To Adopt or Not? The Role of the International Criminal Court in Developing Regional Strategic Gains

by

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## List of Abbreviated Words

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CPED</td>
<td>International Convention for the Protection of all Persons from Enforced Disappearance</td>
</tr>
<tr>
<td>CPPCG</td>
<td>Convention on the Prevention and Punishment of the Crime of Genocide</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>DAC</td>
<td>Development Assistance Committee</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of all Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>ICMW</td>
<td>International Convention on the Protection of the Rights of all Migrant Workers</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
</tr>
<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>UAM</td>
<td>Arab Maghreb Union/ Union du Maghreb Arabe</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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Chapter 1. Introduction

The International Criminal Court is of notable interest because of its unprecedented legal power. The following thesis aims to address the factors that primarily influence state ratification decisions regarding the Rome Statute of the International Criminal Court (ICC), particularly in the Middle East and North Africa (MENA). The Rome Statute is different from the core human rights treaties in that it holds human rights violators legally accountable for their actions. It has the power to investigate, try, and imprison those suspected of egregious human rights crimes. The core treaties, however, are only equipped with monitoring committees capable of giving suggestions and warnings to violating states. This limits the committees’ ability to enforce treaty terms. It is imperative to grant the International Criminal Court a larger role in political science research because of its unique enforcement mechanisms and because of the recent attempts by select states to withdraw from the Court or to undermine its efforts to investigate relevant cases. Additionally, increased research into the ICC can allow legal scholars to better understand how to make it a more effective legal system, especially since past treaty ratification literature may be unable to completely address the unique characteristics of the ICC. I am opting to conduct a comparative case study using Jordan and Morocco because of their institutional similarities and initial support for the creation of the Court, but varying relations with it. These cases will help answer the question “what factors motivate the Rome Statute ratification decisions made by Middle Eastern and North African states?” MENA is especially important to analyze because of the
continuing levels of violence and instability present in the region and the egregious human rights violations being committed by MENA states today. Many of the conflicts in MENA could be prosecuted by the ICC, so understanding MENA’s relationship with the Court can help the international community better understand how to hold Middle Eastern and North African human rights criminals accountable for their actions.

The end of World War II and a burgeoning desire to respond to the atrocities committed during it led to the emergence of the human rights regime. The human rights regime could be defined as a “universally acknowledged system of treaties, institutions, and norms” that addresses human rights (Council on Foreign Relations 2013). What makes the human rights regime stand apart from other international law regimes is its intent to restrict states’ actions towards their own citizens; it infringes on state sovereignty in a way that other regimes do not and cannot. Many international treaties focus on the relationships between states and emphasize the importance of inter-state interactions while refraining from addressing the domestic actions of governments, as that could be viewed as impeding on a state’s independence and sovereignty (Moravcsik 2000: 217).

The core human rights treaties are the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW); the
Convention Against Torture (CAT); the Convention on the Rights of the Child (CRC); the International Convention on the Protection of the Rights of all Migrant Workers (ICMW); the International Convention for the Protection of all Persons from Enforced Disappearance (CPED); and the Convention on the Rights of Persons with Disabilities (CPRD). These treaties comprise the core of the human rights regime because they address basic human rights and establish committees that monitor implementation and compliance (OHCHR 2016). Compared to other international law regimes, the human rights regime is relatively new with the first of the core treaties becoming effective in 1965. If the Geneva Conventions, which address the laws of war, are to be considered core human rights treaties, then the regime can be said to have begun in 1949. Consequently, human rights literature is less developed than literature on other international regimes, leaving plenty of opportunity for theory development, especially in regards to newer agreements like the Rome Statute.

**An Overview of the International Criminal Court**

The International Criminal Court was created as an extension of past criminal tribunals such as the International Criminal Tribunal of the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The intention was to create a permanent and independent court to prosecute violations of humanitarian law in order to hold state leaders accountable, while also avoiding accusations of “victor’s justice” (Evans and Sahnoun 2001: 24). Victor’s justice is the idea that the victors in a given conflict administer their own definitions of
justice without regard to the injustices they committed. For example, the Nuremberg Trials were criticized for addressing crimes committed by the Axis powers, but not those committed by the Allies. The process of creating the ICC spanned over 10 years with multiple international institutions taking on the responsibility of drafting the Statute. The remainder of this section provides a timeline of the process of creating the ICC as understanding, in detail, its many stages is important for properly analyzing how different states have engaged with it.

The International Law Commission (Law Commission or ILC) managed the first stage of the drafting process. The UN General Assembly (UNGA) requested in 1989 that the Law Commission commence work on drafting a statute for an international criminal court after receiving requests for such an institution from multiple member states including the Soviet Union, the United States, the United Kingdom, and Trinidad and Tobago (Morton 2000: 108). The International Law Commission was created in the aftermath of WWII and was intended as “a permanent institution for the codification and progressive development of international law” (Morton 2000: 1). The ILC consists of members from all regions of the word with regional representation dependent on the number of member states from each region in the UN. Members of the Law Commission are nominated by their governments and are elected by the UN General Assembly, but when elected, they are considered independent of their governments (Morton 2000: 10-11). Before the ILC can submit a draft statute to the UN General Assembly, it undergoes a multi-step drafting process. A
rapporteur is appointed by the ILC from among its members to take on the responsibility of creating the first draft of the statute articles. This draft is then transferred to a drafting committee, which creates a ‘final’ draft to be debated within the Law Commission. The Commission aims to reach consensus on each of the articles in order to make the statutes appealing for the majority of states. The General Assembly can return the statute to the Commission with suggestions for changes to be made (Morton 2000: 14–15).

The Rome Statute of the International Criminal Court created a court that “investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes and crimes against humanity” (International Criminal Court 2016a). The International Criminal Court operates under the principle of complementarity, meaning that cases investigated or prosecuted by the Court must be cases that cannot be fairly or adequately prosecuted in their relevant countries. States have jurisdiction unless they prove themselves unable or unwilling to carry out impartial investigations and trials (Agirre et al. 2003: 3). This provision was included to limit the sovereignty costs associated with the Court. Such a check on the Court was necessary to assure states that it would not encroach on their rights over internal proceedings without reason.

There are three avenues through which the Office of the Prosecutor can investigate cases: states can refer cases, the UN Security Council can refer cases, or the Prosecutor can initiate investigations. After a case is referred, the Prosecutor determines whether or not the Court has jurisdiction. Some factors taken into consideration are whether the crimes allegedly committed fall under the ICC’s jurisdiction, whether the crimes were committed after 2002 (the year the Rome Statute went into force), and whether the state that has primary jurisdiction is conducting a genuine investigation (United Nations 1998a).

Having multiple methods for referral to the ICC is meant to work as a safeguard against the politicization of the case referral process. If, for example, the UNSC refuses to refer a case because of political reasons, the Prosecutor can ensure
that justice is still administered by investigating the case him/herself. States that sign the Rome Statute signal to the international community a desire to comply with the elements that comprise it, although there are no legal ramifications if the states fail to do so. However, ratification by a state makes it legally bound to the Statute and gives the ICC jurisdiction to prosecute it should it commit any of the above crimes. The UN Security Council under Chapter VII of the UN Charter can refer states that do not ratify the Statute to the ICC, but the referred state must accept the Court’s jurisdiction for the present case. If the state refuses to do so, the Court cannot proceed with an investigation (UNSC 2005; United Nations 2002: Article 13; United Nations 1945: Chapter VII).

By 2002, 60 states accepted the jurisdiction of the Court and ratified the Statute. Today, that number has increased to 124 out of the 192 states party to the United Nations. The only states to vote against the Rome Statute are the United States, Israel, China, Iraq, Libya, Qatar, and Yemen. The United States, a self-proclaimed advocate for human rights, argued that the Court places American peacekeepers in danger, as they can be prosecuted for accidents that occur during peacekeeping missions. Because the Court was given more powers than the United States desired, “The American Ministry of Defense, the Pentagon, launched an aggressive campaign in last April [1998], during which it contacted its counterparts in various countries around the world” to pressure them to not join the Court (Reuters 1998). This campaign, of course, failed.

The judicial process of the International Criminal Court is fairly straightforward. Understanding it makes clear how much space is given to states
in prosecuting their own cases, as well as the safeguards in place to ensure that the cases taken on by the Court are the most serious ones. When a case is referred to the International Criminal Court, it is first examined by the Prosecutor to determine whether or not the ICC has jurisdiction over that particular case. If the Prosecutor decides that the ICC does not have jurisdiction, s/he alerts the Pre-Trial Chamber of that decision and the Chamber either accepts it or overturns it. If the Prosecutor decides to pursue the case, an investigation is opened to collect evidence for a potential trial. The Prosecutor may then request that the Pre-Trial Chamber issue an arrest warrant or a summons to appear for the state leader accused of relevant crimes. Because the ICC does not have an armed force, it relies on member states to comply with arrest warrants. This reliance can be problematic if states prioritize foreign relations over their commitments to the Court. For example, the Court is facing difficulty in having Omar Al-Bashir, Sudan’s former president, appear before the Court because members of the African Union agreed that they would not surrender him (Barnes 2011: 1608). Before a trial commences, the Prosecutor must provide evidence to the Pre-Trial Chamber to support the charges filed. If the Pre-Trial Chamber believes that the evidence is insufficient, it may decline to confirm a specific charge. The Prosecutor can return with additional evidence to have the charge confirmed. When charges are confirmed and the accused is made aware of those charges, the case proceeds to trial. The Prosecutor must prove that the accused is guilty beyond reasonable doubt. If the accused is convicted, the Trial Chamber, comprised of three trial judges, issues a sentence
not to exceed 30 years. A life sentence may only be issued under exceptional circumstances. The Prosecutor or the Defense can appeal a decision made by the Trial Chamber. The Appeals Chamber is comprised of five trial judges different from the judges in the Trial Chamber. The decision made by the Appeals Chamber is final. Since 2002, the ICC has completed three cases with judgments of prison sentences and victim reparations. The Court is currently in the midst of the trials for another 15 defendants with another 20 cases in the preliminary investigations stage (International Criminal Court 2017d). Because some states have opted to not join the Court, they do not have a legal obligation to surrender criminals, which explains Sudan’s decision to not surrender Omar Al-Bashir to the Court (International Criminal Court 2017b). In addition to having to navigate a world that does not unanimously support it, the Court must also compete with political alliances that states sometimes believe outweigh their allegiance to the Court. Uganda and Djibouti, both ICC state parties, opted to not arrest and surrender Al-Bashir when he was in their respective countries. In such situations, the ICC is relatively powerless and can only ask the UN Security Council to intervene (International Criminal Court 2017c).

**Case Selection**

The Middle East and North Africa (MENA) is considered one of the most underrepresented regions in the ICC as a result of the limited number of ratifications by MENA states. In the region, only Jordan and Tunisia have ratified the Rome Statute, while Algeria, Bahrain, Egypt, Iran, Israel, Kuwait, Morocco,
Oman, Syria, the UAE and Yemen have signed it and Iraq, Lebanon, Libya, Qatar, and Saudi Arabia have not signed or ratified the Statute (CICC 2016). Using this information, I am addressing why certain states in the Middle East have ratified the Rome Statute and others have not. My two cases are Jordan and Morocco because both were equally supportive of the Court, but eventually diverged with Jordan ratifying and Morocco failing to progress past signing the Statute.

Jordan

Jordan ratified the Rome Statute in 2002, becoming the first MENA state to do so. Its status as the first state in the region to join the ICC makes Jordan a particularly interesting case to analyze because it can help explain why states join international treaties in situations where they are not facing regional pressure to do so. Jordan was involved in both the International Law Commission and the Rome Conference during the drafting process. Jordan was also a member of the Like-Minded Group, which was a group of states that had similar opinions about the structure and role of the International Criminal Court (Bassiouni 1999: 8; Washburn 1999: 367). They all advocated for a strong and independent court. Jordan played a prominent role in shaping the ICC, making ratification a logical next step. When the ICC was formally established in 2002, a Jordanian representative was elected as President of the Assembly of State Parties from 2002 to 2005 (CICC 2016).
Jordan is a parliamentary constitutional monarchy with a multi-party system and, while fairly autocratic,¹ it underwent political and economic liberalization in the years leading up to its decision to sign the Statute (Ryan 2002: 20). For Jordan, I am concentrating on the factors that prompted it to desire a court with as many jurisdictional powers as the ICC currently holds. Understanding the factors that motivated Jordan's ratification is particularly salient because a monarch with broad powers typically finds little reason to allow third parties to hold him/her accountable. It is important to understand why the Jordanian king was compelled to ratify the Statute and subject himself and his administration to the laws of an international court. Understanding his position and the circumstances that made accession to the Court more lucrative than rejecting the Court's jurisdiction can help explain the elements that need to be present for the rest of the Middle East to be willing to accept the jurisdiction of the Court.

Morocco

Morocco makes for an excellent comparison to Jordan because of the institutional and historical similarities that the two states share and because this comparison is often used in other research on the Middle East and North Africa. Although not a like-minded state, Morocco had a representative in the International Law Commission and was on the Drafting Committee of the Rome Statute, meaning a Moroccan representative helped design the language that

¹ Freedom House considered Jordan 'Partly Free' from 1998 until 2010 when it transitioned to being 'Not Free.' The 'Partly Free' rating was a result of decreases in freedom of expression and
would eventually make it into the final draft of the Statute. Despite that, Morocco only signed the Statute in 2000, two years after it was open for signatures, and has failed to ratify it as of yet.

Like Jordan, Morocco is a constitutional monarchy with a multi-party system. Both states underwent political liberalization in the 1990s and early 2000s, and both underwent leadership changes in 1999. Morocco has ratified every core human rights treaty, but not the optional protocols. Jordan, however, has ratified most, but has opted to forgo joining a few key treaties. Morocco and Jordan are important comparisons because both states started equally supportive of the Court, but diverged in the decisions they made regarding the Statute. For Morocco, it is necessary to investigate the reasons behind its initial support for the Court and why that support did not culminate in ratification. It is also important to note that Morocco’s signing of the Statute is a significant step and an indicator of some form of commitment to its content. Therefore, its initial support and decision to sign make its decision to not ratify more puzzling.

**Methodology**

The following thesis uses case studies to better understand the ICC. I am using most similar cases to address why nearly identical states make different decisions pertaining to the International Criminal Court. I am testing multiple theories that I discuss in more detail in the following chapter. There has been a

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2 From 2001 until today, Freedom House ranked Morocco as ‘Partly Free’ because of the continued absence of broad civil and political liberties. Morocco’s polity score starting in 1990 ranges between -4 and -8 on the 10 to -10 scale.
fair amount of research done on general international treaty ratification, so I am testing how my cases fit into those theories. I find a noticeable gap in the literature and develop a theory that more strongly explains the decisions made by Jordan and Morocco and that can be applied more generally to explain ICC ratification.

In testing my theories, I focus on each state’s international economic relationships, judicial competence, human rights legacy, international military involvements, and political histories. For economics, I use data on foreign aid received from members of the Organisation of Economic Co-operation Development (OECD) to understand how economics influenced each state’s decisions. I am opting to focus primarily on aid from OECD nations because these states are typically the most politically powerful and have the capabilities to influence Jordan and Morocco. Additionally, because the World Bank DataBank compiles this data and is successful in providing data for all of the dates I need, comparing aid from different states at different times is possible and allows for a more complete analysis. I also use the OECD statistics database to break down total aid from different states to understand the sectors the donors prioritized. I also analyze significant trade agreements and the impacts those had on each state’s economy. Because both states made agreements with the International Monetary Fund to economically liberalize during the 1990s, I analyze how the text of those agreements may have influenced their decisions regarding the ICC.

To understand the power and role of the judiciary, as well as the judiciary’s level of independence, I am using each state’s constitution and past
legal records. The constitutions help outline the legal process in each state, as well as how involved the executive is in legal proceedings. I also incorporate the World Bank Rule of Law indicator, which measures confidence in and observation of a society’s laws. To measure respect for human rights, I am looking at each state’s history of human rights treaty ratification and analyzing why certain decisions were made and what that could mean for human rights in the relevant state. I am also using the Cingranelli-Richards Human Rights dataset because it provides ratings for the dates needed for this analysis and disaggregates human rights practices allowing for a more detailed understanding a state’s human rights. Finally, international military involvement is assessed using the Correlates of War dataset, the Uppsala Conflict Data Program, and the World Bank measurement of military spending as a percent of GDP. The Correlates of War data offers every international conflict in which a state was or is involved, Uppsala provides information on domestic conflicts, and military spending can serve as an indicator of a state’s expectation to be involved in future military conflicts.

For foreign and domestic politics, I emphasize how each state’s political history may have impacted ratification decisions. I pinpoint significant moments in each country’s history and use newspapers like *Ad-Dustour, Al Sabaheya, Al-Sharq Al-Awsat*, and *The Jerusalem Post* to determine the impact those moments had on each state’s eventual decision. *Ad-Dustour* was used to determine the rhetoric used in Jordan when discussing the Rome Statute. *Al Sabaheya* and *Al-Sharq Al-Awsat* were used to understand Morocco’s stance on the Court and the
opinions of human rights organizations in Morocco. *The Jerusalem Post* was used for understanding how Israeli politicians spoke about the Court and what they thought of Jordan’s positions. I also conducted an interview with William Pace, Convenor of the Coalition for the International Criminal Court, to better understand how each state’s political history influenced its stance during the Rome Conference.

**Outline of Project**

As stated previously, the human rights regime is one of the least researched regimes in international law, but it is also one of the most noteworthy because of the restrictions it places on domestic law. I am exploring the ratification of the International Criminal Court in the context of the Middle East, which is a relatively uncharted part of human rights research. By conducting a comparative case study using the above two cases, I hope to better understand ratification decisions within the Middle East and to be able to apply the theories I find most relevant to explain other ICC-related decisions. Much of the research on the ICC uses quantitative analyses, which fails to explain how individual states fit within the theories. The few case studies on the ICC use African states and they tend to use only positive cases, which leaves MENA unexplained. ICC literature tends to focus on its effectiveness, which leaves unexplored the question of why states take the initial step of ratification. The effectiveness of the Court cannot be fully understood without understanding ratification decisions as well, so I am hoping that my research will be a first step
towards a more holistic understanding of it. Chapter Two will provide an overview of the theoretical arguments surrounding international treaty ratification although I will only be testing the rewards, ease of compliance, and political linkage theories in my cases. Chapter Three presents the Jordan case study and I find that Jordan likely ratified because of regional competition with Israel. Chapter Four presents Morocco, which shows that regional competition with Algeria deterred Morocco from ratifying. Chapter Five applies my findings to international relations theories and I find that realism most closely resembles my conclusion. Chapter Six is my conclusion and includes the policy implications of my findings, as well as possibilities for future research.
Chapter 2. Existing Explanations of Treaty Ratification

Why do some Middle Eastern and North African states ratify the Rome Statute of the International Criminal Court, thereby accepting the jurisdiction of the Court? I provide potential answers for this question through a case study using Jordan and Morocco since they share many institutional similarities, but differ in their ratification statuses. State ratification of international human rights treaties has often stumped political scientists. While states typically join treaties because of the potential for receiving reciprocal benefits, human rights treaties only seem to impose costs on states. This chapter provides an overview of existing theories regarding treaty ratification. The theories below apply generally to international treaties, not the Rome Statute in particular, as a result of an absence of extensive research on the ICC.

The theories examined in this chapter concern normative pressure, linkage politics, reputation, economic benefits, ease of compliance, religion, regime change, and involvement in international conflict. The normative pressure theory argues that states join certain treaties because the norms in the treaty have become an international or regional norm, and so states feel some pressure to adhere to that norm. Linkage politics argues that state decisions in international politics are linked to the state’s foreign or domestic politics. The reputation argument considers the role that a state’s reputation on the international stage plays in its ratification decisions. The economic benefits theory examines the relationship between economic changes and treaty ratification. Ease of compliance theory argues that states are more likely to ratify
treaties if they have reason to believe that they can comply with its terms. The state religion theory as presented below examines the relationship between Muslim states and international human rights treaties. The regime change theory considers the impact that democratic transitions have on a state's treaty ratification record. Finally, the international conflict theory examines the relationship between involvement in foreign conflicts and Rome Statute ratification, specifically.

**Normative Pressure**

Political scientists describe normative pressure as the pressure on states to follow the norms of international society. States are inherently members of international society simply as a result of existing in a globalized, highly interconnected world and because they “internalize international norms and seek to look legitimate by doing what they ‘are supposed to do’” (Wotipka and Tsutsui 2008: 736). The most common definition of international norms describes them as “standards of behavior defined in terms of rights and obligations” (Krasner 1983: 2-3). When a norm changes, the regime itself changes because norms define a regime as a whole; they do not just explain elements within the regime (Krasner 1983: 2-3). If a regime is strong and well-defined then the norms that populate it should be well-known and understood by international actors. If there is confusion surrounding an international norm, then the regime to which it belongs is weakening and the “norm” is no longer considered a norm (Krasner 1983: 5). While ratification of the Rome Statute is
still not considered an undeniable norm, especially as a result of the United States, Russia, and China’s decisions to not ratify, the increasing number of states that join the Court each year is a strong indicator of the potential for it to become one in the near future.

Normative pressure can take place on two levels: the regional level and the international level. If many states in a particular region join a treaty, then a non-party state in that region may feel obligated to ratify to avoid challenging the status quo. If an entire region has ratified a treaty and one state has not, that state becomes more conspicuous and may seem like a less legitimate member of that regional community. The same is true on the international level. If ratifying the treaty becomes the norm, it becomes more difficult to oppose it. Multiple studies use the core human rights treaties to show that as states are more engaged with international society or are surrounded by states that are, they become more likely to ratify the treaties in question (Wotipka and Tsutsui 2008b; Goodliffe and Hawkins 2006; Hafner-Burton, Tsutsui, and Meyer 2008; Finnemore and Sikkink 1998).

While it is absolutely imperative to explore the motivations behind state decisions to ratify human rights treaties, by excluding ratification of the Optional Protocols that go along with some of the core treaties, Wotipka and Tsutsui forego an opportunity to find and understand the factors that influence states to accept greater consequences for violations. The results show that as membership in international governmental and international nongovernmental organizations increased, ratification rates also increased. This increase is
because ratification is seen as the appropriate step for a state to take to look “legitimate” in international society.

