The International Criminal Court: Does It Help End Civil Wars?

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Abstract

More than a decade since the International Criminal Court's (ICC) founding, its effectiveness remains a topic of fierce debate. One prominent claim in support of the Court is that it can help resolve conflict. A 2010 study published in *International Organization*, "Credible Commitments and the International Criminal Court" by Beth A. Simmons and Allison Danner, argues that ratification of the Rome Statute, the ICC's founding treaty, provides a "credible commitment" mechanism that unaccountable regimes use to help end civil wars. A closer examination of the findings, however, reveals the challenge of conducting cross-national quantitative research on the ICC's effects. Most problematically, the key findings disappear with the removal of an outlying case, Sierra Leone. The application of a standard "block boostrap" technique to correct for the dataset's small number of cases also eliminates the findings. Thus, scholars and policymakers should view claims that ratifying the Rome Statute can help end civil wars with caution.

Controversy has swirled around the International Criminal Court (ICC) since its founding in 1998. To its supporters, the ICC offers an important tool to prosecute

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human rights violations and resolve conflict. To its detractors, the ICC unfairly targets perpetrators in fragile states, particularly in sub-Saharan Africa, and undermines conflict resolution efforts.[1] As former South African president Thabo Mbeki (2014) has argued, "In civil wars, no one is wholly innocent and no one wholly guilty...To call simply for victims' justice, as the ICC does, is to risk a continuation of civil war." With civil conflicts continuing to boil in Africa and elsewhere, understanding the ICC's influence on war termination remains a salient issue. Many states with robust or simmering insurgencies—Syria, Sudan, Russia, Yemen, among others—have signed the Rome Statute, the ICC's founding treaty, but have yet to ratify it. Would joining the Court help end their conflicts?

Scholars have largely taken a qualitative approach to evaluate questions surrounding the ICC—either focusing on individual cases or its broader normative implications (Branch, 2007; Contarino et al., 2012; Mamdani, 2009; Wigglesworth, 2008). An important exception is Beth A. Simmons and Allison Danner's (2010) *International Organization* article "Credible Commitments and the International Criminal Court", which uses cross-national quantitative methods.[2] Simmons and Danner (S&D) argue *inter alia* that Rome Statute ratification helps end civil wars, because joining the Court signals to rebel groups that regimes with weak accountability mechanisms are more likely to be prosecuted for future abuses.

A closer examination of their article, however, reveals the challenge of rigorously testing this argument. Their models that ostensibly show ratification contributing

[1] As of April 2014, all of the ICC's official investigations have been in African states. In part because of this targeting, African Union (AU) member states have considered withdrawing *en masse* from the Court.

[2] See Neumayer (2009) for an additional example of quantitative research on the ICC.

to civil war termination have three primary shortcomings. First and foremost, they are driven entirely by a *single* case, Sierra Leone. Second, the models suffer from "small sample bias," meaning they have too few cases to get sufficient statistical leverage. "Block bootstrapping" the models, which helps correct for small sample bias, eliminates the correlation between ratification and war termination. Third, their conflict intensity measure is ambiguously coded and its re-specification from ordinal to nominal substantially reduces ratification's estimated effect. In all, scholars and policymakers should view claims that ratifying the Rome Statute can help end civil wars with caution.

The Case for Ratification

To explain why some states have ratified the Rome Statute while others have not, the authors apply "credible commitment" theory, arguing that conflict-afflicted regimes use the ICC as a "hand-tying" mechanism. The crux of their theory is that *ceteris paribus* regimes with weak domestic accountability mechanisms and a civil conflict are more likely to ratify the Rome Statue than those with strong domestic institutions and a civil conflict. To help resolve internal conflicts, as the theory goes, regimes with weak accountability mechanisms ratify the treaty, which signals to rebel groups that the government will face prosecution for abuses. The increased accountability, thus, makes ending the war more attractive to rebels.[3]

Given this dynamic, S&D argue, ratification should contribute to civil war termi-

