

The politics of “rushing to pen”. Treaty commitment and diplomatic ties that bind?

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Abstract

The existing literature on international treaty-making generally differentiates between states' commitment and states' compliance. What has received less attention is that commitment usually is signaled in two steps. Before countries ratify international treaties, they engage in negotiations that culminate in the act of signature. While there exists a considerable literature explaining the determinants of ratification, we know surprisingly little about the politics of signing. This paper starts from the observation that differences between the act of signature and the act of ratification have not received sufficient attention. We argue that a state's decision to sign a treaty differs from the decision to ratify a treaty. In particular, our empirical test suggests that the size of states' representation to international organizations yields explanatory power for treaty signature, but not for ratification. Rooted in the principal-agent literature, we develop an argument on why and how participation in negotiations affects the incentives of negotiators to “rush to pen”. Empirically, we rely on a new data-set comprising 53 multilateral treaties concluded between 1990 and 2005.

1. Introduction

A newfound interest of states in negotiating new international treaties after the end of the Cold war has contributed to an increasing literature on cooperation through international treaties. A substantial number of quantitative and qualitative studies has proposed (and subsequently tested) a variety of explanations on why states commit to international agreements. Scholars have studied states' commitment across time, issue areas and have focused on various instruments (bilateral, regional, and multilateral treaty-making). Doing so, commitment has been usually measured by states' decisions to ratify treaties. This research has significantly improved our understanding about which forces drive treaty commitment and international cooperation.

As to multilateral treaties, arguments related to regime type (democracy and democratization), Europe as sponsor of many multilateral agreements and regional pressures, in particular, stand out (Simmons 2000, Neumayer 2002; Hathaway 2007; Elsig, Milewicz and Stürchler forthcoming 2012).¹ The literature also suggests distinguishing between ratification as an act which involves important domestic adjustment costs and ratification as a form of cheap talk or cheap action (Downs, Rocke and Barsoom 1996; Guzman 2008; Milewicz and Elsig 2011). Yet, what has received little attention is the fact that ratification is preceded by the act of signature.

While some work conceptualizes signature as a type of partial commitment or as a sequential story (e.g., Goodliffe and Hawkins 2006), we argue that there are more subtle differences between the politics of signature and the politics of ratification than usually accepted. So far, research at the interface of international politics and international law has focused on why states do or do not ratify treaties. Almost no attention has been paid to the question why states sign a treaty in the first place. In this paper, we provide empirical evidence on what drives states' decision to sign multilateral treaties. We begin from the empirical observation that the size of diplomatic representations to international organizations (IOs) engaged in treaty-making matters for the decision to sign but not to ratify a treaty. This finding is especially puzzling, given that states have 1) substantial influence on the treaty design by their sheer mission size, and 2) a relatively high degree of information about treaty implications by the end of negotiations and thus the foreseeability of ratification at home. Sudden domestic changes that affect mobilization for or against an international treaty can hardly account for

¹ We define multilateral here as treaties that are potentially open for all UN members and that focus on issues of global concerns.

the observed outcome. Using a principal-agent framework, we suggest that participation in negotiations creates a “ties that bind” effect among negotiators (agents) that, in turn, increases the likelihood of treaty signature.

The paper proceeds as follows. First, we provide for a conceptualization of treaty signature in relation to ratification of international treaties. Second, we contrast data on signature with ratification data relying on a novel data-set of 53 post-Cold War multilateral treaties. We test key explanatory arguments prevalent in the literature on ratification using event history models. Based on our findings that the size of diplomatic representation to IOs matters for the states’ decision to sign, we then develop a novel “ties-that-bind” argument that mirrors in the signature patterns. In the last section we outline our next steps to trace the causal mechanism conjectured in the paper in more details.

2. Conceptualizing signature

In the historical context of treaty making, international negotiations have been characterized by the “power to represent” debate and the question on whether state representatives have full powers to make commitments as agents of their state leaders. Jones (1946) posits that in the 17th century, parties to a negotiation would first debate whether and which diplomats had sufficient discretion to act as state representatives and make promises on behalf of their states. This diplomatic screening went hand in hand with a prevalent anticipation that once representation was decided, agents would have sufficient power to commit. Put differently, ratification was perceived as being a foregone conclusion. In the course of the 20th century, the representational aspect of agents has become less an issue, and ratification failures have allegedly increased. More importantly, it has become acceptable that states may not fully commit to their prior consent given by their agents. For today’s scholars of international law, signing is an instrument signaling intent to examine the treaty in view of ratification. While it does not bind states, it puts an obligation on them to abstain from undercutting any treaty objectives. Guzman suggests that it is “more a promise not to undermine the treaty than a pledge to ratify” (2008:178).

