

The International Criminal Court and Regional Diffusion

Heather M. Smith

Ph.D. Candidate
University of California, San Diego
La Jolla, CA 92093-0521
(858) 452-8075
hmsmith@ucsd.edu

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Abstract: Why do states commit to international human rights institutions? The commitment literature points to rational actor models to explain state participation in trade and security institutions—states identify benefits to participation that are not otherwise available, meet membership requirements, and commit themselves to the institution. Yet because human rights institutions, unlike trade or security institutions, rarely offer tangible benefits to members, rational functionalist accounts of state participation prove insufficient in explaining observed patterns of commitment. I argue that cross regional variation in patterns of state ratification of the International Criminal Court (ICC) are best explained by the diffusion of distinct regional norms of state respect for human rights. Using empirical analysis, I demonstrate homogeneity of preferences over state respect for human rights within regions and heterogeneity of preferences across regions. These norms correlate with patterns of state ratification of the ICC. This analysis suggests the existence of distinct regional norms of state participation in the (ICC).

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States commit to international institutions to obtain institution-specific benefits. The lure of low tariffs, market expansion, and the opportunities for specialization make free international trade highly valued. Commitment to international trade organizations is explained by rational actor models—states identify benefits to participation that are not otherwise available, meet membership requirements, and commit themselves to the institution. The material benefits of participation outweigh accompanying sovereignty costs and hence explain the decision to commit.

State commitment to international human rights institutions is less straightforward. Ratification of human rights treaties entails new domestic obligations and unlike international trade institutions, offers no apparent material benefits. Additionally, if states want to stop torture or end discrimination they need not sign an international treaty. Unilateral action can achieve identical outcomes while freeing states from the burdens of international delegation and enforcement. The overwhelming disadvantages of state participation in international human rights regimes make their recent and copious emergence perplexing.²

This article explores the motivations behind state acceptance of international human rights obligations, particularly the International Criminal Court (ICC). The ICC is an interesting case for two reasons. First, the ICC embodies the type of hard law that international legal scholars argue fails to emerge because it entails such high sovereignty costs to states.³ Second, the development of a permanent court empowered to try individuals, rather than states, challenges the traditional boundaries of international

² Hathaway 2002, reviews the explosion in the emergence of human rights regimes in the last thirty years, 1946.

³ Abbot and Snidal 2001, 37.

human rights law. Since the end of World War II, the global human rights regime has served to limit the extent to which states can violate the human rights of their citizens. Occasionally and generally on an ad hoc basis, international human rights law has been applied to individuals.⁴ The ICC expands the jurisdiction of the global human rights regime by creating a permanent court charged with applying international human rights law to individuals. The strength of the Court's mandate and the expansion of its jurisdiction to individuals further complicates a state's motivation for ratification.

In the first section, I review the literature on state participation in international institutions. In the second, a theory of regional norm diffusion is introduced to explain state acceptance of international human rights commitments. A research design and the findings of this examination are presented in the third and fourth sections. I argue that the effects of regional rather than international norm diffusion best explain a state's commitment to international human rights institutions.

Literature Review

The literature on international human rights norms offers four competing justifications for a states' willingness to enter into costly human rights institutions. The first body of literature focuses on the ability of strong states to coerce weak states into joining international institutions.⁵ The second strand of the literature argues for a rational-functionalist approach to international institutions, suggesting that the desire for collective benefits explain a state's willingness to enter international institutions.⁶

Alternatively, strategic domestic considerations may motivate states to enter an

⁴ In response to large-scale human rights violations the international community has typically established ad hoc tribunals such as the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

⁵ Krasner, 1991; Donnelly 1986.

⁶ Stein 1983; Keohane 1984; Sindal 1998.

international institution.⁷ The final variant of this literature focuses on the abilities of both state and non-state actors to socialize and pressure others into joining international institutions.⁸ While each offers a heuristically useful conceptual framework for explaining a state's decision to enter into a human rights regime, I argue in this section that a refined version of the external socialization arguments are the most compelling.

The Power of Strong States

Classical realists assert that in the anarchic world system the primary goal of the nation-state is to obtain power.⁹ If and when states achieve a powerful position in the international system, they use that position to coerce less powerful states into adopting various policies, including human rights policies.¹⁰ In this view, international regimes are irrelevant in the creation of policy; dominant states through coercion determine policy outcomes.¹¹ Because classical realism fails to account for the empirical reality of regime emergence in the 1970s and 1980s structural realism refines the argument to account for this observed emergence.¹²

Structural realists assert that powerful actors are not only responsible for coercing less powerful actors into adopting human rights norms. Powerful actors also are the originators of the norms and the consequent institutions. From this perspective regimes emerge when an international demand for coordination is associated with an international actor or group of actors that is willing and able to supply it. This demand emerges when preferences over policy are sufficiently similar to allow for mutually beneficial

⁷ Richards 1995; Moravcsik 2000; Damrosch 1991.

⁸ Keck and Sikkink 1998; Finnemore and Sikkink 1998

⁹ Morgenthau 1960.

¹⁰ Moravcsik 2000, 221.

¹¹ Mearsheimer 1994, Strange 1991.

¹² Hathaway 2002, 1946.

agreements to be created.¹³ While the demand for such regimes may originate in the periphery of the international system, only the powerful actors, which are by definition states, are able to act on those demands and supply the relevant institutions. Krasner (1991) argues that state power, rather than any desire for collective benefits, explain the evolution and structure of the global communications regime. The creation of and compliance with human rights regimes is therefore a function of the interest of powerful states in supplying and enforcing regimes through coercion and pressure.¹⁴

In considering both structural and classical realist assertions, Gubin (1995) argues that in their focus on power and security realists tend to neglect the primacy of human rights considerations in the construction of foreign policy.¹⁵ Power and material interest drive the development of international human rights regimes rather than genuine human rights concerns. Realist accounts of both regional and international human rights regimes' development seem to confirm Gubin's assertion.

