

The Changing Nature of Presidential Policy Making on International Agreements

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Why are executive agreements (EAs), rather than treaties, increasingly used to formalize U.S. relations with other countries? We examine this question from two perspectives. In the first, known as the “evasion” hypothesis, presidents act strategically to evade the Senate when governing circumstances are difficult. This strategic view reflects the conventional wisdom. Second, we consider whether organizational efficiency drives presidential use of EAs. As the number of countries increases, requiring more international agreements, it becomes necessary to rely more on an efficient mechanism to “get things done.” We test these rival hypotheses by analyzing EA use as a percentage of all international agreements, as well as a subset of important EAs, from 1949 to 1998. In contrast to the conventional wisdom, we find consistent support for the efficiency hypothesis and only mixed support for the evasion hypothesis. Within these mixed findings, an interesting trend emerges. As expected, presidents act more strategically on the subset of important agreements, but this behavior appears to be driven by the ideological makeup of the Senate rather than partisan cleavages.

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As chief diplomats, U.S. presidents hold a great reservoir of power, both formal and informal. One of the most important formal diplomatic powers of the presidency is the constitutional authority to negotiate treaties. However, presidents are constrained considerably when using the treaty power, for treaties require supermajority advice and consent in the Senate. Perhaps as a result, modern presidents since Franklin Roosevelt have more regularly used executive agreements (EAs), rather than treaties, to complete important diplomatic action. Scholars have noted a great increase in the use of EAs vis-à-vis treaties, citing the conventional “evasion hypothesis,” which states that presidents skirt the Senate because of difficult political hurdles which are exacerbated by partisan politics (Lindsay 1994; Margolis 1986).

Despite the fact that most treaties are given advice and consent in the Senate eventually, the conventional wisdom posits that modern presidents use the EA as a means to enter into binding international agreements while avoiding the political uncertainty of the treaty process. The Supreme Court has maintained that EAs are as binding in terms of American law as treaties (*United States v. Pink*, 315 U.S. 203, 1942), and most do not require the approval of Congress.¹ One explanation left unexplored by the literature is that EAs provide a much more efficient process for the president. Agreements go into effect sooner, offer the president the opportunity for unilateral action in some cases (Howell 2003), and if law demands Congress has a say, may only require majority approval in both chambers rather than supermajority approval in the Senate.² The alternative explanation, then, suggests that the increased use of EAs is an evolutionary response by the presidency and the Senate to greater diplomatic demands of the modern era.

In this article, we ask the following question: why are EAs, rather than treaties (which require a two-thirds vote of support by the U.S. Senate), increasingly used as a means to formalize U.S. relations with other countries? We examine this question from two perspectives. In the first, we assume presidents behave strategically when using EAs, a view held by the lion’s share of scholars in the area (Edwards and Wayne 1999; Fisher 1991; Lindsay 1994; Margolis 1986). Hence, the use of the EA is driven by a presidential desire to circumvent the Senate when governing circumstances are difficult. Second, and alternatively, we envision organizational efficiency at the heart of the use of EAs. In general, conducting foreign affairs has become increasingly complex in the modern era,

1. However, many EAs do require congressional approval, such as trade, arms control, and fishery agreements (Fisher 1991, 242-43). For example, the 1961 law establishing the Arms Control and Disarmament Agency also “states that any agreement to limit U.S. armed forces or armaments must be approved by legislation or treaty” (*CQ Almanac* 1992, 622).

2. The Department of State’s Office of the Assistant Legal Adviser for Treaty Affairs makes further distinctions between the different forms of international agreements. The typical distinction categorizes Article II treaties as formal treaties and all other international agreements as “agreements other than treaties,” better known as EAs. The Treaty Office further divides EAs into three subcategories that have important distinctions bearing on our discussion here: (1) congressional EAs, which are pursuant to a previous act of Congress, and sometimes require congressional approval (either through a later veto or outright majority vote); (2) agreements pursuant to a treaty; and (3) presidential agreements concluded pursuant to an Article II power of the president (U.S. Government Printing Office 2001, 78-95). Among political scientists, only Johnson (1984) makes distinctions between these forms of EAs, noting a large percentage (87 percent) of EAs are what he terms “statutory agreements,” fitting with the first category above.

necessitating the reliance of the executive branch on an efficient mechanism to “get things done” in a busier international system.³

After reviewing the state of the literature on international agreements, we discuss, and develop hypotheses for, these two alternative explanations of this important institutional change: political strategy and institutional efficiency. We then discuss our data collection procedures, followed by a description of our dependent and independent variables. We next present our findings and conclude with a discussion of the broader implications of our results for scholarship on the presidency and Congress in foreign policy.

Literature Review

Studying the patterns of presidential behavior in completing international agreements over time may teach us a great deal about the institution’s response to changing domestic political environments as well as changes in the international context. Despite the constitutional significance of international agreements, very little systematic study has focused on the politics of the treaty ratification process or the process of alternatively forging EAs. We do know that the use of EAs took off during the Franklin Roosevelt administration. Roosevelt completed several EAs with Allied powers prior to U.S. entry into World War II, avoiding the treaty process altogether. Roosevelt clearly showed the alternative open to presidents who fear a tough fight in the Senate over a treaty: use EAs instead. Roosevelt could avoid the requirements of persuading two thirds of an isolationist Senate for these vitally important EAs.⁴ While Congress was not completely skirted in Roosevelt’s efforts, persuading a majority of both houses to approve funding bills (in fulfillment of the EAs) might prove more likely than gaining the approval of two thirds of the Senate.

