

# **Legislative-Executive Relations in U.S. Foreign Policy: Continuum of Consensus and Dissension in Treaty Powers and War Powers**

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## **Abstract**

The current U.S. political landscape is predominantly marked by divided government, polarized politics and gridlock. Such contentious political environment has proved to be detrimental for efficient and effective policy-making in foreign policy domain. There are significant political factors that complicate the process of decision making and congressional-presidential relations. Partisan and ideological differences under the conditions of divided government are dominant in current political process and in turn affect the prospects of legislative-executive consensus and dissension. In an era in which heightened political brinkmanship has enveloped Washington politics, *continuum of consensus and dissension between Congress and the president on strategic foreign policy issues* has virtually become the norm. This paper analyzes the dynamics of legislative-executive relations for treaty process and war powers with special reference to the Comprehensive Test Ban Treaty (CTBT) as a case study. The paper argues that *continuum of legislative-executive consensus and dissension* is the cornerstone in the making of foreign policy during modern times.

## **Introduction:**

The U.S. political landscape has witnessed significant changes since the early days of 1970s. Momentous political shift began when in an unprecedented move Congress successfully passed the War Powers Resolution in 1973 by overriding a presidential veto. This extraordinary event was undoubtedly a turning point in U.S. politics and marked the resurgence of Congress. In turn such political development greatly altered legislative-executive balance of power at the national level.<sup>1</sup> Since then the two coequal branches were destined to experience *continuum of consensus and dissension* in the political process both in foreign and domestic spheres. The intent of this paper is to investigate the prospects of such consensus and dissension in the realm of legislative-executive relations for treaty process and war powers with special reference to the Comprehensive Test Ban Treaty (CTBT). Because legislative-executive relations in U.S. political system primarily determine the contours of political process such empirical investigation is expected to throw greater insight on the nature of political system, policymaking and power dynamics.

## **Mapping out the Problem Structure:**

**Treaty Process:** Treaty process is an important issue area to explore the theoretical framework reflecting continuum of consensus and dissension between Capitol Hill and the White House. This issue area is politically strategic and constitutes the elite club of the “so called high politics of foreign policy.”<sup>2</sup> The criteria for continuum of consensus and dissension in the realm of treaty politics are examined within the constitutional framework, which requires the U.S. Senate’s “advice and consent” by a two-thirds majority of the senators present for approval of the

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<sup>1</sup> Sundquist, James. 1981; Lindsay, James and Randall Ripley.1993; Meernik, James.1993; Lindsay, James.1994.

<sup>2</sup> Carter, Ralph G. 1986, p.332.

proposed international treaty.<sup>3</sup> This automatically means that the U.S. Constitution designates treaty politics to be shared power between Congress and the presidency. In fact, the constitutional provision of two-thirds majority in the Senate is intended to ensure that “treaties must reflect a broad national consensus.”<sup>4</sup> Thus treaty process (encompassing treaty making, advice and consent and ratification) is not the exclusive power of either Congress or the president. Also the Constitution does not allow the president to single-handedly negotiate and ratify a treaty. The criterion of advice and consent implies “that the Senate will have an opportunity to shape the content of a treaty.”<sup>5</sup> Thus the intent of the Constitution is to make the United States Senate an equal partner in treaty making process. In this context the constitutional principle of *separation of powers* creates political constraints and contingencies. For successful treaty consent and ratification there is an urgent need for legislative-executive consensus in Washington by ensuring *sharing of powers between separated institutions*.<sup>6</sup> The continuum of legislative-executive consensus and dissension in treaty process in turn is greatly determined by how the principle of separation of powers actually transcribes into power sharing between separated institutions. In an era of increasing presence of divided government, partisan and ideological differences have dominated the treaty process. Treaty process is a delicate political dynamic which urgently requires joint institutional interplay of political obligations between the Hill and the administration. The Senate rejection of the Comprehensive Test Ban Treaty (CTBT) is a classic example of such joint institutional interplay which basically reflects contentious politics, consensus and dissension not only inside Congress but also between Capitol Hill and the White House.

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<sup>3</sup> U.S. Constitution Article 2, section 2.

<sup>4</sup> U.S.Senate official website. Available at <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>

<sup>5</sup> Fisher, Louis.1989. p.1512.

<sup>6</sup> Neustadt, Richard. 1990.

**War Powers:** The War Powers Resolution (1973) as a major policy intervention has affected U.S. foreign policy in a significant manner. It marks the resurgence of Congress in terms of heightened levels of congressional assertiveness in the foreign policy process. The issue area of war powers explores the full range of legislative-executive relations in which the United States Congress, including the House of Representatives and the Senate, are involved in the political process along with the president. During the Vietnam War era prior to 1973, the extent of presidential war powers climbed to such heights, and with questionable consequences, that Congress felt compelled to intervene in an unprecedented manner and enacted the War Powers Resolution by overriding presidential veto of President Nixon.<sup>7</sup> This was intended to “rein in a presidency run amok and to reassert congressional prerogatives over foreign policy making.”<sup>8</sup> In turn the Act established “parameters for desired presidential behavior and subsequent congressional action. With a few exceptions, presidents have significantly limited the duration of foreign interventions to conform to the limits set forth in the Act.”<sup>9</sup> Since then, a more assertive Congress has led to its having a greater confrontational position with the president.<sup>10</sup>

The purpose of War Powers Resolution (P.L.93-148) is to ensure sharing of power between Congress and the president in any decision-making process which might get U.S. armed forces involved in hostilities in foreign land.<sup>11</sup> In essence, the statute calls for “collective judgment” by Congress and the president prior to the deployment of U.S. troops into hostilities and military operations abroad.<sup>12</sup> The statute requires the president to report to and consult with Congress for every U.S. military intervention into hostilities abroad. Through this, the Act tends

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<sup>7</sup> Fisher, Louise. 1994-5.

<sup>8</sup> Howell, William G. and Jon C. Pevehouse. 2007. p.4.

<sup>9</sup> Auerswald, David P. and Peter F. Cowhey. 1995. p. 506.

<sup>10</sup> Meernik, James. 1995.

<sup>11</sup> Congressional Research Service Report Number RL33532. 2007. *War Powers Resolution: Presidential Compliance.*

<sup>12</sup> Fisher, Louis. 1995.

to emphasize interbranch collaboration whenever U.S. troops are to be deployed in a foreign land.<sup>13</sup> In this context, “the resolution was an effort by legislators to revitalize and give new meaning to the constitutional power of Congress to declare war.”<sup>14</sup> The hallmark of this act is that it contemplates two means of legislative control – (i) a deadline of 60 to 90 days on presidential initiatives to use military force abroad; (ii) the use of a concurrent resolution by Congress to require the president to withdraw U.S. troops engaged in hostilities in the event of Congress not authorizing any extension of the time limit for troop deployment.<sup>15</sup> The issue area of war powers based on the provisions of the War Powers Resolution is important because it tends to carve out a trajectory of dissension and consensus between Capitol Hill and the White House on military policy. Ever since the inception of the Act in 1973, there has been policy contestation between Congress and the president on troop deployment into hostilities abroad. Variation in government typology (divided and unified) and differential policy preferences between the Hill and the administration have often been responsible for conflict and cooperation when it comes to enforcement of the Act. Subsequently, the dynamics of legislative-executive interactions on sensitive foreign policy issue like troop deployment into hostilities abroad based on the constitutional provisions of the War Powers Resolution significantly helps to map out a continuum of legislative-executive consensus and dissension.

One of the key conditions responsible for the continuum of legislative-executive consensus and dissension in war powers is formation of divided and/or unified government. Divided government is more likely to result in dissension. Formation of divided government leads to hyper-partisanship and heightened levels of political disagreement as to how military operations should be conducted. Such political dynamic in turn affects the prospects of

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<sup>13</sup> Fisher, Louis. 1995.

<sup>14</sup> Crabb Jr., Cecil V., Glenn J. Antizzo and Leila E. Saredine. 2000.

<sup>15</sup> Fisher, Louis. 1995. p.131.

congressional-presidential consensus and dissension on the conduct of war. For instance, in the case of Lebanon MNF intervention (1982-84) there was dissension between Capitol Hill and the White House over military intervention resulting in invocation of War Powers Resolution in letter and intent. Such intense interbranch conflict provided political contingency which ultimately compelled Congress and the administration to come closer and seek compromise regarding the 18 month timeline for troop withdrawal. In essence congressional-presidential conflict forced the two co-equal branches to seek compromise and break the policy impasse. Other relevant cases in which at least one of the houses in Congress, mostly the House of Representatives, initiated action to invoke the War Powers Resolution are Grenada (1983), Libya (1986), Somalia (1992-94), Haiti (1993-94), Bosnia- Herzegovina (1995), and Kosovo (1999). In all such instances there was the presence of divided government.<sup>16</sup> For all such cases political exigencies of divided government created not only dissension between Congress and the president but also dissension between the House and the Senate. However, there was consensus at the intra-branch level politics in Congress. Even for Haiti intervention when the government was unified there was consensus inside Congress, dissension between Congress and the administration, and in the end compromise was reached between the two branches. On the other hand for cases such as Gulf War I (1990-91) and Iraq War (2003) during which there were respectively divided and unified governments in existence there was overall congressional-presidential consensus because of serious national security concerns.<sup>17</sup> In such cases the president was successful in obtaining congressional authorization before deploying troops into hostilities abroad. Thus we can observe that the foreign policy issue area of war powers is fertile land to examine continuum of legislative-executive consensus and dissension, based on the

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<sup>16</sup> Exception was Haiti intervention in 1992-94.

