I. EXECUTIVE SUMMARY

House Bill 1129 requires the Office of the Attorney General to determine the extent to which multinational organizations and international agreements interfere with state law or restrict the sovereignty of the State of Texas. The report finds:

- International legal norms or decisions by multinational organizations do not, on their own accord, preempt state law or intrude on the sovereignty of the states.

- Provisions of international law supersede state law only if either: (1) they are embodied in self-executing provisions of a treaty ratified by the Senate; or (2) the U.S. Congress and the President codify the provisions into federal law through the legislative process.

- Multinational organizations can displace state law only if a federal statute or self-executing provision of a ratified treaty authorizes them do so.

- Treaties found to violate the Constitution cannot be enforced as a matter of domestic law.

II. BACKGROUND ON H.B. 1129

On June 17, 2011, Governor Rick Perry signed into law House Bill 1129, which requires the Office of the Attorney General ("OAG") to study the extent to which multinational organizations and international treaties interfere with state law or undermine the sovereignty of the State of Texas. Authored by Rep. Lois Kolkhorst and sponsored by Sen. Glenn Hegar, H.B. 1129 passed by votes of 137 to 1 in the Texas House of Representatives and 30 to 1 in the Texas Senate.[1]

The text of H.B. 1129 states: "The attorney general shall conduct a study to determine whether the laws of this state or the authority of the Texas Legislature may be restricted, nullified, superseded or directly affected by" multinational bodies and international treaties. In addition to requiring that general inquiry into the legal impact of international law, H.B. 1129 also directs the OAG to examine the effect of certain specified multinational organizations and international treaties. According to a bill analysis prepared by the House Research Organization, legislative support for H.B. 1129 stemmed from a concern that: "Government and government agencies are becoming less accountable to the electorate, causing Americans to feel increasingly removed from their governmental institutions.

[1] H.J. TEX., 82nd Leg., R.S. 3961 (2011); S.J. OF TEX., 82nd Leg., R.S. 3348 (2011).

Government is also becoming increasingly influenced by large multinational bodies and treaties that are not accountable to American voters."[2]

Pursuant to H.B. 1129's directive, the OAG prepared this report. The report is divided into two principal segments. First, the report examines the relationship between state, federal, and international law under the framework established by the U.S. Constitution. This portion of the report examines the United States' federalist system of government, which establishes the legal framework that governs the extent to which international agreements effect domestic law in the United States. As the report explains, the Supremacy Clause of the U.S. Constitution determines which laws preempt state law. Generally, international law does not supersede state law. However, provisions of international law acquire the force of federal law, and thus preempt state law, if either: (1) they are embodied in self-executing provisions of a treaty ratified by the Senate; or (2) they are incorporated into federal law through the legislative process. Similarly, a multinational organization is powerless to displace state law unless a self-executing treaty provision or federal statute authorizes it to do so.

The second portion of the report individually examines each of the multinational organizations and international agreements that are specified in H.B. 1129 and determines that most have no impact on domestic law and are therefore powerless to interfere with the sovereignty and laws of the State of Texas.

III. LEGAL OVERVIEW & CONSTITUTIONAL FRAMEWORK

In order to analyze an international legal norm's domestic impact—and therefore its effect on the State of Texas—it is necessary to first consider the federalist system of government established by the U.S. Constitution. The Constitution grants specific enumerated powers to the legislative, executive, and judicial branches of the federal government. Those powers that the Constitution does not grant to the federal government are specifically reserved to the states and the American people under the Tenth Amendment, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[3]

However, where the federal government is authorized to act, Article VI of the Constitution states that federal law is "supreme" and therefore supersedes any contrary laws enacted by states. The text of Supremacy Clause in Article VI provides:

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[2] HOUSE RESEARCH ORG., BILL ANALYSIS, Tex. H.B. 1129, 82nd Leg., R.S. (2011).
[3] U.S. CONST. amend. X.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Under this constitutional framework, three—and only three—categories of laws are "supreme" in comparison to the laws of the State of Texas: (1) the U.S. Constitution itself; (2) "Laws of the United States";[4] and (3) treaties executed by the President and ratified by the Senate.

