Explaining Variations in Treaty Entry into Force Thresholds

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ABSTRACT It is widely known that treaties have different stipulations on when they come into force. Unfortunately, current research on treaty design has offered no substantial explanation on why treaties have different entry into force (EIF) thresholds. I argue that variations in EIF thresholds are the result of the issue area of the treaty. Specifically, issue areas that face greater potential for collective action problems have the highest EIF threshold as a result of the rational design choice of states to protect themselves from free riders and strengthen the effectiveness of the treaty. I test my argument using original data from coding treaty EIF thresholds along four issue areas and on the EIF negotiations for the 1996 Comprehensive Test Ban Treaty.

Introduction

Much has been written on the different facets of treaties: their flexibility mechanisms, reservations, ratifications, etc. Unfortunately, despite this wide scholarship, very few seem to focus on the enforcement thresholds within treaties. Some treaties come into effect shortly after the individual state ratifies it; some require a certain percentage of state ratification; while others require a percentage of a geographic, economic or other specific group to ratify the treaty. What explains all these variations? Why do certain treaties require simple individual ratification, while others place complex requirements for the treaty to come into force? This paper seeks to explain the different entry into force (EIF) thresholds within treaties. I argue that issue areas that face greater potential for collective action problems have the highest EIF threshold as a result of the rational choice design of states to both protect themselves from free riders and to strengthen the effectiveness of the treaty.

Collective action refers to the needs of groups to work together to achieve common goal(s). Collective action *problems* occur when the cost to the individual is greater than the benefit of cooperation, even when cooperation brings about achievement of the goal[1]. In international relations, prime collective action problems occur in instances where state cooperation yields greater results compared to individual action, but there remains potential risk of not every state adequately fulfilling its obligations. For example, in protecting the environment, while long-term outcomes will be greater if every state reduces carbon emissions, for the individual state carbon reduction can mean short-term

[1] "Collective Action." In International Encyclopedia of the Social Sciences. Ed. William A. Darity, Jr. 2nd ed. Vol. 2. Detroit: Macmillan Reference, 2008.
[2] Murphy, *Principles,* 82
[3] Ibid.
[4] Korontzis, "Making the Treaty," 202
[5] Korontzis, "Making the Treaty," 201

economic loss. Individually, a state can gain the greatest benefit if others reduce carbon emission without having the particular state do so itself. In this scenario, the individual state "free-rides" on the work of others, without having to sacrifice anything in return. If every state takes on this view, problems arise over lack of action and mistrust of other states in complying with international agreements. It is from this problem that I draw my thesis on the variation of EIF thresholds.

This paper proceeds in three parts. In Part I, I begin with a thorough definition of the dependent variable, the entry into force threshold. Next, I argue that while constructivist theories offer an alternative explanation of my thesis, the rational design approach of international institutions provide the best explanation on the variations and importance of EIF thresholds. I then present my research design and the resulting findings. In Part II, I focus on the entry into force negotiations for the 1996 Comprehensive Test Ban Treaty. Finally, in Part III, I conclude the paper with a look at future improvements to the study of EIF thresholds.

PART I.

Defining Entry into Force

To be clear, this paper is not concerned with the ratification process of treaties. Rather than looking at domestic state guidelines for when a treaty comes into force for the state, this project is looking at what is *within* the treaty that brings the treaty itself into force. Article 24(1) of the 1969 Vienna Convention on the Law Of Treaties stipulates, "A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree." Even if states have submitted their signatures and successfully completed national ratification processes, the treaty does not bind them until

the EIF provision has been met[2]. After the EIF threshold has been met, the treaty provides a specified timeframe in which future states can become parties of the treaty[3].

The EIF provision is generally outlined in the final sections of the treaty[4]. For bilateral treaties, the EIF threshold can be as simple as the exchange of notes or signatures of the two parties. In either case, bilateral treaties typically have a default EIF threshold of when the last state submits its signature[5]. For this reason, this project does not assess EIFs for bilateral treaties, as they would be unrepresentative of the variations of EIFs and would skew coding results. Whereas bilateral treaties have simple EIFs, multilateral treaties, due to the nature of the greater number of state parties involved, often require greater negotiations on when the treaty comes into force.

