United States Foreign Policy and Multilateral Institutional Effectiveness

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A thesis submitted in partial fulfillment of the requirement for the degree of Bachelor of Arts in Government from The College of William and Mary

by

Kathryn E. Beaver

Accepted for Honors

Michael J. Tierney, Director

Katherine Rahman

David Corlett

Williamsburg, VA
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Acknowledgements

First, I would like to express my endless gratitude for the hard work of my committee, Professors Michael Tierney, Katherine Rahman, and David Corlett, for their draft edits, our many meetings, and their ability to always ask me the critical questions.

I would also like to acknowledge Professor Amy Oakes and Dessislava Kirilova for their inspiration and guidance when I originally started developing the ideas for this project way back in the spring of 2010.

Additional thanks to Stephen Davenport at Development Gateway, Heather Hanson and Alicia Mandaville from the Millennium Challenge Corporation for their crucial perspectives into the world of aid transparency.

Finally, thanks to my friends and family for editing chapters, keeping my writing concise, and, most of all, for offering endless support and encouragement as I forged my way through this massive scholastic endeavor.
I. Introduction

In a 1998 interview, then-Secretary of State Madeleine Albright referred to the United States as an “indispensable nation” in world affairs. The U.S. “stands tall” and “sees further into the future than other nations.” Its interests cannot be sacrificed in pursuit of multilateral cooperation and thus must be taken into account if such cooperation is to be successful. She made these remarks in the midst of the post-Cold War rise of international organizations and the burgeoning of cooperative multilateral endeavors. While her statement was specifically referring to military action, the words apply profoundly to the U.S. role in all international organizations. Albright’s comments, and similar sentiments from Hillary Clinton, suggest that multilateral cooperation will not operate effectively without support from the United States. This perspective operates on the assumption that U.S. policy matters a great deal to the success of any multilateral endeavor. This claim has not been addressed empirically and deserves more serious scrutiny than it has received to date.

U.S. policy toward multilateral initiatives has varied widely: sometimes, the U.S. signs, ratifies, and strongly supports an institution. At other times the U.S. will refuse to ratify a treaty, but will abide by the spirit of the agreement and cooperate informally. At other times, the U.S. will reluctantly sign a treaty, agreeing to comply with its provisions. Or, the US might actively oppose the treaty, obstructing its operation by advocating for

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1 Steven Lee Meyers, "Hillary Clinton’s Last Tour as a Rock Star Diplomat," The New York Times, June 27, 2012, Magazine, http://www.nytimes.com/2012/07/01/magazine/hillary-clintons-last-tour-as-a-rock-star-diplomat.html?pagewanted=all&_r=0. “In “21st-century statecraft,” though, “the general understanding, which cuts across parties, is that the United States can’t solve all of the problems in the world,” she said. “But the problems in the world can’t be solved without the United States. And therefore, we have to husband our resources, among which is this incredibly valuable asset of global leadership, and figure out how we can best deploy it.”
an alternative means to solve the global problem. This variation in behavior provides opportunities for analysts to explore the causes of such variation and its impact on the success of multilateral cooperation. There has been extensive literature on the reasons why the U.S. should or should not ratify specific treaties, engage in multilateral efforts, or cooperate with other states. There has also been some literature evaluating the effectiveness of certain international organizations. This study will speak to both literatures and seek to systematically address the “indispensable power” argument by determining whether U.S. policy has any impact on the ability of an international organization to operate effectively.

Madeleine Albright’s quote reflects an intuition that bears a striking resemblance to hegemonic stability theory, which has provided theoretical inspiration for this study. I will not test hegemonic stability theory in this thesis, but my findings could reopen the debate about the status of the United States as a hegemon and whether its leadership or engagement is necessary for the success of multilateral initiatives in the 21st century. Both the realist and liberal paradigms offer theories as to how the international system behaves with the presence of a hegemon. While the conditions that sparked this theory, and the status of the United States as a hegemon, have changed, the debates that have arisen between supporters and critics of hegemonic stability theory provide a useful starting point for this study. Contemporary theory suggests that the United States offers valuable resources to international organizations, and implies that U.S. obstruction could negatively impact institutional effectiveness. However, in accordance with the logic of several scholars and critics of hegemonic stability theory, empirical applications of such a bold thesis are shaky. With the rise of new global powers, treaties and organizations that
the United States has opposed have continued to operate without the full support – and sometimes despite the opposition – of the United States. Whether or not the organizations operate effectively is the ultimate question of this study.

This paper approaches this general question of international organization performance as it relates to one state’s foreign policy in an inductive manner. First, the existing literature on the merits and criticisms of hegemonic stability theory, as well as theories on international cooperation and multilateralism per U.S. policy, is explored to build a theoretical foundation for this research. Instead of creating an original theory, my research will be analyzing four case studies in order to produce a theory before recommending other cases on which to test it. I take a broad policy question—is the United States necessary for an organization to perform effectively? — and conduct empirical research to determine whether any patterns emerge in the historical record.

Several political science scholars advocate using case studies as a means to derive theory and explore causality through process-tracing methods. As George and Bennett explain:

In particular, the ‘scientific realist’ school of thought has emphasized that causal mechanisms…are central to causal explanation. This has resonated with case study researchers’ use of process-tracing to uncover evidence of causal mechanisms at work…Case study methods, particularly when used in the development of typological theory, are good at exploring complex causality.²

By having the opportunity to observe certain cases with a high level of scrutiny, this study constructs an evidence chain linking two specific variables through process tracing. The independent variable is the level of U.S. involvement in an organization and the dependent variable will be the effectiveness of said organization. Because case study methods do not require large sample sizes, this paper describes and analyzes complex

² Alexander L. George and Andrew Bennett, Case Studies and Theory Development in the Social Sciences (Cambridge, MA: MIT Press, 2005), p. 10
interactions between variables and allows me to derive theory from my cases. This case study method is employed by many scholars and is considered by its practitioners as “better…for the possibility of learning.” 3 By systematically testing the impact of U.S. involvement in certain treaties and using those treaties as case studies, I can better isolate the effect of the independent variable on the dependent variable to determine whether changing the former affects the latter. In the process of applying these methods to specific case studies, new or unexpected trends could emerge and influence the resulting theory. This study uses process-tracing methods to examine the question of causality between U.S. involvement in an institution and its effectiveness, and attempts to derive theory through case studies of specific multilateral institutions that the U.S. has interacted with in a variety of ways.

After explaining the literature, theoretical implications, and methods employed, I analyze selected cases in order to determine the value of the relevant variables and evaluations of internal and external outputs for each treaty or organization. Finally, I compare the cases more generally to determine if certain trends occurred within each case, which would indicate a possible theory to be tested further. One possible outcome that could be observed is that the U.S. significantly influences an institution’s effectiveness, which would support the “indispensable” theory. However, another possible outcome could be that the level of U.S. involvement in an institution has no bearing on how effective it is. There could also be a middle option in which the U.S. has influence over some measures of effectiveness, while not having any impact on others.

Finally, the study will conclude with a summary of the findings and recommendations for future work in which other scholars can test the theory derived from this case study analysis.

II. Literature Review

The post-WWII expansion of multilateralism demonstrates that it is possible for states to share mutual interests and therefore have grounds for cooperation on a number of global issues through treaties, institutions, and international organizations. Indeed, international relations scholars have debated the merits and benefits of multilateral institutions in the international system and how cooperation can be achieved. While realists are more inclined to discount international institutions as mere instruments through which strong states can achieve their interests, liberal institutionalists argue that non-state actors such as international organizations can facilitate cooperation to better solve global problems.

The role of the U.S. in multilateral cooperation has remained a topic of contention domestically and internationally, particularly during the tumult following the collapse of the Soviet Union. In order to examine the impact U.S. policy has on the effectiveness and performance of international organizations, previous literature on the topic must be taken into consideration. First, hegemonic stability theory and its application to the determinants of stable international regimes are discussed in light of both its strengths and its shortcomings. Second, this section assesses the unique role of the U.S. as a global hegemon and why cooperation exists despite its relative hegemonic decline. This will not only illuminate what the U.S. has to bring to the table for international discussions, but also suggests why scholars believe that cooperation can occur without U.S. support.
Third, this review touches on scholars’ previous attempts at assessing U.S. interaction with various international regimes and the effects of those interactions. Mostly, scholars have researched determinants of the U.S. decision to cooperate in various regimes, while others assess the impact that U.S. policy has had on the organization itself. While most of this research is introduced in later sections on specific case studies, assessments of U.S. policy and its potential influence on international organizations have been included here.

Finally, this literature review describes previous attempts to measure the effectiveness of international organizations and regimes in order to supply a firm methodological foundation for this research.

Hegemonic Stability Theory

One of the most prominent theories purporting to explain cooperation between states is hegemonic stability theory. This theory—advanced by both institutionalists and realists—suggests that order in the international system depends on the presence of a single dominant power, or hegemon. Spawned from a theory on free trade, hegemonic stability is rooted in micro-economic logic. Charles Kindleberger explains the emergence and persistence of international free trade as dependent on a “benevolent despot” that is capable of providing necessary public goods for other states.⁴ The theory also suggests that a benevolent hegemon, one that is more predisposed to utility, shapes the international order to its benefit and to the benefit of all in the system, especially weaker states. A benevolent hegemon bases its capability to enforce its interests on the

⁴ Duncan Snidal, "The Limits of Hegemonic Stability Theory," *International Organization* (Fall 1984): p. 2; Charles Kindleberger, *The World in Depression, 1929-1939* (University of California Press, 1973), p. 307; Public goods are defined as goods that are non-excludable and non-rival, meaning that no individual or state can be excluded from consuming that good, and use by one individual does not reduce availability to others. Examples include national defense, clean air, and free trade.
international system because if the hegemon has a dominant interest in a cooperative outcome, it will ensure its emergence.\(^5\)

However, scholars with a more realist inclination, like Robert Gilpin, do not ground their claims in economic logic, but argue that a dominant state will shape the order suited only to their interests at weaker states’ expense. The theory of hegemonic stability has been useful for realist scholars, not because it claims that hegemony is necessary for cooperation, but because it frames the structure of institutional systems in light of the preferences of a powerful state.\(^6\) Hegemonic stability theory has evolved beyond the issues of free trade and optimal tariffs. The ability of states to cooperate with each other on a variety of global issues could be influenced by a hegemon willing to enforce rules or provide public goods, thereby affecting the strength of international agreements and subsequent organizations. Indeed, a hegemon could incur benefits by choosing a multilateral forum in order to solve a problem. Cooperation could benefit a hegemon in a variety of ways. First, it can reduce transaction costs of interacting with weaker states. It would be more costly to negotiate several bilateral treaties instead of just one multilateral agreement. The hegemon could also structure a forum that would allow other states to have a say, therefore reducing the likelihood that a significant challenger would arise out of conflicts of interest. Finally, by dispersing decision-making power to others, the hegemon is protecting itself from a major shift in power leading to further

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Because of these benefits, a hegemon might prefer cooperation and would ensure its continuation.

I build upon this theoretical framework by analyzing the conditions under which the United States chooses to invest in institutions and multilateral agreements. I examine those conditions and their implications for how involved the U.S. will be and what that involvement means for an institutions’ effectiveness. Arguments for the validity of hegemonic stability indicate that a hegemon would be necessary to ensure a stable cooperative regime. By providing resources, investing a continuing interest in the survival of the organization or treaty, and by using its power to enforce the rules of the institution, the U.S. will perpetuate its existence. While this theory explains the continuation of particular agreements, it does not speak directly to the level of effectiveness the organization will achieve, even with U.S. support. If the U.S. is a relative hegemon in a particular issue area, its support could determine how well the organization or regime is able to achieve its goals and if the agreement persists.

However, the criticisms of hegemonic stability are also relevant to this project, particularly the work of Duncan Snidal, John Ruggie, and Robert Keohane’s later revisions. Norms and institutions matter in world politics and have continued to exist as valid outlets of international cooperation despite the absence of a hegemon. Some scholarship indicates that cooperation does not entirely depend on the existence of a powerful state. Multilateralism and its benefits outweigh the influence of a single

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hegemon and can enhance cooperation in a more holistic way.\textsuperscript{8} Such criticisms could indicate a framework for a possible theory regarding U.S. effect on international organization effectiveness, in that the U.S. might not be a determining factor in the outcome of cooperation because multilateral institutions are able to adapt in the absence of a strong power.

Snidal keeps the theory in its paradigmatic origins, but argues that it lacks validity because of several research design flaws. He points out that if a hegemon existed in the system, there is a possibility that it would not act benevolently towards all states. HST lacks data to measure this component of the theory and trivializes its most potentially relevant detail: that a state is powerful enough to prevent smaller ones from leaving the regime. Additionally, Snidal argues that the original theory does not address the size of the hegemon relative to other states or if the hegemon is benevolent or coercive.\textsuperscript{9} Even though a simple test determining whether or not the presence of a dominant state leads to lasting regimes is a viable way to empirically associate hegemons with stable cooperation, without data indicating whether or not the hegemon is coercive or benevolent and actually distributes benefits to all states, hegemonic stability theory is incomplete.\textsuperscript{10} This study begins to build a foundation for designing such a test.

By ignoring possible discrepancies between relative and absolute size of a hegemon, hegemonic stability theory does not encompass the possibility that a hegemon’s relative size to other states could be getting smaller while it’s absolute size is getting bigger. If a powerful state continues to grow and expand, but other states grow

\textsuperscript{9} Snidal, \textit{The Limits of Hegemonic Stability Theory}, p. 11.
\textsuperscript{10} \textit{Ibid}, p. 6.
and expand at the same time, its relative size shrinks in comparison and could indicate a decrease in influence. Therefore the net gain from an absolute gain will be high, but the state might not be considered a hegemon because its relative size has diminished and it can no longer enforce its interests to preserve cooperation.\textsuperscript{11} This distinction is particularly relevant for this paper because it allows for a clearer classification of the United States’ hegemonic status during the period of this study. There is also a strong possibility that states will have different interests across different issue areas that will determine whether they will act benevolently, or act according to a stronger capacity to coerce. Different issue areas will require a different distribution of benefits by the hegemon, which is an inconsistency that is not observed in the hegemonic stability theory, and could leave room for destabilization.\textsuperscript{12} At this point, my research breaks from scholars’ preoccupation with differentiating between varying issue areas. Because there will be tests conducted on a variety of cases across several international regimes, a theory regarding conditions for U.S. cooperation will be more generalized and therefore applicable to the field of multilateral cooperation and U.S. foreign policy.\textsuperscript{13}

These methodological assessments of hegemonic stability nicely complement Robert Keohane’s revisions of the hegemonic stability theory in \textit{After Hegemony} (1984)—in which he revises several tenants of the original theory in light of declining hegemonies. He selectively applies hegemonic stability theory by determining that the presence of a hegemon can facilitate cooperation, but it is not a necessary or sufficient

\textsuperscript{11} \textit{Ibid}, p. 9
\textsuperscript{12} \textit{Ibid}, p 36.
condition to ensure its success and continuation. He demonstrates that cooperation can occur after the creation of international regimes and can continue throughout a post-hegemonic era. He argues that empirically, the presence of a hegemon was not necessary for international cooperation in the twentieth century. Cooperation and harmony did not occur for long after the U.S. was established as a hegemon in the years after World War II, and Britain, while having the most extensive free trade policy in the early twentieth century, did not necessarily dictate the rules of the system and enforce their trading scheme on others. Additionally, Keohane argues that hegemonic stability theory is not sufficient for cooperation. Concentrated power is not enough to create stability, particularly if it is not powerful relative to other states. In order to demonstrate his revised hegemonic stability theory, Keohane assesses the phenomenon of U.S. hegemony and its decline as well as the subsequent impact it has had on international cooperation. Similar to Keohane, but starting with different assumptions, is John Ikenberry who posits that the collapse of the Cold War did nothing to undermine the global system at which the U.S. was at the center. He also believes in the continuity of cooperation post-Cold War, but acknowledges the continuation of an American-liberal hegemonic order into the 1990s.

**U.S. Hegemony and International Cooperation**

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15 Keohane, *After Hegemony*, p. 32
16 *Ibid.*, p. 35-36; Thanh Duong, *Hegemonic Globalization* (Ashgate Publishing, Ltd., 2002), p. 66. Duong argues that Britain and the United States were not actually full sponsors of free trade in that free trade was merely a mechanism to maximize their own benefits.
The status of the United States as the world’s superpower shifted significantly in the mid to late twentieth century. In the twenty years after World War II, the U.S. enjoyed hegemony over the international system and sought to find mutual interests with partners in order to shape other states to conform to its will. "American hegemonic leadership in the postwar period, presupposed a rough consensus in the North Atlantic area, and later with Japan, on the maintenance of international capitalism, as opposed to socialism…" The U.S. had to invest in institutions and the resulting regimes coming from such investment created a stable, cooperative system. Because smaller states and allies could expect the hegemon to ensure the consistency of a stable system and preserve the status quo, hegemony itself reduced transaction costs and uncertainty in cooperation.

There were several benefits the U.S. provided for others in the system around this time: a stable international monetary system, provision of open markets for goods, and access to stable oil prices. The U.S. could also offer provision of currency, monitoring of exchange rates, protection by the U.S. Navy, a decrease in pirate activity, and lower transaction costs through trade. Those are some examples of how U.S. hegemony determines contributions the U.S. could make to a system of cooperation in order to ensure stability and lead to an effective outcome. If the conclusions of this paper indicate that U.S. support for international institutions makes them more effective, they will not necessarily indicate that the U.S. is once again displaying complete hegemonic leadership, but build from the idea that a strong international player’s investment in cooperation is necessary for institutions’ effectiveness.

After the mid-1960s, U.S. hegemony began to shift in order to encompass the new bipolar international system, as the Soviet Union became a security threat to the U.S. After the collapse of the USSR, other states have risen on the global stage to challenge the U.S. internationally, diminishing its relative status as a global hegemon. Here, the realist paradigm of looking at relative power in a post-hegemonic system is again relevant. In the post-hegemonic era, how can cooperation be achieved? Keohane argues that there is evidence for a decline in international cooperation following the decline in American hegemony, however the difficulty of attributing decreasing cooperation only to declining American hegemony prevents hegemonic stability theory from being as straightforward as originally postulated.23

Other scholars argue that though the bipolar system collapsed at the end of the Cold War, the liberal order that the U.S. created remained intact but was significantly undermined by the Bush era push toward unilateralism and the subsequent economic recession and loss of confidence in U.S. markets.24 The future of a stable liberal order depends on certain variables already emphasized in the literature including the U.S. ability to strike regional bargains, the willingness of the U.S. to provide public goods, a general agreement of rights and privileges and the ability of other rising global powers to operate within this system.25 This research contributes to the literature on American hegemony, for it will explore empirical connections between U.S. policy and effectiveness of multilateral endeavors and what that could mean for the future of cooperation and American influence.

_Multilateralism and U.S. Foreign Policy_

23 Keohane, _After Hegemony_, p. 196.
24 Ikenberry, _Liberal Leviathan_, p. 224-225.
Outside of the broad, theoretical components of hegemony, cooperation, and the role of
the U.S. within that framework, there is extensive literature addressing U.S. choices when
it comes to multilateralism. The traditional, nominal definition of multilateralism is “the
practice of coordinating national policies in groups of three or more states.”\(^{26}\) This
definition certainly lays the groundwork for more sophisticated analysis of the method
through which states choose to cooperate with each other. Multilateralism does not just
focus on the number of states involved, but also the kind of relations that result.\(^{27}\) The
literature on multilateralism includes extensive analysis on the role that the United States
has played in its expansion and within specific institutional regimes. This paper not only
builds on theoretical concepts of hegemonic stability, but also onto previous scholars’
work on multilateralism and U.S. policy.

For the U.S. there are several factors that contribute to the decision to enter a
multilateral agreement. A general consensus among scholars concludes that since the end
of the Cold War, U.S. ambivalence towards international organizations has increased.
The Bush era, from 2001 to 2008, has been characterized as a major shift towards
unilateralism.\(^{28}\) This could be attributed to the failures of some multilateral endeavors,
such as Bosnia and Somalia, or to factors such as domestic political structures, the role of
interest groups, and U.S. exceptionalism. There have been some studies that argue that
the United States’ global dominance has not led to an increase in cooperation, even if it is
by American standards, as hegemonic stability would suggest. Rather, some scholars

\(^{27}\) *Ibid*, p. 6; James A. Caporaso, “International Relations Theory and Multilateralism: The Search for
\(^{28}\) Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, eds., *US Hegemony and International
believe that U.S. dominance has been expressed through its pursuit of unilateralism, instead of cooperation through multilateral engagements. 29 According to realist logic, the structure of multilateralism and the commitment to shared norms or principles despite significant costs and self-restraint are not attractive to a great power like the U.S. This contradicts the theory of hegemonic stability, but provides context to why the U.S. would choose to engage unilaterally. 30

There has been some scholarship on the extent to which U.S. engagement with international organizations has affected the organization itself. These scholars have generally assumed that the impact of U.S. policy on the terms and success of an agreement would be immense. 31 The application of power can come in the form of anticipatory surrender—smaller states giving up their power and actions to the interests of a larger state because they believe the payoffs will be higher—or in the capacity to set agendas. Both of these methods are ways that the U.S. can dictate the outputs and the process of international organizations and therefore greatly affect their efficiency and legitimacy. 32 Some scholars have attempted to answer the question of the impact of the U.S. on particular multilateral regimes. Gautnam Sen and Ngaire Woods analyze U.S. power on the WTO and World Bank/IMF respectively. 33 In those two instances, the U.S. is a major player in that it sets policy, holds significant administrative capacity, and

31 Foot, MacFarlane, Mastanduno, U.S. Hegemony, p. 11.
32 Ibid, p. 10.
provides the primary market for action. Both conclude that without U.S. power, both organizations would not have the capacity to effectively achieve its goals. This thesis contributes to the work already done by these scholars, and looks at issues outside of the realm of world trade and international monetary regimes. So while the essays by Sen and Woods are useful for cases in which the U.S. has already supported, there is still a significant empirical gap on organizations and treaties that the U.S. has not signed or ratified.

*International Cooperation in the Environmental Regime*

Because two case studies used to assess the impact of U.S. policy on organizational effectiveness are environmental agreements, this section offers a very brief overview of some of the theories on the challenges of global environmental governance, a unique issue area, and its relationship to hegemony. Some authors usefully characterize environmental issues as common pool resources (CPRs). This characterization of resources sums up challenges with appropriation and allocation of nonexcludable finite resources and therefore greatly influences the ability of treaties to be successful. Hegemonic stability theory traditionally claims that hegemons can provide public goods, but some theory suggests that in a CPR situation, a hegemon would not be able to effectively ensure the preservation of a resource. A hegemon can theoretically override the free-rider problem by paying for the free riders’ share so long as they can manage the allocation of the resource. However, there is no way for the hegemon to ensure that free riders do not use up all of the remaining shares of the resource while also bearing no cost.

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There is little incentive, therefore, for a hegemon like the United States to agree to environmental cutbacks and pay for other states to indiscriminately consume the resource. Coercive hegemons have a higher likelihood of succeeding in a CPR situation, and must be willing to impose negative sanctions on free riders that would make the cost of overconsumption greater than the cost of forcing cooperation.\(^{36}\) Therefore, existing theories on common pool resources and hegemony characterize some incentive structures for the U.S. when contemplating environmental agreements and the extent to which its support could influence other states in the regime.

Attempts at creating international environmental law are often plagued with various dilemmas and challenges stemming from environmental objectives having to compete with problems of international development for political priority level. While some states may be aware of the need to reduce environmental harm for the sake of protecting the environment, doing so would come at the expense of development because their economies may rely on certain industries affected by environmental regulation. Requiring a developing country to reduce their industrial output and therefore intentionally hurt their economy in order to adhere to environmental treaties is often fruitless. The debate over environmental policy and its effects on development is a continual theme throughout the several decades of attempted multilateral engagement over environmental problems. One notable exception to many common environmental governance dilemmas is the Montreal Protocol, which is a case study in this thesis for analyzing the impacts of U.S. policy on multilateral effectiveness.

Other challenges to achieving agreement on environmental issues come from the reality that there are seldom reliable enforcement mechanisms to ensure that states meet

their treaty obligations. While specific treaties attempt to enforce provisions, there are relatively few consequences for a state to walk away. Canada’s recent withdrawal from the Kyoto Protocol exemplifies this weakness. Canadian industry was unable to meet the required emissions reduction under compliance with the Kyoto Protocol, and the Canadian government withdrew its ratification in 2011.37 Many scholars have speculated on the ability of hard law treaties to create any positive effect on the environment, and indeed, the United Nations reports that many environmental problems from 2002 were exacerbated despite the growing number of signatories to environmental treaties.38 Recent evidence and scholarship on environmental agreements’ success indicates that the number of signatures on a treaty does not necessitate a guarantee that all states parties will comply with the agreements because, despite flexibility mechanisms, many treaties do not have a substantial enforcement mechanism that forces states to honor commitments. All of the above theoretical conditions explore the challenges facing international agreements on environmental issues as well as how a hegemon or powerful state could affect the negotiations, compliance, and success of a treaty. These considerations will be vital in exploring the United States’ role in the two environmental case studies.

Performance of International Organizations

The final component of political science literature that speaks to my central question is the methods by which other scholars have assessed the performance and efficiency of international organizations (IOs) and international regimes. In order to

create a research design that produces meaningful results, I assess the existing literature on performance. When scholars first began to study international institutions in the wake of the post-war reconstruction effort in the 1950s, the focus was on their external effectiveness, or how well the institutions were addressing the post-war chaos. The factor that many academics believed undermined the success of institutions was the scope of the reconstruction itself and the huge problems from which the world suffered.\footnote{Lisa L. Martin and Beth A. Simmons, “Theories and Empirical Studies of International Institutions,” \textit{International Organization} 52, No. 4 (Autumn, 1998): 729-757; p. 730.} The perpetuity of those institutions in later decades could indicate that support from global powers (like the United States) ensured their existence, meaning that the literature on organization effectiveness relates directly to the concepts of hegemonic stability theory. Since then “effectiveness” has been a primary focus of scholarship on international organizations.\footnote{Martin and Simmons, \textit{Theories and Empirical Studies}, p. 734; Carsten Helm and Detlef Sprinz, “Measuring the Effectiveness of International Environmental Regimes,” \textit{The Journal of Conflict Resolution} 44, No. 5 (Oct., 2000): 630-652, p. 630.}

Tamar Gutner and Alexander Thompson, in a Special Issue of the \textit{Review of International Organization}, have consolidated previous work on IO performance and have established guidelines for studying regime effectiveness that would be consistent with the works already written and would avoid common methodological errors that devalue the conclusions made. First, they assert an important distinction between internal process “performance” and external output “effectiveness.” When measuring the dependent variable, I consider this framework and use it in order to provide a comprehensive analysis of institutional effectiveness. In order to measure internal process, I build on previous research, which indicates that IO performance hinges greatly
on bureaucratic elements. Dysfunction within the IO bureaucracy can create pathological behavior and therefore hinder its internal process performance.\textsuperscript{41}

Additionally, Gutner and Thompson identify external factors that could influence IO support, reinforcing the idea that power exerted by individual states can have an impact on IO effectiveness.\textsuperscript{42} Other scholars have contributed to the evaluation of IO performance by using different methods that illuminate the best way to generate meaningful conclusions. Michael Lipson used process-tracing analysis in order to determine the performance level of UN peacekeeping operations, warning that the line between process and outcome analysis in this issue area can be ambiguous.\textsuperscript{43} Therefore, Lipson demonstrates the need to distinguish between process and outcome performance, particularly tailored to a specific issue area. Because this research will be applied over multiple issue areas, each case study will be evaluated along both dimensions. In addressing the environmental regime, scholars such as Carsten Helm and Detlef Sprinz have used simultaneous analysis comparing actual results to both a collective optimum and a “no-regime counterfactual.”\textsuperscript{44} Counterfactuals are a useful tool in this study as it explores how the value of one variable could affect the value of another. By asking how effectiveness would change if the U.S. had initiated a different policy, I can make inferences about the extent to which the variables interact.

