

Negotiating Military Alliances: Legal Systems and Alliance Formation

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Do domestic legal systems affect states' propensity to form military alliances? This article, building upon the existing research in international relations, adopts a socio-legal approach to understanding international treaty making. By focusing on the essence of international negotiations—communication between states' representatives—I argue that negotiating parties who share a common legal language have a common a priori understanding concerning concepts under discussion. Domestic laws operating within states impact the process of creation of international law embodied in treaties. Empirical analyses show that states with similar legal systems are more likely to form military alliances with one another. Additionally, domestic legal systems influence the way that states design their alliance commitments. In general, my findings suggest that the influence of domestic laws does not stop at “the water’s edge.” It permeates the interstate borders and impacts the relations between states, especially the treaty negotiating and drafting process. International negotiators bring their legal backgrounds to the negotiating table, which influences both their willingness to sign treaties and the design of the resulting agreements.

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“Language, the main vehicle of communication between nations, is the tool of the legal workshop, and serves as either the bridge or the barrier

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upon which the organized relations between States are built.” Mala Tabory (1980:1)

Do domestic legal systems affect states’ propensity to form military alliances? When asked about the link between domestic legal training and drafting international treaties, Professor Antonio Perez, former legal advisor in the US State Department, responded in the following way: “My own personal experience serving as a lawyer in the State Department suggests to me that legal education does matter in creating misunderstanding in the process of negotiating and implementing international agreements, including those that relate to national security” (interview with Antonio Perez).¹ Jerzy Szymański, Vice Attorney General of Poland, questioned about the same issue, responded: “Differences in how legal systems understand and interpret legal concepts can constitute serious obstacles in interstate negotiations” (interview with Jerzy Szymański).²

Sociolegal and comparative law scholars increasingly call attention to the fact that important differences exist between domestic legal systems (Bierbrauer 1994; Gibson and Caldeira 1996; Glenn 2007). These differences, both substantive and procedural, account for the fact that different states regulate societal relations differently, which in turn affects the way that individuals view the notions of right and wrong. Moreover, these differences have been found to affect the way that states understand international law and behave on the international arena toward other states and international organizations/institutions (Jouannet 2006; Powell and Mitchell 2007; Powell and Rickard 2010; Simmons 2009). To date, however, the issue of negotiating international treaties across domestic legal cultures has been overlooked. Most international relations scholars seem to perceive differences in legal traditions as, at most, purely technical problems that can be relatively easily resolved.

In contrast, building upon the existing research in international relations, this article adopts a socio-legal approach to understanding international treaty making. I examine the impact of domestic legal systems on states’ propensity to form a specific type of international treaty—military alliances. By focusing on the essence of international negotiations – communication between states’ representatives, I argue that negotiating parties that share a common legal language have a common *a priori* understanding concerning concepts under discussion. Domestic laws operating within states impact the process of creation of international law embodied in treaties. While conducting international negotiations, states’ representatives should be aware of the difficulties that cross-legal communication may entail. The meaning of legal terms cannot be assumed. The influence of domestic laws is not limited to domestic societies.

¹Memorandum of conversation with Professor Antonio Perez, conducted by the author on April 02, 2009.

²Memorandum of conversation with Jerzy Szymański, conducted by the author on May 22, 2009.

MILITARY ALLIANCES IN INTERNATIONAL RELATIONS SCHOLARSHIP

Two fundamental questions can be asked concerning military alliances. First: What factors determine states' decisions to seek alliances? Second: What factors determine each state's choice of alliance partner/partners? (Simon and Gartzke 1996). Traditional theories of alliance formation answer the first question. These explanations, generated by the realist paradigm in international relations scholarship, claim that alliances are sought because of material factors such as security and power considerations (Morrow 1991, 1993; Smith 1995; Snyder 1997; Walt 1987). In general, international relations scholarship is just about unanimous in the view that states' primary motivation in seeking alliances is to augment their security in the face of an immediate or potential future threat (Barnett 1996; Simon and Gartzke 1996).

More recent research, building upon the insights of the traditional theories, has focused on providing answers to the second question, which concerns the actual choice of alliance partners. This strand of scholarly inquiry accepts that alliances are sought because of outside threat, the power of allies, etc., adding, however, that all else equal, certain types of states tend to gravitate toward each other. Perhaps the most important domestic institutional factor that has been found to influence states' choices is regime type (Choi 2003; Dixon 1994; Gaubatz 1996; Lai and Reiter 2000; Leeds 1999; Peceny et al 2002; Siverson and Emmons 1991). Indeed, abundant evidence suggests that a state may seek an alliance partner with a similar political system. Especially democracies are more likely to form alliances with one another.³

Aside from common regime type, several scholars have argued that common cultural background encourages interstate cooperation and decreases conflict. Culturally similar states see themselves as belonging to common in-groups (Barnett 1996; Faure and Rubin 1993; Huntington 1993 and 1996; Lai and Reiter 2000). In the context of alliances, Barnett (1996), for example, shows that common cultural identity shapes security politics and sheds light on the dynamic of alliance formation in the Middle East. Also, Lai and Reiter (2000) demonstrate that joint language and joint religion encourage alliance formation. In the same vein, Leeds et al. (2002) provide support for the cultural arguments by showing that joint religion, language, and ethnicity influence states' decisions whether to form alliances.⁴ How do cultural factors,

³Also see Gibler and Wolford (2006) who show that democratic dyads are unlikely to ally. The similarity argument has been extended in the literature to relations between autocracies, as their structural and institutional characteristics may provide explanations for the formation of alliances (Peceny et al. 2002).

⁴Leeds et al. (2002) replicate Lai and Reiter's (2000) study on a different data set (ATOP—Alliance Treaty Obligations and Provisions). Joint language has also been found to increase interstate cooperation in other areas such as interstate trade (Bliss and Russett 1998; Rose 2004; Souva et al. 2008).

such as ethnicity or language, influence the choice of alliance partners? First, the in-group phenomenon responsible for the feeling of “belonging” encourages intra-cultural cooperation (Barnett 1996; Henderson 1997; Starkey, Boyer, and Wilkenfeld 2005:77). Second, the ease of communication between members of the same linguistic group makes negotiations over international obligations less cumbersome because the negotiators share an a priori agreement regarding concepts under discussion (Cohen 2000).

This paper explores yet another factor that influences the easiness of interstate communication and alliance formation—the domestic legal system. I build upon existing international relations research on alliances, both traditional that focuses on security and material factors, and also more recent research on alliances that shows that regime type and culture matter in the second stage of alliance formation (the choice of a partner). Thus, I do not dispute that states in the process of alliance formation take into consideration primarily questions of threat and security; I also agree that democracy and other cultural characteristics such as linguistic and ethnic similarity matter when states choose alliance partners. The international relations literature only takes us so far. By incorporating insights from the socio-legal literature, I argue that negotiating and drafting alliances entail constructing joint legal texts—international treaties. International treaties convey abstract legal ideas, and are subject to *ex post* legal interpretation. All of these processes bring about communication across legal traditions. Thus, I ask: Once the decision is made to seek an alliance, do domestic legal systems play a role in selecting an alliance partner? Throughout this study, I focus on three major domestic legal systems, civil, common, and Islamic.⁵

DOMESTIC LEGAL SYSTEMS AND NEGOTIATING ALLIANCES

To date, the issue of negotiating international treaties across legal cultures has been overlooked. Differences in legal traditions are either ignored or pictured as at most purely technical problems that can be relatively easily resolved. This view can be supported by three separate arguments. First, the existence of international treaty law, such as the Vienna Convention on the Law of Treaties (VCLT), is assumed to minimize the influence of domestic legal systems. Second, because all diplomats are able to speak the same

⁵Civil law is the Romano-Germanic legal tradition, largely rooted in the laws of the Roman Empire. In this legal tradition, the written letter of law (codes) constitutes the main source of law. Common law, which originated in the British Isles, is based on the *stare decisis* doctrine, according to which judges are bound primarily by precedents established by previous judgments (Opolot 1980). Islamic law, the world's third major legal tradition, arose with the birth of Islam in the seventh century A.D., and is based primarily on religious principles of human conduct (al-Azmeh 1988).

language—English—all possible misunderstandings concerning legal concepts embedded in international treaties should be easily resolved. Third, domestic legal systems are able to impact only those international treaties that are enforced by domestic courts. Treaties that lack domestic enforcement are not affected by domestic legal systems in any way.⁶ Below, I address all three of these arguments and show that all three need to be qualified.

