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The Power and Politicized Expansion of the International Criminal Court

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The Power and Politicized Expansion of the International Criminal Court

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A.B., Dartmouth College, 2006
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An Abstract of
a dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Political Science

2012

Abstract

This dissertation contributes to an understanding of why national leaders voluntarily accept the jurisdiction of the International Criminal Court (ICC), granting it the authority to prosecute them. It theorizes that leaders trade off the risk of unwanted prosecutions against the deterrent threat that prosecutions pose to political rivals and patrons of domestic enemies, who may conspire to violently oust leaders. The risk of unwanted prosecutions and the ICC's deterrent threat both arise because the court's prosecutions credibly communicate guilt for atrocities and may trigger leader-specific sanctions by wealthy donor states that prefer to keep politicians who commit atrocities out of office. Three qualities explain the ICC's credibility: a legitimacy quality, an investment quality, and a reputational quality. Empirical analysis of panel data on leaders and all modern international criminal courts supports the theory. National leaders accept the ICC's jurisdiction when it can deter their rivals from anti-regime violence—when the state depends heavily on development capital disbursed by wealthy democracies—and when the leaders can limit their own exposure to prosecution. The protection leaders obtain under the ICC's jurisdiction gives them longer and more peaceful terms in office. If an international criminal court—including, but not limited to, the ICC—indicts them, however, their chance of losing office increases greatly. If they insist on remaining in power, both the state's receipt of development capital and its domestic production tumble. These courts' indictments prove to be more consequential than other public reports about prosecutable human-rights abuses ostensibly committed by the leader's administration. The ICC's power is real, but it has gaps, politicizing the expansion of its jurisdiction.

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The Department of Political Science of Emory University provided me with a superb graduate experience. In addition to my committee members, I thank Clifford Carrubba, Kyle Beardsley, Drew Linzer, Michael Giles, Alan Abramowitz, and Hubert Tworzecki for teaching me much of what I know about political science. Each, along with Jennifer Gandhi, Thomas Walker, James Larry Taulbee, Courtney Brown, and Tom Clark commented on presentations of earlier versions of this dissertation. I especially wish to thank Clifford and Kyle for giving me detailed feedback on the dissertation's prospectus and on a paper incorporating parts of chapters 3 and 4. Dominique Tremblay, Kathy Malanoski, and Denise Brubaker provided valuable administrative help. I acknowledge four training, conference, and research grants (2009–2010) from the James T. Laney School of Graduate Studies of Emory University.

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and quantitative studies of their publics. These personal interviews were exempted by the Emory Institutional Review Board (IRB00057710).

Retracing the origin of this project is difficult, but I will try to identify some pivotal moments. A presentation by Allan Stam in November 2008 at Emory painted Rwanda's spring of 1994 in painstaking detail, arousing my interest in the one-sided prosecution of crimes from that war. I decided to write about the jurisdictional expansion of the International Criminal Court after my conversations with Anya Vodopyanov and Nina Tannenwald during summer 2009, when I attended the Institute for Qualitative and Multi-Method Research at Syracuse University. A seminar on human rights led by David Davis in the fall of 2009, and a fertile dialogue with my doctoral committee that fall, sharpened my ideas.

This project's origins are older in some ways. During months spent in Buenos Aires in 2006 and Peru in 2003 I made four friends—Jorge Dispari, Luiza Paes, Nirma Bado Canepa, and Jessica Blas—whose personal stories stoked my interest in state terror, politicized prosecutions, the memory of these things, and their intersection with international politics. Later, in the summer of 2005 in Tbilisi, the Saakashvili family recruited me and my colleagues to help reform the state's tax ministry while I was interning at the Transnational Crime and Corruption Center. As that summer went on, I developed mixed feelings about the country-wide purges—at home and at work, I had gotten to know the marginalized former beneficiaries of Eduard Shevardnadze's deposed regime, and understood their frustration. A year prior, in 2004, I was visiting a friend in Paris. Her father, Laurent Douzou, introduced me to his writing on the politicized historiography of French collaboration and resistance during and after the Second World War. What ignited my interest in many of these topics, however, was a course on international law that I took from Allan Stam during my sophomore summer at Dartmouth in 2004. Allan intrigued me with the account of his experience working with Christian Davenport for the legal teams at the International Criminal

Tribunal for Rwanda, work which led to the presentation at Emory four years later.

I owe great debts to a dozen professors at Dartmouth College, where I was an undergraduate, and at The London School of Economics and Political Science, where I spent a semester as an exchange student. Martin Dimitrov, Richard Ned Lebow, and Allan Stam were superb advisors. Lucas Swaine, Michael Herron, Christopher Coker, and Ambassador Kenneth Yalowitz guided me in the right directions and opened doors. Stephen Brooks and William Wohlforth gave me memorable introductions to the study of international relations and foreign policy. Benjamin Bostick, Frank Magilligan, and William Brian Dade made impressions on me, introducing me to scientific discovery and nudging me toward the life of the mind.

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Decatur, Georgia, June 7, 2012

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CHAPTER 1

INTRODUCTION

1.1 INTERNATIONAL CRIMINAL COURTS AND THE PUNISHMENT OF ATROCITY

Years before the International Criminal Court (ICC) reached its landmark first conviction in the trial of the Congolese warlord, Thomas Lubanga, jurists and statesmen had called the court a tour de force of the global rule of law[1] and an institution facing so few checks from sovereign states that it has "virtually unlimited discretion in practice."[2] Indeed, the ICC is the first institution tasked with enforcing atrocity law[3] across the world by prosecuting political and military elites for common tactics and byproducts of war and repression—murder, torture, disappearances, sexual violence, forced population transfers, and child soldiering, for instance. Unlike international tribunals of the past, the court is formally independent of states and the United Nations Security Council, is permanent, and desires jurisdiction over everyone. Like those institutions, however, the court threatens to imprison "the highest echelons of responsibility" for war crimes, crimes against humanity, genocide, and—perhaps soon—the crime of aggression.[4]

[1] Cassese (2011)

[2] Kissinger (2001, 95)

[3] Atrocity law draws on international humanitarian law, criminal law, human rights law, and case law of the tribunals established by the United Nations. The ICC now prosecutes war crimes, crimes against humanity, and genocide as defined in the Rome Statute of the International Criminal Court (Rome, 17 July 1998). See Cryer et al. (2010); Schabas (2010, 2011).

[4] Rome Statute of the International Criminal Court (Rome, 17 July 1998, Art. 27); Office of the Prosecutor of the ICC (2009, 5)

On paper, the world grants the ICC unprecedented flexibility to circumvent sovereignty in pursuit of indictments and convictions. Consider five of the court's powers. First, a ratifying state exposes its nationals and anyone who enters its territory to investigation and prosecution—jurisdiction is based on both the nationality and territoriality principles.[5] Second, the ICC prosecutes in the context of *situations*, a formal term indicating that the court's Office of the Prosecutor conducts an open-ended investigation of events and may seek indictments related to them. Either the Security Council or a state party may refer situations.[6] The ICC prosecutor may, however, decide to start investigating and later request authorization of a situation from the court's Pre-Trial Chambers—the court may open situations *proprio motu*. Third, the statute's principle of complementarity gives national courts priority jurisdiction to prosecute atrocities, but the ICC may override the principle when it decides that national courts are unwilling or unable to prosecute.[7] On top of that, the court may invoke Article 17 of the Rome Statute to suspend defendants' *ne bis in idem* privilege normally protecting them from double jeopardy.[8] Fourth, the Rome Statute allows none of the customary reservations, understandings and declarations adorning multilateral treaties.[9] Fifth, states parties may not unilaterally opt out of the court's jurisdiction on a prosecution-by-prosecution or situation-by-situation basis, and though they may

[5]This dissertation uses the word ratification to imply either ratification or accession.

[6]A state party is a state that ratified or acceded to the Rome Statute, thus granting jurisdiction to the ICC. Signature of the Rome Statute by a state is a preliminary step that neither legally binds the state, nor grants jurisdiction over its territory or nationals to the ICC. See the Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) for a source of this terminology, and of international conventions of signature and ratification. Rome Statute of the International Criminal Court (Rome, 17 July 1998, Art. 16) lets the United Nations Security Council issue Chapter VII resolutions deferring prosecutions for twelve-month periods, but does not allow it a veto.

[7]The ICC may override a state's invocation of the principle of complementarity if the prosecutor's request to do so is approved by one of the Pre-Trial Chambers. Kress (2004).

[8]Arsanjani (1999); Henquet (1999)

[9]This succinct declaration is in Rome Statute of the International Criminal Court (Rome, 17 July 1998, Art. 120). See Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) on reservations, understandings, and declarations. Neumayer (2007) analyzes their use in multilateral human-rights treaties.

exit the Rome Statute, their exit will not invalidate active prosecutions.

International criminal courts of the past two decades have proven that they are not paper tigers. They tried and imprisoned hundreds of state officials and eleven former leaders of seven states: Rwanda's Jean Kambanda; Sierra Leone's Foday Sankoh; Liberia's Charles Taylor; the Federal Republic of Yugoslavia's Slobodan Milošević; the Republic of Serbian Krajina's Milan Martić, Milan Babić, and Goran Hadžić; Bosnia and Herzegovina's Radovan Karadžić, Momčilo Krajišnik, and Biljana Plavšić; and Kosovo's Ramush Haradinaj.[10] Six were convicted and sentenced to between eleven years' and life imprisonment. Of the remainder, Sankoh died in the Special Court for Sierra Leone's (SCSL) custody just after his indictment, while Milošević died in the International Criminal Tribunal for the Former Yugoslavia's (ICTY) custody in his fifth year of trial. After long stints as fugitives, Karadžić and Hadžić were arrested and surrendered to the ICTY in 2008 and 2011. The ICTY acquitted Haradinaj in 2008, but the court's appeals chamber re-indicted him, and he is again on trial.

The ICC, too, has aggressively investigated atrocities since 2002, when it began work. Its prosecutor has conducted preliminary examinations of evidence on the territory of at least seventeen states that accepted the court's jurisdiction, exposing the nationals of twice as many states to prosecution. The court has issued warrants for, or prosecuted, nearly thirty nationals

[10]Another of Bosnia and Herzegovina's co-presidents, Alija Izetbegović, was under ICTY investigation at the time of his death in 2003. His indictment appeared to be imminent, but the ICTY's prosecutors stopped investigating him after his death. Croatia's wartime president, Franjo Tuđman died in December 1999. However, the ICTY issued the nearest thing to a post-mortem conviction of Tuđman on April 15, 2011 by convicting three Croatian generals for war crimes and crimes against humanity in a joint criminal enterprise with Tuđman and three Croatian politicians. See Prosecutor v. Gotovina *et al.*, Judgment, IT-06-90, 15 April 2011. The ICTY also indicted Milan Milutinović in 1999 during his term as president of Serbia, a state of the Federal Republic of Yugoslavia at the time. Milutinović surrendered himself in 2002 and was acquitted. Lutz and Reiger (2009, 12) compile a list of twenty-five ex-leaders who stood trial in domestic or international courts for human rights crimes (1990–2005), although the list may be incomplete—it does not include Sankoh, Martić, Babić, Karadžić, Krajišnik, and Plavšić.

of four such states: the Democratic Republic of the Congo, Central African Republic, Kenya, and Côte D'Ivoire. The court took Côte D'Ivoire's ex-president, Laurent Gbagbo into custody, where he now awaits confirmation of the charges against him. Triggered by two Security Council Chapter VII resolutions, the ICC has also opened investigations of Sudan's long-running war in Darfur, and of the 2011 Libyan revolution. The evidence the court found led it to indict incumbent leaders of both states for atrocities.

The ICC has shown a willingness to unilaterally open situations, moreover. From the summer of 2007 through the winter of 2008 riots and slum battles taking on the hue of ethnic cleansing engulfed the city of Kisumu, then Nairobi, the Rift Valley and the rest of Kenya. As the killing continued, ICC Chief Prosecutor José Luis Moreno-Ocampo and mediator Kofi Annan invited Kenyan President Mwai Kibaki to self-refer a situation under Article 14 of the Rome Statute. Leading a new government—a power-sharing pact between politicians whose supporters had murdered or displaced hundreds of thousands of one another in the revelation of a sloppily-rigged election—Kibaki declined.[11] He promised that Kenya's national courts would prosecute the atrocities and created a commission to start investigating.[12] Unsatisfied, Moreno-Ocampo and an ICC Pre-Trial Chamber opened a situation unilaterally in January 2010. Later that year the court indicted six Kenyan elites, including cabinet ministers, a former national police commissioner, Uhuru Kenyatta—a serious contender for the Kenyan presidency, and a member of the Mount Kenya Mafia—Kibaki's closest allies.[13] The evidence revealed as the prosecutions may lead to other arrest warrants. Kibaki himself or Raila Odinga, currently the strongest contender in Kenya's 2012–2013 general election, could face charges of genocide and crimes against humanity in the coming years.

[11] Anderson and Lochery (2010)
[12] Okuta (2009)
[13] Wrong (2009); Murunga and Nasong'o (2010)

The power of these courts may exceed the threat of incarceration posed by their indictments. Even where they appear to have been *unable to arrest indictees* without the help of state security forces, the politicians under their scrutiny have launched furious campaigns to delegitimize or revoke their authority.[14] They say that the courts are anti-Serb, anti-African, insensitive to local and national mechanisms of post-conflict justice, and politicized by their judges and sovereign sponsors. They point to the dubious legality of situations authorized by Security Council referrals. They argue that prosecutions undermine negotiations between civil-war belligerents and enable further atrocities.

Politicians under the eye of international criminal courts are behaving as if their reputations depend upon what international criminal courts say about them—and perhaps for good reason. The courts have a public audience. In Figure 1.1 the number of Wikipedia searches for the ICC is shown to consistently exceed the number of searches for both the United States Supreme Court and the European Court of Human Rights—two courts thought to have large audiences. When the ICC indicted high-profile politicians, people searched for information about the court's work tens of thousands of times per day.[15] In addition, Figure 1.2 shows when the broader set of ad hoc and permanent international criminal courts have targeted politicians for committing atrocities, Google searches for them can spike by many standard deviations. When international criminal courts speak, an audience listens.

Despite all this, many leaders have been eager to accept the jurisdiction of the world's first permanent international criminal court. They have brought more than sixty percent of the world's states under the ICC's jurisdiction since 1998 (Figure 1.3). Some, like Kibaki and

[14]Peskin (2008); Subotić (2009); The Associated Press (2012); Kirkpatrick and Simons (2012); Mydans (2011); Mathenge (2011); Worth (2010); MacFarquhar and Simons (2009)

[15]Searches for the European Court of Justice and the International Court of Justice—two other major international courts—were infrequent. If placed in the figure, they would barely appear.

Gbagbo, will have taken this step only to face unwanted prosecutions years later. Others, like the Central African Republic's François Bozizé, Democratic Republic of the Congo's Joseph Kabila, and Uganda's Yoweri Museveni—men whose governments are accused of atrocities—not only accepted the ICC's jurisdiction but successfully *petitioned* it to investigate savage wars fought by their subordinates and proxies.[16]

1.2 THE QUESTION AND THE ARGUMENT

Why have leaders voluntarily authorized an international institution to prosecute, and perhaps, to imprison them? The question is a focal point for debates in political science, international relations, and international law. This dissertation answers it and marshals quantitative and qualitative evidence supporting a revisionist history of the ICC and conclusions with wide-ranging implications.

It argues that a prime motive for accepting the ICC's jurisdiction is to marginalize political competitors—the Uhuru Kenyattas and Thomas Lubangas of the world. Leaders confront fierce competition for incumbency from their political rivals, and they strive to defend an image of competency in the face of terrorists, secessionists, recidivists, and organized criminals. In choosing to ratify the Rome Statute, leaders trade off the ICC's potential to destroy their own political careers in unwanted prosecutions against the similar threat that the court poses to contenders for office and the foreign patrons of domestic enemies of the state. They ratify the Rome Statute to gain an ally.

The court's power to hurt political careers stems from its ability to credibly communicate personal guilt for atrocities. With its indictments, arrests, verdicts, and appeals, the ICC can trigger sanctions by rich democracies that prefer to keep politicians who commit atrocities out

[16]Mamdani (2009); Prunier (2009)

of office. Leaders may exploit their control over inculpatory evidence to preemptively sabotage investigations and prosecutions, but the court's discoveries of guilt can only result from evidence that has been expensively and persuasively vetted according to accepted standards.

That credibility stems from three of the court's qualities: a legitimacy quality, an investment quality, and a reputational quality. The Rome Statute manifests internationally agreed-upon solutions to conceptual and inferential pitfalls that can arise when assigning blame for atrocities, the ICC makes unparalleled investments in its investigations and prosecutions, and its judges want to avoid gaining a reputation for frivolous denunciations. The court not only has an audience, it has an audience to whom it issues clear signals about the character of foreign politicians.

The reliance of incumbents on development capital to gain and keep office is crucial to explaining the deterrent threat of prosecution. The chance that the state will lose significant sums of development capital raises the opportunity cost of supporting violent regime change to domestic elites. The chance that the patrons of secessionists, terrorists, and organized criminals in neighboring states will suffer sanctions triggered by prosecutions based on theories of broad criminal liability may cause those patrons to rescind their support.

1.3 PLAN OF THE DISSERTATION

Chapter 2 reviews the literature explaining the expansion of the ICC's jurisdiction. Five perspectives emerge: the political-culture, persuasion, diffuse-reciprocity, civil-peace, and soft-balancing perspectives. As a whole this literature proposes either that domestic-level norms, transnational pressures, or international pressures for ratification are at work, or that leaders accept the court's jurisdiction to self-commit themselves to obeying international law. Some perspectives report supportive evidence, but in large part the empirical work is unsettled. The chapter's key discovery is that not one of the perspectives describes how the court might enforce compliance

with atrocity law—and more pointedly—compliance with the court's efforts to investigate and prosecute. Several perspectives are agnostic about compliance. Others presume that it will naturally follow commitment.

Chapter 3 proposes a theory explaining why leaders grant jurisdiction to the ICC, arguing that leaders trade off the court's ability to marginalize their rivals against self-exposure to prosecution. The chapter first explains how the nexus of the foreign-aid regime, domestic clientilism, and the court's unparalleled credibility explain why its prosecutions hurt politicians' careers. It then explains why the court's ability to elicit compliance varies across polities, and how this affects the trade-off between deterring anti-regime violence and self-exposure to prosecution. The chapter concludes by proposing six hypotheses that are testable with cross-national data.

Chapter 4 tests three of these hypotheses with data on 579 national leaders (1998–2008) using statistical methods for missing data and causal inference. It finds that a greater receipt of development capital increases the probability that a leader accepts the ICC's jurisdiction *only* when s/he can take malfeasant steps to limit self-exposure to prosecution, and that accepting jurisdiction prolongs a leader's tenure and prevents civil conflict. Ruling under the ICC's jurisdiction makes leaders 1.4 percentage points less likely to lose office and 2.7 percentage points less likely to face an armed civil conflict in any quarter.

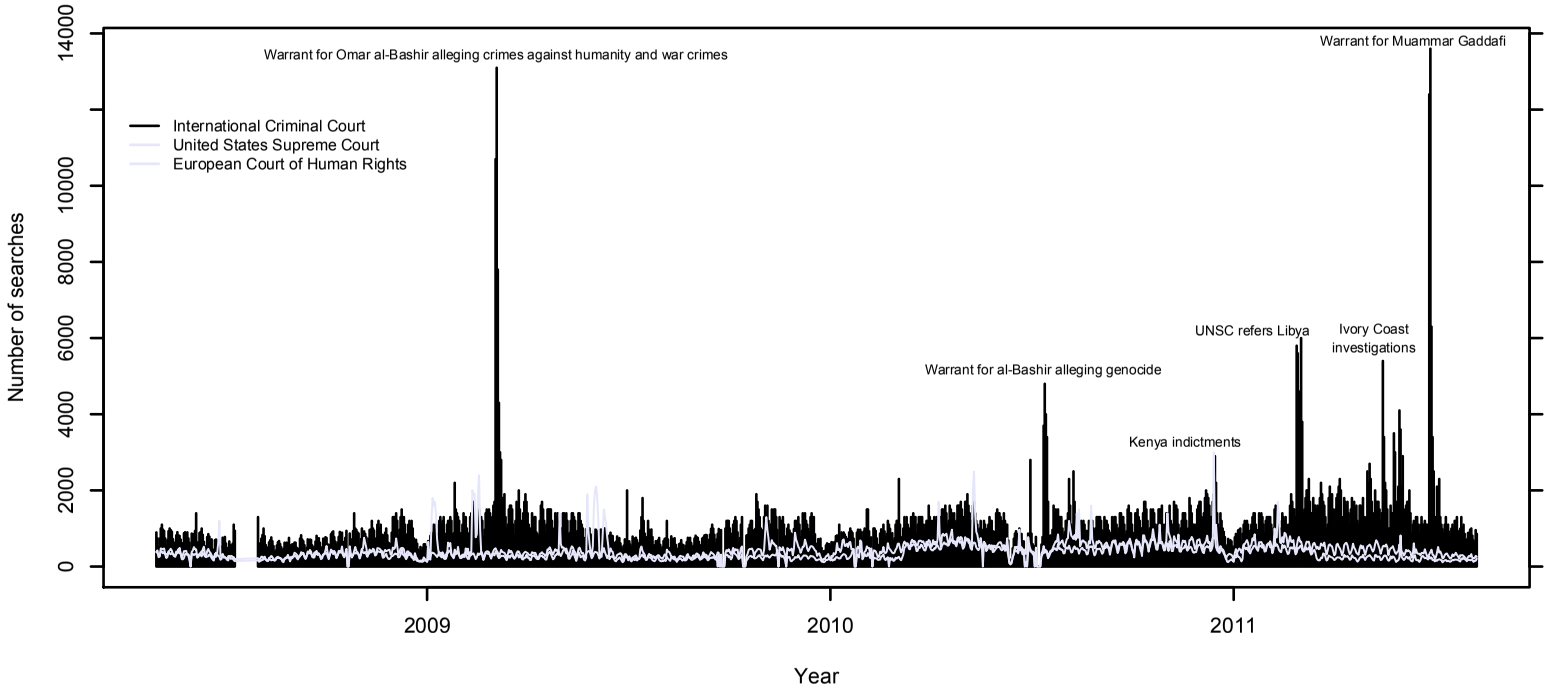
Chapter 5 tests the remaining three hypotheses with data on the same leaders (1993–2008), extending the scope of analysis to all modern international criminal courts. In addition, it presents case studies of time series from Bosnia and Herzegovina, the Federal Republic of Yugoslavia, Liberia, and Sudan. It finds that indictments of incumbent leaders by international criminal courts force indicted leaders out of office—so quickly, in fact, that flows of development capital to their states have historically had insufficient time to fall. Domestic production, however, falls immediately. It also finds that development capital and domestic production strongly

rebound following the deposition of an indicted leader. Finally, neither publicly observable and prosecutable human-rights abuses nor the holding of domestic human-rights trials affects the political survival of leaders, the receipt of development capital, or domestic production to such a degree. Human-rights abuses reduce domestic production, but only when they are frequent and unambiguous. Even under these extreme conditions, they do not reduce the receipt of development capital.

Chapter 6 presents a revisionist history of the ICC and juxtaposes it with the orthodox history. It highlights how politicians—from Kampala and Belgrade to London and Paris—have imagined a permanent international criminal court as an ally to use against their enemies. It also presents a thesis about the timing of the ICC's appearance. Two long-run shifts explain why the ICC became a live option at the end of the Cold War. The spectacular growth of the liberal foreign-aid regime since the mid-1970s promised teeth to a permanent court, and changes in the nature of civil war since 1945—changes that accelerated after 1989—have disadvantaged states vis-à-vis rebels, prompting incumbent leaders to find new ways to marginalize their enemies.

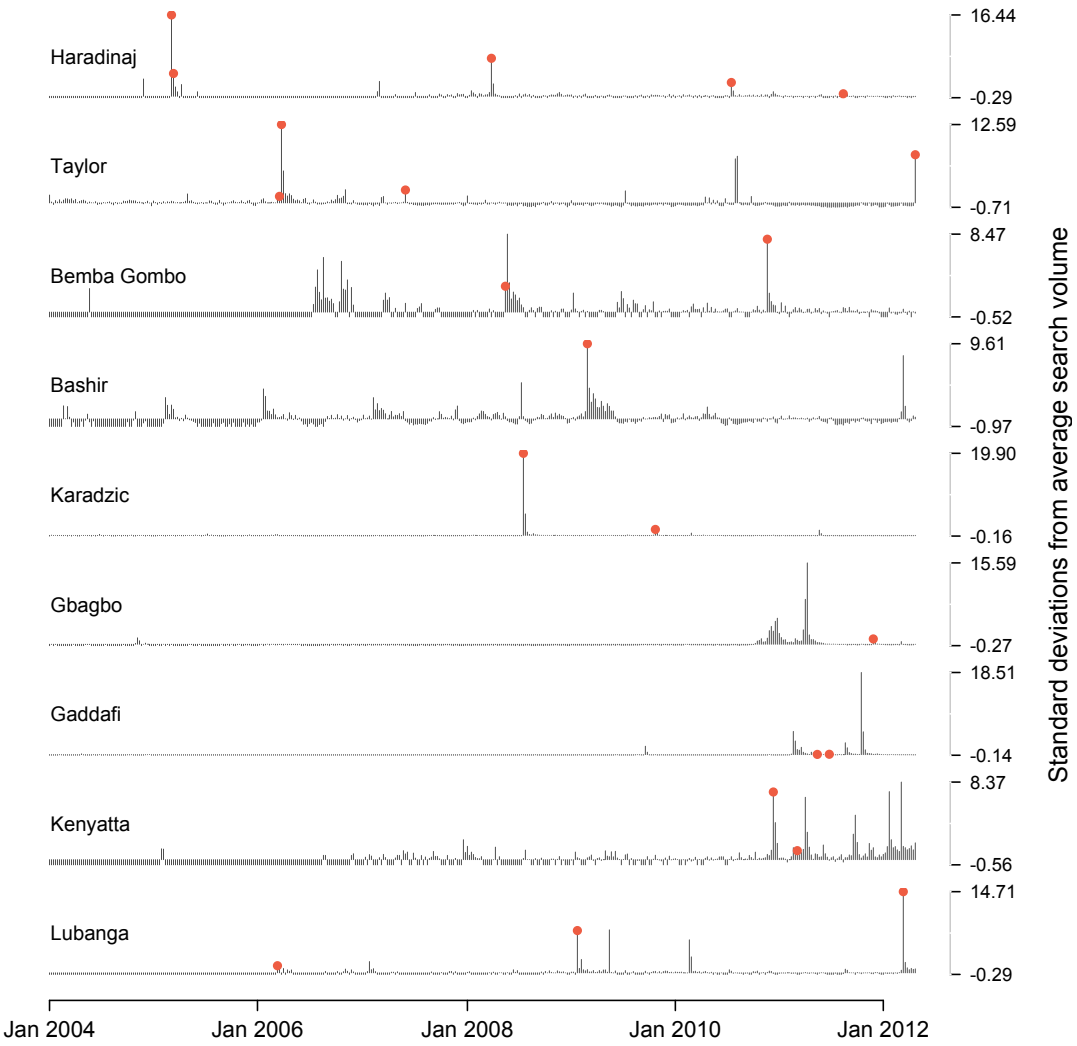
Chapter 7 concludes. It summarizes the dissertation's findings and implications for broad theories of international law and institutions, several perspectives on international criminal courts reviewed in chapter 2, broad theories of political institutions, the question of state compliance with international criminal law, the nature of the justice-versus-peace trade-off in international criminal prosecutions, and the precedent set by the International Military Tribunals of 1945–1948.

Figure 1.1: Time series of Wikipedia searches for "International Criminal Court" versus searches for "United States Supreme Court" and "European Court of Human Rights," 2008–2011



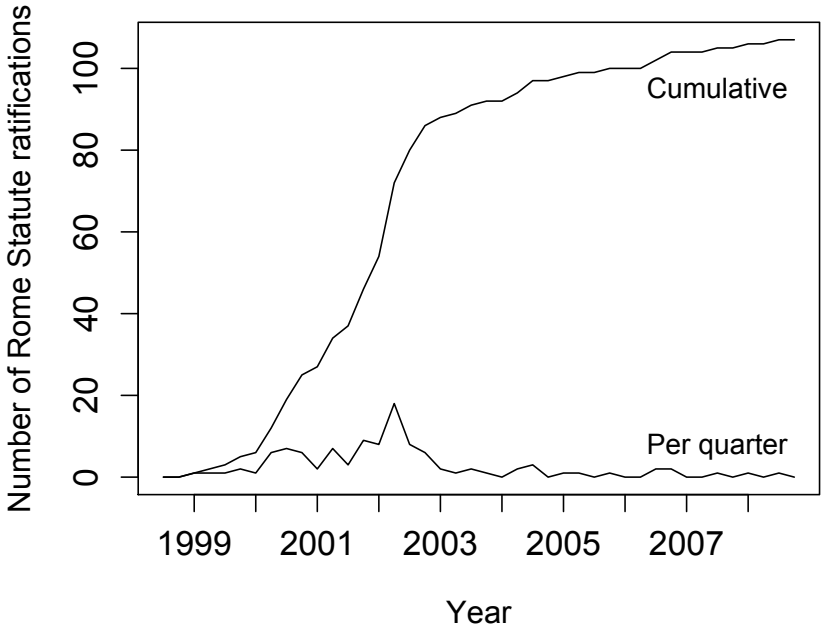
Note: The unit of observation is the day. The black line represents searches for the International Criminal Court on Wikipedia. The light lines represent searches for the United States Supreme Court and the European Court of Human Rights on Wikipedia. Searches are unique searches rather than searches from unique Internet Protocol addresses. UNSC refers to the United Nations Security Council. Sources: Wikipedia, websites of the ICC and UNSC.

Figure 1.2: Abnormalities in Google search volumes for politicians targeted for prosecution by international criminal courts, 2004–2012



Note: Red dots mark where the ICTY, SCSL, or ICC named the politician as a suspect, indicted him for the first time in this time-frame, arrested him, started his trial, delivered its verdict, or appealed and re-indicted him. The unit of observation is the week. Gray lines track Google queries from the United States. The vertical axis measures how many standard deviations the weekly volume of queries for an n-gram (the politician's name) is from the mean of the standardized volume of queries, normalized with mean zero and variance one. The standardized volume of queries is the number of queries for the n-gram divided by the number of all queries that week. Abnormalities without dots are Haradinaj's election as Kosovo's prime minister, re-opening of the prosecution's case against Taylor with testimony by Naomi Campbell and Mia Farrow, Bemba Gombo's dispute with Joseph Kabila over the Democratic Republic of the Congo's general-election outcome, the Security Council's referral of the Sudanese situation and war in South Sudan, Côte D'Ivoire's civil war and the opposition's capture of Gbagbo, the Libyan revolution and Gaddafi's death, 2007–2008 riots in Kenya, Kenyatta's 2012 general-election campaign, and confirmation of charges against Kenyatta. Sources: Google Trends, ICTY, SCSL, and ICC websites.

Figure 1.3: Cumulative and per-quarter Rome Statute ratifications, 1998–2008



Note: The unit of observation is the quarter. The Rome Statute received its sixtieth ratification in 2002, at which point the ICC began work. Bangladesh, Chile, St. Lucia, and Moldova, and Seychelles ratified the Rome Statute in 2010. Cape Verde, Grenada, Maldives, Philippines, Tunisia, and Vanuatu ratified in 2011 and 2012 as of February. Source: websites of the ICC and Coalition for the International Criminal Court.

CHAPTER 2

PERSPECTIVES ON INTERNATIONAL CRIMINAL COURTS

2.1 INTRODUCTION

This dissertation asks why leaders grant jurisdiction to the International Criminal Court. This question is at home with a political-scientific literature on international criminal courts—institutions like the International Military Tribunals of 1945–1948, the United Nations tribunals of 1993–present, and the ICC, which have prosecuted forms of violence and repression that are, at the present, classified as criminal in international law. The present chapter identifies five groups of theory within this literature and calls them the cultural, persuasion, diffuse-reciprocity, civil-peace, and soft-balancing perspectives. It critically highlights the questions that they ask, how they answer them, and what evidence supports the answers.

Among the questions asked are the following. Why would a community of states want to provide justice for atrocities committed against civilians, whether at home or abroad? What sort of justice should be provided? How would institutions help them accomplish their goals? If a community of states wants to provide justice for atrocities, why would they choose a common, multilateral approach? How would they choose one approach, if several exist? Would the community want to extend its approach to parts of the world that had rejected it to that point? Would they succeed? Would their chosen approach spread, anyway?

No perspective simultaneously answers all of these questions. But one particular question—Will Rome Statute ratifiers comply with the statute and the court?—is never asked. The five perspectives say nothing about how the court might promote compliance with atrocity law, and more pointedly, nothing about how the court might promote compliance during investigations and prosecutions. One could plausibly interpret the cultural, persuasion, civil-peace, and diffuse-reciprocity perspectives as presuming that compliance will naturally follow commitment. The soft-balancing theory simply ignores the issue.

This silence on compliance is puzzling, since how actors obtain compliance with agreements made in the absence of hegemonic enforcement is a central concern in political science, international relations, and international law.[1] The matter may be of secondary importance to some of these perspectives, but this dissertation argues that it is of primary importance for answering the question at hand: Why do leaders grant jurisdiction to the court?

This chapter also discusses evidence for the perspectives. The cultural and the diffuse-reciprocity perspectives command moderate evidence. The civil-peace and persuasion perspectives rely on tenuous evidence, though they yield some interesting findings. There is only speculative evidence for the soft-balancing theory. In large part, empirical work in this literature is unsettled.

The following findings stand out, however. State and non-state advocates of a strong and independent ICC invested in a broad campaign to empower the court and natural persons vis-à-vis states. Many states abandoned support for the vision of a constrained court advanced by the Permanent Five Security Council members during negotiations on the ICC's design. Transnational advocacy may have played a role in that shift. States also mimicked the stances of their more

[1] Abbott (1999); Hafner-Burton and Tsutsui (2005); Vanberg (2005); Goldsmith and Posner (2007); Morrow (2007); Guzman (2008); Carrubba (2009)

important trading partners toward the court in the negotiations phase. They tend to mimic their more important trading partners and their most powerful allies when it comes to ratification. Democracies, states with a strong rule of law, states with a European legal tradition, and states that escaped civil wars in the decade prior to the Rome Statute's authentication have been more likely to ratify the statute than have autocracies, states with a weak rule of law, states with a history of civil war in those years, and states with Sharia-influenced legal traditions. Democracies and states with a strong rule of law have been unlikely to sign bilateral non-surrender agreements with the United States if they have ratified the Rome Statute, but not otherwise. Finally, the presence of the ICC's jurisdiction may prevent civil war.

The chapter is in five sections plus a conclusion. Each of the five sections consists of a description of the perspective, a summary of its evidence, and concluding remarks.

2.2 THE POLITICAL-CULTURE PERSPECTIVE

The multitude of liberal and European legal norms in the Rome Statute are important clues to its origins. The Rome Statute's guiding principles, legal rules and operating procedures are imbued with European political and legal values. The statute reflects liberal democracy's concern for the rule of law, human rights, international criminal law, due process, public officials' electoral accountability, and a litany of other liberal norms. The court's legal doctrine, its officials' roles, its rules of evidence, and its procedures of argument, decision, and appeal are a blend of civil and common law traditions.[2]

The *political-culture perspective* argues that the ICC is an artifact of principled collaboration between states wishing to cooperate on a common approach to international criminal justice. This perspective argues that a community of states, acting in accordance with culturally determined

[2]Bassiouni (1998); Powell and Mitchell (2008)

principles, collectively crafted the ICC as a permanent source of responses to remedy the undesirable consequences of warfare—atrocities against civilians, impunity for atrocities at the highest levels of government, interstate aggression, and the like.

Proponents of this perspective offer different answers to two questions of theoretical interest. First, whose preferences matter at the domestic level? Emilia Powell, Sara Mitchell and Judith Kelley each articulate state-centric theories that do not strongly distinguish the preferences of sub-national actors.[3] Gary Bass, Jack Snyder and Leslie Vinjamuri, on the other hand, pay special attention to the role that leaders, elite decision-makers, the press, and interest groups play in making their preferences affect the state's approach to dealing with atrocities. Second, why use an international institution to serve one's preferences? Bass, Snyder and Vinjamuri and Kelley articulate what is called the *principled-justice* theory in what follows. This theory views the institution as the specific embodiment of a principled reaction to injustice. Powell and Mitchell articulate what is hereafter called the *coordination-mechanism* theory. This theory views the institution as a mechanism facilitating coordination on the myriad choices to be made in setting up and running an international criminal justice regime.

The two theories are founded on different models of human behavior: either the logic of appropriateness or the logic of consequences.[4] According to the logic of consequences, people base decisions on the outcomes those decisions are likely to produce. According to the logic of appropriateness, people often have little clue as to what effect their decisions might produce. They instead use two sources of information—the specific, decision-making context and their self-perceived identities, obtained through gradual socialization—to evoke rules prescribing certain decisions and proscribing others.

[3]Powell and Mitchell (2008); Bass (2000); Snyder and Vinjamuri (2004); Kelley (2007)
[4]March and Olsen (1989)

2.2.1 *The principled-justice theory*

Bass, Snyder and Vinjamuri, and Kelley each characterize elite and public support for international criminal justice mechanisms like the ICC as motivated by the principled, rule-following behavior envisioned by the logic of appropriateness, although each author approaches a different research question. Bass asks why victorious belligerents use war crimes trials when they have simpler, less costly, and less risky ways of punishing their vanquished enemies—execution, for example. Snyder and Vinjamuri ask what motivates states to set up post-conflict justice institutions if, as they assert, these institutions fail to deter subsequent atrocities. Kelley asks why only a fraction of states honor their international commitments, using the Rome Statute as a test case. Each author's answer turns on the theory that culturally-specific rules condition citizens and authorities alike to act in culturally-appropriate ways out of habit, a theory that also underpins scholarship on interstate conflict,[5] the "democratic peace,"[6] war-fighting effectiveness,[7] national security policy,[8] foreign-aid policy,[9] and the formation of supranational regimes regulating the global economy,[10] interstate security,[11] and human rights.[12]

The theory's proponents assert that national political and legal cultures socialize elites and politically-active members of any given culture to act according to the rules prevailing in that culture. When confronted with injustice toward civilians, people who have been educated and socialized within cultures that accept the universality and inalienability of human rights and the

[5]Lebow (2008, 2010)
[6]Doyle (1986); Russett (1993); Owen (1994)
[7]Reiter and Stam (2002, Ch. 3)
[8]Katzenstein (1996); Hopf (2002)
[9]Lumsdaine (1993)
[10]Ruggie (1982)
[11]Deutsch (1969); Adler and Barnett (1998)
[12]Donnelly (1986); Sikkink (1993); Klotz (1995); Finnemore (1996); Finnemore and Sikkink (1998); Keck and Sikkink (1998); Risse, Ropp and Sikkink (1999); Risse (2000)

rule of law—two sets of principles that correlate—exhibit a learned motivation to address those violations using familiar organizations, laws, principles, and norms. Fundamental examples of these principles are the prescriptions that people should not be arrested arbitrarily, that everyone deserves a fair trial with an unbiased judge and competent defense, that indictees and convicts be treated humanely, and that prisoners have rights of appeal. People who have been socialized in cultures where human rights are not universal, on the other hand, might only care to legally remedy atrocities against victims who had possessed recognized human rights. People who have been socialized in cultures where the rule of law is weak or absent may care to remedy atrocities, but will prefer revenge and other lawless remedies to legal ones.

The theory's proponents go on to argue that politicians in the employ of liberal democracies under the rule of law act, out of habit, consistently with the principles embodied in their political and legal cultures demanding a legalistic and humane approach to remedying injustices committed abroad.[13] These politicians created and made commitments to institutions that strengthen international criminal law and supply international criminal justice, like the ICC. Subsequent shifts in the identity of national authorities who had previously rejected the ICC or their replacement by new authorities explains why states extended jurisdiction to the ICC after 1998. For these authorities, the ICC is the appropriate way to remedy atrocities.[14] Leaders of societies firmly ruled by law also experience a culturally-conditioned urge to honor their commitments—to respect the norm of *pacta sunt servanda* in both domestic and international law.[15]

[13]Each author phrases his/her argument slightly differently. Bass (2000) argues that "principled ideas," "idealism," "legalism," "rules" and "domestic norms" motivate leaders' behavior. Snyder and Vinjamuri (2004) refer to these motivators as "ideology" and "norms." Kelley (2007) refers to "norms."

