

The United States and International Commitments:
Treaties as Signaling Devices¹

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Abstract

U.S. presidents can choose the form of international agreements that they negotiate. Using the constitution's Article II procedure to gain ratification of a formal treaty is a costly and time-consuming endeavor, so presidents frequently turn to executive agreements that do not require approval by 2/3 of the Senate. Given this alternative, why do presidents ever choose the Article II procedure? This paper argues that treaties serve as a costly signal of intent to comply with the terms of international agreements. The choice between treaties and informal executive agreements is therefore a strategic governmental decision that takes into account the anticipated reactions of other states. A signaling model predicts that high-benefit agreements should take the form of treaties, but that there should not be a consistent relationship between the likelihood that a government is reliable and the chance of a treaty. These propositions are tested on a large dataset of U.S. international agreements between 1980 and 1999.

U.S. presidents can choose the form of international agreements that they negotiate. Using the constitution's Article II procedure to gain ratification of a formal treaty is a costly and time-consuming endeavor, so presidents frequently turn to executive agreements that do not require approval by 2/3 of the Senate. Given this alternative, why do presidents ever choose the Article II procedure? More generally, international agreements can take many different forms. They can be informal understandings, more formal agreements that require domestic approval, treaties that require explicit legislative ratification, or they may create new organizations. The major distinction among these lies in the domestic ratification process. The same agreement may be subject to different ratification processes in the various states that are parties to it.² This paper explores a basic distinction, that between informal agreements and treaties.³ In the United States, informal agreements are generally known as executive agreements. Few explicit rules govern the choice of agreements' form, so the form that any particular agreement takes is the result of strategic considerations.

Scholars of both international relations (Abbot and Snidal 1998, Lipson 1991) and of American politics (King and Ragsdale 1988, Margolis 1986) have considered why some agreements become formalized. However, the theorizing about this choice has been largely ad hoc, not grounded in any particular theoretical framework or model. Empirical studies have likewise been limited, in particular because the data have been analyzed only at a highly aggregate level. This paper addresses both of these issues by

² For example, revisions to European Union treaties must be approved by procedures that are specified by each member state, and that vary from sole executive approval to popular referenda.

³ I use the term "treaties" to refer to agreements that undergo the Article II procedure (requiring approval by 2/3 of Senators present and voting) in the United States. In international law, the term "treaties" is often used to refer to all formal international agreements, regardless of the ratification procedure. In this paper, "executive agreements" refers to all agreements other than treaties.

introducing a basic signaling model of treaties versus executive agreements, and by analyzing a new data set of nearly 5000 U.S. agreements with other countries.

The question of whether a U.S. international agreement takes the form of an executive agreement or a treaty is quite narrowly focused. However, a general approach to answering this question has direct implications for a range of important issues in international relations. One is the impact of domestic institutions on international cooperation (Milner 1997). If domestic institutions influence patterns of cooperation, and if the choice of domestic institutions is strategic, we should expect to see particular patterns in these choices. In the dataset examined here, the institution under study is the domestic approval and ratification process. The model presented in this paper asks whether a state will choose to offer a treaty rather than an executive agreement. However, the form of this model is applicable to a wide range of issues in which the decision over the form of an agreement serves as a costly signal of a state's intent to live up to the terms of that agreement. For example, it could be applied to states' decisions about delegating authority to international organizations (Nielson and Tierney 2003) or creating an international institution (Koremenos, Lipson, and Snidal 2001), to the extent that such decisions are signals of state intentions.

The first section of the paper explains why the choice of agreement form is an interesting question and discusses the existing literature on U.S. use of executive agreements and treaties. It then argues that many approaches to the choice of institutions implicitly or explicitly assume that this choice serves a signaling function. The second section presents a simple signaling model of the choice of treaties. This model gives rise to a number of testable comparative statics results. It implies that the likelihood that any

particular agreement takes the form of a treaty should increase as the anticipated benefits of the agreement increase. It also implies that the percentage of agreements that take the form of a treaty should not be strongly related to the perceived reliability of the country making the choice of institutional form (assumed here to be the United States). This implication stands in stark contrast to predictions that governments that will have a hard time getting agreements ratified will choose executive agreements over treaties as a way of avoiding domestic opposition. On the international level, such a maneuver would signal a lack of reliability and lead to a failure to conclude any agreement.⁴ The third section subjects these implications of the model to a preliminary test using data on U.S. international agreements between 1980 and 1999. The results support the model.

Literature and Motivation

The premise of this paper is that the choice of an international agreement's form is a strategic, taking into account both domestic and international considerations. This choice is of interest because it tells us something about the general issue of the impact of domestic institutions on patterns of international cooperation and provides insight into the nature of agreements that structure states' interactions with one another. The existing literature on U.S. international agreements has, for the most part, looked only at the domestic considerations that go into the choice of form. The model presented here

⁴ Some legal scholars have also argued that treaties serve as signals of U.S. intent to comply with its commitments (Setear 2002). However, their approaches cannot explain the observed pattern of variation in the form of agreements and rest on mistaken empirical assumptions, for example that agreements regarding national security are more likely to take the form of treaties.

introduces international strategic considerations and finds that the major expectation derived from the purely domestic perspective cannot be sustained in equilibrium.

In the United States, the choice between executive agreements and treaties lies with the president. As specified in the Constitution, treaties must receive the approval of two-thirds of voting Senators to go into effect. Executive agreements are not mentioned in the Constitution, and can be approved through a number of different mechanisms, from a legislative vote to sole executive approval (Millett 1990).⁵ Congress has at times attempted to set binding guidelines for the choice of agreement form, but without success, so this choice remains a strategic decision by the executive branch (Setear 2002, S12). A substantial legal literature has emerged asking whether, in fact, the president is unconstrained in his choice. While some have argued, on legal or normative grounds, that the president should limit reliance on executive agreements so that Congress is not bypassed (Tribe 1995), in practice the “doctrine of full interchangeability” has prevailed (Ackerman and Golove 1995; Yoo 2001, 759).⁶ This doctrine means that all international agreements have the same standing in domestic courts, regardless of the ratification procedure.

