

**International Insurance? Democratic Consolidation
and Support for International Human Rights Tribunals**

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Introduction

The opposition of the United States to the International Criminal Court has been consistent, spanning both Democratic and Republican administrations, and strident. Not only has the United States declined to ratify the Treaty of Rome and submit itself to the Court's jurisdiction, it has actively sought to undermine the international enforcement regime established by the Court. Not only has it pursued bilateral treaties with signatory states exempting American citizens from referral to the Court, it has conditioned foreign aid to signatory states upon the ratification of such treaties and conditioned American participation in United Nations peacekeeping operations upon immunity for American peacekeepers (see for example Weller 2002; Johansen 2006). This posture has usually been attributed to idiosyncratic aspects of the American case, such as the unique place that the United States occupies in the modern international order and the United States' distinctive legal and political culture. In particular, as a global superpower with a military presence in over 100 countries, the United States would be uniquely vulnerable to politically motivated prosecutions under the new regime created by the International Criminal Court, a vulnerability that did not exist under the previous international enforcement regime by virtue of the United States' privileged status as a permanent member of the United Nations Security Council (see for example Mayerfeld 2003). Moreover, inconsistency between the procedural guarantees of the Bill of Rights of the United States Constitution and the procedures employed by the International Criminal Court and traditional American sensitivity to infringements upon national sovereignty and hostility to supranational

government have been widely cited as major factors predisposing the United States to opposition even absent concerns of anti-American bias (see for example Amann and Sellers 2002).

However, what this conventional wisdom overlooks is the extent to which the posture of the United States vis à vis the International Criminal Court is inconsistent with international relations theory and suggests a need to reevaluate traditional assumptions. Specifically, realist scholars of international relations have typically framed the existence of international human rights regimes as presenting an apparent paradox insofar as such regimes represent a potentially invasive and countermajoritarian constraint upon national sovereignty that states would ordinarily be disinclined to accept. This apparent paradox can be explained, realists have argued, in terms of the fact that international human rights regimes further the interests of great powers by serving as guises through which such powers pursue their geopolitical interests by imposing their values upon weaker states (see for example Waltz 1979; Donnelly 1986). While ideational accounts emphasizing normative discourses and commitments and their transformative power have represented the major paradigmatic alternative to realism, the expectations of such accounts with regard to patterns of national support for international human rights regimes are rather similar. For example, Kupchan and Kupchan (1991) and Risse-Kappen (1996) have linked such support to domestic commitments to democracy and the rule of law, arguing that nations willing to submit to the rule of law and respect the basic human rights of their citizens are more likely to submit to analogous international legal regimes. According to these ideational accounts, interest groups and public opinion in such established democracies espouse principled commitments to extend their liberal democratic values abroad and exert pressure upon governments and international organizations to form and enforce international human rights regimes. Thus, both realist and ideational accounts predict, falsely in light of recent history, that the United States, as

both a great power and an established democracy, would be among the strongest proponents of international human rights regimes.

The inadequacy of existing theoretical frameworks has also been illustrated by scholarship that has examined the dynamics of the creation of international human rights regimes in greater depth, such as Bass's (2001) survey of the history of war crimes tribunals from the aftermath of the Napoleonic Wars through the establishment of the International Criminal Court. Bass's account refutes realist and ideational assumptions insofar as it demonstrates that while liberal democracies have been at the forefront of efforts to establish such tribunals, such efforts have largely been ad hoc and unprincipled. In particular, liberal democracies have supported war crimes tribunals in specific instances in which they have themselves been the victims of war crimes but have been reluctant to support formal international human rights regimes with reciprocal obligations as they have been unwilling to expose themselves to potential prosecution for crimes committed against their adversaries and unwilling to intervene in humanitarian crises in which they have perceived little national interest. Thus, war crimes tribunals sponsored in whole or in part by liberal democracies that have been celebrated by proponents of ideational accounts as triumphs of legalism, such as the Nuremberg Tribunal, have in fact been characterized by a rather narrow and self-serving focus upon crimes committed against victorious states and their civilian populations in interstate conflicts to the exclusion of other arguably more serious crimes. Therefore, while realist and ideational accounts characterize the International Criminal Court as the natural culmination of longstanding support for international human rights regimes on the part of liberal democracies, the actual history of war crimes tribunals suggests that such conclusions are superficial and that a new theoretical framework is needed to understand the relative willingness of nations to delegate sovereignty to international

tribunals.

