TYING DOWN GULLIVER: HOW WEAK STATES CONTROL THE DESIGN OF INTERNATIONAL INSTITUTIONS

DISSERTATION

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Autumn Lockwood Payton

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Dissertation Committee:

Professor Daniel Verdier, Advisor

Professor Bear Braumoeller

Professor Irfan Nooruddin

Professor Alexander Thompson

ABSTRACT

When do international regimes reflect the preferences of the less powerful? What are the strategies of weak states for overcoming the objections of major powers? In this dissertation I address these questions in light of the bias against weak states present in the literature on regime formation and institutional design. Extant literature has emphasized the role of major powers as the primary architects of institutional design. Contrary to the assertion that they can do little to affect the development of international regimes, I propose that weak states can extract gains and limit the influence of their more powerful of their more powerful counterparts in the design process. An analysis of the international regime for adjudicating large-scale violations of human rights, and specifically, the formation of the International Criminal Court (ICC) reveals that the negotiated outcome over the ICC's design advanced the interests of weak states relative to the major powers on the UN Security Council that stood in opposition to the Court. I show how less powerful states swayed France and the United Kingdom to support the ICC, despite their initial opposition.

In order to explain how weak states achieve advantageous institutional designs, I offer a theory of issue linkage that explains how states connect disparate issues across intergovernmental organizations (IGOs). This form of issue linkage, via institutions, resembles logrolling and is one way in which weak states can use non-traditional sources of bargaining power to influence design outcomes and the overall trajectory of international regimes. Logrolling coalitions based on shared institu-

tional memberships allow states to link issues from one IGO to another, extracting concessions from otherwise recalcitrant actors.

To test the predictions of this theory, I assess state decisions to ratify the Rome Statute of the ICC using three different and original data sets. An analysis of state negotiations over a three year period, which places states on a spatial model according to their preferences for an independent ICC, demonstrates the logic of trans-institutional linkage orchestrated by weak states. Quantitative tests confirm that shared membership in IGOs leads to increased rates of acceptance of the negotiated outcome. A final quantitative analysis reveals that states' attempts to influence a regime extend beyond the initial creation of an institution and when trans-institutional linkage attempts fail, the most powerful states in the international system have recourse through bilateral linkage strategies. This dissertation contributes to an understanding of the politics of the ICC directly, to the design of international institutions and regime development more generally, as well as to the role played by weak states in international politics.

DEDICATION

For Grandad

The first scholar I ever knew.

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And to Eric, for being amazing.

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VITA

4 November 1980	Born - Hampton, VA USA
May 2003	B.A., Political Science, Virginia Tech, Blacksburg, VA USA
2003 – 2009	Graduate Research Associate / FLAS Fellow, The Ohio State University, Columbus, OH USA
December 2005	M.A., Political Science, The Ohio State University, Columbus, OH USA

FIELD OF STUDY

Major Field: Political Science

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ABBREVIATIONS

ASPA	American Servicemembers Protection Act
BIA	Bilateral Immunity Agreement
CAP	Common Agricultural Policy
CFSP	Common Foreign and Security Policy
CICC	Coalition for an International Criminal Court
CRC	Convention on the Rights of the Child
ECB	European Central Bank
ECOSOC	Economic and Social Council
ESF	Economic Support Funds
EP	European Parliament
EU	European Union
FMF	Foreign Military Financing
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
ICC	International Criminal Court
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGO	Intergovernmental Organization

ILC	International Law Commission
IMET	International Military Education and Training
IMF	International Monetary Fund
LDC	Less-Developed Country
LMG	Like-Minded Group
NAM	Non-Aligned Movement
OECD	Organization for Economic Cooperation and Development
P-5	Permanent Five members of the United Nations Security Council
PrepCom	Preparatory Committee for an International Criminal Court
RC	Rome Conference
SADC	Southern African Development Community
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNSC	United Nations Security Council
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

A network of such organizations, they argued, could be created which would absorb, one by one, successive fields of international activity and might even end, like the Lilliputians, in tying down the Gulliver of politics while he slept, so that the world would find itself governed and controlled without ever having consciously yielded up those abstract rights of sovereignty which arouse such fierce political passions and prejudices.
—H.G. Nicholas (1971)

When states gathered in Rome to negotiate over the design of a permanent court to try individuals for massive violations of human rights they were confronted with no shortage of obstacles that imperiled the fate of the Rome Statute of the International Criminal Court (ICC), which delicately hung in the balance between competing state interests. During these negotiations, weaker states seeking a strong, independent court were pitted against the permanent five members of the UN Security Council. In the end, less powerful states were able to design a court that served their interests over the interests of major powers.

A crucial turning point for the future of the ICC was the decision of the United Kingdom and France to support a court that had a very limited role for the Security Council. Prior to the Rome Conference, France and the United Kingdom along with the United States, China and Russia were staunchly opposed to a court that would not grant primary referral responsibilities to the Security Council.[1] Over the course of negotiations, these reservation points shifted and perhaps more puzzling, shifted in favor of weaker states advocating for a stronger role for the prosecutor and a diminished one for the Security Council. Why then did France and the United Kingdom's bargaining positions change to support weaker states' version of the ICC? More broadly, this conundrum prompts the question, *under what conditions can weak states design international institutions that reflect their interests?* Further, how do institutions, created at the behest of weak states, shape the behavior of more powerful states? Taken together, the establishment of the ICC and the responses of major powers and other states illustrate how institutions created by the less powerful shape international outcomes within a particular regime. The literature in international relations gives little guidance on how to address these questions through its neglect of the strategies available to weak states in the institutional

[1]The International Criminal Court will be referred to hereafter as the ICC or simply the Court. The treaty document will be referred to as the Rome Statute.

design process. Thus, the goal of this dissertation is to offer an explanation of how states considered to be weak can control the development of a new regime, but bears in mind that institutional creation is only the first act in a two part (power) play. The second act gives serious consideration to how the development of a regime remains a struggle between those that benefit from it and those that are disadvantaged by it.

At the core of international relations is the *capacity to influence* (Singer 1963). No one knows this lesson better than the Melians. Unfortunately for them, they did not belong to any international organizations through which they could build a coalition to confront their adversaries. It seems that the Melians' historic loss to the Spartans has led to a bias against weak states and their capacity to influence. This dissertation demonstrates in the case of the International Criminal Court how weak states, through international organizations, influence their more powerful counterparts. But acknowledges the laws of physics, indicating that every action has an opposite and equal reaction. Thus, when extrapolating to international politics, in any instance of influence one must anticipate that those subjected to influence attempts will respond in kind. The creation of the ICC is a story of influence from unexpected sources and its response.

The surprisingly asymmetric nature of the ICC bargaining outcome speaks directly to a long-standing debate in international relations, that is, do international institutions constrain state behavior? Many studying intergovernmental organizations (IGOs) have moved beyond this question, developing research programs that focus on when states will choose to constrain themselves and others through IGOs, or focus on how institutional design offers solutions to collective problems in the international system. However, there remains a sizable group of scholars who contend that IGOs do not exert an independent impact on state behavior and that powerful

states will not allow themselves to be bound by international laws or institutions if they directly conflict with their interests (Mearsheimer 1994/95, Grieco 1988). More recent work that acknowledges a role for IGOs suggests that states will only comply when the agreement does not require significant deviation from their normal course of action (Downs, Rocke & Barsoom 1996).

While it is true that the enforcement mechanisms of IGOs are imperfect, the extent to which negotiated outcomes force states to adjust their behavior, despite decisions of some not to participate, has not received adequate attention.[2] New bargains have the capacity to force states to modify their behavior, by moving the status quo ante and taking options off the table. When powerful states were confronted with the Rome Statute, they faced a similar problem: if adopted, the institution would obviate the need for ad hoc tribunals. Major powers dealt with this eventuality in different ways. France and the United Kingdom switched their position; the United States resisted. No party retained the option of ignoring the outcome. Thus, while weak states did not convince the United States to join the ICC, the superpower found itself temporarily tied down by the outcome and forced to adjust its behavior accordingly.

Every institution creates winners and losers, despite whether the issue area is economic, security or otherwise. Even within the human rights regime, the form that these institutions assume can have important distributional consequences for potential members. Ratifying the ICC would require that states bring their judicial systems into conformity with the Court if they wanted to avoid prosecution of an alleged atrocity. Moreover, the ICC carries with it binding obligations and third-party adjudication procedures, largely absent in most other transnational institutions, es-

[2]See Gruber (2000) for an important exception. Though Gruber maintains focus on the ability of already powerful states to "go it alone" and move the status quo in a way that convinces other states to join.

pecially in the case of the human rights regime. The adoption of the Rome Statute forces state parties and, to some degree, non-parties to relinquish control over the adjudication of both national and international criminal activity. As the executive secretary of the Rome Conference, Roy Lee, indicates,

> At the core of a state's sovereignty and constitution are criminal jurisdiction, protection of nationals and privileges of government officials. Implementing the ICC Statute and accepting the Court's functions particularly with respect to investigation, surrender and arrest of suspects, will inevitably touch upon all these issues and might impact on a state's sovereignty or constitution (2005, 9).

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The specific implications of a permanent ICC were the following: for the permanent five members of the Security Council (P-5), a court controlled by all of its state members and an independent prosecutor would, at best, make state cooperation with the ad hoc tribunals challenging as ICC states would see a P-5 rebuff as an affront to the universalistic principles embodied by such a court and, at worst, nullify the ad hoc tribunals and strip them of the authority to control adjudication of human rights in the future, increasing their own vulnerability and that of their allies to investigation and prosecution. For weaker states, a court that relied on the Security Council as its trigger mechanism would be tantamount to a permanent ad hoc tribunal system, solidifying P-5 control over the adjudication of human rights violations with limited influence over this system for the very states that were lobbying for more control over this process in the first place (Benedetti & Washburn 1999).

Existing frameworks for understanding the institutional design process suggest that unless the Court provided distributional benefits, states should have been

reluctant to cede authority to an international court with jurisdiction to try their citizens including their leaders.[3] The movement from the ad hoc tribunals to a permanent court reflected the decision of states to delegate authority over the adjudication of human rights violations to a centralized agent. Previously, scholars have suggested that states will reject the cession of control over their foreign policy to an international body (Mearsheimer 1994/95); however increasingly the international system has witnessed deviations in this pattern with the process of integration in Europe, including most recently the Common Foreign and Security Policy, and the Dispute Settlement Body of the World Trade Organization (Koremenos, Lipson & Snidal 2001, 771). This is not to say that states do not still closely guard their sovereignty as this dissertation will show.

The international organization literature is replete with explanations of how states create and participate in institutions to realize mutual gains, yet this does not explain such wide participation in the ICC. The ICC demonstrates that sometimes IGOs reflect the preferences of weaker states. In other words, institutions are offered as solutions to problems in the international system and they can take on a variety of forms, yet the current state of the literature has not provided adequate guidance as to how particular outcomes are selected among the possible range of bargains. Because states differ according to their interests and resources, any bargaining outcome will have differential effects.[4] The questions of when can states in general achieve their desired bargaining outcomes and more specifically, the circumstances under which

[3]For weaker states the latter ICC draft statutes eroded Security Council domination over one aspect of international politics, but the P-5 was, in large part, content with the ad hoc tribunal system as indicated by the support for the International Law Commission's earliest draft of the ICC Statute in 1994, which subordinated the Court to the Security Council (Schabas 2004).

[4]In game theoretic terms, there are multiple equilibria for problems in international relations and institutional design. The institutional design process can be seen as a way of choosing among several equilibrium solutions. While rational design has demonstrated that the problems that states face in international politics are important inputs for institutional outcomes, it has not given us the analytical tools to determine which outcome will be selected (Koremenos, Lipson & Snidal 2001).

the design of institutions or agreements (embodied in the rules, membership, and decision-making structures) reflect the preferences of weaker states relative to major powers remain unanswered.

Extant literature suggests that institutions reflect power distributions and thus, the preferences of stronger members (Keohane 1984, Mearsheimer 1994/95, Martin & Simmons 1998). More recently, the rational design of institutions research program has allowed for the possibility that variation in institutional design is a function of the nature of the problem that the IGO is designated to confront but, has largely overlooked the issue of state power, though to the extent that it does confront the topic it tends to reinforce conventional understandings that power asymmetries among states are an important determinant of these designs (Koremenos, Lipson & Snidal 2001).[5] The ICC stands out as an anomaly for these theories because it shows how bargaining outcomes can reflect the preferences of weaker states and secure the participation of more powerful ones. Thus, this project can shed light on an important issue that remains to be addressed by the rational design research program, namely that in the process of remedying problems that IOs aim to resolve distributional problems may be created, as some states will prefer delegation to a centralized authority, while others prefer to maintain what control they have. Which alternative a state prefers depends upon the location of their ideal policy in relation to the status quo. Which set of actors will prevail under a given set of circumstances is the subject of this dissertation.

[5]As Koremenos et al. (2001) note, asymmetries in power are expected to produce asymmetries in control over the institution; however, this is just one of the numerous dimensions along which institutional design may vary. IGOs are considered to be "rational, negotiated responses to the problems that international actors face" and in this way concerns about power preservation and correspondingly, distributional consequences and the loss of control are mitigated by the concerns about other issues including time-inconsisteny, unobservability, and moral hazard (768).

Weak States and the International Criminal Court

The International Criminal Court, the United Nations Law of the Sea, the Kyoto Protocol, and the negotiation of Trade Related Intellectual Property Rights (TRIPS) in the World Trade Organization serve as examples of IGOs that may challenge traditional notions about institutional outcomes, particularly the disjuncture between the distribution of capabilities and the design features of these institutions.

Perhaps nowhere in international relations have weak states been as successful in achieving their ends as they have through the creation of the ICC. Previous attempts to adjudicate human rights violations have centered on the ability of powerful states to exclude their weaker counterparts from the decision process. Indeed, this dynamic can be traced back to the Congress of Vienna, in which smaller states were kept from having a seat at the bargaining table.[6] More recently, the UN Security Council has maintained tight control over the establishment of ad hoc tribunals to prosecute large-scale violations until the ICC entered into force.

In the case of the ICC, there was limited agreement on the need for a permanent court to try the most heinous crimes against human rights, but within this space of agreement, no one universally preferred outcome existed. Almost all of the states wanted a human rights court in some form, but there was considerable disagreement on the rules and procedures that such a court would follow (Kirsch & Holmes 1999). In order to garner broad support, the Rome Statute had to accommodate the preferences of no fewer than three groups of states–a large group of small and middle powers supportive of a strong independent court (often referred to as the Like-Minded Group or LMG), the permanent five members (P-5) of the Security Council who supported a weaker court dependent on the direction of the Security Council, and a sizable group of small and middle powers negotiating as the

[6]The abolition of the slave trade was a primary consideration for the Great Powers, namely Britain, at the Congress of Vienna (Nicolson 1946).

Non-Aligned Movement (NAM) wary of Security Council dominance over the new Court.[7]

Given these conflicts of interest, it is notable that the ICC entered into force in July 2002, just four years after the adoption of the Rome Statute, with 66 ratifying state parties. With the first cases underway in Uganda and the Sudan, the ICC enjoys 108 ratifications and accessions, two from permanent members of the UN Security Council, the United Kingdom and France. However, France and the United Kingdom did not always express their support for the ICC. Initially, the two countries stood with the rest of P-5 in their opposition to an independent court that could initiate cases without approval from the Security Council. Why did France and the United Kingdom change their positions on the ICC?

Public statements of support for the Court were ubiquitous in the months surrounding the adoption of the Rome Statute. No state wanted to appear to be against the international criminalization of genocide and similar crimes; however, upon closer examination some states revealed their hesitation about such a powerful adjudicative structure. Their hesitation was not unwarranted. The ICC stands in stark contrast to existing institutions dedicated to protecting against human rights violations, such as the Human Rights Committee designed to monitor implementation and violations of the International Covenant on Civil and Political Rights because it delegates significant powers to the Court's prosecutor to initiate investigations.[8] Moreover, because the ICC is not a substitute for national courts, states have the ability to investigate and prosecute crimes within their own judicial system. However, this is only true insofar as states have incorporated the Rome Statute into their legal system. If a state has not criminalized crimes included in the Rome

[7]Most of the states that negotiated as members of NAM at the Rome Conference later joined the LMG (Bassiouni 1999).

[8]For further discussion of the stakes imposed by the ICC see Simmons and Danner (2008).

Statute then they may be considered unwilling or unable to handle the case within their own legal system, upon which the prosecutor could refer the case to the ICC. As of 2005, less than a quarter of state parties had included ICC crimes into their national laws, "consequently, if a state is interested in prosecuting its own nationals and in according the Court's intervention, it must, in the first instance, make the Statute crimes punishable under its own law" (Lee 2005, 45). Interestingly, the same is true for non-party states if it does not want its citizens to be surrendered to the Court by a third party (Ibid.). Thus, the implications for both party and non-party states could be quite severe for judicial systems that have not included all acts listed as crimes into their penal law, as it is "not impossible that trial for ordinary crimes could be considered a form of shielding of the accused or as evidence of a lack of intent to bring the person concerned to justice" (Broomhall 1999, 150).

To understand the various positions on the Court, the ICC must be considered as an alternative to the status quo, which was not the absence of a human rights court, but the tribunals established by the UN Security Council under the direction of the P-5. Many LMG states and primarily developing countries felt that the P-5 possessed an inordinate amount of control over the ability to prosecute large-scale human rights violations. The Security Council under its Chapter VII duties determines which situations warrant tribunals, what the jurisdiction of the tribunals would be, and how resources would be allocated. For all practical purposes, none of the P-5 nor their allies would be threatened with a tribunal. Many states charged that China and Russia with their respective human rights situations in Tibet and Chechnya could never be held accountable for their possible crimes. For these states, a preferable solution was an institution that could operate independently of the Security Council and hold any individual responsible for the crimes committed under the jurisdiction of the court.

Statements made by delegates at the Rome Conference suggest that weak states sought greater control and authority over the adjudication of human rights violations. A speech made by the the head of Lesotho's delegation at the conclusion of the conference highlights the position of weak states The delegate states, "Let us disabuse ourselves of any hopes that a weak court now can be strengthened later as such a court can never withstand the inevitable changes that will occur in the international system in the near future. It would be a retrogressive step to create a court that does not reflect this reality" (Rome Conference, 15 Jun. 1998).[9] Alternatively, the P-5 pushed for a court that depended upon Security Council approval before initiating a case against any country, a position articulated by the French foreign minister Hubert Vedrine in his statement to diplomats in Rome,

> [t]he Council should be able to ask the Court explicitly not to initiate proceedings. None of us wants to see the Court tuned into a political forum, asked to investigate complaints without foundation whose sole purpose is to challenge the decisions of the Security Council or the foreign policy of one of the all too few countries willing to assume the risk of peacekeeping operations (Rome Conference, 17 Jun. 1998).

Despite this, the end result of negotiations was a court that remained independent of the Security Council and the United Kingdom and eventually France broke ranks with the P-5 position to accept this outcome.

The vast majority of the time, when powerful states participate in IGOs they do so because the design of the institution provides them with some benefit they

[9]Namibia's government puts the point more strongly suggesting that "veto power in the Security Council has outlived its usefulness and is thus now anachronistic which [*sic*] must be abolished. Especially when the International Criminal Court is established which should be an element of peace and security in our contemporary world. It is thus not acceptable to my delegation for the International Criminal Court to be subjected to the political decision of the Security Council" (Rome Conference, 16 Jun. 1998).

would not otherwise receive or because their participation in the organization does not require them to significantly modify their behavior. Voting rules in the IMF and the World Bank or the UN Security Council itself serve as evidence of major power dominance over institutional design. Thus, major power participation in the ICC remains beyond the scope of traditional explanations of institutional creation.

State Power and Regime Formation

Power, traditionally defined, is the "the ability of a nation to exercise and resist influence."[10] Most operational measures of power have centered on material capabilities and in fact the Correlates of War (COW) project (2004) has used the measures to classify states into two categories—major powers and the large residual category, non-major powers. Yet, the type of power involved in the creation of international institutions is context specific. General measures of power based on material capabilities are a useful starting point, but IGOs as a result of their rules and other design features allow for the possibility that some states may have bargaining power that can augment their material power. Therefore, the distinction between weak and strong states in this project is made on the basis of the general environment, in which material power has a prominent role, and in the institutionally specific environment, which elevates the role of bargaining power within that context.

Regime theory removes the focus of IR theory from intractable distrust and fears of defection preventing the realization of mutual interests, yet it maintains a heavy emphasis on the dominant role of major powers in the establishment of international regimes (Keohane 1984, Axelrod 1984). According to this view of institutional formation, a single actor, or a small group can create a mutually beneficial

[10]This is the standard definition given by the Correlates of War Project (2005).

institution and maintain it themselves. The Bretton Woods institutions demonstrated the provision of a public good by such a "privileged" group (Olson 1965).[11] As the hegemonic stability research program demonstrated, it was usually the most powerful state in the system that insisted upon the provision of the good for its own benefit, that benefit primarily being stability in the international economic system (Krasner 1976, Kindleberger 1981). While critics of this approach have suggested that a hegemon need not be the sole provider of a collective good, they maintain that collective goods are unlikely to be provided by groups of weak states (Snidal 1985, Lake 1988). These theories speak more directly to regimes governing the international political economy and their formulation has remanded institutional creation to oligopoly or hegemony with very little room for the influence of weaker actors. In fact, early regime theorists affirmed that "as Realists emphasize, they [regimes] will be shaped largely by their most powerful members, pursuing their own interests" (Keohane 1984, 63). Though the theory maintains that privileged groups are not necessary for regime survival *after* they have been established, as the transaction costs associated with creating new institutions would change the cost/benefit calculus substantially (1984). This approach offers a more optimistic explanation of cooperation, but essentially leads to similar conclusions as realism as to which states create institutions and the preferences that these institutions will reflect.

The prisoner's dilemma may have served as the appropriate analogy of the structural setting in which actors could overcome the consequences of anarchy, but distributional consequences arising from cooperation change the structure of the game in which states operate to one of policy coordination. The process of deciding

[11] Olson indicates that some groups may be "privileged" in cases where "each of its members, or at least some of them, has an incentive to see that the collective good is provided, even if he has to bear the full burden of providing it himself" (50).

upon the location of a policy in international relations has been likened to selecting the point on the Pareto frontier at which the cooperative bargain would be struck. Here again, state power ultimately determines the location of the policy. Therefore, the distributional consequences of new regimes advantage powerful states due to their ability to control which actors can participate, assign payoffs, and establish the rules of the regime (Krasner 1991). Hence, institutional design can be distilled as a conflict over the distribution of resources that regimes supply. Turning on earlier work, Krasner maintains that in international politics the mechanism for establishing the distributive principle has typically been state power, suggesting that less powerful actors have little, if any control over regime outcomes. In some cases, however, the institutions and their designs do not always originate from the most powerful actors. Perhaps more importantly, the distributional consequences of these institutions in which great powers participate do not necessarily favor them more so than other actors in the system.

If, as Martin and Simmons (1998) suggest, "institutions in this formulation prevent potential challengers from undermining existing patterns of cooperation explaining why powerful states may choose to institutionalize these patterns rather than rely solely on ad hoc cooperation," then why would IGOs, especially those that enjoy major power participation, ever reflect the preferences of their weaker members (746)?

Weak states should be no less concerned with the distributional consequences of IGOs and will respond to these incentives by attempting to shape the rules of these institutions. Rather than simply being dragged along for the ride, they will try to influence the institutional bargaining process. The approach for achieving these ends is necessarily different for weak states that do not have certain strategies at their disposal such as the ability of offer side-payments and make credible threats.

Krasner (1985) suggests that existing institutions have allowed for the success of less developed countries (LDCs) in this endeavor.[12] The argument emphasizes the importance of hegemonic decline and the erosion of American control over international institutions for developing countries to achieve desirable outcomes. However, as I seek to demonstrate, hegemonic decline need not be a precondition for the ability of weaker states to extract favorable bargains.

Some focus has been placed on the abilities of middle powers to take on leadership positions in international institutional design and negotiation. Much of the scholarship in this area centers on the efforts of middle powers to mitigate differences between major powers and arrive at some acceptable institutional bargain. Thus, these studies tend to define small and middle powers according to their diplomatic leadership skills rather than traditional measures of power. Higgott and Cooper (1990) suggest that the leadership of the Cairns Group in the Uruguay Round of trade negotiations marked the viability of middle powers in guiding international negotiations. What is notable about the Uruguay Round of trade negotiations is the gains achieved by groups of smaller, less powerful states. Previously, "the role for smaller trading countries and particularly the developing countries was small to nonexistent," notes Miles Kahler (1993, 302). However, rather than bargaining as a weaker group of states, developing countries met with success by attracting smaller industrialized countries as negotiating partners, thus emphasizing the bargaining power of large coalitions in a multilateral setting.

[12]Krasner's concept of existing institutions is somewhat loosely defined. He includes for example the "institution of sovereign equality" which he argues allowed LDCs access to the decision-making process in other venues. But, in practice, the principle of sovereign equality was not embraced by many IGOs in the 1970s and 1980s. Weighted voting procedures in international financial institutions as well as in the UN Security Council prevented sea-changes in the governing structure of the international system.

Weak State Strategies of Institutional Design

While regime theory has focused on the preferences of major powers as the determinants of institutional outcomes in international politics, the rational design approach has focused on how state interests can coalesce around an international problem and arrive at an efficient solution. Neither theory has provided a systematic explanation of when states may choose to use institutionalized multilateral bargaining strategies over bilateral ones and as a result cannot account for the influence of weak states in achieving favorable institutional designs. A handful of scholars have suggested that weak states can use existing institutions to garner power over the creation of new institutions, but the reader has been left to infer what the causal mechanisms for achieving these outcomes are (Krasner 1985, Keohane & Nye 1977). Building upon these insights, this project will offer an explanation for the conditions under which weak states can exert control over international agreements in general and the design of new institutions in particular and further, why major powers would choose to join these organizations despite countervailing interests.

Though much has been written on multilateral issue linkage, the bulk of this work has focused on linkage as a strategy for stronger states, made through side payments and/or coercion, a strategy that proves difficult if not impossible for states that have few resources to spare (Martin 1992, Drezner 2000). By focusing the question on when institutionalized multilateral linkage is desirable or feasible for any state or group of states in the international system, I propose that a strategy of multilateral logrolling—one in which states must form a sufficiently large coalition in order to exact concessions—makes bargaining gains possible for weaker states. The particular combination of strategy and environment are determined by a number of factors including the relative power of a state, the costliness of bilateral versus multilateral strategies, whether an institution reflects majoritarian principles, the issue,

and how embedded a state is the the existing system of international institutions.

Multilateral logrolling coalitions can be used by any state to achieve desirable bargaining outcomes, though without this strategy weak states would have no recourse with which to influence the design of international institutions and agreements. Logrolling can be distinguished from a simple *quid pro quo* by the assumption that some social preference exists apart from the individual that can be achieved through coalitional support.[13] By definition weak states do not possess material resources to coerce or entice others to support institutional features counter to their interests, nor are they usually in positions within existing institutions to make use of features, such as voting rules, to their advantage, individually. I suggest that the dearth of opportunities to leverage other actors though traditional means such as threats and side-payments, encourages states weak in material power to form multilateral logrolling coalitions that allow them to link issues across international institutions. Three factors contribute to the ability of weak states to use this strategy. First, weaker states outnumber major powers in almost every international institution. Second, the number of international institutions is large and growing. Finally, these institutions overlap in membership and in some cases jurisdiction, allowing states link the negotiation of an issue in one institution to another issue in a separate institution in which the states share membership.

Weaker states can use their shared memberships in existing international institutions to design favorable bargains and induce stronger states to accept them through logrolling behavior. If preferences, specifically the preferences of the most powerful, translate directly into institutional outcomes, then there would be very little that weak states could do to take advantage of this process. I contend that

[13]One legal definition of logrolling suggests it is "A legislative practice of embracing in one bill several distinct matters, none of which, perhaps could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures into a majority that will adopt them all" (*West's Encyclopedia of American Law* 2004).

institutional design in international politics has overlooked what those who study domestic political institutions have offered as the solution to the problem of social choice: bargaining outcomes are endogenous to existing institutions. That is, preferences and interests are the beginning of the design process, but institutional equilibria serve as an intervening variables that, when combined with state preferences, produce institutional outcomes. Therefore, outcomes are endogenous to existing institutions, or what Kenneth Shepsle (1979) has called "structure induced equilibrium." In short, preferences must be filtered through existing institutions and only then can the outputs of design become equilibrium institutions. Since issue linkage has traditionally been considered as a tool of powerful states to exact concessions from less powerful ones, little work has been done on the ability of weak states to engage in "coalitional issue linkage" or logrolling. By overcoming problems of collective action and forming of coalitions weak states can gain support for their proposals by applying pressure on states which, under normal circumstances, would not be subject to this type of pressure. Finally, since actors rely on the existence of multiple issues in order to engage in logrolls, little attention has been given to negotiations over single issues. However, shared memberships can serve as a "linkage multiplier" connecting states through IGOs in order to link issues, as opposed to the other way around.

In some ways, this project can be considered a return to the question of interdependence and its effects on state behavior. Previously, this somewhat amorphous concept has been offered as something that happens to states in the international system as their interactions increase over time with the growth of new organizations and bilateral interactions.[14] However, this dissertation suggests that interdepen-

[14]Keohane and Nye define the concept in the following manner, "Interdependence in world politics refers to situations characterized by reciprocal effects among countries or among actors in different countries" (1977, 8).

dence can be created and manipulated in deliberate ways by states pursuing their interests and using shared institutional memberships as a vehicle for doing so. Moreover, this project offers a way of empirically evaluating the effects and implications of interdependence on current and future action by states.

Plan of the Dissertation

In the following chapter, I present a theory of issue linkage. Within this framework I pay special attention to conditions under which weak states can take advantage of multilateral institutionalized logrolling strategies. This theory differs in two significant ways from existing explanations of issue linkage by demonstrating that linkage is a multi-faceted strategy that can be used by any state, powerful or weak, under a given set of conditions and that logrolling can occur *across* international institutions rather than just within them.

The empirical section of this dissertation is composed of two main parts: "Act One" consists of two chapters discussing the role of trans-institutional linkage in establishing the ICC as an institution. "Act Two" addresses how the ICC regime has developed in response to the success of weak states at the Rome Conference.[15] I argue that by bringing these two phases together, we will have a better understanding of the implications of the overall regime and how it both affects and is affected by state behavior.

Chapter 3 tests the predictions of a theory of issue linkage by tracing the causal mechanism of shared membership. I conduct an in-depth negotiation analysis of the Rome Conference in which the ideal points and reservation values of the primary negotiating parties are analyzed over time. The analysis reveals the best

[15]In other words, "Act One" endogenizes the ICC outcome (equilibrium institution) and "Act Two" takes the ICC as exogenous and investigates the outcomes produced by an institution created by weak states (institutional equilibrium).

alternative to a negotiated agreement for countries changed over time, specifically in the case of the United Kingdom and France as a result of the logrolling strategies on the part of weaker states. Chapter 4 expands the focus beyond France and the United Kingdom and follows on the findings presented in the negotiation analysis by presenting quantitative evidence that suggests that shared memberships exerted a positive effect on the rate at which all states accepted the ICC outcome. Shared institutional memberships can serve to "multiply" potential linkages by connecting issues through institutions rather than relying on multiple tradable issues to arise within the context of a single organization. These hypotheses are tested on a data set of state decisions to ratify the Rome Statute of the International Criminal Court through an event history analysis. I find support for the theoretical prediction that the presence of shared memberships will quicken the pace of ratification for individual countries.

An important implication of a theory that asks how weaker states achieve favorable bargains is addressing how the regime develops as a result of the response by major powers to these negotiated outcomes. They may agree to the bargain (or join the institution), they may leave the bargaining table, or they may choose to obstruct the bargain. In Chapter 5, I consider how the response of powerful states to the Rome Statute affected the ICC regime and in turn, how the founders of the institution reacted to these changes. I return to a quantitative analysis of an original data set on state decisions to sign bilateral immunity agreements (BIAs) with the United States and consequently, U.S. decisions to sanction a subset of the countries that did not sign the agreements exempting U.S. citizens from prosecution by the ICC, and finally how states used trans-institutional linkage strategies to resist U.S. obstruction attempts.

In the final chapter, I return to expectations developed in the theory to discuss

how trans-institutional linkage strategies may be extended to other international bargaining contexts. I illustrate these concepts through an example of the World Bank and the World Trade Organization in order to demonstrate the willingness of major powers to engage in trans-institutional linkage strategies and the limitations that weak states may experience when faced with a coalition of major powers. In this example, the United States opted in favor of a universal logrolling coalition in order to prevent European countries from blocking the election of its favored candidate for World Bank president. Finally, I address how the same dynamics that led to gains for weak states in the ICC have been employed to varying degrees in other institutional contexts, inquiring how trans-institutional logrolling by weaker states has played a role in the establishment of institutions and agreements in other issue areas. I conclude with some implications of the theory for the design of future international agreements. Specifically, if the states in the international system operate similarly to domestic legislators when it comes to winning support for their policy proposals, what are the prospects for future convergence of international organizations? As the number of IGOs and correspondingly shared memberships continues to grow, states will increasingly rely upon issue linkage across international organizations to achieve favorable bargaining outcomes.

CHAPTER 2

A THEORY OF THE LOGICS OF LINKAGE AND LOGROLLING

Negotiations over the Rome Statute of the International Criminal Court stand apart from many other international bargaining situations because the final outcome, the ICC, reflected the policy preferences of weaker states rather than major powers. Not only was the result in favor of weak states, but major power detractors changed their positions on the main point of contention—a strong, independent prosecutor versus one under the direction of the UN Security Council. Resolving the puzzle of how weak states were able to control the design of the ICC and induce France and the United Kingdom to change their positions to support the Court requires a theory of influence to explain how the weak states won. Existing explanations of international influence focus on state power, which cannot explain the institutional outcome in this case.

In this chapter, I present a theoretical framework to explain the sources of influence for weak states and the conditions under which they are successful in achieving their preferred policies when designing international institutions. This theory builds upon traditional explanations of influence in international politics including bilateral issue linkage strategies and issue linkage through multilateral organizations, but argues that the treatment of these strategies have largely neglected how weak states can and do use issue linkage. Based on a theory of issue linkage that incorporates weak states, I show the conditions under which bilateral, intra-institutional, and trans-institutional issue linkages work best, respectively. I then discuss the challenges that states must overcome to operate successfully in each of these strategic environments, specifically problems of defection, reputation, and enforcement. While the first part of the theory discusses strategies available to states to influence institutional outcomes, the second part of a theory of linkage discusses when states will be susceptible to these influence attempts. Finally, I generate predictions about state power, joint membership in international organizations, the

number of organizational venues in which issues are being negotiated, and the type of IGO (as reflected in voting rules and agenda setting powers) in which an issue is being negotiated to indicate when states will be susceptible to the types of influence described above.

I argue that the combination of three factors allow weak states to influence institutional design in ways that the literature has not considered previously: 1) small states outnumber major powers in organizations with voting procedures that maintain majoritarian principles (one state, one vote); 2) international organizations, increasing in number, overlap in jurisdiction and membership; 3) existing institutions can provide weak states a forum for coalition formation when they can organize their interests over at least one salient issue. These conditions allow weak states the ability to engage in logrolling that can induce powerful states to agree to bargaining outcomes they may not have otherwise. This latent institutional power, present where the conditions above attain, provides the impetus by which states weak in material power have been able to exert increasing amounts of control over the institutional design process.

What follows is a theory of issue linkage indicating the options that states have when trying to achieve their preferred policy outcomes. While much has been written about issue linkage it has remained under-theorized with regard to which actors use these strategies and the conditions under which they do so.

Theory of Issue Linkage

One mechanism by which states can exact concessions in the institutional bargaining process is through issue linkage. The purpose of linkage is to connect distinct issues in order to achieve policy outcomes that would not have been possible through separate sets of negotiations. Linkage is a viable strategy when actors that

have intense and particularistic preferences in some areas, make concessions in other areas, where other actors may have a more intense set of preferences. The basis for any successful linkage strategy is that the parties involved have to have something attractive to offer each other. Alternatively, the gains from linkage can benefit one actor if they can offer sufficient threats or side-payments. In the international context, the latter is the most well documented type of linkage and the literature has focused on the abilities of powerful states to use their influence to persuade others to accept their policies (Oye 1979, Keohane & Nye 1977, Keohane 1984, Martin 1992, Stein 1980).

There are three types of issue linkage or logrolling behavior that states can use to extract gains in international negotiations: *bilateral*, *intra-institutional*, and *trans-institutional* linkages. The first two have achieved prominence in the international relations literature. The third introduces a novel path for potential linkages for states regardless of their power capability and it is the primary focus of this project. It is trans-institutional linkage that allowed weak states to influence the design of the International Criminal Court.

Actors have a choice over the linkage strategies that they can employ when seeking a bargaining outcome. The choice is between bilateral and multilateral strategies. Bilateral linkage as demonstrated by U.S. financial assistance for countries that supported the March 2003 invasion of Iraq by joining the "coalition of the willing" does not depend on the presence of a formal international organization. This type of "coercive" linkage usually occurs between states as a matter of one state's particular foreign policy goal (Oye 1979, Martin 1992).

Under some circumstances, states will seek to link issues multilaterally. This type of linkage is filtered through international organizations, which have already coalesced certain sets of interests and can facilitate coalitions on this basis. Mul-

tilateral linkage through an international organization can increase support for a particular policy by providing information about the intentions or policies of an actor or by legitimizing a given action.[16]

Multilateral linkage through international organizations can be divided into two further categories based on the number of issues and venues that are part of the linkage strategy: intra-institutional and trans-institutional. Both of these strategies require logrolling coalitions to produce acceptable bargains. Intra-institutional linkage occurs within the context of a single organization and depends upon the presence of multiple salient issues over which to make and gain concessions. This strategy can facilitate simultaneous voting and thereby decrease opportunities for defection, though it should be noted intra-institutional linkage is not omnibus by default; this factor will depend upon the rules of the organization dictating how many issues can be negotiated at once. Finally, trans-institutional linkage occurs across international organizations. When multiple salient issues are not present within a single venue, states may be able to link an issue in one venue to an issue in another distinct venue. For this reason, this type of linkage is the most tenuous because of the difficulties in constructing a coalition that spans multiple organizations and is vulnerable to problems of defection, as a result. Nevertheless, trans-institutional linkage provides opportunities for bargains where other linkage strategies are not viable. The following section addresses when each of these types of strategies will work best and discusses the conditions under which states can overcome the obstacles to trans-institutional linkage to achieve a bargain.

[16]Thompson (2006) argues that IGOs can serve as transmission mechanisms, providing information about actors' intentions when states conduct their foreign policies through them that may serve to increase the level of international support. Linkage filtered through IGOs can also legitimize an action by giving it a universal "stamp of approval" or to aid in burden-sharing (Claude 1966, Martin 1992).

Bilateral Issue Linkage

A *bilateral* approach is perhaps the most prominent form of linkage. It concerns the attempts of a single actor to influence another actor. Bilateral linkage is usually initiated by one actor and relies on the ability to make an offer that is sufficiently attractive or produce a threat that is sufficiently costly as to convince an actor not to invoke her dominant strategy. For bilateral linkage attempts to be successful, the "linker" must have sufficient resources to convince the "linkee" to cooperate. This *quid pro quo* system will advantage those actors that possess more material resources.

All things being equal, states should prefer to use multilateral linkage to demonstrate widespread support for their proposals. Bilateral linkage can be a costly enterprise. The costs of threats and side-payments are borne entirely by the linker. On the other hand, the linker can avert costs of entanglement through a multilateral logrolling coalition. Whichever costs are greater will determine whether a state capable of bilateral linkage will choose that strategy over multilateral linkage. The two primary conditions that determine whether the benefits of bilateral linkage outweigh the costs are concerns about monitoring and the desire for secrecy.

Bilateral linkages will be non-institutionalized for the simple reason that they are no more enforceable within an institution than in its absence. This is the case because bilateral linkages do not present the same information and monitoring problems as multilateral linkages. When using bilateral strategies, a state need not depend on the other members of an organization to punish a defector because it can punish directly by carrying out a threat or retracting a side-payment.

Sometimes states know a priori that they promote unpopular policies. Policies such as imposing sanctions, arranging free trade agreements, and deploying troops for peacekeeping operations may prove unpopular with domestic and/or interna-

tional audiences. A linkage strategy between two countries that bypasses formal institutions will be less public than one filtered through IGOs. States often maintain incentives not to make every detail of their foreign policy known to their domestic audiences and also to international audiences (Holsti 2004). In these circumstances, bilateral linkage strategies may offer the states involved a way of averting international and domestic scrutiny and expediting international negotiations by keeping the details of their arrangement private. While multilateral treaties are subject to some form of domestic scrutiny in democracies, bilateral agreements often can circumvent these requirements through executive agreements. However, if monitoring and secrecy concerns are not acute, states should prefer multilateral linkage strategies leaving bilateral linkage as costly strategy of last resort.

Multilateral Issue Linkage

Multilateral linkage occurs when a group of actors join together in order to connect disparate issues and achieve policy outcomes. This type of linkage strategy is essentially logrolling when it occurs within the context of a single organization.[17] It is most common when actors are relatively free to engage in vote trading. As such, states in the international system are particularly well-suited to logrolling because they are sovereign entities, as opposed to legislators that have to answer

[17]An analogy to congressional committee behavior serves as an illustration for how logrolling may apply to bargaining through international organizations. Negotiations over new institutions and policies and subsequent choices to participate in them may be likened to voting on bills which arrive on the floor of Congress. Issues may be linked within the context of a bargaining coalition within or even across IGOs. Legislative activity in Congress is not a seamless analogy for how states link issues within the context of IGOs and the idiosyncrasies that accompany international politics; however, domestic legislative activity and particularly logrolling can provide useful lessons for how one might expect states to approach bargaining within (and across) IGOs. Previous work in IR has drawn from the literature on American political institutions. Specifically, Thompson (2006) compares IGOs to congressional committees with respect to information theories of legislative organization and delegation. Martin also suggests a parallel between legislatures and IGOs in which states can delegate decisions to organizations in order to "overcome problems of multilateralism" (1993, 99).

to party leaders as well as domestic constituencies for their voting behavior. Thus, states will form logrolling coalitions in an effort to achieve policy outcomes that would have been untenable otherwise. Multilateral strategies offer opportunities for burden-sharing and also allow states that lack traditional sources of power to make side-payments unilaterally to offer attractive bargains as part of a coalition (Martin 1992). This type of linkage requires greater coordination among actors and can be more difficult to enforce because of incentives to defect from a coalition. When using multilateral strategies, fears of defection can be mitigated by the institutional environment in which issues are being negotiated. Variation in these environments will produce two different types of multilateral linkage strategies.

Linking across Issues: Intra-Institutional Logrolling

There are two primary determinants of when logrolling strategies used by states will be successful at achieving policy outcomes: the number of issues and the number of venues. The number of issues on the negotiation table within a single venue (or international organization) determines whether linkage can occur within an IGO. This type of linkage defines intra-institutional logrolling. In the Doha round of trade negotiations, for example, states bargained over issues as diverse as public health exemptions for patent rights and agricultural subsidies within the context of the WTO.

States must be keenly aware of the impact of particular policies on their audiences and thus, need to be able to deliver the "pork" to their domestic constituencies, conceived of here as their winning coalitions.[18] "National governments seek to maximize their own ability to satisfy domestic pressures" (Putnam 1988, 434). They do so by pursuing policies that are highly favorable to their domestic audiences in exchange for concessions on less important ones. Variation in issue salience among

[18]See, for example, Bueno de Mesquita et al. (2005) for a detailed discussion of the importance of foreign policy decisions in satisfying a state's winning coalition.

domestic audiences makes vote trades possible. In the EU, for instance, France has historically been more sensitive to how trade negotiations (both international and intra-EU) will affect agricultural policies and specifically subsidies to farmers in the country, while the United Kingdom exhibits greater concern for policies that affect its industrial and service sectors.[19] Thus, states' intense preferences over a particular policy area may be assuaged by making concessions in areas in which domestic interests are less salient and/or mobilized.

Intra-institutional logrolling relies upon the presence of multiple salient issues that can be negotiated simultaneously or in close sequence (Sebenius 1983, Odell 2000, Raiffa 1982). For logrolling to be successful there must be issues of varying degrees of importance such that coalition partners will be willing to vote for each other's policies without paying a substantial price for their vote via domestic or international audiences.

When states use international organizations to facilitate logrolling attempts the policy outcomes are more visible than bilateral, noninstitutionalized strategies. Under this scenario, enforcement is facilitated by reputation concerns as defectors can be more easily identified (Keohane 1984, Axelrod 1984). If the logroll is sequential, a state that achieves its preferred policy in the first round might be likely to defect in the second round to avoid the costs of supporting another state's or coalition's policy. However, if the state is concerned about having its proposals passed in the future, it will want to avoid a poor reputation so other states will enter into subsequent logrolling coalitions with it. Punishment within the context of a single

[19]In his analysis of the influence of the farm lobby on EU policy and its effects on GATT negotiations, Keeler asserts that "organized agriculture can...ultimately make government officials pay electorally for accepting objectionable CAP or GATT accords" (1996, 138). Further, domestic constituencies may explain the within country variation of certain policies. Germany, traditionally supportive of EU agricultural subsidies under Kohl's CDU government, shifted to a pro-reform CAP position with the leftist coalition government led by Schroeder. Unsurprisingly, 80 percent of German farmers tend to vote for CDU/CSU candidates (Keeler 1996, Patterson 1997, Wood & Yesilada 2002).

organization will be easier to achieve because the coalitions are less fluid than across IGOs.

In order to engage in logrolling, states must be able to form stable coalitions. However, coalitions are subject to defection and enforcement problems.[20] Jockeying over the position of an international policy can be quite severe given the number of states in an organization and how interests are aligned among them. States may negotiate as part of the Non-Aligned Movement in one moment only to defect to a regional coalition in the next. One remedy, mentioned above, is that the shadow of the future will induce states to abide by their promises in order to maintain a favorable reputation. Another solution for states seeking to avoid enforcement problems is to tie together sets of issues and vote on them simultaneously (Davis 2003, Raiffa 1982, Keohane & Nye 1977). This "take-it-or-leave-it" option forces actors to make the decision to save their own proposal by voting for everyone else's proposal, or to turn down the entire package.[21] Simultaneous voting over multiple issues must occur in the context of a single organization and within the same time frame in order to hold other actors accountable and avoid enforcement issues.

In sum, intra-institutional linkage can support two types of logrolling activities. The first, simultaneous or omnibus legislation is easy to enforce, but is subject to jurisdictional concerns about germaneness. Germaneness is a de facto product of the degree of overlap among international organizations and areas of negotiation

[20]One of the primary mechanisms committee members have for obtaining support for their legislative proposals is through logrolling. In the absence of determinative rules that govern interstate relations, this process can be plagued by the cycling of alternatives in policy space, resulting in the fragility of institutional equilibria and, thus, the lack of stable logrolling coalitions (McKelvey 1976, Arrow 1963, Riker 1982).

[21]The institutional structure of the committee system allows members to hold each other accountable through packaging legislative proposals together as omnibus legislation (Ferejohn 1986). With respect to the Council of Ministers in the European Union, Carrubba and Volden (2001, 8) suggest that omnibus bills can serve as a "precommitment mechanism," but are rare because of the Council's strict germaneness rule.

within these organizations.[22] When a strict germaneness rule applies, proposals will be limited to a specific time point and venue and considered in isolation from other policies. Many organizations are issue specific and negotiations within them are oftentimes even more specific. In the EU Council of Ministers for example, policies dealing with different issue areas must be negotiated and voted on in isolation from each other. Thus, omnibus legislation is more difficult to achieve across issue areas. When omnibus legislation is possible, it should be preferred over other options because it is the most enforceable type of multilateral bargain and forces states to make a "take-it-or-leave-it" decision. Such was the case of the UN Conference on the Law of the Sea (UNCLOS), in which members of the Non-Aligned Movement packaged the deep-seabed issue with territorial waters and navigational issues.

When simultaneous negotiation is not possible, but multiple salient issues exist within the context of a single organization, states should prefer this linkage option. This is because there is likely to be greater stability in coalitions within a single IGO. The cleavages that characterize UNCTAD negotiations, for example, are predictably stable between industrialized countries, on the one hand and developing countries, on the other. This stability will lead to greater enforceability as coalition defectors are easily identified and punished in subsequent rounds. Intra-institutional logrolling is a useful means achieving favorable policies as numerous studies have shown (Martin 1992, Davis 2003, Garrett 1992, Higgott & Cooper 1990). However, the current understanding of multilateral linkage over a number of issues explains just one class of multilateral linkage available to states. In the next section, I explain the final type of linkage that the literature has overlooked.

Linking across Venues: Trans-Institutional Logrolling

[22]This congressional rule dictates that a legislative body (the House) can only consider one issue at a time, thus omnibus legislation when the germaneness applies will not be feasible (Carrubba & Volden 2001).

This theory proposes a novel path to issue linkage, trans-institutional logrolling, in which states can link across multiple venues.[23] Previously, studies of issue linkage have restricted the strategy to negotiations over multiple issues within a single organization.[24] According to this version of linkage, the essence of policy trade offs relies upon the existence of multiple issues. This overlooks the ability of states to seek out new venues to expand (artificially) the number of issues over which they negotiate.

In some circumstances, more than one highly salient issue dimension does not exist. The salience of issues must be considered because states should be reluctant to enter into asymmetric trades in which a state makes a concession on an important issue for a policy gain of less importance. Such is the case, I argue for the International Criminal Court in which the central issue driving negotiations over the ICC was whether to create an independent court or one, which relied upon the direction of the UN Security Council in its ability to initiate and prosecute cases.[25] States are not as limited as the extant literature suggests. Actors seeking a favorable bargain may travel outside the organization in an attempt to link issues across venues, rather than within them. Despite being constrained by a single issue dimension, if states can connect issues across IGOs then this may allow them to make policy trade offs that would have been untenable otherwise.

The number of venues in which a given issue may be considered will determine whether states can link across multiple venues. In the international system,

[23]Throughout this dissertation I will refer to issue linkage via institutional coalitions and logrolling interchangeably.

