U.S. BUSINESS AND GLOBAL TREATIES: LOBBYING AS IT EFFECTS MULTILATERAL AGREEMENTS

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ABSTRACT

We examine negotiations for six international treaties and agreements to determine the influence that business had on the U.S. government's position. The treaties: The Kyoto Treaty on Global Warming, North American Free Trade Agreement, OECD Anti-Bribery Agreement, Air Crash Liability Treaty, Law of the Sea Treaty and the Infant Formula Agreement. Business lobbying for these treaties had a strong influence on the U.S. position under all administrations, and that impact has been greater with Republican presidents.

Keywords: international, treaties, business, lobby, United States, Kyoto Treaty, NAFTA

INTRODUCTION

International relations and global transactions require ground rules (Havel 1999). Nation states are limited in their ability to set these rules, and tend to pursue their own self interest (Soros 1998). Global economic institutions, such as the World Trade Organization and the International Monetary Fund, are relatively strong and influential, whereas global institutions charged with worker and environmental protection are relatively weak. Moreover, globalization is pushing decision making to international levels, so many people around the world worry that democracy and accountability are being lost in the process (French 2002). Hence an effective governance system is essential for fair, accountable trade and global relations (Young 1999, Cooper 1989).

When President George W. Bush took office in January, 2001, his aids assured allies that the United States was a team player and would practice multilateralism. However, Bush opposed a considerable number of multilateral treaties and agreements within six months of taking office. It appears that a principal motivation was to pay back debts to his political supporters, such as business and wealthy contributors to his election campaign. For example, the Bush administration pulled

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out of the Kyoto Protocol on global warming, continued to refuse to sign the International Treaty to Ban Antipersonnel Land Mines, said it would withdraw from the Antiballistic Missile Treaty, stated its opposition to the International Criminal Court signed by Clinton (Kupchan 2002, Lewis 2002, Farrell 2002, Drinan 1998), refused to establish a body to verify the 1972 Biological Weapons Convention, and watered down a small arms control pact (Kupchan 2002). Moreover, the U.S. is one of a handful of nations that continues to refuse to ratify the treaty to ban underground testing of nuclear weapons, the Convention on the Rights of the Child (Roth 1998), and the Convention on Biological Diversity.

The above global agreements and those considered later in this paper impact business. Such treaties strive to bring about a stable and equitable environment, and stability is essential for the well being of people and for commerce (Slomanson 1996, Blix 1973). Moreover, as global trade increases, the interdependence of nations increases proportionately. Global agreements are essential, yet there is very little international law to guide such activities (Panic 1988, Soros 1998). The United States is economically and politically dominant, so major global initiatives require its cooperation. However, while the rhetoric favoring international cooperation has been impressive...., genuine progress--especially toward explicit coordination--remains highly uncertain (Bryant and Hodgkinson 1989). In this paper, we distinguish these global agreements from broader international policy regimes (Krasner 1983). The treaties and agreements considered here consist of text that is more specific and explicit.

Why does the U.S. support some multilateral international treaties that effect business, and not others? To what extent is U.S. business lobbying a decisive factor in the existence or absence of U.S. support? Since there are many international treaties (Treaties 1997) and many business firms which have varying interests, we select six international treaties in which the United States has had an important role. We will then examine the influence that business has had on the U.S. government posture. The six international treaties we examine are: 1) The Kyoto Treaty on Global Warming; 2) North American Free Trade Agreement; 3) OECD Anti-Bribery Agreement; 4) Air Crash Liability Treaty; 5) The Law of the Sea Treaty; and 6) The Infant Formula Agreement.

These international agreements have been selected because: 1. Each agreement has either a strong impact on business as a whole, or has an important impact on a particular industry (air crash liability, infant formula); 2. Each has been accompanied by considerable debate, so that various positions are more readily documented; 3. Each agreement affects major issues that face international business (Preston and Windsor 1997); and 4. The debate over each agreement extended over several presidential administrations, so better to make comparisons. Let us now examine the process of making treaties in the U.S.

TREATY MAKING PROCESS IN THE U.S.

To provide some background, let us briefly outline the process within the United States of developing international agreements. For the U.S., international agreements include both treaties, and executive agreements. Nevertheless, both are considered treaties by other countries (Congressional Research Service 2001). The *U.S. Constitution* provides that "(the president) shall have power, by and with the Advice and Consent of the Senate, to make treaties" (*U.S. Constitution*, Art. 11, Sec. 2). Present practice is that treaties are negotiated by the president and must be ratified by two-thirds of the U.S. Senate.

The president of the United States has independent authority to enter into executive agreements under the same article of the Constitution (Art. II, Sec. 1, 2, 3). The president often informs Congress in writing of the content of executive agreements. For analytical purposes, the process consists of two levels: 1. Bargaining among the negotiators, leading to a tentative agreement, and 2. Discussions among each group of constituents as to whether to ratify the agreement (Putnam 1993).

Since the Constitution was established, the United States has "entered into over 12,000 bilateral and multilateral treaties and international agreements. Of these..., the Senate has ratified only 1286... (Kennedy 1996). So, almost 90 percent of international agreements are executive agreements, which do not require Senate ratification. A ratified treaty and in most cases executive agreement are both considered the law of the land within the U.S. That is, U.S. courts recognize them as law in any cases that come before them without further law making action (Congressional Research Service 2001).