International Law and International Treaties

It is indisputable that international treaties are *de jure* governed by international law, such as the VCLT. There are, however, two separate issues that should be addressed here. First, the Convention as the most comprehensive set of rules regarding treaties “is not so concerned with the substance of a treaty (the rights and obligations created by it), which is known as ‘treaty law’” (Aust 2007:6). It is up to the negotiating states to carefully draft all the substantive provisions of a treaty. For example, the Convention is essentially silent with respect to the substantive issue as to what is meant by “an agreement” (Fitzmaurice and Olufemi 2005:7). Therefore, it is states that still have a large “say so” in the way that the negotiating process takes place. It is also states that will decide how their “agreement” will be designed and how it will be interpreted.⁷

Second, although the laws promulgated on the international level are to apply to all treaties, states with different domestic legal systems (civil, common, and Islamic) may understand and interpret international law in different ways (Charney 1997; Koch 2003). Jouannet (2006:300) refers to this process as the “selling of each national legal model in order to influence the establishment of international norms and institutions.” Civil law states are more likely to embrace the teleological approach, and common law states the textual, literal approach.⁸ Islamic law countries, on the other hand, interpret all texts, including international treaties, in the spirit of its religious sources, especially the Koran (Bsoul 2008; Glenn 2007).⁹ The fact that civil, common, and Islamic legal traditions approach interpretation of treaties in

⁶An analogical argument can be made in the context of self-executing and non self-executing treaties (see footnote 18).

⁷Of course, treaties are also interpreted by international adjudicative bodies, arbitral tribunals, etc.

⁸The first general method of interpretation used by all domestic legal systems will be literal, but this is only true in cases “when a text expressed in imperative language is clear, precise, unambiguous” (Friesen 1996:10). This is, however, rarely true, as provisions in any international treaty tend to be general and relatively vague. The teleological approach entails detaching the actual text of a treaty from its historical context and giving it a meaning appropriate for present social and economic conditions. Textual, literal approach relies on the ordinary meaning of words used in a text (Friesen 1996:10).

⁹Mu’ahada, or a treaty according to Islamic law, in order to be valid “must not contradict the legal rulings of the scriptural texts, that is, the Qur’ān and the Sunna” (Bsoul 2008:115).

different ways may cause confusion in interstate bargaining over international treaties.¹⁰

The three legal traditions also diverge in their interpretation of specific concepts included in the Vienna Convention on the Law of Treaties. Thus, although the same *de jure* international principles apply to all interstate treaties, *de facto*, different states understand and interpret them differently. Consider the principle of good faith (Article 31 of the Convention).¹¹ Civil law approaches good faith (*bona fides*) as an overarching general principle, which may include the doctrine of unconscionability or frustration (Farnsworth 1995).¹² Common law tradition, on the other hand, embraces a much more restrictive interpretation of the doctrine of good faith, at the same time sharply separating it from the above-mentioned two principles.¹³ According to Islamic law, dishonesty and fraud, as breaches of good faith, directly contradict religious precepts.¹⁴

English: The Language of Diplomacy

It is true that usually treaty negotiations are conducted in the same language (nowadays, English), and even if they are not, the use of translators makes the process relatively convenient (Aust 2007:250). However, quite a few scholars of comparative law have called into question early assumptions in that field that any single language is able to suffice for transnational legal translation (Curran 1998; Geeroms 2002; Jackson 1991; Kasirer 1999; Macdonald 1997; von Glahn and Taulbee 2007; Van Hoecke and Warrington 1998; Zedner 1995). Indeed, some legal concepts are so closely connected to a specific legal system, that their translation to another language and another legal

¹⁰Article 31 of the VCLT spells out the rules of interpretation of treaties, mentioning the direct textual interpretation and the teleological interpretation. However, the International Law Commission does not support the view that in the process of treaty interpretation one must give priority to one particular factor, such as the text (textual interpretation), intention, or the object of the treaty (teleological interpretation) (Aust 2007:231; Tabory 1980:205).

¹¹Perhaps the best description of good faith comes from the medieval jurists. According to them, good faith meant that a party “must keep his word, refrain from deceit and overreaching, and honor obligations that are only implicit in his contract” (Zimmermann and Whittaker 2000:93).

¹²An unconscionable contract is a contract that is so unfair to a party that no informed or reasonable person would agree to it. Usually it results from unequal bargaining positions between the parties. Frustration of a contract occurs when a contract becomes impossible to perform/fulfill or can be performed/fulfilled only in a way significantly different from that originally envisioned.

¹³English common law does not recognize a general duty to negotiate nor to perform contracts in good faith. Despite the fact that some efforts have been made to incorporate *bona fides* into the common law tradition, the position of *bona fides* in this legal family is still much weaker than under civil law (Powell and Mitchell 2007; Zimmermann and Whittaker 2000). Some common law states have gradually introduced the principle of good faith into their legal systems (Examples: US: the United States Uniform Commercial Code, the US Restatement (Second) of Contracts, UK: the European Consumer Protection Directive of 1994 (Summerst 1982)).

¹⁴Koran LXXXIII: 1–5.

system can completely obscure their meaning. Simply put, sometimes legal vocabulary may be “incommensurable or untranslatable” (Kasirer 1999:658).¹⁵

Difficulties in transmitting concepts across linguistic and legal lines are directly related to the level of abstraction of the concepts. More abstract concepts, such as legal terms, are much more difficult to convey (Curran 1998:50).¹⁶ For example, the negotiating sides will diverge more in their understanding of such terms as *obligation*, *agreement*, *right*, or *liability*, than simpler, everyday-use terms such as *house* or *river*. The terms *obligation*, *agreement*, or *right* appear repeatedly in many international treaties, including military alliances.¹⁷ More importantly, these concepts may have distinct meanings in different legal traditions. The common law concept of *duty* is interpreted by some as having an additional “moral flavor” that is for the most part lacking in the civil concept of an *obligation* (Kasirer 1999:666–667). Whereas the western legal systems treat the concept of duty or an obligation as purely secular, Islamic law adds an important religious dimension to all of them. At the time of concluding an interstate treaty, Muslim negotiators are obliged to conform all treaty stipulations to the Koran: “Every condition that has no root in the Qur’ān is void” (Bsoul 2008:115).

Domestic Enforcement, Monism, Dualism, and International Treaties

An argument can be made that domestic legal systems might affect only the treaties that rely on domestic enforcement, since the domestic judiciary actually shapes interpretation and fulfillment of these treaties.¹⁸ Treaties lacking domestic enforcement are much less likely to be influenced by domestic laws since states themselves, and not the domestic courts, decide whether to comply with these treaties and how to interpret them. For example,

¹⁵This argument is strengthened by the fact that nowadays professional diplomats “are no longer the only, or even the main, actors in international negotiations” (Cohen 1991:18). Officials from domestic agencies, including justice, trade, etc. also play major roles in modern day diplomatic relations (Cohen 1991; Starkey, Boyer, and Wilkenfeld 2005).

¹⁶Also, words may sound similar in two different languages and two different legal systems, but they still may entail slightly, or even fundamentally different concepts.

