# The Politics of Punishment:

# Why Non-Democracies Join the International Criminal Court*

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September 2021

**Abstract**

The International Criminal Court (ICC) has extensive powers to prosecute individuals for core crimes under international law, including aggression, crimes against humanity, genocide, and war crimes. Yet the ICC can only prosecute crimes involving states that have formally joined the Court, thereby accepting the Court's jurisdiction. Previous scholars usually argue that governments join the ICC to signal opposition to international crimes or to credibly commit that they will not commit these crimes in the future, suggesting that the ICC constrains governments. However, we argue that non-democratic leaders use the ICC to target and punish their political rivals by facilitating selective prosecution of crimes committed within their territory. Because the ICC Prosecutor relies on the cooperation of member-states to investigate crimes, collect forensic evidence, provide witnesses, and arrest indicted individuals, leaders have extensive influence over ICC investigations. Political leaders can therefore enable the prosecution of some individuals, while hindering the prosecution of others, making ICC investigations a tool for incumbent government to target their domestic opponents. We illustrate this dynamic with a game-theoretic model and quantitative evidence. Our statistical analysis suggests that non-democracies are most likely to join the ICC when they face domestic political opposition to their rule and are subsequently less likely to commit violence and more likely to survive in office. We further bolster our statistical evidence with a case study of the ICC's prosecution of Dominic Ongwen, a Ugandan rebel.

*Paper prepared for the 2021 annual meeting of the American Political Science Association. Many thanks to Rebecca Pol for her research assistance. This research was funded by a grant from the Burkle Center for International Relations at UCLA.

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# 1 Introduction

In January 2004, an unlikely alliance was presented to the world in a London press conference. Luis Moreno-Ocampo, the prosecutor of the International Criminal Court, announced that he was opening a preliminary examination into crimes that took place in Uganda. Standing by his side was Yoweri Museveni, the Ugandan president and leader of a military that was accused of committing international crimes throughout central Africa. Even more surprisingly, Moreno-Ocampo announced that Museveni's government had formally requested the Court to intervene.

Casual observers could easily have been puzzled by this press conference. Was Museveni asking for his own arrest and imprisonment? Was Museveni trying to lock in new democratic reforms and human rights in a state with a troubled record of armed conflict? More seasoned observers read the situation differently. They believed that Museveni was using the ICC to crack down on his longest-standing and most troublesome political opponent: the Lord's Resistance Army, a violent rebel group (Allen, 2006; Branch, 2011). The ICC's own press release was titled, "President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC."[1] Advocacy groups like Human Rights Watch were alarmed that the ICC seemed to be taking sides in an ongoing political conflict, declaring that "The prosecutor should operate independently and has the authority to look at all ICC crimes committed in Uganda."[2] Moreno-Ocampo tried to undo the damage in his subsequent statements, declaring that the ICC would investigate crimes committed by all actors in Uganda. However, the initial reactions of advocacy groups were confirmed in October 2005 when the ICC publicly announced that it had issued five arrest warrants for Ugandan crimes: all five of the individuals wanted by the Court were members of the Lord's Resistance Army.[3] Not a single Ugandan government or military official was charged with a crime.

Uganda is not a unique case in the ICC's history. Since its creation in July 2002, the ICC had extensive powers to prosecute individuals for international crimes, including crimes against humanity, genocide, and war crimes.[4] Yet the ICC can only prosecute crimes involving states that have joined the Rome Statute, the treaty that creates the Court's jurisdiction. Three puzzling facts surround this process. First, many governments that join the Rome Statute are fighting armed conflicts with serious international crimes. Second, many of these governments have them-

[1] ICC Press Release, 29 January 2004. Document ICC-20040129-44.

[2] Human Rights Watch Press Release, 4 February 2004. Available at: `https://www.hrw.org/news/2004/02/04/icc-investigate-all-sides-uganda`. Emphasis added.

[3] The arrest warrants were secretly issued by the ICC in July. The ICC did not publicly confirm the warrants existed until October.

[4] The ICC also received authority to prosecute aggression beginning in July 2018.

selves committed serious international crimes. And finally, many ICC prosecutions begin with self-referrals, in which governments ask the ICC to investigate crimes that occurred in their own state. These facts yield an important puzzle—*why do political leaders like Museveni make themselves vulnerable to criminal prosecution by joining the Rome Statute?*

Previous scholars usually argue that governments join treaties and international courts for three major reasons. First, joining treaties and international courts allows governments to signal information to observers, like domestic and international audiences. Second, these treaties and courts allow leaders to credibly commit that they will follow international law in the future. And finally, treaties and international courts allow for coordinated and systemic enforcement of norms by large groups of actors. All three of these perspectives suggest that international law imposes costs on governments that select into treaties and the submit themselves to the jurisdiction of international courts.

We build on these arguments by arguing that treaties and international courts impose asymmetric costs in non-democracies. When a state joins the Rome Statute, it makes all actors within the state vulnerable to punishment by the ICC if they commit a severe international crimes.[5] This vulnerability is further amplified when a government asks the ICC prosecutor to investigate crimes on its territory. When Museveni joined the Rome Statute and asked the ICC to investigate crimes in Uganda, he took a risk that the ICC would punish him and his political allies. However, non-democratic governments have extensive powers to informally shape how the ICC investigates and prosecutes crimes. They can restrict the movement of ICC personnel within the state, withhold documentary evidence, and determine which witnesses have access to ICC investigators. These tools allow a leader like Museveni to protect himself and his allies, while simultaneously making his political opponents (the Lord's Resistance Army) vulnerable to punishment.

Such asymmetric costs change the relative power of competing political actors and affect when a non-democratic state will ratify the Rome Statute. We argue that a non-democratic government is most likely to ratify the ICC when it faces high political competition, which makes the use of violence relatively costly. In such circumstances, the government has the most incentive to try to boost its relative power by imposing asymmetric costs for violence. In contrast, when the government faces low political competition, the use of violence is relatively cheap. Because the government is already relatively strong, it has little incentive to increase its relative power further by ratifying the Rome Statute. This theoretical mechanism affects which states select into the

[5] As discussed below, this includes individuals who are linked to the state based on nationality, as well as foreign nationals who commit crimes on the state's territory.

Rome Statute, how domestic actors behave after a state has joined the Rome Statute, and the likelihood that the incumbent government survives in power.

We test our theoretical argument using mixed methods. First, we perform statistical analysis to examine whether the empirical implications of our theoretical model are supported by the available cross-national time-series data. Second, we probe the plausibility of our argument by examining the ICC's prosecution of Dominic Ongwen, an LRA member. While each of these methodologies has inherent limits, we believe that the combination of these different methods yields compelling support for our argument.

Overall, our argument suggests that international law and institutions have important normative implications that have been underexplored by prior research. Many scholars argue that human rights and humanitarian law can benefit civilians by constraining atrocities by governments, particularly in new or transitional democracies (e.g. Hafner-Burton, Mansfield and Pevehouse, 2015; Keck and Sikkink, 1998; Moravcsik, 2000; Simmons, 2009). Yet these same laws and institutions can also constrain non-state actors. In non-democratic states, international law and institutions may therefore prolong the survival of non-democratic governments, rather than fueling democratic governance.

# 2 Overview

## 2.1 Why Do Treaties and International Courts Matter?

Many scholars have examined the creation and use of international law by strategic actors (Johns, 2015). Broadly speaking, this research emphasizes three key complementary (and sometimes overlapping) ways that treaties and international courts can influence international politics. All of these mechanisms can apply to the Rome Statute and ICC.

First, many scholars argue that treaties and international courts are tools that governments use to signal information to domestic and international audiences. This information can include a government's willingness to challenge its political opponents (Hollyer and Rosendorff, 2011) or its level of commitment to values like democracy and human rights (Jo, 2015; Jo and Thomson, 2014; Stanton, 2016). International institutions—like monitoring bodies and courts—may play a similar role by revealing information about a government's actual behavior after it has joined an international treaty (Dai, 2005; Mansfield, Milner and Rosendorff, 2002). Of course, states may sometimes not be sincere in the signals that they try to send to audiences. Such insincerity will

be most common if treaties and courts impose relatively low costs on states (Smith-Cannoy, 2012; Vreeland, 2008). For example, many scholars argue that the Rome Statute imposes relatively low costs on non-democracies because these states can limit ICC investigations, arrests, and prosecutions (Hashimoto, 2020; Meernik, 2015).

Second, many scholars argue that treaties and courts serve as commitment devices. International law may allow a government to credibly commit that it will follow a particular rule by imposing costs if the government violates that rule. Law may thus constrain the choices of both incumbent and future governments (Simmons, 2009; Moravcsik, 2000). For example, Simmons and Danner (2010) argue that joining the Rome Statute is a mechanism for self-binding, leading to reductions in violence after ratification. This argument is supported by additional studies about the impact of ICC membership and prosecutions on violence (Appel, 2018; Hillebrecht, 2016). However, experts debate whether ICC membership will shorten or prolong the rule of leaders who have already committed crimes, and hence are unwilling to step down from power (Gilligan, 2006; Krcmaric, 2018; Prorok, 2017).