Importantly, international law is not included in the text of the Supremacy Clause and is therefore not "supreme" in comparison to state law. Thus, international law, by itself, lacks any authority or preemptive force over state law.[5] However, because the Constitution states that federal law is supreme, if Congress and the President enact a statute that independently adopts international law, or the Senate ratifies a self-executing treaty provision, then that action incorporates a provision of international law as the "supreme Law of the Land," which renders it binding on the states like any other federal law.[6]

Further, an international treaty cannot bind the United States if it violates the Constitution, which is truly the "supreme Law of the Land." As the U.S. Supreme Court observed, a treaty cannot "authorize what the Constitution forbids."[7] The treaty power does not "extend[] so far as to authorize what the Constitution forbids, or a change in the character of the government, or in that of one of the states."[8] Thus, to the extent a treaty signed by the President and ratified by the Senate is found to violate the Constitution, the treaty cannot be enforced as a matter of domestic law.

Under the Supremacy Clause, Treaties are deemed to be "supreme" to state law. However, not *all* treaties supersede state law. That is because the law does not treat all treaties identically. Instead, only certain categories of treaties are automatically enforceable as domestic law and thus have the power to supersede state law.

The Treaty Power is contained in Article II, Section 2 of the U.S. Constitution, which provides that the President: "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the

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[4] *See* U.S. CONST. art. VI.
[5] *See Medellin v. Texas*, 552 U.S. 491 (2008).
[6] *See* U.S. CONST. art. VI.
[7] *Asakura v. City of Seattle*, 265 U.S. 332, 341 (1924).
[8] *Geofroy v. Riggs*, 133 U.S. 258, 267 (1890).

Senators present concur."[9] As a general matter, treaties are not binding on the United States until they have been signed by the President and ratified by the Senate. Even then, not all treaties carry the force of domestic law even when ratified. Only those treaty provisions that are "self-executing" are domestically enforceable upon ratification. Self-executing provisions are considered to be automatically binding as federal law as soon as they are ratified by the Senate and thus require no further congressional action to render them domestically enforceable. In contrast, provisions which do not independently carry the force of federal law—and are therefore not domestically enforceable—are termed "non-self-executing."

The Supreme Court has long recognized the distinction between "self-executing" and "non-self-executing" treaty provisions.[10] The Court has held that "stipulations" which are not self-executing "can only be enforced pursuant to legislation to carry them into effect."[11] Contrasting the two types of treaties, the Court further observed: "If the treaty contains stipulations that are self-executing, that is, require no legislation to make them operative, to that extent they have the force and effect of a legislative enactment."[12]

It is common for the Senate to attach a non-self-execution declaration to treaties that it ratifies, and this is especially common when the Senate ratifies human-rights treaties that include provisions that the United States is unwilling to accept as domestic law.[13] And a treaty provision may be deemed "non-self-executing" even in the absence of an explicit declaration to that effect. A treaty provision that "expressly call[s] for implementing legislation" or "provides that party states will take measures through their own laws to enforce its proscriptions" evinces its "intent not to be self-executing."[14]

Some law professors have suggested that the United States' international legal obligations should have the status of "federal common law." On this view, international law is *automatically* incorporated into "supreme" federal law and preempts any state law to the contrary—regardless of whether the national political branches have enacted a statute or treaty to enforce it.[15] This view is mistaken and cannot be squared with the text of the Constitution.

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[9] U.S. CONST. art. II, § 2.

[10] *See Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829).

[11] *See Whitney v. Robertson*, 124 U.S. 190, 194 (1888).

[12] *Id.*

[13] *See, e.g.*, International Covenant on Civil and Political Rights, Dec. 16, 1966, 6 I.L.M. 368 ("ICCPR"), 138 Cong. Rec. 8,071 (1992).

[14] *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 809 (D.C. Cir. 1984) (Bork, J., concurring).

[15] *See, e.g.*, Harold Hongju Koh, *Is International Law Really State Law?*, 111 Harv. L. Rev. 1824 (1998).