In negotiating and ratifying an international agreement, trying to please multiple parties is a difficult and complex process. Even the first U.S. president, George Washington, had difficulties. Although the Framers of the *U.S. Constitution* intended that the President consult extensively with the Senate on the content of international treaties, Washington is the only president to have done so, and he did it only once in 1789. He was so frustrated by the cumbersome process, even given a U.S. Senate of only 26 men that he never consulted again. None of his successors have done so either. The complexity of consulting so many parties is the principal argument for fast track legislation to allow the U.S. President to negotiate treaties. We will discuss fast track in more detail in the section on the North American Free Trade Agreement (NAFTA). Let us now examine the specifics of the six selected treaties and agreements. First, the Kyoto Treaty.

KYOTO TREATY ON GLOBAL WARMING

Data show that the earth is gradually warming, and almost all scientists now agree that the burning of fossil fuels brings about most of this artificial warming of the earth (Brown 2003). It is caused by a greenhouse effect, most of which is formed by carbon dioxide pollution that is emitted from the burning of coal, petroleum and natural gas. Forests and oceans naturally absorb carbon dioxide, but the increasing amount of emissions is overwhelming this natural balance (Sheehan 2003, *World Press Review* 2001).

Therefore in 1997, delegates from 160 nations gathered in Kyoto, Japan, to forge a pact in an attempt to reduce global warming.

In the Kyoto Treaty developed nations pledged that by 2010 they would reduce their emissions of carbon dioxide below their 1990 levels: Japan by 6%; Europe by 8% and the U.S. by 7%. The European Union is now 0.5% below and Japan is 2.7% above 1990 levels. The U.S. now emits 13% more than its 1990 levels, and produces 24% of the world's carbon dioxide (Dunn 2001). The case for U.S. leadership is put by Nobel Prize willing physicist, Burton Richter. He says that the U.S. is the least energy-efficient society in the industrialized world. The U.S. uses twice as much as energy per dollar of gross domestic product as does Japan and about 1.5 times as much as west Europe (Richter 2001).

Developing nations, including China and India, also produce greenhouse gases. But they argue that at this point in their development, it is more important for them to reduce poverty than to put a limit on the greenhouse gases they emit. They contend that we cannot expect two billion people to continue to live without electricity, and the 1.3 billion people in China to continue to ride bicycles. These poorer nations point out that Europe, Japan and the U.S. built their economies through the use of fossil fuels; developing nations must be permitted to do the same, before being forced to curtail their use of energy. At present, developing nations' per capita emissions of carbon dioxide is a small fraction of that of the developed nations. However, the immense populations of China, India and other developing nations will be major emitters of greenhouse gases in the coming decades, if they do not become more energy efficient and/or shift to other energy sources. While carbon dioxide emissions of developing nations have increased 22.8% since 1990, these nations have made progress in reducing their carbon per gross domestic product (GDP), which is arguably a better way to measure these nations' efforts to decarbonize economic development. In sum, in 1997 the 160 nations that signed the Kyoto Treaty agreed that the developed nations have the wealth, flexibility and stature to be leaders in combating a potential danger for all people and for future generations (Dunn 2001).

There are numerous arguments in favor of supporting the Treaty. The warming of the Earth by even two degrees may not seem like a severe problem. But scientists point out that it could result in shrinking glaciers and rising oceans, flooding of coastal cities and loss of islands, spreading deserts, increasing likelihood of droughts, and increasing frequency of damaging hurricanes, disease and political turmoil. Insurance companies, property owners, agricultural supply firms, and other businesses have been warned of the potentially immense cost of global warming in floods, loss of waterfront properties, tropical diseases and crop damage; such losses increased dramatically to $92 billion in 1998 (Sheehan 2003, Meacher 2002). While there are uncertainties in these predictions, as with other risks, the uncertainty is no excuse for inaction. The potential cost of *not* reducing carbon dioxide emissions is considerably greater than the more immediate costs of greater energy efficiency and the reduction of greenhouse gases (Packard and Reinhardt 2000).

Opposition to the Kyoto Treaty in the U.S. is led by groups like the Global Climate Coalition (an industry-funded group), U.S. Chamber of Commerce, the

United Mine Workers and Exxon-Mobil. U.S. auto firms, GM and Ford, support reducing carbon emissions, but oppose the specifics of Kyoto (Dunn and Flavin 2003). To reduce carbon dioxide a country must become more efficient in its use of energy, and/or shift to non polluting energy sources (hydro, solar or other alternatives). This can be expensive in the short term. Like other pollutants, for a firm to place carbon dioxide in the air is free or low cost to them. Hence, without other incentives, the market encourages such pollution.

During his presidential campaign, U.S. President George W. Bush acknowledged the problems posed by global warming and promised to reduce carbon dioxide emissions. Nevertheless, he withdrew the U.S. from the Kyoto Treaty, saying that the goals for U.S. reductions were too stringent, the cost of compliance was too high and that developing countries were not included in the efforts to reduce greenhouse gas emissions. Since U.S. emissions are now about 13% above 1990 levels, many experts believe that reducing them to 7% below 1990 levels would cause severe dislocations in the U.S. economy. Nevertheless, rejecting the treaty, rather than trying to renegotiate it, yielded to pressure from Exxon-Mobil, coal-mining companies, electric power generators and other business interests.

Even without the U.S., 178 nations hammered out an agreement to implement the Kyoto Treaty in July, 2001. The developed nations pledged to: 1. reduce carbon emissions and pay penalties if goals are not met; 2. establish systems to trade credits for emissions reduction and for investing in energy efficient projects oversees; and 3. set up a fund to help developing nations adapt (Raeburn 2001). Following the U.S. rejection of the Treaty, Russia also rejected it in 2003. Nevertheless, in Europe, Japan and the U.S. just the prospect of a treaty has resulted in legislation and new government and industry policies curbing emissions (Revkin 2003).