Donnelly (1986) for example, argues that an Inter-American human rights regime emerged because it was in interest of the United States to establish it.¹⁶ Conversely, he argues that the absence of a strong regional human rights regime in Africa is best explained by the lack of a regional hegemon willing to supply it.¹⁷ Though not concerned with human rights *per se*, Nayar (1995) points to the power of the United States in determining the structure of postwar aviation regulations despite British opposition.

¹³ Keohane 1982, 336.

¹⁴ Moravcsik 2000, 225.

¹⁵ Gubin 1995, 279.

¹⁶ Donnelly offers no specific reason for U.S. interest in the creation of the regime, "The United States, for whatever reasons, decided that a regional regime with relatively strong monitoring powers was desirable, then exercised its hegemonic power to ensure its creation and support of operation." (625)

¹⁷ Donnelly 1986, 626.

Realist accounts of regime emergence suffer from two theoretical problems. First, structural theory treats as exogenous both the impetus for the demand and the supply of international regimes. In attempting to apply hegemonic stability theory to the emergence of human rights regimes, these theories fail to specify the hegemon's interest in supplying a regime. These theories also fail to specify incentives of small states to demand such regimes. In this respect, realist theories are more descriptive than analytic, explaining how hegemons create regimes rather than why states both supply and demand them.

This lack of preference specification leads to a second problem with realist theories—they are unable to predict regime emergence *ex ante*. Without a theory of preferences that lead to the demand, supply, and subsequent emergence of international regimes, realist theories fail to provide a roadmap for predicting likely conditions in the extant international system under which regimes will emerge. In other words, the predictive power of realist theory with respect to regime emergence is low. Nowhere is this problem more apparent than in Donnelly's interpretation of the emergence of the inter-American human rights regime. In order for the regime to emerge, Donnelly argues there must have been some interest in creating it.¹⁸ Structural theory fails to generate a theory of preference formation, rendering it unable to predict or to explain sufficiently the emergence of international regimes and the adoption of international norms.

Collective Benefits

Scholars working in this tradition draw largely from economic theory arguing that benefits of international regimes lie primarily in their ability to alleviate collective action

¹⁸ Donnelly 1986, 625.

problems and market failures.¹⁹ These theories accept realist assumptions that characterize states as egoistic rational actors operating on the basis of their own self interest.²⁰ These theories diverge from realist accounts in their conception of the beneficiaries of international cooperation. All states participating in international institutions are assumed to be rational actors who, by definition, would not participate unless participation increased their utility. Stein (1983) suggests:

Regimes arise because actors forgo independent decision making in order to deal with the dilemmas of common interests and common aversion. They do so in their own self interest, for, in both cases, jointly accessible outcomes are preferable to those that are or might be reached independently. (127)

Collective benefits accounts of institutional emergence and maintenance fly in the face of earlier theories which argue that the primary beneficiaries of international institutions are powerful states.

From this perspective international institutions accomplish three tasks: they overcome information asymmetries between states, reduce transaction costs, and alleviate enforcement problems.²¹ Keohane (1984) argues parallel interests among states are not enough to obtain the maximal benefits that can be obtained through cooperation. Rather, international institutions can take the place of a hegemon and structure state interactions to allow states to extract the greatest possible benefits from cooperation. Abbott and Snidal (1998) argue that centralization is the primary advantage of participation in international institutions. Centralization, they argue, offers a number of benefits to states seeking to achieve a cooperative outcome. Some of these benefits include increases in the

¹⁹ Richards 1999, 5.

²⁰ Stein 1983, 116.

²¹ Keohane 1984, 12-13.

efficiency of state interactions, providing formal structures of representation and voting rules, and maintaining a stable organizational structure over time. International institutions make cooperation more likely by reducing the likelihood of autonomous defection and reducing transaction and information costs between states.²²

The assumption underlying collective benefits accounts of state participation in international institutions is that international institutions are efficient. States participate in international institutions because institutions solve problems states face in attempting to cooperate with one another. The efficiency assumption is problematic because, as Barnett and Finnemore (1999) have recently suggested, international institutions are often pathological, dysfunctional, and anything but efficient. In addition, these theories cannot account for costly actions undertaken by states through multilaterals. Such cooperation can more easily and efficiently be taken through bilateral action. While a desire for efficient interaction may be a necessary condition for state entry into international institutions, it is not sufficient.

In attempting to explain participation in international human rights institutions, theories pointing to the desire for tangible benefits are, for obvious reasons, less than helpful. States rarely gain anything quantifiable by participating in international human rights institutions. In fact states often incur costs, rather than accumulate benefits, from participation. While such theories give us great purchase on understanding cooperation that produces economic benefits, they add little to our knowledge of participation in international human rights institutions.

Domestic Considerations

²² Oye 1986, 20.

The third approach to international institutions highlights the role of domestic actors and interests in framing decisions over participation in international institutions. As a starting point, these theories typically rely on domestic models of regime emergence and state motivations for participation. In his discussion of the emergence of domestic bureaucracies Moe (1990) argues that those who win the right to hold public authority domestically create institutions to lock in their policy preferences and impose their will on the rest of the polity.²³ But domestic explanations for state participation in international regimes need not be policy oriented as Moe suggests. Richards (1995) identifies the electoral benefits accruing to domestic politicians able to recognize constituent demand for state participation in international institutions. When domestic interests demand the creation of or the participation in existing international institutions, election minded politicians attempt to satisfy them. From this perspective, the benefit of creating a new regime or participating in an existing one is determined by domestic political factors.²⁴

Both Moravcsik (2000) and Damrosch (1991) rely on the logic of domestic regime emergence to explain state participation in international human rights regimes. A state's decision to enter into an international human rights regime depends on two considerations: the relative costs of ceding sovereignty and delegating policy autonomy to an international body and the potential benefits of reducing domestic political uncertainty.²⁵ Moravcsik explains that domestic elites are apprehensive about ceding policy autonomy to an international body because such delegation reduces their ability to

²³ Moe 1991, 222

²⁴ North and Weingast 1989.

