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Abstract

Treaties represent an important policy mechanism in U.S. foreign policy. There are good reasons to expect that the political process underlying treaty ratification in the U.S. is structured by the partisan political context, the policy context including the policy agenda, and, in the case of bilateral agreements, the relationship between the treaty partners. I analyze the duration of the ratification process for all bilateral treaties transmitted by the president to the Senate from 1949 to 2012. I focus the analysis on two key stages where delay is most common: the presidential transmittal stage and the Senate Foreign Relations committee stage. Analysis indicates that presidential resources, partisan polarization, the broader policy agenda, and the value of the treaty structure presidential decisions on treaty transmittal. I find less support for these factors at the committee stage; however, the committee processes treaties with democracies more quickly than treaties with other states. The results have important implications for U.S. foreign policy.

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During the lame duck session in late 2010, the Senate consented to the ratification of President Obama’s Strategic Arms Reduction Treaty, known as New START, a bilateral nuclear arms reduction treaty with Russia. The treaty represented a significant component of the President’s national security agenda. While politics surrounding the consent process were highly partisan, the Senate consented to ratification of the treaty with a 71-26 vote, just five “no” votes shy of an embarrassing defeat and an important setback in U.S.-Russian relations. President Obama had to make major concessions regarding spending on modernization of the U.S. nuclear forces in order to get the treaty to the floor of Senate. The 26 “no” votes on the 2010 treaty, all from Republicans, indicated a significant change in the politics of bilateral arms control treaties in the Senate, as the three prior START treaties were ratified with a sum total of 10 “no” votes (see Peake, Krutz, and Hughes 2012).

While arms control treaties, given their significance, have routinely run up against some conservative opposition in Congress, such opposition has grown more significant during the more recent era of partisan polarization (DeLaet and Scott 2006) and presidents appear to consider such opposition when deciding whether to transmit their treaties to the Senate for approval (Peake, et al. 2012). Domestic politics, more broadly, are likely to affect the politics of treaty ratification, from the point at which presidents decide which treaties to transmit to the Senate for approval, to committee consideration of treaties, to final consideration of the treaty on the floor of the Senate (Krutz and Peake 2009).

While the ideologically polarized parties of the more recent decade make treaty ratification especially difficult, controversial treaties have faced domestic opposition throughout the modern era. For example, the U.S.-Soviet consular convention of 1967, the first bilateral convention with the Soviet Union completed during the Cold War, faced substantial opposition
from conservative interest groups and senators, and passed by just three votes (Kruz and Peake 2009, 108). Conservative opposition to the Panama Canal treaties in 1978 nearly scuttled the agreements and required President Carter to renegotiate portions of the treaties to achieve ratification in the Senate. Even so, the treaty passed by just a single vote (Kruz and Peake 2009, 120). How have partisan politics and other domestic political considerations structured the treaty approval process? What international political considerations prove important in structuring the treaty approval process? In this paper, I address these questions by systematically analyzing the approval process for bilateral treaties across various stages of the process.

Even though domestic politics can prove important in the treaty approval process, a treaty rejection on the floor of the Senate is a rare occurrence in the modern era. Since 1935, the Senate has only formally rejected four treaties, suggesting at first glance that the process may be politically uninteresting and that presidents may have a free hand in conducting diplomacy via treaties. However, a much larger number of treaties languish in the Senate, as they are either ignored by the Senate Foreign Relations Committee (SFRC) or are not brought to the floor following committee action. Languishing treaties include treaties that have a great deal of support from domestic economic interests, security interests, and presidents from both political parties. Kruz and Peake (2009, 34) find that “7.4 percent of the treaties transmitted by presidents to the Senate from 1949 to 2000 failed to ever receive Senate consent,” once one accounts for treaties left languishing in the Senate, withdrawn by the president or returned to the president. Moreover, treaties often face substantial delay on their way to ratification; the median Senate lifespan for ratified treaties of 216 days, or about seven months. This does not include the time between presidential signature and submittal to the Senate, which can sometimes be substantial.
The legislative politics of treaties deserve further scholarly scrutiny. Treaties represent solemn commitments on the part of the United States and are a key component of American foreign policy. Treaties affect a vast range of American foreign policies, including but not limited to commercial agreements, international crime and extradition, foreign direct investment, tax policy, terrorism, environmental policy, human rights, arms transfers, alliances, arms control, and the treatment of diplomatic personnel. As Krutz and Peake argue (2009, 138), “Successful American diplomacy relies on the president and Congress working jointly in making and ratifying international agreements.” While the constitutional requirements of shared power necessarily complicate America’s ability to ratify treaties, it also helps build domestic consensus and sends important signals of commitment to treaty partners (Martin 2005; Milner 2007). Moreover, the delayed ratification of treaties diminishes American leadership internationally.

Haftel and Thompson (2013) argue that the ratification process is worthy of study for three essential reasons. First, a treaty that is not ratified is “devoid of any legal force” with regard to international law (Hathaway 2008, 103), as states are not bound to international agreements that are not in force. Second, joint ratification of a treaty sends a clear and public signal of commitment that a state will abide by the agreement. Third, the ratification of treaties and thus the entering into force for international law is critical for policy reasons. For example, fully ratified bilateral investment treaties lead to realized foreign direct investment; whereas, treaties not in force do not have the intended effect of increasing foreign investments (Haftel 2010).

In the current study, I assess the domestic politics regarding treaty gridlock in the Senate, testing hypotheses related to international politics that were left unconsidered by recent research (e.g., Krutz and Peake 2009), but are critical to understanding the domestic politics of ratification (Haftel and Thompson 2013). Moreover, I address what factors might lead presidents to delay
the transmittal of a treaty to the Senate, employing a similar approach used to study of treaty
gridlock in the Senate.\textsuperscript{5} I focus my analysis on bilateral treaties, an important subset of American
diplomacy. In the conclusion, I summarize the findings and their implications.

THE TREATY PROCESS

The modern treaty process follows what is basically a five-stage process. According to
Article Two of the Constitution, the executive first negotiates and signs the treaty. Second, the
president must submit the treaty to the Senate for advice and consent. The process in the Senate
formally starts when the president transmits the treaty to the Senate, via a transmittal document,
which is a memorandum that requests advice and consent and lays out the president’s reasons for
seeking ratification of the agreement. The first two stages are effectively presidential
monopolies, as presidents choose whether or not to consult the Senate during negotiations and
only the president can send a treaty to the Senate for advice and consent.

Once a treaty is transmitted, it is immediately referred to the Senate Foreign Relations
Committee (SFRC), which must first act on a resolution of ratification before the full Senate can
take up the treaty for advice and consent. During the committee stage of the process, the SFRC
may decide to attach conditions, or RUDs, to the treaty, which will become part of the resolution
considered on the floor.\textsuperscript{6} Once the committee reports the treaty, Senate leaders must seek
approval of the resolution for the treaty to move forward, which requires the constitutionally
mandated two-thirds vote of present senators. Should the treaty fail to make it to a vote on the
floor (or fail on the floor vote), it is returned to the committee where it sits indefinitely until the
committee sees fit to report it out to the Senate once again. The Senate may also return the treaty
to the president by simple resolution, whether or not the treaty ever makes it to the floor for a
vote (Rundquist and Bach 2003). During the final stage, the president ratifies the treaty, as amended, by signing the instrument of ratification, which is then exchanged with treaty partners (or deposited with the requisite international organization), having the effect of entering the treaty into force for domestic and international law.