[14]Hathaway (2002, 2007) and Simmons (2009, 64-67) present similar arguments regarding sovereign commitments to human rights treaties. What is here labelled "rule-following behavior," Simmons calls "rational expression."

[15]Kelley (2007)

The principled-justice perspective does not, however, suggest that people are culturally programmed robots. Bass, Snyder and Vinjamuri argue that people's impulses to act in accordance with principles they identify with are balanced by countervailing considerations. They suggest that aside from politicians' principled behavior, material factors and emotions also help explain sovereign support for the court. Snyder and Vinjamuri argue that people behave according to a blend of the logic of appropriateness, the logic of consequences, and a logic of emotions when deciding whether to use post-conflict justice mechanisms. Bass admits that the leaders of liberal democracies experience, and frequently give in to, "cruder self-interest" to abandon legalistic approaches to dealing with atrocities in favor of vengeance or protecting their own. This leads him to argue that democracies are unlikely to expose their own citizens to the scrutiny of supranational courts and are more likely to seek legal redress when their own citizens are the targets of international crimes than when the citizens of autocracies are targeted.[16] Kelley admits that "traditional interests" affect leaders' non-compliance with the Rome Statute, while suggesting that dependence on trade with, or alliances with, the United States encouraged some incumbents of liberal democracies to break their commitments to the ICC through bilateral treaties exempting American soldiers from the court's jurisdiction. But while these scholars tend to view rejection of international legal institutions like the ICC as being caused by countervailing interests, they avoid the view that pro-active support for these institutions represents a strategic choice. That support, they maintain, represents identity-driven principled behavior.

2.2.2 *The coordination theory*

The second variant of the political-culture perspective, the coordination theory, is rooted in the logic of consequences. It leans on the game-theoretic approach of deducing rational actors'

[16]Bass (2000, 29-30,277-278)

behavior given exogenously determined preferences over their options.

Powell and Mitchell argue that states wishing to adopt a supranational approach to remedy injustices against civilians must coordinate on which common positions they will take on the issues arising as they work toward supplying international criminal justice. States want to arrive at a common approach and then cooperate with one another to serve justice, but they disagree about which approach to adopt.[17] For instance: a group of states may prefer to have an international criminal court, but subgroups will disagree about whether peacekeepers should be exempt from war-crimes prosecution, whether post-civil-war amnesties should be prohibited, whether a prosecutor should have *propriu motu* authority, whether the Security Council should be able to veto prosecutions, whether and when states should be able to opt out of prosecutions once begun, whether the crime of aggression should be enforced, or whether the elements of command responsibility should be as stringent for politicians as they are for military officers. Powell and Mitchell, as we will see, focus specifically on culturally determined causes of differing preferences: the legal principles varying across European and Islamic legal traditions. No state in this group prefers to disagree on a common approach to international criminal justice, but every subgroup of states prefers that all states adopt its favorite approach.

New disputes over what common approaches should be taken on issues will inevitably arise, meaning that this group of states must continually re-coordinate its common approach. States thus need not just an agreement reflecting the common approach at any given moment, but also a mechanism for resolving these disputes as time passes to avoid wasting resources and hindering cooperation. The ICC is the mechanism they designed to facilitate the orderly resolution of these problems, and the Rome Statute reflects the presently agreed-upon common approach to justice.

[17]Richard McAdams' (2005) "expressive theory" of adjudication is a point of reference for the analyses of the ICC in Powell and Mitchell (2008). See also Garrett and Weingast (1993), Ginsburg and McAdams (2004), Powell (2006) and Powell and Mitchell (2007).

The court is a forum for coordinating and re-coordinating state behavior, and the authorities in control of this forum can help states reveal private information that pre-empts or rapidly resolves potentially costly disputes brought on by states' incentives to misrepresent that information to their gain.[18] This sort of information revelation might occur in the ICC's Assembly of States Parties, during ICC-sponsored conferences, or via *amicus curiae* briefs submitted to the Trial Chambers. Court authorities, according to Powell and Mitchell, are effective at revealing states' private information because they have been elected in majoritarian fashion and are insulated de jure from external political pressure as they do their work; they are neutral toward states parties.

Once constructed, Powell and Mitchell view compliance with the panoply of rules and law embodied in the Rome Statute and ICC as a repeated game of cooperation wherein states may be temporarily tempted to break the rules. For example, states may wish to shelter their citizens by providing them biased trials in national judiciaries and evoking the principle of complementarity to deflect the ICC prosecutor's scrutiny. Or, an incumbent whom the court indicts may refuse to surrender himself for trial in the Hague. A necessary condition for several states to accept the court's jurisdiction, then, is that they prefer cooperation to non-cooperation in the relevant issue areas. In addition, states that prefer cooperation but expect to defect frequently enough from the cooperative equilibrium *and* fear a credible punishment in retaliation for their defection will reject the the court's jurisdiction.

According to Powell and Mitchell, states with Islamic or mixed Islamic/European legal traditions are most likely to defect from the rules of the Rome Statute and the ICC. The cause of the problem lies partly in the incompatibilities between the European and Islamic legal traditions. The most notable of these incompatibilities are the requirements that principles of law be derived

[18]Powell and Mitchell (2008, 22) write, "We portray the ICC as an adjudicative institution that can influence the behavior of states by correlating strategies, creating focal points, signaling information, and providing a forum through which states can convey private information."

from Islamic law, that Islamic law be superior to international law, that Muslims not be judged by non-Muslims, and the lack of a "progressive" codification of Islamic criminal justice.[19] The rarity of states with Islamic legal systems worldwide means, moreover, that states under Islamic law had little power to determine the content of the Rome Statute and influence the institutional design of the ICC. The ICC's reliance on European legal principles, Powell and Mitchell write, resulted from the over-representation of states with common and civil law traditions at the Rome Conference. Together, the under-representation of Islamic legal practices in the Rome Statute and culturally determined incompatibilities between European and Islamic law discourage states under an Islamic or mixed rule of law from ratifying the Rome Statute.

2.2.3 *Evidence*

Proponents of the political-culture perspective have tested four empirical implications regarding the ICC, all at the cross-national level of observation. First, states with a strong observance of human rights and democracies should be more likely to ratify the Rome Statute than should autocracies. Second, states with a strong rule of law should be more likely to ratify the Rome Statute than should states with a weak rule of law. Third, states with a civil or common legal system should be more likely to ratify the Rome Statute than should states with Islamic or mixed legal systems. And fourth, democracies and states with a strong rule of law should be less likely to violate their commitments to the Rome Statute—in particular, the commitment to the court's "inherent" jurisdiction over the nationals of any state who commit atrocities on the territory of a state party.

Europe's unanimous support for the ICC and the tentative rejection of the court across most of the Middle East and Asia are consistent with implications one through three, and indeed, scholars

[19]Powell and Mitchell (2008, 15-16). See also Brower and Sharpe (2003), Abtahi (2005), and Roach (2005).

report robust statistical associations in the expected directions between measures of democracy, observance of human rights, measures of the rule of law, and Rome Statute ratifications.[20] Using data from 1998 to 2004, Chapman and Chaudoin present the most thorough investigation of these associations.[21] The authors employ multiple measures of regime type and the rule of law, showing that states that were more democratic and that had a greater rule of law are more likely to ratify the Rome Statute than are other states.

Consistent with the persuasion perspective's third implication, Powell and Mitchell have shown that, as of 2004, states with a common or civil legal system are more likely to be parties to the Rome Statute than are Islamic-law states.[22] Finally, Kelley reports evidence that is consistent with the perspective's fourth implication. Given ratification of the Rome Statute, democracies, states observant of human rights, and states firmly under the rule of law have been less likely than their less-democratic, less-humane and less-law-ruled counterparts to sign bilateral non-surrender treaties with the United States, which violate the spirit, if not the letter, of the Rome Statute.

2.2.4 *Concluding thoughts*

Together the two theories of the political-culture perspective suggest that culturally determined ideas about the appropriate approaches to placing international and civil conflict under the rule of law impel the leaders of liberal democracies, states ruled by law, and states with common and civil law systems toward broadly similar, but not identical, proposals for a common approach to

[20] Struett and Weldon (2006); Kelley (2007); Powell and Mitchell (2008); Simmons and Danner (2010); Goodliffe et al. (2011)

[21] Chapman and Chaudoin (2011)

[22] Powell and Mitchell (2008, 32) write, "The percentage of civil law states that have signed (57%) or ratified (64%) the Rome Statute as of 2004 is higher than the percentage of civil law states in the system (53%). In addition, civil law states constitute by far the largest group of states that have signed and ratified the Rome Statute. The percentage of common law ratifying states (26%) is higher than the percentage of common law states in the system (24%). Islamic law states constitute a much smaller group among the signatories (11%) and the ratifying states (5%)."

international criminal justice. Preferring cooperation to discord, leaders constructed the ICC as a mechanism to facilitate the coordination of a common, multilateral strategy and to resolve future disputes as they arise.

The principled-justice theory is a theory of preferences at the domestic level explaining why certain states might prefer to see injustices against human rights be remedied at home and abroad, but it does not explain why those states act multilaterally and create an international institution to help them. Why can't states "go it alone," drawing on national jurisprudence and international law as they see fit to prosecute atrocities at home and, if necessary, declaring universal jurisdiction to prosecute non-nationals? Using the language of the coordination theory, the question is: Why do states want to coordinate to common approaches to international criminal justice? Many mechanisms of post-conflict justice have been unilateral—for instance, the *Gacaca* court system established by Rwanda in 1996, the "Equity and Reconciliation Commission" established by Morocco in 2004, and the "Truth and Reconciliation Commission" established by South Korea in 2005. The principled-justice theory might imply that multilateralism, too, is a culturally determined, appropriate way to approach international criminal justice,[23] but other theories of multilateralism point in other directions.[24]

The principled-justice theory has, moreover, been uninterested in how politicians decide what to do when cultural principles of universal human rights and legalism are in tension with cultural principles of sovereignty and democracy, or with the basic instinct of self-preservation. Chief among the tensions at the cultural level is the dual desire to give jurisdiction to an international court while maintaining an electoral link between the governed and governors in a republic, a link weakened once citizens are bound by laws created in part by foreign politicians over whom they

[23]Ruggie (1993)

[24]Lake (1999); Ikenberry (2002); Hawkins et al. (2006)

have no control.[25] These cultural-level concerns may become selfish concerns, as citizens or other elites threaten to remove representatives who put them at risk of sanction by the court.

Finally, the principled-justice theory has virtually nothing to say about how the court's creators would actually go about expanding the court's jurisdiction into, and enforcing justice within, a world where many cultures do not embrace the principles that led to the court's creation in the first place. This would not be vexing had the ICC not, in fact, expanded its jurisdiction into that world. A number of leaders of pseudo-democracies and dictatorships in Latin America, Africa, Eastern Europe, and Central Asia ratified the Rome Statute despite their propensity to abuse basic human rights. Even some politicians governing the liberal democracies of Western Europe and North America adopt brutal methods to combat terrorism, secessionism, irredentism, and dissidence.[26] Ratifiers also include a handful of states with Islamic legal traditions like Gambia, Nigeria, Namibia, and Comoros or with mixed Islamic/European judiciaries like Senegal, Niger, Cameroon and Afghanistan. In addition to the Rome Statute's impinging on their sovereignty, all of these leaders appear to have chosen to risk self-exposure to supranational prosecution.

By explaining why states have seen fit to build an international institution, the coordination theory tells us something that the principled-justice theory does not: States empower a formal institution in order to coordinate common, multilateral approaches to international criminal justice. But, like the principled-justice theory, the coordination theory does not explain why states desire this kind of coordination. And assuming that states do desire it, the coordination theory is agnostic as to how the court and its states parties would enforce compliance with the chosen approach. Finally, like the principled-justice theory, the coordination theory says nothing about how the court's missionaries might expand—and enforce—the court's jurisdiction into a world where

[25]Goldsmith and Krasner (2003); Nagel (2005); Benhabib (2009)

[26]Davenport and Armstrong (2004); Danner (2004); Anderson (2005); Beigbeder (2006); Rejali (2007); Downes (2008)

many cultures reject the principles that led to its creation in the first place. If indeed the court's missionaries do not wish to spread their approach to justice, or if they do not take steps to spread their approach to justice to that world, then why does it spread?

2.3 THE PERSUASION PERSPECTIVE

A second perspective suggests that people's own perceptions of their identities, and hence, of their interests, are not stable; they change during a special form of argumentation called discourse. This process leading from discourse to changes of perceived interest is called *persuasion*.[27] With this insight the persuasion perspective explains why politicians who are initially skeptical or doubtful of the merits of granting jurisdiction to the ICC decide, after all, to grant the court jurisdiction. Transnational activists working for non-governmental organizations (NGOs) persuade these politicians that the common approach to international criminal justice embodied in the Rome Statute is, in fact, in their own interests. Activists' persuasion explains why so many delegates to the Rome Conference embraced the version of the ICC's constitution that emerged from the Rome Conference. Persuasion explains, moreover, why the leaders of sovereign states decided to ratify the Rome Statute.

Nicole Dietelhoff and Michael Struett apply the concept of persuasion to explain the puzzling outcome of the 1994–1998 negotiations and conferences over the Rome Statute—negotiations that dramatically strengthened the ICC at the expense of the Security Council, major powers, and sovereign interests.[28] The persuasion perspective does not deny that states sometimes shift their strategies due to changing exogenous factors, but it insists that the power of "better" arguments can, under certain conditions, exert a causal effect on how interlocutors see their own identities

[27]The persuasion perspective draws on theories about discourse in Habermas (1984, 1996) and Alexy (1989). See Risse (2000) for a review.

[28]Struett (2008); Dietelhoff (2009)

and interests. The condition where persuasion is possible is called discourse. It is a special setting for argumentation that must "increase norm density, transparency, inclusiveness, and equality; rely on consensus-based principles; and increase a sense of fairness and trust among participants."[29] Persuasive effects, moreover, are conjectured to be independent of any other countervailing exogenous factors.

How does persuasion change people's perceived identities? When will it work, and when will it fail? Although biological, psychological, anthropological, sociological or economic theories of behavior shed light on what mechanisms might be involved in identity shifts by persuasion, a cumulative research program juxtaposing and testing alternative mechanisms has yet to emerge in political science.[30] In literature on the ICC, theorists of the persuasion perspective are agnostic about what mechanisms may be at work during persuasive conversations. They emphasize, however, that persuasive efforts are not automatically successful. They are most likely to succeed when the interlocutors have a sufficient overlap in "life worlds" (norms and experiences) and when communication occurs in a setting that is open to anyone—formal bargaining settings are unlikely to foster discourse.[31] Persuasive conversation may appeal to emotions, common experiences, analogies, precedents, an image of appropriate behavior, and unrecognized interests.

The ICC's institutional design has been the primary focus of the persuasion perspective. During the 1990s, Dietelhoff argues, people were uncertain both about what the court should do and what, given a premise about what it should do, would make the court effective. Politicians were therefore uncertain about how different design features that an international criminal court might embody would affect their interests. Soon after 1994, however, at least two blocs emerged. Throughout the 1994–1998 period, the Permanent Five (Perm-5) members of the Security Council

[29]Dietelhoff (2009, 45)
[30]See, however, Lupia and McCubbins (1998) and Johnston (2008).
[31]Dietelhoff (2009, 44-46)

formed a negotiating bloc, in which they emphasized that, to be effective, the court must respect "political reality." According to the Perm-5, respecting political reality meant putting justice second to peace and security rather when those goals clashed. The Perm-5's concrete proposals included giving the Security Council control over the court's docket and agenda, allowing states to authorize prosecutions on a case-by-case basis, and requiring stringent conditions to be met before allowing the court to have jurisdiction over a situation. Another bloc of states calling itself the Like-Minded Group (LMG) argued, to the contrary, that a strong court was one that served the "public interest" in law and morality by refusing to except any state's citizens from justice on the basis of politics. This would be best accomplished, said the LMG, by freeing the ICC from Security Council influence, insulating the prosecutor from political pressure, giving the court control over its docket and "inherent" or "automatic" jurisdiction over all humanitarian crimes committed within the borders, or by the nationals, of a state party.[32] In this environment of uncertainty about the best common approach to designing the ICC, pro-LMG activists used persuasion to win the debate about what design features that would help the court be effective. Over time, state delegates steadily defected from the Perm-5 bloc and non-committed positions to espouse the LMG's "public interest" frame.

How did the pro-LMG activists beat the Perm-5 bloc's argument on the ICC's institutional design? Dietelhoff argues that activists associated with the pro-LMG Coalition for the International Criminal Court (CICC) made efforts to approximate the conditions of discourse, succeeded, and thus convinced states to identify with and act upon the LMG's public interest

[32]The LMG initially counted between ten and fifteen member-states including Argentina, Canada, Norway and The Netherlands. The group numbered 42 states in 1997 and 60 states in 1998. By 1998 all members of the European Union had joined except France. Joiners also included Finland, Australia, Jordan, Mexico, some members of the Caribbean Community, and many members of the South African Development Community. Glasius (2006, 22-26).

frame.[33] The CICC set up inclusive regional conferences in 1997 and 1998, where they appealed to norms, principles and shared experiences resonating with the conference attendees. In particular, the CICC focused persuasive efforts on states that were not major powers, thus appealing to the common experiences of marginal actors in world politics. Struett articulates a similar theory. He adds that CICC-affiliated activists changed conference delegates' perceptions of their own interests by persuading them to accept common premises about what the ICC should accomplish in world politics, and how it should do so.[34] This process of persuasion happened in the contexts of CICC-led working group meetings, private consultations with conference delegates, newsletter, internet and a listerv, and inclusive regional fora beginning in 1997.[35]

Dietelhoff and Struett agree that the persuasive efforts of the LMG and CICC paid off in 1998, gaining it a voting bloc with sufficient voting power to hard-wire the LMG's public interest frame into the Rome Statute. The differences between the final Rome Statute and the ILC's 1994 draft are indeed notable. The Rome Statute gives the Security Council authority only to refer and temporarily suspend situations, allows the prosecutor *propriu motu* authority, and claims jurisdiction over crimes without giving states parties the opportunity to opt out of the ICC's

[33]The CICC served as a clearinghouse for information, ideas and debates about the establishment of the ICC. The World Federalist Movement initially coordinated NGOs around this idea, and the CICC was established in 1995 in New York. The number of NGOs in the CICC was in the tens in the early 1990s, exceeded 800 by the summer of 1998, and numbered in the thousands after 1998. More than 200 member organizations sent representatives to the Rome Conference. See Struett (2008, 77-80) and Glasius (2006, 26-28).

[34]Struett (2008, 84, 113) calls these premises *topoi*.

[35]More specifically, the CICC cooperated with local NGOs to convene "national and international conferences, expert meetings, public debates, seminars, symposia, and workshops" in Italy (Sicily in 1990, 1995, 1996, 1997; Turin in 1996; and Rome in 1998), Canada (Vancouver in 1993), India (1995), the United States (New York in 1996), Iceland (1996), The Netherlands (1996), Nepal (1996), Bangladesh (1996), Peru (1996, 1997 and 1998), Morocco (1996), Sierra Leone (1996), Nigeria (1996), South Africa (1997), Botswana (1997), Kenya (1997), the United Kingdom (1997), Denmark (1997), Belgium (Brussels in 1997), Uruguay (1997), Austria (1998), Norway (1998), Poland (1998), Portugal (1998), Russia (1998), Spain (1998), Switzerland (1998), Mexico (1998), Guatemala (1998), Chile (1998), Trinidad and Tobago (1998), and Australia (1998). This list is copied from that in Glasius (2006, 40-41).

jurisdiction post-ratification. To be sure, the court is not omnipotent on paper. The Security Council retains the right to refer situations to the ICC's docket and temporarily suspend situations. States parties have the option of denying the ICC jurisdiction over war crimes for a single, seven-year period. And, the Rome Statute remains vague on the legality of amnesties. But in the ILC's 1994 draft, the Security Council had exclusive control of the ICC's docket; states could selectively opt in and out of the court's jurisdiction on all crimes but genocide; and initiating prosecution required the consent of the state holding the suspect, the state where the crime occurred, and states requesting to extradite the accused.

The persuasion perspective should explain politicians' decisions to commit to the Rome Statute, beyond its focus on matters of institutional design. Struett, for one, argues that the CICC and other civil society actors continue their efforts to persuade politicians to ratify the statute, implement it in municipal law, and even to comply with it. But neither Struett nor any other proponent of this perspective studies compliance.

2.3.1 *Evidence*

Scholars have a hard time finding evidence for the persuasion perspective. They are unable to peer inside politicians' heads to observe changes in perceived interests, unable to sample perceptions in real-time from these actors, and unable to trust politicians when they say, "You persuaded me" after-the-fact. To work around these challenges, Dietelhoff and Struett examine interviews with activists and elites as well as data from a content analysis of the ICC negotiations to determine whether it is plausible that NGO-employed activists persuaded delegates to conferences on the ICC to view a strong court in attractive light. They report some supportive evidence.

Struett and Dietelhoff search, in general, for a correspondence between pro-LMG activism that approximated the conditions of discourse, the positions taken by delegates exposed to such

activism, and the actual votes on, and ratifications of, the Rome Statute. Measuring activism is notoriously difficult, and the two scholars assumed—Struett implicitly, Dietelhoff explicitly—that activism began around 1994, generally accelerated in 1997 and 1998, and continued thereafter at a generally even rate. Measuring delegates' positions is easier. Struett used qualitative case study methods with primary sources and *post hoc* interviews with activists and government officials. Dietelhoff undertook a structured content analysis of statements delegates made in the 1994–1998 period, searching for statements that one could classify as pro-LMG, pro-Perm-5, or neither. She graphs time—a proxy for the increasing intensity of pro-LMG activism—versus delegates' justifications for their on-the-record positions (i.e., the public interest or political reality frame). She presumes, but does not demonstrate, that delegates who adopted the public interest frame voted with the LMG, the prevailing bloc in the Rome Conference.

Beyond these two studies, an article by Jay Goodliffe and Darren Hawkins reports evidence that bears on another of the persuasion perspective's empirical implications: When state delegates and politicians are in greater contact with pro-LMG activism for a strong and independent ICC, they should be more likely to be persuaded by this activism, and hence, they should be more likely to express preferences consistent with those of the LMG.[36] Using pooled cross-national time-series data on state delegates' positions toward a strong versus a weak ICC from 1992 to 1998, Goodliffe and Hawkins report some evidence that is *inconsistent* with this conjecture. One independent variable that ostensibly measures the level of pro-LMG activism that delegates and politicians encounter is the number of NGOs that both attended the Rome Conference and had offices in a state. Goodliffe and Hawkins show that this variable is in fact negatively correlated with positions advocating a strong court.[37]

[36]Goodliffe and Hawkins (2009, 991-993)

[37]The precise description of the variable on NGOs is in the online appendix by Goodliffe and Hawkins. The authors' source is personal communication with Judith Kelley.

For several reasons, proponents of the persuasion perspective should digest the results in Goodliffe and Hawkins with a grain of salt. First, the number of NGOs in a country that attended the Rome Conference is a blunt indicator of the intensity of activists' efforts to persuade state delegates to negotiations regarding the ICC. NGOs are likely to have advocated a variety of positions toward the court. Second, the persuasion perspective does not predict that persuasion efforts will be met by universal success. Persuasive efforts, rather, should have heterogeneous effects on interests. And third, persuasive efforts might be focused on recalcitrant states. Since Goodliffe and Hawkins focused on other findings, the authors did not explore the robustness of the effect of NGOs to endogeneity, outliers like the Perm-5, and interactions with other variables—for example, variables enhancing the chance of successful persuasion, whatever they may be. A more careful look at the effect of NGO activism on support for the court is needed.

2.3.2 *Concluding thoughts*

The persuasion perspective suggests that changes in politicians' identities and interests caused states to ratify the Rome Statute, despite the threat the court may pose to sovereignty and political careers in some cases, and despite the court's redundancy to well-functioning domestic judiciaries in other cases. It therefore provides a solution to both puzzles posed in the Introduction: the puzzling threat and puzzling redundancy of the ICC. Moreover, the perspective explains why and how a common approach to international criminal justice spreads from societies motivated by culturally determined principles to create that approach to parts of the world where those principles are absent—a question that came up in the discussion of the political-culture perspective.

There are at least three concerns to address, however. First, this perspective, like the political-culture perspective, provides virtually no answer to the question of how the court might enforce its mandate. In fact, the persuasion perspective generates vague predictions about how persuaded

politicians will behave after they have agreed upon a common approach to justice and set up an institution to implement it. It suggests that persuaded politicians should be more likely to ratify the Rome Statute. But are these persuadees' newly-perceived interests likely to be durable in the face of incentives to violate commitments to the Rome Statute, or will they be dumped? Will leaders and other policy-makers lose the perception that complying with the commitments of a strong and independent ICC is in their interests when selfish incentives, regime changes, and leadership turnover begin to compete with their pro-ICC interests? If time-inconsistent preferences regarding an affinity with the court undermine the credibility of compliance, how would it and its states parties respond? Dietelhoff and Struett are silent on all of these questions.

Second, the existing empirical tests of the persuasion perspective can be improved. The perspective does not imply that increased activism should always result in successful persuasion. Rather, it predicts that *quality* activism—activism approximating the conditions of discourse—should result in successful persuasion. The hypothesis to be tested, then, is that the interaction of activism and settings fostering discourse should cause shifts in politicians' perceived identities, and therefore, shifts in their interests and behavior. The available evidence shows only that increased activism caused such attitudinal and behavioral shifts.

Third, the persuasion theory does not supply clear expectations about the conditions under which transnational activists are most likely to change politicians' perceived interest through persuasion. In practice, this has forced scholars to rely on three kinds of evidence: qualitative examination of the correspondence between activism and the professed perceptions of delegates and policy makers, correlations between the language used about an issue and the official negotiating positions taken, and analysis of correlations between activism and states' behavior.

A common challenge in working with these kinds of evidence is making valid causal inferences from a correspondence between activism and delegates' or policy-makers' behavior.

Spuriousness is one problem. States in which politicians are less likely to be moved by activist appeals may differ systematically from closed states in variables that cause Rome Statute ratification. The extent of ICC campaigning in Europe and the Middle East probably differed to a great extent, but domestic politics in Europe and the Middle East differ, too. If domestic politics—for instance, entrenched dependence on either American foreign aid or oil revenue—cause both an insulation from activists' persuasion and affect a country's stance toward toward the ICC, then isolating the effects of activists' efforts becomes more complicated. Contemporaneous shocks to all actors' behavior—for instance, the post-Cold War waves of democratization and civil war—may also create spurious correlation between activism and delegate/policy-maker behaviors if such shocks caused similarly-directed trends in each outcome. Reverse causality is another problem. The persuasion perspective does not strongly indicate *where* activists will focus their efforts, but it seems reasonable that a state's initial stance toward the ICC matters when activists decide how to allocate their resources. The persuasion perspective has not addressed these challenges.

With regard to testing the theory, proponents of the persuasion perspective might, at this juncture, attempt to determine when and where persuasion is possible. Knowing which states were led by policy-makers that were persuadable by transnational activism championing the LMG's ideas and which states were led by unpersuadable policy-makers would help identify the mechanisms leading to successful, ineffective, and counterproductive persuasion efforts. That knowledge would, moreover, provide an opportunity to examine whether persuadable states have been more likely to ratify the Rome Statute. Articulating a more specific theory of the quality of persuasion is the necessary first step.

2.4 THE DIFFUSE-RECIPROCITY PERSPECTIVE

The unanswered question that arose in our discussion of the political-culture perspective was how a common approach to international criminal justice spreads from societies motivated by culturally determined principles to create that approach to parts of the world where those principles are absent. Whereas the persuasion perspective's answer to this question can be summed up by saying, "Transnational activists argued with recalcitrant politicians until they saw that expanding the jurisdiction of a strong and independent ICC was in their own interests," the answer given by the *diffuse-reciprocity* perspective is, "No one is making any promises or threats, but friends of the court can suspect they will be rewarded by the court's friends down the road, and enemies of the court can suspect they will punished by the court's friends down the road."

That summary answer invokes a version of the norm of reciprocity that, according to Robert Keohane, states use when they value cooperation in a new activity yet cooperate so frequently with one another in other activities that they need not explicitly communicate promises of punishment and reward to attract cooperation in the new activity.[38] If states agree to act in accordance with the norm of diffuse reciprocity, then they will probably cooperate with their partners without having to be coerced explicitly. A state in the same dependence network as another state will mimic its behavior not because it has been directly promised reward or punishment, but because it expects reciprocation for its mimicry (or lack thereof) sometime in the future on an issue for which it desires multilateral support.

A group of scholars argue that cooperation on the ICC's design and success is a perfect example of a new activity where the norm of diffuse reciprocity is at work. These scholars view diffuse reciprocity as manifesting itself in "dependence networks," groups of states interacting

[38] Keohane (1986)

with one another in international regulatory regimes. Leading this group of scholars, Goodliffe and Hawkins argue that states' adherence to the norm of diffuse reciprocity explains why so many states were willing to support a strong and independent ICC during the 1992–1998 negotiations.[39] Policy-makers, they claim, worried that a position on the ICC's strength would determine future losses and gains in trading relationships, alliances, and in the negotiating forums of international organizations. They conjectured, furthermore, that states sharing linguistic, civilizational or colonial-historical ties might act in accordance with the norm of diffuse reciprocity, supporting a strong ICC when partners in their dependence networks did.

Writing with their colleagues Christine Horne and Daniel Nielson in a second paper on the subject, Goodliffe and Hawkins argue that the diffuse-reciprocity norm also causes states to ratify the Rome Statute.[40] While the diffuse-reciprocity norm is thought of as an unspoken rule among states in a dependence network, it is nonetheless an important rule meant to preserve or improve valuable relationships—relationships that could be compromised if a state fails to support its partners' projects in world politics. The more valuable the relationship, the greater the imperative to mimic. The implication is that states care about mimicking the powerful states in their dependence networks more than the weaker states.

2.4.1 *Evidence*

Two papers provide mixed evidence for the diffuse-reciprocity perspective. Although several networks of states fail exhibit the diffuse reciprocity norm, networks sharing deep trade ties do exhibit the norm.

Goodliffe and Hawkins study whether states in networks characterized by diffuse reciprocity adopted similar foreign policy stances toward the ICC during the 1992–1998 negotiations. They

[39] Goodliffe and Hawkins (2009)
[40] Goodliffe et al. (2011)

make use of a unique, cross-national data set that contains yearly measures of states' reported positions on multiple institutional-design dimensions that would weaken or strengthen the court—dimensions over which the LMG and Perm-5 clashed.

The authors use these data to test the implication that the behavior of a state's dependence networks—they examined trade networks, alliance networks, international-organizations networks, civilizational networks, language networks, and colonization networks—should affect that state's own behavior. The first step they took was to aggregate the dimensions of support for the ICC to a single scale purporting to measure the overall strength of a state's support. Goodliffe and Hawkins then operationalized the behavior of a given dependence network as a weighted average of that dependence network's aggregate position toward the ICC, where the behavior of each state in the network had been weighted by its relative importance for the issue defining that network. They then regressed a state's aggregate position on the aggregate position of its dependence networks, expecting to find a positive association.[41]

The evidence is mixed.[42] Goodliffe and Hawkins focused on the dependence networks where the most obvious costs and benefits lie—those involving trade, security, and international organizations. However, the authors find a positive association only in the case of a state's trade network.[43] The positions of security networks and international-organizations networks, in fact, negatively associate with a state's own position. Thus, states supported a weaker court when

[41]Goodliffe and Hawkins estimated regressions including numerous control variables and correcting for panel-data heterogeneity and dynamics with several techniques, including fixed effects, lags, and instrumental variables.

[42]See Goodliffe and Hawkins (2009, 991-993). These mixed results mirror those of another empirical study. Beth Simmons and Richard Nielson (2009) examine evidence for the argument that leaders attempt to win rewards in the form of trade, investment, credit, aid and general political goodwill from foreign governments by ratifying major human-rights treaties. Simmons and Nielson report mixed evidence.

[43]The trade network's weighted-aggregate position is the average of the aggregate positions of a state's trading partners, where each trading partner's position is weighted by the total volume of imports and exports it shares with the state.

their allies expressed positions, weighted by allies' material power, for a stronger court. States also supported a weaker court when their co-members of international organizations, weighted by contributions to the United Nations' budget, expressed positions for a stronger court. And though it is unclear what rewards and punishments civilization and linguistic networks would use to enforce diffuse reciprocity, their weighted positions associate positively with a state's own.

In the second paper, Goodliffe, Hawkins, Horne and Nielson hypothesize that states are more likely to sign and ratify the Rome Statute when there are more signers and ratifiers in their dependence networks.[44] The authors focus on trade, security, and international-organizations networks, but also examine civilization and linguistic networks. In an empirical study of Rome Statute ratification from 1998 to 2004, they find that trade networks and security networks tend to ratify together. Curiously, international-organizations networks, civilizational networks, and linguistic networks do not.

In summary, the diffuse-reciprocity perspective finds the strongest empirical support in the context of trade networks. States in trade networks tend to mimic their most important co-members in both negotiating positions and the decision whether to ratify. States in security networks, on the other hand, were rife with discord in the negotiations phase, but follow their most powerful co-members in choosing whether to ratify. The most surprising result is that states in international-organizations networks have been divided at both the negotiations and ratification phases. Civilizational and linguistic networks exhibit a puzzling pattern. States within them mimicked their most important co-members at the negotiations phase, but are now divided on ratification.

The diffuse-reciprocity perspective also might expect to see the ICC's missionary states and

[44]Goodliffe et al. (2011). This review is limited to ratification, since signature does not confer jurisdiction to the court.

enemies doling out reward and punishment for cooperation in their efforts toward the court. Wealthy European states and the LMG should be somehow rewarding ratifiers, and somehow punishing non-ratifiers. The Perm-5 should be somehow rewarding non-ratifiers, and punishing ratifiers. In fact, evidence of reciprocity for non-cooperation, but not for cooperation, has materialized. The United States under the Bush administration explicitly linked cooperation on international trade to its trade partners' ratification of bilateral non-surrender agreements.[45] In another context, reciprocity seems to underpin Balkan states' cooperation with the ICTY. The United States and European Union, for example, explicitly linked Union membership, loans, investment, relief from economic sanctions and—in Bosnia and Herzegovina's case—military occupation to encourage Serbian, Croatian and Bosnian compliance with the ICTY.[46] There is no similar evidence in the ICC's case.

2.4.2 *Concluding thoughts*

The diffuse-reciprocity perspective explains how a common, multilateral approach to international criminal justice is adopted in parts of the world that have rejected universal human rights and legalistic approaches to remedying atrocities. It thus appears to offer an answer to the puzzle that some leaders ratify the Rome Statute, despite the court's threat to their careers.

The evidence for the perspective, moreover, suggests that states within trade and security networks tend to follow the behavior of the most influential states. This evidence may, however, be compromised by the endogeneity arising from placing variants of the dependent variable (ratification) on the right-hand and left-hand sides of the regression equation. Until that issue is addressed, evidence for the perspective may be challenged.

Moreover, the diffuse-reciprocity perspective, like the cultural and persuasion perspectives,

[45]Goodliffe et al. (2011, 23-24); Kelley (2007); Struett (2008); Dietelhoff (2009)
[46]Peskin (2008); Subotić (2009)

says nothing about how the court might enforce its mandate. Why would states wish to encourage Rome Statute ratification if they could not also encourage compliance with the statute and the court? And if they want to encourage compliance, could the same methods that they use to encourage commitment also encourage compliance, or not?

A proponent of the perspective might reply that compliance does not matter. The court's missionary states may just want to avoid the pressure to organize and pay for military interventions[47] and ad hoc tribunals[48] every time a humanitarian crisis arises. Another might say that states know that the commitments of Rome Statute ratifiers are not credible—not, at least, in the short-term—but nevertheless want to supply non-state actors throughout the world with the tools to change state behavior in the long-term[49] At this point, however, the diffuse-reciprocity perspecgtive is agnostic on the question of compliance.

2.5 THE CIVIL-PEACE PERSPECTIVE

Why has the Rome Statute gained a foothold in parts of the world where the court's jurisdiction poses a threat to politicians? The *civil-peace* perspective, like the diffuse-reciprocity perspective, offers an explanation. Its premise is that states experience periodic temptations to violate international criminal law and to evade legal accountability—temptations that encourage domestic dissent and violence, undermining long-run objectives. The perspective views the ICC as a mechanism that states can use to commit themselves to good behavior when domestic institutions are too weak or corrupt to do the job.

[47] See Neier (1998, 112), Smith (2002, 177-178) and Forsythe (2002, 403). Neumayer (2009) argues that states that had intervened in foreign conflicts and conducted peacekeeping missions prior to the existence of the Rome Statute are more likely to ratify. His interpretation of this, however, is that the court complements rather than substitutes for intervention and peace-keeping.

[48] Morton (2000, 65), Fehl (2004), Combs (2007, 27-44).

[49] Hafner-Burton and Tsutsui (2005); Simmons (2009)

Drawing on tied-hands models of foreign-policy signaling,[50] Beth Simmons and Allison Danner argue that states grant jurisdiction to the ICC as a credible commitment to obey international criminal law and the Rome Statute.[51] Their goal is to appease and pacify domestic actors—rebels and their civilian bases of support—who fear state-perpetrated atrocities. Authorities who typically want to comply with the rules of the Rome Statute ratify it to convince these actors that the state's promises are credible. A state's ratification-for-peace bargain is self-enforcing, Simmons and Danner propose, because the ICC can impose penalties, via prosecution, on individuals for committing atrocities and attempting to evade prosecution. Since the Rome Statute applies to everyone on the territory of an ICC state party, ratifying governments make commitments on the part of both themselves and rebels.

Tom Ginsburg proposes an alternative model. He suggests that ratifiers use the ICC, instead, to credibly commit to *prosecute* atrocities.[52] State's often face short-term temptations to grant amnesties protecting rebels from prosecution in exchange for peace, but such amnesties undermine their long-term interests by leaving major crimes unpunished. Assuming that authorities would pay a penalty for scuttling prosecutions that the Rome Statute obligates them to provide, Ginsburg argues that states ratify the Rome Statute to tie their hands, using the threat of sanctions for non-compliance with the ICC as a mechanism to commit to prosecuting rebels and others responsible for atrocities. An omitted, but important, detail in Ginsburg's argument is the mechanism by which amnesties hurt the long-term interests of states—and hence, why they would want to commit to prosecuting. One possibility is that amnesty leaves threats to the regime at-large. Alternatively, amnesty may estrange wartime victims. Ginsburg is agnostic on this issue.

[50] Fearon (1997)
[51] Simmons and Danner (2010)
[52] Ginsburg (2009)

2.5.1 *Evidence*

Simmons and Danner test and confirm two of the civil-peace theory's implications using quarterly cross-national data on ICC membership (1998–2004). First, states that are unable to commit to obey international law because they lack domestic institutions ensuring accountability for noncompliance should be more likely to commit to the Rome Statute when they desperately need to make that commitment credible—when governments confront serious threats to their survival from rebels. Simmons and Danner propose the following hypothesis. Among autocracies and states with a weak rule of law, the states that had fought a civil war during 1987 to 1997—the ten year window before the Rome Statute's opening—are more likely to ratify the Rome Statute than are states that were at peace in that era.[53]

Simmons and Danner found support for this first hypothesis. Indeed, as Chapman and Chaudoin clarify in a reanalysis, the original article's empirics show that autocracies and states with a poor rule of law are more likely to ratify the Rome Statute when they had experienced a civil war in the recent past, despite the fact that democracies and states with a strong rule of law are more likely to ratify the Rome Statute regardless of whether a civil war was in their recent past.[54] Simmons and Danner do not dispute that democracies constitute a large percent of the court's states parties. They agree with the political-culture perspective's explanation for this pattern of support.

[53] See Simmons and Danner (2010), Table 1. Indicators of democracy come from Marshall and Jaggers (2009) and *Freedom House* (2009). Indicators for the rule of law come from The World Bank. Kaufmann, Kraay and Mastruzzi (2009) write: "Rule of Law [the variable] measures the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence."

[54] Chapman and Chaudoin (2011) note the inaccuracy of the article's conclusion that, based on Table 1, "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." See Simmons and Danner (2010, 252).

