NOTE

The Nuclear Option: Domestic Treaty Withdrawal Mechanisms

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Treaties are the main contractual instrument of cooperation between countries. A state can legally denounce a treaty in international law by adhering to the treaty's withdrawal clause or to the default provisions outlined in the Vienna Convention on the Law of Treaties. Separate yet parallel withdrawal procedures exist in domestic legal systems. In a multi-year research dataset, 72% of the countries examined had enacted domestic withdrawal procedures which were more lenient than the international procedures; they lacked any notice period and required only the signature of the executive, allowing for swift withdrawal from treaties under domestic law.

Domestic withdrawal mechanisms facilitate swift withdrawal when a country is in a state of emergency and unable to continue fulfilling its treaty obligations, but is simultaneously unable to fulfill the notice period imposed by international law. These mechanisms ameliorate only domestic consequences, not international repercussions. The force of a treaty frequently stems from domestic courts, therefore, adherence to domestic, not international, law is of utmost priority. When a treaty is terminated through domestic withdrawal procedures, its force in national courts, and any legal remedy it provides, is also terminated.

Although legal under domestic law, unilateral withdrawal without notice is in violation of international law and would create enormous political costs. It is therefore dubbed the "nuclear option." As with a nuclear strike, the domestic withdrawal mechanisms may never be invoked. Their existence, however, provides a security which likely contributes to countries' decision to engage with the international system.

Despite the widespread repercussions that might result from such internationally sanctioned withdrawal, the domestic mechanisms remain unexamined and unacknowledged by the scholarly community. The international system requires further study in light of the current theories of compliance with the reality that states continue to retain the nuclear option. This Note attempts to explain the continued existence of domestic withdrawal mechanisms despite the presence of flexibility-enhancing mechanisms in international treaty-making.

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INTRODUCTION

A treaty, the principal contractual instrument facilitating relationships between states and the international community,[1] rightfully occupies center stage in international scholarship.[2] After all, treaties constitute the underpinnings of many economically and militarily superior international organizations such as the European Union ("EU")[3] and the North Atlantic Treaty Organization ("NATO").[4] A treaty, however, does not provide the traditional enforcement mechanisms available to the parties of a contract.[5] Much of the literature focusing on the law and implementation of treaties, therefore, concerns itself with compliance theories — why countries adopt

1. *See* Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573, 573–74 (2005) ("The viability of international law, as a legal system, rests largely on the viability of treaties as a source of law. In the second half of the twentieth century, the international state system was supported by the development of treaties. States focused the majority of their regime-building efforts on three sets of concerns: restraining interstate conflict, securing human rights, and managing the economic system. States used treaties as the primary tool in the construction of these international institutions and in the codification of these norms.").

2. *See, e.g.*, NISRINE ABIAD, SHARIA, MUSLIM STATES AND INTERNATIONAL HUMAN RIGHTS TREATY OBLIGATIONS: A COMPARATIVE STUDY (2008); JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005); JAN KLABBERS, THE CONCEPT OF TREATY IN INTERNATIONAL LAW (1996); JEFFREY S. LANTIS, THE LIFE AND DEATH OF INTERNATIONAL TREATIES : DOUBLE-EDGED DIPLOMACY AND THE POLITICS OF RATIFICATION IN COMPARATIVE PERSPECTIVE (2008).

3. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1; Treaty on European Union as Amended by the Treaty of Lisbon, May 9, 2008, 2008 O.J. (C 115) 13; Treaty on the Functioning of the European Union, May 9, 2008, 2008 O.J. (C 115) 47.

4. North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

5. *See, e.g.*, Gabriella Blum, *Bilateralism, Multilateralism, and the Architecture of International Law*, 49 HARV. INT'L L.J. 323, 353 n.130 (2008) ("Most empirical studies show that international agreements generally do not include any strong enforcement mechanisms."); Alan E. Boyle, *Some Reflections on the Relationship of Treaties and Soft Law*, 48 INT'L & COMP. L.Q. 901, 909 (1999) ("Soft [treaty] enforcement characteristically evades issues of responsibility for breach, and relies on a combination of inducements or the possibility of termination or suspension of treaty rights to secure compliance."); Laurence R. Helfer, *Public International Law and Economics: Nonconsensual International Lawmaking*, 2008 U. ILL. L. REV. 71, 76 (2008) ("International law does not share the coercive enforcement authority of its domestic counterparts.").

and follow international law.[6] In that regard, international legal scholars have also focused on the phenomenon of treaty withdrawal — its frequency, justification, procedures, and laws.[7] In international law, treaty withdrawal mechanisms are either embedded in the treaty itself or default to the withdrawal provisions of the Vienna Convention on the Law of Treaties ("VCLT").[8] However, international legal scholars have been negligent in acknowledging the treaty withdrawal mechanisms that exist in domestic legal systems, which are wholly separate from their international counterparts and impose entirely different treaty withdrawal procedures. These domestic mechanisms remain largely unexamined and unrecognized.

Upon close inspection, domestic withdrawal mechanisms are remarkably lax, both in comparison to international withdrawal mechanisms and to nations' demanding treaty ratification procedures. Therefore, as this paper argues, the domestic mechanisms occupy a peculiar space — they address the circumstance when it is impossible for a state to legally withdraw from a treaty under international law, yet politically necessary to do so swiftly. Of course, a country skirting its international obligations will be met with immediate criticism. But it is the *domestic* consequences, not the international penalties, that the domestic withdrawal mechanisms seek to alleviate.

As this Note argues, it is incorrect to assume that domestic treaty withdrawal procedures are irrelevant in light of the internationally governed withdrawal mechanisms. Although domestic procedures have admittedly never been invoked in a unilateral withdrawal, they indisputably allow countries to more freely engage with the international system by providing an exit option and a flexibility mechanism in the face of uncertainty and instability in international politics, thus safeguarding national sovereignty against severe encroachments of international law into the domestic domain. Retention and preservation of these mechanisms in domestic systems cannot be dismissed as merely on oversight or a remnant of the past. Today, in an era with increasing international cooperation and influence which, at the same time, increasingly stokes domestic fears of loss of sovereignty and, in some cases, xenophobia and exclusionary attitudes, domestic withdrawal mechanisms ought to be studied given the alarming possibility of their sudden invocation by a recalcitrant state.

