



Regulating Conflict: Historical Legacies and State Commitment to the Laws of War¹

GEOFFREY WALLACE

University of Kentucky

The ongoing War on Terror and the rise of nonstate actors in armed conflicts around the world have led both critics and proponents of international law to argue the Geneva Conventions currently governing warfare are no longer relevant. Yet what are the prospects for a new Geneva Convention to take hold in the international community? In order to begin to address this issue, I examine the factors influencing the decision of states to commit to the existing laws of war. Using an event history analysis of the ratification of the 1949 Geneva Conventions and 1977 Additional Protocols I and II, I find formative events involving past experience with war, as well as several other domestic and external factors, shape the incentives to commit to international law. In particular, far from pushing war-torn states to join international agreements in the hopes of mitigating the costs of armed conflict, the legacy of war makes states less willing to be constrained by international humanitarian law. The findings have implications for the role of formative events on incentives for international cooperation and foreshadow that the path toward widespread acceptance of any new Geneva Convention, should one ever be negotiated, would likely be formidable.

“[T]he war against terrorism is a new kind of war...this new paradigm renders obsolete Geneva’s strict limitations...and renders quaint some of its provisions” (Gonzales 2002:2).

In the aftermath of the September 11, 2001, attacks and the ongoing War on Terror, many officials and commentators have asserted that the current laws of war,² rooted in the 1949 Geneva Conventions, no longer apply (Rabkin 2003). This has been reflected in official US policies of refusing to grant formal prisoner of war status to terrorist suspects, the indefinite detention of detainees, and the use of “enhanced” interrogation techniques. Furthermore, scholars suggest that the overall substance of counterterrorism policies between the Obama and Bush administrations reflect more continuities than differences, including the relative commitment to international law (Desch 2010). In response, defenders of the existing regime argue that despite challenges created by terrorist adversaries and irregular warfare, the general principles of the prevailing laws of war still hold and should be adapted to changing circumstances (Greenwood 2002).

I thank Daniel Morey, Mark Peffley, Chad Rector, Clayton Thyne, Sophia Wallace, Christopher Way, two anonymous reviewers, and the editor for helpful comments. All errors remain the responsibility of the author; full replication materials available at <http://www.uky.edu/~gpwa223/>.

¹ An earlier version of this paper was presented at the 2010 Annual Meeting of the Midwest Political Science Association.

² I use the terms laws of war and international humanitarian law interchangeably.

Bolstering this view are numerous human rights groups calling for the United States and other countries to uphold their legal obligations irrespective of the nature of the enemy (Human Rights Watch 2008).

Taking a middle ground is a growing chorus of scholars pointing to deficiencies in both the practices of states as well as the current body of international law. Consequently, there are numerous calls for a new treaty to replace, or at least update, the current international regime (Wippman 2005; Carpenter 2008). Even the International Committee for the Red Cross (ICRC), one of the main drivers behind the original Geneva Conventions, recognizes the current regime does not adequately address recent developments in armed conflict (Lavoyer 2004). Although concerned future negotiations could potentially roll back existing protections, the ICRC has quietly developed a Project for the Reaffirmation and Development of International Humanitarian Law to interpret obligations under the existing laws of war, as well as identify issues possibly necessitating new agreements.³

Lost in much of the discussion by all sides, however, is the feasibility of generating widespread support for any future treaty. The new ways of war pose formidable challenges to negotiators, ranging from what kinds of rights to afford terrorist suspects to the legality of political assassinations (Thomas 2000). Past experience shows the difficulties of reaching agreement on rules related to armed conflict, such as the rancorous negotiations leading to the creation of the International Criminal Court (ICC) (Goodliffe and Hawkins 2009). While much research in international relations points to the promise but also challenges of multilateral cooperation, obstacles are likely to be particularly daunting for questions of war where a state's very survival may be at stake. The evolution of international law is rife with treaties that opened for ratification only to be met with the refusal of several states to eventually commit.⁴ Even if an updated Geneva Convention could be negotiated, what are the prospects that many states would actually ratify to the agreement?

Existing research provides little insight into why states decide to commit to international humanitarian law compared to other areas, such as political economy, human rights, or the environment (Simmons 2000; Hafner-Burton and Tsutsui 2005; von Stein 2008).⁵ This perhaps reflects an implicit acknowledgement of Clausewitz's general skepticism of the laws of war, which he characterized as "certain self-imposed, imperceptible limitations hardly worth mentioning" (1984:75). Realist scholars echo similar sentiments and are equally pessimistic regarding the ability of international agreements to influence the preferences or behavior of states, especially in matters of national security (Mearsheimer, 1994–1995). Recent empirical work shows some support for this view, finding international law exerts little restraint on the treatment of civilians during war (Valentino, Huth, and Croco 2006). Yet the outlook for international law is not necessarily so bleak. Other studies point to some of the ways in which international treaties act in more subtle ways to condition the expectations of belligerents regarding retaliation by their adversaries, which ultimately influences their conduct (Morrow 2007).

This paper seeks to contribute to this debate by examining the prior step of why states commit to international humanitarian law.⁶ In order to gain a better understanding of the promise for any future laws of war, I examine state support

³ See <http://www.icrc.org/web/eng/siteeng0.nsf/html/5TALFN>.

⁴ For example, negotiations over the United Nations Convention on the Law of the Sea (UNCLOS) dragged on for nearly a decade, and key maritime powers, such as the United States, still remain outside the Convention.

⁵ Exceptions include (Neumayer 2009; Goodliffe, Hawkins, Horne, and Nielson 2010; Simmons and Danner 2010), though they focus on the more recent ICC rather than the Geneva treaties forming the foundations of the modern laws of war.

⁶ By commitment, I mean the decision to ratify a given international agreement. This differs from the subsequent stage of actually complying with the terms of the treaty, though in practice the two stages are often closely connected (Simmons 2000).

for the existing international humanitarian law regime, which is based around the 1949 Geneva Conventions and the 1977 Additional Protocols I and II (API and APII). Under what conditions are states most likely to ratify the laws of war? Furthermore, why do some states commit sooner than others?

I argue states are deeply shaped by their past experiences when weighing whether to commit to the laws of war. Much research assumes past formative events can reorient affected states toward desiring greater international cooperation. In contrast, I propose that in the case of the laws of war, historical legacies have a fundamental dampening effect on international commitment. Using an event history analysis of ratification of the Geneva Conventions and each Additional Protocol, I find that states emerging from past experiences with warfare are more reluctant to ratify, irrespective of the outcome of these earlier conflicts. Far from encouraging former belligerents to foster new legal constraints to mitigate the horrors of war, a history of armed conflict appears to generate a desire for states to maintain their room for maneuver in future conflicts. In addition to past experiences, other factors commonly cited in the literature on commitment to international law, which tend to focus more on a state's current or prospective context and incentives, also play some role in the decision to ratify the laws of war. Nevertheless, the implications of wartime legacies in particular provide a poor prognosis for any future treaty. Should a new Geneva Convention governing terrorism, or other forms of irregular warfare, eventually be agreed upon, those states most likely to fall under its mandate would probably be the most reluctant to ratify.

The paper proceeds as follows. First, I provide a brief background to the Geneva regime concerning the laws of war. Second, I outline the main theoretical arguments for the impact of historical legacies of conflict on commitment to the laws of war. The third section presents the research design and measures for key variables along with considering several alternative explanations before turning to the empirical results. The final section summarizes the main findings and offers suggestions for future research.

The Geneva War Regime

The Geneva Conventions opened for ratification in August 1949 and entered into force just over a year later in October 1950. Although often referred to collectively, the Conventions are composed of four separate treaties protecting distinct groups: (I) the wounded and sick on land; (II) the wounded, sick, and shipwrecked at sea; (III) prisoners of war; and (IV) civilians. Taken together, the Conventions are generally considered a watershed in the protection of victims of war (Best 1980:80). Earlier agreements existed, but the sheer breadth and depth of the provisions negotiated in 1949 surpassed all previous attempts at the codification of international humanitarian law. "Geneva Law" dealing with war's victims complemented the existing "Hague Law" covering the particular means and methods of war, which was rooted in the 1899 and 1907 Hague Conventions (Forsythe 2005:248).

Compared to other treaties, the Geneva Conventions exhibit medium to high levels of precision, obligation, and delegation—three principal components measuring the degree of legalization of international agreements (Abbott, Keohane, Moravcsik, Slaughter, and Snidal 2000). Precision concerns the extent to which provisions unambiguously define appropriate conduct. Compromise language and ambiguities inevitably remained, but the Conventions represented a significant improvement over previous agreements. Using the Third Convention as an example, the agreement enumerated more detailed requirements in matters such as nutrition, housing, and labor for prisoners compared to its earlier 1929 incarnation.