Many firms have voluntarily reduced carbon dioxide emissions. Dupont, a major chloroflorocarbon producer which ceased production of it following the Montreal Treaty, has now pledged to reduce carbon dioxide emissions to 65% below 1990 levels. In addition, Ford, Dow Chemical, I.B.M., Johnson & Johnson, Daimler Chrysler, Alcan Aluminum, Suncor Energy, Ontario Power, Shell and BP-Amoco have also indicated that they are voluntarily reducing their emissions of greenhouse gases (Dunn and Flavin 2003).

In conclusion, President George W. Bush's decision to unilaterally withdraw from the Kyoto Treaty on global warming is criticized by most leaders and citizens overseas and by many U.S. citizens. One of his principal reasons for withdrawing was the additional costs that it would place on U.S. businesses and U.S. citizens. Coal, electrical power, petroleum and transportation firms led the campaign to negate Kyoto. Although some business firms support Kyoto and have voluntarily agreed to reduce carbon dioxide, other firms had more influence on Bush. In global warming, we have a case where a democratic president supported and signed a treaty, and his republican successor withdrew from the same treaty. Here George W. Bush seemed unwilling to jeopardize short term economic prosperity in exchange for the long term physical and economic health of U.S. and world citizens.

NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement (NAFTA) was signed in December, 1992 by the U.S. President George H. Bush, Canadian Prime Minister Mulroney, and Mexican President Salinas and it took effect on January 1, 1994. The Agreement would eliminate restrictions on the flow of goods, services, and investment in North America by phasing out tariffs over a 15 year period; it also protects intellectual property and provides a mechanism for dispute resolution (Preston and Windsor 1997, Globerman 1993). In addition, it provides side agreements on the environment, worker wages and working conditions (*Congressional Digest* 1993).

Obtaining the approval of the U.S. Congress to negotiate this pact was difficult. The first hurdle was over authorizing "fast track" authority for the President to negotiate the treaty. By fast track Congress delegates power to the president to negotiate on its behalf. Congress thus commits itself to limited debate and to a yes or no vote without amendment on the agreement presented by the President. In May, 1991, Congress granted this authority to President George H. W. Bush for two years (Mayer 1998). In January, 1993, a coalition of labor, environmental, farm, consumer, religious, human rights, and some small manufacturing groups questioned both the fast track process and the NAFTA pact itself. The opposition to NAFTA focused on the perceived loss of American jobs, the plight of Mexican workers and the environmental degradation brought on by NAFTA.

When President Bill Clinton took office in 1993, he directed that new negotiations be undertaken to obtain "side agreements" on labor and the environment (NAFTA 1993). It was a challenge to negotiate these agreements, without losing the support of business interests and thus a number of key Republican votes (Rich 1997). Meanwhile, leaders of major business firms who favored NAFTA recognized that it was necessary for them to become active in obtaining Congressional approval. The Business Round Table, an organization of chief executive officers of the largest U.S. firms, formed a "blue" team to work on labor issues, and a "green" team to treat environmental negotiations. Prior to approval, most studies on the potential effects of NAFTA on jobs in the U.S. showed very little effect, but varied from 200,000 jobs created to AFL-CIO estimate of a loss of 500,000 jobs. To place these figures in perspective, the U.S. economy ordinarily generates up to 200,000 new jobs each month.

NAFTA, approved by the U.S. Congress in January 1994, created the largest free trade area and richest market in the world. Large, global businesses especially have benefited from NAFTA. The U.S. Department of Commerce calculated:

> *NAFTA is the most comprehensive regional trade agreement ever negotiated by the United States and is scheduled to be fully implemented by the year 2008. In 1996, U.S. two-way trade in goods under the NAFTA with Canada and Mexico stood at $420 billion, a 44% increase since the NAFTA was signed (United States Department of Commerce 1998).*

The Department of Commerce estimated that 311,000 jobs in the U.S., paying 13-16% above the average U.S. wage, have been created in exporting goods to Mexico and Canada. Moreover the NAFTA Commission on Environmental Cooperation (CEC) is addressing illegal trade in hazardous wastes, endangered wildlife and the elimination of certain toxic chemicals and pesticides, such as DDT and chlordane. A study of several industries showed that global trade did shift some production and thus jobs in computers, semiconductors, automobiles, bearings, telecommunications, construction equipment, minerals and insurance. However, the authors found that lower wages were not the determining factor in new investment (Yoffie 1993).

Global firms supported NAFTA from the beginning, and business lobbying was important for the final approval of NAFTA. Labor unions and many environmental groups opposed and almost defeated NAFTA. Ross Perot had been very outspoken in his criticism of the "great sucking sound" of jobs lost to Mexico. But two public events were crucial in changing public opinion. First, the public appearance at the White House of three U.S. ex-presidents from both parties, Ford, Carter and Bush standing beside Clinton - all supporting NAFTA. Second, in the TV debate on NAFTA of Ross Perot and Vice President Al Gore, Gore was better prepared and polls showed that Gore won the debate.

Labor unions and many environmental groups opposed NAFTA, but many of their traditional political supporters, such as Jimmy Carter, Bill Clinton, and other Democrats supported NAFTA. Both Carter and Clinton were convinced that the people of the U.S. would ultimately benefit from NAFTA. The principal arguments opposing NAFTA were made in the public protest at the World Trade Organization (WTO) meetings in Seattle in 1999 (Kuttner 1999) and in subsequent international trade meetings. The demonstrators claimed that wages, working conditions, human rights and environmental protection were being neglected by WTO negotiations (Perry 1998). President Clinton then presented those issues to assembled members of the WTO in his opening address. Representatives of some developing nations objected, because it could undermine their competitive advantage of low wages and relaxed environmental regulations in the global market.

