WAIT ‘TIL NEXT YEAR?
THE POLITICS AND TIMING OF TREATY RATIFICATION

BY

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DISSEATION

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ABSTRACT

States spend years and tremendous diplomatic capital negotiating treaties. Yet, despite the best efforts of skilled negotiators, some states wait for months, years, and even decades, to ratify the treaties they took part in negotiating. In this dissertation, I investigate the phenomenon of ratification delay and attempt to provide an explanation for why some states wait to ratify treaties while others do not. In order to build a theory of ratification timing, I recast the two-level game metaphor to account of the strategic behavior of state legislatures and constraints of the ratification process. I test this theory on an original dataset of state ratifications for a specific cluster of treaties: The United Nations Convention on the Law of the Sea and its implementing treaties. My findings indicate that previous studies of ratification have overestimated the importance of the states leaders and underestimated the importance of legislators and the institutional ratification requirements.
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December 10th, 1982 – Montego Bay

It was a sunny, balmy day in Jamaica. Diplomats from around the world were assembled to conclude negotiations on the single most important and expansive maritime treaty in history of international law: The United Nations Convention on the Law of the Sea. Inside a massive convention hall the air was filled with a cacophony of voices. A sense of accomplishment was in the air. When the Law of the Sea opened for signature that afternoon it would end of nine long years of diplomatic conferences. After years of political wrangling and shuttling back and forth between New York and Geneva, the diplomats that endured this tireless marathon had reason to celebrate. They had succeeded. On their desks before them lay copies of the completed treaty text, three-hundred and twenty articles, nine annexes, detailed rules to govern the maritime behavior of states, of firms, of individuals, all there in black and white.

The Law of the Sea would be a constitution for the oceans. It would partition the oceans by creating and allocating a 200-mile Exclusive Economic Zone (EEZ) to every coastal state. The Law of the Sea would codify and clarify regulations, expectations, and prohibitions for nearly every type of maritime behavior, from piracy to innocent passage. Its effects would cover the broad swath of oceanic geography, from the seabed floor to the high seas. It would be among the first legal

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1 Hereafter referred to as the Law of the Sea.
instruments to establish the legal principle "for the common heritage of mankind," the fundamental mechanism by which developing states and future generations might stake legal claim to their part of the ocean's bounty. Finally, the Law of the Sea would envelop states within a regime of rules and institutions to serve as a line of defense against the “land grab at sea” foretold by US President Lyndon Banes Johnson (Churchill and Lowe 1999, 15-16). The Law of the Sea’s comprehensive complexity would, in the end, be superseded only by the United Nations itself, the European Union, and World Trade Organization (Harrison 2011; Sebenius 1984).

With the political storm clouds of national interests and the Cold War looming on the horizon, the very the process of negotiating the Law of the Sea was an accomplishment. The treaty text was negotiated using an active consensus-building (Buzan 1981). Consensus negotiating employs a single “negotiating text” and procedurally allows votes only after all efforts at structuring a consensus text have failed. Moreover, this model of bargaining requires two-thirds agreement of the states present and voting. In effect any substantive changes can be blocked by a minority of states (Sebenius 1984, 12-13). First pioneered in Jamaica, consensus negotiation is often standard protocol at most international conferences.

Wielding this new bargaining tool, negotiators were empowered to hear from a diversity of state and non-state interests. Within working groups they were driven to fashion treaty language that included something in it for every state. In contrast, majority voting procedures of the past were rendered “increasingly useless for law making decisions because of the danger of powerful alienated minorities” (Buzan 1981, 326). This novel process generated a lucid document, laden with
detailed examples, and even directions on how to apply its rules. The Law of the Sea is in many ways the sort of functionally-relevant, interest-sensitive agreement that whose consensus negotiation should hold up in the face of decline hegemony (Keohane 1984). Former US Secretary of State Henry Kissinger called the Law of the Sea negotiations one of the “most important international negotiations which has ever taken place” (Freudenheim 1979).

Yet amidst the speeches, signatures, and late-night parties, more than a few weary diplomats realized that the day’s heady proclamations might amount to precious little (Pardo 1983). Presaged by the newly elected US President Regan’s refusal to sign the treaty, twelve years would pass before the Law of the Sea would garner the sixty ratification necessary to enter into force in 1994. To date of this writing, several major maritime powers have refused to ratify the Law of the Sea.

Why did it take so long for the Law of the Sea to enter into force? Why, after so much effort, did some states wait to join the treaty? Why have some countries still not ratified the Law of Sea? After all, this was an agreement that was negotiated by experienced diplomats over the span of nine years. Employing the latest consensus-based approach to bargaining, ensured buy-in from as many parties as possible, the negotiators produced a clearly written treaty that solved several very real dilemmas that could only be ignored at some real cost. Among the dilemmas solved by the Law the Sea were ocean pollution, shipping transit rights, fisheries protection, mining rules, and scientific as well as military rules). So why would states wait to join the Law of the Sea? In this dissertation I retell story of the
The intervening years from December 12th 1982 to the present, with an eye toward the puzzle of why states wait.

This story of the Law of the Sea is a part of a larger empirical puzzle at the heart of modern treaty making: after years of negotiations, in the face of comprehensive treaties, and despite so much preparation, why do the countries of the world exhibit such wide variation in the time it takes them to ratify? To answer this broader puzzle of why states wait, I will construct a new theory of ratification timing and test it against other theories of international cooperation to illuminate the political forces that drive the delays of different states. In conducting this investigation, I will argue that scholars – especially political scientists – should abandon the over-simplified, over-vague, and over-used concept of state cooperation. Rather, I will argue, we ought to view international treaty law as a policy-making process with distinct stages, wherein the timing of events matters. Finally, I will present evidence that negotiators are more heavily constrained by their government’s composition, domestic ratification procedures, and competing policy priorities than previously thought.

**The Importance of Treaty Law**

International treaty law is the most powerful, prevalent, and stable method of generating legal obligations between states. Consider that the 2009 United Nations Climate Change Conference (COP-15) brought together world leaders, encouraged full-throated discussion to climate change issues, and even produced a written accord on the goal of reducing carbon emissions. The COP-15 advanced the
discourse on climate change by securing acknowledgement from China that it may have to set targets. It also was successful in forcing world leaders to pay attention to the issue and the variety of stakeholders involved. Yet the COP-15 was almost immediately deemed a failure primarily because it did not result in the creation of a new climate change treaty capable of giving legal effect to emission targets and binding state behavior (Vidal 2009).

The failure of COP-15 arises from uncertainty regarding the obligation and precision of the agreement reached (Abbott and Snidal 2000). Whether the goal of states is the elimination of tariffs (e.g. GATT), establishment of human rights (e.g. Genocide Convention), management and extraction of resources (e.g. Amazon Treaty), preservation of species (e.g. the CITES treaty), or peace after war (e.g. Comprehensive Peace Agreement – Sudan), cooperation between states necessitates rule making. Abbott and Snidal differentiate between “hard” and “soft” law on the grounds that hard law provides for more dependable commitments and keeps open legal avenues of complaint, even if it is necessarily less flexible than non-binding accords. As the zenith of hard law, treaties are capable producing a clarity and legal force to rules that softer forms of agreement simply cannot. This is part of the reason that the number of treaties and subsequent documents registered with the United Nations Treaties Collection since 1946 now runs in excess of 158,000 documents, regulating nearly every aspect of state behavior.²

There are functional reasons for the proliferation and importance of treaties within the international legal system. As the basis for legal claims, treaties are

² [www.treaties.un.org](http://www.treaties.un.org)
desirable because international law deals primarily with questions of state liability, a process more akin to civil law than criminal. Most of the cases decided in international courts, are focused on clarifying obligations, assessing damages, or negotiating claims of ownership and responsibility. In civil cases the clarity of the law is paramount because parties to a case seek an assignment of liability that requires the rules and obligations of each to be clearly stated. Of the international legal instruments that states possess for creating rules, treaties identify and allocate both rights and responsibilities with clarity unmatched by *jus cogens*, general principles, or customary law.

Most international legal issues center on politically and conceptually difficult problems of states cooperation. Most cooperative endeavors require states to engage complex legal phenomena (e.g. defining trade protectionism or a human right), the form and function of organizations (e.g. how to manage trade or human rights violations and violators), and existing legal principles (e.g. state sovereignty). Treaties are a highly malleable form of law. Treaties can be designed to integrate prior agreements, set definitions of legal terms, subsequently change those definitions, and at the heart of every international organization is a constitution treaty, or in some cases a series of treaties, that set forth organizational structures, rights, and responsibilities.

Alternative sources of international law – *jus cogens*, general principles, or customary law – are neither quick nor flexible enough to deal with these difficult, often novel, problems of the modern era (Shaw 2008). Moral strictures and defining general legal principles are necessary but not sufficient to govern the complex
interactions of state cooperation. Customary law requires such broad consensus (not to mention documented behavior) that it provides guidance on only the most consistent cooperative acts. It takes far fewer years to negotiate and ratify a treaty in response to a specific problem than the time and consensus required in customary law.

Treaties also allow for a maximum of state choice. Treaties are directly negotiated by states they are intended to govern. States are empowered through writing, signing, and ratifying a new treaty to set, or change, their legal obligations to other states.³ Treaties are forward-looking contracts designed in accordance with the interests, and clearly expressing the expectations, of states the states party. Unlike *jus cogens*, general principles, or customary laws⁴ that apply to all states, treaties are contracted between specific states to solve a dilemma those states face. As a result, treaties can create different legal obligations between different groups of states. For example, the North American Free Trade Agreement (NAFTA) liberalized trade between the US, Canada, and Mexico but it did not effect the status quo of trade between the US and South Korea.⁵

In contrast to the secret alliances that existed prior to World War I, the body of modern treaty law is public knowledge – the UN maintains a database of the current status of all treaties. Consequently, the behavior of countries vis-à-vis their obligations, violations, and judgments within the international legal system are

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³ Treaties that violate *jus cogens*/preemptory norms are considered invalid – see the Vienna Convention on the Law of Treaties (1969), Article 53.
⁴ In the event of persistent objection a state may exempt itself from a customary law (Shaw 2008).
⁵ Recently the US and South Korea did negotiate a treaty to liberalize trade between the two countries – The United State-Korea – Free Trade Agreement, which entered into force March 15, 2012. This is yet more evidence of the substantial element of state choice in deciding when and with whom to change the status quo rules.
visible, creating a historical record of when a state’s behaviors coincided with its obligations. Thus, the proliferation of treaties provides world leaders, diplomats, and scholars with a clearer picture of expectations with which to understand and analyze the current and historical relationships between states.

The wave of treaty law has in many instances begun to wash over other sources of international law by codifying existing legal rights, principles, and norms within treaties. The ongoing process of codification means that in future legal disputes the primary source material may, in many cases, be treaty law, especially where global treaties exist to which many states might be party (Simmons 2009).

In addition to codifying existing rights, principles and norms, states employ treaties form new rights and modify existing obligations in the face modern challenges. Consider the following challenges:
Table 1.1 List of Treaties and Rights

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Treaty</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>States needed a more powerful organization to advance free trade.</td>
<td>Marrakesh Declaration (1994)</td>
<td>Created of the World Trade Organization and a Dispute Settlement System capable of legitimizing retaliatory action by states to unfair trade practices.</td>
</tr>
<tr>
<td>Scientists discovered that chlorofluorocarbons (CFC) threatened the Earth's ozone layer.</td>
<td>The Montreal Protocol on Substances that Deplete the Ozone Layer (1987)</td>
<td>Phased out of production substances responsible for depleting the ozone layer.</td>
</tr>
<tr>
<td>Widespread moral revulsion to the atrocities conducted by the Nazis during World War II.</td>
<td>Convention on the Prevention and Punishment of the Crime of Genocide (1948)</td>
<td>Defined genocide in legal terms and encourages punishment of those responsible for genocide.</td>
</tr>
</tbody>
</table>

As the table above shows, international treaties have been employed by states to deals with an array of complex of problems across issue areas. Whether the stakes of an issue were high or low, states turned to treaty law to prohibit behaviors, establish rights, and resolved disputes. It is also telling that the treaties do not exist in isolation.

The Marrakesh Declaration was an outgrowth of the Uruguay round of trade talks within the global trade regime guided by yet another treaty – The General
Agreement on Tariffs and Trade (1948). Over a decade after the Anti-personnel landmine treaty was written, negotiators drew inspiration from it to design the list of prohibitions contained in the Cluster Munitions treaty. These three treaties are similarly joined by other agreements from accords on anti-dumping and non-tariff trade barriers to prohibitions on biological and chemical weapons. These are just a few of the examples of the state-led march toward a future where treaty law regulates international relations.

Yet the steady march toward a malleable, responsive, and open legal system of clearly written treaties is not without deadfalls and quagmires. The self-governance of states through treaties is dependent on the consent of states. Thus, the issue that both scholars and policy makers must grapple with is why some states consent more readily than others? In treaty law, consent is attained twice once in negotiation (to settle the treaty text) and again through a process of domestic approval (to make the treaty legally binding). The latter process is commonly known as ratification. Ratification typically entails the executive branch of consulting with, and in many cases winning a vote in, the legislature. Although domestic legislatures are often left out of treaty negotiations for fear of provincial concerns complicating international prerogatives, the requirement of ratification extends to legislatures a powerful political tool: the ability to say no.

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6 In practice the act of assuming legal obligation goes by several names – e.g. accession, succession – for clarity throughout I use the term “ratification” to indicate the assumption of legal obligation.
The Puzzle of Treaty Ratification

Scholars of international relations and law who study treaties have classically focused on either the negotiation of treaties or compliance with them (Downs, Rocke, and Barsoom 1996; Fearon 1998; Koremenos, Lipson, and Snidal 2001). Yet, as I will show in Chapter 2, simplifying the process of treaty making and use into games of bargaining and compliance is highly problematic. Such a division overlooks the process by which treaties acquire binding legal force and states take on legal obligations: ratification.7

Although possessing neither the formality of a signing ceremony, nor the loud condemnations given to treaty violations, the ratification of a treaty is an essential phase in the process of making international law binding. Too often ratification is viewed as an afterthought to negotiations, or an assumed prior to compliance. Ratification is a crucial crossroads along the path interstate cooperation, not a weigh station.

When states launch an attack or institute a tariff it is the action, its type and severity, and the consequences that flow from acting that make political analysis of the phenomenon compelling. In contrast, the decision to ratify is significant because of the potential for inaction, strategic delay, or outright refusal. Especially in democracies leaders seeking ratification of a treaty must engage their legislatures and legislative power in treaty making is the ability to say no (Caro 2002).

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7 Under the Vienna Convention on the Law of Treaties (1969) signature of a treaty carries an obligation not to work against “the object or the purpose” of the signed treaty (Article 18). Although it is a legal obligation, the prohibition resulting from signature should not be viewed as similarly constraining as full agreement to a treaty. Only after a state has deposited an instrument of ratification can others bring suit against it for having violated its legal obligations.
Article 2, Section 2 of the United States’ Constitution, for example, captures in crisp language the power legislators to deny the treaty making power of the president – “The President shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur....”

The President’s power to proactively make treaties is circumscribed by the possibility of the Senate refusal. A similar dynamic can be found in many of the government structures around the world with presidents and prime ministers beholden to the will of their legislatures.

Beyond near ubiquitous requirement of domestic consent, whether easily achieved or not, the study of ratification is important because delays and failures of ratification can and do happen, weakening attempts to regulate state behaviors through law rather than coercion or ad hoc diplomacy. Consider the statistics in Table 1.2 of recent environmental treaties.

<table>
<thead>
<tr>
<th>Treaties</th>
<th>Number of States Ratified Within* 2 years</th>
<th>Average Time-to-Ratification of States Ratified</th>
<th>Standard Deviation Time-to-Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kyoto (Carbon Emissions)</td>
<td>21 of 196</td>
<td>5.5 years</td>
<td>2.2 years</td>
</tr>
<tr>
<td>Montreal (Ozone)</td>
<td>52 of 196</td>
<td>5.8 years</td>
<td>4.1 years</td>
</tr>
<tr>
<td>Stockholm (Organic Pollutants)</td>
<td>42 of 196**</td>
<td>3.2 years</td>
<td>1.5 years</td>
</tr>
<tr>
<td>Cartagena (Biosafety)</td>
<td>38 of 196**</td>
<td>3.4 years</td>
<td>1.4 years</td>
</tr>
</tbody>
</table>

**Over 50 states have not ratified
Questions abound about this phenomenon of delay. Practical questions arise such as: which states accounted for these delays? Why did they delay? The answers to which might help policy makers and scholars understand better the members of the international community of states. Counterfactual questions beg to be asked: would different treaty designs or legal requirements have increased state participation? Might these treaties have been more successful had they experienced faster ratification? The success of any treaty is unlikely to be linearly related to the number of ratifications because different states simply matter more to some issues than others. Yet, Table 1.2 shows that gaps of several years exist between negotiation and ratification for many states. Some of those states that fail to ratify will be consequential for the treaty’s political and legal power. Analyses of compliance or enforcement behavior cannot proceed without understanding which states carry legal obligations and when those obligations were shouldered.

Delays and failures to ratify are a serious problem in the case of multilateral treaties. Multilateral treaties are the most common way of addressing collective problems such as trade, environmental degradation, and human rights abuses. With these sorts of issues all or most states must cooperate to solve the problem. Yet individual states might have less incentive to hurry if a problem is being addressed by others (Olson 1965). Moreover, without the speedy ratification of many countries, multilateral treaties frequently cannot enter into force due to prevalence of treaty clauses requiring a minimum number of ratifications for a treaty to take effect.
The Kyoto Protocol was negotiated in 1997 and opened for signature in 1998; nevertheless, it did not enter into force until 2005, a full seven years later. The effect of this delay was that the greenhouse gas emissions regulated under Kyoto continued unconstrained for almost a decade after the close of negotiations. Some states did meet their emissions targets before Kyoto’s entry into force but for those states that refused to ratify, or delayed ratification, there existed neither legal obligation. In those seven years it wasn’t even possible to claim a compliance violation of those states that had ratified because the treaty had not entered into force (von Stein 2008).

The problems of ratification delay and refusal are not exclusive to global treaty regimes; regional groups of states have also seen delays or refusals affect the ability of those states to cooperate. Reforms and expansion of the European Union treaty complex have been stalled for years following the rejection or forced renegotiations by member states (Moravcsik 1997). Many of these political exchanges occurred after the treaty was written, during the ratification stage (Milner 2006). Thus, even integrated groups of states can experience ratification problems.

Treaties between even two states can suffer from problems of ratification timing. In a recent study of bilateral investment treaties (BITs), Haftel and Thompson (2009) succinctly capture the political dilemma that ratification delay or refusal by one or both states evokes. “The ratification stage of international cooperation is therefore crucial from a legal perspective but also from a political perspective, since an un-ratified commitment may not be credible and thus may not
produce salutary effects” (Haftel and Thompson 2009, 6). Without ratification, a treaty cannot be said to have the binding effect of law.

In addition to Kyoto, the EU, and un-resolved BITs, the 2010 drama in the US Senate over the New START treaty to further reduce the number of nuclear arms in the US and Russia demonstrates that the problem of delaying ratification can affect treaties even in high politics issues. The summative effect of these examples is to beg the question: why do some states to delay or refuse treaties they have already drawn up? Beyond the sunk costs of negotiations, delays also threaten to hold back the positive effects of treaties that states presumably desire (e.g. reduced pollution or nuclear weapons, increased investment or coordination). So why do states wait?

**Dissertation Structure**

My broad research goal is to offer an explanation of ratification timing and test it against other accounts. Chapter 2 offers a brief review of the literature. From both the work on ratification delay and failure and the more general theories of international cooperation, I draw out competing explanations of why states wait. Then in Chapter 3 I take up one of the most prominent theoretical devices used in international relations, Putnam’s two-level game metaphor, and transform it into a new theory that generates novel predictions about ratification behavior.

In Chapter 4 I review the history of the Law of the Sea and its two implementing treaties. I explain their importance and place in international maritime law. Chapter 5 offers an overview of the dataset I constructed to test the competing explanations of ratification delay and failure within the Law of the Sea.
In the first of two empirical chapters, Chapter 6, I examine the entire population of states and establish the reasons that ratification delays occurred in approving the Law of the Sea and its two implementing treaties. Chapter 7 delves specifically into the ratification delays of democracies. In Chapter 8 I conclude by discussing the implications that this study and its finding have for both our understanding of the Law of the Sea and the process of treaty making more broadly.
Ratification is the domestic political process by which a country formally commits itself to a treaty, promising to obey the treaty’s provisions (Shaw 2008). As a part of the treaty making, ratification serves two purposes. First, ratification ensures that international agreements will receive at least some domestic support in the future by requiring leaders to secure consent from their governments, the most common form of which is a vote in the legislature. Secondly, the time between settling the treaty text and ratification provides an opportunity to resolve any tensions between the treaty and its implementation (Lake and Powell 1999; Martin 2000). The ratification requirement is a safeguard against both treaties that over-promise and the hasty adoption of legal obligations without debate.

Ratification delay is actually one variation on the dilemma posed by promise making and promise keeping in an anarchic international system, a classic problem in international relations. There exists a voluminous political science literature on general “cooperation” between nation-states (Downs, Rocke, and Barsoom 1996; Fearon 1998; Haas 1989; Keohane 1984; Koremenos, Lipson, and Snidal 2001; Krasner 1983; Milner 1997; Young 1994). Among legal scholars, there exists a standing discussion on the role of the legitimacy in international law making and a more recent discussion on the role of interests (Franck 1990; Goldsmith and Posner 2005; Guzmán 2008; Henkin 1979; Sinclair 2010).
Given this concern over cooperation at the international level, it is surprising how little we know about what drives ratification. The politics of ratification are rarely examined on their own merits. Speculation about the interests of states, the role of legitimacy, influential norms and political or economic obstacles are common (Axelrod 1984; Byers 2000; Dai 2007; Franck 1995; Ginsburg, Chernykh, and Elkins 2008; Neumayer 2005; Simmons 2009), to date, however, few studies have been advanced as an explanation for the variation in ratification timing observed (Haftel and Thompson 2009; Hathaway 2007; Lantis 1997, 2009; von Stein 2008). This is regrettable because as the recent ratification struggles over climate change have demonstrated, ratification is an intensely political process with real effects on the international legal system (Victor 2001).

**Focusing on Cooperating or Not**

When ratification has been considered in the political science or law literature, it has almost always been approached in terms of whether or not ratification occurred, with little attention to how long different ratification successes took (Evans, Jacobson, and Putnam 1993). Thus, a review of the existing literature necessitates some interpretation to draw out the insights it holds regarding ratification delay.

Recently, there has been a shift in focus among political scientists from studying international institutions to examining the “legalization” of international cooperation. This shift was captured best in the 2000 special issue of *International Organization (IO)* on the topic of “legalization” (Goldstein et al. 2000). This special
issue of IO set out to classify and analyze the legalized cooperation between states (e.g., treaties, agreements, institutions). In essence, this special issue attempted to give social scientists a vocabulary to discuss law, distinct from the often-normatively oriented language employed by legal scholars (e.g., arguing what ought to be legal) (Goldstein et al. 2000).

In many ways, this shift is a promising development, drawing scholarly attention to a broader set of legal agreements beyond international organizations like the UN and WTO, thereby enriching our understanding of institutions that might affect state behavior. The editors and authors of the special issue of IO did the discipline two major services. First, they created a classification system for different legal agreements (precision, obligation, delegation) (Abbott and Snidal 2000). Second, they applied their classification system to legalized international cooperation to reveal variations in the amount and quality of legalization across issue areas. Yet they stopped somewhere short of a comprehensive theory of legalization, stating they “do not claim to have provided a coherent new theory to explain the differentiated phenomenon that we have defined as legalization” (Goldstein et al. 2000, 399).

This is not to say that the classification system developed in the special issue of IO is completely silent on the politics of treaty ratification. In their seminal article on hard and soft law, Abbott and Snidal (2000) consider the fact that “hard law” agreements – precise, obligatory treaties – might make ratification more difficult by clarifying responsibilities and distributional consequences of the treaty. Thus, they
reason, it may be more efficient for states to use soft law – less precise, less
obligatory agreements – under certain circumstances.

Applying this conjecture to the question of why states wait to ratify, it is
reasonable to expect that the more precise and obligatory a treaty is, the more likely
that treaty is to experience longer ratification delays and potentially ratification
failures. Unfortunately, the precision and extent of treaty obligations are broad
explanatory tools, and alone they are unlikely to explain the variation in when
different individual states decide ratify the treaties they have negotiated. After all,
precision and obligations of a treaty are frequently the same for most states, yet
those states vary in how long they wait (Simmons 2009).

The legalization framework, in attempting to classify legal cooperation,
alludes to what might contribute to ratification delay. Though it lacks a detailed,
coherent theory as to why individual states faced with the agreement vary in when
they ratify, this framework possesses an expectation about what types of
agreements might be more susceptible to delay. Thus, a central task of this
literature review to pull from these theories the implications for variations in
ratification timing across states.

Political scientists and legal scholars have traditionally framed the decision
to cooperate, and thereby ratify, in five ways: treaty design, state interests, political
discourse, uncertainty, and two-level games. In the sections below, I review the
literatures that advance these explanations and, as in the example above, I look for
predictive elements in each strand of literature that might shed some light
ratification delay.
**Treaty Design**

One of the key components to understanding cooperation and ratification is the agreement itself. Building on the concept of a rational, unitary state, Koremenos, Lipson, and Snidal (2001) develop a theoretical framework to explain how states design international institutions. Koremenos et al. base their theoretical framework on a simple observation – that international institutions vary in how they are designed. From this observation Koremenos et al. attempt to connect the characteristics of institutional designs\(^8\) with the *ex ante* challenges\(^9\) states face when designing the institution. Koremenos et al.’s (2001) work produces several conjectures about when different institutional are most likely (e.g., restrictive membership increases with the severity of the enforcement problem).

The moving parts of Koremenos et al.’s explanation occur when states are choosing the institution’s (treaty’s) design. If the choices that states make account for the problems and uncertainties they face, then ratifications should follow hard upon the conclusion of negotiations because obstacles to agreement will have been anticipated. This expectation runs counter to the ratification histories of many treaties like those discussed above. Nevertheless, there are two possible reasons that even an institution that was rationally designed by states may experience ratification delays: negotiation mistakes by states or an intervening process.

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\(^8\) Dependent variables: membership, scope of issues covered, centralization of tasks, rules for controlling the institution, and the flexibility of the agreement.

\(^9\) Independent variables: problem type (distributional vs. enforcement), number/asymmetries of actors, uncertainty about behavior of others, uncertainty about the state of the world, and uncertainty about preferences.
Some states might not be very good at predicting or accounting for all the potential contingencies that might arise because of capacity limitations. If so, this might result in certain groups of states negotiating a less rationally attractive agreement that they cannot subsequently ratify when they bring it back to their domestic audience. Modifying the rational design projects broader theory to account for differences in negotiating capacity, and thus the ratifications delays that many treaties exhibit, has some serious consequences for the theory. It undermines a fundamental assumption of the rational design project, namely that states correctly anticipating future constraints and adapting their institutions to those constraints of the time. One way to assess whether negotiators made mistakes is to examine the historical record around negotiations and in the years following to see if the former negotiators expressed regrets at having agreed to an implausible plan. Luckily, the treaties examined here have an extensive legislative record both pre- and post-negotiation that I can examine for such expressions.

A second reason that the expectations of rational design project diverge from the empirical record may be that process at different level of analysis – e.g., a systemic change or a process within states rather than between them – blocks the speedy ratification of well-negotiated treaties. A systematic change might alter the problem faced by states or the levels of uncertainty and affected states, possibly all states, might recoil from an institutional design that no longer rationally meets the concerns of states. Although this modification technically fits within the rational design project’s logic, it generates empirical quandaries of its own. First it contradicts the well-established finding of institutional durability and participation
across changes in the types of problems dealt with, fluctuations in uncertainty, and even the behavior of the institutional bureaucracy (Barnett and Finnemore 2004; Duffield 1994; Keohane 1984). Second, the systemic changes necessary to alter the concerns of states would need to be significant and timed to coincide with the conclusion of negotiations to explain widespread reluctance to ratify a recently negotiated agreement. These conditions greatly limit the scope of cases that might be covered by accounting for systemic shocks.

Alternatively, within states processes such as political changes, market failures, or social movements may de-rail the best-laid plans of a government. The incorporation of this explanation of ratification delay into the rational design project is unlikely because it violates the assumption of unitary rationality of states. The rational design project’s novelty is derived from the parsimonious link it draws between the problems that states face and the institutions they design; a link dependent on the assumption that states behave in rational, risk-adverse ways. The types of process obstacles mentioned challenge the assumption of consistent rational, risk-adverse behavior by revealing how states preferences might change across time.

Critiques of the rational design project have also appeared in the cooperation literature. In the special issue of IO devoted to the rational design of international institutions, Wendt (2001) criticizes the project for not adequately considering alternative theories of institutional design. For example, both the sociological and constructivist explanations of institutional features point to logics of appropriateness that is likely to guide the choice of institutional design.
Additionally, Wendt finds the discussion of uncertainty and the role of path dependence in institutional design lacking. Duffield (2003) also analyzes the shortcomings of the rational design project. His primary critique is that the framework provides highly aggregated variables without much clarity on how these variables are connected. In Duffield’s opinion, these are solvable problems. They require breaking down independent variables (e.g., distributional problems) into discreet component parts (e.g., power, interests) as well as clarifying the logical connections between variables in the face of multiple institutional equilibria (Duffield 2003). These of critiques highlight additional hurdles the rational design project faces in explaining institutional design as well as the puzzle of ratification delay.

**State Interests**

There exist several long-standing and ongoing debates in political science about whether or not aggregate national interests exist and, if so, what they are (Morgenthau and Thompson 1993; Wolfers 1952). Both Realist and Neo-liberal Institutionalist scholars generally agree that national state interests control the behavior of states (Keohane 1984; Morgenthau and Thompson 1993; Waltz 1979). Nevertheless, when questions of international institutional form, function, and effects emerge these scholars have tended to diverge. Traditional Realists argue that institutions are epiphenomenal to the driving *animus dominandi* of states and largely unworthy of study in light of the importance of power and interests (Morgenthau and Thompson 1993).
More recent Realist scholarship has reconsidered the role of institutions, especially as they set up by hegemonic powers to help them maintain a dominant position (Gruber 2000; Ikenberry 2001). The fundamental logic behind this new approach is that institutions provide powerful states with a means of controlling those less powerful. For Gruber (2000) supranational institutions are not equally advantageous and states capable of going it alone may use them to extort and manipulate those less capable of prospering without the institution. Alternatively, Ikenberry (2001) argues that following major wars victors may exercise strategic constraint in designing institutions in order to preserve their dominant position longer. Neither of these explanations grants institutions their own causal force, but taken together they do remind us that the creation and use of institutions is not an inherently benevolent act. To the extent that institutions serve powerful states, the resulting ratifications of those institutions should be based on the relationships of weaker states to those more powerful states.

In contrast, Institutionalist scholars endeavor to show that, despite rational egoism, states can cooperate and institutions do in fact facilitate good relations between states. In this scholarship, ongoing transaction cost and coordination costs are held up as reasons that states create and use international institutions so frequently (Keohane 1984). Though this is not intended to ignore power asymmetries between actors or other more normative constraints (Keohane 1997), for Institutionalists institutional creation and use is driven by the practical needs of states and not coercive stratagems. The primary motivation for joining an institution (or treaty) should be the cost differential between the status quo and the
anticipated efficiency gains of an agreement. The gains though depend on the question of amount of cheating expected. Thus, for Institutionalist scholars systems with better monitoring systems and greater mutual benefits should motivate states to join more rapidly in order to realize the benefits of membership.

State interests are difficult to measure but the explanations above generate some expectations about what might happen in the treaty negotiations and the patterns of ratification delay that are likely to result. Specifically, if the interests of the powerful states trump those of minor states, then international institutions (e.g., treaties) should tend to reflect the will of the powerful and possibly of one group of powerful states over another. Three predictions emerge from this line of thought. First, treaties should to favor the interests of the more powerful states involved. When this is the case, powerful states should ratify more quickly as their interests are best represented, with weaker states following later. Second, insofar as treaty design favors one group of states, that group should ratify more quickly than those states disadvantaged by the treaty. Third, on transaction rich issues, states should tend to ratify more quickly because there is more to gain from setting up an institution.

