WHO MAKES THE RULES? WHY THE UNITED STATES SUCCEDES OR FAILS IN SHAPING THE GLOBAL AGENDA

A Dissertation
Submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Government

By

David C. Post, M.A.

Washington D.C.

May 2010
WHO MAKES THE RULES? WHY THE UNITED STATES SUCCEEDS OR FAILS IN SHAPING THE GLOBAL AGENDA

David C. Post, M.A.

Thesis Advisors: Andrew Bennett, Ph.D.
Elizabeth Stanley, Ph.D.
Anthony Arend, Ph.D.

ABSTRACT

Among other characteristics, one facet of the unipolar world that clearly differentiates it from previous eras is the degree to which interactions between states are increasingly institutionalized. While the United States continues to play an integral role in the formation of new agreements, a variety of global institutions have been established in recent years in the face of opposition from the United States. Though the literature on institutional formation is rich and diverse, much of it suggests that the formation of institutions in the face of opposition from the world’s most powerful state should be highly unlikely. As such, the existence of “outliers” suggests that existing theoretical paradigms on institutional formation may need to be reassessed and reapplied to better take the dynamics of unipolarity into account.

How do institutions form in the face of hegemonic opposition? Why has the United States lost control over the agenda in many post cold-war international treaty negotiations? What were the tipping points that changed the negotiation dynamics? Where, when and how could the United States have intervened to alter the outcome? What are the implications for international relations theory and practice? This dissertation attempts to shed light on these and other related questions.
Drawing on descriptive quantitative data and a range of case studies including the Ottawa Treaty on Landmines, Kyoto Protocol and International Criminal Court, this dissertation tests a theoretical model aimed at explaining the post-Cold War emergence of global international institutions that do not reflect the United States’ preferences. The results of the case studies suggest that a variety of factors including ineffective diplomacy, changes in the structure of the international system and the emergence of new methods of institutional formation have ultimately led to the creation of institutions that the United States opposes. These findings have important implications for international relations theory and practice.
# Table of Contents

Introduction.................................................................................................................................................................................. 1
Chapter 1: Setting the Stage........................................................................................................................................................................ 17
Chapter 2: How and Why do Institutions Matter?................................................................................................................................. 39
Chapter 3: A Theory of Institutional Formation Under Hegemonic Opposition................................................................. 56
Chapter 4: The United States’ Involvement in Global Treaties........................................................................................................... 92
Chapter 5: The Ottawa Treaty on Landmines..................................................................................................................................... 110
Chapter 6: The Kyoto Protocol............................................................................................................................................................. 151
Chapter 7: The International Criminal Court...................................................................................................................................... 194
Chapter 8: Examining the Other Quadrants........................................................................................................................................ 236
Chapter 9: Conclusion.............................................................................................................................................................................. 260
Appendix 1: Research Questions ......................................................................................................................................................... 275
Appendix 2: Cases and Outcomes for International Treaties the United States Has Not Ratified.............................................................. 277
Works Cited......................................................................................................................................................................................... 278
List of Figures

Figure 1. Variables and Outcomes for Primary and Shorter Case Studies .................. 13
Figure 2: Military Spending as a Percentage of Gross Domestic Product, European NATO Members, 1985 and 2002................................................................. 23
Figure 3: Phases of Negotiation................................................................................. 65
Figure 4: A Typology of Institutional Outcomes....................................................... 84
Figure 5: The Model .................................................................................................. 88
Figure 6: The United States’ Treaty Ratification Process ......................................... 96
Figure 7: Members of the United Nations 1945-2009.............................................. 101
Figure 8: Average Number of Treaties Per Year...................................................... 102
Figure 9: Percentage of Global Treaties Ratified by the United States.................. 103
Figure 10: Status of Treaties that the United States has not Ratified by Time Period ... 105
Figure 11: United States’ Ratification of Global Treaties by Issue Area .................. 107
Figure 12: Global Agreements by Type, 1945-1990................................................. 108
Figure 13: Global Agreement by Type, 1991-2005................................................... 108
Figure 14: The Model Applied to the Ottawa Treaty .............................................. 111
Figure 15: The Model Applied to the Kyoto Protocol............................................ 152
Figure 16: The Model Applied to the International Criminal Court...................... 195
### Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AHC</td>
<td>Ad hoc Committee on the Establishment of an International Criminal Court</td>
</tr>
<tr>
<td>AHG</td>
<td>Ad hoc Group</td>
</tr>
<tr>
<td>AGBM</td>
<td>Ad hoc Group on the Berlin Mandate</td>
</tr>
<tr>
<td>APLs</td>
<td>Anti-Personnel Landmines</td>
</tr>
<tr>
<td>ACA</td>
<td>Arms Control Associations</td>
</tr>
<tr>
<td>BWC</td>
<td>Biological Weapons Convention</td>
</tr>
<tr>
<td>CO2</td>
<td>Carbon Dioxide</td>
</tr>
<tr>
<td>CT</td>
<td>Chairman’s Text</td>
</tr>
<tr>
<td>CFCs</td>
<td>Chlorofluorocarbons</td>
</tr>
<tr>
<td>CAN</td>
<td>Climate Action Network</td>
</tr>
<tr>
<td>CC</td>
<td>Climate Change</td>
</tr>
<tr>
<td>CICC</td>
<td>Coalition for an International Criminal Court</td>
</tr>
<tr>
<td>COP</td>
<td>Conference of Parties</td>
</tr>
<tr>
<td>CCW</td>
<td>Conference on Certain Conventional Weapons</td>
</tr>
<tr>
<td>CD</td>
<td>Conference on Disarmament</td>
</tr>
<tr>
<td>CCM</td>
<td>Convention on Cluster Munitions</td>
</tr>
<tr>
<td>CTBT</td>
<td>Comprehensive Nuclear Test Ban Treaty</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>G-77</td>
<td>Group of 77</td>
</tr>
<tr>
<td>HST</td>
<td>Hegemonic Stability Theory</td>
</tr>
<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for Yugoslavia</td>
</tr>
<tr>
<td>INC</td>
<td>Intergovernmental Negotiating Committee for the UNFCC</td>
</tr>
<tr>
<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
</tr>
<tr>
<td>ICBL</td>
<td>International Campaign to Ban Landmines</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>IANSA</td>
<td>International Action Network on Small Arms</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>JUSSCANNZ</td>
<td>Japan, the United States, Switzerland, Canada, Australia, Norway and New Zealand</td>
</tr>
<tr>
<td>KP</td>
<td>Kyoto Protocol</td>
</tr>
<tr>
<td>LMG</td>
<td>Like-Minded Group</td>
</tr>
<tr>
<td>NAM</td>
<td>Non-Aligned Movement</td>
</tr>
<tr>
<td>NGOs</td>
<td>Non-governmental Organizations</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>NPT</td>
<td>Nuclear Non-Proliferation Treaty</td>
</tr>
<tr>
<td>OPEC</td>
<td>Organization of Petroleum Exporting Countries</td>
</tr>
<tr>
<td>OP</td>
<td>Ottawa Process</td>
</tr>
<tr>
<td>OTL</td>
<td>Ottawa Treaty on Landmines</td>
</tr>
<tr>
<td>P-5</td>
<td>Permanent Five Members of the Security Council</td>
</tr>
<tr>
<td>PC</td>
<td>Preparatory Committee</td>
</tr>
</tbody>
</table>
Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects  
Protocol on Procedures to Verify Compliance with the Biological and Toxin Weapons Convention  
Small Arms and Light Weapons  
United Nations  
United Nations Environment Program  
United Nations Framework Convention on Climate Change  
United States  
Vietnam Veterans of America Foundation  
World Trade Organization  

PoA  
PBWC  
SALW  
UN  
UNEP  
UNFCC  
US  
VVAF  
WTO
Introduction

On December 29 2008, the United States based Arms Control Association (ACA) awarded Norway’s Foreign Minister Jonas Store and Steffen Kongstad, the ministry’s Director-General for Security Policy and the High North, the “2008 Arms Control Person of the Year Award.” Though a wide range of accomplished American candidates were nominated for the award including Christopher Hill (the lead United States negotiator for North Korea), and former United States Secretaries of State Henry Kissinger and George Schultz, the ACA chose to honor the Norwegian initiators of the Convention on Cluster Munitions for advancing an aspect of the international arms control regime that the United States itself had not endorsed. As Jeff Abramson, a conventional weapons analyst with the Arms Control Association, commented,

The Convention on Cluster Munitions is the most important new humanitarian arms control treaty of the still-young century and Norway’s Store and Kongstad deserve great praise for their leadership. Working with other countries and a dedicated coalition of civil society leaders and cluster munitions survivors, their actions spurred meaningful progress to bar indiscriminate weapons that have killed or maimed tens of thousands of noncombatants. (Cluster Munition Coalition 2009)

The roots of the Convention on Cluster Munitions (CCM) date to 2006 when Store, dissatisfied with the snails’ pace at which the United Nations’ (UN) Conference on Certain Conventional Weapons (CCW) was addressing the issue of cluster munitions, announced that his government would take the lead on pushing forth an international effort to ban these weapons. Though the CCW had just ratified a protocol that committed signatories to clear their territories of unexploded ordnance or explosive remnants of war, it had not addressed ways to limit the use of these weapons in the first place. In response to Norway’s statement, a variety of other states including Austria, Ireland, New Zealand
and Mexico voiced support for the initiation of a legally binding process that addresses the humanitarian concerns posed by cluster munitions.” (Boese 2006)

In contrast, and in lockstep with other great powers, the United States expressed deep reservations to Norway’s stance. In response to Norway’s statement, Ronald Bettauer, the head of the United States’ delegation to the CCW conference, described the United States as “disappointed” with the decision to move forward on a ban and argued that “the effort to go outside this framework is not healthy for the CCW” and would “weaken the international humanitarian law effort” (Boese 2006). He also argued that the CCW was the only body that could deliver “meaningful” results on the issue because it was the only framework that brought together users and producers of the weapons (Boese 2007). Apparently, other states did not share these sentiments.

As the negotiations on CCM moved forward, the United States did not even bother to send representatives to the proceedings. However, despite the United States’ opposition, the CCM had gained popular support in the international community by the middle of 2007, with more than seventy countries voicing support for the initiative. As it became increasingly apparent that the CCM was likely to pass, the United States abruptly changed its position by announcing that it would back cluster munitions discussions in the CCW. Though negotiations began to move forward in the context of the CCW throughout the end of 2007 and much of 2008, the bodies’ consensus-based decision-making structure continued to hamper progress. In the meantime, states involved in the Norway-led negotiations continued to move ahead.

On December 3 2008, representatives of states from around the world came together in Oslo, Norway, where the Convention on Cluster Munitions would open for
signatures. On the morning of the signing, President Hamid Karzai of Afghanistan surprised the other members of the convention by announcing that, despite the United States’ opposition, his country would also sign the treaty. By the end of the week, ninety-three other states had also signed the treaty, including 18 of the 26 members of NATO. In defending the United States’ decision not to enter the agreement, James F. Lawrence, director of the State Department’s Office of Weapons Removal, said, “…cluster bombs were sometimes more humane than conventional bombs. As an example, he said that antennas on a roof could be taken out efficiently with a cluster bomb, without bringing the building down” (Gibbs and Semple 2008). Unsurprisingly, these statements did not sway participants’ stance on the issue.

Having been ratified by 30 states and signed by an additional 76, the CCM will enter into force on August 1st, 2010. The United States remains on the outside of the treaty looking in alongside Russia, China and Saudi Arabia.

The Issue

Your first decision, therefore, is which country to approach, out of more than 190. At the most elementary level, an initial list would include: The United States. Simply because, as by far the most powerful country, its attitude is extremely important. If it can be persuaded to support your project, this is immensely valuable. If it is uninterested or hostile, this will be one of the major problems facing your campaign. If the United States is not, at the end of the day, willing to participate in your proposed new organization or standard, the question arises as whether that organization or standard can be effective. (Walker 2004, 74)

Among other characteristics, one facet of the unipolar world that clearly differentiates it from previous eras is the degree to which interactions between states are increasingly institutionalized. Although this process of institutionalization was jump-started by the United States after the end of World War II, the formation of new institutions has occurred at a historically unprecedented clip over the last thirty years.
For example, between 1970 and 1997, the number of international treaties at the global level more than tripled (Schocken 2001).

While the United States continues to play an integral role in the formation of new agreements, a variety of global institutions have been established in recent years in the face of opposition from the United States. Though the literature on institutional formation is rich and diverse, much of it suggests that the formation of regimes in the face of opposition from the world’s most powerful state should be highly unlikely. In particular, collective action theory, arguably the most prominent theory on regime formation, suggests that the creation of regimes is likely only when a single powerful state or a small number of powerful states is sufficiently interested in the issue. As such, the existence of “outliers” like the CCM suggests that existing theoretical paradigms on institutional formation may need to be reassessed and reapplied to better account for the dynamics of unipolarity.

According to scholars like G. John Ikenberry (2000, 51-71), one of the reasons that the United States has been able to maintain its position of primacy in the post-World War II era is because it established a variety of institutions in the post-war period that, in short, decreased the costs of hegemony. By subsuming itself to a degree of “self-binding,” the United States struck a “constitutional bargain” with other states which has augmented its capacity for long-term power preservation.

Though the United States was involved in the majority of institutional forming activities in the post-war era, the post-Cold War period (and last ten to 15 years specifically) has seen the passage of a variety of treaties that the United States has not

---

1 I use the terms institutions, treaties and agreements synonymously in this dissertation.
2 I define the post Cold-War (unipolar) era as after 1990.
ratified, and in many instances clearly opposed, adopted with a widespread worldwide consensus. Indeed, quantitative descriptive data suggests that the United States has ratified a significantly lower proportion of global treaties in the post-Cold War period (40%) than it did for treaties negotiated from 1945-1991 (76%).

Given that the United States’ power has remained more or less constant in the post-Cold War period, it is puzzling that it has been neither able to shape these initiatives in ways that are sufficiently consistent with American interests to allow for the United States’ participation, nor to undermine their widespread adoption altogether. It is also puzzling, and contrary to the prediction of many scholars of international law and international relations, that other countries would be willing to move ahead and establish global legal agreements without the United States’ participation.

How do institutions form in the face of hegemonic opposition? Why has the United States lost control over the agenda in many post-Cold War international treaty negotiations? What were the tipping points that changed the negotiation dynamics?

---

3 The population of global treaties that have been established in the post-Cold War era that the United States has not ratified includes: the Kyoto Protocol, the International Criminal Court, the Ottawa Treaty on Landmines (The Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction), Comprehensive Nuclear Test Ban Treaty, Convention on Biological Diversity, Convention on the Rights of the Child, WHO Framework Convention on Tobacco Control, Law of the Sea, Basel Convention on Hazardous Wastes and Cartagena Protocol on Biosafety.

4 I define this as treaties that have been ratified by over 100 countries, which is over 1/2 of the membership of the United Nations.

5 Global treaties that the United States has ratified in the post-Cold War period include: Chemical Weapons Convention, International Coffee Agreement, WIPO Copyright Agreement, Convention to Combat Desertification, United Nations Framework Convention on Climate Change, Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labor, Protocol of 1988 relating to the international convention on load lines, Protocol of 1988 relating to the international convention for the safety of life at sea, United Nations convention against transnational organized crime, Sixth additional protocol to the constitution of the Universal Postal Union of July 10, 1964, Postal payment services agreement, Constitution and Convention of the International Telecommunication Union, International convention for the suppression of terrorist bombings, International convention for the suppression of the financing of terrorism, Marrakesh agreement establishing the World Trade Organization (WTO) and Protocol on Persistent Organic Pollutants.

6 This should especially be the case in instances in which the United States’ non-participation could ultimately undermine the effectiveness of the agreement entirely.
Where, when and how could the United States have intervened to alter the outcome? What are the implications for international relations theory and practice? This dissertation will attempt to shed light on these and other related questions.

Presumably, the United States only supports the formation of (and ratifies) treaties/institutions that advance its national interests. Since the formulation of these treaties is often the culmination of a long process of negotiation between countries with divergent interests, the United States’ ratification of international agreements suggests that it has successfully “shaped” treaties’ in ways that are broadly consistent with, or at least not opposed to, its long term foreign policy goals.

Ironically, in the post-Cold War era the United States has actively propagated many of the ideas and norms that ultimately formed the basis for agreements that it ended up not ratifying. While some of these situations represent international diplomatic successes that the United States did not ratify for domestic political reasons, others can be considered unqualified setbacks where the United States was simply not able to get its way.

Why would the United States actively propagate ideas and norms that ultimately formed the basis for the creation of agreements that it ended up opposing? There are at least three potential explanations for why this may have occurred. First, it is possible that the executive branch was attempting to tie down future administrations to these agreements in the long-term, fully conscious of the fact that the short-term result would

---

7 Examples of treaties that the United States has successfully shaped the content of, but not ratified for domestic reasons, includes: Comprehensive Nuclear Test Ban Treaty, WHO Framework Convention on Tobacco Control, Convention on Biological Diversity, Convention on the Rights of the Child, and Law of the Sea.

8 Examples of treaties that the United States has failed to shape internationally include: Kyoto Protocol, International Criminal Court, Ottawa Treaty on Landmines, Basel Convention on Hazardous Wastes and Cartagena Protocol on Biosafety.
be to allow the emergence of institutions that were outside the sphere of the United States’ influence. I argue that this explanation is not convincing because the executive branch advanced positions that were ultimately not reflected in the final texts of many of these agreements.

Second, it is possible the United States may actually benefit more by shaping the content of these agreements but not ratifying them. Treaties formally codify norms in the international arena. In doing so, these agreements constrain and shape state behavior and influence patterns of interaction in the international sphere. By defining the content of agreements but not ratifying them, the United States is able to influence other states to take on the costs of adhering to agreements (that it influenced or helped to write) while facing no direct costs of compliance itself. Paradoxically then, and assuming it was deliberate, the United States’ strategy during these treaty negotiations may have subtly reinforced its hegemony. Though interesting from a theoretical standpoint, the evidence does not support this account. In all of the cases that I examine, the United States actively tried to shape the content of the agreements so that it could join them. The United States only withdrew from negotiations when it became clear that the treaty would take a form that it could not support.

Finally, and most plausibly from my perspective, while the United States was able to set the agenda initially, there was a point in the course of treaty negotiations when it was unable to maintain control of how deliberations evolved. As the hegemon, the United States must walk a delicate tightrope between fulfilling its national interests (e.g. not being tied down by international institutions it does not support) and acting as a leader on the world stage. Given this tension, I suggest that the United States should prefer one of
two possible outcomes: either the United States gets what it wants in international treaties and ratifies them or it refuses to ratify treaties if the rules do not conform with its priorities and pushes others to do the same.

Multilateral negotiations are complex processes in which states must effectively leverage their persuasive capabilities, conventional power resources and diplomatic assets in order to be successful. However, since states often do not reveal their bottom line preferences until negotiations have actually begun, the United States (and other countries) does not know whether or not it can get an acceptable deal a priori. Indeed, key information about preferences is revealed primarily throughout the bargaining process. Nevertheless, whereas in the past the United States successfully leveraged its resources and structural position to control how the agenda evolved, it has been slow to adapt to the changes in the dynamics of international negotiations catalyzed by the shift to unipolarity. This has resulted in the rise of international institutions that the United States opposes.

The institutions that this dissertation explores are of particular interest because they represent outliers in the population of agreements that were established under United States’ hegemony in the post-Cold War period. While previous studies have examined various factors associated with these cases—such as Europeans’ willingness to move on without the United States in the security (Fehl 2008) and environmental realms (Cass 2005; Hovi et al., 2003) and the determinants of successful middle power leadership on human security issues (Behringer 2005; Hampson and Reid 2003)—little research to my knowledge has systematically synthesized these findings across and within cases or
specifically focused on the factors underlying the United States’ inability to shape the institutional formation process.⁹

In this dissertation, I argue that a variety of factors—including inept diplomacy, changes in the structure of the international system and the emergence of new methods of institutional formation—ultimately led to the creation of institutions that the United States opposes. While this trend is not likely to lead to the end of the unipolar world in and of itself, the formation of alternative institutions that the United States opposes can significantly constrain the United States and undermine its legitimacy as a global leader.

Relevance

There is a burgeoning consensus among scholars that extant international relations theory may need to be revised and rethought to more accurately account for the dynamics of the unipolar world.¹⁰ Given that cooperation between states will continue to be increasingly institutionalized, this project not only has the potential to make theoretical contributions to enhancing our understanding of unipolar dynamics, but also to generate important policy recommendations.

First, and as mentioned previously, one of the major explanations for the longevity of the United States’ primacy in the post-World War II era has been its establishment of, and support for, the international institutions and treaties around which the existing international system is based. While the dynamics of unipolarity, and corresponding power disparities, make it unlikely that systemic change will occur via traditional balancing dynamics, the formation of alternative institutions represents a

---

⁹ One notable exception is an edited volume by Brem and Stiles (2009). However, and as with most analyses on this subject, the volume tends to focus more on the outcome of the negotiations as opposed to examining the process by which the United States lost its influence in the context of the deliberations. As such, my analysis of the issue is more comprehensive than previous work on this subject.
¹⁰ See the January 2009 issue of World Politics for a whole series of articles on this topic.
mechanism by which other states can constrain US power. By outlining the causal pathways by which this process occurs, this project contributes to the literature on the stability and longevity of hegemonic orders. It also contributes to advancing longstanding debates on the role (or lack thereof) that hegemonic states play in the process of institutional and regime formation (Keohane 1992; Young 1991).

Second, at a time when the United States’ leadership is often questioned, this project attempts to advance a more nuanced understanding of the determinants of the United States’ ability to shape the agenda on global issues. Despite its importance and application in the field of American politics (Ordeshook and Schwartz 1987; Romer and Rosenthal 1978; Bachrach and Baratz 1962) and the study of the European Union (Pollack 1997; Tsebelis 1994), agenda setting remains an underdeveloped concept in the international relations literature (Livingston 1994). By developing a parsimonious framework for explaining the United States in(ability) to control the agenda in international negotiations, this project will significantly advance the literature on this topic.

Finally, given the Obama administration’s commitment to restoring the United States’ leadership in the global arena through participation in multi-lateral forums, this project is timely from a policy perspective. Indeed, this project generates a number of policy relevant recommendations and presents strategies that the United States could adopt to more successfully control the evolution of international negotiations.

**Methodology and Case Selection**

The major case studies will focus on three global treaties—the Kyoto Protocol (KP), International Criminal Court (ICC) and Ottawa Treaty on Landmines (OTL)—that
the United States was unable to shape prior to their broad-based acceptance and ratification at the international level. This mixture of cases is particularly appropriate for the purposes of this study because it includes one case that deals with “soft” issues (the environment), one that deals with “medium” issues (international justice) and one that focuses on “hard” security-oriented issues (landmines).

By not limiting myself to “soft” cases, I will be able to argue convincingly that my findings apply to a wide range of cases, even those that have major national security consequences. Furthermore, this case selection is appropriate because all of the agreements were negotiated during William Clinton’s presidency. This allows me to control for administration and other factors that may have influenced the treaty formation process. Finally, and as the table on page 13 demonstrates, the agreements that I analyze in the primary case studies vary on key dimensions of interest such as policy inconsistency, involvement of middle powers/non-governmental organizations (NGOs), type of diplomatic process, etc. It is important to note that these cases represent most-likely cases for the theory (Bennett and George 2005). In other words, if my hypotheses are accurate they should hold in the cases I examine in this dissertation.

In order enhance the robustness of my findings and ensure that the causal mechanisms that I identify are broadly applicable, I also include more brief case studies from different “quadrants” of the matrix of population cases. The purpose of this approach is to analyze cases that constitute “negative cases” for the puzzle that I am addressing (Goertz and Mahoney 2004). These are cases that could have resulted in the outcome of interest (the passage of a global agreement that does not reflect the United States’ position), but did not. First, I examine situations in which the United States was
able to prevent the emergence of a treaty when its passage seemed likely (the UN Convention on the Illicit Trade in Small Arms and Light Weapons and the Protocol on Procedures to Verify Compliance with the Biological and Toxin Weapons Convention). Second, I examine an instance where the United States was able to control the agenda at the international level but not ultimately able to ratify the treaty because of domestic reasons (Comprehensive Nuclear Test Ban Treaty).  

From a methodological perspective, I test my hypotheses by applying structured, focused comparisons across cases. The method is “structured” in that I compile questions aimed at testing my hypotheses and apply them to each of the cases in order to guide and standardize data collection (which makes a comparison of the case findings possible) (Bennett and George 2005, 67-72). The method is “focused” because it only deals with certain aspects of the historical case studies. Utilizing this approach allows me to compile my findings into a more generalizable theoretical model for explaining the puzzle at hand.

Throughout the case studies, I also use within-case process-tracing to look for “tipping” or “critical” points where negotiating dynamics and coalition structures changed in ways that caused the United States to gradually lose control of the “agenda”. This method involves monitoring “the trend of concessions or verbal behavior leading toward or away from an agreement” over time (Druckman 2002, 19). As the goal of the analysis is to examine when, why and how the United States “did not get its way” in the course of international negotiations, this method of analysis will allow me to more

---

11 It is important to note that while all of the negotiations examined in the dissertation originated during the Clinton presidency, some of the treaties in the more brief case studies were completed during the administration of George W. Bush. Given that the respective administrations approached foreign policy in different ways, it is possible, though unlikely, that different causal mechanisms may have been driving the outcomes across different time periods. I account for this possibility by assessing the degree to which the independent variables are applicable across time periods.

12 See Appendix 1 for the list of questions that were asked across questions to test the hypotheses.
effectively and accurately examine how the interaction of multiple variables impacts the dependent variable. In terms of sources, I draw upon secondary source data (including journal articles, books, speeches, policy statements, etc.) in order to obtain the requisite information about the case studies. I supplement these secondary sources by conducting interviews with people directly involved in the negotiations.

**Figure 1. Variables and Outcomes for Primary and Shorter Case Studies**

<table>
<thead>
<tr>
<th>Treaty Name13</th>
<th>Policy Inconsistency</th>
<th>Keep Swing States</th>
<th>Middle Power/NGO Influence</th>
<th>Consensus Based Process</th>
<th>Previous Propagation of Norms</th>
<th>Treaty Reflects US Position</th>
<th>International Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ottawa Treaty on Landmines</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>In-Force</td>
</tr>
<tr>
<td>Kyoto Protocol</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>In-Force</td>
</tr>
<tr>
<td>ICC</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>In-Force</td>
</tr>
<tr>
<td>Comprehensive Nuclear Test Ban Treaty</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Not In-Force</td>
</tr>
<tr>
<td>United Nations Program of Action on the Illicit Trade in Small Arms and Light Weapons</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>NA</td>
<td>Not In-Force</td>
</tr>
<tr>
<td>Protocol on Procedures to Verify Compliance with the Biological and Toxin Weapons Convention</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>NA</td>
<td>Not In-Force</td>
</tr>
</tbody>
</table>

13 See Appendix 2 for an expanded table that includes treaties not analyzed in the case studies and additional variables of interest.
The population of cases that I explore in the major case studies (global treaties that have entered into force and do not reflect the United States’ positions) are outliers and by definition, limited in number. As such, I am explicitly selecting on the dependent variable in this project (though I do include cases that vary both on the independent and dependent variables). Though scholars conducting statistical analyses argue that it is not advisable to select cases on the dependent variable, many scholars working in the qualitative tradition argue that having no variance in the dependent variable does not inherently lead to selection bias and that there are actually instances where adopting this methodology is most appropriate (Collier and Mahoney 1996; Van Evera 1997; Bennett and George 2005).

For example, in *Case Studies and Theory Development in the Social Sciences*, Andrew Bennett and Alexander George identify six types of theory-building research objectives. Among them, heuristic case studies aim at identifying new variables, hypotheses, casual mechanisms and causal pathways. According to the authors, “deviant” or “outlier cases” are particularly useful for heuristic purposes because they are not what traditional theories would anticipate. Moreover, selecting on the dependent variable can help determine which variables are not necessary or sufficient conditions for the outcome of interest (Bennett and George 2006, 74-76). This dissertation has both heuristic theory development and theory testing goals since its focus is on the (outlying) positive cases, but also includes negative cases for theory testing purposes.

**Overview of the Dissertation**

The plan for the dissertation is as follows. In chapter one, I set the stage for the dissertation by contextualizing the puzzle within current debates in international relations.
In the process, I highlight how the United States’ position of primacy is unlikely to be undermined by traditional balancing dynamics in the near future. At the same time, I suggest that the shift to unipolarity has created new challenges for the United States and that other states are adopting novel techniques to constrain the United States’ influence in the realm of multilateral diplomacy. The analysis suggests that the dynamics that the United States must contend with in the realm of multi-lateral diplomacy are much different under unipolarity than other power distributions.

In chapter two, I present a brief review of the literature on institutions. I highlight the reasons why institutions have important effects on relations between states and argue that international agreements can create constraints for the hegemonic state. I also outline theoretical explanations for how the process of institutional formation occurs.

In chapter three, I present my theory and hypotheses. As mentioned previously, I will argue that a variety of factors, including inept diplomacy, changes in the structure of the international system and the emergence of new methods of institutional formation ultimately led to the creation of institutions that the United States opposed.

In chapter four, I describe the processes by which international agreements are negotiated and enter into force at the international level and outline the domestic treaty ratification process in the United States. I also provide descriptive quantitative data highlighting trends in the United States’ involvement in international treaties and organizations over the last forty years. The results of the analysis highlight that while the United States successfully shaped the majority of global agreements in the post-World War II period, it was unable to ratify many of these treaties because of domestic political
disagreements. In contrast, I argue that a different set of causal mechanisms has led to
the emergence of institutions that the United States opposes in the post-Cold War period.

Chapters five, six and seven are devoted to analyzing major case studies on the
Kyoto Protocol, the International Criminal Court and the Ottawa Treaty. These high
profile and global treaties were all established in the face of opposition from the United
States and represent outliers in the population of treaties established under US hegemony.
As such, they represent interesting and relevant test cases for my theoretical model.

In chapter eight, I present a series abridged case studies to examine the extent to
which my theoretical framework travels across the possible universe of cases. First, I
analyze cases that should have resulted in the formation of alternative institutions (the
UN Program of Action on Small Arms and Light Weapons and the Protocol on
Procedures to Verify Compliance with the Biological and Toxin Weapons Convention)
but did not. Second, I examine an instance where the United States achieved its goal in
negotiations but was not able to ratify the treaty for domestic reasons (Comprehensive
Test Ban Treaty).

In chapter nine, I discuss my findings and outline a number of recommendations
and strategies that the United States could potentially use to advance its interests in
different stages of the treaty formation process. I also conclude the dissertation by
discussing the implications of my findings for international relations theory and practice.
Chapter 1: Setting the Stage

With the fall of the Soviet Union and end of the Cold War, the United States emerged as the world’s only superpower. In this chapter, I set the stage for the dissertation by placing my research in the context of the emerging literature on the unique dynamics of unipolarity. Overall, the literature suggests that the shift to unipolarity has created a variety of new challenges for the United States in the realm of foreign policy generally, and in the area of multilateral diplomacy more specifically.

I begin the chapter by outlining the United States’ project of order-building in the Post-World War II era. Next, I examine responses to US hegemony and their implications for the stability of the unipolar world. I argue that though the United States’ position of global leadership is unlikely to be eroded by conventional balancing measures, other states have adopted a variety of techniques to undermine the United States’ influence. I conclude the chapter by analyzing potential explanations for the widening gap between the United States and other countries in the realm of multilateral institutions. I propose that factors such as other states’ perceived lack of “voice” in existing international institutions and the introduction of different types of agenda items may account for this phenomenon, while the effects of domestic factors and unilateralism on this trend are more ambiguous.

Order Building in the Post-World War II era

In order to theorize about and understand the implications of the rise of alternative institutions for the United States, it is important to consider the logic of the United States’ post-World War II project of institution building. In his study of great power behavior, John Ikenberry (2000, 50-52) argues that winning states have three options about how to
use their new-found preponderance of power after major wars. First, leading states can attempt to dominate other states by using their material preponderance to coerce other states into compliance with their dictates. Second, hegemons that are confident in their security can withdraw from the international sphere and post-war disputes, thereby opening a vacuum of power to be filled by traditional balancing dynamics. Finally, hegemonic states can adopt a policy of “strategic restraint”, which involves using a strategy of institutionalization to create a durable and mutually agreeable international order.

The strategy of “strategic restraint”, which Ikenberry argues the United States pursued in the post-World War II era, provides the hegemonic state with a number of benefits. First, given that power advantages are not permanent, institutions help the hegemonic state “lock-in” gains and establish a more predictable pattern of inter-state interactions. In short, “institutions play a two-sided role: they must bind the leading state when it is initially stronger and the subordinate states later when they are stronger” (Ikenberry 2000, 57). Second, institutionalization reduces the “enforcement costs” the hegemon must incur to maintain order. By voluntarily placing limits on its own power and giving other less-powerful states a voice on issues via institutionalization, the hegemon decreases other states’ fear of domination and abandonment and obtains their buy-in to a hegemonic-led international order. Since international institutions decrease the value of material unilateral power, and enhance the value of diplomacy, bargaining, and international legislative solutions, they decrease the leading state’s need to “use power resources to secure compliance and favorable outcomes.” As such, “a state that
wins a [major] war has incentives to construct a postwar order that is legitimate and durable” (Ikenberry 2000, 54-55).

As Ikenberry correctly points out, the order that the United States and other major industrial powers forged in the post-World War II era has been remarkably durable. Indeed, institutions such as the World Bank, United Nations and International Monetary Fund have proved remarkably resilient and continue to have an important effect on international politics. With the collapse of the Soviet Union and the onset of unipolarity, the United States once again found itself in a preponderant position on the world scale (Ikenberry 2000, 215-256). In similarity to 1945, the United States once again chose a strategy of strategic restraint. For example, working together with its European allies, the United States continued with its institution building agenda to establish and expand international and regional organizations such as the World Trade Association (WTO) and North Atlantic Treaty Organization (NATO).

However, while the end of the Cold War provided the United States with the opportunity to engage in institutional forming activities, it also provided other states and actors with an unprecedented chance to do the same. Therefore, before analyzing processes of institutional formation more closely, it is first necessary to examine the dynamics associated with US primacy, and other states’ response to it, in the unipolar world.

**Unipolarity in Context**

International relations scholars use the term “polarity” as an analytical tool for describing the distribution of power in the international system (Waltz 1979). States are typically considered to be “poles” if they: (1) have an especially large proportion of the
resources that states typically use to achieve their objectives in the international sphere; and (2) excel in all the elements of state capability including military strength, size of territory and population, economic capacity and resource endowment.\textsuperscript{14}

Based on the number of states that fulfill these criteria, the structure of the international system can either be multipolar (as it was in pre-World War II Europe), bipolar (as it was during the Cold War) or unipolar (as I argue it is now). While the term “polarity” has significant analytical value, it is important to note that “real international systems only approximate polar ideal types” (Ikenberry et al., 2009, 5). For example, during the Cold War there was significant debate about whether the Soviet Union had the capabilities necessary to qualify as a pole.

Given this conceptual ambiguity, scholars have developed a set of criteria to determine whether or not the current international system in unipolar (Ikenberry et al., 2009, 5-7). Generally speaking, a system can be considered to be unipolar if it contains one state whose share of capabilities in relation to other states unambiguously places the unipole in a class of its own. Moreover, the unipole must have preponderance in all the categories of state capability mentioned in the previous paragraph.

Though it can be difficult at times to determine the polarity in the international realm, there is a general scholarly consensus that the current distribution of power in the international system is unipolar (Ikenberry et al., 2009, 6). Indeed, there is widespread agreement among scholars that the United States would be in a class of its own in any index that aggregated state capabilities. For example, in 2006 the United States accounted for almost one quarter of global gross domestic product and 50 percent of gross domestic

\textsuperscript{14} It is important to note that the term polarity refers exclusively to the distribution of capabilities in the international system as opposed to degree of influence or political relationships (Ikenberry et al., 2009, 4).
product among great powers (Ikenberry et al., 2009, 7). Similarly, in the military realm the United States devotes more resources to defense spending than the rest of the world combined (Ikenberry et al., 2009, 8). For example, the United States accounts for over half of world-wide military research and development spending (Ikenberry et al., 2009, 8). As the information presented in this paragraph demonstrates, the United States is in a class of its own in the world on typical measures of state capabilities.

At the same time that the world is unipolar in terms of the distribution capabilities, however, it is important to note that the United States’ military and economic preponderance does not automatically translate into influence in the international sphere (Lieber 2005, 19). First, while the United States’ preponderance of capabilities gives it an advantage in pursuing its desired outcomes, a state’s ability to exert influence in international politics is also determined by other factors, including its “soft power” and diplomatic acumen (Nye 2004, Nye 2002).15 Second, the onset of unipolarity has produced both constraints and opportunities for the United States in the realm of foreign policy. For example, whereas the United States largely dominated international economic adjustment struggles during the Cold War, the fact that other states are now less dependent on the United States in the realm of security under unipolarity has significantly undermined US influence in these struggles post-Cold War (Mastanduno 2009, 121). I discuss these and other related issues in greater depth in subsequent sections of the dissertation.

---

15 Joseph Nye argues that a state’s soft power is contingent on its ability to shape other states’ preferences based on factors such culture, ideology and domestic institutions. For example, if the United States represents values that other states want to follow, it will be easier for the United States to shape their preferences in the international sphere (Nye 2002, 9).
Responses (or lack thereof) to US Primacy in the Unipolar Era

With the end of the Cold War and the onset of unipolarity, many observers predicted that the world would regress into the balance of power dynamics which had historically typified patterns of great power interaction (Waltz 2000; Kupchan 1998; Layne 1993, 2006; Mearsheimer 1990). Typically associated with Waltzian structural realism, balance of power dynamics are closely related to realists’ assumption that the distribution of capabilities among great powers determines the structure of the international system. Under conditions of anarchy, states must enact balancing measures to preserve their security by ensuring that no single state in the system accrues too much power. The number of poles determines how balancing behavior unfolds, shaping the dynamics of international politics. Balance of power theory suggests that, under conditions of unipolarity, states should initiate balancing measures to contain the hegemonic power. For example, according to Kenneth Waltz, perhaps the most prominent structural realist, “states, if they are free to choose, flock to the weaker side; for it is the stronger side that threatens them” (Waltz 1979, 127).

Despite the predictions of balance of power theory, however, US hegemony has provoked no explicit hard balancing behavior by major powers up to this point. For example, as the figure on the next page demonstrates, European military spending as a percentage of GDP dropped in every country in real terms between 1985 and 2002 (Lieber and Alexander 2005, 118). While the apparent lack of hard balancing could be a function of the fact that insufficient time has passed for a “balance” to form, I argue that four factors make it very unlikely that great power politics and war will undermine the United States’ position of primacy in the near future.
To begin with, great power politics are unlikely to undermine the unipolar world so long as the United States retains its massive power advantage (Wohlforth 1999). While the United States’ massive power advantage over its nearest rivals is not unique in and of itself, the fact that the United States is the first state in modern history to enjoy a global preponderance of power simultaneously in the economic, military, technological, cultural and geopolitical spheres is historically unprecedented. In addition to providing the United States with enhanced leverage, this massive power advantage also makes it dangerous for other states to overtly adopt balancing measures. Indeed, with the exception of China, “no other country or group of countries is likely to emerge as an effective global competitor in the coming decades” (Lieber 2005, 17). Add to the equation that the likelihood of war among the great powers has receded because of a host of factors, including the spread of nuclear weapons, increased economic interdependence, the spread of democracy, the multi-nationalization of weapons production and the proliferation of institutions, and it seems clear that great power balancing is unlikely to
occur in the near future (Wohlforth 2009; Walt 2009; Brooks and Wohlforth 2008; Brooks and Wohlforth 1995).

Second, the United States’ geographic location is conducive to the sustenance of US primacy. Whereas the United States is geographically separated from its rivals and does not pose a proximate threat to their survival, the other “potential poles” in the system are all in Eurasia and locked in security competition with one another (Brooks and Wohlforth 2005). Previous research has shown that while great powers do not necessarily balance against hegemonic concentrations of sea power, they do tend to balance against concentrations of land power in continental systems (Levy and Thompson 2005, 1). This suggests that efforts by major powers in Eurasia to “produce a counterbalance globally will generate powerful countervailing action locally” (Wohlforth 1999, 28). In other words, rising powers will find it difficult to overtly balance against the United States without catalyzing regional balancing and exacerbating local security concerns. Coupled with the United States’ advantageous geographical position, this logic suggests that “the threshold concentration of power necessary to sustain unipolarity is lower than most scholars assume” (Wohlforth 1999, 28).

Third, great power politics are unlikely to undermine US hegemony because of the range of public goods the United States provides for the world, including other great powers (Lieber 2005, 200-202). In the security realm, the United States acts as a “hedge against uncertainty” by taking on the burden of dealing with global security threats. In addition to exhibiting willingness to take action on the “world’s most dangerous and urgent problems”, US leadership in the security realm has allowed other major power such as Japan and members of the EU to “free-ride” by maintaining relatively small
military forces. As one German politician recently remarked, “There are a lot of people who don’t like the American policeman, but they are happy there is one” (Lieber 2005, 200-202).

In the economic realm, the United States’ maintenance of the Bretton Woods institutions, provision of security goods, and a commitment to free trade has promoted continued growth in the world economy. Given that the majority of the great powers, including China (which did $30 billion dollars worth of trade with the United States in 2006), continue to benefit from the current economic regime, they have very little incentive to alter the status quo (Lieber 2005, 203-207). Despite all of the rhetoric to the contrary, the global community does depend on the United States to wage the war on terrorism and underwrite the UN, World Bank and International Monetary Fund. To the extent that states continue to “bandwagon” with the United States in order to benefit from public security and economic goods—and assuming the United States continues to provide these goods)—the unipolar world will remain stable for the foreseeable future.

Fourth, and as the previous section demonstrates, in the post-World War II era the United States has consistently acted as “restrained hegemon”, bound to international institutions and committed to multilateralism. Though it has pursued its interests unilaterally when necessary (as in the case of Iraq), the United States has also consistently demonstrated a grand strategic interest in preserving its power by creating “a stable and legitimate international order” (Ikenberry 2003, 533). In doing so, the United States has ameliorated other states’ fears about its intentions and massive preponderance of power. As demonstrated by its current multilateral approach to controversial issues
such as Iran, North Korea and Darfur and even the 2008-2009 financial crisis, the United States remains committed to this “constitutional order” (Ikenberry 2000).

When considered together, the stabilizing factors and theoretical logic outlined above suggests that it is unlikely that great power politics and traditional balancing dynamics will result in a wholesale systemic transformation in the near future. However, at the same time that the overall system is stable, it would be a fallacy to assume that competition for resources, influence, prestige and power among states in the international system has ended. In the next section, I examine more closely how and why this competition is unfolding in the realm of multilateral diplomacy.

Setting the Stage

Counterintuitive as it may seem, while the emergence of the unipolar world has certainly put the United States in a position of unprecedented dominance in terms of material capabilities, it has also opened up opportunities for other states to challenge US dominance in new ways. Indeed, as the authors of a recent article suggest, “the shift from bipolarity to unipolarity may not be an unambiguous benefit for the unipole’s ability to wield influence” (Ikenberry et al., 2009, 15).

First, scholars have highlighted how a unipole’s need to maintain a semblance of legitimacy constrains its ability to translate power into outcomes (Finnemore 2009; Loomis 2008; Cronin 2001). According to Finnemore (2009, 61), “legitimacy is, by its nature, a social and relational phenomenon…Actors, including unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others.” This logic suggests that while a unipole’s material capabilities matter for the overall stability of the international system, the stability of unipolar systems is also dependent on other states’
acceptance of the hegemon’s legitimacy (Lake 2008; Ikenberry and Kupchan 1990; Gilpin 1986). While other states may or may not support the hegemonic state in individual issue areas, they recognize that its power is legitimate and tacitly accept the structure in which it operates.

The challenge for unipolar states in general—and the United States in particular since it promotes a “liberal international order”—is that this endowed legitimacy generates both privileges and obligations. For example, the leading state is expected to provide public goods and act as a leader even on issues that do not relate to its core interests (Finnemore 2009; Cronin 2001; Hurd 1999). This often leads to situations where the “demand” for hegemonic involvement can outstrip the “supply” of public goods than the leading state can provide. As a result, the hegemon’s actions and positions are subject to greater scrutiny than those of other states. Thus, the “paradox of hegemony” is that while the United States has more foreign policy options and flexibility than other states, it simultaneously faces greater constraints on its actions (Cronin 2001, 111-113).

At the same time that the United States is under greater scrutiny, the structural shift to unipolarity has decreased other states’ security interdependence on the United States. This has undermined US influence and enhanced other states’ latitude in the realm of foreign policy making. For example, “the United States has less control over adjustment struggles with its principal economic partners, because it can no longer leverage their security dependence to dictate international economic outcomes” (Ikenberry et al., 2009, 16). In short, other states paradoxically have more autonomy in the realm of foreign policy under unipolarity than they did under bipolarity. For example,
Erik Voeten’s (2004) statistical analysis of UN voting patterns confirms that the “preference gap” between the United States and other countries widened at a constant rate after the onset of unipolarity from 1991 to 2001. This finding suggests that the United States has increasingly found itself at odds with other countries in the UN in the post-Cold War era.

Though other states are not able to challenge the United States in the military realm, and continue to benefit from continued US primacy in a variety of ways, states’ interests and priorities inevitably diverge at times in the context of normal interactions. Predictably, states with power and influence are able to obtain their desired results more often than those who do not possess these assets. Thus, though not threatening from a military perspective, the freedom of action that the United States enjoys as a result of power disparities under unipolarity is disconcerting to other states. As Stephen Walt (2005, 108) argues, other states

...have misgivings because they recognize that Washington's power could threaten their own interests. Even those countries that do not fear a U.S. attack are still aware that the United States' position as the world's lone superpower makes it easier for Washington to get its way. And of course, U.S. leaders have sought primacy precisely because they understand that weaker nations have less clout.

In other words, though neither interested nor able to compete with the United States in the military realm, states still would like to “get their way” in the context of international political interactions.

As such, states have unsurprisingly developed strategies in the unipolar era to enhance their own influence at the expense of the United States’ authority in the international realm. Some scholars suggest that states have adopted “soft balancing” techniques to counter US power (Pape 2005; Paul 2005). Since confronting the United
States directly is too dangerous, major powers have adopted nonmilitary tools to delay, frustrate, and undermine the United States. In the diplomatic realm this has involved countries pooling their diplomatic resources together to obtain outcomes contrary to the United States’ preferences, which they could not have achieved in the absence of such cooperation (Walt 2009, 104). For example, countries such as France, Germany and Russia opposed the United States’ plan to invade Iraq in the context of the Security Council. Though not aimed at ending US primacy, this strategy undermined the United States’ ability to translate power into influence in the international system.

Similarly, Walt (2005, 114-115) suggests that states use “binding” to constrain US power within the context of international institutions, especially in areas where the United States’ influence is not pronounced. Since the United States has finite resources and must address many issues in the international sphere at any given time, other states can enhance their influence (at the expense of the United States’) by developing niche capabilities in individual issue areas. For example, Canada and other middle powers were the driving force behind the passage of the OTL.