In the analysis below, I focus on two critical stages where politics are most likely to play a role in delaying the ratification of treaties. First, I focus on the transmittal stage of the process, i.e. what factors delay or accelerate presidential decisions to transmit treaties to the Senate for ratification? Second, I focus on the committee stage of the process. Given the fundamental role of the SFRC over treaties, what leads the committee to process some treaties quickly while other treaties languish for long periods? I focus my attention on these particular stages for two reasons. First, the bulk of delay in the treaty process occurs either at the stage between presidential signature and transmittal to the Senate or between transmittal and the committee reporting the treaty to the floor. Second, as is made clear above, the key political players in the process are the president, given his constitutional role as chief diplomat, and the SFRC, given its primary responsibility over treaties according to Senate rules and tradition.

WHY STUDY TREATY DELAY?

As outlined above, presidents monopolize the negotiation stage of the process. However, as Putnam (1988) reminds us negotiation and domestic ratification are intertwined such that domestic politics often structure the negotiation process. Much of the focus in the international relations literature has emphasized the negotiation stage of the process, while limiting its focus on the domestic politics likely to arise during the ratification stage (e.g., Evans, Jacobson and Putnam 1993; Tarar 2001). While Putnam’s theoretical approach emphasized the “simultaneous
alignment of domestic and international considerations,” and the ability of executives to account for domestic politics during the negotiation stage, recently, Lantis (2009, 5) has argued that in liberal democracies treaty processes are sequential and domestic politics have often undermined international cooperation during the ratification stage.

Lantis (2009) notes that much of the prior research assumes that negotiators are effective in anticipating where domestic opposition lies and will only sign agreements that will achieve domestic ratification. Such an assumption, of course, is too simple, as Lantis explains, because a large number of treaties falter at the ratification stage due to domestic political opposition. Either the negotiators fail to foresee domestic opposition, or they sign the agreement knowing full well that ratification may present a difficult political problem. Glennon (1990, 123) stated it clearly when he wrote, “The hand that signs is not the hand that delivers; what looks like a good bargain to diplomats… may look altogether different to legislators.” Examination of the process in the United States supports this contention that negotiators may miscalculate the degree of domestic opposition to international agreements. This is clearly the case when one examines instances of delayed ratification of treaties, in addition to outright treaty failures.

Most treaties signed by presidents and transmitted to the Senate for consent to ratification are eventually ratified, however. Given this empirical fact, why is it important to study treaty gridlock, or delay in ratification, if such a high percentage of treaties are eventually ratified in the case of the United States? As a general statement, gridlock in treaty ratification means that the U.S. is less able to achieve its diplomatic goals and “to enlarge the area of confidence between governments,” which is so significant for the preservation of international order (Glennon 1990, 123). As Krutz and Peake (2009, 139) demonstrate, substantial delay in ratification correlates highly with failed ratification, as 71% of the treaties they analyzed that took longer than three
years to get through the Senate failed to ever receive Senate consent. Moreover, of those treaties not given consent within one Senate of their transmittal, 50% failed to ever receive Senate consent.\(^9\)

Understanding ratification delay at both the transmittal and ratification stages is important for a number of additional reasons. First, delayed transmittal and ratification allows opponents of a treaty to increase their efforts to change or defeat it. The degree to which the president desires the treaty allows opponents the opportunity to use it as a bargaining chip to receive concessions on other issues, as was the case with New START and nuclear force modernization. For example, this occurred during the ratification debates in 1996 on the Chemical Weapons Convention and START II, as the SFRC chair, Jesse Helms used the treaties as bargaining chips to secure a reorganization of the State Department which Democrats and President Clinton opposed (Hersman 2000, 88-90).

Second, delay on important treaties may have an attendant agenda-setting cost. Treaties may compete with other foreign policy issues on the president’s agenda. As the president focuses his attention on securing passage of a treaty, it necessarily means he must spend less attention on other foreign policy issues (Jones and Baumgartner 2005; Peake 2001). Pushing a treaty through the Senate, and the associated political costs of doing so, may also structure presidential decisions during the transmittal stage of the process, as the president may have less political capital to spend on other agenda items. Such costs may actually deter presidents from transmitting a treaty, as is suggested by recent work by Kelley and Pevehouse (2013), because the president may want to preserve his political capital for other agenda priorities. The opposite relationship could emerge, as presidents with greater resources may believe that ratification will come more easily and, as a result, will be more likely to seek ratification of treaties.
Other attendant costs from the president’s perspective may accrue, as a treaty remains unratified. Treaties that stagnate may make the president look ineffective as a foreign policy leader, which may diminish the perception of the U.S., and particularly the current president, as worthy of partnership. “The lengthier the delay, the more likely it is that treaty partners may question the president’s ability to attain legislative support for the treaty [or additional treaties] and fulfill international obligations” (Krutz and Peake 2009, 141). Such a result could limit the ability of negotiators to obtain concessions in future treaty negotiations (Kaye 2013). A president’s international credibility may be at stake, if it is perceived that the president lacks the ability to secure legislative cooperation during the ratification stage of the process (Martin 2000, 70-71), which may result from lengthy delay. A protracted treaty ratification process could have “a corrosive effect on American prestige” (Krepon and Caldwell 1991, 4).

Finally, and perhaps most basically, the existing status quo that led the executive to sign the treaty in the first place remains until the treaty is ratified. The unfavorable status quo dealt with by the treaty may involve a number of important policies, even in the case of bilateral treaties, including unfavorable tax and investment conditions for U.S. businesses and difficulty in international extradition procedures and in combatting transnational crime.

**WHY STUDY BILATERAL TREATIES?**

In the analysis below, I focus my attention on bilateral treaties, i.e., treaties signed between the United States and one other state. I do so for a number of reasons. First and foremost, bilateral treaties are inherently different than multilateral treaties on a number of dimensions. Bilateral treaties, while important in their own right for U.S. diplomacy and the global economy, tend to be less controversial than multilateral treaties and the politics
surrounding their ratification may differ as a result. For example, United Nations conventions, which often spark the opposition of conservatives in the U.S., are by definition multilateral.\textsuperscript{10} Relatedly, bilateral treaties tend to deal with a different range of issues than multilateral treaties.

Instrumentally, given that bilateral treaties include a single treaty partner, I am able to test hypotheses related to international politics (i.e. those specific to the treaty partner) left previously unconsidered by prior analyses of the treaty approval process. Moreover, given the expectation that domestic political opposition is likely to play a more significant role in the ratification process for multilateral treaties, analyses focused on bilateral treaties are biased against finding significant results. Thus, bilateral treaties may prove to be a difficult set of cases to test hypotheses emphasizing domestic political considerations. However, readers should keep in mind that the findings presented below may not generalize to multilateral treaties.

The ability to ratify bilateral treaties is an indicator of well-functioning diplomatic processes. Indications that the process is broken or that bilateral treaties are routinely ignored or delayed significantly present a substantial challenge for presidents as they implement U.S. foreign policy. As explained above, understanding what might cause delay, even in the case of bilateral treaties, is important for assessing American diplomatic processes. Because bilateral treaties deal with substantively important issues, to include tax policy, extradition, legal assistance and foreign investment, delay in their ratification can have associated economic and legal costs.