<sup>17</sup> There were flickers of inter-branch conflict at the initial stage during Gulf War I 1990-1 but it subsided later.

provisions of the War Powers Resolution.<sup>18</sup> Variations in political process and outcome across time and space are commonly experienced on matters of military interventions because of the constitutional provisions imposed by the War Powers Resolution.

### **Exploration of Existing Theoretical Work to Analyze the Treaty Case Study:**

- **Divided Government:** Formation of divided and/or unified government is a critical factor affecting legislative-executive relations at the national level. Divided government exists when there is split party control of legislative and executive branches. In contrast, unified government is formed when legislative and executive branches are controlled by the same party.<sup>19</sup> Split party control of one or both chambers of Congress and the White House also represents divided government.<sup>20</sup> Conventional scholarship suggests that divided government results in gridlock or dissension and unified government causes cooperation or consensus.<sup>21</sup> On the other hand, revisionist theory suggests that the presence of divided or unified government does not matter in delineating legislative success and legislative-executive consensus.<sup>22</sup>

In the treaty process, when there is the presence of divided government with the opposition party in control of the U.S. Senate, there is generally confrontational politics between the Senate and the president. Based on conventional understanding of the effects of partisanship on foreign policy during divided government, it is generally observed that the SFRC chairman tends to block and frustrate presidential treaty-making efforts.<sup>23</sup> Congressional oversight of treaty-making also increases during the presence of divided government.<sup>24</sup> There is evidence that

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<sup>18</sup> See Appendix 1.

<sup>19</sup> Clarke, Wes. 1998.

<sup>20</sup> Auerswald, David and Colton Campbell. 2012.

<sup>21</sup> Sundquist, James. 1980, 1988-9; Cox, Gary and Samuel Kernell. 1991; Binder, Sarah. 1999; Coleman, John. 1999; Krutz, Glen and Jeffrey Peake. 2009.

<sup>22</sup> Mayhew, David. 2005; Peterson, Mark. 1990; Krehbiel, Keith. 1998.

<sup>23</sup> Krutz, Glen and Jeffrey Peake. 2009; McCormick, James and Eugene Wittkopf. 1990. The Chairman of the SFRC is an important gatekeeper whose approval is required to move the treaty to the floor of the Senate for consideration.

<sup>24</sup> Krutz, Glen and Jeffrey Peake. 2009.

divided government diminishes the president's ability to liberalize trade at the time of negotiating trade-related treaties.<sup>25</sup> Proponents of revisionist argument on foreign policy claim that congressional-executive cooperation or gridlock does not necessarily depend on divided or unified government. Auerswald and Maltzman show an insignificant probability of divided government on the imposition of reservations in the treaty ratification process.<sup>26</sup> The ideological preference of the pivotal institutional players triumphs in treaty consent process regardless of divided or unified government.<sup>27</sup> Also treaty characteristics often drive the treaty consent process, regardless of whether divided or unified government is in existence. For instance treaties belonging to "high politics" (i.e. sovereignty and security issues) are more likely to draw reservations and delay in consent than treaties belonging to "low politics" (i.e. economic, legal, or normative issues) regardless of divided or unified government.<sup>28</sup>

- **Partisan difference between Congress and the president:** In the treaty process, partisan differences significantly influence the political dynamics, with variations in decision outcome. It is argued that majority party leaders from the opposite side of the aisle more often are less likely to defer to the minority administrations.<sup>29</sup> Here the conventional understanding is that when the president garners support from more co-partisans in the Senate, his policies including treaties, are less likely to face partisan obstacles.<sup>30</sup> As legislators play a strategic role in setting policy priorities, particularly at the committee level, their partisan preferences become critically important in the overall political process.<sup>31</sup> Partisan conflict between the SFRC chairman, the

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<sup>25</sup> Lohmann, Susanne and Sharyn O'Halloran 1994; Milner, Helen. 1997.

<sup>26</sup> Auerswald, David and Forrest Maltzman. 2003; Interestingly such interpretation of Senate advice and consent consider elements of both conventional and revisionist views on divided government criterion.

<sup>27</sup> Krehbiel, Keith. 1998.

<sup>28</sup> Auerswald, David and Colton Campbell. 2012.

<sup>29</sup> Ripley, Randall and James Lindsay. 1993; Peake, Jeffrey. 2002.

<sup>30</sup> Krutz, Glen and Jeffrey Peake. 2009. p.145.

<sup>31</sup> Cox, Gary and Mathew McCubbins. 1993.



president, and the treaty pivot (i.e. the particular senator deciding the crucial two-thirds vote on the Senate floor) is critical in determining the fate of the treaty.<sup>32</sup> Also legislative procedures and priorities, delay tactics, imposition of reservations and amendments are greatly governed by partisan fault lines in the United States Senate.<sup>33</sup> For instance, as explained later in this paper, partisan differences between the Republican Senate and the Clinton White House played major role in determining the fate of CTBT.

- **Ideological dimensions and congressional-presidential relations:** With respect to politics of treaty consent, ideological distance along the liberal-conservative continuum is a dominant factor in the treaty consent process. Traditionally, conservatives have shown greater distrust to international treaties and agreements than their liberal counterparts.<sup>34</sup> The ideological distance between the pivotal institutional players, especially the SFRC chairman and the president is of paramount importance in deciding the fate of the treaty.<sup>35</sup> Traditionally “conservatives have had a greater distrust for international agreements than their more liberal colleagues” leading to the expectation that “[treaty] ratification reservations will be more likely when the Senate is tilted toward the conservative side of the ideological spectrum.”<sup>36</sup> In their study, DaLaet and Scott argue that both during and after the Cold War era, ideology had a statistically significant relationship with the congressional vote on arms control treaties.<sup>37</sup> For instance with regard to arms control treaties like the Comprehensive Test Ban Treaty ideological

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<sup>32</sup> Krutz, Glen and Jeffrey Peake. 2009.

<sup>33</sup> Lindsay, James.1994; Auerswald, David and Forrest Maltzman. 2003; Auerswald, David. 2006.

<sup>34</sup> Auerswald, David. 2006.

<sup>35</sup> Krutz, Glen and Jeffrey Peake. 2009. p.146.

<sup>36</sup> Auerswald, David and Forrest Maltzman. 2003. p. 1101.

<sup>37</sup> DaLaet, C James and James M Scott. 2006. The effect of ideology was however lesser during the post-Cold War period, as compared to during the Cold War period.

factors greatly influence Senate voting pattern, thereby reflecting the trend that hawks support strong defense while doves support reduced spending on defense-related policy issues.<sup>38</sup>

- **Extensiveness of Debate in Congress:** Profound ideological-gap and partisan polarization at the inter-branch and intra-branch level in Washington greatly contribute to lengthy treaty debate proceedings and policy gridlock.<sup>39</sup> In high politics foreign policy issue areas such as treaty process, lengthy debates in Congress can create political impediments in the treaty ratification process, particularly with regard to arms control treaties.<sup>40</sup> The Senate uses the debate proceedings to delay and often derail presidential efforts to get the treaty approved. Inadequate debate in the Senate because of partisan, ideological, and procedural hindrances can be detrimental as the case of rejection of CTBT (1999) in the Senate.<sup>41</sup> Also, by stretching the duration of debate proceedings, the Senate can directly intervene in the treaty process by attaching amendments, reservations, understandings, and policy declarations to the treaty's original document as part of ratification. Once such modifications are inserted by the Senate, it becomes very difficult for the president to reject them.<sup>42</sup>

- **Role of Media:** The extent of media attention is reflected in media coverage by print newspapers like the *New York Times*, *Washington Post*, etc., popular cable television network coverage such as CNN, CBS, NBC, Fox News, etc., occasionally various late-night talk shows, and others. In general, when international agreements are more salient in the media, the executive branch is inclined to complete them as treaties.<sup>43</sup> Media attention can make treaty or agreement consent process extremely contentious. Krepon and Caldwell argue that “Without

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<sup>38</sup> Bernstein, Robert A. and William W. Anthony. 1974; McCormick, James M. and Michael Black. 1983; Wayman, Frank Whelon 1985.

<sup>39</sup> Binder, Sarah. 1999.

<sup>40</sup> Auerswald, David and Colton Campbell. 2012.

<sup>41</sup> Evans, Lawrence and Walter Oleszek. 2003.

<sup>42</sup> Auerswald, David. 2003.

<sup>43</sup> Glen Krutz and Jeffrey Peake. 2009.

strenuous efforts by the executive branch, critics can establish the terms of debate, particularly through sophisticated media campaigns that drive up negative perceptions of the treaty in question.”<sup>44</sup> For instance, in the case of Comprehensive Test Ban Treaty the Clinton administration’s media strategy was poorly planned and that damaged the prospects of the treaty ratification outcome.

