

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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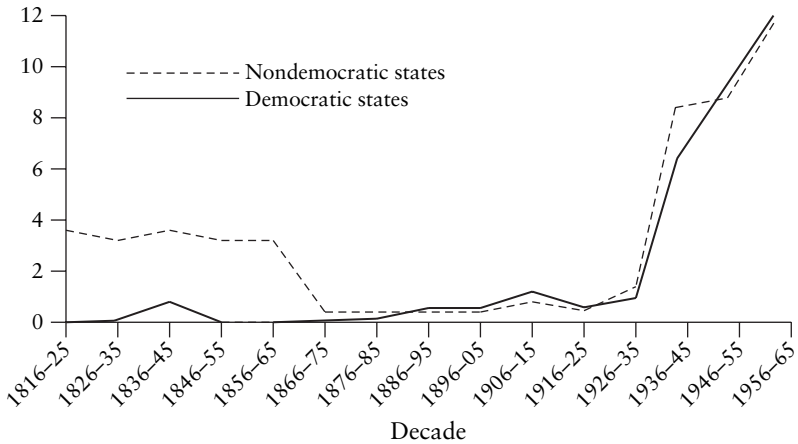


FIGURE 3.1. Average alliance density per decade, 1816-1965.

time support the notion that alliance norms have evolved over the past two centuries.<sup>51</sup>

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Figure 3.1 is, of course, a simple representation of the relationship between alliances and democracy with no controls for confounding factors. On its face, this pattern would give the most support to the expectation that domestic regime type should not make much difference in international behavior in general and in the ability to make commitments in particular. These results do not support the idea that democratic states should be more alliance-prone, but neither do they support the more often expressed concern that democratic states cannot make credible commitments. Democratic states find just as many alliance partners as non-democratic states. \*\*\* Either Salisbury was wrong or something has changed since he suggested that democratic states cannot keep their promises and thus will have trouble entering into alliances. At a minimum, democratic states are finding other states that are at least willing to sign the papers.

\*\*\* The question in which we are most interested is not simply how many alliance relationships democratic states enter, but rather what level of commitment those relationships represent. We can move one analytic step closer to this more fundamental issue by considering the length of time that democratic and nondemocratic alliances tend to last.

<sup>51</sup> On the evolution of alliance norms, see Kegley and Raymond 1990.

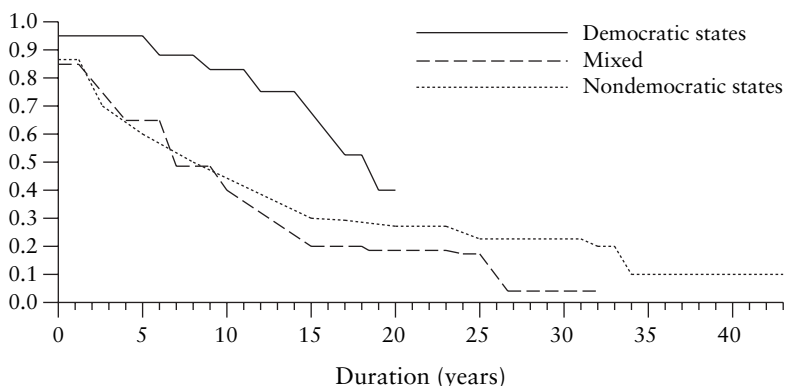


FIGURE 3.2. Alliance survival functions (Kaplan–Meier estimates) for alliances by treaty (reduced model 1).

### The Duration of Alliances

Statistical analysis of duration data is made treacherous by several factors. Briefly, the two primary problems are nonlinear relationships and the censoring of data.<sup>52</sup> Duration data are said to be right-censored when the events are still ongoing at the end of the observation period. For example, a seemingly robust alliance that starts just two years before the end of the observation period should not be coded as having ended after just two years. If we did not take censoring into account, we would bias our analysis for all the cases of alliances that were still in effect at the end of the period of observation. This bias is nontrivial because it would tend to be the alliances that were the longest lasting that would be censored. This is of particular importance in the study of alliances, because a large number of alliances are still ongoing.

The most common method for examining survival data, given these problems, is the use of Kaplan–Meier or product-limit estimates of the survival function. \*\*\* The Kaplan–Meier estimate of the probability that an alliance will last  $k$  years is the product of the estimate of the probability that the alliance will last  $k - 1$  years and the observed survival rate in year  $k$ . Thus, censored and uncensored observations will provide information as to the number of alliances that last  $k - 1$  years, while the uncensored observations will provide the observed survival rate in any given year.<sup>53</sup> Figure 3.2 displays the Kaplan–Meier estimates of survival times for the

<sup>52</sup> For a thorough review of the statistical issues, see Kiefer 1988. For a discussion that is more oriented toward political science, see Bienen and Van de Walle 1991, chap. 3.