²⁵ Moravcsik 2000, 227.

make side payments to keep themselves in office.²⁶ Additionally, delegating authority to an international body implies that those unfamiliar with domestic politics, norms, or culture may have final authority over policy decisions.

While working as a constraint on current elites, the attractiveness of international human rights treaties from this perspective is their ability to reduce political uncertainty and lock-in current preferences for future national governments. Indeed, Damrosch argues that this tradeoff between ceding policy autonomy and reducing domestic political uncertainty led the Soviet Union to delegate significant domestic legal authority to a quasi-independent Constitutional Commission.²⁷ Yet, leaders may also choose to retain policy autonomy at the expense of future domestic political certainty. Martin and Sikkink (1993) suggest that if President Carter was truly devoted to state respect for human rights as a lynchpin for foreign policy he would have accepted a transfer of his policy autonomy proposed by Congress.²⁸

Given the costs and benefits of entering into international human rights regimes, Moravcsik argues that newly established and potentially unstable democracies, rather than established democracies or autocracies, will draw the most benefit from a guarantee of domestic political certainty.²⁹ After a transition to democracy when democratic ideals are new or tenuous, the legacy of non-democratic politics may threaten the continued existence of the new regime. In an effort to prevent groups hostile to the new democratic order from capturing the state, the current government enters into an international human rights regime to limit the policy options of future governments. For established

²⁶ Moravcsik 2000, 227.

²⁷ Damrosch 1991, 2324.

²⁸ Martin and Sikkink 1993, 353.

²⁹ Moravcsik 2000, 229.

democracies with entrenched democratic norms, the benefit of policy autonomy, freedom from external constraints, outweighs the accompanying costs of uncertainty.

Dictatorships, Moravcsik argues, are particularly unlikely to support human rights regimes because dictators have no interest in demonstrating their commitment to democratic ideals and are unwilling to accept restrictions on policy autonomy.³⁰

Focusing solely on domestic politics precludes the possibilities for international strategic behavior as a force motivating state entry into international human rights regimes. For example, the European Union continues to delay consideration of Turkey's accession into the body, arguing that Turkey's human rights policies diverge considerably from those of member states.³¹ In an effort to demonstrate that Turkey does indeed place considerable value on human rights and is thus worthy of membership, Turkey signed six of the principal United Nations human rights treaties between January of 1999 and September of 2000.³² Republican liberal theories deny any role for such strategic entry into international human rights regimes and are thus incomplete explanations of state participation.

In testing a competing theory, Simmons (2002) finds a paucity of empirical support for domestic explanations of state support for international human rights treaties. While theoretically satisfying, purely domestic explanations of international outcomes

³⁰ Moravcsik 2000, 229.

³¹ "Turkey Approves Anti Torture Legislation," New York Times Associated Press, December 3, 2002.

³² Turkey signed the International Covenant on Civil and Political Rights (CCPR) in August 2000, the International Convention on Economic, Social and Cultural Rights (CESCR) in August 2000, the Optional Protocol to the Convention on Elimination of all forms of Discrimination Against Women in September of 2000, 2 Optional Protocols to the Convention of the Rights of the Child in September of 2000, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of the Families (MWC) in January of 1999. UN High Commissioner of Refugees, Status of Ratification of the Principal Human Rights Treaties, August 21, 2002.

assign no role for strategic international behavior and find questionable support empirically.

*External Socialization*³³

The final variant of the literature considered here asserts that states enter into international treaties and adopt international human rights norms in response to transnational socialization.³⁴ The mechanism by which transnational socialization occurs is straightforward. Motivated by altruism, norm entrepreneurs work to persuade states to adopt a new norm. Once the new norm has been adopted by a critical mass of states, a norm cascade occurs and those that embrace the norm pressure others to accept it. The result is an internalization of the norm across an international dimension.³⁵ Risse, Rop and Sikkink (1999) argue that the process of transnational socialization includes “strategic bargaining, moral consciousness-raising through argumentative discourse and institutionalization and habitualization.”³⁶

From this perspective, a logic of appropriateness informs state decisions to enter international institutions.³⁷ Rather than embracing a norm as a rational calculation that will achieve a given goal, states embrace norms out of their “desire to conform to shared ideas and norms of behavior.”³⁸ In this respect, preferences and international institutions are mutually constitutive. States, acting as norm entrepreneurs under the constraints of extant institutions, are the originators of norms. Norms in turn shape preferences of other

³³ This account of the socialization literature is somewhat truncated. For an additional variation on this school see Ramirez, Soysal, and Shanahan 1997. Other scholars from this school such as Kaufman and Pape 1999 emphasize the role of domestic civil society in propelling state action.

³⁴ Keck and Sikkink 1998.

³⁵ Finnemore and Sikkink 1998, 895.

³⁶ Quoted from Stewart 2001, 233 in his discussion of Risse, Rop, and Sikkink 1999.

³⁷ March and Olsen 1998.

³⁸ Moravcsik 2000, 224.

states, who in turn embrace and generate new norms and new institutions. Not all states are equally likely to act as norm entrepreneurs. Risse-Kappen (1996) argues that members of the community of liberal democracies are not only less likely to fight each other but are also more likely to create institutions to serve their common interests and ideals.³⁹ Thus, norms of behavior in the international system should be promoted and institutions should be created by established democracies.