[24]Indeed as Odell (2000) notes, "Issue linkage is found in every strategy and negotiation except those that cover only a single issue, and very few negotiated international agreements pertain to a single issue" (37).

[25]I make a simplifying assumption that the creation of the Court represented a single issue area due to the fact that the most contentious discussion of ICC components would have direct effects on its operation as an independent institution, though there were other more minor issues at stake. The independence of the ICC marked the major dividing line between the two primary camps. In later chapters, I take up this issue to establish that this was indeed the case.

venues are the negotiating fora in which international negotiations take place and are more fluid than in domestic politics because there are fewer governing rules. These venues constrain where international actors can negotiate a given set of issues. There is a considerable degree of overlap among IGOs and actors must consider which jurisdiction will facilitate the best outcome (Raustilia & Victor 2004, Alter & Meunier 2006, Aggarwal 1998).[26] A common, though implicit, assumption in international politics is that IGOs, unless nested operate independently of each other.[27] The overlap among IGOs can create bargaining opportunities or they can constrain them. Negotiations over new institutions do not occur in a vacuum and the existing institutional context can create "structural complexity" because states maintain commitments to other actors in a variety of IGOs (Copelovitch & Putnam 2007). These commitments (or logrolls in other organizations) can affect the strategies by which states establish new institutions and their choices to join new IGOs. Thus, it is essential to account for how many venues in which states can negotiate a set of issues because this number can either limit or expand the number of logrolls made.

Trans-institutional logrolling involves linkages *across* international organizations. Scholarship on linkage or vote trading as bargaining strategies overlooks the possibility for logrolling across institutions, suggesting that linkages across organizational units is intractable.[28] Keohane notes that "linkages among issues falling into different regimes will remain difficult, or even become more so (since the natural

[26]Here Shepsle's point about variation in jurisdictional arrangements applies. Some IGOs may be subdivided as they have different bodies, programs, or in the case of the EU, committees that constitute multiple venues; demonstrating complex, overlapping and in some cases global jurisdictions (1979, 31-32). Consider, for example, the UN as a venue, subdivided by the Security Council, the General Assembly and ECOSOC, which can be further divided into its subsidiary programs including UNESCO, WHO, UNICEF, UNDP, etc.

[27]See, for example Kenneth Shepsle's (1979) discussion of structure induced equilibrium. Practically speaking, Shepsle acknowledges that jurisdictions, like venues, do not always remain distinct.

[28]In domestic politics, cross-committee logrolls are uncommon, although "a logroll may be conceived outside the framework of committees but, because of the instability of such arrangements it will require the regular intervention of party leaders to consummate" (Ferejohn 1986, 226).

linkages on those issues will be issues in the same regime)" (1984, 91). As a result, all of the enforcement problems present in intra-institutional logrolling are magnified in this strategy. This raises the question, if this is the case, why would states ever use this strategy? The simple answer, is that they use it when the conditions for intra-institutional linkage are not present, for instance, when multiple salient issues cannot be negotiated within a single organization. The literature has overlooked this negotiating strategy (and as a consequence, a strategy employable by states unable to furnish side-payments) because concerns over defection would appear to be intractable as bargains are separated by both time and space. Trans-institutional logrolling requires the presence of a stable coalition over multiple IGOs. International politics may be better suited to this type of linkage than domestic logrolling coalitions because there is greater overlap in IGO membership than across membership in legislative committees. Therefore, a coalition in one organization may be likely to recur in another organization and members are more likely to be able to hold each other accountable. States must be able to coordinate and sustain these coalitions. Often this involves overcoming serious collective action problems.

There are several factors that support coalitions, particularly large groups of weak states. The first is issue salience. The more important an issue is to a group of states then the more likely they will be to organize around that interest (Olson 1965). In the case of the ICC, most countries were either vehemently opposed to an independent prosecutor or highly in favor of one. There were few states that did not feel strongly about this issue and as a result remained on the fringes of negotiation. Alternatively, the rule deciding whether ICC judges could live in their home countries or must live near the seat of the Court in the Netherlands was an important issue for only a handful of countries and the debate did not engender any

serious or formidable coalitions on the matter.[29] If the issue stakes divide countries into distinct cleavages, it will be more likely to produce organization along these lines.

The second factor contributing to coalition maintenance is the presence of existing organizations. An IGO created by a single state or a small group of states but joined by others can foster the organization of interests for some other purpose (Krasner 1985). According to by-product theory, coalitions can form under the auspices of an institution that provided positive inducements or coercion to obtain membership (Olson 1965). The UN General Assembly, for instance, allowed the like-minded states to coalesce their interests for a permanent international criminal court that would rival the UN Security Council for the ability to establish human rights tribunals. Once coalitions are formed, how can they be sustained, especially over multiple international organizations?

Coalitions are, to a degree, defection-resistant. The suggestion that actors will seek the greatest payoff by joining the smallest possible winning coalition has been challenged by the empirical fact that many legislative coalitions (both international and domestic) are oversized and, in some cases, universal (Groseclose & Snyder 1996, Carrubba & Volden 2000, 2001). Oftentimes, minimum winning coalitions cannot sustain cooperation because it only takes one coalition member to defect before the logroll unravels. So while the overall costs of voting for others' proposals is lower in minimum winning, fears of defection are much higher. In oversized coalitions, two or more members must defect in order for the logroll to disintegrate and in this case multiple parties would be putting their reputations as future coalition partners at stake.

Trans-institutional bargains made via logrolling can achieve some measure of

[29]This debate occurred in the context of the 9^{th} Preparatory Commission for an ICC, in which the author attended negotiations over the first year budget of the ICC.

sustainability and avoid the chaos problem through the stability of membership. When IGOs do not encounter significant turnover in membership actors will place a higher value on future interaction.[30] As a result, honoring logrolls becomes integral to having subsequent proposals passed and maintaining cooperation into the future (Axelrod 1984, Weingast 1989). When states know that they will encounter each other repeatedly through numerous sets of negotiations in multiple organizations, maintaining a favorable reputation becomes indispensable. In the end, states should be reluctant to defect because doing so would erode their chances of securing cooperation and having future proposals passed.

Previously, outcomes of negotiations over a single issue have been reduced to some function of the bargaining and/or material power structure in the organization, usually yielding the most favorable results for major powers. The existence of multiple IGOs with shared membership may allow for issues to be linked across institutions, expanding the possibilities for any state to exact leverage over the negotiation process. This applies to situations in which there are multiple venues. Alternatively, when negotiation is limited to a single venue, states might press for multiple issues to be negotiated at once to assure maximum enforceability of the logroll. However, if no other issues are introduced in this context, no linkage will be possible.

Success of Issue Linkage: Susceptibility and Strategic Choices

The typology of issue linkage I have presented suggests that states can choose among three main strategies: bilateral linkage, intra-institutional logrolling, and trans-institutional logrolling. The first two have been addressed in previous treat-

[30]Fenno (1962) has offered this argument for how committee legislation is received on the floor of Congress. The stability of leadership makes members less likely to discount the future and place a higher value on future interactions.

ments of linkage strategies both internationally and domestically. Trans-institutional logrolling has remained under-theorized as have the conditions under which states will select among these strategies. Thus far, I have provided the general conditions under which each type of linkage will work best. Bilateral linkage remains a strategy for major powers because they possess the material capability to make this a successful tool of influence. Intra-institutional and especially trans-institutional strategies offer weak states recourse through the use of existing IGOs and organized interests. The second part of a theory of issue linkage that addresses how weak states can achieve success through these strategies suggests conditions under which other states are susceptible to these attempts at influence. In the section that follows, I develop predictions about the factors that will affect state decisions over linkage and whether they will be vulnerable to these types of issue linkage. The factors that will affect the success of linkage include institutional embeddedness, state power, and the rules of existing organizations that states use to link issues. At the end of this section I summarize the predictions of a theory of issue linkage.

Institutional Embeddedness

International organizations allow states to exact concessions from others through shared memberships, this membership makes logrolls possible by expanding the potential set of linkages over a number of IGOs. A theory of trans-institutional logrolling must incorporate the role of shared memberships in making linkages possible. One criticism of egoistic theories of economic action is that they do not take into account the social context in which that action occurs. In international relations the institutional context of state action similarly has been overlooked.[31] Actors' behaviors are embedded in a network of existing social and institutional relationships

[31]For important exceptions see Maoz et al. (2006) and Ingram et al.(2005).

and to understand individual choices and action in isolation from these relations would overlook the constraining effects of that network (Granovetter 1985, Ingram, Robinson & Busch 2005). States are linked by their shared memberships in international organizations even when these IGOs do not overlap in issue area. Institutional embeddedness, or the number of shared memberships a state maintains, provides the condition that allows for this unique case of linkage. Joint membership facilitates linkages in two ways. First, it serves as a linkage multiplier. As previously discussed, states will try to link issues within institutions; however, in the absence of multiple salient issues, states can travel outside the organization (one in which an issue is under negotiation) to an organization in which some number of the same states share membership in search of potential logrolls in existing organizations. If states can locate salient issues in more than one IGO, trans-institutional vote trades may be possible.

Second, institutional embeddedness increases states' vulnerability to entering into a logroll when they are opposed to a particular policy. The greater the number of shared memberships, or the more embedded a state is in the IGO network, the more susceptible it will be to attempts at influence because it will be more dependent on those logrolls to obtain its own policies. Shared memberships also provide the basis for stable coalitions across international organizations. Note, for example, that the coalition of like-minded states in the ICC was repeated with respect to regional organizations in the European Union, the Organization of American States and also in the African Union. Each of these organizations made statements in support of the ICC, despite the fact that some of their members were opposed to the Court. The fact that a majority of countries was in favor allowed members of the "first order" IGOs to pressure ICC detractors from within these regional organizations. Thus, shared memberships can create opportunities for linkage when significant overlap

exists and coalitions remain stable across those IGOs.

As indicated above, trans-institutional linkage presents some difficulties because, unlike omnibus proposals, separate issues must be linked across institutions.[32] A vote in one IGO may be linked to a vote for a proposal in another IGO. These votes or negotiation outcomes are necessarily sequential because they occur across separate bargaining spaces. Shared memberships allow members to hold each other accountable by increasing the visibility of cross-organizational vote trades. It is precisely because of shared institutional membership that trans-institutional linkage is possible.

State Power

Thus far, the assumptions of this framework have remained agnostic about the role of state power in selecting linkage strategies. However, power is ubiquitous in international relations. What does a theory of linkage strategies indicate about when and which states will use certain types of linkage strategies? It has previously been suggested that weak states can use existing institutions to gain bargaining leverage and create new IGOs (Krasner 1985, Keohane & Nye 1977). However, the means by which they do so and the strategies available for this group of states in instances of institutional design have not received adequate treatment.

Issue linkage has been treated as largely a tool for stronger states.[33] Economic theories of linkage minimize the possibility that weak states can use this strategy as a bargaining tool because of their relative difficulty in furnishing side-payments (Sebenius 1983, Tollison & Willett 1979). Powerful states have the ability to offer

[32]Omnibus bills are just one mechanism of logrolling within committees. In other cases, as legislative scholars have noted, logrolling in the committee system is not accompanied with a precommitment mechanism to prevent defections (Baron & Ferejohn 1989, Carrubba & Volden 2001).

[33]Keohane and Nye (1977) suggest that weak states too can use issue linkage as a strategy, yet they do not provide a precise mechanism by which the linkage occurs. Specifically, it is not clear how the linkage strategies of weak states force major powers to accept the bargaining outcome.

attractive side-payments in return for concessions in other areas, while weak states have been characterized as the 'losers' of negotiations that are the recipients of these payments. Yet, there is no a priori reason to assume that weak states cannot link issues, but that the process by which they do so is necessarily different.

Power, argue Keohane and Nye, can "be conceived in terms of control over outcomes" (1977, 11). The question remains is how do weak states exert control over outcomes if they lack material capabilities and formal institutional power? Two major sources of power can affect linkage strategies: material capability and "organizationally dependent capabilities," or institutional power, derived from bargaining situations and environmental factors such as the number of state participants in an institution, the voting rules, agenda setting power, and the availability of bargaining coalitions.[34] These capabilities will vary according to the institutional setting in which bargains occur. For instance, a state considered to be traditionally powerful or even powerful in one IGO, as Germany is in the European Union, may be considered less so in an organization like the UN. Yet, power through organizations is even more fluid than "organizationally dependent capabilities" suggest. IGOs can confer informal power when states share common interests and can form stable coalitions.

Material power can determine which states can use bilateral (direct) linkage strategies, but it does not indicate that more powerful states will prefer this linkage strategy. As long as the relative cost of bilateral linkage is lower than the costs of building a multilateral logrolling coalition, materially powerful states will prefer this method. However, bilateral strategies are costly when they involve convincing many actors to make policy concessions, or when states can gain support from others when filtering its strategy through an organization for the purposes of burden-sharing or to appease a domestic audience (Martin 1992, Thompson 2006). Under these

[34]The term "organizationally dependent capabilities" originates from Keohane and Nye (1977, 55).

circumstances, a materially powerful state should prefer an indirect strategy such as logrolling if the costs of voting for other states' proposals is relatively low as compared to a bilateral approach or the particular policy it prefers is popular and it expects states will be willing to accommodate its request. The larger each individual side-payment a state would have to offer under bilateral linkage the more likely it will be to pursue a logrolling strategy. Bilateral strategies may reveal the failure of a multilateral logrolling strategy or indicate that leaders fear punishment from domestic audiences if the policy were publicized.

With regard to susceptibility to logrolling strategies, states that are more powerful should be able to resist logrolling attempts than less powerful states. This is because powerful states have recourse through bilateral linkage strategies and can use their material capability to counter logrolling attempts with side-payments. However, power is tempered by institutional embeddedness. The more embedded a country is than the more powerful they have to be to resist logrolling attempts. Powerful states can be expected to react to logrolling attempts in a number of ways. First, if the offer is sufficiently attractive a state can accept. Second, since membership in institutions is voluntary, a state can choose not to participate in the bargain. Finally, in combination with the second option, a state with sufficient resources will respond to logrolling attempts with counter offers to obstruct or derail a bargain. Major powers may choose to do this through multilateral or bilateral strategies, though the strategy they select may be determined by international and domestic conditions, including domestic audience costs, the availability of issues and venues, and the number of shared memberships.

States with low material power as compared to their negotiating partners cannot readily engage in bilateral linkage. These states must be able to offer an attractive side-payment or a credible threat in order to have direct influence on

bargaining outcomes. For example, one implication of the power to control institutional outcomes is whether the threat of exit from an institution by a particular state jeopardizes the viability and success of the organization as a whole. In this way, the United States maintained a considerable amount of power in negotiations over the League of Nations as many have argued its nonparticipation in the organization ultimately led to its demise. Similarly, in the European context, the failure of the European Defense Community in 1954 can be attributed to the exit of one of its leading members, France, from the negotiation table. For relatively weak states the threat of exit is not credible and they achieve bargaining outcomes through indirect strategies and in many situations, logrolling is the only viable linkage strategy they can use.

Voting Rules and Agenda Setting Powers

The rules that govern decision-making in international organizations can have a significant impact on states' susceptibility and use of linkage strategies. Some voting procedures reflect the power distribution that existed when major powers established some of these IGOs; however, other IGOs are more egalitarian in their decision-making apparatuses. While the prevailing view holds that major powers have exerted influence proportionate to their power on institutional design, this perspective often neglects that strong states remain interested in securing cooperation and institutions in which the rules favor major powers too heavily often experience problems with compliance (McIntyre 1954). In some circumstances, issuing side-payments to exact compliance and/or participation can be prohibitively costly. This would be most likely to occur when membership in an organization is very large and coalitions required for agreement are also large. Therefore, upon establishment of an IGO by major powers initial concessions have to be made to provide incentives

to participate. These concessions may have been relatively minor in comparison to the payoffs from wider participation. Take for instance, the creation of the United Nations system. The representative structures of the General Assembly and the Economic and Social Council (ECOSOC) were a trade off on the part of the great powers for the influence they secured over the international system through permanent membership on the UN Security Council.[35] Participation in institutions is a two-way street, major powers must provide some incentive for states to participate in the institution to help shoulder the costs, prevent free-riding, and secure the gains from cooperation. The desire for compliance on the part of major powers, especially in situations in which side-payments are not feasible may require changes in the form of compromise in their ideal design of the organization.

Transaction costs also contribute to situations in which weak states may be able to exert more control over an organization than expected by major powers. In an effort to minimize transaction costs associated with creating a new institution (whether a formal organization or simply an agreement) states engage in incomplete contracting. Despite its adjectival connotation, the incomplete contract is as much of a solution in international politics as it is a problem. The costs associated with drafting a detailed arrangement may preclude the possibility of a mutually agreed upon outcome or result in the ineffectiveness of the institution. In an effort to draft a very precise contract, the agreement may become too detailed and potentially inconsistent, creating enforcement problems for agents. Alternatively, a complete contract may be too rigid, leading to unnecessary defections (Abbott & Snidal 2000). In order to cope with this problem, states may create "framework institutions" such as the UN Framework Convention on Climate Change, which allowed for the adoption of the Kyoto Protocol when the bargaining environment had changed to

[35]See H.G. Nicholas (1971) in which the author describes several specific UN Charter concessions made to countries based on the permanent five members' desire for their participation.

a sufficient degree to allow for specific and binding targets. Another method of dealing with this problem, delegating to an international agent, works directly to the advantage of weak states by putting power directly in the hands of international bureaucrats. These actors are often sympathetic to the efforts of weak states as has been discussed in the case of UNCTAD and will be shown in the case of the ICC. Therefore, "given bounded rationality and the pervasive uncertainty in which states operate, they can never construct agreements that anticipate every contingency" (Ibid. 433). Thus, incomplete contracting allows weak states to exploit unforeseen opportunities in IGOs.

Organizations that have majoritarian voting procedures are ideal venues for weak states to exert control over the bargaining process. Weak states outnumber their major power counterparts and will almost always be the median voter on any policy in these types of organizations. Thus, they can use their advantage in numbers as leverage when attempting to arrange a logroll. The prospect of being outvoted on one issue in one organization may not be severe, but when it is repeated among organizations and issues, states might be more willing to enter into logrolls rather than have their policies voted down repeatedly. In exchange, weak states obtain the cooperation of their major power counterparts.

However, some influential organizations do not embody majoritarian principles. IGOs like the IMF, World Bank, and UN Security Council limit the logrolling potential of weak states through voting procedures heavily weighted in favor of major powers. In these cases, major powers might be more successful using multilateral linkage, but it is unlikely that weak states can exact a large degree of influence over these organizations.

Agenda setting powers are also an important component of institutional design that allow weak states to take advantage of logrolling opportunities. States often

delegate power to the bureaucratic structure of international organizations in an effort to reduce transaction costs. But because there are multiple principals (states) with varying preferences some agent drift is inevitable (Nielson & Tierney 2003). When this occurs, bureaucratic agents will seek to control the agenda to further the interests of their own state or the interests of the organization itself. Informal rules in the UN, for example, indicate that the Secretary-General should not hail from a major power, but rather a middle power or developing country. Kofi Annan, a firm supporter of the ICC, helped the like-minded states organize their interests by providing logistical support through the expertise of UN agents. Similarly, the UN Conference on Trade and Development was spearheaded by the Secretary of ECOSOC, Malinowski. The Security Council was not overly concerned with the development goals of ECOSOC and thus did not anticipate the Secretary's efforts to increase developing country representation on the committee, which ultimately provided the impetus for the formation of UNCTAD.[36]

Organizational rules, both formal and informal, can have important effects on the degree of control states can exert within an IGO. Unlike for major powers, these paths to exerting control over institutional outcomes are not always direct. Weak states must find ways to coalesce their interests and use existing institutional rules to provide a path to control bargaining outcomes. The following section summarizes the predictions of a theory of linkage and logrolling.

Summary of Predictions

Multilateral linkage strategies offer weak states some control over the design of international institutions. They will be more likely to exert control over institutional

[36]According to one account, Malinowski "stood ready to help all delegations with substantive information, data, and advice... Above all, he made it one of his missions to assist developing countries to coalesce into a single, united group, so as to strengthen their negotiating position" (Cutajar 1985, xix).

design when

—The voting procedures of the organization in which the bargain occurs reflect majoritarian principles.

—Coalitions are relatively easy to form because a subset of states share similar preferences

—The policy is sufficiently popular, or does not demand secrecy

Expectations about multilateral linkage can be divided further into expectations about when intra-institutional and trans-institutional logrolling will be selected. The first set suggests that states will be more likely to use intra-institutional logrolling strategies when

—The number of highly salient issues within a single organization is greater than one

—Two or more policies can be voted on simultaneously (omnibus)

—The number of shared memberships is low

Logrolling will be trans-institutional when

—Only one highly salient issue exists within an institution

—The number of shared memberships is high

—There are stable coalitions across international organizations

With regard to states' susceptibility to linkage strategies employed by weak states, states will be more (less) vulnerable to trans-institutional linkage when

—Institutional embeddedness (in terms of shared IGO memberships) is high (low)

—State power is relatively low (high)

—Voting rules in existing organizations favor majoritarian (weighted) procedures

—Agenda setting powers are egalitarian with respect to state power

The following set of hypotheses (tested in Chapter 5) suggest that a state will be more likely to use bilateral linkage strategies when

—It has attempted and failed multilateral linkage strategies

—It is materially powerful relative to its negotiating partners

—The foreign policy goal is unpopular with domestic and/or international audiences

—The number of states which it has to offer side-payments to is small

—The cost of side-payments is low relative to the cost of voting for other states' policies

Conclusion

States with the ability to exert their power directly over the institutional design process possess the independent means to affect institutional outcomes—they are major powers. These states can be said to have *direct* strategies to influence over institutional design. Another, larger group of states, that is most states in the international system, generally take advantage of context specific bargaining tools in an attempt to affect outcomes. While this group consists of many states that vary in terms of the relative size, wealth, and the degree of participation in IGOs, they have traditionally remained on the margins of formation of major international institutions, largely because their means of influence is *indirect*.

However, closer scrutiny reveals that weak states have asserted more of a role in the creation and design of institutions and they have done so in the face of major

power opposition. It is not a novelty that weak states should have an interest in designing institutions that distribute gains in their favor. Indeed, weak states "want power and control as much as wealth" (Krasner 1985, 3). Existing institutions offer weak states the opportunity to change the rules of the game and create IGOs that do not necessarily reflect the distribution of power in the international system.

While transnational institutions should be considered "rational, negotiated responses to the problems that international actors face," the rational design approach has said very little about how the process is shaped by actors with different interests and of varying capabilities (Koremenos, Lipson & Snidal 2001). It is unlikely that states in pursuit of their self-interest will share the exact same preferences over the design features of an institution under negotiation—after all, instances of harmony in which no attempts are made toward policy adjustment are a rarity in international politics (Keohane 1984).[37] When states seek a cooperative solution to an international problem it is likely that some subset of those states will decide the rules. Because no two states are alike in interests and resources, each design feature will correspondingly have differential effects for states. States, then, will prefer different design features even when they face a common problem.

Weak states are no more or less self-interested than their major power counterparts and as a result, they too will seek to control the design of international institutions. But because the existing system tends to reward its powerful members some actors may recognize the need to adapt their behavior to maximize efficiency or effectiveness in pursuit of a goal. Weak states seek ways to adjust to unfavorable international environments, in which they constantly find themselves disadvantaged, and they lack material power and positions of privilege to make credible threats and offer side-payments to induce cooperation from other actors. Despite their lack of

[37]Indeed, as Keohane suggests, harmony is "apolitical" (1984, 53).

traditional power resources, these states are not content to be dragged through the institutional design process only to achieve few if any gains. Rather weak states are strategic and they can engage in bootstrapping behavior by using the rules and provisions present in existing institutions to design new favorable institutions and induce stronger states to join the new organization through their shared membership in the external, existing IGO.

Almost every bargain in international relations has been achieved through linkage strategies (Odell 2000). Despite this, linkage strategies have not been adequately differentiated in terms of who uses them and the conditions under which they use them. As this theory has illustrated, materially powerful states can use direct and indirect forms of linkage strategies. Where the literature has previously neglected weak state strategies, this theory suggests that less powerful states can use issue linkage when it is multilateral and institutionalized. These logrolling strategies are facilitated by existing institutions, cohesive interests, and shared institutional memberships.

When weak states use logrolling strategies effectively they can chip away at the authority of major powers to control international outcomes, in some cases weak states can even create new international organizations that reflect their interests. Such was the case, I argue, for the International Criminal Court where weak states engaged in logrolling across IGOs to create an court that would, in effect, strip the Security Council of its authority to establish human rights tribunals.

In the empirical tests that follow, I demonstrate that institutional embeddedness (through shared IGO memberships) facilitated the possibilities for trans-institutional linkage because, in cases of high embeddedness, states will depend on other states to extract attractive bargains. The next chapter will examine in detail the causal logic of trans-institutional linkage based on shared memberships through

an in-depth negotiation analysis of the major negotiating parties at the Rome Conference. Chapter 4 turns to a test of the relationship between shared institutional memberships and international bargaining outcomes, specifically the Rome Statute of the ICC, to establish that shared membership has a positive relationship on acceptance of these bargains.

CHAPTER 3

NEGOTIATING THE ICC: HOW THE WEAK WON (ACT ONE, PART ONE)

It should be noted that a large number of small countries attached importance to the establishment of an International Criminal Court. The history of the negotiations showed that the contributions from small States had often proved essential to the consideration of the provisions of the Statute.—Ambassador Wenaweser, Liechtenstein (United Nations, 1997)

Introduction

The ICC has remained the source of vociferous debate surrounding the adjudication of human rights violations on the world stage since the 1998 Rome Conference on the Establishment of the International Criminal Court.[38] Human rights advocates, international lawyers, and states alike hailed a permanent court that could try individuals irrespective of their nationality, for crimes of genocide, war crimes, and crimes against humanity.[39] Some states, however, remained apprehensive about such an extensive adjudicative body. The major dividing line between weaker states and the permanent five members of the Security Council was the independence of the ICC prosecutor from the Security Council. While issues such as the definition and elements of the crimes proved difficult, as opponents decried potential encroachments on national sovereignty and the politicization of the Court, there was no other issue that achieved the attention and importance of prosecutorial independence.[40]

To answer the question of how weak states can control the design of international regimes, this chapter presents an in-depth analysis of the negotiations that founded the International Criminal Court in which the ideal points of the primary negotiating parties are analyzed over time to uncover the causal mechanism behind the effects of shared membership in international organizations. The first act establishing the ICC regime was to create the agreement that would give the Court, as an international institution, its mandate. This process lasted from 1989 until 1998

[38]Hereafter, I refer the International Criminal Court as the ICC or the Court. The Rome Statute refers to the treaty document establishing the ICC, and the Rome Conference refers to the set of negotiations that took place in June-July 1998 that led to the adoption of the Rome Statute.

[39]The jurisdiction of the ICC is based upon the principles of territoriality and nationality, meaning that the Court can exercise jurisdiction when acts are perpetrated within a state that is a party to the Rome Statute even if the perpetrators are nationals of a non-party state (Rome Statute of the International Criminal Court (No. 38544) 2002, Schiff 2008, 79).

[40]States that are not parties to the ICC are not bound by the jurisdiction of the ICC, though the Court may still prosecute the national of a non-party state. Further, the prosecutor possesses the authority to initiate investigations, independent from referral by a state party or the UNSC (Rome Statute, Art. 15).

when the Statute was officially adopted. But, as in the case of any international regime, the actions and reactions of states and other actors contribute in important ways to how the regime will function and the effects that it will have on state behavior into the future. This phase, "Act Two," will be discussed in a subsequent chapter.

As part of the regime for adjudicating massive violations of human rights, the ICC should not be considered in isolation from, but as an alternative to other institutions that served similar functions, namely the ad hoc tribunals established by the Security Council. In order for an ICC to be successful, weak states would have to break up the P-5 block and garner the support of at least one member. This analysis suggests the best alternative in the absence of an agreement for countries changed over time, specifically in the case of the United Kingdom and France as a result of the linkage strategies on the part of weaker states. While these two countries initially preferred that the UN Security Council have exclusive power to initiate cases and opposed an independent prosecutor, this calculus changed as it became clear that weaker states were determined to establish an ICC in which the prosecutor could investigate and prosecute cases without the explicit consent of states or other IGOs, or *proprio motu*.[41] Thus, the permanent five members of the UN Security Council were faced with the decision to support weaker states in return for concessions in external, or first order, organizations, or to resist and maintain control over the establishment of ad hoc tribunals, despite the probable lack of cooperation if they were to coexist with the ICC.[42] At present, I focus on the strategies weak states

[41]In legal terminology, *proprio motu* means that the prosecutor of the court can initiate investigations without seeking approval from a third party. The term is latin for "of one's own accord." This term will be used herein to describe the powers of the ICC prosecutor.

[42]The ad hoc tribunal system was plagued by a serious crisis of confidence as some countries saw the establishment and management of the tribunals as politically motivated and/or biased (Neuffer 2002). General distrust and skepticism in the system managed by the UNSC has resulted in a lack of cooperation by the countries involved, including refusals to turn over indicted suspects and provide requested evidence. See also, the speech given by the Deputy Prime Minister of Croatia

employ to achieve favorable bargaining outcomes by building coalitions and using shared organizational memberships as a vehicle for issue linkage.

In the first section, I discuss the role of first order institutions and why the European Union and the General Assembly, despite their vast differences are amenable fora for weak states to engage in trans-institutional linkage strategies. In the second section, I offer a spatial model of the preferences of a set of actors, the United Kingdom, France, the United States, the Like-Minded Group (LMG), and the non-aligned countries based on a single dimension reflecting the independence of the Court and the resulting win sets with regard to the Rome Statute of the ICC. The third section presents an analysis of the negotiations over the draft statute for an ICC. The positions of every state participating in the negotiations were coded on three primary issues and tracked over time. I demonstrate how positions shifted as a result of interactions based on trans-institutional linkages. The institutional structure of the negotiations including rules over preference aggregation and agenda setting power aided weak states in their endeavor to build an independent and effective court and the outcome at Rome must be understood within that context. In the fourth section, I discuss the role that coalitions, capitalizing on shared memberships, played in the relative success of ICC linkage strategies. Analysis of negotiations through spatial models illustrates how coalition formation based on shared institutional memberships is an effective strategy for influencing the preferences of other actors. The final section concludes with a discussion of the stakes faced by major powers and why in comparison to France and the United Kingdom the remaining three permanent vetoes withheld their support.

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at the Rome Conference on 17 June, in which the official refers to the "political arbitrariness" of the tribunals (United Nations 1998*b*).

First Order Institutions and Opportunities for Linkage

A number of organizations in which ICC negotiators shared membership provided the necessary institutional settings in which linkages across international organizations could be successfully forged. Specifically, the UN General Assembly and the European Union were two key institutional landscapes that allowed for the formation of bargains that secured the cooperation of France and the United Kingdom in the final outcome in Rome.

It is, perhaps, counterintuitive that these two organizations in particular were essential to the establishment of an International Criminal Court that was acceptable to weak states. In many ways these institutions share very little in common. The inclusivity of the General Assembly can be juxtaposed against the political and geographic selectivity of the European Union. Further, the GA produces nonbinding resolutions, while the EU maintains an enforcement arm, the European Court of Justice, to ensure that its policies are adopted and implemented by its members. Finally, while the median voter in the GA is usually a developing country, the median voter in the EU is an advanced industrialized democracy, even with the addition of twelve new members from Central and Eastern Europe by 2007. What makes the General Assembly and EU amenable to trans-institutional bargains is not necessarily their membership or the impact of the policies they pass, though this may be part of the puzzle, rather it is the scope of issues that are covered by these institutions, the regularity with which they take up policy debates, and their methods for preference aggregation that give voice to weaker states.

Preference Aggregation

In the EU, major institutional changes must be approved by unanimous consent. Hence, the passage of important policies in domains such as security and

immigration places Luxembourg and Ireland on equal policy footing with France and the United Kingdom. While qualified majority voting (QMV) is continuously expanding to other areas of EU legislative action and some states are afforded more voting weight, the methods for achieving these weights have given smaller members disproportionate influence when considering voting formulas based upon population. According to one study assessing the relationship between voting weights and voting power in the Council, "larger countries have always received a smaller share of the voting weight than their share of the population, reflecting the need to ensure adequate representation of small countries as independent states" (Leech 2002, 439).[43]

Two of the major outcomes of the Treaty of Amsterdam, signed in 1997, served to constrain the autonomy of member state action with regard to individual state preferences. First, in an effort to confront criticisms of democratic deficit owing, in part, to Parliament's minimal role in European policy-making, the treaty sought to strengthen the role of Parliament through the extension of the co-decision procedure, whereby legislative actions had to be approved by both the Council and the Parliament. Second, the treaty extended the scope and emphasized the goal of a cohesive common security and foreign policy. While the Council maintained unanimity decision-making procedures for new common positions under the foreign policy umbrella, implementation decisions could be taken under QMV decision rules.

The UN General Assembly is the realization of the notion of sovereign equality in the international system. By granting member states one vote regardless of wealth, contribution, or military might, the GA reinforces the idea that the interests of the weak are no less important than those of the powerful. However,

[43] A number of studies examining the effects of weighted voting and voting power in the European Council confirm that the largest states in the EU are underrepresented, though less so under Nice, while smaller states are overrepresented (Felsenthal & Machover 2001, Hosli & Machover 2004, Moberg 2002, Leech 2002).

decisions made in the GA, it has been argued, have little direct bearing on policy outcomes and decisions in the assembly are often taken in the absence of a vote (Voeten 2000, Moon 1985). Since many of the divisions within the GA fall along developmental (and in some cases regional) lines, western industrialized states often find themselves further from the median voter position, as developing countries outnumber their wealthier counterparts by a margin of five to one. Empirical studies of voting alignments in the GA have demonstrated that major divisions continue to persist within the body even in the post-cold war period (Kim & Russett 1996, Voeten 2000). Moreover, these divisions are strong predictors of voting behavior over some issue areas and often correspond to the groups within which states caucus. According to Kim and Russett, "In the General Assembly—unlike the Security Council, which privileges veto-wielding great powers—large and cohesive caucusing groups can exert substantial power to block resolutions and especially to pass them" (1996, 645).

However, if GA voting is merely symbolic and requires very little policy adjustment on the part of states, it prompts the question of why states would bother to use the GA as a forum for making vote trades or linkages? In other words, while it obvious that the General Assembly affords weaker states greater latitude to pass resolutions closer to their ideal points, provided that they can overcome collective action problems, it is not clear what the return on their vote investment might be if no policy adjustment is required. Whereas, in the EU Council of Ministers weaker countries are afforded either equal voting power, through unanimity procedures, or voting power that is disproportionate to their size, offering them enhanced opportunities to block unfavorable legislation and pass favorable measures and the promise that new policies will affect state behavior. The following section establishes the plausibility of the General Assembly as a forum for viable linkages.

General Assembly Votes as Bartering Devices

While GA resolutions are non-binding, there is ample evidence to support the notion that states do care about how their counterparts vote on these resolutions and, furthermore, that they seek to change outcomes by courting votes. The 1947 resolution on the partition of Palestine demonstrates the potential for GA votes to be subject to linkage, as a number of states were persuaded to change their votes from opposing to supporting partition as a result of U.S. pressures and promises. In the debate on UNGA Resolution 181, the Philippines spoke out strongly against the partition, stating,

> The Philippine Government has come to the conclusion that it cannot give its support to any proposal for the political disunion and the territorial dismemberment of Palestine...The issue is whether the United Nations should accept responsibility for the enforcement of a policy which, not being mandatory under any specific recognition in the Charter nor in accordance with its fundamental principles, is clearly repugnant to the valid aspirations of the people of Palestine (United Nations 1990).

Despite this rather vehement denunciation of the proposed partition, the Philippines ultimately cast its vote in favor of the resolution. According to Bregman and El-Tahri, the Philippines vote changed from no to yes when 26 senators and two Supreme Court justices contacted President Carlos Rojas urging him to change his position at the same time that the country was waiting on a line of credit from Congress (1998, 27). The final vote on UNGA Resolution 181 on the partition of Palestine was 33 votes in favor, 13 against, and 10 abstentions, just two more votes than necessary to pass the two-thirds majority threshold required (United Nations 1990).

While Resolution 181 was, in some ways, an anomalous vote since the UN General Assembly is rarely involved in the creation of new states, though recognition has continued to be a subject of some importance and controversy.[44] However, there is evidence beyond the decision to partition of Palestine to suggest that states seek to influence the outcomes of GA votes by seeking to change the minds of other states, indicating that these votes are more than merely symbolic. The U.S. Department of State tracks the voting records of member states in the General Assembly and reports these records to Congress. The *Report to Congress on Voting Practices in the United Nations* is used as a litmus test for support for the United States and its policies. Thacker quotes one State Department official who offered that, "At critical moments in the world's recent history, the U.S. 'bought' votes subtly and indirectly to support its stand in the General Assembly. The 'buying' is in terms of U.S. assistance to the voting country" (1999, 54).[45] Thacker's study reveals a strong correlation between political alignment with the United States, measured as similarity in UNGA voting, increased chances of receiving an IMF loan.

Building upon the notion that states may be persuaded to change their GA votes through side-payments, Dreher, Nunnenkamp, and Thiele (2008) predict whether a state will vote more frequently with a donor based on the type of aid it receives. In this case, the causal arrow would suggest that aid is a tool for securing political support for UNGA resolutions. The results of their analysis indicate that the receipt of some types of aid may increase voting compliance with the United States by up to 30 percent, suggesting some states may use aid as a way of influencing UN voting

[44]The General Assembly is responsible for admitting new members to the organization upon the recommendation of the Security Council (Charter of the United Nations Art. 4 para. 2). Among others, the list of controversial applicants includes Namibia (1990), Bosnia (1992), and East Timor (2002).

[45]Original quote found in Ed Lansdale, "Memo Re: Long Range Impact FPF-II," April 24, 1964, National Archives, Record Group 59, Lot file 67D554, Under Secretary for Political Affairs, Records of the Special Assistant 1963-65, Box 2. Thacker's (1999) reference to this memo was found in Dreher, Nunnenkamp, and Thiele (2008).

behavior within the General Assembly (150).

It is not within the scope of this project to establish whether the General Assembly directly precipitates changes in state behavior; however, the examples above illustrate that, regardless of whether GA outcomes result in policy adjustment, states care about the outcomes of UN voting even when the resolutions are non-binding and they also seek to change the votes of other states in order to achieve favorable results. This condition allows the body to serve as an appropriate and viable forum for issue linkage.

Agenda Setting

Apart from preference aggregation methods, or decision-making mechanisms, both the EU and the General Assembly afford weaker states first mover capabilities in some circumstances. While voting power is often considered the ultimate expression of power to control the outcomes of an institution, the ability to move first and place and item on the organizational agenda can be an important source of influence. Agenda setting is defined here as "process through which issues attain the status of being seriously debated by politically relevant actors" which may include activities such as proposal power and/or gate-keeping (Sinclair 1986). In many instances, proposal rights correspond to voting power; however these elements of institutional control can also vary independently, affording actors with less decisional power greater control over outcomes through agenda-setting (Kalandrakis 2006). Under certain circumstances, actors entitled to put items on the agenda are empowered to keep them off as well. Gatekeeping is considered to be an important source of power emanating from congressional committees under an open rule, to prevent undesirable shifts away from the median position on the committee once a bill reaches the floor (Denzau & MacKay 1983). In IOs, the formal committee struc-

ture with restrictive rules seldom exists, though divisions and specialization within the organization can result in informal proposal powers (Hirsch & Shotts 2009).

European Union

In the European Union, the "right of initiative" has been explicitly granted to the Commission, the supranational body charged with the representation of EU common interests.[46] Thus, the passage of any legislation by the Council and Parliament first requires policy proposal by the Commission. Additionally, the Commission is responsible for negotiating international agreements on behalf of the EU.

The ability of the Commission to set the agenda has important implications for the direction of policy in relation to the preferences of individual members states. As some have noted, the distance between ideal points of the Commission and the Parliament is smaller than the distance between the Commission and the Council (König, Lindberg, Lechner & Pohlmeier 2007, Napel & Widgrén 2008).[47] Additionally, some scholars have argued that the European Parliament (EP) wields "conditional" agenda-setting power because, contingent upon acceptance by the Commission, it can make proposals that are easier for the Council to accept rather than modify (Tsebelis 1994). The treaties of Maastricht and Amsterdam also strengthened Parliament through the investiture procedure in which the body was given the power to approve the nominations of commissioners before they were appointed by the Council.

The question then remains, how do the Commission and Parliament with their agenda setting powers "work for" the smaller members of the EU? Empirical

[46]It has been argued elsewhere that the Commission does not have "monopoly proposal rights" because the Parliament and Council can compel the Commission to act, though they cannot control the content of the proposal (Crombez, Groseclose & Krehbiel 2006).

[47]Napel and Widgrén (2008) argue that because of decision rules across EU institutions, the pivotal voter in the Commission is the median voter and thus, more moderate than the pivot in the Council, which requires a qualified majority to pass legislation and, as a result, will be more conservative. Alternatively, the Parliament is more moderate because of simple majority rules.

studies of EU Council voting have shown that "large countries are significantly more inclined to vote 'no' than are their smaller counterparts (Mattila & Lane 2001, 31). Taken together with the finding that the Parliament and the Commission are closer in policy space and more moderate than the Council, this suggests that smaller EU states are generally more moderate and thus, maintain preferences closer to the median voters in the other two institutions. In concert with the supranational EU bodies, smaller national governments can exploit opportunities to advance their agenda. This is especially true if a smaller state holds the Council Presidency.[48]

The Council maintains a pre-determined six-month rotating presidency, in which a member state assumes a chairmanship-like role whereby the president is expected to remain neutral, acting on behalf of the member states in interactions with non-EU countries and other EU institutions. Yet, the position also allows countries to cultivate "objectives the Presidency is keen to pursue, as well as current affairs, and—in the interests of continuity—elements from the agendas of preceding Presidencies" (Council of the EU 2009).

The ability of the Presidency to shape the agenda hinges on a number factors. One is its relationship with the Commission. The Commission, Tallberg (2003) argues, can aid the Presidency by allowing government officials sufficient leeway in executing its programme, once the two actors engage in consultations and emerge with an understanding to support the pursuit of the other's objectives. In this way, the interaction between the official agenda-setter, the Commission, and the Presidency is key to the latter influencing the Council. The Presidency also speaks for the Council (i.e. national governments) in external matters. Therefore, in addressing

[48]Warntjen (2007) provides some empirical support for the argument that the Council Presidency can significantly impact the legislative activity of the Council. His findings on the impact of state size are tentative; however, the direction of the relationship between small state presidency and legislative activity would seem to indicate that EU presidents from smaller states may have more influence over legislative outcomes than their larger counterparts.

other IOs, the Presidency wields some influence on how agenda items are framed.

Finally, since the EU Presidency rotates at six month intervals, issues often cannot develop into policies in such a short time frame. In addition to forming their own program, new presidents are often left with the unfinished business of their predecessors. Thus, "The most prominent constraint is the degree to which Presidencies inherit the agenda of their predecessors" (Tallberg 2003, 3). Once policy is moving in a certain direction, it could prove difficult to change the trajectory of that policy, especially if it has considerable support from within the Council as well as in other EU institutions.

General Assembly

In the UN General Assembly, agenda control is far less institutionalized and the ability to exercise even informal gatekeeping control is rare. However, despite the Security Council's dominance within the United Nations system, the right of any member state of the UN to put a topic up for discussion is provided for in the Charter of the United Nations (Art. 11). This open rule allows weaker states to exercise some control over the organizational agenda, though some important caveats apply.

As Sinclair (1986) suggests, it is not necessarily how an item originates on an agenda, but rather the trajectory of an issue once it does appear, or whether the issue is exhaustively debated or effectively ignored, that determines the degree of influence an actor has over an agenda. This is especially true in a body such as the GA in which any state as well as the Secretariat can suggest issues for debate, yet all issues do not receive equal attention.

The climate in which a given issue is put forward is a important factor in explaining whether or not weaker states will be able to succeed in influencing the

legislative agenda. While current events shape the agenda, how these events divide the members of the GA can determine the amount of influence that weaker members have over the agenda. In the case of the founding of UN Conference on Trade and Development in 1964, the worsening economic conditions in developing countries in the 1950s and 1960s led to a distrust of the dominance of the Bretton Woods institutions, primarily the GATT, which served to galvanize interests along North-South lines; ultimately, the reluctance of ECOSOC to assume responsibility for development issues dealing with trade was the proximate cause for the creation of UNCTAD as an organization (Cutajar 1985). In the case of the ICC, there were several outstanding issues that created a favorable climate for weaker states to steer the agenda towards a independent international criminal court, which will be discussed in a subsequent section.

While any state can introduce questions for discussion by the General Assembly, the Security Council possesses some limited gatekeeping control over issues on the GA docket. According to the UN Charter,

> While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests (Art. 12, para. a).

Thus, if UNSC members maintain an interest in keeping an item from being discussed within the context of the GA, they can take up the issue within the Security Council. This strategy can delay discussion until it is, perhaps, less salient within the GA, but may prove risky if it focuses further attention on the issue.

The distributional consequences that drive issue salience lay at the crux of linkage. Vote-trading or linkage requires variance in the degree to which member

states value certain issues.[49] The EU and GA take up many issues within a large scope (e.g. Palestine to global trade and development within the GA or the common agricultural policy to immigration and tax policy in the EU), which allows members to realistically contemplate vote trades by acknowledging that they may have more to gain from one issue than they do another. In combination with aggregation rules, and agenda setting opportunities, the wide variance of issues within the EU and the GA allows linkages to be formed both within and across these institutions.[50] In the section that follows, I investigate the positions of states negotiating over the establishment of the International Criminal Court and discuss how the institutional features in the organizations above allowed weaker states to link issues from a first order institution, the European Union or the General Assembly, to the second order institution, the International Criminal Court.

A Spatial Model of the Rome Statute

Spatial models of political outcomes require two primary elements. First, the ordered preferences of the relevant actors must be known. Second, the institutions for aggregating those preferences are critical to predicting the particular outcome (Hinich & Munger 1997). In the case of the Rome Statute, most states had a very definite set of preferences over elements of the Statute. I have argued previously that the independence of the prosecutor from the UN Security Council was paramount and dominated a significant portion of the debate among the primary actors in Rome.

[49]See, for example, Ferejohn (1986) for a lengthy discussion of the role of salience in domestic legislatures, or Tollison and Willett (1979) at the international level.

[50]It should be noted; however, the linkages are not exclusive to the two organizations above, rather, that they afford weaker members influence in ways that organizations like the UN Security Council, World Bank, or IMF do not. Other organizations that present viable opportunities for linkage include the African Union, the ACP-EU Joint Assembly, etc.

Actors

In any spatial model of politics, it is essential to know who the actors are and how many there are. For instance, does the body responsible for producing an outcome operate like a committee, in which there are a small number of decision-makers and each actor has a high degree of influence on the outcome, or does the it operate more like voters in elections, in which any one actor has a small degree of influence on the final outcome? While analogies can be made to voting in mass elections where voters are allocated a single vote per person and do not exert a high degree of influence, there is an important caveat when applying these models to the international system; even when the decision rule ascribes each voter equal degree of influence over the outcome (one state, one vote), international organizations often are designed such that richer, more powerful members will join (Abbott & Snidal 1998, Koremenos, Lipson & Snidal 2001). This is because these actors are the ones that will shoulder the costs of keeping the organization afloat. Therefore concessions made during the negotiation process can reflect the degree of informal power that "important" states may wield even if they hold the same amount of formal decision power as other states.

At the Rome Conference, 160 state participants comprised the Committee of the Whole which was the principal body that would eventually vote on the Statute. The number of delegates for each state ranged from one (Chad, St. Lucia, Sao Tome Principe, and Uzbekistan) to 18 (United Kingdom), though votes would be registered by government and not by delegate (United Nations 1998*c*). So while the size of a state's delegation did not impact its voting weight, it did influence its ability to attend relevant working group sessions and participate in simultaneous negotiations.[51] Non-voting participants consisted mainly of NGO delegates that

[51]Cherif Bassiouni who served as the chairman of the Drafting Committee as well as on the Bureau suggested that "Delegations with 10 or more members could adequately cover all of the

provided assistance and informational support to smaller delegations as well as a vast cadre of journalists and UN translators (Lee 1999). Non-state actors played an essential role in disseminating information especially to smaller delegations that struggled to maintain a presence at all of the working group meetings.

The principal actors addressed in the chapter are the five permanent members of the UN Security Council, United Kingdom, France, China, Russia and the United States, the Like-Minded Group, consisting of approximately 60 states including members of the Southern African Development Community (SADC), and states of the Non-Aligned Movement (NAM). While the SADC primarily caucused with the LMG, their positions went even further in supporting an independent ICC (Glasius 2006, 23-4). Most members of the EU were either officially members of the LMG or maintained positions similar to the LMG. But according to one account, "The European Union did not visibly act as a bloc at the conference, because of the independent policy of France and, to a lesser extent, the United Kingdom, related to their permanent membership of the Security Council" (Ibid., 23). States ranged in their preferences over the draft statute of the ICC from extremely supportive to those that sought major revisions to a number of core articles including prosecutorial independence, the relationship with the UNSC, the elements of the crimes, and other jurisdictional issues.

Preferences over an ICC

For a permanent court with global jurisdiction over individuals who commit the most serious human rights violations to appear on the agenda of the international community, it is first requisite to know the proponents of such an institution. Historically, the creation of IOs that impose binding obligations under international

proceedings, but smaller delegations could not" (1999, 450 fn. 27).

law and are accompanied by enforcement structures has been spearheaded by the most powerful states in the international system.[52] Yet, ideas about the formation of international criminal court have a turbulent history of state support as the implications for state sovereignty have remained at the center of debate over such an organization.

