

# The Exception

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An Alternative Explanation of the American  
Outlier Effect in Treaty Ratification

**A Thesis Presented by  
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Finally, to my parents for never setting limits on what I can accomplish and always encouraging me to pursue my dreams. Without your constant support and love I would be a completely different person. This is dedicated to you.

## Preface

A few years ago I sat in class listening to my professor explain how the federal nature of American government made it difficult for the United States to ratify the Convention on the Rights of the Child. Until that point, I had been one of the many who chalked that up to American arrogance – even though I would define myself as a proud American and a generally freethinking political science student. I held this mistaken view because it was what surrounded me, in the views of many of those around me and in the mass media. The lecture was eye opening and forced me to reevaluate how I felt about the United States' treaty ratification. Shortly afterward I began an internship in British Parliament that opened my eyes to the effects treaty ratification can have on a country without a codified constitution. Soon I was considering what other domestic characteristics played into treaty ratification, and I began to understand that there is much more to ratification than simple support of the treaty's provisions.

I myself have been one of those people who criticized the United States' failure to ratify important multilateral treaties. Like many others, I fell prey to the easy explanation of hegemonic arrogance, until someone suggested a different view. Through my work I want to help others begin to consider alternative explanations in hopes that they, like I, reconsider their position on the American outlier effect.

## **Abstract**

Failure to ratify some international treaties is often cited as evidence that the United States arrogantly believes that it is exempt from international laws. This view is damaging to the United States' international reputation and does not address the various reasons that the United States has not ratified treaties. Rather than a result of arrogance, lack of ratification is more frequently the result of domestic constraints found in the United States – domestic constraints which can be summarized by the concept of American exceptionalism. The core tenant of American exceptionalism is that the United States is different from most other countries due to its historical, institutional, and cultural characteristics. This paper explores the application of American exceptionalism to treaty ratification and shows that the United States faces many obstacles in the ratification process that are unrelated to the hegemonic arrogance of which it is accused.

## 1. Introduction

Treaty ratification is viewed as a way to demonstrate a desire to cooperate internationally and comply with international regulations and norms. When the United States does not ratify major, multilateral treaties this is often perceived as a lack of concern for those international norms. This is translated into an explanation of American arrogance for the American outlier effect.<sup>1</sup> Essentially, the criticism is that the United States believes that its hegemonic role in world affairs affords it the ability to ignore those rules it does not wish to recognize.

While the path to that explanation is clear, the explanation itself leaves much to be desired. It ignores many other possible factors responsible for lack of treaty ratification and instead assumes the popular position of criticizing world leaders. The main aspect of treaty ratification this theory ignores is that of domestic constraints. Domestic characteristics create the environment for ratification, because while treaties are negotiated internationally they must be ratified domestically. While this is a simple concept, it is overlooked by the theory of American arrogance. Therefore, it is necessary to examine not only international but also domestic qualities when evaluating treaty ratification.

The concept of American exceptionalism explains the domestic constraints in the United States. American exceptionalism is the idea that the United States is different from other countries, and it explains these differences as institutional, cultural, and historical qualities. The concept is relatively simple – the United States has been different from other major countries from its inception. Those who lived in the New World were often searching for freedom and opportunities they could not find in their homeland. Because of this, they shaped a country very

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<sup>1</sup> For the purpose of this paper, the American outlier effect refers to the fact that the United States ratifies multilateral treaties less frequently than other developed nations.

different from those of the Old World. For centuries, scholars and intellectuals have studied and considered this phenomenon, intrigued by the differences of the New World.

Today the concept of American exceptionalism can also provide a concrete theory of the domestic constraints on treaty ratification in the United States. The American outlier effect in treaty ratification exists because the United States *is* an outlier, or an exception, historically, culturally, and institutionally. These differences increase the difficulties of treaty ratification in the United States.

This paper will explore the effect of American exceptionalism in the following order. Chapter two is a literature review ranging from the origins and necessity of treaty ratification to specific treaty powers and domestic constraints in the United States and other countries. Chapter three will give further background on the popular criticism of U.S. failure to ratify and the specifics of the ratification process in the United States. Chapter four explains the concept of American exceptionalism in depth. Chapter five covers analysis of the treaties the United States has not ratified. Chapter six includes the treaties that the United States has ratified and explores the differences and similarities between ratified and unratified treaties. Chapter seven examines one ratified treaty, the United Nations Framework Convention on Climate Change, and one unratified treaty, the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, to ascertain what led to the latter's lack of ratification.

## **2. Literature Review**

The idea of negotiating and implementing treaties has long been debated. Though there is a great deal of literature on ratification and the necessity of ratification, the literature on the



United States' ratification of treaties focuses mainly on criticizing the United States' failure to ratify treaties, leaving a gap where explanation of this failure should be. This gap is what I will explore in the following chapters. This chapter continues as follows: section one examines the idea of conflict termination with treaties. Section two explores ratification in general. Section three focuses on ratification in the United States. Section four elaborates on the issues surrounding ratification in other countries.

## 2.1 Conflict Termination

In order for conflict termination to be successful, several aspects must be calculated into the end product. Any international agreement must take into account both the domestic and international domains.<sup>1</sup> As negotiations mainly take place in the international arena, it is incredibly important to remember domestic factors because they may not be obvious during negotiations. There is tension between international and domestic views of the balance of power between the two domains. The international view is that international laws are the supreme law of the world and domestic constitutions are merely facts. However, each country sees its own laws and constitution as the absolute law, and strong countries believe that international law does not have the power to constrain domestic law.<sup>2</sup> "Variance in state preferences is almost entirely due to difference in domestic arrangements" and therefore it is incredibly important to consider domestic constraints during international negotiations.<sup>3</sup> "The domestic process of ratification and the concentration of social interests influence international bargaining processes" and this

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<sup>1</sup> Nathalie J. Frensey. "Ratification Processes and Conflict Termination." *Journal of Peace Research* 35.2 (1998): 167-191.

<sup>2</sup> Edward T. Swaine. "Does Federalism Constrain the Treaty Power?" *Columbia Law Review* 103.3 (2003): 403-533.

<sup>3</sup> Peter B. Evans, Harold Karan Jacobson, and Robert D. Putnam. *Double-edged Diplomacy: International Bargaining and Domestic Politics*. Berkeley: University of California, 1993. 12.

determines the win-set of ratifiable agreements for each individual country.<sup>1</sup> The international domain sometimes discounts the importance of domestic institutions and public opinion, which is a mistake. Domestic constraints have a large impact on a country's international negotiations because, while the world is more united than ever, it is still comprised of roughly two hundred individual countries.

Domestic constraints must be considered because treaties, while primarily international, have a large effect on internal issues and require domestic enforcement. It is not possible for treaties to only be relevant in the international realm. Additionally, today treaties often govern domestic issues, which increases the likelihood of overlap and conflict with domestic law.<sup>2</sup> Treaties like the human rights treaties greatly affect internal matters and require domestic enforcement of rights such as the right to work, right to strike, right to just and favorable conditions of work, right to association, right to social security, right to family support, right to an adequate standard of education and right to participation in one's own culture.<sup>3</sup> While most of these rights are recognized in developed democracies, all countries that ratify the United Nation's Covenant on Economic, Social, and Cultural Rights, for instance, must take care that these rights are enforceable through domestic law. Treaties have soft law characteristics, which makes them essentially unenforceable through traditional means.<sup>4</sup> This requires states to provide domestic interpretation of the treaty and to develop new ways to enforce the terms. This may cause "states with robust domestic rule of law" to "shy away from committing to international

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<sup>1</sup> Peter B. Evans, Harold Karan Jacobson, and Robert D. Putnam. *Double-edged Diplomacy: International Bargaining and Domestic Politics*. 33.

<sup>2</sup> Curtis A. Bradley. "The Treaty Power and American Federalism." *Michigan Law Review* 97.2 (1998): 390-461.

<sup>3</sup> Clarence Clyde Ferguson. "The United Nations Human Rights Covenants: Problems of Ratification and Implementation." *Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969)* 62 (1968): 83-96.

<sup>4</sup> Oona A. Hathaway. "Why Do Countries Commit to Human Rights Treaties?" *The Journal of Conflict Resolution* 51.4 (2007): 588-621.

treaties” because it would be incredibly difficult to incorporate the treaty into the existing statutes.<sup>1</sup>

Domestic institutions, law, and politics have a large impact on which treaties a country is able to ratify. Some countries have very complicated ratification processes intended to slow ratification or limit the amount of time that can be spent on the ratification procedure. For example, in order to approve the ratification of the Amsterdam Treaty, Ireland, Finland, Austria and France had to write constitutional amendments; Ireland and Denmark had to hold popular referendums; and Finland, Germany, Greece, Luxembourg and Sweden all required a qualified majority vote in parliament.<sup>2</sup> Japan, another country with complicated ratification, has a “confusingly pluralist” political system that draws out the ratification process.<sup>3</sup> The emphasis in Japan is on consensus, not majority rule, and there are only about 150 days in the legislative calendar, around 60 of which are dedicated to the budget.<sup>4</sup> Because the government of Japan is incredibly limited in its ability to ratify treaties, the process is long. Regarding domestic laws, a country’s ability to ratify a treaty could be constrained by its constitutional law. For instance, the human rights covenants disallow speech that incites national, racial, or religious hatred, but this directly contradicts the right to free speech under the Constitution of the United States.<sup>5</sup> Additionally, some nations may hold moral contention with approaching certain issues from a legal standpoint rather than an educational or socialization aspect. Ferguson questions if the

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<sup>1</sup> Oona A. Hathaway. “Why Do Countries Commit to Human Rights Treaties?” 612.

<sup>2</sup> Simon Hug and Thomas König. “In View of Ratification: Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference.” *International Organization* 56.2 (2002): 447-476.

<sup>3</sup> Joseph Frankel. “Domestic Politics of Japan's Foreign Policy: A Case Study of the Ratification of the Non-Proliferation Treaty.” *British Journal of International Studies* 3.3 (1977): 254-268. 262.

<sup>4</sup> Joseph Frankel. “Domestic Politics of Japan's Foreign Policy: A Case Study of the Ratification of the Non-Proliferation Treaty.”

<sup>5</sup> Clarence Clyde Ferguson. “The United Nations Human Rights Covenants: Problems of Ratification and Implementation.”

correct approach to human rights is really through a law or if it is better accomplish in some other way.<sup>1</sup>

Domestic politics can also impede treaty ratification. Evans calls domestic politics the “imperfection” that prohibits purely rational actions in the international sphere.<sup>2</sup> The political process, independent of institutions, can slow down the ratification process, as has often happened with the lengthy discussion of the United Nations human rights covenants in the United States.<sup>3</sup> If a country’s politics requires extensive work and hearings to discuss the treaty at length before the ratification process can begin, this can lead to stagnation of the issue and legislators will either choose to move on or be forced to move on by the necessity of discussing other issues.<sup>4</sup> One remedy for stagnation Lillich suggests is to essentially publicize the treaty and publically push for ratification. Interested organizations must coordinate efforts to push for ratification while communicating officially and informally with the responsible administration.<sup>5</sup> Domestic politics have been impeding ratification since at least the mid-19<sup>th</sup> century. In Japan between 1853 and 1868 there was serious political conflict over a trade agreement with Western powers. The Shogun, or secular leader, had absolute treaty power but customarily consulted with the Mikado, the spiritual leader. When the Mikado opposed the agreement with the West, the Shogun ignored his advice and continued anyway. Over several years the two struggled to gain control of the issue and though the Shogun eventually won, his position lost a great deal of

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<sup>1</sup> Clarence Clyde Ferguson. “The United Nations Human Rights Covenants: Problems of Ratification and Implementation.”

<sup>2</sup> Peter B. Evans, Harold Karan Jacobson, and Robert D. Putnam. *Double-edged Diplomacy: International Bargaining and Domestic Politics*. 9.

<sup>3</sup> Richard B. Lillich. “U.S. Ratification of the Human Rights Covenants: Now or Ever?” *Proceedings of the Annual Meeting (American Society of International Law)* 80 (1986): 419-421.

<sup>4</sup> Richard B. Lillich. “U.S. Ratification of the Human Rights Covenants: Now or Ever?”

<sup>5</sup> Richard B. Lillich. “U.S. Ratification of the Human Rights Covenants: Now or Ever?”

power and reputation in the process.<sup>1</sup> Though the internal struggle over ratification may not be as dramatic as it was in 19<sup>th</sup> century Japan, the same issues often affect the feasibility of treaty ratification today.

The domestic population's public opinion of the treaty must also be considered during negotiations. Public opinion can have a serious effect on both the process and result of international bargaining if the public and ratifying actors disagree, the issue is salient to the public, and the public has an indirect or direct ratifying power.<sup>2</sup> Direct ratifying power usually involves a popular referendum. Indirect ratifying power is the likelihood that the issue will be important in an election and because of this it is generally acknowledged that treaties should be acceptable to the domestic population.<sup>3</sup> Otherwise, the collateral consequences can be disastrous either for the treaty, the government, or the political actors involved in ratification.<sup>4</sup> This can be a problem when the population is divided in its support or does not wish for the government to involve itself in an international problem, a concept known as the entry problem. "Elites respond to the entry problem by refusing to engage in negotiations or by trying to convince their constituents that their primary interests are best promoted by ending the conflict."<sup>5</sup> The median voter of the population plays a central role in conflict termination. How the median voter will act depends on the character of the population and the median voter's preference.<sup>6</sup> If the population is fairly homogenous, there will be no ratification requirement because the negotiators will hold the same values as the voters. This is a rare circumstance because most

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<sup>1</sup> Payson J. Treat. "The Mikado's Ratification of the Foreign Treaties." *The American Historical Review* 23.3 (1918): 531-549.

<sup>2</sup> Peter F. Trumbore. "Electoral Politics as Domestic Ratification in International Negotiations: Insights from the Anglo-Irish Peace Process." *Irish Studies in International Affairs* 12 (2001): 113-131.

<sup>3</sup> Peter F. Trumbore. "Electoral Politics as Domestic Ratification in International Negotiations: Insights from the Anglo-Irish Peace Process."; Nathalie J. Frensey. "Ratification Processes and Conflict Termination."

<sup>4</sup> Oona A. Hathaway. "Why Do Countries Commit to Human Rights Treaties?"

<sup>5</sup> Nathalie J. Frensey. "Ratification Processes and Conflict Termination." 171.

<sup>6</sup> Hans Haller and Steinar Holden. "Ratification Requirement and Bargaining Power." *International Economic Review* 38.4 (1997): 825-851.

populations are not homogenous in their political beliefs. If the population is heterogeneous, which is much more likely, the median voter's preference will dictate the ratification requirement. If he has a low reservation utility, meaning he would like there to be *any* resolution, he will prefer a simple majority vote. However, if he has a high reservation utility, meaning he will only accept a few possible resolutions, he will require a supermajority vote.<sup>1</sup> While it may seem like domestic constraints could easily overwhelm international cooperation, Hug and König present the belief that if domestic constraints are factored into the negotiations, the people will take little notice of the result. Research in this area has been limited to the application of the theory to the Amsterdam Intergovernmental Convention, but it could be possible to broaden this idea to future deliberations as well.<sup>2</sup>

There are many cases in which public opinion had an influence on negotiations and ratification. As an example, Trumbore explains the difference between British and Irish ratification power as it applied to the Anglo-Irish peace process at the end of the 20<sup>th</sup> century. The Irish, unlike the British, have a direct ratification power because constitutional changes in Ireland require a popular referendum. Neither country, however, had an indirect ratification power because the populations of both countries did not hold the peace process as an important electoral issue. Therefore, public opinion in Ireland had a stronger effect on the negotiations than public opinion in Britain, due to the direct ratification power.<sup>3</sup> Divided public opinion impeded ratification in Japan during Japanese ratification of the Non-Proliferation Treaty, and as

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<sup>1</sup> Hans Haller and Steinar Holden. "Ratification Requirement and Bargaining Power."

<sup>2</sup> Simon Hug and Thomas König. "In View of Ratification: Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference."

<sup>3</sup> Peter F. Trumbore. "Electoral Politics as Domestic Ratification in International Negotiations: Insights from the Anglo-Irish Peace Process."

it was impossible for the government to satisfy both sides, the ratification process was protracted.<sup>1</sup>

Nigerian ratification of the Anglo-Nigerian Defence Agreement is a good example of the negative consequences of negotiating a treaty against the public's will. The Nigerian people were outraged that the government had agreed to allow the British army to establish bases in Nigeria.<sup>2</sup> The outcry against the agreement succeeded in removing the clauses about British bases before ratification of the agreement. The agreement narrowly passed and in fact only passed because the country had a North-South ideological cleavage and the North, which supported the agreement, had more political power.<sup>3</sup> While domestic disapproval of a treaty is not enough to prohibit ratification in most cases, it certainly complicates the process.

If there is too much disapproval of a treaty or the negotiator's actions, it may be possible to remove the responsible domestic leaders from power. Leaders generally do not wish to be caught cheating either other countries or their own citizens because this can result in dismissal from their positions.<sup>4</sup> However, for this to be a constraint, the actors must believe that the public will likely hold them accountable, either by rewarding or punishing them for the results of the negotiations.<sup>5</sup> Knowledge of how hard it is to remove a leader, which is controlled by the domestic institutions, can help improve international cooperation.<sup>6</sup> If the cost of removal is too high to be feasible, a states' negotiator will not require the cooperation of other domestic leaders.

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<sup>1</sup> Joseph Frankel. "Domestic Politics of Japan's Foreign Policy: A Case Study of the Ratification of the Non-Proliferation Treaty."

<sup>2</sup> Gordon J. Idang. "The Politics of Nigerian Foreign Policy: The Ratification and Renunciation of the Anglo-Nigerian Defence Agreement." *African Studies Review* 13.2 (1970): 227-251.

