The Logic of Treaty-Making

by

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A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
(Political Science)
at the University of Michigan
2020

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To my wife, Mila, who never lost faith in me, even though it would have been rational at several points to do so.

And to my newborn son, Caspian, who – partly because of this project – had to wait a bit longer to enter the world than he probably would have preferred.

Acknowledgements

A dissertation is necessarily a group effort. But first and foremost, I thank my advisor and committee chair, Jim Morrow, who introduced me to the concept of spatial models and showed interest in my half-baked travaux-coding idea during my first semester at Michigan. Our conversations and collaborations over the years made this project possible. Barb Koremenos is one of the main reasons I ended up at Michigan, and the first things I learned about building and managing datasets came from working with her, especially on her *Continent of International Law* book manuscript in the summer of 2016. Most of what I know about empirical analysis I learned from Yuri Zhukov, whose Empirical Model of Civil Conflict course was among the most valuable I've taken in any subject, in any program. Kevin Quinn's research has been an inspiration for this and another ongoing ideology project, and his advice was invaluable in navigating the law job market. Even though they were not in the Department, Yon Lupu and Kiyo Tsutsui have been great friends and supporters, and this project benefitted from their examples in many different ways.

For sharing their personal insights into global treaty negotiations, I thank David Scheffer, U.S. Ambassador at Large for War Crimes Issues and lead U.S. delegate to the UN negotiations on the ICC, and John Norton Moore, former Ambassador and Deputy Special Representative of the President to the Law of the Sea Conference. I thank Ben Doherty and the UVA Law Library for their work in locating and cataloguing the Racial Convention travaux, and Wayne Sandholtz for allowing me

to use his ICC implementation data.

I owe a lot to all of my current and past UVA colleagues, but I thank several in particular – Quinn Curtis, Joshua Fischman, Michael Gilbert, Richard Hynes, Michael Livermore, Paul Mahoney, Anne Meng, Cynthia Nicoletti, Molly Shadel, Paul Stephan, and Pierre-Hugues Verdier – for super helpful comments and/or conversations. I think Mike Gilbert, especially, who made it through multiple drafts. His feedback and counsel were beyond the call of duty, and his thoughts on selling the project are one of the main reasons I'm now employed.

Erin Delaney, Jill Goldenziel, Ariela Gross, Andrew Guzman, Yoon-Ho Alex Lee, Adi Leibovitch, Daria Roithmayr, and David Schwartz all gave helpful comments before or after I presented this paper at places including Northwestern and USC. Apart from my wife, Adi Leibovitch certainly spent more time than anyone (at least 15 hours) reading and giving great comments on this manuscript. And Jason Davis easily gets the prize for farthest distance travelled (Philadelphia to Washington, DC) for the sole purpose of giving me his excellent feedback on this project, as well as the prize for leaving me most dejected about how much work I still had to do.

Finally, I have my parents, Donald and Lonna, to thank for giving me the cliche-but-underestimated values of hard work and giving every task your best effort. As the very first Cope to get a Ph.D., my sister Lora has been an inspiration in many ways, including just by proving that it could be done. My wife Mila Versteeg deserves an award just for putting up with three years of long-distance, with (almost) no complaint. Although (and because) she's my toughest critic, Mila is the biggest reason I'm about to make it through graduate school; I never could have done it without her.

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Abstract

Multilateral treaties' success depends in large part on decisions made during their drafting and negotiations. Lack of support from key states, weak or non-binding commitments, and sweeping reservations often doom treaties to ineffectiveness or worse. Challenges to treaty effectiveness have inspired significant bodies of research in international law and relations. Yet existing research in these fields has given little systematic attention to negotiations or to the political origins of treaties generally.

This dissertation aims to improve our understanding of treaty-making through both theory development and empirical analysis. I first develop a positive decision-theoretical model of the factors that states consider in drafting, negotiating, approving, and ratifying multilateral treaties. The model considers states' right to opt-out of a treaty and that right's several implications: that treaty-making entails a three-stage decisional process unique in democratic lawmaking, and that treaty externalities and the quantity and character of future members both affect states' decisional logic during negotiations. These phenomena have not been fully appreciated in either the legal or international relations literatures, much less formally theorized.

I then apply these insights to analyze real-world drafting efforts. Using a novel technique, I code the drafting states' recorded positions based on three treaties' negotiating histories, and I use them to estimate states' ideal points on multiple

issues. My findings demonstrate that this method can predict states' ratifications and reservations with reasonable accuracy.

The analysis provides new insights into how international law is created and implemented, and under what circumstances it meaningfully affects later state behaviors. Specifically, the issues that divide states differ across treaties, and I find evidence that states' preferences for particular treaty provisions coincide with those we would expect of utility-maximizing states. That the state positions predict subsequent behavior implies that treaty negotiations yield a rich trove of relatively authentic revealed state preferences. This finding suggests that, in addition to fueling theory and data-generation, these methods and the insights they provide might even be used to aid future treaty negotiations.

Chapter 1

Introduction

In a late-night meeting in Paris on December 12, 2015, 196 countries adopted by consensus a major multilateral agreement, the Paris Agreement on climate change, the latest agreement under the umbrella of the UN Framework Convention on Climate Change (UNFCCC). The late-night victory – producing a standing ovation among some 50,000 attendees and cheers and tears among the delegates – came after two weeks of intense negotiations full of diplomatic obstacles and several deadlocks.[1] Getting 196 countries to agree to cut emissions was no small feat: prior UNFCCC conferences since Kyoto had revealed major schisms between the developing and developed world and had been less successful, such as the 2009 Copenhagen Accord, which failed to produce a binding agreement.[2] This time was different. The Danish host in Copenhagen had made a number of mistakes: the conference had focused on "important countries," perturbing small states, and the drafting process was overly rushed.[3] By contrast, the experienced members of the French diplomatic corps used a number of innovative techniques to move the discussion forward. They consulted all delegates in confidential meetings (called

[1] Fiona Harvey, *Paris Climate Change Agreement: The World's Greatest Diplomatic Success*, GUARDIAN, Dec. 14, 2015.

[2] Kevin Rudd, *Paris Can't Be Another Copenhagen*, N.Y. TIMES, May 25, 2015, *available at* https://www.nytimes.com/2015/05/26/opinion/kevin-rudd-paris-cant-be-another-copenhagen.html.

[3] *Why Did Copenhagen Fail to Deliver a Climate Deal?*, BBC NEWS, Aug. 22, 2009.

confessionals); they held "informal informals" whereby small groups of delegates negotiated over small portions of the treaty text (the parts of the treaty still in "square brackets"); and they used the Zulu tradition of "indabas," whereby elders (in this case, up to 80 states) convened to discuss disputes. They also strategically employed Barack Obama, Francois Hollande, and Angela Merkel to talk with reluctant world leaders, including Xi Jinping, Narendra Modi, and Vladimir Putin, in private.

But arguably the most important break-through came three days before the final vote, when the "coalition of high ambition" was announced. This coalition cut through the entrenched developing-country/developed-country divides, presenting a coalition of countries that wanted a more ambitious treaty. As the EU climate commissioner Miguel Arias Cañete put it, "[t]hese negotiations are not about them and us. They are about all of us, developed and developing countries, finding common ground and solutions together."[4] Thus, while some of the countries within the group initially found themselves at opposite sides of the negotiating table, they realized they had similar goals and ambitions. This breakthrough was crucial in reaching the final agreement. With all of the world leaders involved, some 600,000 people marching around the world, and, given a "last chance" to take decisive global action to address climate change,[5] they overcame old divides, formed a new coalition, and concluded the treaty.

Many attempts at multilateral treaties end very differently. Most drafting conferences are relatively low-profile affairs, and if there are deeply entrenched divides, negotiation efforts simply break down. To mention just one example,

[4] Karl Mathiesen & Fiona Harvey, *Climate Coalition Breaks Cover in Paris to Push for Binding and Ambitious Deal*, GUARDIAN, Dec. 8, 2015.

[5] Fiona Harvey, *Paris Climate Change Agreement: The World's Greatest Diplomatic Success*, GUARDIAN, Dec. 14, 2015 (quoting Miguel Arias Canete, Europe's climate chief).

negotiations over ILO Convention 169 broke down in 1989 over whether to include the term "peoples," instead of "people" or "population," and whether doing so entailed peoples' right to self-determination, which blocked the Convention for a full two years (Engle 2011).[6] Short of the kind of circumstances that surrounded the Paris Agreement, it is often hard to break such deadlock.

International lawyers and scholars know well the challenges of persuading key states to engage with multilateral treaties, including the significant concessions that are often required. In some cases, treaties' strong provisions deter states from joining, preventing the agreement from receiving enough support to take effect or otherwise function properly (a failure of depth over breadth in the so-called "broader-deeper tradeoff") (Gilligan 2004). For instance, the Anti-Counterfeiting Trade Agreement of 2011 received only one ratifier (Japan) before protests in Europe effectively doomed the treaty after the European Parliament declined to consent (Floridi 2015; Weatherall 2011).[7] The Indigenous and Tribal Peoples Convention of the International Labour Organization likewise failed to attract states with substantial native populations, such as the United States, New Zealand, Australia, and Canada (Engle 2011).[8]

In other cases, many states have ratified ambitious treaties so riddled with

[6] Engle (2011) writes that "Indigenous participants' insistence on the term 'peoples' blocked the convention's adoption at one point, leading to two years of negotiation and an eventual compromise, after which the term 'peoples' was finally included, but alongside a provision that disclaimed the attachment of any international rights to the term. Specifically, '[t]he use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which might attach under international law."'

[7] Another example is the Migrant Workers' Convention, which mainly ensured support from sending-countries, not receiving-countries, and is widely considered a failed treaty (see, e.g., Lyon 2009) (observing that for the United States and other "migrant-receiving" countries, the Convention is a "political non-starter").

[8] With some 22 parties and low prospects for future ratifiers, further progress on indigenous people's rights is now being made through non-binding "soft law," such as the UN General Assembly Declaration on the Rights of Indigenous Peoples (United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 13 Sept. 2007).

reservations that they lack real bite. Saudi Arabia's reservation to the Women's Rights Convention states that "in case of contradiction between any term of the Convention and the norms of Islamic law," it is not bound (see, e.g., Clark 1991; Riddle 2002). Another well-known example is the Genocide Convention, whose reservations are so significant that it led the International Court of Justice to revisit the doctrine of reservations entirely.[9] And some treaties are widely ratified but only after substantial dilution during negotiations (a failure of breadth over depth). For example, the legally binding character of the 2016 Paris climate agreement was dramatically scaled down; part of the goal was to allow the U.S. president to ratify without advice and consent from the Senate (Bodansky 2016) (which, in June 2017, became a moot point).[10]

These consensus-building problems have plagued international conventions for over a century. Especially in recent decades, they have inspired a discourse among legal academics and practitioners over how to address negotiation failures. For example, some international legal scholars have argued that certain provisions of widely ratified treaties represent customary international law and therefore bind even non-parties.[11] Others have made normative arguments that certain states have moral obligations or utilitarian reasons for joining certain popular treaties (see, e.g., Delmont 2001; Koh 2002). For treaties riddled with reservations, international legal scholars have asked what to do with those reservations that undermine the object and purpose of the treaty (Goodman 2002) and what to make of states' objections to

[9] See Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. Rep. 15 (May 28) [hereinafter "ICJ Advisory Opinion on Reservations"].

[10] In June 2017 the Trump administration announced its intention to withdraw from the agreement anyway. *Paris Climate Deal: Trump Pulls US Out of 2015 Accord*, BBC NEWS, June 1, 2017, *available at* https://www.bbc.com/news/world-us-canada-40127326.

[11] There is disagreement on the question of whether and to what extent multilateral treaties might provide evidence of the existence of international custom (See Roberts 2001).

them (anonymous note 1951; Ginsburg 2018; Redgwell 2017). For treaties with weak provisions, other scholars have advocated strengthening them through creative interpretation and litigation.[12] Indeed, a substantial fraction of the international legal literature is devoted to exactly these kinds of problems.

In international relations, a strand of research has treated the content of international agreements as the dependent variable, asking what phenomena predict certain treaty features, and conjecturing that treaties reflect rational state interests. For example, Koremenos et al. (2001) argue that treaties are largely the product of states' pursuing self-interested international goals. Koremenos (2005, 2013, 2016) empirically supports this conjecture, showing that agreements often contain mechanisms tailored to the particular cooperation problems facing the parties. These studies do not attempt to observe *directly* how states pursue their objectives through treaty design; rather, they infer that states adopt treaty provisions that will help them address the issues that impede cooperation on the issues addressed.

Thus, all these literatures focus on events after the treaty's negotiation and adoption. Scholars have paid little systematic attention to what happens before: specifically, how global welfare might be improved at the drafting and negotiation stages. To be sure, the unique dynamic of multilateral treaty-making has not been lost on international legal scholars; a large body of research has analyzed particular negotiations. Both historians (e.g., Davidson 1992) and legal scholars studying the history of international institutions (e.g., Hathaway and Shapiro 2017) have

[12] There are many examples. For instance, the Spanish Supreme Court recently found that the decisions by human rights treaty bodies are legally binding on Spain, even though human rights treaties make clear that they are not. As another example, the Committee Against Torture effectively has interpreted away the difference between torture and cruel, unusual and degrading treatment. (See Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007)).

contributed to this literature. But no research has attempted to build a universal theory of treaty-making applicable to both past and future negotiations.

Through theory development and an empirical study of several real-world drafting efforts, this dissertation attempts to do so. I show that statements made during multilateral treaty negotiations predict states' subsequent international legal behavior, even years later. Moreover, I develop a method that, by drawing on these insights, might be used to improve future treaty-making. As with all theory, the model necessarily simplifies the world. But in doing so, it produces a framework that generalizes between treaties, across issue areas, and over time. I hope that this framework will be useful to international relations scholars, international legal scholars, and international lawyers who study, create, and interpret many types of multilateral treaties.

In Chapters 2 and 3, I first show how treaties can be modeled spatially, and I then develop a formal decision-theoretical model that explains what factors states consider in drafting, negotiating, approving, and ratifying multilateral treaties. The goal of this theory is to better understand states' decisional logic in their interactions with other states through the different stages of the treaty-making process. International law scholars are aware that treaty-making is a fundamentally different exercise than other forms of lawmaking (Aust 2013; Benedetti et al. 2013), but the consequences of the differences have not been fully appreciated in either the legal or international relations literatures. In contrast with most other institutions, treaties allow their participants to opt in or out of the legal regime. Treaties generally permit all potential parties to participate in the negotiations, but no state is bound to the resulting treaty's terms unless it voluntarily accepts them through ratification. This fact distinguishes treaty-making from nearly every other democratic lawmaking process, in which all actors are bound to the

collectively adopted law. I show that this rule causes treaty-making to unfold in three decisional stages: (1) a negotiation stage, (2) an adoption stage, and (3) a ratification/reservation stage. In deciding their respective negotiation strategies, states must anticipate the actions in later stages – both their own and that of other states – that is, they must look down the decision tree. Most notably, whether or not states intend to ratify in the third stage affects their advocacy behavior in the first stage. This, of course, creates a sort of circular dilemma, as states cannot know with certainty whether they will ratify until they have observed the outcome of the first two stages.

This model is not just a theoretical exercise: it can predict state ratifications and reservations when applied to actual treaties. To apply my model to real-world treaty-making, Chapter 4 explains how to use treaties' legislative history, called the *travaux préparatoires* (or just *travaux*), by converting it into quantitative data. To analyze the negotiating data, I use ideal-point estimation to determine the positions of states relative to each other, to the status quo, and to the treaty. I use an item-response theory, a form of Bayesian statistical preference-scaling, which draws on states' recorded positions to estimate states' ideal points in one or more dimensions. Applying these methods to treaty-making requires some methodological innovations; they were developed for domestic legislatures and must be modified to account for the unique properties of treaty-making.

In Chapter 5, I apply the method to three treaties: the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Rome Statute of the International Criminal Court, and the Convention on the Status of Refugees. CERD is a global convention designed to formally condemn all forms of racism and to promote national legal mechanisms that reduce and eventually eliminate racism around the world. It was opened for signature in 1965 and entered into force in

1969. The Rome Statute established the world's first permanent international court with jurisdiction over an array of international crimes. It was finalized in 1998 and entered into force in 2002. The Refugee Convention was adopted in response to the refugee crisis created by World War II and the Holocaust. It requires its parties to provide limited protections to people arriving at the border who would suffer government-sponsored or enabled persecution if returned to their home countries. It was drafted from 1950–51 and entered into force in 1954.

For those treaties, it turns out that the positions that states took during the negotiations predict ratification. For CERD, it also predicts reservations, declarations, and understandings (RUDs). For the Rome Statute, the negotiating positions predict future implementation efforts. To perform this analysis, I introduce several methodological and research-design innovations. First, I introduce the concept of dual ideal points and show how the concept complicates states' decision-making when contemplating creating and joining an institution with substantial externalities. The concept does not apply to most democratic lawmaking. But it might be usefully applied to other institutions that involve both a voluntary opt-in rule and externalities, as with many constitutional conventions. The second methodological innovation is the process of converting qualitative records of negotiations into "votes" for the purpose of ideal-point estimation.[13] Finally, I show how, in applying spatial public choice theory to empirical position data, a researcher can construct policy points – the status quo and the treaty – as if they were political actors by estimating the position that each would take on each issue.

Taken together, the theoretical model and its empirical application provide

[13] See also James Morrow, "The International Legislature," National Science Foundation Grant Application (2004).

important insights for international law and relations scholars, which I explain in Chapter 6. Although we seem to have entered a period of general growing hostility towards international cooperation, global problems persist, and new treaties are emerging in response. Trade barriers, climate change, and the growing refugee crisis are among the global problems that best lend themselves to formal, multilateral cooperation (Cope and Crabtree 2019). I hope that this dissertation will contribute to these debates, first of all, by providing an analytical framework for analyzing these problems and, second, by providing empirical insights into real-world drafting efforts. Among these insights is that states' negotiating positions are generally not "cheap talk" (Farrell and Rabin 1996) and that what states say during the negotiations predicts their subsequent behavior in meaningful ways. Many scholars and practitioners have long believed as much, but I develop the first tool for demonstrating it empirically and applying its implications going forward. More specifically, states' negotiating positions predict subsequent ratification, as well as the entering of reservations, declarations, and understandings, and, to a lesser extent, domestic legal implementation. The fact that these behaviors were foreseeable at the time of drafting offers important new insights for long-standing international legal debates on ratification and reservations.

In addition to improving our theoretical understanding of treaty-making, the method might even be applied to ongoing treaty drafting. I expect that the method will eventually be able to process negotiating records more comprehensively and more quickly than any individual negotiator could, thereby aiding future negotiations and interpretation. Negotiators on the ground have neither the benefit of hindsight nor a bird's-eye view of the negotiation. In the flurry of fast-moving talks involving more than 100 states, delegates rarely have the ability to see how all the issues fit together or how seemingly unconnected states might

form useful alliances. The empirical technique that I develop can help states and intergovernmental organizations do so by showing the relationships between key elements on each set of important issues. The ability to analyze the evolving positions in real time could be a valuable tool for negotiators, convention mediators, and non-governmental organizations.

Chapter 2

Modeling Treaties Spatially

Realists in world politics think of the international system as a state of chaos (Morgenthau 1985; Waltz 1979). In this telling, states struggle with each other in a anarchic world, where, in the words of Thucydides, "the strong do what they can and the weak suffer what they must" (Hornblower 1996).[1] But in modern world politics, this zero-sum state of conflict describes only a fraction of international interactions. Like domestic political actors, states can often benefit from jointly agreeing to constrain themselves from "do[ing] what they can." In fact, states throughout history have routinely bargained and reached mutually beneficial agreements, even in the face of impending war (Fearon 1995).[2] A large fraction of these agreements are multilateral conventions: treaties open to many states, and often, *all* states. These agreements are often drafted and negotiated in legislative-like settings, with representatives from states and NGOs working to draw up initial provisions in committees, followed by sometimes months of debate and revisions in a plenary conference. Indeed, partly for this reason, scholars often analogize multilateral treaties to domestic legislation (Mahoney 2006).

[1] A better translation of the original Greek is probably "The powerful exact what they can, and the weak have to comply" (Hornblower 1996).

[2] Finding ways to promote adherence with those agreements is a different story, and one beyond the scope of this manuscript. Indeed, the mechanisms by which they motivate states to change their behavior are more nuanced and complex than in most domestic systems (Guzman 2008; Scott and Stephan 2006).

As international lawyers and scholars are well aware, however, treaty-making differs in key ways from domestic lawmaking (Benedetti et al. 2013). Benedetti et al. note that treaty-making is thought of as a "product of its own kind," neither "legislative" in "the way that laws are made" nor "like the make of resolutions in governing bodies, such as the United Nations General Assembly." Scholars have noted that treaty-making bodies are not continuously constituted; they assemble for limited periods to complete the discrete task of drafting a treaty. One consequence of this difference is that when negotiations deadlock, it is often more difficult to simply resume discussion later, after positions may have hardened, often because of feedback from polarized domestic stakeholders (Benedetti et al. 2013). For example, for the Rome Conference, when the Conference seemed to be moving on without U.S. support, the U.S. delegation asked for an additional 2–3 days; the Chairman denied that request to maintain momentum and with the idea that, after a recess, the conference and the alliances would not be the same (Benedetti et al. 2013).

In contrast with domestic legislatures, the ad hoc nature of treaty-making bodies also makes it difficult for delegates to trade support (i.e., "log-roll") across different treaties (Morrow and Cope 2018). Treaties are also different from domestic legislation in that they represent a series of votes or expressions of consensus on related proposals, rather than an up-or-down vote on an entire bill. As the International Court of Justice observed in its advisory opinion on reservations, even multilateral treaties approved by consensus are "nevertheless adopted through a series of majority votes" (ICJ Advisory Opinion of 28 May 1951). Sometimes, drafting conferences vote on a package of proposals, as with the Rome Statute and the Law of the Sea, but this is unusual. Indeed, the parliamentary rules of both the UN General Assembly and most preparatory committees actively discourage this. (Benedetti et al. 2013). Other observers have emphasized the consensual nature of

treaty-making relative to domestic legislation. For instance, many important issues in treaty-drafting are not formally voted on because states operate by consensus (Bederman 1993).

Although scholars have noted the several unique properties of treaty-making, those properties have never been fleshed out into a general theory of treaty-making. I do so here. To provide some basic building blocks, I first introduce a basic public-choice spatial model of lawmaking, which is widely used in economics and political science, and occasionally, law.[3] Chapter 3 introduces my own contribution, which adapts the spatial model to account for the unique features of treaty-making. To do so, I model the factors that shape states' dynamic decisional logic through each stage of treaty-making. The core insights from this theory are: (1) we can model states' making treaties in three stages, with each stage involving factors that influence states' strategic calculations; (2) in determining their actions at the first two stages, states must look to later stages in the decision tree and anticipate the payoffs from different scenarios; and (3) in contrast to other kinds of democratic lawmaking, treaty-making has a unique third stage – the decision to ratify or not – which impacts states' strategic calculations in ways that are unique to treaty-making.

Different classes of international problems call for different types of treaties to address them (Koremenos 2016; Koremenos et al. 2001). The type of problem that a treaty is intended to solve affects the nature of the negotiations, including states' strategic negotiating logic. Some treaties address problems of *collaboration*, like trade agreements, which reflect parties' commitment not to impose trade barriers. Collaboration problems (sometimes called market failures) occur when two or more states are positioned to take actions that affect each other, and each state has a dominant strategy, that is, an action that – for any given action of the other state(s)

[3] Readers familiar with spatial models may wish to skip ahead to Chapter 3.

– produces the best possible outcome for the first state, but which is nonetheless is sub-optimal among all possible outcomes for both states. Put differently, the "dilemma arises when the Pareto-optimal outcome that the actors mutually desire is not an equilibrium outcome" (Snidal 1985; Stein 1982). The classic prisoners' dilemma typifies this situation (Setear 1996).

Other treaties solve problems of *coordination*, like the Chicago Convention on Aviation,[4] which ensures that pilots are able to communicate effectively in the same language, among other things. In contrast to collaboration problems, coordination problems exist when each state's preferred outcome depends on what other states will do, creating multiple equilibria. That is, neither state has a dominant strategy. Although each state may have a first-choice of action for it and its partners, each state would rather take other states' favored actions (almost whatever they are) than pursue its first-choice action alone. Where all states share the same first choice of standard, there exist no distributional issues, and cooperation is rather trivial. But where they differ on the preferred standard, distributional problems may frustrate reaching consensus. Thus, coordination problems may or may not contain distributional issues (see Hardin 2015; Heymann 1973; Schelling 1980). Once a coordination problem is solved through international consensus, it generally becomes self-enforcing. That is, rational states will continue to adhere to the norms it provides, even absent any external consequences for violating them. This occurs for the same reason that people from Great Britain (usually) drive on the right side of the road when they visit most of the rest of the world. They would do so even if it were not legally enforced. They might prefer that everyone drive on the left side, but they cannot accomplish that unilaterally, and they much prefer the oddity

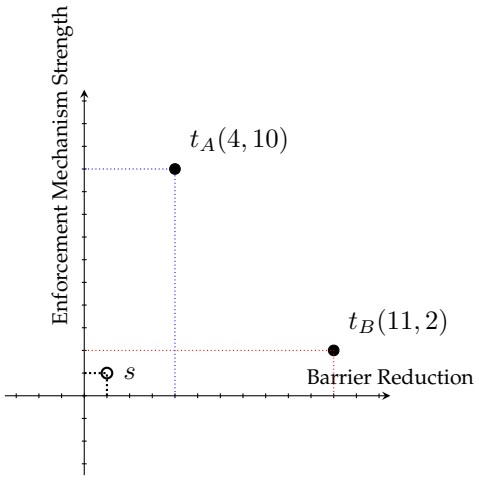
[4] Convention on International Civil Aviation (also known as the Chicago Convention), signed Dec. 7, 1944 (Stein 1982)

of right-side driving to a head-on collision.

Still other treaties do not promote interstate cooperation in the traditional sense. Instead they create rules for how states must regulate themselves internally. This configuration describes most human rights treaties, which set norms for how states treat their own nationals.

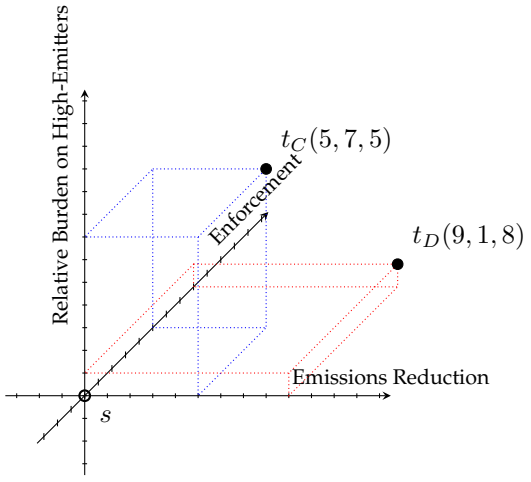
The spatial model I develop can explain negotiations over any of these treaty types. The model is a useful way to analyze the issues that a given treaty addresses by depicting graphically those issues and the states' positions on them. A given treaty comprises numerous important issues, and the treaty can address each of those issues in any number of ways. A spatial model depicts these relationships in physical space, either one-dimensional (a line) or multi-dimensional (a plane or 3+-dimensional space). The policy alternatives for each issue can then be ordered along a continuum in each dimension in some logical order. For instance, the dominant issue in many trade treaties is to what extent to reduce trade barriers (including tariffs and non-tariff barriers). Consider Panel A in Figure 2.1 below, which depicts the range of options on key issues for a hypothetical trade treaty. The smallest reductions in trade barriers would lie on the left end of the continuum; the largest would lie at the right end. But states also differ on other issues, such as the mechanism for filing complaints and retaliating against offending states. Decentralized mechanisms that rely on voluntary state cooperation for compliance would lie toward the bottom of the continuum, while centralized mechanisms that strongly coerce compliance would lie near the top. States may align differently on these two sets of issues. The 'treaty points' t_A and t_B depict hypothetical treaties comprising different variations of these two policies.

Likewise, Panel B depicts how a global environmental treaty might address three issues: the overall level of emissions or pollution restrictions (x), how those



Panel A
Trade Treaty (2 dimensions)

t_A: A treaty with high tariff levels and most non-tariff barriers permitted; enforcement mechanism typically imposes significant penalties for violations
t_B: A treaty with tariffs nearly eliminated and most non-tariff barriers prohibited; remedy for non-compliance is a system of voluntary, collective reciprocal treatment or retribution



Panel B
Environmental Treaty (3 dimensions)

t_C: A treaty with moderate emissions-reduction goals, relatively high burden on high emitters, and fairly effective mechanism for enforcing non-compliance
t_D: A treaty with ambitious emissions-reduction goals, the burden of reduction roughly equally distributed between high and low emitters, and an effective mechanism for enforcing non-compliance

Figure 2.1: Continua of Issues for Two Hypothetical Treaties

restrictions are distributed among states that emit high and low levels of pollution (y), and the nature of the enforcement mechanism (z). Treaties t_C and t_D show how the policy choices might manifest in two different treaties. For both panels, the points s denote the *status quo*. Whenever states are considering drafting a treaty, there are a set of existing international rules (or lack thereof) already in place. For some agreements, that means essentially few or no such rules; for others, the existing international framework is already quite robust. Regardless, this set of status-quo rules can also be located in this space.

For each issue and each state with an interest in that issue, there exists an ideal point: a provision that that state would prefer over all others because it would maximize its expected utility from the treaty. That is, the state believes that it would benefit more from having that provision in the treaty than from any other provision.

My model denotes ideal points as x_i, for a state i.

To illustrate further, Figure 2.2 below is a two-dimensional graph depicting a proposed trilateral treaty with two discrete issues. There are three actors, A, B, and C. Because there are two issues, each actor has an ideal point in dimension x and one in dimension y, which together can be plotted as a single point in two-dimensional space. The utility that any state derives from the treaty is maximized when the ideal point and the treaty point coincide, because that scenario reflects the state's ideal outcome. The state's utility therefore declines at some rate as the treaty moves away, i.e., as the distance between the treaty point and ideal point increases. As with most negotiations, states rarely get their most preferred term on every issue. So each state needs to decide how much deviation from its ideal point it is willing to tolerate before it no longer supports the treaty. This point occurs where the distance between the ideal point and the treaty point exceeds that between the ideal point and the status quo. There, and beyond that point, the actor prefers the status quo.

More formally, each actors' utility (u_i) is a function of the treaty policy (t), the status quo (s), and i's ideal point (x_i). $u_i(t)$ decreases quadratically with the distance between x_i, and t or s. Therefore:

$$u_i(t) = \begin{cases} -(t - x_i)^2 & \text{if the policy takes effect (1)} \\ -(s - x_i)^2 & \text{if the policy does not take effect (2)} \end{cases} \tag{2.1}$$

with $(t - x_i)^2$ denoting the distance between i's ideal treaty policy and the proposed treaty policy, and $(s - x_i)^2$ denoting the distance between i's ideal treaty policy and the status quo. During drafting and negotiations over the treaty, the actor advocates for terms that move the treaty policy as close as possible to its ideal point. Then, when the treaty is put to an up-or-down vote to conclude it, i will vote to support the treaty if and only it lies closer to its ideal point than to the status quo, that is, if

$-(t - x_i)^2 \geq -(s - x_i)^2$.[5]

In deciding whether any given formulation of the treaty policy would be utility-enhancing, an actor weighs each of the salient issues collectively. Therefore, for each actor, there exists a set of provisions that will increase its utility and another set that will decrease it. The border between these two sets constitutes an actor's *reservation curve*, which forms a circle whose center is the ideal point, and whose edge is the status quo, s. Its radius therefore has a length of $||s - x||$.[6] By definition, the status quo lies on this reservation curve.[7]

For proposed polices lying on that curve, the actor neither benefits nor is harmed relative to the status quo, because the distance from the ideal point to the treaty equals the distance from the ideal point to the status quo, that is, the radius. The reservation curves are depicted in Figure 2.2 as dashed lines. An actor will benefit more from the treaty than the status quo only if that treaty point lies within the actor's gray-shaded area between the ideal point and the reservation curve.

The several actors engaged in writing and negotiating the treaty have different ideal points and different reservation curves. In Figure 2.2, the set of treaty points that A will benefit from is large; it prefers a treaty far from the status quo, so there is a broad range of rules it prefers, including ones that make much more drastic changes than it would prefer. In contrast, the set of treaty points that C will benefit

[5] This inequality resolves to $x_i \geq \frac{t^2 - s^2}{t - s}$.

[6] It is a perfect circle, i.e., it is symmetric in each dimension (and not a non-circular ellipse), because I assume that utility declines at the same rate in every dimension.

[7] That the reservation curve is an ellipse rather than a rectangle implies that the actors consider discrete issues as a whole package, rather than one at a time. With a rectangular reservation curve, an actor's reservation point in any one dimension is not conditional on its reservation points in any other dimension. In other words, there is no tradeoff between dimensions. That means that an issue in any given dimension can have decisive reservation points, across which point an actor will reject a policy regardless of concessions on any other issue. But with a circular (or other elliptical) reservation curve, an actor's reservation point in any one dimension is conditional on its reservation point in the other dimensions, which is a function of the shape and radius of the reservation curve. That means that the location of the 'deal-breaker' policy in a given dimension varies depending on the policy's position in the other dimensions. In other words, the issues are sometimes fungible.

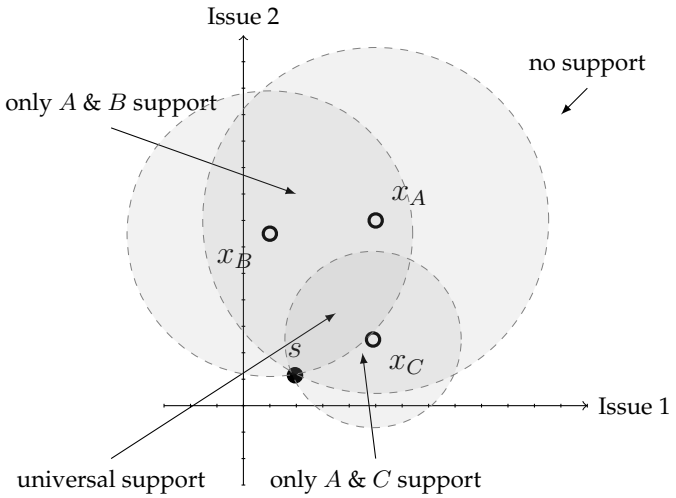


Figure 2.2: Hypothetical policy showing three actors' ideal points and reservation curves, with labels showing support were the treaty policy to lie in that space

from is more limited. C prefers not to deviate much from the status quo; it will not benefit from any policy that departs from it significantly.

Where two actors' reservation curves overlap, a treaty would make both better off relative to the status quo. Where there are three or more actors, several of these spaces may overlap with each other. In that space, each of those actors would be better off if the treaty policy were adopted: it is *pareto-improving* (that is, it makes at least one state better off and leaves none worse off). In negotiations of this type, the dominant issue is therefore distributional: where within that set the policy will be located, that is, how the benefits of the treaty policy will be distributed.

In Figure 2.2, in part because of C's narrow preferences, the only set of terms that all three actors will support is the dark gray sliver labeled "universal support." To receive support from all three actors, the treaty would need to lie within that space. But placing the treaty there does not necessarily maximize the three actors' collective utility. A and B may prefer to adopt the treaty without C's support, under terms closer to their own ideal points (at some point in the gray-shaded area).

Whether they do so will depend on whether C's participation is needed for the policy's success, i.e., the relative utility that A and B would derive from the policy with and without C's participation. A and B may be willing to trade more favorable policies for C's involvement, if that involvement yields sufficient utility in itself.

In essence, democratic lawmaking – including treaty drafting and negotiations – involves arriving at a policy that makes a sufficient number of actors better off, but which may leave some worse off. Choosing a given treaty policy therefore involves trade-offs – between different actors, and between a treaty with more parties and one that regulates more state conduct. This is referred to as the "broader-deeper tradeoff" (Gilligan 2004), because it involves tension between more participants and more extensive international rules. Many treaties improve total welfare relative to the status quo but do not maximize welfare. A challenge for those studying and coordinating negotiations, then, is to design a treaty drafting and negotiating system that is most likely to lead to a utility-*increasing* treaty, and as close as possible to a utility-*maximizing* one. To do that, I must first develop a theory of treaty-negotiating states' strategic considerations.

Chapter 3

How States Make International Law: A Positive Theory of Treaty-making

This Chapter develops a formal, positive theory of states' decision-making in each of the three stages of treaty-making. Section 1 explains the unique decisional logic of treaty-making, laying out the utility function associated with the three scenarios facing every negotiating state. Section 2 then presents the dynamic decision-making that guides states through the three stages: negotiation, approval, ratification.

1 THE UNIQUE DECISIONAL LOGIC OF TREATY-MAKING

Spatial models can describe how collective policy choices are made in many different systems: legislatures, courts, and constitutional conventions, for instance. In fact, scholars in law (Eskridge Jr 1991; Gilbert 2017), political science (Austen-Smith and Feddersen 2006; Baron and Ferejohn 1989; Cameron and Kornhauser 2012; Cox 2000; Wahlbeck et al. 1998), international relations (Fearon 1998; Krasner 1991; Morrow 1986), and economics (Levy 2007) have extensively theorized about the law- and decision-making processes of these other public institutions, with many drawing on a spatial model similar to Figure 2.2 in the previous chapter.

A. Voluntary Opt-In and the Third Option

None of these models are suitable for multilateral treaties, however, because none account for the unique rules governing how treaties bind their subjects. Consider that a legislator and her constituents are bound by legislation enacted by the body, regardless of whether the legislator supports it. Likewise, in many systems that recognize *stare decisis*, judges considering a case are bound to follow similar past decisions from the same court, even if they dissented from it.[1] In contrast, the norm of state sovereignty (Barkin and Cronin 1994; Nagan and Hammer 2004) as reflected in the international law of treaties gives state treaty-framers the power to opt in or out of the regime they have created. No state is bound to a treaty's terms unless and until it voluntarily accepts them through ratification or accession.[2]

As a result, in addition to the two scenarios that face other lawmakers (creating the regime and being bound by it, or not creating the regime), states negotiating a treaty have a third option: they can decide not to join a regime that has been created. This means that for a treaty-making state, there are three possible scenarios: (1) a treaty is adopted, and the state opts-in through ratification or accession, (2) a treaty is not adopted, and (3) a treaty is adopted, but a state decides to opt-out.[3] As I elaborate below, this means that, in developing their treaty negotiating strategies, states must consider a far more complex set of factors than actors making other types of law do. The central challenge in developing a model of multilateral treaty-making

[1] Precedent is not unchangeable, of course, and dissents can convince judges to change the rule in the future (see Douglas 1949).

