

State Cooperation with International Criminal Tribunals: An Investigation of International Warrant Enforcement*

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Abstract

International criminal tribunals (ICTs) cannot apprehend suspects, and states hesitate to put forth costly effort to arrest those indicted for war crimes. Yet many suspects have been arrested or surrendered to ICTs of their own accord. Understanding why some suspects are arrested and others are not can illuminate why states will cooperate with international justice more generally. We present a formal model of a suspect who surrenders or evades arrest and a state that devotes some level of effort to apprehension. We draw on this theory as well as interviews conducted at ICTs in the Hague to present international-, state-, and suspect-level expectations over when and how suspects are likely to surrender or be captured. We use these insights to model the time until capture or surrender in an event history framework, utilizing newly collected data on all individuals indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Keywords:

International Courts, Enforcement, Cooperation, Post-Conflict Justice, Human Rights

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International criminal courts and tribunals (ICTs), such as the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), struggle to prosecute and deter criminals not because they lack the ability to punish those who violate international law but because they cannot *apprehend* their suspects (cf. Ritter and Wolford 2012). ICTs have no associated forces with the capacity or authority to find and arrest suspects, relying primarily on oft-unwilling states to do so. In states transitioning out of civil conflict, decisions over cooperating with international courts may influence leaders' ability to gain or retain political power, and public support for suspected war criminals can facilitate evasion—sometimes, even in plain sight. Further, even states that would like to pursue suspects are generally unwilling to violate another's sovereignty in the process.

These difficulties notwithstanding, many ICT suspects *have* been brought to trial. The ICC accused Bahar Idriss Abu Garda of committing war crimes in Darfur, and he surrendered to the court a mere ten days after issuance of a warrant for his arrest. Congolese authorities captured Thomas Lubanga Dyilo, ultimately convicted of crimes committed in the Democratic Republic of the Congo, a month after the ICC issued a warrant. Yet the ICTY issued a warrant for the arrest of Ratko Mladic in 1995, and Serbia only arrested and turned him over to the court in 2011, sixteen years later. While the ICC has only seen four warrants successfully executed of fourteen issued since its opening in 2002, the ICTY has seen *all* 162 of its suspects brought to the Hague for trial, exhibiting wide variation in their time at large.¹ This raises an obvious question. Why are some suspects brought to trial soon after their indictments, while others remain at large for much longer?

¹Details on each of these cases and all of those either in progress or completed by these institutions can be found on their respective websites: the ICC (<http://www.icc-cpi.int/>) and the ICTY (<http://www.icty.org/>).

The ICTY's perfect record of bringing suspects to trial is puzzling on its own, yet explaining variation in suspects' time-to-arrest also speaks to broader questions of state compliance with international institutions. Unlike international trade and security, where cooperation can be supported by threats of retaliation or reciprocity, states are often loath to expend resources to encourage others' cooperation over issues outside their own immediate interests, such as human rights practices, environmental protection, public health, and international humanitarian law. The conflict over and a return to "normal" politics on the horizon, why would a state encourage a transitioning state to capture its citizens and turn them over to international courts? Why do states expend effort and resources to capture suspects in the absence of these pressures, and how do these efforts affect the time that suspects remain at large?

We examine how both domestic and international incentives affect the likelihood that a suspect will come before an international court by simultaneously analyzing (a) state efforts to apprehend suspects indicted by the ICTY—that is, cooperation with the international institution—and (b) suspect decisions to surrender or attempt to evade arrest. Drawing on interviews with international and government officials in The Hague, we specify a general formal model of the interaction between pursuers and suspects in the shadow of an international criminal warrant. We derive implications of the theory for international criminal courts operating in general context and then turn to hypotheses specifically derived in order to study variation in compliance with the ICTY. We predict the effect on the likelihood of apprehension and surrender of suspects as a function of their alleged roles in crimes, their positions in political and military hierarchies, the presence of international peacekeeping forces, the shadow of upcoming elections in the former Yugoslavian states, and the ICTY's decisions over how long, if at all, to keep indictments sealed and out of public view. We propose that suspects of higher rank will remain at large

the longest, even as those that directed specific crimes will be arrested sooner than those who merely followed orders. We also expect that the presence of peacekeepers and international interventions will shorten time to arrest, while sealed indictments will see a potential significant effect on the time to capture censored out of observational data.

To assess these expectations, we draw upon newly collected data on suspects indicted by the ICTY. All 162 indicted suspects have been brought before the Tribunal's bench, allowing for an uncensored dataset of warrants and surrender/capture incidents. Using case information, periodic reports, and press releases from the ICTY and secondary sources, we have coded information on each suspect's background, crimes, circumstances, and capture, as well as information on states' efforts to support or hinder capture and domestic political conditions that influence state choices. Studying all suspects accused by the ICTY provides us with significant variation in the type of suspect, the country in which they evaded capture, the organizations available to capture them, and, most importantly, the duration of time they remained at large after their warrant was posted and the manner of their arrest (surrender or capture). We estimate event history models to uncover the factors that influence a suspect's risk of arrest as a function given that she has remained at large until the present time, finding that the nature of the crimes, alleged role, and the secrecy of some indictments all play a role in shaping variation in the time that a suspect remains at large.

By examining their most pressing barrier to enforcement—the problem of arrest—we speak to the effectiveness of ICTs, as well as to the enduring question of when and how states will cooperate with international institutions in general. Rather than using ratification patterns to draw conclusions about state perceptions of ICT effectiveness (e.g., Gilligan 2006, Simmons and Danner 2010, Chapman and Chaudoin 2013), we utilize new data on the actual efforts of

the ICTY, states, and international institutions, as well as characteristics of each suspect, to determine how these variables affected the length of time a suspect remained at large. This allows us to draw conclusions about the effectiveness of such an ICT based on the actual behavior of states. We also speculate on some viable solutions to the problem of capture, examining how third-party rewards and punishments can incentivize potential captors to devote resources to find and apprehend suspects wanted for war crimes and crimes against humanity. Specifically, we find that international institutions or interested states can take effective action to motivate capture in otherwise noncompliant states, despite an ICT's lack of independent forces for arrest and the lack of local state support for warrant execution.

The Effectiveness of ICTs

International criminal courts and tribunals (ICTs) attempt to prosecute the unprosecutable. After devastating wars or crimes against humanity, there are international and domestic pressures to punish those responsible, create records of the events, establish justice or remedy for victims, and facilitate societal recovery. Postwar states like Rwanda, Yugoslavia, Sierra Leone, or Uganda are often unable to meet these goals with local institutions, having to wait years for independent and powerful courts to (re-)emerge. Frequently, both rebel and government actors are responsible for war crimes, and many of these continue to hold or have obtained power in the post-conflict regime. Holding power means wielding authority over those who would arrest and try the accused for their alleged crimes, which compounds the obstacles to successful prosecution.

Interested observer states and international organizations have stepped in to create ICTs to

take legal action for post-conflict justice when domestic courts are unable to do so. We define ICTs as international institutions granted the legal authority to prosecute, try, and impose sentences on individuals accused of war crimes, crimes against humanity, and/or genocide.² The United Nations took primary responsibility for international tribunals associated with the Former Republic of Yugoslavia and Rwanda, and it provided guidance and support to Cambodia and Sierra Leone to manage special criminal tribunals on their own soil. ICTs have also been used to prosecute crimes related to terrorism, as with the Special Tribunal for Lebanon (STL). The ICC, in contrast, is not limited to particular conflicts but instead is permanent, with jurisdiction over war crimes and crimes against humanity if they are committed by or in any of its member states. However constituted, ICTs all have international character and legal authority to try those suspects that recovering states cannot—those accused of having the highest level of responsibility for crimes committed against vulnerable populations in the context of war. ICTs are created with the cards stacked against them, working in ruins to bring prominent political actors to justice when domestic institutions cannot.

ICTs are designed with mandates to bring parties responsible for war crimes and crimes against humanity to trial and justice, with the ultimate goals of restoring peace to war-torn areas and/or deterring future crimes. The UN resolution that established the ICTY states that the tribunal, through its efforts to try those most responsible for the violations of international humanitarian law that took place during the 1990s in the former Yugoslavia, would prosecute those crimes and “contribute to the restoration and maintenance of peace” in the region (UN Security Council Resolution S/RES/808 1993). A broader hope was that others might expect to

²This definition most notably excludes strictly domestic mechanisms of post-conflict justice and those institutions that function strictly as truth commissions. Both of these face different challenges and incentives than those we discuss in an international, legally-binding context.

be taken to court for similar crimes, whether through an ad hoc tribunal or the permanent ICC with wide jurisdiction for investigating situations of genocide, crimes against humanity, and war crimes. In theory, if a person expects that they can be brought to trial at an ICT, they may be deterred from committing crimes.