Most recent accounts of the international agreement process begin their examination during the post-World War II era. The conventional wisdom, as expressed in textbooks (e.g., Edwards and Wayne 1999; Hastedt 2000) is that senatorial consent to treaties in the modern era is *pro forma*, meaning that modern presidents have very little difficulty gaining senatorial advice and consent on their treaties. When political roadblocks are likely to arise, modern presidents have the option to enter into an EA, which may not require congressional consent in many instances. This bolsters their already high treaty ratification success rate, while allowing them to complete diplomatic action considerably more quickly. Along these lines, Lindsay (1994) suggests that presidents may buttress their success rate on treaties by entering into EAs instead, when they believe that attaining the two-thirds requirement in the Senate is unlikely.

3. Martin (2000) offers a third perspective encompassed somewhat by both perspectives tested below. She argues that presidents cannot evade the Senate when making foreign policy and demonstrates in her analysis that the use of EAs does not vary with the typical variables noted as important by previous literature.

4. An example of one of Roosevelt’s important EAs leading up to World War II was the agreement to trade U.S. destroyers to Great Britain in exchange for bases in the Caribbean.

Margolis (1986) finds a greater propensity for presidents to use the EA over the treaty during divided government, especially when the opposing party holds a two-thirds majority, and concludes that presidents evade the Senate. More recently, however, Martin (2000) has argued that presidents are incapable of evading the Senate through the use of EAs. While her findings question to some extent the conventional wisdom, she stops short of providing a rival explanation for the trend. That is, Martin does not provide empirical evidence directly answering why presidents have more readily utilized EAs over treaties in the postwar era, if not for strategic political reasons.

Other studies have questioned the political use of EAs that underlies the strategic model. Johnson (1984) examined the form taken by international agreements in the 1946-1972 period, finding that an overwhelming share of the agreements (87 percent) were completed pursuant to congressional statute or approval, with only a small percentage (7.4 percent) concluded by presidents based on their sole executive authority (13). Treaties only constituted 6 percent of the agreements analyzed by Johnson. While his analysis suggests that presidents share international agreement responsibility with Congress, he fails to provide an explanation for the rise of agreements. He does note that sole EAs have been used more routinely to complete major military commitments abroad, with 99 of the 131 agreements examined fitting into that category (59). The analysis suggests that disaggregating in terms of the important agreements is useful for disentangling why presidents have chosen the more expedient alternative in the modern era.

A major flaw in the literature is the way scholars account for the difficult governing circumstances which may lead a president to evade the Senate. Margolis (1986) and Martin (2000) rely on simple measures of divided government and the size of the president's party in the Senate. Divided government is often considered a major culprit in gridlock (Edwards, Barrett, and Peake 1997). However, recent research suggests institutional preferences (Binder 1999) and the preferences of pivotal players in the process (Krehbiel 1998) best explain legislative gridlock. These latter factors may matter more because the modern era has not featured sizeable enough majority coalitions in the Senate to overcome supermajority requirements on partisan issues. Neither Margolis nor Martin account for the institutional preferences or pivotal players that are likely to emerge as important when there is a two-thirds requirement to ratify a treaty. In addition, the Senate Foreign Relations Committee (SFRC) is a major roadblock in the treaty process, as most treaties that fail die there, yet no previous study has taken into account the views of the SFRC.

Research in this area has also focused on the implications of the Case-Zablocki Act of 1972 (Public Law 92-403). Congress used this act to broadcast to the executive branch that they wanted to be more involved in this area. A forerunner to the ultimate act was passed by the Senate in 1969 and expressed the sense of the Senate through resolutions in two respects. First, the Senate went on record saying that the making of national commitments such as these should involve the legislative and executive branches. More specifically, the Senate stated that agreements regarding military bases should take the form of treaties. The final Case-Zablocki Act requires that all international agreements other than treaties be reported to both the House and Senate foreign affairs committees within sixty days of their entering into force (McCormick 2005). In

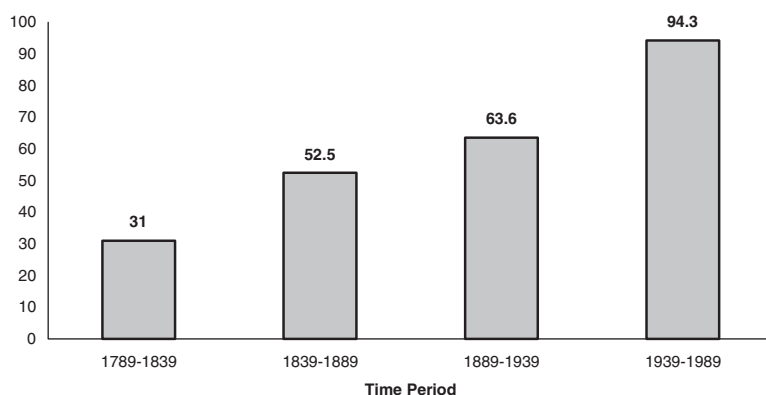


FIGURE 1. Executive Agreements as a Percentage of All International Agreements by Time Period, 1789-1989.

Source: Table II-1 of *Treaties and other international agreements: The role of the United States Senate* (U.S. Government Printing Office 2001).

summary, with the Case-Zablocki efforts (the 1969 Senate resolutions and the 1972 act), Congress (and, for our purposes, the Senate) went on record wanting to see more treaties rather than EAs and to know more generally about what was happening on U.S. international commitments.

The current state of knowledge on the topic has texts claiming the treaty process as pro forma, with presidents primarily getting their way. This argument raises the following question. If the treaty process is pro forma, why use EAs instead of treaties? It is possible that the treaty process is murkier than conventional understanding suggests (Auerswald and Maltzman 2003), so strategic-political incentives may drive presidents to use EAs instead. Or, the alternative perspective of efficiency may be the best explanation. We seek to understand this murky process through a systematic examination of international agreements in the modern era, specifically the use of EAs as an alternative means to formalize relations with other countries.