¹⁷Examples include the Warsaw Security Pact (1955), the Southeast Asia Collective Defense Treaty (1954), the Mutual Defense Treaty Between the United States and the Republic of Korea (1953), the Treaty of Mutual Cooperation and Security between Japan and the United States of America (1960), the nonaggression pact between Poland and Greece (1996), the Inter-American treaty of Reciprocal Assistance (1947), the nonaggression pact between Angola, Botswana, and twelve other African states (2001), the nonaggression pact between Belarus and Turkmenistan (2002), and many others.

¹⁸Worth mentioning is that international treaties can be either self-executing (such a treaty is effective without the need for supplementary legislation, as it provides to individuals specific rights, which the domestic courts may enforce) or non-self-executing (requires an act of a state’s legislative body or of the executive branch, for example the president, to give it a legal effect). In some domestic legal systems, domestic courts decide how to interpret whether a treaty is self-executing or non-self-executing. Importantly, alliance treaties may generate obligations that may ultimately require domestic legal execution (e.g., the funding of an alliance-related war).

a state's breach of its obligations arising from a military alliance does not trigger any type of domestic legal repercussions, but instead tarnishes the state's reputation in the international arena.

A similar argument can be made in the context of monism and dualism. Monist states believe that domestic and international legal systems form unity, and that international law is "hierarchically superior" (von Glahn and Taulbee 2007:83). Dualist states, on the other hand, subscribe to the view that domestic and international law constitute entirely separate legal systems. More importantly, according to the dualist approach, international law can be applied domestically only if international rules have been appropriately "transformed or incorporated into the domestic legal system" (von Glahn and Taulbee 2007:83). One can argue that characteristics of domestic legal systems play a more important role in the dualist states, because in these systems the courts may apply domestic principles of interpretation to shape international law (Gardiner 2008:127).¹⁹ In monist states the impact may be much weaker because provisions of international law override conflicting domestic laws.

However, when we examine the inherent nature of international treaties, it becomes clear that all treaties, self-executing or not, constitute legal texts, full of legal terms and intricate legal concepts, which have to be agreed upon in the process of negotiations, and which have to be interpreted by state representatives who often times have been trained in different legal systems (Cassese 2005; Shaw 2003; von Glahn and Taulbee 2007).²⁰ Similarly, in both systems—monist and dualist—states are faced with interpretation of international rules and principles.²¹

PRIVATE CONTRACT LAW AND PUBLIC INTERNATIONAL BEHAVIOR

Negotiations involve communication between states' representatives, who strive to reach an agreement acceptable to both sides. Starkey et al. (2005:73) adequately captured the nature of this process: "Diplomacy is not just about

¹⁹The courts may alternatively use rules of interpretation established by international law (Gardiner 2008:127).

²⁰For example, domestic legal systems had a substantial impact on the legal set-up of several international courts such as the Permanent Court of International Justice; its successor, the International Court of Justice; and the International Criminal Court (Fernández de Gurmendi 1999; Lloyd 1985:35; Powell and Mitchell 2007).

²¹My arguments dealing with all three counter-explanations concern largely treaty compliance. Following Fearon (1998), I believe that expectations about compliance influence agreement. I expect that the lack of common understanding concerning legal concepts makes the formation of alliances less likely. If, on the other hand, the enforcement and monitoring dilemmas are resolvable, "we should observe serious attempts at international cooperation" (p. 279). It is simply easier to communicate within a legal tradition.

bargaining, there is a human dimension to the negotiation game that should not be ignored.” Complex process of interaction between states’ representatives involves creating joint legal texts that transmit abstract legal ideas. These abstract legal ideas are subject to *ex post* interpretation (Fitzmaurice and Olufemi 2005:53). Treaty negotiation and treaty interpretation bring about communication across legal traditions.²² Through the process of communicating, states’ representatives “via the interplay of offer and counter-offer, or at least an exploration of contending views, try and reach a common understanding,” a deal that is acceptable to both sides (Cohen 2000:317).²³ This process requires common understanding of legal terms embodied in a treaty.

There are good theoretical reasons to think that the traditional form of private contracts informs the nature of public international law agreements. National leaders are educated in the ways of private litigation in their own countries. Thus, they carry their own understanding of legal concepts over to foreign policy making (Dezalay and Garth 1995, 1996). Since drafting international treaties resembles drafting domestic contracts, it is natural that *a priori* acquired domestic legal education will play a role in the way that states’ representatives approach interstate agreements. Civil lawyers approach drafting and interpretation of multinational agreements as they would a civil code (Koch 2003). Similarly, common law lawyers promote designing of international agreements in the spirit of their domestic legal system (Jouannet 2006).²⁴

In general, states view and interpret international law through the eyes of their policymakers: “states learn what international law is from the lawyers who practice it” (Gaubatz and MacArthur 2001:246). Antonio Perez, who as a legal advisor in the US State Department worked mostly on security and nuclear nonproliferation treaties, believes that domestic legal training

²²My approach to treaty drafting and interpretation is similar to the “contextual approach” to treaty interpretation, which proposes that treaties constitute objective manifestations of the subjective expectations of treaty negotiators. Also see Gardiner (2008:65–68) for the description of the New Haven School/Myres McDougal sociological jurisprudence. Professor McDougal believed that a treaty constitutes “a continuing process of communication” (Gardiner 2008:65).

²³Precise treaty provisions mean fewer (if any) disagreements about interpretation. Vague treaty provisions may lead to a situation where a party may find itself bound by an obligation it had no intent to create. Of course, just as with domestic contracts, treaties are often times ambiguous (Chayes and Chayes 1993). Secondly, ambiguity of treaty provisions may be an indicator of disagreement over more precise provisions.

²⁴Lawyers have also played important roles in states’ negotiations in the past. For example, in the 18th century England, the King consulted private legal practitioners or university law professors regarding international negotiations (Fitzmaurice 1965:77). Another more recent example is that of the Association of Soviet Lawyers, which was instrumental in negotiating the Soviet Nuclear Arms Control Agreement and several military alliances (Downs 1997). Nowadays, despite the fact that ministries of foreign affairs play a crucial role in drawing up international treaties, most governments employ their own staff of resident legal advisers, treaty specialists, and legal scholars (both domestic and international) responsible for drafting and interpreting of international agreements.

directly impacts the way that state representatives approach treaty negotiating and implementing. According to him, what matters in interstate negotiations is the background structure of domestic legal system, its foundational assumptions such as good faith, and the way that domestic legal traditions understand and view the nature of an agreement.²⁵ Jerzy Szymański, Vice-Attorney General of Poland described the link between domestic legal systems and public international law behavior in the following way: “For me, as a representative of a civil law state, it is much easier to communicate with representatives from other civil law countries, because they share the civil law understanding of principles such as good faith, duty, or obligation. Also, lawyers trained in civil law have a common understanding of the role that law plays in enforcing agreements, whether domestic, or international.”²⁶

According to Islamic law, Islamic domestic legal principles apply directly to all international treaties, self-executing or not, relying on domestic enforcement or not. Islamic states are to abide by the Koran and other Islamic religious sources of law in their relations with other states, just as the Koran is to guide behavior of the believers: “Islamic international law (*siyar*), therefore, based as it is on the Qur’ān and Sunna, enshrines certain major ethical principles that are incumbent upon Muslims. Just as individual Muslims are obliged to observe certain ethical principles, so are nations” (Bsoul 2008:13). In short, domestic laws provide lenses through which state representatives view and understand international law. These expectations lead to the following hypothesis:

H1: States with similar domestic legal systems are more likely to form military alliances with one another.