The political-science literature on executive agreements sees them as a mechanism by which the president can evade legislative constraints, thus as a way for the president to enhance his dominance over the legislature in foreign affairs. Since

⁵ The legal literature draws distinctions among sole executive agreements, congressional-executive agreements, and executive agreements that are subsequent to previous congressional approval. While this more fine-grained distinction may prove important, at this stage I examine only the broad difference between treaties and all forms of executive agreements. This is motivated by data availability (no data are readily accessible differentiating among types of executive agreements) and by the presumption, justified below, that treaties impose higher domestic costs on the president than other forms of agreements.

⁶ Spiro 2001 disagrees with Ackerman and Golove’s conclusion, arguing that sole executive agreements are constitutionally unacceptable under some conditions. However, this reasoning has found no support in the courts.

executive agreements create binding commitments to other countries (they have the same legal standing as treaties), but do not involve the Senate in its constitutionally-prescribed formal “advise and consent” role, they could be a potent source of executive power. By the 1990s, the president was signing hundreds of these agreements each year, while the number of treaties signed each year is just a couple of dozen (CRS 1993). Nathan and Oliver (1994, 99) summarize the consensus view of American politics scholars about the use of executive agreements: “Presidents ... have developed and employed the executive agreement to circumvent Senate involvement in international agreements almost altogether.”

This hypothesis, which has been labeled the “evasion hypothesis” (Martin 2000), implies that executive agreements are a mechanism for evading congressional influence on foreign policy. It has at least one implication that can be tested quantitatively: that when the president expects the most congressional opposition to an international agreement, he should be the most likely to choose an executive agreement rather than a treaty. Thus, we should expect to see a higher percentage of U.S. international agreements taking the form of executive agreements when Congress (or at least the Senate) is in different partisan hands than the presidency, or when the president receives low levels of support in general from Congress.

Martin (2000) has examined the evasion hypothesis and found little support for it. Earlier studies, such as Margolis (1986), claimed to find empirical support, in that the percentage of agreements completed as executive agreements increased under divided government. However, these studies used crude statistical techniques and no control variables. Martin (2000) relies on the same aggregate data, a simple count of the number

of executive agreements and treaties completed each year. However, using more appropriate statistical methods and introducing a few controls, she finds that support for the evasion hypothesis disappears. These highly aggregated data do not allow for direct tests of more plausible hypotheses about the choice of institution. Without a data set in which each individual agreement can be coded, we cannot tell what characteristics of particular agreements lead to institutional choice. This paper provides the first test using such micro-level data.

There are many reasons to question the logic of the evasion hypothesis, as simple and compelling as it may appear initially. One difficulty is that most executive agreements do in fact require some legislative action, such as appropriating funds, and thus are not likely to allow the president complete freedom of maneuver. Few agreements, even formal treaties, are self-executing. They thus require implementing legislation of some sort. Even agreements that do not require explicit implementing legislation can be overturned by congressional action, as legal doctrine provides that the most recent action takes precedence in the courts. Therefore, executive agreements do not allow the president the unfettered freedom to make commitments that many assume. Attempting to evade congressional will can backfire, as Congress has many methods it can use to void or refuse to implement executive agreements.

Perhaps even more telling, the evasion hypothesis completely neglects the process of negotiation with other countries. Assume that the hypothesis was correct, and that the president used informal agreements to evade legislative opposition. Other states would then see these agreements as a sign of lack of domestic support for the agreement, and would therefore become more reluctant to sign on to it. Signing an agreement that the

United States then reneges on can be highly costly for other states. Consider, for example, a trade agreement. If individuals expect an agreement to be implemented, investments will flow to those sectors that now have enhanced opportunities to export to the United States (Hathaway 1998). If the United States fails to live up to the terms of the agreement, these investments will fail to produce the expected returns. In addition, to the extent that assets are specific to a particular sector, they cannot be easily redeployed to another sector, implying further losses. Thus governments should follow domestic debates about agreements closely, and take them as signals about the likelihood that the United States will actually live up to the terms of the agreement. While an agreement's form likely has a number of consequences, one of the most important may be its impact on the beliefs of other parties to the agreement. That is, agreements are signaling devices.

The proposition that treaties can serve as signals rests on two crucial assumptions. The first is that there is some uncertainty about whether the United States will live up to the terms of the agreement. Empirically, this seems a reasonable assumption. The United States does sometimes renege on its international commitments. Such renegeing rarely takes the form of legal abrogation of a treaty. More often, the United States simply does not fully implement the terms of the agreement, or chooses to "reinterpret" the agreement in such a manner that it does not behave as the other parties anticipated it would.

