



Explaining Nonratification of the Genocide Convention: A Nested Analysis¹

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What explains the large variation in the time taken by states to ratify the 1948 Genocide Convention? The costs of ratification would appear to be relatively low, yet many states have waited several decades before ratifying this symbolically important treaty. This study employs a “nested analysis” that combines a large-*n* event history analysis with a detailed study of an important outlying case in order to explain the main sources of this variation. Surprisingly, the results of our event history analysis suggest that states do not become more likely to ratify once the treaty has become widely adopted by others. We use the case of Japan to examine this relationship in more detail. We argue that once the norm embodied in a human rights treaty develops a “taken-for-granted” character, the rate of ratification can slow down because the marginal costs of additional ratifications begin to outweigh the expected benefits.

International human rights treaties present states with a relatively low-cost opportunity to demonstrate their support for a human rights principle. With the exception of the powerful European human rights regime, most international human rights treaties lack effective enforcement procedures. Moreover, whatever sanctions the international community may impose on a state for violating the terms of a human rights treaty are unlikely to be greater than what they would have been had the state not previously ratified the treaty. Consider the following counterfactual: Would the international community’s condemnation of Syria’s crackdown on antigovernment protestors have been any less intense had Syria not already ratified the International Covenant on Civil and Political Rights (ICCPR)? Presumably the answer is no; states are generally held to account for their human rights behavior regardless of their ratification status with respect to the major international treaties. It would therefore appear that the marginal costs of ratification are very low. In other words, if states are going to be subject to these standards in any case, they might as well reap the benefits of being seen to ratify the treaty. Yet the fact that so many states have waited for years, and even decades, before eventually ratifying some of the major human rights treaties has generated a difficult puzzle for political scientists to solve.

¹*Author’s note:* The authors thank Eric Cox, Oona Hathaway, Rhoda Howard-Hassmann, Benjamin Valentino, and three anonymous reviewers for their careful readings and helpful suggestions.

In this paper, we examine the pattern of ratification of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”). We do so using a “nested analysis” that combines large-n statistical work with a detailed case study of decision making at the level of an individual state (Lieberman 2005). In the first stage, we conduct a statistical analysis of the time taken to ratify the Genocide Convention using data on all UN member states in the period from 1948 to 2001. In the second stage, we closely examine the debates that took place within one particular state—Japan—concerning the question of whether to ratify the treaty. We use this case study to test the validity of the model estimated in the statistical analysis as well to generate further insight into the forces governing states’ decisions to ratify human rights treaties. We find that the ratification pattern of the Genocide Convention is particularly puzzling because, for most of the period since the treaty opened for signature in 1948, the probability that the nonparty states will ratify the treaty does not increase in response to an increase in the cumulative number of ratifications. Only much later—by 1987, after as many as 94 states have already ratified the treaty—do we start to see the beginning of an increase in the rate of ratification that we would have expected from a typical “norm cascade.” As we will discuss in more depth below, this pattern is interesting because it runs contrary to the findings of other influential empirical and theoretical work on treaty ratification. We explain this trend with reference to the nature of the antigencide norm itself.

The Genocide Convention

The Genocide Convention was the United Nations’ very first human rights treaty, yet it is a treaty whose ratification pattern has attracted relatively little attention within the rapidly growing literature on the ratification of human rights treaties (see, e.g., Hathaway 2002, 2007; Cole 2005; Goodliffe and Hawkins 2006; Kelley 2007; Vreeland 2008; Simmons 2009). It establishes the act of genocide as well as attempts or conspiracy to commit genocide as a crime in international law. Like most human rights treaties, it imposes very little in the way of costly obligations on its state parties. Article I obliges states to “prevent and punish” acts of genocide. This language has led to the much-publicized reluctance of political leaders to use the so-called G-word in describing cases of genocide for fear of triggering an obligation to intervene militarily (Power 2002). Although there is some debate among legal scholars as to what sorts of obligations this provision creates, no one can credibly claim that this creates an obligation to intervene militarily. Indeed, in 2004, both the US Congress and the State Department labeled the situation in Darfur a “genocide” without placing any significant constraints on US policy on the issue. Moreover, as our case study of Japan suggests, fear of taking on an obligation to participate in military interventions cannot account for Japan’s nonratification of the Convention, nor does this appear to have been a major concern in the debates leading up to the United States’ decision to ratify the treaty in 1988. In the case of the United States, the final holdouts in the Senate were concerned with an entirely different issue—specifically, whether those convicted of the crime of genocide in U.S. courts would be eligible for the death penalty (Molotsky 1988). Meanwhile, the only other potentially costly commitment implied by ratification of the Convention—the provision in Article IX that enables the International Court of Justice (ICJ) to adjudicate disputes concerning states’ obligations under the treaty—is one from which many states (including the United States) have exempted themselves by ratifying the treaty subject to an appropriate series of reservations.

Figure 1 shows the trends in ratification of the Genocide Convention. As of February 2013, only 142 of the 193 member states of the United Nations have

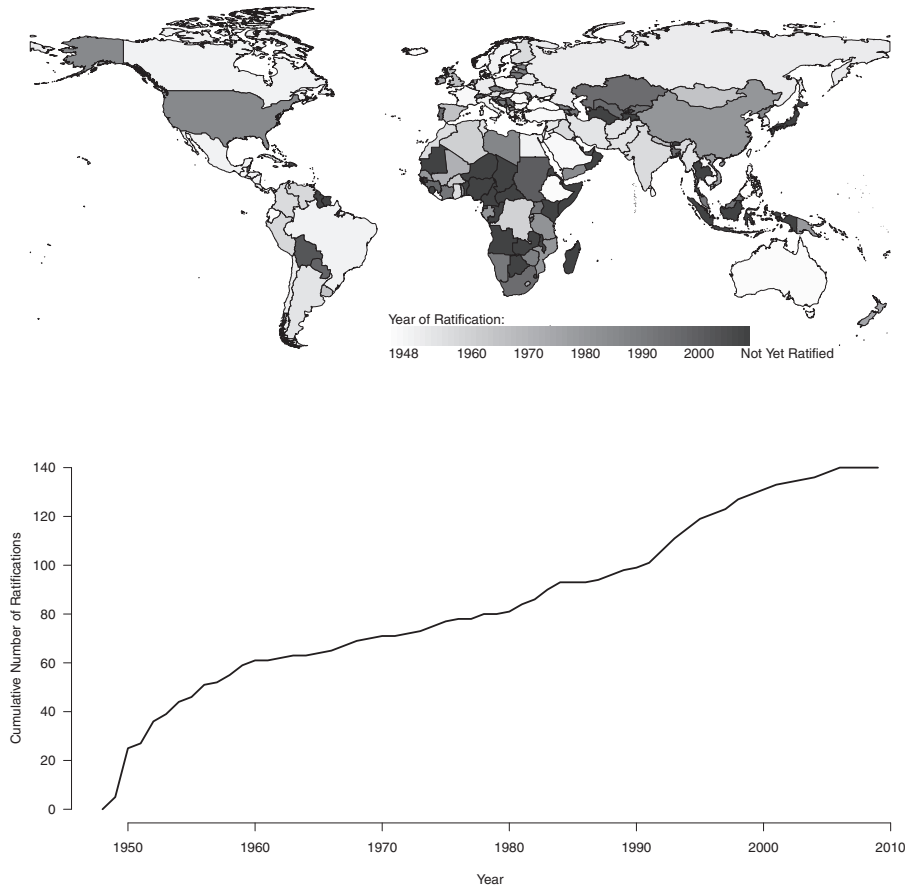


FIG 1. Temporal and spatial variation in the ratification of the Genocide Convention. The countries in the upper panel are shaded according to their time of ratification. Darker shades indicate later dates of ratification. The darkest shade indicates countries that have not yet ratified the treaty. The graph in the lower panel shows the trend in the total number of states that have ratified the treaty over time.

ratified the treaty. What is surprising is that a large number of states that presumably have had little to fear from the prospect of being charged with the crime of genocide by an international tribunal (and that, in any case, could have chosen to opt out of Article IX had they been afraid of this potential outcome) have waited a very long time before ratification. Notable examples include the United Kingdom and the United States (which ratified in 1970 and 1988, respectively), and Japan, which, as of February 2013, has still not ratified the treaty.