Other methods for evaluating IO performance as employed by scholars have evolved from Abbott and Snidal’s emphasis on Transnational New Governance and the ability of an IO to enhance performance by involving public and private actors to orchestrate global

\textsuperscript{42} \textit{Ibid}, p. 230.
\textsuperscript{43} \textit{Ibid}, p. 241.
\textsuperscript{44} Helm and Sprinz, \textit{Effectiveness of International Environmental Regimes}, p. 630.
governance networks. This theory recognizes that IOs are only one actor in complicated systems of issue areas and without addressing the other actors involved, outputs and performance of the IO cannot be fully understood.45 This method is useful when evaluating the performance of regimes, but my research will treat IOs as individual actors as they relate to an individual state. More literature is presented later in the paper regarding the individual case studies and previous studies analyzing their performance, but the overall literature on IO effectiveness, particularly Gutner and Thompson’s reconciling piece provides a reasonable research design that is compatible with previous work.

III. Theory and Methods

In order to obtain empirical results, I have developed a policy scale, hereafter the Multilateral Policy Scale, as an independent variable, indicating a range of possible policy options the U.S. could choose to initiate toward treaty negotiations and compliance with treaty provisions. Because the U.S. rarely responds to a policy issue in a black-and-white manner, this scale is necessary to represent all possible policy choices. The Multilateral Policy Scale starts at “Ratification” to indicate whether the United States has ratified or signed an agreement. However, because ratification is not necessarily a determinant of compliance, the Policy Scale then moves through a separate “compliance” variable as an indication of how well the U.S. has adhered to treaty agreements. The Policy Scale then moves through “providing resources” to “diplomatic support.” There is a middle option of ignoring the agreement. The Scale moves downward to include the negative policy options: “refusal to give diplomatic support,” to

45 Gutner and Thompson, Politics of IO Performance, p. 242.
“refusal to offer resources,” to “non-compliance,” which could apply even in the absence of ratification. The U.S. might comply without ratifying an agreement, and can also ratify an agreement without complying. This distinction is crucial in determining the level of U.S. involvement. Finally, “obstruction” is the most hostile value that the variable can take, and is indicated by non-ratification and efforts to broker an alternative to the existing arrangement. A visual representation appears below, assigning numerical values for each component. This visual representation of the scale will appear within each case study across four sample years in order to more clearly capture variation on the independent variable.

There has been extensive literature on the best way to measure a variable as multifaceted as “effectiveness,” and scholars often differ in their interpretation of the best conceptualization. One of the challenges for this study will be to conceptualize “effectiveness” in a way that is able to be used across different issue areas while still
producing meaningful and practical observations to be used in policy making or derivation of future theory. Thomas Bernauer discusses this methodological conundrum at great length in the context of international environmental policies, and offers a useful method for measuring this variable. Effectiveness should first be measured in terms of goal achievement. Has the institution been successful in achieving its stated goals? Then, the analysis determines the extent to which the institution contributed to goal attainment. This allows me to both measure effectiveness based on how well the treaty achieves its goals, and also to measure effectiveness based on how the institution has contributed to the overall process in solving a global problem. This framework nicely complements that of Gutner and Thompson, who distinguish between IO effectiveness and IO performance. Considering both methodological recommendations, “effectiveness” is conceptualized in this way: the organization is evaluated based on external output effectiveness and how well it has achieved its stated goals. Then the organization is evaluated based on internal performance by examining structural mechanisms, compliance mechanisms, and how much the organization itself has contributed to solving a global problem.

In order to measure effectiveness for each case, I establish a baseline standard by determining the ideal outcome as specified in original treaties and the stated goals in an organization’s founding documents. I then compare the actual, observed outcome with the ideal figure to get a measure of how effective the IO has been at solving problems identified in the founding documents. I observe the impact that the institution had on goal attainment by looking at state compliance and internal process in areas that could impact

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effectiveness (particularly those in which the United States could be involved). Finally, I assess the contribution that the treaty has made to global legal processes of solving a particular global problem. The indicators of output effectiveness and the ability of the institution to contribute to problem solving provide crucial evidence as to whether or not the particular IO has been successful since its inception.

In order to determine a causal chain between U.S. policy and IO effectiveness, I employ two separate analytical methods, including process tracing and comparative case studies. In order to determine causation within each case, the case is isolated and heavily researched. Then, I move down the policy scale using the measures and indications previously explained, and determine the value of the independent variable in each case. After isolating the applicable policy actions, I then conduct another test to analyze the dependent variable for effectiveness of the institution. After establishing U.S. policy and behavior toward a given regime and knowing what the outputs are and are not, I outline a causal chain to link the variables and determine whether the policy option exercised by the U.S. contributed to the observed results. By understanding the indicators on the independent variable and by exploring counterfactuals to determine the resources that U.S. brings to the table for that particular case, one can draw conditional conclusions about the relationship between variables.

Several political science scholars have advocated the use of counterfactuals in deriving inferences and conclusions from small-N case study methods. Because counterfactuals explicitly deal with situations and suppositions that did not actually happen, there are certain methods for an analyst to use in order to validate arguments derived from counterfactuals. James Fearon explains that researchers, when looking to
make causal claims through counterfactuals, must make arguments about what could have happened based on invoking general principles and theories and using existing historical knowledge relevant to the counterfactual scenario.47 Fearon demonstrates several examples of successful use of counterfactuals in small-N designs, all of which contain elements of explaining how elements of an independent variable explain outcomes in certain cases with implicit emphasis on how the outcome could have been different given historical realities.48 Counterfactuals in this study are a necessary component to deriving useful conclusions and to justifying causal claims regarding U.S. involvement and effectiveness of an institution because it involves a small sample of cases but a wide variety of independent variable options. In order to achieve this, this study ensures that counterfactual analysis is both explicit and defensible by providing evidence for any assumptions made by presuming a different outcome.

The second portion of the research involves constructed comparison between the cases, looking to determine whether or not the expected outcome occurred in all situations. I use the results of comparative case study analysis to determine the consistency of my theory and to ultimately demonstrate whether any overarching relationship is observable between U.S. involvement and regime effectiveness.

Case selection for this study consists of treaties or multilateral endeavors in the post-1990 era that the U.S. has rejected, has fully supported from the beginning, or has complied with informally without ratification. The U.S. Senate Treaty Series and several IO scholars have data on all treaties and relevant amendments and protocols that the U.S. has signed since 1990. Additionally, because the United Nations requires members to

48 Fearon, Counterfactuals, 188.
submit all negotiated treaties to a database, the UN Treaty Series (UNTS) provides crucial data on determining the total population of cases that the U.S. has participated in since 1990. According to the UNTS, the United States has been listed as a participant in approximately 3,000 bilateral and multilateral treaties since 1945. After filtering the data to only include those negotiated after 1990, the population shrinks to 548 bilateral and multilateral treaties signed. Out of those 548, a majority of those treaties are bilateral and not applicable to this study. However, the U.S. has “participated” in approximately 40 international treaties since 1990.49 There are still some limitations to the usefulness of this data since it does not include treaties that the U.S. did not sign, however, there is no existing comprehensive source. Using this data, I can better choose cases that are representative of the wide variation in my independent variable. It is important to achieve variation on case selection in order to illuminate the resources that the U.S. can bring to IOs to help them succeed and to isolate the effect of U.S. support on effectiveness.

The following cases were selected based on variation in the independent variable: The Montreal Protocol (1987), The International Aid Transparency Initiative (2008), The Rome Statute (2002) that establishes the International Criminal Court, and the Kyoto Protocol (2005). These cases all vary significantly along the Multilateral Policy Scale, and demonstrate a wide variation of U.S. policy. The Montreal Protocol has the highest value of U.S. participation and the Kyoto Protocol has the lowest value, and the case studies are presented in descending order down the Multilateral Policy Scale. In order to obtain comparable results, the cases selected deal with “low-politics” issues, such as international justice, environmental issues, foreign aid, or monetary policy. To avoid a

misleading comparison, “high politics” issues like nuclear proliferation, advanced weaponry, or military invasions should be excluded from consideration. This is because high politics issues generally attract significant external factors (i.e. human cost) that shape U.S. policy.

The implications of this research are expansive. It empirically evaluates a specific diplomatic paradigm adopted by many representatives and treaty delegations, namely that a multilateral agreement not receiving U.S. support is doomed to fail. By building on the framework of hegemonic stability theory and its criticisms, these tests could illuminate a useful theory in addressing IO performance as it relates to U.S. policy. The conclusions of this paper could indicate a specific path for U.S. foreign policy as well as explain a logical prediction for the future of effective international organization. Given that good performance is a source of legitimacy for an international organization, this research could indicate whether U.S. support is a necessary element that an IO must obtain in order to be successful, effective, or legitimate.

**IV. The Montreal Protocol**

The first case study used to empirically test the influence of U.S. policy on a multilateral organization is The Montreal Protocol on Ozone Depleting Substances. This Protocol, added to the Vienna Convention on the Protection of the Ozone Layer is considered one of the most successful international environmental agreements of all time and represents a case at the top of the Multilateral Policy Scale. This chapter will first contextualize the Protocol and the events implicit in its creation to get a sense of how the U.S. participated and what preferences it demonstrated when negotiating the Protocol. Then, U.S. involvement in the treaty is explored to measure how U.S. policy measures up
on the Multilateral Policy Scale. This chapter then isolates the dependent variable and assesses how effective the Montreal Protocol has been so far with respect to external outputs and internal performance. Finally, this chapter employs process-tracing methods to determine whether there is a link between the variables.

Background: United States and Ozone Protection

In the first half of the twentieth century, industrial and technological advancement skyrocketed to the level of unprecedented innovation in fields of science, weaponry, and efficient production. In the latter half of the twentieth century, innovation and development continued to increase exponentially but with the newfound awareness of certain environmental costs of such rapid industrial expansion. In 1972, several states recognized the need for common principles that address the detrimental effects of industrial development on human health and protect the human and physical environment and gathered in Stockholm, Sweden in order to discuss and affirm such principles. Using the same rhetoric and spirit of the potential for human innovation and advancement, states in Stockholm codified the idea that humans must take responsibility for man-made problems in the environment and succeeded in developing language that would build the international legal structure of environmental agreements. By the early 1990s, the international community began to recognize that environmental degradation would come at the expense of human health, food security, and development unless serious multilateral action was taken. Several states and representatives convened in Rio de Janeiro in 1992 in order to develop a multilateral agreement on environmental policy and human development. The Rio Conference continued establishing framework language for

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issues that do not adhere to territorial boundaries such as fish, animals, air and water pollution, and rising global temperatures. Now, after twenty years of attempting to regulate environmental policy on an international level, the international community has remained committed to decreasing hazardous behavior, but results have been varied. Cooperation over the environment is exceedingly difficult and has exposed several challenges to achieving the necessary cooperation from all states.

The Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer is evidence of the evolving trend towards international cooperation on environmental issues. It first opened for discussion in 1986 and entered into force January 1, 1989. The United States Senate ratified the agreement in 1988, and in 1990, the terms of the treaty entered U.S. law via amendments to the Clean Air Act of 1970. The Montreal Protocol was designed to reduce ozone-depleting substances in the atmosphere by 50 percent below 1986 base levels in response to scientific reports linking chemical compositions of household products to significant damage in the ozone layer. According to British scientists studying the atmosphere in Antarctica in 1984, a recurring “hole” in the ozone layer appeared when levels of ozone dropped below 10 percent of their expected value for that region.\(^5\) Another measurement indicated an even sharper drop in ozone concentration from previous decades: nearly 35 percent of the previous levels of ozone in Antarctica’s atmosphere had disappeared. The ozone hole had spread over the populated areas of the Falkland Islands, South Georgia, and the southern tip of South America, greatly concerning scientists over possible impacts on human health. The ozone layer of the atmosphere protects life on earth from harmful ultraviolet rays released through sunlight. Conditions like high-level radiation could significantly damage the

earth’s delicate ecosystem and cause immune system deficiencies, eye damage, and skin cancer in humans.\textsuperscript{52}

By 1987, public awareness of the ozone hole and its potential effects on human life had spread globally—along with the ozone hole itself. Public opinion about solutions to the ozone hole phenomenon played a large role in the policy process in the United States and pressured policymakers to address this serious concern. Asked in a 1988 survey conducted by the National Geographic Society, “If the ozone layer were to be damaged to any significant extent, would the impact be limited to industrialized nations, underdeveloped Third World countries, or do you think the effects would be felt all over the world?”, 94 percent of U.S. respondents indicated that they believed ozone depletion to impact the whole world.\textsuperscript{53} In the same survey, 84 percent of respondents indicated that they were aware of the destructive impact of CFCs on the ozone layer.\textsuperscript{54} One year later, the J. Walter Thompson Company determined that 79 percent of U.S. respondents favored “a ban on fluorocarbons and other chemicals known to damage the ozone layer, even if it means higher prices for air conditioners, refrigerators, and some other consumer products.”\textsuperscript{55} Finally, the Opinion Research Corporation determined in a poll that 57 percent of respondents were “very concerned” about greater exposure to the sun’s rays due to ozone depletion. Another 25 percent indicated that they were “fairly concerned.”\textsuperscript{56}

According to this polling data, the American public was aware of and concerned about the danger related to ozone depletion and would be willing to incur higher

\textsuperscript{52} Ibid.
\textsuperscript{54} “National Geographic Survey Poll.”
individual costs in favor of reducing emissions of ozone depleting substances (ODSs). These opinions put significant amounts of pressure on policymakers in Washington to address ozone depletion as a matter of importance. In addition to a high level of public support for action against ODS emissions, politicians also had to consider the potential economic consequences of seriously committing to reduce consumption of ODSs.

Several U.S.-based manufacturing companies produced refrigeration and cooling technologies that consumed high levels of ODSs, therefore leading to increased research into the exact substances that have caused these problems and how best to mitigate their impact on the atmosphere. Companies such as Du Pont and Allied Signal Inc. produced large amounts of products using ODSs and eventually became significant actors in determining the type of regulations imposed during the negotiations. In addition, these industrial actors, combined with hundreds of thousands of businesses that consumed ODSs in regular operation, contributed to scientific research on the specific harms of chemicals to the ozone layer and eventually developed economically and environmentally viable substitutes to these chemicals. American industry played an instrumental role during the treaty negotiations in Vienna and Montreal, as exemplified by the full discussion of U.S. involvement is fully explored in the next section of the chapter.

The final text of the Montreal Protocol was added to the Vienna Convention in 1987, requiring a complete phase out of several chemicals including chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform from industrial production in state parties by the year 2000. The treaty provisions did distinguish between the industrialized (non-Article 5) and non-industrialized (Article 5) nations and reflected an international

consensus that the latter countries would have more time and more assistance to meet their treaty obligations. Developed countries had until 1995 to completely phase out those chemicals, while developing countries were given until 2015. States were also required to incrementally reduce other more sophisticated chemicals like hydro chlorofluorocarbons (HCFCs) over five year periods and totally phase them out by 2020.\textsuperscript{58} The parties to the Montreal Protocol also established a financial flexibility mechanism in 1991, the Multilateral Fund, to ensure that developing countries are able to fulfill their treaty promises by funding sustainable development projects in 148 Article 5 countries whose annual emissions of ODSs do not exceed .3 kilograms per capita.\textsuperscript{59} The Montreal Protocol internal structure also contains various advisory boards, scientific assessment panels, and environmental assessment panels that regularly monitor compliance with provisions and continue researching the scientific components of ozone depletion and its environmental effects. The Protocol allowed limited exceptions to the consumption ban of ODSs if any equipment vital to human security or medicine required their consumption. Currently, the Montreal Protocol has 191 signatories, making it a universal treaty.\textsuperscript{60} Twenty years after the Montreal Protocol has entered into force, the UN Environmental Program through the Scientific, Environmental Effects, and Science and Economics Assessment Panels have determined that ozone-depleting substances have

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\item \textsuperscript{58} The Montreal Protocol on Substances that Deplete the Ozone Layer, Signed at Montreal on 16 September 1987, text found at http://ozone.unep.org/new_site/en/Treaties/treaties_decisions-hb.php?sec_id=342\&show_all; Art. II.
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declined significantly since 1990 and even more significantly between the 2006 assessment and 2010 assessment.\textsuperscript{61}

\textit{The United States Involvement the Montreal Protocol}

This section identifies the level of U.S. involvement with regard to the Multilateral Policy Scale, which ranges from ratification to obstruction. The U.S. involvement in the Montreal Protocol has been consistently positive. This section provides evidence for all four positive indications for U.S. involvement in an institution. The U.S. has ratified the Montreal Protocol and has so far complied with its obligations. There is also evidence of the U.S. providing resources and technical assistance to the Protocol through its contributions to the Multilateral Fund, the heavy involvement of American scientific communities, and the role industrial actors in the negotiations for the treaty and domestic implementation. Finally, there is evidence of diplomatic support from U.S. officials in the executive and legislative branches in each administration from Ronald Reagan during the 1980s to Barack Obama from 2009 to 2012.

The U.S. expressed immense support for the binding regulations of ODS emissions on signatories when the Montreal Protocol was negotiated in 1987. Domestic law from previous decades laid the groundwork for an immediate American ratification of the Protocol, despite many scientific uncertainties. The Clean Air Act, passed in 1970, allowed the Environmental Protection Agency (EPA) to regulate the emissions of any substance that “may reasonably be anticipated to affect” the stratosphere or ozone layer.\textsuperscript{62}


Richard E. Benedick, the chief negotiator at the Montreal Protocol negotiations and former Deputy Assistant Secretary of State for Environment, Health and Natural Resources, emphasized the achievement of the Montreal Protocol in requiring states to incur significant short-term costs for scientific conjecture that, in 1986, was still a theory.\textsuperscript{63} Indeed, some officials within the Reagan Administration at the time of the negotiations questioned the necessity to impose binding restrictions on American industry if scientific evidence was not confirmed. While Reagan’s ideological predisposition usually opposed such binding restrictions and regulations on American industry, various domestic forces including support from Congress, new scientific reports confirming environmental effects of ODSs, overwhelming support from the American public, and pressure from industrial actors who wished to capitalize on manufacturing ODS substitutes influenced him to vocalize American support for binding regulations.

In a statement following ratification, Reagan proclaimed the Protocol as “[marking] an important milestone for the future quality of the global environment and for the health and well-being of all the peoples of the world.”\textsuperscript{64} The U.S. Senate unanimously ratified the treaty 83-0 on March 14, 1988.\textsuperscript{65} In addition to ratification, the U.S. demonstrated its commitment to the Montreal Protocol by integrating the binding treaty provisions into domestic law through Title VI of the Clean Air Act, prohibiting consumption of ODSs after the target dates for the phase out plans. Manufacturers were prohibited from producing more than 10 percent of the individual level of ODSs from the

\begin{enumerate}
\item \textsuperscript{63} \textit{The Case of the Montreal Protocol: Science Serving Public Policy: Testimony to the United States Senate Committee on the Environment and Public Works} (September 2005), (statement of Richard E. Benedick), p. 3.
\item \textsuperscript{65} Montreal Protocol On Substances that Deplete the Ozone Layer.
baseline year for that chemical (1986 for most ODSs). Title VI also provides legal and technical assistance for the development clause of the Montreal Protocol by allowing production of goods using limited amounts of ODSs to be exported for domestic use in Article 5 countries.66

Beyond ratifying the treaty, the U.S. demonstrated other indicators on the Multilateral Policy Scale, notably satisfying the compliance variable and contributing to significantly reducing global ODS emissions. According to the UNEP Ozone Secretariat Reports last updated in January 2013, the United States has achieved the following levels of ODS consumption (production plus imports minus exports to state parties):

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Levels of ODS consumption in ODP tonnes as of January 11, 2013; UNEP Ozone Secretariat Report.67

Broken down, this indicates that the U.S. has reduced consumption of various ODS chemicals in the last five years. Negative figures indicate how far below the baseline level (1986 levels, as stipulated by the treaty) consumption has moved for each chemical. According to this chart, the U.S. has met the targets stipulated in the Clean Air Act and

66 “Clean Air Act of 1970,” Title VI; Sections 602-618.

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the Montreal Protocol, excepting HCFCs and Methyl Bromide because those target dates are still in the future. In 2007, the twentieth anniversary of the Montreal Protocol, the U.S. had met its targets for phasing out the following chemicals from production: Halons by January 1, 1994; CFCs by January 1, 1996; Carbon tetrachloride by January 1, 1996; Hydrobromofluorocarbons (HBFCs) by January 1, 1996; Methyl chloroform by January 1, 1996; Chlorobromomethane by August 18, 2003; and Methyl Bromide by January 1, 2005. In addition, the report mentions that the U.S. is on track for future phase out plans for chemicals such as the elimination of HCFCs by January 1, 2030.\(^68\) In 1990 the U.S. consumed 232,682.2 metric tons of ODSs. In 2012, the U.S. consumed 2,339.5 metric tons.\(^69\) While precise figures for the exact percentage of total global emissions caused by the U.S. are unclear due to incomplete emissions history, U.S. consumption of ODS were anywhere from 10 percent to 50 percent of the global levels. This would imply that the 98 percent reduction of ODS consumption in the U.S. significantly impacted global levels as well, considering that the U.S. was one of the largest consumers of ODSs in the world.

The U.S. was highly involved in providing resources and technical assistance to further the implementation of the Montreal Protocol. This variable contains three components that indicate the level of involvement by the United States in providing resources to further the goals of the Montreal Protocol. The first is the involvement of the U.S. in the Multilateral Fund and its assistance to sustainable development projects per the London Amendment to the Montreal Protocol in 1993. Success of this mechanism is useful in determining how the treaty was able to reduce emissions globally and obtain universal participation. The second factor involves the U.S. government spearheading the

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\(^{69}\) “United States of America,” *UNEP Ozone Secretariat Report*. 39
scientific research in the public and private sector that was able to provide empirical and scientific foundations for the Protocol and why emissions targets are a pressing environmental concern. The third factor involves the role of American industrial actors in developing viable chemical alternatives and the influence they had on political leaders during negotiations.

The Multilateral Fund allocates monetary assistance from developed countries into projects in Article 5 countries in order to help them comply with the stringent reduction requirements. The Fund consists of an Executive Committee, on which the United States has a permanent seat, and a Secretariat. These bodies delegate appropriation power to the World Bank and the UNEP, which then implement local projects on the ground in developing regions. Per Article V of the Protocol and commitments under the London Amendment, U.S. law allows for up to $30 million for developing countries to help achieve baseline emissions of ODS production in the 1991, 1993, and 1995 fiscal years. The Government Accountability Office (GAO) determined in 1997 that the U.S. was the largest contributor to the Multilateral Fund and accounted for 25 percent of total contributions. The U.S. has maintained its position as the Fund’s largest contributor, despite switching to an alternative payment method.

The additional two aspects of technical assistance provided by the United States include contributions in scientific assessment and discovery, and the role of industry. Before the Montreal Protocol was created, a large-scale multinational effort to increase scientific study about ozone depletion began under leadership of U.S. scientists.

70 “Clean Air Act of 1970,” Title VI; Section 618.
72 In order to save around $2 million a year, the U.S. offers promissory notes instead of cash in order to increase interest savings.
Launched by National Aeronautics and Space Administration (NASA), and the National Oceanic and Atmospheric Administration (NOAA), a massive coordination effort emerged, involving over 100 scientists from around the globe. They produced a groundbreaking study, published in 1985, which provided an extensive analysis of ozone depletion and its causes.\(^73\) American industry also played a significant role in promoting research on ozone depleting chemicals, particularly after the U.S. had ratified the agreement and enacted the industrial regulations. The role of industry in implementation of the Montreal Protocol was largely based on market incentives. Du Pont, for example, was suffering from a poor corporate image for its production of harmful chemicals. Du Pont, having access to scientific reports linking CFCs to ozone depletion, then spent millions of dollars throughout the 1980s researching viable substitutes for ODSs and successfully completed chemical substitutes for CFCs that do not have as large an impact on ozone depletion. In order for these advancements to be marketable, global regulation must occur to be cost beneficial for the company. A statement by Du Pont’s environmental manager Dr. Joseph Steed indicated that the only beneficial option for the company was to develop alternatives and to support an international regulatory treaty.\(^74\) Therefore, joined by other chemical companies, American industrial actors used their influence to push American politicians to support a global regulatory treaty on CFCs and to help implement the provisions after ratification in 1988.\(^75\)


To round out the analysis of the independent variable, this next portion focuses on the strength of the United States’ diplomatic support for the Montreal Protocol. During the negotiations, many prominent emitters of ODSs in the European Community and Japan were reluctant to implement regulation. After British scientists discovered the ozone hole in Antarctica, the British government subsequently defunded such scientific expeditions, bowing to the pressure of chemical companies.76 In order to persuade other states to agree to reductions in ODS emissions, several U.S. State Department representatives waged a global diplomatic campaign advocating for greater regulation. Richard Benedick along with scientific experts from NASA conducted seminars with diplomats, officials, environmental ministers, and foreign officers in key blocking countries in order to share scientific insight and to explain the U.S. rationale.77 Such efforts were successful, and many key opponents eventually signed the Protocol alongside the U.S. in 1988.78

In addition to diplomatic efforts around the time of entry into force, all subsequent U.S. administrations have supported the Montreal Protocol. William K. Riley, an EPA administrator during the George H.W. Bush Administration, addressed the Parties to the Montreal Protocol in 1990, not only expressly stating diplomatic support for governments signing the treaty, but also concrete support for its goals.

We are particularly pleased that 59 nations have now ratified the Protocol, almost double the number that had ratified 15 months ago when we gathered last in London. Full international participation and implementation of the Protocol is essential to its effectiveness. We urge therefore all nations that have not yet done so to accede to both the

78 “Parties That Have Signed the Montreal Protocol.”
Protocol and its framework agreement, the Vienna Convention on the Protection of the Ozone Layer.

We support an 85% reduction of carbon tetrachloride by 1995 and a complete phase-out by the year 2000, with 1989 as a base year. We support a freeze on methyl chloroform by 1993, a 30% reduction by 1995 and a 50% reduction by the year 2000 with 1989 as a base year. We also support the resolution to phase out this substance as soon as possible. 79

The Clinton Administration expressed willingness to continue to comply with the Montreal Protocol, as well as expand its influence, by agreeing to amendments limiting imports and trade of methyl bromide in addition to authorizing contributions to the Multilateral Fund. “The Clinton-Gore Administration is working aggressively to implement the Montreal Protocol on Substances that Deplete the Ozone Layer… The President today called on Congress to approve the funds needed to sustain strong international efforts to protect the ozone layer.” 80 Similarly, the George W. Bush administration continued to support the Montreal Protocol initiatives and continued regulation to oversee complete phase out of several ODSs. In 2007, the U.S. recommended an acceleration of remaining phase-outs by ten years. Demonstrating continual cooperation over this issue, the parties to the Protocol accepted this proposal and moved the phase out schedule for HCFCs to 2020 (up from 2030) for developed countries. 81

Finally, the Obama administration has celebrated and recognized the twenty-fifth anniversary of the Montreal Protocol and has expressed commitment to furthering the

phase-outs and regulations of ODS emissions. Daniel A. Reifsnyder, deputy assistant secretary for the Bureau of Oceans and International Environmental and Scientific Affairs, spoke on behalf of the United States at the Twenty-Fourth Meeting of the State Parties in 2012, and focused on forward momentum by using the Montreal Protocol as a springboard for further protection of the atmosphere:

In particular, I urge that we not deplete the store of benefits to the climate system that we have built up under the Montreal Protocol by ignoring the impacts on the climate system of our actions to protect the stratospheric ozone layer. We have a critical opportunity now to "get it right" – let us seize it.\textsuperscript{82}

This sampling of diplomatic statements demonstrates continual commitment to abide by Montreal Protocol regulations and indicates a consistent presence of positive diplomacy in favor of the Protocol. The visuals below outline the involvement that the U.S. initiated relating to the Montreal Protocol for four years since 1987.


Original Signatory, likely ratification
Scientific leadership, industrial support
White House Statements

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction


Ratified since 1988, met all reductions targets.
Millions to Multilateral Fund, continued scientific research

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction
Overall, when evaluating the independent variable based on the Multilateral Policy Scale, the United States fully supported the Montreal Protocol by becoming an original signatory and by implementing regulations into domestic law, and this policy
was maintained throughout several administrations. The U.S. contributed resources, funding, and technical assistance through spearheading scientific study, involving industrial actors, contributing and influencing the creation of the Multilateral Fund, and by successfully complying with treaty provisions and reducing ODS emissions by over 97 percent since 1990.

