

The Politics of Punishment: Why Dictators Join the International Criminal Court*

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Abstract

Scholars commonly argue that international law and organizations promote democracy by helping dictators to credibly commit to accountability, individual rights, and transparency. Yet dictators routinely join treaties and international organizations without transitioning to democracy. International law and organizations can generate asymmetric costs on domestic actors because international rules often apply to both governments and non-state actors, yet dictators can limit how these rules are upheld at the domestic and international level. We argue that dictators are most likely to join such treaties and international organizations when they face strong domestic political competition. We illustrate our argument using the International Criminal Court (ICC), which has extensive powers to prosecute individuals for international crimes, including crimes against humanity, genocide, and war crimes. We show that ICC investigations and prosecutions have become a tool for incumbent dictators to target their domestic opponents. We examine the implications of our theory for multiple outcome variables, including the decision to join the ICC, violence, and the survival of dictators in power. Our evidence suggests that dictators are most likely to join the ICC when they face strong political opponents and are subsequently less likely to commit violence and more likely to survive in office.

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1 Introduction

In January 2004, an unlikely alliance was presented to the world in a London press conference. Luis Moreno-Ocampo, the Prosecutor of the International Criminal Court, announced that he was opening a preliminary examination into crimes in Uganda. Standing by his side was Yoweri Museveni, Uganda's dictator and leader of a military that committed international crimes throughout central Africa. Surprisingly, Moreno-Ocampo announced that Museveni had formally requested the Court to intervene in Uganda. Casual observers could easily have been puzzled by this press conference. Was Museveni asking for his own arrest and imprisonment? Was Museveni trying to democratize and promote human rights?

Scholars commonly argue that international law and organizations promote democracy. They believe that institutions like the International Criminal Court allow dictators to credibly commit to democratization and values like government accountability, individual rights, and transparency (Hafner-Burton, Mansfield and Pevehouse, 2015; Keck and Sikkink, 1998; Moravcsik, 2000; Simmons, 2009). Yet dictators often join and participate in international law and organizations, and decades of globalization have led to widespread democratic backsliding (Ginsburg, 2020; Waldner and Lust, 2018). Why do so many leaders who commit severe atrocities against their people belong to treaties and international organizations that aim to prohibit and punish such atrocities? Might international law and organizations sometimes erode democratic pressures and allow dictators to preserve their hold on power?

We argue that international law and organizations often impose asymmetric costs on dictators. Many international laws and organizations establish rules that apply to both governments and non-state actors. Yet dictators can limit how these rules are upheld at the domestic and international level. By exerting control over judges, legislators, reporters, and civil society, dictators can limit how and when violations of international rules are documented, publicized, and punished. While international law and organizations create legal obligations for governments, dictators can shield themselves from accountability while simultaneously using international law and organizations to punish their opponents. In such circumstances, the act of joining a treaty and participating in an international organization will increase the political power of a dictator relative to his domestic opponents.

We argue that a dictator is most likely to join treaties and participate in international organizations that generate asymmetric costs when he faces high political competition, which makes the use of violence relatively costly. In such circumstances, a dictator has incentive to

try to increase his relative political power by generating asymmetric costs for violence. In contrast, when the dictator faces low political competition, the use of violence is relatively cheap. Because the dictator is already relatively strong, he has little incentive to increase his power further using international law and organizations. This theoretical mechanism affects which dictatorships select into treaties and international organizations, how domestic actors behave after a dictator has selected into these institutions, and the likelihood that an incumbent dictator survives in power. Our theoretical argument is supported by a formal model to ensure its internal consistency and robustness.

We test our broad theoretical argument in the context of the International Criminal Court (ICC) using mixed methods. First, we illustrate the plausibility of our assumptions about asymmetric costs in dictatorships by including qualitative vignettes of multiple ICC investigations, arrest warrants, and prosecutions. Second, we perform statistical analysis to examine whether the empirical implications of our theoretical model are supported by cross-national time-series data. These tests examine three distinct outcome variables: when dictators join the ICC; the impact of ICC membership on total violence within dictatorships; and the survival of incumbent dictators in office. While each of these methodologies has inherent limits, we believe that the combination of these different methods yields compelling support for our argument.

Our argument suggests that international law and organizations have important normative implications that have been under-explored by prior research. First, asymmetric costs challenge the ICC's claims to be an impartial and neutral actor, which is key to a court's public support (Nalepa, 2012; Zvobgo, 2019). Continued use of the ICC by autocrats to punish their political rivals may therefore reduce the ICC's ability to survive over time. Second, our argument and evidence suggest that the overall effect of international law and organizations will sometimes be the consolidation of power by dictators and democratic backsliding, despite the best intentions and efforts of civil society and international bureaucrats and lawyers. Advocates of international cooperation must carefully consider whether such international cooperation actually benefits domestic societies.

2 Dictators and International Justice

As background for our argument, we begin by discussing why dictators use international law. We first examine general arguments about why treaties and international organizations matter, and then summarize major accounts of the domestic politics of dictatorship. We then narrow our focus to the International Criminal Court. Namely, we describe how ICC investigations and

prosecutions generate asymmetric costs within dictatorships and illustrate these processes using case study vignettes.

2.1 Dictators and International Law

Many scholars have examined the creation and use of international law and organizations by strategic actors (Johns, 2015). Broadly speaking, this research emphasizes three key complementary (and often overlapping) ways that treaties and international organizations influence international politics.

First, many scholars argue that treaties and international organizations serve as commitment devices. International law may allow a government to credibly commit that it will follow a particular rule by imposing costs if the government violates that rule. Law may thus constrain the choices of both incumbent and future governments (Simmons, 2009; Moravcsik, 2000). For example, Simmons and Danner (2010) argue that joining the ICC is a mechanism for self-binding, leading to reduced violence after ratification. This argument is supported by additional studies about the impact of ICC membership and prosecutions on domestic violence and prosecutions (Appel, 2018; Bates, 2021; Hillebrecht, 2016*a*). However, experts debate whether ICC membership will shorten or prolong the rule of leaders who have already committed crimes, and hence are unwilling to step down from power (Gilligan, 2006; Krcmaric, 2018; Prorok, 2017; Nalepa and Powell, 2016).

Second, many scholars argue that treaties and international organizations are tools that governments use to signal information to domestic and international audiences. This information can include a government's willingness to challenge its political opponents (Hollyer and Rosendorff, 2011) or its commitment to values like democracy and human rights (Jo, 2015; Jo and Thomson, 2014; Stanton, 2016). International organizations can play a similar role by revealing information about a government's behavior (Terman and Voeten, 2018). Of course, states may sometimes be insincere in the signals that they send to audiences. Scholars usually argue that insincerity will be most likely if treaties and international organizations impose relatively low costs on states (Smith-Cannoy, 2012; Vreeland, 2008). For example, some scholars argue that the International Criminal Court imposes relatively low costs on dictators because these leaders can limit ICC investigations, arrests, and prosecutions (Hashimoto, 2020; Meernik, 2015).

Third, some scholars argue that international law facilitates enforcement by communities of disinterested actors. Such multilateral enforcement is most challenging in large communities of actors (Milgrom, North and Weingast, 1990). By setting clear rules about how states should behave

and publicizing when states break these rules, international law can help states to craft multilateral solutions for bilateral disputes (Johns, 2012). Enforcement communities can be created by military alliances, trade agreements, and foreign capital flows (Appel and Prorok, 2019; Goodliffe et al., 2012; Prorok and Appel, 2013).

The impact of these three mechanisms—credible commitment, signaling, and coordination—is affected by the regime-type of states. A growing body of scholarship has examined how the International Criminal Court can affect domestic public attitudes and political outcomes (Chaudoin and Chapman, 2020; Chaudoin, 2016; Zvobgo, 2019). These studies have largely focused on democracies, in which representative governance, alternation in political power by competing groups, and independent judiciaries affect the ICC’s activities. However, an understanding of the ICC’s impact within dictatorships requires that we understand the tools that dictators use to maintain their power.

While scholars debate the central meaning of democracy, they generally agree that democracies are states with well-consolidated institutions that provide representative governance, allow multiple political parties, and protect basic civil and political rights. Przeworski (1999) argues compellingly that the key unifying characteristic of democracies is competitive elections that can result in peaceful transitions of political power. We accordingly use a minimalist conception of a “dictatorship” as a political regime that preserves “power by means other than competitive elections” (Gandhi, 2008, 7).¹ This includes a broad range of institutional arrangements, including monarchies, military rulers, and civilian autocrats.