Explaining the Rise of EAs: Politics or Efficiency?

Several scholars demonstrate that presidential use of the EA has grown substantially in the postwar era (Edwards and Wayne 1999; Lindsay 1994; Ragsdale 1998). Figure 1 shows quite starkly this increase in the proportion of EAs by time period. The use of EAs has tripled. We examine this important institutional change by considering two potential explanations for the rise in the use of EAs.

EAs as Political Strategy

Strategy might drive presidential decisions of whether to submit an international agreement to the Senate as a treaty or alternatively treat the agreement as an EA. The

president is not bound legally to go the treaty route. In fact, major international agreements have commonly been completed using the EA method.⁵ Scholars have examined similar strategic behavior related to the politics of executive orders. Deering and Maltzman (1999) describe the conventional wisdom related to executive orders: "According to this strategic model, executive orders are instruments used by Presidents to circumvent the constitutionally prescribed policymaking process." Executive orders enable presidents to "pursue policy goals in an efficient and alternative manner" (768).

The parallel between EAs and executive orders is clear, as both are cited as examples of unilateral executive action (Howell 2003, 19-20). Unilateral action allows presidents to make policy more efficiently by skirting the constitutional processes involving the legislature (see also Fisher 1991, chapter 8). Additionally, the fact that both executive orders and EAs are often pursuant to a delegation of authority by Congress does not make them any less efficient in terms of policy making. This does suggest, however, that the legislature may be complicit in this policy evolution. Despite the claim that presidents behave strategically when completing EAs, little in the way of empirical evidence has been forwarded to support it. Anecdotal evidence suggests, however, that strategy may play a role in certain high-profile decisions.

Lindsay (1994) suggests that the "law of anticipated reactions" is likely to govern executive behavior in terms of treaties and EAs. Lindsay states that "presidents facing strong opposition in the Senate have an incentive to negotiate a treaty that reflects senatorial views. . . . But presidents need not always heed their critics. Presidents can skirt a truculent Senate through the use of EAs" (81). Lindsay explains that, even when agreements require congressional approval, "presidents prefer it to a treaty because they usually find it far easier to round up majority support in both chambers than a supermajority in the Senate" (82).

When presidents openly consider completing an important agreement as an EA instead of a treaty they may come under pressure from members of the Senate to respect the constitutional design. In 1979, Carter floated a trial balloon suggesting that he might submit SALT II to Congress as an EA, requiring majority approval in both chambers, rather than as a treaty. Carter recognized the opposition in the Senate would be difficult to overcome and stated that "if a SALT agreement were blocked or emasculated in the upper chamber," he would then ask for approval of both the House and Senate by simple majority (Burns 1979; cited in Caldwell 1991, 64). In 1990, President George H. W. Bush completed a chemical weapons reduction agreement with the Soviet Union and considered submitting the agreement for approval from Congress. Administration officials cited concerns about getting the necessary two-thirds vote in the Senate if the agreement was treated as a treaty document. In response, the SFRC held public hearings on the acceptability of this practice in June 1990, with a formal protest issued by eighteen of the nineteen members of the committee. Bush still opted for the EA route,

5. Many important international agreements have been concluded as EAs, including the annexation of Texas and Hawaii and the peace agreements ending the Korean and Vietnam wars. The treaty dealing with the annexation of Texas, in 1841, failed ratification in the Senate, necessitating the EA (Holt 1933). More recently, SALT I (1972), NAFTA (1992), GATT (1994), and the Kosovo Peace Accords (1999) were completed as EAs.

but never asked Congress for official approval and international events overtook the process (Lindsay 1994, 83; *Congressional Quarterly Almanac* 1990, 709).⁶ Anecdotal evidence, thus, suggests the importance of the SFRC in the presidential decision to complete an agreement by EA or treaty.⁷

This political explanation of the rise in the use of EAs is consistent with much of the recent literature on institutional change. Scholars posit that the design of institutions bubbles up from the battle of politics (Binder 1997; Katz and Sala 1996; Schickler 1998). While there is some disagreement among scholars about the tenor of that change, they proceed from the same underlying assumption that the formal and informal design of institutions reflects the desires of purposive and self-interested political actors. These actors seek to craft institutions and develop policy mechanisms that will better enable them to enact their policy preferences. The EA appears consistent with this point of view; their rise may indeed be the result of shifting political coalitions and the creative strategy of political actors, namely the president.

EAs as a Mechanism to Get Things Done

While the idea that presidents would skirt Senate prerogatives by using EAs instead of treaties makes some sense, there are theoretical reasons to question such an assumption. For one, if the Senate were being subverted on a regular basis in this manner, we would expect at least one senator to stand up and filibuster the accompanying attempt to pass implementation legislation. Additionally, what incentives are there for the SFRC chair to allow presidents to run roughshod over their constitutional prerogatives? Presidents do not get a “free pass” using this approach; indeed, with the use of an EA, presidents get around the two-thirds requirement in the Senate, but they still must put together a Senate (and House) majority to pass the budgetary and implementation particulars of EAs, should that be necessary.⁸

If the Senate was maddened by the presidential use of EAs, it could simply refuse to fund the accompanying provisions. That the Senate does not regularly throw EAs back in the president’s face suggests two possible scenarios. First, they might completely defer to the president on international agreements generally. Given the propensity of the Senate to quibble with the president on treaties (see Auerswald and Maltzman 2003) and members of the Senate to guard their constitutional prerogatives, this is highly unlikely.⁹ Second, and alternatively, the Senate may, more or less, be a willing party in this trend.

6. In early 1993, Bush, in one of his final actions as president, signed the Chemical Weapons Ban Treaty with the Soviet Union, which was eventually ratified in April 1997 (*CQ Almanac* 1997).

