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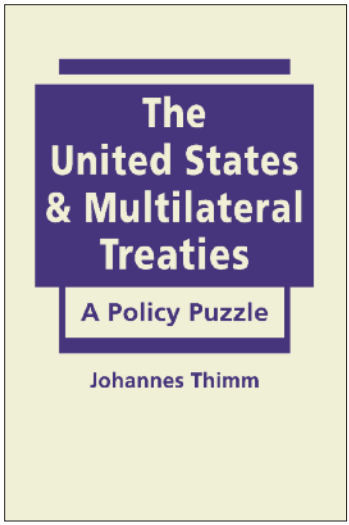
The United States and Multilateral Treaties: A Policy Puzzle

Johannes Thimm



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The United States and Multilateral Treaties

Shortly after President Barack Obama took office in 2009, his administration informed the US Senate of its priorities with regard to treaties. The newly elected president wanted the United States to join a number of multilateral treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women, the Comprehensive Test Ban Treaty, and the United Nations Convention on the Law of the Sea. Before a treaty can be ratified, the Senate is required to give its "advice and consent." Yet, in the years since Obama entered the White House, none of the above-mentioned treaties have even reached the Senate floor for consideration. The Senate did, however, consider the United Nations Convention on the Rights of Persons with Disabilities, a treaty designed to provide disabled people with equal opportunities. Since the United States is a global leader in that effort and the convention was closely modeled on the 1990 Americans with Disabilities Act, the international standards set by the treaty required practically no change in US policy. Nevertheless, when the Senate voted on the convention on 4 December 2012, the result of 61 votes in favor and 36 opposed did not meet the two-thirds threshold needed for ratification. This outcome did not come as a surprise to those that follow US foreign policy. More often than not, America remains outside of multilateral treaties, including some that enjoy almost universal membership otherwise. This has led to accusations of US unilateralism.

Why is the United States so reluctant to join global multilateral treaties? And how does it determine which treaties to join? The answers to these questions are less straightforward than they might seem. The answer that seems obvious – national interest – provides an explanation that is more justification than underlying reason for certain policy preferences. Reasonable people disagree about America's interests, but

attributing the failure to ratify the Law of the Sea Convention, a treaty that every president from Ronald Reagan to Barack Obama has supported, to national interest probably raises more questions than it answers. We need better explanations for US treaty policy.

In this book I examine the question of US treaty participation in a systematic manner. I open up the black box of American unilateralism with respect to global multilateral treaties by investigating the politics of treaty negotiation and ratification. Among the wide range of ways for nations to cooperate, multilateral treaties are a particularly important and accepted instrument. They can be used to establish new norms of behavior. They also form the legal basis for creating organizations to overcome problems of collective action or to help enforce agreed-upon rules. Because the United States is the most influential country in international politics, its participation is crucial to the success of any multilateral endeavor.

In order to reveal the conditions for treaty support, my aim is to answer the following question: *Why does the United States join some multilateral treaties while rejecting others?* The question may appear simple enough, but as I show below, the answer touches on a wide range of issues that are hotly contested in the debate on US unilateralism. Formulating the question in this way makes the *variance* in US behavior the central puzzle of the study and requires the consideration of both treaty participation and rejection cases. Such an approach has many benefits and distinguishes this analysis from others that focus only on agreements Washington refuses to join. Answering why the United States participates in some agreements but not in others also sheds light on a challenge with important policy implications: under what conditions is American support for a treaty obtainable?

My argument, in a nutshell, is that the causes of Washington's reluctance to enter legally binding international agreements lie first and foremost in its domestic institutions. The unique features of the American political system – in particular, but not limited to, the powerful role of the US Senate with regard to treaty ratification – create an exceptionally high number of veto players in the treaty process. These conditions result in high barriers at the institutional level that explain why nonparticipation is the norm. Given these structural obstacles, the real puzzle is not why the United States does not support more treaties, but rather how it manages to join any binding international treaties at all.