That the United States, as well as other states, sometimes fails to live up to the terms of an agreement is exemplified in the elaborate dispute-resolution mechanisms now found in international trade agreements, and the fact that the United States is frequently

charged in these settings with violations. For example, from 1948 through 2002, the United States was the defendant in 193 disputes in the GATT/WTO (Reinhardt forthcoming; Busch and Reinhardt 2003). Formal rulings were issued in 81 of these cases, and 56 of these rulings found against the United States, while another 14 resulted in mixed verdicts. In 70 cases in which the dispute was resolved prior to a formal ruling, the United States substantial concessions in 32 cases, and partial concessions in another 12. These figures indicate that the United States does, in fact, fail to live up to the understood terms of trade agreements with some frequency.⁷

On security commitments as well, the United States is sometimes unreliable. A well-known example of unreliability regards the Anti-Ballistic Missile (ABM) Treaty with Russia. This treaty constrained the United States and Russia to build no more than two ABM installations, one to protect the capital city and one elsewhere. Beginning under Ronald Reagan, and continuing through recent administrations, these limitations conflicted with the desire to pursue defensive systems that would shoot down incoming missiles, whether from Russia or small attacks from rogue states. Rather than simply stating that the United States was withdrawing from or abrogating the ABM treaty, administrations have engaged in a contorted attempt to “reinterpret” it to allow large-scale development of these anti-missile systems. While some debate has ensued regarding the legalities of reinterpretation, there is no doubt that development of ABM systems is a substantial deviation from the behavior expected under the terms of the

⁷ I should note that I am using the term “renegeing” in a political sense: whether states live up to the understood terms of agreements. This should be distinguished from legal compliance. In these GATT/WTO cases, legal scholars could argue that the United States had actually “complied” because once a ruling went against the United States, it typically changed its trade policies or offered compensation. However, this type of legal compliance is not the behavior of interest here, or when states are considering whether the United States will be reliable. The fact that compliance only comes about after long delays and lengthy legal procedures means that U.S. actions impose significant costs on other parties. For discussions of compliance, see Chayes and Chayes 1993, Downs, Rocke, and Barsoom 1996, and Simmons 2000.

ABM treaty. Thus, other states can reasonably ask when reaching an agreement with the United States whether it will, in practice, live up to the terms of the agreement. In the signaling model presented here, I use the shorthand of “reliability” and “unreliability.” A reliable state is one that live up to the terms of the agreement, and an unreliable state is one that will renege on it. Other parties to agreements estimate the probability that a state is reliable.

Why renege on international agreements? Typically, the reason lies in domestic politics. While some domestic groups benefit from the terms of agreements, others see these commitments as costly and would prefer to renege. This dynamic is very clear on trade agreements, where exporters and consumers gain from liberalized trade, but import-competitors are harmed by it. Trade policy is the result of complex bargaining and struggle among these different interests. If import-competitors are well-organized and have access to government decisionmakers, there is a reasonable probability that the United States will fail to implement trade liberalization fully. Similarly, on arms-control agreements, if actors who believe that these commitments are too costly and constraining are in positions of decisionmaking authority, there is an increased chance of renegeing. Thus, the chance that the United States will live up to the terms of an agreement is a direct function of the level of domestic support for and opposition to the agreement. A state that has a high probability of being reliable is one in which there is high domestic support for the agreement and a low level of opposition.

Considering the level of domestic opposition to an agreement leads us to the second crucial assumption of a signaling model: that the signals sent are costly, and the costs vary for different sorts of actors. Here, we are interpreting treaties as a signal of the

reliability of the United States. They can only serve as such a signal if treaties are more costly to conclude than executive agreements; and if there is a cost differential so that reliable types bear lower costs for treaties than do unreliable types. Both aspects of this assumption are highly plausible. Consider first whether it is more costly for a president to gain approval of a treaty than an executive agreement. If the agreement is a sole executive agreement, the comparison is obvious: treaties require gaining the support of 2/3 of the Senate, which involves bargaining, arm-twisting, concessions, and sometimes delays. None of this is necessary for a sole executive agreement.

More serious questions may arise when comparing treaties to executive agreements that involve some degree of ex ante legislative participation. Is it always the case that treaties will be more costly? While there may be exceptions, I would argue that the assumption that treaties are more costly for the president is reasonable. Consider what would be the most costly form of a congressional-executive agreement, one that required majority support from both the House and Senate.⁸ Would the president have to pay a higher cost to get this agreement approved than a treaty? No, unless the distribution of preferences in the House diverges substantially from that in the Senate. If the distribution of preferences is similar, then the median voter in the House will be similar to that in the Senate. Satisfying this median voter will be less difficult than satisfying the swing voter when 2/3 of the Senate is required, since this swing voter will be more extreme. There may be occasions when preference outliers in the House are able to hold an agreement hostage and demand high side-payments or concessions from the president. However, these occasions should be rare, and the assumption that the

⁸ I would note that very few executive agreements require this high level of legislative participation.

president bears higher costs to gain approval for treaties than for nearly any executive agreement is plausible.

The idea that an international agreement can be a signaling device is implicit or explicit in many theories of international relations, even those that do not focus on strategic interaction. Many theorists refer to the signals that agreements send. For example, Keohane (1984) considers the reputational implications of international commitments. Theorists who focus on the socialization effects of international cooperation also imply that international commitments have a signaling function. They may serve as a signal or expression of a state's identity (Johnston 2001). While theorists working from a sociological perspective have not been very explicit about the strategic considerations relevant to making international commitments, a model of treaties as signaling devices should have implications for these theories as well as for strategic theories of domestic-international interaction.

Anecdotal evidence suggests that the picture developed here of treaties as signaling devices is one held by governments. If other states believe that treaties signal that the United States intends to live up to the terms of an agreement, they should under some conditions (as specified in the following section, when the potential benefits of the agreement are in a moderate range) demand that an agreement take the form of a treaty rather than an executive agreement. In fact, such demands are easy to find. Negotiations between the United States and Russia on Nuclear Arms Reduction found Russian president Putin working hard to persuade U.S. president Bush to sign a "full-blown" treaty to provide "certainty" (*San Francisco Chronicle*, 14 May 2002; *New York Times*,

12 April 2002). Bush had preferred a “gentlemen’s agreement” that would avoid high negotiation costs (*Deutsche Presse-Agentur*, 13 May 2002).