[2] In international-law literature, bilateral treaties are often likened to contracts, and international conventions are often compared with legislation (Mahoney 2006). Yet from a negotiations perspective, the voluntary opt-in rule suggests that conventions resemble multilateral contracts as much or more than they do legislation.

[3] If the existence of a treaty does not materially alter the status quo for non-parties, there is no material difference between scenarios (2) and (3). Yet, as I show below, some treaties alter the status quo by their very existence. That is, the treaty's entry into force changes all states' foreign-relations environments, even for states that do not join the treaty.

is to account for the implications of these three scenarios, while keeping the model parsimonious enough to apply to a variety of real-world treaties.

Recall the utility function for most lawmaking described in the last chapter:

$$u_i(t) = \begin{cases} -(t - x_i)^2 & \text{if the policy takes effect (1)} \\ -(s - x_i)^2 & \text{if the policy does not take effect (2)} \end{cases} \tag{3.1}$$

where t denotes the policy point, x_i denotes i's ideal point, and s denotes the status quo policy point. Because of treaty-making's voluntary opt-in rule, the function must be refined to capture that process. The utility for state i from a treaty is instead:

$$u_i(t) = \begin{cases} \sum_{i_{rat.}} v_i - (t - x_i)^2 & \text{if } t \text{ enters into force and } i \text{ ratifies } t \text{ (1)} \\ -(s - x_i)^2 & \text{if } t \text{ does not enter into force (2)} \\ e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] - (1 - e)(s - x_i)^2 & \text{if } t \text{ enters into force, } i \text{ does not ratify (3)} \end{cases} \tag{3.2}$$

where $e \in [0, 1]$ denotes the fraction of a treaty's benefits that are external, $i_{rat.}$ denotes a ratifying state, x_i denotes i's ideal point assuming ratification, x_i' denotes i's ideal point assuming non-ratification, and v_i denotes the marginal value of i's ratification to the treaty.

Note that only the utility for scenario 2, the treaty's not entering into force, is the same as in the spatial model for traditional policy-making. The voluntary opt-in rule and the resulting third option complicate a state's utility for the treaty in the other two cases: where (1) the treaty enters into force and the state ratifies; and (3) it enters into force but the state does not ratify. This third option, which captures the voluntary opt-in rule, creates two new important phenomena: (i) the role of externalities (captured by e) and (ii) the concept of membership-based utility (captured by $\sum_{i_{rat}} v_i$). Each is unique to treaty-making, and each affects states'

decisional logic in negotiating, approving, and joining the legal regime. I elaborate on the roles of externalities and membership-based utility below.

B. The Treaty's Potential Externalities and Alternative Ideal Points

The fact that some treaties produce significant externalities complicates a state's treaty-making utility analysis. Those external effects can be either positive/beneficial, or negative/harmful (see, e.g., Buchanan and Stubblebine 1962). By definition, where a treaty creates externalities, non-parties to the treaty are either benefitted or harmed by the treaty, despite their not being parties to it. Of course, treaties are not the only political or legal interactions that produce externalities. But because of the voluntary opt-in rule, treaty externalities affect policy formation differently than do externalities in other systems. In most of those other systems, all those involved in negotiating and voting on a proposed law will be forcibly bound by it, meaning they are not in fact "external" to the institution. Not so with treaties.

The nature of a treaty's externalities affects how the treaty distributes utility between the group of states that have ratified the treaty and those that have not, which in turn affects states' ratification decisions, and therefore, their negotiation strategies. We can think of treaties whose benefits are primarily or entirely positive externalities as producing public goods (i.e., both nonrival and nonexcludable). Consider a hypothetical treaty designed to provide 100% of its benefits to non-parties and parties alike.[4] A state considering whether to ratify would know that it will receive all the benefits even if it does not join. In that scenario, the marginal benefit of ratifying would be little or nothing. Such a treaty would thus

[4] If we define the benefits of ratification broadly to include less tangible benefits like international and domestic signaling, few if any agreements produce public goods exclusively. For instance, international signaling and reputation for cooperation or liberal norms are important motivators for many states in considering whether to ratify a treaty, particularly for human rights and international humanitarian law. Because this aspect of the treaty benefit accrues only to members, no treaty that carries reputational benefits produces exclusively public goods.

invite enormous free-riding, allowing states to enjoy the benefits of the regime without suffering any of the constraints or other costs. A global environmental treaty is perhaps one of the closest examples of a pure public-good treaty; it affects the entire world, producing expected climate benefits for every state (though not necessarily to the same extent) regardless of membership. Likewise, treaties aimed at solving coordination problems – such as standardized international procedures (e.g., aviation), metering, or measurement – can also generate significant benefits for non-members. Non-members are usually free to use and benefit from the agreed-on standard if they wish.[5]

Other treaties produce negative externalities. These include some (not all) that produce so-called private or club goods (i.e., benefits from which non-parties can be excluded). The difference between private and club goods lies in their rivalrous nature: club goods are not diminished by others' use; private goods are. For instance, mutual defense agreements arguably produce private goods, because only those that join the coalition receive defense benefits, and because military resources are finite, a coalition that comes to the aid of one member may be unable or less able to aid other members in other conflicts. Likewise, the consequences of not ratifying a human rights treaty may become more severe as more parties join, and IGOs and NGOs can increasingly focus their-naming and-shaming efforts on non-parties. This phenomenon is further illustrated in the discussion surrounding Figure 3.1 below.

These negative-externality treaties make at least some non-parties worse off compared with a world with no treaty at all. This phenomenon can occur through several different mechanisms. One such mechanism is where the treaty members pool their efforts to improve their collective welfare in a way that

[5] A state that prefers a different standard may also be harmed by the treaty, since it encourages other states to use a different standard, raising the costs of using its preferred standard.

reduces opportunities for non-members to do the same. For instance, consider a mutual-defense coalition; those that do not join the coalition maintain the same absolute military strength they had before the coalition formed. But *relative to* the members of the new coalition, they may find themselves weaker, and thus more vulnerable to attack than if the other states had not made the agreement.[6] Likewise, a trade treaty makes its members more attractive trading partners to each other, which may draw trading opportunities away from non-parties. In both cases, the treaty's mere creation makes the non-party worse off than if the treaty did not exist (Gruber 2000).

The combination of the production of externalities and the voluntary opt-in rule complicates states' treaty-making logic. In the absence of externalities, any state could opt-out of a concluded treaty and experience a foreign-relations environment much like that before the treaty arose, i.e., the status quo. But if a treaty produces substantial externalities, its entry into force changes the international legal and political state of affairs for a state, *regardless of whether that state ratifies*.

This observation gives rise to a striking and novel theoretical insight: *a state negotiating a treaty can have two simultaneous, alternative ideal points*: one assuming it ratifies the treaty; and another assuming it does not. That is, it would prefer one set of treaty terms if it is going to ratify, and another set of treaty terms if it is not going to ratify. It follows that states might push for a particular type of treaty based on whether they intend to ratify, without revealing these intentions during the negations. To illustrate, if a treaty has strong positive externalities (as with a global environmental agreement), a state might push for a strong treaty that it does not intend to ratify; it knows that a strong treaty will make it better off than a weak or no treaty, regardless of whether it ratifies. Because the state hopes to free-ride

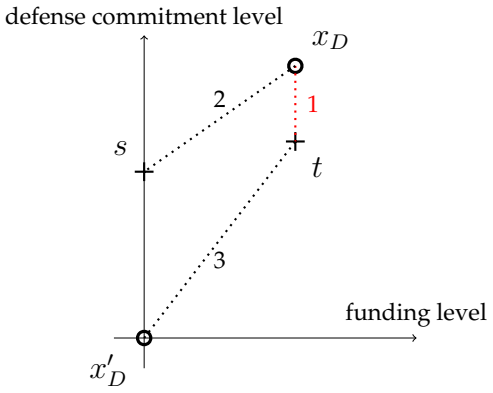
[6] See Figure 3.1 below.

on the treaty's benefits, it wants those benefits to be as plentiful as possible, and it would not care about its costs to members. Conversely, when a treaty has negative externalities (as the mutual-defense agreement), a state may do the opposite and push for a weak treaty, one which it has no intent of ratifying. I define the two ideal points produced by externalities as x (assuming ratification) and x' (assuming non-ratification).[7]

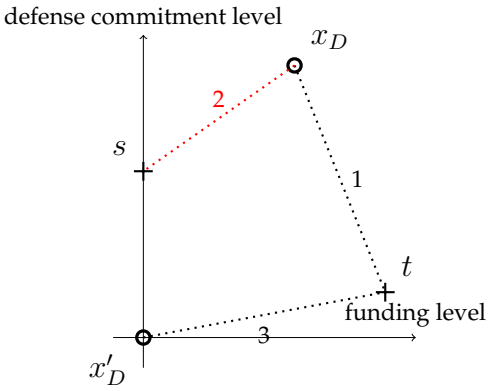
The nature of the externalities – whether they are positive or negative, and their magnitude – matters a great deal to negotiating states' strategic calculations. It affects the relative positions of the x and x' in the following ways. For *club/private-good treaties with negative externalities*, x is typically greater (i.e., higher level of regulation) than x', and the difference increases as the level of positive externalities increases. Likely examples include mutual defense and trade. For *public-good treaties with positive externalities*, x' is typically greater (i.e., higher level of regulation) than x, and the difference increases as the level of positive externalities increases. This is true because a stronger x_i' maximizes the benefits of free-riding. Likely examples include environmental, refugee, coordination, and disarmament treaties.

Consider the graphs in Figure 3.1 below, which depict a world with four states: Aspain, Breaca, Craocia, and Doswor. (Only Doswar's ideal point is plotted.) Aspain is a powerful bully, and Breaca, Craocia, and Doswor are considering a mutual defense agreement to deter and protect themselves from Aspain's potential aggression. Doswor is the weakest state, and if it joins a defense agreement, it wants very strong protections (expressed as its ideal point, x_D) from Aspain. But other states are less committed to a strong regime, and they have proposed t. Because

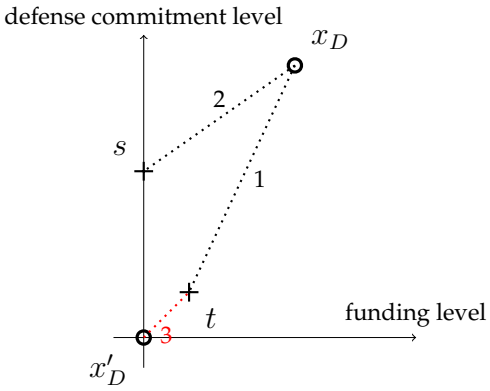
[7] As explored in the next section, this distinction is relevant only when a treaty produces strong externalities. If there are few or no externalities, x and x' coincide, and we can think of a state's having only a single ideal point, x.



Panel A
A treaty with moderately high funding and defense levels; D's order of preferences is ratify, status quo, not ratify



Panel B
A treaty with high funding and low defense levels; D's order of preferences is status quo, not ratify, ratify



Panel C
A treaty with low funding and defense levels; D's order of preferences is not ratify, status quo, ratify

Figure 3.1: Three Hypothetical Proposed Mutual-Defense Agreements (utility from most-D's preferred scenario in red)

Doswor is not convinced that t would provide sufficiently strong commitments, Doswor is on the fence about whether to join the coalition as proposed, or whether to support the status quo, s. One possibility is that Doswor joins, in which case it wants a well-funded coalition with commitments to robust mutual defense, x_D. Another possibility is that Doswor does not join, but the agreement goes forward with only Breaca and Craocia. In that case, Doswor will become the weakest unit by far, and a relatively attractive target for Aspain. In that case, Doswor would

prefer a very weak agreement, x'_D (or no agreement at all, the status quo, s) to a strong agreement. Doswor's decision about the form of treaty for which it should advocate therefore depends on whether it anticipates ratifying it. The type of treaty Doswor prefers depends on whether it joins, and whether it joins determines what treaty it prefers.

Given those assumptions, suppose that the putative coalition produces a draft agreement with fairly low levels of funding and commitment, as in Panel A of Figure 3.1. The utility function would produce the following analysis for Doswor: The most preferred outcome is that t enters into force and i ratifies t ($u_i = -(t-x_D)^2$), depicted by segment 1; the second-most preferred outcome is that t does not enter into force ($u_i = -(s - x_D)^2$), depicted by segment 2; and the least-preferred outcome is that t enters into force, but i does not ratify t; ($u_i = -(t - x'_D)^2$), depicted by segment 3.

Now assume instead that the states have proposed a different treaty, one depicted in Panel B of Figure 3.1. The treaty features large funding levels but very low commitment levels. This changes the relative utility of the three options for Doswor. Now, because 2 is the shortest segment, followed by 3 and 1, Doswor's order of scenario preferences is 2, then 3, then 1. Assuming the proposed treaty does not change significantly over the course of the negotiations, it would most prefer that no treaty is concluded, as the proposed treaty would be very expensive and offer little expectation of effective defense. Its second choice is that the treaty is concluded but it does not join. Although that would make it susceptible to Aspain, it may be able to use the funds it saved to bolster its own military and deter Aspain's aggression somewhat. Its least-favored scenario is joining the treaty. Given its expense but lack of commitments from other states, it may not be much safer than without the coalition, and the financial commitments might deprive it of the ability to defend itself.

Finally, assume yet another version of the treaty is proposed, as in the Panel C of Figure 3.1. The treaty involves less financial and defense commitment compared with the other proposed treaties. Now Doswor's most-preferred scenario is for the treaty to be concluded but not to ratify it, segment 3. Again, as with the second proposal, it may save a small amount of funds from not joining, and it appears to have little clout anyway. Segment 2 (no treaty) is second, followed by segment 1 (ratification).

This last scenario highlights why it is critical to consider the two ideal points in models of treaty-making. If we had used a conventional model which compared only the ideal point x_D's relative distance to s and to t, we would have concluded that Doswor prefers the status quo above all, so pursuing a strategy resulting in no treaty at all was its best option. But that would have overlooked the regime's considerable externalities, making Doswar best off when there is a treaty, but it is not part of it.

As another example, consider a regional trade treaty involving a number of South American states. Assume that currently, there are no international legal constraints preventing the negotiating states from imposing trade tariffs on the other states. Brazil is participating in the negotiations. As an initial matter, Brazil must weigh any proposed treaty's terms to determine whether the net effect on it would be beneficial or harmful. But because of externalities, the decision is not as simple as opting for a treaty or not. A regional trade pact would be expected to increase trade flows between its members, probably to the detriment of non-members. That is, it would produce negative externalities. If an agreement with aggressive trade-liberalization terms arises without Brazil's participation, it might have fewer favorable trade opportunities than it does currently. If so, it might be in Brazil's interest to advocate for a treaty that produces little or no trade-barrier reductions

with the intent of never ratifying it.

To formalize, let $e \in [0,1]$ denote the fraction of a treaty's benefits that are external. So, for example, $e = 1$ indicates a pure public-good treaty. (In theory it could also denote a pure public-*bad* treaty.) At the other extreme, $e = 0$ indicates a pure private/club-goods treaty, for which none of the treaty's effects are felt by outsiders. (The notion of a treaty with $e = 0$ is mainly theoretical; it is unlikely that any actual treaty has zero externalities.) In the component of the utility function providing the utility for entry-into-force but non-ratification, that is, $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] - (1-e)(s-x)^2$, the e variable serves two purposes.

First, because $e = 1$ for pure public-good treaties (for which the treaty's benefits accrue to non-parties as they do to parties), where a treaty produces a public good, the x ideal point (the option to ratify an existing treaty) has what we can think of as a comparative disadvantage, all things being equal, relative to x'. That is, the state receives the public goods regardless; why accept the restrictions and other costs that go along with them if it is unnecessary? The discount from ideological distance where t enters into force but i does not ratify (scenario 3) is denoted $(t - x_i')^2$. But where t produces pure public goods, $e = 1$, so

$$\lim_{e \to 1} \left\{ e \left[\sum_{i_{rat}} v_i - (t - x_i')^2 \right] - (1-e)(s-x)^2 \right\} = \sum_{i_{rat}} v_i - (t - x_i')^2$$

So where $e = 1$,

$$u_i(t) = \begin{cases} \sum_{i_{rat.}} v_i - (t - x_i)^2 & \text{if } t \text{ enters into force and } i \text{ ratifies } t \text{ (1)} \\ -(s - x_i)^2 & \text{if } t \text{ does not enter into force (2)} \\ \sum_{i_{rat}} v_i & \text{if } t \text{ enters into force, } i \text{ does not ratify (3)} \end{cases} \tag{3.3}$$

So $u_i(t) = \sum_{i_{rat.}} v_i - (t - x_i)^2$ from ratifying and $\sum_{i_{rat.}} v_i$ from not ratifying. Since i is comparing the two – assuming that the $\sum_{i_{rat.}} v_i$ term (described below) is equal in

both components – that term falls out, and the state prefers the greater of $-(t - x_i)^2$ and 0. Where t and x_i coincide (that is, the proposed treaty is the state's *ideal* treaty), $-(t-x_i)^2 = 0$, and i is therefore indifferent.[8] Therefore, since i is indifferent between ratification and non-ratification even for its ideal treaty, i will always weakly strictly prefer non-ratification to ratification of a pure public-good treaty.[9]

Second, consider the extreme opposite case, where t produces no public goods or other externalities ($e = 0$). In that case, a non-ratifying i is indifferent between all t because, by definition, the treaty has zero effect on i's welfare. $e = 0$, so $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] = 0$, and x' is irrelevant to i's payoff. That is because

$$\lim_{e \to 0} \left\{ e \left[\sum_{i_{rat}} v_i - (t - x_i')^2 \right] - (1 - e)(s - x)^2 \right\} = -(s - x)^2$$

The utility of not ratifying is therefore a function of $(1 - e)(s - x)^2 = (s - x)^2$, alone, that is, the proximity of the status quo, s, to the ideal point x. So where $e = 0$,

$$u_i(t) = \begin{cases} \sum_{i_{rat.}} v_i - (t - x_i)^2 & \text{if } t \text{ enters into force and } i \text{ ratifies } t \text{ (1)} \\ -(s - x_i)^2 & \text{if } t \text{ does not enter into force (2)} \\ -(s - x_i)^2 & \text{if } t \text{ enters into force, } i \text{ does not ratify (3)} \end{cases} \tag{3.4}$$

Note that this value, $-(s-x_i)^2$ equals the payoff from scenario 2, the status quo. In other words, where there are no externalities and $e = 0$, not ratifying a treaty that enters into force is equivalent to the treaty's not entering into force at all.

[8] Note that the states' preferences for the nature of the externally provided public good can vary between states (as it does for the private/club goods). One dimension on which a treaty policy could vary is the nature of the public good, which could therefore have distributional effects among states.

[9] This is somewhat of a strong assumption, because i's own ratification will, in itself, make the term in scenario 1 greater than that in scenario 3, all else equal.

C. *Membership-based Utility*

The basic utility function in Equation 3.1 for ordinary lawmaking does not account for the fact that, all things being equal, the benefits to each treaty-negotiating state can depend on the number and character of the other ratifying states. Most political studies of voting simply assume a fixed number of parties. Likewise, most bargaining models in economics and political science assume that the parties are bargaining over a fixed-size "cake," "pie," "donut" (Raworth 2017), or some other delicious round baked good. This makes sense for those systems because there, while different *policies* affect the size of the pie and how it is divided, the number of supporters does not. So long as there exists sufficient support to adopt the policy (usually a majority, or sometimes, a super-majority), the number of bargaining actors voting for the policy has little direct effect on the total utility it provides.

Treaties are different in this respect. For many treaties, the size of the "pie" is endogenous, not just to the terms of the agreement, but to the number and character of the parties. Specifically, many treaties tend to yield more utility for each state-party as the number of parties joining it increases. Not all treaties do, though; for human rights treaties, for example, the utility that each state derives from additional members is likely fixed. But for many others, the utility that a state derives from joining a treaty is not just a function of the treaty terms' proximity to the state's ideal point; it also depends on who else is participating. In this sense, they are similar to some multi-party private contracts, such as patent pools.[10]

[10] A patent pool is an agreement between several patent holders to cross-license those patents for a particular use or technology. *See* Michael Lightfoot, *Patent Pools: What Are They, What Are Their Uses and Their Benefits?*, INTELLECTUAL PATS, May 3, 2015, *at* http://intellectualpats.com/patent-pools-what-are-they-what-are-their-uses-and-their-benefits/. I thank Dotan Oliar for this example.

Consider, for example, a treaty to lower trade tariffs for imports from members states. Bilateral tariff reductions benefit trade partners, so, all else equal, a state joining a *multi*lateral tariff-reduction agreement with five other states (the equivalent of five bilateral agreements), derives more total utility than if it joined an agreement under the same terms with just one other state. The same is also generally true, for example, of agreements to follow certain rules of war and to provide collective security.

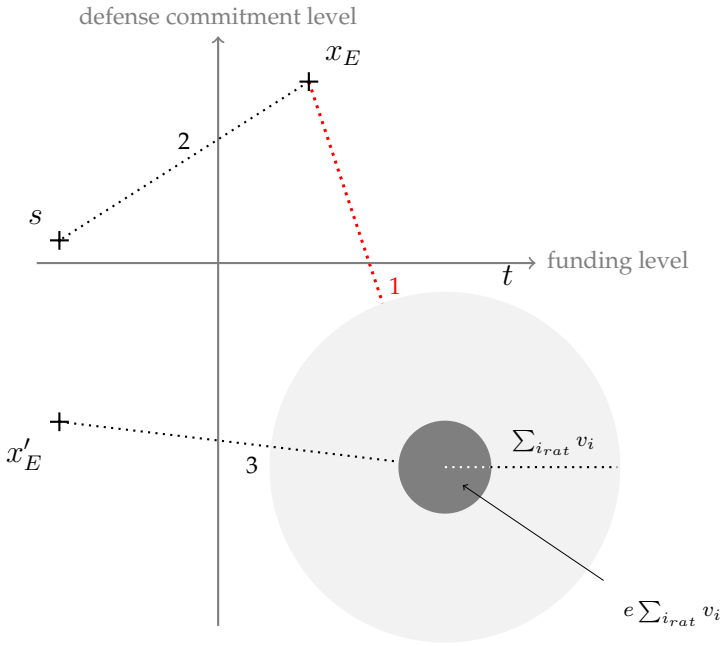
As the utility function in Equation 3.1 above for ratification is structured, even under the ideal scenario – where the treaty policy point, t, and a state's ideal point, x_i, coincide – 0 utility is derived. In any other ratification scenario, utility is negative. That seemingly odd result follows from the implicit assumption that the treaty would have no other parties. A treaty with one party is, of course, not a treaty at all! Because the state is comparing the utility from each of these with each other – not with zero – this does not affect the analysis.

I capture the membership-driven value of treaties by defining a state-specific *value* giving the marginal value for the treaty from the state's ratification. I define v_i as the marginal value for the treaty from i's ratification. The aggregate level of state contributions is expressed as $\sum_{i_{rat.}} v_i$, such that $\sum_{i=1}^{M} v_i \in [-\infty, \infty]$, where $i_{rat.}$ denotes a ratifying state, and there exist M possible ratifying states.[11]

The term appears in the payoff formula for ratifiers, $\sum_{i_{rat.}} v_i - (t - x_i)^2$, by contributing to the utility that all ratifying states receive, and for non-ratifiers, $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right]$, by contributing to the utility that states receive, to the extent the treaty's benefits are public. The value effectively acts to expand the treaty point, t, from a single point to a circle that varies with the sum of all state-parties'

[11] This term is inspired by a similar concept discussed in James Morrow's 2004 National Science Foundation grant application, "The International Legislature," and elaborated in Morrow and Cope (2018).

Figure 3.2: Illustration of the Utility-Changing Effect of $e \sum_{i_{rat}} v_i$ for Public-Good Treaties



values, thus bringing the treaty's edge closer to all other ideal points and uniformly increasing the treaty's potential utility for all states. Thus, where $\sum_{i_{rat.}} v_i > 0$, the ideal point is an *'ideal circle'* with a radius of $\sum_{i_{rat.}} v_i$. Where $\sum_{i_{rat.}} v_i = 0$, the ideal point is a traditional point with a radius of 0. See Figure 3.2 above.

The value a state adds to a given treaty depends on a variety of state- and treaty-specific factors. States vary in the value they bring to the treaty regime. In a trade treaty, states with large economies would have the largest value. In a mutual defense treaty, military spending might largely determine a state's value. And in an environmental treaty, the level of current pollution (assuming cuts are roughly constant as a percentage of pollution) would determine its value.

A state's ratification decision may therefore turn on the number of other ratifiers it expects. The importance of additional parties to the ratification calculation also depends on what fraction of the treaty's benefits generally reach non-ratifiers, i.e.,

are positive externalities. In many cases, non-ratifiers will receive some, but not all, of the benefits of additional parties.[12]

Because other states may be making a similar calculation simultaneously, a state rarely knows for sure how many others will ratify. It must estimate this by observing and comparing other states' relative utilities of ratifying and not ratifying, just as it does for its own ratification decision. This phenomenon explains why most all treaties require a threshold number of ratifiers (modeled here as a sufficiently large $\sum_{i_{rat.}} v_i$) before the treaty enters into force. Some treaties (like the Comprehensive Nuclear-Test-Ban Treaty (CTBT)) require the participation of not just a minimum number, but certain key states, before they enter into force.

This calculation partially explains why some states might ratify even a mostly public-good treaty. Many public-good treaties are collaboration-like prisoners' dilemmas; in any one round, defecting (not agreeing to cooperate) is always the dominant strategy. Consider a major global polluter like the United States, India, or China. If the net utility to that state of continuing a high level of emissions (the benefits of efficiency savings and/or jobs minus the costs of pollution) exceeds the

[12] To illustrate, suppose you are considering joining a book-sharing group with a given set of rules: each month, each member must donate a book and may borrow a book. The group would not provide much benefit if there were only 10 other members, as you would be stuck with whichever 10 books those 10 members happened to lend. But if there were 10,000 members, you would have a veritable library of new books to choose from and would probably have at least a few dozen to your liking. Even though the rules ("give a book, take a book" each month) remained the same, the additional members themselves would make you more likely to join the group. Now assume the group is considering whether to make its book collection open to the public, that is, to non-members who do not have to lend books. That is, $e = 1$. So $e \sum_{i_{rat.}} v_i = \sum_{i_{rat.}} v_i$ for all $\sum_{i_{rat.}} v_i$. In that case, the group's growing from 10 to 10,000 would not affect your decision to join; as a member of the public, you would receive the same access either way. Instead, your decision would be determined by the club's rules or traits (that is, the difference between t and t'),for instance, the book-borrowing location or favorite genre of the median member. Presumably, they would coincide (making you indifferent) only if the costs of membership were 0 (where here, they are > 0, since members must lend a book each month). But if borrowing books were available only to members, (that is, $e = 0$), then the difference between the benefits received would depend on being a member, that is, the difference between $e \sum_{i_{rat.}} v_i = 0$ and $\sum_{i_{rat.}} v_i$, and the growth would certainly affect your membership decision.

utility to that state of lowering its own emissions (the benefits of higher air quality minus the costs of reduced productivity and/or technological development), the state should not rationally commit to an emissions-reduction international regime. After all, most of the regime's benefit will accrue to it regardless, but it will incur costs only if it joins. But assuming (1) the benefits of the *regime's existence* exceed the state's costs of its lowering its own pollution, and (2) it believes that its participation will lead other major players to join that would not have otherwise, it should rationally commit to the regime. Formally, the state might expect that, for one or more other key states, its own participation would decisively increase the treaty's utility: it would increase $\sum_{i_{rat.}} v_i$, making $\sum_{i_{rat.}} v_i - (t - x_i)^2 \geq e \sum_{i_{rat.}} v_i - (t - x_i')^2$. If so, it would form the tipping point for those other states' own ratification, sending the entry-into-force tally over the minimum threshold (see Schelling 1971, 1978).[13]

This rationale is closely linked to the logic of the multi-stage prisoners' dilemma, a game were cooperation produces the public good of reduced jail time. Where there are two or more players, cooperation by staying silent benefits all other players; the game is designed so that one cannot snitch on one player but not another. Defect/defect is the strictly dominant strategy, and mutual defection is the Nash equilibrium. But as many others have shown, rational cooperation can occur in the iterated prisoners' dilemma, if players believe that the opponents' strategy (such as 'tit-for-tat' or the 'grim trigger') will produce more utility for him over many iterations if he cooperates (Axelrod 1984; Friedman 1971). The thinking is that cooperation would pay less for any given round, but would keep the game going,

[13] This logic relates to Schelling's concept of a "critical mass" of actors, in which sufficient participants in an activity make it more valuable for others, produces external benefits, and thus, makes it self-sustaining (Schelling 1978). A tipping point can also trigger flight from an activity. For example, if there exists even a small level of white intolerance for black neighborhoods, a certain small number of black entrants to a neighborhood would constitute a tipping point that would eventually lead to complete racial segregation (Schelling 1971).

producing many rounds of moderate payoffs that, together, exceed the windfall payoff from a one-time defection.

Returning to the hypothetical South American trade treaty, in estimating the potential treaty's expected utility, Brazil will be interested in gauging which other states are likely to ratify the treaty. For instance, if the treaty gets participation from several other major trade partners – especially those that import iron ore from Brazil like Argentina – the benefits of the tariff reductions to Brazil would be greater than if those states were not members, even if the treaty terms were the same.

2 THE THREE STAGES OF TREATY-MAKING

With these utility calculations in mind, the theoretical model treats treaty-making as a three-stage process. Those stages are: (1) drafting and negotiation advocacy; (2) deciding whether to support the treaty's adoption; and (3) deciding whether to ratify or accede[14] to the treaty and make reservations. I explain how – as with many other multi-stage decisional processes – states' decisions in earlier stages are informed by the states' expectations about the relative utility of their expected options in later stages. This means that the decision-making logic in each stage cannot be completely isolated from other stages; rather, states must use backwards induction.

Nonetheless, because the real-life stages proceed chronologically and because the stages are codified in the Vienna Convention on the Law of Treaties, it is useful to disaggregate the decision-making process this way. The rest of this chapter therefore explains the different decisional logic of a utility-maximizing state in each of the

[14] *Accession* to a treaty is an alternative method for consenting to being bound; it occurs in lieu of ratification, typically after the period for signature and ratification has ended and the treaty has already entered into force. *See* VCLT Art. 15. In this manuscript, I use the term ratification to include both ratification and accession.

three stages.

A. Stage 1: Drafting and Negotiation Advocacy

States negotiate the substance of international law in multilateral negotiations under the auspices of the United Nations or other intergovernmental organizations. These negotiations begin when a core set of states agrees on the need for a treaty to advance international cooperation on a particular issue. A common approach is for working committees of IGOs or NGOs to first draw up draft portions of the treaty, though sometimes a single state proposes a first draft.[15] Once a draft has been produced, the overseeing IGO typically holds a final conference to revise the draft treaty based on comments from representatives of the participating states and NGOs. Sometimes the conference approves the various articles through a series of roll-call votes, but states' more detailed views on the provisions come from their verbal statements, which are sometimes written but mostly expressed orally. The Vienna Convention on the Law of Treaties is relatively silent on the procedures for this drafting stage, merely noting that every state "possesses capacity to conclude treaties"[16] and providing rules on who is authorized to negotiate treaties on behalf of a state.[17] It therefore falls on each treaty conference to develop its own specific set of procedures.

Despite the lack of international standards, this negotiation stage is critical to the final treaty's character and relative success. Moreover, states' decision-making in this stage affects – and is affected by – their expectations for subsequent stages. While a state has unilateral power to ratify a treaty if it is concluded (and enters

[15] For example, Sweden proposed a full first draft of the Convention Against Torture; the United States developed a full draft of the Race Convention.

[16] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 6 (entered into force Jan. 27, 1980) [hereinafter VCLT].

[17] *Id.*, Arts. 7 & 8.

into force), each individual state has relatively little influence over the content of the treaty and whether it enters into force at all (Simmons 2009). Although the official decision to ratify comes well after drafting and negotiations are concluded, a state involved in negotiations must consider the likelihoods that it will enter into force – and if it does, that the state will ratify it – in deciding what substantive legal provisions it most prefers and for which it will advocate. This is true because, as discussed above, a state may prefer one version of a treaty if it joins the regime, but another version if the treaty enters into force but the state stays outside the regime.

This dynamic greatly complicates the decision-making logic of treaty negotiations, creating a circular dilemma: whether a state ratifies or not depends on the treaty's terms, and who else ratifies it. But the terms a state prefers can sometimes depend on whether the state will ratify it. At each round of the negotiations, a state must therefore make a series of informed estimates based on the status quo, the state of the draft treaty, and what it believes to be other states' positions and intentions for ratification.

Having determined its relative utility for the three scenarios – status quo; treaty with ratification; or treaty without ratification – based on the considerations above, a state engages in diplomatic advocacy, using persuasion or coercion to attempt to convince other states to adopt treaty provisions that are most favorable to it. To do so, the state first attempts to predict whether it might be able to persuade enough states to move the treaty point sufficiently that it would change the state's optimal scenario from the one it currently prefers, to one of the other two that would be preferable. If so, it advocates for nudging the treaty in the direction that optimizes that alternative scenario. For example, a state may prefer to ratify a weak treaty (x) over the status quo (s), which in turn it prefers to not ratifying a strong treaty (x'). If the currently proposed treaty is fairly strong, its best scenario is to not ratify. But

if it senses that it might be able to persuade a coalition of other sympathetic states to significantly weaken certain provisions, it would get more benefit from ratifying that weak treaty than from not ratifying the existing strong treaty. It might therefore try to weaken the treaty, that is, to move the treaty *away* from one of its ideal points, x', and toward its x.[18] If not, the state advocates for nudging the treaty toward its appropriate ideal point under the preferred scenario.

In the trade-treaty example, in entering the negotiations, Brazil would first need to estimate the relative utility of the three scenarios. Suppose that Brazil's domestic petroleum industry accounts for a large fraction of its exports, but it also imports a significant amount of petroleum. The government has determined that the petroleum industry is vital to the national economy, and the benefits of protecting it from competition outweigh any hike in consumer oil prices. Brazil therefore wants to be permitted to levy high tariffs on petroleum, to protect its domestic industry. Brazil's second-biggest industry is the production of iron ore, and it exports a significant volume of ore to other South American states. Brazil therefore would prefer the agreement significantly limit tariffs on iron ore, so as to drive business for its domestic ore producers. Suppose the currently proposed treaty lowers permissible tariffs on iron ore, but it also limits petroleum tariffs, preventing Brazil from continuing its high tariffs. Brazil would benefit from the lowering of iron ore barriers, but it would be harmed by the reductions in petroleum barriers.

Suppose Brazil determines that joining the treaty as proposed would not serve its interests because of the reduced petroleum tariffs or because it expects an insufficient number of other states to join. In that case, if the treaty were to be adopted and take effect, Brazil would want the treaty to do as little as possible

[18] If the current or alternative most preferred outcome is the status quo, the state is unlikely to truthfully reveal its preferences; rather, it will likely make arguments to weaken the treaty marginally (Morrow and Cope 2018).

to promote efficient trade among the parties, minimizing the extent to which it disadvantages Brazil vis-a-vis its trade partners. In that case, however, maintaining the status quo of no agreement would still preferable.[19] In that case, Brazil should advocate for a weak treaty, that is, one that resembles the status quo by doing little to reduce trade barriers. In other words, it should attempt to move the treaty point close to its ideal point assuming non-ratification (x'). If, on the other hand, Brazil determines that the treaty's benefits are likely to outweigh its costs, it should advocate for a treaty that leaves petroleum tariffs in place, and which lowers the permissible tariffs on iron ore. In other words, it should attempt to move the treaty point close to its ideal point assuming ratification (x).[20]

A state considers the relevant factors and formulates its negotiation tactics repeatedly, in every round of the negotiations, until the states have concluded negotiations over the treaty's substantive provisions. At that point, the states move on to the stage 2 process of deciding whether to support the treaty's adoption.

B. Stage 2: Deciding Whether to Support the Treaty's Adoption

Per the decision tree in Figure 3.3, at the stage 2 approval decision, the state compares the utility of two options, the greater of: (1) scenarios 1 and 3 (both under which a treaty is concluded); and (2) scenario 2 (under which a treaty is not concluded). If the utility from (1) is greater, it supports approving the treaty and its entry into force. If the utility from (2) is greater, it opposes approving the treaty and its entry into force. Of course, any state i has little power in itself over this outcome; its power is only marginal, as all the other states collectively have effective control

[19] This order of preferences (though not the positions of ideal and policy points) would resemble that in Panel B of 3.1.

[20] This order of preferences (though not the positions of ideal and policy points) would resemble that in Panel A of Figure 3.1.