Examining the implications of the social structure of unipolarity, Martha Finnemore (2009, 66) proposes that states and other actors have sought to constrain the United States by developing strategies to undermine the US legitimacy in the international realm. For example, the International Campaign to Ban Landmines (ICBL) used a variety of techniques to de-legitimize the United States’ position and garner support for the OTL in the face of US opposition. Though this does not represent a new diplomatic tactic by any means, the United States’ position on various issues is scrutinized by other states more under unipolarity than bipolarity. This is because, as the
hegemon, the United States must walk a delicate tightrope between satisfying its national interests and fulfilling its perceived obligations as the most powerful state in the system. As such, other actors have more opportunities than they did in the past to promote alternative values and visions that states may find more attractive than US positions (Finnemore 2009, 66-67).

As this section demonstrates, the onset of unipolarity poses significant challenges to the United States’ capacity to achieve its objectives in the realm of multilateral diplomacy. At the same time, multilateralism still represents an attractive strategy as it allows the United States to decrease the cost of hegemony and mitigate the need to use coercion to achieve its objectives. Though I argue that disagreements between the United States and other countries within the context of international institutions can best be understood as “diplomatic friction” (Lieber and Alexander 2005, 125), the fact is that this “friction” can potentially undermine the United States’ leadership potential and legitimacy in the context of international institutions.

**Dueling Explanations**

In the previous section I highlighted how the unipolar structure of the international system presents the United States with significant challenges in the realm of multilateral diplomacy and discussed strategies that other states have adopted in response to US primacy in the realm of international institutions. However, the theoretical and empirical evidence presented earlier begs the question: given the constraints and opportunities provided by unipolarity, what are the causal factors underlying the divergence in preferences between the United States and the rest of the world in the realm of multilateral institutions? This section explores such factors.
One potential explanation is that the United States’ newfound relative position of power has tempted it to act more unilaterally, and that these increasingly unilateralist tendencies in the realm of foreign policy have generated a backlash against US policies in the international realm. As mentioned previously, the United States largely pursued a multilateral policy after the collapse of the Soviet Union by establishing the WTO, expanding NATO, bringing together a coalition of other states together during the first Gulf War and forging the North American Free Trade Association, among other initiatives. However, with the enactment of the controversial Helms Burton Act under Clinton in 1996, the United States set itself down more of a unilateralist diplomatic path (Voeten 2004, 730-731). Throughout the presidency of George W. Bush, this trend became more pronounced with the United States’ relatively unilateral invasion of Iraq, withdrawal from the Kyoto Treaty, resistance of efforts to limit small arms transfers, and general aversion to multilateral diplomacy. Thus, whereas the United States previously enjoyed a reputation for multilateralism, its turn towards unilateralism provided other states with incentives to adopt measures to check US power.

Emphasizing the importance of multilateralism in US foreign policy, Ikenberry (2003) suggests that American unilateralism undermines US influence by making other states fearful of the United States and depriving them of the “voice” opportunities upon which the post-World War II international order was built. While US foreign policy under the Bush administration was often portrayed as predominantly unilateral, a more accurate description may have been “a la carte multilateralism” (Shanker 2001). According to this policy, the United States reviews treaties on a case-by-case basis and
only accepts those that clearly promote the United States’ national interest. While this strategy is no different from how other states presumably approach treaty making (after all, states do not typically join agreements that don’t advance their national interests), the difference is that “‘a la carte multilateralism’ by the single superpower means a lot more in international law and the international community than ‘al la carte multilateralism’ on the part of, say, tiny San Marino” (Kwaka 2003, 53). As result of its position of prominence, Ikenberry argues that if the United States does not maintain a reputation for multilateralism, it will be much more difficult for the United States to secure weaker states’ cooperation in the context of international institutions.

Using statistical techniques, Voeten (2004) found that states increasingly began to introduce resolutions in the United Nations to denounce unilateralist US policies and drop resolutions supportive of US purposes after the United States’ shift towards more unilateralist policies in the mid-1990s. This suggests that states may deliberately introduce policies to frustrate Washington’s ambitions in response to unilateralist policies. Given that the United States’ policy has been more unilateral during the presidency of George W. Bush, we would expect that this trend would be even more pronounced in the UN now than in 2001.

Though the findings are robust, it is important to note a few caveats and clarifications about Voeten’s results. First, since Voeten only examines the introduction of agenda items, and not whether or not they were successfully passed, it is difficult to determine the extent to which these activities undermined the United States’ in the realm of multilateral diplomacy. Moreover, Voeten also found that the gap in preferences between the United States and the rest of the world widened at a constant rate between
1991 and 2001. This suggests that while the United States’ unilateral policies since the mid-1990s may have expedited the shift to a less US-friendly international agenda, the divergence in preferences began at the onset of the unipolar era and has continued at a constant rate in the face of variations in United States foreign policy. In light of these findings, it seems plausible that other states have increasingly attempted to control the agenda as a way to constrain the hegemon in the realm of international institutions regardless of the hegemon’s behavior. Furthermore, while this shift may have initially occurred in a response to unilateralism by the United States it seems more likely that other states have adopted this strategy over time because it is one of the most effective ways to even the playing field and temper the United States’ preponderance of power.

Theses caveats point to the fact that though currently en vogue, the theoretical and empirical evidence supporting the proposition that unilateralism has led to a divergence in preferences between the United States and the rest of the world is decidedly mixed. Stephen Brooks and William Wohlforth (2005, 513-516) argue that the costs of unilateralism may not be as pronounced as commonly assumed, especially in the realm of international institutions. Citing Downs and Jones (2002), the authors suggest that the neo-liberal institutionalists’ contention that reputations are of critical importance in the realm of multilateral cooperation is flawed because states have multiple reputations in different international institutions. Thus, the United States’ unilateral policies in the UN do not necessarily undermine its ability to obtain cooperation in the WTO. Moreover, while unilateral policies may be viewed unfavorably in some contexts (e.g. the United States’ invasion of Iraq) in other instances this policy approach may actually enhance the United States’ legitimacy (e.g. aid to Africa and humanitarian intervention).
The arguments outlined by Brooks and Wohlforth (2002) highlight that it is often challenging to draw a clear dichotomy between multilateral and unilateral policies. Indeed, the variable missing from most arguments about unilateralism is the extent to which other states view the United States’ actions favorably. In other words, the distinction between process legitimacy and outcome legitimacy is relevant when considering other states’ responses to US unilateralism. If other states disagree with US goals, they will oppose the United States whether it acts unilaterally or not. However, if other states share US goals they will be less concerned if the United States acts unilaterally (Brooks and Wohlforth 2002). For this reason, it would be difficult to attribute the rise of alternative institutions solely to either the content or process by which the United States implements its foreign policy.

Furthermore, the argument that unilateralism is detrimental to the United States’ ability to achieve its objectives in the international realm does not consider that states have interests that they pursue independently of the United States. For example, many European countries’ support for the establishment of a climate change regime is based on domestic political considerations which would presumably remain the same regardless of the US position on the issue (Cass 2005). Finally, it is important to note that many of the institutions examined in this dissertation were created during the Clinton era when the United States’ popularity was high and its policies were relatively multilateral. This suggests that it is unlikely that unilateralism played a role in catalyzing the emergence of international institutions that did not reflect US preferences.
Regime Change?

A second potential explanation for the divergence in preferences is that many states are discontent with their lack of “voice” in existing international institutions and have increasingly used these forums to oppose the United States. As mentioned previously, after World War II the United States established a variety of multilateral institutions such as the IMF, World Bank and UN. Initially comprised of only Western states, these institutions gradually expanded their memberships to encompass the majority of states in the world.

However, as Koremenos et al. (2001, 766-768) note, existing international arrangements are often determined by institutions’ historical development. Because existing institutions reflect this path dependency, they differ significantly from what “might be created de-novo.” For example, while international institutions reflected the distribution of power at the time they were established, the rise of Brazil, Russia, India and China (commonly referred to as the BRICs) as new poles of economic strength have led many observers to question why the United States and Europe should have de facto control over the leadership of the international financial institutions.

Similarly, middle powers and developing countries alike increasingly question why great powers should have a monopoly over the control of the human security agenda in the context of the CCW (Hampson and Reid 2003). Furthermore, transnational advocacy networks and non-governmental organizations (NGOs) have criticized the “democratic deficit” associated with the opaque and bureaucrat-centered decision making procedures utilized by many international institutions, arguing that these institutions’ decisions should be based on a global consensus (Keohane and Nye 2000, 23). If these
arguments are valid, then the United States will have to become better at accommodating other actors’ need for greater “voice” and input into the decision making processes within the context of existing institutions if it hopes to prevent the rise of alternative institutional forums.

*Domestic Politics*

Another possibility is that the United States is simply not in a position from a domestic standpoint to take a leadership role in multilateral fora. For example, Charles Kupchan and Peter Trubowitz (2007) argue that deep domestic political divisions have made it unfeasible for the United States to continue to maintain its previous level of involvement in international institutions. As such, the United States should focus on establishing “pragmatic partnerships over the formalized institutions of the Cold War era” until the domestic consensus necessary to pursue a liberal internationalist foreign policy re-emerges (Kupchan and Trubowitz 2007, 83). Though the domestic explanation provides insights into why the United States often has difficulty ratifying treaties domestically (which inevitably undermines its international standing), it has less predictive power for explaining the United States’ (in)ability to achieve its diplomatic objectives in the international realm.

*Agenda Shaping (or lack thereof)*

A fourth explanation for the growing gap between the United States and rest of the world is that the types of issues that have made it onto the global agenda in the unipolar era are different, and potentially more divisive from the United States’ perspective, than issues that made it on to the agenda in the past (Voeten 2004). As scholars have noted, agreements such as the CTBT, KP, ICC and OTL disproportionately
affect the United States in comparison to other states (Voeten 2004; Ikenberry 2003). For example, whereas it would be extremely costly for the United States to reduce its carbon emissions in line with the terms outlined in the KP, the cost for many smaller developing countries would be minimal. Similarly, most of the signatories to the OTL were neither landmine producers nor users of large quantities of mines when they signed the treaty. In contrast, the United States is a major mine producer and has many mines deployed along the Korean demilitarized zone.

Though observers are correct to point out that new issues are on the agenda, no research until now has addressed the question of how these agreements were able to emerge in the face of US opposition. While structural factors associated with the emergence of unipolarity—such as middle power’s decreasing security dependence on the United States—were necessary for these contentious items to get on the agenda, I argue that they were far from sufficient to drive the process of institutional formation forward. This is because institutions do not form quickly or easily; rather they are a product of intense negotiations between states with divergent interests (Young 1991, Young 1983). Indeed, as subsequent chapters will demonstrate, the United States lost control of the agenda in part because it attempted to use Cold-War era negotiation techniques to achieve its goals in a unipolar world. As the negotiation expert Chester Karrass reminds us, “in life you don’t get what you deserve, you get what you negotiate!” (Karrass).

**Conclusion**

In this chapter, I have set the stage for the rest of the dissertation by providing a brief snapshot of the United States’ position in the unipolar world. I have argued that
although the unipolar world is largely stable, the United States’ position of dominance has paradoxically allowed other states to increasingly challenge its authority in the realm of multilateral diplomacy. Indeed, the evidence suggests that the environment in which multi-lateral diplomacy unfolds is much different under unipolarity than under other power distributions. I have also outlined potential explanations for the divergence in preferences between the United States and other countries in the realm of multilateral diplomacy. While factors such as other states’ perceived lack of “voice” in international institutions and the introduction of different types of agenda items may account for this puzzle, the effects of domestic factors and unilateralism on this phenomenon are more ambiguous. In the next chapter, I present a brief review of the literature on institutions in order to lay the groundwork for the presentation of my theory and hypotheses in Chapter three.
Chapter 2: How and Why do Institutions Matter?

From trade to aid and the environment to arms control, institutions are a defining factor of the contemporary international system. Following the most commonly used definition in the political science literature, I define institutions as “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations” (Krasner 1983, 2). Institutions vary widely in terms of both the issue area that they address and their institutional design (Koremenos et al., 2001; Goldstein et al., 2000). For example, some institutions are informal and decentralized (e.g. sovereignty and free trade), while others are highly legalized with vast and complex bureaucracies (e.g. the World Trade Organization and World Bank). While this dissertation does not seek to account for why global institutions take the precise forms that they do, the analysis presented in subsequent chapters highlights disagreements that existed over institutional design in the context of international negotiations and the negotiating dynamics and strategies that influenced institutional design outcomes.

In this chapter I briefly review the literature on institutions. First, I examine the debate between realists and neo-liberal institutionalists about the extent to which institutions play an important role in international politics. Next, I outline the ways in which institutions shape state behavior in the international sphere. I conclude by reviewing and critiquing the major theories of regime formation.

Do Institutions Matter?

Despite institutions’ prominent role in international politics, scholars in the realist tradition have historically viewed institutions as epiphenomenal. Realists’ approach to
understanding international politics is conditioned by the assumption of anarchy—that in contrast to domestic politics, no overarching authority exists in the realm of international politics to mediate conflict (Waltz 1979). In this point of view, relations in the international sphere are essentially adversarial as states attempt to preserve their security in the face of ongoing competition. Thus, though cooperation between states occurs, it is conditioned by the mutual distrust and security dilemmas—especially about relative gains and cheating—that typify the anarchic international system (Grieco 1988).

Moreover, though states do form international institutions, they are primarily sites of power politics, used by the strong as forums to dominate the weak. In this point of view, states with the most power in conventional terms are able to set up international institutions with their own needs and priorities in mind (Krasner 1991). If institutions do not serve the interest of powerful states, they will withdrawal from them, ignore their dictates or decide not to join in the first place. As such institutions are largely epiphenomenal and do not exert any causal influence on state’s actions in the international realm (Mearsheimer 1994-1995; Waltz 1979).

Critiquing realist’s arguments as overly pessimistic, neo-liberal institutionalists argue not only that institutionalized cooperation is possible, but also that it has the potential to create joint gains and foster pareto-optimal outcomes. According to scholars in this school of thought, the institutionalization of cooperation provides states with a variety of functional benefits; otherwise, states would presumably not cooperate in this type of way (Keohane 1983). First, institutions increase information flow and transparency between states, thereby allowing them to more effectively sanction violators. Second, institutions decrease transaction costs, facilitating easier cooperation between
states. Third, institutions lengthen the shadow of the future, thereby increasing the importance of factors like reputation.

Along a similar vein, Abbot and Snidal (1998) suggest that two facets of international organizations—centralization and independence—provide states with important incentives for institutionalized cooperation. Because institutions allow for the centralization of collective activities via bureaucratic structures, they improve the efficiency of collective activity and “enhance organizations’ ability to effect the understandings, environment and interests of states” (Abbot and Snidal 1998, 5). Institutions are also independent in that they have limited autonomy in their respective issue areas. In theory, this both mitigates concerns about power asymmetries and allows the institutions to play a neutral role in mitigating disputes.

Debates between realist and neo-liberal institutionalist scholars on the importance of relative gains and the role of international institutions in world politics in general persisted throughout much of the late 1980s and early 1990s (Baldwin 1993). Over the last decade, however, this debate has largely gone stale. First, scholars have persuasively demonstrated that institutions shape international political interactions in a myriad of ways, many of which run counter to realist arguments on this subject. For example, Thomas Barnett and Martha Finnemore (1999) highlight how international organizations often evolve into “autonomous actors” and experience a variety of pathologies (bureaucratic universalism, normalization of deviance, etc..) that cause them to function in ways that may run contrary to their founders’ intent. Similarly, other scholars have demonstrated how membership in forums like regional trade agreements decreases the likelihood of war (Mansfield and Pevehouse 2000).
Second, while power politics still do occur in the context of international organizations, a plethora of new institutions—like the European Union (EU) and WTO—that have been established in recent years run counter to realist predictions. For example, members of the EU put aside the historical animosity and suspicions that developed through centuries of war to establish the EU; powerful members of the EU have also given up a significant degree of their sovereignty throughout the process of European integration. Similarly, despite being the undisputed hegemon, the United States lost a decision in the WTO to Antigua in 2005 about restrictions on internet gambling operations (Rivlin 2007). As mentioned in the introduction, the world is more institutionalized now than ever before, with institutions shaping and promoting coordination on a wide range of issues.

**Why do Institutions Matter?**

As it has become clear that institutions exert an important influence in world politics, the debate has shifted away from the question of “if” institutions matter to the question of “why and how” institutions matter. Outlining some of the potential answers to these questions is the purpose of this section. International relations scholarship highlights that institutions have a variety of important effects on interactions between states in the international sphere.

First, though states may not comply with agreements and may even exit them at times, the standards and norms embodied by institutions increase the political costs of defection. Indeed, states that break their commitments to international agreements may face reputational costs for non-compliance; this is especially likely for states that have a strong domestic rule of law, such as the United States (Simmons 2000, 593-598). As such,
states that sign on to an institution or agreement have strong incentives to adhere to their commitments. For example, Judith Kelley (2007) suggests that many states were unwilling to sign non-surrender agreements with the United States because they did not want to break the commitments they had made to the ICC.

Moreover, the establishment of broad-based agreements establishes standards of legitimacy (and deviance) that define the “rules of the game” on a global scale, even for non-members. For example, Lloyd Gruber (2000) argues that institutionalized cooperation can restrict the options available to non-members by changing the rules of the game so that it is difficult from them to pursue previously acceptable policies. This type of logic may explain why the United States changed its position on cluster munitions in response to the initiation of negotiations for the Convention on Cluster Munitions (in which it was not involved and has not signed).

In relation to this, countries that are not members of global treaties presumably find it much more difficult to take on a leadership role in issue areas relevant to the institution. This is clearly the case for the United States in the environmental realm, for example, where it is routinely bashed in international fora for its refusal to ratify the Kyoto Protocol (Hurd 1999; Young 1992). Similarly, even though the United States continues to donate tens of millions of dollars to landmine eradication campaigns, and even accepts many of the OTL’s dictates, its failure to ratify the treaty has placed the United States squarely outside the global norm on this issue. It is also important to note that international agreements tend to build upon one another. As such, the content of earlier agreements often informs the development of later ones. States that are not
involved in existing institutions presumably have more difficulty controlling how these debates evolve.

Finally, the establishment of institutions can also have an independent effect on reordering states’ preferences. One way that this can occur is that institutions can come to embody norms to which states have been socialized to adhere. For example, Kelley (2007) highlights how states went against their material interests by refusing to sign bilateral non-surrender agreements with the United States because they valued the ICC on moral and normative grounds. As the examples above highlight, institutions have an important effect on international political interactions in a myriad of ways. Taken together, the evidence suggests that even if the United States does not join agreements, these institutions have the potential to impact and constrain the United States in the international realm.

**Increasing Returns to Institutions**

As the previous section demonstrates, institutions shape international interactions in a variety of ways, even for non-members. At the same time, the form that institutions take initially is very important because, once established, the dynamics of “increasing returns” make it very difficult to change institutions (Ikenberry 2000; Pierson 2000). The notion of increasing returns encompasses two distinct analytical concepts: that the cost of switching institutions increases over time and that issues related to timing and sequence are critical to determining how the process of institutional formation unfolds (Pierson 2000, 251).

The first aspect of increasing returns is that the costs of switching from one institution to another will increase significantly over time. Applying this concept to
explain the longevity and significance of global institutions is a relatively straightforward exercise. First, institutions in general, and global agreements in particular, generally have large set-up costs. For example, the process leading up to the signing of the Kyoto Protocol in 1997 lasted almost five years and involved countless contentious negotiations. As a result of the large start-up costs, global institutions are often designed so that they will be difficult to alter once established. For example, it is very difficult to add additional permanent members to the United Nations Security Council because doing so requires the consent of the permanent five (who are unlikely to do so because their power would be undermined by such a move). These types of design characteristics enhance the value of the institution by allowing participants to both bind their successors to the institutions and make credible commitments to one another. In tandem, large start-up costs and barriers to institutional change mean that once a treaty is signed and ratified it is often exceedingly difficult to alter the scope and design of the treaty, as well as the normative context that the institution explicitly promotes (Pierson 2000, 254).

Moreover, the establishment of international agreements leads to the formation of inter-governmental networks between states and autonomous actors within international bureaucracies (Ikenberry 2000; Keohane and Nye 1989). For example, human rights agreement can lead to the establishment of non-governmental organizations whose aim is to pressure states to adhere to their commitments (Ikenberry 2000, 68). These actors reinforce policy commitments within the context of organizations and embed institutions in the overall international structure, making institutional change unlikely. Finally, participation in institutions leads to “learning effects” which increase the value of continued action in the context of the institution. For example, since states have
developed experience navigating the intricacies of the United Nations, they are unlikely to discard it in favor of a new institution. Taken together, the establishment of international networks and “learning effects” provide “positive feedback” which make it very difficult to abandon one institution in favor of an alternative forum (Pierson 2000, 263).

Institutions’ path dependent characteristics suggest that even when alternative institutions may be more effective or correspond more closely to the priorities of powerful states, “the gains for the new institutions must be overwhelmingly greater before they [powerful states] overcome the sunk costs of the existing institutions” (Ikenberry 2000, 70-71). In other words, while powerful states may be able to influence the process of institutional formation itself and may exert control in the context of institutions, it is very difficult—even for powerful states—to promote organizational alternatives once agreements are actually established. Thus, the dynamics of “increasing returns” make the norms, rules and decision-making procedures which they formally codify notoriously sticky and difficult to undermine and/or transform.

The second aspect of increasing returns is that the timing at which events occur in the “lifecycle” of institutional formation can influence how this process unfolds. Paul Pierson (2000, 263) argues that events that happen earlier in the sequence of institutional formation matter much more for outcomes than do latter events. As such, an event that happens too late in the process of institutional formation may have little or no effect, even though it might have been significant had it happened earlier in the process. For example, if the United States had argued for meaningful developing country participation at the beginning of the KP negotiations (as opposed to near the end), it might have affected how
the KP negotiations on this topic unfolded. However, by the time that the Untied States expressed its reservations on this subject in the midst of the negotiating process, negotiations had moved forward to the point where reversing course was difficult. I examine this concept in greater depth in the following section.

**Explanations for the Formation of Institutions**

Having outlined the reasons why institutions are so difficult to change once established and highlighted how events’ timing can influence the institutional formation process, it is necessary to more closely examine the processes by which institutions form in the first place. In this section I outline the three main schools of thought in the field of international relations on this topic. Though the functionalist and constructivist schools both have theoretical strengths and weaknesses, taken together they provide important insights into the processes by which institutions form in the international arena.

*Structural School: Hegemonic Stability Theory*

The structural school of institutional formation, conventionally associated with hegemonic stability theory (HST), suggests that the imposition of international order typically requires a hegemonic state (Gilpin 1981; Kindleberger 1973). Since institutions are merely a facet of the international order, their creation (by definition) also requires the presence of a hegemon. In this point of view, hegemonic states provide a variety of economic and security goods while weaker states conveniently free ride. Because states’ do not have the capacity to engage in large-scale collective action, institutions only emerge in an issue area if a hegemonic states can supply public goods through independent action (Hasenclever et al., 1993, 97). However, if the hegemonic state
declines in power, the institutions that it created should also become weaker and eventually dissipate.

Though very much in vogue in the scholarly community up to the mid-1980’s this explanation for regime formation has been largely discredited (Russett 1985; Snidal 1985). First, scholars argue that the theory’s assumptions about the impossibility of collective action are flawed. For example, Snidal (1985, 579) suggests that the collective action of a “K-group” can act as a substitute for hegemonic leadership in some instances. Second, structural theories are often a poor predictor of what type of institutions will actually arise. As such they must often refer to domestic-level variables such as regime type to explain causation. In short, structural explanations do not adequately account for what “hegemons actually do to promulgate and maintain a given set of rules; [thus] structural theories, by their nature, are less useful for understanding processes than for establishing connections” (Haggard and Simmons 1987, 11-13).

**Functionalist Accounts**

In a departure from the over-simplified focus on structure advanced by hegemonic stability theorists, functionalist accounts of regime formation suggest that institutions emerge to provide states with functional benefits via opportunities for institutionalized cooperation. In contrast to HST, functionalists argue that institutions can emerge under a variety of conditions. At times, the hegemonic state must take an active leadership role in the institutional formation process (Keohane 1992). For example, the United States was the driving force for the establishment of the Bretton Woods institutions in the post-World War II era. In order to be successful in the process of institutional formation, the hegemonic state must often devote significant energy to this process while obtaining
consent from other states. In this scenario, institutions should reflect many of the hegemon’s preferences because of its primary role in the institution building process.

Furthermore, Robert Keohane (1992, 77) builds off the work of Mancur Olsen to argue that institutions can form without a hegemon, so long as a small group of strong actors work together to achieve this task. Pointing out that negotiations among advanced industrial countries typically depend only on a few crucial participants and that these states also tend to play a primary role in global negotiations, Keohane argues that a small powerful group of states working together can act as a substitute for the hegemonic involvement often required for institution building. Supporting this view, scholars like Gowa (1989) and Kahler (1992) suggest that “minilateral” coalitions composed of the most powerful states in the system can successfully establish international institutions. Finally, Keohane (1992, 77-79) suggests that institutions can form rapidly in sudden and severe crises, even if they do not actually reflect existing power dynamics. However, he does not provide much insight into the process by which this occurs.

While functional theories correctly suggest that there are multiple pathways to institutional formation and provide good explanations for why states pursue institutionalized cooperation in the first place, they have difficulty predicting when institutions will actually emerge (Haggard and Simmons 1987, 18). Moreover, in similarity to structural theories, functional theories fail to specify the processes by which institutions take the form that they ultimately do. Because any given institutional constellation represents only one out of many possible equilibrium points (Goldstein and Keohane 1993), functionalist theories often have difficulty accounting for the micro-processes of institutional formation.
In recent years, functionalist accounts have attempted to pay greater attention to why institutions ultimately take the forms that they do. While institutions may take different forms, Barbara Koremenos et al., (2001) argue that all institutions are created by states to advance their goals. Thus, institutions should be viewed as negotiated solutions to international problems that actors face. If this is the case, choices about institutional design are not random, rather they are “the result of rational, purposive interactions among states and other international actors to solve specific problems” (Koremenos et al., 2001, 767). In other words, states design institutions deliberatively in order to achieve specific international outcomes.

At their core, multiparty negotiations for global agreements are often struggles over the form that an agreement or treaty will take. As mentioned previously, institutions are typically very difficult to change once created (Ikenberry 2000; Pierson 2000). Thus, institutional design is the primary focus of negotiations precisely because design influences long-term outcomes in the international sphere. Koremenos et al., (2001) note that institutions are designed in very different ways.\footnote{For example, some institutions are highly centralized with broad memberships, while others are narrower in scope and informal. More specifically, the authors suggest that institutions vary on five key dimensions (Koremenos et al., 2001, 768-773): Membership refers to who belongs to an institution and the degree to which membership is exclusive and restrictive; Scope refers to the range of issues that the institution covers; Centralization refers to the degree to which institutional activities such as the dissemination of information, reduction of bargaining and transactions costs and enhancement of enforcement are centralized; Control refers to the method of making collective decisions (e.g. voting arrangements); Flexibility refers to the way that the institution is designed to respond to new circumstances through adaptive (e.g. escape clauses) and transformative (e.g. renegotiation clauses) mechanisms.}

Though this dissertation does not seek explain the rationale underlying why global institutions take the precise form that they do, organizational design can if often a contentious issue in the course of international negotiations. As such, the analysis presented in subsequent chapters identifies the disagreements that existed over
institutional design in the context of negotiations and the negotiating dynamics and strategies that ultimately led the institutions to take the form that they did.

Constructivist Accounts

The final school of thought on the formation of institutions is constructivism. According to this view, institutions reflect inter-subjective understandings based on convergent expectations and an overarching “logic of appropriateness” about patterns of behavior (Young 1983). For example, Ruggie (1982) argues that the web of institutions promulgated by the United States in the post-World War II period was effective because it represented a fusion of power with legitimate social purpose. Constructivists argue factors like ideology, norms and learning effects can have important impacts on the process of institutional formation, or lack thereof.

In the context of negotiations, actors engage in productive bargaining (not distributive bargaining) under conditions of uncertainty.\(^\text{17}\) Though some institutions are effectively imposed by great powers (even though negotiations take place), the vast majority are “characterized by conscious efforts to agree on their major provisions, explicit consent on the part of individual participants, and formal expression of the results.” (Young 1983, 99). Though power, as defined in terms of material capabilities, can tilt negotiations in favor of dominant states at times, this resource does not guarantee success in and of itself. This is because other forms of “leadership” matter in the context of forming new institutions. For example, Young argues that entrepreneurial actors with the ability to frame issues in ways that promote collective action or effectively advance new knowledge that promotes consensus also have the ability to advance the institutional

---

\(^{17}\) Distributive bargaining occurs when two or more actors negotiate over a fixed win set. In contrast, productive bargaining occurs when actors negotiate to create joint gains.
formation process (Young 1991). As such, the emergence of some type of “leader” is a necessary, but not sufficient, condition for the formation of new institutions (Skodvin and Andresen 2005; Young 1991).

As mentioned previously, constructivists argue that institutions reflect inter-subjective understandings that lead to convergent expectations and an overarching “logic of appropriateness”. Wendt (2001, 1023-1041) suggests that this proposition has a number of important implications in the realm of institutional design. First, states may forego potentially attractive institutional designs because of normative concerns. For example, states were unwilling to provide the United States with the concessions it demanded during the ICC negotiations for normative reasons, even though the United States’ participation would have greatly strengthened the institution. Second, normative considerations may influence the process by which an institution is formed. This can result in the adoption of institutional designs that would not necessarily be predicted solely based on rational considerations. For example, NGOs were intimately involved in negotiations over the OTL and ICC because of the unique processes through which these institutions were created. It is important to note that these counter-arguments do not mean that rational considerations do not play a role in institutional design, rather that normative considerations also affect the process.

In recent years, constructivists have also focused on the role that non-state actors play in the process of institutional formation. Pointing out that globalization has provided a variety of actors—from multi-national corporations to social movements and even terrorists—with opportunities to influence issues previously considered to the sole domain of states, scholars argue that non-state actors should also be considered as major

As a result of these multiple potential poles of influence, it is often difficult to determine how international negotiations will proceed ex ante. As Kehoane and Nye (1979, 30-31) argue,

> Traditional analysis focuses on the international system, and leads us to anticipate similar political processes on a variety of issues... By using their overall dominance to prevail on their weak issues, the strongest states will, in the traditional model, ensure a congruence between the overall structure of military and economic power and the pattern of outcomes on any one issue area... As military force is devalued, militarily strong states will find it more difficult to use their overall dominance to control outcomes on issues in which they are weak... outcomes and distinctive political processes are likely to vary from one set of issues to another.

As the quote demonstrates, it would be a mistake to assume that the United States’ preponderance of power automatically translates into control over international outcomes (Finnemore 2009; Lake 2007). This suggests that processes of institutional formation, even under conditions of unipolarity, have no pre-ordained outcome.

While it accounts well for the micro-processes of institutional formation and highlights that negotiations over their form have no pre-ordained outcome, the constructivist approach is not without weaknesses. First, given its focus on process, the approach has been criticized for lacking predictive power ex ante. Second, the emphasis on agency has made it difficult for constructivist accounts to effectively incorporate power and other structural variables. Finally, the assumption that actors only engage in productive bargaining (as opposed to distributive bargaining) throughout the course of negotiations is questionable.
Conclusion

In this chapter I have provided a brief review of the literature on institutions that is germane to this project. First, I outlined the debate between realists and neo-liberal institutionalists about the significance of institutions in the international realm. Next, I argued that institutions play an important role in international politics and highlighted how institutions can influence state behavior and even constrain the hegemonic state. Third, I highlighted that institutions are very difficult to alter once established because they are typified by the dynamics of increasing returns. Finally, I outlined different explanations for the process of institutional formation and highlighted their corresponding strengths and weaknesses.

As this brief literature review demonstrates, the different schools of thought have distinct strengths and weaknesses in accounting for the formation of new institutions. Thus, theoretical gaps still exist. First, while functionalist and constructivist accounts of regime formation suggest that institutions can form without hegemonic involvement, they do not specify the conditions under which this can occur. For example, while functionalist accounts suggest that some concentration of power is necessary for institutional formation in the absence of a hegemon, they do not specify how these power resources are translated into influence in the context of international negotiations. Similarly, while constructivist accounts correctly highlight that a variety of factors—some related to power and others not—can influence the course of treaty negotiations, they do not specify which resources will matter most in different stages of international negotiation.
As these examples highlight, and as Young (1991, 307-308) correctly notes, we need to develop models that will provide a better understanding of how factors such as the issue area under consideration and the interaction of different facets of power and influence impact the institutional formation process. This dissertation attempts to advance this research agenda. Moreover, since many of the scholarly debates on this topic occurred prior to the onset of unipolarity, when most states were still constrained by Cold War dynamics, they neither provide much guidance on, nor explicitly explore, how institutions can arise in the face of hegemonic opposition. As I argued earlier in this chapter, unipolarity presents actors with a different opportunity structure for creating new institutions than under other power distributions. It also provides the hegemonic state with a different set of opportunities and constraints in terms of influencing how the process of institutional formation occurs. In the next chapter I take my analysis one step further by presenting my theoretical model about the causal mechanisms by which institutions form in the face of hegemonic opposition.
Chapter 3: A Theory of Institutional Formation Under Hegemonic Opposition

As mentioned in Chapter one, the shift to unipolarity, and the corresponding changes that were associated with it, have significantly altered the constraints and opportunities that the United States faces in the realm of multilateral diplomacy. In the cases of the ICC, KT and OTL, other states moved ahead with the institutional formation process without the United States despite the fact that the United States has the most troops deployed abroad, is the biggest emitter of greenhouse gasses, and is a major user and producer of landmines.

Accordingly, I begin this chapter by outlining the reasons why other states move forward with the institutional formation process without the United States. Though this information provides a necessary base for my analysis, I argue that these explanations are incomplete because they do not account for the processes by which other states were presented with the option to move ahead without the United States in the first place. Next, I explore the importance of agenda setting in international negotiations. I conclude the chapter by presenting my hypotheses and theoretical model. I argue that a variety of factors—including policy inconsistency, inability to forge coalitions with potential swing states, the United States’ previous propagation of norms relevant to the agreements, and the emergence of new actors and methods of institutional formation—ultimately led to the creation of institutions that the United States opposes.

Why States Move Ahead with Institutional Formation Without the United States

According to neo-liberal institutionalists, a “state’s leverage over the set-up of a given institution depends on its importance for effectively addressing the specific
problem at stake” (Fehl 2008, 262). Given that US participation is often critical for addressing the problems that global treaties aim to solve, we would expect that US preferences should be reflected in the majority of treaties that attract widespread global support. Yet, as mentioned previously, other states seem increasingly willing to move on with the treaty formation process without the United States. This begs the question: given its central role, why would states move forward with a global agreement in the face of opposition from the United States?

As the world’s most powerful state, the United States’ involvement is important for ensuring a treaty’s overall effectiveness for a variety of reasons. First, the United States is often part of the problem being addressed. As such, the United States’ participation is often critical if the problem is to be solved. For example, the United States is critical for climate change agreements because it is the world’s largest producer of greenhouse gases. Second, the United States can use its hegemonic position to influence other states to either adhere or conform to the treaty’s dictates (Fehl 2008, 262). For example, observers argue that the United States’ ratification of the CTBT would provide it with important leverage in pressuring other states not to test nuclear weapons. Third, the United States can provide resources and leverage additional financial support from other states to ensure that the agreement is implemented effectively. For example, the United States is currently the largest donor to the UN. Fourth, the United States’ participation in global agreements enhances their legitimacy, which makes it more likely that other states will join. Given the reasons outlined in this paragraph, it is puzzling that other states would choose to go forward with the process of institutional formation
without the United States (whose lack of participation could greatly undermine the institution’s effectiveness).

As such, scholars have developed a variety of potential explanations to account for this phenomenon. Caroline Fehl (2008) examines European responses to the United States’ unilateralism in the realm of arms control. She argues that states primarily move on with the process of institutional formation in the face of US opposition when the treaty is likely to be effective even without the United States. At the same time, Europeans’ willingness to do so is tempered by the norms of consensual decision-making that typify international treaty making processes. These norms mean that Europeans have a “compromise bias” in their interactions with the United States. The author also finds that geo-political rivalries and the influence of non-governmental organizations have very little influence on European’s willingness to accommodate the United States. While her arguments are applicable to the realm of arms control, Fehl’s argument does not travel well to the cases of the ICC and KP. Indeed, the United States’ non-participation casts serious doubt on the ICC’s future effectiveness and has greatly undermined the KP’s effectiveness thus far.

Constructivist scholars highlight the ability of NGOs and other non-state actors to convince states to move forward with the institutional formation process in the face of hegemonic opposition. In separate articles examining the individual cases of the OTL and ICC, Kenneth Rutherford (2000) and Nicole Deitelhoff (2009) suggest that NGOs’ success was a result of their ability to generate support from developing world countries and middle powers and involvement in drafting recommendations to guide the negotiating process. They argue that NGOs used their influence and persuasive
capabilities to generate opposition to attempts by the United States and others to “water down” treaties in ways that would have undermined the norm that these groups were trying to promote. For example, NGOs used “shaming” techniques to prevent other states from accommodating the United States’ demands in last-minute negotiations on the OTL (Fehl 2008, 268). If this logic is correct, it suggests that NGOs’ pressure) may have led states to establish the agreements without the United States, even though some of these countries would have preferred to make the concessions necessary for the United States to participate.

While this explanation correctly highlights the important role that non-state actors can play, I argue that the involvement of these actors is neither a necessary nor a sufficient condition for states to move forward with an agreement in the face of opposition from the United States. For example, there was relatively little NGO involvement and input into the KP (in comparison to other treaties) and a high level of NGO involvement in the negotiations on the UN Convention on Small Arms (an instance where states decided not to move forward with the institutional formation process).

A third potential explanation for why countries move forward and establish global agreements is that they view the United States as a rival in some issue areas and want to prove to the world that global agreements can be established without hegemonic consent (Fehl 2008). As mentioned previously, states are constantly struggling for influence and freedom of action on the international stage. This competition at times translates into international rivalries, making it more difficult for countries to negotiate with some states than others (Wendt 1999). For example, during the negotiations for the KP, many domestic constituencies in the EU viewed the United States as the primary obstacle to an
international agreement. As a result, a rivalry developed between the United States and the EU during these negotiations. Thus, whereas the EU refused to compromise with the United States on the issue of flexibility mechanisms at Kyoto, they gave Japan and Russia many of these concessions after the United States’ exit from the KP (Cass 2005, 53) even though doing so significantly weakened the KP. In this instance, members of the EU were willing to sacrifice the treaty’s effectiveness to prove the point that it would be possible for the international community to establish a global agreement without the United States’ participation (Hovi et al., 2003). As this example highlights, when it comes to negotiating with the United States, countries and other actors may be willing to sacrifice agreements’ long-term effectiveness so that they can claim “victory” by striking an agreement without US consent.

Finally, states may move ahead with forming institutions without the United States in instances where the US executive branch supports the treaty, but cannot push domestic ratification through. It is important to note that the executive branch in the United States has historically been much more willing to bind the United States to international treaties than the Senate. This domestic political reality explains why the United States was actively involved in crafting the content of treaties such as the League of Nations, Vienna Convention on the Law of the Treaties, and the CTBT, but still has not ratified these agreements. In these instances, the United States “shaped” the agreement, but was not able to ratify them for domestic reasons. Presumably, other states will be more likely to go ahead with the process of concluding agreements and putting them into force if the United States has successfully had its concerns addressed during negotiations to the point that its domestic ratification seemed likely ex ante. This is
because in these situations, and regardless of what happens in terms of domestic ratification, the executive branch may still choose to follow the treaty (or parts of it) as customary law or provide significant financial support.

While the information presented in this section provides a base for subsequent analysis, it is important to note that these explanations are incomplete. This is because while these explanations focus on why states moved ahead without the United States after negotiations had concluded, they do not account for the processes through which other states were presented with this option in the first place. In other words, these analyses focus more on the decisions that states made near the end of negotiations instead of the processes by which those agreements were defined and reached.

The latter issue is critical for the purposes of this analysis given that United States participated in negotiations that it ultimately abandoned, thereby providing legitimacy to both the deliberations and the outcome. My dissertation addresses this latter issue and thus provides a more comprehensive treatment of both how other states and actors were able to take control of the agenda in the context of international negotiations and why they ultimately decided to move on with the agreements without the United States. I now deepen my analysis by assessing the importance of agenda setting in international negotiations.

Agenda Setting in Negotiations

As mentioned in the introduction to this dissertation, the United States has actively propagated many of the ideas and norms that ultimately formed the basis for agreements that it ended up not ratifying in the post-Cold War era. While some of these agreements represent international diplomatic successes that the United States did not
ratify for domestic political reasons, others can be considered unqualified setbacks where the United States was simply unable to get its way.

In many respects, the United States’ ability to shape global agreements is dependent on its capacity to control the agenda during negotiations. I begin this section by briefly outlining the concept of agenda setting in international negotiations. Next, I argue that while the United States has significant agenda shaping advantages before the decision to pursue an agreement is made, the negotiating dynamics shift dramatically after the United States has used its hegemonic position to put an item on the agenda and/or consented to allowing negotiations on a topic to move forward in the international sphere.

*Agenda Setting in International Negotiations*

Though most often applied to domestic settings (Romer and Rosenthal 1978), the literature on agenda setting is informative for the purpose of this analysis. According to Livingston, an agenda item can be understood as a “defined problem, a set of alternative solutions, and an attached level of salience” (Livingston 1992, 315). Control of the agenda is crucial because it determines why some issues are organized into international politics while others are organized out of it (Livingston 1992, 313). Prevailing international factors (norms, institutions, etc…) structure the agenda-setting process by creating the “access points” through which the agenda can be set and controlled.

---


According to Livingston (1992, 316), there are four different classes of access points at the international level:

- **Knowledge** refers to consensual understandings that serve as guides to public policy. Examples include sites of global knowledge production and consensual knowledge. For example, the Intergovernmental Panel on Climate Change (IPCC) was instrumental in educating states about the detrimental impacts of climate change and providing potential solutions. As such, the IPCC’s recommendations shaped how the KP negotiations unfolded.

- **Communication channels** refer to transnational communication patterns. Examples include linkages to transnational networks and brokerage positions vis-à-vis other actors. For example, the Coalition for the International Criminal Court (an umbrella organization made up of non-governmental organizations) formed national and regional coalitions to lobby governments and provided frequent status updates to ensure that the issue would remain on the national and international agendas.

- **Institutional loci of decision-making** refers to arenas where an issue can be legitimately raised and decision rules. Examples include actors’ formal or informal position in an institution or regime and institutionally dependent capabilities. For example, the coalition of states that organized OTL conference adopted majoritarian decision making procedures in order to ensure that an up or down vote would on the treaty would occur.

- **Diplomatic norms** refer to the shared understandings about the legitimate and effective forms of formal interstate behavior; Examples include action forcing events (such as summits and conferences) and status dependent access (as a result of coalitional structures and the differentiated status of great powers). For example, whereas the coalition of middle powers that led the initiative to pass the CCM did not have much sway within the context of the consensus based CCW, they had significantly greater agenda setting capacities in the parallel institution established to negotiation the CCM.

Actors’ success (or lack thereof) in using these access points determines their agenda-setting and controlling capabilities. For example, if actors are far from the access points because they lack capabilities, oppose to dominant knowledge or reject diplomatic norms, they will be unlikely to control how issues are defined and pursued in the international arena. As such, actors must apply a variety of techniques and capabilities to maintain control of how an agenda item evolves. For the purposes of this analysis it is important to note that the process of agenda setting and maintenance is a dynamic one. As such, the importance and availability of various access points can shift over time in
response to negotiating dynamics, the emergence of new poles of influence, and the strategies that states adopt. It is only when an agenda item is locked in through the establishment of an institution or agreement that its content and form is solidified, and therefore much less vulnerable to alteration, in the international sphere.

*Agenda Setting in the Negotiation Process*

At this point, it is important to note that the process of agenda setting in the international sphere takes place in three distinct phases (Mansbach and Vasquez 1981, 93). The first stage of the process, prenegotiation, occurs as an agenda item is brought to the attention of actors who have the capacity to make a decision about whether the issue warrants further attention. Agenda items are typically brought to states’ attention over time as other states and/or non-state actors make the case that there is a problem that needs to be solved. Actors such as epistemic communities and transnational advocacy groups are often important players in this process. The prenegotiation phase is useful to parties because it provides lower exit costs than formal negotiations (should prenegotiation fail). Moreover, prenegotiation can serve an important function by specifying the boundaries that guide formal negotiations, identifying and selecting participants, and setting and delimiting the agenda for negotiations (e.g. deciding which items will be on and off the negotiating table) (Hampson 2005, 27).

The second stage of the agenda setting and defining process—negotiation—occurs when states endow an entity or identify a process (typically a conference or convention) that can effectively resolve competing claims, leading to a tangible solution

---

20 A key issue that impacts this phase is whether negotiations take place through a pre-existing mechanism (such as the United Nations) where rules and processes are well defined or through an ad hoc process in which procedures are negotiated by states.
to the issue at hand (Mansbach and Vasquez 1981, 92). In this phase, actors “exchange information, discuss alternative negotiation packages, and move from a general formula to the actual details of an agreement.” As such, the way in which multilateral negotiations unfold determines how and if an agenda item is pursued.

The struggle to set and control the evolution of an agenda item throughout the various phases of the negotiation life cycle is a normal facet of international politics. However, the capacity of different actors to influence the way in which this process occurs differs markedly in various phases of a negotiation. As mentioned earlier in this chapter, states are often hesitant to move forward on negotiating global agreements if they think the institutions will be ineffectual (Fehl 2008, 262). Thus, in situations where states cannot agree on whether the issue is important enough to warrant further discussions or arrive at a consensus on the “rules of the game”, there is presumably little chance that the negotiations about an agreement will move forward (because the negotiations will not include major players).

Figure 3: Phases of Negotiation

---

21 The third phase of the negotiating cycle is agreement and implementation. As it is beyond the scope of this analysis, I do not examine this phase of the negotiating cycle.
This suggests that potential “veto players”, including the United States, have more bargaining power in the prenegotiation phase than as the discussions move on. Indeed, since other states look to the United States for leadership in these instances, it should have a much easier time establishing coalitions with other states, applying its diplomatic resources to shape the debate on the issue (in order to define what issues are important and what the end goal should be) and establishing clear negotiating parameters before the deliberations actually begin.

However, once the United States and other important countries agree to pursue an agreement and negotiations begin, the dynamics can change dramatically. First, debates about the treaty’s form and specific provisions become more pronounced as actors compete to establish the knowledge around which public policy will be based. In addition to unfolding in state-to-state negotiations, this process also occurs in the realm of public opinion where non-state actors and middle powers can advance their case (Risse 2000, 33-34). Second, whereas the pre-negotiation stage can stretch on for years, many international negotiations have a timetable for completion. This makes tactics like delaying much less feasible and increases pressure on all parties to strike an agreement. Third, the negotiation process opens up new access points based on the framework through which the agreement is being negotiated (e.g. whether decision making is consensus or majority based) (Livingston 1992, 316). Furthermore, entities such as special commissions are often delegated with the task of moving the negotiating process forward (e.g. the Preparatory Committee in the case of the ICC). This reallocation of agenda-setting power not only insulates decision making bodies from great power pressure by endowing them with monopolistic characteristics (Romer and Rosenthal 1978,
27-28), but also opens up space for these “autonomous actors” to function in ways that may run contrary to their founders’ intent (Barnett and Finnemore 1999).