The most important function of EIF thresholds is that they enable the treaty to become enforceable. While provided last, EIFs confer power to the treaty by outlining how and when the treaty comes into force. I argue that because of this power of EIFs, negotiating the EIF threshold provides states a powerful tool in affecting the outcome of an international agreement. In deciding the EIF for a treaty, states have the ability to create thresholds that can either make it easier or harder for the treaty to come into force. Too high of an EIF threshold risks the treaty not coming into force, as will be later discussed in Part II with the Comprehensive Nuclear Test Ban Treaty.

Alternatively, too low of an EIF threshold risks the treaty being seen as ineffective.[6] Treaties not only work to regulate and enforce behavior amongst states, but

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[2] Murphy, *Principles,* 82
[3] Ibid.
[4] Korontzis, "Making the Treaty," 202
[5] Korontzis, "Making the Treaty," 201
[6] United Nations Institute for Disarmament Research

also to define expected behavior within a given area[7]. In joining a treaty, states inherently compromise their sovereignty by agreeing to modify their behavior in accordance with the treaty guidelines. As a result, before joining a treaty states want to make sure that there is a reasonable chance of the treaty fulfilling its intended purpose and that the benefits of adhering to the treaty outweigh its costs to state sovereignty[8]. In a 2009 report for the United Nations Institute for Disarmament Research, Rebecca Johnson finds that during domestic ratification debates, public officials often look to the EIF threshold to determine the merits of joining a treaty. As an important power-conferring tool of treaties, EIF thresholds help gauge the potential effectiveness of a given treaty by outlining the expected number of participants[9]. In agreements that deal with public goods or involve "obligations so interwoven that each obligation has to be performed in relation to all treaty parties," [10] it becomes essential that key players agree to participate before the treaty becomes enforceable[11]. With such importance placed on EIFs, negotiators must ensure "that the [EIF] requirements give a treaty credibility, without being prohibitively stringent[12]."

Alternative Explanations

The 1980s saw an increase in scholarly focus on utilizing game-theory analysis to the study of international cooperation. Snidal (1985) argued that the traditional 2x2 Prisoners Dilemma failed to take into account the varying collective action and

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[7] Ulfstein, et al., *Making Treaties Work,* 4-5
[8] United Nations Institute for Disarmament Research
[9] Ibid
[10]Ulfstein, et al., *Making Treaties Work,* 4
[11] United Nations Institute for Disarmament Research
[12] Ibid

coordination problems apparent in international cooperation. Further work looked into how institutions played a role in promoting and regulating international cooperation. Keohone (1984) theorized that institutions promote cooperation in varying ways through establishing norms and reducing uncertainty and transactions cost, amongst others. Contributions from Helfer (2006), Goldsmith and Posner (2005), and Raustiala (2002) began integrating this emerging research on cooperation to the study of international law and legal institutions.

However, nearly all of these works tended to focus on physical institutions, such as international organizations. This project diverges from these original contributions by instead focusing on international cooperation as manifested in treaties. As such, this project more similarly advances the rational design framework understanding of international institutions advanced by Koremenos, et al. (2001) in the special issue of *International Organization.* Rational design theory holds that the design of international institutions is a deliberate process and differences amongst institutions are the result of conscious state decisions[13]. States understand the role that institutions play in both constraining state behavior and influencing outcome. As such, states actively negotiate and bargain for institutional design, fighting for design features that would create desirable outcomes for themselves[14].

Unlike rational theories that view actors as having fixed preferences, constructivism views preferences as changing to reflect the broader social structure[15]. In the international arena and the institutions that arise from it, constructivists question

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[13] Koremenos, et al., "International Institutions," 762
[14] Ibid.
[15] Price & Reus-Smit. "Dangerous Liaisons?," 259; Cohen, "Can International Law Work?," 639

rational theory claims of actors' fixed preferences. Instead constructivism hold that international institutions serve not as tools of states, but as independent entities that seek to establish, alter, or promote norms[16]. It views the international system as built upon norms and behavior deriving from "human consciousness and its role in international society[17]." Rather than act in ways to maximize their interests, states look to socially accepted norms to dedicate their behavior. In light of the focus of this project, constructivists would argue that international agreements are a form of norm promotion. Treaties enable states to formally negotiate and codify expected behaviors and spread these norms by having other states join the agreements[18]. However, this view limits the role of agreements to mere external entities that function separately from states. Constructivists fail to realize that international agreements are conscious and rational creations of states. Even treaties that function as promoting norms do so because states have created them in that manner.

