

**Ratification Matters:
The Domestic Fate of Bilateral Investment Treaties**

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Abstract

Some treaties are signed and then ratified quickly while others languish in legal limbo, unratified by one or more parties. What explains this variation in the time between signature and ratification? The international relations literature has not taken the ratification stage of formal cooperation seriously enough, despite its obvious importance from both a legal perspective (treaties are not binding until they are ratified) and a political perspective (an unratified legal commitment may not be credible and thus may not produce salutary effects). In this project, which is at an early stage, we examine a large number of bilateral investment treaties—designed to ease barriers to foreign direct investment and guarantee legal rights for investors—to explain variation in time between signature and mutual ratification. We propose and test various hypotheses based on domestic-level institutions and the political constraints facing leaders at home.

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Introduction

States employ a wide variety of tacit and informal agreements to forge international cooperation, but much of the most important and stable cooperation takes place through the vehicle of formal international treaty-making. While academics and the media often focus on the negotiation and signing of treaties, they are only binding on a state once they have been ratified at the domestic level and only enter into force—thereby becoming binding law—once a sufficient number of states has ratified.¹ As one law scholar notes, ratification “is the act of consent by each country that transforms an international agreement from a piece of paper devoid of any legal force into law that binds” (Hathaway 2008: 103). The ratification stage of international cooperation is therefore crucial from a legal perspective but also from a political perspective, since an unratified commitment may not be credible and thus may not produce salutary effects. We are interested in this key stage and thus in the fate of international agreements once leaders bring them home.

We investigate a specific empirical puzzle arising from treaty ratification behavior. Some treaties are signed and then ratified quickly while others languish, unratified by one or more parties for a long period or never at all. What explains this variation in the time between signature at the international level and ratification at the domestic level? Why are some treaties signed but never ratified at all? Fearon (1998) argues that we should distinguish between the bargaining and implementation (or enforcement) stages of international cooperation. By addressing these questions we hope to shed light on the equally important stage of ratification, which falls between bargaining and implementation, has its own strategic dynamics, and lies at the nexus of international and domestic politics.

¹ For bilateral treaties, mutual ratification is required for entry into force. For multilateral treaties, some larger number of ratifications, determined through negotiation and varies by treaty, is required.

This paper explores the politics of ratification in the context of international investment agreements, a sphere of international economic relations that is of central importance to government officials and private economic actors and of growing interest to political scientists (e.g., Elkins, Simmons and Guzman 2006). While other economic issues are governed by more centralized regimes, foreign direct investment (FDI) is governed mostly by a vast tapestry of bilateral investment agreements (BITs), designed to ease barriers to foreign investment and guarantee legal rights for investing corporations. Since the late 1950s, governments have signed more than 2,600 BITs. Their popularity has accelerated dramatically over the last two decades, with an average of more than a hundred new treaties signed each year since the early 1990s, and today almost every country in the world is part of this treaty network. The importance of BITs is underscored by the tremendous growth in FDI over the same period: from only \$700 billion in 1980, the world's stock of FDI now stands at almost \$10 trillion and is growing at twice the rate of trade exports (UNCTAD 2006b: 3-4). BITs are the primary political and legal vehicle for regulating this expansion.

BITs are widely viewed as an indispensable tool for making costly, fixed foreign investments possible. Senders of FDI—both multinational corporations and their governments—see them as a way to protect the interests of investors against governments that might have an interest in expropriating or otherwise obstructing foreign operations for political gain, while host governments view them as necessary to mitigate this risk in order to attract private capital from abroad. BITs thus hold the promise of solving the age-old credible commitment problem faced by foreign firms and host governments (Moran 2005; Stasavage 2002; Lipson 1985). Yet while most BITs are signed and then ratified promptly, some are pursued enthusiastically by national leaders only to be ratified many years later. Indeed, at the end of 2005 almost a quarter of signed

BITs had not entered into force, meaning that one or both parties had not ratified at all, leaving more than 600 agreements in limbo at the domestic level (UNCTAD 2006a).

We propose that two main sets of factors are likely to explain time between treaty signature and ratification in general. The first is the features of the agreement itself. Other things being equal, more constraining treaties (which pose a greater threat to national sovereignty) and treaties wider in scope (which implicate a broader range of domestic interests) are more likely to stir opposition at the domestic level and thus to slow ratification. We refer to this as the *treaty design* hypothesis. We do not explore this set of independent variables in this paper, however. In effect, we control for treaty variation by looking in a single issue area (FDI) and at a set of treaties (BITs) that are notable for their uniformity.

The second set of factors, and those on which we focus, relate to domestic politics and institutions. First, the formal, constitutionally rooted procedure for ratification varies by country, with some legislatures more involved than others. We refer to this as the *legislature hurdles* hypothesis. More generally, we might expect that more politically constrained executives, conceived of both institutionally and in terms of opposing preferences at the domestic level, will have more difficulty achieving ratification once a treaty is brought home. We refer to this as the *domestic constraint* hypothesis. However, there is a potential countervailing logic: if a leader knows that he (or his treaty partner) faces domestic obstacles, he might be reluctant to engage and invest in treaty negotiations to begin with or might only do so after addressing those potential obstacles. In other words, to the extent that anticipation of the ratification stage influences the negotiation stage, domestic constraints would not impede ratification. We refer to this as the *rational anticipation* hypothesis.

The next section elaborates on the puzzle and the theoretical importance of distinguishing between signature and ratification as distinct phases of cooperation, and offers hypotheses for explaining time to ratification. We then give an overview of bilateral investment treaties and the ratification behavior associated with them. An empirical section outlines the research design and data and presents statistical results. The final section discusses the results and offers implications for international relations and law.

The Politics of Treaty Ratification

Several recent and important cases highlight the need to take ratification seriously. The Rome Statute establishing the International Criminal Court was opened for signature in 1998 but did not receive enough ratifications to enter into force until 2002. Key countries, including the United States, Israel and Yemen, have signed but not ratified the treaty and are thus do not fall under the ICC's jurisdiction. Similarly, the Kyoto Protocol on climate change was signed in 1997 but ratifications were slow in coming; it did not enter into force until 2005, and the world's largest emitter of greenhouse gases, the United States, has signed but not ratified. In both cases, the ability of these institutions to perform their negotiated functions was stalled at the ratification stage for a variety of domestic and international political reasons.

Economic agreements face similar obstacles. Over the past two years, the U.S. government has negotiated and signed free trade agreements with Panama, Colombia and South Korea. All three are seen as promoting important economic and foreign policy interests. Referring to the Colombia accord, President Bush argued that "This agreement has strategic implications. It is very important for [the United States] to stand with democracies that protect human rights and human dignity; democracies based upon the rule of law" (USTR 2008). And

yet all three of these agreements lie dormant in Congress, with opposition from labor, environmental groups, and key import-competing industries, with no hope of passage before the next election and no legal effect on the trading relationship between these countries.

