



Ratification Patterns and the International Criminal Court¹

TERRENCE L. CHAPMAN

University of Texas

AND

STEPHEN CHAUDOIN

Princeton University

What types of countries have ratified the Rome Statute establishing the International Criminal Court? Because the court relies on state cooperation, it is a good example of a regime facing a “participation problem.” In order to be effective, the regime requires active members, but states that fear regime effectiveness will therefore find it potentially costly to join. We analyze the extent to which this problem plagues the ICC. We find that countries for whom compliance is likely to be easiest—democracies with little internal violence—are the most likely countries to join the ICC. On the other hand, countries with the most to fear from ICC prosecution, nondemocracies with weak legal systems and a history of domestic political violence, tend to avoid ratification. We contrast our findings with those of a recent article by Simmons and Danner (2010), arguing that ratification patterns show evidence of credible commitments. Our analysis across a breadth of evidence, both descriptive and multivariate, suggests caution toward arguments about the impact of the ICC on global practices and provides support for the notion that states strategically select themselves into supranational judicial agreements.

What types of countries ratify the Rome Statute establishing the International Criminal Court (ICC)? The ICC is the first attempt at creating a permanent body to prosecute war crimes and is intended to influence a sensitive area of state sovereignty—the use of repression, violence, and other large-scale human rights violations. The ICC’s jurisdiction extends to individuals responsible for genocide, crimes against humanity, war crimes, and aggression.² Like many instruments of international law, governments voluntarily decide whether to become ICC members. The potential costs to a government of ratifying the Rome Statute establishing the ICC, namely the risk of being prosecuted in the future, are not the same for all governments. Ratification is most risky for governments that may run afoul of the court in the future and less risky for countries that are unlikely to commit ICC violations.

The ICC’s institutional rules make it easiest for the court to prosecute crimes committed in countries that have joined, so understanding which countries have ratified the ICC is a key component of assessing whether the regime’s potential to protect citizens from war crimes is reaching those that need it most. An important recent article from Simmons and Danner (2010) used ratification patterns to argue that countries with past conflict and weaker institutions ratify the ICC in order to make a “credible commitment” to the rule of law. Contrary to

those findings, we show that countries with the most to fear from ICC ratification tend to avoid doing so, while countries for whom ratification is less costly are more likely to ratify.

Our analysis is an example of the broader importance of studying the “participation problem” facing international regimes (Barrett and Stavins 2003; Bechtel and Tosun 2009; Urpelainen 2010). The participation problem arises because the number and type of members of a regime can affect the regime’s effectiveness.³ A regime that relies on state cooperation for effectiveness, like the ICC, will be less effective if states that are the most likely to violate the regime do not support or join it. Therefore, studying the determinants of ratification is a critical initial step for understanding potential regime effectiveness.

We begin by reviewing recent arguments about the ICC and the credible commitment argument in particular. We then present a broad array of evidence that ICC ratification is being avoided by countries with the most to fear. We discuss some important exceptions to this trend, namely countries in sub-Saharan Africa, and describe in greater detail their reasons for ratifying the ICC. We reassess the evidence and methods employed by Simmons and Danner and argue that the data are inconsistent with patterns of credible commitment. Finally, we summarize the broader implications of this study.

Why Participation Matters

The ICC is a new institution, which has yet to render a verdict in any cases. This makes it difficult to empirically study the court’s effect on member states, although there are several theoretical arguments for the court’s potential impacts. Most importantly, these arguments apply primar-

¹ *Author’s note.* The authors thank Cliff Carrubba, Morris Chan, Christina Davis, David Hsu, Sarah Hummel, Hyeran Jo, Jeff Kucik, Pat McDonald, Dan Reiter, Beth Simmons, Steve Simon, Branislav Slantchev, Jeff Staton, Dustin Tingley, James Vreeland and audiences at Emory University, Princeton University, the 2011 Political Economy of International Organizations Conference at ETH Zurich, the 2011 Annual Meeting of the Midwest Political Science Association, as well as seminar participants at the University of Texas, and the editors and reviewers for helpful comments and suggestions. Thanks to Beth Simmons, Allison Danner, and Linda Camp Keith for generously sharing their data. Replication data and files are available from the authors.

² The court has yet to define the crime of aggression and can only exercise jurisdiction over that crime once it has been defined and required provisions are agreed upon.

³ We thank an anonymous reviewer for suggesting this description of the problem.

ily to countries that ratify the ICC. The “teeth” of the ICC are in the potential for prosecution, which is much more likely for signatory states because of the institution’s rules on the indictment of nonmembers, discussed below. Here, we briefly survey existing arguments about the ways that the ICC can affect behavior and discuss why understanding ratification patterns is an important step for evaluating these arguments.

While there are both supporters and critics of the ICC, several recent arguments are optimistic about the court’s potential impact on state behavior. The main argument is that the ICC can deter atrocities by raising the *ex post* costs of committing them, namely the costs of being exposed to prosecution. There are at least two theories of how the ICC could raise these costs. The most prominent version of this argument supposes that the creation of a permanent court means that there will be increased monitoring of leaders’ behavior and punishment for violations.⁴

A similar argument was recently articulated by Simmons and Danner (2010). They argue that the ICC is a way for governments to credibly commit to the rule of law and refraining from committing atrocities. Not every country needs such a commitment. Simmons and Danner point to a country’s domestic institutions and the presence of internal violence in the country’s recent history as two features affecting the need to make credible commitments. Nondemocracies with a recent history of internal violence are most in need of credible commitments to domestic populations and international audiences, since these countries cannot credibly promise to forgo the use of violence or repression. Democracies are less in need of this commitment device because their domestic institutions help ensure that their leaders will not commit atrocities. Peaceful countries are also less in need of this commitment because of their positive record of refraining from war crimes.

Another argument reasons that the ICC provides a politically credible alternative for countries that would otherwise grant asylum to dictators, in exchange for the dictator voluntarily relinquishing his hold on power (Gilligan 2006). Without the ICC, dictators who employ violent repression may eventually gain asylum in a friendly host country if their rule is threatened. With the ICC, the asylum alternative is taken off the table, since member states are legally obliged to arrest ICC-indicted war criminals. If turned over to the ICC, former dictators face stiff ICC penalties, such as life in prison. This means that the presence of the ICC should deter leaders from committing atrocities in the first place (Gilligan 2006:938).

