A REPUTATION OF NON-RATIFICATION: EXPLAINING THE DELAY IN THE UNITED STATES' RATIFICATION OF THE ICCPR

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ABSTRACT

The history of the United States' involvement in international agreements reveals a disproportionate timeline between signing and ratification. Notably, the International Covenant on Civil and Political Rights (ICCPR), one of the binding twin covenants enacting the goals of the non-binding Universal Declaration of Human Rights (UDHR), features a 15-year delay following signing before ratification by the U.S. The agreement was viewed as inherently Western, and the United States took leadership during negotiations, becoming the primary promoter of the drafting process. Yet, domestic support for the agreement was seemingly inconsistent with its leading role, identifiable by the delay. The following analysis will evaluate the rationales—legal, institutional, and political—for the delay in the United States' ratification of the ICCPR. It will then explore catalysts in the international sphere that incited the eventual ratification. Through close readings of Senate hearings, drafts of UN negotiation documents, and analysis of theoretical frameworks by which the United States' system ratifies international agreements, the following synthesis is a variety of

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primary and secondary sources which explain the delay in ratification. The study reveals that the United States' reputation of non-ratification has implications for its international credibility, affecting its ability to shape global politics. The ICCPR is used as a case that elucidates the United States' rationale for ratifying, or neglecting to ratify, other international agreements; thus, this analysis will address the influence of international politics on domestic participation.

INTRODUCING THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

"The covenant is rooted in Western, democratic traditions and values. It guarantees rights and freedoms consistent with our own constitution and the Bill of Rights," argued the chairman of the U.S. Senate Committee on Foreign Relations in the 1991 hearing on the International Covenant on Civil and Political Rights. This hearing, which occurred more than a decade after the U.S. signed the covenant, prompted the United States' eventual ratification of the agreement. The International Covenant on Civil and Political Rights (hereafter, ICCPR) is a primary part of global doctrine that defined and institutionalized respect for human rights. The United Nations' International Bill of Human Rights² is comprised of the non-binding Universal Declaration of Human Rights and its binding twin covenants, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR prescribes international law relating to economics, labor, health, education, and living standards, and it remains unsigned and unratified by the United States.³⁴

HISTORY AND LEADERSHIP OF THE COVENANT

The United States played a leading role in forming the ICCPR. Taking

² The International Bill of Human Rights is the title under which the Universal Declaration of Human Rights falls, which remains legally unbinding. The legally binding components are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

³ A fundamental contrast exists between the rights established in the ICCPR and ICESCR. The ICCPR outlines "negative" rights while the ICESCR outlines "positive" rights. Legal scholarship distinguishes between these, defining negative rights as those that entail duties of self-restraint in which a state will not derogate the right, while positive rights impose affirmative duties on the state with respect to granting specified benefits. (See Fellmeth, endnote 4).

⁴ Aaron Fellmeth, *Paradigms of International Human Rights Law*, Oxford: Oxford University Press, 2016, 215.

charge of the ICCPR seemed an appropriate task for the United States, given its status as a world leader in the development of human rights norms⁵ and its long history of calling on other governments to respect rights consistent with principles of democracy.⁶ The United States demonstrated leadership in the agreement's formation in numerous ways, including facilitating the document's conclusion in New York City, serving as the primary drafter of the agreement, and maintaining control of the United Nations. The following section explores in greater detail the displays of leadership expressed by the United States.

The United States helped to form the ICCPR by serving as the “prime promoter” of the drafting process and setting the agenda of negotiations.⁷ Scholar Barbara Koremenos theorizes agenda setting as demonstrative of state leadership in negotiations whereby the “leading” state “initiat[es] cooperative endeavors by putting forth the first drafts of an international agreement and, for the most part, remain[s] in control of subsequent drafts.”⁸ The United States also maintained control in the UN, the international institution through which the ICCPR was formed. The United States and other victors of WWII created the UN. The postwar advantage notion posits that most major International Governmental Organizations (IGOs) are created in the aftermath of a large-scale war, when power asymmetries are most pronounced and the victor has a pointed interest in shaping the future institutional order.⁹ The United States shaped the structure of global institutions after WWII, most notably through the founding of the United Nations, where it maintains an international position of power.¹⁰

While the U.S. portrayed itself as a proponent of the covenant's creation, domestic support in the U.S. for the agreement contradicted its leading role and

⁵ M. Cherif Bassouni, “Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate,” *DePaul Law Review* vol. 42, no. 4 (Summer 1993): 1169.

⁶ Aryeh Neier, “Political Consequences of the United States Ratification of the International Covenant on Civil and Political Rights,” *DePaul Law Review* vol. 42, no. 4 (Summer 1993): 1236.

⁷ John Quigley, “The International Covenant on Civil and Political Rights and the Supremacy Clause,” *DePaul Law Review* vol. 42, no. 4 (Summer 1993): 1288.

⁸ Barbara Koremenos, et al. “International Organization Foundation: The Rational Design of International Institutions” The MIT Press, 55(4) 2016: 237.

⁹ Erik Voeten, “Where Is U.S. Multilateral Leadership? Reconceptualizing Transnational Governance,” 2016 Global Economic Symposium. (August 2016): 1.