Obligation refers to the degree to which rules are legally binding as opposed to general principles of intent. The Third Convention outlines a series of requirements all captor states are required to obey. It distinguishes between different categories of violations with the most serious being grave breaches, including the “willful killing, torture, or inhuman treatment” of prisoners.⁷ Such abuses have become a cornerstone of subsequent war crimes tribunals, alongside other extreme violations, such as genocide or crimes against humanity.⁸

Finally, delegation involves granting authority to third parties to interpret and enforce the treaty’s rules. As originally conceived, the Geneva Conventions did not confer authority to anything resembling the current ICC, but contain several elements suggesting medium levels of delegation. Articles 8 and 9 of the Third Convention created an expectation for belligerents to grant rights to neutral states referred to as “Protecting Powers,” as well as humanitarian organizations like the ICRC, to ensure compliance with the terms of the agreement. Article 123 further mandated belligerents to set up a Central Prisoner of War Information Agency in a neutral country to monitor and exchange information.

Although the Conventions lack an independent prosecutorial body like the ICC or recent ad hoc tribunals, the principle of universal jurisdiction provides a decentralized enforcement mechanism. Universal jurisdiction means a state can claim the right to prosecute alleged perpetrators of crimes, irrespective of where the crime was committed, or the nationality of the perpetrator or victim (Rodley 1999:121–22). Article 129 of the Third Convention requires states to search and bring to trial persons alleged to have committed grave breaches of the Convention regardless of nationality or the location of the violation. The provisions present a potentially major loss of sovereignty for states committing to the Conventions, since their soldiers and leaders are opened to possible prosecution by any other contracting party.

The Geneva Conventions thus exhibit moderate levels of legalization. As various scholars have argued, greater legalization entails higher costs for states to commit to the treaty, but also potentially greater benefits (Abbott and Snidal 2000). These gains can accrue even in times of war if both sides are committed to the humanitarian impulse of the Conventions and correspondingly fight in a more restrained fashion. Taken together, the level of legalization of the Geneva Conventions suggests that decisions by states to ratify are not likely to be taken lightly given that commitment comes with a number of costs. States have varied greatly in terms of the timing of their ratification decisions. In the more than half-century since their inception, states took from under one year to more than four decades to ratify Conventions. Figure 1 below shows the number of parties to the Geneva Conventions, as well as the later Additional Protocols, in relation to the total number of states by year. The Conventions have witnessed a steady rise in adherents such that they presently receive universal support.⁹

Warfare in subsequent years revealed several deficiencies in the Geneva Conventions, particularly with regard to anticolonial conflicts, guerrilla insurgencies, and civil wars. The 1977 Additional Protocols I and II (API and APII

⁷ For the full text of the Geneva Conventions, as well as subsequent Protocols, see <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>.

⁸ For instance, see Articles 5–8 of the 1998 Rome Statute of the ICC, <http://www.icrc.org/ihl.nsf/FULL/585?OpenDocument>.

⁹ As of 2000, which is the endpoint for this study, only two states independent at the time had failed to ratify the Conventions—the Marshall Islands and Nauru. Both subsequently committed to the Conventions in 2004 and 2006, respectively.

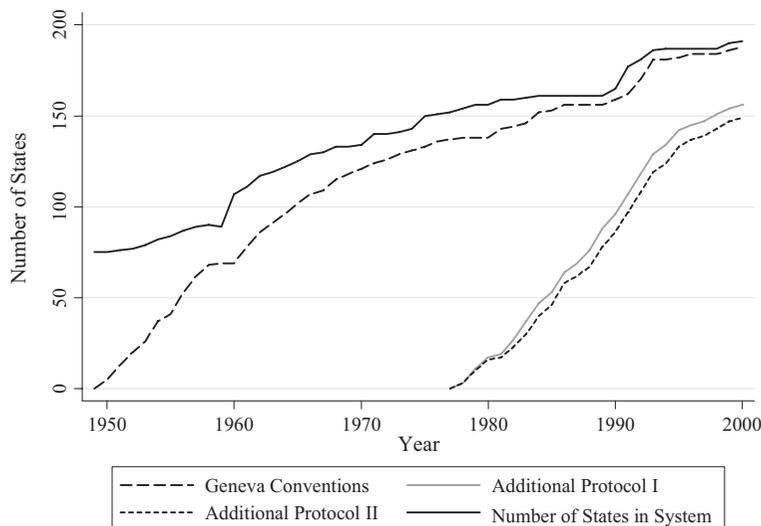


FIG 1. Support for the Geneva Conventions and Additional Protocols

respectively) were meant to address these gaps, but some of their provisions proved to be controversial.¹⁰

API was intended to build on the Geneva Conventions by clarifying obligations under international conflicts. API generally exhibits similar levels of legalization to the Geneva Conventions, though it includes more detailed requirements in certain respects. Of central concern for numerous states was the expanded definition of international conflicts to include anticolonial wars and other fights for self-determination (Article 1(4)), as well as incorporating guerrillas as legitimate combatants (Article 44(3)). Debates over extending protections to guerrilla forces reflects a long line of tension going back to the 1899 Hague Convention, when states disagreed over the legitimacy of people's armies and other forms of popular rebellion (Best 1980:190–92). API thus represented a potential sea change in the nature of the laws of war by broadening the class of conflicts covered, along with extending rights to irregular combatants. Internal documents on the negotiation of the Protocol suggest that the latter provisions in particular became hotly contested, as several states vigorously opposed granting protections to guerrilla fighters (Pilloud, Sandoz, Swinarski, and Zimmermann 1987:519–30). Opposition continued after the Protocol opened for ratification. To this day, a significant minority of countries refuse to ratify API, as is evident in Figure 1 above from the lower levels of support compared to the original Geneva Conventions. API obtained several enthusiastic early adherents, but a number of prominent laggards remain.

APII is in some ways more limited compared to API, but has proven to be similarly contested because it represents the first humanitarian agreement concerned specifically with civil wars.¹¹ Given the desire of states to maintain a monopoly over the legitimate use of force within their own borders, along with the general principle of nonintervention in a country's internal affairs, previous agreements focused primarily on wars between states. The main exception was Common

¹⁰ A third Additional Protocol was negotiated in 2005, introducing the red crystal as an emblem for relief workers alongside the tradition red cross and crescent. Given the more limited nature of this Protocol in terms of regulating wartime conduct, it is not considered further in this study.

¹¹ For instance, APII contains only 28 articles compared to the 102 articles found in API, in addition to several annexes.

Article 3 to the Geneva Conventions, which enumerated general principles for wars “not of an international character,” but in practice provided little restraint. Although more modest in scope, APII also represented a potential revolution in the thinking and practice of the laws of war, as states were now expected to provide certain rights and protections to the very rebels challenging their authority. Not surprisingly, many states have also refused to ratify APII and support is similarly lower compared to the Geneva Conventions.

The three treaties making up the Geneva war regime entail numerous obligations for states across an increasingly wide range of conflicts. Support for the agreements has grown gradually, albeit haltingly, over time. In the following section, I outline a framework for understanding the factors influencing the decision and timing for the commitment of states to the laws of war with a particular focus on the role of past experiences with war.

Theory: The Legal Legacy of War

Scholars offer a variety of explanation for why states commit to international law. If ratifying the Geneva Conventions and their Additional Protocols was entirely costless, there would be little reason to see any meaningful variation in the decision of states to commit to the agreements. However, the costs and benefits of joining these treaties likely differ across countries and might reasonably lead them to commit for very different reasons. In this section, I put forward an argument evaluating the role of past historical experiences, specifically in terms of the legacy of war, on support for international humanitarian law.

A large literature drawing on psychological and organizational studies argues actors do not weigh all information equally when evaluating options in new situations with consequent effects for decision making. Information that is “vivid” in the sense that it is emotionally interesting, offers concrete imagery, and proximate to the actor has been shown to play a particularly crucial role in subsequent judgment and decision making (Nisbett and Ross 1980:43–51). Related studies have shown that salient information resulting from dramatic personally experienced events is much more likely to be recalled and relied upon in later situations (Tversky and Kahneman 1982:11). More recent research reinforces earlier findings, but emphasizes that extremely emotional events, such as violent conflicts, are especially likely to influence future preferences and strategies (Rosen 2005:50–55). Such formative events may thus greatly shape the way actors evaluate new problems and opportunities, irrespective of their contemporary strategic context.

Much work examining international cooperation, and the resort to international legal remedies in particular, indeed suggests past formative events play a crucial role. The construction of the Bretton Woods order based around international institutions such as the World Bank and the International Monetary is widely argued to have been a direct response to the worldwide economic cataclysm caused by the Great Depression (Ruggie 1982). A similar dynamic appeared at work with the creation of the International Energy Agency in the aftermath of the 1973 Oil Crisis, which had threatened the economic stability of many industrialized countries (Keohane 1984:100). The horrendous toll wrought by these economic shocks correspondingly generated heightened incentives for cooperation among nations than would otherwise have been the case. The breakdown of traditional concerns to maintain exclusive sovereignty over national policies was also evident in the early formation of the international human rights regime, where salient events such as the Holocaust played a transformative role (Sikkink 1993).

Historical experiences can also have effects beyond the incentives of elites, but impact public opinion along with specific groups who may be skeptical of new international agreements. For instance, the revelation of an enormous hole in

the atmosphere over Antarctica was largely credited in mobilizing public opinion and spurring governments in tandem with several key industrial interests to negotiate and commit to the 1987 Montreal Protocol phasing out the production of various ozone-depleting substances. As one scholar remarked, "The discovery of the ozone hole, combined with the unexpected increases in CFC use, alarmed the public and added a sense of urgency to the international discussions" (Haas 1992:203). In a similar manner, the 1986 Sandoz chemical spill, where 10,000–15,000 tons of agrochemical pollutants entered the Rhine river destroying huge portions of the surrounding marine life, is largely credited with encouraging further cooperation among affected states (Bernauer and Moser 1996).