<sup>3</sup> Gordon J. Idang. "The Politics of Nigerian Foreign Policy: The Ratification and Renunciation of the Anglo-Nigerian Defence Agreement."

<sup>4</sup> Fiona McGillivray and Alastair Smith. "The Impact of Leadership Turnover and Domestic Institutions on International Cooperation." *The Journal of Conflict Resolution* 49.5 (2005): 639-660.

<sup>5</sup> Peter F. Trumbore. "Electoral Politics as Domestic Ratification in International Negotiations: Insights from the Anglo-Irish Peace Process."

<sup>6</sup> Fiona McGillivray and Alastair Smith. "The Impact of Leadership Turnover and Domestic Institutions on International Cooperation."

If the cost is low, the negotiator is more likely to cooperate both domestically and internationally.<sup>1</sup>

In summary, it is clear that while international factors are important in conflict resolution, neglecting to include domestic factors in analysis limits the depth of analysis. Through institutions, politics and public opinion, domestic constraints have a large effect on what is ratifiable in a particular country. As these factors limit the possibility of domestic ratification, if they are considered during conflict resolution, there is a greater likelihood that ratification will be successful. Additionally, they must be considered in any analysis of ratification or failure thereof.

## 2.2 Ratification

Conflict termination ideally results in ratification of a treaty to signify binding agreement on the issue. Traditionally, ratification of treaties was not required because the signatures of the monarchs negotiating the agreement were binding.<sup>2</sup> With the dissolution of monarchical states came the importance of ratification.

Whether or not states are obligated to ratify treaties that they have negotiated or signed is a contested point. Some authorities on the subject believe that, as long as the negotiator did not transcend his instructions, the state has a perfect or legal obligation to ratify the treaty.<sup>3</sup> Other experts disagree, suggesting that there is a moral obligation but no legal obligation, or that treaty ratification is completely a matter of discretion.<sup>4</sup> There does not appear to be a prevailing

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<sup>1</sup> Fiona McGillivray and Alastair Smith. "The Impact of Leadership Turnover and Domestic Institutions on International Cooperation."

<sup>2</sup> John Eugene Harley. "The Obligation to Ratify Treaties." *The American Journal of International Law* 13.3 (1919): 389-405.

<sup>3</sup> John Eugene Harley. "The Obligation to Ratify Treaties."

<sup>4</sup> John Eugene Harley. "The Obligation to Ratify Treaties."



viewpoint of which perspective is correct. However, it is viewed that "countries and their governments as the principal international actors maximize their own utility without regard to the welfare of other actors on the basis of a given set of preferences and subject to constraints of power."<sup>1</sup> This is essentially a rational actor assumption and the foundation for game theory. A game theoretical approach to treaty ratification would suggest that countries do not view ratification as an obligation, but rather as an available option, should that option have the best results for the country.

When deciding whether or not to ratify a treaty, a country's actors must weigh the costs and benefits of ratification. Ratifying a treaty makes the country part of a broad international action.<sup>2</sup> Ostensibly, ratification signifies a country's full acceptance of the terms of that treaty.<sup>3</sup> This can send a message about what the country values and that it pledges to follow international laws. Another benefit is enhancing national security.<sup>4</sup> While not every treaty necessarily enhances national security, international cooperation is one way to ensure that your country will be protected or supported by the international community should a security issue arise. Ratification can also increase a country's influence and power in the international community, whereas failure to ratify undermines international credibility.<sup>5</sup> A country that has ratified a treaty can also work on interpretation and implementation and increase the likelihood that the treaty will be understood the way it wants.<sup>6</sup>

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<sup>1</sup> Eric Neumayer. "Qualified Ratification: Explaining Reservations to International Human Rights Treaties." *The Journal of Legal Studies* 36.2 (2007): 397-429. Section 2.

<sup>2</sup> John Eugene Harley. "The Obligation to Ratify Treaties."

<sup>3</sup> David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture." *Proceedings of the Annual Meeting (American Society of International Law)* 83 (1989): 529-547.

<sup>4</sup> John Eugene Harley. "The Obligation to Ratify Treaties."

<sup>5</sup> John Eugene Harley. "The Obligation to Ratify Treaties."; David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

<sup>6</sup> David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

However, there are costs to ratifying treaties and sometimes these costs can outweigh the benefits. Generally, ratifying a treaty means a country has an obligation to follow the terms of the treaty.<sup>1</sup> This could necessitate reworking existing laws and can cause conflict with legal enforcement.<sup>2</sup> In order for a law to be properly enforced, it must avoid ambiguity and subjective wording, qualities that are very common in treaties due to the many compromises necessary in treaty negotiations.<sup>3</sup> It also means that the specific definitions in the treaty are the new legal definitions, which can create enforcement issues. For example, the definition of torture in the United Nations Convention Against Torture would have classified many of the aspects of conscription to the United States Military as torture.<sup>4</sup> Clearly that is a serious issue the United States had to consider when discussing ratification of that convention. Problems with enforcement endanger local law enforcement agents who may not correctly enforce all of the aspects of the new law, whether because the treaty conflicts with domestic law or because the treaty is unclear.<sup>5</sup> Treaties can also have undesirable consequences, such as prohibiting desirable behaviors. For example, the Geneva Protocol on Gas and Bacteriological Warfare could have the unintended consequence of limiting riot-control agents and chemical herbicides.<sup>6</sup> The intent of that protocol was to increase peace and protect soldiers, but it also could have a disastrous effect on farming and domestic police work.

Many countries will attempt to limit the costs of ratifying a specific treaty while still gaining the benefits. The most popular way to accomplish this is through reservations, understandings, and declarations (RUDs). RUDs send a mixed international message; a country

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<sup>1</sup> John Eugene Harley. "The Obligation to Ratify Treaties."

<sup>2</sup> John Eugene Harley. "The Obligation to Ratify Treaties.;" David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

<sup>3</sup> David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

<sup>4</sup> David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

<sup>5</sup> David Weissbrodt, et al. "Prospects for U.S. Ratification of the Convention Against Torture."

<sup>6</sup> John Norton Moore. "Ratification of the Geneva Protocol on Gas and Bacteriological Warfare: A Legal and Political Analysis." *Virginia Law Review* 58.3 (1972): 419-509.

is willing to abide by all of the terms of the treaty except the ones it does not like. They are a legitimate way of “accounting for cultural, religious, or political diversity across nations” but they tend to send a poor international message and slow the ratification process.<sup>1</sup> One benefit to RUDs is that they can serve to clear up implementation issues by clarifying what a certain nation believes the vague treaty language means.<sup>2</sup> This can be an issue because the interpretation can be wrong, however eventually the treaty will have to be implemented and if the language is vague, the implementation could be wrong even without RUDs. There does appear to be a limit of how many RUDs are acceptable before ratification becomes essentially meaningless. In the United States, numerous reservations have stopped several human rights conventions from being seriously debated.<sup>3</sup> Liberal democratic and more politically constrained countries are much more likely to have RUDs than authoritarian states.<sup>4</sup> The prevailing ideology is that if a country does not plan on implementing a treaty, as is often the case in authoritarian states, there is no purpose to RUDs.

After weighing all the costs and benefits of ratifying and considering the possibility of RUDs, a country can cite many reasons as grounds for refusal to ratify. For instance, if the negotiator is either threatened with force or menace during negotiations or he goes beyond the boundaries set by the ratifying agent, a country is within its rights to refuse to ratify.<sup>5</sup> Another reason to refuse is the impossibility, either literally or morally, for a country to ratify the treaty. If any clause of the treaty is contradictory to a contractant’s domestic law, ratification may be refused. Lastly, if any of the circumstances under which the treaty was agreed and signed have

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<sup>1</sup> Eric Neumayer. “Qualified Ratification: Explaining Reservations to International Human Rights Treaties.” Section 1.; David Weissbrodt, et al. “Prospects for U.S. Ratification of the Convention Against Torture.”

<sup>2</sup> Eric Neumayer. “Qualified Ratification: Explaining Reservations to International Human Rights Treaties.”

<sup>3</sup> David Weissbrodt, et al. “Prospects for U.S. Ratification of the Convention Against Torture.”

<sup>4</sup> Eric Neumayer. “Qualified Ratification: Explaining Reservations to International Human Rights Treaties.”

<sup>5</sup> John Eugene Harley. “The Obligation to Ratify Treaties.”

changed, a country may refuse to ratify.<sup>1</sup> While these are all legitimate reasons for refusal to ratify, most are rarely applicable today and other explanations and justifications must be present.

Ratification is a central part of international conflict termination. It would appear that there is not an obligation to ratify, and in fact there are many reasons not to ratify, or to only ratify with RUDs. Conversely, the international perception of a lack of ratification may outweigh the costs of the ratification. In the end, ratification of a treaty depends on the specifics of the treaty and the specific domestic environment to which the treaty will apply.

### **2.3 Treaty power in the United States**

Most of the literature about ratification and domestic constraints covers the controversial problems that federal states face with either states' rights in ratification or domestic implementation of treaties. Professor Max Sørensen from the University of Aarhus supports the idea that "the federal system of government is particularly ill-adapted to international cooperation."<sup>2</sup> This is because the founders of federal states generally believed in limiting the power of the central government. This intentional limiting of the central government and its consequences for ratification is a central tenant of my research question. The United States appears to be one of the more controversial federal states, at least in regards to the treaty power. The majority of relevant literature covers the tension both between the central and state governments and between the branches of the American system of limited government, though several other federal systems and even unitary governments appear in the literature as well.

There are generally two sides to the argument over the treaty power in America – one side supporting the federal government and one supporting states' rights. Among those who

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<sup>1</sup> John Eugene Harley. "The Obligation to Ratify Treaties."

<sup>2</sup> Andrew Byrnes and Hilary Charlesworth. "Federalism and the International Legal Order: Recent Developments in Australia." *The American Journal of International Law* 79.3 (1985): 622-640. 623.

champion the supremacy of the central government in treaty matters, there is the concern that if the federal government is constrained in the treaty power, the nation will appear divided in international relations. "States' individual interests are best promoted through national unity," and fragmentation due to states' rights could lead to a weakened international position for the United States.<sup>1</sup> A central idea supporting this position is that during treaty making states should delegate their powers to the federal government.<sup>2</sup> Proponents argue that there is sufficient protection of states' rights in the Senate, a body that was formed to protect states' interests and give them equal voice, that additional representation in treaty ratification is unnecessary. Furthermore, treaty ratification requires a supermajority, which is cited as additional protection for the states.<sup>3</sup> Professor Lori Damrosch of Columbia Law School interprets constitutional law to indicate that "the treaty-makers may make supreme law binding on the states as to any subject, and notions of states' rights should not be asserted as impediments to the full implementation of treaty obligations."<sup>4</sup>

History illustrates a bleak picture for states' rights. Around the time of the Constitutional Convention, individual states had a reputation for not complying with federally ratified treaties, which frustrated the founders.<sup>5</sup> Proponents view this as evidence that the founders intended to give the federal government supremacy over states' rights because the states could not be trusted in international matters. Swaine cites the dormant treaty power by arguing that "state bargaining generates disadvantages for the collective interests of the states that are best avoided by centralizing the conduct of international negotiations in the Senate and the President," and,

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<sup>1</sup> Edward T. Swaine. "Negotiating Federalism: State Bargaining and the Dormant Treaty Power." *Duke Law Journal* 49.5 (2000): 1127-1278. 1256.

<sup>2</sup> Curtis A. Bradley. "The Treaty Power and American Federalism."

<sup>3</sup> Curtis A. Bradley. "The Treaty Power and American Federalism."

<sup>4</sup> Curtis A. Bradley. "The Treaty Power and American Federalism." 393.

<sup>5</sup> Edward T. Swaine. "Negotiating Federalism: State Bargaining and the Dormant Treaty Power."

therefore, states cannot be allowed to interfere with treaty making.<sup>1</sup> The Supreme Court has tended to support this view by showing “sensitivity toward accommodating the United States’ ability to promote its interests through international law” and rarely ruling in states’ favor in cases involving treaty power limitations.<sup>2</sup>

Many of the arguments in favor of federal supremacy exaggerate the consequences of recognizing the states’ rights’ limit on the treaty power. While it is important to maintain unity in international bargaining, the treaty power should not, and perhaps cannot, invade subject matter which is state sovereign.<sup>3</sup> It is unlikely that recognizing states’ rights will cause the United States to present a divided front, especially as “united voice” is not possible in a country with three separate branches of government.<sup>4</sup> “A treaty cannot bind the United States to do what their Constitution forbids them to do,” namely passing unconstitutional laws by ratifying treaties that involve areas not under federal purview.<sup>5</sup> Because treaties have domestic implications, they must adhere to the Constitution. The Constitution very clearly lists the powers reserved to the states, including reserving all unenumerated powers to the states. The Founders were wary of federal supremacy and even forbade certain powers from the federal government. The treaty power is not exempt from these limitations.<sup>6</sup> The Founders wanted treaties, like laws, to be difficult to make, and they delegated treaty-making power to the Senate, the federal body that was supposed to be representative of states’ rights. The analysis of the actions and desires of the Founders supports the idea that the federal government should be limited in the treaty power and

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<sup>1</sup> Edward T. Swaine. “Negotiating Federalism: State Bargaining and the Dormant Treaty Power.” 1278.

<sup>2</sup> Edward T. Swaine. “Does Federalism Constrain the Treaty Power?” 412.

<sup>3</sup> Edward T. Swaine. “Negotiating Federalism: State Bargaining and the Dormant Treaty Power.”

<sup>4</sup> Curtis A. Bradley. “The Treaty Power and American Federalism.”

<sup>5</sup> L. L. Thompson. “State Sovereignty and the Treaty-Making Power.” *California Law Review* 11.4 (1923): 242-258. 248.

<sup>6</sup> L. L. Thompson. “State Sovereignty and the Treaty-Making Power.”; Curtis A. Bradley. “The Treaty Power and American Federalism.”

should not disregard states' rights.<sup>1</sup> According to Bradley, "there is no justification for giving the treaty power special immunity for such protection" as the Supreme Court has indicated that "federalism is to be the subject of judicial protection."<sup>2</sup> The anticommandeering principle is relevant to this discussion as well. As long as treaties require state enforcement or legislation, the treaty power cannot be unaffected by states' rights.<sup>3</sup> However, it is important that states comply with ratified treaties because to do otherwise hinders America's international efforts.<sup>4</sup>

America's rigid separation of powers is another source of domestic tension over the treaty power. The president is the main negotiating power in international relations, which the Founders intended to "enhance the minority-state check in the Senate."<sup>5</sup> The Senate's role is to assist the president in his decision, but the text of the Constitution is vague about this power. It is unclear if the Senate is meant to assist the president before, during, or after negotiations are concluded and if the advice of the Senate is binding.<sup>6</sup> The judicial branch is not involved until after a treaty has been ratified. Because treaty ratification does not require public records of debate, unlike regular laws, it is difficult for the judicial branch to infer meaning from the treaty.<sup>7</sup> Treaty language is often vague to appeal to many different nations, and this sometimes results in confusion regarding specific definitions and enforcement. Without the guidance of public records of negotiations, the judicial branch has a difficult task in applying the law appropriately. Overall, because the Founders wished to limit the central government through the federal system and separation of powers, the United States experiences a great deal of controversy regarding

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<sup>1</sup> Curtis A. Bradley. "The Treaty Power and American Federalism."

<sup>2</sup> Curtis A. Bradley. "The Treaty Power and American Federalism." 394.

<sup>3</sup> Edward T. Swaine. "Does Federalism Constrain the Treaty Power?"

<sup>4</sup> Edward T. Swaine. "Does Federalism Constrain the Treaty Power?"

<sup>5</sup> Edward T. Swaine. "Negotiating Federalism: State Bargaining and the Dormant Treaty Power." 1181.

<sup>6</sup> Edward T. Swaine. "Negotiating Federalism: State Bargaining and the Dormant Treaty Power."

<sup>7</sup> L. L. Thompson. "State Sovereignty and the Treaty-Making Power."

treaty ratification. This controversy and the subsequent difficulty in ratification is a direct result of the United States' federal and presidential system.

## 2.4 Treaty power in similar states

Australia has a similar tension between states rights and federal powers, especially with the treaty power. The Australian federal government draws its power to ratify treaties from the “external affairs” power granted in its constitution.<sup>1</sup> As the name implies, this empowers the federal government to act internationally on behalf of all of the states, a power that is rather common among nations with a federal system. To date, the Australian federal government has been powerful in its ability to ratify treaties, even treaties that may conflict with powers granted directly to the states. The majority of judges believe this is the best way to maintain continuity in the country and in international bargaining. Some judges, however, are worried that this is just the tip of the iceberg, according to Byrnes and Charlesworth. They are afraid that this will weaken federalist distribution of powers by taking powers away from the states. Byrnes and Charlesworth stress that it is important to have “state cooperation in the implementation of international obligations” in order for a treaty to be effective.<sup>2</sup> Australia also has tension between its federal branches of government. The treaty power is such that the executive approves ratification; the legislature must then implement and enforce the treaty without having had input in the ratification process. This leads to “federal hesitation” or “federal reluctance” to ratify treaties in fear that the legislature will be unable to implement a treaty that has been

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<sup>1</sup> Andrew Byrnes and Hilary Charlesworth. “Federalism and the International Legal Order: Recent Developments in Australia.”

<sup>2</sup> Andrew Byrnes and Hilary Charlesworth. “Federalism and the International Legal Order: Recent Developments in Australia.” 633.



ratified by the executive.<sup>1</sup> This federal reluctance is the product of the shared government powers and results in the ratification of fewer treaties.