The Politics of Judicial Empowerment

Such a new theoretical starting point may be offered by scholarship that has used the political self-interest of elites as its point of departure and applied the insights of scholarship on the dynamics of judicial empowerment to the international context. Specifically, this scholarship has demonstrated that the presence or absence of precursors to the empowerment of domestic courts may offer considerable leverage in explaining patterns of support for the empowerment of international tribunals as well and that the refusal of the United States to submit itself to the jurisdiction of the International Criminal Court is not merely the product of American exceptionalism but rather fits (albeit as an extreme case) into a general pattern of national postures toward international human rights regimes. In particular, as Landes and Posner (1975) and Ramseyer (1994) illustrate, judicial independence is promoted by political actors as a form of political insurance that guarantees that the terms of political bargains reached will be adhered to in the future by successors in office who may have different preferences. As a result, the degree of judicial empowerment found in a country has tended to be contingent upon its level of political uncertainty, with highly competitive political environments associated with more independent judiciaries and vice versa. For this reason, as Ginsburg (2003) has demonstrated, judicial empowerment has played a particularly important role in new democracies in which pluralism is fragile and political factions have been uncertain of the willingness of their opponents to abide by democratic norms and therefore sought alternative channels for challenging state action.

That the domestic political uncertainty and resulting desire for political insurance that

accompanies democratization may also contribute to support for the empowerment of international courts is illustrated by Moravcsik (2000). In particular, Moravcsik's case study of the negotiations between 1949 and 1950 that produced the European Court of Human Rights reveals that the strongest support for a stronger and more independent Court came not from established democracies but rather from recently reestablished (and therefore potentially unstable) democracies. Established democracies with lengthy and unbroken democratic traditions, such as the United Kingdom and the nations of Benelux and Scandinavia, favored largely rhetorical commitments to human rights and were initially cool to proposals to establish a Court with mandatory binding jurisdiction and an individual right to petition. In contrast, newly reestablished democracies that had just emerged from fascist interludes, such as Austria, France, West Germany, and Italy, were the strongest proponents of the more robust enforcement regime that ultimately emerged. Consequently, the negotiations were marked by the frequent emergence of an unlikely alliance between established democracies and authoritarian regimes, such as those that governed Greece and Turkey at the time, which for obvious reasons also preferred a Court with relatively weak enforcement capabilities. Moravcsik argues that this pattern stems from the fact that for new democracies the costs associated with surrendering sovereignty to an international tribunal are outweighed by the benefits associated with "locking in" democracy against potential efforts to subvert it from within and thereby enhancing the credibility of democratic institutions and policies. On the other hand, established democracies have been more reluctant to embrace strong international human rights regimes as from their perspective the sovereignty costs associated with such regimes are not outweighed by any countervailing benefit given that the stability of domestic democracy is already high.

As Moravcsik illustrates, the alternative explanations that have been offered for these

alignments, such as varying commitments to parliamentary sovereignty, varying support for European integration, and varying experiences with regard to military occupation during World War II fit the data poorly insofar as both the bloc of nations advocating a stronger and more independent Court and the bloc of nations advocating a weaker and more constrained Court contained nations with traditions of parliamentary sovereignty as well as nations with traditions of constitutional judicial review, nations that embraced the concept of European integration as well as nations hostile to it, and nations that had been occupied by Germany during World War II and nations that had not been.

Despite the potential significance of this finding to theory building and to understanding the dynamics of judicial empowerment, its possible broader implications have not been widely explored. The most notable effort in this direction is Goodliffe and Hawkins' (2009) analysis of the negotiations that produced the 1998 Rome Statute of the International Criminal Court, which considers, among other possible factors shaping nations' postures toward the Court, the degree of regime volatility and democratic instability experienced by those nations and whether or not they are new democracies. Goodliffe and Hawkins focus primarily upon the role of trade networks and how these networks may have led nations to mirror the negotiating positions of their network partners in an effort to maintain good relations. They conclude that the negotiations provide ambiguous support at best for Moravcsik's thesis as although two of their measures of democratic consolidation (new democracy and regime volatility) were statistically significant in the hypothesized direction, one (democratic instability) was statistically significant in the wrong direction. Their (2006) analysis of signings and ratifications of the International Convention Against Torture tests the same variables and reaches a similar conclusion, finding that none of these measures of democratic consolidation were significant predictors of national commitments.

