

**COMMITMENT TO THE INTERNATIONAL CRIMINAL COURT: DO  
STATES VIEW STRONG ENFORCEMENT MECHANISMS AS A CREDIBLE  
THREAT?**

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## **Abstract**

States with poor human rights records regularly sign and violate international treaties designed to protect human rights. In contrast to previous human rights treaties that only require self-reporting, commitment to the International Criminal Court (the “ICC”) requires the state to cede to an independent prosecutor the power to investigate and prosecute the state’s own nationals for mass atrocities when that prosecutor determines the state is unwilling or unable to carry out the investigation domestically. Because the enforcement mechanisms associated with the ICC are significant, I find that states with poor human rights records will be less likely to ratify the treaty, yet states with strong domestic law enforcement institutions will be more likely to join. The implication is that, unlike as with previous treaties, states are not committing to the ICC unless they intend to comply, suggesting that treaties with strong enforcement mechanisms might be more effective at curbing mass atrocities.

Are the terms and provisions of international human rights treaties relevant to state commitment decisions? In particular, does the presence of strong enforcement mechanisms in such treaties cause states to view them as credible threats such that states actually consider their ability to comply with treaty terms and promote the goals they are designed to achieve before committing? The International Criminal Court (the “ICC”) provides a unique opportunity to examine these questions. The ICC is the first permanent, treaty-based international criminal court established to help end impunity for perpetrators of the most serious crimes of genocide, crimes against humanity, and war crimes. In addition, unlike other human rights treaties, the ICC treaty contains significant, legally binding, and precise enforcement mechanisms to punish non-compliance. Indeed, non-compliance with the ICC treaty can result in a substantial loss of state sovereignty – the state’s right to mete out justice within its own borders. The 110 State Parties to the ICC have agreed to cede to an independent prosecutor the power to investigate and prosecute the state’s own nationals who are accused of committing the covered crimes, as long as the prosecutor determines the state is unwilling or unable to carry out the investigation domestically.

Given these strong enforcement mechanisms and the apparently high costs associated with non-compliance, prior to committing to the ICC, one might expect a state to consider whether its human rights practices are sufficiently good and whether its legal institutions are sufficiently developed and trustworthy to avoid the specter of a future ICC prosecution. I suggest that states will view these enforcement mechanisms as a credible threat and will not commit to the ICC unless they intend to comply.

Yet, in the case of other international human rights treaties, scholars have actually found that past and present practices (presumably indicators of the state’s ability to comply with a treaty promoting high human rights standards) are no real indicator of whether a state will or will not join an international human rights regime. In fact, scholars have found that states with poor human rights records are often just as likely as states with good human rights records to commit to human rights treaties (Hathaway 2005. Hathaway 2003. Hafner-Burton and Tsutsui 2007). Furthermore, studies have shown that many states continue their poor practices after ratification, which perhaps suggests that states do not care about commitment costs (Hafner-Burton and Tsutsui 2007). On the other hand, some scholars have argued that the absence of any real enforcement mechanisms associated with most human rights treaties – because many only require the state to self-report its compliance efforts<sup>1</sup> – means there are no real compliance costs associated with commitment. Rather, there are only the benefits associated with appearing to embrace admirable and worthy behavioral norms (Hathaway 2003).

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<sup>1</sup> For example, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states agree to submit reports on the measures they have undertaken to give effect to the matters addressed in the Convention (*see* Article 19). In addition, that Convention establishes a Committee Against Torture whose competence State Parties may recognize to consider communications about violations of the Convention. Even so, however, the Committee’s enforcement mechanism is limited to attempting to facilitate a resolution or providing a report of its findings. The provisions of the International Covenant on Civil and Political Rights are similar (*see* Articles 40, 41, and 42).

The ICC treaty offers an excellent opportunity to consider whether international human rights treaties with apparently real enforcement mechanisms cause states to view them as credible threats. If so, then we should see empirically that states with reason to fear a potential ICC prosecution of their nationals will be less likely to join the court – at least until such time as they can comply. Yet, there is little scholarly attention given to ICC commitment at all,<sup>2</sup> and no studies that empirically examine whether and how the apparently strict enforcement mechanisms associated with the treaty creating the court influence state commitment decisions.

My empirical results suggest that international human rights treaties with strong enforcement mechanisms do cause states to view them as credible threats. I find that states with poor human rights records will be less likely to ratify the ICC treaty, yet states with strong domestic law enforcement institutions (enabling them to prosecute mass atrocities locally) will be more likely to join. The implication is that, unlike as with previous treaties, nations view commitment to the ICC treaty as costly and are not committing unless they intend to comply. This further suggests that human rights treaties with serious enforcement mechanisms might be more effective at curbing mass atrocities.

The remainder of this paper proceeds as follows. First, I provide a brief background to the establishment of the ICC. Next, I review the existing literature that addresses the theories associated with state decisions to commit to human rights treaties in general and the ICC in particular. I then discuss more fully my argument that the threat associated with the enforcement mechanisms contained in the Rome Statute is causing states to engage in cost calculations about their ability to comply with the ICC treaty when making determinations about whether to join the court. Finally, I introduce the data, the methodology, and present the empirical results. The discussion of the implications of these empirical results focuses on how to structure international treaties so that states perceive them as credible threats to punish bad and non-compliant behavior. I also present a future research agenda that looks at the effect of the ICC on state behavior.

## **BACKGROUND TO THE ESTABLISHMENT OF THE ICC**

Situated in The Hague, Netherlands, the ICC is the first permanent, treaty-based international criminal court established to help end impunity for perpetrators of the most serious crimes of genocide, crimes against humanity, and war crimes. The statute creating

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<sup>2</sup> Moreover, the few studies that do empirically examine state commitment to the ICC posit different theories about commitment decisions, employ different dependent variables in different empirical models, and reach different conclusions about what variables are and are not driving ICC commitment decisions. In particular, the findings of these studies differ significantly on the variables I argue should be most relevant to state decisions to commit to the ICC: (1) a state's level of human rights practices and (2) the quality of its domestic law enforcement institutions. For example, Goodliffe and Hawkins (2009) found in one of their models that higher levels of human rights practices led to support for a strong ICC, but they included no measure for the concept of a state's level of domestic law enforcement institutions. On the other hand, Simmons and Danner (2008) included no measure for the level of a state's human rights practices other than whether the state experienced a recent civil war. However, in a robustness check, they found that weaker rule of law states were more likely to commit to the ICC. Finally, none of these studies was focused on the question of how the strong enforcement mechanisms contained in the Rome Statute influence state behavior relating to commitment.

the court – the Rome Statute – was finally adopted in July 1998 during a United Nations conference in Rome and was the culmination of a nearly decade-long negotiation process (Arsanjani 1999). Attending the conference were 160 states, 33 international governmental coalitions, and a coalition of more than 200 non-governmental organizations (“NGOs”) (Fehl 2004). Of those states in attendance, 120 voted in favor of adopting the statute, seven voted against, and 21 abstained (Arsanjani 1999). In July 2002 after the required 60 states had ratified the statute, the ICC came into existence.

That the Rome Statute would be adopted – particularly in its current form – however, was anything but a foregone conclusion. Indeed, a handful of core issues concerning ICC jurisdiction over crimes, the mechanism for triggering prosecution, and the role of the United Nations Security Council were the subject of much negotiation (Schabas 2007). Although a number of states favored an independent prosecutor with power to initiate proceedings and no Security Council veto on prosecutions, some powerful states, such as the United States, pushed for granting to the Security Council a greater role in determining which cases to pursue (Schabas 2007). Nevertheless, at the conclusion of negotiations, the Rome Statute states voted to adopt was one that envisioned a powerful and independent court.