Moving down to the regional level, states may become more likely to ratify international treaties if surrounded by states that have already ratified. The imitation theory argues that states ratify when they see nearby states ratifying because they begin to feel pressure to follow those around them. Using the core human rights treaties, Wotipka and Tsutsui show that regionalism is a positive and significant variable meaning that increases in regional ratification rates led to increases in individual state ratification rates (Wotipka and Tsutsui 2008: 739-747). Goodliffe and Hawkins reach the same conclusion when looking at the effects of international and regional norms on ratification of the Convention Against Torture (Goodliffe and Hawkins 2006: 365-368). The treaties used by Wotipka and Tsutsui and Goodliffe and Hawkins are applicable to my research question because of their use of monitoring bodies and universal jurisdiction. However, they fail to entirely explain why states join or do not join the ICC because the monitoring bodies associated with the core treaties serve to monitor implementation, but are unable to enforce any of the treaty terms (Goodliffe and Hawkins 2006: 360). The core treaties do not require states to grant jurisdiction to outside bodies, and so the costs are not as high as those of ratifying the Rome Statute. While regionalism may be at play in the Statute ratification decision-making process, it does not help explain why the first state in a region will make the decision to ratify or why nearby states will choose not to ratify.
Notably, an examination of ICC ratification shows that regionalism/normative pressure is not a statistically significant variable. Goodliffe et al. argue that the above analyses were able to achieve results that showed regionalism to be significant because they did not control for trade. Trade dependence and regionalism are correlated, so when the above studies found regionalism to be a factor, they were actually finding trade to be the factor at play (Goodliffe et al. 2012: 138). Similarly, although it is not thoroughly explained, Simmons and Danner show that regional rates of ratification do not influence state decisions to join the ICC because the ICC has stronger enforcement mechanisms than other human rights treaties. Therefore, states prioritize the ICC’s enforcement mechanisms and their willingness to subject themselves to such mechanisms over the need to conform to the actions of surrounding states (Simmons and Danner 2010: 244-245). Despite contrasting with most other studies on normative pressure and regionalism, it may be difficult to disprove Goodliffe et al.’s assertions as it is nearly impossible to find a region with states that are not economically dependent on surrounding states.

Despite the importance of understanding the impact of normative pressure, I am not providing this theory a central role in my thesis. Instead, I address the theory in connection with others because the extensive overlapping makes it difficult to isolate this theory and explore its impact on its own. Both Jordan and Morocco rely heavily on ally support—financially and politically—so addressing the pressures that may come along with that support is essential.
**Linkage Politics**

The linkage politics theory addresses the interdependence of domestic and international politics. The theory argues that states’ international policy decisions are heavily influenced by their domestic politics and vice versa. Nye and Keohane attempt to connect realist and liberal theories through their theories on interdependence. They do not directly address linkage politics, but aim instead to contribute to the literature on bargaining (Nye and Keohane 1987: 435). Asymmetric interdependence is viewed as the primary driver for interstate relationships, as it is power over others that will allow a certain state to achieve what it desires in the international sphere (Nye and Keohane 1987: 728). Interdependence drives states to attempt to find agreements that appeal to foreign partners while not isolating or displeasing their domestic constituents (Nye and Keohane 1987: 730). The main flaw with this theory is that it does not attempt to expand on issue linkage, “the simultaneous discussion of two or more issues for joint settlement,” which overlooks a main component of political interdependence (Poast 2013: 287).

Putnam views international treaty negotiations as a two-level game. On level 1, state representatives negotiate mutually beneficial agreements, and on level 2, negotiators work to gain domestic ratification (Putnam 1988: 436). Putnam uses game theory to indicate the likelihood of agreements on both levels during different situations. However, most of these situations involve economic treaties, which do not translate easily to treaties like the Rome Statue. Economic treaties directly and immediately impact both international and domestic
audiences, so the desire to reconcile the demands of both levels is sensible. However, in a situation such as the ICC, domestic audiences are not heavily impacted by whether or not their state joins the Court. Therefore, appealing to domestic audiences may not have played an important role in the Statute negotiations. The disregard for regional politics and their influence on international negotiations leaves a gap in this literature that needs to be addressed. Additionally, the rise of international organizations and globalization has led to a decrease in research on linkage politics, which leaves opportunities for applying this theory to the current world order and investigating the role it plays today (Putnam 1988: 431).

I am exploring the relative importance that this theory holds in understanding ratification of the Rome Statute in the Middle East. However, in addition to considering domestic-international relations, I am exploring the links between regional and international politics. Regional politics are a prevalent theme in Middle East research, so to disregard this theory would make it difficult to address the role my thesis plays in the context of Middle East literature.

**Reputation**

Another theory proposes that states commit to human rights treaties for reputational purposes. For a state to develop a reputation, its actions must be seen as a result of its character, and its personality must be used to predict future actions. Some states find that appearing committed to human rights will compel other states to respect them and consider them to be commendable
members of the international community. Reputations matter to states not only for trade and economic purposes, but also for diplomacy reasons (Hathaway 2007: 597). States that respect human rights may be unwilling to interact or negotiate with states that violate human rights, but ratifying a human rights treaty sends a message that the state is committed to respect for its citizens and that it is willing to take the steps necessary to fully comply with the treaty (Guzman 2002: 1849).

Reputation has been the leading theory for justifying states’ willingness to commit to treaties despite low levels of returns. Assuming that reputation is as important as it is often thought to be, countries will find it in their best interest to commit to an international treaty and comply with it. Reputation impacts a state’s future standing hence why most states will choose to comply. This argument also helps explain violations by arguing that if reputational sanctions will have small impacts, violations may be more enticing (Guzman 2002: 1848-1849). Guzman predicts the importance and level of influence of reputation through the use of game theory and in particular, the prisoner’s dilemma. This argument on compliance fails to explain why states may decide to commit in the first place. Claiming that states will comply for reputational reasons can imply that states will only commit if they have reason to believe that they can comply, which is not applicable to ratification of the Rome Statute. Many states that have committed to the Statute have failed to adhere to its rules, and inability to comply has had little effect on interstate interactions. Guzman’s theory seems to be more applicable to international treaties focused on
economic relations, as those treaties tend to be more highly regarded because of their immediate impact on a state's economic condition.

However, it may be the case that reputation is not as significant a factor as was once assumed. Downs and Jones conduct a qualitative analysis and argue that reputations for treaty compliance are only taken into consideration by states when the agreements or treaties are important or highly regarded, with their relative importance being decided by the state (Downs and Jones 2002: S98). Instead of using a prisoner's dilemma to measure the importance of reputation like Guzman, Downs and Jones provide a different way to evaluate the role of reputation. They argue that rather than having one reputation that impacts how they are perceived in the international arena, it may be that states have multiple reputations (Downs and Jones 2002: S102). Because they have multiple reputations, their actions in one sector are unlikely to affect how other states think of them in regards to a different sector. For example, if a state frequently fails to comply with human rights treaties, other states will not assume that it has a reputation for noncompliance and will fail to comply with treaties regarding trade. Multiple reputations make it so that human rights reputations and trade reputations are kept separate. It follows then that new states or new regimes will have higher compliance rates because the states are trying to build their reputations. In this case, their reputations for compliance with low-risk agreements will lead other states to willingly enter into more important agreements with them (Downs and Jones 2002: S107-S108). Downs and Jones argue that human rights violations are the least likely to negatively
impact reputations and other treaty negotiations because human rights treaties tend to be less important than trade and security treaties (Downs and Jones 2002: S112).

It is not necessarily the case that the existence of multiple reputations undermines the importance of reputation. For some, reputational costs are taken into consideration during all decision-making processes because these costs are seen as impacting future international relationships. While doing so, states may choose to clarify that their compliance in one situation does not guarantee compliance in another and vice versa. In the example given by Keohane, the United States in 1814 refused to grant Native Americans land, but assured European states that they are still committed to agreements made between the U.S. and Europe (Keohane 1997: 498-499). Because the argument made by Keohane is more general, it can be applied to ratification of the Rome Statute in the Middle East. In the case of the ICC, states like Jordan were willing to both join the International Criminal Court and sign bilateral immunity agreements with the United States (Coalition for the International Criminal Court 2006). This worked to signal both a commitment to human rights and a commitment to foreign relations. It may be, however, that by establishing such a reputation for flexibility, Jordan invalidates its reputation for commitment to human rights.

One of the few empirical evaluations of the relationship between reputation and human rights treaty compliance analyzes state policy changes after ratifying the Convention Against Torture. Ramos and Falstrom determine that states are likely to change their policies to be more compliant with the CAT
if they feel pressure to improve their reputations on the international stage. They opt to use the CAT because it requires that states take certain actions when they ratify the treaty such as enacting legislation that makes torture expressly illegal (Ramos and Falstrom 2005: 16). The strong language in the CAT and decisions to comply can work as a comparison to the language of and ability to comply with the Rome Statute. As both Jordan and Morocco ratified the Convention Against Torture, Ramos and Falstrom’s coding method can help determine their abilities to comply.

In moving past the relationship between reputation and treaty compliance, Weisiger and Yarhi-Milo create a theory on reputation using state resolve during conflicts. Using the Correlates of War Military interstate Dispute dataset for a quantitative examination of reputation shows that states that gain reputations for resolve are less likely to be militarily challenged than states that have backed down from conflict in recent years, thus reputations are important in international politics (Weisiger and Yarhi-Milo 2015: 489, 492). However, because reputations for human rights tend to not be as valued as reputations related to military conflict, it may be that Weisiger and Yarhi-Milo’s conclusions would not apply to the ICC.

Because the literature on reputation in international law tends to center on treaty compliance, I will be looking at the relationship between reputation and Jordan and Morocco’s decisions within my sections on ease of compliance. Reputations for compliance for either state would indicate whether their expectations for their ability to abide by the Rome Statute influenced their
decisions. Although I will be analyzing reputation, it is important to note that reputation theory's weakness lays in the fact that states that commit to treaties that do not limit their actions garner reputations for compliance despite not having to change their actions. However, for states that commit, but are aware of a difficulty to comply, a reputation for noncompliance is likely. This then deters progressing states from committing although they would benefit most from being parties to certain treaties. Therefore, reputations for compliance are not the most accurate method for determining treaty ratification decisions.

**Rewards Theory**

Another well-known theory connects human rights treaty ratifications to economic benefits in terms of trade, foreign aid, and foreign direct investment (FDI). This theory can be referred to as the ‘rewards theory’. Some political scientists believe that states will commit to treaties in hopes of receiving certain economic benefits. For developing states, there could be an expectation of increases in foreign aid, favorable trade relations, or increases in FDI after ratifying a human rights treaty. States that are already committed to protecting human rights may opt to limit economic relations with states that violate human rights, and so those who do violate may feel that ratification could lead to economic benefits. This theory incorporates the reputation theory because states believe that reputations for respecting human rights could lead to increases in economic aid.
In trying to understand commitment to and compliance with international treaties, one factor to consider is collateral consequences. Collateral consequences, typically economic, result from reactions to decisions to commit to and comply with international treaties, and they can occur on the domestic and transnational levels (Hathaway 2005: 473, 492). States may join international treaties despite having no intention to comply because they can receive benefits like foreign aid and increased trade through ratification. The states that are providing these benefits may see ratification as a first step towards change (Hathaway 2005: 507).

Because many international treaties are voluntary and weakly enforced, some states may not find collateral consequences to be enough incentive to prompt compliance. Using just the Convention Against Torture (CAT), an empirical analysis shows that nondemocratic states with worse human rights records are more likely to ratify the Convention because they expect higher collateral consequences. The CAT has weak enforcement mechanisms, so these states do not find commitment to be costly (Hathaway 2005: 521). However, when using the International Covenant on Civil and Political Rights and the CAT, along with the Optional Protocols for each, results show that foreign aid is not impacted by ratification while trade actually decreases (Nielsen and Simmons 2012: 18-20). It should then follow that ratification of the Rome Statute will also be uncorrelated to economic aid. However, focusing an empirical analysis on ratification of the Rome Statute shows a strong and positive correlation between ratification and the amount of aid received from OECD nations (Meernik and
This analysis is used to indicate that states that rely on economically powerful states are more likely to support the ICC (Meernik and Shairick 2011: 32-37). The opposite results prompt a need for additional research on the impact of economic aid on human rights treaty ratifications. It may be that Meernik and Shairick restricted their definition of ‘economically powerful’ to only include members of the OECD, which excludes many economically important states that may not qualify for OECD membership or may be uninterested in joining.

Looking at universal treaties as a whole, there appears to be support for the rewards theory. Many economic treaties are exclusive, so the universal treaties used to test the impact of economic consequences on ratification do not include the main economic treaties like the GATT and the WTO, along with bilateral investment treaties (Lupu 2016: 1229). The rewards theory was tested using multiple kinds of analyses, and results showed that trade, in particular, was significantly impacted by ratification decisions (Lupu 2016: 1241-1242). However, this theory does not seem to apply to MENA ratifications of the Statute. Jordan relies primarily on foreign aid from the United States, but has ratified the Statute, while Morocco relies on foreign aid from the European Union and has not ratified the Statute. These differing results when applying the theory to the Middle East make additional studies on the rewards theory necessary.

Although Hathaway’s argument for the importance of rewards is highly respected and made compelling points throughout, I am not convinced by her conclusion that states will commit for collateral consequences, but they will not
comply. I find that the empirical evidence she presents does not support her conclusion. Hathaway defines collateral consequences as economic benefits such as aid and trade, but in order to show the relation between commitment/compliance and aid, Hathaway actually compares ratification rates of different treaties with the regime types of the ratifiers. She finds that states that are less likely to comply will commit to international treaties, and she attributes that to the presence of collateral consequences without stating why she does so (Hathaway 2005: 514, 521-528). In order to show the direct relation between collateral consequences/economic aid and commitment/compliance, Hathaway may have been more successful using economic aid data rather than regime type data.

Foreign direct investment is another way states can use economic relationships to influence their political relations. Researchers on the relationship between FDI and human rights disagree on whether it is a positive or negative relationship. Falk argues that globalization, in general, leads to a decline in human rights in developing states because multinational corporations are likely to invest in states that offer cheap labor, thereby increasing profits (Falk 2002: 66). Blanton and Blanton instead find that states with improved human rights are more likely to receive large amounts of FDI as respect for human rights is seen as an indicator of political stability (Blanton and Blanton 2007: 152). Kim and Trumbore concentrate on transnational mergers and acquisitions and also find that FDI leads to an improvement in human rights. They theorize that this may be either because economic improvement generally
leads to an improvement in human rights or because MNCs transfer their norms to the host state (Kim and Trumbore 2010: 729). During the 1990s Morocco heavily depended on FDI inflows for economic durability, so I am observing the impact of it on only Morocco’s decision regarding the ICC. FDI was a more politically salient issue for Morocco than it was for Jordan.

I am addressing the economic benefits theory extensively with regard to Jordan and Morocco’s decisions because of both states’ dependence on foreign aid. Both states are not independently sustainable, and both rely on foreign assistance to maintain both domestic stability and international influence. Understanding how each state’s economic relationships influenced its political decisions is vital for understanding the link between economics and politics, as well as for contributing to the debate on the importance of economic benefits in political decisions.

**Ease of Compliance**

The ease of compliance theory takes into account a state’s ability to comply after commitment when trying to understand why countries commit in the first place. Many theorists believe that states that are already respectful of human rights will ratify these treaties because they are not obligated to change their behavior (Von Stein 2005; Hathaway 2007; Simmons and Danner 2010). While this theory could help explain some states’ decisions, it does not explain why many repressive states ratify or why some states with the ability to comply choose not to. Changing behavior is not only time-consuming, but it is also costly
and can be met by opposition from those that benefit from systems of repression. It is understandable that states that will not suffer economically or politically will opt to ratify, but this leaves unanswered the question of repressive states’ willingness to commit without intention to comply. Many repressive states have chosen to ratify human rights treaties but are still serious violators of human rights.

Several studies on the effects of compliance on ratification have shown a positive correlation between the two and argue that domestic enforcement and implementation mechanisms are vital to state decisions to ratify. An empirical analysis using just Article VIII of the IMF shows that states with higher abilities to comply were more likely to commit because of the potential reputational consequences that accompany noncompliance (Von Stein 2005: 619). When an analysis is done using human rights treaties, it again becomes apparent that states that recognize their inability to comply will avoid commitment. The results show that when high levels of human rights violations accompany high levels of democracy, ratification rates decrease because states are aware that the treaties are more likely to be effective. However, authoritarian states recognize that domestic institutions will be unable to force them to comply and so they are “no less likely to join a treaty when their practices are inconsistent with its requirements” (Hathaway 2007: 608-609). The empirics also show that new regimes, not just democratic, are more likely to ratify human rights treaties because they are attempting to create reputations that could lead to benefits like economic rewards. Therefore, states make ratification decisions not based on
treaty terms, but based on domestic enforcement mechanisms and their abilities to comply with the treaty (Hathaway 2007: 597, 611). States hope that by complying they will gain increasing power in the international community, in addition to ordinary benefits like aid and trade (Hathaway 2005: 506-507). Focusing specifically on enforcement and ratification, a third empirical analysis shows that states join treaties based on implementation mechanisms and not treaty content. The ICESCR and the ICCPR, both core treaties, protect different rights but have similar implementation mechanisms, while the ICCPR and its Optional Protocol protect the same rights and have different implementation mechanisms. The Optional Protocol lays out a more demanding implementation process, making ratification more costly for states. The empirical results show that states are just as likely to ratify the ICESCR as they are the ICCPR, but they are less likely to ratify the Optional Protocol (Cole 2009: 570, 578-583). While it could be argued that Hathaway reached the conclusion that she did because economic treaties are traditionally more highly respected, the arrival at the same conclusion when using human rights treaties lends additional support to the compliance theory. However, the empirics of all of the above-mentioned studies still fail to explain commitment decisions by states that know they will be unable or unwilling to comply. In the case of the ICC, there have been multiple state parties that continue to defy the terms of the Statute and have done so since before the ICC went into force.

The role of implementation mechanisms is important to understand in the case of the ICC in MENA. Before the Rome Statute came about and addressed
the crime of genocide, there had been a Genocide Convention that was ratified by every state except China. The Convention defined genocide, but did not establish actual consequences for states that violated it. The ICC addresses the same treaty terms and yet has a significantly lower number of ratifiers. Even though MENA states showed their support for eradicating genocide through the earlier Convention, they were hesitant to do the same through ratification of the Statute. This could be because enforcement mechanisms of the ICC are stronger.

When applying the compliance theory to the ICC, similar conclusions are reached on the role of compliance in ratification, but the studies find differences in the kinds of states that are more likely to ratify the Rome Statute. Focusing on credible commitments to the ICC, it is shown that nonviolent democracies and violent non-democracies are likely to ratify, while violent democracies are not (Simmons and Danner 2010: 240-241). Simmons and Danner believe the results show that unstable states with poor judicial institutions will commit as a way to move towards stability, while unstable states with the ability to prosecute will avoid ratification because they are unwilling to surrender sovereignty rights (Simmons and Danner 2010: 231, 235). Democratic governments with little violence are likely to join because they do not expect to be prosecuted by the Court (Simmons and Danner 2010: 244-245). This conclusion falls in line with Cole’s argument that states join treaties depending on their enforcement mechanisms, not terms. Disagreeing with Simmons and Danner, Dutton finds that violent non-democracies are actually not more likely to join the ICC. She disagrees with their decision to use ‘recent civil wars’ as a variable to capture
human rights practices and instead uses the Cingranelli-Richards Human Rights Dataset and whether or not states experienced recent genocides to create her human rights variable (Dutton 2011: 496-497, 509). She does agree with Simmons and Danner’s conclusion that states commit to treaties that have weak enforcement mechanisms (Dutton 2011: 495-497). Dutton also shows that violent, democratic states are more likely to join than violent, nondemocratic states, which disproves the credible commitments theory and provides support for the credible threats theory. States with weak domestic institutions are less likely to ratify the Rome Statute because they believe the ICC will reduce their powers and increase sovereignty costs, providing further evidence that enforcement mechanisms and ability to comply are important factors in making the decision to join the ICC (Dutton 2011: 514, 517-518).

The ease of compliance theory will also play a central role in the Jordan and Morocco case study chapters. Neither Jordan nor Morocco is known for particularly harsh human rights abuses. In fact, both are known to be on the more respectful end of the spectrum in comparison to the rest of the Middle East. Understanding why two states with supposedly similar abilities to comply made two different decisions is necessary for understanding whether ability to comply is the true factor at play, or if another factor like reputation or economic benefits holds a larger role.

State Religion
A sub-argument of the ease of compliance theory is that of state religion and the impact it has on a state’s ability to comply with certain treaty terms. The debate on whether or not Islam and Western political thought and human rights are inherently antithetical continues today. Islamic and Western laws are often portrayed as being in contradiction and, while that claim may be true in some cases, it does not provide enough explanation for the absence of Middle Eastern and Islamic states party to the Rome Statute.

Muslim states may not be willing to accede to the terms of the Rome Statute because of the differences in application and specific terms of international and domestic laws. Sharia law tends to provide guidelines for how to live according God’s will without provide specific details or term definitions while, international laws make efforts to use more concrete terms so as to prevent states from circumventing the law (Roach 2005). There are also apparent cultural differences such as those related to women’s rights. Muslim states may not be in support of including the prohibition of forced pregnancy in the Rome Statute, as that would require them to legalize abortions. Because many Muslim states have not joined the ICC, discord between Islamic law and international law may seem legitimate, and the presence of state religion may be seen as the primary factor preventing Islamic states from ratifying the Statute. However, every point brought up by Muslim states as being contrary to their beliefs was changed so as to accommodate their needs. Forced pregnancy was changed to “forcible impregnation” and the definition of torture in the Rome
Statute excludes lawful sanctions thereby allowing forms of punishment such as flogging and stoning (Roach 2005, 148; Arsanjani 1999, 31).