¹⁰ Voeten, “Where Is U.S. Multilateral Leadership?” 1.

caused misalignment with international expectations. The ICCPR concluded and opened for signature on December 19, 1966 in New York City, but the United States did not sign the agreement until 1977, under the executive leadership of then-President Jimmy Carter. Ratification occurred in 1992 under the executive leadership of then-president George H. W. Bush, nearly 30 years following its conclusion. Given the ways in which the United States took leadership during negotiations, this timeframe with long lags between conclusion and signature, and signature and ratification, is perplexing. Many nations could not reconcile the United States' reluctance to ratify the treaty with its leading role in the treaty's creation.¹¹ Further, the outward aim of the United States to uphold human rights on its soil and abroad made the delay in the ICCPR's ratification striking and atypical in comparison to its democratic peers. *Figure 1* depicts the dates of signing, ratifying and years of delay for other Western democracies.

Figure 1.

Country	Date Signed	Date Ratified	Delay (years)
Australia	1972	1980	8
Austria	1973	1978	5
Belgium	1968	1983	15*
Chile	1969	1972	3
Denmark	1968	1972	4
Finland	1967	1975	8
Germany	1968	1973	5
Hungary	1969	1974	5
Iceland	1968	1979	11
Ireland	1973	1989	16*
Israel	1966	1991	25*
Italy	1967	1978	11
Japan	1978	1979	1
Netherlands	1969	1978	9
New Zealand	1968	1978	10

¹¹ Bassouni, "Reflections on the International Covenant," 1171.

Norway	1968	1972	4
Poland	1967	1977	10
Portugal	1976	1978	2
Sweden	1967	1971	4
United Kingdom	1968	1976	8
United States	1977	1992	15*

*= *delay time equal to or greater than U.S. delay time* | *Average: 8.53 years*

The average Western democratic state¹² took 8.53 years to ratify after signing, with the United States' delay time of 15 years rivaled or surpassed only by Belgium (15-year delay), Ireland (16-year delay), and Israel (25-year delay). Since the United States proved itself the leader of negotiations in the ICCPR's development, what might account for the delay to ratify that followed its signing? Furthermore, why did the U.S. choose to ratify when it did? The importance of the ICCPR to international human rights guarantees justifies close evaluation of its timeline of acceptance in the United States.

This analysis will explore the rationale regarding the ratification of international human rights law in the United States using the ICCPR as a representative case. While the timelines of other international laws could be evaluated, the focused study of the ICCPR is relevant when asking: how did a leading Western nation neglect to accede to one of the primary human rights doctrines in the international community? The ICCPR is uniquely suited for the study as it set precedents for human rights agreements in its position as one of the binding covenants enacting the aspirational guarantees in the United Declaration of Human Rights. It incorporates the rights considered primary by free and fair governments, including rights to life and liberty, among others. The agreement is broad in its coverage of rights as compared to niche topics guaranteed by other major international treaties such as the *Convention Against*

¹² Western democracies used in calculation were selected according to three criteria: 1) states with ratification dates (of the ICCPR) submitted to the UNTC, 2) states holding OECD status, and 3) states with Freedom House distinction as free. Countries only with accession dates deposited were omitted, including Canada. These states, if considered, would further demonstrate the US as an oddity with extensive delay given their absence of any delay between signature and accession.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the *Convention on the Rights of the Child*. These topical agreements are more likely to be accepted or rejected outright by a state based on its preferences, while the ICCPR's breadth of encompassed rights allows for more debate, disagreement, and demands within the substance of the agreement. It is thus a useful representative case for understanding delay in the ratification of human rights treaties as acceded to by the U.S. at large. The particularities of the ICCPR and its timeline are analyzed to explore how the U.S. approaches signing and ratifying international human rights law.

The following section will outline the main hypotheses regarding legal, institutional, and geopolitical rationales for delay and ratification, respectively. The analysis will track the agreement's signature and ratification sequentially, evaluating the substance of the ICCPR to posit legal explanations for delay, investigating institutional constraints to the agreement's ratification, and understanding international factors as they contribute to the eventual accession by the United States. The analysis reveals that disagreements over the law's substance only partially explain the delay and that these legal disagreements become relevant as they interact with the domestic system of ratification. The United States ratifies treaties with a domestic institutional structure that is slow by design and the preferences of executives play an outsized role in decision-making, which perpetuate delay in ratification. Further, the analysis reveals that ratification of the ICCPR is incited by a catalyst after a period of stasis occurring at the international level. The analysis shows how domestic institutional factors prolong delay and an international catalyst ignites treaty ratification. The domestic factors which influence accession to human rights law have consequences for a state's international credibility and role in global politics.

HYPOTHESIS AND APPROACH

Extensive legal literature recounts the particularities of the ICCPR, with elaborative discussions of the agreement clauses and the U.S. resistance or adherence to each. This literature differs in content, but many writings express the same core idea: the eventual ratification of the ICCPR would be critical to maintaining the United States' international influence on the development of freedoms and democratic rights around the globe.¹³ At stake with the ICCPR was the United

¹³ David P. Stewart, "United States Ratification of the Covenant on Civil and Political Rights:

States' legitimacy as a norm-setting state. As a leading democracy, the country's accession revealed its intentions to the international community, as is explored in greater detail later. However, while scholars have marveled at the delay following signing, few have attempted to explain it.

The prevailing argument suggests the United States only signs international law, particularly human rights law, when the agreement conforms to domestic standards and requires no change in U.S. practices.¹⁴ These agreements are low-cost, as they need no additional legislation to implement their guarantees. Under this framework, states will fail to ratify agreements that differ too greatly from or contradict their domestic body of law. The first hypothesis regarding the delay between the ICCPR's signature and ratification comes from this theory and evaluates the document's content:

H1: Differences in international standards codified in the ICCPR and the domestic body of law (U.S. Constitution) cause substantive disagreements which slow ratification of international law.