Extending the data from the 1998–2006 period to the 1998–2008 period, however, reveals the absence of empirical support for Simmons and Danner's conditional hypothesis.[55] Figure 2.1 shows that democrats are more likely to ratify the Rome Statute than autocrats are, irrespective of whether their states had a civil conflict in the 1987–1997 period. It also shows that democrats are less likely to ratify the Rome Statute if they have a such history of civil war, but that autocrats are neither more nor less likely to ratify under those circumstances.

Despite this disconfirming evidence, a second set of findings supports the civil peace perspective. Simmons and Danner investigated whether the court's jurisdiction had affected domestic politics in 1998–2004. They studied two hypothesized causal effects of Rome Statute ratification (i.e., the presence of the ICC's jurisdiction). On one hand, among the set of states that have ongoing civil wars, ratification should cause states to end civil wars. On the other hand, among the set of states that had civil wars during the 1987–1997 period, ratification should cause states to reach peace agreements.[56] Using instrumental variables to address the endogeneity of ratification to these outcomes, the article reports causal relationships between both outcomes and Rome Statute ratification in the expected directions. The presence of the court's jurisdiction, it appears, causes peace agreements and prevents new civil wars. Here, however, Chapman and Chaudoin critique the validity of Simmons and Danner's instruments, which consist of political variables that may be endogenous to civil conflict.[57]

[55]The data set used to create Figure 2.1 is described in chapter 4. Democracies are classified as states with a Polity IV score above the sample median (6). This is roughly consistent with Simmons and Danner's coding rule. Data on regime type and civil conflict are from Marshall and Jaggers (2009) and Uppsala Conflict Data Program (UCDP) and Centre for the Study of Civil Wars, International Peace Research Institute, Oslo (PRIO) (2009). Civil conflicts include both non-internationalized and internationalized civil conflicts with an annual battle-death threshold of 25.

[56]See Simmons and Danner (2010), Tables 2–3.

[57]Chapman and Chaudoin (2011)

2.5.2 *Concluding thoughts*

While the persuasion perspective argues that transnational activism aligns leaders' interests with those of the court, the diffuse-reciprocity perspective tells us that networks of states sharing trade ties and alliances ratify or refuse to ratify together because they expect reciprocity on future issues. Neither of these perspectives, however, say anything about why ratifiers' commitment to international criminal law and the Rome Statute might be perceived as credible to the group of states promoting the spread of the court's jurisdiction. The civil-peace perspective suggests another explanation for the spread of the ICC's jurisdiction. It points out that a leader's commitment is self-enforcing because of the cooperative equilibrium it fosters in domestic politics. Although there is no evidence that states ratify the Rome Statute when the perspective expects them to, the finding that ratifying the Rome Statute creates more peaceful domestic politics is compelling.

The stability of the ratification-for-peace bargain hinges, however, on the assumption that governments that are non-compliant with the ICC suffer penalties. Where rebellious citizens are interested in seeing states ratify the Rome Statute, they may indeed want to reward states for ratifying. But is the commitment credible? One might doubt it. The commitment might be credible if the ICC could exercise its jurisdiction to investigate and prosecute even when states are reluctant to let it, or that evasive states will face some other cost for non-compliance. The Rome Statute and Additional Protocol on Immunities and Privileges of the court (APIC) obligate states parties to abstain from interfering with investigations, and the prosecutor and the ICC Victims and Witnesses Unit (VWU) monitors compliance. But states may be able to break the rules by destroying physical evidence and interfering with witnesses. If caught, the consequence of being declared "in contempt of court"—a petition to the Security Council—is ambiguous. Perhaps if

evasion were easily monitored, damage to a state's reputation would lead to punishment in linked issue areas. But domestic audiences would need guarantees of this punishment's credibility, and monitoring evasion would prove difficult. The prosecutor and VWU, after all, are small teams with limited means. There are extreme situations—like the deployment of North Atlantic Treaty Organization (NATO) peacekeepers to Bosnia and Herzegovina to oversee cooperation with the 1995 Dayton Agreement and the ICTY—when a state might convince domestic audiences that its commitment is credible. But the ICC will do most of its work without the help of NATO and other powerful friends.

In summary, breaking commitments to the Rome Statute and the ICC may be cheap, and in that case, ratifying the Rome Statute may not entail a state's credible commitment to anything. Simmons and Danner present the compelling stylized fact that the presence of the ICC's jurisdiction over a state's nationals and territory causes domestic peace. But the civil-peace perspective is silent on the question of compliance, which should be of central concern to it.

2.6 THE SOFT-BALANCING PERSPECTIVE

The fourth and least developed perspective sees widespread support for the ICC as an instance of *soft balancing* against the United States, a strategy of constraining American behavior through nonmilitary means, and potentially, a way to build trust among the future participants of a hard balancing coalition.

The concept of soft balancing arose from the analysis of balance-of-power theory under conditions of unipolarity—a distribution of power among the world's states that leaves one state in possession of a disproportionate share of economic and military resources. Balance-of-power theory assumes that in the absence of strongly enforced international law, states capable of using military force jealously guard their territorial integrity and sovereignty against each others'

potentially predatory or revisionist intentions. Under these conditions, assert balance-of-power theorists, each state fears being conquered or otherwise coerced. Exactly *what* these fears lead a group of states to do has been a recurring point of contention. Since war with the powerful or ill-intentioned is always possible, balance-of-power theorists argue that states will prepare for war. One such preparation is balancing: encouraging economic growth, investing in a robust military, and allying and trading with states that also fear being the target of aggression or coercion. Two other behaviors are also imaginable: "buck-passing" (letting other states assume the burden of balancing) and "bandwagoning" (joining forces with would-be aggressors). The literature on balance-of-power theory generally consists of theories predicting when each of these behaviors—balancing, buck-passing and bandwagoning—will occur.[58] A key insight here is that a state's desire to balance a powerful, predatory or revisionist state through alliances is tempered by its fear of being "abandoned" by buck-passing allies or "entrapped" by unnecessarily aggressive allies.[59]

As the Soviet Union collapsed and Western Europe and Japan failed to match the pace of America's economic growth during the early 1990s, balance-of-power theorists Christopher Layne and Kenneth Waltz predicted that the shift from "bipolarity" to unipolarity would be short, as a new coalition of states would arise to balance American power.[60] Other political scientists disagreed. In a widely-noted journal article, William Wohlforth argued that the United States had become so disproportionately economically and militarily powerful by the early 1990s that no states or coalitions of states, be they second-ranked or minor powers, would desire to pay the costs involved in balancing American power.[61] The distribution of power in the international system had

[58] Waltz (1979) and Mearsheimer (2001) are core statements of the theory. See Nexon (2009) and Wagner (2007) for reviews and critiques. Some distinguish between balance-of-power theory, emphasizing that states fear other states' material power, and balance-of-threat theory, emphasizing that states fear other states' intentions (Walt, 1987).

[59] Waltz (1979); Snyder (1984); Christensen and Snyder (1990)

[60] Layne (1993); Waltz (1993)

[61] Wohlforth (1999). See also Krauthammer (2002) and Brooks and Wohlforth (2008).

become so skewed toward the United States, argued Wohlforth, that even states wishing to balance America would fail to attempt to catch up with American power, fall prey to "divide-and-conquer" strategies employed by the United States to promote buck-passing within countervailing alliances, and therefore would either bandwagon with America or remain neutral. And despite America's unrivaled ability to project power anywhere in the globe, the world's other major powers, being European or Asian, are far from North America. As a result, regional rivalries outweigh Eurasian states' fears of American military aggression. Most of these states have therefore sought to align and cooperate with the United States to balance local competitors.[62]

The argument that counter-American balancing will be rare has gained currency among many balance-of-power theorists, but a contingent of them now argues that states *have* in fact begun balancing. New anti-American balancing coalitions began forming, insist these scholars, because of Washington's response to Al Qaeda's September 11, 2001 attacks on the World Trade Center and Pentagon. After the deaths of thousands of Americans in New York and Washington, the Bush administration announced a new national security policy that the rest of the world saw as a harbinger of American aggression. The administration's new stance called for a "War on Terror" to destroy anti-American terrorist organizations throughout the world and prevent weapons of mass destruction from falling into their hands. The War on Terror called, in turn, for preventive invasions of states aiding or giving sanctuary to terrorists and lent, in the Bush administration's eyes, legitimacy to the United States invasions of Afghanistan and Iraq in 2001 and 2003. Although the Security Council authorized the Afghanistan invasion, it denied authorization for the invasion of Iraq. Washington's conquest of a Middle Eastern dictatorship was an unprecedented development in the unipolar era, but preventive war was just one component of the administration's new doctrine. It withdrew from the Anti-Ballistic Missile Treaty and began a National Missile

[62]Paul (2005, 53-57); Walt (2009, 96-97, 111-114)

Defense program that some believed would undermine Chinese, Russian, or North Korean nuclear deterrents.

Although balance-of-power theorist Barry Posen argues that Europe is now beginning to balance American power by cooperating on European defense policy and increasing defense spending,[63] Robert Pape, T.V. Paul, Walt and Martha Finnemore have argued that America is still too powerful and benign to warrant a risky hard-balancing coalition.[64] Pape argues that states are instead "soft balancing." According to him, states are undertaking "actions that do not directly challenge American military preponderance but that use nonmilitary tools to delay, frustrate, and undermine aggressive unilateral American military policies." The tools include "international institutions, economic statecraft, and diplomatic arrangements."[65] Walt argues, similarly, that "soft balancing accepts the current balance of power but seeks to obtain better outcomes within it, by assembling countervailing coalitions designed to thwart or impede specific policies" by means of "conscious coordination of diplomatic action."[66] Pape takes a further step, claiming that states perform soft balancing to build trust among the potential members of a future hard balancing coalition. He writes that second-ranked states are trying to "establish a basis of cooperation for more forceful, hard-balancing measures in the future" because "the logic of balancing against a sole superpower is about coordinating expectations of collective action among a number of second-ranked states."[67] In Pape's view, multilateral soft balancing may be intended to build a repertoire of counter-hegemonic behavior and reveal which states will be reliable allies in the future.

[63]Posen (2006); but see Howorth and Menon (2009).

[64]Pape (2005); Paul (2005); Walt (2005); Finnemore (2009); Walt (2009). See also the special volume of *World Politics* introduced by Ikenberry, Mastanduno and Wohlforth (2009).

[65]Pape (2005, 10). Some balance-of-power theorists have insisted that "balancing," be it of the soft or hard variety, must somehow cause a balance of military power. See Brooks and Wohlforth (2005); Lieber and Alexander (2005); Art et al. (2005/2006).

[66]Walt (2009, 104)

[67]Pape (2005, 17)

How does soft balancing exert a more immediate effect on American power? In other words, how do states thwart aggressive unilateralism? Finnemore and Paul focus on soft balancing via institutions, arguing that states constrain unilateralism through the multilateral, institutionalized control over the legitimacy of American foreign policy.

Finnemore presents the fullest treatment of this argument to date. She argues that using power to achieve any end is easiest if other actors—domestic constituents and foreign leaders in the present case—view the given use of power as legitimate. The keystone of her argument is that the legitimate use of power requires that power be delegated to other actors. For Finnemore the epitome of this logic is Washington's choice to lock-in the post-1945 international order by building a "rational-legal" system of laws, rules and institutions, structures that legitimated America's dramatic reordering of international relations but required Washington to relinquish significant authority to international institutions and the states sharing control of them.[68] Institutions like the North Atlantic Treaty Organization, the United Nations, and the Bretton Woods organizations gradually became capable of using their authority to command international and public opinion toward the United States, thus "trapping" American power and punishing its illegitimate use.[69] And since 2001, according to Finnemore, states have used these very institutions to attempt to constrain the United States by sounding the alarm when the United Stateshas committed acts that the United States itself would castigate as illegitimate had they been committed by another state. The intended recipients of this institutionalized "alarm" are foreign leaders around the globe and the American public. This appears to have been Paul's argument as well when he wrote that soft-balancing coalitions use international institutions to shape the opinion of foreign leaders and America's public regarding Washington's respect for the

[68] Ikenberry (2002)

[69] See also Barnett and Finnemore (2004).

the legitimate foreign policy, and: "The veto power that [second-ranked powers] hold in the UN Security Council is pivotal to this strategy. By denying the UN stamp of approval on American-led interventions, these states hope to deny legitimacy to policies they perceive as imperial and sovereignty limiting."[70]

The soft-balancing perspective's proponents have not articulated how the ICC in particular would aid soft-balancers, but the ICC regularly appears as an example of soft balancing in their writing.[71] The perspective might view the court, an institution authorized by the United Nations and empowered by its ratifiers, as a tool that states use to put legitimate constraints on American foreign policy while building trust among members of a potential, future balancing coalition. The perspective might also interpret a number of facts as evidence that sufficient numbers of states feel threatened by American hegemony. These include the LMG's victory in the struggle over limits on the Security Council's and states parties' authority vis-à-vis the court during the 1994–1998 design negotiations, the opposition to bilateral non-surrender agreements with the United States in some parts of the world, and the more recent decision at Kampala to begin prosecuting the crime of interstate aggression beginning in 2017.

Does the court actually threaten to expose aggressive and unilateral American foreign policy as illegitimate? If the court can do so simply by blowing the whistle on American non-compliance with the Rome Statute, then the answer may be yes. Although the United States refused to ratify the Rome Statute, second-ranked states and minor powers may now use the court to prosecute United States nationals (and the nationals of the United States' allies) for humanitarian crimes they have committed on states parties' soil. Should Washington ignore the prosecutor's subpoenas or warrants, the theory would expect the American public and foreign leaders to disapprove. Perhaps,

[70]Paul (2005, 58-59). See also Voeten (2005), Hurd (2007) and Chapman (2011) for theories explaining how the Security Council legitimates the use of military force in interstate crises.

[71]Pape (2005, 1), Walt (2005, Ch. 3), Ikenberry, Mastanduno and Wohlforth (2009, 21)

since the United States is not a ratifier, this disapproval would be slight. Washington, however, has been central in the effort to promote international criminal courts in the past. The hypocrisy of spurning the ICC may provoke a backlash of public opinion that is too great to bear. According to the soft- balancing perspective, the ICC's very existence tempers American unilateralism.

2.6.1 *Evidence*

Evidence for the soft-balancing perspective consists of qualitative evidence showing that states, because of their fears about Washington's intentions, have used international institutions or diplomacy to undermine American foreign policy or encourage trust among future hard-balancers since 1991.[72] The key to corroborating the soft-balancing perspective in these case studies is establishing that state authorities sought ways to check American foreign policy because they were concerned about either the disproportionate concentration of power in Washington or about Washington's unilateral foreign policy designs.

There is no such evidence in the ICC's case. A single book presents a thesis that, at first glance, seems congruent with the soft-balancing perspective's contention that the ICC frustrates aggressive and unilateral American foreign policy. Jason Ralph's analysis of Washington's stance toward the court is consistent with the idea that Europe and other states have tried to set the stage for displacing the United States from its dominant position. Ralph contends that European states, the LMG and NGOs sought to use the ICC to replace the existing normative framework of international society, "the society of states," in which American power is unrivaled, with something else, which he calls the "world society."[73] The intentions of the would-be soft balancers in Ralph's analysis, however, are inconsistent with what the soft-balancing perspective would expect. Ralph does not argue that a fear-inspired urge to balance American power or threat per se

[72]Pape (2005); Paul (2005); Walt (2005); Finnemore (2009); Howorth and Menon (2009)
[73]Ralph (2007)

motivated the LMG and pro-ICC NGOs to try to supplant the society of states. Rather, he suggests that these actors were seeking changes *of* the international system that were consistent with their beliefs—not changes of the distribution of power in the international system. These beliefs happened to be inimical to American interests, but fears of aggressive American unilateralism did not motivate them.

2.6.2 *Concluding thoughts*

The soft-balancing perspective supplies us with a novel answer to the two puzzles in chapter 1: Why do states accept the court's jurisdiction when it is redundant, and why do they accept it when it threatens their tenure? The ICC, according to this perspective, is a tool states are using to establish multilateral, institutionalized control over the legitimacy of American foreign policy because they fear unilateral and aggressive American foreign policy under conditions of unipolarity. Whether the court is redundant or threatening, states tolerate its jurisdiction because of a greater problem: the unconstrained power concentrated in Washington.

This perspective simultaneously provides answers to all of the questions raised in the introduction to this chapter. Soft-balancing against the United States explains why states wish to adopt a common, multilateral approach to international criminal justice, what sort of approach they would select, why states need an institution to implement their approach, and why they wish this approach to spread to parts of the world that might at first abhor it. It views the problem of enforcing the court's mandate as irrelevant. Enforcing the court's mandate by actually prosecuting American war criminals is not necessary to frustrate American foreign policy. As long as the court can gather and publicize evidence of American non-compliance with the ICC, states may use that evidence to delegitimize American foreign policy in the minds of the American public and foreign leaders.

The perspective's simple appeal, however, should be weighed against the absence of empirical evidence for it. Moreover, it seems implausible that many of the Rome Statute's ratifiers mean to balance aggressive American unilateralism, and such a motivation has yet to emerge in empirical work. Finally, the ICC has not stopped Washington from invading Iraq without authorization from the United Nations Security Council, making close allies among states emerging from the Soviet Union, and allegedly committing war crimes and crimes against humanity in the course of its Global War on Terror.

2.7 Conclusion

This chapter reviewed the literature on international criminal courts. Five perspectives offer mutually-reinforcing explanations of sovereign decisions—equifinal ones, in all likelihood—to accept or reject the ICC's jurisdiction.

The political-culture perspective argues that political and legal cultures determine state-level decisions to accept the ICC's jurisdiction and comply with the court. The persuasion perspective argues that transnational advocates working for NGOs persuade people to see a strong and independent court as complementary rather than contrary to their interests. The diffuse-reciprocity perspective argues that states ratify or reject the Rome Statute to curry favor with influential states in their commercial, security, institutional, linguistic, and civilizational networks. The civil-peace perspective argues that leaders of states doing little to rein in executive discretion accept the ICC's jurisdiction to convince domestic groups that they are committed to obeying international law. The soft-balancing perspective sees widespread acceptance of the ICC's jurisdiction as balancing against the United States by establishing control over American foreign policy through the use of multilateral international institutions.

This chapter reviewed evidence for the perspectives, as well. The cultural and the

diffuse-reciprocity perspectives command moderate evidence. The civil-peace and persuasion perspectives rely on tenuous evidence, though they yield some interesting findings. Evidence for the soft-balancing theory is virtually nonexistent. In large part, empirical work in this literature is unsettled.

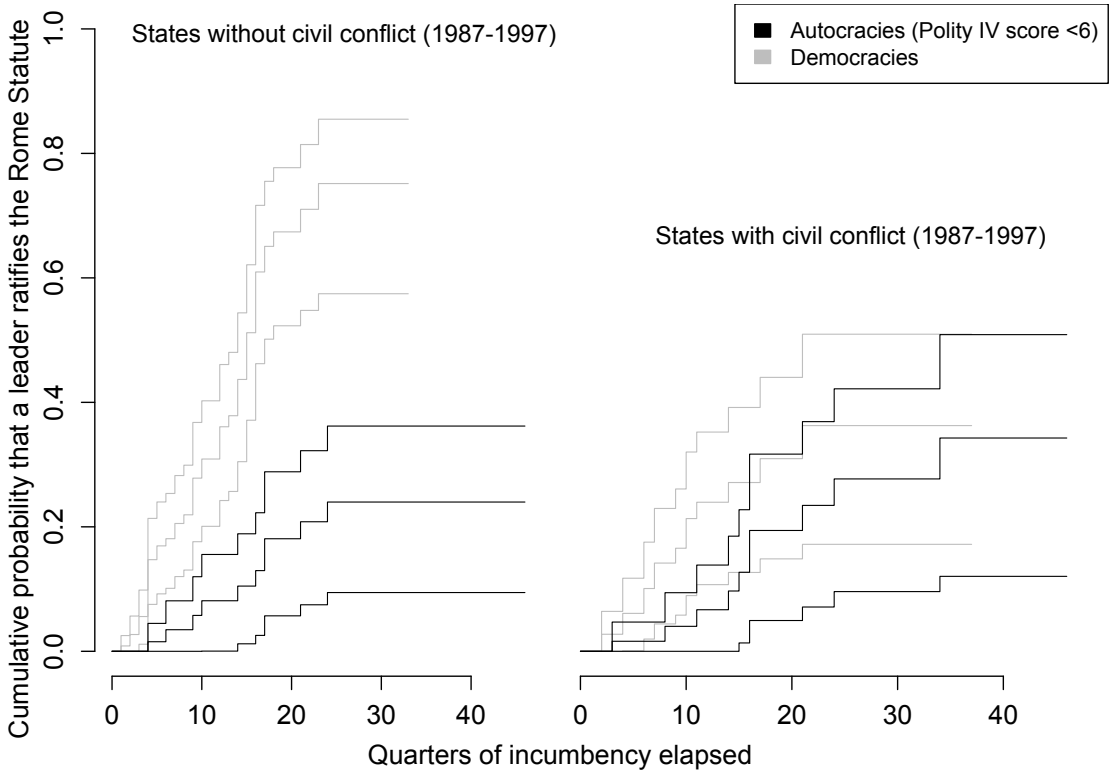
The following findings stand out, however. State and non-state advocates of a strong and independent ICC invested in a broad campaign to empower the court and natural persons vis-à-vis states. Many states abandoned support for the Perm-5's vision of a constrained court during negotiations on the ICC's design, and this advocacy may have played a role in the shift. States also mimicked the stances of their more important trading partners toward the court in the negotiations phase. They tend to mimic their more important trading partners and their most powerful allies when it comes to ratification. Democracies, states with a strong rule of law, states with a European legal tradition, and states that escaped civil wars in the decade prior to the Rome Statute's authentication have been more likely to ratify the statute than have autocracies, states with a weak rule of law, states with a history of civil war, and states with Sharia-influenced legal traditions. Democracies and states with a strong rule of law have been unlikely to sign bilateral non-surrender agreements with the United States if they have ratified the Rome Statute, but not otherwise. Finally, the presence of the ICC's jurisdiction may prevent civil war.

The chapter's own finding, however, is that the literature on international criminal courts does not identify how the ICC might promote compliance with atrocity law, nor does it explain how the court might elicit compliance during investigations and prosecutions. One could plausibly interpret the cultural, persuasion, civil-peace, and diffuse-reciprocity theories as presuming that compliance will naturally follow commitment. The soft-balancing theory ignores the issue altogether. The matter may be unimportant for some of these perspectives, but this dissertation argues that it helps answer a central question: Why do leaders grant jurisdiction to the ICC?

Indeed, one of this project's central insight is that when institutions lack obvious means to enforce their wills, identifying how they do so, if at all, is necessary for understanding how they function and evolve.

APPENDIX 2: FIGURES

Figure 2.1: The interactive relationship between democracy, a history of civil conflict, and the choice to ratify the Rome Statute, 1998–2008



Note: The figure shows cumulative event curves plus their 95% confidence intervals calculated from nonparametric Kaplan-Meier estimates. The data set includes all leaders at risk of ratifying the Rome Statute, 1998(3)–2008(4). The unit of observation is the leader-quarter. The figure shows that democrats are more likely to ratify the Rome Statute than autocrats are, irrespective of whether their states had an armed civil conflict ($\geq$ 25 battle deaths) in the decade prior to the Rome Statute's 1998 opening. It also shows that democrats are less likely to ratify the Rome Statute if they have a such history of civil war, but that autocrats are not. Similar patterns emerge when using alternative measures of democracy and the rule of law. Kaplan-Meier estimates are less accurate and precise in their right-tails when data are right-censored, as these are. See Klein and Moeschberger (2003, §4.7) for background on the estimator. Data are fully described in chapter 4 section 4.3.

CHAPTER 3

WHY LEADERS ACCEPT THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

3.1 INTRODUCTION

This chapter argues that many leaders accept the ICC's jurisdiction to marginalize political competitors. Leaders trade off the risk of unwanted prosecutions against the deterrent threat that an ICC prosecution poses to political rivals and patrons of domestic enemies, who may conspire to violently oust them. The risk of unwanted prosecutions and the court's deterrent threat both arise because ICC prosecutions credibly communicate guilt for atrocities and may trigger leader-specific sanctions by wealthy donor states that prefer to keep politicians who commit atrocities out of office. The chapter first explains how the nexus of the foreign-aid regime, domestic clientilism, and the court's unparalleled credibility explain why its prosecutions hurt politicians' careers. It then explains why the court's ability to elicit compliance varies across polities, and how this affects the trade-off between deterring anti-regime violence and self-exposure to prosecution. It concludes with six hypotheses.

3.2 WHY PROSECUTIONS HURT CAREERS

Domestic political elites—military elites, large landowners, prominent business owners, first families, local officials, and intermediaries who deliver votes—demand payment in pork, patronage, and club or public goods in exchange for putting or keeping politicians in leadership posts.[1] Whether leaders distribute private or public goods to buy the support of elites, and whether or not leaders are elected, they must carefully cultivate their reputations as breadwinners to stay politically competitive.

A significant source of the capital that domestic elites expect leaders to raise comes from international sources—the foreign-aid regime in particular. Foreign aid and loans are known to prolong leaders' tenure in office,[2] and the growth of export industries with close ties to the state may bring similar benefits. A small set of rich liberal democracies is the origin of most of these capital flows.[3] These states make outward capital transfers and friendly trade policy contingent on foreign states' behavior and enforce such arrangements with the threat of sanctions against the offending government or leader.[4] By leveraging their wealth and market size, rich democracies manipulate—indeed, play kingmaker in—the politics of poorer states.

Voters in rich donor-democracies—people who have indirect control over their states' foreign policy and support the foreign-aid regime in part because they hope to improve the welfare of foreigners[5]—*dislike* when their governments tax them and disadvantage domestic import competitors to prop up leaders who are known to have committed major international crimes.

[1] Bueno de Mesquita et al. (2003); Hicken (2011)

[2] Smith and Vreeland (2006); Bueno de Mesquita and Smith (2008, 2010); Kono and Montinola (2009); Licht (2010); Ahmed (2012). A large literature establishes the fungibility of foreign aid and loans. See, e.g., Feyzioglu, Swaroop and Zhu (1998).

[3] Neumayer (2003)

[4] Hafner-Burton (2005); McGillivray and Smith (2008); Lebovic and Voeten (2009)

[5] Lumsdaine (1993); Milner and Tingley (2010*a*,*b*)

Given credible, public proof that a foreign leader *is* guilty of such crimes, these voters' representatives will heed pressure to impose a panoply of economic sanctions against the leader's government and person. Even special interests surrounding tied aid may approve of sanctions that are leader-specific and therefore of limited duration.

Nearly everyone in rich democracies, however, is ignorant not only about *what* atrocities are and who *should* be guilty of them, but also about who *is* guilty of them. Simply put, the average person lacks the attention and expertise to sort through the first two matters, while credible evidence bearing on the third matter is hard to discover and assemble into a persuasive case. A key difficulty in addressing all three matters is the fact that politicians and other elites nearly always delegate atrocities to their subordinates, and they rarely document their orders and intentions. Building a credible case against politicians who commit atrocities is a task fraught with conceptual and inferential complexities[6]—a task that NGOs, international organizations (IOs), and national institutions are unequipped to execute.

The ICC plays a key role here. The court specializes in legitimately resolving the complexities of assigning personal guilt for atrocities and credibly communicating that, at the very least, those whom it indicts and convicts are more likely to be guilty than those whom it does not. Three of the court's qualities explain its credibility: a *legitimacy* quality, an *investment* quality, and a *reputational* quality.

First, the ICC is founded on and employs relatively legitimate (i.e., widely approved) and transparent norms, rules, and procedures. The Rome Statute and the ICC's Elements of Crimes reflect more than a century of development in humanitarian law, human rights law, international criminal law, and decades of international negotiations and expert conferences. The ICC's Rules of Procedures and Evidence, moreover, reflect both general principles of international law and

[6]Combs (2010)

decades of case law emerging from the tribunals of the United Nations.[7] While the crimes outlined by the Rome Statute are controversial in some quarters and vaguer than some crimes prosecuted in domestic legal systems,[8] NGOs, IOs, and domestic bureaucracies and courts are far more likely to employ idiosyncratic and less legitimate standards and procedures in assigning personal culpability for atrocities.

Second, the ICC has unrivaled powers to invest in collecting evidence, interpreting atrocity law, and evaluating the merits of cases due to its large budget, which has exceeded $100 million annually since 2009.[9] This investment serves two purposes. It lowers both the rate of mistaken non-indictments and non-convictions (false negatives) and the rate of mistaken indictments and convictions (false positives), and it sends a costly signal to external observers that the court has in fact taken steps to lower its false-inference rates.[10] While the court will, in many cases, reach an inflexible lower bound on the probability of a false negative ruling due to the indecisiveness of evidence, its investments help it push the probability of a false positive ruling toward zero. By contrast, NGOs, IOs, and national courts invest far less in any given case. The budgets of the two largest NGOs focusing on human rights around the world are roughly half the size of the ICC's.[11]

Third, ICC judges evaluating a case stake their reputations in the legal community for professional competence—for issuing decisions with a *low false-positive rate* in particular. This

[7] Schabas (2010, 2011)

[8] Goldsmith and Krasner (2003); Scheffer (2012)

[9] The resolutions of the ICC's Assembly of States Parties hosted at the ICC's website publishes the ICC's budgets from 2002 to 2011. In 2009, the Office of the Prosecutor claimed nearly a quarter of the court's budget.

[10] Slantchev (2005) analyzes how military mobilization (a form of investment) alters choice-contingent payoffs in the future (tying hands) and incurs costs regardless of future choices (sinking costs).

[11] Neither of these two NGOS—Amnesty International (AI) and Human Rights Watch (HRW)—publicizes its budget, but NGO Monitor reports that AI's 2007 budget was £30 million (about $60 million) and HRW's 2008 budget was $42 million. See <http://www.ngo-monitor.org/index.php>. While Oxfam, CARE, and World Vision have budgets roughly six times larger than the ICC's, they spend on a far wider set of activities (e.g., disaster relief) than AI, HRW, and the ICC do.

sort of reputation, in turn, influences their chances of re-election to posts in the ICC and of selection for jobs in firms, universities, and courts elsewhere. The ICC's judges surely are, in some sense, policy-seekers who react to idiosyncratic personal beliefs about the proper interpretation of atrocity law,[12] but their fears of acquiring reputations for recklessness should be the overriding concern. By contrast, domestic bureaucrats and judges prosecuting the rivals and enemies of their appointers or masters may not care about cultivating such reputations. Outside of perhaps a few historically democratic states, they and the institutions they staff can be transformed into instruments to coordinate[13] and legitimize[14] repression. In firmly authoritarian states, these officials build prosecutions against perceived enemies of the state on imaginary evidence and unfair reasoning,[15] and they are only likely to issue judgments truly inimical to their appointers when the latter are vulnerable to removal from office.[16] In 2001, even the executive branch of a historically democratic state, the United States, established secretive new courts that are under its firm control, staffed by anonymous judges and prosecutors, and meant to prosecute suspected terrorists with evidence extracted by enhanced interrogation methods and torture conducted by foreign states.[17] Finally, there is little reason to believe that the members of fact-finding teams working for international human-rights NGOs would seek the sort of reputations that judges seek.

In summary, the ICC's power to damage politicians' careers arises from the interplay of clientelism, the liberal foreign-aid regime, and the credibility of information revealed during ICC prosecutions. The court's public disclosures of politicians' behavior can disqualify them from the fruits of the foreign-aid regime, thereby ruining their futures as viable candidates for

[12] Voeten (2008)
[13] Carey (2000)
[14] Pereira (2005)
[15] Ibid.
[16] Helmke (2005)
[17] Resnick (2012)

national leadership. *Aspirant* incumbents in addition to current incumbents will be affected by these disclosures—an important detail explaining why current incumbents ever accept the ICC's jurisdiction.

3.3 WHY LEADERS ACCEPT THE COURT'S JURISDICTION

Leaders accept the ICC's jurisdiction precisely because prosecution threatens politicians' careers. In many states, political rivals aspire to take leaders' jobs and undermine their campaigns to expand executive power, secessionists weaken the state's hold on territory, terrorists reveal the state's inability to protect its subjects, and organized criminals appropriate tax revenue and compromise the state's authority. Traditionally, one option—unilateral repression—has been open to leaders battling these threats. Since 1998, leaders have been able to accept the court's jurisdiction, trading off self-exposure to prosecution against the court's ability to marginalize those threats.

At the heart of this theory is an expected-utility model of the decision to accept the court's jurisdiction. Leaders accept the court's jurisdiction when they value its effect on actors who threaten their political survival more than they fear unwanted prosecutions. The following subsections examine the two sides of this trade-off in detail.

3.3.1 *The court's effect on the threat to leaders from their rivals and enemies*

Two mechanisms explain why the court's jurisdiction suppresses the threat to a leader from rivals and other enemies of the state: one operating on domestic rivals, and the other operating on the foreign patrons of domestic enemies of the state.

Consider, first, the case where a leader defends against rivals aspiring to incumbency. The court's jurisdiction deters these rivals from threatening to organize and encourage anti-regime

violence, which often generates prosecutable atrocities. The ICC's jurisdiction affects the decisions of non-incumbent rivals because it raises the opportunity costs of leadership turnover for local elites whose support those rivals must secure en route to incumbency. Leaders who ratify the statute exploit two facts: Aspirant rivals must make credible promises to redistribute capital to local elites who play kingmaker; and foreign donor constituencies, viewing ICC indictments and convictions as credible signals of guilt, can pressure their representatives to sanction an atrocity-doer who ascends to national leadership. Thus, a leader may marginalize his/her political rivals by leveraging the court's jurisdiction to eliminate his/her rivals' threat to encourage violence against the regime.

Now consider the case where a leader is threatened by terrorists, secessionist leaders and organized criminals that are not aspiring incumbents, but are still nuisances to national security and may threaten a leader's own political survival. These enemies routinely use anti-civilian violence outlawed by the Rome Statute. Moreover, they sometimes receive orders, sanctuary, arms, and resources from foreign patrons. How would scrutiny from the ICC prosecutor affect the decision-making of these enemies of the state? A distressed incumbent may supply the prosecutor with evidence linking a foreign patron to a subordinate client's crimes. Facing the consequences of adverse publicity arising from an ICC prosecution—alienation from wealthy donors—patrons are more likely to preemptively cut funding, deny sanctuary or arrest and surrender indictees to the ICC in order to avoid prosecution. Thus, a leader may marginalize enemies of the state by leveraging the court's jurisdiction to eliminate his/her enemies' access to foreign resources.

Can the ICC realistically prosecute the foreign patrons of local enemies of the state? In theory the ICC may, and in practice international courts do, pursue patrons and other people tangentially linked to crimes. Assisting that pursuit are three legal theories of liability: individual criminal responsibility, whether alone or in the context of a joint criminal enterprise, and command

responsibility. These theories, reviewed below, have evolved in the past six decades from treaty and case law.

First, under the Rome Statute's Article 25, a defendant may be liable for crimes as either a principal or secondary co-perpetrator pursuant to the theory of individual criminal responsibility if s/he organizes, masterminds, controls, orders, solicits, induces, aids, abets, otherwise assists, provides the means for, or in any other way intentionally contributes to the commission of the crime. Second, a defendant may be held individually criminally responsible as a co-perpetrator for crimes pursuant to the theory of joint criminal enterprise if s/he partakes in a plan to commit the crimes, even when this plan is unwritten and implicit, and even when the crimes are simply predictable consequences of the plan rather than outcomes called for by the plan.[18] Third, if the defendant was neither part of a joint criminal enterprise nor was individually responsible for the crimes, s/he may still be liable as a negligent superior pursuant to the theory of command responsibility. This line of prosecution requires proof of a superior-subordinate relationship between the defendant and perpetrators, yet the Rome Statute defines a superior-subordinate relationship in such a way that a transnational patron-client relationship is fair game. The relationship between the defendant and perpetrator does not need to be direct, military, hierarchical or even de jure. The defendant must only have had the de facto capacity to either prevent the perpetrator's behavior or punish the perpetrator retroactively.[19]

International courts are, by now, well-accustomed to prosecuting foreign patrons pursuant to all three theories of liability. The SCSL indicted Taylor, alleging that the former president of Liberia is individually criminally responsible for nearly a dozen counts of war crimes and

[18]Drawing on customary international law, the ICTY promulgated joint-criminal-enterprise doctrine in two judgments: Prosecutor v. Delalić et al., Judgment, Case No. IT-96-21, Trial Chamber, 16 November 1998 and Prosecutor v. Tadić, Judgment, Case No. IT-94-1, Appeals Chamber, 15 July 1999. See Cryer et al. (2010, 367–373).

[19]Danner and Martinez (2005); Cryer et al. (2010, 387–400)

crimes against humanity committed by three rebel groups that fought in Sierra Leone between 1996 and 2002.[20] Reflecting an increasing reliance on the joint-criminal-enterprise theory, ICTY prosecutors argued that the Federal Republic of Yugoslavia's ex-president, Milošević partook in such an enterprise by aiding and abetting Serbian paramilitaries' atrocities in Croatia and in Bosnia and Herzegovina between 1991 and 1995.[21] And one year after the final Milošević indictments, the outgoing chief prosecutor of the United Nations Special Tribunal for Lebanon wrote a report blaming top Syrian officials and Syrian President Bashar al-Assad for the assassination of Lebanese Prime Minister, Rafik Hariri and 21 others in 2005. The report hints that when the tribunal issues indictments, it may use the individual-criminal-responsibility theory—perhaps in conjunction with the joint-criminal-enterprise theory—to prosecute the foreign patrons of Hezbollah.[22] There is speculation that the tribunal's new chief prosecutor has, since then, issued sealed indictments against Syrian officials and Iran's Ayatollah Ali Khamenei for delivering the assassination order to Hezbollah via Iran's Revolutionary Guards Quds Force.[23] Finally, the ICC indicted the Democratic Republic of the Congo politician, Bemba Gombo pursuant to the command-responsibility theory, alleging his responsible for atrocities committed by his party's members during the Central African Republic's 2002–2003 civil war.[24]

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[20]Prosecutor v. Taylor, Indictment, SCSL-03-01-I, 7 March 2003.

[21]The ICTY's final indictments against Milošević and four others for crimes in Croatia and Bosnia and Herzegovina are: Prosecutor v. Milošević, Second Amended Indictment, Case No. IT-02-54-T, July 24, 2004 and Prosecutor v. Milošević, Amended Indictment, Case No. IT-02-54-T, Nov. 23, 2002.

[22]Mehlis (2005)

[23]Issacharoff and *Haaretz* Service (2011)

[24]Prosecutor v. Bemba, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, 15 June 2009.

3.3.2 *A leader's exposure to unwanted prosecutions*

The self-exposure of leaders to unwanted ICC prosecutions does not simply depend on their actual behavior, even if there is abundant evidence of that behavior. Self-exposure also depends on whether leaders can take malfeasant steps to shield themselves and their allies in government from prosecution. The ICC's ability to build an evidence-based prosecution requires state cooperation. Leaders may be happy to submit evidence inculpating enemies, but will exploit their unique powers to keep evidence inculpating them and their allies out of the ICC's possession. They can use state security forces and less conventional means to destroy or hide physical evidence—documents, bodies, and graves—and to co-opt, intimidate, or kill those who might testify for the prosecution. They can also exploit the ICC's complementarity principle, which permits national courts to serve as courts of first instance for prosecuting the atrocities defined in the Rome Statute if they are "able and willing" to.

An infamous example of a state-coordinated plan to eliminate physical and oral evidence linking wartime atrocities to politicians and generals is Imperial Japan's subterfuge during the two-week hiatus between its 1945 surrender and the start of the Allied occupation, which would usher in the International Military Tribunal for the Far East in Tokyo.

> Even in the best of circumstances, it is hard to prevent war criminals from destroying the evidence. After the war was lost, Japanese militarists set off bonfires, destroying records of the secret police and military, transcripts of imperial conferences, cabinet deliberations, and records on prisoners of war and on campaigns in China. Some Japanese officers killed witnesses of war crimes, and by the end of August 1945, over a thousand Japanese officers had committed suicide (Bass, 2000, 303).