To begin with, Article I, § 8 of the Constitution gives Congress the power to "define and punish . . . Offenses against the Law of Nations"; this provision is hard to reconcile with the notion that international law automatically takes effect as self-executing federal law. The Constitution also requires the United States to guarantee to the people of each State a "republican form of government."[16] A "republican" form of government cannot allow state law to be pushed aside by international legal norms that have not been formally incorporated into United States law.[17] Finally, international law is notably absent from the three categories of "supreme" federal law described in Article VI: the Constitution, treaties, and the "laws of the United States." As state officials are bound by oath to follow state law, except to the extent it conflicts with the Constitution of the United States, those are the *only* three categories of law that are capable of displacing state law or restricting the powers of our legislature.

In sum, the laws of the State of Texas cannot be "restricted, nullified, superseded, preempted, or otherwise directly affected" by any multinational organization or international agreement acting on its own independent authority. If, however, Congress and the President enact a federal statute adopting international legal provisions through the legislative process or the Senate ratifies a treaty with self-executing provisions, those international legal provisions become the supreme law of the United States and supersede contrary state law. International legal norms or decisions by multinational bodies are not, on their own accord, empowered to preempt state law or intrude on the sovereignty of the states.

IV. ANALYSIS OF SPECIFIC INTERNATIONAL AGREEMENTS AND MULTINATIONAL ORGANIZATIONS ENUMERATED IN H.B. 1129

A. THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) AND ANY ENTITY CREATED UNDER OR IN CONNECTION WITH THE AGREEMENT.

Initially, NAFTA was little more than a non-binding agreement entered into by President George H.W. Bush in late 1992. That agreement was not legally binding in the United States until 1993, when the U.S. Congress passed and President Bill Clinton signed the NAFTA Implementation Act.[18] The NAFTA Implementation Act (Act) amended provisions of federal law to adopt and implement the requirements contained in the agreement originally signed by

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[16] *See* U.S. CONST. art. IV, § 4.

[17] *Cf.* Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 857 (1997) (noting that the "position that [international law] is federal common law is in tension with basic notions of American representative democracy").

[18] Pub. L. No. 103-182, 107 Stat. 2057 (1993) (codified at 19 U.S.C.A. § 3301).

President Bush. Besides codifying the language of NAFTA as federal law, the Act also stated Congress's "approval" of the Agreement.[19]

As a federal statute enacted by Congress, the NAFTA Implementation Act maintains the same constitutional supremacy that is accorded to all other federal statutes. As a consequence, any conflicting state laws are preempted: "the federal government, through its Constitutional authority and the implementing bill, retains the authority to overrule inconsistent state law through legislation or civil suit."[20] Importantly, however, the Act strictly limits the circumstances in which state law may be declared preempted: "No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid."[21] And the Act expressly prohibits a *private* right of action against states.[22]

Consistent with this, the "Statement of Administrative Action" – which Congress also "approve[d]" in the Act,[23]– states that "[t]he NAFTA does not automatically 'preempt' or invalidate state laws that do not conform to the NAFTA's rules."[24] When disputes arise, NAFTA contemplates the use of dispute settlement panels, but "even if a NAFTA dispute settlement panel were to find a state measure inconsistent with NAFTA" it would not be preempted automatically.[25] Instead, only "the federal government, through its Constitutional authority and the implementing bill, retains the authority to overrule inconsistent state law through legislation or civil suit."[26] And "only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the NAFTA."[27] If the federal government brings an action in court, the federal court will decide *de novo* whether the state's law or action is at odds with NAFTA, based strictly on the language of NAFTA, together with its "negotiating and legislative history."[28] The federal court should give no deference to the findings or conclusions of any NAFTA tribunal.[29]

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[19] *Id.* § 101(a)
[20] The North American Free Trade Agreement Implementation Act, United States Statement on Administrative Action at 12 (1993).
[21] NAFTA Implementation Act § 102(b)(1)(B)(2).
[22] *Id.* § 102(c).
[23] *See id.* §101(a)(2)
[24] Statement of Administrative Action at 9.
[25] *Id.*
[26] *Id.* at 12.
[27] *Id.*
[28] *Id.* at 12-13.
[29] *Id.*