For both arguments, the key to deterrence lies in the threat of an ICC indictment and trial. Ratification is important to the risk of prosecution because ICC jurisdiction is limited with regard to countries that are not party to the treaty. War crimes committed by the nationals of non-signatory states in non-signatory countries do not fall under ICC jurisdiction, except in the case of Security Council referral. When governments make the decision of whether to ratify the Rome Statute, they must weigh expected costs, such as the probability that the ICC will investigate and prosecute members of the government or prevent the government from using repressive tools to stay in power, against expected benefits, including the ability of the government to use the ICC to prosecute

non-government domestic actors like rebel groups while avoiding prosecution themselves (cf. Ginsburg 2008).

The main exception to the limit on the ICC’s jurisdiction is referral by the United Nations Security Council, a process with its own considerable political hurdles. To date, referrals have occurred only twice: the Security Council referred the Sudanese government on suspicion of state-sponsored violence in Darfur and, more recently, the Security Council referred the Libyan government on charges of brutal repression of popular protests. In the case of Sudan, the political difficulties of the referral were substantial. Violence in Darfur erupted in early 2003, but the Security Council referred the case to the ICC only in March 2005, and the arrest warrant for President Bashir was not issued until March 2009. Securing Chinese consent during the process was particularly difficult. Despite the arrest warrant, Bashir has not been taken into custody and travels freely among non-signatory countries. Even signatory countries, like Chad, Kenya, and the Central African Republic, have allowed Bashir transit without arrest, casting further doubt on the actual costs of the ICC to non-signatories. Although the referral of the Libyan case was less politically difficult, it did not produce a voluntary surrender, and there is evidence of a lack of universal support among NATO allies for ICC prosecution since asylum may have been a more expedient way to end the conflict.⁵

The ICC is thus a good example of a regime facing a “participation problem” (Barrett 1994; Bechtel and Tosun 2009; Urpelainen 2010). The design of the ICC is not an example of “shallow cooperation,” which refers to examples of international law that do not commit states to fundamental changes in their behavior (Downs, Rocke, and Barsboom 1996). The formal commitments of member states of the ICC are substantial. However, the regime’s effectiveness depends on the participation and cooperation of member states because of its jurisdictional rules and its reliance on state parties for the capture of indicted suspects. Cooperation is a concern even for some member states, as the United States has pressured some members to sign bilateral “Article 98” agreements that make U.S. nationals immune from prosecution (Nooruddin and Payton 2010). But generally, the potential costs of voluntarily submitting to the ICC’s jurisdiction increase with its membership, as there is a greater chance of being caught and held accountable for crimes as more countries formally commit to support the regime and turn over indicted suspects. This means that states with the most to fear from ICC prosecution face an incentive to avoid joining the regime and, not only placing themselves under its jurisdiction, but also potentially strengthening the regime’s overall effectiveness.

Patterns of Ratification

The primary danger of submitting to ICC jurisdiction is that a leader or official will someday face ICC prosecution. For this to occur, at least two things must happen: (i) a leader must commit an offense such as war crimes, genocide, or crimes against humanity and (ii) the ICC must choose to prosecute. We analyze both of these issues in turn. Following the example of Simmons and Danner (2010), we focus on a country’s recent history of

⁴ E.g. Schabas 2007

⁵ See Sanger and Schmitt, “U.S. and Allies seek refuge for Qaddafi,” *New York Times* April 16, 2011; Alan Cowell, “In shift, Britain says Qaddafi could stay in Libya,” *New York Times* July 26, 2011.

internal conflict (an indicator of opportunity for atrocities) and a country’s domestic political and legal institutions (an indicator of existing, domestic disincentives for committing atrocities, as well as insulation against prosecution via the complementarity principle). For this section, the sample is the 191 countries for which we could collect the relevant data.⁶ Ratification decisions were coded until July 2011. Along both dimensions, internal conflict and the strength of domestic institutions, we find that ratifiers are systematically different from non-ratifiers. Ratifiers have significantly less past internal conflict and significantly stronger domestic political and judicial institutions. Countries with the most to fear, that is, those with past conflict and weak institutions, avoid ratifying. We first present simple cross-tabs and summary statistics to show the differences between ratifiers and non-ratifiers. These results are summarized in Table 1. Figure 1 shows the cumulative number of countries ratifying the ICC over time. We conclude this section with a closer look at ratification trends in Sub-Saharan Africa, which are the main exception to the general pattern.

Internal Conflict and ICC Ratification

First, we examine whether ratifiers and non-ratifiers have significantly different levels of past internal conflict. We compare ratifiers and non-ratifiers based on the severity of civil conflict, World Governance Indicators (WGI) of political stability and violence, and Political Risk Services (PRS) risk ratings. While none of these is a perfect predictor of ICC violations, the measures are theoretically and empirically linked with the probability of an ICC-prosecutable violation occurring, since events like genocide, mass killing, and targeted killings of civilians are more likely to occur in countries experiencing civil violence and instability. All ICC actions to date have dealt with allegations concerning civil conflicts, suggesting that this is an area of focus for the institution. Valentino, Huth, and Balch-Lindsay (2004) demonstrate that the majority of mass killings of the last half century occurred during civil conflicts. The amount of civil conflict that a country experienced in the period prior to the ICC’s entry into force is thus a telling indicator of the likelihood of that country running afoul of the ICC in the future. Following existing literature, we focus on the period from 1990 to 1997 because the Rome Statute was opened for signature in 1998.⁷

For the first measure, we use data describing the number of battle deaths from civil conflicts during the 1990s. While existing work uses binary codings of civil conflict, we measure the actual number of battle deaths resulting from civil conflict.⁸ Using battle deaths is an improvement over binary codings for two reasons. First, the severity of conflict matters. For instance, a binary measure requiring at least 1,000 deaths to count as a civil war would code the UK and Iran identically for the period 1990–1997, but treating those countries as having equally