However, there is reason to believe that a different operationalization of democratic consolidation may yield results that are significantly more supportive of the Moravcsik's thesis. While Goodliffe and Hawkins treat democratic instability and regime volatility as continuous variables, it may be more appropriate to treat them as a dichotomous variable that captures whether or not a nation has had recent experience with the type of highly autocratic regime that is particularly likely to commit serious human rights violations. Such historical memory may condition support for international human rights regimes more strongly than the political instability that is associated with transitions between democracy and anocracy (an intermediate regime type that is neither fully democratic nor autocratic) or between different anocratic regimes. For this reason, it may not be new democracies but rather all former autocracies that are the most desirous of the kind of political insurance provided by more robust international enforcement of human rights. This is particularly the case with the International Criminal Court, whose limited focus on the most serious human rights violations (aggression, crimes against humanity, genocide, and war crimes) poses less of a threat than other supranational courts to governments in transitional states where democracy has not been fully established. In contrast, the European Court of Human Rights, which is empowered by the European Convention on Human Rights to enforce a broad range of civil and political rights, is a supranational court whose appeal is likely to be limited to nations that have fully democratized. Thus, while the concept of political insurance may explain International Criminal Court negotiations, the type of regime seeking such insurance during these negotiations may be different due to fundamental differences between the International Criminal Court and the European Court of Human Rights.

Thus, this paper will reconsider whether Moravcsik's "lock in" thesis can also explain the dynamics of the creation of other international human rights regimes by taking a closer look at

the negotiations that produced the Rome Statute of the International Criminal Court. Just as the framework created by the European Convention on Human Rights was of greatest value to certain nations, largely of symbolic value to others, and a threat to others still, the same is true of the framework created by the Treaty of Rome. In particular, the International Criminal Court is of greatest actual and perceived value to new democracies and anocracies in which commitments to basic human rights are fragile and the memory of autocracy remains vivid. In contrast, it offers primarily symbolic benefits for established democracies and anocracies with no such memory and poses a threat to autocracies. As Goldsmith (2003) illustrates, the scenario in which the International Criminal Court is most likely to actually be called upon to try accused human rights violators is the abrupt overthrow of an autocratic regime in the wake of a popular uprising, civil war, or interstate conflict in a signatory state that is followed by the victors in the conflict delivering the vanquished for international prosecution (as the Court lacks jurisdiction to prosecute citizens of non-signatory states for crimes committed within their own borders). Since such a scenario is most likely to materialize in nations that have previous histories of autocracy, it is these states that would be expected to have exhibited the strongest support during the negotiations for a more robust enforcement regime. Indeed, of the eight investigations that the Court has undertaken since its inception, all have involved alleged human rights violations committed in transitional states (the Central African Republic, the Democratic Republic of the Congo, the Ivory Coast, Kenya, Libya, Mali, Sudan, and Uganda) during periods of civil strife and/or autocratic government (International Criminal Court 2013). On the other hand, established democracies and anocracies with no recent history of autocracy have little to gain from such regimes (except perhaps, as Moravcsik speculates, the benefits associated with the “democratic peace” that would flow from better international protection of human rights) and

therefore should have been less willing to incur significant sovereignty costs.

Data and Methods

In order to ascertain whether this is the case, the records of the 1998 United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court were examined and the postures of the participating nations assessed in relation to their respective levels of democratic consolidation. Given that a mere seven nations (China, Libya, Iraq, Israel, Qatar, the United States, and Yemen) voted against the final version of the Treaty of Rome establishing the International Criminal Court while 120 voted to approve it (and 21 abstained), few definitive conclusions regarding patterns of support for international human rights regimes can be drawn on the basis of the final roll call vote. While the coalition of “no” votes was, as Moravcsik’s thesis would predict, a somewhat counterintuitive coalition of established democracies and autocracies, the immediate origins of the opposition of established democracies such as Israel and the United States are attributable not to their high levels of democratic consolidation but rather to their controversial foreign policies and perceived vulnerability to politically motivated prosecution. However, as Moravcsik’s analysis indicates, it may be misleading to focus upon states’ positions with regard to final approval of the Treaty of Rome rather than upon nations’ positions during the negotiations. Just as the unanimous assent of the members of the Council of Europe to the legal framework establishing the European Court of Human Rights obscured the significant differences of opinion that separated established democracies and new democracies during the negotiations that produced that framework, the overwhelming support among both established democracies and autocracies (and even a substantial number of autocracies) for the Treaty of Rome likely obscured equally significant

differences of opinion during the drafting process.