This book is a contribution to an ongoing debate. A number of scholars note the ambivalent relationship between the United States and international institutions.[1] In particular, the controversial policies of

George W. Bush's presidency garnered a great deal of attention around the world. Scholars point to a number of reasons for the nature of US policies, including the powerful position of the United States in the international system and a particular culture of American exceptionalism. I argue that these explanations are less convincing than one that puts domestic politics at the center of the analysis. This becomes clear if one looks at US policies toward multilateral treaties in a more systematic way than that taken by the research conducted thus far.

The existing literature on the relationship between the United States and international institutions looks at a broad range of issues. It covers everything from the US approach to specialized UN agencies to the unilateral use of force, making the comparison of US policies in different situations nearly impossible. There is a fundamental gap with regard to scale. On the one hand, a great number of case studies address US policy with regard to a specific institution. These case studies are insightful and detailed, but they mostly rely on highly contingent, *ad hoc* explanations of US behavior. While interesting empirically, these accounts provide little basis for generalizations. On the other hand, a number of survey studies and *tours d' horizon* of US behavior with regard to international institutions have also been conducted. Because of the high level of aggregation, there are natural limitations to these analyses.[2]

This book aims at the middle ground between the two ends of the spectrum, the single case studies and macro surveys. By comparing a small number of cases with varying outcomes in a systematic manner, I attempt to bridge the gap between the results of single case studies that have not been tested beyond their specific circumstances, and over-generalizations that provide little insight into the reasons for individual policy outcomes. A central component of my work is integrating the diverse explanations that have been proposed into a coherent theoretical framework and then applying them to a clearly delimited universe of empirical situations. This enables me to systematically test prevalent explanations and specify the conditions for their validity, laying the groundwork for further cumulative theorizing.

The first step in a meaningful comparison is to define the scope of the phenomenon under investigation. This is often a problem with works that investigate "multilateralism" in such different dimensions as US regional policy, its relationship with specific international organizations, or policies in a given issue area, such as trade. These are all different phenomena resting on different understandings of multilateralism. The same is true for different policies often referred to as "unilateralist,"

such as the use of force without approval from allies, non-compliance with international humanitarian law, or opposition to international treaties. These policies do not necessarily have the same causes. Each of these types of unilateral behavior can occur individually without affecting the other two types. To illustrate, comparing the Bush and Obama administrations on the unilateral use of force might yield different results than comparing their compliance with international humanitarian law or their policy toward multilateral agreements would. Thus the different types of behavior cannot easily be compared with each other, and they have to be studied separately to allow for any kind of systematic inquiry. Referring to all three types of behavior as unilateralism obfuscates important differences. I chose to concentrate on US treaty behavior, which is well suited for systematic comparison due to the formalized nature of treaties and the standardized character of their negotiations.

In this book I use a qualitative definition of the term "multilateral." Under a broad numerical definition, "multilateral" refers to any type of coordinated action between three or more parties, as opposed to unilateral action or bilateral coordination. A qualitative or substantive definition is more demanding with respect to the nature of this coordination. According to John Ruggie (1992: 571), multilateralism refers to "institutional form which coordinates relations among three or more states on the basis of 'generalized' principles of conduct."[3] In the strictest sense, this means that the same rules should apply to all participants. Ruggie's other criteria of "diffuse reciprocity" and "indivisibility" also imply that true multilateralism is not exclusive, but open to all parties willing to participate. Such a restrictive qualitative understanding excludes certain regional arrangements like the North American Treaty Organization (NATO) or the European Union (EU), and forums like the Group of Eight (G8). It applies most accurately to global treaties.

US Policy toward Multilateral Treaties in Context

American reluctance to enter binding international treaties is widely recognized in the literature on the subject. Yet systematic overviews of US treaty practice or quantitative assessments are rare. Since a number of organizations serve as depositary agencies, there is no single database that includes all treaties, making it difficult to compile quantitative data. The Minnesota-based Institute of Agricultural and Trade Policy (IATP) has combined a number of sources and compiled a list of 550 treaties that are relevant to the United States, of which it has ratified 160 treaties

