

Does the International Criminal Court Deter Torture?

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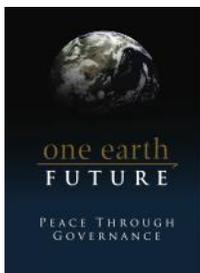
March 27, 2013

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This draft manuscript was prepared for the annual meeting of the International Studies Association in San Francisco, CA, March 2013. Please do not cite or circulate without permission.



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Abstract

Despite widespread commitment to the international human rights regime, grave human rights abuses persist and go unpunished. One prominent explanation for this phenomenon is that states are insincerely committing to treaties they perceive as having weak enforcement mechanisms for the purpose of sending a cheap signal of their legitimacy. Only recently, however, states created an international human rights treaty with a new and much stronger enforcement mechanism. States committing to the newly-created International Criminal Court (ICC) grant an independent prosecutor and court permission to try their own citizens should they commit genocide, crimes against humanity, or war crimes in the event the state does not commence a prosecution on its own. Should we expect that states will behave differently in the face of this new and stronger enforcement mechanism and actually conform their policies and practices to those required pursuant to treaty terms? Or is any optimism about the institution's ability to make a difference and actually influence positive change in state behavior as relates to the protection of individual human rights misplaced? This article explores these questions by looking at one aspect of state's protection against human rights abuses that is covered by the ICC treaty's terms: whether and to what extent its leaders or state representatives use torture against the populace. If the ICC treaty is as effective as states creating it hoped it would be, it should be effective at constraining its membership and deterring those states from engaging in torture. This paper examines the ICC's deterrence effect as regards states' torture practices using both quantitative and qualitative analyses.

Introduction

The question this paper addresses is whether the incidence of torture decreases in countries that have ratified the Rome Statute, the foundational document of the International Criminal Court (ICC). Scholars have long questioned whether international human rights treaties are effectively reducing violations of human rights. The vast majority of states now belong to the six main international human rights treaties (not including the ICC).¹ Yet, grave human rights abuses persist and go unpunished. Indeed, some research suggests that international human rights institutions are not successful in constraining state behavior and leading to improvements in domestic legal practices relating to the protection of human rights (Hathaway 2002; Hafner-Burton and Tsutsui 2004; Hafner, 2007; Neumeyer 2005). Explanations for this phenomenon often focus on institutional design and cite the relatively weak monitoring and enforcement mechanisms that accompany these treaties (Camp Keith 1999; Hathaway 2002). For example, many human rights treaties require only that the state self-report its compliance with treaty terms and goals to a committee with no power to sanction or punish bad and noncompliant behavior (Donnelly 2007: 85-87).

In the context of the international human rights regime, however, the recently-created International Criminal Court (ICC) has much stronger enforcement mechanisms. By ratifying the Rome Statute, states cede to an independent prosecutor the power to investigate and prosecute the state's own nationals who are accused by the court of committing any of the ICC's core crimes. These crimes include genocide, crimes against humanity, and war crimes. The ICC has jurisdiction over these crimes only if the prosecutor and the court determine the state is "unwilling or unable genuinely to carry out the investigation or prosecution" domestically (Rome Statute 1998, sec. 17. 1. (c)). These powers are significantly greater than those possessed by any of the committees

¹ These include the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social and Economic Rights (ICESCR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

overseeing compliance with the various other international human rights treaties. In addition, unlike the ad hoc international and hybrid tribunals that are geographically and temporally limited the ICC is the only permanent global court that has jurisdiction over individuals.

The ICC's powers are limited, however; it does not possess or command a police force and as a result it relies on states' forces to arrest and bring suspects to The Hague. Consequently, not all suspects who have been the subject of an ICC arrest warrant have been brought to the court for prosecution. Indeed, a well-known example of an indicted, but free, individual is President Bashir of Sudan. Nonetheless, an ICC arrest warrant, compared to typical rulings from committees overseeing other human rights treaties, places significant constraints on the person who is subject to it. Since the issuance of the warrant for his arrest, for example, President Bashir has not travelled to Europe, likely because he would be arrested should he do so.

We explore whether the ICC deters torture by testing the effect of ICC ratification on the incidence of torture. We focus on torture for several reasons. First, torture can constitute a crime against humanity, war crime, or genocide, all of which states committing to the ICC agree are crimes the court and its prosecutor may investigate and punish should the state fail to do so. Thus, torture is an appropriate instrument for measuring the ICC's impact because it is within the ICC's purview.² In a less specific way, torture is also prohibited by the ICC's provisions criminalizing genocide inasmuch as the crime includes "causing serious bodily or mental harm to members" of a national, ethnical, racial, or religious group with the intent to destroy that group, in whole or in part.³ We expect that if the ICC is effective, incidents of torture should be reduced in states that have agreed to be subject to its jurisdiction. A second reason we examine torture is because it uniquely allows us to isolate the impact of the ICC. Even before the ICC was created in 2002, customary international law and the 1984 Convention Against

²Pursuant to Article 7.1(f) of the Rome Statute, a crime against humanity includes torture when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." To constitute a "crime against humanity," one would need to show multiple instances of torture on civilians as part of a state or organizational policy. Under Article 8, torture is also a defined war crime when committed during "an armed conflict not of an international character" and on persons, such as civilians. Rome Statute, Art. 8.2(c)(i).