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6. *See, e.g.*, DINAH SHELTON, COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM (2003); Andrew T. Guzman, *A Compliance-Based Theory of International Law* , 90 CAL. L. REV. 1823 (2002); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997).

7. *See, e.g.*, Laurence R. Helfer, *Exiting Treaties*, 91 VA. L. REV. 1579 (2005); Barbara Koremenos & Allison Nau, *Exit, No Exit*, 21 DUKE J. COMP. & INT'L L. 81 (2010); Timothy Meyer, *Power, Exit Costs, and Renegotiation in International Law*, 51 HARV. INT'L L.J. 379 (2010).

8. Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331; *see also* ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 290–91 (2d ed. 2007).

This Note explores the implications and possible justifications for the widespread lenient treaty renunciation procedures that exist in national systems. The first part of the paper describes under what circumstances countries might choose to withdraw from treaties in general. The second part describes the international mechanisms for withdrawal. The third focuses on the domestic treaty exit procedures. The fourth and fifth parts analyze the possible consequences of the lenient withdrawal clauses and discuss what can be gleaned from these mechanisms. The sixth part concludes.

I. THE THEORY OF WITHDRAWAL IN INTERNATIONAL LAW

Although the "[international relations] theorists have mostly ignored the study of when and why states quit a treaty,"[9] the existence of international withdrawal mechanisms in general lends itself to a set of explanations, oscillating broadly around notions of sovereignty and uncertainty about the strength of a country's bargaining position. Since the creation of the international system, fears of loss of sovereignty, coupled with political uncertainty and instability, have permeated foreign relations and treaty-making, and provide an explanation for why countries might choose to withdraw.[10]

As mentioned, the first explanation examines the concept of geopolitical instability. Denunciation may constitute "a rational response to a world plagued by uncertainty, one in which States negotiate commitments with imperfect information about the future and the preferences of other treaty parties."[11] The depth of uncertainty facing a country can be substantial, from "uncertainty about the preferences of other States, uncertainty about their behavior, and uncertainty about future events such as 'unanticipated

9. Helfer, *Exiting Treaties*, *supra* note 7, at 1585.

10. Historically, lenient treaty withdrawal procedures may have reflected states' expectations about shifting bargaining power and may have, during the formative years of international law, facilitated its growth by removing a major obstacle — fear of loss of sovereignty — by providing a low-cost exit strategy. Weak domestic withdrawal procedures may therefore shed some light on the fragility of the international system in its early years, and uncertainty about the distribution and shifts in power after a period of great political volatility. *See e.g.*, Barbara Koremenos, *Contracting Around International Uncertainty*, 99 AM. POL. SCIENCE REV. 549, 557 (2005). The beginning of the twentieth century, marred by two world wars, was characterized by great instability and uncertainty about the efforts to build an international community. Europe itself faced cooperation problems following World War II, which underlined the problems that nations would have to resolve to collaborate. Koremenos & Nau, *supra* note 7, at 86. For instance, "the Europeans faced a unique problem concerning Germany that could be characterized either as a significant uncertainty about preferences (Could Germany be trusted? Was Germany indeed a peace-loving state or would it end up going down the same path that brought about two World Wars?), or as a commitment problem, when an actor's optimal plan today may not be optimal at a future point in time (Was it just a matter of time before some future German leader follows the destructive path of the past?)." *Id.*

11. Laurence R. Helfer, *Terminating Treaties*, *in* THE OXFORD GUIDE TO TREATIES 647 (Duncan B. Hollis ed., 2012).

circumstances or shocks,'"[12] to "new demands from domestic coalitions or clusters of States wanting to change important rules or procedures."[13] As such, the ability to exit is a "form of insurance."[14] Therefore, it would be incorrect to assume that states strive to make their "agreements renegotiation-proof, both to avoid the possibility of losing the gains tomorrow that they bargained for today and to induce reliance."[15] A state that expects to see its bargaining power (and international position) improve tomorrow incurs an opportunity cost by entering into an agreement today. "High exit costs therefore narrow the set of treaty provisions that make an agreement today worth foregoing tomorrow's bargaining power."[16] Simply put, states want to provide themselves with a low-cost opportunity to withdraw and renegotiate from a better bargaining position, anticipating that their power might shift. This is true both for weak states anticipating growth in power, and those already in power, fearing its loss. "[L]ow exit costs allow the ascendant state to retain the ability to renegotiate when it becomes more powerful . . . . Declining states may actually wish to have low exit costs because they prefer a greater share of the benefits from cooperation today, and conceding on the issue of exit costs may allow them to extract preferable substantive rules."[17] The ability to exit might also encourage countries to "test the waters." Indeed, as scholars have argued, agreements which allow low-cost withdrawals may offer the kind of flexibility "to allow states to experiment with particular substantive rules and learn how they operate in practice."[18]

Another reason for countries' decision to withdraw focuses on perceived threats to sovereignty and states' ability to limit the extent to which international law and institutions intrude upon the domestic sphere. This explanation assumes that the right to withdraw is the right of a sovereign, exercised in the best interest of maintaining sovereignty. As scholars have found, "States use unilateral exit to disengage from or radically reconfigure existing forms of international cooperation,"[19] "to increase their voice within treaty-based negotiating forums and to reshape treaty commitments to more accurately reflect their interests,"[20] and "to withdraw from a treaty as a condition of joining or retaining membership in an

12. *Id.*

13. Barbara Koremenos et al., *The Rational Design of International Institutions*, 55 INT'L ORG. 761, 773 (2001).

14. Meyer, *supra* note 7, at 389.

15. *Id.* at 382.

16. *Id.* at 383.

17. *Id.* Further, "low exit costs confer potential future bargaining power on states whose cooperation in an agreement is most valuable to other agreement members." *Id.* at 405.

18. *Id.* at 418.

19. Helfer, *Terminating Treaties*, *supra* note 11, at 645.

20. *Id.* at 646; *see also* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).

