

Complementarity and Public Views on Overlapping Domestic and International Courts*

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Abstract

A growing regime complex of domestic and international legal institutions have overlapping jurisdictions for violations of international law. In many contexts, the jurisdiction of the international court is restricted by the principle of “complementarity”: the international court can only intervene in countries where governments have proved unwilling or unable to conduct investigations or plaintiffs have exhausted domestic remedies. We ask whether complementarity (a) increases support for international courts’ actions and (b) increases support for domestic remedies as a way to forestall international court action. International courts, especially the International Criminal Court, rely heavily on an affirmative answer to both questions. We assess these predictions with a survey experiment about the ICC in Georgia, with planned extensions to the United States, Israel, the Philippines, and South Africa. In the case of Georgia, we do not find that complementarity frames improve support for either ICC or domestic court actions. These results are important because they indicate that arguments about procedural fairness like complementarity may not necessarily stem the tide of increasingly public opinion on international courts and international organizations more generally.

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1 Introduction

The ecology of international institutions has become remarkably dense over the past three decades. The number of international institutions—often overlapping with each other and with domestic institutional jurisdictions—has skyrocketed.¹ Many international and transnational interactions are now governed by a “complex interdependence” of overlapping national and international jurisdictions.²

A principle known as “complementarity” is one of the most important rules governing the overlap between international and domestic institutions. It is a hallmark feature of a diversity of institutions, from international courts such as the International Criminal Court (ICC) to the universal periodic review process at the United Nations to truth and reconciliation commissions in post-violence settings. With respect to judicial institutions, complementarity limits international courts’ jurisdiction to situations where governments have proved to be unwilling or unable to conduct investigations or plaintiffs have exhausted domestic remedies. International courts thus complement domestic courts; they work alongside them, but a step behind. This principle provides pride of place to domestic courts, with international courts deferring if domestic legal institutions and actions meet certain conditions.

Complementarity is also thought to play two important *political* roles. First, complementarity is thought to enhance the perceived legitimacy of supranational institutions. It does this by making supranational authority more palatable to domestic publics and politicians. In the case of a judicial institution like the ICC, complementarity makes the Court appear less interventionist or neo-imperialist. To keep the Court at a distance, a member state would only need to take its own appropriate legal actions. The international institution only has authority if the domestic institution has ceded it. This principle therefore helps the process of exercising authority at the international level appear more fair and democratic, since countries have chosen to be members in this regime and national leaders enjoy a lever of control over the supranational body. In turn, more democratic and procedurally fair processes are thought to be perceived as more legitimate.³

A second political role for complementarity lies in its effects on domestic institutional actions. Complementarity is thought to be a powerful inducement for action by national authorities. Since many

¹ Alter (2014); Alter and Meunier (2009); Hafner-Burton, Mosley and Galantucci (2019); von Stein (2018).

² Farrell and Newman (2014); Keohane and Victor (2011); Raustiala and Victor (2004); Urpelainen and Van de Graaf (2015).

³ Bechtel and Scheve (2013); Dellmuth and Tallberg (2015); Binder and Heupel (2015).

citizens and politicians prefer that their country's institutions handle their country's affairs, the threat of an international institution taking over should spur support for greater efforts by national authorities as a way to forestall international intervention. This effect is referred to as "positive complementarity" by legal scholars and practitioners. Luban (2013) refers to this as "the most important achievement in [international criminal justice]."

As we document systematically below, complementarity is an oft-used selling point for the ICC in a variety of contexts, for a variety of audiences. After coding all official statements and press releases from the ICC's Office of the Prosecutor (OTP), we find that over 30% of recent documents emphasize complementarity, with a significant increase since the Court's inception. The OTP frequently foregrounds complementarity, accentuating, for a given situation, that the Prosecutor is only acting because domestic actors and institutions have failed to do so.

We use evidence from a survey experiment about the ICC conducted in the Republic of Georgia to better understand the conditions under which complementarity plays these two roles: increasing support for international actions and domestic actions. In addition to the experimental evidence, we leverage qualitative data drawn from nearly two dozen interviews with Georgian civil society actors and policy makers. The ICC's investigation in Georgia concerns the 2008 war between Georgia and Russia over the contested territories of Abkhazia and South Ossetia. This ICC situation is legally and politically significant, and offers an ideal laboratory for this study.

Among countries under ICC investigation, Georgia is one of the most democratic. Public opinion should matter more there than in other contexts.⁴ This is also the first ICC situation concerning interstate conflict. Similar to most conflicts, there exist multiple narratives about exact events and different attributions of responsibility, as well as competing claims over the authority and competency of domestic and international institutions.⁵

Contrary to expectation, we do not find that information about complementarity increases support of ICC investigations. Nor do we find that informing people of complementarity increases support for domestic investigations. We believe null results are informative, in this case. In designing the experimental protocol, we took care to produce a treatment vignette that resembles OTP statements

⁴ Aldrich et al. (2006); De Mesquita and Siverson (1995).

⁵ Meernik and King (2014); Shany (2003); Hayner (2000, 2011).

regarding the opening of a preliminary examination or investigation and, more generally, the Court's jurisdiction over a given situation. While the Chief Prosecutor and other representatives of the ICC use complementarity to discursively frame the Court's authority and actions as legitimate, this argument, predicated on procedural fairness, does not appear to be effective.

This paper contributes theoretically and empirically to the scholarship on international law and the design of international institutions. First, we break new ground in the types of institutional design features that can affect perceptions of an institution. Much scholarship focuses on monadic features of international legal institutions, for example treaty provisions that prohibit a specific practice or oblige a government to a particular action.⁶ In contrast, we focus attention on a set of institutional design features that are *dyadic*—governing the relationship *between* institutions. As the number of international institutions grows and their overlap becomes more dense, understanding the consequences of design features governing this overlap will become more important.

Second, our study speaks to whether certain political strategies can resuscitate the image of international institutions like the ICC. The recent global backlash against international institutions is well documented.⁷ The publics of many countries are no longer strong “compliance partners,” or a bottom-up force that encourages compliance with international law.⁸ Our study sheds light on the question that naturally follows: what can turn this tide? The ICC has placed great faith in complementarity as a political tool for blunting criticism of the Court and cultivating support. Our study provides empirical evidence that the current approach is not effective.

Third, our study provides empirical evidence concerning whether international institutions spur compliance among their states parties through positive complementarity – in the ICC's case, by increasing public support for domestic investigations and prosecutions. In very practical terms, the ICC has finite time and resources; it cannot pursue all potential situations and litigate all possible cases. The Court, and the international legal regime more broadly, relies on domestic institutions to assume the bulk of accountability for serious crimes. Just as we do not find support for complementarity frames improving support for ICC actions, we do not find that complementarity improves support for domestic-level actions. This finding is troubling. If the ICC is indeed having knock-on effects, like those described by positive

⁶ Simmons (2009); Zvobgo, Sandholtz and Mulesky (2020).

⁷ Langan (2015); Helfer and Showalter (2017)

⁸ Alter (2014). See also Vreeland (2003); Nooruddin and Simmons (2006); Simmons (2009).

complementarity, they do not appear to be from increased public support for domestic investigations.

2 Complementarity in Practice and Theory

How do institutional design features that govern the relationship between national and international institutions affect popular support for each institution? We focus on a fundamental, yet understudied, design feature of international institutions: complementarity.

Complementarity refers to a legal principle under which one institution, usually the international organization (IO), complements another institution, usually the corresponding domestic body. The principle establishes which institution has primacy and under what conditions. In the case of international law, complementarity circumscribes the international body's ability to open or continue investigations. It is a negative check on what the international body can do.

The shorthand that describes complementarity and the ICC is exemplary of this concept: the ICC only has jurisdiction if the relevant domestic institutions are "unwilling or unable" to investigate for themselves. Complementarity is also the reason why Court officials, lawyers, activists, NGOs, and journalists refer to the ICC as "a court of last resort."

Historically, complementarity has played a *practical* role for international institutions like the ICC. Recognizing that some problems are too big for one institution, complementarity acknowledges that multiple institutions, domestic and international, are needed to undertake large missions such as the fight to end impunity for atrocity crimes. More recently, the ICC has taken a view of complementarity as a way to engage in burden-sharing with national institutions, wherein the Court would focus on high-level perpetrators and national institutions would focus on lower-level perpetrators.