- **Public Opinion and Electoral Imperatives:** With regard to the issue area of treaty process, constituency interest and preference play a dominant role in determining not only congressional voting patterns, but also the timing of lawmakers’ position taking. During the treaty consent process, treaty approval gets delayed in the SFRC, as well as in floor-level deliberations in the Senate. Such procedural delays are because of the conflict in the ideological policy preferences of pivotal senators and can be significantly connected to electoral prospects in their respective states.<sup>45</sup> Electoral pressures raise congressional-presidential competition to resolve urgent foreign policy issues.<sup>46</sup> Because of such constitutional empowerment and greater electoral incentives, the Senate can directly intervene in the treaty process by attaching amendments, reservations, understandings, and policy declarations to the treaty’s original document as part of ratification.<sup>47</sup>

### **Hypotheses Formulation and Testing:**

The theoretical overview in the previous section helps in hypotheses formulation and testing. Each of the following hypotheses incorporates the causal factors that are assumed to affect the CTBT ratification process and thereby reflects the contours of congressional-presidential consensus and dissension. The hypotheses are outlined below:

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<sup>44</sup> Krepon, Michael and Dan Caldwell. 1991.

<sup>45</sup> Glen Krutz and Jeffrey Peake. 2009.

<sup>46</sup> Conley, Richard. 2000.

<sup>47</sup> Auerswald, David. 2003.

- **Hypothesis 1:** Unified government facilitates consensus in the treaty making process while divided government does not.
- **Hypothesis 2:** Ideological differences and partisan fault lines influence the treaty consent process.
- **Hypothesis 3:** Extensiveness of debate influences continuum of consensus and dissension in treaty consent process.
- **Hypothesis 4:** High salience and resulting coverage in the media is a significant condition in depicting consensus and dissension in treaty consent process.
- **Hypothesis 5:** Electoral imperatives and public opinion influence treaty consent process.

### **Comprehensive Test Ban Treaty (CTBT)**

**Background:** The Comprehensive Test Ban Treaty (CTBT) was a major international arms control treaty that was signed by President Bill Clinton. This Treaty was intended to ban underground nuclear weapons testing worldwide. It was a key step toward complying with the obligations of Article VI of the Nuclear Non-proliferation Treaty (NPT).<sup>48</sup> The strategic significance of the Treaty made it highly controversial in Washington because of its direct implications on national security and arms control. Partisan conflict between the Democratic White House and the Republican Senate were profound resulting in full-scale legislative-executive contestation. CTBT was signed by President Clinton on September 24, 1996.<sup>49</sup> He submitted the Treaty to the United States Senate for advice and consent one year later on September 22, 1997.<sup>50</sup> As a classic case portraying conditions of divided government and polarized politics the Treaty was expected to encounter contentious ratification process. In the end the United States Senate rejected CTBT on October 13, 1999 by a vote of 48 to 51 with 1

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<sup>48</sup> Congressional Research Service. Report Number RL33865; *Arms Control and Nonproliferation: A catalogue of Treaties and Agreements*. February 2, 2010.

<sup>49</sup> Krutz, Glen S. and Jeffrey S. Peake. 2009.

<sup>50</sup> Congressional Research Service. Report Number IB92099; *Nuclear weapons: Comprehensive Test Ban Treaty*. March 20, 2002.

present.<sup>51</sup> Analysis of CTBT ratification process reveals the potential difficulties of finding common grounds to forge bipartisan consensus especially in a divided government setting dominated by partisan politics.<sup>52</sup> Long term political ramifications of the Treaty's demise were far-reaching for arms control. This case reinforces the assertion that constitutional provisions entail treaty process to be a contentious foreign policy issue area which is often marked by continuum of consensus and dissension in modern era.

**Hypothesis 1: Unified government facilitates consensus-building in the treaty making process,**

**while divided government does not.** When the Comprehensive Test Ban Treaty was submitted to the United States Senate under the conditions of divided government, political tension on partisan lines between the Republican Senate and the Democratic White House was at the all-time high. As a result the clash of titans between Congress and the president was almost a certainty. Also domestic political environment was conducive for partisan conflict. President Clinton was in the last two years of his second term, the so called lame duck session, and the country was bracing a tough presidential election cycle. Republicans were desperate to regain control of the White House after 8 years. Amidst such political tension the prospects of finding common ground at the congressional-presidential level were exponentially slim.

However, there was also an extraordinary situation unique to the political environment of 106<sup>th</sup> Congress (1999-2001) and that further enhanced political complications. In the Senate, where CTBT was expected to come up for advice and consent in due course of time, the year witnessed intense divisive politics because of Senate trial of President Clinton following his impeachment by the House of Representatives.<sup>53</sup> Prevailing high level of partisan animosity under the conditions of divided government worsened the dynamics of the already contentious

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<sup>51</sup> Congressional Record –Senate. October 13, 1999. p.25143.

<sup>52</sup> Bond, Jon R., and Richard Fleisher (eds), 2000.

<sup>53</sup> Evans, Lawrence and Walter Oleszek. 2003.

CTBT ratification process. The Treaty virtually became a pawn of brinkmanship and was destined to face serious political challenges in Congress. Once the president transmitted CTBT to the Senate for advice and consent political contestation at the congressional-presidential level lingered for about two years.<sup>54</sup> Ultimately, on October 13, 1999, the Senate rejected the Treaty on a mostly party-line vote of 48 to 51 with 1 present.<sup>55</sup> Conditions of divided government dominated the treaty consent process all through resulting in legislative-executive dissension. Importantly, there was remarkable amount of intra-party consensus within both the political parties. In the run up to the roll call vote partisan division and political gamesmanship overshadowed any attempts of interbranch cooperation.<sup>56</sup> Continuum of consensus and dissension in legislative-executive relations was overwhelmingly discernible during Treaty consent process.

From the outset the CTBT received cold treatment in the Senate. The typology of divided government was critical in setting the political stage for contentious political process. The Treaty was held strategically flawed by the political opponents. Notwithstanding significant differences between the Democratic White House and Republican Senate, in his letter of transmittal President Clinton asked the Senate for speedy consent and approval. The letter assured members of the Senate about long term merits of the Treaty as mentioned in the following lines:

“The Comprehensive Nuclear Test-Ban Treaty is of singular significance to the continuing efforts to stem nuclear proliferation and strengthen global stability. Its conclusion marks the achievement of the highest priority on the international arms control and nonproliferation agenda.....I believe that the Comprehensive Nuclear Test-Ban Treaty is in the best interest of the United States. Its provisions will significantly further our nuclear non-proliferation and arms control objectives and strengthen international security. Therefore, I urge the Senate to give early and favorable consideration to the Treaty and its advice and consent to the ratification as soon as possible.”<sup>57</sup>

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<sup>54</sup> The president transmitted the treaty to the Senate for advice and consent in September 1997. The Senate rejected the treaty in October 1999.

<sup>55</sup> Congressional Record – Senate, 106<sup>th</sup> Congress, October 13, 1999. p. S12548;

<sup>56</sup> Evans, Lawrence and Walter Oleszek. 2003. p. 90.

<sup>57</sup> Message from the President of the United States transmitting Comprehensive Nuclear Test-Ban Treaty, 105th Congress, Senate Treaty Document 105-28, p. VII-VIII.

In this letter the president pointed out the various safety and security measures of CTBT with regard to verification and monitoring of nuclear weapons and their sites. He also assured the Senate about the effectiveness of the Stockpile Stewardship Program (SSP) and provisions of strict enforceability of the Treaty in the international community. Nevertheless, each one of these features became contentious and source of heated debate in Senate proceedings during the ratification process. Majority of the Republican senators were in complete denial of the accuracy of the claims that the president made. Differences between Senate Republicans and the president reflected partisan divide across Pennsylvania Avenue. This was evidential when Senator Jesse Helms (R-N.C.), Chairman of the powerful Senate Foreign Relations Committee, expressed his reservation for committee consideration of CTBT.<sup>58</sup> In a letter to President Clinton, dated January 21, 1998 Senator Helms categorically stated his position:

“Mr. President, let me be clear. I will be prepared to schedule Committee consideration of the CTBT only after the Senate has had the opportunity to consider and vote on the Kyoto Protocol and the amendments to the ABM treaty. When the administration has submitted these treaties, and when the Senate has completed its consideration of them, then and only then, will the Foreign Relations Committee consider the CTBT.”<sup>59</sup>

In response to the letter of Senator Helms, President Clinton in his State of the Union Address on January, 1998 once again asked the Senate to give its consent to the Treaty.<sup>60</sup> The battle-line between the Republican Senate and the Democratic White House was drawn based on the contours of divided government. Legislative-executive dissension got further intense because of deficit of trust between Senate Republicans and the president regarding the controversial provisions of CTBT. Also the administration did a poor job in aggressively lobbying and

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<sup>58</sup> Congressional Research Service Number IB92099 *Nuclear weapons: Comprehensive Test Ban Treaty*. March 20, 2002.

