Should the United States Consent to be Bound by One or More International Treaties?

Written by: The Coalition To Debate Treaties (CTDT)
Submitted to the CEDA Topic Committee April 19, 2010

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Introducing the Coalition To Debate Treaties

The Coalition To Debate Treaties is an ad hoc group of debaters, coaches, and interested parties that emerged through conversations, gmail chat, and facebook, who would like to see the college policy debate community debate the question of whether the United States should bind itself to one or more multilateral treaties for the 2010-2011 season. While authors of specific sections will be identified in the text, we will now identify the group members who provided general support, idea generation, and/or research to support this project. The current membership includes:

Adam Abelkop, University of Iowa
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Patrick Waldinger, Boston College
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Derek Woods, Liberty University
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*An executive decision was made not to include Sohin Guatum's excellent sub-paper on the question of withdrawal from treaties. While Guatum's work was quite strong, the controversy paper requirement seems to mandate a direction for the topic paper to include on the ballot. Guatum's paper would have allowed the topic to be bi-directional: allowing affirmatives that withdrew from a treaty, putting it at odds with the idea that the United States should consent to be bound by a multilateral treaty. Should the committee decide that treaty withdrawal is not at odds with the intent of this paper, Sohin's work is available at the CEDA Forums web page.

Sorry, Sohin, I owe you one…

-RG

Introduction: Why Debate Treaties?

By Ryan Galloway, Samford University

This paper advocates that the college debate community select a topic for the 2010-2011 debate season which would require the United States federal government to consent to be bound by a multilateral treaty. The topic has unique salience for three primary reasons. First, the liberal nature of the Obama presidency forces the community to adapt to a now left-leaning status quo. Second, there are a plethora of treaties which allow for the discussion of under-debated, and yet salient, issues in the year 2010. Third, treaties is a tried and true mechanism: the previous version of the treaties topic allowed for a range of relevant and salient issues to be discussed under a unified framework.

The Obama Problem

President Barack Obama has made debate more complicated. This year, we've seen massive changes in the topic occur on the day of tournaments. The day before Georgia State, Obama moved missile defense systems out of Europe, creating big uniqueness problems for the nuclear weapons topic. If we had been debating Russia, negative uniqueness for disadvantages might have been thoroughly decimated, and it seems likely that a good number of teams' affirmatives might have been done on that day.

A day before Richmond, he was granted the Nobel Peace Prize, complicating a bunch of uniqueness questions related to soft power and politics. At Liberty and Wake, huge health care votes happened that complicated the politics disad on the topic. At the NDT, a health care vote happened on the second day of the tournament. The NPR was released just a week after CEDA Nationals. If that event had occurred earlier in the year, it would have created major headaches

for disadvantage uniqueness, as well as severely complicating both sides of the topic.

Obama supports reducing nuclear weapons. He supports cap and trade initiatives for the environment. He has made immigration reform a top priority (Romm, April 19, 2010). He is currently planning to increase NASA funding by about $6 billion over five years, and backtracking on original proposals to reduce human space exploration ("NASA and Obama's budget," 2010). Basically, he is an activist, liberal president that generally supports things the community likes, making uniqueness very difficult under the Obama administration. High profile items on his agenda could change any topic for 2010-2011 massively by the time the NDT and CEDA nationals occur. Any topic chosen for 2010-2011 must deal with the Obama problem.

President Bush may have had some redeeming qualities after all. He was great for comedians, and he was good for debate. We knew where he stood, and most of affirmative cases were going to go strongly the opposite direction of the Bush administration. Not so with Obama. He not only is surprisingly "unfunny" (Carter, 2008), but he pushes a lot of legislation all the time. Absent a strong structural constraint, the community rolls the dice any time it picks a topic that Obama supports. We may be having a vote on the question while rounds at national tournaments are going on, or major revisions to the issue occurring right as we debate our last rounds on the topic.

Solving the "Obama problem"

This paper argues that an effective method to solve the Obama problem is to debate a situation where Obama is not the primary relevant factor. There may be some structural actions Obama can't get through because he doesn't have the votes. Presidents need 67 votes in the

Senate to get multilateral treaties ratified. Daniel Drezner argues in an aptly titled article, "Will the United States be ratifying any treaties soon?" that:

> International treaties are signed by the president, but under the Constitution must be ratified by the Senate to become law. They need at least 67 votes to pass, not a simple majority of 51, typically requiring strong support from the president's own party and a significant number of votes from the opposing party. Democrats now control 60 seats in the Senate, counting two independents who usually vote with the party. Obtaining 67 votes has proved difficult under the best of circumstances and helps explain why fewer than 20 major security treaties have been ratified since the end of World War II, according to David Auerswald, a professor of strategy and policy at the National War College in Washington. "The foreign policy consensus in this country has disappeared on many issues,'' said Auerswald, a leading specialist on treaties. "Given that the Democrats only have 60 of the 67 votes necessary to approve a treaty, they have to hold their ranks and pick off seven Republicans. Yet moderate Republicans are a dying breed in the Senate, making the Democrats' task that much harder.'' (Drezner, 2009).

John Isaccs of the Bulletin of the Atomic Scientists continues:

> * Pieces of the Obama administration's national security agenda will need 67 Senate votes to become a reality.
> * Even with a strong Democratic majority in the Senate, this will be a difficult task given unified Republican opposition to most of Obama's initiatives. (Isaccs, 2009).

Predictions from today indicate that Republicans will gain seven seats in the United States Senate (2010 Senate Race Forecast). The odds that Obama will have 67 votes in his pocket after the midterms are realistically, zero. Debating treaties puts a structural constraint on the topic that resolutions which only require legislation simply do not have.

Why Now?

An important question when discussing treaties is to ask why we should debate treaties now? After all, we debated the topic in 2002-2003, and the substantial likelihood that treaties won't pass may seem to undercut the rationale for debating the question. There are several answers to this question.

The first is that treaties are central to a large portion of Obama's foreign policy vision. Bryan Bender argues:

> President Obama's vision of global cooperation - symbolized by his surprise Nobel Peace Prize - is in for a crucial test in the months ahead when he begins sending a series of treaties to the US Senate, where skepticism among Republicans and some Democrats will make approval exceedingly difficult, according to government officials and specialists. Marking a major reversal from the Bush administration, which considered most treaties to be too restrictive of US sovereignty, the Obama administration says it will seek ratification of three major pacts aimed at reducing nuclear weapons. It also will seek approval of a set of regulations to manage use of the oceans and, by the end of the president's first term, a new treaty to combat global climate change. (Bender, 2009).

Part of the "hope" in Obama's foreign policy was a hope predicated upon the idea of working with other nations effectively. This topic allows us to ask the question of what the world "should" be like, and not merely what it "would" be like by the end of the year.

In addition, the question of whether or not the United States should ratify international treaties is an educational one that stands the test of time. Much of the rest of the world is frustrated with the unwillingness of the United States to play by international rules, harming America's global standing. William McDonough explains:

> When President Obama steps to the podium at the opening session of the 64th U.N. General Assembly on Wednesday he will be making his inaugural address on the world's stage. This occasion will provide a singular opportunity for the president to move forward with his promise to restore America's global standing, and he can do so by invoking a somewhat forgotten tool of U.S. foreign policy — international treaty law. Since the middle of the last century, the pursuit of a commonly accepted, rules-based international system has been a defining objective of American foreign policy. This was particularly true in the period immediately after World War II, when the United States led the way in creating a regime of multilateral treaty-based institutions. Since then, however, U.S. support for the international rule of law, as expressed through the ratification of international treaties, has been uneven at best. In recent years, American willingness to support multilateral treaties has hit an all-time low. (McDonough, et al, 2009).

The second answer is found in the individual treaties. The Coalition has done a fantastic job isolating the rationales to debate many of the individual treaties. A brief summary of those ideas may be helpful:

> 1) 2010 is the year of biodiversity according to the United Nations. This makes the case for debating the CBD relevant right now.

2) Obama rejected the Ottawa Landmines Protocol late last year. A whole host of articles came out on the importance of the landmines question and the worsening of the global problem.
3) The community has not debated the issues of the rights of children in recent memory. I am bereft of knowledge of a single topic that dealt with this issue in decades (Deshaney v. Winnebago on the 1992 courts topic?)
4) The community has not debated the issue of tobacco in quite some time. My memory dates back to the trade topic in 1991 where teams ran cases on this question.
5) While Morrison was a subset of the Courts topic, women's issues have not been debated on an international stage in quite some time as well.
6) The community, rarely, if ever, debates the question of Toxic Waste.

And finally, the community seems to support the idea of debating treaties. It allows for a wide range of issues to be discussed with a neat mechanism that ties ideas together. The very notion that such a broad swath of issues can be discussed while still having a central focal point is part of the appeal of the topic. We can take advantage of the current political situation where Obama is either opposed to or can't get support for the United States to sign on to major multilateral treaties, and debate a topic with a focused mechanism that also allows for a broad range of ideas to be discussed.

Tried and True

Treaties was an overwhelmingly popular topic that allowed for an in-depth discussion on issues such as nuclear proliferation, global warming, international rules relating to the US military, the death penalty, and yeah, that SORT thing. It finished second in the recent Southworth poll on best topics (USA Policy Debate's Best of Decade, 2010). Personal conversations with debaters lead me to believe it was one of their favorite topics, and debaters who missed it frequently wish they could have debated it. Now is their chance.

Some may fear that we've "been there, done that." We should not be afraid of recycling good ideas. If something works well, we should be encouraged that we can continue in the same vein. Treaties itself was, in some ways, an outgrowth of the "sanctions model" for a topic, with a

fixed mechanism and then a list of areas where that mechanism could be made applicable. Sanctions finished first in the decade, treaties finished second. The community seems to be saying that a fixed mechanism with a broad range of areas under which that mechanism applies is the right mixture for a topic.

It is also important to define what this topic is not. This is not a topic about bilateral treaties. The question of whether the United States should subordinate itself to the rules of one or more international regimes does not apply to any bilateral treaty, be it SORT, or perhaps most relevantly, START. The central question in the paper is whether or not the United States should willingly take on obligations that other countries already adhere to in an effort to support a laudable goal, like freedom of navigation, ending the scourge of landmines, promoting women's rights, etc. Bilateral and even regional treaties need not apply for admission to the CTDT.

Second, this resolution is not a nuclear weapons topic. As much as it pains me, the CTBT (which certainly fits under question one), should not be debated under this topic. The reason is sheer pragmatics: some teams ran the CTBT last year, but even more pertinent to the question, the core issues of US nuclear policy related to international non-proliferation and US leadership on nuclear weapons were thoroughly debated last year. If the committee decided that the CTBT could be taken on for this year, the treaty certainly fits the broader rubric. However, as this topic is currently formulated, the CTBT would not be included.

Overview for the paper

The rest of this paper is divided into three sections. The first section deals with "resolutional mechanics," or how the treaties topic could be put together. It includes work by Nick Brown and Cameron Norris from Vanderbilt on the wording stem. In addition, Daniel Stout of the University of Wisconsin Osh-Kosh provides commentary on the difference between

non-self executing and self-executing treaties, which is relevant in wording the stem to the resolution, both for inclusion of the treaties and counterplan options. If we choose to include non-self executing treaties (many of which are included in this paper with a recommendation to be in a final topic), we should be careful about the wording stem with regard to counterplans and to ensure such treaties are not accidentally excluded.

The second section outlines generic negative ground on the topic and is written by Eric Morris of Missouri State. While each treaty section will individually contain suggestions for negative ground, there are also a plethora of generic approaches to the topic that apply no matter what the treaty in question is.

The third, and by far the longest, section of the paper deals with the individual treaties. Ten treaties are specifically discussed, and a brief eleventh section is in the paper that discusses additional avenues for research for potential other treaties that could be included in the topic. This section includes work by Scott Elliott on the Convention on Biological Diversity, John Katsulas discussing the Law of the Sea Treaty, Scott Herndon, Collin Roark, and Wes Dwyer discussing the Ottawa Landmines Protocol, David Cram Helwich writing about CEDAW, Patrick Waldinger's essay on the ICC, Kevin Kallmyer on the Basel Convention and the Biological Weapons Convention, Danielle O'Gorman-Verney writing about the Convention on the Rights of the Child, John Katsulas on the Framework Convention on Tobacco Control, and Dylan Quigley of Kansas discussing The International Covenant on Economic, Social and Cultural Rights. An eleventh section briefly mentions how the treaty "rubric" might apply to other treaties on questions like space and international migration.

Finally, I would like to thank all those who made this project possible. The outpouring of support in conversations, over email, and through the Facebook page illustrate the power of

collaboration in the topic writing process. New social networking technologies make joint projects easier than ever before, and I hope that we see greater efforts to team up on questions central to our community in the future.

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Section 1: Resolution Mechanics

Part 1: Wording of the Stem

By Nick Brown and Cameron Norris, Vanderbilt University

For a potential topic on treaties, it seems fairly simple to draft a basic resolutional skeleton:

The United States federal government should _____ one or more of the following:

**** [Treaty A]***
**** [Treaty B]***
**** …***

Though the resolution doesn't necessarily need to be in "list" form, this structure seems particularly well-suited for a treaties topic. First, it's difficult to imagine how a completely open-ended resolution could keep a topic about treaties limited in any sort of debatable fashion (would it read, "The USFG should ratify one or more multilateral treaties"?). Moreover, the typical complaint put forth against "lists" is that these resolutions try to write teams' plan texts for them, thereby stifling aff creativity. However, with treaties, the real brunt of aff creativity will come from the advantages teams come up with based on the particular treaties, rather than the plan text itself.

But despite this overarching concern, there are other important decisions to be made concerning how we word the resolution. Which treaties should ultimately be included will be addressed elsewhere in this paper. But here, we hope to shed light on the verb portion of the resolution—the part left blank in the example above—and investigate a few of the potential options available.

Option 1: "Ratify or Accede to"

The United States federal government should ratify or accede to, and implement, one or more of the following:

Having debated a treaties topic in the last decade, it's tempting to simply recycle what we know worked last time, and this example was the language chosen for the 2002-2003 treaties resolution. Though this is ultimately a viable option for 2010-2011, we foresee some potential disadvantages.

First, a plethora of evidence suggests that the word "ratify" means a particular process, that is, requiring the "advice and consent" of two-thirds of the Senate:

Here's the process of "ratifying" a treaty – the Senate approves by a two-thirds majority, then the President deposits the instrument of ratification
CLW 10 – Council for a Livable World
Mar 25, http://blog.livableworld.org/story/2010/3/25/102113/266

> •The Senate does not actually ratify treaties—that is the job of the President o The Senate provides advice (on the substance) and consent (with two-thirds of the Senate required to approve a treaty) o The Senate considers on the Senate floor resolutions of ratification rather than the treaty itself •To ratify a treaty, the President signs and deposits the instrument of ratification •The resolution of ratification of a treaty can be as short as a paragraph or many pages long. The resolution of ratification of the 2002 Treaty of Moscow was longer than the treaty itself. o The President submits a treaty to the Senate along with its associated protocol and annexes, as well as an article-by-article analysis of the treaty. The protocol and annexes provided details of verification procedures, for example. There are reports that the New START agreement is about 20 pages but that the associated documents are as much as 150 pages. o Letters exchanged between the negotiators are often included in the package delivered to the Senate but are not binding, can be in the form of a unilateral statement or can be responded to by the other party either in agreement or disagreement • The treaty is first considered in the

Senate Foreign Relations Committee, which has sole jurisdiction to write the resolution of ratification o Other committees such as the Senate Armed Services and Senate Intelligence committees will often hold hearings as well and may express views to the Foreign Relations Committee but do not consider the resolution of ratification • The resolution of ratification can be changed on the Senate floor through conditions, reservations, understandings and declarations. A majority vote, not two-thirds vote, is required to approve any of these additions. •The Senate has never added an amendment to a treaty – although it is technically possible for a brief period of time – because the amendment would have to be approved by the other party(ies) to the treaty. •A unanimous consent agreement must be reached to consider the treaty on the floor •In the Senate, process (of treaty ratification) is often more important than the substance of treaties •Timing of Senate action on treaties has greatly varied o The 1972 Anti-Ballistic Missile Treaty was ratified within a matter of six weeks o The 1987 Intermediate Nuclear Forces Treaty took seven months o The 2002 Moscow Treaty took nine months o START I took longer because the collapse of the Soviet Union o New START can be ratified within 5-6 months after it is negotiated if opponents do not try to hold up treaty approval • If a treaty is rejected on the floor – as was the Comprehensive Nuclear Test Ban Treaty in 1999 -- it can be sent back to committee (where it will remain on the Senate calendar) or the President recall it

"Ratify" means two-thirds of the Senate approves, and the President ratifies

Engsberg 6 – Mark, Hauser Global Law School Program, New York University School of Law
Mar, An Introduction to Sources for Treaty Research, http://www.nyulawglobal.org/globalex/Treaty_Research.htm

A treaty binds only the parties to the treaty.[3] The US government is bound by the provisions of a treaty only when the agreement has been submitted to the US Senate for advice and consent and 2/3 of the Senate vote to approve it and the President ratifies it.[4] The entire process is called ratification. International agreements are sometimes confused with treaties, though they are not treaties. Rather, they are executive in nature, can be approved with a simple majority vote of both houses of Congress, or may not even be submitted to Congress for approval. These documents directly govern or implement a great deal of US foreign policy, especially matters related to trade. International

> agreements are often preferred by various parties because they are often easier and more expeditious to obtain. After all, a 2/3 majority in the Senate - the proportion necessary to ratify a treaty - can be very difficult to achieve.[5]

"Ratify" means 67 votes in the Senate – contextual ev.

Open Congress 10

Feb 19, http://www.opencongress.org/articles/view/1607-Biden-Urges-Senate-To-Ratify-Nuclear-Test-Ban-treaty-

> A major tenet of the administration's nuclear weapons agenda is to ratify the Comprehensive Nuclear Test-Ban Treaty, which Biden believes is necessary to preserve global security: The Treaty's basic bargain – that nuclear powers pursue disarmament and non-nuclear states do not acquire such weapons, while gaining access to civilian nuclear technology – is the cornerstone of the non-proliferation regime. Before the treaty was negotiated, President Kennedy predicted a world with up to 20 nuclear powers by the mid-1970s. Because of the Non-Proliferation Treaty and the consensus it embodied, that didn't happen. Now, 40 years later, that consensus is fraying. We must reinforce this consensus, and strengthen the treaty for the future. While the United States has signed the treaty, the Senate has yet to ratify it – putting this country in the same position as countries like North Korea and Pakistan. In the Senate, 67 votes are needed to ratify a treaty. In 1999, president Clinton could only get 48 senators to vote for it.

Given the numerous ways treaties can be put in place (Congressional-Executive Agreements, Sole Executive Agreements, etc.[1]), we believe locking affirmatives into a particular process opens the door to a series of process counterplan debates that risk trading off with discussions of the substance of the treaties themselves. We saw this dynamic play out on the 2006-2007 courts topic with the word "overrule," which encouraged an abundance of "implicit overrule" and "distinguish" counterplan strategies rather than focus on the merits of the particular cases. Though the "race to the generic CP" obviously cannot totally be avoided, the resolution could be written in a way that doesn't lock affirmatives into rigid solvency mechanisms.

Secondly, the language of "ratification" may unduly limit the treaties that could be included in the resolution. This phrase was acceptable in 2002-2003 because the only treaties

[1] We have seen no conclusive evidence that speaks to the role of the Supreme Court and what effect any of these wordings would have on making Court action topical or not. The topic committee may want to look into this.

considered for that resolution were ones that the U.S. had already signed. Signing a treaty must predate its ratification.[2] Thus, as it stands, "ratification" would preclude debates about treaties that the U.S. has yet to sign, such as the Mine Ban Treaty[3] and the Migrant Worker's Convention.[4] If the community decides that treaties like these are worth including, the language of "ratification" will need to be revisited.

Note: "Accede to"

The 2002-2003 resolution gave affirmatives the option to "ratify *or* accede to" one or more of the treaties listed. Though ratification and accession have the same legal effect[5], the two procedures are distinct. At the most basic level, "accession" means "ratification not preceded by signature."[6] This occurs when at least one of two conditions hold.

First, accession is required if the deadline for signing a particular treaty has already passed. This typically occurs when a state wasn't part of the original treaty negotiations or wasn't yet an independent state when the treaty negotiations were concluded.[7] That either of these conditions applies to the U.S. with regard to any of the major multilateral treaties is unlikely at best.

Second, "accession" is required when a particular treaty has already entered into force.[8] Sometimes, multilateral treaties have provisions that trigger entry into force after a specified

[2] American Association of University Women. "The international law of human rights," Acc, Apr 2, 2010, http://www.aauw.org/About/international_corner/upload/CEDAWin-the-US.pdf, Page 1, Paragraph 1
[3] "US Position on International Treaties," Global Policy Forum, Updated: July 2003, http://www.globalpolicy.org/component/content/article/154-general/26665-us-position-on-international-treaties.html
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[7] Harun ur Rashid, Barrister. "Difference between ratification and accession of a treaty," Apr 1, 2005, http://www.thedailystar.net/law/2005/04/01/info.htm
[8] *See*: Byers, Michael. *War Law: Understanding International Law and Armed Conflict*, Google Books, p. 4; and Sieghart, Paul. *The international law of human rights*, Google Books, p. 36

number of countries ratify them. Since some of the treaties considered for the 2002-2003 topic had already or were threatening to enter into force, this fear was the main rationale behind the topic committee's inclusion of the "accession" option in that resolution. Thus, if the verb "ratify" is ultimately chosen for a 2010-2011 treaties topic resolution, the community may also want to revisit the inclusion of the phrase "or accede to" to address these concerns again.

Note: "And implement"

One other wording issue that implicates all of the verb choices is whether or not to include the phrase "and implement" (the 2002-2003 resolution, for example, read, "The USFG should ratify or accede to, and implement, one or more of…"). This issue arises because treaties include both "self-executing" and "non-self-executing" components. Non-self-executing provisions require additional legislation to be passed by Congress after ratification in order for the U.S. to come into compliance with the treaty's mandates.[9]

From the discussions we've had with members of the 2002 topic committee, they decided to include the phrase "and implement" to give affirmatives the ability to incorporate implementing legislation without being extra-topical. Without this provision, negative teams would have a strong solvency argument that ratifying a treaty wouldn't necessarily lead to Congress passing the required legislation to implement it.

Thus, including this phrase is another area that needs to be addressed in crafting a resolution for a new treaties topic. There seem to be compelling reasons for including the words

[9] Fact-Index. "Treaty," Acc. Mar 31, 2010, http://www.fact-index.com/t/tr/treaty.html

"and implement," and though some may fear this opens the door to affirmatives fiating an infinite number of implementation processes, the counterplan to do the implementation mechanisms without ratifying the treaty itself should sufficiently preserve negative ground.

Option 2: "Consent to Be Bound By"

The United States federal government should consent to be bound by, and implement, one or more of the following:

That a country should "consent to be bound by" an international agreement is a phrase that originates from the Vienna Convention on the Law of Treaties, widely considered the most authoritative agreement on international treaty law.[10] This terminology has several advantages, which leads us to believe it may be the best choice for a new year of debates on a treaties topic.

First, "consent to be bound" solves the problem identified above concerning the status of particular treaties in the U.S. (unsigned, signed but not ratified, etc.). According to the UN's description, the process by which a country gives its "consent to be bound" is laid out in the text of the particular treaties themselves. In other words, "consent to be bound" basically just means "do the ratification processes outlined in each particular treaty." Likewise, the "consent to be bound" process is inclusive of the normal "ratification" process as well as "accession," making this phrase a more concise way to take into account the differences in treaties' entry-into-force status.[11] Thus, no matter the language of a specific treaty or the status of its progress in the U.S., the "consent to be bound" terminology would enable affirmatives to agree to be fully legally bound by a treaty of their choice.[12]

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[10] Kirgis, Frederic L. "Reservations to Treaties and United States Practice," May 2003, *American Society of International Law*, http://www.asil.org/insigh105.cfm

[11] United Nations. "Human Rights Treaty Bodies," 2004-2007, http://www2.ohchr.org/english/bodies/treaty/glossary.htm

[12] More research needs to be done on whether this language makes inclusion of the phrase "and implement" necessary or not.

Second and most importantly, we believe this language gives the affirmative some important flexibility in arguing against generic process CPs. "Consent to be bound by" is distinct from "ratify" in the sense that the former covers a wider range of processes than the latter. Thus, no matter if done through the "advice and consent" of two-thirds of the Senate or a Congressional-Executive Agreement, as long as a process results in the U.S. being legally bound by the terms of a particular treaty, then "consent to be bound" has been expressed. We believe this phrase gives the affirmative some important leverage in making the case that these "do the plan" CPs are therefore not competitive. At the very least, "consent to be bound" would allow the affirmative to choose the specific process they want to defend, perhaps assuaging some of the concerns of those in the community who are uncomfortable with "list" topics.

A potential problem does arise with the "consent to be bound by" language, however. That is, this phrase may seem to unlimit the number of methods by which the affirmative could agree to a treaty. In fact, the Vienna Convention indicates that a state could provide its "consent to be bound" using mere "signature" alone.[13]

Nevertheless, we believe this concern is unfounded. When the Vienna Convention *et al* talk about "consent to be bound" via "signature," they don't mean a "simple signature" like the U.S. has performed on many of these multilateral agreements already, but rather a "definitive signature." The following evidence explains this important distinction:

"Consent to be bound" means to become legally binding in the country – it can't be just a signature

CBEL accessed 10 – Centre for Biomedical Ethics and Law

Acc. Mar 31, EU Member States| SIGNING AND RATIFYING A TREATY, http://europatientrights.eu/countries/signing_and_ratifying_a_treaty.html

> "Signature" is a process that has different legal meanings depending on the circumstances in which it is performed. A distinction is made between "simple

[13] Aust, Anthony. *Handbook of International Law*, Google Books, 2005, p. 62.

signature", which is subject to ratification, and "definitive signature", which is not subject to ratification. The "simple signature" applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its ***consent to be bound by*** the treaty until it ratifies, accepts or approves it. In that case, a State that signs a treaty is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Signature alone does not impose on the State obligations under the treaty. For states this usually means that the international agreement has to be put before the national parliament for approval, thereby giving the people a direct say in the external activities of the state. The "definitive signature", in contrary, occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval. A State may definitively sign a treaty only when the treaty so permits. To make the comparison: a definitive signature has the same force as a simple signature, which is followed by ratification. Although this last process is becoming more common in international relations, the more commonly used procedure is still signature followed by ratification at a later stage. Because of the fact that the Convention does not contain a provision stipulating the possibility of a definitively sign, signing the Convention only causes the effects of a simple signature. Thereby, ratification after a signature is necessary for a State to be bound to it. "Ratification" in contrary to "signature" refers to the act undertaken in the international plane, whereby a State establishes its consent to be bound by a treaty. Usually ratification involves two distinct procedural acts. The first is related to the constitutional (internal) laws of a contracting party. It involves the international procedure that must be fulfilled before the state can assume the international obligations enshrined in the international agreement. In many instances this involves approval by the national parliament. The second element deals with the external (international) level. It is the process through which the contracting party indicates its consent to be bound to the other contracting parties. Historically, ratification was intended to avoid that the representative exceeded his powers or instructions with regard to the making of a particular agreement. With the decline of absolute sovereigns and the increase of parliamentary democracies the consent by ratification has acquired a new meaning. Although it still gives the contracting parties the chance to weigh and consider their options under the proposed agreement, its most important role is to give the national parliament, and therefore the citizens, a direct sat in the public affairs of the state. To summarize this topic, the countries which only signed, but not ratified the Convention have for the moment only an obligation to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Ratification stays necessary before the Convention becomes part of the legal system of those countries.

More evidence indicates the advantages of the "consent to be bound by" phrase. It's both wide enough for the affirmative to be able to make competition arguments and narrow enough to limit out plan texts that just defend simply signing an agreement:

"Consent to be bound" can be provided in a variety of ways, but simple signature isn't enough

UN 7 – United Nations

Human Rights Treaty Bodies, http://www2.ohchr.org/english/bodies/treaty/glossary.htm

A State party to a treaty is a State that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law. See article 2(1)(g) of the Vienna Convention 1969. Some treaties are only open to States whereas others are also open to other entities with treaty-making capacity. The two Covenants and ICERD are open to signature and ratification by "any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations". The other core human rights treaties are open to all States. The Optional Protocols are all restricted to States parties to the parent treaty except the CRC Optional Protocol on the involvement of children in armed conflict to which any State may accede. Signature Multilateral treaties usually provide for signature subject to ratification, acceptance or approval - also called simple signature. In such cases, a signing State does not undertake positive legal obligations under the treaty upon signature. However, signature does indicate the State's intention to take steps to express its consent to be bound by the treaty at a later date. In other words, signature is a preparatory step on the way to ratification of the treaty by the State. Signature also creates an obligation, in the period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty (see article 18 of the Vienna Convention 1969). Consent to be bound In order to become a party to a multilateral treaty, a State must demonstrate, ***through a concrete act***, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways are: definitive signature; ratification; acceptance or approval; and accession. The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty's entry into force. Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a treaty through definitive signature or the deposit of an instrument of ratification, acceptance, approval or accession. Entry into force of a treaty with regard to a State is the moment the treaty becomes legally binding for the State that is party to the treaty. Each treaty contains provisions dealing with both aspects.