The idea for an ICC has existed for some time and though a full review of its historical foundations remains outside the scope of this chapter, a number of works speak directly to the origins of an international criminal court (See Schabas 2007, von Hebel 1999, Bassiouni 1998, Lee 1999). A brief explanation suggests that the impetus for a court with jurisdiction over crimes of genocide, war crimes, and crimes against humanity arose with the passage of core human rights treaties including the 1948 Universal Declaration of Human Rights and the 1948 Convention of the Prevention and Punishment of the Crime of Genocide (von Hebel 1999). Concerns over the encroachment of national sovereignty coupled with cold war hostilities resulted in the ICC agenda being pushed to the side for several decades. The idea was revived in 1989 when Trinidad and Tobago asked the General Assembly to investigate potential judicial mechanisms to prosecute international drug trafficking.[53] The momentum for the ICC that exists today was set in motion by this request and the subsequent work of the International Law Commission (ILC), which eventually submitted a draft statute for an international criminal court in 1994.

Individual country positions on an international criminal court are subject to

[52]Examples include the League of Nations and the Permanent Court of International Justice, the United Nations system and the International Court of Justice and the Security Council, the World Trade Organization and the Dispute Settlement Mechanism.

[53]See Summary Record of the 38th Meeting of the 44th Session of the UN General Assembly UN Doc. A/C.6/44/SR.38 in which the proposal by Trinidad and Tobago was debated. Also the corresponding General Assembly resolution UN Doc. A/Res/44/39 "International Criminal Responsibility of Individuals and Entities Engaged in Illicit Trafficking in Narcotic Drugs Across National Frontiers and Other Transnational Criminal Activities : Establishment of an International Criminal Court with Jurisdiction over such Crimes," which commissioned the International Law Commission to investigate the matter further.

some debate. For instance, the United States claims to have been a long-standing supporter of an international court to try the most heinous abuses of human rights, as suggested by its active participation in the negotiations over the court and statements of support by U.S. delegates at the conference (United Nations 1998*b*). But, official records of UN debates indicate that the United States remained skeptical of an ICC even prior to the suggestion that it could be independent from the Security Council. Striking a cautious tone, one U.S. delegate stated, "the potential benefits and problems of establishing an international criminal court must be carefully weighed, to avoid the risk of doing more harm than good" (United Nations 1989, 3, para. 9). Moreover, there were some early indications that the United States would attempt to frustrate progress towards an ICC. As one former State Department official offers, "Policymakers at the U.S. Departments of State, Justice, and Defense quickly reached a consensus that a permanent international criminal court was not in the interest of the United States." He continues, "It was during this time that I was serving as the State Department official responsible for considering the issue... I was assigned the task of making the Trinidadian initiative 'go away"' (Scharf 1999, 98).

However, the United States was not alone in expressing its reservations and a number of states remained wary of the jurisdiction of the Court. In particular, when the ILC reported its draft statute in 1994, some of the UN Security Council members indicated an expectation that the ICC would function as a subsidiary organ of the United Nations.[54] At various points states including China, Russia, France, India, Indonesia, and Pakistan all registered their apprehension about a court that could initiate proceedings without the consent of all the states involved in a dispute.[55]

[54]See Topical Summary of the discussion held at the Sixth Committee of the General Assembly, Sess. 49, UN Doc. A/CN.4/464/Add.1, para. 38, 22 February 1995.

[55]Statements made by delegates attending the meetings of the sixth (legal) committee of the UN General Assembly attest to objections offered by these delegations. See Summary Record of the

The jurisdiction of the ICC was by far the most problematic issue faced by negotiators in Rome. This included several areas of controversy that were not readily disentangled. As the executive secretary of the Rome Conference (RC) observed, "Even at this preparatory stage, some delegations saw the inseparable linkages between core issues and within each core issue" (Lee 1999, 21). In other words, those issues that fell under Part II of the draft statute—the Court's trigger mechanism and the conditions for the exercise of jurisdiction—were the most politically sensitive and the subject of the most heated debate at the conference and moreover, these issues did not readily lend themselves to trade-offs (Kirsch 1999, Arsanjani 1999). In light of this, I focus the negotiation analysis on the issues contained in Part II of the draft statute, though it would be misleading to suggest that agreement on the remaining 13 sections of the treaty was readily obtained. Rather, as one delegate that was active in the negotiations observed about the provisions contained in Part II, "On those issues, states would finally take a decision as to whether the Statute would be acceptable" (von Hebel 1999, 36).

The following sections address where states stood (i.e. their ideal points) on these issues during the negotiation phase, both during the preparatory committee sessions and the RC, and their position at the end of the conference. To suggest that states were either for or against the establishment of an ICC would be to mischaracterize the political landscape that dominated the debates of the UN legal committee and the Preparatory Committee (PrepCom) for the four years prior to the RC. Most states, at least publicly, emphasized their support for an ICC, rather it was obtaining a bargaining outcome that reflected states' interests that remained at the center of debate. Thus, I break down the core concerns in Part II of the

26th Meeting of the Sixth Committee of the General Assembly, Sess. 51, UN Doc. A/C.6/51/SR26, 29 October 1996 and Summary Record of the 14th Meeting of the Sixth Committee of the UN General Assembly, Sess. 52, UN Doc. A/C.6/52/SR.14, 23 October 1997. See also Benedetti and Washburn (1999).

draft statute into three major issues: the ICC's relationship with the UN Security Council, the role of the Prosecutor, and the debate over inherent or consensual jurisdiction regime. Taken together, these issues would determine the extent to which the ICC operated as an independent institution with jurisdiction over the crimes committed as defined in the treaty or whether the ICC would operate more like the ad hoc tribunals at the discretion of the Security Council, or even the ICJ in which states would agree beforehand to accept the jurisdiction of the court before proceeding with a case.[56] These issues were interconnected such that disagreement on one precluded, in large part, agreement on the other.

"The delegates at the Conference did not begin negotiating with a blank slate; instead they built upon the efforts of the Ad Hoc Committee and the PrepCom" (Bassiouni 1999, 455). These debates began in earnest following the establishment of the Preparatory Committee in 1996 by the UN General Assembly. The task of the PrepCom was to prepare a workable solution to the disputed articles presented in the ILC draft statute. Thus, the idea was to present a draft in Rome that would only require minor revisions. It became evident during the PrepCom sessions, which met six times between 1996 and 1998, that major disagreements among the P-5, the LMG, and the Non-Aligned states would not be resolved by the beginning of the RC, though the PrepCom meetings did serve a valuable purpose for the LMG which was able to recruit members and develop a cohesive program in order to present a united front against detractors of an independent court.

[56]In the ICJ, the court may only proceed with a case without the explicit consent of all the parties if a state has recognized the compulsory jurisdiction of the ICJ under Article 36, paragraph 2 of the statute of the court.

The Stakes and the Strategy: Separating the P-5

The Security Council members ultimately sought to avoid a classic principal-agent problem. As the negotiation analysis below will show, the P-5 began negotiations over the Court as a bloc. While their cohesion was primarily a result of individual preferences, there was a sense among them that any significant break in this position could tip the balance away from Security Council control of initiating cases and towards an independent agent doing so. In the case of the ad hoc tribunals, each permanent member of the UNSC can block the contract between the principal (the Council) and the agent (the tribunal prosecutor), whereas in the case of the ICC as envisioned by weak states, no one state can block the contract between the principal (the Assembly of States Parties) and the agent (the ICC prosecutor). For the P-5, this shift represented a significant loss of control, in which agent shirking could produce undesirable or unwelcome investigations and prosecutions by the Court.

Indeed, there was nothing to prevent weak states from establishing a court without the participation of any of the major powers if they chose to do so, but a major concern of LMG was that if the ad hoc tribunal system was left intact, then the Council would be free to pass resolutions against the ICC, essentially overriding the newly established court in favor of another ad hoc tribunal. The power strategy for the weak states was to incapacitate the Security Council, preventing it from establishing any additional ad hoc tribunals. To do so, they would have to peel away at least one P-5 member to support the Court. The support of just one member was essential because this meant that they could veto Security Council action with regard to any new ad hoc tribunal. This would, as LMG states affirmed, eliminate the need for the Security Council in setting up tribunals. One Algerian delegate at Rome suggested that there is a "clear need for an effective and objective

international court to deal with the crimes under international law, which would obviate the necessity for ad hoc tribunals" (United Nations 1998*c*, 73).

In the absence of support from any one member of the P-5, there was little to stop the Security Council from continuing to establish ad hoc tribunals into the future and indeed the United States attempted to do just this in the case of Darfur, an issue which I will return to later in this chapter. The emphasis on an effective court led to the view among many states that the Court would have to enjoy some major power participation. As one observer at Rome notes, "There was a wide belief that the Court could not be effective without the participation of at least some permanent UN Security Council members" (interview with NGO delegate at RC, 7 Nov. 2008). Thus, it is unclear whether the Rome Statute would have been able to garner the 60 ratifications necessary to enter into force without any major power participation. Even if the ICC had been established without any P-5 support, it would have to compete with the Security Council as the mandate of each body would overlap considerably in the area of human rights adjudication. Alternatively, with the support of any member of the P-5 the international community could jettison the Security Council in favor of the ICC through a veto of an ad hoc tribunal by the ICC-supporting member(s).

The permanent members were keenly aware of the stakes emanating from a P-5 split. Throughout negotiations various UNSC members argued forcefully for the need to maintain veto control over the initiation of investigations. The section below describes in detail the initial position of all five members on the role of the Security Council. London's eventual, albeit tenuous, break with that position created a rift between the United States along with the remaining three permanent members. Highlighting the importance of splitting the cohesion of the P-5, the coordinator of the Lawyer's Committee for Human Rights, Jelena Pejić notes, "What the British

did was very important, extremely important. It has loosened the Security Council's ranks" (*NYT*, 14 Dec. 1997). Thus, the analysis below demonstrates how "political maneouvering within Europe has yielded real dividends in steering Britain away from the other four permanent members of the Security Council to accept a more limited Council role over the Court's work" and following this formula, how outside pressures applied to France yielded similar results (*Terra Viva*, 22 Jun.).

Analysis of ICC Negotiations

The method employed here to assess the outcome reached at the RC is based on the negotiation-analytic approach described by Sebenius (1992*a*, 1992*b*). Much like spatial models of politics, the elements of negotiation analysis focus on the nature and number of actors, their interests, the alternative to the negotiated agreement (i.e. status quo), and efforts to "change the game" including issue linkage strategies (1992*a*, 332). In order to establish individual positions on each of the issues above, I conducted a content analysis of negotiations over the draft statute. Coded debates occurred in one of three forums: (a) in the UN General Assembly meetings of the sixth (legal) committee, (b) the PrepCom sessions established by the UNGA, and (c) the Rome Conference. While there were a number of informal meetings in which major points of controversy were debated, many of the discussions remained private and official records and/or transcripts do not exist for these meetings. Each debate focused on broad concepts, such as jurisdiction, or specific articles that corresponded to the ILC draft, or subsequent draft statutes prepared by the PrepComs (all based upon the ILC version). Whenever a delegate spoke specifically about a broad concept dealing with one of the three categories above, their position was coded as either for or against. If a delegate expressed support for or opposition to a specific article or provision of the draft statute, dealing with one

of these broad themes this was also noted. Because the draft statutes changed form significantly from 1994 to 1998, the coding scheme employed reflects these shifts and maps them onto a single framework illustrated in Figure 3.1. The content analysis was conducted at five stages in the negotiation process.

- First session of the Preparatory Committee, March/April 1996
- UN General Assembly meeting of the Sixth Committee, October 1997
- 6^{th}-11^{th} Meetings of the Committee of the Whole, 18 June-22 June 1998
- 29^{th}-31^{st} Meetings of the Committee of the Whole, 9 July 1998
- 33^{rd} Meeting of the Committee of the Whole, 13 July 1998

Each set of negotiations was analyzed according to states' positions on the separate articles that remained at the center of controversy throughout the negotiations listed above.[57] Responses pertaining to a specific article were assigned a score ranging from zero to one. A score of zero reflects a preference for more independence from states and/or the UNSC, while a score of one reflects greater dependence. After analyzing each article, states' responses were summed across the core issues. A minimum score awarded to a state was a zero, while the maximum was three. This scheme enables the collapsing of multiple issues into a single dimension. This dimension reflects the overall independence of the Court. The justification for doing so is based on observations made by delegates and UN officials present for the PrepCom meetings and at the Rome Conference. The coordinator for the working group on issues contained in Part II of the draft statute observed,

[57]It should be emphasized that states debated numerous issues in the 128 article Rome Statute and while I do not claim to have captured the entire range of debate on the Statute, I argue that the issues coded here, represent those that are primary areas of disagreement. NAM countries, led by India, also emphasized two more factors: banning the use of nuclear weapons and including the crime of aggression into the Statute; however, because of their strident opposition to the Security Council, it is unlikely that either of these issues alone could have won over a significant portion of NAM countries. Moreover, the nuclear issue was not at the forefront of the LMG position and the future possibility to include aggression was included in the version of the final statute.

> Progress throughout the Preparatory Committee on most questions was painstakingly slow, especially on those issues considered fundamental such as the definition of crimes, the exercise of jurisdiction, trigger mechanism, the role of the Security Council and an independent prosecutor. Lack of progress occurred in large part because these fundamental questions were so interlinked (Holmes 1999, 43).

The first issue coded dealt with the exercise of jurisdiction. States that preferred a regime of inherent or universal jurisdiction were assigned a 0, while states that preferred an opt-in jurisdictional regime were assigned a 1. The second issue concerned the role of the UN Security Council. States that preferred no role whatsoever for the UNSC in the new court were assigned a 0; states that preferred a limited role, but no veto were given a 0.5; states that preferred that the UNSC have traditional veto powers over prosecutions were assigned a 1. In the third category, states that preferred an independent prosecutor that could initiate investigations *proprio motu* were given a score of 0, while states that preferred that the prosecutor should have to wait to act until referred a situation by a state party or the Security Council were assigned a 1. Modifications to the ILC draft were reflected in the renumbering of articles from one version to the next. Figure 3.1 depicts the coding scheme for each of the three elements and reflects these changes and it should be emphasized that successive articles are essentially replacements for the former, as they address the same issues.

The following figures are depictions of the ICC negotiations in policy space, with country ideal points represented. The status quo policy is shown by x_{SQ}. The status quo, the ad hoc tribunals created by the UNSC, is positioned on the same zero to three scale as the draft statutes. Thus, the ad hoc tribunals constitute the least independent alternative available. The tribunals have a prosector whose jurisdiction

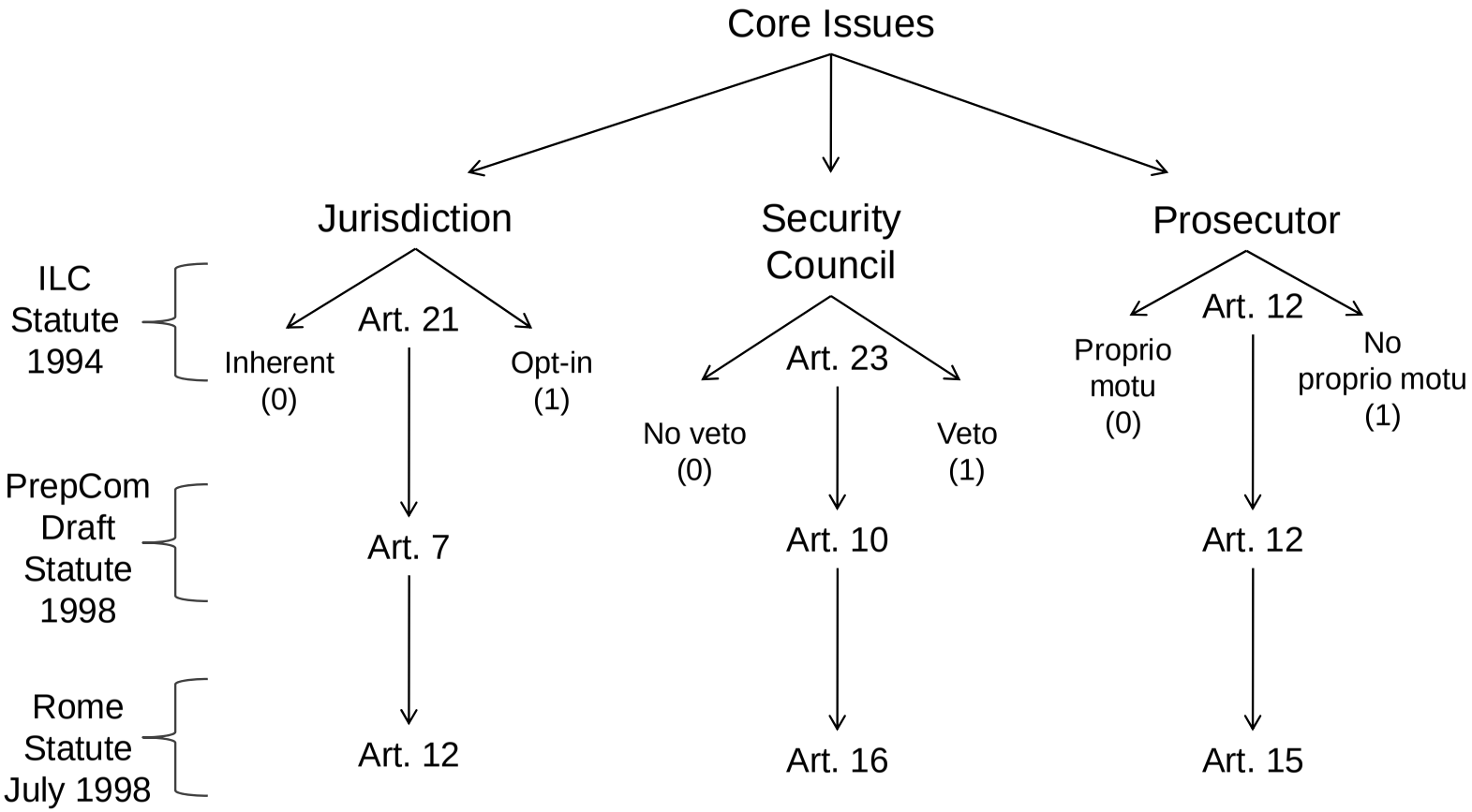


Figure 3.1: Stages of Debate

is predetermined by the Security Council and only the Council can initiate a tribunal. Thus, the UNSC has gatekeeping control over the ad hoc tribunal system.

In the next section, I lay out the ideal points of the major parties with a series of spatial diagrams based upon the content analysis described above. The discussion focuses on the changes in positions and proposes that weak state strategies, namely trans-institutional issue linkage, can explain why France and the United Kingdom switched their position over the course of the negotiating period.

Phase I: The ILC Draft and the PrepCom

The ILC Draft Statute

The draft statute submitted by the International Law Commission in 1994 (hereinafter ILC draft) was, in many ways, only a small departure from the ad hoc tribunals. The major differences between the two alternatives, is that the ILC draft established a permanent court and conferred upon states the power to refer cases to the ICC, though they would have to be parties to the Statute. Under this scenario, the Security Council would still hold considerable control over the ICC, as any one P-5 member would be able to prevent a case from going forward in the Court. Figure 3.2 depicts the two proposals, χ_{SQ} (the ad hoc tribunals) and χ_{ILC} (the ILC draft) in policy space, as well as the disparate position of the Like-Minded countries. The ILC's proposal allowed states to opt-in to the crimes under the jurisdiction of the Court and did not provide for a prosecutor that could initiate cases on their own.[58]

Given the preferences of the P-5 during the time when the ILC was crafting its proposal, it is unsurprising that the draft was not a more significant departure from the ad hoc tribunals. The legal experts on the ILC were not uninterested parties nor were they immune from influence by the UNSC. The members of the ILC during the

[58]Article 12 of the ILC draft did not provide for *ex officio* or *proprio motu* powers of the prosecutor.

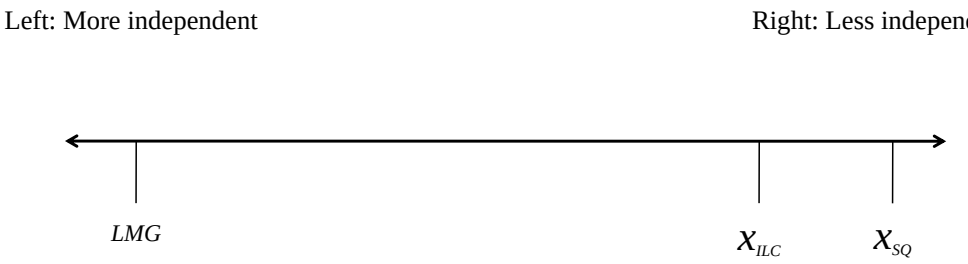


Figure 3.2: ICC Positions 1995

period in which the draft statute was compiled included representatives from all P-5 members. States, in granting the ILC authority to draft a statute for an international court, insisted that any future court would have the following attributes:

- The court would be established by treaty (as opposed to a UN resolution)
- The court would exercise jurisdiction over persons (as opposed to states, as in the case of the ICJ)
- The jurisdiction would be limited to crimes laid out in existing international treaties.
- The court would not have compulsory jurisdiction such that a state party would have to accept the jurisdiction of the court without the opportunity to investigate and prosecute a case domestically.
- The court, while permanent, would not operate full time, but only when handling a case (Crawford 1995).

These principles left ample room for interpretation about how they would be applied by a functioning court. While keeping with these principles, the ILC draft seemed to grant precedence to the UNSC, rather than reaching for a more radical departure

from existing alternatives. Thus, when states gathered to discuss the ILC draft in the context of the Ad Hoc committee, formed by the UNGA to discuss general perspectives on an ICC, debate focused on the strength and independence of the court. States' positions given during the two meetings of the Ad Hoc committee are not analyzed here because the discussions during 1995 remained very general and did not contain specific proposals. It was not until the PrepComs were established with working groups created for specific areas of disagreement that states' positions on specific matters related to the independence of the court came to light.

While the LMG was still very much in its formative stages in 1995 when the Ad Hoc committee was formed, their aim was to push for a court that was relatively independent from the UNSC (Glasius 2006). Some have suggested, that a combination of hope, anger, and distrust of the Security Council, "combined to reinforce the demand for a strong, independent, representative, and permanent international criminal court" (Benedetti & Washburn 1999, 4). Thus, the LMG positioned itself relatively far from the preferences of the P-5, "whose initial vision of the institution was indeed closer to a permanent ad hoc tribunal of the Security Council than to an independent international judicial institution" (Ibid., 18). The formation of the PrepCom in 1996 brought these differences to light, as countries began to debate the specific provisions of the ILC draft.

PrepCom 1996-1997

One defining feature of the PrepCom sessions is the relatively low participation of states at these meetings. While the Rome Conference enjoyed the participation of 160 states, the PrepComs were attended by about 60. Nevertheless, the participants included members of the Southern African Development Community, Caribbean states, and other LDCs, in addition to the founding members of the LMG, NAM,

and the P-5. So while attendance was far from universal it was still representative in geographical and developmental terms. Each PrepCom session was designed to tackle a different set of issues. The April 1996 session discussed here addressed the core issues displayed in Figure 3.1.

At the time of the first PrepCom meeting membership in the LMG stood at about 40 states. The group was led by Canada, but its membership consisted primarily of smaller, developing countries as well as EU members minus the United Kingdom and France. The presence and active participation of smaller states attest to their commitment to shape the Court as the costs of attending the PrepCom meetings as well as the Rome Conference ballooned. A complete list of like-minded states is located in the appendix of this chapter.

The ILC draft posed a challenge for the group of Like-Minded states as well as the SADC, which had a clear and coherent vision for a strong, independent court. One of the major obstacles these groups would have to overcome to achieve their goals was to reverse the language of Article 23, especially with respect to paragraph three and to remove in Article 21 the provision for state consent, replacing the requirement of consent with inherent jurisdiction, or the ability of the court to assert its jurisdiction over the core crimes as long as the party referring the situation was a state party, the Security Council, or the prosecutor.

The Role of the UN Security Council: Veto or No?

As a result of its perceived bias toward the Security Council, the ILC draft had many states that supported an independent ICC on the defensive.[59] The ILC had granted the UNSC wide-reaching powers over work of the court and the ability of the prosecutor to proceed with a case. Article 23 of the draft provided for "Action

[59]Commenting on the ILC draft statute in 1994, a number of states observed that the draft gave the Security Council "far greater powers than any state" and moreover, would distort the separation between the UNSC and the role of the prosecutor (United Nations 1994*a*, 27, 38).

by the Security Council." The three paragraphs therein stipulated the following: the UNSC could refer a matter to the court (para. 1), acts of aggression could not be referred to the court unless the UNSC had determined that such an act had occurred (para. 2), and finally, the UNSC could halt the prosecution of a case if it determined that it interfered with the work of the Security Council itself (para. 3) (United Nations 1994*b*).

From the outset, Article 23 was the subject of heated debate. Some states saw this article as a further extension of UNSC veto power and feared that the Court would be held as a political hostage of the P-5. For other states, Article 23 came as an assurance that the Security Council could continue its work in the maintenance of peace and security unencumbered. Unsurprisingly, the veto powers reacted similarly to the language contained in the ILC draft. In the first meeting of the PrepCom in April 1996 states began to lay out their positions on Article 23 and the role of the UNSC. Figure 3.3 depicts the positions of some of the states that participated in the first PrepCom in addition to the General Assembly debates of the Sixth Committee on Legal Affairs in October 1997.[60]

For the most part, the LMG supported the language permitting the Security Council to refer situations to the Court as this provision would obviate the need to establish future ad hoc tribunals.[61] Rather, the primary objection settled on the veto provision in paragraph three, and to a lesser extent paragraph two. Chile suggested that "Paragraph 3, as currently worded, implied an improper subordination of the court to the Security Council." Similarly, the Swedish delegate offered that "Para-

[60]Because debate focused on the same proposal, x_{ILC}, these two negotiating periods have been combined to maximize the number of participants speaking on all three issues so as to obtain a combined score on independence.

[61]For purposes of brevity, I combine the positions of the LMG and the SADC, where appropriate. The SADC shared many of the same preferences as the LMG and most SADC members also caucused with the LMG. On the left/right scale presented here, this group tended to be the left most negotiating group in the ICC negotiations.

graph 3 was disturbing" and should be deleted (PrepCom Meeting 17, 4 April 1996). Their main objection was that paragraph three would allow any permanent member block the investigation of a situation by the prosecutor. For this reason, most states favored deleting this provision altogether (Benedetti & Washburn 1999, Hall 1998).

All five veto-weilding members of the UNSC spoke in favor of the provisions of Article 23. One of the strongest positions was offered by France which advocated that the Security Council should have the right of veto over cases brought before the court. Records of the proceedings indicate that the French delegate suggested that "Any communication from States requesting action by the court should first be referred to the Security Council" (PrepCom Meeting 16, 4 April 1996). During the same meeting, the representative from the United Kingdom disputed claims made by some states which indicated that the court would be merely an instrument of the Security Council if paragraph three of Article 23 were allowed to stand. The Russian delegation admonished other states' opposition to the ability of the Security Council to halt a prosecution from going forward, suggesting, "The representative of the Russian Federation said that the court statute should not, in any way, limit the powers of the Security Council" (Ibid.). The Chinese delegation also spoke in favor of retaining the language of Article 23 without modification. Finally, speaking on behalf of the article as drafted, the United States emphasized that the UNSC "would continue to exercise authority in regard to international peace and security" furthermore, the U.S. delegate argued for a strengthening of the language of paragraph three "to include all matters being dealt with by the Council" as opposed to only situations that are a threat to peace or an act of aggression (PrepCom Meeting 17, 4 April 1996).

A number of states, primarily NAM members, objected to any role whatsoever for the UNSC. States such as India, Mexico, Iran, and Libya questioned the need for

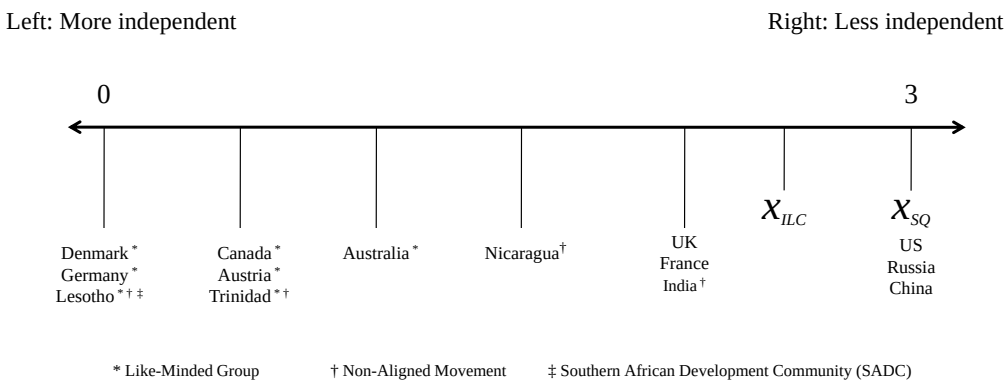


Figure 3.3: ICC Positions PrepCom Negotiations

the Security Council to refer situations to the Court when the ILC draft provided for the right of any state party to refer a situation. They argued that granting the Security Council the right of referral could only lead to interference by compromising the independence of the ICC. Libya's delegate argued, "the Security Council had been used as a 'sword in the hand' of hegemonic great powers" and that the "great powers should not be allowed to extend their vetoes to the international criminal court" (Ibid.).

Jurisdiction: Inherent or Opt-In?

A second core issue debated during these sessions addressed the conditions for exercising the jurisdiction of the court. Articles 21 and 22 of the ILC draft also reflected the preferences of the P-5, although the fault lines of this issue did not divide major powers from their weaker counterparts as clearly. Permission to choose the crimes for which states would accept the jurisdiction of the court became known as the opt-in provision, which some states derisively referred to as an à la carte menu (PrepCom Meeting 16, 4 April 1996). The single exception to the opt-in provision was the crime of genocide, for which the court would have automatic

jurisdiction. These articles were positioned closer to the ideal points of those states that preferred a weaker, less independent court.

Article 21 of the ILC draft was a major disappointment to states that preferred universal or inherent jurisdiction over the core crimes listed in the statute. During the PrepCom, the LMG made their case for a court with "inherent" jurisdiction over all of the core crimes.[62] There was some debate over the terminology used in proposing a system in which the ICC would not have to obtain explicit permission by a state to proceed with a case. Inherent jurisdiction implied that the ICC would be able to prosecute a case with respect to crimes listed in the statute without the consent of state parties, because parties, having ratified the treaty, would thereby automatically submit to the jurisdiction of the Court. This is in contrast to a system of universal jurisdiction in which the Court could prosecute any case whether or not the states were parties to the ICC. A proposal for universal jurisdiction was floated by Germany and received considerable support from developing countries.[63] Though most LMG members advocated for inherent jurisdiction.

On this issue, the United Kingdom and France adopted a slightly more liberal position than their P-5 counterparts, proposing a system of automatic jurisdiction over the core crimes under the condition that the states of territoriality and nationality were parties to the ICC or had given their consent (Wilmshurst 1999, 132). France waffled on this position throughout negotiations, periodically expressing support for opting-in. While this position gave the Court slightly more independence than the opt-in regime, the threshold remained high if the state of nationality (i.e. the state in which the accused is a national or citizen) had to consent to the Court's jurisdiction. In many ways, this is akin to the ICJ system of accepting jurisdiction

[62]In addition to genocide, these includes crimes against humanity, war crimes, and the much disputed crime of aggression.

[63]Those countries expressing a preference for the German proposal included, Senegal, Burundi, Djibouti, Samoa, Bosnia, and Ecuador, among others (United Nations 1998*c*).

when a state has not already accepted the compulsory jurisdiction of the organization. The LMG states argued that barring a change in government, states in this position would have little incentive to consent to the jurisdiction of the Court. The remaining members of the P-5 stood strongly in favor of an opt-in regime, though some were willing to accept the ILC version allowing for inherent jurisdiction over the crime of genocide. NAM countries fell mostly on the side of an opt-in regime, arguing that inherent jurisdiction would compromise the principle of complementarity, stating that the Court would defer to national courts unless a state was unwilling or unable to pursue a case.

The Prosecutor: Proprio Motu or Inappropriate?

The final core issue coded for this analysis was whether the Court should provide for an independent prosecutor, or one that could investigate cases on her own initiative (*proprio motu*). Under the ILC draft the trigger mechanisms of the Court were limited to a state party or the Security Council (Fernández de Gurmendi 1999, 175). Believing this role to be too restrictive, the LMG and SADC were adamant that a truly effective court would allow the prosecutor to investigate a crime under the jurisdiction of the court without waiting for state or UNSC referral. In their view, an independent prosecutor would ensure the impartiality of the court because, as they argued, the other two trigger mechanisms were inherently political. Their argument on the limitations of Article 12 culminated in the inclusion of the new alternative presented in Rome of a third trigger—the prosecutor. Alternatively, the P-5 alongside members of the NAM preferred the ILC draft precluding initiation by the prosecutor. Both groups believed that a prosecutor that could trigger an investigation would wield too much power and could politicize the court.

The positions of the P-5 at the inaugural session of the Preparatory Committee and the GA meeting of the legal committee reflect that these countries, largely

content with the powers granted to the Security Council by the ILC draft statute, found themselves defending a statute that was relatively close to their ideal points when weaker states began to chip away at the shield of veto power to which these states had grown accustomed. Concurrently, the PrepCom sessions allowed members of the LMG to consolidate their positions and pool their resources together with the Southern African Development Community. These two groups formed a tight coalition that specified three clear goals: an independent prosecutor, inherent jurisdiction, and the elimination of a UNSC veto.

The period between the PrepComs and the Rome Conference revealed the cracks in the seemingly solid P-5 position on the Security Council. The next section discusses when positions began to change and importantly why they changed, when failure to adopt a statute in Rome would have meant the preservation of P-5 dominance over the adjudication of major human rights abuses and the continued ability of the P-5 to shield themselves or their allies from prosecution with a single veto.

Phase II: Negotiating the PrepCom Draft Statute

Because negotiation is a process by which actors attempt to arrive at a mutually acceptable solution, compromise allows states to achieve an acceptable bargain. It would therefore be surprising if states did not shift their positions by making concessions. Incremental movement in policy space reflects the nature of these compromises and is to be expected in the negotiating process (Raiffa 1982). However, large leaps in policy space should raise flags about whether states are engaging in modest compromises to converge towards the median voter position. Further, if these shifts are occurring in a single direction, then this should be an indicator of a change that is exogenous to the negotiations within the second order institution.

The sources of these shifts could be many and varied. For instance, within the context of the negotiations over the ICC, large changes in position could originate from a change in the domestic political environment.

A change in government could precipitate a shift in the negotiating position. If, for example, a government goes from being internationalist to being isolationist as the result of the installation of a new regime (either through election or otherwise), then the government's attitude toward an ICC should produce a more conservative negotiating position. Another source of large shifts could come from international or internal conflict. Depending on whether the conflict is beginning or ending and whether the government in power is considered the perpetrator or victim of the hostilities, states could become more or less sympathetic towards an ICC. For instance, on the heels of the war in the former Yugoslavia, Bosnia and Hercegovina participated actively in the ICC negotiations as a member of the LMG, while Serbia, active in hostilities with Kosovo at the time and largely seen as the aggressor in both campaigns, refrained from participating in the conference.

Finally, drastic changes in negotiating positions (without reciprocal change), could be the result of bargains struck outside of the context of the second order institution. States may engage in trans-institutional issue linkage when deals within an organization become intractable or issues cannot be readily traded. Thus, major shifts in one institution should be mirrored by major shifts or concessions in another, first order, institution by another actor. Here I present evidence that shifts occurred in states' positions, reflecting the changes in their preferences as expressed in the debates coded for this negotiation analysis.

As discussed above, far more states participated in the Rome Conference than at the PrepComs and in the debates of the UNGA legal committee. Much of the discrepancy centers on the lack of resources for many developing countries, but also

PrepCom participation was a signal of how invested some states were in the outcome of the negotiations. In the opening days of the conference much of the debate reflected previous positions held by states during the PrepCom sessions as well states registering their positions on the major issues for the first time, having read the proposed draft just days prior to the opening of the conference (Bassiouni 1999).

In subsequent PrepComs the role of the Security Council continued to frustrate a compromise that would ensure that the UNSC's Chapter VII powers would remain unencumbered while convincing the LMG that the independence of the Court would be preserved. However, a proposal floated by Singapore in August 1996 and debated in detail at the RC, provided an option for which the LMG could accept a greater role for the Security Council without surrendering to the possibility that a single veto could prevent a case from going forward. The "Singapore Compromise" as it became known, proposed to amend Article 23(3) of the ILC draft to "provide that a prosecution could not proceed if the Security Council *otherwise* decided, thus requiring a decision by *all five* permanent members, plus four nonpermanent members, a more difficult hurdle" (Hall 1998, 131, italics added). This provision did not preclude the UNSC from delaying an investigation (the elimination of this possibility was preferred by most NAM and SADC members as well some of the LMG), but it did shift the burden onto no fewer than nine members of the Council, forcing them to agree to delaying or preventing a case for the purposes of peace and security.[64]

The effect of the Singapore Compromise was to avert the deadlock that threatened to derail ICC negotiations altogether. One P-5 member, the United Kingdom, even tentatively expressed its support for this provision, though when it came to

[64]This became known as the "positive veto" because it required the Security Council to make a positive decision to prevent the commencement or continuation of an investigation or prosecution by the ICC of a matter the Security Council was seized with (PrepCom Meeting 15, 4 Aug. 1997).

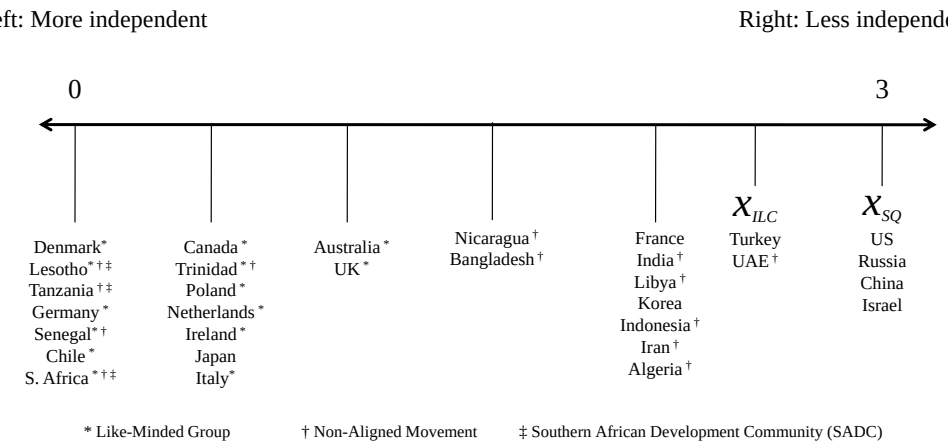


Figure 3.4: ICC Positions RC–June 1998

introducing time limits on delaying cases, the issue once again became controversial. Figure 3.4 illustrates the positions of a subset of states at the beginning of the RC. Most notably, the United Kingdom leaps from a position near to $\mathrm{x}_{\mathrm{ILC}}$ to a position that is closer to the LMG. Meanwhile, there is relatively little variation in the positions of the remaining P-5, especially on the core issues coded for and presented here. In substantive terms, the United Kingdom moved from the most stringent position on the role of the UNSC to accepting the Singapore Compromise, allowing for the possibility of inherent jurisdiction, and to accepting a prosecutor with *proprio motu* powers.[65] Numerically, this resulted in a one point shift towards the "left: more independent" policy position.

The change in policy preference for the United Kingdom marked a critical juncture in the ICC negotiations. For the first time since the ICC debate began in 1994, the P-5 could not present a united front. According to one source, a major breakthrough for the LMG occurred in December 1997,

[65] While the United Kingdom did express support for the Singapore Compromise, it was resistant to the proposal that the time frame could not be determined by the Security Council, but would expire after a period of 12 months.

> [w]hen the U.K. confirmed its decision to oppose the provision in the draft statute that would require prior approval by the Security Council before the court could proceed with investigations and trials. This change of policy by the U.K. ultimately led to its joining the Like-Minded Group (Benedetti & Washburn 1999, 21).

The UK Reversal: A Story of Shared Membership

What precipitated this major reversal on the part of the United Kingdom? As suggested previously, negotiations can be expected to produce small shifts in policy positions; however, this shift towards the LMG position, I argue, was the result of more than intra-institutional compromise. Because the United Kingdom shared membership with 14 members of the European Union, 13 of which were firmly positioned within the Like-Minded camp, the British government was forced to confront a stark reality if it continued to oppose the ICC. That reality was that its goals within the EU could be compromised if it pursued an adversarial position on the ICC. Key to understanding the conundrum Britain faced are the institutional features of the EU.

In January 1998, the United Kingdom assumed the Presidency of the European Union and inherited the agenda of its predecessors which were some of the most pro-ICC members of the EU, including Italy—which by 1996 had offered to serve as host of the Conference of Plenipotentiaries—Ireland, the Netherlands—which was the home country of the PrepCom Chairman and the Chairman elect of the Committee of the Whole, Adrian Bos—and Luxembourg. The presidencies of these four countries were able to set forth an institutional inertia towards supporting the establishment of a strong, independent court by guiding discussion and debate within the EU and also within the UN General Assembly.

The Irish government was pressured from within its own parliament, the Dáil,

to place the establishment of the International Criminal Court on the EU's agenda. Just prior to Ireland assuming the Council presidency in July 1996, one member of Irish Parliament asked Irish foreign minister, Richard Spring "if he will ensure that the issue of the establishment of a permanent international criminal court is fully debated during the Irish Presidency of the EU, particularly in view of the recent atrocities in Bosnia" to which minister replied that the government had raised the issue in numerous General Assembly debates and intended to assume responsibility for organizing the EU's position on the ICC, and, despite some underlying disagreements, would ensure that the ICC would be "fully debated in all appropriate fora" (Dáil Éireann 1996*a*).

In subsequent responses to his own parliament, Minister Spring maintained that he had spoken in favor of the court on behalf of the EU and separately for his own government. The positions he advocated were essentially the same, despite persistent disagreement that divided the EU with the United Kingdom and France on one side, and the remaining 13 members on the other (Dáil Éireann 1996*b*). As EU scholars have noted, it would be "unrealistic to expect governments to act out of character for the six months' duration of the Presidency" (Tallberg 2003, 5).[66] Ireland, therefore, was able to prioritize the establishment of an ICC by garnering support through the EU. Though, as Spring indicates, every EU country nominally supported a permanent court, by the end of 1996 fundamental disagreements, remained.

In moving forward with its pro-ICC agenda, Ireland had the full support of the EU Parliament and the Commission. In October 1996, still early in the PrepCom negotiations, Parliament passed a resolution in support of the ICC and called upon

[66]Original quote taken from Helen Wallace (1985) "EC Membership and the Presidency: A Comparative Perspective," in Colm O'Naullain (ed.), *The Presidency of the European Council of Ministers. Impacts and Implications for National Goverments*, London: Croom Helm.

Ireland, as the current EU President, as well as the Commission "to do all within their power to ensure that the Union speaks with one voice" (European Parliament 1996). The Parliament continued to debate the matter, calling on member states and the Council to support a strong position on the Court. In November 1997, the EP took up discussion on the ICC as a matter of "topical and urgent debate." In the debate EU parliamentary members (MEP) from across the political spectrum expressed support for an independent court. One MEP (Denmark) of the middle-right European People's Party (the Christian-Democratic group) asserted,

> [i]t is obviously very important also that this court—and this should if possible be clarified in the preparatory meetings—can operate independently of the United Nations and the Security Council, so that matters are not constantly blocked by these institutions for professional reasons (European Parliament 1997/98, 271).

After having taken its own official position in support of the ICC, the EP urged the Council to adopt a common position which would expressly reject UNSC veto over the Court (European Parliament 1998/99*a*, 157, 160). Parliament expressed repeated frustration with member states displaying a lack of support for the Court. Statements such as the following characterized the tension between EU members arising from the issue,

> Most of the Member States of the European Union support these basic principles. There are one or two who are hesitant and it is against that background that it is extremely important that a clear and unanimous signal should be given by Parliament (Ibid.)

Despite this prodding, the Council did not take a common position on the ICC prior to the adoption of the Rome Statute. While the Amsterdam Treaty was still

under negotiation, a Council position on this particular matter would fall under the banner of the Common Foreign and Security Policy (CFSP) and would be subject to unanimous decision. Thus, forcing a vote on the ICC when the EU lacked full support could have resulted in a major setback for the Union at a time when efforts were intensely pointed towards further integration of the CFSP under the Treaty of Amsterdam.

Alternative explanations for the British reversal may point to the election of a new government during the course of the ICC negotiations. One observable implication of this explanation suggests that the new government should enact desired change as expeditiously as possible. This is especially true in Parliamentary systems where cabinet officials are often drawn from shadow governments that have developed opposing positions from their counterparts in power and are prepared to enact the new policies upon their arrival in a post.

While it is indeed the case that British elections produced a shift away from the conservative, Euroskeptic approach of the Tory Party under the leadership of John Major to Tony Blair's "New Labour," and while it is also the case that the new government's "Third Way" offered a more international tone to British foreign policy in general, the chronology of elections and the softening of the British position on the ICC suggest a more complicated explanation than just domestic politics. The Labour Party took control of Parliament after the elections of 1 May 1997. The break with the P-5 did not occur until December 1997, at the fourth PrepCom session (*The Guardian*, 12 Dec. 1997). In the interim period PrepComs continued with the third session held in in August 1997 and the meeting of the UNGA Sixth Committee in October the same year, three months after the Labour Party had assumed control of the government, including the Foreign Office, the cabinet office responsible for ICC negotiations.

While it is possible that the election of the Labour Party contributed to a more ICC-friendly position, the timing of the reversal suggests that the new government was not immediately drawn to the position of the LMG. Since EU Council presidents only hold the position for six months, they have a very limited amount of time to achieve the goals laid out in their programme. To do so, they rely on the support of the EU Commission as well as the cooperation of preceding and future presidents. They are also constrained by the actions of previous presidents as policy is set into motion by their predecessors, as noted in the Irish case. Such was the case for the British Presidency. As one observer of the Rome negotiations noted, "If you are president of the EU, you are constrained in the positions you can take. You have to stick to a position supported by the European Union" (interview with NGO delegate at RC, 7 Nov. 2008).

Phase III: Rome Negotiations

While the United Kingdom had to wrestle with the role of Council Presidency as well as its own preferences as a sovereign state, France did not face quite the same institutional constraints. This may explain why the French position did not shift in tandem with the United Kingdom. However, I maintain that membership in the EU continued to play an central role in the French reversal, although through different means.

The first visible shift in the French position came between the June and July debates of the Committee of the Whole in which Part II of the draft statute was addressed.[67] Figure 3.5(A) shows France's position moving slightly to the left to where the new proposal (x_{PC}), the ILC draft amended by the PrepCom, is located. The primary difference between $\mathsf{x}_{\mathsf{ILC}}$ and x_{PC} was that the new proposal contained

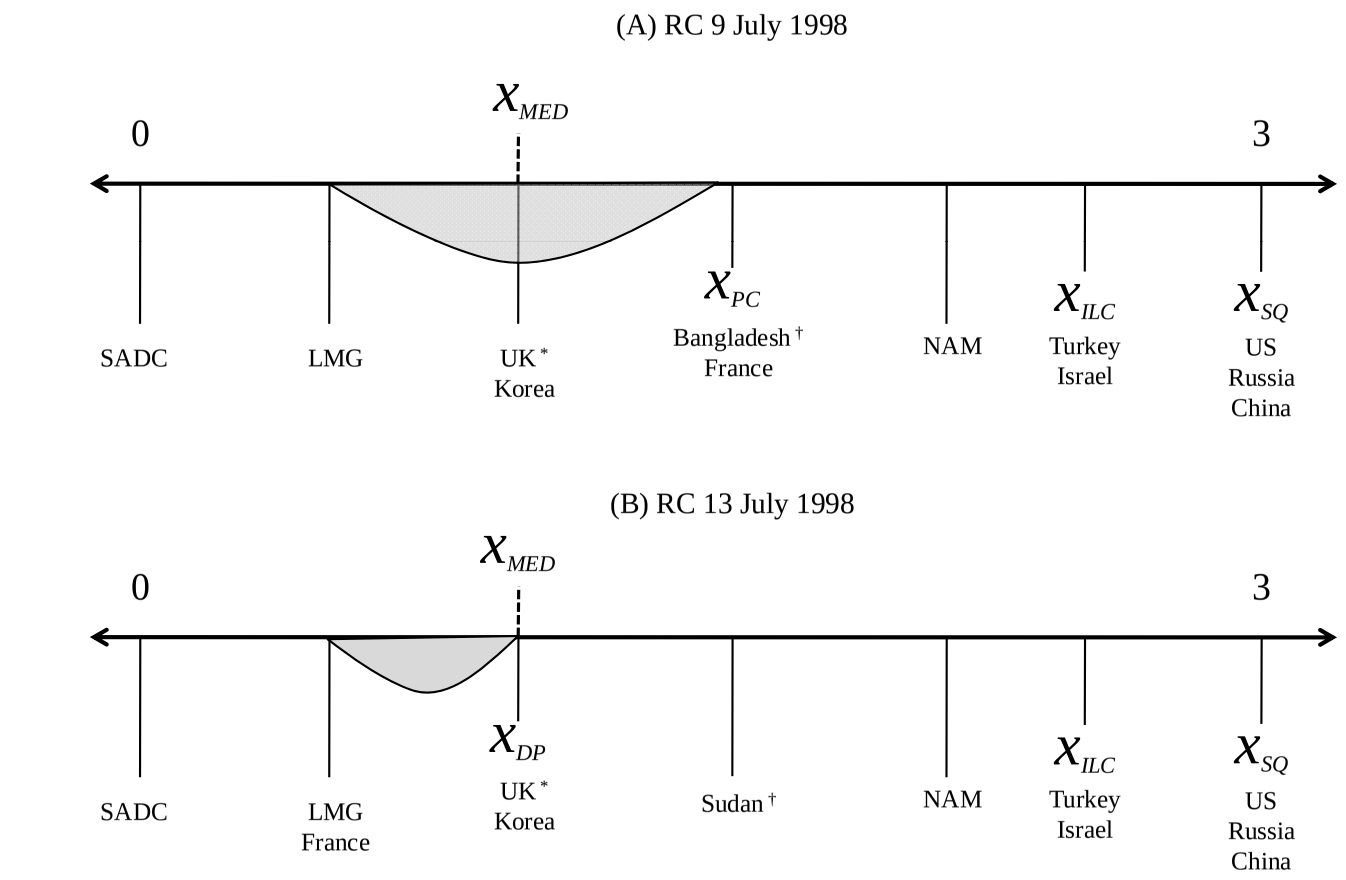
[67]The negotiation analysis traces changes in positions between formal meetings. Many informal meetings were held in the interim; however, these records are not publicly available.

an option granting the prosecutor self-intiating authority. France's shift reflects the acceptance of an independent prosecutor, though this particular move was probably not a direct result of trans-institutional linkage, but rather an outcome of the negotiating process within the ICC context.