TABLE 1. Differences Between Ratifiers and Non-ratifiers

Variable	N	Mean	SD	Min.	Max.	p value
Conflict history						
Battle Deaths 1990s						
Ratifiers	112	1,215	5,165	0	47,000	.01
Non-ratifiers	79	5,253	13,627	0	72,700	
Battle Deaths 1990s (Strictly Positive)						
Ratifiers	27	5,043	9,688	30	47,000	.03
Non-ratifiers	29	14,311	19,572	25	72,700	
Battle Deaths 1990s (Excl. Afghanistan)						
Ratifiers	111	803	2,773	0	20,000	
Non-ratifiers	79	5,253	13,627	0	72,700	<.01
Political Risk						
Ratifiers	82	67.46	13.22	27	91.6	<.01
Non-ratifiers	55	57.99	11.87	23.73	81.9	
WGI Political Viol.						
Ratifiers	108	0.1	0.99	-2.6	1.48	.01
Non-ratifiers	72	-0.4	0.91	-2.54	1.16	
Institutions						
Polity II						
Ratifiers	94	4.75	5.27	-6	10	<.01
Non-ratifiers	63	-1.93	6.35	-10	10	
Polity II (Nondemocr.’s Only)						
Ratifiers	13	-2.52	2.22	-6	1.3	<.01
Non-ratifiers	32	-6.54	2.73	-10	0	
Executive Constraint						
Ratifiers	93	5.2	1.89	1	7	<.01
Non-ratifiers	63	3.34	1.92	1	7	
Freedom House						
Ratifiers	112	2.43	0.66	1	3	<.01
Non-ratifiers	78	1.76	0.72	1	3	
WGI Rule of Law						
Ratifiers	109	0.15	1.03	-2.17	2.02	<.01
Non-ratifiers	76	-0.44	0.79	-2.18	1.68	
Judicial Independence						
Ratifiers	107	8.79	4.38	-1	16.6	<.01
Non-ratifiers	71	5.98	4.51	-1	17	

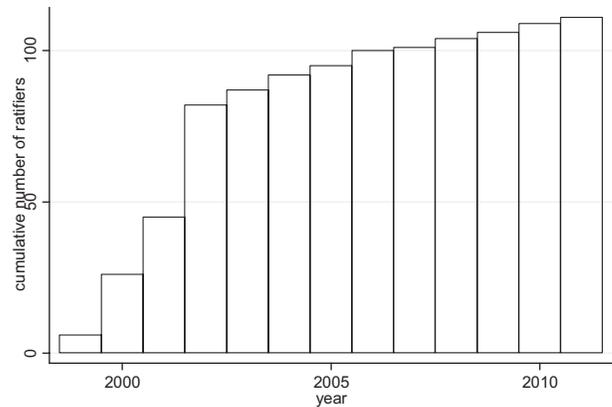


FIG 1. Cumulative Number of ICC Ratifiers by Year, 1999–2011

as much to fear from future ICC ratification is misleading. Second, existing work has shown that the choice of “cutoffs” for what constitutes a civil conflict greatly affects empirical results (Hegre and Sambanis 2006). Variation in the definitional threshold for civil war results in data sets that are poorly correlated with one another and regressions using different data sets yielding divergent results.

International Criminal Court ratifiers experienced significantly less civil violence in the 1990s than non-ratifi-

⁶ Data limitations exclude some micro-states.

⁷ Simmons and Danner (2010:237–238) argue (and we agree) that countries with more civil conflict prior to the ICC ratification period have a higher risk of future atrocities. For too many countries, past violence is often a good predictor of future violence. We use data from immediately prior to the opening of ratification in order to compare countries’ time until ratification in the duration analysis that follows as a function of comparable covariates. Additionally, the vast majority of ratifications occur within the first few years of the Rome Statute’s opening, making the 1990–1997 time period appropriate. Results do not change if we move the starting or ending dates of this window.

⁸ Uppsala PRIO Battle Deaths dataset, version 3.0, Lacin and Gleditsch (2005).

ers. The average number of battle deaths from civil conflict during the period 1990–1997 for eventual ratifiers is 1,215, while the average for non-ratifiers is 5,252.⁹ If we exclude countries that experienced no battle deaths during the 1990s, the difference becomes even starker. The average number of deaths for ratifiers is 5,043, compared to an enormous 14,311 for non-ratifiers.¹⁰ Figure 2 plots a histogram of this data for countries that experienced at least one battle death.

This trend is more stark when we consider outliers. Afghanistan ratified the ICC, despite experiencing an estimated 54,000 battle deaths from civil violence in the 1990s. The severity of the Afghan civil conflicts greatly inflates the average number of battle deaths for ratifying countries, as shown in Figure 2. Excluding Afghanistan, the average number of deaths for ratifiers drops from 1,215 to 803, a 34% decrease. While Afghanistan has ratified the ICC, as of late 2009, Afghanistan had not taken any serious action to fulfill its ICC obligations by amending national law.¹¹ In 2007, Afghanistan enacted blanket legal provisions to grant amnesty to government officials that might come under ICC scrutiny. Afghanistan also signed an Article 98 agreement, providing immunity for U.S. soldiers and personnel.¹²

These findings are consistent across other measures of internal conflict. The WGI includes a measure of the “Political Stability and Absence of Violence” for a country-year, based on survey responses from experts, think tanks, citizens, and business leaders. The data “captur[e] perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically motivated violence and terrorism” (Kaufmann, Kraay, and Mastruzzi 2010:4). The measure ranges from -3 , indicating the highest likelihood of instability and violence, to 3 , indicating the lowest likelihood. This measure is also forward looking—it captures perceptions that a country will experience violence in the future. During the 1990s, ratifying countries had an average political stability score of 0.1 , significantly higher than the average of -0.40 for non-ratifiers (p value $< .01$).¹³

Another often-used measure of political risk comes from the PRS Group and evaluates the political stability of a country based on component scores on dimensions like government stability, internal/external conflict, socio-economic conditions, law and order, and democratic accountability.¹⁴ We use the political risk rating scores, which range from zero to one hundred, with higher scores indicating more stability and less risk. Ratifiers again outperform non-ratifiers. The average risk score during the 1990s for ratifiers is 67.46 , compared to 57.99 for non-ratifiers (p value $< .01$). Although this measure is intended for investors, the differences between ratifiers and non-ratifiers are consistent with the general pattern among other measures. Across multiple measures of recent history of violence and political instability, ratifiers fair much better, indicating that they are less likely to face problems meeting their ICC obligations.

⁹ p value for difference in means is $.01$. For this and other references to p values in this section, we use a simple difference in means t -test. We use “type-3” conflicts only, excluding conflicts classified as “internal conflict with outside intervention.” Results do not change when these are included.

¹⁰ p value $.03$.

¹¹ See Moen and Mohammadi (2009).

¹² Tajikistan is the next highest outlier among the ratifying countries and also signed an Article 98 agreement with the United States.

¹³ The WGI is not intended for cross-national comparison, so the comparison should be taken only as additional evidence.

¹⁴ See http://www.prgroup.com/ICRG_Methodology.aspx.

Political and Judicial Institutions and ICC Ratification

Ratifiers are also systematically different from non-ratifiers in their political institutions, rule of law, and degree of judicial independence. Democracies and countries with strong rule of law and judicial independence have less to fear from ICC prosecution because of the ICC’s use of the complementarity principle. In the court’s own words, “[The ICC] will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility.”¹⁵ Complementarity creates an additional hurdle, or buffer, to ICC prosecution, should a crime be committed.¹⁶ For governments already accountable to strong domestic legal institutions, ratifying the Rome Statute does not present significant additional risk, while ICC ratification may expose governments operating without those constraints to prosecution.

