WHY DEBATE TREATIES?

Last year, the "Coalition to Debate Treaties" wrote an excellent paper urging the community to vote for a topic area that involved United States ratification of multilateral treaties. Sadly, the treaties topic lost out to immigration in a very close vote. The purpose of this paper is to highlight the still present relevancy of the treaties topic a year later. Rather than simply reproduce last year's topic paper, it is our goal to reemphasize the benefits of debating treaties while pointing out the evolution of the topic literature over the past year. As I see it, there are multiple advantages to debating the treaties topic:

I. Topic Stability

No matter what happens in Congress over the next year or so, almost every affirmative on a treaties topic (if not all) will be guaranteed inherency. In last year's paper, Galloway referred to this as 'the Obama problem.' The basic argument is that a progressive president motivated for change creates a lot of problems for inherency and negative uniqueness for many of the topics that we discuss. One need only look to the 'Dream Act' debates on last year's topic to see that the president often complicates our ability to predictably prepare for tournaments. Despite some evidence that the president may be willing to move on certain treaties in the near future (you may recall some CTBT politics disadvantages at the NDT this year), it is highly unlikely that there will be any substantial movement on multilateral treaties any time soon. There are several reasons for this:

First, the Obama administration has been least active presidency in this area in over 50 years…

John B. Bellinger III, former legal advisor to the State Department, adjunct senior fellow in international and national security law at the Council on Foreign Relations, and partner at Arnold & Porter LLP, June 11, 2010, "Our Abandoned Treaties," Washington Post

Although the Bush administration was criticized for its alleged lack of respect for international law, it had a particularly good record on seeking and obtaining treaty approvals. It secured Senate advice and consent for 163 treaties from 2001 to 2009. These included 20 treaties during the administration's first two years and a record 90 treaties during its last two years -- more treaties approved by the Senate than during any single previous Congress in U.S. history. Treaties approved by the Senate during the Bush years included more than a hundred bilateral agreements on such diverse subjects as the protection of polar bears in the Arctic and the return of stolen automobiles from Honduras. There were more than two dozen multilateral conventions on human rights, environmental and marine protection, arms control, nuclear proliferation, cybercrime and sports anti-doping rules. And senior Bush officials testified in favor of treaties restricting the involvement of children in armed conflicts, protecting the ozone layer and creating a marine preserve in the Caribbean. I testified in support of five treaties on the law of war that had languished before the Senate for years, including agreements prohibiting the use of incendiary weapons (such as napalm) and blinding lasers, attacks on cultural property in wartime and pacts requiring the cleanup of unexploded ordnance after a war. The Senate approved all five in September 2008. One especially important treaty that the Senate refused to approve was the U.N. Convention on the Law of the Sea, to which 158 countries are party. This multilateral treaty, which guarantees freedom of navigation, codifies sovereign rights over marine resources and protects the world's oceans, was strongly supported by all branches of the U.S. military, every major U.S. ocean industry and many environmental groups (and even then-Alaska Gov. Sarah Palin). Senior Bush administration officials testified in favor of the treaty in

2004 and 2007, and the Senate Foreign Relations Committee recommended passage in both years. Despite vigorous efforts by the Bush administration, the full Senate failed to vote on the convention because of concerns raised by conservative groups. The Obama administration took office promising a "return" to the U.S. commitment to international law. Obama officials have publicly supported Senate passage of various multilateral conventions, including the Comprehensive Test Ban Treaty and the Convention on the Elimination of Discrimination Against Women (neither of which the Bush administration supported). But as time has passed, the Obama administration's commitment to the ratification of treaties has taken a back seat to health care and other legislative priorities. Sadly, the White House made no effort to obtain Senate approval for the Law of the Sea convention last year, when the political opportunity for passage was greatest (because the Democrats had both a cloture-proof majority for several months in a non-election year and political momentum after Obama's win). Meanwhile, several other important treaties await Senate action, including agreements to limit illegal trafficking in firearms, dumping of waste at sea and production of toxic chemicals. All of these deserve vigorous support from the administration. Even if the Senate approves START and several other bilateral tax conventions this year, the Obama administration will have presided over Senate approval of the smallest number of treaties during a two-year Congress in more than 50 years.

Ian Williams, Senior Analyst for Foreign Policy in Focus, January 28, 2011, “UN Again in Crosshairs,” Foreign Policy in Focus

Ros-Lehtinen's actions, in opposing multilateralism, will not likely result in a political disadvantage for the Republicans. The Obama administration pays lip service to the UN and multilateral obligations. But the failure of the Democrats after two years control of the White House and Capitol Hill to ratify crucial multilateral instruments on child soldiers, land mines, or the Law of the Sea suggests that the administration's heart was not really in it. Certainly the chances of any of these treaties passing in the balance of this presidential term are somewhat minimal.

Second, the midterm setbacks for the Democratic Party and the requirement to secure a senate super-majority for approval make it unlikely that any significant multilateral treaties will emerge from a republican-controlled congress that is traditionally hostile to such actions…

Michael Knigge, Deutsche Welle World News, October 29, 2010, “Shift to the Right in Midterm Elections Could Affect US Foreign Policy,” http://www.dw-world.de/dw/article/0,,6157523,00.html

What's more, Congress is also needed to ratify international treaties. Even with a sizeable majority in both chambers during the first half of his term, President Barack Obama couldn't get a climate change treaty through Congress. With a Republican majority in one or both chambers of Congress, predict the experts, a climate change treaty which must be ratified by a two-thirds majority in the Senate is all but dead. The fate of the new Start treaty, the follow-up to the original nuclear disarmament pact signed by Republican icon Ronald Reagan and Soviet leader Mikhail Gorbachev, is also uncertain. The lame duck Senate will vote on the issue in the middle of November. Whether it goes through is still unclear. If it doesn't, it seems rather unlikely that it will have an easier time in the new Senate. "I don't see any major treaties like these being ratified, at least not easily," says Chrobog. "I hope that President Obama and the Democrats at least keep their majority in the Senate." The likely swing to the right in the midterm elections could make US foreign policy less predictable and more complicated, argue the experts. Still,

they add, Europeans shouldn't fret too much about the outcome of the polls. "I think the most important thing for those looking from abroad at this election is to realize this is not fundamentally about ideology," says Mann. "This is about Americans being scared and sour and pessimistic about our economic well-being and instinctively voting against the party in power."