[international organization.]" [21] Therefore, the underlying tenet of international law is that "exit sits at the intersection of law and power in international relations."[22] In addition, the free rider problem,[23] which occurs when a state negotiates but does not ratify a treaty benefiting it, also may push a fellow state towards withdrawal because it is bound by an agreement with undermined effectiveness. [24] Furthermore, the recent trend in nonconsensual international lawmaking may be another reason explaining the existence of withdrawal procedures.[25] This trend has been defined as "the creation of a legal obligation that binds a member state of a treaty or an international organization even where that country has not . . . acceded to, or otherwise affirmatively accepted that obligation."[26] In fact, "[s]uch majoritarian amending powers appear in a large number of treaties and [international organizations'] charters." [27] Binding resolutions, directives, amendments, and augmentations of agreements as well as decisions of tribunals and treaty bodies are prime examples.[28] Finally, states might invoke the exit option in response to the proliferation of treaties of indefinite duration and agreements that disallow withdrawal altogether, such as the International Covenant on Civil and Political Rights ("ICCPR").[29] Clearly then, the right to exit creates "tension between the normative aspirations of state sovereignty and binding international obligations,"[30] especially given

21. Helfer, *Terminating Treaties*, *supra* note 11, at 646.

22. Helfer, *Exiting Treaties*, *supra* note 7, at 1588.

23. Helfer, *Public International Law and Economics*, *supra* note 5, at 74, 115.

24. *See* John H. Jackson, *Sovereignty-Modern: A New Approach to an Outdated Concept*, 97 AM. J. INT'L L. 782, 795 (2003).

25. *See* T. Alexander Aleinikoff, *Thinking Outside the Sovereignty Box: Transnational Law and the U.S. Constitution*, 82 TEX. L. REV. 1989, 1992 (2004) ("International law is moving away from a foundation of state consent and towards majoritarianism."); *see also* Laurence R. Heifer, *Nonconsensual International Lawmaking*, 2008 U. ILL. L. REV. 71 (2008) (analyzing the emergence of nonconsensual lawmaking in international law); Tom Ginsburg, *Bounded Discretion in International Judicial Lawmaking*, 45 VA. J. INT'L L. 631, 647–49 (2005); Anne Peters, *Global Constitutionalism Revisited*, 11 INT'L LEGAL THEORY 39, 51 (2005) (showing that the "the erosion of the consent requirement" is a "change of paradigm . . . manifesting itself in the weakening of the persistent-objector rule, third-party effects of treaties, and majority voting within treaty bodies and international organizations"). *See generally* JOEL P. TRACHTMAN, THE FUTURE OF INTERNATIONAL LAW: GLOBAL GOVERNMENT (2013).

26. Helfer, *Public International Law and Economics*, *supra* note 5, at 74; *see also* JOSE E. ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 336–37 (2006).

27. Helfer, *Public International Law and Economics*, *supra* note 5, at 76 n.14.

28. *Id.* at 75 (mentioning, for instance, "[r]esolutions of the United Nations Security Council relating to international peace and security and directives of the European Union" as well as amendments originating from the International Monetary Fund).

29. International Covenant on Civil and Political Rights and Optional Protocol, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 301 (1967); U.N. Human Rights Comm., General Comment No. 26: Continuity of Obligations, U.N. Doc. CCPR/C/21/Rev.1/Add.8/Rev.1, ¶ 1 (Dec. 8, 1997).

30. Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749, 1750 (2003); *see also* Phillip R. Trimble, *Globalization, International Institutions, and the Erosion of National Sovereignty and Democracy*, 95 MICH. L. REV. 1944, 1944–45 (1997) ("The … practical devolution of decision-making authority to international institutions is the essence of the loss of national sovereignty.").

that international law demands that states "delegate[] to an international body the authority to make future decisions."[31] As transaction cost theory explains, "[t]here are gains to be achieved from cooperation, and there are sovereignty costs associated with cooperation."[32]

It must be noted, however, that the existence of exit clauses does not per se diminish cooperation among states who might fear lack of commitment or compliance; rather, it encourages countries to join treaties. These mechanisms, "while suboptimal from an ex post standpoint, are optimal from an ex ante standpoint because they help to facilitate agreement where agreement might not otherwise have been possible."[33] As Meyer explained, "[the] ability to credibly threaten not to participate in an institution depends on one's alternatives to cooperation."[34] With time, "a shift in a state's preferences can change how it perceives the value of its various options."[35] Some uncertainty about international law may have dissipated over time with the introduction of various "flexibility devices — such as reservations, amendment rules, escape clauses, and renegotiation provisions — that treaty-makers use to manage risk."[36] Reputational costs increase as countries' power begins to solidify. Today, even with some persistent international instability or uncertainty about bargaining power, "we are unaware of any sentiment among commentators that there is a problem of excessive withdrawal."[37]

II. INTERNATIONAL WITHDRAWAL MECHANISMS

In international law, a state can legally denounce a treaty by adhering to that treaty's internal withdrawal clause. When the proper mechanisms are followed, exit constitutes merely an invocation of a right enshrined in the treaty and is legal and valid. Indeed, "withdrawal or denunciation clauses generally allow a state the unilateral option to legally withdraw from or denounce an agreement, sometimes when certain conditions are met or sometimes simply at its discretion."[38] Treaties that do not expressly contain a withdrawal clause are nevertheless bound by the provisions of the Vienna

31. Helfer, *Public International Law and Economics*, *supra* note 5, at 76; *see also* Cesare P.R. Romano, *The Shift From the Consensual to the Compulsory Paradigm in International Adjudication: Elements for a Theory of Consent*, 39 NYU J. INT'L L. & POL. 791, 795 (2007) (concluding that "consent has become so removed in time and substance from the exercise of [international tribunals'] jurisdiction that one may question whether consent continues to serve a significant function in the international order").

32. Joel P. Trachtman, *The Economic Structure of the Law of International Organizations*, 15 CHI. J. INT'L L. 162, 175 (2014).

33. Meyer, *supra* note 7, at 389.

34. *Id.* at 380.

35. *Id.* at 402.