A fundamental problem faced by dictators is how to maintain their survival in power given the resources available to them (Bueno De Mesquita et al., 2003). At the domestic level, dictators often rely on the threat or use of repression and violence to maintain their power (Conrad and Ritter, 2013; Tyson and Smith, 2018). Such repression often includes violations of basic civil and political rights by government actors, including the military, police, and domestic courts (Shen-Bayh, 2018). Repression also often includes more serious violations of physical autonomy, like killings, sexual violence, and torture (Davenport, 2007; Conrad and Ritter, 2019). These tactics often qualify as serious international crimes that can be punished by the ICC.

Dictators can also use their control over information to help them survive in office (Hollyer, Rosendorff and Vreeland, 2011). This control is more easily accomplished when a dictator has less political competition, as reflected in control over state media, prohibition of opposition political

¹We discuss how we measure regime-type in Section 4.

parties, and weak or non-existent constraints on executive authority. Control over information limits the ability of opponents to solve collective action problems (Edmond, 2013). It also limits the knowledge of average individuals about the content and quality of government policies (Gehlbach and Sonin, 2014).

A third tool for maintaining domestic power is rents. For example, dictators may be able to buy political support by selectively taxing and redistributing wealth within their states (Acemoglu and Robinson, 2001; Bueno De Mesquita et al., 2003). Alternatively, some dictators can survive in power by distributing natural resource wealth to the governing elite (Ross, 2012). Many dictators also channel external financial assistance—like foreign aid and development assistance—to reward their political supporters and prolong their survival (Bueno De Mesquita and Smith, 2010; Smith and Vreeland, 2006).

Finally, dictators can sometimes create and use domestic institutions to help them survive in office. For example, scholars have examined how dictators build and maintain elite support by sharing power within legislatures (Gandhi, 2008). Dictators can also share power using advisory councils, cabinet positions, controlled elections, and/or multiple political parties (Arriola, Devaro and Meng, 2021; Boix and Svulik, 2013; Magaloni, 2006, 2008). Finally, economic agencies that disseminate credible economic information can help dictators to maintain elite support (Hollyer, Rosendorff and Vreeland, 2019). Such arrangements help members of the elite to solve underlying strategic problems, like asymmetric information, collective action, commitment problems, guardianship dilemmas, and monitoring problems (Meng, 2020; Meng and Paine, Forthcoming; Svulik, 2012). These arrangements can also bolster a dictators power by fragmenting any possible political opposition (Arriola, Devaro and Meng, 2021).

Most scholars have argued that international institutions—including treaties and international organizations—harm the survival of dictators. For example, many scholars argue that human rights treaties fuel democratization by either empowering domestic civil society or “locking-in” basic rights for individuals, like physical autonomy and freedoms of expression and association (Simmons, 2009; Moravcsik, 2000). Similarly, many empirical scholars have identified a robust relationship between democratic governance and participation in regional and international organizations (e.g. Pevehouse, 2005; Mansfield and Pevehouse, 2006).

Yet a small body of research—to which we contribute—shows that sometimes dictators can strategically use international law and organizations to help maintain their power. For example, Bush (2016) carefully details how dictators can manipulate nongovernmental organizations into

designing democracy assistance programs that hinder democratization. Similarly, multiple recent papers have examined when dictators join the UN Convention Against Torture (CAT). Both Conrad (2014) and Vreeland (2008) argue that more political competition will result in more pressure on dictators to join the CAT in exchange for maintaining their political power. In contrast, Hollyer and Rosendorff (2011) argue that a government’s underlying willingness to use force drives decisions about whether to join the CAT. Signing the CAT, they argue, signals to political opponents that the government is so strong that it can easily afford to make violence more costly, thereby deterring political competition. However, one aspect of the CAT prevents these theories from being easily extended to other areas of international law. Namely, the CAT definition of torture only applies to acts “of a public official or other person acting in an official capacity.”² The CAT cannot be used to punish non-state actors, such as armed opposition groups (Johns, 2022, 282-286). To fully understand how dictators can use international law and organization to prolong their survival, we must therefore consider the impact of international rules that constrain both a dictator and his opponents.

2.2 Dictators and the International Criminal Court

The two central assumptions of our theory are that the International Criminal Court: (1) constrains both a dictator and his opponents; and (2) creates asymmetric costs in dictatorships. We must therefore justify these assumptions in detail.

When a state joins the ICC, it accepts the authority—or jurisdiction—of the Court to investigate and prosecute serious international crimes that are committed either on its territory or by its nationals. Most states join the ICC by ratifying the Rome Statute, which is the international treaty that defines the ICC’s powers and procedures. States can also accept the ICC’s authority to investigate and prosecute by filing a special declaration in which they accept the ICC’s jurisdiction even if they have not formally ratified the treaty.³ We describe both actions as decisions to join the ICC.

The Rome Statute also defines the crimes that can be prosecuted by the Court. These include crimes against humanity, genocide, and war crimes.⁴ Unlike the UN Convention Against Torture, the ICC does not require that a crime be committed by “a public official or other person

²CAT (1984), Article 1(1).

³See Rome Statute (1998), Article 12(3). Cte d’Ivoire (2003) and Ukraine (2014) both used this tactic to accept ICC jurisdiction.

⁴The Court can also prosecute acts of aggression committed after July 2018. This has not (yet) occurred.

acting in an official capacity.”⁵ The Rome Statute allows the Court to investigate and prosecute all individuals, regardless of their official status. As such, the ICC can target rebel commanders, opposition politicians, and other individuals who are not part of a sitting government. The ICC can also prosecute government officials, including political and military leaders, because the ICC does not allow such individuals to claim official immunity from prosecution.⁶

The ICC process begins when the Prosecutor learns about an alleged crime. She can learn about a crime through press reports, communications with individuals and NGOs, or formal referrals by the UN Security Council or member states. The Prosecutor and her staff then conduct a preliminary examination, in which they assess whether the ICC is likely to have jurisdiction over alleged crime. If a situation is referred by the UN Security Council or a member state, the Prosecutor can proceed directly to a formal investigation. However, if the Prosecutor learns about alleged crimes through other means, she must seek approval from ICC judges before opening a formal investigation. If an investigation yields sufficient evidence, the Prosecutor can then request that ICC judges issue an arrest warrant or summons to appear for an individual to face trial.⁷ Once a wanted individual appears before the Court, prosecution begins.

This basic process gives dictators multiple opportunities to influence investigations and prosecutions. First, a dictator has the power to self-refer cases to the Court, which his opponents cannot do. These self-referrals set the agenda for what the Court investigates, and often contain geographic, temporal, or subject-matter limits.⁸ Such self-referrals become formal investigations without any judicial review. In contrast, non-state actors, like rebel groups and NGOs, can send written complaints to the ICC Prosecutor, but the Prosecutor cannot open an official investigation without securing approval from ICC judges.⁹ Paradoxically, this process requires that the Prosecutor submit evidence of a crime before the Prosecutor can actually investigate.

For example, the Central African Republic (CAR) is a dictatorship that has experienced ongoing violence and atrocities since the ICC’s creation in 2002. CAR has experienced three major waves of violence since 2002. The CAR government twice asked the ICC to formally investigate its political opponents (in 2004 and 2012). However, the referrals excluded atrocities committed by CAR government forces in 2005–2008, when CAR’s dictator battled two rebellions in the northern

⁵CAT (1984), para. Article 1(1).

⁶Rome Statute (1998), Article 27.

⁷The ICC issues a summons to appear if it believes that a defendant will voluntarily appear before the Court. Otherwise, the Court issues an arrest warrant.

⁸Solomon and Zvobgo (2020) argue that autocrats can similarly manipulate a domestic truth commission by limiting the commission’s authority.

⁹Rome Statute (1998), Article 15.

territories.¹⁰ The CAR government was able to limit the scope of the ICC's investigation by excluding atrocities it did not want investigated.

Second, successful investigations require that investigators identify and locate witnesses to alleged crimes. Since alleged crimes are usually initially investigated by local police and/or military forces, the government has specialized information that is not easily available to the ICC, such as who witnessed a crime. Government registries and social service offices can help the ICC to locate these witnesses. In dictatorships, governments can easily withhold such information if they wish to constrain an ICC investigation. Once witnesses are found, the ICC must then interview and prepare witnesses for trial, either directly or through intermediaries. This process usually requires the free movement of ICC staff and/or intermediaries, and access to translators who understand local languages and modes of expression. Many witnesses then require security, both before and during a trial. The ICC lacks law enforcement officers and cannot grant asylum to witnesses. The ICC therefore depends on governments to protect witnesses. Dictators can hinder these tasks by denying travel permits, restricting access to transportation and translators, refusing to provide security to witnesses, or even coaching individuals on how to provide false testimony. In contrast, political opponents do not have access to the state security apparatus.