Thus, NAFTA directly preempts state law only in limited ways. First, those aspects of NAFTA that have been expressly passed into federal law (whether in the NAFTA Implementation Act, or in later legislation) preempt contrary state law. However, to the extent state law is preempted by NAFTA, that preemptions stems from Congress's enactment of the NAFTA Implementation Act. Second, if the federal government believes a state law or its application is inconsistent with NAFTA, it can bring suit against the state asking a federal court to declare the state law or application invalid. During the course of its research, the OAG was unable to locate any instances wherein the federal government sued to preempt a state law for contravening the NAFTA Implementation Act.

While NAFTA only *directly* preempts contrary state laws in these very limited ways, it remains possible for NAFTA tribunals to *indirectly* but significantly impact state law and policy. Chapter 11 of NAFTA sets up a dispute-resolution procedure whereby Canadian or Mexican "investors" can bring a binding arbitration proceeding against the United States government alleging that government action (including state action) has (1) economically discriminated against them, (2) treated them with less than the "fair and equitable treatment" required by international law, or (3) "expropriated" from them without just compensation. The parties set up an international panel of three arbitrators to decide the controversy. This panel may award monetary damages to the claimant, but the panel may not enjoin any domestic law (or declare it invalid).

Even so, the financial liability imposed by a NAFTA panel might affect state law or policy by influencing the federal government to pressure a state to make changes to avoid future liability. And NAFTA panels have not been shy about asserting jurisdiction to consider sub-national governmental actions, including the actions of state courts. Below is a brief summary of four NAFTA chapter 11 proceedings that are illustrative.

· **Metalclad v. Mexico** (August, 2000): Metalclad, an American-owned company, received approval from Mexican federal authorities to build a hazardous waste storage facility in Mexico. The local authorities, however, refused to give their approval, and the governor of the affected Mexican state even went so far as to sign a decree placing the proposed site within a protected ecological zone. Metalclad brought a NAFTA chapter 11 claim, and the panel found against Mexico, awarding $16.8 million to Metalclad. The panel concluded that Mexico had breached a duty of transparency and that the regulatory actions taken by the local and provincial governments had constituted an impermissible expropriation of property. Mexico brought an action in the Supreme Court of British Columbia, Canada, seeking to annul the award (the parties had agreed on Vancouver as the place of arbitration). The Canadian court upheld the majority of the award based on the takings ruling, but did find that the NAFTA panel had exceeded its authority in finding that Mexico had violated a supposed international-law rule of transparency.

· **Loewen v. United States** (June 2003): Loewen was a Canadian funeral-home operator engaged in an aggressive expansion-through-acquisition campaign. It contracted to buy a small Mississippi funeral home operator, who later sued Loewen in Mississippi court for breach of the $4 million contract. The Mississippi judge allegedly allowed the local operator to repeatedly characterize Loewen as a large, ruthless foreign company that took advantage of a small, unsophisticated local company. The Mississippi jury awarded $500 million in damages against Loewen, including $75 million for emotional distress, and $400 million in punitive damages. Mississippi law required Loewen to post a 125% bond to appeal the award. Loewen asked the Mississippi Supreme Court to excuse or reduce the bonding requirement, which it refused. Per Loewen, that refusal forced it to quickly settle with the local funeral home operator for $175 million. Loewen subsequently brought a NAFTA chapter 11 claim against the United States alleging it had been treated discriminatorily and without due process. In a preliminary decision, the NAFTA panel found it had jurisdiction, rejecting arguments that it lacked the ability to review state-court proceedings or judgments. Ultimately, the NAFTA panel determined that there was no rational basis for the jury's enormous award, and that there had been a gross miscarriage of justice based on discrimination against a foreign company. But the panel ultimately awarded no damages based on various procedural issues, including the fact that Loewen had become controlled by a U.S. company after it initiated the chapter 11 proceedings.