The U.S. and NAFTA

The United States took the lead in advocating and negotiating NAFTA. From a Canadian perspective, Jean Pasquero listed the goals of the U.S. in pursuing NAFTA: 1) reinforcing the U.S. position as a world power in the post-cold war era, 2) promoting its own brand of free market ideology, 3) advancing democracy through trade, and 4) securing access for U.S. products and services to world markets (Pasquero 2000).

Note that these goals mix self-interest and benefits to others. Supporting NAFTA took the U.S. out of the isolationist posture it had adopted on other agreements. Moreover, advancing democracy and promoting trade can be a win-win strategy for most parties. On the other hand, NAFTA served the interests of large U.S. investors and firms that could readily benefit from open borders and expanded trade. Many assume, correctly or not, that free trade will ultimately benefit all, including raising wages and a better physical environment (O'Byrne 1996).

Business support was essential in passing NAFTA, but it was by no means sufficient. When the environmental side agreements were later initiated, some environmental groups cooperated to develop those agreements, and then ultimately supported the treaty. The goals of the U.S. were to obtain increased access to foreign markets, but were also influenced by pressure group activity (Lenway 1985). NAFTA raises the question of how to decide the appropriate tradeoffs between business interests - for example, trade, goods, capital - and public interests - for example, child labor, wages, working conditions and protection of the environment (Weintraub 1997). As NAFTA trade increases, high-trust relations are expected, and this is a benefit for all (Husted 1994). The goals of NAFTA are economic, and many assume that greater economic prosperity automatically will benefit poor people. While prosperity benefits many people, especially those who already have capital and skills, the gap between rich and poor is actually widening (MacArthur 2000, Heymann 2000). In addition, most poor countries are becoming even more polluted. This is the nature of the free market. Public goals can only be achieved by an institution that is able to pursue those goals, that is, one that has sufficient scope and authority to work for the public interest. The Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO) and the International Monetary Fund (IMF) pursue largely business interests. The United Nations, the International Labor Organization and the World Bank, while serving the public interest, have been denied the authority to treat child labor, wages, working conditions and the environment. Many countries, including especially the U.S., are unwilling to give the authority to any world body to oversea such issues. So there is now no international regime that is sufficiently empowered to oversee and monitor global public interests, such as: wages, working conditions and pollution (Young 1999).

In conclusion, the North American Free Trade Agreement could not have become law without the active support of business leaders. Of all the treaties discussed here, NAFTA provides the greatest net benefit to North American business firms. Even though it was opposed by labor unions and by populist politicians, in the end it was supported by three ex presidents of the U.S. from both parties. Finally, a Carnegie Endowment for International Peace Report on the impact of NAFTA found that it failed to live up to expectations. It did not generate substantial job growth in Mexico, hurt hundreds of thousands of substance farmers there, and had little effect on jobs in the U.S. and Canada (Dugger 2003).

CONVENTION ON BRIBERY OF FOREIGN OFFICIALS

Bribing government officials to obtain an advantage in the marketplace is common in many countries. But it results in additional costs for businesses, consumers and taxpayers, and has a negative impact on development: economic growth, domestic and foreign investment and poverty (Tronnes 2000), and also subverts public support for government (Hamra 2000, Preston and Windsor 1997, Roodman 1999). Bribery is also unethical, and practically all governments outlaw bribery within their borders (Getz 2000, Frederick 1991, Noonan 1984). Bribery, which is one form of corruption, takes on greater importance in the global economy because of the immense contracts.

Some argue that corruption will always exist, so it is fruitless to try to stop it. However, limiting bribery can benefit most people, especially those who possess less money or power (Hamra 2000). Corruption is more likely to take place when an individual makes a decision alone, has considerable latitude on criteria for making that decision, and there is little oversight or accountability for those decisions (Klitgaard 1998, 1988). Corruption includes procurement fraud, money laundering, bribery, embezzlement of public money, and abuse of insider information (Getz and Volkema 2001). We will here examine the work of the Organization for Economic Cooperation and Development (OECD) to limit the corrupt practice of bribery.

The OECD is composed of 29 of the wealthiest nations. In 1997 after much discussion and two years of negotiation, the member states signed an agreement whereby each nation agreed to pass domestic legislation that would outlaw bribery of foreign officials. Until 1997, there had been no international treaty to ban bribery of another country's officials. Japan, France and Germany had been reluctant to agree to such restraints. Canada and Germany had even allowed firms to take tax deductions for bribes paid; the OECD now bans the tax deductibility of bribe payments. Two new OECD members, South Korea and Mexico, where bribery has been common, have also signed the agreement (Getz 2000, Sanger 1997).

Corruption is distinguished as grand or petty. Grand corruption is large payments to powerful senior officials as a condition for obtaining business. This could be either extortion, if initiated by the official, or bribery, if initiated by the party seeking the business. Petty corruption consists of the small payments that are often provided to junior officials, such as customs agents (Getz and Volkema 2001). The OECD Convention seeks to outlaw and penalize grand corruption and also forbids indirect bribes through intermediaries (Hamra 2000), but like the earlier U.S. Foreign Corrupt Practices Act (FCPA), it does not outlaw petty corruption.