For example, the Democratic Republic of the Congo (DRC) asked the ICC in 2004 to investigate and prosecute ongoing crimes in the eastern Congo. Because of instability and violence in the region, ICC staff could not easily travel within the eastern Congo or communicate with alleged witnesses and victims. Instead, the ICC relied on intermediaries, who were local individuals who agreed to locate and interview witnesses on behalf of the ICC. This arrangement generated immense problems during the trial of Thomas Lubanga, a rebel commander. ICC judges ruled that at least three of the seven intermediaries used by the ICC generated unreliable evidence against Lubanga.¹¹ For example, multiple alleged victims admitted during the trial that they had lied and been coached on their testimony by an intermediary in exchange for bribes. The Court would not publicly identify the intermediaries, but the Court revealed that at least one of the intermediaries worked for the Congolese intelligence service. This same intermediary also worked on investigations against other ICC defendants, including Germain Katanga and Mathieu Ngudjolo Chui (Buisman, 2013, 39). This revelation shows the potential for dictators to manipulate ICC investigations and prosecutions.

¹⁰See Human Rights Watch (2007) "State of Anarchy Rebellion and Abuses against Civilians" Sept. 14. Available at: <https://www.hrw.org/report/2007/09/14/state-anarchy/rebellion-and-abuses-against-civilians>. Report also on file with authors.

¹¹ICC, *Lubanga*, Trial Judgment of 14 March 2012, pp. 90–230.

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

This pattern is apparent in the trial of Dominic Ongwen, a mid-level commander in the Lord's Resistance Army (LRA), a rebel group in Uganda. In Ongwen's trial, the ICC Prosecutor relied extensively on recordings and logbooks of LRA radio communications. These communications were intercepted, screened, recorded, and translated by the Ugandan military, intelligence agency, and local police forces.¹² The Ugandan government then provided edited recordings and selected logbook entries to ICC investigators, who used these materials as evidence against Ongwen. In contrast, the LRA lacked capacity to collect evidence about the activities and communications of the Ugandan military.

Fourth, the ICC relies on its member-states to enforce arrest warrants. Even if the ICC prosecutor has sufficient evidence to prosecute an individual, a trial cannot occur *in absentia*. The ICC must have the actual suspect in custody. Many individuals who are wanted by the ICC have voluntarily appeared at the Court, either because they believe that they can prove their innocence or because they prefer an ICC trial to the prospect of punishment at home. Yet incumbent governments can also choose to enforce warrants for their political opponents while shielding themselves and their allies from arrest (Hillebrecht and Straus, 2017).

For example, Germain Katanga was a rebel fighter accused of committing atrocities during an attack on a village in the eastern Congo in 2003. As part of the power sharing agreement that ended the Great African War, Katanga—who had fought against the Congolese government—agreed to be incorporated into the new national army in late 2004. This demobilization process gave the government information about where to find Katanga. Just four months later, the Congolese government arrested Katanga and turned him over to the ICC for trial.¹³

One final possibility is that a dictator may be able to render a case inadmissible by launching a complementary domestic investigation and prosecution of a wanted individual.¹⁴ We are

¹²ICC, *Ongwen*, Trial Judgment of 4 February 2021, section IV.3.

¹³ICC, *Katanga*, Trial Judgment, 7 March 2014, para. 6.

¹⁴We thank Stephen Chaudoin for suggesting this point.

ambivalent about whether this is an effective way for dictators to shield themselves from ICC punishment. On the one hand, the principle of complementarity ensures that a case is inadmissible before the ICC if it “is being investigated or prosecuted by a State which has jurisdiction over it.”¹⁵ This design attribute is intended to enhance public support for international justice (Zvobgo and Chaudoin, 2022). In theory, this principle may allow dictators to create the false appearance of justice by creating domestic justice mechanisms that shield regime supporters. On the other hand, the Rome Statute attempts to prevent such actions by allowing the ICC Prosecutor to take action if “the State is unwilling or unable *genuinely* to carry out the investigation or prosecution.”¹⁶

We cannot identify any example in which a dictator shielded a supporter from ICC prosecution by launching complementary domestic proceedings. Simply put, we cannot (yet) credibly identify individuals that were *not* pursued by the ICC because of complementarity. We can only observe arrest warrants that actually *are* filed. Additionally, qualitative research on Uganda and Sudan compellingly shows that ICC actions did not cause dictators in those states to shield their supporters from justice using domestic investigations and prosecutions (Nouwen, 2013). Indeed, the only ICC case to date involving complementarity was one in which an accused individual requested prosecution by the ICC, rather than by a domestic court in Libya.¹⁷ Nonetheless, complementarity may be a useful tactic that future dictators can deploy to protect themselves and their supporters.

What makes democracies different from dictatorships? Democracies can also make self-referrals, hinder investigations, withhold digital and documentary evidence, refuse to enforce arrest warrants, and launch complementary domestic proceedings. For example, the ICC Appeals Chamber ruled in March 2020 that the ICC Prosecutor could investigate war crimes committed in Afghanistan by US troops. In response, US President Trump tried to hinder this investigation by ordering sanctions ICC staffers in June 2020.¹⁸ Doesn’t this example demonstrate that democratic leaders can protect themselves and their allies from the ICC?

We certainly agree that more powerful states will be better able to protect themselves and their allies than less powerful states, all else equal. However, we also believe that democratic institutions—including mass enfranchisement, opposition political parties, competitive and free

¹⁵Rome Statute (1998), Article 17(1)(a).

¹⁶*Ibid.* Emphasis added.

¹⁷See ICC, *Al-Senussi*, Decisions of 11 October 2013 and 24 July 2014.

¹⁸US Executive Office of the President, “Blocking Property of Certain Persons Associated With the International Criminal Court,” Executive Order 13928 of June 11, 2020. Available at: <https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>. Last accessed: 22 June 2022.

elections, independent domestic courts, transparency laws, and freedoms of speech and the press—make these ineffective tools for manipulating ICC investigations and prosecutions. For example, the decision by the ICC Appeals Chamber to allow an investigation of US war crimes in Afghanistan was based almost entirely on documentary evidence that was publicly disseminated in 2014 by the US Senate Select Committee on Intelligence.¹⁹ These documents were published worldwide in newspapers and available on US government websites. Simply put, the US Senate provided the evidence necessary for the ICC to conduct a formal investigation of US activities in Afghanistan. Similarly, Trump’s executive order imposing sanctions was publicly disseminated in accordance with US transparency laws. It was then widely reported and condemned by diverse political actors in domestic and international news media. The American Civil Liberties Union quickly filed a legal challenge to the executive order in US federal courts.²⁰ When political power shifted to newly-elected President Biden in early 2021, the executive order was completely rescinded.²¹ We do not yet know how the US government will respond if the ICC issues an arrest warrant for a US national. However, Trump’s executive order was temporary, ineffective, and primarily political theater, rather than a genuine obstruction. This example suggests that democracies are fundamentally different from dictatorships when it comes to manipulating ICC investigations and prosecutions.

In sum, dictators can use their political power to shield themselves from the ICC while simultaneously making their political opponents vulnerable. This difference is reflected in the kinds of individuals who are targeted by the ICC for trial. As shown in Table 1, the ICC has issued (as of the end of 2021) 37 warrants or summons to appear before the Court for alleged international crimes.²² About 43 percent of these individuals were government officials or supporters at the time that the alleged crime took place. Many of these individuals were targeted in investigations that began as referrals by the UN Security Council or the Prosecutor. These investigations focused on both democracies and dictatorships. Among the self-referred investigations—all of which involve dictatorships—only 1 of the 17 individuals who were targeted by the Court was a government sup-

¹⁹See ICC, “Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan,” 5 March 2020.

²⁰See American Civil Liberties Union, “ACLU Clients Challenge Trump’s Sanction Order Against International Criminal Court,” Press release of 15 January 2021. Available at: <https://www.aclu.org/press-releases/aclu-clients-challenge-trumps-sanctions-order-against-international-criminal-court>. Last accessed: 22 June 2022.

²¹US State Department, “Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court,” Press Statement of 2 April 2021. Available at: <https://www.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court/>. Last accessed: 22 June 2022.

²²This count excludes administration of justice cases, which involve matters like witness tampering, rather than core international crimes.

porter when the alleged crimes were committed. All the remaining targeted individuals committed their alleged crimes while challenging the government.

[Table 1 goes here.]