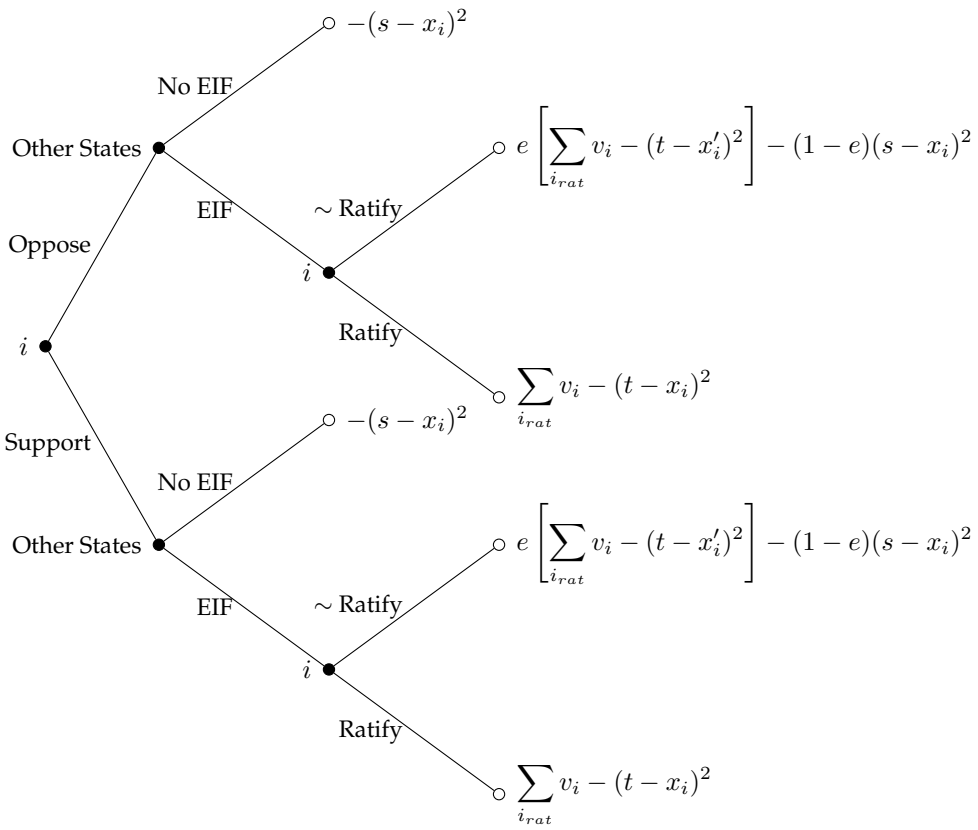


Figure 3.3: Decision Tree Depicting State i's Post-Negotiation Decisional Logic in Stages 2 and 3

over this outcome. For this reason, all other states together then move to enter the

treaty into force or not. Though i's effect is marginal, it is not zero.[21]

After negotiations have completed, the drafting conference determines whether to accept or reject the final draft. This is often accomplished through consensus, because at that point, the negotiating states have already signaled their support for the treaty, and the chair would be reluctant to move the treaty to a final vote without a consensus from the convention. Sometimes, however, if the level of support for the draft agreement is unclear or one or more states want state positions on the record, the conference may hold a formal roll-call vote. This occurred, for example, at the 1998 ICC Rome Conference. According to the Vienna Convention on the Law of Treaties, "the adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule."[22] In this case, states vote either to support the treaty with an eye toward its taking effect at some later date, or they reject it in favor of maintaining the status quo, at least for the time-being. If that vote fails (or, more likely, a vote is never called because states have signaled a lack of support), the state and all other states must accept the status quo. Although

[21] The equations below give the probability of the treaty's entry into force (EIF) given i's opposition $Pr\{EIF\ |Nay\}$ and support $Pr\{EIF\ |Yea\}$, respectively. Note that they draw on a cumulative binomial density function of the form $F(x) = \Pr\{X \leq x\} = \sum_{k=1}^{x} \binom{n}{k} p^k (1-p)^{n-k}$. The probability of entry into force conditional on i opposing the treaty, then, is

$$Pr\{EIF\ |Nay\} = \sum_{\frac{M-1}{2}+1}^{M} \left[\binom{M-1}{\frac{M-1}{2}+1} p^{\left(\frac{M-1}{2}+1\right)} (1-p)^{(M-1)-\left(\frac{M-1}{2}+1\right)} \right] \tag{3.5}$$

where p denotes the probability that some other state, j, will support the treaty, with M negotiating states. (The function makes the unrealistic but typically insignificant simplifying assumption that all other states have the same probability of support.) Likewise, the probability of entry into force conditional on i supporting the treaty is

$$Pr\{EIF\ |Yea\} = \sum_{\frac{M-1}{2}}^{M} \left[\binom{M-1}{\frac{M-1}{2}} p^{\left(\frac{M-1}{2}\right)} (1-p)^{(M-1)-\left(\frac{M-1}{2}\right)} \right] \tag{3.6}$$

[22] VCLT, *supra* note 16, at art. 9.2.

treaties rarely fail in this phase, there are some examples of its happening, such as the 1967 International Convention on Religious Tolerance and the 2009 Copenhagen Agreement on Climate Change (Rajamani 2010, 825–26). My model treats a state's advocating for not holding a vote because it opposes the treaty in its current form as equivalent to formally voting against the treaty.

This stage mirrors the approval vote in other democratic legal and political systems, in which a final vote is held to approve (or reject) the bill, judicial opinion, or other collective policy choice. Unless they abstain, the actors vote either to support the new policy or to reject it and retain the status quo. The difference for treaties lies in the voluntary opt-in rule and the three scenarios it provides, meaning some states may vote to approve the treaty even if they have no intention of being bound by it. Therefore, in the final vote, a state chooses between two options: (a) the status quo (s), and (b) the greater utility produced by ratifying (x), a future treaty that will enter into force, or not ratifying it (x'). If (a) is greater, the state votes nay; if (b) is greater, it votes yea.

In the trade agreement hypothetical, Brazil would oppose the treaty's adoption and taking effect if and only if the status quo is the most preferred outcome. If either of the other two scenarios are preferred – including the scenario in which it does not ratify the new treaty – it should support the treaty's adoption and entry into force.

C. Stage 3: Deciding Whether to Ratify and/or Reserve

If the treaty is approved, it is opened for signature and national ratification, usually requiring the support of national legislatures (Cope 2016). This stage is unlike virtually any other public-law process. If and only if the treaty is approved, each state must decide whether to ratify, thereby accepting its terms and the benefits and restrictions that they involve, or to not ratify, thereby rejecting them, and staying

unencumbered by the new regime's rules. It further has the option to ratify with modifications by entering reservations, declarations, and understandings.

The Ratification Calculation. At the final stage, ratification, i compares the expected payoffs from scenarios 1 and 3. i ratifies if the utility from scenario 1 is greater, and does not ratify if utility from scenario 3 is greater. Once a state reaches this stage, it has already done most of the hard work to determine its expected utility from the treaty under different scenarios. It has gauged the treaty's externalities, speculated on the utility provided from other potential members, and used this information to advocate for a utility-maximizing instrument during negotiations. It has supported or opposed the treaty's approval based on the considerations above. So once the treaty has been approved and opened for signing and ratification, it is left only with a choice of whether or not to ratify it.

Of course, no state has complete information about its utility, even at this stage. It cannot be certain about which states will ratify, although because treaties generally have minimum-ratifier thresholds for entry into force, it *can* be certain there will be a critical mass of states before the treaty enters into force and the state is bound. It also cannot be sure what if any external shocks – economic, political, or otherwise – may alter its benefit from the treaty. But, as with actors facing most lawmaking choices, states must use whatever information they have to make an informed estimate.

At this stage, the state is choosing between a world with a regime of which it is a part, and a world with a regime of which it is not a part: a world with no such regime is no longer possible. That said, for a treaty with relatively few externalities – including the three treaties analyzed in Chapter 5 – the post-treaty state-of-the-world for non-ratifiers is very much like the pre-treaty

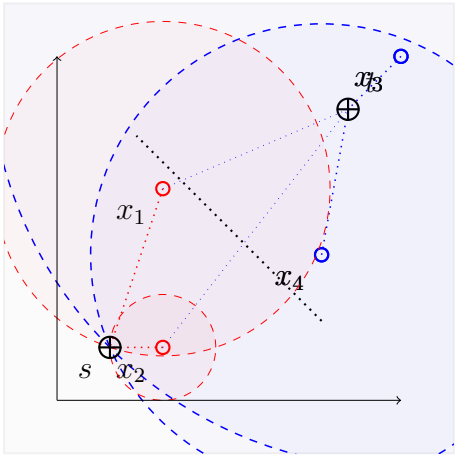


Figure 3.4: Hypothetical, 4-State Club-Good Treaty Negotiation Resulting in 2 Ratifiers

state-of-the-world, i.e., the status quo. That is, if the treaty does not primarily produce externalities, the status quo adequately approximates the alternative to ratification, so it effectively chooses between s (not ratify) and x (ratify) based on an estimate of which is closer to its ideal point, that is, which policy is more similar to its ideal scenario.

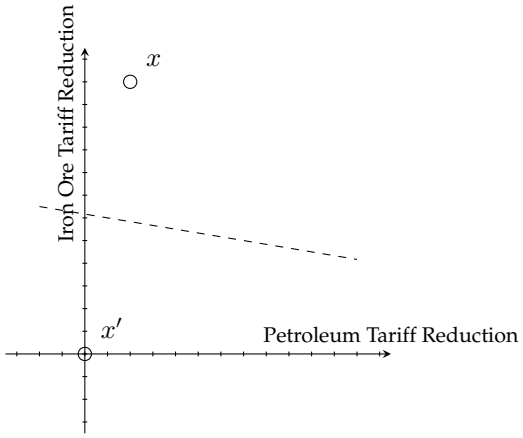
Consider Figure 3.4 below, which depicts a hypothetical, four-state club-good treaty with few or no externalities. The policy points of the treaty, t, and status quo, s, are also depicted. The ideal points for states 1–4 are distributed throughout the two-dimensional space. Each state compares its utility from ratifying (indicated by the line from its ideal point to the treaty) with its utility from not ratifying (indicated by the line from its ideal point to the status quo) and makes a decision to ratify or not. If the distance to the treaty is shorter, it ratifies; if the distance to the status quo is shorter, it does not ratify. The dashed line, called the "cut line," represents the set of points that is equidistant between the treaty and the status quo. The two states that ratify are colored blue; the two that do not are colored red.[23]

[23] Note that the cut line is not "fitted" to the states' ideal points; rather, it exists independently of them and can be estimated before any state takes a position.

In the alternative case of a treaty that exerts significant externalities on the rest of the world, the previous state of the world is no longer the status quo. Upon entry into force, it is replaced by the post-treaty world, regardless of any given state's ratification decision. In that case, a state in this stage faces a different set of calculations than choosing between retaining the status quo and adopting a new, mandatorily binding regime. The decision instead depends on whether the actual treaty is more like the treaty the state considers ideal, assuming it is a party, or more like the treaty the state considers ideal, assuming it is not a party. Therefore, if the treaty vote succeeds and a treaty with significant externalities has enough support to enter into force, the status quo is taken off the table for all states. The state must then choose between x (ratify) or x' (not ratify), based on whichever is closer to t.

Consider how this logic would apply to the three mutual-defense-agreement scenarios depicted in Figure 3.1 above. In the top panel, D would lobby to move t as close as possible to x_D, would vote in favor of adopting the final treaty, and, if it is adopted, would ratify it. In the bottom left scenario, D would lobby to move t as close as possible to x_D, but, assuming the treaty did not change significantly, would vote against approving the final treaty. If it were approved, it would not ratify it. In the bottom right scenario, D would lobby to move t as close as possible to x'_D and would vote to approve the final treaty. But if it were concluded, it would not ratify it.

Returning one last time to the trade treaty example, suppose that the negotiating states have approved a treaty text and there is sufficient support for it to enter into force. In this case, even if Brazil preferred the status quo, it is no longer possible. It must therefore choose between x and x'. Figure 3.5 below illustrates this choice. Brazil's x involves large reductions to iron ore tariffs but few reductions to petroleum tariffs. Its x' involves few or no tariff reductions at all. Whether it will



Note: Brazil will ratify a treaty if and only if it lies above the dashed cut line, which is equidistant between x and x'. (The status quo, s, coincides with x', but it is no longer a possible scenario, because the treaty will take effect, changing the international legal environment for all states.)

Figure 3.5: Brazil's Scenarios in Hypothetical Proposed Regional Trade Agreement, Where Treaty Has Been Approved and Will Enter Into Force

ratify depends on whether the treaty's terms place it closer to x or x'. The dashed cut line represents the series of terms for which Brazil would be indifferent, so it will ratify if the treaty lies above the line and not ratify if it lies below it.

The Reservation Calculation. The law of treaties allows states to opt-out of, or *reserve*, specific provisions of a treaty, so long as: (1) the treaty itself does not prohibit it, and (2) the reservation does not undermine the treaty's object and purpose.[24] A state can use this option to effectively modify the treaty's terms for itself. Legal scholars have examined how allowing reservations affects things like ratification rates, subsequent state behavior and compliance, and the integrity of international law.

This feature of the treaty system is difficult to capture formally, but as I show for the CERD below, it can be relevant to explaining reservation behavior. For the purpose of my approach, if there exists a discrete provision or other element of the

[24] VCLT, *supra*, note 16 art. 19 ("A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless . . . The reservation is prohibited by the treaty . . . the reservation is incompatible with the object and purpose of the treaty.).

treaty whose removal would meaningfully improve the treaty's utility for that state (and the two conditions above are met), the state should enter a reservation for that provision. It should then gauge the relative utility of the treaty as if the treaty had that position. In effect, doing so alters the treaty by moving t closer to x, but only for that state.

***

This model has explained how states weigh several factors in position-taking, voting to approve the final draft, and ratification. With these expectations in mind, I develop a method to apply the model's assumptions to real treaty negotiations – past, present, and future – by converting negotiation records into data. I then show how these methods together could be used to aid states, IGOs, and NGOs in negotiating future treaties.

Chapter 4

Empirical Research Design and Methods

This Chapter explains how to apply the theoretical model developed in Chapter 3 to real-world treaty negotiations. Using the negotiating records of three treaties, I develop a method to obtain the theory's key parameters from treaty negotiating records. That is, for each of these treaties, I can estimate t (the proposed treaty), s (the status quo without the treaty), as well as each states' ideal point based on its stated positions during the negotiations x (the ideal point assuming ratification), and, for some treaties, x' (the ideal point assuming non-ratification). While I cannot explore all the concepts or implications from my theoretical model with these three treaties alone, the analysis partially validates some aspects of the theory and provides important insights about treatymaking.

1 TRAVAUX PRÉPARATOIRES AS A SOURCE OF STATE IDEOLOGY

Some may be skeptical about the value of travaux generally as a source of state international-law preferences. Indeed, a long-running related debate exists among lawyers, law scholars, and political scientists over why states ratify treaties (see, e.g., Simmons and Danner 2010; Vreeland 2008). Within this debate, some theorists have dismissed many types of multilateral treaties and international-organization actions as "cheap talk," or as otherwise unimportant to foreign policy and state behavior

(Morgenthau 1985; Waltz 1979). Indeed, Voeten (2000) finds that states' UN General Assembly (UNGA) votes on given issues are not closely connected to particular state interests, but rather divide into traditional, East-West Cold War alliances, groupings which are only occasionally logically related to the substantive international issues under consideration. Just as "some see UNGA votes as merely symbolic," (Voeten 2000) then, some may believe that treaty negotiating statements may be signaling an alliance or state identity more than a substantive policy preference.[1]

To the contrary, there is strong theoretical and empirical support for the notion that states' treaty negotiating positions are substantively meaningful and generally authentic. First, unlike UNGA resolutions, multilateral treaties are legally binding on states that join them and may even have consequences for non-parties. By proposing or otherwise taking a position on a treaty term, a state is much more likely to affect the content of potentially binding international law than it is with a single vote in the General Assembly (whose resolutions are not even binding on member states). Second, compared to the UNGA, treaty negotiations are relatively low-profile fora on average; they rarely have large audiences and are not broadcast on the Internet or otherwise audio-visually recorded. In a high-profile public

[1] International lawyers have expressed other concerns about the travaux related to their usefulness as interpretive aids because they are often contradictory and inconclusive (Bederman 1993; Sadat and Jolly 2014). In its 1927 Lotus decision, the Permanent Court of International Justice stated expressed skepticism about using the travaux for treaty-interpretation and held that on "no occasion" they should be resorted to when the treaty itself is clear, a principle that the Vienna Convention on the Law of Treaties later adopted. The Court noted that it is always possible to cherry pick statements and that it is often hard to find evidence of what states actually intended (S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) (observing that "only the British delegate . . . stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France")). Scholars have voiced similar objections, though both international and domestic courts routinely use the travaux in treaty-interpretation. Even if some of these concerns are valid, they do not directly bear on using the travaux as evidence of state positions. After all, the fact that drafters disagree with each other and that the records produce no clear consensus is a strength for measuring state preferences, not a weakness.

forum with political alliances particularly salient like the U.S. Congress or the UN General Assembly, states may believe that the symbolic importance of maintaining voting blocs trumps any marginal policy impact. Though treaty negotiations are increasingly public affairs, they are relatively low-profile fora on average compared with General Assembly votes. As such, the audience costs of taking a position in a treaty negotiation are likely to be lower, leaving states relatively free to pursue policies that state representatives nonetheless believe serve their interests, but which might carry domestic or international political costs. Conversely, the benefits in this forum of inauthentic grandstanding or value-signaling are small.

There are therefore good *a priori* reasons to think that negotiating positions typically represent relatively authentic state interests. But as with voting in the UN General Assembly, these beliefs can be tested empirically. If treaties are merely conduits for power-driven signaling, the positions I retrieve from the data will mostly track established alliances or other superficial traits rather than reflecting the provision-specific utility that the state expected to derive from the treaty. The empirical analysis that follows provides evidence to the contrary: the positions that states take in negotiations tend to align with what we would expect to represent their genuine state interests.

2 QUANTIFYING AND ANALYZING THE TRAVAUX

A first step in processing the travaux is to code them. Because those negotiations rarely conduct formal, recorded roll calls, the positions of states must be interpreted from the statements they make over the course of negotiations. These records contain many substantive proposals to amend existing provisions and to add new ones entirely, as well as state responses to these proposals. An example is the

dialogue below, taken from the CERD travaux; it summarizes part of the debate over a U.S.-sponsored proposal concerning anti-Semitism.[2]

> Mrs. TREE (United States of America) proposed that the words "racial segregation and apartheid" in article III of the draft convention should be replaced by "racial segregation, apartheid and anti-Semitism". Anti-Semitism was an evil which should be mentioned side by side with apartheid and which was far from having disappeared after the Second World War.

As an example of how states can respond to this type of proposal, consider the statements by Lebanon and the Soviet Union.

> Mr. Hakim (Lebanon) said that, like all the Arab States, Lebanon considered that unspeakable crimes had been committed against the Jews and that those crimes had had deplorable consequences both for the Jews and for the Arabs of Palestine. He strongly condemned anti-Semitism and recalled in that regard that the Arabs also belonged to the Semitic race, just like the Jews. The Arabs, for their part, had never practised discrimination against the Jews, who had always lived in peace in Arab countries. In his view, anti-Semitism was not solely a manifestation of racial discrimination and did not therefore belong in the draft convention under consideration, and in particular in article III. In that article, the Sub-Commission had laid stress on apartheid, because that was the most repellant form of racial hatred existing at the present time.

> Mr. Morozov (USSR) said that the insertion proposed by the United States delegation would radically alter the balance of article III. Racial segregation and apartheid were forms of discrimination. They were methods of promoting a racist policy, which had been used in several countries, were still being used and could be directed against any race. That was why the Sub-Commission had particularly condemned racial segregation and apartheid. However, anti-Semitism was a manifestation of discrimination against one particular race. Consequently, apartheid and anti-Semitism could not be placed on the same footing. The former was a general form of racial discrimination, which might be applied at any period and against any race. The latter

[2] E.CN4/ SR789, at 10–12.

> was merely one manifestation of racial discrimination in a particular case. However, if the Commission intended to revise article III, his delegation would submit a sub-amendment to the United States amendment, so that reference would also be made to the other individual manifestations of racial discrimination which still existed. Subject to any changes, the sub-amendment would consist of the addition of the word "Nazism" after the word "apartheid" and of the words "and other expressions of hatred based on doctrines of racial superiority" after the word "anti-Semitism.""

Each record contains hundreds of such proposals like the U.S. representative's and thousands of responses like those of the Lebanese and Soviet delegates.

Experts familiar with both international law and with the treaty's substantive issues must interpret and code the proposals and their responses. To facilitate coding, I developed a codebook containing detailed coding instructions and dozens of variables, some of which are appropriate for all treaties, and some of which are treaty-specific (see appendix). Among other things, the questions capture the identities of issue sponsors, supporters, and critics, as well as the strength of preference on a five-point scale.[3] Trained coding assistants and I read each meeting report and identified all proposals relating to the substantive content of the treaty at issue. I also compared each proposal to the final version of the treaty. In doing so, I took account of which states or other organizations made which sort of proposals, capturing and coding numerous attributes of each. For each proposal, the sponsor and all actors that take a position on the proposal are recorded, coded on a 5-point Likert scale from 1 (unqualified support) to 5 (unqualified opposition). A code of 3 denotes a mixed or ambivalent position. Coding a treaty typically takes each trained coder approximately 100–300 hours in total.

[3] The questions also capture the exact nature of the proposal assigning to one or more of dozens of categories. (The coding scheme was designed to capture a broad set of information about the negotiations, which might be used in a variety of future research projects; only some of that information is used in the analysis in this dissertation.) Parts of this typology are partly inspired by the treaty-problem categories in the Continent of International Law (COIL) coding system (Koremenos 2016).

After the travaux is coded, the next step is to process the resulting data. To do so, I use a form of ideal-point estimation. Similar methods have been used for the U.S. Congress (Poole and Rosenthal 1985), the U.S. Supreme Court (Bailey 2017; Fischman 2011; Martin and Quinn 2002), and the UN General Assembly (Voeten 2000). In essence, these methods use the 'yea' and 'nay' votes of lawmakers or judges to estimate a latent dimension that groups likeminded actors together and places their ideal points on the latent dimension.

The merits of different forms of ideal-point estimation are subject to an ongoing debate among political methodologists. I will not attempt to meaningfully cover that debate here, but suffice it to say, each of the several methods of ideal-point estimation has its own assumptions about the data, the form of actor utility, and the goals of the estimation (Armstrong et al. 2014; Carroll et al. 2009; Laver 2014). The leading technique is likely still NOMINATE, which was developed by Keith Poole and Howard Rosenthal 1985 for the U.S. Congress and adopted in hundreds of published papers. They include Poole and Rosenthal (1997), Voeten (2000) (UN General Assembly), and Lupu (2013a) (W-NOMINATE), for states based on previous treaty ratification behavior. Another spatial estimation technique is Optimal Classification (OC) (Poole 2000). Optimal Classification prioritizes categorizing political actors into like-minded groups, uses a non-parametric form for voters' utility functions, and produces ordinal rather than interval ideal point estimates (McCarty 2011).

In the analysis that follows, I opt for an Item Response Theory (IRT) model. IRT exploits advances in Bayesian methods and is now used to model ideal points of domestic actors more broadly (Clinton et al. 2004). Specifically, I use the IDEAL quadratic parametric model developed by Clinton et al., and elaborated in Armstrong et al. (2014). The principal motivation for choosing IDEAL is my

assumption that decrease in state utility accelerates as a treaty policy moves away from a state's ideal point, and that utility becomes negative with sufficient distance, making the IRT's quadratic (rather than Gaussian) utility function appropriate for my purposes. The main alternative is a Gaussian form used by models such as NOMINATE, in which the the actor's utility asymptotically approaches 0, such that it is largely indifferent between extreme positions. IDEAL has also been shown to estimate with greater certainty the positions of moderate actors relative to extreme ones (Carroll et al. 2009). Moderate actors tend to be more influential, so determining their positions with greater precision is valuable.

IRT was initially developed for psychometric testing but was later adopted for estimating parameters of legislator roll-call votes (see Ladha 1991). The psychometric test model (from which the model I use was derived) estimates two latent parameters – (1) item discrimination and (2) item difficulty – based on test subjects' responses. Some variation of this model is now widely used in political science, in addition to psychometrics and epidemiology. Like others studying political actors, I model *the positions of actors* (instead of test subjects' responses) on *political issues* (instead of test questions) (Martin and Quinn 2002). The corresponding three latent parameters are therefore (1) issue ideological divisiveness α_j, and (2) issue unpopularity, β_j, of issue j, given the matrix of states' expressed positions about the treaty terms, $\mathbf{Y}$, comprising $n \times q$ positions, y_{ij}. It also estimates state ideal point, x_i, for each state i. In this model, for issue j in $k \in [1, s]$ dimensions, state i derives utility U_{ijy} from the acceptance, y, where the proposed treaty's policy point on that issue lies at t_{jky}, and it derives utility U_{ijn} from rejecting, n, the proposed policy on issue j and remaining at the status quo policy point at t_{jkn} (cf. Armstrong et al. 2014).

With this IRT model, I can estimate states' ideal points, as well as the position of the treaty (t) and the status quo without the treaty (s). To calculate state ideal points x, I treat the positions of each state on each issue captured in the negotiating record as a vote, with a supportive position equivalent to a *yea* and a critical one equivalent to a *nay*. These "votes" can then be expressed as an $n \times q$ matrix.The matrixes below show the form of the data. The left panel shows the generic form of the data; the right panel shows a set of hypothetical states and coded positions.

Table 4.1: $n \times q$ matrix of state positions, y_{ij}

	j_1	j_2	j_3	...	j_q
i_1	y_{11}	y_{12}	y_{13}	...	y_{1q}
i_2	y_{21}	y_{22}	y_{23}	...	y_{2q}
i_3	y_{31}	y_{32}	y_{33}	...	y_{3q}
$\vdots$	$\vdots$	$\vdots$	$\vdots$	$\ddots$	
i_n	y_{n1}	y_{n2}	y_{n3}	...	y_{nq}

	j_1	j_2	j_3	...	j_q
Iran	3	3	2	...	3
China	1	3	3	...	2
Zambia	3	3	2	...	3
$\vdots$	$\vdots$	$\vdots$	$\vdots$	$\ddots$	
Argentina	3	3	3	...	1

Because the conventional IRT model on which I draw is designed for binary rather than ordinal data, the 5-point Likert scale is reduced to a 3-point scale: 1 (supportive), 2 (critical), or 3 (ambivalent), with ambivalence treated as no position.[4] With this matrix of state positions, I can estimate each state's ideal point in n-dimensions. For the purpose of ensuring relatively precise estimates, I excluded those negotiating states that took fewer positions than one standard deviation below the mean number of positions.[5] The IRT model excludes issues for which there was

[4] In addition, there are fairly few "partial" positions, ie., 2 or 5, so the choice of binary instead of ordinal IRT likely makes little difference. Nonetheless, in future work, I may use an ordinal model as a robustness check.

[5] For the CERD that number was 9; for the Rome Statute, it was 5; for the Refugee Convention, it was 3. Therefore, I did not estimate ideal points for states that took fewer than 9, 5, and 3 positions, respectively.

unanimous consent, which are uninformative.

In a methodological innovation, I also use the IRT model to obtain an empirical estimate of the treaty point and the status quo. Applying the ideal-point estimation methods to a treaty's negotiating records requires incorporating this unique opt-in features of treaties by estimating policy points for the treaty and the status quo. To capture t, I conceive a hypothetical actor, the 'treaty,' which supports every proposal that the body as a whole supports, and which appears in the concluded treaty – and add this hypothetical actor to my data. Of course, the logic of negotiations implies that the treaty will nearly always occupy some middle position among the states. The estimation of t represents an innovation because the notion of an "ideal point" for the final institutional product (in this case, the treaty) is theoretically meaningless for most other legal institutions. In other systems, roll calls are disconnected: legislators cast votes, and judges decide court cases in isolation from each other. In legislative roll calls, for instance, all members of the legislature can be mapped in n dimensions, and in a polarized legislature, party members will cluster together around an unobservable point that represents their median policy preference. There may exist sets of related issues on which the body decides, like taxes, defense spending, and social welfare programs, but the legislative session or court sitting as a whole usually has no substantively coherent theme or product whose proximity to the actors has political significance. In contrast, treaty negotiations entail a final product that links all of the different votes together into one, tangible institutional package: the treaty.

In the same fashion, the position of the *status quo* can also be derived from the data. It roughly approximates the status of international law without a new treaty. I therefore construct a hypothetical actor who always responds *yea* or *nay* to proposals based on which outcome lies closest to the status quo, and I add it to my data.

For instance, the status quo actor would prefer the smallest possible (or no) legal commitments, the fewest terms, the weakest possible enforcement mechanisms, the least burdensome reporting obligations and oversight body, and in general, to maintain the greatest possible sovereignty.

The values for v_i (the value added to a treaty by state i's ratification), and e (the fraction of the treaty's benefits that are public goods), are more difficult to model empirically. v_i, or more specifically, the sum of all states' added values, $\sum_{i_{rat.}} v_i$, can be induced from the ratification behavior of sates; if states that are approximately equidistant from the status quo tend to ratify, we can assume that $\sum_{i_{rat.}} v_i$ is large. As discussed above, e denotes the percentage of the utility that constitutes positive externalities (i.e., public goods) the treaty provides.

Pilot data coding has revealed one of ideal-point estimation's potential vulnerabilities: that the estimated ideal points can be highly dependent on a researcher's choices in identifying contentious issues. By analogy, methods for estimating ideal points for legislators usually count all bills considered. Some of those bills (e.g., tax, spending, civil rights, and environmental protection), are related to one or more principal ideological dimensions, while others (e.g., naming a bridge) are not. The IRT model essentially attributes to error those bills that do not divide legislators along typical lines. But if a legislative session were dominated by such minor or procedural issues, the recovered dimensions would reflect those issues, not the substantive, politically salient ones, even though they are not central to a legislator's world view and do not factor into the electorate's voting decisions. Conversely, if a single vote were held on a single omnibus bill that contained dozens of important issues, the model would under-weigh those issues.

Likewise, with treaty travaux, issues that are complex but relatively unimportant to states can sometimes dominate negotiations. Such issues include

debates over minor legal terminology and procedures for running the would-be institution. Because these issues are complex, they can be divided into numerous questions which may be discussed multiple times over the course of the negotiations. (This is less likely to occur in other lawmaking contexts such as legislatures, where the same issues are less often revisited over a legislative session.) If each of these were counted independently, they might dominate the recovered dimensions. It is therefore important to delineate the contentious issues in a way that roughly reflects their relevance to the negotiations. To do so, a researcher might consider grouping closely related issues together. That is, a coder might first identify all instances in which the negotiators discuss some discrete issues, even if those discussions were separated in time. The coder would then treat those discussions as one discussion by aggregating all the state positions. Doing so would have the additional advantage of grouping more actors votes together, likely improving the model's ability to determine relative ideological positions.

Chapter 5

Three Treaties

This chapter applies the theoretical and empirical models in Chapters 3 and 4 to real-world drafting efforts: (1) the International Covenant on the Elimination on All Forms of Racial Discrimination (CERD); (2) the Rome Statute of the International Criminal Court; and (3) the Convention on the Status of Refugees. I choose these three treaties for several reasons.[1] They represent high-profile drafting efforts with detailed historical records. They are also relatively straightforward to analyze: CERD and the Rome Statute have relatively small externalities, so it is likely that the positions we observe in the records represent their positions assuming their intent to ratify.[2]

1 APPLYING THEORY TO OBSERVATION

One of the insights from the theory developed in Chapter 3 is that treaties with large externalities induce states to pursue negotiating positions consistent with their optimal treaty that they *do not* intend to ratify. Therefore, a prior question to guide

[1] I hope that the book project that evolves from this dissertation will contain up to a dozen treaties, including some with large externalities. To that end, I have obtained over two-dozen negotiating records with documentation sufficient for coding. The other issue areas include: trade and investment, international humanitarian law/the laws of war, migration and refugee, human rights, diplomatic, security, and others, such as the Vienna Convention on the Law of Treaties and the UN Convention on the Law of the Sea.

[2] This means that we likely observe x and not x'.

this empirical analysis is whether the treaty's primary effects can be limited to state parties, or whether the treaty produces significant externalities, either positive or negative.

In Chapter 3, I distinguished between two kinds of states' ideal points, one with the intent to ratify the treaty (x) and one with the intent not to ratify (x'). The empirical analysis cannot capture both for any given state; of course, states express either x or x' at any given time. Therefore, only one of them can be observed, and which of the two they express is private information to that state; the other ideal point remains latent, hidden to other states. Yet for any given treaty, we can hypothesize whether states' positions reflect x or x' based on the nature of the treaty and subsequent ratification patterns. Specifically, when a treaty produces large externalities, we expect that at least some states express x'. In these cases, the stated positions should also do a poor job at explaining subsequent ratification. For treaties with few or no externalities, we must assume that we observe x, as a state is largely or entirely indifferent among all possible X', that is, all versions of the treaty that it does not join. Put differently, x and x' will tend to converge as e approaches 0. Because $e\left[\sum_{i_{rat}} v_i - (t - x'_i)^2\right] = 0$ when $e = 0$, the salience of ideological distance between the treaty and x' $(t - x)$ likewise becomes nil as the treaty's externalities are reduced.

For the sake of simplicity, the empirical analysis assumes that e is insignificant for the three treaties that follow. This assumption is not arbitrary; it is grounded in the nature of the three selected treaties. I believe that both CERD and the Rome Statute are primarily club or private-goods treaties with relatively small externalities. CERD's externalities are relatively small because its main purpose is to prompt state-parties to comply with certain legal standards on racial discrimination, but these standards do not apply to non-state-parties. This observation does not

imply that it has no externalities at all. A set of agreed-on norms against which states can judge other states' behavior is a form of externality: a positive one for states who agree and practice those norms, and a negative one for states with weak records or poor prognoses for racial equality. But these externalities are more difficult to gauge than those for agreements like environmental or trade treaties, which solve collaboration or cooperation problems. More importantly, they are small compared with the treaty's effects on the parties themselves.

Gauging the ICC's externalities is more complex. The creation of a court with the power to deter crime has clear benefits for many states, but most ICC crimes are intra-state. Although the Statute recognizes that crimes against humanity, war crimes, and genocide can take place across national borders as in interstate war, the ICC was inspired by and modeled after the internal conflict and persecution in Nazi Germany, Yugoslavia, and Rwanda. It appears that the Rome Statute drafting states envisioned that the Court would target internal crimes, which, until then, were outside of any court's jurisdiction. (In contrast, violations of the laws of war and other interstate crimes might fall under the jurisdiction of national courts or the International Court of Justice.) And indeed, the offenses that the Court has investigated since its inception have occurred almost entirely in the defendant-national's own territory.[3] So it seems that the Court's deterrence and criminal-justice procedural benefits would fall almost entirely on member states, meaning little external effect.

Granted, one key feature of the Rome Statute is that it extends the ICC's jurisdiction to nationals of non-parties, provided the offense occurred in the territory of a party. This provision obviously impacts non-parties. In fact, it was the United

[3] *See* Coalition for the International Criminal Court, "ICC Situations and Cases," *at* http://www.coalitionfortheicc.org/explore/icc-situations-and-cases.

States's primary objection to the treaty and reportedly its main reason for not ratifying. Yet in practice, this rule has little or no effect on the vast majority of states: the risk of prosecution for extra-territorial conduct falls most heavily on states who routinely have large numbers of troops abroad. The ICC's costs and benefits are therefore designed to fall primarily on state-parties, and externalities were probably not a significant consideration for most negotiating states.

The nature of the Refugee Convention's goods-production is also not straightforward. The treaty certainly produces externalities, as binding oneself to accept refugees under certain conditions partly relieves other states of that burden. Like with many human rights treaties, however, it is unclear if that logic actually motivates states to accept that burden for themselves by ratifying the treaty.

For each of these treaties, I therefore believe it is theoretically defensible to focus on x and omit consideration of x', as with the hypothetical, four-state treaty negotiation depicted in Figure 3.4 in Chapter 3. While one of the model's insights involves the relationship between externalities and negotiating positions, it is useful to test the model's core predictions (that is, that negotiating positions explain ratification, reservations, and implementation) before introducing treaties with substantial externalities, which complicate these predictions. I hope that, as I expand this project into a book manuscript and functional tool (as described in the final chapter), I will be able to identify and code the travaux for treaties with substantial externalities, such as trade, defense, and environmental treaties.

Since my empirical analysis relies on the treaties' travaux, it is useful to briefly discuss the nature of these records and reflect on what they capture. I do so first for the Race Convention.

2 THE RACE CONVENTION

A. Background and Empirical Expectations

The development of legally binding racial-discrimination covenant can be seen against the backdrop of the mid-1960s Cold War struggle for influence with the newly independent colonies. For the new African states, condemning racial inequality was a particularly important and unifying topic, and they used their influence in the General Assembly to push for a convention. Racial equality was also a sensitive topic for the United States; parts of it operated under an effective apartheid regime, which hurt its standing among the African states in particular. It was clear to U.S. officials in the early 1960s that if the United States was to compete successfully with the Soviet Union for the moral high ground on racial policy, the United States would need to support the African initiative to enact a convention condemning racial discrimination (Lovelace 2014). In essence, the convention represented a virtue-signaling competition between the United States and Soviet Union.

The competition for influence between the Soviet Union and the United States was apparent in the initial battle over whether the convention should focus on just race, or also on religion. When a group of African states tabled an official proposal to commence the drafting of a racial discrimination convention during the 1962 regular session of the General Assembly, Liberia (at the request of Israel) pushed to include religious discrimination in the mandate. This presented an important opportunity for the United States: while it was particularly weak on racial equality, it had a strong record on religious freedom. In contrast, religion was the Soviet Union's Achilles heel: at the time, it was under pressure for repressing religion and for its anti-Semitism in particular. A convention that would deal with both race and

religion would level the playing field for the United States. But the U.S. proposal to include religion produced Soviet pushback, while simultaneously playing into African states' desire to focus on condemning racial discrimination and Arab states' animosity for Israel, which was pushing to formally condemn anti-Semitism. The Soviet lobbying efforts paid off: the General Assembly ultimately resolved that the UN Commission on Human Rights should prepare two draft conventions, one on race and one on religion. The latter Convention was never adopted.

The Convention was drafted and developed within several UN bodies. First, the UN Commission on Human Rights[4] began drafting the Convention in 1964. The draft was debated and revised within the UN General Assembly, where it was first discussed in its Third Committee in fall 1965,[5] followed by a contentious revision process in the plenary session on the General Assembly in December 1965. The available travaux préparatoires captures both these stages. Notably, while the initial discussions in the Human Rights Commission were limited to a smaller group of states, major players like the United States, the Soviet Union, and Great Britain were all represented on this body, and, during the General Assembly stage, new states entered the discussion. Thus, it is likely that all states that wanted to press their views on the issue had an opportunity to do so, and that these views are captured by the analysis that follows. It is also noteworthy that of the 53 states represented on the Commission that were active participants, only 24 actively participated in this initial stage.

Before 2013, the CERD travaux was not widely accessible; they, along with other treaty travaux, were available only on physical microfiche files, and accessible

[4] The UN Commission on Human Rights was a permanent UN body that had 53 members, elected on a regional basis, which was replaced by the Human Rights Council in 2006 (Helfer and Slaughter 1997).

[5] The Third Committee is a standing committee dealing with human rights and humanitarian issues.

only from UN libraries in Geneva and New York. As part of a travaux-collection initiative of the University of Virginia Law Library, I played a small supportive role in the effort to bring these records together into one collection, digitize them, and make them publicly available on the web.[6] These records, which form the basis for my ideal-point estimation, start with the 1964 deliberation in the UN Commission on Human Rights, at which point religious discrimination had already been relegated to a separate covenant.[7] The historical records in this analysis also span the subsequent discussions in the General Assembly's Third Committee and a plenary session on the General Assembly in December 1965, where the Race Convention was unanimously adopted. In total, the travaux forming the basis for the data comprises 94 documents of approximately 5 pages each, totaling just under 500 pages.

B. States' CERD Ideal Points

To convert the travaux records into quantitative data for ideal-point estimation, two trained coders each reviewed all of the available CERD travaux. Using the methods discussed in Chapter 4 and in the codebook I developed (see Appendix), they identified every contentious issue and every potential state and NGO position on that issue. I myself also read the travaux multiple times and reconciled all differences between the coders. The reconciled dataset is a 220×494 matrix (comprising 220 states and 494 contentious issues).

To determine interrater agreement, Cohen's Kappa or Krippendorff's Alpha is appropriate here because the compared data are categorical. This coding involves

[6] See 'UN Human Rights Treaties Travaux Preparatoires,' at https://hr-travaux.law.virginia.edu/.