However, a design feature like complementarity also plays a *political* role because it potentially affects public perceptions of an IO's actions, like an ICC investigation. Many IO actions face resistance. For an international institution focusing on criminal law like the ICC, investigations frequently require acquiescence or cooperation from the very groups suspected of crimes. Often, those likely to face investigation *are* the individuals, group members, or co-ethnics of the people in power in a country. Part of the IO's power rests on support from at least some subset of the country's populace. IOs thus face an inherently uphill battle in many settings, because they need to persuade some portion of the populace to support actions that they might initially oppose.

While our study focuses on the ICC, complementarity exists across many IOs, though its exact manifestation can vary. For example, the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) practice complementarity as courts of last resort. In each system, the role of the international court is to support, not replace, national courts. For a case to be admissible, petitioners must have exhausted all domestic venues. In the case of the ICC, however, domestic venues need not be exhausted. Case admissibility is determined by governments' demonstrated unwillingness and inability to conduct their own investigations and, where appropriate, prosecutions. Exhausting domestic venues is just one way to make the case for ICC intervention.

There are also non-judicial expressions of complementarity, throughout the international system and within nation-states. The UN Universal Periodic Review, which monitors UN member states' human rights performance, has a mandate to "complement and not duplicate the work of treaty bodies," which more precisely monitor states parties' compliance with the core human rights treaties.⁹ Likewise, courts and truth commissions sometimes operate as complementary institutions. For example, in Sierra Leone, the post-civil war Special Court and truth and reconciliation commission were designed to "perform complementary roles," be "mutually supportive," and operate "in full respect for each other's mandate."¹⁰

Complementarity as a Discursive Frame

How and why does the ICC use complementarity as a political argument and as a potentially persuasive discursive frame for Court actions? Complementarity operates as an implied, peremptory response to concerns that the ICC is overstepping its authority. The ICC often deploys the concept of complementarity in just this way, to inoculate itself against criticisms that it has unfairly butted in with its examinations or investigations. For example, Chief Prosecutor Fatou Bensouda rarely fails to highlight complementarity when discussing preliminary examinations or investigations,¹¹ or when reporting to the United Nations Security Council,¹² or when requesting the Court's judges to authorize an investigation

⁹ United Nations General Assembly (2006).

¹⁰ United Nations Secretary-General (2001).

¹¹ "In conformity with the complementarity principle, my Office will also be engaging with the Burundian authorities with a view to discussing and assessing relevant investigations and prosecutions at the national level" (Office of the Prosecutor, 2016b).

¹² "Sudan remains under a legal obligation to transfer these suspects to the ICC to stand trial, unless it can demonstrate to the Judges of the International Criminal Court that it is willing and able to genuinely prosecute them for the same cases. *Consistent with the bedrock principle of complementarity enshrined in the Rome Statute, I am ready to engage*

into a given situation.¹³

One of the most trenchant criticisms of the ICC is that the Court has an anti-Africa bias or is neo-colonial. Opponents of the Court amplify these objections as part of their political strategy to turn public opinion against the Court and protect themselves (Chaudoin, 2016; Mueller, 2014). Complementarity has been one of the OTP's main defenses against these charges.¹⁴ Chief Prosecutor Bensouda has underscored time and again that the ICC has opened investigations in many African states at the request of the countries themselves¹⁵ or upon referral by the UN Security Council—in other words, on the basis of complementarity.¹⁶

The OTP has increasingly emphasized complementarity over time. To systematically describe this trend, we collected every official OTP document from the “News and Statements” section of the ICC's website—a total of 434 documents.¹⁷ These are public-facing documents that the OTP uses to communicate with the broader public and national and international actors. The documents include statements and remarks at the Assemblies of State Parties, statements about specific situations, or other public declarations. We coded each document across a range of indicators, including the ‘recipient’ (generally the country of interest or an IO like the UN or the Organization of American States (OAS)), whether the OTP referenced general complementarity, and whether the OTP mentioned positive complementarity. For example, in her 2019 statement to the United Nations about the situation in Darfur, Sudan, Chief Prosecutor Bensouda said:

Consistent with the bedrock principle of complementarity enshrined in the Rome Statute, I am ready to engage in dialogue with the authorities in Sudan to ensure that the Darfur suspects face independent and impartial justice, either in a courtroom in The Hague, or in Sudan.¹⁸

in dialogue with the authorities in Sudan to ensure that the Darfur suspects face independent and impartial justice, either in a courtroom in The Hague, or in Sudan. Continued impunity is not an option. The victims of the Darfur situation deserve to finally have their day in court” (Office of the Prosecutor, 2019b: Emphasis added).

¹³ These mentions can go beyond just argumentation that the case meets the legal hurdle of complementarity, e.g., “Should the Prosecutor's request be granted, as with all situations under investigation by her Office, that work will be undertaken independently and impartially in the strict service of our mandate under the founding Statute of the Court, and with respect for the principle of complementarity as enshrined in that Statute” (Office of the Prosecutor, 2019a: Emphasis added).

¹⁴ For example, *The Guardian* (2019) and *Africa News* (2019).

¹⁵ See, for example, the situations in the Central African Republic, Democratic Republic of the Congo, Mali, and Uganda.

¹⁶ See, for example, the situations in Darfur, Sudan and in Libya.

¹⁷ <https://www.icc-cpi.int/about/otp/Pages/otp-news.aspx> accessed 12-01-2019. We collected documents labelled with the type “Press Release” or “Statement.”

¹⁸ “Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593.” June 2019.

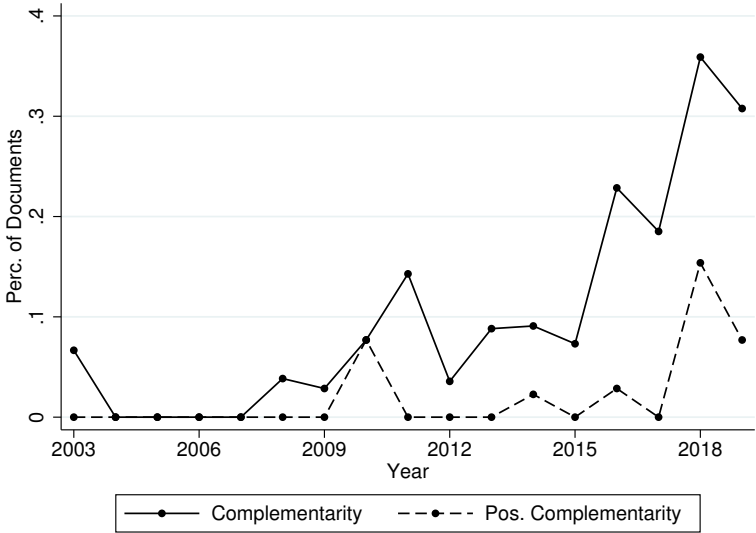
We also code whether the document emphasizes the concept of positive complementarity. The latter is described in greater detail below and refers to active cooperation between the ICC and national courts with the goal of spurring or aiding national judicial bodies.

For example, in her 2018 statement to the United Nations about the same situation, Chief Prosecutor Bensouda emphasized active support for national level prosecutions:

Consistent with [UN] Resolution 1593 and in accordance with the principle of complementarity, my Office is prepared to support national efforts to combat impunity in Darfur...¹⁹

Figure 1 shows the proportion of OTP documents that mention complementarity, from 2003 to 2019. The dashed line shows which of those mentions emphasize positive complementarity. The trend is clear: the OTP increasingly accentuates both concepts over time. By 2019, approximately 30% of OTP statements mention some form of complementarity. Positive complementarity has also accounted for a larger proportion of those mentions over time. It is clear that the OTP has increasingly relied on this concept in its public-facing communications.

Figure 1: Complementarity in OTP Statements and Press Releases



¹⁹ "Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593." December 2018.

Emphasis on complementarity as an important feature of the Court is not limited to the OTP. Other organs of the Court and NGOs - who are stakeholders in the success of the Court and understand the importance of public acceptance - also use complementarity as part of their pitch for the Court. During public appearances and interviews in Georgia, representatives of the ICC's Country Office, an organ separate from the Office of the Prosecutor, highlighted how national courts have initial jurisdiction, with ICC involvement only occurring when "the country does not want or fails to investigate [a] case."²⁰ The Coalition for the ICC, a collection of NGOs and civil society organizations that helped found and continues to support the Court, says the following in almost all of its mentions of the Court, as part of its key background information about the institution:

Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes.²¹

Likewise, Article 42, a non-governmental organization (NGO) that advocates for investigation of war crimes and crimes against humanity in Georgia, chose to emphasize complementarity at the very beginning of its primer to the ICC and the investigation into the Georgian situation:

The Court seeks global cooperation to protect all people from the crimes codified in the Rome Statute. As a court of last resort, it seeks to complement, not replace, national authorities. Under the principle of complementarity in the Rome Statute, the ICC only acts when national legal systems are unable or unwilling to keep their responsibility to prosecute atrocities at home. ICC States Parties can challenge the admissibility of cases before the ICC if they feel they can prosecute domestically.²²

In sum, complementarity plays a large and important role in how the Court and related actors describe and advocate for Court actions.

