



United States on the Road to Isolation: The Cost of Non-Ratification

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Prepared for:
GlobalSolutions.org
420 7th SE, Washington, DC 20003

6 May, 2014

Preface

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We were engaged by GlobalSolutions.org and its CEO, Don Kraus, to evaluate costs associated with the United States' failure to ratify certain international treaties. GlobalSolutions.org is an advocacy organization that promotes greater international cooperation and dispute resolution through deliberative means. It lobbies policymakers on related issues in Washington, D.C. and in New York at the United Nations.

We relied upon qualitative research methods in creating this report. From the end of February to the first week of April 2014, our group conducted twenty-three interviews, both in person and remotely, with various experts from the private sector, government, NGOs, and academic institutions. Their comments were instrumental in refining our work and ably supplemented our secondary research.

We hope this report will be of value to GlobalSolutions.org now and in the future.

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Executive Summary

This report analyzes four specific international treaties: the Arms Trade Treaty (“**ATT**”), the Convention on the Law of the Sea (“**UNCLOS**”), the Convention on All forms of Elimination of Discrimination Against Women (“**CEDAW**”), and the Convention on the Rights of Persons with Disabilities (“**CRPD**”). All four have been signed by the U.S., but not yet ratified by the Senate. We analyzed each of them within the context of three key criteria, namely, the cost of non-ratification as it relates to: (1) the U.S. economy, (2) U.S. global leadership, and (3) U.S. national security.

Global Leadership

- Failure to ratify these four treaties generates high costs to the U.S. in terms of its global leadership.
- These costs include: loss of international credibility, weaker political authority, and diminished prospects for future leadership.

Economic Cost

- Failure to ratify the ATT, UNCLOS, and CEDAW generates high economic costs to the U.S.
- Lack of normalization and harmonization of universal standards and regulations by the U.S. hurts the overall health of the economy.

National Security Cost

- Failure to ratify the ATT and UNCLOS creates medium national security costs for the United States.
- The U.S. forgoes an opportunity to contribute to collective global security by non-ratification of multilateral treaties.

Policy and Political Challenges

- The policy challenges to treaty ratification are mostly illusory.
- The political obstacles are real and considerable.
- Political challenges manifest themselves in four key ways: ideology, legislative procedure, advocacy (lobbying), and elections.

Conclusions

- Comprehensive quantitative data would be useful in measuring the economic costs of non-ratification for the two human rights treaties, CEDAW and CRPD. It would also be very persuasive in overall discussions of ATT and UNCLOS.
- Building coalitions of treaty proponents among different sectors and interests is important to combat partisanship and electoral volatility in the Senate.

Introduction

International treaties are the most frequent and effective means of creating global rules or standards by which States must abide. Numerous international treaties are in force today and help govern conduct of the international community.

Since 1997, the United States has failed to ratify thirty-eight international treaties.¹ These treaties cover policy areas like human rights, economic rights, social rights, and even cultural rights. Various domestic and international advocacy organizations working in the U.S. and around the world encourage countries to ratify and adopt these international treaties. However, others hold opposing views on multilateral treaty ratification and work actively to impede the U.S.' commitment to them. Nonetheless, failure to ratify the international treaties incurs costs to the United States.

Looking into four specific treaties, UNCLOS, ATT, CEDAW and CRPD, this report seeks to measure the costs in terms of their impact on U.S. economic, national security, and global leadership interests. Uniformly evaluating these costs required some degree of subjectivity. As a result, we used the weight of expert opinions and our own research to arrive at our own value judgments on the severity of these costs. A three-point scale was established to gauge their significance.

High costs are those that would create present and substantial concern for policymakers. **Medium costs** are those that create some concern for policymakers, but not on a level requiring immediate or substantial attention. **Low costs** are those that create little concern for policymakers, and can be safely set aside for consideration at another time. The following matrix shows how the four treaties fare.

	Economic Costs	Leadership Costs	Nat'l Security Costs
ATT	High	High	Medium
CEDAW	High	High	Low
CRPD	Medium	High	Low
UNCLOS	High	High	Medium

We note that these costs are not unique to the treaties studied within. Other noteworthy agreements not ratified by the United States—like the Rome Statute of the International Criminal Court, the Comprehensive Nuclear-Test-Ban Treaty, and the Kyoto Protocol—can be analyzed in much the same way that the four have been treated in this report. For example, some contend that the U.S. failure to ratify the Kyoto Protocol creates considerable costs to our national security. Greater shifts in temperature created by carbon emissions can lead to population displacement, which can lead to conflict. Furthermore, failure to ratify the CTBT and Rome Statute may generate costs to our global leadership: the former arguably undercuts U.S. credibility surrounding nuclear security and the latter detracts from the U.S. commitment to international justice. In short, the analysis used in this report has the potential for broader application.

Arms Trade Treaty (“ATT”)

The ATT is intended to regulate the international trade in conventional arms, as well as eliminate the illicit trade of arms. Its origins date back to the late 1990s. Conventional arms in the ATT definition from Article 2 range from small arms to larger arms such as tanks, warships and combat aircraft.²

Former Costa Rican President and Nobel Peace Prize laureate Óscar Arias spearheaded efforts in 1997 to gain traction with the international community on the issue of a broad arms regulation treaty. The first United Nations action on this issue came with the adoption of a Programme of Action (“PoA”) at the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which occurred July 9-20, 2001. However, as this PoA was not legally binding, it failed to carry much weight with the international community. UN action on a broad arms control agreement was largely stagnant until October 2006 when the General Assembly passed resolution 61/89. This resolution urged the UN Secretary General to explore options for a future arms trade treaty, including the basic feasibility of doing so. This resolution, dubbed, “Towards an Arms Trade Treaty: establishing common international standards for the import, export and transfer of conventional arms,” signified the beginning of the formation of today’s ATT. The United States is the only country to vote against resolution 61/89. Twenty-four other nations, including Iran, Syria, and Russia, abstained.

As the UN transitioned from Secretary General Kofi Annan to Ban Ki-moon’s leadership in January 2007, efforts on the ATT moved forward with a group of government experts from twenty-eight countries compiling a feasibility report. After meeting throughout 2008, President Arias presented the Treaty to the UN, at which point an Open-ended Working Group on arms trade commenced and continued for the next year. In December 2009, the UN General Assembly passed resolution 64/48 urging nations to implement relevant recommendations contained in the government experts’ report. This resolution firmly recognizes “[a]rms control, disarmament and non-proliferation as essential for the maintenance of international peace and security.”³ Shortly before the adoption, U.S. Secretary of State Hillary Rodham Clinton announced that the United States would support and participate in the ATT negotiation process as well as the UN Conference on the Arms Trade Treaty to be held in 2012.

By March 2013, a second round of negotiations produced the final treaty text. Consensus approval on this text was then blocked by Iran, North Korea, and Syria. However, a consortium of ninety nations, including the U.S., was able to push it through to a UN General Assembly vote. On April 2, 2013 ATT passed by a vote of 153 to 3, with 22 abstentions. It was adopted by the General Assembly and then opened for signature. As of this writing, 118 nations have signed the ATT and thirty-one have ratified it. The entry-into-force point for the ATT is ratification by fifty nations, after which there will be a ninety-day time period before full enforcement of the treaty begins.⁴

This section will provide an in-depth look into the potential costs the U.S. incurs by failing to ratify the ATT in terms of its national security and economic interests, as well as to its global leadership. In doing so, this portion will analyze these question while providing insights from a number of notable experts in the fields of arms control, national security, and human rights.

National Security Costs

One important issue surrounding non-ratification of the ATT is that of the potential costs to U.S. national security. The ATT builds off of earlier efforts, such as the PoA, and sees some provisions of the treaty apply to ammunitions as well as the parts and components of these weapons. Further, the ATT is legally binding, and applies to state-to-state transfers of arms. Given these new realities, this treaty will better serve nations around the world looking to regulate the illicit trade in arms. “Half of the countries in the world don’t have national rules or guidelines regarding which arms imports and exports to approve or disapprove,” said Daryl Kimball, Executive Director at the Arms Control Association.⁵ With the U.S.’ propensity to assist in a variety of capacities in violent trouble spots around the world, the illicit movement and acquisition of arms anywhere can be viewed as well within U.S. national security interests.