Nigeria, another federal state, has a constitutionally stronger central government than either Australia or the United States. Nigeria's constitution focuses on federal dominance. In the concurrent legislative list of shared responsibility – the enumerated powers granted to both the states and the central government – the federal powers override and take supremacy over the state powers.<sup>2</sup> The purpose of this was to strengthen the national government and establish its authority in the country. The constitution also maintains that federal laws and decisions will remain supreme over individual states' laws and gives the federal government more exclusive authority than the federal governments in the United States and Australia.<sup>3</sup> However, this federal country still has conflicts over the treaty power. The treaty power in Nigeria is similar to that in Australia and the United States in that the ratifying agent is not the implementing agent. In Nigeria, the duty of implementation belongs to the states while the federal government is responsible for ratifying treaties.<sup>4</sup> This creates tension between the regional and the federal governments over which treaties are ratified and how they affect governance in the states. This tension could result in some treaties not being ratified or a longer ratification period.

Canada, on the other hand, is a much weaker federal state than Nigeria. Compared to America, the Canadian central government has less power to implement treaties.<sup>5</sup> Many international treaties involve subject matter that is the right of the provinces in Canada.

However, Byrnes and Charlesworth note that this does not seem to inhibit Canada “to any great

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<sup>1</sup> Andrew Byrnes and Hilary Charlesworth. “Federalism and the International Legal Order: Recent Developments in Australia.” 623.

<sup>2</sup> Albert E. Utton. “Nigeria and the United States: Some Constitutional Comparisons.” *Journal of African Law* 9.1 (1965): 40-59.

<sup>3</sup> Albert E. Utton. “Nigeria and the United States: Some Constitutional Comparisons.”

<sup>4</sup> Albert E. Utton. “Nigeria and the United States: Some Constitutional Comparisons.”

<sup>5</sup> Andrew Byrnes and Hilary Charlesworth. “Federalism and the International Legal Order: Recent Developments in Australia.”

extent” in its treaty negotiation and ratification process. Instead, it has resulted in an “extensive consultative process” in which the provinces have substantial input in how a treaty will be approved and implemented.<sup>1</sup> This is remarkably different from how power sharing occurs in the United States and Australia and illustrates that federalism does not necessarily have to result in tension between the regional governments and the federal governments. Though the Canadian process is quite long, it appears to be a system in which both the federal governments and regional authorities are able to exercise their appropriate powers without interfering with one another. While the Canadian federal system works well in coordinating regional and federal powers of treaty ratification, this system of cooperation is rare among federal countries.

Switzerland technically has a federal system of government, but it is incredibly centralized to the point where it functions nearly as a unitary government.<sup>2</sup> It has an organization similar to the one outlined in the United States’ 10<sup>th</sup> amendment, reserving all remaining powers to the states, but it does not have a subject matter limitation for the treaty power, even if the treaty regards a power belonging to the cantons (states). However, the central government avoids acting on this issue if at all possible.<sup>3</sup> The lack of tension between regional and central government is found between the branches of government as well. The legislature is highly involved in the treaty process; both chambers must review and pass the law before it moves on to the Federal Council, the executive branch, for approval. Theoretically, the seven members of the Federal Council must abide by the legislature’s expressed desires, but it has not been tested to what extent this is necessary.<sup>4</sup> There is no judicial review in Switzerland, and this appears to

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<sup>1</sup> Andrew Byrnes and Hilary Charlesworth. “Federalism and the International Legal Order: Recent Developments in Australia.”

<sup>2</sup> Robert B. Loper. “The Treaty Power in Switzerland.” *The American Journal of Comparative Law* 7.2 (1958): 178-194.

<sup>3</sup> Robert B. Loper. “The Treaty Power in Switzerland.”

<sup>4</sup> Robert B. Loper. “The Treaty Power in Switzerland.”

lessen the conflict horizontally between branches and vertically between the cantonal and central governments as every law passed is automatically constitutional merely by its passage. The final ratifying power lies with the people in the form of an optional popular referendum on a treaty. This has barely been used in Switzerland, but it serves as a constraint because the central government must always consider the possibility of a referendum.<sup>1</sup> This essentially means the end result is close to the popular desire of the people because it is in the government's best interest to not have a referendum. It is interesting to observe how Switzerland, though a federal state, avoids most conflict in government and with its people by involving many aspects of the country in its ratification process. It is much more similar to the Canadian approach of collaboration than the American or Australian approach of discord and legal battles. Similar to Canada, the degree of collaboration and consensus could draw out ratification or inhibit ratification due to the amount of players involved in the process.

Great Britain, while not a federal state, made great strides toward sharing the treaty power among different branches in the 1920s. Technically, the government (the executive branch) has the sole power to ratify treaties without publication of the treaties or advice from Parliament.<sup>2</sup> However, starting with the Treaty of Lausanne to partition the Ottoman Empire in 1924, the government has had a more open policy of treaty ratification. It was decided that Parliament would "be allowed an adequate opportunity for the discussion of all treaties before their final ratification."<sup>3</sup> The government does not require approval of a treaty from the Parliament, but Scott correctly believes it is unlikely that the government, a group of leaders chosen from the legislature, would deviate much from the expressed wishes of Parliament. Such

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<sup>1</sup> Robert B. Loper. "The Treaty Power in Switzerland."

<sup>2</sup> James Brown Scott. "Ratification of Treaties in Great Britain." *The American Journal of International Law* 18.2 (1924): 296-298. 296.

<sup>3</sup> James Brown Scott. "Ratification of Treaties in Great Britain." 296.

action could result in calling for an election or replacement of the majority party leader. The effect was “the Americanization of the British Constitution,” or a more public approach to treaties. The hope was this would “exercise a sobering effect on treaties” and help preserve both international and domestic peace.<sup>1</sup> It was generally believed by members of the government that if a government is unwilling to disclose the terms of a treaty to its people, it should not agree to the treaty. The new plan allowed for 21 days between the signing of a treaty and ratification of a treaty, during which Parliament could peruse, debate, and either support or condemn the treaty before the government made a final decision. Though separation of powers is not a part of the British system of government, this tempered the executive’s treaty power and somewhat weakened the central government by making it more accountable to both the legislature and the people and resulted in a longer ratification process.

In sum, federal systems and governments with some form of limited power experience roadblocks in the ratification of treaties. Sharing power requires debate and discussion before ratification and can sometimes result in a failure to ratify. The literature supports the conclusion that states with institutional domestic constraints have a higher likelihood of a long and more difficult ratification process.

### **3. Background**

This chapter will cover the remaining background material necessary to understand the concepts explored in this paper. It explains the idea of “exceptional” America – that is the criticism that the United States believes its hegemonic power exempts it from the necessity of observing international laws and codes of conduct. It also gives factual background on the

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<sup>1</sup> James Brown Scott. “Ratification of Treaties in Great Britain.” 297.

details of the United States treaty power, covering the different responsibilities guaranteed in the Constitution and outlining the ratification process.

### 3.1 Exceptional America

The United States has, especially recently, been criticized as viewing itself as exceptional. While in some cases this can be viewed a credible criticism, in many situations, such as treaty ratification, it is both overused and misused. According to critics, through time, “Americans became accustomed to thinking of their country as ‘the indispensable nation’” because “the status of the United States as ‘sole superpower’ appeared unassailable.<sup>1</sup> Its dominance was unquestioned and unambiguous...it was the conventional wisdom.”<sup>2</sup> This gave American exceptionalism, originally simply the idea of being different from most other world powers, an “obtuse American” angle as the act of being different took on a new connotation.<sup>3</sup>

American dominance in international relations often has a positive effect, in that the country has demonstrated an exceptional commitment to democracy, international law, and human rights.<sup>4</sup> Unfortunately, this dominance can also be construed as American arrogance in international relations. Michael Ignatieff has laid out three types of what he calls exceptionalism with the last, American exceptionalism, being the most egregious charge against the United States in international relations. Here, the term exceptionalism is misused to refer to the belief that the United States is exceptional, as the term takes on the negative connotation earlier discussed. The first charge Ignatieff lays against the United States is human rights narcissism, a belief that the First Amendment embodies all of the important rights and ignores other rights

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<sup>1</sup> Andrew J. Bacevich. *The Limits of Power: the End of American Exceptionalism*. New York: Metropolitan, 2008. 2.

<sup>2</sup> Andrew J. Bacevich. *The Limits of Power: the End of American Exceptionalism*. 2-3.

<sup>3</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism,” *Stanford Law Review* 55 (May 2003): 1479-1527. 1481.

<sup>4</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.”

“that are widely accepted throughout the rest of the world.”<sup>1</sup> The second, judicial exceptionalism, refers to the belief that the “practices of foreign countries are irrelevant to US constitutional interpretation.”<sup>2</sup> The last is the practice of exemption from “certain international law rules and agreements.”<sup>3</sup> The first two are cited as more of a nuisance or non-issue, however, the double standards involved in the last type present a large problem for Koh. He feels “the United States uses its exceptional power and wealth to promote a *double standard*.”<sup>4</sup> This action has been explained by the United States’ unwillingness to be subject to international treaties in fear of being constrained in domestic and international actions. There is a belief held among critics that even when the United States ratifies a treaty, it does so “in a way designed to preclude...any domestic effect.”<sup>5</sup> One way to accomplish this is to use reservations, understandings, and declarations as previously discussed. While the United States does use RUDs from time to time to clarify how the United States will interpret or view a treaty, it does not always attach these and occasionally forgoes ratification when it feels the RUDs would undermine the purpose of the treaty.

Critics of the United States’ international actions cite a unique ratification strategy. Because treaties in the U.S. are not self-executing, they sometimes require additional domestic legislation to implement the treaty. However, it is often declared that the United States does not require any implementing legislation because the current legislation is sufficient to address the treaty conditions.<sup>6</sup> This behavior “suggests a view that human rights treaties should be embraced

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<sup>1</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.” 1482.

<sup>2</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.” 1482.

<sup>3</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.” 1482.

<sup>4</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.” 1485.

<sup>5</sup> Kenneth Roth. “The Charade of US Ratification of International Human Rights Treaties.” *Chicago Journal of International Law* 1 (2000): 347-352. 347.

<sup>6</sup> Kenneth Roth. “The Charade of US Ratification of International Human Rights Treaties.”

only insofar as they codify existing US practice, not if they would compel any change in US behavior.”<sup>1</sup>

These criticisms of the United States are often narrow-minded. While some of the arguments are undoubtedly legitimate because the United States is not a perfect country, most only consider part of the situation. When the United States ratifies a treaty, it intends to comply with it, while some other states may show an outward approval through ratification but do not attempt to comply. Because of this, if the United States cannot comply with a treaty for whatever reason, it does not ratify it in an attempt to pretend to follow the provisions. Further, the United States is not the only state to submit RUDs, and it does attempt to keep the purpose of the treaty intact when it does so. Lastly, it is unfairly critical and cynical to assume that the United States is being untruthful when it declares that current domestic legislation is in compliance with a treaty. There is little reason to accept this criticism as true, as if this were the case, there would surely be widespread, serious, international backlash and criticism regarding compliance with treaties.

### **3.2 The Ratification Process**

In the United States, the Constitution divides the treaty power between the executive and legislative branches. The president has the power to make treaties while the Senate has the power to “concur.”<sup>2</sup> The Senate does not ratify treaties but rather it gives advice and consent to ratification. First a treaty is signed, either by the president or a diplomatic figure working on behalf of the president. The president then may submit the treaty to the Senate for ratification. However, the president is under no obligation to submit the treaty and may choose to submit it at

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<sup>1</sup> Kenneth Roth. "The Charade of US Ratification of International Human Rights Treaties." 350.

<sup>2</sup> *U.S. Senate*. <<http://senate.gov>>.

a later date if he believes the Senate will not approve ratification at that time. Since signed treaties do not expire, they can be submitted to the Senate at any time by any president. If a treaty is submitted to the Senate for consideration, the Senate can approve it, reject it, or take no action on it. Acceptance requires a two-thirds majority and can include reservations, understandings, declarations, interpretations, or any other statements the Senate would like to include in the decision.<sup>1</sup> As with the decision itself, these additions are the advice of the Senate; the president must decide whether or not to negotiate them into the ratification. The two-thirds majority vote usually requires the Senate to overcome the party divide and take bipartisan action on the treaty. This raises the ratification threshold in the United States because the treaty must be agreeable to both parties.

If the treaty receives Senate approval, the president then formally ratifies the treaty with the other parties. If the treaty does not come to a vote, it remains in the Senate until either the president removes it or the Senate requests its removal. Because the treaties do not expire in the Senate, a treaty can be resurrected from the Committee on Foreign Relations and ratified at a much later date should there be a push for ratification, though this occurs infrequently. If resurrected, these treaties can be used as political tools or avenues for social change. Bilateral treaties are usually submitted immediately and discussed, then either approved or rejected without additional discussion, due to the nature of bilateral negotiations. For multilateral treaties, the process is more complicated and a treaty may go back and forth from the committee to the floor several times or languish in committee for decades without approval.

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<sup>1</sup> *U.S. Senate.*



#### 4. American Exceptionalism

As discussed in the previous chapter, one of the most popular explanations for American nonratification of important multi-lateral treaties is that of American arrogance and double standards. The term “American exceptionalism” often has been used to explain this concept, but it is a misuse of the term. “American exceptionalism has been used far too loosely and without meaningful nuance” and has lost much of its meaning.<sup>1</sup> For the purpose of this paper, American exceptionalism will be defined as the circumstance of America being an *exception* rather than the belief that America is *exceptional*. In the following sections I will argue that American exceptionalism can be applied to the American outlier effect in treaty ratification. First, however, this chapter will explain the concept of American exceptionalism.

American exceptionalism in international affairs has its roots in the Paris Peace Conference of 1919 and President Woodrow Wilson’s 14 points following World War I.<sup>2</sup> Before this, the concept was generally viewed as an isolationist quality rather than exceptionalism. At that time the United States declined to join the League of Nations even though President Wilson had been instrumental in the institution’s formation. With the United States demonstrating that it was willing to participate in world affairs, both through its actions in the war and President Wilson’s 14 points, the idea of isolationism was replaced with that of American exceptionalism.

Lockhart lists historical, institutional, and cultural variables as the roots of American exceptionalism in domestic policies.<sup>3</sup> While America’s domestic exceptionalism and international exceptionalism are not the same, their causes are related. Simmons upholds this connection as she lists democratic institutions, cultural characteristics, and occasionally

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<sup>1</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.” 1482.

<sup>2</sup> Harold Hongju Koh. “Foreword: on American Exceptionalism.”

<sup>3</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*. New York: Palgrave Macmillan, 2003.

government orientation as factors that affect a country's ability and predisposition to ratify treaties.<sup>1</sup> Though she leaves out historical factors, the three parts of American exceptionalism are so closely related at times that it can be difficult to fully distinguish the difference between them. The particular culture in the United States has a historical basis, as the values of independence and individual freedoms originated from the country's history as a dissatisfied British colony. Institutions in the United States were influenced during their formation by this culture and the historical concerns about abuse of power. In turn, the institutions affected events in American history and helped further shape the culture as it evolved.

Historically, the United States has had unique political and social experiences. The lack of a feudal system in the early United States pushed the creation of a strong middle class not found in many European countries.<sup>2</sup> The secession from Britain and its political implications laid the foundation for the concepts of separation of power and a relatively weak, federal system. Until around the 1950s the United States was protected from any severe sudden changes as it was "unusually well insulated from the threats of foreign attack and many international economic problems."<sup>3</sup> As opposed to countries with several borders, the United States was cushioned by oceans and relatively friendly neighbors and thus was allowed to form and modernize with only moderate influence from other states.

Institutions, a central factor of this paper, are cited as having a strong effect on American exceptionalism. Because "institutions in general are sticky, change of, in, and by them is further

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<sup>1</sup> Beth Simmons. "Theories of Commitment" (Chapter 3), "Theories of Compliance" (Chapter 4) and "The Protection of Innocents: Rights of the Child" (Chapter 7). *Mobilizing for Human Rights*. New York: Cambridge University Press. 2009.

<sup>2</sup> Andrei S. Markovits and Steven L. Hellerman. *Offside: Soccer and American Exceptionalism*. New Jersey: Princeton UP, 2001.

<sup>3</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*. 3.

slowed by the stickiness of cultures laden with tradition, habit, custom, and simple inertia."<sup>1</sup> Institutions have a large impact on domestic and international policies and tend to encourage path dependency. Institutions in the United States were created by religious dissenters who "shared a preference for more egalitarian, congregational forms of worship and social life than the relatively hierarchical forms" in Europe.<sup>2</sup> The institutions are a reflection of the people who created them, who were generally more individualist and entrepreneurial than those who stayed behind in Europe.<sup>3</sup> It took a certain type of person to be willing to move to a new colony that was far from home and largely unknown, and these people and their progeny are those who would later form the new government in America and leave their mark on the new system. Furthermore, after American independence, the country attracted many who were dissatisfied with the traditional governmental structure of Europe.<sup>4</sup> This further increased the tendency to build institutions that put more value on the power of the individual rather than following a rigid, hierarchical structure both economically and socially. The foundation of American institutions is important because the "character of these institutions may make some new policy directions more feasible than others," a concept that applies to both domestic and international actions.<sup>5</sup>

Clearly, the historical, cultural, and institutional factors are not unrelated and thus the effects of each individually are difficult to isolate. The institutions provide for a great deal of separation of powers because the founders were concerned with the possibility of one person gathering all the power to himself, especially as they had just fought a war to prevent such an occurrence. As the culture in the United States focused on equality more than the traditional

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<sup>1</sup> Andrei S. Markovits and Steven L. Hellerman. *Offside: Soccer and American Exceptionalism*. 14; Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*.

<sup>2</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*. 8.

<sup>3</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*.

<sup>4</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*.