³ See Rome Statute, Art. 6(b).

Torture (CAT) prohibited torture. While many states joined the CAT and expressed their intention to prohibit and punish torture, the treaty contains no enforcement mechanism allowing for a prosecution of those who practice torture. If enforcement mechanisms are unimportant insofar as reduction matters, then we expect incidents of torture would have gone down with the CAT's enactment but not necessarily to be correlated with the establishment of the ICC. Using torture as the dependent variable allows us to isolate some precise conduct expressly prohibited before the existence of the ICC. Any positive findings suggest that our argument about the relative impact of the ICC's enforcement mechanisms is valid. Finally, the data on torture covers a relatively large time period and universe, allowing for a more rigorous analysis.

Our analysis focuses on significant incidents of torture from 1981-2010. Our results indicate that states that commit to the ICC are less likely to commit torture. The findings specifically show a consistent negative relationship between torture and ratification of the ICC; in contrast, the relationship between CAT commitment and torture is much less clear. Additionally, our results indicate interesting relationships between regime type, capability and torture. Together, these findings suggest several things. First, in addition to a regime's type and ability, a state's commitment to the ICC is instrumental in deterring individuals from abusing others' right to not be tortured. Second, the structure of the ICC is associated with better outcomes. For those concerned with the design of international commitments, this speaks to the potential of credible enforcement mechanisms to improve individuals' behavior if states commit to a global institution.

We proceed by providing some background on the creation of the ICC and the terms of the treaty to which states submit themselves when they ratify it. We then situate our argument within the literature addressing the design of international human rights treaties and their effectiveness in constraining state behavior. In that context, we also review the existing empirical studies addressing state commitment to the ICC and its likely ability to be able to constrain state behavior and improve the protection against human rights abuses. Next, we explain more specifically our argument and why we expect the ICC is more effective at deterring individuals from committing torture. We then

generate hypotheses, describe our research design, and present the results of the empirical analyses. The conclusion discusses policy implications and directions for future research.

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 individual perpetrators of the crimes of genocide, crimes against humanity, and war crimes. The Rome Statute was adopted in July 1998 after a nearly decade-long negotiation process (Arsanjani, 1999). The ICC itself came into existence and began operating on 1 July 2002 after the required 60 states ratified the statute.

The ICC treaty is not like any human rights treaty that has gone before it. 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 UN Security Council a greater role in determining which cases to pursue (Schabas, 2007). States ultimately created a new and different institution—one decidedly different in terms of its enforcement powers from both previous international human rights treaties and ad hoc international criminal tribunals.

Unlike other international human rights treaties, the ICC can subject individuals to legally binding mechanisms to enforce compliance with treaty terms. The committees overseeing compliance with other human rights treaties cannot issue legally binding decisions sanctioning or punishing states or their citizens for failing to conduct their domestic affairs in a way that comports with treaty terms and goals (Steiner, 2000:36-37). The ICC is also more powerful than the ad hoc tribunals. First, it operates independently from the United Nations Security Council and may decide without that institution's approval what cases to commence or prosecute as long as the target of the investigation is a citizen of a member state or allegedly committed a crime on the territory of a member

state (Rudolph, 2001; Goldsmith and Krasner, 2003). The ICC may also accept cases based on referrals from the UN Security Council. Furthermore, there is no diplomatic or head of state immunity. The ICC treaty's "complementarity" provision means that states can avoid having one of their citizens prosecuted at the ICC by prosecuting any core crime domestically. But, the provision only protects state sovereignty to the extent that such domestic prosecutions are commenced and also in a way that demonstrates such proceedings are not a sham: such as where the state puts only low-level perpetrators on trial and shields certain persons from prosecution. And, by ICC treaty terms, the ICC court and prosecutor—not the states themselves—are empowered to make decisions about whether such domestic prosecutions are sufficient to stave off an ICC proceeding (Schabas, 2007).

Further, as a permanent court, the ICC serves a constant reminder to individuals who consider committing serious international crimes that their conduct can be punished by an international institution. The ad hoc tribunals have no such general forward-looking deterrent effect: although there may have been a limited deterrent effect with the ICTY, they were created after atrocities began and their jurisdiction is limited to dealing with those particular atrocities committed in particular states. By contrast, the ICC treaty is designed to constrain the behavior of individuals in states that commit to the treaty and encourage states hold individuals within their jurisdictions to account for crimes against humanity, genocide, or war crimes so that states do not suffer a costly loss of sovereignty by having their citizens tried in The Hague.

As of March 2013, 122 states have ratified the ICC treaty and thereby agreed to be bound by its terms. This is more than 50% of the total number of states in the world. Member states include most of the countries in Europe, Africa, Central and South America, and the Caribbean. The United States, China, Russia, and India are notable large and powerful states that have not committed to the court.