The exception to the rule is Jean-Pierre Bemba Gomba, a prominent Congolese politician and military leader. Bemba rose to power as leader of the *Mouvement de Libération du Congo* (MLC) in the final years of the Great African War. While fighting the government of Joseph Kabila, Bemba took control over Equateur Province in the northern DRC. Gaining and keeping this territory required that Bemba maintain a friendly relationship with Ange-Felix Patassé, the dictator of the neighboring Central African Republic (Gérard, 2009, 233). Patassé was struggling with repeated coup attempts by his political opponents and ratified the Rome Statute in 2001. In late 2002, Patassé asked Bemba to send some MLC troops to help him secure the capital of Bangui (Stearns, 2011, 230). A few months later, Patassé was deposed in a coup led by General Francois Bozizé that caused massive civilian suffering. Bozizé then asked the ICC in 2004 to investigate Patassé and Bemba for international crimes. The ICC obliged by opening its first investigation of the CAR.

Throughout the fighting in CAR and the subsequent ICC investigation, Bemba lived in the northern DRC. From there, he participated in the Congolese power sharing agreement by incorporating his troops into the new national army and shifting the MLC into a political organization. In 2006, he competed in the DRC's presidential election, challenging incumbent dictator Joseph Kabila. Bemba garnered enough votes to force a run-off election, ultimately securing 48 percent of the national vote. Bemba had clearly established himself as the main political rival to Joseph Kabila, who was the preferred candidate of France and the US. Only 18 months after the DRC runoff election, the ICC issued an arrest warrant for Bemba, who was arrested a day later and sent to the ICC for trial.

The point of this story is not that Bemba was unjustly accused. Like all rebel groups that fought in the DRC, the MLC committed crimes against humanity and war crimes, albeit at lower levels than many other rebel groups in the DRC (Carayannis, 2015, 260). What made Bemba different from other rebel leaders—who were *not* prosecuted by the ICC—was that he was popular, and so posed a unique political threat to Joseph Kabila, a dictator who was struggling to keep his hold on power.

How do the ICC staff view this situation? What is their role as purposive actors? In public interviews, ICC staff routinely emphasize their reliance on member-states for cooperation

in collecting evidence and arresting wanted individuals.²³ They also emphasize their primary obligation to punish international crimes with extremely limited resources. They ...

We are not the first scholars to note that the ICC imposes asymmetric costs within dictatorships. Many law scholars have examined the details of specific ICC investigations. These scholars often note that economic, legal, and political constraints affect both arrest warrants and prosecutions (e.g. Hillebrecht and Straus, 2017; Peskin, 2009; Rosenberg, 2017). Similarly, many scholars have noted that dictators can often shield themselves and punish their enemies by limiting the access of ICC staff to evidence and witnesses (e.g. Hashimoto, 2020; Tiemessen, 2014, 2016). We build on these insights by examining the consequences of these asymmetric costs for: whether leaders select into the ICC; the impact of the ICC on total violence; and the impact of the ICC on leader survival in office.

Does our argument also apply to democracies?

3 Theory

While we explain our argument informally, the logic of our argument is documented in a formal model in an Online Appendix. We begin by describing the basic assumptions of our argument. Namely, we describe who are the relevant actors, what actions are available to them, how these actions translate into outcomes, and the preferences of actors over the different outcomes. We then describe how these assumptions generate observable behavior. We use this behavior to derive empirical implications of our argument. And finally, we discuss the robustness of our argument to alternative assumptions and explanations.

3.1 Assumptions

We begin by assuming that the dictator is a unitary actor whose goal is to survive in power. All dictators have potential political opponents. These potential opponents can include members of the governing elite, such as military commanders who currently support the dictator but could switch their allegiance to an alternative leader. Political opponents can also include individuals who are not part of the governing elite, like repressed groups within the state. These opponents may already belong to armed opposition groups, or they may have the potential to join such groups if they believe that violence can successfully generate a leadership change. We focus here on the interactions between the dictator and a single political opponent.

²³CITE Bensouda interview with Asymmetric Haircuts

We assume that both the dictator and his opponent have common knowledge about the level of political competition.²⁴ We assume that both the dictator and his political opponent must pay a cost if they use violence to try to secure power. However, we assume that higher levels of political competition make it relatively more costly for the dictator to use violence. For example, the presence of multiple political parties should allow opponents to publicly shame the government for atrocities. Similarly, a free press, opposition political parties, active civil society, and/or independent bureaucracies increase transparency about government policies and make it harder for dictators to hide their actions from view. Finally, semi-independent political institutions—like legislatures and domestic courts—can have limited powers to sanction the government for violence.

Strategic interactions between the dictator and his political opponent begin when the dictator decides whether to join the ICC. Since our focus is on dictatorships, we assume that the dictator can unilaterally make this decision. This decision affects the expected cost for both actors of using violence. If the dictator joins the ICC, both sides know that it will be possible in the future for the ICC to investigate and prosecute any crimes that result from the violence. Therefore, joining the ICC increases the expected cost of violence by a small amount for the dictator, but increases the expected cost to the political opponent by a larger amount.

After the dictator has made his decision, both sides must then decide how much effort to deploy in securing political power using violence. This violence might come in the form of outright armed rebellion or repression. It might also take the form of creating armed self-defense units at the local level, which is a frequent tactic in places under ICC investigation. Violence might also result from mass protests or strikes that are intended to challenge the dictator. We assume that, all else equal, as one side uses more violence, it is more likely to have control of the government in the future.

In term of preferences, we assume that both the dictator and the political opponent receive a reward from being in control of the government. This reward can come from either rents or policy benefits. However, we assume that both players must pay a cost to use violence to seize and maintain control of the government. Both sides must therefore assess how to trade off the benefit from being in power against the cost of violence, given how the other actor is expected to behave. As described above, we assume that more political competition makes violence more costly for the government relative to the cost of violence for the political opposition. We also assume that joining the ICC raises the expected cost of violence for both players, but that the ICC imposes a higher

²⁴We discuss how we measure political competition in section 4.

cost on the opponent than it does on the dictator.

3.2 Behavior and Observable Implications

We are interested in three outcomes from this framework that connect to observable behavior. First, we care about: when do dictators join the ICC? A dictator must carefully consider the likely effects of joining the ICC on subsequent choices about violence and the likelihood that he can survive in power. On the one hand, joining the ICC raises the dictator's own cost of violence. This added cost will have the direct effect of reducing the amount of violence that the dictator will subsequently choose, thereby lowering the likelihood that the dictator will survive in power. On the other hand, joining the ICC also indirectly affects the dictator by raising the cost of violence for his political opponent. This added cost will lower the amount of violence deployed by the opponent, thereby increasing the likelihood that the dictator survives in power.

The relative magnitude of these direct and indirect effects will depend on the level of political competition. When political competition is low, the dictator can easily deploy violence at little cost. In the absence of ICC membership, the dictator's strength deters opposition violence, allowing the dictator to have confidence that he will retain his hold on power. Joining the ICC—and raising the costs of violence for both players—provides little added benefit to the dictator because his political opponent is already deterred from seriously challenging him. Overall, joining the ICC does not benefit a dictator when he faces little political competition.

In contrast, when political competition is high, the dictator finds violence more costly. In the absence of ICC membership, the dictator's weakness encourages opposition violence, reducing the dictator's confidence that he can remain in power. While joining the ICC will further constrain the government, it will also constrain the political opposition even more. This imbalance in expected costs imposed by the ICC hurts the opposition more than it hurts the dictator. Overall, joining the ICC will therefore benefit a dictator when political competition is high. This logic underlies the first hypothesis and observable implication of our theory:

Hypothesis 1 (selection): Dictators with more political competition are more likely to join the ICC than governments with low political competition.

Second, we want to know: how does joining the ICC affect overall violence within a dictatorship? Because joining the ICC raises the expected cost of violence for each player, the direct effect of ICC membership is to lower the amount of violence chosen by each player. These direct

effects reinforce each other via indirect strategic effects. For example, if the dictator expects that the political opposition will use less violence, then the dictator will also want to use less violence himself. These reinforcing direct and indirect effects generate the second hypothesis and observable implication of our theory:

Hypothesis 2 (violence): Joining the ICC lowers the total amount of violence in the state.

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

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

Hypothesis 3 (survival): For dictators that select into the ICC, joining the ICC increases the dictator's probability of surviving in office.

Note that this final observable implication is a conditional effect. It only holds for situations in which the government chooses to join the ICC. The impact of the ICC on dictator survival is thus driven by selection effects. These selection effects must be carefully considered when we assess the empirical evidence and the normative implications of our theory. All three of our observable implications are summarized in Table 2.

[Table 2 goes here.]