<sup>53</sup> Lee 1992, chaps. 4 and 5.

TABLE 3.1. *Predicted Alliance Durations (expected duration in years of a defense pact starting in 1925 between two major powers)*

	Democratic alliances	Mixed alliances	Nondemocratic alliances
<i>All alliances</i>			
Dyads	17.1	9.8	10.7
Model 1	8.8	3.4	4.2
Model 2	12.6	6.7	6.6
<i>Defense pacts</i>			
Dyads	39.0	16.3	10.6
Model 1	30.6	18.5	18.4
Model 2	30.8	18.7	18.5

first reduced data set based on treaties. The three lines show the estimated survival function for democratic alliances, nondemocratic alliances, and mixed alliances. The distinctiveness of democratic alliances is clearly visible in this figure. Reading across the chart at the 50-percent survival mark, we can see that the median survival time for both mixed and non-democratic alliances is about seven years, while democratic alliances have a median survival time of about seventeen years. A generalized Wilcoxon rank test shows this difference to be significant at the 0.005 level.

The central limitation of the Kaplan–Meier estimates is that they are nonparametric. While they provide an effective visual indicator of survival patterns, it is difficult to control for important covariates or to specify more exactly the independent effect of democracy on alliance duration. A next step, then, is to turn to a parametric survival model. The model I use here to assess the effects of democracy on alliance duration is an accelerated failure time model \*\*\* using the LIFEREG procedure in SAS.

\* \* \*

This model does show a significant effect for the duration of alliances between liberal democracies. These effects are consistent in direction across all of the aggregations of the data and are statistically significant for the dual democracy coefficient in all of the models that use all alliances and for one of the dual democracy coefficients in the defense pact models. \*\*\* The impact \*\*\* can be seen more concretely in the examples given in Table 3.1. For the purposes of illustration, I have presented the predicted durations of a defense pact between two major powers that starts in 1925.

With all of the other independent variables held constant, the effect of the democracy variables is clearly visible in each row of the table. Most of the models predict fairly similar results.

As in the Siverson and Emmons work and the work on democracies and wars, it is again the dyadic effects of democracy that are the most notable.<sup>54</sup> We can make a distinction between the case of two democracies and either one or no democracies. But there is no statistically significant separation between the cases of one democracy and no democracies. Democracies are no different than nondemocracies when it comes to relationships with nondemocracies. It is only alliances between democracies that appear to be more durable. If alliance duration is an indicator of the ability to make commitments, then democracy by itself does not appear to either increase or decrease the ability of a state to make commitments to nondemocracies.

That democracies would be no worse at making commitments than nondemocracies is itself interesting in light of the frequent concerns about the instability of democratic decision making. The dyadic finding, however, suggests that the important explanations do not lie within the stability of democratic institutions themselves. Rather, the most promising source of explanation for these findings is likely to be either in the distinctive preferences democratic states may hold for maintaining their relationships with each other or in the institutional elements that develop in the relationships between democratic states.

\* \* \*

## CONCLUSIONS

The central characteristic of liberal democracies is juridically limited majority rule. For foreign policy decision making, this has meant that decision makers are limited in their ability to commit the state both because of the limits in their power at any given time – for example, the requirement that the President of the United States submit treaties to the Senate for ratification – and because of the possibility that public preferences will change. Drawing on these characteristics, the most traditional argument about the relationship between democratic states and commitment in the international system focuses on the inconstant commons and the expectation that democratic governance will be particularly ill-suited to

<sup>54</sup> Siverson and Emmons 1991. On democracy and war, see, for example, Small and Singer 1976; Maoz and Abdolali 1989; Russett 1990; and 1993.

long lasting commitments. The relationship between polity type and the ability to make commitments is more complex than this traditional argument would allow. As Riker has argued, there is a theoretical basis for policy stability in liberal democratic regimes; and this has been supported in several studies of foreign policy stability. Moreover, at the theoretical level, the creation of links between external commitments and internal commitments and the development of shared preferences through interdependence should also enhance the ability of liberal democracies to forge effective international commitments.