As Galloway elegantly stated in last year's treaties paper, "[d]ebating treaties puts a structural constraint on the topic that resolutions which only require legislation simply do not have." If the community votes for the treaties topic, they can do so knowing that there will be a fairly decent guarantee of topic stability throughout the season.

Some may argue that the benefit of topic stability comes at the price of timeliness. This is not necessarily true in the instance of the treaties topic. While there is very little chance that the senate will take action on any particular treaty, there is no shortage of advocates pressing them to do just that. One need only look to the following statements to find advocates who argue for a pressing need for action…

Don Kraus, Chief Executive Officer of Citizens for Global Solutions and Contributor to Foreign Policy in Focus, January 18, 2011, "A New Start on Treaties," Foreign Policy in Focus

Treaties are the bedrock of international law. U.S. accession to a convention increases its credibility while bolstering U.S. global leadership. It's long past time for the Senate to take up incredibly important agreements that have languished for decades, such as the Convention on the Law of the Sea, the Comprehensive Nuclear Test Ban Treaty and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). New treaties, like the Convention on the Rights of Persons with Disabilities that the administration signed this summer, will soon be added to the list. Challenges to the U.S. vision of a world based on democracy and human rights are coming from emerging economies and fundamentalist regimes. Renewed U.S. reinforcement of the web of international laws and norms is our best means of parrying such attacks.

John B. Bellinger III, former legal advisor to the State Department, adjunct senior fellow in international and national security law at the Council on Foreign Relations, and partner at Arnold & Porter LLP, June 11, 2010, "Our Abandoned Treaties," Washington Post

After November, the administration will have a narrow window to make substantial progress on treaty ratifications before the next election year. It must devote the same energy it has given to START to securing Senate approval for the equally important treaties remaining on the Senate calendar. It should begin with the U.N. Convention on the Law of the Sea.

In addition, the Obama administration is expected to release its "treaty priority list" soon which will provide speculation in the literature about the passage of any number of treaties…

Andrew Burt, February 7, 2011, "Obama Administration to Push Law of the Sea Treaty in Senate this Year," Inside the Navy

As officials from the Obama administration set off for Europe last week to mark the commencement of the follow-on Strategic Arms Reduction Treaty, the administration was also considering what treaties it would attempt to ratify in 2011 -- and it looks like the U.N. Convention on the Law of the Sea is destined for the top of its list. The specific list, called the treaty priority list, is usually sent from the State Department to the Senate Foreign Relations Committee at the beginning of every new legislative session, which outlines the administration's goals for the session. The committee must then send any treaties to the Senate floor for a two-thirds vote and the president's signature in order to be ratified. Just last month, the committee's chairman and ranking member began this process by sending a letter to Secretary of State Hillary Clinton asking for the treaty priority list, according to Mark Helmke, a spokesman for Ranking Member Sen. Richard Lugar (R-IN). But according to Helmke, the treaty's chances in the Senate are even slimmer now than they were when the Bush administration backed it in 2007, where the treaty met a dead end due to opposition from conservative Republicans. "I think this time, you have [fewer] Democrats and it's going to be harder for [Obama] to get the necessary Republicans to support it," he said. "And he may even have a hard chance getting all the Democrats." Although the committee has not yet heard from the administration, many signs indicate that when they do, the U.N. Convention on the Law of the Sea -- also known as UNCLOS -- will have moved to the top of the priority list, despite the hurdles it would face in the Senate. Perhaps the clearest sign of the Obama administration's intentions is the following statement, made by Clinton late last year: "We prioritized the START Treaty this year. We're going to prioritize the Law of the Seas next year." Other more recent signs suggest that the administration is following through on these sentiments. On Feb. 3, for example, a State Department official told Inside the Navy that the administration "strongly" supports the convention and that it remains "hopeful the Senate will approve the treaty soon." The official also added that the department was in the midst of drafting a new UNCLOS briefing for the press -- an indication that the department expects many more queries about the treaty in the future. "We should have passed it years ago," said John Norton Moore, a professor at the University of Virginia Law School and the head of the Center for Oceans Law and Policy. "But it's even more urgent with every passing day. For one thing, the Arctic is extremely important, and the demarcation of the continental margin in the Arctic is an enormously sensitive and important issue and we're basically left out of that process." Drafted in 1982, the convention sought to define a common set of international maritime norms, focusing on maritime territorial rights and setting up an international body for dispute resolution. Without ratifying the treaty, the United States cannot access that body to settle its territorial disputes in the Arctic, a fact routinely touted by the treaty's proponents. Many conservatives object to the treaty on the grounds that it would diminish U.S. sovereignty on the high seas. Aside from UNCLOS's importance in the Arctic, analysts and officials say that the Obama administration may also prioritize the treaty to bolster its case in confronting China's rising assertiveness in the South China Sea -- an increasingly important issue for the administration as it seeks to convince allies in the region that U.S. power is not in decline. The dispute over freedom of navigation for U.S. Navy ships off China's coast is largely a matter of differing interpretations of the treaty. "It's very difficult for the United States to protect its interests when we're not a party" to the treaty, explained Moore. "They simply in discussions will say, 'Why should we listen to you? You're not a party.'" Military and administration officials

have long made that same argument. In December, for example, the Naval War College published a U.S.-Chinese dialogue on tensions over U.S. military operations in the South China Sea. "The [Chinese government's] message is that even though the United States asserts its compliance with UNCLOS, because it has not undertaken to be formally bound by the convention it has no standing to impose its self-regarding interpretations of the regime on those states that have ratified it," Alan Wachman, an associate professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University, wrote in that volume. "As things stand now, it's more difficult for us to deal with what are becoming increasingly pressing maritime issues," said Clinton late last year, "both in freedom of navigation and in the exploitation of the sea bed for searching for everything from oil and gas to minerals." Despite growing support for UNCLOS, many conservatives remain skeptical about the treaty's chances of making it to the Senate floor. In a December briefing titled "Five Controversial Treaties to Be Wary of in 2011," Steven Groves, a fellow at the Heritage Foundation, gave the law of the sea treaty a 15 percent chance of receiving Senate consideration. The treaty "has the support of a diverse range of interests, including segments of the U.S. military, environmental groups, and the oil and gas industry," wrote Groves. "Among the treaties that have languished in the Senate's 'inbox' for years," UNCLOS has been thought of as a "low hanging fruit" and "yet the treaty eludes ratification time and time again." The administration is expected to announce its treaty priority list alongside the release of the 2012 budget, which is set for the week of Feb. 14.