36. Helfer, *Terminating Treaties*, *supra* note 11, at 649.

37. Curtis A. Bradley & Mitu Gulati, *Withdrawing from International Custom*, 120 YALE L.J. 202, 259 (2010).

38. Meyer, *supra* note 7, at 394.

Convention on the Law of Treaties, which prescribes the default withdrawal mechanisms in international law.[39] Under the VCLT, "nations may still have a right to withdraw in the event of a fundamental change of circumstance, [however] this basis for withdrawal is a narrow one, and it is thought to be more restricted today than in the past."[40] In addition, the VCLT requires a state to first establish that the treaty parties intended the possibility of an exit, and then to give at least a one year "notice of its intention to denounce or withdraw from a treaty."[41]

Most treaties, however, contract around the default rules of the VCLT and set forth their own withdrawal clauses.[42] As Koremenos found, approximately 60% of treaties contain an exit clause.[43] Among those, "[n]otice periods range from less than one month to twenty-four months, with a twelve-month period being the most popular."[44] Additionally, 58.4% of treaties include a withdrawal "waiting period," which precludes a country from renouncing a treaty for a period of time after ratification. "While the most common wait period is one year or less, the majority of agreements that include wait periods specify a period of time greater than one year, with a nontrivial number of agreements specifying ten to twenty years."[45] Koremenos also found that only about eight percent of treaties have escape clauses (also called derogation clauses), which allow states to temporarily suspend the operation of the treaty.[46] The circumstances which make it appropriate for a state to "escape cooperation" encompass "extraordinary circumstances that jeopardize extreme national interests," usually limited to "a civil war."[47]

Withdrawal under international law is, therefore, quite restricted. In fact, with the addition of the default provisions of the VCLT in 1969, it may have become less flexible over time. Thus, a fundamental feature of international

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39. Vienna Convention, *supra* note 8, art. 56, 1155 U.N.T.S. at 346:

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

40. Bradley & Gulati, *supra* note 37, at 204 n.4.

41. Vienna Convention on the Law of Treaties, *supra* note 8, art. 56(2), 1155 U.N.T.S. at 345.

42. Helfer, *Exiting Treaties*, *supra* note 7, at 1582 (stating that "[t]reaty clauses that authorize exit are pervasive").

43. Koremenos & Nau, *supra* note 7, at 106 (finding that "the incidence of a withdrawal clause varies by issue area, with human rights agreement almost always incorporating them but more than half of the security agreements in the sample failing to do so").

44. *Id.*

45. *Id.* at 107.

46. *Id.* at 93.

47. *Id.* at 92.

treaty withdrawal law is that it does not allow for a speedy exit. Domestic withdrawal mechanisms, however, offer a different legal framework.

III. DOMESTIC WITHDRAWAL MECHANISMS

Domestic withdrawal mechanisms are particularly lenient, both in comparison to international withdrawal mechanisms and to nations' treaty ratification procedures. In a substantial number of countries, withdrawal procedures require less executive and legislative action to effectuate a withdrawal than for ratification. In fact, frequently, no legislative action is required; the head of state's signature is all that is necessary to withdraw. The notice requirement, a prominent feature of the international mechanism, is absent in domestic procedures. For example, from a purely domestic perspective, what stands in the way of Germany's withdrawal from the European Union is the stroke of the pen held by its chancellor.

Further, although ratification procedures, often requiring extensive legislative and executive involvement, are flaunted in states' constitutions, withdrawal procedures, perhaps unsurprisingly, are never displayed in constitutions. Rather, they are embedded in internal governance law.[48] However, a dataset from a multi-year research by Pierre-Hugues Verdier and Mila Versteeg provides a glimpse into the buried mechanisms.[49] "The dataset captures numerous specific features of national approaches to international law, including treaty-making procedures, and the status of treaties in domestic law [and] currently covers 101 countries for the period 1815–2013."[50] With respect to withdrawal mechanisms, the dataset shows that in 72.4% of the countries examined, withdrawal is decided and effectuated entirely by the executive. In only 26.6% of the countries, withdrawal is subject to a legislative vote. One percent of countries adopt a different mechanism altogether.[51]

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48. As Helfer explained referring to exit clauses, "[t]o many commentators anxious to demonstrate that States obey international law, the pervasiveness of these exit options is not something to be advertised, let alone celebrated." Helfer, *Terminating Treaties*, *supra* note 11, at 647.

49. Pierre-Hugues Verdier & Mila Versteeg, *International Law in National Legal Systems: An Empirical Investigation* 109 AM. J. INT'L L. 514 (2015). Verdier and Versteeg do not analyze domestic withdrawal mechanisms in their article; I thank them for access to the dataset.

50. *Id.* at 514. "In collecting our data, a first step was to identify and define the substantive issues that define a state's relationship with international law. We identified about fifty issues under the categories of treaty making, treaty reception, and CIL reception. For each country, we commissioned a written memorandum that provides a narrative answer to each of the questions and, where applicable, documents how this answer has changed over time. These memorandums were written by the principal investigators or by scholars, professors, and students that usually possessed substantial knowledge on the foreign legal system in question. Where multiple interpretations existed, we relied on the most authoritative source of that system to make a judgment call. The principal investigators conducted all of the coding." *Id.* at 517.

51. Data on file with author.

METHOD OF WITHDRAWAL	PERCENTAGE OF COUNTRIES
By executive branch	72.5%
By executive, subject to a legislative vote	26.5%
Other	1.0%

By comparison, as Verdier and Versteeg uncovered, treaty ratification requires a more extensive legislative action in many countries. After all, "participation by national legislatures in treaty-making plays an important role in conferring upon treaties the imprimatur of democratic legitimacy."[52] In 73% of the countries the authors examined, treaty ratification requires prior legislative approval. In fact, "systems in which treaties apply directly almost universally require the executive to obtain legislative approval prior to ratification."[53] In countries which require legislative implementation of treaties, "prior legislative approval is much less common."[54]

Domestic treaty withdrawal mechanisms are therefore much more lenient than ratification requirements in the procedural burden they place on the state that decides to withdraw. They are also more lenient than their international counterparts, as most treaties are safeguarded by either an exit clause and a notice period, or the default provision of the VCLT, requiring at least a one-year notice and justification for withdrawal.

The "imprimatur of democratic legitimacy" is conspicuously absent from the mechanisms governing withdrawal; there is no evidence of concern for legislative or democratic involvement, or commitment to separation of powers. After all, "exit occupies a unique and somewhat paradoxical position at the juncture of international law and politics."[55] As will be explored, it is precisely this circumvention of any formalities prolonging the withdrawal process that lies at the heart of domestic withdrawal. On the contrary, speed and flexibility are the underpinnings of these mechanisms.

