

Can the International Criminal Court Deter Atrocity?

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ABSTRACT

Whether and how violence can be controlled to spare innocent lives is a central issue in international relations. The most ambitious effort to date has been the International Criminal Court (ICC), designed to enhance security and safety by preventing and deterring war crimes. A key question facing the young ICC is whether or not it can deter perpetrators and reduce intentional violence against civilians in civil wars. We offer the first systematic assessment of the deterrent effects of the ICC for both state and non-state actors. We argue that the ICC can potentially deter through both prosecution and social deterrence. While no institution can deter all actors, we argue that the ICC can deter some governments and those rebel groups that seek legitimacy. We find support for this conditional impact of the ICC cross-nationally. Our work has implications for the study of international institutions and international relations, and supports the violence-reducing role of pursuing justice in international affairs.

Key Words International Criminal Court (ICC), international criminal justice, deterrence, peace, insurgent groups, civil war, war crimes.

Can the International Criminal Court Deter Atrocity?

One of the most important questions in international policy and research is whether justice is possible in a system dominated by self-regarding sovereign states. The International Criminal Court (ICC) provides a challenging opportunity to probe the possibilities for international law to reduce human suffering in inter- and intra-state conflict. The Court has jurisdiction in a domain where military and strategic logic generally prevails, and yet it does not have its own police force but must instead rely on domestic law enforcement or third parties to arrest those charged. The ICC's task is inherently difficult: it can prosecute state agents, including head of states, as well as non-state actors such as rebel group leaders over whom international institutions traditionally have scant authority. Its goals are ambitious: the attainment of peace and security, as well as justice for those who commit atrocities. Is the Court contributing to achieving these goals, as its original drafters envisioned? In particular, in this article we ask, under what conditions can the ICC reduce egregious human rights violations against civilians?

The question of the ICC's impact is important because it has the authority to enforce international law against those who commit the most serious and systematic crimes. With more than 100 state members, the Court issued its first conviction – of Thomas Lubanga, a rebel leader of the Democratic Republic of Congo – in 2012 and is now examining crimes against humanity in Kenya. As the world's only site of global criminal prosecution, the ICC is central to contemporary problems in international relations.

In this article, we examine the ICC's ability to deter one of the most dastardly international crimes: the widespread and intentional killing of civilians, in states that have experienced civil wars in their recent past. We take a broad view of deterrence and explicate both its prosecutorial as well as social dimensions. *Prosecutorial deterrence* is a direct consequence of legal punishment: it holds when potential perpetrators reduce or avoid law-breaking for fear of prosecution and official punishment. *Social deterrence* is a consequence of the broader social milieu in which actors operate: it occurs when potential perpetrators calculate the informal consequences of law-breaking.

A judicial institution is at its most powerful when prosecutorial and social deterrence reinforce one another, which happens when actors threaten to impose extra-legal costs for non-compliance with legal authority. Recognizing this complementary relationship between formal prosecution and informal compliance pressures, we argue that the ICC's influence may go well beyond the common assertion that the institution has no "teeth." There are multiple mechanisms – legal and social, international and domestic – associated with the authority of the ICC that can potentially deter law violation in countries prone to civil violence.

At the same time, we acknowledge what few would have doubted: the ICC's contribution to deterrence is conditional. On average, it has stronger positive effects on governments than on rebels. We also acknowledge that the ICC has had little effect in some countries where it has intervened with indictments (Sudan and Libya, for example), but in other cases, ICC jurisdiction has mobilized domestic actors and stimulated important domestic reforms (weak yet notable improvements can be seen in Uganda, Kenya and Côte d'Ivoire, for example). Our results contrast with the predictions of those who view the ICC as a worthless institution – or worse.

This article is organized as follows. Section I reviews previous research on the ICC and several (largely untested) claims about its (in)effectiveness. Section II presents our argument about distinct mechanisms of ICC deterrence that operate at different levels and with implications that vary for different actors potentially involved in civil violence. Section III presents statistical evidence comparing countries and rebel groups over time. We find *conditional* evidence that extensions of ICC jurisdiction and demonstrations of its willingness to prosecute are associated with reduced violence against civilians. We cannot say whether the changes we observe will endure in the long term, but there are grounds for cautious optimism that the ICC is contributing in important ways to violence reduction in some of the most brutal places in the world.

I. Research on the Effects of the ICC

There are many standards by which international criminal justice institutions such as the ICC can be judged. They may be evaluated based on their contribution to justice,¹ on their normative value,² on their capacity to offer societal “atonement”,³ and on their legitimacy in the eyes of local victims.⁴ As a “renewed commitment to international idealism,”⁵ the ICC almost by definition raises hopes and expectations beyond anything we have seen since the Nuremburg and Tokyo trials. And yet, its critics are rife. Some view it as incapable of calibrating threats and

¹ Goodman and Jinks 2003.

² Bass 2003.

³ Bikundo 2012.

⁴ Clark 2011.

⁵ Goldsmith and Krasner 2003.

rewards to coerce an end to wartime atrocities.⁶ Others see it as an institution whose success is regularly frustrated by local and regional politics.⁷

Some of the most heated debates over the ICC relate to the effect it may have on the dynamics of peacemaking. For example, Snyder and Vinjamuri argue that international prosecutions can discourage pragmatic bargaining between warring parties and block the use of amnesty that could usher in peace.⁸ Similarly, Goldsmith and Krasner warn that “the ICC could initiate prosecutions that aggravate bloody political conflicts and prolong political instability in the affected regions.”⁹ Practically no systematic evidence has been produced to date to support such concerns. In fact, other studies have found suggestive evidence that ratification of the ICC by a government tends to be correlated with a pause in civil war hostilities¹⁰ or reduction in human rights violations.¹¹ Sikkink’s research on domestic trials suggests that prosecutions have been associated with human rights improvements.¹² Along with Dancy she makes the important point that the history of impunity has hardly racked up a stunning record for peace.¹³ There may be some cases in which the unreasonable insistence on prosecution could be antithetical to the more practical idea of “making deals” and “compromising” with atrocity offenders, and we do not deny that carefully calibrated amnesties may in some circumstances support peace processes,¹⁴ but as a general matter there is little evidence to suggest the peace *versus* justice tradeoff is anything other than a false dichotomy.¹⁵

⁶ Mendeloff 2014.

⁷ Mueller 2014.

⁸ Snyder and Vinjamuri 2003.

⁹ Goldsmith and Krasner 2003, 55.

¹⁰ Simmons and Danner 2010.

¹¹ Mitchell and Powell 2013.

¹² Sikkink 2010.

¹³ Dancy and Sikkink forthcoming.

¹⁴ Lessa and Payne 2012.

¹⁵ Dancy and Sikkink forthcoming.

A related but distinct issue is whether the ICC can *deter* the specific crimes it is designed to address. After all, the ICC does not outlaw war; *it outlaws specific violations of the laws of war*, those “limited to the most serious crimes of concern to the international community as a whole” including genocide, crimes against humanity, and war crimes.¹⁶ Does the ICC deter such crimes by raising the risk of punishment for the worst offenses? Again, skeptics abound. Goldsmith and Krasner assert flatly that to think the ICC may save lives “is wishful thinking.”¹⁷ Ku and Nzelibe argue that ICC deterrence is undercut because it depends on states’ willingness to cooperate and cannot impose the death penalty.¹⁸ Cronin-Furman similarly concludes that the absence of severe punishment and low probability of capture makes the ICC deterrent effect weak.¹⁹ Fish calls the ICC’s deterrent effect “weak and speculative” while Ainley calls it “as yet unproven.”²⁰ Specialists in criminal justice point out that the ICC simply does not have the resources to make punishment a real risk.²¹ We would simply point out the inconsistency among some of the ICC’s most ardent critics: it is odd to argue that the court’s weakness renders it unable to deter crime, and yet to claim that the Court exacerbates conflict by (credibly, apparently) threatening to punish perpetrators, who are thereby supposedly incentivized to elude justice and fight on.

Our investigation avoids generalized claims and instead advances *conditional* arguments about ICC deterrence, flowing both from its formal authority to prosecute and its focal power as a socially relevant justice institution. We are careful to craft arguments conditional on *who* is expected to be deterred. We argue first that ICC jurisdiction increases the risk of prosecution

¹⁶ Rome Statute, Art 5(1) (a-c).

¹⁷ Goldsmith and Krasner 2003, 55.

¹⁸ Ku and Nzelibe 2006.

¹⁹ Cronin-Furman 2013.

²⁰ Fish 2010; Ainley 2011.

²¹ Rodman 2008; and Mullins and Rothe 2010.

compared to impunity, and that this can deter some individuals from committing crimes, especially when the ICC signals its will and capacity to prosecute. But acknowledging the uncertainty of being punished, we argue the ICC is more likely to deter actors when they are sensitive to social pressure. Actors who are concerned with their legitimacy in the eyes of domestic public and/or the international community are much more likely to be deterred by the possibility of ICC prosecution than those who are not.

II. A Theory of Conditional Impact of the ICC

How can an international institution with broad legal authority, but only limited *material capacity* to enforce the law influence the course of civil war violence? We specify two broad channels of general deterrence²²: prosecutorial deterrence and social deterrence. *Prosecutorial deterrence* works via anticipated legalized, court-ordered punishment. *Social deterrence* results from extra-legal social costs associated with law violation. Both of these channels can be accommodated in a framework that views the propensity to commit a crime as a function of the likelihood of getting caught and the cost of punishment, broadly understood.²³ This framework assumes, of course, that potential perpetrators are aware of and can weigh risks, costs and benefits, and update their assessments over time.

Prosecutorial Deterrence

²² *General deterrence* refers to the fear of punishment that prevents others from committing a similar crime. *Specific deterrence* refers to the effect that punishment has on the punished individual's future behavior (recidivism). In this paper we focus on general deterrence.

²³ Becker 1968.

Prosecutorial deterrence refers to the omission of a criminal act out of fear of sanctions resulting from legal prosecution. People are deterred from violating the law when the chances and severity of a legal sanction, such as a fine, incarceration or capital punishment, increases. As such, law violation is a function of prosecution and sentencing; as the risk of more severe penalties are perceived to increase, the likelihood that an individual will commit a crime is reduced and the crime rate falls (holding any “utility” resulting from the violation constant).

