

Understanding International Human Rights Commitments: Control Mechanisms, Legitimacy and Domestic Change

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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 testing 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 ratifying treaties with a strong control mechanism. An analysis of government and parliamentary historical records further showed that the regimes ratified human rights treaties with mixed motivations which developed over time.

Introductory remarks

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 as a 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 disputed (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.

In the second part of the paper, we seek to dig deeper into the motivations of regimes, as represented by their governments and legislative bodies. We searched the historical records in a sample of treaties¹ and tried to identify reasons why the regime ratified the treaty in the minutes of legislative bodies, government preparatory texts, and in various declarations. We sought to uncover any patterns appearing in the argumentation of ministers and parliamentarians. Was the rational or the ideational argumentation more prevalent? How sincere were the commitments of the regimes?

¹ The UN points to eighteen treaties as the most important regarding human rights. Czechoslovakia and then the Czech Republic ratified thirteen of them. We chose at least two treaties for every regime – communist Czechoslovakia (until November 1989), transitioning Czechoslovakia (until December 1992) and democratic Czech Republic. The sample consists of: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

An Empirical Study on the Influence of the Control Mechanism on Commitment Patterns

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.

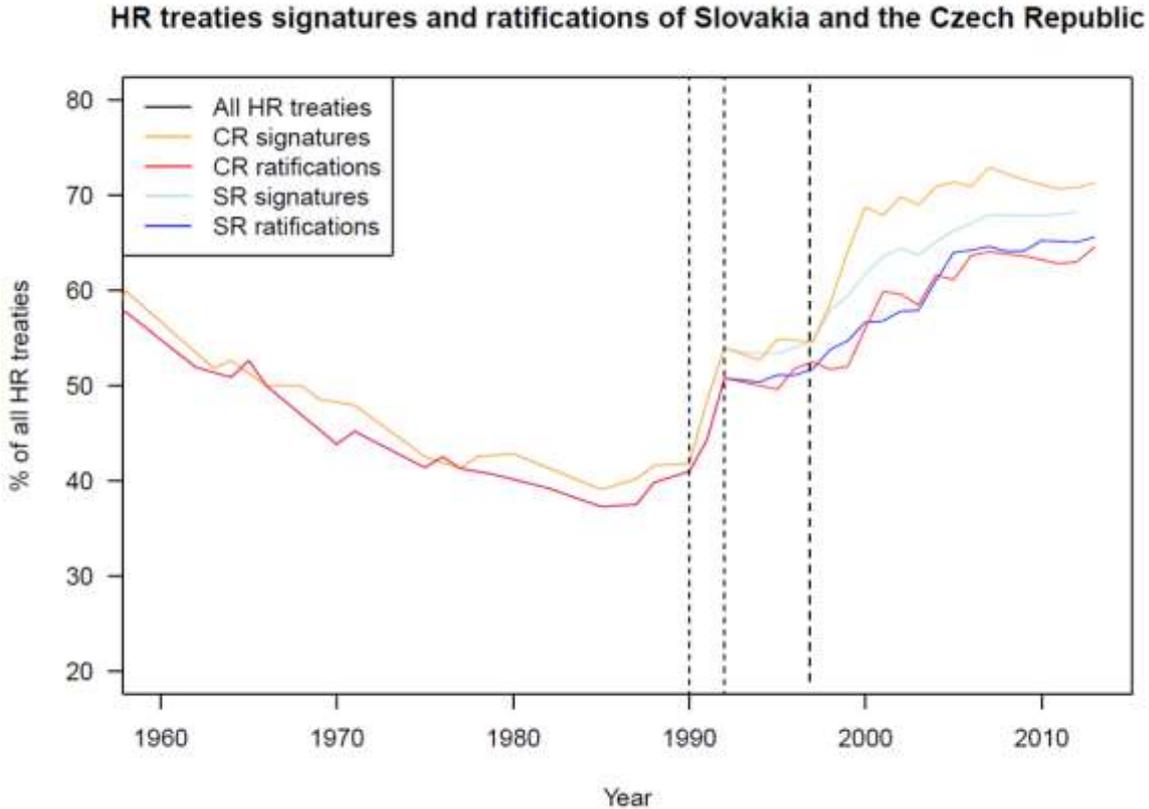
Figure 1: Theoretical expectations (Source: authors)

	Regime	Commitment pattern(expected frequency and speed of commitments)
<i>Communist Czechoslovakia (1948-1989)</i>	Non-Dem	Low commitment activity; medium-fast process Higher 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
<i>Slovak Republic (1993 →)</i>	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.² 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).