The argument presented above is not complete without taking into consideration states’ past dealings with different legal systems. In a sense, every alliance treaty constitutes a learning experience. Past interactions shape to some extent how potential allies approach their current obligations. There are sound theoretical reasons to think that in the security area in particular, each state has strong incentives to understand the legal concepts deployed by its allies. Repeated interactions with states representing different legal traditions provide a great opportunity to learn about the legal cultures that are of importance to a state’s security. This is especially true for military alliances since they are hardly “one shot” treaties. Alliances are often times renewed, renegotiated, or reneged upon. Moreover, states have been entering into military alliances for centuries and they continue to sign numerous new alliance treaties.

²⁵Memorandum of conversation with Professor Antonio Perez, conducted by the author on April 02, 2009.

²⁶Memorandum of conversation with Jerzy Szymański, conducted by the author on May 22, 2009.

Entering into military alliances constitutes an important part of a state's foreign policy, and as Levy (1994) shows, "learning plays an important role in the formulation of foreign policy" (p. 282). Through repeated interactions with other legal cultures, states are able to acquire a more extensive understanding of foreign legal concepts, such as "duty" or "obligation." As Levy (1994) argues, learning can involve "probability updating, learning new skills or procedures, or the incremental change of beliefs over time as a result of the gradual cumulation of experience" (p. 287). States develop new skills and update their beliefs as a result of the observation of other legal systems, and through interpreting their own past experiences stemming from these interactions. States that have had more dealings with different legal systems in the context of military alliances have more knowledge concerning foreign legal concepts, and are more flexible in their interpretation of legal terms. These states are, therefore, able to negotiate quicker and are more open to enter into new alliances. In hypothesis form, I expect that, *ceteris paribus*,

H2: States that have more experience interacting with other legal cultures in military alliances are more likely to form new alliances.

DOMESTIC LEGAL SYSTEMS AND THE DESIGN OF ALLIANCES

In addition to alliance formation, I expect that domestic legal systems influence the design of military alliances. When drafting an alliance agreement, states can incorporate into their treaties numerous details concerning the functioning and execution of an alliance (contingencies). For example, they can include provisions for new members to join an alliance, provisions dealing with renewal of an existing agreement, specify a particular duration, establish terms of renunciation of the agreement, and so forth.²⁷ I expect that states' international commitments reflect to some extent the way that contracts look domestically. Because legal advisors play important roles in negotiating interstate alliances, the design of alliances should reflect influences

²⁷Other examples of contingencies include: establishing an organization (for example, the Inter-American Treaty of Reciprocal Assistance, the Rio Treaty, 1947, establishes an Organ of Consultation); references to the United Nations or other international organizations (the Warsaw Pact, 1955, made references to United Nations (Article 4), the nonaggression pact between Poland and Greece (1996) makes reference to the European Union (Art. 1 and Art. 6), and the United Nations (Art. 2), the nonaggression pact between Belarus and Turkmenistan (2002) refers to the Organization for Security and Co-operation in Europe (Art. 2)); mention of mediation/arbitration or other means of settling disputes among the signatories (the nonaggression pact between Chile and Argentina (1984) in Article III states that "the Parties shall adopt appropriate measures to maintain the best general conditions of coexistence"); specific provisions concerning the length of time the treaty is to last (the nonaggression pact between Belarus and Vietnam in Art. 18 states that this treaty is to last for 120 months).

of domestic legal traditions. The way that contracts are drafted, including their length and thoroughness, differs considerably in the civil, common, and Islamic legal traditions.

Contracts concluded in a civil law system are relatively straightforward, due to the presence of civil codes, which contain all main principles that are to apply to contracts. Usually, these general principles appear in the front sections of the codes, implying their application to all contractual relations enumerated in a code. Codification entails a systematic organization of the contract law and “a scientific recasting of legal concepts,” which makes the space-consuming enumeration of legal principles in a contract redundant (Langbein 1987:383).

Common law contracts are much more detailed and meticulous than civil law contracts (Langbein 1987; Lundmark 2001).²⁸ Because there is much less codified law that incorporates overarching general principles, the parties are responsible for including certain stipulations (clauses) in their contract. Moss (2007) best describes the difference in contract design between civil and common law traditions: “A common law contract is written with the idea of expressing as much as possible and as detailed as possible the whole relationship between the parties, because that document will be, with few exceptions that are not very significant in commercial matters, the only basis upon which the judge will render its decision on any dispute. A civil law contract is traditionally written with the idea of regulating the specifics of the case, while leaving the rest to the legal system, which integrates the contract” (p.13).

Islamic law regulates contractual relationships in a way that is strikingly different from that of common and civil law. First of all, Islamic law lacks a general theory of contracts comparable to its Western counterparts. The Koran, however, to some extent, plays the role of a code, in which general principles are included. For example, the Koran regulates which types of contracts are admissible to the faithful. It also directly regulates contractual rights and obligations. Parties to a contract are also free, with some limitations, to place stipulations in a contract. These clauses cannot negate the legal purpose of a contract, or violate specific laws included in the Koran or the *sunna* (Arabi 1998). Islamic law scholars put great emphasis on writing down a treaty in a very precise manner in order to circumvent future misunderstandings.

Accordingly, civil law states’ alliances should be straightforward, with relatively few contingencies. In contrast, common law states should place a higher number of contingencies on their alliances. These restrictions ensure

²⁸According to Lundmark (2001), “a typical American purchase agreement of 3,800 words in length devotes only 550 words to business terms, leaving over 3,000 words for standard definitions and boiler-plate [recitations of applicable law]” (p. 121). Interestingly, American common law contracts are longer than their British counterparts.

that states' rights and obligations are clearly specified, resembling the "all-inclusive" approach of domestic common law contracts. Islamic states' representatives should be extremely careful in signing international contracts. Because all international treaties must be in line with the Koran, representatives of these states want to take particular care in designing thorough interstate contracts. In addition, the cultural differences between Islam and the West should make Islamic law states' representatives hesitant to sign alliances without specifically regulating contractual rights and obligations.

Because each partner in an alliance can have input in its design, it is important to keep in mind that the larger the proportion of states representing a particular legal tradition in an alliance, the more likely it is that contractual design promoted by this legal tradition will prevail. For example, a civil law state will be more likely to enjoy the luxury of pre-agreement about which contingencies are included in a treaty when forming alliances with other civil law states. The larger the proportion of civil law states in an alliance, the more likely it is that civilian contractual design will prevail. The same logic can be applied to common law and Islamic law states. Thus, I posit the following hypothesis:

- H3: Common law states and Islamic law states place the greatest amount of contingencies on their alliances, while civil law states place the fewest contingencies.

RESEARCH DESIGN

The temporal domain of this study is 1960–2002, and the basic unit of analysis is the dyad year. I use all nondirected politically relevant dyads, which are defined as dyads that are contiguous or have at least one major power. The primary data set used in this analysis is the Alliance Treaty Obligations and Provisions (ATOP) data set (version 3.0), which includes information about the alliance commitments shared by a pair of states in a given year (Leeds et al. 2002).²⁹

In this study, I have two dependent variables since I am interested in how domestic legal systems influence the signing and design of alliance treaties. My first dependent variable, Signing of an Alliance Treaty, is a dichotomous variable, coded 1 if a new alliance treaty was signed in any given year between two states in a dyad, and 0 otherwise. Following Leeds and Mattes (2007:185), I define a military alliance as "a formal agreement among independent states to cooperate militarily in the face of potential

²⁹Assembly of the necessary data (control variables) has been enhanced by using the Expected Utility Generation and Data Management Program (EUGene) (Bennett and Stam 2000).

or realized conflict.” In cases of multilateral alliances, I look at each dyadic pair.³⁰

The second dependent variable, Number of Contingencies Included in an Alliance, is a count variable that summarizes the number of contingencies. If a state is part of multiple alliances, I treat each alliance as a unique contractual obligation. Thus, my data set includes each alliance commitment that a state is part of. In other words, an alliance treaty constitutes my unit of analysis. Since contingencies can be added to an alliance after its signing, any contingency that ever existed during the alliance is included in my data as a contingency of the alliance as a whole (ATOP codebook 2005;32). The minimum number of contingencies that states place on their alliances is 0, the maximum 20, and the mean is 8.4.