<sup>59</sup> Congressional Record - Senate, 106<sup>th</sup> Congress, September 30, 1999, p.S11667.

<sup>60</sup> Address before a Joint Session of Congress on the State of the Union on January 27, 1998.

consulting with pivotal Republican leaders about how the Treaty would be implemented.<sup>61</sup> Such “tactical blunders” by President Clinton and Senate Democrats to seek common ground put prominent “internationalist” Republicans such as John W. Warner of Virginia (Chairman, Senate Armed Services Committee), Pete V. Domenici of New Mexico, Richard G. Lugar of Indiana and Ted Stevens of Alaska in the camp of other isolationist GOP colleagues.<sup>62</sup> In addition tension between Republican Senate and Clinton White House took an unexpected downhill turn in the wake of Clinton’s impeachment and trial procedures on Capitol Hill in the winter of 1998.<sup>63</sup> Subsequently, the Senate tried in every way to block CTBT and deprive President Clinton from attaining the coveted “legacy trip” in ensuring a major foreign policy triumph just 15 months before the completion of his second term in office.<sup>64</sup> Eventually CTBT became a scapegoat of political gamesmanship in which the two opposing parties, in a divided government set up, were fully committed toward intense contestation.

This was also the time when crucial hearings took place in the Senate Foreign Relations Committee and Senate Armed Services Committee. Those who testified on behalf of the administration before the Senate Armed Services Committee were William S. Cohen (Secretary of Defense), Bill Richardson (Secretary of Energy), and General Henry H. Shelton (Chairman, Joint Chiefs of Staff). Others who testified were James R. Schlesinger (former Secretary of Defense), and General John M. Shalikashvili (former Chairman, Joint Chiefs of Staff). During the hearings Senator John Warner (R-Va.), Chairman of Senate Armed Services Committee, expressed his serious concerns about the implications of CTBT on US national security. In the opening remarks of the crucial hearings on October 6, 1999 in which Secretary Cohen and

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<sup>61</sup> Evans, Lawrence and Walter Oleszek. 2003.

<sup>62</sup> Congressional Quarterly Weekly Report, October 16, 1999. p.2435-38.

<sup>63</sup> The *Washington Post*, October 8, 1999, p.A24.

<sup>64</sup> Ibid.



General Shelton were supposed to testify, Senator Warner voiced his concerns and set the stage for contentious committee procedures:

“I believe the burden is on the administration in this important treaty to prove almost beyond a reasonable doubt that the ratification of this treaty is in the National security interests of the United States today, tomorrow, and decades hence. This is a tough case. ....No previous president has ever proposed a test ban of zero yield and unlimited duration.....CTBT will not allow us to replace aging or unsafe weapons in the future.”<sup>65</sup>

The remarks of Senator Warner, who by and large represented general perception of Senate Republicans, were critical of the Treaty provisions. Such comments were indications of contentious treaty consent process that was expected under the conditions of divided government. In return Senate Democrats, spearheaded by Senator Carl Levin (D-Mich.), refuted the claims made by Republican senators when he stated,

“The CTBT, if it comes into effect, will increase significantly our ability to observe and monitor tests because it will create an international monitoring system of 321 monitoring stations in 90 countries.....it is important that this Treaty be ratified, but it is also important that it not be defeated.”<sup>66</sup>

Such viewpoints of Senate Democrats were supported by Defense Secretary Cohen, General Shelton, and General Shalikashvili in their testimonies. In due course of hearing procedure, Secretary Cohen and General Shelton were grilled by Senate Republicans such as Senator Strom Thurmond (R-S.C.), Jeff Sessions (R-Ala.), Senator Olympia Snowe (R-Me.), and Senator James M. Inhofe (R-Okla.). Senator Thurmond while asking questions to Secretary Cohen directly charged the administration by his following remarks,

“I agree with Chairman Helms that the United States has more urgent priorities than an unverifiable, ineffective, and undesirable nuclear test ban. The administration’s political calendar is dictating the urgent push for ratification.....While this Treaty will tie our hands, other nations will proceed to test in secret.”<sup>67</sup>

While denying Senator Olympia Snowe’s (R-Me.) criticism of President’s Clinton’s support for a zero yield CTBT Senator Carl Levin (D-Mich.) advocated that a zero yield CTBT would make

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<sup>65</sup> Hearings before the Committee on Armed Services, United States Senate, 106<sup>th</sup> Congress, October 6, 7, 1999. p.3-4.

<sup>66</sup> Ibid. p.8-9.

<sup>67</sup> Ibid. p.25-6.

it harder for other countries to maintain existing stockpiles.<sup>68</sup> He asserted, “A zero yield Test Ban Treaty will make it harder and more expensive for other nations to become nuclear states.”<sup>69</sup>

The political dynamics of Senate Foreign Relations Committee was also characterized by interbranch competition thereby further diminishing any prospects of political convergence between the president and Senate Republicans. Hearing process and subsequent deliberations were highly politicized.<sup>70</sup> In his opening remarks, Chairman Jesse Helms (R- N.C.) made it very clear about his intentions of not supporting CTBT. He stated that U.S. foreign policy experts were generally against Treaty ratification. Chairman Helms added,

“Four former Directors of Central Intelligence have weighed in against the CTBT, including two of President Clinton’s CIA Directors....two former chairmen of Joint Chiefs are likewise strongly opposed, and yesterday the Senate received a letter signed by six – count them, six – former Secretaries of Defense. In any case, perhaps we should be reminded that it’s not the Republicans who asked for this vote [CTBT ratification]. It was forced upon us by the President and all 45 Senators on the other side of the aisle.”<sup>71</sup>

The comments made by Senator Helms were highly political. On the one hand he attempted to show evidence of general distaste among retired defense and intelligence officials for CTBT. On the other hand he directly blamed the president for the political impasse that had erupted over the issue of CTBT. This classic political overtone was reminiscent of divided government in existence across Pennsylvania Avenue. In return the ranking member of the Senate Foreign Relations Committee, Senator Joseph Biden (D- Del.), criticized Chairman Helms about his low priority for CTBT. Senator Biden said,

“I would argue it is the first hearing as well as the final hearing. And as it relates to a clear consensus of the foreign policy community, I would ask, rather than take the time now, to enter in the record a list of prominent individuals including the present and five former Joint Chiefs of Staff, as well as 32 Nobel laureates, et cetera, and so if we can duel on who supports what, I am

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<sup>68</sup> Hearings before the Committee on Armed Services, United States Senate, 106<sup>th</sup> Congress, October 6, 7, 1999. p. 44.

<sup>69</sup> Ibid. p. 98.

<sup>70</sup> Congressional Quarterly Weekly Report, October 9, 1999. p.2393-95.

<sup>71</sup> Hearings before the Committee on Foreign Relations, United States Senate, 106<sup>th</sup> Congress, October 7, 1999, p.2.

confident that there are more prominent Americans, particularly scientists, who support this than oppose it...’’<sup>72</sup>

The political rhetoric that characterized heated exchanges between the Chairman and the ranking member of the Senate Foreign Relations Committee in the very beginning of CTBT hearings provides for ample evidence of divided government dissension at the committee level that was also witnessed during rest of the ratification debate. Political deliberations were reduced to a clash of political egoism between the Democratic proponents and Republican opponents.

Among the key speakers who testified before the Senate Foreign Relations Committee were Madeleine K. Albright (Secretary of State) and Caspar W. Weinberger (former Secretary of Defense). While Secretary Albright represented the point of view of Democratic White House, Secretary Weinberger represented the Republican Senate. By and large, this was a perfect line up for the dramatizing the prospects of partisan politics in an already tension ridden divided government set up. Secretary of State Albright’s testimony was very comprehensive covering the entire gamut of the provisions of CTBT. However, her words were directly in non-conformity with the critical appraisal made earlier by prominent Senate Republicans such as Senator Jesse Helms (Chairman, Senate Foreign Relations Committee) and Senator John Warner (Chairman, Senate Armed Services Committee). Such hearings further exacerbated the already existing political fault lines between Congress and the president almost to the crisis point. After the hearing procedures were over Senate Majority Leader Trent Lott (R-Miss.) said, “Just in the last two days, in hearings before the Armed Services Committee and the Foreign Relations Committee, it's become apparent that this Treaty is flawed -- should not be ratified, now or in the foreseeable future.”<sup>73</sup> Such a political development had adverse ramifications down the line

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<sup>72</sup> Hearings before the Committee on Foreign Relations, United States Senate, 106<sup>th</sup> Congress, October 7 , 1999, p.2.

<sup>73</sup> The *New York Times*, October 9, 1999, Section A, p.8.

when the Senate took up CTBT for floor debate and roll call voting ultimately leading to the Treaty's rejection by 51-48 margin.