"Consent to be bound" requires signature, ratification or accession, and the deposit of instruments

Bayefsky accessed 10 – A.F., Professor at York University, Toronto, Canada, and a Barrister and Solicitor, Ontario Bar

Acc. Apr 8, "How To Complain About Human Rights Treaty Violations The Basic International Rules," http://www.bayefsky.com/complain/4_rules.php

c) How Does a State Become Bound by a Treaty? In general, states parties to the international human rights treaties express their consent to be bound by a particular treaty by a two-step process, first, signature and then ratification or accession. A state that signs a treaty signals its intention to become bound by its provisions and must refrain from acts which would defeat the object and purpose of the treaty. The state does not actually become bound by the treaty until it ratifies it. For a treaty to enter into force for a particular state, the ratification or accession must be deposited. The depository is an entity which undertakes to receive ratifications, accessions and other related statements, and keeps other states parties informed. For the UN human rights treaties, the depository is the UN Secretary General, specifically the UN Office of Legal Affairs.

Signature alone can't provide "consent to be bound" for the U.S. – that only works for executive agreements, not preexisting multilateral agreements

CRS 1 – Congressional Research Service, Library of Congress
Jan, "TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE,"
http://www.au.af.mil/au/awc/awcgate/congress/treaties_senate_role.pdf

Signing an international agreement may indicate a nation's consent to be bound if this is its intention. Under U.S. practice this would be the case only with executive agreements; treaties are required to go through the ratification process to be binding. Occasionally, one government may intend signing of an international agreement to indicate consent to be bound while another signs subject to ratification. This was the case with the Agreement on Friendship, Defense, and Cooperation between the United States and the Kingdom of Spain, signed July 2, 1982. The Spanish representative signed the agreement subject to ratification by the Cortes Generale, the Spanish Parliament, while the U.S. represent-ative signed the document as an executive agreement that did not require ratification.

Signature can only express "consent to be bound" if a) the treaty text allows it, b) the parties to the treaty agreed that it's allowed, or c) your government is authoritarian

Setear 5 – John K., Professor of Law, University of Virginia School of Law
Winter, Treaties, Custom, Iteration, and Public Choice, Chicago Journal of International Law, 5 Chi. J. Int'l L. 715, LEXIS

"The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed." Id, art 11. However, the signature of a representative serves as consent to be bound only when "(a) the treaty provides that signature shall have that effect; (b) It is otherwise established that the negotiating States were agreed that signature should have that effect; or (c) The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation." Id, art 12(1).

In fact, this next piece of evidence indicates that "consent to be bound" really only allows for approximately 3 solvency mechanisms:

"Consent to be bound" means definitive signature, simple signature plus approval by the domestic government, or accession

Smith 3 – Brad, Legal Officer, Treaty Section, United Nations Office of Legal Affairs
Multilateral Treaties Deposited with the Secretary-General, http://webcache.googleusercontent.com/search?q=cache:KaKgT329mkkJ:untreaty.un.org/English/Seminar/depositary.ppt+%22consent+to+be+bound%22+specified+in+each+particular+treaty&cd=10&hl=en&ct=clnk&gl=us

Consent to be Bound

How?

* Definitive Signature

* Simple Signature followed by Ratification, Acceptance or Approval

*Accession

All of this evidence indicates that, for the U.S. specifically, "consent to be bound" can mean a few different processes, but not a simple signature by itself. And regardless of evidence that suggests that "consent to be bound" could be expressed in several different ways, this language requires affirmatives to defend the U.S. agreeing to be fully legally bound to a particular treaty, which guarantees the requisite generic negative ground.

With regards to the CEA CP specifically, it seems that "consent to be bound" makes it much more questionably competitive:

CEAs, like treaties, also "bind" the U.S.

Kirgis 97 – Frederic, Professor of Law at Washington & Lee University School of Law
May, International Agreements and U.S. Law, http://www.asil.org/insigh10.cfm

To summarize: the Senate does not ratify treaties; the President does. Treaties, in the U.S. sense, are not the only type of binding international agreement. Congressional-Executive agreements and Sole Executive agreements may also be binding. It is generally understood that treaties and Congressional-Executive agreements are interchangeable; Sole Executive agreements occupy a more limited space constitutionally and are linked

> primarily if not exclusively to the President's powers as commander in chief and head diplomat. Treaties and other international agreements are subject to the Bill of Rights. Congress may supersede a prior inconsistent treaty or Congressional-Executive agreement as a matter of U. S. law, but not as a matter of international law. Courts in the United States use their powers of interpretation to try not to let Congress place the United States in violation of its international law obligations. A self-executing treaty provision is the supreme law of the land in the same sense as a federal statute that is judicially enforceable by private parties. Even a non-self-executing provision of an international agreement represents an international obligation that courts are very much inclined to protect against encroachment by local, state or federal law.

CEAs and treaties are indistinguishable

Kirgis 97 – Frederic, Professor of Law at Washington & Lee University School of Law
May, International Agreements and U.S. Law, http://www.asil.org/insigh10.cfm

> Although some Senators have at times taken the position that certain important international agreements must be submitted as treaties for the Senate's advice and consent, the prevailing view is that a Congressional-Executive agreement may be used whenever a treaty could be. This is the position taken in the American Law Institute's Restatement Third of Foreign Relations Law of the United States, § 303, Comment e. Under the prevailing view, the converse is true as well: a treaty may be used whenever a Congressional-Executive agreement could be.

At this point, some people may complain that "consent to be bound" is an attempt to write the CEAs CP out of the topic altogether. However, negative teams will always find ways to try to make their generic process CPs; the real question becomes whether or not we want to provide the affirmative with some weapons to use in arguing against their competitiveness. We believe that the dangers of overly restrictive aff solvency mechanisms leading to unpredictable generic CPs—like the distinguish, NPR, and NSS CPs that we've seen in the past—outweigh the risks associated with increased affirmative flexibility. This is especially true since affirmatives on this proposed topic will already be defending the implementation of a massive multilateral treaty with plenty of deep case literature on both sides, and negatives will still have multiple other CPs germane to the topic. Furthermore, "consent to be bound" would give affirmatives the

option of defending the CEA mechanism among others, which ensures educational debates about the desirability of these different mechanisms would still occur.

All in all, whether we choose a more restrictive resolutional mechanism like "ratify" or one more open-ended like "consent to be bound" is a decision ultimately up to the topic committee and the debate community at large. We believe "consent to be bound" offers the best solution to the potential concerns addressed here. But regardless of these issues, we can still all agree for now that a treaties topic would provide a great of year of stimulating debates, and a resolution could be easily crafted for whatever purposes the community desires.

Part 2: The Question of Self-Executing Treaties

By Dan Stout, University of Wisconsin, Osh Kosh

The choosing between self executing treaties and non self executing treaties is not one that just revolves around the idea of affirmative flexibility. More unpredictable non self executing treaties will push opponents into places where running generic positions like Congressional Executive Agreements seems like an appropriate response. This section will look at how the question of Self Executing and non Self Executing Treaties line up against Congressional Executive Agreements. John Yoo in the 2001 article *"LAWS AS TREATIES?: THE CONSTITUTIONALITY OF CONGRESSIONAL-EXECUTIVE AGREEMENTS"* in the Michigan Law Review states:

> This analysis finds that the domestic area open to control only by treaty is the class of subjects that rests outside of Congress's Article I, Section 8 powers. While the reach of the Commerce Clause has expanded enormously since the New Deal, United States v. Morrison demonstrates that there are still some matters that Congress cannot [*827] regulate under the Commerce Clause. n283 City of Boerne v. Flores makes clear that Congress's Section 5 enforcement powers under the Fourteenth Amendment cannot expand definitions of individual constitutional rights. n284 Printz n285, New York n286, Seminole Tribe n287, and Alden n288 rule out use of the Commerce Clause to overcome certain aspects of state sovereignty. Nevertheless, Missouri v. Holland indicates that these areas may still be subject to Article II's treaty power, even if Congress could not use its Article I powers to pass a domestic statute on the matter. n289 Commentators have been troubled by Holland's expansive language because it seems to assert without any textual basis that the federal government can act outside of its enumerated powers. n290 In fact, Holland makes sense as an accommodation of the executive treaty power and Article I's vesting of all of the federal legislative power in Congress. While treaties should not be self-executing in areas of plenary congressional authority, they should reach areas that lie outside of congressional powers due to Article I or Tenth Amendment limits. n291 Giving treaties this scope prevents them from infringing upon Congress's enumerated powers, while also respecting Article VI's grant of supremacy effect to treaties over state law. n292 This theory explains why the political branches have refused to use congressional-executive agreements to enter into international human rights conventions. Interchangeability cannot prevail because of the constitutional limitations on Congress's enumerated powers to expand the definition of individual rights that apply against the states. Several treaties that the United States has ratified alter the definition of certain individual rights contrary to Supreme Court decisions. For example, the International

> Covenant on Civil and Political Rights prohibits the death penalty for crimes committed when the criminal offender was under the age of eighteen. n293 Supreme Court precedent, however, permits states to execute juvenile offenders for crimes committed as young as sixteen years old. n294 That same treaty sets international standards [*828] against cruel, inhumane, or degrading treatment while in prison that go beyond the Court's reading of the Eighth Amendment. n295 Other agreements, such as the International Convention on the Elimination of All Forms of Racial Discrimination, which prohibits racial hate speech, n296 similarly would expand individual rights beyond the Court's interpretation of the Bill of Rights. n297 It was once thought that Congress had some authority under Section 5 of the Fourteenth Amendment to participate in the definition of the substance of individual constitutional rights. n298 City of Boerne, however, made clear that Congress could not use its Section 5 powers to pursue a definition of constitutional rights at variance with the decisions of the Court. n299 While we may live in an age when many important rights are guaranteed by statute, City of Boerne still forbids Congress from interfering in areas where the Court has refused to recognize broader constitutional protections. At most, Congress may enact only non-substantive, remedial statutes that bear a certain congruence and proportionality to violations of constitutional rights by the states. n300 As Professor Gerald Neuman has recently suggested, however, this limitation on congressional authority may not apply to the treaty power due to Missouri v. Holland. n301 The treaty power, Justice Holmes indicated, was not just a different procedure for the exercise of Article I's enumerated power, but was an independent source of substantive power. [*829] If Missouri v. Holland remains good law, then the political branches theoretically can use the treaty power to reach the same result as the Religious Freedom Restoration Act ("RFRA"), without being limited by Section 5 of the Fourteenth Amendment or the Commerce Clause. Rather than altering the meaning of the Constitution, as interpreted by the Supreme Court, Congress would merely be implementing a treaty. Indeed, Professor Neuman has argued that provisions of the International Convention on Civil and Political Rights already create the treaty hook necessary to pass another version of RFRA. n302 Federal regulation of other areas may also require the treaty form in order to benefit from Missouri v. Holland's sweep. United States v. Lopez, for example, indicates that Congress can use its Commerce Clause powers only to regulate activity that either is in interstate commerce, is an instrumentality of interstate commerce, or substantially effects interstate commerce if commercial itself in nature. n303 Last Term's United States v. Morrison re-emphasized this limit. Some environmental protection measures thus might encounter constitutional difficulties if undertaken solely by Congress's Commerce Clause power. Current treaties that protect endangered species might fall outside the Court's current approach to the Commerce Clause, n304 as might proposed treaties that would protect biodiversity and establish national quotas for energy use. Only the Treaty Clause might supply a certain source of power to regulate in these areas. n305

Since the non self executing treaty would require additional legislation, legislation that is according to Yoo, equivalent to the Congressional Executive Agreement. This leaves very little

difference between a non self executing treaty and a congressional executive agreement. The problem with both the plan and the counterplan in this instance would be that "domestic legislation" would have to be passed to implement the treaty. This has a couple of ramifications. The first is that as according to Yoo, both the counterplan and the plan would have to deal with issues of federalism. This is particularly problematic with the CEA debate because the large amount of evidence that indicates that CEAs are illegitimate revolves around the issue of overstepping the congressional boundaries when the issues of the treaty are considered (environment, human rights). These two types of treaty processes have the same logic applied to their legality which mutes out much of the affirmatives ability to generate no solvency claims.

The second concern is the super charged net benefit. OONA A. HATHAWAY in the article " *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States"* from the Yale Law Review indicates that politics truly becomes a possible net benefit. She writes about additional legislation having to be passed implementing the treaty "This in turn leads to more efficient lawmaking (requiring one step rather than two) and at the same time avoids the awkward possibility that the Senate would be willing to give its advice and consent to a treaty, but the House would be unwilling to support legislation to implement it. Moreover, because the lawmaking process would require simple majority votes in both houses rather than a supermajority vote in one house, it would be less likely to be subject to the whims of the unrepresentative political extremes that might command thirty-four votes in the Senate". (Hathaway does include needing funding for implementation as non self executing) The indication here is that the treaty would have to be pushed twice causing more political capital to have to be invested and that extremists in the senate would not be able to de rail any potential for the treaty.

Non self executing treaties therefore leave the affirmative with little ability to debate against a congressional executive agreement because muted ability to claim no solvency, and the inability to overcome the risk of the net benefit. Self Executing Treaties provide a much more even debate against the congressional executive agreement. The stasis point between the self executing treaty and the congressional executive agreement would allow the federalism debate to take place. The Yoo citation above points out that Article II treaties, based upon the Holland decision, allows the affirmative to be immune to the federalism question. While Yoo and others (Harvard Law Review, "*Restructuring the Modern Treaty Power",* 2001) argue that CEAs that violate federalism are not permissible, and thus provides solvency takeouts for the affirmative, it is not consensus. A debate can occur between scholars who argue that CEAs are interchangeable (Professor Henkin, as cited in the Yoo Article, as well as "Restatement (Third) of the Foreign Relations Law of the United States") with Article II treaties in terms of federalist protections and scholars like Yoo, who argue that is not a good way to conduct international agreements. The other point of stasis can be place upon whether the involvement of the House of Representatives is a good thing or a bad thing. This should allow more ground to be dug up by both sides, whether saying house involvement is key to democracy or that the House involvement would create inconsistent and ever changing foreign policy.

Section 2: Generic Negative Ground

By Dr. Eric Morris, Missouri State University

Generic Ground

One of the appeals of a treaties topic is the relative focus on the particular treaty in negative planning – particularly if the possible number of affirmative cases remains limited. That said, there is plenty of possibility for generic ground in relation to the treaty process.

Counterplans

Considering CP options involves understanding the ratification workflow. The act of ratification requires four district processes (Senate Committee on Foreign Relations, 1977); in most cases, affirmative fiat would involve each of these four. First (after a treaty is signed and sealed), a report is authored by the Secretary of State's office for the president. The report includes an evaluation of the treaty's consistency with current law, which may involve consulting other agencies as well (Fryer Institute, 2006). This report, along with the treaty and a message from the President, is transmitted to the Senate. Second, the Senate refers the treaty to committee. This committee is always the Foreign Relations committee (under Senate rule XXV.1j), although other committees could hold parallel hearings and other members could be involved at the invitation of the FRC. The third phrase is Senate action, consisting of a committee recommendation and report, followed by actions by the full Senate. The Senate technically acts on a resolution of advice and consent to ratification (the Senate vote does not technically complete the ratification). That resolution's format is extremely open ended, and can provide limitations on a treaty (and thus a possibility of a competitive counterplan). Fourth, an instrument of ratification is prepared for the President's signature, which includes the language from the Senate resolution and perhaps additional presidential language. This leads to the

construction of the exchange copy and its deposit with other parties to the treaty. The final stage played a significant role on the previous treaties topic, since the Senate voted in favor of the SORT treaty prior to nationals and some SORT affirmatives were re-written to claim advantages related to processing the final stage.

Since the last treaties topic, some argue there has been a wider range of negative strategic options accepted by judges. That dynamic might not continue if a treaties topic limits the affirmative to a clearly predictable and limited set of cases, but if so the possibilities were only partially explored in 2002-3. First, nearly anything the Senate might include in an authorizing resolution could be seen as limiting the treaty. Here's how the Senate Committee on Foreign Relations (1977) describes the legislative language:

> There are a number of options open to the Senate to put its mark on a treaty short of rejecting it outright. This is done by including in the resolution of ratification whatever the Senate has agreed on. The language and terminology of these limiting actions can be of an almost infinite variety. The most familiar terms in recent years have been: amendment, reservation, understanding, interpretations, declaration, and statement. The Senate rules do not define the scope and nature of amendments or reservations nor any other terminology used in a resolution of ratification (p.3).

Thus, any literature expressing a concern about how a particular passage of a treaty could be misread or misused might function as solvency evidence for a counterplan which uses reservations or understandings to avoid that interpretation. There is a robust normal means / competition debate about such counterplans, but it is important note that lots of negative rounds were won this last year on counterplans to "do the plan through normal means" (the NPR). A view of fiat which allowed such permutations could also expose the affirmative to disads and solvency arguments related to the reservations and understandings which might normally be added by the US Senate to a given treaty. On previous topics, affirmatives often had the best of both worlds (insulation from these 'rider' limitation disads and also normal means arguments

against doing the same 'riders' as a counterplan), but that may come into conflict with the way the community is presently thinking about competition. Since there are executive branch reports both before and after Senate action, the possibilities for such counterplans are broadened. It should be noted that terminology isn't used consistently on these questions; according the Council for a Livable World (2010), "The Senate has never added an amendment to a treaty – although it is technically possible for a brief period of time – because the amendment would have to be approved by the other party(ies) to the treaty." Furthermore, these sorts of changes can be achieved on majority vote (Council for a Livable World, 2010) even through the final advice and consent vote requires a 2/3 majority.

There may be other counterplan options built into the typical ratification process. Some negatives might attempt to change Senate rule XXV.1j (referral to the Foreign Relations Committee), but such rule changes might be perm-able. Unusual processes allowed within the rules (such as Rule XXXVII.1, which would allow the treaty to be directly considered in open executive session) may be a bit harder to perm, although they still complete on the basis of normal means. A lot of the benefits to such processes are solved by fiat, so it will take more research than this paper to lay out the net benefit and competition claims.

Clearly, the negative has the ability to achieve treaty benefits through non-ratification approaches. Several of these were used on the prior topic, including (a) signature and compliance without ratification – which is the status quo for many treaties (b) some instrument to make US compliance more binding, as with the 'permanent testing moratorium' counterplan from CTBT debates (c) executive agreements with other treaty parties (Nelson, 1958) which, while lacking the same legal force as treaties, may involve considerable political force (d) Congressional-executive agreements, bringing Congress into an understanding of some variety without the

formal treaty commitment vote and (e) passage of legislation designed to implement the above options and/or act in compliance with a treaty. Each of these counterplans could have some sort of a politics net benefit, although there may be a trade off between the degree of solvency and the evidentiary requirements to demonstrate net benefits. The most significant chances for an affirmative solvency deficit involve the political signals from full ratification (which means support from both political parties) and the relative increase in complexity for treaty withdrawal (Nelson, 1958). Given the tendency of the debate community to side-step the latter concern with theory arguments about durability, the former may be more important. The category (e) above is actually quite a broad category, since other countries purpose in the treaty may be to force us into making specific changes more than to force changes upon themselves.

Courts counterplans are also possible. The previous treaties topic had at least one case (the death penalty) where most of the literature focused on customary international law instead of formal ratification. Those affirmatives were forced to split hairs in debating Courts counterplans. Such counterplans are likely to resurge given (a) some success of Court counterplans on seemingly unrelated topics and (b) the possibility of internal net benefits. A Courts counterplan which did not specify grounds, for example, might argue that the need to rationalize a decision using customary international law was an opportunity cost to giving the court an easier ground (actual treaty commitment) to justify the same outcome. Also, if there is a clear sentiment about whether a treaty is self executing (does not require independent and optional legislative action), a court decision the other way might be competitive. If a treaty is not self executing, compliance may require passage of separate legislation (Fryer Institute, 2006), which could involve both branches of government and may extend beyond affirmative fiat from a topic focused solely on

ratification. Sometimes the Senate waits to have a complete package, including related legislation, before acting.

And, if the Courts can do it, the states may as well. Some states have signed treaties with other nations, although the legal status of such treaties is complicated by federal supremacy. Although avoiding the problem of having 50 states negotiating separate deals is part of the point of handling treaties at a federal level, debaters often wield the fiat wand in ways that would have impressed the Sorcerer's apprentice.

Finally, a negative could attempt to renegotiate a treaty to improve the terms. Although such a process may involve delay and uncertainty, this tactic has been used in the case of the Law of the Sea. Similarly, negatives could attempt to terminate the US role as a signatory to the particular treaty in question, arguing that the process of un-signing a treaty (as attempted with the ICC) has some additional benefits beyond avoiding the treaty's ratification. It might even be possible to establish some sort of inter-branch conflict over the legal status of the treaty by having one of more parties to the ratification fight against it. For example, passing the treaty but having either the president (Riggs, 1966) or Congress (Columbia Journal of Transnational Law, 1974) attempt to undermine it might be competitive.

Disadvantages

Politics disadvantages have dominated the debate landscape for decades, and would likely continue to do so under a treaties topic. From a certain point of view, however, nearly every disad is in part a politics disad. The discussion of the processes in the counterplan section should provide lots of intriguing potential for negative arguments based on the abnormal process acceleration imagined in many views of affirmative fiat. This section will focus primarily on

discussing process links for disads, regardless of whether which actual treaty the affirmative is defending.

The most common link story in the past several years has focused on the required expenditure of political capital by the president in order to cajole Congress into prioritizing the issue and then acting on it. Since Senate advice and consent involves a 2/3 majority, Obama would need at least 8 Republicans to switch over for Senate passage. In an era where it is possible to get all 41 Republican Senators to sign a commitment to filibuster financial reform, there may be a very strong process-based political capital link regardless of the treaty's content. From the reverse perspective, however, treaty passage may represent the first major internal fault line in Republican unity (as the 'party of no'), which could hurt Republicans even more than Democrats in relation to the 2010 elections (Isaacs, 2010) as well as their ability to halt Obama's agenda on other fronts.

Some disadvantages on prior topics have focused on the concessions that would be required to get a treaty out of the Foreign Relations Committee, but that vote is only a majority vote and could be achieved on a party line basis. Considering the affirmative plan ahead of other FRC business, including the new START treaty, might allow negatives to recycle some arguments from the nuclear weapons topic. Such link stories might even focus on specific individuals whose positions are viewed as critical in the START debate, such as Jon Kyl or John McCain (Isaacs, 2010). It should be easy for negatives to demonstrate that Republicans might use all possible procedural mechanisms to slow consideration of Obama's agenda items, potentially including the plan or potentially in response to the plan. Thus, FRC focus disads could extend beyond actual treaties under consideration. Given the considerable role of the

Department of State at the front and back end of the ratification process, trade off disadvantages could happen at that level as well.

One under-explored element of treaty ratification is that most treaties include specific processes for treaty termination. Although one could sidestep these questions with a view of fiat durability, that may not be fully satisfactory since fiat is imagining the passage of an entire treaty – including its procedures for opting out. There is a robust debate to be had about the process and probability of treaty termination –the Senate Foreign Relations Committee (1979) produced a document nearly 600 pages deep, based on hearings about the subject. Although ratified treatments could be argued to have more staying power than signed treaties or implementation of commitments bringing the U.S. into compliance, they often create specific mechanisms for adjudication in addition to termination (Sinha, 1966). In the context of the World Trade Organization, debaters have sometimes won that the adjudication mechanisms function to reverse the intention of the underlying treaty.

Most treaties have a literature base arguing for ratification as a means to expand U.S. influence (whether soft power, or smart power, or something else) within the treaty regime, and more generally. Prior treaties topics have had specific disads related to what the US might do with its post-ratification treaty clout (e.g. push India, Pakistan, or Israel to join the CTBT). The more generic version of the same argument is that the enhanced U.S. influence post plan gives us the clout to pursue our other agenda items, which may turn out to be a bad idea in the particulars.

Finally, a disad link story with uniqueness challenges is the expansion of international law and reduction in U.S. sovereignty. Such an argument might require a broad-based (perm-able) reassertion of sovereignty to actually ‘solve’ the link, but this concern also motivates many groups that tend to oppose all treaties. Beyond amplification of the politics links, there is the

potential for broader (violent?) political backlash to further extension of international law. The intrusive requirements for verifying our compliance – and the compliance of others – many expand this link or create other disad options. Such disads could be more credible given that treaty ratification may involve the Republicans reaching toward the political center and abandoning people whose votes they are currently courting. Although the best such disads are probably specific to the treaty, the current political climate means a more generic version is possible.

Kritiks

It's not clear how a topic could be written to deny kritikal ground to negatives, even if that was the primary purpose of the topic authors. The full range of kritiks related to state action, impact calculation, and calculation more generally, agency, etc. will be as relevant on a treaties topic as on any other. Probably, such concerns should relate more to whether treaties selected for the final resolution include one or more likely to make kritikal affirmatives viable and topical. That said, there are a few pockets of consideration for kritiks more specific to a treaties topic.

First, treaties are often taken to have more symbolic than legal force. Counterplans achieving the same legal situation without ratification can clarify this. Thus, kritiks related to using the law as symbolic speech, in the tradition of Critical Legal Studies, may have more play than in recent years.

Second, the concept of international law itself may be problematic. Although there is the possibility of a konservative kritik highlighting the importance of sovereignty as a means of self determination, the process can be examined from the other directions. Treaties generally involve the notion that the nation is bound if – and ONLY if – it chooses to bind itself. Thus, in a sense

treaties affirm the concept of sovereignty, perhaps in opposition to an ethic of universality. Some of the dispute related to customary international law relates to whether a state can exempt itself from universal obligations by simply choosing to do so, and the treaty mechanism is generally complicit with the status quo on this question. Of course, this can also be specific – nuclear arms control treaties typically affirm the rights of their parties to have nuclear arms in the first place, for example.

Third, a lot of cards advocating U.S. treaty compliance tend toward the use of American exceptionalism in their reasoning processes. Modeling cards, answers to "have Canada ratify it" counterplans, and U.S. influence advantages will make this clear. An international perspective which views states as morally equal might link to affirmative evidence, even if not as much so to actual plan texts.

Finally, while gridlock good arguments (Isaacs, 2010) are useful as a form of politics disad, the institutional gridlock of the present might also be highlighted as presenting systemic weaknesses that can be exploited by those seeking to overthrow capitalism or open other pathways of change in the absence of an effectively functioning U.S. federal government.

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Section 3: The Specific Treaties

Part 1: Convention on Biological Diversity

By Scott Elliott, University of Louisiana-Lafayette

Introduction

On the April 4, 2010 episode of *60 Minutes*, there was a segment on women in the United States with a gene that predisposes them to ovarian or breast cancer. Unfortunately, one company in the United States owns the exclusive patent for this gene. The result is that a mere test for this trait is over $3,000 (many experts conclude the test could easily be as little at $200) and no researchers can do develop new treatments unless they pay royalties to the company at issue. The same show also had a segment on HIV treatments in Africa, and the millions saved by U.S. biotech companies' research and the Bush Administration's AIDS in Africa program. That same evening, there was another episode of *Life* on Discovery; a celebration of the diversity of life on the planet. However, "We are currently witnessing the greatest extinction crisis since dinosaurs disappeared from our planet 65 million years ago."[14] After watching these programs, I turned to my wife and said, "This is why I want students to debate the Convention on Biological Diversity" ("CBD"). It turns out that ratification of the CBD by the United States has the potential to help women obtain affordable access to genetic testing and to protect the Earth's genetic treasury. However, it also has the potential to undermine lifesaving treatments, and hurt the economic recovery by crippling the United States biotech industry.

This year is the United Nations International Year of Biodiversity. In October, over 150 nations will converge in Japan to debate and sign the "Nagoya Protocol" under the CBD. The

[14] http://www.afriquejet.com/news/africa-news/healthy-biodiversity-is-life-foundation-on-earth,-says-iucn-2010032446440.html

Protocol will require Multinational corporations and their host nations to share the benefits of genetic resources discovered in other countries. "It also requires research institutes, universities and private companies to obtain written consent from countries of origin when they exploit resources, while urging both users and providers of the resources to cooperate to prevent illegal access in accordance with laws.[15]" The United States will have little input on these new rules because even though the United States is a signatory of the CBD, it has never ratified the treaty.

Background and Inherency for the CBD

Paraphrasing from the Convention on Biological Diversity website, there is a growing recognition that biological diversity is a global asset of tremendous value to present and future generations. At the same time, the threat to species and ecosystems has never been so great as it is today. Species extinction caused by human activities continues at an alarming rate.