A Theory of Human Rights Treaty Ratification

We propose that the rate of treaty ratification will be high at times when the benefits of ratification clearly outweigh the costs, and low otherwise. In general, we propose that supporters of human rights will push for governments to ratify human rights treaties in order to realize two main benefits—one domestic and one international. First, from the perspective of domestic politics, proponents of ratification often hope that the treaty will provide a new tool for potential victims of human rights abuses to use against the state. For example, ratification of the Convention Against Torture gives citizens a new form of recourse against

their state in cases of torture or other inhumane treatment. Following this logic, human rights advocates might support treaty ratification because the act of ratification is believed to *create new obligations in domestic politics*.

Second, human rights advocates might support ratification not because they feel it is particularly relevant to the domestic politics of their own state, but rather because they hope that the act of ratification will add momentum to an emerging international norm. Thus, human rights advocates might pressure a particular state to ratify a human rights treaty even if the treaty does not create any new domestic obligations for the ratifying state. For example, even if all of the practices forbidden by the Convention Against Torture are already forbidden by domestic law, human rights supporters might ask their government to ratify in order to lend support to an international norm against torture. In short, human rights supporters might also support treaty ratification because ratification *strengthens an emerging international human rights norm*.

Ratifying human rights treaties also involves certain costs. When deciding whether to push for the ratification of a particular human rights treaty, human rights advocates in the government and in civil society weigh these two benefits—the benefit of creating new obligations in domestic politics and the benefit of strengthening the norm—against the costs of pushing for ratification of the treaty. In states that have high levels of respect for the rule of law, ratification of a human rights treaty might require significant changes to domestic laws in order to bring them into compliance with the treaty. Pursuing these changes takes time and resources, which often cannot be used by advocates of human rights in governments to pursue some other priority. At the same time, human rights advocates in civil society with limited resources have to consider the opportunity costs involved in fighting for ratification of a particular treaty. For example, if a group such as Amnesty International or Human Rights Watch were to devote significant efforts to pushing for ratification of the Genocide Convention among the minority of states that have not yet ratified, this effort would presumably divert resources away from other more pressing campaigns such as the fight to release political prisoners.

When we apply this framework to explaining states' decisions to ratify (or not to ratify) the Genocide Convention, it appears that the benefits of ratification are often outweighed by the costs. First, in terms of the domestic benefits of ratification, it is difficult to imagine supporters of ratification believing that the Genocide Convention will help to create a meaningful obligation in domestic politics. This is because genocide is such a dramatic and overwhelming crime against humanity that is almost always preceded by a total disregard for international obligations. It is difficult to imagine the Nazis in Germany, the Interahamwe militias in Rwanda, or the Khmer Rouge in Cambodia slowing the pace of their killing because they had previously ratified a human rights treaty, or, for that matter, because of the constraints imposed by any other law, international or domestic. (As it turns out, Cambodia had already ratified the Genocide Convention in 1950, and Rwanda had done so in 1975.)

Second, while supporters of ratification might be expected to push for ratification in order to build momentum for the antigenocide norm at the international level, this effect will presumably diminish once the norm has been widely accepted. Once enough states have internalized the antigenocide norm—irrespective of whether they have yet ratified the Genocide Convention—the marginal benefit of each additional ratification decreases. Because there is a real (but small) cost to ratification, focusing on ratification of the Genocide Convention diverts the resources of human rights advocates and lawmakers away from other pressing issues. At this point, the treaty, in effect, becomes a victim of its own success—after having achieved near-universal acceptance of the underlying norm (in this case the norm prohibiting genocide), the pressure on states to

ratify the treaty drops significantly. We argue that this dynamic can help to explain why the rate of ratification decreased significantly soon after the Genocide Convention opened for signature and why a state like Japan has not yet ratified the Genocide Convention.

The rest of the paper proceeds as follows. In the remainder of this section, we discuss the merits of Lieberman's "nested" approach and explain why it is particularly well suited to the study of this problem. In the second section, we present the method and results of the initial large-*n* analysis that uses an event history model. In the third section, we test how well the expectations of the statistical model conform to the findings of a detailed study of the debates surrounding Japan's decision not to ratify the Genocide Convention. Finally, we conclude with a discussion of the implications that this has for the study of international human rights norms.

The "Nested Analysis"

Findings from empirical studies of human rights have exhibited a trend that is troubling to those who are concerned about the prospect of a truly "scientific" social science. As Hafner-Burton and Ron note, large-*n* studies have tended to reach pessimistic conclusions about the power of human rights norms, while small-*n* studies have tended to reach much more optimistic conclusions (2009:389–90). In order to address this problem, this paper combines a large-*n* event history analysis with small-*n* process tracing, using what Lieberman (2005) calls "nested analysis." Lieberman defines "nested analysis" as a technique whereby the results of large-*n* analysis are used to select cases for small-*n* analysis.

Where the results of a large-*n* analysis are "robust and satisfactory," Lieberman argues that one should conduct "model-testing small-*n* analysis," and thus only select cases for small-*n* analysis that one's model explains well. This is because large-*n* analysis assumes that "cases outside the confidence interval are not of theoretical interest and should be treated as unexplained 'noise,'" and thus "scholars should only select cases for further investigation that are *well predicted* by the best fitting statistical model" (2005:444, emphasis in original). However, as Rohlfing notes, even if we believe that our large-*n* results are robust and satisfactory, if we follow Lieberman's advice and only select cases for small-*n* analysis that our model explains, we run the risk of making "an ontological mistake" that "travels through the design and undermines causal inference in the quantitative and the qualitative part, rendering its identification and elimination arduous" (2008:1493).

Rohlfing (2008) suggests a number of modifications to Lieberman's technique of nested analysis in order to solve this problem, and one of those techniques is relevant to this paper. According to Rohlfing, it is methodologically dangerous to focus one's small-*n* analysis on "typical cases" (2008:1499). This is because, if the model that we tested with our large-*n* analysis is underspecified—that is, if the model is robust and satisfactory *but lacking an important explanatory variable*—then it is possible that our "typical case" will not reflect the true importance of that explanatory variable. We side with Rohlfing in this debate because we think it is plausible to imagine robust and satisfactory statistical findings that could, nevertheless, be improved with the addition of one or more independent variables. This seems particularly likely with variables that are not currently available in the large data sets that are often used in quantitative scholarship on human rights such as measures of domestic public opinion and of elite consensus or dispute regarding particular international norms. Thus, we focus the small-*n* portion of our analysis on Japan, a country that we judge to be deviant based on the results of our event history analysis.