[7] The issue would occasionally reappear in proposals to include anti-Semitism as a form of racial discrimination.

identifying issues, and then states by country ID, rather than assigning a level or quantity value to a predetermined unit. It would therefore be inappropriate to use statistics designed for ordinal or interval data. (While many coding approaches suffer from the "prevalence problem," meaning that the distribution of ratings in one or more categories occur at significantly higher rates, that problem does not occur here, so neither the Brennan and Prediger coefficient24 or Gwet's Adjusted Coefficient are necessary here (Hallgren 2012; Hickel Jr 2019).) Cohen's Kappa = 0.514 ($p<0.001$), meaning moderate strength of agreement. Krippendorff's Alpha = 0.827 (where $\alpha \geq 0.800$ is considered reliable and $\alpha \geq 0.667$ is considered acceptable). So although this coding involves many difficult, subjective decisions, the coders agreed at reasonable levels.

A matrix of that size accommodates over 100,000 votes, but most of its cells are in fact empty or "missing." As discussed in Chapter 4, most states in treaty negotiations do not record a position on any given issue, either because they are not present for the discussion, or because they simply opt not to openly express their position. Because we cannot know the reason for a state's failure to take a position in any particular instance, I treat all non-positions as abstentions, neither in favor of the proposition nor against it. As a result, the dataset comprises 1,956 positions: 1,491 in favor of a proposition and 465 against one. Because states that speak infrequently produce highly imprecise estimates, I drop states with fewer than 10 expressed positions (1 standard deviation below the mean). I also drop all issues in which there was unanimous agreement, which are uninformative in any IRT model. This process leaves 44 states, 123 contentious issues, and 1,013 positions: 598 positions in favor of a proposition and 415 positions against one. See Table 5.1. As mentioned, this "voting pattern" differs markedly from that in a typical legislature or court, in that the vast majority of 'votes' are abstentions. As shown below, despite the large

Table 5.1: State Positions in CERD Negotiations

Position	*Count*	*Percent*
0 (nay)	415	7.7%
1 (yea)	598	11.0%
99 (missing)	4,399	81.3%
Total	5,412	100.0%

volume of missing data, there are a sufficient number of contentious issues such that most states' ideal points can be estimated with reasonable precision.

With this matrix of position data, I estimate x for each state i, as well as s and t using the methods described in Chapter 4.[8] Because standard errors are difficult to depict in multiple dimensions with many actors, I first estimate and display the ideal points in one dimension. Figure 5.1 below provides the one-dimensional ideal points with 95% confidence intervals. From what we know of the negotiations, however, it is likely that the data can be better represented in two or more dimensions. To determine the dimensionality of the data, I plot a scree plot and observe the Eigenvalues, that is, the relative amount of variation in the data for each dimension.[9] An "elbow test" applied to the scree plot suggests that that CERD is best characterized as two-dimensional. See Figure A.1 in the Appendix. I therefore estimate the ideal points in two dimensions.[10] Table A.1 in the Appendix provides the estimated two-dimensional ideal points. The Figure 5.2 scatterplot below depicts the ideal points spatially, along with the treaty t and status quo s. Here, the status quo roughly approximates the status of international

[8] The IDEAL model parameters I used are: *maxiter* (the "number of MCMC iterations") = 200,000, *thin* (the "thinning interval used for recording MCMC iterations") = 5, and *burnin* (the "number of MCMC iterations to run before recording") = 100,000.

[9] In a scree plot, the dimensions' Eigenvalues are plotted in descending order, and a researcher typically determines the last value before a significant drop-off (otherwise known as the "elbow test").

[10] The IDEAL model parameters I used are: *maxiter* (the "number of MCMC iterations") = 200,000, *thin* (the "thinning interval used for recording MCMC iterations") = 5, and *burnin* (the "number of MCMC iterations to run before recording") = 100,000.

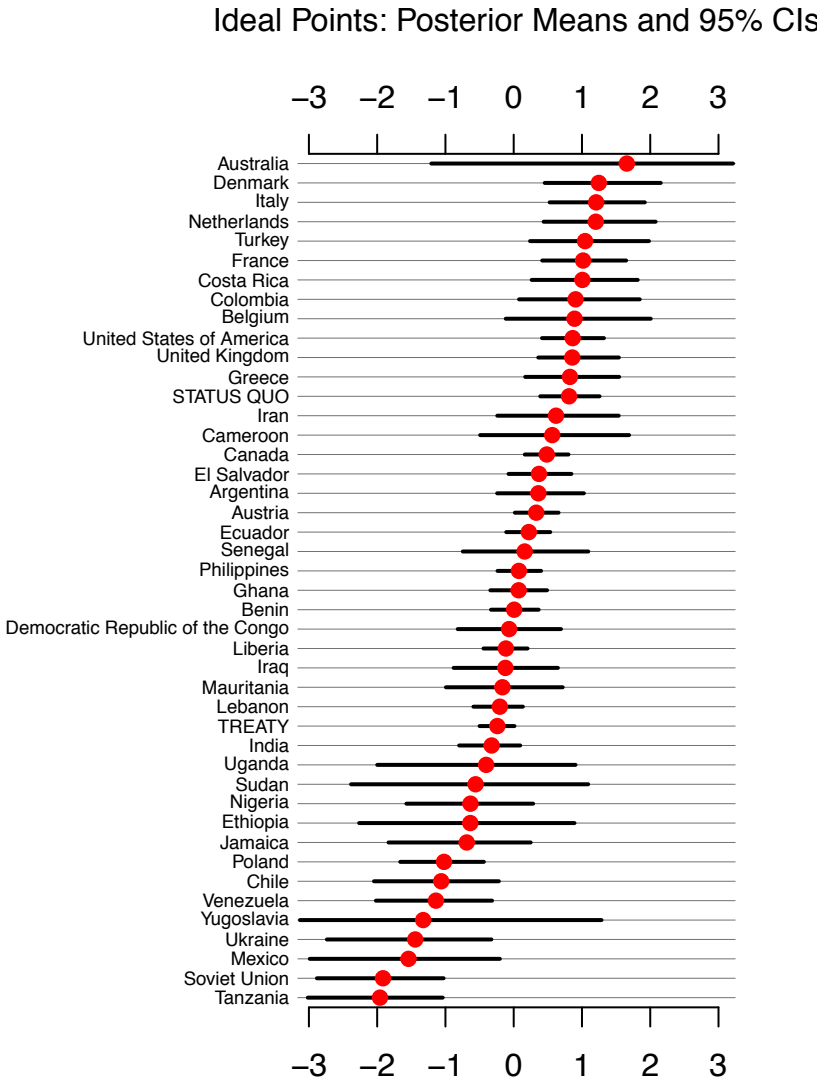


Figure 5.1: CERD Negotiating Positions in a Single Dimension, with 95% Confidence Intervals

racial-discrimination laws and norms in 1965 in the absence of a new treaty.

How states divide along the two dimensions provides insight into what these dimensions represent. Because the treaty preferences captured by the dimensions are latent, their identity must be inferred from the kinds of issues that divide the states. Doing so involves a non-trivial interpretative exercise. As with scholars of the U.S. Congress, who infer that a legislator sitting on the right side of a spatial model

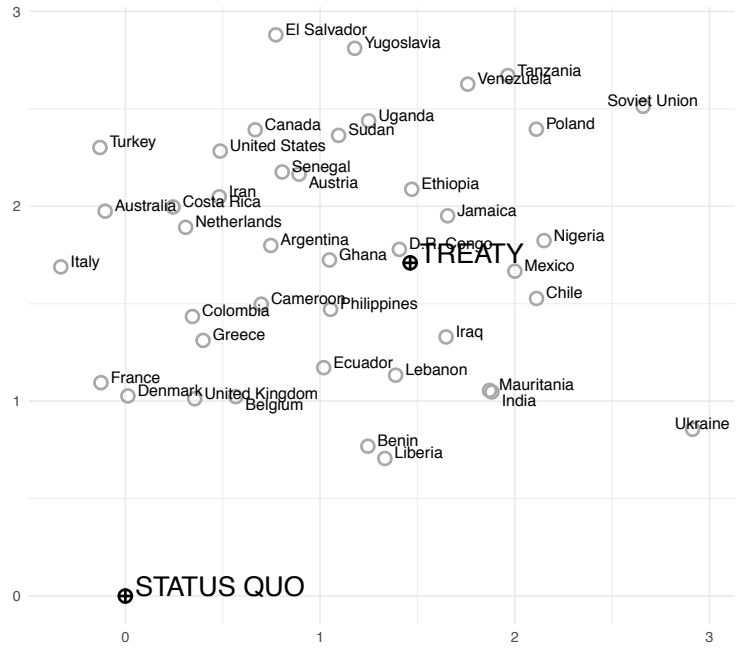


Figure 5.2: CERD Negotiating Positions in Two Dimensions

(and who has voted for lower taxes and abortion restrictions) is *conservative*, I must glean the nature of the issues in a treaty negotiation. Since the divisive issues in any treaty-making process are usually less familiar than those for the U.S. Congress or other domestic legislatures, this interpretative task is not so straightforward.

The empirical model produces data to aid in this exercise. For each recorded vote, the model produces a *discrimination parameter*, so called because it indicates how well the vote separates the states on any given dimension. See Tables A.6 and A.7 in the Appendix. By way of comparison, studies of U.S. Supreme Court decisions find that the body is mostly divided along one dimension: liberal to conservative (Martin and Quinn 2002). Some types of cases – like civil rights, criminal sentencing, and immigration cases – usually reveal the justices' positions on that spectrum better than other types – like jurisdictional and procedural cases. That former set of cases, which discriminates better between liberal

and conservative justices, would have higher discrimination parameters on the liberal-conservative dimension. We might look closely at those cases in particular for evidence of where any given justice lies on the left-right dimension. Likewise, I can observe the set of issues with the largest discrimination parameters in each dimension of interest.

Another tool for inferring the nature of the dimensions is to identify the most extreme states in each dimension based on their ideal points and to inspect the positions they took that caused their ideological isolation. For example, on what types of issues do Italy, Turkey, and/or Australia, on one hand, take opposite positions from the Soviet Union, Ukraine, and Poland, on the other hand? Those issues likely represent the divisions underlying the first dimension.

Applying these diagnostic tools, it appears that the first dimension represents an ideology divide over the *scope of regulated conduct*. A cursory inspection of this plot reveals that the first dimension seems to track Cold War divides. On the right end lie states like Ukraine, the Soviet Union, Nigeria, Chile, and Poland; on the left end lie states including Italy, Turkey, France, Australia, Denmark, Costa Rica, the Netherlands, the United States, and Great Britain. In general, Western states preferred more libertarian approaches and generally eschewed coercive measures to reduce racism. In contrast, the Soviet Union and its allies were more comfortable mandating such measures. For example, one of the issues with the highest discrimination parameters involved whether state parties would be required to prohibit not only *acts* leading to discrimination, but also to *ban entire organizations* that had committed these infractions. To illustrate, in spring 1964, article IV of the Convention's working draft stated in part, "States Parties ... undertake to adopt immediate and positive measures designed to eradicate all incitement to such discrimination, and to this end, ... (b) Shall declare *illegal and*

prohibit organizations, and also organized propaganda activities, which promote and incite racial discrimination ...."[11] This would have been politically and/or legally impossible for many Western liberal democracies.

Schisms and alliances forming the second dimension are more difficult to characterize: at the top lie states including Uganda, the Soviet Union, Venezuela, Tanzania, Yugoslavia, El Salvador, and Poland; at the bottom lie states including Liberia, Benin, Great Britain, India, Mauritania, and Ukraine. Notably, this dimension divides the independent African states who were instrumental in placing an international instrument on racial discrimination on the UN's agenda (Friesel 2014). The United States and most (though not all) Western states fall somewhere in the middle.

Looking to the divisive issues on the second dimension, it includes a set of disagreements over: whether to permit what later became known as affirmative action; what groups would be entitled to such affirmative action; and how to refer to those groups in the treaty. In one of the most divisive issues, all states generally agreed that parties could take remedial measures favoring certain groups, at least temporarily. But foreshadowing the debate that would take place in the United States and elsewhere in the following decades,[12] the states disagreed over their permissible means and what kind of groups could benefit. For example, draft Article II, ¶2, stated, "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and

[11] E/CN.4/SR.790 (emphasis added).

[12] *See, e.g.*, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) (upholding the use of racial preferences generally in college admissions, while holding that race-based numerical quotas violate the Equal Protection clause).

equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." Mr. Hakim of Lebanon argued that the purpose of affirmative action was not to ensure that the groups would receive "full" enjoyment of the rights, but rather their "equal" enjoyment. Otherwise, he feared, "a situation might arise in the newly independent countries, with their very limited resources, where under-developed racial groups would be assured a greater enjoyment of human rights and fundamental freedoms than the rest of the community."[13]

Thus, the data appear to tell a similar story about the main contentious issues as that told by qualitative and historical accounts. That fact partly validate the model's approach. Identifying dimensions is not, however, the method's primary contribution. One of my theoretical model's main functions is to infer and predict states' subsequent international legal behavior. To that end, I next use the ideal points to predict which states value the treaty enough to formally act on it.

C. Predicting Ratification

To explain how observed ideal points can predict ratification, I briefly recall the logic of the theoretical model from Chapter 3. When a state considers a treaty that does not primarily produce externalities, it decides what positions to take and whether to ratify by comparing its ideal point, x, with the treaty and with the status quo. The one that generates the greater expected utility is the one closest to its ideal point. During the negotiation stage, states will push for amendments that move the treaty closer to its ideal point, x. This is true regardless of whether it finds itself closer to the treaty, t, or the status quo, s: at this point, before preferences

[13] E/CN.4/SR.786, at 6.

are well-formed and before most of the treaty content is developed, there may be ample opportunity to shape the treaty's terms. This is especially true if the marginal difference between the two proximities is small: that is, the state is "on the fence" about whether to ratify. States in those cases may enjoy a relatively large amount of leverage over the treaty terms by credibly threatening not to ratify if the state does not get the concessions it requests (Morrow and Cope 2018). Of course, all things equal, it is much more likely to receive those concessions if its participation would add more value than other states' participation. (In the model's terms: its v_i is relatively large.) Once the drafting stage is over, a state will base its ratification decision on where it finds itself relative to the treaty, t and the status quo, s. If it is closer to the treaty, it will ratify; if it is closer to the status quo, it will not, unless it can modify its position by entering reservations, declarations, or understandings (RUDs).

This same logic can be used to predict ratification empirically. The model can predict ratification simply by comparing the relative proximities of the state's ideal point to the treaty and the state's ideal point to the status quo. If the former is closer, it predicts that the state will ratify (or has ratified); if the latter is closer, it predicts that the state will not ratify (or did not ratify). Thus, I can calculate each state's relative distance from the treaty and the status quo to make predictions about each's relative expected utility from ratifying. To depict visually where states are relative to the treaty, a "cut line" is added to each plot. As with Figure 3.4 in Chapter 3, this cut line represents the set of points that are equidistant between the status quo and the treaty point, that is, where $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] - (1-e)(s-x_i)^2 = \sum_{i_{rat.}} v_i - (t-x_i)^2$, assuming both v and $e = 0$. Any state on that line should therefore be indifferent between ratifying and not. States lying closer to the treaty should prefer to ratify, and states lying closer to the status quo should prefer not to ratify. Note that the

line is not "fitted" to the states' ideal points; it is determined *ex ante* to any state position-taking and depends entirely on the treaty and status quo.

The CERD treaty point lies at (1.46, 1.71), and the status quo is normalized to the origin. The cut line, again representing where $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] - (1-e)(s - x_i)^2 i = \sum_{i_{rat.}} v_i - (t - x_i)^2$ (assuming both v and $e = 0$), runs perpendicular to the line connecting those two points and is equidistant from them. The fact that it runs diagonally, as opposed to horizontally or vertically, means that the treaty and status quo are meaningfully different in both dimensions. This in turn suggests that both dimensions were salient to states in determining whether to ratify.

This analysis predicts near-universal ratification of the CERD. Figure 5.3 depicts the same two-dimensional plot as above, but with the cut line added, and with the states that ratified (here, all of them) displayed in blue/purple. It reveals that nearly every state lies above and to the right of the cut line – and thus closer to the treaty than to the status quo. The point estimates place only four states – France, Denmark, United Kingdom, and Italy – below and to the left of the line. Those ideal points suggest that those four would not ratify (although they are close enough that their confidence intervals include the line and points on the other side). In reality, every state that participated in the negotiating later ratified the treaty.[14] The model therefore made four "errors" in this case, all "false-negatives" – predicting no ratification for ratifying states – although, again, each within the model's margin of error. As I will show below, three of those four entered reservations and declarations that would bring their ideal point closer to the treaty.

[14] The treaty was popular not just among those who negotiated it: as of 2019, only 14 UN-member states, including North Korea, Angola, Myanmar, Malaysia, and Western Sahara, have not ratified.

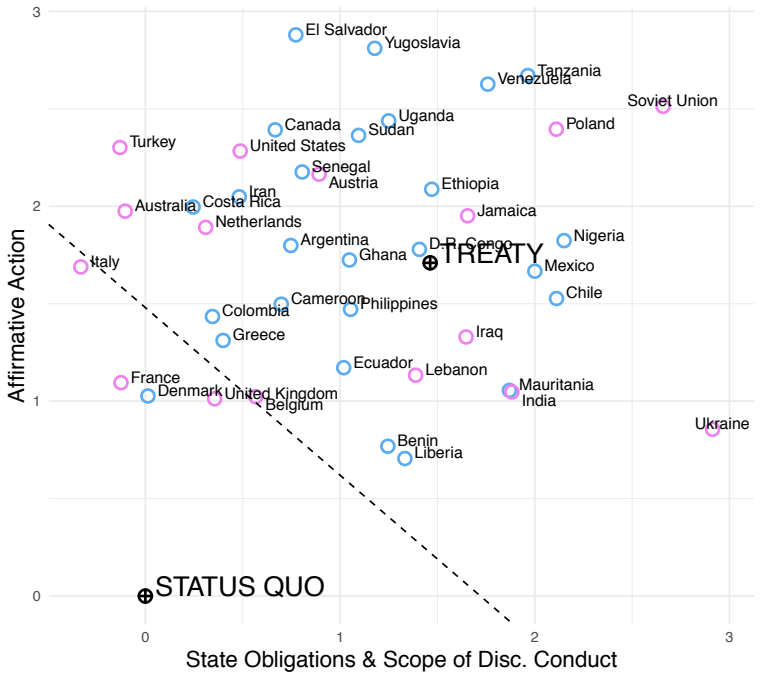


Figure 5.3: CERD Negotiating Positions in Two Dimensions with Cut Line: Ratifiers With RUDs in Purple, Ratifiers Without RUDs in Blue

D. Predicting RUDs

Another feature of this model is that it can be used to explain reservations and declarations. After all, where states are on the fence about a treaty (that is, they are near the cut line), they might effectively be able to move the treaty, t, closer to their ideal point by entering a reservation (or declaration or understanding) that modifies the treaty so that it effectively becomes more palatable to them. Indeed, one of the main arguments for allowing RUDs is that it will increase the number of ratifiers.[15]

Unlike some treaties such as the Rome Statute, CERD does allow reservations. Note that Figure 5.3 above depicts reserving states in purple. A quick inspection of

[15] Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice (ICJ), 28 May 1951. ("The object and purpose of the Convention imply that it was the intention General Assembly and of the States which adopted it, that many States as possible should participate. This purpose would be defeated if an objection to a minor reservation should produce complete exclusion from the Convention").

the plot reveals that reserving states tend to be those farther away from the treaty, as expected. Interestingly, three of the four countries that the model predicted would not ratify, but nonetheless did, entered RUDs. Take the example of Great Britain and Belgium, whose ideal points are roughly equidistant between the status quo and the treaty. As mentioned, during the drafting of CERD, delegates stood divided over whether the treaty should "declare illegal and prohibit organizations, and also organized propaganda activities, which promote and incite racial discrimination." This language was proposed by the Soviet Union. A coalition of Western states including Great Britain and Belgium feared that it would undermine free speech and freedom of association. While the language ultimately made it into Article 4 of the final treaty, Great Britain and Belgium issued an interpretative declaration stating that they interpret Article 4 as "requiring a party to the Convention to adopt further legislative measures . . . only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association)."[16] With this interpretation, these states effectively moved the treaty closer to their ideal point, and they ratified it.

This relationship can be explored with a logit model. Regressing the RUDs on the states' ideal points' proximity to the treaty allows me to estimate the likelihood of a state's entering either of those, given its ideal point. I use absolute proximity to the treaty instead of relative proximity between the treaty and status quo because preference for the status quo is not necessarily the only driver of states' decisions

[16] *See* International Convention on the Elimination of All Forms of Racial Discrimination, Declarations and Reservations-United Kingdom of Great Britain & Northern Ireland, signed with reservation and interpretative statements Oct. 11, 1966, 660 U.N.T.S 195, 302-03, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en..

to enter declarations or reservations. In Figure 5.4 below, states that have entered RUDs are represented by the black dots at the top; states that have not are at the bottom. From these data points, the logit model infers the likelihood that a state with a given ideal point will enter either a reservation or declaration. As with the Figure 5.3 scatterplot above, the states that ratified without RUDs are in blue and the states that ratified with RUDs are in purple. This scatterplot, analyzed together with the logit graph in Figure 5.4, reveals a relationship between RUDs and distance from the treaty that is both substantively meaningful and statistically significant ($p < 0.05$). Notably, it is not just states that preferred a treaty closer to the status quo that were more likely to enter RUDs; states that preferred *either* more or less state obligations and/or more or less oversight were more likely to enter RUDs. States that favor versions of the treaty even more different from the status quo (that is, even more robust requirements or oversight than the treaty provided) were more likely to enter reservations – or particularly declarations – to clarify that they view a provision as imposing strong requirements, thereby effectively moving the treaty in their more extreme direction, at least for them.

The logit model is only bivariate, regressing RUD decisions on the ideal point estimates alone. If the goal were to maximize predictive accuracy, I would add other elements to the model that are not strongly correlated with ideal point but which bear on states' tendency to enter RUDs. These might include variables such as structure of the domestic ratification apparatus, including veto players, and states' tendency to enter RUDs to similar past (or even future) treaties.

In essence, as applied to CERD, the model does a reasonably good job at: (1) identifying state positions on multiple dimensions and the resulting alliances; (2) revealing the identity of salient contentious issues; and (3) predicting state legal action on the treaty, both ratification, and the entry of reservations or declarations.

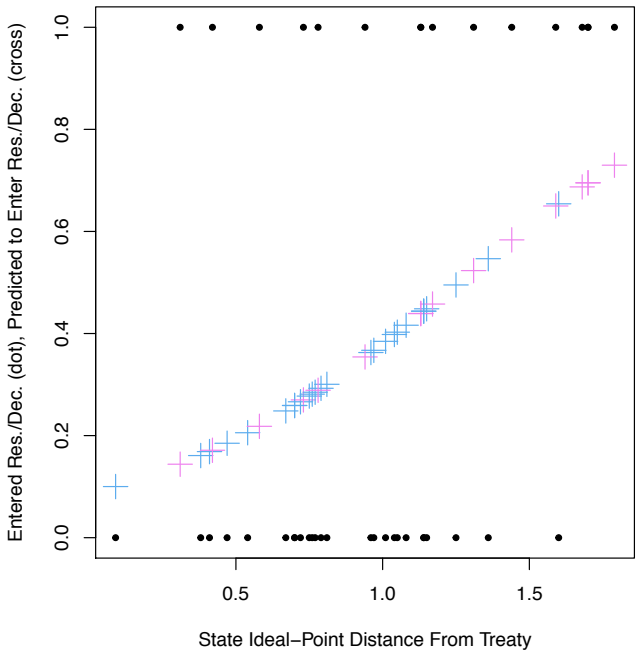


Figure 5.4: Predicted Entry of Reservation or Declaration as a Function of Distance From the Treaty

At least as to the CERD, it appears that states' expressed negotiating positions represent a fairly sincere expression of the utility they expect to receive from the treaty.

To further explore this phenomenon, I next apply the model to a somewhat different and more controversial type of treaty: the Rome Statute of the International Criminal Court.

3 THE ROME STATUTE

A. Background and Empirical Expectations

The ICC's authority flows from the Rome Statute of 1998, which confers permanent jurisdiction over crimes against humanity, genocide, war crimes, and (as of July 2018), the crime of state-to-state aggression. Before the Rome Statute's entry-into-force, there was no permanent international mechanism for prosecuting and trying criminal acts. Serious talk of an international criminal court started after World War I, when states discussed it at the 1918 Paris Peace Conference. When the Genocide Convention was being drafted after World War II, the UN General Assembly asked the International Law Commission (ILC), the United Nations' legal think tank, to consider the prospects of establishing an international court with jurisdiction over genocide, among other possible crimes. The Genocide Convention was concluded and took effect, but Cold War factions prevented states from reaching consensus for an international court to enforce its terms.

Since then, terrorism, human trafficking trade, drug trade, human rights abuses, and other spillover threats to state security reinvigorated discussion of a permanent international criminal court. In 1989, Trinidad and Tobago formally requested the UN to reconsider a permanent international court to deal with transnational drug-trade-related crimes, and the General Assembly asked the ILC to draft a statute. While the drafting was underway, wars in the former Yugoslavia and Rwanda spurred the UN General Assembly to create temporary war crimes tribunals for the purpose prosecuting offenders from those conflicts. Although those bodies had jurisdiction only over specific conflicts (Kim 2003), they partially paved the way for a permanent court by showing that international criminal tribunals could work.

The ILC concluded its draft in 1994 (Kim 2003). The draft envisioned a system in which perpetrators of human rights abuses would preferably answer not to an international tribunal, but to their own domestic courts. But the drafters knew that crimes occurring during civil war or under the auspices of a corrupt regime rarely come before domestic courts in practice, so they also sought to establish an independent international court that would complement this regime by wielding the threat of independent prosecution. The General Assembly created a preparatory committee to reconcile the ILC draft text with proposals from states and NGOs. The preparatory committee met several times at the UN headquarters between 1996 and 1998.

Finally, a five-week diplomatic conference took place in Rome in June and July 1998 (Bassiouni 1999). It included not only state delegates, but hundreds of NGO representatives who participated directly through the Coalition for the International Criminal Court.[17] Some of the most contentious issues involved the scope of court's compulsory authority and the scope of crimes over which the court would have jurisdiction. With two weeks left of the Conference, the delegates had reached an impasse. Short on time, the Conference's chair did something rare for large treaty negotiations: he called a meeting with selected delegates in order to craft a consensus "package," which he hoped the whole Conference would then vote to accept wholesale (Benedetti et al. 2013). This meeting included 28 of the Conference's 150 delegates. It was not held at the regular conference venue, but at the Canadian Embassy. Some states criticized it as an improper "ambush by the chairman" (Benedetti et al. 2013, 123).

[17] One difference between the Rome Statute and CERD is that the former allowed NGOs to participate. Since NGO statements are included in the negotiating record, they are also included in my analysis. Two of those, Amnesty International and the Red Cross, made enough proposals to be included in the analysis.

Although the United States participated in crafting this package deal, the U.S. delegation objected to the package that emerged, mainly because it would subject nationals of *non*-state-parties to the Court's jurisdiction.[18] The U.S. delegation had already lost some credibility with other delegations. It had received conflicting directives from the Defense and State Departments, and the lead delegate struggled to receive clear instructions from President Clinton, who was embroiled in the Monica Lewinsky scandal (and who was being prosecuted by independent counsel Kenneth Starr under a statute that some senior U.S. officials likened to the ICC's draft prosecutor provision) (Benedetti et al. 2013; Scheffer 2013, 125). Some other delegations were skeptical that the United States would ever join the treaty, even if it received the several major concessions it had requested. Two weeks later, the proposed U.S. amendments were defeated at the eleventh hour. Most of the other delegates spontaneously hugged, cheered, and wept in the "biggest emotional demonstration" of the Conference.[19]

On July 17, 1998, the Conference concluded the Rome Statute and opened it to signature from all states. The majority got something close to their preferred treaty in a strong international court, but at a price. President Clinton signed the Statute but did not pursue ratification, and the Bush administration worked to actively undermine the Court. The United States enacted legislation in 2002 levying economic sanctions on certain parties to the Statute and giving the president authority to use "all means necessary and appropriate" to free U.S. service members being detained by the Court (giving rise to the nickname, "the Hague Invasion

[18] The United States was willing to accept this jurisdiction for the crime of genocide, but not for war crimes or crimes against humanity (Benedetti et al. 2013, 127). For a detailed analysis of the U.S. objections, see Scheffer (1999).

[19] A total of 113 states voted in favor of the "no-action" motion on the proposed American amendments, 17 opposed, and 25 abstained (Benedetti et al. 2013).

Act").[20] The U.S. government also concluded a series of bilateral immunity treaties ("Article 98" agreements),[21] which sought to shield American troops from the ICC.[22] In September 2018, the Trump administration went further, threatening the Court's judges and prosecutors with criminal prosecution, and vowing financial retaliation against states aiding Court investigations of American service members.[23]

The Rome Statute entered into force in July 2002, upon receiving 60 ratifications from parties to the Statute. As of 2019, of the 139 states that signed the Rome Statute, 123 have ratified it. States including China and India are non-party, non-signatories to the treaty. In addition to the United States, Israel and Sudan have purported to "unsign" the Statute, signaling that they no longer intend to become a party and have no legal obligations arising from their original signatory status.

B. States' Rome Statute Ideal Points

The analysis here is based on the records of this final conference; there are no detailed records of the earlier two stages. Two coders reviewed the Rome Conference travaux, identifying each contentious issue and every state and NGO position on that issue. I read the travaux and reconciled all differences between the

[20] American Service-Members' Protection Act of 2002 (ASPA), 22 U.S.C. § 7421 et seq. (2002).

[21] The treaties are inspired by the Rome Statute's Article 98, which provides, "The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender." (Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, 148 (entered into force July 1, 2002)). The United States had lobbied for this provision in earlier stages of the negotiations. (Scheffer 1999, 2001).

[22] These developments have received significant scholarly attention (see, e.g., Eubany 2003; Kelley 2007; Orentilicher 2003; Sadat 2003; Tallman 2004; Wedgwood 2001).

[23] Mark Landler, *Trump Administration Threatens International Criminal Court and the P.L.O.*, N.Y. TIMES, Sept. 10, 2018, *available at* https://www.nytimes.com/2018/09/10/us/politics/trump-plo-bolton-international-criminal-court.html ("'The United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court'. . . ." (quoting U.S. National Security Adviser, John Bolton)).

coders. The reconciled dataset comprises 142 state advocates and 229 contentious issues. The dataset comprises 6,699 positions: 4,896 in favor of a proposition and 1,803 against one. As with the CERD, I drop states with fewer than 5 expressed positions. I also drop all issues in which there was unanimous agreement. This process left 142 states (none dropped), 149 contentious issues, and 5,215 positions: 3,419 positions in favor of a proposition and 1,796 positions against one. See Table 5.2.

Table 5.2: State Positions in Rome Statute Negotiations

Position	*Count*	*Percent*
0 (nay)	1,796	8.5%
1 (yea)	3,419	16.2%
99 (missing)	15,943	75.4%
Total	39,388	100%

With this matrix of position data, I estimate x for each state i, as well as s and t, as I did with the CERD. Figure 5.5 below provides the ideal points for the Rome Statute in a single dimension with 95% confidence intervals.

As with CERD, Eigenvalue analysis suggests that the data is better represented in two dimensions. The scree plot (see Figure A.2 in the Appendix) suggests that that ICC is also two-dimensional.[24] Figure 5.6 depicts state ideal points, x, in two dimensions, along with the treaty, t, and the status quo, s. Key states are labeled; see Tables A.2, A.3, and A.4 in the Appendix for a list of all the ideal points. Here, the status quo attempts to model a world without an international criminal court (and assuming no new ad hoc tribunals in the mode of the ICTY or ICTR). There are plausible alternatives for conceiving the status quo. For instance, I might have

[24] The IDEAL model parameters I used are: *maxiter* (the "number of MCMC iterations") = 100,000, *thin* (the "thinning interval used for recording MCMC iterations") = 5, and *burnin* (the "number of MCMC iterations to run before recording") = 50,000.

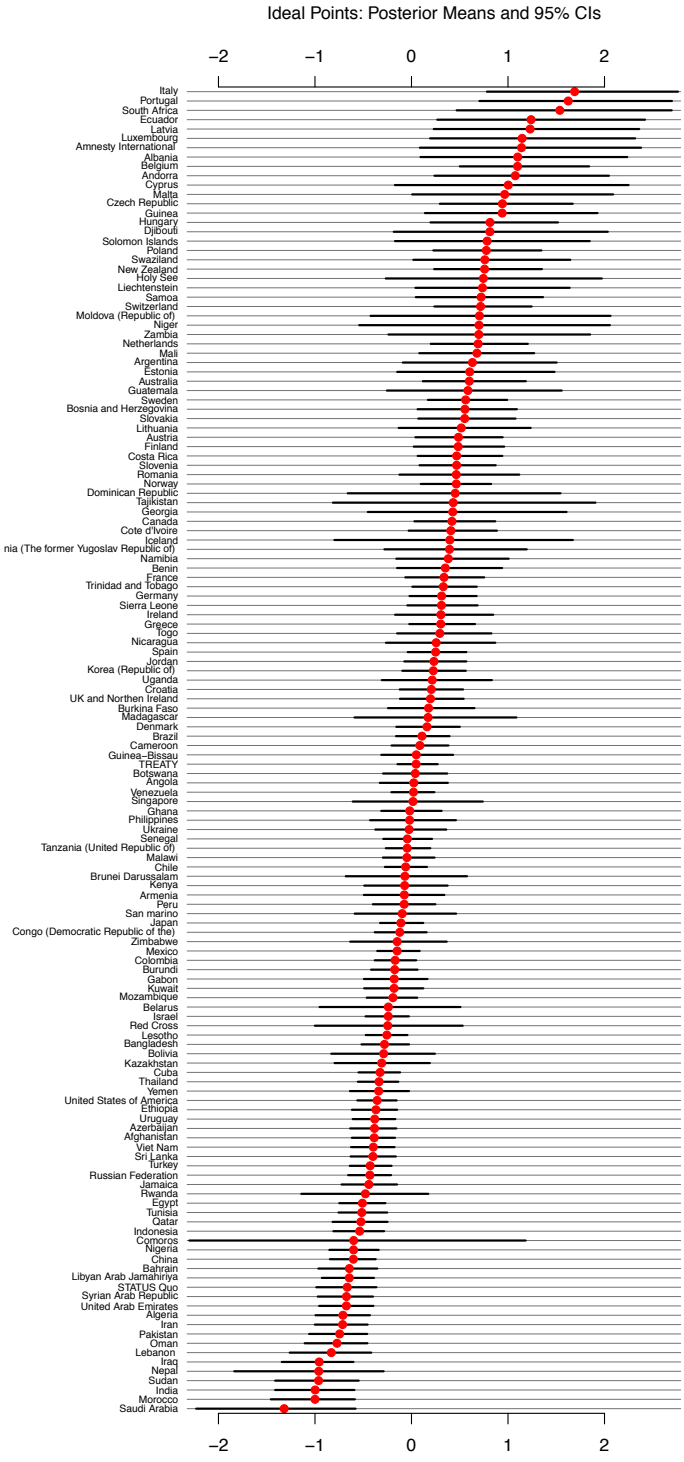


Figure 5.5: Rome Statute Negotiating Positions in a Single Dimension, with 95% Confidence Intervals

assumed that, in the absence of the ICC, the UN Security Council would have created a series of ad hoc tribunals – similar to those for Rwanda and the former Yugoslavia – in response to future conflicts. But there is little reason to believe that the Security Council would have consistently done so. And more to the point, there is no evidence that the negotiating states *expected* that it would.

The plot reveals that the first (horizontal) dimension appears to capture an anti-Israel alliance. It separates the Arab states and others (on the left side of the plot) from Israel, the United States, France, Great Britain, and others (on the right side). The second (vertical) dimension separates states like the United States, China, Russia, India, and Pakistan from a group of mostly Western European states and South Africa.

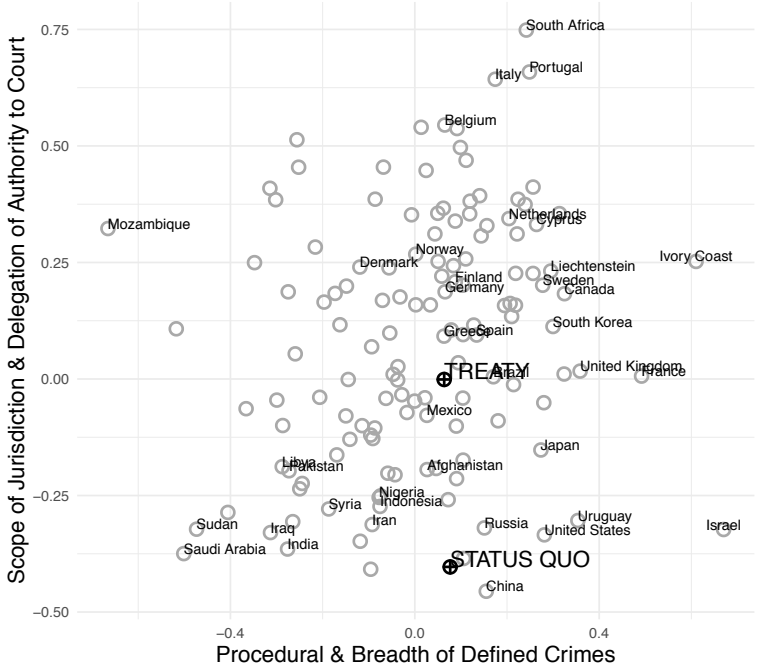


Figure 5.6: Rome Statute Negotiating Positions in Two Dimensions

I again use the discrimination parameters and the positions of the extreme states to better understand the nature of the divides (see Tables A.8, A.9, and A.10 in

the Appendix.) This analysis reveals that the first dimension captures a range of issues related to procedure, as well as a number of issues relating to the state of Israel in particular. The highest discrimination-parameter issues on this dimension include logistical procedures for establishing the court seat, the independence of judges, representation in the assembly, double jeopardy,[25] and voting rules. But it also reflects questions of more substance. Examining the extreme state ideal points reveals important disagreements over the scope of certain crimes that seem to implicate Israel, most notably, the inclusion of a provision defining war crimes to include "The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory."[26] Only the United States and Israel opposed this provision as written. In particular, both opposed the term, "directly or indirectly." This term implicated Israel, of course, because the international community generally considered its occupation of the Palestinian Territories illegal, and Israel had permitted (and would continue to permit) Israeli settlers to relocate into those territories. To the extent the state of Israel only "permitted" it but did not facilitate or execute the transfers itself, its conduct may not be covered, unless "indirect" transfers were expressly prohibited. Every state that took a position on the issue except Israel and the United States supported the broader language: several Arab, Western European, sub-Saharan African, and Asian states. This alignment helps to explain Israel's position on the right side of the Figure 5.6 plot, and the Arab, Latin American, and African states' position on the left side. Another divisive issue on the first dimension separated the Middle Eastern states from the rest of the world: the

[25] The Rome Statute uses the more universal Latin term, *ne bis in idem*, "not twice in the same [thing]."