Despite its importance, the international politics and international law literatures have not taken the critical role of ratification in interstate cooperation seriously enough, and it remains poorly understood.² This is true even with growing interest among academics in the formal process of establishing and designing international agreements (Koremenos, Lipson and Snidal 2004) and in the intersection of international politics and law (Goldstein et al. 2001; Simmons and Steinberg 2007). The lack of empirical and theoretical focus on ratification is especially puzzling given calls among political scientists and law scholars alike for examining more carefully the relationship between domestic politics and international cooperation (Martin and Simmons 1998; Slaughter and Burke-White 2006). Students of international relations know with confidence that domestic politics matter for international cooperation but have neglected what is arguably the central nexus between these domains.

As we noted in the introduction, some treaties are signed and then ratified quickly by a sufficient number of parties, thereby entering into force. In other cases, one or more parties balk at ratification of a signed treaty, thereby delaying entry into force. These details matter since unratified treaties are not binding on signatory states and should not produce the same effects of a formal international agreement.³ Most international relations scholarship treats the act of international cooperation in a simplistic and homogenous manner—states either cooperate with each other or they do not—and ignore the formal stages involved when it comes to treaty-based

² A number of recent studies do consider ratification in the context of human rights treaties. See, for example, Allendoerfer and von Stein 2008, Goodliffe and Hawkins 2006, Neumayer 2008, Simmons 2009, and Vreeland 2008.

³ To be clear, signing a treaty does create a legal obligation to not undermine the spirit of the treaty, even if the specific provisions themselves are not binding.

agreements. While Fearon (1998) provided nuance and theoretical leverage by distinguishing between the “bargaining” and “enforcement” stages of cooperation, this additional distinction still does not adequately reflect the international and domestic realities of reaching formal agreements. We agree with the spirit of Fearon’s argument but believe it should be taken further: successful international bargaining cannot lead to implementation without the middle stage of ratification.

There are sound theoretical reasons to believe that the process of cooperation through law should be broken down into its constituent stages: negotiating, which leads to treaty signing (or not), and ratification, which leads to treaty implementation (or not). In particular, signatures are provided by heads of state and may provide a costly signal of the leadership’s intentions, a function often ascribed to international agreements and institutions (Kydd 2001; Morrow 1994; Thompson 2006). However, such signals are not necessarily reassuring to other governments and private actors, including international investors. After all, a government’s preferences may change over time as domestic pressures evolve and, more profoundly, as the leadership itself turns over through elections, coups and succession. Moreover, signed agreements may never be implemented if domestic actors do not formally assent to them, and domestic-level concurrence makes it harder for leaders to back out in the future.

Beyond a signal of intentions, then, other international actors are looking for a credible commitment to the course of action established in an international agreement. Ratification has the potential to perform this hands-tying function by involving various other domestic actors, thereby making it harder for a leader to back out in the future, and by staking a domestic and international reputation on adherence to a binding agreement. The often contentious process of ratification increases the publicness and formality of a cooperative effort, thereby increasing its

credibility (Lipson 1991). Joint ratification, in particular, has salutary effects. As James Morrow (2007: 559-60) notes, “Joint ratification of a treaty demonstrates publicly that both sides accept the standards of that treaty and should enforce them through reciprocity. Joint ratification both strengthens reciprocity and leads to compliance generally through effective deterrence.”

International relations scholars have indeed addressed the commitment function of international agreements. One standard argument is that states assume legal obligation as a mechanism to credibly commit (Abbott and Snidal 2000). Empirical studies show that governments tie themselves to law and institutions to commit to democratic reform (Pevehouse 2005), to human rights (Hathaway 2007; Moravcsik 2000, Simmons 2009), to certain long-term economic policies (Simmons 2000), and to the protection of foreign investors (Büthe and Milner 2008; Neumayer and Spess 2005). None of these studies distinguishes between signature and ratification when it comes to international agreements, a gap we begin to fill.

The “two-level games” literature in international relations has produced a more nuanced understanding of the role of domestic politics in international agreements (Putnam 1988), and has helped spur a significant literature on the role of domestic politics in international bargaining (Mayer 1992; Moravcsik 1998; Tarar 2001). Some work in this vein refers specifically to the role of ratification. Helen Milner’s (1997) book on domestic politics and international cooperation offers a rational-choice model that includes a ratification stage, predicting that ratification failure is most likely when domestic preferences are divergent and when domestic actors are asymmetrically informed. John Odell (2000) argues that ratification is more likely to be successful when international negotiators are highly constrained by their political principals back home. Mansfield, Milner and Pevehouse (2007) offer a formal model of international trade

cooperation with a ratification stage, however they do not distinguish between the signature and ratification of agreements.

These works take domestic politics seriously and offer valuable theoretical insights that we build on to explain ratification. Ultimately, international cooperation in the form of treaties depends on the ability of leaders to forge agreement not only with international counterparts but also with domestic players that must offer their assent. This leads to our first hypothesis:

H1: Legislative Hurdles. The more significant the formal, constitutional requirements faced by an executive, the longer ratification takes and the less likely it is to be achieved.

Different political systems vary widely in terms of their ratification requirements (Hathaway 2008; Hollis, Blakeslee, and Ederington 2005), though in almost all cases ratification imposes a significant procedural hurdle. Thus the formal process of international treaty ratification is important to consider. In some countries, no legislature approval is required. When approval is required, some executives must achieve assent from only one house of the legislature while others must achieve it from two. Finally, the voting threshold varies across countries, with some legislatures approving by a simple majority and others requiring variations of a supermajority. As such hurdles become more difficult to overcome, we expect ratification to be increasingly difficult, other things equal.

Of course, leaders face many political obstacles that are not captured in the formal, legal process of treaty ratification. For example, a leader facing divided government would likely have more difficulty achieving ratification, and an authoritarian leader would have more options for bypassing the formal legal channels of ratification. For example, the constitution of Azerbaijan requires that treaties be approved by a majority of parliament. In practice, however, this country is tightly controlled by the president, his family, and allies. In the area of investment

treaties, the executive faces few constraints and “[t]he parliament, irrespective of the constitution, exercises virtually no oversight” (Bayulgen 2005: 16).

Our second hypothesis captures this wider range of political constraints:

H1: Domestic Constraint. The more politically constrained the executive at the domestic level, the longer ratifications takes and the less likely it is to be achieved.

In general, the process of forging domestic support is more complicated in democracies, where political institutions constrain the executive’s freedom of action in various formal ways (Cowhey 1993; Leeds 1999; Martin 2000). However, while the democracy-autocracy distinction is important, it should not be overstated and it likely not sufficient to understand treaty ratification. First, there is significant variation among democracies themselves, with some requiring explicit legislative approval (e.g., the United States) and others merely requiring consent of the cabinet (e.g., Australia).⁴ Second, even autocrats may be constrained by other political institutions (e.g., the military), interest groups and public opinion and must appeal to a “selectorate” on whom their position of power depends (Bueno de Mesquita et al. 2004).