When examining issues ranging from monetary policy to the environment, formative events appear to profoundly shape the contours of subsequent efforts at cooperation. Much of this literature assumes formative events have a general facilitating effect on support for international agreements. States having experienced past economic or environmental disasters are in turn considered more likely to support later international cooperation. When examining the role of past wars, however, the relationship may not be quite so straightforward.

In the realm of formative events, the impact of past wars figures prominently. Jervis argues experiences from earlier wars shape the perceptions and foreign policies of leaders for years afterward (Jervis 1976:266–67). Policymakers often rely on analogies created from past conflicts to guide their behavior in future situations (Khong 1992:9). Leaders also develop specific lessons from the past, which condition later policies irrespective of potentially important changes in the strategic context (Reiter 1996:35–36). Existing studies focus on the legacy of war for understanding crisis management or conflict behavior, but are largely silent regarding implications for understanding commitment to international law.

Applying the logic of formative events to the laws of war suggests two main ways in which past conflict experience influences commitments to international law. First, the sheer horrors created by warfare may lead states to turn to international law as a way to prevent future wars, or at least mitigate their effects. With the devastation across Europe resulting from the French Revolutionary Wars, beginning in 1815 numerous peace societies arose with many prominent members, which sought to abolish warfare (Eyffinger 1988:14). Building on experiences from the bloody 1854–1856 Crimean War and subsequent conflicts, Tsarist Russia became increasingly committed to "civilizing" warfare and introducing a greater degree of humanity into relations between states (Myles 2002). This culminated in Tsar Nicholas II playing a central role in convening the 1899 Hague Peace Conference, which led to the first comprehensive international codification of the modern laws of war.

The potential pacifying effects of wartime legacies is also in many ways consistent with the belief that widespread feelings of war-weariness often take hold in conflict-torn countries. According to this view, countries ravaged by war lose their enthusiasm for armed conflict, at least temporarily, which makes them less likely to engage in war during subsequent periods (Blainey 1988:6–7). Given their greater sensitivity to the costs of conflict, it follows that those states having experienced the ravages of war might be expected to be the most eager to find ways to constrain its conduct. Taken together, this leads to the expectation that countries who have experienced war are the most likely to commit to international humanitarian law. This expectation is largely consistent with the role of formative events in many other issues areas, where past experiences are generally presumed to lead to greater support for international law.

In contrast to this view on the facilitating function of formative events, legacies of war might have the opposite effect of actually reducing support for international law. War remains the ultimate test of a state's material capabilities and

very independence; states are thus often thought to be especially reluctant to join any international agreement that impinges on their sovereignty, especially in matters of war (Posner 2003). Countries emerging from recent wars might be especially sensitive to the potential dangers of any new rules that might limit the ability to protect their territory and the well-being of their citizens. War-torn states often express the contrasting view that they must maintain as much room for maneuver as possible to ensure their survival. For instance, some of the most vociferous opponents to API, and its consequent incorporation of insurgencies, were precisely those states that had recently fought conflicts against guerrilla opponents. In expressing its refusal to ratify the Protocol, the decision of the United States was colored in large part by its recent experience with insurgency in Vietnam (Reagan 1987).

Arguments have also been raised on moral grounds that if war truly is hell, then leaders should be allowed to do whatever is necessary, however gruesome in the short-term, to bring conflicts to a speedy end (Walzer 2000:32–33). After the First World War, several officials hesitated to support any ban on chemical warfare if such weapons could hasten the end of combat, given that “conventional” weapons had been responsible for the deaths of millions of soldiers over four hard-fought years (Roberts 1994). This leads to the expectation that countries who have experienced war should be the least likely to commit to international humanitarian law. Far from encouraging greater cooperation, formative wartime experiences might actually create significant obstacles to support for international law.

It is also not immediately clear whether or not victorious and defeated powers from past wars would draw different lessons regarding the desire to avoid constraints on their conduct. Defeated powers may be particularly attracted to maintaining their freedom of action, though they might also see new laws of war as a potential tool to protect themselves from the worst effects in any future war by providing some form of restraint on their opponent. Similarly, victorious powers might be less concerned with any new rules given their preexisting winning record, but they may also be distrustful of any proposed constraints that could impinge upon the weapons or strategies necessary to maintain their winning ways. Rather than the particular outcome of past conflicts, it appears instead that the very act of participating in warfare has the greatest systematic impact on the reluctance to support the laws of war. The history of the codification, or lack thereof, of rules governing the use of air power in the first half of the twentieth century is suggestive of the transformational role played by wartime experience; victors and losers alike generally sought to avoid any significant constraints on the devastating promise of aerial bombardment (Biddle 1994).

The empirical record on the relationship between war and legal commitments remains relatively sparse. Past studies in the related area of human rights have found some support for the second perspective that wartime experience reduces the likelihood to commit to international treaties, but others find no meaningful effect (Dunér and Geurtsen 2002; Neumayer 2008). Other work looking at support for the ICC similarly points to enabling or constraining effects of past conflicts, though the relationship may depend on the country's particular context (Neumayer 2009; Simmons and Danner 2010). Taken together, existing research tentatively provides more support for the restraining rather than facilitating legacy of war for international humanitarian law, but the debate remains far from settled.

Data and Measurement

In order to assess the role of historical wartime legacies, I examine the determinants of ratification of the main treaties forming the Geneva war regime, which

is composed of the 1949 Geneva Conventions, along with API and APII from 1977. While the Geneva Conventions technically comprise four separate agreements, in practice states decided to commit to all four simultaneously. Countries may have made reservations to specific components, but ratification of the Geneva Conventions was generally a singular event. I primarily rely on the ICRC's compendium of documents relating to international humanitarian law for obtaining dates of ratification to the Conventions and both Protocols.¹² Because the ICRC does not maintain ratification dates for countries that no longer exist, such as Communist-era Czechoslovakia or the predecessor states to modern-day Yemen, I consulted additional sources for several cases (for example, Schindler and Toman 2004).

I employ an event history analysis, which takes into account both the decision of states to ratify a treaty, as well as the length of time until ratification. Examining the time to ratify is preferable to a binary ratification variable because the timing of the event also reveals information about the decision making and preferences of actors (von Stein 2008). The opportunity to ratify begins after a treaty's date of adoption, which is 1949 for the Geneva Conventions and 1977 for both Protocols. For countries that did not exist prior to the opening date, the opportunity begins on the date they achieved independence. Because much of the available data for several of the explanatory variables are only available until 2000, the analysis focuses on the commitment decisions for each treaty from the time it opened for ratification until 2000.

Given most of the data are also only available on an annual basis, I use a discrete-time event history model (Box-Steffensmeier and Jones 2004:69–75).¹³ The unit of analysis is the country-year. Following the recommendations of Beck, Katz, and Tucker (1998), I take into account duration dependence using a years-at-risk variable counting the number of years since a country's opportunity for ratification began, along with three cubic splines.¹⁴

The first set of measures tests the main hypothesis that experience in past wars shapes commitment to the laws of war. Since war likely generates a legacy lasting beyond the formal termination of the conflict, I code each state's experience with warfare over the previous decade. *War Participation (interstate)* calculates a 10-year moving average of the number of wars a state participated in per year; this measure is used for the Geneva Conventions.¹⁵ In light of the expansion of API to include aspects of guerrilla warfare, the most vociferous opponents are likely those who fought against insurgencies. To test for this impact on support for API, *War Participation (insurgency)* is a similar 10-year moving average based on past participation in insurgencies (Lyll and Wilson 2009). Finally, because of APII's focus on intrastate conflicts, *War Participation (civil war)* calculates the 10-year moving average for participation in civil wars (Doyle and Sambanis 2006).

In order to test whether it is not war participation on its own, but rather the actual outcome of the conflict that matters, I also include a corresponding set of variables capturing the overall lesson a state received over the prior decade from each type of conflict. *War Outcome (interstate)/(insurgency)/(civil war)* are separate variables for each type of war, which sums the total lesson for each state from the prior decade, where a victory is counted as +1, a loss as -1, and a draw as 0.¹⁶

¹² Available at <http://www.icrc.org/ihl.nsf>.

¹³ To ensure the results were not driven by model choice, I also reran the analysis using a continuous-time Cox proportional hazard model with duration spells measured in months until ratification. The results do not change substantially.

¹⁴ I also accounted for temporal dependence using dummy variables for each year since duration began. The results were not significantly different.

¹⁵ Coding for interstate war participation and outcomes is based on Downes (2009).

¹⁶ This approach draws partially on Reiter and Meek's (1999) coding scheme.

I also consider a number of alternative explanations commonly put forward to explain state support for international law, including norms, domestic politics, and a variety of current and future costs. In comparison with the emphasis of historical legacies on the role of the past, most of these alternative explanations tend to focus on the current or prospective incentives facing states in deciding whether to ratify an international agreement.