Many scholars and policymakers argue that being brought to trial before an international criminal tribunal imposes sufficient costs to deter future criminal behavior, at least in some cases. Some conclusions about the ability of ICTs to impose credible punishments can and have been drawn from patterns of ratification. Many types of states accept the jurisdictions of ICTs, from states with reputations for rights protection like Finland and Canada (members of the ICC), to states with histories of mass violence and attacks on civilians like Cambodia and Sierra Leone (both with hybrid special tribunals) and the Democratic Republic of the Congo (ICC). When states like Cambodia invite the UN to work with them to facilitate the post-conflict justice process, it sends the signal that ICTs are more than window-dressing. [Simmons and Danner \(2010\)](#) suggest the states most likely to have citizens taken to trial for crimes under the ICC's jurisdiction join the institution to make a costly—and therefore credible—commitment to protect civilians in the future. States that have recently experienced civil wars and lack domestic courts are more likely to ratify the Rome Statute than peaceful states or those with independent courts, suggesting states do act according to a pattern that treats the ICC as if it is effective ([Simmons and Danner 2010](#)). [Gilligan \(2006\)](#) uses a theoretical model to argue that the ICC can be a credible punishment for those criminals who are very likely to lose their positions of power, preferring international trial to worse post-conflict fates, and so it can deter crimes “at the margin.”

Most arguments for effectiveness rely on ICTs to threaten punishments that would-be crim-

inals prefer to avoid, but there is debate as to whether the punishment would be sufficiently costly. Other analyses of ICT ratification patterns identify a selection effect, in that those states that join the institution are those least likely to be taken to trial, with the violent exceptions being those who would like their *opponents* to be brought to court rather than holding themselves accountable (Chapman and Chaudoin 2013). If the states with criminals are not members, the ICC is not able to alter behavior by threatening them with meaningful punishment. Furthermore, if ICT punishments are lighter and/or less likely than local sanctions, then ICT threats cannot actually influence potential or actual criminal behavior. Ku and Nzelbe (2006) argue that domestic and local punishments for crimes are far harsher than sentences short of the death penalty and served in Red Cross-certified prisons, as those convicted by ICTs experience. Ritter and Wolford (2012) agree that light sentences are unlikely to deter future crime, especially when the actors considering these crimes have a great deal to gain that off-sets the not-too-terrible fate of being brought to international trial with international standards of fairness and prisoner treatment.

The question of effectiveness goes beyond the actual value of punishment to whether it is actually carried out for its intended targets. Though ICTs have full authority and capacity to try cases and enact punishment once suspects are rendered into their custody, potential criminals will only be deterred or end ongoing crimes if they believe they will be taken to trial, which is a question of state compliance with the international institution. As international institutions without sovereign control over armed forces, ICTs have no independent means of finding and arresting suspects within sovereign states. The ICT prosecutor investigates cases or situations and asks a panel of judges to issue an indictment and/or warrant for a suspect accused of crimes committed within the Court's jurisdiction. The warrant may be sealed (announced

only to the relevant authorities) or unsealed (made public), a distinction we revisit below. The ICT then depends on domestic authorities with jurisdiction over the territory in which the suspect resides to capture him and turn him over to the Court. Warrants can also be executed by international authorities who are working in the regions where suspects reside, as when Vidoje Blagojevic was arrested by the NATO Stabilization Force (SFOR) in 2001 (ICTY Case Information Sheet IT-98-33/1), but this is relatively rare.³

Thus, the primary burden for arresting international suspects rests with states, and there are challenges to relying on their cooperation. Searching for and arresting suspects can be quite expensive and, some claim, contribute to destabilizing the region, which worries new governments.⁴ Many states lack the institutional capacity to find and arrest suspects after conflict ends. Rwanda, for instance, struggled with corruption and continued in-fighting long after the end of the genocide in 1994, which limited the state's ability to arrest those responsible for crimes. This is a particular challenge when those responsible retain (or have obtained) power; it is difficult to arrest those actors who have authority over the police and/or military, as Milosevic did in Serbia and al-Bashir does in Sudan. Arrests can be complicated in new states with old politics; Ante Gotovina was considered a national hero in Croatia, but the ICTY indicted (and eventually convicted) him for war crimes.⁵ As in many issue areas governed by international institutions, domestic politics creates incentives for states to shirk their responsibilities to cooperate with ICTs, and norms of sovereignty protect those states who do choose to shirk.

Though war crimes tribunals have a long historical precedent, including the trial of Napoleon

³International forces tend to be limited by their mandates; NATO forces in the former Yugoslavia mostly participated in arrests in the early years of the ICTY, and their mandates only allowed them to arrest suspects if they happened to come across them while carrying out their normal duties. NATO was also particularly unwilling to arrest higher level suspects. (Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.)

⁴Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

⁵Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

and the British-led tribunal after the Armenian genocide (Bass 2001), ICTs in their current forms as formal international institutions are relatively new. This means there is limited evidence from which scholars can draw conclusions about the ability of these courts to carry out their mandates, let alone long term questions of reconciliation and lasting peace. To date, scholars have had to draw conclusions about the efficacy of these courts based mostly on legal arguments (Goldsmith 2003, Goldsmith and Krasner 2003, Ku and Nzelbe 2006), early anecdotes, theory (Gilligan 2006, Ritter and Wolford 2012), and patterns in ratification data (Simmons and Danner 2010, Chapman and Chaudoin 2013). In other words, we have been assessing efficacy based on arguments about likely compliance and promises to cooperate, rather than evidence of realized or failed cooperation with ICTs.

Yet there are many ways a state can cooperate with an international criminal tribunal. First, interested states can support ICTs by voting for their establishment or to authorize investigations via the UN. Governments can further put their money behind their commitment, providing resources ranging from annual contributions to the ICC to donating facilities in the Hague, as the Dutch government did for the ICTY, the ICC, and the STL. ICTs ask the most, though, of the states recovering from conflict under their jurisdiction, requesting cooperation with investigations, the surrender of evidence, the transfer and protection of witnesses, and the arrest of suspects.⁶ Arrests provide us with an opportunity to collect systematic evidence of varied cooperation with international courts, because there are publicly available records of arrests and surrenders to ICTs.

As the ICTY's mandate draws to a close, there is a complete body of evidence that can shed light on when and why states with incentives to resist ICT demands will cooperate in capturing

⁶Author interview with Special Tribunal for Lebanon official, the Hague, the Netherlands, June 19, 2012.

suspects. In the following sections, we introduce a new dataset of all individuals indicted by the ICTY and the manner in which they came before the Court, describing the data to identify interesting variation across suspects and the states where they resided. We then derive empirical expectations from a simple theory of (a) suspect choices over surrender and evasion and (b) state decisions over cooperating in the pursuit of suspects, drawing on interviews with international and governmental elites to establish the first principles of state cooperation at the suspect, domestic, and international levels of analysis. Finally, we conduct empirical analyses of the conditions under which suspects come before the ICTY's bench.

Introducing the ICTY Suspect Data

The International Criminal Tribunal for the Former Yugoslavia (ICTY) has a perfect record of warrant execution, representing a complete set of data. The Court is mandated to try those accused of crimes from a single conflict over a limited period of time, which means that there is a clear beginning and end to its ability to indict suspects. All 162 suspects that the ICTY indicted for war crimes, genocide, and crimes against humanity have either surrendered or been captured and turned over to the Court, leaving no outstanding warrants. Using ICTY reports supplemented by secondary sources, we developed a new dataset of all suspects, their personal characteristics, details of their trials, and the conditions of their arrest. The result is an uncensored dataset that includes 5081 suspect-months covering all warrants and subsequent surrenders/arrests from January 2002 to July 2011, not including eighteen suspects who were already in a third party's custody at the time their warrants were issued.⁷

⁷Some information included in the dataset will not be complete as of writing, such as information relating to ongoing trials, but they are not used in these analyses. These variables will be continually updated until the ICTY's

Working from a complete list of cases from the ICTY, we used both Court documents and secondary sources to identify all suspects and collect information about the circumstances by which they came to the Hague for trial.⁸ The ICTY publishes on its website a Case Information Sheet (CIS) for each case, which includes a summary of the alleged crime, the details of the indictment, the trial, and other information. These sheets, supplemented by indictments, press releases, and other Court documents, allowed us to collect information such as the dates on which the suspect was indicted and the indictment was made public; the suspect's nationality, civil/military background and ethnicity; the charges and the suspect's alleged role in the crime; and verdict and sentencing information (for completed trials). We supplemented these core details with research on the surrender or capture of each suspect and details of their time at large using ICTY press releases and secondary (international news media) sources.⁹ The dataset is organized at the suspect-month unit of observation.