For our purposes it is also useful to think of political systems as varying along a continuum, from those where the executive has the freest hand to those where the executive’s power is most in check. This is consistent with important concepts in political science, such as that of “veto players” (Tsebelis 2002)—designed to capture the number of actors (individual or institutional) whose agreement is needed for policy change—and of “executive constraint”—designed to capture “the extent of institutionalized constraints on the decisionmaking powers of the chief executives” (Marshall and Jagers 2000: 23). Such constructs are used in the

⁴ It should be noted that any treaty that is not entirely self-executing requires implementing legislation. Legislatures may also be implicated when it comes to budget support and the implementation of an agreement. In all these cases, legislatures in democracies may be involved in the negotiation and ratification process even if their formal consent to a treaty is not required.

comparative politics and international relations literatures to provide nuanced comparisons of political systems across regime type. The existence of constraints reduces the size of the domestic win-set and makes it more difficult to change the status quo since the government is confronted with a higher probability of “factional blocking” (Mayer 1992). Executives who are not constrained should be able to achieve ratification more quickly following signature and with a higher probability overall.

There is a countervailing logic, however. Fearon (1998) and Downs, Rocke and Barsoom (1996) argue that leaders rationally anticipate the implementation phase of an agreement during the earlier, bargaining phase. For example, they might drive a harder bargain if they know the distribution of gains will be skewed indefinitely into the future, and they might seek a shallow treaty (or might not bargain at all) if they believe an agreement will be impossible to enforce. We might similarly argue that executives anticipate obstacles presented by domestic institutions and opposition at the ratification stage and address these concerns during the negotiation stage. This leads to a third hypothesis:

H3: Rational Anticipation. Because leaders anticipate obstacles to ratification during the negotiation stage, domestic political obstacles do not delay ratification.

This rational anticipation could manifest itself in three ways. First, knowing they face insurmountable obstacles to ratification at home, leaders may simply avoid engaging in negotiations and therefore never select themselves into a signed treaty. Second, knowing they face obstacles to ratification at home, leaders may seek to address the concerns of the relevant interest groups and legislatures, either through side-payments or through adjustments to the treaty itself in ways that make it more appealing domestically. Third, knowing that their potential treaty *partners* face obstacles to ratification, leaders might be reluctant to engage in

negotiations or might delay negotiations until the partner has resolved his domestic political problems. Indeed, leaders might agree to certain treaty provisions designed to assuage domestic opposition in the partner.

If the rational anticipation logic holds, at the very least we would expect no relationship between domestic constraints and time to ratification. In their formal model of trade cooperation, Mansfield, Milner and Pevehouse (2007) implicitly assume that the executive anticipates obstacles presented by domestic veto players and addresses these concerns in the negotiation stage. Ratification thus naturally flows from signature. Indeed, a stronger version of the argument might predict an even shorter time to ratification in some cases. Especially wary leaders may simply avoid signing treaties until they have resolved domestic opposition issues at home and abroad, in which case signature would almost automatically lead to speedy ratification. In democracies, this anticipation would be especially important. If a democratic leader moves first to ratify and fails to do so, he might look incompetent for having backed down. And if a democratic leader achieves ratification first only to have the other side not reciprocate, he might look incompetent for having been stood up. Advanced democracies in particular tend to be more transparent and to have higher levels of capacity, which makes them more capable of anticipating and addressing domestic obstacles at home and abroad during the negotiation phase. When the respective win-sets are common knowledge, ratification should not pose a hurdle once signature has been achieved.

BITs: The Ratification Puzzle

The growing literature on BITs has tended to focus on two puzzles. First, scholars seek to explain why BITs are pursued and signed—an especially interesting question from the

perspective of developing-country hosts of FDI (Guzman 1998; Elkins, Simmons and Guzman 2006). Second, an important debate has emerged over whether BITs perform their intended function of attracting more foreign investment and boosting development. Some find that they do (Neumayer and Spess 2005; Salacuse and Sullivan 2005; Büthe and Milner 2008) while others find that they do not (Gallagher and Birch 2006; Hallward-Driemeier 2003; Guzman 1998).

In addition to shedding light on the broader puzzle of treaty ratification, distinguishing between signature and ratification in the context of BITs may help us explain why the relationship between BITs and their putative benefits is so complicated. Existing quantitative studies of BITs have treated signature as the key event and have ignored the role of ratification. For example, in their important and thorough study of why states conclude BITs and how they diffuse internationally, Elkins, Guzman and Simmons (2006) treat signature of the treaty as the “important event” that international investors should respond to. UNCTAD (1998: 106) similarly argues that, “As the great majority of BITs are ratified, it is reasonable to assume that, in the perception of investors, signing a BIT is the crucial action.”

However, two recent studies have shown that mutual signature alone does not increase FDI flows between the two countries involved, the intended purpose of BITs, but that only mutual ratification does (Egger and Pfaffermayr 2004; Haftel 2008). The U.S.-Russia BIT nicely illustrates this issue in practice. The two countries signed this treaty in 1992. From the perspective of the Russian executive, including President Boris Yeltsin, the treaty was necessary to attract much needed foreign investment into the country. In order to take effect, both the U.S. Senate and the Russian Duma had to ratify the treaty. While the Senate quickly did so, it became bogged down in the Russian legislature, where competing economic interests battled for control

over precious economic resources, and where the oil lobby in particular opposed opening the door to foreign ventures (Bayulgen 2005). This legal and political uncertainty resulted in a lack of confidence in the Russian investment environment and a markedly sluggish flow of American investment into Russia (Bayulgen 2005; *Journal of Commerce*, March 28, 1995). As of 2008, the Russian Parliament has yet to ratify the U.S.-Russia BIT.

Numerous interviews conducted by the authors confirm that, at least in the United States, both government officials and private investors stress the importance of joint ratification of investment treaties. Interviewees repeatedly argued that ratification has significant consequences for investors, in particular with respect to their ability to utilize the binding dispute settlement mechanism provided for in almost all BITs. They pointed out, for example, that Russia's failure to ratify its BIT with the United States is a cause of serious concern to investors and government officials alike—even though the BIT has been signed by both sides. They also indicated that Brazil's failure to ratify all its previously signed BITs will be an important consideration if future negotiations are to be considered. Our interviews therefore corroborate the quantitative evidence: The difference between signed treaties and treaties in force is consequential to governments and investors.

Thus while using signature dates is convenient since the data already exist (supplied by UNCTAD), there are sound theoretical and empirical reasons to believe that ratification and entry into force are more politically and economically important (they are without question more legally important). At the very least, it should be emphasized as an event distinct from signature and as a crucial stage in the establishment of investment treaties.