A number of scholars have recently argued that international norms shape national foreign policies. In the realm of international law, Finnemore and Sikkink (1998:902) argues that as new norms emerge and gain greater acceptance, a “norms cascade” can result whereby other states feel increasingly compelled to commit. Normative factors have been found to be a key determinant of support of a variety of human rights treaties (Wotipka and Tsutsui 2008), and similar factors might be expected to apply to international humanitarian law as well. Following previous quantitative work incorporating normative factors into the determinants of international commitment, *Global Norms* measures the proportion of countries in the world that have ratified the relevant treaty by year (Simmons 2000).¹⁷ *Regional Norms* is constructed in a similar manner, but measures the proportion of countries ratifying by region.¹⁸

In a similar manner, intergovernmental organizations (IGOs) may also act as norm entrepreneurs or more broadly influence the preferences and behavior of states. As Ward (2006) argues, IGOs create extensive networks of linkages among member states, which can result in greater exchange of information and best practices. These networks can alter state preferences and make members more likely to support international cooperation. In order to capture the degree to which states are embedded in the global network of IGOs, *Network Centrality* is a measure for the number of organizational links for each state to other states in the network (Ward 2006).¹⁹

Moving to the domestic level, a long and growing research tradition points to the distinctiveness of democracies in foreign policy given their particular political culture and domestic institutions (Doyle 1986). Democracies have been described as exhibiting a “contracting advantage,” making them more likely to develop and commit to international agreements compared to autocracies (Lipson 2003:11–12). Evidence linking democracy to support for international law across a variety of issue areas, however, remains mixed (Hathaway 2003; Bättig and Bernauer 2009). In order to test for the role of democracy in the context of the laws of war, *Polity Score* uses the well-known Polity2 index, which ranges from –10 to 10, where governments scoring 10 are considered the most democratic (Marshall and Jaggers 2005).

Not all democracies may be equal in their desire to commit to international institutions. New democracies may be especially concerned with the stability of their regime and be willing to use international treaties as a self-binding mechanism, making it more costly for later governments to reverse initial commitments (Moravcsik 2000). This argument has primarily been applied to human rights treaties (Goodliffe and Hawkins 2006; Neumayer 2008), but remains relevant for the laws of war. Self-binding might be particularly salient for APII, since newly democratic governments may want improve the prospects that their adversaries will engage in proper conduct during civil wars should they fall from power and once again become the opposition.²⁰ In order to capture possible self-binding

¹⁷ To avoid problems of endogeneity, the ratification decision of each state in question is excluded for their respective observations, and all values are lagged 1 year.

¹⁸ I use the World Bank’s regional classification system. Results do not change substantially when using Correlates of War (COW) regional identifiers instead.

¹⁹ Following Dorussen and Ward (2008), I divide this variable by 100 to avoid overly small coefficients.

²⁰ Of course, new democracies may also have greater reasons to avoid ratifying this Protocol, if they believe having a freer hand in any internal disturbances may enhance their likelihood of holding onto power.

motives, *New Democracy* is a dichotomous variable that takes a value of 1 for the years in which a country first reaches 7 or above on the Polity2 index; the variable ceases to equal 1 in subsequent years if the Polity2 score falls below 7, or the country has remained at 7 or above for at least 10 years.²¹

Irrespective of regime type, government ideology has often been found to influence foreign policy, which contrasts with the view that partisan politics ‘stop at the water’s edge’ (Gowa 1998). Left-wing governments generally exhibit more internationalist predilections, which should make them more willing to commit to international agreements (Budge, Klingemann, Volkens, Bara, and Tanenbaum 2001:78–83). Recent research suggests leftist regimes are more likely to commit to human rights treaties, and similar dynamics might be expected to apply to the laws of war (Neumayer 2008). Communist regimes, however, may exhibit divergent motives compared to their more moderate left-wing counterparts. The Soviet Union categorically refused to ratify the 1929 Geneva Convention on Prisoners of War, charging it was a bourgeois instrument that reinforced class divisions (Morrow 2001). Similarly, during the Korean and Vietnam Wars, Communist belligerents rejected the notion of any meaningful constraints on their conduct (Beaumont 1996). In order to evaluate the role of partisan effects, *Leftist Government* is a dichotomous variable measuring whether a country was ruled by a left-wing chief of government (Beck, Clarke, Groff, Keefer, and Walsh 2001). The data is only available beginning in 1975, meaning this hypothesis can only be tested on the Additional Protocols. The original measure collapses together more moderate social democratic and socialist governments with communist regimes. Since communist governments may be expected to behave differently, I exclude these regimes from the general leftist measure and create a separate *Communist* dichotomous variable, which is available for all years of the study.²²

In an innovative article, Goodliffe and Hawkins (2006) distinguish between three main categories of costs influencing the commitment of states to international agreements: policy change, unintended consequences, and limited flexibility. First, by ratifying international agreements, states often need to change their laws and policies to meet new commitments. For instance, Article 129 of the Third Geneva Convention requires states to enact new legislation for prosecuting individuals committing grave breaches. It is commonly argued states tend to commit to an agreement only when their existing policies are already largely consistent with the treaty’s provisions (Downs, Rocke, and Barsboom 1996). This suggests states that conducted themselves more humanely in past conflicts should be more likely to commit to the laws of war compared to frequent violators. For the 1949 Geneva Conventions, *Wartime Conduct (interstate)* is a summary measure of a state’s average level of compliance with the laws of war during all interstate wars fought over the previous 10-year window using data from Morrow (2007).²³ Given the lack of similar data on conduct across most insurgencies and civil wars, I use the Political Terror Scale (PTS) lagged by 1 year as a proxy measure for estimating wartime conduct for both Additional Protocols (Gibney,

²¹ The coding rule is based on Goodliffe and Hawkins (2006).

²² Coding is primarily based on Karnai (1992:6–7) and supplemented with country histories from the Library of Congress, available at <http://memory.loc.gov/frd/cs/>.

²³ Morrow looks at compliance across eight issue areas, on a scale ranging from 1 to 16, with 16 representing the worst violations. For each war, I take the average compliance score across all eight issue areas and then use this to construct the summary 10-year measure based on all relevant wars for each state in question. States not fighting in any wars during each time frame are given the minimum value of 1, since their compliance cannot be observed. To ensure the coding of non-warring states was not driving the results, I reran the Geneva models using only warring states. The coefficient remains in the same direction though the statistical significance of many other variables is attenuated, including war participation, which may be driven partly by the much smaller sample size ($n = 165$) along with much less variation in the war-related variables.

Cornett, and Wood 2010). PTS codes government-led abuses, such as torture, execution, and other forms of violence, on a 1–5 scale using reports from Amnesty International and the US Department of State, where 5 indicates the most abusive regimes. While abuses covered by the PTS may occur inside or outside of war, this variable provides a reasonable estimate of how states are likely to act during civil wars or insurgencies.

Second, treaties can sometimes lead to unintended costs beyond what states expected when originally joining the agreement. More powerful states may be less concerned with unforeseen consequences because they have more resources to avoid punishment, while they can still employ their material advantages to prosecute suspects from weaker states (Goodliffe and Hawkins 2006). As a measure of material power, *GDP (logged)* takes the natural log of real GDP of each state measured in constant 1996 US dollars (Gleditsch 2002). At the domestic level, common law legal systems provide greater autonomy for judges and courts to interpret legal obligations beyond the original intent of legislatures, meaning governments from such countries may be more reluctant to commit to international laws in the first place. *Common Law Country* is a dichotomous variable equaling 1 for countries with a common law judicial system, and 0 otherwise (Mitchell and Powell 2009).²⁴

Third, commitment to the laws of war may limit a state's flexibility to employ the full range of policy options when dealing with future security threats. The laws of war prohibit a wide range of acts that might prove strategically important to states fighting for their survival. States anticipating severe security threats may thus be less likely to commit to the laws of war. As a measure of the intensity of external threats for the 1949 Geneva Conventions, I rely on the militarized interstate dispute (MID) data set (Ghosn, Palmer, and Bremer 2004). *MID Involvement* calculates a 5-year moving average of the number of MIDs per year in which a state was involved, since other studies have found this to be a reasonable estimate of future threats of international conflict (Way and Sasikumar 2004).²⁵ No corollary to MIDs exists for lower-level threats of insurgency or civil conflict. As a proxy, I use *GDP Per Capita*, measured in constant 1996 US dollars (Gleditsch 2002), since poverty is often associated with weak state capacity and greater risk of such conflicts (Fearon and Laitin 2003). It should be noted that flexibility costs share some similarities to the main argument regarding the constraining effect of historical wartime legacies. The key difference, however, concerns temporal domain, since historical legacies focus much more on the weight of earlier formative events compared to the concern of flexibility costs with assessing current and future threats irrespective of such past events.

Results

Table 1 reports the findings from the discrete-time event history analysis for each of the three agreements.²⁶ Positive coefficients indicate an increase in the independent variable is associated with a rise in the probability a state will commit to the treaty, and also that it does so more quickly.²⁷

²⁴ Results do not change substantially when using La Porta, Lopez-de-Silanes, Shleifer, and Vishny's (1999) alternative coding.