– just under 30 percent.[4] This figure is a useful first approximation, but by counting the formal treaty actions, we learn little about the scope and significance of each one. How do we assess the relative importance of a technical agreement on compatibility standards in the telecommunications sector compared to the WTO treaty, which requires states to give up substantial aspects of their sovereignty? And should additional protocols – which are technically separate treaty actions – be assigned the same weight as the treaty they complement? The IATP (2005: 26) has addressed these difficulties by selecting 43 treaties in five issue areas based on "a high public profile, timeliness and socioeconomic importance." The following table provides an overview of American participation in those 43 treaties:

Table 1.1

Issue Area[5]	**Significant Treaties**	**Significant Treaties the US has joined**
Rule of Law	1	0
Labor Rights	8	2
Human Rights	15	6
Environment and Sustainable Development	11	3
Peace and Security	8	4

Data Source IATP (2005: 27-28)

The IATP report (24) also notes that the United States "tends to be more supportive of treaties that expand a country's access to commercial resources and foster trade." Defining which treaties are to be considered "important", of course, fundamentally depends on the research interest. Focusing just on treaties with high levels of international support, Nico Krisch emphasizes the exceptional nature of the United States' failure to participate. Krisch looks at treaties deposited with the UN Secretary-General that *more than half of the world's states* have ratified. This is true for 38 treaties, of which the United States has ratified 24. The US

ratio of ratification is 63 percent, compared to a 76 percent global average and 93 percent among the G8 countries. To further highlight the exceptional nature of US reluctance, observers frequently refer to treaties with near-universal membership, pointing out the company the United States keeps by refusing to join. A favorite example is the Convention on the Rights of the Child, which, besides the United States, only Somalia has not acceded to.

Another frequent practice is to list prominent treaties that the United States has not ratified or has rejected. Among the agreements often referred to are[6]:

- the Kyoto Protocol Against Climate Change
- the Ottawa Convention Against Anti-Personnel Mines
- the Rome Statute for the International Criminal Court (ICC)
- the Comprehensive Test Ban Treaty (CTBT)
- the Verification Protocol to the Bacteriological (Biological) and Toxin Weapons Convention (BWC)
- the Program of Action Against the Illicit Trade in Small Arms and Light Weapons (SALW)
- the Anti-Ballistic Missile (ABM) Treaty
- the Convention on the Rights of the Child (CRC)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- the Convention on the Law of the Sea (UNCLOS)
- the Convention on Biodiversity
- the Vienna Convention on the Law of Treaties
- the UN Convention on the Rights of Persons with Disabilities (CRPD)

Besides the outright refusal to join agreements, many authors point to the long delays between signing a treaty and joining it by ratification (Krisch 2003: 47). In one extreme example, the Genocide Convention, the process took 40 years (Power 2000). The United Nations General Assembly adopted the convention and President Truman signed it in 1949, but the Senate did not ratify it until 1986. Congress did not pass implementing legislation until 1988, and the following year the treaty finally took effect for the United States.

Also important in this context is the Washington's extensive use of reservations, understandings, and declarations – often referred to as RUDs (Chayes 2008; Krisch 2003: 59; Roth 2000). The Senate has a

long history of using reservations to limit the effects of a treaty on US policies. Lewis Henkin (1995) observes that, in the context of human rights conventions, the reservations serve five main purposes: to ensure the supremacy of the US Constitution in cases of conflict; to prevent treaties from changing existing US law and practice; to deny the International Court of Justice jurisdiction over US action; to ensure compatibility with American federalism; and to declare treaties not "self-executing," i.e., to require implementing legislation before a treaty can take effect under US law and be applied by American courts.[7] Ever since the ratification of the Genocide Convention, the US Senate has routinely included a condition declaring the treaty not to be self-executing in the resolution of ratification (Krisch 2003: 61). This practice vindicates the position of Senator Bricker, who unsuccessfully pushed for a constitutional amendment prohibiting self-executing treaties in the 1950s, the so-called Bricker amendment (see Henkin 1995: 348-349). Kenneth Roth highlights the fact that US practice with regard to human rights treaties effectively denies US citizens any human rights beyond the ones they already enjoy under US law (Roth 2000).

