

Emerging Voices: Strength and Legitimacy of Control Mechanisms in International Human Rights Treaties: The Moderation Effect

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The study finds that the strength of a human-rights treaty’s control mechanism moderates the effect of the political regime on how states commit to HR treaties. Empirical test of the “moderation effect hypothesis” showed that the overall speed of the commitment process of communist Czechoslovakia and newer democratic regimes (CR and SR) was quite similar. However, while communist Czechoslovakia preferred commitments to treaties with weak control mechanisms, the transitioning CSFR and its democratic successors were more prone to ratify treaties with a strong control mechanism.

What motivates states to ratify international human rights treaties remains an unanswered question in political science. Many tentative explanations for the observed commitment patterns have been proposed, relating e.g. to the character of the political regime of the state ([Moravcsik 2000](#), [Hafner-Burton – Tsutsui – Meyer 2008](#)), the characteristics of a treaty and how they diverge from a country’s practice ([Hathaway 2007](#); [Cole 2005](#)), and foreign policy goals ([Goodman 2000](#), [Heyns and Viljoen 2001](#)), especially accession to the EU ([Guzman 2008](#); [Landman 2005](#)).

A thorough examination of practices in two post-communist countries, the Czech Republic and Slovakia, contributes to this long-standing debate on different commitments patterns (i.e. signatures and ratifications). Our in-depth comparative [study](#) is based on a set of more than 190 human rights treaties; by a “human-rights treaty” we understand any multilateral treaty which includes human-rights provisions (i.e. both predominantly human-rights treaties and treaties dealing with human rights only in parts of their provisions). These are typically treaties which originated in the Council of Europe, the United Nations and the International Labour Organization.

The study covers two countries with similar foreign policy incentives as well as a common historical, political, and legal heritage. Interestingly, the political experience of the both countries has included non-democratic, semi-democratic, democratic and transitional periods. After the fall of a four-decade-long communist regime in 1989, both countries experienced a short intermezzo as a federal democratic republic (“CSFR”), which dissolved on 1 January 1993 following strong calls for national self-determination. Approximately seven decades of common history meant that the two new states shared a common starting point with regards to their international commitments and domestic legal systems. The Czech Republic set off decisively for political and economic liberal reforms in order to quickly integrate into Western international structures and it very soon acquired a reputation of the front-runner among post-communist countries. On the other hand, between 1993 and 1998, Slovakia, under the government of Prime Minister Vladimír Mečiar, slowly moved towards a semi-authoritarian system, characterised by restrictions of political rights, censorship in the media, and economic scandals. At the end of 1998, Mečiar’s government fell due to worsening economic problems and foreign-policy failures (pre-accession talks with the EU and NATO were particularly unsuccessful). After 1998, Slovakia caught up with the other CEE candidate countries and fully reoriented its efforts

towards integration into Western structures. In December 2002, both states successfully concluded their pre-accession negotiations with the EU and subsequently acceded on 1 May 2004.

In this study, we do not break out the period of Mečiar’s government for methodological reasons: its character and position on the democratic – non-democratic axis remains disputable (see [Janos 2000](#), [Kitschelt 1999](#), or [Linz and Stepan 1996](#)). However, the political developments are taken into account when interpreting the data. Experience with different political regimes adds data variability and enables us to focus on the relationship between the character of the regime and state’s commitment activity wherever possible. Academic literature includes regime type among the most important variables influencing the decision to commit. Several authors have pointed out that non-democratic countries with poor human rights records tend to ratify treaties at a higher rate and speed ([Hathaway 2002](#)), in order to demonstrate a low-cost legitimizing symbolic commitment without any actual willingness to comply ([Hafner-Burton – Tsutsui – Meyer 2008](#)). Moreover, this commitment might be further distorted either by the use of reservations ([Neumayer 2007](#)) or a control mechanism too weak to be seen as a credible threat ([Dutton 2013](#)).

