

The Double Standard of the Major Military Powers: The International Criminal Court and the Control of Nuclear Weapons

Lawrence S. Wittner

Abstract: *In 1998, the International Criminal Court was established by the Rome Statute. With 123 nations now parties to the Treaty, the ICC, headquartered at the Hague, may investigate and prosecute individuals for war crimes, genocide, crimes against humanity, and aggression. It is hampered, however, by the fact that 70 countries, including the US, Russia, China and many other nuclear powers, have not joined and actively oppose the work of the court. What have been its accomplishments and its limits?*

Noam Chomsky, the famed linguist and social critic, once remarked: “For the powerful, crimes are those that others commit.”

This trenchant observation is bolstered by the decades-long reluctance of today’s major military powers to respect international law—as shown, for example, by their fraught relationship with the International Criminal Court.



The Headquarters of the International Criminal Court, the Hague.

In 1998, the [International Criminal Court \(ICC\)](#) was established by an international treaty, the Rome Statute. Coming into force in 2002 and with [123 nations now parties](#) to it, the [treaty provides](#) that the ICC, headquartered at the Hague, may investigate and prosecute individuals for war crimes, genocide, crimes against humanity, and the crime of aggression. As a court of last resort, the ICC may only initiate proceedings when a country is unwilling or unable to take such action against its nationals or anyone else on its territory. In addition, although the ICC is authorized to initiate investigations anywhere, it may only try nationals or residents of nations that are parties to the treaty, unless it is authorized to investigate by the nation where the crimes occurred.

The development of a permanent international

court dealing with severe violations of human rights, a unique event in human history, has already produced some important results. [Thirty-one criminal cases](#) have been brought before the ICC, resulting, thus far, in ten convictions and four acquittals. The [first ICC conviction](#) occurred in 2012, when a Congolese warlord was found guilty of using conscripted child soldiers in his nation. In 2020, the ICC began trying a former Islamist militant alleged to have forced hundreds of women into sexual slavery in Mali. In April, 2022 the ICC opened the trial of a militia leader charged with 31 counts of war crimes and crimes against humanity committed in Darfur, Sudan. [Parliamentarians](#) from around the world have lauded “the ICC’s pivotal role in the prevention of atrocities, the fight against impunity, the support for victims’ rights, and the guarantee of long-lasting justice.”

Despite these advances, the ICC faces some [serious problems](#). Often years after criminal transgressions, it must locate the criminals and people willing to testify in their cases. Furthermore, lacking a police force, it is forced to rely upon national governments, some with a minimal commitment to justice, to capture and deport suspected criminals for trial. Governments also occasionally withdraw from the ICC, when angered, as [the Philippines did](#) in 2018 after its president, Rodrigo Duterte, came under investigation.

The ICC’s most serious problem, however, is that [70 nations](#), including the world’s major military powers, have refused to become parties to the treaty. The governments of China, India, and Saudi Arabia never signed the Rome Statute. Although the governments of the United States, Russia, and Israel did sign it, they never ratified it. Subsequently, in fact, they withdrew their signatures.

The motive for these holdouts is clear enough. In 2014, Russian President [Vladimir Putin](#) ordered the withdrawal of his nation from the

process of joining the ICC. This action occurred in response to the ICC ruling that Russia’s seizure of Crimea amounted to an “ongoing occupation.” Such a position, said Kremlin spokesman Dmitry Peskov, “contradicts reality” and the Russian foreign ministry dismissed the court as “one-sided and inefficient.” Understandably, governments harboring current and future war criminals would rather not face investigations and possible prosecutions.

The skittishness of the U.S. government toward the ICC illustrates this point. Even as he signed the treaty, President [Bill Clinton](#) cited “concerns about significant flaws” in it, notably the inability to “protect US officials from unfounded charges.” Thus, he did not submit the treaty to the Senate for ratification and recommended that his successor, George W. Bush, continue this policy “until our fundamental concerns are satisfied.” [Bush](#), in turn, “unsigned” the treaty in 2002, pressured other governments into bilateral agreements that required them to refuse surrender of U.S. nationals to the ICC, and signed the American Servicemembers Protection Act (sometimes called the “Hague Invasion Act”) which authorized the use of military force to liberate any American being held by the ICC.

Although, subsequently, the [Bush](#) and [Obama](#) administrations grew more cooperative with the court, aiding it in the prosecution of African warlords, the Trump administration adopted the most hostile stance toward it yet. In September 2018, [Donald Trump](#) told the UN General Assembly that the United States would provide “no support” to the ICC, which had “no jurisdiction, no legitimacy, and no authority.” In 2020, the [Trump administration](#) imposed economic sanctions and visa restrictions on top ICC officials for any efforts to investigate the actions of U.S. personnel in Afghanistan.

