

# Signed but not ratified: Limits to U.S. participation in international environmental agreements

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## **Abstract**

Why does the United States sign environmental treaties but not ratify them? U.S. presidents have negotiated and signed several environmental treaties that ultimately could not obtain Senate ratification. This paper considers two alternative explanations. First, presidents may face divided government and upcoming elections; elections can increase uncertainty regarding ratification, because they upset majorities and change congressional preferences on issues. Such factors may have caused “involuntary” defection from international environmental cooperation. Second, compensation and compromise on enabling legislation could satisfy enough senators and their constituents to allow the legislation’s passage. Failure to secure ratification may be a result of the president’s overestimating the potential for negotiating a policy package capable of creating sufficient support to obtain Senate ratification. I compare domestic constraints on U.S. participation in three international environmental negotiations – climate change, biodiversity, and chemicals – to assess the alternative explanations. The cases exemplify how domestic institutions affect international environmental cooperation.

## **Introduction**

Why does the United States sign environmental treaties but not ratify them? Two-level game theory says executives will sign only such treaties that can obtain the required support for ratification in the legislature (Putnam, 1988). Over the past 20 years, however, presidents negotiated and signed several environmental treaties that the Senate has not ratified (Schreurs, Selin and VanDeveer, 2009). This paper considers two alternative explanations for such failures. First, presidents may face divided government and upcoming elections that increase uncertainty about ratification because elections can upset majorities and change congressional preferences. Such factors may have caused “involuntary” defection from international environmental cooperation. Second, establishing a compromise that entails compensation for constituent groups so that enabling legislation can pass will improve the probability for securing the Senate’s advice and consent. The president and his congressional allies can advocate compensation programs for key constituency interests, i.e., attempt to overcome congressional resistance through various inducements. Failure to secure ratification may be a result of the president’s overestimating the potential for negotiating a policy package capable of creating sufficient support to obtain Senate ratification.

This paper examines these alternative explanations by comparing the effect of domestic constraints on U.S. participation in three international environmental cooperation areas: climate change, biodiversity, and chemicals. The cases exemplify how domestic institutions affect international environmental cooperation. I argue that institutions regulate executive-legislative relations, resulting in Senate debates that primarily focus on finding compensation programs for strong constituency interest groups as the best avenue for gathering support for policy change. My results therefore point to explanation 2 as the most plausible reason for

why U.S. administrations sign environmental treaties that ultimately fail to obtain Senate ratification.

The paper proceeds as follows: Section 2 provides an overview of ratification procedures and of the role of enabling legislation in the United States. Section 3 describes the two alternative explanations, and places their assumptions within the context of existing literature. Sections 4–6 analyze three domestic debates on treaty ratification and enabling legislation, and section 7 concludes.

### **Ratification procedure and enabling legislation in the United States**

The U.S. Constitution states that the president “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.” To ratify a treaty, therefore, a two-thirds majority – 67 senators – must vote in favor in a Senate floor vote. The president presents an international agreement before the Senate for consideration after he has signed it. The Foreign Relations Committee will then discuss the treaty, and can choose to hold hearings to clarify matters, and to hear expert witnesses. The Foreign Relations Committee subsequently decides whether to report the treaty back to the Senate – favorably, unfavorably, or without recommendation – or to decline to act on it (U.S. Senate, 2001).

The majority leader decides when to schedule a vote so that the Senate can consider the treaty. Senators first consider the treaty’s text, similar to how they would proceed to debate the text of any other bill proposal. The text is open for amendment at any point during the debate. After having debated and amended the bill text, the Senate does not vote directly on approving the treaty. Instead, senators vote on a *resolution of ratification*. If the resolution

gets a two-thirds majority, the Senate formally gives its advice and consent on the treaty (Palmer, 2009).

Under the Constitution, a treaty is part of the “supreme Law of the Land.” Self-executing treaties that do not require enabling legislation automatically become domestic law when they enter into force. Other treaties require enactment of enabling legislation before they become domestic law, and then technically it is the legislation, not the treaty (unless incorporated into the legislation), that is the law of the land (Palmer, 2009). Some treaties expressly call for enabling legislation or deal with subjects clearly requiring congressional action, such as the appropriation of funds or enactment of domestic penal provisions. The executive branch and, less frequently, the courts play an important role in deciding the question of whether a treaty requires enabling legislation or is self-executing. The Senate can include an understanding in the resolution of ratification that explains why certain provisions are not self-executing and that makes clear that the president can exchange or deposit the instrument of ratification only after the enactment of enabling legislation (U.S. Senate, 2001).