Third, some scholars argue that international law facilitates enforcement by communities of disinterested actors. Such multilateral enforcement is most challenging in large communities of actors (Milgrom, North and Weingast, 1990). By setting clear rules about how states should behave and publicizing when states break these rules, international law can help states to craft multilateral solutions for bilateral disputes (Johns, 2012). Enforcement communities can be created by military alliance, trade agreements, and even the flow of foreign capital (Appel and Prorok, 2019; Goodliffe et al., 2012; Prorok and Appel, 2013).

Generally speaking, these theoretical accounts apply to all states within the international system, although the precise incentives of democratic and non-democratic states can vary. For example, non-democracies are usually less transparent than non-democracies, suggesting that they may benefit more from signaling information to domestic and international audiences (Hollyer, Rosendorff and Vreeland, 2011). Similarly, non-democracies may benefit more using international law as a commitment device because they lack domestic institutions to constrain their behavior.

We build on these diverse accounts by viewing Rome Statute ratification and ICC self-referral as tools for a non-democratic government to raise the cost of violence for all of the actors within its territory. We believe that because non-democratic states can exert control over various aspects of ICC investigation and prosecution, the Rome Statute imposes asymmetric costs within non-democracies.

## 2.2 How the ICC Creates Asymmetric Costs

When a leader joins the Rome Statute, she accepts the risk that she will someday be investigated and prosecuted by the ICC for a serious international crime. The ICC prosecutor has discretion to pursue his own investigations and prosecutions, independent of the preferences of ICC members.[6] Leaders cannot claim immunity from prosecution if their state joins the ICC.[7] Additionally, while individuals often evade arrest, all Rome Statute members pledge to "cooperate fully with the Court", which includes executing arrest warrants.[8] These ICC features ensure that joining the Rome Statute increases the expected cost for the government from subsequent violence.

Yet ICC membership can also impose even larger costs on a leader's political opponents. The government of a Rome Statute member can formally request that the ICC investigate and prosecute crimes committed by its nationals or on its territory. [9]. Such self-referrals are common at the ICC. In contrast, nonstate actors, like rebel groups, cannot formally ask the ICC to investigate and prosecute crimes committed by a government. ICC prosecutors often meet with advocacy organizations that seek international justice. However, prosecutors are not formally required to meet with these groups or respond to their requests.

Once investigation and prosecution begin, the asymmetric costs imposed on governments and rebel groups widen even further. Successful prosecutions require that investigators identify and locate witnesses to alleged crimes. Since alleged crimes are usually initially investigated by local police and/or military forces, the government has specialized information that is not easily available to the ICC, such as who witnessed a crime. Government registries and social service offices can then help the ICC to locate these witnesses. In non-democratic states, governments can easily withhold such information if they wish to constrain an ICC investigation.

Once witnesses are found, the ICC must then interview them and prepare their testimony for trial. This process requires that the ICC personnel and the witnesses travel to a common location. ICC personnel must then have translators who understand local languages and modes of expression. Many witnesses then require security to prevent witness tampering and intimidation, both before and during a trial. The ICC lacks law enforcement officers and cannot grant asylum to its witnesses. The ICC therefore depends on governments to protect witnesses. In non-democratic states, governments can hinder these tasks by denying travel permits, restricting access to trans-

[6] Rome Statute (1998), Article 15(1).
[7] Rome Statute (1998), Article 25.
[8] Rome Statute (1998), Article 86.
[9] Rome Statute (1998), Article 14.

portation and translators, and even refusing to provide security to witnesses. Rebel groups do not have this power because they do not have access to the state security apparatus. More perniciously, some ICC prosecutions have been hindered by government attempts to actively intimidate witnesses.

The ICC also often uses documentary evidence to establish that high-ranking individuals, like politicians and military commanders, are responsible for acts committed by subordinates under their direct control. Non-democratic governments often provide such evidence to the ICC when crimes are committed by rebel groups. However, non-democratic governments can also shield themselves from prosecution by withholding and/or destroying documentary evidence. Rebel groups do not often have access to this kind of documentary information, so they cannot create the same kind of costs for the government as the government creates for them.

Additionally, the ICC relies on its member-states to enforce arrest warrants. Even if the ICC prosecutor has sufficient evidence to convict an individual, a trial cannot occur *in absentia*. The ICC must have the actual suspect in custody. Many individuals who are wanted by the ICC have voluntarily appeared at the Court, either because they believe that they can prove their innocence or because they prefer an ICC trial to the prospect of punishment at home. Yet the ICC cannot prosecute individuals who are actively shielded from arrest by their governments.

In sum, it is far more difficult to prosecute a government official than a rebel. The high evidentiary requirements of an ICC prosecution, government control over evidence and witnesses, and the difficulty of enforcing arrest warrants all ensure that Rome Statute ratification and ICC self-referral impose asymmetric costs on governments and rebel groups. We are not the first scholars to note this asymmetry of costs. Many law scholars have examined the details of specific ICC investigations. These scholars often note that economic, legal, and political constraints affect both arrest warrants and prosecutions (e.g. Peskin, 2009; Rosenberg, 2017). Similarly, many scholars have noted that non-democratic governments can often shield themselves and punish their enemies by limiting the access of ICC staff to evidence and witnesses (e.g. Hashimoto, 2020; Tiemessen, 2014, 2016).

Our contribution comes in recognizing that the relative power of the government and rebel groups–that is, the context of domestic political competition–shapes whether an incumbent government will benefit from joining the Rome Statute and asking the ICC to investigate crimes within its territory. We agree, for example, with the numerous Uganda experts who have argued that ICC prosecutions helped Museveni to consolidate his domestic political power (Allen, 2006; Branch,

2011). However, we would add that this effect only occurred because Museveni faced relatively high domestic political competition prior to joining the ICC and asking it to investigate the LRA (Rubongoya, 2007). Had Museveni been in a relatively strong domestic political position in the early 2000s, he probably would have not selected into the ICC and raised the costs of violence to bolster his own political power. In the next section, we explain the logic behind how domestic political competition affects a leader's willingness to join the ICC.

# 3 Theory

## 3.1 Assumptions

We focus on strategic interactions between two actors: the government, $G$, and a rebel group, $R$. We assume that these two actors are competing for power over the state, which yields a payoff of $W > 0$. To isolate our causal mechanism, we assume that both players have complete information all aspects of the game.

The game begins when the government decides whether to join the ICC. We assume that the only impact of this publicly-observed decision is to raise the cost of violence to both players. After the government makes its decision, each player simultaneously chooses a level of effort to invest in violence, $e_i \geq 0$. These effort levels in turn determine the likelihood that each player wins power over the state. Namely, we assume that the probability that the government survives in power is:

$$\pi\left(e_G, e_R\right) = \frac{e_G}{e_G + e_R}$$

The probability that the rebel group gains power over the state is therefore: $1 - \pi$.

The payoffs of the players from the various outcomes depend on whether the government previously joined the ICC. If the government has not previously joined the ICC, we assume that the government's unit cost of violence is $c > 0$. We interpret this parameter as the strength of the government, relative to the rebel group. We assume that when the government is relatively strong, it can easily deploy violence at little cost. The corresponding government cost of violence, $c$, is therefore small. In contrast, we assume that when the government is relatively weak, violence is more costly in economic and political terms. The corresponding government cost of violence, $c$, is therefore large. We normalize the cost of violence for the rebel group to be equal to 1.[10]

[10]This normalizing assumption does not affect any of our results. It simply reduces the number of parameters in the model.

In contrast, if the government has previously joined the ICC, we assume that the costs of violence are higher for both the government and the rebel group. Namely, we let parameter $\rho > 0$ denote the added unit cost of violence to the rebel group. Higher values of $\rho$ therefore correspond to situations in which players expect for the ICC to have more ability and willingness to prosecute international crimes. The overall unit cost of violence for the rebel group if the state belongs to the ICC is therefore: $1 + \rho$.

We let parameter $z > 1$ denote the extent to which the government can maintain control over any possible ICC investigations and prosecutions. Higher values of government control, $z$, indicate that the government has more capacity to minimize its own costs from possible ICC actions. We assume that the added unit cost of violence for the government is therefore $\frac{\rho}{z}$ if the government joins the ICC. The overall unit cost of violence for the government if the state belongs to the ICC is therefore: $c + \frac{\rho}{z}$. The expected payoffs for both players from the various outcomes of the game are shown in Table 1.

[Table 1 goes here.]

### 3.2 Behavior and Comparative Statics

We are interested in three outcomes from the model that connect to observable behavior. First, we care about: when do non-democracies join the ICC? A government must carefully consider the likely effects of ICC membership on subsequent choices about violence and the likelihood that the government can survive in power. On the one hand, joining the ICC raises the government's own cost of violence (by a unit cost of $\frac{\rho}{z}$). This added cost will have the direct effect of reducing the amount of violence that the government will subsequently choose, thereby lowering the likelihood that the government will survive in power. On the other hand, joining the ICC also indirectly affects the government by raising the rebel group's cost of violence (by a unit cost of $\rho$). This added cost will lower the amount of violence deployed by the rebel group, thereby increasing the likelihood that the government survives in power.

The relative magnitude of these direct and indirect effects will depend on the government's underlying strength (i.e. its value of $c$). When the government is strong, relative to the rebel group, it can easily deploy violence at little cost. In the absence of ICC membership, the government's strength deters rebel violence, allowing the government to have confidence that it will retain its hold on power. Joining the ICC—and raising the costs of violence for both players—provides little added benefit to the government because the rebel group is already deterred from seriously

challenging the government. Overall, joining the ICC does not benefit a strong government.