In contrast to single national interest expectations above, Sprintz and Vaahtoranta (1994) have offered an explanation for international policy making that splits state interest into explicitly competing calculations. Their work focuses on explaining commitment to environmental treaties. They choose these treaties in part because they provide a logical division for the competing interests. Specifically, some states are more vulnerable to environmental problems and the costs of solving
an environmental problem vary across states. Sprintz and Vahtoranta label these competing interests as ecological vulnerability and abatement cost.

Similar to Sprintz and Vahtoranta, I test my explanation on an environmental treaty, the Law of the Sea. Environmental treaties provide a theoretically useful idea of “cost” for states attempting to cooperate because the inability to deal with an environmental problem often imposes costs of greater pollution, less resource availability, or greater health risks to the populations of states. Second, while some substantive work in IR has been done on the domestic politics of environmental issues, the effects of those politics and the creation of law remain understudied (DeSombre 2000). Finally, environmental issues are likely to be what 21st century battles are fought over, specifically the use of resources not political empire.

While retaining a unified “state” decision-maker, Sprinz and Vaahotoranta complicate the state’s decision in the issue area of environmental politics by introducing the countervailing pulls of ecological vulnerability and abatement costs. Thus, in the Sprinz and Vahtoranta’s theoretical model, different states possess more than a single national interest; they possess competing and/or complementary incentives to act and solve the same environmental problem. For example, a state with high ecological vulnerability may have either low or high abatement costs. In the case of low abatement costs the state has complementary incentives, there is benefit in solving a problem and little cost to solve the problem. Thus, the state should act quickly. However, as the cost of abatement rises it creates competing
incentives (i.e., solving the problem vs. retaining resources to allocate to other problems). States in with high abatement costs should act more slowly.

The dependent variables considered here are both the policy promotion and by logical extension the ratification timing. Translated to the language of treaty ratification, we should observe a rush to ratify by “pusher” states with complementary incentives; meanwhile, “dragger” states should take longer than either “intermediates” or “bystanders” to ratify, because the former must pay more to solve a problem to which they have little vulnerability. Figure 2.1 reveals how Sprinz and Vaahatoranta categorize different state types.

**Figure 2.1 Classification of a Country’s Support for Environmental Regulation.**

![Diagram showing the classification of a country's support for international environmental regulation.](Sprinz and Vaahatoranta 1994)

More detailed than the single interest state power account above, this is a plausible explanation for broad groups of states and can be tested quantitatively. Yet this theory does not account for why states within the same group might ratify at different times.

In summary, state interest accounts of ratification delay warn scholars to be aware of how power asymmetries may affect the institutional arrangements of
treaties, specifically which states benefit the most from treaties. When dividing state interests to create conflicting/complimentary drives, the interest-based explanations of ratification delay offer a broadly predictive account of international policy making with policy “pushers” and “draggers,” but fail to offer a prediction on why states within those groups might vary in their ratification timing. Overall, state interest explanations are weak explanations because they can be tautological (i.e., states do is in their interest) and rarely is the specified national interest cited.

**Political Discourse**

The possibility that the quality of the discourse over treaty law might affect a treaty’s potential ratification rests on three sources of influence: the legitimacy of the process (Franck 1990), the perception of the problem and solution (Haas 1989, 1992), and the role of societal actors (Keck and Sikkink 1998). Each of these sources affects how a treaty is viewed.

The legitimacy of the international process used to create a law is a key concern of many legal and constructivist scholars (Franck 1990, 1995). In sum, their arguments boil down to a concern for how the rule is understood, with less legitimate rules receiving less attention or compliance. The legitimacy of rule can originate with either the process of creation – was it open to states and did it appeal to some basic element of fairness – or to the cognitive process of leaders – does it possess clarity, normative cues of appropriateness, coherence in its application, and a set of secondary rules related to the primary rules.
Although these concerns are not testable in the quantitative sense employed here, the Law of the Sea and its implementing treaties were negotiated in consensus style, involving far more states than recent attempts at legal cooperation (e.g., the 2009 Copenhagen Conference on Climate Change). Moreover, the treaties examined herein are exceeding clear and large sections are based on long-standing state practices. In both instances – the creation process and possible cognitive understandings of the Law of the Sea rules – the cases here should display strong “legitimacy” and thus “compliance pull” (Franck 1990). Yet even here ratification delay remains a problem.

The perception of the problems could presumably shift the rate of ratification if a major discovery were made to increase the importance or visibility of a problem. Yet if epistemic communities exerted such pressure, the Law of the Sea should have experienced quick ratification (Haas, Keohane, and Levy 1993). The importance of governing the seas has changed over time, but that change has been in the direction of the desirability of governance and a greater understanding that the seas are not simply a limitless pollution sink or pantry (Churchill and Lowe 1999). According to the historical record, epistemic communities were most active early on in the Law of the Sea conference (Sebenius 1984).

Finally, discourse and legitimacy can also influence the role of advocacy groups (von Stein 2008). Treaties viewed favorably and highly salient to advocacy groups tend to attract attention – e.g. land mine opponents have long pressured the US to ratify the Land Mine Treaty. Although an analysis of the discourse surrounding the Law of the Sea and the advocacy groups it engages is beyond the
scope of this dissertation, the presence of non-state actors in the ratification process is reflected in the interaction of state interest variables with democracy in the analyses that follows.

Uncertainty

Since the introduction of game theory to IR, attempts have been made to model the effects of divided government and information on ratification (Milner 1997; Pahre 2006). In a world of perfect information, all negotiated treaties are ratified. In order to account for the “mistakes” of executives who bring back agreements that go un-ratified, modelers have had to resort to either uncertainty of information or partial implementation. A third, less frequently modeled, approach is to investigate political changes over time within states. This last approach, captured in Putnam (1988) and Lantis (Lantis 1997, 2009) serves as a jumping off points for constructing a new theory of ratification delay.

Partial implementation relies on anticipation of a less-than-complete level of cooperation (Mertha and Pahre 2005). The basic logic of partial implementation is that negotiators are empowered to create agreements knowing that not all of treaty’s provisions are likely to be enacted. This logic accounts for the extraordinary concessions of some states in negotiation (e.g. Sino-American intellectual property rights agreements) that are never fully implemented. Though theoretically interesting, this model is most applicable to iterated, complex, and shifting interactions (e.g. patent law and enforcement), not to the structure of traditional treaties – wherein full implementation is required to solve the problem.
Finally, it is unclear exactly how this model might explain the delay in ratification observed across countries. The partial implementation models’ purpose is to show how agreement might be reached regardless of ratifying interests.

The incomplete-information approach to explaining ratification builds on the classic ratification game in which a hawkish legislature constrains a dovish executive (Milner 1997). By identifying dividedness of executive and legislative ideal policy points and legislative uncertainty about the quality of the agreement as the key explanatory mechanisms, this theoretical approach makes broad empirical investigation difficult – a likely reason most investigations of this type are done through case studies.

More troubling than the lack of systematic explanation or evaluation is that the uncertainty approach posits a world of highly uninformed legislatures as changes in information explain why some states ratify and others do not. Even though some uncertainty does exist in decision-making, relying on “endorsers” as a theoretical mechanism that prompts legislative action through signaling their approval is problematic (Milner 1997). Considering the sheer preponderance of research that has been done on any contemporary issues, it seems unlikely that it is new information or uncertainty about the agreement reached that is swaying the will of legislators. Moreover, it is not uncommon for negotiators to discuss and even include legislative actors in the negotiations. In either case, neither the partial-implementation nor the uncertainty approaches map on well to contemporary international lawmaking.
Two-Level Games

Putnam’s metaphor has strongly influenced the recent study of international cooperation (Putnam 1988). Over the last twenty-two years, the concept of a Janus-faced executive simultaneously negotiating at the international and domestic level has proved a compelling counter to theories operating solely at the systemic level.

Lantis has most advanced Putnam’s metaphor in the study of treaty ratification. His two works (Lantis 1997, 2009) on the subject have served as useful guideposts in thinking through what might drive the timing of ratification. As Lantis himself acknowledges, however, his work is a beginning not an end (Lantis 2009). Designed as a sampling of different treaties and employing the comparative case study method around developed democracies (i.e. the US, UK, Canada, Germany, and Australia), Lantis’ work is suggestive that, “a central assumption of two-level game theory – that the executive can anticipate the preferences of domestic actors and, therefore, only develops agreements that are ratifiable – does not hold. Instead, treaty ratification is a process that requires and incredible investment of time and energy by committed leaders” (2009, 11).

I draw on Lantis’ observation that the original interpretation of Putnam’s executive simultaneously playing multiple games at multiple levels is empirically incorrect and theoretically misleading. In reality, Lantis notes, the ratification game is necessarily played after negotiation of a treaty text has concluded. On this point, I

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10 This conception of uncertainty stands in contrast to Milner’s (1997) conception of uncertainty, in which it is the legislature that is uncertain of the quality of the agreement reached while the executive has complete information.
concur with Lantis – ratification does happen over time and this should inform both our theory and methods.\textsuperscript{11}

Unfortunately, several methodological and conceptual problems limit the conclusions we can draw from Lantis’ work. Despite the rich detail contained in Lantis’ case studies: that methodological choice carries the cost of generalizability. Lantis does find some support for the propositions (hypotheses) that leadership, government form, and ideological arrangement, and the presence of interest groups matter, but his study is limited to the eighteen cases studies examined. Selecting a variety of treaties across issue areas allows for a comparison of factors across cases/issues, but it severely reduces his ability to pool his data and make any broader statement about the effect of certain factors within a given issue area.\textsuperscript{12} Lantis himself notes that:

“This study does not provide a comprehensive study of the propositions given the small number of cases. Rather I seek to evaluate the plausibility of the propositions for explaining these specific cases – with the assumption that this has potential for assessment of related cases of ratification struggles in advanced industrial democracies” (Lantis 2009, 29).

Lantis’ analysis also remains strictly focused on whether or not a state ratified an agreement, never making the leap to analyze whether the factors under

\textsuperscript{11} Jana von Stein (2008) compared the ratification delays of the UNFCCC and Kyoto. Her conclusion was that carbon-emitting, Annex 1 democracies take longer to ratify, but her data her analysis remained silent as to what it was about carbon-emitting, Annex 1 democracies that slowed ratification. Von Stein also restrained her analysis to the issue of climate change and did not develop a broader theory of ratification delay.

\textsuperscript{12} For example, on environmental issues Life and Death of International Treaties has analyzes only one treaty (the Kyoto Protocol) and the ratifications (or not) of five states. These cases are informative as a plausibility probes but of such limited number that cannot offer a compelling test of Lantis’ arguments.
examination also contributed to ratification delays – although he does mention the
time it took states to ratify in most cases. Similar to Milner (1997) before him, this
centralization is attributable to his interest in offering an analysis of conditions
that affect the success or failure of ratification instead of the factors that might
result countries ratifying at different times. Combined with the above
methodological limitations, this success/failure orientation confounds Lantis’s
ability to analyze ratification delay.

**Problems with the Traditional Two-Level Games Metaphor**

The Janus-faced national executive engaged in simultaneous negotiations
with both foreign leaders and a domestic audience is not a theory, but rather a
metaphor (Putnam 1988; Evans et al 1993). Across academic disciplines metaphors
are images used to represent less tangible ideas. Metaphors typically do not and
often cannot explain or predict phenomena with auxiliary theoretical assumptions.
Within international relations, the two-level game metaphor originally advanced by
Putnam has most frequently been used as an organizational schema for the
negotiation pressures that might existent in constructing an international
agreement. Borrowing from the behavioral theory of social negotiations within
labor talks (Walton and McKersie 1965), Putnam paints the following picture:

“Each national political leader appears at both game boards. Across
the international table sit his foreign counterparts, and at his elbows sit
diplomats and other international advisors. Around the domestic table
behind him sit party and parliamentary figures, spokespersons for domestic
agencies, representatives of key interest groups, and the leader’s own political advisors” (Putnam 1988, 434).

The image of political leaders playing multiple interconnected games describes the circumstances of the game, but it does not generate expectations about the outcomes of those games. Putnam’s metaphor identifies the possible combinations of actors playing (leader-to-leader, leader-to-diplomats, and leader-to-domestic audiences) as well as the linkage between each game (national leaders). Simply identifying combinations and linkages do not offer what testable theory requires: a causal story capable of generating predictions.

Putnam himself acknowledges as much: "Metaphors are not theories...Formal analysis of a game requires well-defined rules, choices, payoffs, players, and information, and even then, many simple two-person, mixed motive games have no determinant solution...In what follows I hope to motivate further work on that problem” (Putnam 1988, 435). In many ways Putnam’s original article and the edited volume that followed it were designed as a series of plausibility studies, examining whether and to what extent the process described by the traditional metaphor actually exists. To date, more systemic quantitative analysis remains to be done.

In blazing a path forward, Putnam incorporated the concept of dueling “win-sets” to create a rudimentary mechanism for producing predictions. A win-set in the traditional sense is the range of agreements acceptable to the ratifying actors, the size and overlap of which affect the likelihood of an agreement being reached as well as the distribution of joint gains (Putnam 1988). Understanding how leaders
use their win-sets in negotiation is the key to the behaviors of bargaining actors and the likelihood of an agreement being reached. The manipulation of win-sets (e.g., a negotiator claiming a small win-set to pull an agreement closer toward the state’s preferred agreement) is integral to the Putnam’s account of cooperation generally and ratification specifically.

**Figure 2.2 A Representation of Win-sets**

![Diagram of win-sets](image)

**Figure 1. Effects of reducing win-set size**

Putnam (1988)

In Figure 2.2, as actor Y’s win-set shrinks (i.e. moves closer to $Y_M$), actor Y the overlap of the win-set moves any deal closer actor Y’s ideal point – $Y_M$. As a result, most scholars in the two-level games tradition have focused on the persuasive strategies of leaders, informational asymmetry, and the effects of interest group signals (Evans et al. 1993; Milner 1997). These aspects of Putnam’s metaphor owe the close scrutiny that they have received to their purported abilities to manipulate the preferences of ratifying actors. The effect of persuasive leaders and information bearing interest groups is the same: to alter the size of national win-sets (Evans et al. 1993, Milner 1997). Meanwhile, the ratifying actors – the domestic half of the metaphor – are conceptualized primarily as a static limit on the behaviors and outcomes at the international level and not as an active part of the cooperation story.
These developments occurred despite allusions in Putnam’s original article to the importance and complexity of domestic politics and the preferences of ratifiers (here referred to as Level II) versus the international negotiation (Level I). Putnam originally argued that the size and the overlap of win-sets, and thus the ability of leaders to secure an agreement, are driven primarily by three factors: “1. Level II coalitions and preferences; 2. Level II institutions; [and] 3. Level I negotiating strategies” (Putnam, 1988, 422). Two of these three are domestic phenomena specifically having to do with ratifying actors. Yet in recent attempts to convert of Putnam’s metaphor into a theory these domestic factors have receive remarkably little scholarly attention.

This singular focus on leaders is made more puzzling because Putnam devotes an entire section of his article to the difficulty that negotiators experience in understanding the Level II game. “Level I negotiators are often badly misinformed about Level II politics, particularly the opposing side” (Putnam 1988, 452). This obtuseness also seems to extend to a negotiator’s own domestic politics. At the outset of the single most comprehensive work on two-level games, Moravcsik notes also that, “Statesmen often find it easier to launch negotiations than to gain domestic ratification for the resulting agreements” (1993, 34). Taken together these statements paint a picture of striking disjuncture between levels and yet the effects of this separation have remained largely unexplored.

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13 By “opposing side” Putnam means the domestic politics that a leader’s negotiating partner faces upon returning home. Putnam’s main empirical reference for this observation is this 1978 Bonn Conference wherein “American officials did not appreciate the complex domestic game that Chancellor Schmidt was playing over the issue of German reflation” (Putnam, 1988, 452).
In the traditional metaphor, national leaders link the two negotiation games (Evans et al, 1993; Lantis 2008) but the above statements suggest that the emphasis on analyzing leaders, whether and how they attain an overlap of win-sets, might be incomplete and possibly misdirected. How can leaders manipulate a process they regularly fail to understand? In the years since Putnam first advanced his metaphor the world has observed increased involvement of domestic actors in foreign policy. This should only have increased the information available to leaders about the preferences of ratifiers, and thus there should have been a reduction in the threat posed by ratification failure. To date, however, the international community continues to struggle with non-commitments, unexpected failures to ratify, and strategic delay by states. Given that ratification has proven such a sticking point for cooperation in the modern era, an analysis of the actors who ratify is long overdue.

A notable exception to the privileging of leaders in theory building from the two-level games metaphor is Milner’s (1997) conceptualization of interest groups as information endorsers. In Milner’s cooperation story, interest groups signal an agreement’s utility to a legislature by endorsing it. This signal helps to inform the legislature’s median voter, who knows the preferences of the interest group but is uncertain about the quality of the agreement. Within Milner’s adaptation of the traditional metaphor, the main barriers to cooperation are scarcity of information and the underlying differences in executive and legislative policy preferences.

As with misunderstandings of leaders, the recent increase in transparent, comprehensive international negotiations and the concurrent rise in legislative capacity and information technology in states across the world should have reduced
some of the uncertainty Milner assumes. Despite the proliferation of information many agreements are still negotiated that experience heated ratification battles and long delays.

The concept of an endorser also remains difficult to pin down. Endorsers are defined by Milner as “any domestic group other than the executive; it could be an interest group, a legislative committee, other party members, an independent agency, and so on” (1997, 86). Although this is useful in constructing a theory this broad assembly of actors makes it difficult to think that information is the only thing being exchanged. The picture of legislatures and interest groups painted by Milner is surprisingly apolitical. Legislatures only figure into her story when executives possess beliefs about their recalcitrance. This raises several questions. Is information all that endorsers, whomever they are, provide? Is it even the most important among the possible persuasive strategies available to would be endorsers? The literature on interest group politics seems to suggest other possibilities, including, but not limited to, campaign donations/assistance, outright vote buying, or assistance in legislative tasks (Hall and Deardorff 2006). These alternatives are left unexplored in Milner’s models and information is assumed to take priority.

None of the theory emerging from the traditional metaphor moves beyond a static conception of Level II politics (Putnam 1988, Evans et al. 1993, 453). When heterogeneous domestic interests exist Putnam argues, “the effect a domestic division, embodied in hardline opposition from hawks, is to raise the risk of involuntary defection and thus impede agreement at Level I” (Putnam 1988, 445).
What Putnam does not explain is why a leader would ever bring back an agreement under such circumstances. Instead, he focuses on the strategic implications for negotiation and the manipulations available to leaders once agreements outside the pre-defined win-set are brought back to Level II.

Similarly, according to Milner (1997) legislatures are assumed to possess a single, static policy preference, only malleable through information endorsers attesting to the goodness of the deal and thereby resolving the legislature’s uncertainty. Milner models the decision of the leaders to pursue a treaty as one based on an executives beliefs about the legislature (and vice-versa) but offers no clarification on what informs those beliefs (1997, 87-88). The theory offered below begins to offer an answer to this theoretical silence.

Left un-modified, the traditional two-level games metaphor describes two negotiators communicating and attempting to change their win-sets in order to bargain more effectively. Given the costs of ratification failure, reasonable negotiations should, after wrangling over the terms of an agreement, result in either an agreement that is ratified quickly or failure to settle on a treaty text. The traditional two-level games metaphor can neither fully answer the question nor even directly ask why states vary in their ratification timing. Beyond the contradictions and inconsistencies above, this explanatory silence is unfortunate because it is ratification delays and failures that most directly threaten the universality, substantive effects and enforceability of the international agreements that the traditional metaphor was created to describe.
A theory of treaty making ought to explain both how and why certain agreements are reached as well as how and why involuntary defections occur. In the next chapter I re-cast the two-level games metaphor into a more complete theory capable of explaining ratification delay. To accomplish this I build on the second half of Putnam’s metaphor, the domestic game of vote getting in the legislature. Specifically, I explore the incentives that motivate the ratifying actors and the institutions that constrain state leaders during the ratification process.
Chapter 3

A Theory of Ratification Timing

Two-level games scholars argue that much of international cooperation, especially negotiated agreements, require a second game of approval (e.g. ratification), whether formal or informal (Putnam 1988). Thus the two-level games metaphor should serve as a parsimonious illustration from which to theorize about state behavior (Evans, Jacobson, and Putnam 1993). I contend that the arguments and empirical studies of two-level game scholars (Lantis 2009; Martin 2000; Milner 1997) should be seen as one wing of a broader, progressive Liberalist research tradition (Laudan 1977; Moravcsik 1997). The goal of this tradition is to better understand international state behavior by looking inside the black box of states, to the domestic politics so often ignored under other research paradigms.\(^{14}\)

The research of scholars working within this broad tradition has generated new and exciting ideas about the likelihood of cooperation through the manipulation of win-sets (Milner 1997), as well as insights, into the effect of domestic institutions on treaty ratification (Haftel and Thompson 2009; Simmons 2009) and the role of sub-national actors in compliance (Dai 2007). Within this evolving research tradition, I believe that the two-level games metaphor is a promising theoretical lead to follow.

That domestic politics matter is not a new claim. Reasoning through for the mollifying effects democracy could have on the scourge of war, Kant penned the

\(^{14}\) See the seminal realist writings of Morgenthau and Thompson (1993) and Waltz (1979). For institutional arguments see Keohane (2005) and for rational choice arguments see Koremenos et al. (2001).
essay “Perpetual Peace” in 1795. Since that time the investigations into “how”
domestic politics might matter have proliferated. I join this running dialogue by
recasting the two-level games metaphor into a theory of ratification timing. In doing
so my hope is to contribute to both the broader Liberalist research tradition and the
of two-level games literature.

In the previous chapter, I explored the problems with the traditional
metaphor’s limitations and inaccuracies in depicting how international cooperation
happens. Yet these critiques were inspired more by admiration than disapproval.
Despite its shortcomings, Putnam’s metaphor remains an inspirational force in its
parsimony. It leaves aside the extraneous details that often plague foreign policy
analysis (Snyder et al. 2002), and it identifies the key political actors in international
cooperation, especially in the treaty making process.

Thus, with some revision, I believe the two-level game metaphor can be
recast as a theory with the capacity to produce more dynamic and nuanced
predictions of international cooperation. Specific to the dissertation at hand, a
revised two-level game theory holds the promise of explaining why states wait to
ratify the treaties that they have already negotiated and signed. Moreover, once
constructed, such a theory could be applied to the other stages of the treaty making
process, namely implementation and compliance.

Recasting the Metaphor

As will become clear, the central theme of this chapter is that the domestic
constraints alluded to, and the ratifying actors mentioned in, Putnam’s metaphor are
more important than previously thought. I argue that in addition to being stronger constraints on the executive, ratifying actors are strategic in their behavior. Similar to negotiators at the international level, I contend that ratifiers are engaged in political party struggles at the domestic level that have their own incentives, choices, and strategic calculations.

Good social science theory ought to offer an explanation of the processes by which events unfold, a story about the primary actors and their actions. For theory to be productive and progressive, it should also specify outcomes – specifically a series of falsifiable predictions about how similar events are likely to unfold across time and space. This short history of the two-level games metaphor is one primarily of struggling with theory development and not of evaluating the claims of a completed theory.15

Because Putnam’s (1988) two-level games metaphor does not fully meet the requirements above, Evans et al. (1993) advance several additional assumptions about the incompleteness of information, the skills, interests, and strategies of negotiators, as well as the variations in domestic win-sets to extract predictions from the traditional metaphor about the bargaining outcomes of the games being played. Yet because their explanations remained silent on time as a component of cooperation, Evans et al. (1993) are restricted to evaluating cooperation as a single binary outcome, largely without an explanation for the post-negotiation difficulties that their case studies revealed.

15 As a contrast consider that within the conflict literature there have been hundreds of articles and books concerned with evaluating the claims of different theories of power politics – for examples see Lemke (2002) on power transition theory and Vazquez and Elman (2003) on the balance of power predictions of Waltz (1979).
Later applications of the metaphor (Lantis 2009; Milner 1997) take up post-negotiation difficulties identified by Evans et al. Although these scholarly efforts pay lip service to time, their assertions are left largely untested. Milner’s game theoretic exploration of the traditional metaphor takes the median legislators interest and uncertainty as forces that constrain the ability of leaders to cooperate, but without an explanation for why leaders might attempt cooperation without endorsers to ensure the deal. Milner (1997, 88) mentions the beliefs of both the leader and the legislature as important, but does not develop any explanation for how the beliefs are constructed. Lantis (2009) postulates several conjectures about domestic politics, but he does not attempt to tie them together into a systematic theory of ratification timing.

Thus far, none of the theory development has produced a full account for why ratifications are delayed or denied, nor have scholars developed databases to conduct Large-N testing accuracy of their claims. With the modifications below and the following Large-N study of the ratification timing of the Law of the Sea, I test how well Putnam’s metaphor recast as a theory accounts for ratification delays and failures. Following each modification, I describe the hypotheses that modification generates specific to ratification delay or failure.\textsuperscript{16} A full table of the hypotheses is also presented at the end of the chapter.

\textsuperscript{16} Remember that if Putnam’s (1988) original metaphor were correct about ratification timing we ought to observe ratification without delay because the ratifying interests would have been taken into account by negotiators communicating about their win-sets.
Modification #1: Treaty Making is a Sequential Process

Treaty making happens in the following stages: negotiation, ratification, implementation, and enforcement (a.k.a. compliance). Yet, in Putnam’s metaphor the stages of negotiation and ratification collapse into one (Evans, Jacobson, and Putnam 1993; Putnam 1988). I argue that this collapse is problematic because it confuses two distinct political processes. Moreover, it credits negotiators with more predictive power than they actually possess. In order to make the metaphor tractable as a theory, we must pull the stages of negotiation and ratification apart.

Ratification necessarily follows negotiation. Until negotiators treaty’s text in hand, no agreement exists to ratify. Although negotiators undoubtedly attempt to anticipate the struggles an agreement might face during ratification, negotiation and ratification do not occur simultaneously. In the chronological space between negotiating and ratifying there lurks the potential for misunderstandings, miscalculations, and the shifting of political forces beyond the control or prediction of any negotiator, no matter how skilled or powerful.

Legal scholars have long known that negotiation and ratification exist as separate stages of treaty making. The former precedes the latter and each creates different legal obligations (Shaw 2008). Along with implementation and compliance, the stages of treaty making mirror domestic policy-making so much so that legal theorists have even designed systems for interpreting international law based methods for interpreting domestic legislation (Macdonald and Johnston 1983). Furthermore, distinct stages exist in other forms of legal cooperation. Memorandums of understandings and executive agreements frequently depend on
some form of domestic consent, e.g., funding commitments or the passage of legislation.

Even if the traditional metaphor overlooks the separateness of negotiation and ratification; political scientists have not. Martin (2000) provides a detailed argument on the variety of ways the US congress can limit executive agreements. Martin’s (2000) primary finding is that the legislatures are able to constrain executives regardless of the choice of legal instrument. So why don’t executives bring legislators into the negotiations to account for their preferences early on? Martin conjectures that executives headed to the negotiating table likely weigh the tradeoffs in credibility (increased by legislative involvement) versus flexibility (decreased by legislative involvement) and come down on the side of flexibility. Beyond asserting this conjecture, Martin leaves the exact weighting of the tradeoff unexplored. Why would leaders value flexibility more? And why would increasing credibility be seen as less valuable during negotiations?

In order to begin to answer these questions, we must remember that the credibility benefit of leaders bringing legislators to the negotiating table is contingent upon two things. First, the selected legislators must represent legislative interests. If they do not, or cannot, represent the preferences of the legislature, or at least key constituencies, they will not contribute much to the negotiations. Second, the selected legislators need to be able and willing to support during the ratification stage. Yet time passes during negotiations and again between negotiations and the actual ratification vote, endangering the ability of legislative liaisons to perform either function. Legislators can lose their seats. New parties can
gain seats. Legislative majorities can shift. Absent standing parliamentary committees that can assure a leader of accurate representation of legislative interests and future support for the treaty (Martin 2000), the credibility gained by including individual legislators remains a debatable.

Abandoning the attempt at capturing legislative preferences through the inclusion of actual legislators, scholars focusing on treaty design (Koremenos, Lipson, and Snidal 2001) or employing the traditional two-level games model (Evans, Jacobson, and Putnam 1993; Milner 1997; Putnam 1988) assume that leaders will able to predict the domestic hurdles a treaty will face. There can be no doubt that leaders attempt to do this, but their relative success in doing so is unclear and should not simply be assumed. The depiction of a leader turning his/her chair around to poll and re-poll easily and quickly their potential ratifiers is at odds with the actual time and resource constraints faced by negotiators, not to mention the periodic strategic incentives toward secrecy during negotiations (Berridge 2010). Moreover, even if leaders are striving to predict the fate of treaties, they appear to be doing a poor job of it.

As Table 1.2 in Chapter 1 showed, environmental treaties, even those regarded as successes such as the Montreal Protocol, have experienced delays in ratification. Trying to anticipate all or even most ratification obstacles for all the states arrayed around the negotiation table requires a good deal of educated guesswork. On this front it is telling that Evans et al. (1993) find little evidence for manipulation or understanding of domestic politics by negotiators. “Our mistake was not in overestimating the importance of information; it was in overestimating
the informational consequences of national boundaries. COG’s [executive’s] estimates of what was ratifiable in their own domestic polities were often wrong…” (Evans, Jacobson, and Putnam 1993, 409). Even assuming perfect knowledge exists about future domestic preferences, the true effects of an agreement might be uncertain or heavily contingent on other environmental factors.

Given the above arguments and findings, the two-level games metaphor can be improved by explicitly introducing time, acknowledging the limitations leaders face, and providing an avenue to theorize about those constraints. I make this modification by arguing that leaders are primarily concerned with establishing a workable solution to a problem – not anticipating every future obstacle. Moreover I contend that they are engaged in a problem solving activity within which there is bargaining.

**Time and Uncertainty**

Because negotiation is separated from ratification, often by many months or years, it is nearly impossible to anticipate every future domestic hurdle that each of the assembled countries might face. These predictions are especially difficult as the number of states involved increases, which is increasingly the case for important international treaties. Negotiators may, and probably do, possess a diversity of goals – e.g., discussing and framing the problem, achieving buy-in of the assembled countries, solving as much of a problem as possible. They might even bargain hard by referencing difficulties in gaining ratification, yet on average negotiators are both
less able to foresee obstacles than originally speculated (Evans, Jacobson, and Putnam 1993, 409).

Negotiators face several temporal dilemmas unrepresented by the traditional metaphor. Frequently negotiations can take years during which time the domestic political environments of each state might shift. Even the negotiators can changeover during the course of negotiations. For example, although President George Bush Sr. began negotiations of the North American Free Trade Agreement (NAFTA), President Clinton concluded them. Although both presidents operated within constraints of what was not ratifiable (e.g., the US would hardly agree to drop its own tariffs while Mexico doubled its tariffs on US goods), the question of how ratifiable each alternative might be within future domestic political environments given future elections, shifting coalition or party dynamics, or exogenous events (e.g., war, resource discoveries, etc.) was far from clear at the time of negotiations.

Attempts by negotiators to direct their efforts to mollifying specific, immediate domestic concerns are unlikely to prove effective or stable solutions if the ratification stage is many months, or years, off as it often is in the case in treaty making. Being presented with clear boundaries on what is not ratifiable is not the same as knowing which agreement is most likely to win ratification across the domestic politics of all the relevant states at some future date. This is likely why many negotiations employ normative values such as fairness, legitimacy, or responsibility as guideposts for treaty design (Berridge 2010). These norms can stand in for what might be acceptable and sustainable across states, providing the
foundation for ratification arguments better than ongoing analyses of the political circumstances of the moment.

Franck (1990, 1995) captures this dynamic in his arguments about the role of legitimacy in international law. For Frank the key to understanding international law’s effectiveness is state acquiescence to legitimacy (whether of process or principle), not coercion by force or power dynamics. International law is driven by the consent of states and only treaties undergirded by universal principles such as fairness, legitimacy, or responsibility are likely to be acceptable in legislatures around the world. Applied to the question of why states wait to ratify, the legitimacy-focused approach suggests two interesting possibilities. First, negotiators overcome future uncertainty by adhering to “legitimate” process of negotiation and treaty structure. Second, ratification delay might be exaggerated when either the process that created a treaty, or the treaty’s structure, are deemed illegitimate.