Complementarity and Fairness

Why might complementarity increase support for an IO's action? Complementarity, as a legal rule, is intended to make the process of an international institution's actions appear more fair by giving the

²⁰ As an example, see *First Channel* (2018). See also *Georgia Today* (2018); "The ICC does not substitute national courts, but complements them."

²¹ As an example, see, Coalition for the ICC (2015).

²² Article 42 (2019).

national institution pride of place. Complementarity is meant to make seemingly powerful international institutions more limited in their roles, leaving greater responsibility to the seemingly weaker national institutions. If an international institution's jurisdiction is circumscribed to only those situations where domestic institutions have been unwilling or unable to act, then the ball at least starts in the domestic institution's court (no pun intended). It could appear unfair, inappropriate, or even unjust, if an international institution swooped in and assumed power over something that an otherwise competent and willing national institution previously controlled. The international institution, in that case, would be viewed as unfairly taking away agency from the very people and institutions it was designed to support and strengthen.

If national authorities have the ultimate decision over whether to pursue an investigation, and therefore over whether the ICC can claim jurisdiction, then it should be harder to charge the Court with trampling on national sovereignty or unfairly targeting an individual. Tracing the historical origins of complementarity from Nuremberg to the Rome Statute, Clarke (2012) describes complementarity as "an attempt to pacify concerns that the Court could exercise unchecked dominance." Knowing that ICC actions only arose after national institutions showed themselves unwilling or unable to pursue the same case might, therefore, make citizens more supportive of the ICC.

Much research on legitimacy argues that more democratic IO procedures and processes increase perceptions of fairness and legitimacy. Procedural fairness refers to the use of procedures ensuring that "rules and standards be created and enforced in an impartial and predictable way" (Woods, 1999: 45-46). This helps ensure that actions by an IO are viewed as appropriate and legitimate. Processes in which a greater number of countries can shape decisions and in which the costs and benefits of IO decisions are diffuse are viewed as more fair and legitimate.²³ Processes dominated by one country or a subset of powerful countries are perceived as less fair or legitimate.²⁴ Perceptions of fairness also shape confidence in international institutions among elites and policymakers.²⁵ Therefore, emphasizing this aspect of the Court and better informing citizens about complementarity should increase support for the ICC.

Hypothesis 1. *Individuals who are made aware of the principle of complementarity will be more likely*

²³ E.g. Bechtel and Scheve (2013); Binder and Heupel (2015). Though, Dellmuth and Tallberg (2015) find that perceptions of input processes matter less.

²⁴ Johnson (2011); Meernik (2015).

²⁵ Verhaegen et al, PEIO working paper.

to support ICC actions.

Positive Complementarity and Support for National Investigations

Complementarity also has potential effects on support for the actions of domestic institutions. “Positive complementarity” describes how the specter of an international institution can be a positive inducement for national institutions to act. Complementarity, in addition to being a negative constraint on one institution, is also an implied threat. It stipulates, “If institution A does not act, then institution B will.”

Positive complementarity has come to play a very large role in the case of the ICC. Many hope that the ICC spurs national courts into action and gives citizens a reason to support genuine national-level action. National actors understand the concept of complementarity: if domestic actors want to retain control of a case, then they must demonstrate genuine action. And since most national-level actors prefer to have control over high-stakes investigations, complementarity spurs them to do so. Domestic institutions can forestall international action by taking genuine actions on their own. Luis Gabriel Moreno Ocampo, the ICC’s first Chief Prosecutor, envisioned positive complementarity when he famously remarked that the measure of the ICC’s success would be the *absence* of trials: rather than be conducted at the ICC, trials would be conducted in domestic courts.²⁶

Current Chief Prosecutor Bensouda explicitly references the possibility of ICC action as an inducement for greater national action.²⁷ The OTP has also embraced positive complementarity as a way of partnering the ICC with national authorities, with the Court providing support or evidence to national proceedings for cases not involving the Court.²⁸ The OTP actively encourages states of concern to initiate national proceedings, assists in developing strategies to combat impunity, shares information, and offers technical advice. At the same time, to fulfill its mandate, the OTP must gather its own information to establish that national proceedings are in fact genuine and, if not, exercise jurisdiction.

²⁶ Office of the Prosecutor (2003).

²⁷ “Following the referral of the situation of Libya by the UN Security Council Resolution 1970 (2011), and in accordance with my mandate under the Rome Statute, my Office is currently investigating several cases in the Libya situation, and continues to actively monitor the developing situation in the country. *I will not hesitate to expand my investigations and potential prosecutions to cover any new instances of crimes falling within the Court’s jurisdiction, with full respect for the principle of complementarity.* No one should doubt my determination in this regard” (Office of the Prosecutor, 2019c: Emphasis added).

²⁸ Office of the Prosecutor (2010).

Partnership should, in expectation, render unnecessary OTP information gathering. Yet, fact finding may, itself, spur domestic proceedings.

Citizens might also understand this logic. A desire to avoid an ICC case makes national action more attractive. Citizens who are hesitant about international actions may support increased national actions because of complementarity.

Hypothesis 2. *Individuals who are made aware of the principle of complementarity will be more likely to support national-level investigations.*

The empirical evidence for whether the Court has its intended effect via positive complementarity is mixed. Dancy and Sikkink (2011) use cross national data on domestic human rights prosecutions and find that ratification of treaties like the Rome Statute can increase domestic prosecutions of human rights abuses, though they also find that those treaties are also associated with decreased convictions. Dancy and Montal (2017) find “unintended” positive complementarity, wherein ICC investigations can indirectly trigger additional human rights prosecutions at the domestic level. Scholarship on particular countries has come to conflicting conclusions, however. Shenkman (2012) finds that the ICC cases in Kenya and Libya spurred domestic judicial reform, while Bjork and Goebertus (2011) find the opposite in Kenya. Sarah Nouwen (2013) finds that the ICC did not catalyze domestic prosecutions in Uganda, where the government initially outsourced difficult prosecutions to the ICC before shifting to shallow efforts designed to thwart ICC proceedings via complementarity. She also finds that the ICC spurred, at best, cosmetic efforts in Sudan.

3 Georgia Case Background

The ICC situation in the Republic of Georgia focuses on one part of a broader, complex “frozen conflict” between Georgia and Russia. At its core, the conflict pertains to two disputed territories along the northern border of Georgia: South Ossetia and Abkhazia. Since the collapse of the Soviet Union, Georgia and both regions fought wars over the status of Abkhazia and South Ossetia. Both regions remain *de facto* autonomous from Georgia, though the international community largely recognizes them as legally part of Georgia. Here, we describe the key features and historical events as they pertain to the ICC situation.

The ICC situation pertains only to alleged war crimes and crimes against humanity occurring in the most recent war between Georgia, South Ossetian forces, and Russia, from July 1 to October 10, 2008. At the onset of renewed hostilities in 2008, Russia deployed military personnel to both regions, ostensibly as peacekeepers. Russia also provided direct and indirect military support to separatist forces in both regions.

In April of 2008, Georgia accused Russia of shooting down a Georgian drone in Abkhazia. Denying the accusation, Russia sent troops to Abkhazia to brace for retaliation from Georgia. Georgia responded by sending troops into nearby South Ossetia in early August. On August 7, the Georgian military shelled Tskhinvali, a town just inside South Ossetia. On August 8, foreign governments, chief among them the United States and United Kingdom, as well as members of the North Atlantic Treaty Organization, called for a ceasefire. Despite the call for a ceasefire and the arrival of diplomatic delegations from the European Union and the United States on August 9, Russian soldiers and tanks advanced into South Ossetia on August 10. The Russians backed another successful advance from Abkhazia into the Kodori Valley, in northwest Georgia.

A ceasefire plan was announced on August 12. It was signed by Georgian president Mikheil Saakashvili on August 15 and by Russian president Dmitry Medvedev on August 16. The agreement called for a partial withdrawal of Russian troops, with some soldiers remaining at checkpoints near Abkhazia and South Ossetia. Controversially, Russia declared Abkhazia and South Ossetia independent of Georgia shortly thereafter.