In contrast, when the government is weak, relative to the rebel group, it finds violence more costly. In the absence of ICC membership, the government's weakness encourages rebel violence, reducing the government's confidence that it can remain in power. While joining the ICC will further constrain the government, it will also constrain the rebel group even more. This imbalance in expected costs imposed by the ICC hurts the rebels more than it hurts the government. Overall, joining the ICC will therefore benefit a weak government. This logic underlies our first important theoretical result, which is shown graphically in Figure 1(a):

**Proposition 1.** *In equilibrium, weaker governments (with high values of c) join the ICC, while stronger governments (with lower values of c) do not join.*

[Figure 1 goes here.]

Second, we want to know: how does joining the ICC affect overall violence within the state? More specifically, we examine the impact of ICC membership on the total effort in violence ($e_G + e_R$). Because joining the ICC raises the cost of violence for each player, the direct effect of ICC membership is to lower the amount of violence chosen by each player. These direct effects reinforce each other via indirect strategic effects. For example, if the government expects that the rebel group will use less violence, then the government will also want to use less violence itself. These reinforcing direct and indirect effects ensure that ICC membership decreases total violence within the state, as shown graphically in Figure 1(b):

**Proposition 2.** *Joining the ICC always lowers the level of violence in the state.*

Finally, we ask: how does joining the ICC affect the likelihood that the government survives in power ($\pi$)? While ICC membership reduces violence, the impact of this change on government survival is mixed. Sometimes joining the ICC increases the probability that the government survives in power, and sometimes it reduces this probability. Perhaps not surprisingly, this effect of ICC membership affects which states will want to join the ICC.

That is, if joining the ICC is going to reduce the likelihood that the government survives in office, then membership provides the government with no benefit. In such circumstances, the government will not join. The government will only join the ICC if this membership provides a benefit. These incentives ensure that selection into the ICC must correspond (in expectation) to a higher probability that the government survives in power. This yields our final important theoretical result:

**Proposition 3.** *For governments that select into the ICC, joining the ICC increases the probability of surviving in office.*

Note that this final theoretical result is a conditional effect. It only holds for parameters in which the government chooses to joins the ICC, as shown in Figure 1(c). The impact of the institution on leader survival is thus driven by selection effects. These selection effects must be carefully considered when we assess the empirical evidence and the normative implications of our theory.

### 3.3 Empirical Implications

If our theoretical argument is correct, then the ICC is indeed a commitment device that constrains states. But it is also an institution with distributional effects at the domestic level because the ICC credibly constrains rebel groups more than it credibly constrains governments. If this theoretical mechanism is indeed at work, then we should expect to find support for Propositions 1-3 in the observable behavior of non-democratic states.

Our primary explanatory variable is the government's strength, which we define as the government's unit cost of violence, relative to that of the rebel group. While we cannot explicitly measure this variable, which is surely affected by economic, political, and psychological forces, numerous scholars have assessed and measured the related concept of political competition. When a government is strong and can easily deploy violence at little cost, it operates in a context in which it does not face significant political competition. However, a weak government that finds it more costly to use violence is more likely to face significant political competition. As shown in Table 2, Proposition 1 suggests that we should expect to find a positive relationship between political competition and Rome Statute ratification if we examine the behavior of all non-democracies.

Our second important explanatory variable is the impact of ratification itself. Proposition 2 suggests that ratification will be negatively associated with violence. Because there may be systematic factors that differentiate non-democracies that ratify from ones that never do, the never-ratifiers are excluded from this analysis. Thus, we test this proposition using non-democracies that ratify as our sample. We compare the level of violence committed by non-democracies that ratify pre- and post-ratification. As shown in Table 2, we expect that ratification decreases violence among all non-democracies that ratify, post-ratification.

Finally, Proposition 3 suggests that the ICC will be positively associated with the likelihood that a government survives in power, for those governments that select into the ICC. Because this

is a conditional effect, any statistical analysis of government survival should be limited to those non-democracies that actually ratify the Rome Statute. Our analysis would therefore require us to compare the likelihood of government survival before and after ratification, controlling for other relevant factors.

# 4 Statistical Evidence

Because we are interested in the behavior of non-democracies, our sample consists of autocratic and anocratic states, defined as those with a Polity score of 5 or less. For the first test, we consider all non-democracies to be "at risk" of ratifying the Rome Statute, giving us a baseline sample of 94 states. In subsequent analyses, we restrict the sample to the 31 non-democracies that eventually ratified the Rome Statute, as we are interested in how ratification affected violence and political survival post-ratification. Because there might be inherent differences in non-democracies that ratify and do not, we believe the most accurate comparison of the effect of ratification can only be made in those non-democracies that chose to ratify.

A common variable across all three tests is ratification of the Rome Statute. In our first test, the dependent variable is Years to Ratification. The earliest possible ratification year is 1998, which is when the Rome Statute treaty opened for signature. We model the probability of ratification over the first two decades of the Rome Statute's existence. In the subsequent two tests, the key explanatory variable is Post-ratification, which is a binary variable indicating whether the non-democracy has ratified the Rome Statute in a prior year. Note that because the sample in the second and third tests is restricted to non-democracies that ratify, Post-ratification will take the value of 1 at least once for each state in the dataset.

## 4.1 Does Political Competition Increase Ratification?

We begin by assessing the first empirical implication of our model: political competition will be positively associated with an increase in the probability of ratification of the Rome Statute. Our dependent variable is the number of Years to Ratification. Ratification is a generally a one-time event: once a state joins the Rome Statute, it must go through difficult processes to leave. Thus, a state exits the risk set once it ratifies the Rome Statute.[11] Between 1998 and 2018, 31

[11]Recently, backlash against the ICC by African states has led to several threats of withdrawal. To date, only two states have formally withdrawn from the ICC: Burundi (in 2016) and the Philippines (in 2019). Several other states, including The Gambia and South Africa threatened to withdraw, but ultimately remained members of the ICC. Burundi re-enters the risk set in 2017, to account for the fact that it could rejoin the ICC if it ratified the Rome

non-democracies ratified the Rome Statute.

Because we are modeling time to ratification, we use a discrete-time survival model, namely a logistic regression with dummy variables for each year, allowing the baseline hazard (i.e. the underlying probability of ratification) to vary by year. The model is right-censored in 2018 because of control variable availability. However, we note that the latest ratification in our dataset of non-democracies was in 2013 (Côte d'Ivoire). The three states that have ratified since 2013 (Palestine, El Salvador, and Kiribati) are all democracies, and hence outside the scope of our theory and analysis. Thus, we believe our dataset has good coverage of the relevant risk period for ratification.

We measure our explanatory variable—government strength—as POLITICAL COMPETITION. As noted in Section 3, this is not an exact measurement of a government's cost of violence. However, we believe it is reasonable to assume that a government's cost of using violence is positively correlated with political competition. That is, we expect that when a government faces little political competition, it will have a low cost of using violence. In contrast, we expect that when a government faces high political competition, it will have a high cost of violence. We measure POLITICAL COMPETITION using Polity's "competitiveness of participation" variable, which is "the extent to which alternative preferences for policy and leadership can be pursued in the political arena."[12] This variable ranges from 1 to 5, where 1 indicates that political competition is repressed and 5 indicates open competition. Within non-democracies, the maximum level we observe is 4.[13]

We include several control variables to account for possible alternative explanations. First, several scholars argue that states with a stronger domestic rule of law may be more likely to ratify the Rome Statute (Simmons and Danner, 2010; Chapman and Chaudoin, 2013). They hypothesize that this relationship occurs because actors are less likely to commit severe international crimes in states with a strong rule of law. Additionally, the ICC should be less likely to file prosecutions involving these states because of the principle of complementarity, which ensures that the ICC only files cases if a state is unable or unwilling to prosecute offenders. These two factors imply that the ICC will impose fewer costs on states with strong domestic legal institutions. Our measure of RULE OF LAW comes from the Worldwide Governance Indicators (WGI) dataset at the World Databank.

Second, many scholars argue that states that are poorer or more dependent on foreign aid are more likely to sign the Rome Statute because they are coerced into doing so by richer and more

Statute again.

[12] See the Political Regime Characteristics and Transitions, 1800-2018 Dataset Users' Manual.

[13] See Table A1 in the Supplemental Appendix for descriptive statistics of all variables.

powerful states that support the ICC (Spence, 2014).[14] To control for this alternative argument, we include Log (GDP per capita) and Foreign aid from the Worldwide Development Indicators dataset.[15]

Third, because the ICC specifically punishes war crimes, which (by definition) can only occur during armed conflicts, we include various measures of armed conflict. First, we include Total violence from the Major Episodes of Political Violence and Conflict Regions dataset, which measures all episodes of inter- and intra-state violence. Higher values indicate greater levels of violence. Second, we disaggregate this measure into Intra-state violence and Inter-state violence in an alternate specification as a robustness check in case the two kinds of violence have differing effects (Simmons and Danner, 2010).

Finally, many scholars of international justice argue that norms can spread across states through a process of diffusion, emulation, and/or learning (Simmons and Danner, 2010; Sikkink, 2011). To control for this alternative explanation, we include dummy variables for each region.