Multilateral treaties were created to address many of the world's most pressing problems. To the extent that the treaties have not come into force or lack the support of one of the most powerful countries in the international system, those problems are obviously still pressing and thus there should be no shortage of 'brinkish' arguments in the literature surrounding foreign affairs and policy. Many of the arguments concerning timeliness from last year's treaties paper also hold true today. Regardless of whether Obama has held true to the vision of change that was outlined in his campaign for presidency, international cooperation is still an overriding concern and priority for the administration. This can be seen in recent events surrounding Libya…

Howard LaFranchi, Staff Writer for the Christian Science Monitor, April 4, 2011, "Obama on Libya: The Dawn of a Foreign Policy Doctrine?" CSM

Obama's decision to intervene has led to speculation over the dawning of an Obama doctrine. Was Libya setting a precedent for future military actions under this president when other despots turned their guns on their own people? The answer would seem to be a clear "no." In explaining his decision on Libya, Obama has emphasized how "unique" the Libyan case is as much as he has made the case for international action. But what Obama has revealed - both in his response to Libya and to the turmoil across the Middle East more broadly - is, if not a doctrine, then a set of principles that guide his foreign-policy and national-security decisionmaking. Multilateralism

figures at the top of the list, but it includes a new emphasis on the duties of other powers (and a growing array of powers) in the world as well as a hesitance to use military power - positions that some critics portray as an abdication of American leadership. Obama's lofty images of an America that intervenes on the side of good aside, it was probably the private White House deliberations on Libya that gave a truer picture of this president's approach to foreign policy. As the debate proceeded at that March 15 meeting, Obama homed in on one overriding question: Can this work, and what would it take from the US for an international intervention to be successful? In particular, he focused on the need for a strong enough United Nations Security Council resolution authorizing the use of force to virtually guarantee that any international intervention could achieve its goals.

In addition, other nations are no doubt still frustrated with our lack of movement on treaties, as

can be seen by Russia's recent frustration over the lack of ratification of the CTBT…

Global Security Newswire, March 2, 2011, "Russia Demands Universal Observance of CTBT," http://www.globalsecuritynewswire.org/gsn/nw_20110302_2869.php

Russia has pressed all governments that are not yet Comprehensive Test Ban Treaty signatories to join the agreement, Interfax reported yesterday (see GSN, Feb. 28). The pact has been ratified by 153 nations, including Russia and 34 more of the 44 states whose full endorsement is required for the international prohibition on nuclear test blasts to enter into force. Holdouts among that group of "Annex 2" states are China, Egypt, India, Indonesia, Iran, Israel, North Korea, Pakistan and the United States. "The disarmament agenda includes a number of priority issues that need to be resolved and can be resolved today," Russian Foreign Minister Sergei Lavrov told the international Conference on Disarmament in Geneva, Switzerland. "The task of enacting the Comprehensive Nuclear Test Ban Treaty as soon as possible is particularly important. We once again call on all of the countries that have not yet signed and ratified the treaty to do so." "Unilateral moratoriums on nuclear tests are useful, but they cannot substitute this obligation, which is key to global security," Lavrov said (Interfax I).

II. Mechanism Stability

The beauty of a treaties topic is that it allows the community to debate a diverse array of issues while having the stability of a consistent mechanism for plan action. The last time the community debated treaties, we were able to discuss the death penalty, nuclear testing, global warming, arms control and an international criminal court. In addition to the initially broad choice of areas to debate, affirmatives innovated throughout the season by writing new advantages to ratification and add-ons. Normally, this degree of breadth would make it difficult for negative teams to manage the research workload for an entire debate season. However, the stability of the mechanism allowed the negative to keep up throughout the year. No matter what changes were made to the affirmative, negatives had the relative security blanket of knowing that the affirmative would have to use the mechanism of ratification. The power of a stable mechanism is that it lends a great deal of predictability to the negative for researching specific disadvantages and counterplan ideas. Without the benefit of a stable mechanism, it would be virtually impossible to justify a topic with a comparable amount of argument breadth. Thus, any topic wording written for the treaties topic area should, at the very minimum, mandate that the affirmative use the process of ratification or accession.

NEGATIVE GROUND

I. Counterplans

Eric Morris did a thorough job of explaining the counterplan options available to the negative in last year's paper. I will briefly summarize here to avoid the need for persistent cross-reading of the papers:

First, negatives have the option of fiating compliance with the treaty in question. The purpose of such a counterplan would be to test the need for ratification while solving for any affirmative advantages that stemmed solely from non-compliance. There are a number of ways that the negative could achieve this. One way would be to pass legislation that is equivalent to implementing legislation without the ratification of the treaty. Another option would be to have the Supreme Court incorporate the treaty into U.S. law through a ruling on customary international law. The negative could have the states implement laws that are consistent with the implementation of the treaty. Finally, each individual treaty will yield a number of specific counterplans designed to solve for core advantages areas that would further serve to test the affirmative's justification for ratifying the treaty.