The mean time-at-large in the data is roughly seventy months, with a standard deviation of around forty months, indicating substantial variation in the amount of time that suspects avoided coming before the ICTY. Figure 1 presents a histogram showing the distribution of suspects across months-at-large, where most are clustered between about thirty and seventy-five months, even as considerable numbers fall outside that range—including, at 191 months-at-large, Ratko Mladić, the last suspect to come before the Court.¹⁰ While Mladić's case, on its own, is consistent with a picture of an ineffective, "toothless" institution unable to win the cooperation of those actors with the means to arrest its suspects, the substantial number of suspects

mandate is completed for purposes of future research.

⁸All data along with the codebook used to create the dataset will be available on the authors' websites upon publication.

⁹To ensure intercoder reliability, each case was coded independently by at least two research assistants, and the authors conducted checks of details for all individual cases.

¹⁰The extreme observations at the right end of the distribution produce some, albeit mild, positive skewness.

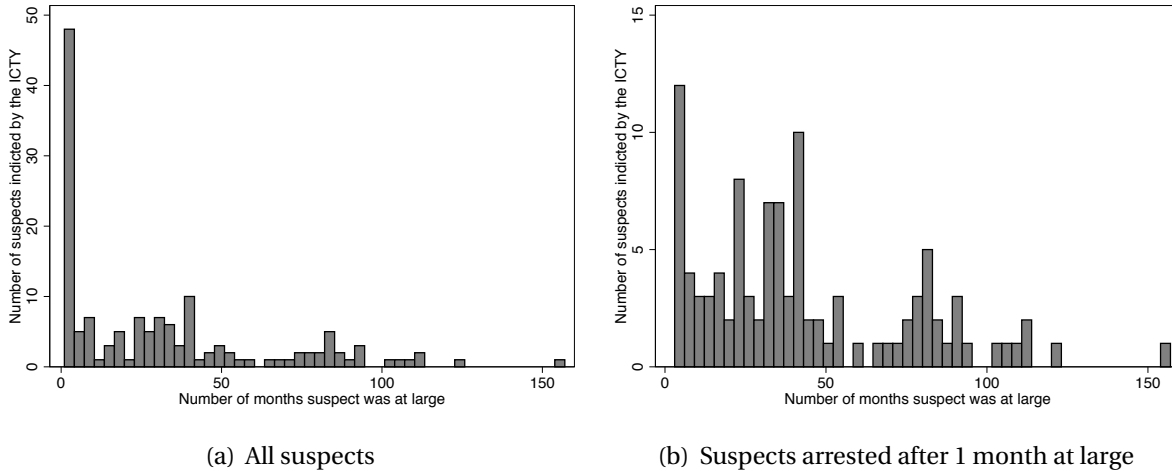


Figure 1: Histogram of suspect months-at-large

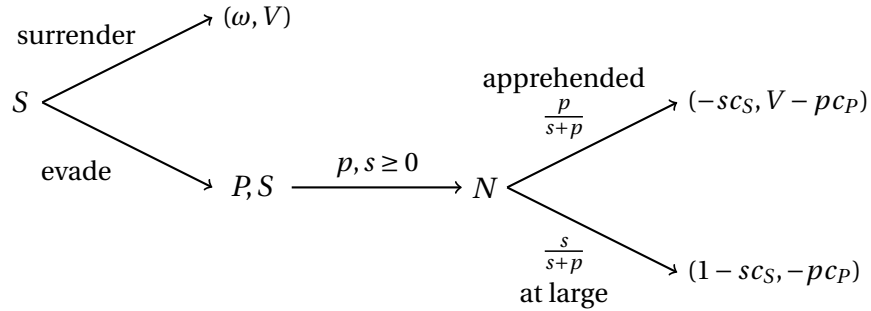
arrested within one or two years of indictment reveals that the ICTY *was* effective in some cases. With the world watching—both states that might consider working with or establishing ICTs in the future and individuals weighing the consequences of engaging in war crimes—the ICTY clearly wished to arrest its suspects and managed to win sufficient cooperation to capture *all* of them. How did it do so? What made some suspects easy to arrest, while others remained at large for years, often at significant cost to the ICTY’s public standing? We turn in the next section to establishing some expectations that we will go on to assess against the empirical record.

A Theory of Surrender, Evasion, and Arrest

The Formal Theory

We derive empirical expectations from a simple formal model based on the goals of and actions available to a Suspect (S) and a Pursuer (P). Suspects choose between attempting to evade capture, subject to their own limited resources or abilities, and surrendering, while potential

Figure 2: The game tree



captors must choose, in light of their own constraints, how much effort to put into pursuing suspects. The game tree is depicted in Figure 2. As we show in this section, these interdependent choices combine to produce surprising implications for how we judge the effectiveness of ICTs on state behavior.

In this model, the Pursuer represents the authority or set of authorities tasked by the international court with arresting a particular suspect. While a number of individuals or groups could find and arrest the accused, they have varied incentives to do so, and we need to limit our study to draw clear inferences. With our scholarly interest in state cooperation with the international tribunals, we assume the Pursuer to be the ruling government of the state where the Suspect is believed to reside.¹¹ This is the entity making authoritative decisions as to what effort should be expended to find and arrest the Suspect, even though agents carry out those orders. The Pursuer has some value, $V \geq 0$, for a suspect being turned over to the international institution. We see this variable as representing the *political* value the Pursuer receives for the suspect going to trial. It can be low for unheard-of suspects or in times of public antipathy toward the

¹¹ICTs such as the ICTY, the STL, and the ICTR have Tracking Units, which are departments of experts with experience in police and military investigations, specifically in tracking fugitives. Their job is not to find and arrest fugitives but to determine where fugitives are most likely to be and assess whether the state is doing all it can to try and arrest them.

international institution, or it can be high, as when the state would receive a political “bonus” for its cooperation. P receives this value whether the Suspect surrenders or is apprehended, but it receives 0 if S remains at large.

Suspects may find that there are incentives to surrender to the Court rather than expending resources to evade domestic authorities. Putting aside for the moment that the process of avoiding arrest—or even being captured—can be quite costly, direct surrender to the international court may involve desirable benefits. Suspects may believe they will receive good will from the prosecutor or the bench for their cooperation. There can also be benefits from surrender that are not available to those who evade arrest. Vojislav Koštunica, a nationalist Prime Minister of Serbia, refused to execute warrants or otherwise cooperate with the ICTY, including prominently opposing the extradition of former President Milošević.¹² However, in 2006 Koštunica announced that suspects who surrendered themselves to the ICTY would receive state funds for all legal fees, family travel to the Hague, etc. This incentivized some mid-level suspects to surrender to the Court.¹³ Formally, if the Suspect surrenders, he receives $\omega \in [0, \bar{\omega}]$, where $0 < \bar{\omega} < 1$.

If the Suspect chooses to evade arrest, he and the Pursuer choose levels of effort to commit to avoiding ($s > 0$) and executing ($p > 0$) arrest, respectively. These efforts combine in a contest success function representing the probability of the outcome; the suspect will successfully evade arrest with probability $\frac{s}{s+p}$ and will be apprehended with the complementary probability. Suspects have particular resources and abilities they can use to avoid arrest. They will weigh the tools to which they have access against the likely effort of their pursuers, generally

¹²<http://news.bbc.co.uk/2/hi/europe/1412828.stm>, accessed July 16, 2014.

¹³Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

working harder to remain at large when their pursuers work harder, as implied by the contest function. In any case, suspects incur the cost of expending resources (c_S) as a function of their effort (s). For many suspects, this effort to remain at large resembles what we might expect of any suspect with average resources—changing identities, fleeing authorities, or hiding in family homes. However, many suspects indicted by international tribunals continue to hold power once the conflict ends. Popular support, control over the police or military, or political office are powerful assets that make it easier to avoid apprehension, even while remaining in public view. The pursuer, for its part, must divert resources c_P to a pursuit effort—money, attention, or manpower—that it could use for other goals, such that its own costs for pursuing the suspect are its effort scaled by the costs of that effort, or $p c_P$.

The players' respective utility functions can be stated formally as follows:

$$u_S = \begin{cases} \omega & \text{if surrender} \\ \frac{s}{s+p} \times (1) + \left(\frac{p}{s+p}\right) \times (0) - s c_S & \text{if evade} \end{cases} \quad (1)$$

$$u_P = \begin{cases} V & \text{if surrender} \\ \frac{s}{s+p} \times (0) + \left(\frac{p}{s+p}\right) \times (V) - p c_P & \text{if evade.} \end{cases} \quad (2)$$

We identify the unique Subgame Perfect Equilibrium, which illuminates (a) the Pursuer's level of effort p that maximizes the likelihood of arresting the suspect at minimal cost, (b) the Suspect's level of effort s that maximizes his probability of remaining free while minimizing cost, and (c) the conditions under which the Suspect chooses surrender to the Court over the costly lottery of evasion.