For decades, the criminal deterrence literature has debated the question of exactly which elements of this rationalist model account for the deterrence of criminal behavior. The idea that severity of punishment largely drives deterrence²⁴ fueled the move toward harsher sentencing in the United States in the 1980s. However, a growing consensus in the deterrence literature suggests that the swiftness and especially the *likelihood* of punishment may more effectively deter crime than severity of punishment.²⁵ Empirical researchers employing surveys, experiments and scenarios also conclude that the likelihood of punishment is key for deterring crimes ranging from tax evasion to theft to sexual assault.²⁶ Observational studies often find that measures that raise the risk of apprehension, such as increased policing²⁷ or even the greater presence of cell phones²⁸ reduce crime.

While the criminology literature is exceptionally thin in parts of the world where ICC jurisdiction currently looms large, many of the same themes are common. A large study affiliated with the World Bank based on developing countries found that higher conviction rates

²⁴ Grasmick and Bryjak 1980.

²⁵ Kleiman 2009; Wright 2010.

²⁶ Nagin and Paternoster 1993; Nagin 1998.

²⁷ Klick and Tabarrok 2010.

²⁸ Klick, et al. 2012.

tended to reduce crime, even while controlling for the death penalty.²⁹ Major texts on criminal deterrence in Africa agree that the key to crime control in most contexts in Africa is not the severity of punishment, but its likelihood.³⁰ Elites in states with less robust judicial systems may have become accustomed to operating above the law, but the *theoretical* role of raising perceived risks of prosecution has been widely accepted as a starting point in a wide range of contexts.

Indeed, raising the risk of punishment where the rule of law is otherwise weak is precisely the *formal* role envisioned for the ICC. The Court was designed to do this in two ways. The first is through its own authority to prosecute. The Court's jurisdiction applies to cases of genocide, crimes against humanity, egregious human rights violations and war crimes³¹ that occurred after July 1, 2002 in the territory of a state that has ratified the treaty or that is committed by a national of such a state or in cases referred to it by the UN Security Council.³² The Office of the Prosecutor ultimately decides which cases to pursue, but cases may be referred by member states (e.g., Uganda, Democratic Republic of Congo, and the Central African Republic), the Security Council (Sudan and Libya), or initiated by the Prosecutor herself (Kenya and Côte d'Ivoire). Importantly, immunities of local officials are not to be recognized by the Court.³³

General prosecutorial deterrence is only possible if the Court's existence and actions raise the perceived likelihood that an individual will be tried and punished. To date, the ICC prosecutor has indicted more than 35 persons, and a further 7 cases (involving Afghanistan, Honduras, Korea, Nigeria, Colombia, Georgia, and Guinea) are under preliminary examination

²⁹ Fajnzylber, Lederman, and Loayza 1998.

³⁰ Tibamanya 2011, 10, 122, and 266.

³¹ We refer to these below as "ICC crimes" or "international crimes."

³² Rome Statute, Art. 12(2); Chapter VIII covers UNSC authority to refer.

³³ Rome Statute, Art. 27.

for jurisdiction and admissibility. Prosecutorial deterrence theory implies that investigations, indictments and especially successful prosecutions should trigger a reassessment of the likelihood of punishment and a boost to general deterrence³⁴ – a result consistent with Kim and Sikkink’s study of national human rights trials in transition countries.³⁵ But even if suspects are never apprehended, one costly result of the ICC regime, as Gilligan demonstrates theoretically, is that perpetrators have fewer asylum options, potentially deterring them from flagrant violations.³⁶

Moreover, the Rome Statute’s “complementarity regime” creates a channel for the ICC to support prosecutorial deterrence at the *national* level as well. The ICC is designed to complement, and not to preempt or substitute for national prosecution. National courts have the option of investigating a case domestically before the ICC can adjudicate it.³⁷ The ICC may nonetheless find a case admissible despite domestic action if the Court determines that “the state is unwilling or unable genuinely to carry out the investigation or prosecution.”³⁸ Sudan’s desultory investigations and prosecutions of crimes committed in Darfur provide an example of the kind of behavior the admissibility provisions were designed to override.³⁹

This complementarity principle bolsters the ICC’s prosecutorial deterrence to the extent that it creates incentives for states to strengthen their own legal capacities.⁴⁰ The ICC report to

³⁴ Geerken and Gove 1975.

³⁵ Kim and Sikkink 2010.

³⁶ Gilligan 2006. Even an indictee such as Bashir who seems to have the protection of the African Union has been threatened by arrest in Botswana and South Africa, a 2011 arrest warrant by the Kenyan High Court and refusal of entry by Central African Republic and Libya in 2010, which suggests costs to indictment even without prosecution.

³⁷ See Rome Statute, Preamble and Art.1. For a discussion of the conditions under which domestic courts are likely to enforce international human rights law, see Lupu 2013.

³⁸ Rome Statute, Art. 17(1)(a).

³⁹ ICC 2006.

⁴⁰ Dunoff and Trachtman 1999. This idea is termed “positive complementarity” in legal research. See Burke-White 2010.

the United Nations notes several reforms that came after the launch of preliminary examinations, including reforms in Guinea, Colombia, and Georgia.⁴¹ Sarah Nouwen also documents how ICC investigations “catalyzed” legal reforms in the Democratic Republic of Congo (DRC) and Sudan.⁴² Uganda’s implementing legislation was passed only recently, in 2010, but it empowers the Ugandan High Court to prosecute international crimes.⁴³ Thus, an *indirect* channel through which the ICC may exert prosecutorial deterrence is through stimulating national courts to act,⁴⁴ theoretically creating favorable conditions for internal monitoring and law enforcement, thus bolstering prosecutorial deterrence. Arguably, national courts have contributed to a broader system-wide expectation that impunity is no longer quietly tolerated.⁴⁵

In sum, prosecutorial deterrence is expected to be enhanced by any condition that makes prosecution more likely in a given jurisdiction, such as ratification of the Rome Statutes, passage of ICC implementing legislation, national trials or court reforms that make trials more probable and credible. Qualitative research reveals such changes become part of leaders’ updated calculations. For example, the former Colombian President Pastrana expressed concerns that he might get prosecuted by the ICC, and the paramilitary leader, Vincente Castano of the Autodefensas Unidas de Colombia (AUC), was “sharply aware and fearful of the possibility of ICC prosecution, a fear that reportedly directly contributed to his demobilization.”⁴⁶ Even some rebel groups have begun to assess risks in the ICC’s shadow. For example the two main rebel groups in Colombia – the Fuerzas Armadas Revolucionarias de Colombia (FARC-EP) and the Unión Camilista - Ejército de Liberación Nacional (UC-ELN) – have published internal

⁴¹ See ICC 2011.

⁴² Nouwen 2014.

⁴³ Nouwen and Werner 2011.

⁴⁴ Stahn and El Zeidy 2011.

⁴⁵ Sikkink 2011.

⁴⁶ Grono 2012.

documents assessing the likelihood of prosecution by the ICC or domestic courts.⁴⁷ ICC investigations, indictments and convictions or those triggered by complementarity are likely to encourage actual or potential perpetrators to reassess the risks of punishment – *often relative to impunity* – and to moderate their behavior.

Social Deterrence

A narrow focus on prosecution is likely to underestimate the full deterrent effect of the ICC. The ICC is the institutional manifestation of a movement, years in the making, to punish international crimes and to put them firmly beyond the pale. Quite aside from its formal power to prosecute, the Court’s legal mandate signals the nature and strength of community norms.⁴⁸ When community norms are challenged in a clear way (signaled for example by ICC actions or statements), there is significant potential for a social reaction to law violations.

The concept of social deterrence has been central to behavioral models in criminology for decades.⁴⁹ In their research on criminal behavior, Zimring and Hawkins noted long ago that threatened consequences include “social reactions that may provide potential offenders with more reason to avoid conviction than the officially imposed unpleasantness of punishment.”⁵⁰ Experimental research suggests that potential offenders are often deterred from violating the law more as a result of the anticipated social response than the likelihood of prosecution and punishment by formal legal processes.⁵¹ Indeed some studies conclude that “the extralegal consequences from conviction appear to be at least as great a deterrent as the legal

⁴⁷ Cantor and Engstrom 2011.

⁴⁸ Kahan 1997.

⁴⁹ Williams and Hawkins 1986; McCarthy 2002.

⁵⁰ Zimring and Hawkins 1973.

⁵¹ Tittle 1980; Tittle, et al. 2011.

consequences.”⁵² Social deterrence depends for its effectiveness on the expression of clear standards of behavior as well as enhanced monitoring.⁵³ Kahan emphasizes that law signals information about what a broader community values.⁵⁴ The willingness of a community to defend its values informally must be taken into account by a would-be offender.

The social consequences of violation may range from the psychic costs of stigmatization to the material costs of being shunned from profitable relationships. The central characteristic of social deterrence is its *informal, extralegal character*, as distinct from the likelihood of formal prosecution. One social cost of a common crime might be that it is harder to get a job, not because one would be legally barred, but because many people do not want to hire – or even to be seen to hire – a criminal. Social deterrence, as this example illustrates, does not correspond directly to material versus intangible sanctions. In the theory we advance, extrajudicial actors may shun or shame offenders; those with resources may potentially deploy material pressures extralegally to advance community values. Importantly, this range of informal social pressure is both elicited and legitimated by the normative focal power of a criminal tribunal.

Social deterrence is a central feature of research on compliance with international human rights norms, which are notoriously difficult to enforce internationally. That literature recognizes that international norms are largely “enforced” through extralegal means: by transnational organizations that publicize violations, and ally with states and international organizations to condemn them.⁵⁵ Hafner-Burton emphasizes international social pressures backed by economic sanctions.⁵⁶ One conclusion to which the human rights literature clearly

⁵² Nagin and Pogarsky 2001.

⁵³ Agnew 2011.

⁵⁴ Kahn 1997.

⁵⁵ Risse, Ropp and Sikkink 1999; Risse, et al. 2013.

⁵⁶ Hafner-Burton 2013.

points is the central importance of extralegal deterrents to law violation. More broadly, social deterrence is emphasized in compliance research where legitimacy of rules and authority plays a critical role in deterring crimes and inducing compliance.⁵⁷ In fact, it may be especially relevant precisely when norms are strong but the *formal* institutions of law – policing, courts, and formal confinement – are weak.