We choose to focus on Japan for three reasons. First, because Japan is an outlier, not explained well by our statistical model, we choose Japan with a view toward uncovering variables and causal processes that are not picked up by our statistical model. This kind of qualitative analysis of an outlier case is particularly useful for sorting out the problem that Hafner-Burton and Ron (2009) note—that large-*n* studies of human rights notes tend to be pessimistic, while small-*n* studies tend to be optimistic. Second, because Japan has not ratified the Genocide Convention despite the predictions of our event history analysis, Japan is a “hard case” for our theory. If we still see some of the causal processes that our theory predicts even in an outlier case, then this suggests that our theory has substantial explanatory power. Third, Japan is also a useful case because it allows us to test one alternative explanation that is difficult to model statistically. That is, we are able to test the explanation that some states have avoided ratification of the Genocide Convention because they are concerned that ratification would obligate them to become involved in conflicts abroad. Japan has consistently interpreted Article IX of its Constitution, which prohibits Japan from maintaining “land, sea, and air forces, as well as other war potential,” in a way that severely restricts the operations of Japan’s Self-Defense Force. Given this constitutional prohibition and interpretation, if any state were expected to avoid ratifying the Convention because of concern that the Convention might require foreign military involvement, we would expect Japan to have this concern. Thus, Japan is a particularly good case in which to test this explanation.

Event History Analysis

We begin our study with an event history analysis of the time taken for states to ratify the Genocide Convention. Event history models are an appropriate choice for applications where the dependent variable is a measure of the time taken to for an event to occur—in this case, the state’s decision to ratify the Genocide Convention. Different options exist for modeling the process through which states decide to ratify a treaty. The option we have chosen is a logit model (Box-Steffensmeier and Jones 2004: chapter 5). This approach easily allows for the inclusion of time-varying covariates and enables us to directly test hypotheses concerning the pattern of duration dependence. We chose not to use the Cox proportional hazards model because the Cox proportional hazards model makes no assumptions about how the underlying hazard (that is, the baseline probability of ratification in a given year) changes as a function of time. The Cox proportional hazards model is therefore a popular choice when the duration dependency is regarded as simply a “nuisance” variable. However, in the current study, we have chosen to use a discrete-time logit model because we are interested in testing hypotheses that are, in effect, about the pattern of duration dependency itself (as reflected in the variables we use to capture the cumulative number of ratifications at each point in time).²

Dependent Variable

When implementing an event history analysis using a discrete-time logit model, the dependent variable is simply a binary indicator of the ratification status for

² Alternative choices for modeling the duration dependence might involve including a year counter variable (or some other measures of historic time) instead of or in addition to our measure of the global number of ratifications. However, in a cross-national analysis such as this one, the total number of ratifications is itself a function of time and is, unsurprisingly, very closely correlated to a simple year counter ($\rho = 0.98$). Given that the total number of ratifications is a more theoretically defensible measure of time than, say, a simple year counter or a series of dummies for various time periods, we choose to use this as our measure of duration dependence.

each country-year in the period from 1948 to 2009. At the same time, the data set is structured such that each country is included only for the years up to and including its eventual year of ratification; data for the years after that act of ratification occurred are excluded as they provide no information relevant to the decision to ratify. Ratification data for each country were obtained from the United Nations Treaty Collection.³ Each country-year is coded as “0” if the country had not ratified the treaty by December 31 of that year and “1” for the year in which the country ratified the treaty. The regression coefficients can therefore be interpreted in terms of the effect they have on the probability that a state that has not yet ratified the Convention will do so in a given year.

Explanatory Variables

In recent years, constructivist IR scholars have drawn attention to the role that norms (at both the global and regional levels) can play in shaping states’ interests and, as a result, their behavior on the international stage. Finnemore and Sikkink (1998) have developed the idea of a “norm cascade” to describe the way in which, once adoption of a norm has reached a certain critical level (or “tipping point”), states that had originally resisted adopting the norm find themselves coming under strong pressure to conform. They suggest that states are socialized into accepting the norm largely because of their desire to maintain their identity as a norm-following member of the international community (Finnemore and Sikkink 1998:902). Finnemore and Sikkink’s argument has been quite influential, and scholars operating from different theoretical traditions have been influenced by their claim that social pressures are important in treaty ratification. Although rationalist scholars tend to avoid the language of norm socialization, Simmons’ recent study of the causes and consequences of human rights treaty ratification has pointed to “the social and political costs of remaining aloof from a multilateral agreement to which most of their peers have already committed themselves” in explaining the social nature of treaty ratification (Simmons 2009:13).

While Finnemore and Sikkink are primarily concerned with the spread of norms rather than the ratification of international treaties, they do argue that treaty ratification can provide evidence that a norm has spread (Finnemore and Sikkink 1998:901, note 57).⁴ A testable implication of this hypothesis is that states will be more likely to ratify the Genocide Convention (or any treaty, for that matter) as the proportion of states that have ratified the treaty increases. This has been found to be true in the case of treaties such as the *Convention Against Torture (CAT)* and the Kyoto Protocol (Goodliffe and Hawkins 2006; von Stein 2008).

Another possibility we explore is that the probability of ratifications has a non-linear effect on the probability that a state will ratify the Convention in a particular year. In his study of ratification of the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Cole (2005) includes a quadratic term (that is, the square of the cumulative number of ratifications) in order to identify possible inflection points in the trend toward ratification—in other words, a point in time at which additional ratifications have no further positive effect on the

³ Data were downloaded from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtds_g_no=IV-1&chapter=4&lang=en on June 19, 2009.

⁴ Finnemore and Sikkink argue that “International law has had to wrestle with this problem repeatedly, since many modern international norms are embodied in treaties. Treaties implicitly recognize this concept of critical mass by specifying that a particular number of countries must ratify for the treaty to enter into force. Where treaties exist, the entry into force of the treaty may be a useful proxy for the critical mass necessary to say that a norm exists” (1998:904, note 57).

probability that a state will ratify the treaty. He finds that after an initial positive effect of additional ratifications, the effect disappears for the ICCPR and ICESCR by 1987 and 1981, respectively. Moreover, with respect to the First Optional Protocol to the ICCPR, he finds evidence to suggest that additional ratifications actually decrease the probability that a state will ratify the protocol (Cole 2005:484–485). To allow us to capture the possibility of nonlinearities in the relationship between global adoption and the probability of ratification, we estimate a sequence of models that include linear, quadratic, and cubic forms of the variable that measures the cumulative number of ratifications. (Replacing these variables with equivalent forms that measure the global proportion of states that have ratified the Genocide Convention produces similar results.)

In addition to measuring the global level of adoption of the norm, we also include measures of the level of adoption of the norm among a state's close interaction partners. Given the high degree of international cooperation that tends to take place within particular regions of the world, we hypothesize that states are more likely to be influenced by the behavior of geographically proximate states. A large empirical literature already points to the important role that geographical proximity plays in the diffusion of norms and practices such as democracy, human rights, or economic liberalization among states.⁵ Moreover, studies of treaty ratification have shown specifically that in the case of the ICCPR, the CAT, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), higher levels of ratification within a state's wider geographical region are associated with an increased probability of ratification (Goodliffe and Hawkins 2006; Hathaway 2007). We expect that similar effects may operate with respect to ratification of the Genocide Convention. In order to operationalize the concept of norm diffusion due to geographical proximity, we create a spatially lagged variable that measures the average ratification status of the 10 states closest to the country of interest.⁶ If socialization effects operate at the regional level, we should expect to find a positive and statistically significant coefficient for these spatially lagged variables.