²⁵ Since I include a separate variable for war participation, wars are excluded from the MID measure.

²⁶ Specifically, I use the discrete-time logistic (proportional odds) model. Results do not change significantly when using the proportional hazard (complementary log–log) model instead. All estimations were performed using Stata 11. All replication files, supporting information, and results for robustness checks are available from the author upon request.

²⁷ For all models, the duration dependence variables—years-at-risk for ratification and the three cubic splines—are jointly statistically significant.

TABLE 1. Discrete-Time Event History Analysis of Commitment to the Laws of War

	(1)	(2)	(3)
	<i>1949 Geneva Conventions</i>	<i>1977 Additional Protocol I</i>	<i>1977 Additional Protocol II</i>
War Participation [†]	-1.745 (0.884)**	-1.231 (0.398)***	-0.417 (0.371)
War Outcome [†]	-0.518 (0.163)***	-0.223 (0.493)	-0.0411 (0.502)
Global Norms	2.351 (0.737)***	-2.068 (1.882)	-2.298 (2.238)
Regional Norms	-0.785 (0.696)	2.096 (1.002)**	1.744 (1.166)
Network Centrality	0.0697 (0.0238)***	0.0149 (0.0213)	0.0557 (0.0222)**
New Democracy	-1.870 (0.930)**	0.536 (0.368)	0.660 (0.379)*
Polity Score	0.0410 (0.0193)**	-0.00495 (0.0195)	0.00775 (0.0198)
Communist	0.634 (0.322)**	0.283 (0.434)	0.425 (0.389)
Leftist Government		0.571 (0.239)**	0.467 (0.240)*
Wartime Conduct (interstate)	0.178 (0.0722)**		
Political Terror Scale		-0.152 (0.148)	-0.299 (0.150)**
GDP (logged)	0.192 (0.0853)**	-0.169 (0.110)	-0.689 (0.298)**
Common Law	-0.254 (0.363)	-0.805 (0.285)***	-0.324 (0.113)***
MID Involvement	-0.0399 (0.197)		
GDP Per Capita		1.25e-05 (2.10e-05)	1.32e-05 (2.84e-05)
Constant	-8.508 (2.152)***	-1.994 (2.098)	0.501 (2.218)
Observations	805	1864	2015
Number of countries	125	145	145
Log-likelihood	-318.1	-379.3	-369.2
χ^2	59.96	84.84	76.81

(Notes. Robust standard errors clustered by country in parentheses.

*** $p < .01$, ** $p < .05$, * $p < .1$; p -values for two-tailed tests.

[†]War participation and outcome measures refer to interstate wars for the 1949 Geneva Conventions, insurgencies for AP1, and civil wars for AP2.

The variables for duration dependence, represented by a years-at-risk of ratification variable and three cubic splines, are not shown but are jointly significant in all models.)

The models provide strong support for the constraining effect of wartime experience on commitment to the laws of war. The legacy of earlier wars appears to figure prominently in the decision making of states. Countries that experienced more war in the previous decade were less likely to commit to each agreement, and this finding is statistically significant for the Geneva Conventions and API. The coefficient for APII falls short of achieving statistical significance, though the result is somewhat sensitive to the specific measure and specification employed.²⁸ Taken together, the results across the three models buttress the argument that countries experiencing war are more likely to oppose laws governing warfare rather than become staunch supporters. Far from war-torn countries turning to international law as a way to hedge against the horrors of future conflicts, the legacy of war appears to have made such states more willing to spurn legal instruments.

Examining the experience of specific countries across different wars seems to bear this logic out. For instance, the Philippines and Indonesia have been

²⁸ One potential concern is that the war participation variable for each type of conflict is positively correlated with the respective wartime conduct measures. For instance, civil war participation is moderately correlated with the Political Terror Scale ($r = .5$). If the latter variable is removed, war participation achieves a greater level of statistical significance (p -value = .05) and in line with the results from the first two models. There may be a related concern that because of this collinearity, wartime conduct is the ultimate explanatory factor for the constraining effect of war participation. As will be discussed in further detail below, however, given that the sign of the wartime conduct coefficient changes direction across agreements, this would likely not account for the consistent negative effect of war participation for all three treaties.

free of interstate wars since their inception and, given this lack of wartime legacy, signed onto the Geneva Conventions in relatively short order. By comparison, both countries have had to contend with a variety of internal challenges to their rule and continue to experience a number of ongoing insurgencies. Consistent with the role of historical legacies, both countries have so far refused to ratify either Additional Protocol. Even countries that eventually commit to a particular agreement may do so much later than others given their different wartime experiences. Considering the long history of internal conflicts and insurgencies both before and after the fall of Saddam Hussein, Iraq only ratified AP1 in April 2010 and has still not committed to AP2.²⁹

Beyond these particular cases, the results from the quantitative analysis suggest a more cautionary note for the role of formative events. In contrast to the general view that such events can catalyze support for international law and international institutions more broadly, the legacy of war appears to operate as an obstacle against such forms of cooperation. Furthermore, the constraining effect of wartime legacies appears to function in a similar manner across states and particular circumstances. While not reported here due to space constraints, tests for a variety of possible interaction effects between war participation and other variables in the models revealed no significant results.³⁰

The impact of participating in past conflicts also appears to be a more consistent explanatory factor than the actual outcome of the fighting. The results suggest that if any notion of “victor’s justice” exists (Meernik 2003), it may be taking place outside of the laws of war. In all three agreements, the coefficient for war outcome is negative, though the coefficient only reaches statistical significance for the Geneva Conventions, while remaining much weaker for either Protocol. This suggests some modest support for the view that past losers may look to the laws of war as a way to even the playing field and provide some further protections, while winners of past wars may seek to keep open as much as possible the same tactics that worked for them in prior rounds of fighting. Indeed, in the aftermath of the Second World War, the main defeated countries of Germany and Japan committed to the Geneva Conventions relatively soon after regaining independence. By comparison, the main victors from the war—the United States, Great Britain, and the Soviet Union—took several years longer before they eventually joined the Conventions. Nevertheless, the results suggest that even if war outcome has some modest impact, the actual experience of warfare appears to have a more persistent effect on support for the laws of war.

In comparison to the findings of historical legacies of war, results for several common alternative factors are more mixed. First, norms-based arguments receive some modest, though by no means widespread, support. Global pressures from the ratification decisions of other states to the 1949 Geneva Conventions do appear to play a facilitating role in affecting the likelihood others will follow their lead. However, the effect of global norms ceases to be significant for both Protocols and the coefficient actually becomes negative. On the other hand, while regional norms are negative and insignificant for the 1949 Conventions, they become positive for both Protocols and significant for API. This suggests states may have become more sensitive to pressures from members of their immediate region in later years. Compared to the uneven impact of global and regional norms, the effect of IGO networks appears to play a more prominent

²⁹ Of course, Iraq’s decision falls outside of the timeframe of this study and was instead treated as right-censored as of the 2000 endpoint. Nevertheless, the case is in many ways consistent with the expectations of the impact of historical wartime legacies.

³⁰ Nevertheless, investigating the possibility of conditional effects for both the Geneva war regime and other treaties related to armed conflict remains an interesting avenue for future research.

role. States that exhibit higher levels of network centrality are more likely to commit sooner to the Geneva Conventions and APII, though the effect is insignificant for API.³¹

Second, evidence is also somewhat mixed for the role of domestic politics, but notable exceptions exist. The strongest results are for the Geneva Conventions where all the relevant measures are significant, though not always in the expected direction. Consistent with expectations regarding the distinctiveness of democracies, more democratic countries are more likely to ratify the Conventions, though the coefficient is no longer significant for the Protocols. In contrast, support for the self-binding motive is more limited. For the Geneva Conventions, new democracies are actually less likely to commit, which is in the opposite than expected direction. Self-binding receives greater support for the Protocols, where the coefficient is positive for both and significant at the 10 percent level for APII. This suggests a potentially interesting distinction between interstate conflicts compared to more localized violence, where in the latter case new democracies appear more willing to use international law as a way to self-bind domestic opponents.

Other domestic variables also turn out to be significant when looking at commitment to the Geneva Conventions. Balancing the view of their lawless nature and despotic treatment of their own citizens, Communist countries are actually more likely to commit to the Conventions, though the effect is no longer significant for either Protocol.³² More consistent with expectations, leftist governments are more likely to commit to both Protocols, which supports recent work arguing governments are not purely concerned with retaining office, but also seek to advance partisan agendas (Rathbun 2004:7–14).

Third, the various costs imposed by the laws of war on different states revealed some intriguing results. Contra the expectations of policy change costs, states that committed higher levels of abuse were actually more likely to commit to the Geneva Conventions. While somewhat counterintuitive, this finding is in many ways consistent with recent work looking the Convention against Torture (CAT) where certain countries with worse human rights abuses are also more likely to ratify the agreement (Hathaway 2003). Arguments put forward to explain this pattern range from the use of international commitments by violators as a small concession to opposition groups (Vreeland 2008), to the use of ratification as a costly signal to adversaries that the country is willing to do whatever it takes during any future conflict (Hollyer and Rosendorff 2009). While only provisional, future work could benefit from examining the relationship between wartime conduct and international commitments, given similar patterns in the area of human rights. By comparison, the implications of policy change costs for commitment to the Protocols is less stark. The Political Terror Scale measure is negative for both Protocols as expected, though it only attains statistical significance for APII.