Research Design

The existing literature and the brief empirical survey of US treaty practice confirm the United States' reluctance to enter multilateral treaties. In light of this observation, the approach of most studies on the subject is somewhat paradoxical: expecting a more consistent US engagement in international institutions, many authors focus on explaining why the United States does *not* participate in certain institutions or treaties. This creates a certain bias towards examples of American nonparticipation in the more detailed case studies. From a normative standpoint, US reluctance to enter treaties may be puzzling. From a strictly empirical perspective, however, nonparticipation is the norm. More often than not, Washington refuses to commit to multilateral treaties, whether through outright rejection, failure to ratify a treaty, or the inclusion of reservations limiting the effect of a treaty on US policy. Viewed from this perspective, the treaties that the United States ratified are at least as interesting as the ones it rejected. Looking at the exception of treaty participation can tell us more about the rule of nonparticipation. If we take this into account, the interesting question turns into the following: Under what conditions is the United States willing to join binding multilateral treaties? This question is still compatible with a normative preference for multilateral policies, but is sounder methodologically.

To understand US policies toward multilateral treaties, it is necessary to include both cases of participation and nonparticipation. To put it in methodological terms, to avoid selection bias it is necessary to ensure variance of the dependent variable. This rationale is key to formulating my central research question in a way that makes the variance in US behavior the central puzzle. The question (*why does the United States participate in some multilateral treaties, while rejecting others?*) allows me to avoid normative and theoretical biases.

I analyze the behavior of the US government both in the negotiating phase and – if the treaty is supported by the executive – throughout the process of ratification. This excludes the issue of compliance. In general, US compliance with legal obligations is comparatively high. In contrast to some other states that join treaties, even if they have no intention of complying, the United States only makes legal commitments it intends to keep (Chayes 2008: 48; Koh 2003: 1884).

Methodology

My main research interest is empirical: my goal is to explain a particular aspect of American foreign policy, namely its participation or nonparticipation in multilateral treaties. To approach the research question I draw on International Relations theory, including the realist, liberal, and constructivist schools with a focus on foreign policy analysis (FPA), as well as more policy-oriented literature. I further elaborate the theoretical foundation and how I construct testable hypotheses in the next chapter. Generally speaking, I depart from prevalent explanations in the literature about US multilateralism. On the basis of a theoretical discussion, I reformulate these explanations as hypotheses that can be systematically tested across cases. This is not intended as a theory test in the strict sense. I do not try to evaluate theoretical assumptions on the basis of their general validity or accuracy, but investigate which theories are *useful* for explaining American policies.

In order to test these hypotheses, I use comparative qualitative case studies. In particular, I analyze US policies with regard to four multilateral treaties: the Chemical Weapons Convention, the Landmine Treaty, the Torture Convention, and the Rome Statute establishing the International Criminal Court. My analysis is based on the method of structured, focused comparison, most prominently elaborated by Alexander George and Andrew Bennett (2005). The central feature of the method is to approach each individual case study with a set of standardized questions, which are derived from my theoretical assumptions. This ensures the comparability of the empirical results and

facilitates claims about the possibility for generalization. A qualitative research design only allows for the analysis of a limited number of cases. To minimize the problem of selection bias, I select cases based on the dependent variable, purposefully trying to include the broadest range of outcomes possible.

To further compensate for the small number of cases, I increase the number of observations by selecting treaties that display a certain degree of in-case variance. This is a necessary feature, because when a great number of potential explanatory variables are present, it is not possible to identify the relevant causal mechanisms based on the small number of cases alone. By including comparisons across time as well as across cases, the number of observations is greatly increased. A historical account relying on process tracing allows me to factor in in-case variance and to identify causal chains that led to the observed outcome (Collier 2011).

A wide variety of written documents provide the material basis for the empirical analysis. I draw on existing accounts of US policy, including some detailed investigations and witness accounts from actors involved in the process. I also review the relevant news coverage, with special attention given to *The New York Times* and *The Washington Post*.[8] I place particular emphasis on primary sources, such as statements from government officials, legislative records, and other kinds of available documentation. With respect to the United States' position in the negotiation of the Convention Against Torture, on which there is relatively little information in the public domain, I reviewed cable communications between the State Department and the US mission at the United Nations in Geneva, which I obtained through a Freedom of Information Act (FOIA) request. In addition, I conducted selected interviews with experts and persons involved in the process of negotiation and ratification of these agreements. The interviews are intended to supplement the analysis of the written documentation and to fill gaps in the literature.