Proposition 1. *The following strategies constitute the unique SPE. S surrenders when $\omega \geq \frac{c_P^2}{(c_P + V c_S)^2} \equiv \hat{\omega}$ and evades otherwise. S sets $s^* = \frac{c_P V}{(c_P + V c_S)^2}$, and P sets $p^* = \frac{c_S V^2}{(c_P + V c_S)^2}$.*

Both players choose levels of effort as a function of their own costs and benefits as well as their opponent's. The Suspect sets s^* to minimize his own costs, but with an eye as to the costs that constrain his Pursuer from a higher level of effort p^* ; the Pursuer acts likewise. Pursuers, for their part, will put the most effort into pursuing suspects when the costs are low and when the potential rewards are large, and the Suspect bears this in mind in his own calculations.

In the first move, S chooses whether to surrender rather than evade, which he will do when the value of surrender ω is at least as attractive as the net risks of evasion, for which he pays $s c_S$ in return for a probability of successfully avoiding arrest. Should he be successful, his payoff of 1 is greater than the value of surrender, but the costs of evasion may counterbalance that benefit. Unsurprisingly, the Suspect will surrender when the terms of surrender are sufficiently attractive, but this threshold becomes easier to satisfy as the Pursuer finds it cheaper or more beneficial to seek him and as his own costs of evasion increase. To flesh out these ideas and derive testable implications from the model, we turn to comparative statics analysis.

What do changes in these variables mean for the probability a given suspect will be apprehended? Substituting s^* and p^* for s and p yields the following probability:

$$\Pr(\text{Apprehension}) = \frac{p^*}{s^* + p^*} = \frac{V c_S}{c_P + V c_S} \quad (3)$$

This probability increases as the Pursuer's benefit of investing effort into finding and arresting the suspect increases, and it decreases as the Suspect's costs of evasion increase. The value to the state of a suspect going to trial can vary by state-level conditions such as political insti-

tutions and support as well as by suspect-level pressures such as a political rival or suspect-specific conditions on diplomatic ties. Regardless of the reason, as the benefit the Pursuer receives from a Suspect's arrest, V , increases, the state will devote greater effort to his apprehension. The Pursuer's effort also increases as it becomes easier or cheaper to find and arrest the Suspect, or as c_P decreases. Though the Suspect wants to try and match the Pursuer's efforts and so sidestep them, he is limited by his own resources; as c_S increases, the probability he will be arrested increases due to constraints on his efforts of evasion.

These implications give a sense of how the probability of apprehension changes as the actors' preferences shift, but this probability in isolation is not enough to make predictions over when a suspect will leave the at-large sample and in what manner; we turn to analysis of a conditional probability. What do changes in these variables mean for the probability a given suspect will be arrested, *given that he has chosen to try and evade arrest*? Assuming ω is distributed uniformly, $\omega \sim U[0, \bar{\omega}]$, the probability of arrest given the suspect's evasion is:

$$\Pr(\text{Apprehension}|\text{Evade}) = \Pr(\text{Evade}) \times \Pr(\text{Apprehension}) \quad (4)$$

$$= \left(\frac{\hat{\omega}}{\bar{\omega}} \right) \times \left(\frac{p^*}{s^* + p^*} \right) \quad (5)$$

$$= \left(\frac{c_P^2}{\bar{\omega}(c_P + Vc_S)^2} \right) \times \left(\frac{Vc_S}{c_P + Vc_S} \right) \quad (6)$$

$$= \frac{Vc_P^2c_S}{\bar{\omega}(c_P + Vc_S)^3} \quad (7)$$

Focusing on this conditional probability allows us to draw inferences about the conditions under which a suspect who does *not* surrender voluntarily to the Tribunal will be pursued and arrested. In the initial decision, the costs of evasion and its likely success weigh against the value

of certain trial absent the dangers and resource costs of evasion. In equilibrium, the Suspect will prefer surrender when the value of surrender is especially high *or* when he expects it will be too costly to match the efforts of a determined Pursuer. When the value of surrender is below the cutpoint defined in Proposition 1, $\omega < \hat{\omega}$, he opts to evade. This is the case when there is a good chance that he will successfully dodge arrest: when conditions make his effort easy and the Pursuer's efforts costly. In other words, the opportunity to surrender is a selection process, and the suspects who prefer to evade have lower costs and higher expectations of success. The theoretical implications for arrest take this weeding process into account.

Taking the first derivative of Equation 7 with respect to V suggests the probability of arrest (given evasion) increases through low values of V and falls through high values. The relationship between the Pursuer's value for arresting the suspect and the probability he will be arrested takes an inverted-U shape. States facing political resistance to cooperation with the Court in general or with a given suspect have little incentive to devote resources to arresting suspects. Suspects will not surrender to the Court, as they have a good chance at avoiding the Pursuer's minimal efforts. As V increases, authorities receive greater benefits from the suspect's arrest and will devote greater effort into capturing him; as long as his value to the state is sufficiently low, the suspect will still take his chances despite the increasing effort from his pursuer. However, a suspect of very high value will elicit great effort from the Pursuer, and only those suspects with very low costs for evasion will have chosen not to surrender; as a result of this selection, the probability of arrest actually declines as the pursuer's value for capturing him increases. This is because *the conditions that make states work hardest to arrest a suspect will make him more likely to surrender instead*. This discussion yields the first implication of the theoretical model (technical proofs of all implications are presented in the Appendix):

Result 1. *As the pursuer's value for cooperation V increases, the probability an at-large suspect will be apprehended increases up to a point and then decreases.*

Analyzing the probability of evasion defined as the first term in Equation 6 also yields predictions over surrender in line with this discussion:

Result 2. *The probability a suspect will surrender increases as the pursuer's value for cooperation increases.*

Comparative statics analysis reveals a similar relationship between the actors' costs of finding or avoiding each other, respectively, and the likelihood of capture. The probability of arrest given the suspect's refusal to surrender increases as both c_P and c_S increase, but the compound probability begins to decrease after a threshold. Importantly, the shape of the relationship is similar for increases in both actors' costs, but it takes this form for very different reasons. Consider Equation 6. As c_S increases, the first term, representing the probability of evasion, decreases while the second term, the probability of being arrested, increases. Having limited resources or other conditions that make evasion costly will make a suspect reduce his efforts to hide, which improves the probability the state will find and capture him. Expecting this, though low initial costs lead him to enter the at-large pool, surrender becomes increasingly attractive with increasing c_S , meaning that another selection process alters the underlying effects of c_S in the sample of suspects attempting to evade arrest.

Result 3. *As the suspect's costs c_S increase, the probability an at-large suspect will be apprehended increases up to a point and then decreases.*

Result 4. *The probability a suspect will surrender increases as the suspect's costs of evasion increases.*

The change in the compound probability takes the same form as c_P increases, but for different reasons. The state's effort to find the suspect, p^* , strictly decreases in c_P , which decreases the probability of successfully arresting the suspect. This creates incentives for the Suspect to surrender when the Pursuer's costs are low but go to ground as they increase. So as the Pursuer's costs of finding and arresting the suspect increase, the probability the suspect will attempt to evade capture (the first term) increases while the probability of successfully arresting him (the second term) decreases. Nonetheless, for low values of c_P , suspects who contribute low amounts of effort to evade capture enter the at-large pool, making arrests likely even while the state's costs increase.

Result 5. *As the pursuer's costs c_P increase, the probability an at-large suspect will be apprehended increases up to a point and then decreases.*

Result 6. *The probability a suspect will surrender decreases as the pursuer's costs of pursuit increases.*

This analysis highlights what the theory implies as to how changes in variables of interest affect likely outcomes in a general setting of international criminal warrants, a generic pursuer, and a generic suspect. What does this model predict when we look at a particular institution and context, focusing explicitly on the ICTY? Scholarship, legal documents, and personal accounts suggest that the ICTY does not plea bargain with suspects, offering reduced sentences for surrender or confession (Combs 2006). The prosecutor can recommend that the judicial panel select a reduced sentence for a defendant who cooperates with the process of trial, but the bench is not bound by this recommendation. With the exception of the small financial carrots offered by Koštunica, then, there are no or low benefits available to suspects that are

particular to surrender. To derive particular predictions for the ICTY, then, we fix ω to an arbitrary low value. As $\omega \rightarrow 0$, the first term of Equation 5 approaches one, turning our analysis to the probability that the suspect will be apprehended as a function of the actors' characteristics. The effects of the variables on the probability of arrest approach linearity. Furthermore, we can still derive predictions as to the likelihood of surrender, but the expectation is that variation is always on a quite low likelihood. The streamlined focus thus allows for more straightforward empirical implications stated as follows, which we translate into contextual concepts in the next subsection, stated as follows:

Implication 1. *States will be more likely to arrest an at-large suspect, and a suspect will be more likely to surrender to the ICTY, as*

- 1. the pursuer's value for cooperation increases,*
- 2. the suspect's costs of evasion increase, and*
- 3. the pursuer's costs of pursuit decrease.*

Hypotheses over the Apprehension or Surrender of ICTY Suspects

We translate these implications into the political concepts that are likely to be approximations of the theoretical abstractions. In each case, we describe the general concepts behind each formal parameter as they would be applied to any international criminal tribunal before operationalizing them for studying cooperation with ICTY warrants in particular. Interviews with officials at the ICTY in the Hague aid us considerably in this operationalization.