The political process associated with Senate debate on CTBT and the dramatic manner in which the roll call vote was conducted on the Senate floor had its own uniqueness. In the Senate debate, Republicans reiterated their concern that the treaty would not ensure other nations to comply with its provisions. They also argued that if CTBT was ratified, it would be difficult for the United States to ensure the viability of its own strategic nuclear stockpile. Senate Republicans utterly rejected the Democrats' viewpoint that failure to ratify CTBT would send a wrong message to other nations interested in joining the nuclear club.<sup>74</sup> Among others, key Republican Senators who took part actively in Senate debate were Senate Majority Leader Trent Lott (R-Miss.), Jesse Helms (R-N.C.)<sup>75</sup>, John Warner (R-Va.)<sup>76</sup>, John Kyl (R-Ariz.), and James Inhofe (R-Okla.). On the Democratic side the political heavyweights were Senate Minority Leader Tom Daschle (D-S.D.), Carl Levin (D-Mich.)<sup>77</sup>, Joseph Biden (D-Del.)<sup>78</sup>, Dianne Feinstein (D-Calif.), and Barbara Boxer (D-Calif.).

In the executive session of the Senate debate on CTBT, Minority Leader Tom Daschle pointed out that CTBT did not get enough time for consideration. In fact, he brought in on Senate record a comparative chart of the time for consideration of all other major international treaties for the period 1972-99.<sup>79</sup> This concern was echoed by Senator Robert Byrd (D-W.Va.) who expressed dissatisfaction with the inadequate time given by Senate Republicans for the

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<sup>74</sup> The *Washington Post*, October 14, 1999, p.A01.

<sup>75</sup> Chairman, Senate Foreign Relations Committee.

<sup>76</sup> Chairman, Senate Armed Services Committee.

<sup>77</sup> Ranking member, Senate Armed Services Committee.

<sup>78</sup> Ranking member, Senate Foreign Relations Committee.

<sup>79</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12509.

consideration of the CTBT.<sup>80</sup> In fact, indirectly Daschle and Byrd were criticizing the high level of partisan politics that was so rampantly observable in the divided government set up of the 106<sup>th</sup> Congress. This partisan politics on procedural level was also heavily criticized by President Clinton in his News Conference on October 14, 1999.<sup>81</sup> The Republicans by and large ignored all such criticism. To worsen the politics of animosity and extreme rhetoric in the divided government set up in the 106<sup>th</sup> Congress, there was war of words especially between Minority Leader Tom Daschle (D-S.D.) and Senate Foreign Relations Committee Chairman Senator Jesse Helms (R-N.C.). Senator Daschle said, “This is a terrible, terrible mistake. If politics don’t stop at the water’s edge, nothing does.” Senator Helms considered CTBT as “the most egregious Treaty ever submitted to the Senate for advice and consent....a dangerous Treaty” that deserved Senate’s rejection.<sup>82</sup>

However, the real problematic issues on which the Senate Republicans and Democrats encountered major differences were again with respect to verification, monitoring, enforceability, nuclear stockpile, non-proliferation and their ultimate implications on national security. In his statement, Senator Jesse Helms referred to the letter written by Henry Kissinger, former Secretary of State, voicing utmost concern about the national security implications of CTBT on the United States.<sup>83</sup> Voicing such concerns Helms stated,

“The CTBT is a dangerous treaty which, if ratified, would do enormous harm to our national security. It will not and cannot accomplish its highly exaggerated stated goal of halting the spread of nuclear weapons..... Those who support the CTBT have failed to make a compelling case, and that, Mr. President, is precisely why the CTBT is headed for defeat.”<sup>84</sup>

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<sup>80</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12523.

<sup>81</sup> 182<sup>nd</sup> News Conference of the President of the United States, October 14, 1999.

<sup>82</sup> The *Washington Post*, October 14 1999, p.A01.

<sup>83</sup> Kissinger pointed out his apprehensions about the treaty’s effectiveness on verification, monitoring, enforceability (provisions of sanction), nuclear stockpile, and non-proliferation.

<sup>84</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12507.

Such rhetorical comments were highly detrimental in seeking compromises on a crucial issue like CTBT and further intensified the vitriolic tone of the politics of the day. Politicians across party lines did not want to budge an inch from their respective positions in a typical pattern of political gridlock catalyzed further by divided government set up. To counter-attack the Republican criticisms, Democrats fired back. Senator Dianne Feinstein's (D-Calif.) comments on the issue clarify this point clearly,

“The treaty [CTBT] is a key element of global non-proliferation regime....The CTBT will constraint the development of nuclear capabilities by rogue states, as well as the development of more advanced weapons by declared nuclear states.....The CTBT will improve the U.S. ability to detect and deter nuclear tests.....The CTBT will make the world a safer place and safeguard U.S. national security interests.”<sup>85</sup>

Senator Feinstein's viewpoints were largely supported by the Democratic Caucus. For instance, Senator Carl Levin (D-Mich.) expressed deep concern about the political brinksmanship that was being played on the Senate floor purely on a partisan basis to take advantage of the divided government political scenario. He echoed the sentiments of the administration, its point men and other prominent officials who testified in support of the Treaty.<sup>86</sup>

One of the most outspoken opponents of the Treaty was Republican Senator John Kyl (R-Ariz.) who severely criticized the CTBT and took away the momentum of the debate in favor of the Republican Party. In his speech Kyl reiterated the Republican Party's opposition as,

“The inescapable fact about the CTBT is that it is a fatally flawed treaty – it jeopardizes this Nation's nuclear deterrent, it will not contribute to the cause of nonproliferation, and it is unverifiable and unenforceable....The CTBT is unverifiable, meaning that states who choose to violate the CTBT may never be caught, and it is unenforceable, meaning that violators who are caught will likely go unpunished.”<sup>87</sup>

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<sup>85</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12528.

<sup>86</sup> Such prominent individuals were Secretary of Defense Bill Cohen; General Hugh Shelton (Chairman, Joint Chiefs of Staff); General Shalikashvili (former Chairman, JCS); C.Paul Robinson (Director, Sandia National Laboratories); John C. Browne (Director, Los Alamos National Laboratories); and C.Bruce Tarter (Director, Lawrence Livermore National Laboratory). All these individuals testified in favor of CTBT in the Hearings of Senate Armed Services Commission. For details, see Hearings before the Committee on Armed Services, United States Senate, 106<sup>th</sup> Congress, October 6, 7, 1999.

<sup>87</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12529.

Senator Kyl also referred to the letter (dated October 13, 1999) that former Secretary of State Henry Kissinger wrote to Senator Jesse Helms, Chairman SFRC, expressing his concern and disapproval for the CTBT. GOP Senators Jesse Helms and James Inhofe expressed their strong reservations about President Clinton's zero yield provision in CTBT, that is, no testing at all for an unlimited duration.<sup>88</sup> GOP Senator Richard Lugar (R-Ind.), a well-respected expert on national security, provided for a thoughtful indictment of the CTBT as mentioned below:

“The treaty will prevent the United States from ensuring the reliability, effectiveness and safety of our nation's nuclear deterrent; the treaty is not verifiable – not only due to our simple technical inability effectively to monitor for tests, but due to lack of agreement on what tests are permitted or not permitted in the treaty.....This Treaty simply has no teeth.”<sup>89</sup>

Heated deliberations between Senate Democrats and Republicans during the hearing proceedings at the Senate Armed Services Committee were reflections of intra-party consensus in conjunction with partisan divide leading to legislative-executive dissension under the conditions of divided government. The political climate in the 106<sup>th</sup> Congress in turn was marked by extreme rhetoric and animosity that was explicit throughout the entire CTBT ratification debate. It significantly diminished the chances of any compromise. The Senate and the president in divided government set up kept hanging on with their respective positions in such a manner that in turn enhanced the political gridlock. Dissension in the political process during CTBT ratification debate was the consequence of the presence of divided government. Political passion and partisan politics in the divided government set up carried the day. Ideological, procedural, and substantive differences between the Republican Congress and Democratic White House remained at a very high level and were further reinforced by the politics of divided government. Even on substantive and technical issues, despite the testimonies given by various experts, Democrats and Republicans were not able to come out with compromises for consensus building, primarily because of the

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<sup>88</sup> Congressional Record –Senate, 106<sup>th</sup> Congress. p.12511; p.12547.

<sup>89</sup> Ibid. p.12513.

polarization of politics in a divided government. Political passion was so high that the members of the Senate on both sides of the aisle were not even willing to properly accommodate each other's' viewpoints on the merits of the arguments and testimonies – a classic situation of political gridlock primarily fomented by deep cleavages in a situation of divided government politics.<sup>90</sup> Empirical evidence shows that even if there could have been some compromises in a typical situation of normal politics, there was no willingness, perhaps incentive, on the part of either the Republican or Democratic Party to reach into any viable consensus in the case of ratification of the CTBT.<sup>91</sup> Very often it looked like the various provisions of the treaty along with their hearing testimonies were debated with political overtones and rhetoric that were inflamed by the structural composition of divided government and polarized political environment. The Republican Party did not want to provide an opportunity for the Democratic Clinton administration for claiming a “legacy trip” particularly in the presidential election cycle when the Republicans were desperate to gain control of the White House.<sup>92</sup> So it was a virtual political deadlock on every front. This paper asserts that the main causal factor for such insurmountable political gridlock was the presence of a deeply divided government during the 106<sup>th</sup> Congress (1999-2001). The political cleavage was at its highest level with partisan passions, emotions, and animosities were flying high.