· **Methanex v. United States** (August 2005): Methanex, a Canadian methanol producer, brought a chapter 11 claim against the United States after California changed from requiring methanol as a gasoline additive, to requiring ethanol as an additive and banning methanol. California had ostensibly banned methanol because it was deemed a possible carcinogen and there had been several leaks into groundwater. Methanex claimed the ban was an attempt by California to favor Midwest U.S. producers of ethanol over Canadian-produced methanol. Ultimately, the chapter 11 panel found that Methanex had failed to prove its claims, and that the California legislature and governor had acted on the basis of substantial scientific evidence.

· **Glamis Gold v. United States** (June 2009): Glamis, a Canadian gold mining company, brought a chapter 11 proceeding claiming that the federal and California governments had unlawfully expropriated its investment in California land through a series of legislative and regulatory measures that effectively made mining the land unfeasible. After deciding that chapter 11 panels are *not* bound by the decisions of prior NAFTA panels (but that some attempt at consistency should be made), the panel in the Glamis case rejected the expropriation claim for two reasons. First, the panel found that the regulatory and legislative actions were at most a *partial* taking, and hence not compensable. Second, the panel found that, to violate the "fair and equitable treatment" requirement of NAFTA, government

action "must be sufficiently egregious and shocking—a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or a manifest lack of reasons—so as to fall below accepted international standards." Thus, the Glamis panel, while acknowledging that future chapter 11 panels were under no obligation to follow it, appeared to be attempting to modestly circumscribe when chapter 11 damages would be available to petitioners.

B. The Security and Prosperity Partnership of North America (SPP) and Any Entity Created Under or in Connection with the Agreement, Including the North American Competitiveness Council (NACC)

The Security and Prosperity Partnership of North America (SPP) was an initiative started in 2005 and supported by President George W. Bush, the President of Mexico, and the Prime Minister of Canada. These three leaders launched the initiative, and various additional meetings were held by representatives of the participating countries between 2005 and 2009.

Unlike NAFTA or the World Trade Organization, the SPP has never resulted in a signed treaty or agreement, and never purported to impose legally binding commitments or obligations on the participating nations. Since President Barack Obama took office in 2009, the SPP has apparently become dormant—indeed, the U.S. website for the SPP is no longer even active.

The North American Competitiveness Council (NACC) was an official working group of the SPP that consisted of 30 corporate representatives from some of North America's largest companies. But like the SPP itself, the NACC never purported to create any legally binding obligations so it has never restricted the authority of the Texas Legislature in any way.

C. The World Trade Organization (WTO) And Any Associated Agreement

In 1995, the U.S. and other WTO member countries entered into a series of trade agreements called the Uruguay Round Agreements. The agreements are not a self-executing treaty. Thus, Congress and the President enacted the Uruguay Round Agreement Act (URAA) (which implemented the agreement by formally adopting its terms) and an accompanying Statement of Administrative Action.[30] As with NAFTA, the URAA attempted to specifically amend those parts of federal law that Congress deemed necessary to comply with these WTO agreements, while leaving the international agreements themselves with no independent force of law in the United States.

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[30] Uruguay Round Agreement Act, Pub. L. No. 103-465 (codified at 19 U.S.C.A. §§ 3501 et seq.).

Like the NAFTA Implementation Act, the URAA provides that: "No State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law or application invalid."[31] The URAA also makes clear that any decision by a WTO dispute settlement panel (which acts similarly to a NAFTA panel) will be given no deference by a U.S. court.[32] And as with NAFTA, the URAA also clearly prohibits any private right of action based on the WTO agreements (or the URAA), even going so far as to exercise Congress's commerce clause power to "occupy the field" so as to "preclud[e] any person other than the United States from bringing any action against any State or political subdivision thereof or rais[e] any defense to the application of State law under or in connection with any of the Uruguay Round Agreements."[33]

D. The World Health Organization (WHO) And Any Associated Entity or Agreement

The World Health Organization (WHO) is an agency of the United Nations (U.N) that was established in 1948. The U.S. has been a member of the WHO since 1946.

The WHO has no authority to supersede state law. Indeed, it does not appear that the WHO puprports to be a law-making body. Instead, the WHO generally pursues nonlegal projects intended to further international public health. To the extent the WHO works to establish international law, it appears to do so by promoting treaties among its member nations.