The primary explanatory variable, Similar Legal Systems, is a dichotomous variable that equals 1 if states in a dyad year represent the same legal tradition and 0 otherwise. I use Powell and Mitchell's (2007) classification of domestic legal systems.³¹ The Powell and Mitchell (2007) measure has the following four categories: civil law, common law, Islamic law, and mixed law.³² Because I do not have any theoretical expectations regarding the mixed law dyads (dyads in which both states have mixed legal systems), I assign a value of 0 to the Similar Legal System variable for these dyads. In the empirical analysis of the design of alliances, I use four distinct dichotomous variables that indicate the type of a state's domestic legal system. In the latter model, I also include three variables that capture a proportion of civil, common and Islamic law states that belong to an alliance (mixed excluded to avoid the dummy trap).³³ I gathered information necessary to construct these variables from ATOP (Leeds et al. 2002).

³⁰There are several types of military alliance treaties: defense pacts (Barbados and Dominica, 1996; Libya and Niger, 1974), offense pacts (Germany, Austria-Hungary, Russia, 1833; Israel and U S, 1981), neutrality pacts (Paraguay and Argentina, 1856), nonaggression pacts (Germany and Denmark, 1939; U S and Canada, 1975), and consultation pacts (Belarus and Turkmenistan, 2002).

³¹Other scholars propose divergent classifications of legal systems (see for example La Porta Lopez-Silanes Schleifer and Vishny (1999) with the following categories: English, Socialist, French, German, and Scandinavian legal origin). Splitting the civil law family into French and German yields an unnecessary subcategorization, since both of these legal families are based on highly similar, and often times identical procedural and substantive concepts. In addition, the LaPorta et al. (1999) measure omits the Islamic legal system, which, I argue, constitutes one of the most important legal traditions of the world, present and past. For robustness checks I run our model with this measure and my results hold up.

³²The mixed legal system/tradition includes hybrid, or composite legal systems, in which civil, common, and Islamic traditions are mixed with one another, or in which either of these is amalgamated with the customary law of nations. Examples include Botswana, Brunei, Cameroon, China, Israel, and Japan. Countries belonging to the mixed category constitute a very small portion of my data set.

³³I decided not to include the socialist legal system in my analyses. The main traits that distinguish socialist law from civil, common, and Islamic legal traditions are inherently bound to the socialist political regime (principles related to the very nature of Man, God, the dominant class, and the special courts, such as comrades' and people's courts), and constitute unique ideas of socialism that permeated from the political system into the domestic legal framework of several socialist states. Because my argument focuses on the substantive characteristics of domestic legal systems, I believe that the link between law and politics does not justify introducing a separate category of domestic legal systems.

In order to account for the fact that states learn from their past interactions with other states, using information provided by ATOP's member level dataset, I constructed a variable Dyadic Legal Learning. First, I analyzed each military alliance in my data set and gathered information about the legal system of each member, adding civil law, common law, and Islamic law members separately. Based on this information and ATOP's data on yearly state membership in military alliances, for each state in the system, I added the total number of states representing each legal tradition that a particular state has had interaction with up to date (1945–2002, yearly). If a state has had repeated interactions with another state, I considered each interaction as a separate learning experience. For example, a civil law country Poland, by the year 2000 (for the period 1945–2000) has experienced 128 interactions with civil law states, and 21 interactions with common law states. Next, for each dyad I coded the variable Dyadic Legal Learning to include only relevant past legal experience—experience with the legal system of the other state in a dyad. Finally, I summed up past legal experience of both states in a dyad.

I include several control variables in the model to account for alternative explanations suggested in the literature. The first set of control variables deals with traditional security arguments advanced in the international relations literature. Any military alliance constitutes a means of balancing when states' own capabilities are not enough to counterbalance a hegemon or a powerful group of states. First, I include the Major Power variable in my analyses. The literature shows that major powers are more likely to have worldwide geopolitical and economic interests, which generates their willingness to form alliances (Lai and Reiter 2000). Second, I include a measure of threat, since several international relations scholars suggest that military alliances constitute tools that states use to balance against threat (Müller 2005; Walt 1987). The variable Threat, obtained from Lai and Reiter (2000), is a count variable, and it captures the number of Militarized Interstate Disputes against the same state for the two states in the dyad over the past 10 years.

Third, in order to account for the impact of inter-dyad conflict, I include Militarized Interstate Dispute (MID) as one of my control variables. A Militarized Interstate Dispute can consist of threat, display, or use of military force, including war. Data on MID's come from the Correlates of War project (Jones, Bremer, and Singer 1996). This variable equals 1 if two states in a dyad are involved in a MID with each other during any particular dyad year. Fourth, I incorporate a measure of distance in my dyadic analyses, because I anticipate that neighboring states are more likely to sign an alliance commitment. The Distance variable is calculated using the distance between national capitals (Bennett and Stam 2005). Fifth, I want to account for the fact that states' interests determine alliance partner choices. Foreign Policy Portfolio Similarity evaluates the rank order correlation for two states'

alliance portfolios. It takes into account the presence or absence of an alliance in the correlation calculation. I use the s-score calculated on the global level (Signorino and Ritter 1999). I expect Foreign Policy Portfolio Similarity to be positively associated with formation of military alliances. Moreover, since a state's propensity to enter into a new alliance may be influenced by its existing alliance obligations, I control for the total number of alliances to which each state belongs. The variable Dyadic Total Number of Alliances, constructed using information provided by ATOP, constitutes the product of the total number of alliances each state in a dyad is a member of during the year of observation. I expect the coefficient for Dyadic Total Number of Alliances to be positive.

The second set of control variables is designed to capture arguments of more recent research in international relations that proposes that certain types of states, due to their "similarity," tend to gravitate toward each other. First, the literature suggests that democracies are more likely to form alliances with one another (Gaubatz 1996; Lai and Reiter 2000; Leeds 1999; Werner 2000). Thus, I include Joint Democracy in my first model, which deals with the formation of military alliances. It is coded 1 if both states score 6 or higher on the Polity IV scale (Marshall and Jaggers 2003). I also include a dichotomous variable Democracy in my analyses regarding the design of alliances. Again, it is coded 1 if a state scores 6 or more on the Polity IV scale.

Next, because several scholars have argued that common cultural background encourages interstate cooperation (Barnett 1996; Huntington 1993, 1996; Lai and Reiter 2000), I include several control variables that capture cultural similarity of two states in a dyad: Same Language, Same Religion, Same Ethnicity, Common Colonial Heritage, and British Commonwealth.³⁴ The first three of these variables come from Ellingsen (2000), who gathered these data from *Handbook of the Nations*, *Britannica Book of the Year*, and *Demographic Yearbook*. I obtained the Common Colonial Heritage variable from the ICOW Colonial History Data compiled by Hensel (2006). This variable equals 1 if two states in a dyad have ever had a colonial relationship, or a common colonizer, and 0 otherwise. Former colonial states are thought to continue to have an interest in their former colonies, and former dependencies of the same colonizer might also continue to have a special perception of one another, including the feeling of belonging to the same "in-group." In order to account for the fact that members of the Commonwealth of Nations may be especially likely to form military alliances with one another, I include a variable British Commonwealth into the model. It equals 1 if both states in a dyad belong to the Commonwealth of Nations in any given

³⁴Correlations between same Legal System variable and the cultural similarity variables are relatively low and range from .03 to .08.

year, and 0 otherwise. Information necessary to construct this variable comes from the website of this organization.³⁵