The statute debated at the RC took as its basis the ILC draft statute, but included a number of proposals and options for consideration by the Committee of the Whole. Article 6, "Preconditions to the exercise of jurisdiction" of the PrepCom draft statute amended the ILC draft by incorporating language to allow the prosecutor to initiate investigations independently from state parties and the UNSC (United Nations 1998*a*, 130). Consequently, a number of states voiced their support for or opposition to "paragraph c" of the article. For instance, a representative from Sierra Leone, an LMG member, stated that his delegation "considered it imperative that the Prosecutor should be able to initiate investigations and was therefore in favour of option 1 for article 6(c)" (United Nations 1998*c*, 298). While option two, which mirrored the ILC draft, continued to be the preference of China, Russia, and the United States as well as India, Israel, and others. One representative from Israel argued that,

> The Prosecutor should not have the power to initiate investigations *proprio motu*, since that might weaken rather than reinforce his or her independence by exposing him or her to political pressure and manipulation (United Nations 1998*c*, 310).

France, during previous negotiations had expressed trepidation towards a self-initiating prosecutor, though during the course of the RC changed its position on this feature lobbied for intensely by the LMG. The major difference came with the suggestion of a "Pre-Trial Chamber" which would serve as a check on prosecutorial powers. A discussion paper circulated on 6 July contained a proposal by Argentina



x_{MED} represents the median voter at the RC for a 2/3 majority vote required for adoption

Shaded areas denote intra-EU bargaining space

Figure 3.5: ICC Positions Pre-Rome Negotiations

and Germany that offered some safeguards to states concerned about an independent prosecutor. This proposal, added to Article 12 of the PrepCom draft, provided that the prosecutor could initiate investigations *proprio motu*, but that a Pre-Trial Chamber, composed of three judges would have to authorize the investigation if the prosecutor had determined that there was sufficient evidence to proceed in the absence of state party referral. In response to these changes France registered its approval of Article 12 in the RC meeting of the Committee of the Whole on 9 July. The shift away from the x_{ILC} proposal towards the new proposal x_{PC} brought France closer to the LMG position and closer to the position of the median voter within the Committee of the Whole, x_{MED}. Figure 3.5(A) depicts the change in the French ideal point and also the "bargaining space" within the EU. The shaded area points to the distance between the majority EU position and the furthest EU member, France, from that position. Believing that an effective Court would require the participation of at least some of the P-5, the LMG was in a precarious position. Its task was to bring the United Kingdom and France, if possible, close enough to their ideal point without sacrificing the three basic principles of the group as outlined above. The French position, at this point, remained an unacceptable compromise for most of the Like-Minded countries. The next section analyzes the final phase of the ICC negotiations, asserting that institutional rules play a nontrivial role in shaping the outcome of negotiations. In the following section, I provide an explanation based on shared membership and trans-institutional linkage of how France came to occupy the position of the LMG.

Phase IV: The Outcome

By the end of the Rome Conference France had moved once again towards the LMG. This time its shift was on the issue of jurisdiction. Figure 3.5(B) illustrates the

final positions of states on the Rome Statute. Since the beginning of negotiations, France had insisted on a opt-in regime for crimes under the jurisdiction of the Court. The EU-13 favored automatic jurisdiction. Most vocal in this debate were Denmark and Finland, anchored by Germany. In their view, as well as the rest of the LMG, adjudicating serious violations of human rights should not be akin to choosing from an à la carte menu. For the statute to be adopted, these states, insisted that all three core crimes must fall under the automatic jurisdiction of the Court and an opt-in approach "was fundamentally unacceptable to the 'like-minded' delegations present (Wilmshurst 1999, 137). By the end of the conference France had accepted automatic jurisdiction over all of the crimes.

In the few days before states were to register their ultimate assessment of a statute for an ICC, the UNSC members made a final attempt to have their specific demands met. While the P-5 had not negotiated as a block throughout the conference, they met informally to present to the Bureau a list of demands including a French demand for a ten year renewable opt-out provision on war crimes, a British request for territorial jurisdiction only, and a U.S. proposal for withholding jurisdiction when the state of the accused considered the action in question to be an "official act of state" (Glasius 2006, 72). Taken together, this package of proposals jeopardized the LMG vision for an independent and effective court, reducing it to a court that would be granted jurisdiction if and when a state allowed for it. Given considerable disagreement on the definition of war crimes, an arrangement was made in which states could temporarily opt-out for a period of seven years, non-renewable after the entry into force of the Statute (Rome Statute Art. 124). While controversial, Article 124 "does not detract from the effectiveness of the Court in a serious and lasting way" (Glasius 2006, 76). The final moments of the Conference were extremely tense as states made their eleventh-hour efforts to change the language

of the treaty to meet their own preferences. These attempts provide evidence to suggest that the United Kingdom and France still preferred positions away from the LMG and that all of their demands had not necessarily been met, but taken with the bargains being arranged within the EU, these two countries accepted the Rome Statute complete with an independent prosecutor, a reduced role for the Security Council, and automatic jurisdiction over the core crimes. The section below reveals the mechanism by which France came to occupy a position near the LMG.

Observable implications of trans-institutional linkage within the context of the EU (the first order institution) and the ICC negotiations would suggest that movement by France or the United Kingdom on the ICC would be mirrored by movement by EU-13 on issues within the EU. The best evidence of trans-institutional linkage would be an admission by government officials that a deal was brokered in the EU in order to win over these two countries to the ICC. One difficulty in observing this directly is that governments are, for good reason, reticent to admit to deals being brokered that would be unpopular with domestic constituents. Additionally, bargains are difficult to detect because politicians have incentives to misrepresent their true preferences in order to achieve their desired outcomes.

In the lead up to the ICC negotiations, Europe was deeply split on internal matters. During the spring and summer of 1998, Franco-German tensions had reached fever-pitch, with debates raging over the appointment of the president of the European Central Bank (ECB), the EURO-11 meetings that threatened to usurp the control of the newly minted ECB, and the voluminous and ever-growing EU budget. As France vied for greater control over EU monetary policy as well as a larger budget for what some EU members saw as the already bloated Common Agricultural Policy (CAP); Germany was emphatic about the need to increase the autonomy of the ECB, reduce CAP, and above all, reduce its contribution to the

EU budget.

While EU debates are generally protracted affairs that often pit a number of EU heavy weights against each other, May through July 1998 saw some significant movement away from pro-German monetary policies. Despite a victory for the German position in May when Wim Duisenberg was appointed to head the ECB over French objections, German influence over EU fiscal matters began to slip. While Duisenberg was the preferred candidate of most of the EU countries, French opposition to the appointment of anyone other than Chirac's own candidate, Jean-Claude Trichet, threatened to derail a monetary union that was on track to adopt a single currency in less than a year's time.[68] As EU countries prepared to send their delegations to Rome as well as their common representatives, a considerable concession was made to France which would allow Trichet to assume the head of the ECB after Duisenberg served an abbreviated term.[69] According to the Treaty of Maastricht, which established the ECB, the president of the bank would serve for an eight year term. The eleven members (EURO-11) preparing to adopt the common currency saw consistency and stability as essential in ECB leadership during this transition period, preferring a single candidate, Duisenberg, to assume the position. Publicly, the Council Presidency, headed by Tony Blair, was ridiculed for placating Chirac by going against the majority EU opinion and allowing a deal would discredit the fledgling institution by splitting the term of its first president.[70]

The question remains as to why France was in a position to bargain and receive the concessions that it did within the EU during this period. In Schelling's

[68]See, for example, *Agence France Presse* "Gloves Off in Fight Over European Central Bank Chief," 17 April 1998.

[69]EU representatives at the Rome Conference were EU Commission president Emma Bonino and the representative for the British Council Presidency, Tony Lloyd.

[70]See Sebastian Hamilton, "Row Erupts Over Euro Bank Chief," *Scotland on Sunday*, 3 May 1998.

terminology, France was able to produce an "extortionate threat" (1960, 31).[71] If no acceptable agreement was reached in Rome, the reversion point would result in the continuation of ad hoc tribunals under the exclusive control of the UNSC and the four years of work that the LMG had contributed towards moving away from this option would be for naught.

By May 1998, France occupied the furthest position from the LMG of all of the EU countries, resisting nearly all of the Like-Minded countries' key requirements for an ICC. For the EU to achieve a consensus position in Rome, they would have to win over France. Its candidate for bank chief had been all but promised the post after Duisenberg served a full eight year term. However, this did not seem to be an acceptable deal. In addition to receiving assurances that Duisenberg would step aside after four years of service, France managed to provide a counterweight to the ECB through the formation of the EURO-11 Council.[72] Despite misgivings about regular meetings among some members (Germany, Austria, and the Netherlands) worried that the EURO-11 could infringe upon the independence of the ECB, France was successful in calling for monthly meetings of the group.

A final factor that lends support to the strengthening of France's bargaining position in the EU vis-à-vis other members was the ongoing dispute over the EU budget. The EU budget battle is characterized by disagreements that have traditionally pitted industrial and business interests against agricultural ones, in an effort to reform the CAP, which consumes 45 percent of the organization's total budget, with France receiving a quarter of this, prior to enlargement.[73] Thus, it is unsurprising

[71] According to Schelling, a successful extortionate threat depends upon the necessity of concurrent or future negotiations. If the negotiating agenda is, by contrast, restricted to the existing issue then parties cannot credibly produce such a threat (1960, 31).

[72] Some countries strongly objected to the terminology "council," preferring instead to call the organization a "group," insisting that the former designation implied that the body would have policy authority (*AFX News*, 5 Jun. 1998).

[73] Estimates of CAP expenditures are taken from 2006 estimates, though the 45 percent figure has fluctuated little from 1998-2009 (European Communities 2006).

that ICC negotiations in June and July took place against the backdrop of EU budget disputes. In March 1998 the Commission presented proposals for CAP reform which included reducing the size of farm subsidies. These proposals were part of the "Agenda 2000" budget reform package and were not to take effect immediately, but were discussed at the Cardiff meeting of the European Council which began on 15 June, the date that also marked the opening of the Rome Conference. No agreement was reached at Cardiff, with France flatly rejecting the reform package and Germany pledging to reduce its contribution to the EU budget. Despite early support for Germany's position from smaller EU partners, including the Netherlands, Sweden, and Austria, the tide of the budget debates seemed to move against these countries and towards the French position.[74] Despite that "France is probably the most isolated country in the EU defending the old-style CAP," the country seemed to win major budget concessions beginning in June 1998, until Germany and its negotiating partners conceded to defeat on the Agenda 2000 reform package (Wood & Yesilada 2002, 154).[75] "Not only did the EU heads of state and government fail to substantially reduce CAP budget; they also left subsidies for farm exports intact" (Ibid.). The negotiations over the EU budget reform began just prior to the Rome Conference and ended in the following spring, but what is important to note is the period in which the balance shifted away from Germany and its partners and towards France, which coincided with French concessions in Rome.

Issue salience plays a central role in whether linkages will be successful. A lack of variation in the importance of "tradable" issues across a set of actors will result in deadlock, as states cannot forgo gains in one area for losses in another. The negotiations in Rome provided a valuable negotiating chip for France that allowed

[74]See "Stage Set for Bitter EU Budget Battle," *Deutsche Presse-Agentur* 7 Oct. 1998 and "EU Ministers Divided Over Financing Reform," *AFX Europe*, 12 Oct. 1998.

[75]See also, "Germany Admits Defeat on Key EU Demand," *The Scotsman*, 4 March 1999.

the state to extract concessions from its EU partners, many of whom were adamant about the need for an independent and permanent ICC and had invested great time and resources on a successful Rome Conference.[76] While France remained in favor of establishing an ICC (under certain conditions) its stake in moving from the ad hoc tribunals to a permanent court along the lines of the ILC proposal was not as great as it was for other EU members. Alternatively, forestalling a major overhaul of the CAP was a major domestic issue inside France.[77] The influence of French farmers, a small, but powerful interest group within the country, has pushed the government to resist major EU agricultural reforms and to preserve a strong system of subsidies, a trend that persisted during the course of budget negotiations beginning in spring 1998.[78] Incentives for a French reversal continued to mount when European Parliamentary debates revealed strong pressure for France to join the EU coalition. One parliamentarian notes without directly mentioning France or the United States by name, "However, it would be even more regrettable if certain Member States of the European Union, ignoring public opinion, were to join with those efforts of the North American government" (European Parliament 1998/99*b*, 291). Ultimately, the decision of France and the United Kingdom to reverse their positions on the Court should be considered through the lens of simultaneous negotiations. As one scholar has noted "The [ICC] negotiations happened less than a year after the conclusion of the Amsterdam Treaty (October 1997) which first intro-

[76] A number of EU countries made considerable contributions to the trust fund that allowed LDCs to participate in the conference.

[77] France maintains a long history of exacting concessions with regard to CAP reform to the extent that de Gaulle withdrew French participation from the EEC, causing crisis in an organization that required unanimity to make decisions (Wood & Yesilada 2002, 148). More recently, however, CAP reform is subject to QMV decision measures, requiring France to lobby for CAP without the threat of a veto.

[78] Additionally, French farmers have been known to riot against changes in agricultural policies. These protests have taken place Brussels (see "European Farmers on a Rampage," *International Herald Tribune*, 23 Feb. 1999), but also have been directed at the central government (see "Farmers Ransack Paris Ministry," *The Independent*, 9 Feb. 1999).

duced Europe's Common Foreign and Security Policy. So there was some pressure to take this seriously, presenting the EU as a block" (interview with ICC scholar, 4 Nov. 2008).

The outcome of the negotiations in Rome must be understood through the institutional setting from which the final document, and thus, the final positions emerged. The number of alternatives considered over the four and a half years since the ILC submitted the draft statute added to the complexity of the ICC negotiations.

Institutions: Committees and Aggregation Rules

Agenda Setting and the Power of Proposal

Given the constrained time period of one month with which to pass a statute for an international criminal court and the number of parties present for negotiations, the Rome Conference maintained a number of subcommittees and working groups responsible for various parts of the treaty negotiations. The Committee of the Whole was the main organ of the conference and included all of the state delegations. It was responsible for taking up all substantive discussion regarding the Rome Statute was the most inclusive body of the conference. However, considerable power was afforded the Bureau of the Committee of the Whole, the Drafting Committee (DC), and the coordinators of the working groups.

The Drafting Committee's task was to "coordinate and refine the drafting of all texts referred to it, without altering their substance" (United Nations 1998*c*, 58). However, as past treaties have demonstrated, drafting committees often exert more influence on the substantive text than intended by the principals (Lee 1999, 18-19). While states were cautious of agent drift in the case of the DC, refinement necessarily invokes some modicum of interpretation. Moreover a further task of the DC was to offer advice to the Committee of the Whole on the drafting of the

Statute, affording the DC considerable framing powers.

The Committee of the Whole was subdivided into a number of working groups which were open to participation by any delegation. However, the coordinators of the working groups wielded substantial powers to set the agenda for their meetings and frame the relevant debates as they were expected to "guide the discussions, identify areas of agreement and disagreement, act as a focal point to foster ideas, and put forward compromises in light of divergent proposals" (Lee 1999, 22). These delegates were chosen on the basis of their expertise, but also selected primarily from among members of the LMG by the chairman for the Preparatory Committee for an ICC, Adriaan Bos of the Netherlands. Thus, members of the LMG held key positions in the Preparatory Committee (PrepCom) meetings, which carried over to the diplomatic conference when the head of the Canadian delegation, Philippe Kirsch was elected as chairman of the Committee of the Whole, at which point Canada turned over the chair of the LMG to Australia (Schabas 2007, 19).

The coordinators of the working groups were responsible for recommending compromises on contentious issues and reaching agreement on the text submitted to the Committee of the Whole. It was the decision of the chairman of the Bureau of the Committee of the Whole to name the coordinators of these working groups. As a result, the most controversial parts of the statute were under the direction of LMG members. The coordinator for the working group on issues related to the Security Council was a delegate from Chile, whose government had voiced strong support for an independent prosecutor.[79] The coordinator position for the working group on jurisdiction was held by Finland. While the United States did coordinate a working group on the issue of enforcement, this remained outside of the purview of Part II of the Rome Statute. Thus, while coordinators held no formal powers

[79]H.E. Jose Antonio Gomez delivered this message in an address to the plenary session on 16 June 1998 (United Nations 1998*b*, in Spanish).

in the negotiations, they used their leadership positions to steer debate and craft proposals to achieve their preferred positions. Proposal power, however, rested in the hands of all of the state delegates at the Conference.

The procedure for making alternative proposals and amendments in both the PrepCom sessions and at the RC was an open rule, such that any representative could offer an alternative to the basic proposal, the draft statute as amended by the PrepCom. In the lead up to the conference, states could gauge tentative support for their proposals, giving them a sense of whether it could obtain majority support. Under closed rule, committees restrict proposal power and the committee chair often has the power to control amendments originating from the committee. Had the Preparatory Committee and the Rome Conference operated under closed rule, it is doubtful that many of the (often developing country proposals) that brought about compromise could have reached the floor for consideration by the Committee of the Whole.

Rules of Preference Aggregation

Much like the UN General Assembly, the work of the Rome Conference was to be reached by general agreement. Failing consensus, however, matters could be put to a vote on the recommendation of the President of the Conference. According to the rules of procedure adopted for the conference, each state was afforded one vote. Passage for substantive measures required supermajorities in the Committee of the Whole and the Plenary, and thus the fate of the Rome Statute relied upon its passage by a two-thirds majority of voting delegates (United Nations 1998*c*, 57).[80]

[80]A two-thirds majority of *voting* delegates meant that abstentions would not be counted as votes. Majorities had to obtain a minimum number of *affirmative* votes in order to pass. This minimum number was set at one-third of the participating states. In terms of adopting the Statute this meant that 81 countries would have to vote in favor (Lee 1999, 17-18). Based upon the negotiation analysis presented here and represented in Figure 3.5, the median voter, x_{MED}, at the Rome Conference was situated just to the right of the LMG position. Lee indicates that the LMG was short of the votes necessary for passage, such that adoption of the Statute was not a guarantee from the outset, and thus reversion to the ad hoc status quo x_{SQ} (Lee 1999, 18).

While the LMG continued to gain in number, the supermajority required to pass the Statute posed a real threat to achieving an outcome in Rome. About a week from the scheduled end of the conference, the president of the RC, Giovanni Conso, pleaded with states to make their support known. Conso indicated that "The like-minded states are short 38 votes to achieve the minimum support needed to establish a strong and independent International Criminal Court" (*Terra Viva*, 9 Jul. 2009). As disagreements on the core issues persisted, opportunities for consensus quickly faded as delegates feared that consensus would produce an ineffective court, as suggested by one representative from Jordan that, "There was an inherent risk that the lowest common denominator approach would produce a weak legal institution rather than one enjoying worldwide respect. If the principle of reservations were endorsed by consensus, it should be applied very conservatively" (United Nations 1998*c*, 114).

True consensus was never achieved in Rome. On 17 July, the final day of the conference, the United States, having failed in its efforts to introduce an amendment that would secure immunity from ICC prosecution for non-party states, requested a non-recorded vote on the Rome Statute (Schabas 2007). This non-recorded vote was the U.S. delegation's final effort to encourage states to oppose the Statute because it would be more difficult to attribute the "nays" to the countries that cast those votes. The final vote tally was 120 in favor, 7 against, and 21 abstentions (Benedetti & Washburn 1999, 27).[81] Despite receiving far more affirmative votes than necessary for adoption, states that opposed the passage of the Rome Statute emphasized the lack of consensus and disapproved of the adoption of the Statute by vote. The Chinese delegate insisted that the Statute "should have been adopted on the basis of consensus, not of voting. The history of negotiating international

[81] According to observers, the other states to vote against the Rome Statute included Israel, China, Libya, Qatar, Iraq, and Yemen (Benedetti & Washburn 1999, 27). Only the United States, Israel, and China have gone on the record as casting a negative vote (Schabas 2007, 21).

treaties had proved that no convention adopted by a vote would be assured universal participation" (United Nations 1998*c*, 124). Alternatively, states supporting a strong, independent court, highlighted the consensus achieved in Rome despite having to default to voting as demonstrated by one delegate from Botswana who voted in favor because the Statute "reflected the consensus of humanity as represented at the Conference" (United Nations 1998*c*, 127). Unsurprisingly, the location of the Rome Statute in policy space rested on the median voter's ideal point, just to the right of the LMG position.[82] Having addressed the role of shared memberships and trans-institutional linkage within the context of the EU, in the following section I discuss the central part that weak states using their shared memberships with each other and advanced industrialized countries including France and the United Kingdom played in achieving the final outcome.

Shared Memberships and Coalition Building Strategies by Weak States

This chapter has argued that weak states were able to form a court closer to their preferences over the objections of major powers. Moreover, in at least two cases, weak states managed to pull major powers to accept their position, bolstering the effectiveness and legitimacy of an International Criminal Court. Because, as a number of states argued, in order to avert the marginalization that has occurred to some IOs, such as the NIEO, the new Court would have to gain the membership of some of the international community's major players. The predictions from the theory of trans-institutional linkage presented in Chapter 2 suggest that this strategy

[82]The difference between the LMG position and x_{MED} came down to a provision in Article 16 that allowed the Security Council to renew the deferral of a situation, though this provision remains consistent with the Singapore Compromise in which nine UNSC members would have to vote in favor of a deferral, including all five permanent members.

will be most successful with the number of shared institutional memberships among states is high and that relatively stable coalitions can be formed within and across these IGOs. In the section below I provide evidence for these predictions. I briefly describe the central role that some of the weakest states in the international system played in establishing the ICC.

Actors that are considered to be weaker in terms of their formal power in an organization or their material resources (or lack thereof) can use informal institutional features within an organization to their advantage. One of the institutions that offered weak states a major advantage and has been discussed previously was the open proposal rule in the ICC negotiations. The effect of the open rule was to increase the number of proposals situated in policy space. In considering the role agenda setting played throughout negotiations, it is not surprising that proposals continued to move to the left towards a more independent ICC.

When the GA first commissioned the ILC to produce a draft statute, the outcome reflected the preferences of the P-5, as they occupied a place on the ILC drafting committee. However, what the United States and its veto counterparts overlooked was the ability of the weaker countries within the GA to steer the agenda and coalesce around issues. As mentioned previously, the climate in which an issue is introduced can determine whether agenda setters, especially those with informal powers as in the case of states in the GA and the ICC negotiations, will be successful. Few could have predicted how timely the ILC draft would be. When the GA passed the resolution requesting that the ILC look into the matter of an international criminal court in 1989, Yugoslavia remained intact. But by 1992, the ILC's task had taken on new meaning as ethnic violence began to rip Yugoslavia apart. Furthermore, when the ILC reported its draft two years later many states within the GA were unequivocal in their insistence for the need for an permanent court as

the Security Council had just established the ICTY and had begun work on another tribunal to prosecute Rwanda's genocidaires.

While the United States and other P-5 members would have preferred the status quo arrangement, the events in Yugoslavia and Rwanda demanded that the international community do something to prevent future atrocities from occurring. As one former State Department official has suggested, the U.S. strategy of halting progress on the ILC draft by stalling "any international debate on the issue" worked and the ILC "might still be debating the matter to this day were it not for developments in the Balkan States during the summer of 1992" (Scharf 1999, 98-99).

The first and loudest voices in the debate were emitted from some of the UN's weakest states. In addition to Trinidad and Tobago, members of the Southern African Development Community took advantage of the climate to generate support within the GA, other African regional IGOs, and in the EU for an ICC. According to one African legal scholar,

> Delegations from Lesotho, Malawi, Swaziland, Tanzania, and South Africa had participated in an effort to establish the ICC as early as 1993...It had been quite clear that, in order to make an impact on these multilateral negotiations, SADC states had to speak with one voice and thus negotiate as a bloc rather than as 'small' individual states (Maqungo 2000, 2).

The SADC began crafting a strategy early on that placed its members in key positions within the ICC negotiations, which allowed these states the ability to steer the debate towards their desired ends. The SADC was successful in its lobbying efforts for Lesotho lead the African group at the conference, which meant that the SADC could "influence the agenda for the African group" (Ibid., 3). Lesotho would also assume the position of coordinator for the working group on Part 9 of the Rome

Statute. By virtue of its appointment to the Drafting Committee, South Africa frequently participated in the meetings of the Bureau, the most powerful body at the RC (Ibid.). These positions allowed SADC states to guide the ICC negotiations toward their desired goals and to use agenda control to craft discussion papers that created proposals that served the interests of the LMG.

Shared memberships played an essential role achieving a sufficiently large coalition to counterbalance detractors of an independent ICC. One facet of the SADC strategy aimed at this end was to pull NAM members away from their more conservative positions on the Court and towards the SADC/LMG position. Namibia served as the coordinator for the African states within the Non-Aligned Movement (Ibid., 4). If an African country less sympathetic to the ICC held this position (e.g. Sudan, Libya, or Nigeria), the outcome could have been drastically different. Figure 3.3 suggests that the group experienced some success in this endeavor, with several NAM states breaking ranks with India in favor of a more pro-ICC position. Moreover, the positions of more skeptical African countries did, in fact, move to the left on the policy range over the course of the negotiations.[83]

In addition to the activities of the SADC, African ICC advocates pushed their counterparts within the Organization of African Unity (OAU now AU) to adopt a common position on the Court. This position was reached at an OAU ministerial conference only a week prior to the Rome Conference (United Nations 1998*b*).[84] Though they did not secure the full support of African states, the efforts of a handful of governments through UN, OAU, and other IGOs (see below) were able to turn minority support for the ICC across the continent into an increasingly unified front. However, influence attempts by weaker states extended far beyond the OAU and NAM, reaching out to larger, more diverse states.

[83]Sudan moved from a 2.5 on the combined scale to a 1.5 and Nigeria from a 2 to a 1.
[84]See statement by T. Maluwa, OAU Legal Counsel, 17 June 1998.

Using the UNGA as a mouthpiece, Like-Minded states lobbied to accelerate ICC negotiations despite major power foot-dragging, passing Resolution 207 calling for a diplomatic conference of plenipotentiaries to be held no later than 1998 to establish an ICC (United Nations 1996). Characteristic among LDCs, "Ghana supported the establishment of a preparatory committee; however, its primary task should be, not further debate, but the preparation of draft provisions and the incorporation in its report of the issues to be considered at a conference of plenipotentiaries" (United Nations 1995*b*, 6). Alternatively, states including Pakistan, India, China and the United States resisted attempts to set a date for the conference, suggesting that too many disagreements persisted on basic principles of the Court (United Nations 1995*c*). One Chinese delegate speaking before a meeting of the sixth committee of the UNGA offered the following, "For the time being it would therefore be premature to set a date for a diplomatic conference or to begin preparing for that conference (United Nations 1995*a*, 13). France, too, expressed some reservations about setting a date, but ultimately came to the conclusion that a date should be set based on "a very broad consensus among Member States" (Ibid.).

Wealthier Like-Minded states made deliberate attempts to cooperate with LDCs from within the UN, establishing a trust fund for developing countries to participate in the PrepCom negotiations. LDCs also capitalized on their shared memberships with EU countries. In 1996, the Assembly of African, Caribbean and Pacific States and the European Community (ACP-EU) passed a joint resolution calling for their respective members to support the establishment of an ICC. Efforts to pressure reluctant EU states were less than subtle as the resolution states, "there is still strong opposition from some countries as well as reservations from two Member States of the EU" (European Parliament 1997). This statement was followed by a call for the member states of ACP-EU to act "in concert" at the upcoming

General Assembly meeting as well as the PrepCom sessions in order to "establish an International Criminal Court before the end of 1998" (Ibid). These efforts to build diverse coalitions from within and across IGOs demonstrate that the use of shared memberships was an explicit strategy on the part of ICC advocates, which served to foster an environment of cooperation on the ICC between developing and industrialized countries. These coalitions, exerted pressure on EU hold-outs; however, it should be emphasized that states that are not in the coalition in one organization can use their recalcitrance as a source of bargaining leverage when attempting to win concessions in another organization.

Conclusions

For weak states to achieve their desired outcome in Rome they had to execute a strategy based upon splitting the cohesion of the permanent five members of the UN Security Council. While an ICC could have been created without the approval of these five states, it would have to compete for jurisdiction with the ad hoc tribunals. With the support of any P-5 member, the ICC can bypass the Security Council, previously the sole institution with the task of establishing tribunals for individual abusers of human rights. Additionally, the weak states' strategy relied on the overall preferences of the P-5.[85] No P-5 state argued for the complete absence of any judicial mechanism to try individuals for the most heinous of crimes, rather their preference was not to move away from the preferred position of Security Council control over tribunals. In spatial terms, a permanent court was closer to the status quo than no tribunal system at all. If this is the case, then we should expect the remaining members of the UNSC that opposed the ICC (China, Russia, and the United States) to prefer an ad hoc tribunal to the ICC, but the ICC to the absence of adjudication.

[85] In the spatial diagrams above the option of no adjudicative body is omitted.

Despite the newness of the Court, there is already evidence to suggest that this strategy has met with success.

In March 2005, the UNSC met to discuss the deteriorating situation in the Darfur region of Sudan. Some policy-makers and human rights groups concluded that genocide was occurring in the region and while the UN stopped short of using the term genocide, Secretary-General Kofi Annan suggested that crimes against humanity were being committed. France and the United Kingdom, having ratified the Rome Statute were now state parties to the ICC, and pushed for a Security Council resolution that would refer the Darfur case to the ICC.[86] The United States lobbied its European counterparts on the Council to establish an ad hoc tribunal, despite the ICC's entry into force. However, this possibility was rejected by France and the United Kingdom, which considered the establishment of another ad hoc tribunal superfluous (*AP*, 23 Mar. 2005). Despite a threatened veto, the United States allowed the referral of the Darfur case to the ICC. While the details surrounding this case will be addressed more fully in a later chapter, the Darfur referral demonstrates the obsolescence of the ad hoc tribunals at the insistence of two countries that originally preferred them, but switched their positions in support of the ICC.

The explanation offered here suggests that shared membership in the EU constrained the British government such that failure to support pro-ICC policies could have had adverse consequences for achieving other goals within the programme of the EU Presidency held by the United Kingdom in the lead up to the Rome Conference. The United Kingdom, lukewarm on the ICC at the time, was both preceded and succeeded (Germany and Austria) by pro-ICC forces in the EU Council Presidency. Achieving policy goals in the EU would require the British government to make some concessions elsewhere. The novelty of organizations like the EU is that, by

[86]Sudan is not a member of the ICC and is also the territorial and national state of the accused so the only option for referral is the UNSC.

virtue of institutional design, smaller states (such as Ireland and Luxembourg) can affect policy outcomes despite having less voting power and/or material resources. This effect is only magnified when these states can form coalitions to counterbalance the more powerful states in the organization. While the outcome is still often a compromise position as in the case of any negotiation outcome, weak states can achieve institutional outcomes that reflect their interest by exploiting their shared memberships and creating issue linkages across those institutions.

For France, the distributional effects of EU policies helped to push its position on the ICC towards the Like-Minded Group. France had too much to lose within the EU with respect to proposed reforms to the Common Agricultural Policy and the European Central Bank that resisting its EU counterparts in the ICC could have meant unwelcome changes to the CAP or the failure of ECB chief, Duisenberg to step down and allow Trichet to accept the position of bank president. By trading off issues in one organization, the ICC, France was able to secure important gains in another, the EU. According to one observer at Rome, "France changed its position because it did not wish to be in the minority. For France this was a formative period and the country was concerned to maintain its leadership position given its 'friendly rivalry' with Germany" (interview with NGO delegate at RC, 7 Nov. 2008). A confluence of events within the European Union, namely the push towards integration and the impending entry into force of the Treaty of Amsterdam, resulted in a change in French policy that otherwise may not have occurred.

The observation that states make concessions in negotiations is undeniable. However, the reversal in the positions of France and the United Kingdom demands an explanation outside of intra-institutional bargaining mechanisms. I have argued that trans-institutional linkage and shared memberships in IGOs played a key role in the policy reversals. However, for the United States, Russia and China these

same institutional constraints were not at play. While the Organization of American States took a conciliatory position as a whole towards the ICC, states of the Americas maintained a far less cohesive position on the Court than did African states via the Southern African Development Community. For Asian states and their respective organizations this fact is even more apparent, as India, Malaysia, Indonesia and Pakistan opposed an independent court, while Korea and Japan advocated for one. In this light, it remains unsurprising that the positions of the remaining P-5 never changed and that ultimately China and the United States were one of seven countries to vote against the Rome Statute. As ICC scholar Marlies Glasius has noted,

> [w]hile other states have opposed perceived infringements on sovereignty during the negotiation leading up to the adoption of the Statute, they have been satisfied merely not to ratify the treaty and to stay away from further negotiations. The United States is the only state to date that has pursued an active policy of opposing the Court (Glasius 2006, 17).

In the following chapter, I demonstrate how states accepted the ICC outcome more readily when they were more institutionally embedded, while powerful states were able to resist accepting the outcome. Unsatisfied with the outcome at Rome, one country has sought to wrestle free from the ropes created by the Statute. In the final empirical chapter, I discuss how the United States has responded to this bargaining outcome by attempting to link issues multilaterally across institutions, within institutions, and then ultimately resorting to bilateral means of influence and how pro-ICC states have sought to thwart these attempts and cement the ICC regime through trans-institutional means.

CHAPTER 4

MULTIPLYING LINKAGES THROUGH SHARED MEMBERSHIP (ACT ONE, PART TWO)

The greatest novelty of the ICC is that it exists at all.

—Thomas Smith (2002)

Introduction

I have argued previously that the negotiations over the International Criminal Court pitted weak states seeking a strong, independent court against the permanent five members of the UN Security Council. In the end, less powerful states were able to divide the P-5 and design a court that served their interests over the interest of the major powers. After surveying the theoretical literature on regime formation, I have also suggested that the case of the ICC raises the questions: Under what conditions can weak states control the design of new international regimes? Further, what makes major powers susceptible to weak states' attempts to entice them to agree to these bargains and, in some cases, join new international organizations? The Rome Statute was the result of negotiated institutional design, but the final product challenges traditional notions about institutional outcomes, particularly the disjuncture between the distribution of capabilities and the design features of these institutions.

The previous chapter demonstrates how shared memberships in international organizations allowed weak states to use trans-institutional linkage strategies to split up the unified (anti-ICC) position of the permanent five members of the UN Security Council. By doing so, the Like-Minded coalition was able to remove the option of the ad hoc tribunals and force recalcitrant states on the Security Council to choose between the ICC or nothing. Even for the United States, despite its efforts to thwart the ICC, domestic political considerations forced the government to choose the ICC over the latter alternative. In this chapter, I extend the logic of shared institutional memberships to all countries.

If a theory of trans-institutional linkage is correct, then as predicted in Chapter 2 of this dissertation, greater numbers of shared memberships should lead to increased acceptance of a new organization or international bargain. This is because

shared IGO memberships serve to "multiply" potential linkages by connecting issues *across* international organizations rather than relying on multiple tradable issues to arise within the context of a single organization. Additionally, embeddedness not only effects the linkage strategies available to weak states, but also makes other states more vulnerable to logrolling because each shared membership acts as a constraint on state action through commitments made to each actor in a variety of international organizations (Copelovitch & Putnam 2007). Thus, the more institutionally embedded states are the more likely that should be to enter into a logroll and agree to an institutional outcome, in this case the ICC. These hypotheses are tested through an event history analysis of an original data set of 172 states decisions to ratify the Rome Statute of the International Criminal Court. Overall, 97 countries ratified the Rome Statute in an average of five and a half years. When holding constant those countries that have yet to ratify, the average time until ratification drops to approximately three and a half years.

Given the initial reluctance of France and the United Kingdom, it is notable that these states broke ranks with the rest of the permanent five members of the UN Security Council. Both of these countries had some of the highest levels of shared IGO memberships and France is the most institutionally embedded country in the international system. The empirical analysis that forms the basis of this chapter demonstrates that institutional embeddedness applies more generally to the international system and corresponds with the notion that states that maintain high levels of shared IGO memberships will enter into bargains more quickly than those that do not. As such, this chapter provides support for two components presented in the "Theory of the Logics of Linkage and Logrolling" that high embeddedness will make states more susceptible to logrolling and that state power tempers this effect, because it affords states greater autonomy of action and the ability to make side-payments to

persuade other states to defect from a logrolling coalition. The negotiation analysis in Chapter 3, illustrating the causal mechanisms of trans-institutional logrolling, lays the groundwork for showing that the relationship between shared memberships and joining the ICC extends to a larger set of countries beyond France and the United Kingdom. In the section that follows, I briefly review the main issues that were at stake during the negotiations in Rome over the ICC to illustrate that weak states lost ground on some issues, while maintaining their footing on the most important ones, the prosecutor and the role of the UNSC.[87]

Negotiating the ICC

As has been suggested previously, the ICC represented a shift away from the ideal point (the ad hoc tribunals) of the P-5. However, many states felt marginalized by the tribunals and the process by which they were established. Major criticisms of the ad hoc tribunals included the sentiment that small and middle powers were shut out of the process of establishing human rights tribunals and relatedly, that the mandates of the Security Council and human rights courts are fundamentally different—the first, political and the second, judicial—and should remain separate.[88] Additionally, the tribunals for Yugoslavia and Rwanda in particular suffered from crises of confidence from the very people for whom they were to render justice (Neuffer 2002). These tribunals were insulated from scrutiny by other UN organs as well, but highly dependent upon the will of the Security Council (Schiff 2008). It was this insulation that weak states were reacting to when pushing for a per-

[87]Chapter 3 explains these positions in detail to demonstrate not only the problems at Rome, but also that logrolling across IGOs resulted in France and the United Kingdom's decisions to change their positions.

[88]Indeed, one delegate from Ghana remarked in Rome that the Security Council was bound by "jaundiced political considerations" in its failure to act more swiftly, implying that a court that had both state-party and independent trigger mechanisms would be better equipped to handle alleged atrocities (United Nations 1998*b*).

manent international court to replace the ad hoc tribunals. Indeed, as Namibia's representative to the Rome Conference remarked,

> "veto power in the Security Council has outlived its usefulness and is thus now anachronistic which [*sic*] must be abolished. Especially when the International Criminal Court is established which should be an element of peace and security in our contemporary world. It is thus not acceptable to my delegation for the International Criminal Court to be subjected to the political decision of the Security Council" (United Nations 1998*b*).

Canada, the leader of the group supporting prosecutorial independence, but also a state typically friendly to American and European interests, also spoke carefully about the role of the Security Council at the Rome Conference. Canada's minister of foreign affairs, Lloyd Axworthy, reiterated the point made by middle powers and developing countries cautioning, "We must not, however, allow the Court to be paralyzed simply because a matter is on the Security Council agenda" (United Nations 1998*b*).

In order to garner broad support for the organization, the Rome Statute had to accommodate the preferences of three main camps, a large group of middle powers and developing countries supportive of a strong and independent court, the Like-Minded Group (LMG), the permanent five members of the Security Council, and a members of the non-aligned movement, which proved to be an even more skeptical audience wary of Security Council control over the an ICC (Kirsch & Holmes 1999, Schiff 2008, 78-9).[89] The P-5 were the most vocal opponents of prosecutorial independence. The United States along with other members of the P-5 maintained that any investigation or indictment should first be approved by

[89]The Non-aligned movement, led by India, also pushed for the inclusion of the use of nuclear weapons as a crime under the Rome Statute, a proposal flatly rejected by the United States among others (Benedetti & Washburn 1999, Bassiouni 1999).

the Security Council before proceeding to the Court. The LMG and non-aligned group objected, arguing that this would render the Court indistinguishable from the ad hoc tribunals. Throughout the negotiations the United States and China were adamantly opposed to an independent ICC. The European Union (EU), however, was divided. Early in the negotiation process the United Kingdom and France opposed the Court, while the remaining thirteen members supported its creation. The United Kingdom changed its position during the final preparatory committee session leading up to the conference and France eventually withdrew its opposition as well. This reversal is key to discovering how weak states achieved their preferred outcomes in the ICC.[90]

Despite its objections to the Court, the United States maintained a sizable delegation throughout the conference. Along with China, France and Russia, the United States pushed for a prominent role for the Security Council. For many small states, a trade off here was non-negotiable. Table 4.1 summarizes the points on which major negotiating parties were successful at achieving their ends.[91]

[90] According to one account, France and the United Kingdom's "narrow 'Permanent Five' vision" of the Court prevented EU consensus, though through negotiations the Statute was able to win the eventual support of both of these countries (Benedetti & Washburn 1999, 36). Just prior to the Rome Conference the P-5 opposed the suggestion of an independent prosecutor, placing the United Kingdom and France squarely in the camp with the remaining members of the Security Council (Glasius 2006, Hall 1998, 132). Accounts differ as to whether the United Kingdom was a member of the Like-Minded group by the Rome Conference. Bassiouni suggests that, neither France nor the United Kingdom were members of the LMG as of the final Prepcom session in April 1998 (Bassiouni 1999). Alternatively, others have maintained that the United Kingdom joined the LMG, but was not considered a committed member of the group (Glasius 2006, 25).

[91] The crime of aggression was officially included in the Statute; however, no compromise was made on an acceptable definition. Once such a definition is determined it can be included by amendment. On the issue of the jurisdiction of crimes, several key states including France, the United States, China and Russia pushed for an "opt-in" clause in which nationals of state parties would not be prosecuted for crimes under the Statute unless the state party explicitly accepts jurisdiction, thus denying the automatic jurisdiction of the Court. The final result was an "opt-out" provision for war crimes for a period of seven years after the entry into force of the Rome Statute embodied in Article 124 of the Statute (Wilmshurst 1999, 135-38). The Security Council can prevent a situation from proceeding to the ICC if, and only if, all five permanent members and 4 non-permanent members are in favor of halting an investigation. On the rights of the accused, a major dividing line was the issue of holding trials *in absentia*. While the United States and the United Kingdom sought extensive protections for the rights of the accused, France worried that

Table 4.1: Negotiating Positions & Bargaining Outcomes

Request	Positions			Outcome	Article
	US	*France*	*LMG*		
Crime of aggression	No	No	Yes	Yes	5(2)
Automatic jurisdiction*	No	No	Yes	Yes	12
Self-initiating prosecutor*	No	Yes	Yes	Yes	15
Security Council veto*	Yes	Yes	No	No	16
Extensive rights for accused	Yes	No	No	Yes	55,63,66-67
National security privileges	Yes	Yes	No	Yes	72
Status of forces protections	Yes	Yes	No	Yes	98
Exemption for U.S. citizens	Yes	No	No	No	12
Treaty reservations accepted	Yes	Yes	No	No	120
Amendments binding	No	No	Yes	No	121

Notes: *Denotes most salient issues. Prosecutorial independence, jurisdiction, and Security Council veto power were not mutually exclusive categories, and as such, could not be traded.

By the close of negotiations, the United States had won extensive concessions on several points including rights for the accused, for national security privileges and allowances for the observance of existing status-of-forces agreements. Yet, major sticking points remained, namely the *propio muto* (self-initiating) powers of the prosecutor, and the independence of the Court itself from the UN Security Council.

On July 17 the conference was scheduled to come to a close and the Rome Statute would be put to a vote and without the support of the numerous small and middle powers spanning six continents and representing both OECD and developing countries, the Rome Statute would fail. In the final moments of the conference, in the absence of a completed Statute, the conference deadline was extended by several hours in order to vote on the proposed text (Bassiouni 1999). Late that same evening, the Plenary voted on the Rome Statute; the result was 120 in favor, 21 abstentions, and seven against.[92] The final vote reflected U.S. opposition and, at

this could delay the prosecution of cases (Bassiouni 1999, Friman 1999, 255-58).

[92]According to Bassiouni who served on the Bureau which submitted the draft for a vote, the clock was "figuratively stopped" at 11:59 p.m. in order to abide by the General Assembly's mandate

least, the tacit support of France and the United Kingdom.

The Like-Minded states led by Canada, but also comprising mainly of weak states, secured the establishment of a court that would not be beholden to the UN Security Council. While concessions were made throughout the conference by weak states and the P-5 alike, the issue that loomed large over the Rome Conference—independence of the prosecutor versus control by the Security Council—ultimately reflected the position of weak states. Current literature in international relations cannot adequately explain how weak states were able to create an ICC that better reflected their preferences versus those of the powerful, given that traditional means of issue linkage—those that occur via side-payments—were largely unavailable to this set of countries as a result of their limited material resources. This is not to say, however, that weak states cannot engage in issue linkage, but that they must have different strategies for linking issues than materially powerful states.

Multiplying Linkages through Joint Membership

One strand of IO research has proposed that shared memberships in IGOs can affect the ways in which states will react to a given situation. Seminal work conducted by Russett and Oneal (2001) suggests that shared memberships in international organizations can reduce the likelihood of conflict because these multilateral institutions embody norms of peaceful dispute resolution and reduce uncertainty that can inform perceptions, among other functions. Boehmer et al. (2004) refine and test this hypothesis by classifying IGOs according to their function and the degree of "institutionalization," (e.g. provisions for adjudication, regular meetings, formal voting rules, etc.). Both studies find limited support for the proposition that shared membership can affect conflict behavior between states. Expanding the

of conference completion on 17 July, though statements continued following the vote well into the next day (1999, 460).

focus of the effects of joint membership, Ingram et al. (2005) offer an explanation of the effectiveness of trade specific IGOs such as the WTO on trade flows among states. They argue that assessing the effectiveness of trade institutions in isolation from other IGOs does not provide a complete picture of the complex relationship between states and the IGO networks in which they are embedded. Trade is facilitated by IGO networks through "transaction-smoothing rules" as well as their ability to foster empathy and trust between international business partners (Ibid., 831).

More recently, Maoz et al. (2006) have extended network analysis to the study of international conflict. This moves beyond accounting for shared membership to directly test how the degree of similarity among actors in a network (structural equivalence) will affect their behavior towards each other. The current analysis concurs with the work of Ingram et al. and Maoz et al. in that more satisfying explanations of the effects of IGOs can be reached by assessing the entire network of organizations. Further, research that has endeavored to distinguish IGOs by the scope of their functions has progressed the study of international institutions by allowing for tests of the conjecture that IGOs may have different effects on state behavior depending on the type of institution. There are, however, some situations in which membership, more generally, can create important incentives and/or constraints on state behavior.

States that are linked by joint, or shared, membership can exact concessions from other states, not only though the use of material power, but also by the nature of shared IGO membership, this membership makes logrolling possible in three key ways. First, shared membership can facilitate logrolls by "multiplying" linkage possibilities. As previously mentioned, the issue linkage literature does not allow for the possibility of linkages when negotiating over a single issue. However, logrolls

are possible when states are deadlocked on a single issue, such as the independence of the prosecutor, because of the presence of multiple venues. Shared membership is what allows states to "travel" outside their jurisdictions to strike bargains through other organizations in which they share membership. Therefore, a concession by State A to State B in one institution will result in a reciprocal concession by State B to State A in another institution.

The second way that joint membership facilitates linkage is through coalition formation. As previously discussed, linkage, especially when conducted on a bilateral basis, is a tool of the materially powerful to transfer their capabilities into bargaining leverage. Weak states must use linkage strategies similar to legislative committee members attempting to engage in a logroll. In order to do so, legislators must form coalitions to extract support for their proposals. Any coalition that hopes to pass legislation must be able to at least capture the median voter on the committee or in the IGO. Assembling a coalition that will be able to successfully engage in logrolling is far from a costless exercise. Each participant must pay the costs associated with going along with another's proposals. In turn, these costs create fears of defection. What is to keep a coalition member from dropping out after their policy has been successfully voted on? Empirically speaking, IGOs do not serve as mechanisms of enforcement, rather they are particularly suited to mitigating problems of moral hazard by reducing uncertainty and providing monitoring mechanisms (Keohane 1984). When states share membership in IGOs their interactions are more frequent, especially in the case of regional organizations like the EU or the Organization of American States (OAS). Therefore, coalitions may take on some permanency as they are extended beyond the institution under negotiation. This has the effect of lengthening the shadow of the future and enhancing cooperative behavior and

coalition building.[93]

Finally, states that are highly embedded in a network of international organizations will find themselves more tied down than states that are not. They maintain more commitments to more states in a number of organizations. In this way, these states will be more likely to enter into logrolling coalitions in order to get their own proposals passed.

I argue that the EU specifically, and membership in other IGOs more generally, was able to influence the decision of states to give or withhold support for the ICC. Testing these claims requires sound theoretical justification for suggesting that institutional embeddedness (shared membership across the set of IGOs) will affect state behavior. I offer these mechanisms to show that first, weak states can exert control offer the design of international institutions and second, that they do so by taking advantage of some key strategies permitted by shared membership in international institutions. The section below offers some testable hypotheses about the conditions under which we would expect to see shared memberships, both general and differentiated according to the degree of "institutionalization," affect the joining behavior of states.

Testing Theoretical Predictions of Embeddedness

One indication of the success of weak states in designing the International Criminal Court is the number of states that accepted the final outcome. The final vote tally on the Rome Statute itself is one way in which to gauge this outcome and given the overwhelming majority that voted for the Statute it would appear

[93]States that defect from logrolling coalitions may find that getting their own policies passed will prove difficult. Carrubba and Volden (2001) model the reputational costs of coalition defection in the European Council of Ministers, in which a defecting coalition member is placed in 'bad standing' and no other member will form a coalition with her in the 'forseeable future' (9).

that weak states were largely successful.[94] Additional evidence that points toward the success of weak states in designing the ICC is whether and how long it took for states to accept the jurisdiction of the Court by ratifying the Rome Statute.