Currently, some 139 countries have signed the Rome Statute, and 110 have actually become States Parties to it. Of the State Parties, about 20 are from Western Europe, 17 are from Eastern Europe, 30 are from Africa, 14 are Asian, and 24 are from Latin America and the Caribbean. The United States, Israel, China, Russia, Indonesia, and India are notable powerful states that have declined to ratify the treaty. Also not parties to the treaty are a number of Islamic and African states, including Bangladesh, Bahrain, Iran, Iraq, Kuwait, Pakistan, Qatar, Syria, Turkey, United Arab Emirates, Yemen, Algeria, Angola, Cameroon, Cape Verde, Cote d’Ivoire, Egypt, Morocco, Sudan, Tunisia, and Zimbabwe.

The ICC these states have joined is substantially different from any other international criminal tribunal that has gone before it. Unlike the ad hoc international criminal tribunals such as those established to deal with crimes committed in Rwanda and the former Yugoslavia, its jurisdiction is not circumscribed to dealing only with particular atrocities in particular states. Furthermore, it operates independently of the United Nations Security Council and accords no veto power to the permanent members of the Council over decisions regarding what cases to commence or prosecute (Rudolph 2001. Goldsmith and Krasner 2003). Rather, according to the terms and provisions of the Rome Statute, it is an independent ICC prosecutor elected by a majority of signatory nations who may decide whether to initiate investigations on his own, or based on referrals from a State Party or the United Nations Security Council. And, by committing to the treaty creating the ICC, states agree that such investigations may be commenced against the state’s own nationals for the covered crimes of genocide, crimes against humanity, or war crimes, as long as those crimes were committed after the court came into existence or after the state ratified the treaty, whichever is later.

Finally, although it is true that under the “complementarity” provision of the Rome Statute the ICC operates as a court of last resort, State Parties may only avoid international prosecution of their nationals if they themselves proceed with the case domestically. The statute provides that where the State Party is “unwilling or unable

genuinely” to proceed with a case, the ICC prosecutor may obtain jurisdiction over the case (Schabas 2007. Arsanjani 1999). And, it is the ICC that determines the “unwillingness” or “inability” of a state to carry out an investigation and prosecution on its own. Therefore, states that do not commence investigations and prosecutions of individuals committing the crimes covered by the Rome Statute, or states that commence proceedings that are evidently impartial or lacking in resolve could risk an ICC determination that they are “unwilling” to prosecute a meritorious case (Schabas 2007). Similarly, states may be deemed “unable” to carry out the required investigation where they cannot obtain witnesses or evidence, or where they otherwise do not possess the national judicial system necessary to conclude the proceedings (Schabas 2007).

In sum, the ICC treaty contains strong enforcement mechanisms in the form of an independent prosecutor who may initiate investigations of nationals of State Parties who are accused of committing mass atrocities where the ICC determines the state is “unwilling or unable” to proceed domestically with such investigations. In other words, with state commitment to the ICC also comes the risk of surrendering some significant sovereignty – the state’s right to administer justice within its own territory.

### **FACTORS GENERALLY INFLUENCING COMMITMENT TO HUMAN RIGHTS TREATIES**

Although there is little scholarly research empirically testing the question of why states do or do not commit to the treaty creating the ICC, much literature suggests that when choosing amongst international institutions, states will commit to those they perceive to be the least costly and the most beneficial. Furthermore, costs and benefits can be both direct and indirect. Direct costs and benefits include those precisely associated with joining or refusing to join the international institution and the terms governing commitment. Indirect costs and benefits have nothing to do with the precise terms governing the institution. Rather, they include the extra-institutional economic or political consequences – such as increased aid or military support – a state may experience from joining or refusing to join an institution that is favored by another important or more powerful state. Below, I discuss the previous literature addressing the question of how and whether both the direct and indirect costs and benefits associated with joining international human rights treaties influence state decisions to commit.

## Direct Costs and Benefits

Regarding the costs typically associated with joining international institutions, scholars generally posit that states will join those that require the least amount of policy compliance (Downs, Rocke, and Barsoom 1996). Thus, democratic states may be more likely than authoritarian states to commit to international human rights regimes because the norms embodied in such regimes are likely also already part of their domestic policies, practices, laws, and institutions – meaning that compliance costs will be minimal (Cole 2005. Vreeland 2006).

Similarly, where domestic legal institutions are developed and the rule of law is fairly applied, states are also likely to have the kinds of laws, policies, and norms that would make treaty compliance easier – and also less costly. In their study of the Convention Against Torture, Goodliffe and Hawkins (2006) found evidence that supports this theory, reporting that states that followed the rule of law were more likely to sign the treaty. On the other hand, states with stronger rule of law traditions can face domestic costs that will make them less likely to commit to international treaties (Hathaway 2003). Basically, states that adhere to the rule of law generally must allow the citizenry and others, such as NGOs, to challenge any non-compliance with treaty obligations (Hathaway 2003). Such states also likely view their legal commitments as binding, since a failure to do so would threaten the very principles upon which the government depends for its legitimacy (Hathaway 2003).<sup>3</sup> Thus, stronger rule of law states may be wary of joining international institutions with which they believe they may not be able to comply.

In addition, theory generally predicts that states with better human rights practices will be more likely to ratify human rights treaties because they will find compliance with treaty norms easier, and accordingly, less costly. However, the potential costs associated with ratifying a human rights treaty likely depend not only on the norms embodied by the treaty, but also on the nature of the proposed mechanisms to enforce state compliance with those norms. Thus, scholars have found that states with poor human rights records often enter into human rights regimes, but that many do not thereafter alter their poor practices – presumably because the regime lacked concrete and substantial enforcement mechanisms to induce compliance (Hathaway 2003. Hafner-Burton and Tsutsui 2007. Goodliffe and Hawkins 2006). In particular, Hathaway (2003) determined that non-democracies with poor human rights practices will commit to human rights regimes at the same or higher rate as non-democracies with better practices because the benefits of expressing a commitment to international human rights norms likely outweigh the potential costs of having to better their practices. Basically, the states may expect the

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<sup>3</sup> Judith Kelley (2007) offered just such a rationale to explain her findings showing that high rule-of-law states were no more likely than other states to favor the ICC. She suggested that such states may not ratify the treaty creating the court precisely because they take their commitments seriously and rationally fear that later developments (in this case, the bilateral non-surrender agreements with the United States on which her study focused) would make their commitment more costly.

norms will never be enforced against them via the treaty provisions or via domestic enforcement mechanisms (Hathaway 2003).<sup>4</sup>

Even though a state may generally embrace and promote norms favoring good human rights practices, states that have a larger military presence within the world community may also find that their nationals could be more likely targets of an ICC prosecution. Because the crimes covered by the ICC include “war crimes,” states with a greater military presence may be more at risk for prosecution of their citizens – and therefore view ICC ratification as more costly – than states with a smaller military presence. For example, the United States argued during negotiations that its military forces should be exempted from ICC jurisdiction because those forces were present throughout the world, were critical to international peace and security, and would be more exposed to accusations of wrongdoing than would citizens of other states with less international military involvement (Schiff 2008, 161). The results of empirical tests of this theory, however, have been mixed.<sup>5</sup>

Finally, some scholars have posited that states that follow a common law tradition will find commitment to international legal tribunals more costly than will states following a civil law tradition. For example, Beth Simmons (2002) notes that common law courts have the flexibility to alter existing law by following international legal determinations, a fact that some states could view as another costly loss to their sovereignty – in this case, the right to determine domestic law.

### **Direct Benefits**

In addition to direct costs, some scholars contend that states may also directly benefit from committing to international human rights regimes. In particular, Andrew Moravcsik (2000) argues that new democracies can outweigh the sovereignty costs associated with joining such regimes by locking-in the democratic principles embodied by the international regime and signaling to the international community and any potential future domestic political leaders their stability and credibility (Moravcsik 2000). Similarly, Edward Mansfield and Jon Pevehouse (2006) concluded that newly democratizing nations were especially likely to enter international organizations because doing so would allow the state to “credibly commit to carry out democratic reforms and .

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<sup>4</sup> With regards to the ICC specifically, results of studies addressing the impact of a state’s human rights practices on its decision to commit to the court are decidedly mixed. Goodliffe and Hawkins (2009) found little evidence that a state’s human rights practices influenced whether the state supported a strong and independent ICC based on statements made during Rome Statute negotiations. On the other hand, in her study addressing state decisions to sign bilateral immunity agreements with the United States, Judith Kelley (2007) concluded that a state’s human rights record was a significant and positive predictor of ICC ratification.