Case Selection

The case selection reflects four main considerations. The first criterion is to maximize variance on the dependent variable. Second, the number of independent variables should be limited to ensure comparability. Third, the cases chosen represent a hard test for the research interest of American participation in multilateral agreements. Finally, all four cases are of general relevance: They have received a high degree of public attention and scholarly interest; they are central to the relations of the

United States with other countries; and the substantive issues they regulate continue to be important for policy. The four treaties chosen as case studies are:

- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Landmine Treaty)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention or CAT)
- The Rome Statute establishing the International Criminal Court (ICC)

In accordance with my research design, the most important criterion for the case selection is variance on the dependent variable. The emphasis on variance – my main tool for avoiding selection bias – works on several levels. The most basic level is the binary distinction between participation and nonparticipation: I include one case of each outcome in the respective issue areas.

Table 1.2

US Policy **Issue Area**	**US Party to the Treaty**	**US not Party to the Treaty**
Arms Control and Disarmament	Chemical Weapons Convention	Landmine Treaty
Human Rights and Humanitarian Law	Convention Against Torture	International Criminal Court

The United States ratified the Chemical Weapons Convention in 1997. In the case of the Convention Against Torture, the Senate passed the resolution of ratification in 1990, but the instrument of ratification wasn't deposited with the UN until 1994, after the United States had passed implementing legislation that made torture a criminal offense

under domestic law. The Landmine Treaty and the International Criminal Court were rejected. Beyond the binary distinction between participation and nonparticipation, it is possible to distinguish between different degrees of support and resistance, which further increases variance. If the United States is party to a treaty, it is important to look at the specific conditions of that participation. As mentioned above, Washington regularly attaches conditions in the form of reservations, understandings, and declarations to the instruments of ratification. This occurred with both the Chemical Weapons Convention and the Torture Convention. Looking at the exact nature of the conditions allows for distinguishing between different degrees of support. In cases of nonparticipation, we can also distinguish between different degrees of opposition. In the case of the Landmine Treaty, the United States remained outside of the regime, but did not actively oppose it. In contrast, the US government has at times actively tried to undermine the ICC. These different types of behavior add to the puzzle and increase the range of variance on the dependent variable.

Another way to increase variance is to take into account the evolution of US policy over time. Analyzing cross-temporal variance can complement cross-case variance. In all four cases, there was some degree of variance over time. The policy toward the Chemical Weapons Convention and the International Criminal Court reveal some important turning points, while the evolution in the policy of the Landmine Treaty and the Torture Convention was more subtle. Since the cross-case comparison will be complemented by process tracing, this temporal variance is also part of the analysis.

The second criterion for my case selection is the aim of ensuring comparability by keeping certain context variables constant. This is necessary to be able to isolate potential causal factors from the complex empirical evidence. The present study is also limited to two issue areas. Going beyond a single issue area allows me to investigate whether similarities or differences prevail with regard to different policy areas. The focus on security and human rights is a deliberate one. Trade agreements and environmental agreements are often adopted as executive agreements, not as treaties. To what degree some of the findings can be generalized beyond the issue areas studied here, for example, to environmental or trade agreements, will be addressed in the conclusion. From a greater historical perspective, the treaties are also products of roughly the same era, although the period under consideration from the late 1970s to 2008 does encompass a certain degree of variance. On the international level, important historical events such as the end of the Cold War and the terrorist attacks of

11 September 2001 took place during that time, allowing for discussion of whether or not they constituted turning points for the subject at hand. In contrast, there is considerable variance on the domestic level during the period under consideration. This study spans ten administrations and six presidents from both parties, as well as changing majorities in Congress and the corresponding combinations of unified and divided government.