In addition to testing whether the institutional scope and capacity of an IGO will produce differential effects on the probability that a state will join an international organization, I suggest that shared membership in heterogeneous institutions (those that do not overlap in issue area) also plays an important role. In essence, the extent to which IGOs can facilitate logrolling behavior is a numbers game. The members, how many, and who they are will determine whether logrolling is feasible and the composition of the coalition. As the size of the coalition increases, the costs of logrolling to its members will also increase (Carrubba & Volden 2001). Alternatively, larger coalitions (in international politics) tend to favor weaker countries. International organizations with majoritarian voting rules will maximize the voting power of weak states. While in many IGOs and especially the most prominent ones (e.g. the UN Security Council, the IMF, and the World Bank) voting power is not assigned democratically (i.e. one state, one vote), in the ones that are, weak states exert a clear advantage, simply because there are more of them (Zamora 1980). Thus we might expect that weak states will tend to form large bargaining coalitions when they are more likely to be the median voter, especially if the costs of policy tradeoffs are relatively small and ideal points are close together. As a result, logrolling attempts by weak states will be more successful when conducted within majoritarian institutions. The ICC negotiations, for example, took place under the auspices of the UN General Assembly which emphasizes the one state, one vote principle.

[94]The tally stood at 120 in favor, seven against, with 21 abstentions. Russia voted in favor of the adoption of the Rome Statute, but has not ratified the treaty. Additionally, recent Russian efforts to shield high-ranking Sudanese officials including President al-Bashir from prosecution by the ICC can even be interpreted as obstructionist (*Reuters*, 28 Jul. 2008). Thus, a yay vote on the Statute itself cannot necessarily be interpreted as support for the organization.

If weak states are more likely to prefer large coalitions in cases where this will give them bargaining leverage, it is likely that when they are designing new institutions the features will reflect these preferences. Weak states, by definition, are limited in their bargaining power and, therefore, must maintain a delicate balance by tempering their design strategy so as to maximize their gains while maintaining, at least some, major power participation.[95] As a result, weak states, in most cases, will refrain from proposing decision-making rules that disproportionately represent their preferences (i.e. one might imagine that weak states would prefer a veto and that major powers would be denied one). Thus, we might expect that weak states will prefer majoritarian voting rules over those that weight major power preferences more strongly. A general analysis of ICC negotiations suggests that the Like-Minded Group representing over 60 countries pressed for egalitarian decision-making procedures within the ICC.[96]

The observations above describe broad patterns of weak state behavior with respect to institutional design. Following these expectations, I suggest some specific hypotheses about the effects of shared membership on the ratification (acceptance) pattern of states when presented with new institutional alternatives.

The degree of institutionalization of an international organization may have important constraining effects on state behavior. As Boehmer et al. indicate, highly institutionalized IGOs have the ability to "coerce state decisions (such as withholding loans or aid), as well as means to enforce organizational decisions and norms" (2004, 18). Therefore we might expect that "interventionist" IGOs (as Boehmer et al. refer to them) will result in higher rates of ratification. The logic suggests

[95]Major power participation in institutions that favor weak states will have a direct impact on the distribution of gains. If participation is limited to weak states then the distribution of benefits will be smaller. In other words the overall size of the "pie" will necessarily be smaller.

[96]This reflects general observations taken from the proceedings in Rome. These expectations were explored systematically in the preceding chapter.

that these institutions have more formal voting arrangements, produce more policy outcomes, and allocate more resources than other types of organizations and will therefore provide more logrolling opportunities.

The hypotheses below follow directly from the theoretical predictions explain in Chapter 2 regarding the effects of embeddedness and state power on the likelihood that states will accept new institutions. I tailor these predictions to the ICC, specifically by investigating states' acceptance of the outcome of the Rome negotiations by ratifying or acceding to the statute.

> *H1a: States that share memberships in highly institutionalized organizations will join organizations more quickly than will states with fewer shared memberships in these organizations.*

Because shared membership facilitates logrolling through multiplying possibilities for issue linkage, the number of organizations that states have in common should also affect the joining behavior of states as the potential for logrolling increases with the number of shared memberships.

> *H1b: States that have a higher number of shared memberships will join organizations more quickly than will states with fewer shared memberships overall.*

I suggest that shared membership permits trans-institutional logrolling to occur, which may in turn lead to higher rates of ratification, but it is necessary to consider (and control for) other factors that affect states' rates of ratification.

While shared membership may serve to constrain states through logrolls that have the potential to "tie them down" to policies they would not otherwise accept, state power may temper the effects of shared membership. As previously discussed,

more materially powerful states can link issues by doling out side-payments. While these payments may be costly, the relative costs compared to agreeing to support unfavorable policies often may be less. Further, when states submit themselves to international treaties, they must consider how it will affect their sovereignty and their ability to act both domestically and internationally (i.e. can the treaty constrain their ability to use their power). More powerful states may be less willing to subject themselves to international law for the very reason that they have more to lose in terms of autonomy of action by doing so. Therefore,

> *H2: More materially powerful states will ratify treaties less quickly than will less materially powerful states.*

Control Variables

There are a number of other factors that may affect the rates of ratification and in order to appreciate the effects of institutional embeddedness these factors must be understood and controlled for. Ratification, a necessary and non-trivial step in joining an international organization, is inherently a domestic political process. In some countries, ratification may happen quickly because where domestic constraints on decision-makers are low, executives can provide a "rubber-stamp." While there is reason to believe that this is more likely in an autocracy rather than a democracy this is not universally true. Autocracies are subject to constraints through their winning coalitions, however small they may be.[97] In other countries, ratification is an arduous process in which both the executive and the legislative body must approve the treaty and national legislation must be developed to implement the treaty. In these cases, ratification will probably take longer as it is subjected to a more rigorous

[97]According to Bueno de Mesquita et al. (2005) autocracies, states which have small winning coalitions with large selectorates, are still subject to constraints placed on them by their coalitions, though the nature of these constraints tend to be less institutionalized.

process. Such is the case in the United States, where the executive may choose to submit the treaty to the Senate and two-thirds of legislators must adopt the treaty for ratification. Domestic political considerations lead to the following hypothesis:

> *H3: States with greater (fewer) constraints on the executive branch of government will ratify treaties more slowly (quickly) than those with fewer (greater).*

Because many of the countries with more constraints on the executive tend to be democracies, we might expect that these countries will be more likely to ratify a human rights treaty, such as the one that is the subject of the present analysis, because democracies are typically better at securing and respecting human rights domestically. However, on this point, the record is mixed. Human rights treaties are widely ratified by democracies and non-democracies alike.[98] The Convention of the Rights of the Child (CRC) has obtained 193 ratifications, including from some of the most egregious abusers of these rights (United Nations 2000*a*). The International Covenant on Civil and Political Rights (ICCPR) has been ratified by 160 countries many of which engage in widespread political repression (United Nations 2000*b*). Countries that respect human rights (again usually democratic states), on the other hand, may be more likely to refrain from ratifying a treaty because they would rather remain in compliance with international law than ratify a treaty and be in violation of that law. This argument can be made for the United States' decision to refrain from ratifying the CRC, believing that the treaty goes too far in terms of the economic and social protections it affords minors. However, the U.S. record on protecting children's rights far outshines those of many CRC state parties. For the reasons outlined above, this paper remains agnostic about the effects of democracy

[98]See, for example, Hafner-Burton and Tsutsui (2005). Hathaway (2007) has empirically demonstrated that autocratic states are no less likely to ratify human rights conventions than are democracies.

on the expectation that states will ratify a treaty more or less quickly. Rather constraints on the executive branch of government, should have a greater impact on the rate of ratification.

Also inherent in many arguments distinguishing democratic from autocratic states is the assumption that democratic states are better protectors of human rights in general, regardless of the international treaties dictating this behavior.[99] However, observation on individual countries' human rights records allows us to test directly whether human rights records themselves have any bearing on whether states will ratify human rights treaties. The logic here is straightforward: if states fear real costs, whether material or reputational, for violating human rights, they will be less likely to ratify human rights treaties.

> *H4: States with good (poor) human rights records will ratify treaties more quickly (slowly) than will states with poor (good) records.*

The above hypothesis is especially important when considering the ICC. The consequences for noncompliance could be significant for leaders and officials of states that are indicted by the ICC. While leaders are unlikely to surrender themselves to the Court, an indictment may severely restrict their ability to travel outside their country for fear of apprehension, as state parties are obliged to cooperate with the Court on these matters. Indicted leaders are likely to be ostracized by ICC scrutiny which could potentially restrict diplomatic and economic exchanges for countries that are the subject of investigation. Therefore, in the case of the ICC, we should expect that the consequences of noncompliance should be greater than those for more regulatory human rights regimes such as the ICCPR and the CRC.

[99] Given the high degree of correlation between the executive constraints variable and democracy, I do not analyze the original model controlling for democracy. Although, democracy is controlled for in robustness checks that appear in Appendix B.

Compliance with international law has remained the subject of research both by legal scholars and IR scholars for some time and the record on compliance with international law is mixed (Henkin 1979, Simmons 2000, von Stein 2005, Simmons & Hopkins 2005). More recently, Kelley (2007) has suggested that adherence to the rule of law domestically translates (via normative commitment) to observance of international law. Following from this, we might expect that states that have high respect for the rule of law to ratify treaties that reflect the laws of the state. This is a more direct test of the assumptions implicit in using measures for the democracy/autocracy variable. Still, I expect that most states that respect the rule of law will be democratic. The ICC Statute is explicitly deferent to national judicial systems while embodying many of the rights of individuals also reflected in the legal systems of democratic societies including extensive protections for the rights of the accused (Rome Statute, Art. 17, 66, 67). Furthermore, states that have a high rule of law will already have many similar if not the same provisions within their own domestic legal systems as in the treaty and therefore, should have to spend less time bringing domestic legislation into accordance with international law. Thus we might expect the following,

> *H5: States that adhere to the rule of law domestically will ratify treaties more quickly than states that do not.*

A final consideration in predicting the rate at which countries ratify treaties concerns patterns of legislation adoption. The diffusion process views "state adoptions of policies as emulations of previous adoptions by other states" (Berry & Berry 2006, 224). This phenomenon has been widely studied with regard to policy adoption in American states though more recent work has extended to the European Union and the diffusion of policies transnationally.[100] Allowing for the possi-

[100]See Simmons and Elkins (2004) and Brooks (2007) for recent examples of this work.

bility that international treaty adoption is subject to the process of policy diffusion may shed light on whether regional organizations have an affect on policy adoption, whether through recommendation, as in the OAS or the African Union, or mandated policy adoption as is the case for the European Court of Justice. While diffusion and geographical proximity are not the same, one might expect that geographical patterns of policy adoption to affect the ratification patterns of states.

> *H6: States that are contiguous will be more likely to ratify treaties more quickly than those that are more isolated.*

In the section that follows I present a series of event history models that test the propositions above in an attempt to discover whether shared membership, either by type of institution or the number of shared memberships in international organizations a state maintains has an effect on whether and/or how quickly that state will ratify the Rome Statute of the ICC. While the data analysis is limited to the ratification of one specific treaty, it should be noted that the argument and hypotheses presented above may be generalized to the larger population of international treaties.

Analysis

Method and Measurement

This chapter aims to test the acceptance behavior of states with regard to international institutions that were designed to reflect the preferences of weak states relative to major powers. To do so, I collect data on state decisions to ratify the Rome Statute of the ICC, a relatively new IGO, the design of which has been controlled mostly by weak states. There are several methodological approaches with which to test the likelihood that states will ratify an international treaty and thus,

join an IGO based upon their shared membership in existing international institutions. Since the observation of ratification is a dichotomous variable, this analysis might lend itself to maximum likelihood (ML) estimation. However, estimating an ML model would result in the loss of valuable information on the dependent variable. Alternatively, event history analysis allows us to observe ratification over time. The argument and hypotheses above suggest the ratification of treaties is a process rather than an event to be measured at a single point in time. For instance, states may have every intention of ratifying a treaty, but ratification is subject to an arduous domestic political process. Hence, the observation is not simply whether or not a country ratified the Rome Statute, but how long it takes a country to ratify the treaty as a function of the co-variates (described below). Estimating the model in this framework takes into account that states that have not ratified the Rome Statute are not simply non-ratifiers but, rather they are right-censored, meaning that these cases remain in the risk set at the time the analysis ends. This is a more accurate reflection of treaty ratification considering that some states ratify treaties very quickly, while others may not. For example, a ML model estimating ratification of the ICCPR prior to 1992 would consider the United States, among others, as a non-ratifier, while an event history model using similar data would treat the United States as remaining in the set of countries that has yet to ratify (i.e. the risk set).[101] Treaties are often closed for signature, but usually this does not preclude states from acceding to a treaty after that time. In technical terms, a state may accede to a treaty at any point after its adoption. Few, if any, multilateral treaties are ever closed for ratification unless they cease to be relevant or are superseded by other treaties.[102]

[101]In terms of failure analysis, failure=ratification, thus removing a ratifier from the set of countries at risk of failing/ratifying.

[102]The ICC is a unique organization because even after the adoption of the Rome Statute, states continued to negotiate the exact terms of the treaty in the sessions of the preparatory commission.

An additional advantage of event history analysis with respect to the question posed here is that membership data changes over time. The joining of international organizations is a dynamic process. Inherent in an argument about institutional embeddedness is that as states become more embedded over time they will accept new institutional outcomes more quickly as they are persuaded to go along with more logrolls. Event history allows us to capture the dynamic process of joining new IGOs and accepting international bargains.

The data set I compiled for this analysis is based on 172 state decisions to ratify the Rome Statute.[103] The observation is the country-month starting July 1998 (when the Rome Statute was adopted) until December 2006 since ratifications vary on a monthly basis.

Observations on the main independent variable, shared membership, were collected using the Pevehouse, Nordstrom, and Warnke (v2.1) IGO membership data. Since observations are at the state level (the data set used for this analysis is not dyadic), I compiled observations on the total number of shared memberships for each country in each year and subsequently for each level of institutionalization as indicated by Boehmer et al. (2004) and extended by Ingram et al. (2005).[104] The IGO data set ends in 2000. Missing data for total shared membership were handled in three ways. First, shared membership varied for the first three years in the data set

Thus, changes to the treaty after its adoption may have led some states to ratify later rather than sooner; however changes after the adoption of the treaty could not and did not change the core principles of the outcome—an independent prosecutor and the absence of a Security Council veto.

[103]This is a modification of previous work which only included observations on countries that signed the Rome Statute (i.e. signing was a necessary condition for entering the data set) (Payton 2007). Although, there is some reason to believe that states that have signed the Rome Statute differ from those who have not, the data presented here takes into account the fact that countries can ratify or accede to the Rome Statute without having signed it and their exclusion from the risk set would therefore be artificial. Afghanistan serves as one such example of a country that would have been excluded from the data set based on signature status, but went on to accede to the treaty in February 2003 after it was closed for signature in 2001.

[104]The institutionalization coding was obtained directly from Paul Ingram which is the same coding scheme used in Ingram et al. (2005) and reflects prior work by Boehmer et al. (2004).

and was held constant for each country after that. Second, missing data were interpolated by lagging the main independent variable so that shared membership varied for each year as a function of the trend created in the first three years. The third method took the average of the available observations and replaced the missing values with the mean of the first three years. The models (discussed below) were robust to each method and the results are reported using the first method. Membership data for IGOs that were coded as highly institutionalized or "interventionist" organizations by Boehmer et al. (2004) and Ingram et al. (2005) were updated through 2006 using the Yearbook of International Organizations (2000/2001-2006/2007).[105]

State power is measured by taking the log of overall gross domestic product in (2000) constant U.S. dollars obtained from the World Bank's World Development Indicators (2008). While GDP is neither a perfect nor a complete reflection of power, the variable is designed to capture the overall material capability potential of a state. Other measures of state power are also appropriate for this analysis including military capability, population size and some development indicators; however, the reliability of some of this data remains highly questionable as measurement error and misrepresentation are common, especially among military spending indicators (Stockholm Peace Research Institute 2006).[106]

The degree to which the ratification process is subject to checks by different branches of government (i.e. it is not rubber stamped by the executive) is captured in

[105]I extended the Pevehouse membership data set by coding the 34 institutions coded as "level 3" interventionist institutions by Ingram et al. (2005) for six years such that the observations on the institutions regarded as potentially having the greatest effect on state behavior would not have to be analyzed using interpolated data. In subsequent analyses I plan to extend the data for all types of organizations.

[106]I attempted to collect data on levels of military spending; however, much of the data is missing and what does exist is highly variable. For example, the Stockholm International Peace Research Institute (2008) which collects data on military expenditures reports that China spent 2.1 percent of its GDP on military spending in 2006, while the CIA World Factbook (2008) reports a level of 4.3 percent for the same year. In one of the world's largest economies and militaries the difference is hardly negligible. National Material Capabilities scores available from the Correlates of War project were also a possible source for this data, although the data set ends in 2001.

two ways. First, I include the Polity IV component variable "executive constraints" which measures "the extent to which the head of the unit must take into account the preferences of others when making decisions" (Marshall & Jaggers v2006, 22). In other words, the executive constraints variable ranges from 1 (unlimited authority) to 7 (executive parity or subordination) and measures the formal institutional constraints on executive decision-making power. Alternatively, this variable can be captured through the "checks" variable from the Database of Political Institutions (Keefer & Stasavage 2003) and ranges from 1 (only the executive has a check) to 18 based upon the number of checks (as a function of legislative parties) present in the system originating from both the executive and the legislature. Both the executive constraints and checks variables serve as proxies for the constraints argument presented above.[107]

A state's human rights record has been hypothesized to influence whether it will ratify a human rights treaty and the ICC in particular. States' human rights records are measured using the "physical integrity" variable from the CIRI Human Rights Database (Cingranelli & Richards v2006). Physical integrity is an aggregated index of states' records of various human rights violations and ranges from 0 (government does not respect rights) to 8 (full respect for human rights).[108]

The rule of law measure obtained from the World Bank's Worldwide Governance Indicators ranges empirically from -2.37 to 2.27 with higher values being

[107]I use Polity IV component variable "executive constraints" for two reasons. Theoretically, as outlined above, executive constraints better captures the relationship between international treaty ratification and the domestic legislative process. Methodologically, problems with aggregate measures of democracy/autocracy have been widely documented and using the component variables often yields less problematic results (Treier & Jackman 2008, Gleditsch & Ward 1997, Casper & Tufis 2003, Vreeland 2008). Gleditsch and Ward note specifically that "the degree of constraint on the chief executive is largely a determinant of the democracy, autocracy and democracy minus autocracy scale scores" (1997, 380). I have included results using the aggregate polity scale indicator in the appendix for the reader to reference.

[108]The rights included by CIRI in the physical integrity score are freedom from torture, extrajudicial killing, political imprisonment, and disappearance.

associated with higher rule of law. It is based on "perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence (Kaufmann, Kraay & Mastruzzi 2008, 7). The governance indicators are based on surveys conducted in six separate years included in the data set. Data was imputed for the years these surveys were not conducted (1999, 2001, 2006).[109]

Finally, to control for potential regional effects of ratification, the Correlates of War (2007) direct contiguity data set was used. Both land contiguity (those states separated by a land or river border) and total contiguity including both land and water based contiguity were used. Since the models are robust to both types, total contiguity is used in the analysis so as not to preclude geographical relationships shared between countries such as the United Kingdom and France, for example.[110]

Results

Summary statistics for the data are provided in Table 4.2. The results from the event history analysis are presented in Table 4.3.

The first two columns in Table 4.3 report the findings when shared membership is accounting for the total number of shared memberships in the international

[109]The models presented below were run with the imputed rule of law variable and the non-imputed variable. The results did not change either in sign or significance when the imputed variable was used.

[110]This variable is an imperfect measure of spatial effects. In order to address the potential of spatial clustering based upon geographical contiguity, I constructed a spatial weights matrix based upon shared borders. Initial diagnostics suggest that there is spatial dependency in the data; however, upon re-estimating the diagnostics on a linear regression model based upon the event history model below, spatial clustering does not appear to be a problem in five different tests for spatial dependence. The results of these tests are provided in the appendix to this chapter. A fully specified spatial lag model is not included here because of the computational intensity of estimating such a model. As of yet, there is no way to estimate a Cox Proportional Hazards model using spatial analysis. It would therefore be necessary to specify a functional form and estimate a parameterized model.

Table 4.2: Summary Statistics

Variable	Mean	Std. Dev.	N
Shared Membership (total)	5808	1082.53	17544
Shared Membership (high)	1342	204.70	17544
GDP (Log)	23.42	2.27	16597
Physical Integrity	4.86	2.23	16567
Executive Constraints	4.83	2.10	15197
DPI Checks	2.86	1.56	12204
Rule of Law	-0.12	0.99	17418
Contiguity	6.03	3.42	17544
Countries	**Failures**	**Avg. Risk Time**	**N**
172	97	68.48 mo.	11778

system. The first model includes all of the countries, while the second model reports the results for all non-OECD countries in the sample. OECD countries comprise the 30 wealthiest countries in the world and as a result the memberships they share in international organizations may raise suspicions about potential outliers and leverage. These countries are the most democratic and have highly functioning domestic political institutions relative to their non-OECD counterparts. They also tend to belong to some very highly institutionalized international organizations including the European Union and NATO. By removing OECD countries from the sample, I demonstrate that the explanatory factors that determine ratification remain relevant. The relationship between shared membership and the ratification of the Rome Statute is significant beyond conventional levels and in the direction posited by the theory. Since the results are reported as hazard ratios, values greater than one indicate that the hazard rate is increasing with levels of the covariate, meaning time until ratification is decreasing as the number of shared memberships increases. This relationship holds when OECD countries are removed from the sample.

While the effect of shared membership appears small, a substantive interpretation of the hazard rate reveals that joint membership can have an important impact

Table 4.3: Event History Estimates of ICC Ratification

	Total Shared Mem.		High Inst. Shared Mem.	
Variable	*Model 1*	*Model 2*	*Model 3*	*Model 4*
Shared Membership (total)	1.001*	1.001*	—	—
	(0.000)	(0.000)	—	—
Shared Membership (high)	—	—	1.004*	1.003*
	—	—	(0.001)	(0.002)
GDP (Log)	0.729*	0.762*	0.808*	0.845
	(0.073)	(0.10)	(.077)	(.110)
Physical Integrity	1.267*	1.261*	1.197*	1.222
	(0.113)	(0.134)	(0.111)	(0.134)
Executive Constraints	1.379*	1.396*	1.313*	1.345*
	(0.113)	(0.119)	(0.106)	(0.119)
Rule of Law	1.209	0.888	1.202	0.818
	(0.277)	(0.243)	(0.275)	(0.213)
Contiguity	1.041	1.007	1.038	0.989
	(0.037)	(0.049)	(0.037)	(0.045)
N	9397	8169	9397	8169
Sample	All	Non-OECD	All	Non-OECD

Notes: $p < 0.05$. Cell entries are the hazard ratios for ratification of the Rome Statute of the ICC. Estimates are calculated using the Cox Proportional Hazards model and are clustered by country; robust standard errors are reported in parentheses. Ties are handled using the Efron method. The models do not violate the proportional hazards assumption that the model does not display dependency on time (prob>χ^2=0.798; prob>χ^2=0.870; prob>χ^2=0.279; prob>χ^2=0.795, respectively).

on whether a country will ratify the Rome Statute.[111] For example, the risk of failure when a state is located in the 50^{th} percentile of shared membership (approximately 5973 shared memberships) is 126 percent greater than if a state were in the 25^{th} percentile (approximately 4936 shared memberships). From the 50^{th} to

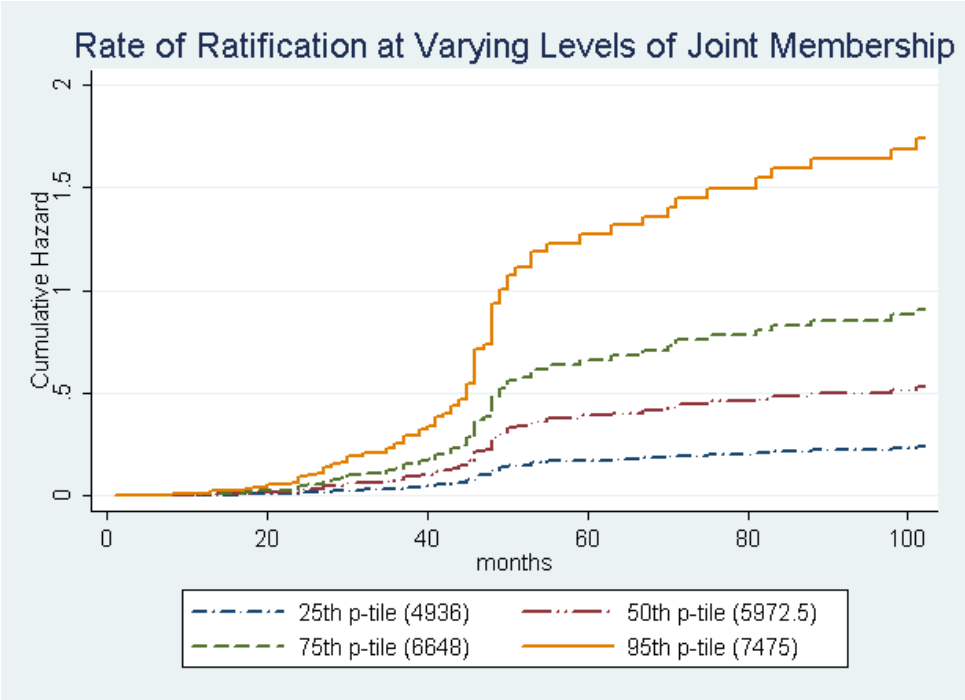
[111]In table 4.2, the average number of shared memberships is 5808 and the standard deviation is 1082. Therefore, when states join new organizations their shared memberships do not increase by one or two, rather by 10 or 20 at a time. The shared membership variable reports a hazard ratio for an increase of one shared membership.

the 75^{th} percentiles the risk increases by about 70 percent and by about 92 percent when moving from the 75^{th} to the 95^{th}. These substantive effects are represented by Figure 4.1, which depicts the cumulative hazard rates for ratification at the 25^{th}, 50^{th}, 75^{th}, and 95^{th} percentiles of shared membership.

When OECD countries are removed from the sample (model 2) the effect is smaller, but still nontrivial. From the 25^{th} to 50^{th} percentiles for this group of countries the risk of failure (ratification) increases by 67 percent, by 51 percent at the 75^{th}, as compared to the 50^{th}, and another 51 percent greater when a state is in the 95th percentile versus the 75^{th}. Cumulatively, the risk of ratification for a state with many shared memberships (95^{th} percentile) is 283 percent higher than for a state with very few shared memberships (5^{th} percentile), indicating that even for non-OECD countries, the number of shared memberships impacts whether a state will join the ICC.

Models 3 and 4 exhibit similar trends in terms of the effect of shared memberships on how quickly a country exits the risk set. Both models display increasing trends with regard to the risk of ratification when the number of highly institutionalized shared memberships increases, though the effects are slightly less pronounced. Figure 4.2 shows how shared memberships in highly institutionalized organizations track those of shared memberships more generally.

A state's material capability, measured here as the log of GDP, increases the time until ratification in all of the models, though its effect in model 4 is not significant at conventional levels. This result is consistent with the hypothesis that the greater power potential of a state the more successful that state will be at resisting logrolls that may arise from shared membership. A state's human rights record (physical integrity) also affects how quickly a state will join the ICC by decreasing the time until ratification. The discussion above points to a debate in the litera-



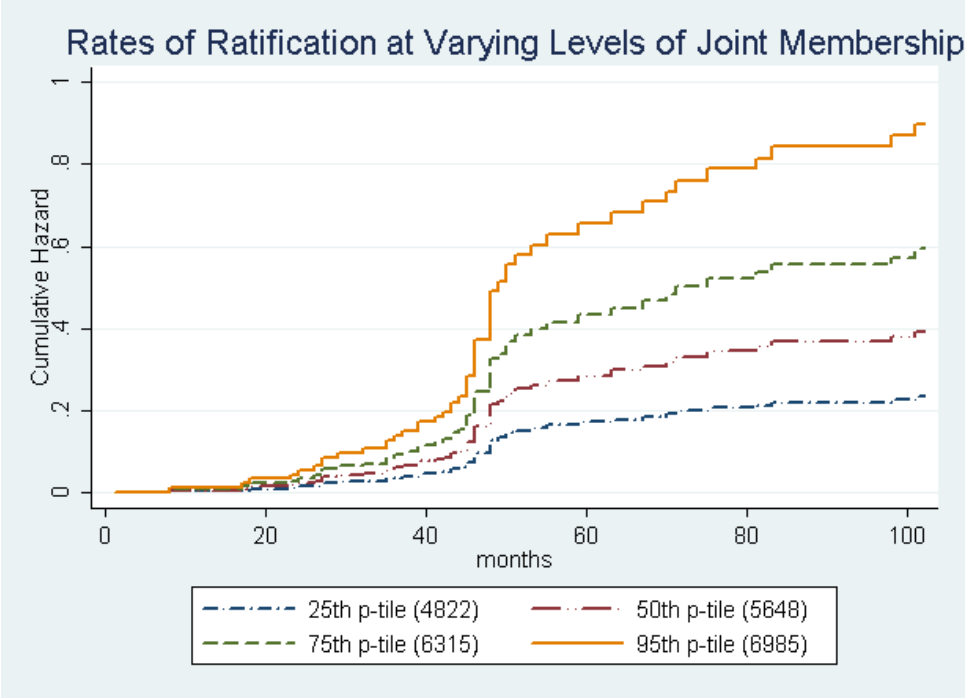


Figure 4.1: Cumulative Hazard Rates (A) All Countries; (B) Non-OECD

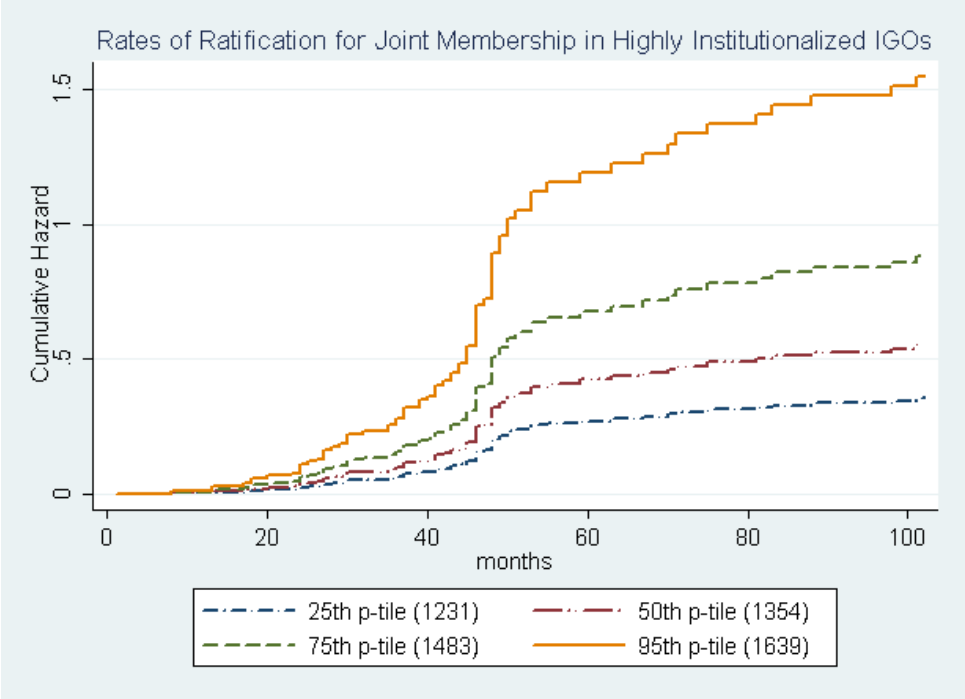


Figure 4.2: Cumulative Hazard Rates for Highly Institutionalized Shared Memberships

ture about whether or not countries with poor human rights records ratify human rights treaties, the result here sheds light on that debate by suggesting that some states are, indeed, wary about joining an organization that prosecutes human rights violations, though more will be said about this point in the following section.

Executive constraints also affect how quickly a state will ratify the Rome Statute across all models presented here. There are two competing hypotheses about the effects of constraints on the executive. First, as discussed above, the greater the number of constraints on the executive then the more "meaningful" the ratification process will be, as the executive cannot just rubber stamp the treaty. In this respect, I would expect the ratification process to take longer for governments with more checks on the executive. However, those states with higher values on executive constraints are also more democratic, as checks on the executive are often a definitional attribute of a democratic regime. The results of the model seem to

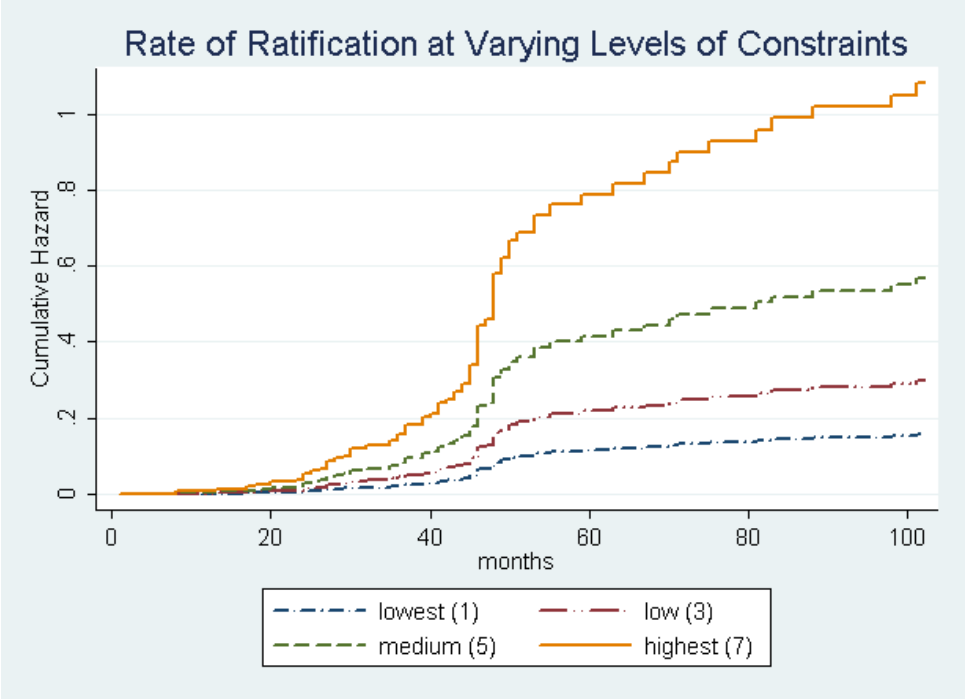


Figure 4.3: Cumulative Hazard Rates for Executive Constraints

suggest that, per the latter discussion, democracies are better at securing minority rights and already have many of the treaty provisions in place within their domestic institutions such that ratifying a treaty does not require them to deviate significantly from their normal course of action. With this second hypothesis in mind, it is unsurprising that the risk of ratification for states with more constraints on the executive is about 1.4 times greater (1.3 in the models 3 and 4) than it would be for fairly unconstrained executives. Yet, there is an indication that domestic political institutions can slow down the process of ratification initially. Figure 4.3 shows that at high levels of executive constraints (7) the risk of ratification increases slowly (and tracks that of less constrained executives) until about 45 months, where the risk radically diverges from lower levels of constraint. The results for DPI checks variable mimic those of executive constraints and are presented as robustness checks in the appendix.

The rule of law is not a significant predictor of the risk of ratification. The rule of law variable, intended to control for the suggestion that high rule of law countries would be more likely to submit themselves to international laws regarding human rights protections, demonstrates that domestic rule of law does not determine a state's decision to submit itself to international law.[112]

Finally, contiguity does not obtain significance in any of the models, and therefore, I cannot conclude that sharing borders has an effect on the speed of ratification. The next section will discuss some possibilities for resolving whether regional effects exist for treaty adoption, rather than directly measuring the number of borders states share with each other.

Overall, the models presented here show that power, human rights records, and executive constraints are valuable determinants of the ICC ratification process. The novel contribution of this model, however, is to demonstrate that joint membership, in terms of the total number of shared memberships and the degree of institutionalization, exerts a strong effect on whether a state will join the ICC. The next section will discuss what this finding means in terms of the larger theory and for the "joining behavior" of states in general.

Accounting for Alternative Explanations

I have argued here that states join organizations, in part, for reasons of influence and to achieve some material benefit, whether in the organization they are joining or in a different one. However, a number of alternative explanations, both competing and complementary, exist. While the theory suggests that institutional embeddedness assists weak states in making linkages across institutions and also

[112]It is important to distinguish between the effect of executive constraints which is an institutional argument about why a state would choose to ratify a treaty from rule of law, which is a normative argument, indicating that respect for law translates from the domestic to the international level. The two variables are correlated at 0.51.

makes states more vulnerable to logrolling strategies across IGOs, there exists an alternative explanation for why embeddedness might indicate a willingness to accept new international bargains. Some states, like France and Senegal tend to be "joiners" of institutions. Others, like North Korea and Vietnam, tend to avoid joining them. Thus, a simpler explanation may suggest that some states will join new organizations because joining begets more joining. While this explanation may pose a possible threat to inference, unless there are certain country-specific factors that lead them to do so, it implies an automaticity in decisions to participate in new institutions. In the section that follows, I offer some explanations that could also explain this behavior apart from the mechanism of linkage through shared membership.

There is an extensive literature in the social sciences that attempts to explain individuals' decisions to engage in voluntary associations. If cross-country variation in individual joining behavior can offer any clues as to why states might join voluntary associations then we could expect factors such as wealth, level of development, and liberal democratic institutions to predict a state's propensity to join IGOs.[113] That is, do the factors that explain joining rates more generally also explain the decision to join the ICC specifically?

A further explanation has been offered by Mansfield and Pevehouse (2001), which suggests that transitional countries enter into IGOs in an effort to credibly commit to reforms aimed at liberalization. IGO membership can provide valuable information to other states about the progress of reform in a country in transition because "transitional regimes face reputational problems, including the prospect that they lack restraint and cannot be trusted to honor commitments" (Mansfield & Pevehouse 2001, 140). Moreover, leaders of transitional states may have time-

[113]One study investigating rates of voluntary associations cross-nationally finds that levels of economic development, the type of political system, and the duration of democracy predicts high levels of association (Curtis, Baer & Grabb 2001).

inconsistent preferences as the economic, thus electoral, costs of reform may change leaders' preferences (Przeworski 1991). From this, we might expect that transitional countries should join more organizations and, hence, share more memberships in international organizations.

If country specific factors do correlate with shared membership than this does not necessarily discredit a theory of linkage, but rather may offer some clues as to which states engage in linkage behavior more readily. Alternatively, if Mansfield and Pevehouse alone are correct that countries experiencing transitions towards democracy are joining for the purposes of conveying their commitment to reform then this could potentially jeopardize a theory of linkage. Finally, if joining begets joining then one might expect the primary factor explaining membership in IGOs to center on the decision to join a new organization. If this is the case, then one must consider the possibility that some states join IGOs simply because the opportunity presents itself.

An analysis predicting the number of shared memberships takes into account previous research on volunteerism at the domestic level in an effort to test alternative explanations that wealth, the existence and duration of democratic institutions, and high levels of economic development positively influence joining behavior. Additionally, an explanation suggesting that "joiners join" should also predict that states that ratified the Rome Statute should have higher number of shared memberships. Table 4.4 reports the results of a linear regression, where wealth is measured as the natural log GDP per capita; economic development is the logged value of GDP; regime type is measured as a dichotomous indicator of democracy or anocracy based on the Polity IV scale.[114] The duration of the democracy is measured as the number of continuous years that a country remained a democracy, and transitional countries

[114]An anocracy is a regime that falls between -5 and 5 on the Polity scale. See Vreeland (2008) for a more complete explanation of anocracy.

Table 4.4: OLS Estimates Predicting Shared Memberships

Variable	*Model 1*	*Model 2*
GDP per capita	-80.52	-162.82*
	(59.50)	(64.22)
GDP (log)	359.68*	362.25*
	(39.45)	(43.74)
Democracy	977.16*	864.36*
	(222.39)	(242.72)
Anocracy	1165.24*	1161.29*
	(221.56)	(224.42)
Regime duration	0.88	8.34
	(2.33)	(5.35)
Transitional Country	100.23	123.81
	(154.53)	(157.45)
Ratify ICC	314.51*	220.66
	(132.43)	(142.77)
Constant	-3071.33*	-2540.41*
	(790.35)	(923.36)
N	143	116
Sample	All	Non-OECD
Adj. R^2	0.56	0.46

Notes: $p < 0.05$. Cell entries are OLS coefficients.

are measured following Mansfield and Pevehouse (2001) in which a state is considered to be democratizing if it moves from autocracy to anocracy or democracy, or from anocracy to democracy over a five year period. Finally, if the explanation is as simple as "joiners join" ratification of the ICC should be a strong predictor of shared memberships.

The analysis indicates support for a number of the alternative hypotheses above; importantly, however, these results do not preclude the explanation offered

in this project. The variable with the most impact on the number of shared memberships a state has is is regime type. Anocracies, states that exhibit some features of a democracy and some features of an autocracy, share 1165 more memberships, on average, than their autocratic counterparts, while democracies share approximately 997 more memberships. Substantively speaking, anocracies like Haiti and Uganda tend to have more shared memberships than autocracies like Cuba and Eritrea.[115] Even when the most democratic countries, OECD states, are removed from the model, democracy increases shared memberships by 864. Interestingly, the anocracy result runs counter to the joiner hypothesis that states that have long traditions of democratic institutions should be more likely to join IGOs than those that do not and indeed, the duration variable is insignificant in both models. The final regime type variable, whether the state is transitioning towards democracy, is insignificant in both models, calling into question whether states undergoing transitions have the capacity and resources to join new IGOs.

While wealth does not appear to exert an impact in model 1, in model 2 with OECD countries removed, wealth has a negative effect on joining behavior, while the overall size of a country's GDP has a positive effect. The result for GDP per capita is somewhat puzzling in model 2, however the explanation given in this dissertation may help to explain this peculiar result. I have suggested that states weaker in material power seek out alternate means of influence. This result suggests that less wealthy states (when OECD countries are removed from the sample) are the ones that tend to join more organizations. Alternatively, when considering the size of GDP, states with higher GDPs tend to share more memberships. There is a simple explanation for this that derives from the voluntary association literature—that is,

[115]Since many anocracies are located on the African continent, regional dummies were included in an additional analysis and the anocracy result remains large and significant; the other results of the model also do not change.

participation in organizations requires resources including diplomatic representation, contributions, etc. and states with more material resources have more "expendable income" with which to participate.

Finally, ratification of the Rome Statute is a predictor of shared memberships, but it is far from the strongest one. If a country has ratified the Rome Statute then this points to an increase by about 315 in the number of shared memberships. Compare this with the regime type variables, which have a far greater impact on the number of memberships. Interestingly, when OECD states are removed from the sample as in model 2, ICC ratification no longer predicts levels of shared memberships. This result, in and of itself is evidence that the states do not simply join for the sake of joining or because of some intrinsically derived value from joining. One possible explanation for model 2 is fairly simple, OECD members are primarily wealthy European countries that belong to the European Union. The EU already has judicial institutions (the European Court of Human Rights, in particular) in place to try egregious abuses of human rights and some countries, namely Spain and Belgium, have extended this further to universal jurisdiction over rights abusers outside of Europe including the high profile Pinochet case. Therefore, joining the ICC could be seen as less costly for many of these countries since they already have in place the domestic laws necessary for implementation at the national level. In short, the argument I have offered in this dissertation does not dispense with the critique that joining begets joining, but rather it provides the causal mechanism as to why this might be the case. Joiners join so that they can influence international outcomes.

Table 4.5: Levels of Institutional Embeddedness

Country	No. Shared Memberships	ICC Ratification
France	8104	6/2000
United Kingdom	7688	10/2001
Germany	7395	12/2000
Japan	7174	7/2007
China	6746	Not yet ratified
United States	6609	Not yet ratified
Russia	6335	Not yet ratified

Discussion and Conclusions

In this analysis, I have shown the institutional embeddedness, measured as the number of shared memberships states maintain across international organizations, has a positive effect on the rates of ratification of the Rome Statute of the ICC. However, it is not enough to show that highly embedded countries are those that ratify most quickly. The empirical puzzle driving this analysis focuses on why France and the United Kingdom, two major powers and permanent UN Security Council members, changed their positions on the ICC. I have suggested that it is because they are susceptible to logrolling pressures from weaker states. As Table 4.5 indicates, France is the most highly embedded country in the international system and the United Kingdom ranks sixth in terms of the total number of shared memberships. The United States and Russia, on the other hand, fall below the 75^{th} percentile of shared memberships. It is worth noting, then, that France and the United Kingdom ratified much more quickly than their less embedded counterparts. The evidence presented in Chapter 3 demonstrates the causal logic behind the existence of the empirical relationship between embeddedness and shared memberships, on the one hand and joining new organizations, on the other.

Weak states maintain the same goals in institutional design as do their major power counterparts—obtaining a favorable distribution of benefits. Yet, they often

lack the material power to issue side payments and "sweeten" potential bargains. In the absence of these resources, I have suggested that weak states created an International Criminal Court that reflected their interests by forming coalitions in order to logroll across international institutions. Previously shared membership has been argued to affect state behaviors ranging from their propensity to engage in conflicts and disputes to the level of trade flows (Russett & Oneal 2001, Boehmer, Gartzke & Nordstrom 2004, Ingram, Robinson & Busch 2005, Maoz, Kuperman, Terris & Talmud 2006). I have extended this argument to suggest that shared memberships can affect whether or not states will join new IGOs. The results of the analysis suggest that the degree of institutionalization does not exert noticeably more influence on states' propensity to join than the number of organizations overall. In fact, from the models presented here it appears that the number of shared memberships has more of an effect over the joining behavior than does the type of institution. This result lends support for the argument that shared memberships multiply the number of possible linkages and thus, the greater the number of linkages the greater potential that a state will engage in a logroll that may result in joining an IGO that they would not have otherwise. In order to gain more leverage on this question, however, it will be necessary to analyze the effects of "minimal" and "structured" organizations as Boehmer et al. do for their work, though membership data must be extended for these organizations as well.

Another result from the model speaks directly to the debate in the literature about who ratifies human rights treaties. While some scholars have suggested that violators of human rights do not exhibit different ratification patterns from those countries with relatively favorable human rights records, the analyses above consistently show that states with poor human rights records do not ratify the Rome Statute of the ICC. This result does not nullify the contributions of those who have

found little difference in the ratification records between rights abusers and rights respecters; however, it does suggest that the International Criminal Court poses different consequences from other human rights institutions. Abusers approach the ICC with caution because the Court can impose real material costs on states (or individuals within states) it identifies as contravening fundamental human rights. If this is indeed the case, it would set the ICC apart as a human rights institution that actually carries the threat of enforcement. Thus, I can conclude from this analysis that states carefully weigh decisions to join IGOs when enforcement costs are taken into consideration.

While shared membership is not a direct test of logrolling behavior, it serves as an indicator of the possibilities for logrolling across IGOs. In the previous chapter I demonstrated the logic behind institutional embeddedness by exploring the causal mechanisms with which shared membership affects weak states' ability to engage in logrolling in order to design institutions that distribute benefits more favorably across a wider class of IGOs. Future work should also take into account the general sentiment of the members of an organization toward the new institution. This would include assigning "valences" to organizations depending upon whether the existing institution advocates, condemns or remains neutral on the IGO under creation. For example, the secretariats of the African Union, the OAS, and the EU all spoke in favor of the ICC, while the Arab League maintained a cautious stance. Accounting for the "push and pull" of shared membership will provide a more accurate picture of the effects of existing memberships on states' propensity to join new institutions.

An additional area deserving further exploration includes diffusion effects of early adopters of new policies. In the models above, I included a control for shared borders to assess potential regional effects; in a similar analysis, the results of which are included in Appendix B, I controlled for spatial dependence, or geographic diffu-

sion effects. But, as indicated by Beck et al. (2006), "space is more than geography." Thus, spatial dependence may center on the primary variable of interest in this analysis, shared organizational memberships, rather on geographic contiguity. However, methods for analyzing spatial models outside of OLS regression can be extremely complicated and while this is an area that deserves further attention, it is beyond the scope of this present analysis.

Power, the currency of international politics, is a reflection of the degree to which states will find themselves tied down by logrolling across international institutions. This analysis suggests that as power increases so too does a states' ability to resist joining an organization that it does not support. Shared memberships will tend to pull states towards each other's policy positions, but power tempers this effect as states resist actions that will restrict their autonomy. This result might explain the United States' ability to remain a non-party state to the ICC, although weaker states, bit by bit, have managed to constrain the United States by the institution in other ways. As international institutions continue to proliferate, the opportunities they provide weak states in the international system will also continue to expand. Leading us then to wonder, how the great powers will push back.

In this chapter I contribute to the understanding of institutional design by providing a potential path for which weak states can exert control over institutional design, an area that has experienced relative neglect by scholars studying regime formation and institutional design. Further, I have suggested that shared membership in IGOs plays an important role in achieving favorable designs for weak states. Chapter 5 will address predictions concerning state power and specifically how major powers might respond to weak states' attempts at influence and how weak states use trans-institutional linkage strategies to curb the efforts of major powers to modify the ICC regime.

CHAPTER 5

RESPONDING TO INFLUENCE: UNDERMINING VS. SECURING THE ICC REGIME (ACT TWO)

Mr. Ambassador, the U.S. lost the big battles over universal jurisdiction, the self-initiating prosecutor, a Security Council screen, the crimes of aggression, and state consent. I hope now the administration will actively oppose this court to make sure that it shares the same fate as the League of Nations and collapses without U.S. support for this court truly I believe is the monster and the monster that we need to slay.
—Senator Rod Grams, 23 July 1998

Introduction

Senator Grams' condemnation is one indication that the International Criminal Court was not an outcome easily ignored by the United States. Rather, in his words it is a "monster that we need to slay" (U.S. Senate 1998). This depiction of the ICC is far from the view held by those who suggest that IGOs cannot shape state behavior in significant ways. Statements like this one from U.S. policy makers clearly signal that the ICC has changed the status quo in a such a way that demanded action on the part of the U.S. government.