The Effectiveness of the Montreal Protocol

Effectiveness for this study is defined as the ability of the treaty to meet its stated goals and the extent to which the institution contributed to the larger international process for solving a global problem with respect for both output effectiveness and internal process performance.83 The concrete goal as stated in the Montreal Protocol and its subsequent amendments is a total phase out of ozone depleting substances by 2020. Cooperation for an agreement like the Montreal Protocol follows certain models of international dependency and indicates how such an agreement can be successful.

Looking first at the output effectiveness and how well the treaty has achieved its stated goals, it is clear that the Montreal Protocol has been largely successful in this respect. Quoting Kofi Annan, the UNEP Rio+20 report hails the Montreal Protocol as “perhaps the most successful international agreement to date.” This report offers staggering data about the overall reduction in ODSs since the Protocol was signed in 1992. The consumption of ODSs worldwide has decreased by 93 percent since 1992. The area of the ozone hole peaked in 2006, according to daily NASA projections and has since begun to decline nearly to its previous size during the 1980s. The 2006 peak indicates the enormous impact of universal ratification. By 2006, all developing countries had phased out ODSs causing a dramatic decline in global emissions levels and an

83 See Gutner and Thompson framework in Chapter 1.
apparent re-thickening of the ozone hole. The expansion of the ozone hole has halted, and while scientists do not expect the condition of the ozone layer to be restored to its pre-1980 levels until 2050, parts of the ozone layer have not gotten any thinner since 1988 and the average area of the ozone hole has decreased. The stated goals of the Protocol included a complete phase out of ODS emissions by 2020 and, with only HCFC phase outs left to go, the state parties to the Protocol are close to achieving that goal and are scheduled to do so within the next seven years.

Then, with regard to internal process performance, the Montreal Protocol has demonstrated effectiveness through its structural mechanisms, including compliance and the Multilateral Fund. The text of the Protocol established certain procedures to investigate possible cases of non-compliance and to develop measures against states that do not comply. Per the procedure delineated in Article 7 of the Protocol, no non-compliance complaints have yet been filed by other parties. In some instances, however, states have expressed concern over future target dates and whether or not they could meet certain deadlines. In 1992, several Eastern European states, including the Russian Federation, filed a request for assistance to the Implementation Committees out of concern that they would not comply with looming deadlines. The MOP took appropriate action by obtaining data, identifying sources of future non-compliance, and granting financial assistance from the Multilateral Fund for each state. They eventually did meet

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85 Article 7 allows parties to the Protocol to file non-compliance complaints to internal Implementation Committees and to the Meeting of the Parties.
the target phase out dates and maintained compliance.\textsuperscript{86} In 2001, the Meeting of the Parties (MOP) issued a non-compliance status to thirty Article 5 (developing) states due to failure to report required data. The MOP followed the standard procedure indicated by Article 7 and declared that the states should continue to receive assistance from the Multilateral Fund to help achieve future targets, but it also warned that if emissions targets were still not met by the negotiated deadlines, it would be compelled to issue standard consequences for non-compliance. Such punitive measures include removing monetary and developmental assistance from the institutions of the Protocol for meeting targets, exclusion from the MOP and the decision-making process, and loss of trade privileges with any state party to the Protocol.\textsuperscript{87} Despite occasional issues of non-compliance, states at the MOP have not issued any of these measures to a non-complying state thus far.

In addition to the internal compliance mechanisms, the Multilateral Fund has been instrumental in facilitating universal ratification by offering billions of dollars to 143 Article 5 countries to help reduce emissions. The seven broad purposes of Multilateral Fund projects include “(1) country program preparation, (2) institutional strengthening, (3) technical assistance, (4) training, (5) demonstration projects, (6) project preparation, and (7) investment projects.”\textsuperscript{88} Over 80 percent of the projects funded are directed at investing in local businesses in order to facilitate their transitions from production using

\textsuperscript{87} The Montreal Protocol on Substances that Deplete the Ozone Layer, Art. X
ODSs to production that does not result in ODS emission.\textsuperscript{89} The Executive Committee and Secretariat of the Fund create a budget for contributions and formulate development plans to determine where money goes and what projects to fund.\textsuperscript{90} Projects are implemented through global development agencies, such as the UNEP and the World Bank. So far, there is evidence of a dramatic reduction in emissions in developing countries, and all 143 of those members are on track to complete phase out of ODSs by 2015. Between 1991 and 2004, the Fund received $1.68 billion from non-Article 5 countries from which it has been able to implement over 4,000 projects that have assisted developing countries with technology transfer, capacity building, training, and institutional strengthening.

By using the above measures of effectiveness, this chapter determines that the Montreal Protocol has contributed to the global process of solving a specific issue. Within the ozone depletion and climate change regime, Montreal is considered incredibly unique because of its universal status. All recognized states in the system have ratified the treaty and have complied with its agreements, bringing the total number of signatories to 191. The Montreal Protocol has also demonstrated success on a more basic level of cooperation and international agreements. While faced with many obstacles such as the challenge of sacrificing development for environmental policy in developing countries, the Protocol was still able to get near universal participation with the likelihood that emissions of ODSs are going to phase out of developing countries by 2015.\textsuperscript{91} The

\textsuperscript{90} “Fund Secretariat,” \textit{The Multilateral Fund}, http://www.multilateralfund.org/aboutMLF/fundsecretariat/default.aspx
Protocol is a flexible treaty and compliance relies on a flexible structure and the allowance of non-negotiated adjustments run by a secretariat, implementation committees, and meetings of the parties, which acted as a decision-making body during compliance issues. This body helped mitigate conflicts and allowed treaty language to change without sacrificing support.92

The Montreal Protocol is widely acknowledged by states as being very successful—so successful that some environmentalists and state officials have speculated on using the Montreal model to apply to other issue areas, especially climate change and reduction of greenhouse gases. The Kyoto Protocol, many assert, could be more effective if it follows the same model as the Montreal Protocol.93 While this argument has its merits, the mere fact that state officials have acknowledged the Montreal Protocol as a possible standard legal framework for other environmental agreements indicates that it was effective in achieving external output and in creating internal process mechanisms to solve a substantial environmental problem.

U.S. Policy and its Impact on the Montreal Protocol’s Effectiveness

Characterizing protection of the ozone layer as a public good is a useful paradigm through which to view possible theoretical models for effectiveness. If State A is a large producer of ODSs, and expresses intent to ratify the agreement, State B is less likely to ratify because it can free ride on the reduced emissions without paying any cost. However, if State A has power or significant trade relations with State B, their interdependence would allow State B a higher likelihood of ratifying in order to preserve

93 Reifsnyder, Twenty-Five Years of the Montreal Protocol.
The decision to ratify the treaty is contingent on overall power and economic interdependence of states with each other. The number of states ratifying the Montreal Protocol is crucial to its success. The more states that commit to reducing ODSs, the lower the levels of ODSs and the smaller the depletion of the ozone layer, and the presence of a hegemon like the United States would help bring the level of emissions down domestically and globally.

In the case of the Montreal Protocol, there is strong evidence indicating the extent of U.S. involvement has been instrumental in the continual success of the Protocol. The U.S., according to GAO reports to Congress, was responsible for up to 50 percent of global consumption of ODSs, and with the near complete phase out, the U.S. has contributed to half of the total global reductions seen so far. Therefore, the targeted global emissions reductions could not have been achieved without U.S. compliance with agreements. The U.S. diplomatic efforts and input by industry heavily influenced other major emitters to sign the Protocol in 1987. Because American industrial actors had developed appropriate chemical substitutes for several ODSs in the early stages of the Protocol, those substitutes have been used in Fund projects in developing countries to maintain production while reducing ODS emissions and complying with treaty provisions. The coalition between the scientific community and U.S. diplomatic efforts spearheaded international scientific research on the link between production of consumer goods to ozone depletion. Without the scientific base, agreement would have been more

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95 Ibid, p. 294.

difficult. For example, contention emerged during negotiations between the U.S. and
developed countries that heavily relied on ODS consumption such as Germany, Japan,
and the U.K. Through the intense diplomatic campaign involving state officials,
economists, and scientists alike, the U.S. delegation was able to convince European
actors to sign on. They would not have done so without the carrot and stick approach
used by the U.S. Keeping in mind previous theories on how environmental agreements
could be effective, it is clear that the U.S. helped rescale the ozone negotiations to include
all relevant epistemic communities, industry, and environmentalists in addition to
diplomats and policymakers. Including those actors in the discussion facilitated easier
negotiation because they provided solutions to overcoming information deficits and
asymmetries and practical means for achieving universal compliance.

Additionally, the U.S. has supported the Multilateral Fund by contributing the
largest amount of any other non-Article 5 country to investment and development
projects in developing countries. Most of the funds have gone to projects in China and
India, again implying that those states’ ratification of the Protocol may not have
happened without assurance that non-Article 5 countries would commit to assisting with
Before the Subcommittee of Health and Environment, Committee on Commerce, U.S. House of
Representatives} (July, 1997).} For China to ratify the Montreal Protocol, its delegation insisted
on differential treatment for developing countries with regard to mandatory emissions
reduction. In addition to concerns over limiting modernization and production to meet
aggressive ODS emission reduction targets, China also expressed concern over the
availability of substitutes and the rapid timetable for future reductions.\textsuperscript{98} When the state parties to the Protocol negotiated the London Amendment in 1991, the delegation from China voiced these concerns and stated that they would not ratify without the approval of a Multilateral Fund that would provide the $40 million estimate needed to implement the treaty provisions.\textsuperscript{99} Because the U.S. preferred China’s ratification of the treaty and inclusion in the ODS reductions, the delegation was successful in creating such a Fund, which has since allocated a majority of its funds to China.

What would the Montreal Protocol and efforts to achieve agreement on ozone regulation have looked like without U.S. involvement? First, because the U.S. produced over 50 percent of the world’s ODSs, the decision to fully comply with the Protocol had positive effects on the state of the environment. If no controls had been imposed in the 1980s, the ozone hole would have been reduced 15.7 percent. Five percent of that amount would come from American industrial production alone, meaning both that long-term effects would be contingent on American participation in reductions and on a global agreement.\textsuperscript{100} There are several reasons why the U.S. would not have committed to regulating its industry without a global agreement, one of which was a concern of industrial actors domestically that were spending millions of dollars to develop chemical substitutes for ODSs. It would have been too costly for chemical companies to produce a substitute if there was no global market for it. In addition, while the short-term cost-benefit for the U.S. would have supported unilateral action, future expectations of ozone


depletion indicated the necessity for other emitters and producers to sign on to binding emissions reductions. Without U.S. leadership in the ozone depletion regime and its support for binding emissions reductions, there may not have been an agreement at all. The U.S. was responsible for organizing scientific studies, developing alternative chemicals, and for convincing other large developed emitters (particularly Japan and recovering industrial states in Europe) to agree to regulation at all. Developing countries signed on because of a centralized mechanism responsible for allocating funding for their domestic projects, and contributions by the U.S. make up a significant portion of their funding. Finally, U.S. law reflects the consensus made by the states party to the Protocol in the early stages of negotiations that bans trade of products using ODS. The threat of trade restrictions with the United States has even compelled Taiwan, who is not a state recognized by the UN and has no international legal standing to sign the Montreal Protocol, to fully comply with its measures to preserve trade relations with the United States and European Community.

It seems that this case study follows the theoretical models of a public good scenario heavily influenced by the presence of a hegemon. The U.S. is a powerful state with a high interest in an agreement around reducing ozone-depleting materials, and faced with long-term environmental consequences, it was interested in a global agreement to reduce unilateral cost and protect human health from dangers of a dilapidated ozone layer. So, the U.S. was willing to incur significant costs to fund research into alternatives, conduct scientific study, and reduce domestic consumption of ODSs in order to contribute to preserving the quality of the ozone layer. As a result, other states were compelled to sign the agreement, recognizing it as a legitimate force, which
led to universal ratification and a high capacity to solve a global problem, contributing to both the internal and external effectiveness of the Montreal Protocol.

V. The International Aid Transparency Initiative

The next case study through which to explore the relationship between U.S. involvement and multilateral effectiveness is the International Aid Transparency Initiative (IATI). This case study explores the background of the aid transparency regime to contextualize U.S. policy preferences towards this issue. This section then briefly summarizes U.S. policy towards foreign aid and aid transparency, beginning with promises made at the 2005 High Level Forum on Aid Effectiveness in Paris and the subsequent policies relating to transparency. I evaluate the independent variable, the level of U.S. involvement in IATI, via measures on the Multilateral Policy Scale. I measure the effectiveness of IATI so far, keeping in mind the two distinct indicators introduced in Chapter 1. IATI is evaluated based on its output performance and how well it has achieved its stated goals, and on the efficacy of its internal structures and how the institution has been able to contribute to the broader aid transparency regime. Finally, this chapter employs process tracing in order to uncover any causal connection indicating that U.S. participation has influenced IATI’s effectiveness or not. I conclude that only certain aspects of IATI’s effectiveness result from U.S. participation, and beyond these components, the U.S. has not demonstrated the political will to significantly influence the internal structures of IATI nor has the institution been shaped by U.S. policy concerns.

In the last decade, the global development regime has undergone a significant shift towards transparency and open access to international aid given by donors to recipients around the world. In 2005, states gathered in Paris for a High-Level Forum on
Aid Effectiveness issued a Declaration on Aid Effectiveness that indicated the need for more properly managed foreign assistance that is focused on the needs and priorities of recipient countries. Representatives agreed that donor countries needed to take concrete steps to align their aid with the recipient’s needs and priorities to increase aid effectiveness and to overcome several challenges presented by the realities of high amounts of foreign aid. Such realities, as specified by the Declaration include weaknesses in developing countries’ institutions that prevent implementation of aid strategies, lack of multi-year and predictable commitments by large donors, weak partnerships fostered between donor and recipient, and corruption as a root cause for a lack in transparency and therefore accountability. ¹⁰¹ This Declaration laid the foundation for what would become a significant shift in policy norms within the global development regime towards increased transparency.

Many scholars have studied the impacts and effectiveness of foreign aid and indicate how aid transparency can be a crucial factor in how efficiently foreign assistance is put to use, how well intended projects are implemented, and whether the money ends up where it is supposed to be.¹⁰² According to scholars, donors often times lack the capacity to monitor the implementation of foreign aid on the ground, leading to accountability problems both in the recipient country and to the citizens of the donor country. In addition, some donors explicitly use foreign aid as a tool for geopolitical and security interests, instead of development. While the primary operational cost of


Two types of benefits that some scholars believe arise out of greater transparency, and, specifically, IATI, are efficiency gains and effectiveness gains. The former category implies that administrative costs for donors will be reduced and aid programs will be less susceptible to duplication or poor planning. By publishing to a common data standard routinely that can be read directly into aid management systems in recipient countries, donors can reduce the amount of coordination and data input required for their own agencies and at the country-level. The latter category includes the benefits of improved services resulting from transparency, and higher predictability that would be economically advantageous. Scholars predicted that IATI signatories would experience a sharp decline in the amount of their aid that was captured or diverted by recipient governments to use for other purposes besides providing public resources for their people.\footnote{Collin et al., \textit{Costs and Benefits of Aid Transparency}, p. 10.} Increased monitoring of and information about an aid flow dramatically reduces the ability of an agent to divert resources. Normatively, greater aid transparency would allow for a less misallocation of resources in developing countries as well as a faster turnaround for results, advancing poverty alleviation. Publication of allocation data would allow donor countries to have access to the plans of other donors, and could
provide a forum for civil society groups to have greater leverage over the improvement of aid implementation.\textsuperscript{105}

The International Aid Transparency Initiative (IATI) was launched at the 2008 High-Level Forum on Aid Effectiveness in Accra, Ghana and has since gained 33 signatories, including the United States in 2011. After the conference in Accra in 2008, teams of field experts and technical advisory groups met to determine the scope of IATI and the details of the new data standard. One of the primary objectives of the agreement is, intuitively, more data. The amount of data that countries have that indicate types and levels of aid flows in and out of their country is low. In addition, IATI must be tailored to recipient governments’ mechanisms for measuring aid flows to reduce transaction costs.

Finally, experts suggested that IATI expand its focus to include a wider range of information in its standard. While the “how much” and “what for” questions are vital to the idea of transparency, other factors include aid agreements, contracts, project implementation status, future allocations and schedules, and intended sector.\textsuperscript{106} The United States announced its support for IATI at the Busan Partnership for Effective Development in November of 2011, signing the agreement three years after its conception and agreeing to develop an implementation schedule for a massive publication of aid spending data from U.S. agencies including primarily the U.S. Agency for International Development (USAID), the Department of Defense, the Millennium Challenge Corporation (MCC), and the Department of State.

\textit{Background: the United States and Aid Transparency}

\textsuperscript{105} Ibid, p. 13.
United States foreign aid comes from twenty-four federal agencies, the three most influential being USAID, the MCC, and the U.S. Department of State. In addition to the big three, other U.S. executive and specialized agencies disburse foreign aid annually. Foreign aid makes up approximately one percent of the federal budget per fiscal year, and has served as an important tool to advance U.S. foreign policy objectives. In 2005, the United States, along with other OECD states, multilateral donor agencies, and multinational corporations, participated in discussions at the Second High Level Forum on Aid Effectiveness in Paris. The outcome document, the Paris Declaration, reflected the 130 signatories’ commitment to enhancing aid effectiveness by creating more efficient implementation systems within developing countries. This initiative, donors hoped, would strengthen country systems and institutions to allow aid to flow through governments and align with the aims of national development strategies.

As the HLF-3 in Accra approached, development organizations placed more emphasis on finding a common reporting and data standard that would require states to be more transparent about their aid flows. The discussions in Paris mentioned aid transparency as a pillar of effectiveness, but in Accra, the UK and Denmark pushed for other states to seriously address transparency as a critical objective. The United States, while committed to aid effectiveness in Paris, still lacked various data transparency standards that were being contemplated by other nations. The OECD, when evaluating global progress towards aid transparency, observed that recording aid in partner countries has been more of a challenge than originally anticipated. The lack of predictability in

foreign aid indicated a significant need for donors to examine their domestic political structures in order to create a reliable reporting system for publishing future aid disbursements.\textsuperscript{109}

At HLF-3 in 2008, the United States signed another document, the Accra Agenda for Action, representing a continuing multilateral interest in investing to improve aid effectiveness. The meeting successfully included civil society organizations into the aid effectiveness regime, to the protest of the United States and Japan, though NGOs were not invited to the table for discussion until HLF-4 in Busan in 2011.\textsuperscript{110} IATI was a side event at the Accra meetings, but by the end of the forum, several states and development organizations signed a document agreeing to create a common and open data standard. In this statement, representatives from Finland, the Netherlands, UK Department for International Development (DFID), the World Bank, Irish Aid, Germany, the UNDP, Australia (and AusAID), Sida, GAVI Alliance, Hewlett Foundation, Denmark, and the European Union announced their intention to put significant political pressure on domestic agencies and aid actors to adhere to an internationally-agreed reporting standard that would promote transparency for present and future aid disbursements.\textsuperscript{111} The International Aid Transparency Initiative began as a result of this agreement and was hosted by DFID in the UK.

At the time, the United States claimed that it could not comply with the demands of the International Aid Transparency Initiative and did not intend to sign the agreement.

The U.S. had no common reporting mechanism that coordinated among its twenty-four agencies, much less the capacity to standardize with the international community. President Bush enacted several foreign aid policies during his two administrations, and in several ways bolstered the amount given by the U.S.\textsuperscript{112} However, his administration did not take any measures to seriously address aid effectiveness or transparency. Many opponents of his foreign policy criticized his foreign aid for being tied to strategic and economic interests instead of development. By the time IATI was discussed, Bush was on his way out of office and did not seriously pursue the effort to coordinate the various channels through which U.S. foreign assistance flows.

*United States Involvement in the International Aid Transparency Initiative*

This section analyzes the level of U.S. support for IATI relative to the Multilateral Policy Scale. While the United States delegation did not initially sign the IATI agreement, eventually officials in the Obama Administration reconsidered its position and signed the agreement three years after implementation, in 2011. However, while the ratification variable is present in the IATI case, U.S. compliance has been poor, with very few U.S. agencies reporting data to the IATI standard. The United States has, however, provided resources and assistance by sending representatives to Technical Advisory Group (TAG) and Steering Committee Meetings and continues to contribute to the institution’s internal processes throughout its compliance period beginning in 2011. Finally, the United States has diplomatically supported the IATI standard, despite its initial hesitance to comply. This section demonstrates that while interaction with IATI has largely positive due to provision of resources, ratification, and diplomatic support, the

inability of the U.S. to comply with its obligations is hindering the amount of influence it holds over the success of the institution.

Because coordination among the several aid agencies was so poor at the time of the HLF-3 in Accra in 2008, the United States delegation, led by Henrietta Fore, the administrator at USAID and director of U.S. foreign assistance, was hesitant to sign any binding agreement on a common data standard. During the side meetings that eventually created the foundations for IATI, the United States firmly asserted that it could not comply with such a rigorous standard and would not agree to such lofty publication targets.\textsuperscript{113} The primary objective at HLF-3 in Accra was the advancement of the principles of the Paris Declaration so recipient countries could take more ownership. Fore emphasized the importance of country ownership and of transparency, and hoped that the provisions agreed-upon in Accra could be enacted in U.S. policy.\textsuperscript{114} While the U.S. delegation recognized the need for increased transparency, they were aware that they could not comply so they did not sign.

However, the U.S. demonstrated support for the principles behind IATI by enacting several policies oriented towards transparency during the intervening years. When Barack Obama took office in 2009, he immediately launched the Open Government Initiative that aimed to make government more efficient, transparent, and effective. Some components of this plan included opening various data sets to the public along with future plans by every federal agency. Accompanying these more technical aspects of transparency was a new effort to reform transparency in foreign aid. In 2010,

\textsuperscript{113} Stephen Davenport, Interview by Kathryn Beaver, Washington DC, March 9, 2013.
President Obama was able to renew commitments to foreign aid transparency at the Pittsburgh G20 Leadership Summit. In that year, the U.S. began using “Data.gov” to publish amounts of high level ODA to the “Greenbook,” which supplies past and present information about foreign aid to Congress. In addition to reporting data to the Greenbook, aid agencies also had to report to the OECD/DAC, both of which use a different data standard.

In order to prepare for the conference in Busan in 2011, the United States launched a domestic aid transparency mechanism that would demonstrate potential capacity for implementing IATI. The Department of State, along with USAID, launched the Foreign Assistance Dashboard, which became the primary reporting mechanism through which all aid spending coming from the United States would be reported and public. The Dashboard was initially unorganized and unhelpful—agencies were slow to meet the reporting standards, and so the whole picture of foreign aid data was incomplete. But despite its shortcomings, the Dashboard allowed the U.S. delegation to come to the table in Busan and claim that it now had the capacity to comply with IATI. In November of 2011, the United States signed the IATI agreement, with the intention of making the Dashboard the centerpiece of their compliance and public data availability.

Moving down the Multilateral Policy Scale, the United States’ compliance record with the IATI standard has so far been poor due to the number of agencies that need to coordinate data procedures obstructs cooperation. After the IATI signature, the Foreign Assistance Dashboard began coordinating implementation data from various aid agencies, but has only published on the three biggest ODA donors: USAID, State, and

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116 Davenport, Interview by Kathryn Beaver.
MCC and does not give a comprehensive record of foreign aid. Before agencies could begin to alter data reporting and comply with the agreements in IATI, the Office of Management and Budget had to publish a set of standard guidelines for agencies to follow. Until this document was released, the process of implementing IATI within the U.S. stagnated.\textsuperscript{117} In November of 2012, the OMB released Bulletin No. 12-01 containing guidelines for IATI implementation. The U.S. aid transparency process was to follow these principles: “a presumption in the favor of openness, an initial focus on the publication of existing data online in an open format, detail, timeliness, and quality, prioritization [of high value data], comprehensiveness and comparability [across agencies], accessibility, and institutionalization.”\textsuperscript{118}

Under these guidelines, agencies must publish data in Excel or XML formats, must update their submissions on a quarterly basis, and must provide new data to OECD/DAC, the Greenbook, and the Dashboard once per year, and to verify their data according to all three data repository’s standards. The directive gives the Department of State responsibility for coordinating IATI implementation throughout the U.S. government and for communicating for with the IATI Secretariat on behalf of the United States.\textsuperscript{119} The United States released an implementation schedule in December 2012, satisfying the first of two major requirements required for compliance.\textsuperscript{120} Publish What You Fund deemed the U.S. plan “unambitious,” but observers from within the U.S.

\textsuperscript{117} Ibid.
\textsuperscript{119} Ibid, p. 6-8.
government believe the plan to be very ambitious given the coordination challenges among the twenty-four agencies.\footnote{Stephen Davenport, Interview by Kathryn Beaver; Heather Hanson, Interview by Kathryn Beaver, Washington DC, March 29, 2013.}

As of February 2013, some United States agencies have published data according to the IATI standard. While the United States has signed the IATI agreement, produced executive and budgetary resolutions to implement the data requirements, and is currently considering foreign assistance legislation that would enforce the IATI standard through domestic law\footnote{H.R.3159 codified U.S. aid transparency commitments, including IATI, passing the House of Representatives 390-0 in December 2012. It is currently under consideration in the Senate.}, the U.S. has had a difficult time fully complying. Only State, MCC, and USAID have made significant progress on reformatting data systems, information management systems, and reporting techniques to adhere to the IATI standard. Other agencies have not made any significant process in streamlining their data reporting systems.\footnote{Heather Hanson, Interview by Kathryn Beaver.} Currently, out of five major U.S. donors, only an average of 34 percent of all ODA is published according to aid transparency standards. Agencies are just beginning to make a shift towards publishing according to the IATI standard, but are far behind their target dates. The MCC currently ranks ninth out of 72 donors for transparency and currently publishes 70 percent of all aid spending data, and has been the most successful of all U.S. agencies to implement the IATI standard.\footnote{"United States: Millennium Challenge Corporation,” 2012 Aid Transparency Index, last modified 2012, http://www.publishwhatyoufund.org/index/2012-index/us/mcc/.} USAID is the second-best U.S. agency in its compliance record, having published 50 percent of all ODA data in 2012. USAID has yet to make its information management system compatible with IATI data and hopes to do so by 2014.\footnote{"United States U.S. Agency for International Development,” 2012 Aid Transparency Index, last modified 2012, http://www.publishwhatyoufund.org/index/2012-index/us/usaid/.} The State Department, Department of Defense (DOD),
and Department of the Treasury are further below USAID and MCC, and are ranked forty-sixth, fifty-sixth, and thirty-fourth respectively. Compared to Publish What You Fund’s first ranked agency, Department For International Development (UK-DFID), which has been deemed “compliant” with the IATI standard, U.S. agencies are lagging significantly. MCC, USAID, and State hope to publish all of the required data by the end of 2013 through the Foreign Assistance Dashboard. Overall, however, U.S. agencies have sluggishly begun changing data standards to better comply with the IATI provisions.

Despite a below-average compliance record, the United States provided technical support and resources to the IATI institution. The U.S. demonstrates its involvement through a few agencies’ compliance with the IATI standards and through U.S. involvement in the various structural meetings that comprise the IATI institution, such as the Steering Committee, Secretariat, and Technical Advisory Groups. When Technical Advisory Groups convened to determine costs, benefits, and implications of the IATI data standard, the United States, along with several US-based think tanks and organizations, participated in the discussions.¹²⁶

Beginning in 2009, a representative from USAID attended the meetings, primarily focused on how to structure a standard that would be the most efficient for ultimate aid transparency goals. The discussions centered on the definitions, wording, and implementation challenges of many categories related to foreign aid and whether or not online databases or donor systems should be altered to accommodate the changes. The United States represented the interests of the world’s largest donor, and was able to

weigh in on these key issues.\textsuperscript{127} USAID sent a representative to the October meeting in 2010 that aimed to recommend aid management information systems to increase the efficacy through which agencies can standardize and report information, instead of relying on manual entry, as well as increasing dialogue in partner countries to raise awareness and learning scenarios for the standard to be the most effective.\textsuperscript{128} Until 2011, the U.S. did not formally participate in Steering Committee decisions as a signatory, but did contribute to decision-making processes after Busan. When the U.S. became a signatory of IATI, it had a representative on the Steering Committee and was able to participate in significant governance decisions within the institution. One of the most recent of these decisions was the debate over the selection of new hosts to the IATI standard after DFID announced it would end its tenure. The United States government representatives favored a hosting arrangement through OECD and its established DAC. Although, the MCC expressed its support for the alternative consortium arrangement through which various states and organizations would host IATI jointly. The Steering Committee chose the latter option, despite the preference of the United States.\textsuperscript{129}

Moving down the Multilateral Policy Scale, the U.S. supplied diplomatic support to IATI during the beginning years of its creation. The background section to this case study emphasized the immense diplomatic support that the Bush Administration offered the Paris Declaration and the Accra Agenda for Action as positive forces for aid effectiveness in the coming years. However, the IATI agreement was not at the forefront


\textsuperscript{129} “Steering Committee,” \textit{IATI Standard Governance}, last modified June 2012, \url{http://iatistandard.org/governance/steering-committee/}; Heather Hanson, Interview by Kathryn Beaver.
of U.S. political interests at that time, and there were few instances of U.S. officials speaking publically about the agreement. In a few statements after the 2008 Forum in Accra, some U.S. officials began emphasizing new measures of transparency that the new administration could continue in order to make financial activities of foreign assistance programs more transparent. Under Secretary for Management at the State Department, Patrick Kennedy, explained in an interview in 2008 the importance of coordinating among U.S. agencies offering ODA to increase transparency and accountability:

We’re working with our partners at AID as we’re already working with our partners in Defense, and the Department of Justice, and the Department of Homeland Security to pull our operating environment together, to streamline it and make sure that we can achieve the greatest economies of scale.  