How do these substantive legal disagreements move through the domestic system in the U.S. to affect delay? In her 2009 publication *Mobilizing for Human Rights*, scholar Beth Simmons contemplates the likelihood of ratification of international human rights agreements finding that countries that practice different legal systems—like common law or civil law—have statistically significant differences in the number of agreements ratified.¹⁵ Her work introduced the relevance of variances in domestic institutions, as they affect the passage and implementation of laws. The United States' executive is constitutionally granted the right to propose and negotiate international agreements, but agreement ratification is completed only with the advice and consent of the Senate. The second and third hypotheses closely relate to the logistics of the U.S. system of ratification:

The Significance of the Reservations, Understandings, and Declarations,” *DePaul Law Review* vol. 42, no. 4 (Summer 1993): 1184.

¹⁴ Quigley, “The International Covenant,” 1287.

¹⁵ Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*. (Cambridge University Press, 2009): 87.

H2: The United States' institutional structure of codifying treaties is subject to constraints of time which slow ratification of international law.

H3: The preferences of the executive shape priorities of foreign relations and lawmaking, which slows ratification of international law.

Equally important to the study of the delay is an explanation of the eventual decision to ratify. Much like Newton's conception of stasis and motion in foundational physics theory, the delay period of the ICCPR can be conceived of as an inertial political state. Newton's first law of motion states that the inertia of an object is maintained until acted upon by an external force. Under this analogy, political change is caused by an external force, which jolted the U.S. out of its inertial complacency. Stasis in the ICCPR's timeline is the period of non-ratification by the United States, ended only due to a catalyst external to the United States itself. Overcoming delay, as predicted for the ICCPR, is broader than micro-legal rationale and domestic institutional explanations, and engages instead with the international level of analysis. Thus, the hypothesis regarding the eventual decision to ratify is as follows:

H4: The United States' decision to ratify the ICCPR after the delay, a period of political stasis, was incited by a catalyst at the international level.

Through a close reading of Senate hearings, an analysis of UN negotiation documents, and an evaluation of theoretical frameworks by which the United States' federal government ratifies international agreements, the following analysis will synthesize a variety of primary and secondary sources to test these hypotheses regarding the delay in ratification of the ICCPR. The United Nations Treaty Series data is used as the source for international agreement details. This analysis of source material is a unique and meaningful approach to studying the ICCPR, as it allows for examination into the nuances of the case which can be scrutinized in greater detail than a study which looks comparatively across other states and laws. The findings from an in-depth review will differ from those observed in comparative or larger-scale studies.

Admittedly, there are also shortcomings to this approach. One, in particular, is the risk of overlooking broader patterns that could be studied in a larger statistical analysis on signature and ratification dates that evaluate human

rights law holistically or globally. However, the following analysis of the ICCPR in the United States is a critical contribution to the understanding of otherwise underexplored details that can inform the framework of subsequent broader studies.

THE SIGNING OF THE ICCPR AND ROADBLOCKS TO RATIFICATION

In 1977, under a unified, majority-Democratic 95th Congress (1977-1979), then-President Jimmy Carter signed the ICCPR. Carter submitted the agreement to the Senate to receive advice and consent for ratification concurrently with three other international human rights agreements,¹⁶ placing his proposal in a framework that emphasized the necessity of global progress toward the betterment of human rights.¹⁷ In his *Letter of Transmittal*, Carter writes, “Our failure to become a party increasingly reflects upon our attainments, and prejudices United States participation in the development of the international law of human rights.”¹⁸ The Foreign Relations Committee’s debate after Carter’s proposal highlighted international and domestic conditions underlying the decision to sign and those which might motivate ratification. Prevalent themes discussed in the hearing included Carter’s emphasis on improving global human rights and the United States’ responsibilities to the rest of the world.¹⁹ Senators who favored ratification argued that signatories would have the ability to push and shape global norms, thus, U.S. interests were better served with active participation. Then-Deputy Secretary of State, Christopher Warren, clarified, “We should not deny ourselves this opportunity to help shape the developing international standards for human rights...”²⁰ Despite the compelling debate and Carter’s insistence on advancing international human rights standards, the treaty remained unratified following his presidency. The most commonly considered

¹⁶ Carter also submitted The International Covenant on Economic, Social and Cultural Rights, The International Convention on the Elimination of All Forms of Racial Discrimination, and The American Convention on Human Rights.

¹⁷ Stewart, “United States Ratification of the Covenant,” 1185.

¹⁸ Jimmy Carter, Letter of Transmittal, on the international human rights agreements, February 23, 1978. Unpaginated.

¹⁹ U.S. Senate, EX. C, D, E, AND F, 95-2-FOUR TREATIES RELATING TO HUMAN RIGHTS: Hearing before the Committee on Foreign Relations, International Human Rights Treaties. United States Senate, Ninety-Sixth Congress, First Session, November 14, 15, 16, and 19, 1979. Accessed November 11, 2017. from HeinOnline.com.

²⁰ U.S. Senate, “Hearing Before the Committee on Foreign Relations,” 1979: 21.

roadblock to ratification is the disagreement over the agreement's substantive provisions.