Concerns over unanticipated consequences do appear to play a more important role for some of the treaties. As expected, countries with greater material resources are more likely to commit to the Geneva Conventions. However, the effect is not significant for API and actually negative for APII, suggesting more powerful countries may more likely to avoid uncertainty when dealing with civil

³¹ Some studies argue that the prominence of non-governmental organizations (NGOs) in a country can influence its support for international law (Hafner-Burton and Tsutsui 2005). However, including a measure for the number of NGOs in a country never attains statistical significance and does not alter any of the other results.

³² It should be noted the dependent variable only refers to ratifying the treaty and does not take into account any possible reservations that could undermine the overall scope and effectiveness of the agreement, a charge that has been brought specifically against Communist regimes in the past (Beaumont 1996). Recent work has sought to examine the predisposition of certain states to add reservations when ratifying international treaties (Neumayer 2007). This is an interesting question for future research on the laws of war, but is beyond the scope of this study.

conflicts, given their increasing prevalence in recent decades.³³ Turning to internal sources of uncertainty, states with common law judicial systems are less likely to commit to any of the treaties, and the results are significant for both Protocols. The greater leeway afforded to the judiciary in common law systems thus appears to act as a deterrent against commitment, which is consistent with many other studies. In contrast, costs of limited flexibility and resulting sensitivities to future threats appear to provide little explanatory leverage. MID involvement and the GDP per capita proxy for insurgencies and civil wars both fail to be statistically significant.³⁴ The non-findings for both measures of limited flexibility in some way provide further support for wartime legacies. These variables focus more on lower levels of violence and their effects on current and future threat assessments, while the war participation variables center on the crucial role played by earlier formative evidence. Given the difference in the findings for both sets of variables, it appears the commitment decisions of states are shaped much more by their past experiences compared to concerns over contemporary security threats.³⁵

Table 2 below gives a better sense of the substantive significance of wartime legacies along with a selection of several of the other main findings from the analysis. The values report the difference in the probability a state will ratify the relevant treaty in a given year when moving from lower to higher values for each variable of interest.³⁶

The results indicate the substantive effects differ greatly across variables, where wartime conduct has the most pronounced change of an increase of 30% on the probability of committing to the Geneva Conventions, though the effect become negative and greatly reduced for both Protocols where the confidence intervals include zero. As expected, a country's past experience with war has a more consistent negative impact for all three treaties resulting in between a 2% and 12% reduction in the probability of ratification and remains significant for both the Geneva Conventions and API. Although having a substantial constraining effect of over 28% for the Geneva Conventions, war outcomes do not have much impact on either Protocol. The remaining variables also have varying effects on commitment, but in several instances fail to be meaningfully significant. In sum, the results point to numerous factors playing a role on commitment with historical legacies exhibiting a distinctive constraining effect on ratifying the laws of war.

Conclusion

The Geneva Conventions and their Additional Protocols have gradually garnered rising levels of international support from state actors, but the road to full acceptance has been halting and riddled with obstacles. Several factors provide a

³³ As an alternative measure, I also considered the composite index of national capability (CINC) from COW (Singer, Bremer, and Stuckey 1972). When using CINC, none of the coefficients attain statistical significance, which provides further reason to be cautious regarding the explanatory power of external sources of unanticipated costs.

³⁴ As an alternative, I considered a similar measure using lower-level conflicts (that is, <1,000 annual battle deaths) from the UCDP/PRIO armed conflict data set (Gleditsch, Wallenstein, Eriksson, Sollenberg, and Strand 2002). This is not a perfect corollary to the threat measure from MIDs, since all UCDP/PRIO cases involve at least 25 battle deaths, while MIDs also include cases without any fatalities. Nevertheless, even when using this measure, the results for the Additional Protocols do not change substantially.

³⁵ One additional concern might be that expectations of future conflict are not adequately captured by the proposed measures for flexibility costs and, more problematically, might be inherently connected to wartime experience. This might especially be the case because many wars are clustered temporally and take place as part of rivalries (Goertz and Diehl 2000). The legacy of war finding might thus be a function primarily of states that are part of a rivalry. However, including a measure for whether a state is part of a rivalry is not significant and does not substantially alter the results, suggesting there is indeed a separate effect for wartime legacies. I thank Daniel Morey for sharing his rivalry data, which allowed me to test for this possibility.

³⁶ All simulations performed using *CLARIFY* (King, Tomz, and Wittenberg 2000).

TABLE 2. Substantive Effects of Selected Independent Variables on Probability of Ratifying the Laws of War

Variable	Change in probability of commitment		
	Geneva Conventions	API	APII
War Participation [†]	-0.12 (-0.18, -0.002)	-0.05 (-0.07, -0.03)	-0.02 (-0.05, 0.05)
War Outcome [†]	-0.28 (-0.44, -0.12)	-0.04 (-0.26, 0.07)	-0.04 (-0.42, 0.16)
Network Centrality	0.07 (0.03, 0.11)	0.01 (-0.02, 0.04)	0.03 (0.01, 0.06)
New Democracy	-0.11 (-0.15, -0.02)	0.03 (-0.01, 0.08)	0.03 (-0.003, 0.08)
Leftist Government	-	0.03 (0.01, 0.06)	0.02 (-0.001, 0.05)
Wartime Conduct [‡]	0.30 (0.05, 0.60)	-0.02 (-0.06, 0.02)	-0.03 (-0.08, 0.001)
Common Law	-0.02 (-0.09, 0.06)	-0.02 (-0.03, -0.01)	-0.02 (-0.03, -0.002)

(Notes. Baseline probability is calculated by setting all continuous and categorical variables to their means, and all dichotomous variables to 0. The baseline probability of ratifying each treaty is as follows: Geneva Conventions (.14); API (.04); APII (.03). Changes in predicted probability of ratification are calculated by moving from 0 to 1 for dichotomous variables, minimum to maximum for categorical variables, and 20th to 80th percentile for continuous variables; 95% confidence intervals in parentheses.

[†]This refers to interstate wars for the 1949 Geneva Conventions, insurgencies for API, and civil wars for APII.

[‡]This refers to the *Wartime Conduct* (interstate) variable for the Geneva Conventions, and the *Political Terror Scale* variable for the Additional Protocols.)

better understanding of whether and how quickly states join the agreements making up the Geneva war regime. The historical legacy of warfare weighs heavily on the decision making of states. Rather than turning to legal instruments as a way to mitigate the potential strains of future military confrontations, states coming out of wars appear much more willing to maintain a degree freedom from the constraints imposed by international humanitarian law. The outcome and conduct of past wars also seem to matter at times, though not always in the expected direction. At the domestic level, while various aspects of regime type seem to matter in certain instances, the partisanship of governments appears to be a more significant determinant, with leftist regimes more likely to ratify the laws of war. Turning to the external level, network of linkages through IGOs appears to provide various incentives for states to commit to new agreements.

The findings have implications for understanding wartime politics and suggest several avenues for future research. First, the role of past formative events in shaping the preferences and incentives of states has potential implications for the study of international law more generally. The constraining effects of previous conflicts on support for subsequent international treaties suggest states do not make decisions with a clean slate, but are rather molded in crucial ways by earlier experiences. While states may take into account contemporary costs and benefits of a given treaty, the shadow of the past appears to loom large. Formative events may thus figure prominently in state support for other issue areas, such as past episodes of genocide or severe repression for human rights, or natural disasters for the environment and is deserving of closer scrutiny. In particular, while this paper focused on the Geneva war regime, it remains to be seen whether wartime legacies have a similar effect on the related branch of Hague law, which includes not only the 1899 and 1907 Hague Conventions but also more recent agreements like the 1980 Convention on Conventional Weapons and its numerous protocols.³⁷

Second, developing a theoretical framework for commitment to the laws of war provides a necessary first step for more fully understanding the subsequent effectiveness of international law during armed conflict. Work on international law has increasingly stressed that the factors leading states to ratify a treaty may

³⁷ I thank an anonymous reviewer for suggesting this future line of inquiry.

shape subsequent compliance behavior (von Stein 2005). The voluntary nature of international treaties means that selection effects are likely present that bias any inferences resulting from a focus on the compliance stage in isolation from earlier decision making. Future work evaluating the effectiveness of the laws of war may benefit from more explicitly taking into account the initial decision of states to commit to relevant treaties.

Third, examining the decision to commit is certainly a useful step in evaluating the overall effectiveness of international law, but this leaves aside the even earlier stage of drafting and negotiating the original agreement. As is evident from the history of API with its contentious debates over the incorporation of guerrilla warfare, the content of treaties matters a great deal for state commitment. Research into the design and negotiation of agreements related to armed conflict remains relatively sparse, but includes recent work on national positions in the sessions leading to the creation of the ICC (Powell and Mitchell 2008; Goodliffe and Hawkins 2009). This work relates to the broader literature on the rational design of international institutions, which examines how certain attributes of agreements can be effective in solving particular problems and challenges, including the laws of war (Koremenos, Lipson, and Snidal 2001; Morrow 2001). Subsequent research could investigate in a more rigorous manner the positions of states negotiating the treaties making up the Geneva war regime, and how institutional design was employed to address the obstacles inherent in achieving cooperation in matters relating to armed conflict.