[3]Conflict-afflicted regimes with strong accountability mechanisms, for their part, refrain from joining the ICC since they already tend to have independent judiciaries that can credibly prosecute atrocities.

nation in states with unaccountable regimes while having little effect in states with accountable regimes. To test their claims, they develop three models, each incorporating a different proxy measure for accountability: (1) regime type as measured by the Polity IV Project; (2) the World Bank's rule of law index, and (3) Wiltold Henisz's measure of political constraints on executive authority. They split each measure between high accountability and low accountability and use a Cox proportional hazard ("Cox PH") model to test the influence of ratification, along with a battery of covariates, on the likelihood of civil war termination.[4]

As one would expect, their findings are consistent with credible commitment theory. "In all specifications," Simmons and Danner write, "the governments with the weakest domestic accountability mechanisms that have ratified the Rome Statute are more likely to experience at least a lull in violent hostilities following ratification compared to the least accountable governments that have not ratified" (2010, p. 247). Table 1 shows a replication of their findings with the reported "hazard ratios."[5] The ratios indicate the proportional influence that ratification and other covariates have on the probability of civil wars ending. A ratio of one indicates the variable has no influence on termination. A ratio of greater than one is the proportional influence the variable has on increasing the probability of termination, while a ratio of less than one is the variable's proportional influence in reducing this probability (Simmons and Danner, 2010, p. 239).[6]

[4]Civil war termination is defined as one-year cessation in hostilities. The models test the impact of ratification between 1998 and 2007 (Simmons and Danner, 2010, p. 247).

[5]The data used for the replication was downloaded from Beth Simmon's Dataverse site: http://scholar.harvard.edu/bsimmons/data.

[6]The replication was done in R statistical software, which results in two distinctions between Table 1 and the authors' table, since they employed STATA (Simmons and Danner, 2010, p. 249).

For Model 1 (Polity), ratification has no effect on civil war termination in high-polity-score countries while having a very substantial effect for low-polity-score countries. The reported hazard ratio is 7.84 (p = 0.0434), which means autocracies are, in their words, "almost eight times more likely to terminate a violent conflict if they have ratified the ICC statutes...than if they have not" (p. 248). In Model 2, ratification does not have statistically significant effects for countries with either high or low rule of law. Model 3 (Constraints) shows ratification having an essentially null effect for countries with high constraints and another massive hazard ratio of 9.51 (p = 0.075), an almost ten-fold proportional effect on termination. Thus, S&D's claim that ratification contributes to civil war termination rests on the two effects shown in the low polity portion of Model 1 and the no constraints portion of Model 3.

Rethinking the Ratification Effect

Given their centrality to the claim that ratification helps end civil wars, this section focuses on the low polity portion of Model 1 and the no constraints portion of Model 3, heretofore simply "Model 1" and "Model 3" respectively.[7]

First, R produces slightly lower standard errors, but it only increases the reported statistical significance of their findings. Second, due to a non-convergence error, the "Country's Military Power" coefficient differs in some models but has the comparable statistical significance scores across all models. Note also that the results are sensitive to the method of tie calculation—the authors' model and the replication use Breslow ties, but the standard errors noticeably change with the more common Efron method.

[7]The ratification variable—a dummy with a one if a country ratified and a zero if it has not—is coded as "20101" for Turkey. Given that Turkey has a high polity score and high constraints, it does not effect the models examined in this section. When the variable is re-coded with zeros for Turkey (it has yet to ratify the Rome Statute), the effect of ratification for high accountability countries remains substantively and statistically insignificant.