Norm entrepreneurs need not necessarily be states. Keck and Sikkink (1998) argue that transnational advocacy networks, on behalf of victims of human rights abuses pressure violating states to change their behavior.⁴⁰ In addition to advocacy networks, much of this literature identifies regional effects in the diffusion of norms, suggesting that the states in a geographic region are influential in determining patterns of appropriate international behavior.⁴¹ Yet, the literature fails to develop a theory to explain observed patterns of regional norm diffusion. The following section attempts to fill this gap in the literature.

Regional Norm Diffusion

Krasner (1983) defines norms as “standards of behavior defined in terms of rights and obligations.”⁴² The theory advanced here distinguishes between two types of norms. Global norms encompass broad understandings among states, including diplomatic immunity, sovereignty, and free trade.⁴³ Regional norms incorporate understandings

³⁹ Risse-Kappen 1996, 397.

⁴⁰ Keck and Sikkink 1998, 13.

⁴¹ Simmons 2001, 2002, Simmons and Elkins 2003.

⁴² Krasner 1983, 2.

⁴³ Cortell and Davis 1996, 452.

among states that are specific to a given region. For example, ASEAN members practice noninterference—avoiding intrusion in the domestic affairs of other member states.⁴⁴

In attempting to explain state participation in international institutions, a growing body of literature identifies strong regional effects across a wide range of issue areas. Many scholars tend to focus on state commitment to or deviation from a single international standard of behavior. Such explanations are limited because they fail to point to the presence of various regional norms. Kaufman and Pape (1999) detail the efforts of the British in advancing a global norm against participation in the slave trade. This type of analysis fails to consider systematic differences across regions.

However, a small group of scholars have recently attempted both to identify and explain cross regional variance over a wide range of issue areas. Simmons (2000) considers the trend toward legalization in international monetary affairs. She demonstrates that states participate in and comply with Article VIII of the International Monetary Fund in order to “avoid reputational costs associated with renegeing on a legal obligation.”⁴⁵ She finds that regional relationships are particularly salient with respect to participation and compliance with the IMF. For every 10 percent increase in regional acceptance of Article VIII, a state is 49 percent more likely to participate.⁴⁶ Simmons and Elkins (2003) demonstrate an increase in global liberalization of the current account, capital account, and exchange rate regime over time. They argue that this trend toward liberalization is explained by two factors—competitive economic pressures and emulation of states with a similar religious background.

⁴⁴ Vatikiotis 1996, 23.

⁴⁵ Simmons 2000, 308

⁴⁶ Ibid, 323.

Regional pressures also influence a government's decision to adopt democracy. O'Loughlin et al. (1998) find that in the post 1960 era states with similar regime types have tended to cluster in large regional masses over time.⁴⁷ They argue that diffusion among geographically proximate states influences a state's choice of regime type. This finding runs counter to Huntington's third wave of democracy and suggests that regional influences, rather than a blanket global trend explain the increase in democracy over time.

Simmons (2002) considers participation in the International Covenant on Civil and Political Rights (ICCPR), what she terms the "core" United Nations human rights treaties. Again, she finds strong regional effects and points to the role of norm diffusion to explain state acceptance of the ICCPR treaties. Unable to expand Moravcsik's democratic lock-in hypothesis, she argues that regional socialization and the history of respect for the domestic rule of law conditions participation in the ICCPR.

This body of scholarship points to the role of regional variables in explaining state behavior across a wide range of issue areas. Following this tradition, I argue that regional norms influence a state's decision to participate in global human rights institutions. If regional influences are indeed present, we should expect to see homogenous preferences within regions and variations across regions.

Prima facia evidence suggests the existence of distinct regional norms with respect to standards of state respect for human rights. Western European states, for example, have consistently complied with decisions handed down by the European Court

⁴⁷ O'Loughlin, Ward, Lordahl, Cohen, Brown, Reilly and Gleditsch 1998, 563.

of Human Rights (ECHR).⁴⁸ Since 1968, the ECHR has documented 294 instances of reparations paid to victims and adjustments of domestic law in direct response to rulings handed down by the Court.⁴⁹ Widespread compliance with the rulings of the ECHR constitutes a uniquely Western European commitment to respect for human rights. In contrast, Asia has yet to develop a regional supervisory mechanism for the protection of human rights. Despite numerous attempts by the United Nations, nongovernmental organizations, and states in the region, little progress has been made on a regional supervisory mechanism for the protection of human rights in Asia.⁵⁰ Regional norms of state respect for human rights differ markedly between Western Europe and Asia.

Variations in regional norms of state respect for human rights help to explain participation in global human rights institutions. Where strong norms of state respect for human rights dominate, I expect to find high rates of ratification of global human rights institutions. Cross regional variation in state respect for human rights should correlate with patterns of participation in global human rights institutions.

The mechanism by which states are pressured to commit to global institutions is explained by regional norm diffusion. Constructivist accounts of norm internalization rely on a norm entrepreneur to initiate the push for normative change, a critical mass of actors to embrace the change, followed by internalization of the norm throughout the

⁴⁸ I would like to thank an anonymous referee for pointing this out.

⁴⁹ For a detailed list of state actions in response to ECHR judgments see: <http://www.echr.coe.int/Eng/EDocs/EffectsOfJudgments.html>.

⁵⁰ Again, I would like to thank an anonymous referee for pointing this out. For an interesting discussion of the various attempts to create a regional supervisory mechanism for the protection of human rights in Asia see Hashimoto 2004, 112-123.

population of actors.⁵¹ Contra constructivist assertions, I argue that this norm diffusion occurs regionally, rather than internationally.