In addition to the effects of international norms, we would also expect that states with different domestic political institutions would differ significantly in their propensity to ratify international treaties. However, the theoretical considerations that connect levels of democracy to treaty ratification are complex. On the one hand, one could argue that democratic governments come under greater pressure from their citizens to comply with international norms than do the governments of authoritarian regimes. Similarly, one could argue that democracies tend to have an ideological commitment to the rule of law in a way that extends beyond their borders. On the other hand, some scholars have suggested that democracies are sometimes less willing to ratify international human rights treaties because the act of treaty ratification has different meanings for democratic and authoritarian regimes (Hathaway 2002, 2007; Vreeland 2008; Simmons 2009). Democracies are generally believed to take their commitments to international treaties more seriously than nondemocracies because democratically elected leaders risk being punished by the electorate should they fail to uphold their international commitments. Democracies are therefore likely to delay ratifying a treaty until they are fully ready to comply with the treaty's provisions. Authoritarian regimes, however, are not subject to similar levels of scrutiny

⁵ On geographic diffusion, see Kopstein and Reilly 2000; Simmons and Elkins 2004; Gleditsch and Ward 2006; Cao 2009.

⁶ Specifying the geographical proximity variable in this way avoids the need to define the boundaries of particular regions of the world. See Ward and Gleditsch (2008) for a detailed explanation of the construction of spatially lagged variables. The ten closest countries were identified using a data set on distances between capital cities compiled by Kristian Gleditsch.

and can often afford to ratify a human rights treaty with little regard for their future ability to comply with its provisions. This theory has been used to explain the counterintuitive finding that the ratification of human rights treaties often appears to be associated with worse human rights behavior in subsequent periods (Hathaway 2002; Hafner-Burton and Tsutsui 2005; Vreeland 2008). We operationalize the concept of democracy using the Polity 2 scale developed by the Polity IV Project (Marshall and Jaggers 2002). This is a composite measure of the democratic and autocratic nature of a country's domestic institutions that ranges from -10 (in the case of a fully autocratic regime) to $+10$ (in the case of a fully democratic regime).

In addition to modeling ratification of the Genocide Convention as a function of the level of democracy/autocracy in each state, we also include a dummy variable indicating whether the state is a new democracy. Moravcsik (2000) suggests that new democracies differ from older democracies in their willingness to commit to international agreements. Although the obligations created by ratification of the Genocide Convention are unlikely to have the effect of "locking-in" democracy in the same way that ratification of the European Convention on Human Rights might have, it is conceivable that a newly democratic state will want to ratify the Genocide Convention as part of a more general desire to ratify international human rights treaties. We would therefore expect to find a positive association between the dummy for newly democratic states and ratification in this analysis. We coded the dummy variable as "1" for any year in which the country of interest has a positive Polity 2 score and, over the preceding five years, had either been established as a new state or had had a negative Polity 2 score.

We also account for differences in other aspects of the states' domestic political institutions that could affect their probability of ratifying the Genocide Convention (or human rights treaties more generally). One important source of variation is the ease with which executives can bind their states to international treaties. The United States, for example, requires a two-thirds majority in the Senate in order for treaties to be ratified. This continues to present a significant obstacle to American ratification of human rights treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷ To account for this source of variation, we use Simmons' (2009) ordinal measure of the extent of the political obstacles facing governments that seek to ratify a treaty. Values range from 1 for states (such as India) where the executive has broad powers to bind the state to international treaties to 3 for states (such as the United States) that require a supermajority in one legislative body and/or majorities in two legislative bodies. Data for this measure were obtained from the online appendix that accompanies Simmons (2009).⁸

Previous studies of human rights treaty ratification have found that governments of states with a common law system will generally be less willing to ratify human rights treaties than those of states with civil law systems (see, for example, Goodliffe and Hawkins 2006; Neumayer 2008; Simmons 2009; although see Mitchell and Powell (2011) for a discussion of how the Rome Statute establishing the International Criminal Court contained provisions that helped encourage civil law states to ratify). This could be due to the greater uncertainty over how the courts might interpret the states' treaty obligations, and/or the fact that courts in common law systems tend to be more independent than courts in civil law systems. Following Simmons (2009), we obtain data on whether a state's legal system is based on British common law from the Global Development Network Growth Database.⁹

⁷ For further analysis of the United States' nonratification of CEDAW, see Baldez 2011.

⁸ See http://scholar.harvard.edu/b Simmons/files/APP_3.2_Ratification_rules.pdf (accessed January 20, 2012).

⁹ <http://nyudri.org/resources/global-development-network-growth-database/> (accessed January 20, 2012)

We also suppose that richer countries are more likely to ratify international human rights treaties than poorer countries. Richer countries are more likely to have the capacity to fulfill their obligations under international human rights treaties in general, which, in the case of the Genocide Convention, could involve undertaking law enforcement and extradition procedures and even armed intervention to prevent or stop genocide. We operationalize the concept of economic development using the measure of real GDP (in 1996 constant US dollars) per capita obtained from the Expanded Trade and GDP Data set compiled by Kristian Gleditsch.¹⁰

Finally, we test the hypothesis that countries with a greater number of ethnic or religious minorities may come under greater pressure to ratify the Genocide Convention in order to demonstrate their commitment to protecting these groups. This pressure may arise either from within the state or from without. Data on threatened minority groups were obtained from the Minorities At Risk (MAR) project (Minorities At Risk Project 2009). We construct a measure of the number of minorities at risk for each country-year by simply counting the total number of entries in the MAR data set for each country-year.¹¹

Results

We report the results of the logit models of ratification in Table 1. In the first three models, we explore the relationship between the number of states that have ratified and the probability of further ratifications by including increasingly complex specification of the Global Ratifications term. In Model 1, the states' response to global norms is captured by including a simple measure of the cumulative number of states that have ratified the convention by the end of each year ("*Global Ratifications*"). This indicates a negative relationship to the probability of ratification that is highly statistically significant ($p < .001$). In Model 2, we include a quadratic term (that is, the cumulative number of ratifications squared) in order to capture the possibility that a nonlinear relationship exists between the number of states that have ratified and the probability of further ratifications—in other words, the possibility of a "tipping point" in the relationship. In Model 3, we include a cubic term in order to add further flexibility to the relationship. Because the response to global norms in Models 2 and 3 is captured by the sum of the various terms of the polynomial, the overall effect is best described by plotting the relationship between the number of states that have ratified the treaty and the annual probability of ratification for any of the remaining states that have not yet ratified. In Figure 2, we plot this relationship for Models 1, 2, and 3. As these graphs show, once we relax the linearity assumption we find that the global ratification rate has a more complex U-shaped relationship to the probability of ratification. The less constrained models (Models 2 and 3) show that in the initial period of adoption, the probability of ratification decreases as more states ratify the treaty. This effect tapers off by the time that the first 50 or so states have ratified the treaty (corresponding to the mid-1950s). In later periods, once the total number of ratifications exceeds 94 (corresponding to the period after the end of the Cold War), the probability that a given state will ratify begins to increase as a function of further ratifications.¹² Both

¹⁰ Data were downloaded from <http://privatewww.essex.ac.uk/~ksg/exptradegdp.html> on June 30, 2009. In order to avoid listwise deletion of observations representing the first two years after the Genocide Convention became open for signature, missing values of GDP per capita for the years 1948 and 1949 were replaced with the actual values for 1950.

¹¹ Where data for individual years were missing, we imputed the median number of minorities at risk for that particular country. This is based on the assumption that the numbers of minorities at risk within an individual country is relatively stable over time.

¹² At this point in time, the total number of states present in the international system was 168.