<sup>5</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*. 7.

feudalism beliefs in Europe dictated, the institutions were formed differently than those in Europe.<sup>1</sup> The end result is that American culture, history, and therefore institutions place a greater emphasis on liberty and autonomy than other governments.<sup>2</sup>

The concept of American exceptionalism applies well to treaty ratification. The treaty power is a perfect example of separation of powers, as the executive negotiates treaties, the Senate approves them, and then the executive must ratify them. It allows the construct of separation of powers and the possibility of divided government to have a serious effect on ratification. The desire for a weak central government motivated the founders to give the states powers that are technically outside of the purview of the federal government. This can create difficulties with ratification of treaties that cover issues delegated to the states. Historically the United States was relatively self-sufficient and not dependent on many other countries, and therefore it was able to isolate itself. It was also founded by a group of free-thinking, independent individuals who placed a high premium on preventing unnecessary government interference. This has created a culture in which the government can be hesitant to regulate certain actions that the people may believe to be their freedoms. The following sections will apply these concepts to concrete examples to explore American exceptionalism's effect on treaty ratification.

## **5. Treaty Analysis**

This chapter will explore how the institutional and cultural aspects of American exceptionalism apply to treaty ratification using treaty data. I use OECD data about major multilateral treaties that have not been ratified by the United States to examine the effect

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<sup>1</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*.

<sup>2</sup> Charles Lockhart. *The Roots of American Exceptionalism: History, Institutions and Culture*.

institutional difference has on treaty ratification. The institutional differences included here are those that together set the United States apart from the majority of other countries – bicameralism, presidentialism, and federalism. Following the analysis of the institutional factors I explore the ideological make-up of the United States government for each of the treaties and postulate on its effect and the importance of timing in treaty ratification.

## **5.1 Methods**

### *5.1.1 Treaties*

I define major multilateral treaties as United Nations treaties that have 100 or more parties, as this is a clear majority of UN member states. Out of these 39 treaties, the United States has not ratified 19 treaties. Of the 19 unratified treaties, the United States has signed 14 of these treaties and has not signed five. The treaties are listed in the table on the next page.

For this comparison I use countries from the OECD, thereby controlling for countries that share the United States' characteristics of liberal democracy and capitalism. I calculate the length of ratification time using each treaty's official submission date and the date of ratification for each country. For my purposes, I included treaties marked with "accession" as ratified treaties because accession usually requires the same process as ratification, without a previous signature.<sup>1</sup> As treaties often have a time limit for signature, a country may not have the opportunity to ratify a treaty because it has not signed it, and therefore "accession" is the strongest available option. Most treaties are closed for signatures after a certain number of countries have ratified the treaty. Treaties that have "approval" or "acceptance" by a country are not included in my work, though I do list them after the treaties as these processes are not similar to ratification. Countries that have "succession to signature" are also excluded. While these last

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<sup>1</sup> United Nations. Office of Legal Affairs. *Treaty Reference Guide*. 2001.

three types of countries are parties to the treaties, they do not go through the ratification process, or what is very similar to the ratification process, and so the data do not apply in this case.<sup>1</sup>

	<b>Treaty</b>	<b>Year Submitted</b>	<b>Number of Parties</b>	<b>U.S. Action</b>
1	Convention on Biological Diversity	1993	193	Signed
2	Comprehensive Nuclear-Test-Ban Treaty	1996	188	Signed
3	Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction	1997	156	No action
4	Stockholm Convention on Persistent Organic Pollutants	2001	173	Signed
5	Kyoto Protocol to the United Nations	1997	192	Signed
6	Convention on the Privileges and Immunities of the Specialized Agencies	1949	118	No action
7	International Covenant on Economic, Social, and Cultural Rights	1966	160	Signed
8	International Convention on the Suppression and Punishment of the Crime of Apartheid	1973	107	No action
9	Convention on the Elimination of All Forms of Discrimination Against Women	1979	187	Signed
10	Convention on the Rights of the Child	1989	193	Signed
11	Convention on the Rights of Persons with Disabilities	2006	106	Signed
12	Convention Relating to the Status of Refugees	1951	145	No action
13	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998	144	Signed
14	Vienna Convention on the Law of Treaties	1969	111	Signed
15	Rome Statue of the International Criminal Court	1998	118	Signed
16	United Nations Convention on the Law of the Sea	1982	162	No action
17	World Health Organization Framework Convention on Tobacco Control	2003	174	Signed
18	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1989	173	Signed
19	Agreement Establishing the Common Fund for Commodities	1980	117	Signed

<sup>1</sup> United Nations. Office of Legal Affairs. *Treaty Reference Guide*. 2001.

### *5.1.2 Exclusion of Russia*

Russia is also a federal, semi-presidential, bicameral system of government; however it is not included in this study. It faces similar criticism as the United States from the international community about its world affairs, including a tendency to apply a double standard to international cooperation. While the history and evolution of Russia is quite different from that of the United States, both countries are frequently viewed internationally as outliers. Furthermore, both are criticized for lack of complete involvement in major international affairs. On the surface, the two countries may have more in common than one might originally assume.

However, Russia poses several problems as a case. First, it is not actually a liberal democracy, as is the rest of the Organization for Economic Co-operation and Development. The history of Russian development sets the country apart from the United States, regardless of the shared institutional characteristics. While Russia is different from most of the developed world, it is for very different reasons from the historical, institutional, and cultural reasons that form American exceptionalism. Because of this, attempting to understand the Russian outlier effect will not necessarily shed light on the American outlier effect. In addition, Russian democratic institutions are questionable in that the political power is in reality concentrated in one person, usually the president. While the country is federal, it has become greatly centralized under the leadership of Vladimir Putin. The institutions of presidentialism and bicameralism mean little in actuality in Russia as the executive branch controls the government. Therefore, institutional similarities between the United States and Russia are in practice limited, and Russia is not an appropriate case for inclusion.

## 5.2 Institutions

In the following sections I examine the treaties according to each country's characteristics. The corresponding tables can be found in Appendix 1. In the tables the countries with the same characteristic as the United States being discussed, that is presidential, bicameral, or federal, are marked in green.

### 5.2.1 *Presidentialism*<sup>1</sup>

Of the 19 treaties, the presidential countries ratified seven treaties later than the majority of other ratifying OECD countries. For one treaty, the Agreement Establishing the Common Fund for Commodities (19), the presidential countries ratified around the median length of ratification.<sup>2</sup> In ratification of the Convention on the Rights of Persons with Disabilities (11), the presidential countries actually ratified earlier than the majority of other ratifying OECD countries. For the remaining nine treaties, without including the International Convention on the Suppression of the Crime of Apartheid (8), the presidential countries' ratification times were spread fairly evenly throughout the time line. In the International Convention on the Suppression of the Crime of Apartheid, the only presidential country that is a party to the convention, Mexico, did ratify later than the majority of other ratifying OECD countries, however as only four OECD countries are parties to this treaty, this treaty is not significant for the purpose of this study, though the treaty would be interesting to be examined in its own right.

Presidential countries are sometimes missing from the list of parties to the treaty. Chile did not sign or ratify the Agreement Establishing the Common Fund for Commodities (19), the

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<sup>1</sup> The presidential countries are Chile, Mexico, South Korea, and Switzerland.

<sup>2</sup> For easy identification, the corresponding treaty number for the tables in Section 5.1.1 and Appendix 1 follows the treaty name.



treaty in which the remaining three presidential countries fell in the median of OECD ratification time. Switzerland signed the World Health Organization Framework Convention on Tobacco Control (17) but has not yet ratified it, and it has not even signed the Convention on the Rights of Persons with Disabilities (11), the treaty in which the other presidential countries demonstrated early ratification, or the Convention on the Privileges and Immunities of the Specialized Agencies (6). Mexico has also failed to sign or ratify the Convention on the Privileges and Immunities of the Specialized Agencies (6), while South Korea has not acted on the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (3).

Canada is a good illustration of the effect of presidentialism on ratification. Canada has a similar culture to the United States. It is also a bicameral (though weak bicameral, as discussed in a later section) and federal state. Canada tends to ratify early, falling in the first half of the ratification timeline in 12 of the 19 treaties. With the exception of the International Convention on the Suppression of the Crime of Apartheid (8), Canada has only failed to ratify one treaty. The comparison of the United States and Canada holds as many domestic characteristics constant as possible and shows that, though presidentialism does not appear to always affect treaty ratification, the differences between American and Canadian ratification implies that it does have an impact.

The data suggests that sometimes presidential states do take longer to ratify major international treaties or may sometimes join the United States in failure to ratify. However this is not the case with all 19 treaties, and more frequently presidential countries ratify in similar time frames to their parliamentary partners in the OECD. While it would be false to say that

presidentialism always has a slowing effect on treaty ratification, in some cases it appears to have slowed the ratification process.

### 5.2.2 *Federalism*<sup>1</sup>

Though the literature strongly supports the idea that federalism constrains the domestic treaty power, for the major multilateral treaties that the United States has not ratified, federalism does not appear to have had a significant slowing effect on ratification time. For all 19 of the treaties, the federal OECD countries have ratified at a similar rate as the unitary OECD countries, falling evenly distributed throughout the timeline. Furthermore, for 15 of the treaties, every federal country, other than the United States, ratified the treaty. Of the remaining four treaties, two were ratified by seven of the eight federal countries, one was ratified by five, and the last was ratified by only one. This last treaty, however, is the International Convention on the Suppression of the Crime of Apartheid (8), which as previously stated only has four parties from the OECD. For the two treaties that were ratified by seven of the eight federal countries, the one country that joined the United States as a non-ratifier is Switzerland. Switzerland is another unique case and frequently an outlier, due to its multi-person executive, presidential system and its historical role of neutrality and culture of privacy. However, as a federal state, the federal government in Switzerland must work with the cantonal governments to ensure that ratification of a treaty is acceptable to the cantons. In this sense, Switzerland is more similar, regarding federal relationships, to the United States than a country like Canada, where the federal government has more power over regional governments.

Ultimately, federalism alone does not appear to have a large effect on the time of ratification. This is surprising because it is contradictory to both the literature on the subject and

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<sup>1</sup> The federal countries are Australia, Austria, Belgium, Canada, Germany, Mexico, Spain, and Switzerland.

common logic. While literature on the limitations placed on ratification by bicameralism, presidentialism, and other institutional factors is not widely found, literature about the limitations placed on ratification by federalism is widespread, both in the abstract and in relation to federalism in specific countries. In federal countries there are more veto players whose opinions must be considered in treaty ratification, especially as sometimes the regional governments have powers with which the federal government is constitutionally prohibited from interfering. That these ideas are not reflected in the data is unexpected.

### 5.2.3 *Bicameralism*<sup>1</sup>

According to the literature, bicameralism should slow the ratification process as well, however this does not appear to hold true in this data. Simmons' comments on bicameralism limiting the ratification ability of the government are not reflected here. While some of the bicameral countries did not ratify all of these treaties, the proportion that did not ratify is comparable to the proportion of all OECD countries that did not ratify. For these 19 treaties, with the exception of the International Convention on the Suppression of the Crime of Apartheid (with only four OECD parties), the bicameral countries' ratification times are either equally distributed throughout the time period or occasionally are distributed around the median OECD range.

However, of the 19 bicameral countries in the OECD, only seven have bicameral legislatures in which the houses have equal power: Australia, Belgium, Chile, Germany, Italy, Switzerland, and the United States. With those countries in mind, for eight of the treaties it took strong bicameral countries longer to ratify the treaties than either weak bicameral or unicameral

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<sup>1</sup> The bicameral countries are Australia, Austria, Belgium, Canada, Chile, Czech Republic, France, Germany, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Slovenia, Spain, Switzerland, and the United Kingdom.

countries. For most of the treaties, all of the strong bicameral countries ratified the treaty. The exceptions are the Convention on the Privileges and Immunities of the Specialized Agencies (6) and the Convention on the Rights of Persons with Disabilities (11), on which Switzerland has not taken action, the World Health Organization Framework Convention on Tobacco Control (17), which Switzerland signed but did not ratify, and the Agreement Establishing the Common Fund for Commodities (19), which neither Italy nor Chile has signed.

Like federalism, bicameralism should slow the process of ratification, at least when the country is a strong bicameral state. Unicameral and weak bicameral states have fewer veto players than strong bicameral states simply because they only have one house. Even if the end result is ratification, the discussions alone add time to the process. For these 19 treaties, however, bicameralism alone did not appear to delay or greatly affect ratification.

### **5.3 Switzerland and Mexico**

As the only other bicameral, presidential, and federal states in the OECD, Switzerland and Mexico should be good comparison countries for the United States. However, Mexico has a remarkably different culture and history from that of the United States. Combined with the fact that Mexico is not as much of a liberal democracy as the United States, this precludes Mexico from constructive comparison with the United States.

Switzerland, on the other hand, is more similar to the United States than one might think. Though many of the specific features may be different, in that Switzerland has a seven member executive and a history of global neutrality, Switzerland also has unique institutions, culture, and history. It is reasonable to believe that Switzerland's domestic characteristics may limit its ability to ratify treaties and this effect is demonstrated in the treaty data. Of the 19 major

multilateral treaties examined here, Switzerland has failed to ratify five treaties. It has ratified only three treaties early and only four treaties in the middle of the ratification timeline. Most frequently, Switzerland is the last or nearly the last OECD member to ratify treaties. This clearly demonstrates that Switzerland, like the United States, is constrained in its treaty ratification abilities. Though this conjecture requires further examination, Switzerland's delayed or absent ratification can be reasonably attributed to Switzerland's unique qualities. In this way, Switzerland is a good comparison for the United States as it too demonstrates an outlier effect and aspects of exceptionalism. This shows that ratification can be affected by unique domestic qualities.

#### **5.4 Ideology**

The ideological component of treaty ratification in the United States is two-fold. First, the majority party should be in agreement with the treaty. While it would be possible for the minority party to garner enough support from the majority party in order to cross the two-thirds threshold, it would require the defection of a significant amount of the majority party. This leads to the second component, the necessity of two thirds of the Senate agreeing on the treaty. When one party barely has a majority and must gain the agreement of several opposition members, it would logically follow that the ratification threshold is raised. If the majority party has close to a two-thirds majority it will be easier to achieve approval of ratification. Ideologically, the Democratic Party is more inclined towards multilateral international cooperation and, therefore, would be more amenable to approval of major multilateral treaties.

Eight treaties that remain unratified have been submitted to the Senate. Five were submitted to a Democratic controlled Senate, two were submitted to a Republican controlled Senate, and one was submitted to an evenly split Senate. If we accept the idea that presidents

usually prefer to introduce a treaty to a Senate that will approve ratification, this would appear to confirm the assumption that the Democrats are more inclined to approve ratification. The two Republican controlled Senates that received treaty submissions were made up of 55 Republicans and 45 Democrats. The Democrats would have to convince at least 22 Republicans to vote with them or the Republicans would need to sway at least 12 Democrats. The Democratic controlled Senates that received treaty submissions ranged from 54 to 61 Democrats, meaning they would need to sway at least six to thirteen Republicans in order to approve the treaty.

The treaties submitted to Republican controlled Senates also have received their latest official action from a Republican controlled Senate. The Senate composition for one treaty, the Comprehensive Nuclear-Test-Ban Treaty, stayed the same. For the other treaty, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Republicans lost three seats to Democrats and one to a third party. The Senate environment for those two treaties was not favorable for ratification as Republicans are less ideologically inclined to support major multilateral treaties. In fact, the Comprehensive Nuclear-Test-Ban Treaty was rejected by the 55-45 Republican controlled Senate on October 13, 1999, about two years after it was submitted. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was discussed for just over three years. The treaty submitted to the split Senate, the Stockholm Convention on Persistent Organic Pollutants, was discussed for barely a year before a new Republican controlled Senate stalled it in the Committee on Foreign Relations.

Of the five treaties submitted to Democratic controlled Senates, two received their last action from a reduced Democratic majority. The International Covenant on Economic, Social, and Cultural Rights faced a Democratic majority that lost three seats a year and a half into

debate, going from 61 to 58 seats. While the majority was still a strong one, when 67 votes are required, losing even three votes could have been costly. The Convention on the Elimination of All Forms of Discrimination Against Women was introduced to a 58-41 Democratic controlled Senate. This treaty was extremely controversial and debated for over two decades before a split Senate consigned it to the Committee of Foreign Relations. Even with the changing composition of the Senate from a Democratic majority to a Republican majority back to a Democratic controlled Congress, the Senate could not agree on approval of the treaty, demonstrating the difficulties imposed by the two-thirds majority requirement in treaty approval.

Two of the treaties submitted to a Democratic majority received their latest action from a Senate of the same partisan make up. The Convention on Biological Diversity was discussed for a year by a 57-43 Democratic controlled Senate and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was also discussed for about a year by a 56-44 Senate. The conditions for ratification of these two treaties were fairly favorable, as they were received and discussed by unchanging Democratic controlled Senates that had to gain only 10-11 opposition votes, yet they were discussed for only a year. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was actually approved by the Senate on August 11, 1992. In this case, the treaty did make it through the approval process and yet was not ratified, even though President George H. W. Bush both submitted and received the approval. This is surprising because one would assume that if he would have ratified it when he received approval. However, he received approval less than two months before the 1992 presidential elections, in which he was running for reelection. This may have had an effect on his decision to ratify the treaty, especially if he thought ratification would cost him votes. This treaty is discussed in depth in chapter seven.

One treaty, the Vienna Convention on the Law of Treaties, was tabled by a Senate in which the Democratic Party had increased its representation from 54 to 56 since the submission of the treaty. However, the treaty was still not approved after two and a half years of discussion. Like the previous two treaties, the Vienna Convention on the Law of Treaties had favorable ideological conditions for ratification but was not approved.

Four of the treaties were submitted to the Senate during a time of divided government. Two were submitted by a Democratic president to a Republican controlled Senate and two were submitted by a Republican president to a Democratic controlled Senate. Logically, divided governments with a Republican president should be more inclined to approve and ratify treaties. If a president negotiates and introduces a treaty to the Senate he likely supports it, therefore his personal stance on the subject is already established in favor of the treaty and it is Congress' support that needs to be secured. The two treaties submitted to these more favorable divided governments were the Basel Convention, which will be further discussed in chapter seven, and the Vienna Convention on the Law of Treaties. This treaty illustrates the real difficulty of approving a treaty in the United States, as even when there are favorable conditions for approval, treaties do not always make it through the Senate.