_Prioritizing Efforts_

Negotiators face a challenging set of tasks so they must prioritize their efforts. The time at conferences is often focused on the proposed solutions. Debating, comparing, and assessing alternative solutions are key aspects of negotiation (Starkey et al. 2010). Often these processes are done behind closed doors (or during the frequent coffee breaks). Information on costs, benefits and political will are important currencies in diplomatic exchanges. Yet the inclusion of information providers, playing the Level II game in metaphor parlance, is often at
the expense of both time spent on Level I negotiations. Bringing in outside opinions also carries the potential cost of making negotiations more difficult because a disinterested actor almost never provides information.

The traditional metaphor assumes leaders are surrounded by, and can communicate with, other leaders, diplomats and ratifiers. Instead, I argue that each of those efforts requires energy, carries costs of additional publicity, and takes time. Negotiators must prioritize their efforts because they simply cannot do everything. During conferences in which treaties are drawn up, most of the efforts of negotiators are directed at negotiating with other leaders over alternative solutions to the problem at hand, not on polling and re-polling their ratifiers (Berridge 2010).

*The Compromise Constraint*

At the international level, the negotiators are also constrained because they need to have other states consent to an agreement. For any issue, a number of solutions technically exist wherein one country, or a subset of countries, does nothing while the remaining states work to solve the problem. These “solutions” are not viable because not all states are likely to ratify them, especially those states asked to work while others do not. Compromise, to some extent, is required by all states in order to negotiate a treaty. This subtle process is misrepresented in the traditional metaphor as simply the median point between indifference curves for a single issue. Reality is more complex. Most states must move away from their preferred policy toward a comprise solution more likely to entice others to ratify.
The historical record shows, negotiators often must be creative in balancing tradeoffs and creating mechanisms within agreements that solve problems in a manner with which most states agree (Chayes and Chayes 1993; Churchill and Owen 2010). In multilateral settings, in which several states are required to solve a problem, the compromise constraint will be exaggerated. As the number of crucial states increases so too does the possibility of a state vetoing any specific agreement. Thus, expanding the number of ratifications necessary to deal with a problem limits the ability of any individual state to unilaterally dictate the terms of the agreement in their favor.

*The Norm of Problem Solving*

Beyond being advocates for their own countries interests, negotiators are normatively pre-disposed to problem solving. The forums that they operate within – diplomatic conferences and summits – are almost always centered on solving a problem. Negotiators are sent to bargain with the directive of finding a workable solution to a problem. Thus, the professional reputation and acclaim available to negotiators comes from their ability to demonstrate that they are capable of successfully bargaining a sound solution to a problem (Berridge 2010). They employ a number of strategies designed to find common ground, overcome obstacles, and distribute the material and political costs of solving a problem. I contend that negotiators are not simply looking for a point within the indifference curves closest to their ideal policy. Negotiators care that their solution works.
In the Putnam’s two-level games metaphor, the interests of negotiators are divorced from the actual problem requiring cooperation. Successful negotiators in Putnam’s metaphor are able to find a point within their overlapping interests. If possible, a negotiator will represent their win-set as very small in order to shift the chosen policy closer to their ideal. Yet, there is no predictive mechanism to establish which of the infinite median points between their indifference curve will actually be chosen. In essence once each side is fully informed that each median point between them is as agreeable as the next, there are multiple equilibria. As long as these points of agreement rest with an overlap of win-sets, all of them should be easily ratified.

In contrast, I argue that negotiators are not removed from the quality of the solutions that they propose. The norm of problem solving and the professional incentives surrounding the status of being a good problem solver push negotiators to find an agreement that best addresses a given problem, not simply whatever is politically expedient. Combined with uncertainty about the future, limited time and resources, and the compromise constraint, the normative frame of problem solving helps explain why agreements are reached that risk involuntary defection. In such cases, negotiators are placing additional weight on the soundness of the solution versus the risks of involuntary defection, accepting some risk in exchange for the possibility of better solution and professional accolades.
Different Questions and Processes

Negotiation not only occurs prior to ratification, it is a qualitatively different endeavor. There are several central questions during negotiation: How should the costs and benefits of a solution be structured? What configuration of obligations is most acceptable to those at the table? In contrast, the central questions during ratification are different: Is this treaty worth ratifying? What, if any, political or economic effects will this agreement produce? These are different sets of questions, resulting in fundamentally different political processes.

During the ratification stage, societal interests from the political, economic, and social spheres have an even greater opportunity and motivation to voice their satisfaction or disapproval with a treaty text. Increased opportunity presents itself in the form of domestic lobbying, which societal interests are more practiced and effective than at lobbying within conferences. Moreover, a negotiated treaty poised for ratification is far more consequential to domestic groups than all the speeches made during the negotiations. A treaty brought up for ratification has the possibility of becoming law and imposing costs in a way that negotiations do not. It is the possibility of creating legal restrictions or rights that gives greater immediacy to mobilization efforts, often awakening domestic political interests.

Summary of Modification #1

In returning home, each negotiator begins a series of ratification procedures and potential political battles over whether or not the treaty ought to become law. For broad multilateral treaties, this can mean literally hundreds of individual
ratification decisions in capitals around the world, taking place under a variety of different institutional rules and across shifting domestic political contexts.

In contrast to negotiators, ratifiers are not investigating alternatives among legal equals. Ratifying actors, often legislatures, parliaments, cabinets or inner circles, are necessarily engaged in a calculation of the political, economic and social ramifications on their constituents and themselves of making a proposed treaty law. The choice faced during ratification is between the negotiated treaty and the status quo. Alternatives considered during negotiation are not on the table.

Thus, to improve the two-level games metaphor we must acknowledge that negotiation and ratification are more sequential than simultaneous. Negotiators do the best they can to create viable, effective solutions, but their negotiations are both prior to, and qualitatively different from, the task and calculations of ratifying actors during the ratification stage of treaty making.

Not only are the processes of negotiation and ratification different, the independence of ratifying actors from negotiators varies across states. The presence of a democracy and a democratically elected legislature affects ratification. Whether or not the ratifying actors possess different interests from negotiators – or indeed are distinct actors – is determined by the election of legislators. The electoral process admits a variety of political views and interests into democracies

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17 Historically, reservations have been employed by ratifying actors who could only agree by opting out of some portion of the treaty. Increasingly though treaties are written that expressly forbid reservations and so the substance of ratification debates is increasingly centered on the treaty as written and its likely effects. Although the hypotheses, research design, and cases considered in this study deal with ratification without reservations, this would be a relatively minor theoretical modification to make. Reservations have the effect of aiding ratification of a treaty through mollifying opposition parties and interest groups by opting out of a particular requirement, thus all else equal the presence of reservations should increase the speed and number of ratifications a given treaty receives – though they are almost certain to complicate the future implementation and compliance stages.
(Cheibub, Gandhi, and Vreeland 2010). By driving apart the interests of negotiators and ratifiers, the election of legislators in democracies creates the “dividedness” of government that Milner (1997) points to as a necessary condition for cooperation. Although I agree with Milner that divided government in democracies does make ratification more difficult, I break with her analysis of interest groups. Rather than serving as informants on the quality of a treaty, I contend that interest groups actually enter the fray, whipping votes and political support to delay or hasten ratification.

The main hypotheses derived from this modification are the following:

H1) Democracies will more likely to experience ratification delay than non-democracies.

H2) Democracies with strong interest groups opposed to a treaty will experience even greater ratification delay.

In contrast to democracies, non-democracies, dictatorships or single-party states, for whom the negotiating and ratifying actors are either the same or very similar, negotiators are able to predict what ratifiers will accept. For non-democracies the distribution of ratification delays should be based on the preferences of leaders. Most likely, those preferences will result in a bi-modal distribution of ratification delays, with some non-democratic leaders willing to commit right away and others, perhaps dissatisfied with the agreement, refusing ratification.

In most democracies, the political opposition is included in the legislature and subject to electoral change, making prediction of what is ratifiable considerably more difficult. Moreover, the selfish interests of opposition and government
legislators (e.g. re-election, future employment) create more access points for lobbying groups than in non-democracies (Olson 1982). As a result, I contend that democracies are more susceptible to clashes of legislative and executive interests, or outright lobbying by interest groups, that should make ratification a more difficult and lengthy process than in non-democracies.

My remaining modifications to Putnam’s metaphor focus on its ability to explain the variation in ratification delay among democracies. Non-democracies, by definition, do not hold free and fair elections and lack independent legislatures that include opposition political groups in a meaningful way; thus, none of the modifications below are relevant to non-democracies. This division of analysis is reflected in the later empirical chapters. Chapter 6 compares the ratification delays of all states; whereas, Chapter 7 explores variations in delay within democratic states.

Modification #2: Opportunistic Legislators in Democracies

The traditional two-level games metaphor focuses intensely on negotiators, their bargaining strategies, and their tactics for manipulating their domestic audience (e.g. side payments, issue linkage, etc.). Meanwhile, ratifying actors are often conceptualized as a faceless mass with most scholars employing a median-voter assumption to collapse legislative preferences into a single individual’s ideal preferences. 

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18 For the remainder of this chapter I use the terms ratifying actors, legislators, and ratifiers interchangeably. Although not all ratifications require a legislative vote, similar to Evans et al., Milner and Lantis before me, I employ the same observation that though formal ratification procedures vary, often implementing legislations is required and informal procedures that require legislative consent are common where legislatures are present.
policy. Yet, there are good reasons to doubt that by simply aggregating and averaging the individual policy preferences of ratifying actors to find the median preference actually captures the dynamics of a vote for treaty ratification. States require one another to ratify their negotiated agreements to ensure that political factions not represented by the negotiator will also follow the agreement in the future (Martin 2000) – *pacta sunt servanda*. Put differently, ratification ensures that a negotiator actually represents the political will of the majority, not simply their political party. The median voter reduction assumes away the importance of group pressures and divisions of party, ideology, and societal interests – the very pressures that a ratification requirement is intended to expose.

Any move toward a theory and an explanation of ratification timing will require a more dynamic view of the ratifying actors (e.g. legislatures, parliaments, cabinets or inner circles) than the median voter assumption allows. Happily there is no *ex ante* reason to suspect that ratifying actors are any less savvy than negotiators.

But what do ratifying actors want? Political opportunities and risks present themselves during ratification. Ratification is the moment when ratifiers most directly impact their country’s foreign policy. Yet it is also a moment to punish opponents. To capture this diverse set of motivations, I introduce the concept of “opportunistic legislators.” Opportunistic legislators are, as the name implies, those that use their voting privilege to maximize their benefits strategically from being good party politicians, making good policy, and being re-elected. This
conceptualization of ratifiers provides a coherent way of theorizing about legislative incentives in multiparty democracies.\textsuperscript{19}

The term “opportunistic legislators” is purposely pluralized. The question of how individual legislators behave during ratification votes, while a fascinating question in its own right, is beyond the scope of this dissertation. Though individual legislators are at times and on certain issues important, any systematic cross-national explanation of cooperation and ratification timing must examine the larger political fault lines between ratifying actors and how those lines shift over time. My focus here is on the broader, observable organizational dynamics of the ratifying body, specifically political parties and coalitions.

Although it is a legal requirement in most states, ratification is a process rife with political opportunism in democracies.\textsuperscript{20} Democracies legislatures are usually divided into political parties, with some legislators affiliated with the executive and others affiliated with opposition parties. This stands in contrast to the general audience of the traditional metaphor. It also informs the opportunistic behavior of legislators in my theory.

\textsuperscript{19} Though not all ratifying actors are legislators, the convention within two-level games is to use the term legislature and legislators. I retain it here because it provides greater coherence in discussing specific democratic events – e.g. elections and campaigning.

\textsuperscript{20} The ratification thresholds faced by leaders in a non-democracy are easier to cross because leaders in non-democracies exert control over the legislature.
Ratification and Party Politics

Ratification presents an opportunity to support, embarrass, or rebuke the negotiator who is often the executive or the executive’s representative.\(^{21}\) Negotiators are politically vulnerable when they return with a signed treaty that has not yet been ratified. Having issued a promise by signing the treaty, negotiators must then win the approval necessary to make the treaty legally binding. This opens up the possibility for ratifying actors to affect the internal and external perception of the negotiator’s political strength by refusing to ratify the treaty that the negotiator has signed. Ratifying actors are thus able to punish poor performance, poor treaty design, or the normative content of the treaty by voting against the agreement.

Although treaties often deal with complex issues, this does not exempt them from being exploited in domestic political struggles. Because executives often tout successfully negotiating and winning ratification for a treaty as a foreign policy victory, opposition legislators will have a political incentive to refuse ratification in order to deny an executive his/her claim of victory. Meanwhile, ratifiers politically affiliated with the executive will have less incentive to deny the executive his/her foreign policy victory because hurting the executive is likely to hurt their party and themselves as well. Whether a ratify actor is affiliated with the executive or not, they may still refuse ratification for reasons of poor performance or poor treaty designs.

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\(^{21}\) This is an elaboration of the traditional model’s constraint dynamic that only considers the aggregate preference of the legislature without accounting for the divisions within the legislature. I use the terms executive and negotiator interchangeably for the remainder of the chapter. The concept of legislative division is only applied to democratic states.
Ratification and the National Interest

Refusing to ratify a treaty may score political points for a party, but it also forecloses the potential benefits of the treaty, with some treaties carrying more benefits than others. Although opportunistic, even opposition legislators still desire their country to do well. With beneficial treaties, the attractiveness of political punishment is offset by the opportunity cost of the treaty's anticipated effects. When the country as a whole stands to gain more from a treaty, the calculations of legislators should shift steadily towards ratification. The pressure to acting for the good of the country, especially where there are substantial gains to be had, should work to mitigate political divisions and the gains to be had by embarrassing an executive who has promised ratification.

Ratification and Re-election

A third less noble, though distinctly political, calculation by opportunistic legislators is the ability to use their voting privilege to help them to increase support from domestic interests groups. In keeping with much of the literature on legislative motivations, I assume that legislators desire to be re-elected, retain, or increase their political influence. These desires require material and legislative support and the ability to ratify or reject a treaty creates an opportunity for legislators to garner political favor from domestic groups concerned with whether or not the treaty is ratified. In sum, opportunistic legislators can use the dilemma of
ratification to procure interest group support when strong interest groups are present.22

Summary of Modification #2

To understand the game being played domestically, we must theorize about and investigate the motivations of ratifiers. The concept of opportunistic legislators illuminates three different motivations for ratifying actors to speed up, slow down, or halt the ratification process. Combined with the introduction of sequence to the metaphor, this concept provides a basis for explaining the party, national, or personal political goals that ratifiers weigh their decisions to ratify. At times, these motivations conflict in measurable and theoretically informative ways. The existence and relative influence of each desire-opportunity pairing suggested above is investigable. I generate hypotheses for each below that are examined in the chapters that follow.

H3) The lower ratification thresholds in a democracy, the more likely it will be to ratify quickly.

H4) The larger and less fractionalized the legislative majority in a democracy, the more likely it will be to ratify quickly.

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22 It is worth noting that this conceptualization of the ratifying actor differs starkly from Milner’s (1997) game-theoretic exploration. Milner’s actors are not subdivided into parties and their primary driving concern is uncertainty regarding the “goodness” of the agreement relative to the Executive and the Legislative preference points. Milner resolves this assumed uncertainty by introducing the concept of Information Endorsers, whose known preferences help inform the legislators willingness to ratify the agreement. For Milner uncertainty is the driving force in ratification struggles not political opportunism. Thus as the world becomes ever more richly informed and negotiations ever more transparent, if Milner is correct, we should see ratification timing correspondingly shrink. This prediction is at odds with the observed delays following recent treaties as noted in the Chapter 1.
H5) The fewer major interest groups opposed to a treaty in a democracy the more likely it will be to ratify quickly.

Each of the preceding hypotheses derives directly from the relationship between opportunistic legislators and leaders. As discussed above, the requirement that a treaty be ratified imposes upon a leader the burden of assembling enough votes in the legislature to meet the country’s ratification threshold. Securing enough votes to ratify a treaty under a high ratification threshold requires leaders to seek votes from legislators who may be ideologically opposed to the treaty or whose indifference (whether due to party affiliation or ideological orientation) empowers them to withhold their support for a price. In both cases, the leader must exert greater effort, skill, and side-payments in promoting the treaty under a high ratification threshold (Moffett 1985). Legislators less invested in the leader’s foreign policy success are more costly to persuade due to the opportunity that voting no affords them. At worst, a high ratification threshold means a quick legislative death of treaties and, at best, it means more politicking by the leader and longer delay.

The lobbying of leaders is more difficult when they must get votes from outside his/her own party. A leader whose party controls the legislature independent of opposition parties is only required to seek votes from within his own party that benefits from his foreign policy successes. In contrast, the presence of a coalition government requires a leader to persuade the minority party’s members to go along. Often the minority party in a coalition is more politically

23 There are exceptions where cabinets are consulted (e.g. the United Kingdom).
extreme. Controlling the legislature is not equally advantageous for majority and coalition governments. Persuasion may still be required in coalitions when it would not be required with a simple majority. Thus, a smaller legislative majority increases the likelihood of ratification being delayed.

Leaders are not the only actors who lobby legislatures. Societal interests, especially resource rich actors, can use the ratification process to stop unfavorable international treaties in their tracks. My argument that legislators are strategic actors who behave opportunistically applies equally well to leader and lobbying groups. Equivalents exist for the leader’s bully pulpit and side-payments among interest groups. Interest groups support (or oppose) legislators in elections regularly. Interests groups can offer support or threaten to withdraw it in exchange for legislators holding firm in their opposition to ratification. In some cases, such as US ratification of the Kyoto Protocol, the opposition of electorally important interests may kill a treaty’s chance of passage. In other cases, the presence of interest groups opposed to the treaty will simply make the job of treaty proponents more difficult. It will likely raise the cost of persuading indifferent legislators by creating a bidding war. Within ideologically opposed parties, interest groups can further harden opposition through monitoring designed to create electoral pressures. This is why legislators in the US receive “report cards” on their voting records from different lobbying groups. Thus, treaties should be ratified more quickly when fewer major interest groups oppose a treaty. As the number of interest groups opposed to a treaty rises, so too should the cost of finding the votes necessary to ratify the treaty, resulting in greater ratification delay.
Modification #3: Composition and Changeover

The compositions of governments change over time. This is true of both the ratifying actors and negotiating executives. Although the mechanism of elections is specific to democracies, the broader concept of changeover can also be applied to non-democracies as well, whether the changeover occurs as a result of coups, deaths, ascensions, or other means. Having already disentangled the stages of negotiation and ratification, this modification offers a more dynamic view of the entire process of treaty making. Within the Putnam’s metaphor, there is no account of time both because of the simultaneity inherent in the metaphor. This is made worse by the widespread practice within the two-level games literature of analyzing successes or failures rather than the time it takes for different ratification successes to occur. All three major books employing the two-level games metaphor (Evans et al. 1993; Milner 1997; Lantis 2008) use case studies to test their predictions or conjectures; many of their cases range over many months, some over years, during which time the ratifiers and negotiators sometimes changed. Yet these changeovers are rarely mentioned nor are their impacts systematically evaluated.

In most other IR theories, state interests are exogenously given. As a result, observed variations in state behavior under similar international circumstances are difficult to explain. Including measures for democracy have helped explain some this variation, especially in the conflict literature. Yet for more specific questions of timing, the presence or absence of democracy can only provide a first, rough cut of the possibility of changeover. The existence of democracy does not reveal how an
elected government is composed. Thus, more sophisticated measures of the
domestic level divisions will be necessary to explain what causes changes in the
likelihood of ratification from one time to another.

*Changeover and Governments*

The most obvious consequence of government changeover is that it alters its
composition (i.e. the number and orientation of the political interests represented
within the government). This is most directly represented by the distribution of
legislative seats to different political parties. These changes affect the probability of
ratification. In keeping with the concept of opportunistic legislators, as the
composition of the legislature shifts, so too should the prospects of ratification
within the newly comprised government. This change in the likelihood of
ratification from one election cycle to the next re-casts the traditional metaphor into
a series of ratification opportunities for differently comprised governments. Thus, if
following a changeover there is an increase the negotiator’s party support (i.e. the
election of additional legislators to the negotiator’s party) then we ought to observe
a better baseline likelihood of ratification.

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24 For example when President Obama, a Democrat, was elected with a 60-set democrat majority in the
Senate there was a stir of discussion that the United States might finally be able to ratify many of treaties it
had negotiated and failed to ratify. One of these treaties was the Law of the Sea. In practice the 2/3 advise
and consent requirement in the Senate, combined with intransigence from Republicans, thwarted
ratification.
Anticipating Changeover

Beyond changing the baseline likelihood of ratification, the prospect of changeover can exert additional pressures to ratify. This should be especially evident in democracies where changeovers, in the form of elections, are announced in advance. Dependent on the system there may be a lag time between the elections and the actual changeover. Most importantly, both elections and changeover can be anticipated and when ratifiers changeover it can either increase or decrease the negotiator’s support. Because ratifiers frequently possess other priorities (e.g. running government ministries, drafting legislation), time and political capital are only likely to be spent on ratification (or implementing legislation) if the prospects for passage are good. Thus, predictions about the outcome of the next election cycle should incentivize more or less effort on the part of both executives and legislators to ratify or deny an agreement.

If the negotiator’s supporters anticipate – whether via polling, legislative defeats, or local elections – a poor performance in the upcoming election both the negotiator and his legislative allies should put forth greater effort to ratify before that changeover occurs. Winning ratification in advance of changeover has the double benefit of making the treaty law and providing a policy victory for the leader and his allies during the impending campaign season. The inverse expectation is, of course, true for opposition groups that hold legislative sway; they should work to prevent ratification in advance of a changeover. Importantly, this modification accounts for when negotiators might employ their executive power to cajole a reluctant legislature. This modification generates expectations about how elections
affect the likelihood of ratification and why ratifications might cluster near changeovers in government.

Summary of Modification #3

The relative importance of changeover pressure versus the likelihood of ratification based on composition can be tested. Both are readily measurable and comparable within a research design that accounts for time. Because the reality of changing governments and electoral politics are absent in the traditional model previous work in the two-level games tradition has not examined the importance of changing win-sets based on changes to the ratifiers who set the boundaries of acceptable agreements. Moreover the simple inclusion of a democracy measure into existing cooperation studies does not accurately capture the divisions and political party dynamics pressured by societal interest and the desire to stay in office.

H6) In democratic countries, ratifications should occur soon after or soon before an executive changeover.

H7) In democratic countries, ratifications should occur soon after or soon before a legislative changeover.

The two logics that drive these two hypotheses are that elections either A) create pressure to ratify before seats are lost, or, B) increase the legislative majority to make ratification more likely. In essence, this modification gives Putnam’s metaphor the ability to observe preference changes. It also accounts for one set of reasons why the effort put forth to ratify a treaty might vary over time.
Modification #4: The Ideological Orientation of Government

The traditional two-level games metaphor is silent on the ideology of governments, focusing instead on the divergence between preferences of the negotiator and the ratifying actors. Later applications of the metaphor (Milner 1997) have extended the concept of policy preferences to legislative uncertainty about the utility of an agreement or (Lantis 2008) the strategies employed to overcome legislative intransigence. Yet, neither Milner nor Lantis take the ideology of the actors seriously. Because of their ideological biases, governments may value policies differently.

A running theme within my theoretical story of treaty ratification is that all governments are not equally predisposed to ratify all treaties. Similar to the variations in national gains across treaties and the immediacy of changeovers motivating opportunistic legislators, the overall ideological orientation of a government conditions the willingness of that government to accept the norms embodied within the treaty.

Before continuing this modification, a short note on the difference between utility gains vs. normative values is needed. It is possible for a state to benefit disproportionately from a treaty’s design (the increased utility making it attractive to ratify), but also for that same country’s government to oppose the values enshrined in the treaty (which should make it more difficult to ratify). Consider the out of hand rejection of the International Criminal Court (ICC) by US President George W. Bush. Although the ICC was unlikely to threaten US military actions given its complementary jurisdiction restriction; and although it would provide a globally
legitimate avenue to deter and prosecute terrorists or war criminals (the expressed policy goals of the US across administrations), President Bush took the extreme measure of “un-signing” the treaty.

One common argument for this event is that the internationalist legal and regulatory set up of the Rome Statute was more at odds with conservative norms of President Bush and his Republican legislature, who valued de-regulation and generally distrusted supranational institutions, a normative calculus different from President Clinton who initially signed the treaty. Although both presidents could conduct a cost-benefit analysis of the ICC’s risk to US troops and ability to aid the War on Terror, President Bush was more ideologically predisposed to dislike the ICC, affecting his willingness to ratify and even driving him to un-sign and actively undermine the Rome Statute through a series of non-surrender agreements ensuring US immunity from ICC jurisdiction (Kelly 2007).

I employ heuristic assumptions about the ideological preferences of Left-wing and Right-wing governments in order to modify the traditional metaphor to account for the congruence or divergence between the content of a treaty and broader policy norms of a government. This modification informs both the general likelihood of ratification by a government as well as the substantive effects of changeovers between ideologically different groups or parties.

On average, Left-wing governments are going to view more favorably those policies that endorse radical change, collectivism, regulation, and redistribution. Applied to the realm of international treaties, many environmental treaties tend to

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25 It should of course be noted that Clinton did express some reservations upon signing the treaty. Despite those reservations he signed.
match up with the policy predisposition of Left-wing governments because they contain regulatory schemes and often enshrine broader community values (e.g. “the common heritage for mankind” legal principle for seabed mining). In contrast, Right-wing governments will view more favorably those policies that support the status quo, individual rights, de-regulation, and the interests of business or elites. Most trade and economic treaties embody these values. Considered against the cases examined here, treaties such as the Law of the Sea with its redistributive institutions and radically new norms granting common ownership of the high seas seabed should win faster ratification among Left-wing governments than among Right-wing governments.

Summary of Modification #4

Introducing ideological preference into the two-level games metaphor allows us to understand additional reasons why the politics of delay and denial might be so attractive to opportunistic legislators. Modern treaties – both the regulations they require and the rights they create – will almost never be viewed as equally good and acceptable to actors of every ideological orientation. Treaties must adopt some policy that generates an output that will be evaluated through the ideological lenses of the ratifiers. When a treaty is salient and can be painted as ideologically driven, it becomes both an attractive target for opportunistic behavior and more difficult for ideologically opposed legislators to support it.

At the level of opportunistic legislators, changeovers can shift both the composition and the overall ideological orientation of the ratifying group though not
necessarily at the same time. The likelihood of ratification should increase as more legislators belong to the negotiator’s party are elected. That likelihood should increase even more if coupled with the election or inclusion of a Left-wing party into a coalition that shifts the general ideological orientation of government. The non-political bargaining envisioned by the traditional metaphor inaccurately represents the actual debate language used to characterize treaties. The utility of an agreement is not the sole point of contention, the norms and values it advances are also relevant.\textsuperscript{26}

H8) Democracies with an executive from a left or center party will be more likely to ratify the Law of the Sea.

H9) Democracies with a legislature where the largest party is ideologically left or center will be more likely to ratify the Law of the Sea.

H10) Democracies where the executive and the largest legislative party are both ideologically left or center will be more likely to ratify the Law of the Sea.

\textsuperscript{26} In addition to more accurately representing the norms and values often invoked during ratification debates, this modification might further illuminate variation in when different executive bargaining strategies are employed (e.g. side payments, issue linkage, re-framing, etc.) and whether those strategies succeed or fail in different states, across different government configurations and ideologies across time.
### Table 3.1 Hypotheses Derived from the Recast Metaphor

<table>
<thead>
<tr>
<th>Hypotheses by Modification</th>
<th>Effect on Likelihood of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modification #1</strong></td>
<td></td>
</tr>
<tr>
<td>Democratic State</td>
<td></td>
</tr>
<tr>
<td>Interaction of democracy and state interests</td>
<td>$(-) \times$ (See below)</td>
</tr>
<tr>
<td><strong>Modification #2</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative Majority for Government</td>
<td>+</td>
</tr>
<tr>
<td>Government Fractionalization$^{27}$</td>
<td>-</td>
</tr>
<tr>
<td>Lower ratification threshold</td>
<td>+</td>
</tr>
<tr>
<td>See state interest hypotheses below</td>
<td></td>
</tr>
<tr>
<td><strong>Modification #3 (Composition and Changeover)</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative Election Zone</td>
<td>+</td>
</tr>
<tr>
<td>Executive Election Zone</td>
<td>+</td>
</tr>
<tr>
<td><strong>Modification #4 (Ideology)</strong></td>
<td></td>
</tr>
<tr>
<td>Left/Center Executive</td>
<td>+</td>
</tr>
<tr>
<td>Largest Party Left/Center</td>
<td>+</td>
</tr>
<tr>
<td>Left/Center Executive + Largest Party Left/Center</td>
<td>++</td>
</tr>
</tbody>
</table>

$^{27}$ This is measured as the probability that any 2 deputies chosen will be of the same party.
Chapter 4

The History and Importance of the Law of the Sea

Questions of transit, ownership and usage of the world’s oceans have a long and storied history within international law (Harrison 2011; Shaw 2008). In the first half of this chapter I offer a brief overview of the history, events, and issues that led to the Third UN Conference on the Law of the Sea (UNCLOS III). Then I discuss the origins of each of the subsequent implementing treaties and explain why the Law of the Sea and its implementing treaties are worthy of study.

A Brief Historical Sketch of the Law of the Sea

Early attempts to regulate the sea depended primarily on how far national power could be projected, with national claims limited only by the audaciousness of the sovereigns that made them (Oxman 2006). Dueling schools of legal thought emerged over the question of whether or not the seas were indeed free. Early on prominent jurists, such as Hugo Grotius (1583-1645) and John Seldon (1584-1654), argued in their seminal works – *Mare Liberum* (Grotius 1609) and *Mare Clausum* (Seldon 1635), respectively – for either the absolute freedom of the seas or their enclosure within national jurisdictions.

With a diversity of uses and wealth available from sea activities – fishing, shipping, transporting military forces – questions about the extent and implications of freedom at sea, asked in earlier centuries under the natural law tradition, carried into the positivist debates over the observable structure of the international legal
system. At the same time national greed, competitiveness, and the resultant disputes behind these academic debates grew in intensity and frequency. Still the world’s oceans were expansive and often conflict could be avoided. It was not until the early 20th century that territorial claims by nations jockeying for power, combined with the introduction of new states, became pervasive and disruptive such that its results threatened the stability and profitability of maritime relations.

Oxman (2006) argues that the legal struggle observed in the last century was motivated by the contradictory impulses of states. On one hand, states desired the freedom of transit and use of the ocean. Yet, on the other hand, they coveted coastal resources and ownership over greater area of the ocean. What unfolded was an escalating series of claims and counter-claims over the sea that strained the ability of states to do either. Oxman describes this dilemma as a “territorial temptation” for sovereigns, whose claims of increasingly wide swaths of sea as national waters ultimately “ran up against increasingly important legal constraints on land – often in response to the values of facilitation of trade, communication, and cooperation” (Oxman 2006, 831).

To make matters worse, this motivational dilemma could not be resolved quickly or easily under the system of customary international law that regulated most maritime behavior at the time. As a decentralized system of law, customary international law required consistent, coordinated state practice and acknowledgement that such behavior was legally required, opinio juris (Shaw 2008).

28 Oxman (2006) offers the example of President Truman’s 1945 claim that US territorial rights extended over the entire continental shelf – exceeding 300 miles at points – as one of several claims that unleashed a series of territorial and quasi-territorial claims by neighboring states.
Yet, state practice in the late 19th and early 20th centuries was increasingly inconsistent and no legal mechanism existed to reconcile the different legal obligations expressed by states. Thus, customary law was undermined by its very constitutive rules (Shaw 2008).