TABLE 1. Logit models of ratification of the Genocide Convention. All Covariates have been Lagged by 1 Year

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>
Constant	-1.89 (0.10)	-0.98 (0.40)	-1.83 (0.13)
Global Ratifications	-0.02 (0.00)	-0.06 (0.00)	-0.01 (0.81)
Global Ratifications (Squared)		0.00 (0.00)	-0.00 (0.11)
Global Ratifications (Cubed)			0.00 (0.02)
Neighborhood Effect	0.86 (0.05)	1.40 (0.00)	1.05 (0.03)
Democracy	0.05 (0.01)	0.04 (0.03)	0.03 (0.07)
New Democracy	0.44 (0.19)	0.36 (0.28)	0.49 (0.15)
Institutional Hurdles	-0.12 (0.54)	-0.15 (0.43)	-0.13 (0.50)
Common Law	-0.79 (0.00)	-0.62 (0.02)	-0.57 (0.03)
GDP per capita (logged)	-0.01 (0.93)	-0.04 (0.78)	0.03 (0.83)
Minorities at Risk	0.04 (0.35)	0.03 (0.46)	0.03 (0.55)
N	2496	2496	2496
AIC	787.71	771.82	768.57

(Note: P-values (for a two-tailed test) are shown in parentheses below each coefficient estimate.)

the quadratic (Model 2) and the less constrained cubic (Model 3) models show a similar relationship over this period, although **Model 3 turns out to be the best-fitting model of the three based upon its having the lowest Akaike information criterion (AIC) score.**

This trend is surprising because at first sight it does not appear fit the pattern of adoption that is usually associated with the emergence of new norms in the international system. In the first stage of the three-stage “life-cycle” of a norm described by Finnemore and Sikkink (1998), a norm begins to emerge as a small minority of states gradually adopt an innovative form of behavior (for example, granting women the right to vote). After a sufficient number of states have adopted the practice, a “norm cascade” begins in which states that do not yet conform to the new norm come under increasingly strong pressure to do so. As a result, the rate of adoption of the norm rises rapidly. In the third stage, however, the norm becomes so deeply internalized that we can expect to see very little evidence of new adoption. This pattern of adoption tends to result in the classic S-shaped relationship that characterizes the successful diffusion of innovations (see Figure 3).¹³ These results for the model of ratification of the Genocide Convention, however, suggest that the willingness of states to ratify the treaty is at its very highest in the early years, but tapers off as more states ratify, and then begins to increase in the post-Cold War period.

What explains this initial decline in the rate of ratification? Unlike other important human rights treaties, the Genocide Convention opened for signature at a point in time when the Holocaust was an all-too-recent memory and when enthusiasm for the effort to strengthen international law in this area was especially high. The Genocide Convention therefore opened for signature when the norm cascade associated with the antigenocide norm was already well under way. Soon thereafter the norm became so deeply internalized that the pressure for states to engage in the symbolic act of signaling their acceptance of the norm by ratifying the Convention diminished significantly. This is an explanation that we shall re-examine in more detail in the next section when we consider the case of Japan’s nonratification.

To help to interpret the effect of the Global Ratifications variable in the context of the other covariates included in the model, Figure 4 shows a series of marginal effect plots for each of the variables included in the models in Table 1.

¹³ See Rogers (2003) for an excellent review of the diffusion literature.

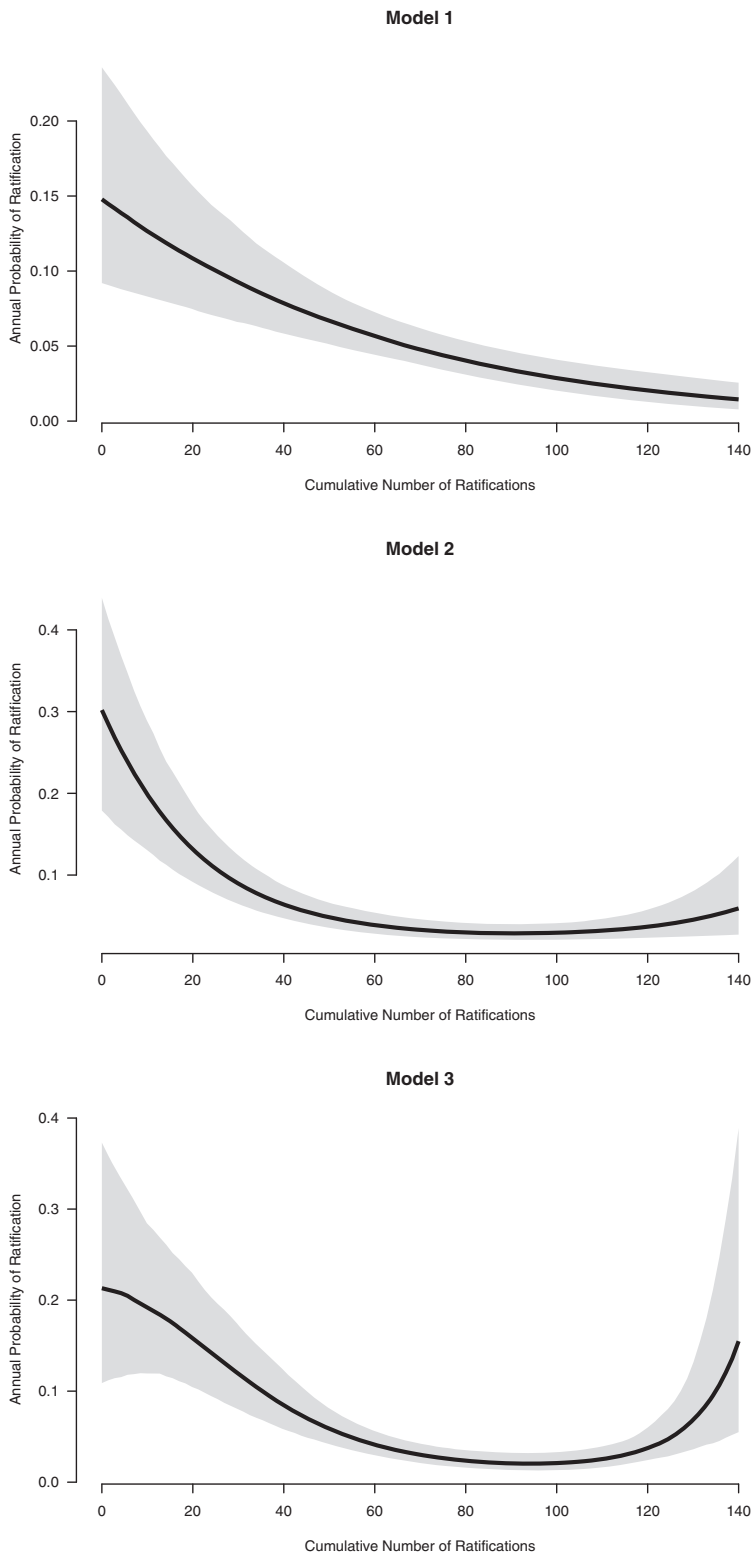


FIG 2. Probability of ratification as a function of the global number of ratifications while all other co-
variates are held constant at their median levels. The grey areas represent the 95% confidence inter-
vals around the expected probabilities.