IV. THE INVISIBLE GAP: THE MISALIGNMENT OF MECHANISMS

The lack of alignment between the domestic and international treaty withdrawal procedures is evident and reveals a nontrivial "gap," or, a third option. Consider, for instance, a country, which finds itself in a state of emergency, unable to continue fulfilling its treaty obligations, and, at the same time, equally unable to fulfill the withdrawal requirements imposed by international law, namely, the notice period. The domestic mechanisms provide a solution — they apply in the circumstance when swift withdrawal from a treaty is politically necessary but impossible under international law.

52. Verdier & Versteeg, *supra* note 49, at 518.
53. *Id.*
54. *Id.*
55. Helfer, *Exiting Treaties*, *supra* note 7, at 1587.

A country skirting its international obligations may be met with immense scrutiny and criticism, but it is the *domestic* consequences, not international penalties, that the third option seeks to ameliorate. After all, withdrawal can be legal under domestic law even while unauthorized by international law.

There are two levels of consequences for violating treaties. An illegal exit carries with it the punishment vis-à-vis other states, international organizations, and courts. It may entail widespread international condemnation and the use of any enforcement mechanisms the international system has at its disposal. Although of great significance, such sanctions are not directly enforceable in domestic courts and they are by nature directed at the state, not the state actors who caused the illegal withdrawal. On the other hand, illegal withdrawal under domestic law carries a much greater risk for the executive. At the domestic level, in cases of self-executing treaties and those enforced by courts, there is another level of consequences for violations of treaties. At least in some countries, treaty denunciations in violation of domestic law carry serious consequences for political leaders — they can be brought before a domestic court that may nullify their withdrawal and sanction them for their illegal acts. The treaty would remain in force along with all of the country's obligations. The lenient domestic withdrawal mechanisms, deliberately unaligned with international mechanisms, provide another legal option. A country, compelled by an emergency, may withdraw illegally under international law and accept all the resulting consequences, while withdrawing legally under domestic law. Lenient treaty mechanisms allow for the flexibility that states need in situations where it would be too costly to let domestic courts stand in the way of a swift withdrawal. After all, domestic courts play a role in enforcing treaties and a treaty's force often stems from domestic courts.[56] In order to swiftly terminate such enforcement, a withdrawal must first and foremost be legal within the meaning of domestic law.

Lenient treaty withdrawal mechanisms are an alternative flexibility-maximizing device for a country willing to absorb the consequences of illegal international withdrawal but unwilling to face the domestic consequences. While the notice requirement of international law may stand in the way of a swift withdrawal under the international legal framework, the domestic mechanisms stand ready to be employed in emergency situations

56. *See* Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 497–98 (2005) ("How each state will react to international laws . . . depends in important part on its internal institutions for enforcement. Indeed, much of international law is obeyed primarily because domestic institutions create mechanisms for ensuring that a state abides by its international legal commitments whether or not particular governmental actors wish it to do so. . . . If a state does have such rule of law institutions in place, it can be expected to engage in domestic legal enforcement, even if little or no transnational legal enforcement occurs. In states lacking such a system, however, it is more difficult for domestic actors to force the government to live up to its commitments."); *see also* Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573, 574 (stating that "treaties shift issues from the political arena into a juridical, rule-based, forum").

where domestic validity of the withdrawal is crucial to the cessation of the operation of the treaty.

V. POLITICAL NECESSITY AND NATIONAL EMERGENCY

Emergencies which might necessitate swift withdrawal and the violation of international obligations primarily affect rights-granting treaties that non-governmental actors can enforce in domestic courts. In these emergent situations, the state becomes unwilling or unable to continue to provide treaty-based rights, or a right to enforcement of a treaty in its domestic courts.

A hypothetical situation involving Syrian refugees seeking asylum under the appropriate international instruments provides an illustration.[57] A country which opposes the granting of asylum to Syrian refugees due to the fear of inadvertently admitting terrorists, yet is internationally pressured to fulfill existing treating obligations and accept refugees immediately to prevent a human rights crisis, might need swift action to withdraw legally from the appropriate treaties under domestic law, even if its withdrawal constitutes a violation of international law.[58] After all, a Syrian refugee pursuing asylum might seek recourse in the courts of that country, which effectuate the appropriate international instruments and treaties concerning refugees through the domestic immigration mechanism. Domestic courts are the main source of enforcement of many international laws, and this source of enforcement is accessible to persons pursuing their international claims.[59] In the instance that a treaty is swiftly terminated through the domestic withdrawal procedures, the treaty's force in domestic courts is also terminated, and there would no longer be recourse under domestic law for the refugee because only the domestic courts can effectuate the rights under an international refugee treaty. There might remain the possibility of recourse under international law, but this lacks the treaty enforcement power that a domestic order would have; it is the domestic courts and the domestic immigration system (a part of the executive branch) that grant the

57. The 1951 Convention relating to the Status of Refugees, the international instrument in the background of the current Syrian migrant crisis, is a prime example here; it is difficult to withdraw swiftly from the Convention given a notice requirement. 1951 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; *see also* Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (1988).

58. This is the sentiment expressed, for instance, by the Polish government following the terrorist attacks in Paris in 2015. *See* Ashley Cowburn, *Poland Says It Cannot Accept Migrants Under EU Quotas, Following Attacks in Paris*, INDEP. (Nov. 14, 2015), http://www.independent.co.uk/news/world/europe/poland-plans-to-backtrack-on-migrant-commitment-following-attacks-in-paris-a6734521.html.