While the Conference debated numerous issues of varying importance in the course of its work, there were four major issues relating to the independence and jurisdiction of the Court that proved to be the most significant points of contention. These included the issue of the role of the United Nations Security Council in relation to the Court, the issue of whether the Court should have universal jurisdiction over the “core” crimes traditionally within the ambit of international tribunals (aggression, crimes against humanity, genocide, and war crimes), the issue of how much latitude prosecutors should be given to initiate investigations and prosecutions, and the issue of whether to limit the crimes falling under the Court’s jurisdiction to the core crimes or to additionally grant the Court jurisdiction over other international crimes such as crimes against United Nations personnel, drug trafficking, illegal arms dealing, terrorism, and the use of weapons of mass destruction.

The statements of the participating nations’ representatives with regard to each of these issues were coded in terms of whether they favored a more powerful and independent Court or a weaker and more constrained Court. National positions on the relationship between the Court and the Security Council were indicative of national postures toward the Court generally insofar as proponents of a more powerful and independent Court feared that giving the Security Council the power to terminate or defer investigations or the responsibility for determining the existence of aggression would fatally undermine the Court by making it, in the words of Afghanistan’s representative, “...hostage to a political body” (United Nations 2002, p. 87). Conversely, proponents of a weaker and more constrained Court feared that allowing the Court to operate wholly independent of the Security Council would, in the words of Australia’s representative, interfere with the Council’s “...primacy in matters relating to international peace and security”

(p. 65). Thus, statements regarding the Security Council were coded as favoring a more powerful and independent Court if they expressed opposition to any participation in the Court's decision-making processes by the Council and/or critiqued the Council as a political body whose interference with the administration of justice would be inappropriate. Conversely, statements regarding the Security Council were coded as favoring a weaker and more constrained Court if they expressed support for providing for a formal role for the Council in some or all of the Court's decision-making processes and/or for ensuring that the new Court would not infringe upon any of the prerogatives of the Council.

Another major point of contention during the conference was whether the International Criminal Court should have universal jurisdiction over crimes such as aggression, crimes against humanity, genocide, and war crimes, crimes recognized as such under customary international law. This would have empowered the Court to prosecute such crimes no matter where they were committed or what the nationality of the perpetrators. While proponents of a more powerful and independent Court favored such proposals, believing that they were necessary, in the words of Germany's representative, to "...eliminate the real loopholes which otherwise would exist for individuals who had committed heinous crimes" (p. 184), proponents of a weaker and more constrained Court opposed them on grounds that, in the words of United States' representative, they "...took the principle of universal jurisdiction far outside any acceptable context" by "...attempt[ing] to impose the jurisdiction of the Court on states which did not become parties to the statute" (p. 361). Thus, statements favoring proposals to give the Court universal jurisdiction were coded as favoring a stronger and more independent Court while statements opposing these proposals were coded as favoring a weaker and more constrained Court.

National positions on procedures for initiating International Criminal Court

investigations, particularly those relating to prosecutorial discretion and the creation of safeguards to prevent frivolous and/or politically motivated prosecutions, were the third major point of contention during the conference. While nations committed to a more powerful and independent Court generally favored a prosecutor with the independent power to initiate investigations and subject to minimal oversight, nations committed to a weaker and more constrained Court generally favored either a prosecutor whose power to independently initiate investigations would be non-existent or highly circumscribed (by requirements such as state consent or by allowing states to enter reservations) or one whose decisions to prosecute would be subject to more robust oversight. Thus, statements regarding prosecutorial discretion and independence were coded as favoring a stronger and more independent Court if they expressed support for empowering the prosecutor to independently initiate investigations without referral by a state party or the Security Council and did not qualify these statements with statements expressing concern over possible abuses of prosecutorial discretion and advocating for restraints upon that discretion (such as review of decisions to prosecute by a pre-trial chamber). Conversely, statements regarding prosecutorial discretion and independence were coded as favoring a weaker and more constrained Court if they expressed opposition to empowering the prosecutor to independently initiate investigations, sought to circumscribe that power by expressing support for requiring state consent or permitting reservations, or expressed support for a pre-trial chamber or other oversight mechanisms as essential means of preventing abuses of prosecutorial discretion.

A fourth major point of contention during the conference was which crimes would fall within the Court's jurisdiction. While some preferred, in the words of Finland's representative, that the Court's "...resources should be focused on the most serious international crimes" (p.