7. A more recent significant example includes consideration by the George W. Bush administration to treat the Moscow Treaty (an arms control agreement with Russia) as an EA rather than a treaty. Upon the urging of a united SFRC leadership (via a letter from Senators Biden and Helms), the president transmitted the agreement to the Senate as a formal treaty (from interview with SFRC staff).

8. In addition to legal requirements on congressional approval for some EAs, Congress has sought to curtail some practices of the president in this arena, most notably requiring the president to report agreements in a timely fashion in accordance with the Case-Zablocki Act and making illegal secret EAs (Edwards and Wayne 1999, 446-47).

9. One senior Senate staffer put it this way, “If there was an end-run around the Senate and the Senate was divided on the matter there would be a backlash.” A senior bureaucrat in the State Department

This second scenario deserves some discussion and leads to a second view of EAs that is consistent with the organizational view of institutional change. The organizational approach to institutional change posits that Congress adapts itself in concert with changes in its external environment. For example, Polsby found that, as the country grew in size and complexity, Congress gradually aligned itself with that change by adopting respect for seniority and a stricter division of labor (Polsby 1968).

The growth of EAs perhaps can be accounted for by “the sheer increase in volume of the amount of business and contacts between the United States and other countries. Many observers believe it would be impractical to submit every international agreement the United States enters to the Senate as a treaty” (Fisher 2001, 40). Along these lines, Grimmett suggests that the Senate has accepted the use of EAs on most international agreements because “submitting all agreements to the Senate as treaties would either overwhelm the Senate with work or force approval to become perfunctory” (2001, 22). Hence, while it is clear why the use of EAs has increased relative to the evolution of the presidency, the Senate’s general acquiescence to the process also makes a good deal of theoretical sense.¹⁰

It is striking that, when asked, key legislative staffers and executive bureaucrats in the process focus on EAs as a mechanism of efficiency rather than strategy. Officials in the State Department, who are primarily responsible for determining the form an international agreement will take, acknowledge the important role of the Senate in international agreements. One staffer in the Department of State’s Office of the Assistant Legal Adviser for Treaty Affairs stated: “No one’s looking to evade, they’re looking to streamline the process,” and “This isn’t something they [State] want to waste political capital on.” From the White House perspective, EAs clearly are efficient. Robert Dalton, the assistant legal adviser for treaty affairs, reflected, “The treaty process is a drain on the president’s time. There are issues of economy and efficiency, which is why we have the rise in preauthorized EAs.” The view from the Senate is similar. One senior staffer on Foreign Relations concluded that “It’s just an efficiency matter.” In reference to the treaty process, the “reality is, as the Senate’s plate gets fuller and fuller, the process . . . is cumbersome . . . delay can be substantial. It’s [EAs] a quicker way of doing things.”

Hypotheses

In order to assess systematically the strategic and efficiency assumptions, we analyze the propensity of presidents to use EAs in a given Congress. The strategic perspective

concluded, “I’ve never gotten a phone call or my boss hasn’t with someone with Senate Foreign Relations saying ‘Why is something an EA and not a treaty? What are you guys trying to do to us?’ That just hasn’t happened.”

10. Interviews with Senate Foreign Relations staff verify these suspicions. One senior staffer related, “The advice and consent role is something we take seriously. But we are conscious of the cumbersome nature of the process.” He described it as “fairly a collegial sort of process,” and “to do all EAs as treaties would increase our workload substantially.” A staffer from the other party stated that the use of EAs is “typically not [seen as] a desire to make an end run around the Senate.”

suggests that presidents turn to EAs when treaty ratification is less likely or would take greater effort on behalf of the president owing to the particular set of governing circumstances. This suggests four hypotheses that we test in the following analysis. First, *presidents facing a Senate controlled by the opposing party are more likely to use EAs than treaties*. A corollary hypothesis suggests that presidents who have more significant partisan majorities are more likely to go the treaty route. Stated more formally, *presidents with fewer fellow partisans in the Senate are more likely to use EAs than treaties*.

Second, it is probable that policy preferences play a role in the process, as well, not just partisan differences (Krehbiel 1998). As a statement, it is more challenging for presidents to enact their policy preferences when the pivotal senator¹¹ differs significantly from the president. Therefore, we test the following proposition: *presidents are more likely to use EAs when the “pivotal” member of the Senate is further from the president on an ideological continuum*.

Third, the SFRC plays an important role in the treaty ratification process, so its preferences are likely critical when presidents assess the political landscape of the Senate. A conservative SFRC chair may be less willing to rubber stamp a president's treaties because “conservatives have traditionally had a greater distrust for international agreements than their more liberal colleagues” (Auerswald and Maltzman 2003, 1101). Therefore, *presidents utilize EAs more often when the SFRC chair is conservative*. Alternatively, when the chair of the committee is more conservative, he or she may be more likely to object to presidents skirting the treaty route. In order to keep the efficient mechanism of EA use intact, presidents may avoid skirting the Senate when the chair objects. This suggests an alternative hypothesis: *presidents utilize fewer EAs when the SFRC chair is conservative*.¹²

Another proposition flows from the circumstance of the Case-Zablocki Act of 1972. In that act, the Senate (and the House) went on record with the demand that presidents submit more treaties to the Senate, rather than relying on EAs to codify international agreements. In a system of separated institutions sharing power, the branches have an incentive to respond to strong signals such as these. Hence, we expect that, controlling for other factors, *presidential use of EAs would be lower as a proportion of all international agreements after the passage of Case-Zablocki than before*.

11. In the case of treaties, much like with vetoes, the pivotal senator is the individual located at the two-thirds spot on a one-dimensional ideological scale. Because international agreements are presidential policies, the pivotal member of the Senate is the sixty-seventh most liberal senator when the president is a Republican and sixty-seventh most conservative senator when the president is a Democrat.