The concept of social deterrence has largely been missing from accounts of how and why the ICC is a potentially powerful institution. This relative silence is ironic since one key purpose of the ICC is to set expectations, thereby placing some tactics outside the boundary of acceptable behavior. As the world’s first permanent and global criminal court, the ICC is especially central in defining international society’s response to international crimes. This is reflected in the growth in attention to ICC crimes in resolutions of the United Nations General Assembly since the ICC entered into force in 2002 (Figure 1). The international community is quite clearly paying more attention to international crime than it has ever done in the past. In this spirit, Koskeniemi views international criminal trials as enabling the formation of a “moral community,”⁵⁸ while Akhavan refers to the “socio-pedagogical influence of judicial stigmatization,” which he characterizes as subtle, but potentially quite far-reaching.⁵⁹

[Figure 1 about here]

Our argument about the capacity of the ICC to stimulate social deterrence is compatible with this literature. Law violation in the presence of ICC authority crosses a fairly bright line

⁵⁷ Franck 1990; Tyler 2006.

⁵⁸ Koskeniemi 2002; Bikundo 2012.

⁵⁹ Akhavan 2005.

that the international community as a whole values and therefore has an interest in maintaining. State officials as well as rebel groups vary in their sensitivity to the values of the international community; integration into global networks and dependence on the approval of foreign actors critical to strengthening the ICC in the first place⁶⁰ may well enhance external social deterrence.

Domestic communities may be also highly relevant to social deterrence, as is well-documented in the human rights literature. Simmons argues for the importance of domestic mobilization for deterring human rights violations of ratified treaties.⁶¹ Parties to a civil conflict must consider their ability to maintain support from civilian populations and their own troops in the event of an ICC investigation. A war crime accusation could severely damage a government or rebel group's relationship with domestic populations. Civil societies may be emboldened by the ICC to mobilize for some form of justice, petitioning the cases to national courts and potentially providing evidence to the ICC.⁶²

We are not suggesting that all civil society members will want to turn to the ICC. In Uganda, traditional restorative justice rather than the ICC was suggested by the Acholi leaders, for example,⁶³ but even in this case the ICC galvanized the local discussion on accountability norms and (as intended by the ICC's complementary principle) stimulated reform of domestic justice systems.⁶⁴ In Kenya, some supporters of Kenyatta and Ruto quite obviously did not want the ICC to try their leaders⁶⁵ and the government commenced a relentless campaign against the ICC (to include Kenya's withdrawal from the institution). Even so, in late 2011 nearly 60 percent of Kenyans supported the ICC process, rising to nearly 70 percent in Nairobi and 86 per cent in

⁶⁰ Goodliffe and Hawkins 2009.

⁶¹ Simmons 2009; See also Neumayer 2005.

⁶² McKay 2004; Glasius 2009a; see also Hillebrecht 2014.

⁶³ Clark 2012.

⁶⁴ Nouwen 2014.

⁶⁵ Chaudoin 2013; Mueller 2014.

the Nyanza region. Moreover, 77 per cent of Kenyans polled said they had followed the ICC proceedings naming the “Ocampo Six” very closely.⁶⁶ These cases illustrate why it may be important to supplement an understanding of the ICC’s prosecutorial deterrence power with its broader ability to mobilize extralegal pressures. As the ICC takes action, it not only raises expectations of prosecution, it shapes social expectations about what constitutes justice more broadly.

Theoretical Expectations

The above analysis suggests that the effects of the ICC may be much more nuanced than discussions of its formal capacities recognize. The ICC may have varying effects on different categories of actors, depending on their exposure to (1) the risk of prosecution and (2) the importance they attach – or the vulnerability they believe they have – to the social costs of criminal law violation.

First, we expect *prosecutorial deterrence* to depend on state ratification, which is the primary mechanism for the Court to gain jurisdiction. The absolute risk of punishment by the ICC remains small, but it is not negligible and is much higher than was the case when impunity was the default. Of course, government and rebel forces may believe that prosecution is a remote possibility and may be more sensitive to risks of crude retribution by their enemies than to the threat of the prosecution by the ICC. Or, a government may have ratified to make rebel prosecution more likely,⁶⁷ which does not affect the jurisdictional fact that to do so brings the

⁶⁶ Ipsos-Synovate, “Confirmation Hearings Boost Support for the ICC Process.” 4 November 2011.

⁶⁷ See Nouwen 2014 for the discussion of the Uganda case.

government under ICC scrutiny as well.⁶⁸ While the calculations of individual actors may be complex and attenuated, our theoretical expectation is clear: *a reduction in the commission of ICC crimes post-ratification is consistent with expectations based on direct prosecutorial deterrence.*

Prosecutorial deterrence should also increase as the court demonstrates its will and capacity to prosecute. Governments, military officials, and rebel leaders within the Court's jurisdiction are expected to consider new evidence of the Court's authority and the prosecutor's determination to investigate, indict and convict. For example, the M23 rebel group in the DRC publicly expressed its willingness to adhere to international humanitarian law in the aftermath of Lubanga's conviction, and appears to have moderated the extent of war crimes and strengthened discipline of its soldiers in the wake of that case.⁶⁹ If this example can be generalized, we should expect a public display of the Court's power to strengthen direct prosecutorial deterrence. The most powerful boost to deterrence is likely to be within the "situation" to which the Court's action pertains, but could influence actors more broadly,⁷⁰ since such interventions display the determination and the authority of the institution to act. ICC crimes should diminish when the Court begins an investigation, indicts, or convicts.

We expect the ICC to exert prosecutorial deterrence indirectly as well. The complementarity mechanism creates incentives for states to develop their own capacity to investigate and try ICC crimes.⁷¹ Dancy and Sikkink have shown that when states ratify human rights treaties that require them to prosecute violators, states are in fact more likely to hold

⁶⁸ It is important to note that situations, and not individuals, can be referred to the ICC for prosecution (See the Rome Statute, Part II, Article 13 and 14), which opens up the possibility for investigation of crimes committed by government or military officers, or non-state actors.

⁶⁹ Bueno and Angwandi 2012; Gorur 2012.

⁷⁰ Sikkink 2011.

⁷¹ Slaughter and Burke-White 2006.

domestic trials.⁷² Similarly, we expect ICC crimes to decrease when states implement ICC-consistent statutes, when they improve the capacity of their courts to try war crimes, and when they build military capacities to detect and punish international crimes.⁷³ It is possible that states adopt ICC-statutes in their national laws with ulterior motives other than improving its criminal justice system. But on average the improved systems have been linked to substantive reforms and more human rights trials of government actors.⁷⁴

One of our primary expectations is that extralegal social pressures deter international crime as well. These mechanisms are highly conditional: they depend on the existence of salient groups or networks who “matter” to the target, and who have the ability to apply costly social pressure.⁷⁵ In terms of materially-backed social sanctions, we expect state actors that are more dependent on international trade and foreign assistance to be more likely to be deterred from using tactics that are a clear violation of international criminal law.⁷⁶ But social pressure need not be backed by material coercion. We also expect state actors to be deterred by mobilization pressures from domestic and international human rights organizations.⁷⁷ Domestic groups draw attention to official actions, raising legitimacy challenges that, at a minimum, have the potential to increase the costs to government actors of maintaining power. Where human rights mobilization is more intense locally, government officials and military forces should be more deterred from committing international crimes, *especially if state officials have raised behavioral expectations by ratifying the ICC’s statutes.*

⁷² Dancy and Sikkink 2012.

⁷³ See Morrow 2014 for the importance of internal discipline in the enforcement of laws of war.

⁷⁴ Grammer 2004; Kleffner 2008; Dancy and Montal 2014.

⁷⁵ Agnew 2011.

⁷⁶ Hafner-Burton 2013.

⁷⁷ Simmons 2009.

Unlike state actors, rebel groups rarely have formal institutional mechanisms to participate in the creation of or to commit themselves to international norms.⁷⁸ Vague awareness of the ICC's jurisdiction, an ability to hide in rough terrain and in some cases exceptional brutality contribute to a weaker expectation of deterrence for many rebel groups. Nonetheless, in theory, the ICC has changed the legal context in which rebels operate as well. First, like state officers, rebels are formally subject to enhanced prosecutorial deterrence, since the ICC has the power to investigate situations involving both state and non-state actors. In fact, among the 30 people indicted by the ICC,⁷⁹ about half are rebel group leaders.

Also, our social deterrence theory suggests that *some rebels may be more deterrable than others*. Recent research suggests that secessionist rebels tend to abide by international humanitarian law and refrain from civilian abuse, relative to non-secessionist groups, mainly because of their need to cultivate international legitimacy.⁸⁰ This is despite the fact that separatist civil wars tend to be brutal and long-lasting, generating many battle-related deaths between governments and rebel groups.⁸¹ Furthermore, secessionist groups are more likely to be aware of international affairs and to conduct international diplomacy than are non-secessionist counterparts.⁸² Motivated by the findings in the civil war literature about internal discipline,⁸³ we expect that secessionist rebels to be more sensitive to social expectations associated with ICC norms. Social deterrence will be strongest for groups with strong command and control over their troops. Our hypotheses are summarized in Table 1.

⁷⁸ Sivakumaran 2012.

⁷⁹ Within 8 situations and 21 cases, 32 defendants, 14 are rebel leaders, 13 had official positions in governments. 5 have no affiliations (1 journalist and 4 individuals that provided false testimonies in the ICC court).

⁸⁰ Fazal 2013; Jo forthcoming.

⁸¹ Walter 2009.

⁸² Huang 2014.

⁸³ Weinstein 2007; Cronin-Furman 2013; Jo and Thomson 2014.

[Table 1 about here]

We note that prosecutorial and social deterrence do not necessarily generate completely independent influences. Prosecutorial deterrence can shape social deterrence over time as investigations, arrests and convictions reinforce broadly shared values, which sharpens the *focal power* of an institution such as the ICC. Heightened social sensitivity can in turn strengthen prosecutorial deterrence when civil society actors push for legal reforms and cooperate by reporting, testifying and producing evidence in legal proceedings. With these relationships between prosecutorial and social deterrence in mind, we now turn to our empirical inquiry of the ICC's impact on atrocities toward civilians.

III. Empirical Investigation of the ICC's Impacts

Sample

Studying deterrence empirically is a difficult endeavor. The first challenge is to identify a relevant population who is at risk of committing a crime.⁸⁴ We need a set of cases where atrocities seem possible, and have therefore selected countries that have had at least one episode of civil war since 1945. Civil wars are not the only political context that can generate ICC crimes, but they are likely to increase the occurrence of civilian killing among warring parties.⁸⁵

⁸⁴ Achen and Snidal 1989.