283) of aggression, crimes against humanity, genocide, and war crimes, others favored giving the Court a broader mandate to prosecute, in the words of the Philippines' representative, additional "...crimes that affect the very fabric of the international system" (p. 82) such as crimes against United Nations personnel, drug trafficking, illegal arms dealing, terrorism, and the use of weapons of mass destruction. Thus, statements regarding the crimes falling within the Court's jurisdiction were coded as favoring a stronger and more independent Court if they expressed support for conferring jurisdiction over some or all of these "treaty crimes." Conversely, statements regarding the crimes falling within the Court's jurisdiction were coded as favoring a weaker and more constrained Court if they expressed opposition to the inclusion of treaty crimes and favored limiting the Court's jurisdiction to the core crimes.

Democratic consolidation was measured in terms of nations' annual Polity scores and used Moravcsik's 30-year benchmark for regime type consolidation. Nations that had continuously been democracies or anocracies for 30 years or more prior to the conference (never earning a Polity score below -5 in any year between 1968 and 1998) were classified as "established democracies and anocracies." Nations that underwent decolonization after 1968, that immediately underwent a transition to democracy or anocracy upon decolonization, and that subsequently avoided any plunges into autocracy through 1998 were also included in this group. Nations that experienced a transition from autocracy to anocracy or democracy after 1968 and that were still non-autocratic in 1998 (although perhaps after a period of retrogression) were classified as "former autocracies." Nations that earned Polity scores below -5 in 1998 were classified as "autocracies." As the Polity dataset is limited to nations with populations of 500,000 or greater, several small nations that participated in the conference are not assigned Polity scores. These include several European democracies (Andorra, Liechtenstein,

Luxembourg, Malta, and San Marino) and an Asian monarchy (Brunei). Given these European democracies' lengthy and unbroken histories of democratic governance, they were grouped with established democracies and anocracies while Brunei, given its lack of democratic institutions and the near absolute power enjoyed by its monarchy, was grouped with autocracies.

Democratic Consolidation and the International Criminal Court

Cross-tabulating participating nations' levels of democratic consolidation with their positions on the major issues considered during the negotiations indicates that Moravcsik's thesis is broadly generalizable and that democratic consolidation is an important determinant of national postures toward international human rights regimes. In particular, established democracies and anocracies, which had relatively little to gain from a more robust system of international human rights enforcement, and autocracies, which would be directly threatened by such a system, generally supported a more limited role for the Court than did former autocracies during these negotiations. The issue that was the source of the most polarization between established democracies and anocracies and former autocracies during the conference was the question of what role, if any, the Security Council should play in referring cases to the Court and controlling its agenda. As Table #1 on page 16 demonstrates, the rhetoric that nations participating in the conference used with regard to this issue correlated strongly with their respective levels of democratic consolidation, with the former autocracies that discussed the issue favoring a more independent Court not beholden in any way to the Security Council by nearly a four to one margin and the established democracies and anocracies that declared an official position more closely divided but favoring a formal role for the Security Council on balance. These contrasting views were not simply a product of the five permanent members of

Table #1: Democratic Consolidation and National Positions on the Role of the United Nations Security Council in the International Criminal Court

	<i>Autocracies</i>	<i>Former Autocracies</i>	<i>Established Democracies and Anocracies</i>
<i>Supported major role</i>	Belarus, China, Djibouti, Saudi Arabia, Tajikistan (5)	Bangladesh, Bosnia-Herzegovina, Georgia, Hungary, Kazakhstan, Latvia, Macedonia, Moldova, Mozambique, Romania, Russia, Thailand (12)	Andorra, Australia, Belgium, Botswana, Denmark, Finland, France, Germany, Ireland, Israel, Japan, Luxembourg, Netherlands, Norway, Sweden, Turkey, United Kingdom, United States (18)
<i>Opposed major role</i>	Afghanistan, Armenia, Azerbaijan, Cuba, Democratic Republic of the Congo, Egypt, Indonesia, Iran, Iraq, Ivory Coast, Libya, Morocco, Niger, Nigeria, Oman, Qatar, Sudan, Syria, Swaziland, United Arab Emirates (20)	Algeria, Angola, Argentina, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Central African Republic, Congo, Croatia, Czech Republic, Estonia, Ethiopia, Gabon, Greece, Jordan, Kenya, Lesotho, Lithuania, Malawi, Madagascar, Mexico, Nepal, Nicaragua, Pakistan, Peru, Philippines, Poland, Senegal, Sierra Leone, Slovenia, Slovakia, South Korea, Spain, Tanzania, Tunisia, Uganda, Ukraine, Uruguay, Yemen, Zambia (43)	Canada, Colombia, Costa Rica, India, Italy, Jamaica, Lebanon, Liechtenstein, Malta, Namibia, New Zealand, Samoa, South Africa, Switzerland, Trinidad & Tobago, Venezuela (16)
$\chi^2 = 9.697^*$			