Yet, the relationship between signature and ratification is also affected by the choice of forum and more particular by the sheer number of participants. Anecdotal evidence suggests that in the setting of bilateral treaty negotiations incidences of non-ratification following

signatures are rare.² What can be observed is that ratification bodies attempt to change some contentious clauses post-signature. This standard practice usually prolongs the time span between signature and ratification,³ but is less prevalent in multilateral treaty-making where imminent re-negotiations are hardly operational in the multilateral context. The number of actors and the consensual decision-making procedures make the option of re-opening the negotiations quasi impractical. Some instruments used by negotiators account for the impossibility to re-negotiate after agreements have been signed by taking recourse to specific safety clauses (e.g., sun-set clauses or country-specific opt-outs). Nevertheless, ratification is far from automatic. While public debates and media headlines usually focus on the ratification failure of great powers (e.g., the US non-ratification of the signed Kyoto Protocol), failure to fully commit is a more often observed phenomenon than usually perceived.

Despite the attention given to the act of ratification, there is little work on signature as a commitment device. The issue of signing is usually tackled indirectly with the question on why a state might *ex post* decide to not ratify a treaty to which it had given a formal pre-consent. Scholarship has mainly focused on domestic institutions and politics to account for non-ratification (e.g., implementation costs, the number of veto players, change of governments, and common law vs. civil law system, short vs. long term gains) (Simmons 2009), but does not pay explicit attention to the pre-commitment stage taking the form of signature. While one of the few existing studies exploring states' decision to ratify and sign the Convention against Torture finds that the same factors that account for signature also drive ratification (Goodliffe and Hawkins 2006), we posit that the non-ratification of signed agreements cannot be systematically explained by classical ratification hurdles.⁴

3. Empirical patterns: Comparing signature and ratification

In order to study patterns of signature and ratification, we draw from an existing data-set of 76 multilateral treaties which have been concluded between 1990 and 2005, and which meet the following three criteria.⁵ First, they are universal; they offer participation to all recognized

² Gardiner (2003: 69) suggests that many bilateral agreements become binding through signature. For a rare case of failure to ratify a bilateral agreement in the context of Swiss foreign policy see Elsig 2006.

³ For example, the US Congress often drags on ratification of bilateral trade agreements and ratifies them after some corrections.

⁴ They find evidence that the judicial system (common law), regional diffusion pressures and treaty-related civil rights drive both signature and ratification of the Convention against Torture.

⁵ We systematically collected data from the United Nations Treaty Collection (2009). This Collection, however, does not cover all multilateral treaties in existence, notwithstanding the obligations of states under article 102 of the UN Charter (Aust 2002; Kohona 2002). Therefore, we consulted with experts on international law and

states in the world defined as UN members.⁶ This condition excludes all plurilateral treaties (e.g., NAFTA) which are often defined as multilateral. Second, they address global concerns. This excludes treaties that are open to all states in terms of membership, but have a regional focus regarding the subject matter of the treaty (e.g., conventions under the auspices of the UN Economic Commission for Europe). Third, they depart from previous practice. This disqualifies treaties that reflect mere adjustments to a pre-existing treaty (e.g., different reporting requirements or the addition of minor areas of application).

For the purpose of this analysis, we eliminated those treaties which do not foresee two clearly separable steps of commitment (signature and ratification), but which provide for accession only (e.g., WTO treaties). We also excluded treaties of private international law character (e.g., Hague Private International Law conventions or UNIDROIT conventions), as these treaties are drafted and negotiated by private international law experts and scholars, rather than state representatives. Our final data set counts 53 public international law treaties, and provides for signature and ratification entries made by nation states between 1990 and 2008. It covers diverse areas, such as human rights, security, crime, trade and environment. An overview of the selected treaties is presented in Table A1.

3.1 Mapping signatures and ratifications

In order to grasp whether and how the act of signature substantially differs from the act of ratification, we provide some descriptive evidence as to which states are topping the league tables for signing and ratifying agreements (Table 1). As to ratification, we observe that European countries, especially newly democratized states in Eastern Europe are well represented in the upper part of the ranking. Spain, Romania, Slovenia, Latvia and Lithuania are the leading ratifying nations, followed by Hungary, Norway, Bulgaria and Denmark.

The ranking figures for signatories reveal a slightly different picture. Unlike ratification, established western democracies (plus Argentina and Brazil) are almost exclusively the leading nations when it comes to signing multilateral agreements. Though, there is some overlap between the top twenty ratifying and signatories – Denmark, France, Netherlands, Norway Spain, Sweden, Switzerland rank high both for ratification and signature – the overall signature and ratification rankings are markedly distinct.

systematically screened the literature in order to complement the list of treaties, see also Elsig, Milewicz and Stürchler forthcoming 2012.

⁶ The Cook Islands, Niue, Hong Kong, Macao, the Vatican, Taiwan and the European Community are not UN members but occasional parties to multilateral treaties. The same holds true for Kosovo. On these entities, see Crawford (2007).

Table 1. Top 20 ratifying and signatory states.