## **6. Ratified Treaties**

In order to understand the American outlier effect, analysis of ratified treaties can shed light on the differences between ratified and unratified treaties. The United States has ratified 20 major multilateral treaties since the beginning of the United Nations. The United States signed and ratified one treaty, the Constitution of the United Nations Industrial Development Organization, but later withdrew from the treaty. Due to its nature as a withdrawn ratification,



the Constitution of the United Nations Industrial Development Organization will not be included here. The remaining 19 treaties are listed below.

<b>Treaty</b>	<b>Year</b>	<b>Ratified</b>
Vienna Convention on Diplomatic Relations	1961	1972
Vienna Convention on Consular Relations	1963	1969
Convention on the Prevention and Punishment of the Crime of Genocide	1948	1988
International Convention on the Elimination of All Forms of Racial Discrimination	1966	1994
International Covenant on Civil and Political Rights	1966	1992
Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment	1984	1994
Convention on Psychotropic Substances	1971	1980
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	1988	1990
International Convention Against the Taking of Hostages	1979	1984
Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents	1973	1976
International Convention for the Suppression of Terrorist Bombings	1997	2002
United Nations Convention Against Transnational Organized Crime	2000	2005
United Nations Convention Against Corruption	2003	2006
Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects	1980	1995
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	1992	1997
Vienna Convention for the Protection of the Ozone Layer	1985	1986
Montreal Protocol on Substances that Deplete the Ozone Layer	1987	1988
United Nations Framework Convention on Climate Change	1992	1992
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	1994	2000

## **6.1 Subject Matter**

The major multilateral treaties that the United States has ratified are spread across a diverse subject range, including human rights; privileges and immunities, diplomatic and consular relations, etc; narcotic drugs and psychotropic substances; penal matters; disarmament; and environment; While some categories, such as penal matters, are more favored in the group of treaties which have been ratified, in general there is not a difference in subject matter between the treaties which have been ratified by the United States and those that have not. This indicates that overarching subject matter itself – the environment, disarmament, human rights, etc – does not have a large effect on whether or not the United States will ratify a treaty.

## **6.2 Ideology**

Of these 19 ratified major multilateral treaties, one was approved by a split Senate, seven were approved by a Republican controlled Senate, and eleven were approved by a Democratic controlled Senate. This holds with the earlier suggestion that more liberal Senates are more likely to approve a treaty, though clearly more conservative Senates are not necessarily unlikely to issue approval. Eleven of the treaties were approved and ratified by a split government. Eight of the split governments were composed of a Republican president and a Democratic Senate, while the remaining three had a Democratic president and a Republican Senate. This suggests that in a split government, the level of liberalism in the Senate is more important than that of the president, as postulated in the previous chapter.

### 6.3 Length of Debate

The length of time between a treaty's submission to the U.N. Secretary General and ratification by the United States varies widely for the major multilateral treaties that the United States has ratified. The shortest interval was just over five months for the United Nations Framework Convention on Climate Change, which was introduced by a Republican president, President George H. W. Bush, after the treaty's official recognition by the United Nations on May 9, 1992 and officially ratified on October 15, 1992 with the approval of a Democratic controlled Senate. This remarkably quick ratification may have been driven by a complete consensus on the importance of battling climate change, although the United States did not even submit the subsequent Kyoto Protocol to the United Nations Framework Convention on Climate Change to the Senate for approval. However, the speed with which this treaty was ratified may not be tied to its subject entirely. In November 1992 both President George H. W. Bush and one third of the senators in the Democratic-controlled Senate were up for reelection. Facing the election may have sped up the Senate's consideration of the treaty, either because the senators believed approval would help their reelection chances or because they were afraid the new Senate would not approve the treaty. The circumstances surrounding the ratification of this outlier treaty are explored in the following chapter.

The longest time period between U.N. recognition and United States ratification of a treaty occurred with the Convention on the Prevention and Punishment of the Crime of Genocide, which took almost 40 years to be ratified by the United States from the time it was deposited with the Secretary General of the United Nations on December 9, 1948. It was finally ratified after approval by a Democratic controlled Senate on November 25, 1988.

The rest of the ratified treaties range from one year to 28 years of time elapsed before ratification occurred. The average time for ratification, from the time of the treaty's submission to the United Nations to official ratification by the United States, is about nine and a half years. This is a much shorter time period than those that have elapsed for the treaties that have not been ratified. The major multilateral treaties in the Senate that are waiting for approval have been open for ratification for an average of around 23 years, ranging from 11 years for Stockholm Convention on Persistent Organic Pollutants to 46 years for the International Covenant on Economic, Social, and Cultural Rights. This suggests that, in general, treaties are more likely to be ratified by the United States closer to their origination, rather than in later years. However it is important to note that this is not an absolute rule, as seen with the Genocide Convention, which was ratified after 40 years.

#### **6.4 Accession to Treaties**

The United States has indicated accession to four major multilateral treaties. As earlier discussed, accession essentially indicates a desire to ratify but an inability to do so due to lack of signature. Because often treaties have a limited time of availability for signature, usually until a treaty enters into force, a country may decide to become a party to the treaty after it has been closed for signatures and is therefore too late for ratification. In the United States, the Senate proceeds with the treaty, once it has been submitted to the Senate, in the same manner as it proceeds with approval of ratification and will issue an approval of ratification if it agrees with the treaty, even though technically the president can only indicate accession to the treaty and not ratification. For this reason I have included the treaties to which the United States has acceded but kept them separate from the ratified treaties for the sake of distinction. For one treaty, the Convention on the Privileges and Immunities of the United Nations, ratification was not an

option for any country, likely due to the timing of the treaty in the early days of the United Nations, and all parties to the convention have either indicated accession or succeeded to that treaty. The treaties are as follows:

<b>Treaty</b>	<b>Year</b>	<b>Accession</b>
Convention on the Privileges and Immunities of the United Nations	1946	1970
Single Convention on Narcotic Drugs	1961	1967
Convention on the Political Rights of Women	1953	1976
Convention on the Recognition and Enforcement of Foreign Arbitrary Awards	1958	1970

For these treaties, the time between declaration of the treaty and accession ranges from six years, for the Single Convention on Narcotic Drugs, to 24 years for the Convention on the Privileges and Immunities of the United Nations. The average time period is 16.25 years, though this is clearly heavily influenced by the 23 and 24 years periods due to a small data pool. Regardless, accession to treaties appears to take longer than ratification. Accession only occurs when a country decides to move forward with ratification after a treaty has been closed for signatures. Because these treaties are acceded to rather than ratified, it follows logically that the time from creation to accession would take longer than the time for ratification. However, accession may indicate that the United States hesitated before moving forward with the ratification process, which may be a result of a more controversial treaty that also required longer debate and consideration. Though the average time period of a treaty with United States accession is longer than that of a treaty with United States ratification, the accession time period is still shorter than the average time for the treaties that have been submitted to the Senate but not ratified, upholding the postulation that the more time that passes the less likely a treaty is to be ratified.

## 7. Case studies

While the previous sections show some of the effects of different aspects of American exceptionalism, they do not provide a picture of how the components work together to affect treaty ratification. This section will explore two treaties in an attempt to understand how the historical, cultural, and institutional differences in the United States shaped the discussion and ratification of the treaties. These two major multilateral treaties were both introduced and supported by President George H. W. Bush and discussed by the 102<sup>nd</sup> Senate during the same time period. The Senate consented to ratification of both treaties, but only one treaty, the United Nations Framework Convention on Climate Change, was ratified. This section explores these two treaties and explanations for the different results.

### 7.1 Background

During the 102<sup>nd</sup> Congress, two treaties were introduced to Congress by President George H. W. Bush – the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the United Nations Framework Convention on Climate Change. The treaties were submitted to Congress in 1991 and 1992 respectively. The government was divided, with a Republican president and a Democratic controlled Senate where the Democrats had a solid majority of 56. Both treaties came to a vote in 1992 and consent to ratification was granted by Congress. However, only one treaty, the United Nations Framework Convention on Climate Change, was ultimately ratified, on October 15, 1992 by President George H. W. Bush.<sup>1</sup>

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<sup>1</sup> *Library of Congress: THOMAS.* <<http://thomas.loc.gov>>.

The Basel Convention has yet to be ratified, 20 years later, though consent to ratification of that treaty also was approved by the Senate in 1992.<sup>1</sup>

In addition to these two treaties, the Bush administration was also negotiating the Biodiversity Treaty. The Biodiversity Treaty and the U.N. Framework Convention on Climate Change were a pair of treaties discussed at the U.N. Earth Summit in Rio de Janeiro in 1992. In 1992 the United States under President Bush had refused to sign the Biodiversity Treaty because the administration believed it would interfere with intellectual property rights in the United States as it “obligates countries...to conserve, sustainably use, and guarantee access to genetic resources.”<sup>2</sup> President Bill Clinton signed the treaty during his tenure, but it was not ratified and in fact the only action Congress took was to release a statement about the necessity of specific language explaining the United States’ interpretation of that treaty.<sup>3</sup> However, at the time of discussion of the two treaties examined here, the United States had not signed the Biodiversity Treaty, which may have had a strengthening impact on the willingness of the United States government to approve and ratify the other environmental treaty discussed at the U.N Earth Summit, the Framework Convention on Climate Change.

In 1992 the country was suffering from unemployment and recession. Unemployment was above seven percent in November 1992. Historically, in four of the five U.S. elections when unemployment was above six percent, the president’s party was not reelected to the presidency and this surely was not lost on President Bush.<sup>4</sup> In November of 1992, President Bush ran for reelection against Bill Clinton and Ross Perot and lost. While these two treaties were being

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<sup>1</sup> *Library of Congress: THOMAS.*

<sup>2</sup> Charles R. McManis. "The Interface between International Intellectual Property and Environmental Protection: Biodiversity Treaty and Biotechnology." *Washington University Law Quarterly* 76.255 (1998). 260.

<sup>3</sup> Charles R. McManis. "The Interface between International Intellectual Property and Environmental Protection: Biodiversity Treaty and Biotechnology."

<sup>4</sup> "Unemployment and Presidential Elections." *The Washington Times*. 25 May 2008.

discussed, the election was looming in the distance, with the added pressure of recession and unemployment affecting Bush's reelection prospects.

## 7.2 U.N. Framework Convention on Climate Change

The United States signed the U.N. Framework Convention on Climate Change on June 12, 1992 at the U.N. Earth Summit in Rio de Janeiro, Brazil.<sup>1</sup> The convention was fueled by concerns over carbon dioxide and greenhouse gas emissions.<sup>2</sup> On September 8, 1992 President Bush submitted the treaty to the Senate and it was referred to the Committee on Foreign Relations.<sup>3</sup> In his letter to the Senate, President Bush stated that the convention "represents a delicate balance of many interests" expressed at the Rio Summit.<sup>4</sup> He encouraged prompt ratification by the United States because he believed it would encourage other countries to also ratify the treaty.<sup>5</sup> The State Department report that accompanied the president's letter agreed and included that timely ratification was important to show the United States' commitment to preventing climate change. It also confirmed that ratification would be consistent with the United States' environmental and economic interests and foreign policy.<sup>6</sup>

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<sup>1</sup> *Library of Congress: THOMAS*; Los Angeles Times. "Senate Approves Rio Treaty." Buffalo News Oct 08 1992: A.9.

<sup>2</sup> Los Angeles Times. "Senate Approves Rio Treaty."

<sup>3</sup> *Library of Congress: THOMAS*.

<sup>4</sup> United States Senate. *United Nations Framework Convention on Climate Change: message from the President of the United States transmitting the United Nations Framework Convention on Climate Change, adopted May 9, 1992*. 102<sup>nd</sup> Congress. 2<sup>nd</sup> session. Washington: GPO, 1992.

<sup>5</sup> United States Senate. *United Nations Framework Convention on Climate Change: message from the President of the United States transmitting the United Nations Framework Convention on Climate Change, adopted May 9, 1992*.

<sup>6</sup> United States Senate. *United Nations Framework Convention on Climate Change: message from the President of the United States transmitting the United Nations Framework Convention on Climate Change, adopted May 9, 1992*.



On September 18, 1992 the Committee on Foreign Relations held a hearing about the treaty.<sup>1</sup> The main issues that arose during the hearing were global warming, the economic effect of the treaty, the United States being obligated to observe specific timelines and limits, and the need for the United States to be a party to the convention and a leader on the issue. Experts in the field of global warming expressed concerns that the treaty was not strict enough to fully address the problem, but conceded that while it “guarantees nothing,” it would open the door for further action on the issue and should therefore be ratified.<sup>2</sup> Their base assumption, that global warming was a serious problem, received some opposition, especially from the ranking Republican member, Senator McConnell, who maintained that “there is *no* conclusive evidence of significant long-term global warming”.<sup>3</sup> Senator McConnell also expressed concerns about the economic consequences of the treaty and was joined by others who agreed that it was important to look first toward economic growth. Given the economic climate and level of unemployment at the time, these concerns were to be expected. However, several others, including experts and Democrats, argued that green technology would create jobs that were sorely needed.<sup>4</sup>

Concerns about the United States being bound to specific goals and timelines were prevalent during the hearing. For example, Senator McConnell advised some clarifications from the committee to confirm that the United States would not be bound to reduce greenhouse gas emissions.<sup>5</sup> Time tables and targets were a large issue of contention throughout the hearing, with

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*. 102<sup>nd</sup> Congress. 2<sup>nd</sup> Session. Washington: GPO, 1993.

<sup>2</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>3</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>5</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

most Democrats and experts supporting them and most Republicans opposing them.<sup>1</sup> William K. Reilly, an administrator at the Environmental Protection Agency, commented that prompt ratification would not threaten the economy and instead actually would help it because the United States was already in compliance with the treaty.<sup>2</sup> The general consensus of the hearing was that ratification was important to show the United States' commitment to the issue and to continue being a world leader in environmental matters.<sup>3</sup> Criticism from the world community was cited, condemning the United States' actions at the summit in Rio, attacking the United States for acting in its own interests and not the interests of the world. While some of the criticism was clearly intended to defer blame from the source, the sentiment was wide-spread at the summit.<sup>4</sup>

A major theme of the hearing was the upcoming election, which at that point was less than two months away. At the summit there was criticism of the United States looking toward its own elections rather than the issue at hand.<sup>5</sup> Reilly commented that much of the hearing was unrelated to the convention and that reviewing what happened at the summit, which comprised a significant portion of the hearing, was only a political maneuver. Senator Gore (D), who would become vice president in 1993, boldly stated that the importance of the treaty "was lost" on President Bush and that the American citizens at the conference were "disappointed" because their voices were drowned out by the international outrage at the Bush administration's actions at

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>2</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>3</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>5</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

the summit.<sup>1</sup> He blamed President Bush for the lack of legally binding commitments in the treaty, pointedly attacked his knowledge of technology, and accused him of relying “on analyses that have been widely criticized and discredited.”<sup>2</sup> Senator McConnell retorted that Senator Gore’s views were either a “hallucination” or a “nightmare” and that Americans were not embarrassed by the president’s actions at the summit.<sup>3</sup> He used strong words throughout his support of the president’s actions and attacked the Democrats stating, “in this year of sloganeering and poll watching, it may be an irresistible urge to gloss over the facts, and smear prudent policies in favor of environmental extremism,” upholding his doubt about the real impact of climate change.<sup>4</sup>

On October 1, 1992 the Committee on Foreign Relations ordered the treaty to be reported “without amendment favorably” to the Senate as a whole.<sup>5</sup> In the report the committee expressed the belief that approval and ratification would encourage other states to ratify, though the committee was not certain that the convention fully addressed the problem of global warming. The committee also took this opportunity to reaffirm some of the Senate’s constitutional rights. First, it asserted that Senate approval was necessary for any timetables or targets proposed by the executive branch or the Conference of the Parties to the treaty. It also condemned the current trend of inhibiting the attachment of reservations to treaty ratification, as the Senate has the constitutional right to attach reservations where it sees fit.<sup>6</sup>

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>2</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>3</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, U.N. Framework Convention on Climate Change (Treaty Doc. 102-38)*.

<sup>5</sup> *Library of Congress: THOMAS*.

<sup>6</sup> United States Senate. *U.N. Framework Convention on Climate Change: report (to accompany Treaty doc.102-38)*.

The Senate discussed the treaty and passed a resolution consenting to ratification in a division vote.<sup>1</sup> Most of the Senators who spoke during the discussion approved of ratification. As in committee, on the floor of the Senate the treaty debate was used as an election issue, with Senator McConnell continuing his praise of the president's actions and Senator Gore further attacking the president's work at the summit.<sup>2</sup> The economic issues from the committee hearing were raised again. Senator McConnell stated that his earlier concerns about the economic consequences of the treaty had been resolved and Senator Baucus (D) added that green technology would in fact create more jobs rather than eliminate them.<sup>3</sup> On the topic of timetables and targets, the senators were still split on party lines. Senators Pell (D) and Biden (D) supported the inclusion of timetables and targets while Senators McConnell, Simpson (R), and Craig (R) opposed any specific guarantee. Many senators present, including Senators Baucus, Mitchell (D), Gore, and Biden, agreed that the treaty could have done more and should have been better but that it was a good foundation and a start toward resolving the issue of climate change.<sup>4</sup>

The 102<sup>nd</sup> Congress adjourned the next day, on October 8, presumably so the senators and congressmen up for reelection could return home to campaign.<sup>5</sup> Upon the Senate's approval of ratification, Reilly expressed his pleasure with the rapid approval and the fact the United States would be the first industrial nation to ratify the treaty, fulfilling the need discussed in the hearing to be a leader in this area.<sup>6</sup> President Bush submitted the instrument of ratification on

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<sup>1</sup> In a division vote, unlike a roll call vote, individual votes are not recorded. Those in favor of the vote simply stand in their place and are counted, then those against stand to be counted. The prevailing side is announced, but the margin of victory is not.