[26] Rome Statute art.8 (2)(b)(viii).

question of whether incidents that occurred exclusively within the country's borders could constitute crimes against humanity.

The second dimension represents a set of related issues dividing states that wanted a strong and independent court (led by Western European states) from those that wanted a weaker court (such as the United States and Pakistan). Analysis of the discrimination parameters shows that the majority of contentious issues on this dimension considered jurisdictional issues and centralization of authority in the Court versus decentralization of power: how much authority states would retain over prosecutions of their own nationals.

C. Predicting Ratification

As with CERD, I can use the insights from the Chapter 3 theoretical model, together with the empirically estimated ideal points, treaty point, and status quo point, to make predictions about the states' post-negotiation foreign relations behaviors. Figure 5.7 again depicts the same two dimensional plot as before, but adds a cut line, where $e\left[\sum_{i_{rat}} v_i - (t - x_i')^2\right] - (1-e)(s - x_i)^2 i = \sum_{i_{rat.}} v_i - (t - x_i)^2$, assuming both v and $e = 0$. It further displays states that ultimately ratified in blue; and those that did not in red.

The treaty point lies at (0.063, 0.001), and the status quo lies at (0.076, -.403). The cut line is mostly horizontal (and bisects the plot at around the -.2 mark on the y-axis). The model expects states above that line to ratify and states below it not to. The fact that the cut line is horizontal in itself yields information: it means that it is mainly the second dimension (which captures disagreement over the strength of the court) that predicts ratification. Given the complexity, the model does a reasonably good job of separating ratifiers from non-ratifers. It correctly predicts the ratification actions of 107 of the 136 states in the data set, incorrectly predicts that 27 states

would ratify (but which, thus far, have not), and incorrectly predicts that 2 states (Uruguay and Nigeria) would not ratify (which have).

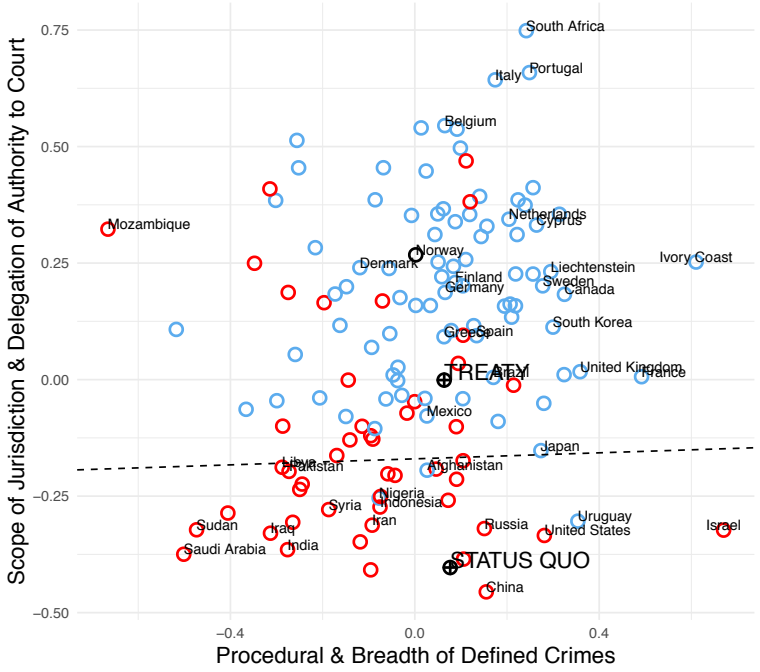


Figure 5.7: Rome Statute Negotiating Positions in Two Dimensions with Cut Line: Ratifiers in Blue, Non-ratifiers in Red

There are several possible explanations for why several states behaved differently than the model expected. First, the executive branch, which directed the drafting efforts, may have encountered veto-players with divergent preferences when going through the domestic ratification process (Cope 2015). Second, there may be time-inconsistency issues, i.e., changes in preferences after negotiations but before ratification, particularly where the ratification process takes many years. In theory, this is most likely to result from government transition or regime change after the negotiations. For example, Nigeria was one of the two false-negative ratification predictions. Indeed, the military-led Nigerian government was among the most hostile to the treaty during the 1998 final negotiations; the model estimates

based on its statements and the ratification actions of others that Nigeria was very unlikely to ratify. (Per the logit graph in Figure 5.8 below, the likelihood was only about 16%.) But one year after the treaty was concluded, Nigeria ended over 30 years of military rule and implemented sweeping democratic reforms. Two years later, Nigeria ratified the treaty. It is impossible for an IRT model to capture such country-specific forces, which were mostly unforeseen at the time of negotiation. The recent "African backlash" against the Court can also be seen in this light: most African states were strongly supportive of the ICC at the time of drafting and turned against the Court only afterwards, especially when a pattern emerged of the prosecutor's investigating African states exclusively.[27]

Of course, prediction errors can also result from some degree of insincere position-taking during the negotiations, or there might be some misspecification in the empirical strategy.[28] Regardless of the source, we can learn a great deal from these predictive errors, and I envision doing so in future work.

The relationship between the relative proximity of ideal points and ratification can further be explored through logit regression. The logit model here allows me to test the model's assumptions by comparing its several *predicted* post-negotiation state legal behaviors with their *actual* behaviors: first, whether or not a state ratifies. A set of predicted values gives the ex-post probability of each state's ratifying. If the probability of the behavior in question changes significantly as the proximity to the treaty changes, that means that the content of the negotiation statements is strongly

[27] The prosecutor has more recently launched investigations into Georgia, Palestine, and Bangladesh/Myanmar and began preliminary examinations into several other non-African states.

[28] Notably, the Rome Statute explicitly bans reservations (Article 120); it is a classic example of a "package-deal" treaty that cannot be tailored to state preferences. (The same is true for, e.g., the Convention on the Law of the Sea.) A visual inspection of the Rome Statute plot reveals that this rule might have suppressed ratification. It shows that the states close to the cut line, and thus not too far away from the treaty, mostly did not ratify, even though with minor modifications they might have been able to "pull" the treaty sufficiently close to their ideal point.

related to that behavior: states for whom the actual treaty was very close to their ideal are more likely to legally embrace the treaty's provisions as-is by ratifying it.

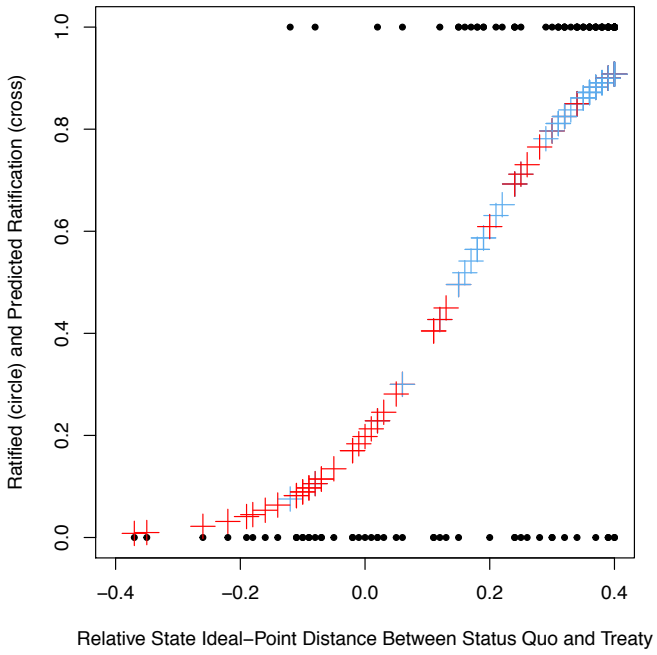


Figure 5.8: Predicted Ratification as a Function of Treaty vs. Status Quo Relative Proximity

The results of the logit regression are displayed in Figure 5.8 below. The probability of each state's ratifying the Rome Statute given its relative distance from the treaty and status quo is depicted on the y-axis with the plus signs. States that have in fact ratified are depicted as black dots at the top; states that have not ratified are the black dots at the bottom. From these data points, the logit model infers the likelihood that a state with a given ideal point will ratify.

The curve reveals a significant and substantively large relationship between the location of states' ideal points and Rome Statute ratification. The ideal points' relative proximity to the treaty versus the status quo are strongly correlated with ratification ($p < 0.001$). The curve is rather S-shaped, such that states with the lowest

ideal points are very unlikely to ratify – approaching about 5% likelihood – and those with the highest are very likely – approaching 100% likelihood. The curve rises steeply between. The non-ratifying states tend to cluster below the 0.5 probability level; the ratifying states tend to cluster above that probability level. Thus, the curve shows that the ideal points are reasonably strong predictors of actual Rome Statute ratification. This analysis confirms that there is a close relationship between states' ideal points as obtained from the negotiating record, and subsequent ratification.[29]

D. Predicting Implementation

Finally, the empirical model allows me to explore whether state ideal points are related to other future legal behaviors such as implementation. Of course, the relationship between treaty drafting and subsequent implementation is more attenuated, and it depends more on factors that cannot be observed at the time of drafting, such as future changes in government, domestic veto players, and so on. Nonetheless, it is worth exploring whether the model has some predictive value here.

The Rome Statute is a good treaty to test the model's validity for implementation, as it requires domestic implementation in two areas (Sandholtz n.d.). First, pursuant to the principle of complementarity, states must outlaw the conduct that the Rome Statute prohibits ("complementarity legislation"). Second, it must have an apparatus in place to facilitate cooperation with the Court, such as extraditing suspects and providing evidence ("cooperation legislation").[30] These implementation efforts have previously been quantified by Wayne Sandholtz, who

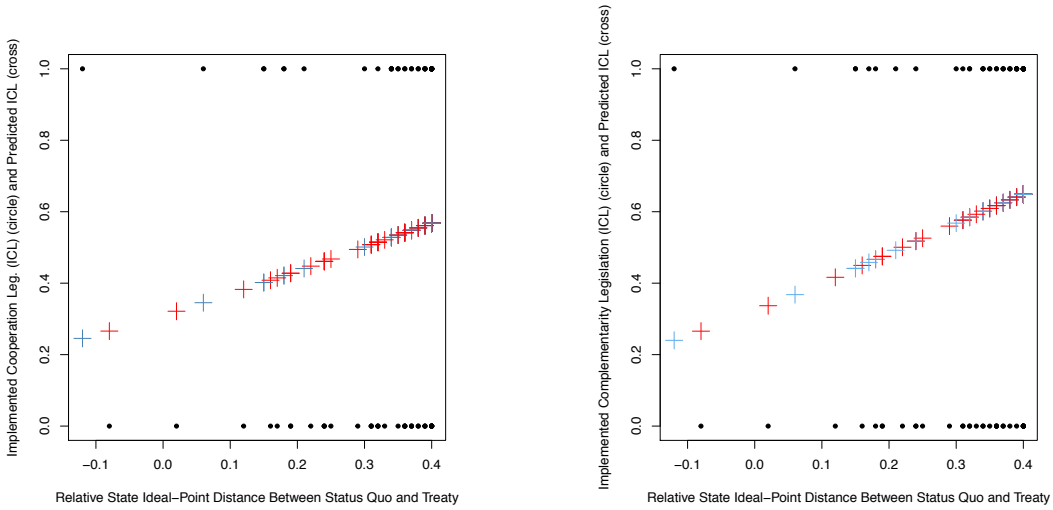
[29] Repeating this analysis with signing instead of ratification produces similar findings.

[30] Article 86 of the Rome Statute creates an "obligation to cooperate"; it provides, "States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court" (Sandholtz n.d.).

coded for each state whether it had enacted both obligations into law (Sandholtz n.d.), and I use those data here.

Analysis of the relationship between ideal points and subsequent implementation reveals a possible relationship between ideal points for both the complementary legislation and the cooperation legislation, albeit at different levels of positive significance. To gauge these relationships I again use logit regressions. The two logit curves in Figure 5.9 show the relationship between these two forms of domestic implementation, respectively, and states' ideal-points relative proximity to the status quo and the treaty. They show whether the states that ratified the Statute implemented legislation to facilitate cooperation with the Court (Panel A), and to grant the Court jurisdiction under the Rome Statute's complementarity principles (Panel B). The relationship between ideal point and complementarity-implementing legislation is just outside conventional levels of statistical significance ($p = 0.106$); that between ideal point and cooperation-implementing legislation is well outside conventional significance levels ($p = 0.200$). The effect is also substantively small: the relatively small slope means that as the ideal points move from -0.4 to -0.6, the change in likelihood of implementing legislation is much smaller, increasing from about 35% to about 70% for cooperation legislation, and from about 30% to about 85% for complementary legislation. Overall, however, this analysis suggests a positive and possibly significant relationship between ideal points and implementation.

The validity of the ideal-point estimation approach to the Rome Statute is supported by qualitative evidence. After doing that analysis, I interviewed David Scheffer, the U.S. Ambassador at Large for War Crimes Issues, who led the U.S. Rome Statute delegation and signed the Statute on behalf of the United States in



Panel A
Predicted Implementation of Cooperation Legislation

Panel B
Predicted Implementation of Complementarity Legislation

Figure 5.9: Predicted Post-negotiation Phenomena as a Function of Treaty vs. Status Quo Relative Proximity

2000.[31] After reviewing the Figure 5.7 two-dimensional plot of state positions, Ambassador Scheffer observed, "This is a very accurate depiction of what went on. ... Your map is quite accurate to demonstrate that there were positions in Rome that we ultimately overcome." More interestingly, he mentioned that he sat next to the Uruguayan representative throughout the Rome Conference (because of alphabetical seating) and that they "were talking constantly." Through the conference, Ambassador Scheffer said, "we were pretty much aligned," despite the fact that most other Latin American states were generally more supportive of a stronger court. It did not surprise him, then, to see that the ideal points for the United States and Uruguay in Figure 5.7 are nearly overlapping.

[31] Telephone interview with David Scheffer, the U.S. Ambassador at Large for War Crimes Issues (November 9, 2018).

4 THE REFUGEE CONVENTION

A. Background and Empirical Expectations

Refugees have been a subject of international concern for at least as long as sovereign states have existed. Refugees pose a difficult foreign relations challenge: they generally have no right under ordinary domestic law to enter the country in which they arrive, but forcing them to return home to be persecuted would violate international humanitarian norms.

The Convention on the Status of Refugees was not the first attempt at legalizing international refugee policy; numerous ad hoc agreements arose in the decades before World War II in response to several isolated refugee crises, usually spurred by civil war or other conflict. The Holocaust and the resulting pan-Eurasian refugee crisis was a tipping point for international cooperation; it prompted a truly global effort to address the World War II refugee fallout and mitigate possible future crises. In 1948, the UN Commission on Human Rights adopted a resolution urging the UN to consider developing a framework to address the "legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation." An Ad Hoc Committee on Statelessness and Related Problems was convened comprising major powers from Europe and several from North America, Asia, and South America.[32] The committee prepared a draft convention in Lake Success, New York, in January and February 1950, and later reconvened to revise the draft in August 1950 in Geneva. A later conference of plenipotentiaries, comprising representatives from 26 states (and two observers), met in Geneva in July 1951 to

[32] Thirteen states were part of the ad hoc committee: Belgium, Brazil, Canada, China, Denmark, France, Israel, Poland, Turkey, the Soviet Union, the United Kingdom, the United States, and Venezuela, though the Poland and Soviet representatives did not participate in the drafting.

finish refining the draft convention. The convention was concluded on July 25 and opened for signature (Robinson 1953). The travaux come from a compilation of records from these various negotiations prepared by Paul Weis (Weis 1995).

According to the negotiation records, one key issue in each of the negotiation stages involved to what extent refugees would enjoy equal, greater, or less protection than other, similarly situated migrants. For instance, could they be expelled in the event of a threat to public order or a national emergency? Did they have to conform to all national laws and norms? To what extent would they be exempt from exceptional measures? Another issue was the definition of "refugee."[33]

B. States' Refugee Convention Ideal Points

A trained coder reviewed the Refugee Convention travaux, identifying each contentious issue and every state and NGO position on that issue. I myself also read the travaux closely and reviewed all coding decisions. I drop states with fewer than 3 expressed positions. I also drop all issues in which there was unanimous agreement. This process produced a 25 $\times$ 103 matrix (25 states and the treaty and status quo, and 103 contentious issues). The dataset comprises 455 positions: 253 in favor of a proposition and 202 against one. See Table 5.3.

Table 5.3: State Positions in Refugee Convention Negotiations

Position	*Count*	*Percent*
0 (nay)	202	7.8%
1 (yea)	253	9.8%
99 (missing)	2,020	82.3%
Total	2,475	100.0%

With this matrix of position data, I estimate x for each state i, as well as s and t, as I did with the Race Convention and Rome Statute. Figure 5.10 below

[33] Unfortunately for the purpose of this analysis, those negotiations occurred in a General Assembly Committee and were not available.

provides the ideal points for the Refugee Convention in a single dimension with 95% confidence intervals. Note that the status quo occupies the most extreme position, with non-ratifier Venezuela closest in proximity, followed by Egypt. Curiously, the other non-ratifier, the United States (which, like Venezuela, later ratified the 1967 Protocol), lies near the other end of the continuum, close to the treaty point.

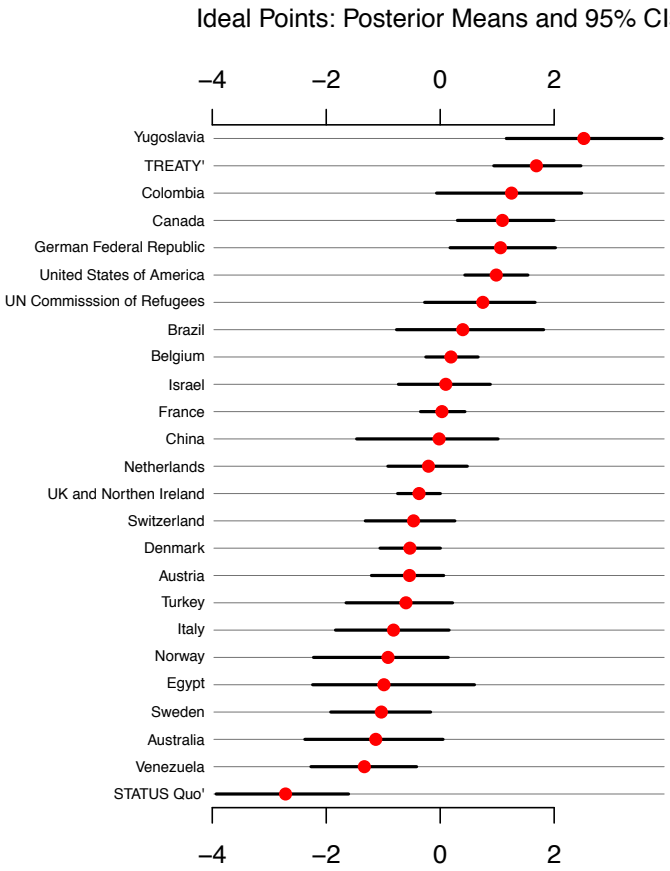


Figure 5.10: Refugee Convention Negotiating Positions in a Single Dimension, with 95% Confidence Intervals

The Eigenvalue analysis produces unclear results, with no clear break between dimensions (see Figure A.3 in the Appendix). Nonetheless, I map the first two dimensions in order to depict the two-dimensional formal model.[34] Figure 5.11

[34] The IDEAL model parameters applied are: *maxiter* (the "number of MCMC iterations") =

depicts state ideal points, x, in two dimensions, along with the treaty, t, and the status quo, s,

Using the techniques described above, the plot reveals that the first (horizontal) dimension appears to relate to the tradeoff between national security and the sovereign right to exclude undesirables, on one hand, and the rights of refugees, on the other hand. On the left side, closer to the status quo, lie European states including Belgium, Great Britain, the Netherlands, and Austria. On the right side closer to the treaty lie Yugoslavia, Israel, and Australia. Looking to the issues underlying those positions, several deal with preserving state power to exclude under certain circumstances. For instance, Australia proposed an amendment to the working Article 5, which read, "Nothing in this Article should prevent a Contracting State in time of war or national emergency or in the interest of national security, from taking provisionally essential measures in the case of any person, pending a determination that the particular person is in fact a refugee and that such measures are still necessary in his case in the interest of national security." In other words, Australia wanted to ensure that states could detain would-be refugees while ascertaining their legal status. States obviously have this right under domestic and international law for regular (i.e., non-refugee) would-be migrants, but the Convention might have been interpreted to prevent provisional detention of would-be refugees as well. The proposal was supported only by the sponsor, Australia, which lies on the right side of the ideological space. It was opposed by several states, including Great Britain, the Netherlands, and Switzerland, all of which lie on the left half of the space. Curiously, the proposal ultimately became Article 9 of the Convention.

200,000, *thin* (the "thinning interval used for recording MCMC iterations") = 5, and *burnin* (the "number of MCMC iterations to run before recording") = 50,000.

On the second dimension, no states are close to the status quo, which implies that every state on this dimension preferred significant change from the state of the world in 1951. Closest to the bottom lies Venezuela, followed closely by a large group of states. On the top, closer to the treaty, lie Canada, Germany, the United States, and the UN High Commissioner for Refugees. The substantive issues that divide states involve a collection of issues related to the degree to which states were obligated to give refugees equal and/or additional rights beyond those given to other regular long-term migrants. For instance, Sweden proposed an amendment to Article 5, which stated, "With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality, or shall provide for appropriate exemptions in respect of such refugees." This issue divided Scandinavia from the rest of Europe, with Denmark and Norway supporting the Swedish proposal, and Belgium and Great Britain opposing.

C. Predicting Ratification

The treaty point lies at (0.88, 1.60), and the status quo lies at (-0.88, -2.22). The cut line runs perpendicular to the line connecting those two points and and equidistant from them. As with the CERD, the fact that it runs diagonal means that the treaty and status quo are meaningfully different in both dimensions and that both dimensions were important to states' determinations to ratify.

Participants in and observers of the negotiations noted the broader-deeper tradeoff that occurred, especially with regard to the degree of refugee rights protections and state obligations to refugees. As one observer noted, the Convention "contains a number of provisions which could have been more liberal"; "[t]he

Figure 5.11: Refugee Convention Negotiating Positions in Two Dimensions

restrictive nature of these stipulations was due mainly to the desire of the framers of the Convention to reach unanimity in the Conference and not to write a document which may be ideal in its wording but would not be acceptable to many governments" (Robinson 1953).

One curious trait of the estimated points is that the treaty occupies an extreme position in the second dimension. In theory, the treaty should typically occupy a position close to the median state. After all, in consensus or majority-rule decision-making processes, the treaty should represent a modal compromise or the preferences of the median state, respectively. In some cases, one or more states with extreme views may be particularly influential. But even in that case, it makes little sense that states would agree on a treaty policy more extreme than the most extreme state in any given dimension. There are at least a couple explanations for why we

observe this phenomenon for the Refugee Convention. First, it may be that the treaty was modified after the negotiations reflected in the travaux, though I am not aware of evidence that that happened here. Another possibility is that in coding, proposals' agreement with the treaty were held to an overly technical standard. For instance, suppose a state proposed language for a particular treaty term and most other states supported the proposal. The final treaty language incorporated the sentiment of the proposal, but with minor changes in phrasing. A coder reviewing the final treaty language might reasonably conclude that the treaty had rejected the proposed change, creating ideological distance between the state consensus and the treaty. Making this distinction requires understanding of the legal issues involved in the treaty and the implications of differences in language. In coding and reviewing others' coding, I was aware of this possibility and made decisions accordingly, in light of each provision's purpose. But it is possible that small misjudgments on key issues might have affected the treaty position nonetheless.

Whatever the reason, the model manages to correctly classify the ratification decision of most states (62.5%). The Refugee Convention has now been ratified by the vast majority of UN member states, including all but two of those that participated in the 1951 negotiations.[35] (The United States and Venezuela later ratified the 1967 Protocol, thereby committing themselves to the 1951 Convention's terms.) As with the CERD, the model predicted that the majority of negotiating states would ratify. The model performed somewhat worse compared with the other two treaties. It incorrectly predicted 8 states to be non-ratifiers, which did in fact ratify, and 1 state to be a ratifier, which did not ratify. On a positive note, the model would give non-ratifier Venezuela the lowest likelihood of ratifying, as that

[35] See "Convention relating to the Status of Refugees," at https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en.

state's ideal point appears closest to the status quo (and farthest from the treaty).

Given that only two states failed to ratify (and even they ratified the Convention's substance after 1967), it is not possible to gauge the predictive power of the ideal points, as I did with Rome Statute. Nor is it feasible here to measure the ideal points' ability to predict reservations and declarations, as nearly all of the ratifying states entered some form of RUD. Some were largely technical or idiosyncratic (such as refusing to apply its terms to certain territories or colonies), and others were highly substantive, and the large variation makes it difficult to code.

Instead, to validate the ideal points, I estimate a bivariate OLS model, regressing states' *time-to-ratification* on their ideal points. The underlying theory being that states that are most satisfied with the result will ratify quickly, and those that are dissatisfied will ratify later, perhaps only after a new government, change of leadership, or changed external incentives. Figure 5.12 below plots ideal point on days–to-ratification. The relationship is statistically insignificant ($p > 0.87$). The estimated expected utility from the treaty is not significantly correlated with how quickly states ratified the Refugee Convention.[36]

Thus, the model performed somewhat worse for the Refugee Convention than for the other two treaties. In addition to the sources of possible predictive error discussed for the Rome Statute and just above, I suspect that the main reason is the relative sparsity of the negotiation records. Although many issues were discussed, states took relatively few positions for each issue. Many votes were held to resolve disagreements, but they are recorded anonymously. This observation underscores the importance of identifying treaties and locating travaux for which detailed, non-anonymous records exist.

[36] As a robustness check, a Cox proportional hazards model also produced no significant results. So did removing the time-to-ratify 'censored' states (i.e., the United States and Venezuela, which have technically never ratified) from the analysis.

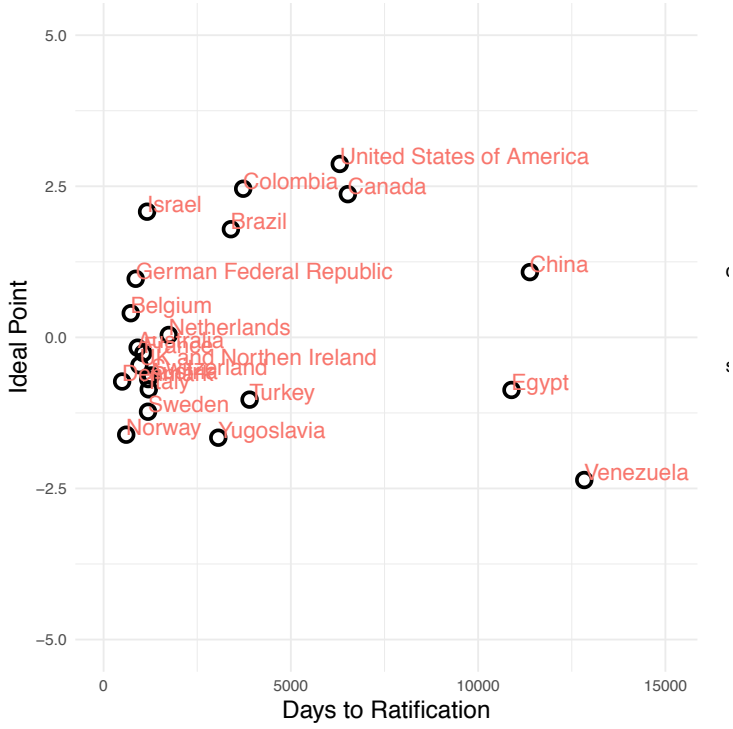


Figure 5.12: Refugee Convention Days to Ratification vs. Relative Ideal Point Distance

Chapter 6

Implications for IR/IL Theory and Concluding Thoughts

1 CONSEQUENCES FOR INTERNATIONAL RELATIONS THEORY

My findings have implications for several long-standing academic debates in international law and politics, including those over reservations and ratification. The topic of reservations, in particular, has interested both researchers and international legal bodies (see, e.g., Pellet 2013)[1]. According to the Argentine jurist J.M. Ruda, "[t]he question of reservations to multilateral treaties has been one of the most controversial subjects in contemporary international law" (Ruda 1975). This quote has been much repeated since. This widely held view has prompted a vigorous debate among both scholars and practitioners over the relative costs and benefits of reservations, including how they trade off more participation[2] with decreased strength of legal commitments (Helfer 2006; Swaine 2006),[3] and whether they present a net benefit or harm to the institution of treaties generally (Henkin

[1] Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994)

[2] Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice (ICJ), 28 May 1951.

[3] Swaine's conjectures are supported by an empirical study by Neumayer Neumayer (2007), who finds that liberal democracies are most likely to enter reservations.

1995; Lijnzaad 1995). Goodman (2002) has also considered the legal status of the most harmful reservations (those that undermine the treaty's "object and purpose").

More recent work has argued that reservations are under-appreciated because they contain important informational value: they serve to reveal states' otherwise private information (albeit imperfectly), such as whether they expect to uphold the treaty and their level of commitment to the provisions that they have not reserved (Swaine 2006). My analysis does not contradict this insight, but it implies that such information is not the only source of this information; it can also be inferred from the negotiating record itself. If negotiation positions allow me to predict ratifications, they might also reveal the kind of information that can be gleaned from reservations, probably in greater detail.

My findings have other implications. For those who believe that reservations are a net negative to multilateral treaties, my analysis reveals that they can be prevented. That is, before a treaty enters into force, we can predict which states are most likely to enter reservations, and this information could be used to persuade those states to refrain from reserving. The analysis further confirms what many international lawyers have long understood: banning reservations (as the Rome Statute does) usually suppresses ratification.

The subject of ratification has stirred less controversy in international legal scholarship, but it has not gone unnoticed. International legal scholars have produced countless articles that advance normative arguments for why certain states should (or, less often, should not) ratify particular treaties. Some others have offered positive explanations for why states actually ratify. In an important and recent line of work, Goodman and Jinks (2013) have argued that, at least in the realm of human rights, states ratify multilateral human rights agreements primarily to signal their conformance to global norms, not because they have internalized

these norms in any meaningful way (a phenomenon that they call "acculturation"). Under their account, states' treaty behavior is primarily about paying lip-service to international norms, not about states' expected utility in ratifying.

My findings partly agree and partly disagree. Even if states are driven largely by the benefits of value-signaling when considering human rights treaties, the question remains of *whose values* they will be. As I observed in the CERD debates, there are distributional consequences of selecting one or another set of international norms, and states tend to take those consequences seriously, advocating vigorously for the norms that comport with their own. Whether as an ideological proxy battle in the Cold War, a ploy to reassure foreign investors, or a signal to domestic audiences, these ideological divergences are often meaningful enough to trigger RUDs, non-ratification, and other opposition that alters the treaty's effect in apparently welfare-enhancing ways.

Perhaps more importantly, neither my theory nor my empirical strategy are limited to human rights agreements. The analysis of the Rome Statute revealed substantial disagreements over the scope of the Court's power, which deterred some states from ratifying. The findings from these two treaties jointly provides evidence that the positions states take during the negotiations are substantively meaningful. That is, the positions make sense, given states' particular traits and international status, as well as the features and objectives of the treaty in question. Moreover, the positions that states take and the alliances that they form with each other vary substantially from treaty to treaty. These insights suggest that treaty-making in international fora is not primarily cheap talk; it offers important insights into real state preferences.

My findings also speak to the relevance of treaty implementation. As international legal scholars and practitioners are aware, domestic implementation

is challenging; international law lacks the kinds of centralized enforcement mechanisms often present in domestic law (Goldsmith and Levinson 2008). Indeed, the relative lack of centralized enforcement is one of the traits missing in international law that have lead a few to argue that it should not be considered law at all. (Compare Lewis (1997) with Hart et al. (2012).) In addition, legal scholars have long documented the challenges of implementation for different areas of international law (Farrier and Tucker 2000; Freestone and Hey 1996; Merry 2009). More recently, an empirical literature has emerged that seeks to more systematically document the causes of effective implementation (or "treaty effectiveness") (Cope and Creamer 2016).[4]

One of the key insights from this literature is that downstream domestic legal and political constraints can matter to international law. Certain studies have documented empirically that whether a state implements its international law commitments depends on post-ratification domestic politics, as well as key features of the domestic legal systems (Mitchell and Powell 2011). For example, some have found that treaty commitments are more likely to be upheld in democracies (Simmons 2009), in countries with strong courts (Lupu 2013b; Powell and Staton 2009), and in countries where courts can interpret domestic law in light of international law (Lupu unpublished manuscript). My findings do not contradict these insights, but they might surprise some of those who work on these issues, because they suggest that post-ratification law and politics is not all that matters; some implementation behavior is foreseeable based on the positions held and taken during the negotiations.

Finally, these findings also provide some insights into the nature of the

[4] But compare Chilton and Posner (2016), who conclude that institutional or environmental factors, more than international law, explain historical improvements in human rights performance.

travaux préparatoires. International lawyers routinely consult travaux in both legal international legal research and practice. For example, Bederman's survey of treaty interpretation in U.S. courts reveals that they routinely rely on the travaux (Bederman 1993; Ris 1991).[5] But while the travaux are often used, there is widespread skepticism on how much we can learn from them (Aust 2013; Sadat and Jolly 2014). Aust (2013) cautions that "[t]ravaux must ... always be approached with care," as "[t]heir investigation is time-consuming, their usefulness often being marginal and very seldom decisive." Indeed, the ICJ typically avoids the travaux when the meaning of the treaty is sufficiently clear. This skepticism traces back to the Lotus decision from the Permanent Court of International Justice, in which the Court held that on "no occasion" they should be resorted to when the treaty itself is clear, a principle that later would be enshrined in the Vienna Convention on the Law of Treaties.[6] Some human rights courts deliberately reject the travaux as a canon of interpretation, instead favoring interpretative canons that favor pro-human rights interpretations, such as the "pro persona" principle in the Inter-American Court of Human Rights and the "evolutive" interpretation principle in the European Court of Human Rights (Dzehtsiarou 2011).

I find that, while individual statements recorded in the travaux are sometimes hard to decipher, they reveal a lot of useful information on the whole. Each state representative's corpus of positions was sufficiently clear and coherent to trained coders that they revealed state positions that predicted ensuing state legal action with reasonable accuracy. This insight suggests that, at least for the treaties that

[5] Bederman notes that "[r]ecently, the use of negotiating history by courts has become much more sophisticated-and problematic" (Bederman 1993, 971).

[6] *See, e.g.*, S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) (observing that "only the British delegate . . . stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France").

I studied, the travaux are more coherent and useful than some international legal scholars have suggested. And they appear not to represent mere cheap talk, as some political realists might believe. While there might be good reasons for judicial interpreters to eschew the travaux, the nature of the records themselves is not one of them.

2 A TOOL FOR TREATY NEGOTIATIONS

My method may be able to aid in these kinds of cases by offering a systematic overview of where different parties stand, where the coalitions may lie, and what adjustments can be made to move the negotiations forward. In reading through a case study or history of a negotiation, one might implicitly assume that the negotiators had the same sort of insights in the midst of the talks that we now have in retrospect. In reality, negotiators' real-time perspectives are usually more limited. A committee or state delegate may know some states' positions on certain issues, including their deal-breakers and reservation points for ratifying, and they are likely aware of key state coalitions and schisms. But negotiators often lack the capacity to learn *every* state's position on *every* issue. Negotiators on the ground have neither the benefit of hindsight nor of a bird's eye view of the negotiation, especially in fast-moving negotiations or those which involve many states. In the midst of talks, delegates rarely have the ability to see how all the issues fit together or how seemingly unconnected states might have positions in common. It is also difficult for negotiators to see how minor changes in policy might increase or decrease states' expected utility, pushing those states across the ratification threshold one way or the other. On top of all this, state delegates often misrepresent their true reservation points, if they announce them at all (Morrow and Cope 2018). It is difficult to know

when and how states are exaggerating or otherwise misrepresenting their positions in order to gain a strategic advantage. All of these things challenge even the most sophisticated and well-equipped delegations, but it is particularly difficult for the many delegations with less funding, fewer diplomatic personnel, and generally lower capacity.

My method for analyzing treaty negotiations may offer some solutions to these challenges. A spatial model's key advantage lies in data reduction. That is, it reduces the hundreds or thousands of elements down to the truly relevant ones, showing relationships between the existing international policy, the proposed treaty policy, and the revealed state preferences on each key issue. This might be helpful to negotiations in several ways.

First, a spatial model depicts the full set of state participants. While many states may have relatively little economic, military, or other relevance to the cooperation, they still hold the same single vote in the final approval vote, and their decision to ratify counts the same toward the entry-into-force threshold. And large blocs of these minor players can collectively be significant in that respect, or even in the value they add to the cooperation endeavor itself. Though these blocs sometimes recognize their common cause and ally together to maximize their leverage, they may often lack the capacity to do so. A spatial model would allow them to do so more easily and more readily.

Second, this analysis can also uncover coalitions based on seemingly unrelated issues, thereby offering insight into the actors' motivations. Specifically, it could reveal that two substantively different issues actually fall on the same dimension, meaning that states' positions on one are closely correlated with the same states' positions on the other. This might reveal that some value underlies the two that might not have been obvious to negotiators or negotiation coordinators.

Third, in lengthier negotiations, it might show how states' positions have changed over time relative to each other, suggesting how open they might be to further movement. The chair or mediator could use this information to develop and propose further changes. The chair often acts as a conciliator, and he or she might point out to State B that State A has already comprised significantly from its original position, perhaps making State B more flexible. This could be, and sometimes is, done already. But where negotiations drag on for years, the delegations and chairs often turn over and institutional memory is lost. Regardless, a new delegate or chair may not have the time or resources upon taking her position to comb through thousands of pages of past records. Even if she did, it would be easy even for an astute observer to overlook certain patterns. By reducing data, the spatial model provides a bird's-eye picture that might assist them in doing so.

Finally, a spatial model can show how minor changes to certain treaty provisions would affect the states' alignment relative to the treaty and status quo, increasing or decreasing expected ratifications. For drafting committees or IGOs chairing a negotiation, a dynamic spatial model might reveal that a series of minor changes to draft treaty policy might be sufficient for certain key states (or a large number of secondary states) to support the treaty. The chair could then use that information to propose the change to the parties and show how it would enhance total welfare by expectedly bringing more parties into the regime.

By way of analogy, consider how a comprehensive visual map of the battlefield showing allied and enemy troop locations, as well as geographic features, aids military commanders in developing battle strategies and tactics. Using modern computer software, these tools can make a series of competing assumptions about different tactics and can run simulations showing the most likely result of those moves. A spatial model of negotiation positions could serve a similar purpose.