More than anything else, the ATT regulates the *export* of weapons. With the U.S. currently holding the distinction of being the world’s largest arms exporter, it is in its best interests to accurately identify and track exactly where its weapons exports are going. The U.S. has long since understood the importance of this issue, which is why they have had domestic measures to meet this goal—such as restrictions on re-transfer of arms sold abroad and end-user checks—in place for some time. The “boomerang effect,” where weapons produced in the U.S. end up being used against U.S. personnel on the ground, is an important part of the national security side of this debate.

Barbara Frey, Director of the Human Rights Program at the University of Minnesota and former Special Rapporteur to the UN Sub-Commission on the issue of preventing human rights abuses committed with small arms, further points out that the latest estimates suggest there are currently 650 million firearms in civilian possession, including 2-10 million in the hands of gangs, and 1.1-1.8 million more in the possession of non-state armed groups.⁶ “It really matters what governments do with their weapons,” says Frey.

Accordingly, the emphasis the ATT places on cooperation between nations who have ratified the treaty will help eliminate gray areas that arise from export destinations that may present risk. The ATT calls for information sharing on things like international trafficking routes, illicit brokers, and methods of concealment.⁷ In ratifying the ATT and solidifying this commitment for the international community, the U.S. would not only increase the group’s capacity to collect this important information, but also strengthen its own argument and ability to draw other hesitant nations such as China and Russia into compliance with the treaty. With today’s ever-changing geopolitical situation, the flow of arms from China to Pakistan (accounting for 55% of Chinese arms exports), Myanmar, or Venezuela is something that, if left unregulated by an international mechanism, represents a real cost to U.S. national security.⁸ Without ratifying the document itself, the U.S. will fall short in its argument with fellow large-scale arms export States whose interests do not always align with its own.

The transparency provided by mandatory national records on arms exports, stipulated in Article 12 of the ATT, is an invaluable asset to the international community, requiring those who join the treaty to take responsibility for arms leaving their territory.⁹ Globalization has changed the way the world interacts and conducts exchange. In particular, the developing States’ interactions

and exchanges with developed States have been slow or resistant to regulation largely due to rampant corruption in the developing world. The U.S. has set the gold standard when it comes to keeping and reporting export data with or without the ATT, but there are many nations around the world who do not do so, nations that won't even discuss joining the treaty until movement on the issue is seen from the United States. If the U.S. joins and strengthens the regulatory group that will emerge when the treaty comes into force, then the opportunity to help quell violence in a variety of hot spots around the world, from the Middle East to Central Africa, increases significantly. The reality is that today there can be no global norm without the participation of the U.S. and the legitimacy that comes with that participation. U.S. ratification will not attract every country in the world, but there will undoubtedly be a domino effect and the strength of this treaty comes from the transparency these States then must provide on their arms sales. If the U.S. is looking to maintain its ability to oversee and appropriately punish countries for illicit activity through international institutions such as the UN, it cannot turn its back on one of the mechanisms it helped this body create to regulate such activity.

The ATT is not unique as a treaty with arms control goals that the United States has not ratified. For example, the domestic political fight over ratifying the Comprehensive Nuclear-Test-Ban Treaty (CTBT), another treaty with broad global support, is still being fought in the U.S. However, a better example of the world coming together to create an international mechanism already paying dividends is the Chemical Weapons Convention (CWC). Since its inception in April 1997, the norms created by the CWC have led to a marked decrease in the production and proliferation of chemical weapons around the world, including the ongoing removal of chemical weapons from Syria. The outcome and goals of the CWC are different from the basic regulation of arms sales that the ATT seeks, but it nonetheless is an example of the international community, including full participation of and ratification by the United States, working collaboratively to create a mechanism and universal norms by which States around the world operate to increase collective security. These types of victories for that collective security can undoubtedly be placed in the "pro" section of the ATT debate.

Global Leadership Costs

The ATT has taken nearly two decades to be molded into the mature piece of global arms trade regulation that it is today. Careful consideration has been paid throughout this process to voices of support as well as voices of opposition. The United States, being the world's largest arms exporter, has had an unquestionably important role in the formation of this document and has made the decision to sign the ATT. However, despite our inclusion in the negotiation process and as the treaty nears the all-important number of fifty ratifications, which would bring the treaty into force, the U.S. stands on the sidelines in terms of actually ratifying the document. As our allies look to us to assume leadership of another critical global regulatory mechanism, the United States has yet to step forward.

Jeff Abramson, currently of Landmine & Cluster Munition Monitor and formerly of Control Arms, underscores this point by saying that while the treaty will move forward without U.S. ratification, "[t]he U.S. still loses international leadership and moral credit" for not ratifying the ATT along with many of our allies.¹⁰ While it is difficult to quantify moral credit, this point speaks to the fact that the U.S. in not ratifying will place themselves in a group with North

Korea, Iran, and Syria, rather than joining our allies such as Germany, France, and the United Kingdom in ratification.

Nonetheless, there are some advantages to the U.S.' current position. By participating in the negotiation process and signing the ATT, the U.S. was able to include within it virtually all its favored global norms and protect its national security interests. Internally, pro-ATT members of the current administration likely look at this as a best case scenario: the ATT is rooted deeply in American values on this issue, the treaty is headed for entry into force, and the administration suffers little to no consequences on the domestic political front by not actually ratifying it.

However, the costs of non-ratification are still significant going forward. If the world begins to see the U.S. as completely hamstrung by domestic political forces, the leadership the international community expects from America could slowly deteriorate. If the U.S. is unwilling to put its official stamp of approval on a treaty aimed at positively contributing to collective global security and human rights, then it runs the risk of inviting the international community to move forward on other sensitive issues without that leadership in the future. The U.S. being side-stepped in future negotiations would be a sizeable blow to its global leadership and could result in the adoption of treaties with norms contrary to U.S. interests.

Arguments against ratification consistently include the point that the United States has already done what is necessary to protect its vital interests in the ATT, such as mandatory implementation of national export and import control systems and transparent government records on arms transfers. However, this contention is problematic. As soon as the fiftieth nation ratifies the treaty, the ATT will enter into force, and the Conference of States Parties must convene within a year afterward.¹¹ Critical outcomes regarding the enforcement mechanism, possible amendments, and financial decisions will be decided at this point and as of now, only those who have ratified stand to be included in this process. The U.S. is currently lobbying for inclusion in the Conference of States Parties even if it does not ratify, but no decision has been made given the precedent that would set. Understandably there is hesitation by those who have already ratified to allow the U.S. this opportunity, as it would remove any existing incentive for ratification. Any reservations amongst our allies regarding the possible skirting of institutional norms and multilateral relations by the United States could only be further enhanced by this move.

As previously stated, global leadership can be difficult to quantify. But one potential method would be to look at the type of role a given State plays in finding a solution to a perceived problem in relation to its contribution to what is trying to be solved. Although the United States does not intentionally contribute to the illicit arms trade and already follows all of the guidelines of the ATT, the U.S.' role as the world's largest arms dealer requires a commensurate effort in terms of leadership and promotion of global norms to achieve collective security on this issue. While failure to ratify has not derailed the treaty, it is impossible to ignore the absence of the United States and it inevitably makes the treaty itself less robust and lessens pressure on other nations to join.

Heather Hurlburt, former Executive Director of the National Security Network, emphasizes this point by noting that international relations can be seen as a "giant set of trades," and that given the importance of the ATT to other countries, the U.S.' failure to ratify could return to haunt us

when another issue more important to U.S. interests is raised at the UN. Furthermore, Hurlburt notes the dependence of U.S. interests on international norms and the observation of those norms, and likens ATT to a bargaining chip the U.S. would be forfeiting for having negotiated but not ultimately ratifying the treaty.¹² Given the global direction toward more regional and international institutions that focus on a multilateral approach to governance and regulation, failure of the world's lone superpower to ratify such a treaty damages its credibility, political authority, and prospects for future leadership.