Rank	Ratifiers	no.	%	Rank	Signatories	no.	%
1	<i>Spain</i>	40	75.47	1	Finland	43	81.13
2	Romania	38	71.7	2	<i>Denmark</i>	42	79.25
	Slovenia	38	71.7	3	Germany	40	75.47
4	Latvia	37	69.81		<i>Sweden</i>	40	75.47
	Lithuania	37	69.81	5	<i>Spain</i>	39	73.58
6	Hungary	36	67.92	6	<i>Netherlands</i>	38	71.7
	<i>Norway</i>	36	67.92		Brazil	38	71.7
	Bulgaria	36	67.92	8	<i>France</i>	37	69.81
	<i>Denmark</i>	36	67.92		Great Britain	37	69.81
10	<i>Netherlands</i>	35	66.04	10	Italy	36	67.92
	Slovakia	35	66.04		Luxembourg	36	67.92
	<i>Sweden</i>	35	66.04		<i>Norway</i>	36	67.92
	<i>Switzerland</i>	35	66.04	13	<i>Switzerland</i>	35	66.04
	Australia	35	66.04		USA	35	66.04
15	Ecuador	34	64.15		Belgium	35	66.04
	<i>France</i>	34	64.15	16	Greece	34	64.15
	Mexico	34	64.15		Portugal	34	64.15
	Poland	34	64.15		Argentina	34	64.15
	Croatia	34	64.15		Austria	34	64.15
	Cyprus	34	64.15	20	Canada	33	62.26

Note: Rankings for the top 20 ratifying and signatory states (No: number of ratifications/signatures; %: percentage of ratifications/signatures). States belonging to the group of top 20 ratifiers and signatories are shown in italics.

3.2 Key explanations

What are the factors that trigger these (dissimilar) commitment patterns? To answer this question, we test several key explanations prominent in the commitment literature and compare their explanatory power for signature and ratification patterns. An overview of the variables as well as descriptive statistics is presented in Table 2.

First, we test argument related to regime type (see Slaughter 1995). The regime type of a state expresses the underlying political values, structures and institutions of a society (ranging along a continuum with autocratic and democratic poles) (Moravcsik 2000). The prevailing message of this strand of research is that democracies are generally expected to be more likely to commit to multilateral treaties; this is helped by the fact that the treaty content largely reflects their domestic (western liberal) political values. To test for the liberal argument, we follow the standard approach of commitment studies and employ as a proxy the polity2 score from the Polity IV index (POLITY). The scale ranges from -10 (strongly autocratic) to +10 (strongly democratic) (Marshall and Jaggers 2007), and measures the domestic regime type of

a given state reflecting the underlying political (democratic versus authoritarian) values, structures and institutions of a society.

Second, and related to a specific regime subcategory, we test for the effect of new democracies. A dominant argument in the literature suggests that new democracies are prone to commit to international agreements in order to build up credibility. In the face of political uncertainty, governments in newly established or re-established democracies ‘lock in’ favored policies within intergovernmental democratic networks buffering against future governments’ incentives to question domestic reforms (Moravcsik 2000: 226, 228; Mansfield and Pevehouse 2006; Pinto 1993: 43). Using international institutions, they send a serious signal of true intentions to the international community that can help to “consolidate democratic institutions, thereby enhancing their credibility and stability vis-à-vis non-democratic political threats” (Moravcsik 2000: 220). We apply a categorical variable – POLITY (CATEGORICAL) measuring whether a state is a new democracy (reference category), AUTOCRACY, ESTABLISHED DEMOCRACY and OTHER. The variable is based on the polity2 score, and measures the domestic regime type of a state. We define new democracies as states which displayed in the period 1970 to 1988 an average value of less than 1 on the Polity IV scale, and between 2000 and 2007 a value greater or equal 5. Autocracies are defined by an average value of less than 1 for both periods. Established democracies exhibit in both periods average values of greater or equal 5. States which do not fall under any of the three categories are coded as “others”.

Third, we test in the signature and ratification models for the participation effect. The dominant argument in the literature is that participation and influence over the treaty text during negotiations will affect commitment. Our proxy for participation is the size of states’ delegations. Put differently, the greater the size of diplomatic representations that take part in treaty negotiations, the greater the likelihood for signing and ratifying international agreements. We call this variable DIPLOMATIC REPRESENTATION. The variable reflects the size of the state missions to the United Nations (UN) in New York, and is based on information from UN Blue Books available for the period 1993 to 2008.⁷

Fourth, we test for the extent to which a state is economically interlinked with other states by the variable TRADE OPENNESS. TRADE OPENNESS is the total trade of a given country as a percentage of GDP. By strengthening the international legal order, multilateral rules contribute to securing existing international trade flows and in particular help to safeguard inter-

⁷ Most multilateral treaties are negotiated under the auspices of IOs.

national actors who are engaged in the exchange of goods and services against arbitrary treatment by importing countries (Heston, Summers and Aten 2009).