These expectations generate two testable hypotheses. First, where regional norms of state respect for human rights are identified, we should see high levels of state ratification of global human rights institutions. Because a direct measure of regional norms of human rights does not exist I use a number of proxy variables to identify regional patterns. These variables include state respect for the domestic rule of law, strength of democratic institutions, depth of the regional human rights regimes, and recent patterns of state respect for human rights. Where regional scores on these variables cluster, we should see homogenous preferences over ratification of global human rights institutions. Second, to test for the influence of regional norm diffusion specific to the ICC, I follow Simmons (2002) and construct a variable to measure the proportion of states in ones region that have already committed to the institution. A State will be more inclined to commit to a global human rights institution when others in its region have committed. If this variable is a significant predictor of state ratification, this variable will indicate the influence of regional norm diffusion.

Much like the constructivist norm diffusion argument, my explanation assumes an underlying logic of appropriateness, rather than a logic of consequences.⁵² The commitment literature identifies strong regional effects but fails to point to the presence of various regional standards of behavior. If such diverse standards exist, we should see relative homogeneity of preferences with respect to international commitments within regions and heterogeneity of preferences across regions.

⁵¹ Finnemore and Sikkink 1998, Laitin 1998.

⁵² March and Olsen 1998, Kranser 1999.

This theory diverges from the constructivist argument in scope. Constructivists point to transnational socialization to explain state commitments to international institutions.⁵³ However, recent literature encourages the investigation of norm diffusion at lower systemic levels.⁵⁴ States do not become socialized to acceptable patterns of behavior exclusively from international norm entrepreneurs. The origin of norms and socialization of acceptable patterns of behavior must be conceived of as a continuum devolving from international, to regional, to state, and eventually to the level of sub-national politics. This paper's analysis focuses on norms generated at the regional level.

Research Design

The creation of a permanent ICC was originally delegated to the International Law Commission by the United Nations General Assembly in April 1989. After nearly a decade of preparation, the United Nations Conference on Plenipotentiaries on the Establishment of an International Criminal Court took place in Rome, Italy. On July 17, 1998 the Conference voted to adopt the Convention on the Establishment of the International Criminal Court. States have had the opportunity to sign and ratify the Convention since this time. The Rome Statute of the International Criminal Court entered into force on July 1, 2002 after the 60th ratification took place.⁵⁵

What motivates states ratification of the ICC? To test among the four competing hypotheses for state commitments to international human rights institutions, I employ a standard probit regression and control for robust standard errors. All regressions are run

⁵³ Risse, Rop, and Sikkink 1999.

⁵⁴ Simmons 2001, 2002, Simmons and Elkins 2003, Lutz and Sikkink 2001.

⁵⁵ Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 17 July 1998.

with the `dprobit` function in STATA, which reports the slope coefficients. CLARIFY is then used to interpret the probit regression results.

Variables

The dependent variable for all of the regressions is state ratification of the ICC. A series of control variables and the regional diffusion variable are presented in the following section.

Realist theory suggests that strong states will dictate policy for weaker states. In the extant international system, there appear to be only two powers capable of such coercion, the United States and the European Union. Conveniently, the United States has vehemently objected to the jurisdiction of the International Criminal Court, while nearly every member of the European Union has embraced the Court's jurisdiction.⁵⁶ If realist assertions are correct, these two powers should create spheres of influence and force policies in line with their own on weaker states.⁵⁷

To account for this possibility I measure the proportion of trade for each country with both the European Union and the United States as a proportion of GDP in the year before a country ratified the ICC.⁵⁸ These variables are labeled *GDPtrdEU* and *GDPtrdUS*, respectively. This will indicate the relative importance of trade with the great powers for the individual country and hence their likelihood to conform to the policies of the stronger states regarding the ICC.

⁵⁶ See Table 2.

⁵⁷ I focus here on the bilateral trade relationship between a given state and the United States. Other variables, such as bilateral military and political alliances, may also be important in explaining a state's decision to ratify. While beyond the scope of the current project, these variables may be important avenues for further research. Additionally, further research might examine the effect of civil, regional, and extra-territorial conflict on ratification.

⁵⁸ This data comes from the Direction of Trade statistics database (DOT). For states that have not yet ratified the ICC scores were generated using 1999 as the default year.

Republican liberal explanations for state commitments to international institutions suggest that threats to democracy increase the likelihood of the current government tying their own hands in an effort to lock-in democratic policies. Thus, where there is instability (newly established or particularly volatile democracies) states should commit to international institutions. Where democratic ideals are stable and entrenched (established democracies), we should see state rejection of international institutions. In addition, where democratic norms are rejected (autocracies), states should refrain from committing to international institutions. The polity score for each country in the year before ratification of the ICC is used to differentiate between democracies and autocracies.⁵⁹ To capture democratic stability I use the standard deviation of the mean polity score since 1945 or the date the country was established.⁶⁰ This variable is labeled *PolityStdev* in the regression.

To test constructivist arguments relating to the international diffusion of norms, dummy variables are created for each of the three principal United Nations human rights treaties.⁶¹ Constructivists suggest that if states have signed on to all or most of these treaties they have been effectively socialized by the international system and will be more likely to ratify the ICC.

Eight regional dummies are included to test the effect of region on a state's likelihood of ratifying the ICC. World Bank classifications are used to delineate geographic regions.

⁵⁹ For states that did not ratify the ICC, I use 1999 as the default year. This data comes from the Polity IV data set and can be accessed at <http://www.cidcm.umd.edu/inscr/polity/>.

⁶⁰ Simmons 2002 uses this variable to capture the republican liberal argument in her discussion of the International Convention on Civil and Political Rights.