The Strategic Arms Limitation Treaty (SALT II) negotiations in 1977-1979 showed a similar dynamic, as the Soviet foreign minister objected that an executive agreement would not require the approval of 2/3 of the Senate and so would have an “inferior” status (*Washington Post*, 11 May 1979). At times, U.S. allies demand that long-standing executive agreements be transformed into formal treaties, explicitly stating that such changes would signal U.S. long-term commitment. This has been the case, for example, in security agreements with Pakistan (*Washington Post*, 18 January 1980; *The Economist*, 26 January 1980) and aid agreements with Turkey. The Turkey case is especially interesting, as it was complaints that Washington had not lived up to the terms of previous executive agreements that led to calls for a treaty (*New York Times*, 21 March 1986). Even participation in the space station has been subject to these kinds of demands, as European states argued that executive agreements are easy to breach and subject to misunderstanding (*Aviation Week and Space Technology*, 22 October 1984). The following section presents a simple signaling model building on the insights developed above.

Model

As the previous section illustrates, many arguments about the use of formal institutions for international cooperation implicitly or explicitly assume that formality is a signal of intent to comply with the terms of the agreement. If a treaty is more costly to

sign than an executive agreement, due to increased ratification costs, it may screen out those states that do not intend to live up to the agreement. This logic suggests a signaling model of the choice between executive agreements and treaties. This section presents a model where the United States makes the choice between an executive agreement and a treaty, and another state then decides whether to conclude the agreement with the United States.

Assume a bilateral game, between the United States (US) and another state (B). The two states are deciding whether to sign an agreement. If an agreement is completed and US lives up to its terms, it is worth value z to US, and x to B; both $z > 0$ and $x > 0$. I assume that B will always comply with the agreement after signing. However, US may decide not to comply after signing.⁹ US can be one of two types: a type that is reliable and will always comply, or a type that is unreliable and will always renege. US is reliable with probability r and unreliable with probability $1-r$. US knows its type, but B does not. As discussed above, we can understand the label “type” to mean the degree of domestic opposition to the agreement. When domestic opposition is high, r is low, as even a well-intentioned government may not be able to overcome this opposition to fully implement the agreement.

Nature moves first and determines US’s type. US then moves, and decides whether to offer B an executive agreement or a treaty. It is more difficult for US to gain approval of treaties than of executive agreements, since treaties need to go through a formal ratification process with a high threshold for legislative approval. Thus, offering a treaty means that US bears a cost. We can understand this cost to refer to the difficulties

⁹ A more realistic model would also allow B to renege. This complication would introduce more parameters to the model, but would not change its basic insights.

of putting together a legislative coalition in support of the agreement, which might involve significant lobbying, side-payments, and other costs. The cost of offering a treaty is higher for unreliable than for reliable types, because being unreliable means facing more domestic opposition, thus requiring higher side-payments and greater lobbying efforts. Summarizing these assumptions, for a reliable type that completes a treaty with B, the payoff to US is $z-b$; for an unreliable type it is $z-a$, with $a > b$. The cost of offering an executive agreement is normalized to zero, as is the payoff to no agreement for both US and B. If US decides to offer a treaty, it bears cost a or b regardless of whether B actually signs the agreement; the cost inheres in putting together a legislative coalition and must be borne before the treaty is actually implemented

B knows that US is reliable with prior probability r , as defined above. If B signs an agreement with US but US then reneges, B is left worse off than if it had completed no agreement at all. As discussed above, this may be due to specific investments that are lost when US reneges. Thus, B's payoff to signing an agreement with an unreliable US is $-y$, with $y > 0$. Y is likely to vary tremendously, depending on the issue at stake. For some agreements, the costs to B if US reneges will be minimal, as it can simply revert to its pre-agreement policy with few attendant costs. This may be the case, for example, on certain cultural agreements. On the other hand, sometimes y will be very large, as reverting to the pre-agreement policy could be impossible or prohibitively costly. Consider a military alliance that leads B to change the structure of its military forces, for example. If US reneges on this agreement, the costs attached to reconfiguring the military to allow for self-defense could be extremely large. As we will see below, y is a parameter that plays an important role in determining equilibrium strategies.

B observes whether US offers a treaty or an executive agreement, and uses this information to update its beliefs about the US type, then decides whether to sign the agreement. All parties then realize their payoffs. Since treaties are more costly for unreliable than reliable types ($a > b$), under some conditions B will be able to determine from the offer of a treaty or an executive agreement whether it should go ahead and sign. These conditions describe a separating equilibrium, which are efficient. Under other conditions, the US action provides no information. These are pooling equilibria, which may be inefficient in that possible mutually-beneficial agreements between a reliable US and B are not realized.

The equilibria of this game are shown in Table 1. Proofs of the equilibria are in Appendix 1. Equilibrium strategies are described as functions of two key parameters: the potential benefits of the agreement to US (z) and the prior probability that US is reliable (r). When benefits are low and reliability is low, no agreements are reached. When benefits are low and reliability is high, all agreements take the form of executive agreements. When benefits are in an intermediate range, reliable types are able to fully differentiate themselves from unreliable types, since it is worthwhile for them to offer treaties, but not for unreliable types. In this region we find that reliable types offer treaties and unreliable types do not. B signs all treaties but no executive agreements in this intermediate range.

When the potential benefits of an agreement are high, equilibrium strategies get more complex. Reliable types always offer treaties in this high-benefit region. When benefits are high and the probability of reliability is also high, it is worthwhile for unreliable types to always bluff by offering treaties, and for B to sign all treaties. In

practice, this is the region in which we would observe US reneging on signed treaties. When benefits are high but reliability is low, unreliable types have an incentive to bluff with some probability less than one. Thus reliable types cannot fully distinguish themselves, and B decides probabilistically whether to sign any treaties that are offered. B does not sign any executive agreements, and refuses to sign some treaties. This is the only region in which we would see B declining to sign some treaties; we would also see US reneging on some signed treaties here.