Extending the constructivist sentiment to EIF thresholds, constructivism sees EIFs not as deliberate acts of states, but rather as a form of path dependency. High or low EIF thresholds across treaty areas are the result of how things have been done, and in drafting new treaties states simply follow the existing EIF threshold pattern of the particular type of treaty. If this were true, one would expect to see uniform EIF scores amongst and within issue areas.

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[16] Cohen, "Can International Law Work?," 643
[17] Murphy, *Principles,* 19
[18] Koremenos, et al., "International Institutions," 762

Research Design[19]

To test my claim of EIF variations being contingent on issue areas, I needed to analyze and code the EIF thresholds of several treaties. I focused on agreements covering four general issue areas: human rights, the environment, security, and economics[20]. Before selecting treaties, I narrowed the criteria of usable international agreements by the following guidelines: First, all treaties must be multilateral, meaning that at least three states must be parties to it. Treaties between states and an international organization (IO) were excluded. However, treaties drafted and/or signed by state parties within an IO were included[21]. Second, treaties were only considered if they resulted in measurable and substantive results, or in the words of Koremenos (2012), the treaty had to "[...] prescribe, proscribe, or authorize behavior that is observable in principle" (p.8). For this reason, several of the United Nations Treaty Series multilateral economic treaties were disqualified as they only established guidelines for future negotiations or the establishment of a new institution. Third, protocols and other amendments to treaties were only considered if they elaborated or established new observable behavior separate from the underlying treaty. Protocols intended to clarify definitions or extend the duration of the original treaty were not considered. Lastly, renegotiated treaties that fulfilled the first and second criteria were considered in the case population.

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[19] In creating my research design, I relied heavily on the Koremenos' 2012 Continent of International Law (COIL) project. In COIL, Koremenos coded several international treaties in four issue areas along twelve cooperation problems.

[20] Economics was further broken down into four subfields: investment, trade, finance, and monetary agreements.

[21] For example, I used several treaties drafted within the Organization of American States (OAS) and signed by its members.

Having identified these guidelines, the next step was to create a population of cases. The first option was to use Koremenos' (2012) sample treaties available at the COIL website, as my treaty criteria (with the exception of only using multilateral treaties) matched hers. I pulled all of her multilateral treaties for a total of seventy-seven treaties across the four issue areas. To create a bigger case population, I pulled multilateral treaties deposited with the UN Secretary General[22]. I also relied upon several databases for human rights, environmental, and security agreements[23]. The biggest obstacle to creating a large population was finding multilateral economics agreements. I came across numerous economic agreements, both through Koremenos' sample cases and thorough the above-mentioned methods, but very few contained multilateral treaties that also fulfilled the remaining criteria[24]. In the process of looking through UN treaty collections for the three other issue areas, I would occasionally come across a usable economic treaty, which I would then select. In this manner, I was able to create a list of twelve economic treaties from which to analyze EIF thresholds.

After complying a large population of treaties, I went through the individual treaties, verifying that that they matched all the criteria. Next, I used an online list

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[22] The general list of UN multilateral treaties can be found at <https://treaties.un.org/pages/participationstatus.aspx>. For human rights agreements, I used Chapter IV; for environmental agreements, Chapter XXVII; for security agreements, Chapter XXVI; and for economic agreements, a combination of Chapters X and XIX.

[23] For human rights agreements, I used the University of Minnesota Human Rights Library <http://www1.umn.edu/humanrts/treaties.htm>; for environmental agreements, the International Environmental Agreements (IEA) Database Project <http://iea.uoregon.edu/page.php?file=home.htm&query=static>; and for security agreements, I used a combination of the National Nuclear Security Administration Nuclear Threat Initiative and the Arms Control Association <http://www.armscontrol.org/treaties>.

[24] Koremenos (2012) had only three usable economic treaties, while a majority of the UN treaties focused on establishing formal institutions such as regional banks.

generator to create a randomized sample of treaties from which to code EIF thresholds. Since there were only twelve economics treaties to begin with, I chose not to randomize these and instead used all twelve treaties.

The coding scheme was dichotomous: either a treaty had a low EIF threshold score of (0) or a high EIF threshold score of (1). Low EIF thresholds were treaties that only required a simple number of state ratification in a particular number of days. Treaties with (0) scores usually followed an EIF threshold along the lines of "This convention shall come into force on the X day following the date of deposit of the Xth instrument of ratification, accession…" Alternatively, treaties with a score of (1) had to have EIF thresholds that stipulated more demanding and staggered requirements for the treaty to come into force. In order to receive a score of (1), the treaty EIF must demand the need for specific states of economic, geographic, or other specified groups, to ratify the treaty before it came into force. Discussion of the 1996 Comprehensive Test Ban Treaty in Part III will further delve into the explicit characteristics of having a high EIF threshold.