<sup>5</sup> For example, in their conference paper, Struett and Weldon (2007) found that states that spent more of their national income on defense and those that had a greater share of world military spending (when controlling for democracy) were less likely to ratify the treaty creating the ICC. On the other hand, Kelley (2007) found that a state’s relative military power (measured as military spending in millions of dollars) did not predict a state’s affinity for the ICC – nor its likelihood of later signing a bilateral immunity agreement with the United States.

.. reduce the prospect of reversions to authoritarianism” (138). Nevertheless, when Moravcsik’s theory was tested in connection with state decisions to support the Convention Against Torture and the ICC treaty, the researchers found little or no support for the hypothesis (Goodliffe and Hawkins 2006. Goodliffe and Hawkins 2009).

In addition, some scholars argue that states create international institutions in order to realize the benefits of decreased transaction costs – in this case, savings associated with no longer having to pay their share to support various expensive ad hoc international criminal tribunals (which are supported by funds from the United Nations states) (Fehl 2004; Goodliffe and Hawkins 2009). Indeed, even back in 2002, the budget for the two ad hoc tribunals totaled approximately \$200 million. Yet, in 2005, the budget for the ICC was approximately \$90 million ([www.amicc.org](http://www.amicc.org)).<sup>6</sup> Therefore, states might expect that supporting the ICC will be significantly less expensive than the alternative of supporting additional ad hoc tribunals that might have to be created to prosecute the perpetrators of mass atrocities.

### **Indirect Costs/Benefits**

On the other hand, some scholars have noted that state decisions to commit or refuse to commit to international human rights regimes may have little or nothing at all to do with the precise terms of the treaty under consideration. Rather, state commitment decisions may be driven by considerations of the potential to realize particular extra-treaty costs or benefits (Goodliffe and Hawkins 2009. Simmons and Danner 2008).

For example, some governments may join international institutions because they are indirectly or directly pressured to do so by the greater powers that they rely on for military assistance or foreign aid, among other things. Even though a state would prefer to guard its sovereignty and avoid external constraints, the benefits of fostering or maintaining certain valuable extra-treaty relationships may influence the state to act similarly to the power that it depends on for on which it depends for these benefits. In the case of the ICC, it could be that weaker states within Europe ratified the Rome Statute because of overt or perceived pressure by stronger states within the European Union that supported the ICC (Simmons and Danner 2008). Similarly, some states may have declined to join the ICC because they were willingly aligning themselves with, or bowing to direct pressure applied by, the United States – a powerful state and a vocal critic of the ICC (Simmons and Danner 2008).

In a slightly different vein, states may join international institutions because of the perceived benefits associated with simply appearing to be a legitimate member of either a regional or the world community by committing to international institutions embodying favorable norms. For example, scholars have suggested that states within a particular region may act similarly with regard to many international institutions. Regarding the evidence for this idea, Goodliffe and Hawkins (2006) found that geographic region was an important determinant of whether states would commit to the Convention Against Torture.

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<sup>6</sup> AIMCC is a coalition of non-governmental organizations whose aim is to encourage United States ratification of the ICC by means of education, information, promotion, and aroused public opinion.

In addition to the pressure states may feel to appear to embrace the norms of their neighbors, where the ICC is concerned, Michael Struett (2008) in particular has noted that states may have been persuaded by pro-ICC NGOs that joining the ICC was necessary to be considered a legitimate state: one that would promote the appropriate norm of supporting an international court to help end impunity for crimes against humanity. Thus, some states may have joined the ICC to improve their reputation as legitimate members of an international society. Simmons and Danner (2008) included variables in one of their models to test this theory, but the results were statistically insignificant.

### **STATES SHOULD VIEW THE ICC'S ENFORCEMENT MECHANISMS AS A CREDIBLE THREAT**

Although prior research indicates a tendency for states to commit to international human rights treaties with which they cannot or will not comply, I expect states will be more likely to commit to the ICC if they intend to comply since the ICC treaty contains significant enforcement mechanisms to punish non-compliance. Indeed, using the language of Kenneth Abbott and Duncan Snidal (2000), traditional international human rights regimes that rely on self-reporting can fairly be characterized as being governed by “soft law” provisions. By contrast, the ICC treaty can be more fairly characterized as containing “hard law” governance provisions. According to those authors, soft law exists once legal arrangements are weakened by lacking clear obligations, precision, or delegation of authority or responsibility. Hard law, by contrast, is defined as obligations that are legally binding and are precise or can be made precise through adjudication of terms or by issuance of regulations. In the case of the ICC, the treaty describes in detail the elements of the covered crimes of genocide, crimes against humanity, and war crimes. Furthermore, by its terms, it designates to an independent prosecutor the authority to prosecute those who commit the covered crimes within the territory of a State Party.

Thus, although it may be rational for states to join human rights treaties containing “soft law” provisions, notwithstanding the state’s inability or unwillingness to comply, it would seem less rational for those states to join a treaty like the ICC which contains significant enforcement mechanisms. Of course, it remains to be seen whether the ICC’s enforcement mechanisms are as real and substantial as they appear to be on paper.<sup>7</sup> Nevertheless, the fact remains that states spent years negotiating treaty provisions that give an independent prosecutor power to prosecute crimes committed in violation of the treaty. If the terms of the ICC – including those providing for an independent prosecutor with the power to investigate mass atrocities when the state is unwilling or unable to do so – did not matter, then why did states spend so very many years negotiating them?

Accordingly, I expect that states will view the ICC treaty’s enforcement mechanisms as a credible threat and will be concerned with their ability to comply with

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<sup>7</sup> Some scholars suggest that without the support of some of the most powerful nations – such as the United States, the ICC may have some difficulties obtaining the presence of the individuals it wishes to prosecute (Goldsmith and Krasner 2003, 56).

treaty terms when they make commitment decisions.<sup>8</sup> As a preliminary matter, compliance requires a state and its nationals to commit to having relatively good human rights practices, because it is only where nationals of State Parties commit any of the covered crimes that the ICC can even potentially obtain jurisdiction over a matter. Therefore, I expect states with better human rights practices will be more likely to commit to the court.

Second, because pursuant to the complementarity provision of the Rome Statute the ICC prosecutor can only bring a case if the state is unwilling or unable to prosecute covered crimes domestically, compliance requires a state to commit to having relatively good domestic law enforcement institutions. Although governments that are actually committing mass atrocities are likely to be “unwilling” to prosecute such atrocities, the Rome Statute also envisions the possibility of good governments that are nevertheless “unable” to carry out the requisite investigations and prosecutions. The statute defines inability to include those instances where the domestic legal institutions are not sufficient to conduct proceedings, either because the institutions are in some state of collapse or inactivity or where the institutions do not have the ability to obtain witnesses or evidence. For example, even though a government may respect human rights, domestic law enforcement institutions – such as the police and courts – may not be of the quality required to collect the evidence and mount the proceedings necessary to stop rebel forces or bring to justice those most responsible for mass atrocities. Therefore, it is the state’s domestic legal institutions that can save it from the specter of an ICC prosecution – even in instances where the state or its citizens have otherwise committed crimes covered by the treaty’s provisions. Thus, even though some literature suggests that states with better law enforcement institutions and more respect for the rule of law will be wary of joining international human rights regimes, in this case I expect those states to commit to the ICC because they will better be able to comply with the treaty’s terms and avoid being punished via its strong enforcement mechanisms.