59. *See* Hathaway, *supra* note 56, at 498 ("[O]nce a treaty has been ratified by a state, individuals and groups . . . have access to a [domestic] tool that would otherwise not be available to them to change state behavior in ways consistent with the treaty.").

status of residency to refugees, even if their designation as refugees stems from international instruments.[60]

A disgruntled member of the European Union also might feel compelled to resort to employing the domestic withdrawal mechanism. The Treaty of Lisbon, which governs proper withdrawal from the European Union, imposes a notice period which might be considered burdensome to a country experiencing a growing threat to its sovereignty.[61] Of course, an illegal withdrawal would be very costly and no state would make such a decision lightly; however, the operation of the European Union is consistent with the recognition that the threat of withdrawal does influence the governance mechanisms. For instance, the qualified majority voting in the Council of the European Union highlights the underpinning of the European system: striving for widespread consensus minimizes the likelihood of withdrawal by a discontented member who is regularly disregarded. If the domestic withdrawal procedures were aligned with their international (or European) counterparts, it would remove the threat of any state swiftly withdrawing from the EU. Obtaining input from all members on every consequential issue, and attempting to achieve near consensus, likely represents a calculated strategy to appease the member states through accommodation. The EU, as a treaty-based organization, is dependent on the consent and consensus of its members who approach the negotiating table or legislative session with threat of domestic withdrawal hanging over it.[62]

The lenient domestic withdrawal mechanisms may operate differently, with varying levels of relevance, depending on multiple factors, including the type of treaty, the source of enforcement, judicial competence and threat to the elites. A country with a corrupt and feckless judiciary might not expend the effort to withdraw through domestic mechanisms, due to the

60. This scenario assumes, of course, that a country would be willing to pay the high reputational costs of such an action, which would be outweighed by the political and economic concerns of the withdrawing country. It is, however, unlikely that the withdrawal would significantly impact a country's credibility and reputation with regards to compliance with, for instance, bilateral investment treaties, unless, of course, there is a general international reputation for compliance that travels from one kind of a treaty to another. Further research may provide the empirical data aimed at shedding some light on this proposition.

61. Article 50 of the Treaty of Lisbon governs withdrawals from the European Union. In essence, a country is allowed to withdraw either if the Council of the EU grants permission, acting by qualified majority, or after a two-year notice period. The Treaty of Lisbon, *supra* note 3, O.J. (C115) 1.

62. For instance, Hungary has recently become the subject of intense scrutiny from the Union because the Hungarian Fidesz government "stripped the constitutional court of important jurisdiction, enabled it to be packed with government supporters, and seriously threatened the independence of the ordinary judiciary" when it came to power in January 2012. Stephen Gardbaum, *Are Strong Constitutional Courts Always a Good Thing for New Democracies?*, 53 COLUM. J. TRANSNAT'L L. 285, 287 (2015). In response to the scrutiny, the Hungarian government has considered immediately withdrawing from the European Union, if necessary. *See* Csaba Tóth, *Kövér: Hungary should consider withdrawing from the EU*, THE BUDAPEST BEACON (Oct. 25, 2014), http://budapestbeacon.com/politics/kover-hungary-should-consider-withdrawing-from-the-eu/14217.

fact that even if a treaty remains in place, such a judiciary likely will not enforce it anyway.[63] Therefore, the "gap" may be more readily invoked in countries with a strong rule of law and judicial enforcement. Similarly, the domestic operation of a treaty with strong international enforcement mechanisms and weak domestic enforcement capabilities likely would not be impacted by the invocation of the "gap," limiting the usefulness of domestic withdrawal. Therefore, the ability of the domestic courts to enforce the treaty against the executive is an important characteristic of a country where the "gap" is more likely to be invoked.

In addition, the threat to sovereignty has to be especially great in the eyes of the political actors, elites, and interest groups to resort to the use of domestic withdrawal mechanisms. States will seek international cooperation only as long as it enhances public welfare of the state, or, at least until it threatens the political elites and interest groups. After all, international law "suggests that domestic politicians may delegate authority to international organizations where they can garner more political support, perhaps by blaming international organizations for unpopular actions . . . or by obscuring action from public view by carrying it out through an international organization."[64] In other words, political elites can use the international system to its advantage domestically. Such calculated use of international law and organizations, undesirable from the perspective of the general public, is helpful to the elites and the executive in maintaining their legitimacy and longevity. Even if in some instances the public voices displeasure about some encroachments of international law into the domestic system and its sovereignty, the withdrawal lever rests in the hands of the executive, and no action will be taken. Rather, the domestic withdrawal mechanisms will be invoked when there is a much greater threat to the political elites, such as a brewing revolution aimed to displace those in power as a result of pressure to accept refugees. Therefore, while international law can at times cross the line into a state's sovereignty, the domestic treaty withdrawal clauses warn that exceptionally extensive infringements upon states' sovereignty will not be tolerated, even if merely because they threaten the political elites with displacement.[65]

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63. Hathaway, *supra* note 56, at 497 ("The internalization of international legal requirements and compliance with them . . . depends on what kind of domestic enforcement mechanisms the state possesses. Does it have a strong and independent judiciary to fairly adjudicate claims of litigants who believe that the state has failed to meet its international legal obligations? Are there sufficient protections for civil rights such that individuals and groups can bring enforcement actions against the government without fear of reprisals?").

64. Trachtman, *supra* note 32, at 172.

65. Of course, there is a possibility that, because domestic treaty withdrawal mechanisms concentrate power to withdraw in the hands of the executive, that power may be misused for short-term political gains and not the interest of the country as a whole. Further research may provide the empirical data aimed at shedding some light on this proposition, coding and calculating how frequent

The preceding discussion serves to narrow down the situations when the "gap" is most applicable and most likely subject to use. As noted, there must be a threat or unanticipated emergency which can be alleviated by withdrawal from a treaty that precludes swift action through burdensome international withdrawal mechanisms. In particular, a country must be apprehensive about the continued enforceability of the treaty in domestic courts. The international consequences would then be viewed simply as a price paid in mitigating the domestic concerns.

VI. NUCLEAR OPTION IN TREATY WITHDRAWAL

Without a doubt, widespread illegal treaty violations and withdrawals would undermine the international system. Indeed, some scholars believe that exiting treaties in general is a "practice which weakens the whole structure of treaty-created international obligations."[66] Nevertheless, "[i]n a practical sense, a state is always free to exit an agreement,"[67] especially given the fact that "[t]he overwhelming majority of the denunciation and withdrawal clauses . . . do not require a state to provide any justification for its decision to quit a treaty."[68] Therefore, the only major procedural mechanism that keeps countries from swiftly withdrawing in international law is the notice period. As such, the continued existence of lenient procedural mechanisms in domestic law can be understood as a guarantee of the option to immediately terminate any agreement. Because such unilateral withdrawal, without notice or justification,[69] and therefore in violation of international law, would create considerable political, legal, and reputational costs with reverberating repercussions for a state, such a withdrawal option is dubbed here the "nuclear option."