In 1958, the first United Nations Conference on the Law of the Sea (UNCLOS-I) was held in Geneva. Its objective was to codify the tangle of pre-war customs into four conventions (Sanger 1987). Three of these four conventions were eventually adopted and entered into force nearly a decade later. To date, these conventions remain the bedrock of long established maritime legal principles. By and large the 1958 Geneva Conventions endorsed Grotius’ freedom of the seas doctrine, especially on the high seas. Unfortunately the 1958 Geneva Conventions failed to resolve key questions on the exact breadth of the territorial sea and on the limits of the fishing and mining rights of states, especially near the coasts of others (Shaw 2008). These were defining issues for the modern use of the seas following WWII. The 1958 Geneva Conventions offered few if any clear answers on where states could act and what states could do.

The presence of factory ships anchored off foreign shores with more-powerful fishing and freezing capabilities, a decided increase in pollution at sea, and a series of rapid technological advances in seabed mining and oil exploration followed UNCLOS-I. All conspired to increase concerns about the questions that

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29 The Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas; the Convention on the Continental Shelf; and the Convention on Fishing and Conservation of the Living Resources of the High Seas.

30 The freedom of the high seas doctrine found in the 1958 Geneva Conventions survived in the Law of the Sea as Part VII, despite the growing support for the “common heritage of mankind norm” and expanded economic rights for coastal states.
UNCLOS-I had left open. A second conference, UNCLOS-II, was convened in 1960 to resolve these outstanding issues, but that conference failed (by a single vote) to adopt a compromise agreement setting a 12-mile breadth of territorial sea divided into a six-mile band of territorial waters and a further six-mile band for fishing.

At both UNCLOS-I and UNCLOS-II, the preferences of developing states played an increasingly important role in designing a legal regime for the oceans. At UNCLOS-II, it was ultimately an alliance between recently independent Arab states with the Soviet Union that foiled last minute conference efforts to adopt the compromise agreement (Sanger 1987).

In the years following UNCLOS-II, more states entered the international system through independence movements as well as decolonization. Issues of economic fairness in the international system rose to prominence in the shadow of these events and the ideological tensions of the Cold War. In maritime law, this push for equality among nations found its clearest expression on the question of ownership over the mineral wealth of the seabed (Oxman, Caron, and Buderi 1983). So prominent were these concerns that, in 1966, US President Lyndon Johnson commented that:

“Under no circumstances must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among maritime nations. We must be careful to avoid a race to grab and hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings” (quoted in Churchill and Lowe 1999, 15-16).
What President Johnson, the Soviets, and other observers of ocean law saw in the conflicting claims on ocean resources and the early grumblings by developing states of being unfairly shut out of a common resource (which they lacked the technology to exploit) was a series of political, economic, and security problems that threatened the peaceful use of the seas (Sanger 1987).

These concerns came to a head at 10:30 A.M. November 1st, 1967 when the Maltese Ambassador, Dr. Arvid Pardo, took the podium in front of the UN General Assembly.31 Described by contemporaries as avant-garde in his approach to negotiation, Pardo was a tireless advocate for humanitarian considerations within maritime law (Teltsch 1969). Prior to his speech, Pardo had served for years on the Sea Bed Committee. He held terminal degrees in both law and political science. He even survived five years as a prisoner of war for his anti-fascist activities in Italy during World War II (Daniell 1965). Pardo was a leading and persistent voice on all maritime issues. Chief among his concerns though was the status accorded to the wealth of mineral deposits lining the seabed floor. Pardo’s speech that November morning electrified the delegates. In a radical break from the current proposals, he argued that the mineral resources of the sea should be placed beyond the reach of any single country’s control into the hands an international bureaucracy (Korbonski et al. 1999).

In advocating for a written, detailed, and binding Law of the Sea, Pardo gave careful attention to the growing concerns that military rivalries might pose a threat

31 The original text of Dr. Pardo’s speech can be found at: http://www.un.org/Depts/los/convention_agreements/texts/pardo_ga1967.pdf
to the stable, peaceful use of the oceans. Whether in the form of tangible alterations
(e.g. the construction of military installations and nuclear testing), in the conflicts
over ownership, or Cold War tensions likely to accompany any competition for the
mineral wealth of the seabed, Pardo saw the stability of maritime relations
threatened with states increasingly tempted to deny access or unilaterally assert
ownership rights. He gave a detailed account of the effects that these nascent
disputes were already having on peaceful uses of the sea. He traced the difficulty
that scientists were having conducting research at sea back to the politics of
national security and appropriation. Pardo passionately insisted that the troubling
environmental trends – over-fishing, pollution from shipping, or dumping
radioactive waste at sea – all would continue and worsen if the behavior of
individual states went unconstrained.

His speech artfully touched on the concerns of many states, East and West
and unaligned, powerful and weak, developed and developing, receiving a positive
response and igniting a lengthy debate on the topic that carried into the UNCLOS-III.
Today, Pardo is often credited as the father of the Law of the Sea for provoking the
UN General Assembly to act (Sanger 1987). Following his speech, the General
Assembly voted just six weeks later to establish the Ad Hoc Committee to Study the
Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National
Jurisdiction (UN Resolution 2340). This committee would ultimately lead to the
formal conference UNCLOS-III that began in 1973 and concluded successfully in
1982 having produced exactly what Pardo had called for: a written, detailed, and
binding Law of the Sea.
At the time of its conception, the Law of the Sea was a necessity to reconcile the ancient, conflicting objectives of navigational freedom and national ownership as well as to regulate how the seas would be used in the modern era, arresting the competitive pressures of the international system that would, if left unaddressed, find their release on the high seas. The Law of the Sea has often been called a constitution for the oceans (Buck 1998; Churchill and Lowe 1999; Johnston 1985; Sanger 1987; Sebenius 1984) as it serves as the fundamental guide to questions of maritime behavior and is the root of much of the regional maritime law that developed in its wake (Churchill and Owen 2010).

**The Implementing Treaties**

Just as the 1958 Geneva Conventions did before, the Law of the Sea left some issues unresolved. Two of those issues were of sufficient political and economic importance to require additional conferences: the seabed-mining regime and straddling stocks of migratory fish. In the section below, I give a short introduction to each, discussing the motivations behind them as well as of the treaties each conference produced.

**The International Sea Bed Area**

The Law of the Sea employed a two-fold system to organize the state claims to mining sites on the seabed and to share the technology and profits from the seabed (known in the treaty as the Area) with developing states. A governing

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32 These stocks of fish either move between EEZs or “straddle” the 200-mile limit between a coastal state’s EEZ and the high seas.
structure (known in the treaty as the Authority) was charged with designing and overseeing rules for the exploitation and distribution of the ocean’s mineral riches.\textsuperscript{33} Although the allocation of state representation in the Authority’s various organs was not free of conflict (Sebenius 1984), most of the ire of proponents and opponents of the Law of the Sea was directed at the mineral exploitation system embodied in the treaty.

As designed in the original Law of the Sea treaty, the Authority administered a parallel system of distributing claims. Under this system states were be free to prospect, but in order to exploit their discoveries they needed to submit two comparable claims for mining sites. States were awarded one claim by the Authority. An international mining company (known within the treaty as the Enterprise) explored the second mining claim, for the benefit of the “common heritage of mankind.” Although left unspecified, it was generally thought that the “equitable” requirement (LOS, art. 140) would benefit developing states most directly. The states parties to the Law of the Sea initially fund the Authority and the Enterprise, with subsequent funding to come from profits derived from mining activities and regulatory fees.

Although those profits remain unrealized, the mandatory transfer of technology required by the convention, from industrialized states and their companies to either the Enterprise or developing states wishing to engage in seabed mining, proved a major obstacle for ratification among most Western, developed states given the technical expertise necessary to mine the seabed and the prevailing

\textsuperscript{33} For a comprehensive review of the original governance structure, financing, and regulatory rules – see Sebenius, James K. (1984) \textit{Negotiating the Law of the Sea}. 
views of intellectual property within those states (Churchill and Lowe 1999). An interim system of mini-treaties and national legislation (known as the Reciprocating States Regime) developed among those states that remained outside the Law of the Sea.34 During the late-1980s a decline in world metal markets made seabed mining less attractive and bought time for states to reconcile the divergent systems of seabed mining regulation.

To resolve this fundamental disagreement on the responsibilities of developed states, talks began in 1990 and concluded in 1994 with The Agreement Relating to Part XI of the Convention (opened for signature in 1994, hereafter the Part XI Agreement). The Part XI Agreement effectively addressed the concerns of many developed states by disabling the most contentious elements of the seabed-mining regime contained within the Law of the Sea. Gone were the mandatory technology transfers, the responsibilities of the Authority were recast with an “evolutionary approach” to oversight (Part XI, Annex, Section 1), wherein the Authority began as a small, simple organization with the possibility of evolving as needed.

It is important to understand that in 1994 a significant shift occurred to both the operation and regulatory functions of the Authority. This shift affected the obligations of prospective mining states under the Law of the Sea. It decreased the obligations of developed states and likely lowered the cost of ratifying the Law of the Sea for them.

34 See Churchill and Lowe (1999) 236-237 for a detailed account of the variety of international agreements and coordinated national legislation that constituted this regime.
**Straddling Stocks**

The Law of the Sea contained only a single provision dealing with stocks of fish that straddle (or move between) the border of the EEZ and the high seas:

“Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area” (LOS, Art. 63, Sec. 2).

This provision left open the question of whose priorities (coastal or distance-water fishing states) should take precedence\(^{35}\) and what principle of conservation ought to guide future conservation agreements.

Developed from 1993-1995, *The United Nations Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*\(^{36}\) (opened for signature in 1995; hereafter the Straddling Stocks Agreement) resolved these issues in two ways. First, in article 6 (and again in annex II), it advances the precautionary principle (Art. 5 and 6) as a guide for any regional, subregional, or direct agreements. The precautionary principle is embodied in Principle 15 of the Rio Declaration (1992) and states that a lack of scientific

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\(^{35}\) Declarations by several coastal states (including Cape Verde, Sao Tome and Principe, and Uruguay) made at the time of signature or ratification advance positions that the coastal state interest ought to take priority.

knowledge should not prevent states from taking cost-effective measures to head off serious environmental damage.\(^{37}\)

Beyond invoking the precautionary principle, the Straddling Stocks Agreement also gave teeth to the Law of the Sea's proviso that regional, sub-regional, or direct agreements should be concluded to manage border stocks. The mechanism chosen used the combination of flag state responsibility for violations and an authorization of coastal states to inspect suspected violators, whether or not the violator's flag state is party to the Agreement (Straddling Stocks, Art. 19). The Straddling Stocks agreement clarified the principle to be used in managing these stocks and, at least in the enforcement provisions, sided with coastal state interests, especially if those states possessed resources to monitor and inspect fishing vessels on the high seas adjacent to their EEZ.\(^{38}\)

**Why Study the Law of the Sea and its Implementing Treaties?**

The Law of the Sea contains 320 Articles and 9 Annexes, regulating nearly every facet of maritime behavior. It entered into force in 1994 (one year after the 60\(^{th}\) ratification) and is one of the most substantial legal accomplishments in modern history. Along with its implementing treaties, the Law of the Sea provides unique insight into the phenomena of ratification delay and failure.

\(^{37}\) In essence this principle of law limits the ability of states to claim ignorance as a reason for allowing environmental degradation. States acting under this principle must be proactive in taking measures to preserve the environment even in the face of uncertainty.

\(^{38}\) For a more extensive exploration of the Straddling Stocks Agreement (it runs to fifty articles and has two annexes) see – Churchill and Lowe (1999) or Shaw (2008) 623-629.
Simmons (2009, 5) argues that, “treaties reflect politics...” Their negotiation and ratification reflect the power, organization, and aspirations of the governments that negotiate and sign them, the legislatures that ratify them, and the groups that lobby on their behalf.” Yet, the majority of ratification studies in recent years have centered on human rights agreements (Hathaway 2002, 2007; Neumayer 2005; Simmons 2009). These agreements are indeed important, but they address a unique political dilemma wherein the ratifying states are the very same actors that are most likely to violate their citizen's rights. These international treaties that regulate domestic human rights practices are different from the treaties that exist in many other issue areas (e.g. the use of force, trade, and the environment) in which treaties are designed to regulate international behavior and violations are as likely to come from outside a state as within (e.g. the sale of illegal arms, violations of trade agreements, and polluting the atmosphere).

An assumption that there is an underlying “true” government preference on the treatment of citizens is a large part the reason that Simmons (2009) spends so much time discussing false negatives/positives in ratification. The dilemma that third-party states might cause human rights violations is not considered (for good reason – it rarely happens). Thus, the ratification puzzle for Simmons is viewed as an exercise in detecting the honest preferences of individual states regarding their domestic behavior. The dilemma of a problem of international behavior is different because the non-ratification and non-compliance of third-party actors might generate costs for those states that do ratify and comply (e.g., pollution by firms).
The Law of the Sea and its implementing treaties dealt largely with international problems when states can impose costs on one another. Thus, the problems addressed in the Law of Sea are more representative of the coordination, regulatory, and enforcement dilemmas faced in other treaty regimes than the problem of human rights violating governments. Simmons is correct that treaties reflect politics; nevertheless, in order to make broader claims about the actors and dynamics that cause ratification delays or failures, it is crucial that the political dilemmas underlying those treaties are similar.

*The Law of the Sea is Important*

In the issue area of international maritime relations, the Law of the Sea and its implementing treaties frequently serve as the regulatory backbone of other multilateral, regional, and bilateral treaties (Shaw 2008). Thus, understanding the politics of ratifying the Law of the Sea should shed light on the specific political dynamics likely at play in a number of other maritime treaties.

In addition to its prominence within the international legal system, the Law of the Sea offers one of the first instances of consensus-based negotiation. Prior to the Law of Sea, the frameworks and even drafts of international agreements were frequently drawn up in advance of negotiations, which, at times, had the effect of biasing subsequent negotiations based on the inclusion or exclusion of topics or competition between different proposals (Sanger 1987). Under consensus-based negotiations, negotiators draw up a treaty’s text during the conference with an
overriding concern for consensus because consensus is the only method by which an agreement can be made.

Because it is thought to produce better multilateral agreements that states can more easily join, the consensus-based method of negotiating treaties is now the dominant way that much of international law is generated. The Law of the Sea took seven years and hundreds of days of deliberation to produce. Thus, understanding what factors caused ratification delays and failures in the Law of the Sea (especially following such lengthy deliberation) should provide evidence of fundamental obstacles that even consensus-based negotiations were unable to completely overcome.

The Law of the Sea and its implementing treaties are also among the most carefully crafted and minutely detailed legal agreements that attempt to reconcile conflicting state interests and positions in a political environment of varying historical claims. These treaties take seriously the role that uncertainty plays, whether it be scientific, economic, or geo-political, in aggravating international disputes, and they offer regulatory and settlement procedures to address each. The Law of the Sea and its implementing treaties speak to the sort of agreement the world is likely to need in addressing current and future common-pool resource and public goods issues such as climate change, trade, food production, disease control as well as weapons monitoring and anti-proliferation efforts.

Finally, the Law of the Sea and its implementing treaties are an important treaty regime to understand independent of the broader system of law.
The world’s population is heavily dependent on fish for protein. The world’s economy depends on shipping to connect goods and consumers. Much of the world’s untapped mineral resources are located in the seabed (Sebenius 1984). The oceans are one of four resources held in common by all states. In the absence of an institutional structure to prevent pollution, over-fishing, and disputes over ownership, states will degrade the oceans and inhibit their use. Thus, understanding the difficulties that different states experience in ratifying the Law of the Sea can help scholars and policymakers understand the obstacles and opportunities that exist in preserving this valuable resource.

*The Law of the Sea Provides “Good” Data*

To study any problem quantitatively, it is necessary that the cases selected provide enough variation on the variables of interest to be informative (King, Keohane, and Verba 1994). The number and variation of states that delayed or failed to ratify the Law of the Sea and its implementing treaties allow for the systematic testing of hypotheses about why those delays or failure occurred.

**Table 4.1** Descriptive Ratification Statistics for the Law of the Sea

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Number of Ratifications</th>
<th>Mean/Median Time to Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law of the Sea</td>
<td>158</td>
<td>12.2 / 13 years</td>
</tr>
<tr>
<td>Part XI Agreement</td>
<td>137</td>
<td>4.5 / 2 years</td>
</tr>
<tr>
<td>Fish Stocks Agreement</td>
<td>72</td>
<td>7.3 / 8 years</td>
</tr>
</tbody>
</table>

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39 www.who.com - see “Global and Regional Food Consumption Patterns and Trends.”
40 Other resources common to all states are the atmosphere, Antarctica, and outer space.
41 To date of this writing several additional states have joined each convention: LOS – 162 ratifications; Part XI Agreement – 141; and, Straddling Stocks Agreement – 78. The measure of mean time to ratify is measured from the treaties availability (see Chapter 5 for a description of how this measure was constructed).
As Table 4.1 shows, 367 ratification events occurred over the 27 years of this study. Moreover, these ratifications of the Law of the Sea and its implementing treaties display variation in when they occur, providing enough measures of ratification to statistically examine. Finally, a variety of states – democracies, non-democracies, divided governments and undivided governments, leaders and legislatures with varying political orientations, states with interest groups and without – have decided to ratify at different moments following each treaty opening for signature. This number of ratifications and the diversity of the states deciding to ratify combined allow for meaningful comparison of the different explanations for ratification delay and failure. In contrast, the most recent multilateral treaties simply have not been around long enough to amass a record of ratification delays among a diverse enough population of states on which to perform quantitative analysis.42

Moreover, because the Law of the Sea and its implementing treaties were intended to exist in perpetuity, they do not possess expiration dates.43 There was no guaranteed renegotiation. This keeps the motivations of states uncontaminated by the threat or promise of an expiration date. Ratifying the Law of the Sea means accepting its provisions – both the benefits and costs – for the long-term. The lasting quality of these ratifications makes inferring the reasons for delay or failure

42 In statistical terms the missing cases (i.e. non-ratifications) of other treaties result in a limited variation the dependent variable years-to-ratify as well as explanatory variables of interest.
43 For example, Article 3 of the Kyoto Protocol states: “…with a view to reducing their overall emissions of such gases by 5 per cent below 1990 levels in the commitment period of 2008 to 2012.” See – “Kyoto Protocol” United Nations Framework Convention on Climate Change. Web. 23 March 2011. www.unfccc.int
clearer because states cannot reasonably expect to escape their obligation once made.

Generalizing to Other Instances of Ratification Delay and Failure

Collier frames the importance of generalizing from any sample of cases as a balancing act between “a legitimate process of delimiting the scope of findings and a degree of particularism that excessively limits the contribution of the study” (1995, 465). The central question that Collier begs of researchers is whether or not the analytic processes they employ, both theoretical and methodological, to generate findings in the sampled cases can be re-applied to extract findings from other cases within the population. I argue that both the theoretical and methodological processes used to explain ratification timing for the Law of the Sea and its implementing treaties can be fruitfully re-applied to the ratification histories of other treaties.

The theories advanced thus far and the political processes they capture (power politics; state interests and vulnerability; agreement bias; and domestic politics) clearly have broader applicability than the specific case of the Law of the Sea. This generalizability of this case is supported in that some of the same explanations for ratification that are tested here have been used in other academic work (Evans, Jacobson, and Putnam 1993; Koremenos, Lipson, and Snidal 2001; Lemke 2002; Milner 1997). Additionally, because the operating system of international law changes slowly, the phases of treaty making, and the processes within each phase, have remained remarkably consistent over time and are unlikely
to change in the immediate future (Ku et al. 2001). Thus, on the theoretical analysis employed on the sample here, as well the findings could very reasonably be extended to other cases within the population of treaties.

Consider also that the likelihood and cost of a maritime dispute falls somewhere between the frequent, but near costless, low politics of pure coordination issues (e.g. Convention on International Civil Aviation) and the high politics survival dilemmas of war and trade (e.g. Strategic Arms Reduction Treaty, Global Agreement on Tariffs and Trade). In terms of the amount of risk posed by a problem that the Law of the Sea and its implementing treaties addressed these treaties can be though of as solving “middle politics” problems.

The middle politics status of the Law of the Sea is advantageous for research because the findings here will be able to speak to role of cost-benefit trade-offs in deterring ratification, but without being dominated by the survival concerns of the states in situations which are often involve a small number of cases. Both Milner’s (1997) and Lantis’s (2009) books on ratification politics sample a variety of middle, high, and low politics issues with the same logic in mind; Lantis, in particular, notes that his “cases were selected for this study to represent different international agreements across a range of issue areas” (2009). In sum, both the theories of ratification tested herein and the problems that the Law of the Sea and its implementing treaties addressed generalize to other treaties such that findings here on the role of power, vulnerability or domestic politics will contribute to our understanding of ratification delay and failure elsewhere.
The methodological process employed here will travels well, especially to multilateral treaties. I employ country-year measures of the time until ratification as well as the relevant covariates for each of the 192 countries that could have ratified the Law of the Sea during the period of 1982-2010. The structure of the data set here can be replicated quickly for other treaties, especially given the country-year data available publicly.

This data structure is common to event history analysis (Cleves 2010) and allows for changes in country characteristics to occur from one country-year to the next, capturing events such as democratization, economic downturns, or shifts in the ideology of leaders. By allowing the independent variables under investigation to vary over time, this methodology enables researchers to assess the changes in risk of ratification over time (Box-Steppensmeier, Reiter, and Zorn 2003). I return to the details of this analysis in Chapters 6 and 7, but it should suffice to note that in standard OLS or logistic regression single covariates are pared with single outcomes; thus any variation must be examined between, not within, cases. In contrast, the choice to use event history in this study allows changes within a “case” (here defined as a country that is observed yearly) to inform the story the data are able to tell. This is exactly the sort of analysis - the international legal phenomenon as the dependent variable possessing variation – that Ku et al. (2001) encourage in their analysis of why international law remains understudied within international relations scholarship.

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44 The operationalization of concepts is discussed in detail in Chapter 5
Moreover, this methodological process (i.e. focusing questions of on duration and building datasets to match) applies to other treaties, across issue areas. Many treaties encounter delays in gathering the ratifications necessary to enter into force and historically only a few treaties have obtained universal support quickly. Thus, examining the different moments when states make decisions (whether to sign, to ratify, to implement or to wait), and employing the event history method, can provide insight into the processes of negotiation, ratification, and implementation attendant to every treaty.

Several caveats are in order regarding the cases to which this methodological approach best applies. Ideally, multilateral treaties with sufficient numbers of countries that have ratified (~30) are best, but it can also be applied to cases of bilateral treaties when a large enough number of comparable treaties exist. This approach has most frequently been applied to analyzing the politics of ratification behind bilateral investment treaties (Haftel and Thompson 2009). To date, this methodological approach has been successfully applied to select groups of bilateral, regional or global treaties and particular issues, but much work remains to be done.

When an insufficient number of ratifications or comparable cases pose obstacles to quantitative analysis, the theoretical process of analysis employed here (i.e. examining the shifts in domestic politics, state positions, or revision to the treaty under investigation) can still be fruitfully used in qualitative research. Indeed, theorizing about systemic changes to the legal system (Diehl and Ku 2010) or the political system (Keohane 1984) or to preference changes within states
(Moravcsik 1997) matches well with King, Keohane, and Verba’s advice that qualitative scholars seek variation within the details of their cases (1994).

The Law of the Sea and Comparing Different Explanations

As the theories discussed in Chapters 2 and 3 suggest, the pressure to either ratify a treaty or delay can be categorized as coming from one of three sources: a state’s position, a state’s domestic politics, or the agreement’s incentives. The Law of the Sea and its implementing treaties possess sufficient variation across these categories to assess what aspects of each source drives ratification delay or failure.

In terms of position, landlocked states and coastal states, developed and developing states, as well as, Western, Soviet and Non-aligned states all came together to negotiate the Law of the Sea and its implementing treaties. Within these groups each individual state was (and still is) located in a particular geographic region with a specific relationship to the bodies of water it shares with others.

The physical characteristics, capabilities, and even national interests of states change little or slowly and, absent systemic changes (e.g. the end of the Cold War), these fundamental characteristics are likely to constrain how different state leaders approach problems (Morgenthau and Thompson 1993). Because the Law of the Sea and its implementing treaties were global in scope and carried different relevance for states in different positions (securing navigational rights for navies vs. establishing legal principles to protect coastal resources), it provides an ideal

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46 These sources of pressure also exist during the negotiation, implementation and compliance stages of treaty law.
47 Although other factors can contribute to the decision to ratify (e.g. regional or supranational pressure, existing and relevant conflicts, NGO campaigns, etc.) the three sources of pressure identified above most directly capture the cost-benefit analysis state leaders (and ratifiers) must individually undergo when accepting the legal obligation of a treaty.
testing ground for investigating which positional characteristics matter most in explaining the decision to ratify.

Moreover when positional factors are dynamic (e.g. a regional hegemon ratifying the Law of the Sea or possible diffusion of the Law of the Sea policy among regions), the Law of the Sea and its implementing treaties give specific reasons to expect position to matter, whether following or binding a local power (Gruber 2000; Lemke 2002), or coordinating with or emulating neighboring states (Simmons and Elkins 2004). The data and methodology tools exist to evaluate and compare these different factors.

In contrast to the positional characteristics of states, domestic politics as a source of pressure to ratify is channeled through the sub-national political processes of governments. The theory presented in Chapter 3 explained how divisions between the executive and legislature, or the ideological orientation of leaders and ratifying actors might create obstacles to ratification, either through divided government or ideological opposition to the values contained within a treaty.

Most importantly, domestic political pressures should vary over time. As years pass, new actors are included in (or removed from) the ratification decisions. The preferences of the decision makers or the population may change (e.g. social movements, lobbying, issue education) (Spencer 2000). Especially when the domestic form of government is democratic, the possibility exists for wholesale changes in foreign policy priorities and behaviors following elections. Thus, although states might be pushed or pulled by the circumstances, the decision to
ratify is ultimately made by governments with domestic political interests and constraints (Evans, Jacobson, and Putnam 1993; Lantis 1997, 2009; Milner 1997). The Law of the Sea and its implementing treaties were important enough to provoke domestic interests within states and as a result these treaties provide a good testing ground for comparing the relative importance of what is happening inside and outside a state.

The third major source of pressure to ratify or not comes from the incentives included within the treaty itself. Treaties can, and do, vary along dimensions such as the agreement’s scope, flexibility, membership, degree of centralization, and the process of rule making. Depending on the concerns of states, some agreements may be more preferable than others (Koremenos, Lipson, and Snidal 2001). Agreements can also vary in the obligations they require of different states or the benefits they parcel out (Victor 2001), driving some states away while attracting others (Von Stein 2005). In sum, the design of a regime matters in explaining why some states wait to ratify a treaty (Mitchell 1994).

Through its implementing treaties the Law of the Sea offers a unique revision moment when the obligations of particular states were removed (i.e. Part XI’s restructuring of mining claims and the removal of mandatory technology transfers) and still others were incentivized to ratify if they had not already (i.e. extending the right to board and investigate suspected violators or regional agreements on straddling stocks). By comparing the ratifications before and after these crucial
revisions, it is possible to discover to what extent removing obligations or extending rights induces states to ratify.\footnote{These changes are necessarily interactive with the interests of different states but, much like Mitchell’s (1994) work on variation in compliance levels of oil pollution regimes, where changes in the governing regimes occur inferences can be drawn about the regime’s effect on state behavior, holding the interests of states constant.}

In conclusion, the Law of the Sea’s long and complicated history makes it uniquely suited to examining the effects of state positions, domestic politics, and agreement incentives on the ratification process. Both the findings and analytical processes employed here can be used to examine other cases of ratification delay or failure. Thus the findings here should chart promising avenues for future research. In the next chapter, I take up the question of operationalizing the dependent and independent variables discussed thus far. I will also discuss in much greater detail how I will use event history analysis to compare the effects of position, domestic politics, and agreement related variables on ratification delay and failure.
Chapter 5
Research Plan and Descriptive Statistics

How Should the Law of the Sea Be Studied?

International relations scholars have begun to take more seriously the effects of time and timing of state decisions. When states act – whether deciding to ratify a treaty (Haftel and Thompson 2009; von Stein 2008) or break a post-war peace (Werner 1999) – the timing of their choice is increasingly the subject of theoretical and methodological interest by political scientists. This interest is especially evident when the timing of an action begins a period of legal obligations or reveals information about the interests of states vis-à-vis their commitments. By accounting for time, scholars have the opportunity to build more accurate theories and test more nuanced hypotheses, even accounting for variations in the strength of theorized causes over time (Box-Steffensmeier, Reiter, and Zorn 2003).

Building on these recent theoretical and methodological insights (Box-Steffensmeier and Jones 2004), the four-fold goals of this chapter are: 1) advance an argument for understanding ratification as a process and measuring it as such; 2) discuss the ratification history of the Law of the Sea and its implementing treaties; and, 3) explain the structure of my dataset, including descriptive statistics of the relevant theoretical and control covariates.
Conceptualizing and Operationalizing the Ratification Process

The difficulty of explaining cooperation at the international level is that it can mean so many different things. For example, Klein, Goertz, and Diehl (2008) demonstrate the peace spells between military rivalries can, and do, exhibit variation in the amount/quality of the peace experienced. Legal cooperation might take many forms within the system of international law, ranging from joint memoranda of understanding (expressing joint willingness but lacking legal obligation) to treaties that allocate decision-making power to 3rd party institutions (e.g., the 1995 Marrakech Agreement creating the WTO or the evolving EU treaty regime).

Broad general theories of cooperation are frequently capable of offering only vague hypotheses about the likelihood of cooperation increasing or decreasing (Axelrod 1984; Keohane 2005; Milner 1997). Because these theories tend to pool the phenomena of cooperation (Gruber 2000), across historical eras (Ikenberry 2001), and across states (Olson 1982), the explanations offered by most general theories are unable to speak to the probability of a specific form of cooperation occurring or even the tradeoffs between different types of cooperation. Broad theories offer broad conclusions, leaving unanswered more nuanced questions about the likelihood of and dynamics underlying specific types of cooperation. Yet it is these very questions, and the answers that follow them, that would be most useful in understanding opportunities and obstacles those different forms of cooperation offer.
To work around the problem of generality, I focus my study on a specific set of events: treaty ratifications. The ratification of a treaty is an important event to understand because it captures the moment in the treaty-making process that connects the specific legal obligations contained within a treaty’s text to the behavior changes of states (i.e. implementing legislation and compliance) (Simmons and Hopkins 2005). The same is not so for signing a treaty. Under Article 18 of the Vienna Convention on the Law of Treaties (adopted 1960; entered into force 1980) a state that has signed or expressed a willingness to be bound by a treaty is obligated “not to defeat the object and purpose of a treaty prior to its entry into force,” but this commitment to inaction falls far short of living up to the obligations of the treaty.

Ratification is the legal version of the credible commitment dilemma, one prevalent in the anarchic world of international politics. This essence of this dilemma centers on whether or not a promise made at one time will be upheld at some future date. In conflict studies, credible commitment is displayed by a state when it possesses both the ability and the willingness to carry out a threat it has made.

In the realm of international law, the credible commitment dilemma of ratification following the conclusion of a treaty depends on the ability of a state’s leader to navigate the institutional gauntlet(s) of vote-getting to officially ratify a treaty and the willingness of a state’s internal political groups to consent to that treaty at some future date – a set of concerns somewhat anticipated by, but distinct from, the negotiating process. The results of different ratification processes within
states around the world are plain to see: states vary in how long they wait to ratify treaties. As argued above, any delay matters for the community of states that awaits a state’s commitment as well as for the state that struggles to commitment credibly via ratification.

The hard reality of the ratification processes around the world is that they do not always end in a successful ratification. In addition to exploring Realism, E.H. Carr’s account of the twenty-year’s crisis, considers the failure of US President Woodrow Wilson to ratify the League of Nations covenant due to the reservations placed upon it in the US Senate. Carr’s analysis is primarily a meditation on the failures of legalists, legal commitments, political “utopians,” and international institutions to hold back the tide of the Second World War with promises and diplomacy alone (Carr 1940).

Such struggles to win ratification do not exist remotely or in distant history alone. Examples of contemporary high profile ratification failures (of the US) and strategic delays (by Russia) have dogged recent treaties such as the Kyoto Protocol (Victor 2001; von Stein 2008). Even for treaties that are in the economic and security interests of both the states involved, e.g. the Panama Canal Treaty, the ratification process can still stir up political anxieties, if not outright political battles, within those states involved (Moffett 1985). In the cases at the heart of this dissertation, the Law of the Sea and its implementing treaties, the delays and failures of so many developed countries to ratify the Law of the Sea as it opened for ratification – even after seven years of hard fought negotiation – stand as examples
of the contentiousness, difficulty, and importance of the ratification process, and credible commitments more broadly, at the international level.