Like the U.N. itself, the WHO has the ability to promote and facilitate multilateral treaties between its members. A notable example of a WHO-led treaty is the World Health Organization Framework Convention on Tobacco Control (FCTC). However, the FCTC does not bind the Unites States – or the State of Texas – because it was never signed by the President or ratified by the Senate. Although the U.S. Ambassador to the WHO initially signed the FCTC and thus made the U.S. one of the 168 signatory nations to the proposed agreement, President Bush refused to do so and never submitted it to the Senate for ratification. Therefore, the FCTC has no force of law in the United States.

E. The United Nations And Any Associated Entity or Agreement.

The United States has entered into multiple multilateral treaties as a result

[31] *Id.* § 102(b)(2)(A).
[32] *Id.* § 102(b)(2)(B).
[33] *Id.* § 102(c).

of its membership in the United Nations and associated entities. Rather than provide a comprehensive list of all the U.N.-related treaties that the US has signed, this report provides examples of various types of treaties in an attempt to highlight the better known or more controversial agreements. This provides a platform for discussing how each treaty might affect Texas law and thus illustrates how similar treaties might also affect the State of Texas.

There are many spin-off organizations that had their genesis in the United Nations. Some of these groups remain within that umbrella; others are now standalone organizations. Also provided below is a list of some of those organizations.

Organizations

The U.N. itself is made up of five principle organs: the General Assembly (the main deliberative assembly); the Security Council (for deciding certain resolutions for peace and security); the Economic and Social Council (for assisting in promoting international economic and social cooperation and development); the Secretariat (for providing studies, information, and facilities needed by the UN); and the International Court of Justice (ICJ) (the primary judicial organ).

The ICJ has jurisdiction to issue advisory opinions requested by various U.N. bodies and agencies, and also has jurisdiction to decide adversarial proceedings between nations, but only if those nations consent to ICJ's jurisdiction. It appears the U.S. may have attempted to invoke this latter jurisdiction against Iran during the hostage crisis, but Iran refused to participate and refused to comply with the ICJ's judgment.

The U.N. has many specialized institutions, including: the World Health Organization (discussed above), the World Food Program, the United Nations Children's Fund, the Food and Agriculture Organization, the International Atomic Energy Agency, the International Civil Aviation Organization, the International Fund for Agricultural Development, the International Labour Organization, the International Maritime Organization, the International Monetary Fund, the International Telecommunication Union, the United Nations Educational, Scientific, and Cultural Organization, the United Nations Industrial Development Organization, the Universal Postal Union, the World Bank, the World Intellectual Property Organization, the World Meteorological Organization, and the World Tourism Organization.

Treaties

• *U.N. Charter*: The U.N. Charter was the treaty that created the United Nations. The U.S. ratified this treaty. Article 25 of the Charter gives the U.N.'s Security Council the power to make decisions that are legally binding on its members. The

U.S. has a permanent seat on the Security Council that carries with it veto power over any such binding decision. Thus, the U.S. can only be bound by a Security Council decision if it first consents to that decision by not vetoing it. Even then, a Security Council decision would not take effect in the U.S. unless Congress and the President enacted legislation implementing the decision. One example of this relates to Yugoslavia in 1993. In 1993, the U.N. Security Council established an international tribunal to prosecute war crimes in former Yugoslavia. As part of this, the Security Council passed a statute requiring countries to comply with requests for assistance from the new tribunal, including extradition of those indicted by the tribunal. The domestic law of the U.S. at the time did not allow for this type of extradition, so Congress enacted Public Law 104-106 authorizing the transfer of persons to the tribunal pursuant to the Security Council statute. This domestic law went into effect in 1996 and, as a valid federal statute, had the power to preempt contrary state law.

• *The Convention on International Civil Aviation*: also known as the Chicago Convention, established the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations charged with coordinating and regulating international air travel. The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel. The Convention also exempts airplane fuels from taxation. It was ratified by the U.S.