It is true that some of the prior literature mentioned above suggests that indirect costs and benefits unrelated to treaty terms and compliance may drive state decisions to commit to international human rights regimes. Such factors, however, should not significantly influence state decisions to commit to the ICC. On the contrary, when considering commitment to the ICC, a rational state should first consider its ability to comply with the treaty’s terms, because if it does not, it risks being subjected to enforcement mechanisms that impose a substantial loss of state sovereignty. To the extent that indirect benefits (such as the benefits of “locking in” democracy, obtaining potential military support or foreign aid, or simply looking like a state that embraces the norms of its neighbors or NGOs and the international community factors) are relevant, they most likely influence state decisions to commit where the state has already determined it is able and willing to comply with the ICC treaty – such that it need not fear imposition of the treaty’s strong enforcement mechanisms. Furthermore, indirect benefits

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<sup>8</sup> States may commit to the ICC treaty by ratification or accession. Ratification is the process used when a state has already signed a treaty during the period it is open for signature: in this case, states could sign the ICC treaty between July 17, 1998 and December 31, 2000. States that did not sign the treaty may commit by accession.

are most likely relevant to states that are not rich and powerful, given that those states generally provide the aid and military support that might be used to entice other states to join or refuse to join the ICC and likely are less concerned with needing to establish themselves as accepted members of the regional or world community. Of course, states may consider the various extra-treaty factors relevant when making decisions about whether to sign the ICC treaty since signature alone does not require compliance with treaty terms or commit states to the ICC's enforcement mechanisms.

In short, I expect states will view the significant enforcement mechanisms contained in the ICC treaty as a credible threat and will be more likely to join the court if they believe they can, and will, comply with its terms – and thus avoid the specter of an international criminal prosecution of their nationals. Therefore, I expect states with good human rights practices and better-quality domestic law enforcement institutions will be more likely to join the ICC. On the other hand, I expect states with poor human rights practices and lower-quality domestic law enforcement institutions will be less likely to commit to the court.

#### IV. DATA AND METHODOLOGY

As noted above, the purpose of this paper is to examine whether states view human rights treaties with strong enforcement mechanisms as credible threats. If the enforcement mechanisms do pose a credible threat, then states should consider their potential to actually comply with the ICC treaty when making commitment decisions. Empirically, we should see evidence that states able and willing to comply with the precise terms of the ICC treaty also will be most likely to join the court. In this case, the enforcement mechanisms of the ICC – namely, an investigation mounted by the ICC prosecutor – are only triggered where (1) a state's nationals have committed mass atrocities *and* (2) the state itself is unwilling or able to prosecute such crimes domestically.

I employ two logistic regression models using cross-sectional data to test this theory about the credible threat associated with the strong enforcement mechanisms contained in the ICC treaty. First, I employ a model examining the binary choice of committing to the court by either ratification or accession.<sup>9</sup> Second, I employ a model examining the binary choice of signing the treaty establishing the ICC. The Rome Statute was available for signature beginning on July 17, 1998 and ending on December 31, 2000. States that did not sign during the time period are required to accede to the treaty creating the ICC, rather than commit to it by ratification of their signature. At present, some 110 states are states parties to the treaty – about 100 of them by way of ratification. Some 38 states have signed the treaty, but have not ratified it. The signature model will provide a corroborative test of the credible threat theory because in contrast to ratification, signature does not legally bind a state to the treaty's terms – meaning that the strong enforcement mechanisms contained in the ICC treaty have no role in this context.

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<sup>9</sup> For ease of reference, those models are referred to as ratification models, and the dependent variable references ICC ratification only since legally states are equally committed to court by either method and also because the majority of states that committed did so by ratification.

## **The Major Explanatory Variables: Level of Human Rights Practices and Quality of Domestic Law Enforcement Institutions**

I use two main measures of a state's human rights practices. First, the Cingranelli-Richards Human Rights Dataset measures a state's physical integrity based on data from U.S. State Department and Amnesty International reports addressing tortures, extrajudicial killings, political imprisonments, and disappearances. These are the types of serious human rights violations that are covered by the ICC – those that can trigger the treaty's enforcement mechanisms. The physical integrity rating is specified on a 0 to 8 scale, with 8 representing full governmental respect for physical rights. Regarding states that ratified the ICC, I use data for the year before ratification in order to best capture whether the state made its decision to ratify based on its actual human rights practices. For all other states, I use data from 2002 because the ICC only has jurisdiction to prosecute crimes occurring after July 2002, and because 2002 otherwise represents a date reasonably situated between the present (when states may still ratify) and the end of negotiations in 1998.<sup>10</sup>

Second, genocide – a specific crime over which the ICC has jurisdiction – is measured using data on genocide and politicide from the Center for International Development and Conflict Management at the University of Maryland, College Park. From that data – which exists for the years from 1945 to 2006 – I create a dichotomous variable, putting states into a genocide category if they had a genocidal episode in that period and putting them in a non-genocidal category if they did not.<sup>11</sup>

To capture whether the state possesses the trustworthy and developed law enforcement institutions necessary to permit it to prosecute any violations of the crimes covered by the ICC treaty within its own borders, I use a rule of law measure from the World Bank's Worldwide Governance Research Indicators project. This indicator measures “the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence” (Kaufmann, Kraay, and Mastruzzi 2007). For those states that ratified the treaty, I use data from the year prior to ratification (or for two years prior if it was the only data available). For all other states, I use 2002 data.

### **Additional Variables Measuring Treaty Commitment Costs**

Regarding the remaining commitment cost factors for which I will control, I measure whether or not a state is a democracy using the Polity IV data set (Marshall and Jaggers 2007). That democracy indicator is on a 0 to 10 scale, with scores based on several dimensions of democracy: (1) competitiveness of political participation; (2) openness and competitiveness of executive recruitment; and (3) constraints on the chief executive. Because my review of the literature indicates that researchers generally consider democracies to be those states scoring a 7 or above, and because my concern is with general regime type, I have transformed the Polity IV measure into a dichotomous

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<sup>10</sup> For the models testing state decisions to sign the ICC treaty, I use data from 1998 unless otherwise noted, since that is when the treaty was available for signature and also represents a date after which states still had two years to sign.

<sup>11</sup> Accordingly, I measure human rights practices directly, rather than by using the less-direct civil war data used by Simmons and Danner (2008) in their model testing state commitment to the ICC.

variable. I designate states with scores of 7 and above as democracies and those with scores 6 and below as non-democracies. For those states that ratified the treaty, I use data from the year prior to ratification. For all other states, I use 2002 data.

With respect to a state's level of military exposure, I include a variable measuring the state's military spending in billions of dollars according to the CIA World Fact Book.<sup>12</sup> This is the same measure that Judith Kelley (2007) used to test the theory that states with relatively less military power were less likely to become involved in activities that fall under the ICC's jurisdiction, making them more likely to ratify the statute. Although the human rights measure should most directly measure whether the state's citizens are likely to commit the kinds of crimes covered by the ICC treaty, this measure is designed to capture the idea that states spending relatively more on their military are also more likely to have citizens engaged in military operations, thereby potentially exposing those citizens to ICC jurisdiction for acts committed during peacekeeping or warfare.

Finally, I include a variable to account for the possibility that states following a common law legal tradition, rather than a civil law tradition which binds courts to statutory law only, may be more likely to refuse to commit to the ICC. I measure this concept using a dichotomous variable indicating whether or not a state follows a common law legal tradition. The data for the variable were obtained from the Global Network Growth Database created by William Easterly and Hairong Yu (2001).

### **Variables Measuring Direct Treaty Commitment Benefits**

Although the new democracy, "lock-in" benefit theory advanced by Moravcsik (2000) is not supported by empirical studies conducted concerning ICC commitment, I include it as a control variable using the Polity IV democracy measure.<sup>13</sup>

Regarding the concept concerning the benefits associated with no longer having to pay for expensive ad-hoc criminal tribunals, I include a control variable measuring the costs each state was required to pay to support the ad hoc tribunals for Yugoslavia and Rwanda. I take the natural logarithm of the costs each state was assessed in the year 2002 for the ratification models and in the year 1998 for the signing models. According to the theory, states that paid more to support those ad-hoc tribunals should prefer joining the ICC – a permanent court with a smaller yearly budget.

### **Variables Measuring Indirect Costs/Benefits of Treaty Commitment**

To control for the idea that states may have been influenced by the extra-treaty benefits the EU or the United States could provide or withhold should those states make a commitment decision contrary to those of these powers, I use several measures. First, I

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<sup>12</sup> I use the 2002 CIA World Fact Book data for the analysis regarding ratification and the 1998 World Fact Book for the analysis regarding signature.