TREATY SUBSTANCE EVALUATION

H1 posits that the substance of the treaty and disagreements over its legal ramifications contributed to the United States' delay in ratification. To test the validity of H1, the following analysis will track the content of the ICCPR over time, identifying senatorial disagreements regarding the treaty's provisions and executive proposals to limit or widen its scope.

Ratification of international law by the United States hinges on the advice and consent of the Senate, often provided through deliberations of the Foreign Relations Committee and their commentary developed in response to the reservations, understandings, and declarations (RUDs) attached to the treaty document by the executive before its approval. Both Carter and Bush attached a set of RUDs to the ICCPR, which, in accordance with precedent, included protective measures against codifying threats to sovereignty.²¹ Evaluating RUDs highlights the provisions which the U.S. was hesitant to accept, and provides insight as to what, if anything, in the treaty's text prevented the agreement's ratification. Tracking RUDs over time will demonstrate the relevance, or not, of treaty substance to delay.

Senators disagreed as to whether the proposed reservations were too lenient on the U.S. or, conversely, insufficient for protection against infringement on sovereignty. This foundational divide may have contributed to the prevention of immediate ratification following the treaty signing. Exploring this disagreement, as a response to proposed RUDs, is another critical component of understanding the relevance of the treaty's content, or not, to delayed ratification.

The first argument to prevail in the Senate hearings was that the United States reserved too many portions of the agreement and would fall short of the international ideals to which it claimed to subscribe.²² Senators who aligned with Carter's presentation of the agreement as a necessary measure by which to spread international human rights standards wanted the U.S. to commit to each part of the agreement. They hoped accession would commit the state to guaranteeing the international standards which it did not reach. They rejected too-intrusive RUDs

²¹ Quigley, "Supremacy Clause," 1287.

²² U.S. Senate, "Hearing Before the Committee on Foreign Relations," 1979: 6.

that minimized the breadth of rights guaranteed by the ICCPR. However, the senators agreed that ratification with strict reservations would be better than not ratifying at all.²³

For others, the fear that the agreement would infringe upon domestic law was paramount. Within this debate, senators circled a variety of topical concerns and sought increasingly-stringent RUDs. They feared the granting of human rights would entail the removal of otherwise protected liberties, like free speech and penal allowances.^{24,25} They feared that too-stringent human rights guarantees would allow ideologically-different states to accuse the United States of going against the terms of the ICCPR, and these states would wield self-serving power over the United States.²⁶ There was also fear of the associative nature of international agreements, in which a perceived Western democratic state like the U.S., signs onto the same set of guidelines as repressive governments.²⁷ The fear of this negative association, in addition to those fears mentioned above, dominated the Senate hearings.

To remedy these concerns and others, both Carter, the president under whom the agreement was signed, and George H. W. Bush, the president under whom the agreement was eventually ratified, proposed a thorough set of provisos alleviating domestic uncertainties about implications of the treaty substance.²⁸

²³ U.S. Senate, "Hearing Before the Committee on Foreign Relations," 1979: 6.

²⁴ Reservations under Bush addressed these issues, reserving Article 20 to protect free speech, and portions of Articles 7, 10, 14, and 15 to uphold legality of domestic punishments allowed for in the Constitution. *See more details in following footnote.*

²⁵ U.S. Senate, International Covenant on Civil and Political Rights: Hearing before the Committee on Foreign Relations, United States Senate, One Hundred Second Congress, First Session, November 21, 1991: 2. Accessed October 12, 2017 from HeinOnline.com.

²⁶ U.S. Senate, "Hearing Before the Committee on Foreign Relations," 1991: 3.

²⁷ *Ibid*: 6.

²⁸ Stewart writes a qualitative comparison of the provisos submitted by each executive and a brief analysis of their differences, noting, "The principal changes [between the proposed RUDs] concerned replacement of the reservation on federalism with an understanding, a revision to the reservation on the First Amendment, acceptance of the prohibition against imposing the death penalty on pregnant women, and deletion of the understanding interpreting certain rights enumerated in Article 10 as 'goals for progressive achievement.' Among the new elements were an additional reservation regarding Article 7 (cruel, inhuman, or degrading treatment or punishment), an understanding concerning equal protection and nondiscrimination, and a declaration concerning restrictions and limitations on rights." (*See Stewart 1993, page 1190*)
Note: Carter's submitted provisos in full can be found in Carter's Letter of Submittal from the

Figure 2 shows the total number of RUDs proposed by each.

Figure 2.

RUDs Proposed Under Carter

Reservations	4
Understandings	1
Declarations	2
Other	1

RUDs Proposed Under Bush

Reservations	5
Understandings	5
Declarations	4
Other	1

While these suggested changes differed slightly in number, both administrations' proposals were characterized in existing scholarship as "not significantly different."²⁹ Bush's package of proposed provisos were based on the proposals set forth in the Carter transmittal and thus were more alike than different.³⁰ Given this condition, it is likely that contestation over treaty substance could have been a factor slowing ratification but it could not be the primary or single factor, rejecting H1 as the leading, or only, argument for the delay in ratification. Since the document evolved in a way which left fundamentals intact—despite differing fears about its content—overcoming differences was not the sole reason delay occurred. The foregoing review of the nearly-unchanged RUDs and evaluation of specific senatorial debates tests H1 and reveals it to be incomplete.

IDENTIFYING LIMITS OF THE FOREIGN RELATIONS COMMITTEE

The insufficiency of legal explanations in fully explaining ratification delay

Department of State, Washington, December 17, 1977. Bush's submitting provisos in full can be found in Executive Report 102-23 on Ratification submitted by Mr. Pell from the Committee on Foreign Relations, on March 24, 1992.