Just as important for our purposes, BITs offer a nice laboratory to study the politics of treaty ratification and its role in international cooperation. First, because they are all bilateral,

mutual ratification by definition implies entry into force and thus bindingness. We can avoid the complication of comparing treaties that vary in terms of the threshold of ratifications required for entry into force. We can also control for differences across issue areas (since they all deal with FDI), for variation in treaty design (since they share roughly the same design), and for variation in the scope of agreements (i.e., we do not have to compare bilateral to multilateral treaties). Studying BITs also allows us to isolate the commitment function of treaties since the primary cooperation problem they are designed to solve is that of credible commitment by the host government.⁵ Finally, BITs have the virtue of involving every region and most countries, thereby offering variation on political dimensions that are likely to be important explanatory variables.

Of course, the study of treaty ratification is worthwhile only to the extent that this process plays out differently for different parties at different times. If most BITs enter into force quickly and efficiently, the question addressed in this paper would be moot. As we report elsewhere (Haftel and Thompson 2008), considerable variation does indeed exist in the time that passes between signing and mutual ratification, both over time and across countries. Using data compiled by UNCTAD, Figure 1 shows the growth of BITs over time and the gap between signed and mutually ratified BITs, and Figure 2 shows these numbers as a ratio of BITs in force to all signed BITs. 560 BITs, or 20% of all concluded BITs, were not in force in 2003.

[Figure 1]

[Figure 2]

⁵ Of course, in other research it would be interesting to study the impact of variation on these dimensions (and we are in the process of exploring the impact of treaty design on time to ratification). For now it is most useful to control for them in order to isolate the key independent variables across a relatively homogenous set of treaties.

These aggregate numbers mask considerable variation that is particular interest from a political standpoint. Different countries display diverse experiences in the time that lapses between signing and mutual ratification. For example, the mean for treaties that involve Belgium and Luxemburg is almost four years, but the mean for treaties that involve Switzerland is only one-and-a-half years. BITs that are not in force involve many countries from most regions of the world. However, some countries have ratified most of the BITs they have concluded; ten out of eleven BITs signed by Japan, for example, were in force in 2003. Similarly, only three out of 56 BITs signed by Hungary and only nine out of 100 signed by Switzerland are not currently in force. In contrast, 15 out of 41 treaties signed by Pakistan, 16 out of 54 signed by Russia, and 17 out of 23 signed by Ghana were still not in force in 2003. In an extreme case, Brazil has signed fourteen BITs, all in the mid- and late-1990s, but has ratified none, presumably for political reasons (UNCTAD 2006a: 3). Clearly, there is substantial variation to be explained.

Research Design

We use event history modeling techniques to estimate the effect of the independent variables on the duration of signed treaties before they enter into force. This type of analysis estimates the “risk” that an event will take place as time elapses. As such, it is especially suitable to account for variation in the timing of events (Box-Steffenmeier and Jones 2004). The unit of analysis is the treaty and our data set includes 1,745 BITs from 1958, the year in which the first BIT was signed, to 1999. We employ a Cox proportional hazard model with robust standard errors. The dependent variable – labeled *TIME FORCE* – is the “spell,” or the number of years passed from signing to entry into force. To code this variable we used the United Nations Conference on Trade and Development (UNCTAD) data on the dates of entry into force of all BITs. This

variable varies from 1 for treaties that were signed and entered into force in the same year to 40 for the France-Chad BIT that was signed in 1960 and had not entered into force by 1999 (and, indeed, is not yet in force today). 1,233 BITs, which is about seventy percent of the total sample, entered into force in or before 1999.

Independent Variables

All the independent variables are coded for the year in which the BIT was signed. Summary statistics and a correlation matrix are reported in the appendix.

Domestic Political Factors

The first set of independent variables pertains to the domestic politics and institutions of parties to the BITs. First, to capture the formal, legal hurdles to ratification, we rely on information presented in Hathaway (2008), who looks at the constitutional requirements for treaty ratification for most countries in the world (we have filled in values for the few countries that are included in our analysis but not in hers). We have coded each country according the following scheme:

- 0 No legislative approval required (e.g., Atingua-Barbuda, Israel, Libya)
- 1 Majority in one house required (e.g., Armenia, Greece, Panama)
- 2 Majority in two houses required (e.g., Argentina, Czech R., Malaysia)
- 3 Supermajority in one house required (e.g., Algeria, Iraq, Micronesia, U.S.)
- 4 Supermajority in two houses required (Burundi)

This scheme is designed to capture increased difficulty of ratification as the numbers get higher. Because each observation involves a pair of countries we make the “weakest link” assumption:

we expect that the party that faces greater legislative hurdles determines the timing of entry into force.⁶ Thus, the variable *LHURDLES* reflects the maximum value of this indicator for each dyad.

For the number of veto players, which we use to capture other political constraints on the executive, we use Witold Henisz' (2002) data on political constraints. *POLCON* ranges from 0, which indicates complete executive discretion to reverse policies, to 1, which indicates complete infeasibility of policy change. Importantly, this measure includes not only the number of players that have veto power but also the homogeneity of their preferences. As with the legislative hurdles variable, we assume that the executive that faces more domestic political constraints will determine the timing of entry into force. The countervailing logics presented above point to a possible curvilinear relationship between political constraints and ratification – either very high constraints or very low constraints may result in speedy ratification, while intermediate constraints may not. A squared term, labeled *POLCON*², allows us to test this hypothesis.

We also consider the effect of regime type, which is a conventional variable in most analyses of FDI and BITs and of treaty ratification. We employ the widely used Polity IV data (Marshall and Jaggers 2002) to create the variable *DEMOCRACY*, which represents the highest Polity score in the dyad. It ranges from -10, for a complete autocracy, to 10, for a mature democracy. There are reasons to believe that the relationship between regime type and ratification time may be curvilinear (Simmons 2009). Highly autocratic countries face few legal constraints, which presumably makes ratification easier, and highly democratic countries benefit from a more transparent ratification process as well as strong incentives to ratify signed BITs, both of which make the rational anticipation dynamic more likely. Countries in the middle of the

⁶ This is practice is conventional and widely used in other research areas, like the Kantian peace. See, for example, Russett and Oneal (2001).

spectrum—newly democratized states, for example—may represent the worst of both worlds and find ratification most difficult. We probe this possibility with a squared term, labeled DEMOCRACY².

A growing body of work indicates that the nature of the legal system has implications for the prospects of treaty ratification. Specifically, it is believed that common law countries are more reluctant to ratify than countries with other legal traditions. First, common law countries offer better domestic legal protection and less need for external guarantees (Elkins, Guzman, and Simmons 2006). Second, the judiciary in common law systems is more powerful and independent (La Porta et al. 2008). As a result, the domestic consequences of the treaty are more uncertain and carry greater risk (Allendoerfer and von Stein 2008, Simmons 2009), a consideration that might make treaty partners reluctant to ratify as well. *COMMON LAW* is a dichotomous variable that scores 1 if at least one party has a common law system (that is, one of British origin) and zero otherwise. We use data from La Porta et al. (2008) to code this variable. We expect longer ratification time in dyads in which one or both countries have a common law system.