Of course, this analysis requires a team of trained lawyers, social scientists, coders, and data analysts, to which most delegations would not have access. Of the delegations that might desire and benefit from this analysis, a small fraction would have the capacity to conduct it. Instead of individual delegations' hiring their own analysts, I imagine that a group of international lawyers and social scientists might institute a third-party international consulting organization, which would provide these analytical services to delegations that request it. In this sense, the program would operate somewhat like a jury-selection consultant firm in the U.S. legal system, but more effectively, I would hope (see, e.g. Diamond 1989).[7] Unlike jury-selection consultants, this consulting organization might be affiliated with an academic institution and/or a think-tank-affiliated institute. It would presumably operate on a non-profit basis, recouping its expenses from the requesting states, IGOs, NGOs, and/or private donors. Whatever the specific organization or institutional model, the products from these techniques would provide one additional tool to negotiators and IGO coordinators hoping to produce the most effective and welfare-enhancing treaty, whether for them, or for the parties involved generally.

3 CONCLUSION

I have developed a theoretical model of treaty-making and used it to guide the analysis of the drafting of three existing treaties. Doing so has yielded some important new insights, most notably, that states appear to treat their negotiating positions as substantively meaningful and that we can use them to predict ratification, reservations, and even implementation efforts. These findings

[7] Diamond concludes that "[t]he effects of scientific jury selection are modest at best."

provide novel insights into long-standing debates in international law, and they can also be used to aid future treaty drafting efforts.

I acknowledge that this method has limits, and that existing historic and first-hand accounts provide some things that this method cannot. Historical accounts, case studies, and reports based on personal experience and primary sources can provide nuanced understanding of the particular actors, including people and government bodies, that influence negotiations. Historical and narrative accounts also offer unique insights into the process by revealing micro-level negotiation dynamics – e.g., broad strategies, side-deals, interpersonal relationships – that most shaped the course of the negotiations and final treaty product. For this reason, to provide a "reality check" on my findings and richer insight into my quantitative results, I supplemented this analysis with interviews with experienced treaty negotiators. As mentioned, I spoke with David Scheffer, who served as U.S. Ambassador at Large for War Crimes Issues and lead U.S. delegate to the UN negotiations on the ICC, as well as John Norton Moore, who served as U.S. Deputy Special Representative for the UN Law of the Sea Conference from 1973 to 1976.

One of the advantages of these approaches is the benefit of time and hindsight. They can draw on several types of sources such as notes, personal interviews with participants, complete records from the talks, as well as reactions by states, public officials, and citizens to the final product. Putting all these together can paint a picture of why certain delegations did what they did and the interests and diplomatic strategies that led to the final treaty provisions. The findings these studies make are critical to understanding why and under what conditions international cooperation succeeds or fails.

The method I develop here cannot do these things nearly as well, but it has the unique application described above: providing insight into positions of

numerous state delegations, the status of every provision of the draft treaty, how each delegation was aligned with every other one, and how all this had changed over the months and years of the negotiation. Knowing these things is also crucial to understanding the story of a treaty's creation. Future work will reveal the method's full potential in this regard.

One question that I leave unanswered is whether the difference between treaties with and without externalities can be observed empirically. That is, my theoretical model predicts that if we explore the negotiating records of treaties with large externalities, we will find that states' ideal points derived from the negotiating records do not predict subsequent ratification, since states push for strong (or weak) treaties that they do not intend to ratify. To illustrate, it predicts for a global environmental agreement that some states will push for a strong treaty but not ratify it, since they get to reap its benefits regardless of whether they join. My empirical analysis thus far is limited to treaties without strong externalities, but in the larger book project, I hope to gain empirical leverage on this question by adding treaties with significant externalities.

Whatever their level of externalities, those treaties will span different areas of international law, including trade, security, intellectual property, the environment, and refugee law. They will differ in their distributional effects, methods for generating cooperative benefits and enforcing compliance, and ways of discriminating against non-parties. I expect that these additional treaties will extend the findings in this dissertation with deeper and more generalizable insights about the origins of treaties. I therefore hope that those insights will bring about better understanding of treaties' role in a host of questions that interest international lawyers, social scientists, and legal scholars. With these methods, I can also explore other questions, such as: (1) whether and how state positions change over the course

of treaty negotiations; (2) which states are most successful during the negotiation, and what explains this success: the power of persuasion (states acting as norm entrepreneurs) or more traditional proxies of power such as military and economic strength; and (3) the growing role of the various non-state actors that participate in treaty-drafting and work to move states in their preferred policy direction.

Finally, my methods allow me to contribute to the ongoing debate on treaty effectiveness, a debate that has engaged both international legal scholars and international relations scholars and produced numerous articles (e.g., Goodman and Jinks 2003; Hafner-Burton and Tsutsui 2005; Hathaway 2002; Lupu 2013b; Simmons 2009). The primary obstacle for these studies to measuring a causal effect is the inherent "endogeneity problem." More specifically, many traits that make states more likely to engage in treaty-complying behavior also make them more likely to ratify the treaty in the first place, so when researchers observe that ratifiers have better records than non-ratifiers, it is difficult to determine how much of the effect was caused by the treaty ratification itself, versus the latent trait that also made the state more likely to ratify. In a number of high-profile articles, Yonatan Lupu has attempted to address this problem by identifying state preferences for international legal commitment based on their ratification of prior treaties, and then comparing states that are ideologically similar, but which differ only in whether they ratified a given treaty (Lupu 2013a). My ideal points could serve a similar function, but unlike Lupu, I could tailor them to the specific international legal problems at issue. Thus, instead of an ideal point that captures general willingness to commit to international law, I could calculate ideal points that capture willingness to commit to trade agreements, or human rights – and that can aid future efforts to better explore the causal effect of specific treaties.

Much of international law and politics concerns one or both of two broad issues:

why states interact with each other as they do, and how institutions promote global objectives like justice, wealth, and peace. This dissertation has taken a small step toward deeper insight into both of those questions. A better understanding of how states decide whether to join treaties – and, specifically, how they determine and pursue their foreign relations goals through treaty negotiations – will help international actors to create systems that promote even more effective international cooperation.

Appendix

Scree Plots

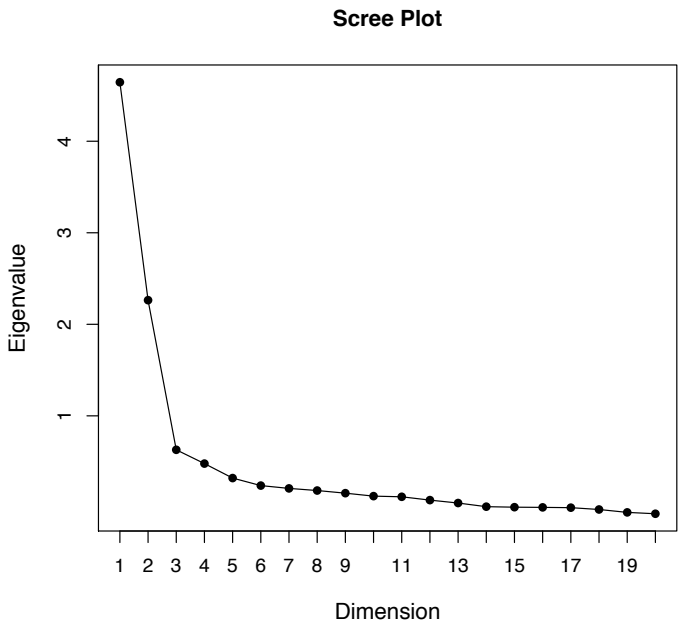


Figure A.1: Race Convention Scree Plot

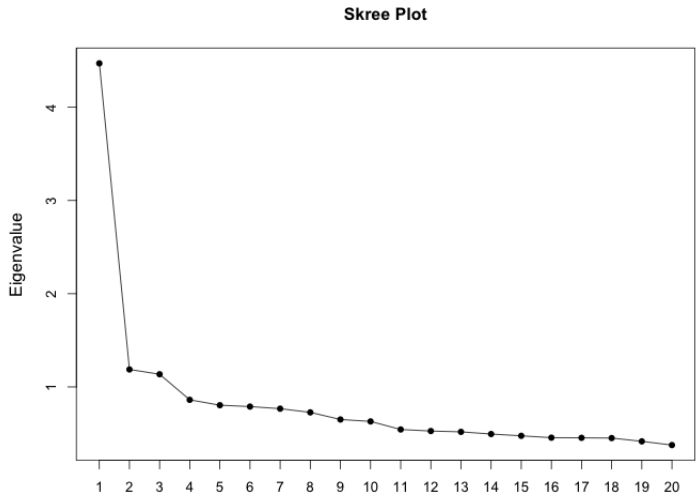


Figure A.2: Rome Statute Scree Plot

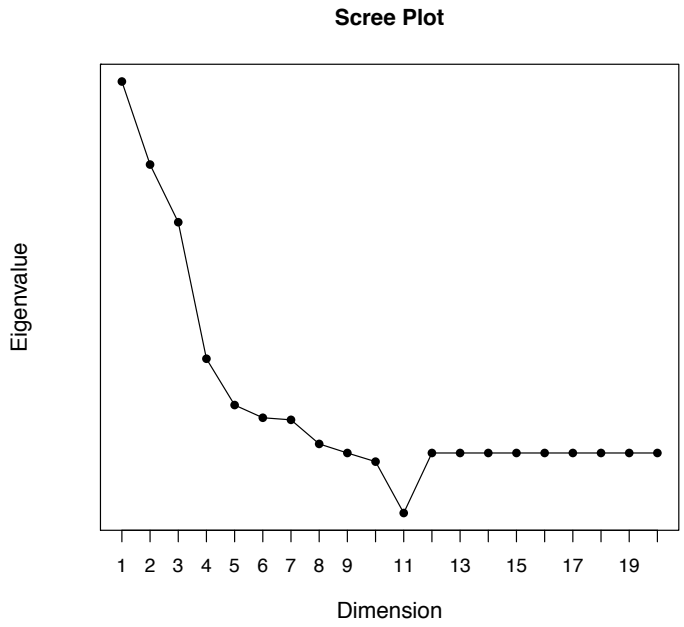


Figure A.3: Refugee Convention Scree Plot

State Ideal Points Tables

Table A.1: Race Convention State Ideal Points

	D1	D2
Argentina	0.747	1.799
Australia	−0.104	1.975
Austria	0.892	2.165
Belgium	0.567	1.023
Benin	1.246	0.769
Cameroon	0.698	1.498
Canada	0.667	2.392
Chile	2.112	1.527
Colombia	0.345	1.434
Costa Rica	0.245	1.996
D.R. Congo	1.407	1.779
Denmark	$1.323 \cdot 10^{-2}$	1.027
Ecuador	1.019	1.172
El Salvador	0.773	2.880
Ethiopia	1.471	2.087
France	−0.125	1.095
Ghana	1.048	1.724
Greece	0.399	1.312
India	1.883	1.047
Iran	0.482	2.049
Iraq	1.647	1.330
Italy	−0.331	1.689
Jamaica	1.655	1.951
Lebanon	1.388	1.133
Liberia	1.333	0.706
Mauritania	1.870	1.055
Mexico	2.000	1.667
Netherlands	0.310	1.892
Nigeria	2.150	1.824
Philippines	1.054	1.471
Poland	2.111	2.396
Senegal	0.806	2.176
Soviet Union	2.659	2.513
STATUS QUO	0.000	0.000
Sudan	1.095	2.364
Tanzania	1.964	2.671
TREATY	1.463	1.710
Turkey	−0.131	2.302
Uganda	1.250	2.438
Ukraine	2.913	0.856
United Kingdom	0.356	1.012
United States	0.487	2.283
Venezuela	1.759	2.627
Yugoslavia	1.178	2.811

Table A.2: Rome Statute State Ideal Points

	D1	D2
TREATY	$6.372 \cdot 10^{-2}$	$-9.963 \cdot 10^{-4}$
STATUS Quo	$7.675 \cdot 10^{-2}$	-0.403
Afghanistan	$2.665 \cdot 10^{-2}$	-0.194
Albania	$-6.807 \cdot 10^{-2}$	0.455
Algeria	-0.244	-0.224
Andorra	0.257	0.412
Angola	-0.314	0.409
Argentina	$8.777 \cdot 10^{-2}$	0.339
Armenia	-0.348	0.250
Australia	$-7.139 \cdot 10^{-3}$	0.352
Austria	0.218	0.158
Azerbaijan	-0.141	-0.129
Bahrain	0.106	-0.385
Bangladesh	-0.150	$-7.912 \cdot 10^{-2}$
Belarus	$-1.702 \cdot 10^{-2}$	$-7.189 \cdot 10^{-2}$
Belgium	$6.508 \cdot 10^{-2}$	0.545
Benin	$5.858 \cdot 10^{-2}$	0.221
Bolivia	-0.517	0.108
Bosnia and Herzegovina	$8.383 \cdot 10^{-2}$	0.243
Botswana	$-4.704 \cdot 10^{-2}$	$9.999 \cdot 10^{-3}$
Brazil	0.170	$4.762 \cdot 10^{-3}$
Brunei Darussalam	-0.144	$-9.894 \cdot 10^{-4}$
Burkina Faso	-0.148	0.199
Burundi	-0.259	$5.396 \cdot 10^{-2}$
Cameroon	$9.434 \cdot 10^{-2}$	$3.484 \cdot 10^{-2}$
Canada	0.325	0.183
Chile	0.104	$-4.095 \cdot 10^{-2}$
China	0.155	-0.455
Colombia	$-6.258 \cdot 10^{-2}$	$-4.149 \cdot 10^{-2}$
Comoros	-0.299	$-4.526 \cdot 10^{-2}$
Congo (Democratic Republic of the)	$-2.82 \cdot 10^{-2}$	$-3.374 \cdot 10^{-2}$
Costa Rica	-0.256	0.513
Cote d'Ivoire	0.610	0.252
Croatia	-0.302	0.385
Cuba	-0.114	-0.100
Cyprus	0.264	0.332
Czech Republic	0.239	0.374
Denmark	-0.119	0.240
Djibouti	$6.189 \cdot 10^{-2}$	0.366
Dominican Republic	0.324	$1.071 \cdot 10^{-2}$
Ecuador	$9.89 \cdot 10^{-2}$	0.497
Egypt	$-7.421 \cdot 10^{-2}$	-0.251
Estonia	$-8.598 \cdot 10^{-2}$	0.386
Ethiopia	$4.64 \cdot 10^{-2}$	-0.192
Finland	$8.787 \cdot 10^{-2}$	0.209
France	0.492	$6.244 \cdot 10^{-3}$
Gabon	$-8.675 \cdot 10^{-2}$	-0.105
Georgia	0.104	0.201
Germany	$6.573 \cdot 10^{-2}$	0.187
Ghana	$-9.363 \cdot 10^{-2}$	$6.918 \cdot 10^{-2}$

Table A.3: Rome Statute State Ideal Points (cont.)

	D1	D2
Greece	$6 \cdot 10^{-2}$	$9 \cdot 10^{-2}$
Guatemala	0.190	0.160
Guinea	0.220	0.390
Guinea-Bissau	0.210	$-1 \cdot 10^{-2}$
Holy See	$-4 \cdot 10^{-2}$	0.310
Hungary	0.310	0.350
Iceland	−0.170	0.180
India	−0.280	−0.360
Indonesia	$-8 \cdot 10^{-2}$	−0.270
Iran	$-9 \cdot 10^{-2}$	−0.310
Iraq	−0.310	−0.330
Ireland	0.130	0.120
Israel	0.670	−0.320
Italy	0.170	0.640
Jamaica	−0.290	−0.100
Japan	0.270	−0.150
Jordan	$-3 \cdot 10^{-2}$	0.180
Kazakhstan	−0.100	−0.120
Kenya	0.180	$-9 \cdot 10^{-2}$
Korea (Republic of)	0.300	0.110
Kuwait	0.000	$-5 \cdot 10^{-2}$
Latvia	$9 \cdot 10^{-2}$	0.540
Lebanon	−0.260	−0.310
Lesotho	−0.210	$-4 \cdot 10^{-2}$
Libyan Arab Jamahiriya	−0.290	−0.190
Liechtenstein	0.300	0.230
Lithuania	$5 \cdot 10^{-2}$	0.250
Luxembourg	$1 \cdot 10^{-2}$	0.540
Macedonia	0.110	0.260
Madagascar	−0.220	0.280
Malawi	$2 \cdot 10^{-2}$	$-4 \cdot 10^{-2}$
Mali	0.160	0.330
Malta	0.220	0.310
Mexico	$3 \cdot 10^{-2}$	$-8 \cdot 10^{-2}$
Moldova	0.220	0.230
Morocco	−0.410	−0.290
Mozambique	−0.670	0.320
Namibia	−0.250	0.450
Nepal	−0.100	−0.410
Netherlands	0.200	0.340
New Zealand	$4 \cdot 10^{-2}$	0.310
Nicaragua	$-7 \cdot 10^{-2}$	0.170
Niger	0.260	0.230
Nigeria	$-8 \cdot 10^{-2}$	−0.250
Norway	0.000	0.270
Oman	−0.250	−0.240
Pakistan	−0.270	−0.200
Peru	0.280	$-5 \cdot 10^{-2}$
Philippines	−0.160	0.120
Poland	0.140	0.390
Portugal	0.250	0.660
Qatar	−0.170	−0.160
Romania	0.210	0.160
Russian Federation	0.150	−0.320
Rwanda	$-6 \cdot 10^{-2}$	−0.200

Table A.4: Rome Statute State Ideal Points (cont.)

	D1	D2
Samoa	$2.453 \cdot 10^{-2}$	0.448
San marino	-0.348	0.161
Saudi Arabia	-0.501	-0.375
Senegal	$-3.665 \cdot 10^{-2}$	$2.655 \cdot 10^{-2}$
Sierra Leone	$7.901 \cdot 10^{-2}$	0.105
Singapore	$8.998 \cdot 10^{-2}$	-0.101
Slovakia	0.144	0.307
Slovenia	0.210	0.134
Solomon Islands	0.120	0.382
South Africa	0.242	0.749
Spain	0.134	$9.43 \cdot 10^{-2}$
Sri Lanka	$-4.291 \cdot 10^{-2}$	-0.205
Sudan	-0.473	-0.322
Swaziland	0.111	0.469
Sweden	0.277	0.201
Switzerland	$4.983 \cdot 10^{-2}$	0.356
Syrian Arab Republic	-0.187	-0.279
Tajikistan	$3.37 \cdot 10^{-2}$	0.159
Tanzania	$-3.718 \cdot 10^{-2}$	$-2.058 \cdot 10^{-3}$
Thailand	0.105	-0.174
Togo	0.105	$9.523 \cdot 10^{-2}$
Trinidad and Tobago	$-5.584 \cdot 10^{-2}$	0.238
Tunisia	-0.366	$-6.367 \cdot 10^{-2}$
Turkey	$7.237 \cdot 10^{-2}$	-0.259
Uganda	$2.164 \cdot 10^{-3}$	0.159
UK and Northern Ireland	0.359	$1.694 \cdot 10^{-2}$
Ukraine	-0.275	0.187
United Arab Emirates	-0.118	-0.348
United States of America	0.281	-0.334
Uruguay	0.354	-0.304
Venezuela	$-5.427 \cdot 10^{-2}$	$9.869 \cdot 10^{-2}$
Viet Nam	$9.061 \cdot 10^{-2}$	-0.214
Yemen	$-9.107 \cdot 10^{-2}$	-0.128
Zambia	0.119	0.354
Zimbabwe	-0.197	0.165
Red Cross	0.300	-0.172
Amnesty International	$-7.155 \cdot 10^{-2}$	0.399

Table A.5: Refugee Convention State Ideal Points

	"D1"	"D2"
"TREATY′"	1.893	−0.173
"STATUS Quo′"	−2.450	0.257
"Australia"	−0.130	−0.903
"Austria"	−0.462	0.830
"Belgium"	0.384	1.548
"Brazil"	0.651	−0.118
"Canada"	1.065	0.493
"China"	0.295	$8.96 \cdot 10^{-2}$
"Colombia"	1.070	0.170
"Denmark"	−0.298	$-1.153 \cdot 10^{-2}$
"Egypt"	−0.521	−0.350
"France"	−0.367	−0.500
"German Federal Republic"	0.924	−0.222
"Israel"	0.730	−0.513
"Italy"	−0.620	0.180
"Netherlands"	−0.262	0.538
"Norway"	−0.392	−0.108
"Sweden"	−0.691	−0.417
"Switzerland"	−0.531	0.408
"Turkey"	−0.543	−0.211
"UK and Northen Ireland"	−0.356	0.956
"United States of America"	1.166	0.176
"Venezuela"	−1.116	0.113
"Yugoslavia"	$4.278 \cdot 10^{-2}$	−1.757
"UN Commisssion of Refugees"	0.821	$3.467 \cdot 10^{-2}$

Treaty Discrimination and Difficulty Parameter Tables

Table A.6: Race Convention Discrimination and Difficulty Parameters, by Issue

	Discrimination D1	Discrimination D2	Difficulty
X004	1.900	4.000	−2.700
X005	1.900	4.000	−2.800
X132	−3.000	4.100	1.500
X133	−4.300	4.800	−0.900
X134	−4.000	4.800	−0.900
X135	−4.100	−0.200	−4.000
X136	−5.300	2.100	1.400
X137	−4.200	−2.200	1.600
X138	−5.900	−1.400	0.000
X139	0.500	1.600	−1.100
X140	5.200	−0.600	1.600
X141	5.300	1.400	0.100
X143	6.100	1.200	−0.200
X144	5.600	1.700	1.300
X146	−5.200	2.200	0.400
X153	2.800	−0.500	−5.800
X157	−0.200	3.700	−3.600
X158	−4.300	3.900	2.400
X159	−4.300	2.900	−3.600
X161	1.900	0.000	−1.200
X163	5.700	−0.600	−3.500
X164	−6.400	−2.200	0.900
X166	1.900	−4.200	−3.600
X167	3.400	0.200	3.100
X169	2.700	4.000	0.200
X170	4.300	3.400	0.700
X173	4.100	0.600	−5.000
X174	−4.800	1.100	−2.600
X175	−1.400	−5.800	−2.100
X189	−3.300	−1.300	−5.800
X190	−3.400	−1.400	−5.900
X191	4.400	0.600	−4.200
X211	6.100	−0.700	−3.600
X214	−4.400	−3.400	0.600
X215	−6.400	−1.600	−0.100
X216	−5.400	3.000	1.400
X218	−5.900	1.200	2.500
X255	4.100	−2.600	4.400
X258	4.000	2.200	−2.900
X260	−0.200	−5.800	1.800
X262	1.200	4.300	−2.700
X263	0.100	−5.600	−1.500
X268	0.500	0.400	−0.600
X269	4.900	3.200	1.500
X270	3.400	−1.200	−4.500
X271	0.400	1.300	−0.800
X272	3.900	0.500	3.900
X278	−1.300	6.100	−0.200
X280	−4.000	2.700	−1.300
X282	1.100	5.100	−2.900
X283	1.300	5.200	−2.900
X284	0.200	3.900	−4.100
X285	−1.200	6.000	−0.200
X286	4.300	−2.600	1.700
X290	0.200	−2.700	2.400
X295	−0.700	0.500	−2.500
X297	−2.500	−2.900	1.100
X299	−0.700	0.200	−1.000
X300	−4.000	2.400	−1.700

Table A.7: Race Convention Discrimination and Difficulty Parameters, by Issue (cont.)

	Discrimination D1	Discrimination D2	Difficulty
X304	2.500	−5.100	0.900
X306	−4.600	0.800	−3.200
X307	−4.500	1.700	−4.300
X314	3.700	−1.800	−0.200
X318	0.000	5.700	−2.700
X328	−4.000	−2.500	−0.600
X332	−0.300	4.300	3.500
X334	−0.100	3.900	−4.000
X336	−3.000	−1.300	−2.000
X338	−3.100	−1.800	4.000
X342	−1.900	3.800	3.500
X345	2.400	3.100	−3.700
X346	−3.200	−2.500	−1.700
X347	1.900	−0.500	−1.000
X353	2.800	2.100	1.600
X355	1.900	−3.000	1.100
X357	1.800	−3.400	−3.200
X360	1.100	4.300	−2.200
X362	5.600	−1.200	−1.200
X365	−3.900	−1.900	−2.300
X367	−5.500	−0.400	1.000
X369	−5.100	0.000	−1.700
X376	−3.500	−3.300	−2.000
X377	−0.100	4.200	0.300
X378	1.300	2.000	0.100
X385	−2.500	3.300	3.700
X391	2.400	−3.000	−5.200
X392	1.200	−3.300	−4.400
X402	−0.100	0.500	−0.700
X403	−1.100	−4.300	1.700
X411	−4.800	1.100	0.300
X412	−4.500	−1.200	−1.800
X415	−1.900	−1.000	−1.500
X416	−0.300	−2.900	−4.100
X417	−4.300	1.700	0.200
X418	−4.400	1.500	0.400
X426	−0.900	−1.500	−4.100
X428	−1.000	2.300	3.700
X430	−0.500	−0.500	−0.200
X433	−0.800	−0.800	−5.800
X436	−2.600	2.400	0.200
X440	−3.700	1.700	−4.100
X445	−1.400	3.200	−0.500
X456	−1.600	−3.500	−2.500
X457	−1.100	−4.300	2.400
X458	−1.700	−3.500	−2.500
X459	−1.100	−4.300	2.400
X463	−1.800	−0.700	−6.400
X464	−5.500	0.500	1.200
X465	3.100	−2.400	−5.000
X467	−0.100	5.700	−2.100
X469	−1.500	2.900	4.100
X470	5.300	0.500	1.600
X471	−4.100	−0.300	−3.200
X472	−1.800	−3.900	3.300
X473	4.000	−1.300	2.000
X474	5.600	−0.300	0.300
X478.1	−1.100	2.500	−7.000
X479	2.400	3.200	−1.900
X481	4.400	−3.000	4.200
X488	−2.100	−4.000	1.200
X490	2.700	−2.500	−2.600
X491	−1.000	1.700	−4.400

Table A.8: Rome Statute Discrimination and Difficulty Parameters, by Issue

	Discrimination 1	Discrimination 2	Difficulty
X7.3.FO	3.090	−0.240	−3.030
X3.3	3.030	$-5 \cdot 10^{-2}$	0.450
X3.2	−2.690	$2 \cdot 10^{-2}$	−2.690
X7.3	−2.550	$-5 \cdot 10^{-2}$	1.890
X41	2.510	0.590	−0.720
X7.FO	2.300	2.810	−2.380
X4	−2.220	1.040	−4.670
X10.2	2.210	0.380	−0.760
X99	−2.210	−0.150	−1.140
X102.1.	−2.200	0.890	1.960
X1	−2.170	−1.120	−3.630
X15.2	2.070	1.100	−2.990
X18.2	2.030	−1.230	3.550
X5c.Bf	−2.000	0.940	−6.640
X5d	2.000	2.000	−4.770
X53.1	1.990	−1.000	1.450
X45	1.930	−1.120	−4.100
X25	1.910	2.360	−2.830
X11.3.FO	1.870	−2.020	3.860
X43.2	−1.740	$-6 \cdot 10^{-2}$	−1.130
X42.3	1.720	−0.440	−1.230
X26	−1.690	−0.330	−4.080
X6.1a..	1.660	0.770	−2.610
X107	−1.650	−2.570	−1.450
X102.2e	1.650	−2.280	−0.560
X10.1.FO	1.620	0.310	−0.840
X5c.Bp	−1.600	0.860	−6.780
X43.	−1.600	0.490	−6.800
X7.1.FO	1.570	2.070	−2.090
X10.4.1	1.570	0.330	−1.310
X109	1.540	1.240	−0.340
X5c.D	1.520	2.630	−3.750
X6b	1.500	2.620	−1.910
X8	1.460	$-4 \cdot 10^{-2}$	−4.720
X17.6	1.460	2.520	−0.480
X27Proposal2	−1.460	1.780	−4.470
X5c.C.1	1.450	1.920	−3.100
X11.3	1.320	−0.480	2.140
X7.2	1.300	−1.650	4.260
X5b.1	−1.250	2.650	−4.390
X37.5	−1.210	−2.320	−3.590
X5c.C	1.190	2.970	−2.720
X17	1.180	−1.000	−5.190
X5c.D.1	1.150	2.430	−2.470
treaty.crimes	−1.150	0.480	−1.730
X106	−1.130	1.070	−2.560
X7ter..12.3	1.110	0.930	−3.020
X6.7.9	−1.100	4.150	2.620
xx.1	−1.100	2.030	−5.120
X9.FO.	−1.090	3.370	2.140
X2	−1.040	2.130	1.530
X4.1	0.990	0.230	−0.780
X10.5	0.990	0.800	−1.330
X10.3	0.980	0.470	−0.150
X38.2	0.970	2.580	−3.170
X43.1.1	−0.940	−1.620	0.950

Table A.9: Rome Statute Discrimination and Difficulty Parameters, by Issue (cont.)

	Discrimination 1	Discrimination 2	Difficulty
X5d.1	−0.940	2.270	−1.900
X10.7	0.940	0.340	−0.140
X7.2.1	−0.880	−0.830	4.400
X6c.1	0.810	3.510	−0.980
X10.1	0.800	0.390	−1.060
B.o.	0.770	0.460	1.080
X5c.B.o.	0.770	0.150	−0.440
X10.4	0.750	0.360	$-9 \cdot 10^{-2}$
X5.ter	0.750	2.260	−1.660
X5c.Bp.bis.	0.730	1.720	−4.410
X91	0.730	−0.540	−0.500
X44.4	0.730	1.410	−3.360
X6.1c	0.720	2.380	−1.570
X87.3b	−0.700	−3.060	−0.910
X5d.1j	0.690	0.860	−0.840
X112	−0.690	$-2 \cdot 10^{-2}$	0.110
X40	0.690	0.880	−1.810
X16.2	0.650	−0.620	−1.010
X20.1c	0.640	0.790	−1.060
X..5e	−0.630	$7 \cdot 10^{-2}$	−1.900
X18	0.610	0.470	−1.100
X10.2.FO	0.610	0.490	−0.530
X10	0.600	0.600	−2.420
X6a	−0.590	0.570	−1.730
X75e	0.590	0.750	−0.580
X110.6	0.590	−0.990	0.230
X7.2.FO	0.590	−0.150	−0.920
X7.1	0.580	0.790	0.130
X15.1	−0.570	1.930	−3.430
X6c	0.560	1.780	−1.180
X6.7.9.a	0.550	2.280	−0.860
X16.1	0.550	−1.030	−0.300
X8.1	0.540	0.540	−2.250
X6.7.9.b	0.540	2.300	−3.240
X115...	−0.530	0.890	−1.080
X108	0.520	0.420	−1.060
X45.4	0.510	0.350	0.570
X9.	−0.510	−1.040	1.010
X12	−0.490	2.900	−3.520
X5c.Bo	0.460	0.000	0.450
X5d.1i	0.460	1.150	−1.190
X5e	−0.450	$5 \cdot 10^{-2}$	0.330
X104	−0.440	$-9 \cdot 10^{-2}$	0.320
X52.1	0.430	0.290	−1.250
X12.1	−0.410	3.110	−3.080
X16	0.400	−0.880	−0.520
xx..4...2.	0.390	−0.490	1.220
X6b.1	0.390	2.960	−3.210
X114	0.390	−1.080	0.450
X39.3a.	0.360	−0.100	0.460
X7.ter	−0.340	−2.020	−4.050
X17.2b..	−0.340	0.100	−0.770
X7.bis	−0.340	−3.410	0.380
X5d.1h.	0.330	1.650	−3.950
X49.2...	−0.320	−0.790	1.020
X37.3..	−0.300	0.700	1.790
X37.8d.e	0.300	0.220	−0.830

Table A.10: Rome Statute Discrimination and Difficulty Parameters, by Issue (cont.)

	Discrimination 1	Discrimination 2	Difficulty
X5c.Ba.bis.	-0.290	-0.240	-1.470
X43.2.	-0.280	-2.490	-5.050
X6.1b	-0.270	-0.140	0.620
X43.9	0.260	0.540	-1.990
X5d.option.1	-0.260	$3 \cdot 10^{-2}$	-1.840
X111	0.230	0.290	$-5 \cdot 10^{-2}$
X7bis	-0.220	-1.750	0.680
X5c..	0.210	1.640	-3.870
X19	0.210	0.630	0.480
X10.6	-0.200	1.010	-0.920
X5.Quarter	-0.190	0.640	-1.020
X5c.Bb	0.170	0.300	0.310
X5d.2	0.160	-0.130	0.610
X5	0.150	0.220	1.250
X12.2	0.130	2.840	-1.290
X39.4	-0.130	0.100	-0.720
X5c.Bt	0.120	1.650	-4.050
X14	0.110	$-3 \cdot 10^{-2}$	-1.430
X23.5.6	-0.100	-0.100	1.950
X6.2	$9 \cdot 10^{-2}$	$-8 \cdot 10^{-2}$	-0.240
X7.bis.1	$-9 \cdot 10^{-2}$	1.080	-1.140
AggOptions	$8 \cdot 10^{-2}$	0.790	-0.560
X15	$-8 \cdot 10^{-2}$	-0.210	0.760
X7.1.1	$-8 \cdot 10^{-2}$	1.600	-2.570
X102.5	$8 \cdot 10^{-2}$	0.100	-1.890
X5c.1.thresh.	$8 \cdot 10^{-2}$	0.130	$1 \cdot 10^{-2}$
X20.1b	$-7 \cdot 10^{-2}$	0.410	$8 \cdot 10^{-2}$
X36	$-6 \cdot 10^{-2}$	1.380	-4.420
X105	$-6 \cdot 10^{-2}$	0.170	-0.690
X37.4.	$5 \cdot 10^{-2}$	-0.110	-1.070
X47.2c.	$-4 \cdot 10^{-2}$	0.000	0.780
X5d.1d	$3 \cdot 10^{-2}$	1.180	-2.240
X110.3	$-2 \cdot 10^{-2}$	-0.100	-0.830
X5c.Bb.bis.	$2 \cdot 10^{-2}$	-0.220	$-4 \cdot 10^{-2}$
xx	$1 \cdot 10^{-2}$	-0.460	0.720
X113	$-1 \cdot 10^{-2}$	0.340	-0.260

Table A.11: Refugee Convention Discrimination and Difficulty Parameters, by Issue

	Discrimination D1	Discrimination D2	Difficulty
Vote 1	0.690	−1.850	−4.373
Vote 2	−2.446	3.310	−1.985
Vote 3	−2.656	−1.479	−4.935
Vote 4	$8.926 \cdot 10^{-2}$	−2.345	4.018
Vote 6	−2.460	−1.021	−1.224
Vote 7	−3.564	1.838	2.817
Vote 8	3.260	0.121	−2.312
Vote 9	−3.436	$1.828 \cdot 10^{-2}$	−1.093
Vote 13	−2.850	−1.102	−1.491
Vote 15	0.668	−2.391	6.785
Vote 16	1.697	1.382	−6.893
Vote 20	−1.775	2.664	2.176
Vote 22	−1.767	2.632	−4.520
Vote 23	3.193	−0.181	−3.535
Vote 24	−3.096	$8.202 \cdot 10^{-2}$	−0.728
Vote 25	3.403	−1.314	1.821
Vote 26	3.755	0.336	−0.830
Vote 27	1.460	1.537	6.356
Vote 28	1.607	−2.383	−0.533
Vote 29	2.389	1.366	−5.786
Vote 37	−0.565	−3.410	−4.497
Vote 39	−2.896	−1.428	−0.731
Vote 41	−3.262	0.726	4.447
Vote 42	−2.060	−2.596	−2.100
Vote 44	−3.389	$8.036 \cdot 10^{-2}$	−1.277
Vote 47	$1.561 \cdot 10^{-2}$	4.288	−1.307
Vote 48	−1.501	−3.091	−1.333
Vote 50	0.587	−3.267	−3.185
Vote 52	3.032	−0.638	0.119
Vote 53	−2.668	−1.448	−0.680
Vote 56	0.161	−2.732	−3.314
Vote 58	−0.674	2.454	3.049
Vote 61	−0.568	1.816	5.000
Vote 64	−3.238	1.983	$1.706 \cdot 10^{-2}$
Vote 69	2.787	1.625	1.735
Vote 71	2.475	1.606	$-2.109 \cdot 10^{-2}$
Vote 72	−1.770	−2.308	−1.611
Vote 73	−1.517	−2.768	3.763
Vote 74	−1.728	1.163	−1.185
Vote 77	−3.544	−0.621	1.512
Vote 78	−2.892	−0.889	−1.580
Vote 79	−0.402	−4.053	1.051
Vote 80	3.091	0.261	2.716
Vote 81	1.487	3.149	−1.548
Vote 82	−2.311	2.442	−1.739
Vote 83	−1.218	0.984	−5.445
Vote 84	2.911	−1.294	1.190
Vote 86	−3.538	−1.385	−4.000
Vote 88	3.613	−0.170	2.741
Vote 92	−0.334	−2.786	0.653
Vote 93	2.575	3.242	0.512
Vote 94	2.427	0.842	3.482
Vote 95	2.820	0.873	−1.363
Vote 97	−2.304	−2.620	−2.195

Table A.12: Refugee Convention Discrimination and Difficulty Parameters, by Issue (cont.)