Economic Costs

The global arms trade is big business. A Congressional Research Service study found that in 2011 the United States exported \$66.3 billion worth of arms (of \$85.3 billion total throughout the world, or, 77.7% share of exports worldwide), and has consistently ranked number one in the world, ahead of Russia, each year since 2003.¹³ Given this position and its strict weapons exports regulations, the U.S. might be reasonably expected to gain the most from a uniform regulatory standard imposed on the world arms trade. In addition, these economic costs represent just the surface of the issue, as many further costs are derived from corruption in the industry as well as the lost opportunities for socio-economic development caused by armed violence in nations to which the U.S. is already providing development aid.

One of the ATT's core principles is ensuring that weapons likely to be used for violations of international law are never transferred. Article 7 expressly forbids governments from selling arms if there is an "overriding risk" of those arms being used to provoke regional instability, commit violations of human rights or humanitarian law, hamper efforts to reduce poverty, commit transnational organized crime, or to support or perpetrate terrorist acts.¹⁴ A 2008 International Action Network on Small Arms (IANSA) study found that African countries alone lose \$18 billion in development each year to armed violence, with 95% of weapons coming from outside the continent.¹⁵ The availability of illicitly-exchanged weapons helps sustain these conflicts. In 2012, the United States provided \$12 billion in official development assistance to African nations.¹⁶ It is inaccurate to say that every nation in Africa is riddled with armed violence that contribute to lost investment opportunities, but a review of these figures indicates that a combination of development assistance and installation of a UN-led arms regulation standard would be beneficial to many developing countries in this part of the world. It could eventually contribute to diminished ODA needs. In addition, a U.S. Department of Commerce study estimates that the arms trade alone accounts for nearly 50 per cent of all corrupt transactions globally, while the value of arms traded annually doesn't exceed 1 per cent of global trade.¹⁷ These figures illustrate how rampant corruption is in the international arms trade network and highlight the need for an international consensus on regulating it.

Rachel Stohl, Senior Associate with The Stimson Center and Consultant to the UN ATT process, explains the importance of having a "[h]armonization of standards" in the global arms trade, saying, "[w]hen you know what the rules of the game are, it makes trade more efficient, [so] harmonization of exports has an economic benefit."¹⁸ Stohl's point speaks to the ability of legitimate arms dealers and governments to work more effectively and efficiently in avoiding the corruption and other illicit activity in today's arms trade network. The ATT will add to the predictability as far as who has arms and who does not. Building on the U.S. standard, the ATT

will not only save money for global arms exporters by making this export standard a universal obligation, but also make the process of identifying and labeling unacceptable partners for arms trade easier for those who are party to the treaty. Given the high standard the U.S. imposes on itself, the U.S. would be best suited to further encourage all other nations to ratify the ATT and submit to these same standards and obligations in order to level the playing field. States currently existing outside the treaty enjoy a marginally greater advantage in relation to the U.S. on arms trade. It's not often that the business community and human rights groups have an opportunity to jointly benefit from a treaty; however, the ATT presents that opportunity.

Summary

This section has discussed the positive impact on collective global security this treaty will have as well as the prominent role around the world the U.S. plays in terms of both international aid and military involvement. Due to these factors, the United States incurs a high cost to its global leadership by failing to ratify the ATT. And although the ATT, like any other treaty, will not be a panacea for the particular issue of armed violence in the world, there are clear economic advantages to streamlining the regulatory process for the arms trade. Accordingly, economic costs to the U.S. of non-ratification are also high. And even though this treaty will not eliminate the black market for weapons, it will help reduce it. Ultimately, this makes armed violence more expensive for perpetrators by further cutting into the ability of any type of individual or organization seeking to violate international law from obtaining the means to do so. The U.S. has the ability to stand in clear opposition to such groups by ratifying the ATT, all the while enjoying the economic benefits that come with this harmonization of standards in arms regulation.

Convention on the Law of the Sea (“UNCLOS”)

For the thirty-two years that the UN Convention on the Law of the Sea has been in force, the United States has failed to ratify this agreement, which would define the rights of each country in the use of the world’s oceans for shipping and natural resources. Although strong support for ratification exists, there is still vocal opposition within the United States Senate as well as from think tanks and other organizations that view ratification as yielding American sovereignty to the United Nations. Will ratification of UNCLOS undermine American sovereignty, and reduce its ability to protect its economic and military national interests? Or will U.S. ratification provide an opportunity for American businesses to seek rightful claims to sea-bed drilling and a larger seat and voice on the world stage?

In a May 2012 Senate Foreign Relations Committee hearing on UNCLOS, then-Senator John Kerry stated that the U.S. had already lived by the terms of the treaty for over thirty years, but was on the outside looking in as a non-party. Americans lived by the rules, but they didn’t shape them.¹⁹

This section looks to quantify the costs of non-ratification to the U.S. and its economic, national security, and global leadership interests. Quantifying these costs has been difficult, especially considering differences in opinion by a number of stakeholders and advocacy organizations. Nonetheless, the U.S. national security sector—along with trade organizations for the nation’s largest business communities—have been united in their belief that ratification is vital to the future of the U.S. and their efforts to urge the Senate to ratify UNCLOS.

Economic Costs

Business organizations—traditional conservative stalwarts and often the opponents of ratifying multilateral treaties—have been some of the strongest proponents of UNCLOS. Major associations and corporations from the U.S. Chamber of Commerce²⁰ to the American Petroleum Institute²¹ and Lockheed Martin²² have all come out in absolute support for UNCLOS. The Chamber of Commerce has stated that “accession to the Law of the Sea Convention would protect U.S. claims to the vast natural resources contained on the ocean floor.”

Those Senators and other interests opposing UNCLOS have maintained a deaf ear to the desires of the business community. According to a letter written by the U.S. Chamber of Commerce President Tom Donahue, ratification would allow the U.S. to gain exclusive natural-resource sovereignty to over 4.1 million square miles of subsea territory, an area greater than the area of the contiguous 48 states.²³ Joining the convention will allow favorable navigation rights for shipping that American commerce depends on every day. At a 2005 conference on Global Offshore Drilling, “Break the Boundaries and Explore New Frontiers”, Rowen Companies Senior Vice President Paul Kelly reiterated that the offshore oil and gas industry is a multibillion-dollar industry. In fact, offshore oil and natural gas now represents the world’s biggest maritime industry—oil production alone has an estimated value of more than \$300 billion per annum.²⁴

The Rule of Law Committee for the Oceans is arguably the leading advocate of ratification. In the course of her work, Executive Director Caitlyn Antrim calculated certain figures associated with ratification of UNCLOS. She and Ocean Law, along with academic institutions and the mining industry, have calculated cost estimates for a single deep ocean mining operation recovering polymetallic nodules from the eastern Pacific Ocean. The chart below indicates that ratifying the treaty will provide American companies valuable rights to submarine mining, as well as shipping transport.

Cost Estimates (in million US \$)

Updated to 2012, Scaled to 3 Million Dry Metric Tons per Year²⁵

	Updated MIT	
	Capital	Operating
Mining	857.0	183.5
Sea Transport	562.1	62.1
Marine Support	5.0	13.7
Ore Discharge Terminal	64.0	8.9
On-Land Transport	102.6	21.5
Processing	1256.8	278.7
Waste Disposal	42.8	10.9
General & Administrative	246.8	11.2
Continuing Preparations	0.0	16.8
Total	3,137.1	607.3

Energy interests clearly play a large role in advocating for ratification. With the world’s second longest coastline,²⁶ the U.S. has an obvious interest in deep-sea energy production. Only as party to the treaty can the U.S. secure its sovereign rights to natural energy resources beyond the 200 mile zone extending from American shores. UNCLOS will also strengthen U.S. commercial claims against China in particular in the Pacific, the Arctic and elsewhere. This may provide the US the energy independence that policy makers have been urging for a number of years by staking these claims deep below to ocean’s surface. Rare earth minerals that go into a number of important items from weapons systems to computers and cell phones will be allowed to be mined without the worry of potential suits against our claims. As this is written, Russia and other nations are continuing to carve out portions of the Arctic. Without ratification, American companies cannot legitimately stake these claims as well, thus greatly reducing our competitive edge and increasing our dependence on foreign energy supplies. These investments and mining ventures would surely result in the addition of new jobs. In a time when policy makers continue to try to find ways to promote job creation, ratifying this treaty would be a great start.