The negotiation process is designed to yield an acceptable outcome for the relevant parties to a particular bargain. But these outcomes do not always appease all of the parties to a negotiation. Sometimes actors will feel particularly disadvantaged by the agreement reached, especially if they feel this agreement is worse than the status quo. In these cases, states have several options at their disposal. They can accept the bargain, despite its limitations, they can refuse to be a part of the new settlement (passive resistance), or they can choose to obstruct the bargain (active resistance) by taking some action that undermines the settlement. International treaty design, the Rome Statute of the International Criminal Court in particular, provides an ideal case with which to examine how international actors may use issue linkage to undermine a negotiated outcome they oppose. Additionally, when actors do try to obstruct a bargain, characteristics of the actor and the situation will determine the linkage strategy, bilateral or multilateral, they will pursue.

In this chapter, I present "Act Two" of the puzzle posed in this dissertation: how do international regimes created by weak states shape the behavior of major powers? Thus, this chapter will focus on the U.S. response to the ICC and how it sought to share the regime, and, in turn, how weak states sought to thwart obstructionist behavior and cement the ICC regime. In so doing, I provide evidence

for some of the predictions that follow from the theory (summarized in Chapter 2). These predictions indicate that states often will prefer multilateral linkage strategies over bilateral ones, even when the state attempting to make linkages is powerful. According to the theory presented here, intra-institutional linkage is more likely when there are multiple salient issues that can be packaged together and voted upon simultaneously. Trans-institutional linkage is more likely in the absence of multiple issues within and single venue and when shared memberships allow for the formation of logrolling coalitions across IGOs. I expect to observe bilateral linkage strategies when a state is materially powerful relative to "linkees," when multilateral linkage attempts have failed, and/or when the the goal of linkage is unpopular with domestic and international audiences (i.e. secrecy of exchange is preferred). Finally, the costs of arranging the side-payments must be lower ex ante, than accepting the bargain.

Bilateral linkage is a costly strategy of last resort. Because bilateral linkage is costly, both economically and diplomatically, a state should refrain from employing such a strategy unless it can guarantee its effectiveness. I argue that the United States, accustomed to achieving its preferred outcome in international negotiations and being pinned down by the bargain reached in Rome, engaged in obstructionist behavior toward the International Criminal Court through the use of bilateral linkage tactics. Despite numerous concessions won by the United States, it could not achieve its ultimate goal of a court reliant upon the UN Security Council to act. The United States both preferred and pursued a multilateral linkage strategy to achieve a more favorable outcome. When this strategy failed, the United States resorted to bilateral tactics in order to undermine the ICC. Aware of U.S. attempts to undermine the ICC regime, some states turned to trans-institutional linkage strategies to derail U.S. efforts.

I present evidence that the United States tried to secure a post hoc arrangement to exempt U.S. citizens from the jurisdiction of the ICC through trans-institutional linkage tactics, linking support for UN and NATO missions to immunity in the ICC. A secondary analysis turns to the bilateral linkage strategy employed by the United States which presents data collected on the bilateral immunity agreements that the United States requested all states sign, which barred them from transferring U.S. service members to the ICC. In order to gain cooperation with its request, the United States threatened to revoke foreign aid from hundreds of countries. Some states, even states that were not parties to the Rome Statute, demonstrated their willingness to comply with U.S. requests, while others were more reluctant to do so, this reluctance has its foundations in trans-institutional linkage attempts by the European Union and developing countries. This chapter demonstrates that when states feel tied down by a bargaining outcome they will attempt to obstruct it through the use of multilateral and bilateral linkage strategies and suggests the conditions under which they will be successful in this endeavor.

This chapter proceeds as follows: in the first section I present the options available to states when they are dissatisfied with the bargain reached through multilateral negotiations. Given these options, the next section discusses the initial reaction of the U.S. government to the Rome Statute and the linkage strategies it pursued to limit the reach of the ICC. In the third section I present hypotheses relating to the expected success of the bilateral strategy that the United States ultimately pursued. The fourth section presents the data and research design for assessing these bilateral strategies, followed by a discussion of the results of the models. In the final section, I offer conclusions about when states should use specific linkage tactics and be susceptible to pressures to link issues multilaterally, though international institutions and bilaterally and suggest implications for how states,

both powerful and weak should respond to attempts at influence.

Negotiating Around the Bargain

A state's ability to object to or opt out of an unfavorable bargain such as an international treaty is often determined by the terms of the bargain itself. When a bargain is formalized through codification, such as a treaty, avenues for dissent also tend to be more formal. By and large, treaties apply only to those states that have deposited their official instruments of ratification (either through approval by a legislature or via the executive). In most cases, states that cannot achieve their desired bargain through the negotiation process will choose not to ratify a treaty. However, there are some exceptions within the international legal framework that permit states to "exempt" themselves from certain treaty provisions, provided that other treaty parties accept these reservations. When formal mechanisms for opting out of specific treaty provisions do not exist, a state may decide to reject, accept, or go around the treaty by using linkage and side-payments to undermine the agreement. The following section briefly explores legal avenues (those codified in the treaty or within the larger body of international law) for opposition and dissent and why these mechanisms were not available to the United States.

Cooperation in Part: Unilateral Reservations

Multilateral international treaties often allow states the opportunity to comply with parts of an agreement such that disagreement over certain treaty provisions will not prevent broader cooperation. States may accept a bargain with reservations and opt out clauses, giving them a "line-item veto" on some treaty provisions.[116]

[116]According to the 1969 Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports *to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State*," (emphasis added) (Art. 2

Often referred to as RUDs (reservations, understandings, and declarations), these exceptions can lead to increased flexibility in treaty provisions, allowing for cooperation that may otherwise have been untenable (Swaine 2006, 311).[117] One of the most well-documented cases of a state using these unilateral provisions to preserve the possibility of agreement was the United Kingdom's decision to opt out of the European Monetary Union (EMU) and European social policy under Maastricht, while maintaining its status as a member and even a major player within the European Union. Despite objections by other EU members that these unilateral options created fragmentation within the union, others have argued that the existence of flexibility arrangements indicate a willingness by member states to accept a looser application of EU rules in exchange for allowing the process of integration to move forward (Shaw 1998, 75).

Reservations in multilateral treaty-making abound and even the Vienna Convention itself spells out general, though debated, guidelines for making treaty reservations. Reservations allow countries to signal their intention to accept the bargain in general, while rejecting pieces that are deemed to be inconsistent with their own domestic law or foreign policy. For non-reserving states, however, reservations may indicate that the reserver will cooperate with the negotiated outcome, "but only on its own terms" (Helfer 2006, 369).

When permitted by a treaty, states may make reservations provided that they are not "incompatible with the object and the purpose of the treaty" (Vienna Convention Art. 19(c)). In the case of human rights treaties in general, and the Rome Statute of the ICC in particular, some legal scholars have suggested that any reser-

(1d)). The full text of the Vienna Convention can be found located at the following address: http://treaties.un.org/Pages/showDetails.aspx?objid=0800000028003902f. Vienna Convention on the Law of Treaties, Signed in Vienna 23 May 1969 (No. 18232), *United Nations Treaty Series* 1155 (1980) p. 331. Hereafter Vienna Convention.

[117]For a more in depth explanation of the role of RUDs in international law see Goldsmith and Posner (2005) and Neumayer (2007).

vations would run contrary to the intention of these types of treaties as they would permit oppression or impunity (Goodman 2002). For this reason, the Rome Statute does not allow states to make reservations or opt out of any of its provisions (see Rome Statute Art. 120).[118][119] Treaties like the Rome Statute can often lead to more resistance behaviors and particularly obstructionist behavior if states feel wronged or damaged by the negotiated outcome and cannot opt out of disagreeable provisions. Had treaty reservations been permitted under the Rome Statute, I suggest that the United States would not have actively resisted the treaty, instead opting to recognize, through reservation, the automatic jurisdiction of the court only in cases of genocide and rejecting the *propio muto* powers of the prosecutor for crimes against humanity and war crimes.

The strongest advocates of the Rome Statute lobbied vehemently against allowing unilateral reservations to the treaty, arguing that reservations would pave the way for individualized exemptions as countries would rush to preemtively shield their own citizens from the Court's reach, while affirming their commitment to the broader agenda of fighting impunity. France, like the United States, advocated for the opportunity to create "opt out" provisions for members of the armed forces serving in military and peacekeeping missions abroad. The Like-Minded Group adamantly opposed an ad hoc opt-out regime and the compromise reached included a blanket opt out provision for war crimes that would expire seven years after the adoption of the treaty (Rome Statute Art. 124). This compromise, offered by the Bureau of the Committee of the Whole the night before the vote was to be taken on the Rome Statute, permitted concerned states like France and the United States

[118]The full text of the Rome Statute can be located at the following address: http://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774. Rome Statute of the International Criminal Court, Signed in Rome 17 July 1998 (No. 38544), *United Nations Treaty Series* 2187 (2002) p. 3. Hereafter, Rome Statute.

[119]States may append declarations, expressing concerns relative to the treaty, however, declarations do not exempt states from their legal obligations under the treaty.

to make any desired changes to the nature of peacekeeping missions and military exercises they were involved in so as to minimize the risk of prosecution by the ICC, but stopped short of allowing states to decide for themselves when and for which crimes they would accept jurisdiction.

If international law is endogenous to state interests, as Goldsmith and Posner (2005) argue, then reservations are a natural outgrowth of the treaty negotiation process as they allow states to pursue their interests and coordinate their interests without international law threatening their sovereignty. The Rome Statute was the product of the pursuit of state interests, but not all states. Eliminating the possibility of reservations put the United States on a collision course with the ICC and its proponents, as the country sought to reduce the sovereignty costs imposed by the new institution. U.S. officials argued that, along with the independent prosecutor, the risk posed by "politicized prosecutions" was enough not only to deter U.S. cooperation with the ICC, but to ensure that the United States would pursue a campaign to obstruct the work of the Court if U.S. citizens came under its scrutiny. Indeed as David Scheffer, U.S. ambassador-at-large for war crimes issues during the Rome Conference aptly stated, "there are too many governments which would never join this treaty and which, at least in the case of the United States, would have to actively oppose this Court if the principle of universal jurisdiction or some variant of it were embodied in the jurisdiction of the Court" (*Terra Viva*, 10 Jul 1998).[120] Active opposition by the U.S. government consisted of both multilateral and bilateral linkage strategies. The following section offers expectations concerning the nature and success of U.S. obstruction efforts.

[120]This statement made by Scheffer was part of a last minute attempt to block the passage of a Statute that included automatic jurisdiction. As Chapter 4 suggests, there are a number of states that opposed universal or even automatic jurisdiction over the core crimes, but by the end of the Rome Conference this group was relatively small and was composed of some NAM countries in addition to the United States.

Issue Linkage as a Strategy for Obstruction

The costs of attempting to negotiate bilateral agreements that require side-payments or threats are often prohibitive for all but the most powerful and are potentially extremely high for those that do have the ability to offer sufficient leverage. In addition to the costs of the agreement itself, bilateral linkage involves opportunity costs that require states to postpone or forgo other potential deals, restricting the variety of penalties and/or inducements that can be offered for any future agreement. While this is also true for multilateral linkage, the costs are not multiplied over the number of deals that are made. In short, bilateral linkage strategies can be costly for two reasons: first, for each individual deal the state offering the side-payment pays a cost and second, a state expends resources, and hence future linkage opportunities each time it engages in linkage. Therefore, states should therefore be reluctant to use bilateral linkage when the number of states that it has to offer side-payments too is large.

Alternatively, multilateral linkage can reduce transaction costs (Martin 1992, Keohane 1984). As Keohane notes, "Clustering of issues under a regime facilitates side-payments among these issues: more potential *quids* are available for the *quo*" (Keohane 1984, 91). In terms of transaction cost economics, linking issues through institutions allows for increasing returns to scale. This is because bargains, or contracts, impose both ex ante and ex post costs on the parties (Kreps 1990, 743). With every bilateral agreement a new set of ex ante and ex post costs must be paid. As the number of parties with which a contract must be concluded increases, so too do the ex ante costs. Each agreement may be slightly different as each party has specific demands and possess different amounts of bargaining leverage vis à vis the actor desiring the initial contract. On the other hand, linkage through institutions can minimize the ex ante costs by negotiating a single contract that applies to all

of the parties.

When a state can arrange linkage through an institution it can bind other members to a particular decision through a single vote (in the case of intra-institutional linkage) or multiple votes/agreements (in the case of trans-institutional, though less than the number of bilateral deals required). While multilateral linkage is more desirable and often more efficient in terms of costs to the party that is dissatisfied with the outcome of a bargain, there are several limitations to employing this strategy, both in terms of trans-institutional linkage and intra-institutional linkage. Policies that are highly salient or unpopular with constituencies raise the costs of using multilateral linkage strategies that are filtered through institutions as visibility also increases.

Another problem arises from the practical limitations of enforcing multilateral bargains. In theory, multilateral enforcement should prove more effective because there are more actors that can sanction a potential cheater. However, in practice, enforcement is often difficult. Studies of international economic sanctions, for example, have shown that opportunism can frustrate cooperation in a multilateral sanctioning coalition "as individual countries face incentives to free-ride in their responsibilities for enforcing the sanctions" (Kaempfer & Lowenberg 1999, 53).[121] Generally, states have more control over bilateral agreements and can enact the threat or retract side-payments more readily because collective action is not required to carry out the threat.

U.S. opposition centered on efforts to reduce the sovereignty costs that U.S. officials feared the ICC could inflict. An ICC with an independent prosecutor would hamper national security efforts by curtailing the deployment of U.S. troops abroad, including troops currently stationed in bases around the world.[122] The strategy

[121] See also, Drezner (Drezner 2000, Hufbauer, Schott & Elliot 1990, Miers & Morgan 2002).

[122] A number of explanations of the U.S. position exist. Ambassador Scheffer, testifying before the

pursued by the United States must be considered in light of these costs. Thus, the transaction costs of arranging multilateral and/or bilateral exemptions were, at least *ex ante* determined to be lower that the potential costs imposed by the Court. U.S. opposition the Rome Statute of the International Criminal Court led both the Clinton and Bush administrations to attempt issue linkage through international organizations to extract a more favorable bargain. For the former administration this occurred intra-institutionally, through the negotiations in Rome and at the PrepCom sessions, while the latter orchestrated its opposition trans-institutionally, through the UN. But multilateral linkage was ultimately unsuccessful, the consequence of which spurred the development of an expansive and costly bilateral linkage strategy to undercut the reach of the International Criminal Court.

U.S. Responses to the ICC: Multilateral Institutions and BIAs

Despite U.S. opposition to the ICC, President Clinton signed the Rome Statute on 31 December 2000—the final day the treaty was open for signature. Though he cautioned his successor, stating "I will not, and do not recommend that my successor submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied"(U.S. House of Representatives 2002).

Following the failure of multilateral linkage attempts, bilateral immunity agreements (BIAs) became the primary instrument of U.S. opposition to the ICC, imposing material costs on ICC state parties that refused to conclude these agreements. The road to the BIA was a complicated web of congressional legislation and executive agreements that culminated in a massive diplomatic campaign carried out

Senate Foreign Relations committee, suggested that the ICC would make it difficult for the United States to send troops abroad without the concern that they might be subjected to prosecution by the Court (U.S. Senate 1998).

by State Department lower level foreign service officers to Secretary of State Colin Powell.

U.S. Multilateral Linkage Attempts

One of the primary reasons that the Clinton administration signed the Rome Statute was to preserve a seat at the negotiating table and achieve concessions as the finer grained details of the ICC continued to be hammered out over the next several years until its entry into force. It was at these preparatory commissions, ten sessions over the period from February 1999 until July 2002, that the United States pressed for immunity from prosecution by the Court for American citizens.[123]

The preparatory commission meetings were held at the United Nations in New York which allowed the U.S. delegation ample opportunities to lobby governments for their proposed changes and clarifications to the Rome Statute. Among the issues that states discussed were defining the crime of aggression, establishing more detailed guidelines for dealing with victim and witness testimonies, adopting the rules of procedure and evidence, and issues dealing with international cooperation and judicial assistance from states. Early on in the preparatory commissions, the United States played an active role in attempting to secure immunity through multilateral negotiations. Records of the second session indicate that a "particularly notable element of the session was the constructive engagement of the United States delegation in drafting the rules and elements. There was speculation whether this signaled a possible shift in Washington's opposition to the Court" (CICC 1999, 10). As negotiations continued to unfold, it became clear that U.S. cooperation in some areas was an exchange for compromises on others. In particular, the chief U.S.

[123]There is a distinction between the preparatory committee (PrepCom) which met intermittently from 1996-1998 in preparation for the Rome Conference to prepare a draft statute and the preparatory commission referred to here which met from 1998-2002 to refine the details of the Court and settle the unresolved issues from Rome.

negotiator, Ambassador David Scheffer proposed a revision to the Rome Statute that would require a non-party state to approve the Court's jurisdiction before its nationals could be surrendered, unless the UN Security Council authorized such an action under its Chapter VII prerogative. This proposal, argued state parties and NGOs alike, would "essentially amend the Rome Statute, dramatically increasing the ability of the Security Council to control the Court and providing to permanent members of the Security Council a *de facto* veto over Court prosecutions" (CICC 2000, 35).

Between the fourth and fifth preparatory commissions, in June 2000, Secretary of State Madeleine Albright, suggested to EU foreign ministers that if immunity for American citizens could not be achieved that withdrawal from international peacekeeping missions was a real possibility (*The Independent*, 5 Jun 2002). This threat linking ICC prosecutorial powers to UN and NATO peacekeeping missions did not sit well with Europeans who feared the withdrawal U.S. resources and personnel from a still unstable Balkans. Yet, despite such threats, preparatory commission participants continued to resist U.S. overtures for immunity.

Ultimately the Clinton administration was unable to resolve the matter of immunity and Security Council control over the ICC, an issue which would continue to plague the incoming administration. While both administrations opposed the ICC's broad jurisdiction and the power of the prosecutor to initiate investigations, the Clinton administration remained open to the possibility of U.S. ratification if certain demands (namely U.S. immunity and Security Council approval) were met. Alternatively, the Bush administration actively opposed the Rome Statute, "unsigning" the treaty in May 2002. Secretary of State Colin Powell noted that "we [the United States] have no intention of ratifying the International Criminal Court treaty" (*National Post*, 6 May 2002) . When asked about the unsigning of the Rome

Statute, Pierre-Richard Prosper, the State Department's ambassador-at-large for war crimes issues declared, "It's over. We're washing our hands of it" (*Washington Times*, 6 May 2002). The withdrawal of the U.S. signature only marked the beginning of concentrated efforts on the part of the United States to obstruct the ICC. Still, efforts continued to arrange immunity multilaterally.

The Bush administration originally attempted to negotiate immunity for U.S. citizens through the auspices of the UN Security Council beginning in May 2002 with a resolution on the UN peacekeeping mission in East Timor which linked the mission's renewal to ICC immunity for U.S. peacekeepers. Ultimately, the resolution passed 15-0 without the U.S. amendment providing for immunity, though American officials signaled that they would attempt a broader resolution on immunity in the future (*NYT*, 17 May 2002). The U.S. government began issuing threats regarding the future of U.S. involvement in peacekeeping missions, including withdrawal of U.S. peacekeepers and blocking funding for missions.

The effort to renew the peacekeeping mandate in Bosnia in June 2002 brought tensions between the United States and ICC supporters to a head. U.S. allies and disgruntled Security Council members launched a very public campaign against perceived unilateralism and arm-twisting. ICC supporters on the UNSC leaked documents, revealing U.S. demands for immunity (*The Independent*, 28 Jun 2002) . The response in the international media to Washington's request was widespread as the Bosnia renewal decision received critical coverage across the globe.[124] The United States then upped the ante by not only threatening to withdraw troops, but vetoing a continuation of the Bosnia mission on 30 June, one day prior to the Rome Statute's entry into force.

[124]Headlines included, "US demands jeopardise peace force in Bosnia" (*The Times*, 27 Jun 2002), "US threat to Balkans peace force: S-For held hostage for changes to International Criminal Court" (*The Guardian*, 27 Jun 2002), and "US casts cloud over start of International Criminal Court" (*Jakarta Post*, 28 Jun 2002).

The agreement that was eventually reached on Bosnia was UNSC Resolution 1422, which achieved a 12-month deferral for any investigation involving an ICC non-party state if it is involved in UN peacekeeping operations.[125] While the resolution did not absolve U.S. concerns over ICC investigation and prosecution, Washington eventually backed down from its demands that U.S. citizens be granted immunity through the UNSC.

Why was the United States ultimately unsuccessful in its attempts to link ICC immunity to support for UN peacekeeping missions? Public opinion data suggests that European citizens were far more supportive of the International Criminal Court on the whole than were Americans. A Pew Center research poll of global attitudes reported that in the United Kingdom 52 percent of those surveyed felt that the ICC should try soldiers accused of war crimes. Seventy-one percent of respondents in France and 65 percent in Germany also supported ICC jurisdiction over soldiers, compared with 37 percent of U.S. respondents (Pew Research Center 2003).

High support for the ICC coincides with falling levels of international support for the United States. Between 1999 and the summer of 2002 (shortly after the failed Security Council votes on the peacekeeping mission in Bosnia) ICC advocates including Italy, the United Kingdom, South Korea, Germany, Argentina and Brazil all experienced a drop in the percentage of people surveyed who held a favorable view of the United States (Pew Research Center 2003).[126] The Pew Global Attitudes survey conducted in the period between July and October 2002 reported an eight percent slip (to 75 percent) in British respondents holding a favorable view of the United States between 2000 and 2002. Meanwhile French and German attitudes towards the United States were among the lowest in Europe at 63 and 61 percent,

[125]These deferrals may be reneweed for 12-month periods, at the discretion of the Security Council (United Nations 2002).

[126]This trend continued and was more pronounced by March 2003, though the declining image began prior to the build up to the Iraq war.

respectively (Pew Research Center 2003, 4). While declining opinions of the United States cannot be attributed to ICC opposition alone, as the steel tariffs, resistance to the Kyoto Protocol, and disengagement from the Middle East peace process were all likely contributors to the decline in U.S. popularity as well, this downward trend had the potential to impose policy constraints on governments that accommodated perceived U.S. unilateralism and yielded to linkage attempts.

Despite an upsurge in U.S. popularity after the September 11 attacks, the international community became increasingly critical of what it saw as U.S. unilateralism in the areas of security and economics. One poll in August 2001 "found that Britons, French, Italians and Germans overwhelmingly opposed Bush's decisions to withdraw from the Kyoto Protocol on global warming and to develop a national missile defense system that might mean unilaterally abrogating the 1972 Anti-Ballistic Missile Treaty with Russia" (*Washington Post*, 16 Aug. 2001). In response to their own constituencies, European leaders openly criticized American unilateralism. Speaking in reference to disputes over steel tariffs, the Middle East peace process, and U.S. denial of POW status to combatants, French Foreign Minister Hubert Vedrine suggested that the United States acted "unilaterally, without consulting others...refusing any multilateral negotiation that could limit their decision-making, sovereignty, and freedom of action" (*Business Times Singapore*, 14 Feb. 2002). Further, German Chancellor Gerhard Schroeder and French President Jacques Chirac decried the imposition of steel tariffs in March 2002 as anti-free trade and hypocritical (*Washington Post*, 7 Mar. 2002; *Agence France Presse*, 17 May 2002). U.S. threats over the Bosnia peacekeeping mission marked the latest in a long string of highly unpopular unilateral moves from which other governments sought to distance themselves.

The Blair government faced considerable criticism from its EU counterparts

and from voters within its own country even prior to its decision to back the United States in its Iraq war efforts. In a March 2002 poll of British voters 40 percent of respondents believed that "the British government is too supportive" of American foreign policy objectives, while only three percent of respondents replied that the British government was not supportive enough. This corresponds to a drop in British support for both Blair, from 71 percent in November 2001 to 52 percent, and Bush, from 66 to 50 percent (Ipsos MORI 2002). The price paid by the British government for supporting U.S. anti-terrorism policies inspired caution on the part of Blair who was also criticized by members in his own party for his willingness to go along with Bush's objectives. In light of these recriminations, the Labour leader added his voice to the criticism of Washington's threat to veto the Bosnia mission (*The Guardian*, 2 July 2002).

Given the highly publicized nature of the Security Council debate, coupled with declining U.S. image and favorable popular opinion of the ICC abroad it is not surprising that these attempts to engage in trans-institutional linkage (ICC-UN-NATO) ultimately failed. States sought to avoid the costs of yielding to conspicuous attempts through international organizations to grant Americans immunity from prosecution by the ICC. But multilateral linkage is only one strategy that major powers have at their disposal to achieve acceptable bargains.

Bilateral Immunity Agreements

Anticipating the Rome Statute would receive the required number of ratifications and skeptical of working through UN auspices, Senator Jesse Helms (R–NC) began preparations for legislation that would prohibit U.S. cooperation with the ICC before President Clinton administration left office. The American Servicemembers' Protection Act (ASPA) was first introduced as a standalone bill in the Committee

on Foreign Relations in June 2000; however, the initial bill never left committee.[127] The early failure of the bill was not a function of the composition of partisan actors on the committees and in Congress. Helms first introduced ASPA when he held the chairmanship of the Senate Foreign Relations committee and, while the Republicans controlled Congress and tended to be more opposed to the ICC than Democrats, the latter party recognized the Clinton administration's apprehension regarding the Rome Statute. At hearing of the Senate Foreign Relations committee immediately following the conclusion of the Rome Conference, senators Dianne Feinstein (D-CA) and Joseph Biden (D-DE), who was the committee chairman when the bill finally did pass, joined their GOP counterparts in expressing doubts and concerns about the Rome Statute (U.S. Senate 1998). One reason for APSA's delay came at the request of Ambassador Scheffer, who urged Congress not to authorize the imposition of penalties on governments that had ratified the Rome Statute. The bill, Scheffer offered, "would have detrimental consequences without providing the Administration with any new authority or any increased ability to protect U.S. servicemembers from prosecution." Highlighting what he feared as interference with multilateral negotiations, he continues,

> The latest round of ICC meetings ended on June 30. We made important progress at those meetings, but we have a very tough struggle ahead as we advance toward the next session in late November. We are deeply concerned that in addition to imposing unnecessary and dangerous restrictions on national security decision-making the legislation prejudges the outcome of ongoing negotiations on the protection objectives we are seeking to achieve (U.S. Senate 1998, 40).

[127] A similar bill was introduced in the House Committee on International Relations by Rep. Tom Delay at the same time (U.S. Senate 2000).

ASPA appeared again as amendment 1724 to the National Defense Authorization Act of 2002, where the measure met with greater success when offered by John Warner (R–VA) as part of an appropriations bill on the Senate floor, though the text remained virtually unchanged. The bill, which targeted U.S. financing of foreign defense activities in countries that had ratified the Rome Statute, allowed for the forceable retrieval of any U.S. citizens from the Hague, and prohibited peacekeeping operations in countries that were ICC parties, became law in August 2002.

ASPA was the product of careful and deliberate planning among ICC detractors in Congress and the executive. Prior to the introduction of the amendment, Helms obtained administration approval, stating before Congress, "Vice President Cheney has personally seen to it the language in my underlying amendment has the approval of the State Department, the Defense Department, the National Security Council, the Justice Department, along with other parts of the Government" (U.S. Senate 2001). Citing risks to U.S. military forces and the usurpation of UN Security Council prerogative, ASPA opened the door for the U.S. Department of State to conclude agreements with foreign governments that would require them to turn over U.S. citizens to the United States rather than to the Court if indicted by the ICC prosecutor.[128]

According to U.S. government officials, the legal basis for the bilateral agreements was Article 98 of the Rome Statute of the ICC. Article 98 states,

> The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless

[128]U.S. persons covered by the law include U.S. military personnel, elected and appointed officials, and any person acting on behalf of the U.S. government (U.S. Congress 2002) Hereafter, ASPA.

the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

While the drafters of the Rome Statute maintain that Article 98 was intended to safeguard any existing international agreements between states (e.g. status of forces agreements), the United States took the statute language as indication that it could shield U.S. citizens from potential prosecution by the Court by negotiating agreements with foreign governments after the adoption of the Rome Statute. International legal scholars as well as NGO groups and many states disagreed.[129] The EU cautioned its members and prospective members not to conclude any accords of this nature with the United States. The Council of Europe went as far as to "condemn" U.S. actions with respect to Article 98, claiming that the agreements undermine the Rome Statute and violate the Vienna Convention on the Law of Treaties (Council of Europe 2003). Despite the misgivings of European allies, the U.S. Department of State began signing bilateral immunity agreements in July 2002, just prior to the passage of ASPA.

BIAs established that foreign governments could not transfer U.S. citizens to the ICC. Despite initial reluctance on the part of many states, the United States extracted agreements through its promise to suspend military aid to ICC state parties that did not sign and ratify a BIA. Under ASPA, "no United States military assistance may be provided to the government of a country that is a party to the International Criminal Court" unless they conclude a BIA (ASPA Sec. 2007 para. a).

[129] A formal opinion was solicited by the Lawyers' Committee on Human Rights the on the legality of the BIAs. The joint opinion given by international legal experts, James Crawford a professor of international law at the University of Cambridge who also served on the ILC, Philippe Sands professor of international law at the University College of London and a legal expert on arbitration panels who has served as a litigator before the ICJ and the ECJ, and Ralph Wilde, also law faculty at the University College of London, stated that "the object and purpose of the ICC Statute precludes a state party from entering into an agreement the purpose or effect which may lead to impunity" (Crawford, Sands & Wilde 2003, 23).

The cuts targeted two specific areas of U.S. military aid, International Military Education and Training (IMET) programs and Foreign Military Financing (FMF). ASPA does allow some exceptions to these sanctions. The U.S. president may issue a waiver if he anticipates a target government that has signed a BIA will follow through on its commitment and ratify the agreement, or a national interest waiver may be issued if the president determines it is important to the national interest for a government to receive the funds. Finally, a state may be exempted from the provisions of ASPA in the case it is a NATO ally, or a major non-NATO ally (ASPA Sec. 2007 para. d).

In addition to the funds targeted by ASPA, an amendment to a foreign operations appropriations bill in 2005, called the Nethercutt amendment, cut Economic Suport Funds (ESF) from ICC state parties that had not concluded a BIA with the United States. Unlike IMET and FMF funds, ESF programs are not directly associated with military financing. ESF programs are implemented by USAID and target economic stabilization and government transparency and accountability in transitional democracies. Specifically, ESF funds have supported free media, balance of payments issues, human rights, women's empowerment, anti-human trafficking, Middle East peace initiatives and reconciliation in Ireland and Cyprus (U.S. Department of State 2009). While ASPA raised much criticism from human rights groups and foreign governments alike, the Nethercutt amendment was especially contentious because it expanded the scope of the sanctions from affecting military assistance to broader aid categories.

In summer 2002, the United States began to officially negotiate BIAs with foreign governments. On 1 August 2002, Romania became the first country to sign a BIA with the United States. Other countries soon followed suit and by May 2007, 100 countries had signed BIAs.

The Use and Response to Bilateral Linkage: Hypotheses

The linkage theory I offer suggests that states will try to obstruct international bargains when they have attempted and failed in multilateral linkage strategies. While smaller, less powerful states achieved gains through multilateral negotiations in the ICC, the United States, unhappy with the outcome, invoked both multilateral and bilateral strategies in responding to the attempts of influence by weaker states. However, states are far from equal in their ability to extend attractive linkages. States that are materially powerful relative to their negotiating partner are better suited to this task. Side-payments can be prohibitively costly even for a moderately powerful state, thus the absolute power of a state can impact the feasibility of using bilateral issue linkage to obstruct an unfavorable bargain.

The line between bilateral linkage and coercion is relatively blurry, though transaction cost economics offers some important clarifications. Bilateral contracting may be either symmetrical or asymmetrical. An extreme form of asymmetrical contracting is called *hierarchical transaction* in which "one of the two parties retains, by law or by custom, most of the authority to determine how the contract will be fulfilled. The second party will retain some explicit rights, such as to abrogate the contract, perhaps at some specified cost" (Kreps 1990, 751). The contract is a voluntary arrangement that implies a beneficial exchange of goods and/or services, whereas coercion involves a punitive threat for noncompliance. Here again, the line distinguishing BIAs from coercion is not entirely clear, but states had the option of continuing to receive aid (a good), or to cancel that aid by not engaging in the contract. In exchange, the United States would receive cooperation on matters relating to the ICC. Cast in these terms, BIAs are an explicit attempt to link two seemingly unrelated issues, the ICC and foreign aid, through a type of contract referred to in economics as a hierarchical transaction.

Oye's (1986) conception of blackmailing as a type of linkage, in which the linker threatens to take an action that is in conflict with its immediate interests unless the linkee complies, also suggests obvious parallels to the BIA linkage strategy. As Oye notes, "Were it not for linkage, the other actor would not even consider going ahead with the action threatened" (Ibid., 15). Here the United States threatened to cease aid to countries that did not conclude an immunity agreement, despite arguments that the U.S. government was also a beneficiary of the aid arrangements. Indeed, in a hearing before the Senate, Ambassador Scheffer, who cast the nay vote in Rome criticized ASPA, suggesting that it "could make it impossible for the United States to engage in critical multinational operations" and "could weaken essential military alliances" (U.S. Senate 1998, 40). Others within government added their voice to concerns that the United States, while gaining cooperation of the ICC issue, might lose essential support at a time when the United States was recruiting support for its war on terrorism.[130] If the United States paid such a cost, then why would they proceed with the BIA agreements? First, I argue that this was not the preferred method of arranging immunity and second, in terms of a transaction cost approach, the BIAs had to provide net benefits, despite the ex ante costs of the contract.

I suggest that major powers are in a unique position to credibly offer bilateral issue linkage. For the most part the United States did not offer carrots to countries that complied with its request for a BIA, but rather threatened to cut off military and development aid if they refused U.S. entreaties. In a material sense, the agreements

[130]In addressing ESF cuts Rep. Jim Kolbe (R–AZ) made the following statement, "At a time when we are fighting the war or terrorism, reducing this tool of diplomatic influence is not a good idea" (U.S. House of Representatives 2004, H5882). Further evidence suggesting that the United States paid some cost in revoking aid are the following statements made at State Department press briefing in June 2002, just before ASPA became law, in which one reporter asked State Department spokesman, Richard Boucher, "Aren't some of these programs beneficial to the U.S.? I mean, the U.S. wouldn't have had the FMF and IMET programs unless the U.S. derived some benefit from it." To which Boucher replied "Well, we wouldn't be spending our money, taxpayer money, on these programs unless we felt they were beneficial" (U.S. Department of State 2003*b*).

were relatively inexpensive for the United States. Targets of the linkage policy stood to lose military funding from the United States, but the questions stands: would revoking IMET and FMF funds be costly enough to garner cooperation from these states in spite of the very unpopular BIA policy? These funds averaged only 0.2 percent of target countries' GDPs. What incentive did countries have for resisting U.S. pressure and refusing to sign BIAs? In other words, what were the costs of signing for these countries?

Economic sanctions involve political and economic costs for the sender and the target (Baldwin 1985). Some costs may dispose states to resist threats and sanctions, while others should make them more like to acquiesce to the senders demands. In the following section, I present expectations about the costs of resisting and acceding to U.S. requests to conclude BIAs, suggesting when the strategy will be more or less successful.

The Costs of BIAs to Foreign Governments

Political Costs: The political costs for aspirant EU countries were far more tangible than for others. The EU made clear that the BIAs were undesirable, at the very least, and at most, illegal. In September 2002, the Council of the European Union passed a resolution establishing guidelines for its members with regard to BIAs. The resolution took into account the Council's conclusions which stated that, "Entering into U.S. agreements – as presently drafted – would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties"(EU Council of Ministers 2002). Thus, concluding a BIA for one of these countries might tarnish or complicate efforts to accede to the EU.

Candidate countries were in a unique position, pressured by the United States

Table 5.1: EU Candidates & BIA Activity

Candidate	EU Member	ICC Party	BIA Signed	BIA Ratified
Bulgaria	2007	4/2002	no	no
Croatia	—	5/2001	no	no
Cyprus	2004	3/2002	no	no
Czech Republic	2004	—	no	no
Estonia	2004	1/2002	no	no
Hungary	2004	11/2001	no	no
Latvia	2004	6/2002	no	no
Lithuania	2004	5/2003	no	no
Macedonia	—	3/2002	6/2003	11/2003
Malta	2004	11/2002	no	no
Romania	2007	4/2002	8/2002	no
Slovakia	2004	4/2002	no	no
Slovenia	2004	12/2001	no	no
Turkey	—	—	no	no

to conclude a BIA on the one hand, and by the EU to resist, on the other. Indeed as EU spokesperson Irena Guzelova indicated in reference to Macedonia's consideration of a BIA, "each country is free to make its own decision but has to be aware of the weight of such a move" (*Deutsche Presse-Agentur*, 15 May 2003). A report from the Congressional Research Service reiterates the point, "The U.S. and European opposing positions on the Article 98 agreements have posed a dilemma for many east central European governments, forcing them to make an explicit choice on the matter and face the consequences" (Kim 2003). Table 5.1 lists the countries that were involved in the EU accession process at the time of the BIA requests along with their decisions to accept or reject a BIA. Notably, there is little variation with respect to ICC ratification and BIA conclusion, which could be the result of EU influences and a combination of other factors discussed below.

Unnerved by Romania's early signature of a BIA, top EU officials issued a letter to EU hopefuls tentatively cautioning them,

"As a country with which the EU enjoys close and developing relations,

you are invited to take into account the EU Council Conclusions and Guiding Principles when formulating your response to the US requests for the conclusion of bilateral agreements" (*World News Connection*, 29 May 2003).

While Romania signed the agreement, it was never given full consideration by parliament and was never ratified. However, two factors may have contributed to this decision. One factor may have been the aforementioned EU pressure not to ratify the agreement, but equally as compelling, could have been the U.S. decision to extend to the new NATO members a national interest waiver, subsequently followed by the same exemption given to current members of NATO.[131] The waiver meant that Romania and the six other candidates would not be subject aid cuts, virtually erasing their incentive to comply with U.S. requests to conclude a BIA that persisted in spite of the waiver and eventual exemption. Nevertheless, some of these countries prior to receiving the waiver seriously considered the BIA, at least until the EU intervened (*BBC*, 2 Oct. 2002).

The efforts of the EU to persuade members and potential members not to conclude BIAs with the United States points to a well-orchestrated trans-institutional linkage strategy, wherein the EU linked membership in the organization with resisting U.S. overtures to sign a BIA.[132] If successful, the EU strategy demonstrates the potential power of trans-institutional linkage because the most vulnerable states under this scenario have not yet obtained membership in the IGO. The analysis to follow will determine the success of this strategy.

[131]Romania postponed its decision on ratification until the EU released its common position on the bilateral agreements. The general secretariat of the EU Council released the "Guiding Principles" on 30 September 2002 and the common position was subsequently passed in June 2003 (EU Council of Ministers 2003). The United States issued the national interest waiver for Romania in November 2003 and the country officially joined NATO in March 2004 (U.S. Executive Office of the President 2003).

[132]Here the institutions in question are the EU, the ICC, and more loosely the BIA regime because only states parties were susceptible to aid reductions.

EU aspirants faced added scrutiny as Brussels kept a close watch on their actions and whether or not they remained in line with EU guidelines and policies. For central and east European governments, concluding a BIA would mean choosing between strained relations with the EU or the United States, and while the EU imposed no direct monetary penalties as did the United States, many of these countries consider timely accession into the union as vital to economic prosperity. Following from this discussion, I expect that countries that had applied for EU membership when the ASPA restrictions came into effect should be more reluctant to conclude BIAs with the United States.

H1: EU applicants should be less likely to conclude BIAs with the United States than those countries that have not applied for EU membership.

For most other governments, the relative cost of resisting U.S. entreaties is more ambiguous. State parties to the ICC stand to lose military aid and economic support funds from the United States, but capitulating is not without costs. In many countries, the BIA campaign has been viewed as another instance of U.S. unilateralism. Ecuador, an ICC party and home to the Manta air base used by the U.S. Air Force, argued that granting U.S. personnel immunity from ICC prosecution by concluding a BIA would constitute an unacceptable loss of sovereignty (*BBC* 22 Jun 2005). Other arguments centered on the need to preserve the integrity of the Rome Statute (Brazil, Costa Rica, and Peru) and the double standards imposed by the United States with respect to the apprehension and prosecution of war criminals (Serbia and Croatia). Still others (South Africa and Kenya) have suggested that the United States is engaged in blackmailing tactics to induce countries to sign agreements and giving in to these demands might be politically costly (Coalition for an ICC 2009).

More broadly international political costs to governments may be captured by

an explanation introduced in the theoretical chapter of this dissertation. Previously, I have suggested that shared institutional memberships can affect whether a state will join a new IGO or accept a new international bargain. Chapters 3 and 4 of this dissertation test this prediction with regard to the ICC. Following the logic of a theory of institutional linkage, states that are more institutionally embedded, or share more memberships, should be more susceptible to multilateral linkage strategies. Many IGOs including the EU, the OAU/AU, the Southern African Development Community, the OAS, and CARICOM, all passed common positions in support of the ICC and in some cases against the BIAs. As shown quite explicitly in the case of the EU, the organization discouraged its members and potential members from ratifying BIAs with the United States. This would suggest that shared institutional memberships should, on average, curtail the conclusion of BIAs.

> *H2: States that share more organizational memberships should be less likely to conclude a BIA with the United States.*

Many of the explanations offered by countries that have resisted signing BIAs may be classified as domestic political considerations. Often these costs are not directly observable, but they point to a government's sensitivity to ceding control of their foreign policy to another actor, in this case the United States. These costs can be conceived of as the domestic political costs of the domestically unpopular BIAs. Given the popularity enjoyed by the fledgling court, BIAs should be most unpopular with countries that are ICC parties. Thus, I expect countries that ratified the Rome Statute to exhibit greater sensitivity to domestic political costs than countries that did not ratify the treaty and resist requests to ratify BIAs. But, it is difficult to separate the above argument from one that previously exists in the literature about states' respect for the rule of law. Domestic respect for the rule of law consists of "a commitment to the 'self-binding' procedures of governance" enforced through a

"clear hierarchy of laws interpreted by an independent judicial system and supported by a strong legal culture in civil society" (Linz & Stepan 1996, 10). The international principle reflecting these ideas is the concept of *pact sunt servanda*, which implies that states will observe the treaties that they sign and ratify. As the highest form of international law, treaties are given precedence over customary law and general principles and the record has shown that states do generally fulfill their international legal promises (Henkin 1979, Koh 1997). Kelley (2007) argues that respect for the rule of law, measured at the domestic level, should translate to respect for the rule of law internationally. Thus, states with a high level of respect for the rule of law domestically and have previously committed to the Rome Statute should be less inclined to conclude BIAs than states that have low respect for the rule of law in domestic settings. It is precisely because high rule of law states have embraced the principle of *pacta sunt servanda* at home, that Kelley expects they will do so abroad. The above conjectures point to the following hypotheses:

> *H3a: States that have ratified the Rome Statute (ICC state parties) should be less likely to conclude a BIA.*
>
> *H3b: States with a high domestic rule of law should be less likely to conclude a BIA.*
>
> *H3c: ICC state parties that have a high domestic rule of law should be less likely to conclude BIAs than ICC parties that have a low domestic rule of law.*

Governments that are accountable to their publics through domestic political institutions (i.e. the electoral process) should be more sensitive to acquiescing to unpopular foreign policies. Leaders of democratic governments are by definition accountable to their domestic constituencies and should therefore be more responsive

to the will of the people as a matter of political survival (Bueno De Mesquita, Smith, Siverson & Morrow 2005, Fearon 1994).[133]

H4: Democracies should be less likely to conclude a BIA with the United States than nondemocracies.

Political Control Variables

Strategic relationships are often an indicator of the a state's willingness to comply with linkage tactics. If the issue is not of acute importance to a state (a condition of issue linkage) then their interest in maintaining a strategic relationship should outweigh the costs of the issue linkage. Drezner (1998), for example, finds that a state's allies yield more readily in the face of economic coercion than its adversaries.

H5: States that share close strategic relationships with the United States should be more likely to conclude a BIA.

Two of the predictions above are complicated by the situation faced by Romania as well as a number of states (namely, allies and EU aspirants). Because the United States chose to exempt some countries from the ASPA mandated sanctions, this set of countries did not confront the same stakes for not concluding a BIA as did non-exempt countries. Although the United States persisted in its request that exempt countries ratify a BIA, the material incentives that comprised the mechanism of issue linkage were undercut. Thus,

H6: Countries that were deemed exempt by the United States should be less likely to conclude a BIA.

[133]Bueno de Mesquita et al. (2005) do not explicitly connect the size of the winning coalition to whether the country is a democracy, but empirically speaking, larger winning coalitions tend to be more democratic.

Economic Costs: The costs associated with BIAs speak directly to issues of asset specificity. According to Kreps, "a transaction has high levels of asset specificity if as the trade develops one side or the other or both becomes tied to and in the 'power' of the other side" (1990, 747). If governments receiving these funds from the United States lack an acceptable alternative for the aid, then they should feel this loss more acutely than governments that maintained lower levels of asset specificity. Thus, the more "assets" aid-receiving governments have invested in their relationship with the United States the more dependent they should be on the aid relationship. Thus, through deep involvement over time these states have assumed more risk in their relationship with the U.S. government. The following hypotheses reflect different aspects of asset specificity in regard to the targeted aid.

The bilateral linkage strategy the United States employed to obstruct the ICC was one of economic coercion. Theories of economic statecraft and its success have remained the subject of scrutiny (Baldwin 1985, Hufbauer, Schott & Elliot 1990, Pape 1997). One of the difficulties in observing the effectiveness of issue linkage based on economic threats is that those states that are sanctioned are often the 'hard cases' (Nooruddin 2002). The military aid cut offs provided for under ASPA can be considered a targeted sanction, designed not to destabilize regimes, but to achieve a very specific policy concession. One testable prediction arising from this research program suggests that if sanctioned states are the hard cases, they should continue to resist a BIA, even though they can reverse the sanctions by concluding a BIA at any point during the period under investigation.

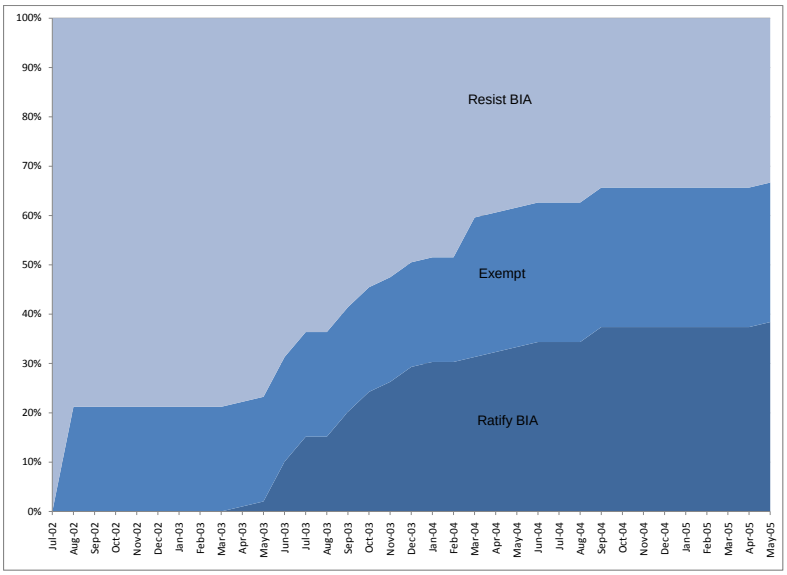
H7: States that have had their ESF, FMF, or IMET funds revoked should be less likely to conclude a BIA.

Alternatively, the data and research design presented in the following section allow for a test of whether U.S. issue linkage attempts (i.e. the threat of negative

sanctions) were effective in this instance. We often lack the data necessary to observe capitulation prior to the sanction; however, in the case of BIAs, the threat was constant across all countries in the population 'at risk' of receiving a sanction. Some actors will respond to a threat and change their behavior before punitive action is taken to avoid sanction. In the case of the BIAs, ASPA was passed in August 2002, one year prior to when their IMET and FMF funds would be revoked if they failed to conclude a BIA. A number of states rushed to sign BIAs just prior to the enactment of sanctions under ASPA in July 2003. Timely acquiescence is marked by ratification of a BIA prior to the sanctioning period.

Figure 5.1 (A) depicts the pattern of BIA ratifications from just before the sanctions begin to when they were well underway. There is an notable spike in the number of ratifications from May to July 2003, followed by another more gradual, albeit considerable, increase in ratifications from August 2003 to January 2004. Figure 5.1 (B) provides a slightly more nuanced view of the BIA accession process, which also accounts for national interest waivers and BIA signatures. This explains the gradual increase in BIA ratifications after the sanctioning period officially began. In other words, it answers the question of why states that had indicated their intention to ratify by signing a BIA did not conclude the ratification process prior to the initiation of sanctions.

Figure 5.1 (B) reveals that some countries, such as Afghanistan, Botswana, East Timor, and Ghana, signed BIAs and were granted national interest waivers that permitted them to go unsanctioned for a period of three to six months to allow these countries an opportunity to conclude the ratification process. Almost all countries that were granted waivers in this way eventually ratified BIAs. For the United States, issuing temporary waivers would provide the necessary motivation for countries to conclude the BIA process expediently.