<sup>2</sup> Congressional Record. "Framework Convention on Climate Change." 102<sup>nd</sup> Congress (October 7, 1992) S17150-6.

<sup>3</sup> Congressional Record. "Framework Convention on Climate Change."

<sup>4</sup> Congressional Record. "Framework Convention on Climate Change."

<sup>5</sup> Congressional Record. 8 October 1992.

<sup>6</sup> Los Angeles Times. "Senate Approves Rio Treaty."

October 15, 1992 and the United States became a party to the U.N. Framework Convention on Climate Change a mere 125 days after signing the treaty.<sup>1</sup>

### 7.3 Basel Convention

The United States signed the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on March 22, 1990 in Basel, Switzerland.<sup>2</sup> The treaty was prompted by economic concerns regarding the methods of transportation and disposal of different wastes, most of which were unregulated at the time. President Bush submitted the treaty to the Senate on May 17, 1991, over a year after signing it.<sup>3</sup> In his letter accompanying the submission of the treaty, he stated that the United States was one of the first countries in the world to have legislation restricting exports of hazardous wastes, and he recommended that the Senate consent to ratification. He also announced that even before signing the treaty, his administration began to “seek statutory authority to ban exports of hazardous wastes” and that legislation that would bring the United States’ current laws into compliance with the treaty had already been sent to Congress.<sup>4</sup> The State Department report that accompanied the president’s letter expressed support for the treaty because the United States “has long supported” the intent and purpose of the treaty and encouraged rapid ratification so

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<sup>1</sup> *United Nations Treaty Collection.*

<sup>2</sup> *United Nations Treaty Collection.*

<sup>3</sup> *Library of Congress: THOMAS.*

<sup>4</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: message from the President of the United States transmitting the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, with annexes, done at Basel on March 22, 1989.* 102<sup>nd</sup> Congress. 1<sup>st</sup> session. Washington: GPO, 1991.

trade would not be disrupted.<sup>1</sup> It included four understandings recommended to be included in the final resolution of approval of ratification.

In order to ratify the treaty, however, the United States needed to make changes in the domestic laws. First, new or changed laws needed to create the authority for the United States to prohibit shipments of wastes when it believes the receiving nation will improperly handle the wastes. Second, the United States' definition of hazardous waste needed to include household wastes and ash from the incineration of wastes among other types of waste described in the treaty. Last, in cases where waste is illegally transported and disposed of by private parties the United States needed the authority to take charge of these wastes.<sup>2</sup>

On May 20, 1991 the Basel Convention was sent to the Committee on Foreign Relations but the hearing was not held until nearly 10 months later on March 12, 1992.<sup>3</sup> For the most part, the senators and experts involved in the hearing agreed on the necessity of action on the issue of control of hazardous materials and believed that this treaty was a good beginning to the solution. Senator Pell voiced the opinion that there was a definite need for control of hazardous materials. Richard J. Smith from the Environmental Protection Agency agreed that the treaty was a good solution to a serious problem and would only serve to strengthen protection in the United States because the treaty was broader than the U.S. legislation at the time.<sup>4</sup> The only voice of serious

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<sup>1</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: message from the President of the United States transmitting the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, with annexes, done at Basel on March 22, 1989.*

<sup>2</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: message from the President of the United States transmitting the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, with annexes, done at Basel on March 22, 1989.*

<sup>3</sup> *Library of Congress: THOMAS.*

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5).* 102<sup>nd</sup> Congress. 2<sup>nd</sup> Session. Washington: GPO, 1992.

criticism was that of Jim Vallette from Greenpeace, who criticized President Bush for preventing this treaty from being strong, although he did admit that, because the treaty would require closer monitoring in the United States, it would be good for the country.<sup>1</sup>

One of the main concerns expressed in the hearing was the consequences of not ratifying. Senator Baucus communicated his hope that the United States would continue the leadership position that it took during the negotiations. Smith from the EPA supported quick ratification because the convention would enter into force on May 5, 1992 and the states parties would convene shortly thereafter to establish the technical guidelines for the “sound management of wastes,” an opinion strongly supported by Harvey Alter from the Chamber of Commerce and John Bullock from the International Precious Metals Institute.<sup>2</sup> Again Vallette from Greenpeace was alone in his view that it would be better for the world if the United States was not a party and could not be involved in these important discussions.<sup>3</sup>

The issue of trade was prevalent during the hearing, as numerous participants voiced their concern about the effects of not being a party to the treaty. Smith explained that unless the United States had a bilateral agreement with a state, if that state were a party to the treaty the United States would not be able to trade as easily, or possibly trade at all, with it.<sup>4</sup> This was a serious concern for both Alter and Bullock, who was especially worried about the effect the

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>2</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>3</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

treaty would have on the trade of precious metals, as the wastes of that commodity would be governed by the convention.<sup>1</sup>

The necessity of implementing legislation was a central part of the debate surrounding the Basel Convention. Because the convention is non-self executing, the United States needed to change the current laws or pass new legislation in order to be in compliance with the treaty.<sup>2</sup> As stated in President Bush's letter of submission, efforts to address this necessity began even before the treaty was finalized. The issue of implementing legislation had two parts: what it should be and when it should be passed. Congressman Synar (D) expressed the need for tough implementation language and Senator Baucus stressed the importance of addressing the specific aspects of the law that needed to be modified instead of merely duplicating the treaty in new legislation.<sup>3</sup> Congressman Synar promoted his own bill, the Waste Export Control Act, as a solution, criticizing the Bush administration's bill for having vague definitions, weak provisions, and exempting Canada and Mexico, which were the recipients of over 90% of American exports of hazardous wastes.<sup>4</sup>

The hearing participants disagreed about when the implementing legislation needed to be passed, however. Senator Baucus said he believed the legislation could and should swiftly follow ratification, rather than precede it, in order to avoid infringing on the Senate's right to approve ratification of treaties; Alter agreed with him.<sup>5</sup> Smith believed that the legislation was

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>2</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal." *Fordham Environmental Law Journal* 8 (1997): 305-49.

<sup>3</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>4</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>5</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.



necessary before official ratification because the language of the treaty was much broader than that of the domestic legislation, and Congressman Synar, predictably, was in favor of passing his own bill before ratifying the treaty.<sup>1</sup>

On May 7, 1992 the Committee on Foreign Relations ordered the Basel Convention to be reported to the Senate and it was reported with understandings on May 28.<sup>2</sup> The report recommended approval in order to stop “damaging effects on public health, the environment, and foreign regulations” and expounded upon the need for domestic legislation already explained by the State Department and during the hearing.<sup>3</sup> The Committee recommended the same four understandings that the State Department originally submitted with the treaty, which are included in Appendix 2. The first understanding upholds the necessity of respecting the sovereign immunity of appropriate vessels under the convention. The second pertains to the definition of a “state of transit” under Article 2 of the convention and is intended to avoid conflict between the convention and the law of the sea.<sup>4</sup> The third is applicable to Article 4(9)(a) which limits export of hazardous waste to situations in which the exporting country “does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites.” This understanding declares that the United States will take the cost of both domestic and international disposal into consideration when determining the possibility of exporting waste, rather than only exporting when internal disposal is impossible.<sup>5</sup> The final understanding explains the United States’

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<sup>1</sup> United States Senate. Committee on Foreign Relations. *Hearing, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Treaty Doc. 102-5)*.

<sup>2</sup> *Library of Congress: THOMAS*.

<sup>3</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: report (to accompany Treaty doc.102-5)*. 102<sup>nd</sup> Congress. 2<sup>nd</sup> session. Senate Executive Report 102-36. Washington: GPO, 1991.

<sup>4</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: report (to accompany Treaty doc.102-5)*.

<sup>5</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: report (to accompany Treaty doc.102-5)*.

interpretation of cleanup obligations in an attempt to avoid “costly and politically sensitive” cleanup requirements.<sup>1</sup>

Ratification of the Basel Convention received advice and consent by the Senate in a division vote on August 11, 1992.<sup>2</sup> However, to this date, the treaty has not been ratified. The main reason for this is that the implementing legislation necessary for ratification has never been enacted. Though numerous pieces of legislation have been proposed and discussed, none have been passed, mostly due to disagreements over specific standards for the export and disposal of the hazardous wastes.<sup>3</sup>

President George H. W. Bush’s administration had two strong motivations for rapid ratification of the convention. The first, voiced in the State Department report and the hearing before the Committee on Foreign Relations, was the concern that the United States’ lack of party status would interfere with existing trade with countries that were parties to the convention. The United States already had bilateral agreements with Canada and Mexico, and was pursuing similar agreements within the Organization for Economic Cooperation and Development, but would be prevented or hindered in exporting wastes to other countries that ratified the convention. Additionally, party status would include the United States in subsequent conferences and give it a voice in further developments.<sup>4</sup>

Despite the administration’s strong motivation to ratify the convention quickly, implementing legislation failed to pass during President Bush’s tenure due to political

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<sup>1</sup> United States Senate. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: report (to accompany Treaty doc.102-5)*.

<sup>2</sup> *Library of Congress: THOMAS*.

<sup>3</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal."

<sup>4</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal."

disagreements between Democrats in Congress and the Bush administration. Congressional Democrats, seizing the opportunity to advance their own agendas on the White House, pushed for a reauthorization of all domestic environmental law, while the Bush administration preferred to revisit only those parts necessary to be in compliance with the treaty.

Three major pieces of implementing legislation were introduced during the Bush administration – the Waste Export and Import Prohibition Act (WEIPA), the Waste Export Control Act (WECA), and the Hazardous and Additional Waste Export and Import Act (HWEI). WEIPA imposed a comprehensive ban on imports and exports, as introduced by Congressman Towns (D). It failed due to serious disagreements over most of its provisions and the belief that it likely created more problems than it solved.<sup>1</sup> WECA, as previously discussed, was introduced by Congressman Synar. It established the extraterritorial jurisdiction of United States laws and standards, essentially forcing countries importing from the United States to adopt U.S. laws, which would not have been received well internationally.<sup>2</sup> The Bush administration's bill, HWEI, required only that importing states handle waste in an "environmentally sound" manner, but this in turn was criticized for not forcing the importing states to comply with United States laws.<sup>3</sup> A major impediment to the passage of these bills was that neither side was willing to compromise. For example, a proposal of blanket bans was dismissed for being too strong; the proposal of broad bans was rejected for not being a blanket ban. Similarly, legislators could not agree on whether or not extraterritorial jurisdiction should be included in the legislation.

When President Bill Clinton took office, he proposed a Resource Conservation and Recovery Act (RCRA) scaled-down reauthorization bill as a way to achieve implementation

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<sup>1</sup> William N. Doyle. "United States Implementation of the Basel Convention: Time Keeps Ticking, Ticking Away." *Temple International and Comparative Law Journal* 9 (1995): 141-61.

<sup>2</sup> William N. Doyle. "United States Implementation of the Basel Convention: Time Keeps Ticking, Ticking Away."

<sup>3</sup> William N. Doyle. "United States Implementation of the Basel Convention: Time Keeps Ticking, Ticking Away."

quickly.<sup>1</sup> HR 3706 was sponsored by Congressman Towns and was very similar to WEIPA with the difference that it included a wide spectrum of bans rather than a blanket ban on exports. It was also introduced in 1993 but was not passed.<sup>2</sup> In a message from the White House at the end of February 1993, the Clinton administration announced introduction of a bill that would be an important step toward ratification.<sup>3</sup> Unfortunately, the president's bill coincided with the Second Conference of the Basel Convention, where the parties to the treaty approved the Ban Amendment. This amendment banned any waste export or import between OECD states and non-OECD states and upon the Second Conference's approval of this amendment, the United States Department of Commerce withdrew its support for the treaty.<sup>4</sup> After the implementation of the Ban Amendment by the parties to the treaty, Congress ceased discussion on ratification of the treaty. Though it would be possible to submit a reservation regarding the Ban Amendment that would exempt the United States, many government leaders and environmentalists felt this would undermine the purpose of the convention.<sup>5</sup>

President Clinton did not abandon the idea of ratifying the Basel Convention, instead promising in 1999 that the implementing legislation would be passed before the end of the 103<sup>rd</sup> Congress.<sup>6</sup> However, this ultimately did not happen. This failure may have occurred because of the Protocol on Liability and Compensation, which was added to the convention in December of

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<sup>1</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal."

<sup>2</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal."

<sup>3</sup> The White House. Office of the Vice President. *Environment*. 2 Mar. 1994.

<sup>4</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal."

<sup>5</sup> Sejal Choksi. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation."

<sup>6</sup> Miles L. Buckingham. "Hazardous Materials and Energy: The Basel Convention." *Colorado Journal of International Environmental Law and Policy* (1998): 291-97.

that same year.<sup>1</sup> The Protocol most importantly imposes liability on parties who fail to comply with the convention. As a protocol, it requires ratification separate from the treaty itself, but the United States is traditionally wary of treaties and agreements that impose liability on parties.<sup>2</sup>

In 2000, new members of Congress and President George W. Bush were sworn in and ratification efforts continued to lose steam. The United States submitted a comment on the Basel Convention Strategic Plan in 2009.<sup>3</sup> In it, the United States affirmed that it was acting “generally” in compliance with the treaty and still hoped to implement legislation that would allow ratification of the treaty. However, in this statement, the United States was far more critical of the convention than it had previously been, stating that the convention was not up to date with modern situations, and suggesting that other organizations, such as the OECD, had done much more to solve problems related to the export of hazardous wastes than the Basel Convention.<sup>4</sup>

Though the United States is not a party to the Basel Convention and has not managed to pass the implementing legislation, the State Department “currently maintains that, in practice, the U.S. adheres to the Basel Convention in its entirety.”<sup>5</sup> The United States also still has bilateral agreements with Canada and Mexico which cover almost all of the U.S.’s export of hazardous wastes. Legislation updating United States laws to be in compliance with the treaty has not been voted on in Congress since 1994, and the existence of both the Ban Amendment and the Protocol

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<sup>1</sup> Sejal Choksi. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation."

<sup>2</sup> Sejal Choksi. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation."

<sup>3</sup> Unfortunately, this comment is not dated. It must have been submitted after March 30, 2009, as it is filled under comments submitted after that date and before June 2009, as that date is cited as a future date at which more information will be provided.

<sup>4</sup> "U.S. Comments on the Developments and Obstacles in the Implementation of the Basel Convention Strategic Plan." <<http://www.basel.int/Portals/4/Basel%20Convention/docs/stratplan/dev-obst/comments/us-e.pdf>>.

<sup>5</sup> Mark Bradford. "The United States, China, and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal." 329.

have cost the treaty a great deal of support within the American political system.<sup>1</sup> Currently the treaty remains unratified by the United States.

## 7.4 Conclusions

Though these two treaties were being discussed in Congress at the same time, and both were in fact approved by the Senate, only one was ratified. Ironically, the treaty that was signed and submitted later in the congressional session, the Framework Convention on Climate Change, was rapidly approved by Congress, while the Basel Convention stagnated between approval and ratification due to failure to pass the necessary implementing legislation.

Congress reached a general agreement to ratify the Framework Convention on Climate Change before the Committee on Foreign Relations even held a hearing. For the most part the discussion was divided along party lines. Democrats urged further action, argued that the treaty would ultimately help the economy, and supported the idea that it was incredibly important for the United States to be a party. Congressional Republicans pushed for no binding agreements to timetables, worried about economic repercussions, and questioned the real importance of climate change. Though many involved debated the details and effects of the Framework Convention, President George H. W. Bush, the United States State Department, the Senate, and various experts all agreed that the United States should ratify the treaty. However, most parties involved in Basel Convention debates also supported ratification, acknowledging that the treaty was a good step in solving this ecological problem, and agreed that it was important for the United States to be a party to the treaty in order to maintain leadership and trade,. While ratification of the Framework Convention was strongly supported by the president, Congress and experts, as

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<sup>1</sup> Sejal Choksi. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation."

ratification of the Basel Convention enjoyed similar agreement throughout the process, such an agreement does not in itself explain the Framework Convention's quick approval.

One factor that appeared to affect the speed at which the Framework Convention on Climate Change was ratified was the upcoming election. Congress adjourned just one day after approving it and President Bush did not delay before submitting the United States' official ratification. The debates about the treaty were used as elections tools, with members of both parties toeing the party line in solidarity. The Republicans likely hoped to keep the presidency and regain as much of Congress as possible, while the Democrats hoped to win the White House and maintain a stronghold over Congress. It is possible that the need to support the president so close to the election motivated more Republican senators to support the treaty than might have earlier in the year. While this election effect might have carried over to the Basel Convention's implementing legislation, it did not. Instead, the election affected the legislation in another way, with the Democratic controlled Congress rejecting the Republican president's bill in the lead up to the election. Democrats in Congress wanted a reauthorization of the entirety of environmental law and used the president's publicly stated support for ratification to attempt to force his hand.

That the United Nations Framework Convention on Climate Change was passed so quickly appears to suggest that rapid ratification is easily achievable, contrary to the premise of this paper. However, it is incredibly rare for a treaty to be ratified so quickly; in fact, the Framework Convention on Climate Change was ratified faster than any other major multilateral treaty in United States history. As shown in the table and explained in chapter six, the United States' ratification period for major multilateral treaties ranges from less than one year to 28 years, with an average time of about nine and a half years. The Framework Convention was clearly an anomaly. The impending election, approaching recess, and desire of both parties and

both branches to take electoral credit for ratifying the treaty created a unique circumstance that has not been repeated since.

The looming election was not strong enough motivation to push through the implementing legislation necessary to ratify the Basel Convention. One reason for this is that the legislation became an election issue between the two parties and divided the legislative and executive branches. However, even after the election, the United States continued to have difficulty ratifying the convention due to the now protracted ratification process.