EMPIRICAL ANALYSES

I begin by examining some simple descriptive statistics. Of all “allied” dyadic years, 60% are composed of states that have a similar legal system, and only 40% are composed of states that represent different legal traditions. Legal system similarity seems to increase the likelihood of alliance formation. Turning to multivariate analysis, I estimated a Markov Transition Logit model since my first dependent variable, Signing of an Alliance Treaty, is a dichotomous variable. One concern with employing a state-year design is the possibility of equating transitions to an alliance with continued existence of an alliance commitment year to year. In other words, if I simply coded in each year whether there exists an alliance commitment between two states in a dyad, I would be treating the emergence of an alliance and survival of commitment as equivalent. I expect that new alliance obligations are different than recurring obligations. Because my theory deals only with alliance formation, I estimate only the formation equation of the model, which can be written as:³⁶

$$P(y_{i,t} = 1 | y_{i,t-1} = 0) = \text{Logit}(x_{i,t}\beta)$$

Table 1 presents estimates from this model, while Table 2 presents predicted probabilities to ascertain the substantive effect of each variable, holding all others at their mean or mode.³⁷ The results support my theoretical expectations (Hypothesis 1). The coefficient for the Same Legal Systems variable is positive and statistically significant. This suggests that states with similar legal systems are more likely to ally with one another. Table 2 shows that the predicted probability of signing an alliance between two states with similar legal

³⁵Available at <http://www.thecommonwealth.org/> Correlation between British Commonwealth and Common Colonial Heritage is .09.

³⁶The model can be estimated in one of two ways, either through estimation of the two models separately, conditional on the value of the lagged dependent variable (0 or 1) or by creating a series of interaction terms which multiply each independent variable by the lagged dependent variable. I employ the first strategy. The survival of alliance commitments can be estimated via the survival equation, which can be written as follows: $p(y_{i,t} = 1 | y_{i,t-1} = 1) = \text{Logit}(x_{i,t}\alpha)$

³⁷Since several scholars have shown that a state’s reputation as a reliable/unreliable alliance partner can affect alliance formation (Gibler 2008; Leeds 2003), I also estimated my base model with three separate measures of past reliability (past reliability during times of war (Leeds 2003), whether there was a previous violation of an alliance commitment in a dyad in the international system (Gibler 2008), and whether there was a previous violation of an alliance commitment in a dyad in the region (Gibler 2008)). These three measures are negative and statistically insignificant in my models.

TABLE 1 Logistic Results – Transition to Military Alliances, 1945–2002

Same Legal System	.370 ^{***} (.152)
Dyadic Legal Learning	.004 ^{***} (.000)
Major Power	-.184 (.195)
Threat	.066 (.689)
Militarized Interstate Conflict	-.956 ^{**} (.069)
Distance	-.001 ^{***} (.000)
Foreign Policy Portfolio Similarity	4.82 ^{***} (.481)
Dyadic Total Number of Alliances	.004 ^{**} (.002)
Joint Democracy	.217 (.165)
Same Language	-.150 (.281)
Same Religion	.431 ^{***} (.158)
Same Ethnicity	-1.16 ^{***} (.311)
Common Colonial Heritage	.440 ^{**} (.205)
British Commonwealth	-1.66 ^{***} (.586)
Constant	-7.68 ^{***} (.492)
N	31689

* $p < .10$, ** $p < .05$, *** $p < .01$.

LR $\chi^2(14)$: 672.88.

Prob $> \chi^2$: 0.000.

Pseudo r^2 : .205.

Log-likelihood: -1304.0668.

systems is .002 larger than the probability of an alliance between two states of divergent legal origins (states with similar legal systems have a 67% higher probability of signing an alliance with one another). If the two bargaining states have similar domestic legal systems, communication is much easier for their representatives since they are used to operating in similar legal frameworks. Akin concepts of commitment, fulfillment of contracts, and similar legal language make bargaining over terms of an alliance simpler. A shared *a priori* understanding of legal rules enhances interstate cooperation.

As expected, states seem to learn from their past interactions with other legal systems. The variable Dyadic Legal Learning has a positive, statistically significant effect on the likelihood that a dyad will form an alliance. In fact,

TABLE 2 Predicted Probabilities—Transition to Military Alliances, 1960–2002

	Predicted probability of alliance formation
Different Legal System	.003
Same Legal System	.005
Minimum Dyadic Legal Learning (0)	.003
Maximum Dyadic Legal Learning (200)	.007
No Major Power	.003
Major Power	.003
Maximum Threat (20)	.003
Minimum Threat (0)	.028
Militarized Interstate Conflict	.003
No Militarized Interstate Conflict	.001
Minimum Distance (0)	.012
Maximum Distance (12347)	.0003
Dissimilar Foreign Policy Portfolio (.03)	.0002
Similar Foreign Policy Portfolio (1)	.021
Minimum Dyadic Total Number of Alliances (1)	.003
Maximum Dyadic Total Number of Alliances (1312)	.439
Not Joint Democracy	.003
Joint Democracy	.004
Different Language	.003
Same Language	.003
Same Religion	.003
Different Religion	.005
Same Ethnicity	.003
Different Ethnicity	.001
No Common Colonial Heritage	.003
Common Colonial Heritage	.005
Not a Member of British Commonwealth	.003
Member of British Commonwealth	.001

as Table 2 demonstrates, dyads where both states have had an extensive experience with the other side's legal system are much more likely to transition into an alliance (133% increase in predicted probabilities). This confirms my expectation that every alliance treaty constitutes in some sense a learning experience. Through repeated interactions with different legal cultures, states are able to acquire understanding of foreign legal concepts, including abstract concepts such as "duty" or "obligation." This result fits well with the existing literature that demonstrates that states' past experiences such as state learning are strong predictors for alliance formation (Gibler and Wolford 2006; Lai and Reiter 2000). As the results presented here suggest, states' ability to learn carries over into the legal dimension of alliances.

Realist variables provide interesting insights into patterns of military alliances. As expected, militarized conflict and distance lower the likelihood of signing an alliance. Similarity of foreign policy portfolios and total dyadic

number of alliances, on the other hand, substantially increase the probability of alliance formation. The threat variable is not statistically significant in my model, which may indicate that alliance formation is influenced not only by a material threat but also perception of threat, since “threat is both a behavioral and a perceptual variable rather than a material one” (Müller 2005:371). This result, however, fits well with the patterns discovered by Lai and Reiter (2000) and Gibler and Wolford (2006) who show that outside threat does not have a stable, positive impact on alliance formation. Presence of a major power in a dyad does not have a statistically significant impact on the likelihood of alliance formation in my model. This is consistent with Gibler and Wolford’s (2006) results, where the impact of major power variable varies with model specification and sample.

The second set of control variables, designed to capture the regime and cultural similarity between the states in a dyad, provides further insights into alliance formation. Interestingly, two democracies are not more likely to ally with each other, which questions arguments advanced in the literature (Gaubatz 1996; Lai and Reiter 2000; Leeds 1999; Werner 2000). This finding, however, bodes well with patterns discovered by Gibler and Wolford (2006), who demonstrate that when the dependent variable is alliance formation, democratic dyads are unlikely to ally.

Out of the three cultural similarity control variables, only joint religion encourages alliance formation. Same Language variable is not statistically significant and common ethnicity seems to decrease the likelihood of forming an alliance. These results further support the findings of Lai and Reiter (2000) and Leeds et al. (2002), two recent studies of military alliances that demonstrate that joint religion encourages formation of alliances. Interestingly, also in Lai and Reiter’s (2000) models and Gibler and Wolford’s (2006) models, joint ethnicity does not have a stable positive impact on signing alliances. As expected, states that in the past had a colonial relationship are more likely to form military alliances with one another. Indeed, past dependency continues to have an impact on states’ current foreign policy as alliances formed between colonizers and their former colonial dependencies after their declaration of independence still hold. Somewhat surprisingly, joint membership in the Commonwealth of Nations has a dampening effect on alliance formation.