<sup>13</sup> I create a dummy variable to account for those states that are new democracies. I code new democracies as those that became democracies sometime during the general negotiation phase of the ICC treaty and have stayed democratic since that time. Because negotiations began in 1994, and because it is consistent with Moravcsik's argument to believe that a state would still be a transitional democracy if it only became a democracy shortly before the creation of the court, I chose 1990 as the cut-off date for new democracies.

include a measure of military alliances.<sup>14</sup> I also include a measure of foreign aid assistance.<sup>15</sup>

In addition, I include in my logistic regression a measure for geographic region to account for the possibility that states follow the behavior of their neighbors in deciding whether or not to commit to the ICC. I control for this concept with the inclusion of variables which designate countries as members of different geographical regions.<sup>16</sup>

Finally, although a precise measure of NGO influence on state decisions to commit to the ICC may be impossible, I measure this concept using data on the number of NGOs in each state that are members of the Coalition for the International Criminal Court (which is a network of over 2,000 NGOs advocating for state membership in a fair, effective, and independent ICC).<sup>17</sup>

Tables 1 and 2 provide the summary statistics for the variables described above. I employ these variables in a series of models testing ratification and signature of the ICC treaty. The various models employed are discussed in more detail below.

[SEE TABLES 1 AND 2 IN APPENDIX]

### EMPIRICAL ANALYSES

As an initial matter, examination of the ratification patterns of the various states provides preliminary support for the theory that states view human rights treaties with strong enforcement mechanisms as credible threats. Indeed, the empirical evidence shows that states that are most likely to comply with the precise terms of the ICC treaty are also most likely to commit to it. For example, Table 3 shows state treaty ratification patterns based on the likelihood of a human rights violation as determined by the state's Physical Integrity Rights score.

[SEE TABLE 3 IN APPENDIX]

Among states with good human rights practices, 62.5% ratified the Rome Statute. Among states with poor human rights practices, 60% did not ratify the statute.

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<sup>14</sup> Using data on dyadic military alliance from the Correlates of War Database, I create a dichotomous variable, coding states as a "1" if they had a military alliance with the United States at any time between 1998 and 2000. With regards to the European Union, I code states as a "1" if they had a military alliance with any of the original powerful 15 members of the European Union (the "EU-15") during that time-period. The year 2000 is the last year for which this military alliance data is available.

<sup>15</sup> I obtain data on official net Overseas Development Assistance from each of the United States and the EU-15 from the OECD Development Assistance Committee, International Development Statistics. See [www.oecd.org/dac/stats](http://www.oecd.org/dac/stats). For the ratification analysis, I aggregate data from 1998, 1999, 2000, and 2001. For the signature analysis, I use data from 1998.

<sup>16</sup> I create dummy variables to account for six different regions identified by the United Nations: Africa, Asia, Europe, Latin America, Northern America, and Oceania.

<sup>17</sup> Even aside from the general difficulty of measuring this concept of NGO influence (because we may only know from qualitative analysis whether states were really influenced by NGOs to join the ICC and since the presence of NGOs in states or even state meetings with NGOs does not necessarily mean a state was persuaded by NGOs to change its behavior), the data I was able to obtain on NGO members in the CICC is not as precise as it could be. The data list the number of CICC-member NGOs as of March 2009. A more precise measure might account for NGO membership by state according to particular time-periods. However, I was advised by CICC personnel that such data were not maintained in that format.

Accordingly, the ratification patterns generally show that states with good human rights practices are more likely to ratify the ICC treaty, while states with poor human rights practices are less likely to ratify the treaty.

The ratification patterns reported in Table 4 are similar.

[SEE TABLE 4 IN APPENDIX]

Table 4 shows treaty ratification patterns based on the state's level of domestic law enforcement institutions as measured by the state's World Bank Rule of Law score. Among states with better domestic law enforcement institutions, approximately 56% ratified the Rome Statute, and 34% did not. Moreover, among states with worse domestic law enforcement institutions, more than 51% did not ratify the Rome Statute. Furthermore, although the remaining 51 states in this category (49% of the total) did ratify the statute, of those states, 26 are also states with good human rights practices. For example, within this category of states with below average domestic law enforcement institutions but good human rights practices are "transitioning" states, such as those within Eastern Europe. These states may ratify the Rome Statute despite their poor legal institutions because as an initial matter they do not expect their citizens to commit the kinds of mass atrocities that would fall within the ICC's jurisdiction. Therefore, whether their institutions would be capable of prosecuting such criminals may be of a lesser concern when making a determination about ICC membership. In sum, although the ratification patterns of states with worse domestic law enforcement institutions are almost equal statistically, the fact that many ratifiers are also states with good human rights practices further supports the general theory concerning the credible threat posed by strong enforcement mechanisms and state calculations concerning their compliance potential.

Moreover, one can interpret optimistically the fact that some states with lower human rights scores and lower rule of law scores ratified the ICC. At least some proportion could have ratified to commit to bettering their human rights practices and their domestic law enforcement institutions – all so as to avoid the treaty's enforcement mechanisms. Indeed, if those states do not improve their human rights practices and their domestic law enforcement institutions, they will face the possibility of an ICC prosecution.

The logistic regressions also provide support for the idea that states view the ICC treaty's enforcement mechanisms as a credible threat. Table 5 presents five logit models for ICC treaty ratification. Model 1 reports the results of the baseline model for ratification and includes the variables measuring level of human rights practices, level of domestic law enforcement institutions, as well as the remaining control variables which measure the direct costs associated with treaty commitment: whether or not the state is a democracy, the extent of its military presence, and whether or not it is a common law state. Model 2 includes the variables relevant to the literature addressing the direct benefits associated with joining the ICC: whether or not the state is a new transitional democracy or not and its level of spending in connection with the ad hoc tribunals. Model 3 includes the indirect cost/benefit treaty commitment variables that relate to the military assistance or foreign aid the United States or the European Union countries could withhold or provide in exchange for commitment decisions by states consistent with the

preferences of those powerful actors. Finally, Models 4 and 5 include the indirect cost/benefit treaty commitment variables that are more normative in nature: regional or NGO-influence. Model 5 drops the regional variables because of substantial multicollinearity issues in Model 4.

[SEE TABLE 5 IN APPENDIX]

The results generally support the credible threat theory and the idea that states are more likely to commit to the ICC where they intend to comply with its terms. Specifically, a country's level of human rights practices and its level of democracy are significant and positive predictors of ICC treaty ratification. Indeed, the genocide predictor is significant at the 5% level, and the human rights predictor is significant at the 10% level. Furthermore, the results with respect to the genocide and democracy variables remain significant in all five ratification models. And, while democracy, unlike a state's human rights rating, is not a primary indicator of potential compliance with the precise terms of the ICC treaty, theory does predict that democracies are more likely to have policies and embrace norms respecting human rights (*see* Cole 2005; Vreeland 2006).

Furthermore, tests indicate that Model 1 – where the human rights and genocide predictors were both significant and positive predictors of ICC treaty ratification – is a better fit than the other models with additional variables – and also much more parsimonious. In addition, omitted variable tests indicate that Model 1 is not missing any important predictive variables.<sup>18</sup> On the other hand, tests indicate the presence of multicollinearity in Models 2, 3, 4, and 5.<sup>19</sup> Although the more substantial issues with multicollinearity occur in Model 4 when the extra-treaty concepts of region and NGO influence (both concepts related to the benefits of appearing to embrace admirable norms accepted or advanced by others who are members of the legitimate world community) are added,<sup>20</sup> all of Models 2, 3, 4, and 5 have Variance Inflation Factor ratings higher than those of Model 1.