• *The Convention on the Prevention and Punishment of the Crime of Genocide*: adopted by the United Nations General Assembly on December 9, 1948 as General Assembly Resolution 260. The Convention entered into force on January 12, 1951. All participating countries are advised to prevent and punish actions of genocide in war and in peacetime. The number of states that have ratified the convention is currently 142. The U.S. ratified the treaty in 1988.

• *The International Atomic Energy Treaty*: created the International Atomic Energy Agency (IAEA), an international organization that seeks to promote the peaceful use of nuclear energy, and to inhibit its use for any military purpose, including nuclear weapons. The IAEA was established as an autonomous organization on July 29, 1957. Though established independently of the United Nations through its own international treaty, the IAEA Statute, the IAEA reports to both the U.N. General Assembly and Security Council.

• *The Vienna Convention on Diplomatic Relations*: an international treaty that defines a framework for diplomatic relations between independent countries. It specifies the privileges of a diplomatic mission that enable diplomats to perform their function without fear of coercion or harassment by the host country. This forms the legal basis for diplomatic immunity. It has been ratified by 187 countries. The treaty was adopted on April 18, 1961, by the United Nations Conference on

Diplomatic Intercourse and Immunities held in Vienna, Austria, and first implemented on April 24, 1964. Two years later, the United Nations adopted a closely related treaty, the Vienna Convention on Consular Relations.

• *The Single Convention on Narcotic Drugs*: an international treaty to prohibit production and supply of specific drugs and of drugs with similar effects except under license for specific purposes, such as medical treatment and research. The Treaty updated and consolidated earlier treaties to include new types of drugs. The Commission on Narcotic Drugs and the World Health Organization were empowered to add, remove, and transfer drugs among the treaty's four Schedules of controlled substances. The International Narcotics Control Board was put in charge of administering controls on drug production, international trade, and dispensation. The United Nations Office on Drugs and Crime (UNODC) was delegated the Board's day-to-day work of monitoring the situation in each country and working with national authorities to ensure compliance with the Single Convention. This treaty has since been supplemented by the Convention on Psychotropic Substances, which controls LSD, Ecstasy, and other psychoactive pharmaceuticals, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which strengthens provisions against money laundering and other drug-related offenses.

• *The Vienna Convention on Civil Liability for Nuclear Damage*: Initially established in 1963, the treaty was substantially amended at 1997 a IAEA diplomatic conference, where various nations adopted a protocol to amend the convention. This protocol establishes liability parameters for nuclear facilities. The U.S. has not signed or ratified the 1997 protocol.

• *The Vienna Convention on the Law of Treaties*: a treaty concerning the international law on treaties between states. The VCLT was drafted by the International Law Commission (ILC) of the United Nations, which began work on the Convention in 1949. It was adopted on May 22, 1969. The Convention entered into force on January 27, 1980. The VCLT has been ratified by 112 states as of November 2010. The United States signed the treaty, but never ratified it. The Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations (VCLTIO) is an extension of the VCLT. It was developed by the International Law Commission and opened for signature on March 21, 1986. The U.S. has not ratified this later treaty either.

• *United Nations Convention Against Torture*: requires participating nations to take effective measures to prevent torture within their borders, and forbids states to transport people to any country where there is reason to believe they will be tortured. It was signed and ratified by the U.S. An additional Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the U.N. General Assembly in 2002, and

has 71 signatories. It provides for the establishment of "a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment," to be overseen by a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The OPCAT has not been signed or ratified by the U.S.

• *The International Covenant on Civil and Political Rights (ICCPR)*: a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of March 2012, the Covenant had 74 signatories and 167 parties. The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The ICCPR is monitored by the Human Rights Committee (a separate body from the Human Rights Council), which reviews regular reports on how the rights are being implemented. Signatory nations must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and typically holds three sessions per year. The U.S. signed and ratified the treaty in 1992, but with reservations that none of the articles should restrict the right of free speech and association; that the U.S. government may impose capital punishment on any person other than a pregnant woman, including persons below the age of 18; that "cruel, inhuman and degrading treatment or punishment" refers only to those treatments or punishments prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the U.S. Constitution; that Paragraph 1, Article 15 will not apply; and that, notwithstanding paragraphs 2(b) and 3 of Article 10 and paragraph 4 of Article 14, the U.S. government may treat juveniles as adults, and accept volunteers to the military prior to the age of 18. The United States also submitted five "understandings", and four "declarations." Included in the Senate's ratification was the declaration that "the provisions of Article 1 through 27 of the Covenant are not self-executing", and in a Senate Executive Report stated that the declaration was meant to "clarify that the Covenant will not create a private cause of action in U.S. Courts."