In this section I have outlined the concept of agenda setting and demonstrated that while the United States has significant agenda shaping advantages before the decision to pursue an agreement is made, the negotiating dynamics shift dramatically after negotiations commence in the international sphere. This begs the question: why have other actors been able to take control of the agenda and push it beyond the point that the United States has been willing to support? In the next section I present testable hypotheses about the factors that caused the United States to lose control of international negotiations in the unipolar era, ultimately leading to the rise of institutions that do not reflect US preferences.

**Hypotheses**

In this section I draw on a wide range of literatures in order to derive testable hypotheses that will allow me to identify the causal mechanisms that have led to the establishment of institutions opposed by the United States. I argue that a variety of factors—including inept diplomacy, previous propagation of norms by the United States, and lower barriers to institutional formation—have undermined the United States’ capacity to shape global agreements.

**Realist Explanation**

For realists, material power is what allows states to achieve their desired outcomes in world politics. According to realists, as the most powerful state in conventional terms, the United States should be able to achieve its objectives in the realm of international negotiations. If this does not occur, it signifies that the United States has
not made it a priority to shape these agreements. Since institutions are simply used by the strong as a way to influence the weak, strong states have very little incentive to give up their foreign policy flexibility in the context of international institutions if these agreements do not serve their interests. As such, realists would argue that the United States has opposed the global agreements analyzed in this dissertation because they tie it down, undermine its foreign policy goals, and limit its flexibility.

According to this logic, if the rules for particular kinds of institutions do not favor the United States, the United States would rather undermine the institutions and not join them than negotiate a compromise and join. Moreover, since institutions are largely epiphenomenal and exert no independent influence in world politics (Mearsheimer 1994-1995; Waltz 1979), the United States faces few substantial costs for not participating in these international treaties. Indeed, institutions lacking US approval and participation will be weak in general and especially weak in constraining the United States.

Drawing from realist theory, the null hypothesis (H0) for this project is that the United States has failed to shape global agreements because it did not make it a priority to do so. In this view, the United States’ participation in early discussions on potential agreements is merely a form of “testing the waters” to see how far American power can go in achieving the kind of results the United States wants. When such early discussions prove less fruitful than the United States wants, it either attempts to ensure that the agreement that does arise is weak and non-binding or pulls out of negotiations and seeks to prevent the formation of the regime in question. Realists would expect the United States to be successful in these efforts and have a difficult time explaining any regimes that impose costs on the United States or change its behavior without the United States’
support. Though I do not think that this hypothesis will be confirmed, it serves as the logical starting point for this analysis.

**Inept Diplomacy**

The second subset of hypotheses (H1) revolve around the notion that the United States has failed to shape global agreements because of inept diplomacy. More specifically, I postulate that two factors have detrimentally influenced the United States’ capacity to influence the course of international negotiations: (1) (in)coherence of the US policy position during the course of negotiations; and (2) the United States’ (in)ability to co-opt important “swing states”. Though these variables are analytically distinct, it is important to note that they interact. For example, policy inconsistency can make it more difficult to maintain coalitions with swing states.

**Policy Inconsistency**

Though constructivist scholarship often focuses on how NGOs use tactics such as framing, persuasion and argument to shift states’ normative orientations (Deitelhoff 2009, Rutherford 2000, Price 1998), Brooks and Wohlfarth (2008) highlight that very little international relations scholarship has examined how hegemonic states can use the same tactics to advance their objectives.

In addition to material power, the substance, structure and content of international agreements emerge as a result of states’ (and non-state actors’) capacity to persuade others to accept their positions (Payne 2001). According to constructivists, knowledge

---

22 For example, Price (1998) argues that the ICBL and other organizations played a crucial role in the formation of the OTL by propagating a “landmine taboo” norm. These groups accomplished this task by framing the debate about landmines issues in ways that put mine proponents on the defensive and providing political cover for domestic decision makers in favor of a ban. Once they had generated enough support for the norm, more and more states began to adopt it because of concerns about their reputation. In other words, states began to adhere to the norm even without pressure from outside groups.

23 Notable exceptions are Ikenberry and Kupchan 1990 and Schimellfenig 2005. I discuss this issue in greater depth later in this chapter.
and shared ideas are important “building blocks of international reality” (Ruggie 1998, 33). The norms that reflect these shared understandings are created by agents who engage in “framing” to persuade others to adopt their ideational orientations (Payne 2001, 38-39). Barnett (1999, 25) defines framing as a device used to “fix meanings, organize experience, alert others that their interests and possibly their identities are at stake and propose solutions to ongoing problems.” Not only do frames provide an interpretation of a situation and appropriate behavior for that context, but they also serve to legitimize social orders (Payne 2001; Finnemore and Sikkink 1998). In any given negotiation context, actors compete to define a norm by presenting a wide range of competing frames. In order to be successful, the frames that actors put forward must resonate well with important audiences and commonly held public understandings.

When the United States takes a public position on an issue, other states presumably take its statements at face value. As such, public statements increase states’ expectations that the United States will use its diplomatic clout and economic strength to address a problem. Other states also presumably assume that the United States will take a leadership role on the issue and support the formation of institutions that can effectively ameliorate the challenges at hand.

Unsurprisingly, policy inconsistency makes it much more difficult for a state to successfully persuade other nations to adopt its normative orientation. Given the scrutiny that it is under as the unipole, the problem of policy inconsistency is arguably more

---

24 Following the conventional definition, I define norms as standards of appropriate behavior for an actor with a given identity (Finnemore and Sikkink 1998)
25 Though some observers question whether leaders use public statements primarily for instrumental purposes, recent research by Renshon (2009) suggests that leaders’ public and private positions are closely correlated. As such, I argue that public statements provide important insights into states’ foreign policy stance.
pronounced for the United States than other countries. To begin with, policy inconsistency undermines the value of the United States’ credible commitments. As such, other states will not take future proclamations seriously and will be less likely to seek out US leadership (Finnemore 2009). In relation to this, policy inconsistency undermines the US capacity to shape international negotiations by making the United States appear hypocritical. As Finnemore (2009, 74) argues, “hypocrisy leads others to question the authenticity of an actor’s moral commitments but also its moral constitution and character…if reputations are perceived to be cultivated only for utility, those reputations are of limited value.”

This logic suggests that once an actor’s reputation on a particular issue is undermined, it is difficult for that actor to reassert leadership on the topic. For example, if the executive branch makes a statement in favor of banning landmines only to shun international efforts at accomplishing this goal, other states will be less likely to accept the United States’ arguments about why a landmine ban would be inappropriate. Indeed, if the United States deploys persuasive strategies that contradict its previous positions, it will appear self-serving and hypocritical and have difficulties framing the debate in ways that make its adversaries’ positions appear inconsistent (Brooks and Wohlforth 2008). For example, other states can refer to the United States’ previous statements strategically as a way to undermine the United States’ influence and legitimacy in the course of negotiations (Finnemore 2009, 66). As Thomas Risse (2000, 22) argues, “actors who can legitimately claim authoritative knowledge or moral authority (or both) should be more

---

26 This could explain why other states continue to castigate the United States for not ratifying international treaties even though, for example, the United States is the largest donor to landmine eradication programs and has accepted most aspects of the Law of the Sea Treaty (which it still has not ratified) as customary law.
able to convince a skeptical audience than actors who are suspected of promoting ‘private’ interests’.”

Furthermore, the United States’ hypocrisy in and of itself may provide other states with a rallying point around which to proceed with the institutional formation process in the face of US opposition. States and non-state actors alike may peg their initial position to that of the United States. As the negotiation process moves forward, these actors may promote the United States’ initial position and/or use it as the basis for getting other countries to commit to the nascent norm. When the United States’ position on the issue shifts, however, other actors’ commitment to the previous position (and norm that it embodies) makes it much more difficult for them to change their course, even if they want to (Cass 2005; Diehl 2000). This is because, after generating the “audience costs” associated with public statements on the issue, states may be viewed as capitulating to the United States if they give in to new sets of demands (Fearon 1994). As this sub-section demonstrates, policy inconsistency undermines the United States’ “shaping” abilities by both undermining its persuasive capacities and constraining other states’ ability to accommodate the US position.

Inability to Co-Opt “Swing States”

According to Finnemore and Sikkink (1998, 895-909), the norms upon which many international agreements are based go through three distinct stages (emergence, cascade and internationalization). In the “emergence” phase, norm leaders use persuasion to try convince a “critical mass” of states to accept the norm. This is a difficult task, considering that few decision makers are likely to exhibit support for a norm when its success is questionable (Price 1998). Over time, a combination of leaders’ desire to

---

27 I use the terms swing states and veto players interchangeably throughout this dissertation.
enhance their self-esteem, pressure for conforming, and the need to enhance international legitimacy cause more and more states to adopt the norm (Finnemore and Sikkink 1998).

A norm cascade occurs when the norm reaches a “tipping point,” which typically occurs after the norm has been accepted by more than one-third of states in the system (around sixty states) (Finnemore and Sikkink 1998, 895-897). After a norm passes this tipping point, other states will be more likely to also adopt it, even without domestic pressure to do so. For example, while only sixty states ratified the OTL in March of 1997, one hundred and twenty four countries had ratified the treaty by December of 1997 (Price 1998).

It is important to note that it is in addition to the number of states accepting the norm, it also matters which states adopt the norm. This is because while some states are critical for the norm’s adoption, other states are not. Indeed, the non-participation of “blocking coalitions”, which are typically made up of actors with significant structural power, can undermine an otherwise viable multilateral agreement aimed at promoting a specific norm (Hampson 1995, 26).

According to George Tsebilis (1995, 289), these “veto players” are actors whose agreement is required to change the status quo. Examining political and regime stability at the domestic level, Tsebelis suggests that the possibilities for policy change decrease as the number of veto players increases and a lack of consensus among veto players develops about how to move forward. I argue that just as veto players determine the stability of policy at the domestic level, they also determine the viability of potential international agreements. For example, the United States, Russia, Japan, China and Australia were important veto players in the KP negotiations. Similarly, the United

---

28 Following the literature, I adopt this definition of a norm cascade throughout this dissertation.
States, Germany and Canada were considered to be veto players in G-8 debates over debt relief (Buzby 2007).

The theoretical and empirical evidence presented in this sub-section suggests that the United States has failed to shape global agreements because it has been unable to use side payments and effective diplomatic maneuvering to keep important “veto players”\textsuperscript{29} in line with its position. While middle powers and non-state actors can play a leadership role in advancing nascent international agreements, these institutions need some major power participation to move forward. The result of the United States’ inability to maintain coalitions with these swing states\textsuperscript{30} has been the emergence of institutions that the United States opposes.

\textit{Structural Factors}

The third subset of hypotheses (H2) examines the importance of factors that are exogenous to the actual negotiations, but may have a pronounced effect on their course. More specifically, I hypothesize that two mechanisms have undermined the United States’ ability to shape global agreements: (1) decreased barriers to institutional formation and (2) previous propagation of norms associated with the treaties by the United States.

\textit{Decreased Barriers to Institutional Formation}

Though the literature highlights how institutions can evolve without the support of the hegemon (Keohane 1992; Young 1991), much less attention has been paid to the processes by which institutions form in the face of hegemonic opposition. The process of

\textsuperscript{29} I define veto players/swing states as states whose participation was critical to allowing the agreements to move forward. I make this determination by assessing primary and secondary source data describing negotiating dynamics.

\textsuperscript{30} I use the terms swing states and veto player interchangeably throughout this dissertation.
forming new institutions to overcome coordination problems and create “pareto optimal” outcomes is time consuming, difficult, and requires significant resources. Since the barriers to institutional formation are so immense, especially for global agreements, the participation of the hegemonic state and other great powers is often critical. As mentioned previously, however, unipolarity has opened up new opportunities for other actors to challenge great power dominance.

In *Power and Interdependence*, Robert Keohane and Joseph Nye (1979, 25-29) critique realists’ approach to international politics and suggest that the world is increasingly typified by complex interdependence, which has three main characteristics. First, multiple channels—including formal ties among government officials, informal ties between non-state actors, and ties within the context of transnational advocacy groups—connect countries. By bringing together stakeholders from different countries outside the scope of traditional state-to-state interactions, these connections have increasingly blurred the lines between domestic and international political issues. Second, complex interdependence is typified by an absence of hierarchy among issues so that not all issues are subordinated to security concerns and multiple issues are on the international agenda at any given time. Finally, military force has a relatively minor role in international politics because it cannot be used to solve many of the human security, environmental and economic challenges that are important to states.

Keohane and Nye’s analysis provides important insights into why the barriers to institutional formation are lower than they were in the past. First, non-state actors have tapped the multiple connections between states and taken advantage of advancements in communications technology and the emergence of a global media to become important
players on the international stage. As such, they currently have more capabilities than in
the past to both draw attention to agenda items and wage campaigns to pressure states to
adhere to emerging norms (Deitelhoff 2009; Cakmak 2008; Faulkner 2007; Wexler 2003;
Rutherford 2000; Price 1998; Haas 1992). This has simultaneously put more issues on the
international agenda while making the “battle for hearts and minds” increasingly
competitive. At the same time, middle powers have started to work closely with NGOs
to move their agendas forward in the international sphere as part of a “new diplomacy”
(Davenport 2002/03). For example, a coalition of middle powers established a
partnership with the ICBL to advance the OTL, even going so far as give the ICBL a seat
at the table during treaty negotiations (Rutherford 2000; Price 1998).

Second, even though the United States is the most powerful state in the
international system, other states have developed niche leadership roles in particular
issues areas. With the end of the Cold War and emergence of unipolarity, the United
States’ ability to exert authority over allies and middle powers is less pronounced than it
was in the past. Since authority is never total, but varies in extent, a dominant state may
possess authority over a subordinate and issue commands regulating possible actions 1-5
but not on actions 6-n, which remain beyond its ability to expect compliance (Lake 2007,
56).

As mentioned previously, there are now more issues on the international agenda
than in the past. Given that states (including the United States) place varying levels of
importance and significance on different issue areas, other states have increasingly taken
on leadership roles in areas where the United States has been slow to take action. For
example, middle powers have exercised leadership in the post-Cold War period by
launching diplomatic initiatives, setting agendas, and building coalitions for action in the realm of human security issues (Behringer 2005, 307). To the extent that leadership is an important determinant of the institutional formation process (Skodvin and Andresen 2006; Hampson and Reid 2003; Young 1991), the fact that other states can take on leadership roles—even in the face of opposition from the United States—in the realm of multilateral diplomacy has decreased the barriers to institutional formation.

Third, new types of diplomatic norms for institutional formation are emerging. Whereas over the past fifty years international agreements were primarily forged on the basis of consensus,\textsuperscript{31} states are increasingly turning to majoritarian processes to establish institutions (Brem and Stiles 2009; Behringer 2005; Davenport 2002-2003).\textsuperscript{32} This means that if a majority of states has approved a decision during the course of negotiations, states that disagree can either conform to the decision or not participate in the agreement.\textsuperscript{33} For example, negotiations for the OTL was conducted along majoritarian principles while the CTBT was eventually taken out of the committee on disarmament and introduced for a vote in the UN General Assembly. It is important to note that great power influence is much less pronounced in these settings. This is because whereas great powers will often have a veto over whether or not agreements move forward in consensus-based settings, majoritarian decision making structures are much less

\textsuperscript{31} Beginning in the 1970’s a norm began to emerge by which international law was negotiated on the basis of consensus (Fehl 2008, 264). While this norm of consensual decision making still defines many contemporary negotiating forums, states are increasingly reverting to majoritarian decision making structures because of the opportunities provided by the shift to unipolarity.

\textsuperscript{32} It is important to note that the process by which many of the institutions (e.g. UN, World Bank and International Monetary Fund) were created in the immediate aftermath of World War II were not consensus-based. However, the majority of subsequent treaty negotiations have largely followed a consensus-based model.

\textsuperscript{33} Some agreements forged through these diplomatic processes (e.g. the ICC) are designed to be binding even on states that do not agree with the final agreement.
hierarchical and therefore open to influence from less materially powerful states and non-state actors (Livingston 1992).

Finally, and somewhat related to the previous point, while states have long used techniques of “forum shopping” (Busch 2007) to advance their interests in the context of international organizations, states also now have the capacity to engage in “forum creation” activities. In these situations, states may be able to build upon both the precedents and inefficiencies of previously established international institutions to justify the creations of new ones (Cottrell 2009). For example, a group of small and medium-sized states used the international publicity generated by negotiations about landmines in the CCW as a springboard to launch the OTL. In this case, the United States’ inability to effectively address the landmines issue and keep states functioning within the context of the CCW and Conference on Disarmament (CD) resulted in the formation of alternative structures to advance the process.

Previous Propagation of Norms by the United States

The literature on hegemonic socialization suggests that a hegemon may find it difficult to shift other states’ normative orientations on issues that the hegemon supported and propagated in the past (Ikenberry and Kupchan 1990). According to G. John Ikenberry and Charles Kupchan (1990), hegemonic states use socialization and the diffusions of norms as a way to legitimate their power and enhance the international system’s stability. The authors argue that in addition to being based on material power, hegemonic stability is also a function of the leading state’s ability to convince foreign elites to accept its leadership. If successful, this process causes elites in secondary states to buy into and internalize norms articulated by the hegemon and therefore pursue
policies consistent with the hegemon’s notion of international order (Lee 2009; Ikenberry and Kupchan 1990).

In similarity to more formal institutions, norms are inherently sticky because they are difficult to alter once propagated. Thus, while hegemonic power is necessary to socialize elites, it is very difficult to “re-socialize” them around new sets of principles. David Lake (2008, 50-53) argues that relationships of authority in international politics are based upon a bargain between the ruler and the ruled, because the ruler must provide a social order that has greater value than ruled states’ loss of autonomy. If the leading state retreats from principles and norms that other states have come to consider to be important aspects of the existing international order, the ruled may no longer be willing to give up their autonomy on some issues. For example, the international community continues to pressure the United States to advance the arms control, environmental and international legal principles that it has championed over the last forty years (Agrawala and Andresen 1999). In a sense then, other states have taken these norms to their logical conclusion and been unwilling to change their course based upon the United States’ concerns. For this reason, it is possible that United States has been unable to achieve its goals in the context of international negotiations because of its clear departure from norms it has actively propagated that in the past.

Alternative Hypothesis: Domestic Factors

One potential alternative explanation for the emergence of global institutions that do not reflect US preferences is that the United States failed to control the agenda because of domestic factors. Though a point of the contention throughout much of the
early 1990s, scholars have persuasively demonstrated in recent years that “first and second image” factors have an important impact on international policy outcomes (Schweller 2004; Milner 1997; Snyder 1993). For example, Randall Schweller demonstrates how domestic factors—such as state fragmentation and elites being constrained by domestic political considerations—lead to “under-balancing” against clear threats. Similarly, Helen Milner (1997) highlights how legislative cleavages and societal preferences impact the executive branch’s ability to enter into trade agreements.

The logic provided by these “second image” explanations suggests that states’ foreign policies are determined as much by processes occurring within the state as structural factors in the international system. As such, domestic politics often play an important role in international negotiations. In his seminal article on the topic, Robert Putnam (1988) highlights that leaders in international negotiations are often faced with “two-level games”, needing to negotiate agreements that are feasible at both the domestic and international levels in order to forge an agreement. If leaders are unable to “win” at both levels of the game, then it is not possible to forge an agreement.

There are two ways that domestic politics could have undermined the United States’ ability to shape the international negotiations examined in this dissertation. First, it is possible that though the United States’ executive branch successfully obtained its objectives during the negotiations, the United States was forced to change its position down the road as a result of opposition in the Senate (which ratifies treaties). Second, it is possible that the domestic political situation in the United States in the post-Cold War period has made it very difficult for the United States to successfully take the lead in

---

34 It is important to note that in some instances the executive branch may follow treaties as customary law (as the United States has done with the Law of the Seas Treaty) even if they have not been ratified by the Senate.
establishing international agreements that are acceptable to other states (Kupchan and Trubowitz 2007). Whereas previously there was bi-partisan consensus that the United States should take the lead in the context of international institutions, domestic political divisions have undermined the coherency of US foreign policy in this area.

Though domestic factors may have played a role in the cases I examine in this dissertation, I argue that the United States’ failure to shape these agreements prior to their broad-based adoption internationally cannot simply be explained by domestic politics alone. As mentioned earlier, Senate opposition explains why the United States was actively involved in crafting the content of treaties such as the League of Nations, Vienna Convention on the Law of the Treaties, and the CTBT, but still has not ratified these agreements. In these instances, the United States “shaped” the agreements, but was not able to ratify them for domestic reasons. In contrast, in the cases that I analyze in this project, the United States was unable to successfully “shape” the agreements because of the interplay between a number of complex structural, domestic and diplomatic factors.

*Alternative Hypothesis: Diplomatic Spillovers from Other Issue Areas*

Another alternative explanation for the rise of institutions that the United States opposes is that other states deliberately deviated from the United States’ negotiating position because of disagreements in other policy realms. For the purposes of this analysis, I define this variable as diplomatic spillovers. As mentioned in chapter one, though other states are neither interested nor able to compete with the United States militarily, they are often concerned with the clout that the United States has in the diplomatic realm. This means if other states are dissatisfied with the United States’

---

35 If the United States is less able to shape international agreements than in the past, it could imply that the United States has become less influential in other states’ foreign policy decisions, that domestic sentiments in the United States have increasingly deviated from those held by citizens in other countries, or both.
actions on one issue, they may also oppose the United States in other related issue areas. For example, Wedgewood argues that the rapid passage of the Rome Statute was in some ways a response to the United States’ obstinacy in negotiations over the OTL (Wedgewood 1998). If this trend holds across cases, it suggests that the United States would have had to change its stance on parallel issues in order to succeed in negotiations for the issue area under consideration. I control for these types of external factors by placing the treaty negotiations that I analyze in the context of events occurring in world politics.

Proving Myself Wrong

In addition to the primary and alternative hypotheses that I have presented above, it is also possible that other factors that I not have identified are driving the emergence of institutions that do not reflect US positions. For example, the causal mechanisms and pathways that I have identified may not apply across cases. If this is the case, it should become apparent through the process tracing and I will not be able to determine which factors are necessary and sufficient to lead to the outcome in question. Moreover, it is possible that other, unrelated, confounding factors are responsible for the United States’ failure to influence the content of these agreements. Though the case study analysis is likely to identify such unanticipated alternative explanations, it is possible that I might not recognize such patterns.

Defining the Variables

**Dependent Variable: Whether the Global Agreement Reflects the United States’ Position**

The form that agreements ultimately take is directly correlated with states’ ability to “shape the agenda” and control how negotiations on the subject unfold. If a country is
unable to effectively convince other states to adopt its views, then the agreement may include provisions that it opposes. Given that the negotiation of global agreements is a time-consuming and contentious process, states are unlikely to open treaties for signing unless they are confident that the draft agreement will attract enough support from other states to eventually enter into force. Hence, the substance of the agreement is a critical determinant of an institution’s success.

Thus, the dependent variable for this study is whether the final text of the agreement reflects the United States’ position. The best indicator of whether this has occurred is whether the United States formally ratifies or informally adheres to the agreement. It is important to note that defining the variable in this way captures the phenomenon I am interested in more accurately than other measures such as the entry of the treaty into force. This is because while the former description captures the substance of the agreement (which determines the United States’ participation, or lack thereof) the latter gets into issues about why states actually ratify the agreement (which is beyond the scope of the agreement).

Furthermore, the variable specification—because it also includes informal adherence to a non-ratified agreement—is appropriate because the United States has successfully “shaped” a variety of international agreements that it has not been able to ratify for domestic reasons. Many of these agreements have subsequently entered into force on the global level. Defining the variable according to the criteria presented earlier allows me to differentiate between instances in which the United States was able to control the negotiations and situations in those in which it was not.
I determine whether or not the agreement reflected the United States’ position by assessing whether the United States complied (either formally through ratification or informally) with the agreement. This variable is coded as “Yes” if the agreement reflected the United States’ position and “No” if it did not reflect the United States’ stance.

**Independent Variables: Policy Inconsistency, Effective Engagement with Swing States, Middle Power/NGO Influence, Consensus-Based Process, Previous Propagation of Norms**

The policy inconsistency variable examines the extent to which the United States propagated policies and positions in earlier stages of negotiations that it attempted to either qualify or back out on as negotiations moved forward. While states typically change their positions during the course of a negotiation multiple times in order to get the best deal possible, it is unusual (and potentially detrimental) for a state to go back on a concession that it has already made. I will measure this variable by examining whether the United States’ initially consented to positions and policies that it reneged on in later
stages of the negotiations. This variable is coded as “No” if the United States did not attempt to backtrack from previous positions and “Yes” if the United States’ final stance did not reflect positions that it had agreed to in earlier stages of the negotiations.

The effective engagement with swing states variables measures the extent to which the United States successfully coordinated its position with swing states and maintained these coalitions during the course of negotiations. I define swing states as states whose support (or opposition) is critical to the passage (or non-passage) of an agreement. I identify which states were “swing states” by drawing on written accounts of the negotiations, interviews and other sources. I measure this variable by assessing the degree to which swing states’ final position was aligned with that of the United States. This variable is coded as “Yes” if the United States was able to keep swing states on its side during the negotiations and “No” if it was not able to do so.

The Middle Power/NGO influence variable measures to the extent to which these actors had their positions reflected in the final text of the agreement (Betsill 2007). This variable will be measured using process tracing and qualitative analysis. The variable is coded as “No” if these actors’ positions were not reflected in the final agreement and “Yes” if their positions were reflected in the text of the agreement.

The consensus-based process variable measures whether treaty decisions were made on a consensual or majoritarian basis. In a consensus-based negotiating model, all states must agree with the text of an agreement before negotiations can move forward or an agreement can be established. In these situations, individual states hold veto power over the negotiations and can hold up proceedings. In contrast, majoritarian decision making models use a one-state, one-vote format to arrive at a final decision (regardless of
whether there is any opposition). The variable is coded as “Yes” if the negotiations were based on a consensus based model and “No” if the negotiations proceeded using a majoritarian decision making structure.

The previous propagation of norms variable measures the United States’ historical support for the norm reflected in the agreement. I will measure this variable by analyzing the United States’ historical support for (or opposition to) the norms associated with the international agreements analyzed in this dissertation. The variable is coded as “Yes” if the United States was a leader in propagating the norm in the past and “No” if it was not.

I also include two variables to measure the two alternative hypotheses (diplomatic spillovers and domestic politics). The spillovers variable examines the extent to which other actors linked the United States’ actions in other realms to the ongoing negotiations. In order to measure this variable, I examine both the broader geo-political context in which the negotiations unfolded and the extent to which representatives from other countries made statements suggesting that their stance in the negotiations was linked to concerns about the United States’ activities in other areas. The variable is coded as “Yes” if external considerations played a major role and “No” if they did not have a significant effect on the negotiations.

The domestic politics variable examines the extent to which domestic political considerations played a role in undermining the United States’ ability to shape the content of the treaties under examination. I assess this variable by drawing upon both primary and secondary source information describing the domestic political dynamics throughout the negotiations. This variable is coded as “Yes” if domestic considerations severely constrained the United States’ negotiating ability and “No” if the evidence
suggests that the United States could have shaped an agreement despite the existence of domestic discord.

Finally, I include two variables—diplomatic involvement and extent of policy change—aimed at testing the null hypothesis that the United States failed to shape these agreements because they would not constrain or impact the United States. The diplomatic involvement variable examines the extent to which the United States committed resources and implemented strategies aimed at either advancing its position or undermining the nascent agreement. This variable is coded as “Yes” if the United States actively participated in the negotiations and “No” if it did not. The policy change variable examines the extent to which the United States altered its policies in response to the emergence of these agreements. This variable is coded as “Yes” if the onset of the agreement produced significant changes in US policies on the issue at hand and “No” if no changes were evident as a result of agreements’ passage.

The Model

The model presented on the next page outlines the causal mechanisms by which the United States loses control of the agenda during multiparty negotiations, resulting in the emergence of institutions that do not reflect US preferences.\(^{36}\) In this “quadrant” of the model, the United States either stakes out an overly ambitious negotiating position (from a domestic point of view) or presents a blanket policy statement (e.g. we will pursue a total ban on landmines) prior to the onset of negotiations. These statements lay the basis for future negotiations and other states and actors develop their positions accordingly. The United States also assumes that its positions will be reflected in the

\(^{36}\) I examine the causal mechanisms in the other “quadrants” of the model throughout the analyses of the mini-case studies.
final agreement and does not put significant effort into coordinating its position with potential swing states prior to the onset of negotiations.

**Figure 5: The Model**

As negotiations proceed, the United States often shifts or qualifies its previously stated policy position in response to either domestic pressures or when it appears that other actors are successfully gaining control over the agenda. This policy inconsistency undermines the United States’ persuasive capabilities while enhancing other actors’ (including middle powers and NGOs) capacity to influence the institutional formation process. As a result, the alternative version of the agreement being promoted gains support and it becomes increasingly difficult for the United States to keep crucial swing states aligned with its position. As larger numbers of states gravitate towards the
alternative position and middle powers/NGOs become more influential, the United States gradually loses its capacity to influence how the debate unfolds.  

The United States’ previous propagation of norms associated with the agreement is also an important variable. This is because the United States’ propagation of norms can provide the impetus for other states to begin moving forward with institutional formation process in the first place. Moreover, previous attempts by the United States’ to draw attention to the issue in the international arena not only provide other states with incentives to go above and beyond what is palpable to the United States in order to advance the norm, but also provides them with important counter arguments to potential objections from the United States. In contrast, these challenges are much less pronounced in instances in which the United States has not propagated the norm in the past.  

The type of decision-making structure (consensus vs. majoritarian) influences the context in which the negotiations unfold. If the decision-making process for the negotiations is majoritarian, other states and actors can more easily step in and fill the leadership gap in negotiations at the expense of the United States. In contrast, the United States should be able to more easily control the agenda in consensus-based negotiations.37

As these dynamics unfold, the United States gradually loses control of the negotiations. When other states/actors are able to garner significant support for their positions and gain the upper hand in negotiations, they move forward with establishing a new institution (Outcome 1). The reason for states’ willingness to move on with the institutional formation process without the United States can either be based upon the

37 Though on the flip-side, the United States may not be able to move forward on an issue because of resistance by other states, which can lead to the creation of alternative negotiating processes.
potential effectiveness of the treaty, influence of middle powers/NGOs and/or rivalry with the United States.

Alternatively, the other potential outcomes represent instances in which the United States is able to keep control of the agenda, thereby either undermining the emergence of an agreement it opposes or ensuring that the agreement reflects US positions. In outcomes two, three and four in the model, the United States presents clear negotiating parameters at the outset of negotiations and engages in effective coalition building with swing states. Since policy inconsistency is not an issue, the United States can still use its position of prominence to shape how the agenda item is defined through persuasion and other diplomatic strategies. This makes it more difficult for NGOs/middle powers and other actors with different policy stances to shape the debate. As a result of these factors, the United States can more easily shape or block progress on the agreement.\(^{38}\)

Conclusion

In this chapter I have presented my theoretical model and hypotheses. I began this chapter by outlining the reasons why other states may move forward with the institutional formation process without the United States. I argued that while informative, these explanations are largely incomplete because they do not account for the processes through which other states were provided with the opportunity to create institutions in the face of hegemonic opposition. Drawing from the literature on agenda setting, I then argued that while the United States has significant agenda shaping advantages before the decision to pursue an agreement is made, the negotiating dynamics shift dramatically.

\(^{38}\) It is important to note that the United States’ actual strategy throughout the course of the negotiations is typically different depending on whether it is trying to torpedo the agreement or shape the agreement according to its foreign policy objectives.
after the United States has used its hegemonic position to put an item on the agenda and/or consented to allowing negotiations on a topic to move forward. Finally, tapping into a wide range of literatures, I derived testable hypotheses and presented a model that can be applied to account for the emergence of post-Cold War institutions that do not reflect US preferences.

In the next chapter, I lay the groundwork for the case studies by explaining the processes by which international agreements are negotiated and enter into force at the international level and the domestic treaty ratification process in the United States. I also provide descriptive quantitative data highlighting trends in the United States’ involvement in international treaties and institutions over the last sixty years.
Chapter 4: The United States’ Involvement in Global Treaties

This chapter lays the groundwork for the case study analyses by providing important background information and highlighting trends in the United States’ involvement in international treaties over the last sixty years. I begin this chapter by outlining the processes by which international treaties are negotiated and enter into force at the international level. I then summarize the domestic treaty ratification process in the United States.

The latter part of the chapter provides descriptive statistics about the United States’ involvement in global treaties over the past sixty years. The results point to a number of interesting conclusions. First, the United States has ratified a much lower percentage of global treaties in the unipolar era than in previous time periods. Second, the items on the “agenda” in the unipolar period are not only much different from those in previous time periods, but also present more constraints for the United States than for other countries. Finally, whereas in the past the United States has not ratified international treaties for domestic reasons, the causal mechanisms underlying the United States’ non-participation in international institutions are much different in the unipolar world than they were in the past.

The International Treaty Making Process

The purpose of this section is to outline the process by which international agreements are negotiated and enter into force. Multilateral agreements are typically negotiated based on the Vienna Convention on the Law of Treaties, which codifies the
rules by which treaties are made. The treaty making process typically begins when countries and/or NGOs successfully bring attention to an agenda item at the international level. As an issue becomes more prominent and political pressure to address it builds, the international community will often convene an international conference to discuss the agenda item and attempt to forge a unified response to it. Such conferences, which are typically hosted by governments or under the auspices of an international organization, extend invitations to governments along with an initial draft text or statement of purpose. Each government then sends a delegation to the conference to advance its interests in the course of negotiations (Jurewicz and Dawkins 2005, 15). Depending on how the conference is structured, the deliberations can utilize either majoritarian or consensus-based decision-making models.

As mentioned previously, negotiations on an issue can take months, years and even decades to complete. If negotiations are ultimately successful, the parties finalize the text and open the treaty for signatures. When a state signs a treaty, it typically signifies that it is interested in the treaty and will become a party at a later date. Signatories of the treaty then pursue domestic approval for ratification, a process that varies from country to country. If and when this process is successful, countries deposit “the instrument of ratification, acceptance, accession or succession with the depository institution, thus obligating the country to comply with the articles of the treaty” (Jurewicz and Dawkins 2005, 16). Parties may also outline reservations (which modify a country’s treaty obligations on a unilateral basis according to its interpretation of the issue) and

---

39 While the United States has not ratified the Vienna Convention, it does follow the treaty as customary law.
40 In the post-Cold War period, NGOs have also played an important role in many international negotiations (Deitelhoff 2009; Cakmak 2008; Faulkner 2007; Wexler 2003; Rutherford 2000; Price 1998; Haas 1992).
declarations (which present a state’s position on an issue without providing an alternative interpretation) to the treaty when depositing it with the relevant entity.

A treaty officially becomes binding international law when “a predetermined number of countries have ratified it, or a specified date is set or specific conditions are met” (Jurewicz and Dawkins 2005, 16). The threshold necessary for a treaty to enter into force varies between agreements and is typically outlined in the text. For example, the KP entered into force after ratification by 55 countries that accounted for a minimum of 55 percent of global emissions. In contrast, the OTL had a ratification threshold of only 40 countries.

If additional issues related to a treaty gain prominence in subsequent years, states can attempt to negotiate a protocol, which is a treaty directly related to a previous agreement (Jurewicz and Dawkins 2005, 15). For example, the KP built off of the United Nations Framework on Climate Change. The process of negotiating a protocol largely follows a similar format to the process of treaty formation outlined in this section. It is important to note that negotiations related to a protocol can be either more or less complicated, time consuming, and controversial than the negotiations for the initial agreement.

**Treaty Negotiation and Ratification in the United States**

Even if the United States agrees to the terms of an agreement at the international level, the Senate must approve the treaty before the president can ratify the agreement. Hence, this section briefly outlines the process by which the United States negotiates and ratifies international agreements. According to article two, section two of the US

---

41 It is important to note that in the case of some trade agreements (such as NAFTA) the House also votes on the agreement.
Constitution, the president of the United States has the power to ratify global treaties with the consent of two-thirds of the Senate. Figure 6 on the next page demonstrates the process by which treaty making occurs in the United States (Schoken 2001, Appendix 1).

As the figure demonstrates, the executive branch is primarily responsible for negotiating international treaties. Typically, the president selects a delegation of negotiators to attend an international conference or convention. Though it varies from negotiation to negotiation, the delegation can include representatives of different ranks from a variety of federal agencies (Jurewicz and Dawkins 2005, 17). For the purposes of this analysis, it is important to note that while the executive branch has the option to consult the Senate throughout the course of negotiations, this is not mandatory. As such, it is possible that the Senate and executive branch may have divergent positions on a treaty, even after negotiations have been concluded at the international level.

After the conclusion of treaty negotiations, the President can decide to sign an agreement and present it to the Senate for approval. As per the Vienna Convention on the Law of Treaties, the President’s signature prohibits the United States from taking steps aimed at undermining the treaty. At the same time, signing the treaty provides the United States with a voice in ongoing treaty negotiations (even if the United States does not plan to ratify the treaty).42

When the President sends the treaty to the Senate, the Senate’s Foreign Relations Committee is generally responsible for managing the ratification process. First, the Committee holds public hearings about the treaty. After this review is concluded, the Committee votes on whether to introduce the treaty for a vote on the Senate floor. If the

---

42States that do not sign a treaty do not have the right to participate in meetings about the treaty.
vote to move the treaty out of committee fails, the treaty is typically put back on the committee’s calendar (where it remains indefinitely).

**Figure 6: The United States’ Treaty Ratification Process**

If the vote to move the treaty out of committee is successful, the Senate votes on the treaty. In order to be sent to the Executive Branch for ratification, the treaty must receive the support of two-thirds of Senators. Because the Senate is not typically

---

43 If the treaty does not receive the Senate’s advice and consent, it does not enter into force and is sent back to the Foreign Relations Committee where it can either remain on the calendar indefinitely or be returned to the executive branch as unacceptable (based on the results of a Senate vote on the topic).
involved in treaty negotiations, it often adds conditions to the treaty in the form of reservations, declarations, understandings, provisos and amendments (Jurewicz and Dawkins 2005, 18). Once the President (or his/her appointed representative) receives the agreement from the Senate and ratifies the treaty, the instruments of ratification are deposited and exchanged as per treaty requirements. At this point, the President typically issues a statement announcing the United States’ commitment to the treaty (Jurewicz and Dawkins 2005, 18). The treaty becomes legally binding for the United States when the number of countries required for the treaty to enter into force have deposited their ratification materials.

The United States’ Involvement in Global Treaties 1945-2005

In previous chapters I have argued that the shift to unipolarity has created a variety of constraints for the United States in the realm of multilateral diplomacy. In this section I take my analysis one step further by providing descriptive quantitative data on the United States’ involvement in international treaties over the past 60 years. If my argument is accurate, the data should reveal not only that the United States was more successful in shaping global treaties prior to 1991 than in the unipolar era, but also that the mechanisms underlying the rise of institutions that do not reflect US preferences differs between time periods.

Data and Methodology

The data used in this section is adapted from the list of treaties compiled by Patricia Jurewicz and Kristin Dawkins (2005, 6-7). The list of treaties was generated by using data in the UN Treaty Collection database, which contains information about the more than five hundred treaties that have been deposited with the Secretary-General. The
database of twenty-nine chapters covers treaties on topics ranging from human rights and refugees to commodities and diplomatic law. Though treaties can also be deposited with other UN organs (such as the Food and Agriculture Agency and the World Intellectual Property Organizations), the UN Treaty Collection Database represents the largest collection of international agreements.

To assemble their sample, Jurewicz and Dawkins dropped treaties in the database that were subsequently superceded by other treaties and/or are regional in nature (and therefore may not directly apply to the United States), leaving them with a total of 333 treaties. I then dropped agreements that entered into force before 1945 along with other agreements (which were initially miscoded by Jurewicz and Dawkins) that are not relevant to the United States; this left me with a sample size of 90 global treaties. Since the United Nations’ membership was constantly increasing in the aftermath of World War II (primarily due to the onset of de-colonization), I define global treaties as agreements that entered into force and were ratified by more then fifty percent of UN member states at the time. Next, I noted whether or not the agreement was ratified by the United States. Finally, I identified global agreements that the United States did not ratify in each time period in the issue areas of disarmament, environment, penal matters and human rights and coded them based on their quadrant in the matrix of institutional outcomes presented in the previous chapter.

I also divided the data into three time periods so that it would more accurately reflect the objectives of my study. The purpose of dividing the data into time periods is to capture how geo-political dynamics influence treaty-making patterns, allowing for comparisons across different time periods. The first time period (1945-1959) covers
agreements from the end of World War II to the onset of global competition between the Soviet Union and the United States in the 1960s. The second time period (1960-1990) encompasses agreements forged during various phases of superpower competition and influenced by the emergence of a multitude of new states at the international level and the beginning of the Sino-Soviet split.\textsuperscript{44} The final time period (1991-2005) starts immediately after the collapse of the Soviet Union and covers global agreements established through 2005.

\textit{Discussion and Results}

From 1945-2009, the frequency with which global treaties were established was influenced by prevailing international geo-political dynamics. As mentioned in previous chapters, the United States took a leadership role in establishing international institutions after World War II (Ikenberry 2000). In a world devastated by prolonged conflict, there was a need to re-establish the rules and principles by which international interactions would occur. As such, global agreements struck from 1945-1959 were concentrated in such areas as the laws of the sea, international trade and commerce, and transport and communication. While tensions between the United States and Soviet Union ran high in Europe and East Asia with the onset of the Cold War, the bipolar structure of the international system—coupled with devastation produced by the war and relatively small number of countries in existence as a result of continued colonization—paradoxically

\textsuperscript{44} Though the Sino-Soviet split became more pronounced in the mid-1960s, it originated in 1959 when the Soviet Premier Nikita Khrushchev met with US President Dwight Eisenhower. Khrushchev’s actions angered Chinese leader Mao Zedong, who felt that the Russian leader was being too conciliatory to the West. This initial disagreement led to the rapid breakdown in Sino-Soviet relations that began with Moscow’s withdrawal of technical experts from China in 1960. Critically, the split led to increased struggles between China and the Soviet Union for leadership of, and influence over, developing world countries. The data presented below is consistent with the idea that the split had important effects on the context in which international treaty-making unfolded. See Lutti (2008) for more information on the Sino-Soviet split.
boded well for global cooperation in areas on which the superpowers could actually agree. Indeed, under the conditions of bipolarity that prevailed in the immediate aftermath of World War II, weaker states tend to participate in institutional arrangements defined and dominated by one or the other of the major superpowers (Ikenberry et al., 2009, 21).

In the late 1950s and early 1960s, global competition for influence between the United States and Soviet Union become more pronounced (Gaddis 2005, 121-124). Although the prospect of mutually assured destruction produced by nuclear parity “froze” superpower conflict in Europe, the process of de-colonization in the developing world provided the superpowers with new potential spheres of influence. As a result, the United States and Soviet Union engaged in proxy struggles throughout the developing world in Vietnam, the Middle East and Latin America (Dobson and March 2006, 20-29). Moreover, as a result of the Sino-Soviet split, which originated in 1959, China emerged as a new potential pole of influence in the developing world (Lutti 2008).

In addition, the dramatic increase in the United Nations’ membership altered the environment for global treaty making during this period. Most notably, the membership of the non-aligned movement (NAM), which was formed in 1961 in response to superpower interference in the developing world, grew rapidly. The NAM aimed to “create an independent path in world politics that would not result in Member States becoming pawns in the struggles between the major powers” (Non-Aligned Movement 2001) and to advance the agenda of the global south (such as disarmament). Thus, while the superpowers were still firmly in charge of the global agenda, they could no longer rely on automatic support from developing states in the context of international institutions.
Despite the fact that new states were emerging on the global scene, superpower cooperation during détente in the late 1960s and 1970s led to a variety of global treaties including the Nuclear Non-Proliferation Treaty and Biological Weapons Convention. As opposed to placing limits on the superpowers’ security resources, these treaties were primarily aimed at limiting the capabilities of potential adversaries. Though détente ended with the Soviet invasion of Afghanistan in 1979, reforms such as Glasnost and Perestroika that were introduced by Gorbachev in the mid-1980s led to another thawing of superpower relations. Faced with a faltering economy, the Soviet Union withdrew from Afghanistan in 1989, consented to German re-unification in 1990 and eventually was dissolved in 1991. It is important to note that more pronounced geo-political divisions, superpower competition, and the superpowers’ effective veto power over global treaty making greatly curtailed the types of agreements that could be introduced during this time period.

The onset of unipolarity and the “unfreezing” of Cold War geo-political divisions transformed the environment in which multi-lateral diplomacy occurred, leading to a shift
towards more international treaty making. The table on the next page shows the number of total and global treaties per year that entered into force in each time period. As the data in Figure 8 highlight, the average number of both total and global treaties per year enacted during the periods between 1945-1959 (4.8, 2.14) and 1991-2005 (5.2, 1.92) were much greater than between 1960-1990 (2.6, .7). This trend is consistent with what we would expect given the shifting international geo-political dynamics between 1945 and 2005.

At the same time that the data is consistent with my expectations, at this point it is important to note two important caveats. First, the number of treaties enacted during each time period may not be correlated with the treaties’ actual importance. Second, it is possible that there may be some path dependent dynamics whereby “easy” treaties may have been established in earlier time period while more contentious items were only deliberated in later time periods.

![Figure 8. Average Number of Treaties Per Year](source: United Nations Treaty Database Online)
The data above highlight that the number of treaties established in the unipolar era has increased to similar levels as before 1960. Figure 9 highlights the United States’ participation in global treaties by time period. As the data show, the United States ratified a significantly higher percentage of global treaties in the 1945-1959 (21/30, 70%) and 1960-1990 (17/20, 85%) time periods in comparison to 1991-2005 (11/27, 40%). This data highlights that the United States’ participation in global treaties has declined in the unipolar era.

![Figure 9. Percentage of Global Treaties Ratified by the United States](image)

Source: United Nations Treaty Database Online

In chapters one and three I argued that the United States had significantly more leverage in the course of international negotiations that took place from 1945-1990 because of the security interdependencies that resulted from the Cold War. Moreover, the geo-political divisions spurred by the Cold War meant that global agreements needed to have the superpowers’ consent to move forward. As such, the United States had a greater ability to shape the global agenda and act as a “veto player” in the realm of
multilateral diplomacy prior to 1991. However, the emergence of the unipolar world, and corresponding opportunities and constraints it created, has changed the landscape in which multilateral diplomacy occurs.

Though the evidence is not determinative, the data in Figure 9 point to two important trends that are relevant to this analysis. First, the United States’ higher ratification rate in previous time periods suggests that the United States was more successful in the past in negotiating agreements that were aligned with its foreign policy goals (after all countries do not ratify agreements that they do not support) and/or preventing negotiations that were moving in a direction that the United States perceived as unfavorable from resulting in treaties. Second, other countries may have been less likely to move on with the treaty formation process without the United States during previous time periods than in the unipolar era. Indeed, the data highlights that the United States has ratified a much lower percentage of global treaties in the unipolar era than in the past. The United States’ dramatically lower ratification rate in the unipolar era highlights the fact that it is increasingly on the “outside looking in” global agreements that have been established in recent years.