Second, Congressional-Executive and Executive Agreements are methods of action that avoid the requirement of super-majority action in the Senate. Some members of the "Committee to Debate Treaties" expressed hesitancy at allowing the negative this ground. I do not share those feelings. While it is true that the CEA was a stock negative strategy for many teams on the treaties topic, it was hardly equivalent to the constitutional amendment nightmare that affirmatives had to deal with on the courts topic. Furthermore, the notion that getting a simple majority's approval in the current Republican-controlled house would be easier than getting a super-majority's approval in the current Democratic-controlled senate is at best hair-splitting, and at worst ludicrous. Moreover, there have been a number of articles published since the last

time the community debated treaties that respond to the use of such action. Such as this spirited dissent:

John Yoo, Law Professor at the University of California-Berkeley, visiting scholar at the American Enterprise Institute, and former deputy assistant attorney general and John R. Bolton, senior fellow at the American Enterprise Institute and former ambassador to the United Nations, January 5, 2009, "Restore the Senate's Treaty Power," New York Times

The Constitution's Treaty Clause has long been seen, rightly, as a bulwark against presidential inclinations to lock the United States into unwise foreign commitments. The clause will likely be tested by Barack Obama's administration, as the new president and Secretary of State-designate Hillary Clinton, led by the legal academics in whose circles they have long traveled, contemplate binding down American power and interests in a dense web of treaties and international bureaucracies. Like past presidents, Mr. Obama will likely be tempted to avoid the requirement that treaties must be approved by two-thirds of the Senate. The usual methods around this constitutional constraint are executive agreements or a majority vote in the House and Senate to pass a treaty as a simple law (known as a Congressional-executive agreement). Executive agreements have an acknowledged but limited place in our foreign affairs. Congressional-executive agreements are far more troubling. They have evoked scathing attacks by constitutional experts and have been strongly resisted in the Senate, at least so far. The framers of the Constitution designed the treaty process with a bias against "entangling alliances," as Thomas Jefferson described them in his first inaugural address. They designated the Senate as the body responsible to protect the interests of the states from being bargained away by the president in deals with foreign nations. The framers required a supermajority to ensure that treaties would reflect a broad consensus and careful, mature decision-making. America needs to maintain its sovereignty and autonomy, not to subordinate its policies, foreign or domestic, to international control. On a broad variety of issues -- many of which sound more like domestic rather than foreign policy -- the re-emergence of the benignly labeled "global governance" movement is well under way in the Obama transition. Candidate Obama promised to "re-engage" and "work constructively within" the United Nations Framework Convention on Climate Change. Will the new president pass a new Kyoto climate accord through Congress by sidestepping the constitutional requirement to persuade two-thirds of the Senate? Draconian restrictions on energy use would follow. A majority of the Congress would be much easier for Mr. Obama to get than a supermajority of the Senate. A scholar at the Brookings Institution has already proposed that a new president overcome objections to this environmentalists' holy grail by evading the Treaty Clause. President George W. Bush resisted many efforts at global governance. But his administration still sometimes fell into the temptation to flout the constitutional requirement of a two-thirds majority in the Senate. In 2002, the administration considered submitting the Treaty of Moscow, a nuclear arms reduction agreement, for majority approval of Congress. Vice President-elect Joe Biden, who was then the chairman of the Senate Foreign Relations Committee, privately made clear that he would vigorously oppose such an attempt to evade the Senate's constitutional prerogatives. The administration agreed to submit the agreement as a treaty, and the Moscow agreement cleared the Senate. We hope the new vice president will not reverse his commitment to the Senate's constitutional authority. But an administration determined to tie one hand behind America's back might use Congressional-executive

agreements to push the nation all too easily into quixotic and impractical global governance regimes. President Bill Clinton signed Kyoto, but the Senate in effect rejected it. He also signed the Rome Treaty of 1998 that established an International Criminal Court, which would subject American soldiers and officials to unaccountable international prosecutors and judges for alleged war crimes (including, potentially, the undefined crime of "aggression"). Mr. Clinton did not even send this agreement to the Senate. Mr. Bush "unsigned" it. Mr. Obama might re-sign it and seek approval by only a majority of both houses of Congress. Other international regimes might restrict America's freedom of action to defend itself. In 1999, the Senate rejected the Comprehensive Test Ban Treaty, which would have undermined America's ability to verify the reliability and effectiveness of its nuclear deterrent. Mr. Obama has said he supports ratification. The historical precedents are that major arms control agreements must receive the approval of two-thirds of the Senate. President Bush, like President Clinton, did not sign a global agreement that would ban antipersonnel land mines, on the grounds that they are a key component of the American defense of South Korea. But his administration has pressed for ratification of the treaty on the law of the sea, which would subject disputes over the free passage of American naval vessels to the jurisdiction of an international maritime court -- which the Senate has so far refused to ratify. If Mr. Obama were to submit either of these agreements for approval by a simple majority of the House and Senate, his actions would pose a serious challenge to American principles of law and democratic governance. Global governance schemes delegate power to independent international organizations to make and enforce laws that would apply domestically, by international bureaucrats who are unaccountable to Congress, the president, American public opinion or the democratic process. It is true that some multinational economic agreements, like Bretton Woods, the General Agreement on Tariffs and Trade and the North American Free Trade Agreement, went into effect after approval by majorities of Congress rather than two-thirds of the Senate. But international agreements that go beyond the rules of international trade and finance -- that involve significant national-security commitments, or that purport to delegate lawmaking and enforcement functions to international organizations, or that could fundamentally alter the American constitutional system of individual rights -- should receive the intense scrutiny of the treaty process, regardless of their policy merits. By insisting on the proper constitutional process for treaty-making, Republicans can join Mr. Obama in advancing a bipartisan foreign policy. They can also help strike the proper balance between the legislative and executive branches that so many have called for in recent years.

Third, there is some concern that the complexity of the ratification process could lend itself to some questionably competitive options given the community’s infatuation of late with process counterplans. As Eric Morris stated in last year’s paper, there is a viable debate to be had about the legitimacy and competition of these counterplans. In addition, the depth of literature on each specific treaty and the link certainty gained from requiring ratification may make judges less receptive to the need for such negative arguments. One need only reference the lack of reliance on the congressional-executive agreement counterplan on the last treaties topic as evidence that

teams will not have significant difficulty formulating specific negative strategies to each treaty in the topic. This is assuming, of course, that the number of treaties in the topic does not deviate substantially under the new wording. Lastly, affirmatives had little trouble defeating counterplans involving reservations and understandings on the last treaties topic, because the advocates of ratification often address the issue in the literature surrounding each individual treaty.