Even apart from the complementarity principle, democracies and countries with strong rule of law tend to have fewer human rights violations and less are less likely to commit an ICC offense in the first place. For instance, Valentino et al. (2004) argue that more autocratic regimes are more likely to use mass killing. Our results are consistent across a broad range of data: countries that ratify the ICC are more democratic, have stronger rule of law, and have greater judicial independence.

We first look at Polity scores as a measure of a country’s democratic institutions. We examine the average Polity score for a country during the 1990s and compare the averages for ratifiers and non-ratifiers.¹⁷ Ratifiers are much more democratic than non-ratifiers: the average Polity score in the 1990s for ratifiers was 4.7 , compared to -1.9 for non-ratifiers (p value $< .01$). This result is also not simply an artifact of the very high scores of the advanced Western democracies. Limiting our sample to only those countries which are nondemocracies,¹⁸ the differences are still stark. The average score for nondemocratic ratifiers was -2.50 compared to -6.50 (p value $< .01$) for nondemocratic non-ratifiers. Even among nondemocracies, ratifiers have higher Polity scores than non-ratifiers.

Executive restraint is a facet of domestic institutions that is immediately relevant to the ICC. The types of war crimes targeted by the ICC are often actions undertaken at the discretion of national executives. Polity’s executive restraint component ranges from 1 (unlimited executive authority) to 7 (executive parity or subordination). The average executive constraint score for ratifiers was 5.20 compared to 3.34 for non-ratifiers (p value $< .01$). The executive restraint component of Polity is also highly correlated with judicial independence.¹⁹ Having an independent judiciary is associated with an executive restraint score of three or higher. Eighty-six percent of ratifiers

¹⁵ From the ICC website: <http://www.icc-cpi.int/Menu/ICC/About+the+Court/ICC+at+a+glance/>

¹⁶ The complementarity principle *does not* allow domestic courts to issue disingenuous free passes to the perpetrators of crimes. But to the extent that existing institutions provide credible threats of prosecution, ratifying the ICC does not represent *additional* costs or risk.

¹⁷ The higher the Polity score, the more democratic the country. Polity IV scores range from -10 to 10 (Marshall, Gurr, Davenport, and Jaggers 2002). We again look at the actual scores, rather than binary indicators.

¹⁸ We use Simmons and Danner’s binary cutoff to establish the category of nondemocracy, which is based on Freedom House scores, as explained below.

¹⁹ See Rios, Figueroa, and Staton, “An Evaluation of Cross-National Measures of Judicial Independence,” 2010.

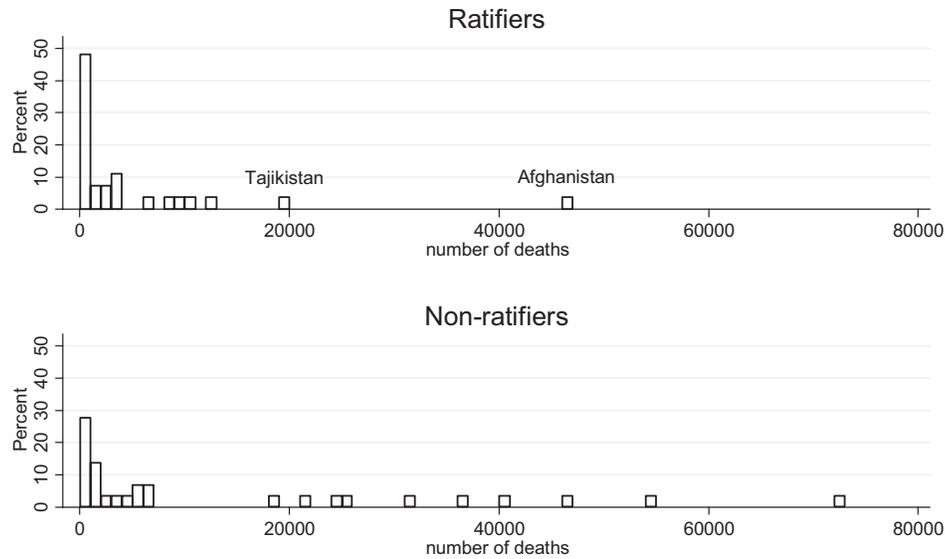


FIG 2. Distribution of Deaths in the 1990s, by ICC Ratification

(Note. Distribution of number of civil conflict battle deaths from 1990 to 1997. The top pane is for ratifiers of the ICC and the bottom pane is for non-ratifiers, with two outliers (Tajikistan and Afghanistan) labeled).

have an executive restraint score of 3 or higher, compared to only 59% of non-ratifiers (p value $< .01$).²⁰

These findings are robust to other measures of political institutions. Freedom House constructs a measurement of whether a country is “free,” “partially free,” or “not free.” If we numerically code “free” as a 3, “partially free” as a 2, and “not free” as a 1, the “mean” Freedom House score during the 1990s for countries that ratify is 2.43, compared with 1.76 for non-ratifiers (p value $< .01$). The World Bank WGI includes a commonly used measure of the Rule of Law for each country, similar to the WGI instability data used above. This score captures “perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence” (Kaufmann et al. 2010:4). The Rule of Law measurement ranges from -3 , where respondents have the most negative perceptions of the country on the above dimensions, to 3 , where respondents have positive perceptions. Again, ratifiers enjoy significantly better rule of law scores than non-ratifiers. The average rule of law score during the 1990s for ratifiers is 0.15, compared to -0.44 for non-ratifiers (p value $< .01$).

Comparing judicial institutions further confirms these trends. Judicial independence is particularly important when considering the complementarity principle, since the ICC reserves jurisdiction if they deem that the courts trying a leader are beholden to that leader. Keith, Tate, and Poe (2009) construct a categorical measure for the level of *de jure* independence of judicial institutions for a number of countries, based on the United States State Department’s Human Rights Reports. These data code the constitutional provisions associated with the independence of the judiciary along nine dimensions.²¹ A country receives a 2 if that state’s constitution provides explicitly

and fully for the independence of the judiciary along a particular dimension, 1 if the constitution does so partially or ambiguously, and 0 if the constitution does not provide for a dimension. We summed each dimension to get an additive index of judicial independence. The index ranges from -1 to 18, with 18 representing the most constitutionally independent judiciary possible.²² Once again, countries that ratify the ICC have much more independent judiciaries, with an average score of 8.79 on this additive scale, compared to 5.98 for non-ratifiers (p value $< .01$).