The American Petroleum Institute (“API”), a staunch proponent of UNCLOS, has also voiced its concern regarding non-ratification. In testimony before the Senate Foreign Relations Committee, API President and CEO Jack Gerard testified that “given the rapid economic and political changes sweeping the world, the U.S. can no longer afford to be left out of the process.”²⁷ The International Seabed Authority (“ISA”) grants leases to companies to deep sea mine. Without treaty approval those ISA leases cannot be granted to American companies.

Another industry often overlooked in the ratification debate is telecommunications. The act of laying, repairing, and maintaining submarine cables is vital for the U.S. to preserve its strong telecommunications infrastructure. Because of this, companies like Verizon and AT&T have come out in full support of passage.²⁸ AT&T has stated that strengthening and protecting the reliability of international submarine cables has never been more important to our economic infrastructure and participation in the global economy. UNCLOS is a critical element of this protection.

Nonetheless, as previously mentioned, opposition is strong and vocal. The main economic argument against ratification is the belief that it would give up certain American rights and wealth to an unelected bureaucracy, and that this bureaucracy would restrict the entrepreneurship of U.S. companies. Even according to the National Center for Public Policy Research’s website on UNCLOS, the treaty calls for technology transfers and wealth transfers from developed to underdeveloped nations.²⁹

National Security Costs

The U.S. Navy and the Pentagon have been strong advocates for ratification of UNCLOS. According to the Navy, becoming party to the Convention “would help ensure the Navy’s ability to move forces on, over, and under the world’s oceans, whenever and wherever needed, and is an important asset in the Global War on Terrorism.”³⁰ In a letter to then-Senator Joe Biden, Department of Homeland Security Secretary Michael Chertoff stated that “the entire civilian and military leadership responsible for our nation’s security has unanimously supported the convention without reservation.”³¹

Opponents see one thing very clearly: the U.S. Navy ensures American ocean passage and shipping lanes, not an international guarantee on paper that the U.S. has no involvement with. In their view, no United Nations document could or would ever expressly permit the U.S. Navy to do what it has done for eighty years, namely, act as the dominant force in policing international waters and commercial shipping lanes. However, the U.S. was actively involved in negotiating UNCLOS. It contains everything the Pentagon had requested. To make the argument that ratification would be detrimental to U.S. national security, its military, and its servicemen and women is incorrect.

Those opposed can point to the Navy’s position stated above on ensuring their ability to move forces across oceans. The counterargument is that nothing prevents the world’s strongest navy from moving forces throughout the world’s oceans now. Certainly the Pentagon does not have the worry of how to move naval forces to any part of the world. This is primarily based on the

traditional rights the United States has in international waters. As General Martin Dempsey, Chairman of the Joint Chiefs of Staff has stated, tradition is a shaky basis upon which to rest our national security and protection of our forces. Customs can be disputed, and they can change.³²

If the U.S. agreed to become a party to UNCLOS, then it would have greater credibility in the Pacific and in particular with China. The U.S. could conceivably push back against illegal Chinese restrictions on our warships' abilities to sail through the South China Sea and other Asian waters.³³

The U.S. Navy conducts what are known as Freedom of Navigation Operations (FONOPS) to challenge claims of territorial exclusivity. However, the U.S. does not have any legal standing to bring complaints to any international organization because of its continued non-party status to the convention.³⁴

The Coast Guard has long supported ratification to better assist it in a number of missions for which it is responsible. It could rely on the treaty's freedom of navigation provisions in order to meet national security requirements. Because the Convention states that countries have the right to freely move beyond twelve nautical miles of a nation's shore, it gives the Coast Guard the ability to properly conduct and engage in law enforcement activities such as piracy and drug trafficking. Past Commandants of the Coast Guard have justified their actions by citing customary international law; however, invoking and enforcing certain navigational provisions would be much easier if UNCLOS were ratified.³⁵

Global Leadership Costs

Quantifying costs to global leadership is not an easy task, particularly when the definition of leadership is typically subjective or intangible. Regardless, there are indicators that can be considered in wider context of the issue. All living Secretaries of State, both Republicans and Democrats, support ratification. A majority of those with knowledge of UNCLOS agree that the U.S.' refusal to ratify undermines America's influence in other international policy areas, and share concerns regarding how the rest of the world perceives us.

There is little question that American participation in UNCLOS would advance international cooperation in dealing with a number of maritime issues. If the United States wants to be trusted with other aspects of international relations, i.e., other treaties and partnerships, it is going to have to demonstrate that it can be trusted to be a participant in other major treaties such as UNCLOS.

The nation's top diplomat as well as its top military advisors and national security chief have all concluded that non-ratification is having a detrimental effect on the United States' ability to be trusted with other international efforts. It shows the world that the U.S., a country whose founding was based on the rule of law has a disdain for the rule of international law and agreement. Few countries throughout the world would question American might, but an international view of the United States acting in bully-like fashion is not a diplomatic way of working cooperatively with the 160 nations that have ratified Law of the Sea.

Summary

There is a limited but extremely vocal opposition to ratification. This opposition is based mainly on political ideology rather than solid factual evidence. Think tanks like The Heritage Foundation and The Cato Institute have continued to state the usual long-discredited talking points to ensure that ratification does not occur. The bottom line is that support and opposition to the UNCLOS comes down to these ideological differences, and both sides have certainly been able to draw conclusions of what treaty ratification would mean for the United States. There is a lot of misinformation and mythology when debating whether the US should ratify the convention. In the meantime, costs to the U.S. in terms of its global leadership and economic interests over UNCLOS are high. Costs to U.S. national security fall into the medium range.

Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)

CEDAW is an international bill of rights for women. The UN General Assembly adopted the convention in 1979, defining what constitutes discrimination against women and setting up an agenda for national action to end such forms of discrimination. The Convention defines discrimination against women as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³⁶

By ratifying the convention, States undertake the responsibility of committing themselves to adopt practices that would end discrimination against women in all forms, including measures:

to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws, and adopt appropriate ones prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The convention provides the basis for realizing equal rights between men and women, ensuring that women have equal access to opportunities in political and civic life. These would include the right to vote and to stand for election as well as equal access and opportunities in the realm of education, health and employment.

The convention has been a milestone in ensuring that women’s rights are in fact human rights. It is the only human rights treaty that has targeted cultures and traditions for shaping and influencing gender roles and has affirmed the reproductive rights of women. It upholds the right of women to participate in society on the same footing as men. The countries that have ratified the Convention are legally bound to implement the provisions. They are also required to submit national reports every four years on the measures that they have adopted to comply with their treaty obligations.

The Convention has been ratified by 187 out of 194 countries. Unfortunately, the United States is one of the eight countries—including Iran, Somalia, South Sudan, Sudan, and two small Pacific Island nations, Palau and Tonga—that have not.³⁷ (Out of that group, only the United States and Palau have actually signed the treaty.) The United States has the dubious distinction of being the only country in the Western Hemisphere and the only industrialized democracy yet to ratify CEDAW, despite the fact that it played an important role in drafting the convention. The Carter administration signed the treaty on July 17, 1980 and transmitted it to the Senate for consideration in November 1980, where it remains to this day.

There are various arguments made in the United States for not ratifying the treaty. Most are advanced by conservative and religious groups who feel that the treaty is more harmful than beneficial to women and children. These organizations believe CEDAW undermines the traditional institution of family by redefining it, thereby challenging U.S. laws and culture. Lisa Baldez, Associate Professor of Government at Dartmouth College says, “[c]ritics say it doesn't reflect American values enough. Here's what they are missing: The treaty takes American values of equality and women's rights and makes them global norms.”³⁸ In other words, these arguments fail to account for costs that may be incurred by the U.S. for not ratifying CEDAW. The section below discusses the economic costs, national security costs, and global leadership costs incurred by the U.S. for non-ratification of CEDAW.

Economic Costs

CEDAW is a tool that women around the world are using effectively to bring about change in their conditions. Even though American women enjoy a particular status and opportunities not available to most of the world's women, few would dispute that more progress is needed in certain areas, such as ending domestic violence and closing the wage gap. According to a relevant study, “U.S. women continue to lag behind men in income, earning on average only 77 cents for every dollar that a man makes. The landmark Violence Against Women Act has done much to prevent domestic violence and meet the needs of victims, yet two million women a year report injuries from current or former partners.”³⁹ Ratifying CEDAW would give the United States a chance to further combat violence and discrimination against women, as well as close the wage gap between men and women. Women who feel safe at home and work are better able to participate in the marketplace and generate economic activity.