### **The effect of domestic institutions on international cooperation**

Over the past three decades, nine environmental treaties were negotiated and signed by the United States but did not receive enough votes for Senate ratification (Schreurs, Selin and VanDeveer, 2009, pp. 8–9). Such empirical evidence contradicts IR theory arguing that presidents will sign only those treaties that can earn Senate ratification, and that presidents will gauge in advance whether treaties have enough support (Putnam, 1988). This paper assesses two alternative explanations for why legislative rejection happens.

The first explanation builds on the assumption that divided government and elections are central features for assessing the potential for ratification of a treaty. Given the requirement for enabling legislation, divided government – control of Congress and the presidency by different parties – can increase the chances for legislative rejection if the preferences of the president and the congressional majority are too divergent. Milner and Rosendorff argue, “Policy-making may be affected when the preferences of the majority in the legislature differ greatly from those of the executive,” and discuss a situation where the presidency and the majority in Congress are controlled by different parties (Milner and Rosendorff, 1997, p. 127). Changes in majority control after an election would cause uncertainty about whether a treaty can be ratified, because the executive could face a different set of preferences than he had foreseen (Mansfield, Milner, and Rosendorff, 2002; Milner and Rosendorff, 1997).

Elections may therefore increase uncertainty because they can upset previous majorities and change congressional preferences on an issue (Milner and Rosendorff, 1997). The preferences of domestic actors – voters, interest groups, and consequently the median legislator – towards a treaty might change because of election results, providing a new map of political representation in the legislature that causes uncertainty. The consequence of uncertainty is that the president cannot foresee whether a treaty can earn the Senate’s advice and consent, and whether enabling legislation can pass in the Senate. He may therefore sign a treaty, believing that ratification is possible. However, an election resulting in a new majority in Congress can obstruct the ratification process if significant divergence exists between the president’s preferences and those of the new majority. Such a situation could lead to involuntary defection. Putnam defines *involuntary defection* as “the behavior of an agent who is unable to deliver on a promise because of failed ratification,” (Putnam, 1988, p. 438). This paper investigates whether divided government and upcoming elections caused involuntary

defection in three cases where the United States signed a treaty but did not ratify it: the Kyoto Protocol, the Convention on Biological Diversity, and the Stockholm Convention on Persistent Organic Pollutants.

An alternative explanation for legislative rejection builds on the assessment that U.S. domestic policy is remarkably stable on many environmental issues, regardless of shifting congressional majorities, divided or unified government, or the president's party affiliation. Consistent constituency pressure from key interest groups in a senator's home state causes stability and influences how the senator will vote on an issue. Constituency pressure is decisive for senators' voting behavior, and consequently policy outcome, because a lawmaker decides his position on a policy issue after assessing how he can best promote constituency interests that ensure his re-election (Krehbiel, 1998; Tsebelis, 2002; Chiou and Rothenberg, 2003; Lee, 2005; Mayhew, 2005). Lawmakers promoting their constituency's interests with a moderate, centrist position tend to have more success in congressional debates. In this context, political parties are weak and therefore the key point for success is to propose bills that can muster large, bipartisan majorities (Krehbiel, 1998). In other words, the senators positioned near the median on an issue have an advantage in determining policy outcome, and will be instrumental for creating sufficiently large majorities across party lines (Tsebelis, 2002, pp. 61–63).

Given the need for enabling legislation to ratify a treaty, the president has an important role to play in attempting to forge a compromise that attracts sufficiently many votes in the Senate. If the president is aware of the economic risks entailed for certain states, he can attempt to engage Senators from those states to negotiate a deal. A sweetened deal that implies compensation and compromise between constituent groups can ease the new legislation's passage. However, the president may risk that when signing a treaty, he overestimates the

chances of establishing a compromise on enabling legislation that can find enough votes in the Senate. Ratification of an international treaty requires a two-thirds majority in the Senate, while passage of enabling legislation requires a three-fifths majority because of Rule 22 that allows extended debate (filibusters). A vote raising the question of whether to end the debate then becomes necessary, with 60 votes – i.e. three-fifths majority – required for cloture. Furthermore, the president can veto legislation passed by Congress, and a two-thirds majority in both houses can override his veto (Krehbiel, 1998, pp. 22–23). To enable ratification it is therefore important to muster a large, bipartisan coalition that is positive to policy change.