the Security Council protecting their own prerogatives but rather reflected a more general cleavage separating established democracies and anocracies and former autocracies. Given that a Court subject to Security Council supervision would inevitably be a less active (and arguably less effective) one, this pattern is consistent with expectations. The only respect in which it is not is the somewhat curious fact that the autocracies that should have been most opposed to a more active Court overwhelmingly aligned with former autocracies to oppose any special role for the Security Council. This perhaps reflected many of these autocracies' poor relations with the United States and some of the Council's other permanent members and fears that a Court directed by the Council might actually be more likely to direct its attention toward them.

Moreover, the rhetoric employed by national representatives in espousing these positions illustrates the depth and origins of these divisions. Most former autocracies seconded the view expressed by Madagascar's representative that the Court should not be dependent upon the Security Council because in the past "...failure by the Security Council...has led to massacres" (p. 108) and by Gabon's representative that the "...basically political nature of the decision-making procedures in the Council" (p. 102) would make it a flawed guarantor of human rights. Conversely, most established democracies and anocracies shared the concern voiced by the United Kingdom's representative that allowing the Court rather than the Council to determine the existence of aggression would "...detract from the role of the Security Council in maintaining international peace and security" (p. 66) and by France's representative that allowing the Court to operate unsupervised by the Security Council would result in "...frivolous complaints...brought with the sole aim of challenging decisions of the Council or the foreign policies of the all-too-few countries that agree to the risk of peacekeeping operations" (p. 101).

As Table #2 on page 19 demonstrates, the debate over whether to grant the Court

universal jurisdiction exposed similar cleavages. Although majorities of both established democracies and anocracies and former autocracies favored universal jurisdiction, with the proposal not being included in the final statute due in large part to the opposition of the United States, former autocracies were far more unified in their support. Indeed, the number of former autocracies that expressed their support for universal jurisdiction outnumbered the number of former autocracies that expressed their opposition to universal jurisdiction by nearly a ten to one margin. In contrast, established democracies and anocracies were more closely divided. While some argued, as Israel's representative did, that "...the universal nature of a crime [does] not give a particular body jurisdiction" (p. 310), others argued, as Costa Rica's representative did, that "...ratification by a limited number of states should suffice to give the Court universal jurisdiction" and that "...ratification by the states directly concerned should not be a prerequisite for the exercise of jurisdiction" (p. 77). Moreover, as expected, autocracies opposed universal jurisdiction by more than a two to one margin, with most sharing the view expressed by Azerbaijan's representative that "...universal jurisdiction was not a realistic approach if the Court's jurisdiction was to be widely recognized" (p. 330).

As Table #3 on page 20 demonstrates, negotiations regarding procedures for initiating investigations and the discretion to be accorded the prosecutor were characterized by a similar pattern. Once again, former autocracies tended to favor a stronger and more independent Court, in particular one empowered to launch investigations on its own initiative and unconstrained by requirements of state consent or overly stringent internal oversight mechanisms, while established democracies and anocracies tended to favor, at a minimum, a Court whose decisions to prosecute would be subject to internal review by a pre-trial chamber, with many also favoring requiring state consent or a referral by the Security Council or a signatory state. As anticipated

Table #2: Democratic Consolidation and National Positions on Granting the International Criminal Court Universal Jurisdiction

	<i>Autocracies</i>	<i>Former Autocracies</i>	<i>Established Democracies and Anocracies</i>
<i>Opposed universal jurisdiction</i>	Azerbaijan, China, Cuba, Egypt, Ivory Coast, Libya, Sudan (7)	Pakistan, South Korea, Spain (3)	France, India, Israel, Norway, Sri Lanka, Sweden, Turkey, United States, United Kingdom (9)
<i>Supported universal jurisdiction</i>	Afghanistan, Djibouti, Swaziland (3)	Albania, Bangladesh, Bosnia-Herzegovina, Brazil, Burundi, Cameroon, Chile, Congo, Czech Republic, Ghana, Greece, Guinea, Hungary, Jordan, Latvia, Lesotho, Lithuania, Mali, Mexico, Portugal, Romania, Senegal, Sierra Leone, Slovenia, Tanzania, Thailand, Ukraine, Zambia (28)	Belgium, Colombia, Costa Rica, Ecuador, Germany, Italy, Luxembourg, Malta, Namibia, Netherlands, New Zealand, Samoa, South Africa, Trinidad & Tobago, Venezuela (15)
$\chi^2 = 14.558^{**}$			