**Hypothesis 2: Ideological differences and partisan fault lines influence the treaty consent process.** Senate ratification process of CTBT bears significant evidence of the presence of deep partisan fault lines between the Republican Senate and the Democratic White House. Exigencies of partisan divide resulted in legislative-executive dissension and in turn offset all efforts taken

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<sup>90</sup> As noted earlier in the case analysis, the CTBT was debated in the Senate under an extra-ordinary condition of political cleavage because other circumstantial factors that came as baggage to the issue.

<sup>91</sup> This paper wonders what could have been the situation if there were a unified government, hypothetically, at that time. This can be a case for further research.

<sup>92</sup> The Washington Post, October 8, 1999, p.A24.



toward conciliatory political process that could have opened the door for viable consensus. From the very outset Senator Jesse Helms (R-N.C.), Chairman of the Senate Foreign Relations Committee, made it clear that CTBT was not a priority for his committee to consider in near future.<sup>93</sup> Also very little time was allotted by the Republican Senate to debate the Treaty in a comprehensive manner on the Senate floor. Minority Leader Tom Daschle (D-S.D.) and another influential Democratic Senator Robert Byrd (D-W.Va.) blamed partisan divide for such inadequate opportunity for congressional deliberations.<sup>94</sup> For the purpose of expediting Senate consideration of CTBT before the next presidential elections, Senate Democrats and the president himself kept pressing the Republican Senate for the whole of 1998 and most part of 1999 to take up CTBT consideration and give consent. The Democrats miscalculated the tactical move camouflaged by hyper-partisan dimensions of the Senate Majority Leader Trent Lott (R-Miss.). The Senate Democrats thought that Lott did not have enough Republican votes to block the successful passage of the Treaty and hence avoiding taking up the measure despite repeated requests. What the Senate Democrats failed to realize was that Lott had already amassed enough Republican votes to reject the Treaty. Since the spring of 1999 a small group of influential Republican senators, under the leadership of John Kyl (R-Ariz.) and Paul Coverdell (R-Ga.) had been working to garner adequate Republican votes against CTBT.<sup>95</sup> What Senator Lott was doing was to wait until a propitious time for roll call vote to take place and the Senate Democrats inadvertently fell into the hyper-partisan trap. Once the Senate Democrats attempted to compel Lott to take up the Treaty by a margin of 55-45 votes the Majority Leader was ready to take up

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<sup>93</sup> Congressional Research Service Number IB92099 *Nuclear weapons: Comprehensive Test Ban Treaty*. March 20, 2002.

<sup>94</sup> Congressional Record – Senate, 106<sup>th</sup> Congress, October 13, 1999. p.S12507; p. S12523.

<sup>95</sup> Evans, Lawrence and Walter Oleszek. 2003.

the Treaty for Senate consideration.<sup>96</sup> In fact by doing that Lott totally surprised the Senate Democrats. On September 30, 1999 Majority Leader Lott allowed to move forward with an expedited action on the Treaty and asked unanimous consent that CTBT be discharged from the Senate Foreign Relations Committee for Senate consideration.<sup>97</sup> With that action, Senate consideration of the CTBT started formally on October 6, 1999 and that ultimately ended with the rejection of the Treaty on October 13, 1999 by a margin of 51 nays, 48 yeas, and 1 present (Senator Robert Byrd).<sup>98</sup> Expressing deep sense of surprise in his press conference, President Clinton said,

“So this whole thing came as a complete surprise to us when we realized that we had 8 or 10 days on a subject that we thought they had decided in a determined way not to bring up, because Senator Helms had made it clear that he didn’t want to bring it up, and he wouldn’t even talk about it until he disposed of two other treaties that he said were ahead of it in his consideration. We had no earthly idea that it was going to be on the Senate calendar.”<sup>99</sup>

In addition to the deep partisan dynamics in the treaty consent process there was also an ideological dimension that needs attention here. As part of a serious political miscalculation Senate Democrats and the Clinton administration had been all through banking on the support of moderate Republicans in the Senate to garner the requisite two-thirds majority vote for Treaty ratification. Although 24 moderate Republican senators out of a total of 62 senators signed a letter written by senators John W. Warner (R-Va.) and Daniel P. Moynihan (D-N.Y.) and requested Majority Leader Lott to postpone the vote, three conservative GOP senators – Tim Hutchinson (Arkansas), Robert C. Smith (New Hampshire), and James M. Inhofe (Oklahoma) – objected such measure.<sup>100</sup> But in the final roll call vote when CTBT went down by a margin of 51-48, all 44 Senate Democrats were joined by only four moderate Republican senators - John H.

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<sup>96</sup> Congressional Record –Senate, 106th Congress. October 13, 1999. p.S12505.

<sup>97</sup> Congressional Record –Senate, 106th Congress. September 30, 1999. p.S11667; Evans and Oleszek. 2003. p.105.

<sup>98</sup> Congressional Record –Senate, 106th Congress. October 13, 1999. p.S12548.

<sup>99</sup> 182<sup>nd</sup> Press Conference of the President of the United States, President Bill Clinton. October 14, 1999. Available at <http://www.gpo.gov/fdsys/pkg/WCPD-1999-10-18/pdf/WCPD-1999-10-18-Pg2035.pdf>

<sup>100</sup> Deibel, Terry L. in (ed) Donald R. Kelley. 2005; Evans and Oleszek. 2003.

Chafee (R.I.), James M. Jeffords (Vt.), Gordon Smith (Ore.), and Arlen Specter (Pa.).<sup>101</sup> After the defeat of CTBT four influential moderate Republican senators – Chuck Hagel (Neb.), John McCain (Ariz.), John W. Warner (Va.), and Thad Cochran (Miss.) – along with 12 other moderate Republicans later in various interviews expressed regret regarding their “nay” vote while extending their consent “to continue the seven-year-old U.S. moratorium on nuclear tests.”<sup>102</sup> Hence it was evident that ideological distance between the far-right and moderate conservatives within the Republican Party also was in play in the final vote count. But overall the congressional approval process was overwhelmingly dominated by hyper-partisan dimensions which created difficult parliamentary and procedural obstacles leading to the ultimate demise of the Treaty. In the final analysis it can be inferred that the implications of partisan and ideological dimensions in varying intensity determined the contours of consensus and dissension at various stages during CTBT consent process.

**Hypothesis 3: Extensiveness of debate influences treaty consent process.** During CTBT consent process there was insufficient debate time allotted by the Senate Republicans. The Treaty was always a low priority for the Republican senators who in turn “offered the Democrats only ten hours of Senate debate on the treaty.”<sup>103</sup> Senate proceedings make it evident that little time was allotted by the Senate Republicans, perhaps due to tactical reasons, for Senate consideration of the Treaty. Senate Democrats such as Minority Leader Tom Daschle (D-S.D.) and Robert Byrd (D-W.Va.) blamed the controlling Republican Party for that matter.<sup>104</sup> Whatever amount of hearings and deliberations that took place they generally inflamed the rhetoric and intensity of partisan politics. Instead of bridging the gap between the Senate Democrats and Senate

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<sup>101</sup> Congressional Record –Senate, 106<sup>th</sup> Congress. p. S12548.

<sup>102</sup> The *Washington Post*. October 15, 1999. p. A.16.

<sup>103</sup> Deibel, Terry L. 2002. p. 149.

<sup>104</sup> Congressional Record –Senate, 106<sup>th</sup> Congress, p.12507; p. 12523.

Republicans the nominal amount of deliberations were characterized by polarized politics. Comments and testimonies were interpreted with political overtones.<sup>105</sup> The contentious issues like verification, monitoring, national security, and stockpile stewardship program were interpreted purely from the perspective of partisan politics. For instance, on the joint statements by the three Nuclear Weapons Laboratory Directors, there was different interpretation made by the Senators based on party lines.<sup>106</sup> While the Senate Democrats generally expressed satisfaction with their comments on the efficacy of the CTBT on national security, the Senate Republicans were not impressed and bore apprehensions.<sup>107</sup> These specimens of the debate procedures further accentuated the political partisanship in a divided government set up during the ratification process of the CTBT.

More extensive Congressional debate proceedings can either help facilitate bridging the gap between the proponents and opponents of a treaty or facilitate greater intensification of the degree of partisan politics. From the empirical investigations outlined in the previous hypotheses this study gets a sense that during the ratification debate of the CTBT the complexities associated actually deepened the already existing dissension between the Senate Republicans and their Democratic counterparts. Insufficient time for debate proceedings also denied any chances for amendments and reservations are normally help finding some kind of common ground to facilitate consensus building between Congress and the president.<sup>108</sup> Hence, it can be concluded

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<sup>105</sup> Comments made by Senator Jesse Helms (R-NC), Chairman Senate Foreign Relations Committee ,on the issue of “effective verification” of nuclear weapons as implied by the CTBT. See Congressional Record –Senate, 106<sup>th</sup> Congress, p.12546.

<sup>106</sup> C.Paul Robinson (Director, Sandia National Laboratories); John C. Browne (Director, Los Alamos National Laboratories); C.Bruce Tarter (Director, Lawrence Livermore National Laboratory).