Regardless of a country's legal tradition, the effectiveness and impartiality of the legal systems as well as the society's respect for the rule of law may be linked to the speed of treaty ratification. On the one hand, countries with more powerful legal systems are likely to face lower perceived political risk and thus less need to conclude investment treaties. On the other hand, such countries may find international treaties a natural extension of their domestic reliance on legal solutions to conflict (Elkins, Guzman, and Simmons 2006, 840). Moreover, to the extent that they sign a BIT they may feel compelled to ratify it and a matter of proper procedure and respect for law. We capture these characteristics with the variable *LAW AND ORDER*, which is a

component of the International Country Risk Guide (ICRG) index. It ranges from 0 for countries with weak legal systems that are routinely ignored to 6 for countries with powerful and impartial legal systems that benefit from high popular observance. We consider the degree of law and order in the host country, where these questions are most relevant.

Finally, we include a measure of the host country's capacity. In line with our theoretical framework, we expect states that lack a sizable and experienced diplomatic and legal corps to have more difficulty in the ratification process and to be less adept at anticipating political obstacles to ratification, both at home and abroad, during the negotiation stage. Since most senders of FDI have a high degree of capacity, this question is of most interest when it comes to host countries, which vary considerably on this dimension. We capture this variable with the host country's number of embassies, labeled *EMBASSIES*. More embassies indicate greater diplomatic capacity. We use Elkins, Guzman, and Simmons (2006) for data on this variable.

National Economic Factors

Several economic factors may affect the prospects of mutual ratification, and these should be controlled for. States that have higher exposure to foreign direct investment may find investment treaties more valuable, and states that are home to multinational corporations involved in foreign investment may feel greater urgency to protect them and their assets abroad. We measure the degree of exposure with the home country's net FDI outflows as a proportion of GDP. This variable is labeled *FDI OUT*. Similarly, host countries that attract more FDI are likely to face greater pressure from foreign investors and their governments to quickly ratify the treaty. We measure the degree of exposure with the host country's net FDI inflows as a proportion of GDP. This variable is labeled *FDI IN*. We employ data from Elkins, Guzman, and Simmons (2006) for these variables.

Dyadic Factors

Several variables that hinge on the relationship between the two parties may also affect the speed of mutual ratification. Investment treaties may be concluded in order to cement security cooperation between two governments. One might also expect more extensive economic ties between countries that share similar security concerns. Hence, parties that have strong security ties might be expected to ratify treaties more quickly. We account for this possibility with *ALLIANCE*, which scores one if the dyad has an alliance and zero otherwise. We also consider common language and a common colonial heritage, labeled *COMLANG* and *COMCOL*, respectively. Both variables are expected to decrease ratification time. We use Elkins, Guzman, and Simmons (2006) to code these variables.

Results

Table 1 presents the results of four event history models estimating the effect of the independent variables on the time that lapses between signing a BIT and its entry into force.⁷ The table reports the hazard ratio, which estimates the hazard rates for different values on the independent variables. The hazard rate is the probability of the event (in our case, entry into force) occurring given its survival up until that point in time. In other words, the hazard ratio is the ratio of the hazard rate given a one unit increase on an explanatory variable to the hazard rate without such an increase. A hazard ratio that is greater than 1 indicates a higher probability of entry into force, such that, as values on the independent variable increase, the likelihood of survival decreases.

⁷ We included several additional control variables that were insignificant and did not change the results. These include the host country's GDP, GDP per capita, economic growth, and the size of extractive sectors, as well as a Cold War dichotomous variable. The results are not reported in the paper but are available from the authors upon request.

Similarly, a hazard ratio that is lower than one represents lower probability of entry into force. Table 2 presents predicted hazard ratios for different values on the independent variables. This table provides a general sense of the substantive effect of these variables.

[Table 1]

[Table 2]

As we expected, more legislative hurdles decrease the probability of entry into force. The hazard ratio for *LEGISLATIVE HURDLES* is about .70, which suggests that an increase in one unit on this variable reduces the hazard rate by about thirty percent compared to the baseline hazard ratio. The hazard ratio is highly significant across all models. It is also substantively meaningful. Moving from one standard deviation below the mean to one standard deviation above the mean decreases the predicted hazard ratio by about thirty percent (see Table 2). Figure 3 provides a visual sense of the substantive effect of this variable. It plots the rate of investment treaties predicted to survive (that is, not in force) at any given time conditioned on low (0) or high (3) legislative hurdles. That is, it compares a scenario in which all dyads include at least one party that has high legislative hurdles to a scenario in which all dyads face no hurdles at all. The figure highlights the sizable effect of the legal ratification process. For example, under conditions of high legislative hurdles only about thirty percent of signed BITs are expected to enter into force. In contrast, under conditions of low hurdles about sixty percent are expected to be mutually ratified. Similarly, in a world of no legislative hurdles almost all BITs enter into force within six years, but about thirty percent remain not in force in a world of high legislative hurdles.

[Figure 3]

The findings offer weaker support for the effect of other domestic political variables. Model 2 indicates that higher domestic constraints are associated a shorter ratification spell. That is, more veto points result in quicker entry into force of investment treaties. The hazard ratio is insignificant, however, and the substantive effect is small, indicating that the relationship between political constraints and ratification time is weak at best. (Moving from one standard deviation below the mean to one standard deviation above the mean increases the predicted hazard ratio by only six percent). Allendoerfer and von Stain (2008) obtain similar results and speculate that *POLCON* may not be a good indicator of political constraints.

A second possibility is that the effect of this variable is curvilinear rather than linear. Indeed, when we add *POLCON*² (model 3), both political constraint variables are significant, indicating that high and low political constraints result in speedy ratification while intermediate values result in slower ratification. However, the substantive effect still seems trivial – an increase or decrease of one standard deviation decreases the hazard ratio by two percent and four percent, respectively.

The hazard ratio of *DEMOCRACY* is larger than 1, indicating higher levels of democracy are associated with shorter survival and thus more speedy ratification. The estimate is significant at a 95 percent level of confidence. Substantively, it indicates that one additional point on the Polity score increases the probability of a BIT's entry into force by about two percent. This substantive effect again appears to be rather minimal: a decrease of one standard deviation decreases the hazard ratio by about five percent. We also find some support for the curvilinear relationship between regime type and the ratification spell. *DEMOCRACY*² is in the expected direction but fails to meet standard levels of significance. It appears, then, that BITs involving

highly democratic countries tend to enter into force more quickly, but that this effect is not very pronounced.