In contradiction to the belief that either international or Sharia law needs to change for the laws to work in tandem with each other, there is also a belief that the integration of Sharia law into the Rome Statute may actually be beneficial for all in the long run. Unlike some other aspects of Sharia, laws of war in Islam are very detailed and arguably provide for just war (Badar 2013, 604-605). While it may be true that incorporating violations of Islamic laws of war into war crimes may lead to a more encompassing Statute, it still does not follow that Islamic states will then ratify the Rome Statute. The issue that Muslim states supposedly have with the Statute is that it is too restricting and making it more restricting will not incentivize either Muslim or non-Muslim states to join.

Incorporating Islamic law may help minimize the argument that international human rights law is Western invention, but it likely will not lead to higher commitment or compliance rates.

Despite how interesting the state religion theory is I will not be addressing it in my case studies as both cases are Muslim majority states and both regard the role of religion in the state fairly similar in their constitutions. Out of 56 Muslim majority states, Morocco was ranked as the 18th most constitutionally Islamic state while Jordan was ranked the 25th (Ahmed and Gouda 2015: 52). Although there is a difference between them, it is not significant enough for religion to have played different roles in them. Because of
this constitutional similarity, it cannot be argued that religion was the factor that led to their taking different stances on the ICC.

**Democratic Transitions**

The previous theories could be applied to authoritarian and democratic regimes with some differences arising in the variables or analytical methods used. The following theory regarding regime change applies primarily to authoritarian and transitioning states, and it argues that authoritarian states tend to ratify human rights treaties because they are attempting to move towards democracy as a result of pressure from domestic groups. States that are undergoing a regime transition may choose to ratify treaties since respect for human rights is a perceived cornerstone of democracy. By ratifying, they can indicate a desire to move away from the actions of the past regime and to start anew. This theory could be tied back to the reputational concerns theory because by indicating to other states a desire to move away from the past regime, ratifying states are trying to improve their reputations and moral standing in the international sphere.

One of the first empirical studies done on the establishment of international human rights regimes shows that new democracies are the biggest proponents of HR regimes, and they ratify as a way to prevent a return to authoritarianism. Using the European Convention for the Protection of Human Rights (ECHR) because of its respected status in Europe, analysis of records of debates and parliamentary sessions shows that new democracies did in fact
support the ECHR, while established democracies and dictatorships opposed it. Moravcsik assumes that new democracies argued for a stronger regime so that the ECHR could operate as a signal of non-democratic actions, which would prompt domestic institutions to make necessary changes (Moravcsik 2000: 238). However, using data on ratification of the CAT, Goodliffe and Hawkins found that there is no evidence supporting the theory that states ratify to increase political stability. Their results mean that states do not ratify the CAT to prevent reverting back to authoritarianism or to satisfy other political actors. The results also show that new democracies had negative coefficients for both signing and ratification, meaning that new democracies will take longer to join the CAT than other states (Goodliffe and Hawkins 2006: 365-366). It is difficult to compare the two analyses because Moravcsik categorizes the states depending on the year they became democratic, but does not provide an explanation of what the term democratic entails or what database was used to categorize the states, making cross-study comparisons difficult (Moravcsik 2000: 231-233).

Another look at ratification of the CAT shows that authoritarian states are more likely to ratify the CAT if there are multiple political parties that are exerting pressure on the ruling party. Despite authoritarian states with multiple parties being more likely to practice torture, they are also more likely to ratify the CAT. In open dictatorships, members of civil and political society are able to force the head of state to make general political concessions such as joining the CAT, and they do so in order to “lock-in” human rights. Civil and political society groups give the dictator their support in return for such concessions (Vreeland
2008: 70). Multiple empirical analyses show that multi-party dictatorships that practice torture have positive and statistically significant relations with ratification (Vreeland 2008: 69-70). While the theory is certainly noteworthy, it does not seem to apply to the ICC. The CAT and the ICC have significantly different implementation mechanisms. States that ratify the CAT are not actually at risk of suffering consequences besides reputational consequences. However, for the ICC, states need to be willing to take the risk of prosecution.

I am also not addressing democratic transitions in the following chapters because neither Jordan nor Morocco experienced democratic transitions. Both states have been expressly monarchical and although they did undergo political liberalization, it cannot be characterized as a form of regime transition. Additionally, as mentioned previously, both states are multi-party systems, so this similarity in their political structure is also indicative of the inability of the regime transition theory to properly explain the different in statuses. If one state had undergone a democratic transition and the other had not, testing this theory would be more appropriate.

**International Intervention**

A less prevalent theory argues that states that intervene in foreign conflicts are more likely to join the ICC. This study was done to determine whether or not joining the ICC leads to unwillingness to intervene. Some oppose the ICC because of a fear that states will be less willing to offer troops for peacekeeping missions out of a concern of having them referred to the ICC for
any mistakes. The United States claims that this is precisely the reason it has refused to join the Court, prompting other states to see the ICC as being a roadblock in the way of intervention. The Court is also seen as an excuse for states to not intervene when necessary out of an assumption that the Court will eventually hold the perpetrators accountable (Neumayer 2005: 662-663). The empirical analysis shows that when the regressions include both developed and developing nations, results show that military intervention and peacekeeping are both positive and statistically significant, and the same results were seen when running the regressions using only developed states (Neumayer 2005: 667-668). Therefore, states do not consider the ICC to be an excuse for inaction, but rather a way for them to combat human rights violations.

I discuss this theory in the following chapters, but address it under ease of compliance. Unlike the above argument, some theorists believe that military involvements lead to a lower likelihood that a state will join the ICC. Neither Jordan nor Morocco is particularly involved in international conflicts, but it will be beneficial to compare the two opposing theories and understand which applies to my cases.

**Filling the Theoretical Gaps**

Despite the recent increase in literature on the ratification of human rights treaties, there is still a clear absence of discussion on the ratification of the Rome Statute. Many of the theories mentioned above could be applied to the ICC, but little headway has been made to truly understand the factors that drive
states to submit to an international court. A major gap in the literature is the absence of research on the relationships between domestic/regional politics and international treaty ratifications. While some research was done in 1970s and 1980s, the theory has become less interesting to political scientists because of the increased desire to study the impact of globalization, so little progress has been made on developing it. Additionally, while the literature adequately addresses normative and regional pressures, it does not provide explanations for why the first state in a region may make the decision to join an unpopular treaty. Applying existing literature to Jordan and Morocco will add to the literature and will help develop existing theories. It can also shed light on new theories that can be explored further in the future.
Chapter 3. Jordan: Genuine Support or Political Opportunism?

This chapter will detail the variables that can help explain Jordan’s unprecedented decision to draft, sign, and ratify the Rome Statute of the International Criminal Court. Jordan was the first and is now one of just two Middle Eastern states to ratify the Rome Statute, so the decisions that led up to the ratification beg some analysis. In addition to being the first state to ratify the Statute in a severely underrepresented region in the ICC, Jordan played a central role in molding the Court to ensure it reaches the level of impartiality and independence that was highly desired at the time. Exploring Jordan’s ratification decision may help in understanding the factors that drive states to be the first in a region to join certain international measures. It can also serve as an indicator of Jordan’s political atmosphere at the time of signature and ratification. Jordan can be considered an anomaly because of its status as the only Arab member of the Court for multiple years, so to not give Jordan the attention and analysis it needs to be understood is to severely underappreciate the value this case has in understanding international affairs.

Throughout negotiations and the drafting process, Jordan created a reputation for itself as being strongly dedicated to the values of the Court. In nearly all cases, it sought to ensure that the Statute included the most binding phrasing available to grant the Court jurisdiction over as many cases as possible. Jordan made every effort to ensure that the Court neither became a tool of Western influence nor a symbolic institution with little power. This stance was
unexpected by human rights organizations because of Jordan’s status as a monarchy, not a democracy, and because of the lack of respect for human rights from surrounding states. Jordan’s decision to eventually ratify the Statute is likely a result of regional political competition and its ability to easily comply with the Statute’s content.

This chapter will first present an overview of Jordan’s involvement in the International Criminal Court and the positions it took during negotiations in order to provide a frame of reference for the remainder of the chapter. The next section examines the economic benefits theory with a particular focus on the impact of foreign aid, international trade, and the IMF agreement of 1989. The following section reviews the ease of compliance theory by analyzing Jordan’s judicial system, relationship with human rights and reputation for treaty compliance, and involvements in international conflicts. The last section delves into linkage politics by exploring the political ramifications of the IMF agreements of 1989 and 1996, as well as impact of relations with Israel.

**Jordan’s Relationship with the International Criminal Court**

Jordan has had a close relationship with the International Criminal Court since the initial decision to draft a statute to create it. The International Law Commission (ILC), the institution given the responsibility of drawing up the initial draft, has had a Jordanian member since 1987 when Awn Shawkat Al-Khasawneh began a tenancy with the ILC that ended in 1999. When the ILC submitted a draft of the Statute to the United Nations General Assembly (UNGA),
the UNGA held the Rome Conference in 1998, which was tasked with “finalizing and adopting a convention on the establishment of an international criminal court” (United Nations 1998b). Jordan was one of 160 UN member states to participate in the Conference and the head of the Jordanian delegation, Waleed Sadi was appointed by the Committee of the Whole to the role of consulting with others on the definition of crimes against humanity (United Nations 1998b, 2002a: 221). Additionally, Prince Zied Ra’ad Zeid al-Hussein was the Deputy Head of Delegation at the Rome Conference and played a “defining [role] during the negotiations of the Rome Statute and progressive evolution of the International Criminal Court” (Sacirbey 2013). In an interview, William Pace, the Convenor of the Coalition of the International Criminal Court (CICC) said, “Jordan comes in because of Prince Zeid, I think, primarily... Zeid, of course, is one of the most progressive supporters of human rights, women’s rights, freedoms that we had” (Pace 2017).

From the suggestions it made, Jordan developed an image of being a state desiring a strong and independent court. Jordan insisted that the Statute incorporate all of the clauses included in the Geneva Conventions and that “the attempts by some delegations [such as China] to pick and choose from the Geneva Conventions of 1949 those elements that should or should not be included in the definition of war crimes were totally unacceptable” (United Nations 2002b: 114, 124, 143). It argued that “grave crimes should be prosecuted, whether they occurred in internal or external conflicts, and whoever committed them” (United Nations 2002b: 114). This conflicted with arguments
made by states such as India and Turkey that proposed that the Court should only have jurisdiction over international conflicts (United Nations 2002b: 114). Jordan “joined the consensus on the inclusion of genocide in the Statute” since the definition used for genocide did not diverge from that used in the 1948 Genocide Convention (United Nations 2002b: 147). In continuing with its support for a strong court, Jordan advocated for the removal of the phrase “on political, philosophical, racial, ethnic or religious grounds or any other arbitrarily defined grounds” from the definition of crimes against humanity because “what was in question was an attack on a population on any grounds” (United Nations 2002b: 151, 2002a: 20). Jordan was worried that such a definition would limit the cases the Court has the authority to prosecute. To further expand the definition of crimes against humanity, Waleed Sadi advocated for the inclusion of ethnic cleansing and destruction of part of a population in the definition for crimes against humanity (United Nations 2002b: 151).

To expand the definition of war crimes, Jordan supported the inclusion of the phrase “intentionally directing attacks against the civilian population as such, as well as individual civilians not taking direct part in hostilities” instead of completely removing the paragraph (United Nations 2002b: 151; United Nations 2002a: 16). The original proposal for war crimes also included that intentional attacks on civilians that greatly exceeded military necessity fell under war crimes. In opposing this definition, Jordan stated that

The qualification of the damage caused by an attack on civilian targets as being "excessive" in relation to the military advantage anticipated raised serious problems as it implied a subjective standard. Who would determine whether or not the damage was excessive? In any case, attacks on civilian targets should not
be justified by military objectives. It would be safer to have no qualification of the type proposed (United Nations 2002b: 158).

In wanting to expand the definitions of various crimes that fall under the jurisdiction of the ICC, Jordan confirmed its support for the purpose of the Court. The role that it played during the Rome Conference could serve as an indicator of its future decision to ratify. Unlike many other Middle Eastern states, Jordan never sought to decrease the power of the Court.

Additionally, Jordan advocated for the creation of an independent Court and for limiting the role of the United Nations Security Council (UNSC). Jordan was supportive of the principle of complementarity, which dictates that states will have principal jurisdiction over cases of international crimes and the ICC will only intervene when a government has proven itself unwilling or unable to prosecute (United Nations 2002b: 187; Agirre et al. 2003: 3). In attempting to limit the power that the UNSC would have over the Court, the Jordanian delegation stated,

It was not clear to [Mr. Sadi] why the Security Council should be singled out... as authorized to make referrals to the Court. Nor did [Mr. Sadi] understand why the Council would need to request the suspension of an investigation for as long as 12 months. The Court should not become a mere appendage of the Council (United Nations 2002b: 208).

Like many other states, Jordan was afraid that the permanent members of the Security Council would use the Court as a political tool and would seek to use it to protect allies or punish adversaries. Jordan did not oppose granting the UNSC the right to refer cases to the Court, but did recommend that “in addition to the Security Council, the Commission on Human Rights could act as a referral organ, since it was the prime United Nations organ dealing with gross and systematic
violations of human rights” (United Nations 2002b: 187). Jordan hoped that by doing so it could ensure both the Court's independence and effectiveness.

Jordan continued to hold an important role in the International Criminal Court as a result of Prince Zeid’s election as the first president of the Assembly of States Parties ("the Assembly"). To become President of the Assembly, Prince Zeid was elected by an absolute majority of the ICC judges as stipulated by Article 38 of the Rome Statute as well as a majority of Assembly members. The President of the Assembly is not given any additional powers and is instead responsible for the Court’s administrative tasks, with the exception of the tasks related to the Office of the Prosecutor (United Nations 1998: Article 38). Despite the absence of additional powers, Prince Zeid’s nomination and subsequent election is indicative of Jordan’s dedication to the values of the International Criminal Court. Prince Zeid’s term as president ended in 2005, but he was then proposed by the next Assembly President and chosen by the Assembly to chair the Credentials Committee. The Committee’s central role is examining the credentials of state representatives to the Assembly prior to the start of the sessions (International Criminal Court 2002: Rule 23).

Additionally, Queen Rania Al-Abdullah was elected to the Trust Fund for Victims (TFV) board in 2003 for a three-year term, providing further evidence that support for the Court followed a top-down approach ("ICC Victims Trust Fund Board” 2003). Article 79 of the Rome Statute created the Trust Fund with the intention of providing reparations to the victims of individuals prosecuted by the Court (United Nations 1998a). The Assembly of States Parties elected Queen
Rania, along with other members of the first board, by consensus ("ICC Victims Trust Fund Board” 2003). As a member of the first board, she helped lay the groundwork for how the TFV would function in the future and the role that it would play. Jordan’s involvement in the International Criminal Court in ways that extend beyond participating in the drafting of the Statute or ratifying the Statute indicates its deep-seated commitment to the values the Court seeks to uphold. The remainder of this chapter will identify and discuss the factors that contributed to this support.

The Role of Economic Relations

In this section I will be testing the applicability of the rewards theory, the belief that states are driven by economic rewards, in Jordan. Jordan’s economy depends primarily on foreign aid and remittances as a result of an absence of natural resources and geographic conditions that fail to foster a successful agricultural industry. Jordan’s dependence on foreign aid sometimes obliges it to follow the whims of international politics when making political decisions. To better understand the role of economics in Jordan’s decision to join the International Criminal Court, it is important to analyze foreign aid trends in Jordan during the 1990s and early 2000s, as well as significant trade agreements or changes in trade. I am opting to start my analysis in 1990, not in 1987 when Jordan first became involved in the drafting process, because, as previously stated, members of the ILC were independent of their nominating governments. The Jordanian government could not take responsibility for articles included in
the draft statute until it was submitted to the UNGA. Therefore, it is unlikely that Jordan would have experienced economic consequences linked to the statute starting in 1987. If aid is a significant factor, there should be an increase in foreign aid in the years ranging from 1995-2003 (one year after the statute was submitted to the UNGA and one year after Jordan ratified it) when compared to the early 1990s. I expect an increase in aid during these years because that is when Jordan became more heavily and publicly involved with the Court. If its involvement was driven by monetary incentives or if it was rewarded for its position, it would have received the funds in late ’90s and early ’00s. Similarly, trade significance would be represented by either an increase in trade between Jordan and a state supportive of the ICC or the entering of Jordan into new trade agreements.

*Foreign Aid*

The rewards theory places great emphasis on foreign aid trends when analyzing the role of economics on treaty ratifications. Because data on aid is limited and it can come from multiple sources, I am opting to focus my analysis using data on aid donations from OECD nations, which is compiled by the World Bank. This is the same measurement used by Meernik and Shairick in their analysis of the impact of aid on Rome Statute ratifications.
Table 1. Net Bilateral Aid Flows from DAC Donors to Jordan (current, millions US$)

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<tr>
<td>Canada</td>
<td>25.6</td>
<td>7.9</td>
<td>2.3</td>
<td>2.3</td>
<td>3.6</td>
<td>3.3</td>
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<tr>
<td>European Union institutions</td>
<td>193.1</td>
<td>55.3</td>
<td>49.2</td>
<td>13.9</td>
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<td>11.8</td>
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<tr>
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<td>51.8</td>
<td>58.9</td>
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<td>50.3</td>
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<tr>
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<td>33.0</td>
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<td>139.8</td>
<td>170.2</td>
<td>286.8</td>
<td>948.4</td>
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<tr>
<td>United Kingdom</td>
<td>5.4</td>
<td>11.6</td>
<td>6.6</td>
<td>7.4</td>
<td>4.9</td>
<td>3.8</td>
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<tr>
<td>Total (all DAC donors)</td>
<td>876.0</td>
<td>450.3</td>
<td>326.2</td>
<td>339.1</td>
<td>436.5</td>
<td>1,135.3</td>
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Source: The World Bank Development Indicators Databank

Fig 1. Net Bilateral Aid Flows from DAC Donors to Jordan (current, millions US$)

Source: The World Bank Development Indicators Databank
Table 1 offers a sampling of official development aid to Jordan with the remaining years and donors included in Table 1A in Appendix A. Figure 1 includes all members and years to provide a visual comparison of aid to Jordan. The states selected above are considered great world powers, and the dates correspond to significant years in Jordan's political history. Meernik and Shairick argue that data compiled for all members of the ICC shows a trend that indicates a significant role played by aid. However, the above data shows otherwise. Jordan became increasingly involved with drafting the Rome Statute in 1994 and ratified in 1998. More often than not, aid donations to Jordan in the years leading up to and immediately following the ratification of the treaty declined. Comparing aid to Jordan from the early 1990s to 2003 shows that some OECD states increased their donations to Jordan in 2003 with the most significant increase coming from the United States. However, aid quickly declined again in 2004 with total DAC aid falling to $488,780,000 from $1,135,300,000. The sudden increase in aid in 2003 is not evidence enough of a significant role of aid in ratification decisions, especially since the aid came from the United States, which was vehemently opposed to the Court.

The trends in the aid that Jordan receives from OECD members are a result of Jordanian foreign policy decisions and not its decision to take steps towards improving human rights. In 1991, Jordan sided with Iraq in the Gulf War because Iraq represented a major market for Jordan’s exports and was Jordan’s supply of low-cost oil. Opposing Iraq would have been destructive for Jordan’s economy and so the Jordanian government made the decision to not comply
with the UN embargo on Iraq (Reed 1990: 22-23). As a result, many Western states drastically cut their aid to Jordan. The United States, for example, gave Jordan $33 million in 1991, a decline from the $58 million that was allocated for Jordan in 1990 (The World Bank 2016a). A later increase in aid in 1995 and continuing increases throughout the late 1990s can be attributed to Jordan’s decision to sign a peace treaty with Israel, thus contributing to movement towards regional stability. The sharp incline in ODA funds in 2003 from 2002 and subsequent decline in 2004 can be attributed to Jordan’s strategic importance in the post-9/11 Middle East and states’ desires to offer it the economic assistance necessary to halt the expansion of terrorist groups into Jordan.

Jordan receives a majority of its foreign aid from the United States, especially after the Gulf War and the peace treaty with Israel in the 1990s (The World Bank 2016a). The United States’ decision to forgive nearly $700 million in Jordanian debt in 1994 was a direct result of US attempts to support Jordan in pursuing Middle East peace. The report to Congress stated, “In support of Jordan’s efforts to support Middle East peace, including in particular its peace agreement with Israel, Congress enacted legislation authorizing forgiveness of Jordan’s debt to the U.S. Government in 1994” (United States Treasury 2000: 16-17).

Economic aid through the United States Agency for International Development (USAID) ranged from $5 to $7 million after the Gulf War and increased dramatically to $126 million in 1997. Though economic aid through
USAID did not increase after the peace treaty with Israel, the later increase in 1997 is a result of Jordan's role in facilitating peace between Israel and the Palestinian territories (US Agency for International Development 1998: 1-4).

The Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 2000 made known that the United States would continue to support Jordan as a result of its vital role in the Middle East peace process. For fiscal year 2000, the Committee on Appropriations approved $150,000,000 from the Economic Support Fund, $75,000,000 from the Foreign Military Fund, as well as $100,000,000 requested by the President for Jordan (Committee on Appropriations 1999: 37-38, 63). This continuous and ever increasing support for Jordan is evidence of the United States’ unwillingness to allow the International Criminal Court to prevent the potential for peace in the Middle East and for a secure Israel. While the ICC would have been a threat to U.S. activity in the Middle East, it was not a significant enough threat for the U.S. to abandon its interests in the region.

The United States has always feared the prosecution of its armed forces should they commit some crime during an international conflict. Before the Rome Statute went into force, the American delegation attempted to include a section articulating that American soldiers are not to be referred to the Court. This attempt received 113 opposing votes and the block was considered a “strong blow to the only superpower in the world” (Ad-Dustour 1998c). In response, the United States made efforts to sign bilateral immunity agreements with nearly all ICC state parties. Bilateral immunity agreements, or non-
surrender agreements, are agreements between the United States and the relevant state ensuring that the other party would not submit Americans accused of war crimes to the International Criminal Court. In 2004, Congress passed the Nethercutt Amendment stipulating that parties to the Rome Statute would be ineligible for military aid unless they ratify BIAs with the U.S. or the President grants them an exception (Ball 2011: 80). The King signed the agreement to prevent a loss of $250 million in aid, but the Lower House of Parliament refused to ratify the agreement (Ralph 2007: 158-159). After resubmission 2006, the Lower House was pressured by the King to ratify it (Human Rights Watch 2006: 464).