Treaty Design and State Behavior

Since World War II, states have increasingly turned to international institutions as a way to monitor and hold themselves accountable for improving their domestic human rights practices. Yet, even today, the effectiveness of those institutions in constraining state behavior and improving respect for human rights is not clear. One might expect that states would not join treaties unless they believed in treaty principles and intended to promote and institutionalize treaty values at the domestic level. Yet examples abound in which signatory states regularly abuse human rights. This behavior is puzzling. Why do states commit to international treaties and then seemingly disregard their commitment? Given this state of affairs, are there reasons to believe that the international human rights regime has any continued role to play in encouraging states to improve their domestic practices as relates to the protection of human rights?

These questions about why states commit to international human rights treaties and the conditions under which they actually embrace treaty constraints have long puzzled scholars of international relations. One strand of the literature on why states commit to international human rights treaties proceeds from a normative perspective and emphasizes states' innate 'propensity to comply' with the agreements they sign (Chayes and Chayes 1993). According to this theory, states genuinely wish to embrace normative change, and formal treaties provide them with the channels through which they may exercise this propensity. Thus, the international institution acts to constrain state behavior, and enforcement problems are minimal because states themselves are seeking a mechanism by which to uphold principles.

On the other hand, many scholars have taken a more skeptical view of the ability of most human rights treaties to actually make a difference in improving states' domestic protection of human rights. For example, Downs, Rocke, and Barsoom (1996) argue that the reason we can observe compliance with some international treaties is because states design those treaties so that they will not be required to cooperate in any deep and meaningful manner. According to this literature, states will want to avoid sovereignty

costs, which are the costs of weakening state sovereignty, and will prefer to join treaties that will only require them to do what they otherwise would have done in the absence of the treaty. Jana Von Stein (2005) makes a similar point about treaty selection effects, noting that “institutional design is at least in part endogenous” because states will not likely invest their time and resources in creating agreements unless they also have some interest in complying with those agreements. Thus, as Von Stein (2005) argues, we may find that treaties will actually screen out potentially bad and noncompliant members, rather than inducing them to join and thereafter alter their behavior to conform to treaty terms. Others argue that although many states make “insincere commitments” to human rights treaties, despite weak accountability mechanisms, some still do have positive effects on human rights (Smith-Cannoy 2012).

There is no consensus on the effect of international human rights treaties on state behavior. For example, the results of Keith’s statistical tests of state commitment to the International Covenant on Political and Civil Rights (ICCPR), failed to produce evidence that ratifying the ICCPR caused an improvement in states’ human rights practices (Keith 1999). Hathaway’s (2002) statistical tests of state commitment to the Genocide Convention, the ICCPR, the CAT, and the Convention on the Political Rights of Women similarly failed to produce evidence linking treaty membership with an improvement in domestic human rights practices. In fact, Hathaway concluded that “noncompliance with treaty obligations appears to be common” and that in some cases ratification was “not infrequently associated with worse human rights ratings than otherwise expected” (Hathaway 2002:1940). To explain this rather counterintuitive finding that human rights treaties might lead to worse practices, Hathaway referenced the minimal monitoring and enforcement mechanisms that are associated with most human rights treaties. Thus, she notes that states can take the relatively costless step of ratifying a treaty and thereafter fail to conform their domestic practices and policies to those advanced by the treaty since enforcement mechanisms are usually too weak to actually compel compliance.

On the other hand, Simmons (2009) examined state commitment to several of the main international human rights treaties and found that characteristics of the state have

profound influence on compliant behavior. Specifically, governments that are not stable democracies or autocracies do improve their respect for human rights after treaty ratification. Those effects were not present for stable autocracies or stable democracies. Although Simmons's focus was not on enforcement mechanisms, she did conclude that her positive and statistically significant results indicating improvement in state practices was likely due to an active civil society with an incentive to mobilize and demand improvements.

As to the ICC in particular, there is some limited evidence suggesting that the institution may be able to improve human rights practices and deter international crimes. Using case studies of indictments for leaders in Ivory Coast, Uganda, and Sudan, Akhavan (2009) concluded that the ICC deters violence and support for violent groups and raises the cost of violence, rather than creating perverse incentives for leaders who have been indicted (Akhavan 2009). Focusing on state commitment to the ICC and using matching techniques and a large dataset on the numbers of civilians killed by governmental and nongovernmental forces, Jo and Simmons find evidence to suggest the ICC has peace enhancing effects: states with civil wars that had committed to the ICC used less violence against civilians (Jo and Simmons Unpublished).

This paper contributes to this body of literature testing the effectiveness of international human rights institutions. We argue that because the ICC treaty is characterized by relatively strong enforcement mechanisms, ICC commitment will positively influence state behavior and effectively reduce the prevalence of abusive human rights practices. The following section spells out our argument linking deterrence theory to the ICC and rates of torture.

Theoretical Reasons Why the ICC Deters Torture

We argue that because the ICC has stronger enforcement mechanisms than other international human rights treaties, it should be more likely to deter individuals from committing the acts underlying genocide, crimes against humanity, and war crimes.