These measures were so successful that they fueled decades of historical revisionism questioning both the extent of Japanese wartime atrocities and the responsibility of the convicted for those atrocities.[25] This literature found its inspiration in judge Radhabinod Pal's dissenting

[25] Another case of such revisionism is Germany during and after the First World War, where the

opinion at the Tokyo tribunal, in which he acquitted every high-ranking defendant, citing inadequate evidence.[26]

Similar malfeasance is evident in the histories of the tribunals of the United Nations, where leaders have refused to surrender suspects and witnesses to the tribunals in key cases, government forces have exhumed and relocated mass graves, and the tribunals have been unable to adequately fund their witness protection programs.[27] More recently, survey results from three of the ICC's situations suggest that people are, for whatever reason, unenthusiastic about cooperating with the court. Just 21% of recent survey respondents in Kenya thought that Kenyans cooperating with the ICC in April 2010 were "very safe," while the plurality—37% of respondents—thought that cooperators were "unsafe."[28] In Uganda just 2% of survey respondents admitted knowing how to contact the ICC in 2007. Fewer than that had done so. In the Democratic Republic of the Congo, just 12% of respondents admitted knowing how contact the ICC in 2008.[29] These data, though limited, do not suggest widespread confidence in the ICC's ability to protect its collaborators.

With a good enough argument for why national courts or investigation commissions are able and willing to prosecute, leaders may never need to destroy physical evidence or interfere with victims and witnesses. They might avoid an ICC prosecution altogether—or suspend an active one on a de facto basis—by invoking the Rome Statute's principle of complementarity. The governments of Uganda, Kenya, and Libya have each done so, with varying success.

While the ICC's only countervailing weapon in the face of obvious interference with investigations and prosecutions is to refer the matter to the Security Council, the probability that a

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state executed an ambitious plan to disseminate its preferred story of the war and suppress others (Herwig, 1987).

[26]Totani (2008, Ch. 9). Pal did not offer the same leniency to lower level (i.e., class BC) suspects.

[27]Sluiter (2005); Peskin (2008)

[28]Synovate pan-Africa, a Kenya-based firm inexplicably removed these data, published in April 2010, from its website several months after the ICC indicted five Kenyan elites.

[29]Vinck et al. (2007, 2008)

leader will face an unwanted prosecution is never zero. Leaders may lose office and then face an ICC prosecution, as did Côte D'Ivoire's Laurent Gbagbo. Or, like Sudan's Omar al-Bashir, they may simply fail to evade prosecution despite an effort to do so. Domestic political institutions that keep executive malfeasance in check may, moreover, expose leaders to prosecution.

3.4 EMPIRICAL IMPLICATIONS

The argument suggests a number of implications concerning the decision to ratify the Rome Statute, the effects of the ICC's jurisdiction on political survival and anti-regime violence, and the effects of indictments by international criminal courts on political survival and inflows of foreign capital. These are reviewed in turn.

3.4.1 *The decision to accept the court's jurisdiction*

If leaders trade off the court's ability to marginalize their enemies by threatening them with prosecution against the risk that they or their allies face prosecution, then deriving testable implications is possible by asking: What factors influence a leader's trade-off, and how?

The *probability* that the ICC prosecutes either actor and the *consequences* of such a prosecution are foremost among the determinants of this trade-off. Some factors may affect the exposure of rivals alone to the probability of prosecution or to its consequences. Other factors may affect the exposure of a leader alone to the probability of prosecution or to its consequences. Finally, there are factors that will *mutually* expose leaders and their rivals to the probability of prosecution or to its consequences. Changes in the first two sorts of factors should have clear directional effects on a leader's propensity to accept the court's jurisdiction, but changes in the third sort of factor should have no impact if a leader simply trades off cost and benefit.

The implication tested here concerns a scenario where mutual exposure to the consequences of an ICC prosecution increases, but the probability that a leader faces prosecution is negligible and remains so. In this scenario the leader may be *more* inclined to accept the court's jurisdiction if he or she can take malfeasant steps—destroying evidence, intimidating witnesses, and exploiting the complementarity principle—to evade prosecution. The same leader would be neither more nor less inclined to accept the court's jurisdiction if he or she were constrained from taking such steps.

What determines mutual exposure? When is a leader capable of evading an ICC prosecution? The source of the court's power is its ability to influence the opinions of enfranchised constituencies of wealthy industrialized democracies—states providing large sums of capital to poorer states. Thus, the amount of capital inflows from major donor democracies determines leaders' and their rivals' mutual exposure to the consequences of prosecution. When the ICC's rulings are engaged to this enforcement mechanism, they have the power to ruin the political careers of the ICC's indictees and convicts.

A leader's capacity to evade prosecution, on the other hand, turns on the quality of enforced *accountability* to the domestic public. Where leaders are held accountable for violating the public interest, they will be incapable of evading ICC prosecutions by destroying evidence, intimidating victims, interfering with the ICC prosecutor's activities, or otherwise refusing to comply with the prosecution. Where this kind of accountability is lacking, leaders may evade prosecution. While this sort of accountability arises in diverse institutional settings, one straightforward manifestation of it is the robust contestation of political power at the heart of democratic governance. Recurring leadership turnover, competitive multipartism, a de facto separation of powers, and a constitution that has proven to be inflexible to the whims of the executive branch each suggest that leaders are incapable of exploiting public office for private gain.[30]

[30]Cheibub, Gandhi and Vreeland (2010)

The prediction, then, is that accountable and unaccountable leaders should respond to an increasing dependence on capital inflows from the world's major donors differently.

HYPOTHESIS 1: Leaders of states receiving more capital transfers from wealthy donor democracies become neither more nor less likely to ratify the Rome Statute if they are highly publicly accountable but become more likely to ratify if they are not highly publicly accountable.

3.4.2 *The effects of the court's jurisdiction on political survival and anti-regime violence*

The theory also has straightforward implications about what happens after a leader ratifies the Rome Statute. If a leader accepts the ICC's jurisdiction to enlist it in deterring anti-regime violence and marginalizing rival incumbents, then a leader governing under the court's jurisdiction should experience a smaller risk both of losing office and of facing anti-regime violence than s/he would have otherwise.

HYPOTHESIS 2: The effect of the ICC's jurisdiction on a leader's risk of losing office is negative.

HYPOTHESIS 3: The effect of the ICC's jurisdiction on a leader's risk of experiencing anti-regime violence is negative.

Chapter 3 also tests Hypotheses 1–3, providing a first round of empirical facts. While Hypothesis 3 echoes previous empirical work,[31] Hypotheses 1 and 2 are novel.

3.4.3 *The economic effects of indictments*

The theory that the court's mode of external enforcement is the denial of capital from wealthy democracies rests upon two premises. The court's ability to influence the opinions of enfranchised

[31] Simmons and Danner (2010)

voters—people who would fire their own representatives for propping up proven war criminals—in wealthy industrialized democracies, is essential for the ICC to enforce its mandate. The first premise thus relates to these voters' preferences: Voters in major donor democracies must be willing to electorally punish their representatives for propping up foreign war criminals. The second premise relates to how their representative react to their demands: My theory expects that representatives take action in line with their constituents' preferences, enacting leader-specific sanctions against foreign leaders whom the ICC has indicted or convicted. These claims are difficult to verify—testing them would require micro-level data on voters' opinions and representatives' voting records from some two dozen democracies.

One can focus, however, on the final steps of the process. What happens to leaders, to their foreign-capital receipts, and to their states when the ICC—or a similar international criminal court—indicts them? The theory in this chapter suggests at a minimum that incumbent indictees should be more likely to exit office and should receive less capital from wealthy democracies.

Domestic production should fall, too—for several reasons. Private economic actors will scale back investment if they anticipate instability in a state's political leadership.[32] The state and private economic actors will reduce investment[33]—and private actors may produce fewer exportable goods[34]—if they are uncertain about the state's future access to foreign aid and loans. Finally, private economic actors may reduce investment if they expect that aid shocks will provoke civil conflict.[35]

Given the deposition of the indicted incumbents, moreover, the theory developed here expects

[32] Alesina et al. (1996)

[33] Lensink and Morrissey (2000). See also Bulíř and Hamann (2003).

[34] Arellano et al. (2009)

[35] Nielsen et al. (2011). The authors hypothesize that such wars are caused by a specific credible commitment problem (Powell, 2004) between states and rebels arising from large aid shocks, positive or negative.

these variables to rebound. A post-deposition leader should experience greater capital receipts from rich democracies and greater domestic production than would the indicted leader, were he to remain in office.

Finally, the theory in this chapter suggests that indictments by international criminal courts supply more credible information about incumbents than is supplied by either public, prosecutable human-rights abuses or domestic human-rights trials. If rich democracies find this information actionable, then the effects of indictments by the ICC and other international criminal courts on leaders' survival in office, foreign-capital flows, and domestic production should be larger in magnitude than the effects of serious human-rights abuses and domestic trials meant to address them.

HYPOTHESIS 4: Indictment of an incumbent leader by an international criminal court increases the probability that the incumbent exits office. The magnitude of this effect is greater than the magnitude of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on the incumbent's probability of exit.

HYPOTHESIS 5: Indictment of an incumbent leader by an international criminal court decreases the state's receipt of development capital from rich democracies. The deposition of the indictee increases receipts of such capital. The magnitudes of these two effects exceed the magnitudes of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on capital receipts.

HYPOTHESIS 6: Indictment of an incumbent leader by an international criminal court decreases the state's GDP. The deposition of the indictee increases GDP. The magnitudes of these two effects exceed the magnitudes of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on GDP.

Chapter 4 tests these hypotheses, producing a number of new empirical facts. Moreover, it takes a closer look at four cases of incumbents indicted by international criminal courts since 1993: Bosnia and Herzegovina under Radovan Karadžić's co-rule, the Federal Republic of Yugoslavia under Slobodan Milošević, Liberia under Charles Taylor, and Sudan under Omar al-Bashir. Four other indictments—of Republic of Serbian Krajina's Milan Martić, of Kosovo's Ramush Haradinaj, and of Libya's Muammar and Saif al-Islam Gaddafi—are left for future study owing to a lack of information on the cases.

3.5 Conclusion

The rise of the ICC marks a fundamental shift in the regulation of threats to human and international security. This chapter analyzed why some leaders voluntarily accept the court's jurisdiction. It argued, in short, that leaders trade off the risk of unwanted prosecutions against the court's deterrent threat to political rivals and patrons of enemies of the state, who may seek to violently oust them.

The chapter then proposed six hypotheses. The theory implies that receiving a larger amount of development capital from wealthy democracies should make leaders more likely to accept the ICC's jurisdiction only when they can evade prosecution, and that ruling under the court's jurisdiction should help leaders stay in office longer and reduce the chance that they face armed civil conflicts. The theory also implies that indictments of international criminal courts should force leaders from office, reduce the state's receipts of development capital, and reduce domestic production. Development capital and domestic production should, however, rebound following the exit of indicted leaders. The consequences of international indictments should exceed those of public knowledge of prosecutable human-rights abuses and domestic human-rights trials.

The two chapters that follow test these implications. The chapter following them tackles a

puzzle in the history of international criminal, human-rights, and humanitarian law: Why did the ICC become a live option only around the end of the Cold War? Why did efforts to establish it in 1973, 1954, 1948, 1945, 1937, and 1920 each fail? The chapter argues that two long-run shifts explain why the ICC became a live option at the end of the Cold War. The spectacular growth of the liberal foreign-aid regime since the mid-1970s promised teeth to a permanent court, and changes in the nature of civil war since 1945—changes that accelerated after 1989—have disadvantaged states vis-à-vis rebels, prompting incumbent leaders to find new ways to marginalize their domestic enemies.

CHAPTER 4

DEVELOPMENT, CONFLICT, AND THE INTERNATIONAL CRIMINAL COURT'S JURISDICTION

4.1 INTRODUCTION

This chapter tests the three hypotheses introduced in sections 3.4.1 and 3.4.2 of the last chapter. Receiving a larger amount of development capital from wealthy democracies should make leaders more likely to accept the ICC's jurisdiction *only* when they can evade prosecution, and ruling under the court's jurisdiction should help leaders stay in office longer and reduce the chance that they face armed civil conflicts.

This chapter documents three empirical facts with panel data on 579 national leaders who held office between 1998 and 2008. First, receiving larger amounts of development capital from the liberal foreign-aid regime makes autocrats—but not democrats—accept the ICC's jurisdiction. Second and third, ruling under the ICC's jurisdiction makes leaders 1.4 percentage points less likely to lose office and 2.7 percentage points less likely to face an armed civil conflict in any quarter. These are large effects when one considers that the baseline and counterfactual probabilities of losing office or facing a civil conflict are on the same order of magnitude. The third finding, moreover, is noteworthy in light of polemics that the ICC's hope of deterring atrocities—

civil wars frequently give rise to such crimes—is futile without the help of superpowers,[1] and is consistent with evidence to the contrary.[2]

The chapter proceeds as follows. Section 4.2 reviews the hypotheses to be tested. Section 4.3 describes the operationalization of key concepts and introduces data. Section 4.4 outlines an empirical strategy improving on extant work by multiply imputing missing data, modeling multiple sources of cross-national and temporal dependence, and applying a form of exact matching to reduce model dependence. Section 4.5 interprets the regression results, then briefly examines whether there is link between other forms of "unearned income" and ratification of the Rome Statute. Section 4.7 concludes. Additional notes on the empirical strategy are in Appendix 4.A. Tables and figures are in Appendix 4.B.

4.2 REVIEW OF HYPOTHESES

The hypotheses below, developed in the last chapter and tested below, are as follows:

HYPOTHESIS 1: Leaders of states receiving more capital transfers from wealthy donor democracies become neither more nor less likely to ratify the Rome Statute if they are highly publicly accountable but become more likely to ratify if they are not highly publicly accountable.

HYPOTHESIS 2: The effect of the ICC's jurisdiction on a leader's risk of losing office is negative.

HYPOTHESIS 3: The effect of the ICC's jurisdiction on a leader's risk of experiencing anti-regime violence is negative.

[1] Bolton (2001); Goldsmith and Krasner (2003)
[2] Kim and Sikkink (2010); Sikkink (2011).

4.3 OPERATIONALIZATION AND DATA

This chapter introduces novel panel data on leaders of all states observed quarterly between 1998 and 2008.[3] Tests of Hypotheses 1–3 rely on three dependent variables, each binary. The first measures a leader's decision to ratify the Rome Statute (*Leader ratifies Rome Statute*). Relatedly, a predictor used to test Hypotheses 2–3 is *Presence of ICC jurisdiction*, which indicates whether a state is under the ICC's jurisdiction by virtue of an incumbent or former leader having ratified the Rome Statute. The second dependent variable indicates whether a leader exits office (*Leader exits office*). The third measures anti-regime violence, operationalized as the incidence of at least one armed civil conflict involving at least 25 battle deaths (*Civil conflict*).[4]

Domestic political constraints on a leader's ability to evade prosecution are measured with a dummy variable (*Democracy*) equal to one when there is a conjunction of events indicating that political representatives are de facto publicly accountable. The variable measures whether, in any year, the state's executive had been elected; there had been alternation of executive power in the recent past; the executive had never illegally closed the lower house of the legislature and rewritten the constitution in his/her or her favor; the legislature had been elected; multipartism was legal and multiple parties were competitive; and opposition parties were in fact serving in the legislature.[5] While many other indicators of "democracy" are available, none is so explicit and consistent in coding actual practices reflecting a high level of public accountability.

[3]Dates of incumbencies come from Goemans, Gleditsch and Chiozza (2009) for the pre-2004 period and from the Central Intelligence Agency of the United States of America (2010) afterward. Leaders holding power in non-consecutive terms are separate panels. A total of 579 leaders held office in the period of observation. 111 leaders out of 437 leaders who were at risk of ratifying over 5,401 leader-quarters did so.

[4]The ICC's website lists dates of ratification. Civil conflict is equal to one if a leader-quarter experiences at least one civil or internationalized-civil conflict. These data come from Uppsala Conflict Data Program (UCDP) and Centre for the Study of Civil Wars, International Peace Research Institute, Oslo (PRIO) (2009).

[5]Cheibub, Gandhi and Vreeland (2010)

Capital flows from wealthy democracies are measured in five ways: concessional aid under their full control, multilateral aid—concessional and non-concessional—from international organizations where they form large voting blocs, the sum of the above three flows, and revenue from exports to rich democracies. All are denominated in millions of current U.S. dollars and exponentiated by $\frac{1}{8}$.[6] Consider these variables in turn.

First is Official Development Assistance (ODA) from the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD),[7] a committee of rich democracies reporting that it gave 53% of all known ODA in 2009, totaling more than $118B, and multilateral ODA from the European Commission (EC). Most of these flows are loans at concessional rates and grants.[8] Measures of the annual gross ODA flows from these two sources are summed to create a single variable: bilateral and multilateral ODA under the full control of wealthy democracies (*Aid from DAC and EC*).

Second is development capital from other international organizations. Democracies channel large sums of multilateral aid and loans through The World Bank, the International Monetary Fund (IMF), and smaller banks in Africa and Asia. The Abidjan-based African Development Bank (AfDB) and its Fund (AfDF) disburses aid to African states, while the Asian Development Fund (AsDF) of the Manila-based Asian Development Bank (AsDB) disburses ODA to member-states throughout the world. De jure decision-making within each organization is determined by member-states' votes, which in turn are determined by their capital contributions. Despite the

[6]This transformation lessens an extreme positive skew in the variable and improves the interpretability of the resultant model estimates.

[7]The DAC has twenty-four members: Australia, Finland, Italy, South Korea, Austria, France, Luxembourg, Spain, Belgium, Germany, Netherlands, Sweden, Canada, Greece, New Zealand, Switzerland, Denmark, Ireland, Norway, United Kingdom, Japan, Portugal, the United States, and the European Commission.

[8]Organisation for Economic Co-Operation and Development International Development Statistics (2010)

fact that these are multilateral banks, wealthy democracies form formidable voting blocs in all of them. Eighteen of the AfDB's 77 members are OECD DAC members, holding roughly 43.8% of the AfDB's 2011 vote-share, and twenty of the AsDB's 67 members are OECD DAC members, holding roughly 56.5% of organization's 2011 vote-share.[9] The same democracies form large voting blocs in The World Bank and IMF, and empirical research reveals a variety of clues of their de facto influence in the two organizations.[10]

These large banks lend in two ways. They issue grants and longer-term loans at concessional interest rates (i.e., ODA) and disburse non-concessional "Other Official Flows (OOF)," which are export credits and shorter-term loans at market rates. This chapter uses measures of both.

The World Bank's International Development Agency (IDA) and the IMF's Poverty Reduction and Growth Facility (PRGF) are major sources of concessional ODA. Both organizations finance their activities in small part by internal allocations, and in large part by bilateral donations and loans from the World Bank's and IMF's member-states. Likewise, the AfDB/AfDF and AsDF finance aid disbursements by bonds backed by member-states and, to a lesser extent, member-states' contributions. The category of OOF is harder to track. The World Bank's International Bank for Reconstruction and Development (IBRD) disburses most of its funds as confidential and non-concessional OOF. The IMF channels short-term loans at market rates to countries facing balance-of-payments crises through several "facilities."[11] Finally, the AsDB distributes substantial sums of OOF. Each organization discussed above finances its OOF similarly: member-states' contributions and sales of member-state-guaranteed bonds in international markets.

Data on ODA disbursements by the IDA, PRGF, AfDB, AfDF and AsDF are measured

[9] Vote shares are available at the websites of the AfDB and AsDB.

[10] Stone (2002); Kuziemko and Werker (2006); Dreher, Sturm and Vreeland (2008); Vreeland (2009)

[11] These are the Extended Credit Facility, Standby Credit Facility, Rapid Credit Facility, Stand-By Arrangements, Flexible Credit Line, and the Extended Fund Facility.

annually in current U.S. dollars.[12] To simplify the analysis the sum of these values is taken, yielding a single measure of ODA inflows from multilateral organizations under wealthy democracies' partial but substantial control (*Aid from WB, IMF, etc.*). Data on non-concessional flows from The IBRD and AsDB (their OOF) are unavailable by recipient. However, loans issued by the IMF's shorter-term and non-concessional lending facilities are available by recipient. This chapter uses an annual measure of these flows in current U.S. dollars (*IMF loans*). Finally, *Total aid and loans* measures the sum of all development capital flows from rich democracies or multilateral organizations under their significant influence.

Exports to the twenty-four DAC democracies are a third sort of capital flow that may be sensitive to ICC indictments, if those democracies can use sanctions or subtler interventions to distort export volumes. Since governments benefit from exports indirectly via taxes, growth, and side-payments for contracts, it is appropriate to scale the value of exports by gross domestic production (GDP). This chapter uses the ratio of a state's quarterly exports to the OECD DAC member-states to the exporter's annual GDP in current U.S. dollars.[13] Greater values of this variable, *Exports to DAC (% GDP)* indicate a greater dependence on the markets of wealthy democracies.

Analyses below control for binary indicators of legal tradition (*Civil law*, *Common law*, *Islamic law*, and *Mixed law*), where the latter indicates a mixed customary-and-European tradition.[14] They also control for The World Bank's measures of the domestic rule of law (*Rule of law*) and GDP exponentiated by one-eighth (*GDP*),[15] plus a binary variable indicating whether

[12]The World Bank (2010*a*); International Monetary Fund (2010*b*); Organisation for Economic Co-Operation and Development International Development Statistics (2010)

[13]International Monetary Fund (2010*a*); The World Bank (2010*b*)

[14]*The World Factbook* of the Central Intelligence Agency of the United States of America (2012)

[15]The World Bank Group (2011); The World Bank (2010*b*). Kaufmann, Kraay and Mastruzzi (2009) describe The World Bank's measure in this way: "Rule of Law measures the extent to

a civil conflict occurred in the 1988–1998 period (*Civil conflict, 1988–1998*), taken from UCDP–PRIO.

4.4 Empirical strategy and estimation framework

Missing data and panel-data issues—heterogeneity, serial correlation, and true state dependence, for example—are common features of cross-national data. The empirical strategy adopted in testing Hypotheses 1–3 is to statistically model them. In testing Hypotheses 2–3, where the aim is to identify the causal effects of the ICC's jurisdiction on domestic politics, model dependence is reduced by pre-processing the data with a form of exact matching.[16] Each issue is addressed in turn, below. To preview the results, summary statistics for the imputed data and comparisons of means for the matched and raw data are in Panels A and B of Table 4.1, respectively.

Missing data is germane to all empirical research on the ICC as well as much research on leaders' survival in office and the incidence of civil conflict. For instance, research estimating the link between ratification and domestic regime type or the rule of law either list-wise delete rows of data or discretize incompletely measured variables by setting missing cells to one side of an arbitrary threshold.[17] Either strategy may arbitrarily bias the parameters of the non-linear

which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence." The measure is estimated from a statistical model incorporating numerous surveys and expert sources. A list of sources is viewable at <http://info.worldbank.org/governance/wgi/pdf/rl.pdf>.

[16] Simmons and Danner (2010) report causal effects of the ICC's jurisdiction on the initial onset of a version of the UCDP/PRIO armed civil conflict measure (a negative effect) and on the signing of a peace agreement between by the government and rebel side (a positive effect). They instrument the presence of the court's jurisdiction with domestic-institutional variables. See Chapman and Chaudoin (2011) for a critique of the instruments.

[17] About 18% and 21% of observations on measures of regime type—The World Bank Group's Rule of Law variable and Polity IV's index of regime type—are missing in the 1998–2008 interval. Because regressions in prior research control for variables with missing data, the resulting sum of deleted observations has varied between 5% and 29% of the sample after discretization. Simmons and Danner (2010) analyze quarterly data from 1998 to 2008 where The World Bank's Rule of Law measure and Polity IV's index of regime type are missing on 15% and 28% of cells, respectively.

regression models appropriate for these data. To avoid the bias—but reflect the uncertainty—arising from missingness, this chapter applies a multiple imputation model appropriate for cross-national data and reports pooled inferences from ten imputed data sets.[18] The model assumes that transformations of all variables used in the analysis are Multivariate Normal and follow time-trends within each of 14 geopolitical cross-sections (listed in Appendix 3.A). The trends are estimated with cubic splines with three knots each. To improve the accuracy and precision of the imputations, the original data set is merged with data on all variables for every panel back to 1988(1) and other well-observed variables (listed in Appendix 3.A). A 1% empirical ridge prior is specified, which may automatically increase to a 10% if the Expectation Maximization algorithm used to estimate the model fails to converge. Imputed data are truncated at zero if they are logically all-positive but are imputed as negative.

Typical panel-data issues that may bias inferences from the event-history models appropriate for these data are cross-unit dependence due to common exposure to shocks, and temporal dependence due to either unit heterogeneity or serial correlation.[19] This chapter accounts for these issues in a regression model with varying intercepts. Starting with logistic regression predicting y—ratification of the Rome Statute, exit from office, or the incidence of civil conflict—in leader-quarters $i = 1 \ldots N$, the model specifies an intercept representing common and contemporaneous exposure to shocks for quarters $q = 1 \ldots Q$, an intercept representing heterogeneity in leaders $j = 1 \ldots J$, and an intercept specific to a leader's period of incumbency $m = 1 \ldots M$ to capture temporal dependence.[20] Intercepts are independent Multivariate Normals. Explanatory variables

In their Table 1, between 5% and 29% of the data are missing even after discretizing these two variables. In Chapman and Chaudoin (2011) 28% of the same data is list-wise deleted.

[18]Honaker, King and Blackwell (2009). Estimates are pooled with routines by Lumley (2010) and Imai, King and Lau (2006).

[19]Box-Steffensmeier and Jones (2004, 141–142)

[20]When $y =$ *Leader ratifies Rome Statute*, the leader's period of incumbency is the number of quarters elapsed since 1998(3), the opening of the Rome Statute. When $y =$ *Leader exits office* or

X are indexed $p = 1 \ldots P$ and controls Z are indexed $k = 1 \ldots K$. Formally:

$$y_{i,j,t,m} \sim \text{Bernoulli}(\text{logit}^{-1}[X_p\beta_p + Z_k\delta_k + \alpha_j + \gamma_q + \phi_m]), \tag{4.1}$$

$$\alpha_j \sim \mathcal{N}(0,\ \sigma_\alpha^2),\ \gamma_q \sim \mathcal{N}(0,\ \sigma_\gamma^2),\ \phi_m \sim \mathcal{N}(0,\ \sigma_\phi^2). \tag{4.2}$$

Possible confounds for each relationship predicted by Hypotheses 1–3 include a state's legal tradition, the quality of the domestic rule of law, and the size of the economy.[21] Model specifications thus control for measures of these confounds via $Z\delta = \textit{Common law} \cdot \delta_1 + \textit{Mixed law} \cdot \delta_2 + \textit{Islamic law} \cdot \delta_3 + \textit{Rule of law} \cdot \delta_4 + \textit{GDP} \cdot \delta_5$. When the dependent variable measures a leader's exit from office or the occurrence of civil conflict, another possible confound is a state's recent history of civil conflict. For example, two studies report a negative link between a state's history of civil conflict in the decade prior to the Rome Conference and its ratification of the Rome Statute.[22] When testing Hypotheses 2–3, $Z\delta$ also includes the term, $\textit{Civil conflict},\ \textit{1988} - \textit{1998} \cdot \delta_6$.

The goal of Hypotheses 2–3 is to assess the causal effects of the ICC's jurisdiction. Imbalance and lack of overlap in the densities of X and Z across states under the ICC's jurisdiction and states not under its jurisdiction may lead to model dependency. To avoid this, the imputed data are pre-processed by coarsened exact matching (CEM), which is Monotonic Imbalance Bounding, balances on interactions, and reduces extrapolation bias.[23] CEM requires cut-points for binning continuous variables. The interquartile thresholds are chosen. Panel B of Table 4.1 reports a greatly reduced imbalance in the means of all predictors.

$y = \textit{Civil conflict}$, the leader's period of incumbency is the number of quarters elapsed since s/he gained office. Appendix 3.A considers methods of modeling temporal dependence.

[21] Chapman and Chaudoin (2011); Powell and Mitchell (2008); Mitchell and Powell (2011)

[22] Simmons and Danner (2010); Chapman and Chaudoin (2011)

[23] Iacus, King and Porro (2011)

4.5 RESULTS

4.5.1 *Hypothesis 1*

Results from Models 1–5 are in Table 4.2. In each model the dependent variable is the leader's choice to ratify the Rome Statute. The linear predictor includes the product of the democracy predictors and one of five predictors measuring capital receipts from wealthy democracies, for $X\beta = Democracy \cdot \beta_1 + Capital \cdot \beta_2 + Democracy \cdot Capital \cdot \beta_3$.[24] If Hypothesis 1 is correct, then β_2 should be positive, and $\beta_2 + \beta_3$ should equal zero.

Each model except Model 5 offers supporting evidence for the hypothesis. In Models 1–4 estimates of β_2 are positive and significant at more than twice the magnitudes of their estimated standard errors, while estimates of $\beta_2 + \beta_3$ are near zero and insignificant.[25] Unexpectedly, Model 5's β_2 and β_3 are both negative and insignificant. To summarize: the results are consistent with Hypothesis 1 as long as a state's receipt of development capital is measured by bilateral and multilateral aid and loans from wealthy democracies.

Panels A–B of Figure 4.1 clarify the results. The sloping white lines show that the effect of the predictor Total aid and loans on ratification is negligible among democracies but strongly positive among autocracies.[26] The figure's Panel C clarifies *when* democrats are no longer more likely to ratify than autocrats are by graphing the expected difference between the estimates in Panels A and B along with its 95% confidence interval. Leaders of democracies are significantly more likely to ratify until the quarterly receipt of rich democracies' development capital exceeds

[24]Each measure of capital receipts is in millions of current U.S. dollars exponentiated by $\frac{1}{8}$ to ameliorate positive skew and simplify the presentation.

[25]Throughout, the term significant means $\hat{\beta}_p \div SE(\hat{\beta}_p) \geq 1.96$.

[26]Quantities of interest are simulated using a Multivariate Normal approximation to β and δ and the routine in Imai, King and Lau (2006), based on King, Tomz and Wittenberg (2000). Continuous (ordinal and nominal) controls are held at their means (modes).

$75.7M. Leaders of autocracies become more likely to ratify in expectation when such receipt exceeds $1.59B. This may seem like a rare level of aid and loans—indeed, it is at about the 90th percentile for all leader-quarters—but these leader-quarters come from 45 states, which are listed in Table 4.3. A few outlying recipient states do not drive this result.

Finally, as past research has shown, democracies, states under a greater rule of law, and states with European or mixed customary-and-European legal traditions are significantly more likely to ratify the Rome Statute than are autocracies, states under a lesser rule of law, and states with Islamic legal traditions.

4.5.2 *Hypotheses 2 and 3*

Results from Models 6–7 are in Panel A of Table 4.4. The dependent variable in Model 6 measures whether a leader exits office. The dependent variable in Model 7 measures whether a civil conflict occurs. In both models the linear predictor includes a dummy variable indicated whether a state is under the ICC's jurisdiction, for: $X\beta = \textit{Presence of ICC jurisdiction} \cdot \beta_1$. The linear predictor also includes controls, for $Z\delta = \textit{Democracy} \cdot \delta_1 + \textit{Total aid and loans} \cdot \delta_2 + \textit{Democracy} \cdot \textit{Total aid and loans} \cdot \delta_3 + \textit{Common law} \cdot \delta_4 + \textit{Mixed law} \cdot \delta_5 + \textit{Islamic law} \cdot \delta_6 + \textit{Rule of law} \cdot \delta_7 + \textit{GDP} \cdot \delta_8 + \textit{Civil conflict}, \textit{1988} - \textit{1998} \cdot \delta_9$. If Hypotheses 2 and 3 are correct, then β_1 should be negative in Models 6–7.

Indeed, estimates of β_1 are negative and significant. Panel B of Table 4.4 displays simulated quantities of interest: first differences, risk ratios, and the average treatment effect on the treated (ATT)—the effect of the ICC's jurisdiction on leaders who actually ratify the Rome Statute. These quantities indicate a substantially negative effect of the ICC's jurisdiction on the probability that a leader loses office or faces an armed civil conflict in a given quarter. Notably, the ATT statistics imply that in states under the ICC's jurisdiction, the presence of the ICC's jurisdiction reduces

a leader's expected risks of losing office and having a civil conflict by 1.4 and 2.7 percentage points, respectively. These effects are substantial, if one considers that leaders under the ICC's jurisdiction expect 5.8 and 7.8 percentage-point risks of losing office and having a civil conflict, respectively.

4.6 Energy rents and dictators' aid: wrenches in the machine?

Before concluding, consider the following question. Might leaders who count on "energy rents" (i.e., revenue from the sale of primary energy commodities) and "dictators' aid" be immune to the court's supposed enforcement mechanism, its leverage over the foreign-aid regime? This sort of de facto immunity to prosecution-triggered sanctions would plausibly eliminate the value of the court's jurisdiction to incumbents or give rise to a collective action problem among sanctions senders.

Table 4.2 charts known dictators' aid since 1998—a small sum relative to what democracies disburse. In 2009 the Islamic Development Bank—the largest multilateral donor institution not controlled by the DAC—and other major non-DAC donorsdisbursed, respectively, just 10% and 5% of the DAC's disbursements. Energy rents are a more plausible supply alternative incomes for leaders who have become international pariahs,[27] since the energy commodity market generates an annual global export value standing an order of magnitude above the annual value of development capital disbursed by the OECD DAC.[28]

There is weak empirical support for the suspicion that leaders who can count on either of these resources should be less likely to ratify the Rome Statute. Unreported analyses show a

[27] Morrison (2009)

[28] In 2005, for example, crude petroleum and natural gas exports alone are valued at $993B and $131.2B, respectively (Radetzki, 2008, 45). Non-energy commodities (i.e., metals and stones) return less revenue. Exports of aluminum and precious stones, the highest-grossing commodities after energy commodities, returned $32.7B and $83B in 2005, respectively.

negative but statistically insignificant relationship between primary energy commodity production and the probability of ratification ($\hat{\beta} = -0.44,\ SE(\hat{\beta}) = 0.29$), and a near-zero link between known sources of aid from Arab states and agencies or the Islamic Development Bank and the probability of ratification. Finally, although Chinese aid disbursements are secret, there is a small, *positive*, and significant link between China's historical aid disbursements and that probability ($\hat{\beta} = 0.1,\ SE(\hat{\beta}) = 0.05$).[29] In summary, energy rents and dictators' aid are unlikely to be serious "wrenches in the machine" nullifying the ICC's value to leaders.

4.7 Conclusion

The chapter presented three new empirical findings. Its methodology improves on extant work in several ways. It multiply imputes of missing data using many well-observed predictors measured in the 1988–2008 interval, it more explicitly models cross-national heterogeneity using mixed-effects regressions, and it performs a form of exact matching to reduce model dependence and improve the validity of causal effect estimates.

The chapter finds the following. First, a larger receipt of bilateral and multilateral development capital from member states of the OECD DAC, IMF, and The World Bank makes leaders more likely to accept the ICC's jurisdiction *only* if those leaders can evade an ICC prosecution—only if they are autocrats. Second, leaders substantially prolong their terms in office by accepting the ICC's jurisdiction. Third, leaders prevent civil conflict by accepting the court's jurisdiction. These findings are consistent with the theory presented here: that leaders are trading off the risk of

[29] Dictators' aid is measured as ODA from the Islamic Development Bank, ODA from major Arab donors, and the number of Chinese aid projects completed in each state during the decade prior to 1998. Data are taken from the Organisation for Economic Co-Operation and Development International Development Statistics (2010) and AidData.org (2010). Primary energy commodity production is measured in gigatons of oil equivalent. Data are taken from The World Bank (2010*b*). More striking results did not materialize when specifying third-order polynomials of the predictors.

unwanted prosecutions against the power of the court's jurisdiction to deter violent challenges to their incumbency.

The chapter also finds that neither the scaled revenue from exports to OECD DAC member states, domestic primary energy commodity production, nor the known present development capital disbursed by rich dictatorships significantly affects a leader's probability of ratifying the Rome Statute. As past research has shown, democracies, states under a greater rule of law, and states with European or mixed customary-and-European legal traditions are more likely to ratify the Rome Statute than are autocracies, states under a lesser rule of law, and states with Islamic legal traditions.

APPENDIX 4.A: TECHNICAL DETAILS

Variables in the multiple imputation model: The imputation model runs on data observed from 1988(1) to 2008(4). Included variables are all those discussed in the text, interactions specified by Models 4-9, cubic polynomials of the number of quarters since 1998(3), cubic polynomials of the number of quarters a leader has held office, and the following well-observed variables. The World Bank (2010*b*) supplies data on: the total land area in hectares, agricultural land area measured both as hectares and as percent of total land area, arable land area measured as a percent of total land area, permanent crop-land as a percent of total land area, total population, population density, total urban population, urban population as a percent of total population, the tuberculosis rate, a state's drawings from its IMF general reserve account, and primary energy commodity production. The Organisation for Economic Co-Operation and Development International Development Statistics (2010) supplies gross grants from the OECD DAC, gross grants from the EC, and gross grants from Arab states and institutions. Abouharb and Kimball (2007) supply the minimum, maximum, median and median absolute deviation of the infant mortality rate between 1945 and 2002. Marshall and Jaggers (2009) supply the Polity IV regime-type index and their measure of domestic constraints on the executive, XCONST. Cheibub, Gandhi and Vreeland (2010) supply: a variable measuring whether de facto number of political parties in a state is zero, one, or more than one; and two variables measuring whether there has been electoral turnover in the legislative and executive branches. Freedom House (2010) supplies a variable measuring whether the press is unfree, partly free, or free. Half the sum of two scales measuring state terror (relying on separate sources) come from Gibney, Cornett and Wood (2010). Cingranelli and Richards (2010) supply three scales indicating whether extrajudicial killings, disappearances, and torture are frequent, occasional or absent. Their sum is used. Uppsala Conflict Data Program (UCDP) and Centre for the Study of

Civil Wars, International Peace Research Institute, Oslo (PRIO) (2009) supplies: two variables measuring the number of days during which a state experienced an armed civil conflict and the number of days on which a state participated in an internationalized armed civil conflict (1945–1998), as well as an indicator of the incidence of civil or internationalized armed civil conflict, onset and termination of either of those types of conflict, the conflict's type (internationalized-civil or civil), its intensity in the given year, its cumulative intensity, whether the conflict is about territory or control of "the center," and a cubic polynomial of the number of quarters since the current conflict episode began. Lyall and Wilson (2009) supply two variables indicating whether a state fought rebels who used a guerrilla strategy and whether a state fought rebels who received support from a foreign patron-state between 1800 and 1998.

Geopolitical cross-sections: The imputation model specifies temporal trends within geopolitical cross-sections—the fourteen categories listed in Table 4.6. No hard-and-fast geographic, regional, continental or geopolitical classifications exist. The purpose of the geopolitical cross-sections used, however, is to pool states with shared historical backgrounds under the presumption that they follow common time trends in many variables, to limit the within-group rate of missing data, and to keep computation time reasonable. These last two goals, best achieved best by pooling all states into a single "global" region, are in tension with the first goal, best achieved by replacing the geopolitical cross-sections with a vector of state or leader names.

Estimation: All models in this chapter are fit in `lme4` for `R` v. 2.14.1.[30] Each model's relative variance-covariance matrix $\mathbf{\Sigma}$ contains variances of all varying intercepts and is parameterized by an m-dimensional parameter θ, where $m \ll J, Q$ or P. `lme4` finds a generalized linear mixed

[30]For mixed-effects (also known as hierarchical or multilevel) modeling with `lme4` see Bates (2010) and Gelman and Hill (2007).

model's posterior by maximizing the Laplace approximation of its profiled log-likelihood with respect to θ, then finding the maxima of the other parameters conditional on θ.

Further panel-data issues: A common critique of panel-data estimators with varying (i.e., random) intercepts—whether correlation between an unobserved unit-specific and time-invariant confounder and the predictors biases the estimates—is not to be dismissed. But neither is it easily dealt with, due to obstacles in fitting fixed unit-effects to data on non-repeatable events.[31] One further issue, contagion—leader 1's decision to ratify exerting a causal effect on leader 2's decision in proportion to a "distance" between—also poses difficulties, for two reasons. Contagion implies simultaneity in the discrete decisions to ratify, and the concepts of distance proposed in extant literature[32] are choice variables—and thus, are arguably endogenous. These difficulties imply both identification and estimation challenges.[33] The results reported here, therefore, should be robust to some, but not all, typical complications arising in the analysis of observational cross-national data.

Temporal dependence in limited-dependent variable regression models: Temporal dependence in such models is often represented in the following framework: $g(y_i) = a(t_i) + b(x_i)$, where i is a unit "at risk" of experiencing y, g is a link function, a and b are functions of the number of periods t elapsed since the period of origin, and x are predictors. Common choices of a are fixed effects over t, polynomials of t, or predictions of $y \mid t$.[34] In the interest of efficiency, this chapter models temporal dependence using varying intercepts over t. The main conclusions drawn from

[31] Allison and Christakis (2006)

[32] The volume of bilateral trade and joint membership in international governmental organizations are examples. See Goodliffe and Hawkins (2009); Goodliffe et al. (2011)

[33] Conley and Molinari (2007); Franzese, Hays and Schaeffer (2010)

[34] Beck, Katz and Tucker (1998); Beck and Jackman (1998); Box-Steffensmeier and Jones (2004, 69–79); Carter and Signorino (2010).

models in this chapter are unaffected by modeling temporal dependence non-parametrically or with polynomials of t.