Taken together, these results suggest that alliances should definitely be seen as a security tool that states use to further their political goals. Majority of traditional realist arguments find support in my analyses. My results also show that common religious identity shapes security politics and thus can shed light on the dynamic of alliance formation. Finally, my analyses demonstrate that military alliances should be seen not only as political, but also as legal phenomena. Communication is easier between state representatives that operate within similar domestic legal frameworks, although through

TABLE 3 Ordinary Least Squares Models: Design of Military Alliances, 1960–2002

Civil Law State	.479 (.443)
Common Law State	.659 (.559)
Islamic Law State	-.189 (.605)
Major Power	-.290 (.256)
Democracy	.516*** (.202)
Proportion of Civil Law States	3.58*** (.782)
Proportion of Common Law States	4.05*** (1.06)
Proportion of Islamic Law States	4.94*** (1.05)
Constant	3.69*** (.690)
N	977

* $p < .10$; ** $p < .05$; *** $p < .01$.

$F(8, 968) = 6.19$.

Prob > F : 0.000.

Adj R^2 : .04.

repeated interactions with different legal systems, states can become more familiar with foreign legal concepts.³⁸

In order to capture the influence of domestic legal systems on the design of military alliances, I estimate an Ordinary Least Squares model (Table 3).³⁹ I hypothesized (Hypothesis 3) that because of the inherent characteristics of common law and Islamic law, states representing these two traditions should place more reservations on their alliances. Again, it is important to keep in mind that the larger the proportion of alliance partners representing a shared legal tradition, the more likely it should be that contractual design characteristic to this legal tradition will prevail.

Results are consistent with my expectations. As I anticipated, alliances designed mainly by common law states and alliances designed by Islamic law states contain, on average, the largest number of contingencies. Alliances designed by civil law states, on the other hand, are shorter. In short, what matters is the proportion of states representing civil, common, and Islamic

³⁸Interestingly, my preliminary analyses (I used Gibler's 2008 measures of alliance violations) show that states with similar domestic legal systems are less likely to violate their alliance commitments. There are more failed promises in military alliances signed between states with different legal systems.

³⁹I have also estimated the model using negative binomial model. Results of this estimation are virtually identical to the OLS model.

legal traditions in an alliance.⁴⁰ For example, if the proportion of common law states or Islamic law states in an alliance increases, the number of contingencies in that alliance increases also (4.05 increase for common law states and 4.94 increase for Islamic law states).⁴¹ Speaking more generally, international commitments of Islamic and common law states seem to be just as specific as their domestic contracts. Again, the way that states regulate their domestic contractual relations carries over to the international realm, where states draft and negotiate interstate treaties. Results show, however, that the ability of each legal tradition to impose its contractual design onto international treaties hinges on the proportion of states sharing the same legal background that are part of that treaty.

Democracies, on average, place more reservations on their alliances commitments. These results seem to be consistent with the literature that suggests that democracies make more credible commitments (Gaubatz 1996; Leeds 1999; Powell 2006; Simmons 2000). Because democratic states know that they will keep their international commitments, they design them in a very cautious way, making sure that all of their obligations and possible future circumstances are accounted for. Interestingly, when we look at the substantive effects, proportion of domestic legal systems in an alliance matters more than a state's regime type.

Robustness Checks and Generalizability

To assess the robustness of my results, I estimated several additional models. Table 4 presents results of five supplementary models. First, it is possible that certain domestic institutional arrangements, other than regime type can explain the variation in states' propensity to form military alliances. For instance, it is likely that the legislature's role in treaty ratification affects whether or not a state will enter into an international agreement such as a military alliance. To test this, I added the Domestic Approval variable to my baseline model (Domestic Approval Model). This variable is coded 1 if in both states in a dyad either the legislature must always ratify international treaties, or if approval is conditionally required (Reiter and Tillman 2000). As expected, dyads in which the legislature holds significant power over foreign policy are less likely to enter into alliances. Importantly however, the Same Legal System variable remains statistically significant demonstrating that legal conceptual issues matter in treaty formation.

Similarly, my legal argument continues to receive empirical support if I control for the nature of political system of democracies. The Political System

⁴⁰In order to make sure that the results are not skewed by the United States, I ran my model excluding the US. Results of this model are virtually identical.

⁴¹Mixed Legal System and Proportion of Mixed Law States constitute the benchmark categories.

TABLE 4 Logistic Results—Robustness Checks, Transition to Military Alliances, 1945–2002

	Domestic politics		International influences		
	Domestic approval model	Political system model	Trade model	WWII model	Time control model ^a
Same Legal System	.397*** (.151)	.851** (.350)	.371** (.151)	.371** (.152)	.624*** (.162)
Major Power	-.16 (.197)	1.02*** (.329)	-.172 (.196)	-.172 (.197)	-.054 (.208)
Threat	.58 (.069)	-.063 (.135)	.066 (.069)	.069 (.069)	.049 (.074)
Militarized Interstate Conflict	-.955** (.462)	-1.56 (1.04)	-.949** (.462)	-.956** (.463)	-1.29*** (.483)
Distance	-.001*** (.000)	-.001*** (.000)	-.000*** (.000)	-.000*** (.000)	-.000*** (.000)
Foreign Policy Portfolio Similarity	4.78*** (.480)	9.48*** (1.35)	4.80*** (.481)	4.81*** (.482)	5.89*** (.549)
Dyadic Total Number of Alliances	.004*** (.001)	.004*** (.000)	.004*** (.001)	.004*** (.001)	.005*** (.001)
Joint Democracy	.325* (.167)	—	.239 (.167)	.213 (.166)	5.89*** (.549)
Same Language	-.256 (.283)	-1.49*** (.519)	-.141 (.281)	-.159 (.282)	.027 (.300)
Same Religion	.476*** (.158)	.109 (.404)	.435*** (.157)	.437*** (.158)	.544*** (.168)
Same Ethnicity	-1.17*** (.311)	.777 (.594)	-1.18*** (.313)	-1.15*** (.312)	-.989** (.532)
Common Colonial Heritage	.406** (.205)	.987*** (.411)	.429** (.205)	.450** (.205)	.294 (.221)
British Commonwealth	-1.68*** (.586)	-.660 (.763)	-1.64*** (.587)	-1.67*** (.586)	-1.37** (.595)
Dyadic Legal Learning	.003* (.002)	.008*** (.002)	.004** (.002)	.004** (.002)	.006*** (.002)
Domestic Approval	-1.68** (.729)	—	—	—	—
Presidential System	—	6.09*** (.607)	—	—	—
Premier-Presidential System	—	-.207 (.387)	—	—	—
Parliamentary System	—	.134 (.294)	—	—	—
WWII	—	—	—	-.079 (.189)	—
Trade	—	—	-.000 (.000)	—	—
Constant	-7.68*** (.49)	-12.6*** (1.48)	-7.67*** (.492)	-7.68*** (.492)	-24.99*** (1.14)
N	31689	14966	31689	31689	25870
Pseudo R ²	.207	.403	.205	.205	.315

* $p < .10$, ** $p < .05$, *** $p < .01$.^aCoefficients for year dummies not shown.

Model, which I estimated on politically relevant democratic dyads includes the following control variables: Presidential System, Premier-Presidential System, and Parliamentary System. All of these are coded 1 if at least one state in a dyad constitutes a particular system, and zero otherwise (Reiter and Tillman 2000).⁴² The only political system variable that is statistically significant is Presidential System—dyads with at least one presidential system democracy are more likely to enter into military alliances, which can be easily attributed to substantial powers of the head of the state.

