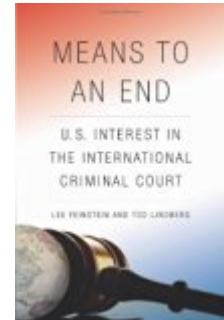


Lee Feinstein, Tod Lindberg. *Means to an End: U.S. Interest in the International Criminal Court.* Washington, DC: Brookings Institution Press, 2009. ix + 178 pp. \$24.95, cloth, ISBN 978-0-8157-0325-9.



Reviewed by John W. Dietrich

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Commissioned by Rebecca K. Root (Ramapo College of New Jersey)

Lee Feinstein and Tod Lindberg argue that the United States should move to a policy of cooperation with the International Criminal Court (ICC) as a means of reaching the established U.S. goal of seeing gross violators of human rights and perpetrators of mass atrocities held accountable for their actions. U.S. cooperation also would please allies and be morally right. The authors move discussion of the ICC away from the well-worn theoretical debates on the merits of global governance and proper limitations on sovereignty to, first, the broader issue of how the United States works for international justice and, second, the practical question of whether cooperation with the ICC advances U.S. interests. Such intellectual moves force U.S. critics of the ICC into the difficult position of either questioning the merits of the U.S. goal of international justice or showing that this goal could be better achieved through other policies.

Feinstein and Lindberg also later add a third shift in the debate by suggesting that the issue should not be defined only as a choice of either

U.S. opposition to the ICC or ratification of the Rome Statute, but should include a middle option of U.S. cooperation with the court without ratification, at least at this point. Cooperation would give the United States many of the benefits of joining the ICC without subjecting itself to the court's jurisdiction or requiring Senate approval.

Overall, the book raises an interesting perspective and advances many practical policy steps. Several of the latter have already been adopted by Barack Obama's administration. ICC critics, though, are likely to be less willing than the authors to move away from theoretical debates or to see the ICC's actions to date in positive terms. How long the United States could, or should, remain with the middle policy of cooperation without ratification also remains unclear.

Feinstein was at the Brookings Institution and has worked with notable Democratic politicians. Lindberg is at the Hoover Institution and has worked with key Republican politicians. Both have spent extensive time in Washington policy

circles. They intend this work to be similar to other recent bipartisan efforts to assess in practical terms how U.S. interests can be furthered by international institutions. Their background and goal gives the book a different set of arguments and writing style when compared to works on the ICC by academics or lawyers.

They begin by tracing U.S. historical support of bringing human rights violators to justice and claim that the intent of the ICC is consistent with this established U.S. goal. Those familiar with the history will find little new here. Those less familiar will learn much, but the authors' effort to bring together everything from eighteenth-century support of free trade to the Hague Conventions on the laws of war to Saddam Hussein's trial stretches their theme quite widely. Notably, they do not explore consistent U.S. hesitancy to ratify numerous UN human rights treaties that impinge on U.S. sovereignty.

The authors then review U.S. criticisms of the ICC and how they led to wariness from Bill Clinton and real opposition from George W. Bush. In the appendix, they include several key documents on these matters. They argue, though, that by 2005, the court's early positive track record and Bush officials' recognition of its possible utility had led to a major turning point; namely, the United States did not oppose the UN Security Council's referral of the humanitarian crisis in Sudan to the ICC. They argue that the ICC's actions on Sudan and other cases through the book's writing in 2009 have further shown that the court is functioning well, that most early U.S. worries about the court were unfounded, and that there is increasing bipartisan recognition of the court's utility. They argue, for example, that fears of an unchecked ICC prosecutor pursuing an anti-American political agenda have been disproven by prosecutor restraint, introduction of more oversight, and hiring of U.S. lawyers. They also note that the Bush administration and Congress gradually moved away from tough rhetoric and chal-

lenging policies, and that Obama has indicated even more support for the ICC.

Before making the case for U.S. cooperation, the authors note that much past debate focused on fears of global governance and loss of sovereignty. They say "these perspectives and the conclusions that follow from them deserve respect.... They are not, however, the perspective from which we have tried to examine the International Criminal Court in this book" (p. 92). This logic helps them focus their attention on practical impacts. In a broader debate, though, it seems unlikely that critics would simply drop their longstanding fears of not only the ICC, but of many international institutions, and argue on the authors' turf. Even on the practical points, Feinstein and Lindberg at times concede a problem with the ICC, but then minimize its importance. They note that only four individuals indicted by the court have been transferred to its custody, but say "this cannot be blamed on the court" (p. 82) because it relies on the cooperation of states to make arrests. They say that the issue of whether ICC indictments may delay or end peace negotiations is "a very serious question" (p. 82), but that policymakers cannot make a consistent choice of justice over peace, or peace over justice. They argue that "U.S. officials and military commanders and troops are at little and diminishing risk of being held accountable at the ICC" (p. 98) because the United States generally follows laws, U.S. courts have the capacity to try violators, and the principle of complementarity means ICC will act only if the United States refuses to, but these are the same core arguments ICC supporters have been making for years. Critics may well take these three points and argue that the ICC is a waste of resources since it prosecutes few, that it hurts U.S. interests in peacefully settling conflicts, and that it still leaves U.S. citizens vulnerable to unwarranted prosecution.

Feinstein and Lindberg argue that U.S. cooperation with the ICC will aid U.S. interests more

than policies of opposition or benign neglect have. They detail numerous steps the United States could take to express support for the court, aid the court's institutional development, assist specific investigations, and protect and assist victims of abuse. They suggest re-signing the Rome Statute, designating officials to work with the court, and attending the ICC Review Conference, yet they oppose moving quickly to ratify the Rome Statute. Before ratification, they suggest waiting to see how the ICC functions after its 2010 Review Conference and 2012 change in prosecutor, assessing whether the ICC is receptive to U.S. ideas, and building congressional and public support for the court. They do not, however, indicate how long the United States should remain in this middle status of cooperation but not ratification, or specify under what specific conditions the benefits of ratification would increase.

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