Jordan was not discouraged from joining the ICC because of its dependence on American foreign aid because Jordan could almost guarantee that the United States could not afford to cut Jordan's foreign aid, as that would negatively impact the status quo in the Middle East. The United States needed to support Jordan to keep it neutral towards Israel. Jordan’s decision to ratify both the Rome Statute and the BIA is evidence of its attempts to create reputations for both respect for human rights and for loyalty to Western states. Cultivating such a reputation allows the Jordanian government to reap the benefits of American economic aid as well as those of being viewed as one of the only champions of human rights in the Middle East. Therefore, the data for Jordan fail to support Meernik and Shairick's findings that there is a general correlation between ratification and foreign aid from OECD nations. Meernik and Shairick, however, acknowledge that their conclusions are not applicable for every state, and it is
the case that Jordan is one of those states for which their conclusion does not apply. There is an absence of strong evidence attributing Jordan’s decisions on human rights to its economic relationship with foreign states.

*International Trade*

Trade relations are also an important variable to consider when analyzing the impact of economics on ratification decisions. Jordan’s proximity to Europe makes Europe an important trading partner. In 1995, Europe began negotiations with multiple states in the Mediterranean with the goal of establishing systems of free trade with all of them by 2010. The final agreement was signed in 1997 and entered into force in 2002. The Barcelona Process, or Euro-Mediterranean Partnership, had the goal of improving relations between the Mediterranean and Europe. The Partnership’s three baskets, or topics, are the political and security basket, economic and financial basket, and social, cultural, and human basket. Within the Partnership was the MEDA Program, which was the Partnership’s bilateral foreign aid arm intended to implement the different elements of the Partnership (Saleh and Abouelkheir 2013: 52). Most of the aid for distribution was allotted to the economic and financial partnership basket. In 1996, MEDA allotted 254 million Euros to Jordan, but only distributed 100 million in the years 1996 to 1998. The entirety of the 100 million Euros went to structural adjustment programs to support the concurrent agreement that Jordan had made with the IMF (EuropeAid Co-operation Office, et al. 2007a: 6; European Commission 1996).
Although one of the baskets focuses on politics and security, very little in the agreement made any mention of political matters. The most direct attention given to politics and democratic policy is Article 2 in the Euro-Mediterranean Agreement, which stipulates that

Relations between the Parties, as well as all of the provisions of the Agreement itself, shall be based on respect of democratic principles and fundamental human rights as set out in the universal declaration on human rights, which guides their international and international policy and constitutes an essential element of this agreement (European Community and The Hashemite Kingdom of Jordan 2002).

The inclusion of this article may be an attempt to include political liberalization without compromising the potential for agreement on the partnership’s terms. Because the Agreement does not detail specific political changes that need to be made for Jordan to be considered democratic, Jordan was not placed under pressure to make changes for economic purposes. Additionally, the MEDA allotted the least amount of aid to improving human rights. Jordan received 700 million Euros from the MEDA in the years between 1996 and 2007 and of those 700 million Euros, only 13.5 million were given to human rights (EuropeAid Co-operation Office, et al. 2007b: 14). The report evaluating the EC’s support to Jordan reveals that this is lowest amount given to any sector (EuropeAid Co-operation Office, et al 2007a: 6). This may then be indicative of an absent desire on the part of the EU to prioritize the promotion of human rights. Because the EU did not make a point of making aid and the partnership contingent on Jordan’s human rights record, Jordan’s decision to draft, sign, and ratify the Rome Statute is likely unrelated to this Partnership. The MEDA did indicate that aid can be frozen if the principles of the economic or political partnerships are violated.
(Saleh and Abouelkheir 2013: 52). The obvious exclusion of human rights in this stipulation points to the EU’s willingness to overlook a partner’s domestic conditions as long as they do not interfere with the economic goals of the partnership. Because the ICC did not concern the Partnership’s goals, Jordan’s joining the Court did not have any significant impact on its relations with European partners.

The United States is also an important Jordanian trading partner, but it was less so during the 1990s. From 1995-2000, imports and exports between the two states remained relatively constant with the United States’ export-import balance ranging from $243,000,000 to $377,000,000. The factor most impacting the balance is the increase in imports from Jordan to the U.S. In 2001, the United States saw a dramatic increase in imports from Jordan: imports in 2000 totaled $73,000,000 and $229,000,000 in 2001. That number doubled in 2002 (U.S. Census Bureau 2016). The sudden increase may have been a result of the U.S.-Jordan Free Trade Agreement signed in 2000. If the United States were a supporter of the International Criminal Court, this evidence would support Nielsen and Simmons’ theory that trade increases will appear 1-3 years after ratification. However, because the United States was an ardent opponent of the Court, its agreement to a free trade relationship was a result of other, unrelated factors, primarily Jordan’s role in the Middle East peace process and the United States’ efforts to enable it to continue playing the role of the mediator in the Middle East (Rosen 2004, 62).
Economic Linkage

An important component of Jordan’s economic survival is the income it receives from citizens working abroad, particularly within the Gulf. Jordan’s economy did significantly well during the 1970s because of the oil boom, which drastically increased employment opportunities in the Gulf (Ryan 1998: 56-57). However, the oil industry began to decline in the 1980s, leading to a 45% decrease in foreign aid from Arab countries as well as a decline in employment opportunities and the remittances that the Jordanian economy would have received. Jordan began to borrow from foreign states to fund government spending, which sped up Jordan’s incurrence of debt. Despite the clear decline in aid and remittances, the Jordanian government failed to make any effort to decrease spending and instead increased it out of an assumption that the oil industry would rebound. In 1979, the Jordanian government had a budget deficit of 85 million JD, and by 1988 that number was up to 388 million JD (Robins 2004: 166-168). To stem further economic deterioration, Jordan signed an economic adjustment and stabilization agreement with the IMF. In return for loans and credit, the Jordanian government had to drastically decrease expenditures (Ryan 1998: 56-57).

The IMF agreement laid out three stages of economic changes: liberalization of the financial sector, stabilization of the macro-economy and structural adjustments, and continuing growth (Harrigan, El-Said, and Wang 2006: 267-272). Stipulations regarding human rights or the need for democratic transition were not included in this agreement. The IMF’s primary purpose is to
develop economies, not states. It was created with the intention of working at the macroeconomic level to improve fiscal policies, which would lift states out of debt or general economic failure. As a result, it rarely addresses human rights concerns in states receiving assistance and only does so if the human rights issue directly impacts the agreement between the IMF and the relevant state (Bradlow 1996: 72-73). Therefore, in Jordan, the IMF did not try to push forward movement towards democracy or political liberalization as part of the program. The fact that political liberalization happened regardless was incidental and is not enough to lend support for the rewards theory.

**Ease of Compliance**

Much of the literature on ease of compliance centers on regime types and the likelihood that a certain type of regime will commit to a treaty. Because I am looking at the issue of ratification at a small scale and am using case studies with similar government types, I will diverge from existing literature and will instead focus on state characteristics. To understand a state’s ability to comply with a given treaty, multiple aspects of political and social proceedings should be reviewed. In the case of the Rome Statute, the state’s judicial competence, human rights legacy, and involvement in international conflict will help indicate the likelihood that a state can comply with the Statute’s content. If ease of compliance can be credited with influencing Jordan’s ratification decision, I expect to see an independent and impartial judiciary, a history of general respect
for human rights along with a reputation for compliance with human rights
treaties, and low levels of involvement with international conflict.

The Strength of Domestic Institutions

The International Criminal Court operates under the principle
complementarity, which is likely one of the reasons that the creation of and
accession to the Court was acceptable for many states. The Court is a court of last
resort, and it paints itself in that way so as avoid impeding on the sovereignty of
states. Because some states are aware that their judicial systems are competent
and impartial enough for their cases to not be referred to the ICC, ratification of
the Rome Statute does not carry high sovereignty costs. Although Jordan’s legal
system is not perfectly independent, it is still, for the most part, able to
adequately prosecute crimes. We can assume that Jordan’s confidence in the
relative competence of its legal system may have influenced its decision to ratify
the Rome Statute.

On the surface level, Jordan’s judiciary seems independent, fair, and
competent; however, understanding the details of Jordan’s legal system
underscores some shortcomings in the system. Jordan’s judiciary is divided into
three types of courts: civil courts, religious courts, and special courts, with
special courts typically indicating military courts (Judicial Council 2011). In
contrast to the Executive’s claims that the “constitution guarantees the
independence of the judicial branch,” the Jordanian constitution indicates an
absence of separation of powers (“The Judicial Branch” 2016). The Court of
Cassation, Jordan’s highest federal court, does not have the power to interpret the constitution. Therefore, the Court is prevented from checking the Executive’s powers. Additionally, the Constitution provides for the protection of personal and other such freedoms, but it also specifies that these freedoms are protected “within the limits of the law,” meaning that the legislative branch can decide to curb them via future legislation (Burgis 2007: 144). Because the Court does not have the power to interpret the Constitution, it can neither prevent such legislation nor stop the Executive from potentially violating the rights of the Jordanian public (Burgis 2007: 144).

Article 98 of the Constitution states, “judges of the Civil and Sharia Courts shall be appointed and dismissed by a Royal Decree, in accordance with the provisions of the law” (Judicial Council 2011). Because judges are appointed and dismissed by the Executive, they sometimes find that their rulings have to be in favor of the Executive, thereby inhibiting the judiciary’s independence (Burgis 2007: 145). However, the King cannot appoint and dismiss judges on his own and must instead work in collaboration with the Minister of Justice and the Judicial Council in making such decisions. The King’s preference is given more weight since the Prime Minister, who is appointed by the King, appoints the Minister of Justice. Therefore, the King and the Minister tend to have similar interests and can ensure that judges do not threaten those interests (Burgis 2007: 150). The organization of Jordan’s judiciary makes it so that in reality, it has very little independence. As a result, joining the ICC holds some risk for Jordan making Jordan’s eventual ratification surprising.
The absence of a large degree of independence for the judiciary, as well as the absence of a true separation of powers leads to the question of why the Jordanian government, and particularly the Executive, was supportive of the International Criminal Court. The ICC takes into account rule of law when determining whether or not a state is capable of prosecuting a case on its own. The World Bank Governance Indicators began documenting rule of law in 1996 and gave Jordan a score of 0.27 on a scale of -2.5 to 2.5 in that year. Rule of law measures “perceptions of the extent to which agents have confidence in and abide by the rules of society” with -2.5 indicating no confidence in the rules and 2.5 indicating complete confidence in society’s rules (The World Bank 2016b). Dutton (2011) also uses rule of law ratings to determine the strength of domestic enforcement institutions and she finds that states with ratings higher than 1 are twice as likely as states with ratings lower than -1 to ratify the Rome Statute. Since Jordan falls in between the two scores, its decision to ratify is not particularly surprising. Jordan’s score was average when compared to other MENA states, which makes more puzzling the fact that it ratified while other MENA states did not. The World Bank also assigned states percentile ranks with 100 being the highest rank. Jordan was given a 59 in 1996. This was once again parallel to the scores received by most MENA states (The World Bank 2016b). Despite the absence of a fully independent judiciary, Jordan’s rule of law ratings indicate an ability to potentially be able to carry out genuine investigations and prosecutions thereby decreasing the risk levels associated with accession to the Court.
Relationship with Human Rights

Within the Middle East, Jordan is often one of the first states to join various human rights treaties, particularly the core treaties. It was an early member of the ICERD, the ICCPR, the ICESCR, the CEDAW, the CAT, the CRC, the CRPD, the CPPCG, and all four Geneva Conventions. Because of that, it has gained a reputation for making efforts towards increasing respect for human rights. In a visit to Jordan by the leader of the Arab Organization for Human Rights in 1998, Jordan was praised for being one of the only Arab states on the road towards democracy, as well as for its respect for human rights. During the meeting, it was stressed that the reason behind the view of Jordan as democratic is because it “amends various [human rights] legislation, stressing Jordan’s interest in this subject, especially in terms of its respect for various international conventions for which Jordan is a major contributor to drafting and preparing” (Ad-Dustour 1998b).

Despite its reputation for supporting respect for human rights, Jordan has not ratified any Optional Protocols, which increase enforcement and implementation mechanisms, except in the case of Optional Protocols for the Convention on the Rights of the Child. These actions provide additional support for Cole’s theory that states ratify treaties depending on their implementation mechanisms more so than their content (Cole 2009). Jordan’s decision to reject increased enforcement through the Optional Protocols indicates disinclination towards human rights treaties that will legitimately constrain the government’s
actions or will require some change on the part of the government. Jordan has also failed to ratify or sign the International Convention on the Protection of the Rights of all Migrant Workers and the International Convention for the Protection of all Persons from Enforced Disappearances, likely because it would be more affected by those treaties. Just as many Jordanians moved to the Gulf to work in the oil industry, many Egyptians and Iraqis migrated to Jordan for work. Of the 314,965 foreign residents\(^3\) in Jordan in 1994 in a total population of over 4 million, 124,566 were originally from Egypt and 24,501 from Iraq (Migration Policy Centre 2013: 1). By refusing to sign the Convention, Jordan allows itself the freedom to expel workers should the need arise. Similarly, Jordan is known for taking part in enforced disappearances to combat political dissent and has assisted the United States in its extraordinary rendition program (Weissbrodt and Bergquist 2006: 128-129). This program allows the CIA to illegally transfer suspected terrorists to states where international law does not fully apply. Had Jordan ratified the convention on enforced disappearances, it would have been held accountable by the international community and would have likely suffered reputational ramifications (ACLU 2016).

Jordan has also failed to sign or ratify the 1951 Convention Relating to the Status of Refugees despite having one of the most robust refugee programs in the Middle East. In 1994, Jordan was home to over 1.2 million refugees primarily from Palestine and Iraq (The World Bank 2016a). Once again, this decision likely

\(^3\) The definition of foreign residents as used by the Population and Housing Census does not include refugees. Foreign residents are simply individuals who moved to Jordan for reasons besides seeking asylum.
stems from an attempt to avoid the potential constraints it will impose on how Jordan operates its refugee program presently and in the future (Francis 2015). The most significant difference between the 1951 Refugee Convention and Jordan’s refugee policy is related to refugees’ right to work. Article 17 of the Convention states,

The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment (UNHCR 1951: 22).

The Jordanian constitution clearly states that employment is the right of citizens and fails to mention employment in regards to refugees or migrants ("The Constitution of the Hashemite Kingdom of Jordan" 1952: Article 23).

The Refugee Convention also requires that states provide opportunities for refugees to work within liberal professions should they have the required degrees (UNHCR 1951: 23). However, the Jordanian Ministry of Labor has a list of professions closed to non-Jordanians, which contains liberal professions such as medical and engineering professions as well as low-skilled positions like guards, servants, and drivers (International Labour Organization 2015: 6). If Jordan were to join the Convention, it would be required to reform its labor laws to eliminate unfair laws directed towards refugees, which could have negative economic consequences for Jordanian citizens.

Jordan may have cultivated a reputation as being a Middle Eastern state at the forefront of international human rights treaties, but this reputation may be prematurely attributed. Jordan ratifies those treaties and protocols it believes it can easily comply with and do not heavily impact prioritized issues. This
relationship with human rights treaties falls in line with Guzman’s (2002) theory that states comply to retain positive reputations on the international stage. The treaties that Jordan is party to are ones that it can more easily comply with. Ramos and Falstrom (2005) provide a challenge to this argument that Jordan joins treaties with which it can comply. They test Jordan’s compliance with the CAT and give it a score of 0, which indicates negative or no change in its torture-related policies. Although Jordan does not change its policies to be more compliant with the CAT, it may be that as Ramos and Falstrom assert, different human rights treaties prompt different compliance procedures measures (Ramos and Falstrom 2005: 24). I maintain my theory that reputation likely deterred Jordan from joining those treaties it found requiring extensive changes to domestic politics. Jordan is not a large violator of human rights, so while its laws may not be fully compliant, it does still comply with the treaties it is party to, to some extent. It was able to ratify the Rome Statute because it did not find itself to be under threat of prosecution; Jordan neither has a history of gross violations of human rights nor is heavily involved in international conflicts. Jordan ratifies those treaties that it sees as posing minimal threat, but does not support those requiring a change in practice.

Dutton (2011) uses the measure for physical integrity rights index from the Cingranelli-Richards Human Rights dataset as her main measure of human rights levels. The index combines scores for torture, extrajudicial killing, political imprisonment, and disappearance. Using rating averages for the years 1997-2008, she categorizes Jordan as a ratifying state with worse human rights
practices on a scale of ‘worse’ and ‘better’ practices. It is correct that Jordan’s respect for human rights began to decline in the late 1990s and, in particular, the number of political prisoners increased. However, the dates used by Dutton misrepresent the results to some extent. In order to understand why Jordan ratified the Statute and was so heavily involved in its drafting, it is most appropriate to analyze the years leading up to ratification in 2002. Averaging the same variable for 1990-2002 gives Jordan a score of 5, which Dutton considers to be the minimum score for states with better human rights (Cingranelli, Richards, and Clay 2014). Jordan is by no means a model for respect for human rights, but it most often receives average scores for the different variables. Average scores are not enough for a state to be referred to the ICC.

*Involvement in International Conflicts*

When Jordan made the decision to ratify the Rome Statute, it likely explored its ability to comply in terms of rule of law and how it compares to other states, as well as the likelihood that it would be referred to the International Criminal Court. Jordan, unlike states such as the United States or Russia, is not heavily involved in international or domestic conflict, although it does play an important role as a mediator in the Middle East. The Correlates of War project includes a collection of datasets such as the Militarized Interstate Dispute dataset, which "provides information about conflicts in which one or more states threaten, display, or use force against one or more other states between 1816 and 2010" (Palmer et al. 2015). The MID dataset placed Jordan in
only 10 conflicts, all within the Middle East. Compared to other states, this number is fairly low and is indicative of Jordan’s hesitance to become involved in conflicts outside of the Middle East (Ghosn and Bennett 2003). The majority of Jordan’s military conflicts have been, unsurprisingly, against Israel. In those conflicts, Jordan often joined a coalition of other Arab states, and rarely did the conflicts move into the East Bank. Jordan’s most recent engagement in conflict before the drafting of the Rome Statute was its marginal support for Iraq during the Gulf War.

Jordan’s involvement in these past international conflicts likely did not play a role in Jordan’s decision to ratify the Rome Statute because in the case of conflicts with Israel, Jordan was preparing for peace in the 1990s. The decision stabilization of relations with Israel meant that Jordan faced fewer prospects for taking part in human rights crimes, so ratifying the Rome Statute held fewer costs. In the case of support for Iraq, Jordan was able to avoid military involvement and presented itself as a somewhat neutral state forced to support Iraq for economic reasons. The lack of use of the armed forces meant that members of the armed forces did not have the potential to take part in war crimes. Using the MID dataset, Meernik and Shairick find that, in general, there is no relationship between involvement in international conflict and Statute ratification, especially since international conflict has been declining in recent years (Meernik and Shairick 2011: 41).

In 1970, King Hussein entered into conflict with the Palestinian guerillas (fedayeen) in Jordan after a series of minor skirmishes escalated to the point of
the *fedayeen* hijacking and blowing up three airliners (Ashton 2008: 144-145).

The King's response to the hijacking, which resulted in the massacre of 20,000
Palestinians, has been condemned by other Arab states and is often considered a
human rights violation (Rubenberg 2003: 13). If Jordan saw potential for similar
events taking place in the future, it may have been deterred from supporting the
International Criminal Court. However, the conflict ended with the *fedayeen*
being driven out of Jordan and into Lebanon and Syria (Robins 2004: 132).

Because these guerrillas no longer had a presence in Jordan, the government did
not have reason to fear another Palestinian uprising, which would warrant a
similar reaction. Uppsala, which tracks interstate and intrastate conflicts starting
in 1989, places Jordan in only the Iraq conflict prior to the Statute ratification
(“Uppsala Conflict Data Program,” n.d.). The absence of internal conflicts leading
up to the Rome Statute provides additional evidence for theories that argue that
states with low levels of military activity are more likely to join the ICC. This
finding supports the conclusion that Jordan's lack of military conflicts likely
contributed to its belief that it does not face a high likelihood of referral to the
Court.

Relatively low (relative to MENA) military expenditures also likely
influenced Jordan’s decision. Low military expenditure is indicative of a state’s
expectation to be uninvolved in military conflicts in future years. If Jordan does
not expect to enter into international or internal conflict, it can feel confident
that ratifying the Rome Statute would not negatively impact its state leaders. In
the years 1990-2002, Jordan spent an average of 6.5% of its GDP on its military.
Compared to the world average of 2.5%, it could be assumed that Jordan joined the ICC despite being prepared and likely to engage in military conflicts (The World Bank 2016a). However, comparing Jordan’s average to the Middle East and North Africa shows that its military expenditure is not unique in the region. In fact, it spends less than the MENA average and spends a similar amount to neighboring states like Lebanon and Syria. Unlike surrounding states, Jordan made efforts to “cut the size of its Armed Forces by 25 percent as a result of the peace negotiations with Israel” in 1994. These cuts “[were] in line with the IMF proposal and guidelines for reforming Jordan’s economy.” Additionally, Jordan is one of the few surrounding states to transition away from military conscription with the program being placed on hold since 1992 and plans to completely dismantle it beginning in tandem with decreasing the size of the military (Al-Sharq Al-Awsat 1994). The higher average in MENA in relation to the rest of the world helps explain why MENA is underrepresented in the Court, and the low average in Jordan compared to MENA shows why it was the only MENA state that opted to initially ratify. The decline of involvement in international conflict and relatively low spending on the military likely motivated Jordan’s belief in its ability to comply with the International Criminal Court in the future and allowed it to perceive itself as safe from future prosecution.