Given the supermajority requirement, senators in a fence-sitting position will have a particularly important position in the legislative process because they have preferences that are decisive for building a compromise that can swing the vote. Their decision to join or refrain from filibuster or veto attempts will make or break the required three-fifths or two-thirds majority hurdles. In this paper, I investigate whether unexpected complications regarding finding a sufficiently large majority in the Senate caused legislative rejection in the three selected cases: the Kyoto Protocol, the Convention on Biological Diversity, and the Stockholm Convention on Persistent Organic Pollutants.

In the following, I discuss Senate debates on federal policy concerning climate change, biodiversity and chemicals, and explore which of the two explanations can best explain why presidents have signed treaties that could not be ratified by the Senate.

### **Climate change**

Climate change has been a contested policy issue in U.S. politics for the past 15 years. Recurrent debates have addressed the need for passing federal legislation to price carbon,

which in turn could make it easier to ratify an international climate treaty. At the international level, the United States participated in negotiating the *United Nations Framework Convention on Climate Change* (UNFCCC), and ratified the treaty in 1993. The negotiations that started in 1995 on the UNFCCC's Kyoto Protocol proved more difficult because the protocol called for mandatory, quantified cuts in GHG emissions. The United States signed the protocol in 1997, but did not ratify it. Ratification requires passage of federal enabling legislation that puts a price on carbon and demands cuts in the emissions of large domestic stationary sources. Powerful interest groups like the oil, coal, utility, and manufacturing industries fear that such legislation will hurt them economically.

Democratic leaders have generally promoted a policy agenda that supports mandatory GHG emissions cuts. Consistently, they have kept climate change on their agenda since the mid-1990s, exploiting the agenda-setting privileges in whatever governmental branch they controlled and trying to accommodate the broad middle ground among voters and party members that supports federal climate policy change. For instance, President Clinton pushed for more incentives to develop renewable energy (1993), signed the Kyoto Protocol (1997), and even tried to introduce some domestic climate policy programs via the Environmental Protection Agency and the Department of Energy (1998–2000). However, he never managed to gain the necessary support from congressional majorities during that period. It is possible that Clinton assumed that the Democrats would win the 2000 elections and that Congress would then ratify the Kyoto Protocol, and that he therefore misjudged the chances for ratification. Still, this seems unlikely since the split on carbon pricing within the Democratic Party was evident in many climate policy debates during Clinton's presidency, even as early as the 1993 BTU-tax debate (Schreurs, 2004). Even years later when Democratic leaders in



the 110<sup>th</sup> and 111<sup>th</sup> Congresses pushed for a mandatory, cap-and-trade-based climate policy they could not muster enough support even among fellow Democrats.

Divisiveness and partisanship have characterized the climate policy debate. Climate change became a signal issue speaking to Republican ideological values like small government and individual freedom of choice. Consequently, the Republican Party made no efforts to debate the climate change issue in Congress (Bryner, 2008). Under Republican unified party government (Senate, House, and President) in the 108<sup>th</sup> and 109<sup>th</sup> Congresses, lack of agenda attention stymied the climate policy debate. The Republican leadership tried to keep the climate change issue off the decision-making agenda and away from floor debates. Only when Senator McCain maneuvered around his party's leadership as chair of the Commerce Committee in 2003 and 2005 did the Republican-controlled Senate seriously debate climate policy. Sponsored by Senators Lieberman and McCain, the Climate Stewardship Act was voted down in 2003 and again in 2005 by solid majorities.

However, more pivotal than partisanship is the easily identifiable split that exists among Democrats. Natural resource structures and the impact fossil-fuel resources have on the local economy in senators' home states causes this split (Fisher, 2004, 2006; Skodvin, 2010). Senators from regions highly dependent on oil and coal industries over time have voted more consistently against introducing mandatory climate policy. For instance, in the Senate vote over whether to introduce a federal cap-and-trade system to curb GHG emissions in 2003, ten Democrats from Montana, Louisiana, West Virginia, North Dakota, Michigan, Arkansas, and Georgia voted against the party line (U.S. Senate, 2010). All of these states stood to lose economically from a price on carbon because of dominant fossil-fuel-intensive industries in their state economies. Democratic senators from these states were aware of the potential costs to their constituents and therefore were reluctant to change the status quo.