II. Disadvantages

Each treaty will have individual disadvantage areas, but some core generic disadvantages can be identified:

Politics. Ratifying a treaty is hard. As discussed earlier, ratification requires a super-majority vote (67) to win approval from the senate. Given the international nature of treaties, the responsibility for spearheading the effort of moving a treaty through congress often (if not always) falls on the President. Negative teams should be able to make a fairly compelling case that ratification would require a substantial investment of political capital. In addition, there are arguments to be made about why securing 67 votes would necessarily fracture the Republican Party. As the election draws near, teams will also likely be able to make arguments about why ratification of international treaties could affect national elections at both the presidential and senate levels.

Hegemony. There is a robust debate about the value of multilateralism vs. unilateralism. Whether ratifying treaties binds the United States to the rules of other countries or allows the government to exert influence over other actors in international forums. Leadership will certainly be both an advantage area and disadvantage for most treaties selected for consideration. Guaranteed access to a large impact base through a core generic like the hegemony disad ensures that even small squads can compete, and creates a litmus test for affirmative innovation (can your new advantage/add-on outweigh the heg da?).

Foreign Relations. As with any international topic, treaty ratification has important implications on how the United States interacts with other nations. In the past, teams have read disadvantages to pressuring other countries to "follow in the U.S.' footsteps" post ratification. These include disads to the pressure alone and also internal politics disads to ratification by other

countries based on the ‘knock on’ effect of U.S. ratification. Relations advantages will also be a core affirmative area which creates the potential for impact turning as a negative strategy.

Federalism. The balance of power between the states and the federal government is heavily implicated in almost every treaty debate. The treaty system in general and the notion of ceding authority to a larger international body is also in some ways duplicative of the American system of federalism. The literature on the effect of international law and treaties on the balance of power in the United States is well developed. It will likely be an area that is explored by both the affirmative and the negative if the treaties topic is chosen.

Other: Some disadvantages might not withstand a great deal of scrutiny, but it will probably not deter teams from deploying them in debates. Such disadvantages include things like the world government disadvantage. This disadvantage is inspired by conservative isolationist literature that fears international organizations like the United Nations and sees treaty ratification as a method of giving power to an eventual power grab by a global government. Also, the notion of a ‘treaty trade-off’ could be used as a disadvantage. The thesis of this disadvantage is like politics, but very specific to treaty ratification. The negative would argue that a certain treaty will be ratified now, but the plan would kill momentum.

III. Critiques

Once again, Eric Morris did a great job on this portion of the topic paper, so I will just attempt to summarize the critical options available. Obviously, each treaty will have its own genre of critiques specific to the subject matter it was designed to address. This is true for both the affirmative and the negative. In addition, there are critiques of the symbolic value of treaties and the notion of international norms. These can be from critiques that question the implicit force/coercion behind such action (a Dillon/Reid global governance style argument) or the western bias in such universal proposals (cultural relativism/post-colonialism). There are also critiques of the notion of sovereignty that is implicated in a nation's consent to be bound by international constraints. On the past treaties topic, teams explored some critical global concepts like Nayar's Global-Local, Derrida's New International, and Badiou's notion of democracy.

POTENTIAL TREATIES

This section is called "potential treaties," because it is not intended to be exclusive. The purpose of this section is to give the community some idea of what options exist and highlight some of the more fertile areas for debate. The wording paper stage of the topic process will allow a much more rigorous analysis of treaty viability. The lack of presence in this topic paper should not be interpreted as an attempt to exclude any treaty from consideration. Rather, the goal is to stress the desirability of mechanism itself as a subject for debate in the coming year. To quote Galloway from last year's topic paper, "It is possible that further exploration in stage two of the process will yield even more treaties that…would allow for areas that debaters wish to discuss…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." Last year's paper contained an extensive bibliography for a large number of treaties. Rather than replicate all of that work, my goal is to point to the evolution of the topic literature over the past year. Specifically, for the purposes of wording papers, the community could look into treaties that were previously debated on the treaties topic, as well as:

· The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (OAS Firearms Convention)

· The Convention on Cluster Munitions

· The Prevention of an Arms Race in Outer Space Resolution (PAROS)

· The International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries

· The General Assembly Resolution on Permanent Sovereignty over National Resources

· The Convention on the Rights of Persons with Disabilities

I. Convention on the Law of the Sea (UNCLOS)

Katsulas' recommendation regarding LOST has held true over the past year. New articles were written advocating and arguing against ratification. More literature has been produced in two particular areas of interest. The first is the right to access and explore the arctic seabed now that the ice is melting. Second is the concern over Chinese naval modernization and the need for the treaty to enforce territorial claims. Both of these issues mean that the treaty will be talked about widely in the coming year. As an example of the literatures development over the past year, I have included the conclusions to an arguing against ratification and subsequent reply to that article from a major journal:

Raul Pedrozo, Retired U.S. Navy Captain and Associate Professor of International Law – Naval War College, April 2010, "Is it Time for the United States to Join the Law of the Sea Convention?" Journal of Maritime Law and Commerce