Empirical Findings

Before starting the coding process, I believed that environmental and human rights treaties would have the highest EIF thresholds. As Figure 1 shows, my original hypothesis was only partially supported. Far from having the highest (1) score, less than 5% of the human rights agreements (HRAs) had high EIF scores[25].

[25] Actually, only one of the twenty-one sampled human rights treaties had an EIF score of (1).

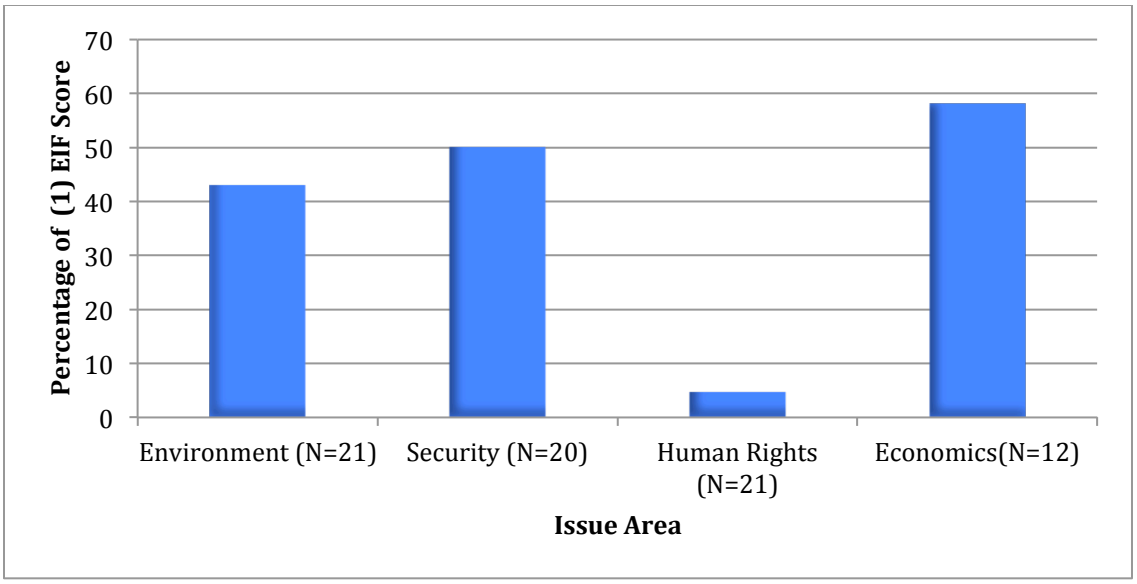

Figure 1.

One explanation for the low HRA EIF scores can be found in the design of the agreements themselves. Koremenos' finds that HRAs are likely to be more imprecise than other international agreements[26]. Typically seen as "soft law", the imprecision of HRAs allow for more flexibility and interpretation of the agreements[27]. This imprecision also works to allow for greater delegation by third parties and non-state actors[28]. The expectancy that third parties will play vital roles in the monitoring and enforcement of HRAs puts less importance on having high EIF thresholds to strengthen compliance and effectiveness of the agreements.

Second, looking at the intended role of HRAs sheds light on why they would have lower EIFs. As Figure 2 indicates, HRAs are more likely than any other agreement types to focus on norm exportation. Borrowing from the constructivist school, HRAs are tools

[26] Koremenos, "Rational Design of HRAs," 1
[27] Koremenos, "Rational Design of HRAs," 2; Abbot and Snidal, "Hard and Soft Law"
[28] Abbot, et al., "Legalization," 416-417; In her COIL project, Koremenos finds that of the four issue areas, human rights agreements make greater reference to third party non-state actors. In total, seventy-eight percent of human rights agreements, forty-eight percent of environmental agreements, thirty-nine percent of economic agreements, and thirty-two percent of security agreements made references to third parties.

used to promote global standards of human rights and ensure that states treat their citizens in a just and equitable manner[29]. As not all human rights are considered "rights" by differing states, HRAs serve as formal instruments to define, codify, and encourage similar rights and protections across states[30]. Having low EIF thresholds increases the chance of HRAs to come into force quicker and allow its provisions to come into effect. Low EIF thresholds, combined with the before mentioned imprecision of HRAs, places greater responsibility on states and third parties to encourage participation in the agreement[31]. This "peer-pressure" to sign HRAs works to spread and internalize the norms of the agreements[32].