This split within the Democratic Party continues in the current political debate. Democratic senators from oil and coal states are unlikely to go against constituency interests to vote with the Democratic Party line because doing so will damage their chances for re-election. In the 110<sup>th</sup> and 111<sup>th</sup> Congresses, moderate, centrist Democrats from the Midwest, Rustbelt and West developed a network consisting of about 15 senators that have a fence-sitting position on the issue. With a common interest in defending their state economies from policy changes that will cause negative effects, these Democrats' support is pivotal for inducing policy change.

The network has proved to be a veto player, and will in the future make or break a climate bill in terms of providing the necessary qualified majority. Any climate bill proposal must meet their concerns, and provide realistic alternatives to their home state economies and workforces dependant on fossil-fuel energy. In 2008, the group came together to write to the Democratic leadership expressing their concerns on some key issues in the Lieberman-Warner bill being discussed at the time in the Environment and Public Works Committee, especially regarding international competition, carbon leakage, technology, cost containment, and offsets. These Democratic senators' staffs met regularly, and in the spring of 2009 coordinated their positions for upcoming debates on climate legislation in the 111<sup>th</sup> Congress (Samuelsohn, 2009). The Democratic Party leadership has few options to pressure a senator to vote against his conviction; so, as long as feasible policy alternatives are not available to replace the jobs and economic output from cornerstone fossil-fuel-intensive industries in many states, this split within the Democratic Party will likely persist. In turn, supermajority procedures in the Senate make it difficult to enact climate policy with a price on carbon.

The debate in the 111<sup>th</sup> Congress over climate legislation provides another example of the difficulty of building a legislative compromise that a majority of senators can accept. Even

with a landslide election victory in 2008 for the Democrats, with solid majorities in both the House and the Senate, the supermajority procedures and the search for 60 votes hampered progress for energy and climate legislation in the 111<sup>th</sup> Congress. President Obama actively sought to pass a bill that would price carbon emissions, and understood such legislation could pave the way for U.S. participation in a new climate treaty after 2012 when the Kyoto Protocol expires. The House of Representatives passed a climate bill in June 2009 that would introduce a cap-and-trade system for regulating carbon emissions. Introduced in the Senate, the bill passed the Environment and Public Works Committee in November 2009. With the support of Senators Kerry (D-MA) and Lieberman (I-CT), eight months of closed-door negotiations with Senator Graham (R-SC) produced a draft compromise bill in May 2010. The draft still left open additional room for changes that would help secure the required 60 votes. The bill included 12 titles covering a cross section of the top environmental and energy issues in the United States, from expanded nuclear power, and carbon capture and sequestration to revenue sharing for states that want to conduct more offshore oil and gas production. It also proposed the first-ever mandatory caps on greenhouse gas emissions (Samuelsohn, 2010). For each of the bill's provisions, Senators Kerry, Lieberman and Graham negotiated with individual senators representing states with high stakes in key energy producing or consuming sectors. For instance, a provision protecting coal-fired utilities from devastating economic risks was included to attract the vote of Senator Levin (D-MI). Similarly, a provision protecting farmers from increased energy costs aimed at securing the vote of Senator Lincoln (D-AR).

Despite Barack Obama's election as president, and Democratic majorities in both Houses in the 111<sup>th</sup> Congress, the Republican minority, together with Democrats that vote against the party line, has enough power in the Senate to block legislation intended to significantly

change current climate policy. This means that it is not divided government, i.e., different party majorities in the branches of government that caused U.S. inability to ratify an international climate agreement. Rather, too many senators protecting constituency interests that stood to lose economically from a price on carbon caused the inability to act.

The Obama Administration has an ambitious program to strengthen climate policy and to improve energy independence, and envisions this program as part of the solution to the economic crisis that developed in 2008–2009. They argue that by increasing investments in new, clean technology related to solar and wind energy they can create green jobs to replace lost jobs. Potentially, Obama's proposed policy solutions could change the incentives for how senators cast their votes on climate policy, because they represent viable alternatives for troubled state economies. In the process, however, the Obama Administration must be acutely attentive towards accommodating the pivotal interests represented in the 111th Congress, and especially those of the fence-sitting Democrats.