12. These ideological hypotheses go beyond the standard partisan hypotheses of previous analyses. It is likely that ideology plays a role in structuring the SFRC chair's beliefs regarding international agreements, no matter the president's political party (Auerswald and Maltzman 2003). For example, conservative senators have been suspicious of international entanglements historically, so a highly conservative chair (e.g., Jesse Helms) might oppose certain treaties on principle, no matter which president submits the treaty. A historical example would be the Bricker Amendment of 1954, which would have amended the Constitution, curtailing the president's use of EAs. Senator John W. Bricker, a Republican, was joined by most Republicans in the Senate who were considerably more conservative than those who voted against the amendment. This episode was a direct assault on the authority of the president perpetrated by conservatives, with a Republican (Eisenhower) in the White House. Often, then, when conflict arises between the Senate and White House over the use of EAs, in the words of one SFRC staffer, the process primarily involves “an institutional struggle, not a political one.”

Finally, the broader domestic political context may play a role in presidential decisions to use EAs. Popular presidents may believe getting through the Senate would be less difficult than when their popularity is low. Therefore, we expect *as presidential approval declines, presidents utilize more EAs*. However, a president might be better situated to get away with evading the Senate if he is popular, as low popularity might constrain his decision on whether or not to evade the Senate. When the president's approval falters, senators may be more likely to challenge the president on foreign policy. Thus, just the opposite relationship could emerge.

The efficiency perspective suggests that the use of EAs rises as the international system grows in terms of size and complexity. The closest measurable concept to this posited relationship is the number of potential countries with which the United States intends to formalize international agreements. Our most direct test of the efficiency explanation includes a test of the following hypothesis: *as the number of nations with whom the United States has relations increases in a given period, the more likely the president is to utilize EAs*. Indirectly, however, the broader international context may play a role in presidential decisions to use EAs. During the Cold War, for example, presidents may have been given greater leeway from the Senate to pursue international agreements through the EA process rather than the more formal treaty process. For example, Auerswald and Maltzman (2003) found that the Senate was more likely to attach reservations to treaties in the post-Cold War era. As the Cold War structured much of U.S. foreign policy during our time period, the efficiency explanation suggests the following hypothesis: *presidents are more likely to utilize EAs during the Cold War period*.

Data Sources

Because existing political science data sets on international agreements are fraught with problems,¹³ we sought out other sources of data that have not previously been used by scholars.¹⁴ We found an internal accounting of international agreements provided by the State Department to the Congressional Research Service, Library of Congress, for a study prepared for the SFRC (U.S. Government Printing Office 2001). More specifically,

13. The two primary problems deal with accuracy (see note 14 below) and the lack of an up-to-date accounting. The Margolis (1986) data end in the 1970s and the Johnson (1984) data end in 1972.

14. Ragsdale (1998) compiled a list of international agreements by form up through 1985. In Table 7-2 of *Vital Statistics on the Presidency*, Ragsdale presents the yearly number of international agreements according to successive volumes of the *Current Treaty Index* (CTI). The list subdivides the number of agreements into two categories: EAs and treaties. However, from 1985 onward, only the total number of international agreements is reported. Ragsdale explains, "Beginning in 1985 the *Current Treaty Index* no longer clearly distinguishes between treaties and EAs" (319). We made attempts to both replicate Ragsdale's count for certain years and update her data through our time period. We turned to the 1995 revision of the *United States Treaty Index: 1776-1990 Consolidation*. This source revealed many more agreements than we had originally counted in the CTI (Ragsdale's source) we examined; yet, it also contained many more agreements than evidenced in Ragsdale's list. Other sources suggest that Ragsdale's accounting of international agreements seriously undercounts the number of EAs and possibly overcounts treaties. Lindsay (1994, 82, Table 3) lists by decade the number of treaties and EAs compiled using Nelson (1989) and Stanley and Niemi (1994). Lindsay finds 3,040 EAs and 173 treaties from 1970 to 1979, whereas Ragsdale finds 2,524 EAs and 379 treaties during the same period. In the 1980-1990 time period Lindsay finds 4,021 total international agreements, whereas Ragsdale finds 1,871. These numbers, especially for the most recent period examined, are wildly different.

the list was compiled by the Department of State's Office of the Assistant Legal Adviser for Treaty Affairs.¹⁵ These agreements represent the universe of international agreements that were concluded by the executive branch on behalf of the United States. As we are examining the change in issue processing on international agreements, we believe studying all those concluded by the United States is the proper set, which is consistent with the State Department list.¹⁶

A Subset of Major International Agreements

Legally, the determination on whether to treat an international agreement as a treaty or EA is at the discretion of the White House, unless prescribed by statute. However, the process is a good deal more institutionalized than has been suggested previously. An overwhelming majority of these decisions are made without any input by the White House, based on the institutionalized process at the State Department which is informed by traditional practice and statute.¹⁷ Many EAs, because of their relative insignificance, are unlikely to approach the "radar screen" of the White House, or for that matter, the Senate. As we are interested in presidential behavior on EAs, it makes sense to narrow our analysis to include only those agreements where the president might actually take an interest. Therefore, we depart from previous quantitative analyses on international agreements by narrowing our analysis to examine separately the important international agreements.

To narrow our focus on the important agreements, we rely upon *Congressional Quarterly's American Treaties and Alliances*, compiled by Alan Axelrod (2000). This source catalogues the five hundred or so "historically significant" international agreements in which the United States has taken part since its early history. While clearly this data source does not provide information on all treaties and EAs, through his use of both secondary and primary sources, Axelrod has compiled a list of what he considers most significant. Given that our questions are focused on the politics surrounding presidential decisions on international agreements, we focus on the important agreements, as they are

15. The Department of State's Office of the Assistant Legal Adviser for Treaty Affairs is primarily responsible for overseeing and processing treaties and EAs on behalf of the administration. Through a process described in Circular 175 (Foreign Affairs Manual), the legal adviser is responsible for providing legal advice regarding the classification of international agreements. A look at the list by year suggests that we are correct to be leery of Ragsdale's (1998) data on international agreements (see note 14).