Table 1: Effect of ICC Ratification on Civil War Termination

	Model					
	(1) Polity		(2) Rule of Law		(3) Constraints	
	High	*Low*	*High*	*Low*	*Any*	*None*
Ratification	1.000	**7.84****	1.000	1.95	0.999	**9.51***
	(0.850)	**(0.044)**	(0.980)	(0.334)	(0.995)	**(0.075)**
Civil War Intensity	1.046	0.134***	0.538	0.262*	0.641	0.143**
	(0.890)	(0.000)	(0.112)	(0.0106)	(.179)	(.004)
Truth Commission	0.615	0.204*	0.278**	0.762	0.313	0.211**
	(0.356)	(0.065)	(0.037)	(0.718)	(0.119)	(0.020)
Military Power (log)	0.004	0.000	36.150	0.000	0.000	0.000
	(0.740)	(0.110)	(0.810)	(0.270)	(0.311)	(0.867)
Military Personnel (log)	0.861	0.513	0.771	1.309	0.944	0.644
	(0.400)	(0.240)	(0.103)	(0.593)	(0.671)	(0.507)
Military Leader	0.061*	1.070	1.571	1.087	1.290	1.303
	(0.071)	(0.910)	(0.526)	(0.904)	(.311)	(.0727)
Total Aid/GDP	1.067**	0.996	1.023	0.995	0.968	1.001
	(0.018)	(0.910)	(0.564)	(0.851)	(0.258)	(0.936)
Military Alliance	0.819	0.467	1.790	0.820	1.100	—
	(0.790)	(0.670)	(0.575)	(0.870)	(0.896)	(NA)
N	412	376	423	365	412	265
R^2	0.019	0.063	0.031	0.027	0.022	0.070

*p < .1; **p < .05; ***p < .01 (p-values in parentheses)

Notes: Table reports proportional hazard ratios. For Model 1 (Polity), *High* is a Polity IV score greater than zero and *Low* is a score less than one. For Model 2 (Rule of Law), *High* is a World Bank rule of law score greater than negative one and *Low* is a score less than negative one. For Model 3 (Constraints), *Any* is a Henisz executive constraint score above zero and *None* is a score equal to zero. The "Military Alliance" variable refers to alliances with U.S. or European countries.

Sierra Leone: A Case Study in Hiding

A single country Sierra Leone entirely drives the models' results. To test ratification's effect on termination, it is useful to ask, how many states with ongoing civil wars ratified the Rome Statute and then saw an end to their conflict? According to S&D's data, Sierra Leone is the only case where this sequence of events occurred for both Model 1 and Model 3. In fact, the data show more conflict-afflicted states ratifying without a subsequent termination—Senegal and Uganda in Model 1 and Burundi and Uganda in Model 3—than those ratifying followed by termination, i.e. Sierra Leone.

Figure 1: Relative Influence of Individual Cases

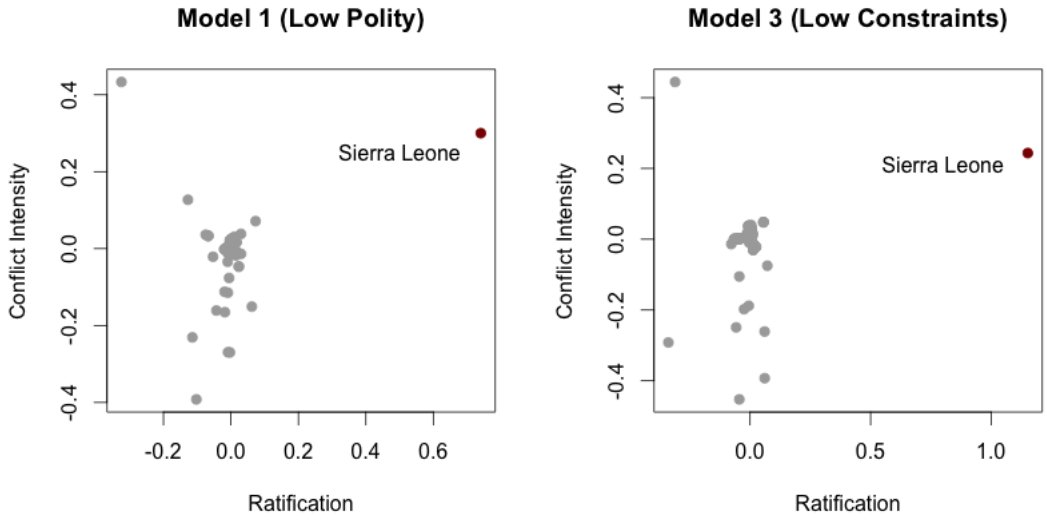


Figure 1 are "DFBETA" plots, which display the relative influence of individual cases from a linear regression of civil war termination on the variables included in S&D's models. The X-axis shows the influence of each case on the ratification coeffi-

