

Domestic Law and the Credibility of Treaty Commitments

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Introduction

- Countries have elaborate domestic laws governing treaty-making procedures and the enforcement of treaties by courts
- Legal scholarship portrays these choices as simple tradeoffs between international cooperation and domestic accountability
- Political science literature on credibility of treaty commitments focuses on:
 - Institutional features of treaty regimes, e.g., dispute settlement
 - Domestic regime type, e.g., democracies are more credible
 - Not on the explicit legal framework described above

Theory

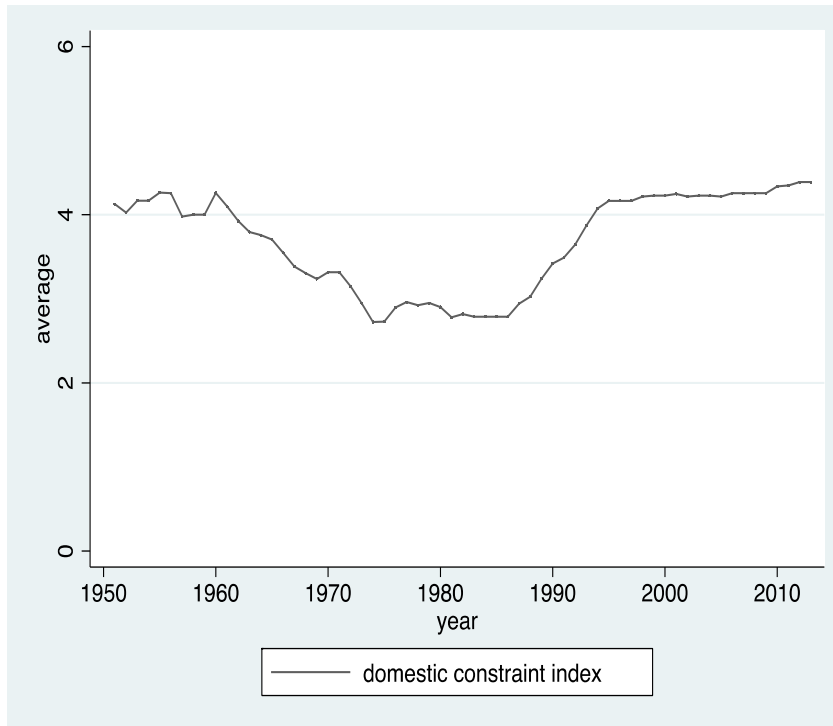
- **States use their domestic rules on treaty-making and court enforcement to enhance the credibility of their commitments**
- Treaty-making procedures force sunk costs and the revelation of private information on the likelihood of future compliance
- Incorporation of treaties in domestic law delegates to domestic courts the authority to enforce them, imposing costs for future deviations
- Implication: Procedural constraints on treaty-making and stronger delegation to domestic courts can allow a state to enter into more treaties when potential partners care about credibility