Fifth, the dichotomous variable COLONIAL PAST is meant to reflect whether a state has been colonized by a Western colonial power since 1700. The focus is exclusively on “Western overseas” colonialism (Teorell and Hadenius 2005). Previous research on economic regionalism (Mansfield, Milner and Rosendorff 2002) and economic trading networks (Goldstein, Rivers and Tomz 2007) has found positive correlations with regard to former colonial relationships. We test whether states with a colonial past are more likely to commit to international agreements, which are strongly sponsored by former colonizers (e.g., European states).

Sixth, the dichotomous variable STATE DURATION determines the lifespan of a nation. It controls for the pace of commitment by states which gained independence after the collapse of the Soviet Union in 1989.

Finally, in order to capture regional differences of treaty commitment, we test a categorical regional variable distinguishing between four regions AMERICA, ASIA, AFRICA and EUROPE (the latter being the reference category). The variable REGION (CATEGORICAL) is meant to capture general regional differences of treaty ratification. We also include binary variables for three major issue areas covered in our sample: HUMAN RIGHTS (including human rights, cultural and public health agreements), SECURITY (including security, crime and diplomatic relations), and ENVIRONMENT in order to capture whether treaty commitment differs across issue areas.

Table 2. Regressor variables in the signature and ratification models.

	<i>min</i>	<i>max</i>	<i>Signature</i>			<i>Ratification</i>		
			<i>mean</i>	<i>sd</i>	<i>no observations</i>	<i>mean</i>	<i>sd</i>	<i>no. observations</i>
POLITY	-10	10	2.23	6.74	52059	2.61	6.7	57345
POLITY (CATEGORICAL)	0	3	1.22	1.07	58189	1.25	1.08	63060
DIPLOMATIC REPRESENTATION	0	129	9.78	11.42	69707	10.69	12.94	74469
TRADE OPENNESS	1.09	456.6	92.42	48.58	61372	90.55	48.22	66662
COLONIAL PAST	0	1	0.68	0.47	71599	0.67	0.47	76517
STATE DURATION	0	1	0.16	0.36	72695	0.14	0.35	77557
REGION (CATEGORICAL)	1	4	2.68	1.06	72695	2.64	1.07	77557
HUMAN RIGHTS	0	1	0.11	0.31	72695	0.12	0.33	77557
SECURITY	0	1	0.20	0.40	72695	0.22	0.41	77557
ENVIRONMENT	0	1	0.36	0.48	72695	0.34	0.48	77557

3.3 Estimation method and models

For the purpose of our empirical analysis, we use event history techniques. Event history modeling offers an appropriate method for analyzing the timing of political change, i.e., the change in status from non-signature/non-ratification to signature/ratification. It not only considers which states sign or ratify treaties, but also takes into account that some states do so with different time lags. Furthermore, event history techniques can be applied to data with “multiple events per subject” (Therneau and Grambsch 2000). In this study, we do not examine ratification behavior for each treaty separately, but are interested in finding a general pattern of multilateral treaty commitment; thus we need to take into account that each state can ratify up to 53 treaties. Our data is formulated in terms of a counting process (Andersen and Gill 1982). The counting process data consists of multiple records and is set up as annual intervals. By clustering on states, we are able to take into account that treaty signatures/ratifications by a specific state are not independent, but are not bound to have experienced a prior event (Box-Steffensmeier and Jones 2004: 158).

We use a Cox proportional hazards regression model with the modified partial likelihood for left-truncated and right-censored data (Tableman and Kim 2004: 209–211). In this study, we are confronted with fixed right-censoring and left-truncation. Fixed right-censoring applies to all states which had not yet signed/ratified a particular treaty at termination of the analysis in December 2008. Left-truncation is determined by a delayed entry time. Delayed entry times apply to successor states of the Socialist Federal Republic of Yugoslavia, the Soviet Union, as well as the Czech Republic and Slovakia.

The Cox proportional hazards model estimates hazard ratios for the variables discussed above. The hazard ratio is the measure of effect; it is the exponential of the regression coefficient ($\exp(\text{coef})$) in the model. A hazard ratio of 1 indicates that there is no effect concerning state commitment to international agreements. A ratio of more than 1 indicates an increase in the rate of signature/ratification, and a ratio of less than 1 indicates a reduction in the rate of signature/ratification. Any statement that a state is more likely to commit is also a statement that the state will commit earlier and vice versa. We account for correlated groups of observations (non-independence of multiple observations per state) with robust sandwich variance estimators based on a grouped jackknife.

3.4 Findings

Tables 3 and 4 present the findings of the Cox proportional hazards estimations based on variables discussed above for the event of signing and ratifying treaties. Our sample of signature and ratification entries for the 53 selected multilateral post-Cold War treaties covers the period 1990 to 2008 and 193 states. Due to missing data, not all explanatory variables are available for the entire period and all states. The sample size varies somewhat throughout the models.

Table 3. Cox proportional hazards models – Signature.