To get a sense of the types of agreements completed as bilateral treaties, a description of the data set is warranted. An overwhelming majority of the 523 bilateral treaties transmitted by the president to the Senate from 1949 to 2012 are either economic or legal treaties. In the economic category, which makes up 52\% of all bilateral treaties, 74\% are tax conventions.
Bilateral investment treaties and fishing agreements represent the bulk of the remaining bilateral economic treaties. Legal treaties represent 29% of the bilateral treaties, and most of these consist of extradition treaties (48%) or mutual legal assistance treaties (33%). Agreements dealing with diplomatic processes, diplomatic personnel and borders, coded as sovereignty agreements below, make up about 19% of the set of bilateral treaties. Bilateral security agreements, including defense pacts and arms control agreements with the USSR (and post-1991, Russia), make up only 3% of the data set. Treaties having to do with human rights and the environment, coded as norms treaties, are rarely done as bilateral agreements, accounting for just 1% of the total bilateral treaties.  

As a result of these differences, bilateral treaties should be analyzed separately from multilateral treaties. Prior analysis by Krutz and Peake (2009, 153) did not separate the two types of agreements, though they did include an indicator variable for multilateral treaties and found, in the case of significant treaties, that multilateral treaties tended to take longer to process in the SFRC. Moreover, a recent study by Kelley and Pevehouse (2013) studied delay on multilateral agreements, without attention to bilateral treaties. Bilateral treaties have received scant attention in the literature and the present analysis serves to fill this gap.

EXPLAINING TREATY RATIFICATION

Recently, international relations scholars have taken more seriously the domestic ratification stage of the process and subjected it to heightened scholarly scrutiny. In his comparative analysis of ratification processes in advanced Western democracies, Lantis finds that “treaty ratification is a process that requires an incredible investment of time and energy by committed leaders” (2009, 12). Despite its importance, only a few recent studies have
systematically considered factors that are likely to influence the domestic politics of treaties in
the U.S. setting. Most of the existing research consists of case studies of a single important treaty
(e.g. Caldwell 1991; Moffett 1985) or on a specific type of treaty such as arms control treaties
(DeLaet and Scott 2006; Krepon and Caldwell 1991). Case evidence abounds suggesting that
ratification in the Senate is often rife with partisan and ideological politics.

More recently, political scientists have examined the politics of treaty ratification in a
broad and systematic fashion (Auerswald and Maltzman 2003; Haftel and Thompson 2013;
Kelley and Pevehouse 2013; Krutz and Peake 2009; Lantis 2009). The literature suggests there
are three sets of factors that help us understand the difficulties in domestic treaty ratification. The
first and second sets of factors deal primarily with domestic politics. Firstly, how legally
constrained is the executive with regard to his or her diplomacy and how much power is shared
with the legislature? Secondly, how politically constrained is the executive? Here we are
interested in factors that deal primarily with changing political contexts, including the
executive’s political capital and the power and institutional positions of groups that may oppose
the treaty. The third set of factors deals with the international context, the existing relationship
between the treaty partners and the overall significance or value of the treaty with regard to the
treaty partners’ national interests.

When ratification requirements involve additional “veto players” and checks on executive
action, it is likely to require increased time and energy to ratify treaties (Haftel and Thompson
2013; Lantis 2009; Leinaweaver 2012). In their cross-national examination of the ratification of
bilateral investment treaties, Haftel and Thompson (2013) find that the existence of significant
legislative hurdles and executive constraints in domestic ratification procedures substantially
increases the duration of ratification processes. Both factors are in abundance in the case of the
U.S., as the super-majority requirement places the U.S. among the group of nations with the most stringent legislative hurdles to domestic ratification (Haftel and Thompson 2013). According to Lantis (2009), there are two key constraints on the executive: a disaggregation of political authority through the separation of powers and an open interest group system that allows opposition groups to muster against international agreements. Both of these constraints describe the American political system fairly well.

While the constitutional constraints evident in the U.S. setting are quite apparent and important in helping explain difficulties in treaty ratification, they do not vary during the modern era of American foreign policy (i.e., since WWII). In other words, comparative analysis focused on domestic institutions tells us that the U.S. is a difficult case for treaty ratification, but that does not help us explain variation within the U.S. setting. Changing political contexts include a number of factors, ranging from unified or divided control of the presidency and the Senate to the president’s approval ratings to the distribution of ideological preferences among key players in the process. In their study of ratification politics in the U.S., Krutz and Peake (2009) find that the relative ideological preferences of the president and key Senators (i.e. the SFRC chair and the so-called “pivotal” senator) are critical to understanding the delayed ratification of treaties. As those preferences diverge (or become more conservative), treaties more commonly run into difficulty in the Senate. Auerswald and Maltzman (2003) find that as the preferences of key players in the Senate become more conservative, the Senate is more likely to attach RUDs to a treaty, thus limiting the president’s autonomy in the diplomatic realm. A common theme in the literature is that conservative senators are most likely to provide the locus of opposition to treaties in the U.S. setting, due to their general opposition to internationalist policies. While this appears to be especially the case with regard to multilateral treaties (see DeLaet and Scott 2006;
Kaufman 1990), opposition to significant bilateral treaties, for example the U.S.-Soviet consular
treaty and the Panama Canal treaties, often comes from conservative groups as well (Krutz and
Peake 2009).

While the preferences of domestic political actors certainly matter with regard to the
ratification process, the broader international and policy contexts are also likely to be important.
To this point, studies focused on the U.S. case have largely failed to consider international and
policy contexts and how they may structure the ratification process (e.g., Krutz and Peake 2009).
Comparative analysis, however, provides important insights here. For example, Boockmann
(2006) finds that a nation’s unemployment rate affects the ratification success of International
Labor Organization conventions in OECD countries. In the U.S. setting, the state of the
economy, especially when it is struggling, is the issue most likely to dominate the president’s
agenda (Eshbaugh-Soha and Peake 2011) and provide agenda competition for a president’s
foreign policies. Given that competition exists between issues for limited agenda space (Jones
and Baumgartner 2005; Wood and Peake 1998), presidents are likely to alter their own policy
agenda in response to heightened public concern for the economy that results from high
unemployment. As a result, the president’s attention to foreign policy may diminish and the
White House may deploy fewer resources in the Senate on behalf of treaties, as those institutions
focus their attention on more pressing matters.

It may simply be a matter that other issues (i.e. the economy) outrank the president’s
treaties on the policy agenda. Even when the president’s political capital is high, the need to
focus on other issues in order to satisfy constituency demands may trump the president’s desire
to push treaties in the Senate. In their analysis of multilateral treaties Kelley and Pevehouse
(2013) suggest “opportunity costs” are borne when the president pushes treaties in the Senate
because he may have to forgo other agenda items. Such an explanation may be helpful in understanding recent counter-intuitive findings related to traditional political variables, including positive relationships between the number of presidential partisans in the Senate and the time it takes for presidents to transmit multilateral treaties (Kelley and Pevehouse 2013) and the duration of the consent process in the Senate (Krutz and Peake 2009, 153). When propitious circumstances exist for lawmaking, presidents may eschew pushing their treaties and instead focus on completing campaign promises related to domestic and economic policy. For example, we know that during his first term President Obama submitted far fewer treaties than any of his predecessors in the modern era (Peake et al. 2012). This may be a result of the fact that Obama’s primary focus was on fulfilling his campaign promises on health care reform and addressing the financial crisis that dominated his first term in office.

Moreover, as a treaty represents a commitment between the U.S. and its treaty partner, the existing relationship between the two may shape the politics surrounding the ratification process. Two key factors are likely to play a role here. First is the quality of relations between the U.S. and its treaty partner and the expectation from the Americans’ perspective of whether the partner will keep its word. A treaty with an ally is less likely to engender domestic opposition than a treaty with a non-ally, which should make for speedier ratification (Haftel and Thompson 2013). Moreover, treaties made by democratic states are generally considered to include more substantial commitments on the part of the state owing to the broad support necessary for ratification and the transparency in the political process (Martin 2000). Thus, treaties with democracies may engender less opposition than treaties with non-democracies, and may result in speedier ratifications. Second is the significance of the agreement, which speaks to the potential benefits of the treaty to U.S. interests. As benefits to national interests increase, treaties may face
more limited domestic opposition. Treaties with wealthier nations, for example, may be more beneficial economically (Martin 2005), providing additional incentives to ratify the agreement.