⁸⁵ All the eight ICC situations are related to civil wars except Kenya and Côte d'Ivoire, both involving election violence.

Based on this sampling strategy, the potential candidates for deterrence are found in 101 states and 264 rebel groups between 1989 and 2011.⁸⁶ For deterrence of government violations, the unit of observation is the country-year. The resulting data structure is a balanced panel for each country for 23 years.⁸⁷ For the case of rebels, we must account for their varying and often shorter life span (average longevity of 4.5 years).⁸⁸ For this reason, we only analyze the years when rebel groups were active in an unbalanced panel with each rebel group as a unit. The list of rebel groups is from the Non-State Actor (NSA) Dataset.⁸⁹ The NSA data defines a civil war with a threshold of 25 battle deaths, which means we are examining the ICC's deterrence potential vis-à-vis rebels that are at least moderately capable of inflicting violence.

The resulting sample includes all ICC "situations" to date – Uganda, Central African Republic, the DRC, Côte d'Ivoire, Sudan, Kenya, Libya and Mali. The countries in the sample are diverse in terms of level of violence against civilians (zero to 500,000 killed), ratification records (52 had ratified and 49 had not during our observation window), and geographic scope (41 African countries, 20 in the Americas, 17 in Asia, 11 in the Middle East, and 12 in Europe). The period 1989-2011 includes 13 years before the ICC was established in 2002 and 10 years after, which allows us to assess the change before and after ICC entry into force.

Dependent Variable

⁸⁶ See the supplemental document for the list of countries and rebel groups. The supplementary materials, including data and replication codes, will be available at [TBD].

⁸⁷ Exceptions include states that were in existence for short periods during these years or that became states after 1989, such as Yugoslavia (only up to 2002), Croatia (1991-), Bosnia and Herzegovina (1992-), Tajikistan (1991-), Uzbekistan (1991-), and South Sudan (2011-). See Polity IV Project's Political Regime Characteristics and Transitions, 1800-2012 (v2013).

⁸⁸ The authors' calculation of the rebel sample.

⁸⁹ Cunningham et al. 2013.

The dependent variable is the number of civilians killed *intentionally* by government forces (for analysis of governments) or a rebel group (for analysis of rebel groups) in a *direct military confrontation* based on media reports.⁹⁰ The data thus exclude *indirect* events such as unintended collateral damage, social demonstrations or deaths from environmental disasters. “Intentionality” is of particular importance for our purposes. Deliberate civilian killing, usually generated by superior command, is an egregious rights violation, a crime against humanity and a war crime under ICC jurisdiction. It is clearly one of the major crimes that the ICC was designed to deter and to punish.⁹¹ We acknowledge it is not the only ICC crime that potentially might be deterred,⁹² but to our knowledge, it is the best available measure to assess the ICC’s impact cross-nationally. Relative to other ICC crimes, intentional killing of civilians is more readily observable and comparable across cases. Significant disagreements exist about what constitutes a legal case of genocide⁹³ and it is difficult to tell the age of children when they are recruited to military ranks,⁹⁴ making these other ICC crimes less amenable to systematic testing. Nonetheless, if intentional civilian killing can be deterred, this should encourage further research into a range of heinous crimes – from sexual violence to trafficking in children to widespread pillaging – that the ICC was meant to address.⁹⁵

⁹⁰ One-Sided Violence (OSV) dataset. Eck and Hultman 2007. OSV data made conscious efforts only to code civilians killed “intentionally.” See more UCDP v 1.4-2013, 1989-2012. http://www.pcr.uu.se/research/ucdp/datasets/ucdp_one-sided_violence_dataset/

⁹¹ Rome Statute, Arts. 7 and 8.

⁹² Schabas 2011.

⁹³ Rome Statute, Arts. 7 and 8.

⁹⁴ Drumbl 2012.

⁹⁵ To check whether the OSV data include most of the cases of political violence involving non-combatants, we additionally check our results with the data of State-Sponsored Mass Killing by Ulfelder and Valentino 2008 (data extended to 2012 by Ulfelder, on file with the authors). Although the criteria for masskilling and civilian killing are different, more than 90% data overlap, suggesting the reliability of the OSV data for our purposes.

In our sample, the yearly average intentional civilian killing by a government is 34, excluding the Rwanda 1994 figure of 50,000.⁹⁶ The figure for rebel group is 83. Government killing occasionally occurs in non-civil war years. Kenya's 2007-2008 election violence is one such example. Since OSV data include any case that generates more than 25 civilian fatalities, its standard is different from the definition of civil war given by the Armed Conflict Dataset, which is more than 25 battle-deaths.⁹⁷ Consequently, our dataset includes 30% civil war years and about 70% non-civil war years. About 27% of the civil war years and 3% of the non-civil war years in the sample had government-perpetrated civilian killings, corroborating our claim that civil wars are breeding grounds for ICC crimes, while showing that they *can* occur (though rarely) during non-civil war years as well. For the years where OSV data do not specify civilian killing counts, we assume zero counts for civilian killing.⁹⁸

Independent Variables

We test for direct prosecutorial deterrence with two indicators. One is whether or not the State has ratified the Rome Statutes (*ICC Ratification*), which we expect to be associated with the reduction in civilian killing by the government actors. The second indicator is what we call, *ICC Actions*. This is a three-year moving average of the collective counts of preliminary examinations, investigations, and arrest warrants announced by the Office of the Prosecutor

⁹⁶ Including Rwanda 1994, the average is 230 a year.

⁹⁷ Themnér and Wallenstein 2013.

⁹⁸ Some of these cases clearly involve no violence; others are uncertain (difficult to verify who committed the acts, exact counts, etc.) Email correspondence with Therese Pattersson, the program director of OSV. To reflect this measurement uncertainty, we later estimate logged version of dependent variable.

(OTP), up to the previous year.⁹⁹ This *ICC Actions* variable signals the determination of the OTP to all actors, and we expect it to be associated with the reduction of intentional civilian killing by both governments and rebels over time.

Indirect prosecutorial deterrence via complementarity is captured by *Domestic Crime Statute*. The variable is an ordinal measure, ranging from 0 (no domestic crime statute dealing with international crimes in place) to 3 (substantial reform).¹⁰⁰ “Substantial reform” involves some indication of enforcement by establishing or strengthening domestic justice institutions or by trying cases. ICC ratification precedes most of these crime statute reforms, indicating that the reform cases are, in fact, plausibly connected with the ICC regime.¹⁰¹ Among the 44 ratifying countries, 10 countries did not reform their crime statutes at all, 28 countries implemented some reform, and 6 underwent substantial reform. Among non-ratifying states, only 2 countries reformed their crime statutes to conform with ICC law. Since these cases of legal reform may not be accompanied by actual implementation or may face difficulties in implementation in societies with weak legal institutions,¹⁰² we control for the *Rule of Law* indicator published by the World Bank.¹⁰³ We expect statutory reform to help deter intentional civilian killing by increasing the perceived likelihood of meaningful domestic prosecution.

We proxy a state official’s international susceptibility to material manifestations of social pressure with total official development assistance. *Aid Pressure* is captured by the amount of

⁹⁹ ICC website http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx. We did not code verdicts because the first one was handed down in 2011, the final year of our study.

¹⁰⁰ For details on what exactly constitutes each category, see the data appendix. We conducted a regression analysis with *Domestic Crime Statute* as a dependent variable and *ICC Ratification* and *Post ICC regime* as independent variables. ICC ratification has a positive and significant effect on the crime statute reforms and post ICC regime is positively and significantly associated with a higher level of legal reforms in the post ICC regime.

¹⁰¹ Source: ICC Legal Tools, Implementation Database, <http://www.legal-tools.org/go-to-database/>.

¹⁰² Terracino 2007; Open Society Foundation 2010.

¹⁰³ The Worldwide Governance Indicators at <http://info.worldbank.org/governance/wgi/index.aspx#home>

economic aid, multiplied by the reporting counts from the New York Times (reflecting “donor interest”).¹⁰⁴ We also use total trade volume (imports plus exports in current U.S. dollars over GDP), logged because of skewness and lagged to avoid problems of reverse causation.¹⁰⁵

Domestically, social deterrence is likely to be less tangible. We theorize it should correlate with the intensification of mobilization by human rights organizations (HROs). The variable *HRO Growth* measures the incremental number of international and domestic HROs within a country.¹⁰⁶ The growth of HROs is expected to stimulate demands for justice, in turn raising legitimacy concerns and governing costs for state officials and military leaders who commit atrocities. We recognize that some human rights organizations are critical while others support the ICC’s efforts, but on average this indicator captures the attention to human rights within a polity. Civil society pressure is likely to increase demands for attention to the plight of victims and to challenge the legitimacy of the perpetrator.

We also control for the factors that influence ratification and atrocities to ensure that it is ICC ratification, not other factors, that produce any potential deterrent effect. Logic and experience suggest that democracies are much less likely to target civilians, so we control for *Political Regime Type* using Polity IV data. We also employ a binary variable, *On-going Civil War*, from the PRIO Armed Conflict Dataset to mark years of active civil conflicts.¹⁰⁷ To reduce the possibility that temporal trends affect our results, we include both a lagged dependent variable and an indicator for the presence of the Court itself, *Post ICC Regime*, which is zero before 2002 and 1 on and after 2002.

¹⁰⁴ Nielsen 2013. Nielsen logs economic aid because of its skew, following the convention in the aid literature. His data are available for 1982-2004.

¹⁰⁵ The source is Barbieri and Keshk 2012. This trade dataset and trade data are available up to 2009.

¹⁰⁶ Meernik et al. 2012. Available for 1998-2007 only; missing data are imputed using Amelia.

¹⁰⁷ Themnér and Wallensteen 2013. This dummy variable records both internal and internalized civil conflicts.

Finally, we control for other types of legally and politically relevant intervention efforts not closely related to the ICC. Since the presence of amnesty laws could blunt deterrence and increase violence, we control for *Amnesty Experience* with the average number of amnesty laws three years leading up to the observation year.¹⁰⁸ Truth commissions and domestic human rights trials generally may influence the level of violence in a society.¹⁰⁹ *Truth Commission Experience* as well as *Domestic Trial Experience* are coded one year after the inception of a truth commission or human rights trial until the end of our observation window.¹¹⁰ We control for the presence of peacekeeping troops,¹¹¹ and six cases of ad hoc *International Tribunal Experience* (Yugoslavia, Rwanda, Sierra Leone, Cambodia, Lebanon, and Guatemala), with dummy variables. The latter is coded one at the tribunal's starting point, and thereafter. Lagged variables are used in all the following analyses.