Table 2 shows how these equilibrium strategies will translate into observed patterns of no agreements, executive agreements, and treaties. The only time that signed executive agreements will be observed is when benefits are low and reliability is high. The high proportion of U.S. agreements that take the form of executive agreements thus implies that the United States is generally reliable (at least relative to the potential benefits of agreements to other states), and that many international agreements are of relatively low value to the U.S. Both claims seem highly plausible.

[Tables 1 and 2 about here]

The following comparative statics can be derived from this model. I highlight those that I go on to test in the following section. When appropriate, predictions about the relative frequency of executive agreements and treaties are stated relative to all *completed* agreements. That is, the hypotheses here take into account the potential for selection bias that has characterized other studies of agreement form, which neglect the fact that some potential agreements are never reached. Because the formal model presented here leads to expectations about when no agreements will be reached, as well

as the form of agreements that are reached, these hypotheses are not subject to the same selection bias problem.

1. **The percent of agreements completed that take the form of treaties increases as the benefit of an agreement to US grows.**¹⁰
2. **There is no relationship between the probability that US is reliable and the percentage of agreements that take the form of treaties,** unless the benefits to US are very high. When benefits to US are high, the percentage of agreements that take the form of treaties is an increasing function of the probability that US is reliable.
3. When the probability that US is reliable is low, no executive agreements will be concluded.¹¹
4. As the costs to B of signing an agreement with an unreliable US increase, we will observe fewer total agreements signed and a higher proportion of agreements as treaties.
5. As the benefits to B of signing an agreement with a reliable US increase, we will observe more total agreements and a higher proportion as executive agreements.
6. For a reliable US, the total number of agreements should be a nonlinear function of their potential benefits to US, taking on a U shape.

I will focus on the first two implications here. They follow from an inspection of

Table 2. Focusing first on the right column, where reliable types are common, we see a

¹⁰ Strictly speaking, this statement is not quite accurate when the probability of US being reliable is low. Here, we either see no agreements (when benefits to US are low) or a mix of treaties and no agreements; no executive agreements are signed in equilibrium. So the percent of total agreements as treaties may not vary for low reliability conditions; however, this case appears less relevant than higher reliability conditions.

¹¹ I should note that the apparent contradiction between hypotheses 1 and 3 is not, in fact, a contradiction. The reason is that these hypotheses take into account the possibility that no agreements will be reached. Hypothesis 1 is stated as a function of all *completed* agreements; hypothesis 3 refers to the entire universe of *possible* agreements.

straightforward positive relationship between the benefits to the United States and the probability that any particular agreement will take the form of a treaty. When benefits are low, all agreements will take the form of executive agreements. When benefits increase, all completed agreements will take the form of treaties. This column seems the most relevant for our empirical analysis, as it is the only column where executive agreements will be observed in equilibrium, and we observe a large number of executive agreements.

Implication 2 states that there is no straightforward relationship between the probability that the United States is reliable and the percentage of agreements that take the form of treaties. This stands in stark contrast to the claims of previous analyses that see executive agreements as a mechanism by which the president can evade opposition in the Senate. If in fact informal agreements are only meant to evade legislative opposition, other countries should be unwilling to sign them in many circumstances. Thus taking into account strategic interaction on the international level calls into question models that consider only U.S. domestic politics.

Overall, the simple signaling model presented here leads to a rich set of expectations about the form that agreements will take. Some of these expectations diverge sharply from existing informal studies of agreement form. The next section tests implications one and two quantitatively.

Data

The dataset analyzed here contains 4953 international agreements signed by the United States between 1980 and 2000. The data were obtained from Oceana, a firm that collects such data for the use of lawyers. While perhaps not a fully comprehensive list, Oceana claims that it includes all significant agreements signed during those years. Oceana indicates the country, countries, or international organization that completed the agreement, its subject, and whether the agreement took the form of a treaty. Just over four percent of the agreements in this dataset are treaties. I have supplemented these data with data describing the countries involved and the political context in the United States.

The agreements in the data set cover all issue-areas. They range from fairly routine scientific and cultural understandings to major military and economic agreements. About 16.1% of the observations are military agreements. 13.4% are trade agreements, 8.6% finance, and 11.7% other economic agreements. Another large economic category is agreements relating to agriculture and commodities, accounting for 8.0% of the total.

The signaling model suggests two hypotheses that I test using these data. The first is that the probability that an agreement takes the form of a treaty should increase as the agreement becomes more valuable to the United States. The second is that, contrary to claims by advocates of the evasion perspective, there should be no consistent relationship between the existence of divided government and the probability that an agreement takes the form of a treaty.

Of course, measuring the value of an agreement to the United States is not easy. Here, I suggest three proxies. One is whether the agreement is multilateral. On average, multilateral agreements should be higher value than bilateral agreements. This is not to deny that some bilateral agreements are of great value. However, it seems reasonable to

assume that, *ceteris paribus*, agreements with more countries provide greater benefits than those with just one country. Take our running example of a generic trade agreement to illustrate this logic. Given similar breadth of issues covered and depth of cooperation (the *ceteris paribus* clauses), an agreement with more countries will result in greater economic benefits. Approximately 7.4% of the agreements in this data set are multilateral.

The second proxy is the per capita GNP of the country that the agreement is with. Focusing on bilateral agreements, it seems likely that agreements with richer countries are on average of more potential benefit to the United States than those with poor countries. The measure used here is the log of per capita GNP. A third proxy is the total GNP of the other country. The logic here is that larger markets should result in higher benefits for the United States. The log of GNP is used.