APPENDIX 4.B: TABLES AND FIGURES

Table 4.1: Summary of the multiply imputed panel data, 1998(3)–2008(4)

(A) Summary statistics

Variable	Min	33rd	Med.	Mean	67th	Max	SD	MAD
Leader ratifies Rome Statute	0	0	0	0.02	0	1	0.14	0
Leader exits office	0	0	0	0.042	0	1	0.20	0
Civil conflict	0	0	0	0.12	0	1	0.32	0
Quarters of incumbency	0	8	15	27	26	328	35.9	16.3
Quarters of incumbency since 1998(3)	0	4	8	10.7	13	41	9.94	8.90
Aid from DAC and EC	0	1.41	1.72	1.39	1.94	3.49	0.89	0.59
Aid from WB, IMF, etc.	0	0	1.10	0.90	1.58	2.88	0.85	1.47
IMF loans	0	0	0	0.79	1.56	3.60	0.96	0
Total aid and loans	0	1.63	1.86	1.72	2.1	3.61	0.51	0.79
Exports to DAC (% GDP)	0	0	0.01	0.03	0.01	20.94	0.24	0
GDP	1.18	2.84	3.21	3.43	3.71	7.83	1.09	1.02
Democracy	0	0	1	0.59	1	1	0.49	0
Rule of law	−3.60	−0.63	−0.22	−0.06	0.41	2.95	1	1.09
Civil law	0	0	0	0.42	1	1	0.49	0
Common law	0	0	0	0.11	0	1	0.31	0
Mixed law	0	0	0	0.29	0	1	0.45	0
Islamic law	0	0	0	0.18	0	1	0.38	0
Civil conflict, 1988–1998	0	0	0	0.34	1	1	0.47	0

(B) Comparisons of means, matching on presence of the ICC's jurisdiction

	Matched data		Un-matched data	
Measure or predictor	No ICC jurisdiction	ICC jurisdiction	No ICC jurisdiction	ICC jurisdiction
$\triangle L_1$	0.44	0.45	0.32	0.43
Total aid and loans	1.60	1.60	1.80	1.60
Democracy	0.78	0.78	0.49	0.77
Common law	0.11	0.11	$9.8{\cdot}10^{-2}$	0.13
Mixed law	0.26	0.26	0.30	0.27
Islamic law	$5.4{\cdot}10^{-2}$	$5.4{\cdot}10^{-2}$	0.25	$6.2{\cdot}10^{-2}$
Rule of law	0.25	0.30	−0.22	0.22
GDP	3.6	3.6	3.3	3.6
Civil conflict, 1988–1998	0.25	0.25	0.37	0.29
Number of leader-quarters	2,700	2,626	5,294	3,031

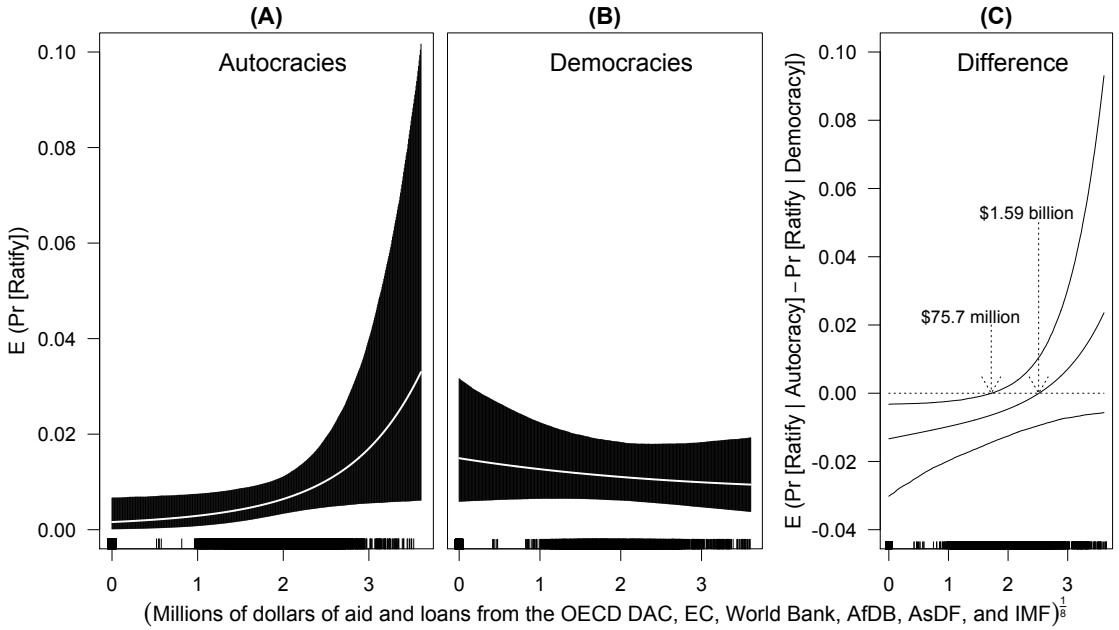
Note: The unit of observation is the leader-quarter. Statistics are taken on ten pooled copies of the multiply-imputed data. All predictors measuring capital receipts and GDP *are denominated in millions of current U.S. dollars and exponentiated by* $\frac{1}{8}$*. In Panel A, SD is standard deviation and MAD is median absolute deviation. Panel B shows means of the predictors used in matching. Continuous predictors are discretized by their interquartile thresholds for the matching model.* $\triangle L_1$*, a balance statistic, is the mean of the differences in* $L_1(f_{\ell_1 \ldots \ell_k})$ *for treated and control units.* $L_1 \in (0,1)$ *and is half the sum of the relative empirical frequency distribution* f *across coordinates* $\ell_1 \ldots \ell_k$ *defined by the cross-tab of* k *discrete predictors.*

Table 4.2: Models predicting whether a leader ratified the Rome Statute, 1998(3)–2008(4): Estimates of β_p and δ_z from varying-intercepts logits

Model number:	(1)		(2)		(3)		(4)		(5)	
Capital as:	Total aid and loans		Aid from DAC and EC		Aid from WB, IMF, etc.		IMF loans		Exports to DAC (% GDP)	
	Est.	SE	Est.	SE	Est.	SE	Est.	SE	Est.	SE
Capital	0.94	0.44	1.02	0.46	0.76	0.30	0.67	0.24	-0.43	2.33
Democracy	2.53	0.99	2.73	0.96	1.63	0.55	1.37	0.47	0.61	0.30
Democracy × Capital	-0.99	0.46	-1.22	0.48	-0.83	0.35	-0.66	0.27	-0.13	2.61
Common law	-0.56	0.37	-0.54	0.37	-0.56	0.37	-0.56	0.36	-0.61	0.38
Mixed law	-0.45	0.27	-0.43	0.27	-0.43	0.27	-0.39	0.26	-0.45	0.27
Islamic law	-1.11	0.45	-1.15	0.45	-0.91	0.46	-0.95	0.45	-1.30	0.45
Rule of law	0.41	0.18	0.32	0.19	0.37	0.15	0.44	0.17	0.36	0.15
GDP	-0.01	0.02	-0.02	0.02	-0.01	0.02	-0.01	0.02	-0.01	0.02
Intercept	-6.17	0.99	-6.15	0.97	-5.42	0.67	-5.16	0.60	-4.35	0.55
Mean and SD of AIC	959.30	1.80	958.20	1.70	957.40	1.90	965.30	2.10	956.70	1.40

Note: The unit of observation is the leader-quarter (N = 5,401). Each model is fit to ten multiply imputed data sets. Post-ratification observations are excluded from analysis. Varying intercepts for 437 leaders, 42 quarters, and 42 quarters of tenure in office since July 1998 are specified. See Panel A of Table 4.1 for summary statistics. The AIC is twice the difference between the number of parameters in the model and the model's log-likelihood. It asymptotically estimates the expected divergence between the model and the "true" model. Smaller AIC statistics correspond to better fit. See, e.g., Burnham and Anderson (2002) for background.

Figure 4.1: The effect of development capital from wealthy democracies on the probability that a leader ratifies the Rome Statute, 1998–2008: Estimates from Model 1



Note: Estimates are based on 10,000 simulations. Horizontal axes show the range of the variable, Total aid and loans. Sloping white lines represent mean simulated expected probabilities. The 95% confidence intervals are the black regions. Panels A–B show that autocrats, but not democrats, are more likely to ratify when they receive more development capital. Panel C plots the difference between the simulations in Panels A and B. Negative (positive) differences imply that a democrat is more likely (less likely) to ratify than an autocrat is. The upper limit of the 95% confidence interval crosses zero at $75.7 million, while the mean crosses zero at $1.59 billion. Jittered tickmarks on the horizontal axes show the spread of leader-quarters over Total aid and loans, revealing leader-quarters receiving no development capital.

Table 4.3: Rome-Statute ratification status of states receiving at or above the 90th percentile ($1.65B) of development capital from rich democracies in at least one quarter, 1998(3)–2008(4)

States parties to the Rome Statute			Not states parties	
Afghanistan	Kenya	Uganda	Algeria	Russia
Argentina	Liberia	Uruguay	Cameroon	Rwanda
Bangladesh	Madagascar	Serbia	China	Sudan
Bolivia	Malawi	Zambia	Egypt	Tanzania
Brazil	Mali		Ethiopia	Thailand
Burkina Faso	Mexico		India	Turkey
Dem. Rep. of Congo	Niger		Indonesia	Ukraine
Ghana	Nigeria		Iraq	Vietnam
Honduras	Panama		Mozambique	
Côte D'Ivoire	Philippines		Nicaragua	
Jordan	Senegal		Pakistan	

Note: Missing data on development capital receipts are multiply imputed.

Table 4.4: Models predicting a leader's exit from office and civil conflict, 1998(3)–2008(4): Estimates of β_p and δ_z from varying-intercepts regressions and quantities of interest derived from the models

(A) Estimates of β_k and δ_z from varying-intercepts logits

Model number:	(6)		(7)	
Dependent variable:	Leader exits office		Civil conflict	
	Est.	SE	Est.	SE
Presence of ICC jurisdiction	-0.28	0.14	-1.12	0.41
Total aid and loans	-0.20	0.59	-0.41	1.33
Democracy	-0.16	1.19	-3.85	4.70
Democracy×Total aid and loans	0.34	0.59	1.88	2.16
Common law	-0.79	0.27	3.42	5.20
Mixed law	-0.27	0.18	2.51	2.14
Islamic law	-0.55	0.40	0.60	2.99
Rule of law	0.21	0.12	-1.70	0.61
GDP	-0.13	0.08	0.04	0.87
Civil conflict, 1988–1998	0.21	0.20	4.55	2.92
Intercept	-2.55	1.20	-11.66	4.25
Mean and SD of AIC of models fit to ten imputed data sets	1979	22.1	1149	544.1

(B): Quantities of interest simulated from Models 6 and 7

Dep. var. (Y)	Quantity	Mean	SD	2.5$^{\text{th}}$ %-ile	97.5$^{\text{th}}$ %-ile
Leader exits office	E[Pr(Y)]	$4.0{\cdot}10^{-2}$	$6.5{\cdot}10^{-3}$	$2.8{\cdot}10^{-2}$	$5.4{\cdot}10^{-2}$
	First difference	$-9.4{\cdot}10^{-3}$	$4.9{\cdot}10^{-3}$	$-2.0{\cdot}10^{-2}$	$-1.9{\cdot}10^{-4}$
	Risk ratio	0.77	0.10	0.58	0.99
	E[Pr(Y | ICC jurisdiction)]	$5.8{\cdot}10^{-2}$	$2.3{\cdot}10^{-2}$	$2.1{\cdot}10^{-2}$	0.11
	ATT	$-1.4{\cdot}10^{-2}$	$5.4{\cdot}10^{-3}$	$-2.50{\cdot}10^{-2}$	$-4.0{\cdot}10^{-3}$
Civil conflict	E[Pr(Y)]	$3.5{\cdot}10^{-4}$	$1.9{\cdot}10^{-3}$	$5.2{\cdot}10^{-8}$	$2.1{\cdot}10^{-3}$
	First difference	$-2.3{\cdot}10^{-4}$	$1.1{\cdot}10^{-3}$	$-1.4{\cdot}10^{-3}$	$-2.2{\cdot}10^{-8}$
	Risk ratio	0.37	0.15	0.16	0.74
	E[Pr(Y | ICC jurisdiction)]	$7.8{\cdot}10^{-2}$	0.18	$1.0{\cdot}10^{-5}$	0.72
	ATT	$-2.7{\cdot}10^{-2}$	$4.2{\cdot}10^{-3}$	$-3.60{\cdot}10^{-2}$	$-1.90{\cdot}10^{-2}$

Note: The unit of observation is the leader-quarter. There are, on average, 5,326 leader-quarters in each of the ten coarsened-exact-matched and multiply imputed data sets: 2,700 leader-quarters not under the ICC's jurisdiction, and 2,626 under it. The matching model conditions on all predictors in Panel A above. Models 6 and 7 specify varying intercepts for 455 leaders, 42 quarters, and 172 quarters of tenure in office. Quantities of interest are calculated from ten pooled vectors of 10,000 simulations each. ATT statistics are simulated from a model with one fixed intercept rather than varying-intercepts. Table 4.1 contains summary statistics of the imputed data and pre- and post-matching balance statistics.

Table 4.5: Fourteen-fold geopolitical classification of states used in the multiple imputation procedure

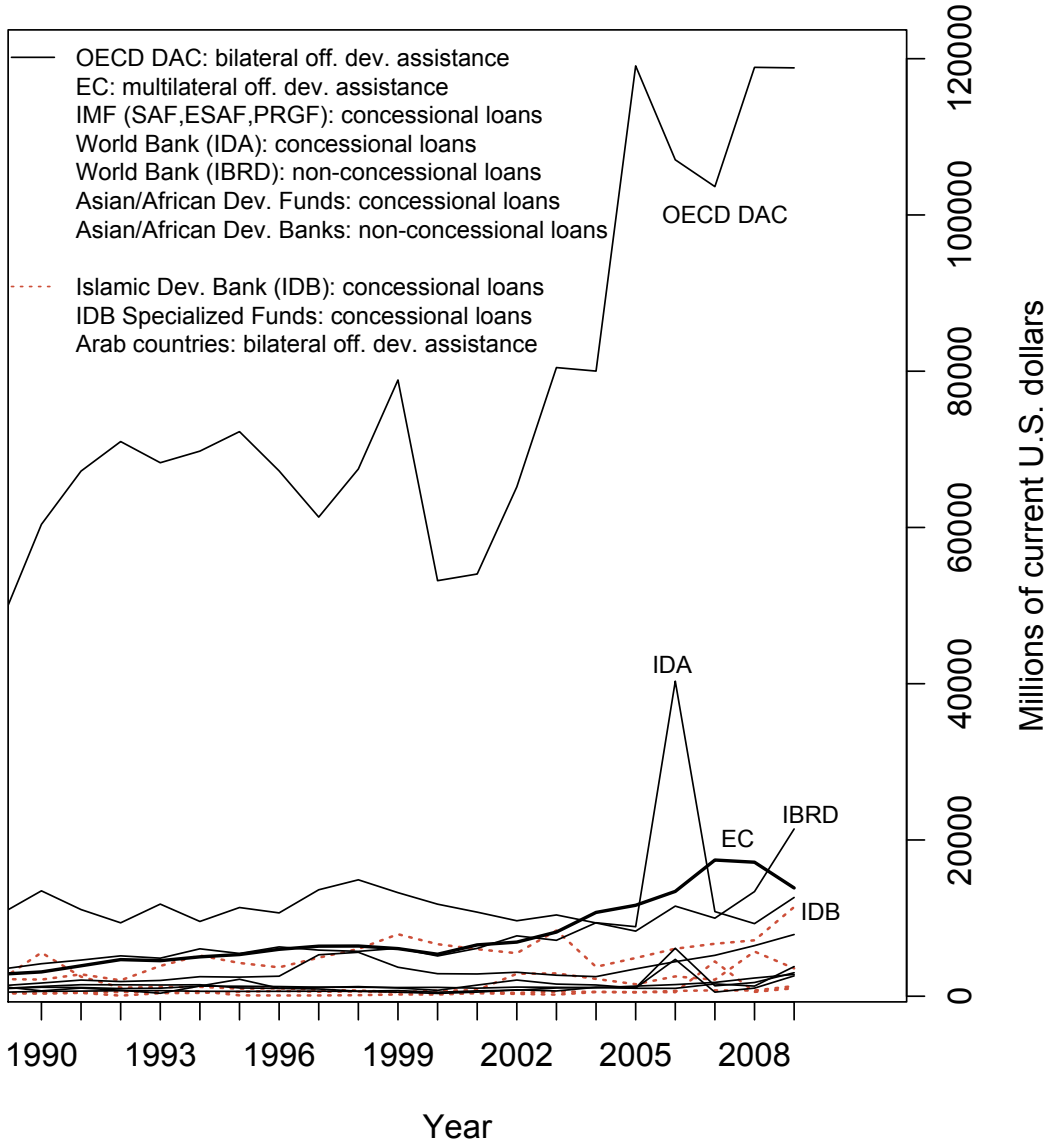
North America:	Mozambique	Turkey
Canada	Namibia	Yugoslavia
United States of America	Niger	*Ex-Sov. Un. & Eur. Sov. Bloc*:
The Caribbean:	Nigeria	Armenia
Antigua & Barbuda	Rwanda	Azerbaijan
Bahamas	Sao Tome and Principe	Belarus
Barbados	Senegal	Bulgaria
Cuba	Seychelles	Czech Republic
Dominica	Sierra Leone	Estonia
Dominican Republic	Somalia	Georgia
Grenada	South Africa	Latvia
Haiti	Swaziland	Lithuania
Jamaica	Tanzania	Moldova
St. Kitts and Nevis	Togo	Poland
St. Lucia	Uganda	Romania
St. Vincent / Grenadines	Zambia	Russia
Trinidad and Tobago	Zimbabwe	Slovakia
Central America:	*Mid. E & N Africa*:	Ukraine
Belize	Algeria	*Ex-Sov. Un. in Asia*:
Costa Rica	Bahrain	Kazakhstan
El Salvador	Egypt	Kyrgyzstan
Guatemala	Iran	Tajikistan
Honduras	Iraq	Turkmenistan
Mexico	Israel	Uzbekistan
Nicaragua	Jordan	*South Asia*:
Panama	Kuwait	Afghanistan
South America:	Lebanon	Bangladesh
Argentina	Libya	Bhutan
Bolivia	Morocco	India
Brazil	Oman	Maldives
Chile	Qatar	Nepal
Colombia	Saudi Arabia	Pakistan
Ecuador	Sudan	Sri Lanka
Guyana	Syria	*Southeast Asia*:
Paraguay	Tunisia	Brunei
Peru	United Arab Emirates	Cambodia
Suriname	Yemen	East Timor
Uruguay	*N, W & Cent. Europe*:	Indonesia
Venezuela	Andorra	Laos
Sub-Saharan Africa:	Austria	Malaysia
Angola	Belgium	Myanmar
Benin	Denmark	Philippines
Botswana	Finland	Singapore
Burkina Faso	France	Thailand

Table 4.6 – continued from previous page

Burundi	Germany	Vietnam
Cameroon	Hungary	*East Asia*:
Cape Verde	Iceland	China
Cent. Af. Rep.	Ireland	Japan
Chad	Italy	Mongolia
Comoros	Liechtenstein	North Korea
Congo	Luxembourg	South Korea
Dem. Rep. of Congo	Monaco	Taiwan
Djibouti	Netherlands	*S. Pac. Ocean island states*:
Equatorial Guinea	Norway	Fed. States of Micronesia
Eritrea	Portugal	Fiji
Ethiopia	Spain	Kiribati
Gabon	Sweden	Marshall Islands
Gambia	Switzerland	Nauru
Ghana	United Kingdom	Palau
Guinea	*Balkans & SE Europe*:	Papua New Guinea
Guinea-Bissau	Albania	Samoa
Ivory Coast	Bosnia and Herzegovina	Solomon Islands
Kenya	Croatia	Tonga
Lesotho	Cyprus	Tuvalu
Liberia	Greece	Vanuatu
Madagascar	Kosovo	*Australia and New Zealand*:
Malawi	Macedonia	Australia
Mali	Malta	New Zealand
Mauritania	Montenegro	
Mauritius	Slovenia	

Note: To aid comparison, the names of the states is the table match those in Sarkees and Wayman (2010) or—if they are not included in that compendium—in The World Factbook *of the Central Intelligence Agency of the United States of America (2012). Forward slashes indicate the words "and the."*

Figure 4.2: Development capital disbursed by democracies and autocracies, 1990–2008



Note: The unit of observation is the year. Solid lines indicate disbursements by wealthy democracies or multilateral institutions where wealthy democracies form large voting blocs. Dotted lines indicate disbursements by autocracies and multilateral institutions governed by them. Flows are current—not inflation adjusted. Capital disbursed by industrialized democracies comprising the Development Assistance Committee (DAC) of the Organisation for Co-operation and Development (OECD) has, since 1960, increased to between twenty and forty times that disbursed by Arab states acting alone or the largest organizations not entirely governed by democracies: the Islamic Development Bank (IDB), Asian Development Bank, and African Development Bank. The World Bank (International Bank for Reconstruction and Development [IBRD] and International Development Association [IDA]) and European Commission of the European Union disburse less than the OECD DAC does, but as a group, considerably more than autocracies do. The International Monetary Fund (IMF) disburses a much smaller amount of ODA; the bulk of its lending are funds available at non-concessional rates (not shown). Source: Organisation for Economic Co-Operation and Development International Development Statistics (2010).

CHAPTER 5

THE CONSEQUENCES OF INDICTMENT

5.1 INTRODUCTION

This chapter tests the three hypotheses introduced in section 3.4.3 of chapter 3 with data on the same 579 leaders that chapter 4 introduced. It extends the scope of analysis to all modern international criminal courts, presenting case studies of economic time series from Bosnia and Herzegovina, Serbia,[1] Liberia, and Sudan.

The theory presented in chapter 3 implies that indictments of international criminal courts should force leaders from office, reduce the state's receipts of development capital, and reduce domestic production. Development capital and domestic production should, however, rebound following the exit of indicted leaders. Finally, these consequences of international indictments should exceed the consequences of public knowledge of prosecutable human-rights abuses and the consequences of domestic human-rights trials.

This chapter presents three new findings that are consistent with those claims. First, indictments of incumbent leaders by international criminal courts force those leaders out of office—so quickly, in fact, that flows of development capital to their states have historically had insufficient time to fall. Domestic production, however, falls immediately. Second, a leader who

[1]Throughout this chapter, the word, Serbia will be used to refer to the Federal Republic of Yugoslavia, Serbia and Montenegro, and to the Republic of Serbia.

would counterfactually remain in office under indictment imposes significant opportunity costs on the state: lost development capital and lost domestic production. Third, neither publicly observable and prosecutable human-rights abuses, the latent forces driving them, nor holding a transitional human-rights trial affects leaders' survival, the receipt of development capital, or domestic production to such a large and consistent degree. In fact, human-rights abuses reduce domestic production only when the abuses are frequent and unambiguous. Even under these extreme conditions, they do not reduce the receipt of development capital.

The chapter proceeds in six parts. Section 5.2 reviews the hypotheses to be tested. Section 5.3 introduces new data on states whose nationals have been under investigation by international criminal courts, on indictments of incumbent leaders by those courts, and a latent scale of human-rights abuses derived from several sources of manifest data. Section 5.4 presents the empirical strategy and estimation framework. These rely on varying-intercepts regression analysis of multiply imputed and matched data. Section 5.5 interprets the regression results. Section 5.6 studies Bosnia and Herzegovina's, Serbia's, Liberia's, and Sudan's receipts of development capital from rich democracies, exports to those democracies, and domestic production. Section 5.7 concludes. All tables and figures are in Appendix 5.A.

5.2 REVIEW OF HYPOTHESES

The hypotheses developed in chapter 3 and tested below are as follows.

HYPOTHESIS 4: Indictment of an incumbent leader by an international criminal court increases the probability that the incumbent exits office. The magnitude of this effect is greater than the magnitude of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on the incumbent's probability of exit.

HYPOTHESIS 5: Indictment of an incumbent leader by an international criminal court decreases the state's receipt of development capital from rich democracies. The deposition of the indictee increases receipts of such capital. The magnitudes of these two effects exceed the magnitudes of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on capital receipts.

HYPOTHESIS 6: Indictment of an incumbent leader by an international criminal court decreases the state's GDP. The deposition of the indictee increases GDP. The magnitudes of these two effects exceed the magnitudes of the effects of (a) serious human-rights abuses and (b) holding a domestic human-rights trial on GDP.

5.3 OPERATIONALIZATION AND DATA

This chapter continues the analysis the 579 leaders who held office during or after 1998, when the International Criminal Court was established, but it extends the panels back to 1993, the first year since 1946 in which an international criminal court (the ICTY) began prosecuting. There are a total of 10,934 leader-quarters in this expanded data set, with a mean of 18.9 quarters per leader. The data were multiply imputed according to the procedure outlined in chapter 3.[2] Summary statistics are in Table 5.1.

The three dependent variables in this chapter's regressions are *Leader exits office*, *Total aid and loans*, and *GDP*. They also feature in four case studies, alongside *Aid from DAC and EC*, *Aid from WB, IMF, etc.*, *IMF loans*, and *DAC exports*. Chapter 4 introduced each.

The first set of explanatory variables appearing in this chapter's analysis are *International*

[2]Regressions reported in section 5.5 below could not be fit to one of the ten data multiply imputed sets. This should pose few problems, since King et al. (2001) and Honaker and King (2010) suggest that pooling regression results from three to five multiply-imputed data sets is adequate.

indictment and *Post-deposition period*. The former equals one if an incumbent is indicted by an international criminal court, while the latter equals one in all periods following the indicted incumbent's exit from office.

Operationalizing these variables requires first identifying international criminal courts, then identifying the universe of investigations by international criminal courts, the states with nationals under investigation, and finally whether any incumbents were indicted. Identifying international criminal courts—courts that have multilateral origins and that prosecute natural persons—and their investigations is straightforward.[3] Non-ICC investigations are considered to have started when the court or its precursory investigations commission began work. ICC investigations are considered to have started when the ICC Office of the Prosecutor began preliminary examination of evidence.[4] The end of investigations is determined by public press releases from the courts. States are considered to have nationals under investigation by these courts if their nationals participated in the armed conflict that the court is investigating.[5] The few indictments of incumbents are straightforward to identify.[6] Table 5.2 displays these data.

The second set of explanatory variables appearing in this chapter measures public knowledge

[3]Beigbeder (2011) and Schabas (2011) list the courts. In addition to the ICTY, ICTR, SCSL, and STL, the list of these courts includes the Special Panels of the Dili District Court and the Extraordinary Chambers of the court of Cambodia. These sources plus press releases from the website of each court were used to identify their investigations.

[4]This preliminary examination differs from a formal "situation." An ICC pre-trial chamber must authorize the prosecutor's request to open a situation—a more formal set of investigations, which is expected to produce indictments—based on the preliminary examination.

[5]In the coalition wars in Iraq and Afghanistan, only states with cumulative deployments of more than 1,000 soldiers during the conflict are listed. Deployment for these wars and those in central Africa were verified with the website of the North Atlantic Treaty Organization's International Security Assistance Force, Clodfelter (2008), Cordesman (2001), Peters (2001), Cimbala and Forster (2010), and Prunier (2009).

[6]The only marginal case involves Radovan Karadžić, who led Republika Srpska from 1992 to 1996. Archigos (Goemans, Gleditsch and Chiozza, 2009) considers Alija Izetbegović to have been effective leader of Bosnia and Herzegovina in 1992–1996, but with little documented justification. This study considers Karadžić and Izetbegović to have been effective co-leaders on a de facto basis before and after the Nov. 1995 Dayton Agreement.

of serious human-rights abuses, which often plausibly meet the criteria of crimes against humanity or genocide enumerated by customary international law, treaties, and international courts. Three variables (*Disappearances*, *Torture*, and *Killings*) measures manifestations of the most prosecutable human-rights abuses committed by state authorities—enforced disappearances, torture, and extrajudicial killings—in 0–2 ordinal scales where class 2 means a high frequency.[7] The latent scale confounding correlations all three manifest scales—the variable responsible for co-movements in the frequencies of prosecutable rights violations—is another useful operationalization. Latent Class Analysis (LCA) is used to estimate it.[8] Levels of the more abstract and multi-dimensional concept of "state terror" captured in the five-fold Political Terror Scale (PTS) are defined in Table 5.3.[9] Two versions of the PTS exist[10] and there are relatively few observations at each scale's most extreme levels, so LCA is used to reduce the pair to a single three-fold scale incorporating their joint information. The resultant variables are *Latent CIRI* and *Latent PTS*.[11] When convenient, classes of the five variables are referred to as *Abuses class c* for $c \in \{0,1,2\}$.

The last set of explanatory variables of interest is meant to tap the harmful information about incumbents that domestic human-rights trials may reveal. One comprehensive survey of prosecutions of heads-of-state reports zero charges against incumbents for human-rights crimes

[7] Cingranelli and Richards (2010)

[8] LCA is comparable to continuous-data reduction methods widely used in political science (Clinton, Jackman and Rivers, 2004), but is appropriate for polytomous data. Latent classes are nominal, but the multi-dimensional scatterplot of manifest variables stratified by the latent variables suggests that they can be considered ordinal. Observations are classified on the 0–2 scale according to their modal posterior probabilities of class membership. Estimates are obtained with routines developed by Linzer and Lewis (2011*b*) as described by Linzer and Lewis (2011*a*), using the authors' suggestion for how to avoid models that identify local maxima in the likelihood.

[9] Gibney, Cornett and Wood (2010)

[10] One of these relies on reports from Amnesty International. The other relies on reports from the United States Department of State.

[11] Interactions and sums of the variables are also specified as manifest variables.

in the 1990–2006 period.[12] Yet human-rights trials may reveal harmful information about incumbents irrespective of whether they indict them. Human-rights prosecutions may offer an informal indictment of the regime, despite focusing on lower echelons of responsibility. A universal list of domestic human-rights trials does not exist, unfortunately. Hunjoon Kim and Kathryn Sikkink, however, argue that human-rights trials in transitional states are freer, fairer and less politicized than trials in authoritarian states, and far more frequent than are such trials in consolidated democracies.[13] By this logic, if any sort regularly occurring domestic trial reveals useful information about an incumbent, it is a trial happening in a democratizing state. *Transitional HR trial*, coded from their data, equals one when a democratizing state holds a domestic human-rights trial, and is otherwise zero.

Finally, variables serving as controls for potential confounders in the regressions below are *Presence of ICC jurisdiction*, *Rule of law*, *Democracy*, *Islamic law*, and *Civil conflict*. Chapter 4 introduced these variables and their data sources. Two other control variables are introduced here. The first measures a state's recent history of civil conflict, which may confound relationships between with the explanatory variables of interest and leaders' tenure in office, the receipt of development capital, and GDP. This variable is *Recent civil conflict*. It equals one if a state had a post-1988 armed civil conflict in any of the previous eight quarters.[14] These controls are meant to measure a necessary condition for international criminal court indictments (serious human-rights abuses), factors increasing their probability (civil conflict, the ICC's jurisdiction), and the determinants of a state's choice to ratify the Rome Statute.[15] The second variable, *Population*,

[12]Lutz and Reiger (2009)

[13]Kim and Sikkink (2010). See also Sikkink (2011), which partly based on the article.

[14]Thus, if any of the eight lags of *Civil conflict* equals one, then so does *Recent civil conflict*. The variable is coded zero otherwise.

[15]Powell and Mitchell (2008); Simmons and Danner (2010); Chapman and Chaudoin (2011)

measures a state's population and is meant to improve model fit.[16]

5.4 EMPIRICAL STRATEGY AND ESTIMATION FRAMEWORK

This chapter adopts an empirical strategy similar to that introduced in chapter 4. Before estimating each regression testing Hypotheses 4–6, each of the multiply imputed data sets is pre-processed by coarsened-exact matching on the relevant treatment variable to reduce pre-treatment covariate imbalance, reduce extrapolation bias, and eliminate lack of overlap. This is meant to reduce bias and variance in causal effect estimates, given the premise of selection on observables.[17] Continuous predictors are coarsened into three categories at their 33rd and 67th percentiles for each matching model. Regressions are fit to each matched data set and their estimates pooled according to Rubin's rules.[18]

The regressions testing Hypothesis 4, where the dependent variable $y =$ *Leader exits office* for leader-quarters $i = 1 \ldots N$, are logit with varying intercepts for leaders $j = 1 \ldots J$, years $t = 1 \ldots T$, and periods of incumbency $m = 1 \ldots M$. The intercepts are considered to be distributed as independent Multivariate Normals.[19] Explanatory variables X are indexed $p = 1 \ldots P$ and controls Z are indexed $k = 1 \ldots K$. Formally:

$$y_{i,j,t,m} \sim \text{Bernoulli}(\text{logit}^{-1}[X_p\beta_p + Z_k\delta_k + \alpha_j + \gamma_t + \phi_m]), \tag{5.1}$$

$$\alpha_j \sim \mathcal{N}(0,\ \sigma_\alpha^2),\ \gamma_t \sim \mathcal{N}(0,\ \sigma_\gamma^2),\ \phi_m \sim \mathcal{N}(0,\ \sigma_\phi^2). \tag{5.2}$$

[16] The World Bank (2010*b*)

[17] Iacus, King and Porro (2011); King and Zeng (2006)

[18] As in chapter 4, estimates are pooled with routines by Lumley (2010) and Imai, King and Lau (2006).

[19] Models are fit in R v. 2.14.1 with routines by Bates, Maechler and Bolker (2011) and Imai, King and Lau (2006). See Bates (2010) and Gelman and Hill (2007) for background. Results did not appreciably differ when specifying M fixed incumbency-period effects or polynomials of m (Carter and Signorino, 2010).

Controls in regressions testing Hypothesis 4, which also enter as predictors in the corresponding matching model, are $Z\delta = \textit{Presence of ICC jurisdiction} \cdot \delta_1 + \textit{GDP} \cdot \delta_2 + \textit{Rule of Law} \cdot \delta_3 + \textit{Democracy} \cdot \delta_4 + \textit{Islamic law} \cdot \delta_5 + \textit{Recent civil conflict} \cdot \delta_6 + \textit{Civil conflict} \cdot \delta_7 + \textit{Latent PTS class } 1 \cdot \delta_9 + \textit{Latent PTS class } 2 \cdot \delta_{10}$. The final two products with *Latent PTS class c* are omitted when the predictors in $X\beta$ measure human-rights abuses.

The Normal regressions testing Hypotheses 5–6, where *y* is either *Total aid and loans* or *GDP*, follow a similar framework, but with varying intercepts only for leaders and years. A one-year lag of *y* within each leader *j*'s panel is meant to account for persistence that is not captured by the leader-specific intercept. Formally:

$$y_{i,j,t} = y_{i,j,t-1}\lambda + X_p\beta_p + Z_k\delta_k + \alpha_j + \gamma_t + \varepsilon_{i,j,t}, \tag{5.3}$$

$$\alpha_j \sim \mathcal{N}(0,\ \sigma_\alpha^2),\ \gamma_t \sim \mathcal{N}(0,\ \sigma_\gamma^2),\ \varepsilon_i \sim \mathcal{N}(0, \sigma^2). \tag{5.4}$$

The same list of controls in regressions testing Hypothesis 4 are in regressions testing Hypotheses 5–6. *Population* also enters the list—to improve model fit rather than to address concerns about confounding. Thus, $Z\delta = \textit{Presence of ICC jurisdiction} \cdot \delta_1 + \textit{GDP} \cdot \delta_2 + \textit{Rule of Law} \cdot \delta_3 + \textit{Democracy} \cdot \delta_4 + \textit{Islamic law} \cdot \delta_5 + \textit{Recent civil conflict} \cdot \delta_6 + \textit{Civil conflict} \cdot \delta_7 + \textit{Latent PTS class } 1 \cdot \delta_9 + \textit{Latent PTS class } 2 \cdot \delta_{10} + \textit{Population} \cdot \delta_{11}$. The product with *GDP* is omitted when $y = \textit{GDP}$, and as above, the products with *Latent PTS class c* are omitted when $X\beta$ has predictors measuring human-rights abuses.

5.5 RESULTS

5.5.1 *Hypothesis 4*

Panel A of Table 5.4 reports results of Models 1–7 testing Hypothesis 4, where y is *Leader exits office*. Model 1 estimates the effect of indictments by international criminal courts on the leader's risk of exit, for $X\beta = International\ indictment \cdot \beta_1$. Models 2–6 estimate the effects of the five categorical measures of serious human-rights abuses on the leader's risk of exit, for the generic term $X\beta = Abuses\ class\ 1 \cdot \beta_2 + Abuses\ class\ 2 \cdot \beta_3$, where β_2 and β_3 are specific to each model but, for parsimony, not indexed. Model 7 estimates the effect of having a transitional human-rights trial on the leader's risk of exit, for $X\beta = Transitional\ HR\ trial \cdot \beta_4$. If Hypothesis 4 is correct, then β_1 should be positive and substantively larger than β_2, β_3, and β_4.

The estimate of β_1 in Model 1 is positive, significant, and at least three times larger than the estimates β_2, β_3, and β_4 in Models 2–7.[20] Whereas serious human-rights abuses have small, insignificant, and inconsistently signed effects on the leader's probability of exit, a transitional human-rights trial has a positive and significant effect.

In summary, domestic human-rights trials may help force a leader from office,[21] but indictments by an international criminal courts are thrice as effective. Serious human-rights abuses alone do not affect a leader's chance of losing office. These results are consistent with Hypothesis 4.

[20]Throughout, the term significant means $\hat{\beta}_p \div SE(\hat{\beta}_p) \geq 1.96$.

[21]This finding is consistent with the theory that such trials may help deter human-rights abuses (Kim and Sikkink, 2010; Sikkink, 2011).

5.5.2 *Hypothesis 5*

Panel B of Table 5.4 reports results of Models 8–15 testing Hypothesis 5, where y is *Total aid and loans*. Model 8 estimates the effect of indictments by international criminal courts on capital receipts, for $X\beta = International\ indictment \cdot \beta_5$. Model 9 estimates the effect of the post-deposition period on capital receipts, for $X\beta = Post\text{-}deposition\ period \cdot \beta_6$. Models 10–14 estimate the effects of the five categorical measures of serious human-rights abuses on capital receipts, for the generic term $X\beta = Abuses\ class\ 1 \cdot \beta_7 + Abuses\ class\ 2 \cdot \beta_8$. Model 15 estimates the effect of having a transitional human-rights trial on capital receipts, for $X\beta = Transitional\ HR\ trial \cdot \beta_9$. If Hypothesis 2 is correct, then β_5 should be negative, β_6 should be positive, and the magnitude of each should exceed the magnitudes of β_7, β_8, and β_9.

The estimate of β_5 in Model 8 is positive—the unexpected direction—and significant, while the estimate of β_6 in Model 9 is positive and significant. The magnitudes of these effects exceed those of β_7, β_8, and β_9. Serious human-rights abuses and holding a transitional human-rights trial generally have small and insignificant effects on capital receipts in the wrong direction. Model 13 demonstrates, for example, that frequent torture significantly increases the state's development capital receipts.

In summary, the large and positive estimate of β_6 is consistent with Hypothesis 5. Rich democracies reward regimes following the deposition of incumbents whom international criminal courts indict—had those indictees remained in office, they would have received lesser sums of development capital.

Although the positive sign on the estimate of β_5 is unexpected, it makes better sense in light of the finding that indictments force incumbents from office (Model 1). To put things concretely, consider Table 5.2. It shows that every incumbent indicted by an international criminal court

between 1993 and 2008 lost office within six quarters of his indictment.[22] Meanwhile, states commit to development capital disbursements at least a year in advance. It is therefore reasonable to expect them to adjust to international indictments over a longer time-frame than six quarters, by which time the indicted incumbent will have probably exited office. This suggests, first, that an indictee holding office a longer time-frame should experience a delayed drop in the receipt of development capital, and second, that economic actors hedging against this risk will make decisions that hurt domestic production during periods when the incumbent is indicted. The next two sub-sections explore these possibilities.