Data on rebel groups' characteristics are drawn from the Non-State Actor (NSA) Dataset.¹¹² We view *Secessionist Rebels* as the rebel groups most likely to seek legitimacy, and thus most susceptible to various forms of social deterrence.¹¹³ We include rebels with autonomy aims as well as those involved in secessionist conflicts in this category, as many rebel groups shift their goals between political autonomy and secessionism. *Rebel Discipline* captures strength of command and control with an ordinal measure (low, moderate, high). We also include *Rebel Strength* to control for the military strength of rebel groups relative to government, marking

¹⁰⁸ Source: Transitional Justice Database Project at <http://www.tjdbproject.com/>.

¹⁰⁹ Kim and Sikkink 2010.

¹¹⁰ Data source is the Transitional Justice Database, as documented above.

¹¹¹ Hultman et al. 2013.

¹¹² Cunningham et al. 2013. The data are located at <http://privatewww.essex.ac.uk/~ksg/eacd.html>

¹¹³ In the supplemental document, we consider an alternative measure of rebel groups' legitimacy-seeking characteristics.

much weaker, weaker, equal, stronger, and much stronger rebel groups on an ordinal scale. All other variables are the same as in the government analysis.

Statistical Analysis

We first present the results from our analysis of intentional civilian killing by governments and then move to the analysis of rebel groups. ICC ratification is one of our key explanatory variables, but it is hardly random.¹¹⁴ For governments, we use two methods to estimate the effects of the ICC on civilian killing. After performing multiple imputation,¹¹⁵ we conduct matching analysis and follow up with a difference-in-differences (DiD) estimator.¹¹⁶ Matching analysis is used to uncover an appropriate comparison between ratifying and non-ratifying states, controlling for important characteristics that lead them to ratify in the first place. The difference-in-differences estimator is frequently used to estimate the causal effects in panel data.¹¹⁷ The general setup for DiD is analogous to panel data analysis with fixed effects,¹¹⁸ so we will present those results below. We use it to estimate the behavioral difference between the ratifiers and non-ratifiers, paying attention to the differences before and after the ratification. The combination of matching and DiD increases the plausibility of a causal effect of ICC-related variables on intentional civilian killing compared to traditional regressions alone.¹¹⁹

¹¹⁴ Simmons and Danner 2010; Chapman and Chaudoin 2013.

¹¹⁵ Imputation is expected to increase data efficiency and to reduce bias. King et al. 2001.

¹¹⁶ Abadie 2005 shows that the use of difference-in-differences estimator after matching improves causal inference.

¹¹⁷ Wooldridge 2010.

¹¹⁸ Angrist and Pischke 2009.

¹¹⁹ Our supplemental document contains further details of multiple imputation, matching procedures, and the DiD analysis.

We use the coarsened exact matching (CEM) algorithm,¹²⁰ and match observations based on the covariates that are significant predictors for ratification in Simmons and Danner 2010: political regime type, recent civil war experience, the presence of peacekeepers, commitment to human rights treaties, being among the “like-minded” coalition during the Rome Statute negotiation, and having elected officials at the ICC eventually.¹²¹ Also, to exploit the richness of panel data and to account for the trajectory of each country,¹²² we include the 3-year moving average of political regime type as a matching covariate.

As Figure 2 shows, matching restores balance on most of the covariates. Commonly recommended standardized bias is less than 0.25,¹²³ and the biases for all the matching covariates except political regime types are reduced after matching. Although the measure of political regime type (polity IV score) does not reach the conventional level of 0.25, the percentage reduction is substantial at about 13%, from 0.75 to 0.65.

[Figure 2 about here]

Table 2 presents the results for government forces, based on the DiD analysis with the matched sample.¹²⁴ Consistent with our hypothesis about prosecutorial deterrence, the significant and negative coefficient for ratification in Model 1 indicates that governments in general tend to

¹²⁰ Iacus et al. 2012.

¹²¹ We did not include the full set of covariates in Simmons and Danner 2010 because this would drop more than half of observations and leave us very few matches to analyze. These covariates are justified on the basis of reducing bias without sacrificing too much efficiency.

¹²² Nielsen 2011.

¹²³ Ho et al 2007.

¹²⁴ The results are from the conditional negative binomial panel analysis of the matched sample, taking into account the heterogeneity of countries in the sample, using the `xtnbreg` command in Stata. Since `xtnbreg` supports importance weights only at the panel level (not by observation as in the initial CEM weights), we calculated an average weight for each country and then used only matched data in our analysis using the panel-average CEM weights.

reduce or refrain from civilian violence after ratification.¹²⁵ The result holds in the interaction model with the mobilization mechanism (Model 4), although it is not significant as a constitutive term in the interaction model with aid pressure (Model 5).¹²⁶ ICC ratification reduces the intentional civilian killing count by approximately 60%.¹²⁷ Counterfactually, were a government who has not ratified the ICC statutes to kill 100 civilians, its most similar counterpart who had ratified would be likely to kill dramatically fewer – perhaps 40 fewer – civilians. This evidence is consistent with a theoretical claim that ratification raises awareness about the risk of ICC prosecution associated with intentional violence against civilians.

This relationship is strong, despite controls for a range of other conditions. All specifications control for core predictors for civilian killing such as political regime, on-going civil war, and (to account further for trends in violence over time) an indicator for before and after the ICC came into force. The lagged dependent variable also controls for auto-regressive patterns in the dependent variable.

[Table 2 about here]

Model 2 looks at the effect of *ICC Actions*, the three-year moving average of previous preliminary examinations, investigations, and warrants by the Office of the Prosecutor.¹²⁸ As a signal to all that the prosecutor is willing to take decisive action, one additional investigation reduces intentional civilian killing by about 9%. This effect is robust even after including year-

¹²⁵ The result holds after eliminating outlier Rwanda in Model 2, a conflict that resulted in 500,000 deaths.

¹²⁶ These specifications are discussed below when we discuss social deterrence.

¹²⁷ This percentage, as well as subsequently reported ones, was calculated using “incidence-rate ratio (IRR)” in Stata.

¹²⁸ Note that Models 2 and 3 do not model ratification, so we use the full sample instead of the matched sample.

and country-identifiers¹²⁹ and *Post ICC Regime*, a variable that captures the Court's *existence*, but not its *actions*. It is therefore quite unlikely that the effect *ICC Actions* is merely an artifact of some general violence-reducing temporal trend or the result of a passive court.¹³⁰ Rather, *ICC Actions* represent new information, available to all actors, demonstrating that the ICC is operational, authoritative, and that the prosecutor means to take action.

What of complementarity? Model 3 demonstrates that *Domestic Crime Statutes* – which as we have shown are themselves influenced by the presence of the ICC – are also associated with reduced civilian killing.¹³¹ This effect is robust to the control of *Rule of Law*, suggesting that it is not merely the capacity to enforce but the substantive legal change that is critical to the result. One categorical shift toward stronger ICC-consistent domestic legal reform reduces civilian killing by about 60%. Knowing the ICC may step in where domestic institutions fail seems to have encouraged domestic legal change, which in turn helps to deter at least some intentional violence against civilians by government forces.

Our second main hypothesis is that state actors can be socially deterred. Extralegal social pressure at the domestic level is most likely to be of the non-material sort; e.g., challenges to the justness and legitimacy of actions taken by government agents. These challenges are hypothesized to be strongest where law focuses social expectations and draws bright lines distinguishing unacceptable behavior. The interaction term in Model 4 tests this idea. It shows that in addition to whatever effect ratification alone may have, human rights groups are able to capitalize on ICC norms to further hold governments accountable to the civil society. The

¹²⁹ Reported in the supplemental document.

¹³⁰ We also conducted a split sample analysis separately for ratifying and non-ratifying countries, and the effect of *ICC Actions* shows up in both.

¹³¹ The strong tendency of ICC ratifiers to change their domestic statutes (documented above) explains why the effect of ratification appears to weaken when domestic crime statutes are included. They are statistically collinear and are an obligation of the ICC statutes.

combination of ICC ratification and growth in human rights mobilization, captured by the interaction term, is associated with less intentional killing (i.e. negative coefficient), likely through social deterrence but also because human rights organizations contribute to prosecutorial risks. Our goal is not to disentangle these effects, but to illustrate that they are in fact mutually reinforcing. Interestingly, in the absence of ICC ratification, human rights organizations appear to have far less traction.

Figure 3 plots marginal effects of HRO growth conditional on ratification. The graph shows the change in the average number of civilians killed as mobilization increases in states that are and are not parties to the statutes. Since the average HRO increase is about 2 per year, and standard deviation is about 25, we report the graph within 2 standard deviations, from -50 to 50. The marginal effect remains negative throughout the entire range [-50, 50], indicating that a change in HRO decreases civilian killings by approximately 2 to 8 deaths per year, or about a 20% reduction in the violence level. This civil society effect is substantially magnified by the focal power and jurisdiction of the ICC: the slope for ratifying states is steeper and more negative than that of non-ratifying states. In states that ratify, adding one human rights organization is estimated to reduce intentional killing by between 4 to 6 civilians. In states that do not ratify, the effect of increases in HROs is flat.

[Figure 3 about here]

At the international level, social deterrence may be supported through aid relationships. Our results show that while aid *itself* is not systematically associated with a reduction of violence, governments that ratified the ICC Statute in fact were subsequently much more likely to reduce

or to refrain from intentional civilian violence the more aid they received (Model 5). As Figure 4 illustrates, increasing aid reduces violence more in states that ratify the statutes. In contrast, without ratification, increasing aid does little to change the marginal effect on the civilian killing count. We found no interactive effects between ratification and foreign trade relationships,¹³² possibly because trade is minor for many of these countries, does not clearly benefit government officials, and flows mostly from the decentralized decisions of private actors. If governments are socially deterred by extralegal material relationships, the risk of losing aid appears to loom much larger than trade relations.