² In order to simplify the graph, Czechoslovakia and the CSFR are both displayed on the “Czech” line.

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

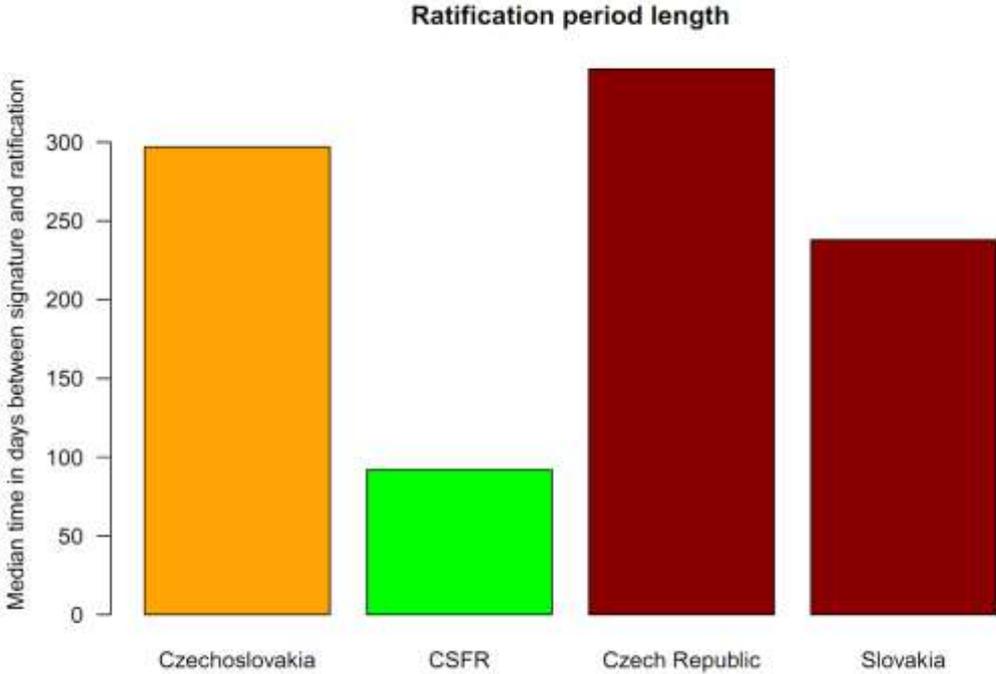


Figure 3 confirms our expectations about the speed of the commitment process. Post-communist federal Czechoslovakia ratified human rights commitments three times faster than its communist or succeeding counterparts. In this period, the CSFR ratified core human rights conventions. The decision to commit was motivated by the 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