	Model 1	Model 2	Model 3	Model 4
	exp(coef)	exp(coef)	exp(coef)	exp(coef)
	(p)	(p)	(p)	(p)
DIPLOMATIC	1.01	1.014	1.013	1.018
REPRESENTATION	0.005**	0.000***	0.000***	0.000***
POLITY		1.068		
		0.000***		
AUTOCRACY			0.467	
(COMP. NEW DEMOCRACY)			0.000***	
EST. DEMOCRACY			1.36	
(COMP. NEW DEMOCRACY)			0.029*	
OTHER			0.764	
(COMP. NEW DEMOCRACY)			0.031*	
TRADE OPENNESS	0.998			
	0.138			
COLONIAL PAST	0.508			
	0.000***			
STATE DURATION	0.612			
	0.002**			
AMERICA (COMP. EUROPE)				0.569
				0.000***
AFRICA (COMP. EUROPE)				0.453
				0.000***
ASIA (COMP. EUROPE)				0.35
				0.000***
HUMAN RIGHTS				7.38
				0.000***
ENVIRONMENT				2.948
				0.000***
SECURITY				8.135
				0.000***
No. Observations	58554	49547	55618	69707
No. Events	2832	2634	2660	3004
No. States	179	159	158	192
Period	1994-2007	1994-2007	1994-2008	1994-2008
LRT	504.7	658.1	616.4	2361
Wald test	76.26	119.7	101.6	1427
Robust (score) logrank test	33.4	45.59	48.61	156.1

Note: The likelihood ratio test assumes independence of observations within a cluster (country), the Wald and robust score tests do not. *** $p|z| < 0.001$, ** $p|z| < 0.01$, * $p|z| < 0.05$.

We present each four models for the event of signature (Table 3) and the event of ratification (Table 4) as the dependent variables. The ratification models are equivalent to the signature models, as they are based on the same set of variables. All presented models include the variable DIPLOMATIC REPRESENTATION. In model 1 we test in addition for the effect of TRADE OPENNESS, COLONIAL PAST and STATE DURATION. The explanatory power of POLITY is captured in model 2. Model 3 builds on categorical variable POLITY (CATEGORICAL) distinguishing between AUTOCRACY, ESTABLISHED DEMOCRACY and OTHER states, NEW DEMOCRACY being the reference category. In model 4 we test for the regional effects for AMERICA, AFRICA and ASIA as compared to the effects for EUROPE, the issue areas HUMAN RIGHTS, SECURITY and ENVIRONMENT.

The multivariate analysis reveals that POLITY as well as NEW DEMOCRACY have a positive and statistically significant effect on both treaty signature and ratification. The more democratic a state is, the more likely it is to commit to multilateral treaties. New democratized states also prove to be more likely to commit to multilateral treaties than other states. The same is true for regional effects as well as the issue areas of treaties. European states (REGION - CATEGORICAL) are significantly more likely to commit (sign and ratify treaties) than states in other world regions. The issue of SECURITY proves to be of most relevance when it comes to the decision to sign and ratify treaties. We find no robust effects for trade openness, state duration and colonial past, neither for the event of ratification nor the event of signature. These results are not surprising and confirm many findings from commitment studies on individual or sector-specific treaties.

The most interesting result relates to the effect of DIPLOMATIC REPRESENTATION. While we find a statistically significant and robust effect for diplomatic representation for the event of signature, no such effect can be revealed for the event of ratification. The size of the state missions does not yield much explanatory power for treaty ratification. In contrast, the increase of a diplomatic mission by one representative (e.g. change in the size of the state mission from 12 to 13 delegates) increases the likelihood of signing a multilateral treaty between 1 per cent (model 1) and 1.8 per cent (model 4). Comparing the 10th and 90th percentiles of diplomatic representations, we find that states with greater representations are between 1.18 (model 1) and 1.36 (model 4) more likely to sign multilateral treaties than states with relatively small missions. In sum, diplomatic representation makes a difference for the event of treaty signature.

Table 4. Cox proportional hazards models – Ratification.

	Model 1	Model 2	Model 3	Model 4
	exp(coef)	exp(coef)	exp(coef)	exp(coef)
	(p)	(p)	(p)	(p)
DIPLOMATIC	1.003	1.003	1.003	1.005
REPRESENTATION	0.266	0.29	0.272	0.069
POLITY		1.043		
		0.000***		
AUTOCRACY (COMP. NEW			0.567	
DEMOCRACY)			0.000***	
EST. DEMOCRACY (COMP. NEW			1.007	
DEMOCRACY)			0.93	
OTHER (COMP. NEW			0.715	
DEMOCRACY)			0.000***	
TRADE OPENESS	1.000			
	0.607			
COLONIAL PAST	0.686			
	0.000***			
STATE DURATION	0.962			
	0.697			
AMERICA (COMP. EUROPE)				0.697
				0.000***
AFRICA (COMP. EUROPE)				0.558
				0.000***
ASIA (COMP. EUROPE)				0.494
				0.000***
HUMAN RIGHTS				4.995
				0.000***
ENVIRONMENT				3.918
				0.000***
SECURITY				5.942
				0.000***
No. Observations	63742	54739	60393	74469
No. Events	3841	3518	3742	4333
No. States	179	159	158	192
Period	1994-2007	1994-2007	1994-2008	1994-2008
LRT	153.2	266.8	255.2	1792
Wald test	37.97	98.9	84.33	962.7
Robust (score) logrank test	38.97	56.15	54.9	160.4