Cooperation Problem	Security (percentage)	Economics (percentage)	Environment (percentage)	Human Rights (percentage)	Total (percentage)
Uncertainty about behavior	20	1	40	50	19
Uncertainty about preferences	24	0	0	38	10
Uncertainty about the state of the world	64	82	52	42	67
Enforcement problem	28	28	36	33	30
Distribution problem	36	19	16	71	30
Commitment problem	0	32	4	46	24
Negative externalities	40	0	80	4	21
Positive externalities	4	7	60	4	15
Deadlock	4	0	0	0	1
Foreign and military aid	44	38	8	0	27
Norm exportation	16	0	20	75	18
Coordination	20	29	12	0	20
N	25	72	25	24	146

Figure 2.
Source: Koremenos, Barbara. "Continent of International Law." Journal of Conflict Resolution 57.4 (2012): 1-29

Lastly, the higher distribution problems faced by HRAs, as shown in Figure 2, can also account for their lower EIF thresholds. Identifying and codifying human rights run into the problem of cultural and ideological differences amongst states. Even when particular human rights are shared, there exist multiple preferences amongst actors and

[29] Ulfstein, et al, "Introduction," 4
[30] Zimmermann, "Dispute Resolution," 16
[31] United Nations Institute for Disarmament Research,
[32] Ibid

thus multiple methods of ensuring state cooperation [33]. In areas such as the environment and security, lack of compliance poses a greater threat to states whereas states generally are not materially harmed if another state violates the human rights of its own citizens. As a result there are significantly fewer (if any) free rider risks in HRAs.

Besides the low HRA scores, the high economic and security scores were also surprising. Starting out on this project, I paid little attention to either issue area, despite the fact that security is one of the most common collective action areas[34]. The security treaties I sampled ranged from agreements combating nuclear proliferation to those regulating small arms use. I found that nearly all the security treaties that scored (1) dealt with the control of nuclear weapons and weapons testing. Since the use of nuclear weapons is a threat to all states, it is understandable why those treaties would have higher EIFs.

For the economic treaties, I had an extremely difficult time finding treaties that fulfilled the criteria. It turned out that trade agreements are the most likely to be multilateral and fulfill the criteria for treaty selection[35]. I noticed that the main reason why trade treaties were more likely to be multilateral was because they dealt with commodities traded amongst multiple states. Investment and finance treaties were restricted to bilateral negotiations, whereas monetary treaties mostly dealt with establishing or regulating monetary organizations. Trade treaties focus on shared commodities also explains why all the sampled trade treaties scored a (1). Following in

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[33] Koremenos, "Rational Design of HRAs," 3

[34] "Collective Action." In International Encyclopedia of the Social Sciences. Ed. William A. Darity, Jr. 2nd ed. Vol. 2. Detroit: Macmillan Reference, 2008.

[35] Of the twelve economics treaties, there were six trade agreements, two investment agreements, three finance agreements, and one monetary agreement.

line with collective action theory, commodities are sought after by every state, regardless of who produced them.

PART II.

In this section, I use the 1996 Comprehensive Test Ban Treaty (CTBT) as a case study on the purpose and rational design of EIF thresholds. During the coding process, the CTBT received a score of (1), as it required specific states to ratify the treaty before it came into force. The drawn out battle over the CTBT EIF is a prime example of states using the EIF to ensure effectiveness of the treaty and to protect themselves from collective action problems.

The CTBT was the latest in decades long attempts at negotiating an affective international agreement to curb the production, testing, and stockpiling of nuclear weapons. In 1955, prompted by the increasing nuclear arsenals of major states and concerns over radioactive fallout from the atomic bombings of Nagasaki and Hiroshima, the United Nations Disarmament Commission convened a conference to negotiate a disarmament agreement[36]. Negotiations soon came to a halt after Soviet Union opposition to proposed on-site inspections, which it feared would lead to spying [37]. Despite the breakdown in talks, the United States did agree to a three-year moratorium on nuclear testing from 1958-1961[38].