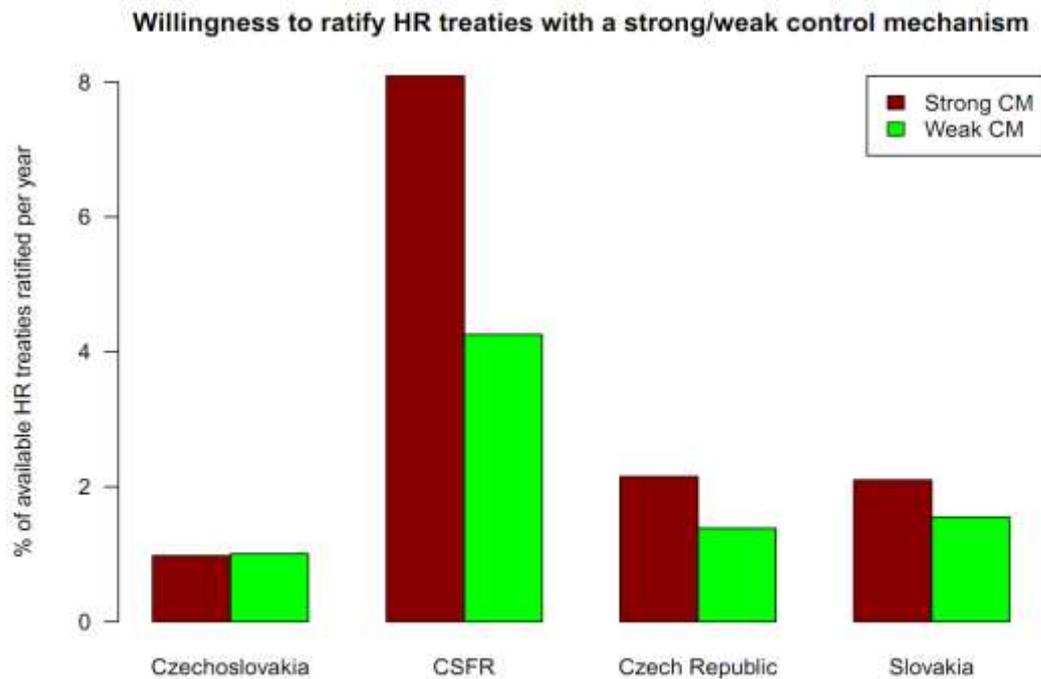
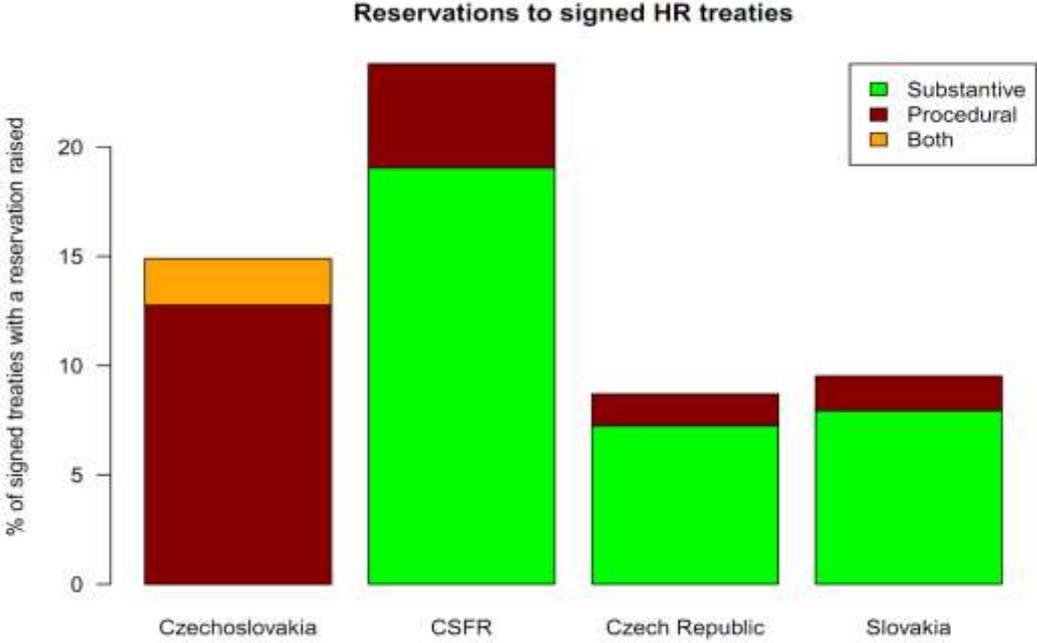


Figure 4 presents interesting data on ratification practices of different regimes in relation to the strength of treaty's control mechanism. Strong control is herein defined as judicial or parajudicial control (i.e. the existence of a court or a committee dealing with complaints), while weak control 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 mechanism³ 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.

³ It is worth noting that the overall number of existing HR treaties with strong/weak control mechanisms is fairly balanced.

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



Regimes and Reasons for Human Rights Commitments

All major works in the field acknowledge that the type of a regime and its international commitments regarding human rights are in an intimate relationship. Stable democracies, transitioning democracies, and non-democracies record different rates of making the commitments and are guided by a different logic (Simmons 2009: 58-111, Posner 2014: 59-66). Similarly, their compliance with the ratified treaty differs to a great extent. Our case selection of Czechoslovakia and its successor state – the Czech Republic – enables a thorough study of a clearly bounded set of states which experienced all three types of regimes. Socialist Czechoslovakia counts as a non-democratic regime from 1948 to 1989, experiencing a transitioning phase up to and immediately following the country’s dissolution into two successor states. The Czech Republic and Slovakia eventually turned into stable democracies in the course of the 1990s.