The results of our analysis appear in Table 3. As expected based on our theory, the coefficient on Political competition is positive and statistically significant, both with and without controls. Substantively, Model (1) tells us that a one-unit increase in political competition translates into a nearly 2.3-fold increase in the probability of ratification. For example, Malawi (with a competitiveness score of 4) is about 2.27 times likelier to ratify the Rome Statute than Zambia (with a competitiveness score of 3). With controls, the substantive effect decreases somewhat in Models (2) and (3) to a roughly 1.91-fold increase. Nevertheless, the findings suggest that non-democracies with higher levels of political competition are significantly more likely to ratify the Rome Statute. None of the control variables are statistically significant. Moreover, we do not find any effect for violence, measured as total or disaggregated by inter- and intra-state, on the probability of ratification.

[Table 3 goes here.]

As an additional robustness check, we examined an alternative measure of government strength, which is our theoretical variable of interest. Unfortunately, existing data for this concept do not provide enough coverage to run a time-series, cross-national model. However, they do provide some suggestive, albeit limited, evidence in favor of our theory. In Figure 2, we use

[14] Alternatively, foreign aid might create a security effect for autocrats, allowing them to fend off domestic political rivals (Hashimoto, 2020).

[15] As in Hashimoto (2020), the Foreign aid measure is transformed using the inverse hyperbolic sine function.

a measure of the relative strength of rebel groups from Cunningham, Gleditsch and Salehyan (2013). These data include 42 of the 94 non-democracies in our larger dataset, which are coded for a maximum of 14 years.[16] Each observation corresponds to one state-year in which the state was fighting against at least one rebel group; thus, the number of observations per state is not consistent.[17] This generates 208 state-year observations.[18] For each observation, we plot the frequency of states facing rebel groups of various strengths, disaggregated by whether that state eventually ratified the Rome Statute. The coding of level of competition posed to the government corresponds to Cunningham, Gleditsch and Salehyan (2013)'s classification of rebel group strength as much weaker (low competition), weaker (moderate competition), and parity/stronger (high competition). A state-year unit is colored black in Figure 2 if the state joined the ICC at some point in time and grey if the state never joined the ICC.

[Figure 2 about here.]

Figure 2 provides additional evidence for our theory. The data include 92 state-year observations in which the rebel group is "much weaker" than the government, meaning that the government faces low levels of political competition. In 9 (or 9.8%) of these observations, the government joined the ICC member at some point in time.[19] Overall, the data show that governments facing low political competition (because rebel groups that are much weaker) are unlikely to join the ICC.

Next, the data include 99 state-year observations in which the rebel group is "weaker" than the government, meaning that the government faces moderate levels of political competition. In 38 (or 38.4%) of these observations, the state joined the ICC member at some point in time. This statistic suggests that a government facing moderate political competition receives more benefit from being an ICC member than a government facing low political competition.

Finally, it is very rare for a rebel group to be at "parity or stronger" than the government (meaning that the rebel group is of equal or greater strength). Only 17 of the 208 observations fall into this category. In such circumstances, a government faces high political competition. In 8 (or

[16] The dataset covers 1998-2011 only.

[17] Additionally, states that ratify the Rome Statute are only included for years prior to ratification. For example, Afghanistan generates five observations (1998-2001 and 2003), Guinea generates two (1998-1999), and Myanmar generates 14 (1998-2011).

[18] We use state-years as the unit because rebel groups change strength over time and aggregating to the level of the state would obscure these differences.

[19] There is only one observation in which a state facing a much weaker rebel group joined the ICC in the same year: Afghanistan in 2003. Obviously, the extensive US government support for the Afghan government in 2003 makes this an idiosyncratic case. Had the US military not been deployed on Afghan soil, the true level of political competition within Afghanistan would have been very high.

47%) of the observations in this category, the government joined the ICC member at some point in time. So governments that face high political competition appear to receive a higher benefit from being an ICC member than government that face moderate or low political competition. Overall, the evidence from Figure 2 supports the first empirical implication of our theory: political competition increases the likelihood of ratification of the Rome Statute.

### 4.2 Does Ratification Reduce Violence?

We can now assess the second empirical implication of our model: ratification of the Rome Statute will be associated with a decrease in overall violence within a ratifying state. Our main dependent variable is TOTAL VIOLENCE, which combines inter- and intra-state violence. In alternate specifications, we use INTRA-STATE VIOLENCE only. Higher values indicate greater levels of violence. Per Proposition 2, we expect violence to decrease after the state joins the ICC. Because we are only interested in the behavior of non-democracies that join the ICC, before and after ratification, we restrict the dataset to the 31 non-democracies that ratify the Rome Statute. Our dependent variable is ordinal, so we model violence using an ordinal logistic regression in the main models.

Our explanatory variable is the binary measure called POST-RATIFICATION, which is coded as 1 if the state is being observed at least one year after ratifying the Rome Statute. The variable is coded as 0 if the state has not yet ratified and in the year of ratification. [20]

As before, we include LOG (GDP PER CAPITA) and FOREIGN AID as control variables because levels of development and economic growth might affect violence (Gleditsch, 2007).[21] Additionally, we include RULE OF LAW as a control variable because strong domestic institutions might limit the government's ability to use violence. In alternate specifications, we also add Polity as a control variable to account for the state's domestic characteristics that might affect its use of violence, particularly for those states that ratify as autocracies but transition to democracy in subsequent years. Finally, we include an indicator variable for AFRICA as violence may create spillover effects.[22]

[Table 4 goes here.]

The results of the ordinal logistic and OLS regressions appear in Table 4. Across all

[20] Descriptive statistics for all variables in this analysis can be found in Table A2 of the Supplemental Appendix.

[21] Foreign aid might also affect violence through a different mechanism, namely that governments depending on foreign aid might be less likely to commit violence to avoid risking their aid allocations from pro-human rights democracies. See Kim and Menninga (2020).

[22] This replaces our regional dummy, since the majority of these 31 states are in Africa.

models for TOTAL VIOLENCE, the coefficient on POST-RATIFICATION is negative and statistically significant. To more easily interpret the ordinal logistic regression results, we plotted the predicted probability of a state being at various levels of violence pre- and post-ratification using coefficients from Model (4). The dashed line in Figure 3 indicates the probability of a pre-ratification non-democracy being observed committing each level of violence.[23] The solid line is the probability that a post-ratification non-democracy is observed committing that level of violence. As Figure 3 illustrates, post-ratification non-democracies are less likely than pre-ratification non-democracies to commit a given level of violence, for all levels of violence.

[Figure 3 goes here.]

Additionally, RULE OF LAW is negative and statistically significant in all models, indicating that states with stronger domestic institutions are less likely to commit violence. In contrast, the coefficient on FOREIGN AID is positive and statistically significant. We believe that this relationship probably indicates that foreign aid allows governments to shift more of their own resources to military and police activities, although this lies outside the scope of our theory (Branch, 2011).

To better illustrate the impact of ratification on violence in a specific case, Figure 4 shows the violence trend in Uganda between 1992 and 2012, ten years before and after ratification, respectively. Prior to ratification, Uganda's level of violence was steady at 3 for about seven years. A score of 3 corresponds to "serious political violence" resulting in 10,000-50,000 deaths. Between 2002 (year of ratification) and 2004 (year of referral), the violence level drops to 2, or "limited political violence" resulting in 3,000-10,000 deaths. Uganda's level of violence drops to 0 in 2006, indicating minimal to no violence, where it remains for the rest of the period.

[Figure 4 goes here.]

### 4.3 Does Ratification Increase Government Survival in Office?

Finally, we consider the third implication of our theoretical model: that ratification of the Rome State will allow governments to stay in power for longer periods of time. Our sample consists of the 31 non-democracies that ratify the Rome Statute. More specifically, each non-democracy is observed throughout the length of tenure of the ICC-ratifying leader, where the unit of observation is a leader-month. For example, Uganda's Museveni is observed for 426 months, reflecting his tenure

[23] The 0 category is excluded, which is why the probabilities do not sum to 1.

from January 1986 through June 2021 (when data collection ended). In contrast, Afghanistan's Hamid Karzai is observed for only 154 months (December 2001 through September 2014).

Our dependent variable is Coup risk from the Rulers, Elections, and Irregular Governance Dataset (Bell, Besaw and Frank, 2021), which is the estimated probability of a military coup taking place in a given month.[24] This measure does not include ICC ratification in its model for generating predicted probabilities of coup risk each month, so the dependent variable is not measured endogenously. We estimate the impact of ratification on coup risk using OLS regression. Our explanatory variable is again Post-ratification.

As control variables, we include Polity as a control variable because states with more democratic characteristics may be less susceptible to coups.[25] We also include Log (GDP per capita) as a control variable because poorer states are more likely to suffer coups. We next include the various violence measures as controls because both forms of violence may make a coup more likely (Wood, 2010; Sudduth, 2017; Kim, 2016). Finally, we include an indicator variable for Africa to capture potential spillover effects.

The results of our models appear in Table 5. Across all models, the coefficient on Post-ratification is negative and statistically significant: ratification decreases the probability of coups. Admittedly, the substantive effect of ratification is small because the underlying probability of a coup in any given month is also small. Nevertheless, the effect is statistically significant at an extremely high level.[26]

[Table 5 goes here.]