In 1977 the United States Congress passed the FCPA, after Congressional hearings revealed that many American executives had bribed foreign officials. Since the FCPA was enacted, it sometimes has been sidestepped in order to compete in the global marketplace. U.S. executives complained that they were at a competitive disadvantage when they competed against non-U.S. firms for overseas contracts. While it is impossible to obtain an accurate measure of bribery, the U.S. Commerce Department estimates that from 1994 to 1997 U.S. firms lost contracts worth about $11 billion dollars because foreign based firms bribed officials (Tronnes 2000). Hence, U.S. business strongly supported an international agreement against bribery and lobbied the Clinton administration to push for such an agreement. Their efforts were successful. The OECD Convention was signed by the United States in November, 1997, and was unanimously ratified by the U.S. Senate a year later (Hamra 2000). The U.S. Congress also amended the Foreign Corrupt Practices Act in 1998 to follow the OECD Convention. It provides penalties upon conviction of up to $2,000,000 for a firm, and up to $100,000 and 5 years in jail for an executive (OECD webpage).

By 2000, 34 nations had signed the OECD Convention and 21 had submitted their instruments of ratification. The signers of the Convention determined that there should be a system to monitor the signers, a rigorous process of multilateral surveillance. Thus they set up a standing Working Group to establish procedures. They required each country to submit a report on how they have adapted their national legislation to follow the Convention. Building upon the report and additional information, the monitoring has two phases: 1) examine the relevant laws of each country to determine whether they conform to the requirements of the Convention, and 2) determine if the countries actually apply the laws they have in place. The Working Group also provides regular information to the public on the compliance of each country with the Convention (Hamra 2000). The OECD website has posted reports on the progress of each of its member states in implementing the Convention (Tronnes 2000, OECD webpage).

In conclusion, the OECD Convention and its implementation should reduce costs and increase the competitiveness, fairness and efficiency of the global economy (Getz 2000, Windsor and Getz 1999). The global economy will be more effective and efficient because of this Convention. U.S. business executives lobbied hard for the U.S. government to push for the OECD Convention. Since the U.S. already had a law outlawing bribery of foreign officials, self interest played a role in the motives of U.S. executives in pushing for this international agreement. The U.S. Foreign Corrupt Practices Act had been passed in 1977, when Americans were embarrassed by the wholesale bribery of foreign officials by U.S. firms. Would Americans be similarly embarrassed in this era of greater global competition and increasing shareholder value? Would the U.S. and U.S. firms have worked so hard for the OECD Convention if there were no U.S. law outlawing bribery? If the answer to those questions is yes, it is a position of moral leadership for the U.S. If the answer is no, this is another case of the U.S. acting to support business and its own self interest.

AIR CRASH LIABILITY TREATY

Airline disasters in the last decade, such as the crashes of TWA 800, Swissair 111 and Egypt Air 990, raise the question of liability on an international air carrier for death or injury due to an air crash. Each of these flights left New York's JFK Airport on international flights and crashed into the Atlantic Ocean, and they thus fall under current international treaties on Air Crash Liability.

The liability of an air carrier on an international flight was first specified by the Warsaw Convention of 1929. Prior to that agreement, an air crash could result in unlimited liability for the carrier, plus a morass of conflicting legal claims under different countries' laws. The Warsaw agreement among international air carriers limited the liability of a carrier to $10,000 per person. Most carriers at this time were small, and the purpose of the original agreement was to protect an air carrier from bankruptcy resulting from a crash. The U.S. did not participate in this original agreement, because it was not a member of the League of Nations under whose auspices the Agreement was reached. However, the U.S. Senate ratified the Warsaw Convention in 1934, making the U.S. a Party to the treaty.

The elements of the Warsaw Agreement are: 1) the liability limit was guaranteed, unless *a party could prove negligence on the part of the carrier*; 2) a surviving passenger or their heir was forced to sue in foreign court if the carrier was not U.S. based, the ticket was purchased outside the U.S. or the flight terminated outside the U.S. The efforts of relatives of those killed in plane crashes to prove negligence on the part of a carrier in court often under another country's law proved difficult, time consuming and expensive.

A 1999 agreement fashioned in Montreal updated the Warsaw Agreement and provides a more uniform approach to liability for both U.S. and foreign carriers. This Montreal Convention was initially signed by 52 of the 121 nations present. On liability, it: 1) guarantees $135,000 to survivors of one killed in a plane crash, no questions asked, and 2) requires airlines to pay claims above $135,000 unless the *airline can prove it was not negligent*. Moreover, it provides that a survivor can sue in their home country, if the airline serves and/or has offices in that country.

The 1998 Montreal meetings on changing the Warsaw Convention began without the participation of the U.S. The U.S. joined in the discussions, when we saw the conference would go ahead without us, we put on a full diplomatic offensive (Modernized Warsaw... 1999). Removing the artificial compensation limits attempts to end lengthy litigation that families of air crash victims had to endure in order to obtain fair compensation. It had been necessary to prove willful misconduct on the part of the carrier in order to obtain compensation above $75,000 (updated amount) for an air crash death. Most families could not afford either the money or the time involved in such lengthy litigation.

Benefits of New Air Crash Convention

U.S. airlines themselves sought to increase the no questions asked compensation from airlines for an air crash, and to allow families of air crash victims to sue for greater damages and not bear the burden of proof of willful negligence. The Montreal amendments to the Warsaw Convention were also pushed by U.S. trial lawyers and by airline survivor groups.

In conclusion, let us ask: what was the role of U.S. business and the U.S. Government in the formulation of these treaties? In both the Warsaw and the initial stages of the Montreal Treaties, the U.S. was not an initial party to the treaties. However, in the later case, the initiative to refashion the Warsaw treaty came from a business group, the International Air Transport Association (IATA), a price setting cartel of airlines (Preston and Windsor 1997).

Strong lobbying for amendments to the Warsaw Treaty also came from trail lawyers, survivors and heirs to those killed in air crashes. U.S. air carriers, as well as other air carriers, wanted the protection from unlimited liability that the treaties provided. They supported raising the limits on liability in 1969 and in 1998, in order to preserve the rest of the treaty. In this case business interests of the air carriers were parallel to those of the air crash survivors, their lawyers and their heirs. Ultimately, the U.S. government supported those interests and ratified the Air Crash Liability Treaty.