Propositions

The forgoing discussion suggests the following propositions. The propositions are generalized and the expectation is that they will influence the transmittal and committee stages in similar fashion.

Proposition 1 (P1): As the president’s political resources diminish, the duration of treaty transmittal and Senate consent will increase.

Proposition 2 (P2): As the number of presidential partisans in the Senate decrease, the duration of treaty transmittal and Senate consent will increase.

Proposition 3 (P3): As the ideological preferences of the two parties diverge, the duration of treaty transmittal and Senate consent will increase as it will become more difficult for leaders to create the bipartisan coalition necessitated by the super-majority constitutional requirement. Relatedly, given the SFRC chair’s importance in the process and the argument that conservatives are most ideologically opposed to treaties, delay in ratification is more common when the SFRC chair is ideologically conservative.

Proposition 4 (P4): When the policy agenda is primarily focused on the economy, as it typically is when unemployment is high, the duration of treaty transmittal and Senate consent will increase.

Proposition 5 (P5): Treaties with democracies will face less domestic opposition and therefore will experience shorter duration at both the transmittal and Senate consent stages. Treaties with allies will also take less time to ratify for similar reasons.
Proposition 6 (P6): Treaties that provide greater economic benefits for the United States take less time during the transmittal and Senate consent stages.

**DATA AND METHOD**

I test the foregoing propositions using data from the 523 bilateral treaties transmitted to the U.S. Senate from 1949 to 2012. I use duration analysis, also referred to as hazard analysis, to assess the independent effects of a set of independent variables on two separate stages of the treaty ratification process. First, I analyze the duration (in days) from presidential signature to presidential transmittal to the Senate. Second, I analyze the duration (in days) from presidential transmittal to SFRC report. The dates of signature, transmittal and SFRC report are the instrumental data for the analysis.\(^{13}\)

Figure 1 presents a histogram for the duration of presidential transmittal and Figure 2 presents a histogram for the duration of SFRC report. Each is limited to treaties taking less than three years to transmit or report, due to the presence of outliers. The duration data for transmittal indicates that a large majority of bilateral treaties are submitted to the Senate within 200 days of signature, however a significant number languish for lengthier periods and a handful take longer than two years to transmit. A similar pattern emerges for SFRC action; however, it is apparent that the committee process typically takes longer.

[Figure 1 and Figure 2 about here]

I employ hazard analysis, as duration data typically violate the assumptions of traditional OLS regression because they often include a non-normally distributed dependent variable that is time dependent (see Bennet and Stam 1996; Box Steffensmeier and Jones 1997). The figures clearly demonstrate the non-normality of the duration data. Prior research on treaty duration has
employed some variation of the hazard model (Boockmann 2006; Haftel and Thompson 2013; Kelley and Pevehouse 2013; Krutz and Peake 2009). Similar approaches are used in analysis of the duration of the confirmation process for presidential nominations in the U.S. Senate, where the interesting dynamic is duration rather than floor failure (DeRouen, et al. 2005; McCarty and Razaghian 1999; Shipan and Shannon 2003). Given the rarity of floor failures on treaties and the discussion above regarding treaty gridlock being equivalent to delay, hazard analysis is the appropriate method of analysis.  

**Independent Variables**

Several variables are used to test P1 through P6. Regarding P1, the president’s political resources are measured using the *president’s approval rating* in the Gallup Poll at the time of the treaty’s signature (for the transmittal model) and the time of the treaty’s transmittal (for the committee model).  

P2 is tested by simply including a variable which counts the *number of presidential partisans* serving in the Senate at the time of signature and transmittal.

To test P3, I include an *ideological polarization* variable in each of the duration models, with the expectation that a more polarized Senate will increase the duration of the process because it limits the leadership’s ability to build the large bipartisan coalitions necessary to ratify treaties. Krutz and Peake (2009, 161) conclude that “partisan ideological polarization… is the clearest contributor to treaty gridlock.” Moreover, polarization may affect presidential decisions to transmit treaties in two ways. First, such conditions increase the effort that presidents may have to spend on behalf of treaties. Second, presidents may decide to avoid the Senate when possible to complete their international agreements. Such estimation may explain why President Obama has submitted so few treaties to the Senate, as his first term has coincided with record-
setting polarization in the Senate (Peake, et al. 2012). The standard measure used to assess the effects of ideological polarization is Poole and Rosenthal’s (1997) Nominate data, which represents the absolute difference between the median Democrat’s and median Republican’s ideology scores. The individual ideology scores range from -1 (liberal) to 1 (conservative). The polarization score, which is the difference between the two party medians, ranges from 0.333 (1951-1952) to 0.845 (2011-2012). The second component of P3 emphasizes the ideology of key senators in the process. Given the well-documented opposition of conservative senators to treaties, generally, and the importance of the SFRC chair in setting the agenda in committee, I include the Nominate score for the SFRC chair ideology. The expectation is that treaties will take longer to process when the SFRC chair is conservative.

As discussed above, there may be an agenda-setting component to the president’s decision to transmit treaties and the Senate’s proclivity to process treaties quickly. P4 addresses this idea. As the president and Senate are focused on competing issues, treaties may take longer to process. I account for this possibility with two measures. First, I include the yearly unemployment for the year of signature for the transmittal model and the year of transmittal for the committee model. When unemployment is high, the president and Senate are likely to focus their efforts on improving the economy rather than foreign policy. Second, I include an indicator variable for the presence of war at the time of signature for the transmittal model and at the time of transmittal for the committee model. While largely used as a control variable for the international context, the expectation here is that the president and Senate are more likely to focus on foreign policy issues when the nation is at war, and as a result, more speedily complete the ratification process. Moreover, recent research suggests that presidents are more likely to get what they want from the Congress during wartime (Howell, Jackman and Rogowski 2013).
For bilateral treaties, characteristics of the treaty partner are likely to contribute to presidential transmittal decisions and the ratification process in the Senate. \textsuperscript{18}P5 hypothesizes that the duration of the process should be reduced for treaties with democratic states, as well as allied states. I employ the Polity IV data as a measure of democracy, with higher scores indicating greater democracy within the partner state. \textsuperscript{19} I employ the Correlates of War data on alliances to create an indicator variable for ally.\textsuperscript{20} P6 proposes that treaties that provide greater benefits to the United States are likely to be processed more quickly than low benefit treaties. Treaties with larger and wealthier states are likely to provide increased benefits for the United States. Moreover, such treaties are likely to be more significant for the president’s agenda. To measure this concept, I include a variable representing the size of the treaty partner’s economy, the log of gross domestic product (GDP).\textsuperscript{21}

Finally, I include two control variables in order to account for treaty characteristics. First, I include an indicator variable for whether or not the treaty is a new treaty.\textsuperscript{22} New treaties are likely to take longer to process, as they represent what are perhaps more significant changes in policy than protocols that amend prior agreements. Second, I include a series of indicator variables for the topic of the treaty, following the same topic codes used by Krutz and Peake (2009). The topical categories include legal, economics, security, sovereignty, and norms treaties. Economic treaties are the reference category in the analysis. Economic treaties are likely to be transmitted and ratified more quickly due to their importance to significant constituencies in the U.S. including commercial interests. On the other hand, legal treaties may take longer to transmit and ratify, as they do not relate directly to constituency interests. Security and sovereignty treaties are likely to be moved through the process more quickly given their diplomatic significance, generally.
Statistical Method