16. A better test of the evasion hypothesis would be to break down the agreements other than treaty by form (see note 2 above). Presidential agreements, for example, are completed with much greater presidential discretion than are congressional EAs. We include all types of agreements in this aggregate analysis. Elsewhere in our project, we are collecting information on an agreement-by-agreement basis for a test of presidential decision making. Johnson (1984) does this for the period 1946-1972. Moreover, including congressional EAs (what Johnson calls "statutory agreements") would focus the efficiency tests to only the presidential side of the equation and not the senatorial side, where efficiency may benefit that institution as well. We disaggregate our analysis below by examining the major international agreements. Our future research agenda includes a disaggregate analysis of these major agreements, which will allow an individual-level analysis.

17. See U.S. Government Printing Office (2001, chapter 4) for a discussion of the State Department Circular 175 process (358-59). Detailed procedures are identified to help practitioners make the determination for agreement classification. In most cases, discretion is not as great as the conventional wisdom suggests. In fact, the preference of Congress is to be taken into consideration, according to 11 Foreign Affairs Manual 710.

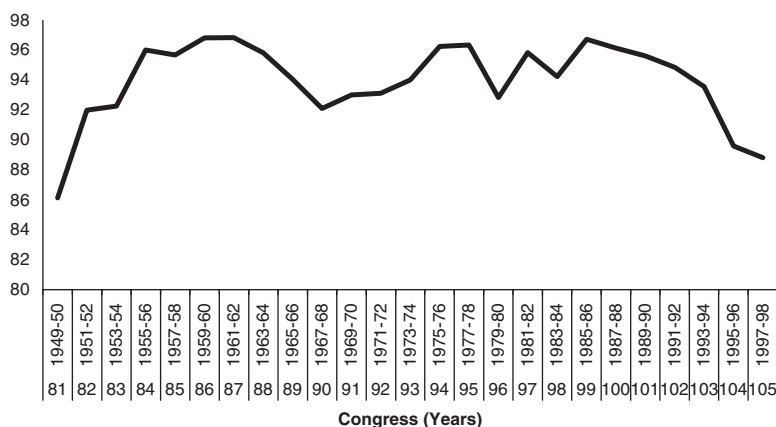


FIGURE 2. Executive Agreements as a Percentage of International Agreements, 1949-1998.

Source: Table II-2 of *Treaties and other international agreements: The role of the United States Senate* (U.S. Government Printing Office 2001).

more likely to deal with salient issues. The State Department data discussed above and used below in much of the analysis make no such distinction. We utilize both the broader list and the subset of important agreements in our analyses to allow a full test of the explanations of international agreement behavior.

Dependent Variable for the Aggregate Analysis

We coded two dependent variables based on the two different sets of international agreements. First, for the broader list of all international agreements, the dependent variable is the number of EAs over the total number of international agreements (EAs plus treaties). This variable measures the degree to which presidents choose the EA option over the treaty option in a given Congress. For the second dependent variable using the Axelrod important cases of international agreements, we also expressed it as the number of EAs over the total number of international agreements (EAs plus treaties). Figures 2 and 3 show these two variables over time from 1949 to 1998.

Independent Variables

The primary independent variables included divided government (coded as a dummy variable, 1 meaning separate partisan control of the presidency and the Senate), the number of presidential partisans in the Senate, the distance between the CS-Nominate score of the president and the pivotal senator,¹⁸ the ideology score (CS-

18. We define the treaty pivot in the same manner that Krehbiel (1998) defines the veto pivot: the sixty-seventh member of the Senate in the direction opposite the ideology of the president. The number

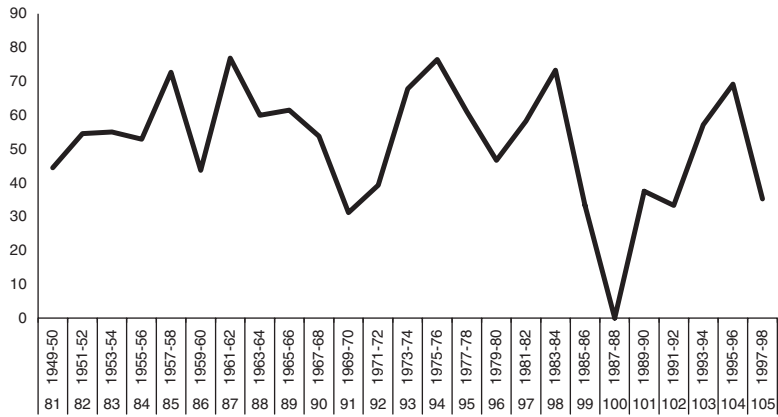


FIGURE 3. Major Executive Agreements as a Percentage of All Major International Agreements, 1949-1998.

Source: *American treaties and alliances* (Axelrod 2000).