Note: The likelihood ratio test assumes independence of observations within a cluster (country), the Wald and robust score tests do not. *** $p|z| < 0.001$, ** $p|z| < 0.01$, * $p|z| < 0.05$.

4. Participation, the negotiation process and treaty commitment.

4.1 Conventional explanations

While non-ratification is a frequently observed phenomenon, our empirical findings regarding the absence of participatory effects for ratifications are puzzling for two reasons. First, if diplomatic representation translates into influence over the treaty outcome, then countries with high levels of representation should not only be more likely to sign the negotiated treaty but also be more likely to ratify it. Multilateral treaty negotiations are largely governed by consensual decision-making providing opportunities for all participating actors to influence treaty

outcomes. While we acknowledge that more powerful states' interventions carry more weight, states represented during negotiations by greater missions will be able to shape the design of treaties more easily according to country-specific demands than states represented by smaller delegations. Second, while at the onset of a long bargaining process, negotiators may face uncertainty about whether certain treaty provisions are acceptable at home⁸, towards the end of negotiations there should be sufficient certainty about the probability of domestic ratification. Taken together, certainty about the chances of domestic ratification and ample influence over treaty design should make delegation size an important predictor not just for signature but also for ratification. While some types of domestic non-ratification can be attributed to unexpected events (e.g., regime change) or to ideological constellations of the parliament or constitutional interpretation of international law (e.g., the United States), these factors can not account for the observed difference.

4.2 Ties that bind – an omitted variable in commitment studies?

What other factors inherent to negotiations and the size of state missions may foster the observed “rushing to pen” effect? We frame our new argument in form of an omitted variable that has been overlooked in the commitment literature, yet may systematically affect signature. We build our argument on principal-agent (PA) theory as applied in the context of IOs (Hawkins et al. 2006). While multilateral treaty-making involves a long delegation chain with many actors, we pay particular attention to the group of proximate principals. Proximate principles are a group of civil servants and diplomats representing states in international institutions or in treaty negotiations (officials based in the host country where treaty negotiations proceed) (Nielson and Tierney 2003). They act as principals vis-à-vis international institutions (are proximate to the final IO agent) and at the same time function as agents for the competent ministries at home. As treaty negotiations are often sponsored by formal IOs and take place under the auspice of intergovernmental organizations, this set of actors merits closer attention (Elsig 2011). While IOs' overall management (e.g., provision of goods and services, surveillance, technical assistance, dispute settlement) is to a certain extent object of IO's discretion – with state principals delegating authority to an IO and its international civil servants, international treaty negotiations remain the prerogative of state parties to the treaties. We theorize that negotiation dynamics produce a “ties that bind” effect. We focus briefly on three important assumptions underlying our argument. First, as to the nature of multilateral treaty ne-

⁸ The minimal outcome that the domestic ratification body accepts, is known in the broader negotiation literature as the so-called “reservation point” (e.g., Putnam 1988).

gotiations, it is worth re-emphasizing that most international agreements are negotiated under consensual rule. Consensual decision-making allows every state representative participating in the negotiations to take stance and to attempt to influence the treaty text, while providing some assurance against burdensome obligations through forms of signalling veto power (e.g., blocking negotiations) or demanding specific opt-outs (e.g., reservations).

Second, as to preferences, we assume negotiation agents (NAs) to be instrumentally rational actors.⁹ A key concern of NAs (that grows over the time of the negotiations) is to present the principals at home a treaty that will pass the specific ratification threshold. The agent's major interest is to influence the evolving agenda (pro-active strategy), and at the same time to control against proposals that run counter to core state interests (re-active strategy). On top of this we assume personal interests to drive the behaviour of bureaucratic agents. Being an NA can potentially yield personal benefits. NAs are trained in the art of negotiations; for them bargaining over treaty texts presents a strategic opportunity to apply their skills. If done well, an NA can strengthen its position within national foreign affairs ministries as an able negotiator which can help career prospects (Elsig 2011). Therefore, beyond the odds of ratifying agreements, there exists an in-built desire of agents to be influential players in the negotiation phase.

Third, we assume that NAs have substantial influence over a state's decision to sign. Due to their involvement in the negotiations, they are in a strong position to persuade domestic ministries to approve NA's demand for signing an agreement. They may use their persuasive skills to address concerns by ministries given existing information asymmetry on the potential meaning, interpretation or opt-outs. While we acknowledge variation across states, we posit that NAs can assume a pivotal role in the decision to sign. NAs become less instrumental once the treaty is discussed in the domestic arena (in particular the parliaments).