Despite the fact that the data in Figure 9 highlight that the United States has ratified a significantly lower percentage of international agreements in the unipolar era than in previous time periods, it is still necessary to identify the extent to which the United States was able to successfully “shape” agreements that it did not ratify prior to 1991. Following the logic I outlined when defining the dependent variable, I draw this distinction by examining whether or not the final text of the treaty reflects the United States’ position. To do this, I drew upon the matrix of institutional outcomes presented in
the last chapter in order to code pre-1991 global treaties that the United States did not ratify.

Figure 10 shows a comparison of the three observable institutional outcomes for global treaties that the United States did not ratify between 1945-1990 and 1991-2005. As the table demonstrates, whereas the United States was able to shape the vast majority of treaties that it did not ratify prior to 1991, it has experienced significantly greater difficulty in achieving this goal in the unipolar world. Indeed, whereas there was an 11:1 ratio of global treaties in force that did/did not reflect the United States’ position between 1945-1990, the ratio has shifted to 4:5 in the unipolar era.

A closer examination of individual cases prior to 1991 reveals that domestic factors played a major role in preventing the United States from ratifying treaties that it had successfully shaped.\textsuperscript{45} In these situations, the executive branch exerted significant influence in the context of the treaty negotiations but could not overcome domestic hurdles to ratifying the treaty. For example, the United States was instrumental in advancing the Vienna Convention on the Law of Treaties but still has not ratified the treaty. Similarly, the United States played a crucial role in putting together the Convention on the Elimination of All Forms of Discrimination Against Women, but was

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
\textbf{Time Period} & \textbf{In Force/Not Reflect US Position} & \textbf{In Force/Reflect US Position} & \textbf{Not in Force/Reflect US Position} \\
\hline
1945-1990 & 1\textsuperscript{47} & 11\textsuperscript{48} & 0 \\
\hline
1991-2005 & 5\textsuperscript{49} & 4\textsuperscript{50} & 1\textsuperscript{51} \\
\hline
\end{tabular}
\caption{Status of Treaties that the United States has not Ratified by Time Period}
\end{table}

\textsuperscript{45} This is an outcome often referred to as involuntary defection.
not able to ratify the agreement because of domestic disagreements about whether it created obligations for the United States in the area of family planning (Jurewicz and Dawkins 2005, C:61). As these examples demonstrate, the United States successfully shaped and was satisfied with the vast majority of agreements that it did not ratify prior to 1991. In contrast, I argue that while domestic factors have contributed to the rise of institutions that the United States opposes in the unipolar era, other factors such as inept diplomacy and lower barriers to institutional formation have arguably played a more prominent role.

The data in Figures 11, 12, and 13 confirm Voeten’s (2004) finding that the items on the international agenda in the unipolar era are different from agenda items that were salient in previous time periods. For example, whereas penal matters, human rights, disarmament and environmental agreements account for 64% (22/34) of the global treaties in the unipolar era, they only accounted for 35% (20/56) of global agreements from 1945-1990. As I noted in chapter one, agreements in issue areas covered by treaties such as the CTBT, KP, ICC and OTL disproportionately affect the United States in

---

46 Source: United Nations Treaty Database Online.
47 The one treaty in this category is the International Convention on Economic, Social and Political Rights. This convention lacked support from the United States and other Western states when it was introduced. However, the majority of the United States’ allies ratified the treaty in the 1990s and the United States is currently the only Western democracy not to have done so (Jurewicz and Dawkins 2005, C:55).
49 Agreements in this category include the ICC, KP, OTL, Basel Convention on Hazardous Wastes and Cartagena Protocol on Biosafety.
50 Agreements in this category include Convention on Biological Diversity, Convention on the Rights of the Child, WHO Framework Convention on Tobacco Control and Law of the Sea
51 The CTBT is the only agreement in this category.
comparison to other states (Voeten 2004; Ikenberry 2003). This trend is reflected in the United States’ low ratification rate in these issue areas. Figure 11 compares the United States’ participation in global agreements in different issue areas across time. As the table demonstrates,

**Figure 11. United States’ Ratification of Global Treaties by Issue Area**

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Human Rights</th>
<th>Environment</th>
<th>Disarmament</th>
<th>Penal Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945-1990</td>
<td>66% (4/6)</td>
<td>100% (3/3)</td>
<td>100% (2/2)</td>
<td>100% (5/5)</td>
</tr>
<tr>
<td>1991-2005</td>
<td>50% (2/4)</td>
<td>45% (5/11)</td>
<td>33% (1/3)</td>
<td>29% (2/7)</td>
</tr>
</tbody>
</table>

Source: United Nations Treaty Database Online

the United States’ ratification in these issue areas is much lower in the unipolar era than in previous time periods.

As Figures 12 and 13 below highlight, it is important to note that virtually no global agreements have been established in the unipolar world in many domains including consular relations, customs, education and cultural matters, and navigation. While this trend is not surprising in and of itself (after all, previous agreements may have already resolved concerns in some issue areas), it does highlight that the items on the global agenda now are different, and potentially more problematic from the United States’ perspective, than in the past.
Conclusion

In this chapter, I outlined the processes by which treaties are negotiated and enter into force at the international level. I also presented the process by which the United States negotiates and ratifies international treaties at the domestic level. Next, I presented descriptive statistics about the United States’ involvement in global agreements over the past sixty years. The results of the analysis reveal a number of important trends. First,
while the number of global treaties established per year has rebounded to the same level as 1945-1960, the percentage of global treaties that the United States has ratified has decreased markedly in the unipolar era. Second, whereas the United States was able to “shape” the majority of treaties it did not ratify in previous time periods, the unipolar era has seen the emergence of treaties that do not reflect US preferences. Third, the items on the “agenda” in the unipolar era are different, and potentially more divisive from the United States’ perspective, than in the past.

When considered together, the results of the quantitative analysis highlight that the rise of institutions that do not reflect US preferences is a unipolar phenomenon that has been catalyzed by distinct causal mechanisms. In the next four chapters, I test my theoretical model and hypotheses about these nascent causal mechanisms through primary case study analyses of the KP, ICC and OTL and more brief analyses of the UN Program of Action on Small Arms and Light Weapons, Protocol on Procedures to Verify Compliance with the Biological and Toxin Weapons Convention and CTBT.
Chapter 5: The Ottawa Treaty on Landmines

With the end of the Cold War in the 1990s, and corresponding shift in security dynamics internationally, humanitarian issues began to achieve increased prominence on the international agenda. One of the most prominent issues on the human security agenda during the 1990s was anti-personnel landmines (APLs). According to the Ottawa Treaty on Landmines (OTL), APLs are mines “designed to be exploded by the presence, proximity or contact of a person and will incapacitate, injure or kill one or more persons” (Cottrell 2009, 227). In 1993, the United States Department of State estimated that there were 80 million unexploded APLs in the ground (Hidden Killers 1994). As a result of the devastation caused by these weapons, the APL issue began to receive increased international attention in the early 1990s.

This chapter proceeds as follows. First, I outline the predictions of my theoretical model and assess the degree to which the model applies to the case of the OTL. Second, I provide a brief history of the landmines issue. Third, I examine the United States’ previous propagation of the anti-landmines norm. Fourth, I analyze the role that diplomatic factors played in the United States’ inability to shape the agreement. Fifth, I assess how structural factors contributed to the emergence of the OTL. After that, I explore the validity of alternative explanations in accounting for this phenomenon. I conclude by briefly summarizing the case and assessing the applicability of the theoretical model to the OTL.

Assessing the Validity of the Model

As the diagram on the next page demonstrates, the OTL case conforms quite closely to the predictions of the theoretical model. While the United States was initially a
leader on the landmine issue, a convergence of factors resulted in the emergence of a global landmines treaty that did not reflect the US position. First, the United States maintained an inconsistent policy position during much of the negotiations. As a result of the United States’ ambiguous position on APLs, other countries (including important swing states) began to oppose the United States on the landmine issue. Second, the United States had previously propagated the norm that landmines should be banned, which provided ban proponents with significant momentum and the ability to portray the United States as hypocritical (Krebs and Jackson 2007).

**Figure 14: The Model Applied to the Ottawa Treaty**

Third, middle powers and NGOs had significant influence in the campaign to ban APLs and successfully created a stand-alone negotiating forum with majoritarian voting rules. This institutional setting undermined the United States’ ability to influence the
negotiating process. Ultimately, and in response to the United States’ inability to control the debate, a group of more than 120 states came together in Ottawa in 1997 to sign a treaty banning the use of APLs. The agreement that entered into force did not reflect the United States’ position.

**A Brief History of the Landmines Issue**

In contrast to most arms control agreements, the origins of international efforts to regulate landmines are in humanitarian law (Cottrell 2009, 227). While the use of APLs grew markedly during World War II, existing international legal institutions did not provide a way to address many concerns about these weapons. Indeed, when the UN International Law Commission, which drafts rules of international law, decided to exclude the laws of war from its activities in 1949, NGOs such as the International Committee of the Red Cross (ICRC) took on the primary responsibility for crafting the humanitarian rules of conflict (Price 1998, 619).\(^{52}\) One of the primary claims of international humanitarian law is that parties to a conflict do not have an unlimited right to use all weapons against an enemy. Two customary principles derived from this rule are that weapons that either cause superfluous injury or unnecessary suffering or strike soldiers and civilians without distinction should be prohibited. Since APLs violate these two customary principles, the ICRC had focused on curtailing the use of these weapons as early as the 1950’s.

However, during the early stages of the Cold War, states were by and large not receptive to placing limits on their ability to conduct warfare (Maslen 1998, 80-82). Despite having difficulties convincing states to address landmines, the ICRC continued

---

\(^{52}\) Malsen (1998, 80) defines international humanitarian law as “the branch of international law that regulates the conduct of warfare with a view to minimizing the suffering inflicted on civilians and combatants alike…”
pressing the issue in a variety of international forums. For example, the ICRC convened Conferences of Governmental Experts on the Use of Certain Conventional Weapons in both 1974 and 1976. The 1976 conference produced a number of draft proposals dealing with the recording of minefields, the use of mines, booby traps and other devises in populated areas, and remotely delivered mines.\footnote{Together these proposals served as a basis for Protocol II of the Conference on Certain Conventional Weapons adopted under the authority of the United Nations.}

The push for states to address the issue of landmines gained additional momentum in 1977 when Protocol I to the Geneva Convention provided a basis for legally regulating the use of conventional weapons according to the principles of international humanitarian law (Maslen 1998, 82). The Protocol formally codified the ideas that parties to a conflict must distinguish between civilians and combatants and that the use of weapons that cause suffering disproportionate to their military utility should be prohibited. Since the Protocol greatly increased the protection afforded to civilians during war, it “created the political opportunity structure necessary to take steps toward addressing landmines” (Cottrell 2009, 227).

After the passage of the Protocol, the UN General Assembly agreed in 1977 to hold a conference under UN auspices aimed at regulating the use of certain conventional weapons. The result of the two sessions held in 1979 and 1980 was the creation of the Conference on Certain Conventional Weapons (CCW). The use of APLs was regulated under Protocol II of the CCW, which specified that mines should not be directed at civilian populations. However, the Protocol was weak in that it only applied to international conflicts (not civil wars), provided no compliance mechanism and left many provisions up to interpretation by states (Maslen 1998, 83). Moreover, as it was
negotiated in the context of the Cold War, the CCW generally reflected the preferences of the superpowers and was based on a consensus-based process that effectively provided individual states with veto power over any of the body’s decisions. Although the great powers (including the United States) signed and ratified the agreement, which entered into force in 1983, the CCW ultimately only attracted fifty-three members (and thirty-two ratifications). This is because many developing world states considered the agreement to be too weak while other militarily important states did not want to be constrained by its provisions (Cottrell 2009, 232).

While progress on the APL issue was slow throughout much of the 1980s, the widespread proliferation of APLs and their use against civilians in a multitude of conflicts (such as Cambodia and Angola) that broke out during the 1980s kept the item on the international humanitarian agenda. With end of the Cold War and corresponding shifts in the international security landscape, the “attention of governments and many NGOs shifted from a potential nuclear conflict to actual wars on the ground and the weapons that were wreaking real destruction” (Price 1998, 619). This created a window of opportunity for “norm entrepreneurs” to shape the agenda. Whereas throughout the Cold War the focus on Super Power security competition meant that many governments and publics alike were largely unaware of the pernicious effects of landmine use, NGOs working in Cambodia, Central Asia and elsewhere increasingly witnessed the destruction wreaked by landmines firsthand (Williams and Goose 1998, 21). As such, the ICRC and other NGOs began to collect data on the subject and attempted to raise the issue with states through diplomatic and legal channels in the early 1990s (Maslen 1998, 84).
However, it was not until the International Campaign to Ban Landmines (ICBL) was formed in 1992 that an international movement began to coalesce. The ICBL—which was founded jointly by Handicap International, Human Rights Watch, Medico International, the Mines Advisory Group and the Vietnam Veterans of America Foundation (VVAF)—aimed to promote an international ban on the use, production, and stockpiling of landmines and to generate resources for humanitarian mine clearance and victim assistance. Given the magnitude of the task at hand, in the early days of the ICBL “few would have ever predicted that within five years an international treaty banning the use…of mines would be signed by over 120 countries…” (Williams and Goose 1998, 22). Fortunately for the ICBL, the world’s only superpower had already started taking actions that ensured that the landmine issue would gain greater prominence in the international arena.

**Previous Propagation of the Anti-Landmines Norm by the United States**

The United States was instrumental in promoting the anti-APL norm internationally in the early 1990s. Indeed, from the time that it became the first country to enact an export moratorium on APLs, to requesting that other countries also enact a ban on APL exports and introducing resolutions calling for an APL ban in the United Nations General Assembly, the United States effectively opened the APL issue up for debate on the international stage.

In similarity to the role played by NGOs in keeping landmines on the agenda internationally, domestic NGOs in the United States were the catalysts for early actions by the United States on this issue. As a result of its experiences operating a prosthetics clinic for landmine victims in Cambodia, the VVAF took a leadership role in
jumpstarting the campaign to ban landmines in the United States. In order to accomplish this task, the VVAF realized that it needed to strike partnerships on Capitol Hill. The VVAF found an ally in Senator Patrick Leahy of Vermont, who had been involved in landmines issues since the 1980s after visiting a field hospital in Nicaragua (Wareham 1998, 212-215).

After determining that a temporary export moratorium on landmines would be an easier sell in Congress than a global ban on landmines, Leahy’s staff began to assemble a coalition on Capitol Hill. In July 1992, Leahy introduced the Landmine Moratorium Act, which called on the Bush Administration to submit the CCW to the Senate for ratification and declared that the United States’ policy would be “to seek verifiable international agreements prohibiting the sale, transfer or export, further limiting the use, and eventually, the termination of production, possession or deployment of anti-personnel landmines” (Sigal 2006). Having attracted 35 co-sponsors in the Senate and significant support in the House of Representatives, the Leahy-Evans export moratorium was signed into law by President George H.W. Bush in October 1992. The initiative “placed the United States in the lead as the first country to enact legislation on landmines and gave tremendous impetus to the ban movement internationally” (Wareham 1998, 214).

Leahy continued to press the issue after the election of President William Clinton. While Leahy was ultimately unsuccessful in lobbying the White House to support a global ban, in 1993 he introduced another bill to extend the export moratorium on APLs for another three years. After attracting 60 co-sponsors, the bill was passed unanimously in the Senate. In August, the United States once again generated international publicity.

54 Given that the United States’ APLs exports had dipped to under two million dollars by 1992, Leahy’s staff concluded that a temporary export moratorium would not generate significant opposition from industry groups.
on APLs when the State Department published a prominent report entitled *Hidden Killers: The Global Problem with Uncleared Mines*. The report was important because it not only highlighted the calamitous effects APLs were having around the world, but also outlined the magnitude of the problem by estimating that there were “80-110 million A/P landmines in 64 countries, which maim or kill an estimated 500 people every week, mostly innocent civilians” (*Hidden Killers* 1994).

In November 1993, the United States further bolstered its global leadership on APLs when the General Assembly unanimously supported a resolution sponsored by the United States (and drafted by Leahy) calling for a global halt to the export of APLs. The United States continued its push for greater regulation of APLs in December when the Clinton Administration wrote to the world’s 44 mine producing countries and asked them to halt APL exports for three to five years (*Sigal* 2006, 19-23). While it is likely that the administration used this strategy for instrumental purposes in order to assuage the mounting pressure for action to ban APLs outright, it had the effect of signaling to other countries that the United States was making this issue a priority and added momentum to the ICBL’s nascent campaign.

Unfortunately for the United States, however, problems emerged only a week later at the UN General Assembly (*Sigal* 2006, 19-23). Though the United States once again sponsored a resolution on APLs, Mexico successfully added wording to the resolution at the last minute that expressed support for a ban on the production, stockpiling and proliferation of landmines as a goal for future talks. Thus, when the UN General Assembly included Mexico’s wording in the resolution and voted to hold a review conference for the CCW by a margin of 162-0, the United States was one of only
three members to abstain from the vote. While the vote foreshadowed challenges that the United States would face on the APL issue in the years to come, few observers could have predicted that an APL ban could come to pass in the face of US opposition. Ultimately, a series of diplomatic miscalculations by the United States would help this unlikely scenario come to pass.

**Diplomatic Factors: (Failed) Attempts by the United States to Control the Agenda on Landmines**

While the United States was a leader in advancing anti-APL norms and increasing the salience of the issue internationally, the 1993 vote at the UN was a signal that other countries were ready to move towards a ban on the weapons much more quickly than the United States. As such, the United States initiated action to head off a ban by attempting to create a regime that would regulate the use of APLs. Despite clear behind the scenes opposition to a ban, the United States nonetheless continued to make ambiguous statements on the issue publicly. Given the public controversy surrounding APLs, the United States’ rhetorical ambiguity may have been in a large part due to the pressure exerted by ban proponents, who attempted to stigmatize opposition to a ban (Krebs and Jackson 2007). In addition to enhancing the influence of ban proponents (including NGOs and middle powers), however, policy inconsistency also made it difficult for the United States to effectively coordinate its position with important swing states. In tandem, these factors provided important momentum for the Ottawa Process (OP).  

---

55 The Ottawa Process was the mechanism through which the Ottawa Treaty on Landmines was negotiated. Throughout the chapter, I use Ottawa Process when referring to the negotiations and the Ottawa Treaty on Landmines when discussing the treaty itself.
Recognizing that momentum for a ban was building, the United States continued to urge other countries to adopt moratoria on the export of landmines. This proposition appealed to other states because, in contrast to an international treaty with binding commitments, it would allow them to unilaterally enact and rescind a moratorium on APLs at their convenience. By 1994, the export moratorium had caught on in Europe with Spain, Slovakia, Switzerland, the Czech Republic, Germany, Italy and Britain all committing to export moratoria of different lengths (Sigal 2006, 38-43).

Energized by the spread of the export moratoria for APLs around the globe, Leahy collected 53 co-sponsors for a bill that would prohibit APL production in the United States. The executive branch took notice of this support and feared that the measure would pass by large margins in both the Senate and House of Representatives, potentially providing serious complications for military strategy. Thus, the Clinton administration convinced Leahy to table legislative actions until they could conduct a policy review on the issue.

In return for Leahy’s cooperation, the administration provided assurances that it would continue to promote a global ban on the exports of APLs (Sigal 2006, 38-43). For this reason, the campaign to ban landmines received an unexpected boost in September 1994 when President Clinton, reading off of a speech crafted by Leahy and his staff, became the world’s first major leader to call for a ban on the weapons. Speaking at the UN General Assembly, Clinton stated,

Today I am proposing a first step toward the eventual elimination of a less visible but still deadly threat—the world's 85 million anti-personnel land mines—one for every 50 people on the face of the earth. I ask all nations to join with us and conclude an agreement to reduce the number and availability of those mines.
Ridding the world of those often hidden weapons will help to save the lives of tens of thousands of men and women and innocent children in the years to come. (President’s Words, 1994)

Though the terminology Clinton used in the speech was intentionally vague, his call for action through the use of the words “reduce”, “ridding” and “elimination” seemingly put the United States in the pro-ban camp. Following the surprise statement by Clinton, the United States sponsored a resolution in the General Assembly that not only called on states to enact export moratoria, but also called for international efforts to seek solutions to the problems caused by APLs with a view towards their eventual elimination.

The combination of Clinton’s remarks and the introduction of the resolution led many observers to believe that the administration was following the leadership shown by Congress on the issue and would be willing to support a worldwide ban on APLs (Williams and Goose 1998, 27). The United States’ expression of support for a ban in 1994 was especially important, since up to that point only nine countries—Belgium, Cambodia, Columbia, Croatia, the Holy See, Ireland, Mexico, Nicaragua, Norway and Tunisia—had announced support for a total ban on the production, usage and transfer of APLs (Gruhn 1996, 2). For example, the ICBL commented that there

…would not be a chemical weapons treaty today had it not been for strong support from the United States...As the world’s most powerful nation, the United States has both a responsibility and an opportunity to press for a solution to eliminate the land mine threat...With strong American leadership we believe a complete ban is possible. (Wexler 2003, 588)

Ban proponents would use Clinton’s UN speech in the future as a basis for pointing out inconsistencies between the President’s words and the United States’ action on the APL issue. Moreover, Clinton’s expression of unqualified support for an eventual ban
undermined many of the arguments that the United States would eventually put forth to justify its position in subsequent debates about APLs.

At the same time that Clinton was making public statements to the contrary, the United States continued behind the scenes diplomatic efforts to undercut momentum towards a ban. In early 1995, the United States convened a group of landmine producing states in order to try to hammer out an international agreement that would significantly regulate the use of certain types of mines while initiating a comprehensive export moratorium. Given that domestic pressure in Europe to address the issue was at relatively low levels (the ICBL was not as influential as it would be in later stages of the negotiations), conditions seemed ripe for an agreement (Sigal 2006, 51-52).

Unfortunately, the negotiations did not proceed as easily as expected. According to Ted McNamara, one of the United States’ key negotiators in the talks, Europeans were initially skeptical of the United States’ proposals because they did not recognize that international pressure to act on APLs was building. McNamara remarks,

> The Europeans were sitting there thinking, we’ve had war for a hundred years now with landmines… [they] expressed skepticism about whether or not this was the kind of problem we were saying it was…On the continent the French, the Germans, the Italians were all saying, you guys are heading off half-cocked on this thing, and I was telling them, you guys have no idea how serious this is…What I was telling them in Rome was to get on top of it now. There was a reluctance to move very fast. (Sigal 2006, 52)

In order to address other states’ concerns, the United States even went so far as to propose a stand-alone forum for the agreement that would function outside the context of the CCW. The United States’ team also tried to reassure other states that there didn’t need to be any pre-conceived notions about what the control regime should be, but that creating an alternative forum would at least allow the major players to “shape” the
agreement. By the end of the talks, the majority of the individual countries had expressed conditional support for a new agreement.

Attempts to Form an Alternative APL Regime and Drama in the CCW

The United States continued consulting with allies throughout 1995 in an attempt to forge an agreement on the APL issue. Most notably, in the middle of 1995 the United States and Britain came to an agreement on the basic principles for a Landmines Control Regime. One important aspect of the framework was that it proposed allowing self-destructing or “smart” mines while prohibiting regular (“dumb”) mines. To that end, the proposal advanced by the United States and Britain proposed a binding framework that would require signatories to cut their stocks of “dumb” APLs, refrain from exporting APLs and gradually replace stocks with “smart mines”. In essence, the proposal attempted to frame the landmine problem as an issue of improper military use that could be solved by regulation (Hubert 2000, 14). Though the proposal was criticized by developing countries and pro-ban actors as establishing a double standard (since richer countries who could afford smart mines could keep them but poorer countries wouldn’t necessarily have access to the weapons), it was supported by the majority of developed world countries (Hubert 2000, 34).

In July of 1995, 30 countries reconvened in Rome in order to discuss the proposed regime. Following the talks, McNamara described the United States’ position: “We are in favor of…strictly controlling the use of landmines. We also wish to see controls placed on the export, on the stockpiling, and on the production of landmines. It is our considered opinion, after many months of working on the issue, that an outright ban on landmines is not possible at this time” (Sigal 2006, 53). As McNamara’s quote highlights,
a clear inconsistency had emerged between the United States’ stated desire to be a leader in promoting an APL ban (as reflected by Clinton’s speech) and its unwillingness to actually advance this position in negotiations. In short, the United States’ official stance had flip-flopped, a fact that would not go unnoticed by ban proponents.

Despite some progress on reaching a consensus in Rome, there were still significant differences between states, because some states were more dependent on landmines for their security than others. For example, whereas Finland (which shares a border with Russia) expressed significant reservations about giving up the ability to deploy landmines, Sweden (which has Finland as a buffer to Russia) was generally supportive of the initiative (Sigal 2006, 53). As a result of these divisions, as well as the fact that the review conference for the CCW was slated to begin later in the year, no independent agreement ultimately emerged from the Rome meetings. As such, the forum for the debate on APLs shifted to the CCW review conference.

In the meantime, and as per the UN 1993 resolution, preparations had begun for a review of the CCW landmines protocol beginning with a series of four governmental experts meetings in 1994 and early 1995. Three issues dominated the discussions: strengthening the regulation of landmine usage, extending the CCW to include internal conflicts, and formulating a procedure for verification. Because the CCW is a consensus based forum, proposed changes to the landmines protocol would necessarily need to apply to the lowest common denominator in order to be successful. For example, details pertaining to the technical regulation of mines proved to be a stumbling block when the Europeans objected to the requirement that anti-tank mines would have to self-destruct or
self-deactivate. As a result, the United States ultimately agreed that only APLs would be required to self-destruct or self-deactivate (Sigal, 2006, 64-65).

Throughout the run-up to the CCW review conference in September, the United States attempted to arrive at a consensus among allies and other major APL users such as China and Russia about how to proceed on the APL issue. However, by the end of the series of review conferences, the United States’ chief negotiator had concluded that the CCW would be “unlikely to reach a consensus on further limits unless a number of states withdrew their objections to key provisions” (Sigal 2006, 65). As expected, the CCW review conference in Vienna in September 1995 produced a deadlock. However, the members of the conference agreed to hold another meeting in Geneva in January 1996. In the face of yet another deadlock, the conference was abruptly dismissed after only a week and provisions were made for a final meeting in April 1996 (Sigal 2006, 82-83).

Mixed Signals

Despite the United States’ clear attempts to head off a landmine ban through diplomacy before and during the CCW process, the United States nevertheless continued to send mixed signals on its stance on an APL ban throughout 1995 and 1996. For example, in February 1996 Clinton signed a bill sponsored by Leahy into law, banning the use of APLs for one year. Moreover, according to Robert Sherman, the American diplomat working on APLs, the United States mistakenly reported to the Germans that it would change its policy soon and accept a total ban. As a result, the Germans decided “if this is where the train is going, let’s get in front of it…that gave the APL ban mainstream support and put pressure on France and the UK to do the same. If there was a point at which the Ottawa Convention reached a critical mass, it was probably the German
decisions” (Sigal 2006, 88). NGOs also misread the United States’ position. Stephen Goose, a member of the ICBL, comments that “quite a few people were convinced that the movement by certain countries in late 1995 and 1996 all happened in anticipation that the United States was going to do it…Germany, Canada and France had all seen the same signals and were trying to beat the United States to the punch” (Sigal 2006, 88).

After months of intense diplomacy by the United States, the conference re-assembled in April 1996 to amend the landmine protocol of the CCW. In the end, the parties were able to agree on an amended protocol that greatly strengthened a number of the treaty’s major deficiencies. For example, the amended protocol extended the application of the treaty to cover armed conflicts, outlined requirements for mine detectability, imposed restrictions on mine transfers, outlined more precise mine clearance provisions and set a specific date for the next review conference. Furthermore, the parties to the CCW stated that they would continue “to strive towards the goal of the eventual elimination of anti-personnel land mines” (Cottrell 2009, 235).

According to Sherman, the “CCW was a huge humanitarian benefit that the United States could take full credit for” and his biggest disappointment was that “Clinton never gave a speech on it” (Sigal 2006, 86). Indeed, instead of emphasizing the importance of the renegotiated protocol and its potential to alleviate the suffering caused by APLs, Clinton publicly outlined the United States’ new landmine policy. Responding to the results of a review conducted by the Joint Chiefs of Staff on the United States’ landmine policy, Clinton’s plan encompassed three main issues. First, the United States pledged to end the use of dumb mines by 1999 with the exception of Korea. Second, the United States announced that it would continue to use smart mines indefinitely until an
international agreement was reached. Finally, the United States pledged to pursue an international agreement to ban landmines (Cottrell 2009, 236).

The United States’ new landmine policy proved controversial for a variety of reasons. First, the policy was contradictory in that the United States claimed that it would use smart mines indefinitely even while pursuing a ban on APLs. Second, the new policy seemed to resemble a step-back from Clinton’s previous pronouncements at the UN in which he had voiced ambiguous yet unqualified support for a ban. As result of these issues, many observers viewed the United States’ new policy stance as a double standard and attacked its position (Cottrell 2009, 236).

In addition to lambasting the United States’ new policy on the APL issue, many ban proponents also criticized the revised CCW protocol itself as being deeply flawed and inadequate for addressing APLs (Hubert 2000, 16). For example, most provisions would not enter into effect for at least a decade, the agreement implicitly provided encouragement for “smart mines”, and there were no restrictions placed on anti-handling devices. As such, the ICBL argued that “the agreement would not go far enough to ban these indiscriminate weapons…the new agreement will be little better than a fig leaf behind which governments will continue to produce ever more sophisticated weapons” (Hubert 2000, 16).

Although the position advocated by the United States and other major powers (including the UN Security Council’s “Permanent 5”) had carried the day in the CCW, the number of states in favor of a complete ban had increased to 41 by the end of the conference. This shift occurred for a number of reasons. First, the CCW deliberations had increased the international prominence of the APL issue in a way that the pro-ban
coalition never could have achieved (Cottrell 2009; Williams and Goose 2000; Cameron 1999). Second, many countries had started to shift their stance in response to the pressure that the ICBL was able to generate domestically for action on APLs. In the words of a Canadian official, “Serendipity, good luck played a large role. We began at a time when the agenda was largely there…We were undistracted: the agenda parted like the red sea” (Cameron 1999, 97). The result of this convergence of events was ultimately the OTL.

**Structural Factors: NGOs, Middle Powers and Decreasing Barriers to Institutional Formation**

In addition to continued diplomatic mishaps (and in part as a result of them), structural factors also contributed to the passage of the OTL. Most prominently, with the end of the Cold War (and its corresponding security interdependencies) not only did middle powers and NGOs have a greater opportunity to take a leadership role in the context of international negotiations on the APL issue, but there was also more scope for these actors to coalesce around a single policy position. Moreover, by creating a stand-alone forum based on majoritarian voting principles, the pro-ban coalition was able to overcome great power opposition and move the OP forward. While the United States had multiple chances to maintain, and even retake, control of the agenda up to the meetings in Oslo, a combination of diplomatic and structural factors ultimately resulted in the success of the OP.

*NGO and Middle Power Influence Grows*

By the time the CCW review conference was held, the ICBL had steadily expanded internationally and, in cooperation with a core group of middle power states,
become one of the driving forces behind the international anti-ban campaign. While the ICBL had initially focused its campaign on major APL exporters in North America, Europe and Australia, its presence had gradually expanded internationally. Indeed, by 1994 the ICBL’s membership had grown to more than 80 NGOs, and the movement began to receive support from UNICEF and other UN agencies (Williams and Goose 2000, 23-28).

Throughout much of 1994 and 1995, the ICBL (and other NGOs such as the ICRC) primarily served in an advocacy role by lobbying governments and attempting to generate greater awareness about the APL issue worldwide. In the course of these activities, the ICBL attempted to portray the continued use of landmines as a humanitarian problem (as opposed to a problem related to inappropriate usage) that could only be ameliorated by a total ban on the weapons. For example, the ICBL publicized statistics that landmines annually kill and maim more than 26,000 people, 80 percent of which are civilians, and that more than 200 million mines are still active in over 60 countries (Rutherford 2000, 87). Moreover, ban proponents attempted to convince policymakers that APLs were illegal under international humanitarian law because they were causing disproportionate casualties to civilians (Rutherford 2000, 92). By adopting these strategies, the ICBL was attempting to re-frame the agenda item in ways that would enhance its ability to promote a total ban on APLs.

Though the ICBL had pushed for a review of the CCW, it was not optimistic that any real progress could be made in this consensus-based forum. As it became clear that negotiations in October 1995 would result in a deadlock, the ICBL determined that it would have to generate support from a small group of like-minded states in order to move
the issue forward. As such, when governments reconvened in Geneva in January 2006, the ICBL invited pro-ban states to a strategizing session to collaboratively plot a course forward (Williams and Goose 1998, 33).

To the shock of many observers, eight states—Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway and Switzerland—attended the meeting. As mentioned in previous chapters, middle powers have been increasingly assertive in advancing agreements in the realm of human security issues in the post-Cold War era (Behringer 2005). While the ICBL had been actively lobbying governments and trying to influence public opinion for years, this meeting marked a significant turning point since it formally established a close working partnership between middle powers and NGOs on the APL issue (Hubert 2000, 17). Additional meetings were subsequently held in April and May 1996. Following the conclusion of the final CCW conference in May 1996, whose achievements ban proponents derided as woefully inadequate, the ICBL held a joint press conference with UNICEF, the UN Department of Humanitarian affairs and the Canadian government to announce they would establish a parallel process to pursue a landmine ban (Hubert 2000, 17).

Recognizing that rapid progress towards a landmine ban could not be achieved in consensus based forums such as the CCW and Conference on Disarmament (CD), the Canadian government offered to hold a strategy meeting for international organizations, pro-ban states and NGOs on the subject in Ottawa in October 1996. From the perspective of the organizers, the meeting’s success would hinge on their ability to “launch pro-ban states towards a ban while preventing more skeptical members of the international community from blocking progress” (Lawson et al., 1998, 161). In order to determine
which countries were actually supportive of the process, the organizers decided to invite states to participate in the talks on the basis of self-selection. As such, a Final Declaration of the Ottawa conference was circulated prior to the conference and only states willing to commit themselves to its principles were invited to attend. States that would not agree to the process ex ante could also attend, but only as observers (Lawson et al., 1998, 161). In a major deviation from previous diplomatic norms, Canada also gave the ICBL a seat at the negotiating table. The unprecedented relationship between, and leadership exhibited by, NGOs and middle powers would become a defining feature of the OP.

The conference itself ultimately attracted seventy-four states—including Security Council members such as the United States, France and the United Kingdom—along with a wide range of international organizations and NGOs. While the conference addressed the full range of issues associated with APLs, divisions began to appear when several delegations proposed that the UN sponsored CD would be the appropriate forum in which to hold further discussions on APLs (Hubert 2000, 18). As a result, and despite the fact that more than 50 states ultimately agreed to support the Ottawa Declaration, the conference organizers felt that the process they had initiated was in danger of being undermined by the need to appeal to a lowest common denominator, which was precisely the problem with the CCW and CD that they were trying to avoid (Hubert 2000, 18).

As such, the organizers decided that drastic action would be necessary to ensure that the process was not compromised or stalled. Therefore, and once again violating diplomatic norms, Canada’s Foreign Minister Lloyd Axworthy shocked conference participants by announcing that Canada was planning to work with the ICBL to forge a treaty banning landmines within a year. In his closing remarks Axworthy stated,
I am convinced that we cannot wait for a universal treaty...I am convinced that we can start now...And today I commit Canada...to work with our global partners to prepare a treaty that can be signed by December 1997...I invite and challenge all of you to with us to attain that goal. (Cottrell 2009, 238)

Instead of waiting for support for a ban to actually emerge, Axworthy had set a deadline in order to force states into action.

*Axworthy Ups the Ante*

Given that participants in the Ottawa talks were caught completely by surprise by Axworthy’s unilateral declaration, the speech generated serious resistance and skepticism among ban supporters and opponents alike (Cottrell 2009, 238; Hubert 2000, 18). While Canada expected criticism for acting unilaterally and breaching diplomatic conventions, it did not anticipate that the statements would call the viability of the process into question (Tomlin 1998, 205). Indeed, even some of the strongest ban-proponents worried how a treaty promoted by middle powers could happen in less than 18 months with great power opposition and continued APL usage by dozens of states (Lawson et al., 1998, 206). According to Jody Williams of the ICBL, “We never talked publicly about how shaky it [the coalition] was in the first couple months after Ottawa...we kept up the smoke and mirrors routine” to keep momentum for a ban going (Sigal 2006, 159).

If the statement tempered the enthusiasm of pro-ban states, it catalyzed outright opposition from major powers. All five members of the UN Security Council initially opposed the OP, arguing that any response to the APL issue would be ineffective if it failed to address the security implications of a ban. Moreover, the United States and others were skeptical that a coalition of middle powers could have any impact on states’ use of APLs and criticized the Ottawa meetings as a “pep rally” and an “exercise in symbolism” (Sigal 2006, 148). Finally, the great powers, including the United States,
were suspicious of NGOs’ prominent role in the OP (Lawson et al., 1998, 164-165; Tomlin 1998, 197). Despite these misgivings, the United States had still not formally announced whether it would pursue the landmine issue in the CD or through the OP. In short, the United States was still “shopping” for a forum in which to address the issue.

In the latter part of 1996, the United States continued to send mixed signals regarding its support (or lack thereof) for an APL ban. In December 1996, the United States once again sponsored a resolution in the UN General Assembly calling for states to “pursue vigorously an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of antipersonnel mines with a view to completing negotiations as soon as possible” (Hubert 2000, 22). The resolution passed by a vote of 156-0 with ten abstentions. Critically, the resolution did not make any mention of the forum in which the APL ban should actually be negotiated. It did, however, provide ban proponents with additional momentum by providing evidence that there was tangible global support for further negotiations. Moreover, supporters of the OP could claim that they were pursuing a ‘vigorous’ deadline of December 1997 (Lawson et al., 1998, 170). Finally, and despite once again advocating a ban, the United States still had not decisively come out for or against the OP.

After prolonged internal deliberations, the United States formally announced in January 1997 that it would pursue the APL ban in the CD. In an attempt to maintain its leadership role on the issue, the United States also announced that it was making the APL moratorium permanent and capping its inventory of smart mines at the current level. The United States had also previously committed to destroying its stock of roughly 3 million dumb mines (Sigal 2006, 150). Thus, at the same time that the United States was calling
for a ban and advocating fast-track negotiations in the UN, it was also attempting to refer discussions to a slow-moving organization and outlining policies which implied that it would continue to use “smart” mines for the foreseeable future.

Given the difficulties that the organizers of the OP experienced in the aftermath of Axworthy’s speech, Canada reached out to the United States in late 1996 and early 1997 in an attempt to garner its support for the process (Sigal 2006, 160). To begin with, Canada provided the United States with the opportunity to participate in putting together the draft treaty. When the United States declined to participate in drafting the treaty, the Canadians put another offer on the table to obtain the United States’ support. Since the Canadians were worried that a single convention would “force states to make a single choice” on whether or not they supported a ban on APLs, they proposed that the process should include four separate protocols (one each for the production, stockpiling, use and transfer of APLs) (Sigal 2006, 160). The Canadians hoped this proposal would generate widespread support by allowing states to pick and choose which protocols to sign and the option to implement the protocols independently of one another.

If the United States had decided to join the OP and negotiate with the core group it is likely that it could have achieved significant concessions. Even as late as 1997, there was still significant opposition to the OP from the permanent members of the UN Security Council. As such, it seems likely that the United States would have had significant leverage to influence the form of the text that would be used as the basis for the Oslo negotiations (Hubert 2000, 56). Though there would have inevitably been opposition from NGOs, it would have been very difficult for NGOs to change the
exemptions that the core group of states put into their initial draft convention (the Austrian draft) and the agreement’s format (four different protocols) (Sigal 2006, 239).

Interestingly, the United States did not take advantage of these offers, despite the fact that either would have provided a measure of predictability and forestalled momentum for a global ban. For example, the United States had a good opportunity to shape the draft text to ensure that it reflected US preferences. Similarly, if the United States had accepted Canada’s offer of four protocols as opposed to a single one, it likely would have undermined other states’ support for a total ban since states would be able to claim that they were acting to eliminate APLs even if they ratified some, but not necessarily all, of the protocols. As the ban gained additional momentum in subsequent months after the introduction of the Austrian draft, however, pressure from NGOs ensured that these proposals were quickly taken off the bargaining table, never to emerge again (Sigal 2006, 239). From a diplomatic perspective, the United States’ rejection of Canada’s offer and general unwillingness to work with the core group of states would prove to be a major miscalculation.

In the meantime, Canada was quietly expanding its base of “core states”. The first meeting of the group was held in February 1997 and brought together Canada, Belgium, Norway, Austria, Switzerland, Ireland, Mexico, South Africa, the Philippines, Germany and the Netherlands. Recognizing that a global approach would be necessary to move the ban forward, states were delegated responsibilities for pressing the issue in their respective regional forums. The core group of states also agreed to hold global consultations in Brussels in June 1997 (Lawson et al., 1998, 167).
At this point it is important to note that it is highly unlikely that this group of middle powers would have been able to coalesce during the Cold War. In essence, the core states in the OP were working multilaterally and in close collaboration with NGOs to foster a global coalition that could overcome the opposition of great powers such as the United States, China and Russia (Sigal 2006, 162). Whereas it would not have been possible to go against the grain of superpower preferences during the Cold War, the transition to unipolarity provided middle powers with the ability to pursue autonomous policies in the realm of human security. Moreover, the end of the Cold War also eliminated many of the geographical cleavages (e.g. North-South and Communist-Capitalist) that had previously undermined global cooperation on human security issues. Thus, in short, middle powers were able to come together around the APL issue because they had both more ability to pursue an autonomous foreign policy and more potential coalition partners to choose from.

A New Diplomatic Strategy Emerges

Since early 1997, pro-ban forces had pursued a two-track diplomatic strategy. The first track focused on implementing the steps necessary to hold a diplomatic conference to negotiate the ban. The second track focused on generating support for the initiative through multilateral initiatives and a series of regional conferences (Lawson et al., 2006, 170). Both tracks would be crucial to the success of the OP.

In early 1997, Austria held an experts meeting aimed at discussing the potential components of an APL treaty. While the officials concluded based on a review of APL policies that they could gain the support of more than 100 countries under the right conditions, in practice very few states were willing to commit to a deadline and the ban
convention that had not yet even been proposed. Nevertheless, after providing travel subsidies for developing countries so that they could also attend, Canada and other core group members were able to attract 111 countries to meetings in Vienna in February 1997. Many of the countries that attended ultimately expressed a preference for conducting deliberations through the OP (Sigal 2006, 165). Interestingly, and despite the fact that they were committed to conducting negotiations through the CD, the United States, France, and Britain also attended the meetings to dispel the “impression that the positions of the core groups commanded the general support of the meeting” (Sigal 2006, 165). Ironically, by attending the meetings, the United States and others provided additional legitimacy to a negotiating process that they did not support.

At the core group’s next meeting in March, Canada circulated a road map outlining the steps necessary to conduct formal negotiations on APLs. As a newly created forum, the OP had the flexibility to formulate the rules that would guide the negotiations. However, given that it had been criticized as illegitimate by some observers because it operated outside of formal channels, the organizers also knew that they would have to adhere to diplomatic protocols to attract and maintain support from skeptics (Lawson et al., 1998, 172-173). In order to provide the process with greater credibility, the coalition asked Jacob Selebi, a senior diplomat from South Africa, to chair the negotiations. Moreover, Norway provided a boost for pro-ban forces when it agreed to host the next round of negotiations in Oslo in June 1997 (Lawson et al., 1998, 173).

While the “first track” of the diplomatic efforts was moving ahead steadily, NGOs such as the ICBL and ICRC held a series of regional conferences in February and April to advance the “second track” efforts. These grassroots conferences successfully generated
global momentum for a ban in the developing world (Lawson et al., 1998, 173). For example, after South Africa announced a unilateral move to ban APLs before a regional conference held in Mozambique, the host country announced its support for the initiative during the conference. By the end of the regional conference, 43 of 53 African states had committed to the ban. In tandem with traditional diplomatic strategies, a similar grassroots campaign unfolded in other regions around the world. For example, the ICBL held conferences in Stockholm, Sydney, Ashgabat, Manila and New Delhi to build support for the OP (Lawson et al., 1998, 173). As a result of the two-track strategy, the number of countries supporting the OP had increased from 30 to 70 by the time that a second meeting on the draft text was held in April 1997 in Bonn (Lawson et al., 1996, 174).

Fortuitous timing also played a role in mounting support for the ban (Cameron 1999, 96). Following the election of left-leaning governments in Britain and France, both countries reversed course and voiced support for the OP, though they argued that the issue should be pursued in the CD too. In addition to providing the campaign with enhanced momentum and credibility via major power support, this shift also undermined the United States’ efforts to convince countries to pursue the issue through the CD alone. For its part, the United States nonetheless remained committed to the CD.

As a result, talks on the APL issue continued to move forward in the CD. However, achieving significant progress proved a daunting task. For example, hampered by internal divisions, members of the CD even had difficulty agreeing on whether to include APLs in its annual work plan. By the time that the CD appointed a special
coordinator “to hold talks about holding talks” in June 1997, it was clear that it would be impossible to achieve a progress in the body on the APL issue (Hubert 2000, 20).

In retrospect, it seems quite obvious that the CD was an unlikely forum for achieving an agreement on APLs. According to Eric Newsom, the deputy assistant secretary of the state in the bureau of political-military affairs, the United States’ outright support of the CD “was a recipe for isolation and embarrassment for the United States” (Sigal 2006, 148). To begin with, the CD functions on a consensus basis, meaning that individual states have veto power over proposals. At the time that the United States and other countries were proposing that the APL issue be discussed in the CD, states like Mexico and Indonesia wanted the CD to continue to focus on nuclear disarmament issues before discussing APLs. On the other end of the spectrum, multiple members of the CD opposed a ban and did not want the CD to consider the issue at all. Even states in favor of action on APLs were divided. For example, France and Britain supported a phased approach to scaling down landmine use while Austria and Ireland were supportive of a total ban (Sigal 2006, 161). As these examples demonstrate, the CD was clearly not well positioned to take action on the APL issue. By publicly throwing its support behind an institution that was bound to fail, the United States effectively undermined its ability to influence the outcome of the OP.

The Agenda Shifts

From the time that Clinton made his speech calling for an eventual ban on landmines in late 1994 to the failure of the CD to move forward on the issue in June 1997, the momentum towards a ban had grown markedly stronger. First, the consensus-based forums (such as the CD and CCW) that were dominated by the great powers had been
discredited and were no longer viewed as forums that could adequately address the APL issue. Moreover, the United States’ allies had slowly begun to alter their stance and support a comprehensive ban. The tide was indeed turning in favor of ban proponents.

_The Only Game in Town_

With talks in the CD officially stalled, the OP was suddenly the only institution around that had the mandate to move towards an APL ban (Hubert 2000, 20). Despite the United States’ opposition to the OP, talks in Brussels held in June 1997 attracted 155 states. In order to force states to act, organizers once again circulated a draft proposal and informed participants that only those states who would publicly commit to the essential elements of the treaty would be able to participate fully in the final round of negotiations in Oslo. In the end, 97 countries signed the Brussels Declaration. Critically, the majority of NATO members, including major power such as Britain and France, moved firmly into the pro-ban camp after Brussels, leaving the United States largely isolated in the forum (Lawson et al., 1998, 175; Hubert 2000, 20).