In sum, the domestic institutional constraints identified above posed challenges to President Obama concerning U.S. participation in international climate cooperation. The United States under Obama is willing to take a more active leadership role in the climate negotiations, but the difficulties in forging an acceptable compromise in the Senate will likely continue to hamper participation. This was evident in the international climate negotiations in Copenhagen in 2009.

## **Biodiversity**

The United States signed the *UN Convention on Biodiversity* (CBD) in New York on June 4, 1993. President Clinton signed the treaty one year after President Bush had refused to do so at

the Rio summit in 1992. This change of policy indicates partisan differences on the issue. Originally, the United States had wanted a treaty to regulate and preserve endangered species. However, as the negotiations progressed the debate addressed more politically difficult issue areas. Developing countries, supported by the EU, introduced provisions giving “countries of origin” the rights to a share from the profits reaped by multinational biotech firms from plant genetic resources discovered on their territory. The debate initiated a difficult discussion about intellectual property rights. Pharmaceutical and agricultural biotech companies in the United States had invested heavily in developing genetic material for industrial and commercial use, like multi-resistant plant seed and various medicines. They opposed the idea of sharing profits with the country of origin of the plant genetic resources they had developed (Rosendal, 2006).

However, parallel to the biodiversity negotiations, the WTO ran negotiations about the protection of intellectual property rights through an international system of patents (TRIPS). The patent system would protect U.S. pharmaceutical and agricultural industries, which had invested brainpower and money to develop new products, from claims by the country of origin concerning sharing profits or knowledge. The legal protection of bioprospecting and biotech patents was very important to U.S. industrial interests. Existing U.S. law became the model for the standards eventually adopted by the WTO. Furthermore, inclusion of these rights in the WTO structure meant very strong protection in terms of the WTO’s instruments for dispute settlement (Raustiala and Victor, 2004).

As in the climate change case, political representatives from states where the biotech and agricultural industries have a substantial economic role in the state economy (and in providing jobs), had a hard time voting for legislation with negative consequences for those industries. More than half of the U.S. states have a substantial farming economy (USDA, 2007).

According to the U.S. Department of Agriculture's National Agricultural Statistics Service (NASS), biotechnology plantings as a percentage of total crop plantings in the United States are about 85 percent for corn, 88 percent for cotton, and 91 percent for soybeans (NASS, 2009). Plant biotechnology allows the transfer of genetic information from new species. Whereas traditional plant breeding involves the crossing of hundreds or thousands of genes, plant biotechnology makes possible the crossing of only one or a few desirable genes. This allows plant breeders and seed producers to develop commercially viable new varieties of crops with specific traits (EPA, 2010). The seeds developed are privately owned, available only through large seed companies, and farmers must pay a premium for them. Farmers using biotech seeds have increased their net returns substantially through savings in production costs, reduced pesticide use, and even yield advantages (NASS, 2009). As U.S. farmers became more dependent on GM seeds, the economic role of biotechnology and seed companies grew. Consequently, politicians in Congress experienced more pressure from their constituents against changing laws that these groups felt worked well. Hence, the TRIPS agreement provided international cooperation that fulfilled U.S. needs better than the CBD did, because it more or less reflected already existing domestic law.

Aware of the patent system developed in the TRIPS negotiations, President Clinton signed the CBD because it addressed important biological conservation concerns not covered by TRIPS. He then sent the treaty to the Senate for ratification, where the Democrats held the majority by 56 to 44. The Foreign Relations committee held hearings on the subject during spring and summer of 1994, and then on June 29 voted 16 to 3 to recommend ratification of the treaty. The committee reported a ratification resolution to the Senate Calendar that had seven “understandings” attached that specified the Clinton Administration’s interpretations of the CBD’s articles. For instance, the resolution says, “It is the understanding of the Government

of the United States of America with respect to provisions addressing access to and transfer of technology that... subject to patents and other intellectual property rights, Parties must ensure that any access to or transfer of technology that occurs recognizes and is consistent with the adequate and effective protection of intellectual property rights, and that Article 16(5) does not alter this obligation,” (Congressional Record, 1994a). The Republican minority in the committee reported objections to the proposed resolution on the same day, because they were not satisfied that the administration had properly addressed their important concerns regarding financing, intellectual property rights, and consequences for land use policies and private property rights (Congressional Record, 1994a). The international negotiations had left many issues open, to be discussed at subsequent Conferences of the Parties. Republican senators argued that they needed a completely negotiated treaty before they would consider ratification.