²⁹ Stewart, "United States Ratification of the Covenant," 1189.

³⁰ Ibid:1190.

demands a look into larger, domestic-level rationales. H2 thus predicts that the delay in ratification arises instead from the limits of domestic institutions. To evaluate the likelihood of that explanation, the following analysis will scrutinize the bodies through which the ICCPR moved toward ratification.

The format by which the United States ratifies treaties involves seeking the advice and consent of the Senate through the Foreign Relations Committee (FRC). The FRC sets out to work on the list of presidential priorities submitted by the State Department. While the priority list narrows the otherwise innumerable topics on which the committee could work, in practice, it overestimates the abilities of the committee. The former chairman of the FRC, Alexander Wiley, confirms the FRC's limitations and notes that while the State Department reliably submits a list of 60 to 75 items of interest during intersession periods, it is a rule that "only a portion of this list is covered by the end of the session."³¹ The committee functions in ways that may prolong treaty ratification, as is demonstrated by the criticism it receives for neglecting to accomplish all items on its priority list.³²

The committee's capacity is not without limit, as the functions of the committee tend to be bounded by international crises. When pressing international matters arise, the committee tends to them and tables legislative matters like treaty ratification. Scholars and involved politicians alike noted that the conclusion of Carter's leadership demanded the time of the committee in handling events like the Soviet invasion of Afghanistan and the hostage crisis in Iran.³³ The ratification report submitted by Chairman Pell serves as another political primary source confirming this as a barrier to ratification, in which he states that, "domestic and international events at the end of 1979, including the Soviet invasion of Afghanistan and the hostage crisis in Iran, prevented the Committee from moving to a vote on the Covenant."³⁴ These significant primary source accounts lend support for the acceptance of H2. They demonstrate that the United States' process for codifying treaties, which relies on the advice and

³¹ Alexander Wiley, "The Committee on Foreign Relations," *The Annals of the American Academy of Political and Social Science*, vol. 289, Issue 1 (1953): 65.

³² Wiley, "The Committee on Foreign Relations," 65.

³³ Stewart, "United States Ratification of the Covenant," 1189.

³⁴ Claiborne Pell, on behalf of the Committee on Foreign Relations, 102nd Congress, Second Session, Executive Report 102-23. *International Covenant on Civil and Political Rights*. (24 March 1992): 2.

consent of the FRC, can be slowed or prevented outright by the occurrence of international crises.

THE ROLE OF EXECUTIVE (DIS)INTEREST

An additional domestic determinant in the treaty ratification process, as outlined in H3, regards the disproportionate role the executive's preferences play on a treaty's acceptance. H3 is evaluated using qualitative evaluations of executive cases that reveal interests and precedents. How have executive interests come to the forefront of domestic politics in the United States? The amount of executive agreements signed by various presidents increased after World War II, with postwar presidents Carter and Reagan each signing more than 1,000 executive agreements during their respective tenures.³⁵ The preponderance of executive agreements suggests that executives create and push their own agendas during their tenures, thus demanding analysis of the role of executive interests in achieving legislative goals, particularly in the international sphere.

EVALUATING REAGAN (1981-1989)

The ICCPR's delay is captured, to a great extent, by Reagan's tenure as executive (1981-1989). To evaluate the influence of executive interests, this analysis asks how Reagan's preferences shaped the tabling of the ICCPR during this period. It discerns Reagan's preferences by evaluating the list of priorities Reagan submitted to the FRC.

Over the course of his tenure, Reagan never noted the ICCPR as a priority of his international relations work on the list deposited with the State Department.³⁶ Instead, his priorities included goals for environmental issues, like acid rain, fishery disputes, and the International Whaling Commission.³⁷ Additionally, the submitted report on ratification stated directly that, "the Reagan administration did not indicate any interest in ratifying the covenant."³⁸ This depriorization may

³⁵ Kiki Caruson and Victoria A. Farrar-Myers, "Promoting the President's Foreign Policy Agenda: Presidential Use of Executive Agreements as Policy Vehicles," *Political Research Quarterly*, Vol. 69 no. 4 (December 2007): 631.

³⁶ Authorization and Oversight Plan for the House Committee on Foreign Affairs under the 98th Congress, under the Subcommittee on Human Rights and International Organization (24 February 1983). Unpaginated.

³⁷ Authorization and Oversight Plan for the House Committee on Foreign Affairs, 1983. Unpaginated.

³⁸ Pell, "Executive Report," 2.

have left the ratification tabled for over a decade.³⁹ Then-president Reagan also drew upon “realpolitik” viewpoints, which frame international law and cooperation as non-foundational to conducting foreign policy. Realpolitik suggests that national interests supersede concern for promotion or safeguarding of human rights.⁴⁰ Reagan’s preferences, then, can be tied to the delayed process of acceding to the ICCPR.