Regarding the other indicator relevant to the credible threat theory – the Rule of Law indicator designed to measure the level of a state's domestic enforcement institutions – it is a significant and positive indicator of ICC treaty ratification in Models 3, 4, and 5. And, although there are multicollinearity issues with these models, as described above, an empirical analysis of ratification patterns does show proportionally that states with higher scores on this variable are more likely to ratify the ICC. As such,

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<sup>18</sup> In addition, because the number of observations in the baseline ratification model is not large, I checked the sample for selection bias issues on the dependent variable of ICC ratification or not. I found the sample quite representative of the actual population of states, as approximately 56% of the sample population had ratified the treaty.

<sup>19</sup> For example, in Model 2 (where variables measuring the concepts of direct ICC treaty benefits are measured), the democracy and new democracy indicators are correlated at approximately .51 and the tribunal costs and the rule of law indicators are correlated at approximately .61.

<sup>20</sup> The average Variance Inflation Factor rating in Model 4 was almost triple that of Model 1. Also, the Variance Inflation Factor rating for a couple of variables in that model approached 10. At least some literature indicates that where logistic regression models are concerned, a Variance Influence Factor of greater than 2.5 indicates substantial multicollinearity issues which can bias the coefficients of individual predictors (Allison 1999).

there is support for the idea that states do consider their ability to domestically prosecute any violations of the ICC treaty crimes prior to committing to the treaty and risking a loss of sovereignty should the prosecutor conclude the state is “unwilling or unable” to prosecute such violations.

Indeed, as another means of presenting and interpreting the data, I ran the baseline model for ratification through CLARIFY, a program that uses Monte Carlo simulation to simulate quantities of interest. I varied the indicators for a state’s level of human rights practices and the quality of its domestic law enforcement institutions, while holding all other indicators in Model 1 at their mean values. The results estimate the probability that a state will ratify the ICC and the uncertainty surrounding that probability at different levels of human rights practices and different levels of domestic law enforcement institutions. Figures 1 and 2 below show that the probability of ICC ratification rises steadily as a state’s human rights practices improve, as well as when the quality of the state’s domestic law enforcement institutions improve. In fact, moving from a Physical Integrity Rights score of 2 to 8 (the highest value) increases the probability of ratification by 29 percent. Moving from a Rule of Law score of -1 to 1.98 (the highest value) increases the probability of ratification by 18 percent.

Figure 1: Probability of Ratification Based on Human Rights Rating

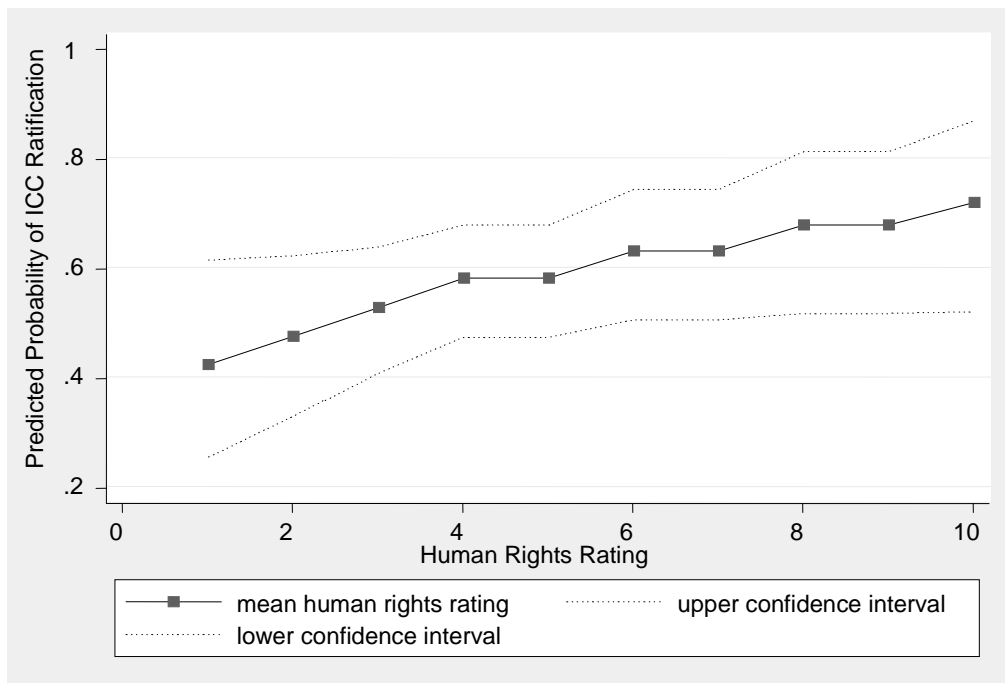
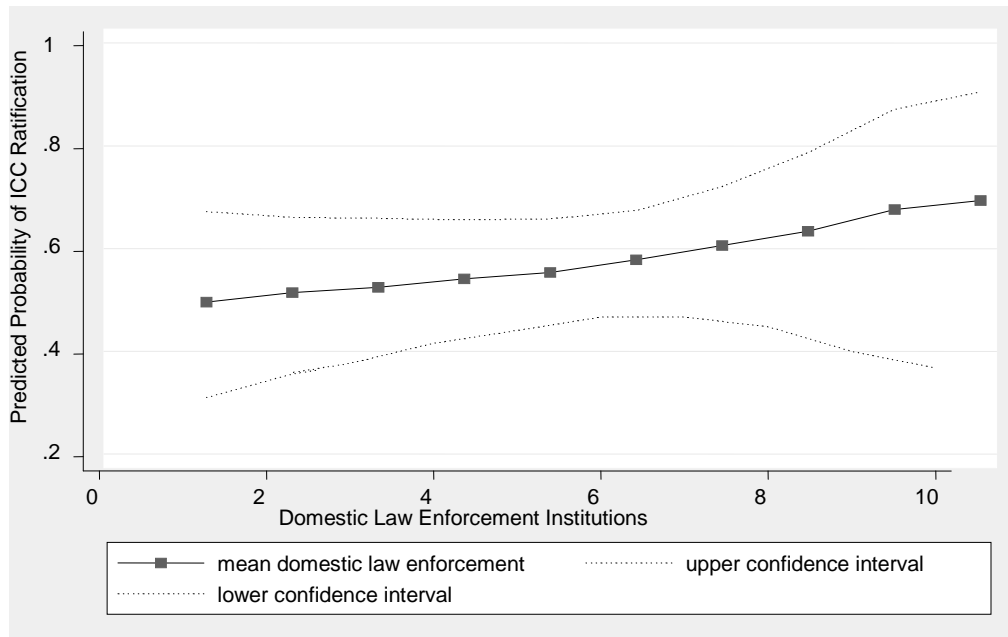


Figure 2: Probability of Ratification Based on Quality of Domestic Law Enforcement Institutions



In sum, the results of Model 1, as well as the results of some of the additional models and the CLARIFY results, provide support for the idea that states view the enforcement mechanisms of the ICC treaty as a credible threat, such that they consider their ability to comply with the precise terms of the treaty prior to committing to it. Again, the provisions of the ICC treaty envision a strong and independent prosecutor armed with the power and resources to pursue those who are accused of committing genocide, crimes against humanity, or war crimes where the state itself does not take responsibility for prosecuting such crimes domestically.

Regarding the remaining variables included as controls or to capture the possibility that factors other than those directly related to a state's ability to comply with the precise terms of the ICC treaty to which the enforcement mechanisms pertain, most are not significant or are significant only in one or two models. A state's level of military presence – measured by its military spending – is a significant and negative predictor of ICC ratification at the 10% level in Model 4 and at the 1% level in Model 5. Therefore, there is some evidence to support the argument that states with more military operations may also be more likely to fear their soldiers will commit acts violating the Rome Statute, making them less likely to ratify the treaty. In addition, the indicator for common law legal tradition or not is a significant predictor in the theorized negative direction at the 5% level in Model 5. Finally, the ad hoc tribunal expenditure variable was significant in Model 5 at the 10% level. However, the sign of that variable is in the opposite of the predicted direction: according to the results in Model 5, states that spend more on the ad hoc tribunals are less likely to prefer joining the relatively less-expensive ICC.