Table #3: Democratic Consolidation and National Positions on Procedures for Initiating International Criminal Court Investigations and Prosecutions

	<i>Autocracies</i>	<i>Former Autocracies</i>	<i>Established Democracies and Anocracies</i>
<i>Less prosecutorial discretion and independence</i>	<p>Azerbaijan, Bahrain, Belarus, Brunei, China, Cuba, Djibouti, Egypt, Indonesia, Iran, Iraq, Ivory Coast, Kuwait, Libya, Morocco, Nigeria, Oman, Qatar, Rwanda, Saudi Arabia, Sudan, Syria, United Arab Emirates, Vietnam</p> <p>(24)</p>	<p>Algeria, Argentina, Bangladesh, Burkina Faso, Gabon, Georgia, Haiti, Kazakhstan, Kenya, Madagascar, Mozambique, Pakistan, Philippines, Poland, Romania, Russia, Senegal, Sierra Leone, Slovakia, Tanzania, Thailand, Togo, Tunisia, Ukraine, Uruguay, Yemen</p> <p>(26)</p>	<p>Australia, Colombia, Costa Rica, France, Germany, India, Ireland, Israel, Italy, Jamaica, Japan, Lebanon, Malaysia, Netherlands, Norway, San Marino, Singapore, Sri Lanka, Sweden, Switzerland, Trinidad & Tobago, Turkey, United Kingdom, United States</p> <p>(24)</p>
<i>More prosecutorial discretion and independence</i>	<p>Armenia, Democratic Republic of the Congo, Niger, Swaziland</p> <p>(4)</p>	<p>Albania, Angola, Benin, Bosnia-Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Chile, Congo, Croatia, Czech Republic, Estonia, Ethiopia, Ghana, Greece, Guinea, Guinea-Bissau, Hungary, Jordan, Kyrgyzstan, Lesotho, Lithuania, Mali, Moldova, Peru, Portugal, Slovenia, South Korea, Spain, Uganda, Zambia</p> <p>(32)</p>	<p>Andorra, Belgium, Botswana, Canada, Cyprus, Denmark, Ecuador, Finland, Liechtenstein, Luxembourg, Malta, Namibia, New Zealand, Samoa, Solomon Islands, South Africa, Venezuela</p> <p>(17)</p>
<p>$\chi^2 = 17.334^{***}$</p>			

and unlike the debate regarding the role of the Security Council, the majority of established democracies and anocracies were this time joined by an overwhelming majority of autocracies in favoring a weaker and more constrained Court. Thus, while most former autocracies expressed relatively less concern about potential abuses of prosecutorial discretion and shared the sentiment expressed by Ghana's representative that placing too many constraints upon the prosecutor "...would render the Court ineffective and unacceptable" (p. 85), most established democracies and anocracies were more wary of granting too much power to the prosecutor and echoed the concern of Trinidad and Tobago's representative that "...it was of vital importance that proper safeguards be put in place to prevent any misuse or abuse of power" (p. 113). For some, such as India, this meant aligning with autocracies such as China, Cuba, and Vietnam to demand the inclusion of language stipulating that prosecutions could not proceed without state consent while others, such as the United States, Israel, Japan, Malaysia, and Norway, proposed a regime in which state consent was not required but prosecutions could only be launched at the behest of the Security Council or a signatory state rather than at the Court's own initiative. Most other established democracies and anocracies favored constraining the Court through stronger internal oversight mechanisms, such as the institution of a pre-trial chamber to review the sufficiency of evidence, in order to prevent what Australia's representative termed "...politically motivated complaints" (p. 65).