In response, the United Nations Environment Programme (UNEP) convened the Ad Hoc Working Group of Experts on Biological Diversity in November 1988 to explore the need for an international convention on biological diversity. Its work culminated on 22 May 1992 with the Nairobi Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity. The Convention was opened for signature in 1992 at the United Nations Conference on Environment and Development (the Rio "Earth Summit"). The Convention entered into force on 29 December 1993.[16] The three goals of the CBD are to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources.[17]

[15] http://www.istockanalyst.com/article/viewiStockNews/articleid/3982389
[16] http://www.cbd.int/history/
[17] http://www.iisd.ca/biodiv/cbdintro.html

Although the Clinton Administration led the CBD movement and signed the treaty, the Republican dominated Senate refused to ratify the treaty.[18] Given that treaty ratification requires a 2/3 vote and that the Democrats do not have 66 Senators, it is doubtful that the CBD will be ratified by the Senate during Obama's first term in office. The result of this policy failure has been the diminished ability of the United States to exercise global environmental leadership and substantial reductions in the rate of species decline. The *San Diego Newsroom* reported on March 10, 2010:

> The U.S. has been a world leader in conservation efforts, but so far has not ratified what many consider to be the key international instrument for sustainable development. The U.S. recognized decades ago that preserving biodiversity could only be done effectively on a global level, and some say that the country can improve both the environment and its international image by joining the rest of the world in this sustainability effort. … "The world eagerly awaits a decision on American ratification of the Convention on Life on Earth." The world may have to keep waiting, because the Senate is not currently considering it. … The U.S. has sent large delegations of government officials and representatives from industry and environmental groups to all the CBD meetings, but as it has not ratified the convention, the U.S. is merely an observer at these meetings and does not have an official voice to engage in negotiations or decision-making…. By not ratifying the convention, the U.S. weakens its ability to affect global conservation and sustainability. A two-thirds vote in the Senate is the only thing needed to turn this around.[19]

Core Affirmative Advantage Areas

The core affirmative advantage areas should be species/ecosystem preservation and sustainable development. The international effort to reduce species decline has failed.[20] The significance of species loss is substantial and growing. 47,677 species are already documented as extinct. And many other species are listed as threatened, including 27 percent of all reef-building corals, 35 percent of all conifers, 21 percent of all mammals, 12 percent of all birds and 30

[18] http://www.sovereignty.net/p/land/biotreatystop.htm
[19] http://sandiegonewsroom.com/news/index.php?option=com_content&view=article&id=42095:emily-holding-&catid=43:wildlife&Itemid=59
[20] Governments fail to reduce global biodiversity decline.Citation Only Available *Nature*, 7/9/2009, Vol. 460 Issue 7252, p163-163

percent of all amphibians.[21] From an anthropocentric perspective, the loss of biological diversity undermines humans' ability to maintain food crop diversity,[22] decreases the development of life-saving drugs and new biotechnologies, and even risks mass human deaths.[23] To give just two examples, the loss of honey bees currently risks destruction of portions of modern agriculture, necessary to maintain billions of people's lives. The destruction of the earth's coral reefs risks collapse of the global food chain.[24] From a biocentric viewpoint, humanity's impact on other species is comparable to genocide. Deep Ecologists such as Christopher Manes, Arne Naess, and David Foreman regularly conclude that species have a deontological right to exist and that steps must be taken to curb human-caused destruction. Seeking a middle ground, social ecologists and advocates of sustainable development seek to preserve species while alleviating the profound poverty facing billions of people.

The CBD is not limited to merely species preservation and sustainable development. Advanced researchers will quickly learn that the "meat" of the CBD is the "Protocols" that are adopted in pursuit of the CBD's overarching goals. The Protocols are binding sub-agreements that create enforceable rules for ecosystem management, import-export rules, and the use of biotechnology. For example, the Cartagena Protocol on Biosafety addresses the safe transfer, handling and use of living modified organisms that may have an adverse effect on biodiversity with a specific focus on transboundary movements.[25] The Protocol incorporates the precautionary principle and details information and documentation requirements. The Protocol also contains provisions regarding documentation, confidential information and information-

[21] http://www.heraldtribune.com/article/20100329/COLUMNIST/3291059/-1/NEWSSITEMAP?p=2&tc=pg
[22] For a breakdown of the impacts of, and rate of, species loss, see Marton-Lelèvre, Julia. *Science*, 3/5/2010, Vol. 327 Issue 5970, p1179-1179; Milius, Susan. *Science News*, 3/13/2010, Vol. 177 Issue 6, p20-25.
[23] Ibid.
[24] http://www.cbd.int/agro/
[25] Let me honestly state that my intent was not to "backdoor" a genetic engineering topic into the Treaties topic paper. However, after a few hours of research, it has become readily apparent that GMOs and intellectual property rights to genetic engineering is a core area of dispute for the CBD.

sharing, capacity-building, and financial resources, with special attention to the situation of developing countries and those without domestic regulatory systems.[26] The United States is not a member of the CBD, and therefore has little negotiating leverage regarding the Protocol's implementation.[27] The biggest debates are over the research, development and use of genetically engineered plants (GMOs) and animals. One should be prepared to debate the merits of a new Green Revolution versus corporate control over genetic materials, terminator genes, and the risks of ecosystem collapse due to genetic drift.[28] The United States is currently one of the most vocal opponents to the Protocol.[29]

Taking it a step further, the Nagoya Protocol will require equitable distribution of the proceeds of genetic materials. "The access and benefit-sharing issue, known as ABS, has been a bone of contention between developed and developing countries in negotiations under the 1992 convention. In the past, businesses and individuals from rich nations have often taken genetic resources and knowledge from communities in poor nations and monopolized the benefits."[30] This is going to be the subject of heated debates by the end of this year, and as it now stands, the United States will have little meaningful input on how the Protocol turns out.[31] Students interested in the rights of indigenous cultures to maintain the proceeds of their knowledge of

[26] http://www.iisd.ca/biodiv/cbdintro.html
[27] "The Protocol will enter into force on September 11, 2003. Although the United States is not a Party to the CBD and therefore cannot become a Party to the Biosafety Protocol, the U.S. participated in the negotiation of the text and the subsequent preparations for entry into force under the Intergovernmental Committee on the Cartagena Protocol." http://www.fas.usda.gov/info/factsheets/biosafety.asp
[28] http://www.scidev.net/en/health/genomics/opinions/the-cartagena-protocol-the-debate-goes-on.html
[29] "Once it became clear that the majority of States wanted a convention that would include not only conservation but also social and economic aspects of biodiversity as well as the issue of biotechnology, the initial State sponsor of the process, the United States, turned into one of its most vocal opponents. Being one of the most important exporting countries, the United States was particularly concerned about including any provision relating to the development, management, safe use and release of genetically modified organisms, and about the protection of intellectual property rights, and opposed the inclusion of prior informed consent requirements in the context of exporting biotechnology or its products. The position of opposing prior informed consent requirements was also supported by Japan. On the other side stood the developing countries; since most of the genetic resources which are the raw materials for biotechnology in agriculture and pharmaceuticals are located in their territories, they made clear that they would oppose any new convention if biotechnology was not included."
http://untreaty.un.org/cod/avl/ha/cpbcbd/cpbcbd.html
[30] http://www.breitbart.com/article.php?id=D9E7OMS00&show_article=1
[31] http://www.rff.org/Publications/Resources/Documents/148/148_treaty_process.pdf

native species;[32] intellectual property[33], social justice;[34] and the North-South/Rich-Poor Gap will be advised to look into this Protocol. Creative teams may decide to take the debate further by arguing the ratification of the CBD will allow the U.S. to stop the Nagoya Protocol. It is conceivable that a negative team could counter-plan to ratify on the condition that the nations not adopt the Nagoya Protocol. Affirmatives should also garner specific country relations advantages (e.g. Brazil and Japan) as well as Soft-power/Environmental leadership advantages.[35] These are just a few of the key affirmative advantage areas. For individuals focused on whether the United States is the key for solvency, this may reduce some of their fears:

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[32] Hastings Center Report; Jan2010, p3-3 and *CULTURAL ANTHROPOLOGY, Vol. 24, Issue 4, pp. 712–745.*

[33] Intellectual property rights and access rules for germplasm: benefit or straitjacket?: Ghijsen, Huib. *Euphytica*, Nov. 2009, Vol. 170 Issue 1/2, p229-234

[34] Justice and the ***Convention on Biological Diversity***.Schroeder, Doris; Pogge, Thomas. *Ethics & International Affairs*, 2009, Vol. 23 Issue 3, p267-280

[35] "Beginning more than 20 years ago, leadership by the USA led to the most comprehensive agreement ever written to reduce the global loss of biodiversity. Then, our nation stepped away while nearly every other nation in the world joined the CBD. The USA stands starkly isolated as a non-party, harming our world image and our ability to affect global conservation and sustainable use efforts."
http://www.defendersofwildlife.org/resources/publications/programs_and_policy/international_conservation/the_u.s._and_the_convention_on_biological_diversity.pdf See also, from the same article: The CBD's effectiveness and the urgent cause of stemming the ongoing high rate of global biodiversity loss both suffer from the lack of official involvement and support from the USA. Membership will allow our nation to help shape and advance the world's approach to conservation and sustainable use.

- Joining the CBD will signal the USA's re-commitment to global environmental leadership and could markedly enhance our international relations.
- The CBD's consensus-based decision processes will ensure the interests of the USA are fully recognized, which they are not as a non-party.
- No party's national sovereignty has ever been undercut by joining or participating in the CBD.
- The CBD's 24 work programs – ranging from agricultural biodiversity to forests, climate change to island issues, and plant conservation to ecotourism – set the agenda for key conservation and sustainable use activities around the world.
- USA environmental and industry groups have long seen the value of the CBD for their work and they actively contribute to its processes and implementation. For example, several major organizations participate in the CBD's protected areas work program, which sets goals for networks of protected areas, strengthens capacity and skills, and provides recognized guidance on management of protected areas.
- Industry groups and other stakeholders are very active in the CBD's genetic resource and access and benefit-sharing (ABS) negotiations. USA membership could significantly aid the molding of fair, workable ABS policies.
- Conservation and sustainable use of biodiversity and habitats such as the tropical forests – Earth's "lungs" - are integral to tackling the impacts of global warming. The CBD helps ensure that Earth's native plants and wildlife are considered in negotiations over global warming mitigation and adaptation.
- A few other notable CBD benefits: it fosters needed international coordination in addressing harmful invasive species; it is implementing a broadly-applauded Global Strategy for Plant Conservation; and it provides strong support for the vital, but neglected, scientific discipline of taxonomy.
- No new legislation is necessary to implement the CBD. A 2/3rds vote of the Senate is the only requirement for ratification under the Constitution (Art. II, Sec. 1). No further formal action from the President is required, but an announcement of Mr. Obama's strong endorsement is critical to making ratification a national priority.

> Djoghlaf, who is Algerian, said in the interview that heads of states are scheduled to meet in September at the U.N. headquarters in New York to address the challenges of accelerated biodiversity loss, and that he expected Japanese Prime Minister Yukio Hatoyama to chair a panel on the issue to "solicit the views and visions" of leaders before the Nagoya conference. He also urged Hatoyama to convince U.S. President Barack Obama that the United States should join the convention, as it will be the only nation among U.N. members not to be party to the treaty. Washington has not ratified the convention due to fears that it would harm the nation's biotechnology industry, but Djoghlaf said such a stance is based on misunderstandings and he believes many of these have been cleared up through negotiations with U.S. officials. He pointed out that the United States is responsible for about 25 percent of consumption and waste generated in the world and that the nation will be "impacted by the lack of progress" in taking care of biodiversity. "We cannot solve the problem of this biodiversity without the U.S. because we need definitively to change our pattern of production and consumption," Djoghlaf said. "We need to live in harmony with nature."

Core Negative Ground

A major problem with the nuclear weapons topic in 2009-2010 was that the core ground for debate was exhausted by October. The final round of the NDT came down to a question of whether no launch on warning should be implemented by the Supreme Court or by Congress. Why? I would hazard to guess it was a combination of two major problems: 1) Barack Obama had already committed to substantial reductions in nuclear weapons; and 2) there was little winnable negative ground on the central merits of launch on warning. Given the unlikely possibility that either the CBD or a major multilateral treaty will be ratified by the Obama administration in 2010-2011, the uniqueness difficulties the negative encountered on the nuclear weapons topic will be largely obviated. In addition, the CBD in particular contains core negative arguments against the ratification of the treaty.

Core negative ground will stem from several areas regarding the merits of the CBD and its Protocols. Biotechnology/Agriculture industry: There are plenty of stakeholders who claim that ratification of the CBD will cripple the biotech industry or agriculture. For the more nuanced, there are those who argue that the CBD will cripple biotech research that can be used to

heal the planet or save species/ecosystems; thereby turning case advantages.[36] For example, the United Nations, via the CBD, halted a test to "seed" bare spots in the ocean, in order to recreate ecosystems.[37] In another case, CBD Protocols are hindering the ability of medical researchers to isolate and find cures for potential pandemics.[38] Another author argues the CBD harms global food security efforts.[39] In addition, the intellectual property rights debate is huge, pitting traditional intellectual property rights versus indigenous people.[40]

Trade: The Protocols within the CBD have a significant impact on international trade and the free market system. Groups such as the CATO Foundation and the Heritage Foundation are fundamentally opposed to the CBD on these grounds. They conclude that the CBD will erect huge trade barriers…leading to possible trade wars or a new economic downturn.[41] Readers are encouraged to look into the TRIPS program as it applies to the WTO.

Politics: Obviously, politics will come into play for the mid-term elections, political capital disadvantages, and Presidential politics in general. There are key constituencies opposed

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[36] The Compliance Mechanism of the Cartagena Protocol ***on*** Biosafety: Development, Adoption, Content and First Years of Life. Koester, Veit. *Review of European Community & International Environmental Law*, 2009, Vol. 18 Issue 1, p77-90; Biofuel Plantations ***on*** Forested Lands: Double Jeopardy for Biodiversity and Climate. DANIELSEN, FINN; BEUKEMA, HENDRIEN; BURGESS, NEIL D.; PARISH, FAIZAL; BRÜHL, CARSTEN A.; DONALD, PAUL F.; MURDIYARSO, DANIEL; PHALAN, BEN; REIJNDERS, LUCAS; STRUEBIG, MATTHEW; FITZHERBERT, EMILY B.. *Conservation Biology*, Apr2009, Vol. 23 Issue 2, p348-358; Strangled at birth? Forest biotech and the ***Convention on Biological Diversity***.Citation Only Available By: Strauss, Steven H.; Tan, Huimin; Boerjan, Wout; Sedjo, Roger. *Nature Biotechnology*, Jun2009, Vol. 27 Issue 6, p519-527; Biodiversity law could stymie research.Citation Only Available By: Gilbert, Natasha. *Nature*, 2/4/2010, Vol. 463 Issue 7281, p598-598;

[37] UN decision puts brakes ***on*** ocean fertilization. Tollefson, Jeff. *Nature*, 6/5/2008, Vol. 453 Issue 7196, p704-704; Is ocean seeding dead in the water?, Reilly, Michael. *New Scientist*, 6/14/2008, Vol. 198 Issue 2660

[38] Leveraging Genetic Resources or Moral Blackmail? Indonesia and Avian Flu Virus Sample Sharing.Full Text Available By: Caplan, Arthur L.; Curry, David R.. *American Journal of Bioethics*, Nov2007, Vol. 7 Issue 11, p1-2

[39] The Role of International Agreements in Achieving Food Security: How Many Lawyers Does It Take to Feed a Village? Bobo, Jack A.. *Vanderbilt Journal of Transnational Law*, Oct2007, Vol. 40 Issue 4, p937-947

[40] Biodiversity law could stymie research. Gilbert, Natasha. *Nature*, 2/4/2010, Vol. 463 Issue 7281, p598-598; The Dilemma of Traditional Knowledge: Indigenous Peoples and Traditional Knowledge. Fitzmaurice, Malgosia. *International Community Law Review*, Oct2008, Vol. 10 Issue 3, p255-278; Human Rights and Technology—A Conflictual Relationship? Assessing Private Research and the Right to Adequate Food. Haugen, Hans Morten. *Journal of Human Rights*, Jul2008, Vol. 7 Issue 3, p224-244; http://www.cato.org/pubs/pas/pa-175es.html.

[41] http://www.cato.org/pubs/regulation/regv29n2/v29n1-4.pdf; see also http://www.ciel.org/Publications/Doha_CBD-10oct02.pdf;

to the CBD and the Protocols. The biotechnology and agricultural industries are major opponents of the CBD. Similarly, property rights groups, intellectual property rights supporters and anyone opposed to Obmaesque "Socialism," is going to be opposed to ratification of the CBD. The Republicans led the fight to defeat ratification during the Clinton years. It should be easy for a negative team to argue that the Republicans will spin this as another reason to oppose Obama. (That being said, fiat would require a substantial number of Republicans to vote for ratification in the Senate. I will let the politics hacks work this out.)

Conclusion

The Convention on Biological Diversity provides students with an opportunity to explore a timely and significant area of international law. The discussion of the core areas for both affirmative and negative teams is just a sketch of the complexity of issues facing policymakers as they attempt to address the issue of biodiversity preservation. It should make for innovative debates that will last the entire year.

Part 2: UN Convention on the Law of the Sea (UNCLOS)

By John Katsulas, Boston College

What is the Convention on the Law of the Sea?

The U.N. Convention on the Law of the Sea (UNCLOS) is a treaty which was negotiated during numerous meetings held between 1973 and 1982 at the third U.N. Conference on the Law of the Sea. For the most part, the treaty was greeted favorably, except for the provisions relating to deep seabed mining in Part XI and Annexes III and IV. The United States and many developing countries refused to sign the 1982 agreement because they felt the deep seabed mining provisions were contrary to their economic interests by imposing high taxes and mandatory technology transfer to developing countries. To overcome the opposition from the United States and other countries, a new 1994 agreement relating to the implementation of the deep seabed mining provisions of the Sea Treaty was agreed to and open for signature on July 28, 1994. The next day, President Clinton signed the 1994 agreement and in October, submitted the entire UN Convention on the Law of the Sea along with the 1994 Agreement to the US Senate for ratification (Browne, 2006). The Senate Foreign Relations committee has twice voted in favor of ratification, but Republican opposition has prevented a vote by the full Senate (Borgerson, 2009).

On November 16, 1994, after attaining the necessary 60 signatures, the 1982 United Nations Convention on the Law of the Sea entered into force. As of today, 160 countries have ratified UNCLOS and 138 countries have ratified the 1994 Agreement relating to the implementation of Part XI of the Convention. The list of countries who have ratified the treaty can be found at this internet address:

[http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea].

The 1982 treaty creates uniform rules for governing the uses of the ocean. The five major features of the treaty are summarized by the National Marine Manufacturer Association (2004):

- **Navigational Freedom.** The Law of the Sea Treaty establishes a territorial sea of a maximum breadth of 12 nautical miles under the control of the coastal state. Within a contiguous zone of up to 24 nautical miles, a state retains limited authority on issues related to customs, immigration, and sanitation. The convention protects movement on the high seas and allows "innocent passage" for all vessels within a state's 12-mile territorial zone. In addition, the treaty establishes the right of "transit passage" through straits used for international navigation that are otherwise within a coastal state's territorial waters—without this provision, over 135 straits around the world potentially could be closed by states' claims to territory.
- **Exclusive Economic Zones.** The treaty establishes a coastal zone extending 200 nautical miles over which the coastal state retains exclusive economic rights, including the right to explore, exploit, and manage all living and non-living resources. The treaty gives the U.S. control of the largest exclusive economic zone in the world, adding 4.1 million square miles of ocean under U.S. jurisdiction, an area that exceeds the total land area of the United States. Under the terms of the treaty, the United States would also have sovereign rights over its continental shelf—one of the largest in the world.
- **Environmental Protection.** The treaty contains provisions obligating states to protect the marine environment and to conserve living species. States are liable for damages if found to be in violation of these international obligations.
- **Marine Scientific Research.** The treaty affirms the right to conduct marine scientific research and establishes a global framework for cooperation that balances the right of scientists to have access to ocean areas for research with the right of coastal states to control their marine jurisdictions. The U.S. conducts more marine scientific research than almost all other nations combined.
- **Dispute Settlement Provisions.** The treaty establishes a comprehensive, compulsory dispute settlement regime based on binding third-party arbitration. States may choose any one of four dispute settlement venues established under UNCLOS, including the International Tribunal for the Law of the Sea, the International Court of Justice, binding international arbitration procedures, or special arbitration tribunals adjudicated by experts in the field relating to the dispute.

The 1994 Amendments and its accompanying annexes adopted a number changes to the deep seabed mining regime to alleviate the objections of the United States. Some of the more

important significant actions including granting the United States a permanent seat on the International Seabed Authority (ISA) Council (Sagarin, Crowder, Dawson, Van Dyke, & Orbach, 2007; Schachte, 2008), repealing the mandatory technology transfer provisions to developing countries (Schachte, 2008), and reducing the application fees from $500,000 to $250,000 (Browne, 2006).

While the Obama administration supports ratification of UNCLOS, there is very little chance that the treaty will receive a vote this year. At the Arctic policy summit in March, supporters of the treaty admitted that while the treaty enjoys broad bipartisan support, ratification will not happen any time soon (Wang, 2010). If as expected, the Republicans pick up several Senate seats in November, it is hard to imagine how UNCLOS will receive a vote during the Spring of 2011.

Affirmative Advantages

Ratifying the Law of the Sea Convention (UNCLOS) will advance U.S. national security interests by guaranteeing military and commercial ships have navigational rights, including the right of safe passage through and over foreign seas and international straits (Bellinger, 2009; Oliver, 2009). It is for this reason that all of the branches of the US military strongly support ratification (Brooks, 2009; Giles, 2009) US Navy Admiral Patrick Walsh (2007) testified that ratification of UNCLOS is essential for ensuring the global strategic mobility of the Armed Forces.

Without the Law of the Sea Treaty, the supremacy of the United States military to freely navigate the ocean is not sustainable in the future. A new report by The Center for a New American Security claims that improvements in blue water naval capabilities by China, Russia, and other powers “will test the ability of the United States and its allies to maintain open access

to the world's oceans (Denmark & Mulvenon, 2010, p. 22). The report concludes that multilateral engagement, including ratification of UNCLOS, is critical to preventing conflicts over navigation and ocean resources: "Considering the strategic importance of the oceans for U.S. security and economic interests, it is imperative that the Senate ratify the UN Convention on the Law of the Sea (UNCLOS). Doing so will benefit immediate U.S. national security interests and lay the groundwork to build up cooperative efforts to minimize conflict over the long term" (Hoffman, 2010, p. 70).

Ratifying UNCLOS will advance US economic interests by codifying rights to all the resources in a 200-nautical mile Exclusive Economic Zone off the US coastline. Moreover, the Commission on the Limits of the Continental Shelf under the Law of the Sea Treaty establishes a procedure whereby a state can receive legal rights to resources beyond the 200 nautical miles. By remaining outside the treaty, the US can't make any legal claims to resources in the Continental Shelf (Bellinger, 2009). The largest business lobby, the US Chamber of Commerce, representing over 3 million businesses, supports ratification because "the treaty provides certainty in accessing resources in the Arctic and Antarctic and could ultimately enable American businesses to explore the vast natural resources contained in the seabeds in those areas" (US Chamber of Commerce, 2010, p. 6).

There is particularly strong evidence that ratification is crucial to preserving US rights to Arctic resources (Kolcz-Ryan, 2009). Russia, the United States, Canada, Norway and Denmark are making claims to the oil and mineral resources under the icecap. The United States is the only country with claims to the Arctic who has not ratified UNCLOS. This failure deprives the United States "a seat at the table when the rights" to the Arctic are allocated and "precludes the United States from submitting an application for the recognition of any extended continental

shelf it may be able to claim in the Arctic" (Becker, 2010, p. 232). By ratifying the treaty, the United States "would have an active voice in the Extended Continental Shelf and seabed claims of every nation" and it would be able to "influence interpretation of the covenants in its favor (e.g., rally support, defend against rival claims, sanction U.S. actions and military operations) and promote cooperative environmental protection and commercial development" (Bert, Chaddic & Perry, 2009).

Numerous solvency authors argue that ratifying UNCLOS will boost US soft-power leadership and create a foundation for multilateral cooperation to combat piracy, terrorism, and to interdict materials for building weapons of mass destruction (Bert & Schlakman, 2009). Borgerson (2009) claims that US failure to join UNCLOS "has directly prevented expansion of the PSI with some critically important Pacific countries" (p. 26).

Environmental leadership is another potential advantage. Ratification of UNCLOS will "strengthen US leadership in combating maritime environmental challenges of increasing urgency, such as ocean acidification, collapsing fish stocks, and pollution" (Borgerson, 2009, p. 37). Moreover, formal accession would "improve the prospects for implementing the environmental provisions of the Law of the Sea, currently strong in theory and patchy in application" (Blunden, 2009, p. 134). Full participation in the Sea Convention is critical for the United States "to exercise environmental leadership over nearly three-quarters of the earth" (Borgerson, 2009, p. 32). Ratification "would help the United States advance new governance initiatives" in the Arctic region, perhaps including "the establishment of a marine scientific park at the North Pole" (Borgeson, 2009, p. 32).

Negative Arguments

The negative evidence against the Law of the Sea Convention (UNCLOS) appears in the publications of conservative think tanks suspicious of ceding sovereignty to the United Nations and in publications of pro-free enterprise organizations opposed to government regulation over natural resources and economic activity. These organizations include The CATO Institute, The Heritage Foundation, The Hudson Institute, The Competitive Enterprise Institute, The John Birch Society, The Eagle Forum, and The National Center for Public Policy Research.

To refute the argument that ratification of UNCLOS is key to freedom of navigation for the military, the negative can advance five arguments. First, customary international law and bilateral agreements already provide US ships the right of free navigation (Douglas, 2010; Spring, Groves, & Schaefer, 2007) and "no nation has had the will or the wherewithal to challenge our use of the seas" (Jasper, March 2009, p. 16). Second, other states are deterred from limiting US navigational rights because they want reciprocal rights to transit through US waters (Meese, Spring, & Schaefer, 20007). Third, the legal protections afforded under UNCLOS are not worth the paper they are written on. Geopolitical interests will always trump international agreements. If China, Pakistan or any other country wants to prevent the transit of US ships within their exclusive zones because they believe UNCLOS prohibits intelligence gathering, they will do so (Bandow, 2009). Third, the dispute resolution provisions under UNCLOS will be used to restrict US military activities (Clark & Meese, III, 2007; Rabkin, 2007). Fourth, UNCLOS will restrict the use of Autonomous Underwater (AUVs) and Remotely Operated Underwater Vehicles (ROVs) because the treaty requires underwater vehicles to surface (Ridenour, 2006). Fifth, lawsuits filed in US courts by NGOS will challenge the legality of the Navy using sonar (Ridenour, 20060) and training activities (Douglas, 2010). While UNCLOS

has an exemption for military activities, the term is undefined and dispute resolution judgments against naval activities are still probable by activist judges (Douglas, 2010; Gaffney, 2009).

The environmental benefits to UNCLOS are largely unproven. Many of the treaties environmental provisions "lack legal teeth and remain largely unenforceable" (Hertell, 2009, p. 572). There is no evidence that the treaty has reduced pollution from ships in offshore areas. The treaty also lacks "concrete standards or specific mandatory language upon which a tribunal" may rely upon to find a violation that requires a remedy (Hertell, 2009, p. 573). And, "weak enforceability and incomplete coverage of Arctic issues" will prevent UNCLOS from saving the arctic environment (Hertell, 2009, p. 574).

There are strong negative arguments to prove that UNCLOS will retard business investment in deep seabed mining (Smith, 2007). The International Seabed Authority (ISA) is under the administration of the United Nations, who has a clear track record of incompetence, corruption, and mismanagement (Lewis, 2009) of programs like the oil for food in Iraq. Putting the ISA in charge of developing the ocean is a "Mafioso's dream—with opportunities for fraud in nearly every step of the process" (Williamson, 2009, p. 13) and "the maritime economy would likely stagnate" (Hawkins, 2007). The collectivist controls and taxes imposed on companies will "discourage future mineral production as well as punish entrepreneurship in related fields involving technology, software, and other processes with an ocean application" (Bandow, 2007, p. 1)

Even though the mandatory technology transfer provisions have been eliminated, the treaty requires making technology available for purchase at reasonable prices, which many believe, means at bargain basement rates (Bandow, 2007; Williamson, 2009)

Claims that the US will lose out on Arctic resources is also a debatable point. Even though the US has not ratified the Law of the Sea Convention, the United States has remained an active participant in the Arctic Ocean conferences (Groves, 2008; Lerner, 2009), which debunks the argument that ratification is key to giving the US a seat at the table. Van Wagner (2010) claims that the Convention on the High Seas allows the US to claim rights to the Arctic, even if it never ratifies UNCLOS. By ratifying UNCLOS, one author claims the US will erode its bargaining position and allow Russia to receive a higher share of the Arctic resources (Howard, 2008).

There are also good negative arguments for why UNCLOS is not key to resolving resource conflicts over the Arctic (Paulson, 2009). The arbitration and dispute settlement provisions of UNCLOs will result in costly court proceedings without reaching a satisfactory solution (Rajabov, 2009). As an alternative to UNCLOS, the negative could advocate negotiating a new Arctic Treaty (Rajabov, 2009) to resolve disputes over resources.

Disadvantages to ratifying UNCLOs include politics, business confidence, PSI and Moon development. The politics story is that ratifying the Law of the Sea Convention would spark a divisive fight in the Senate. There remains "bitter controversy" among the Senators as to whether the 1994 Amendments have fixed the problems with the treaty (Lewis, 2009). The best link to business confidence is that ratification of the treaty will increase business uncertainty due to the possibility of lawsuits against all sectors of the economy. Jasper argues (2009, March) that "lawyers from Greenpeace, the Natural Resources Defense Council, and the World Wildlife Fund (to name but a few) would keep every court in the land (as well as every international tribunal) flooded with perpetual litigation aimed at every productive enterprise" (p. 15). The environmental lawsuits spawned by UNCLOS could "crush the US economy." (Horner, 2007).

Many authors claim that ratifying UNCLOS will reduce the ability of the United States under the Proliferation Security Initiative to board foreign ships for the purpose of searching for weapons of mass destruction (Cohen, 2005; Feulner, 2009; Hawkins, 2007, Rabkin, 2006; Ridenour, 2006). The Moon development disadvantage would argue that the accepting the common heritage precedent of UNCLOS will prevent the development of the Moon (Bandow, 2007) and there is also evidence that it would cause the US to ratify the Moon Treaty, which will inhibit the development of the Moon (National Space Society, 2009).

Recommendation

Overall, there is abundant literature on both sides of the debate on whether the US should ratify the Law of the Sea Convention. New articles will be written on this treaty as there is speculation that the Senate might vote on it. Nevertheless, the chances of the Senate actually voting on this treaty are rather remote. Therefore, I would recommend including it as part of a treaty topic.