Interpreting the results of hazard models is not as straightforward as OLS regression. In a hazard model, the coefficients demonstrate the impact of the variables on the underlying hazard rate. Thus, I report hazard ratios rather than the coefficients, although the significance tests relate to the coefficients. An increase in the hazard rate means that the independent variable has the effect of speeding up the process, while a decrease in the hazard rate means that the variable slows down the process. Hazard rates reflect the probability of the process terminating. In the case of treaties, terminating the process has a somewhat counter-intuitive meaning, as it reflects the president’s decision to transmit the treaty to the Senate or the SFRC reporting the treaty to the floor. Hazard ratios greater than 1.0 with a significant positive coefficient indicate an effect that increases hazard, resulting in speedier termination (transmittal or committee report) and, therefore, decreased duration. Hazard ratios smaller than 1.0 with a significant negative coefficient indicate an effect that decreases hazard (or slower termination), resulting in lengthier duration in the processing of treaties.

FINDINGS

In this section, I present the results of two separate duration analyses on treaty ratification, including, in order, from presidential signature to transmittal to the Senate and from transmittal to SFRC report.

The Transmittal Stage

The results for the hazard model of the transmittal stage are presented in Table 1. Recall, that P1 states that as the president’s political resources diminish, the duration of treaty transmittal
and Senate consent will increase. The indicator for the president’s political resources is the president’s approval rating at the time of treaty signature; therefore, I expect a hazard ratio over one and a decrease in expected duration. The results support P1. As the president’s approval rating increases, expected duration decreases—increasing the president’s popularity by ten points diminishes duration by about 9%. Relatedly, P2 hypothesizes that as the number of presidential partisans in the Senate increase, transmittal duration will decrease. The model estimates that for every one seat increase in the president’s party, there is a corresponding 1.9% decrease in duration. The results also support P2.

[Table 1 about here]

Partisan polarization in the Senate is hypothesized to structure presidential decisions on treaty transmittals. As ideological polarization increases, there is a sizable increase in the duration of presidential transmittals. The marginal effects are especially large—as ideology moves from the time period’s low of 0.333 to the time period’s high of 0.845, the model estimates that duration increases by about 178 days, or six months. The SFRC chair’s ideology, however, has no statistically significant effect on the duration of the treaty transmittal stage. At least in the case of bilateral treaties, the ideology of the SFRC chair does not appear to structure presidential decisions on treaty transmittals. Given that bilateral treaties tend to be less controversial than multilateral treaties, and thus less offensive to conservatives, a non-finding here is unsurprising. Thus, P3 receives partial support.

My theory also suggests possible agenda-setting effects on presidential decisions to transmit treaties. When a president is focused on a struggling economy, captured here via the yearly unemployment rate, he is less likely to emphasize foreign policy on this policy agenda and focus less on completing his treaties. The results indicate a strong relationship between the
unemployment rate and the duration of treaty transmittals. Going from about 3% unemployment to the time period’s high of nearly 10% yields a 48% increase in transmittal duration. Our indicator for the president’s focus on foreign policy is broadly captured by our war indicator variable. During periods of war, the duration of treaty transmittals is reduced, on average, by about 20%. For duration of the transmittal stage, P4 is supported.

Finally, presidents are likely to consider both the relationship between the U.S. and its treaty partners, as well as the benefits likely to accrue if the treaty is ratified. The U.S. tends to have stronger relationships with democracies and other democracies are likely to have transparent ratification procedures, suggesting they are more worthy treaty partners. Second, treaties with security allies should have a similar effect. Finally, treaties with states possessing large economies should be processed more quickly given their correspondingly greater economic benefits. Only the size of the economy proves important as a covariate of transmittal duration. Treaties with the largest economies are transmitted much more quickly than treaties with the world’s smallest economies. While P6 is supported, P5 receives no support.

Regarding the control variables, the analysis suggests that economic treaties (the reference category) are processed significantly more quickly than treaties dealing with sovereignty, legal and norms related subjects.

The Committee Stage

While my theory is effective in explaining presidential behavior on bilateral treaty transmittals, it does less well in explaining action in the SFRC. The results are presented in Table 2. A few of the hypotheses are supported, however, suggesting that politics may play a role here, even in the case of bilateral treaties, which tend to be less controversial than multilateral treaties.
Firstly, treaties transmitted when presidents are popular tend to be processed more quickly by the SFRC. Secondly, when the economy is struggling, the committee stage tends to take longer, suggesting that agenda competition may slow the process down in the Senate. The finding related to democracy is particularly interesting. Treaties completed with democratic states are processed by the committee much more quickly than treaties with autocratic states. The duration of the committee process is decreased by about one-third when we compare treaties completed with states with the lowest possible Polity score to treaties completed with states with the highest possible Polity score.  

[Table 2 about here]

There are two relevant and interesting considerations here. First, the treaty partner characteristics important in the process differ from the transmittal stage (i.e. the size of the treaty partner’s economy) to the committee stage (i.e. democracy level). The reasoning for this may be the domestic controversy that is more likely to emerge when treaty partners are autocratic versus democratic. Domestic opposition to establishing commitments with democracies may be less common than for the case of commitments to nondemocratic states. Moreover, the president appears to consider the associated benefits of the treaty (captured by the GDP variable), as opposed to whether the treaty partner is an ally or a democracy. Given that the U.S. completes a number of important bilateral treaties with nondemocratic states and states that are not allies, ranging from tax and investment treaties to extradition and legal assistance treaties, it follows that the executive would give less pause to submitting such agreements to the Senate; whereas, legislators might find such agreements problematic.

Second, the results of the present analysis differ significantly from the findings reported by Krutz and Peake (2009). They examined all treaties together and found significant effects for
polarization and the ideology of the SFRC chair on treaty duration at the committee stage. The difference in the results is probably due to the focus on bilateral treaties in the present analysis. After all, multilateral treaties are typically more controversial and more likely to engender opposition from conservatives in the Senate, as many include U.N. treaties and other international organization treaties that often relate to human rights, the environment, labor rights, and arms control. Prior research tells us that conservatives find these treaties most threatening to U.S. sovereignty and are more strident in their opposition (Herrsman 2000; Kaufman 1990).26

CONCLUSION

Treaties represent an important policy mechanism in U.S. foreign policy. As a result, there are good reasons to expect that the political process underlying treaty ratification in the United States is structured by a range of political factors, including the partisan political context, the current policy agenda, and, in the case of bilateral agreements, the relationship between the treaty partners. I analyzed the duration of the ratification process for all bilateral treaties transmitted by the president to the Senate from 1949 to 2012. Specifically, I focused the analysis on two key stages where delay is most common: the presidential transmittal stage and the Senate Foreign Relations Committee stage. The analysis indicates that presidential resources, ideological polarization, the broader policy agenda, and the value of the treaty structure presidential decisions on treaty transmittal. However, I find less support for these factors at the committee stage. The Senate Foreign Relations Committee processes treaties with democracies more quickly than treaties with other states, and treaties submitted when presidential approval is high are completed more quickly, while treaties transmitted during economic downturn are approved more slowly.
What does the forgoing analysis of bilateral treaties add to our understanding of the
domestic politics of treaties? First and foremost, the politics underlying the two key stages
appear to differ substantially. Research on the domestic politics of treaties needs to consider the
critical transmittal stage of the process. The political context within the Senate clearly impacts
presidential decisions on transmittal for bilateral treaties. The findings suggest that presidents
give consideration to the domestic support their treaties are likely to receive when transmitting
their treaties to the Senate. Such prospects appear structured by both the political resources
available to the president and the partisan context of the president’s relationship with the Senate.
When those prospects are at their highest (i.e. high presidential approval, many presidential
partisans in the Senate, and low partisan polarization), presidents are less likely to delay treaty
transmittal. Second, the broader agenda and the benefits of the treaty structure presidential
decisions on treaties. Thirdly, the characteristics of the treaty partner matter significantly in the
politics of treaty ratification, although this varies depending on the stage of the process. Such
considerations have been ignored by prior research on the U.S. process (Krutz and Peake 2009),
yet their inclusion in this study significantly improves our understanding of the determinants of
ratification delay at both the transmittal and committee stages.