As Table #4 on page 22 demonstrates, negotiations regarding the range of crimes that should fall within the Court's jurisdiction fit this pattern as well. Former autocracies tended to favor a Court empowered to prosecute not only aggression, crimes against humanity, genocide, and war crimes but also other crimes not traditionally within the ambit of international tribunals such as crimes against United Nations personnel, drug trafficking, illegal arms dealing, terrorism,

Table #4: Democratic Consolidation and National Positions on the Jurisdiction of the International Criminal Court

	<i>Autocracies</i>	<i>Former Autocracies</i>	<i>Established Democracies and Anocracies</i>
<i>Narrower range of crimes covered</i>	Afghanistan, Azerbaijan, Bahrain, China, Iran, Iraq, Kuwait, Morocco, Rwanda, Saudi Arabia, Syria, United Arab Emirates, Vietnam (13)	Brazil, Gabon, Ghana, Greece, Hungary, Kazakhstan, Mali, Mexico, Pakistan, Portugal, Romania, Russia, Senegal, Sierra Leone, Slovakia, Spain, Yemen (17)	Cyprus, Denmark, Finland, France, Israel, Italy, Jamaica, Japan, Liechtenstein, Luxembourg, Malaysia, Netherlands, Norway, Singapore, Sweden, Switzerland, United Kingdom, United States, Venezuela (19)
<i>Broader range of crimes covered</i>	Armenia, Belarus, Cuba, Egypt, Ivory Coast, Libya, Nigeria, Sudan, Tajikistan (9)	Albania, Algeria, Angola, Argentina, Bangladesh, Benin, Bolivia, Bosnia-Herzegovina, Burundi, Comoros, Congo, Ethiopia, Kyrgyzstan, Lithuania, Macedonia, Madagascar, Mozambique, Nepal, Nicaragua, Philippines, Poland, Thailand, Togo, Tunisia, Uganda, Ukraine (26)	Botswana, Costa Rica, Dominican Republic, India, Namibia, New Zealand, Samoa, Sri Lanka, Trinidad & Tobago, Turkey (10)

and the use of weapons of mass destruction, agreeing with Albania's representative that "...in an era of globalization, a growing range of crimes could be regarded as crimes against humanity and against international peace and security" (p. 82). Conversely, established democracies and anocracies tended to favor limiting the Court's jurisdiction to the core crimes, generally sharing the view articulated by Switzerland's representative that "...in order to preserve the distinctiveness of the new institution, it must focus on the most serious acts" (p. 108). Autocracies, consistent with their interest in limiting the reach of the Court, aligned with established democracies on this issue as they had on the issues of universal jurisdiction and prosecutorial discretion and independence, with Rwanda's representative warning against the danger to national sovereignty posed by the Court "...assum[ing] the responsibilities of national courts" (p. 103).

Conclusion

The International Criminal Court that ultimately emerged from the negotiations conducted in Rome in 1998 embodied a number of compromises. The United Nations Security Council was empowered to block the Court from investigating or prosecuting a case, proposals for universal jurisdiction were tabled, a pre-trial chamber was instituted to act as a check upon the prosecutor, and the Court was given a narrowly defined jurisdiction limited to the four core crimes. This paper suggests that democratic consolidation is an important factor in understanding the divergence in national positions that forced these compromises. However, it also suggests that it is recent experience (or lack thereof) with autocracy rather than new democracy or democratic and/or regime instability that drives this relationship. The ranks of the former autocracies that proved to be the most consistent proponents of a stronger and more

independent Court contained a significant number of hybrid regimes that had not fully democratized but which nonetheless embraced groundbreaking commitments to the international protection of human rights. However, while Goodliffe and Hawkins attribute this to a “...calculation among less democratic and repressive states that they could save face somewhat in negotiations and evade the Court later” (2009, p. 994), it may instead reflect a sincere interest in locking in protections against the sort of serious human rights violations that many of these nations experienced in their recent pasts. This is supported by the fact that the truly autocratic regimes that participated in the conference showed little concern for saving face and were quite forthright in their opposition to a stronger and more independent Court throughout the negotiations. Thus, when considering the viability of Moravcsik’s lock in thesis in explaining patterns of support for international human rights regimes, it is important to take into consideration differences in these regimes. Given the manner in which the European Convention on Human Rights intrudes deeply into the domestic policies of signatory states, its appeal as a lock in device was limited to states that had fully transitioned to democracy but in which this transition was tenuous. However, given the International Criminal Court’s more limited reach, its appeal as a lock in device was to a broader range of democratic and quasi-democratic states that shared a common history of autocracy. This may explain why previous research has found little correlation between level of democracy and support for the Court and suggests future avenues for research.

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