Because leader-months are such small units of observation, we calculate the probability of a coup occurring in a given year.[27] Figure 5 plots the cumulative coup risk in each year for three leaders who ratified the Rome Statute in 2002: Museveni (Uganda), Hun Sen (Cambodia), and Jammeh (Gambia). In all three cases, the probability of a coup decreases over the leader's

[24] Time in office after ratification does not necessarily provide useful information about the impact of ICC ratification on survival. For example, a government's time in office after ratification might reflect legal or institutional constraints, like upcoming elections or term limits, rather than a true risk of losing office. In contrast, Coup risk ignores the regular ways in which power might transition, and reflects an irregular transition of power. We accordingly use this as our measure of government survival.

[25] Although these are non-democracies that ratified, the state may not remain a non-democracy during the leader's entire tenure. In this set of empirical tests, observation ends when the leader's tenure ends, regardless of any movement toward more democratic practices.

[26] Specifically, the estimate is significant at the p¡2e-16 level.

[27] Cumulative coup risk treats the Coup risk data as independent, which seems plausible given that the latent variable model does not seem to take prior history of coups into account. We calculate the cumulative coup risk as 1 minus the product of the probability of no coup (1 minus coup risk) for 12 months.

tenure. However, the leader's coup risk also decreases further after ratification in 2002. We view this as suggestive evidence that Rome Statute ratification helps non-democratic leaders to survive in office.

[Figure 5 about here.]

In sum, our statistical evidence supports our theoretical argument. Our statistical tests show that political competition greatly affects the probability of ratification. When governments face higher levels of political competition, they are more likely to ratify the Rome Statute. We also show that among non-democracies that ratify, ratification has significant effects on the level of violence and probability of leader survival. We show that violence decreases after ratification, reflecting the increased cost of committing violence for ICC members. Finally, our statistical evidence indicates that ratification has a negative and statistically significant effect on coup risk, indicating that the leader has a greater probability of survival in office after joining the ICC.

Of course, this analysis comes with important caveats. First, given the relatively small number of non-democracies in general (94) and non-democracies that ratify (31), any statistical test that relies on cross-sectional variation will be limited. Second, given that the earliest possible date for ratification of the Rome Statute was 1998, we are also limited by the amount of time (20 years) over which we can measure and observe government behavior. The combined effects of these two factors—the number of non-democracies and the amount of time since 1998—inherently limits our ability to make valid statistical inferences about this substantively important topic.

## 5 Qualitative Evidence: Prosecuting Dominic Ongwen

Our theoretical mechanism relies upon a central assumption: that the ICC imposes asymmetric costs in non-democracies. Our statistical evidence supports the empirical implications of this theory, yet it is worth asking: are asymmetric costs apparent in ICC investigations and prosecutions? To bolster this aspect of our argument, we examine in closer detail one recent ICC case: the prosecution of Dominic Ongwen.

After Uganda self-referred the violence in Northern Uganda to the ICC, the ICC issued five arrest warrants. One of these warrants was for Dominic Ongwen, who was a mid-level officer in the Lord's Resistance Army (LRA), receiving orders from superior officers and commanding subordinate rebel fighters.[28]. Ongwen is the only Uganda suspect who was actually captured and

[28]ICC, *Ongwen*, Decision on the Confirmation of Charges of 23 March 2016 ("ICC (2016)"), para. 58.

prosecuted by the Court. At his ICC trial, he was charged with 70 separate criminal counts, which were organized into three groups.[29] First, Ongwen was charged with 49 counts involving four attacks on civilians who were living in government-run camps for internally-displaced persons ("IDP camps"). Second, Ongwen was charged with 18 counts involving sexual and gender-based violence. These included forcibly marrying at least seven civilian abductees and aiding in the forced marriages of other rebel commanders. Finally, Ongwen was charged with conscripting and using child soldiers.

To understand why the ICC generates asymmetric costs, it is important to understand how an ICC trial works. To prove each criminal charge, an ICC prosecutor must satisfy three separate criteria. First, the ICC prosecutor had to prove that a specific act occurred at a specific place and time. For example, the prosecutor alleged that at least 48 civilians were killed during an attack on the Lukodi IDP camp on 19 May 2004.[30] The witnesses who testified about these acts included victims, rebels who participated in the attacks, and Ugandan soldiers who were stationed at the IDP camps.

The ICC does not disclose how it conducts criminal investigations, both to protect its own employees and the witnesses themselves. Non-governmental organizations may have assisted the ICC in identifying victims. However, rebel participants were likely identified by the Ugandan government, which operated a demilitarization campaign to help former combatants who agreed to surrender in exchange for immunity. Similarly, the Ugandan government knew which were present during the specific IDP attacks. It is unlikely that ICC investigators found all of these witnesses without information from the Ugandan government. In their appeal of the trial judgment, Ongwen's lawyers accused the ICC of improperly relying on the Ugandan military to find witnesses and collect their statements.[31] Additionally, the ICC investigators needed permission to visit the IDP camps, which were controlled by the Ugandan military. They also needed transportation and translators who spoke the numerous languages of northern Ugandan. Finally, the ICC relied on the Ugandan government to protect witnesses from potential retribution. The ICC does not have the resources to protect or relocate witnesses itself.

Second, the prosecutor had to prove that the specific acts satisfied the legal definition of a war crime and/or crime against humanity. This required that the prosecution prove what is called the "contextual element." Namely, for war crimes, the prosecution must prove that the specific acts

[29]ICC (2016).
[30]ICC (2021), para. 182
[31]ICC, Ongwen, Defence Notification of its Intent to Appeal the Trial Judgment of 21 May 2021, p. 8.

occurred during an "armed conflict" and that they had a nexus—or link—to the armed conflict.[32] For crimes against humanity, the prosecution must prove that the specific acts were "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[33] These contextual elements require that the prosecutor establish elements of why and how specific attacks occur.

For example, to prove that Ongwen had "knowledge of the attack", the ICC found witnesses who participated in planning meetings before the attacks. We do not know how the ICC identified these individuals, but (as noted above) former combatants were likely identified by the Ugandan government's demilitarization campaign. The ICC also used recordings and logbooks of LRA radio communications to prove Ongwen's "knowledge" of attacks. These LRA radio communications were intercepted, recorded, screened, and translated by the Ugandan military, intelligence agency, and local police forces.[34] This evidence was selectively provided to ICC investigators. The ICC was not provided, for example, with all radio transcripts of all communications between government and rebel troops.

Third, the prosecutor had to prove that Dominick Ongwen was legally responsible for these crimes. A few of these crimes were committed by Ongwen himself. For example, seven women testified that they were kidnapped by the LRA and forced to marry Ongwen, leading to rape and forced pregnancy. However, Ongwen was accused of alternative modes of responsibility—such as indirect participation and command responsibility—for the other alleged crimes.[35] Each of these modes of responsibility come with different complex criteria. Once again, this element of the trial relied extensively on LRA radio broadcasts that were intercepted, recorded, screened, and translated by various branches of the Ugandan government.

In contrast, the LRA lacks capacity to collect evidence about the activities and communications of the Ugandan military. The ICC's trial judgment reveals the extremely limited capacity of the LRA. For example, Ongwen was charged and convicted of eight counts of pillage. These charges required the ICC to specify what had been stolen by the LRA troops. The most commonly pillaged items were beans, maize, and other basic foodstuffs.[36] Ongwen's troops also managed to steal two radios, a goat, and a few saucepans over the course of two years. This meager inventory of "pillage" matches the accounts of social scientists who have interviewed abductees and former LRA

[32] Rome Statute (1998), Article 8(1).
[33] Rome Statute (1998), Article 7(1).
[34] See ICC (2021), section IV.3.
[35] For the specific modes invoked, see ICC (2016). For an overview of modes of responsibility, see Johns (Forthcoming, chap. 11).
[36] ICC (2001), para. 150, 165, 185, and 195.

combatants. For example, a large portion of LRA abductions are temporary and occur because the LRA rebels need help carrying food and other stolen goods back to their camps (Finnström, 2008). The LRA can barely manage to feed its own troops, much less to compete with Uganda's military technology.

# 6 Conclusion

We began this paper by describing the press conference at which ICC Prosecutor Luis Moreno-Ocampo announced that Yoweri Museveni, the Ugandan president, had self-referred the "situation concerning the Lord's Resistance Army (LRA) to the ICC."[37] This self-referral led to the investigation of violence in northern Uganda, arrest warrants for five leaders of the LRA, and the ultimate prosecution of Dominic Ongwen. Throughout this process, the ICC was never able to escape the accusation that its actions were biased in favor of the Ugandan government.

Like the LRA, the Ugandan government has been accused of committing numerous serious international crimes since the creation of the ICC. Perhaps most importantly, the Ugandan military forced most civilians in northern Uganda into living in the very camps that were attacked by the LRA. A large portion of camp residents then died from malnutrition and preventable diseases caused by lack of clean water and basic sanitation. Individuals who refused to live in these camps or in military-controlled towns, were told that they would be shot on sight as rebels. Additionally, numerous credible sources have documented pillage, sexual violence, and the conscription and use of child solders by the Ugandan military and local government-organized security forces. While we lack systematic public opinion data, numerous studies suggest that the people of northern Uganda view both the LRA and the government as guilty of serious international crimes (e.g. Allen, 2006; Branch, 2011; Finnström, 2008).