EVALUATING EISENHOWER AND THE BRICKER AMENDMENT

Precedents regarding ratification rates of international human rights law established in the United States shaped the timeline of the ICCPR. During Dwight D. Eisenhower’s tenure in the late 1950s, senators feared that “internal social changes” associated with too-stringent international human rights law would overrule domestic legislation and punish southern Democrats, like Senator John W. Bricker, for legally institutionalizing racism.⁴¹ Senators fearing changes to, and prosecutions based on current domestic laws resisted international change in human rights. Southern Democratic senators, led by Senator Bricker, proposed the Bricker Amendment, which, if passed, would remove the executive’s ability to make executive agreements.⁴² In order to maintain his power to pass executive orders, Eisenhower defeated the Bricker Amendment in a bargain where he agreed not to accede to emerging human rights conventions.⁴³ Thus, due to concessions made by the executive, international human rights law stagnated. Allowing for the continued passage of executive agreements empowered the president to prioritize ratification of international laws, and this decision exemplifies the crucial role executive opinion plays in shaping international ratification outcomes, supporting H3.

Further data illustrate the decreased U.S. participation in the drafting of

³⁹ The disinterest of the Reagan administration in ratifying the ICCPR is asked, in existing scholarship, not to be conflated with his disinterest in human rights. Some have suggested that while the administration did not first emphasize the necessity of commitment to the ICCPR, it was only because the Reagan administration chose to prioritize the Genocide Convention and the Torture Convention (See Stewart 1993, page 1189).

⁴⁰ Burns H. Weston, “The Reagan Administration versus International Law,” *Case Western Reserve Journal of International Law* 19, no. 3 (Summer 1987): 295-302.

⁴¹ Oona A. Hathaway, “Treaties’ End: The Past, Present, and Future of International Lawmaking in the United States,” *The Yale Law Journal*, vol. 117, no. 7 (2008): 1303. JSTOR.

⁴² Hathaway, “Treaties’ End,” 1240.

⁴³ *Ibid.*

international human rights legislation, due in part to the precedent established by the deal between Eisenhower and Bricker. A collection of seven major multilateral human rights agreements which the U.S. is party to show that delays between signature and ratification have taken up to 40 years (*See Figure 3*). *Figure 4* displays these seven agreements on a timeline.⁴⁴

Figure 3.

⁴⁴ These agreements were selected as they are most often considered high-profile international human rights agreements, selected as “important” in numerous other scholastic studies. While this selection is meant only to sample and show variety in delay of various international human rights law, future research should evaluate all human rights agreements ratified by the United States. Figures 3 and 4 additionally neglect to display still unratified human rights agreements in the U.S., some of which are also considered “important” by scholars and the international community.

Figure 4.⁴⁵

In review, the roadblocks to ratifying the ICCPR are encompassed in domestic institutional rationales. Legally, disagreements over the substance in a treaty's articles may prolong debate but are often resolved by the inclusion of RUDs, and thus cannot be the primary cause of a near-30-year delay of the law's domestic ratification. Rather, institutional obstacles, such as the Foreign Relations Committee's limits (H2), and political obstacles, such as an executive's disinterest (H3), are notable factors that prevented ratification of the ICCPR. Next, the analysis will posit explanations of the eventual decision to ratify the ICCPR, expanding the evaluation to include international conditions.

RATIONALIZING THE TIMING OF RATIFICATION OF THE ICCPR

Despite the institutional and political obstacles that slowed the

⁴⁵ The abbreviated codes for these agreements are as follows: *Convention on the Prevention and Punishment for the Crime of Genocide* (GEN), *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), *International Covenant on Civil and Political Rights* (ICCPR), *Convention against Torture* (CAT), *The Geneva Convention/Convention relative to the Treatment of Prisoners of War* (POW), *Convention against Transnational Organized Crime* (CATOC), and *the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (IPP).

ICCPR's ratification in the United States, a divided government⁴⁶ under the Bush administration ratified the document in 1992, a full fifteen years following its signature. Ratification came nearly thirty years following the agreement's conclusion in 1966, when the agreement's drafters originally determined the content of the articles. What was significant about 1992 for the United States' ratification of the primary covenant on human rights? H4 predicts that stasis, like that seen in the ICCPR's political stagnancy in the United States, ends when a catalyst motivates change. In the following analysis, international factors are evaluated for their relevance in catalyzing the United States' sudden decision to ratify.

After extensive delay, incentives for ratification in 1992 surfaced with dramatic shifts in geopolitics. Global standards significantly shifted in the early 1990s when the collapse of the Soviet Union created global uncertainty about how previously occupied nations would land politically. Included among the global events of 1991 was the conclusion of the Cold War, a decades-long conflict which put Soviet and American ideologies in opposition and reinforced the fundamental differences underlying communist ideas in the east and democratic foundations of the west. The Cold War showcased the U.S. as a symbol of the West, and its end created an opportunity for the state to reaffirm international influence in the spread of Western democracy. These geopolitical conditions incentivized the United States to 1) show itself as a leader of democracy, and 2) build its international credibility whereby it could shape world order in instituting democracy and dominance abroad. These incentives ended the nearly 30-year stasis from the agreement's conclusion to its domestic ratification, providing initial support for H4.

In ratifying the ICCPR, the U.S. believed it would boost its international reputation and publicly embrace western ideals, granting itself a leading role in reshaping the Post-Cold War world order. Primary sources and scholastic commentary published soon after ratification reiterated sentiment on the timeliness of the decision to ratify, emphasizing the year as one in which "democracy and democratic ideals enjoy[ed] an unprecedented primacy" and the United States' commitment as one that could "ensure that democratic principles and values [would] take hold in the infant democracies of Eastern Europe, the former Soviet Union, and elsewhere."⁴⁷ It was widely believed that through ICCPR ratification,

⁴⁶ The executive branch was Republican while the legislature was Democratic. While the treaty was signed in conditions of unified government, ratification occurred under differing conditions.