The United States has lived outside the Convention for the past 30 years without any serious adverse repercussions. To the extent U.S. oceans policy has gone off-course during that period, the missteps have been from self-inflicted wounds, such as the Northern Right Whale MSRe system, the offshore oil drilling moratorium off California, the Northwest Hawaiian Islands PSSA designation, the 2009 Polar Bear critical habitat designation in the rich off-shore oil fields off Alaska, the 2007 and 2009 marine national monument designations in the Pacific, and NOAA's recent proposal to establish "hot spots" in the ocean to protect marine mammals from sonar use.31 So the question is - can we live without it for another 30 years? If CFR and the Obama Administration really believe that joining the Convention is critical to U.S. national interests, they will have to do a better job at explaining why it is important to become a party to the treaty. Relying on feeble arguments like the ones articulated in the CFR Expert Brief will, on the one hand, not convince the skeptics and, on the other, provide the Convention's opponents with ample ammunition to undermine the Administration's position. Let's face the facts - although the Convention was well-intended when it was originally negotiated, it has failed to achieve many of its intended purposes. Deep seabed mining remains a pipedream. Creeping jurisdiction has not been curtailed - in fact, it has proliferated in some respects. Moreover, rather than reduce tensions, the Convention's provisions on the EEZ and continental shelf have rekindled long-standing territorial disputes and disputes over fisheries and hydrocarbon deposits, in areas like the South and East China Seas, that have the real potential to result in serious conflict. Until we figure this all out, as long as we retain our leadership role at the IMO, maintain a strong, capable and well-trained Navy, and curtail our own excessive maritime claims in the name of environmental protection, U.S. ocean and national security interests will be preserved.

John A.C. Cartner, Member of Cartner & Fiske, LLC, The Law Society, the D.C. Bar, and the law associations of the U.S., Canada, Australia-New Zealand, etc. and Edgar Gold, Member of the Editorial Board of the Journal of Maritime Law and Commerce, Former President of the Canadian Maritime Law Association, and Member of the Delegation of the International Law Association to the Third UN Conference on the Law of the Sea, January 2011, "Commentary in Reply to 'Is it Time for the United States to Join the Law of the Sea Convention'" Journal of Maritime Law & Commerce

We can only conclude that the arguments the author has put forth as antagonist to the ratification of UNCLOS 1982 by the US have little or no merit. It seems to us that what the author is proffering is exactly the wrong way to go to meet what we perceive his objective to be: a stable and orderly and effective US maritime policy. Such a framework within UNCLOS 1982 will offer not only stability but some certainty as to US behaviour in the maritime sector. Currently its behaviour is neither certain nor coherent, but with one exception. That exception is the very one-sided, overbearing, and overarching intensity of the security tail wagging the national dog of the police functions of the US. This policy appears to us to affect any existing coherent maritime trade policy in a negative way. Trade, not a Leviathan-like governmental control, either positively or by obstructionism, is the ultimate security of a state. This has, once again, been clearly shown by the very recent global financial crisis which fully confirmed the close link between national security, international trade, and the financial sector. Rather than making the state less secure, it seems fairly clear to us that a ratification of UNCLOS 1982 would make the state more secure because it will provide the stability of international certainty for trade and in other maritime matters which the US does not now have. That alone will be the most critical security component and should form the basis for other policy interests. It worries us that a senior and experienced person in an agency that has made such important contributions to the national and international maritime sector seems to espouse views that ignore these economic and political verities. We only hope that the author's views do not represent an official US position being contemplated. Their implementations would be gravely disturbing to what there is of oceanic good order.

II. Ottawa Landmines Convention

The recommendation of the coalition from the University of Texas-Dallas regarding the landmine treaty has also held true over the past year. There was renewed push for ratification of the Ottawa Convention beginning in May of last year. This brief flurry of news resulted in several articles about the potential ratification and its effects…

Mark Landler, May 8, 2010, "White House is Being Pressed to Reverse Course and Join Land Mine Ban," New York Times

The Obama administration, under intense political pressure from Capitol Hill and elsewhere, is engaged in a vigorous debate over whether to reverse course and join an international treaty banning land mines, administration officials said this week. In re-examining the issue, the administration is stepping back into the glare of a perennial cause that has captured the attention of world leaders, royalty and celebrities. It is also inviting another internal debate that pits the Pentagon against other parts of the administration.

The policy discussion produced several affirmative solvency arguments…

Chris Cobb, May 22, 2010, "U.S. Support for Ottawa Treaty would be a huge boost to anti-landmine campaign," Ottawa Citizen

The Obama administration is on the verge of joining the Ottawa Treaty, a significant development for the decade-old initiative that aspires to rid the world of landmines. The United States is one of 37 countries that did not sign the treaty that took root in Ottawa during a 1997 conference. It was the first time in diplomatic history that governments and NGOs worked together openly to craft an international treaty. There are millions of landmines buried in the earth. Although most are from conflicts long past, they remain lethal and kill or maim thousands of people -- mostly children -- each year. A bipartisan group of 68 U.S. senators has written to urge President Barack Obama to join the 156 other countries -- including Canada -- that have ratified the treaty. When it comes to clearing landmines or helping victims, the U.S. is the world's most generous donor. However, it has refused to sign the Ottawa Treaty because of opposition from its military. The Pentagon's case is weaker now because the U.S. hasn't used, produced or exported landmines since 1991. The replacement weapon of choice, the cluster bomb, has all but rendered the U.S. landmine stockpile redundant. "I'm guardedly optimistic," a senior official who favours the treaty told the New York Times this week. "Why stick with the status quo when we would get so much credit for even a modest move?" Mines Action Canada executive director Paul Hannon says the move would be a major achievement for the International Campaign to Ban Landmines (ICBL) to which the Canadian group belongs. ICBL won the Nobel Peace Prize for its work in bringing about the treaty. "Like many Canadians, I have family and friends in the States," said Hannon. "Many of them believe the U.S. is already part of the treaty." It would bring a new level of gravitas to their efforts, he says. "If Washington joins this treaty, it will stop other countries such as China, Pakistan, Russia and India from hiding behind the United States." Those four major holdouts have pointed to the U.S. to justify their own position.

as well as, negative responses…

David B. Rivkin, Jr. and Lee A. Casey, D.C. based attorneys and former Department of Justice employees under Reagan and Bush, May 26, 2010, "The Case Against the Land-Mine Treaty," Wall Street Journal