Previous scholars have examined some of these causal relationship in isolation from each other. For example,

- COMPETITION increases JOIN:

- Vreeland (2008): competition should cause leaders to select in to bolster their power. But they do this because it is not a binding constraint, and hence should not impose added costs on governments
- Simmons and Danner (2010): "states with a history of civil wars and weak institutions, for whom making a credible commitment to reduce violence via ratification may be especially valuable" -j "to increase the costs to government actors of maintaining power"
- JOIN reduces VIOLENCE: Many scholars have examined the impact of the ICC on violence. ICC as an actor reduces violence, therefore (presumably) promoting the democratic norms of peaceful transitions in power (Hillebrecht, 2016*b*; Jo and Simmons, 2016; Jo, Radtke and Simmons, 2018; Jo, Simmons and Radtke, 2021).
- JOIN prolongs SURVIVAL: Hollyer and Rosendorff: Institution boosts survival (H3) and lowers violence (H2), but for the opposite reason of H1

Our theoretical argument thus offers a unified framework for reconciling diverse empirical findings about dictators and the International Criminal Court.

3.3 Alternative Assumptions and Explanations

How robust is our argument? Do changes to our basic assumptions affect our causal mechanism and observable implications? Skeptics of the ICC might argue that the ICC imposes no costs whatsoever on dictators. After all, President Museveni of Uganda never seemed concerned about the prospect of the ICC investigating him or his political allies, despite the extensive international crimes committed by the Ugandan army since 2002. We would counter this argument by noting that the ICC has issued many arrest warrants for government officials, although these have all involved (thus far) democracies or situations referred by the UN Security Council. Yet setting this issue aside, our basic theoretical argument and observational implications continue to hold even if the ICC imposes no expected costs on dictators, provided that the ICC can punish regime opponents.

Second, we assumed that the ICC generated expected costs that were internalized by players based on their strategic position (as a government or political opponent) at the beginning of the interaction. That is, we assumed that the unit cost of violence was not affected by whether a player subsequently seizes power. An alternative way to consider this strategic situation would be

to assume that the unit cost of violence is determined by who wins the conflict. As we show in an Online Appendix, this alternative assumption does not affect our results.

Third, careful readers will note that our argument differs from a more conventional self-binding theory, in which a government binds only itself, and not other actors. The assumption that international law binds all actors is necessary for our argument to work. This assumption clearly differentiates our argument from prior research on the UN Convention Against Torture (Vreeland, 2008; Hollyer and Rosendorff, 2011). We therefore believe that our framework is most appropriate for understanding international laws and organizations—like the laws of armed conflict and the ICC—that constrain all actors within a state, not just government officials.

Fourth, our theoretical argument did not include external pressure from other states to join the ICC. If joining the ICC is linked to tangible rewards from the international community, like enhanced foreign aid or access to foreign markets, then we should expect that states with weaker economies or with greater dependence on international trade will be more likely to join the ICC, all else equal. Incorporating such external factors into our argument would not change the basic causal mechanism and relationships that we identify above. Nevertheless, we are careful to control for this possible alternative explanation in our statistical analysis.

4 Statistical Evidence

Because we are interested in the behavior of dictators, our sample consists of autocratic and anocratic states, defined as those with a Polity score of 5 or less.²⁵ For the first test, we consider all dictatorships to be “at risk” of ratifying the Rome Statute, giving us a baseline sample of 94 states. In subsequent analyses, we restrict the sample to the 31 dictatorships that eventually joined the ICC because we are interested in how joining affected violence and political survival. Because there might be inherent differences in dictatorships that join and do not, we believe the most accurate comparison of the effect of joining can only be made in those dictatorships that chose to join at some point in time.

A common variable across all three tests is joining the ICC.²⁶ In our first test, the dependent variable is YEARS TO JOIN. The earliest possible year to join the ICC is 1998, which is when the Rome Statute opened for signature. We model the probability of joining the ICC up to 2018,

²⁵We consider an alternative coding using V-Dem scores in the Online Appendix.

²⁶In most cases, this is the year the state ratified the Rome Statute. However, in rare cases, a state may accept ICC jurisdiction without ratifying the Rome Statute, as occurred with Cte d’Ivoire (2003) and Ukraine (2014). We show alternative statistical tests that examine Rome Statute ratification only in the Online Appendix.

after which we lack data on control variables. In the subsequent two tests, the key explanatory variable is `POST-JOIN`, which is a binary variable indicating whether the dictatorship has joined the ICC in a prior year. Note that because the sample in the second and third tests is restricted to dictatorships that join, `POST-JOIN` will take the value of 1 at least once for each state in the dataset.

4.1 Does Political Competition Increase Ratification?

We begin by assessing the first observable implication of our model: political competition will be positively associated with an increase in the probability of that a dictator joins the ICC. Our dependent variable is the number of `YEARS TO JOIN`. Joining the ICC is generally a one-time event: once a state joins the Court, it must go through difficult processes to leave. Thus, a state exits the risk set once it joins the Court.²⁷ Between 1998 and 2018, 31 dictatorships joined the ICC.

Because we are modeling time to joining, we use a discrete-time survival model. Namely, we use a logistic regression with dummy variables for each year, which allows the baseline hazard (i.e. the underlying probability of joining) to vary by year. The model is right-censored in 2018 because of control variable availability. However, we note that the latest dictatorship to join the ICC was in 2011 (Tunisia). The four states that have joined since 2013 (Palestine, El Salvador, Kiribati, and Ukraine) are all democracies, and hence outside the scope of our theory and analysis. Thus, our dataset has good coverage of the relevant risk period for joining the ICC.

Our explanatory variable for our first test is `POLITICAL COMPETITION`. We measure this concept using Polity’s “competitiveness of participation” variable, which is “the extent to which alternative preferences for policy and leadership can be pursued in the political arena.”²⁸ This variable ranges from 1 to 5, where 1 indicates that political competition is repressed and 5 indicates open competition. Within dictatorships, the maximum level we observe is 4.²⁹

We include several control variables to account for possible alternative explanations. First, several scholars argue that states with a stronger domestic rule of law may be more likely to join the ICC (Simmons and Danner, 2010; Chapman and Chaudoin, 2013). They hypothesize that this

²⁷Recently, backlash against the ICC by African states has led to several threats of withdrawal. To date, only two states have formally withdrawn from the ICC: Burundi (2016) and the Philippines (2019). Several other states, including The Gambia and South Africa threatened to withdraw, but ultimately remained members of the ICC. Burundi re-enters the risk set in 2017, to account for the fact that it could rejoin the ICC.

²⁸See the Political Regime Characteristics and Transitions, 1800-2018 Dataset Users’ Manual. We consider an alternative competitiveness measure using the “Elections Multiparty” variable from V-Dem in the Online Appendix.

²⁹See the Online Appendix for descriptive statistics of all variables.

relationship occurs because actors are less likely to commit severe international crimes in states with a strong rule of law. Additionally, the ICC should be less likely to file prosecutions involving these states because of the principle of complementarity, which ensures that the ICC only files cases if a state is unable or unwilling to prosecute offenders. These two factors imply that the ICC will impose fewer costs on states with strong domestic legal institutions. Our measure of RULE OF LAW comes from the Worldwide Governance Indicators (WGI) dataset at the World Bank.

Second, many scholars argue that states that are poorer or more dependent on foreign aid are more likely to join the ICC because they are coerced into doing so by richer and more powerful states (Spence, 2014).³⁰ To control for this alternative argument, we include LOG (GDP PER CAPITA) and FOREIGN AID from the Worldwide Development Indicators dataset.³¹

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

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

The results of our analysis appear in Table 3. As expected based on our theory, the coefficient on POLITICAL COMPETITION is positive and statistically significant, both with and without controls. Substantively, Model (1) tells us that a one-unit increase in political competition translates into about a 2.3-fold increase in the probability of joining the ICC. For example, Malawi (with a competitiveness score of 4) is about 2.34 times likelier to join the ICC than Zambia (with a competitiveness score of 3). With controls, the substantive effect decreases somewhat in Models (2) and (3) to a roughly 1.99-fold increase. Nevertheless, the findings suggest that dictatorships with higher levels of political competition are significantly more likely to join the ICC. None of the control variables are statistically significant across all models. Moreover, we do not find any effect for violence, measured as total or disaggregated by inter- and intra-state, on the probability

³⁰Alternatively, foreign aid might create a security effect for autocrats, allowing them to fend off domestic political rivals (Hashimoto, 2020).

³¹As in Hashimoto (2020), the FOREIGN AID measure is transformed using the inverse hyperbolic sine function.

of joining.

[Table 3 goes here.]