Though ban proponents were still not completely confident that countries would be prepared to sign a legally binding treaty, the expression of political support that occurred in Brussels was a significant achievement. The widespread support that the declaration attracted proved that many countries, including those that were normally inclined to follow the United States’ leadership, had decided that they could no longer wait for Washington to make a decision on whether or not to support the OP (Lawson et al., 1998, 175). Instead, states had publicly and collectively committed themselves to a set of principles that did not have the United States’ consent, a fact that made it much
more difficult for them to back down in the face of subsequent demands by the United States (Fearon 1994).

Throughout the talks, the United States’ chief negotiator sat in his hotel room holding impromptu bilateral talks in an attempt to persuade other countries to grant the United States an exception to use dumb mines in Korea and smart mines elsewhere. The strategy proved unsuccessful, largely because of NGO involvement in the negotiations. Whereas in the past the United States might have imposed its will on allies in bilateral talks, the presence of NGOs in the negotiating forum undermined traditional backroom diplomatic wheeling and dealing (Sigal 2006, 173). In short, arms control discussions were not proceeding along the same lines that they had in the past.

By the end of the Brussels conference, it was beginning to become clear that the United States was losing control over how the agenda was evolving. As Newsom explains, “At first they [the Europeans] were all against it, now they had flanked us on the other side…By this time [after Brussels], the Europeans and others we had been talking to were…backing away from us like mad” (Sigal 2006, 55). Given that the United States was used to getting its way in multilateral forums, the advice provided by the United States’ negotiators after Brussels was largely ignored. According to Newsom, “We pleaded for the United States to seize control of this issue while there was still time…After Brussels the issue became, should we become part of the Ottawa process or not…the longer we took to make up our minds, the less likely we would be to reassert leadership” (Sigal 2006, 174).
End Game Approaches

Despite the momentum that the OP organizers had generated in support of a ban, Canada continued to try to convince the United States to participate in the meetings in Oslo in September 1997. As it became more apparent that the APL issue was not going to go away, the OP slowly began to receive more attention in the upper echelons of the US government, including from Secretary of State Madeline Albright. As a result, the United States and Canada held bilateral talks in order to hammer out a proposal that would allow the United States to participate in the negotiations (Sigal 2006, 192). When no agreement was struck, the United States rejected Canada’s invitation and decided to avoid the conference. However, Canada’s willingness to compromise with the United States left many US policymakers with impression that “people wanted the United States there so badly that they would compromise on the question of banning all antipersonnel landmines if we gave them a fig leaf to do it” (Sigal 2006, 192). In short, despite all of its previous mistakes, US officials thought they would still be able to influence the outcome at Ottawa.

Interestingly, many observers held similar sentiments. While Canada was convinced that the United States’ involvement would increase the likelihood of a credible treaty, many ban-proponents were afraid prior to the conference that the United States would actually decide to participate. If this occurred, many observers anticipated that the talks would break down in the face of power politics and superpower influence (Hubert 2000, 24-25). Moreover, ban proponents would no longer be able to use the United States’ obstinacy as a way to generate global support for the ban (Sigal 2006, 192). For example, Mark Perry, a member of the VVAF, explains “that was always our strategy.
We knew if we could keep the United States off the treaty, we could make the argument to Gabon, Jamaica [and] South Africa that this is something the United States wouldn’t do and we could make the United States look bad” (Sigal 2006, 202).

After heated internal debates, the United States surprised the world on August 18, less than two weeks before the meetings were slated to begin, by agreeing to sign the Brussels Declaration and attend the Oslo meetings as a full participant. The Oslo conference ultimately attracted 87 registered states (that could participate in the negotiations), 33 observer states, and representatives of NGOs and international organizations (Lawson et al., 1998, 177). The conference was slated to run for three weeks, with Selebi elected as chair. In a deviation from how the vast majority of arms control negotiations are typically conducted, the delegates agreed that decisions would be made by a two-thirds majority vote (Lawson et al., 1998, 176). Critically, this one-state, one-vote approach provided developing world countries and major powers alike with the same voting rights. In short, the negotiating format presented the United States with major challenges.

However, instead of attempting to shape the negotiations during deliberations, the United States showed up at Oslo with a set of “non-negotiable” demands, including a definitional change allowing the use of mixed system anti-tank mines by the United States, a geographical exemption for the use of landmines in Korea, a nine-year deferral period for compliance with important treaty provisions, more verification measures and the right to withdraw if its national interests were threatened (Hubert 2000, 25).

Though the framework established in Brussels was firmly in place, there was still a significant amount of negotiating to be done regarding the OTL’s final form at Oslo. In
retrospect it seems likely that had the United States attended the conference without making “non-negotiable” demands that created a double standard between it and the rest of the world, the outcome of the Oslo meetings may have been markedly different (Hubert 2000, 25-26). However, when the United States presented non-negotiable demands, it drastically altered the dynamics of the negotiations. As Newsom comments, “organizers of the conference, the most powerful NGOs, and the little inner circle of eight or ten countries that ran things were only worried about what we might do until the end of the first day after…I laid out the five red lines. Then they knew that they were in charge, that we had blown any chance we had of changing the atmosphere” (Sigal 2006, 206). The United States’ ability to control the agenda had officially been lost.

As a result of the United States’ statements, early conference discussions focused on US demands instead of addressing a number of issues that could have potentially divided delegates (Hubert 2000, 25). According to a Canadian diplomat, “the central fault line of the Oslo conference quickly formed along the three most problematic proposals by the United States…” (Sigal 2006, 204). While there was the potential for compromise on a number of the United States’ individual demands—some of which attracted support from potential swing states such as Britain, Brazil, Japan and Australia—the United States’ negotiating team was unable to uncouple the demands to allow for discussion of the individual issues. As a result, the United States was unable to generate support for its positions among important allies (Lawson et al., 1998, 179).

Moreover, the United States’ perceived arrogance became a tool that ban proponents and the ICBL used to rally support among potential swing states—and to pressure the United States’ allies—to pass a strong treaty that would not accommodate
exceptions for the United States. For example, NGOs lobbied hard against accommodating the United States’ demands, including using shaming techniques to pressure wavering delegates to hold firm to previous agreements (Fehl 2008, 270). Similarly, statements made by US Senator Jesse Helms that “the US negotiation position in Oslo is our bottom line…not a starting point for debate” generated positive free media coverage for ban proponents while increasing the international community’s resolve for a complete ban (Cottrell 2009, 242).

By the end of the second week, the United States’ proposals still had not garnered any significant support. While the United States ultimately dropped two of its “redlines”, the concessions were ultimately too little and too late. In a last ditch attempt to work out an arrangement that the United States would find acceptable, the United States’ team asked the plenary for a three day recess so it could engage in some last minute diplomatic maneuvering (Lawson et al., 1998, 178-180. Since the United States was clearly making an effort to strike an agreement that would allow it to sign the treaty, other states were uncertain even in the late stages of the negotiations about whether or not the United States would actually join the OTL (Wexler 2003, 588).

Over the three-day recess, top government officials in Washington were finally engaged on the APL issue for the first time. President Clinton even went so far as to call other heads of state to lobby in favor of the United States’ position. However, these efforts ultimately proved unsuccessful (Sigal 2006, 213-214). For example, Clinton had a conversation with Nelson Mandela pleading with him unsuccessfully to accept the United States’ revised conditions for the treaty. According to one observer, “this was an

---

56 The United States’ three remaining redlines pertained to the right of withdrawal, the nine-year deferral, and an exemption for its anti-tank systems.
important moment in history when the President of the United States asked for something, didn’t get it, and there were no negative consequences for the people who didn’t give him what he asked for” (Sigal 2006, 214). According to Canadian Foreign Minister Lloyd Axworthy, the delegates at Oslo “were not prepared to pay any price” for the United States’ participation. “We have a treaty that in an unambiguous way bans anti-personnel mines. We have support from every region in the world, and there are no exceptions and no loopholes…It really sets a new standard for a weapons treaty” (Arms Control 1997).

On September 17, the United States’ negotiators announced that they had no further proposals to make to the conference. Later that day, President Clinton held a press conference where he announced he could not sign the treaty. In defending the United States’ position, Clinton explained that “our refusal to sign does not indicate a lack of dedication to our common goal of eliminating antipersonnel landmines from the face of the earth,” and reminded the world that he was “the first world leader to call for the elimination of antipersonnel landmines” (Wareham 1998, 212). Eric Newsom comments, “How did it happen that the United States found itself isolated and defeated on an issue on which the senior leadership, the president, and the secretary of state, wanted a positive outcome? There were many reasons why we were unsuccessful….but the decisive factor was the inability to engage at all political levels on what had become a political issue until it was too late” (Sigal 2006, 240).

The next day the revised Austrian text was approved by the delegates and Selbi closed the conference. In December, 122 countries arrived in Ottawa to sign the OTL. The OTL officially entered into force in 1999 after passing the forty-country ratification
threshold. As of May 2010, there were 156 state parties to the OTL. The United States is still not one of them.

**Alternative Explanations**

At this point, it is important to examine the plausibility of alternative explanations including realism, domestic politics and issue linkages. I argue that none of these alternative explanations can account for the outcome of interest as persuasively as the variables outlined in the theoretical model.

*Realism*

Realists would have difficulty accounting for the fact that the OTL was accepted on a global basis despite the United States’ opposition and its preponderance of power in the international system. To begin with, the United States made multiple unsuccessful attempts to derail the OTL by initially referring discussions to the CCW, later advocating for the use of the CD, and finally threatening not to attend the conference in Oslo. In the end, the United States attended the Oslo meetings and attempted unsuccessfully to elicit concessions so that it could join the treaty. This last-ditch attempt to regain control over the agenda involved direct involvement by President Clinton and other senior Cabinet members. In short, the United States tried to regain control of the agenda at the end of the OTL negotiations but failed to do so.

Most tellingly, even though the United States did not join the OTL, it has responded to the global norm established by the OTL by significantly altering its policy on APLs. For example, following the passage of the OTL, the United States drastically increased funding for global demining efforts, promoted international landmine regulations in the CCW, adhered to a unilateral moratorium on landmines use, and even
invested in developing alternatives to APLs so that it could adhere to the global norm (Wexler 2003, 599). Realists would have significant difficulty accounting for why this shift in US APL policy occurred. As these examples highlight, the United States not only attempted to achieve its objectives during landmine negotiations, but also changed its policies on APLs after it was unable to shape the treaty. As such, the realist model clearly does not account for this case.

*Domestic Factors*

While domestic factors played a role in the United States’ inability to shape the form and content of the OTL, the case study data suggest that the factors outlined in this chapter have more explanatory value in accounting for this outcome. At the time that Clinton announced his support for a global ban in 1994 (which was approved by the Joint Chiefs of Staff), the measure was relatively uncontroversial. After all, the Senate had already enacted an export moratorium on the weapons and there were no significant financial interests in the United States that opposed the ban. Even up through the CCW review conference, top Pentagon and civilian officials did not take any interest in the APL issue and continued to delegate responsibilities for setting policy to officials at lower levels (Sigal 2006, 64-67).

When the APL issue eventually began to rise in prominence throughout 1996 and 1997, divisions began to appear within the foreign policy bureaucracy when the military came out in opposition to a total ban, arguing that it needed to continue to use “smart mines”. However, the evidence suggests that had Clinton actually pushed the military, he could have obtained their consent on the APL issue (Sigal 1996, 239). For example, General John Shalikashvili, then chairman of the Joint Chiefs of Staff, had explored how
war could be conducted without using APLs because he expected that Clinton would force the military to comply with a total ban in 1996. Moreover, if the administration had actually pressed the military on the utility of APLs, it would have found that the United States did not even control the landmines that are deployed in Korea (Sigal 1996, 239). Nonetheless, Clinton did not engage effectively with the military in 1996 and shifted the United States’ policies on APLs in response to their concerns. This switch in policy led to policy inconsistency in the US position and undermined its bargaining position throughout the OP.

At the same time that domestic discord influenced the United States’ bargaining position, however, it is important to note that the United States could have forged an agreement that would have satisfied domestic constituencies (including the military) if it had only implemented a more effective diplomatic strategy internationally. Indeed, according to Stephen Goose of the ICBL,

> If some of our opponents had taken the ban a little more seriously, then the United States could have done any number of things, starting with the CCW and moving forward to the days of what became the Ottawa process, to [effect] the outcome greatly, as was shown by how close they came, despite having bungled it for years, to having it radically altered in their favor at Oslo. (Sigal 2006, 239)

As it was, however, the United States did not apply its diplomatic capital on the APL issue on the international scene until it was too late. Indeed, top officials did not even become involved on the APL issue until a few weeks before the Oslo Conference. Thus, it appears that domestic factors only acted as a constraint in this case because of the fact that the United States had implemented an inadequate diplomatic strategy to begin with. In other words, while domestic factors influenced the United States’ negotiating position, its failure to formulate and implement an effective diplomatic strategy at the international
level arguably played a more significant role in the United States’ inability to shape the treaty.

**Issue Linkages**

Throughout the case, there was no indication that issue linkages played a role in how the negotiations unfolded. For example, there were no other major negotiations going on at the time that other states attempted to link to the negotiations on APLs. As such, it does not appear that this variable played any significant role in this case.

**Conclusion**

The OTL case conforms closely to the expectations of the theoretical model. In the case of the OTL, the United States initially acted as a leader on the APL issue and provided critical momentum to pro-ban forces. As negotiations moved forward, the United States switched its position from being supportive of a full ban to saying that it would continue to use smart mines and deploy dumb mines in Korea. Despite the shift in its position, the United States continued to send ambiguous signals about its position that confused both adversaries and allies. While it was able to keep swing states such as France and Britain aligned with its positions up to the end of CD, the United States’ inability to exhibit leadership in this forum ultimately led these states to voice support for the nascent OP. At the same time, the United States’ initial unwillingness to participate in the OP undermined its capacity for leadership within that forum and effectively excluded it from shaping future discussions.

Though they were also involved in putting the APL issue on the international agenda from 1994-1996, middle powers and NGOs began to increasingly control how the agenda item was defined after the collapse of CD talks. By creating a stand-alone
negotiating forum that utilized majoritarian voting processes, middle powers and NGOs took diplomacy out the consensus-based forums in which the United States (and other great powers) had effective veto power. The United States’ continued failure to express a firm policy position on the issue led important swing states to gradually deviate away from its sphere of influence in the months leading up to the Oslo meetings. When the United States eventually agreed to participate in Oslo, it presented a package of non-negotiable positions that provoked resistance and further undermined its agenda-setting power. Ultimately, as a result of the convergence of the factors described above, the delegates at Oslo passed an agreement banning APLs that did not reflect the United States’ preferences.
Chapter 6: The Kyoto Protocol

Following a bevy of scientific research on the topic in the 1970s and early 1980s, the issue of climate change (CC) began to gain increased prominence on the international agenda in the late 1980s. While CC was initially viewed by states and the general public as primarily an environmental issue, it was transformed into an economic issue during the over 15 years of international negotiations on the topic. Given that the benefits of reducing emissions to combat climate change are diffuse while the costs of cutting emissions are concentrated in individual domestic economies, bringing countries together to establish a global agreement on CC would prove to be a major challenge for the international community.

This chapter proceeds as follows. First, I outline the predictions of the theoretical model and assess the degree to which the model applies to the case of the KP. Second, I provide a brief history of CC as an international issue. Third, I explore the United States’ previous propagation of the CC norm. Fourth, I analyze the role that diplomatic factors played in the United States’ inability to shape the KP. Fifth, I assess how structural factors—including the use of majoritarian decision making rules—contributed to the emergence of the KP. After that, I highlight how middle power/NGO influence was not a major factor in influencing the outcome of the CC negotiations. Next, I explore the validity of alternative explanations in accounting for the United States’ inability to shape the KP. I conclude with a brief summary of the results of the case study analysis.

Assessing the Validity of the Model

As the figure on the next page highlights, the case of the KP conforms partially to the predictions of the theoretical model. In the case of the KP, the United States was not
an early leader in promoting the CC norm. Moreover, Middle Powers/NGOs did not have a significant influence on the outcome of the negotiations. According to the theoretical model, the United States should have an easier time shaping agreements in situations with low middle power/NGO influence and where it has not previously propagated the norm under discussion. In contrast to the predictions of the theoretical model, the KP still did not reflect the United States’ preferences even though these variables were both coded as “no”.

**Figure 15: The Model Applied to the Kyoto Protocol**

The other variables presented in the theoretical model—including policy inconsistency, lack of effective engagement with swing states and lack of a consensus-based process—have significant explanatory power in the case of the KP. A variety of
factors undermined the United States’ ability to shape the KP’s final form. First, the United States shifted its policy position dramatically during the course of the negotiations, even in relation to agreements and positions to which it had already consented. This undermined the United States’ bargaining power and made it appear inconsistent in the context of the negotiations. Second, the negotiations at Kyoto were conducted using de facto majoritarian decision making rules. This decision making method effectively deprived the United States of veto power during the final stages of the Kyoto talks. Finally, the United States lost the support of swing states when it decided to withdraw from the KP negotiations. Indeed, and somewhat paradoxically, the KP only generated the level of support necessary to enter into force because the United States withdrew from the negotiating process. Taken together, these variables led to the emergence of the KP—an international agreement that does not reflect the United States’ preferences.

A Brief History of the Climate Change Issue

Though the science underlying CC was presented over a century ago, the issue only began to gain prominence in the international arena in the 1980s. From 1960 to the mid 1980s, the scientific community was the driving force in drawing attention to the issue of CC in the international arena. Over time, a number of scientific discoveries increased the prominence of the CC issue (Bodansky 2001, 24). First, scientists concluded that concentrations of carbon dioxide (CO2) in the atmosphere were increasing. Second, scientists started focusing on greenhouse gases other than CO2 and concluded that the warming effect of these gases was roughly equal to that of CO2. This indicated that the global warming issue was much more problematic than people previously believed. Third, scientists developed more sophisticated climactic models, which
increased their confidence in CC predictions. For example, after reviewing the models, a US National Academic of Science report concluded that “there is no reason to doubt that CC will result and no reason to believe that these changes will be negligible” (Bodansky 2001, 24). Finally, a reassessment of historical temperatures revealed that average global temperatures had been increasing since the mid 1900s (Bodansky 1993, 458-460).

While the development of scientific knowledge set the stage for political and public interest in the problem of global warming, Bodansky (2001, 26-27) argues that three factors ultimately led governments to start taking action on this issue. First, a group of Western scientists working on CC began to promote the issue internationally. Drawing on their connections with international organizations like the United Nations Environment Program (UNEP) and prominent policymakers, these scientists helped expose policymakers to the issue of global warming by publishing articles, holding conferences and lobbying lawmakers. Through these activities, scientists were able to transform policymakers’ views of the implications of CC from a theoretical abstraction to an actual possibility.

Second, environmental issues gained prominence in the late 1980s in response to public concern on a wide range of subjects ranging from deforestation to the international trade in hazardous wastes (Bodansky 2001, 26-27). Most notably, the discovery of the ozone hole over Antarctica and subsequent confirmation that it was caused by human activities (through the emissions of chlorofluorocarbons) raised the prominence of atmospheric issues on the international agenda. Finally, the heat wave and drought in North America during the summer of 1988 raised the prominence of the global warming issue in the United States and Canada (Bodansky 2001, 26-27).
By 1988, CC was beginning to emerge on governments’ foreign policy agendas. Governments, many of which were deeply skeptical of the results of reports on CC released by scientists and NGOs, requested that the World Meteorological Organization and UNEP establish the Intergovernmental Panel on Climate Change (IPCC) to carry out studies on the potential effects of CC and assess potential responses. In establishing the IPCC in 1988, whose major proponent was the United States, states were attempting to take control over the evolution of an increasingly political agenda item that had previously been dominated by scientists and other non-governmental organizations (Bodansky 1993, 464-465).

In response to growing interest in the issue, Canada sponsored an international CC conference in Toronto in order to promote cooperation between scientists and policymakers. The conference ultimately called for a number of actions including: a twenty percent reduction in global emissions by 2005; the development of a global framework to protect the atmosphere; and the establishment of a World Atmosphere Fund financed by a tax on fuel consumption in industrialized countries. Though the conference was not a governmental meeting per se, it was the most prominent CC meeting to date (Bodansky 1993, 462). The UN General Assembly also passed a resolution calling CC “a common concern of mankind” and advocating the creation of a “possible future international convention on climate”. Nevertheless, many countries (including the United States) still opposed the formation of an international treaty on CC, arguing that effects of global warming remained unclear (Bodansky 1993, 462).

Global momentum to establish a global framework on CC continued to grow during 1989. While the IPCC working group continued to hold meetings and talks on the
topic throughout the year, states also held a series of high profile meetings. To begin with, the Hague Conference—which was sponsored by the Netherlands, France and Norway and attended by twenty-four countries—proposed establishing an international institution based on majoritarian decision making rules that could combat global warming (Bodansky 1993, 466). Moreover, at the G-7 summit in Paris, members of the group called for “common efforts to limit emissions of carbon dioxide and other greenhouse gases” and promoted the concept of a “framework or umbrella convention on CC” (Bodansky 1993, 466). Finally, the Noordwijk Ministerial Conference on Atmospheric Pollution and CC was attended by representatives of sixty-six countries (including the United States). The conference was important because it was the first high-level political forum focused specifically on CC issues. It was also the first time that a significant number of delegates from developing countries had attended CC meetings57 (Bodansky 1993, 466).

While the Noordwijk Conference produced consensus on some issues, it also demonstrated the challenges that would ultimately come to typify future global environmental negotiations (Bodansky 1993, 467). For example, while the declaration included a number of provisions that were important to developing countries, most participants from industrialized countries assumed that developing countries would also be required to reduce emissions. Furthermore, whereas discussions on CC had previously focused on the environmental ramifications of the problem, talks increasingly shifted towards the economic aspects of CC. This shift not only highlighted significant differences between industrialized countries on how to most effectively combat CC but also between the global North (that was concerned about costs) and South (that was

57 Developing countries were not previously involved in CC negotiations.
concerned about development issues and financial and technological transfers) (Bodansky 1993, 467). Thus, while the conference’s declaration called for the stabilization of greenhouse gas emissions, opposition from major powers such as Japan, the United States and the Soviet Union prevented delegates from adopting a European-sponsored proposal to establish clear targets and timetables for the reduction of emissions.

Despite these divisions, global pressure to establish a global treaty continued to mount in 1989 and 1990. In response to these pressures and the public embarrassment that occurred after the White House attempted to manipulate congressional testimony about CC, the United States changed its position and announced in May 1989 that it would support the formation of a global framework convention on CC (Bodansky 1993, 474). The IPCC’s first report, which was released in 1990, also added momentum to the pursuit of a CC regime by providing estimates that the earth’s temperature would rise by a historically unprecedented .3 degrees Celsius per decade if no action was taken. At the same time, the IPCC left the science of climate change open to debate by admitting that it could not definitively conclude that CC was caused by human activities, as opposed to natural causes (Bodansky 1993, 475).

As a result of the change in the United States’ position and the information presented in the IPCC’s report, the UN General Assembly voted in late 1990 to establish the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC) to manage the CC negotiations (Bodansky 1993, 474). The Assembly’s goal was to pass a framework convention on CC at the “Earth Summit” in Rio de Janeiro (Rio) in 1992. After two years of intense negotiations the plenary (which included the

---

58 James E. Hansen, the director of NASA’s Institute for Space Studies, had testified that he was 99 percent sure that the causes of hot temperatures in 1988 was caused by humans and not due to natural variations (Schroder 2001, 34).
United States) passed the legally binding United Nations Framework Convention on Climate (UNFCC). The treaty was subsequently signed by over 150 countries. Though the UNFCC represented only a first step in the battle to combat CC, countries had nonetheless started down the long road to the KP (Oberthur and Ott 1999, 43).

Previous Propagation of Environmental Norms by the United States

Though the United States was a leader on a variety of environmental issues over the last 50 years, it has not historically been a major promoter of CC norms. In this section, I briefly outline the historical role that the United States has played in the realm of international environmental politics. I also explore the United States’ role (or lack thereof) in relation to CC initiatives and analyze the factors underlying the United States’ success in controlling the agenda in early CC negotiations.

Promotion of Environmental Norms by the United States

While the United States is often portrayed as a laggard in the realm of environmental politics, few observers realize that the United States has historically been a leader in this area (Park 2000). At the domestic level, the United States was one of the first countries to pass environmental laws and establish regulatory institutions for the environment, including the Environmental Protection Agency which was founded in 1971. The agency became a model for other countries that established similar institutions during the 1970s. Moreover, Congress passed a variety of bills in the 1980s to increase funding for CC initiatives, including the Global Climate Protection Bill in 1987 (which aimed to establish a national strategy on CC). Finally, the United States provided significant funding for CC research during the 1960s and 1970s and scientists from the
United States were instrumental in generating awareness about CC and advocating for action on this issue (Schroder 2001, 34).

At the international level, the United States was also a leader on a wide range of environmental issues including endangered species, the international whaling regime and ocean dumping (Falkner 2005). Most prominently, the United States was the driving force behind the 1987 Montreal Protocol agreement to regulate chlorofluorocarbons (CFCs). Since the 1970s, the United States had actively led the fight to stop the destruction of the ozone layer, even going so far as to enact a unilateral ban on CFCs. The Montreal Protocol, which was adopted using a consensus-based voting mechanism, built upon the non-binding 1985 Vienna Convention for the Protection of the Ozone Layer and mandated that signatories commit to reducing CFCs by 50 percent by 1999.

The Protocol was established in a large measure because the United States used its diplomatic leverage to persuade skeptical European countries to sign onto the treaty (Sussman 2004, 260). Moreover, and in contrast to future CC negotiations, the Vienna Convention and Montreal Protocol were negotiated primarily among developed countries; developing countries were only involved after developed states had already accepted the initial agreements (Bodansky 1993, 478). This two-stage negotiating strategy significantly simplified the bargaining process as it eliminated potential negotiating cleavages (e.g. North-South and South-South). In a testament to the efficiency of the process, more than 80 countries committed to eliminating CFCs totally by the end of the century when they signed the Helsinki Declaration on the Protection of the Ozone Layer in 1989.59

59 While the United States was instrumental in advancing the norm against CFC use, it is important to note that a variety of factors—including a scientific consensus that human activity was causing the problem,
At the same time that the United States was a leader in promoting norms on endangered species and the protection of the ozone layer in the late 1980s and early 1990s, it often acted as barrier to advancing the CC norm internationally during this period. After the first IPCC report was released in 1990, the US government continued to question the science underlying the CC agenda and called for more research on the subject (Bodansky 2001, 29). When mounting scientific evidence began to persuade other countries that CC was a major issue, the United States refused to support global efforts to establish a global treaty to combat CC (Agrawala and Andresen 1999, 460-461). Moreover, when the United States eventually agreed to support progress towards a global compact, it consistently attempted to water down the strength of the agreement (Agrawala and Andresen 1999, 460-461).

In the negotiations leading up to the 1992 Rio talks, the United States under the leadership of George H.W. Bush continued to adamantly oppose any binding emissions commitments because it feared that these targets would have adverse effects on the American economy (Sussman 2004, 363). Thus, even though the United States had started to endorse some of the IPCC’s findings by this time, President Bush even went so far as to threaten to boycott the Rio meetings if there was any mention of binding emissions targets and timetables. In doing so, Bush significantly undermined the United States’ leadership in the realm of environmental diplomacy and left it isolated internationally on the CC issues (Agrawala and Andresen 2001, 460). In sum, and as these examples demonstrate, the United States actively opposed many early CC

lack of industry opposition domestically, low economic costs for compliance, and bi-partisan support—converged to allow the United States to take a leadership role on this issue and ultimately succeed in establishing an international agreement (Sussman 2004, 261).
initiatives. Thus, the previous propagation of norms variable does not appear to have explanatory value in the case of the KP.

Assessing the Implications of Rio

Despite the United States’ obstinacy, other countries were unwilling to move forward with a strong agreement at Rio without the United States’ participation for a variety of reasons. First, given that the United States was the world’s biggest polluter, it was unlikely that any progress on combating CC could occur without the United States’ participation. Indeed, non-participation by the United States would leave other countries vulnerable to CC even if they took action. As one observer noted,

…countries determined that an otherwise well-structured convention with non-binding language on short-term targets that could be signed by the US was preferable to a similar convention with binding language that was not signed by the US. Many delegates argued that this approach was probably justified by the need for active US participation in shaping a successful international strategy for addressing climate change. (Betsill 2000, 216)

Second, as it became clear that unilateral action on climate change could significantly impact countries’ economic competitiveness, many industrialized states conditioned their involvement in the agreement on the universal participation of other developed countries (Betsill 2000, 215-217). Finally, at the time that the UNFCC was passed, there was still uncertainty about whether or not climate change was caused by human activity (Betsill 2000, 215-217). As such, many states had not yet demonstrated the level of urgency in relation to climate change that would come to typify subsequent negotiations.

As a result of these factors, and despite the fact that it was completely isolated during the negotiations as a result of its refusal to submit to binding targets and timetables, the United States still succeeded in ensuring that the final text contained very ambiguous language in regard to this issue (Agrawala and Andresen 1999, 461). For
example, the final text commits Annex I parties to a “non-binding aim” to return to their 1990 emission levels, but establishes no consequences for states that do not achieve this objective (Schroder 2001, 22).

At the same time that the United States achieved its primary objective (which was a non-binding target on emissions), the UNFCC did establish a number of provisions that would prove both important and contentious in subsequent climate change negotiations. Most notably, the framework promoted the principle of common yet differentiated responsibilities. This principle suggests that since industrialized countries are historically responsible for the adverse effects of CC, they should primarily be responsible for combating this issue (Shroder 2001, 21-22). As such, the convention established two annexes in order to differentiate between industrial and developing countries, which are bound by different responsibilities under the treaty (Shroder 2001, 23).60 Whereas the treaty called for Annex I countries to curb their emissions, developing countries were not required to curb emissions unless industrialized countries provided them with adequate technological and financial resources to do so (Shroder 2001, 21).

Moreover, Article 3 of the UNFCC established the precautionary principle. According to this principle, “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures” (UNFCC 1992). Since the United States agreed to this principle, it became more difficult for the United States to credibly

---

60 Annex I includes the OECD countries and twelve transition economies that committed to reducing their emissions to 1990 levels by the year 2000. Annex II includes the OECD countries who are supposed to fund technology transfer and provide financial resources to developing countries.
use the issue of scientific uncertainty to delay action on CC in subsequent negotiations (Balakrishnan 2002, 326).

As these examples demonstrate, the UNFCC established normative principles that would become difficult for the United States to overturn in subsequent negotiations. Indeed, though the text reflected the United States’ position, its ratification of the document was a tacit endorsement that the treaty (and the norms that it promoted) should serve as a basis for subsequent negotiations on CC. Moreover, the convention itself was an acknowledgement that global warming had important effects internationally that could not be solved by unilateral action (Balakrishnan 2002, 318). Finally, and despite the United States’ success in the negotiations, all other OECD countries with the exception of Turkey established emissions reductions targets in the months following the conclusion of Rio (Yamin and Depledge 2004, 23).

Nevertheless, and in an indication of its perceived successes at Rio, the United States became the fourth country to ratify the UNFCC when in October 1992, the Senate provided its consent to the agreement (Agrawal and Andressen 1999, 463). The UNFCC entered into force internationally in March 1994, after attracting its fiftieth ratification. In response to this development, signatories began planning for the annual conference of the parties (COP) in 1995, which would provide an opportunity to assess the global progress that countries had made towards combating CC.
Diplomatic Factors: (Failed) Attempts by the United States to Control the Agenda on CC Negotiations

Following its successes at Rio, the United States seemed to be firmly in control of the CC agenda. Over the course of the next five years, however, the United States made a variety of diplomatic miscalculations that ultimately resulted in its inability to shape the KP. Most notably, the United States not only initially committed itself to policy positions on which it later backtracked, but also mistakenly assumed that it would be able to obtain concessions from developing countries in the later stages of the negotiations.

*From Rio to Geneva*

Between the time that the Senate approved the UNFCC and its entrance into force internationally in 1994, the political landscape in the United States has shifted dramatically. With the defeat of George H.W. Bush in the 1992 presidential election, Bill Clinton entered office and promoted a radically different approach to CC policy. Recognizing that the United States’ leadership on environmental issues had suffered greatly as a result of the Bush administration’s position at Rio, the Clinton administration attempted to re-assert American leadership on the issue (Oberthur and Ott 1999, 43). As a prominent State Department official declared at a press briefing in 1993, “the United States [will] once again resume the leadership that the world expects of us…Just a year ago, the United States was a country not fulfilling its responsibilities, and now we are, on these most difficult issues, once again out to lead” (Harris 2001, 3).

Thus, whereas the Bush administration had focused on examining whether the United States should actually pursue a CC agreement to begin with, the Clinton administration shifted the focus to how and by when action could potentially occur. For
example, in a speech on Earth day in April 1993, Clinton announced that the United States was committed to reducing its emissions of greenhouses gases to their 1990 levels by the year 2000 and that his administration planned to produce a cost-effective plan to continue the trend towards reduced emissions (Agrawala and Andresen 1999, 461-462).

Despite Clinton’s ambitions to re-assert the United States’ leadership in the realm of international environmental politics, domestic challenges proved to be a major stumbling block in pursuing this agenda. For example, the administration’s proposed British thermal unit tax—which aimed to stimulate more efficient consumption of energy—never made it out of the Senate Finance Committee (Agrawala and Andresen 1999, 461). Similarly, in the face of domestic opposition, the Clinton-Gore Climate Change Action Plan eschewed strong regulation and instead asked industry to commit to a series of voluntary initiatives aimed at curbing climate change (Agrawala and Andresen 1999, 461). The situation became even more difficult in 1994 when the Republicans gained control of both the House and the Senate. As these examples demonstrate, reconciling the administration’s desire to pursue a global environmental agreement with domestic factors would prove to be a delicate balancing act as negotiations moved forward.

At the international level, the Intergovernmental Negotiating Committee for the UNFCC (INC) continued to meet regularly between 1992 and 1995 to ensure a prompt start to negotiations after the UNFCC entered into force (Bodansky 2001, 34). As part of this process, industrialized countries submitted national reports to the INC so that it could prepare for the first COP by assessing the progress that had been made and attempting to find ways to address outstanding issues.
At the same time that a scientific consensus was being forged, distinct blocs were also emerging in preparation for new negotiations. Among industrialized countries, the states of the EU were the biggest proponents of binding emission targets. While there were internal divisions and the EU member states did not always speak with one voice during negotiations, the European bloc nevertheless emerged as one of the most important actors in CC talks (Vogler and Bretherton 2006). On the other end of the spectrum, the JUSSCANNZ bloc—which consisted of Japan, the United States, Switzerland, Canada, Australia, Norway and New Zealand—were all opposed to strict timetables and binding emissions commitments. Though it was not part of the bloc, Russia’s negotiating position was similar to that of the JUSSCANNZ bloc (Oberthur and Ott 1999, 24). As the information presented in this paragraph demonstrates, there were significant divisions among industrialized nations in regards to CC negotiations.

Developing countries were also divided. On one hand, the countries in the Organization of Petroleum Exporting Countries (OPEC) opposed an agreement because they feared that a CC agreement would undermine the consumption of fossil fuels. In contrast, a group of 42 low-lying and island countries were major proponents of CC action and grouped together to from the Alliance of Small Island States. Other developing countries in the Group of 77, including important emitters such as India and China, also were generally supportive of reducing emissions globally through binding commitments for developed countries. Despite divisions, the issue that united all developing countries

---

61 Given the fact that the EU for the most part negotiated as a bloc during the CC negotiations, “…it was routinely treated as an actor capable of autonomy and volition…” (Vogler and Bretherton 2006, 2). This being the case, and following best practice in the vast majority of the literature, I refer to the EU—as opposed to its individual member states—during my analysis of the CC negotiations in this chapter.

62 The Group of 77 is a negotiating bloc that was set up by developing countries to pursue their mutual interests in the context of international negotiations.
was that any CC agreement should not require developing countries to slow down their pace of economic development by curbing emissions to deal with a problem that industrialized countries had created (Oberthur and Ott 1999, 25-29).

In the midst of North-North, South-South and North-South disagreements, states convened in March 1995 in Berlin for COP 1. Given that the previous meetings of the INC had failed to generate a consensus on a variety of important issues, parties understood that it was unlikely that a new agreement would be struck at Berlin (Oberthur and Ott 1999, 46). Critically, since the parties could not agree on rules for voting prior to COP 1, the default negotiating rules stipulated that decisions had to be made by consensus. This meant that individual states would have veto power over the negotiations. As such, parties focused on establishing a clear mandate for future negotiations, including a target date for strengthening emissions commitments (Oberthur and Ott 1999, 46).

At the time of COP 1, the United States was opposed to binding targets and still had support for its positions from JUSSCANNZ and OPEC countries. On the other end of the spectrum, the EU and a “green group” of developing countries (consisting of all members of the G-77 except the OPEC countries) forged a negotiating coalition based on the premise that developing countries would not be required to make any additional commitments as part of an agreement on climate change (Oberthur and Ott 1999, 46-47).

After two weeks of negotiating, the deliberations had reached a standstill. However, the United States, its JUSSCANNZ allies, and the OPEC countries were increasingly isolated as a result of the partnership established between the EU and G-77. Moreover, environmental NGOs used their extensive media contacts to publicly “shame” countries that were perceived to be blocking an agreement. Thus, after a night of shuttle
diplomacy, and in response to mounting public pressure to forge an agreement, the United States eventually relented and voiced support for a new mandate on CC (Oberthur and Ott 1999, 46-47). As Timothy Wirth, the United States’ lead negotiator, later commented, “that was a major first step. ... Putting that together and establishing that first groundwork ... and setting up the first rules and getting the negotiators on board, creating a consensus, all of those things take a devilishly long period of time” (Frontline 2007).

While the United States’ allies would have provided support if it had decided to hold out, the shift in the US position drastically changed the negotiating dynamics. Indeed, though some of the United States’ allies (including Australia and Canada) voiced reservations about the agreement, they were unwilling to take the blame for blocking consensus on the draft without US support (Oberthur and Ott 1999, 46-47). Thus, while OPEC countries voiced reservations, the COP ultimately approved the Berlin Mandate.

In many ways, the Berlin Mandate adopted at COP 1 provided the basis for subsequent negotiations on CC. First, in order to attract developing country support, the mandate explicitly stated that developing countries would not be expected to take on any additional obligations in subsequent talks (Oberthur and Ott 1999, 46). Second, the conference created the Ad hoc Group on the Berlin Mandate (AGBM) to coordinate work towards a protocol or other legal instrument that could be adopted at COP 3 in 1997 in Kyoto. Recognizing that the commitments outlined in the UNFCC were inadequate, the goal of subsequent negotiations was to establish timetables and targets for emissions (Oberthur and Ott 1999, 46).

In hindsight, the United States’ endorsement of the Berlin Mandate was problematic for a variety of reasons. First, although the United States had once again
successfully resisted pressure to commit to binding emissions targets, the Berlin Mandate set the stage for other countries to re-introduce this issue during the Kyoto negotiations (Oberthur and Ott 1999, 46). Indeed, given that virtually no one had expected such far reaching results in Berlin, the Mandate provided significant momentum to efforts aimed at strengthening industrialized countries’ emissions commitments (Oberthur and Ott 1999, 46). Second, by supporting the Berlin Mandate the United States committed itself to negotiating a CC agreement within the context of the UN sponsored process. While prior to Berlin the United States’ negotiating team had considered undertaking climate negotiations solely among countries that were willing to reduce emissions, policymakers made the decision after Berlin to attempt to strike an agreement that also involved developing countries (Bodansky 2001, 9-10). By choosing to advocate for a global agreement, as opposed to one that would only include countries required to make emissions cuts, the United States had to face a much more difficult bargaining environment than it would have in the context of negotiations with a smaller group of states.

Finally, and perhaps most critically, the United States once again provided an endorsement of only limited developing country participation in curbing emissions. At the same time, the agreement explicitly gave developing countries a seat at the negotiating table to establish emissions rules that would only apply to developed countries (Bodansky 2001, 9-10). By incorrectly assuming that that it could use its influence to obtain developing country participation on emissions reductions in future negotiations, the United States put itself in a very untenable position in subsequent negotiations (Bodansky 2001, 9-10).
As the AGBM’s negotiations moved forward in 1995, countries continued to debate whether the targets and timetables contained in any agreement should be legally binding. The IPCC influenced the ongoing negotiations dramatically when it put out a report in December 1995 indicating that, “the balance of evidence suggests a discernable human influence on the global climate.” This conclusion was important because it undermined arguments made by countries that were opposed to CC action that the issue needed to be studied further before action could be justified (Betsill 2000, 218). Indeed, even the United States, which had previously called for more research on the CC issue, publicly supported and accepted the results of the report. Furthermore, the report also led the United States to express support for “negotiations”—a term that was excluded from the Berlin Mandate in the face of opposition from the United States—on CC for the first time (Oberthur and Ott 1999, 51).

In 1996, an emboldened Clinton administration pushed environmental issues to the forefront of US foreign policy. Describing the contours of the administration’s new strategy for environmental diplomacy, former Secretary of State Warren Christopher commented that “…our Administration has recognized from the beginning that our ability to advance our global interests is inextricably linked to how we mange the Earth’s natural resources. That is why we are determined to put environmental issues where they belong: in the mainstream of American foreign policy” (Park 2000, 183).

At the COP 2 meeting in 1996, the United States surprised the international community (and many domestic actors) by radically changing its positions on the issue of CC action. Emboldened by improvements in the US economy, the shifts represented a
calculated attempt by the Clinton administration to enhance US leadership on international environmental issues (Oberthur and Ott 1999, 52). First, the United States acknowledged that countries’ non-binding efforts to stabilize emissions at 1990s levels by 2000 were unlikely to achieve the goals outlined in the UNFCC. Second, Timothy Wirth, the head of the United States’ delegation to COP 2, suggested that future negotiations should focus on establishing realistic, verifiable and binding medium-term emissions targets (Park 2000, 183). Wirth’s declaration of support for binding emissions targets marked a radical divergence from the United States’ previous position on the topic and decisively altered “the distribution of power between progressive and laggard forces” in CC negotiations (Oberthur and Ott 1999, 52). While the United States avoided establishing clear targets at COP 2, it did commit to participating in future negotiations on this issue.

The shift in the United States’ position led to the Geneva Ministerial Declaration, which acknowledged the validity of the IPCC report as a scientific basis for strengthening CC action and called upon the AGBM to speed up negotiations (Oberthur and Ott 1999, 54). The Ministers who signed the Geneva Declaration wanted COP 2 to endorse the document as a basis for future negotiations. However, despite the fact that the United States had changed its position and signed the Geneva Declaration, OPEC members continued to question the science underlying the IPCC’s report, while Russia and Australia also voiced reservations about using the report as the basis for subsequent negotiations (Oberthur and Ott 1999, 54).

In order to get around this opposition, proponents of CC action capitalized on the fact that the conference still had not adopted formal procedural rules for voting. Though
the UNFCC (to which the KP is an addition) mandated that some types of decisions (including amendments, amendments to annexes and new annexes) could be made based by a three-fourths majority in the absence of consensus, participants in the COPs still had not come to an agreement about how other substantive decisions were supposed to be made during CC negotiations (Yamin and Depledge 2004, 442). Typically, unless a majoritarian voting rule is specified, CC negotiations had historically proceeded on the basis of consensus. As opposed to unanimity, consensus is typically defined to mean that states do not express objections to a decision (as opposed to accepting them). Thus, the challenge at COP 2 was to get around laggards’ opposition while still adhering to some semblance of consensus.

The United States’ shift in policy and support of the Geneva Declaration meant that other parties had more latitude to take creative action to ensure that individual states would not be able to block progress in the COP (Oberthur and Ott 1999, 53-54). In order to get around opposition from CC laggards and ensure that the COP noted the Geneva Declaration, the participants capitalized on the absence of formalized voting rules by adopting a “consensus minus x” format so the conference could pass measures even in the absence of consensus (Oberthur and Ott 1999, 53-54). In essence, members of the conference began clapping whenever countries objected to including the Geneva Declaration in the COP’s record to prevent them from voicing objections. Thus, while states that opposed the motion could file reservations, provide qualifications, or object, they could not unilaterally block progress (Oberthur and Ott 1999, 54). Through their actions at COP 2, CC proponents had demonstrated that they would not adhere to a consensus-based process if it meant allowing a small number of states to hamper progress.
As a result of the use of the “consensus minus x” formula, the Geneva Declaration was included in the official report for COP 2. The Declaration was important for a number of reasons. First, it acknowledged the IPCC report as the scientific basis for accelerating negotiations on CC. Second, it clarified for the first time that the agreement reached at COP 3 would be legally binding and contain targets and timetables for emissions (Earth Negotiations 1996a). Third, it re-affirmed the principles established through the Berlin Mandate, including those related to (the lack of) developing country participation in curbing emissions.

For its part, the United States “wholeheartedly” endorsed the Geneva Declaration while suggesting that the negotiated outcome should ensure maximum national flexibility for states to implement their legally binding commitments, including the use of international emissions trading (Earth Negotiations 1996b). By coming out in favor of binding commitments and supporting the Geneva Declaration, the United States provided important momentum for advocates of CC action (Oberthur and Ott 1999, 52).

Even more critically perhaps, was that the United States’ endorsed the use of de facto majoritarian voting procedures at COP 2 (Oberthur and Ott 1999, 54). Though it might have seemed unimportant and insignificant in the context of a relatively minor decision to include the Geneva Declaration in the COP’s report, the United States undermined both its, and other states’, potential veto power over the outcome of CC negotiations by supporting (or at least not opposing) the “consensus minus X” format. Indeed, COP 2 demonstrated to CC proponents that they could effectively circumvent opposition by the minority if necessary in the context of the negotiations, even without formal rules on voting. As such, de facto majoritarian decision making procedures would
be the norm in subsequent negotiations on CC, much to the detriment of the United States.63

Domestic Discord

If the United States’ shift in position at COP 2 was a surprise to the international community, it was an even greater shock to domestic actors. Given that the administration had previously assured lawmakers that it would not accept emissions limits at Geneva, Wirth’s declaration that the United States would accept binding targets in the future angered many people on Capitol Hill (Sussman 2004, 363; Balakrishnan 2002, 328). In an indication of their disapproval of the administration’s negotiating stance, the Senate passed the Byrd-Hagel amendment in 1997 by a margin of 95-0. The resolution conditioned the United States’ participation in a global CC regime on the meaningful participation of developing countries in curbing emissions (Balakrishnan 2002, 328).

Though the Clinton administration’s strategy seems unfeasible on the surface—a CC agreement would after all need to be ratified by the Senate—the evidence suggests that it was a deliberate attempt to sway the Senate and public opinion on the CC issue. For example, Wirth explains,

I didn't see it [the vote] as putting a nail in the coffin....You work your way through it. You go meet with Sen. [Robert] Byrd and -- well, Sen. [Chuck] Hagel was not somebody who wanted to negotiate at that point. But Byrd certainly did, and we had a lot of discussions. I went up and talked to him. I'd been in the Senate with him; I had enormous respect for him. He liked me; we used to talk poetry together and so on. He was very interested, and we'd done some interesting things on the Clean Air Act. So I think that there were some possibilities there if in fact the administration had really pushed it…. (Frontline 2007).