We do not find empirical support to the purported effect of legal heritage on the spell of mutual ratification. *COMMON LAW* has the opposite sign and is insignificant. This result is somewhat surprising considering the strong performance of this variable in several recent studies (Allendoerfer and von Stein 2008; Elkins, Guzman, and Simmons 2006; Simmons 2009). It is possible that the nature of the legal system plays a more important role in area of human rights than in foreign investment. The next domestic political variable, *LAW AND ORDER*, is positive and highly significant. It indicates that higher levels of law and order are conducive to a speedy entry into force. Substantively, moving from one standard deviation below the mean to one standard deviation above the mean increases the probability of entry into force by about 20 percent. The host country's number of embassies is positive as expected, but barely meets the 90 percent level of confidence. The substantive effect of this variable is appreciable but modest: moving from one standard deviation below the mean to one standard deviation above the mean increases the hazard ratio by about six percent. The results on the last two variables parallel the findings of Elkins, Guzman, and Simmons (2006) regarding BIT signing.

Turning to the variables pertaining to foreign direct investment, both are significant but in opposite directions. Higher levels of FDI flows into the host country appear to delay mutual ratification. Substantively, moving from one standard deviation below the mean to one standard deviation above the mean decreases the hazard ratio by about seventeen percent. This result suggests that host countries that attract more FDI may have greater leverage and may feel less pressure to ratify BITs they have concluded. In contrast, higher levels of FDI flows out from the home country tend to speed the ratification process, indicating that governments with high

exposure to FDI face greater pressure to protect their investors (and that they may transmit this pressure to their partners). The substantive effect is rather modest, however. Moving from one standard deviation below the mean to one standard deviation above the mean increases the hazard ratio by about five percent.

A pair of countries that shares its language appears to jointly ratify investment treaties more quickly than other pairs of countries. The hazard ratio is greater than one and highly significant. Common language increases the hazard ratio by about twenty-four percent. Thus, cultural similarities tend to accelerate the ratification process. Colonial ties, on the other hand, seem to delay ratification. The substantive effect of this variable is sizable: colonial links decrease the hazard ratio by about forty percent. Elkins, Guzman, and Simmons (2006, 841), who obtain similar results for BIT signing, argue that countries that share common colonial heritage have similar legal institutions and thus have less need to commit through international treaties. Finally, shared security interests expressed with a formal alliance appear to delay mutual ratification. *ALLIANCE* comes close but fails to meet the conventional thresholds of statistical significance, and the substantive effect is also rather modest. This result can be contrasted with a larger than 1 and significant hazard ratio obtained by Elkins, Guzman, and Simmons (2006). It is possible that allies sign BITs for symbolic purposes but then have little incentive to follow up on this gesture, perhaps because they already share a high level of trust.

Conclusions

Treaty ratification matters. While leaders sign and negotiate treaties, they are not binding until they are ratified at the domestic level and therefore may not produce the beneficial effects of cooperating through international law. Practice indicates that many important treaties are signed

but never ratified and that the time between signature and ratification varies significantly across treaties and across countries. We focus on this variation and, more generally, urge international relations scholars to take the ratification stage of international cooperation more seriously.

We investigate the politics of treaty ratification in the context of bilateral investment treaties. We propose three main hypotheses to explain the time between BIT signature and BIT ratification. First, ratification depends on the formal legal hurdles, in the form of the existence and extent of necessary legislative approval that the executive faces once a signed treaty is brought home (the *legislative hurdles* hypothesis). Second, we argue that more constrained executives, conceived of in terms of democracy and veto points, should have more difficulty achieving ratification (the *domestic constraint* hypothesis). Finally, offering a potentially countervailing logic, we argue that some executives might anticipate obstacles at the ratification stage and not sign treaties until opposition has been overcome, thereby eliminating or reversing the relationship between domestic constraints and time to ratification (the *rational anticipation* hypothesis).

While our findings are too preliminary to draw straightforward conclusions about these hypotheses, it is clear that formal legislative hurdles matter to the treaty-making process (Hathaway 2008). This is a structural, constitutional feature that leaders simply cannot work around. In terms of political constraints at the domestic level, we find either no relationship (using veto points) or a positive relationship (using democracy) between a leader's level of constraints at home and the speediness of ratification. This casts doubt on the domestic constraint hypothesis, at least in its simplest form.

The results are more provocative with respect to the rational anticipation hypothesis. It appears, at least suggestively, that there is a curvilinear relationship between domestic political

constraints and time to ratification: the least and the most constrained leaders achieve ratification quickly, while those in between face the greatest prospect of languishing treaties. It makes sense that the least constrained leaders would achieve ratification most quickly. That the most constrained leaders do the same might indicate that leaders in advanced democracies are most able to anticipate obstacles to ratification and to either address them during the negotiation stage or not seek treaties to begin with under those conditions. The positive and significant results for the *LAW AND ORDER* and *EMBASSIES* variables lend further plausibility to this argument. Leaders of governments with the most capacity, predictability and transparency are most capable of anticipating and accommodating domestic opposition, both at home and in their partner countries. If this is true, it supports theoretical arguments in the rational-choice tradition that earlier stages of cooperation are influenced by what is expected to occur at later stages (Fearon 1998; Downs, Rocke and Barsoom 1996).

In addition to improving the data analysis presented here, our research will proceed along two fronts. First, we are in the process of collecting data on BIT ratification dates for individual countries, which will allow us to perform monadic analyses alongside our dyadic ones and will eliminate the need for making the “weakest link” assumption. Second, we are exploring the impact of institutional design on the ratification process. Specifically, we conjecture that deeper treaties involving greater “sovereignty costs” and treaties that cover more issues (and thus implicate a wider range of domestic interests) should take longer to ratify. In both cases, domestic opposition is more likely to slow the process.