Riddled with concerns over private property rights, the domestic debate over ratification of the CBD took place during the summer of 1994. Agricultural interest groups like the American Farm Bureau, the National Cattlemen’s Association and the American Sheep Industry Association feared that the CBD would induce stricter land use policies focusing on biological conservation, which would interfere with farmers’ and ranchers’ rights to use their land for farming purposes and economic gain. They pointed to the problems they had already encountered with more interference with private property rights due to the Endangered Species Act, and argued that the CBD would toughen land-use policies even more. When the Foreign Relations committee approved the treaty’s ratification, these interest groups helped organize a massive grassroots campaign to encourage senators to vote against ratification. Faxes and phone calls to lobby lawmakers came throughout the summer from citizens,

interest groups, and grassroots networks, like the Alliance for America, reporting their worry about interference with private property rights (Sovereignty International, 1998).

Majority leader Mitchell (D-ME) announced on August 3 that he would schedule a vote for August 8, but the next day received a letter from Senator Dole (R-KS) and 34 other Republican senators expressing their intention to vote against the resolution on grounds that it had not addressed the concerns raised by the minority (Sovereignty International, 1998).

Senator Mitchell consequently cancelled the August 8 vote. The Administration attempted to reassure Senator Dole and others in a letter. The letter explained that the conservation obligations of the CBD were flexible and would not require significant changes in federal and state responsibilities, or the preemption of existing state, local or tribal laws. The letter says, “Your letter also expresses a concern that the Convention could adversely affect property rights protected by the U.S. Constitution. We are pleased to assure you that this concern is unfounded. We do not see anything in the text of the Convention that could be interpreted to violate the U.S. Constitution. Similarly, U.S. ratification of the Convention would not further restrict the right of state, local and tribal governments in the United States to control land use,” (U.S. State Department, 1994).

After the summer recess, Senator Mitchell announced on 27 September that he would reschedule a vote on CBD ratification. In response on 30 September, several Republicans repeated their opposition during a floor debate. For instance, Senators Hutchinson (R-TX), Burns (R-MT), Craig (R-ID), Helms (R-NC), Nickles (R-OK), and Wallop (R-WY), all from farm states, decried the treaty for not being clear enough about the consequences for laws and regulations that apply to private lands, including lands that lie adjacent to federal wildlife refuges or wilderness (Congressional Record, 1994b). The Republican minority made it very clear that they would vote against ratification, even after the Administration’s attempts at



reassuring them that amendments to current legislation because of CBD obligations were unnecessary.

As a result, majority leader Mitchell never scheduled a new vote. Instead, he made a statement for the record that underlined the Administration's standpoints about the benefits of the treaty, and the broad support it had from a wide array of organizations and citizens across the country. Leading firms and industry associations like the American Corn Growers Association, the Biotechnology Industry Organization, Merck, Monsanto, and the National Association of Wheat Growers had signed a petition of support for the CBD in a letter to Senator Stevens (R-AK), the ranking member of the Energy and Natural Resources Committee. Senator Mitchell said, "Biological resources underpin many sectors of the U.S. economy, including farming and the agriculture industry, and developments of medicines, medical technology, and biotechnology. Some estimate that biological resources contribute more than \$87 billion annually to our gross domestic product. Ratification of the treaty would provide access to plant genetic resources vital to agricultural production. The Office of Technology Assessment reports that biodiversity has added \$3.2 billion to U.S. annual soybean production, and \$7 billion to our corn production. The Administration spent much time ... explaining the treaty to those concerned, and created a memorandum of record to address concerns about the provisions of the document. Still, Republican Senators chose to obstruct consideration of this important convention and by doing so they hinder the economic and environmental benefits that can be derived from full participation in the treaty," (Congressional Record, 1994c). The Senate has not debated ratification of the CBD again since 1994.