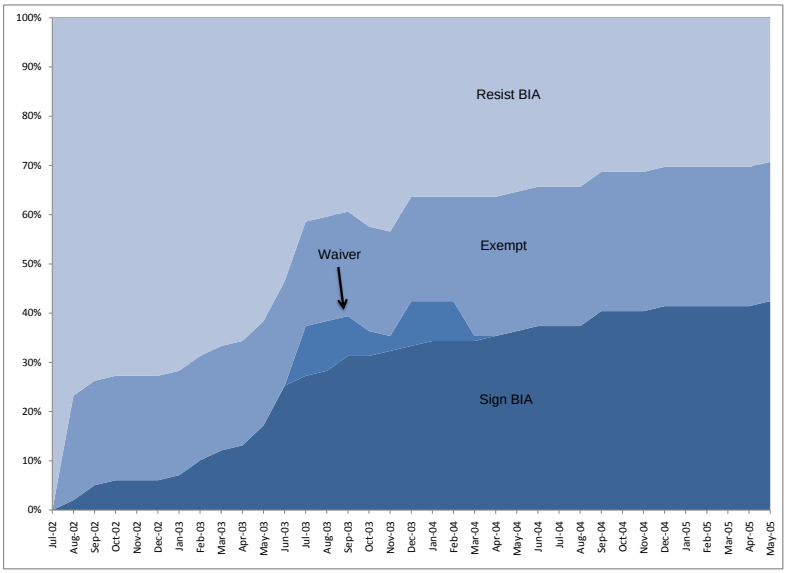


Figure 5.1: (A) Pattern of BIA Ratifications and Exemptions (B) Pattern of BIA Signatures and Waivers

The countries that ratified BIAs prior to July 2003 are those that, from the U.S. perspective, responded most effectively to the bilateral issue linkage strategy. Countries that ratified during their waiver period also capitulated prior to the enactment of sanctions. Some countries stood to lose more from the imposition of ASPA than others. East Timor, for instance, would lose about six percent of its GDP, while El Salvador would lose about one-tenth of a percent. If the *threat* of economic coercion was effective than states that faced a larger sanction relative to the size of their economy, should be more likely to acquiesce than their counterparts.

> *H8: As the amount of "at-risk" aid increases (relative to Gross Domestic Product) a country should be quicker to ratify a BIA.*

Economic Control Variables

ASPA restrictions stopped short of imposing major economic sanctions on countries that refused to conclude BIAs. The United States had to consider the transaction costs of eliminating aid to foreign governments. The administration could have targeted larger bundles of aid but, doing so may have proven more costly by compromising important national security goals. For instance, according to a State Department spokesperson, the bulk of the $1.3 billion Plan Colombia aid package (which consisted of funds aimed at helping the Colombian government fight drug trafficking and eliminate coca plantations) was not jeopardized by the ASPA sanctions. In fact, for the period until Colombia concluded a BIA, only $5 million was at stake (*Daily Press Briefing*, 1 July 2003).[134] If the United States was strategic in choosing the types of aid to cut off, then we should expect it to make the least foreign policy adjustment as possible for the maximum effect possible. The relative strength of a country's economy should make it better suited to weathering the pressures of economic linkage. The following prediction has its roots in the

[134]In the remainder of this text, "Daily Press Briefing" will be abbreviated as DPB.

literature on economic sanctions which suggests that economic statecraft is more effective when the weaker the target is (Kaempfer & Lowenberg 1988, Morgan & Schwebach 1997, Drury 1998).

H9: The weaker a state is economically, the more likely it will be to conclude a BIA with the United States.

The success of the U.S. linkage strategy, the conclusion of BIAs, relies, at least in part, of economic dependence and vulnerability. Linkage is essentially a means of influence in international relations and thus, bilateral trade flows are partial reflections of these of relationships of dependence. For a number of states, like Honduras, Panama, and Nigeria, bilateral trade with the United States constitute a large part of their economy. These economic relationships, sometimes characterized by a high level of dependency, or asset specificity, can create pressures to comply with otherwise undesirable attempts at influence in order to remain in 'good standing' with the United States and linkage strategies will be more successful in these circumstances (See Hufbauer, Schott & Elliot 1990).

H10: The more bilateral trade a state maintains with the United States the more likely that state should be to ratify a BIA.

The following section describes the original data set collected on states' decisions to sign and ratify BIAs and the methods used to evaluate the hypotheses above.

Data and Methodology

Data were compiled on a country-month basis for 166 countries from December 2001 until May 2007.[135] December 2001 corresponds to the month that the Helms

[135]Depending upon the estimation technique, the unit of analysis is either the country (logit models) or the country-month (event history models).

amendment was introduced to the foreign appropriations bill in Congress. The dependent variable, BIA ratification, reports whether a country an agreement has entered into force, indicating that the U.S. issue linkage strategy was successful.[136]

The first set of models are tested by logistic regression and report the likelihood of concluding a bilateral immunity agreement and the success of the bilateral linkage strategy used by the United States.

Data on ICC ratifications and accessions are collected from the United Nations Treaty Series Database. Observations receive a 1 if the Rome Statute has been ratified or acceded to and a 0 otherwise.

EU candidate is a dichotomous variable coded as 1 if a state's application for EU membership has been submitted and accepted by the EU Commission and a 0 otherwise. The final political variable, exemption, is based on a distinction made in Sec. 2007. of the American Servicemembers Protection Act of 2002, exempting NATO and major non-NATO allies from ASPA's provisions.[137] If the country is a NATO ally, or has been designated as a major non-NATO ally under the conditions set forth by section 517 of the Foreign Assistance Act of 1961, the country is coded as a 1.

The variable for the second hypothesis regarding shared institutional memberships, estimated and reported in models 4 through 6, was measured in the same way as in Chapter 3. This variable is a tally of the total number of memberships that each state shares with every other state in the international system. This measurement is scaled to reflect practical changes in the variable. A one unit increase in the scaled shared membership variable translates to an increase in ten memberships.

[136]In some circumstances, BIAs did not enter into force as part of a formal ratification process. In the United States, BIAs were not submitted to the Senate for their advice and consent, but were considered to be executive agreements.

[137]Bahrain does not appear in the text of ASPA as a major non-NATO ally, but was given the designation in October 2001 by the U.S. Department of State via President Bush and was treated as such with respect to the BIAs (U.S. Executive Office of the President 2002).

This measure is more practical because if a state (Romania) joins just one IGO (the EU) its number shared memberships would increase by 27. There are few, if any, instances that could result in a one membership increase.

The rule of law hypothesis proposed by Kelley (2007) is tested using data collected from the World Bank Governance Indicator data set (Kaufmann, Kraay & Mastruzzi 2008). This indicator potentially ranges from -2.5 to 2.5 with higher values associated with more respect for the rule of law. To test the regime type hypothesis, I use Freedom House's Freedom in the World composite index that ranges from 2 to 14, with higher values associated with less democratic regimes.[138]

The variable defense pact is used to capture whether close strategic relationships should compel states to conclude BIAs, and is a dichotomous indicator which reports whether a state shared an explicit alliance relationship with the United States during the period of the BIA campaign. This alliance data is taken from EUGene 3.1 (Bennett & Stam 2000).

The variable "full sanction" measures whether a state received a complete withdrawal of IMET, FMF, or ESF assistance during the period in which it refused to conclude a BIA. This data was obtained from the U.S. Department of State "Congressional Budget Justification for Foreign Operations" (U.S. Department of State 2009).

Variables that assess the economic costs that weigh on states' decisions to conclude a BIA are measured through a series of economic indicators. Economic strength is measured as the logged value of a state's per capita Gross Domestic Product. This data is collected from the World Bank's development indicators data set (World Bank 2008). Lower values are posited to reflect weaker economies and

[138]Polity VI (Marshall & Jaggers v2006) was also included as a robustness check and reports very similar results to the Freedom House variable, but has been omitted given the number of observations dropped from the analysis.

an increased likelihood of ratifying a BIA.

Hypothesis 10 suggests that bilateral trade flows should capture the relationship of trade dependency between a country and the United States. Higher trade, as a percentage of GDP, with the United States should correspond should lead to increased economic vulnerability and correspond to successful linkage. Trade data are collected from Gleditsch's bilateral trade data set (Gleditsch 2002).[139]

Finally, I have suggested that BIAs were time sensitive, and states that would have suffered greater losses by having their aid cut signed more quickly. To assess whether the U.S. strategy was successful, I analyze whether countries that faced greater threats responded more readily to linkage strategies than did countries that did not face the same risks. To do so, I analyze a duration model that predicts time until ratification of a BIA. After a country has ratified a BIA, it exits the data set. The main variable of interest is the size of sanction that the United States either threatened, or in some cases, carried out. These data was collected from the "Congressional Budget Justification for Foreign Operations" (U.S. Department of State 2009).[140] The amount of aid requested by the U.S. government is used to determine whether a country experienced a sanction as a consequence of not concluding a BIA.[141]

[139]Logistic regressions analyzed for this research use indicators for total bilateral trade with the United States and total exports to the United States (to capture the dependence on U.S. markets for exports). Both variables report similar results individually and for the models as a whole. Total bilateral trade flow is reported here.

[140]These data, available from the U.S. Department of State, include a breakdown of the amount received from the previous fiscal year, the amount currently allotted for the current fiscal year, and the amount requested for the following fiscal year. Data for actual and requested allotment were collected for IMET, FMF, and ESF spigots (types of aid). This analysis uses the spigot amount requested to track changes in countries' aid allocation as a result of BIA activity.

[141]Yearly fluctuations in budget requests are to be expected and should not necessarily reflect the presence of a sanction. I account for the possibility that these are simply yearly budget adjustments statistically by using an alternative measure of sanction in which the dependent variable is actual spigot amount in a given year and the predictors of spigot amount are the lagged (actual) spigot amount, a time trend, and country fixed effects. I predict the residuals from the model, negative residuals should indicate a sanction. This method was used in previous work by Nooruddin and Payton (2007). Spigot request and the residuals are correlated at 0.90.

Table 5.2: Summary Statistics

Variable	N	Mean	Std. Dev.	Minimum	Maximum
GDP per capita (log)	157	7.50	1.59	4.41	10.72
Trade (% GDP)	153	9.53	13.25	0	94.02
Size of Sanction (% GDP)	158	0.16	0.69	0	6.11
Full Sanction	166	0.14	0.35	0	1
Defense Pact	166	0.34	0.48	0	1
Freedom House	163	6.30	3.74	2	14
World Bank Rule of Law	163	-0.06	0.99	-1.91	2.01
Ratify ICC	166	0.55	0.50	0	1
Exempt	166	0.20	0.40	0	1
Shared Membership	153	590.75	107.14	256.20	810.40

To assess the success of the U.S. bilateral linkage strategy I conduct two sets of analyses. The first reports cross-sectional maximum likelihood estimations that predict the probability of of concluding a BIA with the United States.[142] The second analysis is a duration model that predicts how quickly countries complied with U.S. requests, or alternatively how eager these countries were to avoid the punitive costs associated with resisting BIAs.

Results and Discussion

Table 5.2 reports the summary statistics for all of the the independent variables. In total, 93 countries in the data set ratified a BIA. Of those that responded affirmatively to the U.S. linkage strategy by concluding an agreement, 37 were at risk of losing military assistance under the American Servicemembers Protection Act. Some 56 countries concluded BIAs that were either exempt (e.g. Israel, Egypt) or did not ratify the Rome Statute of the ICC (e.g. Algeria, Nicaragua, Thailand). A list of countries along with their BIA and ICC status appear in the appendix of this

[142]Since data was collected longitudinally over a series of 66 months, I restrict the data set to the relevant time period. The start period is 1 January 2003 (just months before ASPA came into effect) and end each country's presence in the data once they have ratified a BIA. Therefore, continuous variables are only averaged on the period prior to the conclusion of a BIA.

chapter.

Why would a state that was not at risk of losing aid conclude a BIA? In some cases, states that remained opposed to the ICC saw BIAs as an opportunity to voice opposition to the Court. Alternatively, some states saw their ratification of the ICC as an eventuality and preemptively concluded a BIA to avoid any potential losses as a result of ICC accession. According to one report prepared for the Congressional Research Service,

> The withholding of military assistance to members of the ICC may also be seen as an effort to coerce countries to refuse to ratify the Rome Statute or to sign an article 98 agreement, which could appear to some as undermining the ICC and negating the Administration's stated intent to respect the decisions of other countries to join the ICC (Elsea 2002, 22).

So while the thrust of the U.S. linkage strategy was aimed at states that had already ratified, the United States was successful in gaining the cooperation of countries outside of the primary target category. The pressure to conclude a BIA for ICC non-parties was different and perhaps less acute for ICC parties, at least in the short term, but it is important to consider that these countries were also subjected to U.S. requests to conclude BIAs. To adjudicate between these differences, I consider the entire sample of countries that the United States asked to conclude BIAs as well as only those countries that were subjected to the risk of losing their military and economic assistance specified by the American Servicemembers Protection Act.

Logit Analyses of BIA Ratification

The first two models in Table 5.3 report results for the full sample of countries, though model 1 does not include the interaction between ICC ratification and the

Table 5.3: Logistic Analysis of Country Decisions to Conclude a BIA

Variable	*Model 1*	*Model 2*	*Model 3*	*Model 4*	*Model 5*	*Model 6*
GDP per capita	-0.839*	-0.889*	-1.875	-0.725	-0.731	-1.877*
	(0.428)	(0.446)	(1.112)	(0.448)	(0.466)	(0.664)
Trade w/U.S. (% GDP)	0.087*	0.125*	0.152*	0.091*	0.129*	0.133
	(0.021)	(0.031)	(0.065)	(0.022)	(0.033)	(0.072)
Full Sanction	-3.736*	-6.032*	-8.465*	-3.832*	-5.766*	-8.571*
	(0.793)	(1.228)	(2.283)	(0.823)	(1.202)	(3.068)
Defense Pact	-1.467*	-2.366*	-1.357	-1.476	-2.230*	-0.682
	(0.754)	(0.921)	(1.748)	(0.826)	(0.893)	(1.274)
Freedom House score	0.046	0.026	0.584	0.174	0.141	0.690
	(0.754)	(0.105)	(0.633)	(0.142)	(0.124)	(0.590)
Exempt	-2.530*	-2.997*	—	-2.325	-2.605*	—
	(1.059)	(0.913)		(1.300)	(1.121)	
Rule of Law (World Bank)	0.084	1.258	-0.235	0.102	1.045	0.380
	(0.648)	(0.742)	(1.219)	(0.732)	(0.729)	(1.320)
Ratify ICC	0.674	1.359	—	1.730*	2.205*	—
	(0.615)	(0.722)		(0.765)	(0.809)	
Rule of Law X Ratify ICC	—	-2.915*	—	—	-2.687	—
		(0.704)		(0.766)		
Shared Membership	—	—	—	-0.006*	-0.005*	-0.015*
				(0.002)	(0.002)	(0.009)
Constant	6.506	7.448*	14.710	7.785*	7.879*	23.447*
	(3.140)	(3.312)	(9.773)	(3.530)	(3.644)	(7.131)
N	151	151	57	146	146	63
Sample	All	All	At Risk	All	All	At Risk
Log-Likelihood	-52.435	-45.718	-10.106	-47.220	-42.383	-7.240
Pseudo-R^2	0.50	0.56	0.74	0.53	0.58	0.83

Notes: *p<0.05 Cell entries are estimated coefficients from logit models. Robust standard errors are reported in parentheses. Models 4-6 are based on yearly data for 2006 because membership data has been updated by the author for this year.

rule of law variables. The third model reports results when the sample of countries is restricted to those "at risk" (i.e. ICC state parties and are not exempt). While the number of observations in this sample is less than ideal for maximum likelihood analysis, a potential criticism of the first two models may be that it includes countries in the analysis that feel linkage pressures less acutely as did those countries that were directly at risk of losing military and economic aid. The basic relationships hold in the third model, though unsurprisingly, some of the variables do not obtain significance at the conventional 95 percent confidence level. I focus discussion of the results on the second model which includes the interaction, as it is the most appropriate model for the testing the above hypotheses.[143][144]

One of the most important results of this analysis is the European Union candidacy variable which has been dropped from all of the models because candidacy perfectly predicts the absence of BIA ratification. This result speaks directly to the success of trans-institutional linkage strategies on the part of the EU and its efforts to solidify the ICC regime. Only one current candidate, Macedonia, has ratified an agreement with the United States. However, because Macedonia ratified a BIA it exits the sample just prior to submitting its formal application of EU membership. By and large, however, the stern warnings issued by EU officials appear to have been heeded, including Romania's decision to back down from its initial position in which it signed an agreement.[145] There are other indications that the EU used

[143]In model 2, the coefficient for Full Sanction is large (-6.032). Coefficients this large in maximum likelihood models may indicate that the model is unidentified and that the results are driven by the variable with the large coefficient. However, when this variable is omitted from the analysis, the signs and significance of the variables do not change in substantively meaningful ways. The one exception is the "Ratify ICC" variable which flips signs (-1.077) attains significance at the 0.05 level. This result should not be overemphasized, however, considering it is a lower order interaction term. In model 3, omitting full sanction does not result in any sign changes, though the trade variable loses significance.

[144]A likelihood ratio test of models 1 and 2 indicates that the full model (model 2) is the appropriate model, $\chi^2 = 13.43$, $p < 0.0002$.

[145]It remains unclear whether Romania chose not to conclude the agreement because of its eventual NATO admission or because EU Council warnings to prospective members.

trans-institutional linkage to prevent countries not even eligible for membership in the organization from signing BIAs. These efforts will be addressed in the following section.

Models 4 through 6 estimate the same models as the first set, but incorporate a measure for institutional embeddedness (shared membership). These models report very similar results, while also showing that shared membership exerts a negative effect on the probability of concluding a BIA, as predicted by the theory. Another interesting result arising from these models is that the exempt and defense pact variables appear to be less robust, potentially indicating the competing effects of shared membership, since states that tended to receive exemptions or have defense pacts shared memberships with the United States, but also with many other states belonging to "pro-ICC" IGOs.[146] For ease of comparison, the following section interprets the substantive effects, concentrating on the second model as these data more accurately reflect the data in the event history model.

In the first model, political explanations for the successful conclusion of a bilateral immunity agreement with the United States suggest that states that ratified the Rome Statute were *not* necessarily more likely to resist U.S. entreaties, as the variable, "Ratify ICC" does not approach statistical significance at any conventional level. Countries that respect the rule of law are also no less likely to ratify a BIA than are other countries.[147]

Model 2 includes an interaction term to capture the relationship predicted by the hypothesis that states that had ratified the Rome Statute of the ICC and respect the rule of law, should be less likely to conclude a BIA with the United

[146]In a difference of means test, shared memberships among exempt countries are higher than for those countries that are not exempt. The same is true for countries that share a defense pact with the United States. Both tests are significant at the 0.001 level, and thus, the null of no difference between the means is rejected.

[147]The model reports very similar results when the International Country Risk Guide measure for law and order (Political Risk Services 2003).

States. Considering the results from the first model, that ICC ratification and the rule of law had no bearing on likelihood on this outcome, the results of the second model point to the more complex relationship between ICC ratifiers and rejecting U.S. linkage attempts. The interaction term is significant beyond conventional levels ($p< 0.001$), indicating that state parties to the ICC with more respect for the rule of law are indeed, less likely to ratify a BIA.[148] Figure 5.2 is shows the interactive effects of ratifying the ICC at different levels of the rule of law.[149] The circular nodes on the center line represent coefficients for "ratify ICC" at low, medium, and high levels of the rule of law. The first five points lie above zero indicating that at low and intermediate levels of the rule of law the effect of ratifying the ICC on the probability of concluding a BIA is positive.[150] That is, when the rule of law is relatively low, ratifying the ICC will increase the probability of concluding a BIA.

Alternatively, when countries exhibit high levels of the rule of law, ICC ratification exerts a negative effect on the likelihood that a state will conclude a BIA. Figure 5.3 returns similar results for the relationship between rule of law and BIA ratification when ICC ratification varies between zero and one. If a state is a party to the Rome Statute then the rule of law has a negative effect on the probability of BIA conclusion, the opposite is true for non-parties.[151]

[148]The substantive interpretation of interaction terms in nonlinear models (i.e. maximum likelihood models) has remained the subject of considerable debate among methodologists in the social sciences. Here I present graphically the predicted probabilities as is conventional in political science literature. However, following recent work by Braumoeller (2004), Brambor et al. (2005) and Norton et al. (2004), the substantive interpretation of the coefficient and especially the variance of the term may require greater attention.

[149]Figures 5.2 and 5.3 are based upon Braumoeller (2004). STATA code for generating graphs available from http://polisci.osu.edu/faculty/braumoeller/custom/checklist.html.

[150]It should be noted that the area of the graph in which zero lies between the confidence bands does not achieve significance.

[151]As Table 5.3 indicates, the lower-order terms of the interaction approach significance, ratify ICC: $p < 0.06$ and rule of law: $p > 0.09$. After rescaling the rule of law variable (to reflect a 0-5 scale versus -2.5–2.5) by performing an additive transformation, the coefficient for ratify ICC increases almost seven-fold and the p-value becomes highly significant ($p < 0.001$). This result simply indicates that when rule of law is zero (the lowest value possible once rescaled), ratify ICC will have a strong positive effect on the probability of concluding a BIA.

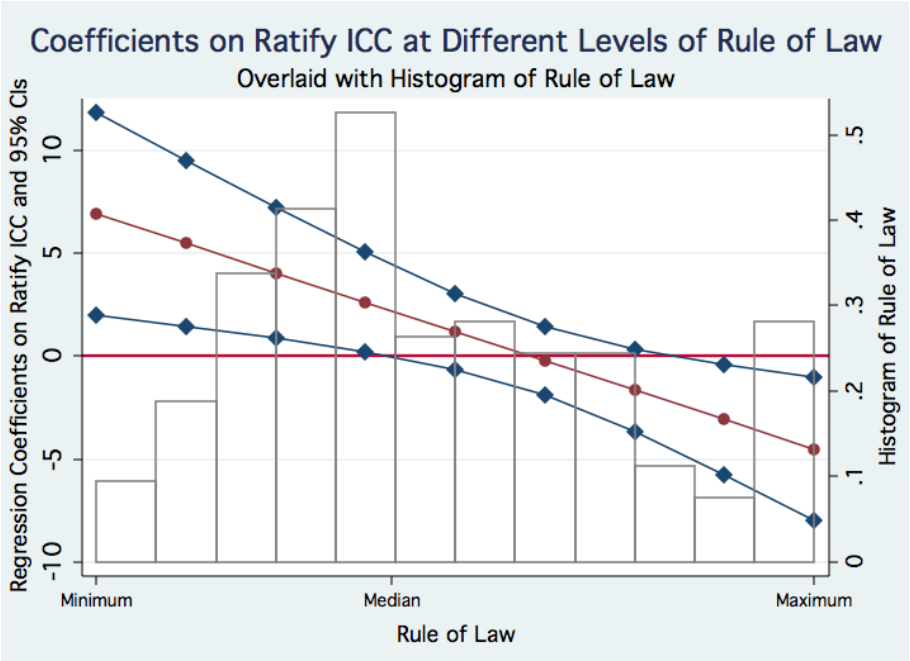


Figure 5.2: Interpreting the Interaction Term: The Effect of Ratify ICC at Varying Levels of the Rule of Law

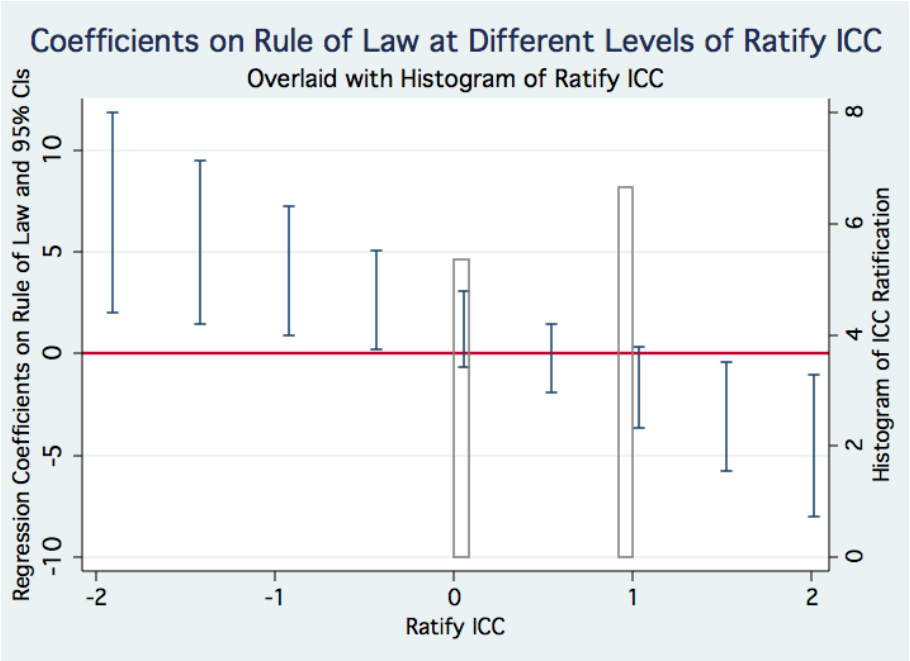


Figure 5.3: Interpreting the Interaction Term: The Effect of Rule of Law at Varying Levels of Ratify ICC

Turning to the substantive effects of the interaction, Figure 5.4 depicts the predicted probability for changing values of the interaction term. The solid line shows the interaction when a state has neither a defense pact with the United States nor was exempted under ASPA, and the dotted line represents the interaction when these two conditions are present. While both lines reveal an overall decrease in the probability of ratification as values of the rule of law increase, the dramatic drop in the exempt/defense pact line emphasizes the importance of considering different covariate profiles for the probability of BIA ratification. At the extremes of the rule of law variable (note the relatively even distribution of cases across the range of the variable in Figure 5.2), there is a minimal difference between states that have received exemptions and those that have not; however, these two groups diverge quite sharply in the intermediate range. The effect of ICC ratification on whether a state will respond affirmatively to U.S. requests is conditional upon higher levels of the rule of law. Because states often commit to treaties to which they have no intention of abiding (especially in the case of human rights treaties), this result sheds light on the conditions under which states will abide by their treaty commitments and when they will not.

Turning to the remaining political variables, consistent with the first model, regime type has no bearing on the likelihood that a state will agree to a BIA. Given the unpopularity of the BIAs and the aggressive posture towards the ICC that many states believed the United States to display, I expected countries in which leaders are accountable to electorate to oppose signing a BIA; however, domestic regime type is not significantly associated with the likelihood of concluding an agreement with the United States. One explanation for this result is that bilateral agreements, made between two countries, most often without the presence of an international organization, are more prone to secrecy or simply receive less attention in the in-

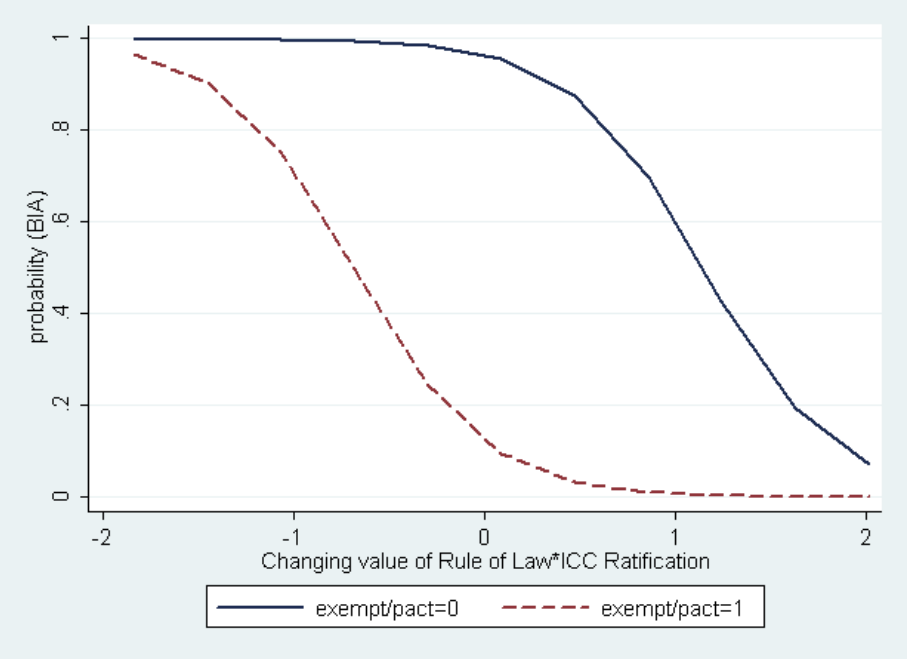


Figure 5.4: Predicted Probability of a BIA for Rule of Law & ICC Interaction

ternational and domestic media. This is especially true for the BIA case in which a number of countries signed and ratified BIAs on the condition that the U.S. government not release their identities. I explore this result further in the concluding section.

States that have signed a defense pact with the United States are also significantly more likely to resist BIAs. This result runs counter to arguments that have been made in the literature, specifically that allies should be more likely to engage in linkage behavior with each other than are adversaries; however, Drury (1998, 507) finds no support for the impact of enmity/amity on sanctioning success. An alternative argument suggests that states that maintain a defense pact with the United States are important strategic partners that the administration should have been loathe to alienate, especially at a time when the U.S. government was seeking support for wars in Iraq and Afghanistan as well as the broader war on terrorism.

Furthermore, many of the countries maintaining such pacts with the United States are also members of IGOs that adopted common positions in support of the ICC, such as EU and OAS countries.

The pattern for exemptions also suggests an interesting dynamic. Some of the countries receiving exemptions also benefitted from considerable aid in the form of IMET, FMF, and ESF funds.[152] Thus, perhaps some of the most vulnerable states were absolved of the requirement of concluding a BIA in order to keep their aid. Unsurprisingly, exempt countries were far less likely to conclude a BIA than were non-exempt countries.

The substantive impacts of having a defense pact and being granted an exemption by the United States are both quite large. While not all states that maintained a defense pact with the United States were granted an exemption under ASPA, many were, reflecting the desire of the United States not to alienate important strategic partners. The effect of having a defense pact and receiving an exemption is reflected in Table C.1, which gives the predicted probabilities of BIA ratification under specific covariate profiles.[153] The baseline probability of signing a BIA when all dichotomous variables are set to zero is 0.89. The probability of concluding a BIA for an exempted ICC party that shares a defense pact with the United States is 0.09. Meanwhile, the probability for ICC parties that were neither formal allies nor received an exemption is 0.95 by comparison. A more comprehensive table of predicted probabilities appears in the appendix of this chapter.

[152]In the case of Jordan, IMET, ESF, and FMF funds constitute about five percent of the country's gross domestic product.

[153]All combinations are not presented here because some categories are mutually exclusive. For instance, a state could not both receive an exemption and be sanctioned.

Table 5.4: Predicted Probabilities of Ratification

Defense Pact	Exempt	Sanction	ICC Party	Probability	Conf. Interval
0	0	0	1	0.95	[0.90, 1.01]
0	0	0	0	0.84	[0.71, 0.97]
1	1	0	1	0.09	[-0.06, 0.24]
0	0	1	1	0.05	[-0.02, 0.12]

Notes: Predicted probabilities are calculated using *S-Post* (Long & Freese 2001) in STATA. Confidence intervals (95%) are calculated using delta method. All other variables set to their means.

The results for states that receive a full sanction enhance our understanding of the problem of observing success in cases of the use of economic statecraft. Hypothesis 7 suggests that states that if states are willing to risk sanction they will be less likely to back down from U.S. linkage pressures once the sanctions have been enacted, because, despite having knowledge of the consequences of resisting in the threat phase, they choose to remain steadfast in their opposition. Thus, these states reveal themselves to be the hard cases that have frustrated those who study economic sanctions as a foreign policy tool. Sanctioned countries are far less likely to conclude a BIA than those than those that avoid sanction altogether, even though these countries have an opportunity to reverse the sanctions in the future if they comply with U.S. requests. The probability of ratifying a BIA if a country received a full sanction, complete withdrawal of IMET, ESF, or FMF aid, is 0.05. Finally, countries in the "at risk" category (ICC party and non-exempt) had a higher probability of concluding a BIA than did non-party states, though non-party states did ratify BIAs with some frequency.

States that maintained their opposition to the BIA linkage strategy did so for a variety of reasons, but ultimately they had to make a cost/benefit calculation that led them to decide that resistance was less costly than capitulation. Brazil, for example, made the case that the cost of the aid cuts was negligible and thus,

compromising their ability to refer cases to the ICC was less desirable than the $800,000 the country stood to lose. As mentioned previously, the EU went to some effort to prevent states outside of the organization from concluding BIAs. In another trans-institutional linkage strategy, the EU promised members of the Africa Caribbean and Pacific Union compensation if they refused BIAs. Some states that received a larger percentage of aid relative to their GDP, looked to promises made by the European Union to compensate them if they had suffered aid losses due to BIA resistance.[154]

Turning now to the economic variables, hypothesis 9 posits that states with stronger economies are in a better position to resist undesirable attempts at linkage because their economies should be less dependent on foreign aid. Across all models states with a higher GDP per capita are less likely to conclude BIAs.[155] Figure 5.5 shows the substantive impact of wealth on the likelihood of ratification. Figure 5.5(A) illustrates clearly that states with very weak economies were almost guaranteed to ratify a BIA when other variables are set to the means or modes (i.e. the defense pact, sanction, and exempt variables take on a value of zero). However, when looking at the effects of GDP on the next most common covariate profile, where defense pact and exemption take on a value of one, the probability of a BIA is markedly lower though still decreases for wealthier states.[156]

The trade variable also performs as expected across all models. As the level of

[154]In a 2003 meeting of the Africa Caribbean Pacific-EU Parliament a resolution was passed which stated that "ACP countries that are suffering financially because of their refusal to submit to pressure concerning the International Criminal Court receive compensation through extension of their cooperative programmes," (ACP-EU Joint Parlimentary Assembly 2003, para. 20).

[155]The coefficient in model 3 achieves significance at the 0.10 level.

[156]As the confidence bands reveal, there are relatively few observations for wealthier states that have concluded a BIA in Figure 5.5 (A) and relatively few observations for poorer countries that have not concluded a BIA in (B). This is, in part, driven by the interaction between receiving exemption and being a poorer country, a relatively rare occurrence. This in turn raises questions about which types of countries the U.S. government chose to target (i.e. vulnerability of potential targets).

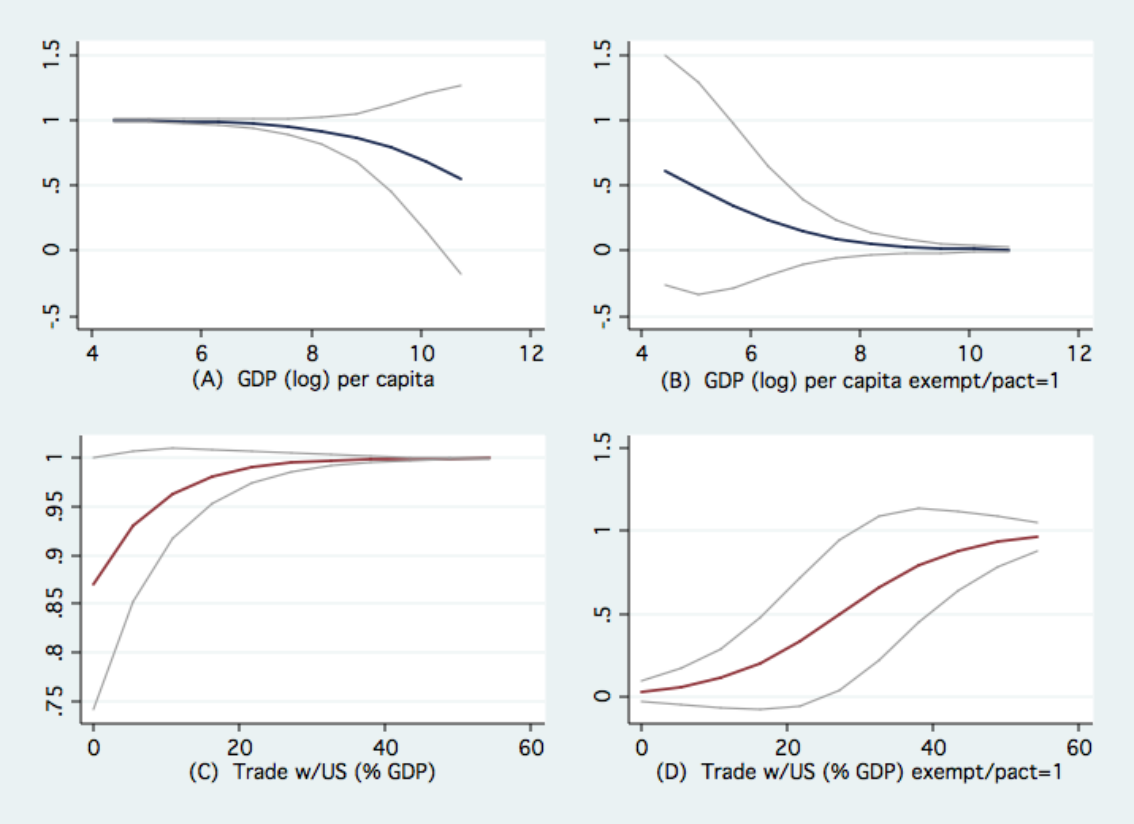


Figure 5.5: Probabilities of a BIA at Varying Levels of GDP and Trade

trade (as a percentage of GDP) between a country and the United States increases a country is more likely to respond affirmatively to U.S. linkage attempts and conclude a BIA. Figure 5.5 (C) and (D) show increasing probabilities of ratification for ICC parties that have no exemption or defense pact and those that have, respectively. These results confirm the argument that states that depend on trade relationships should be more responsive to U.S. linkage attempts. While ASPA and corresponding efforts made by the U.S. government only explicitly link support for BIAs to the three types of aid, there is some indication that states that depend heavily upon strong economic ties with the United States feared backlash in areas beyond those specified by the congressional legislation. One Colombian elected official offered that President Uribe bowed to U.S. requests after initially resisting because of fears that

the United States would also eschew potential trade deals. The official went on to say, "We were made to understand indirectly that it wasn't only military aid at risk, but also our close bilateral relations with the United States which are critical to us" (Tayler 2004).[157]

In sum, given concerns and some allegations that the U.S. government made attempts to link issues beyond military assistance (IMET, FMF) and economic support funds (ESF), states with valuable trade relations with the United States may have been reluctant to resist BIAs on top of the explicit linkages made by Congress and the Bush administration.[158]

The analysis above reveals that states responded to U.S. attempts to link military assistance and support for BIAs in very different ways. Both political and economic explanations paint a more complete picture of when linkage efforts will be successful. Weaker more dependent countries have a higher probability of responding more favorably, while richer countries are more likely to resist. The inclusion of both the defense pact and exemption variables are key to understanding the underlying dynamics which make states susceptible to linkage attempts by the United States. It is unsurprising that most exempted countries did not conclude BIAs; however, the United States chose to exempt the states with which it should have had more political influence (i.e. allies). Controlling for other factors, states that maintained formal alliances were less likely to ratify. This result could be due U.S. reliance on these countries for cooperation in the areas of security and defense, revealing the reciprocal nature of dependency. The waivers granted by the United States point to the complications arising from linkage strategies that may alienate valuable strategic

[157]The United States is Colombia's largest export market. According to the U.S. Trade Representative, Colombian trade with the United States reached $18 billion in 2007 or roughly 7 percent of the country's GDP(U.S. Trade Representative 2008).

[158]Beyond the potential impairment of trade relations alleged by Colombia, other states including Benin and Croatia suggested that U.S. administration officials made veiled threats beyond the explicit ones in the American Servicemembers Protection Act (Coalition for an ICC 2009).

partners.

Across the six logistic regressions presented here, all of the variables perform consistently, although some of the political variables do not accord with original expectations. In these cases, there are viable alternative hypotheses to explain the results presented above. Perhaps most notably, regime type has virtually no effect on whether a state will respond favorably to the United States. I suggest that because the BIA campaign was conducted on a bilateral versus a multilateral basis the agreements largely remained out of the public eye, and therefore publicly accountable leaders felt less pressure from their domestic constituencies and alternatively more freedom to conclude a BIA and receive U.S. aid. However, the more visible and unpopular the policy, the more likely democratic governments should be to resist these policies.

Is there any evidence to suggest that BIAs were more secretive than multilateral attempts to secure immunity through the UNSC? One indication is that U.S. officials claim that they were encouraged by their European allies to pursue immunity bilaterally in an effort to move forward with the peacekeeping mission in Bosnia and prevent any further deadlock on the Security Council.[159] Second, the following exchange between a reporter and State Department spokesman, Richard Boucher, points to both the sensitivity of the BIAs and also to the ability of governments to prevent bilateral agreements from becoming public information, even in democracies.

[159]Despite Europe's misgivings over U.S. immunity requests, the State Department contends that it was their European counterparts on the Security Council that urged them to pursue bilateral agreements, rather than proceed with full immunity through the UN. In an address to the Organization for Security and Cooperation in Europe in 2004, one U.S. diplomat responded to the criticism leveled at the United States for its policies regarding the bilateral agreements indicating, "I should note that the U.S. decision to seek these bilateral agreements originated during an open debate in the U.N. Security Council on Resolution 1422. A number of ICC proponents, including European Union members, encouraged us not to resolve these issues in the Security Council, but rather to do so on a bilateral basis" (U.S. Department of State 2004*b*).

QUESTION: Richard, again, you said that you have got over 50 countries that have concluded. Can you say how many countries you are still negotiating with at this moment?

MR. BOUCHER: I can't say how many we are still negotiating with. We are certainly in touch with a number of other governments, and we would hope to be in touch with more – as many as wish to conclude these agreements, we would expect to negotiate with. Yes.

QUESTION: Richard, you said over 50. Can you fill us in on the last few? Because I think the last count we had was 46 or so, so there must have been some over the weekend or the last few days.

MR. BOUCHER: Yes. There have been a couple that are being worked on. I don't have the – I have got the 43 who are publicly declared, but frankly, I don't have a breakdown as to which of those are the most recent – so.

QUESTION: And you've got seven secret ones now?

MR. BOUCHER: More than seven who have signed [*sic*] agreement, but have asked not to be identified at this stage.

QUESTION: Exactly. How many of those?

MR. BOUCHER: There is [*sic*] more than seven (*DPS*, Jun. 30 2003).

The logit models reveal mixed results for the success of U.S. linkage strategies. Many economically vulnerable countries submitted prior to the enactment ASPA provisions, while others chose to resist. However, hypothesis 8 suggests the magnitude of aid reductions should have an effect on whether or not states will acquiesce. Simply put, does the size of the aid reduction play a role on the rate of capitulation for states facing cut-offs? Answering this question allows for investigation of the success of linkage strategies within the threat period when many states acquiesced before being penalized by ASPA. The primary variable of interest is not whether a state was sanctioned, but the size of the aid reduction relative to a country's GDP. The greater the reduction, the quicker a state should be to conclude a BIA.

Duration Analysis of BIA Ratification

The BIA campaign precipitated shifts in the U.S. State Department's foreign operations budget, as aid requests were being adjusted for cuts in the IMET, FMF, and eventually ESF spigots.[160] Recalling Figure 5.1 which shows the overall pattern of signing and ratification, many states rushed to conclude BIAs prior to the enactment period of the ASPA mandated aid cuts. Using the same set of explanatory variables as in the logit models and adding a variable that captures the size of the potential aid reduction, I estimate a duration model to predict time until BIA ratification.[161]

Table 5.5 reports results that are largely consistent with the logit models. Values for hazard ratios above one indicate that the rate at which countries conclude BIAs is decreasing and thus the rate at which countries resist BIAs is increasing. While the sanction variable in this model still suggests that states that had their military and/or ESF assistance fully cut were disinclined to ratify BIAs (the risk for sanctioned countries was 40 percent smaller), the size of the sanction, or the spigot request, indicates that the magnitude of the threatened aid reduction relative to the size of a state's economy played a significant role in how quickly that state would

[160]References to cuts in military assistance can be found in the detailed country-by-country reports of the Foreign Operations Budget. The following is a typical example of a direct reference to the BIA policy: "Because Croatia so far has not signed an agreement under Article 98 of the American Service-Members' Protection Act, it is currently not eligible to receive Foreign Military Financing (FMF) funds, International Military Education and Training (IMET), funds and Excess Defense Articles (EDA) under Section 516 of the Foreign Assistance Act" (U.S. Department of State 2004*a*, 354-55). Or, for a country that did ratify a BIA: "The Government of Honduras, a strong supporter of the war on terrorism, signed and ratified an ICC Article 98 Agreement with the United States and has deployed troops to Iraq in support of Operation Iraqi Freedom" (U.S. Department of State 2004*a*, 494).

[161]The Cox Proportional Hazards model obtains estimates by maximizing the partial likelihoods of observations that fail and exit the risk set (Box-Steffensmeier & Jones 2004). It should, therefore, achieve estimates quite similar to the maximum likelihood estimates presented above. Although the duration model might report somewhat redundant results from the logit models, the addition of the aid/spigot request variable highlights the importance of taking the timing of BIA ratification into account when considering the effectiveness of the linkage strategy, as the size of the sanction could impact how quickly states choose to leave the risk set.

conclude a BIA. Specifically, when the aid request increases by one percentage point, the risk of ratifying a BIA is approximately 53 percent higher.[162] As the amount of aid requested in the previous fiscal year increases, the risk of concluding a BIA also increases.

Table 5.5: Event History Estimates of BIA Ratification

Variable	Hazard Ratio
Size of Aid Request (% GDP)	1.529*
	(0.297)
GDP per capita	0.712*
	(0.108)
Trade w/U.S. (% GDP)	1.03*
	(0.008)
Full Sanction	0.60*
	(0.027)
Defense Pact	0.320*
	(0.136)
Freedom House score	0.959
	(0.044)
Exempt	0.079*
	(0.068)
Rule of Law (World Bank)	1.73*
	(0.416)
Ratify ICC	1.271
	(0.382)
Rule of Law*Ratify ICC	0.294*
	(0.294)
N	4840
No. Countries	150
Log-Likelihood	-316.256

Notes: Cell entries in the first column are estimated hazard rates for a Cox Proportional Hazard model. Hazard ratios above 1 indicate decreasing time until BIA ratification. Standard errors are clustered on country and reported in parentheses.

[162]It should, however, be noted an increase of one percentage point for this variable can be interpreted as moving from the tenth to the 95^{th} percentiles.

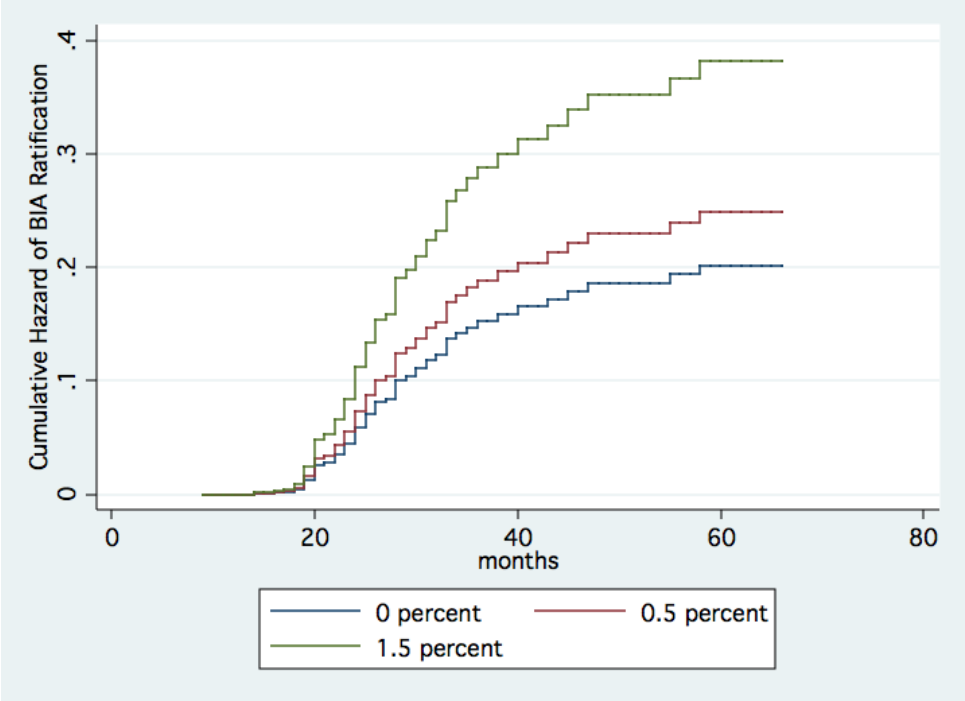


Figure 5.6: Risk of Ratifying a BIA at Different Levels of Aid Request

Figure 5.6 depicts the hazard rates for three separate values of the spigot request variable. While the cumulative hazard rate increases over time, the three lines show that when aid request totals zero, 0.5, and 1.5 percent of a country's GDP the hazard rate increases, respectively. In terms of the broader literature on economic sanctions, the average sanction totals approximately 3 percent of a country's GDP (Hufbauer, Schott & Elliot 1990), whereas the ASPA mandated cuts accounted for, on average, 0.16 percent of a country's gross domestic product. This analysis reveals that in the case of BIAs, sanctions were less costly than average, but were relatively successful.

Discussion

A comparison of the cross-sectional logits and the duration analysis highlights the importance of accounting for the dynamic process of BIA ratifications in under-

standing the success of the U.S. linkage strategy. As the economic pressure on states mounted, many acquiesced under the threat; whereas once the sanctions were firmly in place, there was very little change, as resistors held their ground. The combination of several important factors, both political and economic, allowed the United States effectively to link bilateral immunity agreements and military and economic aid. Hierarchical transactions in which one party maintains, almost exclusively, the ability to determine the terms of the contract characterize the type of linkage that the United States employed. Linkage of a bilateral nature is often asymmetrical, but importantly, both parties to the contract receive some good or service if the contract is fulfilled. As a major power with the largest foreign aid budget in the world, the United States possessed the economic and political leverage to gain a swift response to its opposition of the ICC in the form of BIAs. Ninety-four countries responded affirmatively to U.S. linkage attempts. Some acceded willingly and without complaint. Others, perhaps the cases in which linkage was most successful, reluctantly concluded BIAs, complaining of arm twisting but also citing need and desire to maintain U.S. economic support. Many small, developing countries found themselves in the latter position, as the president of Guyana stated, "I need military cooperation with the US to continue, it's as clear as that" (*Agence France Presse*, 18 Jul 2003).

In some countries, the agreements accompanied by the secretive nature in which they were carried out became the source of heated debates among opposition parties among branches and parties in government. One such debate emerged in Nigeria, in which the Nigerian Senate objected to the president's conclusion of a BIA on the grounds that it violated the Rome Statute, noting that the Nigerian constitution calls for treaties to be enacted by the National Assembly and not by the executive (*Africa News*, 16 Aug 2005). Despite these disagreements and misgivings,

many countries responded affirmatively to the bilateral linkage strategy employed by the United States. Overall these countries were poor, dependent on U.S. trade relationships, and reliant upon U.S. foreign aid.