It was not until the 1962 Cuban Missile Crisis that the Soviet Union and the United States came back to the negotiation table. The Cuban Missile Crisis highlighted how dangerously close the leading world powers had come to a nuclear war and stressed

[36] "Nuclear Test Ban Treaty"
[37] Ibid.
[38] Ibid

the need for more constructive dialogue concerning the future of nuclear weapons use and testing. U.S President John F. Kennedy and Soviet Union Premier Nikita Khrushchev agreed to resume the failed talks of 1955 on a limited nuclear testing treaty[39]. The resulting 1963 Limited Nuclear Test Ban Treaty prohibited the testing and explosion of nuclear weapons in the atmosphere, under water, and outer space[40]. Participants to the treaty also agreed to five-year review sessions and a conference to determine the extension of the treaty during its twenty-fifth year review[41]. After the required ratification of all Original Parties, the treaty entered into force on October 10, 1963.

While the U.S. and the Soviet Union cooperated once more to sign the 1968 Treaty on the Non-Proliferation of Nuclear Weapons and the 1972 Anti-Ballistic Missile Treaty, it was not until 1993 that discussions began for a comprehensive nuclear weapons test ban treaty[42]. The end of the Cold War and the passage of the 1992 Chemical Weapons Convention provided the right opportunity to begin discussion for a comprehensive test ban treaty. This new push for comprehensive test ban prohibition coincided with the expected review of the Limited Nuclear Test Ban Treaty[43]. With the strong support of non-nuclear weapons states (NNWS), in 1994 the United Nations Conference on Disarmament began negotiations to extend the Limited Nuclear Test Ban Treaty into a comprehensive test ban treaty.

NNWS wanted the CTBT to not only extend the original provisions of the Limited Test Ban Treaty, but also push for the disarmament of existing nuclear weapons

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[39] Ibid.
[40] 1963 Limited Test Ban Treaty, Article I.
[41] "Nuclear Test Ban Treaty"
[42] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Debating the Basic Issues:"
[43] Ibid.

states (NWS)[44]. The final draft of the CTBT included the original prohibition of nuclear testing and explosives and at the instance of NNWS, the creation of the Comprehensive Test Ban Treaty Organization (CTBTO) to monitor compliance through direct verification from states of their nuclear testing activities [45].

Negotiating the CTBT's Entry into Force Threshold

The biggest area of contention surrounding the CTBT was in determining the treaty's EIF threshold. Beginning in 1994, debate arose over whether specific states needed to ratify the CTBT in order for it to come into force. The United Kingdom, France, and Russia pushed for an EIF threshold that required CTBT ratification by all NWS, "threshold" states of India, Pakistan, and Israel, and states identified by the International Atomic and Energy Agency (IAEA) as nuclear capable, before the treaty were to come into force.[46] These states believed it necessary for the effectiveness and reputation of the treaty to mandate that all relevant NWS and nuclear capable states became parties to the treaty. Ambassador Grigory Berdennikov, the Permanent Representative of the Russian Federation to the 1994 Conference on Disarmament noted that,

> The provision on the modalities of the Treaty's entry into force was of primary importance in terms of viability and effectiveness of the future CTBT. Indeed, even if a best possible Treaty was to be negotiated but not ratified by the key players, but it entered into force nonetheless, it may become a caricature of itself rather than an effective means of strengthening international security[47].

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[44]Congressional Research Service, "Nuclear Weapons: Comprehensive Test Ban Treaty"
[45] 1996 Comprehensive Test Ban Treaty, Article I and IIs
[46] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Entry into Force"
[47] Berdennikov , "The History Of CTBT Negotiations – A Russian Perspective" <

Japan and Australia opposed such measures and favored a simpler numeric formula for the EIF threshold. They reasoned that requiring ratification of specific states would grant those states "veto power" in the implementation of the treaty[48]. States in favor of a simple EIF formula argued that in mandating specific states to ratify the treaty, the CTBT risked never coming into force if one of the specified states chose not to ratify the treaty. These states were especially skeptical of any EIF provision that required India's ratification for the CTBT to come into force. At the time, India was in the midst of its own domestic dialogue on whether or not to build up its nuclear capabilities[49]. In return for acceding to the CTBT and effectively giving up its options for future nuclear development, India demanded that strong disarmament language be included in the treaty[50]. In light of the uncertainty of India's commitment to the CTBT, states favoring a low EIF threshold argued that any EIF that required Indian ratification was a set-up for failure. In allowing for a simple EIF threshold, the treaty had a greater chance of coming into force and of the setting the foundation for future efforts for disarmament.