---

63 For example, Ruel Estrada, the Chairman of the Kyoto negotiations, used a similar “consensus minus x” formula at the final AGBM meeting prior to Kyoto (Oberthur and Ott 1999, 84).
As this quote demonstrates, and despite the Senate’s pronouncements, administration officials still believed that they could strike a CC agreement that could attract Senate support. Despite these optimistic sentiments, Senate opposition to the administration’s new commitments had an important influence on the United States’ negotiating position in the months leading up to COP 3 at Kyoto. Indeed, in retrospect this “two-level game” gone bad greatly undermined the United States’ ability to shape the KP.

**Structural and Diplomatic Factors Converge: The Agenda Shifts**

Given the United States’ commitments in the context of both the Berlin Mandate and the Geneva Declaration, the emergence of significant domestic discontent about the administration’s handling of the CC issue forced the administration to present new negotiating parameters. While this policy inconsistency undermined the United States’ bargaining power and led it to make concessions at COP 3, the United States was still in a favorable bargaining position even after the breakdown of talks at COP 4. Ultimately, George W. Bush’s decision to withdraw the United States from the KP provided the impetus necessary for other countries to strike a CC agreement that did not reflect the United States’ preferences.

**Challenges at Kyoto**

When the Clinton administration unveiled its policy positions at Kyoto, many observers felt that the new package of demands represented a step back from previous agreements and were inconsistent with policies the United States had supported at COP 1 and COP 2 (Earth Negotiations 1997, 2). Largely crafted in response to the realities of the domestic political landscape, the United States’ proposal had three main elements (Agrawala and Andresen 1999, 462-463). First, the United States proposed that
greenhouse gas emissions should be stabilized at 1990s levels between 2008 and 2012 and that emissions should focus on six greenhouse gases. Second, the United States argued that the protocol should include meaningful participation by developing countries. Third, and least controversial in regards to previous agreements, the United States argued that countries should have flexibility in meeting emissions targets through mechanisms such as emissions trading. The US policy on emissions reductions represented a major concession by the United States because it signaled that the United States was willing to consider short-term targets, something it had refused to do at COP 2. Indeed, according to White House spokesman Michael McCurry, Clinton “wanted to have a negotiating position that would at least give him a seat at the negotiating table” (Agrawala and Andresen 1999, 464).

Despite this apparent concession, however, the fact that the UNFCC had called for emissions to be reduced to 1990s levels by 2000, caused many countries to view the United States’ proposal as a step backwards (Betsill 2000, 221). For example, EU delegates expressed disappointment and, recalling that the IPCC called for the significant reduction of emissions below 1990 levels, called the United States’ targets inadequate (Earth Negotiations 1997, 2). Delegates had a similar response to the United States’ proposal on the need for developing country participation in reducing emissions. From the perspective of the vast majority of states at Kyoto, this issue had been effectively resolved during COP 1 (in the Berlin Mandate) and they accused the United States of trying to renegotiate previous agreements. In the words of one developing country observer, “…no protocol is better than a protocol with new developing country commitments” (Earth Negotiations 1997, 2). Generally speaking, the United States lost a
significant amount of credibility at Kyoto because many of its positions were inconsistent with previous CC agreements that the United States had agreed to. In combination with other factors, these policy inconsistencies significantly limited the United States’ ability to shape the KP negotiations (Betsill 2000, 221).

Despite a series of preparatory meetings leading up to the Kyoto talks, delegates arrived to COP 3 in Kyoto with a number of issues largely unresolved. At the beginning of the week, the United States and EU continued to clash on a number of different issues. Most importantly, there was still no consensus on binding emissions obligations, the role of developing countries, and the role of flexibility mechanisms. As a result, it was still not clear at the outset if a protocol or other legally binding agreement would actually emerge during Kyoto (Oberthur and Ott 1999, 80).

It is important to note that the decision rules that Ruel Estrada, the Argentinean chair of the Kyoto negotiations, utilized greatly improved the prospects for striking an agreement (Oberthur and Ott 1999, 84). As mentioned previously, the COPs did not have formal rules of procedure for making decisions. However, the rules of procedure did specify that the chair had the latitude to determine whether or not a consensus existed (Yamin and Depledge 2004, 443). Building off of the “consensus minus x” format developed at COP 2, this procedural stipulation meant that Estrada could effectively decide whether there was sufficient consensus on an issue for the COP to adopt a decision (Yamin and Depledge 2004, 443). If there were any countries that disagreed with his ruling, they had to obtain a two-thirds majority to overturn the chair’s ruling. Since the KP negotiations took place on the basis of these de facto majoritarian voting rules, the forum provided significant influence to developing countries and middle
powers at the expense of the great powers and other potential spoilers such as the OPEC countries (Oberthur and Ott 1999, 80).

During the first week of COP 3, delegates had their hands full attempting to address the wide range of issues mentioned above. At the end of the first week, Estrada provided an update on the progress that had been made. His briefing revealed that while there were still major disagreements among the delegates on a wide variety of issues, a consensus was slowly growing and that prospects for a legally binding protocol seemed likely (Oberthur and Ott 1999, 81).

In the midst of the heated negotiations, US Vice President Al Gore arrived to address the conference. The fact that Gore decided to address the conference reflected the Clinton administration’s commitment to achieving an agreement at Kyoto. However, Gore had to walk a delicate line between providing the negotiations with momentum and avoiding criticism at home (Oberthur and Ott 1999, 85). Thus, while Gore primarily reiterated the United States’ positions on issues such as the importance of market mechanisms, realistic targets and timetables, and the participation of developing countries, he also instructed the United States’ delegation to “show increased negotiating flexibility if a comprehensive plan can be put into place” (Oberthur and Ott 1999, 86).

The stage had been set for the final week of negotiations. As negotiations continued throughout the last week of the conference, progress on many issues remained elusive. As such, the conference’s final days were typified by a flurry of high level diplomatic activity around the world, including by President Clinton and Vice President Gore (Oberthur and Ott 1999, 88).
As the conference’s final night approached, a variety of issues still remained unresolved, including emissions trading and the level of emission reductions. As the night drew on, Estrada increasingly relied on his power as the chair and the “consensus minus x” model used during COP 2 and the previous AGBM. For example, when discussion on an issue did not lead to consensus, Estrada made a decision on behalf of the delegates. In order to overturn the chair’s ruling, states would have to formally challenge the ruling and attain a two-thirds majority (Oberthur and Ott 1999, 89). Given the difficulties associated with attaining this level of support, Estrada’s essentially had the last say. Similarly, instead of staying neutral in diplomatic discussions, Estrada forcefully cut off debates that he perceived as repetitive or unproductive. For example, he repeatedly overruled requests by the United States to discuss developing country commitments that were beyond what was outlined in the Berlin Mandate (Oberthur and Ott 1999, 84).

And so it was that, after a marathon negotiating session, Estrada and his staff submitted the draft of the KP to the COP that they felt would attract the most support. Shortly thereafter, the COP quickly approved the KP. When it was all said and done, the United States’ success in shaping the agreement was decidedly mixed. On one hand, the United States obtained some important concessions. First, the United States obtained concessions on flexibility mechanisms (Cass 2005, 45-46). This meant that, despite opposition from developing countries, the United States could use methods like emissions trading, joint implementation agreements, and clean development mechanisms to reduce emissions. Decisions about the exact form that flexibility mechanisms would take were tabled to subsequent rounds of talks. Furthermore, the number of greenhouse gases

---

64 Due to the chaos surrounding the final days, it was agreed that the protocol would open for signature in March 1998 to allow for editorial changes (Oberthur and Ott 1999, 91). Eighty-eight countries had signed the KP by the end of March.
included in the agreement was expanded to six (as opposed to the EU’s proposal to include only three) in order to provide flexibility for reducing emissions. Finally, the agreement stipulated that countries could use carbon sinks to offset emissions. This substantially reduced the United States’ potential cost of curbing emissions (Cass 2005, 45-46).

On the other hand, the United States made significant concessions at Kyoto. First, the United States failed to obtain any meaningful participation by developing countries in reducing emissions. Indeed, due to the use of de facto majoritarian voting rules and the chair’s opposition to new action on this issue, G-77 countries were even able to block proposals (supported by the United States and other developing and developed countries) to include an article for voluntary emissions reduction commitments by developing countries in the KP (Cass 2005, 46). Moreover, the United States made a major concession when it agreed to reduce its emissions by seven percent in relation to 1990s level by 2012. In similarity to other countries’ targets, the United States’ emissions reduction obligations would be legally binding if it ratified the protocol (Bodansky 2001, 208). As explained previously, it was unlikely that the administration could successfully “sell” binding emissions targets and no developing country participation to skeptical members of Congress.

Thus, despite the fact that it received some concessions, from a practical standpoint the United States seemed to have lost the battle on the text of the KP. Indeed, compared to its original negotiating position, and in stark contrast to its success at Rio, the United States surrendered more than any country to achieve a compromise at Kyoto (Agrawala and Andresen 1999, 465).
After Kyoto

Despite this apparent defeat, negotiations on the ultimate shape of the CC regime were far from over. This is because in order to enter into force, the KP needed to be ratified by 55 states that collectively accounted for more than 55 percent of carbon dioxide emissions by Annex I countries in 1990 (Jacobson 2002, 416). Since the United States’ emissions alone accounted for over one-third of the 1990 total, it seemed unlikely that any agreement could enter into force without the United States’ consent. Moreover, the United States still had a viable blocking coalition. Indeed, other important Annex I countries such as Russia, Japan and Australia had also expressed reservations about ratifying the treaty (Jacobson 2002, 416). As a result, the United States and other important swing states still had de facto veto power over subsequent negotiations after Kyoto due to the agreement’s organizational design.

In the period after Kyoto, the United States continued to try to convince developing countries to make voluntary commitments so that the CC regime would be palpable domestically. At COP 4 in Buenos Aries, Argentina became the first developing country to break with the G-77 when it agreed to undertake a voluntary commitment to reduce its emissions at COP 5 (Earth Negotiations 1998, 13). The United States called the announcement “historic” and said that it represented the type of “meaningful” developing country participation necessary for the United States to ratify the KP (Earth Negotiations 1998, 13). In response to Argentina’s announcement, the United States proclaimed that it would sign the KP. After US Vice President Gore signed the KP less than one day later, he put out a press release stating that “U.S. leadership was instrumental in achieving a strong and realist agreement in Kyoto…our signing of the
Protocol underscores our determination to achieve a truly global solution to this global challenge” (Gore 1998).

Though the United States’ strategic announcement attracted the support of some Latin American and African countries, it was too late for the United States to fundamentally alter the trajectory of the debate on this topic (Oberthur and Ott 1999, 287-288; Earth Negotiations 1998, 13). At the international level, many members of the G-77 continued to resist making any additional emissions commitments, even if they were voluntary in nature. Indeed, many developing countries remained suspicious of the concept given the contentious debates that had unfolded previously between developing and developed countries on this topic (Earth Negotiations 1998, 13).

Similarly, the administration’s drastic move failed to sway domestic actors involved in the CC debate. For example, Senator Chuck Hagel responded to the United States’ signature of the agreement by stating,

In signing the Kyoto Protocol, the President blatantly contradicts the will of the US Senate. The Byrd-Hagel Resolution, which passed 95-0 in the Senate last year was very clear and bipartisan. It explicitly stated that ‘the United States should not be a signatory to any protocol’ that excludes developing countries from legally binding commitments. (Earth Negotiations 1998, 13)

As this quote demonstrates, the Senate’s opposition meant that the United States’ signature of the KP was largely symbolic in nature.

End Game: The International Community Strikes an Agreement

The next important event in the CC negotiations occurred in 2000 when delegates convened for COP 6 at The Hague. Many observers expected that COP 6 would put the finishing touches on the KP and allow countries to start ratifying the agreement (Grubb and Yamin 2001). As expected, the negotiations continued to focus on the issues left
over from Kyoto, including caps on the use of flexibility mechanisms, rules for implementation, and developing country participation. Despite the multitude of issues, discussions during the COP 6 negotiations were dominated by debates between the United States and EU countries over the credits that could be claimed from carbon sinks. Despite the fact that the United States and EU were ultimately only arguing over a few million tons of carbon (which is a fairly insignificant amount), last minute interventions by President Clinton and other world leaders failed to obtain a viable compromise on this issue (Cass 2005, 53). In this situation, the United States was unwilling to compromise because of domestic concerns while the Europeans felt they had to stand firm to ensure the integrity of the treaty. As a result of this breakdown in negotiations, the plenary did not resolve many of the most important outstanding issues at COP 6 (Cass 2005, 53).

Due to the impending entry of the administration of George W. Bush into office in the United States, CC negotiations essentially halted following the breakdown of talks at The Hague. At the time that President Bush entered into office, the United States still had the support of the JUSSCANNZ countries (and therefore the ability to prevent the agreement from entering into force). Moreover, the United States had played an important role in shaping the CC treaty up to that point by designing the flexibility mechanisms (which were introduced to limit the economic costs of reducing emissions) and several elements of the compliance system (Hovi et al., 2003, 1). With continued diplomacy, it seems likely that the United States and other important swing states could either have frustrated progress on CC issue or continued to work together to shape the content of the agreement.
Despite these successes and the United States’ favorable bargaining position, President Bush officially ended the United States’ participation in the KP in March 2001. While Bush pledged that the United States would not attempt to disrupt or undermine future CC negotiations, he also suggested that United States did not plan to ratify the treaty because the Protocol was fundamentally flawed. In a reflection of the administration’s new stance on the issue, National Security Advisor Condoleezza Rice commented that “…we will have to find new ways to deal with the problem. Kyoto is dead” (Kluger 2001).

When the United States withdrew from the treaty, many observers feared that CC negotiations had reached an end and that there would be a “descent into environmental anarchy” (Earth Negotiations 2001, 13). Thus, it was a great surprise to the international community when the delegates at the CC negotiations in Bonn successfully struck an agreement so that countries could begin ratifying the KP. While the United States had assumed that its rejection of the process would spell the end of Kyoto, the US withdrawal paradoxically ended up being the primary reason for the international success at Bonn (Bodansky 2001, 7).

First, the United States’ withdrawal galvanized global support for a CC agreement because its unilateral withdrawal from the KP was perceived by many countries as a repudiation of over 10 years of multilateral work on the issue of CC. Therefore, the international community wanted to prove that it could strike an agreement without the United States (Bodansky 2001, 7). For example, in a speech made to raucous applause at Bonn’s closing ceremony, the spokesman for the G-77 commented that the
agreement marked “a triumph for multilateralism over unilateralism” (Earth Negotiations 2001, 14).

The EU in particular came to Bonn ready to make whatever compromises necessary to strike an agreement (Bodansky 2001, 7). Recognizing that the United States’ absence provided an opportunity for the EU to exert its leadership in the realm of environmental politics, the EU attempted to achieve political gains by taking the lead at CC negotiations (Hovi et al., 2003). After the talks concluded, Margot Walstrom, the EU Environment Commissioner, claimed that delegates had “really started something so important here today…We’ve shown the United States, our citizens, communities and NGOs that we could have an agreement without the US” (Cass 2005, 57) and that “something has changed today in the balance of power between the US and the EU” (Earth Negotiations 2001, 14). Reflecting similar sentiments, the British Environment Minister Michael Meacher commented that it was “significant that the rest of the world, despite the enormous setback when the United States took its own decision, has nevertheless rallied” (Cass 2005, 57). As these comments demonstrate, the international community in general, and the EU in particular, wanted to teach the United States a lesson by moving forward with the KP.

Second, and in relation to the point outlined in the previous paragraph, the United States’ withdrawal made it easier to strike an agreement from a practical standpoint (Bodansky 2001, 7). Whereas the United States had rigid negotiating positions at The Hague (as negotiators felt that they had to win on every issue to get approval from the Senate), other countries had fewer red-line issues and therefore could more easily agree on a compromise. More specifically, the EU had much more room to compromise on the
issue of carbon sinks (which had led to the breakdown of negotiations at COP 5) with Japan, Canada and Russia because it no longer had to accommodate the United States’ much larger demands on this issue (Bodansky 2001, 7). By withdrawing from the treaty, the United States had opened up the opportunity for other swing states to join the agreement on their own terms.

As a result of these factors, the EU agreed to a framework at Bonn that it had rejected in negotiations with the United States only months earlier (Cass 2003, 57). Paradoxically then, the “Kyoto Light” agreement that was ultimately struck on flexibility mechanisms at Bonn bore a strong resemblance to what the United States had proposed at The Hague. As one observer noted, at “The Hague the European Union wanted a good deal and threw out what it perceived to be a bad one; last night the EU wanted any sort of deal and was grasping at something much worse than it rejected in November” (Cass 2003, 57).

In subsequent negotiations held at COP 7 in Marrakech in 2001, states whose ratification was necessary for the treaty to enter into force (including Russia, Japan, Canada and Australia) used their veto power once again to extract further concessions from the EU and developing countries. Given their desire to achieve an agreement, CC advocates made further concessions on the use flexibility mechanisms and even agreed to a compliance mechanism that was not legally binding (Cass 2005, 55-56; Boehmer-Christiansen and Kellow 2002, 178-179). As a result of these and related concessions, important swing states such as Russia, Japan and Canada agreed to move ahead with ratifying the agreement; this allowed the KP to pass the 55 percent threshold of carbon dioxide emissions from Annex 1 countries in 1990 required for ratification. The KP
officially entered into force in February of 2005, when Russia deposited its instrument of ratification. As of 2010, 191 states had ratified the KP.

**Role (or lack thereof) of NGOs/Middle Powers**

According to the theoretical model, middle powers/NGOs can have an important effect on the outcome of international negotiations in some instances. In the case of the KP, neither NGOs nor middle powers had a major role in shaping the KP.

In the course of the negotiations on CC, NGOs did not play a prominent role in influencing the passage, or shaping the content, of the KP. Between 1995 and 1997, the Climate Action Network (CAN), the primary umbrella organization for environmental NGOs, had four main objectives (Betsill 2007, 46-47). First, CAN argued that the KP should include commitments for developed countries to reduce their emissions 20 percent below 1990 levels by 2005. Second, CAN advocated that the Protocol should include a strong commitment and compliance mechanism. Third, CAN opposed emission trading as a way for developed countries to meet their emission reductions commitments. Finally, CAN opposed the use of credits for carbon sinks.

Though environmental NGOs were present at CC negotiations and undertook advocacy efforts to convince delegates to adopt their policy positions, a variety of factors account for NGO’s lack of influence throughout the KP negotiations. To begin with, NGOs were neither allowed to circulate on the floor during plenary sessions nor to attend the closed-door sessions that delegates increasingly resorted to during the latter parts of the negotiations (Correll and Betsill 2001, 95). This undermined NGOs ability to shape the course of the negotiations. Moreover, whereas NGOs portrayed climate change as primarily an environmental issue, the state-centric negotiations largely focused on the
economic ramifications of emissions reductions. Since NGOs had framed the topic in a way that was inconsistent with the prevailing approach to the issue, their arguments were less persuasive (Correl and Betsill 2001, 100). Third, many environmental NGOs prioritized the international CC negotiations over ongoing national and regional CC action campaigns (this was especially the case in the United States). Given that NGOs’ ability to influence international negotiations is contingent on generating pressure for action at both the domestic and international levels, this strategic miscalculation undermined NGOs’ influence during the negotiations (Betsill 2007, 64). Finally, there was political competition between environmental NGOs and business NGOs throughout the CC negotiations. In the context of this politically polarized atmosphere, environmental NGOs did not have the same level of influence on international negotiations as they would have possessed in the absence of competition from business interests (Raustiala 2001, 108). As a result of these factors, NGOs’ positions were mostly not reflected in the final text of the KP.

Likewise, middle powers did not have significant influence throughout the KP negotiations. Given that developing world countries were absolved of any emission obligations at Berlin and major power Annex I emitters (such as Russia, Japan and the United States) were critical to the viability of the agreement, many of the negotiation’s central debates (e.g. sinks, emission limits, flexibility mechanisms) unfolded primarily between major powers. Furthermore, since the European countries conducted much of their CC actions under the auspices of the EU, there was not much of an opportunity for middle European powers to take the lead on CC issues (Volger and Bretherton 2006).65

---

65 Though middle power members of the EU (e.g. the Netherlands) may have influenced the course of EU CC policy more than major powers such as the United Kingdom or France, it is important to note that the
As a result of these factors, middle powers did not have a significant influence on the outcome of the KP negotiations.

The theoretical model suggests that the United States should have a greater ability to shape agreements in situations where middle powers/NGOs do not have significant influence. The fact that middle power/NGO influence was very low in this case, yet the United States was still not able to shape the agreement, suggests that this variable’s explanatory value across cases may be limited.

**Alternative Explanations**

At this point it is important to examine the plausibility of alternative explanations. While the issue linkage explanation is not persuasive, the case study evidence partially confirms realist and domestic politics explanations.

*Realism*

In the case of the KP, the results are inconsistent with one of the realist variables (the effort the United States put into trying to shape the agreement) and consistent with the other (degree of change in the United States’ position). On the one hand, throughout the course of the KP negotiations under the Clinton administration, the United States dedicated significant resources and diplomatic capital in its attempts to shape the agreement. In addition to making the issue one of its top priorities domestically, the Clinton administration also put its weight behind efforts to establish a viable agreement internationally. For example, Al Gore made an appearance at the COP 3 negotiations at Kyoto in order to provide momentum for an agreement (Oberthur and Ott 1999, 85).

---

EU negotiated as a bloc during the KP negotiations (Oberthur and Ott 1999, 15-17). Given that the EU, and not individual countries, was the primary actor during the KP process, I do not consider middle powers’ success in shaping intra-EU deliberations to be an example of middle power influence within the context of the KP negotiations. In part, this is because it is difficult conceptually to disaggregate middle powers’ influence within the bloc from the EU’s general influence during the KP negotiations.
Similarly, at COP 4 in Buenos Aries, the United States collaborated with Argentina in an attempt to persuade developing countries to commit to voluntary emissions cuts (Earth Negotiations 1998, 13). Despite its efforts, the United States was ultimately unable to shape the form of the KP.

On the other hand, the second realist variable has explanatory power in this case because the United States’ actions on emissions did not change after the agreement entered into force (Agrawla and Andresen 1999, 479). Given that the Bush administration decided to withdraw from the KP and no domestic CC legislation has been enacted up to this point, the KP clearly has not fundamentally altered the United States’ stance on emissions reductions. Thus, support for the realist hypothesis in the KP case is decidedly mixed.

*Domestic Factors*

While domestic factors definitely limited the United States’ potential “win-set” during the KP negotiations, it was ultimately the United States’ commitment to positions that were domestically unfeasible and its withdrawal from the KP that led to the passage of the agreement. In many respects, the Clinton administration’s position during the CC negotiations was a “two-level” game that went bad. Since CC was an important issue for the Clinton administration, the United States provided concessions in pre-Kyoto CC negotiations and attempted to be a leader on the issue, even supporting the Berlin Mandate (which exempted developing countries from emissions reductions). This position was not tenable from the point of view of domestic politics because the Senate, has to approve treaties, had expressed clear opposition to these policies.
Thus, domestic politics limited the executive branch’s options in the context of the CC negotiations because the administration could only credibly commit to an agreement that incorporated the Senate’s preferences (Balakrishnan 2002, 328). As a result, the Clinton Administration was forced to change its position before COP 3 and push for concessions that many states perceived to be a step back from what the United States had agreed to at previous CC negotiating sessions (Earth Negotiations 1997, 2). Ultimately, this undermined the United States’ bargaining position in the context of the negotiations.

At the same time that domestic factors played a role in constraining the United States’ bargaining options, it is also important to note that the KP would most likely not have entered into force in its current form if the United States had not withdrawn from the treaty (Bodansky 2001, 7). As mentioned in previous sections, the United States withdrawal from the KP negotiations provided the primary impetus for other parties to strike an agreement on CC. On a related note, the United States may still have been able to shape the KP if it had incorporated the Senate’s position into its initial bargaining strategy. Thus, while domestic factors undermined the United States’ bargaining position during the CC negotiations, they cannot fully account for why the KP does not reflect the United States’ preferences.

**Issue Linkages**

There is no indication that issue linkages played a major role in how the KP negotiations unfolded. Indeed, there were no other major negotiations going on at the time that other states attempted to link to the United States’ actions during the KP
negotiations. This being the case, it does not seem that this variable played a major role in influencing the outcome of the KP negotiations.

**Conclusion**

The KP case conforms accurately to many, though not all, of the causal mechanisms identified in the theoretical model. As the chapter demonstrates, the United States initially held up progress on CC negotiations and was not involved in propagating the CC norm prior to the Rio Agreement. Following Clinton’s election, however, the United States began to exhibit leadership in the realm of CC negotiations by supporting the Berlin Mandate and Geneva Declaration and calling for the establishment of medium-term emissions targets prior to COP 2. As the negotiations moved forward at COP 3, the United States switched its stance on a variety of issues in response to domestic political factors; the new positions were largely inconsistent with what the United States had agreed to in previous negotiations. This significantly undermined the United States bargaining power at Kyoto. The application of quasi-majoritarian decision making procedures, which initially emerged at COP 2, for COP 3 in Kyoto also prevented the United States from exerting veto-power in the context of negotiations. As a result, the COP 3 negotiations in Kyoto produced an agreement that contained many provisions that the United States opposed.

Despite these setbacks, the United States still had effective veto power over the agreement due to the KP’s institutional design and successfully kept important swing states on its side of the negotiating table up until the breakdown of talks at COP 5. Given that middle powers/NGOs did not play an influential role in the KP negotiations, it seems likely that the United States could have continued to shape the agreement in subsequent
CC talks. In the end, however, it was the United States’ withdrawal from the treaty under the administration of George W. Bush that led to the defection of important swing states and ultimately provided the impetus necessary for the treaty to achieve global ratification. As such, the KP did not reflect US preferences and entered into force in the face of opposition from the United States.
Chapter 7: The International Criminal Court

In the aftermath of the Cold War and as a result of the widespread atrocities that were perpetrated in the former Yugoslavia, Rwanda and elsewhere, the issue of international justice was thrust to the forefront of international affairs in the early and mid 1990s. As it become clear that Ad Hoc Criminal Tribunals were not sustainable for dealing with serious violations of human rights in the long run, the international community began to seriously examine the possibility of establishing a permanent ICC. The result of a prolonged and complex series of negotiations would ultimately be the establishment of the ICC.

This chapter proceeds as follows. First, I examine the extent to which the case of the ICC conforms to the predictions of my theoretical model. Next, I provide a brief history of the international criminal court. Third, I assess the United States’ previous propagation of norms associated with the ICC. Fourth, I describe the negotiating dynamics prior to the beginning of the Preparatory Committee in 1996. Next, I highlight the ways in which a combination of structural and diplomatic factors undermined the United States’ ability to shape the ICC. Sixth, I analyze the applicability of alternative hypotheses for explaining the United States’ failure to shape the ICC. I conclude the chapter with a synopsis of the results of the case study analysis.

Assessing the Validity of the Model

As the figure on the next page demonstrates, the ICC case is fairly consistent with the predictions of the theoretical model. In the case of the ICC, the United States did not historically play a major role in advancing norms associated with the ICC. Indeed, though the United States has been a historical leader in promoting international criminal
justice norms, its stance towards the ICC has vacillated between support and opposition. As such, the previous propagation of norms variable does not seem to have influenced the United States’ ability to shape the ICC.

All of the other variables, however, are largely applicable to this case. To begin with, policy inconsistency and ineffective engagement with swing states played a major role in undermining the United States’ ability to shape the ICC. After the United States dropped its objections to an ICC and began to participate in the negotiations, it largely failed to outline its negotiating redlines. As a result of this ambiguity, important swing states assumed that the United States might be willing to compromise and began to deviate away from the position that the United States’ ultimately adopted. By the time

Figure 16: The Model Applied to the International Criminal Court

that the United States presented its negotiating “redlines”, which were largely inconsistent with the polices that other states thought the United States would ultimately
accept, important swing states were unwilling to accommodate the United States’ demands.

Moreover, middle powers and NGOs played a major role in shaping the final form of the ICC agreement. Indeed, these actors were largely responsible for generating global support for the ICC and advancing positions that made the ICC stronger and more independent than the United States would have preferred. Finally, the Rome Conference’s majoritarian decision making structures advantaged middle powers and developing countries at the expense of major powers like the United States. As a result of the confluence of these factors, the final ICC agreement did not reflect the United States’ preferences.

A Brief History of the International Criminal Court Issue

Though it is often assumed that the idea of an ICC emerged after World War II, the first proposal for an ICC was actually made in 1872 by Gustav Moynier, one of the founders of the ICRC. Moynier proposed that a court should be established to ensure that the Geneva Convention of 1864 would not be violated and to bring anyone to justice responsible for violating the Accord (Glasius 2002, 138). Ultimately, governments did not support the initiative and many observers criticized the idea as unrealistic, ambiguous, and unenforceable. Despite their general unwillingness to pursue an international criminal court, 26 countries adopted the Hague Convention in 1907. The convention was significant because it formally codified the list of war crimes at the international level for the first time (Leonard 2005, 20-21).

Following the widespread atrocities that were perpetrated during World War I, the Allied powers attempted to use the Hague Convention as a justification for establishing
an ICC that would have the capacity to punish individuals guilty of war crimes. Though the Treaty of Versailles, which was signed in 1919) provided the Allies with the right to establish an ICC, the court was never established (Leonard 2005, 21-22). The next effort to establish an ICC occurred in 1937 when a diplomatic conference adopted the Convention for the Creation of an International Criminal Court. Originally envisioned as a forum in which the prosecution of individuals suspected of terrorism could occur, none of the countries that attended the conference ratified the convention prior to the outbreak of World War II (Fehl 2004, 360).

After the conclusion of World War II and the publicity generated by the International Military Tribunal at Nuremberg, the international community once again attempted to draft international statutes that would prevent the occurrence of future atrocities. Accordingly, the UN passed the Universal Declaration of Human Rights and the Genocide Convention in 1948 (Glasius 2002, 139). Moreover, in a resolution that accompanied the Genocide Convention, the UN General Assembly invited the recently established International Law Commission (ILC) to examine the possibility of establishing an ICC. Although the ILC presented its initial report and recommendations to the General Assembly in 1950, a lack of political consensus on the possibility of establishing an ICC meant that the idea stalled (Sadat 36, 2000). Indeed, with the onset of the Cold War and its corresponding geopolitical divisions, it was nearly impossible to make any progress on the ICC issue. Nevertheless, a variety of NGOs and members of the ILC continued to work on the ICC issue throughout the Cold War (Glasius 2002, 139).

With the end of the Cold War and the gradual thawing in East-West relations, the UN ended its nearly 35-year impasse related to the ICC in 1989 when the General
Assembly once again reauthorized the ILC to examine the possibility of establishing an ICC. Though the resolution was initially introduced by Trinidad and Tobago as a way of prosecuting drug traffickers, the ILC extended the scope of legal issues that the court could potentially address when it presented the Draft Code of Crimes in 1991 (Glasius 2002, 139).

**Previous Propagation of International Justice Norms by the United States**

While the United States has historically been a proponent of international justice norms, its support for the establishment of an ICC over time has been much more tepid. In this section I briefly survey the role that the United States’ has played both in the realm of promoting international justice norms generally and of supporting an ICC more specifically.

Generally speaking, the United States’ role in the promotion (and hindrance) of international justice norms has been decidedly mixed. For example, while the United States was one of primary proponents of the Geneva Conventions of 1899 and 1907, it opposed the formation of an international tribunal to try Kaiser Wilhelm II following World War I (Cerone 2007, 280). Given that US President Woodrow Wilson was concerned with fostering a democratic government in Germany and establishing the League of Nations, establishing an international justice mechanism was not high on his list of priorities. As such, the United States expressed significant reservations to the provisions outlined in the Versailles treaty regarding the formation of an ICC when it rejected the tribunal and opposed a trial for the Kaiser (Cerone 2007, 280).

Following the end of World War II, the United States’ stance on international justice mechanisms shifted when it was one of the primary supporters of efforts to
prosecute German and Japanese war criminals. For example, the United States was one of four powers responsible for running the International Military Tribunals at Nuremberg and Tokyo (Schabas 2004, 705). While the United States was also one of the main supporters of the UN Genocide Convention (which ultimately took nearly forty years for the United States to ratify), it argued that parallel efforts aimed at establishing an ICC to punish crimes of genocide should be considered separately from the convention itself (Cerone 2007, 285-286). Nevertheless, the United States voiced strong support for the notion that the Genocide Convention should include language obliging parties to work towards establishing a permanent ICC and to continue to use ad hoc tribunals until a permanent court was established (Cerone 2007, 285-286).

However, when the General Assembly re-considered the issue of establishing an ICC in 1952, the United States announced that it neither favored nor opposed the establishment of an ICC (Cerone 2007, 287). Moreover, in the instance that an ICC was created in the future, the United States suggested that the court should only have jurisdiction over the nationals of countries that had ratified the treaty. In many ways US positions were shaped by the fact that the United States was currently fighting a war in Korea under the UN banner. As such, it was attempting to balance the need to generate international support for the war with protecting the rights of US soldiers currently being held as prisoners of war. While other aspects of the United States stance on the ICC would change over time, the United States would ultimately maintain this policy position throughout negotiations for an ICC.

Following the onset of the Cold War, the UN largely abandoned discussions on the possibility of establishing an ICC. However, as the Cold War began to wind down,
the United States Congress passed a motion in 1988 calling on the president to re-introduce the possibility of establishing an international court (Cerone 2007, 287). The legislation once again stipulated that US nationals should not be subjected to the court’s jurisdiction.

In the early 1990s, the United States and the United Kingdom invoked the precedent of the Nuremberg Trials to introduce the idea of creating an international tribunal to deal with issues associated with the Iraqi invasion of Kuwait. While the idea ultimately did not gain traction, it did provide the basis for the establishment of ad hoc tribunals in the future (Schabas 2004, 707).

In 1992 a working group established by the ILC produced another extensive report that examined the feasibility of establishing an ICC and outlined the processes by which this might occur. Though the UN General Assembly provided the ILC with authorization to compile a draft statute on the basis of its report and the Draft Code of Crimes, the United States and many other countries were not supportive of the initiative (Sadat 2000, 37-38). As such, progress within the ILC on these issues was slow.

Following the atrocities that were committed in Rwanda and the former Yugoslavia, the United States was the primary proponent for the establishment of the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) (Schabas 2004, 708). Despite the fact that many states were skeptical about the formation of these international tribunals, the United States pushed the agreements through the Security Council (Cerone 2007, 288). After the ICTY was established, Secretary of State Madeline Albright commented that “the Nuremberg principles have been reaffirmed. The lesson that we are all accountable to international
law may have finally taken hold in our collective memory” (Albright 1993). Moreover, the United States was one of the main financial supporters for both the ICTY and ICTR (Cerone 2007, 289). At the global level, the United States’ support of the tribunals suggested that it might be willing to support the establishment of an ICC under certain conditions.

In October 1993, the United States opened up the door for future negotiations regarding a permanent court when it changed course and pledged to “actively resolve the remaining legal and practical issues” so that an ICC could be established (Struett 2008, 75). While the United States’ about-face may have had more to do with its desire for a forum in which to deal with pressing foreign policy issues—such as trying to pressure Libya into turning over the Lockerbie bombers and providing a forum in which to try Somali warlords—the shift was significant because it is unlikely that negotiations for creating an ICC could have moved forward in the face of direct opposition from the United States (Struett 2008, 74).

As this section demonstrates, the United States’ role in promoting an ICC has ranged from active promotion and tacit endorsement to outright opposition. Thus, while its tacit complicity allowed the negotiating process to move forward, the United States’ previous propagation of international criminal justice norms did not play a major role in influencing the course of the ICC negotiations.

Diplomatic Factors: Early Attempts by the United States to Control the Agenda on ICC Negotiations

The ICC negotiations began to take form in 1994 when the General Assembly asked the ILC to compile a draft Statute. Initially, the United States attempted to delay
deliberations by referring the ICC issue to the Ad Hoc Committee on the Establishment of an International Criminal Court (AHC). However, the ineffectiveness of ad hoc tribunals, coupled with the fact that the initial ILC draft was favorable to US interests, led the United States to eventually condone the creation of an ICC. When the UN General Assembly subsequently decided to create a Preparatory Committee (PC), the possibility of establishing an ICC began to shift from an abstraction to a potential reality.

*From the AHC to the PC*

Since the United States had withdrawn its opposition and support was building among other court proponents, the General Assembly asked the ILC to submit a completed draft statute for a permanent ICC by July 1994 (Schabas 2004, 715). Given that the ILC was generally considered to be a place where the General Assembly could send issues that they wanted to disappear, most major powers were confident that the ILC would ultimately defend state sovereignty by not trying to advance the ICC issue (Paris 2009, 246). Indeed, with many potential divisions between civil law and common law countries and developing and developed world states, the idea of an ICC seemed unlikely to attract widespread support.

Thus, it came somewhat as a surprise when the ILC submitted the draft statute on time and recommended that the international community hold a diplomatic conference to adopt a statute establishing an ICC (Paris 2009, 246). William Pace, head of the Coalition for an International Criminal Court (CICC) explains that,

> …young legal advisors with no instructions from their governments, and a few senior legal advisors who were at the end of their careers, came together…instead of pulling the draft statute apart, they started pulling something together, and somehow their work went under the radar of the political powers that were sure this would go away. (Paris 2009, 246-247)
It is important to note that the ILC draft statute submitted in 1994 contained a package of provisions that the United States most likely could have accepted as part of a final agreement (Schabas 2004, 715; Dubrské 2005, 31). For example, the ILC draft statute stipulated that the Security Council would be responsible for authorizing prosecutions, that states could join the ICC and then choose selectively (with the exception of genocide) about which issues to give the court jurisdiction over, and that the court would not have universal jurisdiction (Struett 2008, 90). Ultimately, however, these and other important points in the ILC draft were altered substantially in the course of subsequent negotiations.

Even though a number of states came out in support of the ILC’s recommendation that the international community hold a diplomatic conference to establish an ICC, opposition from France, the United Kingdom, the United States and other major powers resulted in an alternative solution (Pace and Schense 2002, 109-110). Instead of holding a conference, states agreed to create an AHC to further study issues related to the ICC. The creation of the committee was widely viewed as tactic that major powers were using to delay action on the ICC, and many observers worried that the Draft Statute would be subjected to endless deliberations within the body (Pace and Schense 2002, 109-110). For their part, members of the Security Council assumed that delegates to the AHC would abandon the idea for an ICC when they recognized that the court would undermine state sovereignty and that it would require an inordinate amount of work to complete (Pace and Schense 2002, 112).

Given that momentum for an ICC appeared to be building, albeit slowly, a small group of NGOs came together in 1994 in order to generate a common strategy for the
upcoming AHC deliberations (Pace and Schense 2002, 110-111). At the meeting, a group of roughly half a dozen NGOs agreed to work together to establish an informal coalition of NGOs that could lobby for the ICC’s creation. The groups were inspired by the International Campaign to Ban Landmines’ model and attempted to replicate both its strategy and structure (Pace and Schense 2002, 110-111). By the time that the AHC held its first meeting in 1995, the Coalition for an International Criminal Court’s (CICC) membership had reached over 30 NGOs (Cakmak 2008, 374-375).

In similarity to the ILC, the AHC was surprisingly effective in advancing progress towards an ICC throughout the course of its meetings in 1995. Far from being unfocused, the AHC meetings proved to be a forum in which governments could come together to familiarize themselves with the ICC issue (Pace and Schense 2002, 112). Moreover, a like a “like-minded group” (LMG) of states that were supportive of forming an ICC began to coalesce during the AHG meetings. Primarily consisting of middle powers (including Canada, Germany, South Africa, the Netherlands, etc), the group’s initial goal was to ensure that the negotiations moved forward in the face of superpower opposition (Pace and Schense 2002, 113). By the conclusion of the AHG, the LMG’s membership had increased from six to 20.

Furthermore the AHC meetings provided governments and NGOs with the opportunity to forge ties and develop close working relationships. Throughout the AHC meetings, governments made an effort to work closely with NGOs. For example, states asked the UN to provide a room where government-NGO meetings could take place (Pace and Schense 2002, 113). The close collaboration between NGOs and middle
powers would become a defining feature of the negotiations leading up to the establishment of the ICC.

At the same time that the AHC was conducting its work, the United States and other major powers were increasingly reaching the conclusion that ad hoc tribunals were unsustainable because of concerns relating to financing, costs, obtaining custody of suspects, and recruiting prosecutors and judges (Cerone 1007, 290). From a practical standpoint, the challenges associated with running these ad hoc tribunals underscored the need for a stable and permanent institution that had the capacity to quickly address international justice issues (Sadat 2000, 37-38).

In the United States’ perspective, there were two potential ways to overcome the problems associated with ad hoc tribunals: states could draw upon domestic legal systems or form an international criminal court (Cerone 1007, 290). Viewing the latter option as being more favorable, the United States announced again in 1995 that it would support the formation of an ICC (Cerone 1007, 290). For example, President Clinton commented that “…nations all around the world who value freedom and tolerance [should] establish a permanent international criminal court to prosecute, with the support of the United Nations Security Council, serious violations of humanitarian law” (Cerone 1007, 290).

It is important to note that that, as per the ILC’s recommendations, the Clinton administration initially envisioned that the Security Council would have a gatekeeper role in terms of referring cases to the court if and when an ICC were established (Schabas 2004, 713). Like other major powers, the United States sought to counter the notion that a strong role for the Security Council would politicize the court (Struett 2008, 101). For example, Jamison Borek, the spokesman for the US delegation at meetings at the UN in
1995, suggested that “there is an important role for the Security Council to play in the work of the court. Under the current draft, the initiation of cases would be subject to whatever political agenda a certain state may have” (Schabas 2004, 713). In an indication of the disagreements surrounding the issue, the 1995 meetings ended without a definitive consensus regarding the role that the Security Council would play in the functioning of an ICC.

Nevertheless, court proponents succeeded in generating enough support that the AHC recommended that the UN General Assembly create a PC to lay the groundwork for a formal diplomatic conference regarding the ICC. When the AHC presented its report to the UN General Assembly in 1995, the Assembly voted overwhelmingly to accept the body’s recommendation to establish a PC. In order to ensure that the deliberations and negotiations surrounding the ICC would not be open-ended and indefinite, the resolution instructed the PC to prepare a consolidated text that could be submitted to a diplomatic conference on the subject (Bos 2002, 44-45). Though the assembly would still have to vote again about whether or not to hold an eventual conference, Italy agreed to be the host and pressure began to mount among delegates for a conference to be held in either 1996 or 1997 (Bos 2002, 44-45).

While it is unlikely that states would have decided to move forward with the intermediary steps necessary to establish a permanent ICC in the face of direct opposition from the United States (Deitelhoff 2009, 49; Struett 2008, 74), the creation of the PC provided court proponents—including the LMG and NGOs—with a forum in which they could actively take the lead in drafting the texts that would ultimately serve as the backbone of an ICC (Bos 2002, 46). Critically for subsequent negotiations, the United
States failed to outline any potential negotiating redlines prior to the start of the PC (Struett 2008, 75). In short, with the establishment of the PC, the notion of forming an ICC had moved from a point of discussion to a practical possibility (Bos 2002, 46).66

**Diplomatic and Structural Factors Converge: The United States Loses Control of the Agenda**

At the outset of the PC meetings, there was little indication that the body would produce anything that was substantively different from the ILC draft. Over the course of the PC meetings, however, LMG and NGOs significantly altered the trajectory of the negotiations. In the end, the coalition was ultimately successful in transforming the ILC draft into a text that advocated a much stronger and more independent ICC than the United States envisioned. In combination with the United States’ failure to outline its policy positions and to develop a unified front with important swing states, the success that NGOs and middle powers achieved during the PC provided these groups with significant momentum heading into the Rome Conference.

**Negotiations Commence**

The PC met six times between March 1996 and April 1998. In contrast to the looser mandate of the AHC, the PC was tasked with putting together a text that could serve as the basis for ICC negotiations (Pace and Schense 2002, 115). As such, the PC would need to tackle a number of controversial questions including: what could trigger an ICC prosecution; whether the Security Council would have a veto over international prosecutions; and how far the court’s jurisdiction would extend (Paris 2009, 247).

---

66 Throughout the PC negotiations, no state publicly objected to the formation of an ICC (Deitelhoff 2009, 49). This highlights that the negotiations took on a much more serious tone after the discussions shifted to the PC.
With the initiation of the PC’s work, the number of governments involved in the negotiations increased from 60 to over 120 (Pace and Schense 2002, 115). In the early stages of the PC, states essentially were split into three negotiating blocks (Leonard 2001, 91-96). As mentioned previously, one major group was the LMG, who were the primary advocates for a strong and independent court and wanted to establish an ICC rapidly. The second major group was the non-aligned movement (NAM). Led by India, the NAM countries were generally supportive of an ICC and wanted to ensure that it would not be subordinated to the Security Council. Finally, the permanent members of the Security Council (P-5) were generally in favor of an ICC, but only to the extent that the Security Council would have the sole ability to refer cases to the court (Leonard 2001, 91-96). It is important to note that, in contrast to most international negotiations, there was no major North-South divide during the ICC negotiations. Instead, the major fault line was between states that favored a strong and independent court versus those that wanted a more limited court (Glasius 2006, 24).

During the early stages of the PC negotiations, the LMG quickly took a leadership role, with the aim of rapidly advancing the negotiations (Bos 2002, 50). For example, the PC meetings were chaired by the Netherlands, which was one of the LMG’s earliest members, under the leadership of Adriaan Bos (Glasius 2006, 25). Bos and his successor Phillipe Kirsch, a Canadian, subsequently used their authority to appoint LMG members as leaders of the working groups that led discussions and drafting on different topics during the negotiations (Glasius 2006, 24; Pace and Schense 2002, 115).

At the same time that the LMG was attempting to cultivate a leadership role, the number of NGOs involved in the negotiations (and number of members in the CICC) was
also increasing. Indeed, the number of NGOs participating in the talks increased from 30 at the AHC meetings in 1995 to 76 at the end of the second PC session in 1996 (Pace and Schense 2002, 115). The members of the CICC played an important role during the initial stages of the PC by engaging in advocacy work, especially in relation to the importance of an independent prosecutor, and producing expert analysis. This work was particularly helpful to members of smaller delegations, which often did not have the resources required to cover all aspects of the PC’s work (Pace and Schense 2002, 115).

The close working relationship that was established between the CICC and LMG provided each group with a number of benefits. From the perspective of the LMG, an alliance with the CICC provided the group of middle powers with enhanced legitimacy in the context of negotiations. For example, the LMG countries could refer to the support of “civil society” when justifying positions and draw on the CICC’s technical expertise when formulating arguments (Pace and Schense 2002, 115). The CICC also benefited from the partnership through enhanced access to decision makers and information regarding the negotiations.

*Momentum Builds*

As the 1996 meetings came to a close, the efforts of the LMG and CICC were beginning to reap dividends. Whereas the PC meetings began with the LMG and NAM negotiating as separate blocks, by the end of 1996 the NAM’s lack of cohesiveness and leadership led a number of African, Latin American, Eastern European and Asian states to gravitate towards the LMG’s position (Glasius 2005-94-94; Bos 2002, 50-51). Thus, while the P-5 still opposed a strong court, a critical mass of states in favor of the LMG’s positions was steadily growing. In a reflection of the momentum generated at the PC’s
first two meetings, the UN General Assembly reaffirmed the body’s mandate and voted to hold a diplomatic conference on the topic of the ICC in 1998 (Bos 2002, 53).