Russia and Georgia both claim that their actions were defensive. The Russians justified their incursion in to Georgia as necessary to prevent a possible genocide against South Ossetians and to protect Russian peacekeepers in the region. Georgia justified their actions as necessary to protect civilians in the region and to repel an impending Russian invasion.

Though fighting only lasted for a short time period, the conflict claimed approximately 850 lives.²⁹ Civilians comprised a large proportion of the casualties. Over 100,000 people were internally displaced, with thousands unable to return home.

²⁹ EU report.

Post-War Legal Efforts

Legal actions began quickly after the conflict ended. Georgia entered a claim at the International Court of Justice (ICJ) under the Convention on the Elimination of all Forms of Racial Discrimination (CERD) before even signing the ceasefire. South Ossetians and Georgians also quickly filed numerous applications at the ECtHR.

A few days after the conflict ended, the Office of the Chief Prosecutor of Georgia opened investigations, deploying more than 100 investigators. In October, Georgia established the “Parliamentary Temporary Commission on Investigation of the Military Aggression and Other Acts of Russia Against the Territorial Integrity of Georgia,” which issued its report in December 2008. The commission concluded, among other things, that Russia (1) contravened the inviolability of state borders, a crime under international law; (2) interfered in Georgia’s internal affairs, also a violation under international law; and (3) violated rights protected by humanitarian and human rights law.³⁰ The report of the European Union’s 2009 independent fact-finding mission was much less conclusive. The mission noted “tendencies by *some of the political actors* to move away from generally-accepted principles of international law such as the respect of territorial integrity” and “*ambiguities, if not infringements* as related to the principle of sovereignty,” as well as “an increased readiness on the part of political actors to accept the use of force as a means to attain political goals.”³¹

Of note, Georgian authorities appeared to undertake genuine investigations of their own conduct. In 2011, the Office of the Chief Prosecutor of Georgia opened investigations into allegations of: (1) attacks against Russian peacekeepers by Georgian forces; (2) enforced displacement of Georgians by Ossetian forces; and (3) other unlawful attacks by Georgian and Russian forces. In 2012, investigations continued but yielded little fruit. This was due, in part, to a “lack of access to South Ossetia and lack of mutual legal assistance with Russia.”³² Parliamentary elections at the end of 2012 changed the composition of the Government, including a new Chief Prosecutor, whose appointment renewed interest in investigating the 2008 conflict. In 2013, his Office reported on progress in reviewing more than one-hundred volumes of investigative material collected since the conflict. In 2014, the Office reported on progress in the

³⁰ Office of the Prosecutor of Georgia (2014).

³¹ Independent International Fact-Finding Mission on the Conflict in Georgia (2015). Emphasis added.

³² Office of the Prosecutor (2014).

investigation of attacks against peacekeepers, displacement, and other unlawful actions. Despite this purported progress, investigations were suspended indefinitely in 2015.

Post-War ICC Events

Georgia ratified the Rome Statute in 2003, which meant that all incidents taking place on Georgian territory or those committed by Georgian nationals thereafter fell under ICC jurisdiction. The ICC opened a preliminary examination into the situation very quickly, on August 14, 2008. After the ICC opened a preliminary examination into the situation, the Georgian government issued annual reports updating the OTP on national criminal proceedings. Simply put, the Georgian government signaled its intentions to sincerely conduct domestic investigations.

Complementarity played a key role in the ICC's decision to request authorization to move beyond a preliminary examination, to a full investigation. When the Georgian government conveyed in writing to the OTP that it had suspended investigations indefinitely in October 2015, the Prosecutor immediately requested authorization to open an investigation. Her request was approved just three months later, in January 2016.³³ One and a half years later, the ICC signed a cooperation agreement with Georgia. The agreement was made to "facilitate the Court's activities and ongoing investigations in the country."³⁴

The exact events or individuals under scrutiny by the ICC investigation are not at present public knowledge. The legal situation is made more complex by the fact that some events relate to intra-state conflict – that is, between Georgian and South Ossetian forces – while other events relate to inter-state conflict, namely between Georgia and Russia. There are several likely events of interest to the ICC.

Georgian exposure to prosecution stems from allegations that Georgian forces intentionally attacked and killed Russian peacekeepers in South Ossetia. Russia claims that 10 peacekeepers died in the initial Georgian attacks. Whether the Russian troops in question should legally be considered peacekeepers is a heavily debated question. To be legally considered peacekeepers, troops must be unbiased with respect to the sides of the conflict and cannot directly participate in conflict except in self-defense; Georgia argues that Russian troops did not meet these criteria.³⁵

³³ Office of the Prosecutor (2016a).

³⁴ International Criminal Court (2017).

³⁵ Heller, Kevin Jon. "The ICC's Investigation into the Situation in Georgia: Legal and Evidentiary Issues." <https://slideplayer.com/slide/9168145/> Accessed 11-20-19.

For South Ossetians, exposure to prosecution stems from their attacks on Georgian peacekeepers and from their forced relocation of ethnic Georgians. Additionally, there were many reports of violence, including sexual and gender-based violence, and destruction of property perpetrated by South Ossetians against Georgians living in the region. Russian exposure to prosecution stems from their functional control over South Ossetia and South Ossetian forces, which increases Russian culpability for crimes committed in South Ossetia and during incursions into Georgian territory.

4 Research Design

From a research design perspective, Georgia is an appropriate place to assess our hypotheses. The opinions of citizens matter in a democracy like Georgia. Many other countries under ICC investigation are less democratic. Georgia, however, has been a democracy for more than a decade.³⁶ While it is important to study public attitudes across regime types, studying public attitudes in democracies is advantageous because we can expect these attitudes to permeate elite debates and materialize into policy—in our case, support for ICC actions.

Georgia is also likely to be a place where public support for the Court could be important to the Court's ultimate success. The dominant narrative in Georgia is that Russians and Ossetians committed the gravest crimes, far beyond any accusations against Georgians. While virtually all Georgians would support any and all efforts to investigate or prosecute Russians or Ossetians, they are against investigations into Georgian nationals. Our qualitative interviews with civil society advocates, government officials, and public opinion researchers suggest that few citizens or government officials would oppose investigatory efforts directed at Russia.³⁷ However, investigations into alleged crimes by Georgian nationals would face much stiffer resistance. Even among people working for NGOs focusing on international law, the prevailing perception was that scrutiny of Georgian forces would be unfair.

Second, the Georgian case has taken on a particular level of importance for general assessments of the ICC: it is an important case. Georgia represents the first ICC investigation to address interstate, rather than intrastate, conflict. The ICC's examination of the Georgian situation was also its first outside

³⁶ Here, we rely on the dichotomous measure of democracy from Boix, Miller and Rosato (2013), who consider polities with high political contestation and high political participation democracies.

³⁷ Authors conducted approximately 20 interviews in Tbilisi about the ICC situation in May 2019.

of Africa. The success or failure of the ICC in Georgia will have an out-sized impact on perceptions of the Court because of these unique features. So understanding public opinion about the Court in this setting is inherently important.

Third, at the time that our survey was fielded there had not been—and there still has not been—a case opened against a specific person or persons, neither Russians, Ossetians, nor Georgians. Uncertainty about the fruits of the ICC’s investigation—charges, trials, convictions, etc.—meant that Georgians would be generally, but not specifically, apprehensive about the Court. Thus, a positive treatment effect would most likely due to perceptions of fairness than an inherent preference for or opposition to the investigation, which could result in a case against one’s co-nationals. The population from which we draw our sample has not been primed to oppose to the ICC as was/is the case in Burundi, Kenya, the Philippines, and more.

Georgian Survey Recruitment

We sampled 1,019 adult respondents across the Republic of Georgia. Surveys were fielded from August 15 to September 1, 2019. Surveys were administered face to face in Georgian. To obtain a representative sample of the national population, the survey firm used stratification and clustering. The primary sampling unit was the electoral precinct—the geographic units with the most up-to-date population data in Georgia. Within each stratum, precincts were selected using the probability-proportional-to-size principle: larger precincts had a higher probability of being sampled. After selecting precincts (clusters), the secondary sampling unit was the household. To sample households, enumerators began at a randomly selected point in a precinct, usually a building, and followed a random walk protocol. One person from each household was selected using a Kish table. Each interview took approximately thirty minutes.³⁸

Survey Instrument

Before assignment to the treatment or control conditions, respondents read a short statement on the ICC, Georgian membership in the Court, and the Court’s jurisdiction over serious crimes. We wanted to make sure that all respondents had a common knowledge baseline. The statement we produced reflects

³⁸ Our items were part of a larger survey; our questions took approximately 5 minutes.

how the Court describes its jurisdiction over the situation of Georgia and how it describes the 2008 Russo-Georgian conflict and the alleged crimes.