Under the Biden administration, however, U.S. policy swung back toward support. Soon after

taking office, Biden—in line with his more welcoming approach to international institutions— [dropped the Trump sanctions](#) against ICC officials. Then, in March 2022, when the Russian invasion of Ukraine produced [widely-reported atrocities](#) in the Ukrainian town of Bucha, the [U.S. president](#) labeled Putin a “war criminal” and called for a “war crimes trial.”

The ICC was the obvious institution for action. That March, the U.S. Senate unanimously passed a resolution backing an investigation into Russian war crimes in Ukraine and praising the ICC. Weeks before this, in fact, the ICC did open an investigation.

Even so, it is unclear what the U.S. government can or is willing to do to aid the ICC in Ukraine. After all, U.S. legislation, still on the books, bars substantial U.S. assistance to the ICC. Also, Pentagon officials are reportedly opposed to action, based on the U.S. government’s long-time fear that U.S. troops might some day be prosecuted for war crimes.

For their part, [Russian officials](#) have claimed that the widely-recognized atrocities were a complete “fake” a “fabrication,” and a “provocation.” In Bucha, stated the Russian defense ministry, “not a single local resident has suffered from any violent action.” Not surprisingly, Russian authorities have [refused to cooperate](#) with the ICC investigation.

A double standard is also evident in the policy of the major military powers toward nuclear weapons. The governments of the United States and the Soviet Union were fast off the mark in building nuclear weapons and in threatening their use. But they were deeply apprehensive of the prospect of other nations developing and using them as well.

As a result, despite their fierce disagreements on other matters, [U.S. and Soviet officials](#) [united](#) in the mid-1960s to propose the world’s adoption of a nuclear non-proliferation treaty

that would ban the development of nuclear weapons by other nations while enabling their own nations to retain very substantial nuclear arsenals. But this proposal aroused fierce resistance by the governments of other countries, which insisted that they had no intention of granting the United States and the Soviet Union a permanent nuclear monopoly. Instead, argued the non-nuclear nations, the renunciation of the nuclear option would have to be paired with an agreement of the nuclear nations (which, by this time included Britain, France, and China) to divest themselves of their own nuclear weapons.

Frustrated by this resistance, the U.S. and Soviet governments grudgingly accepted a provision that would halt their nuclear arms race and lead to their disarmament. Thus, when the nuclear [Non-Proliferation Treaty \(NPT\)](#) was adopted in 1968, it provided for the renunciation of nuclear weapons by the non-nuclear nations and for the nuclear nations to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

Of course, it was one thing to wring a concession out of the nuclear powers and quite another to enforce it. [After the NPT went into force in 1970](#), the U.S. and Soviet governments did sign three modest nuclear arms control treaties, the Anti-Ballistic Missile (ABM) Treaty of 1972 and the Strategic Arms Limitation Treaties of 1972 and 1979 (SALT I and SALT II), over the following decade. But mounting Cold War tensions between the U.S. and Soviet governments blocked ratification of SALT II by the U.S. government and propelled both nations into a new nuclear arms race. With the advent of the hawkish Reagan administration in 1981, arms control and disarmament policies were scrapped, the nuclear arms race escalated, and threats of nuclear war resumed.

Ultimately, it took a massive antinuclear uprising around the world in the 1980s, involving millions of people, to secure the world's first nuclear disarmament treaty, the Intermediate Nuclear Forces (INF) Treaty of 1987. This upheaval also set the course for the Strategic Arms Reduction Treaties, START I and START II (1991 and 1993), and helped push nuclear nations back from the brink of nuclear war.

But, [as public protest receded](#), so too did progress on nuclear disarmament. Although the U.S. government joined other nations in signing the Comprehensive Test Ban Treaty of 1996, Republicans blocked its ratification by the U.S. Senate. Charging that the nuclear powers were not fulfilling their part of the Non-Proliferation Treaty bargain, India and Pakistan threw off NPT constraints and began developing substantial nuclear arsenals of their own.

The collapse of government action for nuclear disarmament was particularly noticeable in the United States. President George W. Bush withdrew the United States from the ABM Treaty (pressing forward instead with "national missile defense"), renewed production of US nuclear weapons, and championed (albeit unsuccessfully) the development of "mini-nukes." Instead of promoting the nuclear disarmament of the major military powers, the Bush administration stressed the supreme importance of stopping the proliferation of nuclear weapons to non-nuclear nations, leading to a disastrous war with Iraq and military confrontations with Iran and North Korea.