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Part 3: Ottawa Landmines Convention

By Scott Herndon, Collin Roark, and Wes Dwyer, University of Texas at Dallas

Introduction and intent

Despite President Barack Obama's positions on nuclear disarmament and his acceptance of the Nobel Peace Prize, he has been reluctant to push for ratification of a ban on the production and military use of landmines. As recently as December of 2009 Obama has made it clear that he will not pursue ratification of the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, leaving in place what proponents of a ban call the "Bush era policies" on antipersonnel landmines (Bolton). Given Obama's reluctance to show support for the Ottawa Convention, this is a potentially ripe area for debate over the question of the Convention's ratification by the US senate. This short paper will discuss the potential desirability of including the Ottawa Convention in a treaties debate topic, and will investigate the potential affirmative advantage areas as well as likely negative positions. Research for this paper was assisted by Collin Roark and Wes Dwyer of the University of Texas at Dallas, their assistance was greatly appreciated. Others pulled a total Durkee…and made Scott, Collin, and Wes fill in the gap…

Affirmative advantage areas

There are many solid affirmative advantage areas, not all of which will be covered in this section. We isolate three strong areas of affirmative advantages that speak to some of the impact diversity available to the affirmative. This section discusses the humanitarian, leadership /soft power and agriculture/development impacts.

A. Humanitarian impacts

Perhaps the most obvious of the affirmative advantages centers on the direct human impact of the continued deployment of landmines by the US. Excellent evidence from multiple and qualified sources attest to the number of civilians killed or maimed by deployed landmines. As this evidence from 2005 indicates, hundreds of millions of landmines are in use and many as twenty thousand people are killed by landmines annually:

> Oppong '5 [Joseph R. Oppong and Ezekiel Kalipeni, "The Geography of Landmines and Implications for Health and Disease in Africa: A Political", Africa Today, Vol. 52, No. 1 (Autumn, 2005), pp. 3-25, http://www.jstor.org/stable/4187842]
>
> Landmine contamination is approaching a worldwide crisis. Approximately 120 million landmines are buried in seventy-one countries throughout the world, and two to five million new landmines are planted each year (Office of International Security and Peacekeeping Operations 1994). In 2002 through June 2003, Landmine Monitor found new landmine casualties reported in 65 countries which included every region of the world. While noting the difficulties of obtaining comprehensive data on landmine casualties, particularly taking into consideration countries experiencing ongoing conflict, or inaccessible minefields in remote areas, or countries with limited resources to monitor public health, Landmine Monitor estimates that there are between 15,000 to 20,000 people that are killed or injured by landmines every year (Landmine Monitor 2003). As a matter of fact, in 2002, over 11,700 new landmine/UXO casualties were reported. Landmine Monitor notes that although this figure falls short of the 15,000-20,000 estimate, it does not take into account the many casualties that are believed to go unreported, as innocent civilians are killed or injured in remote areas away from any form of assistance (Landmine Monitor 2003). The exact figure for landmine casualties is unknown, but may well be far greater, since many victims of landmine accidents never reach a health center, and their cases are therefore not included in the tabulations. The International Council of the Red Cross (ICRC) estimates that landmines maim 1,200 people each month, and kill 800 (Coupland 1998; New Internationalist 1991).

Additionally, a wealth of evidence exists comparing the systemic effects of landmines to nuclear, chemical and biological weapons, providing the affirmative with the opportunity to "outweigh" negative disadvantages that terminate in nuclear war. The following card by Willerman speaks to the kind of evidence affirmative teams are likely to read on this question:

> Willerman '4[Raquel, "Landmines and human security: international politics and war's hidden legacy", Chapter- Victim Assistance, page 103]

> There are an estimated 300,000 landmine survivors worldwide. More than half the people involved in a landmine accident die before reaching medical care. Landmines have killed more people than nuclear, chemical, and biological weapons combined. With over eight thousand new victims reported in 2000 and thousands more whose accidents went unreported, the total number of landmine survivors continues to grow. It is estimated that at least 80 percent of survivors are civilians and 25 percent are children.

Debating the systemic impacts would provide an opportunity to focus debates on impact framing that was not solely focused on the number and magnitude of nuclear wars. While we don't fully address the potential for the affirmative to claim moral obligations to stop the use and spread of weapons designed to cripple an enemy or that indiscriminately kills civilians and non-combatants, such arguments would certainly be common on the affirmative and give the affirmative another tool to increase the magnitude of this type of advantage. The following Cahill evidence is an example of the possible morality links available to the affirmative:

> Cahill 95 (Publication Information: Book Title: Clearing the Fields: Solutions to the Global Land Mines Crisis. Contributors: Kevin M. Cahill - editor. Publisher: Basic Books. Place of Publication: New York. Publication Year: 1995. Ch 7. http://www.questia.com/PM.qst?a=o&d=99867891)
>
> In a speech to the Senate on the suffering caused by land mines, Sen. Patrick Leahy expressed his conviction that the elimination of land mines was "a moral issue." 1 In exploring the meaning of Senator Leahy's statement, we must bear in mind that the resolution of the problem of land mines will require a multidimensional effort; the moral argument for policy is one piece of a much larger picture. Moral arguments, based on ethical principles and rules, seek to restrain power and to provide direction for it in the complex domain of international politics. But such principles and rules never function in isolation. An ethical argument has its own intrinsic meaning, logic, and influence; but particularly in the world of social and political affairs, the ethical argument must be woven together with perspectives of politics, strategy, law, and economics. This chapter will address both the ethical and the political- strategic dimensions of the land mine problem. The first observation to be made is the difficulty of sustaining an ethical argument in the arena of world politics. Professor Stanley Hoffmann of Harvard University has highlighted the traditional case: the absence of a central political authority and a law that binds all actors, combined with the cultural diversity of the international system, makes international ethics the most difficult terrain for moral discourse in all of human affairs. 2 The paradox, of course, is that the absence of effective political and legal authority is precisely the reason why ethical restraints on power are needed in world affairs. Moral arguments are designed to influence two levels of decision making. First,

> they should be used in the policy debate of a society, seeking to bring policy under public scrutiny. Second, moral arguments are directed to the conscience of individuals—citizens, soldiers, diplomats, opinion makers—to aid in their decision making. At each of these levels, moral principles can be used to judge and direct policy even if positive law does not exist on certain questions. Positive international law does exist on the land mine question, but it is fragile and limited; a broader and stronger moral argument can serve as a bridge between law and policy at the national and international levels. The policy question posed by the use of land mines is one dimension of the broader issue of the ethics of military power. In the language of an earlier generation of moralists, the study of land mines is an exercise in ethical casuistry—that is, the study of a "case" in the ethics of war. To address the case, it is necessary to establish a framework for analyzing the moral use of force, then to look for the distinctive features of the problem of land mines. □

B. Ratification / modeling based advantages

While 144 nations have signed and ratified the Convention, many, including Russia, Iran, Pakistan and China still stand outside the agreement pointing to the US position to justify their inaction. Also, according to the Landmine and Cluster Munition Monitor countries bound by the treaty are required to ban use, stop all production/research/stockpiling, and dispose of all landmines. The convention also requires ratifying states to implement any necessary military or budgetary changes needed to fully implement the provisions of the convention. It is precisely these steps that many ratifying nations fail to take seriously due, in part, to US reluctance to adopt the convention itself. The following evidence from Bolton explains the general internal link that affirmatives are likely to claim:

> Bolton ‘9 [Matthew, “Obama follows Bush on landmines”, Nov 26, http://www.guardian.co.uk/commentisfree/cifamerica/2009/nov/26/obama-landmine-ban-treaty]
> In two weeks' time, Barack Obama will accept the Nobel peace prize in Oslo for his "extraordinary efforts to strengthen international diplomacy and co-operation between peoples" and his commitment to "disarmament and arms control negotiations".Yet on Tuesday, as Americans' attentions were turning to the Thanksgiving holidays, a state department spokesman, Ian Kelly, quietly announced that the Obama administration would not sign the international antipersonnel landmine ban. He also said that the Bush-era landmine policy, a regression from Bill Clinton's position, "remains in effect"."It is painful that President Obama has chosen to reject the mine ban treaty just weeks before he joins the ranks of Nobel peace laureates, including the International Campaign to Ban Landmines," said Steve Goose, arms division director at Human Rights Watch, summing

> up the disappointment felt by many at Obama's decision. The announcement comes just days before more than 150 signatory countries of the mine ban treaty meet in Cartegena, Colombia to review progress toward eradicating the threat of landmines in the world's current and former war zones. Last year, landmines and other similar devices killed or injured more than 5,000 people, over 60% of whom were civilians and 28% children. By failing to take a strong stand against landmines, the US will appear to condone this human tragedy and make it easier for China, Russia, Iran and other non-signatories to the ban to shirk their responsibilities. Anti-landmine campaigners and liberal activists had hoped Obama would use the landmine and cluster munitions bans to demonstrate a new commitment to multilateralism, humanitarianism and disarmament. During the campaign he had hinted, though not committed himself to, a more progressive stand than Bush had taken. Instead, Obama's administration has endorsed his predecessor's unilateral repudiation of the treaty. This has outraged the anti-landmine movement, both in the US and globally. The International Campaign to Ban Landmines, a coalition of hundreds of NGOs, churches and grassroots organisations worldwide, "strongly condemned" the decision; its US counterpart called the announcement "shocking". "We cannot understand this shameful decision and we definitely cannot understand President Obama's decision to continue with the Bush policy," said Jody Williams, Nobel co-laureate for her role in the landmine ban. "This decision is a slap in the face to landmine survivors, their families and affected communities everywhere." While the US has not used landmines since 1991, it has stockpiles of some 10m antipersonnel mines and 7.5m anti-vehicular mines, and has used cluster bombs, which leave behind explosive "duds" that act as de facto mines, in Kosovo, Afghanistan and Iraq.

Evidence can be found that more directly links US ratification with stronger enforcement and a race for others to ratify the convention. The following evidence by Loy in 2010 is just one example of the kind of evidence available to the affirmative:

> Loy 3-5-10 [Irwin, “Ottawa Treaty: Local push for US to ban mines”, http://www.phnompenhpost.com/index.php/2010030533119/National-news/ottawa-treaty-local-push-for-us-to-ban-mines.html]
> Anti-land mine campaigners in Cambodia met with US Ambassador Carol Rodley this week, urging US authorities to sign on to a global treaty banning the weapons. Cambodia and 155 other countries have ratified the Ottawa Treaty, which came into effect this week in 1999, banning signatories from using or stockpiling land mines. The US is among the most prominent countries not to have signed. “We think it’s time that President Obama decided that standing outside the Ottawa Treaty agreed to by 156 nations is just out of date,” said Sister Denise Coghlan, country director of Jesuit Refugee Services and a member of the International Campaign to Ban Land Mines. If the US comes on board, Coghlan said, it could have a domino effect on other nations who also haven’t signed on to the treaty, including Russia, Pakistan, China and Israel. Coghlan said campaigners in other nations also planned to meet with US officials to press the issue. The ambassador, Coghlan said, was “very, very gracious” and promised to convey the message. Also present at the meeting was Tun Channareth, an amputee who accepted the Nobel Peace

> Prize on behalf of the ICBL in 1997. Cambodia ratified the land mine treaty in 1999. It has yet to sign on to the Convention on Cluster Munitions, which will come into effect this year.

There is a built in diversity of scenarios in these ratification based advantages. First, the possibility that the plan might lead to follow on ratifications by China, Pakistan or Russia give the affirmative some flexibility and the possibility of breaking new scenarios throughout the season based in different countries or regions of the world, including Asia, Europe and the Middle East. Secondly, process based advantages will most likely be a necessity in combating negative demining counter plans or process based arguments guaranteeing that these areas of literature will be well researched by affirmative teams.

In addition to modeling arguments, there is a swell of international organizations and countries that strongly push for the US ratification of the convention. In this vein there is quality evidence suggesting that US action would bolster US humanitarian credibility, providing the opportunity not only for more general soft-power advantages but also human rights credibility and international law advantages. Trevor Holbrook explains below:

> Trevor Holbrook is a M.A. International Relations candidate at Webster University in Bangkok, Thailand, "INTERNATIONAL HUMANITARIAN LAW AND THE PROMOTION OF HUMAN SECURITY", 17 Hum. Rts. Br. 24, Fall 2009, lexis
> While the purpose of the Ottawa Convention is clearly in line with the U.S. mission to support human rights and humanitarian action around the world, perhaps the most important reason for accession to the Convention are the treaty's implications for the future of international law. While the United States has supported the elimination of civilian landmine threats over the last twenty years, it has also continued to insist on the tactical military importance of indiscriminate anti-personnel landmines and has developed its policy based heavily on the military viewpoint. This insistence flies in the face of the international community's acknowledgement of the disproportionate humanitarian effect of such weapons and the successful introduction of the human security concept into international law. Accession to the Convention is in the best long-term interest of the United States, allowing it to stay near the forefront of international law. Possessing the technology and capability to develop new weaponry, the United States must find an alternative to landmine use in Korea. The cost of ignoring the international consensus in order to maintain a fifty-year-old war zone is short-sighted and in opposition to U.S. goals to spread freedom and improve international security.

C. Development / Agriculture

A final affirmative area is the opportunity for development and agricultural advantages. Many of the more heavily mined parts of the world prevent public development of those spaces inhibiting trade, travel and agricultural development. In many cases landmines are deployed in countries that already suffer from high rates of poverty or food shortages, etc. The obligation placed on ratifying nations to actively decrease their stockpiles would likely mean that the plan would require the US to remove their mines globally and the affirmative may be able to win the modeling claim that other nations would follow suit. The global reduction of deployed landmines would free up thousands of acres of "occupied" land for more productive uses and provide the affirmative with an interesting and compelling advantage area. Holbrook explains again:

> Trevor Holbrook is a M.A. International Relations candidate at Webster University in Bangkok, Thailand, "INTERNATIONAL HUMANITARIAN LAW AND THE PROMOTION OF HUMAN SECURITY", 17 Hum. Rts. Br. 24, Fall 2009, lexis
> The military purpose of anti-personnel landmines (APLs) is to prevent or complicate access to specific areas by killing or incapacitating enemy ground troops. 1 Unfortunately, the vast majority of landmines used in the last several decades have been left in place following the end of conflict, posing a grave threat to local populations. Today, more than eighty million landmines remain active in over seventy countries. Since the end of the Cold War, the international community and non-governmental organizations (NGOs) have recognized the humanitarian crisis posed by landmines. The scale of the landmine crisis is alarming and has both direct and secondary impacts on affected communities. Since 1975, it is estimated that over one million people have been killed or maimed by APLs, including hundreds of thousands of children. 2 Landmine victims become a burden on their families because many can no longer work, and most require substantial medical care. In addition to the physical threat these weapons pose, their presence can have strong psychological effects and can hinder development and economic opportunities. More so than the mine itself, the threat of its presence is the underlying cause of the humanitarian crisis. Mines Advisory Group founder Rae McGrath states, "Any area suspected of being mined is a minefield until proven safe." 3 The possibility of landmines can prevent civilians from using farmland or traveling to another village, reducing productivity and preventing trade. Moreover, mine clearance is dangerous and costly, deterring investment from mine-affected communities and preventing development. These factors keep communities trapped in poverty and insecurity, and prevent a return to normalcy for decades after a conflict ends.

Negative arguments

This section investigates the potential negative arguments that are likely to make up the generic arsenal against an affirmative advocating a ban on landmines. As with the previous section, this list is not exhaustive. It is meant as primer on the most likely areas available to the negative when constructing strategies. This section discusses military necessity / relations disadvantages, politics and counter plans.

A. Military disadvantages

While the international NGO community ardently rejects the military need for landmine deployment there are still vocal and influential elements of the US (and others countries) military that firmly believe that landmines have a place in the US conventional arsenal either as a deterrent or as a necessary signal from the administration to the military that all US options are left open and that the defense of US troops or allies remains a priority.

Probably the "biggest" of these disadvantages centers on the deployment of US landmines in the demilitarized zone between South and North Korea. Colonel Albert Marin explains the possible deterrent effect of US landmines in the Korean Peninsula:

> Marin '3 [COL Albert G. Marin III, "USAWC STRATEGY RESEARCH PROJECT ANTIPERSONNEL LANDMINES – DO THEIR COSTS OUTWEIGH THEIR BENEFITS?", http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA413655]
> Given unlimited depth of the battlefield and the luxury of time commensurate with that depth, there is little doubt that the ROK-US forces would prevail in a future conflict, with minimal noncombatant loss of life. The Commander of Combined Forces Command does not have the luxury of depth. Current intelligence estimates state that an unambiguous warning of a North Korean attack into Korea will be 24-48 hours.22 Using a best case scenario, and in consideration of the fact that the ROK will be mobilizing and moving forces northward as rapidly as possible at the same time Seoul's 22 million try to get out of harm's way, every second counts. It cannot be forgotten that major cities north of Seoul, such as Uijongbu, Tongduchon, and Munsan, will be adding their own million plus populations each to the chaos. No longer is Seoul the single large metropolis north of the Han River. In a matter of hours, millions of people in Seoul and northward could be embroiled in a swift moving conflict of unequalled proportions in history. The landmines along the DMZ, although not the sole discriminating factor in the fight, are a significant impediment to a flood of North Korean forces sweeping south and reeking havoc on the

> second most densely populated city in the world. Army General Thomas Schwartz, the former Commander-In-Chief of the United Nations Command/Combined Forces Command and Commander, United States Forces Korea, states of the austerity of the situation, "The Kim, Chong-Il Regime in North Korea continues to maintain a large, capable, and forward deployed military – making the area between Pyongyang and Seoul the most militarized place on earth. Korea remains a place where U.S. Forces could almost instantaneously become engaged in a high intensity war involving significant ground, air, and naval forces. Such a war would cause loss of life numbering in the hundreds of thousands and cause billions of dollars in property destruction."23 Landmines in the Republic of Korea defend a lot more than the U.S. military – millions of noncombatants are defended as well. Landmines are not the panacea for a Korean War fight; however, they provide added security to one of the world's most tenuous military standoffs and are but one of several risk mitigating means available twenty-four hours a day, seven days a week, three-hundred and sixty-five days a year. Although the mines may not be required to win the conflict, they are in fact needed to limit casualties should a conflict arise.

In addition to US based disadvantages, the affirmative's modeling argument provide ample opportunity for the negative to generate offensive arguments for other countries, like Israel and Iran or China and India. A conflict in either instance would have a shot of escalating to nuclear use giving the negative a host of possible disadvantages that would not necessarily focus solely on the US position on landmines.

In addition to deterrence or perception based disadvantages, the cadre of military support continuing US deployment of landmines abroad would have an impact on civil-military relations, opening the door for another area of military related negative arguments. Again, Bolton explains the possible risks:

> Matthew Bolton, "Ban these pernicious weapons", December 6, 2008, http://www.guardian.co.uk/commentisfree/2008/dec/06/armstrade-obama-white-house Indeed, the Pentagon has long been loath to give up weapons, even seemingly contemptible ones, if they give US troops the slightest battlefield advantage. Despite considerable international consensus that the military value of landmines is outweighed by their devastating humanitarian effects, the Pentagon continues to assert its prerogative to stockpile and deploy mines.

B. Politics / process based advantages

Of course, there is solid politics and midterms ground available to the negative. With midterm elections approaching taking a softer stance on US national security could put Obama or democrats at risk of political backlash. As we noted above, there is a strong military lobby that would oppose ratification of any kind of ban on landmines. Additionally, the plan could alienate base support for Democrats or provide a wedge issue for the GOP. Bolton explains:

> Bolton '9 [Matthew, "Obama follows Bush on landmines", Nov 26, http://www.guardian.co.uk/commentisfree/cifamerica/2009/nov/26/obama-landmine-ban-treaty]
> Obama's apparent approval of a hawkish Bush administration policy has also angered his base supporters, who had hoped his election would usher in an era of liberal, multilateral and gentler foreign policy. When veteran Democratic senator Patrick Leahy of Vermont endorsed Obama's presidential run in 2008, he told reporters it was because we needed a president who could "reintroduce America to the world". However, this week, Leahy did not hold back in his criticism of Obama. "The United States is the most powerful nation on earth. We don't need these weapons and most of our allies have long ago abandoned them," said Leahy. "It is a lost opportunity for the United States to show leadership instead of joining with China and Russia and impeding progress." On Wednesday, in the face of this criticism, the Obama administration seemed to backpedal slightly, saying that a policy review on landmine issues was still continuing. Landmine activists have called on the administration to engage and consult with outside experts, Nato allies who are members of the treaty and organisations working to clear landmines. As a Nobel peace laureate and the leader of the world's most powerful nation, Obama has a duty to live up to his responsibilities to protect civilians in current and former war zones. Obama's misstep must serve as a wake up call for concerned liberal citizens in the US and around the world. Just because Obama shares our language, and probably our ideals, if he doesn't feel political pressure from the left, his administration will be tempted to avoid a backlash from the right by maintaining hawkish and unilateralist Bush-era policies.

Another card from the same author speaks to the concern that the plan would open the Democrats to criticism of their foreign and national security policy at a sensitive time:

> Matthew Bolton, "Ban these pernicious weapons", December 6, 2008, http://www.guardian.co.uk/commentisfree/2008/dec/06/armstrade-obama-white-house
> Though Obama is currently non-commital on the cluster munitions ban – a spokesperson said he would "carefully review the new treaty" – he believes in multilateralism and, as a senator, voted for restrictions on US cluster munitions use. "In general, I strongly support international initiatives to limit harm to civilians caused by conventional weapons," Obama said in September. "As president, I will help lead the way on these

> issues." However, with his anti-Iraq war stance, he may be nervous to seem soft on national security, an epithet often leveled at the Democrats. Obama's party has unpleasant memories of Clinton's clashes with the Pentagon over homosexuals in the military and may want to avoid an early battle with the defence establishment.

Certainly this is not a complete telling of the opportunity for engaging debates on politics over the question of ratification of a landmine ban. However, even from our minimal research in this area we feel comfortable concluding that there would be a robust politics debate that could include many specific links scenarios not only from national security and military interests, but also a left leaning international NGO community and/or public support for a less militaristic and more multilateral US administration.

C. Counter plans

As the convention allows both exceptions and statements of intent to be declared at the time of ratification there is ample counter plan ground based on those exceptions. A detailed explanation of the ratification process as well as the requirements imposed on states ratifying the treaty is explained by the Landmine and Cluster Munition Monitor and can be can be found on the web here: http://lm.icbl.org/index.php/publications/display?url=lm/1999/appendices/international_law.html

However, in a general sense there is strong evidence that supports US ratification with a declaration that exempts certain theatres of landmine use from the agreement. While the reasons landmines are good are probably few, especially arguments for maintaining their presence in places where the conflicts have ended, area PICS may be useful against such cases. The Ottawa Treaty clearly states that landmines must never be used in ANY circumstances:

> Article 1. General Obligations. 1. Each State party undertakes never under any circumstances: (a) To use anti-personnel mines. ..."

As we noted above, in the disadvantage section North Korea is one nation where an exemption is advocated. Plan inclusive counterplans that specify an area where there is a

compelling need to exempt application of the convention would be an effective weapon in the negative tool box as Shenon describes below:

> Shenon 97
> (Philip, Staff, NY Times, Clinton Still Firmly Against Land-Mine Treaty, http://www.nytimes.com/1997/10/11/world/clinton-still-firmly-against-land-mine-treaty.html?pagewanted=1)
> Last month the President announced that the United States would not sign a treaty supported by nearly 100 other nations to ban the use of anti-personnel land mines. The United States had offered to sign the treaty only if it was amended to allow the continued use of land mines along the tense border between North and South Korea for at least 19 more years, and to allow the use of anti-personnel mines in conjunction with anti-tank mines. Mr. Clinton insisted on the exemptions at the urging of the Defense Department, which warned that the United States would invite disaster on the Korean Peninsula if it removed the nearly one million land mines that seed the border between the two Koreas. Pentagon officials insist that without the buffer provided by the minefields, the North Korean Army could seize the South Korean capital, Seoul, within hours of the start of an invasion. About 37,000 American soldiers patrol the Korean border. In his announcement last month, Mr. Clinton said he could not accept a complete ban on anti-personnel land mines because doing so would put American soldiers at risk.

In addition to exemption counter plans, there are a host of advantage counter plans that would be effective in dealing with large portions of the affirmative advantages. For example, multiple demining organization and NGOs are very effective in demining exercises uses various methods for disposal (the Air Knife, trained dogs, foam, etc). Counter plans like these would allow the negative some ground to solve basic affirmative arguments while still claiming disadvantages to treaty ratification.

Since the convention requires ratifying nations to clean up and dispose of mines, there are potentially disadvantages to the physical removal or storage and disposal of the mines themselves. There is a healthy debate over not only the humanity and effectiveness of the techniques used for clearing mines but the environmental effects of their removal. For instance, in countries where the US, or other militaries, have used chemicals in warfare (agent orange in

Viet Nam, for example) the removal of mines can activate chemical compounds in the soil that can have enormous health and environmental effects.

There is also much debate about the effectiveness of the provisions of the treaty, which exempts many varieties of mines that are not viewed as sole anti-personnel. Anti-tank, and anti-vehicle mines are just one example of such an exemption that would bring into question efficacy of US ratification.

Conclusion and recommendation

There is sufficient evidence to sustain the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction as a plank of a larger treaties topic. The affirmative would have chances to innovate by researching country specific scenarios in all the areas listed above and the negative would have sufficient ground to research case specific disadvantages and counter plans that would be effective against the case. Additionally, it is unlikely that Obama will move to support the convention in the status quo, despite his leaning towards multilateral consensus building or disarmament. In these respects, the convention does appear to offer a decent ground for both sides and advance a valuable educational debate.

If there is a concern it might be that the literature in this area is a bit stale and that little has radically changed in terms of the Meta arguments since the last time the community debated landmine issues (Southeast Asia, Africa). Despite this concern, the issue of a landmine ban has never been addressed directly in terms of treaty ratification and as a plank of a larger topic about treaties would most likely open up space for debates that have yet to be explored by our community in any real depth. We believe that while there might be some concerns, the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-

Personnel Mines and on their Destruction would be a solid, workhorse affirmative if included in a resolution.

Part 4: The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

By David Cram Helwich, University of Minnesota

I have been tasked with providing an answer to a specific question: Should a "treaties" resolution include ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, also referred to as the "Women's Rights Treaty") as a plan option? My answer is a qualified "yes", for reasons discussed in the following paragraphs.

Background: Provisions and Status

First, I should provide a bit of background information about CEDAW. According to the ever-reliable Wikipedia and any number of law review articles, the convention was adopted by the UN General Assembly in 1979 and entered into force in 1981. The convention is overseen by the Committee on the Elimination of Discrimination against Women (CEDAW Committee), which includes a number of women's rights experts. As is the case with many human rights convention oversight bodies, the CEDAW Committee is tasked with reviewing reports of convention compliance from treaty parties. The United States is a signatory to the convention (under Carter), but has not ratified the document. Most commentators conclude that the prospects for Senate ratification are quite dim in the status quo. The most recent sources (early 2010) claim that the Senate has held a number of hearings (at least six) on CEDAW, but no hearings have been held since 2002. The United States is one of only a handful of states to have not ratified the treaty, joined by human rights-holdout stalwarts like Iran, Somalia, and Sudan and a few Pacific Island nations. CEDAW also includes an "Optional Protocol" that allows states parties to sign off on the ability of individuals to bring claims before the CEDAW Committee.

The treaty includes a number of wide-ranging provisions that are designed to ensure political, social and economic equality for women and girls. CEDAW's "equality agenda" is spelled out in the treaty's articles, pronouncing women's rights "to non-discrimination in education, employment, and economic and social activities..." relatively unfettered reproductive rights, and the duty of treaty parties "to work towards the modification of social and cultural patterns of individual conduct in order the eliminate 'prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either the sexes or on stereotyped roles for men and women'". The UN's summary of the treaty provisions, and the text of the treaty itself, can be found at <<www2.ohchr.org/english/law/cedaw.htm>>. Although the convention does not make many specific policy recommendations, the legal ramifications of such sweeping provisions are breathtaking, according to critics and advocates alike.

However, like many human rights conventions, CEDAW is not considered to be self-executing, meaning that the rights provisions in the document would only have policy significance to the extent that they were implemented through the federal statutory process. In the "real world," it is also likely that any U.S. ratification of CEDAW would include a number of reservations, understandings and declarations (RUDs) that would seriously limit the convention's domestic legal effects--the Clinton administration's (limited) push for ratification was tied to a number of such restrictive RUDs. This suggests that the topic committee should give considerable attention to (a) the issue of whether any resolution would mandate plan implementation of some or all of CEDAW's provisions, and (b) whether any resolution should speak to the affirmative's ability to include RUDs as part of the ratification process. There are obviously strong arguments on both sides of these questions, and I have not done enough

research to come to a definitive conclusion on these issues, which also implicate any other non-self-executing treaties under consideration.

****CEDAW is not self-executing****

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 138-139.
The U.S. Constitution is unambiguous in stating that treaties are the supreme law of the land. n115 **In the United States, no one branch of government alone has the power to enter into treaties**. n116 **Enabling legislation is the only clear indication that both the executive and the legislative branches agree that the United States will be bound by treaty obligations.** n117 **Without** enabling (or implementing) legislation**, the "treaty" is nothing more than an indication by one branch of the government (the executive) that the U**nited **S**tates **intends to be bound by the document's provisions. There is no enforceable agreement without signature by the President, advice and consent by the Senate, and, in the** [*139] **case of a non-self-executing treaty** n118 **such as CEDAW, enabling legislation**.

****CEDAW, unlike SORT, will remain inherent****

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 139-140.