However, as we have learned through our research, identifying the economic cost created through non-ratification is challenging. Interviewees had similar answers on this point. Marsha Freeman, Senior Fellow at the University of Minnesota Human Rights Center and Director of International Women’s Rights Action Watch said that “[p]utting a dollar sign on it is difficult—it’s not like people will stop investing in the U.S. if the country doesn’t ratify CEDAW unless it is a part of a trade agreement.”⁴⁰ Emily Martin, Vice President and General Counsel of the National Women’s Law Center, went somewhat further, observing that “[t]he economic costs are real, but they are hard to measure and present in a way that people would understand.”⁴¹ Accordingly, failure to ratify CEDAW imposes some kind of economic cost on the United States, but experts in the field seem hard-pressed to detail exactly how those costs can be accurately conveyed.

Nonetheless, evidence exists to support their general claim. The World Bank, the Global Economic Forum, and other scholars have conducted research demonstrating that investing in women and girls is one of the most effective ways to alleviate poverty and boost a State’s economy. Women are thought to invest soundly and focus more on the development of children and the household. The World Development Report 2012 (“WDR”), which focuses on gender equality, argues that investing in women is an economically sound strategy. If women and girls were given access to all tiers of education, land rights, and the wider job market, as well as greater control over their personal lives—particularly with regard to family planning—overall development prospects would improve.

Commenting on the WDR, Justin Yifu Lin, Chief Economist at the World Bank and Senior Vice-President for Development Economics, said that "[b]locking women and girls from getting the skills and earnings to succeed in a globalized world is not only wrong but also economically harmful. Sharing the fruits of growth and globalization equally between men and women is essential to meeting key development goals."⁴²

There is an entire cycle that feeds the economic growth of a State. Women make up around 40% of the global workforce and are more likely to be underpaid than men.⁴³ This means that they do not generate enough income to invest any more than they already do in the economy. This results in a lack of economic growth and a deteriorated standard of living in these societies.

By failing to ratify CEDAW, the U.S. is not only hindering the right of women to participate and contribute in a growing economy, but also "cutting itself out of the talk of business and economic benefit."⁴⁴ The U.S. is thus foregoing a key opportunity to help release people from the vice of poverty and simultaneously boost the economy. According to Freeman, "there is a bottom line in investing in women and girls and by not getting on board with the treaties we are undermining our economy." Providing women with equal access to the same economic opportunities as men and letting them to participate in the economic sphere would result in a better standard of living for the immediate family as well as for the particular State.

National Security Costs

As challenging as it can be to quantify the economic costs of non-ratification, it is far more difficult to accomplish in terms of the costs to U.S. national security. Freeman emphasized that "you cannot put a dollar sign on the value of diplomacy."

The security of the population is the top priority of any state. Approximately 20,000 women and children are trafficked into the U.S. each year, in spite of legislation like the Trafficking Victims Protection Act, which has played an important role in combating the problem. "Human trafficking is considered to be the third-largest source of criminal income worldwide, generating an estimated \$9.5 billion per year. It is also closely linked with 'money laundering, document forgery, drug trafficking and international terrorism.'"⁴⁵ Human trafficking can be linked to terrorism, which poses one of the greatest threats to U.S. national security. Terrorists may use the transportation networks of smugglers and traffickers to move operatives. In many parts of the world, profits from drug trading provide funds for terrorism, and in certain regions of the world trafficking is a large and significant component of that economy.⁴⁶

In the 2002 National Security Strategy of the United States, President Bush stated that "the United States will continue to work with our allies to disrupt the financing of terrorism. We will identify and block the sources of funding for terrorism."⁴⁷ However, complete commitment to the endeavors is impossible without the adoption of international treaties. Ratification of CEDAW would provide an effective catalyst for the U.S. to examine areas of persistent discrimination against women and develop strategies for solutions.

Global Leadership Costs

Failure to ratify CEDAW generates costs to U.S. global leadership. Ratifying the treaty would strengthen the U.S. as a global leader in supporting the rights of women and girls and affirming that women's rights are human rights. As the world's leading superpower, failure to ratify the treaty, according to Emily Martin, not only threatens the United States' own position in the world but also undermines the importance of the treaty for other countries. It sends the message that treaty ratification is unnecessary. When the U.S., a firm believer in the rights of women and believes that women's rights are human rights, does not ratify a treaty that 187 other countries have ratified, it is essentially sending a clear but negative message. Affirming global norms is important, and by signing the treaty the United States would send a symbolic message to the world about the importance of women's rights. As Ms. Martin says, "symbols matter,"⁴⁸ and the presence of the U.S matters not only at home, but also internationally as it shows our commitment to these issues.

The common theme that was drawn out from all the interviews and research was that of "loss of credibility". Many of the interviewees believed that the failure to ratify the treaty puts the country in a bad spot in front of the world and especially developing countries. Many government representatives from different countries have been active in voicing their concerns over the United States' failure to ratify the treaty.⁴⁹ The United States is a large donor for women's rights activities all over the world and along with being the global leader it has certain obligations to validate global norms. When the U.S does not ratify this treaty, which is universally recognized, other countries believe that the U.S does not have the right to tell them to adopt the treaty or adopt measures to end discrimination against women.

Countries where women's rights are respected and protected, where women are able to fully participate in the economy and own property and enjoy equal rights as men, are not only economically stable but also politically and socially stable. Giving women a tool to lead is important for economic prosperity and political stability and the U.S must reinforce this. However, the United States' failure to ratify CEDAW has led other countries to fail in fully complying with the provisions of the treaty, thus leading to infringements on women's rights. It is not in the interest of the United States to offer other countries the excuse for non-compliance.

Summary

The U.S has been a leader in the fight against discrimination against women, however, like any other country, the United States is imperfect. It has been involved in self-implementation, self-monitoring and self-evaluation of laws against discrimination. By letting a neutral third party like the UN monitor its endeavors in advancing efforts to fight discrimination against women, the U.S. can be engaged in thinking critically about how it can further improve the laws regarding the rights of women. Therefore, the cost to the U.S. and its global leadership for not ratifying CEDAW seems to be high. Moreover, the economic cost of non-ratification to the U.S. seems to be high as well.

Convention on Rights for Persons with Disabilities (“CRPD”)

The Convention on the Rights of Persons with Disabilities (“CRPD”) represents the culmination of a multi-year planning and negotiation process among members of the international community. Mexico first proposed the establishment of an Ad Hoc Committee to study the creation of a convention on disability rights in December of 2001. In December 2006, after eight Committee sessions, the United Nations adopted CRPD. It earned the distinction of being the most quickly negotiated human rights treaty in UN history.⁵⁰ It opened for signatures a few months later, in March 2007. Eighty-two countries signed the Convention on its first day, also the most in UN history.⁵¹ After receiving the minimum requisite number of signatures, CRPD entered into force in May 2008.

According to the UN, CRPD is meant to be:

a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.⁵²

President Obama signed the CRPD proclamation and UN Ambassador Susan Rice signed the convention itself in July 2009. In comments to mark his own signing ceremony, the President noted that CRPD “urges equal protection and equal benefits before the law for all citizens [and] reaffirms the inherent dignity and worth and independence of all persons with disabilities worldwide.”⁵³ Obama also expressed the hope that “the Senate [could] give swift consideration and approval to CRPD.”⁵⁴ Instead, it waited several years. The Foreign Relations Committee held hearings on the treaty beginning in May 2012 and—having successfully moved it out of the committee—received its first and only ratification vote in December 2012. All Democrats, both Independents, and eight Republicans voted in favor, but it fell six votes short of the sixty-seven needed for approval.⁵⁵

During the debate, Republicans opposing the treaty based their arguments on what they deemed to be its threat to U.S. sovereignty. They argued that becoming a party to multilateral agreements would constrain U.S. freedom of action and potentially expose U.S. citizens to international prosecution. They also maintained that the U.S. had no legitimate need to ratify a treaty whose provisions were modeled after pre-existing federal law, the Americans with Disabilities Act of 1991. Furthermore, Republicans claimed that CRPD’s twenty-third Article, which provides for the separation of children with disabilities from their families by the government when in the best interests of the child, posed a latent risk to those who home-schooled their children. Meanwhile, Democrats had emphasized that ratifying CRPD would affect no change in U.S. law, provide no private cause of action in U.S. courts, or alter the definition of “disability” under U.S. law. It set forth “globally acceptable rights” that were never intended to act as a Trojan horse for some kind of international takeover.