LAW OF THE SEA TREATY

Negotiations for the Law of the Sea Treaty began in 1966 when the U.S. and the former Soviet Union agreed to consult all nations on a new law of the sea. The initial intent was to set the limit of a country's claim to the sea at 12 miles, and to insure freedom of navigation through international straits covered by the 12 mile limit (Ratiner 1983). The United Nations then expanded the agenda to include the issue of deep seabed mining in areas beyond national jurisdiction (Young 1999).

The U.S. supported provisions of the treaty that gave every nation sovereign control over waters up to 12 miles from the shore, exclusive fishing rights to 200 miles, exclusive access to oil and gas in its continental shelf up to 350 miles out, limits on marine pollution, and a mechanism to resolve disputes. The U.S. Department of Defense supported the treaty because of its provisions for free passage of ships and aircraft. President Lyndon Johnson, the first of three U.S. presidents to negotiate the treaty, said in 1966 that the rights to seabed minerals (copper, nickel, cobalt and manganese) beyond territorial waters belonged to all nations. In 1970 the U.N. declared them to be the "common heritage of mankind", and the U.S. delegation voted in favor of the declaration (Alexander 1982).

Between 1973 and 1980 the U.S. and over 153 other countries agreed on the substance of the treaty. Following on President Johnson's statement and the U.N. declaration, developing nations proposed a Seabed Authority to oversee the harvesting of seabed minerals. By 1975 all nations agreed to the general outlines of the treaty, except for the seabed issues, such that two U.S. representatives wrote that there would be "a widely acceptable Law of the Sea Treaty in 1975" (Caron 1982). This prediction was premature, because working out the seabed authority proved difficult. U.S. Secretary of State Kissinger, under President Nixon, proposed a compromise that established a Seabed Authority for mining in international waters that included both private and public enterprises that could mine the seabed. His compromise was accepted.

However, when Ronald Reagan became President of the U.S. in 1981, he ordered a total reevaluation of the treaty. After a year-long review, Reagan outlined five reasons why he was going to reject the treaty: 1) the Seabed Authority had too much control over private companies, 2) it limited production, 3) it required sale of seabed mining technology to poorer countries, 4) the competition between the private firms and the Seabed Enterprise (Kissinger's compromise), and 5) the fact that after 20 years the treaty could be amended by three fourths of the signers. Chief U.S. negotiator Leigh S. Ratiner later said that hard line conservatives had set the written guidelines under which the U.S. team had to negotiate:

> *Other delegations did not understand that the U.S. delegation was operating under instructions containing a restrictive interpretation of the president's objectives and was under pressure to adhere to them as the sole guidance for interpretation (Ratiner 1983).*

Hence the U.S. delegation had little room to negotiate.

Advocates of the treaty maintained that the U.S. would suffer in the long run if it did not sign. Production ceilings for seabed mining were set very high, and the terms for transferring mining technology favor the seller. Moreover, many feared that if the U.S. did not sign the treaty, its navigational rights and recognition of territorial waters would not be protected. Eminent international law scholar Louis Henkin of Colombia University said, "The treaty is probably the best one obtainable, and is certainly better than the alternative of isolating the U.S. by not signing the agreement" (Torpedo for the Seabed Treaty... 1982).

After 14 years of negotiations, the U.S. tried to renegotiate essential elements of a package that already had a near consensus. In addition, at the last moment, the U.S. tried to convince other industrialized nations not to sign the Law of the Sea Treaty either, and in place of it, to devise a "mini-treaty" that would better protect their own national and property interests.

The chief negotiator for the Reagan Administration, Leigh Ratiner, was chosen because he had broad experience in sea-law and had lobbied for Kennecott and other business firms interested in mining seabed. He saw what he felt were serious flaws in the treaty, and he worked to overcome those flaws. Compromises were reached, but his efforts "were undermined by the hard liners' rigid and unrealistic demands, which convinced the Group of 77 that the U.S. wasn't negotiating in good faith" (Alexander 1982).

On April 30, 1982, 130 nations voted to adopt the treaty and open it for signature. The United States voted against the treaty as did Israel, Turkey and Venezuela, while the Soviet bloc countries and some other Western countries abstained. Twelve years later the seabed mining section was rewritten, and in 1994 the U.S. finally signed on and joined over 170 other nations. The treaty entered into force that year, but the ambitious provisions of the Seabed Enterprise were not included (Young 1999). The revision of the treaty was made largely to answer U.S. opposition, and by 2000 134 countries had ratified the amended Treaty. That same year President Clinton sent the Law of the Sea Treaty to the Senate for ratification, but "the U.S. Senate has yet to hold more than a public hearing on ratifying the pact" (*Congressional Quarterly* 1997). As a result, the U.S. no longer participates as a member of the International Seabed Authority.

Not being a party to the Treaty raises problems for the U.S. When a U.S. Navy reconnaissance plane hit a Chinese plane and was forced to land on mainland China in April, 2001, China charged that the U.S. had violated Chinese sovereignty by flying so close to its coast. The fact that the U.S. had not signed the Treaty, and China had signed it in 1996 undermined the U.S. negotiating position. The U.S. could not go to court to assert that China had violated the treaty (Past Actions Undercut... 2001).