Finally, NGO influence also obtains empirical support.<sup>21</sup> Both Models 4 and 5 suggest that NGO influence is a positive predictor of ICC ratification. And, indeed, the CICC has organized, and continues to organize, meetings with states (with the help of the NGOs in that state that are CICC members) in an effort to persuade states to join the ICC. However, given the potential issues associated with multicollinearity in both of these models and given that the current measure for NGO influence may not measure the concept precisely enough, caution in interpreting these results is likely in order. Additional quantitative and qualitative research should aid in determining whether states joined the ICC because of NGO influence, particularly in a situation where a rational analysis regarding the costs of committing to a treaty with strong enforcement mechanisms might otherwise suggest the state should be wary of joining the institution.

Turning now to the results reported in Table 6 of the logit models testing state decisions to *sign* the ICC treaty,<sup>22</sup> those results show that the only factor directly relating to the treaty's terms and the state's ability to avoid the imposition of its enforcement mechanisms is whether the state experienced a genocidal episode in the past.<sup>23</sup> In contrast to the results reported in Table 5 concerning ratification decisions, neither the variable measuring a state's level of human rights practices nor the variable measuring its level of domestic law enforcement institutions is ever significant in determining state behavior. Nor is the democracy variable (a direct cost of commitment variable) that remained consistent in predicting ratification ever a predictor of signing. Moreover, even with regards to the variable relating to a state's level of military presence, it is only significant in Models 4 and 5, where tests show it is likely that multicollinearity is present in the models that may be biasing the effects of individual predictors.<sup>24</sup>

[SEE TABLE 6 IN APPENDIX]

Of course, the fact that there is less evidence that states engage in cost calculations regarding their ability to comply with the Rome Statute when making signing decisions is consistent with the credible threat theory. Unlike as with other international human rights treaties, states that ratify the ICC treaty are subject to strong enforcement mechanisms. States that only sign the ICC treaty, on the other hand, are not subject to those enforcement mechanisms. Signing entails no concrete obligations, and states and their citizens do not agree to cede to an independent prosecutor the power to investigate and prosecute the state's own nationals for mass atrocities solely by signing the Rome Statute. Accordingly, states need not necessarily calculate their ability to

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<sup>21</sup> Of the four variables included to measure potential positive or negative support for the ICC based on the potential influence of the United States and the EU-15, only the variable for United States military alliances was significant – and only in Model 3. Moreover, the positive sign for that predictor is contrary to the posited theory. Because the United States was a vocal critic of the ICC, states wanting to enhance their chances of maintaining beneficial relationships with the United States should be less likely to join the ICC.

<sup>22</sup> The five models presented for signing follow the pattern used for the models for ratification.

<sup>23</sup> The genocide indicator is not significant in Model 4. However, as with the models predicting ratification, Variance Inflation Factor tests suggest that Model 4 greatly suffers from the presence of multicollinearity. Indeed, the average Variance Inflation Factor in Model 4 is approximately 2 ½ times greater than in Model 1.

<sup>24</sup> Furthermore, as was the case with the models predicting ratification, tests indicate that the baseline Model 1 is a better fit than the other models and also more parsimonious.

comply with the Rome Statute prior to signature. Certainly, some may. But, states may also simply sign as a symbolic gesture: one that shows the world that they embrace the admirable norm of seeking to end impunity for the most serious international crimes. And, there are 38 states that signed the Rome Statute, but have yet to ratify it.

## CONCLUSION

The results of the empirical analyses offer evidence that states view the strong enforcement mechanisms contained in the Rome Statute as a credible threat. I find that states with poor human rights records are less likely to ratify the treaty, yet states with strong domestic law enforcement institutions are more likely to join. However, the results for treaty signature – where no enforcement mechanisms pertain – show much less evidence that such concerns about compliance with the precise terms of the treaty and its goal to end impunity for mass atrocities are driving state behavior. Where signing decisions are concerned, it is only the indicator of whether the state has experienced a prior genocidal episode in the past that is at all significant. Otherwise, there is no clear indication of what motivates states to sign the ICC treaty, suggesting that signature may be little more than a symbolic gesture, rather than the result of a calculation about the ability to actually comply with the treaty's terms.

This indicates that at least where strong enforcement mechanisms are present, states take their commitment to international human rights regimes seriously. The implication is that unlike as with previous treaties, states are not committing to the ICC unless they intend to comply, suggesting that treaties with significant enforcement mechanisms may be more effective at curbing mass atrocities. Presumably this focus by states on the potential for compliance with treaty terms is a positive sign, as the point of international human rights treaties is to actually promote better human rights practices. Thus, if we want to improve international human rights, we should structure our treaties with “hard law” enforcement provisions that are clear, precise, and binding. Otherwise, without the threat of punishment via strong enforcement mechanisms – for example, as when states only make decisions to about whether or not to sign the ICC treaty – the ability and willingness to comply seems of little concern.

Future research should help us determine whether the ICC's enforcement mechanisms are actually promoting better human rights practices and improving the capabilities of domestic law enforcement institutions to prosecute violations. The evidence that compliance considerations drive commitment to the ICC may mean that many of the court's members are states that already had good human rights practices and good domestic law enforcement institutions. However, we know from Tables 3 and 4 that some states with poor practices and poor institutions similarly ratified the Rome Statute. If the credible threat theory is correct and if the enforcement mechanism in the form of independent prosecutor is as strict as it appears to be on paper, then with respect to those states, we should see improvements in both their human rights practices and their domestic legal capabilities. Otherwise, those states face a substantial risk to their sovereignty. Even as to states that may have ratified because their practices and institutions were already good, we may find that the enforcement mechanisms contained in the Rome Statute have produced, and will produce, even better practices and institutions. After all, the ICC covers war crimes. One might expect that many states with otherwise stellar human rights ratings may worry that in times of conflict one of

their citizens may commit an act that constitutes a crime under the ICC statute. Those states may change their military codes of conduct or military training practices so as to avoid such possibilities. Furthermore, with regard to the second prong of the ICC compliance, a state can avoid a loss of sovereignty to the ICC if it prosecutes any crimes covered by the ICC treaty domestically. Thus, we may expect all states would increase their domestic prosecutions of mass atrocities and other human rights violations.

This study provides evidence that states do view strong enforcement mechanisms in international human rights treaties as a credible threat, causing them to care about their ability to comply with those treaties when making commitment decisions. These findings provide hope that someday we may see an end to mass atrocities. Continued study and research will help us determine whether compliance by the international community with the Rome Statute and its goals is, and will be, a reality.

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## APPENDIX

**TABLE 1. Summary Statistics for ICC Ratification Models**

<b>Variable</b>	<b>Obs</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
ICC Ratification	211	.52	.5	0	1
Level of Human Rights Practices (Physical Integrity)	182	5.18	2.29	0	8
Past Genocide or Not	211	.13	.33	0	1
Quality of Domestic Law Enforcement (World Bank Rule of Law)	197	-.03	.99	-1.99	1.98
Democracy or Not	149	.49	.5	0	1
Military Presence	167	4.21	22.29	0	276.7
Common Law State or Not	182	.35	.48	0	1
New Transitional Democracy or Not	162	.24	.43	0	1
Log of Tribunal Spending	212	8.87	4.02	0	17.79
US Military Alliance	212	.25	.44	0	1
EU-15 Military Alliance	212	.04	.19	0	1
US Foreign Aid	212	89.41	280.34	-356.18	3320.26
EU-15 Foreign Aid	212	341.28	575.10	-14.84	3270.38
NGO Influence	208	13.01	32.85	0	305

**TABLE 2. Summary Statistics for ICC Signature Models**

<b>Variable</b>	<b>Obs</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
ICC Signature	211	.65	.48	0	1
Level of Human Rights Practices (Physical Integrity)	155	4.79	2.45	0	8
Past Genocide or Not	211	.13	.33	0	1
Quality of Domestic Law Enforcement (World Bank Rule of Law)	194	-.05	.99	-2.25	2.04
Democracy or Not	151	.44	.5	0	1
Military Presence	142	4.81	23.51	0	267.2
Common Law State or Not	182	.35	.48	0	1
New Transitional Democracy or Not	162	.24	.43	0	1
Log of Tribunal Spending	212	8.28	4	0	17.2
US Military Alliance	212	.25	.44	0	1
EU-15 Military Alliance	212	.04	.19	0	1
US Foreign Aid	212	16.37	76.1	-90.16	1006.01
EU-15 Foreign Aid	212	86.42	148.18	-6.82	858.94
NGO Influence	208	13.01	32.85	0	305