<sup>107</sup> Hearings before the Committee on Armed Services, United States Senate, 106<sup>th</sup> Congress, October 6, 7, 1999; Congressional Record –Senate, 106<sup>th</sup> Congress, p. 12521(Democratic Senator Carl Levin who was Ranking member of Senate Armed Services Committee); p.12533 (Republican Senator John Warner, who was the Chairman of the Senate Armed Services Committee).

<sup>108</sup> Contrast can be made with regard to the Strategic Arms Limitation Treaty (SALT II). The Senate came out with twenty reservations after the hearings were over. These reservations prepared the ground for common understanding

that the given hypothesis is meaningful in this case under the conditions that inadequate debate proceedings facilitated inter-party dissension and thereby greatly reduced the probability of arriving at a consensus.

**Hypothesis 4: High salience and media coverage influence treaty consent process.** Despite its rejection by the Senate, CTBT was regarded a major international treaty of epic proportion. It generated high level of publicity in the media. Media attention in *New York Times* for the time period from January 01, 1979 to December 31, 1999 was substantial. This is evident from the following statistics: (1) Total number of times CTBT was mentioned in any document type in *New York Times* - 545; (2) Total number of front-page stories - 81; and (3) Total number of editorial articles – 57.<sup>109</sup> High level of media attention influenced treaty consent process in the Senate and also revealed the extent of partisan animosity in the political process. While the *New York Times* recorded 127 documents of all types from January 1 to December 31 of 1999, *Washington Post* recorded 134 documents for the same period about the Treaty.<sup>110</sup> For each of these premier newspapers the coverage remained at the highest level for the month of October 1999 because of ensuing congressional debate and roll-call voting schedule.<sup>111</sup> High level of media coverage shaped the dynamics of congressional deliberations to a significant extent. The October 6, 1999 edition of the *New York Times* reported that 32 Nobel laureates in physics urged the U.S. Senate to ratify CTBT as it was “central to future efforts to halt the spread of nuclear weapons” and that United States approval was “imperative” in advancing such global policy.<sup>112</sup>

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between Congress and the President. Extensiveness of hearings in various Senate committees played a crucial role in the proceedings in the Senate.

<sup>109</sup> ProQuest Historical Newspapers The New York Times (1851 – 2007). Available at <http://proquest.umi.com.libproxy.uoregon.edu>

<sup>110</sup> ProQuest Historical Newspapers The *New York Times* (1851 – 2007). Available at <http://proquest.umi.com.libproxy.uoregon.edu>; The *Washington Post* Archival Website. <http://pqasb.pqarchiver.com/washingtonpost/advancedsearch.html>; See Appendix 2.

<sup>111</sup> Senate voting was scheduled on October 13, 1999.

<sup>112</sup> The *New York Times*. October 6, 1999. p. A12.

In a letter to the editor on the *New York Times* (dated October 9, 1999) former CIA Director Stansfield Turner urged the Senate to ratify the Treaty in order to put pressure on other countries “to come into force to do the same.”<sup>113</sup> Apart from influencing domestic politics, media power was successful in generating foreign pressure during CTBT ratification debate. In a major opinion piece in the *New York Times* (dated October 8, 1999) three influential heads of government – French President Jacques Chirac, British Prime Minister Tony Blair, and German Chancellor Gerhard Schroeder – urged the U.S. Senate to approve the Treaty.<sup>114</sup>

Mainstream media campaign in support of the Treaty prompted action from Senate Majority Leader Trent Lott (R-Miss.). However, such action proved to be a double-edged sword which would have hardly pleased CTBT supporters while simultaneously making the Treaty opponents (mainly Republican base) satisfied. This was a classic situation of overlapping consensus and dissension in the political process. Senator Lott while sensing that he had sufficient votes to defeat the measure comfortably on the Senate floor “surprised the Democrats by proposing, in a unanimous consent agreement (UCA), for very quick scheduling of a floor vote, after the pact was suddenly fast-tracked through Senator Helms’s SFRC with only minimal discussion at the hearings.”<sup>115</sup> Such action plan by the Senate Majority Leader started next round of media campaign by the proponents and opponents of the Treaty. Apart from the normal coverage in regular cable news channels, television talk-shows also became important forum to put pressure on the Senate to ratify CTBT. In a last-ditch effort to save the Treaty just three days prior to the Senate vote, top Clinton administration officials were “in an all-out effort to persuade the Senate to delay this week's vote on a nuclear test ban treaty, warning that its rejection would

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<sup>113</sup> The *New York Times*. October 9, 1999. p. A16.

<sup>114</sup> The *New York Times*. October 8, 1999. p. A27.

<sup>115</sup> Krutz, Glen S. and Jeffrey S. Peake. 2009; p. 131.

damage U.S. prestige and hinder non-proliferation efforts.”<sup>116</sup> For instance Defense Secretary William S. Cohen and General Henry H. Shelton (Chairman, Joint Chiefs of Staff) jointly appeared on *NBC's "Meet the Press"* on October 10, 1999. The same day Secretary of State Madeleine K. Albright appeared on *ABC's "This Week"* while Energy Secretary Bill Richardson appeared on *"Fox News Sunday."* Senator Jon Kyl (R-Ariz.), an influential opponent of CTBT, also appeared on *"Fox News Sunday."*<sup>117</sup> In all such television appearances the administration officials unanimously pressed the Senate to postpone consent vote because it was certain that the Treaty would fail to get supermajority 67 votes should the voting took place on October 13. On the contrary Senator Kyl strongly opposed postponing the Senate vote in the pretext of unnecessary future parliamentary maneuvers. Despite mainstream media's strong campaign in support of the measure the Senate proceeded with the planned schedule and rejected CTBT. Nevertheless, high level of media salience and attention played dominant role all through influencing the dynamics of the treaty consent process.

**Hypothesis 5: Electoral imperatives and public opinion influence treaty consent process.** Public opinion with regard to CTBT was initially slow to pick up. With the intensification of media coverage toward the closing months opinion polls showed consistent trend of public approval for the Treaty. Surprisingly even then a good percentage of the American people were not adequately aware of the CTBT issue. One *Gallup poll* showed that only two-thirds of the population only heard about the Treaty, and only 25 percent were aware of its defeat in the Senate. Overall, only 8 percent of the population closely followed the congressional approval proceedings and another 30 percent somewhat closely.<sup>118</sup> However, among those who were

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<sup>116</sup> The *Washington Post*. October 11, 1999. p. A10.

<sup>117</sup> Ibid.

<sup>118</sup> Gallup News Service, November 5, 1999. Website: <http://www.gallup.com/poll/3487/Public-Supports-Comprehensive-Test-Ban-Treaty-Principle.aspx>

keeping track of the CTBT ratification debate in Congress, a growing percentage was in favor of the Senate to ratify the Treaty. According to the *Gallup* poll conducted between October 21 and 24, 1999, just about a week after the Treaty was rejected, 59 percent of respondents said that the Senate should have voted to ratify the Treaty as against 29 percent who opposed it.<sup>119</sup> About 45 days prior to the Senate roll call vote the *New York Times* reported on August 30, 1999 that CTBT had overwhelming backing of public opinion in addition to support of scientific community, military commanders, and arms control groups.<sup>120</sup> About a month prior to the roll call vote Senator Byron Dorgan (D-N.D.) and Senator Arlen Specter (R-PA) wrote in *USA Today* that a new bipartisan opinion poll commissioned by the Coalition to Reduce Nuclear Dangers found that a whopping 82 percent of American people wanted the Senate to ratify CTBT as against 14 percent who opposed it.<sup>121</sup> On October 7, 1999 (about a week prior to the roll call vote) in a press conference President Clinton mentioned about the overwhelming public support for the CTBT to put pressure on the Senate to ratify the Treaty. He said to the Senate members,

“You have heard from Nobel laureates and other experts in nuclear weapons. I hope you listen to them. You listen to our military and scientific leaders about national missile defense. Listen to them about the Comprehensive Test Ban Treaty. Listen to the religious leaders who say it is the right thing to do. Listen to our allies, including nuclear powers Britain and France, who say America must continue to lead. And listen to the American people who have been for this treaty from the very beginning.”<sup>122</sup>

The presidential conference depicted a clear picture of broad spectrum public support among the American people for the CTBT. As reiterated by Clinton, evidence showed that apart from favorable domestic public opinion, in the international sphere too there was high approval for the Treaty. For instance, following the defeat of CTBT the *Australia* reported that despite 80 percent

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<sup>119</sup> The *Gallup Public Opinion Poll*. Survey # GO907190. 1999. p. 230. See Appendix 3.

<sup>120</sup> The *New York Times*. August 30, 1999. Section A; Page 1; Column 6.

<sup>121</sup> USA Today. September 13. 1999. Page 27A.