So how should we understand and measure the ratification process? What conceptualization of ratification will help us capture, quantify, and examine the political dynamics underlying the decision to ratify or not? Below I consider three candidates: 1) the binary measure; 2) ratification as the process between signature and acceptance; and, 3) ratification as the process between a treaty’s availability and acceptance. There are benefits and drawbacks to each concept. However, for the purposes of explaining the ratification process I conclude that the measure of duration between a treaty’s availability and acceptance is the best candidate.

The Binary Conceptualization of Ratification

The simplest understanding of ratification would be a binary one: a state has either accepted a treaty’s obligations by ratifying it or it has not. The majority of scholarship on ratification uses this conceptualization (DeSombre 2000; Evans, Jacobson, and Putnam 1993; Lantis 2009; Milner 1997; Putnam 1988). The binary conceptualization links nicely with legal analyses because it highlights which states have legal obligations to others and which do not.

For case studies, this approach allows for clear comparisons between states (e.g. why did this state ratify, but that state did not?). Quantitatively, this measure allows a researcher to perform difference of means tests between states that have and have not ratified; logistic regressions of the probability of ratification; as well as, standard OLS regression on the time different states took to ratify.
Similar to minimalist definitions of democracy (Alvarez et al. 1996; Przeworski 2000), a conceptual argument exists for employing this measure of the ratification process because it most directly captures the moment (i.e. the deposit of ratification instruments) when a state accepts the full legal obligations of a treaty (Shaw 2008). Furthermore, this measure carries the implication that, like the adage about pregnancy, it is simply not possible to be a little bit ratified: a state either is or is not. The following graphs employ this measure as a way of describing the ratifications for the Law of the Sea and its implementing treaties.

**Figure 5.1 Total Ratifications as of 2010**

<table>
<thead>
<tr>
<th>Agreement</th>
<th>States Not Ratified</th>
<th>States Ratified</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOS (1982)</td>
<td>34</td>
<td>158</td>
</tr>
<tr>
<td>Part XI Agreement (1994)</td>
<td>55</td>
<td>137</td>
</tr>
<tr>
<td>Straddling Stocks Agreement (1995)</td>
<td>120</td>
<td>72</td>
</tr>
</tbody>
</table>

Simply categorizing states by whether they have ratified provides a clear picture of which states are bound and unbound by the treaty. In doing so, it also assumes all ratifications are equivalent when in reality they are not.
A histogram of the number of ratifications divided by the year they occurred reveals the significant variation in “when” different states ratified. This graph implies more than a difference in how long different states have been bound to follow the Law of the Sea; it implies that some states waited, and some are still waiting, while others rushed in. The pressing question of this dissertation is why this variation exists.

**Figure 5.2 Law of the Sea Ratifications by Year**

By graphing the total number\(^{49}\) of ratified and non-ratified states over time (a comparison absent in Figure 5.2 above), we see that every yearly cross-section displays a different proportion of non-ratified and ratified states.

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\(^{49}\) The total population of states for the Law of the Sea and its implementing treaties equals 192 states. The Law of the Sea and its implementing treaties were globally relevant so could be ratified by any state. Of course there were some new states that were not eligible to ratify in 1982. These states enter into the dataset after their independence. Thus, the total population of states does shift over the course of this study.
Thus, beyond obscuring the difference between ratifications, a regression using the binary measure runs the risk of saying more about the chosen cut point rather than the actual processes of ratification occurring over the entire observed time period.

The strictly binary measure of the ratification is inherently a cross-sectional snapshot of treaty ratifications (and non-ratifications) at a point in time. This measure is helpful in understanding and summarizing the momentary scoreboard of ratifications that have occurred, but it is inadequate for analyzing the dynamic game of ratification that resulted in the score at a particular moment.

Certainly a researcher can still attempt to use this measure for specific questions during crucial moments in the ratification history of a treaty (e.g., targeted difference of means test around crucial years, or increasing the dataset’s size and running separate logistic regressions by year to observe the effect of different covariates on the various outputs across the years). Yet there is no

What is most important for accurate conceptualization and measurement is that the total population of states at any given point of time are eligible to ratify the Law of the Sea and its implementing treaties.
established method for reconciling the contradictory findings likely to appear in such a process – especially where covariates change from a regression one year to the next.

Another solution might be to run a standard series of regressions on the number of years it took a state to ratify. This is an especially attractive option for the Law of the Sea or Part XI Agreement because a majority of states have ratified – see Figure 5.1. For these agreements the censored data (i.e., the states that have not ratified) are unlikely to dramatically change the overall distribution of when states ratified. This solution is unlikely to produce very reliable results for the Straddling Stocks Agreement, which two-thirds of states have yet to ratify.

When many states have ratified and the relevant state covariates are relatively stable over the course of the observed time period, a regression of covariates on the measure of years to ratify can yield a reasonable estimate of the covariates’ effects on ratification haste or delay, provided that no important time-varying covariates have been omitted. Unfortunately, given that ratification votes frequently depend on domestic political institutions and actors likely to change over during the observed period, no such guarantees can be made. Thus, it is unclear what single value or average could be entered as a stable covariate for all the years it took to ratify. A secondary problem is that this method also excludes cases of states that fail to ratify (i.e. are left censored) but from which valuable information about the relative risk of ratification might still be gleaned.
The most methodologically troubling aspect of regressing covariates on the time until ratification is the non-normal distribution of time itself. As Cleves et al. argue:

“Linear regression is known, after all, to be remarkably robust to deviations from normality, so why not just use it anyway? The problem is that the distributions for time to an event might be dissimilar from the normal – they are most certainly non-symmetric, they might be bi-modal, and linear regression is not robust to these violations” (Cleves 2010, 2).

An example, again from Cleves et al., of this non-normality is the distribution of survival time following surgery, “many patients die after surgery, but if they survive, the disease might be expected to return” (Cleves 2010). Thus, assuming a normal distribution of time to death outcomes would be inappropriate as the midpoint in the time following recovery is actually where the risk of death is most reduced with most error terms clustering on the bimodal distribution of deaths described above. What is needed is a methodology capable of loosening the normality assumptions for residuals, replacing that assumption with a more reasonable distributional assumption of where error terms are likely to cluster.

In conclusion, the binary measure offers a clear summary of ratifications and conceptually it identifies the most crucial moment in the credible commitment

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50 More specifically the non-normality of the residual error terms – See Cleves et al. 2010 for a full discussion.
51 Analogous events in international law the could effect the relative risk, and thus the normality of the distribution of residuals, could be large systemic or regional changes – e.g. the end of the cold war, the EU supranational endorsement, or the collapse of market values for certain minerals – or more domestic or diffuse changes – e.g. democratization of developing states or the strength of political, social, or industrial movements within states around the world.
dilemma of international law: the decision to ratify or not. Nevertheless, in keeping a clear score of who is ratified and not ratified, this measure obscures the variation in timing of those ratifications and thus how the global game of ratification is actually being played. Moreover, the methodological fixes that are available lack a system for the reconciliation of discrepancies among different findings or run afoul of the basic statistical assumptions underpinning linear regression. As such, this measure can only play a bit part in answering the question: why do states wait to ratify?

**Ratification as the Process Between Signature and Acceptance**

The act of signing a treaty carries with it the obligation on the part of the state signing the treaty to not work against the signed treaty’s object or purpose (Kelley 2007; Shaw 2008, 911). In certain instances, signature can even stand in for ratification, but these cases make a distinct minority in the treaties that form the body of modern international law. The majority of modern, significant treaties contain requirements that states ratify the treaty and deposit a ratification instrument to signal that “the state representatives have agreed upon an acceptable text, which will be forwarded to their particular governments for the necessary decision as to acceptance or rejection” (Shaw 2008).

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52 This is in part why President Bush un-signed the Rome Statute creating the International Criminal Court (ICC), because his administration intended to actively seek bi-lateral non-surrender agreements that undercut the ICC’s jurisdiction over US armed forces (Kelly 2007, 575).

53 See Haftel and Thompson (2009) for a full recounting of different studies than their failure to distinguish between the stages of treaty making.
Given that signature is the moment a leader is literally putting their name on a treaty text, should a measure of the ratification process begin with signature? Certainly it could capture when a country’s leader forwarded the terms of the treaty to the government for acceptance or rejection, thus beginning the ratification process with the natural end point being the government’s acceptance or rejection. In this section, I consider the effect of using signature as a starting point for measuring the ratification process. The majority of my discussion will focus on using this measure in analyzing the Law of the Sea, but similar issues arise in applying the measure to either of the implementing treaties.

Signature for the Law of the Sea was limited to the first three years it was open for signature (1982-1984), presumably to motivate states to sign. During those three years, 153 states signed the Law of the Sea and, of those states, 136 would go onto ratify the Law of the Sea. Thus, of 158 ratifications during the observed period (1982-2010), this measure excludes 22 states that did not sign the Law of the Sea during the signature period but went on to ratify nonetheless.

Two immediate problems present themselves: the pressure to sign early and the exclusions based on using signature as a starting point.

The pressure to sign early – remember the convention was only open for signature between 1982-1984 – weakens the interpretation that can be drawn from

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54 See the Shaw quote above.
55 Two exceptions exist for the signatures of the Czech Republic and Slovakia that occurred in 1993, following the break up of Czechoslovakia on January 1st, 1993.
56 Those states that signed but never ratified are: Afghanistan, Bhutan, Brundi, Cambodia, the Central African Republic, Colombia, El Salvador, Ethiopia, Iran, Libya, Liechtenstein, Niger, North Korea, Rwanda, Swaziland, Thailand, and the United Arab Emirates.
57 States that ratified but never signed: Albania, Armenia, Bosnia and Herzegovina, Croatia, Estonia, Micronesia, Georgia, Germany, Jordan, Kiribati, Latvia, Lithuania, Macedonia, Marshall Islands, Moldova, Montenegro, Palau, Serbia, Slovenia, Tonga, the United Kingdom, and Zimbabwe.
a leader signing the treaty because that decision is not free from the time constraint imposed by the treaty. Although many leaders may sign a treaty because they desire to make their states part to the treaty, an equally plausible possibility is that many leaders sign because they are on the clock with no ready way to distinguish which motivation – desire or the signature constraint – actually cause the signing. The best way to actually measure the “signature” effect is by including it as a control covariate explaining ratification rather than as an assumption within the conceptualization of the ratification process.

The more problematic aspects of this candidate conceptualization – that leads me to reject it as a good measure of the ratification process – are its exclusionary effects. It excludes states that did not sign quickly but that were still considering ratification. Assuming the importance of signature overlooks the key aspect of the Law of the Sea that allowed non-signatories to become states party to the convention: Article 307. This article kept the convention open for accession and allowed states to accede to the Law of the Sea after 1984. As a result, this conceptualization drops 22 cases because those cases lack a signature date, including important states like Germany and the United Kingdom. This effectively throws away 14% of the observed data some cases of which are well documented in theoretically interesting covariates.

Moreover, measuring ratification as the process between signature and acceptance also excludes years during which the Law of the Sea was no doubt under consideration. In Figure 5.4 below we can see that many signatures were made at
the close of the final negotiating conference in Montego Bay Jamaica on December 10th, 1982.

Figure 5.4 A Categorization of Signatures the Law of the Sea\textsuperscript{58}

![Bar Chart]

Fully a quarter of leaders (38 of 153) who would eventually sign decided to wait until one or two years. It is highly unlikely that the ratification process or considerations of that process were suspended following the close of the Montego Bay Conference and only resumed following the signature of the leaders in 1983 or 1984. Thus, although signature may capture a leader’s final decision to push forward with ratification, the moment of signature almost certainly does not indicate the first time the prospects for a ratification vote would be discussed in domestic political circles.

In addition to being a conceptually untenable starting point, leaving out years when the Law of the Sea was likely being debated omits time that should be counted

\textsuperscript{58} As mentioned above the signatures in 1993 followed the peaceful dissolution of Czechoslovakia on January 1st, 1993. It is unclear why these states were allowed to sign so far past the deadline.
as part of the process. As a result the reduced counts of time between signature and acceptance for those leaders that wait to sign misrepresent the total amount of time the Law of the Sea was likely being considered for ratification. For example, Austria and Argentina both ratified the Law of the Sea in 1995, but because Austria signed in 1982 and Argentina signed in 1984. Measured from when they signed, Argentina appears to have two years faster than Austria. In fact, if measured from the date of the treaty opened, Austria deposited its ratification instrument fully 5 months before Argentina!

In sum this measure suffers from a confounding pressure to sign early, a poor conceptualization of when discussions of ratification actually begin, and, dropping cases without a starting point, which affects the final measurement of variation in the length of the ratification processes across states. Signature may be a valuable covariate to include within a statistical model, especially as it relates to the political reputation or incentives to ratify of those leaders signing, but it makes a poor starting point to measure the process of ratification.

**Ratification as the Process Between Availability and Acceptance**

The third candidate conceptualization of the ratification process understands the process of ratification to have begun once a treaty is opened for signature. The two conditions of availability are met when: 1) the treaty’s text is concluded and 2) a state is able to decide independently to ratify the treaty or not. The direct measure of this concept is the time it takes a state to ratify once the state is able to do so independently. Here I use the term “independently” to denote that, under
some historical relationships (i.e., colonialism and the Soviet Union), the foreign policy decision of certain states depended on other states.

**Figure 5.5 Sample of Durations Using Availability**

![Graph showing durations using availability]

**Figure 5.6 Sample of Durations Using Signature**

![Graph showing durations using signature]

The first thing to notice is that the availability to acceptance conceptualization captures more of the ratification process across states than does the signature to acceptance conceptualization.59 Figure 5.5 contains more cases

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59 In most legal scholarship this moment is captured when a treaty “opens for signature.” I use the terms “available for signature” and “availability” to denote that both the legal and political conditions exist to make ratification possible.
In Figure 5.5 the measure of the ratification process begins in 1982 when the Law of the Sea opened for ratification for most states. A notable exception is Armenia, a former member of the Soviet Union, which was not a sovereign state and therefore unable to ratify the Law of the Sea until it established its own government in 1992. By contrast, in Figure 5.6, the Armenian case is dropped because Armenia was unable to sign the Law of the Sea. The 1984 deadline was long past. Despite this timing, the Armenian government’s did decide to ratify in 1995.

Although Azerbaijan appears when the availability conceptualization is used in Figure 5.5.; it is absent in Figure 5.6. Azerbaijan has neither signed nor ratified the Law of the Sea so to date, an example of ratification failure. Yet it is possible that Azerbaijan could ratify at some future date. Thus, a conceptualization that includes Azerbaijan and similar non-event cases, as the availability to acceptance conceptualization does, can help scholars investigate both delay and failure through the use of a unifying concept.

More importantly, keeping Azerbaijan-like cases in the study of ratification delay provides a better estimate of the probability of a state ratifying by better accounting for the total number of states at risk of ratifying at any given moment. The signature to acceptance measure drops cases where states did not sign and thus under-counts the pool of states at risk of ratifying, which biases the descriptive statistics and skews the inferences than can be drawn from comparisons of the states that did and did not ratify. In a study of survival rates from cancer this would
be akin to dropping cases when patients do not die. Yet it is those cases that may help explain patient survival. Beyond its descriptive accuracy, the availability to acceptance conceptualization carries several methodological advantages.

**Methodological Advantages**

The availability to acceptance conceptualization and measure of ratification allows scholars to study all the states at risk of ratifying during the observed period. Employing that concept in this study retains the cases that would be dropped due to lack of signature, increasing the database to all 192 states that could have ratified the Law of the Sea. The availability to acceptance understanding and measure of ratification carries two other methodological advantages.

First, it captures the political struggles waged around the ratification of a treaty. Starting from the availability of a treaty text captures the moment when domestic constituencies might awaken to the potential costs and benefits posed by a treaty (Lantis 2009). The moment a treaty becomes available for acceptance via ratification provides a tangible target for domestic and international interests both in favor and opposed to the treaty. History tells us that those interests will attempt to shape the political debate over ratification as well as its eventual outcome (Evans, Jacobson, and Putnam 1993; Moffett 1985).

In some instances, states themselves take measures to combat an unfavorable treaty text. Kelly (2007) offers a picture of a United States government reluctantly signing, abruptly un-signing the Rome Treaty establishing the International Criminal Court and then desperately working to secure bilateral non-surrender agreements involving its military personnel. At a different level of
analysis, Milner (Milner 2006) presents a more nuanced picture of the public referendum within France that effectively doomed the EU constitution of how citizen groups viewed the benefits of further integration. In both cases, the settled treaty text and the ratification process presented an opportunity for political interests that did not win at the negotiating table to try to derail the treaty during its ratification, all despite the approval of the negotiators who composed the treaty under attack. If nothing else, these ratification struggles and failures should serve to remind scholars of the real challenges negotiators face (well-informed in both these cases) in anticipating and mollifying those actors that bear the costs (real or perceived) of treaties.

The availability to acceptance measure ensures that the full scope of any political action on the treaty text and its implications will be observed within the data. Thus, it captures better the covariate values and value changes following a treaty’s conclusion when it is most likely to garner media attention and provoke interested parties. It also allows researchers to model the decision to sign a treaty alongside relevant covariate changes (e.g. changes in leadership, legislative composition).

The second methodological advantage of this understanding and measure is that a similar process plays out in making other treaties. Even when there are process differences, e.g., signature stands in for ratification, the duration between availability and acceptance can be measured. The portability if this conceptualization of ratification allows for the theories of the ratification process to
be evaluated systematically across a number of treaties covering a range of issue areas.

In sum, understanding and measuring the ratification process as the interval of time between availability and acceptance of a treaty aligns more closely to the actual political dynamics at play during ratification than either the binary conceptualization or using signature as a starting point for analysis. It also generates datasets that yield more accurate representations of the probability of ratification by better capturing the population at risk of ratifying. By capturing the full period of risk, the third candidate measure enables scholars to look at the entire ratification struggle following the conclusion of the treaty. Finally, the availability to acceptance measure of the ratification process travels well to other treaties increasing the ability of scholars to validate and extend previous findings and discover differences in the causal strength of covariates across issue-areas.

**Covariate Descriptions**

In this section, I offer descriptive summaries of the explanatory variables included in the models in Chapters 6 and 7. For each covariate, I describe its coding scheme and its distribution within the dataset. The bulk of variables not specific to the Law of the Sea and its implementing treaties were taken from the “Quality of Government Dataset” available through the Quality of Government Institute located at University of Gotenber in Sweden. This data set provides merged, publicly available data in country-year form from various universities and international

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60 See - [http://www.qog.pol.gu.se/](http://www.qog.pol.gu.se/)
organizations.\(^{61}\) I include the relevant citations when my data came from another source in the variables description and, for clarity, I divide this section into four parts: the ratification measure, agreement variables, power and state interest variables, and domestic politics variables.

**Constructing a Ratification Measure**

The measure of ratification that I use in this dissertation is constructed from the third conceptualization of ratification as a process, beginning at the moment a treaty opens for ratification and concluding when the ratification instrument is deposited. This is measure is for country-year cases. In practice this data structure means that a measure of “0” will be use for each country-year from 1982 (or whenever a country enters the data) until the year it ratifies, when it will be coded as “1”.

Although still measuring states as having ratified or not, this measure facilitates an event history analysis of the relative risk of ratification in any given year, using the preceding non-ratification years to help calculate the baseline probability of any state ratifying in each year (Cleves 2010). Once a state has ratified the Law of the Sea or its implementing treaties\(^{62}\) it is coded as missing. This coding choice is common in data structured for event history because it keeps the ratified states from affecting calculations of ratification risk for states that have not yet ratified.

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\(^{61}\) See Appendix XX.X for a full list of the referenced datasets and the variables employed from each paired with it reported name in this dissertation.

\(^{62}\) The ratification of each treaty is coded as a separate dependent variable because they are distinct acts and states ratified them at different times.
Agreement Variables

The different agreement obligations are primarily tested by comparison of the Law of the Sea and its implementing treaties. The only two agreement specific variables in the data: Signing Declaration and Lucky 14 State. These variables come from the expectations that greater flexibility and greater individual benefit to the state, respectively, will facilitate easier ratification.

*Signing Declaration* is a variable denoting whether or not a state’s representative issued a statement upon signing the Law of the Sea. It is coded “1” if a declaration was received and “0” if not. In total, there were 32 signing declarations issued for the Law of the Sea and these are listed in Table 5.1.63

<table>
<thead>
<tr>
<th>States that Issued a Signing Declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
</tr>
<tr>
<td>Angola</td>
</tr>
<tr>
<td>Argentina</td>
</tr>
<tr>
<td>Belarus</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
<tr>
<td>Bolivia</td>
</tr>
<tr>
<td>Brazil</td>
</tr>
<tr>
<td>Cape Verde</td>
</tr>
</tbody>
</table>

The specific contents of each declaration are not identified by coding rule used here, but a review of these declarations show a variety of Articles within the Law of the Sea referenced most often with the intent of lessening or changing the obligations of

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63 A 33rd declaration was issued the European Union but that declaration is not included as the *EU Membership* is included in the models presented in Chapters 6 and 7 as a control.
the reserving states. In practice these declarations read like treaty reservations, although formal reservations were not allowed to the Law of the Sea or its implementing treaties. The fact that some states made signing declarations is important because if those states intended to limit their obligations under the Law of the Sea then the leaders of that state may have had an easier road to ratification. Thus, we should expect that if a state leader made a signing declaration that state should be more likely to ratify the Law of the Sea.

*Lucky 14 States* were a group of states that stood to gain a disproportionately large amount of sea territory (see – Table 5.2) because either the characteristics of the continental shelf leading off their shore or the geography of their coastlines (Sanger 1987). I classify them here as beneficiaries of the agreement because the inclusion of an Exclusive Economic Zone placed the resources of the surrounding oceans under their economic stewardship. This relates to my theory or ratification timing because these states benefitted both absolutely and relatively from the Law of the Sea. The benefits inherent in ratifying the treaty (here operationalized as the sheer amount of territory) should have altered the calculus of the opportunistic legislators in these 14 states, giving them less reason to fight ratification.

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64 The full text of the declarations and the source of this data is the Law of the Sea’s website: [http://www.un.org/Depts/los/](http://www.un.org/Depts/los/)
Table 5.2 Lucky 14 States

<table>
<thead>
<tr>
<th>Lucky 14 States with Largest 200-mile EEZs</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
</tr>
<tr>
<td>France</td>
</tr>
<tr>
<td>Australia</td>
</tr>
<tr>
<td>New Zealand</td>
</tr>
<tr>
<td>Britain</td>
</tr>
</tbody>
</table>

All figures in millions of sq. nautical miles, data drawn from Sanger (1987, 65)

Power and State Interest Variables

These variables include static measures of state geography and industrial interests as well as more dynamic variables subject to yearly change, (i.e. Fish Catch 100K and GDP). Both static and dynamic measures of state power and interest attempt to capture the state interest in maritime affairs and their potential to influence other states. Additionally, in the case of industry variables such as Distance Fishing Fleet or Mining Pioneer, the existence of major interest groups within states.

These variables relate to the theories discussed earlier in that they capture the overall interests of states in the type of regulations created under the Law of the Sea. Specifically, Distance Fishing Fleet and Mining Pioneer states possessed the capacity, or the potential, to exploit the coastal resources of others, or the seabed. These states were the most heavily regulated by the Law of the Sea and as such
should have been less willing to ratify the treaty because it would have placed constraints on their fishing and mining more so than other states.

States that possessed more resources (i.e., GDP or regional hegemony) should have been able to influence the behavior of others. Wealthier states had more go it alone options or the ability to set up parallel systems of resource management with their own. Similarly, regional hegemons (measured as the ability to finance the projection of military power over land to others) were likely to influence the decisions made by states in their region. If a regional hegemon stays out of the Law of the Sea it reduces its relative attractiveness to smaller, weaker states in the region because they cannot easily use the Law of the Sea to bind the hegemonic actions. By joining though a regional hegemon could effectively pull other smaller, weaker states along – who would join to take advantage of the hegemon’s acceptance of legal contraints.

**Static Measures**

*Coastline, Distance Fishing Fleet, and Mining Pioneer* are the three state interest measures that do not change over time. The first of these three, *Coastline*, is unevenly distributed with most states possessing very little coastline. This variable was gathered from Central Intelligence Agency’s website: [www.ciafactbook.com](http://www.ciafactbook.com).
This variable is used throughout to assess the vulnerability of states to maritime issues. As Sprinz and Vahtoranta (1994) point out the more vulnerable a state is too an ecological problem (here represented by the amount of Coastline in thousands of kilometers) the more likely it is to push for a clear set of rules to deal with the problem. As the histogram above shows, the

The second consistent feature of state interests is the presence of a *Distance Fishing Fleet*. A distance fishing fleet is a fleet of ships capable of traveling long distances and conducting full fishing operations off the coast of other states. Over the observed period (1982-2010), twelve states have consistently done the majority of the distant water fishing in the world. These states had much to lose in the

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65 Canada was dropped from this graph because it has a coastline in excess of 200,000 miles.
Straddling Stocks Agreement wherein coastal states acquired the right of investigation. The Stocks agreement also empowered states to apply the precautionary principle to the act of fishing costal stocks; further empowering coastal states to reduce the legal fish catch of distance fishing fleets. These data were initially gathered from the Food and Agriculture Organization (FAO) but was taken directly from the QOG dataset.66

Table 5.3 States with Distance Fishing Fleets and Fish Catch in 2005

<table>
<thead>
<tr>
<th>Country</th>
<th>Fish Catch (100K tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peru</td>
<td>89.9</td>
</tr>
<tr>
<td>China</td>
<td>84.7</td>
</tr>
<tr>
<td>Indonesia</td>
<td>40.0</td>
</tr>
<tr>
<td>United States</td>
<td>38.8</td>
</tr>
<tr>
<td>Japan</td>
<td>33.3</td>
</tr>
<tr>
<td>Russia</td>
<td>28.4</td>
</tr>
<tr>
<td>India</td>
<td>23.9</td>
</tr>
<tr>
<td>Norway</td>
<td>23.3</td>
</tr>
<tr>
<td>Thailand</td>
<td>22.8</td>
</tr>
<tr>
<td>South Korea</td>
<td>11.6</td>
</tr>
<tr>
<td>Spain</td>
<td>7.8</td>
</tr>
<tr>
<td>Poland</td>
<td>1.3</td>
</tr>
</tbody>
</table>

For each state I code whether or not they were Distance Fishing Fleet states. Distance Fishing Fleet states are constant across the data and are listed in Table 5.3. These states are coded as “1” while states that do not possess a distance fishing fleet are coded as “0.” I also include a measure of Fish Catch (100K) for every country in every year when data was available. The majority of Distance Fishing Fleet states eventually ratified the Law of the Sea and the Straddling Stocks Agreement. China

See - [http://www.qog.pol.gu.se/](http://www.qog.pol.gu.se/)
and Peru are notable exceptions because together they account for 36% of the fish catch of distance water fishing fleets.

Finally, I created a binary measure of *Mining Pioneer* states as they are listed as a on the Law of the Sea’s website or in one of three reference books that includes lists of states headquartering firms that belong to seabed mining consortia (Churchill and Lowe 1999; Sanger 1987; Sebenius 1984). Although it is conceivable that any state could attempt seabed mining, these states are the most likely to given their technological expertise and the initiative they have taken to register claims with the Authority. They are: Belgium, Canada, France, Germany, India, Italy, Japan, Netherlands, Russia, the United Kingdom, and the United States.

*Dynamic Measures*

There are three different dynamic measures of either state interest or power. Mentioned earlier, *Fish Catch (100k)* measures the yearly tonnage of fish caught per country. As the graph below shows most states in the world catch relative small amounts of fish. A minority of states – whether they are fishing at a distance or not – catch most of the fish in the world and thus are likely to be most concerned with limitations on fishing, whether to protect costal fishing grounds or encourage distant water fishing. Both the measure of *Fish Catch* and *Distance Fishing Fleet* are included to differentiate cases like Peru (large *Fish Catch*, *Distance Fishing Fleet*) and Canada (large *Fish Catch*, but no *Distance Fishing Fleet*). These measures also capture the presence of interest groups within states, which is of theoretical interest to my theory of ratification timing. Those states that possess both a large *Fish Catch*
and a *Distance Fishing Fleet* are more likely to have industries with the resources to persuade the government to delay or fail to ratify the Law of the Sea.

**Figure 5.8 A Scatter Plot of Fish Catch (100k) and GDP (ln)**

In addition to yearly fishing data, I also include the natural log of GDP for each state. This measure has the benefit of suppressing the outliers of extreme wealth that exist internationally so that comparisons can be more directly observed on graphs. Originally drawn from the World Bank’s World Development Indicators (WDI), I used the merged values in the QoG Dataset. As mentioned above the wealthier a state is the more able it is to forego the institutions set up by the Law of the Sea and instead use its resources to protect and advance its maritime interests.

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To capture the regional pressures states faced, I code the number of ratified states within each region (lagged by one year). These measures change every year that a new state ratifies. By lagging this measure on year, each state receives a measure of the ratifications of the year prior, prevents a state's own ratification from counting toward their perception of the regional trend. The eight regions used for this measure were drawn from the QoG dataset and were explored in a paper assessing the measures of democracy employed in the analyses below. This measure should capture the changing social pressures and transaction-cost gains for a state as other states in its region ratify.

I use Lemke’s (2002) ranking of 29 regional hegemons from among 89 states arranged in local hierarchies to create a measure of the pull a hegemon might create when either it ratifies the Law of the Sea. Lemke’s originally measure is derived from a formula that calculates cost of projecting force over geographic distance – see Lemke (2002) for a full account of the cost calculation. Once the cost of projecting military force is known, Lemke used the GDP of the state to calculate the range that a state could feasibly project its military force, thereby establishing regional groupings of power with the most powerful (highest GDP) state serving as the regional hegemon. Only 30 states that witnessed a regional hegemons ratify followed suit. Most of ratifications that followed a regional hegemon occurred in Africa and did not immediately follow the hegemon’s ratification.

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Domestic Politics Variables

The following variables capture the primary theoretical interests in this study. I divide my review into government variables (Democracy, Government System, Ratification Threshold), legislature variables (Legislative Majorities, Government Fractionalization), executive variables (Amount of Experience, New Executive, and Left/Center Executive), and election variables (Executive Election Zone, Legislature Election Zone). In describing some of these variables, I simply note their summary statistics because they will be the subject of tables and graphs in the empirical chapters of this dissertation.

Government Variables

I use binary measure of democracy based on contested elections and alternation of power because the systems I am most interested in are those where alternation of power is possible. Of 5,579 country years in the dataset there are 2,502 country-year designated democratic. Within country-years measured as democratic 83 ratifications of the Law of the Sea occurred (69 occurred in non-democratic country-years). Subdividing those democracies into Government Systems reveals that parliamentary democracy was the modal form of government for most of the democratic country-years.
Additionally, a comparison of the percentages of *Ratification Threshold* measures across all states versus only within democracies only reveals that democratic states have slightly higher *Ratification Thresholds*.

**Table 5.4 A Comparison of Ratification Thresholds: All States vs. Democracies***

<table>
<thead>
<tr>
<th>Ratification Threshold</th>
<th>Non-Democracies</th>
<th>Democracies</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Constraint</td>
<td>40% (915)</td>
<td>23% (535)</td>
</tr>
<tr>
<td>Consult Cabinet</td>
<td>4% (80)</td>
<td>9% (212)</td>
</tr>
<tr>
<td>Majority Vote</td>
<td>49% (1122)</td>
<td>47% (1089)</td>
</tr>
<tr>
<td>2/3 Majority Vote</td>
<td>7% (164)</td>
<td>22% (506)</td>
</tr>
</tbody>
</table>

*Country-years in parentheses

The measure of ratification thresholds that I use in this study is a combination of two previous measures: Simmons’ (2009) measure of ratification thresholds and the publicly available data from the Institutions and Election Project (IAEP). The former
is replicated from Simmons’ (2009) online sources appendix for her book Mobilizing for Human Rights and the latter is drawn from the merged QoG dataset. This provides better coverage of the ratification thresholds for countries in my dataset. Of 4,738 country-years where some measure of a ratification threshold exists, 51% have both Simmons’ measure and the IAEP measure. The remaining 2,440 cases have only one measure with roughly two-thirds of those cases covered by the IAEP measure and one-third by Simmons’ measure.