A variety of important developments occurred in 1997 and early 1998 as the negotiations took on a new urgency over the course of the PC’s next four meetings. First, the CICC’s membership blossomed from 76 in 1996 to over 300 by early 1998 (Pace and Schense 2002, 115). Given that a large proportion of the new members were from the global South, the CICC’s increase in membership enhanced its global reach while increasing its influence in the context of negotiations (Pearson 2006, 263). For example, the CICC provided financial support to NGOs from the global South so that they could attend PC meetings and formed regional groupings so that NGOs could lobby their governments in a coordinated way (Pace and Schense 2002, 122; Glasius 2006, 27). By implementing these strategies, the CICC was able to more effectively generate global support for an ICC.

Moreover, in cooperation with the CICC, the LMG convened regional conferences aimed at more effectively engaging with developing countries around the world; the goal was to alleviate developing countries’ concerns and suspicions in relation to the ICC (Deitelhoff 2009, 55-56). Explaining the importance of the regional conferences, an LMG representative commented,

> We invited all future Rome delegates of those countries and sponsored their travel expenditures…to discuss the key issues of the Rome conference. We wanted the participants to evaluate the different models and then to decide upon which is the best model. We prepared about ten key issues and each delegation was responsible for one of these issues and was to prepare their recommendation on how to deal with them. In the end, we discussed those recommendations in the plenary to achieve consensus. As a result, the conference participants agreed on fairly strong principles on the ICC, probably about the strongest I have witnessed throughout the process. (Deitelhoff 2009, 56)
Given the numerical advantage that developing countries had in the context of the majoritarian decision-making structure adopted at Rome, the connections and support that these meetings generated would prove to be a major asset to the LMG and CICC as the deliberations moved forward.

Third, and partially as a result of the factors discussed above, the trajectory of deliberations regarding the role that the Security Council would play in referring cases to the ICC began to change in ways that were contrary to the preferences of the United States and other major powers. Throughout 1996 and 1997, the CICC’s primary objectives were to ensure that the ICC would have an independent prosecutor and that the Security Council would not have the ability to block prosecutions (Glasius 2006, 51). While the United States and other major powers still argued that the Security Council should have responsibilities for initiating a prosecution, other previously undecided states gradually began to gravitate towards the CICC’s and LMG’s position on limiting the role of the Security Council (in response to targeted advocacy activities and the regional conferences) (Deitelhoff 2009, 50).

It was in this political context that the Singaporean delegation introduced the “Singapore Compromise”. In a reversal of the position outlined in the ILC draft, the compromise proposed that instead of the Security Council having to vote to approve a prosecution, members could only vote to block a prosecution (Glasius 2006, 51). In other words, the P-5 could only use a veto to prevent a decision to block an investigation. This type of arrangement would make it much easier to go forward with prosecutions and effectively eliminate great powers’ ability to exert influence on the process (Glasius 2006, 51). In addition to other states, China, Russia and the United Kingdom also surprisingly
supported this proposal. As such, the Singapore Compromise was ultimately included in
the draft Statute that would be reexamined at Rome.

Fourth, a critical mass of states in favor of a strong and independent court began
to emerge after the LMG, which had grown to over 40 members, came out with its
official policy positions in December 1997 (Leonard 2005, 92). The LMG’s proposal
was designed to outline a set of common principles that would allow more states to join
the group while providing latitude for countries to maintain flexibility on more minor
issues. The LMG’s platform consisted of six principles. First, they advocated for an
ICC that would be independent from the Security Council. Furthermore, they argued that
the court should have an independent prosecutor. Moreover, the LMG suggested that the
Court should have the jurisdiction to cover all core crimes for signatories. In addition to
providing the Court with greater prosecutorial independence, this stipulation was aimed
at preventing states from opting in or out of individual crimes (Leonard 2005, 92-93).
Finally, the LMG: 4) called for states to fully cooperate with the ICC; 5) argued that the
ICC should be the ultimate decision-maker on issues of admissibility; and 6) voiced its
commitment to a successful conference at Rome.

*Onward to Rome*

Around the time that the LMG unveiled its negotiation platform, fissures began to
emerge among the P-5. Whereas Russia and China had already indicated support for the
Singapore Compromise regarding the role of the Security Council, the United Kingdom

---

67 It is important to note that, while it was not part of the LMG’s official platform, most members of the
LMG also favored universal jurisdiction for the ICC (Kirsch and Robinson 2005, 71).

68 The United States and other permanent members of the Security Council advocated the following
positions: 1) the court should not have jurisdiction over non-party states; 2) the core crimes should not
include the crime of aggression; 3) there should not be an independent prosecutor; 4) there should be an opt-
out clause in the Statute; 5) the Statute should have a reservation clause; 6) the court should be tied closely
to the Security Council; and 7) the description of crimes should not include any references to drug crimes or
terrorism (Leonard 2005, 133).
went a step further towards the LMG’s camp by offering qualified support for an independent prosecutor (Glasius 2006, 51). Britain’s change in position undermined the unity that the Security Council members previously had on the issue of an independent prosecutor. Furthermore, the United Kingdom, which had a new Labor government, also definitively announced that it would oppose giving the Security Council blocking power and support the Singapore Compromise (Glasius 2006, 51). By joining the LMG, the United Kingdom greatly undermined the United States’ (and other permanent members’) bargaining position and provided crucial momentum to the LMG heading into the negotiations at Rome.

Following the last PC meeting, delegates from LMG countries and the CICC were clearly energized. Despite these positive sentiments, however, there was still significant uncertainty about whether it would be possible to strike an agreement at Rome (Schiff 2008, 70). For example, the text that the PC submitted had 116 articles, many of which were multiple pages long, presented multiple options and contained over 1300 brackets69 (Kirsch and Homes 1999, 2; Arsanjani 1999, 22). Moreover, though the PC had worked out large number of issues associated with the Statute, a variety of contentious issues—including the scope of the Court’s jurisdiction (e.g. whether it would have universal jurisdiction, even over non-signatories) and the Security Council’s role in initiating prosecutions—remained unresolved (Schabas 2004, 14). It was thus clear to participants that the different negotiating blocs would have to compromise and make concessions in order for an agreement to happen (Leonard 2005, 96).

---

69 Brackets are an indication that the issue is still unresolved.
The United States’ Stance

Although the tide was clearly turning against the United States’ interests, the United States nonetheless continued to voice support for creating an ICC during the PC negotiations. Clinton himself even voiced support for creating an ICC six times before the Rome negotiations (Scheffer 2000, 2). For example, speaking at the UN in September 1997, Clinton remarked that “before the century ends, we should establish a permanent international criminal court to prosecute the most serious violations of humanitarian law” (Scheffer 1997, 1). In a reflection of the US position, David Scheffer, the United States’ lead negotiator at Rome, commented that

The President’s vision reflects our long-standing fundamental position of support for a fair, effective, and efficient court, and now emphasizes a rapid timetable for its establishment…The time has come to move with determination towards the establishment of an international court that serves as a deterrent and as a mechanism of accountability in the years to come. The United States will continue to play a major role in the negotiations and in Rome next summer. The participation of the United States in an established permanent court will be essential to its effectiveness. History has shown that when new international institutions are started without full United States participation--like the League of Nations--they can fail.(Scheffer 1997, 1)

As these examples demonstrate, and despite the setbacks mentioned above, the United States still had confidence that it could effectively shape the negotiations at Rome (Dubriske 2005, 32-33).

Problematically, however, the United States still had not outlined a clear policy on many of the most controversial issues associated with the Statute. In March, three months prior to the conference, Jesse Helms, the head of the United States Senate’s Foreign Relations Committee, wrote to Secretary of State Madeline Albright saying that an ICC over which Washington did not have veto power would be “dead upon arrival” in his Committee (Weschler 2000, 91). Helms, with the support of the Pentagon, wanted an
absolute assurance that Americans would not fall under the ICC’s jurisdiction under any circumstance (Weschler 2000, 91).

Given that the United States could not move forward with ratification of an ICC treaty without Senate approval, it seems that Helms’ position would have represented a logical starting point for the US delegation. Indeed, if the executive branch had taken Congress’ concerns more seriously it could have raised these important issues well in advance of the Conference through NATO, other alliance channels and diplomatic channels (Wedgewood 1998, 24). Pursuing this approach may ultimately have altered the trajectory of the ICC negotiations in the United States’ favor.

As it was, however, the United States neither outlined its bottom line nor clarified the terms under which it could support the Statute prior to the onset of the Rome negotiations. As a result, the US delegation went into the negotiations without a clear set of arguments that it could use to shape the deliberations (Wedgewood 1998, 20). In a reflection of the ambiguity inherent in the United States’ platform, the United States announced only days before Rome that the “Clinton administration supports the creation of a strong, effective, and properly constituted court…We remain hopeful that governments will resolve their remaining differences and that the conference will produce a statute for the court that the international community, including the United States, can embrace” (Dubriske 2005, 33). By the time that the US delegation finally received instructions four weeks into the conference regarding what Washington’s “redlines” actually were, it would ultimately prove too late for the United States to achieve its objectives in the context of the negotiations (Wedgewood 1998, 20).
The Agenda Shifts

Going into the Rome Conference, momentum was clearly building against the United States. However, despite facing a myriad of challenges, the United States still had an opportunity to shape the agreement. Ultimately, a combination of factors including the influence of the LMG and CICC, the way in which the negotiations were conducted, and the use of strong-armed diplomatic techniques by the United States led to the passage of an agreement that did not reflect the United States’ preferences.

The Deliberations Proceed

In 1998 more than 160 countries and nearly 250 accredited NGOs, primarily drawn from the CICC’s now 800-strong membership, arrived in Rome for the Conference (Pace and Schense 2005, 115). The task at hand was not an easy one. As Phillipe Kirsch, the chairman of the Rome Conference, explained,

This is easily the most complex international negotiation I have ever been involved in…We have representatives here from one hundred sixty-two countries…confronting, many of them for the first time, a draft document of over two hundred pages, consisting of one hundred twenty articles, and containing thirteen hundred brackets, which the six Preparatory Conference couldn’t resolve, leaving multiple options to be tackled one by one by everybody gathered here—the thirteen hundred hardest issues. (Weschler 2000, 85)

During the first three weeks of the Conference, numerous working groups attempted to resolve many outstanding issues. However, while they achieved success on a number of the less controversial issues, there was still no consensus on many of the most pressing issues, including the independence of the prosecutor, role of the Security Council and the court’s jurisdiction (Weschler 2000, 89). Indeed, it appeared as if the conference was beginning to stall (Pace and Schense 2002, 130).
Although nothing dramatic had happened yet, a number of factors combined to undermine the United States’ position leading into the critical last two weeks of the Conference. First—and even as the LMG had become more cohesive and grown to over 60 states—it quickly became clear during the first few weeks of the negotiations that there were major differences in opinion among the P-5 (Kirsch and Robinson 2005, 70). For example, the United States, Russia and China were initially opposed to an independent prosecutor; China and Russia supported the Singapore Compromise while the United States’ stance on this proposal was unclear. In contrast, France voiced support for an independent prosecutor and expressed only tepid support for the Singapore Compromise. For its part, the United Kingdom—which had joined the LMG—continued to support the Singapore Compromise while voicing new concerns about an independent prosecutor (Glasius 2006, 52).\footnote{The United Kingdom eventually voiced support for an independent prosecutor, adding significant momentum to the LMG’s efforts on this topic (Leonard 2005, 1999).} As a result of these obvious divisions, other delegates quickly realized that the P-5 would not have a unified stance during the negotiations and that they could potentially negotiate side deals with individual states (Pace and Schense 2002, 132).

Due to divisions in its negotiating bloc, the United States was also forced to conduct most of its negotiations and discussions on a bilateral basis. This was a very time-consuming and resource-intensive strategy that made it more difficult for the United States to get its points across in the context of the negotiations (Scheffer and Homes 1999, 15). Moreover, the United States’ lack of strong allies undermined its ability to use persuasion in the context of negotiations. For example, in the middle of the conference the United States attempted to argue against an independent prosecutor by suggesting that
it would be overwhelmed with demands and unable to withstand the political pressure that would be applied to prosecute certain cases (Pace and Schense 2002, 133). However, most states discarded these concerns after the Lawyers Committee for Human Rights put out a 28-page response rebutting the United States’ arguments against an independent prosecutor and the CICC and LMG conducted an awareness campaign (Glasius 2006, 53). As these examples demonstrate, and given the complexity of the negotiations and court proponents’ numerical superiority, the United States’ lack of clear allies would prove to be a major disadvantage during the proceedings at Rome (Scheffer 1999b, 15).

The structure of the negotiations also put the United States at a disadvantage. As mentioned early in this section, the ICC negotiations were extremely complex. Indeed, one observer commented that the negotiations were “like a 3-D chess game…being played on a rotating board” (Weschler 2000, 85). In order to make it easier to address the many unresolved issues, the conference divided the major issues into 15 working groups. As had happened in the PC, the Chair of the conference ensured that 11 of the 15 working group coordinators came from the LMG (Glasius 2006, 25). Critically, LMG representatives led the working groups on many of the most controversial issues, including the role of the prosecutor and the scope of the court’s jurisdiction. Since the coordinators from the LMG were committed to a strong and independent court, they used their leadership positions to shape the negotiations within the context of the working groups (Glasius 2006, 25). The fact that neither the United States nor its allies had representatives in these leadership roles was a major disadvantage.

The CICC also played an influential role during the Rome negotiations to the United States’ detriment. As mentioned previously, the CICC had developed a close
working relationship with the LMG during the PC meetings. In cooperation with the LMG, the CICC continued its involvement at Rome by providing states with information and lobbying them to strengthen their positions in relation to the court (Pearson 2006, 266). Since CICC representatives were able to attend working group and plenary meetings, they also played an important role in monitoring the progress of negotiations and publicizing important trends. Moreover, even though NGOs were excluded from informal state-to-state meetings, LMG members provided the CICC with accounts of the informal meetings so that they could identify potential laggards and/or important issues and tailor their public advocacy strategies accordingly (Glasisus 2006, 44). Working in tandem, the CICC and LMG were an effective team throughout the deliberations (Pearson 2006, 269).

Finally, the United States continued to promote an ambiguous platform during the early stages of the negotiation. For example, the United States’ silence on the Singapore Compromise and other controversial points in an opening speech led some observers to conclude that the United States might be willing to compromise on these issues (Glasius 2006, 52; Haq 1998a). The expectations promoted by this ambiguity resulted in unfavorable consequences when the United States attempted to elicit concessions in later stages of the negotiations.

*The United States Gives an Ultimatum*

Major progress still proved elusive after three weeks of deliberations in Rome. In order to move the negotiations forward, Kirsch began to compile information about states’ preferences and potential compromise options. He then called a meeting of 30 key states to discuss new proposals on the most contentious issues (Glasius 2006, 53). When
Kirsch presented the package of potential options to the Conference in the form of a Bureau Paper, it was clear that there was a consensus building on many issues. For example, a majority of states spoke in favor of an independent prosecutor and 83 percent supported the Singapore Compromise (Glasius 2006, 54). Despite its continued opposition to an independent prosecutor, the United States also indicated that it would be willing to support the Singapore Compromise (Glasius 2006, 54). The shift in the United States’ position on Singapore’s proposal most likely occurred because it had already become clear that the majority of states were in favor of this proposition (Haq 1998b). Regarding the scope of the court’s jurisdiction, 73 percent of states voiced support for universal jurisdiction while France and China insisted on an opt-in provision, and the United States and Russia accepted universal jurisdiction for genocide only and opt-in for other crimes (Glasius 2006, 65).

In explaining the United States’ positions on these issues to the conference, Ambassador David Scheffer put forward an ultimatum that shocked other delegates and fundamentally transformed the dynamics at Rome. As late as July 9, the day before the United States gave its ultimatum, Giovanni Conso, the Conference’s President, remarked that many delegates were worried that time was running out on the conference. Moreover, while the LMG’s position had attracted the support of 70 states, it would still need to gain the support of 38 more countries in order to cross the two-thirds threshold required to approve the Statute (Conso 1998).

Whereas prior to Scheffer’s announcement, which took place during the fourth week of the conference, the United States’ had not heavily emphasized the universal jurisdiction issue, instructions from Washington led Scheffer to introduce fresh demands
to the plenary (Wedgewood 1998, 20). Thus, even while Scheffer was conciliatory on issues such as the Singapore Compromise and the degree of coverage for crimes committed during internal wars, he took a decidedly hard line on universal jurisdiction by announcing that while “automatic jurisdiction over all the core crimes might satisfy the most optimistic requirements of theory… it is a recipe for limited participation in the Court, and, in the result, an ineffective Court” (US 1998). Scheffer concluded by pledging that if “the other approaches I have described emerge as an acceptable package for the Statute, then the United States delegation could seriously consider favorably recommending to the U.S. government that it sign the ICC treaty…” (Weschler 2000, 100). In other words, the United States was ready to oppose the ICC unless the conference gave in to its demands (Weschler 2000, 99).

Given the divisions that still existed among delegates at Rome, it came as a surprise to many observers that, far from being effective, Scheffer’s speech caused a backlash among delegates. For example, the representative from Botswana spoke of the United States’ “breathtaking arrogance” (Weschler 2000, 100). Similarly, in a rejection of the United States’ concerns about its troops, Somoa’s representative commented that “the Fijians have peacekeepers scattered all over the world, too, and you don’t see them worrying about their boys’ exposure before this Court” (Weschler 2000, 100).

The United States’ allies were also unwilling to accommodate new US demands so late in the game (Wedgewood 1998, 20). Given the United States’ tacit acceptance of the Singapore Compromise and lack of emphasis on the jurisdiction issue, many

---

71 Given the United States’ responsibilities for international peacekeeping duties, the Pentagon and Senate were worried that a court with universal jurisdiction could be used to prosecute its soldiers abroad. Although the Statute included the principle of complementarity—that national judicial systems would take precedent over international ones—they was still worried that there was a chance, albeit slim, that Americans could be prosecuted by an ICC (Weschler 2000, 97).
countries and NGOs alike expected that the United States would also moderate its position on other issues required to establish a strong ICC (Haq 1998b). Thus, while the United States’ allies may have accommodated its positions if the United States had presented these concerns earlier in the negotiations, countries were not willing to backtrack on positions that they had been advocating throughout Rome just to satisfy the United States (Wedgewood 1998, 22). In short, the United States’ failure to establish its bottom lines earlier in the deliberations and use of strong-arm negotiating techniques had the effect of galvanizing support against the United States’ position in Rome’s final days (Wedgewood 1998, 20).

More fundamentally, many delegates did not think that the United States would actually end up ratifying the treaty no matter what type of concessions it received. As a lawyer with the Canadian delegation commented, “the United States still hasn’t even ratified the Convention on the Rights of the Child. There are only two countries in the entire world that have failed to do so…So, one has to wonder, why even bother trying to meet such demands” (Weschler 2000, 100). Moreover, in essence the United States seemed to be saying that it would only accept a court that would have no jurisdiction over countries that had not signed the Statute; this suggested that the United States might never sign the Statute even if it was changed to reflect US preferences (Weschler 2000, 101). Finally, many delegates questioned the logic of the United States’ position. In the words of the head of the Korean Delegation,

In order to protect against this less-than-one percent chance of an American peacekeeper becoming exposed, the U.S. would cut off Court access to well over ninety percent of the cases it would otherwise need to be pursuing. Because what tyrant in his right mind would sign such a treaty? (Weschler 2000, 101)
After assessing the feedback on the first Bureau Paper, Kirsch presented the conference with a second Bureau Paper on July 13 (Kirk 1998). Critically, the document included both the Singapore Compromise and a tacit endorsement of an independent prosecutor (Glasius 2006, 55). As it unsurprisingly became clear that there was still a significant amount of controversy surrounding the second draft, especially in relation to the jurisdiction issue, Kirsch and his aides began to craft their strategy for assembling the final proposal. Describing his strategy for the final text, Kirsch explained, “The trick is to emerge with a strong Statute with incentives enough that down the line currently reluctant governments may yet want to join on…no government is going to want to join onto a useless statute” (Weschler 2000, 104).

End Game

Thus, as the beginning of the fifth week approached, delegates were faced with a major dilemma. In the words of one observer, “it’s as is we’re being forced to choose…A Court crippled by American requirement with regard to state content, or a Court crippled by lack of American participation” (Weschler 2000, 103). In general, the prevailing sentiment seemed to be that the United States’ participation was desirable. For example, the head of the German delegation, who was a strong proponent of the court, commented, “we desperately, desperately, desperately want the U.S. on board…We are willing to walk the extra mile…to meet U.S. concerns…Will they be willing to move the slightest bit in order to meet us” (Weschler 2000, 104)?

For its part, the United States was not yet willing to passively concede defeat in the negotiations. For example, President Clinton, Secretary of State Madeline Albright and Defense Secretary William Cohen were phoning their counterparts around the world
in hopes of swaying them on the jurisdiction issue (Weschler 2000, 104). Unfortunately, US attempts to influence the course of negotiations through coercion back-fired once again. For example, when Cohen warned the Germans that the treaty as it was evolving could lead the Pentagon to reconsider stationing troops in Europe, the Germans leaked the information back to the plenary, provoking outrage among delegates and corresponding denials from the United States (Weschler 2000, 104).

Three days before the final text was supposed to be introduced, the P-5 met once again in a final attempt to devise a unified position. Members of the P-5 calculated that they might still be able to alter the trajectory of the negotiations if they could get the United Kingdom to backtrack on its positions and join a unified P-5. When it appeared that the British might waver, NGOs sprung into action and initiated a public relations campaign in England (Weschler 2000, 105). In the face of the public pressure created by the campaign, the British ended up adhering to their previous positions (which corresponded to the platform of the LMG). As a result, when the P-5 presented their new joint proposal (which included a ten-year opt-out for crimes against humanity and war crimes, among other features), it was rejected by the LMG and did not garner any significant support among other delegates (Scheffer 1999, 20).

As the final days of the conference approached, the negotiations evolved into a series of informal meetings. By mid-day on Thursday—when the final negotiating text was supposed to be released—the French had struck a last minute deal with the LMG in which they agreed to endorse the Statute in exchange for the inclusion of a seven-year opt-out clause limited to war crimes alone (Leonard 2005, 99). France’s endorsement of
the LMG’s positions provided the group and its supporters with additional momentum heading into the Conference’s final day.

While the United States also attempted to strike a deal in the final days of the Conference, its efforts were ultimately unsuccessful. For example, in an attempt to protect Americans serving abroad, the United States proposed that the court should withhold its jurisdiction in instances when a non-party state (suspect state) decided that the crime occurred as an “official act” (Glasius 2006, 72; Ortenlicher 1999, 495). In short, the proposal was aimed at giving US citizens involved in military operation a de facto exemption from prosecution by the ICC since the US government could rule their actions an “official act”. Given that ICC proponents wanted a court based on a legitimate rule system, and that the United States’ proposal would cause a major loophole in the court, the proposal proved logically problematic and was quickly discarded (Struett 2008, 128).

In general, it appears that the United States’ position was largely inflexible in the Conference’s final days. As one of Kirsch’s top deputies explained,

Nothing could assuage them [the United States]. We figured they’d be trying to negotiate...Frankly, as of that Monday morning, we figured the Independent Prosecutor was toast...But they never even brought him up. They seemed completely fixated on the Helms/Pentagon imperative...we offered to strengthen complimentarity—for instance requiring the Prosecutor to attain a unanimous vote of a five-judge panel if he was going to challenge the efficacy of any given country’s complimentarity efforts. In fairness, they seemed on an incredibly short leash....(Weschler 2000, 105)

As the quote above demonstrates, the international community was still willing to strike a compromise with the United States in the lead-up to the end of the Conference. Unfortunately, however, other delegates were ultimately not willing to compromise on the only point that could have ensured the United States’ participation.
In the midst of these informal meetings, and in the context of the need to introduce an agreement before the Conference adjourned, Kirsch and his staff began assembling the text for a final draft. As part of this process, Kirsch and his team began meeting informally with members of the various negotiating blocs in order to forge a compromise for the content of the draft Statute. As Kirsch and Robinson (2002, 87) explain,

Most delegations understood that the real effectiveness of the Court must inevitably depend on a balance of two factors: strong treaty provisions in the Statute and strong support from States...putting exclusive emphasis on obtaining universal support would have been...untenable. Given the extent of demands of a minority of delegations, a clear majority of delegations were of the view that to further accommodate those concerns would have involved weakening the Statute to the point where the Court would be constantly paralyzed, i.e. a court ‘not worth having’. Thus, the balance sought in Rome was to create a Statute strong enough to ensure the effective functioning of the Court, with sufficient safeguards to foster broad support among states.

Critically—and instead of being drafted under states’ supervision—, the chair and his staff had the latitude and flexibility to compile whatever draft they believed had the best chance of attracting the support of two-thirds of the delegates (von Hebel 1999, 36).

In addition to the substance of the draft, the Bureau also had latitude over the format for voting on the Statute. Possible options included voting individually on the amendments or a single vote on the package as a whole (Kirk 1998b). When the results of a “virtual vote” conducted by the CICC, and widely distributed to participants, found that the United States’ positions were very much in the minority, momentum began to build for the issues to be put to a vote (Brown 2000, 64). Thus, with the backing of the LMG, Kirsch and his team decided to combine the key elements of the Statute into a take-it-or-leave-it proposal that would not be subjected to further compromises (Davenport 2002/2003, 23; Kirk 1998d). In other words, states would not have the
option to sign the treaty with reservations—they would have to accept the whole package or nothing at all.

Though it was supposed to be released mid-day on Thursday, the Bureau’s final draft was released on Friday (the final day of the conference) at two in the morning. The conference was set to reassemble at 7 in the evening, leaving delegates less than twenty-four hours to review the document (Weschler 2000, 106). From a substantive point of view, the final draft closely resembled the LMG’s positions on many of the most important issues including the role of the Security Council and the independent prosecutor. Critically, the Bureau had chosen to take a middle ground on the issue of the ICC’s jurisdiction by providing the court with jurisdiction in instances in which “one or more of” the suspect state(s) or the territorial state(s) was a signatory to the ICC (Glasius 2006, 73; Weschler 2000, 106). As Charles Brown, the spokesman for the United States’ delegation commented, “Four words. Four little words. It’s incredible. They’re within four words of a draft which, even if we couldn’t necessarily join, we would still be able to live with. And they’re not going to budge. They’re going to stuff them down our throat” (Weschler 2000, 106). Thus, while the final draft did not grant the ICC universal jurisdiction as per the preferences of the CICC and LMG, it also did not conform to the United States’ rigid stance on the issue.

As such, and despite the United States’ best efforts to rally opposition to the Draft among wavering delegates, the vast majority of delegates voiced support for the package proposal and resisted requests for alterations out of fear that doing so might cause the compromise to fall apart (Schabas 2004, 18). A last minute flurry of diplomatic activity
by high-level administration officials and State Department staff was also ultimately unsuccessful (Glasius 2006, 72).

It is important to note that both the lack of transparency that typified the process of compiling the final draft and the way in which it was introduced at the end of the conference significantly undermined the United States’ ability to shape the agreement. For example, Scheffer (1999b, 20) argues that

> The process launched in the final forty-eight hours of the Rome Conference minimized the chances that the proposals and amendments to text that the U.S. delegation had submitted in good faith could be seriously considered by delegations. The treaty text was subjected to a mysterious, closed-door and exclusionary process of revisions by a small number of delegates, mostly from the like-minded group, who cut deals to attract certain wavering governments into supporting a text that was produced at 2:00 am, on the final day of the conference…text for a permanent institution of law was not subjected to the rigorous review of the Drafting Committee or the Committee of the Whole and was rushed to adoption…without debate.

As the quote above demonstrates, the fact that the United States was excluded from key strategy sessions and positions of influence significantly undermined its ability to influence the course of the negotiations (Davenport 2002/03, 25).

As Kirsch convened the delegates on the evening of July 17, many delegates were still worried that the package could fall apart if even one of the provisions was called into question (Glasius 2006, 72). These worries were put to the test when both India and the United States proposed amendments to the draft. In both instances, Norway responded by introducing a “no action” motion, aimed at tabling the amendments (Leonard 2008, 41). The Indian amendment was defeated by a count of 114 against, 16 for, and 20 abstentions, while the amendment proposed by the United States was voted down by a similarly lopsided margin of 113 against, 17 for, and 25 abstentions. Following the second vote United States’ proposal, “the delegates burst into a spontaneous standing
ovation which turned into rhythmic applause that lasted close to 10 minutes…” (Leonard 2008, 41-42).

With a sense of elation permeating the chamber, delegates reconvened two hours later to vote on the Statute. In order to prevent the Statute from being adopted by consensus, the United States exercised its right to call for a vote. The final tally of the anonymous vote was 123 for, 7 against, and 21 abstentions (Schabas 2004, 18). In addition to members of the LMG, P-5 members Russia, France and the United Kingdom also voted in favor of the Statute. The United was joined by China, Libya, Yemen, Iraq, Israel and Qatar in voting against the Statute (Weschler 2000, 108). Soon after striking the gavel confirming the establishment of the ICC to raucous applause, a beaming Kirsch commented, “this is an extraordinary moment, a historical moment. I am not sure to what extent those present here know how important this is for the future of humankind” (Kirk 1998c). David Scheffer, the head of the United States’ delegation, could only sit quietly at the other end of the hall. In subsequent interviews, Scheffer expressed disappointment that the Statute was not to the United States’ liking, but promised that Washington would continue to exert leadership and provide support to “international justice” (Terra Viva 1998).

Despite Scheffer’s sense of despondency and the results of the vote, the United States had arguably accomplished most of what it had set out to achieve during the negotiations (Kirsch and Robinson 2002, 90). The United States’ delegation, which was one of the largest and best prepared at the Conference, was very effective in advancing the United States’ views and may have had a greater impact on the Statute than any other
state. Indeed, multiple aspects of the Statute were specifically designed to reflect or accommodate US priorities (Kirsch and Robinson 2002, 90).

To begin with, the United States achieved an improved form of complimentarity by which the ICC had to defer to a state’s national court and only had jurisdiction in instances where a national court was unable or unwilling to prosecute the case (Leonard 2008, 97). Moreover, the Statute upheld the confidentiality of national security information, established due process and protection of the accused, and established a funding structure which ensured that the ICC would be accountable to state parties. Finally, the Statute established rigorous qualifications for the appointment of judges in order to ensure that the court would not become politicized (Leonard 2008, 98).

Paradoxically, the concessions that the United States was able to achieve may have contributed to the splintering of the P-5. Indeed, several key members of the P-5 (Russia, France and the United Kingdom) may not have voted in favor of the Statute in the absence of these changes (Leonard 2008, 99). As it was, however, the United States’ allies signed the treaty while the United States found itself unable to support an agreement that it had played a primary role in shaping.

The Aftermath

Along with the passage of the Statute, the Conference also established another PC that would be responsible for preparing proposals for the ICC’s establishment and finalizing the draft texts (Brown 2000, 78). Though the United States had been defeated at Rome, it continued to press for an exemption for official acts conducted by non-party states (Glasius 2006, 17; Wedgewood 2001, 201). Despite sustained diplomatic lobbying,
this initiative, along with similar ones introduced in 2000, did not generate any significant support within the PC (Glasius 2006, 18).

Even though it was clear that the United States was not going to achieve its objectives in the context of the PC and domestic opposition to the ICC in its current form was strong, Bill Clinton nevertheless decided to the sign the Rome Statute on his last day in office in December 2000. Clinton’s goal was not to indicate US support for the Statute as it was written, but rather to provide the United States’ with a continued seat at the bargaining table to press for an exception (Glasius 2006, 18). Explaining the United States position, Scheffer (2000, 1-2) commented that there remains a lot of confusion and, frankly, misrepresentations about U.S. policy toward the ICC in the popular media…Overall, there appears to be a common perception that the United States has always stood and continues to stand in opposition to the creation of a permanent International Criminal Court. This perception, of course, is false. The Clinton Administration engaged in the negotiations for an ICC, which formally began in 1995, strongly supporting the establishment of an ICC. We demonstrated that support by being intensively engaged in the negotiations and producing a large number of papers commenting on and proposing text for the emerging draft treaty. From the very beginning, however, we never intended that the treaty's personal jurisdiction would extend as far as the Rome Treaty finally established…

In May 2000, the United States House of Representatives introduced the American Service-members Protection Act. Aimed at shielding members of the US military from prosecution by the ICC, the Act prohibits any form of US cooperation with the ICC, prohibits military assistance to ICC parties, and authorizes the President to use all means necessary to free Americans detained by the ICC (Glasius 2006, 18). The act was passed in May 2002 and soon thereafter, the Bush administration wrote to the UN expressing its plan to withdraw the United States’ signature from the ICC treaty. By
withdrawing its signature, the United States could begin to take actions aimed at undermining the ICC’s authority.\footnote{According to Article 18 (a) of the Vienna Convention a “state is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty…” As a result of the fact that the Vienna Convention is considered customary law, the Bush administration had to withdraw its signature before it could begin attempting to undermine the ICC (Ralph 2007, 127). After withdrawing from the Treaty the Bush administration began asking other states to sign bilateral non surrender agreements, which were essentially aimed at undermining the ICC’s influence (Kelley 2007).}

In April 2002, the ICC treaty passed the 60-state ratification threshold necessary for the agreement to enter into force and the treaty officially entered into force in July 2002. As of January 2010, the Rome Statute had been ratified by 110 countries.

**Alternative Explanations**

In this section I examine the applicability of alternative explanations. While the issue linkage and domestic politics hypotheses have some applicability, the realist explanation cannot effectively account for why the United States was unable to shape the ICC treaty.

**Realism**

Realists would have difficulty accounting for United States’ inability to shape the Rome Statute. First and foremost, the United States dedicated significant resources to advancing its positions during the PC meetings and at Rome. For example, the United States’ delegation was one of the largest and most well prepared at the Rome conference (Kirsch and Robinson 2002, 90). Moreover, high level policymakers, including the president and secretaries of defense and state, all tried unsuccessfully to influence the course of the Rome negotiations. Following the conclusion of Rome, the United States repeatedly attempted to alter the Statute during the PC meetings. As these examples
demonstrate, the United States’ failure to shape the ICC agreement was not due to a lack of effort.

While the effect of the first realist variable was clearly minimal, it is more difficult to assess whether the ICC has influenced the United States’ actions in the realm of international justice. In large part, this difficulty stems from the fact that beyond recognizing its authority, it is unclear how membership in the ICC would change the United States’ actions. On one hand, as per the American Service-members Protection Act, the United States clearly does not recognize the ICC’s jurisdiction over American citizens. However, the United States provided the ICC with tacit support during both the Bush and Obama administrations. For example, the United States gave the ICC support in documenting atrocities in Darfur and has indicated that it will not stand in the way of the ICC’s prosecution of Sudanese President Omar al Bashir (US Signals 2009). As these examples demonstrate, from both a theoretical and practical point of view it is difficult to determine whether the passage of the ICC has definitively influenced the United States’ policies on international justice issues.

**Domestic Politics**

In the case of the ICC, domestic political discord certainly played a role in undermining the coherence of the United States’ bargaining position. However, as mentioned previously, it seems likely that the United States could have shaped the ICC agreement if it taken these constraints into account when formulating its initial bargaining strategy. Although it knew about domestic actors’ concerns months before the ICC negotiations commenced at Rome, the Clinton Administration only formulated its official positions on the most controversial issues a few weeks after the Conference had already
begun (Wedgewood 1998, 20). If the executive branch had taken these stakeholders’ concerns more seriously, it could have raised these issues prior to the conference through NATO, other alliance channels, and behind-the-scenes diplomacy (Wedgewood 1998, 24) or outlined the United States’ most important negotiation positions prior to the conference (instead of four weeks in). Given that the United States could have forged an agreement that would have satisfied domestic constituencies if it had implemented a more effective diplomatic strategy internationally, the domestic politics variable has mixed explanatory value in this case.

**Issue Linkages**

There are indications that issue linkages played a role in influencing the outcome of the ICC negotiations. As discussed in Chapter 5, a coalition of middle powers and NGOs successfully passed the OTL in the face of opposition from the United States; this occurred around the same time that the Rome negotiations were slated to begin. As such, it seems plausible that other states’ unwillingness to accommodate US demands at Rome may have been partially a result of lingering anger at the United States over its obstinacy at Ottawa (Wedgewood 1998, 21).

**Conclusion**

The ICC case is largely consistent with the predictions of the theoretical model. In the case of the ICC, the United States’ endorsement of ICC negotiations provided the impetus necessary for the PC process to move forward. As deliberations in the PC progressed, it quickly became clear that support was building for an ICC that was much stronger and more independent than the ILC had originally envisioned. Despite the fact that US domestic actors expressed concerns about critical aspects of the ICC treaty, the
Clinton administration did not effectively engage with important swing states by clearly outlining the United States’ bottom line for the negotiations prior to the start of the Rome Conference.

Throughout the PC and Rome negotiations, the LMG and CICC steadily gained influence in the context of the deliberations. Given that it appeared increasingly likely that the United States would be willing to compromise, more and more countries, including important swing states, began to gravitate towards the LMG’s position. As a result, by the time that the United States presented its non-negotiable demands, there was already robust support for positions that it opposed. Moreover, the LMG used its positions of influence on the working groups and chairmanship of the Conference to put together an “all or nothing” package of demands that was not subject to further deliberations. In the context of Rome’s majoritarian-based decision making structures, this made it impossible for the United States’ to influence the agreement’s content during the Conference’s final days. As a result of these factors, the plenary passed a Statute establishing the ICC that contained provisions that the United States continues to oppose.
Chapter 8: Examining the Other Quadrants

In the previous three chapters I presented case study analyses examining three instances where international agreements were established in the face of opposition from the United States and did not reflect US preferences. In order to further assess the applicability of my theoretical model, in this chapter I analyze three case studies from quadrants three (not reflect US preferences/not in force) and four (reflect US preferences/not in force) of the typology of institutional outcomes presented in Chapter 3.

First, I assess the factors underlying the United States’ success in preventing the emergence of international agreements in the areas of Small Arms and Light Weapons (SALW) and the Protocol on Procedures to Verify Compliance with the Biological and Toxin Weapons Convention (PBWC). In addition to examining the extent to which these cases are consistent with the theoretical model, I also assess why other countries decided not to move forward with the agreements in the face of US opposition (as occurred in the KP, OTL and ICC negotiations). Next, I examine the negotiations leading up to the Comprehensive Test Ban Treaty (CTBT). Though the United States was able to successfully shape the content of the agreement, the United States still has not ratified the agreement for domestic reasons and, as a result, the agreement itself has not entered into force internationally.

The Agreement that Never Was: Small Arms and Light Weapons

Following the end of the Cold War, and subsequent widespread outbreak of civil wars and other forms of violence, the dangers associated with the proliferation of SALW gained increased prominence in the international arena. However, despite the emergence of the International Action Network on Small Arms (IANSA) to promote the issue and
the support of the majority of EU states, proponents of a SALW agreement failed to establish a legally binding treaty on the issue.

According to many accounts, the United States’ continuing opposition to a number of important provisions was one of the major factors behind the negotiations’ failure to produce a strong agreement (Bondi 2006, 2002; Karp 2002; Stohl 2001). As the subsequent analysis will demonstrate, the SALW case conforms closely to the predictions of the theoretical model. From the outset, the United States maintained a consistent policy position and clearly enunciated its negotiating redlines. Furthermore, the fact that the negotiations were conducted on the basis of consensus provided the United States with effective veto power over the negotiations. Taken together, a combination of these and other factors prevented the emergence of an agreement.

Early Steps

The first major step towards establishing a global agreement regulating SALW in the post-Cold War era occurred in 1993 when Malian President Alpha Oumar Konara made a request to the UN Secretary General for assistance with the challenges associated with the spread of SALW in West Africa (Behringer 2005, 326). UN Secretary Boutros Boutros Ghali added additional momentum to the process for regulating SALW in 1995 when he added the control of small arms to his Personal Agenda for Peace (Karp 2002, 180). As a result of Boutros Ghali’s support, the UN General Assembly agreed to support an intergovernmental study of the SALW issue.

In August 1997, a UN panel of experts issued a report that provided recommendations on the SALW issue and called for an international conference to be convened on the subject (Behringer 2005, 326). The General Assembly subsequently
endorsed the panel’s recommendations, and gave the Secretary-General permission to set up a new Group of Governmental Experts and begin planning for an international conference on SALW. After two years of work, the Group of Governmental Experts arrived at its recommendations. Most notably, the Group suggested that the international conference should focus on SALW that “are manufactured to military specifications, with the objective of halting the illicit trade in SALW in all its aspects” (Behringer 2005, 328).

In response to the report, the General Assembly authorized the creation of a Preparatory Commission (PC) to coordinate planning for a conference in 2001 aimed at establishing a Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA).

*Negotiations Commence*

Between 1999 and 2001, the PC held three meetings. As the start to the PC meetings approached, distinct negotiating blocs began to emerge. On one hand, and despite the expert group’s recommendation to the contrary, the EU and many developing countries favored a binding treaty and a broad interpretation of the word “illicit” that would incorporate legal aspects of the trade in SALW into the PoA (Wisotski 2009, 26). On the other hand, the United States and major powers such as China and Russia were in favor of a limited definition of “illicit” and resisted a legally binding agreement.

Prior to the onset of the PCs, the United States began to devise a proactive strategy to head off momentum towards a legally binding agreement. Most notably, the United States developed a clear set of negotiating redlines for subsequent SALW deliberations, many of which continue to define the U.S. policy on the issue to this day (Bondi 2006, 123). From the early stages of the first PC, the Clinton administration made
it clear that it would be unwilling to compromise on a number of important issues (Behringer 2005, 328). For example, the United States suggested that initiatives aimed at curtailing the spread of SALW should not include: any definition encompassing any non-military-style weapons or lethal weapons of war; any restriction on civilian possession of arms; any clause banning transfers to non-state actors; or any calls for negotiations on legally binding international instruments (Bondi 2006, 121).  

In addition to highlighting its redlines, the United States also outlined what it was prepared to do to address the SALW issue. For example, in a 1999 speech US Secretary of State Madeline Albright announced that the United States would commit to: adopting a voluntary moratorium on arms sales to regions of conflict not already covered by arms embargoes, particularly in Africa; working with other states to crack down on illegal brokering activities; mobilizing allies and partners to develop principles of restraint and a joint action plan on small arms transfers; and devoting resources, training, and expertise to the destruction of weapons stocks worldwide (Bondi 2006, 123). By clearly outlining its redlines and positions early on in the negotiating process, the United States significantly enhanced its ability to shape the agenda in later stages of the deliberations. Especially given the United States’ role as a major arms exporter, it was unlikely that major players in the EU and elsewhere would have considered moving forward with an agreement that included provisions that would have precluded US participation ex ante (Fehl 2008, 272).

Around the time that the United States was outlining its positions on the SALW issue, a coalition of NGOs (IANSA) was also organizing to advocate for stronger

---

73 Though these policies were part of the Clinton administration’s SALW platform, they were introduced more explicitly at the PoA Conference in 2001 (Bondi 2006).
regulations on the global arms trade (Krauss 2002, 256). However, despite its ambitions, IANSA largely struggled to play an influential role in the lead up to the PoA negotiations. First, since the organization was largely made up of Western academics and activists, it did not have the same global reach as NGO coalitions such as the ICBL and CICC (Karp 2002, 180). This made it much more difficult for IANSA to play an advocacy role during the PCs and subsequent negotiations. Second, when the organization was formed it was not clear what the group hoped to accomplish. Indeed, given that it would have been impossible to advocate for a global ban on all arms transfers, IANSA struggled to develop a clear platform that could galvanize public support for its positions. Third, and partially a result of this ambiguity, IANSA was not able to develop a close working relationship with a core group of middle powers (Clarke 2008, 10). Whereas in previous human security negotiations (e.g. the OTL and ICC) governments had relied on NGOs for policy advice, IANSA largely looked to governments for ideas (Karp 2002, 181). As such, NGOs did not have the same influence as in previous negotiations. As this paragraph demonstrates, NGOs did not play a major role in the SALW issue because of both organizational deficiencies and their inability to develop a clear platform due to the complexity of the SALW issue.

Middle powers also attempted to shape the debate on the SALW issue. For example, Norway held a series of international meetings between 1997 and 1999 aimed at developing support for immediate action to prevent the illicit transfer of SALW (Behringer 2005, 328). Similarly, Canada sponsored a series of regional meetings around the world in 2000 aimed at galvanizing action on the SALW issue. Given the complexity of the issue and the fact that middle powers could not draw up on the support of well-
organized NGO allies in the process of building a coalition and generating public support, these meetings did not produce a strong consensus before the PoA (Karp 2002).

For these reasons, there was no significant momentum building for a strong agreement in the months leading up to the PoA meeting in June 2001. On the contrary, the three PCs were highly contentious and, instead of cultivating a clear agenda for subsequent negotiations on the PoA, only served to highlight the divisions between states on a variety of critical issues (Wisotski 2009, 27).

*PoA Deliberations Begin*

Despite the apparent low likelihood of an agreement ex ante, the United States, now under the leadership of President George W. Bush, took the offensive in the early days of the conference, which had attracted more than 140 states and 40 NGOs. In similarity to the “all or nothing” offers it had presented at Ottawa and Rome, John Bolton, the United States’ chief negotiator, shocked the conference when he announced that the United States “would not tolerate any of the visionary proposals under consideration; nor would it accept any recommendations that departed significantly from the status quo, and it would certainly not permit small arms to become a major issue of concern for the UN” (Karp 2002, 177). More specifically, Bolten announced that the United States would not accept a PoA that included text on: restricting civilian ownership of weapons; promoting international advocacy by nongovernmental and international organizations; restricting small arms sales to nongovernmental entities; limiting the legal trade and manufacture of small arms; committing to begin discussions on legally binding agreements; and holding a mandatory review conference (Stohl 2001). While many of these points were consistent with previous US policies, the way that they were presented by Bolten put the US delegation on the defensive (Stohl 2001).
Though Bolten’s remarks left the United States isolated from its European allies in the context of the forum, the consensus-based decision making rules used in the negotiations made it difficult for treaty proponents to capitalize on this opening (Karp 2002, 179). Indeed, it quickly become clear that it would be difficult to achieve the unanimity necessary to strike a strong agreement in the context of the PoA’s consensus-based decision making structures. For example, many African, Latin American and European states still wanted the conference to pursue a legally binding agreement, including prohibiting the sale of SALW to non-state actors (Behringer 2005, 328). In contrast, middle powers such as Canada, Finland, Norway and the Netherlands argued that it would be impossible to regulate the illegal trade in SALW without first regulating the legal trade (Behringer 2005, 328). Finally, Arab-bloc countries and major arms exporters such as India, China and Russia, emboldened by the cover provided by Bolten’s speech, were opposed to some or all of these proposals (Karp 2002, 190; Bondi 2002, 231). As these examples demonstrate, it was clear from the outset that it would be difficult to strike a strong agreement in the context of the PoA’s consensus-based decision making structures where every state had de facto veto power over the agreement’s final content.

As the deliberations moved forward, it became clear that the United States was not going to back down on its positions. While the many European countries were opposed to the United States’ stance, they ultimately felt that its participation would be critical to the success of the regime (Fehl 2008, 271-272). For example, it is unlikely that other major arms exporters would have supported stronger rules for a global regime without US participation. As such, the EU tried to strike a compromise with the United
States. For example, the EU pressured the African delegation to drop their demand for a ban on SALW exports to non-state actors (Wisotski 2009, 33). The European move to accommodate US demands was also ultimately supported by IANSA, which pragmatically viewed US participation as critical to an agreement. As a result of these factors, the PoA was neither strong nor legally binding.