The countries that resisted linkage in spite of sanction, tended to be wealthier, though this was not always the case, and possessed other valuable trade and aid partners including the European Union. Resistance is not solely economic. The EU used its connections to candidate countries and its shared memberships with African, Caribbean, and Pacific countries to persuade them not to sign BIAs in exchange for monetary compensation or membership in the organization. The EU had already demonstrated the importance of the ICC when its members negotiated so vehemently for a strong, independent court, thus, it is hardly surprising that the organization, now with the support of France and the UK, would push against U.S. efforts to undermine the new Court. So while the United States met with some success over its BIA strategy, the potential damage to the Court was mitigated by European efforts to cement the ICC regime and the willingness of weak states (those like Kenya, Mali, and Trinidad) to resist in the face of economic sanction, in exchange for European support.

Political factors play a major role in whether we should expect a state to resist or submit to linkage attempts. States that are allies are less likely to submit to linkage attempts, perhaps because allies are cognizant of the value of their strategic contribution. Political factors also determine whether a state will subject other actors to pressure. While the United States asked every country to conclude a BIA, including valuable allies like the United Kingdom, Australia, and Israel, it also exempted them from any possible sanction. A few exempted countries chose to ratify BIAs, most did not. Several possible explanations exist for U.S. decisions to exempt these countries. First, the inception of the ICC came at a time when the United

States was most vulnerable, just months after the September 11 attacks, when Washington was attempting to sort its allies from its enemies. In gathering support for a war in Afghanistan and another in Iraq, as well as the global war on terrorism, the Bush administration had to tread carefully. Delivering an ultimatum such as 'sign a BIA or else' could alienate long-standing allies and jeopardize cooperation in other high priority areas. Some U.S. policy makers publicly expressed these very concerns. Sen. Christopher Dodd (D–CT) suggested in floor debate on the American Servicemembers Protection Act, "It does great damage to the United States at a critical time when we are trying to build support in dealing with the issues of terrorism." (*Congressional Record*, 6 Jun 2002).

A second explanation points to the potential for resistance to indicate weakness on the part of the linkage source. Under this scenario, the U.S. government would have chosen to exempt countries on the basis that they had the means and the ability to resist U.S. linkage attempts and that this resistance could weaken U.S. reputation. Why then would the U.S. government have chosen not to exempt all potential resistors? Linking economic aid to BIAs may have served as an important revelation mechanism for the United States. Without full and complete information about states' reservation values, the United States had to make educated guesses on the countries that would resist versus those that would capitulate. As Williamson emphasizes, when actors operate under conditions of bounded rationality they must cope with limitation of imperfect information and uncertainty, but they remain "intendedly rational" (1981, 553). This in turn may explain why the United States granted national interest waivers to a number of countries after their initial resistance. Once friendly states revealed themselves as 'strong' types or those that would endure economic sanction, then the United States granted them a reprieve, while

maintaining sanctions on less friendly regimes.[163]

Conclusions

After failed attempts to achieve an acceptable negotiated outcome at the Rome Conference and subsequently in multilateral settings which included the preparatory commission sessions and trans-institutionally in the Security Council, the United States turned to bilateral linkage strategies as a last resort. The bilateral immunity agreements, the purpose of which was to obstruct the outcome of the ICC, offered the United States recourse to achieve immunity from the Court. Officials in the U.S. administration claim that they were encouraged by allies and other states to pursue immunity agreements on a bilateral basis. The reason for doing so was that bilateral forums offered greater secrecy as many countries were wary of publicizing their support for the BIAs. As the multilateral linkage attempts by the United States demonstrated, responding to influence attempts through international organizations should be preferred to bilateral channels when the number of parties is large, indicating the necessity for considerable side-payments or threats, but institutional avenues may prove difficult to overcome when a state cannot build sufficient support for an unpopular policy.

Although the United States sought to extend bilateral linkages with every state in the system, and especially those that had ratified the Rome Statute, side-payments consisted of the promise to continue anticipated aid. Therefore, cutting relatively small sums of foreign aid was less costly than generating positive inducements. Nevertheless, the United States is uniquely positioned as the largest overall

[163]Countries belonging to the category that were granted national interest waivers that waived the prohibition of IMET and ESF funds include, Barbados, Bolivia, Brazil, Costa Rica, Croatia, Cyprus, Ecuador, Kenya, Mali, Malta, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, Serbia, South Africa, St. Vincent and the Grenadines, Tanzania, Trinidad and Tobago, and Uruguay (U.S. Executive Office of the President 2006*a*, U.S. Executive Office of the President 2006*b*). Alternatively, Venezuela received no waiver.

provider of foreign aid to be able to leverage the ties that make bilateral issue linkage possible. Less powerful states are forced to rely on coalition building and shared institutional memberships in order to create multilateral linkages, as the transaction costs of arranging bilateral linkages are often too high for smaller states.

To counter U.S. attempts to undermine the ICC, the European Union used trans-institutional linkage strategies to convince potential members and many developing countries to resist BIAs. These efforts were aimed at solidifying an ICC regime that was intended to serve the interests of a greater number of (often weaker) countries. In the absence of trans-institutional linkage strategies aimed at its preservation, the ICC stood to lose its international reach and legitimacy.

This chapter highlights the benefits and the limitations of multilateral linkage strategies, both intra-institutional and trans-institutional. Herein, I have provided evidence for the predictions in the theory that indicate that states, despite their relative power, will prefer multilateral over bilateral strategies in an effort to minimize transaction costs, that major powers can resist more effectively international attempts to bind them by offering their own side-payments, that bilateral strategies offer greater secrecy, and that major powers, despite their capabilities, must still adjust to a new status quo by expending valuable resources. Shared institutional memberships not only allow states to link issues across IGOs, but they can also apply counter pressure to resist bilateral linkages that may prove contrary to the goals of certain IGOs. I provide both qualitative and quantitative evidence that institutional embeddedness decreased the probability that states would conclude a BIA. Further, I have demonstrated the conditions under which targets will be vulnerable and acquiesce to linkage pressures. While weak states could not persuade the United States to join the ICC by offering a logroll that could be accepted by both parties, they did force the superpower to struggle with the ICC outcome in

a way that ultimately decreased its international standing and its national security by hindering cooperation and alienating allies. Although powerful states possess the ability to link issues bilaterally, this strategy, as both American administrations ultimately realized, comes at a price.

CHAPTER 6

CONCLUSION

On 31 March 2005, members of the United Nations Security Council debated late into the evening. So late, in fact, that European and African newspapers were unable to report the result of the vote in the following days' papers. Their efforts to find an adjudicative solution to the atrocities in Darfur culminated in the passage of Resolution 1593 in an 11 - 0 vote. This resolution called for the referral by the UN Security Council acting under Article 13(b) of the Rome Statute of the situation in Darfur to the International Criminal Court. The resolution, nearly vetoed, marked the first time that the UNSC used it powers of referral under the Rome Statute. Sudan had neither signed nor ratified the treaty and refused the recognize the legitimacy of the Court, dismissing its jurisdiction out of hand. Since both the territorial state as well as the state of the accused were both Sudan, the only route to the ICC was through the Security Council.

The United States actively opposed referring the Darfur case to the ICC, lobbying its European counterparts on the Council to establish an ad hoc tribunal akin to those still in operation for the former Yugoslavia and Rwanda. Until the final moments before the vote was taken, the United States threatened to use its veto to prevent the passage of Resolution 1593, arguing that the ICC was illegitimate on the legal grounds that it could not bind a non-party state. Instead, the U.S. repre-

sentative abstained.[164] Though the exact content of the eleventh-hour negotiations and why the U.S. government chose not to block the Darfur case from going to the ICC remains unknown, several explanations of what transpired on the evening of 31 March in the otherwise deserted halls of the United Nations have been proffered.

A theory of institutional linkage may suggest that the United States engaged in linkage strategies with European countries, especially France, Denmark (which held a non-permanent Council seat at the time) and the United Kingdom in order for Europe to win the referral. If this is true, what did the United States receive in return? Concurrently, what did China, the other skeptic of an ICC referral, receive in exchange for its abstention rather than a veto?[165]

To answer this question, I briefly review the arguments presented in a theory of linkage, returning to some of the evidence presented in the empirical chapters. Using the example of the Darfur referral and the World Bank president appointment, I discuss both the limitations of trans-institutional linkage and how the concept can be extended to a number of different organizations whose membership may or may not consist of weak states. I then present a number of directions for further research based upon issues and questions that this dissertation has raised.

Reviewing A Theory of the Logics of Linkage and Logrolling

This dissertation has offered a theory of issue linkage to answer the questions of how weak states can achieve bargaining outcomes that reflect their interests, and how they garner the cooperation of powerful, yet reluctant states, or alternatively force these states to make significant and undesirable adjustments to their policies and behavior. Taken together, these questions take us beyond the initial phase of

[164]Other abstentions included China, Algeria, and Brazil.

[165]China maintains a lucrative relationship with the Sudanese government, which has led the veto power to oppose sanctions on the regime. Thus, its opposition to a referral may be considered an outgrowth of its interests in the country (*WP*, 16 Jul. 2008).

institutional creation and help us to understand how the regime as a whole develops. While issue linkage is not new to the study of negotiation in international politics, previous research as focused on linkage as a tool for major powers. The theory I present in Chapter 2 suggests that weak states can command control of bargaining situations through a process I call trans-institutional linkage. This strategy draws on theoretical notions of logrolling in a legislative context to suggest how states might become "roped in" to deals that they would otherwise not support. The success of this strategy relies on two essential components: coalitions that can be built across IGOs and shared memberships that make these coalitions feasible and durable.

Trans-institutional linkage belongs to a larger class of linkage strategies that I call multilateral institutionalized strategies in which intra-institutional issue linkage also belongs. While trans-institutional linkage is a novel contribution to the study of international negotiation strategies, the concept of intra-institutional linkage, in which issue linkage occurs within the context of a single IGO, has been addressed by a number of scholars within the field, most notably in Lisa Martin's *Coercive Cooperation* (1992). In an effort to uncover when states will use intra-institutional linkage over trans-institutional, my theory suggests that the number and salience of issues being negotiated will guide which strategy states will select. While intra-institutional linkage relies on the presence of multiple salient issues within the context of a single IGO such that vote trades can be arranged simultaneously or in close succession, trans-institutional linkage offers states an opportunity to travel outside the organization to arrange deals that will achieve their interests.

Finally, I argue that it is only in the absence of multilateral institutionalized strategies that states will pursue bilateral linkage strategies. This is because as the number of deals to be made increases the transaction costs will be higher for bilateral strategies than for one deal made within the context of an institution.

Unfortunately for weak states, their linkage activities are primarily confined to the multilateral institutionalized options as they are rarely in a position to be able to offer attractive side-payments to achieve policy adjustment.

This theory also addresses when states will be more or less susceptible to linkage through shared memberships. Shared memberships are a precondition for successful trans-institutional linkage. If a state is not sufficiently embedded within the network of IGOs and has a low number of shared memberships, then they will be less vulnerable to pressure. Concurrently, states with few shared memberships will have a more difficult time attempting to link issues trans-institutionally, as they will be more limited in the number of venues that they can link across.

The empirical sections of this dissertation are designed to test two aspects of the question posed by this dissertation. First, how do weak states control the design international institutions and second, how do these institutions shape the behavior of more powerful states? The answer to these questions requires the consideration of the entire regime—both its creation and its development. Chapters 3 and 4 address the puzzle of the creation of the ICC regime, while Chapter 5 addresses the response of major powers and how weaker states worked to cement the regime despite obstructionist efforts.

One important question this theory raises is why weak states are especially suited to trans-institutional linkage? Developing countries and small states make up over three-quarters of the states in the international system and when they can successfully align their interests they can be a formidable opponent for major powers. Depending on the institutional features of an IGO, major powers may find themselves in a position in which they need to engage logrolling behavior with weak states to push their own proposals through. In Chapter 3, I analyze the negotiations over the draft statute for an ICC. Through content analysis of five

sets of negotiations over the course of three years, I show how the positions of key actors changed over time as a result of intra-institutional and trans-insitutional bargaining strategies. I further argue that the ICC represents a bargaining outcome in which weak states were able to secure an outcome close to their ideal policy, while larger states found themselves roped in to this outcome through the process of trans-institutional linkage. Because weak states were able to form coalitions across a number of international organizations including the UN General Assembly, the European Union, the Southern African Development Community, and the ACP-EU Joint Assembly, they successfully pulled two key states, the United Kingdom and France away from the position of the permanent five members of the UN Security Council and towards the Like-Minded Group. Negotiations within the EU and other IGOs during the ICC negotiations served to constrain some states, while others, like the United States and China which shared fewer memberships remained less exposed to linkage attempts and because their material power allowed them to resist what attempts were made.

In Chapter 4, I evaluate the relationship between policy adoption and shared institutional memberships to demonstrate that the logic of embeddedness applies more generally to the international system. I constructed a measure of institutional embeddedness that reflects the total number of shared memberships that each state in the international system shares with every other state. This number suggests that states that share more memberships are more likely experience pressure from other members to become involved in trans-institutional logrolls and adopt new policies and join new organizations, despite their preferences. Using ratification data from the Rome Statute of the International Criminal Court, I show that this is indeed the case. States that share more memberships tended to adopt the Rome Statute more quickly than did states that were less embedded. This result provides a measure of

support for the theory of linkage I offer but, it only represents one piece of a larger story of linkage. While institutional embeddedness may be considered the macro-structure underlying a theory of trans-insitutional linkage, Chapter 3 explores the micro-dynamics of this strategy.

Aside from shared memberships, another factor contributing to states' vulnerability to linkage strategies is state power. Powerful states should be less susceptible because they have recourse through bilateral strategies and can use their resources to counter linkage attempts through side-payments. Weak states can produce bargaining outcomes that reflect their interests, but joining IGOs like the ICC is voluntary. States are not bound to accept the outcome, but because this outcome necessarily changes the status quo, other states and even major powers may discover that they will have to adjust their behavior in response to the new status quo. Thus, even major powers must find a way to wrestle free from the constraints imposed by weak states. Though the development of regimes is a push and pull between power and interests and weaker states responded to U.S. efforts in ways that would continue to shape the ICC regime to their interests. This dynamic is explained in Chapter 5, in which the United States, in an effort to wrest itself from the outcome imposed in Rome engaged in a number of linkage strategies. The theory suggests that trans-institutional linkage is not only a strategy of weak states. In fact, almost any state should prefer linkage through institutions, whether within or across institutions, as opposed to bilateral linkage strategies that incur higher transaction costs. There are circumstances; however, that can prevent trans-institutional linkage from being used effectively.

One of these conditions occurs when an issue is salient with domestic audiences. Security Council members were unwilling to trade issues multilaterally on the renewal of the peacekeeping mission in Bosnia because the United States wanted

blanket immunity from the International Criminal Court. For European countries, where the ICC is well-supported by domestic constituencies, this trade could have had adverse consequences if governments were thought to be compromising principles and caving to U.S. pressure. Ultimately, the United States found a measure of success in using bilateral linkage strategies, through the bilateral immunity agreements. This chapter tests the success of these strategies on a new data set on BIAs. The results of a quantitative analysis of BIAs indicate that the United States was successful when states exhibited a high degree of dependence on U.S. trade and aid. Even though the sanction was relatively small, states that were threatened to have their aid revoked responded expediently, usually by concluding an agreement with the United States. As the most materially powerful country in the world, the United States has the ability to extend side-payments and threats to dozens of countries, and while costly, the outcome of bilateral linkage incrementally moves the status quo in the direction of U.S. preferences. In the next section, I return to the story of the ICC referral of the Darfur situation by the UN Security Council, extending some of the lessons learned in the previous chapters to this situation.

Trans-Institutional Linkage: Darfur, the World Bank, and the WTO

Was UNSC cooperation on Darfur achieved through trans-institutional linkage? There is some circumstantial evidence that points to possible issue linkage. In the weeks prior to the decision to refer the Darfur situation to the ICC, President Bush tapped Deputy Defense Secretary Paul Wolfowitz as the nominee for World Bank president. The reaction from the international community was one of surprise and dismay, as many saw Wolfowitz as the architect of the highly unpopular Iraq war. A tacit agreement stands between the United States and Europe in which the

United States selects the head of the World Bank and this decision is automatically approved by European countries in exchange for Washington's approval of a European IMF head. However, the nomination of Wolfowitz caused so much rancor within Europe that, at least initially, it looked as though Europe might attempt to block the decision.[166] Despite vocal displeasure with the U.S. selection, on 31 March 2005, the same day of the Security Council vote, the World Bank Board of Directors voted to appoint Wolfowitz as president. It remains to be seen how linked these two events were. Further evidence of potential vote trades between China and Europe suggests that the decision of whether to lift a long-standing arms embargo on China during the same month was an attempt to bring China into a coalition that would allow for the Darfur referral.[167]

These events may have been part of a bargaining process that led to concessions on all sides. However, as indicated in Chapter 2 and demonstrated in Chapter 5, domestic audiences can bring costs to bear when an issue is subject to linkage within an institutional context, which may ultimately lead to the failure of multilateral linkage strategies. This is because these linkage tactics are more visible to audiences that have the ability to hold their government accountable. When a policy that a state attempts to pursue is unpopular, as was the case with granting blanket immunity from the ICC to U.S. citizens, states may be forced to scrap multilateral avenues and/or turn to bilateral linkage strategies to achieve their policy goals. Thus, a counter explanation for the Darfur referral rests in governments' responses

[166]The voting rule in the World Bank stipulates an 85 percent threshold from the Board of Directors for the approval of a president. However, given the weighted voting scheme in the Bank, the United States holds 16.4 percent of the vote share, affording it the power to block important decisions. The combined shares of the European Union also grant the body a veto over Bank president elections (Germany, France, the United Kingdom and the Netherlands, for example, have enough vote share to block the decision) (World Bank 2009).

[167]Ultimately, the attempt to lift the arms embargo on China failed because of European infighting and U.S. warnings, however, it was not until after the Darfur case that it became apparent that Europe would not lift the embargo.

to their winning coalitions.

Speaking in response to the Darfur case, U.S. Secretary of State Condoleezza Rice offered that, "We do believe that as a matter of principle it is important to uphold the principle that non-parties to a treaty are indeed non-parties to a treaty. Sudan is an extraordinary circumstance" (*The Financial Times*, 2 Apr. 2005). Here it is unclear in this case, whether Secretary Rice was referring to Sudan's non-party status or the United States' non-party status in explaining the U.S. decision to abstain from the vote and allow the referral to go forward. NGOs kept a close watch on the Darfur referral in the lead up to the vote, fearing an immunity compromise would weaken the decision. Indeed, their fears were confirmed as the resolution exempted U.S. nationals from investigation and prosecution by the Court, as related to the Darfur situation.[168] According to one ICC expert, the United States, in the end could not oppose the Darfur referral because there was "significant right wing pressure not to use its veto" (Interview with ICC expert, 8 Nov. 2008). This pressure came from evangelical Christian groups that had visited Sudan, originally with the intent of documenting the persecution of Christians in southern Sudan, but witnessed the effects of the atrocities in Darfur as well (Washburn & Punyasena 2005). One Congressional aide to Rep. Frank Wolf, an ardent supporter of President Bush's (43rd) policies, remarked, "The Christian Right had done more on Sudan than any other single constituency. If an ICC referral is the best way to get serious sanctions imposed against the regime, then they'll rally behind it, regardless of what Bush thinks about the ICC" (quoted in Lobe 2005).

If the U.S. reversal on Darfur can be explained through costs imposed by domestic audiences, what explains European support for the Wolfowitz World Bank

[168]See United States Mission to the United Nations (2005), "Explanation of Vote by Anne W. Patterson, Acting U.S. Representative to the United Nations on the Sudan Accountability Resolution, in the Security Council," Release # 055(05), 31 March 2005.

nomination? In this case, there is a clear indication that the dynamics of trans-institutional linkage were at play. As mentioned previously, the understanding between the United States and the EU is that Europe would in turn, appoint the head of the IMF. Yet, this understanding did not seem to suffice in exchange for the appointment of Wolfowitz. Also on the international agenda in Spring 2005 was the appointment of the head of the World Trade Organization. Almost as soon as the Bush administration announced the nomination of Wolfowitz, European states began pushing for its candidate to head the WTO. "In return for their support, some Europeans are pushing for a greater role in the bank as a counterweight to Wolfowitz and are also seeking American support for a Frenchman, Pascal Lamy, as next head of the World Trade Organization" (*International Herald Tribune*, 31 Mar. 2005). Why then, was this a case of trans-institutional linkage and not simply a case of backscratching among major powers?

Distinguishing trans-institutional linkage from a simple *quid pro quo* is essential to understanding the difference between intra-institutional linkage in which vote trades can occur through omnibus legislation and trans-institutional linkage in which coalition support is integral to the success of the strategy. The importance of coalition building is demonstrated in Chapter 3 in which efforts to build the Like-Minded Group were cultivated through the EU, the General Assembly, the Southern African Development Community, and the OAU. The formation of these coalitions across international organizations was essential to their success within the context of the Rome Conference.

In the World Bank/WTO example, installing Wolfowitz as World Bank president relied primarily on support from European countries and a coalition that did not include Europe was almost certain to fall short of the 85 percent threshold required by the charter. To keep this coalition together, it was incumbent upon

the United States to support European efforts to elect Lamy to the WTO. Both measures required votes and neither case was a "shoo-in" for the candidates. Thu,s a successful coalition relied on the promise of reciprocity. The process for electing the director-general of the WTO is by consensus, except when consensus cannot be reached and then the General Council consisting of representatives from each member state will take a decision by majority vote (under the one state, one vote principle). A number of candidates from developing countries were considered for the position in addition to Lamy, in many cases, dividing these countries along regional lines.

The decision on the WTO head was projected to be close and therefore the cohesion of the coalition between European countries and the United States was ever more important. This is especially true in light of the consensus rule, as it would be difficult to claim consensus if the world's largest economy did not back the winning candidate to lead the organization responsible for coordinating global trade policy. In an IGO where developing countries make up two-thirds of the membership, there was a growing sense that the WTO head should be more representative of its membership. As the Brazilian candidate for the position noted, "It is a question of balance because if you have two major global governance institutions—the IMF and the World Bank—whose leaders are determined by Europe and the US, then the WTO should be represented by someone from a developing country" (Luiz Felipe de Seixas Correa quoted in *The Independent*, 2 Apr. 2005). The WTO selection process occurs over the course of a number of months with candidates being vetted by the General Council to assess relative support. While a candidate would not be selected until 31 May, by April the winnowing process had begun with a few countries announcing support for their preferred candidates. Early assessments put Carlos Perez del Castillo of Uruguay ahead of Lamy for the position (*IHT*, 1 Apr.

2005). U.S. reticence in announcing support for any one candidate was, as one European news source reported, "fueling speculation that Washington will back Mr. Lamy for the WTO as a reward for tacit European support of Mr. Wolfowitz's bid to by the head of the World Bank" (*EUobserver*, 6 Apr. 2005). Despite calls from a number of countries for Lamy to withdraw his candidacy based on the suspected agreement between the EU and the United States, Lamy was selected as the new director general of the WTO.

In spite of the skepticism over the Wolfowitz nomination, the European Union eventually rallied ("without enthusiasm" according to one German official) around the unpopular candidate in order to gain U.S. support for Lamy's appointment.[169] The cohesion of the U.S./EU coalition allowed for successful trans-institutional linkage, the implications of which meant the protection of U.S./EU interests in the international economic sphere. The above example also demonstrates the failure of coalitions when confronted with collective action problems. Developing countries and the Cairns Group, which backed LDC candidates, may have been able to block Lamy's appointment had they rallied behind any single candidate. Yet, their support was divided amongst candidates from Brazil, Uruguay, and Mauritius.[170] The remainder of the WTO membership was similarly divided.

As Chapter 3 discussed, the maintenance of a strong coalition is integral to the success of trans-institutional linkage. Yet, states must be wary of very large coalitions because after sufficient support has been achieved there are decreasing returns with regard to the size of the coalition. One of the issues that the Like-

[169] According to one report in the weekend news magazine published by *The Guardian*, "Blair was aware of Bush's plans for a month before they became public and declined to tell either the Chancellor [Gordon Brown], who is a key IMF figure, or [International Development Secretary Hilary] Benn, a World Bank board member" (*The Observer*, 27 Mar. 2005). Apart from Blair, European governments including the British cabinet remained extremely skeptical about the appointment.

[170] China backed the Brazilian candidate, Australia the Uruguayan, and India the candidate from Mauritius (*EUobserver*, 6 Apr. 2005).

Minded Group confronted was how to obtain a sufficiently large coalition to obtain its preferred outcome without compromising its aims. "The initial strategy of this group of countries was to expand its number. However, after growing from a dozen members to more than forty, members began to worry that future growth would endanger the group's solidarity" (Benedetti & Washburn 1999, 20). This forced the LMG to develop a set of core principles—jurisdiction, the Security Council, and the independent prosecutor—that the group would lobby for, leaving aside other areas of disagreement. If states attempting to form these coalitions cannot agree on a common set of goals the cohesion of the coalition will be endangered as was the case when developing countries sought to select a WTO head that would hail from the developing world.

Extensions and Limitations: An Agenda for Further Research

State Coalitions and Collective Action in International Politics

There is no guarantee that states will be successful in their efforts at trans-institutional linkage. In order to link issues effectively states must be able to overcome their collective action problems and arrive at a common solution within their coalition before they attempt to bargain across an institution. As in the case of the LMG, countries like Denmark and Lesotho had to set aside their opposition to any role for the Security Council in the functioning of the new Court in order to come to an acceptable solution that could win over the United Kingdom and France. Regarding the court's jurisdiction, Germany and Costa Rica had to be willing to set aside their demands for universal jurisdiction and accept automatic jurisdiction. This ability to seek out compromise before attempting to engage in issue linkage with recalcitrant states is essential to the success of logrolling tactics.

These collective action problems may reveal an additional level of complication worthy of investigation because they require linkages to be forged before reaching the stage of trying to ensnare larger actors. Therefore, solving the collective action problem is the first stage of coalition building in which states must come to an agreement on the principles for which they will bargain. The second stage involves building a secondary coalition that will include major powers, or perhaps other states, in a logroll. Seminal research (Olson 1965, Ostrom 1990) indicates that these problems are not so easily solved and while this dissertation does touch upon these issues, future work will investigate the first stage collective action problem in greater depth.

Further research will also investigate the dynamics of coalition building and durability of these coalitions in IGOs. As mentioned in the case of the ICC, the LMG sought to build a large coalition, but then limited that coalition to states accepting a restricted set of principles. Literature on congressional logrolling and on coalition government formation suggests that that actors should strive for minimum winning coalitions, the fewest parties possible to maintain majority support, such that the gains would be divided among the smallest number of actors possible (Riker 1962). More recent research reveals that the existence of these types of coalitions are rare and that oversized coalitions tend to be more successful (Volden & Carrubba 2004). Carrubba and Volden (2000) find that oversized coalitions will be more common when policy logrolls are more difficult to maintain over time, while Baron and Diermeier (2001) find that these types of coalitions may be anticipated when the status quo policy is ideologically extreme.

With respect to the coalitions that engaged in trans-institutional linkage over the ICC outcome, there is some support for both of the above scenarios leading to surplus coalitions. The status quo, the ad hoc tribunals, represented one end of

the policy spectrum and was therefore ideologically extreme. Moreover, Chapter 2 argues that logrolls across institutions should be more difficult to sustain because issues cannot be packaged and voted on in a single measure. The phenomenon of coalitions composed of nation-states has received relatively little attention in international politics. In future work, I plan to address how states will form and maintain effective logrolling coalitions and whether these coalitions will tend to be minimum winning or oversized. Further, will the composition of these coalitions vary with the type of problem (e.g. enforcement, credible commitment, distributional) faced by actors? This will require expanding the research design to investigate a number of international bargains. A particularly promising extension will investigate whether the nature of coalitions and the severity of the collective action problem varies when the bargain is a new organization, implying future interaction, or an agreement that requires finite cooperation.

Joining Behavior, Homophily, and Interdependence

As Chapters 3 and 4 suggest, the number or density of shared organizational memberships allows states to manipulate their ties with each other, creating explicit linkages to achieve favorable bargaining outcomes. As IGOs have increased in number over time, shared memberships have also increased, especially among weaker or small states that have gained independence sought membership in IGOs. These shared memberships have offered states an avenue of influence that previously did not exist or remained weak until the latter half of the 20th century. Steps toward integration, not only in Europe, but also across the African and South American continents have increased opportunities for and vulnerability to trans-institutional linkage.

In some circumstances, small states have used these connections strategically to chip away at the underlying power structure of the international system. These

attempts have, by no means, turned international politics on its head, but they do provide some indication that states traditionally considered to have a weak bargaining position can create favorable outcomes in concert with other actors. This assertion runs contrary to the extant literature which has continued to assume that state power is the strongest determinant of what an international institution will look like. While this may have been true in 1945, it is less so today.

This claim provides a potentially fruitful avenue for further research which suggests that greater participation by weak states in IGOs over time will lead to more institutions and bargaining outcomes that favor these states. This dissertation has investigated in some depth the success of weak states in exerting control over the International Criminal Court. Thus, a theory that relies on the presence of shared memberships would suggest that this process was more feasible in 1998 when the Rome Statute was adopted than in 1965, in which fewer memberships existed, and that we should witness continued and increased gains made by weak states in the future.

While this claim cannot be rigorously tested here, there is some indication that such a trend may exist. During the negotiation of UNCLOS for example, weak states formed a sizable coalition, yet despite their numbers and relative cohesion, they encountered a number of road blocks in reaching an acceptable outcome that would reign in major powers. In the end, weak states achieved a number of concessions, yet could not yield progress on one of the most important issues—control over the deep sea bed. In future work, I intend to conduct similar analyses in the case of UNCLOS to those performed in Chapters 3 and 4. Doing so will require extensive data collection including ratification data and content analysis of negotiations, but should also provide a useful basis for comparison. A more contemporary case, TRIPS in the Doha Round of trade agreements, which has been negotiated haltingly over

several years also provides opportunities for case comparison. Both UNCLOS and TRIPS pit the interests of weak or small states against stronger, materially and institutionally powerful ones.

Another issue raised by this research is one that speaks to a literature on why states join IGOs. Do they do so purposefully, to receive some benefit or resolve a specific problem as the rational design research program suggests? Koremenos, Lipson, and Snidal (2001) hold that states design and join international organizations for purposeful reasons, but these reasons, I argue may not be directly related to that particular institution, but for realizing gains in another. Alternatively, as Chapter 4 reveals, some states tend to join many organizations, while others seem to avoid doing so. Can this pattern by explained through the simple suggestion that "joiners join," or do some states join organizations because they believe that will have a tangible impact on outcomes, whereas others are skeptical of this process and believe that bilateral interactions are more productive? This question touches upon a prevalent issue in network analysis. Homophily is a self-selection problem which suggests that "similarity breeds connection" (McPherson, Smith-Lovin & Cook 2001, 415). In other words, "It is very difficult to know whether networks influence behavior or units join networks composed of members who already behave similarly."[171] In the context of this dissertation, if homophily is present than it will be difficult to separate which process is actually occurring (i.e. do joiners join or is the network actually affecting state behavior?). One way of doing so is to tease out the implications by testing for spatial dependence, and accordingly generating hypotheses about the nature of such dependence, if present. While Chapter 4 has tested for geographic spatial effects, further work will assess spatial dependence among actors based on shared memberships. Spatial analysis is still relatively new in applications

[171]Email correspondence with Jude Hays, Assistant Professor of Political Science, University of Illinois, Urbana-Champagne, 7 March 2009.

of politics. However, recent work in international relations has discussed spatial dependence as a phenomenon to be examined theoretically, rather than a problem of the data (See Franzese & Hays 2008, Beck, Gleditsch & Beardsley 2006). I have suggested here that states are strategic in their joining behavior, yet the IGO network may intervene to affect state action; one potential avenue for extending this project, both theoretically and empirically, involves exploring the overlap between spatial and network analysis and how this may affect states' joining behavior.

Conclusions

A theory of trans-institutional linkage carries with it some interesting implications for the study of international politics. One suggests that some of the voluntary joining behavior supposed by the rational design program has been stripped away, as states are roped into accepting bargaining outcomes that they would not have otherwise. Ultimately, they can continue to resist the institution, but this will leave them worse off in institutions where they need the cooperation of other states. If this is true then will states find themselves agreeing to an increasing number of undesirable policies to achieve one preferred outcome, or will states find ways to resist these outcomes, while still obtaining their desired policies in other IGOs? Logrolling dynamics suggest that as coalitions increase in size, actors must make increasing number of concessions, at some point these concessions outweigh the benefit of the vote trade. This provokes the following question of whether we will witness states "divesting" of their organizational memberships in an effort to reduce pressures of trans-institutional linkage.

Despite the potential costs of shared membership, I have built a theory and provided support that, contrary to the conventional wisdom of international relations scholarship, weak states can achieve favorable outcomes. Moreover, they can pull

their resistant more powerful counterparts to accept their ideal. Their strategy is achieved through coalition building and linking issues through the channels of shared membership, and while they may not always succeed, increasing memberships have afforded weak states greater opportunities. Therefore, Gulliver may be tied down only temporarily, but he must expend time, energy and other resources to wrestle free from constraints placed on him by his individually weaker counterparts.

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APPENDIX A

A.1 Like-Minded Group Members 1996-1998

April 1996		June 1998	
Argentina	Italy	Andorra	Lithuania
Australia	Lesotho	Benin	Luxembourg
Austria	Netherlands	Bosnia	Malawi
Belgium	New Zealand	Brunei	Malta
Canada	Norway	Bulgaria	Namibia
Chile	Slovakia	Burkina Faso	Philippines
Croatia	South Africa	Burundi	Poland
Denmark	Portugal	Republic of Congo	Romania
Egypt	Sweden	Costa Rica	Senegal
Finland	Switzerland	Czech Republic	Sierra Leone
Germany	Trinidad and Tobago	Estonia	Singapore
Greece	Samoa	Gabon	Slovenia
Guatemala*	Uruguay*	Georgia	Solomon Islands
Hungary	Venezuela	Ghana	Spain
Ireland		Jordan	Swaziland
		Republic of Korea	United Kingdom
		Latvia	Zambia
		Liechtenstein	

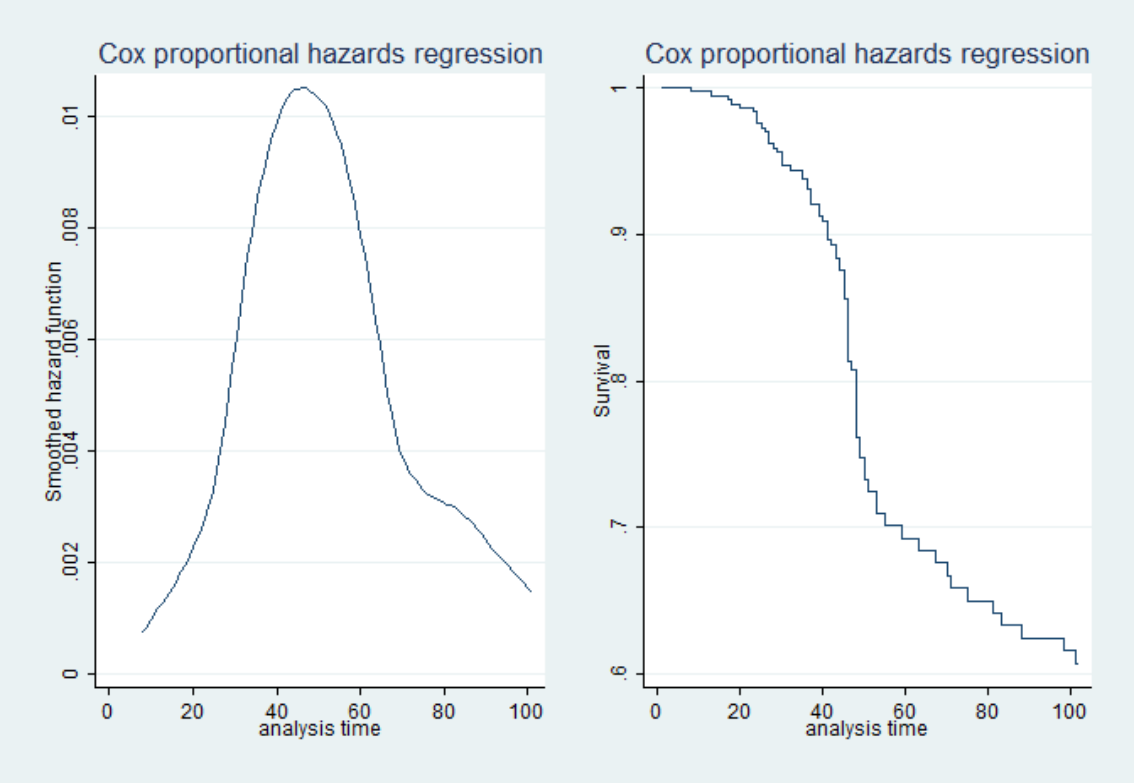
Sources: Schabas (2007, 18 fn. 63) and Bassiouni (1999, 455 fn. 51). *Notes*: LMG countries as of June 1998 includes all countries in left column "April 1996." *Denotes country does not appear in Schabas' (2007) list of like-minded states.

APPENDIX B

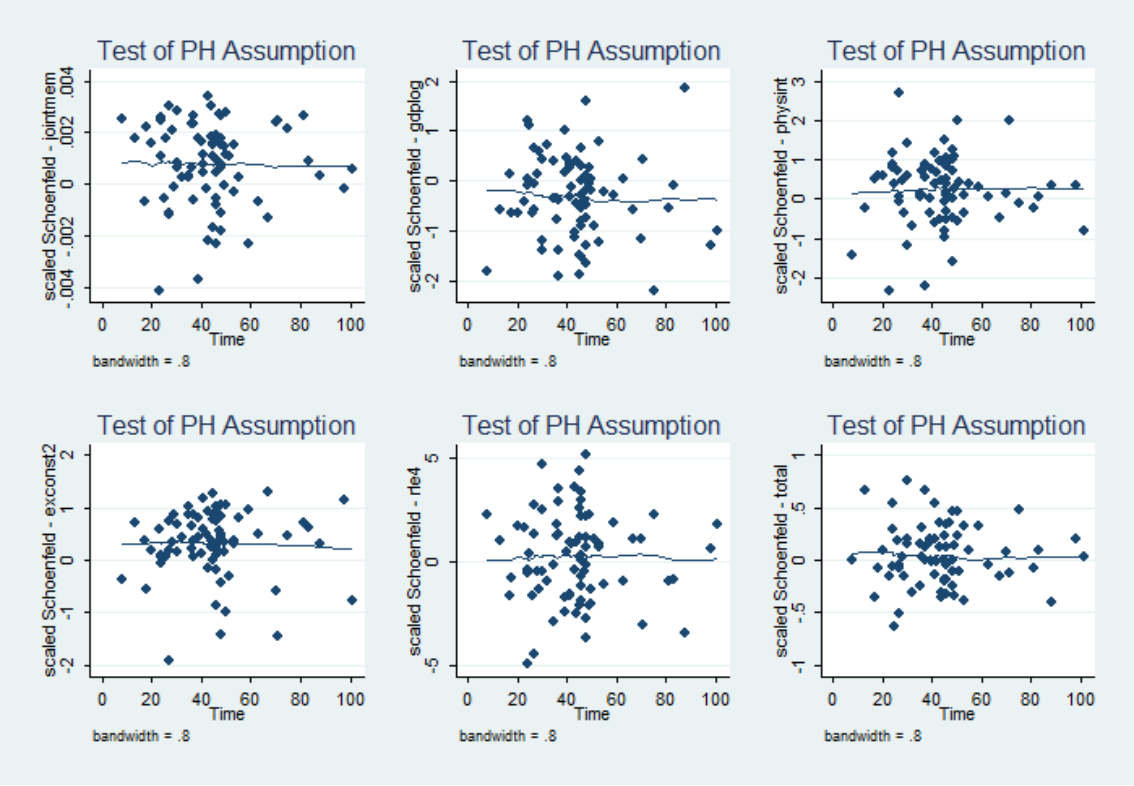
B.1 Spatial Autocorrelation Diagnostics

Test	Expected Value	Statistic	P-value
Moran's I Global (DV)	-0.007	4.909	4.588e-07
OLS Residual Diagnostics			
Moran's I Global	-0.015	2.465	0.014
LM Error Test	17.611	4.554	0.033
Robust LM Error	6.635	1.769	0.184
LM Spatial Lag	6.635	2.785	0.095
Robust LM Spatial Lag	6.635	0.001	0.981

Notes: The first test is very significant and indicates spatial dependence is present in the dependent variable. Remaining tests on OLS residuals do not suggest spatial clustering, only Moran's Global I indicates some measure of clustering. LaGrange Multiplier tests based on Anselin (1995) all indicate the absence of spatial clustering. This suggests that geographic diffusion does not explain decisions to ratify the Rome Statute. The dependent variable in OLS regression is number of months until ratification of Rome Statute.



B.2 (A) Smoothed Hazard (B) Survival Rates for Model 1



Notes: Slope ≈ 0: No violation

B.3 Visual Diagnostics for Proportional Hazards Test

B.4 Robustness Checks

Variable	*Model 1*	*Model 2*	*Model 3*	*Model 4*
Shared Membership (total)	1.001*	1.001*	1.001*	1.001*
	(0.000)	(0.000)	(0.000)	(0.000)
GDP (Log)	0.765*	0.817	0.767*	0.735*
	(0.070)	(0.101)	(0.056)	(0.076)
Physical Integrity	1.347*	1.360*	1.297*	1.208*
	(0.120)	(0.137)	(0.091)	(0.103)
DPI Checks	1.19*	1.236*	—	—
	(0.087)	(0.104)	—	—
Polity Score	—	—	1.127*	1.127*
	—	—	(0.030)	(0.030)
Rule of Law	1.302	0.920	—	—
	(0.272)	(0.236)	—	—
Contiguity	1.010	0.969	1.026	1.001
	(0.034)	(0.043)	(0.036)	(0.047)
N	8091	6919	9696	8422
Sample	All	Non-OECD	All	Non-OECD

Notes: $p < 0.05$. Cell entries are the hazard ratios for ratification of the Rome Statute of the ICC. Estimates are calculated using the Cox Proportional Hazards Model and are clustered by country; robust standard errors are reported in parentheses. Ties are handled using the Efron method.

APPENDIX C

C.1 Predicted Probabilities of Ratification

Defense Pact	Exempt	Sanction	Trade (p-tile)	GDP (p-tile)	Prob.	Conf. Interval
0	0	0	25^{th}	μ	0.99	[0.97, 1.01]
0	0	0	75^{th}	μ	0.92	[0.81, 1.02]
1	0	0	25^{th}	μ	0.79	[0.44, 1.13]
1	0	0	75^{th}	μ	0.50	[0.09, 0.92]
1	1	0	25^{th}	μ	0.04	[-0.03, 0.12]
1	1	0	75^{th}	μ	0.01	[-0.01, 0.03]
0	0	1	25^{th}	μ	0.21	[-0.14, 0.55]
0	0	1	75^{th}	μ	0.04	[-0.03, 0.11]
0	0	0	μ	25^{th}	0.89	[0.79, 1.00]
0	0	0	μ	75^{th}	0.95	[0.88, 1.01]
1	0	0	μ	25^{th}	0.75	[0.43, 1.07]
1	0	0	μ	75^{th}	0.98	[0.95, 1.01]
1	1	0	μ	25^{th}	0.04	[-0.04, 1.07]
1	1	0	μ	75^{th}	0.06	[-0.04, 0.16]
0	0	1	μ	25^{th}	0.02	[-0.02, 0.06]
0	0	1	μ	75^{th}	0.08	[-0.05, 0.20]

Notes: Sample includes 92 countries that are ICC state parties (Ratify ICC = 1). Predicted probabilities are calculated using *S-Post* (Long & Freese 2001) in STATA. Confidence intervals (95%) are calculated using delta method. All other variables set to their means.

C.2 Countries in BIA Sample

Country	*ICC Ratified*	*BIA Concluded*
Afghanistan	2/10/03	8/23/03
Albania	1/31/03	7/7/03
Algeria		4/13/04
Angola		10/6/05
Antigua & Barbuda	6/18/01	9/29/03
Argentina	2/8/01	
Armenia*		3/17/05
Australia	7/1/02	
Austria	12/28/00	
Azerbaijan		8/28/03
Bahrain*		†
Bangladesh*		3/29/04
Barbados	12/10/02	
Belgium	6/28/00	
Belize	4/5/00	12/8/03
Benin	1/22/02	8/25/05
Bhutan		8/16/04
Bolivia	6/27/02	†
Bosnia & Herzegovina	4/11/02	7/7/03
Botswana	9/8/00	9/28/03
Brazil	6/20/02	
Brunei		3/3/04
Bulgaria	4/11/02	
Burkina Faso	4/16/04	10/14/03
Burundi	9/21/04	7/24/03
Cambodia	4/11/02	6/29/05
Cameroon*		12/1/03
Canada	7/7/00	
Cape Verde*		11/19/04
Central African Republic	10/3/01	1/19/04
Chad	1/11/07	6/30/03
Chile*		
Colombia	8/5/02	9/17/03
Comoros	8/18/06	6/30/04
Congo Brazzaville	5/3/04	6/2/04
Costa Rica	6/7/01	
Cote d'Ivoire*		10/16/03
Croatia	5/21/01	

continued

Appendix C.2: Continued

Country	*ICC Ratified*	*BIA Concluded*
Cyprus	3/7/02	
Czech Republic*		
Democratic Rep. Congo	4/11/02	7/22/03
Denmark	6/21/01	
Djibouti	11/5/02	7/2/03
Dominica	2/12/01	5/10/04
Dominican Republic	5/12/05	8/12/04
East Timor	9/6/02	10/30/03
Ecuador	2/5/02	
Egypt*		3/5/03
El Salvador		†
Equatorial Guinea		5/6/04
Eritrea*		7/8/04
Estonia	1/30/02	
Ethiopia		†
Fiji	11/29/99	12/17/03
Finland	12/19/00	
France	6/9/00	
Gabon	9/20/00	4/15/03
Gambia	6/28/02	6/27/03
Georgia	9/5/03	6/26/03
Germany	12/11/00	
Ghana	12/20/99	10/31/03
Greece	5/15/02	
Grenada		3/11/04
Guinea	7/14/03	3/25/04
Guyana	9/24/04	5/18/04
Haiti*		1/12/04
Honduras	7/1/02	6/30/03
Hungary	11/20/01	
Iceland	5/25/00	
India		12/3/03
Indonesia		
Iran*		
Ireland	4/11/02	
Israel*		11/27/03
Italy	7/26/99	
Jamaica*		
Japan	7/17/07	
Jordan	4/11/02	†

continued

Appendix C.2: Continued

Country	*ICC Ratified*	*BIA Concluded*
Kazakhstan		10/10/04
Kenya	3/15/05	
Kiribati		3/4/04
Kuwait*		
Kyrgyzstan*		†
Laos		12/24/03
Latvia	6/28/02	
Lesotho	9/6/00	6/21/06
Liberia	9/22/04	11/3/03
Liechtenstein	10/2/01	
Lithuania	5/12/03	
Luxembourg	9/8/00	
Macedonia	3/6/02	11/12/03
Madagascar		8/4/03
Malawi	9/19/02	9/23/03
Maldives		7/8/03
Mali	8/16/00	
Malta	11/29/02	
Marshall Islands	12/7/00	6/26/03
Mauritania		7/6/03
Mauritius	3/5/02	6/30/03
Mexico	10/28/05	
Micronesia		6/30/03
Mongolia	4/11/02	6/27/03
Morocco*		11/19/03
Mozambique*		3/2/04
Namibia	6/25/02	
Nauru	11/12/01	12/4/03
Nepal		7/22/03
Netherlands	7/17/01	
New Zealand	9/7/00	
Nicaragua		9/12/03
Niger	4/11/02	
Nigeria	9/27/01	10/6/03
Norway	2/16/00	
Oman*		8/1/04
Pakistan		11/6/03
Palau		7/7/03
Panama	3/21/02	11/6/03
Papua New Guinea		9/30/04

continued

Appendix C.2: Continued

Country	*ICC Ratified*	*BIA Concluded*
Paraguay	5/14/01	
Peru	11/10/01	
Philippines*		5/14/03
Poland	11/12/01	
Portugal	2/5/02	
Romania	4/11/02	†
Russia*		
Rwanda		7/11/03
St. Kitts and Nevis	8/22/06	1/31/05
St. Lucia*		
St. Vincent & the Grenadines	12/3/02	
Sao Tome Principe*		11/12/03
Senegal	2/2/99	6/27/03
Serbia	9/6/01	
Seychelles*		7/17/03
Sierra Leone	9/15/00	5/20/03
Singapore		10/17/03
Slovakia	4/11/02	
Slovenia	12/31/01	
Solomon Islands*		3/17/04
South Africa	11/27/00	
South Korea	11/13/02	
Spain	10/24/00	
Sri Lanka		7/4/03
Sudan*		
Swaziland		9/20/06
Sweden	6/28/01	
Switzerland	10/12/01	
Syria*		
Tajikistan	5/5/00	6/23/03
Tanzania	8/20/02	
Thailand*		6/3/03
Togo		1/15/04
Tonga		3/24/04
Trinidad & Tobago	4/6/99	
Tunisia		12/22/03
Turkmenistan		1/30/04
Tuvalu		2/3/03
Uganda	6/14/02	10/23/03
Ukraine*		

continued

Appendix C.2: Continued

Country	*ICC Ratified*	*BIA Concluded*
United Arab Emirates*		2/15/04
United Kingdom	10/4/01	
Uruguay	6/28/02	
Uzbekistan		1/7/03
Venezuela	6/7/00	
Yemen*		12/17/03
Zambia	11/13/02	7/2/03
Zimbabwe*		
Total= 166 countries	101	93

Notes: † Denotes country signed, but never officially concluded a BIA. * Indicates that the country signed, though has not ratified the Rome Statute of the ICC.