⁶¹ The Office of the United Nations High Commissioner of Human Rights published this data in the *2002 Status of Ratification of the Principal International Human Rights Treaties*. This source can be obtained at <http://www.unhcr.ch/pdf/report.pdf>.

To test the regional diffusion argument a variable measuring the proportion of states that have ratified the ICC within the region is generated. This variable operationalizes regional norms of ICC ratification. As this proportion increases, the likelihood of state ratification of the International Criminal Court should also increase. This variable is labeled *PropRegSig* in the regression.

In order to test for the effect of other regional norms on a state's decision to ratify the ICC, I include four proxy variables to identify intra-regional patterns of state respect for human rights.

First, I include the World Bank measure of the domestic rule of law for all countries between 1997-98. This variable tests whether a strong domestic rule of law makes states more likely to ratify the ICC. The intuition is straight forward—if states respect the rule of law then they will use their existing court system to try those accused of human rights abuses domestically. Hence these states should be more likely to ratify the ICC because they are unlikely ever to be dragged before the court. Scores on this variable range from -2 (extremely weak rule of law) to +2 (strong rule of law). To test for regional clustering of rule of law scores, *RegionalRol* measures the proportion of states in a region that score above zero on this variable.

The second variable used to test for the presence of regional norms of state respect for human rights is Amnesty International's scoring of human rights abuses in each country. This data is available for 1990 through 1993. While an ideal measure would include the years just prior to state ratification of the ICC, using the available data allows for the consideration of a state's recent history of human rights abuses. I take the average score on this variable for each country between 1990 and 1993 which range

between 1 (no human rights abuses) to 5 (high levels of human rights abuse). To test for regional clustering on this variable, I measure the proportion of states in a region that have received a score greater than two, indicating the presence of state abuse of human rights. This variable is denoted *RegionalAmnestyScore* in the regression.

Some regions have developed their own regional courts to monitor and punish human rights abuses. For regions that have not developed a regional court, a score of zero is assigned. For regions that have developed a court but have yet to decide a case, a score of one is assigned. Where these courts hear on average, between 1 and 1,000 cases per year a score of two is assigned. A score of 3 indicates a regional court that hears more than 1,000 cases per year. I label this variable *RegionalHRRegime*

Finally, using polity scores I develop a variable to test for regional clustering of democracy. Polity scores range from -10 (very autocratic) to + 10 (very democratic). I measure the proportion of states in the region that have a polity score greater than zero. This variable is labeled *RegionalDemScore*.

Findings

Table 1 presents the results of all of the regressions.⁶² To avoid problems of multicollinearity, regional dummies are left out of the restricted regression and are dealt with in additional tests. The first regression (model 1) is designed to test the impact of the regional norm diffusion variable on the likelihood of ratification of the ICC, while controlling for the effects of republican liberal, realist, and constructivist variables. Neither of the realist trade variables have significant coefficients, suggesting that, with respect to the ICC a state's decision to ratify is independent of superpower coercion.

⁶² All of the following results are interpreted with CLARIFY and are all significant at the 5% level.

Republican-liberal tests find more support in the results. The polity score has a significant effect on a state's likelihood of ratification. The standard deviation of the polity score, designed to test regime volatility, is also significant. This is somewhat surprising given the lack of support that Simmons (2002) finds for these variables in her study of the ICCPR.

Constructivist variables find no support in the regression, suggesting that states that have signed onto these three treaties are no more likely to ratify the ICC than those that have not.⁶³

The test of regional norm diffusion, the proportion of states in a given region that have already ratified the ICC, is significant. Changes in the value of *PropRegSig* impact the likelihood of ratifying the ICC in the expected direction. For example, moving from the 50th to the 75th percentile of *PropRegSig* alters the predicted likelihood of ratification from 47.7% to 58.0%.

Polity and *PropRegSig* have similar impacts on the likelihood of ratification when the values on these variables are low. For example, when a state's polity score increases from the 10th to the 50th percentile (very autocratic to moderately democratic) the likelihood of ratification of the ICC increases by 33.7%. Similarly, when a state's regional rate of ratification of the ICC increases from the 10th to the 50th percentile the state is 30.8% more likely to ratify. Yet, the impact of high regional rate of ratification is greater than the impact of high polity scores. When a state moves from the 50th to the 90th percentile of polity scores (moderately democratic to extremely democratic) its

⁶³ These treaties are The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (MWC), The International Covenant on Civil and Political Rights (ICCPR).

likelihood of ratification is increased by 10.9%. In contrast, when a state's region moves from the 50th to the 90th percentile of ratification, the state is 44.1% more likely to ratify the ICC.

These findings suggest that the impact of regional norm diffusion is consistent across various rates of regional ratification. In contrast, polity scores are not consistent across the distribution. These scores have a stronger impact on the likelihood of ratification at the low end of the distribution. The impact of moving from -10 to zero on the polity scale is far greater than the impact of moving from zero to +10. The polity score tells us less about why relatively democratic regimes ratify the ICC than why relatively autocratic regimes choose to ratify. The impact of regional ratification on a state's decision to ratify is both strong and consistent for regions with high or low rates of ratification. The results of the first regression, although corroborating republican liberal arguments also lend support to regional diffusion.

The second set of regressions is presented in Table 1 and consists of models 2-6. These demonstrate the effect of region on the dependent variable and will be discussed in conjunction with Table 2, which lists the regional percentage of ratification. This table is presented to demonstrate the patterns of ratification across regions. Consistent with the results obtained in model 1, the strength of the regional norm diffusion variable is found to be a strong and significant predictor of state ratification of the ICC in all of the models. Polity scores, while also significant are strong predictors of ratification only where democracy is weak or non-existent.⁶⁴

⁶⁴ In order to confirm this I used CLARIFY to compute first differences in both *polity score* and *propregsig* in all of the models.