Regional Patterns and the Sub-Saharan Africa Exception

The ratification patterns in Sub-Saharan Africa are an exception to the trends described above. In Sub-Saharan Africa, some nondemocracies that experienced recent civil wars have ratified the ICC. To highlight how anomalous this is, only three nondemocracies with past civil conflicts outside of Sub-Saharan Africa have ratified the ICC: Afghanistan, Tajikistan, and Cambodia.²³ The strongest support for the ICC comes from Europe and the other Western democracies. Of the 20 Western democracies, only the United States has not ratified. The vast majority of countries in North Africa, the Middle East, and Asia have not ratified. In these regions, as well as in Eastern Europe and the former USSR, ratification patterns are consistent: democracies and countries with relatively peaceful histories are the most likely to ratify. Figure 3 displays these patterns.

While it is encouraging that some countries with past internal violence in Sub-Saharan Africa have ratified, a closer look at the ICC’s experience in Sub-Saharan Africa suggests caution. Of the ICC’s six current investigations (Sudan, Kenya, Central African Republic, DR Congo, Uganda, and Libya), all but Sudan and Libya involve Sub-Saharan Africa. Of the four remaining cases, three (CAR,

²⁰ Nondemocratic ratifiers have a higher average executive constraint score, 2.45, compared with 2.19 for non-ratifiers, though the difference is not significant (p value .27).

²¹ These are described in their article, pp. 649–50. The data were generously provided by the authors.

²² The -1 comes from the possibility of scoring “ -1 ” along the “No exceptional or Military Courts” dimension, along which a country can score -1 if the constitution explicitly establishes the possibility of civilians being tried in exceptional or military courts (650).

²³ Afghanistan and Tajikistan were discussed above. Cambodia also signed an Article 98 agreement with the United States.

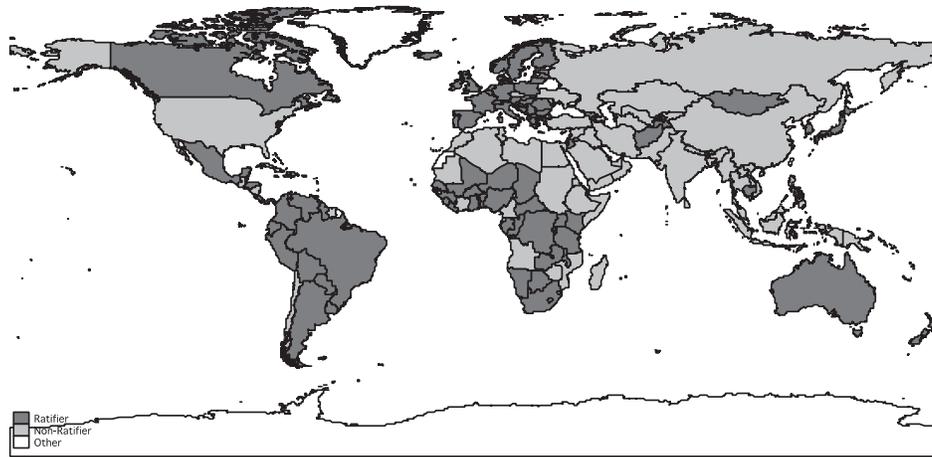


FIG 3. ICC Ratification by Country

DR Congo, and Uganda) involve the prosecution of non-state actors, *not state leaders*. The use of the ICC by some leaders to target rebels suggests that some countries are using the ICC against political opponents, rather than as a mechanism to ensure that leaders do not commit atrocities. According to legal scholar Tom Ginsburg, some countries are “trying to make a strong commitment to prosecute, without necessarily committing to *being* prosecuted” (emphasis in original, 2008, 506).²⁴

Kenya is the only case of ICC action against state actors in Sub-Saharan Africa. Kenya ratified the Rome Statute in 2005, and widespread violence broke out over disputed election results in 2007. In April of 2007, the two sides, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM), agreed to a power-sharing agreement. In December 2010, the ICC named six suspects, two PNU and four ODM members, for their alleged role in the 2007 postelection violence. The ICC issued summonses, not official indictments, for the suspects to appear before the court. The reaction by the Kenyan government has thus far been one of staunch resistance to the ICC. The Kenyan parliament passed a resolution endorsing Kenya’s withdrawal from the ICC, and Kenyan officials successfully lobbied the African Union to support a delay of the Kenyan trial. Kenya also began lobbying South Africa, Nigeria, and Gabon, who are currently sitting on the UN Security Council, for the UNSC to use its ability to defer any ICC actions for a year, thus far to no avail. Finally, Kenya began pushing for domestic proceedings to try the suspects with the express goal of using the complementarity principle to keep them out of the ICC.²⁵ Regardless of the outcome, the strength of the politicians’ resistance to the ICC is discouraging.

Credible Commitments?

In an important recent contribution, Simmons and Danner (2010) argue that a significant portion of ICC ratifications can be explained by a country’s desire to make a

credible commitment to refrain from ICC violations.²⁶ They use duration analysis to analyze the rate at which countries ratify the ICC and find support for their primary claim: nondemocracies with a history of civil war are among the Court’s “earliest and most avid subscribers” (252). Thus, not only do each of the dimensions we examined above—civil conflict history and institutions—alone matter for the likelihood of ratification, but there is a conditional interaction between the two. Summarizing their argument and findings, Simmons and Danner say

Despite exhaustive robustness tests... we found fairly consistently that the least accountable governments — the least democratic, with the weakest reputations for respecting the rule of law, the least politically constrained—with a recent past of civil violence were at the highest “risk” of ratifying the Rome Statute (252).

Simmons and Danner’s research provides a valuable contribution to the theory and empirical study of the ICC. However, reanalysis of these results does not support their conclusions. In particular, we find that their models, as well as theoretically appealing modifications, show that nondemocracies with past civil conflicts are not likely to ratify the ICC. The most likely countries to ratify, by far, are democracies, for whom civil war has little effect. Democracies of all types are followed by nondemocracies with civil wars and finally nondemocracies without civil wars. Alternate specifications further show that past civil conflict has little effect on the rate of ICC ratification, even on nondemocracies.