cient; and, the Y-axis has the influence of their models' most statistically significant variable conflict intensity. In both models, Sierra Leone's ratification is a stark outlier, showing it is the driver behind the findings. We can further test the influence of Sierra Leone by dropping the case from S&D's Cox PH models. Table 2 displays Model 1 and Model 3—the only two models in which ratification had a significant effect on termination—without Sierra Leone (and no other re-specifications). The results with Sierra Leone's removal show ratification now having a strong, negative influence on termination. Since all of the states with ratification were censored (the civil war had not ended by the time of data-gathering), there is no statistical leverage on the models without Sierra Leone to estimate ratification's effect. These results do not mean ratification decreases the likelihood of civil war termination, since they are driven disproportionately by Uganda, Senegal, and Burundi—the cases that had ratification but no termination.

Furthermore, a brief review of the Sierra Leone case suggests it only tenuously supports the theory that credible commitment via ratification played an important role in ending the war. According to S&D, "ratification signals a domestic adversary that a government wants to ratchet down the level of violence, and is willing to tie its hands" (2010, p. 248). We would expect, accordingly, that ratification should precede a decline in violence as the regime signals its willingness to "ratchet down" the fighting.

As Figure 2 suggests, however, violence levels began declining in 1998 and were close to their nadir by the time Sierra Leone ratified the Rome Statute in September

Table 2: Effect of ICC Ratification on Civil War Termination (No Sierra Leone)

	(1) Polity	(3) Constraints
	Low	*None*
Ratification	**0.000*****	**0.000*****
	(0.000)	**(0.000)**
Civil War Intensity	0.130***	0.153***
	(0.000)	(0.007)
Truth Commission	0.103*	0.214**
	(0.083)	(0.031)
Military Power (log)	0.000	0.000
	(0.356)	(0.916)
Military Personnel (log)	0.728	0.867
	(0.510)	(0.753)
Military Leader	1.280	1.794
	(0.665)	(0.380)
Total Aid/GDP	0.982	1.001
	(0.599)	(0.937)
Military Alliance	1.901	—
	(0.730)	(NA)
N	366	255
R^2	0.061	0.062

*p $<$ .1; **p $<$ .05; ***p $<$ .01 (p-values in parentheses)

Notes: Table reports proportional hazard ratios. For Model 1 (Polity), *High* is a Polity IV score greater than zero and *Low* is a score less than one. For Model 2 (Rule of Law), *High* is a World Bank rule of law score greater than negative one and *Low* is a score less than negative one. For Model 3 (Constraints), *Any* is a Henisz executive constraint score above zero and *None* is a score equal to zero. The "Military Alliance" variable refers to alliances with U.S. or European countries.