Torture is one act. The remainder of this section proceeds as follows. We briefly review the conditions under which deterrence is expected to work; show to what extent the ICC meets these conditions and how it differs from other human rights instruments; and then derive specific, falsifiable hypotheses from this theory.

Deterrence is one of several main justifications for international criminal law (Drumbl 2007).⁴ Those who believe in deterrence argue that the possibility of criminal sanctions will positively alter incentives for individuals who might commit crimes so that the cost of committing a crime (torture here) is higher than its benefits. There are two types of deterrence: general and specific (Drumbl 2007, 16). General deterrence has a “social engineering function” (Drumbl 2007, 16). Punishing one person should decrease the likelihood of others committing similar crimes because of their fear of punishment. Specific deterrence refers to the probability punishment has on the likelihood of individual recidivism. We measure overall deterrence, without distinction to who is being deterred. Unfortunately the cross-national data do not currently allow us to assess with that level of specificity. We expect, however, that consistent with Jo and Simmons (Unpublished, 26-32) the ICC deters both general and specific abusive behavior. The reason why we expect specific deterrence is because once leaders have come under scrutiny by the ICC, they know that severe human rights abuses can contribute to the case against them. General deterrence is likely because leaders want to avoid the same fate of others who end up behind bars at the ICC.

For deterrence to be effective, six conditions must exist to some degree (for a useful discussion, see Hiebert 2010). First, punishment must be likely (Drumbl 2007, 169–170). If only one in ten perpetrators is routinely brought to justice, potential criminals know that they will very likely be able to commit a crime and escape punishment. Second, punishment must quickly follow the crime and trial. Punishment cannot start decades after a perpetrator committed an offense because then disincentive to commit a crime is greatly diminished. Third, the person punished must be the individual who committed the offense. Punishing third parties or a collective entity for an individual’s

⁴ By deterrence, we mean through this paper legal deterrence. There are other types such as nuclear deterrence, economic deterrence, and so forth.

actions does not create as large of a cost as punishing only the persons involved in the crime. Fourth, punishment must be proportionate to the crime committed and sufficiently severe so that potential perpetrators view it as costly. For example, a fine of \$10 for murder neither matches the moral gravity of the crime nor is it severe enough to deter potential criminals. Consistent with their study of gangs in inner-city LA, Akerlof and Yellen uncover evidence that communities respond negatively when police actions are judged to be overly brutal and repressive (Akerlof and Yellen 1994). Fifth, potential perpetrators must be aware of the law and rough probability of the first four factors. Sixth, actors must also be sufficiently rational so that they can make cost-benefit calculations (Drumbl 2007, 171).

This last condition is important because it raises the question of to what extent deterrence may be effective. No theory of legal deterrence posits that everyone will necessarily be deterred. There are at least two reasons for this. First, not everyone is equally and fully rational. Second, some people are willing to pay high costs to achieve their nefarious ends. This second point suggests that not everyone would be deterred even if everyone were purely rational unless the costs of committing a crime are so high that no one would be willing to risk committing a crime. What legal sanctions ought to do is sufficiently increase the disincentives of committing a crime for some percentage of the population so that committing a crime is no longer worth the costs. We therefore expect that the ICC will decrease, but not eliminate, torture by deterring those individuals for whom the risk of punishment by the ICC is sufficiently high to outweigh the benefits derived from torturing people. This will unlikely deter those who face the highest incentives to torture.

With the exception of the ICC, international agreements have heretofore lacked substantial adherence to the six conditions of deterrence. For instance, the ICJ cannot punish individuals. It can only punish states. Nor do the Geneva Conventions or CAT grant individuals the authority to send offenders to jail. While some ad hoc tribunals such as The International Criminal Tribunal for Rwanda (ICTR) and The International Criminal Tribunal Former Yugoslavia (ICTY) can punish actors, these tribunals have

temporally and geographically limited jurisdictions. Hence, their general deterrent effect is extremely limited and highly contextual.

Is the ICC different? In other words, has the ICC treaty actually been designed in a way that it meets the deterrence criteria? We argue that the ICC is sufficiently consistent with the principles of deterrence that it will deter individuals from committing underlying acts including torture of genocide, war crimes, and crimes against humanity. While its powers are greater than those of many other international treaties, they remain imperfect. Although the ICC has no police force, the ICC does have people behind bars awaiting trial and being punished. The first criterion of deterrence, certainty of prosecution, is thus imperfectly met. Second, suspects have been prosecuted and convicted. Although some cases have taken years, this may be swift enough to deter some people especially because they remain behind bars as the trial progresses. The second criterion of deterrence theory, swift punishment, is thus partially fulfilled. Third, the ICC does hold individuals to account, which is perhaps the ICC's most important advancement in international criminal law. Thus it meets the third criterion of deterrence theory. Fourth, it remains to be seen whether the punishments are sufficiently harsh to deter other potential international criminals. Fifth, many leaders are well aware of the ICC and the crimes outlawed by the Rome Statute. The main difference of the ICC and a treaty such as CAT is that the ICC can and has arraigned, arrested, tried, and convicted individuals. Thus the ICC meets criteria for deterrence. These new powers embodied in a permanent international treaty are the central reason why we expect the ICC to deter some individuals from committing actions that could constitute a core crime. This argument is supported by findings that individuals in states that ratify the ICC are less likely to torture than in states that do not ratify the Rome Statute.