We replicated the results from Simmons and Danner’s Model 1, as shown in Table 2, columns 1 and 2.²⁷ Simmons and Danner control for a host of theoretically informed variables when examining whether regime type and recent civil war history affect the “hazard” of ratifying the ICC. They control for the size of a country’s military, the number of peacekeepers that country has deployed abroad, the number of ICC ratifiers in the region, the number of human rights treaties the country has ratified, whether or not the country has an ongoing

²⁴ A separate but complementary explanation of patterns of participation in Africa is that Sub-Saharan African countries, some of which are the poorest countries in the world, have ratified the ICC because of material inducements and pressures from the European Union (see Goodliffe et al., <http://goodliffe.byu.edu/papers/iccratify7.pdf>). Hafner-Burton (2005) makes a similar point. Recently, the EU made movements toward ratifying the ICC a precondition for participation in the Cotonou Partnership Agreement on development assistance.

²⁵ See: Maliti, Tom, January 19, 2011 in *The Canadian Press*, “Kenya lobbying African nations to support delaying ICC cases after postelection violence.”

²⁶ Neumayer (2009) also analyzes the effects of past military involvements on ICC ratification rates. He finds that countries with a past willingness to intervene in external conflict ratify the ICC more quickly. His results concerning democracy and past civil conflict are consistent with ours.

²⁷ We thank Beth Simmons and Allison Danner for generously providing their data. We focus on Model 1, since it is their baseline model and they characterize the rest of their models as robustness checks.

TABLE 2. Replication of Simmons and Danner's Model

	SD Model 1 (Hazard Ratios) 1	SD Model 1 (Coefficients) 2	Continuous Deaths (Full Sample) 3	Continuous Deaths (Excluding Afghanistan) 4
Civil War (0,1,2)	2.83 (0.504)**	1.039 (0.504)**		
Democracy Dummy	12.65 (0.794)***	2.537 (0.794)***	1.786 (0.482)***	1.805 (0.493)***
Democracy*Civil War Deaths 1990–1997	0.37 (0.526)*	-0.993 (0.526)*		
			0.00002	-2.26E-06
			-0.00002	-0.00003
Democracy*Deaths			-0.00005	-0.00003
			-0.00004	-0.00005
Log Military Pers.	0.72 (0.086)***	-0.329 (0.086)***	-0.272 (0.082)***	-0.283 (0.083)***
Log Peacekeepers	1.08	0.082	0.068	0.075
	-0.056	-0.056	-0.054	-0.054
Regional Ratification	1.01	0.011	0.011	0.01
	-0.015	-0.015	-0.015	-0.015
Human Rights Treaties	1.38 (0.089)***	0.323 (0.089)***	0.33 (0.088)***	0.331 (0.088)***
Ongoing Ext. Conflict	1.07	0.07	0.099	0.123
	-0.508	-0.508	-0.508	-0.509
Const. Amend. Req.	0.39 (0.31)***	-0.934 (0.31)***	-0.943 (0.309)***	-0.936 (0.309)***
ICC Elected Officials	2.74 (0.268)***	1.009 (0.268)***	0.942 (0.264)***	0.935 (0.263)***
ICC Leaders	2.37 (0.33)***	0.862 (0.33)***	0.767 (0.319)**	0.756 (0.319)**
British Legal Heritage	0.59 (0.261)**	-0.527 (0.261)**	-0.463 (0.26)*	-0.47(0.261)*
Observations (N)	3937	3937	3937	3918
Log Likelihood	-421.92	-421.92	-423.11	-417.03
Countries	189	189	189	188
Ratifications	97	97	97	96

Significance at ***0.01; **0.05; *0.10 levels.

extraterritorial conflict, whether or not the country requires a constitutional amendment to ratify the treaty, whether or not the country was a “leader” in the ICC design process, and whether or not the country has had some of its nationals elected to ICC positions. Their sample, and the one we use here, covers 189 countries, of which 97 ratified the ICC during the time period covered, 1998–2007.

Column 1 of Table 2 reports the hazard ratios from their Model 1, a Cox proportional hazards model and column 2 reports the unexponentiated coefficients. Simmons and Danner focus on the first three rows of results from Model 1. Specifically, they focus on the interactive effect of conflict history and democracy. The first constituent term, which is in the first row of Table 2, is coded 0 if the country experienced no civil wars during the 1990s, 1 if the country experienced 1–4 total years of civil war during the 1990s, and 2 if the country experienced a civil war for 5 or more years.²⁸ The second constituent term, in row two, is a dummy variable that equals one if a country is “free” or “partially free” according to Freedom House scores and zero otherwise. Simmons and Danner refer to “free” or “partially free” countries as democracies, and “not free” countries as nondemocracies. The two constituent terms and the interaction term (third row) thus combine to create six categories of countries (Democracy/Nondemocracy, Civil War of 0, 1, or 2). Their regressions use nondemocracies without a history of civil conflict as the base category. Simmons and Danner report hazard ratios, as in column 1 of Table 2. They conclude that

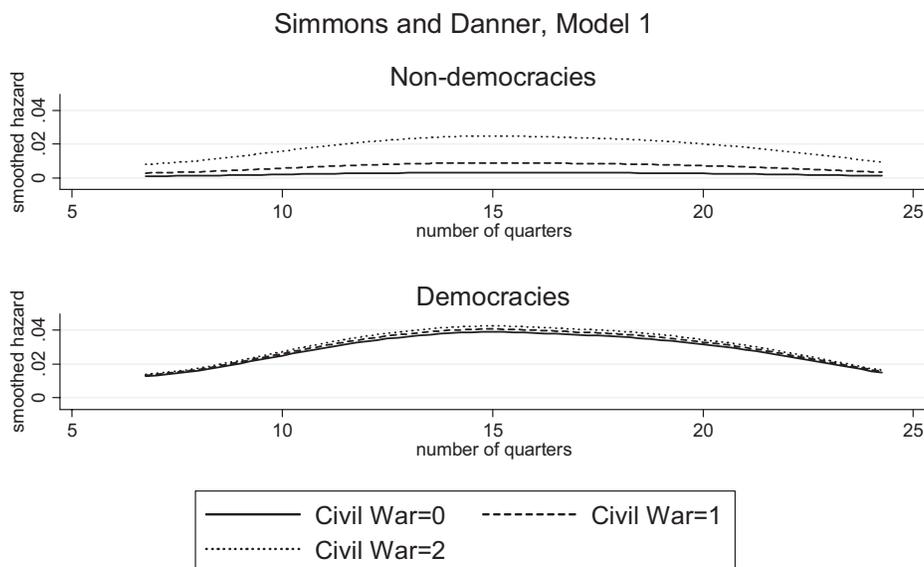
despite their completely different institutions and experiences, peaceful democracies and civil-strife ridden nondemocracies tend to display similar ratification propensities. By contrast, democracies with a recent history of civil war are far less likely to ratify the Rome Statute. (2010:240)

Our disagreement stems from the interpretation of the results for the interaction term and its components. Interpreting the effects of key variables in multiplicative interactive models can be difficult, and with hazard ratios instead of coefficients, interpretation is further complicated. To better interpret the results of the model, we plot the hazard rate for each of the six categories of countries in Figure 4.²⁹ A “higher” curve means that country is at a higher risk of ratifying the ICC for a particular time period. The ordering of risk of ratification is inconsistent with the theory of credible commitments: democracies are at much higher risk of ratification than nondemocracies. The hazard for a nondemocracy that experienced civil war is much lower than that of a democracy, regardless of their history of civil conflict, and nondemocracies with past civil conflict are not more likely to ratify than democracies with past civil conflict.³⁰

²⁹ These are weighted kernel density estimates of the hazard curve, from STATA 10.1. We hold all other variables at their sample means.