Having adequately dealt with the worries concerning protecting the biotechnology industry throughout the TRIPS negotiations, President Clinton had the support of these vital industry

groups when he signed the CBD treaty. However, the Clinton Administration seems to have misjudged the resistance it would meet from other agricultural interest groups towards ratifying the CBD. The President signed the treaty and sought ratification within the same Congressional period, and therefore faced little uncertainty because of elections. Furthermore, he faced a Democratic majority in the Senate. In spite of this, ratification became impossible because 35 Republican senators acted on their constituent's interests and opposed ratification. Because of the two-thirds requirement, a minority of 34 senators can block ratification. Especially senators representing farming and ranching interests were vocal in defending private property rights, like Senators Hutchinson (R-TX), Burns (R-MT), Craig (R-ID), Helms (R-NC), Nickles (R-OK), and Wallop (R-WY). Although the administration tried to address these concerns in several letters to these senators, Clinton was not able to assure them that ratification would not hurt economic interests in their states.

### **Persistent organic pollutants**

International cooperation to strengthen the management of hazardous chemicals from industrial processes has intensified over the past couple of decades. Persistent organic pollutants (POPs) are chemical substances transported across the globe that persist in the environment, accumulate in the body fat of humans and animals, and concentrate up the food chain (Selin, 2009). The 1998 *Convention on Long-Range Transboundary Air Pollution* POPs Protocol covers production, trade, and disposal, the 2001 *Stockholm Convention on Persistent Organic Pollutants* targets production, use, trade, and disposal of chemicals and the 1998 *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* addresses international trade in chemicals.

The United States and the EU are important actors in these international processes, because of

their dominant position as the world's largest producers, users, and exporters of chemicals. While the EU is a supporter for applying the precautionary principle in international chemicals regulations, the United States is reluctant. In general, current U.S. law is more restrictive than the EU's in applying precautionary-based regulation. The United States and EU differ on issues like how many chemicals to regulate, what type and level of risk management to require, and on the use of trade regulations in international environmental agreements (Selin, 2009).

The Bush Administration signed the Stockholm POPs Convention in 2001, even though it allows an international decision-making process to conclude whether to phase-in new substances that the international regime would cover. The Convention has a provision allowing assessment and decisions to expand the number of regulated substances on a scientific basis. This provision causes disagreement on Capitol Hill, since current U.S. law regulates chemicals only in cases of clear evidence of harm.

The 107<sup>th</sup>, 109<sup>th</sup>, 110<sup>th</sup> and 111<sup>th</sup> Congresses have all addressed the question of ratification of the POPs Convention and whether to enact enabling legislation. Before the Senate can provide the necessary advice and consent, Congress must make amendments to two key federal statutes, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1996 and the Toxic Substances Control Act (TSCA) of 1976. Both are acts firmly grounded on risk management standards whereby the EPA must prove evidence of clear harm. For instance, under TSCA, the EPA must provide evidence of unreasonable risk to human health to prevent industries from applying a chemical in their production process. The conflict in congressional debates over ratification centered on how the government should react to any decision by POPs Convention parties to add chemicals to the list of substances controlled under the treaty. Democrats have introduced bills that would require the United States to regulate chemicals

added to the list, while Republicans have proposed legislation that would not compel the government to act in that situation (Morello, 2006).

The debate over POPs enabling legislation began in 2002 when Senators Jeffords (I-VT) and Smith (R-NH) introduced two competing Senate bills. The Senate Committee on Environment and Public Works held a hearing on the proposals, but neither bill advanced before the end of the 107<sup>th</sup> Congress. In April 2004, the Senate Environment and Public Works Committee reported out a new POPs bill sponsored by Senators Chafee (R-RI) and Jeffords, but the bill never was scheduled for a floor vote. Since then, the Senate has not debated ratification of the POPs treaty.

The House of Representatives, however, recurrently has debated enabling legislation for the POPs treaty. After discussions on draft versions of legislation in the 108<sup>th</sup> Congress, the 109<sup>th</sup> Congress considered two competing versions of the required enabling legislation: the Gillmor (R-OH) bill and the Solis (D-CA) bill. The Bush Administration, as well as chemical and pesticide manufacturers supported the Gillmor bill. The bill proposed that before the EPA could implement regulation on a persistent organic pollutant added to the treaty, the EPA must conduct an independent review, and employ a cost-benefit standard rather than the treaty's precautionary approach (U.S. POPs Watch, 2010). In effect, those measures would make it harder for the EPA to regulate a new POP. Furthermore, the Gillmor bill proposed to preempt state legislation that was stricter than the federal standard. The American Chemistry Council supported the bill, but the United Steelworkers, American Nurses Association, and attorneys general in eleven states opposed it (ACC, 2006; Schafer, 2006).