Objections and Alternative Explanations

The central point of our theory is that because the ICC has stronger enforcement mechanisms than some other human rights treaties, it will have some deterrent effect and

it will be more likely to deter individuals than these other treaties. Some might object that our analysis is problematic because the dependent variable, incidence of torture, should only be affected by the ICC if it is part of a crime against humanity or war crime because the ICC does not have jurisdiction over torture unless it is an element in a war crime, genocide, or crime against humanity. This does not undermine our expectations for two reasons. First, people who might commit torture might want to entirely avoid the possibility of being indicted and therefore decrease or end their use of torture outside of context of war crime, genocide, or a crime against humanity. Second, and more importantly, we believe that this problem reduces the likelihood of a positive finding. This biases our analysis against positive findings and, thus, does not undermine our results.

Another alternative argument is that if the incidence of torture decreases after a state ratifies the Rome Statute, it is wrong to infer that the ICC deterred because there could be other factors that caused the incidence of torture to decrease. For example, the ratification of the Rome Statute could signal to actors that international actors condemn genocide, war crimes, and crimes against humanity. Drumbl calls this “expressivism,” which is the idea that international law can express and condemn actions (Drumbl 2007, 11–12, 173–179). The problem with this objection is that genocide, crimes against humanity, and war crimes have been illegal according to international law through treaties and customary international laws before the Rome Statute came into effect. For instance, the Genocide Convention was passed in the 1940s, various Geneva Conventions were ratified in the 1860s, 1940s, 1970s (among others), and CAT came into force in 1987. Thus any decrease of the incidence of torture is not likely due to expressivism but is likely due to the stronger enforcement mechanisms of the ICC compared with other human rights and international law treaties. Our finding that even in states that have ratified the CAT, ratification of the ICC decreases the incidence of torture.

Another objection is that states that torture are also likely targets of international NGOs’ advocacy campaigns which may account for some or all of the decrease of the incidence of torture. Although the evidence is mixed on whether “naming and shaming”

has an effect on state repression (Hafner-Burton 2008), there is some evidence that it positively modifies state behavior directly and through providing cover via criticism of human rights violating regimes through international institutions to allow withholding foreign aid through multilateral institutions (Krain 2012; Lebovic and Voeten 2009). This naming and shaming effect is possible. We plan on controlling for this in the next version of our paper.

Hypotheses

Based on the foregoing analysis, we generate the following hypotheses:

H₁ (a). After a country ratifies the Rome Statute, the incidence of torture in that country will decrease.

H₁ (b). Even if a country has ratified the CAT, we expect that the incidence of torture will decrease after a country ratifies the ICC.

The reason for H₁ follows directly from deterrence theory. We expect that after states which commit to the Rome Statute will have a lower incident of torture because individuals in and out of government can be prosecuted for torture if it is part of a crime against humanity or war crime. Given that there is no immunity for heads of state or anyone else, we would expect state and nonstate actors to commit torture less frequently because the ICC has jurisdiction over nonstate actors as well.

Because the ICC has enforcement mechanisms that CAT and customary international law lack, we expect that torture will decrease in countries after they ratify the ICC even if they have already ratified the CAT. Leaders have been known to make insincere commitments (Smith-Cannoy 2012). The cost of making an insincere commitment to the ICC, however, is higher than it is to the CAT if leaders value state sovereignty or do not want to be hauled before the ICC in the Hague because individuals can be jailed by the ICC but not by the CAT.

H2. Countries that ratify the Rome Statute will have a lower incidence of torture compared with countries that do not ratify the Rome Statute.

This follows directly from the theory of deterrence. Individuals in states that have ratified the Rome Statute are at greater risk being prosecuted and jailed than individuals in states that have not ratified the Rome Statute, *ceteris paribus*. We therefore expect that states that have ratified the Rome Statute, holding everything else constant, will have a lower incidence of torture than those states that have not ratified the Rome Statute.

H3. The incidence of torture will decrease in states that have ratified the Rome Statute in regions where the ICC has indicted and arrested individuals.

The reason why the decrease of the incidence of torture may be lower only for those regions where individuals have been indicted and arrested is that individuals in other areas of the globe may believe that the ICC's threat against them is not credible. Because the ICC has only indicted and arrested individuals from Sub-Saharan Africa, we test whether there has been a decrease in torture in countries that have ratified the ICC in Sub-Saharan Africa.

H4. We expect that torture will decrease in weak countries more than strong countries because the ICC has strategically targeted relatively weak countries for prosecution.

The logic here is that similarly situated individuals in weak countries may believe that states they are at higher risk of torture than individuals in powerful states because the ICC has never prosecuted someone from a country that is materially powerful country.