The Foreign Relations Committee held two new hearings on CRPD in November 2013. Although no vote has been officially scheduled, a well-placed committee staff member speaking on condition of anonymity indicated that the Democratic chairman, Sen. Robert Menendez of New Jersey, would attempt to precipitate a vote and move the bill back to the Senate floor before the end of 2014.⁵⁶

This section of the report examines the failure to ratify CRPD in terms of its costs to U.S. global leadership and national security, as well as economic opportunity costs. It also analyzes whether the opposing sides cannot reach consensus due to real and unresolved policy concerns or if the issue is truly political.

Global Leadership Costs

Quantifying U.S. global leadership, particularly as it affects the condition of disabled people around the world, is a difficult task. Observers must rely on qualitative evidence to draw conclusions. In this instance, many organizations such as federal agencies, nonprofit advocacy groups, professional associations, and individual experts agree that the U.S. weakens its leadership position around the world by failing to ratify CRPD.

The Department of State's Bureau for Public Affairs states on its webpage that ratification "will reinforce America's global leadership [and] put us in the strongest position to advance disability rights worldwide...It's about getting the rest of the world to raise their accessibility standards to our level."⁵⁷ The American Bar Association noted that "as the world's historic leader in disability policy, the United States has a duty to share its knowledge and protect the interests of American citizens abroad...."⁵⁸ The American Legion urged senators to ratify CRPD in a resolution from their national convention, arguing that it "reinforce[d] our leadership in the promotion of opportunities for disabled veterans, service members, and their families...."⁵⁹

Observers generally expect support for multilateral treaties from those who are ideologically progressive. While true in the case of CRPD, individual support has also come from unexpected corners. Former U.S. Senate Majority Leader and Republican presidential candidate Bob Dole, himself a disabled veteran, expressed his support for CRPD. In a pro-CRPD editorial, former U.S. Senate Majority Leader Bill Frist, a Tennessee Republican, contended that "as a global leader, [the U.S.] must stand with those struggling for the rights we hold dear."⁶⁰ In his testimony before the Foreign Relations Committee late last year President George W. Bush's first Homeland Security Secretary, Tom Ridge, argued that in ratifying the treaty "[t]he U.S. will continue to lead the world in establishing a democratic model for participation of all its citizens, including its most vulnerable ones."⁶¹ Accordingly, the list of supporters is not only long, but also politically varied.

Nonetheless, opponents of CRPD are no less certain in their calculation of how non-ratification affects U.S. leadership around the world. For example, the Heritage Foundation argues that U.S. ratification of CRPD is neither necessary nor essential to maintain a leadership position on disability issues. They point to services already offered by the U.S. Agency for International Development ("USAID"), which not only funds but also administers programs around the world delivering technical support, equipment, and other cultural services to advance disability rights

around the world.⁶² According to them, “USAID has managed to successfully perform its mission, and will continue to do so, without U.S. ratification of the CRPD.”⁶³ This argument may be based in fact—USAID certainly does provide meaningful services on a global basis, some of which touch on the state of disability policy—but it purports to have one narrow aspect of U.S. activity represent an entire range of government responses.

While measuring the costs to U.S. global leadership is a subjective exercise, the combined importance of the varying organizations and noteworthy individuals publicly supporting ratification of CRPD cannot be overstated. These actors base their support on the potential cost to U.S. global leadership resulting from non-ratification; therefore, it would appear that the costs are real, at least in the estimation of many policymakers and policy organizations.

National Security Costs

Conversely, no clear link exists between non-ratification of CRPD and costs to U.S. national security. Our interview subjects almost uniformly agreed that this particular treaty had little if any direct measurable impact on U.S. security policy, both domestically and internationally. The lone exception presented was a hypothetical scenario, wherein a high-ranking or high-value member of the U.S. national security apparatus was also disabled, and could not function satisfactorily in the country to which he or she had been assigned.⁶⁴ Their inability to stay in post could then conceivably jeopardize U.S. operations in that country for the immediate future, until a replacement could be found. While theoretically plausible, none of the experts interviewed could recall an instance where a situation like that had actually occurred.⁶⁵

Economic Costs

Some advocacy groups assert that failure to ratify CRPD leads to missed commercial opportunities for U.S. businesses. One is the U.S. Chamber of Commerce, which believes that it would level the playing field for U.S. businesses already observing these protections at home. However, the most vocal group—or at least one containing some of the business community’s most influential members—is the U.S. Business Leadership Network (“BLN”). BLN is a “national nonprofit that helps business drive performance by leveraging disability inclusion in the workplace, supply chain, and marketplace.”⁶⁶ Member companies include noteworthy organizations like IBM, Microsoft, Comcast NBC Universal, AT&T, Dow Chemicals, Northrop Grumman, Bank of America, Price Waterhouse Coopers, and Starbucks, to name just a few.

In their advocacy materials, BLN argues that U.S. ratification of CRPD would “potentially encourage other countries with less comprehensive systems of disability laws to ratify the treaty, which in turn would help create important changes for U.S. business.”⁶⁷ If CRPD were to be adopted in other countries, then BLN and its members, especially those in the technology and assistive technology sectors, believe they would see substantial opportunities in new markets for U.S. exports. They underscored this rationale in a letter to Senators Menendez and Corker of the Foreign Relations Committee: “[t]he CRPD will promote new markets and global commerce by: Increasing international markets and export opportunities for U.S. assistive technology

companies...exporting American made accessibility products and services...[and] promoting U.S. standards internationally.”⁶⁸

In addition, BLN maintains that a failure to ratify CRPD could lead to less overall support for “U.S. public and private research and development; and U.S. academic leadership in global accessibility innovations.”⁶⁹ Non-ratification of CRPD might also rob U.S. companies operating abroad of “competitive advantages” in promoting equal access and opportunities for local employees through “increased international employment and entrepreneurial opportunities for persons with disabilities; [further] international technology accessibility standards and guidelines in the workplace...[and] exercising local leadership in Corporate Social Responsibility and good citizenship.”⁷⁰

Frances West, a senior manager at IBM responsible for the firm’s disability policies, reiterated many of these points in her testimony before the Foreign Relations Committee last November. She noted that a continuing failure to ratify would “stifl[e] the ambition and dreams of people with disabilities, chok[e] marketplace opportunities, and jeopardize[e] the United States’ ability to influence the global accessibility community....” Indeed, she stressed that in the case of CRPD and its ramifications for global disability policy, the private sector sought real cooperation with the public sector. Through West, IBM requested “the full backing of the U.S. government to influence the development of emerging standards and policies that drive an important market....”⁷¹

Although advocacy organizations like BLN have begun to press the business case for ratification more heavily, these arguments appear to rely primarily on a kind of advanced rhetoric. This means that BLN and representatives from its member companies have made relatively detailed arguments regarding *areas* of future growth, but as of yet, none have presented detailed empirical calculations as to what U.S. opportunity costs might actually be in one of these developing countries. Until any of the various scenarios presented are monetized, the costs of not ratifying CRPD remain somewhat speculative. This could have some value in explaining why CRPD proponents weren’t able to succeed in their most recent attempt to ratify the treaty.

Summary

Failure to ratify CRPD generates a high cost to U.S. global leadership. The United States’ has spearheaded the promotion of disability rights and the international community expects it to continue in this role. Non-ratification creates a medium economic cost, since greater specificity is required as to actual monetary benefit that might be enjoyed by U.S. firms. Finally, leaving CRPD unratified incurs a low cost to the U.S. and its national security interests.

Policy and Political Challenges with the Treaties

Having analyzed each treaty in the context of the three cost categories, we turn now to an important question touched upon briefly throughout this report: what exactly are the impediments to U.S. ratification? In short, these impediments can be divided into policy and political challenges. We define policy challenges as objective disagreements made in good faith over the justifications for and terms of these treaties. The political challenges are interrelated, and center on ideology, legislative procedure, advocacy (lobbying), and the electoral landscape.