5.5.3 *Hypothesis 6*

Panel C of Table 5.4 reports results of Models 16–23 testing Hypothesis 6. Model 16 estimates the effect of indictments by international criminal courts on GDP, for $X\beta = International\ indictment \cdot \beta_{10}$. Model 17 estimates the effect of the post-deposition period on GDP, for $X\beta = Post\text{-}deposition\ period \cdot \beta_{11}$. Models 18–22 estimate the effects of serious human-rights abuses on GDP, for the generic term $X\beta = Abuses\ class\ 1 \cdot \beta_{12} + Abuses\ class\ 2 \cdot \beta_{13}$. Model 23 estimates the effect of a transitional human-rights trial on GDP, for $X\beta = Transitional\ HR\ trial \cdot \beta_{14}$. If Hypothesis 3 is correct, then β_{10} should be negative, β_{11} should be positive, and the magnitudes of both should exceed those of β_{12}, β_{13}, and β_{14}.

The estimate of β_{10} in Model 16 is negative and significant, while the estimate of β_{11} in Model 17 is positive and significant. Their magnitudes are at least twice as large as those of β_{12}, β_{13}, and β_{14}. Models 18, 19 and 21 demonstrate that the most serious human-rights abuses have

[22] In the post-2008 period, Muammar Gaddafi and Saif al-Islam Gaddafi, lost office in the year of their indictments, while Omar al-Bashir remains in office more than three years after his indictment. Given the absence of published histories of regime insiders' motivations for defecting from the ruling regime in 2011, it is too early to say whether ICC indictments played a serious role in the downfall of the Gaddafi family.

insignificant effects on a state's GDP. However, the estimates of β_{13} in Models 20 and 22, which multiply *Disappearances class 2* and *Killings class 2* are negative and significant. The size of these estimates are comparable to the size of the significant estimate of β_{14} in Model 23, which measures the effect of having a transitional human-rights trial on GDP.

In summary, disappearing people, killing them extrajudicially, and the existence of a transitional human-rights trial each reduce the state's GDP. But an international criminal court's indictment of the incumbent reduces GDP to a greater extent, and deposing the incumbent greatly increases GDP. These results are consistent with Hypothesis 6. Moreover, they demonstrate the effect of indictments on economic indicators that arguably respond more rapidly than development capital flows do.

5.6 CASE STUDIES OF STATES WHOSE INCUMBENTS WERE INDICTED

Case studies of indicted incumbents can shed additional light on the effect of international indictments on state revenues. Each column of Figure 5.1 displays time series for one of four states—Serbia, Bosnia and Herzegovina, Liberia, and Sudan—whose incumbents were indicted by either the ICTY, SCSL, or ICC (see Table 5.2). The figure's rows display the incumbents' tenure in office, development capital receipts, GDP, and exports to the DAC.[23] Case studies are not feasible for three other states—Republic of Serbian Krajina, Kosovo, and Libya—whose incumbents faced indictments briefly before they exited office. Croatia conquered the Republic of Serbian Krajina in 1995. Statistics on Kosovo begin in 2008, which is well after the 2005 indictment of Ramush Haradinaj. Statistics for Libya during the Gaddafi family's indictments in 2011 are not yet available. With the exception of ex-leaders from these three states, the histories

[23] In Sudan's case total exports are shown.

of each leader's wars, indictments, depositions, and trials are told elsewhere.[24]

The time series in Figure 5.1 generally suggest that a leader facing international indictments forestalls rising sources of state revenue and rapidly exits office, after which state revenues begin to trend upward—dramatically, at times. When a leader remains in office despite the indictment, as al-Bashir has, rising sources of state revenue stagnate or fall. This summary of the cases is consistent with Hypotheses 4–6, but each case differs in the details.

Consider Serbia and Bosnia and Herzegovina, first. Indictments of Milošević and Karadžić—each resulting in the leader's rapid exit—fell during transitions from periods of low development capital receipts and low GDP to periods of high development capital receipts and high GDP. During Milošević's and Karadžić's indictment periods, rising levels of aid from the DAC and EC stagnated for Serbia and reversed direction for Bosnia, declining by about $200M from 1995 to 1996. Meanwhile, aid from The World Bank and IMF remained nonexistent for Serbia and increased by about $100M for Bosnia only in the year of Karadžić's deposition. IMF loans remained low for Serbia, while levels of loans to Bosnia, which had been rising for several years, stagnated and reversed direction. Serbia's GDP declined slightly through Milošević's indictment period, while Bosnia and Herzegovina's GDP increased slightly during Karadžić's. Serbian and Bosnian leaders succeeding the deposed incumbents saw skyrocketing development capital receipts and GDP, which remained high thereafter. Serbia's and Bosnia and Herzegovina's exports to the DAC, on the other hand, did not appear to respond to the ICTY's indictments, nor did they rise following the depositions of Milošević and Karadžić.

Next, consider Liberia. The state's receipt of development capital, consisting of about $400M per year of DAC/EC aid and IMF loans, remained stable during Taylor's indictment period. The

[24]See, e.g., Peskin (2008), Boas (2007), Armatta (2010), Mamdani (2009), Beigbeder (2011), and Schabas (2011).

state's rising exports to the DAC, however, took a $400M nosedive just prior to Taylor's indictment period but recovered when he left office. Taylor's indictment also coincided with a $150M drop in Liberia's GDP, which had risen by $200M over the previous six years. Liberia's GDP began its recovery one year after Taylor's deposition, surpassed its pre-indictment level three years later, and continued its upward trend into 2008. Within a few years of Taylor's exit from office, Liberia's aid receipts from the DAC and EC began a slight upward trend, but in 2007–2008 the state received around $2B of aid and $800M of IMF loans.

Finally, consider Sudan, where al-Bashir's indictment period—14 quarters as of 2012(2)—is the longest on record and allows development capital flows extra time to adjust. Due to the recency of the case, the indictment period in Figure 5.1 covers only the eight quarters of 2009–2010, missing more than a year of the indictment period. Sudan's receipt of aid from the DAC, EC, The World Bank, and IMF had risen by more than $1B from the start of the ICC's investigations in 2004, but suddenly declined in 2009–2010, falling by around half a billion dollars. IMF loans to the state, which had declined throughout the period of ICC investigations, remained at their nadir throughout the indictment period. Sudan's exports[25] and GDP, like its aid receipts, had followed a steady upward trend since 2004—in fact, since well before then. But in 2009 both trends stagnated. Exports fell by almost $5B in the year of the indictment. They rebounded the next year, but to $700M less than their pre-2009 level. Sudan's GDP fell by $3B in 2009, moderately rebounded in 2010, and by one estimate grew just $1B in 2011.[26]

[25] Because the 2009–2010 period falls outside of the data set used throughout, data on Sudan's exports refer to the state's total known exports rather than its multiply imputed exports to the DAC.

[26] *The World Factbook* of the Central Intelligence Agency of the United States of America (2012)

5.7 CONCLUSION

This chapter tested the final three hypotheses of chapter 3 with panel data on 579 leaders who held office between 1993 and 2008. It also studied the economic histories of four states whose incumbents have been indicted by international criminal courts since 1993.

Specifically, the chapter presented three new empirical results. First, indictments of incumbent leaders by international criminal courts force those leaders out of office—so quickly, in fact, that flows of development capital to their states have historically had insufficient time to fall. Domestic production, however, falls immediately. Second, a leader who would counterfactually remain in office under indictment imposes significant opportunity costs on the state: lost development capital and lost domestic production. This is evident in the increases in these variables caused by the deposition of a leader under indictment.

Third, neither publicly observable and prosecutable human-rights abuses, the latent forces driving them, nor holding a transitional human-rights trial affects leaders' survival, the receipt of development capital, or domestic production to such a large and consistent degree. In fact, human-rights abuses reduce domestic production only when the abuses are frequent and unambiguous. Even under these extreme conditions, they do not reduce the receipt of development capital.

APPENDIX 5: TABLES AND FIGURES

Table 5.1: Summary of the multiply imputed panel data, 1993(1)–2008(4)

Variable	Min	33rd	Med.	Mean	67th	Max	SD	MAD
Leader exits office	0	0	0	0.03	0	1	0.18	0
Quarters of incumbency	0	8	15	28.23	26	328	37.54	17.79
Total aid and loans	0	1.63	1.85	1.72	2.09	3.61	0.77	0.51
Aid from DAC and EC	0	1.43	1.72	1.40	1.94	3.49	0.87	0.57
Aid from WB, IMF, etc.	0	0	1.06	0.88	1.55	2.88	0.85	1.54
IMF loans	0	0	0	0.80	1.59	3.60	0.97	0
Exports to DAC	0	1.92	2.20	2.36	2.57	6.69	0.81	0.70
GDP	1.18	2.81	3.16	3.39	3.63	7.83	1.08	0.96
International indictment	0	0	0	0	0	1	0.04	0
Post-deposition period	0	0	0	0.01	0	1	0.11	0
Transitional HR trial	0	0	0	0.06	0	1	0.25	0
Presence of ICC jurisdiction	0	0	0	0.28	0	1	0.45	0
Recent civil conflict	0	0	0	0.16	0	1	0.36	0
Civil conflict	0	0	0	0.12	0	1	0.33	0
Latent PTS class 0	0	0	0	0.30	0	1	0.46	0
Latent PTS class 1	0	0	0	0.32	0	1	0.47	0
Latent PTS class 2	0	0	0	0.37	1	1	0.48	0
Latent CIRI class 0	0	0	0	0.42	1	1	0.49	0
Latent CIRI class 1	0	0	0	0.38	1	1	0.49	0
Latent CIRI class 2	0	0	0	0.20	0	1	0.40	0
Disappearances class 0	0	1	1	0.79	1	1	0.41	0
Disappearances class 1	0	0	0	0.13	0	1	0.34	0
Disappearances class 2	0	0	0	0.08	0	1	0.27	0
Torture class 0	0	0	0	0.18	0	1	0.39	0
Torture class 1	0	0	0	0.39	1	1	0.49	0
Torture class 3	0	0	0	0.42	1	1	0.49	0
Killings class 0	0	0	1	0.51	1	1	0.50	0
Killings class 1	0	0	0	0.31	0	1	0.46	0
Killings class 2	0	0	0	0.18	0	1	0.38	0
Population	$3{\cdot}10^4$	$3{\cdot}10^5$	$6\cdot10^6$	$4\cdot10^7$	$1{\cdot}10^7$	$2\cdot10^9$	$1{\cdot}10^8$	$8\cdot10^6$
Democracy	0	0	1	0.55	1	1	0.50	0
Rule of law	-3.35	-0.62	-0.22	-0.07	0.38	3.14	0.99	1.07
Islamic law	0	0	0	0.19	0	1	0.39	0

Note: The unit of observation is the leader-quarter. There are 579 leaders and 10,934 leader-quarters. All statistics are taken on ten pooled copies of the multiply-imputed data. All variables measuring capital receipts, exports, and GDP are denominated in millions of current U.S. dollars and exponentiated by $\frac{1}{8}$*. SD refers to the standard deviation and MAD to the median absolute deviation.*

Table 5.2: Investigations of atrocities by international criminal courts, 1948–2012

	(A) Non-ICC investigations			
Court	*State of nationals under investigation*	*Start*	*End*	*Incumbent indicted*
ICTY	Federal Republic of Yugoslavia, Serbia and Montenegro, Republic of Serbia	1993		1999(2)–2000(4)
ICTY	Bosnia and Herzegovina	1993		1995(3)–1996(3)
ICTY	Republic of Serbian Krajina	1993		1995(3)
ICTY	Kosovo	1993		2005(1)
ICTY	Croatia, Slovenia, Montenegro, Macedonia	1993		
ICTY	United States of America, United Kingdom, France, Germany, Italy	1999		
ICTR	Rwanda, France	1994		
SPDDC	East Timor, Indonesia	2000	2005	
SCSL	Sierra Leone	2001		
SCSL	Liberia	2001		2003(1)–2003(3)
ECCC	Cambodia	2003		
STL	Lebanon, Iran, Syria	2005		
	(B) ICC investigations			
Situation authorized	*State of nationals under investigation*	*Start*	*End*	*Incumbent indicted*
No	Venezuela	2002	2006	
No	Iraq, United States of America, United Kingdom, Australia, Italy, Netherlands, Spain, Poland, Ukraine, Georgia	2003	2006	
Yes	Democratic Republic of the Congo, Central African Republic, Uganda, Rwanda	2004		
Yes	Sudan	2004		2009(1)–present
Yes	Chad, South Sudan	2004		
No	Colombia	2006		
No	Afghanistan, Pakistan, United States of America, United Kingdom, Australia, Canada, France, Germany, Italy, Netherlands, Spain, Poland, Ukraine, Turkey, Georgia	2007		
No	Georgia, Russia	2008		
No	Nigeria, Guinea, Israel, Honduras	2009		
No	North Korea	2010		
Yes	Kenya	2010		
Yes	Côte D'Ivoire	2011		
Yes	Libya	2011		2011(2)–2011(4)

Note: ICTY stands for International Criminal Tribunal for the Former Yugoslavia, ICTR stands for International Criminal Tribunal for Rwanda, SPDDC stands for Special Panels of the Dili District Court, SCSL stands for Special Tribunal for Sierra Leone, ECCC stands for Extraordinary Chambers of the court of Cambodia, and STL stands for the Special Tribunal for Lebanon. The ICC calls its formal investigations situations. Situations are authorized by one of the court's Pre-Trial Chambers. The Federal Republic of Yugoslavia's indictee is Slobodan Milošević. Bosnia and Herzegovina's indictee is Radovan Karadžić. Republic of Serbian Krajina's indictee is Milan Martić. Kosovo's indictee is Ramush Haradinaj. Liberia's indictee is Charles Taylor. Sudan's indictee is Omar al-Bashir. Libya's indictees are Muammar al-Gaddafi and Saif al-Islam Gaddafi. Dates of indictment refer only to dates in which the person was also an incumbent leader.

Table 5.3: Levels of The Political Terror Scale

1	"Countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare."
2	"There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beatings are exceptional. Political murder is rare."
3	"There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted."
4	"Civil and political rights violations have expanded to large numbers of the population. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas."
5	"Terror has expanded to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals."

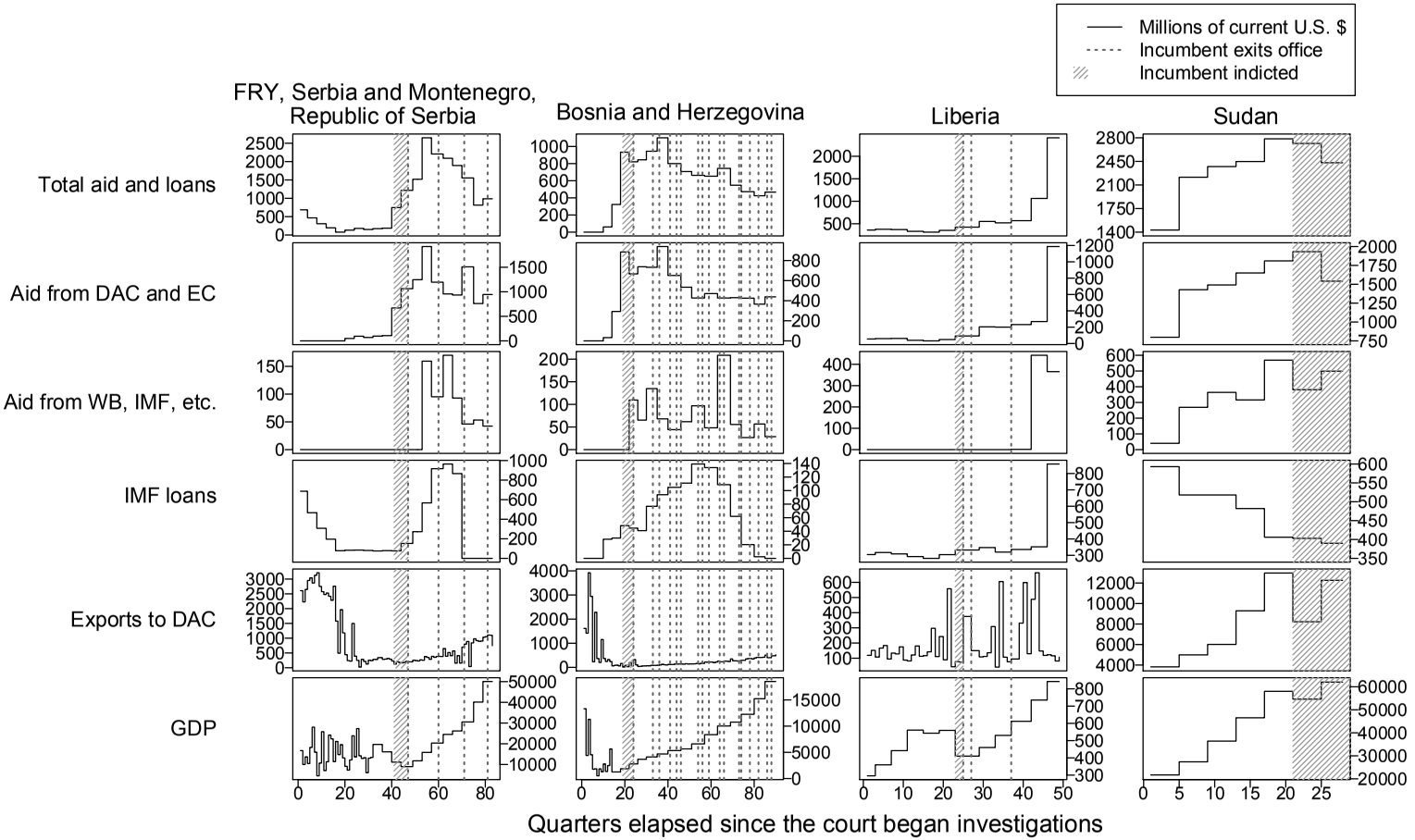
Source: Gibney, Cornett and Wood (2010).

Table 5.4: Models predicting leaders' tenure, receipts of development capital from wealthy democracies, and GDP, 1993(1)–2008(4): Estimates of β_p from varying-intercepts regressions

(A) Dependent variable: Leader exits office								
Model	*Matched predictor*	*Est.*	*SE*	N_T	N_C	$\triangle L_1$	*% drop* $\triangle L_1$	*AIC mean (SD)*
(1)	International indictment	2.18	1.10	17	556	0.01	77.6	175 (2.96)
(2)	Latent PTS class 1	0.01	0.18	3060	3180	0.07	80.6	2240 (66.50)
	Latent PTS class 2	0.10	0.24					
(3)	Latent CIRI class 1	−0.12	0.22	2520	2340	0.05	73.1	1540 (106)
	Latent CIRI class 2	−0.09	0.37					
(4)	Disappearances class 1	−0.07	0.28	1060	3820	0.04	87.8	1380 (95.9)
	Disappearances class 2	0.33	0.33					
(5)	Torture class 1	−0.04	0.17	3730	1970	0.08	66.8	2360 (43.4)
	Torture class 2	−0.17	0.21					
(6)	Killings class 1	−0.02	0.18	2620	3620	0.04	89.6	1950 (77.9)
	Killings class 2	0.16	0.25					
(7)	Transitional HR trial	0.70	0.20	598	4190	0.003	96.5	1470 (32.7)
(B) Dependent variable: Total aid and loans (millions$^{\frac{1}{8}}$ of U.S. $)								
Model	*Matched predictor*	*Est.*	*SE*	N_T	N_C	$\triangle L_1$	*% drop* $\triangle L_1$	*AIC mean (SD)*
(8)	International indictment	0.109	0.054	10	60	0.023	76	−30.1 (6.5)
(9)	Post-deposition period	0.232	0.081	69	269	0.051	76.5	−63.8 (25.2)
(10)	Latent PTS class 1	0.023	0.020	1300	1660	0.048	87.5	3410 (389)
	Latent PTS class 2	0.004	0.028					
(11)	Latent CIRI class 1	−0.021	0.017	1130	816	0.035	75.1	428 (531)
	Latent CIRI class 2	−0.025	0.031					
(12)	Disappearances class 1	0.013	0.017	543	1480	0.057	82.1	854 (105)
	Disappearances class 2	0.035	0.023					
(13)	Torture class 1	0.050	0.022	1900	1310	0.052	78.7	5290 (173)
	Torture class 2	0.068	0.028					
(14)	Killings class 1	−0.016	0.015	1150	1390	0.036	89.5	877 (435)
	Killings class 2	0.030	0.032					
(15)	Transitional HR trial	0.010	0.045	392	1090	0.001	98.5	1950 (56.4)
(C) Dependent variable: GDP (millions$^{\frac{1}{8}}$ of U.S. $)								
Model	*Matched predictor*	*Est.*	*SE*	N_T	N_C	$\triangle L_1$	*% drop* $\triangle L_1$	*AIC mean (SD)*
(16)	International indictment	−0.080	0.025	12	112	0.030	54.7	−235 (9.3)
(17)	Post-deposition period	0.101	0.042	74	460	0.024	78.6	−817 (50.7)
(18)	Latent PTS class 1	−0.004	0.005	1890	1900	0.044	88.1	−6760 (510)
	Latent PTS class 2	−0.014	0.008					
(19)	Latent CIRI class 1	0.001	0.007	1640	1140	0.017	84.4	−4190 (380)
	Latent CIRI class 2	0.011	0.009					
(20)	Disappearances class 1	0.013	0.007	721	2060	0.037	87.6	−3420 (327)
	Disappearances class 2	−0.040	0.010					
(21)	Torture class 1	0.002	0.005	2330	1500	0.053	73.9	−6790 (239)
	Torture class 2	0.003	0.006					
(22)	Killings class 1	0.008	0.005	1630	1780	0.020	93.7	−5460 (315)
	Killings class 2	−0.017	0.007					
(23)	Transitional HR trial	−0.016	0.008	415	1570	0.000	98.1	−3750 (228)

Note: Panel A reports results of logits. Panels B and C reports results of Normal regressions. Each model is run on nine coarsened-exact-matched and multiply-imputed data sets. See text for the list of control variables. Coefficient estimates and standard errors are pooled. Predictors in matching models enter as controls in corresponding regressions. The number of observations per model (and therefore, the number of varying intercepts) varies due to the matching algorithm. N_T *and* N_C *are the mean numbers of leader-quarters in treated and control categories.* $\triangle L_1$*, a balance statistic, is the mean of the differences in* $L_1(f_{\ell_1 \ldots \ell_k})$ *for treated and control units.* $L_1 \in (0,1)$ *and is half the sum of the relative empirical frequency distribution* f *across coordinates* $\ell_1 \ldots \ell_k$ *defined by the cross-tab of* k *discrete predictors.*

Figure 5.1: Time series of development capital flows, exports, and GDP for states whose incumbents were indicted by international criminal courts, 1993–2010



Note: In row one, Total aid and loans is the sum of rows two to four. Row two displays gross concessional ODA from the DAC and EC. Row three displays gross concessional ODA from The World Bank, IMF, AfDB and AsDF. Row four displays gross non-concessional loans from the IMF. Row five displays net exports to the member states of the OECD DAC. The unit of observation is the quarter. In Sudan's case, the graph in row five actually refers to all observed exports to the world. Liberia (under investigation by the SCSL), Serbia, and Bosnia (under investigation by the ICTY) are observed from 1993–2008. Sudan (under investigation by the ICC) is observed from 2004–2010.

CHAPTER 6

THE HISTORY OF THE INTERNATIONAL CRIMINAL COURT

6.1 INTRODUCTION

This chapter identifies an orthodox history of the development of the ICC with roots in the political-culture and persuasion perspectives reviewed in chapter 2. It then brings to light facts from modern Africa and pre-1945 Europe favoring a revisionist history with the following thesis. Politicians have historically imagined that a permanent international criminal court would be an ally against their enemies. In light of the court's appearance after the Cold War, it argues that the court became a live option at some point between the mid-1970s and early 1990s—but not in 1973, 1954, 1948, 1945, 1937, or 1920 when plans for it were scrapped—because the court had lacked broad demand and an enforcement mechanism prior to these decades. The changing nature of rebellion in 1945–1989 put states at a disadvantage relative to rebels and supplied broad demand for the court. The dramatic growth of the liberal foreign-aid regime since the mid-1970s supplied its enforcement mechanism.

6.2 THE ORTHODOX HISTORY

The orthodox history of the ICC's development is one with deep roots in the political-culture and persuasion perspectives that were reviewed chapter 2. According to it, hundreds of national leaders

and non-state actors, disgusted by belligerents' ubiquitous disrespect for international criminal law, pulled together to create a court to make politicians accountable for their atrocities—to end impunity.[1]

In 2009 Antonio Cassese, Editor in Chief of *The Journal of International Criminal Justice* and President of the Special Tribunal for Lebanon, dedicated his €150,000 Erasmus Prize to a trust fund intended to foster scholarship on the enhancement of international courts. On that occasion he told a stirring tale of the world's transformation from a place where people were accountable only to their sovereign "Leviathans," "monarchs" and "princes" to a world where everyone is accountable, in principle, to international law. Although he warned that the tension between sovereign statehood and the international rule of law would not disappear overnight, Cassese remarked that of all courts in history, "Only the International Criminal Court was born out of a genuine desire to dispense justice at the international level regardless of any policy considerations and without taking into account any geopolitical context."[2]

Impunity had prevailed before the Rome Statute. Genocides in the Ottoman Empire, continental Europe, and the Soviet Union brought a few states and politicians to notoriety, but not trial. Between 1918 and 1998 states had held the International Military Tribunals of 1945–1948, published the United Nations' Universal Declaration of Human Rights, made unprecedented expansions in humanitarian and human-rights law, tasked parts of the United Nations with monitoring human-rights abuses, and launched the Helsinki Process to bring political

[1]The narrative in this sub-section is an amalgamation of work reviewed in chapter 2. It also draws on the histories of, and legal commentaries on, the Rome Statute and ICC in Scheffer (2012), Schabas (2011, 2010), Bassiouni (2008, 1999, 1998), Arsanjani and Reisman (2005), Broomhall (2003), Cassese, Gaeta and Jones (2002), Roth (2001), Akhavan (2001), Bendetti and Washburn (1999), Neier (1998), and Scharf (1991); and on the following social-scientific analyses: Sikkink (2011), Groenleer and Rijks (2009), Schiff (2008), Ralph (2007), Glasius (2006), Slaughter and Burke-White (2006), and Fehl (2004).

[2]Cassese (2011, 274)

and civil rights across the Iron Curtain. But the world's most powerful states set bad examples. They fought savage wars—the Second World War, the Korean War, the Vietnam War, colonial counterinsurgencies, and subjugations of Tibet, Hungary, and Afghanistan. They responded meagerly to or ignored the mass killings in India, China, Madagascar, Cambodia, Burma, Colombia, Argentina, Chile, Guatemala, Nicaragua, and Syria. On top of this, they defended the act-of-state and state-immunity doctrines in international law, allowing the repression of dissidents with impunity. Even after the dissolution of the Soviet Union, the United Nations Security Council proved unable to stop genocide and other crimes through military intervention, peacekeeping, and peacebuilding. It failed, for example, to save thousands of civilians in Iraq, Algeria, Yugoslavia, Rwanda, and the Caucasus. The major powers were the only states capable of executing such interventions, but they lacked the political will for them.[3]

Something about Cold-War politics had prevented the world—liberal democracies included—from making serious progress on an international criminal court to prosecute atrocities. That something changed in the early 1990s, however. Major powers empowered ad hoc tribunals in The Hague (the ICTY) and Arusha (the ICTR) to prosecute atrocities committed during wars in Bosnia and Herzegovina, Croatia, and Rwanda. To be sure, these courts were exceptions to the rule. Elsewhere—in Algeria, Chechnya, Burundi, Angola, and El Salvador, for example—people continued fighting dirty wars with impunity. Whatever had changed around the time of the Soviet Union's dissolution, however, had stirred the community of states into using international criminal courts to tear down the act-of-state and state-immunity doctrines bit-by-bit.

What had changed, according to the orthodox narrative, is this: States started listening to the transnational advocacy networks demanding better enforcement of international law. Organizations like The World Federalist Movement, their liaisons in countries around the world,

[3]Neier (1998); Power (2002)

and democratizing states like Argentina and South Africa sold a new vision to the world. There would be a permanent court, independent of sovereign interests. It would prosecute atrocities and interstate aggression. The first states persuaded by this vision were members of what came to be called the Like-Minded Group. It numbered a few states at first, but grew to 42 by 1997, and 60 by 1998.

Meanwhile, sessions of the United Nations General Assembly since 1989 had seen serious discussion on a permanent court, and the United Nations had authorized the International Law Commission—its panel of legal experts—to submit a draft constitution for the permanent court to the General Assembly. In 1994 the International Law Commission completed its draft, and the General Assembly quickly authorized two committees in sequence to revise it.[4]

During this period of quiet negotiations, something important happened. The Like-Minded Group and the court's transnational advocacy network began a concerted campaign to give the court inherent jurisdiction, a prosecutor with *proprio motu* authority, and freedom from a case-by-case Security Council veto, and to support the grander vision surrounding the court: the end of impunity for international crimes. Up to this point, the Permanent Five had seen the nascent ICC in a favorable light. Facing the delegation of ostensibly great powers to the court, they fought hard to maintain control. With persistence and a little luck, however, the Like-Minded Group welcomed new states into its fold, eventually winning over France and the United Kingdom in 1997 when conservative governments in both states fell from power.[5]

Bargaining over the court's institutional design came to a head at the Rome Conference of June 15 to July 17, 1998. Organized by the United Nations, the conference invited sovereign delegates to vote on a final constitution for the permanent court, but was open to non-sovereign delegates.

[4]These committees were the Ad Hoc Committee on the Establishment of an International Criminal Court and the Preparatory Committee.

[5]Groenleer and Rijks (2009)

After intense debate in its final 72 hours, the state delegates in attendance voted whether to adopt a draft of the court's constitution granting expansive powers to the court. A majority of 120 states voted for it. Twenty-one states abstained from the vote, and only the United States, China, Israel, Libya, Iraq, Qatar, and Yemen voted against its adoption.

Three differences between that document—the Rome Statute—and the International Law Commission's 1994 draft constitution stand out. The Rome Statute gives the Security Council authority to refer and temporarily suspend situations—but not to veto them or determine the court's docket, it gives the court the authority to unilaterally start prosecutions, and it denies states parties the opportunity to opt out of the court's jurisdiction on a case-by-case basis. Had the 1994 draft become the Rome Statute, the Security Council would have received exclusive control over the court's docket. Prosecuting anyone would have required the consent of the state in custody of the suspect, the state where the crime occurred, and any states requesting to extradite the accused for trial in their own courts. States parties, moreover, would have had the right to opt in or out of the court's jurisdiction on a case-by-case basis.

Doubt that states would ever welcome the court's jurisdiction vanished within four years. Ratifications trickled in slowly, at first, but the rate of ratifications accelerated near the end of 2001 (Figure 1.3). On July 1, 2002, after the statute had received the 60 ratifications it needed to enter into force, the International Criminal Court began work. As of mid-2012, 120 states have ratified the statute, although the rate of ratifications has slowed to a trickle.

Why did so many states ratify the Rome Statute? To answer this question, the orthodox history draws on the political-culture and persuasion perspectives. It argues that a transnational advocacy network of NGOs, consolidated democracies, and democratizing states achieved a vision of multilateral, institutionalized, international criminal justice. The diffuse-reciprocity and civil-peace perspectives, though not part of this standard history, fill gaps in the story. The former

stakes out an explanation for why the court's member states are geographically concentrated in Europe and Latin America—these regions have dense trade and alliance networks, where the promise of reciprocity in linked issue-areas facilitates like-minded foreign policy toward the court. The latter helps us understand why illiberal authoritarian regimes have accepted the court's jurisdiction—they want to nurture peace with their domestic enemies by credibly committing to obey international law and prosecute those who violate it.

6.3 THE REVISED HISTORY

This dissertation does not seek to refute the orthodox history of the ICC. Rather, it sheds light on how politicians' security concerns have played a pivotal role in the wave of sovereign support for the court. It suggests that, even if some observers of the transnational advocacy network promoting the ICC and the Rome Conference itself were convinced that the court would end impunity or even deter future atrocities, they overlooked something important.

Leaders can and do use the court to marginalize rivals who compete for their jobs, and disempower enemies of the state. They exploit their control over inculpatory evidence—evidence inculpating them, and evidence inculpating their rivals—to deter threats to their regimes while ensuring their own de facto immunity from prosecution.

Today, the nexus of the liberal foreign aid regime, and the court's unparalleled credibility, and clientilism make this possible. Historically, however, leaders have sought out an international criminal court to fulfill two traditional functions of judicial institutions: deterring crime and incapacitating criminals. The following two sections explore such historical episodes, and propose why the ICC appeared around the end of the Cold War, but not before.

6.3.1 *"We were infiltrated"*

In the 1990s the administration of William Clinton in the United States voiced support for a permanent court as a way to legitimately prosecute wanted Palestinian terrorists— Germany, Greece and Libya would not extradite them at the time—and the Somalian politician Mohamed Farrah Aidid. Around the same time, the government of the United Kingdom supported it as a way to prosecute Irish Republican Army members in a court it hoped would be perceived as unbiased.[6] Leaders of Colombia and Caribbean states initially wanted an international criminal court to eliminate threats from the transnational Medellín and Cali drug cartels, which had allied with two Colombian rebel organizations to exploit the cocaine production chain.[7]

Simultaneously, governments in Argentina and South Africa emerged as two of the proposed court's most vocal supporters. Each state was embroiled in a high-stakes competition for political power between new coalitions in government and loyalists of the *ancien régimes* at the time. Argentina's support for the court followed the series of military-led revolts that halted the prosecution of the former military junta members and demonstrated the military's enduring influence on national politics.[8] South Africa's support for a permanent court coincided with the struggle over the country's future that was taking place within the power-sharing pact of the apartheidist Nationalist Party and the reformist African National Congress.[9]

In few places, however, is the exploitation of the ICC as a weapon against domestic enemies as naked as it is in the Democratic Republic of the Congo and Uganda. The first thing one notices about the situations opened by the ICC in these cases since 2003 and 2004 is the fact that both originated in self-referrals. Referring to the court's situation in the Democratic Republic

[6] Scharf (1991, 1994)
[7] Scharf (1991); Schiff (2008, Ch. 1)
[8] McSherry (1997)
[9] Marais (1998); Klug (2000)

of the Congo, one observer writes: "The ICC has offered a politically expedient solution for the Congolese president to deal with potential electoral rivals, resulting in the somewhat surprising referral," and "Vice Presidents Jean-Pierre Bemba Gombo [...] and Azarias Ruberwa [...] are among those most likely to be the subject of any early investigation."[10] Referring to Uganda's situation, another writes:

> Uganda's [president, Yoweri] Museveni [...] shrewdly understood that the court might put decisive pressure upon an adversary he had been unable to defeat on the battlefield. Uganda's letter of referral made reference to the situation concerning the "Lord's Resistance Army" in northern and western Uganda [...] Self-referral was cleverly exploited by Uganda in order to isolate the rebel leaders. Once the political goals had been achieved, Uganda had no further use for the court. For the Ugandan regime, the court soon became an impediment to peace rather than a weapon to use against its enemies.[11]

In a rare public statement on the matter, a member of the team sent by Uganda's Ministry of the Interior to negotiate with rebels frames the court as a point of leverage over the rebels and exploits the fact that Washington had placed them on its Terrorist Exclusion List in 2001. He said the following.

> The ICC is an ally to the government [...] The indictments and arrests warrants issued against Kony and his top commanders have helped us to hold the talks with the rebels [...] The indictments will not be withdrawn until the rebels fulfill all the conditions. If they abandon rebellion, sign a peace agreement and accept to be integrated into the community, then the government will go to the ICC and the world to say that the [Lord's Resistance Army] have met all the required conditions and should be removed from the terrorist list. Thus the cancellation of the ICC warrants will follow.[12]

The second thing one notices about these central African situations is the one-sidedness of the resultant prosecutions. Museveni declared from the start that the court's role in Uganda would be a narrow one: Ugandan courts would try suspects from the government side, and the ICC would try suspects from the side of the rebel Lord's Resistance Army.[13] Though the Ugandan

[10] Burke-White (2005, 559, 565)

[11] Schabas (2008, 752-753).

[12] These comments by Stephen Kagoda are cited in Egadu (2007).

[13] Arsanjani and Reisman (2005, 394). For a similar declaration in another context see Subotić (2009, 85-86).

government did not explicitly prohibit the court from investigating Kampala and its agents in its self-referral to the ICC, it argued that while "there is no doubt that Ugandan courts have the capacity to give captured [Lord's Resistance Army] leaders a fair and impartial trial," the rebels' bases beyond its borders make it difficult to arrest them, and their crimes "are a matter of concern to the international community as a whole."[14] Today all of the ICC's indictees in Uganda are active or retired members from the Lord's Resistance Army.

The ICC has not accused either Kampala or Kinshasa of actually limiting the scope of its investigations the Lord's Resistance Army alone, or of intimidating its staff to that end. But the ICC prosecutor, without doubt, understands the limits of his discretion. Interference in the work of ambitious prosecutors of international criminal courts had precedent in the 1990s. Louise Arbour, Chief Prosecutor (1996–1999) of the ICTR claimed that the ruling Rwandan Patriotic Front in Kigali posed an implicit threat to her prosecutorial team. She wrote:

> We were infiltrated. They knew what I was doing. So if I sent someone off to do an investigation of the [Rwandan Patriotic Front], they might be killed. I wouldn't do it. (Off, 2000, 331)

6.3.2 *"Uttermost ends of the earth"*

Details surrounding the birth of a permanent international criminal court have been lost by the orthodox narrative of the ICC's birth. They reveal the character of past campaigns to build the court existing today, one that fits well with the revised history told in this dissertation. The story begins at the end of the First World War.

After November 1918 the governments of France, the United Kingdom and the United States began a concerted but ultimately fruitless campaign to prosecute German and Ottoman

[14] F.J. Ayume, SC, MP, Attorney General, Republic of Uganda, *International Criminal Court: Referral of the Situation Concerning the Lord's Resistance Army Submitted by the Republic of Uganda*, 16 December 2003, pg. 14.

elites for "crimes against peace," breaches of the Hague Conventions and "barbarous" wartime behavior. That campaign began formally with the treaties drafted at the Paris Peace Conference (1919–1920).[15] It ended inauspiciously in the victorious allies' decision to devolve prosecutorial powers to the new German and Turkish governments, and it failed to yield a template for future prosecutions of international crimes.

Few German and no Ottoman elites ever stood trial. While special courts in Leipzig and Constantinople dismissed or acquitted hundreds of cases,[16] The Netherlands refused to extradite the fugitive ex-kaiser Wilhelm II of Hohenzollern for trial, and dozens of the most-wanted former Ottoman junta members had, by 1922, either vanished or been assassinated by agents of the Armenian Revolutionary Federation.[17]

Wartime and post-war plans to prosecute disgraced politicians from Berlin and Constantinople did, however, help guarantee that the concept of "crimes against civilization and humanity" gained meaning in the language of international law. Moreover, events surrounding the Paris Peace Conference produced the first suggestions for a permanent international criminal court to prosecute individuals, which France would pursue fourteen years later through the League of Nations.

This initial proposal happened during the League's Commission of Jurists convention to draft the Permanent Court of International Justice's statute at The Hague in 1920. During the Commission's meeting, Belgium's Édouard Eugène François Descamps floated the idea of a High Court of International Justice "competent to try crimes constituting a breach of international public

[15]See Bass (2000) for an account of prosecutions in the interwar period. *The Treaties of Peace 1919-1923, Vol. II* (1924) and *The Treaties of Peace 1919-1923, Vol. II* (1924) reproduce the Treaty of Versailles and Treaty of Sèvres, which call for prosecutions of German and Ottoman elites, respectively, in Articles 226-230 of the treaties. The Treaty of Lausanne superseded the Treaty of Sèvres in 1923, replacing trials with amnesties.

[16]The governments of the victorious allies initially accused 892 Germans of war crimes, a number they reduced to 45 after Germany's objections. Germany ultimately prosecuted just twelve of the named persons and convicted six at Leipzig. Morton (2000, 56-57).