I include two other variables as controls. One is the party of the president. This allows for the possibility that, even controlling for divided government, one party is inclined to sign more treaties than the other. I also control for whether an agreement is with an international organization (IO). While I have no strong expectations here, it is possible that agreements with IOs tend to take a particular form.

[Table 3 about here]

Table 3 presents results of rare-events logit estimations. Rare-events logit is the appropriate method to use as treaties are rare events in this dataset; that is, the dependent variable is unbalanced (Tomz, King, and Zeng 1999). However, the results are identical in both substance and statistical significance to those using standard logit. The dependent variable is the probability that any particular agreement is a treaty. Multilateral is a

dummy variable indicating whether an agreement is multilateral. IO is another dummy, indicating whether the agreement is with an international organization. Republican president is a dummy, coded one if the president is a Republican (about 60% of the time in these years). Divided government is a dummy, coded one if the Senate is controlled by a different party than the presidency. During this period, if the Senate was controlled by a different party, so was the House. Per capita GDP is a purchasing-power-parity measure, as is GDP. Descriptive statistics are in Appendix 2. Only one pair of explanatory variables has a correlation above 0.2, log of per capita GNP and log of GNP. They are correlated at 0.61. Otherwise, multicollinearity is not a concern.

Models 1 and 2 in Table 3 present results using the multilateral agreements indicator for the benefit of an agreement to the United States. Model 1 includes all observations. Model 2 eliminates science and cultural agreements, which never take the form of treaties in the period covered by this data set. Substantively, excluding these agreements makes no difference in the results. The results are as predicted on multilateral agreements. They strongly increase the probability that an agreement will be a treaty. For a Democratic president facing a Democratic Senate, moving from a bilateral to a multilateral agreement will increase the probability that it is a treaty from 4.5% to 30.9%.

The other explanatory variable of most interest is divided government. The evasion perspective expects a negative coefficient on this variable, as presidents facing a Senate controlled by the other party will be more likely to use executive agreements. Surprisingly, we find a *positive* and statistically significant coefficient on divided

government. Divided government seems to increase the probability of a treaty from 4.5% to 6.1%. However, as we will see in the rest of the results, this finding is not stable.

Agreements with international organizations are less likely than other agreements to take the form of treaties. If the agreement is with an IO, the probability of a treaty decreases from 4.5% to 0.2%. We also find that Republican presidents are significantly less likely to use treaties. Having a Republican president reduces the chance of a treaty from 4.5% to 1.7%.

Models 3 and 4 look only at bilateral agreements, so that we can introduce a measure of the wealth and size of the country signing the agreement with the United States. Model 4 again eliminates science and culture agreements, with no impact on the results. As expected, we find that agreements with wealthier countries are more likely to take the form of treaties. Again taking the baseline of a Democratic president facing a Democratic Senate, consider moving from a country with its per capita GNP at the 20th percentile to one at the 80th percentile. The chance that an agreement will be a treaty will increase from 3.8% to 12.0%, a large and significant difference. Also as expected, divided government has no effect in this specification. The effect of Republican presidents remains the same.

We find, contrary to expectations, that the total GNP of a country has a negative effect on the probability that an agreement will take the form of a treaty. As the GNP moves from the 20th percentile to the 80th percentile, the probability that an agreement is a treaty decreases from 3.8% to 2.0%. While not a large effect, this finding is puzzling and deserves further exploration.

[Table 4 about here]

In order to give the evasion perspective a further test, I introduce an alternative measure of support for the president in Table 4. Here, I measure presidential victories on votes in the Senate. The variable is a percentage, based on the number of Senate votes supporting the president divided by the total number of votes on which the president had taken a position. Not surprisingly, this indicator is highly correlated with the divided government indicator, so they cannot both be entered in the same specification. As the signaling model predicts, this variable has no effect. Presidents are not able to use executive agreements to circumvent Senate opposition, as this would send a signal of unreliability to U.S. agreement partners.

I have run logit specifications using additional variables that other authors have suggested might have an impact. For example, presidents in their first year in office might have a hard time getting treaties signed; they might also turn to executive agreements in election years in order to create an image of foreign-policy activism. Neither of these indicators has any effect. Overall, the expectations of the signaling model are the only propositions to receive substantial support in this large data set, although an unexplained puzzle arises in that larger (measured by GNP) states give rise to fewer treaties. Models that do not take into account strategic interaction with other states and therefore expect more executive agreements to be used when support for the president is low find no empirical support.

Summary

Why are some international agreements treaties, and others executive agreements?

Authors have offered various answers to this question, but none have integrated the domestic and international levels of strategizing that governments must undertake. I suggest that one mechanism for thinking about the strategic problem, as well as for integrating various theoretical perspectives, is to consider a treaty a costly signal of the likelihood of living up to its terms. Under some conditions, governments that are likely to comply with a treaty will be willing to bear the higher costs of getting it ratified, thus distinguishing themselves from governments that will renege. The likelihood of renegeing is understood here as a function of the level of domestic support for or opposition to the agreement.

A signaling model of treaties implies that treaties should be more likely on high-benefit agreements, since governments will then be willing to bear the costs of signaling their reliability. On the other hand, we should not expect a consistent relationship between the reliability of a government and the percentage of agreements that take the form of treaties. Unreliable governments cannot simply turn to executive agreements to evade domestic opposition, as this sends a signal of unreliability. Thus the conventional wisdom that presidents facing partisan opposition will more frequently use executive agreements is called into question when we consider the international strategic problem.

These hypotheses were tested on a new dataset of nearly 5000 agreements signed by the United States between 1980 and 2000. The implications of the signaling model hold up well, with proxies for high-benefit agreements having positive and significant effects. On the other hand, as expected, we find that indicators of the reliability of the government had no consistent effect. We also find that Republican presidents are less

likely to sign treaties than Democrats, even after controlling for divided government, and that agreements with international organizations are unlikely to take the form of treaties.