Sixty-eight senators have sent a letter to President Obama urging U.S. ratification of the Ottawa Convention. The 10-year-old treaty, banning the production and use of land mines, has been accepted by over 150 countries, including most of our allies. The U.S., however, should not join this august club. Land mines remain a critical part of America's 21st century security architecture. The demilitarized zone (DMZ) between North and South Korea contains massive minefields. They guard against surprise attacks by numerically superior North Korean infantry who are poised 20 miles from the outskirts of Seoul. Deterring nuclear-armed and consistently erratic North Korea (its most recent provocation was sinking a South Korean warship) is a challenge requiring all the tools in the U.S. military arsenal. Ratifying the Ottawa Convention means dismantling the DMZ minefields. That means an American president might face the unpalatable choice of watching South Korea (and the U.S. forces stationed there) overrun—or using nuclear weapons. Although the U.S. has chosen not to deploy land mines in post 9/11 wars, they can save the lives of American soldiers. Our bases in Iraq and Afghanistan have regularly come under insurgent attacks, including on the morning of Oct. 3, 2009, when hundreds of Taliban penetrated the defense perimeter of Combat Outpost Keating, an isolated U.S. camp in northeastern Afghanistan. Outnumbered six to one, the G.I.s fought a desperate action with small arms. U.S. aircraft arrived, but only after eight Americans (of 53) were killed. Had the camp been surrounded with a minefield, the results would have been very different. Outside Korea, land mines on a grand scale may no longer be an essential part of the U.S. arsenal. But ratifying the Ottawa Convention transforms a policy choice into a legal obligation that, notably, neither Russia nor China (or Iran, North Korea and several other rogue states) have accepted. Unilateral disarmament here is neither smart arms control nor good foreign policy. Land mines do present important humanitarian concerns. Once deployed, they can remain active for decades, and civilians are regularly injured or killed by these weapons long after a conflict has ended. This is a particularly acute problem in the developing world, where many belligerents never bothered to mark or clear the affected areas. But the newest generation of American "smart" mines can be remotely armed and disarmed, or programmed to blow themselves up after a given time. These weapons are no more or less inhumane than other types of military hardware. While some smart mines can be expected to malfunction and remain armed, the same is true of all unexploded ordinance, including aircraft-delivered bombs and artillery rounds. Properly used, land mines are not only an effective weapons system, but their limited range can produce far less unintended damage to civilians than, for example, a heavy artillery barrage or aerial bombing. The treaty, however, would ban all land mines, stupid or smart. In truth, most of its proponents are more interested in reworking the entire legal regime governing warfare than they are in making any particular type of weapon more humane. Traditionally, the laws of war accommodated military imperatives, imposing only the most basic of restraints. This was in recognition that a more restrictive code would not likely check nations engaged in a life or death struggle. As the realities of war have receded for most developed countries, progressives have worked to transform the norms applicable to armed conflict into something akin to a code governing domestic police functions. The Ottawa Convention is part and parcel of this process, and the only

real justification for U.S. accession to this treaty is a bow to international political correctness. That is what the Senate letter meant by urging the president to reconsider the U.S. position as consistent with his "commitment to reaffirm U.S. leadership in solving global problems." That type of symbolism is just not a good enough reason to give up a weapon that can protect American forces and assist them in accomplishing their missions.

III. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

The literature on CEDAW continued to develop over the course of the past year. In November of last year, the Congressional Research Service issued an updated report on ratification of the treaty in anticipation of the potential that the senate would give advice and consent…

Luisa Blanchfield, November 1, 2010, Specialist in International Relations at the Congressional Research Service, "CEDAW: Issues in the U.S. Ratification Debate," Congressional Research Service (CRS) Reports and Issue Briefs

Hearings concerning the treaty also took place in Congress during June and November of last year. Congressional testimony can be found advocating and dissenting against ratification. In addition to actual testimony, major editorials were published around the time of the debates. Both arguing for…

Linda Tarr-Whelan, Demos Distinguished Senior Fellow on Women's Leadership and Former Ambassador to the UN Commission on the Status of Women, November 24, 2010, "A New START for Women Around the World," Call & Post

The so-called New START, the Strategic Arms Reduction Treaty with Russia, is poised for an historic ratification vote in the Senate this year. Three more major international treaties are also lined up on President Obama's ratification to-do list: the Comprehensive Nuclear Test Ban Treaty, the UN Convention on the Law of the Sea, and CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women. CEDAW is a landmark international agreement that affirms principles of fundamental human rights and equality for women and girls around the world. Our role as a human rights defender would be improved mightily by ratifying CEDAW, reasserting the United States as a strong global leader in standing up for women and girls in countries worldwide. The resulting glow of praise for the Senate from half the planet would result in more positive action. Advancing women's human rights worldwide is fundamental to America's national security interests and a cornerstone of our foreign policy. CEDAW ratification would amplify the U.S. voice in defense of women and girls at a time when their rights, even their clothing, are a global battleground. It would send the strongest possible signal that America is back as an international team player on the one hand, while reasserting our proud bipartisan tradition of promoting and protecting human rights on the other. At the moment, only seven of the United Nations' 193 member countries have not ratified CEDAW - Iran, Sudan, Somalia, three small Pacific island countries (Nauru, Palau and Tonga), and the United States. Such embarrassing bedfellows! And being in their company weakens our impact in calling for women's protections in other nations. CEDAW offers a practical blueprint