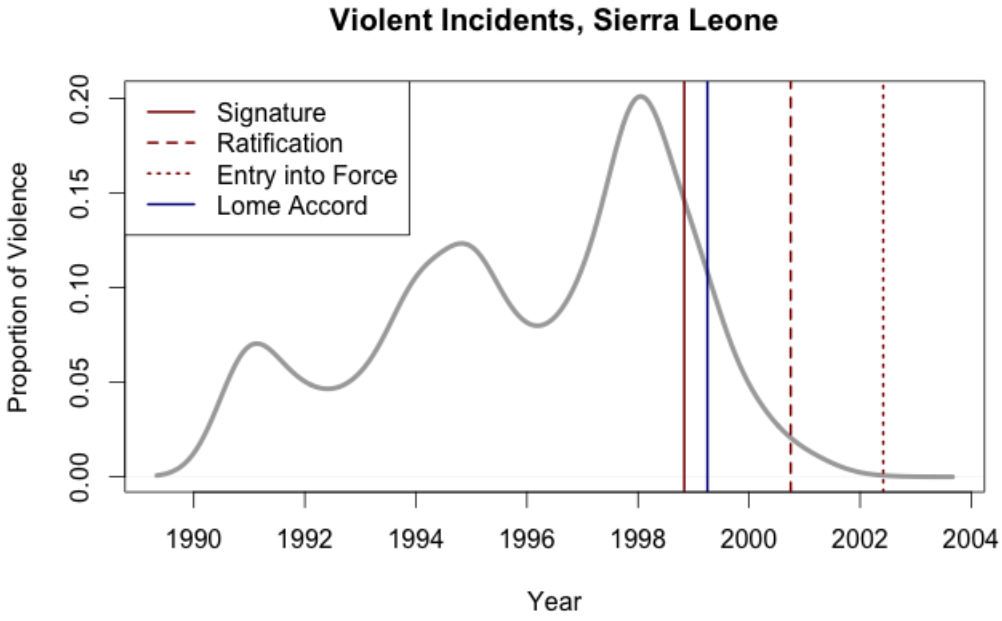
2000.[8] Considering the conflict's major settlement the Lomé Peace Accord was signed in March 1999, more than a year prior to ratification, it is difficult to see how the ICC played a role in the settlement. Moreover, there is no indication that the main rebel group the Revolutionary United Front (RUF) and its leader Foday Sankoh were concerned with tying the government's hands to prevent atrocities. Indeed, the RUF carried out some of the most vicious human rights violations during the war. Just a few months prior to the Lomé Accord's signing, the RUF partook in "Operation No Living Thing", an infamously brutal attack on Sierra Leone's capital that left an estimated 7,000 dead (HRW, 1999). The accord gave Sankoh the vice presidency so, in essence, he would have been tying his own hands in supporting increased accountability mechanisms via the ICC or any other institution. The RUF's main legal concern during the negotiations was getting amnesty for past atrocities, not increasing government accountability.[9]

The Lomé Accord quickly broke down, however. So, one might argue that the government ratified the Rome Statute in September 2000 to signal a credible commitment to gain an additional settlement in the post- Lomé period. However, even after ratification the ICC did not have jurisdiction over crimes in Sierra Leone until the Statute entered into force in July 2002, roughly two years later. Article 1, Paragraph 1, of the Rome State reads, " The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute" (2012). Thus, the

[8]Violence data is from the UCDP GED dataset (Sundberg et al., 2010).

[9]Article IX of the Lomé Accord granted Sankoh "absolute and free pardon" as well as a blanket amnesty for all fighters: "After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement" (USIP, 1999).

Figure 2: Sierra Leone Violence, Data source: Sundberg et al. (2010)



ratification did not actually tie the government's hands until July 2002, six months after Sierra Leone's civil war was officially declared over.

Moreover, in lieu of using the ICC, the government and the United Nations signed an agreement to establish a hybrid domestic-international entity, the Special Court for Sierra Leone, in January 2002. Even with this "ICC-like" entity, there is little indication that it was established to convince the rebels of increased government accountability. Sierra Leone's president has emphasized that the funding and capacity brought by the Special Court was needed to prosecute Sankoh and other rebel leaders for crimes during the war, including the kidnapping of UN peacekeepers, which was not covered within Sierra Leonean law (Hayner, 2007, p. 25). Tying its own hands for the rebels and Sankoh, who had been jailed since May 2000, does not appear

to have been the government's driving motivation as credible commitment theory would suggest.