Figure 1: Cumulative Number of Signed and Mutually Ratified BITs, 1958-2003

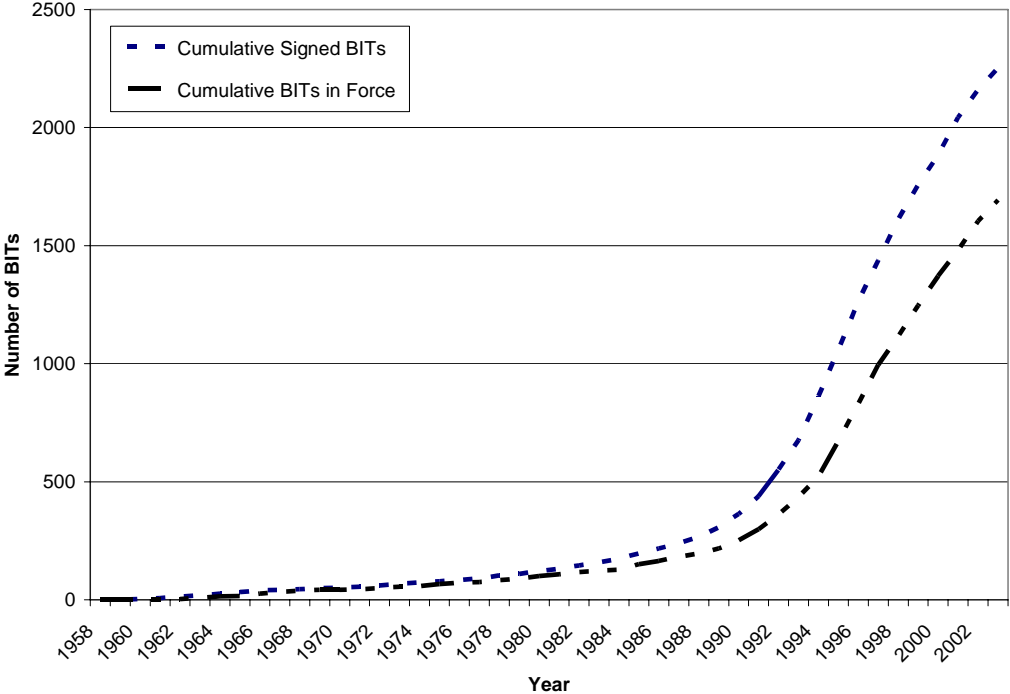


Figure 2: Ratio of Mutually-Ratified to Signed BITs, 1958-2003

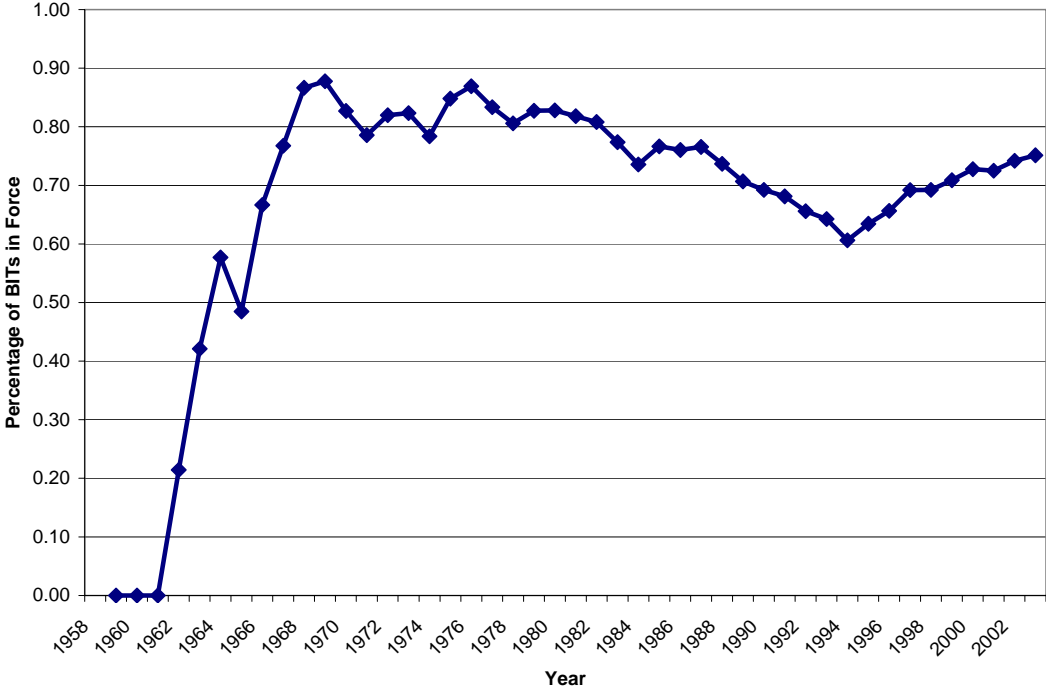


Table 1. Multivariate Models – Cox Proportional Hazard

| Model | 1 | 2 | 3 | 4 |
|------------------------------|-------------------|-------------------|-------------------|-------------------|
| Legislative Hurdles | .69*** (-7.67) | .70*** (-7.39) | .70*** (-7.38) | .69*** (-7.66) |
| Polcon | | 1.32 (1.38) | 4.17** (1.95) | |
| Polcon² | | | .22* (-1.72) | |
| Democracy | 1.02** (2.07) | | | 1.02** (2.12) |
| Democracy² | | | | .99 (-1.15) |
| Common Law | 1.06 (.98) | 1.07 (1.15) | 1.05 (.85) | 1.06 (.96) |
| Law/Order | 1.10*** (3.62) | 1.10*** (3.67) | 1.10*** (3.72) | 1.10*** (3.62) |
| Embassies | 1.00* (1.73) | 1.00 (1.47) | 1.00* (1.69) | 1.00* (1.71) |
| Host FDI/GDP | .84*** (-5.30) | .83*** (-5.37) | .84*** (-5.75) | .84*** (-5.41) |
| Home FDI/GDP | 1.03*** (2.63) | 1.03*** (2.99) | 1.03*** (2.96) | 1.03*** (2.89) |
| Common Language | 1.35** (2.55) | 1.35** (2.54) | 1.35** (2.55) | 1.36*** (2.61) |
| Colonial Ties | .37** (-2.56) | .35*** (-2.79) | .38*** (-2.57) | .38** (-2.56) |
| Alliance | .85 (-1.33) | .83 (-1.50) | .84 (-1.45) | .85 (-1.35) |
| N | 1,429 | 1,429 | 1,429 | 1,429 |

Note: *p<.1; **p<.05; ***p<.01 (two-tailed test). Figures in parentheses are z statistics.