Second, it is possible that my original model does not take into consideration several important international influences. Thus, I estimated two additional models, Trade Model that includes levels of dyadic trade, and WWII Model, that controls for being on the same side of World War II. I obtained the trade data from the COW Project (2008) (Oneal and Russett 1999). Both Trade and WWII variables are statistically insignificant. Results pertaining to bilateral trade are especially interesting since several scholars have suggested that alliances are likely to follow trade (Gowa 1994; Lai and Reiter 2000). Since international trade involves communication across legal systems, it is possible that trade agreements and dense commercial relationships provide a great opportunity for states to learn about foreign legal cultures. If so, the effect of Same Legal System variable should diminish in the trade model. However, just as in Domestic Politics Models, my arguments pertaining to the influence of legal systems hold up in both International Influences Models. Finally, in order to control for time, I estimated my baseline model with year dummies. Results of this model continue to support my theoretical expectations concerning the effect of domestic legal systems on alliance formation. Ultimately, these alternative tests provide continued support for my primary theory, while suggesting several interesting avenues for future scientific exploration, especially teasing out the influences of domestic institutional characteristics on states' propensity to form alliances.⁴³

Finally, can we generalize my findings to agreements beyond alliances? One could argue that state behavior associated with treaty-based alliances may not be typical of state treaty relations insofar as military alliances address issues of high politics and state security. Additionally, alliances usually entail relationships between states with *a priori* common security interests. To assess potential generalizability of my arguments, I have taken an initial cut at identifying the relationship between legal similarity and easiness of interstate communication in a very different area of international relations—peaceful attempts to resolve territorial disputes. I analyze the outcomes of negotiations over territorial, maritime, and river claims in the Western Hemisphere,

⁴²Reiter and Tillman (2000) code an additional category—assembly independent systems—but because Switzerland constitutes the only example of this system, I did not create a separate category for it.

⁴³For example, the Joint Democracy variable became statistically significant in the Domestic Approval and Time Control Models.

TABLE 5 Logistic Results—Reaching Agreement and Compliance with Agreements, Settlement Attempts in Territorial Disputes, 1816–2002

	Reaching agreement	Compliance with agreement
Same Legal System	.159* (.112)	.416** (.172)
Acceptance of the ICJ Jurisdiction	.564*** (.167)	.461* (.274)
Democratic Dyad	-.228** (.119)	.56** (.191)
Challenger's Capabilities	-.279* (.159)	-.146 (.239)
Issue Salience	-.029 (.022)	-.082** (.035)
Recent Conflict	-.128 (.109)	.091 (.172)
Functional/Procedural	.902*** (.108)	.440** (.163)
Constant	.199 (.179)	1.21*** (.267)
	N = 1656 $\chi^2(7) = 87.87$ Prob > $\chi^2 = .000$ Pseudo $R^2 = .040$	N = 922 $\chi^2(7) = 29.82$ Prob > $\chi^2 = .000$ Pseudo $R^2 = .037$

* $p < .10$; ** $p < .05$; *** $p < .01$.

Europe, and the Middle East during the period 1816–2002, as coded by the Issue Correlates of War (ICOW) Project (Hensel et al. 2008).⁴⁴

There are good theoretical reasons to think that negotiations over territorial issues provide an interesting test for my theory because often multiple solutions are possible for drawing borders or managing joint resources. In these situations, common legal background can help parties converge on particular solutions. I examine whether negotiations over contentious issues produce agreements between the disputants, and whether the parties comply with agreements reached. These analyses directly capture the influence of shared legal tradition because I am able to determine if similarity of legal systems impacts whether agreements are struck and complied with. Common legal systems should encourage both reaching an agreement and compliance since expectations about compliance influence agreement (Fearon 1998).

In Table 5, I present the results of two logistic regression analyses. The first dependent variable captures whether or not the parties reach an agreement over the contentious issue at state, and the second dependent variable

⁴⁴This data set includes 1675 peaceful attempts to settle issue claims in the Western Hemisphere, Europe, and the Middle East. A complete list of issue claims is available on the ICOW Web site <http://www.paulhensel.org/icow.html>

codes compliance with agreements, which is measured dichotomously as a one if the parties carry out the agreement within a five-year period or in the time stipulated in the agreement (if longer), and zero otherwise. In addition to the legal system variable, I also include control variables used in most studies on territorial issues.⁴⁵ The results provide strong support for my theoretical argument, showing that states with similar legal systems are more likely to reach a bargaining success in negotiations and are more likely to carry out the agreement.

Several existing studies show that my arguments can be applied to international treaties in general. In the context of human right treaties, Simmons (2009) argues that domestic legal systems affect the way that states view international treaties. Since a civil code present in civil law systems constitutes “a natural, national analogy to the international “code,” or treaty,” civil law states should be more open to international treaties (p. 15). Because common law is based on rules that gradually evolve from local case law, international treaties, according to Simmons, should meet with greater resistance in these states. The way that civil, common, and Islamic legal systems approach the principles of *stare decisis*, *bona fides*, and *pacta sunt servanda* importantly affect the way that states design their commitments to international courts, especially the International Court of Justice (Powell and Mitchell 2007). Generally speaking, any international treaty that deals with states’ rights and obligations can be potentially affected by domestic laws. Undoubtedly, as I mentioned before, the influence will be more profound in treaties that hinge on domestic enforcement, since the relative independence, power, and the scope of the interpretative role of judges can affect the implementation and effectiveness of an international treaty.

CONCLUSIONS

In this inquiry into the relationship between domestic legal systems and formation of international alliances, I have discovered several interesting patterns. First, states with similar legal systems are indeed more likely to form military alliances with one another. I have explained this relationship by focusing on the first stage of treaty formation—international negotiations. Communication, which constitutes the essence of negotiations, is simply much easier for state representatives coming from a similar legal background. Second, I have also demonstrated that domestic legal systems influence the way that states design their alliance commitments. In general, my

⁴⁵Control variables used include: acceptance of the jurisdiction of the International Court of Justice, democratic dyad, challenger’s capabilities, issue salience, recent conflict, and functional/procedural attempts.

findings suggest that the influence of domestic laws does not stop at “the water’s edge.” It permeates the interstate borders and impacts the relations between states, especially the treaty negotiating and drafting process. International negotiators bring their legal backgrounds to the negotiating table, which influences both their willingness to sign treaties and the design of the resulting agreements.

I do not contend that similarity between domestic legal systems constitutes the only important determinant of alliance formation. I accept the traditional realist arguments flowing from the international relations literature that power, external threat, and security interest are crucial in explaining the behavior of states in the international arena. Undoubtedly, as the bulk of empirical studies on military alliances show, basic power-based factors do matter, and they matter greatly. Nor do I wish to downplay the role of political and cultural factors in alliance formation. Communication is certainly easier between democratic states and culturally similar states. Most importantly, I do not wish to overemphasize the role of domestic legal systems. Nonetheless, I argue that domestic legal systems play some role in the process of alliance formation and whether state representatives are able to communicate effectively at the bargaining table has something to do with the way that legal concepts, repeatedly used in international treaties, are framed and interpreted in domestic laws.

Indeed, bargaining over international treaties such as military alliances constitutes “sub-classes of social communication” (Jonsson 2005:226), where perceptions of law, legal principles, and concepts do matter. Consequently, more systematic and more general scientific explorations of the link between domestic legal systems and international treaty-making should be pursued within the fields of international relations and law. Domestic legal systems should not be brushed aside. The way that states regulate their internal laws does indeed affect, even if on the margins, the process of negotiating and drafting international treaties. Negotiating and drafting international treaties constitute inherently legal phenomena, in which states’ rights and obligations are determined through legal processes. Domestic laws operating within states impact in an important way the process of creating the international law embodied in treaties. The influence of domestic laws cannot be contained within tightly sealed national borders.

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