• *The United Nations Framework Convention on Climate Change (UNFCCC or FCCC)*: an international environmental treaty negotiated at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro from June 3 to 14, 1992. The stated objective of the treaty is to stabilize greenhouse gas concentrations in the atmosphere. The treaty itself set no binding limits on greenhouse gas emissions for individual countries and contains no enforcement mechanisms. In that sense, the treaty is considered legally non-binding. Instead, the treaty provides a framework for

negotiating specific international treaties (called "protocols") that may set binding limits on greenhouse gases. The main UNFCCC treaty is the Kyoto Protocol. The U.S. ratified the non-binding UNFCCC, but not the Kyoto Protocol.

• *The Chemical Weapons Convention*: an arms control agreement which outlaws the production, stockpiling, and use of chemical weapons. It was submitted to the UN General Assembly in 1992, which approved it. The U.S. has ratified the CWC. The CWC is administered by the Organization for the Prohibition of Chemical Weapons (OPCW), which acts as the legal platform for specification of the CWC provisions and conducts inspections at military and industrial plants to ensure compliance of member states.

• *United Nations Convention on the Law of the Sea*: an international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place from 1973 through 1982. The Law of the Sea Convention defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The U.S. neither signed nor ratified this treaty.

• *The World Intellectual Property Organization Copyright Treaty*: an international treaty on copyright law adopted by the member states of the World Intellectual Property Organization (WIPO), one of the 17 specialized agencies of the United Nations. The U.S. ratified this treaty, and implemented it into domestic law through the Digital Millennium Copyright Act (DMCA). The WIPO similarly created the WIPO Performances and Phonograms Treaty (WPPT), which the U.S. similarly ratified and implemented through the DMCA.

• *The Comprehensive Nuclear-Test-Ban Treaty (CTBT)*: bans all nuclear explosions in all environments, for military or civilian purposes. It was adopted by the United Nations General Assembly on September 10, 1996. The U.S. signed but has never ratified this treaty.

• *The Rome Statute of the International Criminal Court*: (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on July 17, 1998 and entered into force on July 1, 2002. As of 1 February 2012, 121 nations are party to the statute. Under the Rome Statute, the ICC can only investigate and prosecute the core international crimes (genocide, crimes against humanity, war crimes and the crime of aggression) in situations where nations are unable or unwilling to do so themselves. The court can investigate crimes only in nations that signed the Rome Statute unless authorized by the U.N. Security Council. The U.S. signed but never ratified the Rome Statute, and later informed the U.N. Secretary General that it no longer intends to become a

party to the treaty.

• *The International Treaty on Plant Genetic Resources for Food and Agriculture (IT PGRFA)*: popularly known as the International Seed Treaty. The treaty was negotiated by the Food and Agriculture Organization of the United Nations (FAO) Commission on Genetic Resources for Food and Agriculture (CGRFA) and since 2006 has its own Governing Body under the aegis of the FAO. The U.S. signed but has never ratified this treaty.

F. North American's SuperCorridor Coalition, Inc. (NASCO).

The North America's SuperCorridor Coalition, Inc. (NASCO), is a 501(c)(6) nonprofit trade and lobbying organization dedicated to developing a "multi-modal transportation system" (i.e., trucks, boats, trains, etc.) running from Mexico to Canada. It is especially concerned with interstate highways like I-35. It is not governmental, although some governmental institutions have been members. For example, TxDOT has been a member in the past. NASCO's overarching purpose seems to be creating a transportation super-corridor to facilitate trade under NAFTA.

NASCO is a private non-profit organization, not a governmental entity. Thus, it has no direct legal authority of its own and has no ability to restrict the authority of the Texas Legislature.