³⁰ We can arrive at this conclusion by converting hazard ratios from Model 1 into coefficients, as in column 2 of Table 2. The coefficients on the constituent terms are as follows: β for civil war = 1.04, β for democracy = 2.54, and β for the interaction term (civilwar*democracy) = -0.99. For a democracy without a civil war, the contribution of the regime type and civil war variables to the unexponentiated hazard rate is 2.54. For a democracy with a civil war, the contribution is $1.04 + 2.54 - 0.99 = 2.59$, and for a nondemocracy with a civil war, the contribution is 1.04. Also recall, nondemocracies without a civil war are the base category, so the interpretation of these contributions are that a positive number is associated with an increase in the hazard for that category, relative to the base category, and holding all else equal. Democracies with civil wars have the highest hazard, followed by democracies without civil wars, nondemocracies with civil conflicts, and nondemocracies without civil conflicts.

²⁸ Simmons and Danner describe this variable as binary in their article. The correct explanation was furnished to us by the authors.



Weighted kernel density estimate of hazard curve from the Cox regression in Simmons and Danner's Model 1. Regime type is binary. Civil war equals 0,1, or 2 depending on the number of years of civil conflict experienced by that country during the 1990's.

FIG 4. Effect of Regime Type and Conflict on Ratif. Hazard

These results do, however, show that nondemocracies with worse histories of civil conflict are at greater risk of ratifying the ICC than nondemocracies with more peaceful pasts. Yet, this is an artifact of coding civil war as a trichotomous categorical variable. Using a continuous measure of the intensity of past civil conflicts, specifically, the number of battle deaths, there is little evidence that past civil conflict affects the rate of ICC ratification. We re-estimated Simmons and Danner's Model 1 using the number of civil conflict battle deaths in the 1990s.³¹ We re-estimated Model 1 twice, first on the full sample of countries and then on all countries except Afghanistan.³² Columns 3 and 4 of Table 2 show the coefficients from these regressions. To again facilitate the interpretation of results, Figure 5 shows the smoothed hazard rates for democracies and nondemocracies, varying the number of battle deaths.³³ As in Figure 4, we can see how the risk of ratification shifts upwards or downwards as we vary the number of battle deaths for democracies and nondemocracies.³⁴

The number of battle deaths has little effect on the hazard for ratification, especially for nondemocracies. In the left pane of Figure 5, which shows predicted rates for

nondemocracies, we allow the number of battle deaths to vary from zero to 10,000.³⁵ The right pane of Figure 5 shows the effect of varying battle deaths for democracies. Higher numbers of civil conflict battle deaths are associated with lower rates of ratification, although this effect is somewhat small. More importantly, the risk of ratification is much higher for democracies than nondemocracies, regardless of recent history of civil violence. The bottom predicted hazard in the right pane of Figure 5 shows the magnitude of this difference. For a democracy to display similar ratification rates as a nondemocracy, we have to imagine a democracy that experienced approximately 50,000 battle deaths (lower-most, dotted red line). Such a hypothetical country would be an extreme outlier in this sample. The only "democracy" that experiences close to this amount of civil conflict is Russia, which experienced approximately 47,000 battle deaths during the 1990s, and which is coded as a democracy in Simmons and Danner's data only until the end of 2003.³⁶ Figure 6 shows the survival curves for democracies and nondemocracies, with the number of battle deaths set to zero and to 2,000. Consistent with the graph of the smoothed hazard rates, the survival curves fall much more steeply for democracies than for nondemocracies, regardless of battle deaths.

In the model estimated on the full sample, the effect of the number of battle deaths on ratification rates for nondemocracies is still in the same direction as Simmons and Danner originally found (positive). More deaths are associated

³¹ For the models that we were able to replicate (Models 2–4, 6, and 7), we find similar results as with Model 1 (available upon request). The one exception is Model 7, which uses World Bank Rule of Law scores to measure domestic political institutions and shows the strongest support for Simmons and Danner's argument. The World Bank measure is poorly correlated with the Freedom House and Polity measures (pairwise correlation coefficients of 0.39 and 0.33 respectively), and we suspect that these differences drive this discrepancy.

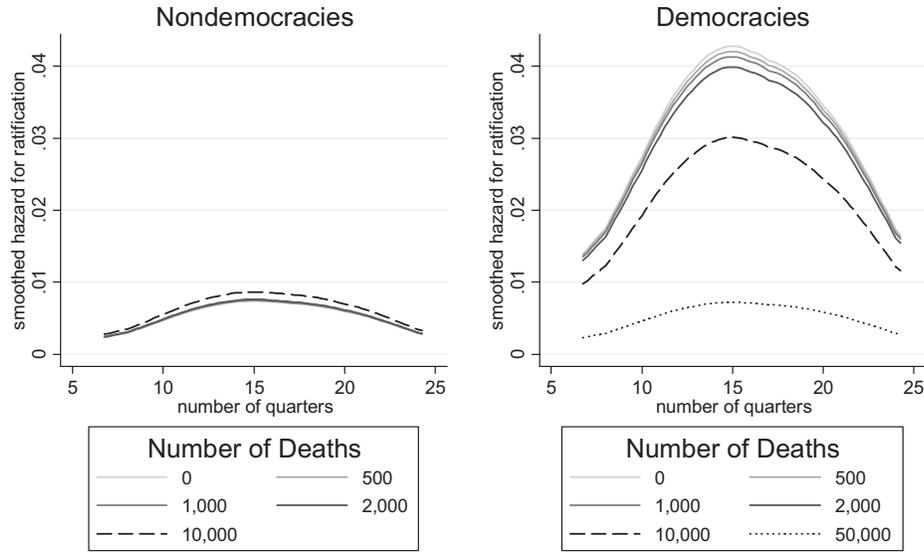
³² As noted above, Afghanistan is both an outlier in terms of battle deaths in the 1990s and has taken steps to undermine its ratification commitments.