So why weren't political and military leaders in the Ugandan government prosecuted too? This question has been asked by many ICC critics, both within and outside of Uganda.[38] Moreno-Ocampo insisted that the investigation and prosecutions targeted the LRA because those individuals had committed the worst atrocities. Yet one telling alternative explanation came from a prominent ICC staffer, who tried in May 2016 to explain the one-sided prosecution of crimes in Uganda. He explained to victims of military violence that: "It's false propaganda that the ICC

[37] ICC Press Release, 29 January 2004. Document ICC-20040129-44.

[38] For one example, see Mark Kersten "Why the ICC Won't Prosecute Museveni" Justice in Conflict Blog, 19 March 2015. Available at: `https://justiceinconflict.org/2015/03/19/why-the-icc-wont-prosecute-museveni`

is only after the LRA. We have not received any evidence against the [Ugandan military]."[39] His choice of wording is important: the ICC staff expects to "receive" evidence, not to search for it.

We argue that these dynamics are not unique to Uganda. They plague all ICC activities, particularly in non-democracies. The ICC relies on cooperation from its members to help it investigate, arrest, and prosecute individuals for international crimes. As Peskin (2009, 656) argued: "Moreno-Ocampo's apparent deference to the Ugandan government seemed part of a larger submission to state sovereignty aimed at receiving state cooperation in investigations and prosecutions." This cooperation ensures that the ICC imposes asymmetric costs on domestic actors. While the ICC raises the cost of violence for all actors, it imposes higher costs on rebel groups than it does on non-democratic governments.

These asymmetric costs shape when and why non-democratic governments select into the ICC by ratifying the Rome Statute. Namely, when a government has little political competition, it can use violence at a relatively low cost. In such circumstances, the government has little incentive to boost its relative power further by increasing the costs of violence. However, if the government faces high political competition, the cost of violence is relatively high. Because such a government is in a relatively weak position *vis-à-vis* a rebel group, the government will be more likely to try to bolster its relative power by joining the Rome Statute.

This causal mechanism suggests that political competition will increase the likelihood of Rome Statute ratification in non-democracies. This empirical implication is supported by our statistical analysis of the available data. Anecdotally, it is also apparent in the case of Uganda. When Museveni ratified the Rome Statute in June 2002, he was under extreme pressure both internally and externally to legalize political parties, had faced a major decline in support in the recent 2001 parliamentary elections, and was facing a looming constitutional term limit that would have ended his power in 2006.[40] Our causal mechanism also implies that Rome Statute ratification should decrease violence and increase the survival of those non-democratic governments that choose to ratify. Once again, statistical evidence supports these empirical implications.

Our argument has mixed normative implications for advocates of international justice. On the one hand, our argument and evidence further bolster the claim that international law generally, and the ICC specifically, can reduce violence and severe atrocities (Jo and Simmons, 2016; Simmons and Danner, 2010). On the other hand, our argument and evidence also suggest that international

[39] James Owich "No Evidence Against UPDF, Says ICC" Acholi Times (Uganda), 2 May 2016. Available at: `http://www.acholitimes.com/2016/05/02/no-evidence-against-updf-says-icc`. Emphasis added

[40] See Rubongoya (2007, 131-185). Museveni convinced the Ugandan parliament to remove the presidential term limit in 2005.

law and courts can have more pernicious effects, like prolonging the tenure of non-democratic leaders who are willing to commit violence and severe atrocities (Hollyer and Rosendorff, 2011; Vreeland, 2008). Unfortunately, such a tradeoff is probably inescapable in laws and courts that are created by men, not angels.

## Theoretical Appendix

*Proof of Proposition 1.* To solve the model generally, let $c_i$ denote the cost of effort to actor $i$, and $\pi_i = \frac{e_i}{e_i+e_j}$ denote the probability that actor $i$ gains the payoff from winning political power. Then the generic utility function for player $i$ is:

$$U_i\left(e_i, e_j\right) = W\pi_i - c_i e_i$$

Maximizing the utility function with respect to the choice variable $e_i$ yields the best response function:

$$e_i\left(e_j\right) = \left(\frac{e_j W}{c_i}\right)^{\frac{1}{2}} - e_j$$

Taking the intersection of the best response functions yields the equilibrium effort level:

$$e_i^* = \frac{W c_j}{\left(c_i + c_j\right)^2}$$

For the two different subgames, this yields the following behavior and outcomes:

| | Don't Join | Join |
|---|---|---|
| Government effort ($e_G$) | $\frac{W}{(1+c)^2}$ | $\frac{W(1+\rho)}{\left(1+c+\rho+\frac{\rho}{z}\right)^2}$ |
| Rebel effort ($e_R$) | $\frac{Wc}{(1+c)^2}$ | $\frac{W\left(c+\frac{\rho}{z}\right)}{\left(1+c+\rho+\frac{\rho}{z}\right)^2}$ |
| Government survival probability ($\pi$) | $\frac{1}{1+c}$ | $\frac{1+\rho}{1+c+\rho+\frac{\rho}{z}}$ |

So the government's expected utility from its two choices is:

$$\begin{aligned} EU_G\left(\text{Don't Join}\right) &= W\left[\frac{1}{1+c}\right] - c\left[\frac{W}{\left(1+c\right)^2}\right] = \frac{W}{\left(1+c\right)^2} \\ EU_G\left(\text{Join}\right) &= W\left[\frac{1+\rho}{1+c+\rho+\frac{\rho}{z}}\right] - \left(c+\frac{\rho}{z}\right)\left[\frac{W\left(1+\rho\right)}{\left(1+c+\rho+\frac{\rho}{z}\right)^2}\right] = \frac{W(1+\rho)^2}{\left(1+c+\rho+\frac{\rho}{z}\right)^2} \end{aligned}$$

The government will thus be willing to join iff:

$$\Psi \equiv \left(1+\rho\right)^2\left(1+c\right)^2 - \left(1+c+\rho+\frac{\rho}{z}\right)^2 \geq 0$$

Note that:

$$\begin{aligned}
\Psi(c=0) &= (1+\rho)^2 - \left(1+\rho+\frac{\rho}{z}\right)^2 = -2(1+\rho)\frac{\rho}{z} - \frac{\rho^2}{z^2} < 0 \\
\frac{\partial \Psi}{\partial c} &= 2(1+\rho)^2(1+c) - 2\left(1+c+\rho+\frac{\rho}{z}\right) = 2\rho\left[2c+\rho(1+c)+\frac{z-1}{z}\right] > 0 \\
\lim_{c\to\infty}\Psi &= \lim_{c\to\infty}\left\{(1+\rho)^2(1+c)^2 - \left[(1+c)^2 + 2(1+c)\left(\rho+\frac{\rho}{z}\right) + \left(\rho+\frac{\rho}{z}\right)^2\right]\right\} \\
&= \lim_{c\to\infty}\rho(1+c)\left[(2+\rho)(1+c) - 2\left(1+\frac{1}{z}\right)\right] - \left(\rho+\frac{\rho}{z}\right)^2 = \infty > 0
\end{aligned}$$

So by the intermediate value theorem, there exists a unique $\bar{c} > 0$ such that $\Psi(c) < 0$ for all $c < \bar{c}$ and $\Psi(c) > 0$ for all $c > \bar{c}$. So higher values of $c$ are (weakly) more likely to join than lower values of $c$. □

*Proof of Proposition 2.* The level of violence if the government does not join the ICC is:

$$\frac{W}{(1+c)^2} + \frac{Wc}{(1+c)^2} = \frac{W}{1+c}$$

The level of violence if the government joins the ICC is:

$$\frac{W(1+\rho)}{\left(1+c+\rho+\frac{\rho}{z}\right)^2} + \frac{W\left(c+\frac{\rho}{z}\right)}{\left(1+c+\rho+\frac{\rho}{z}\right)^2} = \frac{W}{1+c+\rho+\frac{\rho}{z}}$$

Note that the latter quantity is always less than the former quantity. □

*Proof of Proposition 3.* The probability that the government survives in office if it joins increases (relative to not joining) iff:

$$\frac{1}{1+c} < \frac{1+\rho}{1+c+\rho+\frac{\rho}{z}} \quad \Leftrightarrow \quad 1+c+\rho+\frac{\rho}{z} < (1+\rho)(1+c) \quad \Leftrightarrow \quad \frac{1}{z} < c$$

Note that:

$$\begin{aligned}
\Psi\left(c=\frac{1}{z}\right) &= (1+\rho)^2\left(1+\frac{1}{z}\right)^2 - \left(1+\frac{1}{z}+\rho+\frac{\rho}{z}\right)^2 \\
&= (1+\rho)^2\left(1+\frac{1}{z}\right)^2 - \left[\left(1+\frac{1}{z}\right)(1+\rho)\right]^2 = 0
\end{aligned}$$

□

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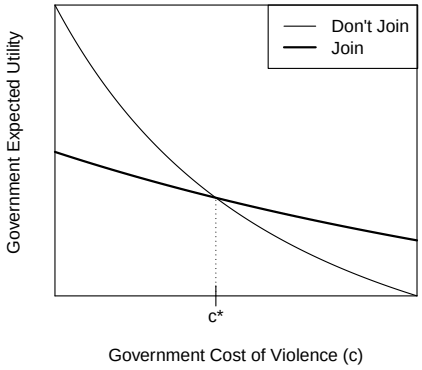
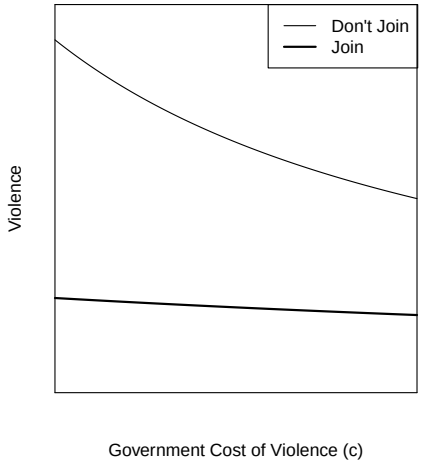
Figure 1: Theoretical Relationships