Ultimately, these factors will have to be disentangled and their individual importance assessed empirically to discern the net effect of the factors that push for and against democratic commitments. I have offered here a start on that empirical task with a broad analysis of the duration of democratic alliances. Consistent with the conjectures of Doyle and Kant, there are distinctive elements in the alliance behavior of democratic states. As Siverson and Emmons have shown, democracies tend to ally with other democracies.<sup>55</sup> I have shown here that these alliances tend to last longer than either the relationships between nondemocracies or the relationships that mix democracies and nondemocracies. Democratic alliances do appear distinctively durable when measured against the background of the constantly shifting international environment. More work will be required before we will want to endorse a robust version of the “*pacific union*” of democratic states. We can be more emphatic in the assertion that contrary to the pessimistic views of the likes of Tocqueville or Salisbury, democratic states have not demonstrated an inability to make lasting commitments.

<sup>55</sup> Siverson and Emmons 1991.

## On Compliance

Abram Chayes and Antonia Handler Chayes

In an increasingly complex and interdependent world, negotiation, adoption, and implementation of international agreements is a major component of the foreign policy activity of every state.<sup>1</sup> International agreements come in a variety of shapes and sizes formal and informal, bilateral and multiparty, universal and regional. Our concern is with contemporary agreements of relatively high political salience in fields such as security, economics, and environment, where the treaty is a central structural element in a broader international regulatory regime. Some of these agreements are little more than statements of general principle, while others contain detailed prescriptions for a defined field of interaction. Still others may be umbrella agreements for consensus building

<sup>1</sup> Barry E. Carter and Phillip R. Trimble, *International Law* (Boston: Little, Brown, 1991), pp. 133–252, cite a statistical study showing that of 10,189 U.S. treaties and international agreements made between 1789 and 1979, 8,955 were concluded between 1933 and 1979 (see p. 169). In the U.S. lexicon, the term “treaty” is reserved for international agreements ratified with the advice and consent of the Senate in accordance with Article 2, cl. 2 of the Constitution. Other international agreements are concluded by the President, in the great majority of cases with the authorization of Congress. All of these are “treaties” according to international usage, which defines a treaty as “an international agreement, concluded between states in written form and governed by international law.” See Vienna Convention on the Law of Treaties (entered into force on 27 January 1980) Article 2(1)(a), in *International Legal Materials*, vol. 8 (Washington, D.C.: The American Society of International Law, July 1969), pp. 679–735, at 701 (hereafter cited as Vienna Convention on the Law of Treaties). The computer bank of the United Nations (UN) Treaty Office shows treaty growth, including multilateral and bilateral treaties and amendments, as follows: 373 treaties were entered into during the ten-year period ending in 1955; 498 in the period ending in 1965; 808 in the period ending in 1975; 461 in the period ending in 1985; and 915 in the period ending in 1991.

in preparation for more specific regulation. Most of the agreements of concern are [now] multilateral.

We believe that when nations enter into an international agreement of this kind, they alter their behavior, their relationships, and their expectations of one another over time in accordance with its terms. That is, they will to some extent comply with the undertakings they have made.<sup>2</sup> How or why this should be so is the subject of a burgeoning literature and debate in which, for the first time in half a century, the possibility of fruitful dialogue between international lawyers and students of international relations has emerged. This article explores some basic propositions we think should frame this discussion.

First, the general level of compliance with international agreements cannot be fully empirically verified. That nations generally comply with their international agreements, on the one hand, and that they violate them whenever it is “in their interests to do so” are not statements of fact or even hypotheses to be tested, but assumptions. We give some reasons why we think the background assumption of a propensity to comply is plausible and useful.

Second, compliance problems often do not reflect a deliberate decision to violate an international undertaking on the basis of a calculation of interests. We propose a variety of other (and in our view more usual) reasons why states may deviate from treaty obligations and why, in particular circumstances, these reasons are accepted by the parties as justifying such departures.

Third, the treaty regime as a whole need not and should not be held to a standard of strict compliance but to a level of overall compliance that is “acceptable” in the light of the interests and concerns the treaty is designed to safeguard. We consider how the “acceptable level” is determined and adjusted.

#### BACKGROUND ASSUMPTION

According to Louis Henkin, “*almost all nations observe almost all principles of international law and almost all of their obligations almost all*

<sup>2</sup> We are mindful of the distinction between treaty compliance and regime effectiveness. See Oran Young, “The Effectiveness of International Institutions: Hard Cases and Critical Variables,” in James N. Rosenau and Ernst-Otto Czempiel, eds., *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992), pp. 160–92.



of the time.”<sup>3</sup> The observation is frequently repeated [without either empirical support or refutation.] A moment’s reflection shows that it would not be easy to devise a statistical protocol that would generate such evidence. For example, how would Iraq’s unbroken respect for the borders of Turkey, Jordan, and Saudi Arabia count in the reckoning against the invasions of Iran and Kuwait?