Despite not signing the IATI agreement, the U.S. delegation expressed support for the idea of a common standard and continued to attend technical advisory meetings among the signatories. During the first few years of the Obama Administration, several U.S. officials publically promoted the ideals of transparency in all government operations, not just foreign aid. “My administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation and collaboration,” Barack Obama promised in his first inaugural address. His Open Government Initiative established directives and procedures for federal agencies to disclose various levels of information. While the Obama Administration’s public and vocal support for transparency did not directly relate to IATI, several of those principles illuminated a path towards instruments such as

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Data.Gov, the Dashboard, and eventually to the commitment to the IATI requirements.

The ultimate gesture of diplomatic support was Hillary Clinton’s speech at HLF-4 in Busan, when she declared the United States’ commitment to aid transparency and intention on signing the IATI agreement. She opened the Forum in her keynote speech, declaring U.S. support for aid transparency and for the IATI Standard.

And finally, I want to say a word about coordinating our efforts. This has been a topic of development conferences for so long that it is a cliché, but it is also still a problem. Many donors, like ourselves, have multiple agencies that engage in development. The United States Government alone has more than 15. And all too often, we require different measures of success, so it is easy to see how our good intentions can create frustrating burdens for our partners… I’m pleased to announce that the United States will join the International Aid Transparency Initiative, and we will report data in a timely, easy-to-use format.132

After the U.S. signed on, various U.S. aid agencies publically declared support for the agreement. In his remarks in Busan, the CEO of the MCC expressed, “On behalf of the United States Government, I would like to express our strong support for inclusive, country-led, results-centered development. To maximize development effectiveness for the world’s poor, the U.S. Government is committed to results in practice, not just in principle…demonstrated through U.S. IATI declaration.”133 Rajiv Shah, stated in a Press Release, “…The United States signed on to the International Aid Transparency Initiative. USAID’s Evaluation Policy was widely heralded as the gold standard for measuring results on the ground, and MCC for their efforts on transparency… In the spirit of

accountability for results, we encourage all stakeholders to monitor adherence by all parties to the principles agreed in Busan...”

The visual representations below capture the general evolution of U.S. policy towards IATI from 2008 to the present.

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U.S. Involvement in IATI- 2009

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

- Attended TAG Meetings
- Domestic Transparency Initiatives
- Still limited capacity to comply with publications

U.S. Involvement in IATI- 2011

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

- U.S. signature at Busan
- TAG and Steering Committee Meetings
- Statements from officials in developing agencies
- Agencies could not get comply with data standard
Therefore, U.S. diplomatic support before 2011 generally referred to the general emerging norms of global aid transparency and effectiveness, and revolved around various U.S.-initiated domestic policies that emphasize transparency and accountability principles. After the U.S. signed IATI, more directed positive diplomatic statements emerged as Secretary of State Hillary Clinton, USAID Administrator, and MCC CEO publically declared U.S. commitment to the IATI standard.

*The Effectiveness of the International Aid Transparency Initiative*

Given the relatively brief period of time through IATI has been in force, evaluating effectiveness must be considered in light of significant time constraints and limitations. IATI went into effect in 2008, and while it has had five years through which to formulate, the process of coordinating domestic foreign aid reporting systems is slow and complicated, particularly in the case of the United States. I measure ‘effectiveness’ based on the same principles in the other case studies, originated by the suggested methodologies from Gutner and Thompson and from Thomas Bernauer.
I first measure IATI based on its outcome performance, or how well it has achieved its stated goals so far. The key indicators for this measure are how many of the signatories have submitted implementation timelines and how much data have been published in the appropriate format. I then apply the second portion of the measure of effectiveness to this case by analyzing internal processes and structures in the IATI institution and how well the organization is contributing to the general aid transparency regime. The key indicators for this measure are the ability of the internal bodies, such as the Steering Committee, Secretariat, and TAG groups to overcome coordination problems between states in order to determine if the implementation of IATI is proceeding as efficiently as it could be. Through this indicator, I determine the extent to which IATI is contributing to solving the global problem and if the institution is sustainable for future activity.

The first core output required to meet the compliance threshold for the International Aid Transparency Initiative is to publish an Implementation Schedule regarding when and where past, present, and future data will be published to the IATI registry and made public. Out of 35 signatories, 27 participants have published implementation schedules. Eight participants have not yet met this requirement, and they include GAVI, Global Fund, the International Labor Organization, OCHA, UNDCF, UN Women, and UN World Food Program. The World Bank has not updated its implementation schedule since May of 2011, and is behind-schedule for this particular output.135 With regard to this first output requirement, most signatories have been up to date with their implementation schedules. However, the IATI agreement expects these

schedules to be ambitious and implemented swiftly. Publish What You Fund, via their aid transparency tracking mechanism, scores the ambitiousness of donors’ implementation plans through two criteria, the first being the stated intention to publish according to the IATI Standard, and the second promising to publish a public and regular data through open license and quarterly publication. Out of the 42 donors analyzed (some are not signatories to IATI, but many are), only fourteen are considered “ambitious” by this methodology. Ten are considered “Moderately Ambitious,” while six are deemed “unambitious.” Among these six bottom organizations are IATI signatories Australia, Germany, UNFPA, and the United States.136 A March 2013 evaluation of existing implementation plans indicates that donors need to be more ambitious in their aid transparency targets and consider publishing in fields that add value to the standards, such as the results of an activity.137

The second core output to the IATI standard is the regular publication of foreign assistance data to the registry. According to various implementation schedules, no field of data has 100 percent publication. The field with the highest publication is “Activity-Recipient Country,” meaning 72 percent of implementation schedules indicate a plan to publish the recipient country of a particular activity regularly and publically.138 Other fields are not as well represented and do indicate that the low levels of ambition of the implementation schedules have aversely affected the actual publication of data.

Publish What You Fund first assessed donors’ aid transparency records in 2010 and their evaluations first discovered significant limitations in determining levels of

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137 Comparative analysis of the common standard implementation schedules (Publish What You Fund, 2012), p. 5.
138 “Organizations: Implementation Plans.”
donor transparency. Data was not consistent or compatible, indicating significant room for improvement in IATI. The data itself showed a wide range of compliance among donors, with only three exceeding 70 percent of their foreign assistance data published.\textsuperscript{139}

Only the World Bank, the Netherlands, and the UK were able to exceed the 70 percent threshold in 2010. Many of the donors had not published to the IATI registry and in 2010, many donors neglected many fields at the organization and activity levels. The evaluation suggested that the IATI standard improve its compatibility with existing donor and recipient standards. In 2011, the general trends of aid transparency had improved, with more signatories signing onto IATI. Several donors improved in the amount of data published, but the 2011 evaluation indicated significant room for improvement in aid transparency. The overall average for donors was only 34 percent of data published, with only a handful above 50 percent. However, the performance of many of the top donors indicate that in 2011, greater aid transparency was possible and the common IATI standard had great potential for increasing the accessibility and availability of ODA data globally. Publish What You Fund observed in their 2011 pilot assessment

For example, since the beginning of 2011, the Netherlands, Sweden, the UK and the World Bank have published considerably more information about their aid activities. In particular, the Netherlands demonstrated how rapidly progress is possible (perhaps providing an example for donors using the extended CRS format integrated within their systems) as it was lifted up the ranking from joint 30th to 4th place through a major release of new data to the IATI Registry…\textsuperscript{140}

Therefore, the change in ranking for some donors indicates the forward momentum associated with a common data standard and the increasing norm for aid transparency. In

2012, aid transparency improved yet again, with DFID publishing over 90 percent of all ODA, and the World Bank close behind at 88 percent.\footnote{141} Several organizations, including international NGOs, have agreed to publish their data to the IATI standard, but many have not yet produced any data sets for the IATI registry.\footnote{142} It is clear from assessing the second core output component of IATI by determining how much ODA has been published to the IATI Registry and how trends in aid transparency have demonstrated the progress, there is still a long way to go for IATI to be a completely effective treaty. However, given the improvement since initial 2010 assessments, there is a probability that transparency will improve even more come the end of 2013 when many publication deadlines expire for donors. Many of the donors have successfully published implementation schedules and many have started to put data into the IATI Registry, but given that the global average of published ODA remains at a low 34 percent, there is significant room for improvement in donors’ compliance with the IATI standard.

The final indicator of effectiveness with which to judge IATI is the effectiveness of the internal structure of the institution and how that institution is contributing to the aid transparency regime. IATI is internally comprised of three institutional bodies, the Secretariat, the Steering Committee, and the Technical Advisory Group and its Secretariat. The Steering Committee and the TAG is comprised of all signatories and participating members of IATI, meaning that several organizations can participate in the implementation decisions of the standard without actually committing to publishing any data in a timely fashion. This is a significant organizational hindrance because even if


\footnote{142} The full list of publishers and their data sets can be found on the IATI Registry page at http://www.iatiregistry.org/publisher.
states or organizations do not commit to fulfilling the treaty obligations, they still have a seat at the table and are still able to offer input into the structural processes. This takes away a major incentive for compliance and participation seen in most international organizations. On the other hand, IATI is successful in involving a wide variety of stakeholders in the foreign aid regime and is accepting of input from donors, partner countries, NGOs, and multilateral institutions. By adhering to input from this wide variety of actors, IATI can create the most comprehensive and effective reporting standard that would achieve the best results. So, while the openness of the internal IATI structure could de-incentivize compliance, it also manages to incorporate a wider variety of viewpoints, ultimately making the standard better.

However, regarding states’ compliance with the standard the internal structure of IATI is generally weak, and instead of amassing power in the organization itself, the IATI institution delegates power to the member states for implementation, which leads to a weak monitoring and enforcement mechanism. In order to scrutinize enforcement and progress, the IATI implementation structure relies on existing mechanisms in OECD and in donor self-reporting.\(^\text{143}\) Whether or not a state complies with its IATI agreements rests highly on the political capital of aid transparency and the domestic policies and costs to following through on implementation schedules on time. If those domestic elements do not exist in an IATI signatory, a state could still get away with non-compliance and would not have to forfeit involvement in the initiative. For example, the several United States agencies have not seriously started reforming data reporting standards to comply

\(^{143}\) “Framework for Implementation,” *International Aid Transparency Initiative Resources*, Downloaded from www.aidtransparency.net/resources, p. 4.
with IATI and many from within the USG believe that timely compliance from all aid agencies, even the biggest agencies such as State and USAID, is highly unlikely.\textsuperscript{144}

Despite the downsides to pursuing a true multi-stakeholder approach, the IATI standard’s goals nicely complement the existing frameworks for international aid transparency. The standard requires a complete picture of all activities and projects from the beginning stages to the implementation of a project. It requires data to be produced in a timely manner to better coordinate between the needs of recipient countries and donors, as well as to improve the predictability of aid. Other ODA reporting standards do not have all of these elements in a single record. IATI will overcome some of the obstacles of keeping aid transparent by creating an efficient and streamlined standard for foreign assistance data. The more states that sign onto the IATI agreement, the better the standard can serve all stakeholders in the process. So, while IATI has yet to really achieve substantial success in reporting of foreign aid and suffers from a weak compliance mechanism, its multi-stakeholder approach has developed a very detailed standard that will eventually achieve meaningful transparency results.

\textit{The Effect of U.S. Involvement on the Effectiveness of IATI}

In order to examine the relationship between the dependent and independent variables in this case, this section uses process tracing to determine how U.S. involvement in IATI impacted its effectiveness so far. Through these methods, I will be able to determine if the U.S. has been a necessary factor for IATI’s success and the potential components of IATI’s effectiveness that are vulnerable to U.S. influence. First, there is a strong indication that the U.S. decision to ratify IATI has the potential to make the standard more effective because of the increase in the total reported aid spending data

\textsuperscript{144} Heather Hanson, Interview by Kathryn Beaver.
that will be a part of the IATI standard. Some observers hope that the U.S. endorsement will carry a level of legitimacy that could influence other donors to be more transparent about their foreign aid. However, it is too early to tell if this is the case, and no evidence of this phenomenon exists.

I also determine that the United States is unlikely to significantly influence the internal decision-making bodies of IATI because of its struggles with non-compliance, its reluctance to sign the treaty, and the presence of other more influential actors. This section ultimately concludes that in the areas of pure output performance, the United States can have a large amount of positive influence if it follows through on treaty commitments. However, regarding the internal process performance component of the effectiveness measure, the U.S. has little influence on the outcomes of the IATI structure.

The United States’ signature to IATI, despite being three years delayed, has marked a significant milestone for the initiative. The U.S. is one of the largest foreign aid donors and accounts for around 60 percent of total ODA. Therefore, if the U.S. complies, the total amount of data published according to the IATI standard will increase significantly. This is a crucial component of output effectiveness, because it will allow a large increase in foreign aid transparency regarding U.S. aid flows. This area of IATI’s effectiveness has been most vulnerable to U.S. influence. So far the United States has posted over 400 datasets to the IATI Registry, and despite a low relative percentage to the amount left to publish, it still publishes the most out of all other donors. But only one U.S. agency, the MCC, has faithfully altered aid management systems to easily input data into the IATI format, while others have not had as much success. It is unlikely that the remaining U.S. governments will comply with their requirements on time, which would
significantly hinder IATI’s output effectiveness, because without the U.S. data, the IATI Registry would be missing a significant portion of aid spending data from one of the world’s largest donors.

However, the other measures of effectiveness are much less vulnerable to U.S. influence. Even though the United States has been sending representatives to TAG meetings and Steering Committee meetings, there has been little evidence of the internal mechanisms yielding to U.S. preferences. For example, regarding the future hosting arrangements for IATI that occurred in November of 2012, the United States preferred for the hosting duties to fall with the OECD. The U.S. already reports data to the OECD/DAC standard and supported a more state-controlled entity hosting IATI. But, the Steering Committee decided instead to pass the hosting position on to a consortium of actors: the UNDP, Sweden, Ghana, Development Initiatives, and the UNOPS. This could indicate the Steering Committee’s unwillingness to bend to U.S. preferences, due either to the United States’ delayed signature or to the poor U.S. compliance record. Additionally, there is little political will for U.S. agencies to implement significant data standards, and almost no enforcement from the executive or legislative branches. Implementing new data standards and switching to more efficient and coordinated information managements systems are costly and slow undertakings and there is currently no political pressure within the U.S. to adhere to the IATI requirements. Because of this, the United States has a poor record on transparency, and while the endorsement of IATI could boost its output effectiveness, the U.S. is not powerful enough in this issue area to heavily influence the decisions made internally.

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145 Heather Hanson, Interview by Kathryn Beaver.
Finally, while many observers of the aid transparency schemes hoped that the US. endorsement would boost IATI’s legitimacy in the eyes of other major donors, there has not been a significant push by other states to join the Initiative since November of 2011. Belgium is the most recent government signatory, and the only state that signed after the U.S. There is no evidence to suggest that Belgium’s decision to sign IATI was based on the U.S. endorsement. Belgium had enthusiastically supported IATI in Busan, but was prevented from joining due to domestic political concerns and problems with their policy coherence for development. Therefore, there is currently no indication of states altering aid policies in order to sign IATI due to U.S. participation. This renders many scholars’ assumptions of U.S. legitimacy and power unfounded, because not only has the U.S. not sparked any additional interest or participation from other states, it also has not been afforded significance within the organization. I argue this is due to the presence of the non-compliance variable. Because the U.S. has not demonstrated the capacity to comply with IATI to the extent of other signatories, it does not enhance the output effectiveness nor does it dominate internal process performance of IATI.

VI. The International Criminal Court

The third case study used to explore causality between U.S. policy and international organization effectiveness is the International Criminal Court (ICC), an organization that has generated significant controversy within the United States. This chapter first explores the trajectory of international criminal justice to contextualize both the creation of the ICC as a permanent world court as well as U.S. preferences towards such multilateral endeavors. Then, this chapter briefly reviews the primary U.S.

objections to the Rome Statute that led to initial hostility from U.S. officials from 2001 to 2006. Then, the involvement of the U.S. in the ICC is fully explored relative to the variables on the policy scale. The ICC is then evaluated on its effectiveness through measures of both output effectiveness and internal performance which will determine its success so far in achieving its goals and the extent to which it has contributed to international legal efforts to end impunity. Finally, the two variables are examined to determine if U.S. policy affected the ICC’s effectiveness and what those conclusions illuminate about the U.S. as an indispensible power.

**Background: The United States and the International Criminal Court**

Liberal insititutionalist scholars as well as many western democratic leaders have historically advocated for a permanent court with an international jurisdiction to hold individuals accountable for offenses such as crimes against humanity, war crimes, genocide, and crimes of aggression. After the turmoil in Rwanda and Yugoslavia during the 1990s, the United Nations Security Council created two regional *ad hoc* tribunals, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Yugoslavia (ICTY), to cover the crimes committed in those regions and to bring individuals to justice. While the two courts operated under the mandate of individual accountability and reconciliation, many critics and victims have expressed dismay at the number of successful apprehensions and indictments of war criminals. Several states in the United Nations, understanding this criticism and recognizing that possible mass genocide incidents could occur in the future, felt called to establish a substantial, permanent legal body to adjudicate conflicts on the basis of individual
responsibility for crimes against humanity, war crimes, and genocide.\textsuperscript{147} The idea of a world court sparked opposition in some scholarly and political circles. The principle of sovereignty and “the sanctity of internal affairs” created obstacles to supporters of global and compulsory jurisdiction.\textsuperscript{148} Legal scholars feared such a court would impede on states’ sovereignty by disregarding domestic legal processes and systems. After multilateral response efforts stalled in Rwanda and Yugoslavia in the 1990s, humanitarian intervention, a popular and contentious topic in international affairs, came under intense scrutiny as scholars and policy makers struggled to identify how to prevent and address crimes of such magnitude.

During the Clinton Administration, the United States publically supported the existence of a permanent world court, and became a significant actor in initial negotiations to consider establishing such an institution. Members of a negotiation team from the United States worked closely with the International Law Commission (ILC) Task Force to develop an institution that would allow for a more efficient forum for addressing serious crimes that would reduce the costs of constant vigilance and action during an international humanitarian crisis.\textsuperscript{149} Despite having moderate success in the initial planning stages, the final outcome of the negotiations, the Rome Statute creating the International Criminal Court, did not meet several U.S. objectives. Many military

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leaders, as well as leadership in Congress, communicated with the White House and the State Department to express their concern with the possibility that an international court could hold jurisdiction over U.S. military personnel with little to no oversight by the United Nations or without clear definitions of many of the key crimes, notably genocide and war crimes. During the final negotiation sessions in Rome in 1998, the U.S. delegation signed the treaty in order to be an original signatory party, but left with major objections to the Rome Statute.\textsuperscript{150}

While the ICC enjoyed support from President Clinton, George W. Bush immediately rejected U.S. ratification by supporting legislation in Congress limiting American officials’ interaction with the ICC. In May 2002, the Bush Administration announced that it had no intention of forwarding the Rome Statute for Advice and Consent to Ratification and wished abolished any legal obligations attributed to its signature. The letter to the U.N. Secretary General requested that the status depository list of signatories to the Rome Statute reflect that the U.S. does not consider itself legally bound to provisions of the treaty.\textsuperscript{151} This unprecedented and conspicuous “unsigning” allowed for the document to enter into force in 2002 without U.S. signature, cooperation, or promise of future ratification. The final treaty contains two fundamental cornerstones that comprise the ICC’s mandate. The first is one of individual accountability for crimes in order to end impunity for individuals responsible for committing them. The second principle is one of complementarity, which qualifies the level of jurisdiction within which the ICC can act. The Court can only try crimes if it deems domestic courts unable or


unwilling to prosecute according to due process. This principle allows for the retention of state sovereignty and retains a focus on strengthening the rule of law inside troublesome states. The Court has since issued arrest warrants and indictments for war criminals in eight situations that are within its jurisdiction.

In the following section, I detail U.S. involvement in the treaty negotiations and with the ICC since the Rome Statute was negotiated in 1997. Opponents of the ICC within the U.S. government have legally excluded the U.S. from formally participating in the Court’s functions and initially treated the ICC with intense hostility. There are two parallel concepts that fully encompass U.S. objections to the Court: legal or structural and political or substantive. Structurally, the main objection of U.S. representatives was Article 12 of the Rome Statute that allowed the ICC to exercise jurisdiction over nationals of non-states parties if one of the four key crimes was committed in the territory of a state party. Opponents of the Court held a substantial concern that U.S. nationals on peacekeeping missions or other endeavors abroad would be vulnerable to prosecution by the ICC, even though the U.S. did not sign the treaty or consent to the use of the ICC in adjudicating international crimes. To U.S. officials present at the Rome Conference and in Washington, this jurisdiction far overreaches the norm of international law by disregarding states’ legal procedures. During the discussions over how to characterize the jurisdiction of the ICC, the U.S. delegation consistently rejected the concept of

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152 This general approach has been taken in all of the literature outlining the U.S. objections, but is often referred to as “substantive” and “structural.”
154 Meißner, *The International Criminal Court Controversy*, p. 35
universal jurisdiction, which would give the Court the ability to initiate legal proceedings against an individual regardless of their location or nationality. However, the ICC does not operate under universal jurisdictional principles, but rather under complementarity, which disqualifies many objections to the Rome Statute by U.S. observers. Many critics then retort that complementarity is too subjective in nature because the ICC would be the actor that determines whether or not a state is willing or able. The Office of the Prosecutor conducts complementarity assessments by investigating domestic legal structures and processes. Judges in the Pre-Trial Chamber then determine if the evidence amassed by the Prosecutor renders the trial admissible. If the state-level proceedings are deemed effective and authorized by the Prosecutor, then the Court has no legal grounds to try the same individuals.\textsuperscript{156} While supporters of the ICC within the United States argue that the complementarity principle prevents universal jurisdiction and would effectively protect American citizens against ICC prosecution, opponents of the Court (and the U.S. treaty delegation) maintained concern over the Rome Statute’s threat to sovereignty.\textsuperscript{157} The U.S. delegation also had concerns about the Court’s jurisdiction in an infraction of international law that could occur on American soil. Many members of Congress have asserted that the Court’s presence in a criminal investigation occurring within the United States’ borders would contradict the U.S. Constitution, an unacceptable condition of any criminal court.\textsuperscript{158} Many opponents of the Court in the State Department and the White House were so concerned about the idea of U.S. citizens’ vulnerability, they initiated


\textsuperscript{157} Scheffer, \textit{The U.S. and the ICC}. This opinion was cited by Scheffer who was the main negotiator on the US delegation to Rome, and by John Bolton, who conducted negotiations in “Article 98” treaties during the Bush Administration.

bilateral non-surrender treaties, known as “Article 98 Agreements,” that would prevent U.S. extradition to the ICC from any state engaged in an agreement with the U.S.

Another major legal objection held by U.S. critics stems from the perceived lack of oversight of the ICC Prosecutor. As per Article 15, prosecutors are allowed to refer a case proprio moto, and without the consent of a larger body (i.e. the Security Council or ICC judges).\textsuperscript{159} The role of the Prosecutor feeds into critics’ more general worry over accountability. According to the statute, the ICC has complete autonomy from the United Nations and, in effect, from the Security Council. While the Council can refer cases and initiate investigations, they cannot prevent an investigation from occurring, particularly if the situation moves through one of the other approved channels for bringing a case to trial, including the prosecutor, which incites U.S. fears of vulnerability.\textsuperscript{160}

Politically, the objections also come from the perceived American role on the global stage. At the time of the conference, U.S. officials contended that because the United States was the world’s strongest power, it often found itself in unique diplomatic and military situations around the globe. This status, according to some authors, requires “special interests and protections” for soldiers and peacekeepers abroad that may be vulnerable to ICC prosecution. Such protections are not included in the Rome Statute.\textsuperscript{161} John Bolton, a strong opponent to the Court and Under Secretary of State to President Bush, criticized the Rome Statute for being not only ambivalent with its definition of genocide, but also contradictory to what the U.S. agreed to at the Genocide Convention

\textsuperscript{159} Feinstein and Lindberg, \textit{Means to an End}, p. 41; Meißner, \textit{The International Criminal Court Controversy}, p. 50; The Rome Statute of the International Criminal Court, Art. XV.

\textsuperscript{160} Birdsell, \textit{The Monster we Need Slay?}, p. 455

\textsuperscript{161} Bolton, \textit{The Risks and Weaknesses of the ICC}, p. 178; Feinstein and Lindberg, \textit{Means to an End}, p. 43; see also: Meißner, \textit{The International Criminal Court Controversy} pp. 93-96 and Birdsell, \textit{The Monster We Need Slay?} p. 455
of 1948. The definitions offered for war crimes and crimes against humanity are, according to Bolton, even more ambiguous, although other state officials do not share that view. Bolton viewed the ambiguities about what does and does not constitute a war crime could have drastic consequences for policy makers in the U.S. who are not party to the treaty, and may therefore unintentionally commit a violation of international law while protecting U.S. interests abroad. The fear of U.S. personnel vulnerability reflects a consensus among court opponents: that the unique situations of the U.S. military and peacekeeping troops are not adequately protected jurisdictionally from a court and from prosecutors who are not held accountable by a governing body.

However, as a member of the UN Security Council, the U.S. does have a narrow avenue through which it can interact with the Court, and it has demonstrated significant variation on the independent variable. This section determines that while the U.S. is not a signatory to the treaty, American diplomats and representatives on the Security Council during the Bush’s second term and during Obama’s administration shifted away from the hostile and obstructionist attitude and instead now chooses to publically support the actions of the ICC through diplomatic channels, and in some situations, through Security Council Resolution.

Structurally, this is what emerged from the Rome Statute: the ICC consists of seven offices that oversee and run all administrative, legal, and judicial aspects of its functions. The ICC is funded through contributions by state parties, but can receive financial assistance from the UN budget if a case is referred by the UNSC and obtains

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162 Bolton, The Risks and Weaknesses of the ICC, p. 170
163 Bolton, The Risks and Weaknesses of the ICC, p. 170
approval by the General Assembly.\textsuperscript{164} The United States approved this measure, believing that members of the UN who would not be states party to the Rome Statute should not be obligated to finance it.\textsuperscript{165} The Presidency consists of three judges, elected by their fellow members of the bench who oversee all other divisions—excepting the Office of the Prosecutor—and any administrative tasks facing the Court, such as the Office of the Registry, the Office of Counsel for Victims, the Counsel for Defense, and the Trust Fund for Victims’ Families. The United States played a large role in the process of including defense counsel into the structure of the Court, and its inclusion adhered to the American standard of due process. The Office of the Prosecutor is independent of the Presidency’s authority and is headed by the Prosecutor of the ICC. This office is responsible for gathering evidence and making substantive claims for the Court’s consideration. The lack of oversight of the Prosecutor was a main objection of the U.S. delegation, and contributed to the ultimate concern very about the degree of independence held by the Prosecutor’s office and the degree of autonomy held by the Court itself. This fundamental lack of oversight, as well as Article 12 of the treaty, leaves U.S. nationals exposed to prosecution by the ICC even though their government has not signed.