In conclusion, the U.S. Pentagon has always supported the Law of the Sea Treaty. Others in the Reagan administration opposed the treaty. Their opposition favored business interests and showed a reluctance to allow an international public body to have jurisdiction over international seabed where mining could be lucrative. This opposition led the U.S. to be the only industrialized country to vote against the treaty. Although 12 years later the treaty was revised and signed by President Clinton, the Senate Foreign Relations Committee has yet to discuss ratification. Even though 134 nations are now parties to the Law of the Sea Treaty, the U.S. is not, largely because of business interests.

GLOBAL INFANT FORMULA AGREEMENT

The International Code for Marketing Infant Formula is not a formal treaty. But such voluntary codes have many of the advantages and problems of treaties (Preston and Windsor 1977). Hence, we examine the Infant Formula Code here because, as an international agreement: 1) it has received widespread public attention, 2) it has implementation provisions, and 3) information is available on the code's passage and on the successes and shortcomings of its implementation.

Infant formula was developed as a supplement to breast milk for newborns, becoming popular in the U.S. and Western Europe also as a convenient substitute for mother's milk. Decades later, because of declining birth rates in these countries, formula makers marketed heavily in Africa, South America and Asia (Preston and Windsor 1997). Advertising often implies that infant formula is better for the infant than breast milk. However, this is not true: 1) infant formula does not contain the antibodies that an infant receives in breast milk to protect itself from diseases; 2) infant formula is sold in powdered form and thus requires often unsanitary water, and thus diseases are transmitted to the infant; 3) infant formula is expensive, and often requires a substantial portion of a poor family's disposable income (Firms Act 1998).

Many physicians, public interest and religious groups objected to marketing infant formula to poor mothers. As early as 1970, the World Health Organization (WHO) and UNICEF invited industry officials, nutritionists and government officials to a conference in Bogotá, Colombia to discuss the problem. The American manufacturers of infant formula represented were: Abbott Laboratories, American Home Products and Bristol-Myers; they were joined by the Swiss multinational food retailer, Nestle (Post 2000, 1978). Marketing and advertising infant formula to mothers in poor countries continued for many years, as did the international censure of such marketing practices.

An international code was proposed that would encourage the education of new mothers about nutrition and the benefits of breast feeding, and also place limits on the commercial marketing of infant formula. This code was fashioned by the senior staff of WHO and their advisors, after consulting effected parties (Brundtland 2000).

The U.S. government under President Jimmy Carter supported the substance of the code, and this position was also taken by U.S. manufacturers of infant formula. But the 1980 election of Ronald Reagan as president shifted the political climate. The new administration supported unregulated free enterprise and opposed international codes. The infant formula industry saw their opportunity and also shifted their position and lobbied for the U.S. to oppose the code. The final vote was taken in 1981 when the 119 member nations of The World Health Organization formally voted: 115 in favor, 1 opposed (the United States), and 3 abstentions (Sethi 1994). The Code was thus formally adopted by the member nations, in spite of the United States casting its lone negative vote.

In casting its negative vote, the U.S. government, in the words of a scholar who researched the entire process, was willing to sacrifice diplomatic niceties and denigrate world opinion. To the world, the United States appeared like an arrogant bully that was indifferent to the political sensitivities of the Third World ...and did not care about infant sickness and mortality in poorer countries (Sethi 1994). The U.S. lost much international good will at this single negative vote.

Implementation

The 1981 WHO Infant Formula Agreement provides an opportunity to examine the implementation of the agreement by the countries that signed it. The Infant Formula Code was voluntary; Enforcement is essential for an effective code of conduct. Failure to create a working mechanism can doom a code to failure in the world of practice (Post 2000). Even though countries voted unanimously for the code; the code can only be effective if each country alters its own domestic legislation to follow the code. By 1986 The European Union countries did alter local laws to reinforce the responsibility of health care workers to inform new mothers on the advantages of breast-feeding and to limit the advertising of infant formula (Sethi 1994). However, the problem of infant mortality is largely in developing countries, and here the record is less positive.

Of 123 developing countries in Africa, Asia and Central and South America, only 10 countries had adopted the informal code fully into local legislation by 1988. Another 27 countries had enacted some of the provisions into law. The largest group, a total of 75 countries had taken no action at all or was still studying the issue. The code states that all nations, including developing countries, have a responsibility to educate new mothers on the advantages of breast milk for newborns. Such education can be expensive, and many countries choose economic growth and weapons over the health of their people (Sethi 1994). Moreover, many developing countries, among them India, allowed their own domestic manufacturers of infant formula to violate the code by their advertising.

In conclusion, U.S. policy under Democratic president Jimmy Carter supported the infant formula agreement. However, his successor, Republican President Ronald Reagan opposed it. Supporting the infant formula manufacturers, the U.S. was the sole nation not to sign the Infant Formula agreement. In this case U.S. business interests ultimately prevailed over protecting the health of infants in poor countries.

SUMMARY AND CONCLUSIONS

On the Kyoto Treaty on Global Warming, many argue that U.S. business interests triumphed over the long term welfare of U.S. citizens. Yet in spite of the U.S. withdrawal, 178 other nations which support the Kyoto Treaty have implemented an international plan to reduce carbon dioxide in the atmosphere. The absence of the U.S., and now Russia, will limit the effectiveness of this plan, but the actions of the 178 other nations will reduce global warming. The reason why the U.S. withdrew from the Treaty is that it would cost too much to follow the provisions of the Treaty and would thus hurt the U.S. economy. Implementing the Treaty is costly for Japan and European nations, also. In this instance, short term U.S. economic interests triumphed over the risk of longer-term degradation of the earth's atmosphere.

NAFTA was strongly supported by large financial and business firms, though it was opposed by labor unions and many environmental groups. Amendments to the initial agreement improved prospects for better wages, working and environmental conditions in Mexico. It was finally ratified after extensive lobbying by business executives.