Nominate) of the SFRC chair, and average presidential approval level for the two-year period. As presidents are faced with tougher political circumstances (divided government, fewer partisans in the Senate, a pivotal senator who is further away from the president, a conservative SFRC chair, and lower presidential approval), the strategic perspective predicts that EA use will increase. We also include a dummy variable for the Case-Zablocki hypothesis that presidents are expected to use fewer EAs after that act (1972) than before. Our variables to test for the efficiency perspective include the number of new United Nations member countries in the most recent Congress (to account for the growth in new nations)¹⁹ and a dummy variable to control for whether or not Congress convened during the Cold War.²⁰ As new nations become part of the United Nations, the efficiency perspective would predict that the United States is more likely to complete EAs as a means of getting more done in a busier international system. Table 1 contains descriptive statistics for our independent variables.

represents the thirty-third most conservative member of the Senate during a Democratic presidency and the thirty-third most liberal member of the Senate during a Republican presidency. Our variable measures the absolute distance between the president's and pivot's first-dimension CS-Nominate scores. We use the median CS-Nominate score of Democrats in the Senate for Truman, as CS-Nominate scores for presidents are unavailable prior to Eisenhower. CS-Nominate scores are from Poole (2003). Nominate scores range from -1 to +1, with the higher score indicating conservatism.

19. While the United States does not have formal relations with every member state of the United Nations (there are ten members where the United States does not have relations), the growth in United Nations membership is a good proxy for new nation-states emerging in the modern era for which the United States will enter into formal relations. Using nation background notes on the Department of State Web site (<http://www.state.gov/r/pa/ei/bgn/>), we cross-referenced a sample of nation states (nations beginning with the letters A-C), assessing when the United States entered into formal relations (either through formal recognition, placement of an embassy, etc.), and found that the year coincided with dates of formal independence and acceptance into the United Nations in most cases, save a few. One exception was Afghanistan, where the U.S. embassy was left unstaffed after violence erupted there in 1978 until 2002.

20. All Congresses beginning in 1989 (101st Congress) are coded 0 for the Cold War variable.

TABLE 1
Variables, Expectations, and Descriptive Statistics

<i>Independent Variable</i>	<i>Exp. Direction</i>	<i>Mean</i>	<i>SD</i>
Growth in United Nations members	+	5.04	6.06
Distance from president to pivotal senator	+	0.59	0.17
SFRC chair ideology	+/-	0.12	0.29
No. of presidential partisans	-	50.80	9.17
Presidential approval	-	54.08	11.59

TABLE 2
Explaining the Percentage of Executive Agreements per Congress, 1949-1998

<i>Independent Variable</i>	<i>Coeff.</i>	<i>SE</i>	<i> t </i>	<i>p > t </i>
Growth in United Nations members	0.087*	0.047	1.86	.040
Cold War	3.839*	0.458	8.39	.000
Distance from president to pivotal senator	1.002	1.555	0.64	.264
Senate Foreign Relations Committee chair	-3.034*	0.757	4.01	.001
No. of pres. partisans	-0.023	0.020	1.15	.133
Presidential approval	0.162*	0.020	8.07	.000
Case-Zablocki	3.176*	0.531	5.98	.000
<i>Constant</i>	80.350*	1.592	50.46	.000
<i>N</i> = 25		Model <i>F</i> statistic = 27.9*		
Adjusted R^2 = 0.98				

* $p < .05$ (one-tailed).

Note: The dependent variable is the percentage of all international agreements that are EAs. The Prais-Winsten AR(1) regression technique was utilized because the Durbin-Watson d statistic indicated a potential autocorrelation problem. Analysis was performed in Stata 7.0.

Findings

The results of our analysis of the EA percentage of all international agreements are presented in Table 2.²¹ The analysis provides only marginal support for the strategic model. While the model diagnostics are good (i.e., the model is statistically significant and R^2 is sufficiently high), none of the strategic relationships is as expected given the propositions. The political situation, as explained in conventional partisan terms, does not appear to play a role in determining whether presidents go the EA route when entering into international agreements. Interestingly, popular presidents use EAs more often vis-à-vis treaties; as approval rises, presidents are more likely to utilize EAs instead of treaties. This finding is counterintuitive to the strategic model, which suggests that

21. We found that divided government and the number of presidential partisans was highly collinear (Pearson's $r = .76$). We ran the model alternatively with both variables. The findings were the same.

TABLE 3
Explaining the Percentage of Major Executive Agreements per Congress, 1949-1998

<i>Independent Variable</i>	<i>Coeff.</i>	<i>SE</i>	<i>t</i>	<i>p</i> > <i>t</i>
Growth in United Nations members	2.63*	0.77	3.42	.002
Cold War	10.85	8.01	1.35	.095
Distance from president to pivotal senator	-8.21	26.84	0.31	.381
Senate Foreign Relations Committee chair	31.24*	12.62	2.48	.012
No. of pres. partisans	0.71*	0.34	2.06	.027
Presidential approval	-0.60*	0.34	1.77	.047
Case-Zablocki	2.12	9.28	0.23	.411
<i>Constant</i>	33.90	27.75	1.22	.120
<i>N</i> = 25		Model <i>F</i> statistic = 3.42*		
Adjusted <i>R</i> ² = 0.41				

* *p* < .05 (one-tailed).

Note: The dependent variable is the percentage of all international agreements that are EAs. The Prais-Winsten AR(1) regression technique was utilized because the Durbin-Watson *d* statistic indicated an autocorrelation problem. Analysis was performed in Stata 7.0.

presidents who are hurting politically (as shown by their low approval) rely more on EAs as a way to get around a tough battle in the Senate. Also, the variable for the Case-Zablocki intervention is significant, but in the wrong direction. We would expect the president to use fewer EAs after that act (1972), as a major feature of it was the demand from Congress that presidents utilize more treaties. The multivariate findings suggest that aggregate EA use actually increased after Case-Zablocki, rather than decreased.

The efficiency perspective receives support in the first analysis. The greater international context of U.S. foreign policy appears to impact presidential usage of EAs considerably. During the Cold War, presidents used a greater number of EAs vis-à-vis treaties than since the Cold War's end. Moreover, the growth in United Nations members variable is significant and in the posited positive direction, suggesting that, as new nations emerge, presidents use EAs as a means of forging new agreements in an efficient manner. Finally, when the SFRC chair is more conservative, presidents use EAs less often. The chair's ideology structures the process in a way that is counter to the standard strategic perspective, but more in line with the efficiency perspective.