Excluded from my analysis are institutions that grant the United States a special status or obvious privileges over other participants. Such institutions are not uncommon: The United Nations Security Council grants the permanent members a veto power; the Nuclear Non-Proliferation Treaty distinguishes between the rights of nuclear powers and the rest; and financial institutions like the International Monetary Fund or the World Bank assign weighted voting rights. The cases of this study, in contrast, are treaties in which all participants have the same rights and obligations. They are also open to all interested states. Their institutional design therefore complies with the highest standard of multilateralism. This restriction serves two purposes at once. First, it ensures comparability. It would be problematic to compare US participation in treaties where it enjoys privileges with those where it does not. Second, limiting the sample to treaties treating all participants equally ensures that all cases are tough tests for the research question, detailing under which conditions the United States is willing to join multilateral agreements. The literature suggests that the United States often uses multilateral institutions to exert influence over others, while at the same time seeking to exempt its own policies from any restrictions. The selection of treaties that do not grant privileges excludes such cases.

The requirement that the cases represent a tough test for the central research question is the third major criterion for case selection. Recognizing this and being mindful of the circumstances under which the United States is willing to commit to treaties, I have adopted definitions that set the standard for US participation in multilateral treaties at a high level. The four agreements selected also constitute hard cases in terms of the issue areas concerned. Two of these cases are usually classified as arms control and disarmament treaties, and two are treaties concerning human rights and humanitarian law. Arms control and disarmament are considered part of national security policy. As such, they fall into the realm of "high politics" where states are reluctant to make concessions or cede any of their control to international mechanisms. Human rights is generally considered a "softer" issue that is not as integral to national security, in other words "low politics."

However, as the literature review and the empirical overview have shown, the United States has historically had a conflicted attitude toward international human rights treaties.

All four treaties have received a great deal of public attention. They are considered relevant not only in a historical sense, but also because of their implications for the present and the future. This means that studying them is not uncharted territory. But even though previous studies exist, especially on the ICC and the Ottawa Convention, they have not been systematically compared.

It is important to point out that I focus on multilateral *treaties*. In contrast to the terms "institution" or "regime," which can refer to both formal and informal rules and standards of behavior, the term "treaty" applies only to formalized agreements that are binding under international law.[9] Furthermore, in the American domestic context the term "treaty" has specific implications for the process of ratification. The US system recognizes three types of agreements: executive agreements, executive-congressional agreements, and treaties.[10] While all three are binding under international law, treaties have the most demanding ratification process, based on Article II of the US Constitution.[11] All four cases in this study are treaties in both the international sense and the US sense of the word. Therefore, unless specified otherwise, I use the generic term "agreement" and "treaty" interchangeably. Nevertheless, it is important to keep the distinction between the different approval processes in mind. The unique American constitutional process of ratifying treaties is crucial to my argument, and it should be kept in mind that some aspects of my explanations apply only to agreements that are explicitly treated as "Article II" treaties in the US.

Outline of the Book

The next chapter outlines the theoretical framework, in which potential explanations for US behavior from each theoretical paradigm are addressed. In some cases, certain explanations can be dismissed a priori, either because a quick survey reveals that the empirical evidence is not compatible with the theoretical expectations or because the theory fails to consider the variance in US policies. Explanations that withstand this initial scrutiny are transformed into hypotheses that are tested in the subsequent case studies.

The four case studies are analyzed in four chapters that constitute the core of the book. Each of these chapters is structured roughly in the same manner. After providing some background and context, I describe

each treaty and analyze how it restricts US autonomy. Next I use process tracing to investigate how the decision on each agreement was made. The theoretical premises laid out in the theory chapter inform the research questions I employ to interrogate the empirical data. However, I also take into account factors which are not predicted by theoretical assumptions. I present the results of my process analysis in the form of a thick description of events, highlighting factors that made a difference in the outcome. Each case ends with a summary of the findings.

With each case study, I introduce additional aspects to the analysis. I start with the more clear-cut cases: the International Criminal Court that met strong resistance among policy makers, and the Torture Convention that enjoyed widespread support. I then move on to the two cases in which the decisions are less clear-cut, adding layers to the explanations that provide a more complete picture, which is applicable to a broader range of situations.

In the final chapter, I examine the empirical results of the case studies in comparison. I also attempt to answer the question of to what degree the findings are applicable to agreements beyond these examined here and discuss their policy implications.