Czechoslovakia as well as the Czech Republic and Slovakia adopted a number of international human rights commitments; the theoretical puzzle still remains why. Especially striking is a case of a non-democratic regime which takes on human-rights obligations, most probably without sincere belief in their fulfilment. This is especially enabled by weak enforcement mechanisms, low incentives to expend resources to enforce the treaty, and tremendous collective action problems (Simmons 2009: 122). In the following section, we turn our interest to how governments rationalize their decision to put a treaty to the legislative body for ratification. We explore documents and minutes from the meetings of legislatures to find which arguments the government and speakers in the parliamentary debate put forward to

support a human rights treaty. We focus on treaties which the UN itself characterizes as core human rights treaties and which were ratified by Czechoslovakia and then by the Czech Republic. Based on this historic research, we can contribute to the knowledge on how the representatives of the regime understood human rights commitments and how they argued for their support – i.e. why they pushed for the treaties.

Readers most probably live in the reality of democratic states, which does not need much additional explanation; however, at least basic information might be required in order to grasp the character of a communist regime and its attitude to the idea of human rights and international law.

Czechoslovakia 1948-1989 and its approach to human rights and international law

Interwar Czechoslovakia stood as one of the few stable democratic states in the region, with a well-developed legal culture; the Brno School of normative theory, drawing on Hans Kelsen, contributed to the European legal theorizing. The Communist Party came to power in February 1948 and quickly installed conditions far from those in liberal democracies. Particularly until the end of 1950s, the new regime established itself aggressively, eliminating its political opponents through show trials and public denunciations. Individual rights were severely curtailed and the combination of censorship and propaganda introduced. The situation relaxed in the second half of the 1960s, but the Prague Spring did not last for long – the Soviet-led invasion in August 1968 buried any hopes of “socialism with a human face.” The population fell in the phase of general disinterest in 1970s which only began to change (slowly) with the overall softening of international tensions in mid-1980s, finally leading to fall of the Soviet bloc, including the Velvet Revolution of November 1989. The Dissident Václav Havel was elected the president only a month later, and first free parliamentary election took place in June 1990.

Despite the existence of constitutions⁴ that included provisions on rights, the conception of rights and of the position of the individual in society (to say nothing of actual compliance with human-rights standards) remained in sharp contrast to the liberal conception during the four decades of the communist rule. The interests of society have a clear precedence over the interests of the individual; in Czechoslovakia, this found its expression e.g. in far-reaching nationalization and economic planning. The term “human rights” was not used in a national context; instead, the regime talked about providing fundamental rights to citizens. Rights and freedoms were enlisted in constitutions;⁵ nevertheless they required concretization in ordinary legislation. An emphasis was put on social rights, such as the right to work and the right to subsistence, which gave the “real meaning” to provisions on citizens’ equality and democratic freedoms. The function of fundamental rights consisted not in any protection of an individual private sphere against intrusion of the state, but in the distribution of certain material possessions and in the integration of an individual in society. Judicial protection of fundamental rights has been virtually non-existent in the socialist conception. The inclusion of a constitutional court in the 1968 Constitutional Law is emblematic; it has never been

⁴ 1948 “May Constitution”, 1960 “Socialist Constitution” and 1968 Constitutional Law on Czechoslovak Federation.

⁵ The range of rights and freedoms proclaimed in constitutions has been somewhat limited (especially freedoms), see e.g. the “Socialist Constitution” of 1960 which omitted freedom of conscience.

established under communist rule. Similarly, legal academia did not show much interest in studying rights and freedoms (Wagnerová 2009: 342-6, Šabatová 2009).

Socialist constitutionalism rested on the following principles: sovereignty of the working class, leading role of the Marxist-Leninist party, a socialist economy based on common ownership of the factors of production and socialist planning, proletarian internationalism, etc. The 1948 Constitution expressly privileged the working class and its most active and aware “vanguard” assembled in the Communist Party. Other political organizations were largely restricted and controlled by the communists; elections were neither free nor competitive (Šimíček – Kysela 2009, Šimáčková 2009).