Koremenos argues that "[treaty] withdrawal clauses are responses to shocks that alter a state's basic interest in cooperation [and] are used in the event of 'bedrock' changes."[70] As long as these "unanticipated exogenous shocks that compel treaty parties to negotiate modifications to their preexisting commitments"[71] continue to exist, states might be inclined to retain such an escape valve to provide relief from any obligations that might

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a withdrawal benefits a country as a whole and how frequently it serves only the executive's short-term goals.

66. C. WILFRED JENKS, A NEW WORLD OF LAW? A STUDY OF THE CREATIVE IMAGINATION IN INTERNATIONAL LAW 180 (1969).

67. Meyer, *supra* note 7, at 393; *see also* J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L. J. 2403, 2412 (1991).

68. Helfer, *Exiting Treaties*, *supra* note 7, at 1598.

69. Even if a treaty does not require a withdrawal justification, "as a practical matter, however, the benefits of giving reasons are considerable." Laurence R. Helfer, *Exiting Custom: Analogies to Treaty Withdrawals*, 21 DUKE J. COMP. & INT'L L. 65, 70 (2010).

70. Koremenos & Nau, *supra* note 7, at 93.

71. Helfer, *Public International Law and Economics*, *supra* note 5, at 76.

undermine their sovereignty. Of course, the domestic withdrawal option may never be used in light of the fact that international law has found ways to introduce flexibility, strengthen acculturation, minimize uncertainty, and allow legal withdrawal, all in an effort to prevent the complete "dismantling [of international] cooperation."[72] States have long relied on the various flexibility mechanisms that international law offers; therefore, the drastic option of unilateral and illegal withdrawal may often be simply unnecessary. Nevertheless, in an admittedly very narrow range of situations, as limited as those that might compel the use of a nuclear strike, withdrawal, at least in the eyes of a state, might be warranted. The international legal system ought to be studied with the looming possibility that states may invoke the nuclear option. After all, under certain conditions, "a quick withdrawal could offer a strategic advantage to the withdrawing state."[73]

When comparing the elaborate requirements for treaty ratification intended to give international law the imprimatur of democracy with the lax withdrawal procedures, it becomes apparent that while treaty ratification is seen by nations as a democratic and symbolic instrument, withdrawal is a diplomatic and political sledgehammer.[74] Foreign policy domain often belongs to the executive, and one of the more potent tools it has retained for itself is the effective and swift withdrawal in times of upheaval. Because there is still some distrust towards the international system, even among developed countries,[75] violations of international law are perceived as significantly less serious than violations of domestic law, which would be a threat to the position of any leader. As such, both the existence and the mechanisms of the lenient withdrawal treaties indicate that they are rationally designed. Swift withdrawal, indeed,

> offer[s] a strategic advantage to the withdrawing state, in the same way that a 'sneak attack' offers an advantage to a state at war. It can be assumed that the withdrawing state knows that it wants to withdraw before it announces it. If it could withdraw immediately, it could have a strategic advantage by surprising other states with the announcement since other states would not have had time to accommodate.[76]

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72. Koremenos & Nau, *supra* note 7, at 92.

73. *Id.* at 96.

74. Helfer, *Exiting Treaties*, *supra* note 7, at 1587 (stating that exit lies "at the juncture of international law and politics").

75. *See, e.g.*, Daniel W. Drezner, *On the Balance Between International Law and Democratic Sovereignty*, 2 CHI. J. INT'L L. 321, 322–23 (2001) (observing that international law is "making a sure and steady encroachment on democratic sovereignty, affecting the United States in particular"); *see also* LORI WALLACH & MICHELLE SFORZA, WHOSE TRADE ORGANIZATION? CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY (1999); Mariano-Florentino Cuellar, *The International Criminal Court and the Political Economy of Antitreaty Discourse*, 55 STAN. L. REV. 1597 (2003).

76. Koremenos & Nau, *supra* note 7, at 96.

Managing foreign affairs requires decisive action and, as such, "carries political risk."[77] Power, therefore, should be allocated to the one branch of the government that is best suited to dispense that power, and in the foreign affairs domain, this is always the executive branch. Otherwise, branches would be prevented from "acting decisively, since each has the means to weaken the other's position . . . . The result is foreign policy by stalemate."[78] The assignment of foreign relations power to the executive branch is crucial and illuminates another rationale for the persistence of lax domestic treaty withdrawal mechanisms — the need for finality and consistency in times of domestic shocks.[79]

Potential for interference by the legislative branch with the executive's mandate to swiftly and effectively dispense foreign policy is patent. In 1978, President Carter announced that the United States would withdraw from its treaty with Taiwan as part of a major foreign policy initiative normalizing relations between the United States and the People's Republic of China.

> What [would happen] if the President and Congress adopt[ed] inconsistent courses, whether in respect of treaty withdrawal or any other foreign policy initiative where constitutional allocation is uncertain? Pending an uncertain political resolution, no one, including both Chinas, would know the status of the treaty, or, consequently, of United States-Chinese relations.[80]

The lenient withdrawal mechanisms which allow for unilateral withdrawal approved only by the executive branch reflect the decision that neither the legislature nor the national courts should inject themselves into the dispensing of diplomacy, international relations, and politics. In a time of upheaval, domestic courts should be primarily concerned with "judicial protection of a coordinate branch decision, which may or may not be constitutional, [because] the value of creating finality for that decision is more important than its constitutionality" [81] or its compliance with international law. Otherwise, if the domestic withdrawal procedures were stymied through judicial interference due to concerns of noncompliance with international law, it would be akin to a judicial usurpation of power that is constitutionally delegated to the executive. Treaty withdrawal mechanisms often reflect that precise notion, dispensing with the democratic, legislative, or judicial vote in favor of speed, decisiveness, and finality. After all, during times of "unanticipated circumstances or shocks,"[82] a fragmented country

77. Linda Champlin & Alan Schwarz, *Political Question Doctrine and Allocation of the Foreign Affairs Power* , 13 HOFSTRA L. REV. 215, 240 (1985).

78. *Id.*

79. Koremenos & Nau, *supra* note 7, at 92–93.

80. Champlin & Schwarz, *supra* note 77, at 249.

81. *Id.* at 219.

82. Koremenos, *supra* note 13, at 773.

will be a weak one. To remain in power, political elites and the executive will seek domestic, not international, legitimacy.