Empirical Analyses

In this section we carry out our analysis of hypotheses 1-4. For reasons mentioned above, we use torture to proxy for the deterrent effect of the ICC. We believe this is an appropriate proxy because torture is included in the ICC's definition of crimes against humanity and war crimes. We expect our results to have general applicability beyond

torture, specifically to human rights violations associated with the Rome Statute mandates.

Dependent, Independent, and Control Variables

Our unit of analysis is country-year and covers human rights violations between 1981 and 2010. To measure torture, we use CIRI torture scores from Cingranelli/Richards database (see: <http://www.humanrightsdata.org>). CIRI defines torture as “the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials.” This definition is consistent with how the ICC treaty defines torture. CIRI torture scores are assigned as follows: countries score a 0 where torture was practiced frequently (>50 incidents per year); 1 if occasionally; and 2 if no torture occurred during a country-year. In keeping with the ICC’s definition of torture (see footnote 2), we consolidated the scores into a binary variable indicating whether the country was associated with major incidents of torture or not (1=torture, 0=none) in any given year. We also ran the analysis on an indicator including minor incidents of torture (see discussion below).

Our primary independent variable is ICC ratification. We code states as having ratified the ICC during the year of ratification and for all subsequent years.⁵ The ICC was available for signature and ratification beginning in 1998. It was not enacted until 2002 when signed by a sufficient number of countries. While our theory does not speak directly to this issue, we acknowledge that the deterrent effect of the ICC’s institutions may not have fully been realized until the treaty became effective. Thus, we include an annual control for all years 2002 onward. Related, we also control for CAT ratification. This allows us to compare the likelihood of torture across CAT and non-CAT signers, and to control for any deterrent impact of the CAT. The CAT was available for ratification in 1984 and is coded similarly to ICC ratification.⁶

⁵ Data on ICC ratification can be obtained from <http://www.iccnw.org/?mod=romeratification> (the CICC website).

⁶ Data on CAT ratification can be obtained from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

In addition to ratification dates, we control for a host of other variables. First, we include a control for POLITY2 scores (Marshall and Jaggers 2010). We anticipate democracy has a negative influence on the likelihood of torture. We also control for states' total population and National Material Capability (CINC V3.02) scores (Singer, Bremer, and Stuckey 1972). We believe that controlling for a state's material capabilities is important as it proxies for strong (or weak) states and is relevant H4. We also include a control for Africa, pursuant to H3.

We also include controls for conflict. Violations of human rights are more likely associated with episodes of conflict. We include three controls to deal with this correlation. First, using the Major Episodes of Political Violence (MEPV) and Conflict Regions Data (Marshall 2010), we include a control for the magnitude score for any episodes of civil war that occur during our dataset. In addition, we are concerned about incidents of torture occurring as a result of the spillover effects from conflict (Salehyan 2009). When states' neighbors experience conflict, often rebel groups take sanctuary in other states, fomenting conflict between states and raising tensions. To the extent that government agents or rebels use torture in these situations, we include controls indicating the number of bordering or regional states with any societal or interstate conflict (variables NRAC and NAC in the MEPV dataset). Descriptive statistics for all our variables are included in Table 1.

Method and Analysis

To assess our hypotheses, we use a series of logit models with year fixed effects. Because we anticipate some correction is necessary to account for standard error correlation within states, we cluster on country codes. Table 2 shows models 1-4. Model 1 is the simple binary relationship between ICC ratification and torture. As anticipated, it is negative and highly significant. Model 2 includes all the controls. Using the same specifications, Models 3 and 4 explore the relationship between ratification and torture on different subpopulations. Model 3 includes the countries that are the worst offenders. These are countries whose collapsed torture scores are amongst the bottom 25th

percentile. These are likely the most infamous countries associated with torture. Model 4 runs the analysis for the remaining 75% of countries (those where torture is less likely).

Table 3 shows the results for models 5-7. Models 5 and 6 split the sample between states that ratified the CAT and those that have not. We split the sample in this manner in order to assess how CAT ratification might impact states' compliance with the ICC. According to $H_1(b)$, we expect that ICC ratification should have an impact on torture *even* when states have previously demonstrated commitments to not torture because the ICC's enforcement mechanisms are stronger. Finally, Model 7 shows the results for ICC ratification on a more inclusive measure of torture. Here, instead of examining major incidents of torture, our indicator records any incidents of torture as a "1".

We also include Graphs 1 and 2 to visually display the relationship between the probability of torture and ICC ratification under different conditions. In Graph 1, we display this probability in cases of civil war (right panel) versus peace (left panel). In Graph 2, we display this probability in cases of CAT ratification (right panel) versus no CAT ratification (left panel). Graphically these displays show that in any context, when ICC ratification occurs (when $x=1$ on lower axis of both graphs), the likelihood of torture is smaller.