As you may or may not know, Georgia is a member of an international organization called the International Criminal Court – the ICC. The ICC is located in The Hague, in the Netherlands. Georgia ratified the treaty related to the ICC in 2003. This means that Georgia recognizes the Court's right to investigate and prosecute individuals who are accused of serious crimes like crimes against humanity, crimes committed during wartime, and genocide.

Treatment consists of exposure to information about complementarity, explaining the concept and what it means for how the ICC investigation in Georgia arose. We wanted the wording of the treatment to mimic the information that a citizen might receive from an elite or a Court representative in the real world. Thus, we took care to produce statements that reflect the language that the OTP uses when opening a preliminary examination or investigation and, more generally, when discussing the Court's jurisdiction over particular countries and particular crimes.

In the control group, respondents were told:

The International Criminal Court (ICC) has opened investigations into alleged war crimes and crimes against humanity during the August 2008 armed conflict in Georgia. The ICC investigation includes Georgians, Russians, and Ossetians.

In the treatment group, respondents were told:

The International Criminal Court (ICC) has opened investigations into alleged war crimes and crimes against humanity during the August 2008 armed conflict in Georgia. The ICC investigation includes Georgians, Russians, and Ossetians.

The treaty that created the ICC requires that the Prosecutor only open an investigation if national authorities are unwilling or unable to investigate. In this case, the Prosecutor opened an investigation after national authorities in Georgia failed to undertake genuine proceedings. National authorities in Georgia began investigations in 2008. However, in 2015, these investigations were suspended indefinitely.

The treatment condition thus contains additional information about the concept of complementarity and how the ICC investigation arose after the suspension of the Georgian investigation in 2015. Any difference in opinion between respondents in the treatment and control conditions is attributable to the way in which the Court's representatives announce and justify its intervention in a given context.

Both conditions also explicitly include the possibility of an ICC investigation targeting Georgians. We included this because support for investigations into Russians or Ossetians would likely be very strong. But the key challenge for the ICC, in terms of public opinion, lies in getting citizens to support something that they might not otherwise like.

Outcome Measures

Immediately after treatment assignment, we asked respondents questions measuring support for an ICC investigation, labelled *ICC inv.*. This outcome measures support for an ICC investigation and explicitly mentions the possibility that the investigation would include Georgians. Inducing support for investigations into one's adversaries is not especially difficult for international institutions—most people are happy to have a court scrutinize the other side. We included the possibility of Georgians facing investigation because that is the harder, and more important test for whether features of the ICC can induce public support.

Do agree or disagree with the following statement?

I support the ICC investigations, including into Georgians.

Respondents could choose “strongly agree,” “somewhat agree,” “somewhat disagree,” or “strongly disagree.” Respondents could also respond that they did not know or they could decline to answer.

The second outcome measures whether respondents thought a Georgian investigation would be better, labelled *Ga. better*. This outcome measure opens the door for a respondent to indicate support for a Georgian investigation. Specifically, we asked:

Do agree or disagree with the following statement?

It would be better for the Georgian government to undertake a genuine investigation into all sides of the conflict – including Georgians.

Respondents again could choose from options ranging from “strongly agree” to “strongly disagree,” as well as indicate that they did not know or declined to answer. To account for respondents who choose “don't know” or refused to answer (DKRTA respondents), we work with two versions of each outcome measure. In one version, we omit DKRTA respondents, and we label these versions of the outcome measure with “No DKRTA.” In other versions, we consider these respondents as not having agreed with

the statement. Respondents who choose “somewhat/strongly agree” were coded as agreeing with the statement, while all other respondents were coded as not having agreed with the statement. In practice, how DKRTA respondents are treated does not influence the results.³⁹

Additional Questions

We also asked respondents several questions designed to measure other factors associated with support for international institutions. *Legal capacity* measures the respondent’s view of Georgian domestic courts. We asked respondents:

Do agree or disagree with the following statement?

The Georgian legal system is capable of good investigations, even when they are politically sensitive or difficult.

Respondents could choose from the same options (agree, disagree, DKRTA) as with the outcome measures. Existing research shows how support for national institutions influences support for international institutions.⁴⁰ Meernik (2015) suggests that individuals generalize their support for domestic legal institutions to international legal institutions. This relationship is especially important to establish when evaluating the effects of complementarity, since complementarity is explicitly related to the actions (or inaction) of a domestic court. Zvobgo (2019) relates opinions about the ICC to concepts of national sovereignty, assessing the effectiveness of human rights arguments (pro-ICC) versus national sovereignty arguments (anti-ICC) in shaping public attitudes on the Court in the United States. Individuals presented with both arguments, she finds, espouse more moderate views than individuals presented with one or the other. The finding suggests that the two ideals do not represent a binary and that seriously engaging disparate viewpoints “can allow for a more meaningful discussion on the principles of complementarity and justice.”⁴¹

If people view domestic legal institutions favorably, the ICC’s Prosecutor could alienate them when she opens an investigation. They may view this action as pitting domestic and international institutions against each other. Individuals who would support the ICC *in general* might come to oppose the Court

³⁹ See appendix for details.

⁴⁰ Dellmuth and Tallberg (2015, 2019).

⁴¹ Zvobgo (2019: 1069).

for a *specific case*. For individuals who view domestic justice negatively, the prediction is less clear, however. On the one hand, they may extend their negative views of domestic justice to international justice. On the other hand, they could view international justice as a worthwhile alternative.

We also asked respondents whether they have changed their place of residence due to the conflicts in Georgia since 1989. This measures whether the respondent is an internally displaced person, labelled *Displaced*, which describes one facet of their direct exposure to the conflicts in South Ossetia and Abkhazia. Chapman and Chaudoin (2020) examine the relationship between citizens' proximity to sites of political violence and their support for ICC investigations. Using evidence from a survey experiment fielded in Kyrgyzstan, the authors find, first, that citizens are less likely to support ICC investigations at home than they are to support investigations abroad and, second, that citizens in proximity to the site of a would-be ICC investigation are even more hesitant about an investigation. People's experiences of violence can also shape their attitudes about domestic and international justice. Some work indicates that people's relationship to past violence shapes their support of a Court action. In the former Yugoslavia, for example, individuals who were heavily exposed to human rights violations were both less likely to support domestic institutions and more likely to support international institutions, up to and including prosecution of war crimes and crimes against humanity.⁴² Related work shows that the scale of violence is positively correlated with support for prosecution. Common perceptions of danger increase support for human rights norms, notably accountability, within affected communities.⁴³

Additionally, we collected standard demographic information on the respondent's gender, age, employment status, education level, and whether they lived in the capital, Tbilisi, a rural area, or an urban area apart from Tbilisi. Respondents also indicated whether they owned various household goods, like a color TV, computer, smartphone, or car. Another question assessed the household's overall economic situation, indicating whether they had enough money for food and clothes.⁴⁴

Summary Statistics and Randomization

Table 1 provides summary information on responses by treatment group. Of initial note, a plurality of respondents indicated support for an ICC investigation. 54% either somewhat or strongly agreed

⁴² Elcheroth and Spini (2009).

⁴³ Spini, Elcheroth and Fasel (2008).

⁴⁴ The appendix contains complete question wording and response choices for these items.

with a statement of support for the ICC. A significant proportion of respondents also indicated that a Georgian investigation would be better. Among those that chose either agree or disagree, 57% preferred a Georgian investigation.