Spot-checking the data generated by Simmons’ coding form and IAEP data against available constitution texts revealed that Simmons’ data are more consistently and reliably sourced to the countries constitutional provisions on ratification. I determined this by checking the relevant sections of the treaties of 30 different countries. I found no errors in any of Simmons’ coding but discovered two inconsistencies in the IAEP data. Simmons’ coding form works best for cases following 1991 because prior to that she does not locate many of the constitutions. The IAEP though has better coverage in the years preceding 1991 though using a more simplified coding structure.

Each data structure used a different coding structure. Simmons uses the following distinctions: 1 = Individual decision, 1.5 = Consult cabinet, 2 = Majority vote in one legislative body, and 3 = Super majority or majority in two legislative bodies. The IAEP uses a simplified coding structure for the legislature’s authority

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70 http://www2.binghamton.edu/political-science/institutions-and-elections-project.html
71 In both cases the coding rules of the IAEP missed the cabinet referral requirement.
72 See fn. 21 above.
over treaties: 1 = No legislative authority, 2 = One house has authority, and 3 = Both houses have authority. I used a simple combination rule to merge the two measures: whenever the IAEP projected farther back in time and the ratings were consistently valued, I used the earliest value Simmons measured for that state and backfilled Simmons’ measure parallel to the IAEP measure.

Cross-tabulating Ratification Thresholds by Government System within democracies reveals that presidential systems tend to have higher ratification thresholds.

Table 5.5 Ratification Thresholds by Regime Type

<table>
<thead>
<tr>
<th>Ratification Thresholds</th>
<th>Parliamentary</th>
<th>Mixed</th>
<th>Presidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Constraint</td>
<td>413 (37%)</td>
<td>75 (15%)</td>
<td>47 (7%)</td>
</tr>
<tr>
<td>Consult Cabinet</td>
<td>162 (14%)</td>
<td>27 (5%)</td>
<td>23 (3%)</td>
</tr>
<tr>
<td>Majority Vote</td>
<td>390 (34%)</td>
<td>326 (65%)</td>
<td>373 (52%)</td>
</tr>
<tr>
<td>2/3 Majority Vote</td>
<td>166 (15%)</td>
<td>72 (15%)</td>
<td>268 (38%)</td>
</tr>
<tr>
<td>Total</td>
<td>1,131*</td>
<td>500</td>
<td>711</td>
</tr>
</tbody>
</table>

* - country years

In sum, the government variables presented here show a good deal of variation in the different state governments that debated ratifying the Law of the Sea and its implementing treaties. Among democratic states, approximately half of all the debate carried out within parliamentary systems, which, as Table 5.5 shows, tend to have a lower ratification threshold than either mixed or presidential systems. Of the three regime types, presidential systems have the greatest concentration of super majority or two house majority vote requirements. Thus,
winning ratification votes in legislatures in presidential systems is more difficult and likely to make ratification less likely.

**Legislature Variables**

I use two different measures of the executive’s support in the legislature. The first is a measure of the *Legislative Majority* held by the government. This is an especially important measure when majority or super majority votes are required for a legislature to ratify a treaty.

Table 5.6 Legislative Majorities by Ratification Thresholds

<table>
<thead>
<tr>
<th>Ratification Threshold</th>
<th>Average Legislative Majority</th>
<th>Standard Deviation</th>
<th>Presidential, % Cases Gov. has required votes</th>
<th>Parliamentary, % Cases Gov. has required votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Constraint</td>
<td>0.66</td>
<td>0.15</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Consult Cabinet</td>
<td>0.52</td>
<td>0.12</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Majority Vote</td>
<td>0.56</td>
<td>0.16</td>
<td>219/373 (59%)</td>
<td>326/390 (84%)</td>
</tr>
<tr>
<td>2/3 Majority Vote</td>
<td>0.57</td>
<td>0.15</td>
<td>86/268 (32%)</td>
<td>16/166 (10%)</td>
</tr>
</tbody>
</table>

Table 5.6 above shows that, when a legislative vote is required, especially a super majority, leaders in democracies are in many cases do not have large enough majority in the legislature on which to rely. The exception is parliamentary systems when only a majority vote is required, even then, in 16% of the cases prime ministers will have to reach outside their government to secure votes.

In addition to the variation in the government’s majorities there is also a good deal of variation in how much *Government Fractionalization* exists. This variable is measured as the probability that two randomly chosen government
deputies will be from different parties. It measures whether a coalition exists and how many different parties are included. This variable originates in the World Bank’s Database of Political Institutions. Here I use the merged data from the QoG dataset.

**Figure 5.10** Histograms of Government Fractionalization by Regime Type

As the graphs above show, fractionalization is both more common and more severe in parliamentary systems than presidential. Among democracies the measures of *Legislative Majority* and *Government Fractionalization* are only moderately correlated ($p=0.43$).

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74 These graphs exclude “0” measures to make them more readable. As a percentage of the total number of democracy country years fractionalization measures over 43% of the 2,121 country-years.
In Chapter 3, I theorized that leaders face opportunistic legislators who are capable of using their ratification vote strategically to deny the leader a foreign policy victory as well as to play party politics. When incorporated into a fuller statistical model these variables will shed light on to what extent a larger majority and a less fractionalized government will help a leader seeking to get the Law of the Sea ratified.

Executive Variables

Different types of executives push for ratification. These measures try to assess to what degree the type of executive trying to persuade a given legislature matters. The first measure, Executive Experience, originates in the World Bank’s Database of Political Institutions and is drawn from the QoG dataset. This measure counts the number of years an executive has served in office. The inclusion of this variable should capture both learning and executive skills. In order to survive politically, executives must be adept using their office to secure re-election or retention. Moreover, as time passes executives should build alliances and learn about the political dynamics going on within their legislature and country.
The distribution of years spent in office decays exponentially with few leaders in democracies spending more than ten years in office. The expectation would be that those leaders who have spent more time in office, though a minority of cases, should be especially skilled at working with legislatures and therefore more likely to win a ratification vote.

The second measure I use, *New Executive*, captures the pressure of the current term of an executive ending. *New Executive* is coded as a count of the years remaining on the executive’s current term. Thus, the higher the measure, the newer or recently re-elected is the executive. This is another World Bank Database of Political Institutions variable drawn from the QoG dataset. This measure is only used on democracies where elections and term limits exist as true barriers to an executive continuing to rule. This measure should capture the different pressures to act at the beginning and end of the term.
Finally, I have theorized that the ideology of an executive can pull them towards certain types of agreements. *Left/Center Executive* is a measure from the World Bank Database of Political Institutions and drawn from the QoG dataset. I recoded “left” and “center” to equal “1”, leaving all “right” governments coded as “0”. This variable covers 1,732 democratic country-years, 51% are coded “1”. Ratifications, however, are nearly evenly split between the two ideologies – with 28 ratifications coming from “right” executive and 31 coming from “left/center” executives.

**Election Variables**

The coding structure I use for elections, whether executive or legislative, is to code the year of election and the years surrounding it as “1” and all other years as “0.” Using data originally from the World Bank’s Database of Political Institutions (drawn from the QoG dataset), I use this coding structure to create the *Executive Election Zone* and *Legislative Election Zone* variables, respectfully. These zone measures should capture whether in the immediate aftermath of an election (or its anticipation) states are more likely to ratify treaties.
Conclusion

These variables are incorporated into the event history analysis of the duration of ratification delays. Though I have drawn consistently from the QoG dataset, I have spot-checked their coding against the original datasets. The summary statistics and year-by-year measures appear to correspond identically. In the next chapter I use the data described above to test the hypotheses generated in Chapters 2 and 3.
Chapter 6

The International Story: Why States Waited to Ratify the Law of the Sea

Event History Analysis

I use event history analysis to compare the influence of the variables explained in the previous chapter. Event history analysis has the advantage of allowing changes in covariates over time (e.g. rising GDP, new leadership) to affect the likelihood that states will ratify (Box-Steppensmeier and Jones 2004). It also includes all of the relevant cases (even those states that have yet to ratify) in the calculation of the baseline hazard of states ratifying (Cleves 2010, 135-141). Scholars have employed this technique to analyze ratification delay using both parametric models that impose assumptions on the underlying hazard rate of ratification (von Stein 2008), and semi-parametric Cox proportional hazard models (Simmons 2009) that allow the baseline hazard rate to vary over time (though as the name implies, these models impose a proportionality assumption on how covariates affect the baseline hazard) (Box-Steppensmeier and Zorn 2001). In the analyses that follow I employ Cox proportional hazards models to examine the hypotheses advanced above.

One reason to select the Cox model over the more assumption laden (and thus more powerful) parametric statistical models is to avoid the threat of model mis-specification (Box-Steppensmeier and Zorn 2001).75 Specifically, parametric

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75 See fn 1 on page 973 in Box-Steppensmeier and Zorn (2001) for comments on the wide spread use of the Cox model beyond the social sciences and the diagnostic problems caused by the restrictive assumptions of parametric (e.g. Weibull) models.
models constrain the underlying hazard rate to a specific functional form, which increases the sensitivity and power of the model to detect significance, so long as it is not incorrectly specified. If incorrectly specified parametric results are unreliable estimators of the hazard rate’s functional form and will produce biased results. Regrettably, diagnostics to check whether or not the correct functional form has been specified remain elusive.76

More importantly, the Cox model offers a clearer way of assessing what type of effect a covariate has on the hazard rate at any given moment.77 A hazard ratio is the shift in the entire baseline hazard and thus the moment-to-moment hazard rates as well. Imagine the likelihood (the risk over time) of two 80-old men dying over the next few years – most likely you will visualize an upward curve, with risk increasing as both of the men age. Now imagine that first old man is a smoker. This difference in condition results in an increase in the hazard rate because the first old man’s smoking is likely to kill him sooner than the second old man. The proportionality assumption of the Cox model requires that the hazard rate along the entire hazard curve be shifted upward because the old man who smokes is at a proportionally higher risk (hazard) of dying over time. Note in this example that both men are at a risk of dying and that the second old man serves as a baseline for the original hazard of dying (which remains undetermined by the Cox model and in the exact same functional form). A similar dynamic will apply in interpreting how much a statistically significant covariate’s hazard rate changes the hazard rate (in

77 For those readers unfamiliar with this sort of statistical analysis I strongly recommend Cleves (2010) and Box-Steffensmeier and Jones (2004).
this case the risk of ratifying) in comparison with hazard rate of baseline/control cases.

The Cox’s singular stumbling block is its assumption of proportionality in changing the hazard rate.\textsuperscript{78} Thankfully, there exist a suite of different diagnostic tests to test and correct for non-proportional hazards. Most solutions involve interacting the non-proportional covariate with some function of time (Box-Steffensmeier, Reiter, and Zorn 2003). Thus, the Cox model offers both a more difficult test – because of its reduced power to detect significance – but also less fallible and more flexible test – because it makes no hazard rate assumption and diagnostics exist to correct for proportionality.

To test the hypotheses from Chapter 3, I run seven different models. The hazard ratios calculated in each instance are a product of the other covariates included in the model. As a result, every hazard ratio is relevant in reference only to the model it was run in and we can expect to see the hazard ratios for any individual covariate change from model to model. If the hazard ratio of a covariate sustains a consistent direction and effect across the models, however, this should offer evidence of the strength of the underlying relationship between that covariate’s value and the risk of ratification across states. Simmons offers a variation of this justification for the interpretation of her findings that increasing

\textsuperscript{78} Remember the baseline hazard can take any functional form with the hazard rate between time \( t_0 \) and \( t_n \) taking any slope, thus the Cox model makes no assumption on the normality of the residuals on the measures of duration.
democracy (using the Polity scale as a measure) increases the probability of ratification of human rights agreements (Simmons 2009).  

**Testing What States Waited to Ratify the Law of the Sea**

Below I run seven different statistical models to investigate ratification timing for states joining the Law of the Sea. Model 1 is run with only control variables to establish baseline hazard ratios for those variables. The next six models incorporate different explanatory variables relevant to the full population of states in the world.

In Appendix A there is a correlation matrix with Pearson correlation coefficient measures for all of the relevant covariates. To ensure against multicollinearity, the models reported were rerun dropping, in turn, each covariate pairing with a coefficient over 0.4. None of the substantive findings discussed below changed as a result of these models. Additionally, every model was tested for proportional hazards violations. Every model reported was first run uncorrected for time. Then each model was tested using Schoenfeld residuals in both the graphical method described in both Box-Steffensmeier and Zorn (2001, 981) and the re-estimation method described in Cleves (2010, 204-208). Persistent problems were found with EU membership’s interaction with time. I employed Cleves et al.’s recommended solution interacting EU membership with time. EU membership appears with “(TVC)” next to it in order to represent it as a time-varying covariate.

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79 Simmons (2009) and von Stein (2008) find that democracy (as measured by polity) results in a higher risk of ratification across their models. In both instances this is argued to be a factor of the treaty.
Table 6.1: Cox Model Results for International Variables

<table>
<thead>
<tr>
<th>Explanatory Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
<th>Model 7</th>
</tr>
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<tbody>
<tr>
<td>Ratification Thresholds*</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2/3 Majority in One House or Majority in Two Houses</td>
<td>-</td>
<td>.505</td>
<td>.547</td>
<td>.570</td>
<td>.292</td>
<td>.464</td>
<td>.493</td>
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<td>.847</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Democracy (Polity)</td>
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<td>-</td>
<td>.981</td>
<td>.975</td>
<td>-</td>
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<tr>
<td>Democracy²(Polity)</td>
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<td>-</td>
<td>-</td>
<td>1.005</td>
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<td>-</td>
<td>1.062</td>
<td>-</td>
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<tr>
<td>System of Government</td>
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<tr>
<td>Strong President Elected by Assembly</td>
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<td>-</td>
<td>-</td>
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<td>1.152</td>
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<td>-</td>
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<td>.842</td>
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</table>
| Signing Declaration   | 1.730   | 1.847   | 1.896   | 1.952   | 2.316   | 1.822   | 1.906   | (.p = .034)** | (.p = .040)** | (.p = .037)** | (.p = .029)** | (.p = .030)** | (.p = .041)** | (.p = .031)** | 80 Both Left/Center Executive and System of Government variables were run in models (unreported here) including both of the democracy measures. Neither the direction nor the strength of any of the variables changed. Additionally the interaction terms between democracy and interest group variables (e.g. Distance Fishing Fleet, Fish Catch (100k) and Mining Pioneer) are unreported because none reached statistical significance.
<table>
<thead>
<tr>
<th>Table 6.1 (cont.)</th>
<th>Distance Fishing Fleet</th>
<th>Fish Catch (100k)</th>
<th>Mining Pioneer</th>
<th>Regional Pressure</th>
<th>Lucky 14 Country</th>
<th>Common Law</th>
<th>GDP (ln)</th>
<th>Hegemon Ratified First</th>
<th>Coastline (1k)</th>
<th>Q1-Q3 GDP (Q1-Q3=1, Q4=0)</th>
<th>Q1-Q3 GDP x Coastline</th>
<th>EU Member (TVC)</th>
<th># of countries</th>
<th># of ratifications</th>
<th># of observations</th>
<th>Prob&gt;X²</th>
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<tr>
<td><strong>Distance Fishing Fleet</strong></td>
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<td>(p = .323)</td>
<td>(p = .601)</td>
<td>(p = .593)</td>
<td>(p = .553)</td>
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<tr>
<td><strong>Fish Catch (100k)</strong></td>
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<td>0.990</td>
<td>0.992</td>
<td>0.994</td>
<td>0.992</td>
<td>0.993</td>
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<td>(p = .517)</td>
<td>(p = .636)</td>
<td>(p = .497)</td>
<td>(p = .531)</td>
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<tr>
<td><strong>Mining Pioneer</strong></td>
<td>-</td>
<td>0.810</td>
<td>0.7829</td>
<td>0.791</td>
<td>1.004</td>
<td>0.828</td>
<td>0.841</td>
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<td>(p = .594)</td>
<td>(p = .610)</td>
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<td><strong>Regional Pressure</strong></td>
<td>0.996</td>
<td>1.001</td>
<td>1.001</td>
<td>1.002</td>
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<td>(p = .935)</td>
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<td><strong>Lucky 14 Country</strong></td>
<td>1.013</td>
<td>0.944</td>
<td>1.169</td>
<td>1.235</td>
<td>1.053</td>
<td>0.995</td>
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<tr>
<td><strong>Common Law</strong></td>
<td>1.489</td>
<td>1.106</td>
<td>1.17</td>
<td>1.182</td>
<td>1.142</td>
<td>1.073</td>
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<td></td>
<td>(p = .054)*</td>
<td>(p = .702)</td>
<td>(p = .598)</td>
<td>(p = .589)</td>
<td>(p = .723)</td>
<td>(p = .795)</td>
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<tr>
<td><strong>GDP (ln)</strong></td>
<td>0.907</td>
<td>0.866</td>
<td>0.858</td>
<td>0.839</td>
<td>0.812</td>
<td>0.871</td>
<td>0.897</td>
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<tr>
<td></td>
<td>(p = .035)**</td>
<td>(p = .010)**</td>
<td>(p = .065)*</td>
<td>(p = .041)**</td>
<td>(p = .021)**</td>
<td>(p = .121)</td>
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<tr>
<td><strong>Hegemon Ratified First</strong></td>
<td>1.068</td>
<td>0.833</td>
<td>0.907</td>
<td>0.919</td>
<td>0.555</td>
<td>0.967</td>
<td>0.834</td>
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<td></td>
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<td>(p = .556)</td>
<td>(p = .762)</td>
<td>(p = .795)</td>
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<td>(p = .558)</td>
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<tr>
<td><strong>Coastline (1k)</strong></td>
<td>1.002</td>
<td>1.002</td>
<td>1.003</td>
<td>1.002</td>
<td>0.999</td>
<td>1.002</td>
<td>1.002</td>
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<td>(p = .644)</td>
<td>(p = .523)</td>
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<td>(p = .642)</td>
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<tr>
<td><strong>Q1-Q3 GDP (Q1-Q3=1, Q4=0)</strong></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.303</td>
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<tr>
<td><strong>Q1-Q3 GDP x Coastline</strong></td>
<td>-</td>
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<td>1.006</td>
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<tr>
<td><strong>EU Member (TVC)</strong></td>
<td>1.074</td>
<td>1.085</td>
<td>1.089</td>
<td>1.075</td>
<td>1.067</td>
<td>1.093</td>
<td>1.085</td>
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<tr>
<td></td>
<td>(p = .001)**</td>
<td>(p = .001)**</td>
<td>(p = .001)**</td>
<td>(p = .009)**</td>
<td>(p = .026)**</td>
<td>(p = .001)**</td>
<td>(p = .001)**</td>
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<tr>
<td><strong># of countries</strong></td>
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<td>127</td>
<td>110</td>
<td>110</td>
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<td>120</td>
<td>128</td>
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<tr>
<td><strong># of ratifications</strong></td>
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<td>89</td>
<td>89</td>
<td>61</td>
<td>100</td>
<td>108</td>
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<tr>
<td><strong># of observations</strong></td>
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<td>1579</td>
<td>1335</td>
<td>1335</td>
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<td><strong>Prob&gt;X²</strong></td>
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<td>0.017</td>
<td>0.0973</td>
<td>0.0954</td>
<td>0.0757</td>
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</table>

**p<.10** **p<.05** **p<.01**
Hazard ratios greater than 1 indicate an increased probability of ratification; whereas, hazard ratios less than 1 indicate a decreased probability of ratification (a greater likelihood of experiencing a delay in ratifying). A binary covariate with a hazard ratio of 1.5 is best understood as the presence of that covariate “increasing” the probability of the event by 50%. Put differently, the same binary covariate with a hazard ratio of 0.5 would signify that cases coded “1” would only be 50% as likely to experience the event as those coded “0”. It is this latter example that represents ratification delay - hazard ratios less than “1” where the probability of the event occurring is reduced.

*Ratification Thresholds*

The first thing to notice about the models above is the robustness of the finding that countries with higher ratification thresholds (i.e. those requiring majority or super-majority votes) are significantly less likely to ratify the Law of the Sea, as compared with the baseline category of countries without ratification thresholds; a country with a ratification threshold requiring a majority vote of the legislature is only 53% as likely to ratify the Law of the Sea as one without. Increasing that requirement to a 2/3 vote (or a majority in both houses) reduces the likelihood an additional five percentage points to 48%.

To represent this shift in the probability of ratification, I have generated survival curves at maximum and minimum values for ratification thresholds (i.e. no requirement vs. 2/3 vote requirement):
Notice that these survival curves move together (an effect of the proportionality assumption) and that the lower the hazard ratio results in longer survival and thus a more lengthy ratification delay (a 2/3 vote requirement results in a 0.505 hazard ratio).

**Measures of Democracy**

Although in the expected direction, with hazard rates less than 1, no measure of democracy reaches statistical significance. This is particularly troubling given the findings of other recent studies wherein democracy had a substantial and sustained effect across models (Neumayer 2005; Simmons 2009; von Stein 2008).
I investigated the non-effect of democracy in these models more closely and it seems likely that the result reported here is incorrect for several reasons. First, simply plotting when states ratified over time and separating countries by their status as a democracy or not using the binary measure developed by Alvarez et al. (1996) reveals that the ratifications of democracies appear to be delayed.

**Figure 6.2 Scatter Plot of Ratification Delay for Dictatorships and Democracies**

Furthermore, a two-way t-test conducted on the mean duration times to ratification (excluding non-ratified states) revealed that differences in the average

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82 I spoke with Dr. Jan Box-Steffensmeier a specialist in event history analysis on June 11, 2012 regarding these abnormal results. After reviewing both my data and results, Dr. Box-Steffensmeier recommended checking for influential outlying points with a dfbeta analysis and for interactions with time. I conducted these tests and found no irregularities. Dr. Box-Steffensmeier concurred that the standard OLS regression run below would likely produce a more reliable estimate of the effect of democracy.
time to ratify the Law of the Sea between non-democracies and democracies is statistically significant.

Table 6.2 T-tests of Variance in Democratic and Non-democratic Regimes

<table>
<thead>
<tr>
<th>Group</th>
<th>Observations</th>
<th>Mean</th>
<th>Std. Error</th>
<th>Std. Deviation</th>
<th>[95% Confidence Interval]</th>
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<td>Non-Democracy</td>
<td>70</td>
<td>9.971</td>
<td>0.861</td>
<td>7.203</td>
<td>8.254 – 11.688</td>
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<td>Democracy</td>
<td>86</td>
<td>14.267</td>
<td>0.607</td>
<td>5.626</td>
<td>13.061 – 15.474</td>
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<tr>
<td>Combined</td>
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<td>12.339</td>
<td>0.537</td>
<td>6.712</td>
<td>11.278 – 13.401</td>
</tr>
<tr>
<td>Difference</td>
<td></td>
<td>-4.296</td>
<td>1.053</td>
<td></td>
<td>-6.379 – -2.212</td>
</tr>
</tbody>
</table>

Difference = mean (Non-Democracy) – mean (Democracy)  
$t = -4.0789$

<table>
<thead>
<tr>
<th>Ho: Diff = 0</th>
<th>Ha: diff &lt; 0</th>
<th>Ha: diff != 0</th>
<th>Ha: diff &gt; 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pr(T &lt; t) = 0.0000</td>
<td>Pr(T &lt; t) = 0.0001</td>
<td>Pr(T &lt; t) = 1.0000</td>
<td></td>
</tr>
</tbody>
</table>

Notice that the confidence intervals reported above do not overlap. In effect, these two alternative tests reveal that the majority of democracies waited to ratify the Law of the Sea and that on average their wait was ~4 years longer to ratify than non-democracies.

A final alternative test is to regress the same measure of democracy on the time it took states to ratify

Table 6.3 Reduced-Form Regression of Democracy on Time to Ratify

<table>
<thead>
<tr>
<th>Outcome: Time to Ratify</th>
<th>Coefficient (Std. Error)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracy (0,1)</td>
<td>4.47*** (1.09)</td>
</tr>
<tr>
<td>Signing Declaration</td>
<td>-2.43* (1.31)</td>
</tr>
<tr>
<td>Common Law</td>
<td>-2.37** (1.11)</td>
</tr>
<tr>
<td>Hegemon Ratified First</td>
<td>4.62*** (1.30)</td>
</tr>
</tbody>
</table>

* p<.10 ** p<.05 *** p<.01

---

83 Satterthwaite's degrees of freedom = 128.772  
84 None of the other time invariant covariate controls reached statistical significance and the data are censored for non-ratifying states.
The regression above reveals that as expected the presence of democratic governance adds years to duration to ratify similar to the amount seen in t-test in Table 6.2. The regression shown above controls for characteristics of states that did not vary over time, thus lending further support to the argument that the Cox model findings on democracy in Table 6.1 miss something in reporting a reduced hazard rate as statistically insignificant. Thus, the testing conducted here offers some support the hypotheses from chapter three that democracies are more likely to delay ratification and less likely to ratify treaties.

The Impact of Wealth

None of the additional measures of interest (or interaction terms) reached statistical significance. Nevertheless, three of the control variables were significant across all models. The natural log of GDP was highly significant across every model reporting between a 10-20% decrease in the probability of ratification per increment increase.

Figure 6.3 Survival Curves for GDP
In the graph, the distribution of wealth in the world is unequal (with a few exceedingly large economies, e.g. the US, China). Thus, the very wealthiest states are empowered to exist without the cover law and delay ratification. This is likely what accounts for the larger (yet still proportional) difference between the survival curves of median income and wealthy states as compared to the gap between median and poor states in their likelihood of ratification.

**Signing Declarations**

In addition to the role that wealth/power played in states waiting, the decision to make a signing declaration proved important for the likelihood of ratification. On average, across the models reported here, issuing a signing declaration nearly doubles a state’s chance of ratifying the Law of the Sea. This is an important finding for several reasons.

First, the Law of the Sea did not allow treaty reservations. It was designed as a package deal that states would either accept or reject (Churchill and Lowe 1999, 20-22). Despite the intent of its framers, a number of heads of state that signed the Law of the Sea issued signing declarations that read like treaty reservations. Whether or not these declarations stand as understandings, opt outs, or qualifiers remains to be seen. The International Tribunal for the Law of the Sea (ITLOS) has yet to take a case in which a contested declaration was at issue.

Building on this first point, a review of just the signing declarations reveals leaders softening the language of the convention, imploring a specific understanding of profit distribution, or setting firm lines of *opinio juris* when they believe the Law of the Sea does not apply. The choice to issue such a statement has important
ramifications for garnering legislative support. Most importantly, it is one method that a leader can use to hedge his/her bets on specific issues that might prove contentious. Additionally, by issuing a signing declaration leaders can then use that declaration at future meetings of the states party, in the assembly, and possibly before ITLOS, to advance a position favorable to their states. It is not a coincidence that the majority of landlocked states issued statements about need for coastal states and the Authority\textsuperscript{85} to share a greater proportion of any EEZ or Area profits with landlocked and geographically disadvantaged states.

Finally, this finding offers a mix of evidence for both a rational design approach to international institutions and domestic politics scholars. On the one hand, clearly the design of an institution matters to the leaders of states and they are forward thinking in how they would like to see the institution evolve. The raft of signing, ratification, and other declarations is evidence supporting this point. Moreover, given the tone and tenor of the declarations made, the assumption by rational design scholars that states are generally risk-averse in creating institutions seems to exist (Koremenos, Lipson, and Snidal 2001). Even a cursory reading reveals that the majority of declarations are about limiting the impact of either the convention or the declarations of other states. In addition to being risk-averse, states also seem to prize the flexibility at the center of the rational design project (Koremenos, Lipson, and Snidal 2001; von Stein 2008).

On the other hand, despite heroic and exhaustive efforts at negotiation over seven years, state leaders still felt it necessary to hedge their bets. The content of these declarations might offer support to general assumptions employed by the

\textsuperscript{85} The Authority is the administrative organization for any future seabed mining of the high seas seabed.
rational design project, but their existence is problematic. If states (or negotiators in the two-level game metaphor) are rationally designing institutions to account for their concerns and uncertainty – why design an institution that requires leaders to hedge so much? Why re-negotiate key provisions through implementing agreements?

Moreover, the flexibility of issuing signing statements was available to all states yet some chose not to – why? Are we to believe those state leaders suddenly stopped valuing the agreement into which they poured their time and resources? That such a strong connection exists between signing declarations and speedy ratification speaks more to mollifying domestic obstacles than actually resolving institutional design problems. Perhaps the preliminary conclusion to draw is that although leaders cannot predict the future, they can and will attempt to head of the most contentious provisions of a treaty, even if they must do so while signing onto that treaty. Graphically we can see that issuing a signing declaration leads to faster ratification.

**Figure 6.4 Survival Curves for Signing Declarations**

![Survival Curves for Signing Declarations](image)
EU Membership

Membership in the EU was significant across models but it also consistently violated the proportional hazards assumption, meaning its effect on the hazard rate was not equal across time. Figure 6.5 is a graphical test of the proportional hazards assumption. If that assumption is met, the lines would be parallel representing the proportionally hazard rates over time for EU members and non-EU members (Cleves 2010). Figure 6.5 has intersecting lines, indicating that as the effect of EU membership varies as time passes. By interacting this variable with time, I control for this effect.

Figure 6.5 Proportional Hazards Test for EU Membership
This visual test is supported by analysis of the Schoenfeld residuals in each of the seven models reported. Given the dramatic drop in survival among EU states as predicted by the models reported, I chose to interact the presence of EU membership with the natural log of analysis time in the model. This creates a measure for EU states that grows each year allowing its year-to-year influence to grow. Because historical sources document how the EU made a decision to push to regulate the EU region first with the Common Fisheries Policy and only in the mid-to late-1990s began pressuring member states to ratify the Law of the Sea (Churchill and Owen 2010), an interaction of EU Membership with time that increases in value should capture this increased pressure to ratify.

Once corrected for its non-proportionality, EU membership increases the probability of ratification by ~8%. While statistically significant across models, this variable has the weakest substantive impact of all the statistically significant variables.

**Figure 6.6 Survival Curves for EU Membership**
Interpreting the Results of the Law of the Sea Models

What do these statistical analyses tell us about ratification delays and failures? Across the models presented above the most consistent and substantive findings on ratification delay come from the ratification thresholds and wealth of states, as well as, the signing declarations leaders issue. Taken together these findings tell a two-part story. First, any struggles to ratify agreements are constrained by rules and requirements of ratification. Leaders can reduce the effects of a high ratification threshold by softening an agreement in a signing declaration (as a stand in for a reservation). A simple cross-tabulation reveals, leaders facing high ratification thresholds are more likely to issue signing declarations.

Table 6.4 Ratification Thresholds and Signing Declarations Cross-Tabulation\(^{86}\)

<table>
<thead>
<tr>
<th>Signing Declaration</th>
<th>No Constraint</th>
<th>Consult Parliament</th>
<th>Majority Vote</th>
<th>2/3 Vote or Majority 2 Houses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>39</td>
<td>10</td>
<td>56</td>
<td>13</td>
<td>118</td>
</tr>
<tr>
<td>Yes</td>
<td>6</td>
<td>0</td>
<td>15</td>
<td>8</td>
<td>29</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>10</td>
<td>71</td>
<td>21</td>
<td>147</td>
</tr>
</tbody>
</table>

This provides additional support for the argument that signing declarations have a significant domestic political component. Leaders facing a more arduous path to ratification issue signing declarations more frequently than leaders without constraints, especially where a super-majority vote is required.

Second, states with greater resources can afford to wait. The determination that GDP is consistently important likely reflects facts particular to the Law of the Sea.

\(^{86}\) The 11 missing cases of ratification are the result of missing data on the ratification threshold.
Sea. It’s unlikely that this demonstrates power politics because when regional hegemons do eventually ratify their ratification does not motivate other states within the region to do the same. There is no pulling effect on poor states when wealthier states agree to be bound. If anything, poorer states (by comparison) appear to flock to the Law of the Sea in advance of regional or global hegemons because the treaty constrains these big nations.