[Figure 4 about here]

Model 6 contains all the ICC-related variables as well as several alternative policy interventions. Social deterrence effects survive while prosecutorial deterrence effects are muted. This is largely because prosecutorial deterrence and social deterrence truly are mutually reinforcing. The effect of *ICC Actions* does not reach traditional significance levels in the full model, but recall that it is based on a restricted sample in order to deal with the endogenous effects of ratification. Since there is no reason to use the matched samples to test the effects of *ICC Actions*, and such actions are robustly associated with reduced civilian killing for all the countries in the sample before matching, we remain fairly confident that investigations, warrants and prosecutions help to deter government atrocities.

Other policy interventions are not statistically significant except *Amnesty Experience*, but these effects should be interpreted with caution as our sample is not specifically designed to test

¹³² Reported in the supplemental document.

the effects of other interventions. For instance, the null result for peacekeeping is inconsistent with the recent peacekeeping literature,¹³³ but this could well be due to differences in the sample. The recent work examined the cases where peacekeeping occurred, with total numbers of killings monthly both by rebels and governments, whereas our sample includes *potential* actors subject to ICC deterrence pressures. How we measure these intervention efforts also influences the interpretation of results. *Amnesty Experience*, for example, is sometimes violence-reducing when it is measured as a cumulative count of all amnesties up to that point, rather than counting amnesties only in three previous years. The effects of other intervention measures, such as *Truth Commissions* or *Domestic Trials*, are sometimes significant in simple bivariate regressions (not reported)¹³⁴ but not in multivariate regressions. The comparative effects of different policy interventions is a worthwhile research endeavor in itself, but not one we can pursue in detail in this article.

We did a further check to verify whether our ICC results are primarily due to the “less brutal” nature of the recent conflict environment, rather than the ICC itself.¹³⁵ Figure 5 evidences no particular trend in violence between 1989 and 2011. Average battle-related deaths world-wide have consistently hovered around 500 per year during the last two decades, albeit with a slightly decreasing trend. Moreover, we controlled for the time trend in the tests above in two ways, distinguishing *Post ICC Regime* or including year dummies.¹³⁶ Some years, such as

¹³³ Hultman et al. 2013.

¹³⁴ Simple fixed effects bivariate regression panel model in unmatched sample yields significant effects of truth commissions (p=0.096), domestic trials (p=0.000), cumulative measure of amnesty (p=0.034), international tribunal experience (p=0.074).

¹³⁵ Goldstein 2011; Pinker 2011; but see Fazal forthcoming.

¹³⁶ We also checked whether our results hold controlling for battle deaths figures from UCDP. They do leaving battle deaths variable often insignificant.

2001, are more violent than others, but these controls do not change the core results about the ICC's deterrence effects on government forces.

[Figure 5 about here]

While these analyses increase confidence that there may be a causal relationship between the ICC and violence, we recognize that neither matching nor DiD completely solve the problem of selection on unobservables.¹³⁷ What our analysis does show is that the net effect of ratification and ICC-related interventions are strongly discernable after controlling for selection into ratification, getting a balanced sample via matching between treatment (ratification-years) and control (non-ratification-years), and estimating the differences between ratification years and non-ratification years. Our results are also robust to alternative specifications such as random effects model and fixed effects model with group and time identifiers.¹³⁸ The evidence is highly suggestive that the ICC has influenced government tactics when it comes to civilian violence. We now analyze whether the ICC has influenced the behavior of *non-state* actors.

Rebel Groups and the ICC

Table 3 reports the results of civilian killing by rebel groups, in a way analogous to that of governments in Table 2.¹³⁹ In the case of rebel groups, some key indicators of prosecutorial

¹³⁷ Since Ho et al. 2007 suggested that it is a good practice to include matching covariates in the main analysis, we also control for those variables and report those results in the supplemental document.

¹³⁸ See the supplemental document.

¹³⁹ For modeling rebel groups' civilian killing behavior, we use random effects panel estimator, since we are interested in generalizing our inference to broader group of rebels that are unobserved, whereas in the analysis of governments we make inferences about a fixed sets of countries. See the discussion in Clark and Linzer forthcoming on the use of random versus fixed models in panel analysis.

deterrence appear to break down almost completely. Neither *ICC Ratification* (Model 1) nor *Domestic Crime Statute* (Model 3) appears to reduce civilian killing. However, even rebel groups respond to *ICC Actions* (Model 2). Rebels do not respond to legal change alone; they are much more impressed with action.

Models 4-5 attempt to capture social deterrence among rebel groups. Rebel groups with secessionist aims are in general likely to kill fewer civilians than those without such aims (Model 4). We use a triple interaction among *Secessionist Rebels*, *Rebel Discipline*, and *Post ICC Regime* in Model 5 to test the idea that secessionist rebels with internal discipline further reduce their violence after the ICC regime is in place. The triple interaction term is negative and significant, indicating some evidence of social deterrence for a particular class of rebel groups. The substantive effects are not large but do suggest some possibility of social deterrence among rebel groups. For example, the marginal effect of civilian killing among secessionist rebel groups with strong command and control is -2.733 [-3.264, -2.202] in the pre-ICC regime and -2.474 [-3.035, -1.913] in the post ICC regime. The difference is not statistically distinguishable with much confidence, but does indicate some behavioral changes after the ICC began its operation. Most importantly, these results provide useful guidance on where to look for normative progress among potentially violent non-state actors: those with both the incentive and the ability to control their troops.

Model 6 takes stock of all the variables related to prosecutorial and social deterrence and controls for other policy interventions as well. The prosecutorial deterrence effects via *ICC Actions* still remain significant while the effect of social deterrence is attenuated, which is unsurprising given the long list of controls which themselves are not significant. The most compelling result is that rebels tend to behavior as though they update their estimates of their

chances of prosecution when the ICC demonstrates its resolve through investigations, warrants and prosecutions. One more *ICC Action* over the course of three years is estimated to reduce civilian killing by 30%.¹⁴⁰ This suggests that rebels are likely to reassess their risk of prosecution in light of new evidence that the prosecutor's office intends to hold actors accountable for their atrocities.

[Table 3 about here]

Conclusion

Few issues in international relations are more urgent than improving the life-chances for civilians who become pawns in civil war violence. Since the end of the Cold War, the international community has been groping toward a way to end impunity with respect to the worst human rights violations in intrastate conflicts. The Yugoslavian and Rwandan Tribunals were important milestones in this regard, but the most ambitious effort to date has been the International Criminal Court. Few institutions have inspired such high hopes, while stimulating so much controversy. Even though the Court has been operating for only twelve years, it is time to supplement anecdotal speculation with careful study of its effects. As realists Goldsmith and

¹⁴⁰ This number is calculated from the incident rate ratio (IRR) in Stata. The IRR for *ICC Action* is .706 [.600, .831]. This means that one unit increase of *ICC Action* variable is expected to decrease the number of civilians by a factor of .706, while holding all other variables in the model constant.

Krasner remind us, “ideals can be pursued effectively only if decision-makers are alert to...the consequences of their policies.”¹⁴¹

This study is an attempt to at least address the “chasm between theory and practice” noted by ICC skeptics.¹⁴² First, we have been careful to specify exactly what it is we might expect the ICC to do: to deter a significant crime category within its jurisdiction. This is not the *only* consequence one might want to explore relating to the ICC, but it is one of its primary goals and civilian suffering as the result of intentional, strategic behavior by combatants has been one of the more tragic outcomes of the explosion of civil wars in the past two decades.

Second, we have theorized two broad and mutually reinforcing channels of potential deterrence – prosecutorial and social deterrence – and specified the conditions under which we might expect them to hold. We have argued that the ICC contributes directly to prosecutorial deterrence by investigating and prosecuting war crimes on its own authority. It also encourages member states to improve their capacity to reduce, detect and prosecute war crimes domestically, and indeed the evidence shows that ratifying states are much more likely than non-ratifiers to do so. There is strong evidence of a reduction in intentional civilian killing by government actors when states implement ICC-consistent statutes in domestic criminal law which we can reasonably attribute, at least indirectly, to the ICC’s influence. Such domestic statutes magnify the ICC’s prosecutorial deterrent effect by bolstering it with the added possibility of punishment at home. Finally, it is critical to understand that legal rules interact with social pressures, both tangible and intangible. The ICC also deters because it mobilizes the international community as well as domestic civil society to demand justice. In this sense, our view of the ICC is fully

¹⁴¹ Goldsmith and Krasner 2003, 48.

¹⁴² Goldsmith and Krasner 2003, 55.

consistent with broader trends in human rights prosecutions at the local, regional and global level.¹⁴³

We want to stress that our claims are modulated. Persons who intentionally terrorize civilians for their personal or political purposes are difficult to deter under any circumstances. But the ICC has raised the risks of consequences for violations, through the channels discussed above. We illustrate the plausibility of these channels but also demonstrate their limits. Governments that depend on aid relationships are easier to deter than the more self-reliant, largely because their economic dependence makes them more vulnerable to external actors who use their resources to enforce broader community values. We also show that rebels are harder to deter than governments. Nonetheless, even rebels appear to have significantly reduced intentional civilian when the ICC has signaled its determination to prosecute. Debates over the effects of the ICC have been sterile, largely because they have failed to specify the conditions under which they might expect the Court to “work.”

It is also important to put our claims into perspective. We are not pushing the point that one prosecutor, acting alone and without significant backing by the international community or local support, could have brought about these consequences merely by issuing a decision to investigate or signing a warrant. The ICC interventions are powerful because they are part of a package of efforts to rally support for ending impunity. Moreover, part of the package has taken time to unfold – a redoubling of *domestic* efforts to develop the legal capacity to prosecute war crimes, which is precisely how the ICC’s complementarity is intended to operate. The evidence suggests these efforts contributed to what we have analyzed as an indirect prosecutorial effect of the ICC itself, though only for government officials. But the evidence suggests that the ICC’s

¹⁴³ Sikkink 2011.

demonstrated determination to investigate and issue warrants has contributed to the reduction of violence by convincing rebel leaders that impunity is a waning option.

At the same time we are under no illusions that the Court has positive impacts in all cases. The Bemba trial in relation to the situation in the Central African Republic did not stop violence by the Seleka faction, which reminds us that the Court cannot solve deep rooted social problems in a short period of time.¹⁴⁴ The Prosecutor prioritizes cases where violations are “grave”¹⁴⁵ and these are precisely cases where violence is prone to recur. We therefore are analyzing some of the most protracted cases of conflict in the world – a fact that makes the modest positive consequences we document all the more remarkable.