Table 1: Summary statistics by Treatment Group

	Full mean	Treatment mean	Control mean
Treatment	0.49	1.00	0.00
<u>Outcome Measures</u>			
App. Inv. NoDKRTA	0.69	0.69	0.70
App. Inv.	0.54	0.55	0.54
GA Bet. NoDKRTA	0.57	0.56	0.59
GA Better	0.44	0.43	0.45
<u>Legal System</u>			
Leg. Cap.	0.33	0.34	0.31
Leg. Cap. NoDKRTA	0.41	0.43	0.40
<u>Demographics</u>			
Female	0.65	0.65	0.64
Age	52.97	52.14	53.77
Employed	0.35	0.39	0.32
Own color TV	0.92	0.93	0.91
Own comp.	0.51	0.53	0.48
Own smartph.	0.62	0.64	0.61
Own car	0.40	0.39	0.41
Displaced	0.10	0.10	0.10
Post-Sec. Ed.	0.32	0.32	0.32
Enough money	0.50	0.50	0.51
Capital	0.28	0.28	0.28
Urban	0.24	0.23	0.25
Rural	0.48	0.48	0.47
<i>N</i>	1019	502	517

Before examining treatment effects, we use the test in Hansen and Bowers (2008) to assess overall covariate balance across treatment and control groups. We want to confirm that respondents in the treatment and control conditions do not diverge significantly on their observable characteristics. We include all of the characteristics in Table 1. The overall chi-squared statistic for testing the null hypothesis of balance in observables across treatment and control groups is 9.16, with a corresponding p -value of 0.61. This means we cannot reject the null that the treatment and control groups are balanced. This is

consistent with the summary statistics in Table 1. There, the largest imbalance is in whether respondents own a computer, with the treatment group more likely to own a computer (53% versus 48%). Even for this individual observable, we cannot reject the null hypothesis of no difference between treatment and control at conventional levels (t statistic = 1.60, p -value = 0.11). Few other observables differed across treatment groups by more than a few percentage points. We do not find strong evidence of imbalance.

5 Experimental Results

Effect on Support for the ICC Investigation

To assess Hypothesis 1, we examine whether treatment affected support for the ICC investigation. Figure 2 shows the distribution of responses by treatment group. There is little difference in the two distributions. The proportion of respondents supporting the ICC investigation changes little across treatment and control groups. Treatment slightly decreased the proportion of respondents who answered “Don’t know,” but only slightly increased the proportion of respondents who somewhat supported or opposed the ICC investigation.

Inconsistent with expectation, we do not find a statistically significant difference in support between respondents in the active and control treatments. 55% of individuals in the complementarity treatment somewhat or strongly support the ICC investigations, including into Georgians, compared to 54% of individuals in the control treatment. Thus, we do not find support for complementarity engendering perceptions of fairness or being overwhelmed by concerns about potentially unfavorable outcomes of investigations.

Figure 2: Support for ICC Investigations, by Treatment Group

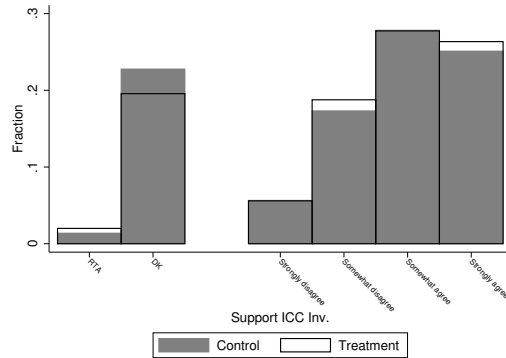


Table 2 assesses the treatment effect with logit regressions. The outcome variable is a binary indicator coded 1 if the respondent choose “somewhat agree” or “strongly agree,” and zero otherwise. In columns 1 and 3, we treat “Don’t know” respondents as not supporting the ICC investigation. In columns 2 and 4, we exclude these respondents. Columns 3 and 4 add the full battery of additional measures described above. The estimated effect of treatment on support for the ICC investigation is generally positive. But it is substantively small and we cannot reject the null of no effect.

It is worth remarking a few individual covariates that correlate with the outcome. More educated individuals, wealthier individuals, and individuals living in the capital city, Tbilisi, are more likely to support ICC investigations. Of note, an individual’s perception of domestic legal system is a positive and statistically significant predictor of the outcome ($p < 0.01$) and the magnitude of the effect is the largest among all covariates. This finding comports with prior scholarship, which shows that individuals generalize from the national to the international.⁴⁵

⁴⁵ Dellmuth and Tallberg (2015, 2019); Meernik (2015).

Table 2: Effect of Complementarity on Support for ICC Investigations

	<i>DV = support ICC investigation</i>			
	(1)	(2)	(3)	(4)
Treatment	0.062 (0.127)	-.037 (0.155)	0.067 (0.138)	0.008 (0.175)
Leg. Cap.			1.188 (0.155)***	
Leg. Cap. NoDKRTA				1.275 (0.194)***
Female			-.231 (0.148)	-.018 (0.184)
Age			0.002 (0.004)	0.004 (0.005)
Employed			0.283 (0.155)*	0.042 (0.194)
Own color TV			-.111 (0.25)	-.154 (0.337)
Own computer			-.132 (0.173)	-.258 (0.219)
Own smartph.			-.096 (0.173)	-.101 (0.215)
Own car			-.152 (0.155)	-.145 (0.193)
Displaced			-.247 (0.235)	-.444 (0.275)
Post-sec. Educ.			0.535 (0.163)***	0.333 (0.197)*
Enough money			0.498 (0.162)***	0.719 (0.207)***
Capital			0.575 (0.181)***	0.447 (0.238)*
Urban			0.204 (0.184)	-.071 (0.229)
Const.	0.146 (0.089)	0.835 (0.11)***	-.566 (0.377)	-.078 (0.492)
Obs.	998	783	989	693

Notes: (1) Standard errors in parentheses.

(2) Statistical significance levels: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Effect on Support for a Georgian Investigation

Figure 3 shows the proportion of respondents who reported support for the Georgian investigations by treatment group.

We also do not find a statistically significant difference in support between respondents in the complementarity and control treatments. 43% of individuals in the complementarity treatment somewhat or strongly agree that it would be better for the Georgian government to undertake an investigation into all sides of the conflict. This is compared to 45% of individuals in the control treatment. Thus, we do not find support for citizens supporting national actions because of positive complementarity.

Figure 3: Support for Georgian Investigations, by Treatment Group

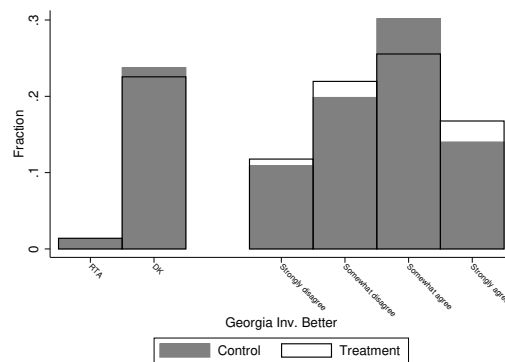


Table 3 reports the results of four logit regressions estimating the effect of the treatment on support for a Georgian investigation, with a similar sequence of specifications as above. Treatment generally decreased support for a Georgian investigation, but this effect was not statistically significant in any specification.

Table 3: Effect of Complementarity on Support for Georgian Investigations

	<i>DV = support Ga. investigation</i>			
	(1)	(2)	(3)	(4)
Treatment	-.075 (0.127)	-.136 (0.146)	-.126 (0.138)	-.235 (0.17)
Leg. Cap.			1.267 (0.148)***	
Leg. Cap. NoDKRTA				1.427 (0.181)***
Female			0.265 (0.147)*	0.555 (0.177)***
Age			0.003 (0.004)	0.009 (0.005)*
Employed			0.198 (0.154)	0.088 (0.186)
Own color TV			-.576 (0.249)**	-.286 (0.313)
Own computer			-.151 (0.172)	-.196 (0.211)
Own smartph.			0.011 (0.173)	0.167 (0.209)
Own car			-.057 (0.154)	0.031 (0.188)
Displaced			0.356 (0.231)	0.312 (0.283)
Post-sec. Educ.			0.387 (0.158)**	0.137 (0.186)
Enough money			0.296 (0.162)*	0.51 (0.2)**
Capital			0.319 (0.179)*	-.132 (0.224)
Urban			0.198 (0.183)	-.086 (0.228)
Const.	-.210 (0.089)**	0.362 (0.104)***	-.869 (0.379)**	-1.105 (0.473)**
Obs.	1001	766	992	671

Notes: (1) Standard errors in parentheses.

(2) Statistical significance levels: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

6 Discussion and Future Research

International institutions often face uphill battles in persuading reluctant polities to support investigations into their governments' past and present actions. The battleground over messaging is fraught, since entrenched interests may have louder microphones with which to oppose an institution.⁴⁶ The ICC and other international institutions have embraced the principle of complementarity as part of their strategy to establish legitimacy and persuade recalcitrant publics to support the institution. Our results suggest that this message may not be effective. In Georgia, one of the most important ICC situations to date, informing citizens about complementarity did not increase their support for the Court. Nor did it increase their support for domestic investigations, as hoped for under the concept of positive complementarity. This is discouraging since Georgia is a democratic country, where public opinion matters and where perceptions of the Court have not yet soured, as they have in other countries.