	Discrimination D1	Discrimination D2	Difficulty
Vote 98	−1.322	−2.556	−1.030
Vote 99	−3.209	−0.114	−0.914
Vote 101	−0.714	−3.754	−1.203
Vote 102	2.973	−2.389	1.451
Vote 106	1.575	−2.625	−5.288
Vote 107	−3.359	−1.653	−1.691
Vote 108	2.554	0.836	−5.507
Vote 109	2.453	1.580	3.165
Vote 110	−1.903	1.867	1.115
Vote 113	1.446	3.673	2.287
Vote 114	3.681	1.056	0.700
Vote 115	1.619	−3.086	3.855
Vote 117	1.590	4.119	0.866
Vote 119	−1.375	−2.564	$-3.108 \cdot 10^{-2}$
Vote 120	1.714	−1.573	5.148
Vote 121	1.828	1.691	−6.163
Vote 122	3.299	0.132	−1.074
Vote 124	3.139	1.486	4.188
Vote 125	1.524	3.756	1.337
Vote 128	3.537	−1.344	−0.313
Vote 130	2.101	1.645	−5.533
Vote 132	−2.502	−2.660	2.161
Vote 133	3.220	0.531	−4.577
Vote 134	3.306	−2.545	−0.558
Vote 135	3.409	−2.621	−0.429
Vote 136	3.361	1.536	3.122
Vote 137	1.759	1.977	−3.309
Vote 140	2.730	1.138	−4.967
Vote 141	3.147	0.942	−0.893
Vote 142	3.797	0.167	1.987
Vote 143	−3.237	1.023	1.691
Vote 144	2.858	−0.103	−3.903
Vote 145	−1.809	−1.762	−2.297
Vote 146	3.072	−1.627	1.489
Vote 147	0.371	−2.700	−2.402
Vote 148	0.927	4.081	−2.086
Vote 149	1.785	3.911	−0.838
Vote 153	−0.800	3.719	−1.499
Vote 154	2.804	−0.743	−2.565
Vote 155	2.449	1.626	−5.480
Vote 158	3.284	−2.160	−0.373
Vote 160	2.496	1.941	2.570
Vote 167	3.074	0.456	−4.250
Vote 168	2.843	−0.167	−3.421
Vote 170	2.871	1.344	−0.770
Vote 171	−0.254	−2.748	−4.276
Vote 174	3.914	−0.727	0.184
Vote 176	−2.675	−1.234	−1.349
Vote 177	−1.822	−1.981	−2.263

TRAVAUX DATASET
Codebook

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Version 1.4
January 18, 20

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1 DATA COLLECTION METHODOLOGY

1.1 Document Collection

The UN core human rights treaties include the following nine instruments: International Convention on the Elimination of All Forms of Racial Discrimination[1]; International Covenant on Civil and Political Rights[2]; International Covenant on Economic, Social and Cultural Rights[3]; Convention on the Elimination of All Forms of Discrimination Against Women[4]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[5]; Convention on the Rights of the Child[6]; Convention on the Rights of Persons with Disabilities; International Convention for the Protection of All Persons from Enforced Disappearance; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

As part of the treaty-drafting records for these conventions, the working groups regularly issued detailed meeting reports and other documents that identify the content and sponsors of substantive proposals.[7] Unfortunately, the travaux for most of the nine core UN human rights instruments has been mostly inaccessible to the public. There is no electronic central depository for most treaties, and many of the older records still exist only in microfiche or other physical formats where the treaties were concluded, such as New York and Geneva. But over the past two years, the PI has worked with University of Virginia Law School Law librarians and other researchers to build and organize a database

[1] Dec. 21, 1965, 660 U.N.T.S. 195.
[2] Dec. 19, 1966, 999 U.N.T.S. 171.
[3] Dec. 16, 1966, 993 U.N.T.S. 3.
[4] Dec. 18, 1979, 1249 U.N.T.S. 13.
[5] Dec. 10, 1984, 1465 U.N.T.S. 85.
[6] Nov. 20, 1989, 1577 U.N.T.S. 3.
[7] For example, a report from a drafting meeting for the Migrant Workers' Convention notes, "The representative of Morocco, supported by the representatives of Jamaica, Algeria, India and the Philippines, suggested starting the article with a chapeau, recognizing, on the one hand, the right of migrant workers to dispose of their earnings and savings and, on the other hand, that States should facilitate the transfer of their earnings and savings" A/C.3/38/1, ¶ 22.

of travaux documents for these treaty-drafting negotiations.[8] We have determined that the universe of documents for the nine treaties comprises approximately 2200 documents totally roughly 44,000 pages. The researchers have finished locating, assembling, and sorting the records, and they are nearly finished converting the documents to text-searchable format. They are now located in a UVA Law Library secured electronic database.

These efforts have enabled this project, which involves quantifying the information in the meeting reports and other pertinent documents, and identifying and classifying all proposals relating to the substantive content of the treaty.[9]

1.2 Coding Methodology

The current stage of the project, then, involves coding the information contained in the travaux documents. This project is primarily interested in parties' proposals for the treaty instrument. In coding the travaux, we are interested in proposals for substantive provisions and procedural reforms, and how those proposals were treated by the drafting committee, including to what extent the substantive provisions appeared in the final treaty.

To quantify the proposal data, two coders will read each relevant document and identify all proposals relating to the treaty being drafted. In doing so, we will take account of which states or other organizations made which sort of proposals, capturing and coding numerous attributes of each. We will find the progression of each proposal by comparing the proposal to the final version of the treaty.[10] Various intercoder reliability statistics will be calculated, and any discrepancies in the two coders' findings will be reconciled by the principal investigator.

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[8] Mila Versteeg, Alec Knight, and I were the faculty and staff members who collaborated with the team of law librarians. Notably, Alec Knight traveled to the UN repository in New York and worked with UN employees in Geneva to locate and retrieve copies of the documents.

[9] I thank Alec Knight for identifying most of the travaux proposal examples below, which are drawn from the Migrant Workers' Convention.

[10] *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

1.2.1 Project Website and Shared Folder

The project website is located at www.kevinlcope.com/travaux. It is password-protected; the password is "[redacted]." The website is the project headquarters, and it contains links to various materials you will need to prepare for and complete the coding. The materials will be updated constantly throughout the project, so rather than downloading the materials and saving them in Dropbox or on your hard drive, access them online each time you need them. Some materials that you'll be editing, like the travaux documents and the coding spreadsheet, are not available on the website; they will be placed in your Dropbox shared folder.

Online forum – There is a link to an online forum on the website. Its password is also "Travaux." We will use this forum in lieu of email to ask questions and share thoughts about the coding process. The forum has the benefit that all team members, including ones that join later, will be able to review it and benefit from our shared experiences. Open communication is crucial to this project. All of us our doing this for the first time (because it's never been done before!), so we're all be learning together. Use the forum and ask questions liberally. *When in doubt, ask; there are no foolish questions!* In fact, we hope that everyone will post *at least* a few questions each week. It's far worse to code something incorrectly–especially if you repeat the error–than to ask a question that you're concerned (probably, unjustifiably) will be obvious to someone else.

When someone posts on the forum, everyone will get a notice email. When someone else posts and you get the email, go to the forum as soon as possible, and read the question. If it's a question that concerns something you've dealt with, feel free to weigh in; don't worry if you're not 100% certain; the PI will review all answers and respond definitively. When an answer is posted, check back and review it; it may be important to what you're then working on.

The one limitation of the forum is that because we are double coding all or some of the treaties, we need coders to make judgments about specific coding questions *without knowing exactly how a past coder has resolved it*. Therefore, do not ask (or answer) questions about precisely how to code a specific issue. Rather, ask about the rule governing that *type* of issue generally. That said, err on the side of asking too many questions; if a

question is too precise, it's not a problem; the PI will simply contact you via email to answer it.

Reporting – When you're coding, if you come across anything that you think is particularly interesting given the project objectives described, above, email the PI. Likewise, if you see a problem with the documents, such as one that seems to be missing, email the PI; we may be able to locate it.

1.2.2 The Coding Process

Each set of treaty travaux comprises many documents. The number of documents ranges by treaty, from 86 to several hundred. The individual documents also vary dramatically in their length. For instance, for CEDAW, the *mean* length is about 11 pages, the *median* length is two pages, the shortest documents are less than one page, and the longest is more than 100 pages (though much of the longer documents are irrelevant to the coding). The documents will be in your Dropbox folder under the name of the pertinent treaty.

Before staring your review, first make sure you're viewing the documents in *chronological order*. The document file names are prefixed with a date in YY-MM-DD format, so sorting them in Windows/Finder, *ascending by document title*, will produce a chronological ordering (usually one that spans many years). Because you're reading the documents in chronological order, you'll also be following the evolution of the treaty, including the development of the various proposals, in chronological order. In essence, you'll be reading the "story of the treaty" from a primary source, the perspective of the drafters.

The travaux documents fall into several categories, some of which contain very many proposals, and some which contain just one or none. These categories include, e.g., (1) meeting reports, which recount and summarize proposals, including, the body's reaction(s); (2) memos by states and other entities making written proposals; (3) committee reports summarizing existing proposals; (4) other reports about related international legal developments. The first three types are likely or guaranteed by definition to contain proposals.

The drafting committees typically convened for meetings over the course of several weeks, once or more per year. The committee generated many reports, submissions, and other documents when in session, and relatively few documents other times. As a result, the documents will generally appear in groups closely clustered in time.

Proposals can take several forms, including written and oral form. Some documents consist entirely of a proposal or series of proposals, usually when a representative submits its amendments (or whole or partial treaty draft) as a memo to the drafting committee. Other proposals are mentioned in meeting reports; a common form is for the report to note that a state or organization proposed something, and then, in some cases, note the reaction.

To begin reviewing, open the Coding Excel spreadsheet located in your Dropbox folder. Before editing the spreadsheet, save a copy of the spreadsheet for the relevant treaty in the treaty data folder. Rename the spreadsheet with the name of the treaty and the initials of the coder (e.g., "CEDAW Coding AB v.1"). Then open each document in Adobe Reader, Preview, or some similar PDF viewer. Determine the document's author, procedural context, and purpose. Also pay attention to the document date, noting how it relates to the dates of any documents you've recently reviewed.

In reviewing a document, keep track of who's "at the table" (states, IGOs, NGOs) for any given session/meeting. Read every page closely to determine whether the document contains any proposals. Note: some documents are reports of a body not specifically dedicated to drafting the treaty (especially early in the process), so some of the material may have nothing to do with the treaty; if you've determined with certainty that a part of the document addresses an unrelated subject (e.g., part of one document in the CEDAW file was a tribute to Pope John Paul on his birthday), you should skip over that portion. When you identify a proposal, note it. Review the entire document to ensure that you've covered all references to that proposal in the document. Note: sometimes a body entertains views, even formal proposals, from states and organizations who are not formal members of the group. Those can constitute proposals, provided they meet the standard criteria below.

It is very common for a proposal to propose a change to a working treaty draft without stating explicitly *how* the proposal changes the status quo. For example, a party might propose that "Article 12 be amended to state [X]," but not specify what Article 12 currently states. You need to know what change the proposal accomplishes in order to code it. For that reason, it is imperative that you maintain a running version of the treaty in a separate Word document. When you come across a proposal, copy and paste it onto the current working treaty version (or run a comparison using Word's *Compare Documents* feature). This will allow you to compare proposals, viewing how they modify the existing draft or previous proposals, which is essential to answering many of the coding questions. Note that a proposal styled as a written memo presenting one or more articles will often change only some aspects of those articles in previous drafts; only those changes constitute the proposals.

When reviewing a proposal, consider whether the proposal might be referring to some previously recorded proposal. For example, sometimes a party submits a proposal in written form, and a report later references that proposal; often the later reference will expressly name the earlier written submission by name and/or document number, but it may not always do so. Other times, the report will reference a proposal previously made orally in another group session. You may need to go through several documents, synthesizing proposals and reactions, to fully complete the questions on any given proposal. Where the discussion does not expressly note that the proposal was made in some other form, you'll have to detect this by comparing the proposal's sponsor(s) and substance. Either way, if the proposal is indeed referencing an earlier-made proposal, do not code it as a separate proposal; rather, use the information in the document to update the coding you already entered for that proposal.

Once you've studied the proposal and determined how it modifies the working version, proceed to answer all of the coding questions in the data map. Note: One of those questions asks you to cut and paste the entire proposal text into the spreadsheet. Since some proposals are long and spreadsheet space is limited, format the spreadsheet cell so that it doesn't expand the cell to accommodate the entire proposal. (It's not important that one can see the full proposal when glancing at the spreadsheet.)

There are 141 questions that apply to all treaties, and several treaty-specific questions that apply to the treaty you're reviewing. (Needless to say, do not answer the treaty-specific questions for other treaties; enter a '99' for them.) To answer each question, closely consult the notes in the Datamap (Section 2 below), which contains instructions on how to interpret and respond to each of the questions.

Q140 asks how the proposal is reflected in the final treaty. To determine this, access the final version of the treaty (available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx) and compare the proposal to the final version of the treaty. Make use of the Control/Command-F function to search for key proposal language in the treaty, wherever it appears.

Do not move on to the next document until you've finished with the previous one. However, you will often need to come back to an already-completed document to review the history of a proposal that resurfaced in a later document.

Repeat this process for all the documents in the set. We expect that a complete treaty will comprise hundreds, perhaps more than one thousand, total proposals.

This process involves a steep learning curve. You will move more slowly at first, but once you've done the process several times, your efficiency will improve as you become acquainted with the questions and possible responses. Importantly, you'll quickly see that the vast majority of questions are not applicable to any given proposal, and will receive a "99" (see Datamap below). Once you're acclimated, we anticipate that identifying and coding a single proposal will take 15-20 minutes on average, though some will take longer.

While we would like to progress efficiently, the most important goal is accuracy. All coding will be reviewed using an intercoder reliability measure, and too much coder disagreement can call the data's reliability into question. So please be meticulous and check to make sure the codes you entered are what you intended.

1.2.3 Identifying Proposals

Definition

A *proposal* is *a suggestion from a state or other participant that the treaty at issue add some term, change some term, and/or delete some term, or that the treaty-writing process adopt some new procedure*.

Not all expressed opinions or stated preferences constitute proposals for our coding purposes. To be considered proposals, statements must be concrete suggestions to shape the treaty content or negotiation procedure; vague preferences about the nature of the treaty are insufficient.[11] Opinions about whether there should be one or multiple treaties, or broad ideas about the focus or scope of the treaty, should not be coded. Also, parties sometimes give explanations, opinions, and objections, or voice other views that don't fall under the above definition of "proposal," and therefore do not constitute proposals for the purpose of this study. Finally, parties often respond to others' proposals, expressing support for or opposition to adopting that proposal; these are coded not as proposals, but as "positions on proposals" and are recorded in Q52-Q134. These positions include instances where a role call vote is taken on a proposal, in which case votes in favor of [opposed to] the proposal should be coded as unqualified support for [unqualified opposition to] it.

Distinguishing the statements that qualify as valid proposals from those that constitute something else requires you to make a subjective and important judgment. While there is no simple method for identifying proposals, there are a few general rules to follow. The sub-sections below provide some guidelines.

Non-proposals and positions on proposals

Explanations, opinions, and positions, which do not quality as proposals, often involve verbs like "expressed," "felt," "stated," and "pointed out."[12] These verbs normally

[11] If a state representative makes a proposal to a version of the treaty in another language (e.g., the French or Spanish text), this should not be coded as a separate proposal; we are concerned only with the primary, English version.

[12] For example, "The representative of Jamaica and other delegations expressed their difficulty in accepting the word legal" A/C.3/37/7, ¶ 21. Example: "The representative of Finland stated that his delegation had difficulty with the phrase 'may be taken into account', as in his view that term expressed an

do not indicate proposals, but they can sometimes do so, particularly when they are combined with auxiliary verbs indicating the desire for or commitment to a particular outcome (e.g., "should," "ought," "must").[13] When parties express support for, object to, or express reservations regarding another proposal without specifying a specific proposed change, these are considered positions on another proposal (Q52-Q134), not proposals themselves.[14]

Revisions

Often one party will *revise* an earlier proposal, modify it, and propose it as its own. Take care to code only those provisions in revisions that are truly different from the original formal proposal. To do otherwise would be to double-count these provisions. Note that so-called revisions often include new provisions, which must also be coded.[15] Also note that where a party amends or corrects its own previous proposal without input from the group, code only the amended/corrected version.

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idea of probability." A/C.3/42/1, ¶ 67. Example: "The representatives of Morocco and Senegal stated that their delegations could not accept such a proposal as the idea behind it implicitly provided for expulsion or deportation…." A/C.3/41/3, ¶ 234

[13] For example, "The representative of the United States stated that, in his view, the paragraph should be limited to detention of migrant workers for being in an irregular situation." A/C.3/42/1, ¶ 15. Example: "The representative of the Federal Republic of Germany, while referring to article 13 of the International Covenant on Civil and Political Rights stressed that the provisions of the present paragraph should be in harmony with the provision of article 13 of the Covenant…." A/C.3/42/1, ¶ 102

[14] Example: "The representative of Greece *placed on record his reservations* on the substance of the proposed article; he objected to any proposal aimed at restricting by the State of employment, the right of migrant workers and members of their families to freedom of expression, to vote and to be elected as well as to participate in the conduct of public affairs in the State of origin, on the grounds that such restrictions would be against the letter and the spirit of the Universal Declaration of Human Rights and of many other relevant international instruments." (Emphasis added) A/C.3/37/7, ¶ 54. Example: "The delegations of Algeria, Morocco, Senegal, the Sudan, Iraq, Mauritania, Saudi Arabia, the United Arab Emirates, the Syrian Arab Republic and Jordan placed on record their formal reservations as regards the inclusion in article 4 of the draft Convention of the [proposed] phrase …." A/C.3/41/3, ¶ 51.

[15] Consider the original, "All migrant workers and members of their families shall enjoy quality of treatment with nationals of the receiving country in respect of social security, in so far as such protection arises out of employment," U.N. Doc. A/C.3/36/WG.1/CRP.1, II.21(1), versus the revision, "Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving country in respect of social security, provided that, as regards migrant workers and members of their family who are undocumented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits, that is, benefits the grant of which depends on direct financial participation by the migrant workers or their employer or on a qualifying period of economic activity." See U.N. Doc. A/C.3/36/WG.1/CRP.1/Add.1, 27.II.21(1) The first part of the proposal is the same in the original and revised versions, the revised version contains a new concept, which must be coded.

Proposal types

There are two main classes of proposals: procedural and substantive. The overwhelming majority–and the ones of most interest here–are substantive.

Procedural proposals (Q12, Q29-Q33) typically refer to the procedures for adopting substantive proposals, such as how many votes are required for adoption, the order for proceeding, or who should be included in the discussions. Minor suggestions for when to discuss specific substantive proposals, should not be included. For example, "[O]n a proposal made by the representative of Greece, the Working Group agreed to reconsider at a later stage the formulation of the part of the text which deals with restrictions applicable to migrant workers . . . in order to take fully into account some concerns expressed . . . ." A/C.3/36/10, ¶ 10. This ad hoc procedural suggestion would not be coded as a proposal.

On the other hand, *substantive* proposals (Q12) must recommend that the treaty add or alter one or more aspects of the treaty itself. Thus, proposals commonly involve verbs like "propose(s)/d," "submit(s)/ted," "suggest(s)/ed," "urge(s)/d," and "call(s)/ed for." These verbs nearly always indicate proposals, but there are other, less common, verbs that may also indicate proposals. As an aid or double-check on your work, you may use the *Control/Command-F* function to locate the common proposal verbs, but *you should not use it exclusively*; you must read every part of every document to identify the proposals. This is true for two main reasons: (1) parties sometimes use other language to make proposals; and (2) some documents are not text-searchable. So relying on this function alone would miss a significant number of important proposals.

Consider the following: "The representative of the United States orally proposed replacing the word 'formalities' by the words 'legal requirements'. A/C.3/37/7, ¶ 21. As another example: the representative of Finland "suggested either the complete deletion of paragraph 2 or the replacement of the word 'may' by the word 'should'." A/C.3/42/1, ¶ 67. These would both constitute substantive proposals.

Distinguishing one proposal from multiple proposals

Sometimes a party will propose a complex substantive treaty change that actually addresses multiple topics. This is especially common when a party submits a written

proposal listing the proposed changes. These cases are considered not one, but *multiple* proposals, and should be coded as such. It may sometimes be difficult to determine the difference between a complex, single proposal, on one hand, and multiple, closely related proposals, on the other. Use your best judgment, and consult the PI whenever in doubt.

2 DATAMAP

Below is a comprehensive list of the travaux information being coded. The questions, possible responses, and interpretive explanations for coders are provided for each variable. The data are currently divided into six categories: (1) preliminary; (2) proposal logistics; (3) sponsorship identify; (4) generic content; (4) support and outcome; (5) CEDAW-specific content; (6) MWC-specific content.

2.1 Preliminary

Q1. What are the coder's initials?

(Fill in)

- E.g., AB

Q2. On what date was the proposal coded?

(Fill in) (YYYY-MM-DD)

- If the coding spans dates, use the date coding started.

Q3. At what time did coding for the proposal begin?

(Fill in) (HH:MM, 24-hour format)

Q4. What is the name of the treaty being drafted?

1. International Covenant on Civil and Political Rights (ICCPR)
2. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

3. Convention on the Rights of the Child (CRC)
4. Convention Against Torture (CAT)
5. Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
6. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)
8. Convention on the Rights of Persons with Disabilities (CRPD)
9. International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED)
10. Rome Statute of the International Criminal Court
11. Convention on the Prevention and Punishment of the Crime of Genocide
12. Convention Relating to the Status of Refugees

Q5. What is the name of the first document that refers to the proposal?

(Fill in)

- Use the document's self-identified title, usually located at the top of the first page.
- If a representative describes his state's proposal in one a document but does not provide the exact wording, it should be coded as being introduced in that document, although details of the proposal may come from elsewhere.

Q6. What is the UN document number of the first document that refers to the proposal?

(Fill in)

- Use the UN symbol nomenclature, e.g., A/C.3/38/5, provided in the file name and on the document. For example, A/52/100 denotes a General Assembly document from the 52nd session; S/1997/100 denotes a Security Council document issued in

1997; and E/1993/100 denotes an Economic and Social Council document from 1993. For a complete overview of UN document symbols, click here.

Q7. On what page(s) of the above document does the proposal appear?

(Fill in)

- Use the page as originally listed on the document itself (not the PDF page number). If the document is not numbered, determine for yourself the page number, treating the first page as "1" (meaning it will generally correspond with the PDF page number).

Q8. On what date was the proposal introduced?

(Fill in) (YYYY-MM-DD)

- If the proposal is described in a meeting report and the exact date of the proposal itself is not given, use the document's event date. If the proposal is submitted in writing, use the date of the submission document. But if the proposal is coded as submitted *both* orally and in writing (Q17 below), use the earlier date.

Q9. What is the full text of the proposal?

(Fill in)

- Cut and paste the proposal from the document. If the proposal includes an entire treaty draft, do not input the full text; simply note as much. If the document has not undergone optical character recognition, look for the corresponding Word or RTF document and cut and paste from it. If no such document exists, ask for assistance from the PI or type the proposal in manually. (This will obviously be more time consuming, so use it only as a last resort.)

Q10. What is the proposal's objective in brief?

(Fill in)

- After reading the proposal and determining how it modifies the status quo, describe the proposal's objective in approximately one to three sentences.

2.2 Proposal Logistics

Q11. Which does the proposal concern: a substantive aspect of the treaty's content or operation, or how the treaty drafting-process will proceed?

1. A substantive aspect of the treaty's content or operation

- The great majority of proposals concern *a substantive aspect of the treaty's content or operation*.

2. How the treaty drafting-process will proceed in general

- Proposals that refer to the general internal workings of the drafting body are coded as *how the treaty drafting-process will proceed in general*. These proposals often refer to the order in which articles should be discussed, but can also refer to voting or membership rules, among other procedural matters. Ad hoc proposals for how to deal with particular issues are not considered proposals for this purpose. For Example 1: "At the end of the discussion on the text of article 8, on a proposal made by the representative of Greece, the Working Group agreed to reconsider at a later stage the formulation of the part of the text which deals with restrictions applicable to migrant workers and members of their families in order to take fully into account some concerns expressed, during the debate, in particular by the representative of Morocco" *See* U.N. Doc. A/C.3/36/10, ¶ 10. This suggestion is considered ad hoc and does not constitute a proposal.

Q12. What is the procedural context of the proposal?

1. Suggests a new change

- The great majority of proposals are coded as *suggests a new change*.
- Where multiple drafts/proposals are submitted by different parties simultaneously (or very close in time), they should be treated as unrelated separate proposals, not as modifications of each other

2. Revises one or more suggestions previously made

- Attempts to create a compromise text based on an earlier proposal, which tend to be submitted by the chairman and/or a group of states, are coded as *revises one or more suggestions previously made*. They must be based directly on an earlier proposal.[16]

3. Proposes to settle upon then-disputed language

- A proposal is coded as *proposes to settle upon then-disputed language* if the proposal selects one word/phrase/sentence from among at least two options in the draft convention. Often, while reading a draft convention, bodies leave words in brackets to indicate that there is no agreement on the language. The text in brackets may be anything from a single word to a paragraph. In the readings of the draft convention that follow, states attempt to reach an agreement, either by deleting the bracketed language or accepting one bracketed option from among multiple choices. For example, "Regarding the word "property" in brackets in the text, the representative of Finland, supported by Australia, suggested removing the brackets around it as it was used in article 2 of the International Covenant on Civil and Political Rights." A/C.3/40/1, ¶ 124.[17]

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[16] For example, at its 6th meeting on 22 October, the Chairman and the original co-sponsors submitted a second revision for a text for article 38, reading as follows…" A/C.3/37/7, ¶ 33. As another example, "After the discussion and informal consultations with delegations, the Chairman proposed to consolidate the Indian proposals in one single article which would be article 68 of part V of the draft Convention, reading as follows…" A/C.3/38/5, ¶ 35.

[17] As another example: "At its 4th meeting on 4 June, the Working Group considered preambular paragraph (1) on the basis of preambular paragraph (1) of the text agreed upon during the first reading (A/C.3/39/WG.1/WP.1) reading as follows: "(1) [Reaffirming] [Taking into account] the [permanent validity] [importance] of the principles [, standards] [and norms] embodied in the basic instruments of the United Nations….The representative of France, supported by the representatives of the Federal Republic of Germany and the United States, expressed a preference for the words "Taking into account" because in their

4. Creates disputed language

- A proposal is coded as *creates disputed language* if it proposes alternative language to another existing proposal that has not been incorporated.

77. Other

88. Multiple above

Q13. Is the proposal part of a first/original treaty draft or does it seek to amend an existing working draft?

1. First/original draft

- Proposals are coded as a *first/original draft* if they constitute a complete version of a proposed treaty rather than a modification to an existing draft. If such a draft is submitted contemporaneously or shortly after another party submits its own competing draft, and the later draft does not acknowledge that it is a modification of the earlier draft, it is coded as a *first/original draft*.

2. Amends an existing working draft

- The great majority of proposals, especially after the early phases of the drafting process, are coded as *amends an existing working draft*.

99. Not applicable

Q14. Does the proposal concern a subject that the working draft (if any) previously addressed, or does it concern a new subject?

1. Concerns a previously addressed subject

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view the word "Reaffirming" would tie the present Convention to previous conventions to which several States were not parties." A/C.3/40/1, ¶ 68

- Proposals are coded as *concerns a previously addressed subject* if some body has previously considered the specific topic at any point during the drafting process.

2. Concerns a new subject

- Proposals are coded as *concerns a new subject* if the proposal introduces a new topic. Note that introducing a new *provision* is not necessarily the same thing as introducing a new *topic*. A new provision could revive a previously discussed topic. Conversely, a modification to an existing paragraph could address a new topic. For example, Country X proposes that the provision stating that "States parties resolve not to discriminate on the basis of gender in government hiring" be amended to add the clause, "but nothing in this provision shall be construed to prevent governments from implementing short-term measures to remedy gender disparities resulting from past discriminatory practices against women." This proposal would be coded as *concerns a new subject* (i.e., whether affirmative action is permitted).

Q15. How much of the treaty text does the proposal seek to change?

1. Introduces or deletes one or more words within a clause or phrase; reformulates, reorders, or otherwise changes a clause or phrase
2. Introduces or deletes one or more clauses or phrases within a sentence; reformulates, reorders, or otherwise changes one or more sentences
3. Introduces or deletes one or more sentences; reformulates, reorders, or otherwise changes one or more subparagraphs
4. Introduces or deletes one or more subparagraphs within a paragraph; reformulates, reorders, otherwise changes a paragraph
5. Introduces or deletes one or more paragraphs; reformulates, reorders, or otherwise changes multiple paragraphs within an article
6. Introduces or deletes an article; reformulates, reorders, or otherwise changes multiple articles
7. General proposal (concrete substantive proposal without specific language suggestion)

- If a proposal falls into more than one category (e.g., it introduces a new, one-sentence (3) subparagraph (4)), use the code of the more substantial change.
- A proposal is coded as *general proposal* if it calls for the inclusion of some new provision or change to existing provisions, but does not suggest any specific textual change.[18] (Recall that vague statements about what the treaty should accomplish or include are not coded as proposals at all.)

77. Other

88. Multiple above

99. Not applicable/none (procedural proposal)

Q16. To what body is the proposal made?

1. A working group/committee session (orally or in writing)

2. The General Assembly (orally or in writing)

77. Other

- Note that many documents reference the General Assembly in the header, even where the document is prepared by a drafting committee. The relevant body is that to which the proposal is directly addressed. So if the proposal is made in a meeting of the "3rd Committee of the General Assembly," it should be coded as a committee session.

[18] Example 1: "In that connection the representative of Mexico, referring to the obstacles encountered by some states to ratify some ILO conventions, stated that the chapeau of the article should mainly address the "prevention of clandestine labour." A/C.3/38/5, ¶ 24. Example 2: [The representative of Algeria] "stressed that, with a view to ensuring their durable reintegration in the country of origin, the return of the migrant worker should be final and freely decided upon by the migrant worker." A/C.3/38/5, ¶ 18. Example 3: "The representative of Argentina stated that there should be a general safeguard clause whereby States would provide legislation or regulation to this end" A/C.3/38/1, ¶ 18. Example 4: [The representative of the Netherlands] "suggested that part 2 of the proposed article 68 should be restricted to an obligation for the States concerned to remove legal obstacles to the repatriation of a body." A/C.3/38/5, ¶ 36. Example 5: "The representative of Morocco, supported by the representatives of Jamaica, Algeria, India and the Philippines, suggested starting the article with a chapeau, recognizing, on tne one hand, the right of migrant workers to dispose of their earnings and savings and, on the other hand, that States should facilitate the transfer of their earnings and savings" A/C.3/38/1, ¶ 22

Q17. In what form is the proposal?

1. Oral

   - Code as an *oral* proposal if the party makes the proposal to a body exclusively in oral form.

2. In writing

   - Code as *in writing* if the party submits a written version of the proposal. (Also code as *in writing* (not *both*) if the party submits a written version, and later, the proposal is orally debated, discussed, or otherwise mentioned before a body (but not formally re-proposed).)

3. Both

   - If the party both submits a written proposal and *formally* makes the proposal before the body (not just discusses it), in whichever order, code as *both*.

77. Other

2.3 Sponsorship Identity

Q18. What is the name of the first state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- If there is no COW code for a country per se, use the code that corresponds most closely. If in doubt, use this ICOW Historical State Names data set: http://www.paulhensel.org/icownames.html.
- Where multiple parties are listed along with the introduction of a proposal, code the party as a proposal maker/sponsor (as opposed to as merely expressing support in the questions below) only if the party is named as a "sponsor," "author" of a submission, as the party that "proposed," or the like. If a report notes that Country X proposed a change, "with the support of Country Y," do not code Country Y as

a sponsor. But if a report notes that "Country X along with Country Y" proposed a change, code Country Y as a sponsor.

- Where there are multiple proposal sponsors, in determining the order, use the order listed in the document.

99. Not applicable

Q19. What is the name of the second state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q20. What is the name of the third state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q21. What is the name of the fourth state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q22. What is the name of the fifth state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q23. What is the name of the sixth state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q24. What is the name of the seventh state making/sponsoring the proposal?

(Use COW state index abbreviation to code)

- See notes on Q18.

99. Not applicable

Q25. How many additional states (beyond the first seven) make/sponsor the proposal and what are the states' identities?

(Fill in)

- If the number of state sponsors exceeds seven, fill in the number and write down its/their identity. So if there were eight sponsors, fill in "1" and give the COW abbreviation of the eighth state.

Q26. What is the name of the first IGO/NGO making/sponsoring the proposal?

(Fill in)

- See notes on Q18.

99. Not applicable

Q27. What is the name of the second IGO/NGO making/sponsoring the proposal?

(Fill in)

- See notes on Q18.

99. Not applicable

Q28. How many additional IGOs/NGOs (beyond the first two) make/sponsor the proposal and what are the IGOs'/NGOs' identities?

(Fill in)

- If the number of IGO/NGO sponsors exceeds two, fill in the excess number and write down its/their identity.

2.4 General Content

Q29. How does the proposal address how the treaty-drafting process will generally proceed?

1. Increases threshold for adopting changes
2. Decreases threshold for adopting changes
3. Allows additional states/organizations to participate
4. Allows fewer states/organizations to participate
5. Changes order in which elements of the treaty will be considered

77. Other

88. Multiple above

99. Not applicable (addresses a substantive aspect)

- Per Q11, ad hoc proposals for how to deal with particular issues are not considered proposals for this purpose.

Q30. What substantive aspect of the treaty does the proposal seek to modify?

1. Modifies treaty definitions[19]
2. Delegates authority to a treaty/third-party organization[20]
3. Modifies the scope of the treaty's jurisdiction[21]
4. Modifies the rules of signature/ratification/accession, EIF, RUDs, amendments, and denunciation[22]

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[19] Example 1: "As regards article 2 (1) and in particular to the expression "on his own account," [the representative of Sweden] stated that in his Government's view it would be unjustified to deprive a migrant worker of the protection accorded to him under the Convention as long as he is employed, for the reason that he decides to set up a small enterprise. Such a change of wstatus would have immediate repercussions also on the rights enjoyed by members of his family if the self-employed worker were to be excluded from the application of the Convention. He thus suggested that the term 'self-employed migrant worker' should be defined in a new subparagraph (g) to be added to article 2 (2) and that provisions applicable to this particular category should be added to part IV" A/C.3/40/1, ¶ 15. Example 2: The representative of the United States felt that there was a slight ambiguity in the phrase "any other status" as those words in themselves might constitute a status. He therefore suggested rewording the phrase after the words "economic position" to read "property, marital status, birth or other status." ICRMW: A/C.3/40/1, ¶ 132. Example 3: With reference to the expression "except as otherwise provided hereafter and without distinction," the representative of Italy suggested deleting the word "and" between "hereafter " and "without" and restructure the beginning of the article to read: "The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction …." ICRMW: A/C.3/40/1, ¶ 133

[20] For example, regarding paragraph 4, the Chairman suggested that the possibility of inviting other agencies and organizations besides ILO to participate, in an advisory capacity in the work of the should be extended as well to intergovernmental organizations outside the united Nations system which dealt with matters covered by the Convention on a regional basis. ICRMW: A/C.3/39/1, ¶ 91

[21] Example 1: The representative of Morocco suggested that the formulation of the article should be based on the wording of article 28 of the International Covenant on Economic, Social and Cultural Rights or on article 50 of the International Covenant on Civil and Political Rights which referred to the application of the Covenant without any limitations or exceptions. ICRMW: A/C.3/39/1, ¶ 24. Example 2: CAT: "The representative of Brazil proposed, in a spirit of compromise, a modified system under which the principle of universal jurisdiction would apply under certain conditions and on a subsidiary basis, only if the States of territorial or national jurisdiction did not request extradition within a set period or if a request were denied." Example 3: The representative of the United States explained her difficulty in accepting proposed paragraph 1 ["This Convention … shall be applicable, in all its terms, all territories under the jurisdiction of States which become parties thereto"] and suggested that it should be reformulated to reflect the concern of States with a federal system. ICRMW: A/C.3/39/1, ¶ 24

[22] Example 1: During the discussion of article 81, the representative of the USSR, supported by the delegations of India and Chile, stressed that the Convention as an international instrument should be opened to all States as set out in the proposal reproduced in column A of document A/.C.3/36/WG.1/WP.1. ICRMW: A/C.3/39/1, ¶ 16. Example 2: The representative of Italy pointed out some problems in connection with any optional clauses. He expressed his preference for working on the basis of reciprocity clauses. He therefore proposed a new formulation for article 85 reading: "At the time of signature, ratification, acceptance, approval or accession, any State may indicate the parts or articles which it will apply only to the nationals of other States." ICRMW: A/C.3/39/4, ¶ 74. Example 3: At its 5th meeting on 27 September, the Working Group had before it a text for article 81 bis to be included in the final provisions submitted by the representative of Denmark. The article read as follows: "… (1) Any State Party which ratifies this Convention may, by a declaration appended to its ratification, exclude from application of the Convention, parts or articles

5. Edits treaty title, subsection title, or preambular language[23]

6. Modifies the substantive rights of the protected group[24]

7. Modifies the enforcement/supervision provisions of the treaty[25]

8. Modifies the requirements for how state governments enact domestic legislation or otherwise implement the treaty

77. Other

88. Multiple above

99. Not applicable

Q31. How does the proposal address the treaty's member requirements or its operation?

1. Requires some behavior of states

- Proposals that prescribe something are coded as requires some behavior of states

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and/or one or more particular categories of migrant workers."… ICRMW: A/C.3/39/4, ¶ 78. Example 4: The representative of Morocco suggested that it would be sufficient to state in that article that the convention would enter into force on the ninetieth day after the deposit of the required number of ratifications or accessions. ICRMW: A/C.3/39/1, ¶ 20.

[23] Example 1: "The representative of Sweden proposed the following text for preambular paragraph (6): 'Recognizing that one of the principal objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own." ICRMW: A/C.3/40/1, ¶ 81. Example 2: "The representatives of Sweden, Finland, the Federal Republic of Germany, Norway, Denmark and the United States felt that preambular paragraph (9) was superfluous and therefore they supported the deletion of the paragraph." ICRMW: A/C.3/40/1, ¶ 89

[24] Example 1: "Turning to the issue of the free assistance. of an interpreter, [the representative of the United States] stated that free interpretation should be provided only for the indigent and not for persons who could themselves pay for an interpreter."ICRMW: A/C.3/41/3, ¶ 199. Example 2: "The representative of France suggested adding a paragraph between paragraphs (2) and (3) as follows: 'Migrant workers and members of their families temporarily deprived of their liberty while awaiting the application of a decision concerning their departure from the territory of the State of employment shall be separated from sentenced and convicted persons.'" ICRMW: A/C.3/41/3, ¶ 231.

[25] Example 1: The representative of France, supported by the representative of the Federal Republic of Germany, stated that some priority should be accorded to States directly concerned with question of migration, in particular, with respect to the supervision of the convention, so as to avoid the supervisory machinery of the Convention being controlled by experts nominated by States which did not have migrant workers. ICRMW: A/C.3/39/4, ¶ 16. Example 2: The representative of the Untied States, supported in principle by the delegation of Canada and the Federal Republic of Germany, proposed a new text for old paragraph 8 (new 9) reading as follows: "The States Parties shall be responsible for all expenses incurred in connection with the administration of the present Convention pursuant to part VI and shall reimburse the United Nations for all costs of meetings, staff, facilities and emoluments."

2. Prohibits some behavior by states

   - Proposals that proscribe something are coded as *prohibits some behavior by states*

3. Authorizes some behavior by states

   - The difference between *requiring* and *authorizing* some behavior is that *requiring* makes the action mandatory, and *authorizing* bestows authority to engage in the behavior but makes it optional.

4. Recommends/suggests some behavior by states

   - The difference between *authorizing* and *recommending/suggesting* some behavior is that *authorizing* bestows authority (i.e., without the provision, there may have been no authority), and *recommending/suggesting* attempts to persuade states to take some action which for which it already has authority.

5. Requires some behavior of a treaty body or other central authority

   - See note for response 1.

6. Prohibits some behavior by a treaty body or other central authority

   - See note for response 2.