[17]Derogy (1990)

order or against the universal law of nations."[18] While the possibility of such a court excited NGOs and European scholars of the 1920s, the League never discussed Descamps' suggestion and no sovereign state supported an international criminal court until the eve of the Second World War.[19]

In 1934, when France took earnest steps toward an international criminal court, the institution would be framed as a venue for prosecuting "crimes committed with a terrorist or political purpose."[20] High-profile assassinations had struck down three allies of French foreign policy in Bucharest, Vienna and Belgrade between the winter of 1933 and fall of 1934. The Romanian and Austrian rulers Ion Duca and Engelbert Dollfuss were the first two to die, at the hands of fascist coup plotters. Within a year, France lost its own Minister for Foreign Affairs, Louis Barthou on October 9 in a dramatic double assassination caught on film when Vlado Černozemski shot Barthou and Yugoslavia's King Aleksandar I Karađorđević as they toured Marseilles, and was then lynched himself on the spot.

Blame for the plot officially fell on the Internal Macedonian Revolutionary Organization (IMRO) and Ustaše, organizations seeking the secession of Macedonia and Croatia from Yugoslavia.[21] When an Aix-en-Provence court convicted the Ustaše leader Ante Pavelić and his lieutenant Eugen Kvaternic for the murders in absentia, Paris requested their extradition from Italy.

Rome's denial of the request amid its own superficial crackdown on the group was unsurprising to both Paris and Belgrade.[22] Within days of Barthou's and Karađorđević's deaths, France

[18]Hudson (1938, 550)

[19]The Inter-Parliamentary Union, Association Internationale de Droit Pénal, and International Law Association organized these conferences. See e.g., Report of the Permanent International Criminal Court (Vienna, 5-11 August 1926). Hudson (1938, 551) lists fourteen scholarly works on the proposed high court published in the 1920–1926 period without attempting an "exhaustive bibliography."

[20]Hudson (1938, 551). Modern texts documenting the ICC's history gloss over France's motivation for establishing a court. See e.g., Glasius (2006); Ralph (2007); Schiff (2008); Ratner, Abrams and Bischoff (2009); Schabas (2011).

[21]Kovrig (1976, 218)

[22]Kovrig (1976, 208)

secretly—and Yugoslavia publicly—had identified the Italian and Hungarian governments as the most significant of IMRO's and Ustaše's sovereign patrons and possible co-conspirators in the assassination plot.[23]

Refusing to accuse the Italian state or Benito Mussolini himself in a plot to kill Karađorđević, the French government reached for a creative solution to its problems. A month after the double assassination in Marseilles, the Council of the League of Nations was vetting France's request for a committee to draft a convention laying out plans for an international criminal court. Immediately following the committee's convention in Geneva, the League opened two documents for signature on November 16, 1937: the Convention for the Prevention and Punishment of Terrorism[24] and the Convention for the Creation of an International Criminal Court.[25] Listed first among the crimes that the new court would prosecute was violence against heads of states, their families and other public officials. Twenty and ten states, respectively, signed these two treaties.[26]

The French Third Republic's demise in 1940 ended its advocacy for an international criminal court. Yet as one of its final acts, the League tasked an unofficial advisory body in 1941, the London International Assembly, to continue the work begun with the 1937 convention under the patronage the United Kingdom and its allies. Two years later, in 1943, the Assembly produced a revision of the 1937 convention.[27]

That same year, the United States, United Kingdom and Soviet Union announced, in the Moscow Declaration on Atrocities,[28] their intention to pursue "to the uttermost ends of the

[23]Seton-Watson (1936, 335); Kovrig (1976)

[24]Convention for the Prevention and Punishment of Terrorism (1938)

[25]Convention for the Creation of an International Criminal Court (1938)

[26]Aside from France, Belgium, Bulgaria, Czechoslovakia, Greece, The Netherlands, Romania, Spain, Turkey and Yugoslavia signed the Convention for the Creation of an International Criminal Court. Hudson (1938, 551-552).

[27]The London International Assembly (1943) entitled this revision the "Draft Convention for the Creation of an International Criminal Court."

[28]Moscow Declaration on Atrocities of 1 November 1943 (1945, 35)

earth" Germans who had committed wartime atrocities and put them on trial. Subsequently, the United Nations Commission for the Investigation of War Crimes took over the Assembly's work, producing a proposal in September 1944 for a court broadly reflecting the one proposed in the 1937 convention.[29] Rejoining the three allies at the August 1945 London Conference, the French provisional government pledged to conduct prosecutions through the tribunal, which famously opened a month later in Nürnberg and dissolved after a year's work.[30] The tribunal's twin court opened in Tokyo in 1946 and dissolved less than three years later.

Historians of the International Criminal Court write that France's interwar campaign for an international criminal court failed due to League members' unwillingness to ratify the 1937 conventions,[31] as if the onset of great-power war had not torn apart the League itself just two years later. More accurately, the campaign for a court was orphaned by France's subjugation and the League's obsolescence, then adopted by the United States, United Kingdom and Soviet Union, which tailored it to the task of purging Axis elites and war criminals.

Despite the continuity between the 1937 Convention for the Creation of an International Criminal Court and the two International Military Tribunals, the victorious allies' tribunals did not coalesce into the permanent court envisioned by League. Nor did any new international criminal court appear during the four decades following the Second World War.

Three years after the London Conference, a proposal for such a court emerged on the floor of the United Nations General Assembly but died another six years later. On December 9, 1948 the General Assembly adopted the United Nations Convention on the Prevention and Punishment

[29]Draft Convention for the Establishment of a United Nations War Crimes Court (30 September 1944); Schabas (2011, 5)

[30]The Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (IMT), Annex (London, 8 August 1945) is the so-called London Charter.

[31]E.g. Glasius (2006, 8); Schiff (2008, 23); Schabas (2011, 4)

of the Crime of Genocide and, in Resolution 260, tasked the International Law Commission to draft a statute for an international criminal court to prosecute the crime.[32] Although the Genocide Convention, as states called it, entered force in 1951, the General Assembly ordered revision of the International Law Commission's draft statute that year, then tabled subsequent versions of the statute in 1953 and 1954 along with the commission's Draft Code of Offences.

The draft statute was thwarted, allegedly, by a controversy—one that remained unresolved until at least 1974 and arguably was never fully resolved—within a special General Assembly committee tasked with defining interstate "aggression."[33] Twenty years later, in 1973, another proposal for an international criminal court—this time to prosecute the new crime of apartheid—emerged in the General Assembly and died within the United Nations Human Rights Commission.[34] And despite the 1974 General Assembly consensus on the definition of aggression, the issue allegedly blocking adoption of the Draft Code of Offences in 1954, the General Assembly seized neither the opportunity to produce a new version of the code nor the opportunity to renew work on an international criminal court with jurisdiction over it.[35]

Sixteen years would pass before the General Assembly reconsidered a permanent international

[32]United Nations Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948)

[33]Revised Draft Statute for an International Criminal Court (1954, 23); Third Report Relating to a Draft Code of Offences Against the Peace and Security of Mankind (1954). See also Bassiouni (1998, 13-15) and Ferencz (1975).

[34]The Human Rights Commission's work on an international criminal court followed the promulgation of the Convention on the Suppression and Punishment of the Crime of Apartheid (New York, 30 November 1973). Citing atrocities committed during the wars in Vietnam and Bangladesh, two NGOs (the World Peace through Law Center and the Foundation for the Establishment of and International Criminal Court) had held earlier conferences regarding an international criminal court in 1971 and 1972, respectively. Marquardt (1995); Morton (2000, 59).

[35]The International Law Commission renewed work on the Draft Code of Offences in 1978, producing the first, second and third drafts in 1982, 1991 and 1996, respectively. The final draft was entitled the Draft Code of Crimes Against the Peace and Security of Mankind: Titles and Articles on the Draft Code of Crimes Against Peace and Security of Mankind, Adopted by the International Law Commission on its Forty-Eighth Session (1996). See also Bassiouni (1998, 14).

criminal court. It revisited the ideas that had first circulated on its floor in 1948 when an unlikely voice, Trinidad and Tobago, sent a letter to the Secretary-General requesting that the International law Commission resume its work.[36] In 1989 the Caribbean nation's government expressed concern about the links between Latin American drug traffickers and terrorist organizations like the Jamaat al Muslimeen, which surprised the government with a violent coup d'etat in Port of Spain just eleven months after the government's request to the United Nations Secretary-General.

6.3.3 *Explaining the appearance of the court after the Cold War*

The changing nature of development finance and civil war help explain the origins of sovereign support for the ICC. In the mid-1970s, wealthy liberal democracies in the OECD began disbursing ever increasing sums of development capital through national and international agencies (Figure 6.1), as well as through indirectly through private donors.[37] These rising sums competed with Soviet and Chinese aid to other parts of the world, but the rate at which they grew far outpaced the growth rates of aid from other wealthy dictatorships. In all likelihood, it outpaced the rates of Soviet aid from that point forward.[38] The Soviet economy, for example, had declined for twenty-five years after 1960, and in roughly the mid-1970s it crossed a breaking point, turning for the worse.[39]

The end of the Cold War, moreover, broke the link between aid and alliances. Wealthy democracies' client states were no longer expected to be allies against communism, but donors

[36]For Trinidad and Tobago's request, see Letter dated 21 August 1989 from the Permanent Representative of Trinidad and Tobago to the Secretary-General, UN GAOR 44th Sess., Annex 44, Agenda Item 152, UN Doc. A/44/195 (1989). The General Assembly acted upon the letter in GA Res. 44/39, UN GAOR, 44th Sess., Supp. No. 49, at 311, UN Doct. A/44/49 (1989).

[37]Smith (1990)

[38]Reliable information on Soviet (Lawson, 1987) and Chinese disbursements is sparse. In the latter case, scholars have tried to circumvent this problem creatively (Brautigam, 2009; AidData.org, 2010), but there are no obvious solutions to the problem.

[39]Brooks and Wohlforth (2000). See also Stone (1996).

and lenders were not just thanking the recipients this time around.[40] Aid and loans could be—and have been—made conditional to other things: democracy,[41] respect for human rights, poverty, low military expenditures, and a low regulatory burden.[42] As this dissertation shows, moreover, aid and loans may be used to induce the ouster of leaders whom a credible institution has accused of serious international crimes.

The nature of civil war also changed. First, rebels became more resilient and more competitive. Over the past two centuries, insurgencies in which rebels used a guerrilla-warfare strategy began in greater number.[43] Since the Second World War, moreover, insurgencies in which the rebels would receive material support from neighboring states, receive territorial sanctuary from those neighbors, or achieve decisive victories, began in greater number.[44] With the end of the Cold War, those wars began in unprecedented numbers (Figure 6.2). Even when states defeated rebels—rebels of any stripe, including guerrillas—the rebels remained organized in 42% of post-1945 cases.[45]

Second, after 1989 the United Nations, the North Atlantic Treaty Organization, and regional

[40]Neumayer (2003, 86–87, 96–97) finds that states' eligibility for foreign aid (1990–2001) was not related to the donors' military-strategic interests, although the level of aid is. The latter relationship, however, is not substantively significant.

[41]Dunning (2004)

[42]Neumayer (2003) shows, on the other hand, that while democracy and human rights predict the level of aid inflows, they do not predict a state's eligibility for aid. Additionally, Wright and Winters (2010) show that donors today reward contestation but punish inclusiveness. Both are key elements of democracy in Dahl (1971).

[43]Lyall (2010, 175) defines an insurgency as "a violent, often protracted, struggle by nonstate actors to obtain political objectives such as independence, greater autonomy, or subversion of the existing political authority" and guerrilla warfare as "a strategy of armed resistance that uses small, mobile groups to inflict punishment through hit-and-run strikes while avoiding direct battle when possible and seeks to win the allegiance of at least some portion of the noncombatant population." Lyall's list of insurgencies includes only those with at least 1,000 battle deaths and at least 100 casualties on each side.

[44]In such defeats, the government "unilaterally concedes to all, or nearly all, insurgent demands, including the granting of independence or the deposition of current leaders" (Lyall, 2010, 175). Toft (2010) discovers a similar pattern in post-1945 civil wars of all types.

[45]Hartzell (2009). See also Jarstad (2008), Sōderberg Kovacs (2008), and de Zeeuw (2008).

organizations intervened in civil wars more frequently, imposing power-sharing, elections, and territorial devolution, and stopping either side from achieving a decisive victory. The interventions did not always solve the underlying political conflicts that led to rebellion in the first place—violence often re-erupted.[46] Put simply, changes in the nature of civil war over the past two centuries have put states at a disadvantage relative to non-state enemies.

Historically, two motives in building a permanent international criminal court have been deterring crime—crime against the state or its leadership—and incapacitating the criminals who commit them. Without doubt, the growing professionalization of the international criminal justice and the growth of transnational advocacy networks promoting a permanent international criminal court played a large role in such a court's post-Cold War appearance. Before some critical moment between 1945 and 1989, however, the court lacked broad demand. States could handle internal threats the old-fashioned way. Additionally, until the mid-1970s the court lacked an enforcement mechanism. Its decisions would pack no punch. This changed with the increasing sophistication of rebellion, which led national leaders on a search for new ways to marginalize their domestic rivals and sever links between their enemies and their enemies' foreign patrons, and with rise of the foreign-aid regime, which would lend teeth to the court.

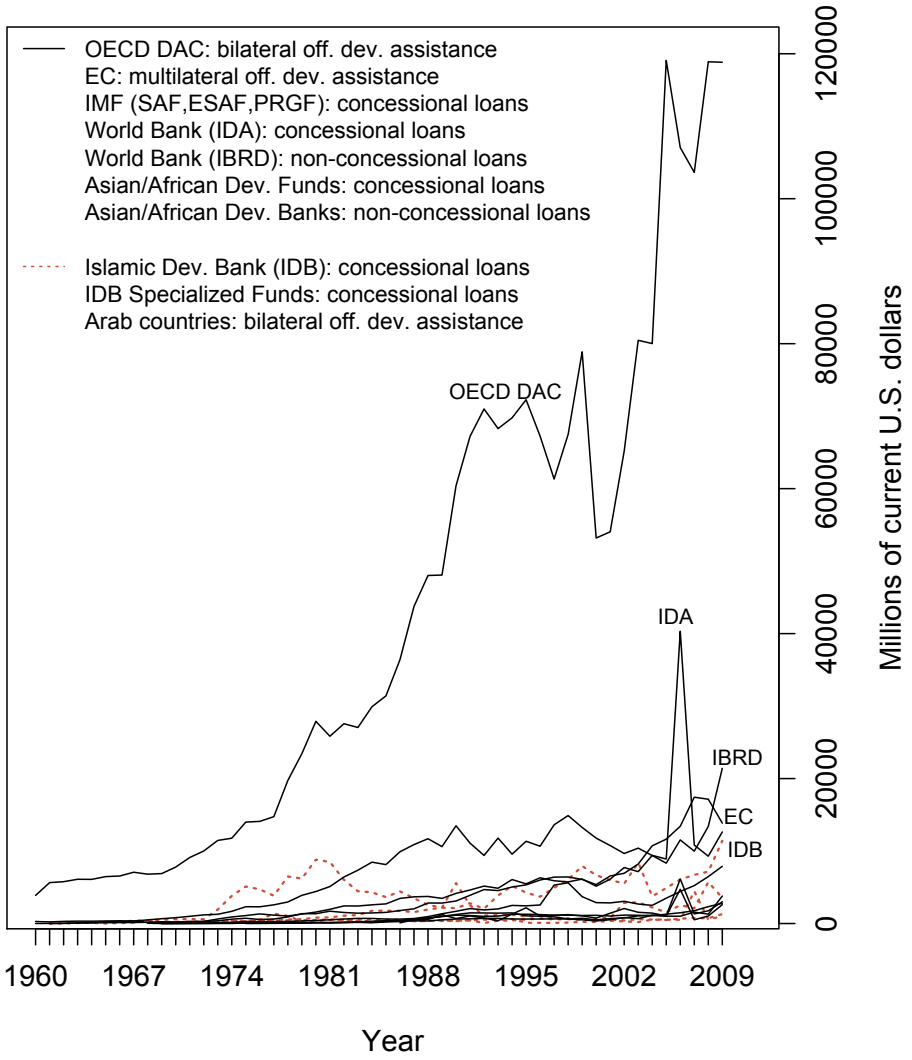
[46]Licklider (1995), Fortna (2008), Toft (2010), Fuhrmann and Tir (2009) and Hartzell (2009) report that military victory by either the rebels or the government is linked to a lower risk of future conflict relative to negotiated peace agreements. Quinn, Mason and Mehmet (2007) and Toft (2010) find that rebel victory leads to more durable peace. Stedman, Rothchild and Cousens (2002) and Mukherjee (2006) find that power-sharing pacts frequently fail. Jarstad and Nillson (2009) find that only the long term implementation of military and territorial—not political—power sharing is linked to longer periods of peace. Roeder and Rothchild (2005) find that four of 22 comprehensive peace settlements since 1991 ended in severe escalations of conflict: Rwanda in 1993, Burundi in 1994, Sierra Leone in 1996 and Afghanistan in 2001. On the link between post-war elections and violence, see Snyder (2000), Paris (2004) and Höglund (2008).

6.4 CONCLUSION

This chapter identified an orthodox history of the ICC with roots in the political-culture and persuasion perspectives reviewed in chapter 2. Building on prior chapters, it then presented facts favoring a revisionist history with the following thesis. Politicians have historically seen a permanent international criminal court as an ally against their enemies. In light of the court's appearance after the Cold War, it argued that the institution became a viable option at some point between the mid-1970s and early 1990s—but not in 1973, 1954, 1948, 1945, 1937, or 1920, when the League of Nations and United Nations considered building it—because the court lacked broad demand before the Second World War, and it lacked an enforcement mechanism before the mid-1970s. The changing nature of rebellion since 1945, and especially since the early 1990s, put states at a disadvantage relative to rebels. This supplied the court's broad demand. The dramatic growth of the liberal foreign-aid regime since the mid-1970s supplied its enforcement mechanism.

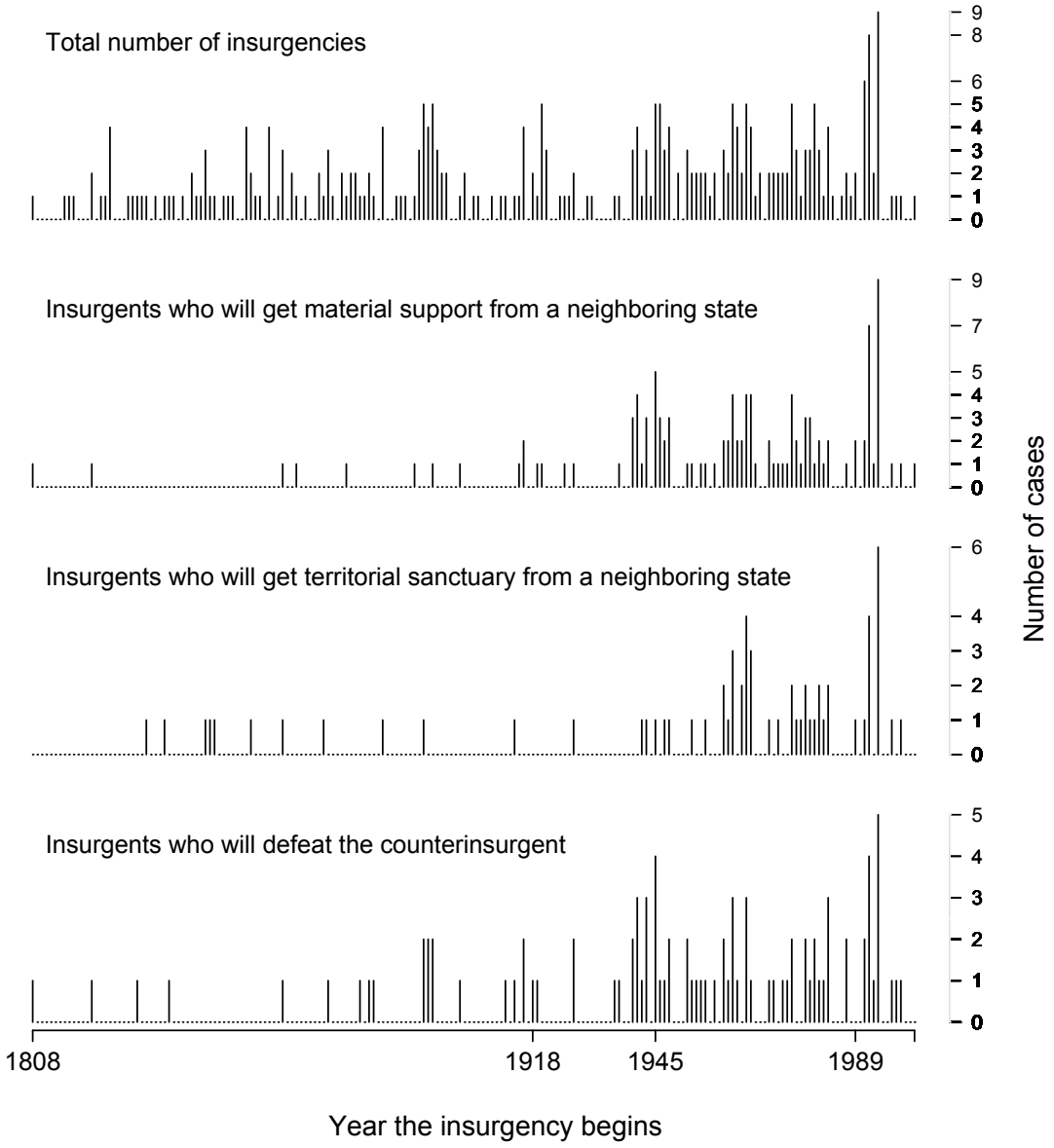
APPENDIX 6: FIGURES

Figure 6.1: Development capital disbursed by democracies and autocracies, 1960–2008



Note: Solid lines indicate disbursements by wealthy democracies or multilateral institutions where wealthy democracies form large voting blocs. Dotted lines indicate disbursements by autocracies and multilateral institutions governed by them. Flows are current—not inflation adjusted. The unit of observation is the year. Capital disbursed by industrialized democracies comprising the Development Assistance Committee (DAC) of the Organisation for Co-operation and Development (OECD) has, since 1960, increased to between twenty and forty times that disbursed by Arab states acting alone or the largest organizations not governed by democracies: the Islamic Development Bank (IDB), Asian Development Bank, and African Development Bank. The World Bank (International Bank for Reconstruction and Development [IBRD] and International Development Association [IDA]) and European Commission of the European Union disburse less than the OECD DAC does, but as a group, considerably more than autocracies do. The International Monetary Fund (IMF) disburses a much smaller amount of ODA; the bulk of its lending are funds available at non-concessional rates (not shown). Source: Organisation for Economic Co-Operation and Development International Development Statistics (2010).

Figure 6.2: Insurgencies, material support, sanctuary, and insurgent victories in insurgencies beginning each year, 1808–2002



Note: Black lines show the number of insurgencies beginning in the given year, the number in which insurgents would at some point get material support neighboring state, the number in which insurgents would get sanctuary from a neighboring state, and the number in which insurgents would ultimately defeat the counterinsurgent government. The unit of observation is the year. All four variables counts rise during the Second World War, subside slightly during the Cold War, and rise to their maximum levels after 1989. A total of 286 insurgencies are in the data set; 223 begin after the Second World War; 151 began after the Cold War. Data are taken from Lyall (2010). Using the study's labels, the variables plotted in the panels (top to bottom) are the number of cases, PATRON $(= 1)$, REAR $(= 1)$, *and* STRICT $(= 0)$ *in insurgencies beginning each year (*YEARBG*) from 1808 to 2002.*

CHAPTER 7

CONCLUSION

The rise of the ICC marks a fundamental shift in the regulation of threats to human and international security. The Rome Statute—at once an international treaty and the court's constitution—vests the court with an unprecedented level of discretion to investigate and prosecute politicians. In the past ten years, the court has aggressively investigated atrocities, wielded its authority to unilaterally initiate prosecutions, indicted nearly thirty individuals, and brought one ex-incumbent leader before the bench. Like the international criminal courts of the past two decades, the ICC has proven that it is no paper tiger. Yet its power to incarcerate people is not the only dangerous thing about it. Politicians targeted by international criminal courts try to delegitimize them even though the courts may be unable to bring indictees to trial. These courts have an audience. When they provide information about what politicians have done, people listen. Why, then, have the leaders of more than half the world's states voluntarily accepted the ICC's jurisdiction by ratifying the Rome Statute?

7.1 SUMMARY OF THE DISSERTATION

This dissertation argued that leaders trade off the risk of unwanted prosecutions against the court's deterrent threat to political rivals and patrons of enemies of the state, who may seek to violently

oust them. The risk of unwanted prosecutions and the court's deterrent threat both arise because the court's prosecutions credibly communicate personal guilt for atrocities and may trigger leader-specific sanctions by wealthy donor states that prefer to keep politicians who commit atrocities out of office.

Some leaders may successfully evade prosecution by hiding or destroying physical evidence, preventing witnesses from testifying, and exploiting the ICC's principle of complementarity, but the court's discoveries of guilt can only result from expensively and persuasively vetted evidence. The Rome Statute manifests internationally agreed-upon solutions to conceptual and inferential pitfalls that can arise when assigning blame for atrocities, the ICC makes unparalleled investments in its investigations and prosecutions, and its judges want to avoid gaining a reputation for frivolous denunciations. The court not only has an audience, it has an audience to whom it issues clear signals about the character of foreign politicians.

The reliance of incumbent leaders on development capital to gain and keep office is key to explaining why prosecution can hurt political careers. The chance that the state will lose large sums of development capital raises the opportunity cost to domestic elites of switching allegiances to back violent regime change. The chance that the patrons of secessionists, terrorists, and organized criminals in neighboring states will suffer sanctions triggered by prosecutions based on broad theories of criminal liability may cause those patrons to rescind their support.

Six pieces of quantitative evidence were presented to support of the theory. The chapters documenting them employed statistical methods for missing data and causal inference, and they relied on rich cross-national panel data on national leaders, plus data on conflict, development capital flows, and all modern international criminal courts.

Chapter 3 hypothesized that leaders should perceive a more favorable trade-off between the deterrent threat of the court's jurisdiction and self-exposure when the state is highly dependent

on development capital from wealthy democracies and the incumbent can evade prosecution by exploiting control over inculpatory evidence. Moreover, accepting the court's jurisdiction should make leaders more secure in office, prolonging their tenures and preventing violent challenges to the regime.

Chapter 4 documented evidence that a greater receipt of development capital increases the probability that an autocrat—but not a democrat—accepts the court's jurisdiction, and that ruling under the ICCs jurisdiction makes leaders 1.4 percentage points less likely to lose office and 2.7 percentage points less likely to face an armed civil conflict in any quarter.

Chapter 3 also hypothesized that international criminal courts should affect the careers of incumbents whom they indict. Their indictments should force leaders from office, reduce the state's receipts of development capital from wealthy democracies, and reduce domestic production, but development capital and production should rebound after the indictees are deposed. The consequences of indictment, moreover, should exceed those of public knowledge of prosecutable human-rights abuses and domestic human-rights trials.

Extending the scope of analysis to all modern international criminal courts and presenting statistical case studies of time series from Bosnia and Herzegovina, the Federal Republic of Yugoslavia (Serbia), Liberia, and Sudan, chapter 5 found the following. Indictments force leaders out of office—so quickly, in fact, that flows of development capital to their states have insufficient time to fall. Domestic production, however, falls immediately. Development capital and production strongly rebound when an indicted leader is deposed. Finally, neither publicly observable and prosecutable human-rights abuses nor the holding of domestic human-rights trials affects the political survival of leaders, the state's receipt of development capital, or domestic production to such a degree. Human-rights abuses depress domestic production, but only when they are frequent and unambiguous. Even under these extreme conditions, they do not reduce the

receipt of development capital.

Together, these two chapters support this dissertation's theory. They suggest that leaders seek out the jurisdiction of the ICC when it is capable of deterring their rivals from anti-regime violence—when the state depends heavily on development capital from wealthy democracies—and when leaders can limit their own exposure to prosecution. The protection leaders obtain under the court's jurisdiction gives them longer and more peaceful terms in office. If an international criminal court—including, but not limited to, the ICC—indicts them, however, their chance of losing office increases greatly. If they insist on remaining in power, development capital receipts and domestic production tumble. Indictments of these courts prove to be more consequential than other public reports about the human-rights abuses of the leader's government.

This argument revises the orthodox narrative of the ICC's history. That narrative argues that a transnational advocacy network of liberal democracies and NGOs are responsible for the court's birth. Chapter 6 made no effort to refute this claim, but it documents cases—from Kampala to London—in which politicians saw a permanent international criminal court as an ally that would help them marginalize their enemies within national borders and beyond them. The first campaign for a permanent court, for instance, began in interwar Europe, and France meant for it to stop fascist saboteurs of her foreign policy in the former Austro-Hungarian Empire.

Chapter 6 culminated in a thesis about the timing of the ICC's appearance. Two long-run shifts explain why the ICC became a live option at the end of the Cold War. The spectacular growth of the liberal foreign-aid regime since the mid-1970s promised teeth to a permanent court, and changes in the nature of civil war since 1945—changes that accelerated after 1989—have disadvantaged states vis-à-vis rebels, prompting incumbent leaders to find new ways to marginalize their domestic enemies.

7.2 IMPLICATIONS

This dissertation has at least seven implications for political science, international law, and international criminal justice. Several implications touch on the literature reviewed in chapter 2. Others are more general.

First, leaders find the ICC useful for precisely the reason that it endangers their careers: The ICC is a "fire-alarm" and "information clearinghouse" with leverage over the foreign aid regime.[1] This contrasts with two extant theories underscoring the limits of international law and institutions when it comes to promoting human rights and preventing atrocities. The *empty-promises theory* argues that international institutions promoting human-rights law lack the means to punish non-compliance in the short term, and that leaders make empty promises to respect human rights simply to win international legitimacy.[2] The *shallow-cooperation theory* of international legal and institutional commitments suggests that the inflexible and ambitious remit of courts like the ICC will keep most states from welcoming their oversight.[3]

Second, when corrupt or weak domestic institutions fail to credibly commit governments to humane governance and obedience to international law, they will also fail to constrain governments from sabotaging oversight by international institutions tasked with monitoring and enforcement. Credible commitment to international agreements requires domestic institutional arrangements that can constrain executive malfeasance. This insight contrasts with the theory that leaders may "tie their hands" to foster long-run domestic cooperation by delegating oversight to international institutions when domestic institutions are too corrupt or weak. It implies, moreover, that the civil-peace perspective is better suited to explain why some *democracies*—not

[1] Carrubba (2009)
[2] Hafner-Burton and Tsutsui (2005)
[3] Posner (2009); Chapman and Chaudoin (2011)

autocracies—accept the court's jurisdiction.

Third, the ICC's jurisdictional expansion brings to light a rare image of political institutions, one in which power asymmetry and coercion sit in the foreground.[4] A large voluntarist literature contends that political actors empower courts, legislatures, bureaucracies, and international organizations either to realize collective gains by leveraging independently refined information, or by stopping themselves from acting counterproductively. This dissertation proposes, in contrast, that institutions may mitigate collective action problems even when the insider actors empowering them obfuscate the information that they disseminate. For these insiders, moreover, the priority may be stopping *outsiders* from acting competitively rather than stopping insiders from acting counterproductively.

Fourth, centralizing the regulation of atrocity law in an international court will unevenly affect compliance. While James Morrow argues that interstate-war belligerents in fact regulate their conduct via decentralized reciprocal enforcement,[5] Kenneth Abbott suggests why civil-war belligerents cannot adopt such a strategy: They lack long-term incentives to protect civilians, and the threat of reciprocal punishment often lacks credibility.[6] A centralized approach is sometimes seen as a solution to this problem—one that may civilize both civil and interstate wars to some extent. Michael Gilligan, for example, argues that such an approach could deter atrocities ex ante by giving haven states a credible threat to deny sanctuary to deposed leaders whom the court wants to arrest.[7] John Bolton and Jack Goldsmith, on the other hand, believe that a centralized approach will fail without the cooperation of major powers—cooperation that is unlikely to materialize because of their exposure to prosecution.[8] This dissertation suggests that the foreign aid regime

[4]Levi (1988); Knight (1992); Moe (2005)
[5]Morrow (2007)
[6]Abbott (1999)
[7]Gilligan (2006)
[8]Bolton (2001); Goldsmith (2003)

and a court credibly communicating defendants' guilt underpin a centralized approach to enforcing atrocity law. This approach will fail in some circumstances—specifically, when a state receives no such aid, or when its government can preemptively sabotage unwanted prosecutions.

Fifth, whether an international court trades off peace in pursuit of justice depends on the nature of the threat that it uses to deter politicians from committing international crimes. If that threat is the court's leverage over the foreign aid regime rather than imprisonment, then a mere indictment may provoke sanctions by rich democracies. Indictment alone hurts. This insight contrasts with the theory that, if an international court's deterrent threat is imprisonment, then the court's indictees will simply remain at-large and may commit further atrocities.[9] It also suggests that targets of prosecution, fearing the political fallout from indictments and convictions, will claim a justice-versus-peace trade-off when none exists.

Sixth, the foreign aid regime is a mechanism for enforcing the respect of human rights, contrary to what one might infer from literature on the nexus of human rights and the economic statecraft of major democracies and IOs. Like past empirical studies, this dissertation finds that bilateral and multilateral donors and lenders do not consistently reward or punish observed human-rights practices. One such study finds that only two major donors (Japan and The World Bank) reduced aid flows to human-rights abusing states in 1991–2000.[10] A second finds that only multilateral agencies—not bilateral donors, who disburse the lion's share of aid—punish states when they are shamed in the United Nations Commission on Human Rights in 1979–2002.[11] A third finds that from the late 1980s to 2000, donors rewarded recipient states for certain democratic institutions (institutions of contestation) but *punished* them for other (institutions of

[9] Scharf (1999); Hencken Ritter and Wolford (2012)

[10] Neumayer (2003, 86–87)

[11] Lebovic and Voeten (2009)

inclusion).[12] Two decades after the end of the Cold War, strategic interests—not human rights—still appear to drive donor decisions. Appearances are deceiving. Aid can be transformed into a weapon to remove human-rights abusers from power if the states behind the trigger have finer-grained information than that conveyed by their foreign ministries and human-rights NGOs. This dissertation argued that their enfranchised constituencies pressure them to do so.

Finally, this dissertation prompts us to revisit Judith Shklar's apology for the International Military Tribunal at Nürnberg.[13] Shklar acknowledged the tribunal's injustices—its one-sidedness and disregard of the *nullum crimen sine lege* principle—but defended the tribunal for substituting legalism for the extrajudicial disposal of foes, promoting liberalism, and establishing jurisprudence on crimes against humanity. The injustice of the ICC, by contrast, is that illiberal autocrats under its jurisdiction are manipulating the court's legalism and liberalism to entrench their rule. The apology for the ICC is twofold: Autocrats must expose themselves—if only slightly—to prosecution, and the court will deter their enemies from organizing violence, which typically produces atrocities. And fortunately, the ICC may preside over a more even-handed rule of law in the future. Leaders' attitudes may genuinely evolve.[14] If they do not, perhaps the court may gradually constrain them in alliance with others.[15]

[12] Wright and Winters (2010)
[13] Shklar (1964)
[14] Finnemore and Sikkink (1998); Risse, Ropp and Sikkink (1999)
[15] Alter (1998); Hafner-Burton and Tsutsui (2005); Carrubba (2009); Simmons (2009)

REFERENCES

Abbott, Kenneth W. 1999. "International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts." *The American Journal of International Law* 93(2):361–379.

Abouharb, M. Rodwan and Anessa L. Kimball. 2007. "A New Dataset on Infant Mortality Rates, 1816—2002." *Journal of Peace Research* 44(6):743–754.

Abtahi, Hirad. 2005. "The Islamic Republic of Iran and the ICC." *Journal of International Criminal Justice* 3:635–648.

Adler, Emanuel and Michael N. Barnett. 1998. *Security Communities*. Cambridge, UK: Cambridge University Press.

Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (IMT), Annex. London, 8 August 1945. United Nations *Treaty Series* vol. 279.

Ahmed, Faisal Z. 2012. "The Perils of Unearned Foreign Income: Aid, Remittances, and Government Survival." *American Political Science Review* 106(1):146–65.

AidData.org. 2010. "China's Foreign Aid." v. 3/19/2010. Accessed 13 May, 2011.

Akhavan, Payam. 2001. "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *The American Journal of International Law* 95(1):7–31.

Alesina, Alberto, Sule Özler, Nouriel Roubini and Phillip Swagel. 1996. "Political Instability and Economic Growth." *Journal of Economic Growth* 1(2):189–211.

Alexy, Robert. 1989. *The Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification*. Oxford, UK: Oxford University Press.

Allison, Paul D. and Nicholas A. Christakis. 2006. "Fixed-Effects Methods For the Analysis of

Nonrepeatable Events." *Sociological Methodology* 36(1):155–172.

Alter, Karen J. 1998. "Who Are the "Masters of the Treaty"? European Governments and the European Court of Justice." *International Organization* 52(1):121–147.

Anderson, David. 2005. *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*. New York, NY: W.W. Norton.

Anderson, David and Emma Lochery. 2010. "Violence and Exodus in Kenya's Rift Valley, 2008: Predictable and Preventable?" *Journal of East African Studies* 2(2):328–343.

Arellano, Cristina, Aleš Bulíř, Timothy Lane and Leslie Lipschitz. 2009. "The Dynamic Implications of Foreign Aid and Its Variability." *Journal of Development Economics* 88:87–102.

Armatta, Judith. 2010. *Twilight of Impunity: the War Crimes Trial of Slobodan Milosevic*. Durham, NC: Duke University Press.

Arsanjani, Mahnoush H. 1999. "The Rome Statute of the International Criminal Court." *The American Journal of International Law* 93(1):22–43.

Arsanjani, Mahnoush H. and W. Michael Reisman. 2005. "The Law-in-Action of the International Criminal Court." *The American Journal of International Law* 99(2):385–403.

Art, Robert J., Stephen G. Brooks, William C. Wohlforth, Kier A. Lieber and Gerard Alexander. 2005/2006. "Correspondence: Striking the Balance." *International Security* 30(3):177–185.

Barnett, Michael N. and Martha Finnemore. 2004. *Rules for the World: International Organizations in Global Politics*. Ithaca, NY: Cornell University Press.

Bass, Gary Jonathan. 2000. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, NJ: Princeton University Press.

Bassiouni, M. Cherif. 1998. *The Statute of the International Criminal Court: A Documentary History*. Ardsley, NY: Transnational Publishers.

Bassiouni, M. Cherif. 1999. "The Future of International Criminal Justice." *Pace University School of Law: International Law Review* 11(2):309–318.

Bassiouni, M. Cherif. 2008. *International Criminal Law*. 3rd ed. Leiden, The Netherlands: M. Nijhoff Publishers.

Bates, Douglas M. 2010. "lme4: Mixed-effects Modeling With R." Manuscript.

Bates, Douglas M., Martin Maechler and Ben Bolker. 2011. "Package 'lme4' v. 0.999375-39.".

Beck, Nathaniel, Jonathan N. Katz and Richard Tucker. 1998. "Taking Time Seriously: Time-Series-Cross-Section Analysis with a Binary Dependent Variable." *American Journal of Political Science* 42(4):1260–1288.

Beck, Nathaniel and Simon Jackman. 1998. "Beyond Linearity by Default: Generalized Additive Models in Political Science." *American Journal of Political Science* 42:596–627.

Beigbeder, Yves. 2006. *Judging War Crimes and Torture: French Justice and International Criminal Tribunals and Commissions (1940-2005)*. Leiden: Martinus Nijhoff.

Beigbeder, Yves. 2011. *International Criminal Tribunals: Justice and Politics*. Houndmills, Basingstoke, Hampshire, UK: Palgrave Macmillan.

Bendetti, Fanny and John Washburn. 1999. "Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference." *Global Governance* 5.

Benhabib, Seyla. 2009. "Claiming Rights Across Borders: International Human Rights and Democratic Sovereignty." *American Political Science Review* 103(4):691–704.

Boas, Gideon. 2007. *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings*. Cambridge, UK: Cambridge University Press.

Bolton, John R. 2001. "The Risks and the Weaknesses of the International Criminal Court from America's Perspective." *Law and Contemporary Problems* 64(1):167–180.

Box-Steffensmeier, Janet M. and Bradford S. Jones. 2004. *Event History Modeling: A Guide for Social Scientists*. Cambridge, UK: Cambridge University Press.

Brautigam, Deborah. 2009. *The Dragon's Gift: The Real Story of China in Africa*. Oxford, UK: Oxford University Press.

Brooks, Stephen G. and William C. Wohlforth. 2000. "Power, Globalization, and the End of the Cold War: Reevaluating a Landmark Case for Ideas." *International Security* 25(3):5–53.