Data

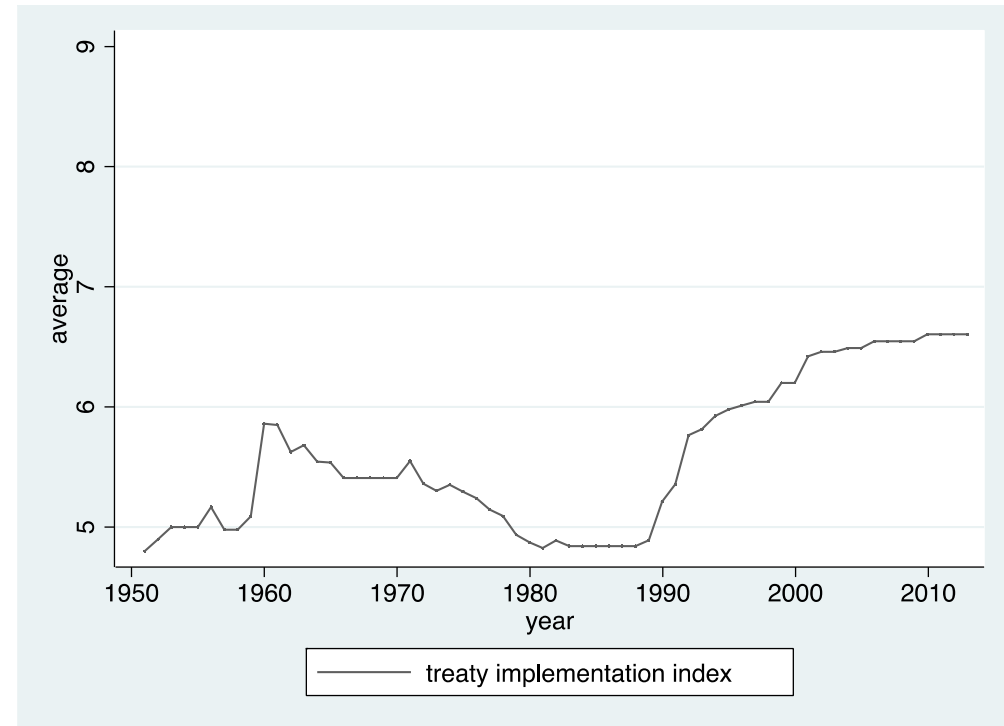
- New dataset on treaty-making procedures and the status of treaties in domestic law across 101 countries, 1815-2013. The data shows clear trends in the past 40 years.
- Treaty-making procedures:
 - Prior legislative approval is widespread
 - Its scope extends to more treaties
 - Prior constitutional review is more common
- Domestic court enforcement:
 - Most countries make treaties part of their domestic law
 - Many make them superior to domestic laws
 - Many domestic courts apply a presumption of conformity

Indices

Domestic Constraints Index (DCI)



Treaty Receptiveness Index (TRI)



Bilateral Investment Treaties (BITs)

- By entering BITs, host states commit themselves to protect foreign direct investment
- This promise should be more valuable to home states and their investors if the host's promises are more credible
- H1: More domestic constraints on treaty-making should allow hosts to sign more BITs with capital exporters
- H2: More robust domestic court enforcement of treaties should allow hosts to sign more BITs with capital exporters

Regression Analysis

- Negative binomial fixed effects
- DV = # of BITs a state signs as host
- IVs = DCI and TRI
- Controls = from prior literature on BIT formation

Results

- DCI and TRI statistically and substantively significant
- TRI from min to max = predicts from 2.9 to 21.6 BITs
- DCI from min to max = predicts from 4.7 to 11.4 BITs
- TRI also increases ratification

	(1) baseline	(2) additional controls	(3) ratification	(4) factor analysis
Treaty receptiveness index	1.1525** (0.073)	1.1639* (0.108)	1.2212*** (0.085)	
Domestic constraints index	1.1035** (0.052)	1.1219** (0.061)	1.0676 (0.051)	
Common variance in TRI and DCI				2.6474*** -0.826
Democracy	1.0375** (0.015)	1.0033 (0.011)	1.0209 (0.016)	1.0374*** -0.015
GDP per capita	3.3170*** (0.734)	1.6381*** (0.265)	3.9267*** (0.895)	3.3335*** -0.737
Literacy rates		1.0197** (0.009)		
Population size		10.6826*** (4.328)		
FDI		0.9994 (0.004)		
Political Risk		1.0097 (0.006)		
Constant	0.0000*** (0.000)	0.0000*** (0.000)	0.0000*** (0.000)	0.0000*** (0.000)
<u>L_nalpha</u>	0.2293*** (0.056)	0.0275*** (0.022)	0.1939*** (0.055)	0.2311*** (0.056)
Country fixed effects	Yes	Yes	Yes	Yes
Decade dummies	Yes	Yes	Yes	Yes
Observations	3,685	1,488	3,685	3,685

Robust standard errors clustered at the country level reported in parentheses. *** p<0.01, ** p<0.05, * p<0.1