⁴⁷ Michael H. Posner, Peter J Spiro, "Adding Teeth to United States Ratification of the Covenant on Civil and Political Rights: The International Human Rights Conformity Act of 1993," DePaul

the U.S. could protect and promote ideals of democracy internationally.⁴⁸ Evidencing the relevance of geopolitics further is the framing of the agreement by then-President Bush, and the negligible changes in the proposed RUDs.

DIFFERENTIAL AGREEMENT FRAMING

The Pell Report, which came from the 102nd Congress in 1992 and announced ratification, emphasized the uniqueness of the era as one in which democracy needed advocates in the international scene. Sentiment stressing the new opportunity for democracy was prevalent in a compelling portion of Pell's report, which stated,

The historical changes in the Soviet Union and Eastern Europe have created an opportunity for democracy to grow and take hold. By ratifying the Covenant at this time, the United States can enhance its ability to promote democratic values and the rule of law... in those countries... which are beginning to move toward democratization.⁴⁹

Bush's administration emphasized these aspects of the agreement, calling attention to its inherent Westernism and highlighting the uniqueness and importance of the United States in the international scene. Hearings in 1991 involved discussions about democracy and global superiority. Multiple senators were quoted, saying "...we are at a time in world history where we have been presented with new opportunities for the forces of democracy. We are pressing forward to support to every possible degree, the spread of democracy."⁵⁰ Carter, in contrast, wrote and spoke about the ICCPR in a way which emphasized its necessity in propelling human rights issues forward, as explored previously. In the absence of geopolitical incentives, Carter's call for ratification remained unfulfilled. His letter for submittal concluded with encouragement to confirm the nation's commitment to human rights,⁵¹ contrasting Bush's language framing the agreement as a tool for democracy's spread. These contrasting narratives provide

Law Review vol. 42, no. 4 (Summer 1993): 1209.

⁴⁸ Stewart, "United States Ratification of the Covenant," 1184.

⁴⁹ Pell, "Executive Report," 3.

⁵⁰ U.S. Senate, "Hearing Before the Committee on Foreign Relations," 1991: 16.

⁵¹ Jimmy Carter, Letter of Transmittal, 1978: Unpaginated.

compelling evidence that the geopolitical conditions in 1992 were influential in the decision to ratify, further lending support for H4.

CONSISTENCY IN RUDs

The suggestions for changing the accepted substance of the ICCPR domestically through RUDs were similar in the fifteen years between signing and ratifying, as was alluded previously. Pell's report further confirms the similarity, stating that the proposed U.S. conditions in the submitted package under the Bush Administration were largely similar to those proposed under Carter's administration.⁵² The nearly homogeneous proposed provisos both refute the argument that disagreement over the treaty's substance was significant enough to sufficiently explain the delay in ratification and suggest the eventual decision to ratify was not prompted by a sudden shift in content to which the United States would agree (H1). Thus, geopolitical conditions, primarily the ending of the Cold War, created an opportunity for reshaping the world order in favor of democracy, a task that the U.S. wanted to lead. H4 suggests that a catalyst will end the stasis of ratification delay, and as evidenced, the catalyst for the ICCPR was the geopolitical change occurring in the international sphere in the early 1990s.

SIGNIFICANCE OF INTERNATIONAL CREDIBILITY

Prior to ratifying the ICCPR, the United States' credibility was in question. Pell's report states that international concern had circulated regarding the United States' flippant behavior regarding human rights standards, in which U.S. failure to ratify the ICCPR was seen as "conspicuous, and in the view of many, hypocritical."⁵³ In the 1991 FRC hearing debating ratification, numerous spokespersons aired concern regarding the United States' ability to credibly claim leadership in human rights standards or accuse other states of failing to reach said standards without having ratified the ICCPR. A board member from an attending NGO testified that U.S. leadership was critical in the promotion of human rights and that the end of the Cold War led to emerging democracies that exacerbated the need for secure human rights leadership. This speaker, who spoke on behalf of the International Human Rights Law Group, argued, "[United States] leadership has been compromised by our continued failure to ratify this basic international

⁵² Pell, "Executive Report," 2.

⁵³ Ibid., 3.

human rights document.”⁵⁴ Other spokespersons present at the hearing feared the decline of U.S. credibility on the international scene, including the Executive Director of the Lawyer’s Committee, who posited, “Ratification would enhance the credibility and effectiveness of U.S. human rights initiatives abroad, particularly... [in] multilateral fora.”⁵⁵ Commentary from NGOs and other associations including the Association of the Bar (NYC), the American Bar Association, Amnesty International, the American Civil Liberties Union, and the Minority Rights Group aired the same concern.⁵⁶ To repair its international status as a meaningful supporter and proponent of human rights, the United States needed to ratify the ICCPR. This viewpoint was expressed in earlier hearings of the Committee, which suggested that the United States could establish international credibility quickly by “a simple act” of ratification.⁵⁷ It was thus the ending of the Cold War and the resulting opportunity to reshape world order in favor of democracy that motivated the United States to publicly embrace Western ideals and fix its international reputation by ratifying the ICCPR.