To begin, we look for elements that influence the political value for the state to cooperate in the capture of suspects as requested by the international court, which we defined formally as V . This political value is the benefit the state receives from cooperating with the international court *in general*, rather than the value of arresting a particular suspect,¹⁴ and it can be the result of either domestic or international politics.

In post-conflict periods, domestic politics are often turbulent, with many factors that contributed to the conflict and the commitment of war crimes and crimes against humanity still present. These tensions contribute to state (un)willingness to cooperate with an ICT attempting to arrest and try suspects. At the low end of the spectrum, domestic politics can be a meaningful block to cooperation with international justice efforts. Serbia was strongly opposed to cooperating with the ICTY in the years immediately following the end of the conflict, particularly when it came to executing warrants, as noted by the Court in its semi-annual Completion Strategy Reports to the UN, while Croatia was generally cooperative with the Tribunal even at the beginning.

Transitions of the states of the Former Yugoslavia away from conflict and toward democracy and the rule of law shifted both popular and government actors toward support for post-conflict justice, such that authorities became increasingly willing to arrest suspects.¹⁵ Interviews with officials at the ICTY, supported by information in the Completion Strategy Reports, suggest that international civil society actors, especially non-governmental organizations of an international character, worked to change the local perceptions of both war crimes and justice institutions.¹⁶ These popular perceptions are critical, since popular support for justice efforts is

¹⁴This distinction is somewhat arbitrary, for the purpose of easing operationalization of these parameters. Below, we will treat c_p as the continuum of costs (or lack thereof) connected with arresting a particular suspect.

¹⁵Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

¹⁶For more on how NGOs work to change minds and thus behaviors, see, e.g., (???)

likely to lead to political pressure on state authorities to cooperate with war crimes courts. We expect that increasing popular support for cooperation with post-conflict justice efforts leads to and *domestic* political rewards for devoting effort to arresting suspects, such that the state will be increasingly willing to do so.

Hypothesis 1. *As domestic support for cooperation with justice efforts increases in a residing state, states will be more likely to arrest at-large suspects.*

However, this *expectation* of likely effort and therefore arrest should make suspects more likely to surrender themselves to the Court, yielding the following hypothesis.

Hypothesis 2. *As domestic support for cooperation with justice efforts increases in a residing state, a suspect will be more likely to surrender.*

States also receive *international* benefits for cooperating with the Court. International pressures, whether from interested states or international organizations, increase the incentives to cooperate with the Court. The United States was critical to ensuring Serbian cooperation in the early days after the conflict. Serbian authorities refused to extradite Slobodan Milošević to the Hague until the US stated it would not participate in a donors conference with Serbia if authorities did not surrender him. The financial conditionality of this threat convinced Prime Minister Đinđić to turn him over to the ICTY. The European Union also used economic carrots to entice states to cooperate with the ICTY, conditioning membership on cooperation. Article 2 of the Stabilization and Association Agreement explicitly calls for Serbia to cooperate fully with the ICTY, and the EU went further to explicitly call for the arrests of particular suspects such as Ratko Mladić, Radovan Karadžić, and Goran Hadžić. Even as the former Yugoslav states joined

the EU and Serbia liberalized, the Netherlands and Belgium continued to condition membership on cooperation with the Tribunal.¹⁷ Dangling meaningful international financial incentives before states transitioning into democracies with liberal economies is a powerful way to counterbalance even costly difficulties of tracking and arresting suspects. Interpreting international benefits of cooperation as another aspect of the value of arresting a suspect yields the following hypotheses:

Hypothesis 3. *As international incentives to cooperate with the ICTY increase in a residing state, states will be more likely to arrest at-large suspects.*

Hypothesis 4. *As international incentives to cooperate with the ICTY increase in a residing state, a suspect will be more likely to surrender.*

The state will also increase its efforts to find and arrest suspects when it is comparatively less costly to do so. Holding the determinants of suspects' efforts constant, what makes it cheaper or easier (or, more resource-costly) for the state to pursue an internationally indicted suspect? c_P represents the continuum of opportunity, resource, and political costs the pursuer must consider when devoting effort to apprehending a particular suspect. Obviously, the state expends resources, particularly when the suspects' whereabouts are actually unknown. Even if his location is known, authorities may have to forgo using resources to execute other policies if personnel and resources must be devoted to his capture. More prominently, however, the leaders of a given state face political tradeoffs for apprehending particular suspects. A suspect who is part of or related to the ruling government is far more politically costly to remove, since that person may have influence or enjoy popular or other support for remaining at large. This is the co-

¹⁷Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

nundrum when the person indicted is a head of state, as when the ICC indicted Kenya's sitting president Uhuru Kenyatta, or a national war hero, like Croatia's Ante Gotovina.¹⁸ Moving down the spectrum of costs, suspects may be members of the opposition or even rebel groups, who would be particularly advantageous to remove from the state (Chapman and Chaudoin 2013).

Though the ICTY's jurisdiction is limited to those suspects bearing the highest responsibility for crimes committed in the Former Yugoslavia, suspects are accused of a crimes ranging from participating in a criminal enterprise or aiding and abetting to bearing primary responsibility for crimes against humanity. We expect that suspects who played minor roles in criminal activity will tend to be those who lack the financial, popular, or political resources to evade arrest, such that evasion is particularly costly for them. In comparison, state authorities will have relative difficulty capturing high-profile suspects with power and other resources that enable them to evade arrest at lower personal cost. States will require additional incentives to invest the significant resources needed to locate and arrest suspects who are former presidents, military leaders, or otherwise popular in the states in which they reside. We therefore expect that those figures who carried out orders or aided and abetted war crimes should therefore come before the ICTY sooner than figures who bore primary responsibility for the crimes.

Hypothesis 5. *States will be more likely to arrest at-large suspects accused of participating in or aiding and abetting crimes than those accused of higher responsibility.*

Hypothesis 6. *Suspects accused of participating in or aiding and abetting crimes will be more likely to surrender than those accused of higher responsibility.*

Private knowledge of the international indictment also affects the state's costs of apprehend-

¹⁸See, for instance, Completion Strategy Report 24 May 2004, UN Document S/2004/420, pp. 18-19.

ing a given suspect. International criminal courts issue warrants as either sealed or unsealed. Sealed indictments are private; the ICT circulates information about the warrant only to the authorities of the state where the suspect is believed to reside while keeping that information hidden from both the targets of indictment and the public. Secrecy can prevent suspects from being tipped off and going to ground, making surprise easier and apprehension more likely. Sealed warrants further give authorities the possibility of hiding compliance if they so desire, so that they can arrest suspects without revealing the cooperation with the tribunal to a skeptical public.¹⁹ Sealed warrants thus create relative efficiencies in apprehension as compared to public indictments, decreasing the state's costs of compliance with the international edict, yielding the following hypotheses in line with the implications for c_P :

Hypothesis 7. *States will be more likely to arrest at-large suspects when their warrant is sealed than when their warrant is unsealed.*

Since a sealed warrant gives private information to state authorities, the structure restricts the Suspect's available choice set. Under a sealed warrant a suspect is quite unlikely to see any benefit of surrender to a Court he does not know has indicted him. Intuitively, a suspect will be comparatively far less likely to surrender than he would if the warrant was made public.

Hypothesis 8. *Suspects will be less likely to surrender when their warrant is sealed than when their warrant is unsealed.*

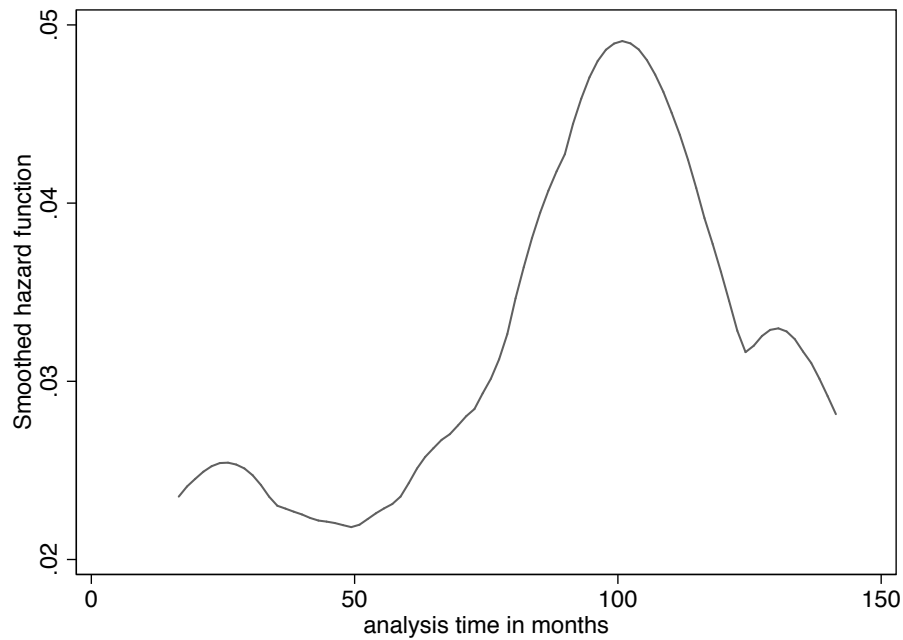
¹⁹Author interview with ICTY official, the Hague, the Netherlands, June 20, 2012.