Two methodological points are in order. First, I control for the effects of region by running one regional dummy at a time against the realist, republican liberal, constructivist, and regional diffusion variables. Second, North America, South Asia, and Western Europe demonstrate a lack of variation on the dependent variable and are considered qualitatively rather than included in the regressions.⁶⁵

South Asia is especially interesting. The South Asian region has seven observations and perfect homogeneity of preferences with respect to the ICC within the region. These states have consistently failed to ratify the ICC, perhaps suggesting the existence of a regional norm of resisting delegation to supranational institutions. Kahler (2001) suggests that the Asian-Pacific region, in contrast to North America and Western Europe demonstrate “an explicit aversion to legalization,” which is dependent upon the strategic context. These states tend to rely on a blend of consultation and consensus to resolve disputes.⁶⁶ While his findings are not specific to South Asia, they suggest the existence of a regional norm of aversion to international delegation.

The rate of ratification of the ICC in the Middle East and North Africa is very low, 10.5 percent. Only two of nineteen states have ratified the treaty. While this regional dummy does not come up significant in model 2, the regional diffusion variable is significant and has a strong positive effect on a state’s likelihood of ratifying the ICC. The Middle East and North Africa fit neatly into the expectations of the theory of regional norm diffusion. First, the lack of state commitment to the ICC in this region demonstrates a regional norm of resistance to international institutional delegation. While an underlying assumption in the international human rights literature points to state

⁶⁵ See Table 3 for the percentage of signatories by region.

⁶⁶ Kahler 2001, 165.

acceptance of liberal democratic values through socialization, this push may drive states in the other ideological direction.⁶⁷ This norm may encourage them to resist, rather than accept, international human rights norms. Second, rather than any specific regional characteristic, the likelihood that any individual state will ratify is a function of the number of states in their region that have already ratified. In essence, the regional norm diffusion in the Middle East and North Africa may cut the other way, encouraging states to resist, rather than to accept new international obligations. Drawing any methodologically sound results from North America is difficult since this region consists of only three states. While the United States and Mexico have resisted ratification of the ICC, Canada was one of the first in the world to ratify the treaty in January of 2000. STATA drops the North America dummy from any regression as a near perfect predictor of failure on the dependent variable.

East Asia and the Pacific, Sub Saharan Africa, Latin America and the Caribbean, and East Europe and Central Asia have middle range proportions of state acceptance of the ICC. In contrast to the regional dummy variables, the coefficient for the regional diffusion variable in models 2-5 is consistently strong and significant. These findings are consistent with the theory of regional norm diffusion. Ratification decisions should be influenced by the strength of regional norms, not just geographic location.

With the exception of Monaco, all states in Western Europe have ratified the ICC. The Western Europe dummy is dropped by STATA because being in Western Europe is a near perfect predictor of successful ratification of the ICC. The near perfect homogeneity of preferences among Western European countries supports the regional norm diffusion

⁶⁷ Keck and Sikkink 1998, Risse-Rop, and Sikkink 1999

argument presented above. A consideration of the timing of state entry into the ICC lends additional support to the regional norm diffusion prediction. Italy was the first state in Western Europe, and the third state in the world to join the ICC in July 1999. Nine more Western European countries joined in 2000 with the vast majority following suit in 2001. Once half of the states in the region accepted jurisdiction, a swift cascade occurred resulting in a 95.2% rate of acceptance.

The third test is designed to assess the impact of other regional norms on a state's decision to ratify the ICC, the results refer to Model 7 in Table 1. I include the regional norm variables, regional rule of law, regional Amnesty International score, regional democracy, and regional human rights regime in the regression. Yet, because these variables may be highly correlated, a variance inflation factor test is run to determine if multicollinearity among the variables is problematic. Out of a possible score of 20, which implies perfect collinearity among the independent variables, the four regional variables score a 4.74. This score suggests that while these variables are somewhat correlated, they can still generate reliable results.

Again the polity scores are significant, suggesting that a state's level of democracy influences its decision to ratify the ICC. Neither realist nor constructivist variables are found to be significant. Contrary to the expectations of the theory advanced here, the regional democracy score was not a significant predictor of ratification of the ICC. Regional democratic clustering does not correlate with a decision to ratify the ICC.

The regional rule of law score is a significant predictor of ratification of the ICC. In order to assess the impact of regional rule of law on state ratification of the ICC, I use CLARIFY to calculate the first differences between various regional rule of law scores.

Regions with high rule of law scores are more likely to ratify the ICC than regions with moderately high, medium, or low rule of law scores. For example, states in Europe are 29.2% more likely to ratify the ICC than states in the Middle East and North Africa based solely on their rule of law scores.

The regional Amnesty International score for past human rights abuses is also a significant predictor of state ratification of the ICC. Recall that a high score on this variable indicates that a state has had a history of past human rights abuses. If past human rights abuses do indeed make a state less likely to ratify the ICC, then the coefficient should be negative. The regressions confirm this expectation. States in regions with few human rights violations are more likely to ratify the ICC than states in regions with more human rights violations. In regions with low levels of human rights violations, such as Europe, states are 6.14% more likely to ratify than regions with slightly higher levels of human rights abuses, such as Europe/Central Asia. As the regional abuse of human rights increases the additional impact on state ratification diminishes but is still positive. This suggests that the marginal impact of human rights abuses is largest in regions with medium levels of human rights abuses and trails off where state abuse of human rights is either extremely high or extremely low.