Control mechanisms adopted in human-rights treaties (i.e. their strength) differ profoundly: from no control, through an obligation to submit internal reports, to subordination to the jurisdiction of a judicial body. In this short contribution, we focus on the influence of the control mechanism on commitment patterns. Our distinct argument, that the strength of a treaty’s control mechanism moderates the effect of the political regime on how states commit to HR treaties, is then tested on the Czech and Slovak experience.

Empirical Study

Figure 1 mirrors our expectations regarding the frequency and the speed of human rights commitments of the Czech Republic and Slovakia under different political regimes. Based on the above-mentioned theories, we would expect non-democratic communist Czechoslovakia to commit to few human rights treaties, and primarily to those with a weak control mechanism (i.e. with no actual control or limited to domestic reports). However, the process of these commitments should be rather fast, because of the limited need for deliberation. On the other hand, we expect the post-1989 Federal Republic to be strongly human-rights oriented, committing frequently and fast in order to boost its international credentials and spur the proverbial return to (Western) Europe. After the consolidation of new democracies, we expect the speed of ratifications to slow down.

Figure 1: Theoretical expectations (Source: authors)

	Regime	Commitment pattern(expected frequency and speed of commitments)
<i>Communist Czechoslovakia (1948-1989)</i>	Non-Dem	Low commitment activity; medium-fast processHigher for treaties with a weak control mechanism compared to democracies
<i>Federal Republic (1990-1992)</i>	Dem	High + fast for all treaties
<i>Czech Republic (1993 →)</i>	Dem	Medium + slow for all treaties

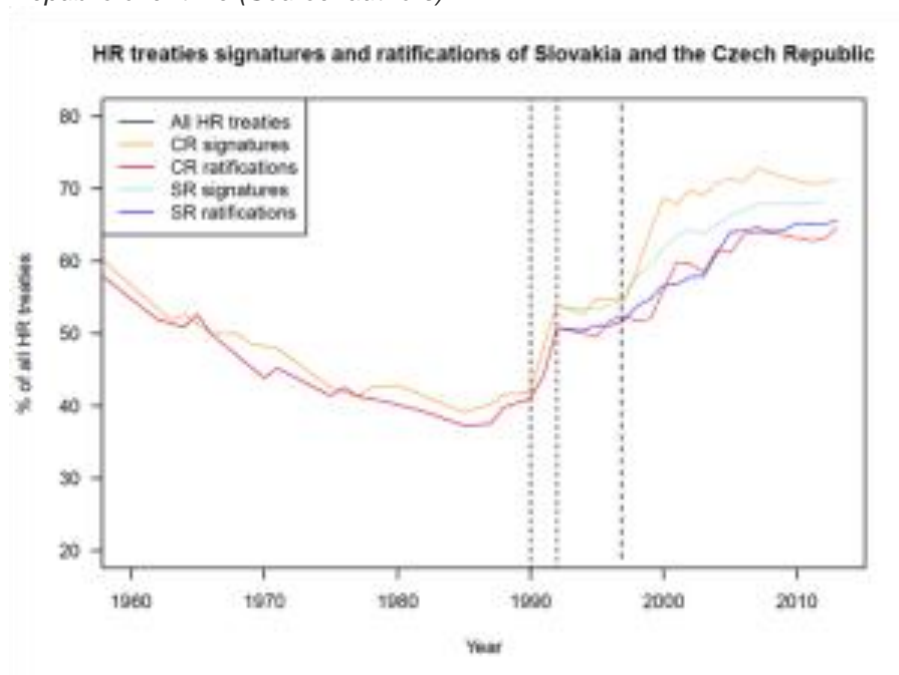
***Slovak Republic
(1993 →)***

Dem*

Medium + slow for all treaties

The overall human rights commitment activity of Czechoslovakia and its successors is presented in Figure 2. The graph shows the cumulative number of human rights treaties signed/ratified as a percentage of all human rights treaties existent at a given point in time. (In order to simplify the graph, Czechoslovakia and the CSFR are both displayed on the “Czech” line.) During the communist era, the number of commitments fell significantly behind the general rise in the number of existing international HR treaties (red and yellow lines), but after 1989 the two countries caught up and their commitment curves rose extremely quickly (the first two dotted lines mark the years 1990-1992).