Our initial research indicates several avenues for further research. First, it begs the question of whether complementarity might build support for the Court in other settings or countries, notably in democracies where public opinion matters most. These include the Philippines, where the ICC prosecutor has opened a preliminary examination into the war on drugs. Other potentially fruitful research settings include non-member countries such as the United States, which the ICC is investigating for suspected war crimes and crimes against humanity related to the war in Afghanistan, and Israel, which is under similar scrutiny for suspected atrocities in Palestine. Since the United States and Israel are not members, complementarity could also potentially change opinions about the desirability of ratifying the Rome Statute. Further inquiry into the effectiveness of complementarity could also be assessed in member countries that are *not* currently under ICC examination or investigation like South Africa. Member countries are said to be key compliance partners for the Court and could, for instance, assist in the arrest and transfer of ICC fugitives to The Hague. However, the costs of such actions are high, and all the more so in an African country following decades of accusations of an anti-Africa bias at the Court. After this conclusion, we describe our plans for surveys in the United States, Israel, the Philippines, and South Africa.

Second, the results from Georgia prompt us to ask why complementarity frames failed to elicit

⁴⁶ Dutton (2017); Chaudoin (2019).

support for ICC actions or domestic court actions in Georgia. The analysis indicates that more educated individuals, wealthier individuals, and individuals who live in the capital city are more likely to support ICC actions. This suggests, albeit preliminary, that the ICC is an institution that primarily appeals to cosmopolitans. It may be that these individuals do not need to be additionally persuaded, while those who are less educated, less wealthy, and do not live at the political and economic center of their respective countries are and remain ambivalent to the institution and others like it.

Third, what messages *do* work? Zvobgo (2019) finds that US public attitudes on the ICC are strongly shaped by whether individuals perceive IOs to be useful for solving problems in the world and whether they perceive IOs to be biased against some countries. While the ICC has a limited record of success, making effectiveness a tenuous discursive frame, the Court may be able to garner support by communicating—in the US, Georgia, and beyond—that its procedure for selecting countries to investigate is based on the merits rather than on politics.

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Appendix: Republic of Georgia

Question Wordings

The following lists the question wording for items whose wording is not in the main text. We omit the most straightforward questions, e.g., “What is your age?”

For *Employed* we used an item asking the respondent’s “primary activity or situation.” Respondents could choose from “Have job,” “Registered entrepreneur,” “Self-employed,” “Student or school pupil,” “Housewife,” “Retired,” “Temporarily unemployed,” “Don’t know,” or “Other.” We coded *Employed* as 1 for respondents who chose one of the first three options and 0 otherwise.

For *Displaced*, respondents were asked whether they “changed [their] place of residence due to the conflicts in Georgia since 1989.” They could respond with “Yes,” “No,” or “Don’t know.”

For *Enough money*, respondents were asked to assess the head of household’s economic situation. They could choose from “Money is not enough for food,” “Money is enough for food, but not for clothes,” “Money is enough for food/clothes, not for expensive ones,” “Money is enough for food/clothes, not for expensive durables,” “Afford buying some expensive durables, but not too expensive,” or “We can afford buying very expensive things,” as well as “Don’t know.” We coded *Enough money* as 1 if the respondent chose an option that indicated they could at least afford food and clothes.

Moderation of Treatment Effects based on Perceptions of Domestic Legal System

It is possible that the effect of complementarity on support for an ICC or domestic investigation depends on how the respondent views their domestic legal system. For example, if a respondent thought highly of her domestic legal system, she might welcome ICC scrutiny, confident that the ICC would find its presence unnecessary because of the adequate domestic legal actions. We investigated whether opinions of the domestic legal system magnified or muted the effect of the complementarity treatment and report those results here. Briefly, we did not find consistent or strong moderation effects.

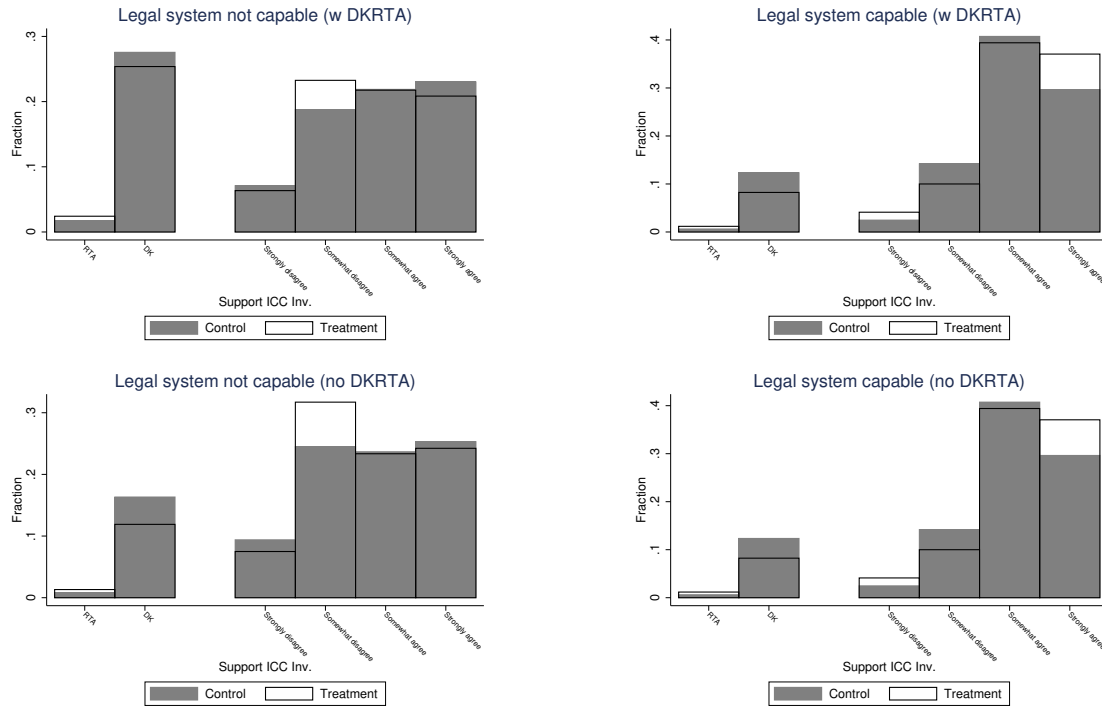
In answering the question about whether they perceived their domestic legal system to be capable, respondents could choose “don’t know” or decline to answer. Therefore, we break results down by measures of perceptions of the domestic legal system in two ways. First, we code *Legal system capable* as 1 if the respondent chose “strongly agree” or “agree” to the question “Do agree or disagree with the following statement? The Georgian legal system is capable of good investigations, even when they are politically sensitive or difficult” and zero otherwise. Then, we code a similar version of this variable that is the same, except it excludes “don’t know” or refuse to answer respondents. We label the first version as “with DKRTA” and the second version as “no DKRTA.”

Effect on support for ICC investigation

Figure 4 shows the effect of the complementarity treatment on the outcome variable measuring support for an ICC investigation. The top two panes show the “with DKRTA” version of the legal system variable and the bottom two panes show the “no DKRTA” version. Results from both are very similar.

Among those who think their legal system *is* capable, complementarity *increases* support for the ICC. On the other hand, among respondents who think the domestic legal system *is not* capable, complementarity *decreases* support for the ICC. It could be that those who view their domestic system as capable fear an ICC investigation less once they are told about complementarity. They might infer that the Court poses less of a threat, since complementarity might induce the Court to defer to competent domestic bodies.

Figure 4: Treatment effect on support for ICC investigation by perception of domestic legal system



However, the results for moderation are not statistically significant in regression analysis. The tables shows results from regressions of the ICC support outcome variable, using interactions terms between treatment and perceptions of the domestic legal institutions. The columns alternatively use the various versions of the *Legal System Capable* variable and do and do not include controls. The first table uses OLS and the second uses logit regressions. As in the figures, treatment increases support for the ICC among those viewing their domestic system as capable and decreases support among those who do not view their system as capable. Though we cannot reject the null hypothesis that the treatment effect for either group equals zero.