Even though Barack Obama, with great fanfare, stirred popular hopes by calling for the building of a nuclear weapons-free world, he made little progress along these lines. Although he negotiated the New START Treaty (2010) with Russia, he eventually [succumbed to blackmail](#) by pro-nuclear Republican Senators, who demanded and secured a plan for

"modernization" of the U.S. nuclear weapons complex as the price of treaty ratification. Facing fierce opposition from hawkish Republicans at home, Obama also encountered growing difficulties in disarmament negotiations with increasingly assertive and hawkish [officials in Russia](#), then engaging in their own nuclear buildup and seizing portions of Ukraine. Consequently, he failed to secure any additional nuclear disarmament measures during his eight years in office.

Obama's "Iran deal" (2015) exemplified this retreat from his ambitious call for a nuclear weapons-free world. Through this limited political agreement, rather than a formal treaty, Obama did manage to avoid a Senate treaty ratification defeat that, given fierce Republican opposition, would almost certainly have occurred. Even so, the Iran deal was in line with the Bush administration's emphasis on blocking proliferation of nuclear weapons to additional nations. Disarmament of the nuclear powers ground to a halt. The United States and Russia each continued to possess some [7,000 nuclear weapons](#)—about 93 percent of the world total, and more than enough to obliterate life on earth.

For his part, Donald Trump, Obama's successor, quickly dropped any pretensions of fostering nuclear arms control or disarmament—withdrawing from the [INF Treaty, the Open Skies Treaty, and the Iran nuclear deal](#). He also promoted a [major U.S. nuclear weapons buildup](#), allowed the [New START Treaty](#) to drift toward expiration, loosened U.S. policy for the [use of nuclear weapons](#), and issued bloodcurdling threats of nuclear war against [North Korea](#) and [Iran](#).

Nor was the U.S. government alone in casting off treaty constraints and escalating the nuclear arms race. [All nine nuclear powers](#) once again scrambled to upgrade their nuclear weapons capabilities. Investing heavily in beefing up their nuclear forces, the Russian

and Chinese governments developed, among other weapons, hypersonic missiles that travel five times the speed of sound. In December 2019, when [the Russian government](#) announced the deployment of the world's first missiles of this kind, President Vladimir Putin boasted that they could bypass missile defense systems and hit almost any point on the planet. He also touted several other new Russian nuclear weapons systems as ahead of their time. "Our equipment must be better than the world's best if we want to come out as the winners," [he asserted](#).

The revival of the nuclear arms race and the growing prospect of nuclear war left thoughtful observers aghast. In January 2020, the editors of the *Bulletin of the Atomic Scientists* set the hands of their famous "[Doomsday Clock](#)" at 100 seconds to midnight—the most ominous setting since the advent of the clock in 1947. Addressing an NPT review conference on August 1, 2022, UN Secretary-General [Antonio Guterres](#), citing rising nuclear dangers in Ukraine, Asia, and elsewhere, warned that "humanity is just one misunderstanding, one miscalculation away from nuclear annihilation."

As the nuclear powers plunged forward in a new nuclear arms race and amid an atmosphere of rising nuclear peril, two groups expressed particularly sharp dismay at this state of affairs—the [remnants of the once-powerful nuclear disarmament movement and the non-nuclear nations](#). Working closely together during the second decade of the 21st century, they sponsored several UN conferences on the humanitarian consequences of nuclear war. Then, drawing upon their strength in the UN General Assembly, they

organized a 2017 UN conference that, in July of that year, by an overwhelming vote, adopted a Treaty on the Prohibition of Nuclear Weapons. This treaty banned developing, testing, producing, acquiring, possessing, stockpiling, and threatening to use nuclear weapons.

As might be expected, the nine nuclear powers were appalled by this action, which represented a clear threat to their nuclear ambitions. Therefore, they boycotted the 2017 UN conference, pressed other nations not to attend it, and refused to sign the nuclear disarmament treaty that it produced. Indeed, the governments of three nuclear nations—the United States, Britain, and France—announced that they would *never* sign it.

Nevertheless, despite the vigorous resistance of the nuclear powers, the signing and ratification of the Treaty on the Prohibition of Nuclear Weapons went forward and, in January 2021, the treaty, having passed the threshold of the necessary 50 ratifications, entered into force. Today, all [66 parties to the treaty](#) are non-nuclear nations. And additional signatories from the ranks of the non-nuclear nations are expected to ratify it in the future. By contrast, none of the nuclear powers has signed or ratified the treaty.

As a result, this landmark nuclear disarmament agreement, like the treaty establishing the International Criminal Court, continues to face a boycott by the world's major military powers. Thus far, despite their public rhetoric about defending human rights and world peace, the governments of these powers remain unwilling to place their nations under the jurisdiction of the relevant international law. That law, they apparently believe, should apply only to other nations.

Lawrence S. Wittner is Professor of History Emeritus at SUNY/Albany and the author of the award-winning scholarly trilogy, *The Struggle Against the Bomb* and its abbreviated version, *Confronting the Bomb* — both published by Stanford University Press.