³³ The sample used here includes Afghanistan.

³⁴ The hazard rate declines after an initial increase, consistent with Figure 1. This reflects the speed with which low-cost ratifiers joined the ICC.

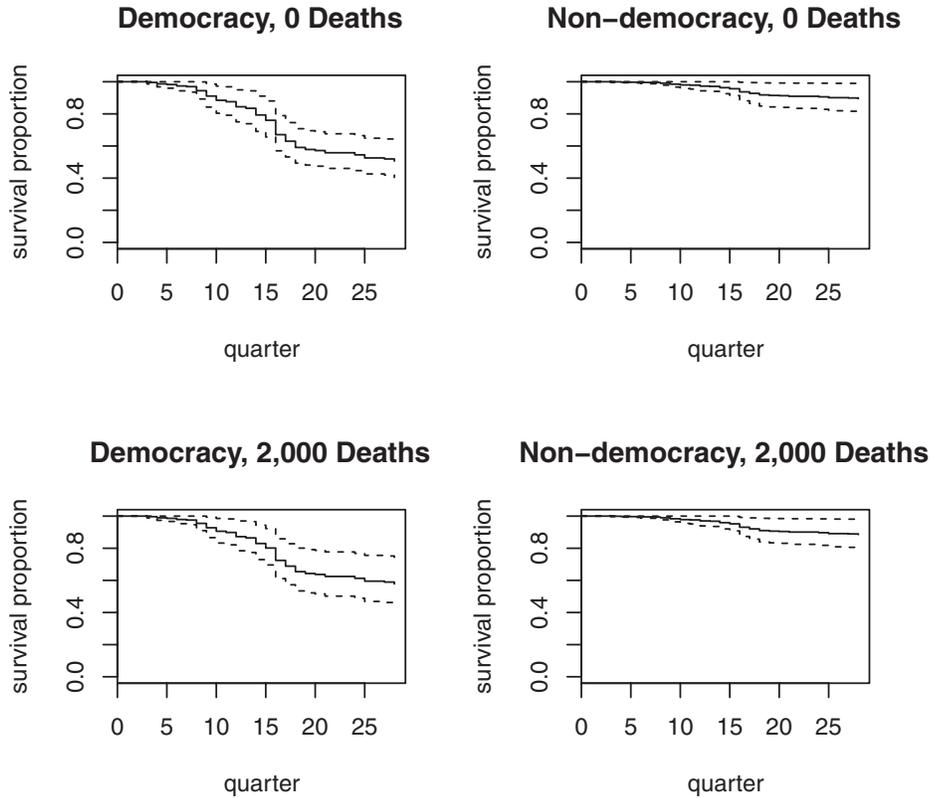
³⁵ Same procedure as described above, holding other variables at their sample means. Going from zero to 10,000 deaths is a tremendously large movement through the sample space. Only 14 countries experienced more than 10,000 battle deaths from civil war in the 1990s (and 10 of those did not ratify the ICC).

³⁶ The countries with the next highest numbers of battle deaths and which Simmons and Danner code as democracies at some point in the sample, are Sri Lanka (~36,000 deaths), Turkey (~31,000), India (~25,000), Ethiopia (~24,000), and Peru (~12,500). We also reran these models using the natural log of battle deaths (results available upon request). Results are the same—democracies are by far the most likely to ratify. Among nondemocracies, higher battle deaths are associated with a higher ratification hazard rate, but this result is substantively small compared to the effect of democracy and is statistically insignificant when excluding Afghanistan. The results above all hold when excluding Western Democracies and Japan as well.



Each line represents the weighted kernel density estimate of the hazard curve for a particular number of battle deaths by regime type. These curves use the results from Model 3, with the full sample of countries.

FIG 5. Effect of Civil War Deaths on Ratification Hazard



Survival curves holding other variables at sample means, using results from Model 3. Dotted lines are 95% confidence intervals.

FIG 6. Survival Curves for Ratification, by Regime Type and Conflict

with higher ratification rates for nondemocracies, although the effect is extremely small. However, this result is contingent on the inclusion of Afghanistan. As shown in column 4 of Table 2, the coefficient on deaths for nondemocracies

(4th variable) is negative when the model is run excluding Afghanistan, although still statistically insignificant.

Setting aside the empirical discrepancies raised above, the finding that nondemocracies with civil conflicts are

likely to ratify the ICC does not necessarily imply support for a theory of credible commitments. An alternative explanation recognizes that the amount of civil strife in a country is strongly correlated with the amount of repression employed by a government. The non-occurrence of a civil war may indicate a successful repressive regime where challenges to the state are so unlikely to succeed that they are not attempted. The list of nondemocracies without civil wars in the 1990s (North Korea, Syria, Cuba, etc.), who are also non-signatories of the ICC, supports this point. This observation is consistent with Vreeland's (2008) argument regarding the UN Convention Against Torture (CAT). He finds that among nondemocracies, those that torture more are actually more likely to join the CAT. According to Vreeland, dictatorships where power is less concentrated are more likely to need torture as a response to opposition, but are also more likely to join the CAT as a concession to their power-sharing partners. On the other hand, many repressive regimes have low realized levels of torture simply because their repressive apparatus deters challenges to the state. The most repressive regimes, who therefore experience the least civil conflict but who might still be considered likely candidates for committing war crimes, are not likely to ratify the ICC.

Conclusion

Using a range of measures and methods, we found that ICC ratification is largely explained by the potential costs facing governments. Countries with little to fear from future ICC actions tend to ratify and countries with higher potential costs remain outside the regime. Specifically, countries with past histories of internal conflict, which indicates a higher possibility of experiencing war crimes in the future, are much less likely to ratify. Similarly, countries with weak domestic political and judicial institutions are much less likely to ratify the ICC because they cannot benefit from the insulation from ICC prosecution that is entailed in the ICC's complementarity principle. We also re-analyzed the most prominent existing empirical study of ratification patterns and showed that democracy drives ratification and that there is little support for the argument that the ICC is a credible commitment device.

To be sure, there are myriad explanations for why particular countries do and do not ratify the ICC, or any other treaty. However, this pattern raises the issue of the "participation problem." In post-Mubarek Egypt, lawmakers have indicated their desire to join the ICC. More ratifications by countries like Egypt, which would be exceptions to the patterns described above, will be key to expanding the membership and effectiveness of the ICC.

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