Equally, and for much the same reasons, there is no way to validate empirically the position of mainstream realist international relations theory going back to Machiavelli, that “a prudent ruler cannot keep his word, nor should he, where such fidelity would damage him, and when the reasons that made him promise are no longer relevant.”<sup>4</sup> Contemporary realists accept that the interest in reciprocal observation of treaty norms by other parties or a more general interest in the state’s reputation as a reliable contractual partner should be counted in the trade-off of costs and benefits on which a decision is based (an extension that detracts considerably from the power and elegance of the realist formula).<sup>5</sup> No calculus, however, will supply a rigorous, non-tautological answer to the question whether a state observed a particular treaty obligation, much less its treaty obligations generally, only when it was in its interest to do so. Anecdotal evidence abounds for both the normative and the realist propositions, but neither of them, in their general form, is subject to statistical or empirical proof. The difference between the two schools is not one of fact but of the background assumption that informs their approach to the subject.

A critical question for any study of compliance, then, is which background assumption to adopt, and that question is to be resolved not on the basis of whether the assumption is “true” or “false” but whether or not it is helpful for the particular inquiry. Thus, for game-theoretic approaches that focus on the abstract structure of the relationship between

<sup>3</sup> See Louis Henkin. *How Nations Behave*, 2d ed. (New York: Columbia University Press, 1979), p. 47; and p. 69 of Louis Henkin, “International Law: Politics, Values, and Functions: General Course on Public International Law,” *Recueil Des Cours*, vol. 216, 1989, pp. 1–416, emphasis original.

<sup>4</sup> Niccolo Machiavelli, *The Prince*, eds. Quentin Skinner and Russell Price (Cambridge: Cambridge University Press, 1988), pp. 61–62. For a modern instance, see Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 5th ed. (New York: Alfred A. Knopf, 1978), p. 560: “In my experience [states] will keep their bargains as long as it is in their interest.”

<sup>5</sup> See, for example, James A. Caporaso, “International Relations Theory and Multilateralism: The Search for Foundations,” *International Organization* 46 (Summer 1992), pp. 599–632.

states, the realist assumption of a unitary rational actor optimizing utilities distributed along smooth preference curves may have value. As Thomas Schelling said at the beginning of his classic work, "The premise of 'rational behavior' is a potent one for the production of theory. Whether the resulting theory provides good or poor insight into actual behavior is . . . a matter for subsequent judgment."

Our interest in this work is in improving the prospects for compliance with treaties, both at the drafting stage and later as the parties live and operate under them. From this perspective, the realist analysis, focusing on a narrow set of externally defined "interests" primarily, in the classical version, the maintenance or enhancement of state military and economic power is not very helpful. Improving compliance becomes a matter of the manipulation of burdens and benefits defined in terms of those interests, which translates into the application of military or economic sanctions. Because these are costly, difficult to mobilize, and of doubtful efficacy, they are infrequently used in practice. Meanwhile, analytic attention is diverted from a wide range of institutional and political mechanisms that in practice bear the burden of efforts to enhance treaty compliance.

For a study of the methods by which compliance can be improved, the background assumption of a general propensity of states to comply with international obligations, which is the basis on which most practitioners carry out their work, seems more illuminating.<sup>6</sup>

### Efficiency

Decisions are not a free good. Governmental resources for policy analysis and decision making are costly and in short supply. Individuals and organizations seek to conserve those resources for the most urgent and pressing matters.<sup>7</sup> In these circumstances, standard economic analysis argues against the continuous recalculation of costs and benefits in the absence of convincing evidence that circumstances have changed since the original decision. Efficiency dictates considerable policy continuity.

<sup>6</sup> See Oran R. Young, *Compliance and Public Authority: A Theory with International Applications* (Baltimore, Md.: Johns Hopkins University Press, 1979), pp. 31–34.

<sup>7</sup> See George Stigler, "The Economics of Information," *Journal of Political Economy* 69 (June 1961), pp. 213–25; G. J. Stigler and G. S. Becker, "De Gustibus non Est Disputandum" (There is no disputing taste), in Karen S. Cook and Margaret Levi, eds., *The Limits of Rationality* (Chicago: University of Chicago Press, 1990), pp. 191–216; Charles E. Lindblom, *The Policy Making Process* (Englewood Cliffs, N.J.: Prentice-Hall, 1968), p. 14.