Empirical Model and Analysis

We use event history techniques on the data described above to estimate the hazard of ICTY suspect exit from the at-large sample by surrender or arrest, using data on the 148 suspects who were at large at the time of their indictments. These models allow us to estimate the role of time in the process of exit, with the assumption that one's risk of exit in any given month is partially a function of the fact that he has remained at large until that point in time. Though we cannot observe or measure the resources and abilities available to each individual for evading arrest, this assumption about time captures these unmeasurables in part; we can estimate the baseline hazard of exit outside of our observed independent variables, which gives us an idea of the risk of apprehension or surrender at various points in time during the average suspect's at-large period. Figure 3 shows the estimated baseline hazard of arrest as a function of the number of months since the initial indictment.

As estimated, the average suspect's risk of arrest begins relatively low, then increases as analysis time (in months) goes on. A small bump in the hazard in the early indictment period suggests suspects are slightly more vulnerable in the first year of their warrant, but the peak of their vulnerability is around one hundred months at large, or just over eight years, before declining sharply. In other words, the risk of appearing before the ICTY's bench begins low before increasing quite dramatically; however, past this period of risk, capture becomes—and remains—substantially less likely for a given suspect who has remained at large to that point. The low dip in the hazard of exit around fifty months hints at the resources or ingenuity of suspects able to remain at large for a few years post-indictment, since they avoid early or easy capture at the outset. It also suggests something about the environment in residing states; most suspects tended

Figure 3: Estimated baseline hazard function (risk of arrest by analysis time)



to be indicted fairly soon after the start of the Tribunal's mandate, when there was little support for the institution in the post-conflict period. Thus, states devoted little effort in the first few years of the Court, which—combined with suspect resources—contributes to the low hazard of exit around fifty months. In contrast, the hazard after the one-hundred-month peak suggests little about state (non)cooperation with the ICTY and more about fugitives' special talents, resources, networks, or support that separates them in some way from those suspects captured sooner after their initial indictment.

To analyze the hypotheses as derived from the formal theoretical model, we estimate two duration processes, predicting the risk that a given suspect will be apprehended and using those estimates to inform predictions over whether the suspect will choose to surrender or remain at large at a given point in time. First, we estimate a logit regression that predicts the likelihood of being arrested as a function of a vector of covariates operationalized in the next subsection

and cubic splines to approximate the role of time. These estimates resemble the expectations a suspect would have as to his or her risk of being apprehended, should he decide to remain at large. However, these estimates, created with measures with likely error, include an element of uncertainty that should be incorporated into the estimates of the dependent decision of surrender. Therefore, we use the linear index, $X\beta$, from the estimated model of arrest to generate a sample of one thousand estimates of a suspect's predicted probability of arrest. We then regress the likelihood of surrender on each of these estimates and save the coefficient estimates for each of the 1000 second regressions. Summaries of both of these simulated sampling distributions allow us to draw inferences as to the estimated likelihood of surrender given the expected likelihood of arrest, as well as the expected likelihood of arrest itself, and the efficiency of these estimates.

Operationalizing Independent Variables

The Case Information Sheets (CIS) provided by the Tribunal²⁰ include detailed information about each suspect's background, their alleged roles in the indicted crimes, and the trial procedures and outcomes, among other things. These are the primary sources of information for our data, which we supplement using reliable secondary sources culled from Lexis-Nexus searches.²¹ The CIS for each case lists the date of the initial indictment, which we use to code the first month the suspect is in the at-large sample.

It is difficult to know with precision the whereabouts of suspects while they were at large.

We do not know in which state the suspect resided, so we do not know for certain which state

²⁰All Case Information Sheets are available by case number or suspect name on the ICTY's website at URL: <http://www.icty.org/action/cases/4>.

²¹All sources are recorded in detail in the raw data, available from the authors upon request.

was responsible for finding and arresting the suspect. However, we assume that suspects tend to stay put in their home state. As told to us by an official at the ICTY, even when they have resources to travel, suspects find it easiest to evade arrest when they remain in their home state, near networks, friendly homes, and familiar places. We first coded a suspect's likely residing state as the state of his birth. Most of the indictments listed all known information about the suspect's whereabouts at the time of issue, and we used this information to update residing information. Essentially, unless Lexis-Nexis searches reveal other known whereabouts, we code the suspect's Residing State to be where they held power, worked, or lived at the time of indictment, as listed in the official document. In almost all cases, media searches confirm this coding rather than overturn it.

We need a variable to approximate the level of public support for transitional justice and cooperation with the international tribunal in the state responsible for arresting a given suspect, or the Residing State. First, we use data from [Smith and Wiest \(2012\)](#) as to the number of international non-governmental organizations (INGOs) reporting membership in a given state. This represents the presence and growth of international civil society in states. In particular, we limit the indicator to those INGOs with a focus on human rights, global justice, democracy, or peace, in the attempt to approximate the actors most likely to work toward changing attitudes toward justice for war crimes.

Though it is a crude match for this concept, the presence of democratic institutions and the development of democratic norms for human rights and the rule of law can approach the idea that the public would give political support for cooperation with the international institution. We use the Unified Democracy Scores (UDS) to measure the level of *Democracy* in the Residing State for a given calendar year while the suspect remains at large within it. We use the

Unified Democracy Scores (UDS), which are estimates of the latent concept of democracy that unifies ten available measures ranging from dichotomous measures of institutions or values to the ordinal scales. Many scholars have developed different concepts of democracy, focusing on institutions, elections, values, rights, participation, and other core ideas that combine to an underlying concept that unites them, with some amount of uncertainty. The UDS average the uncertainty of individual measures and estimate this core concept, which ranges from -2 to 2 and varies by year (Pemstein, Meserve and Melton 2010). Since the UDS draw on information from many measures that capture slightly different things that vary at different times, they give us more variation than, for instance, the more slowly-changing Polity index (see Marshall and Jaggers 2009). We include the Residing State's Unified Democracy Score to assess Hypotheses 1 and 2.

International Pressure indicates the presence of explicit international demands or conditions for Residing States to cooperate with the ICTY. The Tribunal sends semi-annual Completion Strategy Reports (CSRs) to the United Nations Security Council, which detail the progress the Court has made toward fulfilling its mandate, its challenges, and its strategies for moving forward.²² Each of these reports has a section detailing state cooperation with the Tribunal, and the Court uses these sections to list the ways in which individual Residing States have either explicitly cooperated with legal requests and warrants or actively blocked the Court's requests, either in general or in the case of particular suspects. This section also points out whenever an observer state, such as the US or the Netherlands, or an international organization, such as the European Union, put explicit pressure on a Residing State to cooperate with the Tribunal. If a state or organization conditions any kind of financial assistance on the Residing State's cooper-

²²The CSRs are publicly available in the ICTY's online Legal Library: <http://www.icty.org/tabs/14/1>.

ation with the ICTY, we code this variable as 1, and 0 otherwise. The EU conditioning Serbian membership talks on cooperation in general and the US withholding donor conference participation on the extradition of Milosevic are examples of the relevant pressure. We also include an indicator as to the state's progress toward EU membership, whether it is non-existent, in negotiations, the Stabilization and Accession Agreement (SAA) is in force, or the state is a full-fledged member.

Listed on each CIS is the date on which the indictment was made public or unsealed. For instance, Goran Hadžić was indicted on June 4, 2004, and his indictment was made public a month later on July 16, 2004. We code the variable *Sealed Indictment* as 1 for the first month in this case and 0 in the month in which it became public and all months following. A large number of suspects (128) had their indictments sealed for some time before being publicly announced; sealed indictments spent an average of 355 days in secrecy before being publicly announced. As posed in Hypothesis 7, we expect that a Sealed Indictment will lead to relatively higher hazard of arrest.