Discussion

The analysis tells a fairly consistent story regarding the negative effect of ICC ratification on torture. Specifically, in all models the relationship is negative; ICC ratification decreases the likelihood of torture. In models 1,2,4, and 5, the relationship is statistically significant. These findings suggest that H_2 is correct. The findings in models 2 and 4 also demonstrate that even in when controlling for CAT ratification the ICC deters torture, consistent with $H_1(b)$. (We plan on testing for $H_1(a)$ in the next draft of this paper.) Also interesting is that the coefficient on CAT ratification tells a very different story. When it is significant, it is positive suggesting that CAT ratification is actually associated with an increase in torture.

The insignificant finding in Model 3 suggests that the worst offenders may not be deterred by committing to international agreements. One possible explanation for this may have to do with deterrence theory itself. Perhaps the worst offenders fail to meet the rationality criteria outlined above that is necessary for deterrence to work. Or they may face conditions where they calculate that committing torture is worth the risk of prosecution.

Findings in Model 6 also indicate that states that have not ratified the CAT are less likely to be deterred by the ICC. This may also be because these states are some of the worst offenders and pay international treaties no heed. Recall that deterrence theory suggests that some people who are willing to pay the costs will continue to commit crimes. Legal deterrence aims to decrease overall the incidence of crime, but this result will likely occur through changing the costs of committing a crime for those considering committing a crime but not completely determined to do so no matter the cost. Finally, although the coefficient on ICC ratification is negative in Model 7, it is not significant. Substantively, this suggests that the ICC may be most effective in deterring large amounts of torture but not completely eradicating it.

Hypotheses 3 and 4 state that the effect of the ICC on incidents of torture is going to be most pronounced in places where the ICC has been active (i.e. where people have proof that the ICC will pursue offenders). Our findings show marginal support for these arguments. The coefficient on “Africa” is negative, as expected, but it is not consistently significant. The coefficient on CINC scores is negative and mostly significant. Thus, states with lower capabilities are more likely to torture than states with more capabilities. This is contrary to our expectations about the perceptions of leaders in weak states. CINC may be a proxy for how secure state leaders feel, and we know that more secure leaders torture less (Conrad 2012). Thus, while we can’t outright reject H₄, our current analysis strongly suggests that the relationship is actually reversed.

Some of the results of our control variables are interesting as well. War generally increases the probably of torture, even controlling for ICC/CAT ratification. To that end, conflict occurring either within or at the border of a country is most influential. Regional

conflict appears much less influential. The more democratic a country it is, the less likely it is to torture. The control for the year that the ICC entered into force, 2002, is significant in each model and positive, suggesting that torture may have increased throughout the time period under analysis.

Conclusion

Our central conclusion is that the ICC decreases the incidence of torture in states that have ratified the Rome Statute, which supports our argument that stronger enforcement mechanisms may deter some potential perpetrators. This has clear policy implications for existing global institutions and for those interested in developing new treaties. First, reformers aiming to improve existing global institutions should strengthen enforcement mechanisms. Second, proponents of new human rights treaties should include sufficiently strong teeth so that some people may be deterred. Third, and most specifically, the work of NGOs that advocated for the creation of the ICC and encouraged states to ratify the Rome Statute are doing important work that has prevented torture. Our findings also speak to the broader debate about whether global institutions can affect individuals' behavior. Much remains to be done even regarding the ICC. Its deterrent effect could likely increase if it had subpoena powers, had its own police force that could arraign alleged international criminals no matter where they were or who they are. Despite its shortcomings the ICC has likely prevented individuals the horrific experience of being tortured.

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Tables and Figures

Table 1. Descriptive Statistics

Variable	Obs	Mean	Std. Dev	Min	Max
Torture	4746	0.40	0.49	0	1
ICC Ratification	6224	0.16	0.36	0	1
CAT Ratification	6224	0.40	0.49	0	1
Polity2	4675	1.62	7.19	-10	10
MEPV_Civwar	4347	0.26	1.09	0	7
MEPV_Regional political violence	4347	4.18	2.28	0	10
MEPV_border state political violence	4347	0.98	1.22	0	7
Log CINC	4895	-7.27	2.47	-15.23	-1.61
Log T. Pop	4894	8.56	2.08	2.19	14.09
Africa	6062	0.25	0.43	0	1
2002	6288	0.30	0.45	0	1