As an additional robustness check, we examined rebel group competition as an alternative measure of our explanatory variable. Unfortunately, existing data for this concept do not provide enough coverage to run a time-series, cross-national model. However, they do provide some suggestive, albeit limited, evidence in favor of our theory. In Figure 1, we use a measure of the relative strength of rebel groups from Cunningham, Gleditsch and Salehyan (2013). These data include 42 of the 94 dictatorships in our larger dataset, which are coded for a maximum of 14 years.³² Each observation corresponds to one state-year in which the state was fighting against at least one rebel group; thus, the number of observations per state is not consistent.³³ This generates 208 state-year observations.³⁴ For each observation, we plot the frequency of states facing rebel groups of various strengths, disaggregated by whether that state eventually joined the ICC. Our coding of rebel group competition corresponds to Cunningham, Gleditsch and Salehyan (2013)’s classification of rebel group strength as much weaker (low competition), weaker (moderate competition), and parity/stronger (high competition). A state-year unit is colored black in Figure 1 if the state joined the ICC at some point in time and grey if the state never joined the ICC.

[Figure 1 about here.]

Figure 1 provides additional evidence for our theory. The data include 92 state-year observations in which the rebel group is “much weaker” than the government, meaning that the government faces low levels of political competition. In 9 (or 9.8%) of these observations, the government joined the ICC at some point in time.³⁵ Overall, the data show that governments facing low rebel group competition are unlikely to join the ICC.

Next, the data include 99 state-year observations in which the rebel group is “weaker” than the government, meaning that the government faces moderate rebel group competition. In 38 (or 38.4%) of these observations, the state joined the ICC at some point in time. This statistic suggests

³²The dataset covers 1998-2011 only.

³³Additionally, states that join the ICC are only included for years prior to joining. For example, Afghanistan generates five observations (1998-2001 and 2003), Guinea generates two (1998-1999), and Myanmar generates 14 (1998-2011).

³⁴We use state-years as the unit because rebel groups change strength over time and aggregating to the level of the state would obscure these differences.

³⁵There is only one observation in which a state facing a much weaker rebel group joined the ICC in the same year: Afghanistan in 2003. Obviously, the extensive US government support for the Afghan government in 2003 makes this an idiosyncratic case. Had the US military not been deployed on Afghan soil, the true level of political competition within Afghanistan would have been very high.

that a government facing moderate rebel group competition receives more benefit from being an ICC member than a government facing low competition.

Finally, it is very rare for a rebel group to be at “parity or stronger” than the government (meaning that the rebel group is of equal or greater strength). Only 17 of the 208 observations fall into this category. In such circumstances, a government faces high rebel group competition. In 8 (or 47%) of the observations in this category, the government joined the ICC at some point in time. So governments that face high rebel group competition appear to receive a higher benefit from being an ICC member than governments that face moderate or low rebel group competition. Overall, the evidence from Figure 1 supports the first observable implication of our theory: political competition increases the likelihood of joining the ICC.

4.2 Does Joining the ICC Reduce Violence?

We can now assess the second empirical implication of our model: joining the ICC will be associated with a decrease in overall violence within a state. Prior scholars have noted that violence in dictatorships suffers from endogeneity problems: political dissent influences government oppression, and vice versa (Ritter and Conrad, 2016). Our theoretical account controls for this endogeneity in government and opposition group behavior by focusing on total violence.

However, our theory does not provide us with an elegant solution to possible selection effects. Namely, variables that influence the decision to select into the ICC may also influence subsequent decisions about violence. In theory, such problems can be solved by “Heckman” selection models. However, the limited number of observations in our sample, and the lack of a compelling exclusion restriction, rule out this technique. As an alternative approach, we restrict our sample to ensure that we are assessing the impact of joining the ICC only on those dictatorships that actually join. We believe that this partly controls for time-invariant factors that might cause some states to select into the ICC, while other states do not. However, we recognize that the nature of our data and our research question limit our ability to identify the causal effect of ICC membership on violence.

Our main dependent variable is TOTAL VIOLENCE, which combines inter- and intra-state violence. In alternate specifications, we use INTRA-STATE VIOLENCE only.³⁶ Higher values indicate greater levels of violence. Per H2, we expect violence to decrease after the state joins the ICC. Because we are only interested in the behavior of dictatorships that join the ICC, before and after joining, we restrict the dataset to the 31 dictatorships that join. Our dependent variable is ordinal,

³⁶We also measure violence using data from PRIO on episodes of violence and the results do not change. See the Online Appendix.

so we model violence using an ordinal logistic regression in the main models.

Our explanatory variable is the binary measure called POST-JOIN, which is coded as 1 if the state is being observed in the year of joining or later. The variable is coded as 0 if the state has not yet joined.³⁷

As before, we include RULE OF LAW as a control variable because strong domestic institutions might limit the government’s ability to use violence. We also include LOG (GDP PER CAPITA) and FOREIGN AID as control variables because levels of development and economic growth might affect violence (Gleditsch, 2007).³⁸ Additionally, we include an indicator variable for AFRICA as violence may create spillover effects.³⁹ Finally, in Models (8) and (9), we add Polity as a control variable to account for the state’s domestic characteristics that might affect its use of violence, particularly for those states that ratify as autocracies but transition to democracy in subsequent years.

[Table 4 goes here.]

The results of the ordinal logistic regressions appear in Table 4. Across all models for TOTAL VIOLENCE, the coefficient on POST-JOIN is negative and statistically significant. To more easily interpret the ordinal logistic regression results, we plotted the predicted probability of a state being at various levels of violence both before and after joining using coefficients from Model (4). The dashed line in Figure 2 indicates the probability of a dictatorship being observed committing each level of violence before joining the ICC.⁴⁰ The solid line is the probability that a dictatorship is observed committing that level of violence after joining the ICC. As Figure 2 illustrates, dictatorships are less likely than to commit a given level of violence after joining than before, for all levels of violence.

[Figure 2 goes here.]

Additionally, RULE OF LAW is negative and statistically significant in all models, indicating that states with stronger domestic institutions are less likely to commit violence. In contrast, the coefficient on FOREIGN AID is positive and statistically significant. We believe that this relationship may indicate that states with significant armed violence are more likely to require significant

³⁷Descriptive statistics for all variables in this analysis can be found in the Online Appendix.

³⁸Foreign aid might also affect violence through a different mechanism, namely that governments depending on foreign aid might be less likely to commit violence to avoid risking their aid allocations from pro-human rights democracies (Kim and Menninga, 2020).

³⁹This replaces our regional dummy, since the majority of these 31 states are in Africa.

⁴⁰The 0 category is excluded, which is why the probabilities do not sum to 1.

external humanitarian aid. Additionally, ample foreign aid may allow governments to shift more of their own resources to military and police activities, although this lies outside the scope of our theory (Branch, 2011).

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

[Figure 3 goes here.]

Once again, we recognize that these results must be treated with caution because we cannot fully control for possible selection effects in the data. Nonetheless, we believe that this evidence bolsters support for our theory.

4.3 Does Joining the ICC Increase a Dictator’s Survival in Office?

Finally, we consider the third implication of our theoretical model: that joining the ICC will allow dictators to stay in power for longer periods of time. Once again, we are faced with the possible selection effects discussed above. And once again, our empirical strategy for confronting this challenge is to restrict our sample to the 31 dictatorships that joined the ICC during the period begin observed (1998–2018). We believe that this approach helps to control for possible time-invariant factors that influence selection. Additionally, we believe that any selection bias would attenuate our results, as our theory predicts that dictators who join the ICC are already in weaker positions than those that do not. Thus, restricting the sample this way actually biases against us finding any significant effect of joining the ICC on a dictator’s survival in office.⁴¹

The unit of analysis is a leader-year. Our dependent variable is YEARS TO REMOVAL, where “Removal” indicates that the dictator is no longer in office. We took our data on leader tenure from the Rulers, Elections, and Irregular Governance Dataset (Bell, Besaw and Frank, 2021).

Our explanatory variable is POST-JOIN. Again, as we are modeling time to removal, we use a discrete-time survival model and dummy variables to indicate the leader’s tenure in office. The

⁴¹We consider a broader sample, including all dictatorships, regardless of ratification status, in the Online Appendix.

data begin in 1998, as this is the earliest year that a dictator could theoretically have joined the ICC. Leaders who had been in power before 1998 are coded as starting in the year of their tenure in 1998, rather than 0. For example, Museveni is coded as beginning in tenure year 13 in 1998, as he had been in power since 1986.

As control variables, we include LOG (GDP PER CAPITA) as a control variable because poorer states are more likely to suffer coups, which would irregularly remove a leader from office. We next include TOTAL VIOLENCE as a control because violence may make a coup more likely (Wood, 2010; Sudduth, 2017; Kim, 2016). Third, we include POLITY because states with more democratic characteristics may be more susceptible to leader removal, as they hold elections. We also include FOREIGN AID, as this may affect leaders' ability to remain in power (Licht, 2010; Yuichi Kono and Montinola, 2009). Finally, we include an indicator variable for AFRICA to capture potential spillover effects.