The machinery of socialist justice and law worked on completely different principles than that of liberal democracies. The concept of separation of powers was abandoned, and oversight by civil society, public opinion, media etc. was disabled as well. The Communist Party wielded the power and controlled how its aims are fulfilled. Judges cleared the way for prosecutors. Judicial independence vanished and the decay of law continued with the election of judges⁶ and with the installation of lay judges without any proper education. The totalitarian regime strived to completely control the judiciary as an important element of state power. A high percentage of judges were members of the Communist Party with regular party schoolings and were controlled by prosecutors. Moreover, the minister of justice supervised how courts fulfilled their tasks and follow socialist legal theory. Especially in the late 1940s and in the 1950s, the law was used purely instrumentally; even the positive law suffered from breaches by state bodies when it simply contradicted the will of the party. The common interest trumped any other competing considerations. The 1970s and 1980s witnessed a change from judicial (anti-formal) activism of the 1950s to an exaggerated socialist formalism strictly and literally following the wording of legal provisions (Kühn 2009a, Kühn 2009b, Baňouch 2009).

Similarly to other areas of law and politics, communist Czechoslovakia obediently followed the USSR’s lead in its relation to international law. The communist camp progressed from utopian ideas anticipating the extinction of states towards instrumental use of international law. The socialist conception emphasized the equality of states and the right to self-determination, the principle of non-interference in domestic affairs, and the related principle of sovereignty, and peaceful coexistence of states. Czechoslovak legal scholars at first denied the international legal personhood of individuals (Bystrický 1953) and international organizations as the attempts of imperialist states to weaken the principles of state sovereignty and non-interference, but later softened their stance (see e.g. Chaloupek 1969). International human rights protection was termed as unnecessary due to the existence of national guarantees of rights; only the national law could guarantee rights of citizens.⁷ Direct application of UN International Covenants was resolutely rejected.⁸ Moreover, socialist authors denounced human rights treaties as not dealing with the conditions and means of

⁶ In practice, the judges were not elected as there had never been any selection process among multiple candidates, but only a charade confirmation.

⁷ It is interesting that as the “real” sources of international law were considered only treaties, with international customs being acknowledged only later.

⁸ On the other hand, the ICCPR in particular served as a yardstick for Charter 77, probably the most known Czechoslovak dissident organization, which criticized the government for not respecting its own commitments.

actual realization of rights. Socialist states supported cultural and social rights, which they perceived as being overshadowed by individual and political rights (Molek 2009).⁹

Why States Make International Human Rights Commitments

Richard Nielsen and Beth Simmons (2015) recently complained about a lack of empirical evidence when authors discuss motivations of states behind their international human rights commitments. Historical official materials of both communist and transitioning Czechoslovakia and then the Czech Republic provide researchers with an opportunity to learn about the underlying motivations of the regimes when ratifying human rights treaties. The procedure has remained roughly similar over time – the government is the decisive actor in the process, as the one negotiating the treaty. The government then prepares a report intended to persuade parliamentarians to support the treaty. Members of legislative bodies discuss the government report in specialized committees as well as in full sessions of the legislature. Then, the Parliament gives approval to an international treaty.

Hopefully, the introduction to socialist law and its attitude towards international law and human rights shed some light on the peculiarity of the communist regime from the point of view of today's liberal democratic mainstream. Apparently, international human rights treaties have not been perceived as a controversial item on the legislative agenda as no parliamentarians participated at debates and unanimously approved governmental proposals. Several features of governmental justifications constantly repeat and catch the researcher's attention. The communist governments devoted large space to highlight the active and decisive role of communist countries in negotiating the treaties. Moreover, the situations in the Eastern and Western bloc were introduced, and deficiencies in Western human rights protection were emphasized; in comparison Communist countries reportedly stood at the forefront of the fight for human rights. The Czechoslovak governments stressed that international human rights treaties not only formally proclaimed human rights, but especially create conditions for their fulfilment. However, here lies the paradox of the communist approach, because any oversight of the implementation of the treaties' provisions was prevented by disabling any supervisory mechanism. Communist Czechoslovakia typically adopted reservations to any "suspect" provisions and denied ratification of optional protocols. The principles of sovereignty of states and non-interference into internal affairs were followed tightly.