**Linkage Politics**

Jordan was a key player in Middle Eastern regional politics as a result of its proximity to Israel, close relationship with Western states, and alliances with
key states such as Iraq. Jordan may not have been heavily involved in multiple international conflicts, but it did contribute to maintaining the quasi-stability of the region. Jordan’s domestic and regional politics likely motivated its active role in drafting the Rome Statute as well as its willingness to ratify it. Literature on treaty ratification fails to fully address the impact of politics on state decisions and when it does, the focus has been placed on the interdependence between international and domestic politics with less emphasis on the relationship between regional and international politics. Although the political science community underwent an era of evaluating relations between international and domestic politics, this theory has fallen to the wayside in recent years as more focus is placed on globalization (Putnam 1988: 431). However, because of Jordan’s international, regional, and domestic politics, I find it necessary to reemphasize this theory. A state’s decisions on the different political stages are highly interdependent. It is unlikely that a state will make a decision in international politics that doesn’t provide some reciprocal benefit in domestic or regional politics. If international, regional, or domestic politics are the raison d’être for Jordan’s ratification decision, then I expect to find political dialogue justifying the decision to sign and ratify the treaty to include references to its political history. Evidence of political linkage would indicate the importance attached by states to pursuing their political or economic interests.

*Domestic-International Linkage*
Domestic-international linkage theory argues that in making decisions on the international stage, states attempt to satisfy domestic pressures (Putnam 1988). If domestic pressure was the factor that drove Jordan’s ratification, we can expect a trend of attempting to bend to the needs of the public at the time of signing and ratification. Jordan’s economic and political stability depends heavily on its relations with foreign states because it lacks the agricultural and natural resources necessary to make it an independent economy. As explained above, Jordan underwent economic turbulence in the 1980s, stemming from contractions in the oil market. In order to pay back national debt, Jordan signed an IMF economic adjustment and austerity plan in 1989. When Jordan entered into the agreement and began to abide by its conditions, the public took to the streets to protest the sudden increase in prices of and decrease in government subsidies for commodities. To quiet the unrest, King Hussein took this time to begin to politically liberalize. He removed Prime Minister Zaid al-Rifai’s government and replace it with a supposedly less corrupt government (Robins 2004: 170). In 1991, Jordan ratified the National Arab Charter. The Charter legalized the creation of political parties and emphasized the status of Jordan as a Hashemite monarchy. By doing so, the King gave the people greater freedom in politics while maintaining his position as the leader of the state (Robins 2004: 174). In continuing with the efforts to liberalize, the government began to consider lifting martial law in 1989 and eventually followed through in 1991. Martial law had banned large public meetings, essentially outlawing protests,
and restricted free speech by allowing government actions like closing newspapers critical of the government (Associated Press 1989).

The decision to continue the process of drafting the Statute and eventually signing it in 1998 could be seen as a continuation of the government’s attempts to liberalize in order to quell public dissent. The government may have attempted to gain a reputation for respecting human rights within its borders in order to assure its citizens that it has the people’s best interest in mind. However, this argument fails to hold when King Hussein’s reaction to the protests following the 1996 IMF economic adjustment program is taken into consideration (Ryan 1998: 55). Unlike the reaction to the previous demonstrations, government security forces were sent almost immediately to end the protests of 1996. After the first round of protests, the King gave in and replaced the sitting prime minister with Zaid ibn Shaker. In 1996, however, he refused to give into demands for the removal of Prime Minister Abdul Karim al-Kabariti, showing unwillingness to acquiesce. The King also took steps to suppress the political opposition by detaining members of the Baath party and eventually dissolving the present session of parliament (Ryan 1998: 62-64). Such actions show that although the Jordanian government was willing to make some concessions and was more committed to human rights than other Arab states, it still resisted being held accountable by its people. Therefore, Jordan’s support for the ICC does not stem from its attempts to end public unrest, as such an action could have weakened the government in relation to its people. The steps that the King took to liberalize in the early 1990s were significant, but they
were not on par with handing jurisdiction over to a foreign entity, as the costs of liberalizing politically are not as high as the sovereignty costs imposed by the International Criminal Court.

Regional-International Linkage

Jordan’s tense relationship with Israel extends back to 1948 when Israel declared independence, thereby antagonizing much of the Arab World. The Arab-Israeli War of 1948 ended in armistice agreements between Israel and each Arab actor in the Spring of 1949 (Robins 2004: 67-69). Jordan’s involvement in the War was primarily driven by its desire to expand into the West Bank (Robins 2004: 61). Multiple times throughout the conflict Jordan attempted to create peace with Israel or failed to provide proper support for the Arab coalition, thereby undermining their military operations. These attempts at disengagement from the conflict led to an improvement in relations between the two states. This somewhat cordial relationship ended with the ascension of King Hussein to the throne and his desire to improve relations with his Arab neighbors.

Jordan entered into armed conflict with Israel once more in 1967 and spent the years up until the peace agreement of 1994 attempting to stabilize relations. The 1967 War began when Egypt made the decision to move troops into the Sinai Peninsula, prompting Israel to preemptively strike. Jordan’s fears of losing the West Bank were elevated because in November 1966 Israel destroyed the town of Samu in the West Bank in retaliation for a mine laid in
Israel. Jordan saw this attack on Samu to be an excuse by Israel to move towards overtaking the West Bank. This raid led to a deterioration in relations between Israel and Jordan (Ashton 2008: 107). Jordan and Egypt were defeated and Jordan lost the West Bank, which is a major economic hub for Jordan as its industrial and agricultural contributions constituted 40% of Jordan’s GDP (Ashton 2008: 120; Robins 2004: 124-125).

Jordan was willing to agree to full peace with Israel in 1967 in exchange for the return of the West Bank and the general 1967 lines (Ashton 2008: 128). The King adopted UNSC Resolution 242, also known as the “land for peace” resolution, which required Israel to return the territories occupied in the recent conflict (UNSC 1967). Israel interpreted this resolution to mean that it can return whichever territory it saw fit, so it never proposed peace plans to Jordan that included full withdrawal to the ’67 lines (Ashton 2008: 133-135). The 1980s were defined by a series of failed attempts at negotiating peace between Jordan and Israel brokered by the United States (Robins 2004: 158-162). The two states were finally able to reach an agreement in 1994 that formally declared peace between them.

Despite signing a full peace treaty with Israel, Jordan’s decision to join the ICC and the comments and suggestions it made during negotiations can be interpreted as attempts by the state to hold Israel accountable for its violations of international law. Jordan’s suggestion of including ethnic cleansing and destruction of part of a population as crimes within the jurisdiction of the Court is likely linked to the continuing conflict between Israel and Palestine. Jordan
specifically targeted Israel’s actions in Occupied Palestine by expressing support for criminalizing “the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies” (United Nations 2002b: 158). It also suggested including the prohibition of deportation, which could be an extension of ethnic cleansing (United Nations 2002b: 158). These two provisions constituted an attempt to make the expansion of Israeli settlements on Palestinian lands prosecutable. Israel saw Arab support for and the eventual inclusion of this clause as “another tool with which to bludgeon Israel” (The Jerusalem Post 1998).

A previous supporter of the Court, Israel argued that it was forced to turn against it because the “the Arab countries had politicized it by including an article determining that the settlements in the West Bank and Gaza Strip constitute ‘war crimes’” (Henry 1998). Alan Baker, legal adviser to Israel’s foreign ministry, stated that the criminalization of the settlements “has no place in a list of what is considered to be the most serious and grievous and heinous war crimes known to international law . . . it was purely put in for political reasons” (Reuters News Agency 1998). Spokesman for the Israeli Foreign Ministry, Aviv Shir-On was quoted in the Jordanian newspaper Ad-Dustour as saying, “it is a shame that the return of the Jews to their land is being compared to a war crime” (Ad-Dustour 1998a).

Despite the inclusion of this clause in the Statute, Israel continued its expansion into Palestinian territory. In 1990, Israeli settlers in the West Bank, Golan Heights, Gaza Strip, and East Jerusalem totaled 227,500 and by 1999, a
year after the Statute was open for ratification, settlers totaled 369,184 (Foundation for Middle East Peace 2008). Between 1992 and 1997 the Israeli government proposed five different plans to expand Israeli settlements, stymieing the potential for Palestinian autonomy. In 1997, Prime Minister Netanyahu proposed the Allon Plus Plan, which builds upon the Allon Plan of 1968. The new plan would give Israel over 50% of the West Bank, all access to the Jordan River, and complete control over the Jordanian border. Palestine would be allotted four separate plots of land connected by corridors (Luft 2004: 7-9; Krauthammer 1997). Jordan supported the clause on civilian transfers into occupied territory because of the continuation of Israeli attempts to annex the West Bank. These plans for expansion created a security threat for Jordan and would have placed increased pressure on the Jordanian government because of the increase in refugees that would likely follow. Furthermore, Jordan supported this statement because it was secure in the knowledge that it would not be referred to the Court for such a crime, as it does not occupy any territory. The last territory it occupied was the West Bank, which, as mentioned above, it lost in the 1967 War, although it officially disengaged in 1988.

Jordan also preferred that the Court have jurisdiction over war crimes “in particular” when “committed as part of a plan or policy or as part of a large-scale commission of such crimes;” Jordan preferred the wording of “in particular” over “only” to give the ICC more freedom to prosecute war crimes (United Nations 2002b: 268, 270). In this case, Israel’s commission of war crimes in Palestinian territories can be seen as part of a larger political and economic campaign to
expand into Palestinian and potentially Jordanian territories. Jordan did not succeed in advocating for this wording as a majority of delegations favored including “only” – they viewed it as a compromise between “in particular” and the exclusion of any provision.

Jordan’s desire to prevent the UNSC from having the power to suspend investigations for 12 months can also be seen as an attempt to prevent the Western states, and particularly the United States, from allying with Israel and impeding attempts to hold it accountable for its crimes. Jordan feared that the UNSC would excuse the use of its suspension powers by claiming that an investigation into Israel threatens international peace as it could stop peace negotiations between Israel and Palestine (Karmi-Ayyoub 2015). In the years from Israeli independence to the completion of the drafting of the Statute, 18 resolutions condemning Israeli actions in Palestine were vetoed by the United States, the only state to use its veto power for this purpose (UN General Assembly 2004: 13-19). The United States has played a central role in warding off legal ramifications for Israel’s policies in the Occupied Territories and the unbreakable bond between the U.S. and Israel was apparent to Jordanian activists and politicians. During a meeting between human rights organizations in Jordan during the Second Intifada, the Chairman of the Arab Organization for Human Rights, Hani al-Dahla was quoted in Ad-Dustour as saying, “the absolute support provided by the American Congress to Sharon and Israel is not strange since most of the American Representatives and Senators are supported by funds donated by American Jews and other Jewish supporters” (Khalifa 2002)
Because of this continuous belief that Israel was manipulating American politicians for its own benefit, Jordan advocated for limiting the power of the UNSC in the ICC, although it was unsuccessful in ensuring that the statement would remain in the final draft of the Statute.

Despite the Jordanian government never making clear the role Israel played in its stance on the Court, the connection between the two remained obvious to outside observers. In the interview with William Pace [Convenor of the CICC], he stated, “I would think that Jordan because of Israel would be in favor of an ICC. The occupation is illegal and perhaps this Court will be a force for peace and a force for finally settling this long occupation” (Pace 2017).

Jordanian newspaper articles regarding the International Criminal Court frequently discussed the reasons for Israel’s opposition to the Court, though they never addressed that the clauses opposed by Israel were strongly promoted by Jordan during the Rome Convention. Furthermore, newspaper articles failed to address, in any way, Jordan’s role in drafting and preparing the Rome Statute or Prince Zeid’s importance in the process of creating the Court. The emphasis on Israel’s reactions to the Court is evidence of the importance attached by Jordan to the prosecutability of Israel. From April 16, 1998 to April 25, 1998, Ad-Dustour wrote six articles on the ICC: three of them were solely on Israel’s opinions of the Court and the inclusion of settlements as a crime, while the other three articles provided general overviews of the Court, but made sure to still mentions Israel’s opposition to the settlement article.
In addition to Jordan drawing on Israeli actions in Palestine when negotiating the terms of the Statute, Israel’s policies also determined when Jordan would ratify the Statute. Jordan ratified the Rome Statute on April 11, 2002, just 13 days after Israel launched Operation Defensive Shield during the Second Intifada. The Operation was meant to crackdown on terrorist attacks but attracted much international media attention because it was believed that Israel was committing war crimes. The Battle of Jenin, for example, took place from April 1, 2002 to April 11, 2002 resulted in the razing of 40,000 square meters of the Jenin refugee camp, leaving 4,000 Palestinians homeless and 52 dead. Demolitions were also carried out in Nablus, Hebron, and Ramallah (Graham 2003: 63). Food shortages in the West Bank and Gaza became common and the curfew imposed by the IDF led to a slowdown in Palestine’s economy (Whitaker 2002). Jordan’s state-owned newspapers reported almost solely on Palestine during Operation Defensive Shield and even added Palestinian news sections in some issues. I primarily looked at Ad-Dustour and Al-Arab Al-Yawm from April 1, 2002 to April 20, 2002. Both newspapers dedicated their Arab and World News sections almost entirely to covering Israel-Palestine issues with coverage of the issue decreasing around April 16. In that 20-day period, Ad-Dustour added sections for news from Palestine 8 times. The front pages for nearly every day were dominated by updates from the conflict and photos depicting the victims and destruction occupied multiple pages in many of the Ad-Dustour issues.

The timeline of Israeli actions and Jordan’s ratification flowed far too much for it to be a coincidence. If Jordan wanted the Court to be a tool to use
against Israel, ratifying during Operation Defensive Shield is reasonable, as Israel’s actions at the time could have been considered war crimes. Additionally, Jordanians viewed Israel’s actions in Palestine as a threat to not only Palestinians, but to the rest of the Arab world as well, hence their desire to hold the Israeli government accountable on the world stage. There was a fear that Israel would be emboldened by the lack of accountability for its actions and would expand its operations into surrounding Middle Eastern states. In Ad-Dustour, the Chairman of the Jordanian Organization for Human Rights, Dr. Suleiman Suweis, was quoted as saying, “this unprecedented, brutal attack carried out by the Israeli forces will continue and will develop unless there are political forces capable of stopping it” when discussing Operation Defensive Shield (Khalifa 2002). The Chairman of the Jordanian Organization for Citizen Rights, Dr. Fawzy Al-Sahoudi, added that “the targeting of Palestinians is an introduction to forcing the Arab World to bend [to the will of Israel] and the collective massacre committed by the occupation forces is intended to instill fear in the hearts of the Arab people, but the will to struggle and our belief in our rights will undermine Zionist plans” (Khalifa 2002). This common belief among human rights leaders that Israel’s actions were crimes and a threat to MENA, along with the increased attention to Israeli attacks during the Second Intifada provides further support to my argument that Israel was the primary factor driving Jordan to join the International Criminal Court.

Conclusion
Jordan has made a reputation for itself as being one of the few states in the Middle East that is somewhat respectful of human rights. It is a leader in the region in terms of number of human rights treaties ratified and is often one of the first MENA states to ratify a given human rights treaty. Jordan’s involvement and support for the ICC is somewhat surprising because it is a case of an authoritarian leader willingly giving jurisdiction to a foreign institution. However, Jordan’s decision to help draft the Rome Statute and eventually ratify it can be explained by regional politics and the ease of compliance theories. Jordan intended for the ICC to be a tool that it can use against Israel. Israel’s actions in Palestine pose a threat to the region and they constitute egregious human rights abuses. Jordan sought to be a member of an institution that could hold Israel accountable for its actions. However, Israel has opted to not join the Court making it difficult for Jordan to refer it for crimes committed. Jordan also likely joined the Court because of a belief in its ability to comply with its terms. Had Jordan believed that the Court posed a legitimate threat to its ability to conduct itself as it pleases, it would have opted to not ratify, much like it has done with the optional protocols for various human rights treaties. The normative pressure theory likely cannot explain Jordan’s decision making process regarding the Court because it was one of the pioneers of the Court; Jordan was the state pressuring others to join, not vice versa. Normative commitment does not fully capture Jordan’s decision to ratify either because it is unlikely that Jordan would have joined had it not found a benefit to the Court related to regional competition. Its decisions also cannot be explained using the
economic benefits theory because its main economic partners were not supportive of the Court and were in fact opposed to it. Jordan’s ratification is not an example of a state wanting to protect its people against the potential tyranny of the state, but rather, it is an example of a state arming itself in case of regional conflict.
Chapter 4. Morocco: The Shift from Support to Rejection

The previous chapter outlined the characteristics of Jordan’s political and economic histories that allowed it to readily commit to the International Criminal Court. This chapter will replicate that for Morocco, but will instead concentrate on the changes that compelled it to move from strong support for the Court to a resistance to ratifying the Statute. Morocco, like Jordan is a constitutional monarchy, and compared to the rest of the Middle East, it is relatively high on the list of government respect for human rights. It also played an important role in the drafting of the Statute and ensuring its independence. Throughout the drafting process, Morocco was preparing to join the Court, so it is important to investigate the factors that pressured it to refuse ratification. Analyzing Morocco’s case in comparison to Jordan can allow us to better understand the forces that influence treaty ratification even if all of the factors present appear to point to eventual ratification. Understanding such information can also provide some insight into why some states have yet to join the Court, while others are threatening to withdraw from it.

Morocco supported an independent court capable of prosecuting egregious crimes committed during international conflicts. Unlike Jordan, it voted in favor of curbing the Court’s powers and jurisdiction by rejecting the right of the Court to prosecute internal conflicts as it saw such situations as falling strictly within the jurisdiction of the states involved. Allowing the Court to have such power over internal conflicts would be an infringement on state sovereignty. Besides this point, Jordan and Morocco largely agreed on most
other aspects of the Court. They both rejected allowing the Court to become a
tool of Western influence and supported detailed and comprehensive definitions
of the crimes within the Statute. Despite Morocco’s initial support for the Court
and what it stood for, its eventual disinclination to fully join is likely also a result
of regional politics and an unwillingness to cede some of its sovereign powers to
an international court.

**Morocco’s Relationship with the International Criminal Court**

Much like Jordan, Morocco was heavily involved with the establishment
of the International Criminal Court. From 1987 to 1998 Mohamed Bennouna, a
Moroccan representative, was a member of the International Law Commission.
As previously stated, the ILC was tasked with drafting an initial Statute and
submitting it for approval to the UNGA. Like Mr. Al-Khasawneh (Jordan), Mr.
Bennouna had been heavily involved with international law having previously
been a judge on the International Criminal Tribunal of the Former Yugoslavia. He
now holds a judgeship in the International Court of Justice. In addition to taking
part in the original drafting stage of the Statute, Morocco sent a delegation
headed by Mr. Saad Eddine Taib to the Rome Conference in 1998. Morocco also
had a representative on the Drafting Committee during the Rome Conference.
Despite its name, the Drafting Committee did not draft the terms of the statute,
but instead “without reopening substantive discussion on any matter,
[coordinated] and [refined] the drafting of all texts referred to it, without
altering their substance” (United Nations 2002: 58).
Morocco supported establishing a strong and independent Court, but also sought to limit some of its powers throughout the Rome Conference. Morocco argued that the Court “must be permanent, universal, effective, credible, impartial, and independent of any political approach” (United Nations 2002a: 103). It also argued that “the Court’s jurisdiction should be confined to war crimes, crimes of genocide and crimes against humanity” for including the crime of aggression would be “premature” (United Nations 2002a: 103). The Moroccan delegation, like many others, opposed including aggression in 1998 because drafters did not have an agreed upon definition of aggression and because the crime of aggression was too political in nature for the Court since it is difficult to objectively identify acts of aggression (United Nations 2002a: 174, 298; 1998b). Morocco supported the use the same definition for genocide as is used in the Genocide Convention of 1951 since it had already ratified the Convention. Making the definitions similar ensures that Morocco does not have to make any changes to be compliant with this section of the Rome Statute.

Unlike Jordan, Morocco proposed that “crimes against humanity should be considered only in the context of international conflict” instead of including internal conflicts as well (United Nations 2002: 148). The final draft of the Rome Statute makes no such distinction indicating that Morocco was unable to garner enough support for this clause. Morocco joined the general consensus in supporting the principle of complementarity and desired to include a provision stating that “the Court has no jurisdiction where the case in question is being investigated or prosecuted, or has been prosecuted, by a State which has
jurisdiction over it” (United Nations 2002a: 220; United Nations 2002b: 28). This provision was included in the Rome Statute, but the Statute adds that the Court still has jurisdiction if the state is unwilling or unable to genuinely investigate or prosecute the case (United Nations 1998a: 12). Saad Eddine Al-Othmani, a Moroccan spokesperson and future Minister of Foreign Affairs, stated in a press release after the Statute was open for signatures, “the relationship of the Court with national courts should be complementary. It should not interfere in actions of national courts unless they are unable to handle them. The Court’s prosecutor should be able to follow up on cases brought to it” (United Nations 1998c).

In the definition of war crimes, Morocco voted in support of excluding the terminology related to military necessity. It supported the option that outlawed “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment” (United Nations 2002a: 166; 2002b: 16). This option was chosen over another, which added “which is not justified by military necessity” to the end of the phrase (United Nations 2002a: 166; 2002b: 16). This is similar to Jordan’s stance, but unlike Jordan’s criticism of this subparagraph’s subjective nature, Morocco did not expand on why it chose the option that it did. It may be that Morocco also saw the military necessity provision as overly subjective.

In discussing prohibited weapons, Morocco sought to ban “employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently
discriminate” (United Nations 2002a: 166; 2002b: 18) This option was chosen over options that listed the weapons to be banned. Morocco may have supported this option to keep the definition open to future interpretation since weapons are continuously developing, although no official explanation was provided. Morocco opted to add a racial discrimination element to the subparagraph outlawing humiliating and degrading treatment. It also opposed including a subparagraph making the recruitment of child soldiers illegal (United Nations 2002a: 166; United Nations 2002b: 18). Morocco also argued against granting the Court jurisdiction over terrorism because it was not well-defined, or drug trafficking because that was a matter to be dealt with by national courts (United Nations 2002a: 172-173).