The results of our models appear in Table 5. POST-JOIN is negative and statistically significant in Model (11), which includes all of the relevant controls. Again, this comports with our theoretical expectation: leaders of states that are ICC members are less likely to be removed from office, meaning that they are more likely to survive. The substantive interpretation of the coefficient in Model (11) is that dictators who join the ICC are about half as likely to lose office after joining as before joining.

[Table 5 goes here.]

To visualize this relationship, Figure 4 plots the probability of losing office for the dictators in three different states, beginning four years prior to ratification and ending four years after ratification: Uganda (Museveni), Cambodia (Hun Sen), and Gambia (Jammeh). We use the coefficients from Model (11) to generate these predicted probabilities with all covariate values taking on the relevant values for that state. The probability of losing office decreases in the years following ratification, although in all three cases, it subsequently increases later in the leader's tenure. However, in all three cases the mean probability of losing office decreases after ratification. For example, in Guinea, the mean probability of losing office four years prior to ratification is about 3.8%; it decreases to 2% after ratification.

[Figure 4 about here.]

As with our analysis of H2 (on total violence), these results must be treated with caution. Yet they are consistent with our broader claim that dictators can use international law and

organizations to target their political opponents and bolster their survival in office.

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

Of course, this analysis comes with important caveats. First, given the relatively small number of dictatorships in general (94) and dictatorships that ratify (31), any statistical test that relies on cross-sectional variation will be limited. Second, given that the earliest possible date for ratification of the Rome Statute was 1998, we are also limited by the amount of time (20 years) over which we can measure and observe government behavior and control variables. Finally, possible selection effects limit our ability to systematically test H2 and H3. These three constraints all hinder valid statistical inferences. However, we believe that the breadth and diversity of our qualitative and quantitative evidence provide compelling support for our theoretical arguments about a substantively important topic.

5 Conclusion

We began our paper by describing the January 2004 press conference at which Luis Moreno-Ocampo, the prosecutor of the International Criminal Court, announced that he was opening a preliminary examination into crimes in Uganda. He was accompanied by Yoweri Museveni, the president of Uganda. While some naive observers may have believed that Museveni was signaling his commitment to democratization, most seasoned Uganda observers believed that Museveni was using the ICC to crack down on his most troublesome political opponent: the Lord's Resistance Army, a violent rebel group (Allen, 2006; Branch, 2011). The ICC's own press release was titled "President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC."⁴² Advocacy groups like Human Rights Watch were alarmed that the ICC seemed to be taking sides in

⁴²ICC Press Release, 29 January 2004. Document ICC-20040129-44.

an ongoing political conflict, declaring that “The prosecutor should operate independently and has the authority to look at all ICC crimes committed in Uganda.”⁴³ Moreno-Ocampo tried to undo the damage in his subsequent statements, declaring that the ICC would investigate crimes committed by all actors in Uganda. However, the initial reactions of advocacy groups were confirmed in October 2005 when the ICC announced that it had issued five arrest warrants for crimes in Uganda: all five of the individuals wanted by the Court were members of the Lord’s Resistance Army.⁴⁴ No government or military official was charged with a crime.

We argue that these dynamics are not unique to Uganda. Dictators can often shape ICC investigations and prosecutions, shielding themselves while making their political opponents vulnerable. Dictators can wield their authority to selectively self-refer crimes to the Court, manipulate access to witnesses, selectively provide digital and documentary evidence, and enforce arrest warrants against political opponents. Overall, the ICC creates asymmetric costs within dictatorships. Joining the ICC therefore imposes small costs on dictators for committing international crimes, but much larger costs on the political opponents of dictators.

These asymmetric costs shape when and why dictators join the ICC. Namely, when a dictator has little political competition, he can use violence at a relatively low cost. In such circumstances, the dictator has little incentive to boost his political power further by increasing the costs of violence. However, if the dictator faces high political competition, his cost of violence is relatively high. Because such a dictator is in a relatively weak position *vis-à-vis* his political opponents, the dictator will be more likely to bolster his power by joining the ICC.

This causal mechanism suggests that political competition will increase the likelihood the dictators join the ICC. This empirical implication is supported by our statistical analysis of the available data. Anecdotally, it is also apparent in the case of Uganda. When Museveni joined the ICC in June 2002, he was under extreme pressure both internally and externally to legalize political parties, had faced a major decline in support in the recent 2001 parliamentary elections, and was facing a looming constitutional term limit that would have ended his power in 2006.⁴⁵ Our causal mechanism also implies that joining the ICC should decrease violence and increase the survival of those dictators that join the Court. Once again, statistical evidence supports these empirical implications.

⁴³Human Rights Watch Press Release, 4 February 2004. Available at: <https://www.hrw.org/news/2004/02/04/icc-investigate-all-sides-uganda>.

⁴⁴The arrest warrants were secretly issued by the ICC in July. The ICC did not publicly confirm the warrants existed until October.

⁴⁵See Rubongoya (2007, 131-185). Museveni convinced the Ugandan parliament to remove the presidential term limit in 2005.

Our argument has mixed normative implications for advocates of international justice. On the one hand, our argument and evidence further bolster the claim that international law generally, and the ICC specifically, can reduce violence and severe atrocities (Jo and Simmons, 2016; Simmons and Danner, 2010). On the other hand, asymmetric costs suggest that the ICC does not have an impartial effect on domestic governance, which may (in the long run) erode public support for the Court (Nalepa, 2012; Zvobgo, 2019). Additionally, our argument and evidence suggest that international law and organizations can have pernicious effects by prolonging the survival of dictators (Ginsburg, 2020; Hollyer and Rosendorff, 2011; Vreeland, 2008). International cooperation may therefore have a negative impact on domestic societies. Unfortunately, such a tradeoff is probably inescapable in laws and organizations that are created by men, not angels.

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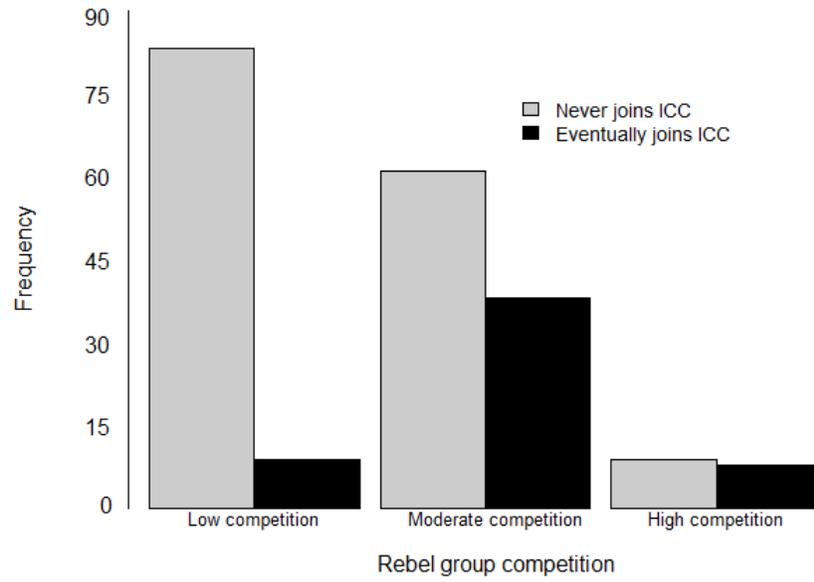
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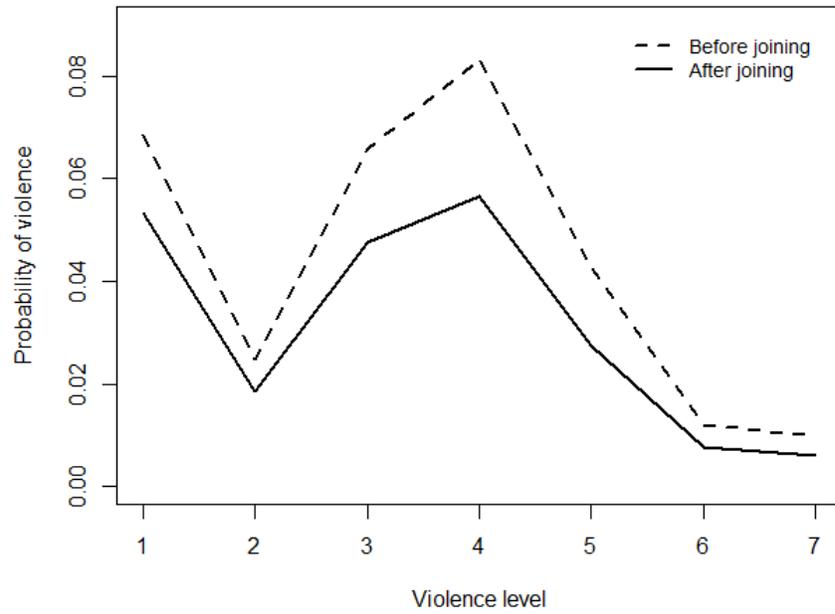
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Figure 1: Rebel Group Competition and Joining the ICC