\textit{Identifying the Level of U.S. Involvement}

In order to test the effects of U.S. policy on the effectiveness of the ICC, this section identifies the level of involvement as the independent variable. The Multilateral Policy Scale ranges from ratification to obstruction, indicated by efforts to pursue alternative means of international justice. Since negotiations for the ICC began in the

\begin{footnotesize}
\textsuperscript{164} Scheffer, \textit{The United States and the International Criminal Court}, p. 17
\textsuperscript{165} Scheffer, \textit{The United States and the International Criminal Court}, p. 17
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1990s during the Clinton Administration, the level of U.S. support has varied over time. This variable has changed and adapted along with the urgency of global events and with the varying foreign policy objectives over three presidential administrations. This section explores the scope of the cases that have faced the ICC since 2002 and will use the range of policy options in order to capture the general trend of U.S. support for the institution. In addition, this chapter samples various significant cases in the ICC’s docket that best represent the level of U.S. involvement in the organization’s activity.

While it is unlikely that the U.S. will ever ratify the Rome Statute, the U.S. has demonstrated capacity and willingness to comply and cooperate informally. The first forum through which the U.S. can engage with the ICC is through the UN Security Council. Out of the seven situations facing the Court, the United Nations Security Council has referred the situations in the Darfur region of Sudan and in Libya to the ICC Prosecutor for consideration. So far, the UNSC has not discussed or referred any other situation to the ICC, and the U.S. has therefore had two opportunities to support or obstruct an investigation. These referrals must constitute a unanimous resolution from the UNSC and compels the Office of the Prosecutor to begin an investigation in those regions. In 2005, the United States conspicuously abstained from the referral in the Darfur case.\footnote{166} This allowed the measure to pass through the UNSC and effectively opened an investigation into the atrocities occurring in Darfur. Many scholars have speculated that the unwillingness for the U.S. to vote against ICC involvement in Darfur was an indication of its improving support.\footnote{167} The Bush Administration made clear that

\footnote{167}Corrina Heyder, “The U.N. Security Council's Referral of the Crimes in Darfur to the International Criminal Court in Light of U.S. Opposition to the Court: Implications for the International Criminal Court's
the option of not using its veto power in the Security Council did not indicate a change in the administration’s attitudes over the ICC, but it did represent a shift in attitude towards the Court along with willingness to recognize its influence in an unstable region.\footnote{Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court, news release, March 31, 2005. Remarks contained in special addendum by Anne Woods Patterson. Other abstaining members: China, Brazil, Algeria.}

The other referral came as a response to Colonel Qaddafi and his government’s transgressions against the Libyan protestors in 2011 and did gain an affirmative vote from the U.S. delegation in the UNSC.\footnote{Susan E. Rice, "In an Explanation of Vote on Resolution 1970” (address, U.S. Mission to the United Nations, New York, NY, February 26, 2011), http://usun.state.gov/briefing/statements/2011/157193.htm} While this certainly represents the Obama administration’s stated goals to further cooperate with the ICC, there has been little conscious effort to ratify or amend the Rome Statute, which would permit consistent and full U.S. involvement and indicate full support. Indeed, the situation in Libya indicates a warming attitude towards the ICC by the Obama administration. The five other cases being assessed by the International Criminal Court to date have resulted from either state referrals (the Democratic Republic of the Congo, Uganda, and Central African Republic) or from independent referral by the Office of the Prosecutor and subsequent approval by ICC judges (Kenya and Côte d’Ivoire).\footnote{“Situations and Cases,” International Criminal Court, http://icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx} Therefore, the space for the U.S. to get involved in referring a case to the ICC jurisdiction is limited. The U.S. has not shown any inclination for signing the treaty and has had a limited role in recommending its involvement in situations.

Additionally, the U.S. has been able to informally comply with the ICC by attending the meetings of the parties to the Rome Statute as observing members. The

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states party to the Rome Statute have met eleven times since 2002, and in 2009, the United States began participating as an observatory member, indicating a growing willingness to engage with the Court’s functions. In an address, U.S. Ambassador-at-Large of War Crimes Stephen Rapp expressed the desire to continue a growing partnership between the U.S. and the Court and to further norms of impunity into the future. However, despite the willingness to improve the partnership and to open new avenues of cooperation, the U.S. has not been reconsidering its legal stance towards the Rome Statute.\textsuperscript{171} Despite lobbyist groups, academics, and influence from liberal politicians, the U.S. has not drastically reconsidered its refusal to ratify the Rome Statute. The United States, under current domestic law, is not permitted to directly aid the ICC in its investigations or to provide funding or intelligence to the Office of the Prosecutor. In response to the divergence of the final treaty text from provisions initially approved by the U.S. delegations, U.S. Senator Jesse Helms (R-NC) introduced a law in the U.S. Senate that expressly prohibited U.S. officials from cooperating with the ICC. The American Service-Members’ Protection Act was designed to “protect United States military personnel and other elected and appointed officials of the United States government against criminal prosecution by an international criminal court to which the United States is not a party.”\textsuperscript{172} The law was part of an appropriations bill in 2002 and was approved 397-32 in the House and 92-7 in the Senate.\textsuperscript{173} President George W. Bush signed the bill into law in 2002. Despite statements from the Bush Administration from


2005-2008 stating that the U.S. would cooperate with the Prosecutor if asked, the ICC emphasized that it had no intention of asking for U.S. assistance in cases.\textsuperscript{174}

When President Obama’s Administration began, however, more concrete action occurred that would allow a new level of cooperation between the U.S. and the ICC. The Obama Administration has allocated resources to capacity building in national courts to ensure justice while constantly encouraging state involvement with ICC prosecutions. In the 2010 National Security Strategy Report, President Obama emphasized U.S. commitment to impunity and to assisting ICC cases as consistent with U.S. law. While some resources and intelligence have been allocated to some situations where genocide, crimes against humanity, or war crimes has been taking place, it was never in direct cooperation with the ICC.\textsuperscript{175} Overall, the value of this variable is weak and any U.S. support that the ICC receives is purely rhetorical and diplomatic.

There has been strong evidence that in recent years, the United States has offered diplomatic support to some investigations facing the Court. This variable, too, has undergone significant evolution since 2002 and is the most dynamic component of this study. In 2002, when the U.S. disengaged from the Rome Statute, rhetoric from U.S. officials was particularly caustic. Members of Congress deemed the ICC a “monster.”\textsuperscript{176} Under Secretary for Political Affairs Marc Grossman publically stated that the ICC undermined UN efforts to establish peace and security, creates an unchecked power,

inherently flawed, and a threat to U.S. sovereignty.\textsuperscript{177} Other prominent officials publically made similar remarks at the time.\textsuperscript{178} However, after the Bush Administration became involved in ending the genocide in Darfur, the United States demonstrated a slight, yet persistent shift in the tone with which it treated the ICC diplomatically. State Department officials in 2006, particularly pragmatists such as Deputy Secretary of State Robert Zoellick and State Department Legal Advisor John Bellinger III, announced that the U.S. was ready to cooperate with ICC investigations in Darfur, despite their preference for alternative means of justice. Bellinger stated:

Moreover, over the past couple of years we have worked hard to demonstrate that we share the main goals and values of the Court. We did not oppose the Security Council’s referral of the Darfur situation to the ICC, and have expressed our willingness to consider assisting the ICC Prosecutor’s Darfur work should we receive an appropriate request. We supported the use of ICC facilities for the trial of Charles Taylor, which began this week here in The Hague. These steps reflect our desire to find practical ways to work with ICC supporters to advance our shared goals of promoting international criminal justice. We believe it important that ICC supporters take a similarly practical approach in working with us on these issues, one that reflects respect for our decision not to become a party to the Rome Statute.\textsuperscript{179}

The Obama Administration continued this positive diplomatic trajectory by becoming an observer member to the International Criminal Court in 2009, allowing the U.S. to observe meetings, but not enjoy the privileges of voting and policy accorded to members. This is currently the most ideal relationship to be expected from U.S.-ICC relations. At those meetings, Ambassador Rapp has made several positive policy statements indicating

\textsuperscript{177} Marc Grossman, “American Foreign Policy and the International Criminal Court” (Remarks, Center for Strategic and International Studies, Washington D.C., May 2002)
diplomatic support for ICC investigations and for assisting the ICC in ensuring justice for victims and ending global impunity. President Obama stated in his National Security Strategy in 2010:

Those who intentionally target innocent civilians must be held accountable, and we will continue to support institutions and prosecutions that advance this important interest. Although the United States is not at present a party to the Rome Statute of the International Criminal Court (ICC), and will always protect U.S. personnel, we are engaging with State Parties to the Rome Statute on issues of concern and are supporting the ICC’s prosecution of those cases that advance U.S. interests and values, consistent with the requirements of U.S. law.\textsuperscript{180}

In order to capture the evolution of U.S. policy and involvement with the Court since 1997, these visual representations roughly codify the presence of certain variables across four years.

\textsuperscript{180} National Security Strategy 2010, p. 48.
U.S. Involvement in ICC - 2006
(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

U.S. Involvement in ICC - 2001
(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

- Statements in support for ICC in Darfur
- Did not vote for or against an ICC investigation in UNSC
- American Service-members' Protection Act
- White House/State Dept. Statements
- American Service-members' Protection Act
- Article 98 Agreements
Having captured the general trend of U.S. involvement with the ICC since 2002 and the evolution of concrete support, provision of resources, and diplomatic support, this chapter assesses the level of U.S. involvement in two specific cases that have been before the ICC. The Prosecutor v. Thomas Lubanga Dyilo is a crucial case in analyzing the effect of the U.S. on the ICC’s effectiveness, because it is one of only two cases that have received a verdict from the Court, and is the only trial that has resulted in a conviction. Joseph Kabila, as head of state in the Democratic Republic of Congo, referred the situation in Ituri—known as one of the bloodiest regions of the DRC and rife with ethnic violence—to the ICC in March 2004 where the case was subsequently approved by the Pre-Trial Chamber as falling under the jurisdiction of the ICC. In 2007, the same Pre-Trial Chamber announced that there was enough evidence to bring down the charges of “enlisting and conscripting children under the age of fifteen years into the FPLC
[English: UPC] and using them to participate actively in hostilities.”¹⁸¹ Such crimes fall under the general category of war crimes, one of the four key crimes that warrant ICC jurisdiction. The presentation of evidence began in January 2009 and formally closed in March 2011. In March 2012, Lubanga was convicted of enlisting child soldiers after three years of turbulent legal proceedings and is currently serving a fourteen-year prison sentence in The Hague.

The involvement of the United States in this specific situation was extremely limited. The case was not referred to the ICC through the UNSC, excluding the U.S. from the decision-making process, and therefore leaving it without opportunity to object to the ICC proceedings. At this time, the U.S. was still pushing for using local tribunals instead of the ICC and would have staunchly opposed a Security Council referral if there had been discussion. Therefore, beginning at the top of the Multilateral Policy Scale, the U.S. did not have the opportunity to decide whether or not to vote to refer the situation to the ICC because the government of the D.R.C. initiated the case through the state referral process. The state leaders referred the case to the ICC themselves, willfully relinquishing Lubanga to The Hague. In fact, at the time of arrest, Lubanga was already detained inside the D.R.C. and only required a simple transfer. The United States did not provide evidence or investigative support, due to domestic legal restrictions and the nature of the ICC’s investigative procedures, which relies on national governments to gather evidence and transport witnesses.

However, there are more affirmative results with regard to the “diplomatic support” variable. While several U.S.-based NGOs came forward in support of legal

¹⁸¹ “Trial Chamber I”: The Prosecutor v. Thomas Lubanga Dyilo, No. ICC-01/04-01/06 (International Criminal Court March 2012), p. 7
action taken against Lubanga, no formal diplomatic statement was made by any U.S. official about the transfer of Lubanga to the ICC’s custody in 2006. After his conviction in 2012, however, the State Department issued a statement hailing the decision as one that is “an historic and important step in providing justice and accountability for the Congolese people. The conviction is also significant for highlighting as an issue of paramount international concern the brutal practice of conscripting and using children to take a direct part in hostilities.”\textsuperscript{182} Therefore, the diplomatic support from the U.S. for the Court and its prosecution of Lubanga and representative of the shift in the level of involvement that the U.S. was willing to have in an ICC case.

The other case that provides insight into the level of U.S. involvement is \textit{The Prosecutor v. Mathieu Ngudjolo Chui}, which formally concluded in December 2012. This was the second verdict handed down by the ICC, but it resulted in acquittal and Ngudjolo was immediately released. The Prosecutor charged Ngudjolo with nine counts of war crimes and crimes against humanity, including murder, sexual slavery, inhumane treatment, use of child soldiers in hostilities, and unlawful attacks against civilians.\textsuperscript{183} The charges were based on a 2004 attack also in the Ituri region of the D.R.C. that involved Ngudjolo commanding troops to invade the village of Bogoro that was occupied by a rival rebel group and full of civilians who were slaughtered by the incoming troops, many of them children under fifteen years of age.

Like in the Lubanga case, the case against Ngudjolo was referred to the ICC by the government of the D.R.C., therefore excluding United States from involvement in


\textsuperscript{183} “Case: Mathieu Ngudjolo Chui,” American Non-Governmental Organizations Coalition for the International Criminal Court, http://amicc.org/icc/ngudjolo
recommending the case to the Prosecutor. Additionally, there was no investigative assistance or provision of resources to the Prosecutor to gather evidence against Ngudjolo. However, there was some diplomatic acknowledgement of the trial, and was included in a 2010 statement by Ambassador Rapp exemplifying U.S. continued support for the ICC.\(^\text{184}\) When asked if there was a specific reaction by the administration to Ngudjolo’s acquittal, Spokesperson for the State Department Victoria Nuland vaguely acknowledged a U.S. stance.

So we’re obviously reviewing the trial’s decision. We also understand that it is subject to appeal. I would note that in announcing the verdict, the chamber made clear that the prosecution had not proven beyond a reasonable doubt that he was the commander of the combatants involved in the attack on the village, and thus he wasn’t responsible within the meaning of the Rome statute. So again, they also – the judges in the case emphasized that his acquittal didn’t mean that in its opinion no crime had been committed there. It’s just that within their definition, they couldn’t link him to it.\(^\text{185}\)

She did not come out directly in support for the verdict, but said that the U.S. will continue to monitor the appeals process that is underway in the Office of the Prosecutor. She emphasized that Ngudjolo was acquitted because the Prosecutor did not meet the burden of proof (beyond a reasonable doubt) that he was the commander behind the attack in Bogoro, but that did not necessarily mean that no crime was committed. In this instance, the level of diplomatic support for an acquittal was much lower than that of Lubanga’s guilty verdict. This indicates that the U.S. evaluates the ICC’s success on the basis of successfully applying judicial principles in order to imprison war criminals. This is an interesting departure from the original concerns expressed during the treaty


negotiations and the Bush Administration, and represents an evolution of the U.S. opinion and attitudes toward the ICC.

*The Effectiveness of the ICC*

For the purpose of this study, “effectiveness” is conceptualized as the ability of an institution to achieve its stated goals, taking into account whether or not it was able to solve the problem it was created to address, or “output effectiveness,” and the extent to which the organization contributed to fixing the problem it was created to solve, relative to how its internal process “performance” affected the output that was observed. The Rome Statute establishes basic normative goals for the International Criminal Court. It is lacking in concrete goals, but it did establish mechanisms through which to evaluate its performance so far. The Rome Statute was created to “put an end to impunity and…contribute to the prevention of crimes” by establishing a “permanent institution” that is complementary to national criminal jurisdictions and respects the norms of international justice.\(^{186}\) Therefore, effectiveness is measured in three areas that apply to output effectiveness and internal performance: ending impunity, preventing future atrocities by changing state behavior (external), and adherence to international legal norms (internal). In order to apply the above-stated measure of effectiveness to the ICC, it is imperative that the literature on the subject of evaluating the Court since 2002 be thoroughly explored. This section explores various scholars’ interpretations of assessing ICC effectiveness, which demonstrates how this thesis contributes to the foundation of literature by systemically measuring effectiveness. In applying the measure generally to the overall performance of the ICC since 2002, this chapter explores the above measures in light of a no-Court counterfactual and will discuss how the landscape of ending

\(^{186}\) The Rome Statute of the International Criminal Court, Preamble.
impunity through international legal justice systems would have looked like if the
international system continued creating regional *ad hoc* courts to address acts of
genocide. Then, this chapter continues the analysis of the two case studies: the Lubanga
and Ngudjolo trials and will apply the dependent variable measures in order to determine
effectiveness on a smaller scale.

Many scholars support the idea that it may be too early to assess the effectiveness
of the ICC. Cedric Ryngaert supports this view simply because so few cases have been
Inc., 2009), p. 170.} If he defines effectiveness as an institution’s ability to achieve its
intended or desired goal, or in the specific case of the ICC “to help end impunity for the
perpetrators of the most serious crimes of concern to the international community,”\footnote{“Situations and Cases,” *The International
Criminal Court.*} he believes that mere arrests and investigations of the ICC do not contribute to this overall
goal.\footnote{Ryngaert, *The Effectiveness of International Criminal Justice*, p. xii and 170} Ryngaert focuses on the complementarity principle, narrowing his measure of an
“effective court” to one that will “encourage the ownership of the judicial process, and
thereby strengthen the rule of law throughout the *State system*, and thereby guarantee
long-term social and political stabilization.”\footnote{Ryngaert, *The Effectiveness of International Criminal Justice*, p. 170} The ICC would be maximizing its
influence, resources, and effectiveness, if and only if it asserted its jurisdiction for
situations in which states cannot genuinely prosecute individuals. According to Ryngaert,
as long as the complementarity principle holds true, the ICC can be an effective
institution in the realm of international criminal justice.\footnote{Ryngaert, *The Effectiveness of International Criminal Justice*, pp. 145-172} Aside from a brief analysis of
how the European Union contributes to the effectiveness of the ICC, he is generally
inconclusive about the effectiveness of the Court so far. Considering the time lapse between his analysis and more current ICC advancements, I have ample opportunity for my study to gauge effectiveness empirically, particularly in connection to U.S. policy, buy considering both arrests and complementarity as measures of process performance and output effectiveness.

Other scholars determined that it is not, in fact, too early to assess the effectiveness of the ICC, and have offered some analysis regarding how well the ICC has lived up to its mission and to the stipulations of the Rome Statute. Their conclusions have generally been positive, stating that since 2002, the ICC has fulfilled its mission to increase accountability of perpetrators. 192 They assert that the Court has belied several of the initial objections from critics by not engaging in extraneous or illegitimate human rights situations and by appearing more dependent on the final oversight of the Assembly of States Parties than critics initially anticipated. 193 The Court has held true to its commitment to the principle of complementarity, and as other scholars suggest, has been able to operate efficiently without impeding on states’ rights to prosecute their own nationals in their own courts. This section builds on this literature and will demonstrate several cases in which the ICC had the opportunity to over-reach on its mandate but has not.

Another indication in the literature on the ICC’s effectiveness has been its efforts to protect the rights of defendants and ensure a fair trial. Judges in the Uganda and Darfur cases have appointed legal counsel to defendants and required the prosecutor to disclose all evidence, including evidence that could mitigate the perpetrated crimes. These high

192 Feinstein and Lindberg, Means to an End, p. 61.
standards of due process have so far proved unwarranted American critics’ concerns that the individual prosecutor and the Court’s judges would operate with little oversight or regard for legal procedure.\footnote{Feinstein and Lindberg, \textit{Means to an End}, p. 76-77, “Courting History,” III.A.1} Legal procedure speaks to organizational effectiveness as part of the performance variable and is crucial to understanding how efficiently and how well the Court is addressing these crimes in accordance with international law. Due largely to the relatively small amount of time the ICC has had to establish itself as an independent judicial institution, coverage of the Court’s effectiveness is brief and inconclusive. Some authors claim that it is too early to assess effectiveness of the ICC, while others suggest that it has had a positive record since 2002, giving lukewarm analysis for each situation. This study is seeking to corroborate the existing assumptions and analysis by \textit{systematically} studying the effectiveness of the ICC. The research design is structured around a range of independent variables (U.S. actions towards the Court) and their effect on effectiveness of the ICC generally and in two cases that have resulted in a verdict since the 2002 ratification of the Rome Statute.

By using the stated goals in the Rome Statute, it is possible to determine a level of output effectiveness of the ICC from 2002 to 2013. While acknowledging the relative youth of the ICC, this section will determine that a strong assessment of effectiveness can be observed empirically by using the two verdicts the Court has produced along with the investigations. Since 2002, the ICC has issued twenty-seven indictments, instigated eighteen cases, have four individuals in custody, and six individuals who are not detained but have voluntarily presented themselves at trial in response to a summons. Two individuals, including Ngudjolo, have been released after an acquittal or a non-confirmation of charges in the Pre-Trial stages. Three individuals are currently in custody
in their domestic states and have not yet been extradited to the ICC, and the remaining alleged criminals remain at large. If analyzing the ICC on the basis of the numbers of criminals prosecuted, the results are a mixed bag. In 2002, before the ICC was created, only *ad hoc* criminal procedures were in pace against individuals wanted for key crimes and those courts are narrowly mandated and region-specific. Most likely, many of the criminals under ICC indictment would still be at large. In this way, the ICC has been successful in making large advancements in ending impunity and holding individuals accountable for providing a legitimate forum for justice with a global scope.

However, progress has been slower than it needs to be. It has so far taken the ICC an average of five years to try an individual for war crimes—Lubanga was transferred to The Hague in 2006 and his verdict was issued in March 2012. Similarly, Ngudjolo was transferred to The Hague in 2008 and his verdict was issued in December 2012. Additionally, slow progress has been evidenced by the amount of time between the entry into force of the Rome Statute and the first arrest, which was four years. However, in the last four years, the ICC has picked up the pace, indicting the remaining twenty-five individuals in the past six years.

Therefore, there has been upward trajectory of indictments and a drastic shift in the impunity of war criminals since 2002. Considering the preliminary examinations that are currently underway in the Office of the Prosecutor, this upward trajectory is likely to continue. Preliminary examinations involve assessment of facts relating to alleged crimes under Article 15 of the Rome Statute to see if they fall under the jurisdiction of the Court, if there are applicable domestic courts that are willing and able to prosecute the crimes,
and if there is an interest in justice.\textsuperscript{195} The preliminary examinations indicate that the Court is continuing to pursue individuals responsible for serious crimes by considering jurisdiction in Afghanistan, Honduras, the Republic of Korea, and Nigeria. It is considering admissibility—assessing complementarity and gravity—in Colombia, Guinea, Georgia, and Mali. The Office of the Prosecutor has recently closed a preliminary examination on crimes occurring in Palestine. According to the Rome Statute, a state can confer jurisdiction to the Court by ratifying the treaty or making an ad hoc declaration to accept the Court’s jurisdiction. Because Palestine’s statehood status is so controversial, the Office of the Prosecutor felt that it was not in the position as an entity to make a decision regarding Palestinian statehood, but would accept jurisdiction if relevant bodies in the UN General Assembly were to make such a determination.\textsuperscript{196} Not only is this statement a good example of the ICC ceding its authority in matters outside of its scope, but it also indicates a willingness to investigate crimes against humanity, war crimes, and genocide wherever they occur in the future.

The Court’s record of investigations and indictments indicates an increase in frequency of cases within the last six years, as well as an expected continuation of such growth. This pattern indicates a growing level of effectiveness when assessing the counterfactual situation and the ability of the Court to achieve its goal of ending impunity, and the extent to which it participated in doing so. If not for ICC investigations, many of the cases would not have achieved as high a level of scrutiny, nor would they have been held to the same international standard. However, considering only two

\textsuperscript{195} ICC Preliminary Examinations Report, 2012, pg. 5
\textsuperscript{196} Preliminary Examinations 2012, pg. 43.
verdicts have been issued, with only one conviction, the ICC still has a long way to go towards reversing the trend of impunity.

Another provision of the stated goals in the Rome Statute is to prevent future atrocities from occurring. While this is an unattainable goal for any individual, organization, or government to achieve, as well as being challenging for scholars to analyze, the ICC has had some deterrent effects. There has been explicit evidence of hostile parties attempting to decrease direct assault on civilians after a prosecutor has started an investigation in the region. While this does not mitigate the egregious nature of their crimes, it does imply that states and war criminals are starting to recognize the Court as a crucial component of increasing international scrutiny and justice. The Court has also been marginally effective at increasing domestic forms of accountability. 197 This was particularly true when the Prosecutor moderated negotiations between Joseph Kony, his Lord’s Resistance Army (LRA), and the Ugandan government, looking for sufficient grounds to intervene. Negotiations ceased when Kony would not cooperate with peace agreements set forth by the government, allowing the ICC to claim jurisdiction according to complementarity, and allowing neighboring states to decrease their support for the LRA. 198 Kony is now indicted on twelve counts of crimes against humanity and twenty-one counts of war crimes at the International Criminal Court. 199 This is an instance of success when the ICC has had a presence in a case, causing involved parties, and states to

197 Feinstein and Lindberg, Means to an End, p. 90. This source also emphasizes some criticisms of the Court’s operation including issues of unequal geographic focus (prosecutors are overly focused on Africa), as well as an allegation that the Court’s procedures obstruct peace negotiations between warring factions by posing a threat to heads of state. While deserving consideration, these objections are not consistent with U.S. policy or criticisms.
199 Akhavan, The Lord’s Resistance Army Case, p. 66.
alter their behavior. However, relatively little success in this area has occurred otherwise. State governments in Libya have not yet cooperated with the Court by relinquishing Saif Al-Islam Gaddafi and Abdullah Al-Senussi.200 Similarly, Sudan has not complied with its obligations per Security Council Resolution to relinquish its leaders to the ICC for trial, notably because Sudan’s president is wanted among them.

The final goal stated in the Rome Statute that is a measure of effectiveness in this case is to end impunity with respect to international legal norms. This measure captures the internal performance variable because it focuses on the internal process of the institution.201 By analyzing the ability of the Court to adhere to international legal norms, I can capture the efficiency with which the institution accomplished its main external output goal, which is ending impunity. The extent to which the Court follows proper legal procedure could have an impact on its ability to hold criminals accountable for crimes with respect to common legal procedure as agreed upon by the member states. Out of the twenty-seven indictments before the Court, one case was dismissed from consideration at the Pre-Trial stage on grounds of insufficient evidence. In that case, Callixte Mbarushimana was accused of participating in an armed conflict in the southern regions of the D.R.C., but the Prosecutor failed to provide sufficient evidence linking him to the crime, and the case was subsequently dismissed. Similarly, Mathieu Ngudjolo was acquitted of his charges after a full trial on the grounds that the Prosecutor did not have sufficient evidence against him.202 Many international actors expressed distress at this

201 Gutner and Thompson, Politics of IO Performance, p. 230.
statement, but while Ngudjolo was released, this measure and the one against Mbarushimama indicate the willingness of the ICC judiciary to uphold due process principles and rule of law according to the Rome Statute.

Before the ICC was created, the international trends for criminal justices were moving toward establishing regional ad hoc institutions to try war criminals for their involvement in specific genocides or incidents. The ICTY and the ICTR offer some insight into how international criminal justice would have looked like if the ICC had not been created. The ICTY and ICTR’s progress was slow at first, the institutions having to appeal to private donors and to the United Nations for funds to keep going, and having to rely heavily on cooperation of states. The institutions themselves were mainly vehicles for providing justice, and had no coercive capacity to make arrests or obtain access to witnesses. All of those functions relied heavily on state government cooperation, which proved to be a burden on the tribunals’ operations. The ICTY eventually passed down over 100 indictments and many war criminals are currently serving prison sentences. As of 2001, at the beginning of the ICC’s tenure and eight years after the ICTY’s establishment in 1993, around forty war criminals still remained at-large. The indictments-to-arrest ratio within the ICTY’s first ten years was very high, but many scholars questioned its effectiveness as an international justice institution. Because it relied so heavily on state cooperation at the investigation stage and had no control over its docket. However, scholars have determined that ICTY proceedings have been consistently fair and aligned with accepted legal norms. Eventually, states in the UNSC

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delegated enough power to the ICTY for it to carry out sentencing and justice towards convicted individuals that were consistent with legal norms.204

The ICTR was established in a post-conflict situation, unlike its counterpart in Yugoslavia, and began operations with 95,000 defendants in custody of the Rwandan government. In the initial stages, the ICTR struggled with jurisdiction relative to the national courts system and suffered from lack of cooperation among states. Its legal procedures and standards of due process were identical to those at the ICTY, and even though those standards ensured strict adherence to legal norms, the institutions itself had little power to carry out arrests, investigations, and witnesses.205 Therefore, it took significant effort by UN Security Council actors and in-state actors to create ad hoc tribunals. It would be impossible to create such organizations in every region affected by conflict. States would have to decide if a situation was bad enough to be worth the expense of creating a tribunal, therefore limiting the scope of these institutions to only the most extreme cases of genocide. If a permanent court had not been established, states may have grown tired of incurring significant costs to set up such narrowly mandated, regional tribunals that relied heavily on state cooperation.