Additionally, multiple Arab states expressed opposition to the inclusion of enforced pregnancy within the definition of war crimes. Their position was a result of a fear that the criminalization of enforced pregnancy would lend support to individuals and organizations seeking to eliminate the prohibition on abortion in those states (Roach 2005: 148). Morocco did not directly support this position and instead remained somewhat neutral by saying that it “understood the concerns of some delegations regarding enforced or involuntary pregnancy and thought that the drafting should be made more specific” (United Nations 2002: 166). Jordan on the other hand stated, “abortion was not the issue; to force a woman to bear the child of a rapist was torture in extreme, and should be included as a crime against humanity” (United Nations 2002a: 332).
Like Jordan, Morocco insisted that the Court be independent from foreign pressure and other international institutions. Morocco hoped to ensure that the Court was free from foreign pressure by arguing that it should be financially independent of the UN and in particular, of the Security Council (United Nations 2002a: 103). To give the Court a more independent role, Morocco supported granting the Prosecutor the right to initiate investigations, but with the requirement that information for the investigations can “only be obtained from States and organizations in the United Nations system,” thereby ensuring that non-state actors cannot present their own evidence to the Prosecutor (United Nations 2002a: 200). To add to the independence of the Court and to prevent its politicization, Morocco sought to limit the UNSC to “referrals of situations involving acts of aggression” (United Nations 2002a: 208). Although not specifically mentioned, it can be inferred that the Moroccan delegation opposed granting the UNSC the power to suspend investigations as such a power is highly susceptible to being affected by political alliances.

Morocco eventually signed the Rome Statute on September 8, 2000 and as of writing, has not ratified. It has not had any additional interactions with the Court, although there exists in Morocco fairly strong civil society coalitions pressuring the state to ratify the Statute. The Moroccan Coalition for the ICC is similar to the CICC in that it serves as the liaison between various NGO’s and the Moroccan government. The Moroccan Coalition collaborates with the CICC to organize recurring campaigns to pressure the Moroccan government to ratify the Rome Statute. For these organizations, Morocco’s decision to not ratify is
seen as contradictory to Morocco’s movement towards greater respect for human rights.

Hichem Al-Cherkaoui, a member of the Moroccan Coalition for the ICC, was quoted in *Al-Nahar Al-Maghribeya*, a Moroccan newspaper, as arguing that Morocco’s justification for not joining the Court is unrealistic because “there is no justification for claiming that such ratification would affect the principle of state sovereignty or the immunity of parliamentarians as has been shown by the fact that the experiment succeeded in similar countries such as Jordan, France, and Belgium” (Al-Daouadi 2008). When speaking during our interview about the potential for Morocco to join the Court in the future, William Pace pointed to these coalitions as having the power to potentially lead the state to ratification. He said, “Morocco has some people we have worked with for years and we’ve had ICC meetings in Morocco. We had our regional coordinator office in Morocco for the regional coordination for Middle East and North Africa, we call it the MENA region, for the Coalition of the ICC” (Pace 2017).

The Coalition of the ICC (CICC) began a global campaign in 2008 to mobilize organizations to join the movement. The movement reached a total of 2,500 Moroccan and foreign NGOs working together on this issue and led to consultative meetings with the parliament. Like Jordan, Morocco signed a bilateral immunity agreement with the United States on September 24, 2003 despite it being a major non-NATO ally making it exempt from the economic ramifications of not signing the agreement (*Agreement between the Government*
of the United States of America and the Government of the Kingdom of Morocco Regarding the Surrender of Persons to the International Criminal Court 2003).

**The Role of Economic Relations**

Morocco’s economy is heavily dependent on relations with European states, and in particular, relations with France. France is Morocco’s largest foreign aid donor as well as its most important trading partner. In addition to trade, the economy relies on the agriculture sector for employment. To better understand the impact that economic policies had on Morocco’s decision to not join the International Criminal Court, I am evaluating foreign aid, trade, and foreign direct investment trends. Because Morocco is heavily dependent on economic relations with foreign states, understanding the different segments of that relationship will be vital to creating a comprehensive analysis of the impact of foreign aid. If economic benefits played a role in Morocco’s decision on the Rome Statute, I expect to see an increase in aid from the United States and other states opposed to the ICC along with a decline in benefits from its European partners. Like was done for the Jordan case study, I am focusing on the years 1990-2003 because using the years before the Rome Conference and after the Statute went into force provides a frame of reference wide enough to allow adequate analysis of economic trends.

**Foreign Aid**

Like Jordan, Morocco relies heavily on foreign aid, but its largest aid donors are European states. Their geographic proximity as well as their close
political relationships make European aid to Morocco both likely and necessary. In 1992, the European Parliament voted against providing Morocco with an aid package, citing rampant human rights abuses in Morocco and “inadequate cooperation in organizing the UN-sponsored western Sahara referendum” (Dawson 2009: 54; Ottaway and Riley 2006: 5). Although the aid package was eventually voted through because of political pressure from Spain, which was concerned about its fishing agreement with Morocco, Morocco did make some changes in how it approached human rights. In 1993, it ratified the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers (OHCHR 2016).

King Hussein II also established a Ministry for Human Rights, although the Ministry is known for simply executing the King’s orders rather than independently advocating for increased human rights reforms (“Human Rights in Morocco” 1995: 9). Despite the rejection of the aid package in 1992, foreign aid data from DAC donors did not exhibit a decline in 1992 as can be seen in Table 2, as well as in the Table 1B in Appendix B. As a matter of fact, Morocco received increased aid from DAC donors because of large increases from Italy and Spain. However, Morocco did experience a decline in aid from all donors. This decline occurred in tandem with a more general decline in OECD aid (Grant and Nijman 1998: 91).
Table 2: Net Bilateral Aid Flows From DAC Donors to Morocco (current, millions US$)

<table>
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<tbody>
<tr>
<td>Belgium</td>
<td>$24.9</td>
<td>$5.3</td>
<td>$6.5</td>
<td>$6.3</td>
<td>$4.8</td>
<td>$2.6</td>
</tr>
<tr>
<td>Canada</td>
<td>$9.1</td>
<td>$7</td>
<td>$4.3</td>
<td>$4.2</td>
<td>$5.1</td>
<td>$3.1</td>
</tr>
<tr>
<td>European Union institutions</td>
<td>$49.6</td>
<td>$106.4</td>
<td>$235.6</td>
<td>$303.7</td>
<td>$117.3</td>
<td>$131.9</td>
</tr>
<tr>
<td>France</td>
<td>$196</td>
<td>$195.1</td>
<td>$198.8</td>
<td>$223.6</td>
<td>$154.6</td>
<td>$174.3</td>
</tr>
<tr>
<td>Germany</td>
<td>$90.1</td>
<td>$36.2</td>
<td>-$4.1</td>
<td>$30.9</td>
<td>$6.1</td>
<td>$29.2</td>
</tr>
<tr>
<td>Italy</td>
<td>$159.2</td>
<td>$84.2</td>
<td>-$4.4</td>
<td>$1.2</td>
<td>$2.1</td>
<td>$7</td>
</tr>
<tr>
<td>Japan</td>
<td>$35.8</td>
<td>$24.9</td>
<td>$39.3</td>
<td>$61.7</td>
<td>$103.2</td>
<td>$101.6</td>
</tr>
<tr>
<td>Spain</td>
<td>$164.7</td>
<td>$12.8</td>
<td>$52.5</td>
<td>$17</td>
<td>-$1.1</td>
<td>$37.1</td>
</tr>
<tr>
<td>Total</td>
<td>$783.4</td>
<td>$454.2</td>
<td>$486.3</td>
<td>$637.3</td>
<td>$410.3</td>
<td>$474.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>$5.9</td>
<td>$.9</td>
<td>$.5</td>
<td>$.4</td>
<td>$.2</td>
<td>$.2</td>
</tr>
<tr>
<td>United States</td>
<td>$33</td>
<td>-$21</td>
<td>-$13.8</td>
<td>-$16.7</td>
<td>$14</td>
<td>-$12.7</td>
</tr>
</tbody>
</table>

Source: The World Bank Development Indicators

In general, France is the biggest aid donor to Morocco, and this close economic relationship is a result of years of French colonial rule. The OECD
Creditor Reporting System provides a breakdown of aid by sector, donor, and recipient, but it only does so starting in 1995. However, analyzing the data for the years 1995-2002 shows no trend in the sectors that France prioritized when making ODA distributions. For example, in 1995, nearly all of France’s aid to Morocco was targeted towards water sanitation, agriculture, and fishing management while aid in 1997 was directed towards import support, nuclear energy plants, and education facilities. What can be said, however, is that from 1995-2002, France never directed any aid towards human rights. In 1998, it donated 0.8 million USD to democratic participation and civil society and did so again in 1999, 2001, and 2002. In 2000, 2001, and 2002, France also donated to legal and judicial development. However, these sectors were never the top aid recipients. For the rest of the 1990s, Morocco received total aid from DAC countries ranging from $215 million and $421 million, but once again, there were no trends. The increase in aid that Morocco experienced in 2001 after signing the Rome Statute is not significant enough to argue that the increase was a financial benefit linked to its decision to sign the Statute.

Despite playing an important role in the ICC negotiations, the United States’ financial assistance to Morocco cannot be credited with influencing it to delay joining the Court. If the argument that foreign aid motivates state decisions is accurate, then we should expect to find that Morocco is heavily dependent on aid from the United States since the United States opposed the Court. Contrary to the evidence needed to support the rewards theory, the United States was not a top donor to Morocco. From 1995-2002, United States’ ODA was in the $13
million range with an outlier of $47 million. This pales in comparison to France’s $200 million aid range, Germany’s $100 million range, and Japan’s $100 million range – all of these states ratified the Rome Statute with Japan only ratifying in 2007. If the United States was a more significant aid contributor to Morocco, an argument could be made regarding the use of American economic aid to pressure Morocco to abandon its original commitment to the Court. As mentioned in the previous chapter, the United States started a campaign in 2002 to pressure states into signing bilateral immunity agreements in exchange for not slashing their aid packages. Morocco decided to sign a BIA to keep that aid, but even if it had opted to forgo signing the agreement, Morocco would not have lost any aid from the United States. This combination of the United States’ aid to Morocco being insignificant in comparison to the aid it receives from other states combined with the improbability of it being cut off from U.S. aid because of its status as a major U.S. ally means that American foreign aid and American pressure to not join the Court was likely not the factor driving Morocco’s decision to not ratify.

*International Trade*

Morocco and Europe’s trade relationship extends back to the French and Spanish colonization of Morocco and the Western Sahara, respectively. Because Morocco lacks oil, it relies heavily on exporting agriculture, phosphorus, and fish. That relationship was formalized through multiple arrangements such as fishing agreements between Morocco and Spain and a free trade agreement between
the European Union and Morocco. Just like Jordan, Morocco is a member of the
Euro-Mediterranean Partnership, but Morocco was the first Mediterranean state
to be approached for this agreement. As mentioned previously, the Partnership
is comprised of three baskets. The political and security basket includes human
rights ("Evaluation of Economic Co-Operation between the European
Commission and Mediterranean Countries" 2003: 6). Because politics play a role
in the success of the Partnership, the Partnership made efforts to improve civil
and political rights in the Mediterranean member states. In Morocco, this meant
that the European states provided support for strengthening NGOs ("Evaluation
of Economic Co-Operation between the European Commission and
Mediterranean Countries" 2003: 11).

The European Union conducted an evaluation of MEDA to better
understand the impact the Partnership had economically and politically. In
terms of economics, the EU claims that the Partnership and general EU-
Moroccan economic relations can be given credit for the overall improvements
in Morocco. Observing macroeconomic indicators such as GDP growth rates,
inflation rates, budget deficit as a percent of GDP, current account balance as a
percent of GDP, and debt service, the EU determined that Morocco’s economic
progress is a result of macroeconomic policy improvements supported by the
Partnership ("Evaluation of Economic Co-Operation between the European
Commission and Mediterranean Countries" 2003: 44). However, the evaluation
finds mixed results for the impact on the political conditions in Morocco.
Indicators like government effectiveness and rule of law are shown to have

The agreement was negotiated starting in 1996 and entered into force in 2000. Because negotiations began before the Rome Statute was open for signatures, it is difficult to say that the Statute and the Partnership impacted each other in any way. Additionally, the economic benefits that the Partnership offered to Europe were far too great for it to make finalization of the agreement contingent on Morocco’s accession to the Court. If the Partnership was merely a foreign aid agreement with Morocco being the only partner to benefit, it could be said that the European Union would have had incentive to pressure Morocco to join the Court using this agreement. However, because the free trade agreement greatly benefited European states, prioritizing a human rights agreement would not have been strategically beneficial. Downs and Jones’ theory on reputation can be applied to the Partnership. The authors claim that because human rights treaties tend to be viewed as less important than economic or strategic agreements, noncompliance with those treaties is less likely to impact a state’s reputation or other treaty negotiations. Therefore, Morocco’s decision to opt out of ratifying the Statute was not a significant enough event to prompt reconsideration of the Partnership. The same can be said of the EP’s freeze on aid to Morocco in 1992 – although the human rights violations committed by Morocco such as large-scale enforced disappearances and the common use of torture were horrific, they were not important enough for Europe to be willing
to compromise their political, economic, and strategic relations, and so the aid package was eventually voted through.

Morocco’s trade industry in the 1990s depended primarily on the agriculture and mining sectors. Morocco is the dominant producer of phosphate in the world and operates a “one man OPEC.” In 1988, it controlled 15.7% of the world’s phosphate production (Van Kauwenbergh 2010: 20). It is able to control production and prices to ensure it continues to benefit from the industry. In 1990, Morocco’s exports made up 26% of its GDP and by 2000, that number was up to 31%, while its imports constituted 32% of GDP in 1990 and 37% of GDP in 2000. Jordan, on the other hand, experienced a decrease in exports from 62% in 1990 to 42% in 2000 and an import decrease from 92% in 1990 to 68% in 2000 (Askari 2006: 112, 157). Morocco experienced an annual growth of 6.6% in merchandise exports during the 1990s and a 5.2% increase for imports (Askari 2006: 149). Morocco exports most of its products to Spain and France and both states heavily rely on those exports for their own economic success. Pressure from either France or Spain on Morocco to joining the ICC could have a negative impact on all three states’ economic survival.

Like the oil-producing states in MENA, Morocco is able to leverage its resources to ensure Western political support. It has made particular use of its rich fishing grounds to benefit both economically and politically. Morocco signed fishing agreements with Europe in 1992, 1995, and again in 1999. Morocco’s waters hold some of the richest deep-sea reserves in the world (White 1997: 318). In 1994, fish exports made up 15% of Morocco’s total exports, but in 1990,
Morocco was only catching 40% of all fish caught in its water (Damis 1998: 65). Spain, and Europe more generally, depends heavily on access to Moroccan waters, as the Europeans are large consumers of fish. Because of the European dependence on this resource, Morocco has been able to leverage it in times of political tension. As mentioned earlier, the European Parliament attempted to withhold aid to Morocco in 1992 as a consequence of its poor human rights record. Morocco then opted to end European access to Moroccan water and end the 1988 fishing agreement. The 1992 agreement was signed in May and Europe subsequently voted to grant Morocco the promised aid (White 1997:325). In 1994, Morocco abruptly ended the 1992 agreement citing overfishing concerns when in reality it was in pursuit of additional concessions. This move put to a standstill the fishing sector in Spain, greatly impacting the wellbeing of entire towns. The European Union threatened the Moroccan government with “appropriate measures” if the government did not recommence issuing fishing licenses to European trawlers. Keeping Europeans out of the waters was beneficial to Moroccan fishers and so they attempted to stall new fishing agreements by agreeing to hire Moroccans who were fired from the European boats (Agence Marocaine de Presse 1994). Another agreement eventually came about in 1995 and it significantly decreased the amount of fish that can be caught and increased annual aid packages to Morocco by 25%.

Despite Morocco’s control over the fishing sector and its ability to put to a standstill an important portion of Spain’s economy, Morocco was eventually strong-armed into the 1995 agreement because of European threats to
discontinue negotiating the EU-Mediterranean Partnership agreement. Although, the European Union is willing to use its political and economic superiority, it still understands that it is subject to Morocco in terms of fishing. During the debate in 1999 in the European Parliament regarding the new fishing agreement, Mr. Antonio Cardoso e Cunha made note of the importance of the agreement. He stated,

It is important to highlight the fact that the fisheries agreement with Morocco is by far the most important one the European Union has, representing more than 30% of all catches by the Community fleet in third country waters... it is important to remind those Member States of the Union that are less enthusiastic about these fisheries agreements that a study made recently by independent experts shows that in return for the EUR 485 million spent by the Union in payment for access to third country waters, we gain a volume of business of around EUR 1500 million, which means that the benefits gained from the international fisheries agreements are three times greater than the costs they incur (EC-Morocco Fisheries Agreement Debate 1999).

This statement of dependence on Morocco’s waters is evidence of the losses that Europe would suffer should attempts to pressure Morocco into joining the ICC or improving human rights fail.

Additionally, the common practice of Europeans fishing in the waters surrounding the Western Sahara is further evidence of Europe’s unwillingness to link politics and human rights with this economic agreement. Ms. Patricia McKenna stated during the EP debate of 1999 that

One of the most deplorable aspects of this resolution is the failure to address the issue of the Western Sahara. Last night a representative of the Saharoui people spoke to the Greens. He told us of EU-flag vessels fishing off the coast of Western Sahara... We all know that the Saharoui people are supposed to vote in a referendum very soon on self-determination but of course many serious problems have been posed by the Moroccans.

There is no EU country that has recognised Moroccan sovereignty over the Western Sahara, but according to the Saharoui people, at the same time the EU pays EUR 500 million to Morocco. EU vessels fish hake and other species in waters off Morocco, and Morocco has no legal jurisdiction in these waters. Many
people believe this constitutes illegal fishing. Some might even go as far as to call it piracy (EC-Morocco Fisheries Agreement Debate 1999).

Mr. Alain Krivine added,

In the case of Morocco and this particular fisheries agreement, it is no longer possible to once again ignore the rights of the Western Saharan people, starting with their right to self-determination, their right to establish an independent state, if they so wish, and to protect the natural wealth of their territory, whether it be phosphate deposits or the specific resources of its shoreline which are threatened by this agreement (EC-Morocco Fisheries Agreement Debate 1999).

Despite efforts from these MEPs, the Sahrawis, and NGOs, the agreement with Morocco still included permission to fish in the waters of the Western Sahara.

This is also part of the effort by Morocco to push fishing south to grant Moroccan waters a reprieve and a chance for the environment to recover. Regardless of the condemnation of European fishing in Sahrawi waters, fishing was too lucrative a sector for Europe to prioritize human rights.

Morocco and the European states were highly dependent on one another for the success of their trading sectors. So, keeping trade relations stable was necessary for Morocco and the EU members, particularly, Spain and France.

While the EU advocated for human rights improvements in Morocco, it was never willing to put such desires above trade agreements. The tendency for European states to overlook Moroccan human rights abuses for the sake of trade relations contradicts Nielsen and Simmons’ findings that states experience decreases in exports as they ratify human rights treaties (2012). My analysis finds that there is no connection between trade and human rights because once again, states prioritize economics over issues like human rights. The discrepancy between my findings and Nielsen and Simmons’ conclusions adds to the debate
regarding the impact of rewards on human rights treaty ratification. It may be that we reach different conclusions merely because we use different human rights treaties.

*Foreign Direct Investment*

Changes in foreign direct investment (FDI) can also be seen as reflections of state relationships with other states. A decrease in FDI inflows shows a state to be volatile and generally seen as a poor investment choice, while increases in FDI inflows can be evidence of improved foreign relations or domestic terms of investment. An increase in FDI was expected in Morocco in the 1990s as Morocco and the European Union became closer politically and more dependent on each other economically. However, as negotiations for the Euro-Mediterranean Agreement were taking place, foreign direct investment decreased dramatically. Total FDI (not limited to Europe) in 1994 was at $550 million, but that number decreased to $92 million in 1995 and continued to decrease to $2 million in 1999. FDI only increased in 2000 to $220 million (The World Bank 2016; Bouoiyour and Rey 2005: 309). The sudden increase was a result of the privatization of large corporations like Maroc Telecom, Samir, and SCP (Bouoiyour 2007: 102). Although these numbers represent FDI from all states, the European Union constituted 68% of foreign investment in Morocco so the changes seen can be attributed primarily to a change in European attitudes towards investment in Morocco (The World Bank 2016; Bouoiyour and Rey 2005: 309).
Literature on the relationship between foreign direct investment and treaty ratification is limited. However, there has been an increase in analysis on the impact of FDI on human rights and vice versa. Despite the many empirical studies, theorists have yet to come to a consensus on whether FDI and human rights have a positive or negative relationship. Regardless of the current theories, the data on foreign direct investment in Morocco fails to consistently correspond to existing explanations. If FDI had a negative impact on human rights we would expect to see a decline in government respect for human rights in the late 1990s, not an increase in respect. If an increase in respect for human rights had a negative impact on FDI, then the decline in FDI in the late 1990s should have continued into the 2000s, but instead, FDI began to increase once again in 2000. If the relationship between the two was positive, FDI should have increased when Morocco began to make known its respect for human rights or human rights should have worsened when FDI decreased in the 1990s. Because FDI and human rights have failed to correlate in any way during the time period associated with ICC drafting/signing, it can be argued that FDI had a minimal impact on Morocco’s decision regarding the ICC.

**Ease of Compliance**

Ease of compliance is another important theory to consider as it may help in clarifying whether or not Morocco’s unwillingness to ratify is based on an inability to comply with the Statute’s terms. To be analyzed first is Morocco’s judicial system. The Court investigates and prosecutes cases that will not be
prosecuted by the state involved either because of its unwillingness or inability to do so. If Morocco’s courts prove a lack of independence or impartiality, it may be that Morocco is unable to comply and can explain its hesitance to commit to the Court. Next, Morocco’s history with human rights will be examined. If it is shown that the government carries out systematic violations of human rights, then a rejection of the Court is easily explained. Within human rights, I will be looking at Morocco’s reputation for human rights by examining its compliance with human rights treaties. The final variable considered is Morocco’s involvements in international conflicts, as a rich history with such conflicts can increase Morocco’s likelihood of committing war crimes and increase the chances for Moroccans to be referred to the Court.