Finally, the findings reported here are important in so far as they are limited to bilateral
treaties. It is very likely that the politics differ for multilateral treaties, as multilateral treaties
tend to involve subjects that engender greater opposition among conservatives in the Senate.
Thus, the political variables related to the Senate are likely to have much more important effects
on the process in committee, as suggested by prior work. Future research could apply this set of
propositions to multilateral treaties. Understanding the differences between bilateral and
multilateral treaties is worth considering.
While most of the major treaties that languish in the Senate are multilateral treaties, as demonstrated above, bilateral treaties sometimes face a difficult road to ratification. Difficulty at the ratification stage, both in terms of the president’s willingness to transmit a treaty and the Senate’s willingness to approve it, presents serious problems for American diplomacy and foreign policy. A more difficult ratification process for multilateral treaties is expected, given recent high profile examples. Even so, the more routine bilateral treaties appear to have been affected by recent partisan politics and this has consequences for American diplomacy. For example, the Department of Treasury’s effort to rewrite tax treaties in order to curtail tax evasion is an important component of current U.S. policy, and several tax treaties languished in the Senate during Obama’s first term. The difficulties faced by President Obama in bilateral treaty ratification fits well with the predictions of the theory presented here. For instance, owing to partisan polarization, the Senate is in poor shape to muster the broad majorities necessary for treaty ratification, and this appears to be the case for the more routine bilateral treaties, as well.

A dysfunctional Senate may encourage presidents to rely even more on their unilateral powers, i.e. executive agreements, in order to complete their international agreements, as appears to be the case with Obama (Peake et al. 2012). This would be an alarming eventuality. However, as discussed above, there are limitations to what presidents can accomplish diplomatically on their own. A well-functioning diplomatic process requires the broad domestic support that comes with legislative involvement, particularly in areas traditionally governed by treaties and in the domain of Congress. In the words of two legal scholars, “the possibility that such legal commitments could be made by the President without the input, much less the approval, of Congress… raises serious questions about the potential of these agreements to undermine democratic lawmaking writ large” (Hathaway and Kapczynski 2011, 4).
REFERENCES


Table 1. Hazard Model for Duration of the Transmittal Stage for Treaty Ratification, Bilateral U.S. Treaties, 1949-2012

| Independent Variables                  | Hazard Ratio | \( |z| \) | Impact on Duration [minimum \( \rightarrow \) maximum] |
|----------------------------------------|--------------|-------|-----------------------------------------------------|
| **Treaty Characteristics**             |              |       |                                                     |
| New Treaty                             | 0.929        | -0.68 |                                                     |
| Security Treaty                        | 1.245        | 0.81  |                                                     |
| Sovereignty Treaty                     | 0.727        | -2.13**| +16% [econ. \( \rightarrow \) sov.]                |
| Legal Treaty                           | 0.484        | -6.34**| +91% [econ. \( \rightarrow \) legal]               |
| Norms Treaty                           | 0.366        | -2.20**| +137% [econ. \( \rightarrow \) norms]              |
| **Presidential Resources**             |              |       |                                                     |
| President’s Approval Rating            | 1.009        | 2.41**| -62% [22 \( \rightarrow \) 89]                    |
| Number of Presidential Partisans       | 1.019        | 2.74**| -64% [35 \( \rightarrow \) 68]                    |
| **Political Context in Senate**        |              |       |                                                     |
| Ideological Polarization               | 0.056        | -6.35**| +151% [0.333 \( \rightarrow \) 0.845]             |
| SFRC Chair Ideology                    | 1.046        | 0.31  |                                                     |
| **Agenda Status**                      |              |       |                                                     |
| Unemployment                           | 0.934        | -1.98**| +48% [2.9 \( \rightarrow \) 9.7]                 |
| War                                    | 1.218        | 1.70**| -20% [no war \( \rightarrow \) war]               |
| **Treaty Partner Characteristics**    |              |       |                                                     |
| Democracy                              | 1.004        | 0.48  |                                                     |
| Ally                                   | 0.877        | -1.23 |                                                     |
| Size of Economy                        | 1.228        | 2.83**| -95% [1.88 \( \rightarrow \) 6.42]               |
| Gamma                                  | -0.0004      | -2.46**|                                                     |

No. of Subjects: 497  
No. of Failures (Transmittals): 497  
Total Time at Risk: 108,239

Log-Likelihood: -725.75  
LR Chi\(^2\) (14): 140.34**

Baseline Median Duration: 117 Days

*Note: *\( p < .1; **p < .05\) (one-tailed). The dependent variable is the time (in days) from the point of presidential signature to transmittal to the Senate for consent. Hazard ratios below 1.0 indicate an increase in duration, whereas a hazard ratio above 1.0 indicates a decrease in duration. *Impact on duration* indicates the percentage effect on the baseline estimate of the median duration to transmittal when the independent variable of interest is moved from its minimum value to its maximum value, with all other variables held at their mean values. Economic treaties are the reference category for treaty type. Analysis was conducted in Stata 12 using the “streg” command with Gompertz distribution. Impacts computed using “mfx compute” command therein.
Table 2. Hazard Model for Duration of the SFRC Report Stage for Treaty Ratification, Bilateral U.S. Treaties, 1949-2012

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Hazard Ratio</th>
<th></th>
<th></th>
<th>Impact on Duration</th>
</tr>
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<tbody>
<tr>
<td><strong>Treaty Characteristics</strong></td>
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</tr>
<tr>
<td>New Treaty</td>
<td>0.714</td>
<td>-3.05**</td>
<td>+35% [0 → 1]</td>
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<tr>
<td>Security Treaty</td>
<td>1.403</td>
<td>1.24</td>
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<td>Sovereignty Treaty</td>
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<td>0.63</td>
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<td>Legal Treaty</td>
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<tr>
<td>Norms Treaty</td>
<td>0.578</td>
<td>-1.08</td>
<td></td>
<td></td>
</tr>
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<td><strong>Presidential Resources</strong></td>
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<tr>
<td>President’s Approval Rating</td>
<td>1.009</td>
<td>2.32**</td>
<td>-62% [22 → 89]</td>
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</tr>
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<td>Number of Presidential Partisans</td>
<td>0.994</td>
<td>-0.91</td>
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<td><strong>Political Context in Senate</strong></td>
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<tr>
<td>Ideological Polarization</td>
<td>0.782</td>
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<td>SFRC Chair Ideology</td>
<td>1.051</td>
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<td><strong>Agenda Status</strong></td>
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<td></td>
</tr>
<tr>
<td>Unemployment</td>
<td>0.935</td>
<td>-1.55*</td>
<td>+50% [2.9 → 9.7]</td>
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</tr>
<tr>
<td>War</td>
<td>1.044</td>
<td>0.35</td>
<td></td>
<td></td>
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<tr>
<td><strong>Treaty Partner Characteristics</strong></td>
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<td></td>
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<tr>
<td>Democracy</td>
<td>1.015</td>
<td>1.80**</td>
<td>-32% [-10 → 10]</td>
<td></td>
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<tr>
<td>Ally</td>
<td>1.031</td>
<td>0.29</td>
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<td></td>
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<tr>
<td>Size of Economy</td>
<td>1.053</td>
<td>0.73</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gamma</td>
<td>-0.0009</td>
<td>-9.23**</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> *p &lt; .1; <strong>p &lt; .05 (one-tailed). The dependent variable is the time (in days) from the point of presidential transmittal SFRC report to the Senate floor for consent. Hazard ratios below 1.0 indicate an increase in duration, whereas a hazard ratio above 1.0 indicates a decrease in duration. Impact on duration indicates the percentage effect on the baseline estimate of the median duration to transmittal when the independent variable of interest is moved from its minimum value to its maximum value, with all other variables held at their mean values. Economic treaties are the reference category for treaty type. Analysis was conducted in Stata 12 using the “streg” command with Gompertz distribution. Impacts computed using “mfx compute” command therein.</strong></td>
<td></td>
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</tr>
</tbody>
</table>
NOTES