In areas of activity covered by treaty obligations, the alternative to recalculation is to follow the established rule.

Organization theory would reach the same result as economic analysis, but by a different route. In place of the continuously calculating, maximizing rational actor, it substitutes a "satisficing" model of bounded rationality that reacts to problems as they arise and searches for solutions within a familiar and accustomed repertoire.<sup>8</sup> In this analysis, bureaucratic organizations are viewed as functioning according to routines and standard operating procedures, often specified by authoritative rules and regulations. The adoption of a treaty, like the enactment of any other law, establishes an authoritative rule system. Compliance is the normal organizational presumption.

The bureaucracy is not monolithic, of course, and it will likely contain opponents of the treaty regime as well as supporters. When there is an applicable rule in a treaty or otherwise, opposition ordinarily surfaces in the course of rule implementation and takes the form of argument over interpretation of language and definition of the exact content of the obligation. Such controversies are settled in accordance with normal bureaucratic procedures in which, again, the presumption is in favor of "following" the rule.

### Interests

The assertion that states carry out treaty commitments only when it is in their interest to do so seems to imply that commitments are somehow unrelated to interests. In fact, the opposite is true. The most basic principle of international law is that states cannot be legally bound except with their own consent. So, in the first instance, the state need not enter into a treaty that does not conform to its interests.

More important, a treaty does not present the state with a simple binary alternative, to sign or not to sign. Treaties, like other legal arrangements, are artifacts of political choice and social existence. The process by which they are formulated and concluded is designed to ensure that the final result will represent, to some degree, an accommodation of the interests of the negotiating states. Modern treaty making, like legislation in

<sup>8</sup> Herbert Simon, *Models of Man: Social and Rational Mathematical Essays on Rational Human Behavior in a Social Setting* (New York: John Wiley & Sons, 1957), pp. 200-204. See also James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley & Sons, 1958), p. 169. For an example of this model of organizational behavior applied to the analysis of international affairs, see Graham T. Allison, *The Essence of Decision: Explaining the Cuban Missile Crisis* (Glenview, Ill.: Scott, Foresman, 1971).

a democratic polity, can be seen as a creative enterprise through which the parties not only weigh the benefits and burdens of commitment but explore, redefine, and sometimes discover their interests. It is at its best a learning process in which not only national positions but also conceptions of national interest evolve.

This process goes on both within each state and at the international level. In a state with a well-developed bureaucracy, the elaboration of national positions in preparation for treaty negotiations requires extensive interagency vetting. Different officials with different responsibilities and objectives engage in what amounts to a sustained internal negotiation. The process can be seen in every major U.S. international negotiation. For example, at the end of what Ambassador Richard Benedick calls "the interagency minuet" in preparation for the Vienna Convention for the Protection of the Ozone Layer, the final U.S. position "was drafted by the State Department and was formally cleared by the Departments of Commerce and Energy, The Council on Environmental Quality, EPA [Environmental Protection Agency], NASA, NOAA [National Oceanographic and Atmospheric Administration], OMB [Office of Management and Budget], USTR [U.S. Trade Representative], and the Domestic Policy Council (representing all other interested agencies)."<sup>9</sup> In addition to this formidable alphabet soup, White House units, like the Office of Science and Technology Policy, the Office of Policy Development, and the Council of Economic Advisers, also got into the act. According to Trimble, "each agency has a distinctive perspective from which it views the process and which influences the position it advocates. . . . All these interests must be accommodated, compromised or overridden by the President before a position can even be put on the table."<sup>10</sup>

In the United States in recent years, increasing involvement of Congress and with it nongovernmental organizations (NGOs) and the broader public has introduced a new range of interests that must ultimately be reflected in the national position.<sup>11</sup> Similar developments seem to be occurring in other democratic countries.

<sup>9</sup> Richard Benedick, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Cambridge, Mass: Harvard University Press, 1991), pp. 51–53. Other states, at least in advanced industrialized societies, exhibit similar, if perhaps not quite as baroque, internal practices in preparation for negotiations. Developing countries, with small resources to commit to bureaucratic coordination, may rely more on the judgment and inspiration of representatives on the scene.

<sup>10</sup> Trimble, "Arms Control and International Negotiation Theory," p. 550.

<sup>11</sup> See Benedick, *Ozone Diplomacy*, p. 57; Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 2d ed. (Glenview, Ill.: Scott, Foresman, 1989). p. 35.