The Strength of Domestic Institutions

Much like Jordan, Morocco’s courts lack the independence and impartiality necessary to make them an acceptable alternative to the International Criminal Court. Morocco’s judiciary consists of civil courts, military courts, and community courts (changed to neighborhood courts after the 2011 constitution), which oversee cases not exceeding 5,000 dirhams or approximately $500 USD. There are also appeals courts and the Supreme Council, the highest federal court. The Supreme Council became known as the Court of Cassation after 2011 constitution. The first article of the chapter on the judiciary in the 1996 Moroccan constitution posits that the judiciary is independent from the legislative and executive branches. However, the article
almost immediately after states that all judges are to be appointed by the king and that judges may not be removed. The king also elects the president of the High Court of Judges, which prosecutes members of parliament ("Constitution of the Kingdom of Morocco of 1996" 1996). Holding such a position allows the king to ensure that parliamentarians loyal to the monarchy are not held accountable for crimes committed. Additionally, the king appoints the Minister of Justice and through him/her is able to control promotions and appointments, thereby placing pressure on judges to issue judgments that align with the monarchy’s needs (Sater 2009: 185). The absence of limitations on the number of years they can spend on the bench makes them more susceptible to becoming corrupt ("Morocco: Legal and Judicial Sector Assessment" 2003: 31).

States with high levels of rule of law are states that make the legal process accessible, hold state leaders accountable, and have independent judiciaries, among other things. On a scale of -2.5 to 2.5 with -2.5 indicating an absence of rule of law and 2.5 indicating full rule of law, the World Bank assigned Morocco a score of .2 in 1996. This score is similar to that of Jordan’s in 1996, which provides additional support to the argument that Jordan and Morocco are most similar cases. Both states started with a score of approximately .2, but they diverged fairly soon after. As Jordan continued to improve its rule of law to a current score of .5, Morocco’s rule of law has declined and is now at -.1. Applying Dutton’s (2011) analysis to Morocco shows that its decision to not ratify earlier is not indicative of much as it falls in between the 1 rating for strong domestic institutions and the -1 rating for weak domestic institutions. However, using this
scale, Morocco is now less likely to join the Court as it is now considered to have weak enforcement mechanisms. The trend of improvement for Jordan may be part of a larger trend of increasing respect for human, civil, and political rights. Joining the International Criminal Court could be considered part of that trend. However, in the case of Morocco, efforts made to increase respect for rights were generally insincere, and the decision to not join the Court can be seen as representative of a desire to not be held accountable by outside institutions. As mentioned previously, Jordan was in the 59th percentile for rule of law measurements in 1996 and is now in the 68th percentile. Morocco on the other hand was in the 58th percentile in 1996 and is now in the 54th percentile (The World Bank 2016b).

Despite legal reforms in the 1990s, the judiciary on the whole never reached a level at which it was independent and impartial enough to hold state leaders accountable. The International Criminal Court most often leans towards granting states the right to prosecute their own cases so as to avoid infringing on their sovereignty, but in the case of Morocco, there is some likelihood that the Court would decide to prosecute should a Moroccan ever commit so egregious as to be referred to it. This potential for referral may have contributed to its decision to not ratify the Rome Statute. However, I do not believe that this factor was the primary reason for Morocco’s decision to not join the ICC, as the potential for referral was a main component of the Court and was understood as such by all member states. Although some states are less likely to be referred as a result of their political histories, they are not guaranteed exemption from
referral. If such states were still willing to join, it is difficult to then convincingly argue that Morocco was deterred because of some potential for a future trial.

\textit{Relationship with Human Rights}

After the Years of Lead⁴, Morocco underwent a major shift in its relationship with human rights. In the early 1990s, the publication of the French book \textit{Notre Ami le Roi} shed light on the high levels of human rights violations perpetrated by the Moroccan government. As that led the European public and governments to reconsider their close relationships with Morocco and freeze foreign aid, the government was forced to address state-sponsored human rights abuses. In 1990, the government created the Conseil Consultatif des Droits de l’Homme (Consultative Council for Human Rights, CCDH) and the Ministry of Human Rights in 1993 (Ottaway and Riley 2006: 5). The creation of both served as the government’s initial steps to responding to criticisms of its human rights practices. However, Morocco responded by issuing a new constitution in 1992, that for the first time ever, acknowledged the government’s responsibility to protect human rights. The preamble states, “the Kingdom of Morocco...reaffirms its attachment to the Human Rights as they are universally recognized” (“Constitution of Morocco, 1992” 1992). One year later Morocco ratified multiple international human rights treaties: the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention Against Torture, the Convention on the Rights of the Child, and the International Convention on the

⁴ The Years of Lead are typically considered to mean the 1960s-1980s when King Hassan II used particularly harsh tactics to silence dissent.
Protection of the Rights of all Migrant Workers. Excluding the Optional Protocols and the Rome Statute, Morocco has fully acceded to every core human rights treaty. Morocco’s decision to ratify these treaties is evidence of the potential for international pressure to encourage governments to increase respect for human rights. However, as mentioned previously, the core human rights treaties have weak enforcement mechanisms and it is only the Optional Protocols that can truly hold states accountable for their actions. Therefore, international pressure has only limited effectiveness in the human rights regime. It may be that reputation to commit also played a significant role in Morocco’s decision to join all of the human rights treaties, but its reputation of noncompliance deterred it from joining treaties/protocols with more serious enforcement mechanism. Ramos and Falstrom (2005) also gave Morocco a score of 0 for treaty compliance because of its failure to change policy to be more in line with the CAT. Unlike Jordan, however, Morocco regularly uses torture, so its failure to comply has a larger effect on its reputation, as its decision to not change policies can be seen as a lack of desire to improve. Once again, however, it may be that reputations for compliance with different human rights treaties are not linked, so non-compliance with the CAT is unrelated to ability to comply with the ICC. Additionally, while the CAT does have stronger language than other human rights treaties, it does not include enforcement mechanisms comparable to the CAT, so an attempt to cultivate a positive reputation by joining the CAT and failing will not have the same consequences as attempting to do the same with ratification of the Rome Statute.
Additionally, the government began to release political prisoners, including individuals that had disappeared after the failed military coup of 1971. This led to the long overdue unofficial acknowledgement of the existence of the Tazmamart prison, which was known for its particularly harsh conditions (Miller 2013: 202). In 1994, in a meeting with the CCDH, King Hassan agreed to pardon the 424 individuals defined as political prisoners by the CCDH or as individuals unfairly detained or in exile. In a speech to the CCDH he described the pardoning as “a time in which I will feel not only happiness but also pride, first because of the work that we have carried out together, and second because of the small number of those who have been defined as political prisoners.” King Hassan went on to claim that individuals were targeting Morocco by falsely claiming that it held hundreds of political prisoners (“King Hassan Receives Human Rights Delegation” 1994). In addition to pardoning prisoners, King Hassan saw “only goodness and interest regarding the abrogation of the 1935 decree,” which stated that “authorized the authorities to detain any person regarded as a ‘threat to the sanctity of the State’” (U.S. Department of State 1995; “King Hassan Receives Human Rights Delegation” 1994).

During the early 1990s, Moroccan women executed a quiet revolution: they became more educated, joined the labor force in greater numbers, married later, and bore fewer children. This bottom-up movement worked to increase women’s independence leading to an increase in women’s rights organizations advocating more openly and at higher levels for rights for women. However, this movement failed to encourage the government to grant them additional legal
rights despite governmental participation in the World Conferences on Women (Miller 2013: 193). This unwillingness to formally support increased equality manifests itself in situations such as Morocco’s reluctance to either advocate for or condemn the criminalization of enforced pregnancy in the Rome Statute.

Using the Cingranelli-Richards Human Rights dataset and calculating the average physical integrity rights rating for 1990-2002 as done for Jordan produces a score of 3.7 for Morocco. Since this is on a scale of 0-8 with 8 being full respect for rights, a score of 3.7 is tremendously low when compared to Jordan’s score of 5 making it deserve the label of a state with ‘worse’ human rights as assigned by Dutton. Morocco’s score is a result of a decline in respect for physical integrity in 1990, 1996, and 1997. Morocco received especially low scores (0 out of 2) for political imprisonment, torture, freedom of assembly and association, freedom of religion, worker’s rights, and women’s social rights. Morocco and Jordan both received average scores for their use of extrajudicial killing, foreign and domestic movement, and independence of the judiciary, and both showed a complete lack of respect for freedom of religion and women’s economic and political rights. Despite the supposed human rights reforms undertaken by Morocco, the ratings for Morocco in the 1990s compared to the 1980s do not show any improvement in actual human rights and in cases like the freedom of assembly and independence of the judiciary, Morocco actually declined. In terms of the judiciary, its independence has continued to decline in the 2000s, making ratification today even less likely (Cingranelli, Richards, and Clay 2014).
Although not known for prioritizing human rights, it is unlikely that Morocco’s records would have been enough for the ICC prosecutor to investigate. The ICC is reserved for the most egregious crimes against humanity and war crimes, which are not present in Morocco’s human rights history and especially not starting in the 1990s. Had the Rome Statute gone into force in 1970s or 1980s, Morocco would have been more likely to be referred the Court. However, its efforts to pursue reforms in the 1990s and which continue until today make it an unlikely candidate for an ICC case. Therefore, an inability to comply with the Statute is likely not the cause of its initial and continued resistance to ratification.

Involvement in International Conflicts

After attaining complete independence in 1958, Morocco spent its early years embroiled in military conflict as a result of attempts to assert its dominance in the Maghreb and to expand its territory. Its first conflict was with Algeria in 1963 as a result of its eastern border: the Tindouf region was historically Moroccan, but France transferred it to Algeria when it granted Algeria independence (Damis 1983: 17). However, during the years surrounding the Rome Statute negotiations, Morocco has been relatively uninvolved in international conflicts. The most recent armed conflict was with the Polisario, the Western Saharan Liberation movement, which ended in 1991 with a ceasefire (Zunes and Mundy 2010: 24). It has remained uninvolved in Arab
conflicts such as the wars with Israel, but it did provide troops to support Saudi Arabia and the United Arab Emirates during the Gulf War (AP 1991).

Morocco’s history of military expenditures is additional evidence of its relative detachment from international or domestic armed conflict. During the years 1990-2000, Morocco spent 3-4% of its GDP on the military. This ranges from one-half to one-third of the average MENA military expenditure, but is slightly higher than the world average of approximately 2.5% (The World Bank 2016a). This relatively low amount given to the military budget is evidence that Morocco did not find it necessary to heavily arm itself out of an expectation of future domestic or international conflicts. Had Morocco been active in the international conflicts arena or had it anticipated future conflict, its expenditures would have been equivalent to or more than the MENA average. Because Morocco is uninvolved in armed conflicts, it is highly unlikely that it will be referred to the Court because of the actions of its military leaders. Once again, an inability to comply with the Statute is likely not a factor driving Morocco’s decision regarding the ICC.

**Linkage Politics**

To better understand Morocco’s position on the ICC and during the Rome Statute negotiations, it is necessary to understand the domestic and foreign context it operates within. Morocco was not heavily involved in Middle Eastern affairs as a result of its location. Because it lay on the far end of North Africa, it was often isolated from or only marginally involved in situations like the Arab-
Israeli conflict or the Iraqi-Gulf/Iran tensions. Most of Morocco’s relationships with foreign states were with other states in the Maghreb (includes Morocco, Tunisia, Algeria, Mauritania, and the Western Sahara) and with Spain and France. Despite Morocco’s isolation from major conflicts as well as its decline in conflicts after 1991, it remains important to evaluate the role that foreign politics and its territorial dispute played in its decision-making process.

*The Western Sahara and Relations with Algeria*

Knowledge of the case of the Western Sahara within recent memory starts with events from the late 1960s. The Western Sahara is bordered by the Atlantic Ocean, Morocco, Mauritania, and Algeria. For some time, Spain colonized the Western Sahara, but because the Sahara was one of the last European-held colonies, especially at a time when colonization was viewed as contrary to European human rights beliefs, Spain faced enormous pressure to grant it independence (Damis 1983: 46). The potential for an independent Western Sahara stirred controversy in the Maghreb. Both Mauritania and Morocco believed the territory to be part of Greater Mauritania and Greater Morocco, respectively, while Algeria and Libya sought to stem the expansion of the powers of both states (Damis 1983: 30). Algeria, in particular, hoped that a weak and independent Western Sahara would serve as a territory it could economically exploit (Damis 1983: 35). It also sought to stem Morocco’s power in the Maghreb especially after Morocco tried to extend its eastern border into Algerian territory immediately following Moroccan independence.
Morocco originally intended to overtake Mauritania as well, but abandoned such plans and recognized Mauritania in 1969. This recognition eventually led to Mauritania ceding claims to the Western Sahara and deferring to Morocco. In 1974, King Hassan II requested the International Court of Justice (ICJ) to make a decision regarding the claims of both Morocco and Mauritania in the Western Sahara. Before the ICJ released its decision in 1975, King Hassan led 350,000 civilians in what was called the “Green March” to ‘liberate’ the Sahara. Algeria, an interested party to the dispute, tried to prevent Moroccan territorial and political expansion into the Western Sahara and responded to the March by expelling thousands of Moroccans from its territory (McDougall 2004: 24). King Hassan intended for this march to pressure Spain to either fire on the citizens marching or to enter negotiations with Morocco. Simultaneous domestic political problems in Spain forced the state to come to an agreement, known as the Tripartite Agreement, that granted both Morocco and Mauritania administrative control in the Sahara and provided Spain time to fully withdraw from the territory (Zunes and Mundy 2010: 5-6). Algeria attempted to prevent this agreement from coming to fruition by threatening Spain with natural gas supply cuts. Algeria’s attempt failed as a result of Saudi Arabia’s agreement to fill the void left by Algeria’s cuts (Damis 1983: 63). Algeria was eventually excluded from the negotiations, refused to accept the terms of the Tripartite Agreement, and instead began to mobilize international support and to more heavily support the Polisario Front (Damis 1983: 69). Algeria’s support for Sahrawi independence is a consequence of its belief in self-determination and a desire to
prevent Moroccan expansion. There were some arguments that suggested Algeria wanted to use the Sahara to gain access to the Atlantic in order to more easily export iron ore, but this theory was disproven as a route through the Sahara is not geographically feasible (Damis 1983: 35; Zunes and Mundy 2010: 41-42).

The tension that the Tripartite Agreement created between Algeria and Morocco continues to shape the states’ political relationship. Algeria, for the most part, avoided becoming militarily involved in the conflict between the Polisario and Morocco. The only time it did enter into a military dispute with Morocco was in 1976 at the Amgala Oasis when the Moroccan army happened upon Algerian troops transporting Sahrawi refugees. Morocco, however, contends that the Algerians were militarily supporting the Polisario. The short dispute ended with approximately 100 Algerian troops taken prisoner by Morocco and a debated number of deaths (Zunes and Mundy 2010: 9; Damis 1983: 73; Arkell 1990: 427). Algeria continued to support the Polisario with money, weapons, equipment, training, and “vital territorial sanctuary in the Tindouf region,” which is where the Sahrawi refugee camps are located today (Damis 1983: 73). The European Union is one of the largest aid donors to Sahrawi refugees in Algeria. Starting in 1993 through 2016, the EU has donated a total of €222 million to Sahrawi refugees (European Commission 2017). The aid typically enters through Algeria and it came to light in 2015 that Algeria, in collaboration with the Polisario, has been embezzling a majority of the aid sent to the Sahrawis for decades (Keenan 2015). Algeria typically took on the role of
advocating for the rights of the Sahrawis, justifying its support for the Polisario, but this corruption scandal provided evidence that Algeria was primarily concerned with the ways through which it can benefit from the Western Sahara.

Regardless of political disagreements, Algeria and Morocco eventually came to an agreement to improve and increase economic collaboration. In 1989 Algeria took the lead in creating the Arab Maghreb Union, which included Tunisia, Algeria, Libya, Morocco, and Mauritania, leaving the Western Sahara’s political status an unanswered question. This economic relationship, as well as Morocco’s military inferiority compared to Algeria, prevented Morocco and Algeria from ever engaging in war (Zunes 1995: 25-26). Despite early hope that the Arab Maghreb Union (UMA) would eventually lead to a resolution of the tensions regarding the Sahara, the Union is currently frozen as a result of the states’ inability to separate their political and economic relationships. Algeria hoped to use the Union to guide Morocco to granting the Western Sahara independence, while Morocco saw the UMA as a way to gain Maghrebi recognition of Morocco’s sovereignty in the Western Sahara. The Union unofficially collapsed in 2005 when Algeria sent the leader of the Polisario a letter on the Polisario’s anniversary. Because Algeria sent this letter immediately before a summit, Morocco interpreted it as a targeted attack on Moroccan claims over the territory. The meeting was then postponed indefinitely and has yet to take place (Bouazza 2017; “The Arab Maghreb Union” 2005; Zunes and Mundy 2010: 49-50). The disagreement between Morocco and Algeria has managed to
taint nearly every aspect of their relationship and continues to contribute to tensions between the two states today.

Moroccan human rights violations in the Western Sahara were egregious and systematic during the 1970s and 1980s and, although they decreased starting in the 1990s, the government still takes part in regular violations of the rights of Sahrawis both in the Sahara and in refugee camps. Morocco’s weapon of choice to establish control over the Sahara was enforced disappearances. Any individual who resisted the government’s rule risked the possibility of disappearing. In these instances, it became impossible to learn the fate of these individuals. The numbers of those who disappeared vary widely with the Polisario inflating the numbers and the Moroccan government denying that enforced disappearances even took place. Estimates range from approximately 900 to 1,500 disappearances (Zunes and Mundy 2010: 145; Amnesty International 2002). The Moroccan government released some people during the 1990s prisoner release, but many remain missing and unacknowledged by the government.

In addition to disappearances, the Moroccan government regularly executed human rights activists, often burying them and their families alive. The changing sand patterns have begun to uncover some of those graves, pointing to aggressive Moroccan policies to quiet dissent and forcefully impose Moroccan rule on the Sahrawis. Sahrawis were also systematically tortured and imprisoned without due process in secret prisons (Zunes and Mundy 2010: 146). Mass arrests were particularly common before royal visits to the Sahara. Despite
the Sahrawi claims of human rights violations, the government summarily denied such actions and only somewhat admitted to enforced disappearances when people who had disappeared in the 1970s were suddenly released in 1991. In the 1990s, Morocco replaced extended disappearances with short-term ones. While Morocco made enormous advancements in human rights in the 1990s and the King issued pardons for hundreds of political prisoners, “all those who [did] not acknowledge Morocco’s sovereignty over the Sahara [were] excluded from this measure,” meaning that the unfair detention of Sahrawis was, in effect, permitted (“Release of Detainees Viewed” 1994).

Despite the government’s continuous denial of any crimes committed in the Western Sahara, King Mohamed VI, the son of King Hassan II, has taken steps towards recognizing government wrongdoings and compensating those affected by such crimes throughout all of Morocco. In 2004, King Mohamed created the Equity and Reconciliation Commission, which was meant to investigate cases of disappearances and to provide compensation to victims of torture. The Commission, however, did not transfer cases and individuals accused of violations to prosecution (Hazan 2010: 92, 96, 98). Despite the creation of the Commission and a general decline in human rights abuses, the Moroccan regime still regularly takes part in arbitrary arrests, enforced disappearances, and torture. Individuals accused of involvement in terrorism are the newest victims of such abuses (Amnesty International 2010: 70-71).

Morocco refuses to consider any suggestion for resolution that includes Sahrawi independence, which served to delay the UN suggested referendum vote
in the 1990s and still prevents the Sahrawis and Moroccans from agreeing to come together to find a mutually beneficial solution. Notably, nearly every mention made of the right to self-determination and of the differences between terrorism/aggression and self-determination during the Rome Conference was made by an Arab state. However, they likely did not advocate for such a differentiation because they supported the independence of the Sahrawis. As a matter of fact, both Egypt and Oman, who expressed support for self-determination, supported Morocco in its attempt to overtake the Western Sahara. The remarks on self-determination were likely directed towards the Palestinians living under Israeli occupation, much like how many of Jordan’s positions during the Rome Conference were directed at Israel.

Regardless of the creation of the Commission and a significant decline in human rights violations in the Sahara, Morocco still risks some possibility of being referred to the Court, although the likelihood of the Court taking its case to trial is slim. The most heinous crimes committed in the Sahara occurred during the 1970s and 1980s and were severely scaled back at the same time as the beginning of the Statute drafting process and continue to be committed at low levels today. Had the International Criminal Court existed during the 1970s and ‘80s, it is highly likely that it would have prosecuted Moroccan officials for committing systematic crimes against humanity. Despite the decline in crimes, Morocco still faces the possibility of referral should it accede to the Court and that small possibility likely drives it to stray away from full commitment.
When asked during our interview whether or not he thought that the Western Sahara was the main reason Morocco has yet to accede to the Court, William Pace replied,

Yes, they have occupied territory. Turkey’s not going to ratify because of Cyprus. Morocco’s not going to ratify because of Western Sahara. This is a Court that is enforcing the Geneva Conventions and part of the Geneva Conventions has very strong issues about occupied territory and what you’re doing in occupied territory (Pace 2017).

Abdel Aziz Al-Nouadi, president of the Adala Organization, would disagree about the Western Sahara being a point of vulnerability for Morocco in its relationship with the ICC. He was quoted in the Al Sabaheya as arguing that that the Court would “strengthen [Morocco’s] role as a just and lawful state and as a peaceful state in the artificial dispute over the Moroccan Sahara” [italics added] (Al Sabaheya 2008). He recognizes that foreign states do not see the Western Sahara as being Moroccan territory, but believes that Morocco’s peaceful operations in the territory would prevent it from being investigated by the Court.

Morocco faces an additional threat from Algeria since Algeria is committed to the independence of the Sahara. Algeria is closely allied with the Third World and can easily use its position of power to mobilize support within that community to pressure the ICC prosecutor to investigate Morocco should its violations become more severe. This perceived threat will continue to push Morocco to shy away from a tool that can potentially be used against it.

The regional politics and the implications of the relationship with its neighbors likely plays a larger role in driving Morocco’s decision than its fear of
a legitimate inability to comply. Like Putnam suggests, this case is an issue of political linkage that occurs on two levels. However, unlike Putnam’s international and domestic levels, it would be more appropriate to characterize the levels in this situation as regional and territorial. This case can technically fit within the international-domestic framework, but it is necessary to acknowledge that regional relationships play an immensely different role from international relationships. The way in which Morocco interacts with other Maghreb states is unlike the way it interacts with its European allies because of the presence of regional competition and territorial disputes in the Maghreb.