Brooks, Stephen G. and William C. Wohlforth. 2005. "Hard Times for Soft Balancing." *International Security* 30(1):72–108.

Brooks, Stephen G. and William C. Wohlforth. 2008. *World Out Of Balance: International Relations and the Challenge of American Primacy*. Princeton, NJ: Princeton University Press.

Broomhall, Bruce. 2003. *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford, UK: Oxford University Press.

Brower, Charles N. and Jeremy K. Sharpe. 2003. "International Arbitration and the Islamic World: The Third Phase." *The American Journal of International Law* 97:643–656.

Bueno de Mesquita, Bruce and Alastair Smith. 2008. "Political Survival and Endogenous Institutional Change." *Comparative Political Studies* 20(10):1–31.

Bueno de Mesquita, Bruce and Alastair Smith. 2010. "Leader Survival, Revolutions and the Nature of Government Finance." *American Journal of Political Science* 54(4):936–50.

Bueno de Mesquita, Bruce, Randolph M. Siverson, Alastair Smith and James D. Morrow. 2003. *The Logic of Political Survival*. Cambridge, MA: MIT Press.

Bulíř, Aleš and Javier Hamann. 2003. "Aid Volatility: An Empirical Assessment." *IMF Staff Working Papers* 50(1):64–89.

Burke-White, William W. 2005. "Complementarity in Practice: The International Criminal Court as Part of a System of Multi-Level Global Governance in the Democratic Republic of Congo."

Leiden Journal of International Law 18:557–590.

Burnham, Kenneth P and David R Anderson. 2002. *Model Selection and Multimodel Inference: A Practical Information-Theoretic Approach*. 2nd ed. New York, NY: Springer.

Carey, John. 2000. "Parchment, Equilibria, and Institutions." *Comparative Political Studies* 6/7:735–761.

Carrubba, Clifford. 2009. "A Model of the Endogenous Development of Judicial Institutions in Federal and International Systems." *Journal of Politics* 71:55–69.

Carter, David B. and Curtis S. Signorino. 2010. "Back to the Future: Modeling Time Dependence in Binary Data." *Political Analysis* 18(3):271–292.

Cassese, Antonio. 2011. "Reflections on International Criminal Justice." *Journal of International Criminal Justice* 9(1):271–275.

Cassese, Antonio, Paola Gaeta and John R. W. D. Jones. 2002. *The Rome Statute of the International Criminal Court: A Commentary*. Oxford, UK: Oxford University Press.

Central Intelligence Agency of the United States of America. 2010. "Chiefs of State and Cabinet Members of Foreign Governments." Accessed September 1, 2011.

Central Intelligence Agency of the United States of America. 2012. "The World Factbook." Accessed May 1, 2012.

Chapman, Terrence L. 2011. *Securing Approval: Domestic Politics and Multilateral Authorization for War*. Chicago, IL: University of Chicago Press.

Chapman, Terrence and Stephen Chaudoin. 2011. "Ratification Patterns of the International Criminal Court." Forthcoming at *International Studies Quarterly*.

Cheibub, José Antonio, Jennifer Gandhi and James R. Vreeland. 2010. "Democracy and Dictatorship Revisited." *Public Choice* 143:67–101.

Christensen, Thomas and Glenn Snyder. 1990. "Chain Gangs and Passed Bucks: Predicting

Alliance Patterns in Multipolarity." *International Organization* 44:137–168.

Cimbala, Stephen J and Peter Kent Forster. 2010. *Multinational Military Intervention: NATO Policy, Strategy and Burden Sharing*. Farnham, UK: Ashgate.

Cingranelli, David L. and David L. Richards. 2010. "The Cingranelli-Richards (CIRI) Human Rights Dataset v. 2010.03.02." Accessed October 12, 2011.

Clinton, Joshua, Simon Jackman and Doug Rivers. 2004. "The Statistical Analysis of Roll Call Data." *American Political Science Review* 98(2):355—370.

Clodfelter, Micheal. 2008. *Warfare and Armed Conflicts: A Statistical Encyclopedia of Casualty and Other Figures, 1494–2007*. 3rd ed. Jefferson, NC: McFarland.

Combs, Nancy A. 2007. *Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach*. Stanford, CA: Stanford University Press.

Combs, Nancy A. 2010. *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions*. Cambridge, UK: Cambridge University Press.

Conley, Timothy G. and Francesca Molinari. 2007. "Spatial Correlation Robust Inference with Errors in Location or Distance." *Journal of Econometrics* 140(1):76 – 96.

Convention for the Creation of an International Criminal Court. 1938. League of Nations Official Journal Special Supplement No. 156 (1936), League of Nations Document C.547.M.384.1937.V.

Convention for the Prevention and Punishment of Terrorism. 1938. League of Nations Official Journal Special Supplement No. 156 (1936), League of Nations Document C.546.M.383.1937.V.

Convention on the Suppression and Punishment of the Crime of Apartheid. New York, 30 November 1973. Nov. 30, 1973, G.A. Res. 3068, 28 U.N. GAOR (No. 50), U.N. Doc.A/9233/Add.1 (1973).

Cordesman, Anthony H. 2001. *The Lessons and Non-Lessons of the Air and Missile Campaign in Kosovo*. Westport, CT: Praeger.

Cryer, Robert, Håkan Friman, Darryl Robinson and Elizabeth Wilmshurst. 2010. *An Introduction to International Criminal Law and Procedure*. 2nd ed. Cambridge, UK: Cambridge University Press.

Dahl, Robert Alan. 1971. *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press.

Danner, Allison M. and Jenny S. Martinez. 2005. "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Developtment of International Criminal Law." *California Law Review* 93:75–169.

Danner, Mark. 2004. *Torture and Truth: America, Abu Ghraib, and the War on Terror*. New York, UK: New York Review Books.

Davenport, Christian and David A. Armstrong. 2004. "Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996." *American Journal of Political Science* 48(3):538–554.

de Zeeuw, Jeroe. 2008. *From Soldiers to Politicians: Transforming Rebel Movements after Civil War*. Boulder, CO: Lynne Rienner Publishers.

Derogy, Jacques. 1990. *Resistance and Revenge: The Armenian Assassination of the Turkish Leaders Responsible for the 1915 Massacres and Deportations*. New Brunswick, NJ: Transaction Publishers.

Deutsch, K.W. 1969. *Political community and the North Atlantic area*. Greenwood Press.

Dietelhoff, Nicole. 2009. "The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case." *International Organization* 63:33–65.

Donnelly, Jack. 1986. "International Human Rights: A Regime Analysis." *International*

Organization 40(3):599–642.

Downes, Alexander B. 2008. *Targeting Civilians in War*. Ithaca, NY: Cornell University Press.

Doyle, Michael W. 1986. "Liberalism and World Politics." *American Political Science Review* pp. 1151–1169.

Draft Code of Crimes Against the Peace and Security of Mankind: Titles and Articles on the Draft Code of Crimes Against Peace and Security of Mankind, Adopted by the International Law Commission on its Forty-Eighth Session. 1996. UN GAOR 51st Session, UN DOcument A/CN.4L.532 (1996).

Draft Convention for the Establishment of a United Nations War Crimes Court. 30 September 1944. UN War Crimes Commission, Doc. C.50.1.

Dreher, Axel, Jan-Egbert Sturm and James R. Vreeland. 2008. "Development Aid and International Politics: Does Membership on the UN Security Council Influence World Bank Decisions?" *Journal of Development Economics* 88(1):1–18.

Dunning, Thad. 2004. "Conditioning the Effects of Aid: Cold War Politics, Donor Credibility, and Democracy in Africa." *International Organization* 58:409–423.

Egadu, Samuel Okiror. 2007. "Uganda: Kampala Rules Out Blanket Amnesty for LRA." *Institute for War & Peace Reporting, ACR Issue 137.* 12 October. Accessed 15 April 2011.

Fearon, James D. 1997. "Signaling Foreign Policy Interests: Tying Hands Versus Sinking Costs." *Journal of Conflict Resolution* 41(1):68–90.

Fehl, Caroline. 2004. "Explaining the International Criminal Court: A 'Practice Test' for Rationalist and Constructivist Approaches." *European Journal of International Relations* 10(3):357–394.

Ferencz, Benjamin B. 1975. *Defining International Aggression, the Search for World Peace: A Documentary History and Analysis*. Dobbs Ferry, NY: Oceana Publications.

Feyzioglu, Tarhan, Vinaya Swaroop and Min Zhu. 1998. "A Panel Data Analysis of the Fungibility of Foreign Aid." *The World Bank Economic Reviw* 12(1):29–58.

Finnemore, Martha. 1996. "Norms, Culture and World Politics: Insights From Sociology's Institutionalism." *International Organization* 50(2):325–347.

Finnemore, Martha. 2009. "Legitimacy, Hypocrisy, and the Social Structure of Unipolarity." *World Politics* 61(1):58–85.

Finnemore, Martha and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 47(4):565–597.

Forsythe, David P. 2002. "The United States and International Criminal Justic." *Human Rights Quarterly* 24:974–991.

Fortna, Virginia Page. 2008. *Does Peacekeeping Work? Shaping Belligerents' Choices After Civil War*. Princeton, NJ: Princeton University Press.

Franzese, Robert J., Jude C. Hays and Lena M. Schaeffer. 2010. "Spatial, Temporal, and Spatiotemporal Autoregressive Probit Models of Binary Outcomes: Estimation, Interpretation, and Presentation." Manuscript, Department of Political Science, University of Michigan.

Freedom House. 2010. "Freedom of the Press Index." Accessed October 3, 2011.

Freedom House. 2009. Accessed October 3, 2011.

Fuhrmann, Matthew and Jaroslav Tir. 2009. "Territorial Dimensions of Enduring Internal Rivalries." *Conflict Management and Peace Science* 26(4):307–329.

Garrett, Geoffrey and Barry Weingast. 1993. Ideas, Interests and Institutions: Constructing the EC's Internal Market. In *Ideas, Interests and Institutions*, ed. Judith Goldstein and Robert O. Keohane. Ithaca, NY: Cornell University Press.

Gelman, Andrew and Jennifer Hill. 2007. *Data Analysis Using Regression and Multilevel/Hierarchical Models*. Cambridge, UK: Cambridge University Press.

Gibney, Mark, Linda Cornett and Reed Wood. 2010. "Political Terror Scale 1976-2008." Accessed October 1, 2011.

Gilligan, Michael. 2006. "Is Enforcement Necessary for Effectiveness? A Model of the International Criminal Regime." *International Organization* 60:935–967.

Ginsburg, Tom. 2009. "The Clash of Commitments and the International Criminal Court." *Chicago Journal of International Law* 9:499–514.

Ginsburg, Tom and Richard McAdams. 2004. "Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution." *William and Mary Law Review* 45(4):1229– 1339.

Glasius, Marlies. 2006. *The International Criminal Court: A Global Civil Society Achievement*. London, UK: Routledge.

Goemans, Hein E., Kristian S. Gleditsch and Giacomo Chiozza. 2009. "Introducing Archigos: A Data Set of Political Leaders." *Journal of Peace Research* 46(2):269–283.

Goldsmith, Jack. 2003. "The Self-Defeating International Criminal Court." *University of Chicago Law Review* 70:89–104.

Goldsmith, Jack L. and Eric A. Posner. 2007. *The Limits of International Law*. Oxford, UK: Oxford University Press.

Goldsmith, Jack and Stephen D. Krasner. 2003. "The Limits of Idealism." *Daedalus* 132:47–63.

Goodliffe, Jay and Darren Hawkins. 2009. "A Funny Thing Happened on the Way to Rome: Explaining International Criminal Court Negotiations." *Journal of Politics* 71(3):977–997.

Goodliffe, Jay, Darren Hawkins, Christine Horne and Daniel Nielson. 2011. "Dependence Networks and the International Criminal Court." Typescript, Brigham Young University, Salt Lake City, UT.

Groenleer, Martijn and David Rijks. 2009. The European Union and the International Criminal Court: The Politics of International Criminal Justice. In *The European Union and International*

Organizations, ed. Knud Erik Jørgensen. Vol. 5 London, UK: Routledge.

Guzman, Andrew T. 2008. *How International Law Works*. New York, NY: Oxford University Press.

Habermas, Jüergen. 1984. *The Theory of Communicative Action*. Vol. 2 vols Boston, MA: Beacon Press.

Habermas, Jüergen. 1996. *Between Facts and Norms*. Cambridge: Polity Press.

Hafner-Burton, Emilie M. 2005. "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." *International Organization* 59(3):593–629.

Hafner-Burton, Emilie M. and Kyotero Tsutsui. 2005. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology* 5:1373–1411.

Hartzell, Caroline A. 2009. "Settling Civil Wars: Armed Opponents Fates and the Duration of the Peace." *Conflict Management and Peace Science* 26(4):437–365.

Hathaway, Oona Anne. 2002. "Do Human Rights Treaties Make a Difference?" *Yale Law Journal* 111:1935–2042.

Hathaway, Oona Anne. 2007. "Why Do Countries Commit to Human Rights Treaties?" *Journal of Conflict Resolution* 51(4):588–621.

Hawkins, Darren G., David A. Lake, Daniel L. Nielson and Michael J. Tierney, eds. 2006. *Delegation and Agency in International Organizations*. Cambridge, UK: Cambridge University Press.

Helmke, Gretchen. 2005. *Courts Under Constraints: Judges, Generals, and Presidents in Argentina*. Cambridge, UK: Cambridge University Press.

Hencken Ritter, Emilie and Scott Wolford. 2012. "The Politics of Nonsovereign Courts." *Journal of Theoretical Politics* Forthcoming.

Henquet, Thomas. 1999. "Mandatory Compliance Powers Vis-à-Vis States by the Ad Hoc

Tribunals and the International Criminal Court: A Comparative Analysis." *Leiden Journal of International Law* 12:969–999.

Herwig, Holger. 1987. "Clio Deceived: Patrotic Self-Censorship in Germany after the Great War." *International Security* 12(2):5–44.

Hicken, Allen. 2011. "Clientelism." *Annual Review of Political Science* 14(1):289–310.

Höglund, Kristine. 2008. Violence in War-to-Democracy Transitions. In *From War to Democracy: Dilemmas of Peacebuilding*, ed. Anna K. Jarstad and Timothy D. Sisk. Cambridge, UK: Cambridge University Press chapter 3, pp. 80–102.

Honaker, James and Gary King. 2010. "What To Do About Missing Values in Time Series Cross-Section Data." *American Journal of Political Science* .

Honaker, James, Gary King and Matthew Blackwell. 2009. "Amelia II: A Program for Missing Data v. 1.2-18.".

Hopf, Ted. 2002. *Social Sonstruction of International Politics: Identities & Foreign Policies, Moscow, 1955 and 1999*. Ithaca, NY: Cornell University Press.

Howorth, Jolyon and Anand Menon. 2009. "Still Not Pushing Back: Why the European Union Is Not Balancing the United States." *Journal of Conflict Resolution* 53(5):727–744.

Hudson, Marston O. 1938. "The Proposed International Criminal Court." *The American Journal of International Law* 32(3):549–554.

Hurd, Ian. 2007. *After Anarchy: Legitimacy and Power in the United Nations Security Council*. Princeton, NJ: Princeton University Press.

Iacus, Stefano M., Gary King and Giuseppe Porro. 2011. "Causal Inference Without Balance Checking: Coarsened Exact Matching." *Political Analysis* 20(1).

Ikenberry, G. John. 2002. Introduction. In *American Unrivaled: the Future of the Balance of Power*, ed. G. John Ikenberry. Ithaca, NY: Cornell University Press.

Ikenberry, G. John, Michael Mastanduno and William C. Wohlforth. 2009. "Introduction: Unipolarity, State Behavior, and Systemic Consequences." *World Politics* 61(1):1–27.

Imai, Kosuke, Gary King and Olivia Lau. 2006. "Zelig: Everyone's Statistical Software." v. 2.8–5.

International Monetary Fund. 2010*a*. "Direction of Trade Statistics." Accessed October 4, 2010.

International Monetary Fund. 2010*b*. "International Financial Statistics." Accessed October 6, 2010.

Issacharoff, Avi and *Haaretz* Service. 2011. "Report: UN tribunal to link Iran's Supreme Leader with Hariri assassination." *Haaretz.* 15 January. Accessed on 20 February 2011.

Jarstad, Anna K. 2008. Power Sharing: Former Enemies in Joint Government. In *From War to Democracy: Dilemmas of Peacebuilding*, ed. Anna K. Jarstad and Timothy D. Sisk. Cambridge, UK: Cambridge University Press chapter 4, pp. 105–133.

Jarstad, Anna K. and Desirée Nillson. 2009. "From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords." *Conflict Management and Peace Science* 25(3):206–233.

Johnston, Alastair I. 2008. *Social States: China in International Institutions, 1980-2000*. Princeton, NJ: Princeton University Press.

Katzenstein, Peter J. 1996. *The Culture of National Security: Norms and Identity in World Politics*. New York, NY: Columbia University Press.

Kaufmann, Daniel, Art Kraay and Massimo Mastruzzi. 2009. "Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996-2008." World Bank Policy Research Working Paper No. 4978.

Keck, Margaret E and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Kelley, Judith. 2007. "Who Keeps International Commitments and Why? The International

Criminal Court and Bilateral Nonsurrender Agreements." *American Political Science Review* 101(3):573–589.

Keohane, Robert O. 1986. "Reciprocity in International Relations." *International Organization* 40(1):1–27.

Kim, Hunjoon and Kathryn Sikkink. 2010. "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries." *International Studies Quarterly* 54(4):939–963.

King, Gary, James Honaker, Anne Joseph and Kenneth Scheve. 2001. "Analyzing Incomplete Political Science Data: An Alternative Algorithm for Multiple Imputation." *American Political Science Review* 95(1):49–69.

King, Gary and Langche Zeng. 2006. "The Dangers of Extreme Counterfactuals." *Political Analysis* 14(2):131–159.

King, Gary, Michael Tomz and Jason Wittenberg. 2000. "Making the Most of Statistical Analyses: Improving Interpretation and Presentation." *American Journal of Political Science* 44(2):341–355.

Kirkpatrick, David D. and Marlise Simons. 2012. "Libya Resists International Court's Claim on War Crimes Case." *The New York Times.* 21 March.

Kissinger, Henry. 2001. "The Pitfalls of Universal Jurisdiction." *Foreign Affairs* 80(4):86–96.

Klein, John P. and Melvin L Moeschberger. 2003. *Survival Analysis: Techniques for Censored and Truncated Data*. 2nd ed. New York, NY: Springer.

Klotz, Audie. 1995. *Norms in International Relations: The Struggle Against Apartheid*. Ithaca, NY: Cornell University Press.

Klug, Heinz. 2000. *Constituting Democracy: Law, Globalism, and South Africa's Political Reconstruction*. Cambridge, UK: Cambridge University Press.

Knight, Jack. 1992. *Institutions and Social Sonflict*. Cambridge, UK: Cambridge University Press.

Kono, Daniel Yuichi and Gabriella R. Montinola. 2009. "Does Foreign Aid Support Autocrats, Democrats, or Both?" *Journal of Politics* 71:704–718.

Kovrig, Bennett. 1976. "Mediation by Obfuscation: the Resolution of the Marseille Crisis, October 1934 to May 1935." *The Historical Journal* 19(1):191–221.

Krauthammer, Charles. 2002. "The Unipolar Moment Revisited." *The National Interest* Dec. 1, 2002.

Kress, Claus. 2004. "'Self-Referrals' and 'Waivers of Complementarity': Some Considerations in Law and Policy." *Journal of International Criminal Justice* 2:944–948.

Kuziemko, I. and E. Werker. 2006. "How Much Is a Seat on the Security Council Worth? Foreign Aid and Bribery at the United Nations." *Journal of Political Economy* 114(5):905–930.

Lake, David A. 1999. *Entangling Relations: American Foreign Policy in its Century*. Princeton, NJ: Princeton University Press.

Lawson, Colin W. 1987. "Soviet Economic Aid Volume, Function and lmportance." *Development Policy Review* 5(3):257–276.

Layne, Christopher. 1993. "The Unipolar Illusion: Why New Great Powers Will Rise." *International Security* 17.

Lebovic, James J. and Erik Voeten. 2009. "The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violators." *Journal of Peace Research* 46(1):79–97.

Lebow, Richard Ned. 2008. *A Cultural Theory of International Relations*. Cambridge, UK: Cambridge University Press.

Lebow, Richard Ned. 2010. *Why Nations Fight: Past and Future Motives for War*. New York, NY: Cambridge University Press.

Lensink, Robert and Oliver Morrissey. 2000. "Aid Instability as a Measure of Uncertainty and the

Positive Impact of Aid on Growth." *The Journal of Development Studies* 36(3):31–49.

Levi, Margaret. 1988. *Of Rule and Revenue*. Berkeley, CA: University of California Press.

Licht, Amanda A. 2010. "Coming Into Money: The Impact of Foreign Aid on Leader Survival." *Journal of Conflict Resolution* 54(1):58–87.

Licklider, Roy. 1995. "The Consequences of Negotiated Settlements in Civl Wars, 1945-1993." *American Political Science Review* 89(3):681–690.

Lieber, Kier A. and Gerard Alexander. 2005. "Waiting for Balancing: Why the World is Not Pushing Back." *International Security* 30(1):109–139.

Linzer, Drew A. and Jeffrey Lewis. 2011*a*. "poLCA: An R Package for Polytomous Variable Latent Class Analysis." *Journal of Statistical Software* 42(10):1–29.

Linzer, Drew A. and Jeffrey Lewis. 2011*b*. "poLCA: Polytomous Variable Latent Class Analysis." R Package version 1.3.1.

London International Assembly. 1943. "Reports on Punishment of War Crimes." U.N. Doc. A/CN.4/7 Rev.1 (1949).

Lumley, Thomas. 2010. "Package 'mitools' v. 2.0.1.".

Lumsdaine, David H. 1993. *Moral Vision in International Politics: The Foreign Aid Regime, 1949-1989*. Princeton, NJ: Princeton University Press.

Lupia, Arthur and Mathew D McCubbins. 1998. *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* Cambridge, UK: Cambridge University Press.

Lutz, Ellen L. and Caitlin Reiger. 2009. *Prosecuting Heads of State*. Cambridge, UK: Cambridge University Press.

Lyall, Jason. 2010. "Do Democracies Make Inferior Counterinsurgents? Reassessing Democracy's Impact on War Outcomes and Duration." *International Organization* 64:167–192.

Lyall, Jason and Isaiah Wilson. 2009. "Rage Against the Machines: Mechanization and the

Determinants of Victory in Counterinsurgency Warfare." *International Organization* 63(1):67–106.

MacFarquhar, Neil and Marlise Simons. 2009. "Bashir Defies War Crime Arrest Order." *The New York Times.* 6 March.

Mamdani, Mahmood. 2009. *Saviors and Survivors: Darfur, Politics, and the War on Terror*. 1st ed. New York, NY: Pantheon Books.

Marais, Hein. 1998. *South Africa, Limits to Change: The Political Economy of Transformation*. Cape Town: University of Cape Town Press.

March, James G and Johan P. Olsen. 1989. *Rediscovering Institutions: The Organizational Basis of Politics*. New York, NY: Free Press.

Marquardt, Paul D. 1995. "Law Without Borders: The Constitutionality of an International Criminal Court." *Columbia Journal of Transnational Law* 33:73–148.

Marshall, Monty G. and Keith Jaggers. 2009. "Polity IV Project: Political Regime Characteristics and Transitions, 1800-2008." Accessed January 12, 2011.

Mathenge, Oliver. 2011. "Rough Road Ahead as Kenya Plans to Lobby UN's Big Five." *Daily Nation.* 5 February.

McAdams, Richard. 2005. "The Expressive Power of Adjudication." *University of Illinois Law Review* 5(1043-1121).

McGillivray, Fiona and Alastair Smith. 2008. *Punishing the Prince: A Theory of Interstate Relations, Political Institutions, and Leader Change*. Princeton, NJ: Princeton University Press.

McSherry, J. Patrice. 1997. *Incomplete Transition: Military Power and Democracy in Argentina*. New York, NY: St. Martin's Press.

Mearsheimer, John J. 2001. *The Tragedy of Great Power Politics*. New York, NY: Norton.

Mehlis, Detlev. 2005. "Report of the International Independent Investigation Commission

Established Pursuant to Security Council Resolution 1595 (2005). S/2005/662." http://www.un.org/News/dh/docs/mehlisreport/.

Milner, Helen and Dustin Tingley. 2010*a*. "The Political Economy of U.S. Foreign Aid: American Legislators and the Domestic Politics of Aid." *Economics & Politics* 22(2):200–232.

Milner, Helen and Dustin Tingley. 2010*b*. "Who Supports Global Economic Engagement? The Sources of Preferences in American Foreign Economic Policy." *International Organization* 65:37–68.

Mitchell, Sara McLaughlin and Emilia J. Powell. 2011. *Domestic Law Goes Global: Legal Traditions and International Courts*. Cambridge, UK: Cambridge University Press.

Moe, Terry M. 2005. "Power and Political Institutions." *Perspectives on Politics* 3(2):215–231.

Morrison, Kevin. 2009. "Oil, Nontax Revenue, and the Redistributional Foundations of Regime Stability." *International Organization* 63:107–138.

Morrow, James D. 2007. "When Do States Follow the Laws of War?" *American Political Science Review* 101(3):559–572.

Morton, Jeffrey S. 2000. *The International Law Commission of the United Nations*. Columbia, SC: University of South Carolina Press.

Moscow Declaration on Atrocities of 1 November 1943. 1945. United Nations Information Organisation. United Nations. London, UK.

Mukherjee, Bumba. 2006. "Why Political Power-Sharing Agreements Lead to Enduring Peaceful Resolution of Some Civil Wars, But Not Others?" *International Studies Quarterly* 50(2):479–504.

Murunga, Godwin R. and Shadrack W. Nasong'o. 2010. "Bent on Self-Destruction: The Kibaki regime in Kenya." *Journal of Contemporary African Studies* 24(1):1–28.

Mydans, Seth. 2011. "Judge Quits Tribunal in Khmer Rouge Inquiry." *The New York Times.* 10

October. Accessed 10 October 2011.

Nagel, Thomas. 2005. "The Problem of Global Justice." *Philosophy and Public Affairs* 33(2):113–147.

Neier, Aryeh. 1998. *War Crimes: Brutality, Genocide, Terror and the Struggle for Justice*. New York, NY: Times Books.

Neumayer, Eric. 2003. *The Pattern of Aid Giving: The Impact of Good Governance on Development Assistance*. London, UK: Routledge.

Neumayer, Eric. 2007. "Qualified Ratification: Explaining Reservations to International Human Rights Treaties." *Journal of Legal Studies* 36(2):397–430.

Neumayer, Eric. 2009. "A New Moral Hazard? Military Intervention, Peacekeeping and the International Criminal Court." *Journal of Peace Research* 46(5):659–670.

Nexon, Daniel H. 2009. "The Balance of Power in The Balance." *World Politics* 61(2):330–359.

Nielsen, Richard A., Michael G. Findley, Zachary S. Davis, Tara Candland and Daniel L. Nielson. 2011. "Foreign Aid Shocks as a Cause of Violent Armed Conflict." *American Journal of Political Science* 55(2):219–232.

Nielson, Richard and Beth A. Simmons. 2009. "Rewards for Ratification?" Paper presented at the Annual Conference of the American Political Science Association, Washington, DC.

Off, Carol. 2000. *The Lion, The Fox and the Eagle: A Story of Generals and Justice in Yugoslavia and Rwanda*. Toronto, Canada: Random House Canada.

Office of the Prosecutor of the ICC. 2009. "Prosecutorial Strategy." Consultative Conference on International Criminal Justice at the United Nations Headquarters. `http://www.internationalcriminaljustice.net/experience/papers/session1.pdf`.

Okuta, Antonina. 2009. "National Legislation for Prosecution of International Crimes in Kenya." *Journal of International Criminal Justice* 7:1063–1076.

Organisation for Economic Co-Operation and Development International Development Statistics. 2010. "ODA Official Development Assistance: Disbursements." Accessed November 1, 2011.

Owen, John M. 1994. "How Liberalism Produces Democratic Peace." *International Security* 19(2):87–125.

Pape, Robert. 2005. "Soft Balancing Against the United States." *International Security* 30(1):7–45.

Paris, Roland. 2004. *At War's End: Building Peace After Civil Conflict*. Cambridge, UK: Cambridge University Press.

Paul, T.V. 2005. "Soft Balancing in the Age of U.S. Primacy." *International Security* 30(1):46–71.

Pereira, Anthony W. 2005. *Political (In)justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina*. Pittsburgh, PA: University of Pittsburgh Press.

Peskin, Victor. 2008. *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*. Cambridge, UK: Cambridge University Press.

Peters, John E. 2001. *European Contributions To Operation Allied Force: Implications for Transatlantic Cooperation*. Santa Monica, CA: RAND.

Posen, Barry R. 2006. "European Union Security and Defense Policy: Response to Unipolarity?" *Security Studies* 15(2):149–186.

Posner, Eric A. 2009. *The Perils of Global Legalism*. Chicago, IL: University of Chicago Press.

Powell, Emilia J. 2006. *Conflict, Cooperation, and the World's Legal Systems*. Ph.D. Disseratation. Florida State University.

Powell, Emilia J. and Sara McLaughlin Mitchell. 2007. "The International Court of Justice and the World's Three Legal Systems." *Journal of Politics* 69(2):397–415.

Powell, Emilia J. and Sara McLaughlin Mitchell. 2008. "The Creation and Expansion of the International Criminal Court." Prepared for the Midwest Political Science Association

Conference, Chicago IL, April 3-6.

Powell, Robert. 2004. "The Inefficient Use of Power: Costly Conflict with Complete Information." *American Political Science Review* 98:231–241.

Power, Samantha. 2002. *A Problem From Hell: America and the Age of Genocide*. New York, NY: Basic Books.

Prunier, Gérard. 2009. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. Oxford, UK: Oxford University Press.

Quinn, David J., David T. Mason and Gurses Mehmet. 2007. "Sustaining the Peace: Determinants of Civil War Recurrence." *International Interactions* 33(2):167–193.

Radetzki, Marian. 2008. *A Handbook of Primary Commodities in the Global Economy*. Cambridge, UK: Cambridge University Press.

Ralph, Jason G. 2007. *Defending the Society of States: Why America Opposes the International Criminal Court and its Vision of World Society*. Oxford, UK: Oxford University Press.

Ratner, Steven R., Jason S. Abrams and James Bischoff. 2009. *Accountability For Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. 3rd ed. Oxford, UK: Oxford University Press.

Reiter, Dan and Allan C. Stam. 2002. *Democracies at War*. Princeton, NJ: Princeton University Press.

Rejali, Darius M. 2007. *Torture and Democracy*. Princeton, NJ: Princeton University Press.

Report of the Permanent International Criminal Court. Vienna, 5-11 August 1926. International Law Association, 34th Conference.

Resnick, Judith. 2012. "Detention, the War on Terror, and the Federal Courts." *Columbia Law Review* 112(4):579–686.

Revised Draft Statute for an International Criminal Court. 1954. GAOR 9th Session, Supplement

No. 12, U.N. Doc. A/2645.

Risse, Thomas. 2000. "'Let's Argue!' Communicative Action in World Politics." *International Organization* 54(1):1–39.

Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink, eds. 1999. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge, UK: Cambridge University Press.

Roach, Steven C. 2005. "Arab States and the Role of Islam in the International Criminal Court." *Political Studies* 53:143–161.

Roeder, Philip G and Donald S Rothchild. 2005. *Sustainable Peace: Power and Democracy After Civil Wars*. Ithaca, NY: Cornell University Press.

Rome Statute of the International Criminal Court. Rome, 17 July 1998. United Nations *Treaty Series*, vol. 2187.

Roth, Kenneth. 2001. "The Case For Universal Jurisdiction." *Foreign Affairs* 80(5).

Ruggie, John Gerard. 1982. "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order." *International Organization* 36(2):379–415.

Ruggie, John Gerard. 1993. *Multilateralism Matters: the Theory and Praxis of an Institutional Form*. New York, NY: Columbia University Press.

Russett, Bruce M. 1993. *Grasping the Democratic Peace*. Princeton, NJ: Princeton University Press.

Sarkees, Meredith Reid and Frank Whelon Wayman. 2010. *Resort to War: A Data Guide to Inter-State, Extra-State, Intra-State, and Non-Sate Wars, 1816-2007*. Washington, DC: CQ Press.

Schabas, William. 2010. *The International Criminal Court: A Commentary on the Rome Statute*. Oxford, UK: Oxford University Press.

Schabas, William. 2011. *An Introduction to the International Criminal Court*. 4th ed. Cambridge, UK: Cambridge University Press.

Schabas, William A. 2008. "Prosecutorial Discretion v. Judicial Activism at the International Criminal Court." *Journal of International Criminal Justice* 6(4):731–761.

Scharf, Michael P. 1991. "The Jury Is Still Out on the Need for An International Criminal Court." *Duke Journal of Comparative & International Law* pp. 135–168.

Scharf, Michael P. 1994. "Getting Serious About An ICC." *Pace International Law Review* 6(1):103–120.

Scharf, Michael P. 1999. "The Amnesty Exception to the Jurisdiction of the International Criminal Court." *Cornell International Law Journal* 32:507–527.

Scheffer, David. 2012. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton, NJ: Princeton University Press.

Schiff, Benjamin N. 2008. *Building the International Criminal Court*. Cambridge, UK: Cambridge University Press.

Seton-Watson, R.W. 1936. "Europe and the Austrian Problem." *International Affairs (Royal Institute of International Affairs 1931-1939)* 15(3):327–350.

Shklar, Judith N. 1964. *Legalism*. Cambridge, MA: Harvard University Press.

Sikkink, Kathryn. 1993. The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe. In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, ed. Judith Goldstein and Robert O. Keohane. Ithaca, NY: Cornell University Press pp. 139–70.

Sikkink, Kathryn. 2011. *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. 1st ed. New York, NY: W. W. Norton & Co.

Simmons, Beth A. 2009. *Mobilizing for Rights: International Law in Domestic Politics*. Cambridge, UK: Cambridge University Press.

Simmons, Beth A. and Allison M. Danner. 2010. "Credible Commitments and the International

Criminal Court." *International Organization* 64(2).

Slantchev, Branislav L. 2005. "Military Coercion in Interstate Crises." *American Political Science Review* 99(04):533–547.

Slaughter, Anne-Marie and William W. Burke-White. 2006. "The Future of International Law Is Domestic (or, the European Way of Law)." *Harvard International Law Journal* 47(2):327–352.

Sluiter, Göran. 2005. "The ICTR and the Protection of Witnesses." *Journal of International Criminal Justice* 3(4):962–976.

Smith, Alastair and James R. Vreeland. 2006. The Survival of Political Leaders and IMF Programs. In *Globalization and the Nation State: The Impact of the IMF and the World Bank*, ed. Gustav Ranis, James R. Vreeland and Stephen Kosack. London, UK: Routledge.

Smith, Brian H. 1990. *More than Altruism: The Politics of Private Foreign Aid*. Princeton, NJ: Princeton University Press.

Smith, Thomas W. 2002. "Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism." *International Politics* 39:175–192.

Snyder, Glenn. 1984. "The Security Dilemma in Alliance Politics,." *World Politics* 36:461–495.

Snyder, Jack L. 2000. *From Voting to Violence: Democratization and Nationalist Conflict*. New York, NY: Norton.

Snyder, Jack and Leslie Vinjamuri. 2004. "Trials and Errors: Principle and Pragmatism in Strategies of International Justice." *International Security* 28(3):5–44.

Sōderberg Kovacs, Mimmi. 2008. Post-War Elections: Uncertain Turning Points of Transition. In *From War to Democracy: Dilemmas of Peacebuilding*, ed. Anna K. Jarstad and Timothy D. Sisk. Cambridge, UK: Cambridge University Press chapter 5, pp. 134–156.

Stedman, Stephen John, Donald S Rothchild and Elizabeth M Cousens. 2002. *Ending Civil Wars: The Implementation of Peace Agreements*. Boulder, CO: Lynne Rienner.

Stone, Randall W. 1996. *Satellites and Commissars: Strategy and Conflict in the Politics of Soviet-Bloc Trade*. Princeton, NJ: Princeton University Press.

Stone, Randall W. 2002. *Lending Credibility: the International Monetary Fund and the Post-Communist Transition*. Princeton, NJ: Princeton University Press.

Struett, Michael J. 2008. *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency*. New York, NY: Palgrave Macmillan.

Struett, Michael J and Steven Weldon. 2006. "Explaining State Decisions to Ratify the International Criminal Court." Paper presented at the Annual Conference of the American Political Science Association in Philadelphia, PA.

Subotić, Jelena. 2009. *Hijacked Justice: Dealing With the Past in the Balkans*. Ithaca, NY: Cornell University Press.

Synovate pan-Africa. April 2010. "Kenyans Overwhelmingly Support the ICC Prosecutions." Accessed 10 January 2011.

The Associated Press. 2012. "International Court Team is Held in Libya." *The New York Times.* 10 June.

The World Bank. 2010*a*. "World Bank Global Development Finance 2010." Accessed October 1, 2010.

The World Bank. 2010*b*. "World Development Indicators 2010." Accessed October 1, 2010.

The World Bank Group. 2011. "Worldwide Governance Indicators 2011." Accessed May 25, 2011.

The Treaties of Peace 1919-1923, Vol. II. 1924. New York, NY: Carnegie Endowment for International Peace.

Third Report Relating to a Draft Code of Offences Against the Peace and Security of Mankind. 1954. UN GAOR 6th Session, UN Document A/CN.4/85 (1954).

Toft, Monica Duffy. 2010. *Securing the Peace: The Durable Settlement of Civil Wars*. Princeton, NJ: Princeton University Press.

Totani, Yuma. 2008. *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II*. Cambridge, MA: Harvard University Asia Center.

United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Paris, 9 December 1948. United Nations *Treaty Series* vol. 78 p. 277.

Uppsala Conflict Data Program (UCDP) and Centre for the Study of Civil Wars, International Peace Research Institute, Oslo (PRIO). 2009. "UCDP/PRIO Armed Conflict Dataset v.4-2009, 1946—2008." Accessed October 12, 2010.

Vanberg, Georg. 2005. *The Politics of Constitutional Review in Germany*. Cambridge, UK: Cambridge University Press.

Vienna Convention on the Law of Treaties. Vienna, 23 May 1969. United Nations *Treaty Series*, vol. 1155, p. 331.

Vinck, Patrick, Pham Phuong, Eric Stover, Andrew Moss, Wierda Marleke and Richard Bailey. 2007. "When the War Ends: a New Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda." Human Rights Center: University of California Berkeley.

Vinck, Patrick, Pham Phuong, Suliman Baldo and Rachel Shigekane. 2008. "Living With Fear: a Population-Based Survey on Attitudes About Peace, Justice, and Social Reconstruction in Eastern Democratic Republic of Congo." Human Rights Center: University of California Berkeley.

Voeten, Erik. 2005. "The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force." *International Organization* 59:527–557.

Voeten, Erik. 2008. "The Impartiality of International Judges: Evidence from the European Court

of Human Rights." *American Political Science Review* 102:417–433.

Vreeland, James R. 2009. "Global Horse Trading: IMF Loans for Votes in the United Nations Security Council." *European Economic Review* 53(7):742–757.

Wagner, R. Harrison. 2007. *War and the State: The Theory of International Politics*. Ann Arbor, MI: University of Michigan Press.

Walt, Stephen M. 1987. *The Origins of Alliances*. Ithaca, NY: Cornell University Press.

Walt, Stephen M. 2005. *Taming American Power: The Global Response to U.S. Primacy*. New York, NY: Random House.

Walt, Stephen M. 2009. "Alliances in a Unipolar World." *World Politics* 61(1):86–120.

Waltz, Kenneth Neal. 1979. *Theory of International Politics*. Reading, MA: Addison-Wesley Pub. Co.

Waltz, Kenneth Neal. 1993. "The Emerging Structure of International Politics." *International Security* 18.

Wohlforth, William C. 1999. "The Stability of a Unipolar World." *International Security* 24(1):5–41.

Worth, Robert F. 2010. "Hezbollah Looks for Shield From Indictments' Sting." *The New York Times.* 24 July.

Wright, Joseph G. and Matthew Winters. 2010. "The Politics of Effective Foreign Aid." *Annual Review of Political Science* 13:61–80.

Wrong, Michela. 2009. *It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower*. New York, NY: Harper.