However**, even if the Senate were to somehow reach consensus on the treaty and grant its consent, CEDAW would only become effective in the United States upon passage of enabling legislation**. n124 **It is the enabling legislation, rather than CEDAW, [*140] that would confer upon individual citizens the right to enforce the treaty's terms in the United States**. n125 **Given the historical reluctance on the part of the Senate to even grant consent to ratification of human rights treaties, compounded by its failure to enact subsequent enabling legislation, it seems safe to say that CEDAW is not likely to become a part of U.S. law any time soon**. n126

Affirmative Ground

Most treaty advocates argue that U.S. ratification of CEDAW would significantly decrease gender inequality in both the United States and other countries. The National Organization for Women (NOW) argues that CEDAW has already had a number of positive effects that will only be bolstered by American ratification, including:

* Decreasing sexual enslavement and trafficking
* Securing legal recourse for protection against violence and rights abuses

* Increasing access to health care and education
* Expanding access to reproductive services
* Bolstering property and economic rights and access
<<http://www.now.org/issues/global/cedaw/General%20CEDAW%20Fact%20Sheet.pdf>>

Obviously, affirmative teams could claim any number of specific advantages based upon implementation of one or more of the convention's provisions--things like universal daycare, removal of federal funding restrictions on reproductive services, re-instatement of VAWA's legal redress provisions, etc. are all possibilities. Affirmative advantage ground is very broad, which seems to be one of the factors that made the 2002/3 topic so popular--stable mechanism, lots of advantage (disadvantage) flexibility.

I also readily found some very strong evidence that the mere act of ratification, sans implementation, would both bolster U.S. human rights credibility and materially benefit women and girls round the world. There also seems to be a lot of evidence that would support various soft power based advantages--check out the "War on Terror" card at the end of this section. I think that the evidence speaks for itself.

****Nonratification destroys U.S. human rights leadership, action will promote women's rights globally****

Harold Hongju **Koh**, Professor, International Law, Yale, "Why America Should Ratify the Women's Rights Treaty (CEDAW)," CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW v. 34, Fall 20**02**, p. 269-270.

At the same time, **from my direct experience as America's chief human rights official**, I can testify that **our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights community. Nations that are otherwise our allies**, with strong rule-of-law traditions, histories, and political cultures, **simply cannot understand why we have failed to take the obvious step of ratifying this convention**. In particular, **our European and Latin American allies regularly question and criticize our isolation from this treaty framework both in public diplomatic settings and private diplomatic meetings. Our nonratification has led our allies and adversaries alike to challenge our claim of moral leadership in international human rights, a devastating challenge** in this post-September 11 environment. Even more troubling, I have found, **our exclusion from this treaty has provided antiAmerican diplomatic ammunition to**

countries who have exhibited far worse record on human rights generally, and women's rights in particular. Persisting in the aberrant practice of nonratification will only further our diplomatic isolation and inevitably harm our other foreign policy interests. [*270] **Treaty ratification would be far more than just a paper act. The treaty has demonstrated its value as an important policy tool to promote equal rights in many of the foreign countries that have ratified the CED**AW. As a recent, comprehensive world survey issued by the United Nations Development Fund for Women chronicles, **numerous countries around the world have experienced positive gains directly attributable to their ratification and implementation of the CEDAW**. n35 In such countries as Nepal, Japan, Tanzania, Botswana, Sri Lanka, and Zambia, CEDAW has been empowering women around the globe to change constitutions, pass new legislation, and influence court decisions**. Ratification of CEDAW by the United States would similarly make clear our national commitment to ensure the equal and nondiscriminatory treatment of American women in such areas as civil and political rights, education, employment, and property rights.**

RUD-laden counterplans do not solve signal/credibility based advantages

Harold Hongju **Koh**, Professor, International Law, Yale, "Why America Should Ratify the Women's Rights Treaty (CEDAW)," CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW v. 34, Fall 20**02**, p. 270-271.

After careful study, I have found nothing in the substantive provisions of this treaty that even arguably jeopardizes our national interests. Those treaty provisions are entirely consistent with the letter and spirit of the United States Constitution and laws, both state and federal**. The United States can and should accept virtually all of CEDAW's obligations and undertakings without qualification. Some have suggested that any United States ratification be accompanied by an extensive package of reservations, understandings, and declarations**. Indeed, past Administrations--including the 1994 Clinton Administration I later served - have unwisely proposed that ratification be accompanied by a detailed package of conditions designed to insulate existing U.S. practices with regard to protection of individual privacy, the role of women in combat service, comparable worth in pay, maternity [*271] leave, freedom of speech, family planning, and the like. All told, these various proposals would reserve to or place understandings upon all or part of Articles 2, 3, 5, 7, 8, 11, 12, 13, and 29 of the treaty, in addition to offering a general understanding about the need to protect states' rights and a blanket declaration that the first thirty articles of the treaty are not selfexecuting. n37 **To proceed with such a qualified, "swiss cheese" ratification in which the legal exceptions would overshadow the core act of ratification would be politically unwise, legally questionable, and practically unnecessary to protect American national interests**. As Rebecca Cook has pointed out, **the purpose of the Women's Treaty is to ensure that states parties move progressively toward elimination of all forms of discrimination against women; "reservations to the Convention's substantive provisions pose a threat to the achievement of this goal."** n38 Upon closer examination, only one of those understandings, relating to limitations of free speech, expression and association, is even arguably advisable to protect the integrity of our national law. n39 **More fundamentally**, as Professor Henkin has noted, **the unsound practice of prospectively declaring human rights treaties non-self-executing seeks to achieve by treaty declaration what Senator Bricker and his allies failed to obtain by constitutional amendment**

decades ago. n40 **At this late date, we gain little and lose much in international credibility, if through extensive reservation practice we** [*272] **resurrect Bricker's ghost and radically qualify our acceptance of a treaty that most of the world has embraced unconditionally**.

****Ratification strengthens the regime and U.S. commitment to end global gender discrimination****

Harold Hongju **Koh**, Professor, International Law, Yale, "Why America Should Ratify the Women's Rights Treaty (CEDAW)," CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW v. 34, Fall 20**02**, p. 267-269.

Ratifying this treaty would send the world the message that we consider eradication of these various forms of discrimination to be solemn, universal obligations. **The violent human rights abuses we recently witnessed against women in Afghanistan, Bosnia, Haiti, Kosovo, and Rwanda painfully remind us of the need for all nations to join together to intensify efforts to protect women's rights as human rights**. n27 **Because much of the discrimination against women goes on behind multiple veils of family privacy, culture, religion, and sovereignty, available governmental statistics are notoriously inaccurate in their undercounting of acts of gender discrimination. Yet even so, the facts are haunting**. As Amartya Sen has reminded us, **around the world, more than 100 million women are likely missing**. n28 In all parts of the world, **women are subject to stunning abuses resulting from deeply entrenched cultural and religious norms, and family and community practices are often shielded from external scrutiny by claims of privacy or sovereignty**. To take just one example, more than 115 million women have been forced to undergo genital mutilation, and some two million still risk this harmful procedure every year. n29 The same goes [*268] for another traditional practice: the ironically named "honor killings"--a practice better called "arbitrary killings"--whereby family members take it upon themselves to kill their sisters or cousins if they suspect them of bringing shame upon the family. n30 In almost every part of the globe, women are far less likely to be literate; they lag far behind men in access to higher education; and they enjoy many fewer job opportunities. n31 Even in the 21st century, a modern form of slave trade persist under the label of trafficking in persons," especially women and children. **n32 At the State Department, where I supervised the production of the annual country reports on human rights conditions worldwide**, n33 **I found that** [*269] **a country's ratification of the CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into its domestic laws**. n34 **Let me emphasize that in light of our ongoing national efforts to address gender equality through state and national legislation, executive action, and judicial decisions, the legal requirements imposed by ratifying this treaty would not be burdensome**. Numerous countries with far less impressive practices regarding gender equality than the United States have ratified the treaty, including countries whom we would never consider our equals on such matters, including Iraq, Kuwait, North Korea, and Saudi Arabia.

****U.S. failure to ratify the treaty undermines women's rights around the world****

Nora **O'Connell**, legislative director and Ritu Sharma, executive director, Women's EDGE, "Point/Counterpoint: Treaty for the Rights of Women Deserves Full U.S. Support," HUMAN RIGHTS BRIEF v. 10, Winter 20**03**, p. 22+.
The failure of the United States to ratify CEDAW allows other countries to continue their neglect of women and undermines the powerful principle that human rights of women are universal across all cultures and religions. Until the United States ratifies, our country cannot credibly demand that others live up to their obligations under this treaty. Ratification would cost the United States little. Because the United States is a world leader in securing women's human rights in our own country, we are already largely in compliance with the treaty.

Ratification solves the War on Terror--wins the vital battle of hearts and minds

Ravi **Mahalingam**, attorney, "Women's Rights and the "War on Terror": Why the United States Should View the Ratification of CEDAW as an Important Step in the Conflict with Militant Islamic Fundamentalism," CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL v. 34, Spring 20**04**, p. 173-174.
Militant Islamic fundamentalists view both the international struggle against western power and the cultural struggle within Islamic societies as equally important to their cause. Both are products of the same source, namely, western, and in particular **U.S., power and values. Overcoming the threat of militant Islamic fundamentalism cannot be reduced simply to breaking up prominent terrorist networks like Al-Qaeda**. The history of militant Islamic fundamentalist movements suggests that **other variants will appear regardless of a particular leader or organization, and will continue, unless challenged and discredited**, to be a potent political force within the Islamic world. Moreover, because of their intense ideological commitment, fundamentalist groups will continue to confront Western and U.S. interests. The scale and audacity of the September 11th attacks will be the barometer by which future militant Islamic fundamentalist activity is measured. Therefore, **one can, and should, expect an intensified conflict that extends from the capitals of Arab states to the U.S. itself.** This article argues that **a decisive victory in the "War on Terror" must include winning the hearts and minds of Muslims to affirmatively reject the world-view and prescriptions of militant Islamic fundamentalism. This will require the West to address the internal debate within Islamic societies between fundamentalists and modernizers**, which will necessarily focus in part on the rights and liberties of women. **Just as the U.S. often promoted human rights and individual liberty as part of its challenge to the Communist world**- [*174] **view during the Cold War**, n7 **so too should the West advance women's rights as part of its strategy to challenge militant Islamic fundamentalism. To do so, the U.S. should seek international consensus and use the tools available under international law to promote women's rights in countries that have a strong fundamentalist presence. In no way could the U.S. demonstrate its commitment to women's rights more clearly than by ratifying** the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) (also known as the Women's Rights Convention). n8 **CEDAW represents the most comprehensive statement regarding the political, economic, social and cultural rights of women, and thus, presents a direct challenge to some of the most ardently held views of militant Islamic fundamentalis**m. Moreover, with an impressive number of signatories, including many from the Arab and Muslim world, n9 **CEDAW provides an established framework of consensus through which the U.S. can exert influence in this region. If the U.S. were to assert itself as a leading proponent of**

CEDAW, it would have a broad platform to challenge militant Islamic fundamentalists while promoting a social vision that Muslims could adapt to their own societies. The U.S. could tilt the political balance of power within Islamic countries towards reform by encouraging governments to comply with CEDAW's provisions and reporting process. With the active support and leadership of the U.S. government in setting priority areas of concern regarding women's rights, moderates in Islamic societies would be empowered and emboldened to challenge, critique and weaken Islamic fundamentalist movements from within. Furthermore, CEDAW's broad acceptance by the international community would partially insulate the U.S. from the political risks of such activism, while providing a useful vehicle to seek changes in the political dynamics of Arab and Muslim societies that have lent support to militant Islamic fundamentalism.

Negative Ground

I am not especially worried about finding strong negative arguments of many flavors (policy left, policy right, critical, performative). The "core policy generics" of the topic area (politics, federalism, i-law bad, alt-implementation counterplans, alt-ratification/binding counterplans) all link well--CEDAW is big, bold, and controversial. Sovereignty nuts on the right loathe the treaty, claiming it would overturn all abortion restrictions, require the legalization of prostitution, destroy the family, and even eliminate Mother's Day. Lefties argue that the treaty does not go far enough, puts the cart before the horse, and/or adopts counterproductive legalistic solutions to profoundly cultural problems. There also seems to be a strong "traditional kritik" literature base criticizing gender representations/identity, the use of positive and negative rights to achieve social ends, the construction of women as inferior subjects needing protection, etc. K backfiles will link, and there is likely a lot of new stuff to explore. I have included some new neg cards that provide a pretty well-reasoned left-leaning takedown of the treaty, which should provide you with some ideas about some potential negative arguments.

****U.S. legal system cannot effectively implement the treaty--treaty's positive rights are confounded by the negative rights approach of the courts, child care example proves****

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 141-142.
It is by no means clear that ratification of CEDAW would immediately or automatically produce a change in circumstances for women in the United **S**tates. Look, for example, at the basic need for childcare: working mothers throughout the United States need safe, affordable childcare. n132 Nothing in U.S. law or the Constitution recognizes this need; there is no right to childcare in this country. n133 Now, **assume that the current administration makes CEDAW a priority, obtaining the advice and consent of the Senate, and introducing implementing legislation. It is almost impossible to envision that enabling or implementing legislation**. If, at best, it directs domestic courts to honor the United States' international obligations under CEDAW (as President George W. Bush declared in an executive memorandum regarding the International Court of Justice's jurisdiction in relation to the Vienna Convention on Consular Relations), n134 U.S. women might petition domestic courts to recognize a right to childcare. n135 **It is not clear, however, where U.S. courts could look for guidance in fashioning such a right. There is nothing in our legal or social culture to serve as precedent. Indeed, our Constitution is generally one of negative rather than positive rights**. n136 **A negative** [*142] **right in this context might be one that would "require government to abstain from denigrating (rather than requiring governments to intervene on behalf of) human dignity**." n137 **From the U.S. Constitution to modern labor laws, our system is designed to require that government not act, rather than that it act.** n138 **The United States lacks a framework for finding and enforcing an affirmative right to childcare. Ratification of CEDAW is not likely to change these structural characteristics of our system**.

Ratification now WORSENS the plight of women--removes pressure on the U.S. to enact meaningful gender reforms

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 151-152.
Some commentators suggest that the United States would help women everywhere if it took the step of ratifying CEDAW, and that the United States should lead by example. n197 However, as Professor Hathaway notes, "**the current treaty system may create opportunities for countries to use treaty ratification to displace pressure for real change in practices.**" n198 **There is a general "pressure" on countries to ratify human rights treaties as an expression of their "commitment to human rights norms**." n199 **Ratification of CEDAW could take the pressure off of the United States, and it would then be less likely to "improve its practices" than it otherwise** might. n200 **Even if, over time, ratification of CEDAW were to have a positive effect, "this process can take decades to lead to tangible change**." n201 U.S. **ratification would likely not only do little to hasten, but could even postpone, perhaps indefinitely, any benefit from the treaty, and could prevent the** [*152] **United States from serving as a good example anywhere around the world**. n202 **If the United States is not yet ready to commit to the goals of CEDAW it should not ratify the treaty; doing so without a commitment to the treaty's purposes could do more harm than good**. Professor Hathaway's findings should caution the

United States against ratification of CEDAW with anything less than full commitment to its objects and purposes.

CEDAW does not solve, and it undermines our bottom-up movement (or alternative)

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 159-161.

Women in the United States lead lives of abundance compared to women in many other parts of the world. Most of us [*160] are educated, are able to vote, live in houses with electricity and running water, and have the right to choose whether and when we will become mothers. We go to work at jobs where many of us earn more money than some of our male colleagues; we seek and are elected to public office. We are doctors, lawyers, judges, legislators, senators, CEOs, and Secretaries of State. **Yet discrimination against women persists even here**. n241 We are the victims of domestic violence, slavery, and prostitution. We are paid less than equally qualified men, and are still in the minority of positions of power. Our relative reproductive freedom is decided by courts and legislatures that remain male-dominated. However, **many other groups, whose members include or are even dominated by women, also continue to face discrimination in the United States**. Poor and middle class people in this country struggle daily to survive without adequate food, shelter, or health care. n242 A low-income African or Latina immigrant woman in the United States may share more concerns with a similarly situated immigrant man than she does with a middle class white woman like me. Anyone with an Arabic-sounding last name is likely to face discrimination every day in this country, regardless of sex, age, or immigration status. The elderly in this country, the majority of whom are women, are discriminated against in terms of health care, housing, and employment, for reasons that have nothing to do with sex. And many African Americans, regardless of age, sex, religion, or socioeconomic status, have had unfortunately common experiences with invidious, hateful [*161] discrimination. **n243 Ratification of CEDAW is not the answer to the discrimination that is so prevalent in the United States today. Adding yet another layer of legal protections for women will not change behavior. Only social movement can accomplish what the Constitution and laws of this country, and the variety of existing human rights documents, have not yet accomplished.** Ratification with the currently proposed RUDs would be more likely to set our country back than to move us forward toward ending discrimination. It is certainly true that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields ... ." n244 **In order for the United States to make meaningful progress in this direction, the conversation about equality must be at least maintained and, ideally, should be reinvigorated. Ratification of a treaty designed to advance women's equality may serve only to silence that conversation. Women ought to learn the lessons of the civil rights and labor movements in this country, and resist the urge to push for a treaty that will have no meaning in our lives. We would do well to urge our President, the Senate, and the Judiciary to work for real change rather than for the "failed success" that CEDAW could bring**.

****Ratification of human rights treaties DECREASES state adherence with those rights--empirical evidence proves that the aff puts the cart before the horse****

Ann M. **Piccard**, Associate Professor, Legal Skills, Stetson University, "U.S. Ratification of CEDAW: From Bad to Worse?" LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE v. 28, Winter 20**10**, p. 145-148.

Human rights treaties are different from other treaties in that the subject of the treaty is an individual rather than a state. n157 However, while there may not be benefits to the state in terms of money or power, n158 compliance with human rights treaties does increase a state's stature in the international community; its reputation, if you will. n159 A state's compliance with a human rights treaty "occurs due to state concern about both reputational and direct sanctions triggered by violations of the law." n160 There are, then, some reasons why the United States, and especially President Obama, n161 might want to pursue ratification of CEDAW. Even if any effect of ratification is more symbolic than practical, the value of "bragging rights" should not be underestimated**. It is less clear**, however, **that ratification on these terms would be a good thing, especially in light of empirical research that raises serious questions about whether ratification of human rights treaties raises or lowers a country's actual performance in relation to human rights**. n162 In her seminal work, Professor Oona Hathaway asked [*146] whether countries actually comply with the requirements of human rights treaties they join. n163 The answer, too often, is no. n164 Not only does entry into human rights treaties not improve a state's behavior, there is some evidence that doing so decreases, rather than increases, an entering state's human rights performance. n165 One explanation for this troubling result is that it is relatively easy and risk-free for countries to join human rights treaties and then to simply ignore them. n166 They reap the benefits of being able to profess allegiance to high human rights standards (thus exercising their bragging rights), and enhance their reputations in the international community. However, both monitoring and enforcement of human rights treaties are notoriously weak, so there may be no negative consequences for those countries whose participation in such treaties is nominal, at best. n167 For U.S. women, Professor **Hathaway's research may indicate that ratification of CEDAW could do more harm than good**. **If the** [*147] **United States ratifies CEDAW in name but not intent, for symbolic purposes only, any current discussion about discrimination against women in the United States will most likely end abruptly**. n168 The United States would not need to do anything more n169 than submit periodic reports n170 to the Committee, n171 and would have no motivation to even talk about ending discrimination. Supporters of CEDAW in the United States like to point out that its ratification would require no changes to existing U.S. law because the Constitution and federal laws already protect women from discrimination. n172 If so, then **post-ratification compliance by the United States would require nothing more than periodic reports to the Committee, of which the United States could become a member upon ratification.** n173 **Nothing would change: no new laws, no new basis for litigation, no policy reform**. **The only logical effect of symbolic ratification for women in the United States would be that there**

would no longer be a reason for the country as a whole to engage in any [*148] **conversation about the fact that women in the United States continue to experience discrimination on the basis of sex. Ratifying CEDAW could amount to sweeping the problem under the carpet, which generally does more harm than good.**

Some Final Thoughts

CEDAW is, on balance, worth debating. The social challenges addressed by the treaty are important, controversial, and merit our attention. There is a robust debate about the merits of the treaty, and the convention is prominent enough that scholars and advocates from across multiple spectrums have written about CEDAW, providing the raw materials for the argument preferences of the many "camps" (or civilizations) that are a part of the debate community. Advantage and disadvantage ground is diverse, there seem to be a number of interesting counterplan options, and the convention intersects with truckloads of critical literature.

A lot more research needs to be completed before CEDAW is included in any "treaty topic" list. I am happy to work on such an effort, having accumulated a fairly lengthy cite list and a number of cards from books (those paper things with hard covers that one sometimes finds in libraries) that I have not had the time to scan/OCR.

I do have a couple of reservations about CEDAW. First, a lot of the best literature is kind of old, at least by collegiate debate standards. There are new articles published about the convention on a fairly regular basis, but many of the core debates about the merits of the convention were staked out in the early 1980s, and do not seem to have shifted much since then. I do not have a problem with this per se, but others could raise concerns. Second, the question of whether affs must implement some or all of the treaty provisions is a serious issue--aside from politics, many of the best disadvantage and kritik links stem from changing domestic law to conform with convention standards. The U.S. is also arguably in compliance with a number of

CEDAW's provisions (this is debatable, obviously). It is possible that many CEDAW debates will come down to politics v. signal advantage. I do not mind such an outcome either, but others might.

Part 5: The International Criminal Court

By Patrick Waldinger, Boston College

Introduction to the International Criminal Court

The Rome Statute of the International Criminal Court (hereafter ICC) was established to prosecute the most heinous crimes on the international scale. Spurred on by the Nuremberg trials after World War II, the idea was to have a permanent international court to help end impunity and establish impartial international justice. In 1998, 120 countries met in Rome with the goal to establish such an international criminal court. After much deliberation between the members over how much power to give a court of the magnitude and accommodating the United States with many provisions to help maintain its sovereignty, the delegates left Rome with an outline of a permanent court waiting to be accepted.

In order for the court to go into force, 60 states, or half the members at the Rome Conference, had to ratify or accede to the Rome Statute's mandates. In April 2002, the Rome Statute received its 60th ratification to be accepted into force. The Court officially went to force on July 1, 2002. As such, the Court exists today. While there are arguments that the U.S. is essential to the ultimate success of the ICC, the U.S. is not necessary for its existence. As of this writing, there are over 110 Party States to the ICC. However, there are notable exceptions, including Russia, China, and India along with the United States.[42]

The ICC's permanent site is in the The Hague, The Netherlands. The ICC consists of eighteen judges elected for varying terms. The Chief Prosecutor is Luis Moreno-Ocampo from

[42] What is very interesting is that while the ICC has an overwhelming majority of nations as members, over half the world's population is theoretically not under the jurisdiction of the ICC.

Argentina. Moreno-Ocampo has been the only Chief Prosecutor of the ICC and his, non-renewable term is up in 2012. The Prosecutor can initiate cases and take referrals. A case can come before the Court in one of several ways: 1) Referred to the Prosecutor by the State Party 2) Referred to the Prosecutor by the UN Security Council 3) The Chief Prosecutor can initiate his or her own investigation. In order for the prosecutor to initiate an investigation, a pre-Trial Chamber must review the merits of the case. If a majority (i.e., 2 out of 3) of the pre-Trial Chamber agrees to initiate, then an investigation can begin.

The ICC has jurisdiction over four crimes: genocide, war crimes, crimes against humanity and aggression[43]. The ICC's jurisdiction is not retroactive, i.e., the ICC does not have jurisdiction over any alleged crime committed before July 1, 2002. Any State Party or state who has ratified or acceded to the ICC automatically accepts the jurisdiction of the ICC. The problem for the ICC is that the states who are Party Members are not the ones likely to commit the more egregious international crimes. Having rejected universal jurisdiction to protect sovereignty in Rome, the Court has several ways in which it can assert jurisdiction: 1) The person accused is a national State Party 2) The crime was committed on the territory of a State Party 3) The United Nations' Security Council gives the ICC jurisdiction over a non-State Party.

The ICC was established to end impunity of egregious international crimes but given compromises in the Rome Statute, the ICC is known as a "court of last resort". The ICC operates under the principle of "complimentarity", i.e., the ICC will only prosecute a case if the nation in question is unable or unwilling to prosecute their own national(s). Theoretically, if a nation has a "sham" trial the ICC can trump that decision and decide to prosecute in spite of the

[43] While in the Rome Statute, the Party States agreed not to prosecute aggression for the first 10 years. As mentioned later in the paper, the Party States will revisit this in May with important ramifications for the debate topic.

national "trial". As explained later in the paper, the ICC is currently active in investigating and prosecuting several different international crimes.

U.S. Response to the Court

Like all international treaties, the ICC illustrates an interesting nexus between maintaining sovereignty and supranational authority, such as, giving the Court enough power to execute its duties. The U.S. has concerns about maintaining its sovereignty. Several compromises, such as the Pre-Trial Chamber and complementarity, implemented solely for the U.S.' benefit, were not enough to encourage their participation, upsetting several of the Party States who only agreed to these provision on the assumption the U.S. would become a member of the Court. The U.S.' response to the ICC was once receptive but became more hostile as the reality of the Court came into existence.

On December 31, 2000, only several weeks before he was out of office, President Bill Clinton signed the treaty. Signatures on treaties are not binding, rather, they indicate an acceptance of a treaty's provisions and the understanding that one day ratification will occur. Ratification is a difficult process in the United States as it is a unique process which requires two-thirds majority of the Senate only. Given the end of his term and his own misgivings about the Court, Clinton did not encourage ratification of the ICC.

After arriving in office in January 2001, George W. Bush did not immediately change the U.S.' position against the ICC. It was only when the Court was perceived as becoming a reality, i.e., that 60 states were going to ratify the Statute, that Bush and Congress took action. On May 6, 2002, the Bush Administration took the bold step of withdrawing the U.S.' signature from the ICC. The U.S. had never in its history "unsigned" an international treaty. Such a move was seen

with disdain on the international scale since the U.S. instantly change its stance from "one day the U.S. will ratify" to "screw the ICC".

The U.S. did not end there to protect itself from the Court's jurisdiction. The U.S. sought to sign bilateral immunity agreements, also known as BIAs or Article 98[44] Agreements, to prevent U.S. soldiers from being brought under the ICC's jurisdiction. Several countries refused to sign these agreements arguing they violated the spirit, if not, the letter of the treaty. The U.S. refused to take "no" for an answer on the BIAs. The U.S. conditioned military aid on countries who did not sign these agreements. As will be explained more later in the paper, in 2005 the U.S., in addition to the military assistance, also conditioned several forms of economic assistance to countries as an incentive to sign the BIAs.

In August of 2002, Congress passed and Bush signed into law the American Servicemembers' Protection Act (hereafter ASPA). The ASPA had several provisions to protect the U.S. from the Court's jurisdiction, including restricting any cooperation with the ICC, conditioning U.S. support of UN peacekeeping missions on immunity, conditioning military aid on countries signing BIAs, and authorizing military force to retrieve U.S. and/or allied nationals from the ICC's jurisdiction. The latter provision earned the ASPA the nickname the "Invade the Hague" Act. The ASPA also includes a provision that allows Presidential waivers so the Act does not interfere with the President's duty to conduct foreign policy. The U.S. later adopted the Dodd Amendment to the ASPA which clarified that the U.S. could cooperate with the ICC if it was working to bring terrorists and other strategic persons of interest to trial.

The U.S.' reaction to the emergence of the ICC was swift and strong in protecting its sovereignty. As will be explained below, there have been some meaningful changes in the U.S.'

[44] Article 98 of the Rome Statute states that the ICC does not supersede bilateral agreements between countries about how to handle extradition of each other's citizens.

response since the ICC came into force in the middle of 2002 and it was last debated it in April 2003. Also, the Obama Administration's response to the ICC has not varied much from the Bush Administration's. Now that the ICC is a reality, it appears that all U.S. Presidents will view the ICC warily regardless of political affiliation, but only time will tell.

Been There, Done That

Didn't we debate the ICC? Yes, the 2002-3 Treaties topic included the International Criminal Court. Since the NDT/CEDA debate community last visited the ICC there have been several changes which will be outlined below. In general, since the Court is actually in existence, there is an ability to take some of the debate of the impact of the U.S. ratification out of theory and apply it to the historical record of the ICC. Many of the arguments have not changed, however, the context that they are debated are informed by an additional 7 years of the ICC's existence. As will be explained later, the biggest change comes in the shift in the debate from strictly should the U.S. ratify or not towards a middle ground of cooperation but not ratification with the Court (Holt 2008)

ICC History

The ICC officially came into existence on July 1, 2002 – right at the beginning of the first Treaties topic. Although the ICC existed at the time, the Court did not have a full staff and thus was not ready to begin operations. Much of the debating on the 2002-3 Treaties topic dealt with how the ICC would theoretically deal with cases. The ICC opened its first investigation in June 2004 against certain nationals from the Democratic Republic of Congo. Since then, the ICC has opened investigations in four other countries: Uganda (July 2004), Sudan (June 2005), Central African Republic (May 2007) and Kenya (March 2010). Aside from Sudan and Kenya, whose cases will be further examined in the next sections, the other three cases involved a self-referral

to the ICC, i.e., the country in question asked the ICC to investigate. As of the writing of this paper, all the countries the ICC has open investigations against are in Africa.

The ICC's investigations in several of the countries have led to arrest warrants for certain nationals to stand trial over the ICC. The ICC began its first trial ever on January 26, 2009 of Thomas Lubanga from the Democratic Republic of Congo. In addition, there are two other trials ongoing and one set to begin at the end of April. Not all arrest warrants have led to trial. There are still several fugitives, whereas others have died before being arrested and others are in the process of confirming charges against them. The outcome of the trials and the ability to capture fugitives is unknown but the ICC process in 2010 is in full swing – with or without the U.S.