The OECD Convention on Bribery of Foreign Officials was strongly supported by U.S. business. The implementation of this Convention benefits both global businesses and most individual workers and citizens worldwide. The Air Crash Liability Treaty sets limits and brings order to what would otherwise be chaotic liability demands when an international air crash occurs. It was supported by U.S. air carriers and eventually by the U.S. government.

The Law of the Sea Treaty has been signed by the president, but has not yet been ratified by the U.S. Senate. The U.S. military supports the treaty. The principal objection is commercial: it will not allow U.S. firms sufficient freedom to mine the oceans. The Infant Formula Agreement pitted manufacturers of formula against the health of many infants, especially those in poor countries. In nations where the Agreement spawned local supportive legislation, it has been a benefit to infants and mothers; but in other countries the Agreement is disregarded.

Three of the six treaties and agreements studied here were supported by the U.S. government: NAFTA, the OECD Anti-Bribery and the Air Crash Liability Treaties. In the cases of the Kyoto Global Warming Treaty and the Infant Formula Agreement, one president supported and signed the treaty and a following president withdrew that support. The Law of the Sea Treaty, while signed, has not yet been ratified (See Table 1).

Domestic interests are a strong influence on any nation's position in both negotiating and ratifying an international agreement (Putnam 1993). Business interests are among the most persuasive. Thus we see that the position that business took on each of these agreements was followed by the U.S. Government. In each case, if most business firms supported it, the U.S. signed and ratified the treaty. This is not surprising, given the sophisticated lobbying employed by U.S. business firms (Hillman and Keim 1995).

In the same fashion, if the treaty was opposed by business interests most affected by the treaty, it was ultimately opposed by the U.S. government. Each case demonstrates pragmatic liberalism; that is, the predominant goal in each case was more influenced by economic than by foreign policy considerations (Lenway 1985). The U.S. Government, like most nation states, follows policies that further their own national objectives. That is, it gives primacy to the welfare of its own citizens (Bryant and Hodgkinson 1989). Thus U.S. business sometimes prevailed over global public interest (Boddewyn and Brewer 1994).

Table 1. Six Selected International Agreements and Their Status

Treaty	Signed by President	Submitted to U.S. Senate	Approved by Senate	Supported by Business
Kyoto Treaty on Global Warming	Yes/No[1]	No	No	No[2]
No. American Free Trade Agreement	Yes	Yes[3]	Yes	Yes
OECD Anti-Bribery Agreement	Yes	Yes	Yes	Yes
Air Crash Liability Treaty	Yes	Yes	Yes	Yes
The Law of the Sea Treaty	Yes	Yes	No	No
The Infant Formula Agreement	NA[4]	NA	NA	Yes/No[5]

NA = not applicable
1. Signed by Pres. William J. Clinton; signature later withdrawn by Pres. George W. Bush.
2. Most firms oppose the Treaty, even though Dupont and some others support it.
3. Submitted under fast track authority.
4. This international agreement was with UNESCO and the firms themselves.
5. Supported when first proposed, but opposed when Pres. Reagan gave them the opportunity.

Many question its real support for free trade when the U.S. knowingly violated WTO rules by placing additional tariffs on imported steel and quotas on Chinese textile precuts, while at the same time negotiating free trade agreements with Vietnam, Chile and other Latin American countries on behalf of large U.S. business firms. The interests of business also prevailed in determining the position of the U.S. government on the six global agreements discussed here. Business lobbying has an important influence under all presidents, but has had a greater impact on Republican presidents. One expects a government to make the interests of its business firms important criteria in framing its position on international treaties, but this position should also bring about the welfare of its own citizens and the common good.

The United States often refuses to participate in international treaties and agreements. The U.S. has a history of isolationism, and because of its global economic and political power, the U.S. is less influenced by the opinions and pressures of other world interests. This is demonstrated when the U.S. is almost alone in rejecting the Kyoto Treaty on Global Warming and the Infant Formula Agreement. It was also apparent during negotiations on the Law of the Sea Treaty and initial discussions of the Air Crash Liability Treaty.

Moreover, the U.S. has not supported other global treaties, such as the International Criminal Court and the Ban on Anti-Personnel Land Mines; the U.S. has also announced that it will withdraw from the Anti Ballistic Missile Treaty. In addition, the U.S. Senate has refused to ratify the Convention on the Rights of the Child and the Convention to Eliminate Discrimination Against Women.

Two former U.S. Secretaries of State, Robert S. McNamara and Henry Kissinger, who served under Democratic and Republican presidents respectively, each independently urge the U.S. to shift from the arrogance of its sole superpower status to attempting to better understand other nations and peoples. Many in the U.S. believe that democracy and an unregulated free market automatically will bring wealth, freedom and peace to the world. But McNamara points out that prosperity itself did not avert World War I. Both McNamara and Kissinger propose a stronger version of the United Nations to avoid another world war (McNamara and Blight 2001, Kissinger 2001).

A unilateral approach on the part of the U.S when negotiating treaties contributes to anti-American sentiment, and makes it more difficult for other nations to recognize the U.S. as a world leader. For such a wealthy nation to act in what appears to be business-dominated self-interest can appear arrogant and selfish to citizens of other nations.

The economic and political dominance of the U.S. in the world gives it an opportunity to shape what comes next. But the U.S. has no grand strategy. It demonstrates no vision of an international order and a willingness to work with allies to attain it. The U.S. is seen as a great power adrift, as made clear by its contradictory and incoherent behavior. In drawing away from multilateral agreements and institutions, the U.S. risks estranging other centers of power, raising the chances that their ascent will create further problems for itself and the rest of the world (Kupchan 2002).

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