In 1993, Democratic President Bill Clinton took office and was also unable to strike an agreement on implementing legislation. Two major factors blocked the legislation. First, the players involved could not agree on what the definitions and technicalities in the legislation should be. One bill did not pass because it imposed United States' standards on other countries, while the next bill was criticized for not imposing those standards. Both broad bans and blanket bans were rejected. The second factor was the changes to the convention, namely the Ban Amendment and the Protocol, which turned many key domestic actors against the treaty. After the Ban Amendment, Congress ceased to discuss implementing legislation and the Department of Commerce pulled its support for the convention. After the Protocol, more government and ecological leaders were disinclined to support the treaty due to American reluctance toward its imposition of liability.

Though the United States, as recently as 2009, has confirmed its desire to pass implementing legislation and ratify the treaty, it does not appear to be a priority anymore. The argument for rapid ratification is no longer valid as most of the important decisions were long



ago made without the United States.<sup>1</sup> Furthermore, the United States has bilateral agreements that cover up to 97% of applicable waste exports and does not need the treaty to continue that trade. The ratification of the treaty appears unlikely now due to these factors.

This clearly illustrates that something other than disagreement with the treaty's provisions has prevented the United States from ratifying. Institutionally, divided government made conflicting goals between the executive branch and the legislative branch possible, as seen in the legislature's attempt to use ratification of the treaty as leverage to force reauthorization of all environmental law. The system also made it possible for the legislature to easily reject the president's bills, a move much more daring and difficult in a parliamentary system. Furthermore, the delays caused by institutional structure increased the difficulty of ratifying the treaty, as intervening changes had been made to the original agreement without the United States' input. Had implementing legislation not been necessary, the Basel Convention may have been ratified before the major changes had been made to the convention.

The United States has a history of unease toward outside intervention, which resulted in the necessity for implementing legislation in order to ratify treaties. Culturally and historically, the United States has also had qualms about ratifying a treaty without support from important leaders throughout both the government and the environmental sector. The discomfort with a liability protocol is directly related to the American tradition of independence and freedom from unnecessary regulation as it could have subjected the United States to liability for actions by a private U.S. company. In the end it was a combination of all three aspects – culture, history, and institutions – of American exceptionalism that led to the failure to ratify the Basel Convention.

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<sup>1</sup> Sejal Choksi. "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation."

## 8. Conclusion

The concept of American exceptionalism is a better explanation for lack of ratification than that of American arrogance. Domestic qualities often constrain a state's ability to act internationally, and instead of ignoring the United States' domestic constraints, those who criticize the United States' ratification record should consider the effect domestic qualities have on ratification. The United States, from the 1770s, has been vastly different from other countries. Today its historical, cultural, and institutional characteristics continue to set it apart from most other modern, developed democracies. The combination of these characteristics, or American exceptionalism, greatly constrains the United States' ability to ratify treaties.

In reality, the United States has ratified many multilateral treaties, so the base of the arrogance accusation is not entirely accurate. However, it is true that the U.S. has ratified fewer treaties than other western, developed states. This is not due to a lack of concern for international cooperation but rather often as a result of domestic constraints. While the United States of course occasionally does not pursue ratification because it does not agree with the terms of a particular treaty, usually lack of ratification of a major multilateral treaty indicates a technical problem rather than disinclination toward compliance. It is widely accepted that domestic constraints do affect a country's ability to ratify treaties, and the United States has a unique set of domestic constraints. Those who have always lived in the United States may not realize how different the country is from other developed states and conversely, those who have never lived in the United States may also have trouble recognizing the differences.

Alone, the individual institutions do not seem to always hinder ratification, as seen when compared with other OECD states. However, the combined effect of bicameralism, federalism,

and presidentialism is difficult to measure as Switzerland and Mexico alone of OECD countries also possess those characteristics. The overarching subject matter of a treaty (environment, human rights, etc.) does not appear to have an effect on whether or not the United States ratifies the treaty. The ideological composition of the government does seem to affect ratification prospects, especially when combined with the institutional possibility of divided government. However, because treaties do not expire in the Senate, this does not necessarily preclude ratification and may merely delay it. When combined with the cultural and historical traditions of popular support and nonregulation, among other things, as demonstrated with the failure to pass the implementing legislation necessary to ratify the Basel Convention, the aspects of American exceptionalism do appear to have a constraining effect on treaty ratification.

The United States, unfortunately, has a bad reputation both internationally, and somewhat domestically, for not ratifying multilateral treaties. One of the most popular explanations for the lack of ratification from the United States is that the country's hegemonic status has bred an attitude of exemption from treaty ratification and compliance. Various presidents, and the country as a whole, have been criticized for having this arrogant self-construct. While America's absence from multilateral treaties is not the only part of this criticism, mistaken views of why the United States has not ratified treaties do damage to our international relations and image.

Because of this critical view, the United States faces difficulties both domestically and internationally. Some citizens vilify the government or feel shame in being an American due to this poor reputation. Internationally, in some negotiations other states may be less likely to compromise or enter into discussions with the United States because they take offense with the alleged hegemonic attitude of exemption. It is unfortunate that a country that does a great deal of good in the world should be condemned by a view that disregards many alternative explanations.

If those who currently criticize the United States for not ratifying treaties viewed the American outlier effect through the lens of American exceptionalism, there would be less animosity toward the United States. While it is certainly not an all-encompassing explanation, it broadens the current favored explanation significantly and introduces the idea that there are alternative, fairer explanations available. While the fact remains that the United States still does not ratify some treaties, a better understanding of why the United States sometimes struggles to ratify treaties would benefit both our international affairs and negotiations and our internal relations.

## Appendix 1: OECD Ratification

### A1.1: Presidentialism

1	2	3	4	5	6	7	8	9	10
Canada	Estonia	Canada	Canada	<i>Iceland</i>	Netherlands	Sweden	Hungary	Sweden	Sweden
<b>Mexico</b>	Japan	Ireland	Germany	Norway	United Kingdom	Denmark	Poland	Poland	France
Norway	Czech Republic	<b>Switzerland</b>	Sweden	Austria	Denmark	<b>Chile</b>	<b>Mexico</b>	Portugal	<b>Chile</b>
Australia	Slovakia	Hungary	Iceland	Denmark	Norway	Norway	<i>Estonia</i>	Hungary	<b>Mexico</b>
New Zealand	Austria	Denmark	Norway	Finland	Austria	Germany		<b>Mexico</b>	Portugal
Sweden	France	<b>Mexico</b>	Slovakia	Germany	Luxembourg	Hungary		Norway	Spain
Denmark	United Kingdom	Austria	Czech Republic	Greece	Sweden	Finland		Canada	Australia
Germany	Australia	Norway	Austria	Ireland	<b>Chile</b>	Australia		Austria	Norway
Portugal	Spain	France	<i>Japan</i>	Italy	Germany	<i>Canada</i>		Denmark	Poland
Spain	Germany	Germany	Luxembourg	Luxembourg	Finland	United Kingdom		Greece	Finland
Hungary	Sweden	United Kingdom	<b>Mexico</b>	<b>Mexico</b>	New Zealand	Poland		Australia	Denmark
Italy	Canada	Belgium	<b>Switzerland</b>	Slovakia	Belgium	Spain		France	Italy
Luxembourg	Denmark	Slovenia	Denmark	Spain	Japan	Portugal		Spain	Israel
United Kingdom	Finland	Sweden	Australia	Sweden	Ireland	Austria		<b>South Korea</b>	Hungary
France	Italy	Australia	Spain	United Kingdom	Hungary	Italy		New Zealand	<i>Estonia</i>
Estonia	New Zealand	Spain	New Zealand	Slovenia	Poland	Netherlands		Italy	<b>South Korea</b>
Greece	Netherlands	New Zealand	United Kingdom	<i>Hungary</i>	Spain	New Zealand		Iceland	Canada
Austria	Greece	Portugal	<b>Chile</b>	<b>Chile</b>	<b>South Korea</b>	Japan		Japan	Belgium
<b>Chile</b>	Poland	Italy	Greece	Estonia	Greece	Iceland		Belgium	United Kingdom
Iceland	Luxembourg	Iceland	Belgium	Belgium	Italy	<i>France</i>		Germany	Germany
<b>South Korea</b>	Belgium	Luxembourg	Slovenia	<b>South Korea</b>	Australia	<b>Mexico</b>		<i>Turkey</i>	Austria
<b>Switzerland</b>	Hungary	Czech Republic	<b>South Korea</b>	Poland	Estonia	Belgium		<i>Ireland</i>	Ireland
Israel	Ireland	<b>Chile</b>	Hungary	Canada	France	Luxembourg		United Kingdom	Iceland
Poland	Norway	Greece	Poland	New Zealand	Iceland	<i>Greece</i>		Finland	New Zealand
Ireland	<b>South Korea</b>	<i>Turkey</i>	<i>Estonia</i>	<b>Switzerland</b>		Ireland		Luxembourg	Greece
Slovenia	<b>Switzerland</b>	<i>Estonia</i>	Turkey	Israel		<b>South Korea</b>		<b>Chile</b>	Luxembourg
Belgium	<b>Mexico</b>		Ireland	Australia		Israel		Netherlands	Japan
Turkey	Turkey			<i>Turkey</i>		Estonia		Israel	Turkey
	Iceland					<b>Switzerland</b>		<i>Estonia</i>	<b>Switzerland</b>
	Portugal					Turkey		<b>Switzerland</b>	
	<b>Chile</b>								
	Slovenia								

Accession indicated by italics

11	12	13	14	15	16	17	18	19
Hungary	Denmark	Slovenia	<i>Canada</i>	Italy	<b>Mexico</b>	New Zealand	<b>Switzerland</b>	Denmark
Spain	Norway	Czech Republic	United Kingdom	Norway	Iceland	Hungary	Norway	<i>Japan</i>
<b>Mexico</b>	Belgium	Hungary	New Zealand	Iceland	Australia	Slovakia	<b>Mexico</b>	Sweden
Slovenia	Luxembourg	Germany	<i>Spain</i>	Belgium	Germany	<b>Mexico</b>	New Zealand	Norway
Australia	Germany	<b>Switzerland</b>	<i>Australia</i>	Canada	Italy	Iceland	Sweden	Australia
<b>Chile</b>	<i>Australia</i>	<i>Canada</i>	Italy	New Zealand	Austria	Australia	<i>Australia</i>	Finland
New Zealand	United Kingdom	Austria	<b>Mexico</b>	Luxembourg	Greece	Canada	Poland	United Kingdom
Austria	France	Italy	Greece	Spain	<b>South Korea</b>	Denmark	<i>Estonia</i>	<b>Mexico</b>
<b>South Korea</b>	Israel	Luxembourg	Sweden	Germany	France	Germany	<b>Chile</b>	<b>South Korea</b>
Sweden	Sweden	Belgium	Denmark	Austria	Slovakia	United Kingdom	Canada	Ireland
Germany	<i>Austria</i>	<b>South Korea</b>	<b>South Korea</b>	Finland	Japan	Turkey	Austria	<b>Switzerland</b>
Italy	Italy	New Zealand	Finland	France	Czech Republic	Spain	<i>Japan</i>	Austria
United Kingdom	<b>Switzerland</b>	Sweden	<i>Austria</i>	Denmark	Finland	Finland	Slovenia	Canada
Belgium	<i>Iceland</i>	Greece	<b>Chile</b>	Sweden	Ireland	Slovenia	Belgium	New Zealand
Denmark	Netherlands	Denmark	<i>Japan</i>	United Kingdom	Norway	<b>South Korea</b>	Portugal	Spain
Portugal	<i>Ireland</i>	Spain	<i>Netherlands</i>	<b>Switzerland</b>	Sweden	<b>Chile</b>	Ireland	Greece
Czech Republic	Greece	Australia	<i>Hungary</i>	Poland	Netherlands	Luxembourg	Italy	Belgium
Turkey	<i>New Zealand</i>	United Kingdom	Germany	Hungary	New Zealand	Sweden	Luxembourg	Germany
France	<i>Portugal</i>	<b>Chile</b>	<i>Switzerland</i>	Slovenia	Spain	Estonia	Spain	Luxembourg
Canada	Turkey	<b>Mexico</b>	<i>Poland</i>	Estonia	<i>United Kingdom</i>	Israel	United Kingdom	Portugal
Slovakia	<i>Finland</i>	<i>Ireland</i>	<i>Estonia</i>	Portugal	<b>Chile</b>	Austria	<b>South Korea</b>	Turkey
Luxembourg	<i>Canada</i>	<i>Poland</i>	<i>Belgium</i>	Ireland	Portugal	Belgium	Turkey	
	<b>Chile</b>	Estonia	Luxembourg	Slovakia	Belgium	Ireland	Greece	
	<i>Spain</i>	<i>Slovakia</i>	<i>Portugal</i>	Greece	Poland	Greece	Israel	
	<i>Japan</i>		<i>Ireland</i>	Australia	Luxembourg	Poland	Germany	
	<i>Hungary</i>			<b>South Korea</b>	Hungary	Italy	<i>Iceland</i>	
	<i>Poland</i>			<b>Mexico</b>	Canada			
	<b>South Korea</b>			<i>Japan</i>	Denmark			
	<i>Estonia</i>			<b>Chile</b>	<i>Estonia</i>			
	<b>Mexico</b>			Czech Republic	<b>Switzerland</b>			

Accession indicated by italics

## A1.2: Federalism

1	2	3	4	5	6	7	8	9	10
<b>Canada</b>	Estonia	<b>Canada</b>	<b>Canada</b>	<i>Iceland</i>	Netherlands	Sweden	Hungary	Sweden	Sweden
<b>Mexico</b>	Japan	Ireland	<b>Germany</b>	Norway	United Kingdom	Denmark	Poland	Poland	France
Norway	Czech Republic	<b>Switzerland</b>	Sweden	<b>Austria</b>	Denmark	Chile	<b>Mexico</b>	Portugal	Chile
<b>Australia</b>	Slovakia	Hungary	Iceland	Denmark	Norway	Norway	<i>Estonia</i>	Hungary	<b>Mexico</b>
New Zealand	<b>Austria</b>	Denmark	Norway	Finland	<b>Austria</b>	<b>Germany</b>		<b>Mexico</b>	Portugal
Sweden	France	<b>Mexico</b>	Slovakia	<b>Germany</b>	Luxembourg	Hungary		Norway	<b>Spain</b>
Denmark	United Kingdom	<b>Austria</b>	Czech Republic	Greece	Sweden	Finland		<b>Canada</b>	<b>Australia</b>
<b>Germany</b>	<b>Australia</b>	Norway	<b>Austria</b>	Ireland	Chile	<b>Australia</b>		<b>Austria</b>	Norway
Portugal	<b>Spain</b>	France	<i>Japan</i>	Italy	<b>Germany</b>	<b>Canada</b>		Denmark	Poland
<b>Spain</b>	<b>Germany</b>	<b>Germany</b>	Luxembourg	Luxembourg	Finland	United Kingdom		Greece	Finland
Hungary	Sweden	United Kingdom	<b>Mexico</b>	<b>Mexico</b>	New Zealand	Poland		<b>Australia</b>	Denmark
Italy	<b>Canada</b>	<b>Belgium</b>	<b>Switzerland</b>	Slovakia	<b>Belgium</b>	<b>Spain</b>		France	Italy
Luxembourg	Denmark	Slovenia	Denmark	<b>Spain</b>	Japan	Portugal		<b>Spain</b>	Israel
United Kingdom	Finland	Sweden	<b>Australia</b>	Sweden	Ireland	<b>Austria</b>		South Korea	Hungary
France	Italy	<b>Australia</b>	<b>Spain</b>	United Kingdom	Hungary	Italy		New Zealand	<i>Estonia</i>
Estonia	New Zealand	<b>Spain</b>	New Zealand	Slovenia	Poland	Netherlands		Italy	South Korea
Greece	Netherlands	New Zealand	United Kingdom	<i>Hungary</i>	<b>Spain</b>	New Zealand		Iceland	<b>Canada</b>
<b>Austria</b>	Greece	Portugal	Chile	Chile	South Korea	Japan		Japan	<b>Belgium</b>
Chile	Poland	Italy	Greece	Estonia	Greece	Iceland		<b>Belgium</b>	United Kingdom
Iceland	Luxembourg	Iceland	<b>Belgium</b>	<b>Belgium</b>	Italy	<i>France</i>		<b>Germany</b>	<b>Germany</b>
South Korea	<b>Belgium</b>	Luxembourg	Slovenia	South Korea	<b>Australia</b>	<b>Mexico</b>		<i>Turkey</i>	<b>Austria</b>
<b>Switzerland</b>	Hungary	Czech Republic	South Korea	Poland	Estonia	<b>Belgium</b>		<i>Ireland</i>	Ireland
Israel	Ireland	Chile	Hungary	<b>Canada</b>	France	Luxembourg		United Kingdom	Iceland
Poland	Norway	Greece	Poland	New Zealand	Iceland	<i>Greece</i>		Finland	New Zealand
Ireland	South Korea	<i>Turkey</i>	<i>Estonia</i>	<b>Switzerland</b>		Ireland		Luxembourg	Greece
Slovenia	<b>Switzerland</b>	<i>Estonia</i>	Turkey	Israel		<i>South Korea</i>		Chile	Luxembourg
<b>Belgium</b>	<b>Mexico</b>		Ireland	<b>Australia</b>		Israel		Netherlands	Japan
Turkey	Turkey			<i>Turkey</i>		Estonia		Israel	Turkey
	Iceland					<b>Switzerland</b>		<i>Estonia</i>	<b>Switzerland</b>
	Portugal					Turkey		<b>Switzerland</b>	
	Chile								
	Slovenia								