The suspect's alleged *Role* in the crimes is coded in one of four ways: Participant, Aiding and Abetting, Complicity, or Responsibility. This listing is in order of the level of responsibility implied by each category, and each suspect is categorized at the highest level of their responsibility. If, for instance, a suspect allegedly planned an event and also participated, he would be coded as Responsibility, rather than Participant. Participants acted according to orders or the specifications of their job as determined by others. Footsoldiers, prison guards, and trigger-pullers tend to fall into this category. The vast majority of people who participated in crimes with low levels of responsibility during the Balkan wars were either left alone or tried in domestic courts, but forty-six were charged by the International Tribunal for their participation.

Suspects are coded as Aiding and Abetting when they facilitated crimes or otherwise made them possible without actually pulling triggers or bearing responsibility; twenty-five suspects are in this category. Trial proceedings frequently make the charge of aiding and abetting explicit. Mitar Vasiljević, for instance, was convicted of aiding and abetting persecutions on political, racial, or religious grounds and murder; he led seven men to line up along a river where they were subsequently shot and five died (CIS IT-98-32 “Višegrad”). As discussed above, we believe that these actors who are accused of lower-level participation in crimes will have fewer resources for evading arrest.

By contrast, seventy-one suspects were coded as exercising Responsibility for crimes against humanity, genocide, or war crimes. The highest level of culpability for the alleged crimes, these actors planned, ordered, or otherwise led others in heinous crimes of a political nature. Frequently, people charged with Responsibility were commanders or leaders; chiefs of staff for conflicting armies; political heads of states or districts; etc. Janko Bobetko was Chief of the Main Staff of the Croatian army and was indicted for planning, ordering, and committing war crimes such as murder, plunder, and wanton destruction of civilian lives and property (CIS IT-02-62 “Medak Pocket”). The most recognizable suspects tried by the ICTY tend to be included in this category, including Milošević, Mladić, Gotevina, and Karadžić. We anticipate that these suspects will be far more costly for the state to apprehend than suspects accused of lower responsibilities in heinous crimes. Hypothesis 5 states that we expect states will be more likely to devote effort to finding the “easy” targets of Participants and Abettors and less likely to arrest those bearing Responsibility; Hypothesis 6 maps these roles to the likelihood of surrender. The reference category of the remaining seventeen suspects is Complicity: suspects who had knowledge of and power to stop crimes but failed to do so.

We gathered several control variables from the CIS archive as well. Characteristics of the suspect or the crimes they are accused of committing may influence both their ability to evade capture and the state's willingness to devote effort to find them, potentially confounding our ability to draw inferences about our theory. *Military* is coded 1 if the suspect held military status at any point during the conflict or post-conflict periods, with 0 indicating civilian status. One's military or civilian status may correlate with particular resources for evasion or state willingness to arrest. Members of the military dominate the sample, with 125 identified as military and 34 as civilian; notably, simple χ^2 tests reject the null hypotheses that military figures differ systematically from civilians in both time at large and rates of surrender and capture. We include an indicator of the *Location* of the alleged crimes, noting whether alleged crimes were committed in Croatia, which left the fighting early, or Kosovo, which saw conflict later, with crimes committed in Bosnia-Herzegovina as the reference category. Crimes committed in Bosnia-Herzegovina dominate the sample, producing 128 suspects, with the remainder accounted for crimes committed in Croatia (18), Kosovo (16), and Macedonia (2). We also control for the initial *Indictment Date* for similar reasons—the timing of the indictment may be strategic on the part of the ICTY, and early indictments may be less likely to be executed than later ones, perhaps as a function of our independent variables of interest.

Finally, we measure some features of the domestic and international environment. *Election* equals 1 in any month in which the Residing State held an election for the national executive or parliamentary representatives and 0 otherwise; we expect that electoral pressures may affect authorities' willingness to cooperate with the ICTY, though we do not know in what direction. *FRY Election* equals 1 if *any* of the former Yugoslav states held elections in that month. We control for the presence of international forces in the air in the Balkan states, with indicators

of *NATO Air Operations* in months when either Operation Deliberate Force (August-September 1995) over Bosnia and Allied Force over Serbia-Kosovo (March-June 1999), are ongoing. We also collected data on the presence of United Nations and NATO peacekeepers and/or observer forces, but the models failed to converge in the presence of those variables, so we have omitted them from the analyses presented here.

Analysis

[The conditional estimations described on page 28 are not complete. We present the following, previously-estimated event history models in the interest of exploring the data empirically—not as analysis of the theoretical implications.]

In this section, we use Cox proportional-hazards models on the new ICTY suspect data to estimate the effect of a number of time-constant and time-varying covariates on the time to exit by either arrest or surrender from the at-large sample. Specifically, we estimate the hazard of a suspect being arrested or surrendering at time t , conditional on having remained at large until that time.²³ We present coefficients in terms of hazard ratios, such that a coefficient greater than one indicates an increase in the risk of capture or surrender, while a coefficient of less than one indicates a reduction in the risk of capture or surrender. Finally, to account for heterogeneity in suspects' individual talents, resources, or social networks, we estimate an individual frailty term for each suspect, which is the event-history equivalent of random effects in standard regression models.

While the Cox model makes no assumptions about the shape of the underlying hazard func-

²³We use the Breslow method to handle ties in time-to-exit.

tion, or the rate at which suspects drop out of the data, it does assume that variables have a proportional or time-constant effect on the shape of the hazard. However, if variables have different or changing effects over time—or if the variables themselves change over time—then the proportional-hazards assumption may be violated. To assess the appropriateness of the assumption, we use a combination of statistical and visual methods (see Box-Steffensmeier and Jones 2004, Ch. 8). First, a global test of the proportionality assumption using Schoenfeld residuals (Grambsch and Therneau 1994) clearly rejects the null hypothesis that hazards are proportional ($p = 0.002$). Next, plotting the Schoenfeld residuals against time indicates that the primary culprits are indicators for crimes committed in Croatia and Kosovo, as well as the naturally time-varying covariates of sealed indictment, NATO air operations, and the occurrence of an election. After interacting each of these variables with the square of analysis time, t^2 , the global test of proportional hazards fails to reject the null hypothesis of proportional hazards ($p = 0.222$).

Table 1 reports the first set of event-history estimates, with the dependent variable being time to exit of any type (apprehension or surrender). Column 1 reports estimates using data on all suspects residing in all states under study, with the level of Democracy of the suspect's Residing State included as a control variable. We expect that the level of public support for cooperation with the ICTY (approximated using the state's level of democracy in a given year) conditions states' cooperation on a number of dimensions. Column 2 reports the estimated model on a sample of all suspects in Residing States considered democratic in a given month, while Column 2 reports the model for non-democratic Residing States.²⁴

Consider first the estimates using the entire sample. What distinguishes those suspects that

²⁴“Democratic” is coded as a UDS score of at least 0.0675.

Table 1: Cox Proportional-Hazards Model of Time to Exit of Any Type

	(1)	(2)	(3)
	All Residing States	Democracies	Non-Democracies
Democracy	1.877 [†] (0.6587)		
Sealed Indictment	0.999** (0.0003)	0.999** (0.0005)	0.999 (0.0005)
Sealed $\times t^2$	1.000** (0.0000)	1.000* (0.0000)	1.000 (0.0000)
Role: Aiding and Abetting	2.214* (0.8539)	1.229 (0.5698)	2.770 (2.5782)
Role: Participant	0.697 (0.2344)	0.407 [†] (0.1886)	1.768 (1.2757)
Role: Responsibility	0.837 (0.2631)	0.578 (0.2149)	1.683 (1.3139)
Counts: War Crimes	1.036* (0.0161)	1.039 [†] (0.0236)	1.068** (0.0265)
Crimes Against Humanity	0.964 (0.0296)	1.049 (0.0459)	0.863** (0.0464)
Counts: Genocide	0.580** (0.1081)	0.665 [†] (0.1427)	0.583 (0.2368)
Military	0.700 (0.1608)	0.823 (0.2434)	0.774 (0.3129)
Location: Croatia	0.243** (0.0910)	0.375* (0.1499)	4.024 (5.8538)
Location: Croatia $\times t^2$	1.000 [†] (0.0001)	1.000 (0.0001)	0.996 (0.0032)
Location: Kosovo	0.308** (0.1231)	0.422* (0.1729)	2.01e-20 (.)
Location: Kosovo $\times t^2$	1.000 (0.0003)	1.001 [†] (0.0003)	0.614 (.)
Indictment Date	1.000** (0.0001)	1.000** (0.0002)	1.002** (0.0006)
NATO Air Ops	132.0 (128390.7790)	3.38e-19 (.)	11.49 (.)
NATO Air Ops $\times t^2$	0.00417 (4.0510)	0.633 (.)	0.0400** (0.0458)
Election	0.788 (0.1547)	0.610 [†] (0.1572)	0.118* (0.1184)
Election $\times t^2$	1.000 (0.0001)	1.000 (0.0001)	1.003** (0.0010)
Observations	4498	2130	2368
Number of subjects	144	98	85
Number of failures	144	97	47

Hazard ratios reported; standard errors in parentheses.