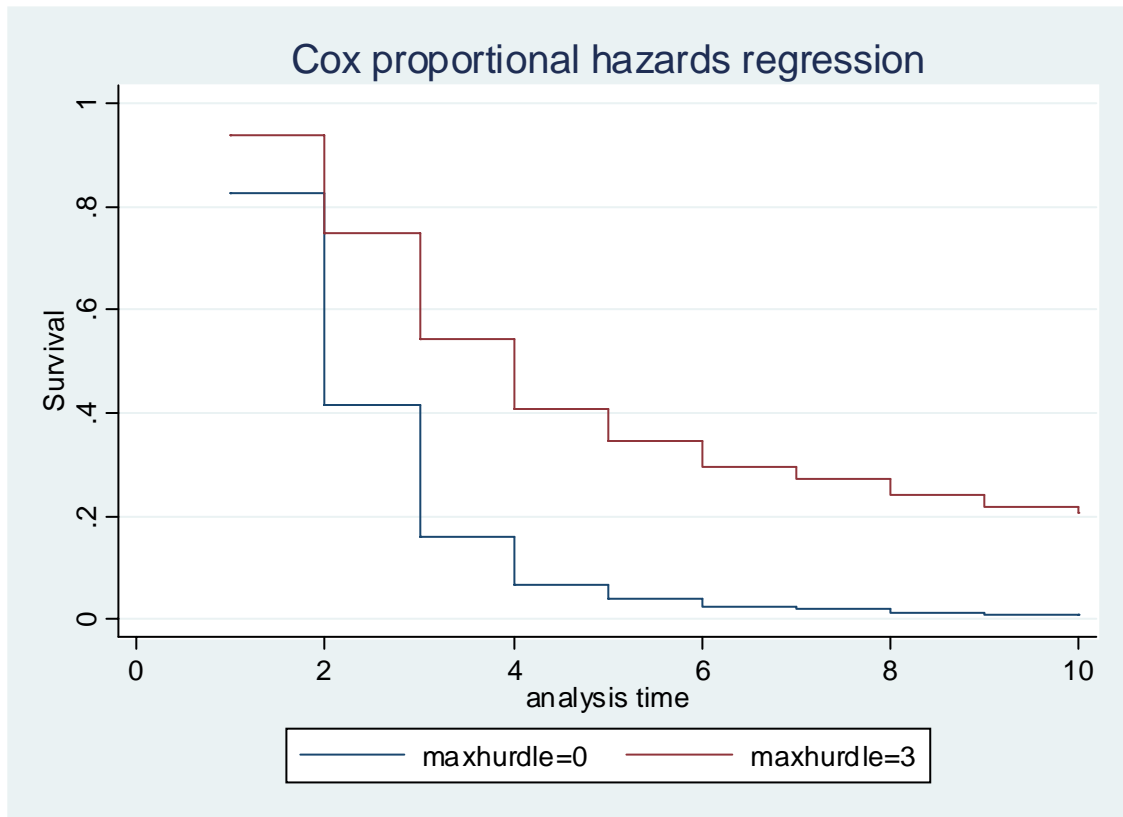
Hazard Ratio: numbers > 1 indicate higher risk of termination; numbers < 1 indicate lower risk of termination.

Table 2. Predicted Hazard Ratios

| Variable | – STD / 0 | + STD / 1 |
|-----------------------------------|------------------|------------------|
| LHURDLES | .55 | .85 |
| POLCON | .61 | .66 |
| POLCON, POLCON ² | .76 | .78 |
| COMMON LAW | .65 | .68 |
| DEMOCRACY | .60 | .68 |
| DEMOCRACY, DEMOCRACY ² | .60 | .60 |
| LAW AND ORDER | .58 | .74 |
| EMBASSIES | .62 | .68 |
| FDI IN | .79 | .53 |
| FDI OUT | .66 | .71 |
| ALLIANCE | .65 | .56 |
| COMLANG | .65 | .88 |
| COMCOL | .65 | .24 |

Note: standard deviations are reported for continuous variables; zero and one for dichotomous variables. For *DEMOCRACY* and *DEMOCARCY*² an increase in one standard deviation exceeds the maximum possible scores. Prediction is based on the maximum score (10). Unless indicated otherwise, predictions are based on Model 1 in Table one. The base line for comparison is a hazard ratio of .65. In the baseline prediction all continuous variables are held at their mean and all dichotomous variables held at 0. Prediction for *POLCON* is based on model 2; the baseline for comparison is .64. Prediction for *POLCON* and *POLCON*² is based on model 3; the baseline for comparison is .80. Prediction for *DEMOCRACY* and *DEMOCARCY*² is based on model 4; the baseline for comparison is .62.

Figure 3: Substantive Effect of Legislative Hurdles



Appendix

Summary Statistics

| Variable | Observations | Mean | Std. Dev. | Min | Max |
|------------------------|---------------------|-------------|------------------|------------|------------|
| TIME FORCE (DV) | 1745 | 2.98 | 2.53 | 1 | 40 |
| LHURDLES | 1745 | 1.6 | .61 | 0 | 4 |
| POLCON | 1742 | .45 | .16 | 0 | .71 |
| POLCON ² | 1742 | .23 | .12 | 0 | .51 |
| COMMON LAW | 1745 | .32 | .46 | 0 | 1 |
| DEMOCRACY | 1745 | 7.50 | 4.60 | -9 | 10 |
| DEMOCRACY ² | 1745 | 77.5 | 30.4 | 0 | 100 |
| LAW AND ORDER | 1558 | 3.69 | 1.29 | 0 | 6 |
| EMBASSIES | 1742 | 54.11 | 36.75 | 1 | 151 |
| FDI IN | 1742 | 2.53 | 1.19 | -1.07 | 3.90 |
| FDI OUT | 1603 | 1.13 | 2.78 | -26.06 | 14.64 |
| ALLIANCE | 1742 | .08 | .27 | 0 | 1 |
| COMLANG | 1742 | .07 | .25 | 0 | 1 |
| COMCOL | 1742 | .01 | .12 | 0 | 1 |

Correlation Matrix

| | LHURDLES | DEMOCRACY | DEMOCRACY² | POLCON | POLCON² | COMMON LAW | LAW AND ORDER | EMBASSIES | FDI IN | FDI OUT | COMLANG | COMCOL | ALLIANCE |
|------------------------------|-----------------|------------------|------------------------------|---------------|---------------------------|-------------------|----------------------|------------------|---------------|----------------|----------------|---------------|-----------------|
| LHURDLES | 1.00 | | | | | | | | | | | | |
| DEMOCRACY | .22 | 1.00 | | | | | | | | | | | |
| DEMOCRACY² | .16 | .77 | 1.00 | | | | | | | | | | |
| POLCON | .21 | .56 | .41 | 1.00 | | | | | | | | | |
| POLCON² | .21 | .44 | .34 | .95 | 1.00 | | | | | | | | |
| COMMON LAW | -.01 | .08 | .07 | -.06 | -.10 | 1.00 | | | | | | | |
| LAW AND ORDER | -.11 | -.02 | -.06 | .10 | .09 | -.14 | 1.00 | | | | | | |
| EMBASSIES | -.02 | -.15 | -.12 | -.08 | -.04 | -.01 | .06 | 1.00 | | | | | |
| FDI IN | -.09 | -.09 | -.15 | .07 | .06 | -.01 | .52 | .07 | 1.00 | | | | |
| FDI OUT | .04 | .25 | .34 | .15 | .14 | .12 | .02 | .08 | .12 | 1.00 | | | |
| COMLANG | .02 | -.07 | -.04 | -.02 | -.04 | -.01 | -.06 | .05 | .05 | -.01 | 1.00 | | |
| COMCOL | -.07 | -.19 | -.14 | -.17 | -.13 | .05 | -.05 | .02 | .02 | -.04 | .06 | 1.00 | |
| ALLIANCE | .05 | -.11 | -.11 | -.01 | -.01 | -.04 | -.01 | .03 | .08 | -.10 | .52 | .01 | 1.00 |

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