Lastly, looking back to the opening question regarding the prospects for any new treaty on the laws of war, the record of war-torn states toward the Geneva Conventions and subsequent Protocols does not provide a great deal of optimism. Countries having experienced war are those most likely to fall under the purview of any new humanitarian agreement, but appear to be the least likely to actually commit in the first place. In this light, it is perhaps more realistic to resuscitate and adapt existing treaties to new wartime challenges as suggested by several commentators (McDonald and Sullivan 2003; De Nevers 2006), rather than attempt to draft entirely new agreements that risk receiving limited support.

References

- ABBOTT, KENNETH W., ROBERT O. KEOHANE, ANDREW MORAVCSIK, ANNE-MARIE SLAUGHTER, AND DUNCAN SNIDAL. (2000) The Concept of Legalization. *International Organization* 54: 401–419.
- ABBOTT, KENNETH W., AND DUNCAN SNIDAL. (2000) Hard and Soft Law in International Governance. *International Organization* 54: 421–456.
- BÄTTIG, MICHÈLE B., AND THOMAS BERNAUER. (2009) National Institutions and Global Public Goods: Are Democracies More Cooperative in Climate Change Policy? *International Organization* 63: 281–308.
- BEAUMONT, JOAN. (1996) Protecting Prisoners of War, 1939–1995. In *Prisoners of War and Their Captors in World War II*, edited by Bob Moore, and Kent Fedorowich. Oxford: Berg.
- BECK, THORSTEN, GEORGE CLARKE, ALBERTO GROFF, PHILIP KEEFER, AND PATRICK WALSH. (2001) New Tools in Comparative Political Economy: The Database of Political Institutions. *World Bank Economic Review* 15: 165–176.
- BECK, NATHANIEL, JONATHAN N. KATZ, AND RICHARD TUCKER. (1998) Taking Time Seriously: Time-Series-Cross-Section Analysis with a Binary Dependent Variable. *American Journal of Political Science* 42: 1260–1288.
- BERNAUER, THOMAS, AND PETER MOSER. (1996) Reducing Pollution of the Rhine River: The Influence of International Cooperation. *Journal of Environment and Development* 5: 391–417.
- BEST, GEOFFREY. (1980) *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts*. New York: Columbia University Press.
- BIDDLE, TAMI D. (1994) Air Power. In *The Laws of War: Constraints on Warfare in the Western World*, edited by Michael Howard, George J. Andreopoulos, and Mark R. Shulman. New Haven, CT: Yale University Press.

- BLAINEY, GEOFFREY. (1988) *The Causes of War*. New York: Free Press.
- BOX-STEFFENSMEIER, JANET M., AND BRADFORD S. JONES. (2004) *Event History Modeling: A Guide for Social Scientists*. Cambridge: Cambridge University Press.
- BUDGE, IAN, HANS-DIETER KLINGEMANN, ANDREA VOLKENS, JUDITH BARA, AND ERIC TANENBAUM. (2001) *Mapping Policy Preferences: Estimates for Parties, Electors, and Governments 1945–1998*. Oxford: Oxford University Press.
- CARPENTER, CHARLI. (2008) Geneva 2.0. *National Interest*.
- CLAUSEWITZ, CARL VON. (1984) *On War*, translated by Michael Howard and Peter Paret. Princeton, NJ: Princeton University Press.
- DE NEVERS, RENÉE. (2006) The Geneva Conventions and New Wars. *Political Science Quarterly* 121: 369–395.
- DESCH, MICHAEL C. (2010) The More Things Change, the More They Stay the Same: The Liberal Tradition and Obama's Counterterrorism Policy. *PS: Political Science & Politics* 43: 425–429.
- DORUSSEN, HAN, AND HUGH WARD. (2008) Intergovernmental Organizations and the Kantian Peace: A Network Perspective. *Journal of Conflict Resolution* 52: 189–212.
- DOWNES, ALEXANDER B. (2009) How Smart and Tough Are Democracies? Reassessing Theories of Democratic Victory in War. *International Security* 33: 9–51.
- DOWNES, GEORGE W., DAVID M. ROCKE, AND PETER N. BARSOOM. (1996) Is the Good News About Compliance Good News About Cooperation? *International Organization* 50: 379–406.
- DOYLE, MICHAEL W. (1986) Liberalism in World Politics. *American Political Science Review* 80: 1151–1169.
- DOYLE, MICHAEL W., AND NICHOLAS SAMBANIS. (2006) *Making War and Building Peace: United Nations Peace Operations*. Princeton, NJ: Princeton University Press.
- DUNÉR, B., AND H. GEURTSSEN. (2002) The Death Penalty and War. *The International Journal of Human Rights* 6: 1–28.
- EYFFINGER, ARTHUR. (1988) *The Peace Palace: Residence for Justice, Domicile of Learning*. The Hague, The Netherlands: Carnegie Foundation.
- FEARON, JAMES D., AND DAVID D. LAITIN. (2003) Ethnicity, Insurgency, and Civil War. *American Political Science Review* 97: 75–90.
- FINNEMORE, MARTHA, AND KATHRYN SIKKINK. (1998) International Norm Dynamics and Political Change. *International Organization* 52: 887–917.
- FORSYTHE, DAVID P. (2005) *The Humanitarians: The International Committee for the Red Cross*. Cambridge: Cambridge University Press.
- GHOSN, FATEN, GLENN PALMER, AND STUART BREMER. (2004) The Mid3 Data Set, 1993–2001: Procedures, Coding Rules, and Description. *Conflict Management and Peace Science* 21: 133–154.
- GIBNEY, MARK, LINDA CORNETT, AND REED WOOD. (2010) Political Terror Scale 1976–2006. Available at www.politicalterroryscale.org/.
- GLEDITSCH, KRISTIAN S. (2002) Expanded Trade and GDP Data. *Journal of Conflict Resolution* 46: 712–724.
- GLEDITSCH, NILS PETTER, PETER WALLENSTEIN, MIKAEL ERIKSSON, MARGARETA SOLLENBERG, AND HAVARD STRAND. (2002) Armed Conflict 1946–2001: A New Dataset. *Journal of Peace Research* 39: 615–637.
- GOERTZ, GARY, AND PAUL F. DIEHL. (2000) *War and Peace in International Rivalry*. Ann Arbor: University of Michigan Press.
- GONZALES, ALBERTO R. (2002) Memorandum for the President. Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban. National Security Archives.
- GOODLIFFE, JAY, AND DARREN G. HAWKINS. (2006) Explaining Commitment: States and the Convention against Torture. *Journal of Politics* 68: 358–371.
- GOODLIFFE, JAY, AND DARREN HAWKINS. (2009) A Funny Thing Happened on the Way to Rome: Explaining International Criminal Court Negotiations. *Journal of Politics* 71: 977–997.
- GOODLIFFE, JAY, DARREN HAWKINS, CHRISTINE HORNE, AND DANIEL NIELSON. (2010) *Dependence Networks and the International Criminal Court*. Unpublished Manuscript, Brigham Young University.
- GOWA, JOANNE. (1998) Politics at the Water's Edge: Parties, Voters, and the Use of Force Abroad. *International Organization* 52: 307–324.
- GREENWOOD, CHRISTOPHER. (2002) New Orders? New Norms? International Law and the 'War against Terrorism'. *International Affairs* 78: 301–317.
- HAAS, PETER M. (1992) Banning Chlorofluorocarbons: Epistemic Community Efforts to Protect Stratospheric Ozone. *International Organization* 46: 187–224.
- HAFNER-BURTON, EMILIE M., AND KIYO TSUTSUI. (2005) Human Rights in a Globalizing World: The Paradox of Empty Promises. *American Journal of Sociology* 110: 1373–1411.