Policy

Policy disagreements over these treaties appear to be at best exaggerated and at worst, manufactured. Each side of these debates has essentially laid out their arguments and there is precious little new ground to explore in terms of policy.⁷²

The case of CRPD is illustrative here. In an opinion article written for the New York Times, Fordham University law professor Catherine Powell summarized the primary points advanced by supporters of the treaty. CRPD extended the same basic rights to Americans abroad that they already enjoyed at home.⁷³ In addition to strengthening disability rights for others, it helped Americans who traveled, lived, and worked or studied abroad, including former military personnel.⁷⁴ It benefited American businesses that sell assistive technologies to aid those with disabilities.

The most recent and heavily-leveraged policy argument against ratifying CRPD seems tenuous—even flimsy—by comparison. CRPD opponents claimed that the treaty would interfere with an American family’s right to educate their children at home. Based on a plain reading of the CRPD’s twenty-third article, the language centering on concern over the “best interests of the child” could just as easily be interpreted as helping to defend autonomy, independence, and choice for families with disabled children.⁷⁵

The same overarching principle applies to the other three treaties. Both advocates and opponents are well aware of what the ATT, UNCLOS, and CEDAW are intended to accomplish. The language contained within the treaties is settled, and it seems evident that those individuals and groups aligned against them attempt to construct new controversies when necessary to combat ratification.

Politics

The political challenges to U.S. ratification of these treaties are much more daunting. The first of these revolves around **ideology**, particularly the ideology of individual senators who ultimately decide the ratification question.

Political ideology as it relates to multilateral treaties and global cooperation splits into two distinct schools of thought. The first promotes the idea that the U.S. is best served by retaining the ability to act unilaterally in protecting its interests. This argument often takes on a

constitutional dimension, in that its proponents argue that international agreements and the obligations accompanying them will inevitably dilute our sovereignty and ensnare the U.S. in regulatory frameworks with other countries. Conversely, the second school believes that in an increasingly interdependent world in which the U.S. must act in cooperation with other countries—and in which security challenges are global in nature—the U.S. must engage constructively with the international community. Our interests are best served by committing to and providing leadership over international agreements, even if that means ceding a measure of political control and adding to our global responsibilities.

The debate over ATT presents an example of this divide at work. The NRA and like-minded organizations based their opposition on the U.S. Constitution's Second Amendment right to keep and bear arms. These groups contended that the ATT was another move by the federal government—in acquiescence to foreign norms—to limit the ability of domestic consumers to obtain arms. As might be expected, this was a powerful and persuasive argument with ideologically conservative senators. Secretary of State Kerry tried to dispel these concerns, releasing a statement prior to the March 2013 ATT negotiations saying that:

The United States could only be party to an Arms Trade Treaty that addresses international transfers of conventional arms...and does not impose any new requirements on the U.S. domestic trade in firearms or on U.S. exporters. We will not support any treaty that would be inconsistent with U.S. law and the rights of American citizens under our Constitution, including the Second Amendment.⁷⁶

Barbara Frey, Director of the Human Rights Program at the University of Minnesota and former Special Rapporteur to the UN Sub-Commission on the issue of preventing human rights abuses committed with small arms, argued that using the constitutional argument was unfair, and that it was akin to “balancing privacy and deregulation against an international right to security.”⁷⁷ As with many debates, if based on facts alone, ratifying the ATT in Congress would be a swift and easy process. There is no pain in terms of implementation or any infringement upon the rights of American citizens, yet much to gain in terms of national security interests, global leadership, and economic benefit.

Proponents of the other treaties must deal with the same ideological question as it relates to sovereignty. In the case of CEDAW, ratification would not result in any automatic changes to U.S. law. Instead, it would provide a practical blueprint to achieve progress for women and girls and an opportunity for policymakers and advocates to work together on how best to end discrimination and full equality for women. Similarly, ratification of CRPD would require no change in U.S. law, and it could not be used as the cause of action for a lawsuit. No international organization, including the nonbinding advisory committee established by the treaty, could force the U.S. to do anything. Instead, U.S. participation would help raise other countries to the so-called “gold standard,” modeled on U.S. disabilities law.⁷⁸ Indeed, the U.S. was the first country to pass comprehensive legislation protecting disability rights, and we successfully exported these rights by negotiating CRPD in a way that mirrors our preexisting values. Needless to say, persuading policymakers to reevaluate some of their fundamental conceptions is no small task.

Another obstacle is **legislative procedure** governing ratification. The U.S. treaty ratification process is arguably the most stringent in the world. Two-thirds of the Senate must vote in the

affirmative to successfully ratify, and recent history has shown how difficult attaining that number can be. Ordinary lawmaking via simple majority presents a real challenge to Senate leadership, and with partisanship increasing sharply over the past decade, obtaining an even higher number is that much more challenging.

The challenge presented by Senate procedure is apparent based on how long it can take treaties to even come to the floor for a vote. CEDAW entered into force in 1979, was signed by the Carter administration in July 1980, and submitted to the Senate for ratification. The Senate Foreign Relations Committee voted favorably on the treaty in 1994 and in 2002, but failed to advance it any further. In 2010, the Obama Administration expressed its strong support for ratification of CEDAW, calling it one of their top priorities, but the treaty has yet to come before the full Senate.⁷⁹

The challenge is particularly concerning with UNCLOS, a treaty that has the overwhelming support of environmental, business, energy, and security interests, yet is not under consideration in the Senate. The current political climate does not allow for the possibility of ratification any time in the near future. One could argue that a different president—perhaps a Republican president—could successfully encourage passage, but President George W. Bush’s efforts toward ratification were rebuffed by his fellow Republicans in the Senate during the last decade. Forward-looking Republicans, such as former Indiana Senator Richard Lugar, would be of considerable help to treaty proponents, since those senators could form a nucleus of lawmakers willing to build a coalition that could reach the two-thirds mark.

The third political challenge stems from **advocacy** and **lobbying**. We arguably reside in one of the most volatile, partisan times in U.S. history, and special interest groups work aggressively to take advantage of these divisions.

Not all lobbying surrounding these treaties is negative. Because many U.S. soldiers are returning from duty with disabilities, nearly two-dozen veterans’ organizations support ratification of CRPD.⁸⁰ As for CEDAW, it has the support of over 150 national, state, and local organizations. The groups include a broad range of professional, religious, civic, and community interests, such as the American Bar Association, Amnesty International USA, The Leadership Conference on Civil and Human Rights, NAACP, the National Council of La Raza, National Council of Churches Women’s Ministries, National Education Association, The United Methodist Church, Sisters of Mercy, and the YWCA.

Nonetheless, special interests aligned against treaty ratification have a talent for exercising maximum leverage in their respective debates. Ratification of the ATT is an excellent example of this phenomenon. Special interests have changed the dimensions of the issue in Washington, especially since the gun lobby is among the strongest and most visible of any group working on Capitol Hill. Given the power of the NRA and other groups that promote domestic gun ownership rights in America—like the International Association for the Protection of Civilian Arms Rights—staunch opposition to the ATT has been created that warns of new regulations and encroachments on American gun owners.

The other treaties are also subject to negative lobbying pressures. Regarding UNCLOS, former Republican Senate Majority Leader Trent Lott, once a fierce opponent of that treaty, recently

expressed support for it.⁸¹ In discussing his newfound perspective, he claimed that a number of sitting Republican Senators do in fact support ratification, but have failed to publicly support it due to pressure from certain advocacy organizations, particularly the Heritage Foundation. Because of that organization's influence in Republican circles, GOP senators who wish to break from their more conservative colleagues and vote for ratification will need to find real courage.

Likewise, critics of CEDAW are either very ideologically conservative or religious groups. CEDAW generates an extra level of political dynamism, inasmuch as the dialogue emanating from its opponents tends to veer toward the reproductive health and rights of women. It becomes a familiar political conflict, wherein abortion is used as a "wedge issue." Martin believes that "within the United States there is still some cultural insecurity when you talk about women's rights.... As a result you get wild accusations that ratifying CEDAW will somehow destroy traditional families and family values."⁸² There is a fundamental concern that the talk of equality or women is an attack on motherhood and that the adoption of CEDAW would result in undermining the traditional concept of family life.