While the model presented here is promising and the data a major advance on previous studies, future empirical analysis could improve on the results presented here in a number of ways. The proxies used, particularly those for the potential benefits of the agreement to the United States, are quite crude. Future research should focus on finding more precise measures of potential benefits and explore the puzzling finding that states with larger GNPs are less likely to sign treaties, as opposed to executive agreements, with the United States. Since this is a large dataset, undertaking in-depth research on each agreement included is impractical. However, some progress might be made by focusing on certain types of agreements, for which more specific measures of benefits might be available.

This research on the form of U.S. agreements has implications for the general study of the role of domestic institutions in international cooperation. Most studies of this topic have treated domestic institutions as exogenous, asking about their impact on patterns of cooperation (see, for example, Schultz 1999). However, the form of an agreement is an important domestic institution, and at least in the case of the United States it is not exogenous. It is instead a strategic choice made by the president under the constraints created by international bargaining. The analysis in this paper suggests that the choice of domestic institutions is driven, at least in part, by what this choice signals to negotiating partners. Governments that care about international agreements and that intend to live up to their terms can, under some conditions, choose domestic institutions to signal this intent. However, under other conditions reliable governments cannot

differentiate themselves from unreliable ones through institutional choice, and some mutually-beneficial international agreements are therefore never reached. The level of international cooperation can be less than optimal.

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Table 1

Equilibria of Signaling Game

Probability that US is reliable (r)		
Benefits of potential agreement to US (z)	$r < y/(x+y)$	$r > y/(x+y)$
$z > a$; Benefits greater than cost of treaty for both types	<i>Semi-separating equilibrium:</i> Reliable types always offer treaties, unreliable types offer treaties with probability $xr/(y(1-r))$. B signs the agreement only if a treaty is offered, then with probability a/z .	<i>Pooling equilibrium:</i> All types offer treaties. B signs all agreements.
$a > z > b$; Benefits greater than cost of treaty for reliable but not unreliable types	<i>Separating equilibrium:</i> Reliable types offer treaties, unreliable types offer executive agreements. B signs only treaties.	<i>Separating equilibrium:</i> Reliable types offer treaties, unreliable types offer executive agreements. B signs only treaties
$z < b$; Benefits less than cost of treaty for all types	<i>Pooling equilibrium:</i> All types offer executive agreements. B does not sign any agreements.	<i>Pooling equilibrium:</i> All types offer executive agreements. B signs all agreements.

Parameters: z is the value of the agreement to US; x is the value of the agreement to B; r is the prior probability that US is reliable; a is the cost to an unreliable type of offering a treaty; b is the cost to a reliable type of offering a treaty; y is the cost to B if US reneges on the agreement.

Table 2

Pattern of Treaties and Executive Agreements in Equilibrium

Benefits of potential agreement to US (z)	Probability that US is reliable (r)	
	$r < y/(x+y)$	$r > y/(x+y)$
$z > a$; Benefits greater than cost of treaty for all types	Mix of treaties (with probability r^2xa/yz) and no agreements	All treaties
$a > z > b$; Benefits greater than cost of treaty for reliable but not unreliable types	Mix of treaties (with probability r) and no agreements	Mix of treaties (with probability r) and no agreements
$z < b$; Benefits less than cost of treaty for all types	No agreements	All executive agreements (no treaties)

Parameters: z is the value of the agreement to US; x is the value of the agreement to B; r is the prior probability that US is reliable; a is the cost to an unreliable type of offering a treaty; b is the cost to a reliable type of offering a treaty; y is the cost to B if US reneges on the agreement.

Table 3

Rare Events Logit Results
Dependent variable=1 if agreement is treaty, 0 otherwise

Variable	Model 1	Model 2	Model 3	Model 4
Constant	-3.06** (0.121)	-2.91** (0.122)	-4.32** (0.509)	-4.40** (0.508)
Multilateral	2.26** (0.180)	2.20** (0.183)		
IO	-3.53** (1.03)	-3.54** (1.032)		
Log per capita GNP			0.382** (0.0928)	0.387** (0.0922)
Log GNP			-0.162** (0.0544)	-0.143** (0.0552)
Republican president	-1.01** (0.161)	-1.09** (0.156)	-1.16** (0.200)	-1.26** (0.202)
Divided government	0.330* (0.160)	0.383* (0.163)	0.251 (0.192)	0.288 (0.195)
N	4953	4403	3973	3549

Estimated using the relogit command in Stata 6.0. Coefficients with two asterisks indicate statistical significance at the .01 level; coefficients with one asterisk indicate statistical significance at the .05 level. Robust standard errors in parentheses. Models 2 and 4 omit Science and Culture agreements. Models 3 and 4 omit multilateral agreements and agreements with international organizations.

Table 4

Rare Events Logit Results, Alternative Measure of Presidential Support
Dependent variable=1 if agreement is treaty, 0 otherwise

Variable	Model 5	Model 6
Constant	-2.420** (0.397)	-4.08** (0.748)
Multilateral	2.26** (0.180)	
IO	-3.52** (1.02)	
Log per capita GNP		0.384** (0.0931)
Log GNP		-0.162** (0.0550)
Republican president	-0.970** (0.153)	-1.13** (0.197)
Senate victories	-0.00669 (0.00523)	-0.00198 (0.00683)
N	4953	3973

Estimated using the relogit command in Stata 6.0. Coefficients with two asterisks indicate statistical significance at the .01 level; coefficients with one asterisk indicate statistical significance at the .05 level. Robust standard errors in parentheses.

Appendix 1

Equilibria of model

I solve for a Bayesian perfect equilibrium. B believes that US is reliable with prior probability r . B observes whether US offers a treaty and uses this information to update its belief about US's type using Bayes' Rule.