Not Enough Cases

Leaving Sierra Leone in the dataset, there are still too few cases to achieve reliable statistical leverage on ratification's effect. An application of "block bootstrapped" standard errors renders the effect unmistakably insignificant for all three models. S&D employ cluster robust standard errors, clustered around the country, which is generally appropriate for panel data.[10] However, clustered standard errors with a small number of clusters suffer from artificially deflated errors—below fifty clusters is generally considered too small of a sample size. Yet, none of S&D's models reach the fifty cluster threshold. For the two models with statistically significant ratification effects, Model 1 (Polity, Low) includes twenty-eight countries while Model 3 (Constraints, None) includes thirty-one countries. The lack of event counts, i.e. civil war terminations, is also problematic. While there are many observations, one for each country at each calender quarter, Model 1 (Polity, Low) has sixteen terminations and Model 3 (Constraints, None) has only eleven terminations.

Block bootstrapping is one way to help correct for this small sample bias (as well as the Sierra Leone outlier problem). Instead of applying a linear algebraic clustering estimator as done with cluster robust standard errors, the technique replicates the data generation process by randomly re-sampling clusters.[11] As shown in Table 3, every ratification coefficient has a p-value of 0.93 or above, meaning that over

[10]Panel data includes multiple cases over multiple years.
[11]See Burr (1994) for more on bootstrapping with Cox-PH models.

repeated sampling, ratification would have no estimated effect on termination in 93% of the samples.

Conflict Intensity Coding: Ambiguous and Sensitive

Additional questions surround the conflict intensity variable, the models' most statistically significant variable. The models measure intensity as defined by the Upsalla/PRIO Armed Conflict Dataset's [Version 3] (2010, p. 238). According to the dataset's codebook, the variable has three settings: one indicates a conflict of "minor" intensity with "at least twenty-five battle-related deaths per year for every year in the period"; two indicates a conflict of "intermediate" intensity with "more than twenty-five battle-related deaths per year and a total conflict history of more than 1,000 battle-related deaths, but fewer than 1,000 per year;" and, three indicates a full-on "war" with "at least 1,000 battle-related deaths per year."[12] The codebook emphasizes that the "variable is *not* ordinal [source's italics]" (Strand et al., 2005, p. 10), meaning it should not be interpreted as progressive steps with intermediate necessarily being greater than minor. The intermediate category could in fact be less intense than the minor category in a given year.

It is unclear how exactly the models employ the conflict intensity variable. S&D's dataset shows it inputted as zero through two, meaning it is being treated as ordinal. They may not have done any transformation from the Upsalla/PRIO intensity data except subtracting one from the level codes. More probably, they transformed it into

[12]For an explanation of the problems with the 1,000 battle-related deaths threshold, see (Sambanis, 2004). This threshold means that countries with large populations such as Nigeria are much more likely to be coded as having a civil war relative to smaller countries such as Burma.

Table 3: Effect of ICC Ratification on Civil War Termination (Bootstrapped)

	Model					
	(1) Polity		(2) Rule of Law		(3) Constraints	
	High	*Low*	*High*	*Low*	*Any*	*None*
Ratification	1.000	**7.84**	1.000	1.96	0.999	**9.51**
	(1.000)	**(0.93)**	(1.000)	(0.96)	(1.000)	**(0.945)**
Civil War Intensity	1.070	0.119***	0.498	0.259*	0.592	0.126
	(0.98)	(0.816)	(0.761)	(0.871)	(0.388)	(0.914)
Truth Commission	0.606	0.174*	0.221**	0.793	0.399	0.176
	(0.885)	(0.898)	(0.900)	(.987)	(.758)	(.937)
Military Power (log)	0.003	0.000	36.150	0.000	0.000	0.000
	(0.991)	(.0806)	(0.981)	(0.899)	(0.888)	(0.99)
Military Personnel (log)	0.854	0.484	0.731	1.252	0.942	0.644
	(0.865)	(0.665)	(0.793)	(0.934)	(0.710)	(0.956)
Military Leader	0.061*	1.177	1.761	1.128	1.470	1.652
	(0.071)	(0.982)	(0.963)	(0.989)	(0.974)	(0.98)
Total Aid/GDP	1.070	0.998	1.031	0.993	0.964	1.003
	(0.744)	(0.986)	(0.914)	(0.977)	(0.855)	(0.99)
Military Alliance	0.751	0.423	1.910	0.737	1.08	—
	(1.000)	(0.967)	(1.000)	(.990)	(1.000)	(NA)
N	412	376	423	365	412	265
R^2	0.019	0.063	0.031	0.027	0.022	0.070