Figure 2: Human rights commitments of Czechoslovakia, the CSFR, Slovakia, and the Czech Republic over time (Source: authors)



As shown in Figure 2, a boom in commitments is noticeable between the years 1998 (the third dotted line) and 2002, with a peak in 2001. This period is demarcated by (i) the opening of EU accession negotiations in March 1998 when the countries needed to show high levels of support for human rights in order to obtain positive reports from the European Commission, and (ii) their successful conclusion in December 2002. Surprisingly, a distortion of commitment practice under the non-democratic Mečiar government (1994-1998) seems to be insignificant. Mečiar’s government fell behind at the beginning of its term but caught up in 1997, possibly also due to increasing international pressure and criticism.

Figure 3: Length of ratification process by regime

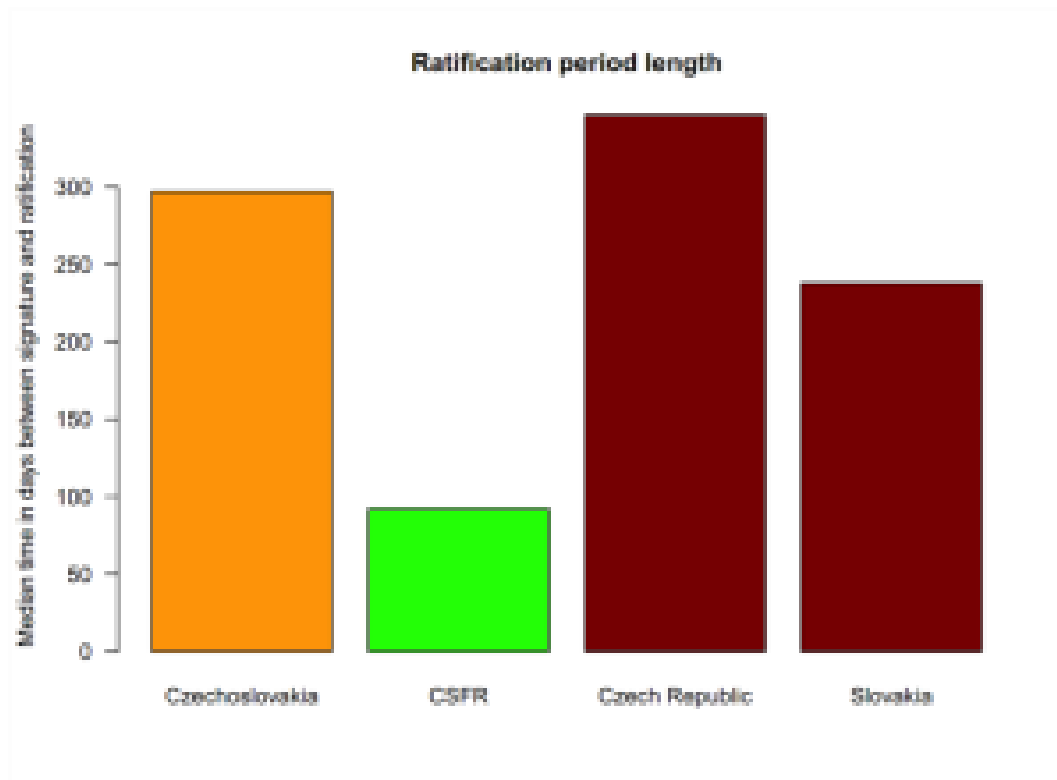


Figure 3 confirms our expectations about the speed of the commitment process. Post-communist federal Czechoslovakia ratified human rights commitments three times faster than its communist or succeeding counterparts. In this period, the CSFR ratified core human rights conventions. The decision to commit was motivated by very strong pro-human-rights and democratic political orientation of the new government. Interestingly, there are also quite significant differences between the Czech Republic and Slovakia, which were caused by the unrestrained Mečiar government acting without real political opposition and by the unicameral Slovak Parliament – as opposed to the bicameral Czech Parliament.