[†] $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

came before the ICTY sooner from those that remained at large for long periods of time? Model 1 in Table 1 suggests some interesting possibilities, based on the suspect-specific independent variables of interest. Sealed indictments are significantly related to a decreased hazard of arrest, but the magnitude of the effect is small—i.e., very close to one. The small substantive effect is consistent with a belief that the international tribunal seals indictments to take advantage of stealth, but moreover that they do so strategically. Secrecy may be used most commonly in cases where suspects are expected to be particularly difficult to capture, such that the relationship between sealed indictments and their true effect on bringing a suspect to the bench is minimized; in other words, the goal of sealing an indictment might be to bring the prospects for arrest in line with the average suspect. Further, the results also suggest that sealed indictments are not overwhelmingly targeted against figures that might be impossible to arrest, then unsealed once conditions change; if that were the case, we would expect a more substantial substantive difference between time at large for this under sealed and unsealed indictments, where suspects under sealed indictments are *much* less likely to be arrested than those under unsealed indictments.

Turning to the Role the suspect played in the alleged crimes, we find that those suspects accused of aiding and abetting crimes are far more likely to exit the at-large sample than those accused of complicity (the omitted reference category), while those accused of direct participation and organizing/ordering criminal behavior do not differ significantly from complicit actors in their hazard of exit. This is consistent with our expectation that those suspected of lower levels of responsibility for atrocities will be easier, and thus more likely, to be captured. Next, increasing counts of war crimes have a significant effect of increasing the risk of exit, while more charges of crimes against humanity and genocide actually *decrease* the risk of exit. Short of a

theory of which suspects are accused of which crimes, we are hesitant to read much about the relative costs of evasion and pursuit across these categories of charges, but this pattern clearly merits further investigation.

Notably, the level of Democracy in the state where the suspect is believed to reside also seems to have an effect on the risk of arrest. Suspects are nearly two times more likely to exit the sample and come before the International Tribunal if they reside in a state that is democratic than if they reside in an autocracy. This result is in line with our expectation that Democracy proxies for public support for cooperation with the Court, leading states to devote more effort to finding and arresting suspects. Several of our hypotheses are conditional on public support for cooperation with the ICTY, so we turn to the estimates distinguished by level of Democracy in the Residing States.

The hazard ratio on Sealed Indictments in Model 3 fails to reach statistical significance by any common standard. This suggests less democratic states do not distinguish between indictments when deciding whether to capture a suspect, devoting little effort to cooperating with the Tribunal in any case. By comparison, there is a statistically significant effect of sealing indictments in more democratic Residing States. Suspects are less likely to exit the sample when their indictments are sealed, though the magnitude of the effect is small, consistent with our story about the strategic use of sealed indictments to bring the risk of arrest for some difficult suspects in line with the average risk for suspects with public indictments.

We argued that once states had sufficient support for cooperation with the ICTY, suspects would still be more likely to exit the sample if they were accused of lower levels of responsibility for war crimes or crimes against humanity. This expectation does not bear out, at least when conditioned on Democracy. Indeed, we find that those suspects accused of individual responsi-

bility for crimes (Participation) are *less* likely to exit the at-large sample in democracies, at least as compared to those accused of Complicity. No other roles in alleged crimes reaches statistical significance in the divided samples.

Each model includes a count of the number of charges a suspect is accused of for each of the three types of crimes in the ICTY's jurisdiction.²⁵ Democratic states will be more likely to put effort toward arresting suspects with more charges weighed against them, though we find that only to be true for those charged with War Crimes. Furthermore, non-democratic residing states will also devote effort to capturing those charged with more counts of war crimes, such that democracies are no better in this endeavor. Interestingly, the estimates suggest that suspects charged with more counts of genocide will be more likely to remain at large in democratic residing states, while suspects charged with more counts of crimes against humanity will be prone to be fugitives in non-democracies. These results also do not support our expectations but deserve further investigation.

Models echoing those in Table 1 but separated by exit type failed to converge in some cases, leaving us unable to examine whether some conditions might lend themselves to surrender but not arrest. Models including International Pressure also failed to converge.

Examining the control variables yields a few more interesting insights about state efforts to cooperate with international warrants. It seems that suspects indicted for crimes committed in Croatia or Kosovo are substantially less likely than others to be arrested early in their indictment period, as indicated by the switch from risk-ratios of less than one as time-constant covariates to ratios just larger than one as time-varying covariates. Thus, while crimes in these two regions are associated with initially low rates of arrest, these rates rise and approach crimes commit-

²⁵Models with a count of all charges in a single variable did not converge.

ted in other regions over time. Finally, the remaining international context variables, ongoing NATO air operation and elections, have no significant effect on the rate of arrest, *except in non-democratic residing states*. Elections do seem to affect states' willingness to capture suspects in states with less support for cooperation with the ICTY. Early in a suspect's indictment period, less democratic residing states shy away from devoting effort to arresting suspects. This may be because actors seeking appointment or retention do not want to be seen as cooperating with the ICTY while there is little support for doing so. However, suspects who remain at large for longer periods may still find themselves subject to arrest as elections approach, even in comparatively less democratic residing states. Notably, the crude nature of the measures, which assumes that NATO operations or elections apply to every suspect at large at the time, regardless of the residing state in which they occur, means that aggregation bias might be masking true effects.

Conclusion

The challenge for most international institutions in ensuring compliance is their lack of enforcement power; when states break the rules, institutions can issue rulings and coordinate retaliation, but they generally have no independent ability to punish violations. International criminal tribunals, however, face a different problem. When individuals break the rules, ICTs have the means, in the form of prosecutors and prisons, to punish them, but they lack the independent ability to apprehend their suspects in the first place (Ritter and Wolford 2012). Put differently, states cannot evade capture if they violate international law, but individuals can and very often do. Yet individual suspects often are arrested, and in the case of the ICTY, *all* of its

suspects surrendered or were apprehended.

To explain this variation, we developed a formal model pitting a suspect preferring freedom but at the cost of evasion against a pursuer weighing variable benefits for cooperating with an international warrant and the costs of search and custody. Analysis of the equilibrium behavior yielded predictions over the probability a suspect will be arrested *given he chooses to evade arrest rather than surrender to authorities*.

Taking a careful approach to interpretation based on case knowledge, we derived testable hypotheses specific to the context of the International Criminal Tribunal for the Former Yugoslavia. The theory suggests that we should see increases in the likelihood of suspects being apprehended as (a) the domestic support for cooperation with the Tribunal increased, (b) international pressures to cooperate increased, (c) the number of charges levied against the suspect increased, (d) knowledge of the warrant is private, and (e) the level of responsibility of which the suspect is accused decreased. Importantly, the selection or censoring structure of the theory implies that for all variables predicting an increase in the likelihood that an at-large suspect would be apprehended, there is an associated increase in the likelihood of the same suspect surrendering for trial.

We introduced a newly collected dataset of the time to apprehension/surrender of every individual indicted by the ICTY. Estimating event history models with corrections for time-varying covariates, we showed that suspects suspected of smaller or indirect roles in crimes, as well as those accused of war crimes, suffer higher rates of arrest than those accused of more direct involvement or those accused of crimes against humanity and genocide. Further, secrecy has a very small negative on the hazard of arrest, though further dispositive evidence can be found through a future evaluation of the decision to seal and then unseal indictments.

Appendix

Proof of Proposition 1. Begin in the pursuit-evasion subgame, where players solve

$$\max_s \left\{ u_S(s) = \frac{s}{s+p} - s c_S \right\} \quad \text{and} \quad \max_p \left\{ u_P(p) = \frac{p}{s+p} V - p c_P \right\}.$$

The first order conditions create the following system of equations,

$$\frac{\partial u_S(s)}{\partial s} = \frac{p}{(s+p)^2} - c_S = \frac{\partial u_P(p)}{\partial p} = \frac{s}{(s+p)^2} V - c_P = 0,$$

and solving it yields a pair of equilibrium efforts,

$$s^* = \frac{V c_P}{(c_P + V c_S)^2} \quad \text{and} \quad p^* = \frac{V^2 c_S}{(c_P + V c_S)^2}.$$

To verify that these are maxima, note that

$$\frac{\partial^2 u_S(s)}{\partial s^2} = -\frac{2p}{(s+p)^3} \quad \text{and} \quad \frac{\partial^2 u_P(p)}{\partial p^2} = -\frac{2sV}{(s+p)^3}$$

are negative at s^* and p^* , respectively. Finally, in the game's initial move S will surrender when

$$\omega \geq \frac{s^*}{s^* + p^*} - s^* c_S = \frac{c_P^2}{(c_P + V c_S)^2} \equiv \hat{\omega},$$

and evade otherwise. □

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