Sudan

Sudan deserves special focus for a few reasons. The first reason is that some negative debaters argued in 2002-3 that there were no genocides ongoing around the world thus there was no need for the ICC. Sudan shows that genocide can occur on a mass scale even in the 21st Century. While it still begs the question of the need for the ICC, the Sudanese example shows that egregious international crimes can occur when leaders deem them necessary.

Second, Sudan is the first case where the ICC has indicted a sitting head of state when it issued an arrest warrant for President Omar al-Bashir. One of the criticisms of the ICC is that it has no enforcement powers for when states do not cooperate with investigations. The Sudanese example has already fostered a healthy debate about the best means to remedy the genocide, including if the ICC is helping or hampering the process.

Third, Sudan is the first case where the ICC has tried a non-State Party. Sudan has not signed nor ratified the ICC. In order for the ICC to gain jurisdiction in Sudan, the UN Security

Council had to unanimously approve the action. On March 31, 2005 the UN Security Council approved a resolution giving the ICC jurisdiction over Sudan. The U.S., a permanent member of the Security Council, was particularly torn about this decision. At first, the U.S. threatened to veto referring Sudan to the ICC for fear it would set a precedent that the ICC has jurisdiction over non-State Party members. The U.S. dropped its criticism and eventually approved the resolution, even if it set a future precedent for the ICC.

Kenya

Since the investigations were recently approved in Kenya on March 31, 2010, there is not much to say about how the Court will handle the case. What is notable though is that the Kenyan investigation is the first begun by the Chief Prosecutor under his own initiative. Given the rules of the Court, a Pre-Trial chamber had to vote in majority to approve the investigation. The Pre-Trial chamber ruled 2-1 that the violence resulting from the 2007 Kenyan elections qualified as a crime against humanity and thus gave the Court jurisdiction to investigate. It will be interesting to see if there are any indictments from the case.

Nethercutt Amendment

As was mentioned above, the U.S. had a strong reaction to the ICC coming into force. The U.S. worked hard to secure BIAs with many Party States to the ICC. The ASPA called for denying military aid to certain countries that refused to sign a BIA. While the military conditioning had limited success, the U.S. felt more should be done to encourage countries to sign the BIAs. On December 8, 2004, the U.S. passed the Nethercutt Amendment to the Foreign Appropriations Bill which cut off the Economic Support Fund (ESF) aid – counter-terrorism funds, HIV/AIDS education, etc. – for countries who did not sign a BIA with the U.S.

Other nations view the military and economic conditioning as an act of coercion. One consequence to these extreme measures is the impact on foreign influence/relations. First, the

coercion immediately sours relations with countries who have not signed a BIA with the U.S. In addition, other countries who are not directly affected frown upon the U.S. activity. Second, other countries, such as China, are happy to fill in economic and military aid where the U.S. cuts it off. This fill-in can be seen starkly in Latin America where U.S.' influence is waning and China's influence is growing. Even then Secretary of State Condoleezza Rice commented in 2005 that conditioning aid over BIAs is "sort of the same as shooting ourselves in the foot."

Prosecutorial Discretion

As explained above, there are several ways to refer a case to the ICC for investigation. However, the ICC does not have to accept the case. The discretion largely resides with the Chief Prosecutor, Luis Moreno-Ocampo. The end of the 2002-3 debate season coincided with the beginning of the current Iraq War. In addition, the U.S. currently maintains troops in Afghanistan. There were several referrals from Party States over U.S.' (and allied forces') conduct in both Iraq and Afghanistan. Moreno-Ocampo looked into the referrals and declined investigation arguing that the ICC lacked jurisdiction in these cases.

The lack of investigation into the U.S. military's activities has caused proponents of ratification to argue that the U.S. has nothing to fear from the Court. Those against ratification argue that the potential for such investigations to take place still exist and thus is a risk. The purpose here is not to settle the debate, rather, to point out there is an empirical record of how the Court has handled cases with the U.S. An interesting factor is that Moreno-Ocampo, the only Chief Prosecutor the ICC has ever known, will end his non-renewable term in 2012. Some commentators argue the U.S. should take a wait and see approach of how the ICC will handle the next election (Lindberg 2010).

Aggression

As was mentioned earlier, the ICC has the jurisdiction to prosecute four crimes under the Rome Statute: genocide, war crimes, crimes against humanity and aggression. Aggression is an extremely controversial crime, particularly with the U.S., since it has a vague definition and the U.S. is currently engaged in two wars (Goldberg 2010). Aggression was so controversial at the ICC's founding, that the Party States agreed not to assert jurisdiction over the crime until it was discussed and debated at the 10 Year Review Conference.

The 10 Year Review Conference will meet this May in Kampala, Uganda to discuss, among other things, whether or not the ICC should expand its jurisdiction to include the crime of aggression. While many commentators argue that the ICC should not include the crime of aggression in its jurisdiction (Rademaker 2010; Glennon 2010), the State Parties may decide to include the crime and define it in a way against U.S.' wishes. This issue is a particularly resonant one for the U.S. and Obama will send delegates to the meeting under the observer status (Goldberg 2010). Because this issue is so important to the U.S. there are those who argue for a wait-and-see approach to the Conference (Lindberg 2010).

At the time of this writing, it is impossible to predict what the result of the Conference will be on the crime of aggression, however, the outcome will have an enormous impact on the literature base. As will be mentioned later, when the Topic Committee convenes in June it should revisit the Conference to determine the outcome of the crime of aggression and what the literature advocates the U.S. response towards the ICC should be post-Conference.

Obama

Although there was much discussion about the direction Obama would move toward the ICC when he became President, the U.S.' policy has not changed very much. There is almost no

discussion, of Obama ratifying the treaty in the short term. However, as Lemer (2010) reports, recently there have been rhetorical moves in favor of greater U.S. cooperation with the Court. It remains to be seen what the substantive nature of this cooperation would be – especially if it would include re-signing the Statute. It may be that the Obama Administration is just paying lip service to gain political favor before the 10 Year Review Conference in May where the State Parties will decide on prosecuting the crime of aggression (Goldberg 2010).

Affirmative Ground

For those of you familiar with the 2002-3 Treaties topic, the current arguments for and against U.S. ratification of the ICC are very similar to those previously debated, however, with the Court in existence the debate has changed to how to deal with the political reality of the Court. The main problem for the affirmative is there is not really any recent scholarly[45] evidence that advocates specifically that Obama should ratify the ICC; rather it speaks to ratification in general. Below is a look at some of the common affirmative advantages to U.S. ratifying (or being bound to) the ICC.

Genocide

The ICC was established to prevent impunity for the most egregious crimes on the international scale, of which genocide is arguably the worst of those crimes. Since the ICC exists, the affirmative needs to prove that U.S. ratification is essential to an effective functioning of the Court or at least that it would help bring more justice. There are those who argue that the U.S.' response to the Court encourages other nations to reject the Court as well as U.S. interference negatively affects the functioning of the Court (Johansen 2001; Johansen 2006;

[45] I use the term scholarly articles here to refer to articles either in peer-reviewed journal or produced by major think tanks. While I am not saying this is the only standard for evidence, it is telling that U.S. foreign policy scholars are mum on the issue of full ratification of the ICC.

Sievert 2006; Veenema 2006). The most optimistic proponents of the ICC claim it has the ability to deter genocide before it even begins (Akhavan 2009).

Genocide has varying impacts from the death toll of the initial genocide to tearing apart civil society to justifying extinction (Campbell 2001; Power 2002). Since genocides are bad but do not rise to the level of "nuclear war, judge", affirmatives can argue the ethical implications of genocide rise to a higher level than even nuclear war (Lang 2003).

Multilateralism/International Relations

With over 110 Party States to the ICC, the Court truly has broad international support. Many of the U.S.' allies, especially most of its European allies, have either signed or ratified the Statute. The Party States feel that no country should be above international law and that applies doubly for the U.S. who often only uses international law to its own advantages. U.S. demands to be outside the Court's jurisdiction upset many nations who view these demands as nothing more than U.S. exceptionalism (Sewall and Kaysen 2000; Markovic 2004; Smith & Smith 2009).

The ICC, perhaps unlike other treaties, is a particularly resonant issue that determines U.S. relations and perceptions of the international community. First, an overwhelming majority of states are party to the treaty. Second, the U.S. believes in the principles of the treaty – except when it comes to the ICC's application to the U.S. As Sewall and Kaysen (2000) argue, the ICC represents "an acid test of America's commitment to…be bound by the rules it establishes for others." Third, the Court actually exists and U.S. absence and belligerence to the Court's functioning will only increase problems. As Nolte (2003) states, "The U.S. decision about whether or not to participate in the ICC is not a onetime technical issue that will quickly be forgotten…. U.S. support will become a topic of frequent debate. Opponents of the United States will regularly have a plausible argument against U.S. foreign policy." Fourth, the military and

economic conditioning on other countries signing BIAs with America hurts U.S. influence, particularly in Latin America (Heindel 2004; Madison 2006).

While this discussion focused more on the general impact of the ICC on international relations, nothing precludes the affirmative from isolating specific countries or regions such as Latin America (Madison 2006). The main concern about ratifying the ICC for international relations is that Obama is already well liked around the world. The lack of specific solvency evidence for Obama may be troubling.

Terrorism

Ever since the 9/11 attacks, the U.S. government has had a main focus on terrorism. Improving relations with other countries may be necessary to continue the coalition against fighting terrorism. Beyond the international relations aspect, there are several commentators that argue the ICC could become an appropriate forum to try terrorists, particularly ones the U.S. does not want in its own court system (Goldstone & Simpson 2003; Roach 2008). Whether the impact of such trials could really deter terrorism or just provide temporary political relief is unknown. In addition, it is unclear whether the U.S. has to ratify in order to use the ICC to prosecute terrorists. There are also those skeptical that terrorism would even be under the jurisdiction of the ICC since it only has power over genocide, crimes against humanity, war crimes and aggression (Selbmann 2003).

K Affs

Affirmatives have the option of several different topical ways to engage the critical literature on the affirmative with the ICC. The affirmative could argue a moral/ethical case for the U.S. ratifying the ICC. There are several authors who speak to the gravity of the crime of

genocide and how each person who is a witness to genocide has an obligation to try to remedy the genocide otherwise silence justifies future genocide (Vetleson 2000; Power 2002).

NYU GG won the 2003 CEDA National tournament with an affirmative to ratify the ICC and try George W. Bush for war crimes. A similar strategy could be employed with the new Administration or you could have Obama refer Bush to the Court (since the ICC's jurisdiction is retroactive to July 1, 2002). Since the treaty undermines U.S. sovereignty, the affirmative could take common negative disadvantage links, such as constraining the military and isolating Israel, and arguing these would be advantageous.

A large discussion exists about whether or not the ICC is a cosmopolitan ideal or retreads over similar realist politics (Roach 2009; Roach 2007). Specifically it has been argued that Jacques Derrida saw the ICC as a good form of sovereign erosion and possibly an example of his New International cosmopolitan ideal (Lietch, 2007). Affirmatives have some latitude to argue what degree they believe the ICC represents the cosmopolitan ideal, or, at a minimum, argue that bringing the U.S. in line with that ideal, however weak, is important.

Answers to Disadvantages

The arguments have not changed much but are now based on the empirical record of the Court. The affirmative can still argue that there are many protections in the Rome Statute, particularly complementarity, and the lack of investigations show the Court will not be politically bent against the U.S. (Smith & Smith 2009; Pai 2010).

Negative Ground

The negative maintains a lot of its core negative ground against the ICC from the 2002-3 Treaties topic. Since there has been a focus in the literature towards U.S. cooperation with the

Court, as opposed to ratification, the "cooperation counterplan" becomes a strong, viable negative strategy.

Case Arguments

The case arguments have not changed over the years but are grounded in the historical record of the Court's work. For example, there are those who argue that Sudan indictments prove the weakness for the Court and its ability to promote more violence than it prevents. In addition, the negative can also go the opposite way – the Court will be successful with or without the U.S. Again there is enough empirical data to support the argument that the ICC does not need the U.S.

As was mentioned above, there is a dearth of scholarly evidence arguing that Obama needs to ratify the Court. In general, there are plausible negative arguments that Obama has already sufficiently increased relations and multilateralism such that U.S. ICC ratification is neither necessary nor sufficient. Salter (2008) also quotes former Obama foreign policy advisor Samantha Power, "Until we've closed Guantánamo, gotten out of Iraq responsibly, renounced torture and rendition, shown a different face for America, American membership of the ICC is going to make countries around the world think the ICC is a tool of American hegemony."

Disadvantages

There are several excellent links to disadvantages to U.S. ratification of the ICC. The first is politics. Without delving too much into the obvious link that treaties have to politics due to the nature of ratification, it is important to note that the ICC is particularly controversial. Smith & Smith (2009) argue that Senatorial opposition to the ICC is tied to electoral politics and a misinformed public. It is also telling that Obama has not acted much to change the Bush stance

on the Court. This lack of policy change shows that the ICC's politics goes a little deeper than the Republican/Democrat divide and is rooted more in the American/international divide (Smith & Smith 2009).

The military disadvantage also has strong links. U.S. ratification would subject its soldiers to the ICC's jurisdiction. Not only does this risk politicized prosecution versus the U.S. but military personnel may think twice about carrying out orders on the battlefield (Austin & Kolenc 2006; Schaefer & Groves 2009). The result may end up in a withdrawal of troops from the world or at a minimum a decreased readiness for troop action (Bolton 2002). In 2002-3 many negatives argued that military personnel, particularly the U.S.', are necessary to stop genocide, turning the case.

Obama's ratification of the ICC would probably damage civil-military relations. While the links to U.S. ratification directly hurting the military seem to get at the impact better, Salter (2008) again quotes Samantha Power as saying: "If Barack Obama ratified the ICC or announced his support for it on day one, two things would happen. One, it would have the chance of discrediting the ICC in the short term, and two, he would so strain his relations with the U.S. military that it would actually be very hard to recover."

One major U.S. ally who has not signed nor ratified the ICC is Israel. U.S. ratification of the ICC could isolate its major Middle East ally as Slaughter (1999) argues "Among allies, a decision to sign and even to seek ratification will have strong support; such a decision may also strengthen support for the United States in the international community generally. The prominent exception will be Israel, which will remain opposed and feel isolated without the United States."

During the 2002-3 topic, the debate turned to specifically how the plan would influence the Israeli elections at the time. At a minimum, the negative has plenty of impacts to isolating Israel.

There are just a few law review articles about whether or not ratifying the ICC violates the U.S. Constitution. The ICC does not afford defendants all the rights in the U.S. Constitution. A partial list includes: no right to trial by jury, no right to confront your accuser and no right to prevent self-incrimination (Smith 2010). In addition, there is a debate over whether or not Congress can give jurisdiction to a Court that supersedes all Article III Courts (Smith 2010). Whether or not it may be technically possible, some argue that willingly giving up U.S. Constitutional rights to a supranational authority is an unsound policy (Bolton 2002).

Counterplans

Aside from process counterplans, such as, congressional-executive agreements, most of the counterplans for the ICC were advantaged based. Oftentimes, the negative would try to solve international relations in other ways, usually by ratifying a different treaty. Obviously advantage counterplans are not very contentious and are still a viable option for negatives.

A shift has occurred in the debate over U.S' policy toward the ICC from the 2002-3 topic. Many commentators are advocating a policy of cooperation or engagement or re-signing the ICC. Without defending a specific mechanism[46], for the purposes of the paper the policy of increased U.S. cooperation or engagement with the ICC will be known as the cooperation counterplan. Since the ICC's existence, the U.S. has had an openly hostile relationship with the Court. With a few notable exceptions, Sudan, for example, the U.S. has been belligerent toward the Court. There is a growing amount of articles dedicated to the U.S. cooperating with the ICC again, especially now that Obama is President.

[46] There are a range of different mechanisms for cooperating with the Court without ratifying – from helping out the ongoing investigations to re-signing the treaty. For some very good counterplan evidence see Feinstein & Lindberg (2009) and Lindberg (2010).

It is true that several authors advocate cooperation under the assumption that ratification is impossible in the short term. That is, many authors would actually agree with the affirmative but understand the political realities of the time (Holt 2008; Edlin 2006; Heindel 2004; Kaye 2009; Taft IV, Wald, Edwards, Newton, O'Connor, Schwebel, Tolbert & Wedgwood, R. 2009). Still, the affirmative will have a hard time claiming that ratification is necessary. The advocates of a cooperation strategy with the ICC – even if they would support overall ratification – argue that this step would help support the goals of the Court (i.e., help stop genocide and other war crimes) while increasing relations and multilateral ties. In addition, the cooperation counterplan – by not subjecting the U.S. to the ICC's jurisdiction – would avoid the Military and Constitution Disadvantages while arguably avoiding the Politics, Israel and CMR Disadvantages.

In addition to the generic evidence advocating cooperation with the Court, there is even specific evidence that argues for a strategy of cooperation rather than ratification (Feinstein & Lindberg 2009; Lindberg 2010). The general argument is that the ICC has some benefits to the U.S. but ratification now, particularly when the Party States are defining aggression, would not be prudent. It is argued that there is plenty of room between the status quo and ratification.

Kritiks

The ICC, being an international criminal court, gives access to all the literature on international relations as well as the merits of legal institutions or the theory of punishment in general (Paris 2009; Struett 2008). In addition, the notion of humanitarianism on the

international scale especially ethics in terms of victims or victimhood is a ripe area for criticisms. Depending on its use, there are also criticisms of how one uses the term "genocide".

One particularly interesting criticism of the ICC that has arisen recently is the ICC's sole focus on Africa. Many commentators argue that only focusing on African nations reifies power politics in the international arena under the guise of being impartial (Mamdani 2008). There are others who argue in general that the ICC is just a tool of realist politics rather than the cosmopolitan ideal which it is touted (Roach 2009).

Should ICC be Included?

There may be some concern that the debate community has already debated this topic and does not want to retread an old debate. The fact that the ICC was debated on the first Treaties topic should not preclude it from being in this one. Any first year student debating on the 2002-3 Treaties topic, assuming he or she took the traditional four years to graduate, would have graduated in 2006. Even given the liberal debate careers students enjoy these days, it is unlikely that any student would have experience on the previous Treaties topic. In addition, the Topic Committee did not object, in theory, to including the CTBT as a smaller part of last year's Nuclear Weapons topic.

Although a lot of the core arguments are the same, the fact remains that the debate has become more focused around the empirical record of the Court. Unlike the 2002-3 debate topic

when the ICC was in its nascent years, the Court will have seven-plus years of historical precedence during the 2010-11 Treaties topic. Debates will be less theoretical about how the Court will operate and incorporate the historical record. There is even a debate about whether or not the U.S. is necessary for the Court's operation and success. In addition, there is a debate about the U.S.' strategy dealing with the Court: opposition, benign neglect, cooperation and ratification (Lindberg 2010).

From an educational standpoint, learning about the ICC matters. Since a lot of debaters go on to law school they are likely to encounter the ICC in the curriculum along the way. Even for those studying Political Science or those just wanting to be knowledgeable citizens, learning about an institution that has a significant, if understated, impact on U.S. foreign policy – from how the U.S. deals to the Court to troop deployments – is very educational. The fact that the ICC is here to stay, even if ineffectively, demands that those who are serious about learning U.S. foreign policy take notice in it. The ICC is even starting to become part of the zeitgeist as it is a major plot point in Roman Polanski's *The Ghost Writer*. It would be wrong to prevent new debaters from gaining knowledge about the ICC simply because the debate community took the issue up over seven years ago.

Despite the strong pedagogical reasons for including the ICC, there is the concern that incorporating the ICC into a new treaties topic that requires ratification (or equivalent wording)

could overwhelmingly bias the negative. While the 2002-3 Treaties topic was notable about how well divided the affirmative and negative arguments were on the issue of U.S. ratification of the ICC, the debate seems to have shifted into the negative's favor. While there is nothing wrong in theory about having strong negative ground – the 2002-3 topic had that – there is a problem when the negative has the argumentative advantage.

There are two reasons why incorporating the ICC into a treaties topic that requires ratification could overwhelmingly bias the negative. First, as mentioned before, there is a dearth of scholarly articles advocating ratification under the Obama Administration. While there are recent scholarly articles which advocate the merits of general United States ratification (without specific reference to the Obama Administration), affirmative teams are left helpless defending why ratification is necessary or sufficient under the Obama Administration, except in vague terms, such as "United States' interest."

In particular, one of the main advantages to general U.S. ratification is to maintain, strengthen and build international relations and multilateral ties. When George W. Bush was President, affirmatives could make a credible argument that ratifying the ICC alone would be sufficient to maintain, strengthen and build international ties. Without specific reference to Obama or his policies, there may not be a credible argument about why ratification of the ICC is

necessary nor sufficient in a world that gave Obama the Nobel Peace Prize simply for not being George W. Bush.

The lack of specific evidence to Obama's ratification of the ICC, however, may be overcome with specific country research or other advantages. After all, debate is supposed to be hard. In theory debates we are told if it is not impossible, then we should press on. The problem is when the dearth of scholarly articles advocating Obama's ratification of the ICC is combined with the second reason, the cooperation counterplan, the negative has a huge advantage. Absent new literature, the negative can make the argument that under Obama "relations are high now" combined with the cooperation counterplan which arguably solves the whole case and avoids many of the disadvantages described above.

Almost all the literature that is Obama specific in regards to the ICC argues in favor of a cooperation strategy with the Court and not ratification. The advocates of a cooperation strategy with the ICC (even if they would support overall ratification) argue that this step would help support the goals of the Court (i.e., stop genocide and other war crimes) while increasing relations and multilateral ties. Even though some of these commentators offer the policy of cooperation because they believe ratification is infeasible, there are some who argue that a cooperation strategy is BETTER THAN ratification strategy. While affirmatives could still win theoretically that ratification is necessary, it becomes much more difficult to do when the

negative has specific, recent solvency evidence and several clear cut net benefits to outweigh the solvency deficits.

These two reasons combined should give pause to anyone advocating the ICC should be part of the 2010-11 Treaties topic. For those of you who think the concern of too much negative ground is being overstated, this paper encourages you to read Lee Feinstein & Tod Lindberg's (2009) book Means to an End and/or Tod Lindberg's February/March 2010 *Policy Review* article, "A Way Forward with the International Criminal Court" and decide for yourself.

Also, it may be entirely possible that Obama may increase the U.S.' cooperation with the ICC.[47] As was mentioned earlier, the Obama Administration has made statements about wanting to increase cooperation with the Court (Lemer 2010). If the U.S. falls in line with the literature base then negatives can simply argue the status quo solves most of the affirmative. Indeed, the Topic Committee has to make a determination of whether or not Obama increasing cooperation with the ICC – even if it happens later during the debate season – is enough to solve most of the affirmative harms. Again, without specific solvency evidence for Obama ratifying the Court in the short term, it appears the negative will have an overwhelming advantage in these debates.

For those of you who want to include the ICC on the 2010-11 topic, there still may be hope. Unfortunately, most of the work must wait until the topic meeting in June. If any new scholarly articles come out in favor of Obama immediately ratifying the ICC between now and when the Topic Committee meets, that might restore the balance of ground. The preponderance of evidence, for whatever reason, advocates a cooperation approach to the ICC with some even arguing cooperation is better than ratification at this time.[48]

[47] It seems that ratification of the ICC or even a push for ratification are unlikely. However, it would not be surprising if Obama re-signed the ICC at some point during now and the end of the debate season in 2011.
[48] It would be true that a resolution that didn't call for ratification or adherence to the treaty but for a general increase in cooperation/support would allow the ICC to be a viable affirmative argument. However, this simply would reverse the problem – the negative would not have much ground. After all, there are not immediate tangible disadvantages to cooperating with the Court while staying outside its jurisdiction. Since this paper overall advocates

Also the 10 Year Review Conference in May for the ICC could turn out to be a watershed event. If the State Parties define aggression in a way the U.S. would like, for example, making the crime only punishable if UN Security Council agrees, or forgoes trying the crime of aggression at all, there may be several articles calling for U.S. ratification. Even the thesis behind the U.S. cooperation strategy to the ICC is that the ICC can benefit U.S.' interests but the U.S. must be cautious. If the Conference decides definitively in the U.S.' favor there could emerge scholarly avocation for ratification. However, if the Conference ignores the U.S.' concerns, the scholarly backlash could be so overwhelming as to ensure a negative bias. The point is, only the June Topic Committee will have the ability to determine the state of the literature post the Review Conference.[49]

In conclusion, the debate over U.S. involvement in the ICC is robust and interesting. There is a clear division on the issue, depending on one's views of sovereignty, which makes it an excellent debate topic. The fact that it was debated over seven years ago should not preclude it on a topic that is chosen to discuss the relevant treaties of the day. The fact that the ICC is in existence, even if the U.S. chooses to ignore that existence, will impact U.S. foreign policy for years to come. What should give the Topic Committee pause is the current lack of affirmative solvency evidence combined with a very strong negative counterplan. Only a review of the literature post the May Review Conference will give a definitive answer to the question: should the ICC be included in any resolutions under the 2010-11 Treaties topic?

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adherence to the treaty, I spent most of the time explaining the arguments in lieu of that.

[49] It may be that June is not enough time after the Conference to determine the state of literature advocating U.S. policy towards the ICC. The Topic Committee would then have to make a decision on the current state of literature, which at the time of this writing, appears to overwhelming favor the negative on a ratification/adherence topic.

[50] While the bibliography includes some of the perennial debate articles on the ICC, I wanted to focus more on the literature that came out after the first Treaties topic was done being debated in April 2003. As such this is an

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Part 6: The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes

By Kevin Kallmyer, University of Mary Washington

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes[51]

[51] Text: http://www.basel.int/text/con-e-rev.pdf

Treaty Background

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes was adopted in 1989 and entered into force in 1992. The treaty seeks to establish a framework to regulate the international transportation and disposal of hazardous waste. In the 1980s, nations increasingly established stricter environmental regulations, and as a result, the cost of hazardous waste disposal increased substantially. The high cost of hazardous waste disposal led to the creation of black-market toxic waste networks, or "toxic traders," that transported waste to developing countries for cheap disposal. Toxic traders dumped waste without concern for the environment or public health. Media revelations on the practice sparked international outrage, and with that, produced momentum for the negotiation of the Basel Convention.[52]

The Basel Convention regulates "the generation, management, transboundary movements and disposal of hazardous and other wastes."[53] Parties to the Basel Convention are expected to pass domestic legislation that punishes the illegal transportation of hazardous waste. The transportation of hazardous waste to and from non-parties is illegal, unless special permission is granted. Additionally, the treaty requires parties to encourage safe waste disposal practices, specifically to "to minimize the quantities that are moved across borders, to treat and dispose of wastes as close as possible to their place of generation and to prevent or minimize the generation of wastes at source."[54]

Importantly, the Basel Convention does establish a uniform definition of "hazardous

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[52] ("Basel Convention on the Control of Transboundary Movements of Hazardous Wastes." *Council on Foreign Relations*. Web. 04 Apr. 2010. <http://www.cfr.org/publication/20588/basel_convention_on_the_control_of_transboundary_movements_of_hazardous_wastes.html>

[53] "The Basel Convention at a Glance..." United Nations Environmental Program. Web. 7 Apr. 2010. <http://www.basel.int/convention/bc_glance.pdf>.

[54] ibid

waste." Instead, it defines wastes as "substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law." [55] In practice, this definition includes biomedical and healthcare wastes, used lead acid batteries, persistent organic pollutant wastes, Polychlorinated Biphenyls (PCBs), and other wastes.[56] Decisions related to treaty implementation are made by the Conference of the Parties (COP), composed of all parties to the convention.

The Basel Convention has 170 parties. The United States signed the convention in 1989, and the Senate gave advice to ratify in 1992. Despite this, the US failed to ratify the convention, and remains the most significant non-party to the treaty.

Since 1992, the Basel Convention has continued to develop among its parties. Importantly, in 1995 at the third meeting of the Conference of Parties to the Basel Convention, the parties adopted an amendment called the "Ban Amendment." The amendment banned the transboundary movement of hazardous waste designated for disposal from any OECD (Convention on the Organisation for Economic Co-operation) country, to a non-OECD country.[57]

Controversy Area

The transboudary transportation of hazardous waste is a potentially salient area for debate. Each year, an estimated 8.5 million tons of hazardous material travels internationally. Of this, the US is responsible for approximately three million tons, or 35%.[58] These estimates, however, are difficult to have a high level of confidence in because of the unregulated nature of the illegal hazardous waste trade. The US federal government claims that the US only exports

[55] ibid
[56] ibid
[57] "Ratification of the Convention on the OECD." *Organisation for Economic Co-operation and Development*. Web. 10 Apr. 2010. <http://www.oecd.org/document/1/0,3343,en_2649_201185_1889402_1_1_1_1,00.html>.