(a) Selection




(b) Violence




(c) Survival

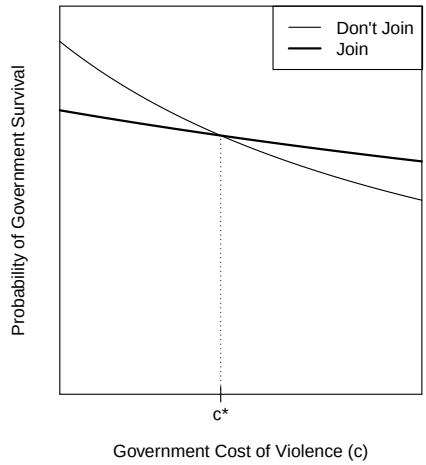
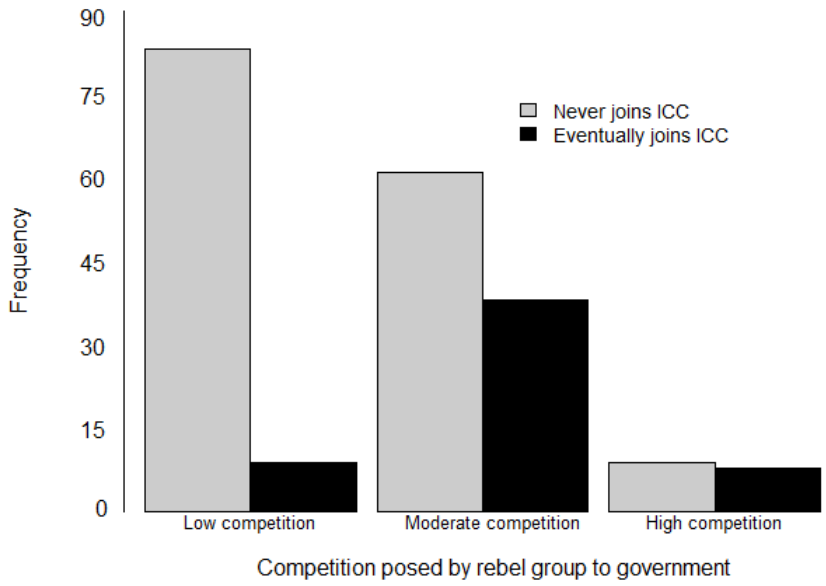
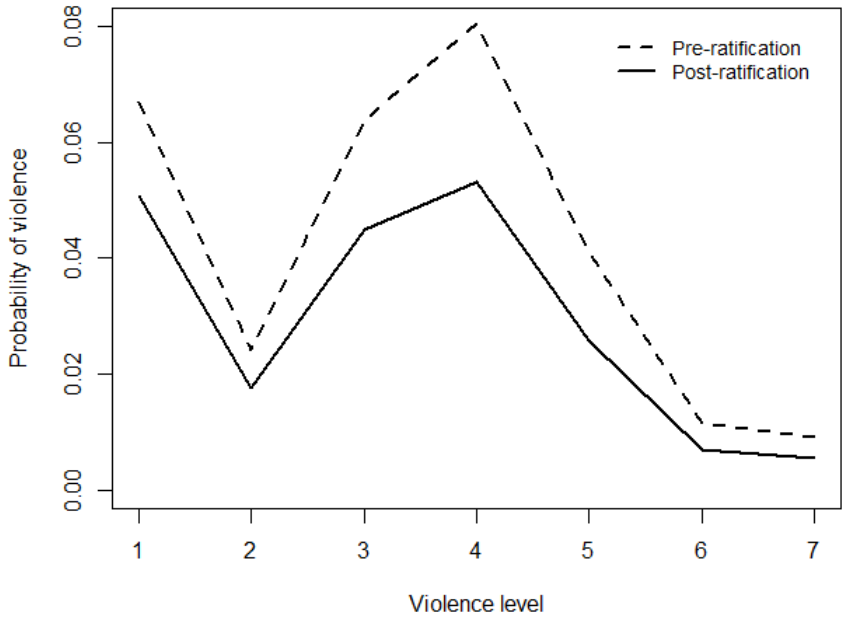


Figure 2: Rebel Group Strength and ICC Ratifications



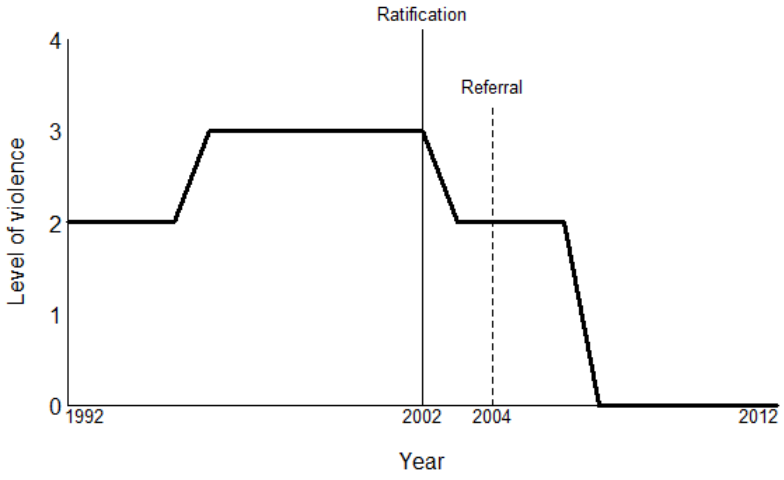

***Note:*** Level of competition corresponds to rebel group strength relative to government as coded by Cunningham, Gleditsch and Salehyan (2013): low competition ("much weaker"), moderate competition ("weaker"), or high competition ("parity" or "stronger"). The unit of analysis is a state-year.

Figure 3: Ratification Decreases Predicted Probability of Violence




***Note:*** Predicted probabilities generated using results from Model (4) holding region constant. Violence of level 0 is excluded from the figure, which is why probabilities do not sum to 1.

Figure 4: Violence in Uganda, 1992–2012




***Note:*** Level of violence measured as summed magnitude of all societal and interstate episodes of political violence from Major Episodes of Political Violence dataset. Figure shows the trend in violence over 1992–2012, starting 10 years prior to Uganda's ratification of the Rome Statute in 2002.

Figure 5: Ratification Decreases Yearly Coup Risk

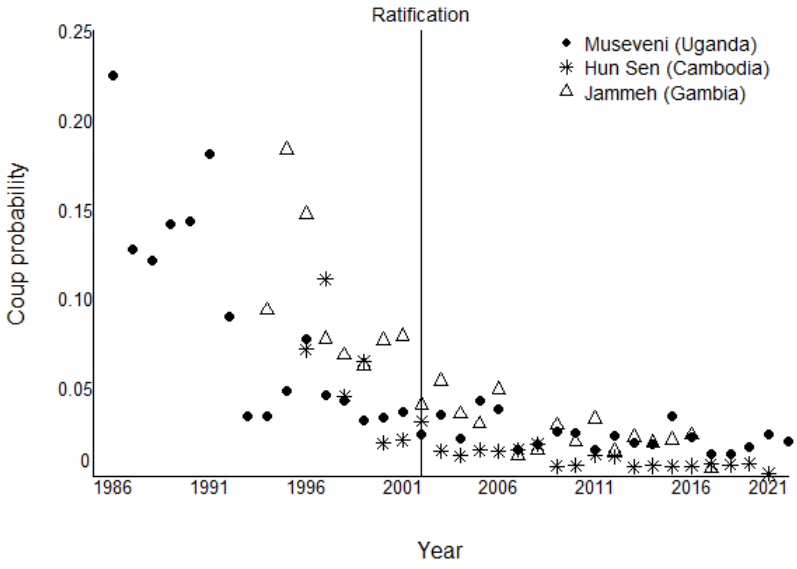


Table 1: Expected Utility from Outcomes in the Theoretical Model

| Actor | Don't Join | Join |
|---|---|---|
| Government | $R\pi - ce_G$ | $R(1-\pi) - \left(c + \frac{\rho}{z}\right) e_G$ |
| Rebel group | $R\pi - e_R$ | $R(1-\pi) - (1+\rho)\, e_R$ |

Table 2: Empirical Implications of the Theoretical Model

| Proposition Number | Explanatory Variable | Outcome Variable | Data Sample | Expected Relationship | Empirical Test |
|---|---|---|---|---|---|
| 1 | Political competition | Ratification | All non-democracies | Positive | Table 3 |
| 2 | Ratification | Violence | Non-democracies that ratify | Negative | Table 4 |
| 3 | Ratification | Government survival | Non-democracies that ratify | Positive | Table 5 |