ALTERNATIVE AND SUPPLEMENTARY EXPLANATIONS

Numerous scholars propose alternative explanations for the delay between signing and ratification. Following the 1992 decision to ratify, many began commenting on the years-long process and reflected on the motivations and implications of the decision. One idea that arose from post-ratification discussion implicates NGOs. Scholars posited that “ratification never became an important issue on the agenda of the many organizations devoted to the protection of civil rights and liberties within the United States” and supposed this to be a likely impediment to the ratification process.⁵⁸ In the 1991 Senate hearing, many NGOs were present and spoke openly about ratification,⁵⁹ but their influence outside of the senatorial deliberation is not highly studied. While they provided compelling testimonies regarding the necessity of the treaty’s ratification, no formal research has measured their effectiveness in pushing

⁵⁴ U.S. Senate, “Hearing Before the Committee on Foreign Relations,” 1991: 58.

⁵⁵ *Ibid.*, 65.

⁵⁶ *Ibid.*

⁵⁷ U.S. Senate, “Hearing Before the Committee on Foreign Relations,” 1979: 4.

⁵⁸ Neier, “Political Consequences,” 1233.

⁵⁹ See Section IV for partial list in-text of present NGOs.

Senators to ratify.

Another factor often explored is the ratification of the Covenant as a tool to monitor the actions of other nations, using a U.S. seat on the Human Rights Committee as a mechanism for closely observing adherence to human rights standards around the globe. Posner and Spiro, writing after the time of ratification, suggest that the ICCPR's ratification allowed the United States to actively participate in developing and monitoring human rights standards around the world.⁶⁰ This idea has additional support in documentation from the submitted ratification statements by Pell and is discussed in prepared statements of the FRC hearing in 1991. It is likely that an underlying motivation behind U.S. policy to take leadership in democracy's spread was the potential to obtain access to monitor and enforce human rights internationally. This explanation works in tandem, and not independent of nor in contrast to the eventual decision to ratify. While it does not wholly explain the decision to ratify fifteen years following the signature, the ending of the Cold War and aforementioned desires for global control of norm-setting likely influenced the motivation for a role in monitoring. This explanation also connects to the Senate's fears of losing control of ideologically-disparate states or regions in the country. With a role in monitoring, the U.S. would not need to sacrifice any of its control.

CONCLUDING REMARKS AND FUTURE RESEARCH

The puzzle of delay in the ICCPR's ratification by the United States is understood in part by legal, institutional, and geopolitical factors. The legal explanation of contested treaty substance is incomplete in rationalizing delay (H1). Instead, institutional explanations regarding the slowness of committee action and the outsized role of executive preference influence explain the continued "stasis" of the agreement's non-ratification (H2 and H3). The stasis is broken by the catalyst of geopolitical change in 1991, which restructures the global order and incentivizes human rights agreement accession for the United States (H4).

The geopolitical conditions which made the early 1990s a favorable time for the spread of democracy were paramount to President Bush's decision to re-propose ratification of the ICCPR. The salience of democracy and the United States' perceived role in leading democratic and international institutions were critical factors shaping the global reputation of the United States and encouraging

⁶⁰ Posner and Spiro, "Adding Teeth to the United States Ratification," 1209.

it to take action to protect its role of leadership in guaranteeing civil and political human rights. While stasis is explained by institutional limits and executive preferences, the termination of stasis is an international catalyst. Demonstrating leadership in ICCPR negotiations made the United States' non-ratification hypocritical to the international community. How might the United States' international reputation contribute to its decisions to ratify human rights agreements differentially across time? International stimuli may meaningfully alter the course of domestic politics and lawmaking.

Looking at the historical timeline of the United States' relationship to international law reveals numerous timescale puzzles and patterns; five major international human rights agreements were signed between the years of 1966 and 1988, yet only three of these were ratified by the U.S., with delays of six, fifteen, and twenty-eight years (*See Figure 5*). Each ratification occurred in the post-Cold War period of the 1990s.

Figure 5.

What particular aspects of its identity did the United States uphold with each ratification? Did the motivation of restoring international credibility fall short for the ratification of additional signed human rights agreements? What type of geopolitical change might shift the country out of static complacency on the unratified agreements? Scholarship posits “that the United States [holds] the view that respect for rights [is] a question of geopolitical alignment rather than a universal obligation.”⁶¹ Future research should examine other international

⁶¹ Neier, “Political Consequences,” 1236.

human rights laws as case studies and evaluate geopolitics at the time of their signature and ratification, observing the (in)consistency of international conditions as the catalyst for legislative changemaking.

Other research ought to broadly examine the delays between signing and ratifying of all international agreements by the United States. Might the delay of environmental, economic, and security agreements differ than that of human rights? Future analysis could evaluate agreements by type (congressional-executive, executive, or treaty) and by topic (environment, human rights, disarmament, etc.) to encompass and explain both institutional and geopolitical rationales for delay and ratification in greater detail. Still other research could evaluate the role geopolitical control has on the decisions of other non-ratifiers, or delayed-ratifiers, like Belgium, Ireland, and Israel to the ICCPR. Are geopolitical catalysts necessary for overcoming ratification delay to other states? To further understand the domestic institutions perpetuating delay, future studies should involve a comparative evaluation of geopolitics as the catalyst ending stasis in states around the globe.

The implications of delay are relevant in determining a country's—in this study, the United States'—likelihood of committing to ideals held in the international community and those which will determine the state's credibility. International credibility and a state's reputation may, as demonstrated by the ICCPR ratification timeline, affect its decisions in international lawmaking and subsequently alter its ability to shape global politics. The ICCPR's delay period provides initial insights into other decisions the United States makes in ratifying—or neglecting to ratify—human rights agreements, and it provides meaningful contributions that explore the interaction between domestic institutions and international politics in the realm of human rights.

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