*p < .1; **p < .05; ***p < .01 (p-values in parentheses)

Notes: Table reports proportional hazard ratios. For Model 1 (Polity), *High* is a Polity IV score greater than zero and *Low* is a score less than one. For Model 2 (Rule of Law), *High* is a World Bank rule of law score greater than negative one and *Low* is a score less than negative one. For Model 3 (Constraints), *Any* is a Henisz executive constraint score above zero and *None* is a score equal to zero. The "Military Alliance" variable refers to alliances with U.S. or European countries.

an ordinal measure in some way, perhaps by combining the first and second levels from the original variable.[13] Regardless, treating it as ordinal imposes an unnecessarily linear parametric form on the data. Re-specifying the variable as nominal, creating individual variables for each intensity category, removes the ordinal structure at no analytic cost. This transformation reduced ratification's effect, suggesting the models are sensitive and dependent on their specification. For Model 1 (Polity, Low), the effect drops roughly 20% from 7.84 ($p = 0.047$) to 6.12 ($p = 0.092$), and for Model 3 (Constraints, None), the effect drops 10% from 9.51 ($p = 0.083$) to 8.52 ($p = 0.0993$). Thus, for both models, the effect is no longer significant at the 5% level, although it remains significant at the 10% level.

Implications

Scholars and policymakers should view claims that joining the ICC can help end civil wars with caution. Unsupported findings such as these could have real-world implications and potentially misinform those undertaking conflict resolution efforts. For instance, would Syria, a signatory to the Rome Statute, benefit from ratifying the treaty? Based on S&D's findings, those involved in the conflict might be led to believe that ratification could help diffuse the violence. As shown, however, there is little empirical evidence to support the claim.

The models' frailty highlight the challenge of doing cross-national quantitative

[13] Footnote 55 (2010, p. 238) in their article mentions that variable explanations are in Appendix B posted on Simmons' website (http://scholar.harvard.edu/bsimmons/publications/credible-commitments) but, as of April 2014, the site states "Appendices are forthcoming and will be available for download."

research on the ICC and civil war termination. The small number of cases provides insufficient statistical leverage, especially given the many confounding factors that lead to a war's end. Despite the difficulty in causal inference, scholars should not shy away from studying the ICC's effect on peace and security. Indeed, anecdotal evidence suggests it has made contributions—albeit modest ones—in this regard. Sierra Leone's Special Court, for instance, sent Liberian president Charles Taylor to the Hague due to security concerns at its own facility. Perhaps the best path forward is to look toward micro-level analysis of the ICC's effect on violence—more granular data within one or a few civil conflicts could provide clearer evidence for causal inference.

Any micro-level study should be grounded in theory. Why regimes in conflict-afflicted states ratify the Rome Statute remains an open question with a number of alternative hypotheses beyond credible commitment deserving exploration. First, these governments could look to the ICC for financial reasons. High-profile trials are likely to be long and expensive due to, for instance, security requirements. War usually saps government coffers, so they might prefer the ICC to shoulder the burden of post-war judicial expenses. Second, perhaps governments ratify due to pressure from the international community.[14] Third, governments may ratify when they foresee an end to the violence given that the Statute's *ex post facto* clause protects them against prosecution for prior abuses. With suitable methods grounded in theory, scholars should be able to shed light on the ICC's effects, which has been a major challenge to-date.

[14]Sierra Leone's government, for instance, was reliant on the United Nations at the time of its ratification and was thus vulnerable to external pressure.

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