Table 3 shows the results of our analysis of the proportion of important EAs. Here we find mixed support for the strategic/political rationale of EA use, but the efficiency hypothesis, interestingly, again receives solid support. The variable measuring the ideological distance from the president to the pivotal senator is again insignificant when we analyze only the important international agreements. While the number of partisans variable is significant, it is in a direction counter to what we expected. As presidential partisans are present in higher numbers, presidents more readily use EAs when completing important international agreements. If strategy dominates presidential decision making on EA use, we would expect the opposite relationship. This finding suggests that the Senate,

as a body, might grant the president greater leeway to use EAs to complete important international agreements when his party dominates the institution.

The findings for the SFRC chair and presidential approval, however, are significant and in the anticipated direction, which offers some support for the strategic perspective. The more conservative the chair, the more likely the president is to use EAs when completing major international agreements. Presidential approval is again significant, but this time it is in the expected direction as suggested by the strategic model. As presidents see their approval ratings take a dive they rely more on EAs, at least when completing important agreements. Interestingly, these findings are just the opposite of what we found when we examined the broader set of all international agreements. It is plausible to conclude in part that the politics surrounding important international agreements, as opposed to the broader set of all agreements, are different and somewhat more in line with the strategic model when political contexts are taken into account.

The variables representing the efficiency perspective work well in the more narrow analysis of important agreements. The growth in United Nations members is strongly statistically significant and in the anticipated direction. As new countries emerge, presidents rely more on EAs. Also, during the Cold War, presidents used a greater number of important EAs vis-à-vis treaties than since the Cold War; however, this variable is only significant at the $p < .1$ level.

Discussion

In summary, our analyses of international agreements since 1949 offer strong support for the efficiency model of EA use and only mixed support for the strategic model. When we examine all international agreements, making no distinction in terms of importance, we find no meaningful support for the strategic model, but greater support for the efficiency model. In fact, as the SFRC chair becomes conservative and as the president's political capital (as expressed by public approval) decreases, presidents are *less likely* to evade the Senate. Under these difficult circumstances, presidents use *fewer* EAs as a proportion of all international agreements.

When we narrow our analysis to include only important international agreements, we find that the political explanations for EA usage become slightly more significant. Presidents are *more likely* to use EAs when they are unpopular and when the SFRC chair is conservative, as anticipated. Relative to previous research on the topic, however, it is interesting that the standard measures of partisan political roadblocks (e.g., the number of presidential partisans) do not coincide with the expectations of the strategic model. The significant variables are ideological, not partisan.

The efficiency model, which runs counter to the conventional wisdom of an "evasive" president, offers a worthwhile addition to our understanding of EA usage. As the world becomes more complex, we see presidents utilizing more EAs when completing international agreements, and this is particularly so when considering important agreements. Moreover, as the number of presidential partisans increases in the Senate, the

leeway granted the president by that body increases, leading to the president using a greater number of EAs vis-à-vis treaties to complete important international agreements.

The differences in our findings between the larger set of all international agreements and the smaller set of important agreements are interesting. Important international agreements are much more salient in terms of the media coverage they receive and the attention they garner in Congress. Additionally, these are the very agreements where the president and his important advisors may take a close interest. Given this, it makes sense that the strategic model receives some support when examining the more important agreements. However, the ideological variables have more power than the traditional partisan variables. The SFRC chair is less inclined to grant leeway to the president on highly salient foreign policies, providing greater incentive for the president to evade the Senate in order to complete a major international agreement. And, finally, the efficiency hypothesis receives strong support even in the subset of important agreements, further crystallizing its importance as an explanation of this institutional change.

Conclusion

Overall, the increased use of EAs vis-à-vis treaties to complete international agreements primarily reflects concerns for efficiency by the presidency and the Senate in completing diplomatic action. The role of partisan politics has been emphasized in previous analyses and in textbook accounts of the process. We believe this emphasis to be misplaced and that the efficiency perspective, which dominates descriptions given to us by participants in the process, has not received due attention. However, our findings suggest politics matter in ways left unconsidered by previous research. The ideological preferences of pivotal players in the process structure presidential decisions to use EAs. Additionally, the president's domestic political capital appears to play a role. However, these relationships are not always in the direction as suggested by the strategic model and change depending on the set of international agreements examined. This is important both methodologically and theoretically. It makes sense, theoretically, that the strategic model works best with the subset of important international agreements. Methodologically, the findings suggest future studies should take into account the importance of international agreements when examining presidential behavior using this policy mechanism.

More broadly, our findings suggest that the greater use of EAs vis-à-vis treaties does not necessarily support the president-dominant perspective of U.S. foreign policy, perhaps best known as the "imperial presidency." Instead, the evolutionary change is more of a reflection of changing political circumstances for both the president and the Senate, which cause them to want to get diplomatic action completed sooner rather than later. That the Senate has acquiesced to this change in policy making is not surprising given the sizable number of international agreements completed by the executive branch each year. When the issues involved are significant, however, politics are more likely to play a role. We suspect, as Martin (2000) argues in her work, that presidents cannot evade the Senate at will. The behavior is contingent upon leeway granted by the Senate to the executive.

Our analyses only indirectly speak to actual presidential decisions to use EAs vis-à-vis treaties because they are aggregate in nature, a shortcoming of most broad published research on the topic.²² Future research should disaggregate the analysis to include a cross-sectional case-by-case analysis of the different important international agreements. Such an analysis would require a great deal of archival data collection and serves as our future research agenda.

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22. See Johnson (1984) for an exception, with a primary focus on military and intelligence agreements.

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