The United States rejected the argument for simple EIF thresholds and instead lobbied for a stronger EIF that required the ratification of NWS[51]. As one of the leading NWS, the U.S. was concerned that if it joined the CTBT and other NWS or nuclear capable states did not, the U.S. would be at a disadvantage in the nuclear security field[52]. Domestically, U.S. leaders debated whether ratifying the CTBT would harm the U.S

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[48] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Entry into Force"
[49] United Nations Institute for Disarmament Research
[50] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Entry into Force"
[51] Ibid.
[52] Congressional Research Services, "Comprehensive Nuclear Test Ban Treaty"

nuclear program and challenge the U.S. global role as a responsible nuclear deterrent[53]. U.S. officials worried that lax EIF thresholds would not target the appropriate NWS or nuclear capable states whose cooperation and compliance was crucial to fulfilling the objectives of the CTBT[54]. The U.S proposed an EIF plan that it hoped would serve as a compromise between low EIF and high EIF threshold wanting states. The proposal favored an EIF threshold that included all NWS.[55] Once the target NWS had ratified, the proposal allowed for a meeting of State Parties to revise the final provisions to enforce the CTBT[56].

China, Russia, the United Kingdom, and France rejected the U.S proposal for a waiver clause and remained adamant that a successful CTBT required the ratification of all NWS and the three threshold states, without exception[57]. In an effort to bring aboard all members, the United Kingdom proposed having an EIF threshold that only required members of the Conference of Disarmament to ratify the CTBT. As the NWS were already members of the Conference, it ensured that they would be held to the CTBT, while also avoiding the political debate of whether or not to require ratification of nuclear weapons capable states[58]. The United Kingdom's representative to the Conference on Disarmament justified this proposal in claiming that, "given that we proceed in this forum by consensus, it is surely not unreasonable to expect that a treaty whose terms we have all

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[53] Ibid
[54] Ibid.
[55] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Entry into Force"
[56] Ibid
[57] United Nations Institute for Disarmament Research
[58] Ibid

been prepared to agree should be ratified by all without undue delay[59].” The United Kingdom’s proposal on basing EIF thresholds on Conference membership was met with wide support and soon looked to be the final EIF provision. Unfortunately, the compromise fell through when Conference members became deadlocked over plans to expand its membership[60]. Once more, the prospect of submitting a final CTBT agreement in time for the 1996 United Nations General Assembly looked slim.

After nearly two years, the CTBT EIF threshold was still not negotiated. Several states had presented proposals, all to be met with political resistance from some members of the Conference on Disarmament, especially India[61]. Deadlock over the EIF threshold finally pushed civil society groups to start letter writing campaigns to participating states, urging for compromise on the EIF. For example, British groups urged their government to take a more “flexible and constructive stance” in the UK’s insistence that EIF provision must include all NWS and the threshold states[62]. Speaking on the insistence of requiring Indian ratification, nuclear politics expert George Perkovich stated, “putting India in a make-or-break EIF position would create a hot- button political issue in India...it’s hard to see any positive aspect to having Indian accession required for EIF, once you accept that Indian signature on the treaty is unlikely[63].”

Determined to have a complete CTBT draft presented to the September 1996 UN General Assembly, chairman of the Conference on Disarmament, Jaap Ramaker, rushed to reach consensus on an acceptable EIF. With the help of Mexican Ambassador and

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[59] Ibid
[60] Ibid.
[61] Ibid
[62] Quoted in United Nations Institute for Disarmament Research
[63] Ibid

"Friend of the Chair" Antonio de Icaza, Ramaker presented a new EIF provision to conference delegates in June 1996[64]. Ramaker's proposal called for the CTBT to come into force 180 days after the ratification of the forty-four states identified by the IAEA of having nuclear reactors. This list, outlined in Annex Two of the treaty, included both members of the Conference on Disarmament, NWS, and the three threshold states. To prevent any state from holding the treaty "hostage" by refusing to ratify, Ramaker's proposal called for a regular meeting of states to review EIF criteria if the CTBT did not enter into force three years after its opening signature[65]. After nearly two years of failed EIF negotiations, members of the Conference on Disarmament agreed to Ramaker's proposal and finally submitted the CTBT to the UN General Assembly.