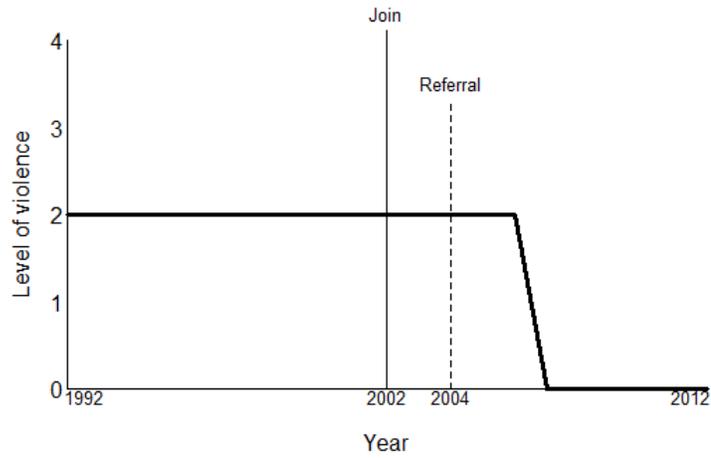
Note: Level of competition corresponds to rebel group strength relative to government as coded by Cunningham, Gleditsch and Salehyan (2013): low competition (“much weaker”), moderate competition (“weaker”), or high competition (“parity” or “stronger”). The unit of analysis is a state-year.

Figure 2: Ratification Decreases Predicted Probability of Violence



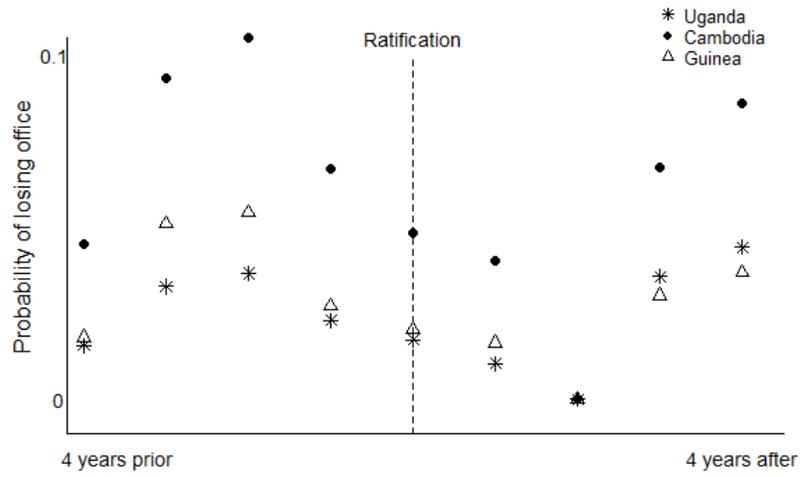
Note: Predicted probabilities generated using results from Model (4) holding region constant. Violence of level 0 is excluded from the figure, which is why probabilities do not sum to 1.

Figure 3: Violence in Uganda, 1992–2012



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

Figure 4: Ratification Decreases Predicted Probability of Losing Office



Note: Predicted probability of leader losing office from four years before ratification to four years afterward, based on coefficients in Model (11). Covariate values are used for the relevant nine years for each state (Uganda, Cambodia, and Guinea).

Table 1: Who was Targeted by the ICC (2002–2021)?

State	Regime-Type*	Referral-Mode	Individual Affiliation During Crime	
			Pro-Government	Anti-Government
Ivory Coast	Democracy	Prosecutor	3	0
Kenya	Democracy	Prosecutor	3	3
Libya	Dictatorship	UN Security Council	5	0
Sudan	Dictatorship	UN Security Council	4	2
Central African Republic (I)	Dictatorship	Self-Referral	1**	0
Central African Republic (II)	Dictatorship	Self-Referral	0	3
Democratic Republic of the Congo	Dictatorship	Self-Referral	0	6
Mali	Dictatorship	Self-Referral	0	2
Uganda	Dictatorship	Self-Referral	0	5
Total			16	21

Data coded by authors from public records of the ICC. Includes all arrest warrants and summons to appear as of January 2022, excluding administration of justice cases.

* Regime-type coded for year in which the ICC's preliminary examination began.

** Alleged crimes were committed during the final months of an incumbent government. The next government asked for investigation of the prior government's activities.

Table 2: Observable Implications of the Theory

Hypothesis Number	Explanatory Variable	Outcome Variable	Data Sample	Expected Relationship	Empirical Test
1	Political competition	Join	All dictatorships	Positive	Table 3
2	Join	Violence	Dictatorships that ratify	Negative	Table 4
3	Join	Leader survival	Dictatorships that ratify	Positive	Table 5

Table 3: Political Competition Increases Probability of Joining the ICC

Dependent Variable: Years to Join			
	(1)	(2)	(3)
<i>Explanatory Variable</i>			
Political competition	0.85*** (0.26)	0.71** (0.29)	0.68** (0.29)
<i>Control Variables</i>			
Rule of law		0.61 (0.47)	0.65 (0.47)
Log (GDP per capita)		-0.33* (0.20)	-0.36* (0.20)
Foreign aid		0.18 (0.23)	0.20 (0.23)
Total violence		0.04 (0.17)	
Intra-state violence			0.09 (0.18)
Inter-state violence			-0.23 (0.60)
Region dummies	Yes	Yes	Yes
Events	23	22	22
States	89	84	84
Observations (state-year)	1,100	932	932

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 4: Joining the ICC Decreases Violence

Violence (DV)	(4)		(5)		(6)		(7)		(8)		(9)	
	Total	Intra-state	Total	Intra-state	Total	Intra-state	Total	Intra-state	Total	Intra-state	Total	Intra-state
Post-join	-0.47** (0.20)	-0.47** (0.21)	-0.94*** (0.30)	-0.95*** (0.30)	-0.87*** (0.30)							
Rule of law			-4.67*** (0.35)	-4.83*** (0.36)	-4.51*** (0.37)	-4.66*** (0.38)	-4.51*** (0.37)	-4.66*** (0.38)	-4.51*** (0.37)	-4.66*** (0.38)	-4.51*** (0.37)	-4.66*** (0.38)
Log (GDP per capita)			-0.25 (0.19)	-0.29 (0.20)	-0.22 (0.20)	-0.27 (0.20)	-0.22 (0.20)	-0.27 (0.20)	-0.22 (0.20)	-0.27 (0.20)	-0.22 (0.20)	-0.27 (0.20)
Foreign aid			1.28*** (0.15)	1.31*** (0.15)	1.26*** (0.16)	1.28*** (0.16)	1.26*** (0.16)	1.28*** (0.16)	1.26*** (0.16)	1.28*** (0.16)	1.26*** (0.16)	1.28*** (0.16)
Polity					-0.03 (0.04)							
Africa	0.59** (0.25)	0.63** (0.25)	2.39*** (0.40)	2.57*** (0.41)	2.37*** (0.44)	2.57*** (0.47)	2.37*** (0.44)	2.57*** (0.47)	2.37*** (0.44)	2.57*** (0.47)	2.37*** (0.44)	2.57*** (0.47)
States	31	31	31	31	30	30	30	30	30	30	30	30
Observations (state-year)	651	651	625	625	592	592	592	592	592	592	592	592

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 5: Joining the ICC Increases Leader Survival in Office

Dependent Variable: Years to Losing Office (Event: Removal from Office)		
	(10)	(11)
<i>Explanatory Variable</i>		
Post-join	-0.15 (0.29)	-0.73* (0.40)
<i>Control Variables</i>		
Log (GDP per capita)		-0.02 (0.19)
Total violence		0.24** (0.10)
Polity		0.23*** (0.06)
Foreign aid		-0.05 (0.16)
Africa	0.39 (0.33)	-0.10 (0.40)
Never-ratifiers	No	No
N events	98	64
N states	31	30
N observations (leader-year)	758	665

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

Note: Models (10)–(11) show results including only those states that eventually join the ICC. Here there are 31 states, representing 120 different leaders, of whom 98 lost office at some point (64 lose office in Model (11) because of missing data). The state missing from Model (11) is Bosnia and Herzegovina, as no Polity scores are recorded. Bosnia and Herzegovina alone is responsible for 32 changes in leadership over the entire period, which is why the number of events drops so drastically.