Given the institutional environment of negotiations and the preference structures, we argue that a "ties-that-bind" effect impacts on the likelihood of treaty signature. This effect will set in over the course of negotiations and will materialize in two forms: 1) support for the drafted text through self-identification of imprints 2) rising mutual expectations by the NAs through balancing of concessions. First, active participation will translate into greater likelihood of signing an agreement on the table. The more an NA will have a hand in drafting the treaty (e.g., introduce wording), the greater his/her overall support for the treaty text and con-

⁹ This remains stable over time. We do not assume identity shifts of agents to occur as a result of interaction as suggested by the social-constructivist literature in relation the negotiations between representatives of EU member states within the European Union (see Checkel 2005).

versely the smaller his/her reluctance to sign.¹⁰ Put differently, NAs may observe imprints in the actual treaty text which they can attribute to their own influence (and which represent the outcome of hard labour measured in numerous hours spend on finding solutions over contentious issues). Interviews with former negotiators in the WTO Uruguay Round reveal that they are proud of shaping certain passages by their drafting skills.¹¹ Overall, they seem to value texts where they had a stake in the drafting over texts where they have not been influential, or where they expect less tangible effects.

Second, negotiations under consensual rule often take the shape of concession-trading. Negotiation packages in multilateral negotiations constitute a fine balance between parties' gains and losses. Concessions in some areas are offset by certain "results/gains" in other areas. Over the course of negotiations, therefore, the NAs' mutual expectations about the envisaged treaty outcome will rise as the deals on the table will be perceived as an offspring of fair compromise that should be "executed". This is similar to the concept of "self-restraint [...] motivated by a sense of responsibility or obligation [...] especially to protect", called by Lax and Sebenius "process" and "relationship" interests (quoted in Lewis 2005:492). Sudden defection (and the reluctance to sign a deal) would only be accepted under special circumstances which any agent may face (e.g., an external shock to the negotiations such a as a regime change at home, or some unanticipated developments that impact the assessment of the draft treaty text). Put differently, the diplomatic ties have bound negotiators in a way that will make it harder to escape.

Both factors fit the expectations from negotiation theory that "the sunk costs of long bargaining and the relationships build up with the other sides ('going native') [...] may lead the engaged agent to seek 'something' to show for the labor" (Lax and Sebenius 1986: 309). At the day of initialling or signing a treaty, those who have been participating all along will be more tempted to sign onto the agreement, partially filtering out the growing concerns over ratification.

To summarize, our 'ties that bind' argument can better account for the puzzling effect of diplomatic representation on signature and ratification, and explain why states that are more actively involved in the negotiations are more likely to sign treaties but not necessarily to ratify them.

¹⁰ This is also reflected in their perception of the constituencies' interests and worries.

¹¹ Interviews with US, Canadian and EU negotiators responsible for reforming the dispute settlement system (4 November 2009, 17 July 2008, 12 June 2009).

5. Conclusion

This paper addresses a gap in the literature and investigates what drives the signing of international agreements. It puts forward a novel argument to account for the influence of the size of diplomatic missions on the likelihood of signature, but not on ratification. Where do we go from here?

First, in order to test the ties-that-bind argument and the conjectured causal mechanism, we will need to use more fine-grained proxies for the diplomatic representation effect. We are in the process of collecting data on treaty negotiations coding the exact size of national delegations as well as the length of the treaty negotiations and the amount of treaty texts produced. Given our proposed explanation, the ties-that-bind effect should increase with the length of the negotiations and the amount of treaty text.

Second, we will engage in selective qualitative case studies with the aim to get a better understanding of the negotiators' motives in the context of negotiation. There might also be issue-specific effects, we could capture through a comparative case-study design. Depending on the interest alignment of the overall treaty objectives, ties-that-bind effects might be more likely in some issue areas than in others.

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Table A1. Selected multilateral treaties.