The regional human rights regime variable is both a strong and significant predictor of state ratification of the ICC. The empirical results suggest that states in regions that have expended the effort to at least put a regional human rights court on paper are 47.8% more likely to ratify the ICC than those regions that have not.⁶⁸ States in regions that have developed a regional human rights court that try fewer than 1,000 cases

⁶⁸ First differences computed using CLARIFY and are all significant at the 5% level.

per year are 20.2% more likely to ratify the ICC than states in regions with non-functioning courts. The final first difference considers the impact of courts hearing more than 1,000 cases per year. States in regions with well functioning courts are 4.1% more likely to ratify the ICC than states in regions with courts that hear fewer cases per year. This suggests that regional human rights courts and global human rights courts are complementary. States in regions with a norm of delegation to regional supranational institutions are more likely to delegate to a global human rights institution.

Taken together the results of the models considered here suggest that regional norms affect a state's decision to ratify the ICC. Ratification of the ICC is most likely where states are inclined to respect the rule of law, disinclined to violate their citizens human rights, and willing both to create and employ regional human rights courts. States that do not respect the rule of law, tend to violate their citizens human rights, and have not created a regional human rights court are significantly less likely to have ratified the ICC. The results of the first model suggest that these effects are largely due to regional norm diffusion.

Conclusion

The variation across regions in acceptance of the ICC supports the influence of regional norms. The extreme cases such as South Asia and Western Europe demonstrate that there are significant policy differences across regions as well as the potential for homogeneity of preferences within regions. Republican-liberal explanations of state ratification of the ICC cannot be discounted. While the observed effects are small, the results suggest that domestic threats to democracy and regime type matter with respect to state decisions to enter international human rights institutions.

The findings obtained here suggest that norms that are directly related to accepting the jurisdiction of an international criminal court have greater effects on a state's decision to ratify the ICC than those indirectly related. A norm of regional disregard for human rights will directly influence a state's decision to ratify the ICC because the ICC will have jurisdiction over previous violations. Norms of regional respect for the rule of law will make individual states more likely to ratify the ICC because they already heed their own domestic human rights laws. This commitment to human rights laws makes the decision to commitment to a global institution less costly. Similarly, regional courts tend to be complements rather than substitutes for global human rights institutions. This suggests an underlying norm of supranational delegation that extends to both regional and global institutions.

In examining the paradox of state acceptance of human rights obligations, much of the existing literature points to transnational socialization as a likely cause. While authors have consistently identified regional effects, they have largely failed to explain how or why regional influences function. With strong initial support, this examination contributes to the development of the human rights literature by offering a possible mechanism through which regional norms influence state acceptance of international institutions.

Table 1*Dependent Variable: State ratification of the ICC*

Variables	Model 1 Regional Norm Diffusion	Model 2 Middle East & North Africa	Model 3 Sub Saharan Africa	Model 4 East Asia & Pacific	Model 5 Latin America & Caribbean	Model 6 Europe & Central Asia	Model 7 Regional HR Norms
<i>CCPRrat</i>	.002 (.989)	.009 (.05)*	-.029 (.849)	-.014 -(.07)	.009 (.967)	.001 (.996)	-.046 (.787)
<i>CATrat</i>	.171 (.308)	.17 (1.03)	.17 (.339)	.163 (.95)	.168 (.322)	.217 (1.27)	.166 (.276)
<i>MWCrat</i>	-.010 (.939)	.003 (.02)*	-.008 (.953)	-.141 -(.10)	-.003 (.980)	-.021 (-.16)	-.004 (.787)
<i>PolityStDev</i>	.058 (.012)*	.063 (.011)*	.54 (.043)*	.058 (.013)*	.060 (.014)*	.049 (.026)*	.051 (.018)*
<i>Polity</i>	.029 (.005)**	.030 (.005)**	.34 (.007)**	.029 (.005)**	.030 (.005)**	.030 (.004)**	.034 (.001)***
<i>GDPtrdEU</i>	.004 (.114)	.003 (.235)	.004 (.141)	.004 (.121)	.004 (.149)	.005 (1.75)	.002 (.305)
<i>GDPtrdUS</i>	-.003 (.444)	-.003 (.483)	-.002 (.479)	-.003 (.445)	-.002 (.564)	-.004 (.314)	-.001 (.642)
<i>PropRegSig</i>	.011 (.001)***	.016 (.000)**	.011 (.001)***	.0115 (.000)***	.0117 (.000)***	.012 (.000)***	-
<i>MidEastNA frca</i>	-	.369 (.088)	-	-	-	-	-
<i>SubSahara Afr</i>	-	-	.136 (.323)	-	-	-	-
<i>LnAmCarr</i>	-	-	-	-	-.057 (.739)	-	-
<i>EuroCntrlA</i>	-	-	-	-	-	-.221 (.119)	-
<i>EastAsiaPa</i>	-	-	-	-.058 (.757)	-	-	-
<i>RegionalRo l</i>	-	-	-	-	-	-	.010 (.018)*
<i>RegionalA mnesty Score</i>	-	-	-	-	-	-	-.041 (.008)**
<i>RegionalDe m Score</i>	-	-	-	-	-	-	-.024 (.012)*
<i>Regional HR Regime</i>	-	-	-	-	-	-	.449 (.005)**
Log likelihood	-56.957	-55.899	-56.459	-56.899	-56.905	-55.877	-54.504
Number of observation	129	129	129	129	129	129	129
Wald Chi(2)	54.34	78.48	49.43	56.74	53.66	47.32	78.48
Probability >Chi(2)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Pseudo R2	.362	.3746	.3683	.3634	.3633	.3748	.3746

Table 2

Region	Percent of Signatories	No of Observations
South Asia	0	7
Middle East & North Africa	10.5	19
North America	33	3
East Asia & Pacific Rim	40.9	22
Sub Saharan Africa	44.6	47
Latin America	50	32
Eastern Europe & Central Asia	53.5	28
Western Europe	95.2	21

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