Compared to this counterfactual, the ICC has achieved success in some ways, but has stagnated in others. The ICC has more autonomy than the two regional courts, and has the power to conduct investigations and assemble evidence. It has also has a global scope and jurisdiction over a wider range of crimes, and is a more significant contribution of ending world impunity than the ad hoc tribunals. However, the ICC has yet to demonstrate strict adherence to legal norms. Overall, the ICC has been effective because

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204 Meernik and King, Effectiveness of International Law, p. 371.  
205 Barria and Roper, How Effective are the International Criminal Tribunals?, p. 363.
it has furthered the course of international criminal justice by expanding the scope of crimes and overcoming many of the coordination costs related to establishing several smaller tribunals. The ICC has indicted individuals based on the four key crimes within its jurisdiction that might not have warranted enough attention or pressure from states to establish a tribunal.

During the trial of *Prosecutor v. Thomas Lubanga Dyilo*, the Prosecution committed several procedural errors that nearly resulted in dismissal. Several times over the course of the trial, the Prosecutor was criticized for misuse of evidence and for not adhering to proper procedure for entering evidence and full disclosure. According to the final decision document written by ICC judges, the first attempt at a hearing was suspended in June 2008, after the Prosecutor failed to disclose a vast amount of “potentially exculpatory evidence,” which they are bound to do by the Rules of Procedure and Evidence. The hearing resumed after the evidence was disclosed to the Court in November 2008, and the prosecution called its first witness in 2009.

This procedural gaffe received some media attention and, finally, criticism about the Court’s ability to operate fairly for such vast crimes was given a focal point. According to the New York Times, the documents were released to the Prosecution on the request that they remain confidential. But even so, confidential materials are not permitted to enter into evidence in a trial setting, which the Prosecution attempted to do anyway. The ICC judges issued a statement calling into question the trial process and feared that it “has been ruptured to such a degree that it is now impossible to piece

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206 ‘Trial Chamber I’ ICC, p. 11
together the constituent elements of a fair trial.” Despite these setbacks, the hearing resumed, only to be stayed again in July 2010. This time, the ICC judges cited “non-compliance with an order for disclosure of an intermediary” on the part of the Prosecutor, who willfully and clearly refused to comply with the orders of the Court. This stay was reversed in October, and proceedings and witness testimony resumed until December, when the defense counsel requested a permanent stay of proceedings because “the intermediaries used by the prosecution had prepared false evidence and the Prosecutor was aware that some of the evidence connected to these individuals was untruthful and failed in his obligation to investigate its reliability.” The trial was then formally closed in May 2011 and deliberations began. Lubanga was not convicted until nearly a year later in March 2012.

Clearly, these procedural faults came from the alleged disregard for procedure and conduct by the Prosecutor and his deliberate methods in ignoring and attempting to conceal evidence against his case. Additionally, the trial proceedings, namely the process of admitting evidence, the requirement of disclosure of evidence to the other side, and the timely review of evidence, suffered. In the case of The Prosecutor v. Lubanga, procedural error significantly hindered the timeliness of the verdict along with the overall process of convicting a war criminal. This indicator of poor internal performance had a negative impact on overall effectiveness because it jeopardized the judicial process by making it slow and inefficient and because it risked acquitting an alleged war criminal not due to proper standard of evidence, but because the Prosecutor was not following

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208 Simons, *International Court May Discard First Case.*
210 “ICC Trial Chamber I”, p.14
procedure. The Court’s ultimate goal, or external output, is ending impunity, and procedural error was almost detrimental to this goal during the Lubanga trial.

Overall, the International Criminal Court has been successful in opening cases and trials against war criminals that violated international law against civilians. With one conviction, along with some arrests and numerous investigations, the status of impunity for war criminals is better than it was before the Court was established. Despite a slow start, the ICC has been able to increase the frequency of its investigations and has gained legitimacy globally. However, another factor in effectiveness is the ability of the ICC to impact state behavior. The ICC has not performed well in this regard. The cases in which the ICC was most effective usually involved cases that were state-referrals, because the ICC could rely on domestic resources to secure an arrest and a guarantee that certain individuals would be extradited for trial. But in cases where compliance was required via Security Council resolution, or an independent case by the Prosecutor, impact on state behavior has been poor and impunity for war criminals is still a reality. Additionally, while the judiciary is seemingly prepared to adhere to judicial norms, the procedural errors in the trial committed by the Prosecutor compromised the Court’s legal legitimacy could have resulted in a war criminal remaining at large.

_U.S. Involvement and its Effect on the ICC’s Effectiveness_

After isolating both variables and applying them to the case study, this section completes the process tracing procedure in order to establish a relationship between the level of U.S. support for the ICC and its overall effectiveness. The previous section of this chapter demonstrated empirically that the level of involvement and the degree of cooperation by the U.S. in the Court’s affairs have increased over the last several years.
The evidence also shows that the number of indictments and investigations have increased over the last several years. This has occurred in part due to the United States’ willingness to cooperate via the UN Security Council and referring situations in Darfur and Libya to the ICC. The Security Council Resolutions compel Libya and Sudan to cooperate with the ICC and extradite wanted individuals. However, compliance in these cases has been poor and the U.S.’s continuing support has not seemed to impact the ability of the ICC to compel extradition. Because of the American Service-members’ Protection Act, American officials are legally prohibited from cooperating with the ICC. American politicians since 2002, even in the Obama Administration, are particularly sensitive about the ability of the Court to try individuals from states that have not signed or ratified the Rome Statute. Even though the cases in Sudan and Libya have been referred by UNSC votes, both of those states are not parties to the Rome Statute, and could indicate a reticence by the U.S. to get involved in the ICC’s efforts in those situations.

If the U.S. were a state party to the ICC, it would have been able to provide more resources to conduct investigations, particularly in regions it occupies. However, while the U.S. could use their capacity and resources to find war criminals at large, there is a limit to how much the U.S. could contribute to ensuring those individuals were extradited to The Hague. One of the primary restrictions on the mandate of the ICC is state sovereignty, in that another state cannot force a non-state party to the Rome Statute to offer custody of a convicted criminal. In Libya, though the U.S. contributed to finding Saif al-Islam Gaddafi and Abdullah al Sanousi, the men are in the custody of Libyan officials and are not compelled by any legal body to extradite them to The Hague.
Whether or not the U.S. was a party to the ICC would not determine Libya’s compliance with the UNSC Resolution. The U.S. is also helping with the global hunt to locate Joseph Kony after the crimes he committed in Uganda. Using satellites and aircraft, the U.S., in conjunction with the Ugandan government (not the ICC), has followed Kony’s trail across central Africa. So far, their methods have been ineffective against his efforts to conceal his whereabouts, and as of April 2013, the U.S. government suspended their search for the elusive warlord. So, while the U.S. can provide increased capacity for locating war criminals, they are not necessarily as effective. If Kony was captured, the Ugandan government, as a state party would be obligated to extradite him to The Hague despite the preferences of the United States, although at this point, the U.S. would prefer to see Kony tried before the ICC.

However, the evolution of U.S. attitudes and the increase in diplomatic support since 2006 has affected the legitimacy of the Court in a positive manner. The ICC no longer has to face the global community with the U.S. as an enemy. The Court is now a viable means for holding individuals accountable and for opening investigations in war-torn regions, and this increase in legitimacy could be attributed to vocal support from the United States diplomatically and inside the UN Security Council. Out of 127 states party to the Rome Statute, 35 states signed on after 2002. After the U.S. altered its position on the ICC in 2006, 22 states signed on to the Rome Statute, the most recent being Cote d’Ivoire in February 2013. However, the U.S. still has the power to restrict ICC influence on the Security Council, and if a referral was against the U.S. geopolitical or strategic preference, they could vote no. However, evidence indicates that the U.S. is generally supportive of the ICC in the Security Council. While this support has allowed indictments
and investigations to occur in Libya and Sudan, those cases have seen the least amount of success. Without resources and cooperation on the ground, the ability of the U.S. to influence those situations is limited.

Another trend documented in this case study was the Court’s record on adherence to legal procedure and evidence gathering. This variable also directly relates to the U.S. role in the ICC. If the U.S. was legally able to provide assistance in investigations, problems gathering sufficient evidence for charging individuals with crimes of such magnitude might be solved more easily. Given that the U.S. is a large power and has the resources to have an immense global presence, it follows that it would be able to supply ample assistance in investigations. Additionally, when the Rome Statute was being negotiated, the United States influenced various aspects of definitions that would impact later jurisdictional decisions. For example, the U.S. delegation fought hard at the discussion table for the definition of war crimes to include both internal conflicts and crimes against women. 211 Both of those aspects of war crimes have arisen in charges against individuals in front of the ICC.

Additionally, in order to ensure that the Rome Statute complied with the Constitution, the U.S. delegation pushed for greater adherence due process and components of American law, including rights of the defendant, which were intended to put limits on the Prosecutor. If the United States was a state party and was able to impact policies and decisions in the Office of the Prosecutor, those due process principles might be stronger. If the U.S. was a party to the Rome Statute, it would have a vote at the meeting of the Assembly of States Parties that has the authority to manage oversight of the Prosecutor’s Office and the Executive, influence the functions of the Rules of

211 Scheffer, *United States and the International Criminal Court*, p. 16.
Evidence and Procedure, and the authority to establish independent monitoring mechanisms for different functions of the Court to ensure efficacy and adequate protection of legal principles.\textsuperscript{212} During the negotiations, the U.S. delegation prompted several due process provisions and subsequent administrations have maintained support for due process. If given voting power in the Assembly, the U.S. would prefer stringent oversight over legal procedure regulations and the activities of the Prosecutor.

After measuring the variables and tracing their impacts on each other, it is clear that the United States has influenced the Court’s effectiveness in some ways. The dramatic increase in diplomatic support from the U.S. for ICC investigations has allowed the Court to enjoy an increase in legitimacy. States are beginning to alter their behavior in order to cooperate with the Prosecutor, greatly influencing their output effectiveness. In addition, some states have witnessed a deterrent effect from the presence of an ICC investigation, particularly in Uganda where state willingness to prosecute the LRA leaders has led to a marginal decrease in LRA activity and external support. Additionally, the United States has allowed the ICC to open investigations in Sudan and Libya and without the affirmative U.S. vote, no ICC investigation would be occurring at all.

However, the ICC still has significant room for improvement when it comes to several performance measures such as adhering to due process and achieving state compliance in cases that were not state referrals. These variables significantly impact the output effectiveness of the organization, and must be considered according to Gutner and Thompson’s framework. While the ICC judges have shown willingness to dismiss cases according to the standard of evidence agreed upon in the Rome Statute, one case has been compromised by the Prosecution’s inability to amass necessary evidence and follow

proper trial procedures. The U.S., having been the architect of many mechanisms in the Rome Statute that limited the influence of the Prosecutor, would support a continuation of adherence to international norms and standards of evidence. Finally, the U.S. law that restricts official cooperation with the ICC also restricts the amount of American resources abroad that could be mobilized to gather evidence, assist in very difficult investigations, and make arrests of criminals still at large.

The ICC still has encountered roadblocks when attempting to arrest certain war criminals without a police force. State sovereignty principles preclude any foreign enforcement team to enter a territory and arrest its citizen without jurisdiction. Because the ICC relies on states for arrests and extradition, the U.S. may not have as significant an impact on the current problems in Sudan and Libya, who are currently refusing to offer up indicted individuals to The Hague. Neither diplomatic support from the U.S. or an affirmative Security Council vote is sufficient to solve this problem. Therefore, U.S. diplomatic support and votes on the Security Council have positively influenced the ICC’s effectiveness in its ability to tackle impunity and increase its legitimacy. But the unwillingness to cooperate by providing resources is negatively impacting the ICC’s ability to gather evidence and employ smooth and efficient trial procedures. But, there is little evidence to support that the ICC’s current problem with state compliance could be helped by U.S. involvement. While the U.S. can enhance the reach of the ICC by providing assistance in investigations, it cannot overcome principles of state sovereignty and the Court and will continue to be challenged as it grows to become a more significant actor on the world stage.

VII. The Kyoto Protocol
This chapter addresses the Kyoto Protocol as another case study in order to determine how U.S. involvement in a treaty or multilateral endeavor influences that institution’s effectiveness. After significant advances in international environmental cooperation during the 1990s, states gathered in Kyoto, Japan in 1997 to negotiate and sign a binding agreement that would commit developed countries to collectively reduce their greenhouse gas emissions (GHG) to five percent below 1990 levels. This chapter will first explore the background of United States’ participation in international climate change negotiations to contextualize their level of involvement in the Kyoto regime. Then, using the variables indicated on the Multilateral Policy Scale, this chapter demonstrates that the level of U.S. involvement with the Kyoto Protocol has been consistently negative. The U.S. has not ratified, complied with, or supported the institution in any way since 1997, and has sought to obstruct the success of the Kyoto Protocol by lobbying for alternative methods for addressing climate change.

After determining the level of U.S. involvement, this chapter explores the effectiveness of the Kyoto Protocol relative to the measures discussed in chapter one. Similar to the Montreal Protocol, the Kyoto Protocol is a hard law treaty that demands significant domestic industrial regulation from its signatories, it distinguishes between developed (Annex I) and developing (non-Annex I) nations, and requires extensive cooperation to be successful. However, by measuring both Kyoto’s output effectiveness—how well the treaty has adhered to its stated goals—and internal process performance—how efficiently the treaty structured has operated and how well it contributed to the overall global process to address climate change—this chapter can evaluate its effectiveness. Finally, this chapter employs the process tracing method to

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213 See Gutner and Thompson, and Bernauer in Chapter 1.
determine if a causal relationship exists between U.S. involvement and the effectiveness of Kyoto so far.

*Background: United States and Climate Change*

The United Nations Framework Convention on Climate Change (UNFCCC) was signed in 1992 to establish an international legal framework through which international cooperation over climate change could be managed. After the success of the Montreal Protocol and the Vienna Convention on Substances that Deplete the Ozone Layer, global attention fastened to other consequences of rapid industrial development during the 20th century and their effects on the atmosphere. Since 1990, scientists at NASA tracked the average global temperature annually and discovered that a majority of the 1.4 degree overall increase had occurred in the ten years before 1990. Scientists readily discovered that human activity altered the cycle of carbon dioxide from the earth into the atmosphere, a phenomenon that came to be known as “the greenhouse effect.” While plants and animals on land and in the ocean naturally exchange CO2 via the atmosphere, emissions from burning coal, oil, and natural gas release excess carbon that increase CO2 concentration in the atmosphere, trapping heat. When “greenhouse gases” such as CO2, methane, nitrous oxide, and water vapor cannot escape the atmosphere, heat gets trapped and the global temperature will rise.

The connection between human activity and climate change became a primary focus in the 1972 Stockholm Declaration, but states took little action to seriously address these problems. By 1992, scientists had determined that the average global temperature

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had risen at an unprecedented rate over the previous ten years, thus setting the stage for an international agreement to address climate change.\footnote{Ibid.} At the Rio Earth Summit of 1992, 172 heads of state agreed to consider alternative energy options, patterns of production involving greenhouse gasses, and increased reliance on public transportation systems, which produced two outcome documents on sustainable development and environmental responsibilities of states.\footnote{Ibid.} The United States participated in the Rio Earth Summit and is a signatory to the UNFCCC. In 1993, President Clinton intended to fulfill the obligations inscribed in the UNFCCC by pushing domestic legislation to seriously address climate change and sustainable development mechanisms through U.S. aid commitments. His administration developed the Climate Change Action Plan (CCAP) in 1993, a $1.9 billion venture that responded to the “twin challenges” of reducing the effects of climate change while protecting the American economy.\footnote{William J. Clinton and Albert Gore, Jr., “Executive Summary of the Climate Change Action Plan” (Washington DC: 1993), http://www.gcrio.org/USCCAP/index.html} The CCAP proposed to cut emissions down to 1990 levels by the year 2000 by committing to reduce emissions of greenhouse gasses, partnering with businesses exhibiting green production practices, creating new jobs, and investing in future technology to develop alternative energy processes.\footnote{Ibid.} The CCAP was an ambitious policy that eventually was swallowed up by higher priority environmental initiatives. That same year, Congress struck down a tax on heat content of fuels (Btu tax) after extensive negotiations with President Clinton’s White House.\footnote{Ronald D. Brunner and Roberta Klein, “Harvesting Experience: A Reappraisal of the U.S. Climate Change Action Plan,” Policy Sciences 32 (1999): p. 134. http://sciencepolicy.colorado.edu/admin/publication_files/1999.17.pdf; Paul F. Horvitz, “Clinton Retreats

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\footnote{Ibid.}
consistently fall short of its targets, specifically, reducing emissions to 1990 levels by 2000. The pessimism that accompanied the CCAP through its first few years in the 1990s paved the way for tense domestic and international negotiations of appropriate strategies and interests to consider when pledging to reduce emissions. By the beginning of negotiations over the Kyoto Protocol, the Clinton Administration had achieved relatively little progress domestically in reducing greenhouse gas emissions.

In 1997, the parties met again to address the shortcomings of the Rio Declaration and the progress made in the five years since it entered into force. In these meetings, states endeavored to create a legally binding treaty to mitigate the causes of climate change. The meetings produced the Kyoto Protocol, negotiated in 1997 in Kyoto, Japan, during the worldwide refocus on the commitments made in Rio. The Kyoto Protocol to the UNFCCC, agreed in 1997, is a binding legal mechanism for developed states (Annex I) to reduce aggregate emissions of greenhouse gasses by 5.2 percent below 1990 levels during a pre-determined five-year commitment period. The states negotiating the terms of the treaty included several flexibility mechanisms to assist Annex I states in achieving such substantial reductions. The Protocol allows states to create emissions trading schemes, which commoditize carbon emissions and incentivize investment in cleaner energy technologies. States that have not used their allotted units of carbon dioxide and weigh in under their target can sell those units to states that will go over the limit.221

In order to address the constant battle between development and environmental policy, the Kyoto Protocol also has a Clean Development Mechanism that awards emissions credits to developed countries for funding clean development projects in non-Annex I countries that help meet emissions targets.\(^\text{223}\) Finally, states can join other states to jointly implement treaty provisions and undertake simultaneous projects for carbon emission reduction and count those towards their targeted reductions under Kyoto.\(^\text{224}\) Annex I countries are mandated to reduce emissions below 1990 levels by signing the treaty, but non-Annex I countries are not legally bound to such restrictions, which became the primary objection by the U.S. Despite international skepticism, the Protocol entered into force in February of 2005 on the ninetieth day after being ratified by 55 nations.

The first commitment period for the Kyoto standard began in 2008 and ended in December of 2012. At the December 2012 Conference of the Parties (COP) to the UNFCCC, states voted to renew the Kyoto Protocol for another commitment period after attaching amendments on issues such as the length of the commitment period and list of greenhouse gas (GHG) chemicals. The second commitment period began January 1, 2013 and will end in 2020.\(^\text{225}\) Currently, the Kyoto Protocol has 190 state parties, with one notable exception: The United States has not yet acceded, ratified, or approved the Protocol. The United States government, while initially supportive of the Kyoto Protocol or a similar binding legal treaty that restricted carbon emissions, ultimately rejected several components of the final document and eventually exhibited unwillingness to


\(^{224}\) Kyoto Protocol, Art. III.

cooperate under the terms of the treaty. Citing unequal costs and irreparable economic damage, U.S. administrations since 1997 have refused to consider any emissions reduction treaty that employs a similar framework as Kyoto.²²⁶

Scholars have considered various factors in the United States’ international and domestic decision-making process regarding climate change and environmental policy. Facets of the domestic political system and aspects of the U.S. political culture do not easily facilitate emissions reduction. First, because the U.S. political system was created to prevent the tyranny of big government, checks and balances and the influence of public opinion often discourage extensive intrusions into the private sector. The American public tends to view regulations and excessive taxation as intrusions on individual freedom. Many global environmental issues involve a multitude of stakeholders in domestic and international policy, and the U.S. is no exception. Industrial and agricultural actors have an extraordinary amount of influence in Congress through political donations, providing jobs to constituents, and lobbying power.²²⁷ Any policy restricting emissions would require extensive coordination between several government agencies, the executive branch, both houses of Congress, industry, interest groups, and the public. Additionally, American political culture and the historical reliance on natural wealth have created the emissions-dependent development path that the U.S. is so reliant upon, making the decision to curb development and progress for the sake of the


environment non-intuitive.\textsuperscript{228} Such attitudes, along with pushback from certain political factions, make climate change policy politically suboptimal. However, they do not necessarily preclude the possibility of regulation on emissions. U.S. ratification of the Montreal Protocol successfully regulated industrial production in order to phase out harmful emissions for the ozone layer. However, a similar scenario for climate change has not yet unfolded. At the negotiations over the UNFCCC in 1992, the delegation representing the U.S. was one of the only developed countries not to agree to set domestic emissions reduction targets.\textsuperscript{229}

Under a Democratic administration, the U.S. delegation entered COP 1 in 1995 with a more engaged attitude than at the Rio Convention, determined to negotiate an acceptable emissions reduction agreement that would seriously address climate change. The U.S. delegation established several objectives for the negotiations, including binding reductions for all countries, not just developed nations even though they tended to be the highest emitters.\textsuperscript{230} A powerful coalition of developing countries called the “Green Group” challenged this notion and successfully influenced the negotiations to broker an agreement that reflected the Berlin Mandate, which codified the polluter pays paradigm, placing the entire cost of reducing GHG emissions on Annex I countries, paving the way for the Kyoto Protocol.

This mandate carried over into COP 2 in 1996 where the U.S. delegation agreed to negotiate legally binding emissions reductions and to align themselves with a majority of their Western allies by accepting the polluter pays paradigm, much to the chagrin of

\textsuperscript{228} Ibid, p. 13
\textsuperscript{230} Depledge, Against the Grain, p. 15.
domestic industrial actors and the Republican Congress. After proposing a timetable that would place binding targets on all nations, including developing countries by 2005, the U.S. delegation proposed a strategy to satisfy both the principles in the Berlin Mandate (polluter pays paradigm) and the U.S. Congress, which was frustrated by the lack of developing country participation. This strategy would allow a seven-year window for industrialized nations to bear the cost of binding reductions while developing countries prepared their economies domestically for implementation beginning in 2005. Both the coalition of developing countries in the negotiations and Congress rejected the proposal.

In response to the debates over developing country participation in the Kyoto negotiations, Congress passed the Byrd-Hagel Resolution, formally requesting to the President that the delegation not accept any treaty that does not include binding emissions reductions on developing countries. While not legally compelling, the bipartisan Resolution put significant limitations on the delegation because it indicated that ratification by the Senate would be unlikely for any treaty not adhering to those state aims.231 The Resolution additionally demanded that the U.S. delegation not accept any treaty that would harm the U.S. economy. The Clinton Administration’s proposals also differed significantly from the rigorous measures proposed by other industrialized countries at Kyoto. In order to keep economic effects to a minimum, President Clinton continued with his CCAP plan, but extended the deadline to 2008, pledging to reduce emissions to the 1990 level by that deadline. Other nations in the negotiations were under the impression that all industrialized countries would have to reduce their emissions below the 1990 level.

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231 Ibid, p. 15; A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change, S. Res. 98, 105th Cong. (1997).
The final objective of the U.S. delegation was to create a series of flexibility mechanisms to mitigate the costs of meeting the assigned emissions targets. The delegation was willing to compromise on the level of reduction, but would absolutely not accept moving the deadline earlier than 2010. In addition the U.S. delegation proposed mechanisms such as borrowing, banking, joint implementation, and emissions trading as ways to assist countries in meeting their reductions targets. Banking refers to allowing unused emissions credits to carry over into future reductions periods, while borrowing would allow one country to borrow emissions allowances from future periods to meet the present one. The banking option did make it into the final treaty, but the borrowing option did not. These mechanisms were innovative to other countries at the table, but further exemplified the exceptionalism of U.S. ambitions to make the binding targets as easy as possible on the domestic economy.

Eventually, eighty-four states adopted the Kyoto Protocol without developing country participation, thereby placing high costs on the U.S. and other Annex I states for reducing emissions past 1990 levels, a higher amount than advocated by President Clinton. The U.S. delegation decided to work with the international community instead of abandoning the core environmental beliefs of the Administration, despite the increasing opposition in Congress. The U.S. signed the Protocol in 1998, but leadership in the Senate declared the ratification “dead-upon-arrival.” The Clinton Administration sent delegations to future discussions over the implementation of the Protocol, and continued to support the UNFCCC vision, but when George W. Bush won the Presidency in 2000, the new president rapidly declared that he had “no interest” in the provisions of the Kyoto
Protocol and that pursuing CO2 reduction had been a mistake. Even though many U.S. officials during the Clinton Administration pledged to continue with the Kyoto process in order to broker a version of the Kyoto Protocol that the U.S. could ratify, the strong rhetoric against the principles of the Protocol from President Bush shocked many in the international community. Since the rejection of the statute, the U.S. has continued to reject the Kyoto Protocol as it is, despite ratification by 190 nations, and has begun to address climate change independent of the international community.

**U.S. Involvement in the Kyoto Protocol**

The United States’ interaction with the Kyoto Protocol, relative to the Multilateral Policy Scale, evolved significantly from the time negotiations began in 1996 to the present discussions. The U.S. has not ratified the Kyoto Protocol, completely rejecting the provisions of the treaty and choosing to address climate change unilaterally, bilaterally, and even through other multilateral forums. The U.S. has not complied, even informally, with the expectations of the Kyoto Protocol. The U.S. has not offered any resources to the Kyoto Protocol’s mechanisms. While the U.S. initially showed substantial diplomatic support for an international agreement with binding emissions targets like Kyoto, over time, that support withered, and the Protocol as it has stood has enjoyed relatively little diplomatic recognition from the United States since 2005.

With respect to the first level of the Policy Scale, the United States has not ratified the Kyoto Protocol and there is evidence of the lowest value: obstruction. The delegation to the negotiations in 1998 put a signature on the treaty as an indication of U.S. willingness to continue to work on making the Protocol a treaty that the U.S. Senate

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could ratify—a treaty that met the two main U.S. objectives: binding reductions for developing countries and no harm to the U.S. economy. The Republican controlled Congress at this time had already slashed spending on several mandatory and discretionary funding programs that attempted to reduce emissions, which made movement toward Kyoto emissions targets less likely. President Clinton, after signing the UNFCCC and planning the CCAP program, continued to support the idea of an international treaty addressing climate change. At COP 2, the U.S. delegation, led by Undersecretary of Global Affairs Timothy Wirth, stated that the U.S. would support binding emissions reductions in an international agreement. In 1997, before the negotiations for the Protocol began, Clinton addressed the National Geographic Society stating,

> Today we have a clear responsibility and a golden opportunity to conquer one of the most important challenges of the 21st century -- the challenge of climate change -- with an environmentally sound and economically strong strategy, to achieve meaningful reductions in greenhouse gases in the United States and throughout the industrialized and the developing world. It is a strategy that, if properly implemented, will create a wealth of new opportunities for entrepreneurs at home, uphold our leadership abroad, and harness the power of free markets to free our planet from an unacceptable risk; a strategy consistent with our commitment to reject false choices.

From the early days of his presidency, Clinton had consistently spoken on behalf of the scientific research that attributes climate change to human development and its subsequent dangers for the Earth’s environment. However, when the international

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233 Depledge, Against the Grain, p. 8.
negotiating began, many skeptics inside his administration significantly limited the U.S. position. According to the head of the U.S. delegation at the Kyoto negotiations, Under Secretary of State for Economic, Business and Agricultural Affairs, Stuart Eizenstat, Congress held the key to Kyoto implementation. He expressed the Clinton Administration’s willingness to implement national policy and continue to work with the international community on forming an acceptable agreement, but that no action should take place without the consent of Congress.\textsuperscript{236} Indeed, Congressional attitudes significantly limited the ability of the executive’s treaty-making power. The Byrd-Hagel Resolution, passed by Congress in June of 1997, determined the proposals that the U.S. delegation would take to Kyoto and established the circumstances under which the Senate would ratify such a treaty.