The Solis bill went further than the Gillmor bill to support the treaty's objectives in terms of phasing out the production and consumption of POPs, and to add new POPs to the list of regulated chemicals under the treaty. The bill also proposed that the international scientific

review would be sufficient for adding new POPs, and for strengthening the EPA's authority to regulate new POPs. Furthermore, the bill would allow states to take stronger actions than the federal standard called for to protect health and the environment (U.S. Senate, 2006). As many as 45 environmental, health and labor groups supported the Solis proposal (U.S. POPs Watch, 2010).

In May 2006, the subcommittee on Hazardous Materials and the Environment voted on the Gillmor bill along strict partisan lines. However, the Speaker never scheduled the bill for a House floor vote. At the same time, a House bill to amend FIFRA easily passed through the Agriculture Committee. The committee voted unanimously in favor of the bill in a voice vote on September 19, 2006. However, the bill never came to the floor for a vote. The Democrats introduced a companion FIFRA POPs bill in the Senate in 2005, but the Senate did not debate the legislation after referring it to the Agriculture Committee (U.S. POPs Watch, 2010).

In the 110<sup>th</sup> Congress, the opportunity for bipartisan agreement on POPs enabling legislation continued to be small. Congress remained divided along party lines over the role of the United States in the POPs agreement, and the Bush Administration did not invest sufficient political capital to be able to forge a compromise that could have made possible its stated goal of joining the POPs treaty. No Member of Congress introduced POPs enabling legislation in the House or the Senate in the 110<sup>th</sup> Congress.

In the 111<sup>th</sup> Congress, under unified Democratic Party government, the Obama Administration stressed the importance of ratifying the POPs treaty and urged Congress to move forward with enabling legislation. In March 2010, the House Commerce, Trade and Consumer Protection Subcommittee held a hearing on the topic that revealed partisan division over how the EPA should regulate. Republicans were in favor of using a risk-based standard that protects human health without harming jobs in the chemical industry. "Hopefully we can

come up with a balanced approach," Rep. Whitfield (R-KY) said at the hearing (Goodman, 2010). The questions of how to define TSCA's safety standard, and how to define the EPA's role in proving potential harm by the chemical to health and the environment continued to be contentious points in the reform effort. Environmentalists felt the current standard was too burdensome to allow the EPA to act, while industry groups worried about imposing an overly stringent standard on chemical manufacturers (Goodman, 2010).

The POPs debate has happened during divided government under the Bush Administration and during unified government under the Obama Administration, but has in essence run into the same barriers each time. Strong partisan division regarding the procedure for adding new POPs and regarding the role of the EPA in such a process persists. The involvement of the Bush and Obama Administrations to find a bipartisan compromise has not resulted in a solution yet. Bipartisan compromise is the only way that the treaty can gain enough votes to be ratified, because of the requirements for a two-thirds majority to ratify and three-fifths majority to enact enabling legislation. In sum, the ratification of the POPs Convention has support in Congress, but not enough agreement on enabling legislation exists to clear the supermajority hurdles required for passage. The efforts by Presidents Bush and Obama have not been sufficient. Hence, even though partisanship persisted, the effect of divided or unified government, or whether party majorities changed after an election, was not the pivotal cause for legislative rejection. Rather, the inability of both presidents to design enabling legislation that could compensate and compromise between key industry interests and key environmentalist interests, and the politicians representing those interest groups, was decisive.

## **Conclusion**

The findings here have important implications for understanding how domestic institutions limit U.S. participation in international environmental cooperation on climate change, biodiversity and chemicals. My comparative approach across three cases reveals that even in situations where government switches from divided to unified party majority in the legislative and executive branches, or where partisan differences are strong – like in the climate change and chemicals cases – the most important dimension for passing enabling legislation is finding bipartisan compromise. Party majority is rarely big enough that the majority party can rely exclusively on the votes of its own representatives to ensure passage. Furthermore, the stability over time in the voting patterns of senators is quite high because of consistent constituency pressure. The assumption that unexpected election results or divided government can result in enough uncertainty to cause involuntary defection does not find much support in my analysis. On the contrary, misjudging the potential for forging bipartisan compromises seems to be the most plausible explanation for why U.S. presidents have signed international environmental treaties that the Senate did not eventually ratify. In all three cases, the debate in Congress primarily focused on finding compensation programs for strong constituency interest groups, indicating that this is normally the best avenue for finding enough support for policy change that could induce ratification.

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