Pooling equilibrium, all offer treaty: An "all-treaty" pooling equilibrium exists if all US types offer a treaty and if B always chooses to sign a treaty. In this case, the offer of a treaty conveys no information to B, so B does not update its beliefs about US's type. The value to B of signing a treaty in this case is $rx + (1-r)(-y)$. B will sign if this is greater than the value of no agreement, 0. So B will sign if $r > y/(x+y)$. Given this strategy, an Unreliable type will receive the payoff $z-a$ from offering a treaty. So an Unreliable type will offer a treaty if the payoff is greater than 0, or $z > a$. In this case, the Reliable type receives a payoff of $z-b > 0$ for offering a treaty, so all types will offer a treaty. So a pooling equilibrium where all types offer a treaty exists if $z > a$ and $r > y/(x+y)$.

Pooling equilibrium, no types offer treaty: Another pooling equilibrium exists if no types find it worthwhile to bear the costs of offering a treaty. A Reliable type is not willing to bear these costs if $z < b$; then getting no agreement is preferable to a treaty. In this case, all US types offer executive agreements. This conveys no information to B, and B does not update its beliefs about US's type. So B is willing to sign the agreement if the expected payoff, $rx + (1-r)(-y) > 0$; $r > y/(x+y)$. So a pooling equilibrium exists if $z < b$. If $r < y/(x+y)$, we observe no agreements; if $r > y/(x+y)$ we observe all executive agreements. This is the only equilibrium in which executive agreements are signed,

when the benefits of the agreement to US are low and the probability that US is reliable is high.

The pooling equilibrium where no agreements are signed is inefficient. Here, there are potential agreements between Reliable types and B that would benefit both, but that are not achieved in equilibrium. The existence of many Unreliable types means that it is not worthwhile for Reliable types to attempt to differentiate themselves, given the relatively low benefits of potential agreements.

Separating equilibrium: A separating equilibrium exists if Reliable types are willing to offer a treaty but Unreliable types are not. This occurs when z takes on an intermediate value, $a > z > b$. In this case, the signal tells B with precision US's type. So B will sign treaties when they are offered, but not executive agreements. Given B's strategy, does an Unreliable type have an incentive to bluff? No, because even if a treaty is completed, the benefits z are less than the cost a to this type.

Semi-separating equilibrium: When the benefits of the agreement are high ($z > a$), but the chance that US is reliable is low ($r < y/(x+y)$), neither a pooling nor a separating equilibrium can exist. The pooling equilibrium where all offer treaties cannot exist, because the expected payoffs to signing a treaty are too low to B, given the high probability that US is unreliable. Thus US does not have an incentive to always offer treaties, in spite of the high potential benefits, because they will not be signed. A separating equilibrium cannot exist, because Unreliable types have an incentive to bluff. The benefits of the agreement are high enough to encourage an Unreliable type to offer a treaty if it will be accepted, as in a separating equilibrium. But we have established that

treaties will not be accepted when $r < y/(x+y)$ unless the choice of the agreement's form provides some information about US's type.

So with high benefits and low reliability, the only equilibrium that can exist requires that Unreliable types randomize and offer a treaty with probability $0 < q < 1$. Reliable types will always offer a treaty. B will observe whether a treaty is offered and update its beliefs about US's type using Bayes' Rule. B will never sign if an executive agreement is offered. If a treaty is offered, B will sign with probability $0 < s < 1$.

B will choose s so as to make Unreliable types indifferent between offering a treaty and offering an executive agreement. Unreliable types' expected payoff from offering a treaty is $s(z-a) + (1-s)(-a)$; the payoff from offering an executive agreement is 0. So an Unreliable type is indifferent when $s = a/z$.

Unreliable types will choose q so as to make B indifferent between signing and not signing after observing a treaty. If B observes a treaty, B's updated belief that US is reliable is $r/(r+q(1-r))$. B's updated belief that US is unreliable is $q(1-r)/(r+q(1-r))$. So B's payoff from signing after observing a treaty is $xr/(r+q(1-r)) - yq(1-r)/(r+q(1-r))$. B will be indifferent between signing and not signing when this is equal to the value of no agreement, 0. So B will be indifferent when $q = xr/y(1-r)$.

Thus, in the semi-separating equilibrium, Reliable types offer treaties with probability 1. Unreliable types offer treaties with probability $q = xr/y(1-r)$. B does not sign if an executive agreement is offered; if a treaty is offered, B signs with probability $s = a/z$.

Given B's strategy, will the Reliable type be tempted to save the costs of a treaty by sometimes offering an executive agreement? No, because this increases the

probability that no agreement will be signed, which can only reduce the Reliable type's payoff when $z > a$.

This equilibrium is also inefficient. Some treaties that are offered by Reliable types are turned down by B, to the detriment of both. Reliable types cannot fully differentiate themselves from Unreliable types because the high benefits of an agreement to US make it worthwhile for Unreliable types to sometimes bluff.

Appendix 2

Descriptive statistics and data sources

Variable	Mean	Std. Dev.	Minimum	Maximum	Source
Treaty	.0416	.1996	0	1	Oceana
Multilateral	.0741	.2620	0	1	Oceana
International organization	.0283	.1657	0	1	Oceana
Log of per capita GNP, constant dollars	7.96	1.54	4.51	10.8	World Development Indicators, 2000 CD-ROM
Log of GNP	10.77	2.35	3.66	15.5	World Development Indicators, 2000 CD-ROM
Republican president	.6032	.4893	0	1	Stanley and Niemi 2001
Divided government	.5501	.4975	0	1	Stanley and Niemi 2001
Presidential victories on votes in Senate	70.72	12.50	42.2	88.3	Stanley and Niemi 2001