**TABLE 3. ICC Treaty Ratification Patterns Based on Likelihood of Human Rights Violations**

<b>Good Human Rights Practices -- Ratified</b>	<b>Poor Human Rights Practices – Not Ratify</b>
<p>Albania, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, Comoros, Congo, Costa Rica,</p> <p>Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guyana, Honduras, Hungary, Iceland, Ireland, Italy, Japan,</p> <p>Jordan, South Korea, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mongolia, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Poland, Portugal, Romania, Samoa, Slovakia, Slovenia, Spain, St. Kitts and Nevis, St. Vincent and Grenadines,</p> <p>Suriname, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, United Kingdom, Uruguay, Zambia.</p>	<p>Algeria, Angola, Azerbaijan, Bangladesh, Cameroon, China, Cote D’Ivoire, Cuba, Egypt, Equatorial Guinea, Ethiopia, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Israel, North Korea, Laos, Libya, Morocco, Mozambique, Myanmar, Nepal, Pakistan, Philippines, Russia, Rwanda, Sri Lanka, Sudan, Syria, Tunisia, Turkey, Uzbekistan, Vietnam, Zimbabwe.</p>

\* I include within the category of states with Good Human Rights practices those with Physical Integrity Rights Ratings of between 5 and 8. States with Poor Human Rights practices are those with Physical Integrity Rights Ratings of 4 and below.

**TABLE 4. ICC Treaty Ratification Patterns Based on Level of Domestic Law Enforcement Institutions\***

<b>Better Domestic Law Enforcement Institutions -- Ratified</b>	<b>Worse Domestic Law Enforcement Institutions – Not Ratify</b>
<p>Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Botswana, Canada, Chile, Cook Islands, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Fiji, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Jordan, South Korea, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mongolia, Namibia, Netherlands, New Zealand, Norway, Poland, Portugal, Samoa, Slovakia, Slovenia, South Africa, Spain, St. Kitts and Nevis, St. Vincent and Grenadines, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, Uruguay.</p>	<p>Algeria, Angola, Armenia, Azerbaijan, Bangladesh, Belarus, Cameroon, China, Cote D’Ivoire, Cuba, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Guatemala, Guinea-Bissau, Haiti, Indonesia, Iran, Iraq, Jamaica, Kazakhstan, North Korea, Kyrgyzstan, Laos, Lebanon, Libya, Mauritania, Micronesia, Moldova, Mozambique, Myanmar, Nepal, Nicaragua, Pakistan, Papua New Guinea, Philippines, Russia, Rwanda, Sao Tome and Principe, Solomon Islands, Somalia, Sudan, Swaziland, Syria, Togo, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vanuatu, Vietnam, Yemen, Zimbabwe.</p>

\*I include within the category of states with Better Domestic Law Enforcement Institutions those with World Bank Rule of Law Scores exceeding the approximate mean score of the sample used in this study. The mean score was -.03, and I included countries with a score of -.05 and above, as -.05 was the closest actual value for that variable.

**TABLE 5. Logit Models Explaining Ratification**

<b>Independent Variables</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>	<b>Model 5</b>
Constant	-1.02 (.767)	1.22 (1.80)	1.24 (2.01)	2.54 (3.23)	1.24 (2.23)
Level of Human Rights Practices (Physical Integrity)	.216 (.124)*	.148 (.132)	.185 (.147)	.188 (.201)	.320 (.167)*
Past Genocide or Not	-1.61 (.713)**	-1.6 (.736)**	-.168 (.776)**	-2.20 (.971)**	-2.20 (.938)**
Quality of Domestic Law Enforcement (ROL World Bank)	.282 (.33)	.684 (.443)	.761 (.458)*	1.57 (.691)**	1.01 (.519)*
Democracy or Not	1.67 (.484)***	1.88 (.643)***	1.49 (.847)**	1.68 (.871)*	1.70 (.757)**
Military Presence	-.019 (.018)	-.012 (.013)	-.011 (.017)	-.060 (.031)*	-.059 (.022)***
Common Law State or Not	-.566 (.491)	-.653 (.524)	-.558 (.554)	-1.19 (.762)	-1.16 (.637)*
New Transitional Democracy or Not	--	.187 (.680)	-.026 (.704)	-.083 (.875)	-.084 (.769)
Log of Tribunal Spending	--	-.193 (.140)	-.241 (.156)	-.288 (.206)	-.313 (.176)*
US Military Alliance	--	--	1.23* (.730)	2.16 (1.51)	1.34 (.833)
EU-15 Military Alliance	--	--	-.194 (1.34)	-.738 (1.59)	-.272 (1.43)
US Foreign Aid	--	--	-.001 (.001)	.000 (.001)	-.000 (.001)
EU-15 Foreign Aid	--	--	.000 (.000)	-.001 (.000)	.000 (.000)

Africa or Not	--	--	--	.848 (1.61)	--
Asia or Not	--	--	--	-2.10 (1.63)	--
Europe or Not	--	--	--	-.683 (1.84)	--
Latin America or Not	--	--	--	-1.37 (2.04)	--
North America or Not	--	--	--	-2.45 (5.62)	--
NGO Influence	--	--	--	.050 (.021)**	.046 (.016)***
N	136	136	136	135	135
Pseudo R-Squared	.269	.280	.305	.477	.388

\*, \*\*, \*\*\*= 10%, 5%, 1% significance

**TABLE 6. Logit Models Explaining Signature**

<b>Independent Variables</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>	<b>Model 5</b>
Constant	.756 (.752)	1.64 (1.83)	1.60 (1.93)	.417 (3.14)	.894 (2.20)
Level of Human Rights Practices (Physical Integrity)	.173 (.129)	.153 (.136)	.113 (.143)	-.011 (.186)	.231 (.163)
Past Genocide or Not	-1.04 (.626)*	-1.05 (.630)*	-1.15 (.676)*	-1.26 (.807)	-1.56 (.760)**
Quality of Domestic Law Enforcement (ROL World Bank)	.115 (.388)	.277 (.478)	.402 (.493)	.971 (.693)	.517 (.540)
Democracy or Not	.400 (.593)	.408 (.672)	.431 (.762)	-.264 (.882)	-.252 (.851)
Military Presence	-.002 (.010)	.001 (.011)	.001 (.012)	-1.49 (.083)*	-.067 (.031)**
Common Law State or Not	-.523 (.528)	-.507 (.557)	-.471 (.587)	-.535 (.781)	-1.17 (.679)*
New Transitional Democracy or Not	--	.293 (.669)	-.080 (.743)	-.141 (.998)	.053 (.830)
Log of Tribunal Spending	--	-.089 (.155)	-.097 (.165)	.099 (.247)	-.045 (.189)
US Military Alliance	--	--	.585 (.814)	2.42 (1.91)	.749 (.869)
EU-15 Military Alliance	--	--	-.020 (1.40)	-1.85 (1.77)	-.685 (1.49)
US Foreign Aid	--	--	.014 (.012)	.010 (.012)	.015 (.012)
EU-15 Foreign Aid	--	--	.001 (.002)	-.001 (.002)	-.002 (.002)
Africa or Not	--	--	--	1.28 (1.60)	--

Asia or Not	--	--	--	-.743 (1.59)	--
Europe or Not	--	--	--	Dropped	--
Latin America or Not	--	--	--	-.973 (2.27)	--
North America or Not	--	--	--	Dropped	--
NGO Influence	--	--	--	.030 (.024)	.064 (.026)**
N	117	117	117	91	116
Pseudo R-Squared	.106	.11	.140	.24	.217

\*, \*\*, \*\*\*= 10%, 5%, 1% significance