A better way to understand the effect of GDP on ratification delay is the following: possessing greater wealth creates both an incentive and an opportunity to delay among wealthy states, neither of which is available to poorer states. The different incentives to ratify came from the ongoing negotiations to resolve the issues surrounding seabed mining. As originally conceived, the Law of the Sea asked wealthy states to provide substantial funding for the Authority and Enterprise. Many of these wealthy states were, and still are, leaders in the sort of technological innovations needed to mine the seabed. By contrast, poorer states were not technological innovators of seabed mining and were not expected to contribute as much to the Authority. Moreover, poor states could expect to receive technology transfers under the terms laid out in the Law of the Sea, something they rushed to support. The result of these divergent incentives (to provide vs. to benefit) resulted in a push toward ratification for poor states and an interest in waiting amongst wealthier states to see if a better deal might be struck (Shaw 2008).

But not all states could easily afford to wait. Wealthier states could seize the opportunity to delay due to the sheer amount of resources material and diplomatic resources these states possessed. Given their resources they could afford to live without the Law of the Sea and subsist on diplomatic untangling of problems that
might arise. Though even on this point we can observe a desire for laws and even a
hope of ratifying the Law of the Sea.

Rather than shaping the Law of the Sea from inside, the meetings of states
party, wealthy states conspired create a Reciprocating States Regime, a collection of
national legislation and bi-lateral treaties to govern seabed mining (Shaw 2008).
Participants in this regime went to great lengths to reassure the world that their
arrangements were temporary and only designed to ensure that wealthy states
outside the convention begin the process of claiming sections of the seabed for
exploration (Churchill and Lowe 1999).

Each democracy comes up statistically insignificant in the Cox model with
coefficients indicating democracies are more likely to ratify. Yet substantial
evidence exists both in other studies and here in the graphs, t-tests and standard
regressions above (where democracy is consistently statistically significant) that
possessing a democratic system of government prevents states from ratifying
quickly. Subsequent testing in Table 6.3 showed that being democratic slows states
ratification by approximately four years. As I will show in the next chapter, the
variation among democracies is the result of factors specifically relevant to
democratic governance. Compared with the weak effect of EU membership,
democracy has a more substantial effect on the probability of ratification. The
greater divergence in the democracy survival curves means that democracy drives
greater ratification delay than EU membership.
Of the controls, two null findings stand out as theoretically relevant. First, states possessing interest groups that are most likely to be affected by the Law of the Sea’s regulatory and administrative organization (i.e., mining consortia and distant water fishing fleets) were at no less likely to ratify the Law of the Sea. Although anecdotal evidence exists of interest group reactions (Sanger 1987), efforts to delay ratification by these industry groups were unsuccessful such that no systematic evidence of delay exists. It remains possible that, as in the Reciprocating States Regime, these groups took the regulatory fight elsewhere to either national or regional organizations or to the implementing legislation not examined in this study.

The second null finding of note is that regional pressure (i.e. the aggregation of ratifications in neighboring states) did not increase the probability that an unratified state would ratify the Law of the Sea. This finding stands in contrast to the findings of Simmons (2009) – that strategic regional emulation occurs – but is in keeping with von Stein’s (2008) findings – that regional pressure did not increase the probability of states signing the Kyoto Protocol. It is important to note that the case examined here serves as a middle ground between the shaming and blaming
common in human rights treaties and the economic effects likely to follow the ratification of high profile environmental treaties.

The Law of the Sea dealt with costly, coordination, ownership and maritime rights problems that states wanted to resolve, so whether neighboring states ratified would matter because the maritime boundaries and rights for any given state would be dependent on others in the region agreeing to the same laws. Perhaps lacking the sticks and carrots of international condemnation or accolade, the Law of the Sea left state leaders less motivated to push for ratification than in the case of human rights. Alternatively, the failure to control for the growth and membership of regional and bilateral maritime agreements may mean that the regional categories used here do not capture the actual networks of pressure among proximate states (e.g., the South Pacific Forum Fisheries Agency). The role and influence of regional and geographic pressures remains an open question in explaining the international legal behavior of states.

**Conclusions from the Law of the Sea Models**

The ratification delay observed in the international models above points to the importance of the position of the states (whether or not they can wait and what organizational pressures they might feel) as well as the effects of agreement obligations (reduced through signing declarations) and ratification thresholds. Additionally there is evidence to suggest that not all states behave the same vis-à-vis
ratification: democracies may take longer to accept the costs of a treaty such as the Law of the Sea than non-democracies.87

Thus, international law, at a minimum in the ratification stage of the treaty making process, is neither a purely international nor a purely domestic affair. In the form of a higher ratification threshold, or in the need for leaders to soften an agreement before seeking ratification back home, or even in the presence of an independent legislature, domestic ratifying actors and institutions do matter. Yet not all states are equal. Wealthy states can afford to wait, especially where the probability of renegotiating disagreeable aspects of a treaty is high.

In the final section of this chapter I model explicitly the renegotiation that occurred in the Law of the Sea in the form of two implementing treaties: the Part XI Agreement and Straddling Stocks Agreement. The changes these agreements caused to the Law of the Sea allow me to test what effect, if any, changing the obligations of the treaty had on the probability of ratification because even states party to the original convention needed to ratify the implementing treaties.

**Changing the International Story: The Implementing Treaties**

The main focus in this section is to investigate whether or not the change in the obligations brought about by the Part XI Agreement and the Straddling Stocks Agreement also changed the ratification behavior of states. By reducing the Authority’s institutional power and removing the required technology transfers, were the drafters of the Part XI Agreement successful in luring industrialized,

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87 This stands in contrast to the ready acceptance of human rights obligations by democratic states because their government structure and history of rights protection reduces the cost of compliance – see Hathaway (2002, 2007) and Simmons (2009).
mining pioneer states to ratify the Law of the Sea? Were developing countries that already ratified the Law of the Sea as willing to ratify the Part XI Agreement, knowing it changed the rules on seabed mining? Did invoking the precautionary principle and granting coastal states investigation rights secure ratification equally from coastal states and states with distant water fishing fleets? I take up these questions in turn below.

**Part XI and Mining Pioneer States**

The thirteen states that Sanger (1987) identifies as owning mining consortia capable of conducting seabed mining as well as those states listed as registered mining pioneers on the Law of the Sea’s website are of particular interest in this section. They are the states most directly affected by the limitations placed on the Authority’s power and by making the technology transfers optional. These states ought to be especially willing to ratify the Law of the Sea.

The profit sharing scheme, financial obligations, and administrative set up under the Law of the Sea were also limited under the Part XI Agreement. Given the politics of redistribution at the heart of these issues we should also expect to see wealthier countries be more willing to endorse a Part XI Agreement that “sought to meet the objections to Part XI made by major western States, and to provide a mechanism by which both ‘latecomers’ and States that had already ratified the original 1982 Convention could quickly integrate themselves into a single regime” (Churchill and Lowe 1999, 238).

---

89 See Churchill and Lowe (1999) 235-251 for a more detailed explanation of the how the changes Part XI made in each of these areas.
Finally, this treaty may prove an imperfect test of the power of democratic institutions and actors for at least three reasons. By 1994, many states had already debated the Law of Sea; at least a third had already signed it. The heated debates of the use of the sea’s mineral wealth had largely subsided by this time with the collapse of the world mineral markets in the 1980s and as the logistical obstacles to seabed mining became clearer. Finally, the poorer states that had signed the Law of the Sea, whether subject to democratic infighting or not, had a simple reason to go along with the Part XI Agreement’s restructuring lest they be stuck with the bill for financing the Authority and managing the Enterprise.

Thus, although the domestic politics theories above expect democracies (conditional on the legislative interests, party divisions, or executive persuasiveness) to demonstrate variations in when they ratify – each of these theories is contingent itself on a treaty’s salience. In sum, while the Part XI Agreement did matter, especially to those states doing the mining and financing the regulatory scheme, its prominence was reduced by the time of its adoption and it may pose a limiting test on the importance of international law domestically. Below I present a table of hypotheses for both the variables of interest and a more limited set of controls likely to apply to the Part XI Agreement:

---

90 80% of the signature before 1994 came from states in lowest three quartiles of GDP.
<table>
<thead>
<tr>
<th>Hypotheses by Theory</th>
<th>Hypothesized effect on the “risk” of ratifying:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Domestic Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Higher ratification threshold</td>
<td>-</td>
</tr>
<tr>
<td>Democracy/More democratic state</td>
<td>-</td>
</tr>
<tr>
<td>Parliamentary system</td>
<td>+</td>
</tr>
<tr>
<td>Left/Center Leadership</td>
<td>-</td>
</tr>
<tr>
<td>Interaction of democracy and state interests</td>
<td></td>
</tr>
<tr>
<td>(-) * (See below)</td>
<td></td>
</tr>
<tr>
<td><strong>Power Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Wealthier state</td>
<td>+</td>
</tr>
<tr>
<td><strong>State Interests</strong></td>
<td></td>
</tr>
<tr>
<td>Common law state</td>
<td>-</td>
</tr>
<tr>
<td>Mining pioneer</td>
<td>+</td>
</tr>
<tr>
<td>EU membership</td>
<td>+</td>
</tr>
<tr>
<td><strong>Agreement factors</strong></td>
<td></td>
</tr>
<tr>
<td>Signing declaration</td>
<td>+</td>
</tr>
</tbody>
</table>

91 The hypotheses here are stated in terms of increasing (+) or decreasing (-) risk of ratification.
### Table 6.6

**Cox Model Reduced-Form Results for Part XI Agreement**

<table>
<thead>
<tr>
<th>Explanatory Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ratification Thresholds</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet Consultation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>.665 (p = .368)</td>
</tr>
<tr>
<td>(p = .544)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Majority in One House</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>.754 (p = .272)</td>
</tr>
<tr>
<td>(p = .445)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2/3 Majority in One House or Majority</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>.588 (p = .149)</td>
</tr>
<tr>
<td>in Two Houses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(p = .142)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democracy (0,1)</td>
<td></td>
<td></td>
<td>1.65 (p = .083)*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(p = .244)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Left/Center Executive</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1.415 (p = .281)</td>
</tr>
<tr>
<td>(p = .281)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>System of Government</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1.625 (p = .157)</td>
</tr>
<tr>
<td>Strong President Elected by Assembly</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parliament</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1.634 (p = .056)*</td>
</tr>
<tr>
<td>(p = .075)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signing Declaration for LOS</td>
<td>1.820 (p = .067)*</td>
<td>1.678 (p = .125)</td>
<td>1.789 (p = .088)*</td>
<td>1.853 (p = .060)*</td>
<td>2.024 (p = .095)*</td>
<td>1.634 (p = .056)*</td>
</tr>
<tr>
<td>Mining Pioneer</td>
<td>1.023 (p = .958)</td>
<td>1.057 (p = .903)</td>
<td>1.092 (p = .848)</td>
<td>1.050 (p = .911)</td>
<td>1.023 (p = .965)</td>
<td>1.963 (p = .930)</td>
</tr>
<tr>
<td>GDP (ln)</td>
<td>1.001 (p = .250)</td>
<td>1.059 (p = .422)</td>
<td>1.038 (p = .607)</td>
<td>.983 (p = .786)</td>
<td>1.044 (p = .644)</td>
<td>1.065 (p = .264)</td>
</tr>
<tr>
<td>EU Member (TVC)</td>
<td>1.075 (p = .001)**</td>
<td>1.081 (p = .001)**</td>
<td>1.069 (p = .004)**</td>
<td>1.066 (p = .004)**</td>
<td>1.059 (p = .026)**</td>
<td>1.922 (p = .081)**</td>
</tr>
<tr>
<td># of countries</td>
<td>113</td>
<td>108</td>
<td>108</td>
<td>113</td>
<td>72</td>
<td>155</td>
</tr>
<tr>
<td># of ratifications</td>
<td>79</td>
<td>74</td>
<td>74</td>
<td>79</td>
<td>48</td>
<td>107</td>
</tr>
<tr>
<td># of observations</td>
<td>808</td>
<td>777</td>
<td>777</td>
<td>796</td>
<td>451</td>
<td>1117</td>
</tr>
<tr>
<td>Prob&gt;X²</td>
<td>0.0013</td>
<td>0.0042</td>
<td>0.0026</td>
<td>0.0018</td>
<td>0.0173</td>
<td>0.0116</td>
</tr>
</tbody>
</table>

Table 6.6 above reveals that both *Mining Pioneer* and *GDP* appear to increase the probability of ratification, yet neither reaches accepted levels of statistical significance in any of the models run. In the case of the mining pioneer states, this result may be misleading because the categories for comparison are skewed. Few states have either filed for pioneer status or are major sponsors of the types of mining consortia most likely to successfully mine the seabed one day in the future.

92 *p<.1 **p<.05 ***p<.01; T- borderline time dependence; O- no time dependence detected. The interaction term of *Democracy* and *Mining Pioneer* and models with *Polity* are unreported. The interaction term never attained statistical significance.
The graph below shows that of the 13 states categorized as mining pioneers in the regression above, 12 ratified the Part XI Agreement shortly after it opened for signature.\footnote{93 The United States has yet to ratify the Part XI Agreement}

**Figure 6.8 Scatter Plot of Ratification Delay by Mining Pioneer Status**

The graph above also reveals that wealthy and poor states both rushed to ratify the Part XI Agreement, giving additional support to the null finding above.

The domestic politics variables of interest – *Democracy* and *Ratification Thresholds* – perform poorly in these models. They only attain statistical significance when included together in Model 3 above. In that model, higher *Ratification Thresholds*, especially a two-thirds vote requirement, appear to make
ratification less likely. The presence of democratic government in Model 3 indicates that democratic governments are more likely to ratify the Part XI treaty.

**Conclusions from the Part XI Models**

The statistically significant findings in Table 6.6 reinforce conclusions from the Law of the Sea analysis earlier, namely that leaders who issued signing declarations and EU member states were more likely to ratify. Yet, the conclusions that can be drawn from these findings are few. When corrected for its non-proportionality over time, EU membership still exerts relatively little substantive impact on the decision to ratify. EU member states are 8% more likely to ratify than non-EU states. Moreover, although many signing declarations mention seabed mining and how profits might be allocated, it is unclear how states might plan to employ those earlier declarations on an agreement that undercuts the profit sharing scheme.

It is possible that neither democracy, nor ratification thresholds, nor wealth drove the ratification delays that states experienced in ratifying the Part XI Agreement, but it would be incorrect to draw the conclusion that this case represents a challenge to the influence of a state’s government type or position in making treaty law. In all likelihood, this case represents a set of limits when wealth (by virtue of the agreement and the need for funding) and government type (given prior ratification and the decline of issue salience) cease being as important to ratification timing.

Absent states with an interest in the particular provisions and rights afforded them in the Part XI Agreement (see the scatter plot of Mining Pioneer states above),
the delays witnessed here are likely logistical. This conclusion is buttressed by the finding on this treaty that parliamentary states are 63% more likely to ratify the Part XI Agreement than presidential systems, wherein the greater the inherent division of the executive and legislative branches creates more opportunities for divided government.

**Figure 6.9 Survival Curves for System of Government**

![Survival Curves for System of Government](image)

I contend that the models above hint at a natural limit on influence of both power politics and domestic politics. When the international legal issues are either narrow or of decreasing importance politics will matter less in determining the timing of events than the bureaucratic logistics of ratifying. In essence, for theories of politics to yield results there must exist one or more political interests vested in the outcome and preferably some dissent over which of the possible outcomes
would be most desirable. Thus, theories of ratification timing such as those explored here and elsewhere ought to select cases when the politics of law are contested and of high prominent. Although initially this was the case for seabed mining, it seems to have changed over time.

**The Straddling Stocks Agreement and Distant Water Fishing States**

The Straddling Stocks Agreement was designed to clarify the legal principle that should guide conservation of those stocks (i.e. the precautionary principle), as well as to establish a mechanism for ensuring conservation (i.e. regional organizations and the right of coastal states to inspect ships fishing the straddling stock). Similar to the Part XI Agreement, this agreement is highly technical and applies to a specific group of states, thus it is best understood as an important patch on the legal software of the Law of the Sea (Diehl and Ku 2010).

The two groups most affected by this agreement were coastal states that possessed straddling stocks and states with distant water fishing fleets capable of fishing those stocks. As in the previous section, I examine these state interest explanations in light of relevant international level agreement variables (i.e. *Signing Declarations*) and domestic politics variables (i.e. *Democracy, System of Government, Common Law*).
<table>
<thead>
<tr>
<th>Hypotheses by Theory</th>
<th>Hypothesized effect on the “risk” of ratifying:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Domestic Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Higher ratification threshold</td>
<td>-</td>
</tr>
<tr>
<td>Democracy/More democratic state</td>
<td>-</td>
</tr>
<tr>
<td>Parliamentary system</td>
<td>+</td>
</tr>
<tr>
<td>Interaction of democracy and state interests</td>
<td>$(-) \times (+)$ (See below)</td>
</tr>
<tr>
<td><strong>Power Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Wealthier state</td>
<td>+</td>
</tr>
<tr>
<td><strong>State Interests</strong></td>
<td></td>
</tr>
<tr>
<td>Common law state</td>
<td>-</td>
</tr>
<tr>
<td>Distance Fishing Fleet</td>
<td>-</td>
</tr>
<tr>
<td>Fish Catch (100k)</td>
<td>-</td>
</tr>
<tr>
<td>EU membership</td>
<td>+</td>
</tr>
<tr>
<td><strong>Agreement factors</strong></td>
<td></td>
</tr>
<tr>
<td>Signing declaration</td>
<td>+</td>
</tr>
</tbody>
</table>
### Table 6.8
**Cox Model Reduced-Form Results for Part XI Agreement**

<table>
<thead>
<tr>
<th>Explanatory Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ratification Thresholds*</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet Consultation</td>
<td>-</td>
<td>-</td>
<td>1.436</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(p = .552)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Majority in One House</td>
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<td>-</td>
<td>.926</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(p = .849)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2/3 Majority in One House or Majority in Two Houses</td>
<td>-</td>
<td>-</td>
<td>.897</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(p = .841)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democracy (0.1)</td>
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<td>-</td>
<td>1.618</td>
<td>1.729</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(p = .222)</td>
<td>(p = .122)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Left/Center Executive 95</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>.903</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(p = .016)***</td>
<td></td>
</tr>
<tr>
<td>System of Government</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strong President Elected by Assembly</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.292</td>
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<td>Parliamentary</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>(p = .152)</td>
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<td>Signing Declaration for LOS</td>
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<td>2.219</td>
<td>2.039</td>
<td>2.177</td>
<td>-</td>
<td>2.295</td>
</tr>
<tr>
<td></td>
<td>(p = .016)*</td>
<td>(p = .035)**</td>
<td>(p = .068)*</td>
<td>(p = .031)**</td>
<td></td>
<td>(p = .035)**</td>
</tr>
<tr>
<td>Distance Fishing Fleet</td>
<td>5.734</td>
<td>-</td>
<td>-</td>
<td>4.962</td>
<td>5.134</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>(p = .000)***</td>
<td></td>
<td></td>
<td>(p = .001)***</td>
<td>(p = .01)***</td>
<td></td>
</tr>
<tr>
<td>Fish Catch (100k)</td>
<td>-</td>
<td>1.022</td>
<td>1.018</td>
<td>-</td>
<td>-</td>
<td>1.023</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(p = .037)**</td>
<td>(p = .134)</td>
<td></td>
<td></td>
<td>(p = .037)**</td>
</tr>
<tr>
<td>Common Law</td>
<td>2.959</td>
<td>3.228</td>
<td>2.509</td>
<td>2.822</td>
<td>2.387</td>
<td>3.060</td>
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<tr>
<td></td>
<td>(p = .001)***</td>
<td>(p = .001)</td>
<td>(p = .021)**</td>
<td>(p = .001)***</td>
<td>(p = .018)***</td>
<td>(p = .003)***</td>
</tr>
<tr>
<td>GDP (ln)</td>
<td>.937</td>
<td>.923</td>
<td>.943</td>
<td>.940</td>
<td>.928</td>
<td>.905</td>
</tr>
<tr>
<td></td>
<td>(p = .337)</td>
<td>(p = .241)</td>
<td>(p = .447)</td>
<td>(p = .349)</td>
<td>(p = .458)</td>
<td>(p = .209)</td>
</tr>
<tr>
<td>EU Member (TVC)</td>
<td>1.419</td>
<td>1.399</td>
<td>1.356</td>
<td>1.382</td>
<td>1.417</td>
<td>1.354</td>
</tr>
<tr>
<td></td>
<td>(p = .000)***</td>
<td>(p = .000)***</td>
<td>(p = .000)***</td>
<td>(p = .000)***</td>
<td>(p = .000)***</td>
<td>(p = .000)***</td>
</tr>
<tr>
<td># of countries</td>
<td>177</td>
<td>139</td>
<td>134</td>
<td>177</td>
<td>177</td>
<td>129</td>
</tr>
<tr>
<td># of ratifications</td>
<td>64</td>
<td>56</td>
<td>53</td>
<td>64</td>
<td>64</td>
<td>52</td>
</tr>
<tr>
<td># of observations</td>
<td>1876</td>
<td>1326</td>
<td>1294</td>
<td>1864</td>
<td>1876</td>
<td>1241</td>
</tr>
<tr>
<td>Prob&gt;X²</td>
<td>0.0000</td>
<td>0.0000</td>
<td>0.0026</td>
<td>0.0000</td>
<td>0.0000</td>
<td>0.0000</td>
</tr>
</tbody>
</table>

The models above reveal an unexpected findings in the direction and strength of the relationship between the type of fishing fleet, the amount of fishing a country does, and its probability of ratifying the Straddling Stocks Agreement: states

---

**Notes:**

94 *p<.10**p<.05***p<.01;

95 This covariate is controlled for time to correct for a violation of the proportional hazards assumption. Additionally, *Signing Declaration* is dropped from this model due to high correlation with the *Left/Center Executive* variable.
with distant water fishing fleets are more likely to ratify than states without such fleets. Although in the model above and the graph below this relationship appears quite strong, there is reason to doubt its strength.

**Figure 6.10 Survival Curves by Presence of Distant Water Fishing Fleets**

This comparison, as with the analysis of *Mining Pioneer* states, suffers from a skewed distribution of cases because very few states consistently fish straddling stocks far from their own shores. Only 12 states are classified here as possessing distant water fish fleets and 8 of the 12 have ratified, but their ratifications are spread over the entire observed period.
Russia, Norway, Indonesia, and the United States all ratified relatively quickly, but India, Spain, Poland and Japan waited several additional years. Thus, the appearance of a rush to ratify should be qualified because one-third of distant water fishing states have yet to ratify the agreement. Among those yet to ratify are China and Peru each of whose average catch in the last five years has exceeded the combination of India, Spain and Poland’s average catch.

So what explains the speedy ratifications of the US, Russia, Norway and Indonesia? Looking past theorized state interests (coastal states desiring protection and states with distant water fishing fleets desiring free use of the sea) several events in recent history have likely changed the calculus of at least some of the

___

96 Thailand, China, South Korea, and Peru have yet to ratify the Straddling Stocks Agreement.
distant water fishing states. Overfishing and the collapse of different fish stocks around the world (straddling and otherwise) have proven that the resources of the sea are not boundless. Calls by the international community, such as UN General Assembly Resolutions 44/225, 45/197, and 46/215 that recommended an immediate stop to the use of driftnet fishing across different regions of the world, upped the reputational costs of being caught recklessly depleting fish stocks.

Moreover, because straddling stocks only exist in commercially attractive quantities in several select locations, certain distant water states actually have an incentive to cooperate or risk continued conflict and the collapse of the fish stock. For example, the US and Russia share access to the “Doughnut Hole” area in the Bering Sea and Norway has long fished the Grand Banks straddling stock in the North-West Atlantic which Canada has gone to great lengths to protect (Churchill and Lowe 1999). Between this evolving incentive structure and the non-ratifications of key distance water fishing countries, there is reason to doubt the statistical finding above will necessarily hold up if, and when, other distance water fishing states ratify.

That the act of issuing a signing declaration is significant is not surprising because the Straddling Stocks Agreement endorses the very sort of rights (e.g. the right to investigate suspected violators) asserted in many of the signing declarations issued by states in the original Law of the Sea treaty. A more detailed study of the contents of each declaration would need to be conducted to examine the distribution of assertions. Such an endeavor is beyond the current study’s capacity.

97 Canada has not yet ratified the Straddling Stocks Agreement, although it has claimed a national jurisdiction over the Grand Banks fish stock, especially from EU member state fleets – see Sanger (1987, 141-3) and Churchill Lowe (1999, 305-306).
Finally, the EU displays the most substantive effect yet seen in this study. This is likely a result of the settlement of the European Common Fisheries Policy and the evolving strength of the EU governance supra-structure on environmental issues throughout the 1990s (Churchill and Owen 2010).

**Conclusions from the Straddling Stocks Models**

The analysis above re-confirms that there may be a limit to the influences of power and domestic politics and possibly the evolving power of regional organizations such as the EU. Again because the myriad of regional agreements and bilateral fisheries treaties are outside this study we can only guess at whether the results here or the earlier, less substantively important results represent the impact of regional environmental coordination policies adopted in recent decades.

Perhaps the most interesting, unexpected, but cautiously endorsed finding above is that, at least for some states, their interests have evolved. It would be too much to claim that the interest of firms that operate fishing fleets are driven by environmental concerns. As Axelrod (1984) showed however the beneficial pressures of cooperative gain can rationally crowd out would be defectors. Whether this is what has happened in managing the straddling stocks of the world remains an open question and would require detailed study beyond the current effort, but certainly the rush by some states to ratify an agreement that obligates them to preserve a common resource is suggestive that the economic interests regulated saw some value in that regulation.
Chapter 7

The Domestic Story: Why Democracies Waited to Ratify the Law of the Sea

Focusing on Democracies

One of the great successes within the field Political Science generally is how scholarly research has evolved to investigate the effect of institutions on behavior. Nowhere is this dynamic more evident in international relations, and nowhere have scholarly findings been more prolific, than in the study of democracy’s effect upon the behavior of states (Russett and Oneal 2001).98

In this section, I examine the two-level game dynamic at the heart of most international cooperation (Evans, Jacobson, and Putnam 1993), especially in international law when the domestic ratification of international treaties serves as a vital link between the promises made at Level-I and obligations assumed at Level-II (Lantis 2009). To conduct this investigation, I limit the scope of my focus to those cases coded as democracies.

Throughout, I employ the popular binary classification scheme of Alvarez et al. (1996) for detecting democracy based on three conditions (i) that elections are held for legislative and executive offices; (ii) that more than one party participates; and, (iii) that alternation of holding power occurs. If those three conditions are met, then a state is included in the sample of ratifications that I analyze. This classification scheme has the advantage of focusing on the political dynamics at the heart of my theory (the composition of government and changeover) and thus it

98 Strong cases could be made within the conflict literature for the effects of both territory and rivalry.
admits the most crucial cases while excluding states defined as democracy based on anything other than elections (e.g. rights, suffrage).

Democracies are the correct testing ground for theories of domestic politics because they provide institutions through which domestic preferences can be expressed in the shape of a legislative branch and regular elections. Moreover, as the previous chapter and other scholarly works have discussed, there is good reason to think that democracies behave differently than non-democracies in their commitment making (DeSombre 2000; Evans, Jacobson, and Putnam 1993; Lantis 2009; Milner 1997; Simmons 2009).

In this section, I evaluate the hypotheses below. Table 7.1 is designed to provide a quick and easy reference to the expected effect of variable on the risk of ratification occurring.
### Table 7.1 Hypotheses for Ratification Delay Amongst Democracies

<table>
<thead>
<tr>
<th>Hypotheses by Theory</th>
<th>Hypothesized effect on the “risk” of ratifying:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutions</strong></td>
<td></td>
</tr>
<tr>
<td>Higher ratification threshold</td>
<td>-</td>
</tr>
<tr>
<td>Parliamentary system</td>
<td>+</td>
</tr>
<tr>
<td><strong>Government Composition</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative Majority for Government</td>
<td>+</td>
</tr>
<tr>
<td>Government Fractionalization(^{99})</td>
<td>+</td>
</tr>
<tr>
<td><strong>Elections</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative Election Zone</td>
<td>+</td>
</tr>
<tr>
<td>Executive Election Zone</td>
<td>+</td>
</tr>
<tr>
<td><strong>Leadership</strong></td>
<td></td>
</tr>
<tr>
<td>Amount of Experience (years in office)</td>
<td>+</td>
</tr>
<tr>
<td>New Executive (years left on current term)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Ideology</strong></td>
<td></td>
</tr>
<tr>
<td>Left/Center Executive</td>
<td>+</td>
</tr>
<tr>
<td>Left/Center Legislative Opposition</td>
<td>+</td>
</tr>
<tr>
<td><strong>Interest Group Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Interaction of democracy and state interests</td>
<td>(-) * (See below)</td>
</tr>
<tr>
<td><strong>Power Politics</strong></td>
<td></td>
</tr>
<tr>
<td>Regional hegemon already ratified</td>
<td>+</td>
</tr>
<tr>
<td>Wealthier state</td>
<td>-</td>
</tr>
</tbody>
</table>

Together these hypotheses help to test the majority of the hypotheses generated by the theories discussed in Chapters 2 and 3. A notable exception is Milner’s (1997) hypothesis that legislative uncertainty provokes ratification failures. In a sense I

\(^{99}\) This is measured as the probability that any 2 deputies chosen will be of the same party.
have controlled for this hypothesis by selecting the Law of the Sea as a proving grounds for my own theory. With its 320 Articles and 9 Annexes, the Law of the Sea regulates nearly every aspect of international maritime behavior. Its ongoing use, the cases that have been decided by the International Tribunal for the Law of the Sea (ITLOS), and two additional implementing agreements all conspire to cast doubt on Milner’s assertion that uncertainty is the real reason for ratification delay or failure. States know what the Law of the Sea is and what it does to regulate the oceans. Negotiated over many long years, it is a comprehensive treaty. Yet, as with other treaties on other issues, states have delayed ratification and failed to ratify the Law of the Sea during its 30-year existence. Thus, although this case does not test Milner’s information hypothesis directly, it does call her hypothesis into question.