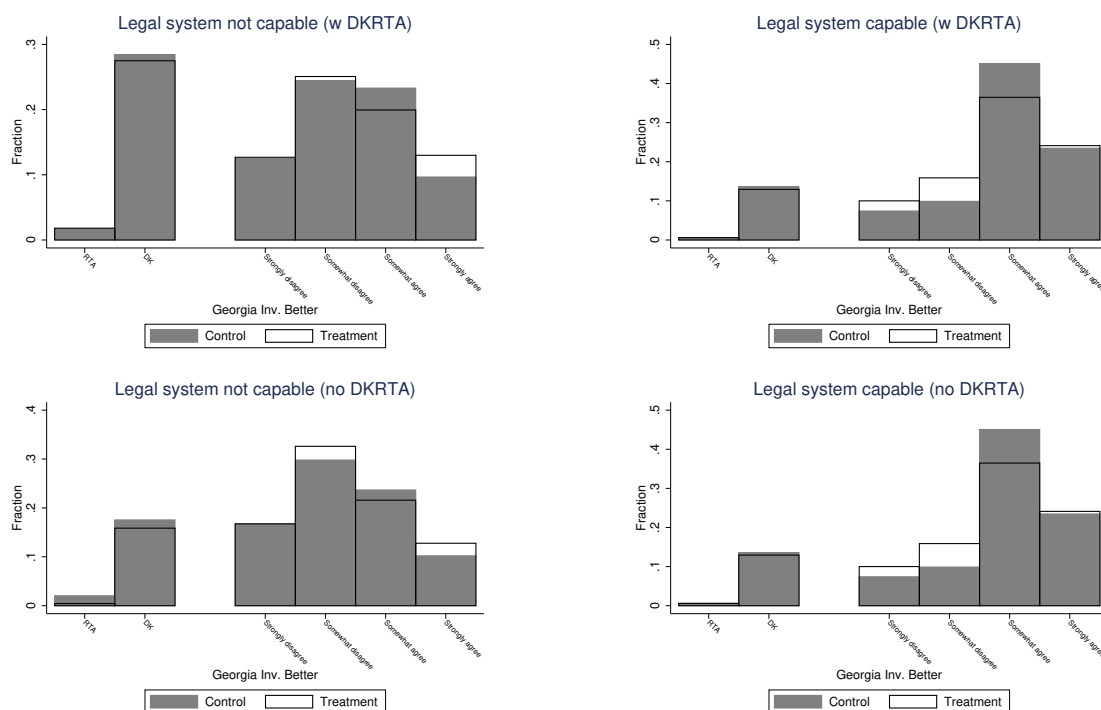
	OLS (1)	OLS, no DKRTA (2)	w. ctrls (3)	w. ctrls, no DKRTA (4)
Treatment	-.020 (0.037)	-.043 (0.045)	-.009 (0.037)	-.031 (0.045)
Leg. Sys. Cap.	0.251 (0.046)***		0.228 (0.045)***	
Leg. Sys. Cap, no DKRTA		0.217 (0.049)***		0.207 (0.049)***
Treat X Leg. Sys. Cap.	0.086 (0.065)		0.067 (0.064)	
Treat X Leg. Sys. Cap., no DKRTA		0.079 (0.069)		0.074 (0.069)
Female			-.049 (0.032)	-.003 (0.036)
Age			0.0004 (0.0009)	0.0008 (0.001)
Employed			0.059 (0.034)*	0.005 (0.037)
Own color TV			-.023 (0.055)	-.031 (0.067)
Own computer			-.028 (0.037)	-.048 (0.042)
Own smartphone			-.020 (0.037)	-.014 (0.042)
Own car			-.030 (0.034)	-.026 (0.038)
Displaced			-.048 (0.051)	-.085 (0.054)
Post Sec. Educ.			0.112 (0.035)***	0.057 (0.038)
Enough Money			0.11 (0.035)***	0.143 (0.04)***
Capital			0.128 (0.039)***	0.089 (0.045)**
Urban			0.045 (0.04)	-.013 (0.045)
Const.	0.457 (0.026)***	0.591 (0.032)***	0.38 (0.083)***	0.509 (0.097)***
Obs.	998	695	989	693

	Logit (1)	Logit, no DKRTA (2)	w. ctrls (3)	w. ctrls, no DKRTA (4)
Treatment	-.081 (0.156)	-.175 (0.202)	-.034 (0.163)	-.128 (0.21)
Leg. Sys. Cap.	1.060 (0.204)***		1.014 (0.212)***	
Leg. Sys. Cap, no DKRTA		1.072 (0.257)***		1.056 (0.266)***
Treat X Leg. Sys. Cap.	0.425 (0.297)		0.363 (0.308)	
Treat X Leg. Sys. Cap., no DKRTA		0.424 (0.369)		0.446 (0.381)
Female			-.223 (0.148)	-.010 (0.185)
Age			0.002 (0.004)	0.005 (0.005)
Employed			0.282 (0.156)*	0.046 (0.195)
Own color TV			-.108 (0.25)	-.159 (0.337)
Own computer			-.135 (0.173)	-.261 (0.219)
Own smartphone			-.093 (0.173)	-.085 (0.215)
Own car			-.143 (0.155)	-.135 (0.194)
Displaced			-.238 (0.235)	-.431 (0.276)
Post Sec. Educ			0.527 (0.163)***	0.327 (0.197)*
Enough money			0.5 (0.162)***	0.721 (0.207)***
Capital			0.575 (0.181)***	0.446 (0.238)*
Urban			0.2 (0.185)	-.076 (0.23)
Const.	-.174 (0.108)	0.369 (0.143)***	-.529 (0.379)	-.042 (0.493)
Obs.	998	695	989	693

Effect on support for Georgia investigation

Figure 5 shows the distribution of support for a Georgian investigation based on perceptions of the domestic legal system and treatment condition. Among respondents who thought the domestic legal system was capable, the complementarity treatment *decreased* support for a Georgian investigation. Among respondents who did not think their legal system was capable, treatment had mixed effects. Neither effect is statistically significant. The tables then show regression results, similar to those from the preceding section.

Figure 5: Treatment effect on support for Georgian investigation by perception of domestic legal system



	OLS (1)	OLS, no DKRTA (2)	w. ctrls (3)	w. ctrls, no DKRTA (4)
Treatment	0.0001 (0.037)	-0.0007 (0.044)	0.0005 (0.037)	-0.003 (0.044)
Leg. Sys. Cap	0.354 (0.045)***		0.338 (0.045)***	
Leg. Sys. Cap, no DKRTA		0.344 (0.049)***		0.327 (0.049)***
Treat. X Leg. Sys. Cap	-0.080 (0.064)		-0.084 (0.064)	
Treat. X Leg. Sys. Cap, no DKRTA		-0.079 (0.069)		-0.077 (0.069)
Female			0.056 (0.032)*	0.079 (0.036)**
Age			0.0007 (0.0009)	0.001 (0.001)
Employed			0.044 (0.034)	0.023 (0.038)
Own color TV			-0.130 (0.055)**	-0.098 (0.065)
Own computer			-0.032 (0.037)	-0.030 (0.042)
Own smartphone			0.001 (0.037)	0.013 (0.042)
Own car			-0.015 (0.034)	-0.016 (0.038)
Displaced			0.077 (0.051)	0.063 (0.056)
Post-sec. Educ.			0.089 (0.035)**	0.068 (0.038)*

	Logit (1)	Logit, no DKRTA (2)	w. ctrls (3)	w. ctrls, no DKRTA (4)
Treatment	0.0006 (0.164)	-.003 (0.195)	0.001 (0.169)	-.016 (0.2)
Leg. Sys. Cap.	1.482 (0.205)***		1.458 (0.21)***	
Leg. Sys. Cap. no DKRTA		1.435 (0.218)***		1.402 (0.224)***
Treat. X Leg. Sys. Cap.	-.353 (0.284)		-.378 (0.291)	
Treat X Leg. Sys. Cap., no DKRTA		-.349 (0.303)		-.339 (0.31)
Female			0.257 (0.147)*	0.361 (0.163)**
Age			0.003 (0.004)	0.005 (0.005)
Employed			0.2 (0.154)	0.105 (0.17)
Own color TV			-.582 (0.249)**	-.436 (0.288)
Own computer			-.147 (0.172)	-.138 (0.19)
Own smartphone			0.006 (0.173)	0.062 (0.19)
Own car			-.068 (0.154)	-.075 (0.17)
Displaced			0.347 (0.232)	0.282 (0.254)
Post-sec. Educ.			0.396 (0.159)**	0.304 (0.17)*
Enough money			0.296 (0.162)*	0.474 (0.181)***
Capital			0.318 (0.18)*	0.001 (0.201)
Urban			0.201 (0.183)	0.002 (0.204)
Const.	-.684 (0.114)***	-.637 (0.136)***	-.913 (0.381)**	-1.072 (0.435)**
Obs.	1001	796	992	794