7. Authorizes some behavior by a treaty body or other central authority

   - See note for response 3.

8. Recommends/suggests some behavior by a treaty body or other central authority

   - See note for response 4.

9. Does not address substantive obligations: concerns preambular language

   - Some proposals address only preambular language, which typically does not directly affect substantive obligations.

10. Does not address substantive obligations: involves treaty logistics/procedure

- Proposals that involve treaty logistics/procedure include topics like amendment, withdrawal, dispute resolution, entry into force, treaty bodies, duration, etc.

77. Other

88. Multiple above

99. Not applicable

Q32. How does the proposal address the precision of the treaty language?

1. Makes it more precise

- More precision roughly equates with less specificity, vagueness, ambiguity, or generality.

2. Makes it less precise

- More precision roughly equates with more specificity, vagueness, ambiguity, or generality.

99. Not applicable (does not address the treaty language's precision)

Q33. Which aspect(s) of the treaty does the proposal address?

1. The treaty's membership rules (skip to Q34)
2. The treaty's derogation provisions (skip to Q35)
3. The treaty's reporting provisions (skip to Q36)
4. The treaty's monitoring provisions (skip to Q37)
5. The treaty's complaint procedures (skip to Q38)
6. The treaty's dispute-resolution mechanism (skip to Q39)
7. The treaty's procedures for incentivizing compliance (skip to Q40)
8. How the treaty creates new bodies (skip to Q41)
9. Whether and how the treaty delegates to other existing (i.e., separate from the treaty) bodies (skip to Q42)
10. The treaty's duration (skip to Q43)

11. The treaty's amendment procedures (skip to Q44)
12. The creation of/deletion of/change to an escape clause (skip to Q45)
13. The creation of/deletion of/change to a withdraw clause (skip to Q46)
14. How the treaty allows reservations (skip to Q47)
15. The substantive rights of the protected group (skip to Q48)
16. The scope of the treaty's jurisdiction (skip to Q49)
17. The flexibility that states have to implement the proposal domestically (skip to 0)
77. Other
88. Multiple above
99. None/Not applicable

- If the proposal addresses only one of the issues in responses 1-17, use that code here, and skip to the question noted. Code '99' (*Not applicable*) for all the questions Q32–0 other than the one chosen.
- If the proposal addresses multiple issues, use code '88' (*multiple above*) here and address the corresponding questions Q32–0. Note: given how the coding scheme defines "proposal," proposals will rarely address more than one issue; if it seems that one does so, consider whether it might more properly be coded as multiple proposals.

Q34. How does the proposal address the treaty's membership or entry-into-force rules?

1. Increases minimum number of members needed for entry into force
2. Decreases minimum number of members needed for entry into force
3. Requires that certain states ratify before it enters into force
4. Removes the requirement that certain states ratify before it enters into force
5. Allows non-states to become members
6. Prevents non-states from becoming members
77. Other

88. Multiple above

99. Not applicable (does not address the treaty's membership rules)

Q35. How does the proposal address the treaty's derogation provisions?

1. Makes one or more provisions derogable

   - Derogation provisions allow, under certain extraordinary circumstances (like a national emergency), states parties to fail to comply with one or more treaty provisions without violating their obligations.

2. Makes one or more provisions non-derogable

3. Heightens the requirements for derogation from one or more provisions

4. Lowers the requirements for derogation from one or more provisions

77. Other

88. Multiple above

99. Not applicable (does not address the treaty's derogation provisions)

Q36. How does the proposal address the treaty's reporting provisions?

1. Gives members more responsibility/authority to report (self-reporting)

2. Gives members less responsibility/authority to report (self-reporting)

3. Gives an internal treaty body more responsibility/authority to report

4. Gives an internal treaty body less responsibility/authority to report

5. Gives an existing IGO more responsibility/authority to report

6. Gives an existing IGO less responsibility/authority to report

7. Gives an NGO more responsibility/authority to report

8. Gives an NGO less responsibility/authority to report

9. Increases the frequency of required reporting

10. Decreases the frequency of required reporting

77. Other

88. Multiple above

99. Not applicable (does not address the treaty's reporting provisions)

Q37. How does the proposal address the treaty's monitoring provisions?

1. Gives a treaty body more monitoring responsibility

2. Gives a treaty body less monitoring responsibility

3. Gives states more monitoring responsibility

4. Gives states less monitoring responsibility

77. Other

88. Multiple above

99. Not applicable (does not address the treaty's monitoring provisions)

Q38. How does the proposal address the treaty's complaint procedures?

1. Allows NGOs to file complaints

2. Disallows NGOs from filing complaints

3. Allows individuals to file complaints

4. Disallows individuals from filing complaints

5. Allows states to file complaints

6. Disallows states from filing complaints

7. Changes the entity with whom complaints are filed

77. Other

88. Multiple above

99. Not applicable (does not address the treaty's complaint procedures)

Q39. How does the proposal address the treaty's dispute-resolution mechanism?

1. Creates a process for rendering binding judgments (arbitration or adjudication)

2. Eliminates a process for rendering binding judgments (arbitration or adjudication)

3. Creates a process for rendering non-binding judgments (mediation or other informal process)
4. Eliminates a process for rendering non-binding judgments (mediation or other informal process)
5. Delegates dispute resolution responsibility to an existing body
6. Removes dispute resolution responsibility from an existing body
7. Delegates dispute resolution responsibility to a newly created body
8. Removes dispute resolution responsibility from a newly created body
77. Other
88. Multiple above
99. Not applicable (does not address the treaty's dispute-resolution procedures)

Q40. How does the proposal address the treaty's procedures for incentivizing compliance?

1. Creates monetary or other rewards for compliance
2. Removes monetary or other rewards for compliance
3. Creates monetary punishments for non-compliance
4. Removes monetary punishments for non-compliance
5. Creates membership-related punishments for non-compliance
6. Removes membership-related punishments for non-compliance
7. Creates reputational punishments for non-compliance
8. Removes reputational punishments for non-compliance
77. Other
88. Multiple above
99. Not applicable (does not address the treaty's procedures for incentivizing compliance)

Q41. How does the proposal address how the treaty creates new bodies?

1. Creates additional bodies
2. Creates fewer bodies
3. Gives a previously proposed body more authority
4. Gives a previously proposed body less authority
5. Changes the membership rules of a previously proposed body
6. Changes the voting rules of a previously proposed body
77. Other
88. Multiple above
99. Not applicable (does not address how the treaty creates new bodies)

Q42. How does the proposal address whether and how the treaty delegates to other existing (i.e., separate from the treaty) bodies?

1. Delegates to additional existing bodies
2. Delegates to fewer existing bodies
3. Delegates more authority to existing bodies
4. Delegates less authority to existing bodies
77. Other
88. Multiple above
99. Not applicable (does not address how the treaty delegates to other existing bodies)

Q43. How does the proposal address the treaty's duration?

1. Makes duration infinite (where previously silent)
2. Makes duration finite (where previously silent)
3. Reduces existing duration to fixed period
4. Increases existing duration to fixed period
77. Other
99. Not applicable (does not address the treaty's duration)

Q44. How does the proposal address the treaty's amendment procedures?

1. Increases number/fraction of states required to approve amendment
2. Decreases number/fraction of states required to approve amendment
3. Sets a minimum waiting period before amendment
4. Increases the minimum waiting period before amendment
5. Decreases the minimum waiting period before amendment
77. Other
88. Multiple above
99. Not applicable (does not address the treaty's amendment procedures)

Q45. How does the proposal address the creation of/deletion of/change to an escape clause?

1. Creates an escape clause
2. Eliminates an escape clause
3. Increases the burden of invoking an escape clause by requiring extraordinary circumstances
4. Increases the burden of invoking an escape clause by requiring approval of other members (or increasing number of members required)
5. Decreases the burden of invoking an escape clause by not requiring extraordinary circumstances
6. Decreases the burden of invoking an escape clause by not approval of other members (or decreasing number of members required)
77. Other
88. Multiple above
99. Not applicable (does not address an escape clause)

Q46. How does the proposal address the creation of/deletion of/change to a withdrawal clause?

1. Creates a withdrawal clause
2. Eliminates a withdrawal clause
3. Increases the burden of invoking a withdrawal clause by requiring extraordinary circumstances
4. Increases the burden of invoking a withdrawal clause by requiring approval of other members (or increasing number of members required)
5. Decreases the burden of invoking a withdrawal clause by not requiring extraordinary circumstances
6. Decreases the burden of invoking a withdrawal clause by not requiring approval of other members (or decreasing number of members required)

77. Other

88. Multiple above

99. Not applicable (does not address a withdraw clause)

Q47. How does the proposal address how the treaty allows reservations?

1. Prohibits reservations altogether
2. Prohibits reservations that undermine treaty's object and purpose
3. Prohibits reservations on some specific substantive issue or group of issues
4. Prohibits reservations on some specific procedural issue or group of issues (e.g., dispute resolution)
5. Allows reservations generally (silent on what type are allowed)
6. Allows reservations that do not undermine treaty's object and purpose
7. Allows reservations on some specific substantive issue or group of issues
8. Allows reservations on some specific procedural issue or group of issues (e.g., dispute resolution)

77. Other

88. Multiple above

99. Not applicable (does not address reservations)

Q48. How does the proposal address the substantive rights of the protected group?

1. Adds a right or protection afforded to the protected group
2. Removes a right or protection afforded to the protected group
3. Expands a right or protection already afforded to the protected group
4. Narrows a right already or protection afforded to the protected group
5. Provides an initial definition of the protected group
6. Expands the definition of the protected group
7. Narrows the definition of the protected group
8. Provides an initial definition of the rights or protections afforded to the protected group

77. Other

88. Multiple above

99. Not applicable

Q49. How does the proposal address the scope of the treaty's jurisdiction?

1. Broadens the jurisdiction by increasing the circumstances under which it will apply
2. Narrows the jurisdiction by creating circumstances under which it will not apply

   - Some treaties have force only where other international instruments or domestic processes are absent or ineffective[26]

3. Broadens the jurisdiction by regulating the conduct of additional parties

[26] Example 1: CAT: "The representative of Brazil proposed, in a spirit of compromise, a modified system under which the principle of universal jurisdiction would apply under certain conditions and on a subsidiary basis, only if the States of territorial or national jurisdiction did not request extradition within a set period or if a request were denied." Example 2: The representative of the United States explained her difficulty in accepting proposed paragraph 1 ["This Convention … shall be applicable, in all its terms, all territories under the jurisdiction of States which become parties thereto"] and suggested that it should be reformulated to reflect the concern of States with a federal system. ICRMW: A/C.3/39/1, ¶ 24

- Some treaties purport to regulate behavior by non-states parties. For instance, the Rome Statute of the ICC regulates behavior by private individuals.

4. Narrows the jurisdiction by regulating the conduct of fewer parties

77. Other

88. Multiple above

99. Not applicable

Q50. How does the proposal address how states implement the proposal domestically?

1. Imposes fewer, less stringent, or more flexible requirements for implementing legislation or other domestic obligations

2. Imposes more, more stringent, or less flexible requirements for implementing legislation or other domestic obligations

99. Not applicable

Q51. On its face, how does the proposal affect the burden of state compliance generally?

1. Adds to, or increases the burden of, all states parties' responsibilities

- Proposals coded as *adds to, or increases the burden of, state-parties' responsibilities* increase the responsibilities of states parties to the convention generally. They include, inter alia, proposals to increase the rights afforded to the protected group, expand the protected group, relinquish authority to third-party organizations, strengthen the enforcement of the convention, widen the jurisdiction of the treaty, and to diminish the ability of states parties to make RUDs.[27]

[27] Example 1: The representative of Pakistan suggested replacing the sentence "Migrant workers and members of their families shall have the right to be fully informed of the length of time during which they may be absent from the State of employment" with the sentence "Migrant workers and member of their

2. Reduces, or reduces the burden of, all states parties' responsibilities

   - Proposals coded as *reduces, or reduces the burden of, states parties' responsibilities* lessen the responsibilities of states parties to the convention generally. They include, inter alia, proposals to reduce the rights afforded to the protected group, shrink the size of the protected group, carve out exceptions on the basis of domestic law and/or existing international law, weaken the enforcement of the convention, curtail the jurisdiction of the treaty, and augment states parties' abilities to make RUDs[28]

3. Adds to, or increases the burden of, some but not all states parties' responsibilities

   - Similar to 1, except the increase in responsibilities facially falls on only some parties

4. Reduces, or reduces the burden of, some but not all states parties' responsibilities

   - Similar to 2, except the decrease in responsibilities facially falls on only some parties

5. No discernable facial change to states parties' responsibilities

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families shall have the right to be temporarily absent from the State of employment under conditions established by that State." A/C.3/37/7, ¶ 29. Example 2: With regard to paragraph (1), the delegation of Yugoslavia orally proposed to add the word "occupational,'' after the word "social," to put a comma at the end of the paragraph after the word "interests," and to add the sentence "including the preservation of their national and cultural identity and links with the State of origin." A/C.3/37/7, ¶ 41

[28] Example 1: Netherlands proposed replacing the words "subject to no limitations other than those provided for in this convention" with "subject to such limitations as imposed on it by this convention or other rules of international law." A/C.3/37/7, ¶ 17. Example 2: United States proposed changing the language from "Each State Party to the present Convention shall be free to determine the criteria for authorizing the admission, stay, employment or other economic activity of migrant workers and members of their families, and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this convention. Any conditions subject to which the admission, stay, employment or other economic activity of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention." to "Nothing in the present convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity, and all other matters relating to the immigration and employment status of migrant workers and members of their families." A/C.37/7, ¶ 18. Example 3: The representative of the United States suggested that the "freedom to choose their place of residence" be limited to those migrant workers authorized to take up residence. A/C.37/7, ¶ 37

- If the effect on state-parties' responsibilities is unclear, code as *no discernable change to states parties' responsibilities*. No Discernable Change to State-Parties' Responsibilities category includes, inter alia, proposals to alter the perambulatory clauses and edit titles/headings in the treaty. Many proposals that fall under other categories in the Substantive Aspects Addressed typology also fall under this category. For example, proposals that target provisions relating to substantive rights often merely clarify, refine, or rearrange those provisions without any effect on the responsibilities of the states parties.[29]

77. Other

99. Not applicable

2.5 Reception and Outcome

Q52. What is the name of the first state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- If a role call vote is taken on a proposal, votes in favor of [opposed to] the proposal should be coded as unqualified support for [unqualified opposition to] it.
- Where states express positions collectively and simultaneously, in determining the order, use the order listed in the document.

99. Not applicable (no first state position)

Q53. What is the nature of that first state's position?

1. Unqualified support

[29] Example 1: "The representative of the Byelorussian SSR, suggested that the whole article should be restructured by starting it with a phrase stating 'with the exception of cases referred to in paragraph 3 of Article 2 of the present Convention, the term 'migrant worker' refers to…." ICRMW: A/C.3/40/1, ¶ 151. Example 2: [Proposed article 81 (2) by the representative of Denmark]: "Such declaration does not affect the rights established for migrant workers and members of their families in the Covenant on Civil and Political Rights." ICRMW: A/C.3/39/4, ¶ 78. Example 3: [Proposed article by the representatives of Sri Lanka and India] "States Parties to the present Convention shall remain free to conclude bilateral or multilateral agreements, subject to no limitations other than those provided for in this Convention…" ICRMW: A/C.3/38/5, ¶ 69

2. Qualified support

3. Mixed/ambivalence

- Code as *mixed/ambivalence* only if the party's comments do not reveal its position (i.e., for or against) on the proposal, or where the comments are perfectly balanced between support and opposition.

4. Concern/reservation

5. Unqualified opposition

99. Not applicable (no first state position)

Q54. What is the name of the second state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no second state position)

Q55. What is the nature of that second state's position?

.....

1. Unqualified support

2. Qualified support

3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation

5. Unqualified opposition

99. Not applicable (no second state position)

Q56. What is the name of the third state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no third state position)

Q57. What is the nature of that third state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no third state position)

Q58. What is the name of the fourth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fourth state position)

Q59. What is the nature of that fourth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fourth state position)

Q60. What is the name of the fifth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q61. What is the nature of that fifth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q62. What is the name of the sixth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q63. What is the nature of that sixth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation

5. Unqualified opposition

99. Not applicable (no fifth state position)

Q64. What is the name of the seventh state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q65. What is the nature of that seventh state's position?

.....

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q66. What is the name of the eighth state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q67. What is the nature of that eighth state's position?

.....

1. Unqualified support

2. Qualified support

3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation

5. Unqualified opposition

99. Not applicable (no fifth state position)

Q68. What is the name of the ninth state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q69. What is the nature of that ninth state's position?

.....

1. Unqualified support

2. Qualified support

3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation

5. Unqualified opposition

99. Not applicable (no fifth state position)

Q70. What is the name of the tenth state that expressed a position on the proposal?

.....

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q71. What is the nature of that tenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q72. What is the name of the eleventh state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q73. What is the nature of that eleventh state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q74. What is the name of the twelfth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q75. What is the nature of that twelfth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q76. What is the name of the thirteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q77. What is the nature of that thirteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q78. What is the name of the fourteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q79. What is the nature of that fourteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q80. What is the name of the fifteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q81. What is the nature of that fifteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q82. What is the name of the sixteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q83. What is the nature of that sixteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q84. What is the name of the seventeenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q85. What is the nature of that seventeenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q86. What is the name of the eighteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q87. What is the nature of that eighteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q88. What is the name of the nineteenth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q89. What is the nature of that nineteenth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q90. What is the name of the twentieth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q91. What is the nature of that twentieth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q92. What is the name of the twenty-first state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q93. What is the nature of that twenty-first state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q94. What is the name of the twenty-second state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q95. What is the nature of that twenty-second state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q96. What is the name of the twenty-third state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q97. What is the nature of that twenty-third state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q98. What is the name of the twenty-fourth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q99. What is the nature of that twenty-fourth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q100. What is the name of the twenty-fifth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q101. What is the nature of that twenty-fifth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q102. What is the name of the twenty-sixth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q103. What is the nature of that twenty-sixth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q104. What is the name of the twenty-seventh state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q105. What is the nature of that twenty-seventh state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q106. What is the name of the twenty-eighth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q107. What is the nature of that twenty-eighth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q108. What is the name of the twenty-ninth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q109. What is the nature of that twenty-ninth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified opposition
99. Not applicable (no fifth state position)

Q110. What is the name of the thirtieth state that expressed a position on the proposal?

(Use COW state index abbreviation to code)

- See note on Q52.

99. Not applicable (no fifth state position)

Q111. What is the nature of that thirtieth state's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no fifth state position)

Q112. How many additional states (beyond the first thirty) express positions on the proposal, and what are the states' identities?

(Fill in)

- If the number of states expressing positions exceeds thirty, fill in the number and write down its/their identity. So if eight states express positions, fill in "1" and give the COW abbreviation of the eighth state.

Q113. How many total states express positions on the proposal?

(Fill in)

Q114. What is the name of the first IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no first IGO/NGO position)

Q115. What is the nature of that first IGO/NGO's position?

1. Unqualified support
2. Qualified support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified opposition

99. Not applicable (no first IGO/NGO position)

Q116. What is the name of the second IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q117. What is the nature of that second IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition

99. Not applicable (no second IGO/NGO position)

Q118. What is the name of the third IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q119. What is the nature of that third IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q120. What is the name of the fourth IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q121. What is the nature of that fourth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support

3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q122. What is the name of the fifth IGO/NGO that expressed a position on the proposal?

(Fill in)

   - See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q123. What is the nature of that fifth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q124. What is the name of the sixth IGO/NGO that expressed a position on the proposal?

(Fill in)

   - See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q125. What is the nature of that sixth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q126. What is the name of the seventh IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q127. What is the nature of that seventh IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q128. What is the name of the eighth IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q129. What is the nature of that eighth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

- See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q130. What is the name of the ninth IGO/NGO that expressed a position on the proposal?

(Fill in)

- See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q131. What is the nature of that ninth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support

3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q132. What is the name of the tenth IGO/NGO that expressed a position on the proposal?

(Fill in)

   - See note on Q52.

99. Not applicable (no second IGO/NGO position)

Q133. What is the nature of that tenth IGO/NGO's position?

1. Unqualified Support
2. Qualified Support
3. Mixed/ambivalence

   - See note on Q53.

4. Concern/reservation
5. Unqualified Opposition
99. Not applicable (no second IGO/NGO position)

Q134. How many additional IGOs/NGOs (beyond the first two) express positions on the proposal, and what are the IGOs'/NGOs' identities?

(Fill in)

- If the number of IGOs/NGOs expressing positions exceeds two, fill in the excess number and write down its/their identity.

Q135. How many total IGOs/NGOs express positions on the proposal?

(Fill in)

Q136. What was the body as-a-whole's view on the proposal (original or as modified, whenever it was decided on)?

1. Received consensus or unanimous support
2. Received consensus or unanimous opposition
3. Received mixed reaction, with more support than opposition
4. Received mixed reaction, with more opposition than support
5. No discernable view expressed
6. Unclear or unstated

77. Other

- If a proposal is passed with all in favor, none opposed but a few abstentions, it is not unanimous support, but it is nonetheless a "consensus," so it should be coded 1.
- For the purpose of this question, where the proposal in question drew a response, do not consider any later decisions on later proposals that effectively nullified/altered the original proposal in question, unless the new decision explicitly mentioned the proposal in question.[30]

[30] For instance, suppose State X proposed that states parties would be required to submit a report every five years and that the proposal was then discussed, adopted, and incorporated into the treaty. One year later, State Y proposed that states parties would be required to submit a report every *four* years, which was likewise adopted, replacing the five-year rule. State Y's proposal would not be considered in coding State X's proposal.

Q137. When was a conclusive decision reached on the proposal?

1. Immediately upon its introduction in the meeting
2. Later during the same meeting
3. At the next working body meeting immediately following its introduction
4. At some subsequent working group/committee/body meeting (but not the one immediately following its introduction)

77. Other

99 Not applicable (available documents do not show a decision's being reached)

- For the purpose of this question, where the proposal in question drew a response, do not consider any later decisions on later proposals that effectively nullified/altered the original proposal in question, unless the new decision explicitly mentioned the proposal in question. See footnote 30.

Q138. How was the proposal acted on by the body?

1. Accepted immediately (without significant deliberation) as proposed

- Proposals that are accepted without *any* modifications, and without more than one page (or multiple reports) of deliberation.

2. Accepted as proposed after substantial deliberation

- Proposals that are accepted without *any* modifications, but with deliberation. . The deliberation must take up more than one page of a working group report, or else it must appear in multiple reports.

3. Accepted with modifications after significant deliberation

- Proposals that were accepted by the drafters, but with modifications. These proposals tend to include whole paragraphs of specific language, which is modified during the drafting process but retains its core substance. The deliberation must

take up more than one page of a working group report, or else it must appear in multiple reports.

4. Rejected immediately without significant deliberation as proposed

- Proposals that were rejected by the drafters without significant debate. A proposal that is rejected out of hand may provoke some discussion, but the discussion does not take up more than one page of a working group report. While these proposals appear in a working group report (otherwise they would be coded as ignored), they do not appear in more than one report. If they appear in multiple reports, they should be coded as rejected after deliberation.[31]

5. Rejected as proposed after significant deliberation

- Proposals that were rejected by the drafters, but after significant debate. Unlike proposals rejected out of hand, these proposals take up more than one page of discussion in a single working group report or else are the subject of discussion across multiple working group reports.[32]

6. Ignored

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[31] Example 1: "With regard to preambular paragraph 17, the representative of Ecuador referred to the phrase 'fundamental human rights' included in the draft proposals both in column A and column C of document A/C.3/36/WG.1/WP.1 and requested that in this paragraph…it should be changed to read 'the human rights and fundamental freedoms', in accordance with the already agreed-upon language used in the Charter of the United Nations, the Universal Declaration of Human Rights and in the International Covenants on Human Rights" See U.N. Doc. A/C.3/36/10, ¶ 24. The final text of draft preambular paragraph 17 in the ICRMW: "Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights, After this brief statement in the 1981 report, the ICRMW Working Group gave Ecuador's proposal to change the language no further consideration.

[32] Example 1: "The representative of the Ukrainian SSR proposed the following amendments to the text: in paragraphs (1) and (2), change the wording from 'to have or to adopt a religion' to 'to have or not to have and to adopt or not to adopt a religion';" See U.N. Doc. A/C.3/36/10, ¶ 39. The Ukrainian SSR made the above proposal in October 1981 and the Working Group placed the words "or not to have" and "or not to adopt" in brackets. In September 1985, many meetings later, the Working Group finally decided to eliminate the language: "After some discussion, the Working Group agreed to delete the words "[or not to have]' and ''[or not to adopt]" in paragraphs (1) and (2) and to delete the brackets around the second sentence of paragraph (1)." See U.N. Doc. A/C.3/41/3, ¶ 128

- Note that proposals that appear in the final treaty text are coded as *ignored* if thy are not explicitly addressed by the drafting body; in some cases, the final provision derives from another, similar proposal.[33]

7. Not formally accepted or rejected itself, but used in forming or developing later proposals

77. Other

- Where a decision was made on the proposal in question, for the purpose of this question, do not consider any later decisions on later proposals that effectively nullified/altered the decision about the original proposal in question, unless the new decision mentions the proposal in question.

Q139. In what document(s), other than the one in which it was first introduced (Questions 5 and 6 above), was the proposal discussed?

.....

(Fill in document number(s).)

99. Not applicable (discussed in only one document)

Q140. How is the proposal ultimately reflected in the final treaty?

.....

1. Appears in treaty exactly as proposed

2. Appears in treaty with minor modifications[34]

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[33] Example 1: In the G77's first draft, they made a proposal: "Every migrant worker shall enjoy exemption from import duties in the State of destination in respect of the importation of his personal effects and work tools or equipment; the same exemption shall be granted in his State of origin on his return thereto. These exemptions shall also apply to the personal effects of his family." *See* U.N. Doc. A/C.3/35/WG.1/CRP.7, art. 23. The Working Group never discussed the G77 proposal in any of its reports. *See* U.N. Doc. A/C.3/38/1.

[34] Example 1: "Considering the situation of vulnerability in which migrant workers find themselves in the receiving societies for objective reasons relating, among other tings, to their absence from their country of departure and to the difficulties of their insertion in the receiving society," See U.N. Doc. A/C.3/35/WG.1/CRP.9, ¶ 7. The final text of preambular paragraph nine of the ICRMW: "Considering the situation of vulnerability in which migrant workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,". Example 2:"Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of

3. Appears in treaty with substantial modifications

4. Does not appear in treaty, or a competing proposal appears in treaty

5. Proposal is *general* and appears spirit of proposal appears in treaty[35]

6. Uncertain/Unclear

77. Other

99. Not applicable

Q141. In what article(s) and paragraph(s) of the final treaty is the proposal codified?

.....

(Fill in) (A.¶.#) (article.paragraph.subparagraph/sentence)

99. Not applicable (does not appear in treaty)

countries in the international community" See U.N. Doc. A/C.3/35/WG.1/CRP.9, ¶ 10. The final text of preambular paragraph seven of the ICRMW: "Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community…."

[35] Example: "The representative of Norway suggested that mention should be made of the Commission for Social Development and of other United Nations agencies, such as the FAO, which had important programmes for the welfare of migrant workers and their families" *See* U.N. Doc. A/C.3/35/WG.1/CRP.16, ¶ 23The final text of preambular paragraph five of the ICRMW: "Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations…" Example: A proposal by the representative of Jamaica with the support of the representatives of Algeria, Egypt, Spain and Turkey and consisted of the formulation of a list of principles and basic rights which are applicable to all migrant workers and their families regardless of their status followed by the formulation, in separate sections of the Convention, of a list of rights applicable to documented migrant workers in a regular situation. The final convention contains a Part (III) on the Human Rights of All Migrant workers and Members of their Families followed by a Part (IV) on the Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation.

2.6 CEDAW-Specific Substance

Q200. How does the proposal seek to change the definition of discrimination against women?

1. Expands it to all discrimination on the basis of sex
2. Narrows it to only discrimination against women
3. Expands it to include "preferences," or the like
4. Narrows it to exclude "preference," or the like
77. Other
88. Multiple above
99. Not applicable

Q201. How does the proposal seek to modify the means by which states must pursue a policy of eliminating discrimination against women?

1. Expands them to include non-legislative practices
2. Narrows them to include legal practices only
3. Expands them to include discrimination "in all its forms," or the like
4. Narrow them to exclude discrimination "in all its forms," or the like
5. Expands them to require states to include the principle of equality in their national constitutions or legislation
6. Narrows them to allow states to decide whether or not to include the principle of equality in their national constitutions or legislation
7. Expands them to require states to ensure that private institutions refrain from engaging in discrimination against women
8. Narrows them to only require states to ensure that "public authorities" refrain from engaging in discrimination against women
9. Expands them to require states to modify or abolish "customs and practices" that constitute discrimination against women

10. Narrows them to require states to only modify or abolish laws and regulations that constitute discrimination against women
11. Expands them to require states to repeal penal provisions that constitute discrimination against women
12. Narrows them to exclude the repeal of penal provisions that constitute discrimination against women
77. Other
88. Multiple above
99. Not applicable

Q202. How does the proposal seek to change state responsibility to implement temporary special measures (AKA positive action, affirmative action, or reverse discrimination)?

1. Expands it to make the imposition of such measures mandatory
2. Narrows it to make the imposition of such measures permissible
3. Excludes such measures from the treaty entirely
4. Expands it to allow for permanent measures
5. Narrows it to temporary measures, which must be discontinued when their objective have been achieved
6. Expands it to allow measures for men as well as women
7. Narrows it to only allow measures for women
8. Expands it to include special measures aimed at protecting maternity
9. Narrows it to exclude special measures aimed at protecting maternity
77. Other

88. Multiple above

99. Not applicable

Q203. How does the proposal seek to modify state responsibility to eliminate prejudices?

1. Expands it to prohibit incitement to discrimination against women or the advocacy of the superiority of one sex over the other
2. Narrows it to exclude the prohibition of incitement to discrimination against women or the advocacy of the superiority of one sex over the other
3. Expands it to include "educating public opinion," or the like
4. Narrows it to exclude "educating public opinion," or the like
5. Expands it to include "protection of motherhood," or the like
6. Narrows it to exclude "protection of motherhood," or the like

77. Other

99. Not Applicable

Q204. How does the proposal seek to change state responsibility regarding sex trafficking and prostitution?

1. Expands it to include combating commercial advertisements contrary to the dignity of women or media exploitation
2. Narrows it to exclude combating commercial advertisements contrary to the dignity of women or media exploitation
3. Expands it to include the suppression of all prostitution
4. Narrows it to only include the suppression of exploitation of prostitution

77. Other

99. Not Applicable

Q205. How does the proposal seek to modify state responsibility regarding violence against women?

1. Expands the Convention to explicitly address violence against women
2. Narrows the Convention to exclude explicit references to violence against women
77. Other
99. Not Applicable

Q206. How does the proposal seek to change state responsibility regarding discrimination against women in politics and public life?

1. Expands state responsibility regarding discrimination against women in politics and public life
2. Narrows state responsibility regarding discrimination against women in politics and public life
77. Other
99. Not Applicable

Q207. How does the proposal seek to modify the right of women to represent their governments at the international level?

1. Expands the right of women to represent their government at the international level
2. Narrows the right of women to represent their government at the international level
77. Other
99. Not Applicable

Q208. How does the proposal seek to change women's rights with respect to nationality?

1. Expands women's rights with respect to nationality
2. Narrows women's rights with respect to nationality

77. Other

99. Not Applicable

Q209. How does the proposal seek to modify women's rights in education?

1. Expands women's rights with respect to education

2. Narrows women's rights with respect to education

77. Other

99. Not Applicable

Q210. How does the proposal seek to change women's rights regarding employment?

1. Expands women's rights regarding employment

2. Narrows women's rights regarding employment

77. Other

99. Not Applicable

Q211. How does the proposal seek to modify state responsibility regarding discrimination against women on the basis of marriage and/or pregnancy?

1. Expands women's rights with respect to discrimination on the basis of marriage and/or pregnancy

2. Narrows women's rights with respect to discrimination on the basis of marriage and/or pregnancy

77. Other

99. Not Applicable

Q212. How does the proposal seek to change women's rights with respect to healthcare?

1. Expands women's rights with respect to healthcare
2. Narrows women's rights with respect to healthcare
77. Other
99. Not Applicable

Q213. How does the proposal seek to change state responsibility regarding rural women?

1. Expands the rights of rural women
2. Narrows the rights of rural women
3. Introduces explicit reference to the rights of rural women
4. Removes explicit reference to the rights of rural women
77. Other
99. Not Applicable

Q214. How does the proposal seek to modify state responsibility regarding the legal capacity of women?

1. Expands women's rights with respect to legal capacity
2. Narrows women's rights with respect to legal capacity
77. Other
99. Not Applicable

Q215. How does the proposal seek to change women's rights with respect to marriage and family relations?

1. Expands women's rights with respect to marriage and family relations
2. Narrows women's rights with respect to marriage and family relations
3. Prohibits child marriage
77. Other
88. Multiple above
99. Not Applicable

Q216. How does the proposal seek to change responsibility for enforcing/monitoring the treaty?

1. Grants the responsibility to the Commission on the Status of Women
2. Creates an ad-hoc committee of states parties and members of the Economic, Social, and Cultural Council to supervise the treaty
3. Creates an independent committee to supervise the treaty
77. Other
99. Not Applicable

Q217. How does the proposal seek to modify the structure of CEDAW's treaty body (eventually named the Committee on the Elimination of Discrimination Against Women)?

1. Expands the powers of the Committee
2. Narrows the powers of the Committee
3. Changes the term of Committee members
4. Requires that a certain number or percentage of members of the Committee must be women

5. Eliminates any requirements regarding the number or percentage of women on the Committee
6. Changes other criteria regarding the selection/election of Committee members
77. Other
99. Not Applicable

Q218. How does the proposal seek to modify the periodic reporting process?

1. Increases the periodicity of reporting
2. Decreases the periodicity of reporting
3. Increases the comprehensiveness of periodic reports
4. Decreases the comprehensiveness of periodic reports
77. Other
88. Multiple above
99. Not Applicable

2.7 MWC-Specific Substance

Q250. How does the proposal seek to change the definition of migrant worker?

1. Adds groups/types of workers from the definition
2. Removes groups/types of workers from the definition
77. Other
99. Not applicable

Q251. How does the proposal seek to modify the rights of migrant workers and members of their families?

1. Adds a right afforded to all migrant workers
2. Removes a right afforded to all migrant workers
3. Expands a right afforded to all migrant workers
4. Narrows a right afforded to all migrant workers
77. Other
99. Not applicable

Q252. How does the proposal seek to modify the definition of members of their families?

1. Adds categories of family members from the definition
2. Removes categories of family members from the definition
77. Other
99. Not applicable

Q253. How does the proposal seek to modify the definition of documented workers?

1. Expands the definition of documented workers
2. Narrows the definition of documented workers

77. Other

99. Not applicable

Q254. How does the proposal seek to modify the definition of undocumented workers?

1. Expands the definition of undocumented workers

2. Narrows the definition of undocumented workers

77. Other

99. Not applicable

Q255. How does the proposal seek to modify the duties of states vis-à-vis migrant workers and members of their families in an irregular situation?

1. Increases protections for migrant workers in an irregular situation

2. Decreases protections for migrant workers in an irregular situation

3. Increases responsibilities to curb employment of migrant workers in an irregular situation

4. Decreases responsibilities to curb employment of migrant workers in an irregular situation

5. Increases duties to curb illegal or clandestine movements of migrant workers

6. Decreases duties to curb illegal or clandestine movements of migrant workers

77. Other

99. Not applicable

Q256. How does the proposal seek to modify the rights afforded only to migrant workers and members of their families in a regular situation?

1. Adds a right afforded to migrant workers in a regular situation

2. Removes a right afforded to migrant workers in a regular situation

3. Expands a right afforded to migrant workers in a regular situation

4. Narrows a right afforded to migrant workers in a regular situation

77. Other

99. Not applicable

Q257. How does the proposal seek to change the definition of states of origin, employment, or transit?

1. Expands the definition of state of origin

2. Narrows the definition of state of origin

3. Expands the definition of state of employment

4. Narrows the definition of state of employment

5. Expands the definition of state of transit

6. Narrows the definition of state of transit

77. Other

99. Not applicable

Q258. How does the proposal seek to modify the International Labor Organization's (ILO) responsibility to enforce/supervise/monitor the treaty?

1. Increases the ILO's powers

2. Decreases the ILO's powers

77. Other

99. Not applicable

Q259. How does the proposal seek to modify the structure of the treaty monitoring body?

1. Creates the committee

2. Eliminates the committee

3. Increases the size of the committee

4. Decreases the size of the committee

5. Changes the rules regarding the selection/election of committee members
6. Changes the term of committee members
7. Expands the powers of the committee
8. Narrows the powers of the committee
77. Other
99. Not applicable

Q260. How does the proposal seek to modify the rights afforded to particular categories of migrant workers and members of their families (e.g. frontier workers)?

1. Adds a right afforded to migrant workers in a regular situation
2. Removes a right afforded to migrant workers in a regular situation
3. Expands a right afforded to migrant workers in a regular situation
4. Narrows a right afforded to migrant workers in a regular situation
77. Other
99. Not applicable

2.8 CERD-Specific Substance

[to come]

Q300. How does the proposal seek to treat national origin as a protected class?

1. Adds national origin as a protected class
2. Eliminates national origin as a protected class
3. Narrows the definition of national origin
4. Broadens the definition of national origin
77. Other
88. Multiple above
99. Not applicable

Q301. How does the proposal seek to treat native/aboriginal peoples as a protected class?

Q302. How does the proposal seek to prohibit/define apartheid?

Q303. How does the proposal seek to change states' responsibility regarding racist expression or discrimination by private actors?

Q304. How does the proposal seek to change states' responsibility regarding the government's role in racial discrimination?

Q305. How does the proposal seek to modify the structure of ICERD's treaty body (eventually named the Committee on the Elimination of All Forms of Racial Discrimination)?

Q306. How does the proposal seek to modify the periodic reporting process?

Q307. How does the proposal seek to change individuals' right to complain to the international treaty body?

Q308. How does the proposal seek to address financing of treaty bodies?

Q309. How does the proposal seek to modify the rights of people in non-independent territories?

Q310. How does the proposal seek to modify the rights of citizens to petition against discriminatory laws?

Q311. How does the proposal seek to change how the treaty expressly addresses anti-Semitism/Zionism?

- References to "Nazism" could fall within this question if the proposal has in mind combatting anti-Jewish views or actions; anti-semitism is often considered an important element of Nazism.

Q312. How does the proposal seek to modify the rights of people from specific regions?

Q313. How does the proposal seek to change responsibility to enforce/monitor the treaty?

Q314. How does the proposal seek to address the acknowledgement of colonialism?

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