**Testing Institutions and Government Composition**

In the previous chapter, the ratification threshold was one of the most robust findings across models of ratification delay of the Law of the Sea. In this section, I delve into the role of legislative composition in the decision to ratify or wait. The key variables of interest here have contradictory theorized effects. Legislative majorities for the government should increase the probability of ratification; meanwhile, facing a fractionalized legislature should make ratification more difficult.
### Table 7.2 Cox Model Results for Institutions and Government Composition

<table>
<thead>
<tr>
<th>Explanatory Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ratification Thresholds</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet Consultation</td>
<td>-</td>
<td>.639</td>
<td>-</td>
<td>.697</td>
<td>.664</td>
<td>.676</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(p = .514)</td>
<td></td>
<td>(p = .609)</td>
<td>(p = .570)</td>
<td>(p = .595)</td>
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<tr>
<td>Majority in One House</td>
<td>-</td>
<td>.277</td>
<td>-</td>
<td>.244</td>
<td>.243</td>
<td>.202</td>
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<tr>
<td></td>
<td></td>
<td>(p = .002)**</td>
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<td>(p = .001)**</td>
<td>(p = .001)**</td>
<td>(p = .001)**</td>
</tr>
<tr>
<td>2/3 Majority in One House or Majority in Two Houses</td>
<td>-</td>
<td>.257</td>
<td>-</td>
<td>.253</td>
<td>.258</td>
<td>.233</td>
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<tr>
<td></td>
<td></td>
<td>(p = .010)**</td>
<td></td>
<td>(p = .011)**</td>
<td>(p = .014)**</td>
<td>(p = .013)**</td>
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<tr>
<td><strong>System of Government</strong></td>
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<td></td>
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</tr>
<tr>
<td>Strong President Elected by Assembly</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>1.354</td>
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<td>(p = .439)</td>
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<td>Parliamentary</td>
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<td>-</td>
<td>1.847</td>
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<td>(p = .216)</td>
</tr>
<tr>
<td>Legislative Majority</td>
<td>-</td>
<td>-</td>
<td>4.893</td>
<td>5.575</td>
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<td>10.652</td>
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<td>(p = .117)</td>
<td>(p = .096)*</td>
<td>(p = .044)**</td>
<td>(p = .033)**</td>
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<tr>
<td>Government Fractionalization</td>
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<td>-</td>
<td>-</td>
<td>.378</td>
<td>.400</td>
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<td></td>
<td></td>
<td></td>
<td>(p = .067)**</td>
<td>(p = .096)*</td>
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</tr>
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<td>Signing Declaration for LOS</td>
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<td>2.322</td>
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<td>(p = .017)**</td>
<td>(p = .123)</td>
<td>(p = .037)**</td>
<td>(p = .008)**</td>
<td>(p = .009)**</td>
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<td>Table 7.2 (cont.)</td>
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</tr>
<tr>
<td>-------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Distance Fishing Fleet</strong></td>
<td>1.209 (p = .752)</td>
<td>1.153 (p = .818)</td>
<td>1.200 (p = .761)</td>
<td>1.028 (p = .965)</td>
<td>1.073 (p = .912)</td>
<td>1.115 (p = .865)</td>
</tr>
<tr>
<td><strong>Fish Catch (100k)</strong></td>
<td>.993 (p = .655)</td>
<td>.996 (p = .814)</td>
<td>.995 (p = .782)</td>
<td>.995 (p = .775)</td>
<td>.994 (p = .725)</td>
<td>.991 (p = .626)</td>
</tr>
<tr>
<td><strong>Mining Pioneer</strong></td>
<td>.953 (p = .921)</td>
<td>.944 (p = .909)</td>
<td>.896 (p = .830)</td>
<td>.777 (p = .624)</td>
<td>1.041 (p = .971)</td>
<td>.861 (p = .780)</td>
</tr>
<tr>
<td><strong>Regional Pressure</strong></td>
<td>2.013 (p = .489)</td>
<td>.923 (p = .940)</td>
<td>.926 (p = .944)</td>
<td>.761 (p = .810)</td>
<td>1.041 (p = .971)</td>
<td>.526 (p = .632)</td>
</tr>
<tr>
<td><strong>Lucky 14 Country</strong></td>
<td>.767 (p = .552)</td>
<td>.734 (p = .560)</td>
<td>.818 (p = .658)</td>
<td>.722 (p = .543)</td>
<td>.747 (p = .594)</td>
<td>.707 (p = .534)</td>
</tr>
<tr>
<td><strong>Common Law</strong></td>
<td>1.769 (p = .101)*</td>
<td>1.646 (p = .171)</td>
<td>1.697 (p = .148)</td>
<td>1.478 (p = .325)</td>
<td>1.509 (p = .325)</td>
<td>1.777 (p = .185)</td>
</tr>
<tr>
<td><strong>GDP (ln)</strong></td>
<td>.888 (p = .145)</td>
<td>.831 (p = .060)*</td>
<td>.876 (p = .184)</td>
<td>.879 (p = .232)</td>
<td>.838 (p = .100)*</td>
<td>.820 (p = .079)*</td>
</tr>
<tr>
<td><strong>Hegemon Ratified First</strong></td>
<td>.722 (p = .551)</td>
<td>.486 (p = .209)</td>
<td>.766 (p = .641)</td>
<td>.501 (p = .254)</td>
<td>.565 (p = .344)</td>
<td>.555 (p = .335)</td>
</tr>
<tr>
<td><strong>Coastline</strong></td>
<td>1.000 (p = .884)</td>
<td>.999 (p = .877)</td>
<td>1.000 (p = .920)</td>
<td>.998 (p = .762)</td>
<td>.997 (p = .576)</td>
<td>.997 (p = .713)</td>
</tr>
<tr>
<td><strong>EU Member (TVC)</strong></td>
<td>1.072 (p = .007)***</td>
<td>1.081 (p = .004)***</td>
<td>1.071 (p = .009)***</td>
<td>1.077 (p = .006)***</td>
<td>1.075 (p = .009)***</td>
<td>1.096 (p = .004)***</td>
</tr>
<tr>
<td># of countries</td>
<td>77</td>
<td>75</td>
<td>71</td>
<td>70</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td># of ratifications</td>
<td>64</td>
<td>62</td>
<td>58</td>
<td>57</td>
<td>57</td>
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<td># of observations</td>
<td>923</td>
<td>892</td>
<td>844</td>
<td>832</td>
<td>827</td>
<td>827</td>
</tr>
<tr>
<td>Prob&gt;X²</td>
<td>0.0405</td>
<td>0.0008</td>
<td>0.0026</td>
<td>0.0072</td>
<td>0.0017</td>
<td>0.0025</td>
</tr>
</tbody>
</table>
As in the previous chapter, the ratification threshold that leaders must pass is both statistically and substantively significant across all models. It is important to note that the effect of these requirements is even greater when considered only with regard to democracies.

**Figure 7.1 Survival Curves for Ratification Thresholds in Democracies**

A state with either a majority vote or a 2/3-majority vote requirement is only 20-25% as likely to ratify as a state without such a requirement.

Similarly, a state leader returning to a fractionalized legislature (meaning there exists a high probability that two randomly chosen legislators will be from different political parties) faces longer odds than a leader with fewer larger parties. When a
legislature is fractionalized, states are nearly 60% less likely to ratify a treaty. Thus, for a leader, it’s not only getting the votes that is difficult, it’s how many different cloak rooms need to be visited along the way!

The largest substantive effect is not surprising but in comparison to other explanations it demonstrates the constraints that an unfavorable legislature can impose upon a leader. The finding across most models here is that having a legislative majority makes ratifying a treaty much easier.

**Figure 7.2 Survival Curves for Legislative Majorities in Democracies**

Faced with either divided or minority government, even with only bare majorities, the chance that a leader will be forced to wait increases dramatically.

Moving between the two extremes here is instructive. A leader with all the legislators
(a majority of 100% - as in many dictatorships) has a ten-fold greater probability of getting a treaty ratified than a leader without any legislative support (a majority of 0%). Even at more the more realistic percentages of 50 and 65%, the difference in the probability of ratification is notable. Many leaders of democracies in the last thirty years have face just such odds.

**Figure 7.3 A Histogram of Legislative Majority Measurements for Democracies 1982-2010**

As in earlier models, the controls for *Signing Declaration, GDP, and EU Membership* are statistically significant across most models. Both *GDP* and *EU Membership* retain the similar substantive effects, meanwhile a democratic state that issues a signing declaration more than doubles its probability of ratification as
compared to democracies that do not. This substantive difference is nearly twice the
effect observed in the previous chapter when Signing Declarations held a hazard rate
near 1.75.

Testing Elections, Leadership, and Ideology

Thus far, it appears that executives of states are heavily constrained by their
circumstances, namely the ratification thresholds a treaty must cross and the legislative
gauntlet it must run through. At the heart of Putnam’s original metaphor, however, is a
leader who can link issues, make appeals, even side payments when necessary. When
might this lone executive influence the speed of ratification? To what extent does
learning or experience help in persuading or cajoling the legislature? Does the
ideological viewpoint of the executive cause them to pursue ratification for some
treaties over others?

Furthermore, in a democracy none of the political players is set. Periodically
each must go before the public and be elected/re-elected. This process raises its own
questions. Are treaties cast aside during the election season? Is there extra pressure to
get them ratified before the government’s composition changes?

In this section, I take up these questions and examine to what extent the leaders
and electoral processes of democracies contribute to ratification delays or failures. The
key variables of interest for my theory of ratification timing are the electoral zone
measures and the New Executive measure. Standing as a proxy for Lantis’ conjecture
that executive strategies are key to winning the ratification battle is the Executive
Experience variable. I compare these two measures against one another is Model 5 below.

### Table 7.3 Cox Model Results for Elections, Leadership and Ideology in Democracies

<table>
<thead>
<tr>
<th>Explanatory Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
</tr>
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<tbody>
<tr>
<td><strong>Ratification Thresholds</strong></td>
<td></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Cabinet Consultation</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>.580</td>
</tr>
<tr>
<td>(p = .451)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Majority in One House</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>.247</td>
</tr>
<tr>
<td>(p = .001)**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2/3 Majority in One House or Majority in Two Houses</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>.236</td>
</tr>
<tr>
<td>(p = .009)**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Executive Election Zone</strong></td>
<td>.944</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(p = .859)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive Experience</td>
<td>-</td>
<td>1.056</td>
<td>-</td>
<td>-</td>
<td>1.019</td>
<td>-</td>
</tr>
<tr>
<td>(Years in office)</td>
<td>(p = .262)</td>
<td></td>
<td></td>
<td></td>
<td>(p = .725)</td>
<td></td>
</tr>
<tr>
<td>New Executive**102</td>
<td>-</td>
<td>-</td>
<td>.824</td>
<td>-</td>
<td>.834</td>
<td>.798</td>
</tr>
<tr>
<td>(Years left in current term)</td>
<td>(p = .065)*</td>
<td></td>
<td></td>
<td>(p = .109)</td>
<td></td>
<td>(p = .031)**</td>
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<tr>
<td>Left/Center Executive103</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.022</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(p = .350)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Legislative Election Zone</strong></td>
<td>.844</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(p = .579)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Legislative Majority</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8.209</td>
</tr>
<tr>
<td>(p = .051)**</td>
<td></td>
<td></td>
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<tr>
<td>Government Fractionalization</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>.372</td>
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<td>(p = .064)*</td>
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<td><strong>Controls104</strong></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Signing Declaration for LOS</td>
<td>2.019</td>
<td>1.969</td>
<td>2.018</td>
<td>2.646</td>
<td>2013</td>
<td>3.172</td>
</tr>
<tr>
<td>(p = .069)*</td>
<td>(p = .079)**</td>
<td>(p = .069)</td>
<td>(p = .024)**</td>
<td>(p = .070)*</td>
<td>(p = .005)**</td>
<td></td>
</tr>
<tr>
<td>GDP (ln)</td>
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<td>.816</td>
<td>.815</td>
<td>.858</td>
<td>.805</td>
<td>.817</td>
</tr>
<tr>
<td>(p = .045)**</td>
<td>(p = .031)**</td>
<td>(p = .033)**</td>
<td>(p = .177)</td>
<td>(p = .026)**</td>
<td>(p = .072)*</td>
<td></td>
</tr>
<tr>
<td>EU Member (TVC)</td>
<td>1.073</td>
<td>1.074</td>
<td>1.078</td>
<td>1.514</td>
<td>1.082</td>
<td>1.079</td>
</tr>
<tr>
<td>(p = .009)**</td>
<td>(p = .007)**</td>
<td>(p = .004)**</td>
<td>(p = .345)</td>
<td>(p = .003)**</td>
<td>(p = .006)**</td>
<td></td>
</tr>
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<td># of countries</td>
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<td>71</td>
<td>71</td>
<td>71</td>
<td>71</td>
<td>70</td>
</tr>
<tr>
<td># of ratifications</td>
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<td>58</td>
<td>58</td>
<td>64</td>
<td>58</td>
<td>57</td>
</tr>
<tr>
<td># of observations</td>
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<td>859</td>
<td>852</td>
<td>923</td>
<td>852</td>
<td>822</td>
</tr>
<tr>
<td>Prob&gt;X2</td>
<td>0.1451</td>
<td>0.0850</td>
<td>0.0442</td>
<td>0.2587</td>
<td>0.0532</td>
<td>0.0006</td>
</tr>
</tbody>
</table>

100 *p<.10**p<.05***p<.01
101 Both election measures (and several variations) were run separately and neither attained statistical significance. They are presented together in Model 1 to conserve space.
102 Unreported here is the model run with a control for multiple terms. The New Executive variable retained statistical significance and its substantive impact on the likelihood of ratification.
103 Corrected for non-proportionality by interacting the variable with analysis time.
104 Controls that never attained significance are unreported here to conserve space. The same controls were run here as were previously reported models in Table XX.X and all their substantive effects were roughly similar. Also, an empty controls model is not reported in this table – though Table XX.X contains the same empty model as would have appeared here.
The most significant finding above is that little evidence exists for the crafty executive at the heart of Putnam’s metaphor. If such an actor existed, we could reasonably expect him/her to become a better politician over time, to build up political capital, and to develop alliances to help him/her win ratification of the treaty. Neither the accumulation of number of years an executive serves nor the number of years his/her party has held power (unreported here) increases the probability of a state ratifying the Law of the Sea.

The only leadership variable to have a statistically significant impact on the probability of ratification is the New Executive variable, a measure of the years left in the executive’s current term. The interpretation of this finding is that each additional year an executive has left to serve reduces the probability of their state ratifying by roughly 20%. Thus “new” executives that have more years left on their terms are much less likely to ratify a treaty than an executive on the way out.

**Figure 7.4 Survival Curves for New Executives in Democracies**

![Survival Curves for New Executives in Democracies](image)
One way to look at this finding is through the lens of what matters most to executives. Ratifying treaties, such as the Law of the Sea, is not likely at the top of a new President or Prime Minister’s list of legislative priorities to push through. When US President Barak Obama was elected in 2008 with a 60 seat Democratic majority in the Senate, his first order of business was a major economic stimulus package and health care reform, not the Law of the Sea – which to date the US has not ratified. It is correct to think that domestic political programs and initiatives will tend to trump international law on a list of executive priorities.

Of 73 ratifications examined here, 56 (over 75%) of them occurred when the executive had 2 years or less left. This is a significant concentration of ratifications. A cynic might note that executives who worked to ratify treaties during their final years may just be cleaning house before they leave office. To put this assertion to rest, we need only ask the question, if treaties are so simply dealt with why not get them ratified right away? The answer that this dissertation provides is that treaties are not easy to ratify. Ratification is a difficult process and fraught with potential for failure and because it is frequently less important than domestic legislation, leaders choose to wait. No leader will squander a honeymoon period on a treaty ratification fight.

I propose another possibility – one more in keeping with the resources and time frequently spent on negotiating treaties like the Law of the Sea. I suggest that the reason we observe such a strong relationship between the last years of the tenure of executives and the probability of ratification is that only at the end of their terms are executives free to be statesmen and to consider questions of legacy.
Early in an executive’s term, there are a number of political opportunities to seize and battles to fight. Why squander political capital on a treaty that much of the public neither knows nor cares about? I suggest that when there are fewer political struggles ahead and no more elections left to win, at that moment, executives are freed to be statesmen. This is not a matter of experience, if it were the years in office indicator would attain significance. The concentration of ratifications is the result of time, specifically the clock running out on an executive’s time in office.

Adding further credence to this argument for statesmanship is the failure of measures of an election zone reported here to attain statistical significance (as well as the multiple variations of those measures left unreported). The Law of the Sea was not ratified during election years. This provides evidence that treaties, such as the Law of the Sea, probably remain outside the electoral politics of states. Yet, given that legislative majorities and fractionalization play such a prominent role in determining whether or not a treaty gets ratified, agreements such as the Law of the Sea are not outside the party politics of states. If so, then someone must push a treaty through to ratification without the goal or hope of electoral gain. In short treaties need statesmen, willing or otherwise. With a short time horizon, the easier path than beginning work on a new international accord is to complete those agreements left un-ratified. Thus, whether for noble reasons or otherwise, I argue that the significance of this finding speaks to pressure of time that drives executive not to clean house but to secure accomplishments.

105 It bears mentioning again that the measures constructed here are crude approximations of electoral zones and that the Law of the Sea, while an important treaty to states, it was unlikely to ignite the political passions of the public.
A Brief Word on the Interaction Democracy and State Interests

Throughout the process of writing this dissertation, I have attempted to model the interactive effect of open democratic government and the lobbying of the groups that might contribute to state interests (i.e. major mining or fishing industries). Yet no matter how I’ve structure the models none of the interactions have attained significance. This remains puzzling in the face of other scholarly work that convincingly shows that domestic groups can make monitoring of agreements easier (Dai 2007) or suggests that proxies for environmental organizations effect ratification delay (von Stein 2008). It is strange that large industries, with vested interests, did not have more impact on the ratification story of the Law of the Sea.

As with my attempt to measure state vulnerability and abatement costs (Sprinz and Vaahtoranta 1994) in the international models, I am left at an impasse. On the one hand, the measures I employ here are crude measures of industry presence. On the other hand, there are few states in the world that can effectively mine the seabed or fish waters far from their own shores, so the binary categorization here should capture the behavior of states with these interests. Even when a more continues measure is available (Fish Catch) statistical significance is not attained. Furthermore, in almost every written account of the Law of the Sea the contentiousness of the seabed mining is cited as a reason western industrialized states stayed out, while the primary concern of coastal states is asserted as protection of their resources (Churchill and Lowe 1999).

After much reflection, I have concluded that reconciling these conflicting accounts is not a statistical problem, but a conceptual one of shifting context. Most of the historical work I have cited concerns itself with the commentary and historical
record of those actors who negotiated the Law of the Sea. Sanger notes, just five years after the Law of the Sea opened for signature:

“The success of UNCLOS-3, was due partly to the invention of new working methods and structures for a big conference; but at least equally important is the human factor. For there gathered around UNCLOS-3 a group of about 80 senior lawyers (some from quite unlikely countries) who were soon dedicated to its success and were prepared, indeed determined to march the full distance...To meet them today is almost like intruding on a long-established club” (Sanger 1987, 23-24).

Yet although some of these 80 distinguished lawyers would go on to write books and law review articles about their experiences and their understanding of the Law of the Sea (Oxman 2006; Oxman, Caron, and Buderi 1983), none of the authors who write from these sources is actually focusing on the central question of this dissertation: after the negotiations stopped, why did some states wait so long to ratify the Law of the Sea?

The world is not static, issues rise and fall in prominence, political dynamics change,106 and cooperation requires time to take hold. The Law of the Sea was caught in the midst of such changes. Mineral markets collapsed, pushing back the start of seabed mining. Fish stocks collapsed, and at least some countries and the firms they contain have taken an interest in sustainable fishing practices. The ideological discord of the Cold War has today been replaced by a different set of conflicts. In short, although it provides a fine testing ground for theories of power, rational agreements, and domestic

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106 Remember the Cold war ended a little less than a decade after the Law of the Sea opened for signature.
politics, the Law of the Sea is perhaps not well suited to testing the lobbying effect of firms seen in other scholarly work (DeSombre 2000).

Finally, this problem of shifting international and regional contexts highlights a central theme of this dissertation: the uncertainty that exists in anticipating the next stage of the international legal process. Could negotiators in 1982 reasonably have predicted the end of the Cold War? If evidence from the discipline of Political Science is any indication, the answer is likely no (Lebow and Risse-Kappen 1995).

This shift and others similar to it lend support to my contentions that the stages of the legal process (i.e. negotiation, ratification, implementation, and compliance) each deserve attention and that scholars should not so put so much faith in the anticipatory powers of actors confined to one stage. The passage of time between the stages of cooperation undermines simplistic views of cooperation as problem of bargaining followed directly by a puzzle of enforcement (Fearon 1998). There is simply more to it than that, especially where those stages (and the two stages left out of Fearon’s model) overlap with major world events that shift the context of states’ interests.

Conclusions from the Democracy Models

Domestic politics are tremendously important in assessing the probability that a treaty will be ratified. Moreover, how those politics matter is as a constraint. Leaders in democracies are stuck with the legislatures that their citizens elect and with the ratification requirements of their respective constitutions.

metaphor, go beyond their expectations that leaders will anticipate or, with cunning, overcome these obstacles. They clearly do not. The findings above suggest that the problem in the two-level games metaphor is actually the language of preferences it employs. The politics of legislative parties matter more than pure preferences of legislators or a calculation of their median point. When leaders do not have a strong majority to meet their required ratification threshold, they must seek support from their political opponents and that is politically costly. This is why ratification is not easy.

Thus, it is correct to think about a divide between the executive and the legislature, but the divide is not one of policy preferences or median voters. The divide executives face is the one between the number and allocation of seats to different parties. As a result, the anticipation prediction that executives must make in negotiating a treaty is shot through with the calculus of vote getting in legislatures that do not yet exist. Negotiating an agreement that provides political kickbacks or linkages for the current legislature – especially in democracies – runs the risk that the next election could undo the settled text. I am skeptical that this is what negotiators do in any but the broadest sense. That leaders in a democracy cannot easily predict the arena in which they will need to fight the ratification battle is an advantage because it forces those leaders to think of what would be the most successful agreement across arenas; it forces them to be statesmen.

In keeping with the above sentiment, the other conclusion to be drawn from this chapter is that executives are more limited in their willingness to push through ratification early in their terms. This finding has important implications for how
international law is made and how the international legal system is likely to grow. Infused as international law is with politics (Shaw 2008), the willingness and ability of leaders to act as ambassadors for the treaties that are negotiated is important. What the evidence here suggests is that leaders only make the grand push to ratify once they have little to lose. What matters most for executives is removing the political constraint of having more important things to do. Only in the twilight of their careers can leaders afford to push for the unpopular and electorally inconsequential.

The broader point to each of these conclusions is that to save the two-level games metaphor scholars must recast it to a theory that accounts for time and its role in obscuring Level-II and its impact on the incentive of leaders. In Chapter 3, I offered a theory that did just this and in the next, and final, chapter I analyze what the international models for the Law of the Sea, the Part XI Agreement, and the Straddling Stocks Agreement, as well as, the domestic politics models of democracies have to say about that theory.
Chapter 8
Conclusion and Future Research

This chapter analyzes the findings of the previous seven chapters. I begin with a review of the major findings of this study, synthesizing both the international and the domestic politics models. Next, I examine the implications of these findings for the theory that I constructed by recasting Putnam’s two-level game metaphor in Chapter 3. Finally, I close with suggestions for future research building off the results here and a reflection on the lessons learned in conducting this research.

Review of the Major Findings

Across both levels of analysis, four factors consistently influenced the probability of ratification delay or failure. At the international level, the prominent role of signing declarations speaks to the seriousness and permanency of treaty obligations. States that were able to find (or in some cases create) flexibility in the extent of their commitments were more successful at ratifying quickly. Regrettably, the same flexibility that allowed some states to hasten their ratification is also the source of contention and ultimately calls into question exactly how the agreement will be used (Churchill and Lowe 1999).

Power also appears to play a distinct role in the making of international treaty law. Distinct from the coercive, power politics of Morgenthau (1993) or security-focused states of Waltz (1979), states exercised their power in this case by opting out. Hegemons did not push and regional pressures did not pull states into ratifying the Law
of the Sea; rather, wealthy states could afford to wait and did so in order to renegotiate a better deal. Thus, even though law is not epiphenomenal to power, more powerful states do interact with the international legal system differently.

In contrast to the go it alone strategy of many wealthy states, members of the European Union (EU) did manage to coordinate their policies sufficiently to increase their probability of ratifying, albeit marginally so. Tellingly this coordination effort happened first within the region and only later expanded to include treaties such as the Law of the Sea (Churchill and Owen 2010).

A lesson in these three international findings is that when cooperation requires domestic political action it is especially difficult. Even states that are used to coordinating, e.g., all the supranational machinery of the EU, can influence the domestic politics of one another only so much. At the heart of those domestic politics are two questions unanswerable at the international level: Who ratifies? And, how?

The number of votes or type of support needed to play the Level-II game, what I refer to as ratification thresholds, varies across countries. Not surprisingly, the more votes that are required to ratify, the greater the probability that ratification will be delayed. Thus, international treaties can be held hostage by domestic constraints and the political interests underlying them.

Looking deeper into the domestic process of ratification, it is clear that differences in the ratification threshold alone do not explain the observed variation in ratification timing. The leaders of democratic states are constrained by the types of legislatures they face and the limited time they have to realize their own domestic political projects.
Politics do enter the international legal system but they are often the politics of avoidance. Whether avoiding specific obligations with declarations, sidestepping legislative fights, or simply going it alone, states and their leaders possess and exercise the option to wait. Rarely are treaties the primary focus of government energies. Of the factors listed here the EU is the only real motivator of ratification and a weak one at that. Yet, treaties remain important devices and state leaders and the public express concern when an agreement cannot be reached (Victor 2001).

The study here reveals that the politics of most treaty ratification is neither a titanic battle of power nor a scrum of domestic interests. Instead, my dissertation gives evidence that the politics of ratification are actually twin dilemmas of circumstance and incentive. Leaders of states, especially democracies, cannot control their circumstances. They cannot control how wealthy their states are or their legislative majorities. Moreover, the acts that will keep a leader in power (good domestic programs, raising the quality of life for the citizens) rarely coincide or are directly served by working to ratify treaties. Thus, leaders do not push for treaties until the end of their terms. In the absence of a departing leader with legislative majorities, states are likely to wait.

**Implications of These Findings**

The findings above have implications for the theory of ratification timing that I advanced in Chapter 3. The central contention of that theory was that for the two-level game metaphor to operate as a theory it needed to be recast in a way that accounted for time and variations in the composition, changeover, and ideological orientation of
government. Once recast, the theory I constructed generated a series of hypotheses some of which were supported by the findings above while others were not.

**Table 8.1 Summary of Hypotheses, Findings, and Support**

<table>
<thead>
<tr>
<th>Hypotheses from Chapter 3</th>
<th>Predicted Effect/ Finding Effect on Pr(Ratification)</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracy</td>
<td>Reduced / ~Reduced</td>
<td>Supported</td>
</tr>
<tr>
<td>High Ratification Thresholds</td>
<td>Reduced / Reduced</td>
<td>Supported</td>
</tr>
<tr>
<td>Legislative Majority</td>
<td>Increased / Increased</td>
<td>Supported</td>
</tr>
<tr>
<td>Multiple Parties</td>
<td>Reduced / Reduced</td>
<td>Supported</td>
</tr>
<tr>
<td>Left/Center Executive</td>
<td>Increased / Null Effect</td>
<td>Not Supported</td>
</tr>
<tr>
<td>Left/Center Opposition</td>
<td>Increased / Null Effect(^{107})</td>
<td>Not Supported</td>
</tr>
<tr>
<td>Election Zone</td>
<td>Increased / Null Effect</td>
<td>Not Supported</td>
</tr>
<tr>
<td>Democracy * Major Interest Group</td>
<td>Reduced / Null Effect(^{108})</td>
<td>Not Supported</td>
</tr>
</tbody>
</table>

The mixed support displayed in Table 8.1 shows which aspects of my theory were likely correct and where it may need revision. The central components of my theory were that 1) ratification struggles are difficult to anticipate and 2) that ratification in democracies is a political struggle between parties. As a result, leaders in democracies are heavily constrained by the votes they must get and the legislature they face, which should result in democracies, especially those with legislative constraints (i.e., legislative majorities and high ratification thresholds) ratifying later and failing to ratify more often. The evidence presented here supports these components of my theory. The theoretical structure I assembled remains intact. Additionally, the research advances the idea of separating and analyzing the stages of treaty making in the international legal system appears to be a promising approach to studying international

\(^{107}\) Not reported in the tables within this dissertation  
\(^{108}\) Not reported in the tables within this dissertation
law through a social science lens. Most importantly, support for these propositions reveal that anticipation of the future – which has often dominated the conversation on states and international law – should be more cautiously investigated before it is asserted in modeling the cooperative behavior of states (Downs, Rocke, and Barsoom 1996; Fearon 1998; Koremenos, Lipson, and Snidal 2001; Milner 1997). The politics of ratification should not be looked at as something that can be solved in advance.

When my hypotheses were not supported, the null findings offered an interesting critique of my causal mechanism – a critique enriched by the powerful yet theoretically unexpected relationship between the end of a leader’s term and the increased probability of ratification. It was not ideology, or electoral pressures, or interest groups that drove states to ratify the Law of the Sea. It appears to be an issue of timing for executives. Thus, despite strong findings that domestic political circumstances and constraints clearly affected the probability of ratification, the moving parts of my theoretical story appear to be unworkable.

If ideology, or elections, or interest groups lobbying, does not motivate politicians of a democratic state to ratify a treaty, what does? Much of the scholarship to develop around Putnam’s original article has emphasized the talents and capabilities of leaders as increasing or decreasing the probability of ratification (Evans, Jacobson, and Putnam 1993; Lantis 2009). Yet, here that conjecture is unsupported because more experienced executives do no better than first-term executives. The answer suggested in the findings above, is that where an executive is in his/her term plays a defining role on when a treaty will most likely be ratified.
This causal mechanism is certainly less dramatic than the story of elections and party politics that I painted earlier, but it does fit within the theoretical framework of time, uncertain anticipation, uncontrollable circumstances, and ratification constraints that I assembled to recast the two-level games metaphor. I maintain that ratification is a political struggle that cannot be assumed away, and I still contend that given a more highly salient issue, ideology might matter, interests may lobby and electoral pressure could build, but as a mechanism to explain the majority of middle politics treaties, the statesmanship of less constrained executives may very well serve as the reason some states act and others wait. The question then is where to go from here?

**Future Research and Lessons Learned**

Perhaps the most immediate question that remains unclear is how and why executives push for ratification. This dissertation has helped to highlight the limits placed upon executives. Whether in their limited ability to anticipate ratification obstacles or in the legislative and vote getting constraints they face once home, it is clear that the two-level game is difficult and often played in stages. A promising avenue of research, building on the findings discussed here, would be to investigate in greater detail the clustering of ratification near the end of the terms of democratic leaders. I have contended that when freed of the constraints of governing into the future, leaders are capable of pushing for less salient but still important legislation, which is likely to include treaties. Yet other motivations may well exist – the only way to know why leaders systematically wait until the end of their tenure is to study it directly. A logical step in this regard would be to collect data on the executives in power during the
decision to ratify agreements and contrast them, their political strategies and characteristics, with their predecessors who did not secure ratification of the Law of the Sea.

Another natural extension of this dissertation is to look at how states implement treaties in the wake of ratifying them. In the Law of the Sea or example, how states should draw their baselines (the line from which the territorial sea begins being measured) is detailed in Articles 7-16 of the Convention, yet there are a number of instances when state practice does not actually align with the rules of the convention. Martin finds similar results in analyzing EU directives (Martin 2000). There are of course other cases of poor implementation of treaty law. Yet theories of implementation, like ratification, are rare in political science (Mertha and Pahre 2005). Just as ratification cannot and should not be assumed to follow from negotiation; implementation should not be assumed to follow from ratification.

Similarly, the declarations made at the signing of the Law of the Sea as well as those made at ratification and beyond all bear closer scrutiny. The decision to allow reservations is a difficult one for negotiators to make. The findings presented here suggests that allowing states to make reservations would improve the speed of ratification, presumably by allowing states to opt out of certain troublesome provisions. In fact, however, the evidence presented here, shows that even in the absence of a formal reservation procedure, states will attempt to find ways to qualify their commitments.

In recent years, negotiators of treaties such as the Convention on the Elimination of the Discrimination Against Women (CEDAW) and the Kyoto Protocol have allowed or
forbidden reservations at their respective peril. The conflicting needs for stability and flexibility in the international legal system are likely to become evident in the future. The current debt crisis in the EU is, in part, a question of the amount of flexibility that that treaty complex can allow member states.

On this issue I follow the example of Diehl and Ku (2010) who after presenting their systemic theory of change in the international legal system, point toward the need for research into the extra-systemic mechanisms that are evolving for dealing with novel or immediate problems. The technical role of reservations in international law is understood, but the actual effect of this increased flexibility remains largely unexamined.

Although the Law of the Sea offers a good testing ground for the role of domestic politics in ratification delay or failure, this study ought to be expanded to include a greater diversity of treaties that can offer comparisons across the dimensions of salience and issue area. The methodology employed should travel well to other treaties. Specifically, adding other environmental treaties that create costs on states would provide good tests. In terms of the allocation of costs and need for joint action, these treaties are less costly than economic treaties and require more joint action than human rights treaties. It is only through comparison with other treaty regimes that scholars can start to assess the limits of security/power concerns, the influence of interest groups, or the effect of domestic politics.

Finally, I close with a couple of lessons learned about studying treaties during the course of this dissertation. First, the international context within which treaties are negotiated, ratified, implemented and complied is not constant. This is not a profound
point but it does have profound impacts on how political scientists ought to think about the interests of states at different points in time and across time. Second, the variation in law exists when studied over time. Ku et al. (2001) noted that international law has received little attention by political scientists. This is changing, but in order for political scientists to make inroads into law they will need a source of variation to (Abbott 1989) examine.109 This dissertation provides one example of how scholars might locate variation in law beyond looking at international court rulings (Alter and Helfer 2010) and compliance decisions (Simmons and Hopkins 2005; Von Stein 2005).

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