Figure 4: Ratifications of HR treaties by control mechanism strength

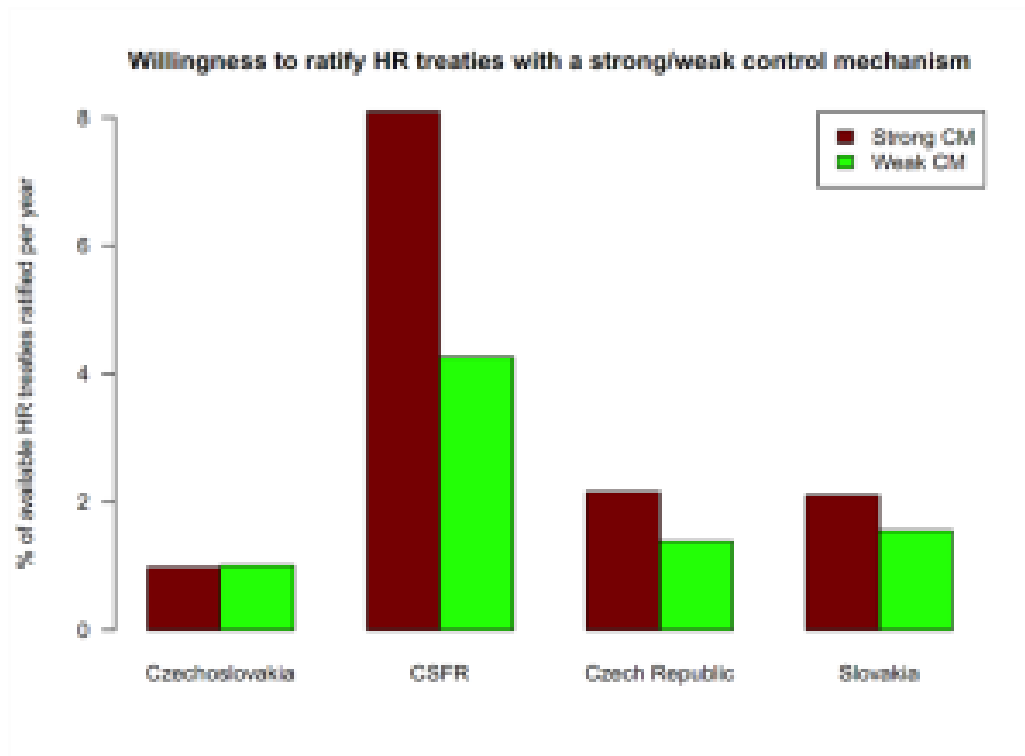
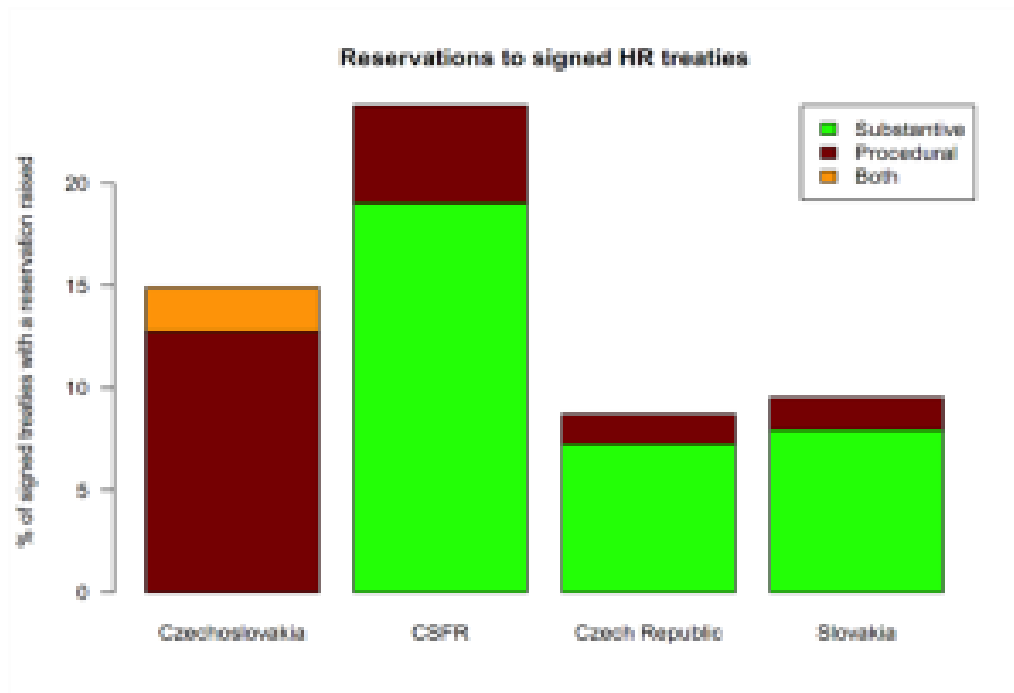