There is no doubt that from the inception of international law, a state's membership in the global international project has resulted in socialization and increased incentives to participate and abide by the international system's tenets. Indeed, the domestic withdrawal option may never be used, given the many treaty flexibility-enhancing mechanisms. Most notably, "the ability to reserve [treaty provisions] enhances the depth and breadth of treaty commitments for all states and that the act of reserving reveals useful information about a state's reputation and its propensity to comply with international law."[83] However, the aforementioned mechanisms may not always provide a sufficiently immediate solution to respond to an unforeseen event.

The domestic withdrawal procedures are indeed intended to provide additional flexibility. As previously mentioned, international scholars have posited that the existence of international withdrawal mechanisms lends itself to a set of explanations, which revolve around notions of sovereignty and uncertainty about one's bargaining position and its stability.[84] These theories apply equally to the *domestic* withdrawal mechanisms, which exist in parallel to the international ones. The nuclear option ameliorates a country's fear of loss of sovereignty, improves or equalizes its bargaining position, and minimizes uncertainty and instability. Domestic withdrawal mechanisms help to protect sovereignty in the face of the emergence of the majoritarian rule in international law and provide an escape valve from any propositions threatening a country's independence. Further, as long as international relations continue to be wracked by uncertainty and instability, countries will seek to maximize available flexibility mechanisms in the face of changing preferences and circumstances, or in anticipation of domestic shocks. Lastly, a country's bargaining position would be weakened if it could not resort to domestic withdrawal. Of course, in practice, there is a tradeoff whereby more flexibility in effectuating a promise equates to a less reliable promise. However, most countries have lax domestic withdrawal clauses, which places them all in equivalent bargaining positions at the negotiating table. Only a handful of countries have more demanding domestic mechanisms for treaty withdrawal.[85] Any country that chooses more stringent domestic mechanisms, however, approaches negotiations from a weakened

83. Laurence R. Helfer, *Not Fully Committed? Reservations, Risk, and Treaty Design*, 31 YALE J. INT'L L. 367, 368 (2006).

84. *See supra* notes 11–37 and accompanying text.

85. Those include Austria, Belarus, Belgium, Bosnia and Herzegovina, Chile, Czech Republic, Estonia, Ethiopia, Hungary, Latvia, Lithuania, Morocco, the Netherlands, Slovenia, South Africa, Tajikistan, Turkmenistan, and the Ukraine. In total, approximately 26.5% of countries have more demanding domestic mechanisms for treaty withdrawal, and the trend overall, very small but statistically significant, is towards more elaborate mechanisms.

bargaining position. The "first move disadvantage" may hold the international community hostage to the currently existing lenient domestic withdrawal mechanisms. However, this inability to move from the status quo and the existence of these lax mechanisms do not impede the workings of the international system. International legal scholarship has developed many compliance theories which may provide a full account of the forces maintaining the international system intact.[86]

CONCLUSION

> *"[A] prudent ruler cannot keep his word, nor should he, where such fidelity would damage him, and when the reasons that made him promise are no longer relevant."*
>
> NICCOLO MACHIAVELLI[87]

International law scholarship has been negligent in acknowledging the gap between international and domestic withdrawal procedures, and has never attempted to explain it in light of the current theories of compliance with international law. It is, of course, plausible that the existence of domestic withdrawal clauses has minimal effects on the behavior of countries who may not pay any attention to them, thus conveying a message to the international community that the mechanisms have little substance. It might be reasonable to assume that despite the persistence of lenient withdrawal provisions in domestic law, countries continue to sign multi- and bilateral treaties because they place more trust in international law and recognize the acculturation, isomorphism, or socialization of states. Their concerns for legitimacy and reputation, and the existence of various flexibility-enhancing mechanisms are also important considerations.

However, there is no doubt that the existence of domestic procedures allows states to more freely engage with the international system. This off switch, although unused and seemingly ignored, safeguards sovereignty, even if that notion, given the expansive and ever-present international system, is today somewhat illusory. Although dubbed here the nuclear option, even on a much smaller scale such an option could potentially undermine the international system by chipping at it whenever a country perceives a threat to its sovereignty, identity, democracy, or as is the case with refugees, national security. After all, "[c]ompliance with international

86. *See, e.g.*, HANS MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE (1948); Daniel A. Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83 (2002); Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749 (2003); Barbara Koremenos, *If Only Half of International Agreements Have Dispute Resolution Provisions, Which Half Needs Explaining?*, 36 J. LEGAL STUD. 189 (2007); Edward D. Mansfield & Jon C. Pevehouse, *Democratization and International Organizations*, 60 INT'L ORG. 137 (2006); Andrew Moravcsik, *The Origins of Human Rights Regimes, Democratic Delegation in Postwar Europe*, 54 INT'L ORG. 217 (2000).

87. NICCOLO MACHIAVELLI, THE PRINCE 61–62 (Quentin Skinner & Russell Price eds., 1988).

law is always dependent upon a contemporaneous domestic political decision to comply."[88] "When shifts in the political landscape or domestic preferences undermine a treaty's objectives or render its terms unduly burdensome or obsolete, international law directs states to eschew unilateral action in favor of negotiation with their treaty partners."[89] However, little-acknowledged mechanisms buried in domestic law provide an alternative to "international law's unequivocal command that states must either obey treaties or cooperate in abrogating or revising them."[90]

Perhaps without the protection this accommodation provides, international law would not have evolved at all.[91] The existence of domestic withdrawal procedures ensured a security which likely contributed to some states' decision to engage with and enter the international system. Further research is needed to ascertain the exact implications of domestic treaty withdrawal mechanisms on global cooperation. Once these mechanisms are properly factored into the international law research and literature, they may call into question assumptions and hypotheses that the discipline has long taken for granted.

88. Joel P. Trachtman, *International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law*, 11 CHI. J. INT'L L. 127, 128 (2010).

89. Helfer, *Exiting Treaties*, *supra* note 7, at 1581.

90. *Id.*

91. Meyer, *supra* note 7, at 389 ("[S]tates may use withdrawal clauses or escape clauses as a form of insurance. Such insurance, while suboptimal from an ex post standpoint, can be optimal from an ex ante standpoint because it helps to facilitate agreement where agreement might not otherwise have been possible. Withdrawal and escape clauses facilitate entrance at the expense of also facilitating exit.").