1 I focus my examples on bilateral treaties, given that they are the set of treaties examined in the analyses below. As discussed below, multilateral treaties, because they tend to be more controversial than bilateral treaties, typically face lengthier approval processes and greater domestic political opposition than bilateral treaties (see Krutz and Peake 2009). I focus my analyses on bilateral treaties for a number of reasons, as I explain in some detail below.

2 Treaties rejected by the Senate since 1935 include the U. N. disabilities convention in 2012, the comprehensive nuclear test ban treaty in 1999, the Montreal Aviation Protocols in 1983 (one of which was eventually ratified in 1998) and the Convention on the High Seas in 1960. Between 1860 and 1935, treaty rejections on the floor were more common, as the Senate voted down 14 treaties (see U.S. Senate 2014).

3 For important treaties, Krutz and Peake estimate a 10% failure rate for treaties transmitted from 1949 to 2000. In total, out of the 850 treaties they analyzed, “46 were rejected, ignored, or left pending by the SFRC. An additional 17 treaties were reported by the SFRC and placed on the Senate calendar but failed at the floor stage due to inaction” (98). Updating these data through March, 2013, I find that a total of 952 treaties have been transmitted to the Senate since 1949. 79 of these, or 8.3%, have either been rejected, ignored, or left pending in the Senate. Bilateral treaties represent 55% of the total, whereas multilateral treaties represent 45%. While 5.6% of bilateral treaties fail to ever receive Senate consent, the failure rate for multilateral treaties is over twice as high, at 11.7%. It should be noted that President Obama has had a particularly poor record in getting his treaties ratified, largely owing to the record-level partisan polarization in the Senate during his presidency (Peake et al. 2012).
While the alternative to complete international agreements as executive agreements complicates this logic considerably in the case of the United States, it should be noted that presidents are not completely free to substitute treaties with executive agreements in order to avoid the noisome treaty ratification process in the Senate. As is well documented by Krutz and Peake (2009), considerable political constraints, both in terms of domestic and international politics, exist on presidential behavior. Moreover, while legal scholarship on this issue is somewhat unclear, presidents are also constrained by tradition, as well as legal requirements, in the case of certain types of international agreements. Most notably, many of the bilateral treaties examined below are done as treaties, rather than as executive agreements, because they deal with clear Article One (i.e. congressional) powers, as well as state powers. This is especially the case for economic agreements (in particular, those dealing with taxes and investments) and legal agreements (in particular, extradition and legal assistance agreements).

Before the Senate can consent to ratification of a treaty, the president must first transmit the treaty to the Senate. There can be substantial delay from the time when the president signs the treaty to the time when the treaty is sent to the Senate for ratification. For example, the Obama administration signed a recent tax convention with Poland in February of 2013, but did not transmit to the treaty to the Senate for approval until May 20, 2014. Fifteen months is a significant delay, as the median number of days between signature and transmittal for bilateral treaties is 119 days, or about four months. For multilateral treaties, the median delay is 348, or nearly one year.

RUDs, shorthand for amendments, reservations, understandings, and declarations, are a significant policymaking tool of the Senate, and can complicate the process significantly. They can alter the language and meaning of treaty provisions, and may require renegotiation with
treaty partners. Moreover, they sometimes address a broader set of policies than those considered in the treaty, and if attached to the treaty which is then ratified, become the law of the land (Auerswald and Maltzman 2003; Lindsay 1994). RUDs only require a simple majority vote on the floor to approve.

7 In some cases presidents will withdraw a languishing treaty from Senate consideration. Upon such requests, the Senate will return the treaty to the president via simple resolution. Presidents typically make such requests when they transmit a treaty that supersedes an existing treaty that is currently awaiting Senate consent.

8 For the 523 bilateral treaties transmitted to the Senate between 1949 and 2012, the mean number of days between presidential signature and transmittal is 218 days, or about 7 months. The median number of days is 119. For the same set of treaties, the mean duration in days from transmittal to committee report is 465 days, or about 16 months. The median duration is 195 days. For the entire Senate process (i.e., from transmittal to Senate consent, failed vote, or a resolution returning the treaty to the president), the mean duration is 617 days, with a median of 236. The median number of days between the committee reporting a treaty and floor action is 8 days. Thus, the bulk of the delay in the Senate occurs during the committee stage, with the presidential transmittal stage providing the other primary delay point.

9 Of course, as scholars have noted, presidents could avoid the Senate altogether and complete their international agreements as executive agreements rather than as treaties. Given that modern presidents regularly use the formal treaty mechanism presents an interesting question: why use treaties at all? The two types of agreements are “legally interchangeable,” according to legal scholars (American Law Institute 1987; Setear 2002), though some constraints do exist relative to existing domestic law and the constitutional rights of U.S. citizens (Krutz and Peake 2009,
However, a number of political scientists (Krust and Peake 2009; Martin 2005) and legal scholars (Spiro 2001; Vagts 1995) have argued that treaties and executive agreements are not politically interchangeable, in that the executive tends to consider traditional, constitutional, and international considerations when classifying agreements. Moreover, as Kaye (2013) makes clear, presidents may act in support of an international convention even though the Senate has not ratified it. He refers to this as “stealth diplomacy” and the approach appears to explain how the Bush and Obama administrations have interacted with international mechanisms governed by conventions (e.g., the International Criminal Court and limitations on carbon emissions). However, as Kaye points out, there are limits to what the president can do, both legally and politically, and in terms of multilateral agreements where institutions are created, the U.S. is often left on the sidelines. It is doubtful that a president could abide by agreements set forth in an unratiﬁed tax treaty or extradition treaty, however, since these issues fall outside of the president’s plenary Article Two powers, so “stealth diplomacy” is probably less common in the case of bilateral agreements. While interesting, systematically addressing this question is beyond the scope of the current study.

Much of the concern for failed treaties among international relations scholars and practitioners focuses on signiﬁcant multilateral treaties that the U.S. has not ratified. Such a focus is reasonable, given the importance of American leadership in the global community and the signiﬁcance of many of these agreements. Such agreements include the U. N. Law of the Sea Treaty; various environmental accords (e.g., the Kyoto Protocol, pesticides agreements); human rights treaties (e.g., the Convention for the Elimination of All Forms of Discrimination Against Women); international legal agreements (e.g., the International Criminal Court); and arms control agreements (e.g., the Comprehensive Nuclear Test Ban treaty).
For comparison purposes, of the 444 multilateral treaties transmitted to the Senate from 1949 to 2012, 188 (42%) dealt with economic matters, 76 (17%) dealt with legal matters, 25 (6%) dealt with sovereignty/diplomatic issues, 53 (12%) were security and arms control agreements, and 102 (23%) dealt with human rights, environmental and other international norms issues.