	treaty	adopted	mean	sd	min	max	N	%
1	Cartagena Protocol on Biosafety	2000	2004	1.799	2000	2008	150	77.72
2	Comprehensive Nuclear-Test-Ban Treaty	1996	2001	3.081	1996	2008	146	75.65
3	Convention on Biological Diversity	1992	1995	2.653	1992	2008	188	97.41
4	Convention on Nuclear Safety	1994	1998	3.767	1994	2008	62	32.12
5	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	1992	1998	3.616	1993	2008	180	93.26
6	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	1997	2000	2.388	1997	2007	153	79.27
7	Convention on the Safety of UN and Associated Personnel	1994	2001	3.297	1995	2008	87	45.08
9	International Atomic Energy Agency (IAEA) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste	1997	2002	2.995	1998	2008	45	23.32
10	International Civil Aviation Organization (ICAO) Convention on the Marking of Plastic Explosives for the Purpose of Detection	1991	2001	3.99	1992	2008	138	71.5
11	International Cocoa Agreement	2001	2003	1.088	2001	2005	16	8.29
12	International Coffee Agreement	2000	2003	1.74	2001	2008	69	35.75
13	International Convention for the Suppression of Acts of Nuclear Terrorism	2005	2007	0.78	2006	2008	47	24.35
14	International Convention for the Suppression of Terrorist Bombings	1997	2003	2.095	1998	2008	160	82.9
15	International Convention for the Suppression of the Financing of Terrorism	1999	2003	1.744	2000	2008	166	86.01
16	International Convention on Maritime Liens and Mortgages	1993	2001	3.848	1995	2007	12	6.22
17	International Convention on the Arrest of Ships	1999	2002	1.604	2001	2005	7	3.63
18	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	1990	2002	4.318	1993	2008	39	20.21
19	International Maritime Organization (IMO) Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea	1996	2004	2.84	2000	2008	13	6.74
20	IMO International Convention on Oil Pollution Preparedness, Response and Co-operation	1990	2000	4.668	1992	2008	97	50.26
21	IMO International Convention for the Control and Management of Ships' Ballast Water and Sediments	2004	2007	1.32	2005	2008	17	8.81
22	IMO International Convention on the Control of Harmful Anti-fouling Systems on Ships	2001	2006	1.974	2002	2008	34	17.62
23	IMO Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances	2000	2005	2.117	2002	2008	23	11.92
24	IMO Protocol to the International Convention on Civil Liability for Oil Pollution Damage	2001	2006	1.722	2003	2008	32	16.58
25	International Tropical Timber Agreement	1994	1997	2.578	1994	2006	60	31.09
26	International Sugar Agreement	1992	1998	5.364	1992	2008	58	30.05
27	Kyoto Protocol	1997	2003	2.424	1998	2008	180	93.26

Note: mean: average year of ratifications; sd: standard deviation for ratification in years; min: earliest year of ratification; max: latest year of ratification; N: number of ratifications; %: percentage of ratifications. Mean and sd refer to the ratifications made; mean is rounded to the actual calendar year (e.g., 2005.7 is written as 2005).

Table A1 (continued). Selected multilateral treaties.

	treaty	adopted	mean	sd	min	max	N	%
28	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2000	2004	1.965	2000	2008	125	64.77
29	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2000	2004	2.013	2000	2008	129	66.84
30	Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime	2001	2005	1.673	2002	2008	77	39.9
31	Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the UN Convention against Transnational Organized Crime	2000	2004	1.751	2001	2008	114	59.07
32	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime	2000	2004	1.751	2001	2008	123	63.73
33	Rome Statute of the International Criminal Court	1998	2002	1.86	1999	2008	107	55.44
34	Rotterdam Convention on Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998	2004	2.175	1999	2008	124	64.25
35	Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict	1999	2004	2.293	2000	2008	51	26.42
36	Stockholm Convention on Persistent Organic Pollutants (POPs)	2001	2004	1.714	2001	2008	155	80.31
37	UN Convention against Corruption	2003	2006	1.245	2003	2008	121	62.69
38	UN Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	1995	2002	3.926	1996	2008	71	36.79
39	UN Convention against Transnational Organized Crime	2000	2004	1.74	2001	2008	143	74.09
40	UN Convention on Independent Guarantees and Stand-by Letters of Credit	1995	2000	3.162	1997	2005	8	4.15
41	UN Convention on Jurisdictional Immunities of States and Their Property	2004	2007	0.983	2006	2008	6	3.11
42	UN Convention on the Assignment of Receivables in International Trade	2001	2005		2005	2005	1	0.52
43	UN Convention on the Liability of Operators of Transport Terminals in International Trade	1991	2001	4.243	1996	2005	4	2.07
44	UN Convention on the Protection and Use of Transboundary Watercourses and International Lakes	1997	2001	3.167	1998	2007	16	8.29
45	UN Convention on the Use of Electronic Communications in International Contracts	2005	No ratifications, yet.					
46	UN Convention to Combat Desertification	1994	1998	2.185	1995	2007	190	98.45
47	UN Framework Convention on Climate Change	1992	1995	2.511	1992	2007	189	97.93
48	World Customs Organization (WCO) Revised Kyoto Convention	1999	2004	2.286	1999	2008	57	29.53
49	World Health Organization (WHO) Framework Convention on Tobacco Control	2003	2005	1.147	2003	2008	157	81.35
50	World Intellectual Property Organization (WIPO) Copyright Treaty	1996	2002	2.936	1997	2008	68	35.23
51	WIPO Trademark Law Treaty	1994	2000	4.06	1995	2008	46	23.83
52	WIPO Patent Law Treaty	2000	2005	2.293	2001	2008	19	9.84
53	WIPO Performances & Phonograms Treaty	1996	2003	2.993	1998	2008	68	35.23