for action that every country can use to make progress toward ending discrimination - even ours. American women enjoy opportunities and status not available to most of the world's women, but few would dispute that more progress is needed here, such as in ending domestic violence and closing the pay gap between men and women. Importantly, CEDAW would not lead to any automatic changes in U.S. law, and at a time when we are worried about the deficit, there is no additional cost. This treaty provides a framework for the continuing national dialogue on women's equality, as it does in every country. Similar treaties outlining global consensus on genocide, torture and race relations won ratification under the leadership of Presidents Reagan, Bush and Clinton. Every country has a different starting point, and CEDAW offers governments and women alike a view of what non-discrimination looks like. Many countries have overhauled their laws and policies because of CEDAW. Mexico City, for example, responded to a destabilizing epidemic of violence against women by using CEDAW terms in a General Law on Women's Access to a Life Free from Violence, and all 32 Mexican states have now adopted it. Kenya used CEDAW to address differences in inheritance rights, eliminating discrimination against widows and daughters of the deceased. Kuwait recommended changes to its electoral law extended voting rights to women in 2005 based on CEDAW, and Bangladesh broadened access to education and vocational training for girls. Such examples are legion. Basic health care, education, the right to work, to vote, to own property - it's not news that girls and women are still denied those in too many places, or that they are forced or sold into marriage to much older men, or that violence against them is rampant, especially during conflict situations. Yes, some countries have ratified CEDAW and still discriminate against women - Saudi women still cannot drive cars, for example - but women in ratifying countries can and do demand that their governments live up to their CEDAW commitments. That pressure would be much stronger if the United States joined the CEDAW community. The American public strongly supports the principles of education, equality, fairness, and basic human rights. CEDAW ratification requires 67 Senate votes. So please, senators, as you debate the New START, remember that women worldwide would get a new start as well from U.S. ratification of CEDAW.

and against the treaty…

Wendy Wright, President of Concerned Women for America (the Nation's Largest Public-Policy Women's Organization), August 19, 2010, "Next stop on the Obama Apology Tour: A United Nations review of our Human Rights Record," Washington Times

This November, for the first time, the United States will be subject to a review of our human rights record by the notorious United Nations Human Rights Council. Undoubtedly, the United States will be chastised for not ratifying a U.N. treaty on women's rights. Because President Obama and Secretary of State Hillary Rodham Clinton support the treaty, this may be another stop on their apologize for America tour. But the State Department has every reason to defend our position confidently. We'll be scolded that most countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Yes, the United States can respond, and that includes nations with the worst records of abuse, yet it has not improved women's standing or conditions in those countries. But if adopted, it would deny women basic freedoms and rights in America. CEDAW is contrary to America's constitutional system: CEDAW's sweeping language to abolish any distinction .. made on the basis of sex covers laws, culture, political systems, schooling, family life, personal relationships and professional choices

Its all-encompassing scope contradicts the U.S. Constitution's limits on government and respect for states to handle matters such as family law. Every aspect of our lives would be fodder for review by a U.N. committee of gender experts. The United States provides women legal protection: The Constitution already covers women. The ruling in Buckley v. Valeo states, The term 'person' in the Fourteenth Amendment has never been limited to men, and fully protects women against denials of 'equal protection.'" If discrimination occurs, women have recourse to state and federal courts, commissions and a culture of shame. Even the president of the United States is accountable and can be sued for sexually harassing women. Women flee to the U.S. when they face horrific discrimination. Recently, the United States extended asylum to a woman who fled her husband's brutal abuse in Guatemala. CEDAW would deny American women's freedom and views: Women in the United States are free to decide their profession, education and political representation or to run for office. Women are free to negotiate their roles as wives, mothers and caregivers. Yet CEDAW would infringe on these freedoms if the United States were subject to the irrational views of the gender experts on the CEDAW Committee, which has oversight of countries that adopt the treaty. CEDAW was crafted during the turbulent 1970s and reflects the view of gender feminists that has been rejected by most American women and many women around the world. It is a relic of a battle won by Western gender feminists against feminists from the developing world. Social feminists who faced violence, enslavement and less-than-human status wanted equal rights and women's unique traits to be valued. They accused the gender feminists of denigrating woman's maternal role and weakening marriage. The CEDAW Committee provides the best reasons why the U.S. has not subjected Americans to this treaty. It told China to decriminalize prostitution, which degrades women as objects to be bought and sold and destroys the marriages of women whose husbands buy prostitutes. It criticized Ireland for the Catholic Church's influence on attitudes and state policy. It told Singapore, which reported that its system is based on merit, to impose minimum quotas for women political candidates. It told Austria to increase women's appointments to academic posts. And when Slovenia reported that there were clear differences in what women and men preferred to study, the committee told the country to institute quotas to limit women's choices of what fields they may study. If political, educational or professional slots are filled based on sex, it reduces respect for women who qualify based on merit. It restricts women's ability to vote for or hire the candidates of their choice and harms the wives of men who lose positions to women who are not as qualified. Famously, the committee criticized Belarus for celebrating Mother's Day. It told Armenia to combat the traditional stereotype of women in the noble role of mother. It pressures countries to provide abortions, which, more than half the time, kill unborn girls and can cause serious and sometimes fatal damage to women. It criticized Slovenia because an insufficient number of toddlers were in government day care, revealing its prejudice against women who choose to stay at home with their children. It prefers that mothers work in day care institutions raising other women's children, not their own. These are issues that Americans - and not a U.N. committee - should decide for themselves. This year marks the 90th anniversary of women's right to vote. The 500,000 members of Concerned Women for America vote against the United States ratifying CEDAW.

IV. Convention on the Rights of the Child

Much of the literature development over the past year for the CRC has focused on a Canadian citizen named Omar Khadr. He was captured by U.S. forces in Afghanistan at the age of fifteen and is currently being detained in Guantanamo. Much of the debate centers around whether he qualifies as a child soldier and his detention is in violation of the treaty. Khadr pled guilty to a slew of charges on October 25th in exchange for a reduced sentence, but significant controversy still surrounds the legitimacy of his trial. The situation obviously has implications regarding the war on terror, its international perceptions, and ethical justifications.

CONCLUSION

Last year, the community came within one vote of debating the treaties topic. There is a large portion of the community that is in favor debating treaties. This is for good reason. The past treaties topic and the sanctions topic that it was modeled after are generally revered as two of the best topics in recent memory by many coaches and former debaters. The reason they feel this way is that a diverse array of topics can be addressed in one year in a way that appeals to fans of broad topics without offending members of the community who prefer more narrow topics. It also accesses a unique "sweet spot" of domestic and international topics with implications on both federalism and foreign relations. The treaties topic would give the community the best of both worlds in every sense. It's possible to revisit the treaties topic in a fresh way that will appeal to a new generation of debaters while accessing a rich and ever-evolving literature base.