Even though the CTBT EIF was finally negotiated, the CTBT has yet to come into force. While the CTBT currently has 186 signatories and 163 state ratifications, seven of the necessary Annex Two states have yet to ratify the treaty[66]. Arguably, the biggest obstacle in achieving CTBT's enforcement is the lack of U.S. ratification of the treaty. Despite President Clinton's support of the CTBT, the U.S. congress declined to ratify on the grounds that the treaty was a "threat" to national security and the U.S role as a nuclear deterrence[67]. Clinging to fears present during the CTBT negotiations, U.S

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[64] Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Interview"; CTBT Article XIV

[65] Pursuant to Article 14 (2), if the CTBT have not entered into force three years after signature, states that have ratified the treaty are to meet at subsequent anniversaries to discuss alternative options to enforce the treaty. Since opening for signature in 1996, there have been eight "Article XIV" conferences. The conferences are hosted by the treaty's depository, the United Nations ("Article XIV Conferences").

[66] The seven states are India, Pakistan, Iran, Israel, Egypt, China, and the United States (Preparatory Commission for the Comprehensive Test Ban Treaty Organization, "Status of Signature and Ratification")

[67] Shah, "The U.S. and the Comprehensive Test Ban Treaty"

opponents to the treaty fear that the treaty's prohibition of nuclear testing will threaten existing U.S nuclear weapons and future nuclear expertise[68]. Without the ability to test new nuclear warheads, opponents questioned the ability of the U.S to remain global deterrents of nuclear use[69]. These opponents see the nuclear ambitions of North Korea, the encroachment of China and Russia, and the animosity between India and Pakistan (all NWS or nuclear capable states) as further proof that the U.S. must maintain and continuously improve its nuclear capabilities. Ironically, the lack of U.S. ratification is the main obstacle preventing the six other Annex Two states from ratifying the CTBT. All Annex Two states have declared that they would ratify the CTBT once the U.S. does the same[70].

Despite the fact that the CTBT has yet to enter into force, the two year political saga of negotiating its EIF threshold show just how important states view EIFs. As I argue, varying EIF thresholds are rational choice treaty design elements that states actively debate and implement. EIF thresholds serve as the last element within the treaty in which states have the opportunity to further their interests and ensure wider compliance of the treaty.

PART III.

Conclusion

This paper has sought to explain the variations in the entry into force thresholds of multilateral treaties. I hypothesized that EIF variations are the result of differing issue areas and that the treaties dealing with collective action are most likely to have higher

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[68] Congressional Research Service, "Comprehensive Nuclear Test Ban Treaty"
[69] Ibid.
[70] Ibid; India and Pakistan also claim that they would each ratify the CTBT once the other state has ratified it.

EIF thresholds. The quantitative research confirmed the general hypothesis and showed that EIFs were higher in environmental, security, and economic trade treaties. Furthermore, the case study of the EIF negotiations for the 1996 Comprehensive Test Ban Treaty supported my argument that EIF thresholds are rational design choices made by states.

While proud of the final results of this research project, there are several areas that can be improved. First the method of collecting treaties can be condensed and better organized. I had originally intended to use the United Nations Treaty Series website to make my list of treaties. Sadly, I found the site difficult to navigate, especially in light of my need for multilateral treaties. While I was eventually able to find reliable sources for treaties, I believe that the United Nations database would provide the most complete population of treaties. Second, a larger sample case can further strengthen the results of this study. Time constraints and misjudgment of work required, forced me to code only a few treaties within each issue area[71]. Lastly, the coding scheme can be further refined to increase replicability. While I believe the current definition of what constitutes (0) and (1) EIF scores are sufficient, a more succinct definition highlighting the main characteristics of each score will aid in better coding[72].

Even without these improvements, this project begins work on an interesting, important, and under-researched area of treaty design and adds to the rational design

[71] I vastly underestimated the time required to find and code the treaties. I was surprised to find that for some treaties, in order to properly code the EIF, it was not enough to simply look at the designated EIF article of the treaty. For some treaties, the EIF section was contingent upon the understanding of other (often more technical) parts of the treaty text.

[72] Admittedly, on three occasions I had difficulty deciding whether a treaty was a (0) or a (1). On these occasions, the coding came down to a judgment call after comparing the three agreements to other treaties with clear (0) and (1) scores.

literature. Better understating of EIF variations and the general role of EIFs contributes to the growing scholarly work of international agreements and the relevance of international law. Lastly, an increased understanding of the role of EIF thresholds will provide states with more tools to draft stronger and more effective treaties.

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