The Court had its ten-year anniversary in 2012. Many challenges are ahead. The Court has yet to gain consistent support from major powers like the US, China, India and Japan which would boost its resources and legitimacy. Although the ICC enjoys the support of 121 countries, observers note that the court faces many practical challenges in its day-to-day operations, such as gathering evidence and conducting quality fact-finding.¹⁴⁶ In many respects we agree. But its willingness to prosecute has contributed to perceptions that impunity for egregious war crimes is a diminishing option. The evidence suggests that this role has potential to save at least a few lives in some of the most violent settings in recent decades.

¹⁴⁴ Glasius 2009b.

¹⁴⁵ ICC 2012.

¹⁴⁶ Hamilton 2012; Schabas 2012.

Table 1: Expectations

I. Prosecutorial deterrence hypotheses:

Direct:

- A. Ratification of the ICC statutes is associated with a reduction of violence against civilians by both state and non-state actors.
- B. ICC actions, such as preliminary examinations, investigations and prosecutions are associated with a reduction of violence against civilians by both state and non-state actors.

Indirect:

- A. Civilian killing should decrease when states implement ICC-consistent domestic criminal statutes.

II. Social deterrence hypotheses:

- A. Civilian killing by government forces should decrease the greater a state's dependence on international trade and foreign aid (material relationships)
- B. Civilian killing by governments should decrease when human rights organizations are mobilized to demand accountability (legitimacy concerns)
- C. Civilian killing should decrease for secessionist rebel groups with internal discipline (legitimacy concerns; with the means to control troops)

Table 2. ICC Effect on Civilian Killing by Governments

	Model 1 Direct Prosecutorial Deterrence I	Model 2 Direct Prosecutorial Deterrence II	Model 3 Indirect Prosecutorial Deterrence	Model 4 Social Deterrence I: Mobilization	Model 5 Social Deterrence II: Aid	Model 6 Other Policy Interventions
ICC Ratification	-0.872** (0.401)			-0.819** (0.406)	-0.112 (0.463)	-0.362 (0.507)
ICC Actions		-0.167*** (0.061)				-0.110 (0.115)
Domestic Crime Statute			-0.536** (0.214)			-0.771** (0.389)
Rule of Law			-0.266** (0.120)			-0.183 (0.237)
Ratification * HRO Growth				-0.035** (0.016)		-0.037** (0.081)
HRO Growth				0.011* (0.005)		0.010* (0.005)
Ratification * Aid Pressure					-0.086*** (0.033)	-0.082** (0.035)
Aid Pressure					0.009 (0.012)	0.008 (0.013)
Truth Commission Experience						-0.088 (0.518)
Domestic Trials Experience						0.135 (0.377)
Amnesty Experience						1.537** (0.611)
International Tribunal Experience						-13.423 (740.442)
Peacekeeping						-0.673 (0.566)
Political Regime	0.033 (0.027)	-0.041*** (0.014)	-0.029** (0.014)	0.032 (0.027)	0.037 (0.028)	0.036 (0.032)
On-going Civil War	2.121*** (0.402)	2.037*** (0.214)	2.048*** (0.217)	2.106*** (0.401)	2.163*** (0.406)	2.301*** (0.419)
Post ICC Regime	0.153 (0.299)	0.258* (0.191)	-0.007 (0.154)	0.141 (0.298)	0.121 (0.302)	0.474 (0.365)
Lagged Dependent Variable	0.001*** (0.000)	0.001*** (0.000)	0.001** (0.000)	0.001*** (0.000)	0.001*** (0.000)	0.001** (0.000)
Observations	592	1028	1026	592	592	592
Number of countries	31	47	47	31	31	31

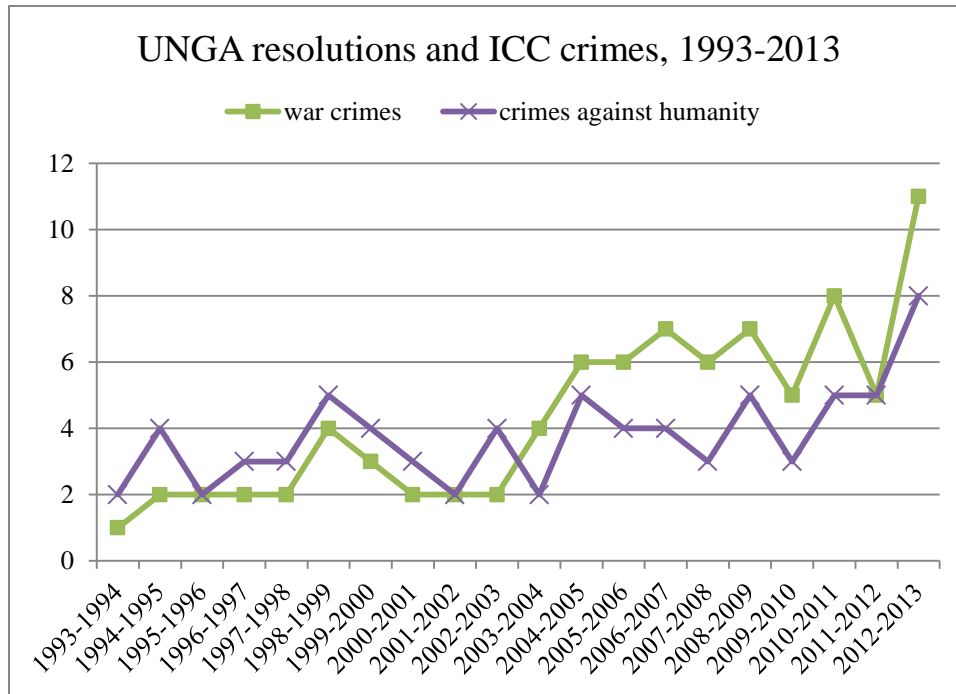
Dependent variable is the count of civilians killed by government. The results are based on negative binomial panel analysis with fixed effects. Except Model 2 and Model 3, which do not use ratification variable, the results are from the matched sample, using weights created by the Coarsened Exact Matching. 53 countries (1138 obs) dropped because of all zero outcomes. 16 countries dropped as a result of matching. Constants suppressed to save space; Standard errors in parentheses: *** p<0.01, ** p<0.05, * p<0.1

Table 3. ICC Effect on Civilian Killing by Rebel Groups

	Model 1 Direct Prosecutorial via Ratification	Model 2 Direct Prosecutorial via ICC Actions	Model 3 Indirect Prosecutorial	Model 4 Social Deterrence without ICC	Model 5 Social Deterrence with ICC	Model 6 Other Policy Interventions
ICC Ratification	0.356 (0.230)					0.677* (0.393)
ICC Actions		-0.201*** (0.056)				-0.347*** (0.082)
Domestic Crime Statute			-0.026 (0.152)			0.128 (0.205)
Rule of Law			0.222 (0.149)			0.137 (0.245)
Secessionist Rebels				-0.286* (0.157)	-0.519 (0.528)	-0.188 (0.787)
Secessionist Rebels * Rebel Discipline * Post ICC Regime					-0.409*** (0.146)	-0.132 (0.259)
Secessionist Rebels * Rebel Discipline					0.155 (0.254)	-0.407 (0.454)
Rebel Discipline * Post ICC Regime					0.632*** (0.226)	0.895** (0.363)
Rebel Discipline					-0.317** (0.161)	-0.279 (0.383)
Peacekeeping						-0.379 (0.398)
Amnesty Experience						-0.117 (0.426)
Political Regime	0.007 (0.013)	0.011 (0.013)	0.019 (0.022)	0.014 (0.014)	0.040*** (0.012)	0.023 (0.032)
Post ICC Regime	-0.214 (0.144)	0.285 (0.169)	-0.060 (0.185)	-0.149 (0.136)	-0.878* (0.449)	-1.308* (0.669)
Rebel Strength	0.489*** (0.106)	0.506*** (0.105)	0.752 (0.150)	0.486*** (0.105)	0.591*** (0.097)	0.857*** (0.283)
Observations	1,155	1,155	491	1,155	1,023	835
Number of Rebel Groups	241	241	142	241	205	161

Dependent variable is the count of civilians killed by rebel groups; coefficients are based on random effects negative binomial panel estimator; constants suppressed to save space; Standard errors are in parentheses *** p<0.01, ** p<0.05, * p<0.1

Figure 1. Attention to Select ICC Crimes in the United Nations General Assembly



Source: Authors' database; based on resolutions at http://www.un.org/depts/dhl/resguide/gares_en.shtml