Figure 4 presents interesting data on ratification practices of different regimes in relation to the strength of treaty's control mechanism. Strong control is herein defined as judicial or parajudicial control (i.e. the existence of a court or a committee dealing with complaints), while weak control means no control at all or an oversight solely by domestic reports or treaty-body reports. Figure 4 suggests that all democratic regimes were more prone to ratify treaties with a strong control mechanism (it is worth noting that the overall number of existing HR treaties with strong/weak control mechanisms is fairly balanced) whereas communist Czechoslovakia had a very slightly higher commitment propensity towards treaties with a weak control mechanism.

Effects of a treaty can be significantly distorted by the use of reservations. Figure 5 shows that communist Czechoslovakia adopted procedural reservations towards the jurisdiction of judicial bodies; this means that when Czechoslovakia committed itself to strong human rights treaties, it opted out of the control mechanism. All these reservations were cancelled soon after the fall of the regime. Nowadays, the two democratic regimes tend to raise substantive reservations in order to ratify a treaty while retaining their (potentially incompatible) domestic legal norms (Týč – Janků – Šipulová 2014). Negotiating substantive reservations may indicate that the state takes international HR commitments seriously.

Figure 5 Reservations of Czechoslovakia, the CSFR, the Czech Republic and Slovakia to the signed HR treaties



The initial expectations derived from the theories are generally supported by the empirical data, as illustrated by Figure 6. Communist Czechoslovakia preferred commitments to treaties with a weak control mechanism. However, the overall speed of the process did not differ much from the practice of the Czech Republic and Slovakia. On the other hand, the transitional CSFR significantly increased both the commitment activity and the speed of their adoption. The succeeding democratic states have not been capable of keeping the pace of the ratification process. Further research is needed to identify the main actors in the commitment process, mainly those who represent the key veto players, and the reasons why they typically prolong/oppose the successful closing of commitment processes.

Figure 6: Conclusions

	Regime	Commitment pattern	Empirical conclusion
<i>Communist Czechoslovakia (1948-1989)</i>	Non-Dem	Low and medium fast Higher for treaties with a weak control mechanism compared to democracies	Supported*
<i>Federal Republic (1990-1992)</i>	Dem	High + fast for all treaties	Supported
<i>Czech Republic (1993 →)</i>	Dem	Medium + slow for all treaties	Supported
<i>Slovak Republic (1993 →)</i>	Dem*	Medium + slow for all treaties	Supported