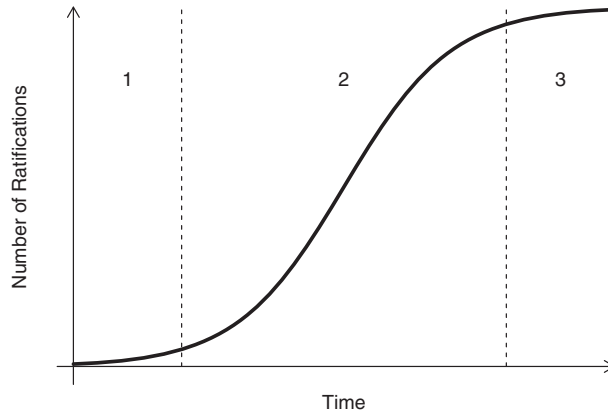


FIG 3. Typical “life cycle” of a norm. Finnemore and Sikkink (1998) refer to the three phases as (1) norm emergence, (2) the norm cascade, and (3) internalization.

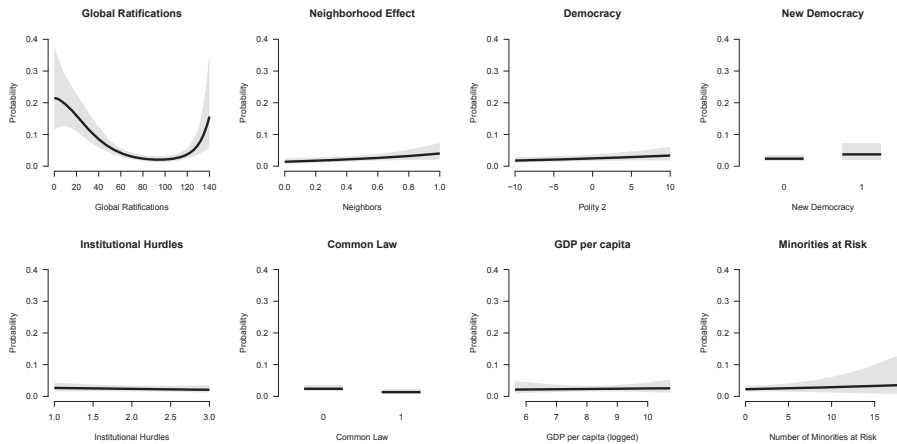


FIG 4. Marginal effect plots showing the predicted probabilities of ratifying the Genocide Convention in a single year as a function of changes in the level of each of the covariates in the models in Table 1 while all other covariates are held constant at their median values. All estimates are based upon the point estimates and variance-covariance matrix obtained from Model 3. The grey areas represent the 95% confidence intervals around the estimated probabilities.

Each panel shows the estimated effect that variation over the range of values observed in the data has on the predicted probability of ratification for a given country-year, while the values of all other covariates in the model are held constant at their median levels. The gray bands represent the 95% confidence intervals around the means. In each case, the predicted probabilities were obtained through a simulation exercise that involved taking 1,000 draws from the multivariate normal distribution described by the coefficient estimates and variance-covariance matrix obtained from Model 3. To facilitate comparison, the y-axes of all 11 panels in Figure 4 are identical.

What these graphs show is that, over the relevant range of values found in the data, the Global Ratifications variable is by far the most important predictor of a state's ratification status. In other words, states' decisions to ratify are influenced—for better or worse—by the cumulative number of ratifications that the treaty

has achieved at each point in time. Meanwhile, the effect of the more localized measure of norm diffusion captured by the Neighborhood Effect variable, although positive and statistically significant, is comparatively very small in terms of its substantive effect.

Other domestic-level variables also have a relatively small effect. For example, although we are able to discern a positive and statistically significant relationship ($p = .07$ in Model 3) between a state's Polity 2 score and its probability of ratification, the effect of high levels of democracy is relatively small in comparison with the effect of low scores on the Global Ratifications variable. To be clear, the effect of democracy is still important—Model 3 predicts that a “typical” country with a score of -10 on the Polity 2 scale has only a 0.018 probability of ratifying the treaty in a single year, whereas the same country with a score of $+10$ has a 0.034 probability of ratification—but the contribution of its democracy score to the overall probability of ratification is still very small when compared to the effect of the Global Ratifications variable (which can be as large as 0.21 in the early years).

Neither the New Democracy nor the Institutional Hurdles variables show a statistically significant relationship to the probability of ratification. The Common Law dummy variable does, however, show a statistically significant negative effect that is consistent with the findings of previous studies (see, for example, Simmons 2009). In other words, states that have a common law system are less likely to ratify the Genocide Convention in any given year than those that have a civil law system. Indeed, Model 3 predicts that the annual probability of ratification for a “typical” country that does not have a common law system is 0.023, whereas the equivalent value for a country that does have a common law system is only 0.014. Interestingly, we were unable to find consistent evidence of a statistically significant effect of economic development or the number of minorities at risk in each state.

In the online appendix that accompanies this article, we show that the results of this regression model are robust to a number of further tests. These include tests of the effect of excluding states that became independent after the Genocide Convention opened for signature, as well as tests of the effect of including further control variables such as types of legal system, membership in the Council of Europe, a recent history of genocide/politicide, and diffusion through networks of intergovernmental organizations. The online appendix can be downloaded from [URL].

Japan and the Genocide Convention

Although the general level of support for codifying the prohibition on genocide was very high in the aftermath of the Holocaust, some states were at first hesitant to support the treaty. As the Genocide Convention was being negotiated, British and Dutch government representatives “argued that the Convention was useless because genocide was a crime committed by states, not by individuals” (Smith 2010:35). In early discussions of the convention in United States, some Senators from southern states opposed the treaty because they were concerned that it might be used to outlaw racial segregation, and others were concerned that it might be used to investigate American treatment of native Americans in the 1800s (Power 2002:67). Even the term “genocide” has been controversial; in 1949, members of the British House of Commons called the word genocide “horrible” and “horribly illiterate” (Smith 2010:34, note 6), and French government representatives initially called the term “a useless and even dangerous neologism” (Smith 2010:39).

Given its internationally contested origins, the extent to which the norms embodied in the Genocide Convention eventually permeated Japanese elite

discourse is remarkable, especially considering that Japan has not ratified the treaty. The case of Japan is also interesting for this study because the results of the models estimated above strongly predict that Japan would have ratified the Genocide Convention. According to the estimates produced by Model 3, the probability that Japan would have ratified the Genocide Convention by now is at least 0.94,¹⁴ and yet Japan has not ratified the Convention, nor does it appear to have plans to do so in the near future.

In order to examine why this might be the case, we conduct a detailed examination of Japan's debates concerning its possible ratification of the treaty in light of the predictions made by our statistical model of ratification. We do this by examining each mention of the Genocide Convention in the Japanese Diet in the postwar period.¹⁵ These Diet hearings are a useful source because they contain records of remarks by majority and minority party MPs as well as the various cabinet members and high level bureaucrats that are brought before the Diet to testify. We also looked for mention of the Genocide Convention in the archives of Japan's largest circulation daily newspaper, *Yomiuri Shimbun*, and on the web site of the Ministry of Foreign Affairs, but we were not able to find discussion of why Japan had not ratified the Convention (or why Japan should ratify the convention) in either location.