The final political challenge relates to another inescapable reality of U.S. politics—the two-year **election** cycle, which sees one-third of the Senate up for election on a biennial basis. Members of the Senate are not only policymakers, but also politicians. Accordingly, efforts to advance good policy are often slowed or halted altogether by the need to maintain and protect political reputations. Ratifying multilateral treaties has become increasingly difficult in the U.S. for precisely that reason.

Elected officials are incredibly sensitive to the preferences and opinions of their constituents, since these individuals control their respective political futures. On average, Americans place very little importance on foreign policy matters in elections.⁸³ However, Americans *do* tend to value the U.S.' autonomy and freedom of action, as well as its role as an exceptional or indispensable country. Treaty ratification meets serious obstacles at the intersection of these two realities. U.S. Senators need to majority support to win elections, and accomplishing that goal requires turning out voters. To turn out those voters, senators will promote policies that positively galvanize their supporters. Ratification of multilateral treaties simply does not inspire excitement among voters in a broad or concentrated way. Until it does, advocates may be hard pressed to persuade senators of the merits of a treaty. Republicans who sided with the Clinton Administration over the Chemical Weapons Convention learned this lesson very well, when their support came to represent potential losses for their party. Since then, elected officials have been much more reluctant to break from their party on global treaty issues.

Another aspect of the elections challenge is how institutional support for multilateral treaties ebbs and flows from one election cycle to the next. For example, the ATT in particular received very little support during the Bush Administration, and while support has increased during the Obama Administration—Secretary of State Kerry signed the treaty late last year—it's unclear what the President's plan is in terms of bringing ATT to Congress before his second term concludes. This year's midterm elections represent another more immediate variable in the current landscape. Many observers believe that the pendulum will swing toward Senate Republicans, with the retirement of several Democrats in toss-up states. Narrowing the Democrats' majority—or even relegating them to the minority—will have significant implications for what kind of legislation is brought to the floor.

Conclusion

When examining the U.S. failure to ratify these four treaties, some clear costs begin to materialize. While it can be challenging to accurately quantify certain costs given their subjective nature or limited available data, we can still draw some important conclusions.

The economic costs for not ratifying each of these treaties relate to the spirit of cooperation that these treaties are working to foster. A treaty like the ATT is designed to raise the world up to U.S. standards of arms export regulation and security, but it also presents an opportunity to ensure legitimate global arms producers are not obtaining a competitive advantage over U.S. producers via lax export controls. Similarly, UNCLOS would ensure the U.S.' legal rights to its seabed resources and guarantee rare earth mineral rights to U.S. businesses. Failure to ratify CRPD hinders U.S. firms from realizing expanded opportunities to export assistive technology. Lastly, failure to ratify CEDAW represents a missed opportunity for the U.S. to reaffirm their worldwide commitment to equality for women.

National security costs varied among the four treaties. Non-ratification of CEDAW and CRPD creates a relatively low cost to national security, while ATT and UNCLOS generated larger ones. And while U.S. ratification of the ATT will not stop Syria or North Korea from pursuing the acquisition of regionally destabilizing weapons, the U.S. can make this treaty more robust. It can also potentially draw in other large arms exporters such as Russia and China, who would then need to comply with strict guidelines on transparency of arms transfers. Again, given the large U.S. military presence abroad, illicit arms trade anywhere is a threat to U.S. national security. As for UNCLOS, it ensures U.S. passage through navigational straits, unrestricted military activity in the high seas, and guarantees the U.S. Navy can detain vessels suspected of piracy. As a result, not ratifying these treaties removes opportunities for the U.S. to increase its influence around the world.

U.S. global leadership undeniably comes into question when it continually fails to ratify treaties that are of huge importance to the international community. The world asks the question: why does its most influential nation oppose these treaties that promote women's and disability rights, create a fair set of rules governing use of the oceans and their resources, and strengthen efforts to eliminate the illicit arms trade. By not ratifying these treaties, the United States sacrifices an opportunities to further strengthen its commitment to a safer, more just, and more economically prosperous world. Furthermore, the international community will not grant the U.S. unlimited access to negotiations on these treaties if it continues to ignore them. Just as political influence and will waxes and wanes domestically, so too does it at the international level. The U.S. can ill-afford to be seen as a nation that cannot be counted on to promote these shared values.

additional quantitative research is needed regarding the economic costs of non-ratification for each treaty. This data would be very useful in quantifying costs attributed to loss of workforce members, like with CEDAW and CRPD. Connections could be made to overall economic losses when members of those specific groups are marginalized and left without the opportunity to contribute to the economy. The ATT is unique to the other treaties analyzed in that it is the only one that has yet to enter into force. Once the treaty enters into force, it will be easier to quantify the impact of the ATT in tracking and curbing the illicit trade in conventional weapons. We

already have a dollar amount, \$2.2 billion, tied to the arms and ammunitions imported between 2000 and 2012 by countries under embargo.⁸⁴ After it takes effect, we may see its impact on the arms trade and perhaps estimate the U.S.' impact on its overall effectiveness. Hard economic data would be a great help in attempts to ratify UNCLOS. The energy and telecommunications industries have vested interests in the ratification of UNCLOS given the opportunities for off-shore energy extraction, as well as strengthening and protecting valuable cable infrastructure.

Furthermore, given domestic political realities, significant positive movement on these treaties seems unlikely in the next two and a half years, a period that includes a midterm and presidential election. The Policy and Political Challenges section underscores why building coalitions among different sectors and interests is important to treaty ratification. Without knowing whether the Senate will be in Democratic or Republican control, and without knowing who will win the presidency in 2016, treaty advocates would be wise to create the widest and most diverse coalitions possible. They play a crucial role in gathering data and sharing it with senators in a persuasive manner.

Appendix

38 Unratified International Treaties by the United States*

1. Ottawa Treaty (the land-mine ban)
2. Treaty on the Rights of the Child (only holdouts are the U.S. and Somalia)
3. Protocol to enforce the 1972 Biological Weapons Convention (vote was 178-1, the US the only holdout)
4. United Nations Convention on the Elimination of All Forms of Discrimination Against Women
5. International Covenant on Economic, Social and Cultural Rights
6. Convention on Biological Diversity
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
8. Stockholm Convention on Persistent Organic Pollutants (POPs)
9. International Convention for the Suppression of Terrorist Bombings
10. International Convention for the Suppression of the Financing of Terrorism.
11. Convention Relating to the Status of Refugees
12. Convention on the Non-Applicability of Statutory Limitations to War Crimes Against Humanity
13. Forced Labor Convention
14. Freedom of Association and Protection of the Right to Organize Convention
15. Right to Organize and Collective Bargaining Convention
16. Convention on Consent to Marriage, Minimum Age to Marriage and Registration of Marriages
17. Convention on the Reduction of Statelessness.
18. Convention on the International Right of Correction
19. International Criminal Court
20. Kyoto Accords (greenhouse gas reductions)
21. UN Convention on Biological Diversity (regulating genetic engineering)
22. UN Declaration on the Rights of Indigenous Peoples
23. Anti-Ballistic Missile Treaty [prohibiting programs like "Stars Wars"]
24. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
25. Convention on the Protection and Use of Transboundary Watercourses and International Lakes
26. International Convention against the Recruitment, Use, Financing and Training of Mercenaries
27. International Convention on the Suppression and Punishment of the Crime of Apartheid
28. Convention concerning Minimum Age for Admission to Employment
29. Vienna Convention on the Law of Treaties
30. Code of Conduct on Arms Transfers (prohibiting sale of arms to human rights violators & aggressors)
31. Comprehensive Nuclear Test Ban Treaty

32. Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, and Other Related Materials
33. UN Convention on the Law of the Sea (bans toxic waste dumping, etc.)
34. UN Moon Treaty [declaring the moon part of the Common Heritage of Mankind]
35. Framework Convention on Tobacco Control
36. UN Convention on the Prevention and Punishment of the Crime of Genocide
37. Protocol to enforce the Convention Against Torture
38. United Nations Convention against Transnational Organized Crime

* The list has been procured from the website of The National Initiative for Democracy.

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