Notes

[1] Leaving aside the definitional intricacies of the more specialized literature, I use the terms *institution* and *regime* interchangeably to refer to "sets of rules meant to govern international behavior." (Simmons and Martin 2002: 192-194, definition: 194). The degree of formalization of institutions can range from informal understandings and expectations about behavior to formal organizations with resources, staff, and a secretariat. The term encompasses but is not limited to multilateral treaties, which I define below.

[2] Typical topics of overviews include the United States and international law (Byers 2000; Byers and Nolte 2003; Krisch 2003, 2005; Slaughter 2003), the United States and the United Nations (Luck 1999, 2002, 2003), or American exceptionalism and human rights (Forsythe 1988, 1995; Ignatieff 2005). There are a few notable contributions that also take a more systematic approach: regarding US unilateralism see Skidmore (2011); regarding the opportunity cost of treaty ratification see Kelley and Pevehouse (2015); on human rights see Kaufman (1990) and Moravcsik (2005); on arms control see Krepon and Caldwell (1991) and Krepon et al. (1997); on "moral" regimes initiated by civil society see Busby (2010); on European reactions to US treaty policies see Fehl (2012) and Mowle (2004).

[3] The noun "multilateralism" generally encompasses both multilateral practice and a normative predisposition toward multilateral policies. In the adjective form, the two meanings can be distinguished by using "multilateral" to refer to practice and "multilateral*ist*" to describe a policy preference. I use

multilateralist to refer to a favorable attitude toward participation in multilateral treaties and to a preference for multilateral principles in the substance of the treaty (see Fehl and Thimm 2008).

[4] The IATP has included treaties deposited with the United Nations, its specialized agencies and the International Committee of the Red Cross, as of 2004. In particular the records consulted are the UN Treaty Collection; the Database of International Labor Standards (ILODEX); the World Intellectual Property Organization (WIPO); the UN Food and Agriculture Organization (FAO); the United Nations Department for Disarmament Affairs (DDA); the UN Office on Drugs and Crime (ODC); the International Committee of the Red Cross (ICRC); it also included the Anti-Ballistic Missile (ABM) Treaty, a bilateral treaty deposited with the US government. It has reviewed a total of 854 treaties and concluded that 550 of those are still active and relevant to the United States.

[5] The International Criminal Court, which also contains elements of the Rule of Law and Human Rights, is categorized as Peace and Security.

[6] Borroughs, Deller, and Makhijani (2003); Chayes (2008); Ikenberry (2003); Institute for Agriculture and Trade Policy (2005); Krisch (2003); Malone (2003); Skidmore (2005).

[7] Under the so-called supremacy clause in Article VI, Paragraph 2, of the US Constitution, treaties "shall be the supreme Law of the Land." Unlike in some countries, US jurisprudence does not consider treaties superior to the constitution. The exact status of treaties in relation to US law remains controversial. Litigation has established certain principles with regard to resolving conflicts between domestic law and treaty law, such as the "Later-in-Time" principle. But the exact relationship between treaties and federal and state law remains contested, and is subject to litigation on a case-by-case basis (see Franck et al. 2008: 343-611).

[8] Systematic searches on the relevant subjects in both newspapers were conducted using Lexis-Nexis.

[9] See Article 2 of the 1969 Vienna Convention on the Law of Treaties, available at http://legal.un.org.

[10] Executive agreements are approved by the president in his capacity as chief diplomat, executive-congressional agreements are approved under the same procedure as domestic legislation (simple majority in both houses and approval by the president), and treaties under the treaty clause of the US Constitution are ratified by the president and two thirds of the Senate (Hathaway 2008).

[11] There are no clear rules defining how an agreement is classified (for some guidelines see Garcia 2015: 9). The general assumption is that the most important international agreements should be ratified under the treaty process. However, the executive has increasingly relied on executive agreements to avoid the obstacle of the requirement of Senate advice and consent. There are some trends: Bilateral agreements are adopted more often as executive agreements than multilateral agreements are. Arms control and human rights agreements are usually ratified under the treaty clause. But in some issue areas, such as trade and environmental regulation, the criteria for the adoption of one process or the other are not transparent (see Hathaway 2008).