Accession indicated by italics

11	12	13	14	15	16	17	18	19
Hungary	Denmark	Slovenia	<i>Canada</i>	Italy	<b>Mexico</b>	New Zealand	<b>Switzerland</b>	Denmark
<b>Spain</b>	Norway	Czech Republic	United Kingdom	Norway	Iceland	Hungary	Norway	<i>Japan</i>
<b>Mexico</b>	<b>Belgium</b>	Hungary	New Zealand	Iceland	<b>Australia</b>	Slovakia	<b>Mexico</b>	Sweden
Slovenia	Luxembourg	<b>Germany</b>	<i>Spain</i>	<b>Belgium</b>	<b>Germany</b>	<b>Mexico</b>	New Zealand	Norway
<b>Australia</b>	<b>Germany</b>	<b>Switzerland</b>	<i>Australia</i>	<b>Canada</b>	Italy	Iceland	Sweden	<b>Australia</b>
Chile	<i>Australia</i>	<i>Canada</i>	Italy	New Zealand	<b>Austria</b>	<b>Australia</b>	<i>Australia</i>	Finland
New Zealand	United Kingdom	<b>Austria</b>	<b>Mexico</b>	Luxembourg	Greece	<b>Canada</b>	Poland	United Kingdom
<b>Austria</b>	France	Italy	Greece	<b>Spain</b>	South Korea	Denmark	<i>Estonia</i>	<b>Mexico</b>
South Korea	Israel	Luxembourg	Sweden	<b>Germany</b>	France	<b>Germany</b>	Chile	South Korea
Sweden	Sweden	<b>Belgium</b>	Denmark	<b>Austria</b>	Slovakia	United Kingdom	<b>Canada</b>	Ireland
<b>Germany</b>	<i>Austria</i>	South Korea	South Korea	Finland	Japan	Turkey	<b>Austria</b>	<b>Switzerland</b>
Italy	Italy	New Zealand	Finland	France	Czech Republic	<b>Spain</b>	<i>Japan</i>	<b>Austria</b>
United Kingdom	<b>Switzerland</b>	Sweden	<i>Austria</i>	Denmark	Finland	Finland	Slovenia	<b>Canada</b>
<b>Belgium</b>	<i>Iceland</i>	Greece	Chile	Sweden	Ireland	Slovenia	<b>Belgium</b>	New Zealand
Denmark	Netherlands	Denmark	<i>Japan</i>	United Kingdom	Norway	South Korea	Portugal	<b>Spain</b>
Portugal	<i>Ireland</i>	<b>Spain</b>	<i>Netherlands</i>	<b>Switzerland</b>	Sweden	Chile	Ireland	Greece
Czech Republic	Greece	<b>Australia</b>	<i>Hungary</i>	Poland	Netherlands	Luxembourg	Italy	<b>Belgium</b>
Turkey	<i>New Zealand</i>	United Kingdom	<b>Germany</b>	Hungary	New Zealand	Sweden	Luxembourg	<b>Germany</b>
France	<i>Portugal</i>	Chile	<i>Switzerland</i>	Slovenia	<b>Spain</b>	Estonia	<b>Spain</b>	Luxembourg
<b>Canada</b>	Turkey	<i>Mexico</i>	<i>Poland</i>	Estonia	<i>United Kingdom</i>	Israel	United Kingdom	Portugal
Slovakia	<i>Finland</i>	<i>Ireland</i>	<i>Estonia</i>	Portugal	Chile	<b>Austria</b>	<i>South Korea</i>	Turkey
Luxembourg	<b>Canada</b>	<i>Poland</i>	<b>Belgium</b>	Ireland	Portugal	<b>Belgium</b>	Turkey	
	<i>Chile</i>	Estonia	Luxembourg	Slovakia	<b>Belgium</b>	Ireland	Greece	
	<i>Spain</i>	<i>Slovakia</i>	<i>Portugal</i>	Greece	Poland	Greece	Israel	
	<i>Japan</i>		<i>Ireland</i>	<b>Australia</b>	Luxembourg	Poland	<b>Germany</b>	
	<i>Hungary</i>			South Korea	Hungary	Italy	<i>Iceland</i>	
	<i>Poland</i>			<b>Mexico</b>	<b>Canada</b>			
	South Korea			<i>Japan</i>	Denmark			
	<i>Estonia</i>			Chile	<i>Estonia</i>			
	<b>Mexico</b>			Czech Republic	<b>Switzerland</b>			

Accession indicated by italics



### A1.3: Bicameralism

1	2	3	4	5	6	7	8	9	10
<b>Canada</b>	Estonia	<b>Canada</b>	<b>Canada</b>	<i>Iceland</i>	<b>Netherlands</b>	Sweden	Hungary	Sweden	Sweden
<b>Mexico</b>	<b>Japan</b>	<b>Ireland</b>	<b>Germany*</b>	Norway	<b>United Kingdom</b>	Denmark	<b>Poland</b>	<b>Poland</b>	<b>France</b>
Norway	Czech Republic	<b>Switzerland*</b>	Sweden	<b>Austria</b>	Denmark	<b>Chile*</b>	<b>Mexico</b>	Portugal	<b>Chile*</b>
<b>Australia*</b>	Slovakia	Hungary	Iceland	Denmark	Norway	Norway	<i>Estonia</i>	Hungary	<b>Mexico</b>
New Zealand	<b>Austria</b>	Denmark	Norway	Finland	<b>Austria</b>	<b>Germany*</b>		<b>Mexico</b>	Portugal
Sweden	<b>France</b>	<b>Mexico</b>	Slovakia	<b>Germany*</b>	Luxembourg	Hungary		Norway	<b>Spain</b>
Denmark	<b>United Kingdom</b>	<b>Austria</b>	Czech Republic	Greece	Sweden	Finland		<b>Canada</b>	<b>Australia*</b>
<b>Germany*</b>	<b>Australia*</b>	Norway	<b>Austria</b>	<b>Ireland</b>	<b>Chile*</b>	<b>Australia*</b>		<b>Austria</b>	Norway
Portugal	<b>Spain</b>	<b>France</b>	<b>Japan</b>	<b>Italy*</b>	<b>Germany*</b>	<b>Canada</b>		Denmark	<b>Poland</b>
<b>Spain</b>	<b>Germany*</b>	<b>Germany*</b>	Luxembourg	Luxembourg	Finland	<b>United Kingdom</b>		Greece	Finland
Hungary	Sweden	<b>United Kingdom</b>	<b>Mexico</b>	<b>Mexico</b>	New Zealand	<b>Poland</b>		<b>Australia*</b>	Denmark
<b>Italy*</b>	<b>Canada</b>	<b>Belgium*</b>	<b>Switzerland*</b>	Slovakia	<b>Belgium*</b>	<b>Spain</b>		<b>France</b>	<b>Italy*</b>
Luxembourg	Denmark	<b>Slovenia</b>	<b>Spain</b>	Denmark	<b>Japan</b>	Portugal		<b>Spain</b>	Israel
<b>United Kingdom</b>	Finland	Sweden	<b>Australia*</b>	Sweden	<b>Ireland</b>	<b>Austria</b>		South Korea	Hungary
<b>France</b>	<b>Italy</b>	<b>Australia*</b>	<b>Spain</b>	<b>United Kingdom</b>	Hungary	<b>Italy*</b>		New Zealand	<i>Estonia</i>
Estonia	New Zealand	<b>Spain</b>	New Zealand	<b>Slovenia</b>	<b>Poland</b>	<b>Netherlands</b>		<b>Italy*</b>	South Korea
Greece	<b>Netherlands</b>	New Zealand	<b>United Kingdom</b>	<i>Hungary</i>	<b>Spain</b>	New Zealand		Iceland	Canada
<b>Austria</b>	Greece	Portugal	<b>Chile*</b>	<b>Chile*</b>	South Korea	<b>Japan</b>		<b>Japan</b>	<b>Belgium*</b>
<b>Chile*</b>	<b>Poland</b>	<b>Italy*</b>	Greece	Estonia	Greece	Iceland		<b>Belgium*</b>	<b>United Kingdom</b>
Iceland	Luxembourg	Iceland	<b>Belgium*</b>	<b>Belgium*</b>	<b>Italy*</b>	<i>France</i>		<b>Germany*</b>	<b>Germany*</b>
South Korea	<b>Belgium*</b>	Luxembourg	<b>Slovenia</b>	South Korea	<b>Australia*</b>	<i>Mexico</i>		<i>Turkey</i>	<b>Austria</b>
<b>Switzerland*</b>	Hungary	Czech Republic	South Korea	<b>Poland</b>	Estonia	<b>Belgium*</b>		<b>Ireland</b>	<b>Ireland</b>
Israel	<b>Ireland</b>	<b>Chile*</b>	Hungary	<b>Canada</b>	<b>France</b>	Luxembourg		<b>United Kingdom</b>	Iceland
<b>Poland</b>	Norway	Greece	<b>Poland</b>	New Zealand	Iceland	<i>Greece</i>		Finland	New Zealand
Ireland	South Korea	<i>Turkey</i>	<i>Estonia</i>	<b>Switzerland*</b>		<b>Ireland</b>		Luxembourg	Greece
Slovenia	<b>Switzerland*</b>	<i>Estonia</i>	Turkey	Israel		<i>South Korea</i>		<b>Chile*</b>	Luxembourg
<b>Belgium*</b>	<b>Mexico</b>		<b>Ireland</b>	<b>Australia*</b>		Israel		<b>Netherlands</b>	<b>Japan</b>
Turkey	Turkey			<i>Turkey</i>		Estonia		Israel	Turkey
	Iceland					<i>Switzerland*</i>		<i>Estonia</i>	<b>Switzerland*</b>
	Portugal					Turkey		<b>Switzerland*</b>	
	<b>Chile*</b>								
	Slovenia								

Accession indicated by italics

Strong bicameralism indicated by asterisk

11	12	13	14	15	16	17	18	19
Hungary	Denmark	<b>Slovenia</b>	<i>Canada</i>	<b>Italy*</b>	<b>Mexico</b>	New Zealand	<b>Switzerland*</b>	Denmark
<b>Spain</b>	Norway	<b>Czech Republic</b>	<b>United Kingdom</b>	Norway	Iceland	Hungary	Norway	<i>Japan</i>
<b>Mexico</b>	<b>Belgium*</b>	Hungary	New Zealand	Iceland	<b>Australia*</b>	Slovakia	<b>Mexico</b>	Sweden
<b>Slovenia</b>	Luxembourg	<b>Germany*</b>	<i>Spain</i>	<b>Belgium*</b>	<b>Germany*</b>	<b>Mexico</b>	New Zealand	Norway
<b>Australia*</b>	<b>Germany*</b>	<b>Switzerland*</b>	<i>Australia*</i>	<b>Canada</b>	<b>Italy*</b>	Iceland	Sweden	<b>Australia*</b>
<b>Chile*</b>	<i>Australia*</i>	<i>Canada</i>	<b>Italy*</b>	New Zealand	<b>Austria</b>	<b>Australia*</b>	<i>Australia*</i>	Finland
New Zealand	<b>United Kingdom</b>	<b>Austria</b>	<b>Mexico</b>	Luxembourg	Greece	Canada	<b>Poland</b>	<b>United Kingdom</b>
<b>Austria</b>	<b>France</b>	<b>Italy*</b>	Greece	<b>Spain</b>	South Korea	Denmark	<i>Estonia</i>	<b>Mexico</b>
South Korea	Israel	Luxembourg	Sweden	<b>Germany*</b>	<b>France</b>	<b>Germany*</b>	<b>Chile*</b>	South Korea
Sweden	Sweden	<b>Belgium*</b>	Denmark	<b>Austria</b>	Slovakia	<b>United Kingdom</b>	<b>Canada</b>	<b>Ireland</b>
<b>Germany*</b>	<i>Austria</i>	South Korea	South Korea	Finland	<b>Japan</b>	Turkey	<b>Austria</b>	<b>Switzerland*</b>
<b>Italy*</b>	<b>Italy*</b>	New Zealand	Finland	<b>France</b>	<b>Czech Republic</b>	<b>Spain</b>	<i>Japan</i>	<b>Austria</b>
<b>United Kingdom</b>	<b>Switzerland*</b>	Sweden	<i>Austria</i>	Denmark	Finland	Finland	<b>Slovenia</b>	<b>Canada</b>
<b>Belgium*</b>	<i>Iceland</i>	Greece	<b>Chile*</b>	Sweden	<b>Ireland</b>	<b>Slovenia</b>	<b>Belgium*</b>	New Zealand
Denmark	<b>Netherlands</b>	Denmark	<i>Japan</i>	<b>United Kingdom</b>	Norway	South Korea	Portugal	<b>Spain</b>
Portugal	<b>Ireland</b>	<b>Spain</b>	<i>Netherlands</i>	<b>Switzerland*</b>	Sweden	<b>Chile*</b>	<b>Ireland</b>	Greece
<b>Czech Republic</b>	Greece	<b>Australia*</b>	<i>Hungary</i>	<b>Poland</b>	<b>Netherlands</b>	Luxembourg	<b>Italy*</b>	<b>Belgium*</b>
Turkey	<i>New Zealand</i>	<b>United Kingdom</b>	<b>Germany*</b>	Hungary	New Zealand	Sweden	Luxembourg	<b>Germany*</b>
<b>France</b>	<i>Portugal</i>	<b>Chile*</b>	<i>Switzerland*</i>	<b>Slovenia</b>	<b>Spain</b>	Estonia	<b>Spain</b>	Luxembourg
<b>Canada</b>	Turkey	<i>Mexico</i>	<i>Poland</i>	Estonia	<i>United Kingdom</i>	Israel	<b>United Kingdom</b>	Portugal
Slovakia	<i>Finland</i>	<b>Ireland</b>	<i>Estonia</i>	Portugal	<b>Chile*</b>	<b>Austria</b>	<i>South Korea</i>	Turkey
Luxembourg	<i>Canada</i>	<b>Poland</b>	<b>Belgium*</b>	<b>Ireland</b>	Portugal	<b>Belgium*</b>	Turkey	
	<b>Chile*</b>	Estonia	Luxembourg	Slovakia	<b>Belgium*</b>	<b>Ireland</b>	Greece	
	<i>Spain</i>	<i>Slovakia</i>	<i>Portugal</i>	Greece	<b>Poland</b>	Greece	Israel	
	<b>Japan</b>		<b>Ireland</b>	<b>Australia*</b>	Luxembourg	<b>Poland</b>	<b>Germany*</b>	
	<i>Hungary</i>			South Korea	Hungary	<b>Italy*</b>	<i>Iceland</i>	
	<b>Poland</b>			<b>Mexico</b>	<b>Canada</b>			
	South Korea			<b>Japan</b>	Denmark			
	<i>Estonia</i>			<b>Chile*</b>	<i>Estonia</i>			
	<b>Mexico</b>			<b>Czech Republic</b>	<b>Switzerland*</b>			

Accession indicated by italics

Strong bicameralism indicated by asterisk

## A1.4: Signature, Succession to Signature, Acceptance, and Approval

- 1: “Acceptance” by Finland, Japan, and the Netherlands; “Approval” by Czech Republic and Slovakia
- 2: Signed by Israel
- 3: Signed by Poland; “Acceptance” by Japan and the Netherlands; “Approval” by Slovakia
- 4: Signed by Italy and Israel; “Acceptance” by Finland, the Netherlands, and Portugal; “Approval” by France
- 5: “Acceptance” by Japan and the Netherlands; “Approval” by Czech Republic, France, and Portugal
- 6: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 7: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 8: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 9: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 10: “Acceptance” by the Netherlands; “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 11: Signed by Estonia, Finland, Greece, Iceland, Ireland, Israel, Japan, the Netherlands, Norway, and Poland
- 12: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 13: Signed by Israel and Turkey; “Acceptance” by Finland, Japan, the Netherlands, and Norway; “Approval” by France and Portugal
- 14: “Succession to signature” by Czech Republic, Slovakia, and Slovenia
- 15: Signed by Israel; “Acceptance” by the Netherlands
- 16: “Succession to signature” by Slovenia
- 17: Signed by Czech Republic and Switzerland; “Acceptance” by Japan and the Netherlands; “Approval” by France, Norway, and Portugal
- 18: “Acceptance” by Finland and the Netherlands; “Approval” by France, Denmark, and Hungary; “Succession to signature” by Czech Republic and Slovakia
- 19: “Acceptance” by the Netherlands; “Approval” by France

## Appendix 2: Understandings to the Basel Convention

“(1) It is the understanding of the United States of America that, as the Convention does not apply to vessel and aircraft that are entitled to sovereign immunity under international law, in particular to any warship, naval auxiliary, and other vessels or aircraft owned or operated by a State and in use on government, non-commercial service, each state shall ensure that such vessels or aircraft act in a manner consistent with this Convention, so far as it practicable and reasonable, by adopting appropriate measures that do not impair the operation or operational capabilities of sovereign immune vessels.

(2) It is the understanding of the United States of America that a state is a “transit state” within the meaning of the Convention only if wastes are moved, or are planned to be moved, through its inland waterways, inland waters, or land territory.

(3) It is the understanding of the United States of America that an exporting state may decide that it lacks the capacity to dispose of wastes in an “environmentally sound and efficient manner” if disposal in the importing country would be both environmentally sound and economically efficient.

(4) It is the understanding of the United States of America that Article 9(2) does not create obligations for the exporting state with regard to cleanup, beyond taking such wastes back or otherwise disposing of them in accordance with the Convention. Further obligations may be determined by the parties pursuant to Article 12.

Further, at the time the United States of America deposits its instrument of ratification of the Basel Convention, the United States will formally object to the declaration of any State which asserts the right to require its prior permission or authorization for the passage of vessels transporting hazardous wastes while exercising, under international law, its right of innocent passage through the territorial sea or freedom of navigation in an exclusive economic zone.”<sup>1</sup>

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<sup>1</sup> Received by the Secretarial-General from the Government of the United States of America on March 13, 1996, as reported in the United Nations Treaty Collection.

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