[58] Choksi, Sejal. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation." *Ecology Law Quarterly* 28 (2001): 509.

one-tenth of one percent of its hazardous material, the rest of which is disposed domestically.[59] However, this claim is likely inaccurate because it doesn't account for undetected waste exports, and defines hazardous material narrowly.[60]

The hazardous waste trade is likely to increase substantially in the future because of an increase in electronic waste. F. H. Faleomavaega, the American Samoa Representative to Congress, explains this trend,

> Note also that many laptops, flat-panel monitors, and televisions contain fluorescent lamps that contain mercury, a dangerous neurotoxin. Also note that many electronic products contain toxic chemicals such as lead, mercury, beryllium, cadmium, chromium, and ruminated flame retardants. Note also that approximately 2,630,000 tons of used or unwanted electronics were discarded in the United States 3 years ago, according to the EPA. Note also that approximately 330,000 tons of electronic waste were collected and diverted from landfills for reuse or recycling 3 years ago, again according to the EPA. Note also that an estimated 50 percent to 80 percent of electronic waste collected for reuse or recycling is exported to countries such as China, India, Ghana, Nigeria, Pakistan, and Thailand, according to the Department of Commerce.[61]

As consumers respond to new technology, such as high-definition televisions, the amount of waste produced by old, unwanted electronic goods will likely increase.[62] This is likely to result in, "more companies eager to exploit opportunities by bringing e-waste to less-developed countries in the future."[63]

The Obama administration has not supported ratification of the Basel Convention. Obama, as a candidate for the presidency, announced his support for increased regulation of hazardous waste. However, the Obama administration recently failed to renew an EPA moratorium on sending US ships to South Asia for dismantlement. The ban was initiated because

[59] ibid
[60] ibid
[61] United States. Cong. House. Committee on Foreign Affairs. Exporting Toxic Trash: Are We Dumping Our Electronic Waste on Poorer Countries? : Hearing before the Subcommittee on Asia, the Pacific, and the Global Environment of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress, Second Session, September 17, 2008. By F. H. Faleomavaega. H. Bill. Washington: U.S. G.P.O., 2008.
[62] "E-waste Casts Shadow Over Basel Convention." Turkish Weekly, 17 Nov. 2009. Web. 9 Apr. 2010. <http://www.turkishweekly.net/news/92987/-e-waste-casts-shadow-over-basel-convention.html>.
[63] Faleomavaega, supra note 11.

of the "environmental hell of South Asian shipbreaking yards."[64] Additionally, Lawrence Summers, Director of Obama's National Economic Council, reportedly wrote in a memo, "I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that."[65] Given these trends and statements, it seems unlikely that the Obama administration will push for either Basel Convention ratification, or stronger regulations of the hazardous waste transportation and dumping.

Affirmative Ground

Affirmative ground for the Basel Convention primarily derives from solving US hazardous waste dumping on developing countries. Hazardous waste dumping allows the affirmative to access advantage areas in the environment, environmental justice, capitalism, and potentially additional areas.

First, US dumping of hazardous material on developing countries has a substantial impact on the environment. There is a reason hazardous waste is regulated.

> Hazardous waste dumping remains an international problem…Hazardous waste sludge illegally dumped in a developing country leaches into the soil and contaminates the groundwater, which in turn pollutes the very crops that are transported across international borders for consumption. The relationship between U.S. waste exports and the health of U.S. citizens thus creates a "circle of poison." In today's global market, environmental degradation is no longer a local issue that can be dealt with by a few neighboring countries. To preserve and restore the planet's natural resources and health, international attention must be focused on global solutions; this requires the United States to be an environmental leader, not a polluting bystander.[66]

Secondly, affirmatives can argue that the practice of dumping hazardous material is tied to a history of colonialism and racism. These advantages allow affirmatives to support an ethic of environmental justice, giving the affirmative a strong indict of potential economy or

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[64] "Obama's EPA Allows Toxic Navy Ships to be Dumped in Bangladesh. " *Basel Action Network (BAN)*. 27 Aug. 2009. Web. 9 Apr. 2010. <http://www.ban.org/BAN_NEWS/2009/090827_toxic_navy_ships_to_be_dumped.html>.

[65] Ogunseitan, Oladele. "The Wild West of Electronic Waste." *Business Day* [Nigeria] 8 Mar. 2010.

[66] Choksi, supra note 8.

manufacturing industry disadvantages. Hugh Marbug, writing in the Vanderbilt Journal of Transnational Law, explains,

> During the last decade, the United Nations and other international organizations have been struggling with the issue of hazardous waste exportation to developing countries. At the same time, the United States has been grappling with environmental racism. However, critics of both hazardous waste exportation and environmental racism have overlooked their similarities, namely, that hazardous waste exportation and environmental racism place a disproportionate burden on the same classes of people, the

> poor and minorities. The exportation of hazardous waste to developing countries is essentially environmental racism on an international scale.

Further, affirmatives will be able to argue that debate is an important area of discussion for electronic waste and its impact on environmental justice, as Vivien-Elizabeth Zazzau, a New York State University at Albany librarian argues,

> For those of us within the academy who are committed to social justice, it is time to move beyond the fifth standard, to consider ecological issues such as electronic waste (e-waste), the resultant environmental degradation, and the effects on human existence. Brenda Gourley, vice-chancellor of South Africa's Open University states, "No university…can be said to send its students out 'appropriately qualified' if it has not prompted them to engage with pressing issues around questions of ethics and social justice."[67]

Third, affirmatives can argue that the hazardous material trade is directly related to capitalism's negative excesses. Affirmatives could potentially argue to implement the Basel Convention by banning hazardous material trade.[68] A ban on transboundry hazardous waste trade would give affirmatives a credible argument for forcing the US to deal with its own waste and consumption of goods. Advantages could be supported by authors such as Paul Virilio, who argues that as technology "speeds up," it creates excesses that cannot be accounted for, which will negate the advancement of that technology or destroy the world.[69] Faleomavaega ties the consumption patterns that produce hazardous waste to the specific argument Virilio articulates,

> We live in a digital age that moves at a dizzying pace…The overwhelming speed at which technology develops requires that we constantly update our machines. We get new, faster, and fancier products to replace our old units, which seem woefully out of date shortly after they are purchased.[70]

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[67] Zazzau, Vivien-Elizabeth. "Becoming Information Literate about Information Technology and the Ethics of Toxic Waste." *Libraries and the Academy* 6.1 (2006): 99-107.
[68] Sundram, Muthu S. "Basel Convention on Transboundary Movement of Hazardous Wastes: Total Ban Amendment." *Pace International Law Review* 9 Pace Int'l L. Rev. 1 (1997). *Lexis*. Web. 9 Apr. 2010.
[69] Virilio, Paul. *Speed and Politics*. Los Angeles, CA: Semiotext(e), 2006.
[70] Faeomavaega, supra note 11.

Negative Ground

Negatives have excellent options against Basel Convention affirmatives. First, negatives can counterplan to increase US regulation of hazardous material without ratifying the Basel Convention. There are a host of possible advantage counterplans, but the basic argument would be that ratifying the Basel Convention is not a necessary action to remedy US dumping of hazardous material. Net-benefits to this counterplan would be the politics disadvantages with ratification links, case turns to the Basel Convention, and criticisms of ratification or international treaties. For example, a significant problem is that current regulations are not enforced and have a narrow definition of "hazardous material." These problems could be corrected with changes to regulatory code and establishing enforcement provisions for such codes.[71]

This strategy is strengthened because the best "ratification key" warrants no longer apply in the current political environment. For example, "the argument…that ratification is necessary to assure the United States a meaningful role in shaping the international regime has largely evaporated, since many of the important decisions…have already taken place."[72] Further, Choksi, writing in Ecology Law Quarterly, explains that there is no longer any utility in US ratification,

> The U.S. has little incentive to ratify because one of the largest purported benefits of the Convention - an additional layer of protection from illegal hazardous waste crimes - has not materialized in practice…Since the United States already uses a prior informed consent mechanism to regulate hazardous wastes under RCRA and imposes its own joint and several liability regime, it has no reason to ratify a weaker and more narrow international law requiring domestic legislation on identical environmental issues.[73]

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[71] United States. Cong. House. Committee on Foreign Affairs. Exporting Toxic Trash: Are We Dumping Our Electronic Waste on Poorer Countries? : Hearing before the Subcommittee on Asia, the Pacific, and the Global Environment of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress, Second Session, September 17, 2008. By John Stephenson. Washington: U.S. G.P.O., 2008.
[72] Choksi, supra note 8.
[73] ibid

One of the most effective negative arguments will be the politics disadvantage. Political opposition is the primary reason why the US has refused to ratify the Basel Convention. Opposition comes from both environmental, who claim the treaty is too weak, and industry groups, who claim it would be a burden on the manufacturing industry. Additionally, the alternative to international shipping of hazardous material is domestic disposal, which will likely draw strong criticism from NIMBY opposition. Lastly, possible affirmative link turns are not as applicable, demonstrated by the general unawareness of the Basel Convention among the American public. As Choksi says, "is little or no political will among the U.S. public to implement the Basel Convention."[74]

A second disadvantage area is US promotion of free trade. The World Trade Organization could potentially find the Basel Convention illegal under its trade rules. The Basel Convention restricts the movement of goods, and in particular the 1995 Ban Amendment could be considered contrary to WTO free trade principles. Further, "recent developments between the United States and Canada have also shown that NAFTA and the Basel Convention may be more than just irreconcilable - NAFTA may actually undermine the Convention."[75] Therefore, negatives could argue that an Obama ratification of the treaty would undermine progress towards free trade, and cause a surge of environmental conditions placed in free trade agreements that undermine overall trade.[76]

Negatives can also argue that increased regulation of the hazardous waste would undermine the US economy. Implementation of the Basel Convention would directly affect the US economy. Choksi explains,

[74] ibid
[75] ibid
[76] Griswold, Daniel. "Trade, Labor, and the Environment: How Blue and Green Sanctions Threaten Higher Standards." *The Cato Institute*. 2001. Web. 09 Apr. 2010. <http://www.cato.org/pub_display.php?pub_id=3642>. Bovard, James. "The Myth of Fair Trade." *The Cato Institute*. 1 Nov. 1991. Web. 09 Apr. 2010. <http://www.cato.org/pubs/pas/pa-164.html>.

> Penalties under the Protocol will effectively hinder trade in non-dangerous recyclable wastes and other profitable U.S. industries…There is also a tangible fear that because the Protocol lacks specific limits on liability, it may be used to gouge deep pockets.[77]

Additionally, affirmatives will likely specify implementing legislation for the treaty that adopted a broader definition of "hazardous waste" for solvency reasons. If affirmatives do so, there are strong economy links to the manufacturing industry. Watson explains,

> By expanding the definition of ''hazardous'' to include all electronic products that pose even a remote risk when disassembled will do little to ensure these products are not mis-managed overseas. However, it will ensure that additional costs are added to the manufacturing, transport, and marketing costs of these products.[78]

Further, ambiguity within the Basel Convention, because it does not define "hazardous waste," could potentially generate unpredictability within any industry that uses potentially toxic material. William Doyle, writing in the Temple International and Comparative Law Journal, argues,

> The incorporation of divergent definitions of hazardous wastes from different member countries has created sufficient ambiguity effective enforcement actions by member countries… This variety of definitions unfortunately creates confusion about what constitutes "waste."[79]

Lastly, negatives will have strong case arguments to undermine the solvency for affirmative advantages. Critics argue the treaty has a slew of loopholes, such as exempting waste transported through bilateral agreements, and allowing national governments to narrowly define "hazardous waste." Dr. Kevin Stairs of Greenpeace said,

> The liability protocol is the sad result of 10 years of effort by the industrial lobby to reduce the original intention to a text with as many holes and exclusions as Swiss cheese.

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[77] Choksi, supra note 8.
[78] United States. Cong. House. Committee on Foreign Affairs. Exporting Toxic Trash: Are We Dumping Our Electronic Waste on Poorer Countries? : Hearing before the Subcommittee on Asia, the Pacific, and the Global Environment of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress, Second Session, September 17, 2008. By Diane Watson. H. Bill. Washington: U.S. G.P.O., 2008.
[79] Doyle, William. "United States Implementation of the Basel Convention: Time Keeps Ticking, Ticking Away." *Temple International and Comparative Law Journal* 9 (1995): 141.

> The protocol is a dangerous precedent and is unlikely to ever ever provide adequate relief for victims of toxic waste or serve as an incentive to avoid hazardous waste trafficking.[80]

These exemptions are particularly relevant for US policy. Ratification of the Basel Convention would likely have close to zero effect on US hazardous waste transportation,

> The United States…claims that most of its waste trading is covered under the Article 11 exemption for bilateral and multilateral agreements. Ninety-seven percent of U.S. hazardous waste exports already go to Mexico and Canada under separate bilateral agreements, and the OECD agreement regulates the majority of the United States' remaining international waste trade.[81]

Additionally, there is a potential that the treaty will only change the direction hazardous waster travels, instead of its unsafe disposal. Marbug argues that even if waste were disposed in the US where there are stronger disposal regulations, poor communities would be disproportionately affected,

> Domestically, studies have shown that poor communities in the United States suffer a disproportionate share of the national burden of hazardous waste. In a sense, the United States has been "exporting" its hazardous waste to its poor neighborhoods, just as industrialized nations have been exporting their waste to the poor and developing nations in Africa and the Caribbean.[82]

Assessment

The Basel Convention is a viable option for inclusion in the treaties topic. It allows affirmatives to debate a salient topic that has not been debated in recent years. To the extent that the environment, environmental justice, capitalism, etc. have been debated, rarely are they discussed in the context of global hazardous waste transportation.

However, while it is a viable treaty for debate, it may not be the best option. Affirmatives need a robust defense of their mechanism to beat the implement but don't ratify CP, or other potential advantage counterplans. Absent a new push for the treaty by the Obama administration

[80] "Greenpeace Flays US." *Basel Action Network (BAN)*. 1999. Web. 09 Apr. 2010. <http://www.ban.org/BAN_NEWS/no_time_for_waste.html>.
[81] Choksi, supra note 8.
[82] Marbug, Hugh J. "Hazardous Waste Exportation: The Global Manifestation of Environmental Racism." *Vanderbilt Journal of Transnational Law* 28 (1995): 251.

resulting in a wave of new literature on the treaty, there is a lack of recent literature supporting ratification. Even advocates of the treaty generally qualify that alternatives are viable option, such as Diane Watson, an advocate for hazardous waste regulation and House Representative from California,

> With regard to the Basel Convention…implementing legislation has not passed. Hopefully, this can be changed in the 111th Congress. Nevertheless, I firmly believe that there are faster ways to deal with the scourge of hazardous electronic waste exports.[83]

As stated in the negative ground section, most of the original arguments that supported ratification were tied to US influence in the treaty regime, which are no longer as relevant since major decisions have been made. More recent literature in support or ratification is more accurately supporting US support for the Basel Convention as a means to force US action against hazardous waste disposal. Further, because the treaty seems to have multiple exemptions, it

[83] Watson, supra note 28

seems that the affirmative will have to garner solvency from specifying implementation legislation that has real teeth. If this is the case, however, affirmatives will garner solvency not from the action of ratification, but from the legislation, giving negatives a strong argument for the ratification PIC.

The Basel Convention is an excellent treaty to debate, but has obvious problems. If the community decides to support a mechanism that is not ratification, but instead to strengthen US

compliance, implementation of potential treaty obligations, or support for a set number of treaties, then the Basel Convention would be an excellent option. If, however, the community wants a treaty ratification topic, affirmatives will be left without viable strategic options to the most obvious and generic negative strategies.

Part 7: The Biological Weapons Convention

By Kevin Kallmyer, University of Mary Washington

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and On Their Destruction[84]

[84] Text: http://www.opbw.org/convention/documents/btwctext.pdf

Background

The Biological Weapons Convention (BWC) entered into force in 1975. The BWC was designed to "ban biological weapons by prohibiting the development, production, and stockpiling of biological agents as well as related equipment and delivery systems that are intended for hostile use."[85]

The BWC was created in response to a history of biological weapons use in wartime. In 1899, the Hague Convention declared that it is "especially prohibited...to employ poison or poisoned arms."[86] Despite this, chemical and biological weapons were used in World War I. In 1925, the Geneva Convention was created, which included provisions that banned the use of biological agents in war. Nevertheless, World War II renewed state interest in biological weapons development. Genuine momentum for the BWC was sparked in 1969, after Britain proposed a ban on biological weapons coupled with Nixon's unilateral renouncement of biological weapons.[87] Some countries initially opposed the proposal because it separated arms control for biological and chemical weapons. Opposition was overcome, however, and the convention was opened for signature in 1972 and entered into force in 1975.

Parties to the BWC have uniform rights and obligations, in contrast to arms regimes such as the Nuclear Non-proliferation Treaty (NPT).[88] All parties are required to ban the development, possession and use of biological weapons intentioned for hostile use. This categorical ban, however, is problematic because of the potential for peaceful use of biological agents. Therefore, similar to nuclear power in the context of the NPT, the BWC only bans the weaponization of

[85] Rissanen, Jenni. "Issue Brief: The Biological Weapons Convention." *Nuclear Threat Initiative*. Mar. 2003. Web. 4 Apr. 2010. <http://www.nti.org/e_research/e3_28a.html>.
[86] ibid
[87] ibid
[88] ibid

biological agents and specifically states that the treaty will "avoid hampering" with the development of peaceful biological projects.[89]

There are 163 parties to the BWC, 13 signatories (states that have signed, but not ratified the treaty), and 19 states that have failed to sign or ratify the treaty.[90] The United States ratified the agreement in 1975. US support for the BWC, however, decreased in 2001. From 1995-2001, the BWC Ad Hoc Group met to develop more effective verification and enforcement measures to prevent non-compliance with the treaty. The Group submitted a proposal that included on-site visits and inspections of state party facilities. The United States rejected the proposal, causing momentum to shift against the treaty. The treaty has continually faced problems with compliance and verification mechanisms, resulting in states moving to alternative means to address potential biological weapon threats.

Controversy Area

Biological weapons proliferation is a significant security issue in the 21st century, and has gone relatively unexplored in recent debate topics. Similar to nuclear weapons and the 2009-2010 topic, biological weapons have served as a common terminal impact over the years, but rarely have they been the focal point of a debate. Additionally, the BWC debate is unlikely to center exclusively on the biological weapons impact, but also include debate on whether the BWC is the appropriate mechanism to address biological weapons, providing for a diverse debate on the issue.

Additionally, the BWC is a timely debate. The Obama administration states that they support a more robust bioweapon agenda, but because of verification problems, that agenda does

[89] ibid
[90] "Membership of the Biological Weapons Convention." *The United Nations*. 2010. Web. 3 Apr. 2010. <http://www.unog.ch/__80256ee600585943.nsf/%28httpPages%29/7be6cbbea0477b52c12571860035fd5c?OpenDocument&ExpandSection=1%2C3%2C2#_Section1>.

not include the BWC.[91] Significantly, the 7th BWC Review Conference will occur in late 2011.[92] This means that the US will likely enter the BWC Review Conference without support for the BWC regime. The proximity of the Review Conference to the debate topic should bolster affirmative solvency claims that action must be taken now, and in support of the BWC, in addition to increasing the literature base on the treaty.

Affirmative Ground

Core affirmatives ground centers on bolstering the BWC regime to effectively regulate biological agents. Jonathan Tucker, a Senior Fellow at the James Martin Center for Nonproliferation Studies, has argued that the United States has the potential to make or break the BWC at the upcoming BWC Review Conference,

> At next year's Seventh BWC Review Conference, the United States will have a unique opportunity to give new vitality and direction to the Convention. At the same time, the U.S. delegation will have to navigate some potentially treacherous political shoals. It is likely that several BWC member states, including Iran, Pakistan, India, and Russia, will seek to revive the BWC protocol negotiations as a means to pursue their negative agenda of attempting to weaken the Convention itself. Other states, including some U.S. allies, have far better intentions and are eager to return to the protocol talks as a way of moving the regime forward after a long period of stasis and drift. Accordingly, if the United States wants to make sure that proponents of the protocol do not hijack the review conference, it will have to offer an alternative package of bold and compelling measures to strengthen the BWC.[93]

BWC reinvigoration allows affirmatives to access substantial advantage areas. The most obvious advantage area is the use of biological weapons by state and non-state actors, exacerbated by biological weapons proliferation. Jenni Rissanen of the Center for

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[91] Tucker, Jonathan. "Addressing the Spectrum of Biological Risk: A Policy Agenda for the United States." *Center for Nonproliferation Studies*. 18 May 2009. Web. 2 Apr. 2010. <http://cns.miis.edu/testimony/pdfs/tucker_jonathan_b_100318.pdf>.

[92] ibid

[93] ibid

Nonproliferation Studies has argued that support for the BWC and the prevention of the regime's collapse is critical to prevent the use and proliferation of such weapons,

> The BWC is important because it represents the international community's will to prevent biological warfare and the deliberate use of disease as a weapon. It is the first disarmament treaty to completely ban an entire class of weapons. The Convention is an indispensable legal and political instrument that reinforces the widespread condemnation of biological weapons.[94]

Biological weapon use is a huge potential impact for affirmatives. Scientific breakthroughs have changed the nature of biological agents in security policy. Kathryn **Nixdroff, a microbiology and genetics professor from the Darmstadt University of Technology explains,**

> Advances in science and technology leading to the creation of novel biological warfare agents are compounded by the recognition that new and improved ways of delivering them are already at hand and will be developed further at a rapid pace.[95]

These scientific and technological breakthroughs, while beneficial for industries tied to the peaceful use of biological agents, exponentially raise the risk of biological weapons use. Geoffrey Smith, a Virology Professor from the Imperial College of London argues:

> Advances in science and technology have the potential to expand the scope of deliberate misuse of biological agents and ultimately make it easier for both states and non-state groups or individuals to develop and use biological weapons…Non-pathogens can be engineered to be pathogenic, and advances in DNA synthesis may even enable the development of novel pathogens. Considering how quickly knowledge of the molecular basis underlying biological processes is expanding, the boundaries between chemical and biological agents are blurring.[96]

[94] Rissanen, supra note 35.
[95] Nixdroff, Kathryn. "Advances in Targeted Delivery and the Future of Bioweapons." *Bulletin of Atomic Scientists* 66.1 (2010).
[96] Smith, Geoffrey. " Assessing the spectrum of biological risks." *Bulletin of Atomic Scientists* 66.1 (2010).

Biological weapon use, either from state use or terrorism, has the potential to spread across borders and result in significant deaths, as well as "devastating" the United States military and ability to fight conventional wars.[97]

Additionally, a strong BWC would entail strong regulation and monitoring of potential biological threats. Therefore, affirmatives could argue that a strengthened BWC would result in increased global response to disease outbreaks, a particular timely impact after the global spread of the H1N1 virus. Article X of the BWC requires states to cooperate on the peaceful application of biotechnology. Potentially, affirmatives could argue that increased US compliance with the BWC would result in bolstered US support for global networks for disease surveillance.[98] An effective global disease surveillance system would allow affirmatives to access the heart of the disease debate,

> As the globe continues to shrink, an outbreak of serious epidemic disease anywhere in the world poses potential risks to Americans here at home. Accordingly, global networks for infectious disease surveillance and response provide an "extended defense perimeter" for the United States by making it possible to detect and snuff out epidemics—whether natural or human-caused—before they reach U.S. shores. Existing disease surveillance networks still contain many gaps in coverage, however, preventing the timely detection and containment of outbreaks close to the source.[99]

Negative Ground

A robust debate exists in the literature whether the BWC should be at the center of biological weapons arms control. In addition to viable generic negative strategies, the BWC negative is quite strong. First, negatives will have strong counterplan options to support alternative mechanisms to contain the spread of biological weapons, similar to Obama's current bioweapon agenda. Negatives could counterplan to implement measures such as expanded

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[97] Utgoff, Victor. "Nuclear Weapons and the Deterrence of Biological and Chemical Warfare." *Stimson Center*. Oct. 1997. Web. 1 Apr. 2010. <www.stimson.org/wmd/pdf/utgoff.pdf>.

[98] Tucker, supra note 36.
[99] ibid

biological engagement programs and international cooperation on the peaceful use of biotech, increase funding for disease surveillance programs, or other mechanisms, all without support for the BWC.[100] In contrast, negatives could also counterplan to develop military counter-proliferation measures, such as nuclear or conventional bunker busters, to deter and, if necessary, eliminate country's biological weapons capabilities.

Secondly, negatives will have disadvantages to the BWC that also serve as net-benefits to the above counterplan option. A bolstered BWC would likely result in an inspection regime for declared biological agent cites. Such inspections have potential downsides for US national security, bioweapons proliferation, and the biotechnology industry. Eric Taylor, Southern Louisiana Chemistry Professor, explains,

> Inspections under the proposed protocols would also provide the potential for compromise of valued U.S. proprietary and commercial secrets and critical data used for defense against bioweapons. Inspections of U.S. leading-edge biomedical and biotechnology companies may well put at risk the security of commercial secrets that are the life's blood of our economy and future prosperity.[101]

For the same reason, inspection regimes that potentially included spies could lead to the dispersion of biotechnology secrets to aid states in the proliferation of eloping biological agents and weapons.

Third, negatives can engage in a case debate over the BWC. Critics of the BWC argue that an arms control is an insufficient means to prevent biological weapons proliferation. Enforcing compliance is difficult and inspections rely on a country declaring biological agent sites. Opponents of the BWC point out that a country could simply not disclose sites where they weaponize biological agents. Additionally, many point out that the actors that are likely to seek

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[100] Taylor, Eric. "Strengthening the Biological Weapons Convention: Illusory Benefits and Nasty Side Effects." *The Cato Institute*. 1999. Web. 1 Apr. 2010. <http://www.cato.org/pubs/pas/pa-355es.html>.
[101] ibid

out biological weapons are likely to do so because of military practicality, and an arms control regime is unlikely to change these strategic calculations. Additionally, there is a robust debate on whether biological agents even constitute a significant security threat.

Assessment

The inclusion of the BWC in the resolution should be based largely on the community's opinion on the best mechanism for the topic. I would assume there is likely to be strong initial support for including the BWC. The literature is high quality, the treaty is timely because of the upcoming Review Conference, and there is strong affirmative and negative ground.

However, this treaty does not fit coherently in the current conception of the treaty topic. If the mechanism for the topic is "consent to be bound by" or "ratify," then the BWC could not be included as the US has already ratified the treaty. The core problem facing the BWC is that the US has decided to exclude the BWC from its biosecurity agenda and has failed to support reforms to make the treaty effective. The topic mechanism would have to be altered to include the BWC (and potentially to make other treaties viable for the affirmative).[102]

At this point, I'm still unclear what language the resolution would have to include to make the BWC a viable affirmative. The word "revival" is used often, but this seems more in the context that the US needs to shift to supporting the BWC at the upcoming Review Conference. A potential resolution would have the US "implement one or more of the following treaties…" which would give the affirmative leeway on how to best revive the selected treaties. This mechanism has clear downsides by creating a more unpredictable mechanism for the negative, but would substantially increase affirmative flexibility and allow for more viable plans to address problems treaty regimes face. However, there are other means to increase affirmative flexibility,

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and the BWC's inclusion would likely only create the potential for a bidirectional mechanism that undermined generic negative strategies.

This problem gets to the core issue for how the community considers specific treaties to be included in the topic. It is easy to select the treaties on the most exciting subject matter, like biological weapons. A potentially more important factor, however, is the strength of the affirmative's mechanism defense. Outside of the obvious reason why the BWC lacks this warrant, it is likely that other treaties are plagued by a host of problems that US ratification is insufficient to remedy. If that is the case, affirmatives will likely lose to counterplans to pass legislation equivalent to the implementing legislation for the treaty, or other advantage-style counterplans, and lose to politics or other potential disadvantages to the ratification of the treaty. In the absence of a deep and current literature base supporting US ratification, the affirmative will face an uphill battle against negative counterplan options.

Part 8: The Convention on the Rights of the Child

By Danielle Verney-O'Gorman, The United States Naval Academy

What is the Convention?

The Convention on the Rights of the Child (hereafter the CRC) was adopted unanimously by the UN General Assembly in 1989 and instituted as international law in 1990. The CRC sets forth basic standards which signatories agree to pursue on behalf of children—the various rights can be grouped into four categories of rights: survival; full development; protection from abuse; and participation in family, cultural, and social life. The CRC requires signatories to "develop and implement policies and programs that ensure all children will grow up in supportive family and community environments that foster an atmosphere of happiness, love, and understanding."[103]

While the text of the treaty is too long to insert in this document, the full text can be found through the Office of the United Nations High Commissioner for Human Rights, here: http://www2.ohchr.org/english/law/crc.htm.

Additionally, a convenient summary of the provisions of each Article can be found here: http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=summary_dat.php.

The United States was instrumental in the creation of the treaty in the late 1980s and, in 1995, the U.S. signed the treaty. However, the treaty was never forwarded to the Senate for ratification. The United States and Somalia are the only two countries who are parties to the UN

[103] The Campaign for US Ratification of the CRC, "What is the Convention on the Rights of the Child?", http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=whatis_dat.php

but have not signed the treaty—and Somalia lacks a functioning central government. In 2002, the U.S. Senate ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography and The Optional Protocol on the Involvement of Children in Armed Conflict.[104]

Uh, didn't we almost debate this in 2002?

So glad you asked; yes, the CRC made one of the lists of treaties that was considered for the 2002-2003 topic. However, since then, the literature has changed in a few interesting ways that make this ripe for revisiting.

1) More countries have signed. Again, at this point in time, only the US and Somalia have not signed, and parties within Somalia have tentatively committed to signing once the security situation within Somalia improves. The US is now in an even smaller and more uncomfortable club.[105]
2) In 2005, the US Supreme Court decided *Roper v Simmons*, which declared the death penalty for offenders who had been minors at the time of their crimes to be unconstitutional.[106] While the outcome of the case is somewhat interesting because it eliminates a political concern and constitutional objection to the CRC (that is, whether the CRC can supercede the US Constitution by rendering the juvenile death penalty illegal via international law though not unconstitutional), the most valuable part of the Court's decision for our purposes is in section III of Justice Scalia's dissent, where he discusses the value of international legal norms in interpreting our Constitution, and

[104] The Campaign for US Ratification of the CRC, "What is the Status of the CRC?", http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=status_dat.php

[105] Ibid.