Figure 2. Balance Before and After Matching

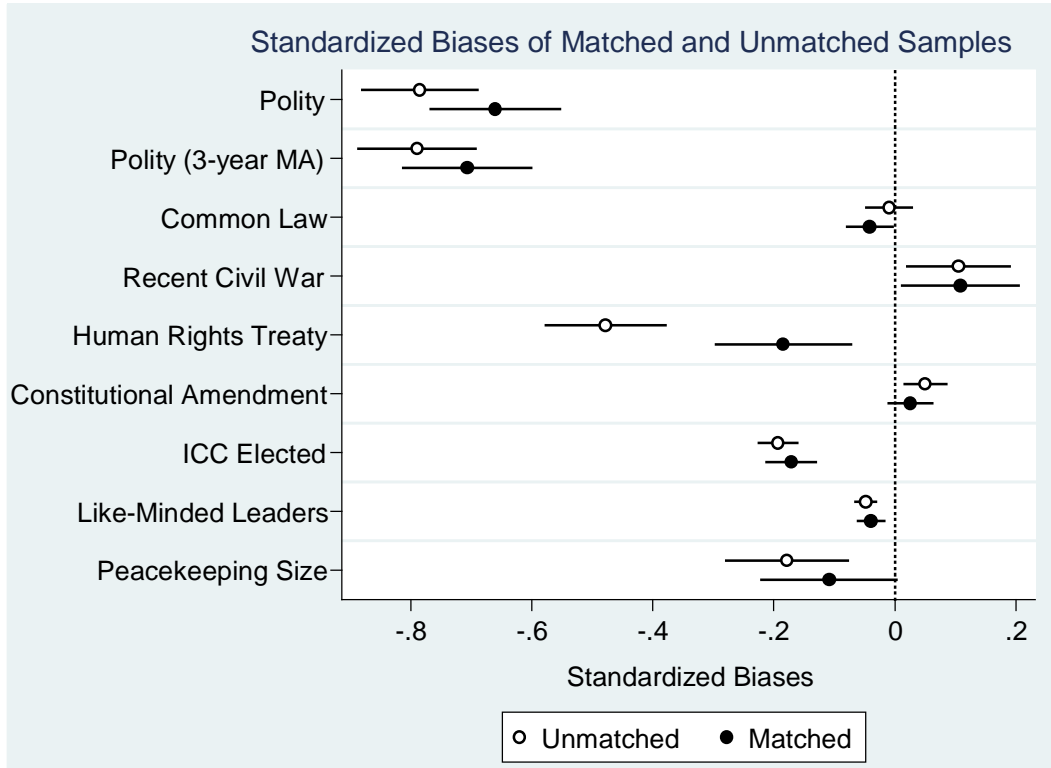
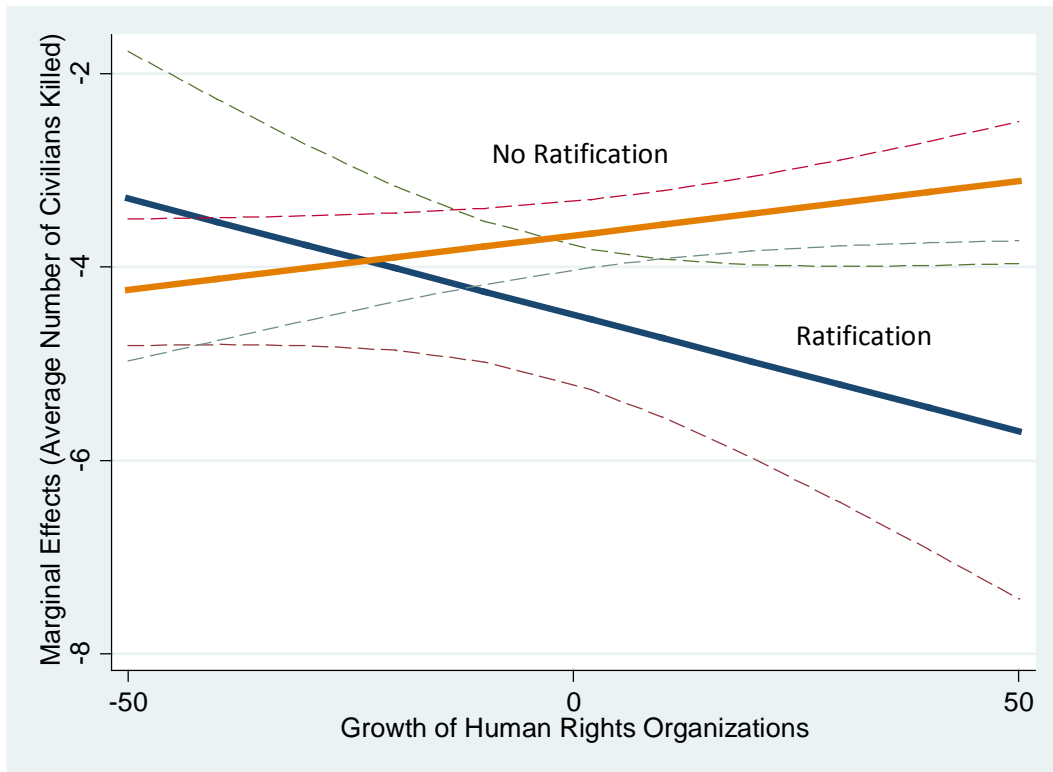
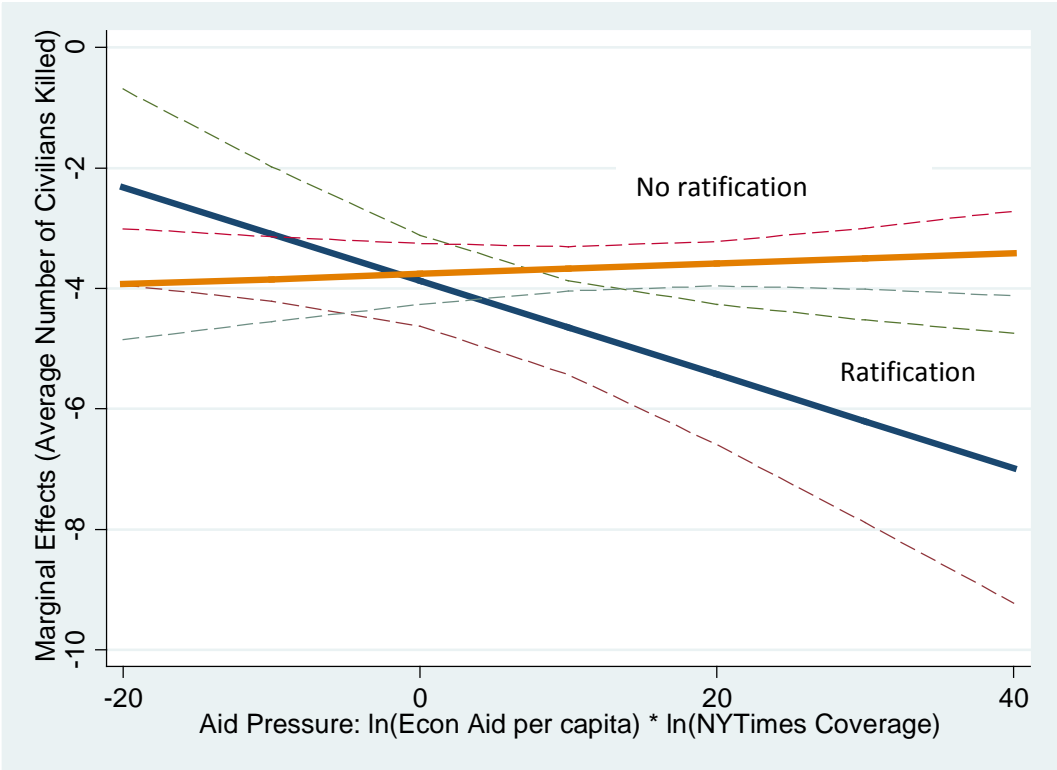


Figure 3. Marginal Effects of Mobilization on Civilian Killing



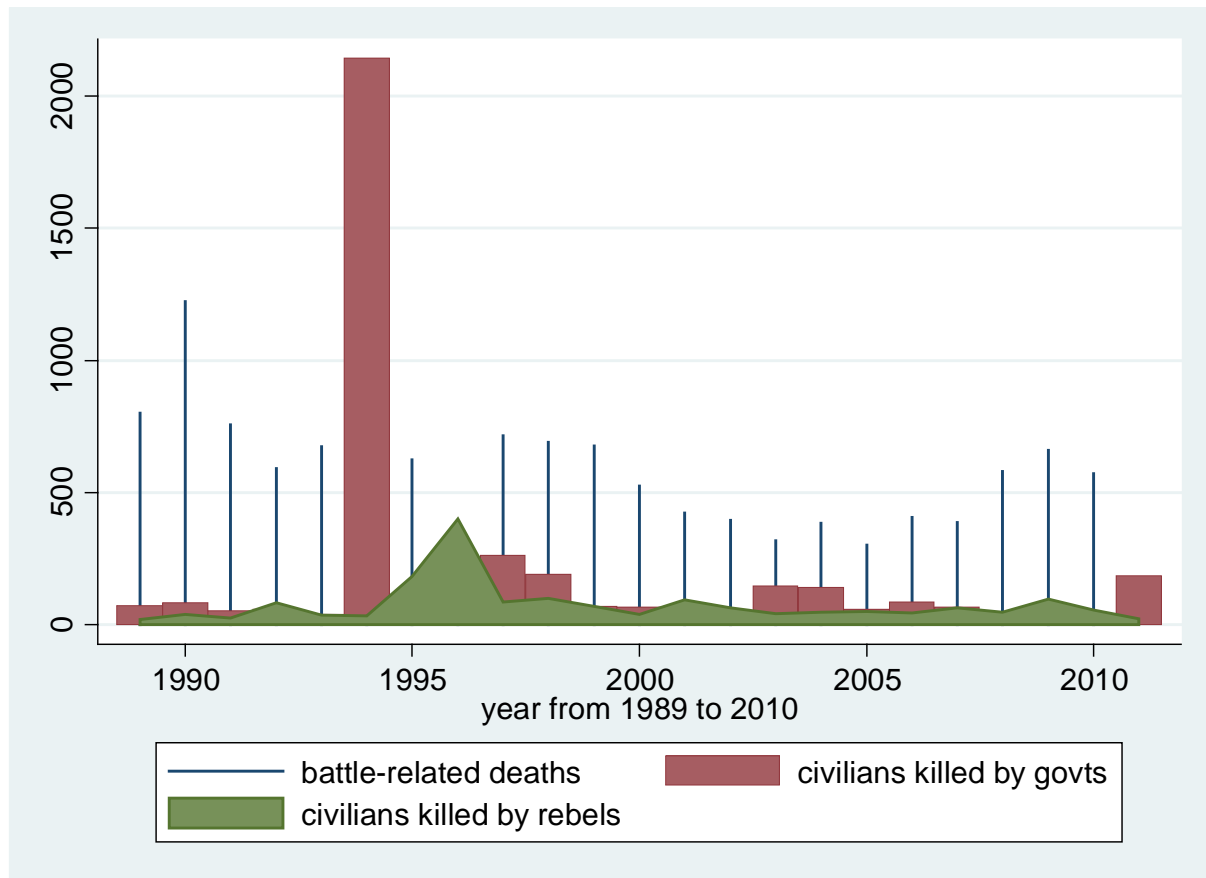
Note: The marginal effects are yearly average civilian killing counts by a government actor. The effects were calculated based on Model 4 in Table 2. The effects are reported for the values within ± 2 standard deviation of the HRO Growth variable.

Figure 4. Marginal Effects of Aid Pressure Conditional on ICC Ratification



Note: The marginal effects are yearly average civilian killing counts by a government actor. The effects were calculated based on Model 5 in Table 2. The effects are reported for the values within ± 3 standard deviation of *Aid Pressure*.

Figure 5. Battle-related Deaths, Government Civilian Killing and Rebel Civilian Killing



Note: Battle-related Deaths are from UCDP's Battle-related Deaths Dataset v.5-2013. Civilian Killing Counts are from the One-sided Violence (OSV) Dataset v.1.4-2013. The peak in 1994 is due to the figure in Rwanda. OSV has it that the Hutu government killed 15000 Tutsi's but the number is not counted as battle-related figures in UCDP battle-related death data.

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