- HATHAWAY, OONA A. (2003) The Cost of Commitment. *Stanford Law Review* 55: 1821–1862.
- HOLLYER, JAMES R., AND B. PETER ROSENDORFF. (2009) Domestic Politics and the Accession of Authoritarian Regimes to Human Rights Treaties. Unpublished manuscript, New York University.
- HUMAN RIGHTS WATCH. (2008) *Fighting Terrorism Fairly and Effectively: Recommendations for President-Elect Barack Obama*. New York: Human Rights Watch.
- JERVIS, ROBERT. (1976) *Perception and Misperception in International Politics*. Princeton, NJ: Princeton University Press.
- KARNAI, JANOS. (1992) *The Socialist System: The Political Economy of Communism*. Princeton, NJ: Princeton University Press.
- KEOHANE, ROBERT O. (1984) *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press.
- KHONG, YUEN FOONG. (1992) *Analogies at War: Korea, Munich, Dien Bien Phu, and the Vietnam Decisions of 1965*. Princeton, NJ: Princeton University Press.
- KING, GARY, MICHAEL TOMZ, AND JASON WITTENBERG. (2000) Making the Most of Statistical Analyses: Improving Interpretation and Presentation. *American Journal of Political Science* 44: 347–361.
- KOREMENOS, BARBARA, CHARLES LIPSON, AND DUNCAN SNIDAL. (2001) The Rational Design of International Institutions. *International Organization* 55: 761–800.
- LA PORTA, RAFAEL, FLORENCIO LOPEZ-DE-SILANES, ANDREI SHLEIFER, AND ROBERT VISHNY. (1999) The Quality of Government. *Journal of Law, Economics, and Organization* 15: 222–279.
- LAVOYER, JEAN-PHILIPPE. (2004) International Humanitarian Law: Should It Be Reaffirmed, Clarified or Developed? In *Israel Yearbook on Human Rights*, edited by Yoram Dinstein, and Fania Domb. Leiden, The Netherlands: Martinus Nijhoff.
- LIPSON, CHARLES. (2003) *Reliable Partners: How Democracies Have Made a Separate Peace*. Princeton, NJ: Princeton University Press.
- LYALL, JASON, AND ISAIAH WILSON. (2009) Rage against the Machines: Explaining the Outcomes in Counterinsurgency Wars. *International Organization* 63: 67–106.
- MARSHALL, MONTY G., AND KEITH JAGGERS. (2005) *Polity Iv Project: Data Users' Manual*. Arlington, VA: George Mason University.
- MCDONALD, NEIL, AND SCOTT SULLIVAN. (2003) Rational Interpretation in Irrational Times: The Third Geneva Convention and The “War on Terror”. *Harvard International Law Journal* 44: 301–316.
- MEARSHEIMER, JOHN. (1994–1995) The False Promise of International Institutions. *International Security* 19: 5–49.
- MEERNIK, JAMES. (2003) Victor’s Justice or the Law? Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia. *Journal of Conflict Resolution* 47: 140–162.
- MITCHELL, SARA M., AND EMILIA J. POWELL. (2009) Legal Systems and Variance in the Design of Commitments to the International Court of Justice. *Conflict Management and Peace Science* 26: 164–190.
- MORAVCSIK, ANDREW. (2000) The Origins of Human Rights Regimes: Democratic Delegation in Post-war Europe. *International Organization* 54: 217–252.
- MORROW, JAMES D. (2001) The Institutional Features of the Prisoners of War Treaties. *International Organization* 55: 971–991.
- MORROW, JAMES D. (2007) When Do States Follow the Laws of War? *American Political Science Review* 101: 559–572.
- MYLES, ERIC. (2002) “Humanity,” “Civilization” and the “International Community” in the Late Imperial Russian Mirror: Three Ideas “Topical for Our Days.” *Journal of the History of International Law* 4: 310–334.
- NEUMAYER, ERIC. (2007) Qualified Ratification: Explaining Reservations to International Human Rights Treaties. *The Journal of Legal Studies* 36: 397–429.
- NEUMAYER, ERIC. (2008) Death Penalty Abolition and the Ratification of the Second Optional Protocol. *International Journal of Human Rights* 12: 3–21.
- NEUMAYER, ERIC. (2009) A New Moral Hazard? Military Intervention, Peacekeeping and Ratification of the International Criminal Court. *Journal of Peace Research* 46: 659–670.
- NISBETT, RICHARD, AND LEE ROSS. (1980) *Human Inference: Strategies and Shortcoming of Social Judgment*. Englewood Cliffs, NJ: Prentice-Hall.
- PILLOUD, CLAUDE, YVES SANDOZ, CHRISTOPHE SWINARSKI, AND BRUNO ZIMMERMANN. (1987) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Norwell, MA: Martinus Nijhoff Publishers.

- POSNER, ERIC A. (2003) A Theory of the Laws of War. *University Of Chicago Law Review* 70: 197–317.
- POWELL, EMILIA J., AND SARA M. MITCHELL. (2008) The Creation and Expansion of the International Criminal Court: A Legal Explanation. In *Annual Meeting of the Midwest Political Science Association*. Chicago, IL.
- RABKIN, JEREMY. (2003) After Guantanamo: The War over the Geneva Convention. *The National Interest on International Law and Order*, edited by R. James Woolsey. New Brunswick, NJ: Transaction.
- RATHBUN, BRIAN C. (2004) *Partisan Interventions: European Party Politics and Peace Enforcement in the Balkans*. Ithaca, NY: Cornell University Press.
- REAGAN, RONALD. (1987) Letter of Transmittal. *American Journal of International Law* 81: 910–912.
- REITER, DAN. (1996) *Crucible of Beliefs: Larning, Aliances, and World Wars*. Ithaca, NY: Cornell University Press.
- REITER, DAN, AND CURTIS MEEK. (1999) Determinants of Military Strategy, 1903–1994: A Quantitative Empirical Test. *International Studies Quarterly* 43: 363–387.
- ROBERTS, ADAM. (1994) Land Warfare: From Hague to Nuremberg. In *The Laws of War: Constraints on Warfare in the Western World*, edited by Michael Howard, George J. Andreopoulos, and Mark R. Shulman. New Haven, CT: Yale University Press.
- RODLEY, NIGEL. (1999) *The Treatment of Prisoners under International Law*. Oxford: Clarendon Press. Oxford, UK: Clarendon Press.
- ROSEN, STEPHEN P. (2005) *War and Human Nature*. Princeton, NJ: Princeton University Press.
- RUGGIE, JOHN G. (1982) International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order. *International Organization* 36: 379–415.
- SCHINDLER, DIETRICH, AND JIN TOMAN. (2004) *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents*. Boston: Martinus Nijhoff Publishers.
- SIKKINK, KATHRYN. (1993) The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe. In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, edited by Judith Goldstein, and Robert O. Keohane. Ithaca, NY: Cornell University Press.
- SIMMONS, BETH A. (2000) International Law and State Behavior: Commitment and Compliance in International Monetary Affairs. *American Political Science Review* 94: 819–835.
- SIMMONS, BETH, AND ALLISON DANNER. (2010) Credible Commitments and the International Criminal Court. *International Organization* 64: 225–256.
- SINGER, J. DAVID, STUART BREMER, AND JOHN STUCKEY. (1972) Capability Distribution, Uncertainty, and Major Power War, 1820–1965. in *Peace, War, and Numbers*, edited by Bruce M. Russett. Beverly Hills, CA: Sage.
- VON STEIN, JANA. (2005) Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance. *American Political Science Review* 99: 611–622.
- VON STEIN, JANA. (2008) The International Law and Politics of Climate Change: Ratification of the United Nations Framework Convention and the Kyoto Protocol. *Journal of Conflict Resolution* 52: 243–268.
- THOMAS, WARD. (2000) Norms and Security: The Case of International Assassination. *International Security* 25: 105–133.
- TVERSKY, AMOS, AND DANIEL KAHNEMAN. (1982) Judgment under Uncertainty: Heuristics and Biases. in *Judgement under Uncertainty: Heuristics and Biases*, edited by Daniel Kahneman, Paul Slovic, and Amos Tversky. New York: Cambridge University Press.
- VALENTINO, BENJAMIN A., PAUL K. HUTH, AND SARAH CROCO. (2006) Covenants without the Sword: International Law and the Protection of Civilians in Times of War. *World Politics* 58: 339–377.
- VREELAND, JAMES R. (2008) Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture. *International Organization* 62: 65–101.
- WALZER, MICHAEL. (2000) *Just and Unjust Wars*, 3rd edition. New York: Basic Books.
- WARD, HUGH. (2006) International Linkages and Environmental Sustainability: The Effectiveness of the Regime Network. *Journal of Peace Research* 43: 149–166.
- WAY, CHRISTOPHER R., AND KARTHIKA SASIKUMAR. (2004) Leaders and Laggards: When and Why Do Countries Sign the Npt? REGIS Working Paper no.16.
- WIPPMAN, DAVID. (2005) Introduction: Do New Wars Call for New Laws? In *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, edited by David Wippman, and Matthew Evangelista. New York: Transnational.
- WOTIPKA, CHRISTINE M., AND KIYOTERU TSUTSUI. (2008) Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965–2001. *Sociological Forum* 23: 724–754.

Supporting Information

Additional Supporting Information may be found in the online version of this article:

Table S1. Correlation Matrix of Explanatory Variables.

Table S2. Discrete-Time Event History Analysis of Commitment to the Laws of War (Including Only Countries that Experienced War for the Geneva Convention Model).

Table S3. Discrete-Time Event History Analysis of Commitment to the Laws of War (Considering Ratification of All Three Treaties as the Event of Interest).

Table S4. Discrete-Time Event History Analysis of Commitment to the Laws of War (Using CINC Instead of GDP Logged).

Table S5. Commitment to the Laws of War (Cox Proportional Hazard Model).

Table S6. Discrete-Time Event History Analysis of Commitment to the Laws of War (Using Low-Level PRIO Conflicts as Measure for Threat of Conflict).

Table S7. Discrete-Time Event History Analysis of Commitment to the Laws of War (Including Rivalry Measure).

Please note: Wiley-Blackwell are not responsible for the content or functionality of any supporting information supplied by the authors. Any queries (other than missing material) should be directed to the corresponding author for the article.