**Conclusion**

While the existence of human rights abuses in Morocco is commonly known, Morocco is typically not perceived as an egregious violator. Its increasing support for human rights in the 1990s and continued rhetoric on working towards decreasing violations help cultivate that image. Its initial support for the International Criminal Court is also supported by the perception that although Morocco may violate rights, it is not among the worst offenders. This view of Morocco is similar to perceptions of Jordan; however, unlike Jordan, Morocco never fully joined the Court. This is because Morocco continues to occupy territory and while occupation is not a crime over which the Court has jurisdiction, it places Morocco in a position where it has high chances of one day committing crimes egregious enough for the Court. Had the Court not been given jurisdiction over internal cases, it is likely that Morocco would have ratified the
Statute as it was one of the early supporters of the Court and it sought to ensure its independence and power throughout the Rome Conference. Morocco did not face international pressure through economic means to either support the Court or not nor did it find itself in a position of being unable to generally comply with the Statute, so the rewards and ease of compliance theories can be discounted in this case. The fact that regional politics served as the primary factors in explaining both Jordan and Morocco means that more attention should be given to the impact of regional politics on ICC decisions, on human rights treaties, and international treaties, more generally.
Chapter 5. An Application of International Relations Theories

As it is now clear that both of my cases were influenced by regional competition, I turn to evaluating them in terms of general international relations theories. International relations theorists claim that international politics can be explained, for the most part, via realism, liberalism, constructivism, or neoliberal institutionalism. I argue that realism is most appropriate for explaining ratification of the Rome Statute because of its emphasis on the role of power in international politics. The alternative theories are less pertinent to ratifications of the Rome Statute because they do not adequately prioritize the role of power in guiding state decisions and if they do view power as central, they do not place states as the sole actors in international relations.

The cases I used pointed to both the importance of power and the centrality of states in the decision-making process. Analyzing Jordan’s role in the ICC alongside its political, economic, and social histories placed regional power dynamics at the center of its relationship with the ICC. Jordan saw the Court as an opportunity to develop an international institution strong enough to hold Israeli leaders accountable for their crimes in Palestine. Although Jordan had signed a peace treaty with Israel only a few years prior to the Rome Conference, it remained critical of the government’s actions against Palestinians and it viewed the ICC as a tool it can use to deter further Israeli aggression. Despite being fairly confident that it would not be referred to the Court, Jordan was willing to brave joining the Court in an effort to be part of a mechanism that has
the potential to hold Israel accountable. Similarly, the Moroccan government recognized that if the Court prosecuted just international crimes, Moroccans would be safe and the state would not undertake much risk in ratifying. However, when it was agreed that the Statute would include internal crimes and crimes in occupied territories, Morocco recognized its vulnerability and the potential for Algeria to use the Court to stymie Morocco’s attempts to become the dominant power in the Maghreb. In both of these cases, regional competition heavily influenced the decisions the states made. Rather than factors like norms or economic dependence, Jordan and Morocco’s decisions were driven primarily by their self-interest. Self-interest can encompass many factors, but in this case, self-interest means a desire to gain or maintain power. The attempt to gain power, or the upper hand over Israel, was the factor at play in Jordan, while the desire to maintain the regional balance of power deterred Morocco from full accession.

**A Quasi-Realist Argument**

I draw upon realism to explain my case study results. I do not believe that the ICC and the decisions to join it fall perfectly within realist theory, but I do find that, for the most part, the fundamentals of realist theory can explain the ICC. The main tenets of realism dictate that the world is anarchic with states as the sole actors in international relations, states are self-interested, i.e. they value power above all else, and states are driven by a need to survive (Grieco 1988: 488). This theory’s focus on states acting in pursuit of their individual needs
without paying much heed to international organizations and the emphasis on power dynamics is essential to explaining both Jordan and Morocco’s decisions. Both states had the attributes necessary to make ratification likely: they were relatively respectful of human rights, they were uninvolved in international conflicts, and they faced little possibility of being embroiled in violent internal conflicts. They could have used this normative parallelism with the Court as an impetus for joining. However, regardless of the norms held, both states heavily prioritized existing power dynamics with their neighbors. States in the same region can serve as each other’s largest threats or most important allies. In both Morocco and Jordan’s cases, their neighbors posed threats to their security and the ICC represented a point of vulnerability and a defensive mechanism, respectively. Within regional politics, relations with neighboring countries and histories of conflict are most salient. In cases of relative peace like in Europe, regional competitions play a smaller role in Rome Statute ratification decisions.

The realist argument that the world is anarchic and that the absence of a central world government drives states to pursue their interests can help in explaining International Criminal Court membership. Realists believe that in an anarchic world, states use international organizations as mechanisms in the competition for increased power, but “they are not instruments of an escape from anarchy” (Schiff 2008: 5). In the case of the ICC, states are willing to relinquish some of their sovereignty to human rights institutions if they find some benefit to joining beyond protection of human rights (Schiff 2008: 5-6). Jordan and Morocco were primarily driven by state interests and paid little heed
to outside pressures, either from states or from international institutions. For Jordan, a benefit of joining was that it could use it as a tool against Israel. Morocco, however, did not find such a benefit, hence its decision to forgo ratification. Taking international institutions and norms into account is important for a state, but such considerations do not supersede individual state interests. For states to regard pressure from other entities as more important than their own interests could cost them in their acquisition of regional and international power.

Additionally, the realist notion that international institutions are not mechanisms for improved cooperation, but are actually created merely to maintain the balance of power applies to my cases to some extent (Jervis 1999: 54; Mearsheimer 1995: 82). The International Criminal Court was created for the purpose of holding individuals of the most egregious human rights crimes accountable for their actions, because state leaders who commit such crimes without fear of being held accountable pose security threats to surrounding states as was seen during WWII and the Rwandan genocide. The Court was, of course, partly a product of normative considerations and moral principles, but genuine belief in prosecuting human rights criminals is not enough to encourage states to place themselves in positions of being held accountable. Both Jordan and Morocco had the social histories to make them normative supporters of the Court and yet, they ultimately made different decisions because the institution did not serve all of their power needs.
Although, I find that realism best encompasses ICC membership decisions, the ICC poses some challenges to some aspects of realist theory. Rome Statute ratification presents a challenge to the offensive realist perception that the great powers are the main actors in international relations and that hegemony is the end goal (Snyder 2002: 151, 152). What is most interesting about the International Criminal Court is that it was small powers that initially proposed it to the UNGA and coalitions of small powers and NGOs that created the terms of the Statute and advocated for it to be a powerful institution. The great powers were, for the most part, supportive of the Court, but did not play lead roles throughout the process. This institution is a demonstration of the influence small powers hold in international law. Additionally, the great powers did not play a role in the decisions made by states regarding whether or not they would ratify the Rome Statute. The great powers may have attempted to influence decisions either way, but it ultimately came down to what individual states found best for themselves.

Moravcsik (2000), Guzman (2002), Hathaway (2002, 2005), and Neumayer (2005) all reject the notion that realism can explain decisions to commit to or comply with international law and especially with human rights treaties. They argue that this is because human rights treaties impose more costs on states than benefits, so it is not in a state’s best interest to commit. Therefore, states commit because of a genuine support for treaties or for improving human rights. However, my cases prove otherwise. States do not base their decisions to join human rights treaties on moral grounds – both Jordan and Morocco
supported the Court, but each found itself benefiting from taking different actions. I do not find that morality plays any role in treaty ratifications, although it may play some role in the drafting process. European states are held as examples of states that support human rights treaties because of normative parallels, but I find this to be a poor example of morality playing a more important role than state interests.

When European states join these treaties, they recognize the few costs imposed on them, because for the most part, they are already compliant with the treaties in question. If European states faced some possibility of violating the treaties and still joined out of a desire for future improvement, their ratification decisions would be more praiseworthy. I do not deny that morality matters to people and states, but I do reject the idea that morals can ever play a main role in decisions with costs as great as those imposed by the ICC.

Additionally, the strict enforcement mechanisms of the ICC provide further support for my argument that morality plays little to no role in ratification decisions. Unlike the core human rights treaties, the Rome Statute gives the Court the power to prosecute and imprison war criminals, meaning that states that ratify the Statute must be willing to accept harsh consequences for the transgressions of their leaders. Because of this added cost, states must heavily consider the benefits they will receive versus the costs they take on. Therefore, in the case of ICC, morality plays an even smaller role than is played by it in other human rights treaties.
A Closer Look at Regional Influences

Throughout my thesis, I emphasized the role of regional competition in influencing both Jordan and Morocco's decisions regarding the Court. As highlighted in the theoretical overview chapter, political scientists rarely approach their understanding of the International Criminal Court from an interstate conflict perspective. On the rare occasion that they do, scholars prefer to examine how domestic politics and influential foreign states, such as the permanent members of the UNSC, influence individual state decisions regarding international law. The approaches that theorists have taken up until today have served academia well, but my cases point to the need to further examine international law in the context of regional competition. Understanding the impact of a state's internal dynamics and the role of states like the P-5 is important, but turning our attention to regional dynamics is just as valuable and deserving of more attention than it is currently given. Granting regional ties a larger role in treaty ratification research can serve to benefit scholarship to a great extent as the perspectives offered by regional dynamics add a layer of depth to research that is currently missing.

While the world order and global balance of power is every state’s concern, states are likely to give additional attention to regional balances of power, as those relations more directly affect them. States may be pressured to bend to the will of their financial supporters, but the importance of that pressure cannot measure up to the importance of their security. Jordan may not have been threatened by Israel’s actions on an individual state level, but it still viewed
joining the Court as a mechanism to hold against Israel should Israel attempt to extend its actions beyond Palestinian territory. There are few ways for states to hold each other accountable for war crimes and it becomes even more difficult when it is a state like Jordan attempting to reign in a well-supported state like Israel. The ICC is one of those ways.

Realistically, there is little likelihood that the Court can prosecute Israeli leaders as Israel is not a member of the Court and the case is likely too political for the Court to want to take on. As much as the Court does for holding human rights abusers accountable, there is no denying that the cases prosecuted by the Court are cases that are uncontroversial and approved by the P-5. Israel, however, is a more contentious human rights violator. Jordan likely recognized the obstacles it would face in referring Israeli leaders to the Court, especially because Israel has not joined, but Jordan’s ratification can still be perceived as a threat because it is evidence of its willingness to confront Israel, if necessary.

Similarly, while Morocco supported the Court’s purpose, it ratcheted down its support when it became apparent that the Court would have jurisdiction over internal crimes, thus opening Morocco up for referral by Algeria or an investigation initiated by the Court’s prosecutor. Regardless of the financial or reputational costs associated with either stance, both states prioritized their self-interest. Pressures from forces outside of MENA played a minimal role in the decision-making processes.

It is reasonable to assume that states, in general, take regional power dynamics into consideration before making final decisions regarding the ICC –
this is not unique to MENA. It may not be the driving force for all states, but it certainly is a factor. Western European states, for example, held norms similar to those exhibited by the Court, but they also felt a regional pressure to join as joining the ICC and the European Court for Human Rights was seen as almost integral to membership in the European Union. While this was not an official requirement, it was viewed as such because the European Union emphasized respect for human rights and not joining the Court could be seen as a rejection of those norms. As the imitation theory previously mentioned argues, states ratify treaties if those around them ratify because they feel pressure to follow their neighbors. Therefore, even for Europe, it was regional dynamics that influenced state ratifications. European states also saw the Court as necessary for the deterrence of crimes against humanity and war crimes in the future since some European states had taken part in such crimes in the past.

Other regions’ relationships with the International Criminal Court can also be explained as being the result of regional competition. In general, states that experience conflict or competition with neighbors, and view themselves as unlikely to be referred to the Court, are more likely to join in an effort to use it against neighbors. The more vulnerable state is then less likely to join the Court out of a fear of it being referred by a neighbor. In situations where both states are equally criminal, ratification can go either way: either both states will join in a case of ‘mutually assured destruction’ in the sense that they understand that referral of a neighbor can in turn lead the neighbor to refer them to the Court, or they can both decide to not join the Court out of an understanding that it does
not benefit either of them to make themselves vulnerable to this institution. In cases where both states are equally respectful, they are both likely to ratify as doing so is not seen as costly. Therefore, regional dynamics often played important roles in guiding state decisions on the International Criminal Court. This factor likely extends beyond the ICC, as regional dynamics are impacted by all international relations decisions and vice versa.

**Discounting Other International Relations Theories**

International politics scholars typically turn to liberalism, constructivism, and institutionalism, in addition to realism, to also explain treaty ratifications. While these theories all have their merits, they are not as widely applicable as they are often made out to be and certainly do not fully explain Rome Statute ratifications. Regardless of their belief in the importance of human rights, Jordan and Morocco will not join treaties that support those norms if the treaties do not, in some way, serve the states’ interests. Jordan and Morocco recognize that they need to be aware of power dynamics to ensure economic and political success, and so both states, like many others, heavily depend on self-interest to guide their decisions on the international stage.

Liberal theory, at its core, places individuals and social groups as the primary actors in international politics, not states. Liberal theorists emphasize that state-society relations and the interests of social groups impact state preferences most (Moravcsik 1997: 518). Although frequently conflated with normative theory or utopianism, liberalism extends beyond that and seeks to
create a paradigm wherein states are representatives of individual and group interest, but also “realize [their] distinctive preferences under varying constraints imposed by the preferences of other states” (Moravcsik 1997: 520). A bottom-up approach to international politics does not explain state relations with the Rome Statute, especially cases like Morocco. As mentioned previously, civil societies are fairly active in Morocco in pressuring the government to join the International Criminal Court, and yet the Moroccan government has continued to resist such pressure. If, as liberals claim, states create preferences in line with individual interests, then we can expect Morocco to have joined the Court. Moravcsik argues that in the liberal understanding of politics, “states do not automatically maximize fixed, homogeneous conceptions of security, sovereignty, or wealth,” but instead “pursue particular interpretations and combinations of security, welfare, and sovereignty preferred by powerful domestic groups” (Moravcsik 1997: 519). In Morocco’s case, the government did take a standard approach to defending state security from outside institutions and largely ignored domestic groups, regardless of their political influence. Once again, many states did heavily prioritize state power interests over norms when making their decisions regarding the International Criminal Court. Decisions to ratify the Rome Statute had to have come from the governments in power and for them to be willing to subject themselves to a Court with the power to prosecute and imprison, they needed to have found within it a potential benefit.

Constructivists believe that relations in international politics are socially constructed, not naturally occurring like realists and liberals propose and that
constructivism is “the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world” (Adler 1997: 322). Like realists, constructivists are structuralists, but they argue that such structures are influenced by social relationships. In their view, norms do not simply influence state behavior, but actually influence state identities and assist states with crafting what they view as their interests (Wendt 1995: 72-73; Snyder and Vinjamuri 2003: 8-9). In this view, pursuit of improved human rights falls within the realm of state interests. Constructivism is less applicable to my case studies because of the nature of its view of the centrality of norms in international relations and the minimal role that norms played in Jordan and Morocco's decisions. Jordan's norms were important to its initial involvement in the drafting process of the Rome Statute, but its ultimate decision was heavily dependent on what it viewed as security interests. If Jordan were truly a normative supporter of the Court, it would not have signed a BIA with the United States as that contradicts the purpose of its ratification. The Moroccan government was also, for the most part, in agreement with the norms of the Rome Statute. The Moroccan government was not taking part in horrendous human rights crimes during the 1990s and early 2000s, although it did continue to occupy land. If constructivism were at play, Morocco's interests should have aligned with its norms. Accession to the Court should not have been seen as a threat to its security. It may be the case that states that join human rights treaties have interests and norms that are parallel, but the opposite is not always
true—as states may have the normative support, but may find their interests under threat for one reason or another.

Finally, like realists, neoliberal institutionalists place states as the primary actors in international relations and they recognize that states are self-interested. They also recognize the difficulty in facilitating cooperation between states, but they believe that international institutions can make cooperation more feasible (Guzman 2002: 1839-1840). Institutionalists would argue that state decisions to commit to or comply with human rights treaties are driven by self-interest with self-interest, once again, indicated a desire to maximize power. They diverge from realists in arguing that increases in power are absolute, not relative. Realists view international relations as a zero-sum game, which decreases the chances for cooperation, while neoliberal institutionalists find that states are more likely to cooperate because they are only concerned with their gains and less so with the gains of other states (Powell 1991: 84; Jervis 1999: 47, 51). Unlike neoliberal institutionalist belief, the ICC, as an institution, did not lead to an increase in cooperation between states. The Court may have been intended to increase cooperation in order to deter human rights crimes, but states primarily joined if they found that the Court served their interests, as was seen with Jordan. Furthermore, the Court did not lead to cooperation between states to move towards a common goal of increased respect for human rights. Jordan, for example, refused to comply with its obligation to surrender Omar al-Bashir, Sudan’s former president, to the ICC despite the presence of an outstanding arrest warrant for him and Jordan’s agreement by virtue of its
ratification to surrender suspects in its territory to the Court ("Sudan Insider: President Bashir Visits Jordan Despite Warrant” 2017). If Jordan viewed this Court as a mode of cooperation towards achievement of self-interests or gains in power, then it likely would have surrendered al-Bashir, but because his case is a contentious one, Jordan prioritized political affairs. This is not the first time that political relations have superseded commitments to the Court. States continually disregard the Court in favor of political dynamics as surrendering or referring a state leader to the Court then exposes that state to politically motivated referrals. While the Court gives states the right to hold one another accountable, they will not do so if it is politically harmful. Similarly, abusive state leaders that view themselves as politically powerful will be less likely to be deterred from committing human rights crimes because they understand they are likely to not be referred to the Court. Although the ICC was intended to have the power to prosecute all egregious crimes and deter future crimes, it has faced difficulty in doing so because of its politicization.

**Conclusion**

Applying the findings from my case studies to traditional international relations theories is important to understanding how ICC membership operates within wider international relations scholarship. Because both of my cases looked to regional competition when deciding whether or not to ratify the Rome Statute, I turn to realism as the primary framework in which these states are operating. Power politics were vital to Jordan’s ratification and Morocco’s
hesitance to fully join the Court. However, realism cannot fully explain the ICC as it does not account for the ICC was primarily created by small states and is rejected by many large powers, meaning that hegemony is not necessarily the end goal. The other international relations detailed above fail to adequately explain my case studies, as they do not sufficiently account for the role of power. Recognizing that realist theory is primarily at play in Rome Statute ratification lays a foundational understanding of the ICC valuable for future research on the Court.
Chapter 6. Conclusion

My decision to pursue this thesis topic was driven by a desire to better understand the factors that motivate states to join the International Criminal Court. I was drawn to the ICC’s power over states’ internal functions and the willingness of some states to subject themselves to a body that can prosecute their leaders. My fascination with the Middle East, along with its interesting relationship with the Court drew me to focus my analysis on Jordan and Morocco’s ratification decisions. Researching both states in-depth brought to light a self-interested thought-process where both Jordan and Morocco heavily prioritized regional competition and conflicts with neighbors when developing their stances on the Court.

Pursuing a comparative case study provided an opportunity to delve into each state’s history and develop more nuanced understandings of the state level considerations that went into each state’s ultimate decision. Knowing that the Court was largely influenced by political considerations creates a need for a better understanding of the true role of the Court. If members only joined to have it as political tool, then I am not confident that the Court does or can ever do what it was originally intended for. The Court was created to avoid future episodes of victor’s justice, but it might just be another, more international version of it. The ICC was originally viewed as a victory for human rights, but I question whether we can truly call it victory if states approached it with this kind of self-interested view. Is it in fact a victory if at least some states have little intent to use it for genuinely improving human rights universally? Or, is its mere
existence a victory on its own? In addition to such questions, political scientists should expand on this thesis to understand how prevalent regional competition truly is in ICC ratification decisions in MENA and beyond.

Besides additional regional competition research, human rights and international law scholars should think more critically about what the Court actually does for human rights. If the ICC cannot be claimed as a victory for human rights because of its political underpinnings, then what kind of institutions could work to promote human rights without finding themselves subject to the political whims of states? Further questions this thesis prompts are questions such as, how do human rights institutions encourage states to prioritize the dissemination of respect for human rights through institutions that may infringe on their sovereignty to some extent? Are such institutions possible? How can human rights institutions prevent cases of states attempting to leave the Court when they suspect that it may begin investigating them as happened with Gambia, Burundi, and South Africa in 2016?

In addition to offering the groundwork for future research on regional competition in the ICC, my thesis offers important insight to understanding political developments in relation to the Court. Along with viewing their own ratifications from a political standpoint, policymakers should also view the ratifications of both allies and enemies as politically motivated. In this case, granting states the benefit of the doubt can have serious, politically harmful consequences. Viewing all interactions with the Court as political can allow policymakers to both glean how other states intend to use the Court and how to
develop it to be a more effective deterrence tool. States are unlikely to act for normative reasons, so a comprehensive understanding of the Court’s political utility is essential for accurately analyzing future state interactions with the Court.

Despite examining just two cases, the findings presented by my analysis of Jordan and Morocco provide a potential explanation for ratifications of the Rome Statute that goes beyond the traditional reputation, normative commitment, or economic dependence arguments. The influence of regional competition is frequently associated with economic and military developments, not with human rights institutions as human rights are often considered irrelevant in the pursuit of power maximization. The analysis presented in my thesis is evidence that this notion may not necessarily be true. The presence of regional competition played a central role in the decisions both states ultimately made regarding the ICC. The relationship between regional competition and the International Criminal Court points to a potential co-opting of human rights by political needs. This change points to the need for changing the mindset with which we approach research on human rights treaties, as such treaties are no longer the apolitical mechanisms once assumed to be.
## APPENDIX A: JORDAN

### Table A1. Net Bilateral Aid to Jordan from DAC Countries (current, millions US$), 1990-2003

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*Source: The World Bank DataBank*
Table A2. U.S. Trade in Goods with Jordan (nominal, millions US$), 1995-2003

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*Source: U.S. Census Bureau*
**APPENDIX B: Morocco**

**Table B1. Net Bilateral Aid Flows to Morocco from DAC Countries (current, millions US$), 1990-2003**

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*Source: The World Bank DataBank*

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### Table B2. Foreign Direct Investment in Morocco, 1990-2003

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*Source: The World Bank DataBank*
References


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