The United States should not be a signatory to any protocol…which would mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period or would result in serious harm to the U.S. economy.\textsuperscript{237}

During 1998, the House of Representatives held several hearings debating the science, geopolitics, and economics of the Kyoto Protocol provisions. During a hearing before the House Committee on Small Business, several scientists from the International Panel on Climate Change (IPCC) informed policy makers of the scientific projections on the effects of climate change on human life. Conservative members of the committee met


\textsuperscript{237} A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change, S. Res. 98, 105th Cong. (1997).
these analyses with skepticism. In a hearing titled, “The Kyoto Protocol: the Undermining of American Prosperity- The Science,” Chairman James Talent (R-MO) began the proceedings stating, “My research into this subject suggests that the catastrophic global warming predictions of the Kyoto Protocol are based primarily on the pretense of a consensus within the scientific community, when in fact no such consensus exists.” Declaring the scientific reports initially misleading, Chairman Talent continued to criticize and question the scientists in attendance regarding their global warming data. During yet another hearing before the House Committee on Foreign Relations, members of the committee expressed concern over the costs to American citizens in industry, the effect of emission reduction regulation on job creation, and infringement upon U.S. sovereignty. Congresswoman Jo Ann Emerson, who observed the Kyoto negotiations, vehemently condemned the agreement as harmful to American citizens and to the American economy.

The scientific community is at odds about whether or not so-called global warming is happening, so…on one hand we have an uncertain “threat of global warming.” On the other hand, we have the reality of a treaty that will destroy American jobs and leave American families scrambling to find ways to simply pay the monthly electric bill.

Finally, there was a domestic concern from Congressional leadership over the effects of climate change negotiation on U.S. national security interests. The language in the Kyoto Protocol addresses circumstances where military action may need to use more fuel emissions in the interest of national security, and allows any multilateral operation

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pursuant to the United Nations Charter to be exempt from emissions reductions. However, according to U.S. critics, this exemption is highly problematic for unilateral U.S. military operations that should not be restricted by an international treaty.\textsuperscript{240} When the negotiation process ended and the Kyoto Protocol was adopted, the U.S. Senate, declared that it did not meet U.S. standards for climate change regulations and would therefore have no chance of being ratified. Congressional leaders cited this decision as one based on concerns over cost to American taxpayers, non-conclusive and contradictory scientific study, and national security interests. However, the U.S. remained committed to attending future negotiations among parties to the Protocol to broker a treaty that would eventually require binding emissions reductions for developing countries, therefore, possibly allowing the treaty to pass in the Senate.

Before the U.S. could broker a deal that assured developing country participation and acknowledgement of American exceptionalism in economic and military terms, George W. Bush was elected President with help from an ideologically conservative base and support from industry. In June of 2001, President Bush declared the Kyoto Protocol “fundamentally flawed” due to its costs to the American economy and the expected one percent decrease in U.S. GDP through implementing measures, the treaty’s lack of inclusion of developing countries, the difficulty with which other industrialized nations will have with their implementation programs, and the idea that the provisions of the treaty are based on uncertain scientific data.\textsuperscript{241} During the Bush era, the executive and legislative branches abandoned any pretenses towards signing the Protocol as it stood.

The United States stopped attending implementation meetings and the parties to the Protocol continued to discuss implementation periods, enforcement mechanisms, and flexibility targets without input from the world’s most powerful polluter.

When President Barack Obama took office in 2009, his administration quickly acknowledged the dangers facing the world due to global warming. During his 2008 campaign and as a president-elect, Obama introduced a domestic cap-and-trade program that would effectively regulate greenhouse gas emissions for domestic businesses through a market structure incentive program and promised to invest $15 billion per year for alternative energy solutions. He praised the continual effort of the international community toward addressing climate change, but he did not express any intention to sign the Kyoto Protocol, and began coordinating an effort to negotiate an alternative treaty to obstruct the existing regime. The views on climate change gratified several world environmental leaders and organizations, warranting recognition from the UNEP Executive Director Achim Steiner, and from the director of the UNFCCC, Yvo de Boer. Both indicated that Obama’s apparent willingness to engage with the international community over climate change issues was a promising step towards achieving a climate change agreement that the U.S. could sign and comply with, unlike the Kyoto Protocol. However, President Obama’s cap and trade program was never signed into law and reflected continued Congressional unwillingness to seriously regulate industrial GHG emissions.

The U.S. continued to attend meetings of states parties to the UNFCCC in Copenhagen, Durban, and Doha, but entered the meetings with a specific objective of replacing the Kyoto Protocol, not signing it or improving it. Therefore, after President Clinton left office in 2001, there has been no significant effort on the part of the U.S. President or Congress to reconsider a new policy towards the Kyoto Protocol and ratify it as it stands. Instead, the U.S., has, over the last ten years obstructed the Protocol’s legitimacy by pushing for a better alternative. Accordingly, after the U.S. pulled out of the agreement, many environmental scholars, observers, and states viewed the treaty as fundamentally ineffectual and the international community has attempted to replace it.

The U.S. has supported efforts to create a new treaty and to institute unilateral emissions reductions programs rather than comply with the provisions of the Kyoto Protocol, indicating that it has satisfied the ‘obstruction’ component of the Multilateral Policy Scale. This means that the U.S. not only refused to ratify the Kyoto Protocol and accept such aggressive regulations on domestic industry, but also has actively sought alternative solutions to addressing global climate change, therefore undermining the Protocol’s relevance and effectiveness.

Because the U.S. is not a signatory or member of the Kyoto Protocol, there has been no effort to institute the reduction targets in the Kyoto treaty—five percent below 1990 levels—into domestic law which would allow the U.S. to comply informally. According to reports from the Department of Energy, total U.S. CO2 emissions from energy consumption rose steadily from 2001 to 2007, from 5754.533 million metric tons to 6,026.284 million metric tons, but began to fall between 2007 and 2011, from 6,026
million metric tons to 5,490.631 million metric tons. In addition to the slight decrease in total emissions in the past five years, domestic carbon emissions per capita underwent a more dramatic reduction. The number of metric tons per person per year decreased 14 percent from 2008 to 2010, indicating an overall decrease in individuals’ carbon footprints. While the federal government imposed relatively few regulations on industry, increased media attention around the effects of climate change have created more mindful citizens who make choices in their everyday lives to limit their effect on the global warming phenomenon, whether it be purchasing a hybrid vehicle, being more mindful to fuel economy standards, or riding bicycles instead of driving cars. Rising gas prices and the general economic slow down since 2008 also contributed to emission reductions, leading to a steady per capita emissions decrease in the last four years. However, total emissions have fallen only slightly and levels are still over three times as high as any other emitter globally. In addition, any progress that the U.S. has made towards mitigating effects on the atmosphere has not been because of Kyoto Protocol provisions or mandates. The U.S. has not provided any improvement according to the treaty goals for Annex I countries and does not operate according to such targets.

The United States has not provided any financial support or resources to the Kyoto Protocol or any of its mechanisms, nor has it engaged with any joint implementation or clean development projects to promote global climate change. In addition, while committed to sustainable development through other mechanisms such as the Global Environment Facility and the Green Climate Fund, the U.S. does not contribute to developing country sustainable development projects through the Kyoto Protocol mechanisms themselves (i.e. the Clean Development Mechanism).

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The United States originally introduced the three flexibility mechanisms, the CDM, joint implementation, and the carbon emissions trading during the initial negotiations at Kyoto, all intended to make the targets easier for Annex I countries to meet and to make the treaty easier to sell to a hostile Congress. The U.S. delegation was successful in codifying joint implementation, clean development initiatives, and carbon commodification, which were included in the final treaty. But, the U.S. didn’t join and therefore does not participate in their implementation or their activities. Instead, the U.S. has pledged to join other similar organizations such as the Green Climate Fund, which was created at the Conference of Parties to the UNFCCC in Cancun, Mexico in 2010, and pledged to contribute to a kick start fund of $30 billion over a three year period, 2010 to 2012 for sustainable development.\textsuperscript{245} The U.S. pledged $1.7 billion between 2010 and 2012 to support developing countries’ sustainable development, low emissions projects.\textsuperscript{246} Therefore, in the past three years, the U.S. has supported alternate mechanisms for funding development projects and has preferred to put funding into UNFCCC mechanisms, not Kyoto mechanisms, due to the general U.S. opinion that the Kyoto agreement is too flawed to be effective.

The Kyoto Protocol, since 1997, has received relatively little diplomatic support from the United States. In its early days, the U.S. enthusiastically pursued a binding international agreement that would impose global emissions targets and attempt to mitigate the greenhouse effect. Even after Congressional skepticism over the economic consequences to the U.S. economy and the lack of developing country participation,

\textsuperscript{245} “Governance and Mandate,” \textit{The Green Climate Fund}, http://gcfund.net/about-the-fund/mandate-and-governance.html; Note: Green Climate Fund is a body mandated by the UNFCCC as a whole and is distinct from the Clean Development Mechanism, which is a mechanism only for the Kyoto Protocol.

President Clinton continued to support the Kyoto efforts. In a statement in December of 1997, Clinton praised the efforts by Vice President Gore and Deputy Secretary Eizentat, “I am very pleased that the United States has reached an historic agreement with other nations of the world to take unprecedented action to address global warming. This agreement is environmentally strong and economically sound…no nation is more committed to this effort than the United States.” In the same statement, Clinton acknowledged the limitations of the Protocol in the view of its opponents and expressed the desire to continue working with the other members of the Kyoto Protocol to reach an international agreement that would include developing country participation. The U.S. continued to attend COP meetings for the parties of the UNFCCC, in 1998 in Buenos Aires, Argentina, in 1999 in Bonn, Germany, and in 2000 in The Hague, Netherlands in order to discuss implementation plans for the Kyoto Protocol. The U.S. delegation’s main objective was to include any language in the treaty that would convince the U.S. Congress that there is a potential for future developing country participation. This objective was not realized and when President Bush took office in 2001, U.S. diplomatic support for the Kyoto Protocol chilled and no longer indicated willingness to ratify the agreement upon further negotiations.

This post-2001 shift in stance towards the Kyoto Protocol began a roundly negative diplomatic campaign against the Kyoto Protocol. After the initial statements by President Bush in June of 2001 when he declared the treaty fundamentally flawed, other U.S. officials in diplomatic capacities continued to express the Administration’s

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criticisms of the treaty. Later in 2001, Harlan Watson, who was a senior climate change negotiator and a “special representative” of the United States, spoke publically against the Kyoto Protocol at an international conference in London.

The United States does not believe that the Kyoto Protocol is the right answer to the challenge of climate change. The Protocol is flawed -- its targets are arbitrary and in many cases unrealistic, it does not include developing countries, and its costs would harm the U.S. economy. The United States has made it very clear that it does not intend to ratify the Protocol. 249

At COP 7 in Marrakesh, Morocco, where the implementation plan for the Kyoto Protocol was decided in 2001, the United States representative Paula Dobriansky emphasized the distinction between activities under the Kyoto Protocol and activities under the Framework Convention. The U.S. would continue to constructively contribute to discussions on reducing climate change and fostering global participation under its treaty obligations for the UNFCCC, but will not accept any obligations under the Kyoto Protocol, funding or otherwise. 250

In addition to the explicit diplomatic condemnation of the Kyoto Protocol received by U.S. officials after 2001, the administration initiated more subtle diplomatic efforts to ensure the demise of the Kyoto Protocol as the dominant international agreement on mitigating climate change. The Bush Administration began reiterating in subsequent COP meetings that the U.S. recognized that the problem of climate change could not be solved unilaterally, and was committed to finding an “acceptable” global,

multilateral solution to reduce GHG emissions.\textsuperscript{251} At this point, the United States began pursuing two diplomatic avenues. The first was to begin to use the COP meetings as negotiations for an alternative multilateral treaty that would include developing country participation and less stringent obligations for the United States, lowering the impact on the economy. The second was to begin negotiating bilateral agreements with other nations and attack climate change by circumventing existing multilateral channels. In 2001, the United States signed a joint research agreement with Italy\textsuperscript{252} and a joint climate mitigation agreement with Spain.\textsuperscript{253} In 2002 alone, the U.S. engaged in bilateral partnerships to reduce climate change with “Australia, Canada, China, seven Central American countries (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama), the European Union, India, Italy, Japan, the Republic of Korea and New Zealand, on issues ranging from climate change science to energy and sequestration technology to policy approaches.”\textsuperscript{254}

In addition to bilateral approaches, the Bush Administration sponsored smaller multilateral initiatives with a more regional focus. In 2005, the U.S., Australia, South Korea, China, Japan and India created The Asia-Pacific Partnership on Clean Development and Climate which addressed sustainable development, low emissions trading, and a development bank to finance clean energy projects. The U.S. proposed

\begin{itemize}
\item \textsuperscript{252} “U.S.-Italy Pledge Joint Research on Climate Change,” U.S. Department of State, http://2001-2009.state.gov/g/oes/rls/fs/2001/4158.htm
\end{itemize}
spending $52 million towards this initiative in the 2007 Appropriations budget. In 2007, the State Department released the U.S. delegation’s goals for the climate negotiations at COP 13 in Bali, which included a “roadmap” for future climate change negotiations to be decided by 2009 and implemented in 2012, after the expiration of the Kyoto Protocol’s first commitment period. President Obama continued upon this trajectory, and sent delegations to Copenhagen in 2009, Cancun in 2010, and Durban in 2011 in order to negotiate a new international agreement on reducing climate change. The results of these conferences have so far dismayed climatologists, scientists, and environmentalists alike, for states have yet to produce a viable new treaty with binding targets and timeframes. COP 15 in Copenhagen was expected to be a turning point in international climate change agreements, and President Obama expected to broker a new treaty that would replace Kyoto and remain within the UNFCCC. The parties fell short of this aspiration. The only outcome of Copenhagen was the “Copenhagen Accord” which, while setting ambitious goals for climate finance, did not clearly give a date for which emissions targets should be met when and contained no compliance mechanism that would incentivize any nation to stop emitting GHGs. Finally, in Doha, Qatar in December of 2012, parties to the Kyoto Protocol surprised many climate change watchers by renewing the Protocol for a second commitment period, to expire in 2020.

The level of U.S. involvement in the Kyoto Protocol largely falls on the negative side of the Multilateral Policy Scale. The evolution of the independent variable is demonstrated in the visuals below:
U.S. Involvement in Kyoto Protocol - 2001

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

White House and EPA Statements
No contributions to CDM or funding.
Rising emissions, developed unilateral policy

U.S. Involvement in Kyoto Protocol - 2009

(9) Ratification
(8) Compliance
(7) Providing Resources
(6) Diplomatic Support
(5) Ignore
(4) Diplomatic Antagonism
(3) Refusal to Provide Resources
(2) Non-Compliance
(1) Obstruction

Did not fund or participate in Kyoto mechanisms.
Has not reduced GHGs to Kyoto levels.
COP 15 in Copenhagen attempted to negotiate new treaty.
The Senate, from the beginning of the negotiations refused to ratify a treaty that did not include developing country support or economic flexibility. By the end of the Clinton Administration, the U.S. delegation did not succeed in brokering a Protocol that would satisfy the requirements delineated by the Byrd-Hagel Resolution and despite Clinton’s ambitions to revise the treaty, the Kyoto Protocol was never ratified. The Bush and Obama Administrations also agreed that the treaty was flawed and that U.S. ratification of that particular agreement would not be feasible. They, therefore, began pursuing alternative means to address climate change and to fulfill their obligations under the UNFCCC. In addition to opposing the Kyoto Protocol, both administrations sought to replace it with bilateral agreements or new multilateral treaties under the UNFCCC framework. Ratifying the Kyoto Protocol was never an option for the United States, and all efforts to negotiate a Protocol that the U.S. could sign ended in 2001.
The Effectiveness of the Kyoto Protocol

In order to address effectiveness of the Kyoto Protocol, this chapter employs the framework previously addressed in the first section by combining the theories of Gutner and Thompson and those of Thomas Bernauer. The Kyoto Protocol is assessed based first on output performance and how well it has achieved its stated goals so far. The primary scope of this measurement will be from 2008 through 2012, its first commitment period and will be applied to total global reductions as well as various geographic regions. This section then assesses the extent to which the Kyoto Protocol contributed to the global process of mitigating climate change through international agreements by looking at its internal structural mechanisms and the contributions Kyoto has made to further multilateral approaches to environmental issues.

Generally, scholars who wrote before the Kyoto Protocol even entered into force doubted its ability to be a successful treaty. Scientists, after calculating the costs of implementing the Protocol, determined that even with U.S. participation, aggregate emissions for Annex I countries would only fall to about 3 percent below 1990 levels, not the 5 percent as initially stated. Without United States support Protocol mechanisms would be underfunded and the market that drives carbon trading would be significantly limited. In addition to those institutional effects, by 2002, parties to the Kyoto Protocol, absent the U.S., China, and India, covered only 30 percent of global emissions. In addition to the lack of U.S. support, some observed that the EU, Japan, and Canada were not on target to meet their reduction targets, which, in 2004, made the Protocol’s entry into force

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258 See Chap. 1
unlikely. It was also unlikely that China, India, or Brazil would agree to any reduction in carbon emissions, since those delegations repeatedly emphasized their lack of responsibility for the problem and their limited capacity to implement the changes. Some of the problems that scholars associate with the Kyoto Protocol and its shortcomings deal with economics of global warming agreements and the structure of the emissions limits.

First, reductions past 1990 levels seemed arbitrary to many observers to the agreement. The criticism that choosing a historical date leaves out several more accurate indications of reducing the impact on the environment such as carbon concentrations, temperature, or costs. In addition, some scholars considered the idea of limiting quantity of emissions troublesome because it does not consider differentiated economic growth among states and uncertain technological futures. Some literature suggests that instead of assigning a quantity reduction of carbon emissions relative to a baseline year, the international community should decide on a harmonized domestic carbon tax and establish the desired baseline at a zero-carbon-tax. This approach would prevent volatility in carbon prices and allow states to operate on more familiar terms: countries have been debating and negotiating over tariffs and tax treatment for many years. Quantity-based emissions reductions require more knowledge of science and technology than was available. While those structural observations are not without fault, the arguments represent a consensus that the Kyoto Protocol was structurally flawed. Relating to those

structural problems, some scholars also posit that Kyoto was a short-term agreement with the intention of being a long-term agreement. The treaty assumes that developing countries could make rapid reductions in a short time frame, but it does not acknowledge the sheer length of time it will take in order to implement sustainable and lasting substitutes for GHG emissions. Technological advancement, alternative energy science, and industrial turnaround could take decades to develop to the extent expected by the emissions targets in the Protocol. It is not a sustainable document, which has became evident in the lead up to the first commitment period, which was only five years. The most recent COP meetings have reflected the general opinion that the Kyoto Protocol is not a sustainable framework, because a majority of those meetings are spent attempting to negotiate a replacement. Therefore, the literature on the effectiveness of the Kyoto Protocol is largely based on skepticism and structural criticism. Before the Protocol entered into force, and before the first commitment period began, many authors disagreed with the agreed framework and were dubious about its ability to achieve lasting environmental effects without the support of the United States, China, India, or Brazil.

The first indicator of effectiveness measured in this chapter is how well the institution achieved its stated goals. Scientifically, the Kyoto Protocol wanted to reduce aggregate GHG emissions for Annex I countries to 5.2 percent below 1990 baseline levels. Looking at various scientific indicators of climate change including CO2 emissions, global temperature, sea levels, and Arctic ice areas, it is easy to see why scientists have been dismayed by the lack of progress. Since 2005, global carbon concentration in the atmosphere has risen nearly twenty parts per million (ppm), up from

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378 to 395 ppm. Global temperatures have risen approximately .8 degrees Celsius in the last century. Land ice and Arctic ice have continued to decline sharply, and the sea level has risen nearly two meters since 1900. While a century may seem like a long time, the speed with which climate change effects can occur has created a rather dismal portrait of the next 100 years if countries continue their “business as usual” emissions.

Scientists have determined the physical consequences that will accompany every degree increase in global temperature. Approaching a one-degree increase, crop yields will begin to decline in several developing regions, coral reefs will incur irreversible damage, and mountain glaciers will melt, significantly impacting water supply in some regions. Above a two-degree increase in global temperature, scientists predict that there could be a 25 to 60 percent increase in people at risk of hunger, significant impacts on water supply, increased frequency of floods and hurricanes, large extinction, and the onset of complete destruction of the Amazon basin. Scholars have also determined that the environmental degradation associated with climate change could significantly impact security arrangements due to food shortages and migrations. Above a three-degree increase, various ecosystems would become irreversibly damaged and all areas of the globe would be affected by food shortages, increased intensity of storms and forest fires, water shortages, and abrupt changes in the climate system. Around the five-degree increase mark, rising sea levels would threaten coastal cities such as London, New York, and Shanghai. Globally, GHG trends per capita have decreased since 2008 in the

266 All temperature specifications will be in Celsius.
United States and Europe, but have dramatically increased in China, India, and other
developing countries. However, total global GHG emissions continue to rise
dramatically, despite total reductions by the EU. However, the question this section
answers is, how much of these environmental effects were caused by the Kyoto Protocol?

Looking at the original treaty goal regarding binding emissions reduction targets-
at 5 percent below 1990 levels for Annex I, on face value, it appears that the Protocol has
been successful in this regard. Out of the 37 Annex I countries, their aggregate reductions
reached around 8 percent below 1990 levels during the first commitment period. This
apparent success is mitigated by two factors. First, most of the progress in global
emissions reduction came from Europe, where many of the EU countries underwent rapid
de-industrialization in the post-Cold War era, accounting for an inevitable decline in
emissions. While deindustrialization does mitigate climate change, the Kyoto Protocol
targets themselves did not cause this emissions reduction in Europe. The second
mitigating circumstance is the dramatic increase in GHG emissions from developing
countries, which has driven total global emissions upward. The Kyoto Protocol does not
include binding restrictions on these non-Annex I countries’ emissions, but rather
attempts to incentivize Annex I parties to invest in clean development projects through
the CDM, joint implementation and carbon trading mechanisms. The data trends,
showing a rapid increase in emissions in non-Annex I parties indicate that those
mechanisms have not had significant success in mitigating climate change in regions that
do not have the internal capacity to meet reduction targets. Therefore, while the original
treaty goal was accomplished during the first commitment period, its significance was

269 “Total Greenhouse Gas Emissions,” chart. UN Framework Convention on Climate Change, 2010,
greatly mitigated by external factors and the inability of the Protocol to adequately stem emissions from developing countries.

The second measure of effectiveness addresses how much the institution has contributed to global processes to stem climate change through international cooperation. This section analyses internal process performance in addition to how that institutional structure is contributing to the global discussion on environmental governance relating to climate change. The Clean Development Mechanism, discussed in the initial Protocol agreement in 1997 and officially adopted in Marrakesh in 2001, is one of the most frequently scrutinized institutional mechanisms relating to climate change and sustainable development. While established to incentivize Annex I countries into investing in clean energy projects in non-Annex I countries by having those emission reduction credits applied domestically, the CDM plays a complicated role in achieving sustainable development. Several studies have concluded that CDM tends to prefer cost-effective projects as opposed to projects that would be the most sustainable, which has caused friction between the CDM and leaders of recipient countries, who feared that Annex I countries would fund the cheapest, easiest options with little regard to the development needs of the recipients.\textsuperscript{270} In a study conducted in 2006, the resulting data on the impact of CDM projects exemplified this trade-off between cost effective development projects that will achieve rapid carbon reductions and sustainable development. While only 1 percent of the projects were projected to achieve sustainable development, over 75 percent of the projects achieved carbon reductions.\textsuperscript{271} While successful in the short term,

\begin{footnotesize}
\textsuperscript{271} \textit{Ibid}, p. 67.
\end{footnotesize}
these projects have not succeeding in establishing sustainable development in regions and those developing countries have continued to emit at a higher rate.

The other prominent internal mechanism in the Kyoto Protocol is the carbon-trading scheme that was implemented as a flexibility mechanism for Annex I countries to achieve their targets. This system allots a certain amount of emission permits per state, and if the state had extra units to spare, it can sell them to countries that exceed their assigned targets. The price of carbon should be higher than costs of cutting emissions, to incentivize firms into reducing emissions instead of relying on the purchase emissions credits. The markets can be implemented at the national or regional level and governments would be responsible for setting emissions limits on certain sectors or firms. The European Union currently has the largest regional market for emissions trading, and has been moderately successful in reducing emissions. Calculations for the emissions reduced due to carbon trading scheme were above 50 million tons of carbon, with around 65 percent of firms participating in cleaner energy initiatives.\textsuperscript{272}

However, the European system represents a modest success compared to the nine billion metric tons of carbon in the atmosphere as a product of GHGs and has not experienced a good record of implementation. The European system currently assigns firms their emissions allowances based on past emissions problems, incentivizing firms to emit extra tons of CO2 in order to get more allowances down the road. In addition, because this market structure is forward-looking and firms are attempting to maximize future benefits, the price of carbon in future periods is a very important factor. But the

Kyoto commitment periods are only five years in length and are not suited to long-term price assessment of carbon units. Again, with the implementation of carbon markets under Kyoto Protocol provisions, problems arise due to the short-term nature of the treaty. The Kyoto Protocol with its various scientific uncertainties and short commitment periods does not encourage investment in sustainable development or in firms to invest in long-term carbon reductions and therefore is unable to contribute to the expanding global climate change efforts.

The final measure of internal process performance as it relates to internal effectiveness focus on the compliance and enforcement mechanisms currently employed by the Protocol. The inability to create reliable enforcement mechanisms has been one of the most publically criticized components of the Protocol during the first commitment period. In 2011, Canada withdrew from the agreement, citing economic difficulties and inability to even come close to meeting its Kyoto obligations. After Canada’s withdrawal, Russia announced that it would not be taking any additional measures to comply with the Protocol and did not renew their commitments at the Doha meeting. Canada, in recent years, has demonstrated its preference to align itself with U.S. domestic climate change legislation. During debates in the Canadian House of Commons in 2011 on climate change, some MPs emphasized that the United States should be a target for Canadian investment in sustainable development. In addition, the Canadian government has agreed to align its emissions reduction regulations with those of the United States in order to reduce GHG emissions by seventeen percent by 2020. Therefore, there is some

evidence that Canada is following the U.S. example on climate change policy, and if the U.S. had joined the Kyoto Protocol, Canada might not have withdrawn.

One of the most difficult principles for any international organization is how to keep nations within the regime even if it is not in their interest. A Compliance Committee, made up of twenty representatives from different regions, monitors a complex compliance system under the Protocol. When a state submits a question regarding possible non-compliance, the Enforcement Board of the Compliance Committee assembles preliminary and annual reports to determine if a state is in non-compliance with its treaty commitments. If so, the Committee enacts consequences that consist of an action plan to make up for lost emissions and loss of participation in various financial mechanisms. Thus, the compliance mechanism is structured to incentivize states to comply by making non-compliance costly. However, if a state does not comply, it submits itself to the sanctions imposed by the Compliance Committee. Under these circumstances a state can either accept the increased financial burden, or withdraw from the agreement. As evidenced by the recent withdrawal of Russia and Canada because of non-compliance, states are more likely to choose the latter option because the costs of remaining party to the treaty outweigh the benefits. Overall, despite being a crucial step towards a legally binding agreement to mitigate climate change, the Kyoto Protocol is a short-term document with longer-term mechanisms, rendering them slow and ineffective. The cost-benefit scheme of complying with the Kyoto Protocol is a crucial component in assessing how the U.S. might impact the Kyoto Protocol’s effectiveness. The next section will explore the relationship between the variables.

U.S. Impact on the Effectiveness of the Kyoto Protocol

This section applies process-tracing methods to both variables to determine whether U.S. involvement has had an impact on the Kyoto Protocol’s effectiveness. Several aspects of the Kyoto Protocol’s effectiveness assessment can be influenced by U.S. policy, and this section argues that in some areas, increased U.S. support could help the Protocol be more effective, particularly in the CDM and emissions trading mechanism. However, the overall progress and structural shortcomings of the Kyoto Protocol—problems with compliance or investment—would not have been more effective even if the United States had joined and cooperated from the very beginning. This finding contradicts the “indispensable” theory, because it indicates that the U.S. may not possess the ability to make an institution operate more efficiently and achieve better results. The primary rationale for this finding comes from the economic and technical preferences demonstrated by the United States over decades of addressing climate threats, and from the emissions regulation trajectory the U.S. was on during the implementation period of the Kyoto Protocol. Both of those factors would have significantly limited the U.S.’s ability to comply with the treaty. This section argues that instead of incurring fines and costs for non-compliance, the U.S. would have withdrawn from the treaty in a similar manner to that of Canada.