Our event history analysis suggests two independent variables, which might be useful in predicting the behavior of Japan: the neighborhood effect and common law variables. First, states with many neighbors that have ratified the Genocide Convention are more likely to ratify the convention. As Figure 5 suggests, Japan's scores on the regional ratification variable over the time period covered by this study are fairly typical and do not suggest that Japan lies in a region with especially low levels of ratification of the treaty. Yet even in years that most of Japan's neighbors had ratified the Genocide Convention, Japan did not appear to come any closer to ratifying the treaty. Indeed, the ratification status of Japan's neighbors did not have much of an impact on Diet discussions of the Convention. While politicians used the Genocide Convention to criticize the actions of Asian countries including China, Burma, and Cambodia, politicians have never used the ratification status of other Asian countries to argue that Japan should ratify. The closest a politician came to this kind of argument about Asia happened in 1970, when LDP MP Ishii Hajime suggested that ratification might help promote Japan's diplomatic efforts in Asia (HOR 1970a).¹⁶

Although Japanese politicians did not make specific reference to the ratification status of other Asian countries, in a 1978 hearing of the Lower House budgetary committee, MP Ueda Takumi (Socialist Party) notes that the Genocide Convention was written in response to crimes from World War II such as the Holocaust and the Rape of Nanking and that England, France, Germany, and Italy have all ratified the treaty (HOR 1978). Ueda's remark is the only instance in the postwar period of the ratification status of other countries being used as an argument in favor of Japan's ratification, and it is noteworthy that all of the other countries mentioned as positive examples are from the Europe. This suggests that the ratification status of Japan's geographical neighbors has not influenced Japan's decision not to ratify the treaty.

¹⁴ Due to missing data on certain covariates, the estimated probability of 0.94 is based upon Japan's covariate values for the period 1953–2001.

¹⁵ We looked for the all mentions of the phrase "jenosaido jōyaku," which includes the transliterated version of the English word "genocide" and the phrase "shūdan satsugaizai no bōshi oyobi shobatsu ni kan suru jōyaku, which is a literal translation of the full title of the Genocide Convention in the online archive of the proceedings of the Japanese Diet (<http://kokkai.ndl.go.jp/>).

¹⁶ The Japanese House of Representatives, which is the lower house of the Japanese Diet, will be abbreviated HOR.

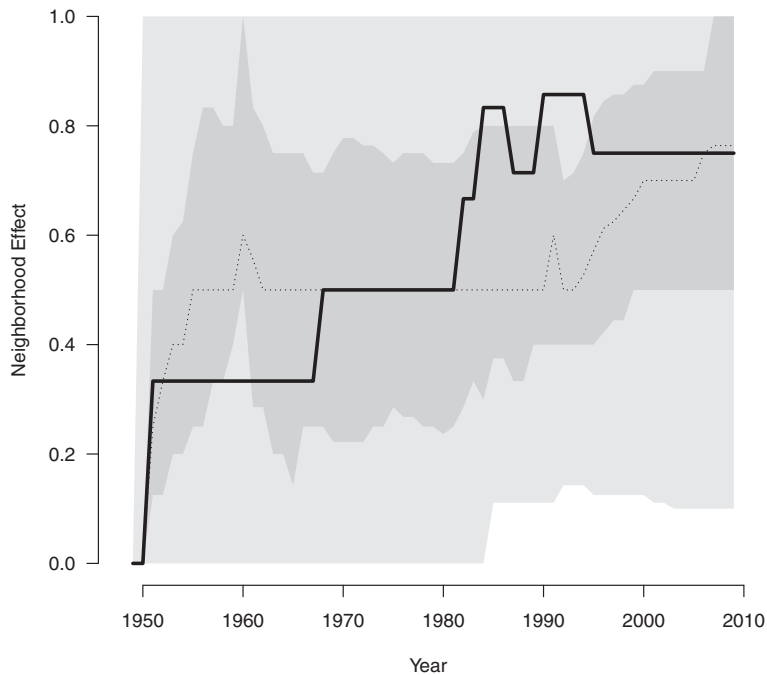


FIG 5. Japan's level of the *Neighborhood Effect* variable relative to other countries in the sample. The thick black line represents Japan's level of the variable at each point in time while the thin dotted line represents the median level of the variable for all countries in that year. To give a clearer sense of the global distribution of the variable at each point in time, the light grey band represents the full range of the variable and the darker grey band represents the interquartile range.

Our model, as well as a variety of other scholarship on treaty ratification discussed above, suggests that Japan's civil law legal system should make Japan somewhat more likely to ratify the Genocide Convention. This is because, unlike Civil Law legal systems, Common Law systems give judges more leeway to adopt expansive interpretations of treaties and thus bind executives and legislatures in unanticipated ways (Goodliffe and Hawkins 2006:364). Conversely, in Civil Law systems, judges are more constrained. This is particularly true of Japan, where courts have been extremely unlikely to rule against the government, particularly in human rights cases (Iwasawa 1998; Hamano 1999).

While Japan's Civil Law system did not pave the way for Japan's ratification, the Japanese case does suggest that other institutional obstacles do seem to have made Japan reluctant to ratify the Convention. The Japanese government generally makes what they regard as the necessary legal changes either before or directly after ratifying a human rights treaty (see Mello and Strausz 2011 for a discussion of the legal changes that accompanied Japan's ratification of CEDAW). In the case of the Genocide Convention, it is clear that cabinet members and bureaucrats thought of these required legal changes as a cost, and they are not willing to argue that the benefits of ratification outweighed that cost. One exchange—between Kaya Harunori,¹⁷ the Director-General of the UN Bureau of the Japanese Ministry of Foreign Affairs, and Tachigi Hiroshi, MP from the Japanese Communist Party—is particularly telling. During a debate about whether Japan should ratify the ICCPR and the ICESCR, Tachigi

¹⁷ We write Japanese names in the Japanese style, with family name first.

suggested that Japan should ratify the Genocide Convention. In his reply, Kaya argued that “if we reflect on the true situation of our country, it must be said that there is scarce genuine necessity to establish genocide as a crime, and for that reason we have not ratified” (HOC 1979a).¹⁸

After arguing that there would be little benefit to Japan’s ratification of the Genocide Convention, Kaya argued in a subsequent meeting that ratification would have some cost:

...the Genocide Convention confirms genocide as a crime under international law, and establishes punishment for steps from conspiracy to commit genocide to actually committing genocide. Our country does not have an objection to this. In a situation where domestic law were to secure the performance of the obligations of the treaty, there are problems regarding how each of the crimes forbidden by the convention would be treated by domestic law, and because we were not able to clarify all of these, we did not ratify the treaty (HOR 1981a).¹⁹

At a more recent meeting, Foreign Minister Asō Tarō made a similar argument that Japan has not yet ratified the treaty because there are still issues with how specific crimes would be treated in Japanese domestic law (HOC 2007). Interestingly, while both Asō and Kaya make references to how various crimes might be treated under domestic law, neither of them specifically raises the concern that the treaty might obligate Japan to become involved with international conflicts in a way that could violate the Japanese constitution. Similarly, no advocates of ratification justified their advocacy by arguing that ratification would compel future leaders to intervene to prevent genocides. Thus, contrary to the alternative explanation that we mentioned above, it does not seem that concern about the Genocide Convention’s affirmative obligation that parties to the treaty act to stop genocide has caused Japan to avoid ratification.

While there is not very much specific talk about which domestic laws would need to be changed, in a political world of limited resources any kind of law change requires time and political capital, and both are scarce resources. Conversely, the benefits of Japan’s ratification of the Genocide Convention would be relatively low for two reasons. First, the Genocide Convention would almost certainly not be sufficient to prevent genocide in Japan. Even if Japan’s government were ever to be taken over by a group intent on committing genocide, it is difficult to imagine that Japan’s status as a party to the Genocide Convention would stand in the way. Second, Japanese politicians from across the political spectrum already consider the prohibition of genocide to be a universally accepted norm.