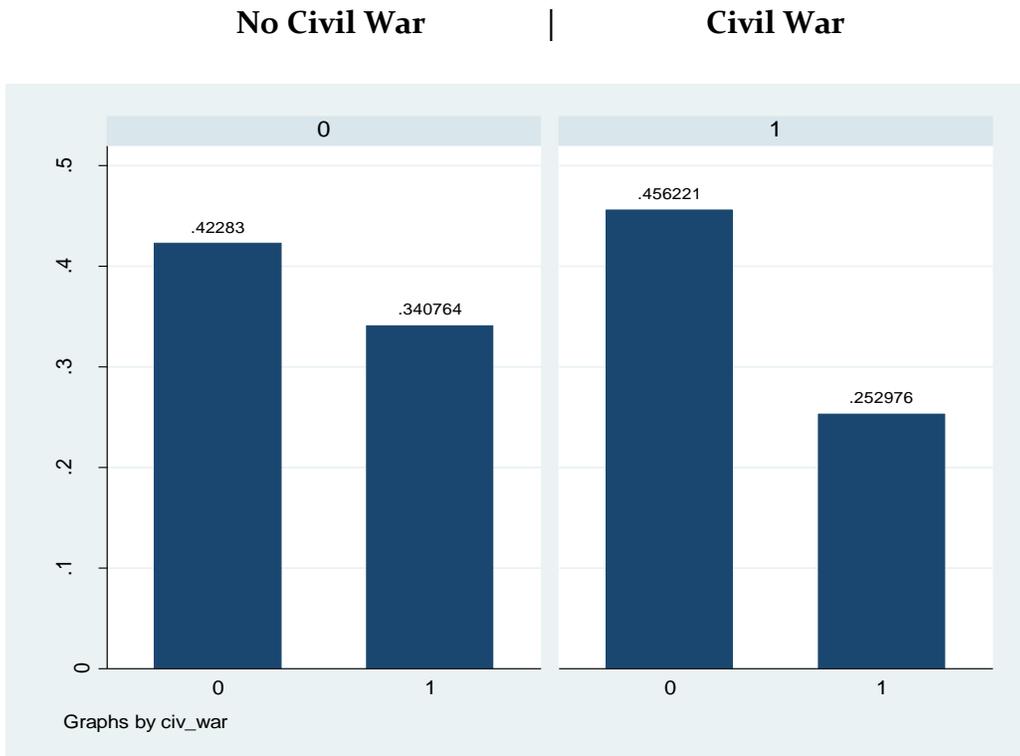
Table 2: Logit model, DV=Major incidents of torture. (*) significant at 0.01, **significant at 0.05, *significant at 0.10)**

Variables	Model 1	Model 2	Model 3 (worst torture records)	Model 4 (better torture records)
ICC Ratification	-0.51 ^{***} (0.07)	-0.74 ^{**} (0.24)	-0.56 (0.53)	-0.59 ^{**} (0.17)
CAT Ratification		0.38 ^{**} (0.19)	-0.25 (0.24)	0.55 ^{**} (0.25)
Polity		-0.08 ^{***} (0.017)	0.00 (0.02)	-0.10 ^{***} (0.01)
MEPV_Civwar		0.22 ^{**} (0.06)	0.04 (0.06)	0.41 ^{***} (0.11)
MEPV_Regional political violence		-0.06 (0.05)	0.02 (0.05)	-0.04 (0.05)
MEPV_border state political violence		0.37 ^{***} (0.10)	0.25 ^{***} (0.07)	0.16 (0.15)
Log CINC		-0.45 ^{***} (0.16)	0.30 (0.22)	-0.67 ^{***} (0.15)
Log T. Pop		0.90 ^{***} (0.19)	-0.17 (0.22)	1.00 ^{***} (0.17)
Africa		-0.36 (0.28)	-0.20 (0.23)	-0.54 [*] (0.30)
2002		2.13 ^{***} (0.37)	3.22 ^{***} (0.70)	1.42 ^{***} (0.48)
Year FE?	N	Y	Y	Y
Constant	-0.28	-12.88	2.71	-15.4
N Clusters	None	160	50	110
N	4725	3759	1264	2495
Log-pseudolikelihood	-3165.39	-2051.04	-585.22	-1168.23
Pseudo R ²	0.007	0.19	0.14	0.16

Table 3. Logit models 5-7. (*) significant at 0.01, (**) significant at 0.05, (*) significant at 0.10)**

Variable	Model 5 (CAT ratifiers)	Model 6 (non-CAT states)	Model 7 (DV=anytor t)
ICC Ratification	-0.95*** (0.28)	-0.02 (0.59)	-0.19 (0.38)
CAT Ratification			0.34 (0.25)
Polity	-0.09*** (0.02)	-0.07*** (0.01)	-0.12*** (0.02)
MEPV_Civwar	-0.00 (0.08)	0.27*** (0.07)	0.54* (0.30)
MEPV_Regional political violence	-0.05 (0.08)	-0.11** (0.05)	-0.09 (0.06)
MEPV_border state political violence	0.50*** (0.14)	0.39*** (0.12)	0.24 (0.16)
Log CINC	-0.98*** (0.25)	-0.09 (0.18)	-0.75*** (0.22)
Log T. Pop	1.56*** (0.30)	0.50** (0.20)	1.22*** (0.27)
Africa	-0.70** (0.35)	-0.30 (0.34)	-0.24 (0.39)
2002	2.00*** (0.72)	1.32*** (0.44)	3.37*** (0.57)
Year FE?	Y	Y	Y
Constant	-21.67	-6.65	-15.88
N Clusters	126	147	160
N	1782	1977	3759
Log- pseudolikelihood	-915.57	-1086.01	-13.03
Pseudo R2	0.25	0.17	0.25

Graph 1: Likelihood of torture when states have: ratified the ICC (1) or not (o) on the bottom X axis.



Graph 2: Likelihood of torture when states have signed (1.) the ICC or not (0) on the bottom X axis.