First, it is imperative to address certain mechanisms within the Kyoto Protocol that could be significantly improved with a higher level of U.S. involvement. First, the Clean Development Mechanism, a crucial tool to ensure developing country support, relies on the willingness of Annex I countries like the United States to invest in projects that encourage sustainable development in non-Annex I countries. The CDM’s record on
establishing long-term, sustainable results has been poor, with donors preferring cost effective solutions in the short term instead of investing in sustainable projects. If the United States participated in this system, it is likely that they would be willing to invest in more sustainable projects. Evidence for this preference was first demonstrated during the negotiations for the Kyoto Protocol. A clean development mechanism that would encourage developing country participation was an American idea. One of the reasons for such a mechanism is that it provides offsets in the U.S.’s own domestic reductions targets. Any CDM-funded project in a development country would give the developed country more carbon allowances to meet its treaty obligations. Because the U.S. would have to incur such dramatic reductions in carbon emissions, it would have had to rely heavily on offsets from development projects. In addition to the flexibility afforded to U.S. industry from extra carbon allowances, these projects will also reduce emissions in developing countries and hopefully incentivize them to cut back on emissions as well. Given the vigor with which the U.S. pursued developing country participation, they would have been able to strengthen the CDM through investments. Additionally, during the past five years of the Obama Administration, the U.S. has demonstrated its willingness to invest in clean energy technologies and industries both domestically and abroad through the Clean Energy Ministerial, partnerships to reduce short-lived pollutants, enhancing tariff agreements with APEC countries, and encouraging sustainable use of unconventional natural gas resources in other regions.276 U.S. involvement would therefore increase the frequency of CDM projects, their

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sustainability, and overall carbon reduction in developing countries, which is one of the biggest problems facing the Kyoto regime.

By joining the Kyoto Protocol, the U.S. would have developed an emissions trading scheme, similar to that in Europe that would have allowed for greater flexibility in meeting targets. The U.S. has had a strong preference for emissions trading schemes over the past decade, having successfully implemented emissions trading markets for acid rain and nitrous oxide. The Obama Administration attempted to institute a cap-and-trade program upon arrival in office in 2009 that would require firms to meet 20 percent of their energy demands with alternative sources, but the legislation was defeated in the Senate. By being bound to treaty obligations to make significant reductions, U.S. Congress would be more compelled to pass cap-and-trade laws that would allow firms more incentive and flexibility to meet rigorous reduction targets. So while implementation of an emissions trading scheme in the U.S. would help reduce overall global emissions, it would still be ill-suited to incentivizing long-term investment if adhering to the Kyoto Protocol’s short commitment period. The EU ETS is suffering from low carbon prices and low incentive for long-term investment in cleaner energy because the commitment periods for Kyoto are so rapid. The U.S. joining the Protocol and implementing a similar emissions market would succumb to the same problem and would not make the Kyoto Protocol more structurally efficient in this way.

However, in the other aspects of the Kyoto Protocol’s effectiveness, the United States has a much more limited impact. One of the primary downfalls as discussed above is the weak compliance mechanism and high costs of compliance. Canada and Russia have withdrawn from the treaty because they did not want to continue to incur greater

costs associated with meeting additional targets and paying extra for non-compliance. The United States, if they ratified the Kyoto Protocol and accepted their emissions reductions, would have faced a commitment to reduce emissions by seven percent below 1990 levels. Given that President Clinton’s CCAP required merely returning to 1990 levels by the year 2000, which had already proved to be too costly for U.S. industries, the U.S. would have a hard time complying with even more rigorous demands. The Kyoto Protocol asked an additional seven percent increase that would have cost the average American citizen an extra thousand dollars a year. By 1997, when negotiating the Protocol, the U.S. was not on target to meet the requirements in the CCAP.

There was a norm within U.S. policymaking that began during the domestic CCAP and Kyoto debates that linked absolute emissions reduction to GDP. Without economic growth, the U.S. government has consistently argued that investment in clean energy initiatives could not happen.\(^\text{278}\) So, emissions in the U.S. continued to rise until 2006 and dropped slightly in 2007, but did not come close to achieving the standard of seven percent below 1990 levels, much less, the promises by subsequent administrations. Because of the lack of progress made by the U.S. before the Kyoto Protocol was ratified or before the first compliance period started, the U.S. could not have complied with its treaty obligations and would have incurred significant costs. The U.S. has not only demonstrated a preference to prioritize economic issues over environmental issues, but has also pushed for alternatives to the Kyoto Protocol, indicating that if faced with increased costs due to non-compliance, the U.S. would likely withdraw from the treaty and choose to pursue an alternative climate change framework. The determination that the U.S. would not have been able to comply with the Kyoto Protocol, even if the Senate

had ratified it, complicates several tenets of hegemonic stability theory and the basis of Albright’s original claim. In the case of the Kyoto Protocol, the presence of a hegemon does not facilitate cooperation because the structure of the institution made compliance too costly and the hegemon would seek an alternative. The Kyoto Protocol is in the same position, even without the U.S. ever having joined, and is largely seen as a weak, ineffective agreement that should be replaced within the next few years.

**IX. Conclusions**

After examining the case studies, it is clear that United States policy toward a multilateral institution has a certain amount of influence over that institution’s effectiveness. These case studies suggest that while U.S. support is not a necessary condition for cooperation, it is necessary for more effective cooperation. Generally, higher values of U.S. involvement correlate with higher values of effectiveness, and areas with lower values of U.S. involvement correlate with lower effectiveness scores. Several multilateral regimes have continued to operate without U.S. support, but this thesis concludes that those institutions tend to be less effective than those with U.S. support. In order to expand upon the trends that emerged in the empirics of this paper, this conclusion reviews findings of each case to summarize major empirical observations. Then, this section explores a broader case study comparison in order to identify new theory and to suggest directions for future research.

*Summary of Findings*

In the case of the Montreal Protocol, the United States has ratified the agreement, maintained a good compliance record, contributed to the internal and structural components of the institution and has supported the agreement diplomatically. The
independent variable in this case did not result with as wide a variety as it did in other cases, and remained consistently positive despite several factors that could have reduced U.S. cooperation and support. The agreements made in the Montreal Protocol entered U.S. law in 1991 and consumers drastically reduced consumption of ODSs and has allowed the United States to meet and surpass every deadline agreed upon for developed states. The U.S. has successfully phased out nearly all of the ODS in domestic consumption, and has also contributed to the Montreal Protocol internal structure by sponsoring and investing in continued scientific study of the ozone layer and its interaction with certain chemicals, in contributing large amounts of funding and leadership to the Multilateral Fund, which ensures compliance and participation from developing countries, and by promoting the American industrial sector which successfully created an economically and environmentally-viable substitute which allowed nearly universal ratification.

According to the definition of effectiveness explained in the introductory chapter, the Montreal Protocol has been very effective both in output effectiveness and internal performance. It has achieved a near global phase out of ODSs and universal participation in both developed and developing countries. Internally, the success of the Multilateral Fund and the development of an economically viable substitute for CFCs have influenced developing countries to sign onto the agreement. The Montreal Protocol’s enforcement mechanism that relies on trade restrictions with states in non-compliance has ensured high levels of compliance. The United States’ involvement in the Montreal Protocol had a significant impact on the treaty’s ability to achieve universal ratification and high levels of compliance. Because the United States produced over 50 percent of ODS emissions,
the Montreal Protocol could not have achieved complete global phase-out without U.S. participation. In addition, the United States’ efforts to develop a chemical alternative to ODSs and the U.S. government’s sponsorship of extensive scientific research on atmospheric chemistry influenced other states to sign the agreement. The Chinese delegation during the meetings of the Montreal Protocol stated that they would not sign an agreement unless developed countries would support their reduction efforts. Similarly, the United States influenced developed countries to sign onto the Protocol such as Great Britain, France, and Germany. Finally, U.S. compelled ratification due to domestic laws that restrict trade with producers of ODSs. Without the U.S. support for scientific study and development of alternatives, many actors would not have been compelled to sign on. If the U.S. had not joined the Montreal Protocol, ozone depletion would have accelerated. Without an international agreement, U.S. industry would not have invested in finding chemical alternatives because there wouldn’t have been a market for them. Therefore, in this case, there is a clear indication that the U.S. greatly contributed to the capacity of the treaty to be more successful, achieve more compliance, and have a further reach by reaching universal ratification.

Moving down the Multilateral Policy Scale, the International Aid Transparency Initiative demonstrated United States’ support for an institution despite hesitating to sign an agreement. Despite supporting the efforts towards aid effectiveness and transparency enshrined in the Paris Declaration of 2005 and the Accra Agenda for Action in 2008, the United States did not immediately sign on to IATI. The U.S. participated in the discussions of the Technical Advisory Group of IATI after its establishment in Accra, but did not initially sign the agreement because it could not comply with the publication
obligations. The U.S. faces extraordinary domestic challenges to coordinate all aid spending data from twenty-four agencies because they all differ in types of data management systems, fields of coverage, and initial levels of publication. Despite not being an original signatory to IATI, the U.S. government, particularly during the beginning of the Obama administration, attempted to build up capacity to comply with aid transparency norms through the Open Government Platform and the Foreign Assistance Dashboard. The Dashboard, while rudimentary in 2008, was intended to be the centerpiece of U.S. accomplishments in HLF-4 in Busan in 2011, and Hillary Clinton announced that the U.S. would sign IATI. Despite signing the agreement, passing the necessary domestic legislation to begin publishing to the standard, and putting out an implementation schedule, the U.S. has struggled to comply. The Millennium Challenge Corporation has achieved a high level of compliance but other U.S. agencies have lagged behind. Many voices from inside the U.S. government are skeptical about whether the U.S. will ever be able to fully comply with the IATI standard because there has been no significant effort from most agencies to reformat data reporting mechanisms.

With the U.S. signature, 60 percent of global aid spending data is now committed to be published to the IATI standard, however, many countries, including the U.S., have gotten off to a slow start in their publications, which negatively affects IATI’s output effectiveness. The internal process of IATI also suffers from a lack of a meaningful enforcement mechanism. Neither the IATI Secretariat nor the Steering Committee have any oversight on enforcement, and instead delegate enforcement authority to states. If states do not have the necessary political will, there is no way for the institution to ensure compliance. However, IATI does make significant advancements towards the goal of aid
effectiveness by using a multi-stakeholder approach, which reflects the emerging norms in the aid transparency regime. The U.S. has so far had a limited impact on IATI’s effectiveness. The Steering Committee has not demonstrated the willingness to bend to U.S. preferences, and due to the slow U.S. compliance, the average data publication for global aid spending data remains at 34 percent. In addition, while some insiders hoped that U.S. signature could encourage other donors to join, there has been little evidence that the U.S. is a deciding factor in this area. There has not been an increase in interest by other states to join IATI, and only one (Belgium) has done so in the year since the U.S. signature. So, while U.S. involvement has hindered output effectiveness in that it is slowing down the publication level, it does not seem to have an impact on internal capacity or increased ratification by other donors.

In the case of the International Criminal Court, the United States’ position evolved significantly since 1997 when the Rome Statute was signed. While initially supportive of a permanent world court, the Bush Administration eventually withdrew support for the ICC due to several irreconcilable problems imbedded in the legal framework of the Court’s structure and scope. The United States has not ratified the treaty, and, more than likely will not do so in the future. Until 2006, the U.S. pursued an active obstructionist policy towards the ICC, attempting to undermine its operations by promoting alternative international justice mechanisms. Diplomatically, the U.S. opposed the Court and passed the American Service-members’ Protection Act that prohibited any U.S. official from cooperating with the Court. However, after experiencing intense political pressure on intervention in the Darfur genocide in 2006, the Bush administration abstained from a Security Council vote to initiate an ICC investigation in the region,
allowing the measure to pass. In the years prior, the U.S. would have obstructed such an action, but after this point, the Administration demonstrated a more positive attitude towards the Court’s activities by softening its public tone and engaging with the ICC Prosecutor. After Barack Obama took office, the attitude towards the Court thawed even more significantly, and U.S. officials adopted a more positive demeanor towards the Court’s activities and praised the ICC on its first verdict in April of 2012. In 2011, the U.S. voted affirmatively to initiate an ICC investigation in Libya, and in March of 2013, worked together with the Rwandan government to extradite a wanted Congolese war criminal to the Hague for trial, a remarkable display of cooperation between the ICC and its most fierce opponent.

After analyzing the effectiveness of the ICC so far, it became apparent that the ICC has increased in global legitimacy as a force for justice. The number of arrests, investigations, and cases has increased since 2006 at the time of a tacit U.S. endorsement. However, there are two areas in the Court’s functioning that do not operate at their full capacity. The first is the uneven record on adherence to legal norms, which have threatened to end trials and close investigations on guilty war criminals. In addition, the Court still lacks capacity to affect state cooperation and has limited resources to apprehend individuals unless there is state cooperation. However, the ICC has contributed to the international criminal justice regime due to its emphasis on due process, complementary jurisdiction, and its global focus, and is a better alternative to establishing regional tribunals.

The United States’ involvement increased the Court’s legitimacy by supporting the ICC in the Security Council and by actively supporting the Court’s efforts in various
situations. In addition, due to the U.S.’s initial preferences, if the U.S. had been a part of the ICC, it would have pushed for stricter adherence to legal norms and due process because it was adamantly against a Court that operated too unilaterally. The U.S. could offer increased intelligence and resources that could improve the ICC’s record with finding war criminals and increasing the deterrent effects of an ICC investigation. Again, capacity and legitimacy emerge as two components of an organization’s effectiveness that is influenced by U.S. involvement.

Finally, the lack of United States involvement in the Kyoto Protocol has adversely affected both the agreement’s external effectiveness and internal process performance. During the 1990s, the U.S. negotiated with other states party to the United Nations Framework Convention on Climate Change (UNFCCC) in order to create such an agreement. However, due to the Berlin Mandate, which codified the ‘polluter pays’ paradigm, the end product—the Kyoto Protocol—placed all of the binding reduction requirements only on developed Annex I countries, and developing economies such as China and India would not be bound to costly restrictions. Due to this structural framework, and because of the ambitious targets contained in the Protocol, the U.S. did not sign, but continued to negotiate with other states during the Clinton administration to improve it. However, in 2001, President Bush declared the Kyoto Protocol as fatally flawed and withdrew the U.S. from any responsibilities or negotiations. Since then, the U.S. has maintained a distant and hostile policy toward the Kyoto Protocol, condemning it diplomatically, refusing to abide by its GHG reduction targets, channeling development assistance through alternative mechanisms, and actively seeking to negotiate a new treaty that would replace the Kyoto Protocol in subsequent years.
Indeed, contrasting the Montreal Protocol, the Kyoto Protocol has been weak and largely ineffective. It did, however, meet its original goal of reducing collective CO2 emissions in Annex I countries to 5.2 percent below 1990 levels during the first compliance period. But, most of this progress came from Europe that underwent massive deindustrialization after the Cold War, not necessarily from compliance with the Kyoto Protocol. In addition, emissions in developing countries have exponentially increased and global levels of GHGs are still continually rising. The Kyoto Protocol flexibility mechanisms including the Clean Development Mechanism (CDM), joint implementation, and emissions trading have been moderately successful at enticing developing countries to sign onto the agreement but not in reducing emissions or promoting sustainable development.

The U.S. is one of the world’s largest emitters, and global climate change could have been mitigated if the U.S. had adopted and complied with their obligations. In addition, the U.S. has demonstrated a preference to invest in sustainable development initiatives to spur GHG reduction in developing countries, but chooses to do so through alternative mechanisms to the CDM, which would be more effective with U.S. support. Both of these counterfactuals indicate that the Protocol’s capacity suffers because of U.S. hostility. The U.S. has diplomatically campaigned for an alternative international agreement to replace the existing Kyoto regime, undermining its strength and legitimacy. Many states and climate change observers have rendered it useless and ineffective because it has not adequately mitigated GHG emissions, and some have even withdrawn from the agreement. However, by examining the counterfactual of the U.S. supporting the arrangement, there is little evidence that would indicate the U.S. support would have
facilitated long-term cooperation. The trajectory of U.S. GHG emissions before Kyoto indicates that the U.S. could not have complied with the treaty provisions, even if it had signed the agreement. Instead of incurring the fines and costs of non-compliance along with the costs of cutting emissions at a more rapid pace, the U.S. would likely have pulled out of the agreement and searched for an alternative that was more aligned with its economic interests. Therefore, this case study indicates that the U.S. holds a considerable amount of influence over capacity and legitimacy, but not over compliance or cooperation in general.

Theoretical Trends

Over these four case studies, several trends emerged through the process tracing exercise. First, in three of the four cases, legitimacy played a large role in how U.S. policy could act to the benefit or detriment of a multilateral institution. When applied to national governments, “legitimacy” refers to the acceptance of a government by a majority of citizens as being the rightful government. When applied to international organizations, legitimacy requires a more complex conceptualization because it is difficult to determine who the constituency is. Who confers legitimacy? States are the primary actors in creating IOs, but the “global citizenry” and the people of the world also benefit from international cooperation. Therefore, legitimacy can be conferred on an IO from both states and global society. In light of this study, legitimacy for international organizations is conceptualized as the acceptance of an IO as a rightful authority by a majority of states. States are the primary actors, and while legitimacy on IOs can be indirectly conferred by the general public, states ultimately determine how and if they
will interact and comply with a multilateral institution. These decisions have a greater impact on its short and long-term effectiveness.

Throughout this study, when addressing whether or not U.S. involvement in an institution impacted its effectiveness, I observed that legitimacy consistently emerged as an element of effectiveness on which the U.S. had an extraordinary impact. In the case of the Montreal Protocol, by providing consistent diplomatic support, compliance, and ratification the U.S. government altered the policies of other emitter states and compelled them to join the agreement by implementing trade restrictions on states that continued to consume ODSs and as a result, all states in the system have accepted the Montreal Protocol as a legitimate authority on ozone depletion and emissions. Its exceptional compliance record demonstrates this. In the ICC case study, the U.S. has not ratified the agreement, but has supported the Court in almost every way informally. Because the U.S. no longer obstructs the Court’s operations, the Court is becoming a more prominent actor in international and domestic conflicts and has been called upon by the Security Council twice in the past seven years, indicating increasing legitimacy from the perspective of both states and individuals. There is ample evidence of the U.S. having a negative impact on the Kyoto Protocol’s legitimacy due to diplomatic antagonism and obstruction. The U.S. is leading the charge to brokering an alternative agreement that would replace the Kyoto Protocol. Most states now prioritize negotiating a new agreement instead of putting extensive resources into complying with one they perceive as old and ineffective. States no longer recognize the Kyoto Protocol as the authoritative agreement by which to structure domestic policy on climate change. Therefore out of the four case studies, three
cases present the ratification variable or the diplomatic support variable and contain evidence that those measures caused increases in legitimacy in the eyes of states.

[H1]: The presence of U.S. ratification or diplomatic support for a multilateral institution tends to increase legitimacy. The presence of diplomatic antagonism or obstruction towards multilateral institution variables tends to decrease legitimacy.

Another trend unearthed in the case study analysis is one of capacity, resources, and scope. In three out of four cases, when the U.S. provided resources to an institution, that institution tended to have a higher level of internal process performance and therefore enhanced effectiveness. In the case of the Montreal Protocol, the U.S. contributed both to the development of alternative substances to ODSs and to the success of the Multilateral Fund, both of which ensured participation and compliance from a large number of states, both developed and developing. Conversely, in cases where the U.S. refused to provide resources, organizations suffered from problems in limited capacity. In the ICC case, the refusal to offer resources to the Court and its offices are negatively impacting the internal processes and capacity. The U.S. has demonstrated preferences for adhering to strict legal norms and could influence the Court in a more positive way if it had any bearing on the internal structure. Also, if the U.S. repealed its domestic law prohibiting U.S. officials from cooperating in ICC investigations, it could widen the reach and influence of the Court, helping improve its record with arrests and indictments. Finally, the Kyoto Protocol suffers immensely from a lack of internal capacity. Its internal mechanisms are weak and its compliance record is poor. The United States has undermined the Clean Development Mechanism by choosing to use alternative institutions to promote sustainable development through substantial amounts of aid and investment. If the U.S.
was a party to the Kyoto Protocol and instead chose to use the Kyoto mechanisms, those mechanisms would be stronger and more effective.

[H2]: U.S. provision of resources enhances internal capacity. Alternatively, when the U.S. withholds resources, institutions’ capacities are diminished.

IATI was the only case study that did not offer any strong evidence supporting the above claims. While some observers hoped that the U.S. endorsement of IATI would enhance the legitimacy of the institution in the eyes of other major donors, there has been no evidence of other states signing onto the IATI standard because of the United States’ participation. Similarly, U.S. involvement in providing resources and participating in the internal bodies of IATI did not change its level of internal effectiveness. IATI has been effective in pushing the agenda on aid transparency and contributes to the global regime because of its multi-stakeholder approach, but U.S. preferences did not determine this structure.

The institution’s main shortcoming is a weak enforcement mechanism and its inability to compel states and organizations to comply. Because the U.S. currently has not complied and is not likely to comply, it has little to no ability to set agendas or influence decisions, and it certainly would not favor more strict compliance enforcement. However, the IATI case did illuminate a trend deserving of further research. The compliance variable matters a great deal in how the U.S. is able to influence IATI. It is too early to tell how the lack of U.S. compliance will affect IATI’s ability to achieve its goals in a few years’ time, but clearly, non-compliance has limited the United States’ ability to influence legitimacy or internal capacity. Because this was the only case study that had both the ‘ratification’ and ‘non-compliance’ variables, future research should be done on similar cases to understand why the non-compliance could undermine the U.S. diplomatic
support, provision of resources, and even ratification in a multilateral institution. This case study could indicate that compliance is the most important aspect of U.S. policy towards a treaty and without comply, the U.S. may not have any impact on how effectively an organization operates internally.

Finally, when analyzing the dependent variable according to Thomas Bernauer’s methodology by assessing the extent to which the institution contributed to solving a global problem, several trends emerged that indicate a significant U.S. role in promoting emerging international norms. When states first began negotiating the Montreal Protocol, the idea of internationally agreed environmental regulations was not a solidified practice in international cooperation, and signified the beginning of the idea that states must cooperate to solve immense environmental problems. The United States’ support for such an institution helped further the idea that states must firmly commit to regulate production for the sake of the environment. The Montreal Protocol itself was very successful in prompting states to phase out the production and consumption of chemicals that damage the ozone layer, and there have been positive environmental results. By objecting to the provisions of the Kyoto Protocol, the U.S. has not rejected this emerging norm of international cooperation on environmental issues, but has chosen to support an alternative institution to achieve this goal.

Analysis of the ICC case also reveals a significant U.S. contribution to furthering the international norms of individual accountability for crimes against humanity, genocide, and war crimes. After the U.S. began supporting the Court’s actions, states have been more receptive to the idea of global justice and accountability from a permanent world court such as the ICC. This furthers the international processes of
solving a goal such as “ending impunity,” which, while impossible to attain, can be furthered by increasing state cooperation with the ICC which leads to more indictments, more arrests, and more verdicts. The IATI case also demonstrates an instance where the United States has played a role in furthering the emergence of aid transparency as a pillar of aid effectiveness. After 2009, the United States government instituted several reform plans to make government activity more transparent and in alignment with these aims, supported IATI in 2011, indicating a growing support for transparency as an international norm. Even though U.S. support for IATI has not caused a massive influx in state support and has not demonstrated compliance, there is potential for IATI to contribute to solving the complex problems associated with aid effectiveness by making data more transparent. Overall, it is clear that in addition to levels of effectiveness related to achieving external goals and high internal process performance, the U.S. has contributed to furthering international norms in several of the case studies discussed.

So, does the U.S. matter for institutional effectiveness? Yes, U.S. policy seems to influence the capacity and legitimacy of organizations. Both of those factors are crucial for organizational effectiveness because they can both determine how well an institution meets its output goals and how efficiently it operates. These trends support some proponents of the theories discussed in the first chapter. The U.S. is a powerful state and when it chooses to ratify an agreement and invest in providing resources, it able to alter state behavior and provide resources that enhance cooperation to the benefit of everyone in the system. Is the U.S. indispensible for cooperation? No. Across the four case studies, there was no trend that would indicate that cooperation could not exist without the U.S. ratification or compliance. However, while the U.S. is not necessary for cooperation, it
does seem to be necessary for effective cooperation. Based on the observed trends in the four case studies, this thesis generates theories that could influence whether or not the U.S. ratifies an international agreement, provides diplomatic support, or offers resources will determine the level of legitimacy and capacity for that institution.

**Implications and Direction for Further Study**

By analyzing four in-depth case studies, this research confirms some existing assumptions on the U.S. role in multilateralism. Scholars previously assumed that the United States contributes a great deal to multilateral institutions through its extensive resources and authority as a world superpower. By systematically testing that assumption through process tracing and case study methods, I determine that the U.S. does influence the capacity and reach of an institution. By offering its share of resources, whether it be funding, manpower, military power, or technological contribution, the United States could make an organization operate to its full capacity and be more effective in adhering to its mandate. Additionally, U.S. support, through ratification or diplomacy, consistently caused an increase in legitimacy—more states cooperate with agreements that the U.S. has ratified and supported. However, the IATI case study indicated that even in the presence of U.S. ratification and diplomatic support, a poor compliance record could mitigate the United States’ influence on legitimacy and capacity.

The implications for these findings are immense, substantively and academically. The findings confirm many assumptions used by scholars when analyzing U.S. participation in international organizations as well as confirming Robert Keohane’s revised theory of hegemonic stability, which states that the presence of a hegemon is neither necessary nor sufficient for cooperation, but leadership from a powerful state can
help cooperation emerge. This study confirms that the U.S. is not indispensable for international agreements, but does tend to make those agreements more effective. In addition, the methodological framework developed, particularly the Multilateral Policy Scale, can be applied to any future study involving U.S. multilateral policy. By encompassing a holistic measurement of the possible policy options, the scale could be useful for any scholar qualitatively evaluating U.S. foreign policy with regard to international cooperation.

Substantively, this theoretical trend could imply profound realities for the future of U.S. multilateral engagement. This theory places significant emphasis on U.S. leadership in forging sustainable international agreements across a wide swath of issue areas, and could imply that while cooperation can exist without U.S. support, agreements would be much more effective with U.S. support, leaving the future of sustainable cooperation with the political preferences in Washington. These possible implications for U.S. policy and future international cooperation agreements leave ample room for further scholarship. This thesis did not prove a theory, but instead, it generated a theory, which now needs to be tested with other case studies. By using the Multilateral Policy Scale and different case studies that vary along that continuum, other scholars can apply the same test to different case studies and contribute to the theoretical basis generated through these four cases.

By developing a sustainable model for testing the level of U.S. involvement in an international organization, this thesis systematically explored untested assumptions in existing literature. Before, there had been no empirical study of how U.S. policy influenced the effectiveness of international organizations and through which avenues it
had the most effect. Now, there are intense analyses of case studies that illuminate some causal trends between the variables, and posit that U.S. ratification, diplomatic support, and provision of resources tends to make organizations more effective through enhancing both legitimacy and capacity. In addition, the case studies hint at how non-compliance can limit how much influence the U.S. can wield over a multilateral institution’s effectiveness. The theories generated in this thesis not only modify the “indispensible power” thesis propagated by Madeleine Albright and Hillary Clinton by revealing that U.S. involvement in an institution is not a necessary condition to ensure cooperation, but also confirm several existing scholarly assumptions that the U.S. is an important force for effective cooperation and by remaining committed to multilateral cooperation could contribute to a greater overall success in solving global problems.
Source List

*Introduction, Literature Review, Methodology*


**The Montreal Protocol**


Reifsnyder, Daniel A. “Twenty-Five Years of the Montreal Protocol: Perspectives on Experiences Gained and their Usefulness to Address Other Global Challenges.” Remarks presented at The Twenty-Fourth Meeting of the Parties to the Montreal Protocol Seminar on Protecting


The International Aid Transparency Initiative


Hanson, Heather. Interview by Kathryn Beaver, Washington DC, March 29, 2013.


The International Criminal Court


The Kyoto Protocol