In the midst of a speech arguing against Japanese neutrality in the Cold War, Ootani In’o, an MP from the ruling Liberal Democratic Party (LDP; a center-right party), asked:

What steps has the Genocide Convention established to deal with countries committing this serious crime under international law? The peaceful Tibetan people are murdered, and moreover the crime that the civilized world deplors, the peaceful Lama disciples have also been slaughtered. Is not this precisely the genocide that civilized countries passed this resolution to oppose (HOC 1959)?

While Ootani was clearly unhappy with the “civilized world” for ignoring China’s actions in Tibet, it is telling that he used the Genocide Convention, a treaty that Japan had not ratified, to give his argument moral authority. Moreover, as this Diet meeting continued, no other speaker mentioned that Japan had not ratified the treaty or argued against the principles underlying the treaty.

¹⁸ We use the acronym HOC to stand for the House of Councillors, the upper house of Japan’s parliament.

¹⁹ We use the acronym HOR to stand for the House of Representatives, the lower house of Japan’s parliament.

In a 1969 Diet meeting, Socialist MP Kawasaki Kanji was concerned that US troops in Okinawa might possess poison gas, and he argued that the use of poison gas violated the Genocide Convention: “even if we look at this situation from the perspective of the Genocide Convention which was adopted by the UN, I believe that the situation in Okinawa must be thoroughly investigated” (HOR 1969). Regardless of the strength of Kawasaki’s interpretation of the Genocide Convention, it is telling that he suggests that this treaty, which neither Japan nor the United States had ratified, created binding obligations on American troops in Japan. Moreover, Kawasaki’s suggestion about the jurisdictional reach of the Genocide Convention was not challenged by other speakers.

Both Ootani, a member of the rightwing LDP, and Kawasaki, a member of the leftwing Socialist Party, treated the Genocide Convention as representing a strong international norm or a piece of customary international law, and neither speaker even mentioned that Japan had not ratified the treaty. These remarks are not anomalous. In the postwar period, the Genocide Convention has also been invoked in criticism of the atomic bombing of Hiroshima and Nagasaki (HOR 1961), the American bombing of Cambodia during the Vietnam War (HOR 1970b), the treatment of the Karen ethnic group by Myanmar (HOC 1992), and Soviet treatment of Japanese prisoners of war (HOR 1981a). The Genocide Convention was also used to argue against the passage of additional laws to support the U.S. war on terror after the 9/11 attacks, as Imagami Masami, MP from the Social Democratic Party argued that such a law was not necessary since there are already a lot of international laws forbidding international crime, including the Genocide Convention (HOR 2001).

All of the above-referenced Diet debates have two things in common. First, none of the speakers were making an argument that Japan should ratify the treaty. Instead, the above politicians were assuming that the convention already represented a legitimate international norm. Second, while politicians and government officials responding to some of the above speakers mentioned in passing that Japan had not ratified the Genocide Convention, no one makes the argument that Japan should not take antigenocide norms seriously because Japan had not ratified the treaty.

The Japanese case thus suggests that, counterintuitively, the very universality of the norm against genocide has worked *against* the full adoption of the Genocide Convention. As the norm against genocide quickly gained influence worldwide after World War II, human rights supporters in governments and civil society had to weigh the benefits of pursuing ratification (in terms of strengthening the norm internationally and potentially binding future regimes domestically) against the opportunity costs of pushing for ratification of the Genocide Convention instead of pursuing other goals. Because of the unique nature of the crime of genocide, human rights supporters are not able to consider binding future regimes as a potential benefit of ratification; the only benefit is strengthening the international norm. However, this benefit decreases as more states ratify the treaty, and thus, we find that, for much of the period after the Genocide Convention opened for signature, the probability that a state will ratify the treaty decreases with each additional ratification.

Conclusions

The question of why some states have taken so long to ratify treaties that impose few significant costs on ratifying states is currently attracting significant interest among political scientists. In the case of the Genocide Convention, our mixed-methods analysis of ratification patterns has suggested an interesting explanation that has so far been overlooked by these studies: namely, that once the norm embodied in the treaty has developed a taken-for-granted quality, the effort to

achieve further ratification loses momentum. This effect can be expected to be especially salient in the case of the Genocide Convention, where—unlike in the case of most other human rights treaties—the costs and benefits associated with the decision to ratify began to weigh heavily against ratification very soon after the treaty opened for signature.

Although our theory predicts a negative relationship between cumulative ratifications and the probability of additional ratifications, one feature of the observed relationship that is more difficult to explain is the fact that the probability of ratification began to accelerate again around 1987. One possible explanation for this change is that, after the Soviet Union collapsed, the cost of remaining aloof from the international human rights regime grew. This was especially true for the aspects of that regime that were supported by the United States, the world's sole superpower, which had ratified the treaty in 1988. As a result, remaining aloof from the international human rights regime took on a new cost in the post-Cold War years. Clearly, the relationship between great power competition and state response to the human rights regime is a promising area for future study.

The Japanese case study enables us to refine our understanding of several interesting features of the statistical model developed in Section 2 above. First, the Japan case highlights the fact that, even in a country that has not ratified the Genocide Convention, the norms that the treaty embodies can still obtain a taken-for-granted quality. It is difficult to imagine a national politician questioning those norms in Japan, regardless of that politician's party or ideology. In one sense, this should not be surprising given that the norm against genocide already constitutes an important part of customary international law. Nonetheless, this highlights one of the more important difficulties of researching the impact of international law on states. If a treaty can have such a profound influence even on states that have not ratified that treaty, then scholars should be careful to look beyond simple measures of ratification to understand the reach of treaties. In other words, ratification of the Genocide Convention may not be an ideal indicator of the level of acceptance of the norms concerning the punishment of the act of genocide. Rather than asking questions such as "How do international treaties affect state behavior?" we should ask more nuanced questions such as "How do international treaties help to establish new international norms, and how do these norms subsequently affect behavior?"

Second, our case study of Japan suggests that our event history analysis may have even more explanatory power if we were able to include an additional variable measuring the extent to which governing elites in a country believe that the Genocide Convention already embodies a very well-established international norm. As more governing elites in a particular country come to believe this, our case study suggests that the country will become less likely to ratify the Genocide Convention. This is a hypothesis that, given appropriate data, could be tested statistically in future research. Moreover, we were able to generate this new hypothesis using a nested analysis that focused on an outlying case in our event history analysis. This provides some evidence in favor of Rohlfing's (2008) modification to Lieberman's (2005) influential nesting method. In short, we were able to generate this new hypothesis because we chose to analyze an outlier, rather than a typical case.

Finally, our event history and case study analysis together serve as an important reminder that, particularly for countries that take the rule of law seriously, the ratification of *any* treaty imposes some costs; at an absolute minimum, laws have to be examined for consistency with the treaty provisions, and inconsistent laws have to be changed. More importantly, however, is the idea that, from the perspective of the proponents of human rights norms in governments and civil society, pushing for the ratification of one particular treaty

involves taking resources away from other campaign efforts that may play a more pivotal role in advancing a human rights agenda. Ratification of a treaty that codifies an already well-established norm may not necessarily be the best use of scarce political capital, and this may, in turn, explain why ratification of the Genocide Convention appears to have lost momentum in the years after its creation.

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Supporting Information

Additional Supporting Information may be found in the Web site listed below:

Appendix S1. "Appendix to 'Explaining Non-Ratification of the Genocide Convention: A Nested Analysis' " <http://dvn.iq.harvard.edu/dvn/dv/briangreenhill>.