[106] *Roper v. Simmons*, 543 US 551 (2005).

whether the goal of bringing US law into line with international conventions is a worthy one.[107]

3) Political considerations have changed. In 2002, we had a Republican president and a Republican Congress. We currently have a Democratic president and a Democratic-controlled Congress, and the Obama Administration seems tentatively interested in pushing Senate ratification.[108] This probably matters for a few reasons: people will be writing about the treaty in an effort to either push or actively resist it, in a way that they were probably not doing in 2002; and there will be legitimate disadvantage stories that make sense (or at least more sense than usual).
4) In December of 2002, the US Senate ratified two Optional Protocols, mentioned above: the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography and The Optional Protocol on the Involvement of Children in Armed Conflict.[109] This may address the concerns that some expressed in 2002 that the CRC was two "aff biased" by eliminating two large possible affirmatives with big impacts.
5) We didn't actually debate this in 2002.[110]

[107] *Roper v. Simmons,*543 US 551, 622-628 (2005).

[108] *The Huffington Post,* "Obama Administration Seeks to Join U.N. Rights of the Child Convention", John Heilprin, June 22, 2009, http://www.huffingtonpost.com/2009/06/23/obama-administration-seek_n_219511.html.

[109] The Campaign for US Ratification of the CRC, "Chronology: The Path to Promoting Universal Child Welfare", http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=chronology_dat.php

[110] Duh, but probably worth reminding people. The treaties that we debated were: CTBT, Kyoto, SORT, The Rome Statute of the International Criminal Court, and The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty, per http://groups.wfu.edu/NDT/HistoricalLists/topics.html

Affirmative Advantages:

1) Soft Power/International Legitimacy Advantages—as stated above, the United States is in a "club of two" with Somalia right now, not exactly the company we like to be in. The affirmative could argue that by changing our position on this almost-universally signed treaty, the US could restore its international standing on human rights issues damaged by the War on Terror.[111]
2) International Modeling/Enforcement Advantages—a major objection to this treaty is that it is not enforced because the Committee on the Rights of the Child lacks the power to effectively enforce obligations upon member states. The affirmative could argue that the presence of the United States on the Committee, or even as a signatory, would provide a powerful incentive and international signal of our approval of the CRC. There could be any number of impact scenarios, from child labor to refugee status to the rights of indigenous children.
3) Domestic scenarios—while many of the rights enshrined in the treaty are already guaranteed (at least in part) to children in the United States, there still many areas that affirmatives could use: immigration, refugee status, migrant worker protection, recognition and protection for indigenous children, foster system reform, child abuse and neglect, reproductive health and freedom, and changes to the structure of juvenile legal proceedings are some of the areas that seem great for affirmatives domestically.
4) Critical Approaches—scholars have commented on the comprehensiveness of identity categories covered by the CRC, which opens the door for critical race, gender, and other

[111] Alison Dundes Renteln, "UNITED STATES RATIFICATION OF HUMAN RIGHTS TREATIES: WHO'S AFRAID OF THE CRC: OBJECTIONS TO THE CONVENTION ON THE RIGHTS OF THE CHILD", ILSA Journal of International & Comparative Law, Winter 1997, 3 ILSA J Int'l & Comp L 629, pages 630-631.

identity affirmatives.[112] These, in addition to some of the aforementioned domestic scenarios, also seem useful for teams interested in narrative, dramatic, or other alternative approaches to the topic.

Negative Arguments:

1) Politics Links—it seems there are a couple of reasons that the right opposes the CRC, among them a belief that the treaty supports or encourages abortions; a belief that the treaty would make it difficult for parents to obtain non-state-based or religious education for their children; and a belief that the treaty would outlaw certain forms of discipline. Conservative interpretations of the CRC tend to paint it as "anti-family" or "anti-parent".[113]
2) Federalism—don't laugh (yet). There are two types of treaties—self-executing and non-self-executing. Human rights treaties tend to be non-self-executing, meaning that the treaty itself does not become law but that the federal government guarantees that legislation will be passed ensuring that the rights protected in the treaty will also be enshrined in domestic law. Given that laws regarding children and families are the traditional domain of states, by signing the treaty the federal government would be in the position of either dictating to states what laws they must pass or passing laws that violate the 10th Amendment.[114]

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[112] Cynthia P. Cohen, "The United Nations Convention on the Rights of the Child: A Feminist Landmark", William and Mary Journal of Women and the Law, Spring 1997, 3 Wm. & Mary J. of Women & L. 29, pages 34-35.

[113] Alison Dundes Renteln, "UNITED STATES RATIFICATION OF HUMAN RIGHTS TREATIES: WHO'S AFRAID OF THE CRC: OBJECTIONS TO THE CONVENTION ON THE RIGHTS OF THE CHILD", ILSA Journal of International & Comparative Law, Winter 1997, 3 ILSA J Int'l & Comp L 629, pages 633-635.

[114] Susan Kilbourne , STUDENT RESEARCH: The Convention on the Rights of the Child: Federalism Issues for the United States, Georgetown Journal on Fighting Poverty , Summer 1998, 5 Geo. J. Fighting Poverty 327

3) "Treaty Tradeoff" Disadvantage—there is a concern that the ratification of the CRC could specifically trade off with CEDAW ratification, which some human rights organizations believe should be preferred because it has been waiting for ratification longer.[115]

4) Case arguments—in addition to the general "treaties bad" ground, there is also some "CRC enforcement mechanisms are toothless" ground that would be unique to the CRC.

[115] Alison Dundes Renteln, "UNITED STATES RATIFICATION OF HUMAN RIGHTS TREATIES: WHO'S AFRAID OF THE CRC: OBJECTIONS TO THE CONVENTION ON THE RIGHTS OF THE CHILD", ILSA Journal of International & Comparative Law, Winter 1997, 3 ILSA J Int'l & Comp L 629, pages 638.

Some scholars have also mentioned that the self-reporting method used to alert the Committee on the Rights of the Child (responsible for enforcement of the CRC) is extremely difficult and excludes many victims.

5) Critical ground—not necessarily my area of expertise but my understanding is that a CRC aff would be rife with links. Some of those might include: Rights Talk, Ageism,

Paternalism, Feminism, Identity Politics, Imperialism/Hegemony Bad, and Cultural Relativism.

6) Counterplans—the states counterplan (as in "have the states pass laws mirroring the CRC", not "have the states ratify the treaty"), run with federalism and politics, is an option for negatives to answer domestic scenarios. Another option (of questionable

competitiveness, perhaps) would be to ratify but attach reservations objecting to the politically unpopular portions of the CRC.

Should we debate the CRC? Isn't it too aff biased?

alternative approaches to this affirmative area. However, there is also a fairly strong and established politics link and a decent federalism disad, with good counterplan ground; the critical ground seems diverse and healthy. From an educational standpoint, it seems important to encourage debaters to examine not just big war impacts (and didn't we just spend a year doing that?) but also smaller, systemic impacts, and to discuss not just relationships between nation-states but also the lives of everyday people. The CRC seems to be a good catalyst for that debate.

Part 9: The Framework Convention on Tobacco Control

By John Katsulas, Boston College

What is the FCTC?

In response to the global epidemic of smoking, the World Health Organization (WHO) negotiated the Framework Convention on Tobacco Control (FCTC). The objectives of the treaty are to protect present and future generations from the destructive consequences of tobacco use and exposure to tobacco smoke. According to Danielle Hickie (2010) of the Framework Convention Alliance, state parties to the FCTC are required to:

- enact and undertake comprehensive bans on tobacco advertising, promotion and sponsorship;
- ban misleading and deceptive terms on cigarette packaging such as "light", "low-tar" and "mild";
- implement rotating health warnings on tobacco packaging that covers at least 30 percent (ideally 50 percent or more) of the display areas – this may include pictures or pictograms;
- protect people from tobacco smoke exposure on public transport, and indoor work and public places;
- adopt or maintain taxation policies aimed at reducing tobacco consumption; and
- combat illicit trade in tobacco products. This requires monitoring, documenting and controlling product movement as well as including origin and destination information on packaging plus enacting legislation with appropriate penalties and remedies.

The FCTC entered into force on February 27, 2005 and today it is one of the most widely supported UN treaties with 168 state party members (Nikogosian, 2009). The United States and Indonesia, both large manufacturers of tobacco products, remain the two most significant holdouts states (Myers, 2010). While the Bush administration signed the treaty in 2004, it never submitted the treaty to the Senate for ratification.

While Obama supported ratification of the FCTC while serving in the US Senate, there is no evidence that his administration will push for ratification in the near future. Aside from the

fact that this is not a top agenda item, the impetus for Obama to devote political capital to tobacco issues lost a lot of steam after Congress passed The Family Smoking Prevention and Tobacco Control Act in July 2009. By passing this law, Congress authorized the FDA to regulate tobacco products. Specifically, the act empowers the FDA to lower the amount of nicotine in tobacco products, requires improved warning labels to prevent misleading labels such as "low tar" and "light" cigarettes, adopts new rules prohibiting marketing of products to youths and greatly expands the power of states to impose restrictions on the sale, exposure and access to tobacco products (Glantz, Barnes, & Eubanks, 2009).

Ironically, while passage of The Family Smoking Prevention and Tobacco Control Act placed the United States in closer compliance with some of the provisions of the FCTC, it also makes it more likely that the US will never ratify the treaty. This is because the new law requires that tobacco manufacturers and growers be appointed as members of the Tobacco Products Scientific Advisory Committee which advises the Secretary of Health and Human Services on issues like regulating nicotine. Article 5.3 of the FCTC prohibits states from appointing members of the tobacco industry to advisory bodies who are involved in tobacco regulation (Glantz, Barnes, & Eubanks, 2009). Even though the US is not a party to the FCTC, multinational tobacco companies are certain to use the precedent in the FDA bill "to undermine implementation of the FCTC elsewhere" (Glantz, Barnes, & Eubanks, 2009, p. 4). Since the new law passed as part of a legislative compromise between Republicans and Democrats to allow new health regulations with the understanding that the tobacco industry would be consulted, political support for ditching this agreement and ratifying the FCTC does not exist.

Affirmative Advantages

The most obvious benefit to US ratification of the FCTC is to reduce the prevalence and rate of smoking in the world. Smoking is a global epidemic and a major cause of death, especially in developing countries (Warner, 2008). Worldwide, an estimated 1.2 billion people smoke. Each year, 6 million people die from smoking and that figure is expected to rise to 8.3 million per year by 2030 (Samet & Wipfli, 2010). The World Health Organization estimates that worldwide enforcement and implementation of the FCTC could save over 200 million lives by 2050 (Ezemalu, 2010).

Non-health related harms to reducing the growing of tobacco could also be claimed as advantages. Numerous studies claim that growing of tobacco increases poverty in developing countries (John & Vaite, 2002; Mamudu, Hammond, & Glantz, 2008; World Bank, 2003). There is also evidence that tobacco growing harms the environment. In many countries, wood is used as fuel to cure tobacco leaves and to build curing barns. For example, in southern Africa alone, studies claim that 200,000 hectares of forests are cut down each year to support tobacco farming (Clay, 2004). Tobacco growing also reduces soil fertility because it depletes nitrogen, phosphorous, and potassium at much higher rates than other food or cash crops ((Reddy & Gupta, 2004). Consequently, growing tobacco requires extensive use of fertilizer. Tobacco growing may also displace the growing of food crops, which causes food shortages and malnutrition (Policy Research for Development Alternative, 2008). In some African countries, tobacco growing increases the exploitation of children who are forced to work in tobacco fields (Eldring, Nakanyane & Tshoaedi, 2000).

Another benefit to strengthening the FCTC is to reduce global trafficking in illicit tobacco products which finances terrorism. McGrady (2009) argues that illicit trade in tobacco

products "poses an indirect threat to U.S. national security" because terrorist organizations such as al Qaeda, Hezbollah and Hamas use trade in contraband cigarettes as a means of financing their activities" (p. 5). Failure to ratify the FCTC will limit the ability of the US to participate in the negotiations to stop illicit trafficking in tobacco.

Given that 168 countries have already ratified the FTCT, one might wonder why US ratification is crucial to the efficacy of the treaty? It is important to first realize that while many countries have acceded to the FCTC, few have actually implemented effective measures to reduce smoking. Under the treaty, countries are given five years from the date when they sign the treaty until the time when they are expected to bring their laws into compliance. Therefore, whether the US ratifies the FCTC could still make or break the success of global efforts to stamp out smoking. US leadership in this regard is important for several reasons.

First, the recent US precedent of allowing tobacco companies to be involved in influencing how the FDA will regulate tobacco sets a terrible example for the rest of the world. If other countries model this policy, it may "undermine international tobacco control efforts" because corporate influence guarantees weak policies (Glantz, Barnes & Eubanks, 2009, p. 4). Second, there is excellent solvency evidence that other countries will follow US actions and guidelines (Raw, Regan, Rigotti & McNeill, 2009). Yang and Novotny (2009) observe that in the area of tobacco regulation, US policies "may act as a model for other countries to follow, including both its successes and its failure" (p. 4). Third, the United States possess unique expertise in the area of health monitoring and reporting. One of the deficiency of the FTCT is the absence of any monitoring body and a relatively weak reporting mechanism. McGrady (2009) argues that because the "United States is a clear leader in the field of evidence-based policymaking," it could "make a large contribution" toward improving the level of global

monitoring and reporting of the FTCT (p. 7). Fourth, developing countries have expressed dissatisfaction with the amount of technical and financial assistance provided under the FTCT. US ratification could "provide foreign aid and technical assistance to support other countries in implementation of the FCTC" including support for crop diversification and assistance to implement smoking cessation programs (Yang & Novotny, 2009, p. 3).

Negative arguments

Ratifying the FCTC links to the politics disadvantage. In particular, Senators from tobacco states oppose the treaty. Senator Mitch McConnell, the GOP minority leader from Kentucky, announced he would fight to oppose ratifying the FTCT (Carroll, 2009). And the fact that the new FDA law received bipartisan support for including consultation with the tobacco industry is another reason why ratifying the FTCT would be politically controversial.

Another generic negative strategy is to argue the Malthus disadvantage, i.e., smoking is an effective death check to reduce overpopulation. This was a successful strategy the last time tobacco affirmatives were debated.

There are numerous solvency arguments the negative can make to prove that the FTCT will never achieve large reductions in smoking, even if the US ratifies the treaty. For example, even if countries impose direct restriction on advertising, it is virtually impossible to prevent advertising on the internet where teenagers spend hours surfing the web. Another barrier is that governments in developing countries are reluctant to raise tobacco taxes because they fear losing tax revenues. China, for example, has ratified the FTCT but has kept tobacco taxes at low levels. Another deficiency with the FTCT is the lack of measures to promote smoking cessation programs (Meier, 2005). A recent study evaluating policies adopted by 10 southeast Asian to comply with the FTCT concluded they were grossly inadequate to achieve reductions in smoking

(Mazumdar, Narendra, & John, S. (2009). Given the fiscal situation facing the United States, it is highly unlikely that the Congress would provide significant funding for anti-tobacco programs. Ratification will obligate the US to provide some funding, but it amounts to less than 2 million dollars, which is a trivial amount. There are also strong arguments for why US ratification will not reduce the ability of multinational tobacco companies to lobby and retain influence in weakening anti-tobacco laws. There is also evidence that if countries increase taxes on cigarettes, that increases the production and sale of illicit and counterfeit cigarettes, which turns the case because illicit cigarettes are more dangerous (Aiken, Fry, Pellegrini, 2009).

As for specific disadvantages, the negative could argue that reducing global tobacco consumption will harm the economies of the nations who manufacture and export cigarettes. China is one of the world's biggest exporters of cigarettes. Tobacco provides income for millions of Chinese household, especially in rural areas (Shen, Antonopoulos, & Von Lampe, 2010). Estimates claim the tobacco generates 8 to 11 percent of all tax revenues for China. Tobacco is even more important to the economy of Indonesia. Cigarette companies are the second largest employer and the industry contributes 12% of Indonesia's tax revenue (Investing in Indonesia's cigarette companies, 2006).

As for critical arguments, the FTCT links to health monitoring and surveillance bad critiques. US ratification would increase our health influence and intervention abroad which provide links to imperialism bad arguments.

Recommendation

The college community has not debated tobacco in many years. Smoking is one of the greatest health problems in the world. The FTCT treaty is timely in that there will be on-going meetings in 2010 and 2011 to discuss ways to strengthen and improve the treaty. There is on-

point solvency evidence which makes arguments for why US ratification is crucial to the success of global tobacco control efforts. At the same time, solvency arguments make it possible for the negative to win debates by outweighing the case with a politics disadvantage. Therefore, there is a strong argument to be made for including this treaty.

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Part 10: The International Covenant on Economic, Social and Cultural Rights

By Dylan Quigley, University of Kansas

Overview

ICESCR[116] is considered one of the three major parts, along with the ICCPR and the Universal Declaration of Human Rights, of the International Bill of Human Rights. It was passed concurrently with the ICCPR by the UN in 1966. Though signed by Jimmy Carter in 1979, advice and consent was never asked for by Carter due to political concerns and it has not yet been ratified. The Reagan and Bush (Sr.) administrations did not believe that economic and social rights were really universal rights at all but rather "desirable goals" and so did not pursue ratification.[117]

The main incentive to debate the ICESCR is that it allows the community to directly attack questions of economic justice as a universal issues of rights and government responsibilities. Where as other treaties do address economic issues as a marginal effect their rights claims, the ICESCR could force a direct debate over questions of poverty, housing right and universal employment. There is strong and interesting literature on the benefits and tradeoffs of considering economic rights as universal human rights[118] – and it is one of the major questions that has prevented a push for ratification in the US.[119]

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[116] Full text of the Treaty can be found at: http://www2.ohchr.org/english/law/cescr.htm,

[117] Amnesty International (ECONOMIC, SOCIAL AND CULTURAL RIGHTS: Questions and Answers, Adapted from: Human Rights Education: The Fourth R, 9:1 (Spring 1998))

[118] See: Susan Kang, The Unsettled Relationship of Economic and Social Rights and the West: A Response to Whelan and Donnelly, 31 Hum. Rts. Q. 1006 (2009).
Daniel J. Whelan & Jack Donnelly, The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight, 29 Hum. Rts. Q. 910 (2007).

[119] Amnesty International Ibid.

Economic social and cultural rights are defined as "conditions necessary to meet basic human needs, such as food, shelter, education, health care, and gainful employment."[120] The specific core rights of the ICESCR are:

> (1) The Right to Education (Article 13 of the ICESCR) guarantees free and compulsory primary education and equal access to secondary and higher education. Among other things, governments are obligated to provide free and compulsory primary education, as well as to ensure that education that does not foster hatred or discrimination.
> (2) The Right to the Highest Attainable Standard of Health (Article 12 of the ICESCR) guarantees access to adequate health care. Among other things, governments are required to ensure that all persons have access to functioning public health and health-care facilities, goods and services, and that these must be available in sufficient quantity to meet the needs of the population.
> (3) The Right to Adequate Housing (Article 11 of the ICESCR) guarantees access to a safe, habitable, and affordable home and protection against forced eviction. Among other things, governments must ensure that all persons have equal access to adequate housing, and that the housing needs of vulnerable groups (such as the homeless) are given particular consideration.
> (4) The Right to Food (Article 11 of the ICESCR) guarantees the right of people to food in a quantity and quality sufficient to satisfy their dietary needs, free from adverse substances, and acceptable within a given culture. In order to fulfill the right to food, governments need to ensure the accessibility of food, in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Among other things, governments must also cooperate in the adequate distribution of world food supplies.
> (5) The Right to Work (Article 6 of the ICESCR) guarantees the opportunity to earn a living wage in a safe work environment, and also provide for the freedom to organize and bargain collectively. Among other things, governments need to ensure that fair wages and equal remuneration for work of equal value without distinction of any kind and that workers are not exposed to unsafe working conditions.

Due to ICESCR's generally ineffective nature globally and the strong effect of the treaties Progressive Realization clause, the question of whether the treaty would have substanitive effects on US domestic policy if ratified seems to be extremely neg biased. The general literature base on US ratification of the treaty is also far less developed than similar discussions over CEDAW or the CRC, though the resent creation of an Optional Protocol to the

[120] Amnesty International Ibid.

ICESCR does give some hope to its development. For these reasons I will conclude that the treaty probably should not be included in a future resolution.

Affirmative Ground

If ratified the United States would:

> be required to "take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" in the Covenant. (…) (3) The USA would be required to report to the UN Committee on Economic, Social and Cultural Rights on measures adopted and progress made in achieving the observance of the Covenant rights. The Committee would then formulate its general observations on how the USA might do better, if it concludes that the USA is not doing enough to realize the rights in the Covenant. Finally, the rights in the Covenant would become part of the "Supreme Law of the Land; and the Judges in every State shall be bound thereby," according to Article VI, Clause 2 of the US Constitution. Thus, in theory, anyone whose rights under the Covenant were violated would be able to bring a case before the courts.[121]

In this way, as outlined by the rights above, we could gain access to advs based around universal employment, poverty law and broad scale question of economic inequality. Similarly there are significant policy and critical advs possible over housing distribution issues. Some groups believe that the housing provisions of the ICESCR make it a good site to challenge US housing policies:

> By becoming a party to ICESCR, the U.S. will at long last recognize that fundamental economic needs like housing, health and food are human rights and that the U.S. will take steps to protect, promote and fulfill such rights. One of the benefits of being a party to such a treaty is participating in periodic reviews where experts on protecting economic rights can engage the U.S. in useful, productive dialogue that produces strategies for protecting these rights. (…) For instance, the right to housing is expounded upon through General Comment No. 4 of the ICESCR that outlines seven key aspects of the right to housing: legal security of tenure, availability of services, materials, facilities and infrastructures, affordability, habitability, accessibility, location and cultural adequacy. This ensures that housing is not merely a roof over one's head, but a safe and secure home in which one can thrive.[122]

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[121] Amnesty International Ibid.

[122] National Alliance of HUD Tenants 9 (Statement by the National Alliance of HUD Tenants Prepared for the hearing before the United States Senate Judiciary Subcommittee on Human Rights and the Law, December 16, 2009 Submitted December 22, 2009, http://durbin.senate.gov/humanRights/record/National%20Alliance%20of%20HUD%20Tenants%20-

Additionally, the intellectual property provision of the ICESCR makes for a diverse set of possible advantages with a debate over the nations obligation to protect and promote scientific research.[123] Some have argued that ratification would obligate the government to promote specific life saving forms of research and change scientific patent policies.

Optional Protocol

Unlike the ICCPR, the ICESCR has no independent adjudication board like the Human Rights Committee for appeals, so in 2008, after years of negotiations the UN General Assembly adopted an Optional Protocol to the ICESCR to create such a mechanism. Twenty nine states signed the document in a treaty event in 2009 but only nine have ratified it.[124] The Optional Protocol "provides the victims of ESC rights violations with remedies when they cannot be heard within their national legal system. Therefore, it redresses the existing inequality in terms of human rights' protection that marginalizes ESC rights. An international complaint mechanism will also help to further define the content of ESC rights and the corresponding State obligations, as well as serve as a guideline for national jurisdictions and human rights institutions."[125]

In contrast to most of the literature on the ICESCR, there is a new and developing body of work on the Optional Protocol which makes real solvency claims to the particular rights

%20HR%20Treaties.pdf.)

[123] Audrey R. Chapman 98 (A Human Rights Perspective on Intellectual Property, Scientific Progress, and Access to the Benefits of Science (Working Paper), 9 November 1998, http://mediaresearchhub.ssrc.org/a-human-rights-perspective-on-intellectual-property-scientific-progress-and-access-to-the-benefits-of-science/resource_view)

[124] Catarina de Albuquerque 2010 (Chronicle of an Announced Birth: The Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights—The Missing Piece of the International Bill of Human Rights, Human Rights Quarterly 32 (2010) 144–178 2010)

[125] Aubrey 9 (Mobilization for the ratification of the Optional Protocol to the ICESCR, Thursday 17 September 2009 by Alexandra Aubry, Plateforme DESC France, http://www.agirpourlesdesc.org/english/how-to-enforce-esc-rights/promoting-the-implementation-of/article/mobilization-for-the-ratification?lang=en)

outlined in the treaty. It is only on the strength of this work that I think ICESCR could merit inclusion in the topic. Catarina de Albuquerque writes this year:

> At the signing event, the High Commissioner for Human Rights, Navanethem Pillay, mentioned that once the new Optional Protocol "enters into force, the ensuing jurisprudence that it will stimulate can offer guidance, with the benefit of concrete examples, regarding the interpretation of economic, social and cultural rights. It will thus clarify the scope of application of these rights by national tribunals and adjudicating bodies." She added that "[w]ith the adoption of the Optional Protocol, the United Nations has now been able to come full circle on the normative architecture envisaged by the Universal Declaration."153 Clearly, the Optional Protocol to the ICESCR will not solve all the prob- lems of the world, but it can surely contribute to improving the enjoyment of socioeconomic rights at the domestic level. In addition, the Optional Protocol will definitely recognize the right of victims of violations of social rights to be heard and give renewed hope to the millions of human beings who still do not enjoy the rights recognized in the Covenant.[126]

Negative Ground

What I see as the major failing of the ICESCR as a possible part of the resolution is lack of strong answers in the literature to major questions of solvency. The Progressive Realization clause of the treaty means that the enumerated rights do not have to be immediately implemented due to economic and social difficulties of doing so. Though there are many with strong legal arguments about why they still must be implemented in a timely manner[127], there is little literature to support that this would actually happen. In fact the empirical record is strongly towards a general failure of enforcement globally due to the Progressive Realization clause.[128] There is new literature developing on the subject, though I could not find much recently that directly considered the question in terms of US ratification.[129]

[126] Albuquerque Ibid.
[127] Amnesty argues that "progressive realization should not be misinterpreted as depriving economic, social and cultural rights of all meaningful content. The purpose, rather, is to give governments flexibility and recognize government's different economic status and capabilities. It is not an escape clause. It includes the idea of continuous improvement and the obligation of the government to ensure that there are no regressive measures."
[128] Audrey R. Chapman 97 (A "Violations Approach" to Monitoring the International Covenant on Economic, Social and Cultural Rights Human Rights Dialogue 1.10 (Fall 1997) "Efforts, East and West, to Improve Human Rights Assessments")
[129] Elizabeth Shura 9 (NEW STRATEGIES FOR PROGRESSIVE REALIZATION ASSESSMENTS OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: CAMBODIAN AIDS-RELATED ORPHANS AND VULNERABLE CHILDREN AS THE HARD CASE, May, 2009, Fordham International Law Journal, 32 Fordham

Aside from the issue of Progressive Realization itself, the question of reservations being passed to nullify the treaty is a major issue of debate in the literature and would need to be hashed out by the community as to whether rider style DAs would be acceptable on this topic or whether the Aff gets to defend complete implementation. Even one of the few recent solvency advocates for US ratification writes that "[i]f we ask what difference it would make, were the U.S. to ratify the International Covenant on Economic, Social and Cultural Rights, we have to keep in mind the dangers of debilitating reservations, understandings and declarations. We cannot simply read the substantive provisions of the Covenant, but must also consider how the application of these provisions to domestic law might be restricted at the time of ratification.[130]

As with many of the treaties the politics link to the treaty is overwhelming for agenda good DAs. But also, if the treaties reforms are actually believed to be implemented, there are serious economic and industry based DAs to thinkgs like full employment, housing reform, science patent changes and governmental science R&D. Also many of those non-rights based advs could be solved by independent changes to domestic regulations, rather than a universal rights based framework. Thus Affs will need to have a defense of the economic rights aspect to the treaty and there, thankfully, is one place where the literature is more well developed (see above).

Conclusion

Though a very interesting idea in terms of the ground that the ICESCR opens up to possible debate, I do not believe that ICESCR should be included in a list of final treaties. The literature advocating US ratification is both outdated and underdeveloped. The majority of

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Int'l L.J. 1657)

[130] Robert Traer 2002 (US Ratification of ICESCR? Delegating Implementation of the Covenant to the States Promises to Keep: Prospects for Human Rights, edited by Charles S. McCoy (Berkeley, CA: Center for Ethics and Social Policy, Graduate Theological Union and Literary Directions, 2002). http://www.religionhumanrights.com/Law/ICESCR/Ratification/ushr.delegate.states.htm

solvency advocates that I have found come from NGO advocacy sheets[131] and are not well developed in the academic literature. Where ICESCR is discussed it is often alongside the much more well developed literature bases of the CRC and CEDAW which share much of the same advantage ground. The Progressive Realization Clause means that Affs will need to rely strongly on highly symbolic advantages and means that it will be much harder to debate the most substitutive and interesting questions of poverty law and universal employment.

Including the Optional Protocol in a version of the resolution could provide a newer, more relevant set of arguments and perhaps a developing literature base as the year proceeds. It might also resolve some of the solvency concerns of the treaty by itself and allow us to debate the question of third party international enforcement. It is only with the inclusion of the Optional Protocol in the resolution, do I think ICESCR could be considered as a resolution option.

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Part 11: The Potential for Other Treaties

By Ryan Galloway, Samford University

The potential for treaties to access other areas of interest to debaters is certainly fertile. As a specific example, the Coalition briefly looked in the Treaty of the Moon as an effort to debate space exploration. In addition, The Convention of the Protection of the Rights of All Migrant Workers and Members of their Families was also briefly looked into for the possibility of debating questions related to immigration. It is possible that further exploration in stage two of the process will yield even more treaties that the United States could consent to be bound by that would allow for areas that debaters wish to discuss in 2010 not currently under consideration by our working group. If treaties wins the controversy vote, I would encourage members of the community to submit papers on other treaties they deem to be pertinent and debatable issues.

Conclusion

International treaties allows for a discussion of a broad range of issues with a stable and unified mechanism. Both kritik teams and policy teams should be pleased with the range of affirmative options provided to them in a world where a treaties topic wins the controversy vote. In addition, the problem of 67 insulates the treaties on this topic from the inherency/uniqueness dilemma created by the Obama presidency. The educational opportunities are plentiful, the literature on these questions is exhaustive, and ground on both sides is strong for both policy and kritik debaters. The CTDT encourages you to vote for treaties as the 2010-2011 topic.