<sup>122</sup> Remarks on the Comprehensive Nuclear-Test Ban Treaty and an Exchange with Reporters. *Administration of William J. Clinton*. October 7, 1999. p.1704-5. Available at <http://www.gpo.gov/fdsys/pkg/PPP-1999-book2/pdf/PPP-1999-book2-doc-pg1704.pdf>



of the American population backing the nuclear deal and America's key European allies like Britain, France, and Germany supporting the deal, the U.S. Senate did not ratify the Treaty.<sup>123</sup> However, such favorable public opinion fell flat in front of the hyper-partisan environment in the Senate. Electoral imperatives were also in play. Because of the Clinton impeachment proceedings in Congress and lack of political capital of the president following such incident, Senate Republicans were fully geared up to work against the legacy of the embattled president for electoral benefit in the next election cycle. Such election dominated political exigencies on the part of Senate Republicans were constantly in conflict with favorable public opinion throughout treaty consent process. Such political complications also influenced the trajectory of legislative-executive consensus and dissension during the ratification debate. Therefore, conclusions can be drawn here that public opinion and electoral imperatives were operational in tandem to complicate the dynamics of treaty consent process. Because of the uniqueness of the prevailing political conditions the given hypothesis stands accepted for the CTBT case study.

### **Concluding Remarks:**

In this paper efforts have been made to explore the various strategic factors which are largely responsible to explain the contours of *legislative-executive consensus and dissension* in high politics foreign policy issue areas such as treaty powers and war powers. The paper specifically selects the issue area of treaty powers and analyzes a treaty case study to illustrate the theoretical foundation of *continuum of congressional-presidential consensus and dissension in foreign policy*. All factors as explained in the theoretical overview and case analysis have profound implications on treaty process and outcome in the context of separated institutions sharing power.<sup>124</sup> The theoretical framework has been applied to the congressional

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<sup>123</sup> The *Australia*. October 15, 1999. Page 11.

<sup>124</sup> Neustadt, Richard. 1990.

ratification process of Comprehensive Test Ban Treaty (CTBT). Empirical analysis suggests that all explanatory variables discussed in the case study play a significant role in tandem and reinforce each other. Broadly speaking congressional rejection of the CTBT was the result of the implications of divided government and polarized politics. Such complex political dynamic in recent years has a cascading effect across congressional-presidential war power prerogatives too. It appears that continuum of legislative-executive consensus and dissension in foreign policy is the new normal in contemporary Washington politics.

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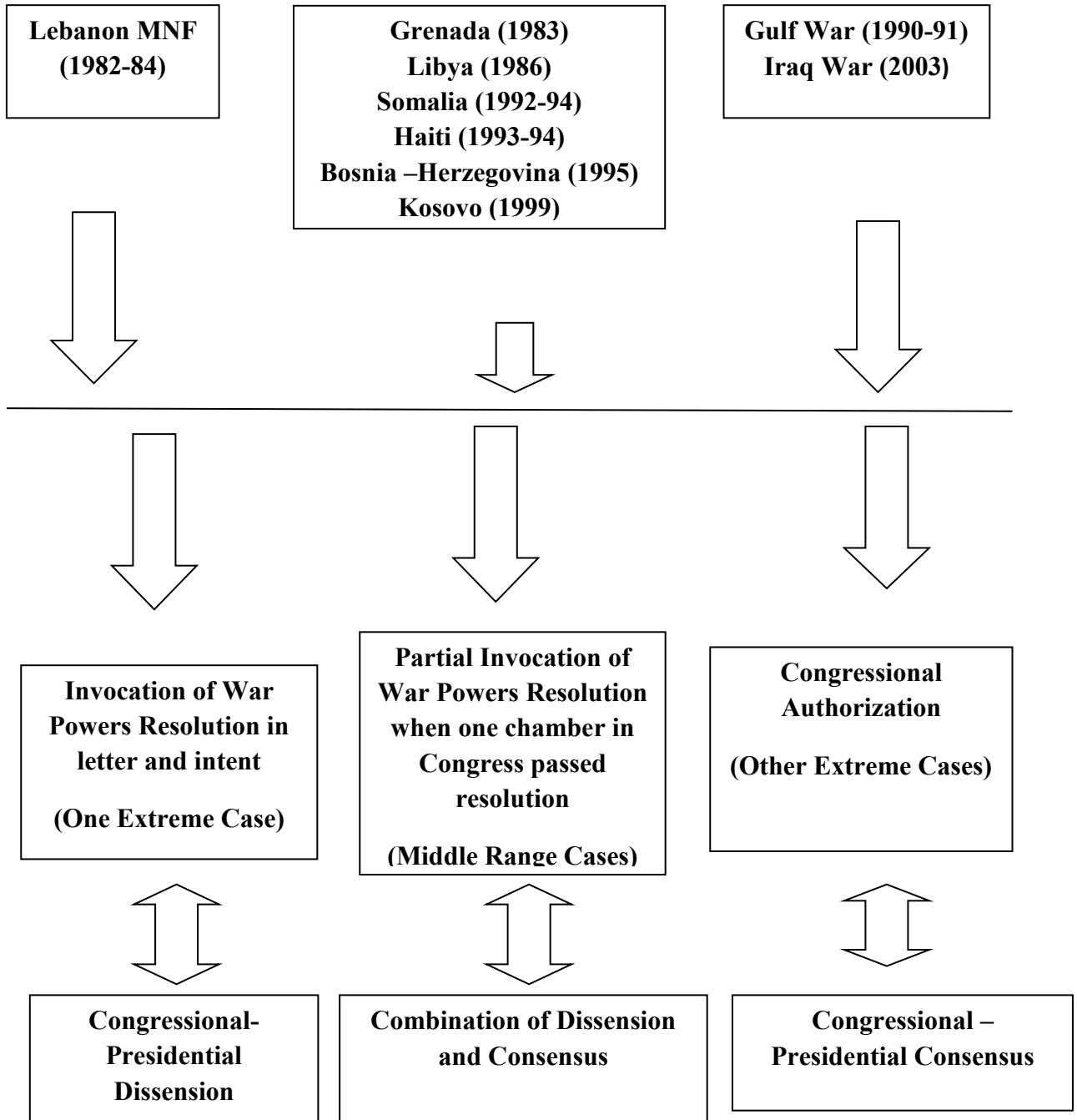
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Appendix 1

**WAR POWERS RESOLUTION**  
**Consensus-Dissension Continuum Chart**



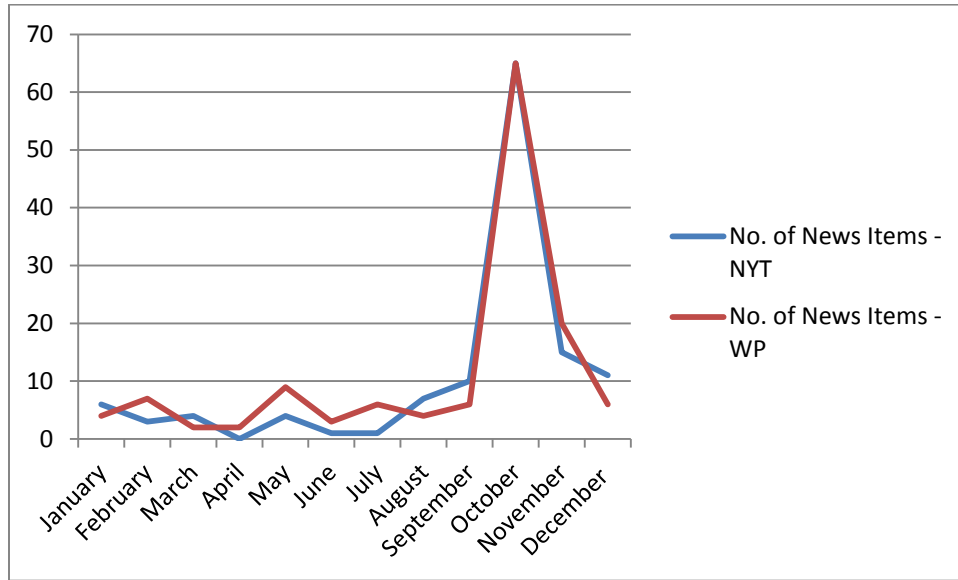


**Appendix 2**

**COMPREHENSIVE TEST BAN TREATY (CTBT)**

**Media Attention – New York Times and Washington Post (Comparative)**

**January – December 1999**



**The New York Times (NYT) – 127**

**Washington Post (WP) - 134**

Source: ProQuest Historical Newspapers: The New York Times (1851 – 2007). Available at <http://proquest.umi.com.libproxy.uoregon.edu>; The Washington Post Archival Website: <http://pqasb.pqarchiver.com/washingtonpost/advancedsearch.html>

Appendix 3

COMPREHENSIVE TEST BAN TREATY (CTBT)

Gallup Public Opinion Survey

Interviewing Date: October 21-24, 1999

Survey # GO907190

Question 1:

Regardless of what the Senate actually did, what do you think the Senate should have done – voted to ratify the treaty, or voted to defeat the treaty?

Response:

- |                          |       |            |
|--------------------------|-------|------------|
| • Voted to ratify treaty | ----- | 59 percent |
| • Voted to defeat treaty | ----- | 29 percent |
| • Other (Volunteered)    | ----- | 1 percent  |
| • No Opinion             | ----- | 11 percent |

Source: The Gallup Poll. Public Opinion 1999. p. 230.