Table 3: Political Competition Increases Ratification of the Rome Statute

Dependent Variable: Years to Ratification

| | (1) | (2) | (3) |
|---|---|---|---|
| *Explanatory Variable* | | | |
| Political competition | 0.82*** | 0.66** | 0.61** |
| | (0.26) | (0.27) | (0.28) |
| *Control Variables* | | | |
| Rule of law | | 0.59 | 0.75 |
| | | (0.46) | (0.50) |
| Log (GDP per capita) | | −0.28 | −0.47 |
| | | (0.19) | (0.31) |
| Foreign aid | | 0.23 | 0.02 |
| | | (0.22) | (0.12) |
| Total violence | | 0.02 | |
| | | (0.17) | |
| Intra-state violence | | | 0.03 |
| | | | (0.18) |
| Inter-state violence | | | −0.30 |
| | | | (0.61) |
| Region dummies | Yes | Yes | Yes |
| Events | 24 | 23 | 23 |
| States | 90 | 85 | 85 |
| Observations (state-year) | 1,108 | 940 | 940 |

$^{*}p < 0.1,^{**}p < 0.05,^{***}p < 0.01$

Table 4: Rome Statute Ratification Decreases Violence

| | (4) | (5) | (6) | (7) | (8) | (9) |
|---|---|---|---|---|---|---|
| Violence (DV) | Total | Intra-state | Total | Intra-state | Total | Intra-state |
| Post-ratification | $-0.49^{**}$ | $-0.50^{**}$ | $-0.62^{**}$ | $-0.63^{**}$ | $-0.58^{**}$ | $-0.58^{*}$ |
| | (0.20) | (0.20) | (0.28) | (0.29) | (0.29) | (0.30) |
| Rule of law | | | $-4.60^{***}$ | $-4.76^{***}$ | $-4.42^{***}$ | $-4.57^{***}$ |
| | | | (0.35) | (0.35) | (0.37) | (0.38) |
| Log (GDP per capita) | | | $-0.33^{*}$ | $-0.37^{*}$ | $-0.27$ | $-0.32$ |
| | | | (0.19) | (0.19) | (0.20) | (0.20) |
| Foreign aid | | | $1.21^{***}$ | $1.24^{***}$ | $1.20^{***}$ | $1.23^{***}$ |
| | | | (0.15) | (0.15) | (0.16) | (0.16) |
| Polity | | | | | $-0.04$ | $-0.04$ |
| | | | | | (0.04) | (0.04) |
| Africa | 0.36 | 0.40 | $2.25^{***}$ | $2.42^{***}$ | $2.29^{***}$ | $2.49^{***}$ |
| | (0.25) | (0.25) | (0.39) | (0.41) | (0.44) | (0.46) |
| States | 31 | 31 | 31 | 31 | 30 | 30 |
| Observations (state-year) | 651 | 651 | 625 | 625 | 592 | 592 |

$^{*}p < 0.1, ^{**}p < 0.05, ^{***}p < 0.01$

Table 5: Rome Statute Ratification Decreases Coup Risk

Dependent Variable: Coup Risk

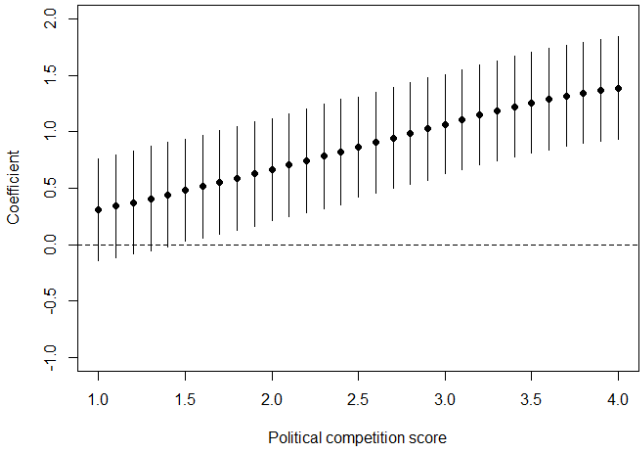
| | (10) | (11) | (12) |
|---|---|---|---|
| Post-ratification | $-0.0015^{***}$ | $-0.0015^{***}$ | $-0.0016^{***}$ |
| | (0.0001) | (0.0001) | (0.0001) |
| Log (GDP per capita) | | $0.0003^{***}$ | $0.0002^{***}$ |
| | | (0.0000) | (0.0000) |
| Polity | | $0.0001^{***}$ | $0.0001^{***}$ |
| | | (0.0000) | (0.0000) |
| Total violence | | $0.0004^{***}$ | |
| | | (0.0000) | |
| Inter-state violence | | | $-0.0017^{***}$ |
| | | | (0.0005) |
| Intra-state violence | | | $0.0004^{***}$ |
| | | | (0.0000) |
| Africa | $0.0057^{***}$ | $0.0025^{***}$ | $0.0026^{***}$ |
| | (0.0001) | (0.0001) | (0.0001) |
| Leaders | 31 | 30 | 30 |
| Observations (leader-month) | 5,609 | 3,679 | 3,679 |
| Adj. R-squared | 0.4252 | 0.4551 | 0.4578 |

$^{*}p < 0.1,^{**}p < 0.05,^{***}p < 0.01$

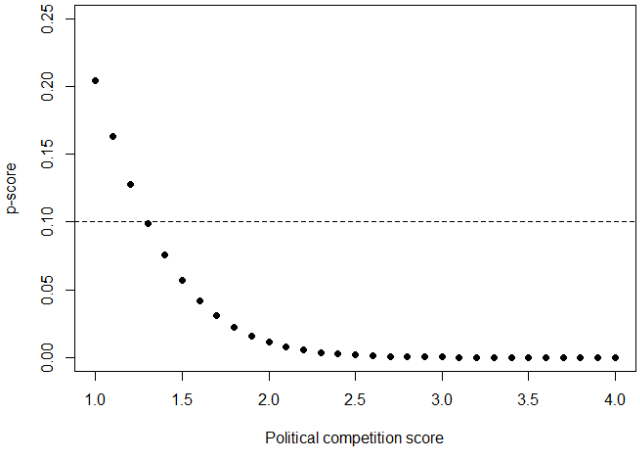
# Supplemental Appendix

Figure A1: Results for Imputed Values of Political Competition

(a) Coefficients




(b) $p$-Values




***Note:*** The x-axis indicates the hypothetical imputed political competition score for states that lack *Political competition* data in any year. Note that this is an extremely conservative estimate of the imputed coefficients because an actual imputation model would use information from prior years available for the state to make its estimate. For example, Afghanistan has data for 1998-2001 but not 2002-2003; an imputation model might use information from 1998-2001 to create the scores for 2002-2003. Here I have assumed a completely naive model in which 2002-2003 scores are coded as any hypothetical political competition score, regardless of what the score was in previous years. Even under this extremely conservative and naive assumption, the coefficient would still be statistically significant at almost any hypothetically imputed political competition score value. The average political competition score in the dataset is 2.08; political competition scores below that are likely much more restrictive than what imputation software would provide for states on which there is zero data. The horizontal line indicates the point at which the result would lose statistical significance at the $p = 0.10$ level.

Table A1: Descriptive Statistics for Models (1)–(3)

| Variable | Mean | Minimum | Maximum | N Obs. |
|---|---|---|---|---|
| Year | 2007 | 1998 | 2018 | 1,209 |
| ICC ratification | 0.02 | 0 | 1 | 1,209 |
| Political competition | 2.08 | 0 | 4 | 1,108 |
| Log(GDP per capita) | 7.89 | 5.23 | 11.15 | 1,122 |
| Rule of law | −0.71 | −2.61 | 1.84 | 1,209 |
| Total violence | 0.81 | 0 | 7 | 1,209 |
| Inter-state violence | 0.09 | 0 | 6 | 1,209 |
| Intra-state violence | 0.73 | 0 | 7 | 1,209 |
| Foreign aid* | 19.34 | −21.41 | 24.66 | 1,110 |

*hyperbolic sine transformation

Table A2: Descriptive Statistics for Models (4)–(9)

| Variable | Mean | Minimum | Maximum | N Obs. |
|---|---|---|---|---|
| Post-ratification | 0.75 | 0 | 1 | 651 |
| Total violence | 0.69 | 0 | 7 | 651 |
| Intra-state violence | 0.68 | 0 | 7 | 651 |
| Log (GDP per capita) | 6.70 | 5.35 | 9.39 | 625 |
| Foreign aid* | 20.71 | −17.05 | 23.89 | |
| Polity | 1.89 | −7 | 8 | 617 |
| Rule of law | −0.75 | −2.13 | 0.46 | 651 |
| Africa | 0.77 | 0 | 1 | 651 |

*hyperbolic sine transformation

Table A3: Descriptive Statistics for Models (10)–(12)

| Variable | Mean | Minimum | Maximum | N Obs. |
|---|---|---|---|---|
| Post-ratification | 0.52 | 0 | 1 | 5,973 |
| Coup risk | 0.0040 | 0.0003 | 0.0519 | 5,887 |
| Polity | −0.98 | −9 | 8 | 5,550 |
| Log(GDP per capita) | 6.87 | 5.40 | 9.39 | 3,920 |
| Total violence | 0.69 | 0 | 7 | 5,695 |
| Inter-state violence | 0.02 | 0 | 2 | 5,695 |
| Intra-state violence | 0.67 | 0 | 7 | 5,695 |
| Africa | 0.76 | 0 | 1 | 5,973 |