Although a review conference for the PoA was held in 2006, the SALW issue has stalled in the international arena and largely fallen off of the radar of the international arms control agenda. While another review conference is scheduled for 2011, it is unlikely that any significant progress will happen in the face of US opposition.

**Conclusion and Analysis**

In the end, the PoA reflected almost all of the United States’ positions. For example, the PoA does not contain provisions aimed at launching processes that could result in a legally binding agreement on the brokering, marking, and tracing of weapons (Stohl 2001). While the consensus-based decision making rules used in the negotiations were critical for providing the United States with the leverage necessary to shape the PoA, the fact that the United States maintained consistent policy positions was also important. Indeed, since other countries knew the United States’ “redlines” in advance, they had few illusions about which provisions would be (in)palpable to the United States. As a result, the negotiations never reached a stage—as happened with the ICC, OTL, and KP—where it would be difficult for other countries to back down and accommodate US positions.

Moreover, given the lack of influence exerted by middle powers and NGOs, the general ambiguity regarding what the international SALW platform should be, and the corresponding lack of public pressure on the SALW issue, other countries did not
seriously consider moving the SALW to an alternative negotiating forum (Fehl 2008, 274). Indeed, IANSA never pressed countries to circumvent US opposition by creating an alternative negotiating forum that could pass a strong agreement (Fehl 2008, 274). As mentioned previously, it seems plausible that other countries and NGOs alike did not think that they could strike an effective agreement on SALW without the United States (Fehl 2008, 271-272).

**And So the Talks Stalled: The Case of the PBWC**

Though the Biological Weapons Convention (BWC), which entered into force in 1975, prohibits the development, production, stockpiling, acquisition, and transfer of biological agents and toxins for hostile purposes, the international community did not have the technical means necessary to verify that countries were fulfilling their treaty obligations at the time the agreement was drafted (Bailey 2002, 5). Moreover, given that the BWC was passed during the Cold War, it was politically impossible at the time of the agreement’s signing to get countries to agree to a verification regime that would involve inspections (Bailey 2002, 5).

With the unfreezing of political tensions following the Cold War, international momentum began to build for taking measures to strengthen the BWC. However, despite drawing the support of a large number of countries, PBWC negotiations broke down in the face of direct opposition from the United States. The PBWC case is largely consistent with the predictions of the theoretical model. Indeed, though policy inconsistency provided challenges for the United States in the context of the PBWC negotiations, the forum’s consensus-based decision making rules ensured that the United States had effective veto power over the agreement’s final form.
Early Steps

As mentioned previously, the BWC did not initially contain any verification provisions. While a series of review conferences in the mid 1980s and early 1990s produced a variety of non-binding measures aimed at building confidence with BWC compliance, the discovery of clandestine biological weapons programs in the Soviet Union (by the United States and United Kingdom) and in Iraq (by the UN) added additional momentum to the argument that a legally-binding protocol to the BWC was necessary (Bailey 2002, 6).

Accordingly, there was a limited sense of optimism heading into the Third Review Conference of the BWC in 1991 that the body would take steps to enhance the treaty’s verification regime. However, disagreements quickly began to emerge between the United States and other important players. Though the United States supported measures aimed at strengthening confidence that countries were adhering to the BWC, it argued at the conference that there were no cost-effective or meaningful ways for the international community to make this determination (Bailey 2002, 6). In contrast, the Europeans and other verification proponents argued that even less than perfect measures could significantly strengthen the treaty (Bailey 2002, 6).

The result of the 1991 conference was a compromise to create an Ad Hoc Group of governmental experts, called VEREX. VEREX’s mandate was to explore potential verification measures from the scientific and technical viewpoints and generate recommendations (Bailey 2002, 7). While the United States had succeeded in delaying negotiations aimed at establishing a legally binding protocol, the establishment of VEREX opened the possibility that negotiations could be held on the topic in the future.

74 Verex did not involve negotiations about verification measures (Dando 2002, 49).
After meeting four times between 1992 and 1994, VEREX presented its final report. The report suggested that a combination of measures had the potential to bolster the BWC by helping monitors differentiate between permitted and prohibited activities (Bailey 2002, 7). As per the group’s mandate, the final text of the recommendations was circulated to all state parties. In response to VEREX’s recommendations, 67 countries requested that a Special Conference be held to discuss the report (Dando 2002, 52).

The conference convened in 1994 and ultimately concluded that an Ad Hoc Group (AHG) should be established to develop a legally binding protocol to the BWC. It is important to note that the mandate given to the AHG was adopted by consensus. Even the United States, which had previously opposed a legally binding protocol and was now under the leadership of the Clinton administration, backed down from its previous positions and announced that,

…the ad hoc committee should focus on developing a legally binding regime based on the measures proposed by the VEREX Group and the conclusions reported to States parties…the selection process should consider both off-site measures, such as mandatory declarations, and on-site measures, such as facility visits, providing a solid foundation for the verification regime. (Dando 2002, 54)

Moreover, the United States’ representative suggested that the work program should allow for the completion of the PBWC in time for the Fourth Review Conference in 1996 (Dando 2002, 54).

While the shift in the US position may simply have been an attempt by the Clinton Administration to enhance US leadership on the international stage, the decision by to allow negotiations to move forward would prove to be a major miscalculation (Bailey 2002, 19). Indeed, when the AHG was formed in 1994 the United States still had major disagreements with many of its traditional European allies on a variety of issues
related to the potential protocol. Moreover, the United States failed to specify any negotiating redlines. Ironically, the United States would end up deploying similar reasoning it had provided for not wanting a negotiated Protocol prior to 1994 when it ultimately rejected the PBWC in 2001 (Bailey 2002, 19).

**PBWC Deliberations Begin**

From 1995-1997, the AHG’s work largely focused on resolving preliminary issues and identifying the potential final elements of a Protocol (Dando 2002, 85). In July 1997 preparatory negotiations officially commenced when the AHG introduced a “Rolling Text” of the draft proposal. Over the course of the next three years, delegates met 13 times in order to establish a final negotiating text (Chevrier 81, 2001).

Though the United States attended the meetings, it did not take a leadership role. For example, the United States only submitted 10 working papers (which addressed different aspects of the negotiations) during the AHG meetings in comparison to 76 from South Africa, 43 from the United Kingdom, and 27 from Russia (Dando 2002, 89). The United States’ lack of leadership was largely due to lingering inter-agency disagreements on how to move forward in the context of negotiations and the Clinton administration’s decision not to make the negotiations a high-level priority (Rosenberg 2001).

Between 1995 and 2000, the United States continued to produce mixed messages about whether or not it would ultimately support the PBWC. For example, and despite its announcement to the contrary in 1994, the Clinton administration once again suggested that the BWC was not verifiable in 1995 (Bailey 2002, 19). At the same time, Clinton encouraged negotiators “to work toward the earliest possible conclusion of a BWC protocol that will further strengthen international security” and promised the United
States would provide leadership to achieve this objective (Rosenberg 2001). Similarly, whereas representatives of nearly all US agencies involved in the negotiations expressed opposition to the PBWC, members of the National Security Council continued to express support for a legally binding treaty based on similar verification mechanisms used in the Chemical Weapons Convention (Bailey 2002, 19). As a result of this policy inconsistency, other states continued on with the negotiations based on the false assumption that the United States might make the compromises necessary to establish an agreement. For its part, the United States did little to dispel this misconception by continuing to participate in the negotiations without clear negotiating parameters.

Given the need to obtain consensus on the document, and the myriad divisions between delegates, striking an agreement that all countries could accept would prove to be a difficult task. For example, the NAM countries were primarily focused on preventing strict export control regimes and ensuring that they received technical and scientific help as a result of the agreement (Zelicoff 2001). The United States, EU countries and other middle powers were primarily concerned with issues associated with non-proliferation and arms control. Moreover, and as mentioned previously, the United States had significant disagreements with other Western countries regarding whether it would even be possible to establish an effective verification regime (Zelicoff 2001).

End Game

By the end of 2000, the AHG had successfully compiled the technical aspects of the negotiating text. However, the deliberations had largely stalled on issues related to the complex political compromises necessary to strike a final agreement (Dando 2002, 92-94). Given their desire to maintain momentum on the issue, protocol proponents
pressed the AHG chairman to compile and release a draft text of the proposal that he thought would achieve the greatest level of support. In response to these requests, Tiber Toth, chairman of the AHG, removed all outstanding brackets on the remaining disputed issues and presented the plenary with a final “Chairman’s Text” (CT) for the PBWC in April 2001. Toth’s goal was to have a draft text completed so that the PBWC could be passed at the BWC review meeting in November.

While some countries were supportive of the CT, the text remained controversial. First, the document included a number of provisions that the United States explicitly opposed (Bailey 2002, 8). Thus, when the United States’ delegation, now operating under the Bush administration, was silent for the first week of the conference, many countries feared that the US would ultimately oppose the draft text. Furthermore, countries such as China, Iran, Russia and Pakistan voiced concerns about using the CT as the basis for future negotiations while other “moderate” NAM countries (such as Brazil and South Africa) and EU members suggested that not all of their concerns had been addressed (Rissanin 2001). As these examples demonstrate, there were still sharp divisions on the PBWC text following the introduction of the CT. In other words, no critical mass of support had developed in support of a particular policy position and consensus remained elusive.

In the lead up to the AHG’s next meeting in July 2001, speculation continued to mount that the United States would oppose the CT. However, it came as some surprise that in addition to rejecting the CT, the United States also announced at the meetings that it would reject future negotiations on the PBWC (Rissanen 2001). In the course of his speech, Donald Mahley, the head of the United States’ delegation to the AHG, announced
that the United States would not support the PBWC draft text in its current form or endorse future negotiations because the “approach was not capable of achieving the mandate set forth for the Ad Hoc Group” (Whitehair and Brugger 2001). In justifying the US position, Mahley explained that the draft text would neither deter countries from seeking biological weapons nor improve the international communities’ ability to verify compliance with the BWC. Moreover, he expressed concerns that the inspection measures in the CT would compromise commercial proprietary information. Nevertheless, Mahley emphasized that the United States was still committed to the BWC and that it would pursue alternative measures for strengthening the treaty (Whitehair and Brugger 2001).

While many countries criticized the United States following the announcement, states’ responses to the US rejection of future negotiations were relatively moderate. This moderate reaction occurred because of a number of inter-related factors. First, the announcement was not a big surprise to members of the AHG (Rissanen 2001). Second, and as mentioned previously, other countries also had significant reservations to the CT. Finally, the fact that the United States had rejected future negotiations caused other countries to reassess their stance on the PBW (Rissanen 2001). Given the United States’ statement of opposition to the CT and future negotiations, and the need to achieve consensus to pass an agreement, other countries were unwilling to continue talks on the PBWC at the AHG meeting. In a reflection of the extent to which the talks had broken down, the AHG was not even able to achieve the consensus necessary to issue a report about the meeting (Rissanen 2001).
Though the idea of proceeding with the PBWC without the United States was raised in the weeks after the conference, the majority of countries decided that the treaty would be ineffective without US participation. First, the United States has the biggest biotechnology industry in the world. Second, without the United States’ participation, China, Russia and others would be unlikely to join, “leaving only the ‘Protocol-friendly’ countries to ‘police’ each other” (Rissanen 2001).

In January 2002, the United States effectively ended negotiations on the PBWC when it made an eleventh hour announcement at the BWC review meeting that it wanted to suspend the diplomatic process aimed at strengthening compliance with the BWC (Brugger 2002). With the announcement, the United States had effectively called for an end to the AHG. Though the announcement produced a major backlash, with most of the delegates blaming the United States’ for the conference’s breakup, a European official noted future prospects for an agreement were dim because the “main problem is the United States doesn’t support any meaningful follow-up work to elaborate ideas or negotiate them...Until there is some flexibility in the U.S. position, we’re basically stuck” (Brugger 2002). As a result of the United States’ opposition, the PBWC remains stalled as of 2010 and the prospects for an agreement on this topic any time in the near future remain dim.

Conclusion and Analysis

As the previous analysis demonstrates, the United States was able to prevail in the context of the AHG’s consensus-based decision making structures despite significant policy inconsistency. Indeed, while the United States may have paid a short-term (and largely unnecessary) reputational price for allowing negotiations to start on a protocol that it
was unlikely to consent to in the first place, the United States nonetheless succeeded in preventing the emergence of a PBWC.

As important to the United States’ longer term success in the issue area, however, was that other states chose not to move on without the United States after it announced that it would oppose future negotiations on the PBWC. There are a number of potential explanations for this phenomenon. First, other states were worried that the treaty would be ineffective without US participation (Rissanen 2001). Second, there was no strong normative consensus surrounding what the PBWC’s final form should be. Indeed, and in contrast to the negotiations leading up to the ICC, KP and OTL, there was neither a strong norm about the issues associated with PBWC nor widespread coalitions in favor of a particular course of action on the subject.

Finally, it is possible that other countries wanted to save their political capital for issues that they perceived were of greater importance. Given that NGOs did not play a prominent role in influencing the PBWC negotiations and that there were many other international negotiations ongoing at the same time, the AHG negotiations never attained prominence in the realm of global public opinion (Fehl 2008, 278; Dando 2002, 77). Since they were not constrained by public opinion, other countries (and especially the European countries) may have had greater flexibility to begrudgingly accept the United States’ position.

**Successful Shaping: The CTBT**

When the Nuclear Non-Proliferation Treaty (NPT) came up for its 25 year review in 1995, the issue of nuclear testing was one of the most prominent points on the agenda. Though the NPT entered into force in 1970, the original treaty called for review
conferences every five years and stipulated that parties would be required to wait 25 years before they could modify the treaty’s duration or extend it indefinitely. In order to generate support for an indefinite extension of the NPT, the United States took the lead in pursuing negotiations to establish a CTBT (Hansen 2006, 14). Throughout the treaty negotiations, the United States maintained a consistent policy position, engaged effectively with important swing states, and even supported moving the negotiations out of the consensus-based CD to the majoritarian structures of the UN General Assembly in order to advance the agreement. While the United States was ultimately unable to ratify the treaty for domestic reasons, it succeeded in successfully shaping the treaty during the course of the negotiations.

Early Steps

Following the end of the Cold War, and the corresponding thawing of international security tensions, many states believed that the time was ripe pursue a ban on nuclear testing. From the outset, it was clear that the United States was well positioned to take on a leadership role in the context of the CTBT negotiations. First, the United States had put a moratorium in place on nuclear testing in 1992 under the leadership of George H.W. Bush. This moratorium was subsequently extended by the Clinton administration in 1993 and 1995 (Deller et al., 2003, 42). Second, the negotiations had the attention of high-level policymakers because the NPT’s extension represented a foreign policy priority for the Clinton administration (Hansen 2002, 9). For example, in 1993 Clinton remarked that “a test ban can strengthen our efforts worldwide to halt the spread of nuclear technology in weapons” and that while testing offered advantages, “…the price we would pay in conducting those tests now by undercutting our own
nonproliferation goals and ensuring that other nations would resume testing outweighs these benefits” (Medalia 2006, 2). Third, the Clinton administration conducted a domestic policy review of nuclear testing in 1993 that identified measures which the United States could take domestically in order to prepare for a test ban (Hansen 2002, 9).

As the NPT review and extension conference approached, non-nuclear states and members of the NAM used their leverage to pressure the P-5 to include a ban on nuclear testing as part of the NPT extension process. Given that the P-5 wanted to ensure that the NPT would be extended indefinitely, they agreed to pursue negotiations for the CTBT with strong leadership from the United States (Hansen 2006, 16-20).

As such, the CD began deliberating the CTBT in 1994. From the outset, CTBT negotiations were divisive. For example, many delegates were suspicious that the P-5 would try to push loopholes in the treaty so that they could continue low level nuclear testing aimed at developing new weapons (Hansen 2002, 24). This issue was resolved in 1995 when, after a lengthy domestic review process, the Clinton administration announced that it supported a “zero-yield” ban on nuclear testing, which would prohibit all nuclear explosions of any yield (Hansen 2002, 26). The United States ultimately maintained this policy position throughout the course of the negotiations.

Similarly, there were disagreements related to the conditions under which the CTBT would enter into force. Given that non-nuclear states wanted to ensure that the treaty would result in a ban on nuclear testing, they argued that the ratification of the treaty by all of the P-5 should be an absolute minimum requirement. In contrast, the P-5 wanted to ensure that “threshold” countries such as India, Pakistan and Israel would also be required to ratify the treaty for it to enter into force (Hansen 2002, 24-26). Ultimately,
the CD concluded that the CTBT would have to be ratified by 44 countries—all of whom had nuclear research programs and/or reactors, had participated in the treaty negotiations, and were members of the CD—in order to enter into force. While many states argued that gaining the support of all 44 countries would make it impossible for the treaty ever to enter into force, it was the only solution that could generate a consensus (Hansen 2002, 28).

Over the course of the negotiations in 1995 and 1996, international pressure was clearly mounting for a deal to be struck. Given the fact that the United Kingdom, United States and Russia had already committed to unilateral moratoria on testing, all declared nuclear states, with the exception of China which eventually instituted a moratorium in July 1996, had followed suit by early 1996 (Hansen 2002, 9).

Nevertheless, and although the CD had made progress on many of the most important issues, the negotiations began to stall in 1996. For example, while the NAM countries had agreed to an indefinite extension of the NPT in 1995 (contingent on the establishment of a CTBT agreement by 1996), they continued to press the P-5 for more concessions in the context of the CTBT deliberations (Hansen 2002, 40). Recognizing that it would be impossible to achieve a consensus position, the chair of the negotiations compiled a consensus text, which was then presented to the delegates (Hansen 2002, 40). Given the 1996 deadline for striking an agreement, even states that disagreed with some aspects of the text—most notably the entry into force provisions—had little choice but to begrudgingly consent to the proposal.

However, an important hurdle emerged in the summer of 1996 when India and Iran announced that they would not sign the treaty (Hansen 2002, 42). Given the CD’s
consensus requirement, this effectively meant that the CD could not move forward with the treaty process, despite the fact that the vast majority of states supported the agreement. In order to circumvent the consensus requirement, treaty proponents (including the United States) used a procedural maneuver to refer the treaty to the UN General Assembly where it would receive an up or down vote (Medalia 2006, 6). In short, the referral of the treaty to General Assembly ensured that a small group of states would not be able to hinder the ambitions of the majority to establish a CTBT.

UN Vote and Aftermath

After concerted lobbying by treaty proponents, the CTBT was formally put to a vote at the UN General Assembly in September 2006. Having obtained the co-sponsorship of 123 countries—including the United States, Britain and France—the measure passed with an overwhelming majority of 158 for, three against and five abstentions. Shortly thereafter, the United States became the first country to sign the treaty. Since it looked as though a treaty would be achievable, the CD set up a preparatory committee to coordinate the implementation process (Hansen 2002, 46).

In the meantime, the United States and its allies attempted to convince important holdouts to join the agreement. For example, the United States took the lead in pressing India and Pakistan to sign the treaty throughout 1997 (Hansen 2002, 47). While these efforts suffered a setback in May 1998 when India and Pakistan both exploded nuclear devices, the administration remained optimistic that it could get them on board (Hansen 2002, 47). Moreover, many observers were confident that North Korea, the other remaining non-signatory, could also be persuaded to join the CTBT if it was offered sufficient financial incentives (Hansen 2002, 47).
Despite the United States’ proactive international stance on the issue, the Clinton administration encountered significant roadblocks in obtaining the Senate’s support for the agreement. For example, though the Clinton administration had the support of the public and senior military leaders, the Senate’s Foreign Relations Committee Chairman Jesse Helms kept the document stuck in committee for nearly two years after Clinton submitted it to the Senate for advice and consent in 1997 (Kimball 1999). Helms’ reluctance to put the treaty to a timely vote could have been a result of the fact that it appeared as though the CTBT had a high likelihood of being passed in the immediate aftermath of the UN vote (Kimball 1999).

Between 1997 and 1999, several key states, including Russia and China, continued to wait for a Senate decision before ratifying the CTBT (Kimball 1999). When the treaty was eventually put to a Senate vote in 1999, however, it was defeated by a margin of 51-48. While it is difficult to predict in retrospect if US efforts to persuade holdouts to join the treaty—and other important signatories to proceed with ratification—would have been successful if the Senate had ratified the treaty, the CTBT’s defeat in the Senate essentially ended international progress on the issue. In a slight consolation to treaty supporters, the Clinton administration announced following the Senate defeat that it would comply with its obligations as a signatory to the treaty by maintaining the moratorium on nuclear testing (Deller et al., 2003, 53). Nevertheless, given the United States’ importance to the treaty, there is unlikely to be any significant formal progress on the CTBT until (and unless) the US ratifies the agreement.²⁵

²⁵Jonas (2002) provides a comprehensive discussion of the factors surrounding the Senate’s rejection of the CTBT.
Conclusion and Analysis

The United States was a leader throughout the process of negotiating the CTBT. By advancing a consistent policy position and effectively engaging with swing states, the United States was able to successfully shape the treaty to the extent that domestic ratification seemed likely ex ante. Interestingly, the United States also condoned moving deliberations on the CTBT out of the consensus-based CD (where India had blocked progress) to the General Assembly’s majoritarian decision making structures. After the treaty was passed by the General Assembly, the United States continued to take the lead in trying to get holdouts on board so that the treaty could enter into force. Ultimately, however, the US Senate’s rejection of the treaty undermined, and continues to hinder, efforts aimed at getting the treaty into force. Given that the treaty already has been ratified by 151 countries and signed by another 31, it is possible that progress towards this goal could resume if and when the United States ratifies the agreement.

Conclusion

In this chapter I have examined cases from other “quadrants” of the theoretical model. Both the SALW and PBWC cases are broadly consistent with the predications of the theoretical model. For example, the consensus-based decision making model used for these negotiations was one of the main factors that contributed to the United States’ successes in these forums. Similarly, the CTBT case highlights how the United States was able to successfully shape the agreement by advancing a coherent negotiating position and effectively engaging with swing states.

In addition to demonstrating the applicability of the theoretical model, the cases also highlight some important issues related to the emergence of institutions that the
United States opposes. First, it is unlikely that other states will attempt to shift negotiations to an alternative negotiating forum in the face of US opposition unless there is a global consensus about how to proceed. Second, it is easier for the United States to keep other states negotiating in consensus-based forums in instances where NGO and middle power influence is low and the issue under discussion has not achieved prominence globally. Third, where US participation is truly a necessary condition for an agreement’s success—as in the SALW and PBWC cases—the United States will have significant negotiating leverage. Finally, important swing states may accommodate the US position due to concerns about treaty effectiveness if they have the latitude to do so (e.g. there is not significant public pressure regarding the issue like there was for the KP, ICC and OTL).

The CTBT case provides a useful illustration of a case in which the United States was able to successfully shape a treaty at the international level, but not able to achieve ratification at the domestic level. Throughout the CTBT deliberations, the United States played a leadership role and participated effectively in the negotiations. However, despite the fact that the Clinton Administration had shaped the treaty to the extent that it felt the treaty would be domestically acceptable, the CTBT was ultimately rejected by the Senate. As a result of the United States’ failure to ratify the agreement, the CTBT still has not entered into force at the international level.
Chapter 9: Conclusion

The shift to unipolarity has changed the dynamics of international politics in ways that scholars and policymakers alike are still trying to understand. Whereas in the past security concerns dominated the international agenda, the stability associated with the unipolar world has paradoxically provided states with the latitude to challenge the global hegemon in a wide range of issues areas. While states’ new found flexibility has not resulted in major competition with the United States in the realm of security, the same cannot be said for the global negotiations that increasingly shape the international rules and norms around which the international system is structured.

When viewed through the lens of extant international relations theory, the emergence of international institutions in the unipolar era that do not reflect US preferences poses a genuine puzzle. The results of this analysis, however, suggest that the conditions under which international agreements will emerge in the face of hegemonic opposition are quite predictable. In this chapter I first summarize and discuss the results of the case studies and examine the theoretical model’s applicability. Next, I outline a series of policy-relevant trends and lessons learned. I conclude by presenting the study’s implications for international relations theory, its limitations, and potential avenues for future research.

Assessing the Theoretical Model

The results of the case study analyses suggest that the theoretical model presented in Chapter three has significant predictive power in accounting for the emergence of international institutions that do not reflect US preferences. Among the primary variables identified in the model, those on policy inconsistency, effective engagement with swing
states and consensus versus majoritarian negotiating fora had the most predictive value. While the results from the NGO/middle power variable and the realist and domestic politics explanations were mixed, the previous propagation of norms and issue linkages variables did not have significant predictive power.

Policy Inconsistency and Effective Engagement with Swing States

The results of the analysis suggest that the policy inconsistency and effective engagement with swing states variables, which are largely interconnected, have significant predictive power. Though words are typically viewed as “cheap” in the study of international relations, they have important ramifications in the context of international negotiations. Indeed, the commitments and stances that states take in the context of international negotiations shape other states’ perceptions of what a final agreement might look like. Other states also generate audience costs by committing to policy positions that are difficult to back down from in later stages of the negotiation (Fearon 1996). Moreover, if states—including the hegemon—backtrack on their commitments they can leave themselves open to accusations of hypocrisy (Finnemore 2009).

In the OTL, KP and ICC cases, the United States not only committed to positions that it later reneged on, but it also failed to draw clear negotiating redlines. In contrast to how these cases are often portrayed in the popular press, other states were surprisingly willing to compromise with the United States—despite its lack of diplomatic acumen and general lack of flexibility—even up to the very late stages of the negotiations. However, by either allowing negotiations to move forward on the basis of policy positions which it could not ultimately agree to or remaining ambiguous about its stance, the United States undermined its ability to effectively engage with important swing states (most notably
members of the EU). Indeed, by the time that Washington figured out what terms it could actually agree to, it was often too late to shape the debate in the United States’ favor.

Though not definitive, the case study data provide insights into why the United States was so slow and inconsistent in its approach during the negotiations. First, the United States was not able to shape the agenda because it overestimated its ability to control how the negotiations would unfold. Whereas in the Cold War period other states largely accommodated the United States’ because of security concerns, the onset of the unipolar era has presented states with new opportunities in the realm of institutional formation, including changing the way that treaties are negotiated. For example, there has been a break-down in the consensus-based decision making norms that typified negotiations in the Cold War period and NGOs and middle powers are currently much more influential than they were in the past. Despite these structural changes, however, the United States largely approached the negotiations with a Cold War mentality that other states would have to accommodate its preferences and that it could rely on the support of other major powers. Ultimately, this approach backfired.

Second, the United States’ diplomatic performance was sub-par because of breakdowns in the inter-agency process. Ideally, domestic actors’ objections and concerns should be reflected in the United States’ initial bargaining position. This simply did not happen in the primary cases examined in this dissertation. For example, in the case of the OTL, the administration did not have a firm policy stance on the APL issue until the start of the Ottawa conference. Similarly, the United States changed its stance in the KP and ICC negotiations in response to the concerns of important domestic actors. If
the United States had incorporated these points in its bargaining position to begin with, it is possible, though not certain, that the outcome in these cases may have been different.

*Consensus Based Forums*

The voting procedures used in the negotiations were also critical for determining the outcomes of the cases. Whereas the United States was able to succeed in the consensus-based formats used for the PoA, CTBT and PWBC, the majoritarian decision making structures used for the OTL, KP and ICC significantly undermined the United States’ ability to shape these agreements.

Interestingly, the majoritarian decision making structures used in the three major case studies were adopted in different ways. In the case of the OTL, middle powers and NGOs created an alternative negotiating forum for the deliberations. In contrast, in the ICC case the chair of the negotiations was given the latitude to decide whether the negotiations should occur on a consensus or majoritarian basis. For the KP, the COPs were not able to agree on negotiating rules. However, when the United States changed its policy stance and supported the Geneva Declaration, the COP used a “consensus minus x” format to overcome other states’ objections in what had previously been a consensus-based forum. When the United States found itself in the minority at Kyoto, majoritarian decision making rules were used to overcome US opposition.

*Influence of NGOs and Middle Powers*

Though they did not play a major role in the KP case, NGO and middle power influence was an important feature of the ICC and OTL cases. In these situations, NGOs and middle powers played an important role by virtue of their ability to arrive at a clearly defined platform, conduct advocacy activities, and shape public opinion. These actors’
success in shaping the agenda and building coalitions ultimately made it difficult for important swing states to accommodate US demands in the later stages of the ICC and OTL cases. In contrast, the lack of NGO and middle power influence in the PoA and PBWC made it easier for the United States to end the negotiations on these issues. Thus, the results suggest that while NGO and middle power influence is not required for international institutions to form in the face of US opposition, it can contribute to this outcome under certain circumstances.

*Previous Propagation of Norms*

Among the case studies examined in this dissertation, the previous propagation of norms variable only played a significant role in the OTL case. Prior to the OTL negotiations, the United States bore primary responsibility for enhancing the prominence of the APL issue on the international agenda. For example, the United States was one of the first countries to take domestic action on the APL issue. By taking on a leadership role on the issue early on, the United States opened up the door to international negotiations on APLs and added momentum to ban proponents’ early efforts.

In contrast, the United States was not an active proponent (and at times was an opponent) of norms associated with the ICC and KP. In these cases, the United States begrudgingly consented to moving forward with the negotiating process when it became clear that the majority of states were in favor of action on these issues. These examples demonstrate that while the United States’ previous propagation of norms can open up the possibility of negotiations on an issue, states typically move forward with establishing agreements in the face of US opposition because of other factors.
Alternative Explanations

The results of the analyses suggest that the United States’ failure to shape the agreements analyzed in this dissertation was not due to a lack of effort. Indeed, throughout the ICC, KP and OTL negotiations the United States actively attempted to shape the agreements. For example, high-level policy makers were involved in trying to advance the United States’ positions in all of the cases. Results related to the extent to which the agreements influenced subsequent the United States’ policies are more mixed. For example, the United States’ changed its policies in response to the OTL but did not follow the KP at all; the influence of the ICC on US policy was more difficult to determine.

Though the domestic politics variable played a role in undermining the United States’ capacity to influence the course of international agreements, other factors were arguably more important. As mentioned previously, other states were largely willing to accommodate the United States even up to late stages of the negotiations. While domestic politics were responsible for the United States backtracking on positions and failing to outline negotiating redlines—factors which undermined its position in the context of the negotiations—it seems probable that the United States could have achieved its negotiating objectives if it had incorporated these domestic positions into its initial bargaining position. As such, domestic politics were only indirectly responsible for the United States’ failure to shape the institutions discussed in this dissertation.

While it appears to have played a minor role in the OTL case, the issue linkage variable was not important in the other cases. This finding is consistent with previous
research which suggests that states have multiple reputations in different international institutions (Downs and Jones 2002).

**Policy Implications**

As the hegemon, the United States is undoubtedly the world’s most powerful state. At the same time, however, the United States’ need to maintain a semblance of legitimacy constrains its ability to translate this power into outcomes (Finnemore 2009; Loomis 2008; Cronin 2001). For example, other states expect the United States to provide public goods and act as a leader, even on issues that do not relate to its core interests. The results of this analysis suggest that the tension between the United States’ desire to act as a global leader and its need to pursue more narrow self interests has undermined its influence in the context of international negotiations.

Given that the trend toward institutionalization is likely to become even more pronounced in the unipolar world, it will be important for the United States to improve its effectiveness in the context of international negotiations. The results of this analysis point to a number of important recommendations in relation to this issue. First and foremost, policymakers need to develop a domestic consensus on the United States’ negotiating redlines prior to consenting to negotiations. In many of the case studies, the executive branch outlined the United States’ position in the international sphere without regard to the range of agreements that could potentially emerge. Indeed, it appears as if the executive branch assumed that the United States would be able to dictate the terms of the agreement when it made blanket statements supporting one position or another. When it became clear that the negotiations were proceeding in ways that were not aligned with
domestic political realities, the United States was forced to change its stance in ways that undermined its persuasive capacities.

The results of the case studies also suggest that it is important for the executive branch to consult with members of the Senate and conduct interagency consultations prior to condoning negotiations. While it will not be possible to cover all issues during initial consultations, these meetings should allow policymakers to develop and present clear negotiating redlines prior to the start of negotiations. It is better to provide these redlines at the beginning of negotiations so that other states will understand the US position instead of introducing them at later stages, when other states may be unwilling to accommodate the United States because consensus has emerged in support of an alternative position.

Second, given the importance of soft power and legitimacy in the international realm, it is detrimental to US interests to consent to negotiations for treaties that policymakers think are impractical and/or domestically unfeasible from the outset. For example, the United States consented to PWBC negotiations even when it was clear that the treaty would not conform to US positions on the issue. When the United States pulled the plug on PWBC negotiations six years later using the same arguments and reservations that it had deployed before negotiations began, other states uniformly blamed the United States for the breakdown of negotiations. Ceteris paribus, it is likely that the United States will pay a lesser reputational price for taking a rigid bargaining stance at the outset than for reneging on its positions at the end of the negotiations after other states have put significant time and effort into the process. While there is always a risk that other countries will simply choose to move ahead without the United States in instances where
it is perceived as blocking progress, the case study evidence suggests that US preferences and redlines often dictate how (and if) negotiations evolve, especially in the early stages of the institutional formation process.

Third, given that states are increasingly willing to form institutions without the United States, proactively engaging early on in the negotiations with important swing states is critical. As the case study analyses demonstrate, the United States did not take the potential emergence of these agreements seriously from the outset because it assumed that the agreements could not go forward without US participation. As such, and lacking a well defined strategy for success, the United States did not attempt to establish great power coalitions and/or foster divisions between “critical states” prior to the onset of negotiations or soon after they commenced. Lacking a strong coalition, it was very difficult for the United States to respond to alternative propositions put forward by potential challengers within the context of the negotiations.

The case studies also revealed that traditional US allies may not be as reliable as in years past. Indeed, it is important to note that the emergence of the European Union has placed added pressure on important US allies such as France and Great Britain to conform to the policy dictates of their European counterparts. For example, Britain and France faced significant pressure at the Rome Conference to support the ICC (which both states subsequently ended up ratifying). The United States’ failure to engage with these states at the earlier stages of negotiations, thereby preventing them from defecting, is critical because these countries’ support can provide the boost necessary for norms that run counter to US interests to “cascade”. As this example demonstrates, the United
States will need to more effectively engage with swing states in order to shape future negotiations.

Fourth, and in relation to the previous point, it is important to note that other states may increasingly resort to majoritarian decision making mechanisms and alternative negotiating forums in instances where the United States is perceived as blocking progress on an issue. While the United States can take measures—such as engaging with swing states, maintaining a consistent policy position and pushing for the negotiations to use consensus-based decision making rules—to prevent this from occurring, policymakers would benefit from an enhanced understanding of the conditions under which this is likely to occur. Preliminary evidence from this analysis and elsewhere suggests that other states may choose these routes in instances where the treaty is likely to be relatively effective without US participation, a clear consensus exists on the way forward, and there is significant public pressure for action on an issue (Fehl 2007).

Given that the process of generating a normative consensus takes place over a long period of time, policymakers can fairly easily determine the extent to which a global consensus is building. In these instances, policymakers should take proactive measures to regain control of the agenda by more clearly outlining US policy positions. Similarly, given that various negotiating fora are typified by different precedents, rules and power dynamics, the United States needs to tailor its negotiating strategy and approach to the context at hand. For example, whereas delivering an ultimatum will be effective in a consensus-based forum like the CCW, it can backfire in the context of negotiations that use majoritarian decision-making rules, which are typified by different power dynamics.
Finally, and perhaps obviously, the United States does not possess the same level of veto power over international negotiations that it did in the past. As a result, the United States cannot expect to show up in the late stages of negotiations, present its demands, and have other states listen. On the contrary, this strategy often seems to produce a backlash that undermines the United States’ bargaining power. Similarly, the United States cannot renege on negotiating positions it has agreed to and expect other states to understand. These points are illustrative of the fact that though the United States remains the world’s most powerful state, it must be more sensitive to other states’ positions in the context of international negotiations than in eras past.

**Contribution to International Relations Theory, Limitations, and Avenues for Future Research**

There is an emerging consensus among international relations scholars that extant theoretical models cannot adequately account for the dynamics of unipolarity. This research fills an important gap in the international relations literature by identifying the factors underlying the rise of international institutions that do not reflect US preferences.\(^\text{76}\) The limited research that has examined the rise of non-hegemonic regimes up to this point has tended to focus on either explaining why other states move on with the institutional formation process without the United States (Fehl 2007) or identifying the factors that make the emergence of non-hegemonic regimes more likely (Brem and Stiles 2009; Behringer 2005). However, by focusing on the outcomes of these cases, as opposed to the processes by which actors are presented with the opportunity to advance non-hegemonic regimes in the first place, these analyses have provided an incomplete

---

\(^\text{76}\) See Brem and Stiles (2009) for a more limited analysis of this topic.
assessment of the process by which international institutions form (Young 1991; Keohane and Nye 1979).

The fact is that international negotiations are complex processes with no predetermined outcomes. While factors like power advantage some actors over others, the strategies that states (and non-state actors) adopt to advance their positions are critical for determining the outcome of international negotiations (Young 1991; Young 1983). The model outlined in this dissertation provides scholars and policymakers alike with a better understanding of how factors such as the issue area under consideration and interaction of different facets of power and persuasive capabilities influence the institutional formation process under unipolarity.

As such, this research makes a number of important contributions to international relations theory. First, it contributes to long-standing debates on the role that hegemons play in the institutional process formation. While Keohane (1992) argues that hegemons often play an integral role in the process of institutional creation, he and others also suggest that a small group of powerful states can act as a substitute for hegemonic involvement (Kahler 1992; Gowa 1989). The results of the analysis presented in this dissertation highlight a number of important points in relation to this issue. First, while “minilateral” coalitions can succeed in creating global institutions under unipolarity, this is unlikely to occur if the hegemon opposes the process from the outset. However, once the hegemon consents to negotiations and actively participates in the process, “minilateral” coalitions can use their collective influence to overcome hegemonic opposition. In relation to this, and given the lowering of barriers to institutional formation, non-major powers can also play an important role in the institutional
formation process under unipolarity. Indeed, middle powers and NGOs are using novel forms of diplomacy to establish new institutions in the unipolar era, even in the face of hegemonic opposition (Davenport 2002-2003).

Moreover, the research presented in this dissertation bridges the gap between structural, functionalist, and constructivist accounts of institutional formation. Though changes in the structure of the international system (e.g. the shift to unipolarity) presents states with new challenges and opportunities, the strategies that policymakers adopt to advance their positions also has a determinative effect on outcomes in the context of international negotiations. By highlighting the interaction between structural and diplomatic variables, this analysis provides a good starting point for research that incorporates an emphasis on both structure and strategy. Given that extant theoretical models have difficulty accounting for the dynamics of unipolarity, adopting this analytical approach could help scholars more effectively assess the implications of unipolarity on international politics.

Third, this dissertation highlights that although the United States has suffered a number of high-profile defeats in the context of international negotiations, there is no evidence that US influence is necessarily in decline. Indeed, far from using the negotiations as a way to undermine US power and influence, one striking feature of the case studies was the extent to which other states were willing and eager to accommodate the United States despite its multiple diplomatic gaffes. Given that US participation remains crucial for the success of international institutions, the results of this analysis suggest that the United States can regain control of the international agenda by adopting more effective negotiating strategies in the context of international deliberations.
At the same time that this research makes important contributions to international relations theory and practice, the study does have some limitations. First, the study only examined a relatively small number of cases. Though these cases were useful tests for the theoretical framework, future research could benefit by expanding the number of cases. Second, the study only examined negotiations that took place during the Clinton Administration. Given that the onset of unipolarity was typified by negotiations on a wide range of issues and subjects, it is possible that the context in which these negotiations took place may be markedly different from subsequent time periods. For example, the thawing of tensions after the Cold War presented the international community with the opportunity to initiate negotiations on a wide range of issues, many of which could not have been addressed during the Cold War. Since the international community addressed many of these issues during a burst of treaty making in the early years of unipolarity, it is possible that the pace of institutional formation could slow; the types of items on the international agenda may also change. As such, future research should analyze negotiations that originated during the Presidencies of George W. Bush and Barak Obama to determine whether the variables outlined in the theoretical model are applicable as unipolarity moves forward.

The results of this analysis also highlight a number of other potential avenues for future research. First, future research could productively examine both the conditions under which states adopt majoritarian voting mechanisms and/or create alternative negotiating fora in the face of US opposition and the strategies that they utilize to pursue these objectives. While the results presented in this dissertation and previous scholarship (Cottrell 2009; Fehl 2007) provide some insights into this topic, it will be important for
future research to develop a more systematic understanding of the phenomenon. Second, future research could examine the extent to which previous hegemons have successfully shaped international institutions. This could involve analyzing a wide range of historical periods throughout history, including the Cold War.

Finally, scholars could productively examine the role that individual leaders play in the institutional formation process. One variable that was not included in the model, but appeared to have played a role in determining the outcomes in some cases, was the importance of individual leaders (Young 1991). In the ICC and KP cases, Kirsch (ICC) and Estrada (KP) played an important role in influencing both how the final negotiating sessions unfolded and making decisions about the content of the draft treaties that were presented to the plenary. At the same time, however, these leaders’ influence was contingent on the decision making rules utilized at the respective conferences. It is also important to note that the leaders only exerted significant influence in the final stages of the negotiations. Given these competing logics, future research should explore the role that individual leaders play in driving the institutional formation process in greater depth.

The purpose of this dissertation was to account for a seemingly puzzling facet of the unipolar world—the emergence of institutions that the hegemon opposes. Given that the onset of unipolarity has transformed the conditions under which states interact in the international system, there is a need for scholars to develop theoretical paradigms that can more accurately account for the unique facets of the unipolar world. To the extent that scholars can successfully pursue this research program, they will continue to make important contributions to enhancing our understanding of the United States’ opportunities and constraints in a globalized world.
Appendix 1: Research Questions

Questions for hypothesis 1a (realist)
1. At what point in the negotiation process (if ever) did the United States become actively involved in the negotiations? Did the United States take the emergence of the agreement seriously and dedicate resources to succeeding in the negotiations?
2. Did the United States make a significant effort to try to shape the agreements? Diplomatically? Using side payments?
3. Has the agreement that went into force altered the United States’ position on the issue?

Questions for hypothesis 2a (policy inconsistency/ineffective diplomacy)
1. What was the United States’ initial position in the negotiations? Was the United States’ position stated clearly? When? What were the justifications and/or reasoning the United States used to advance this position in negotiations? What were some the principles/information the United States tried to appeal to in justifying its position?
2. At what point in the negotiations did the United States’ position change? How did the United States justify its shift in policy? What types of arguments did it draw upon? Which states were these arguments primarily targeted at? Why weren’t these arguments successful?
3. How did other states react to this change in policy stance? Which states reacted most strongly to the changes in policy stance? What types of arguments did they attempt to use to counter the United States’ position? What were the reasons why they held firm to their previous positions? What were the constraints other states faced in terms of changing their position to more closely reflect the United States’ stance?

Questions for hypothesis 2b (swing states)
1. Who were the potential “veto players” in the agreement? Could these agreements have gone forward without the support of these actors?
2. On what dimensions were veto players’ positions initially aligned with the United States’ position in the negotiations? On what dimensions were they opposed?
3. What were the factors behind swing states’ opposition to the United States’ position? At what point in the negotiation did their positions change?
4. What measures did the United States take to prevent their defection? Which of these measures were successful? Which of these measures were ineffective? Why?

Questions for hypothesis 3a (consensus based process)
1. Why did states/NGOs begin to operate outside the context of US dominated institutions? How were states able to maintain support for these initiatives in the face of US opposition?
2. Which states were leaders of the efforts to create alternative institutions? What role did NGOs play in this process? What capacities did they possess which allowed them to accomplish this task? What strategies did they adopt to generate support for their efforts at institutional formation? Why were these strategies successful?
3. What decision making rules were used in the context of the negotiations? How did the decision making rules influence the way in which the negotiations unfolded?
Questions for hypothesis 3b (previous propagation of norms)
1. What were the United States’ previous actions in terms of advancing the norms embodied in the agreements? Did the United States influence other states to change their position on these issues in the past? Was the United States considered to be a leader on the norm embodied in the agreement?
2. To what extent was the norm reflected in the treaty consistent with the ideas the United States had propagated in the past? In what ways did it diverge? When did the United States’ position begin to diverge from its previous support of these norms?
3. How did other states’ respond to this change in stance? Did they view this change in stance as consistent with the United States’ previous actions in the issue area?

Questions for alternative hypothesis 1 (issue linkages)
1. Were there other issues unfolding simultaneously with the negotiations that other states “linked” to the deliberations? What were the outside issues?
2. To what extent did participants justify their stance in the negotiations by referring to the linked issues? Did the issue linkages provide important momentum to US adversaries in the negotiations?
3. What diplomatic actions did the United States take to “de-link” these issues? Did the United States attempt to use side payments to “de-link” these issues?
4. How did other states respond to these overtures? Which states responded positively? Which states responded negatively?

Questions for alternative hypothesis 2 (domestic politics)
1. Did the executive branch proceed with negotiations even though it knew the treaty would not be ratified by the senate? What permutation of the agreement (if any) would have been palpable to the legislative branch?
2. Did the executive branch coordinate its negotiating position with the legislative branch? If so, when? If not, was the United States forced to change its position in the middle of negotiations as a result of disputes between different branches/parts of government?
Appendix 2: Cases and Outcomes for International Treaties the United States Has Not Ratified

<table>
<thead>
<tr>
<th>Treaty Name</th>
<th>Policy Inconsistency</th>
<th>Keep Swing States</th>
<th>Middle Power/NGO Influence</th>
<th>Consensus Based Process</th>
<th>Domestic Politics</th>
<th>Issue Linkages</th>
<th>Realist Variables</th>
<th>Previous Propagation of Norms</th>
<th>Treaty Reflects US Position</th>
<th>International Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>OTL</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>In Force</td>
</tr>
<tr>
<td>KP</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>In Force</td>
</tr>
<tr>
<td>ICC</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>In Force</td>
</tr>
<tr>
<td>CTBT</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Not In Force</td>
</tr>
<tr>
<td>Convention on Biological Diversity</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of the Child</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>WHO Framework Convention on Tobacco Control</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>In Force</td>
</tr>
<tr>
<td>Law of the Seas</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Basel Convention on Hazardous Wastes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Cartagena Protocol on Biosafety</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>In Force</td>
<td></td>
</tr>
<tr>
<td>Convention on Cluster Munitions</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Not In Force</td>
<td></td>
</tr>
</tbody>
</table>

77 This treaty is expected to enter into force on August 10, 2010.
Works Cited


Kwaka, E. (2003). The international community, international law and the united states: Three in one, two against one, or one and the same. In M. Byers, & G. Nolte (Eds.), *United States hegemony and the foundations of international law* (pp. 25-56). Cambridge: Cambridge University Press.


Park, J. (2000). Governing climate change policy: From scientific obscurity to foreign policy prominence. In P. Harris (Ed.), *Climate change and American foreign policy* (pp. 73-88). New York: St. Martin's Press.


Tomlin, B. W. (1998). In a fast track to a ban: The Canadian policy process. In M. A. Cameron, R. J. Lawson & B. W. Tomlin (Eds.), *To walk without fear* (pp. 185-211). Ontario: Oxford University Press.


Williams, J., & Goose, S. (1998). The international campaign to ban landmines. In M. A. Cameron, R. J. Lawson & B. W. Tomlin (Eds.), *To walk without fear* (pp. 20-47). Toronto: Oxford University Press.