Given that a vast majority (about 95%) of bilateral international agreements are done as executive agreements, why study bilateral treaties? Presidential decisions on agreement type (executive agreement vs. treaty) is beyond the scope of the present study (see Martin 2005), however, this is an important question bearing on the present analysis. First, as explained above, while presidents may use executive agreements instead of treaties on many issues, bilateral treaties are still an important subset of international agreements. Second, bilateral executive agreements and bilateral treaties are qualitatively different in that they generally address different issues, presidents can do more with treaties than with executive agreements and treaties tend to be more foundational (and significant), often forming the basis for many follow-on executive agreements. Recent analysis of executive agreements completed during the first Obama administration indicates that executive agreements are not simply replacements for treaties (Peake 2014). For example, very few executive agreements deal with tax policy and those few that do are much more limited in scope than traditional tax treaties. In that data, only ten tax agreements were completed as executive agreements (out of a total of nearly 800 executive agreements), and those ten agreements were limited to information exchanges or dealt with a specific type of taxation, i.e. social security. Tax treaties and associated protocols deal with more significant and comprehensive tax policy, including the avoidance of double taxation and tax evasion. Similar patterns emerge for legal agreements.
For treaties that are withdrawn, returned to the president, or defeated on the floor by a floor vote, the date of this event occurring is the date used in the analysis.

There are a variety of hazard models available, which differ based on the distribution of the rate at which the duration processes end. Common practice is to examine the hazard functions of the dependent variable in order to visually inspect its distribution for time dependency. Examination of the hazard functions (provided in the Appendix) clearly indicates that a majority of treaties are processed quickly, and as time goes on, the likelihood of the process ending (with transmittal or report) is decreased. This suggests that the assumptions of the Cox proportional hazards model are violated, and that a parametric hazard model is more appropriate—specifically one that specifies a hazard function that is monotonic. Such distributions include the Weibull and Gompertz hazard distributions. The models were run using in Stata 12 using both distributions and AIC tests were used to select between the Gompertz and Weibull distributions. The AIC tests indicate that the Gompertz hazard distribution is the best fit.

The specific poll data used include the most recent poll prior to signature and transmittal. I tested an alternative measure, the yearly average approval rating during the year of signature and transmittal, and the results are the same. The data are from Woolley and Peters (2014).

Given the fact that Obama’s presidency has coincided with record-level polarization in the Senate, I ran the models excluding treaties signed and/or transmitted by President Obama. The results of this analysis are the same as those presented below in terms of variable significance and the directions of the relationships.

Wars include the Korean War (1950 to 1953), the Vietnam War (1965 to 1973), the Persian Gulf War (1991), and the wars in Afghanistan and Iraq (late 2001 to 2012).
The U.S. completes a large number of treaties with non-democracies, covering a range of topics. While 60% of the bilateral treaties are completed with democracies (Polity score of 6+), there are large number of extradition, investment, and tax treaties (for example) with non-democracies, especially African states and former Soviet states.

The data are available are from Marshall and Gurr (2014).

I consider a state an ally if there is a formal defense agreement between the United States and the treaty partner during the year the treaty is signed. The Correlates of War Alliances (version 4.1) data are from Gibler (2008).

While the United States tends to have strong ties to most of the world’s large economies and democracies, the variables used in the analyses are not highly correlated. The ally variable correlates with the GDP variable at 0.19. The democracy variable correlates with the ally variable at 0.29 and with GDP at 0.19. While these are statistically significant correlations, they are not sufficiently high to indicate one measure is a proxy for another or to introduce multicollinearity into the analyses. Excluding each of these variables, from the analyses, in turn does not alter any of the results.

I read the president’s transmittal document for each case to determine if the treaty qualifies as a new treaty, rather than an amendment to an existing treaty.

Hazard models, as well as survival models, are a form of duration model. They are commonly used to predict the time to a particular event, often in medical research where analysts are interested in the rate of death for patients provided different treatments. They are especially useful when the dependent variable is time dependent, i.e., that the process is more likely or less likely to end as time continues, as is the case for medical patients.
For the transmittal model, this is fairly straightforward, as all of the cases begin with the president’s signature and terminate with the treaty’s transmittal. Treaties that are signed but never transmitted are not included in the analysis. Agreements entered into force upon the president’s signature or ratified through a two-chamber approval process are known as sole executive and congressional-executive agreements, respectively, and are not included in this study. The modeling process for Senate consideration of treaties is significantly more complicated, as treaties remain on the calendar of the SFRC indefinitely until they are reported (and ratified), withdrawn, returned to the president or superseded by a new treaty. Unlike nominations or legislation, pending treaties do not terminate at the end of a two-year Congress. While in the vast majority of the cases, termination of the process represents successfully processing the treaty, this is not always the case, as bilateral treaties may also end in death or languish indefinitely. The latter situation is problematic, as it enters outliers into the analysis. I ran the analyses using a variety of techniques and robustness checks to ensure that the results are not due to outliers or the few cases that end in death (rather an SFRC report).

I also ran the model employing a democracy indicator variable (where the Polity score was six or greater), and obtained the same results. I ran a reduced form model for both Tables 1 and 2, excluding all insignificant variables, but keeping the control variables (the topic codes and new treaty). Each of the significant relationships is verified in the reduced form model, as significant at the p < .05 level.

I ran additional two additional hazard analyses, examining the delay from the point at which the president transmits the treaty to its ratification, i.e., the entire process in the Senate, and from presidential signature to Senate consent. The results largely follow the results reported in Tables 1 and 2. For the analysis encompassing the entire process in the Senate (from transmittal to
Senate consent), the findings are similar to those reported in Table 2. For the analysis encompassing the entire process (from signature to Senate consent), the findings are similar to those reported in Table 1, though they are somewhat attenuated due to the more limited impact of factors found less important in the Senate process but found to be significant in the transmittal stage.

27 As mentioned above, of the 79 treaties that failed between 1949 and 2012, 50 (63%) are multilateral treaties and 29 were bilateral treaties.

28 See the recent tax treaty with Poland for an example (U.S. Government Printing Office 2014). The treaty amends an existing 1974 treaty and was transmitted in May 2014.

29 If one compares Obama’s first term transmittal of treaties and success rates on bilateral treaties to his modern predecessors, he does not fair well at all. Examination of the bilateral treaties data set indicates that Obama transmitted the fewest number of bilateral treaties in the modern era (nine total) and for those bilateral treaties he managed to transmit, his ratification success rate was just 44% (4 of 9). Other presidents (1949-2008) had an 81% success rate for treaties ratified during the term in which they were transmitted (Peake and Krutz 2014).
Fig. 1. Histogram of days to presidential transmittal to the Senate (for bilateral treaties, from 1949-2012, taking less than 3 years for transmittal, N=513).
Fig. 2. Histogram of days from presidential submittal to SFRC report (for bilateral treaties, from 1949-2012, taking less than 3 years for consent, N=488).
Appendix Fig. 1, Hazard rate for treaties awaiting presidential transmittal to the Senate, N=523
Appendix Fig. 2, Hazard rate for treaties awaiting SFRC report, N=523 (includes 504 of which passed committee).