The Czechoslovak governments apparently worked on self-legitimization in the eyes of the domestic public when it repeatedly emphasized that only the socialist regime can guarantee the full realization of human rights. The government rationalistically argued that Czechoslovakia (similarly to other socialist countries) already guaranteed all the rights in the international treaties (and sometimes even provided better protection); therefore the socialist camp initiated and pushed through the treaties. Czechoslovakia used the ratification process of human rights treaties quite instrumentally – it declared that the provisions were already domestically protected, and therefore no adaptation was needed, and moreover pointed to the superiority of socialist regimes compared to the capitalist countries which contributed to further cementing the support for the regime. Additionally, the self-presentation (presumably

⁹ Chaloupek (1969: 676-7) perceived as human rights only citizen rights such as equality before the law, personal freedom and security, fair trial, rights to property, family rights, ban of torture, slavery etc.; but not fundamental freedoms (freedom of conscious, religious freedom of expression and assembly and voting right).

both for the internal and external audience) of the socialist camp as the active and progressive player in the international arena permeated all historical materials. Lastly, one cannot deny a certain sincerity (and rationality at the same time) of the regime when it refused to ratify any provision enabling external supervision over the commitments.

Dramatic developments, which had already started in some countries of the Eastern bloc, came to Czechoslovakia in November 1989, when the “Velvet Revolution” kicked off the transition towards a liberal democracy. The role of the international human rights treaties suddenly changed. Still, parliamentary debates were not particularly lively, because there were only a few experts on the subject in Czechoslovakia; moreover, the idea of human rights itself had a high degree of legitimacy, which played an important role during the overthrow of the regime. Czechoslovakia again presented itself as a great proponent of the idea of human rights, but more openly to the world, in the sense of promoting a single standard of rights internationally. Since then the government has often conceded that the legislation needed adaptation to the requirements of the human rights treaties and at the same time has taken on some external control mechanisms. Such practices hint that the government could use the argumentation of the necessity of the change of laws by referring to international commitments. At the same time, we find many idealistic proclamations of hope in elevating the quality of protection of human rights and dignity of the people not only at home, but also worldwide.

The era of the democratic Czech Republic brought changes to the aforementioned patterns. First, the Czech Republic has considered the explicit support for universal values and to their worldwide propagation as the main objective of its human rights commitments. Second, the international treaties are no longer undisputed. Compared to previous periods, the parliamentary discussions on human rights can become heated and the government has been criticized e.g. for supporting a treaty which is not going to make any change – either because the Czech Republic already guarantees its object of protection in domestic legislation, or a speaker does not believe in its practical realization. In particular, the government has supported treaties which do not require any domestic adaptation, thus silencing conservative critics in the debate voicing sovereignty concerns. The ratification therefore comes at no foreseeable cost, which contrasts to the transitioning period with Czechoslovakia using international treaties as an argumentative instrument for domestic changes. As a result, “signalling” becomes the most emphasized reason for ratification – explicit support for human rights as one of the constitutive elements of the regime which seeks to spread them internationally.

Conclusion

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

The second part of the paper sought to uncover reasons for making human rights commitments. Through the study of historical governmental and parliamentary records, certain patterns appeared in the three periods of different regimes – Communist Czechoslovakia, transitioning Czechoslovakia, and democratic Czech Republic. First, human rights treaties became “business as usual” in the parliamentary debates, with voices criticizing the content of treaties or the decision of the government to start with the ratification process. Human rights treaties lost their “untouchable” appeal which they had shortly after the Velvet Revolution. Nowadays, governments tend to proceed with ratification particularly when national legislation already protects the rights included in the treaty; this stands in contrast to the transitioning period, when the treaties served as a vehicle for changes in legislation. Accordingly, while communist Czechoslovakia focused on internal self-legitimization, trying to present the socialist camp as the only one capable of protecting rights, and transitioning Czechoslovakia turned both to domestic and foreign audiences, nowadays democratic Czech Republic uses ratification particularly for external signalling of its values. Overall, both rational and ideational elements appear in the ratification process and the argumentation.

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