

Coach's Notes¹

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Resolved: The US should join the International Criminal Court.

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Introduction

This is the December edition of the 2016-17 CDA season. Previous year's editions can be found through the [Training Materials](#) page on the [CDA web site](#). Accompanying this document are my notes from the final round at Simsbury High School presented in two formats, transcript and flow chart.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing signed, reasoned comments or replies from coaches or students. So if you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

One Counterplan Too Many

The Negative presented a counterplan in the final round at Simsbury. It was a mistake that should have cost them the round. But not all mistakes are fatal. I don't know the basis for each judge's decision, but I give my rationale below. As a debater, you should learn to recognize whether you were lucky or smart.

Aff should have all but ended the debate during the cross-ex of the First Negative. This round is a good example of what not to do, and how to effectively use cross-ex to undo it.

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I'll discuss the counterplan first, and after that how to practice cross-ex using this example.

Counterplans 101

Debaters seem fascinated with counterplans. The first time I saw one presented in CDA was in February 2008 and I wrote about it in these notes. Neg had clearly thought it out carefully, laid the groundwork and it was very effective. The next month it seemed every Negative had a counterplan for a resolution where it made no sense at all.

Counterplans should be used very rarely, and with great care. They are complicated and time consuming. Often Neg can achieve the same affect by raising objections to the Aff case and explaining how the status quo is already working on the problem without adopting the resolution.

Most judges don't really understand counterplans, and some don't believe they are a valid strategy. You take the additional risk of having the judge reject the counterplan outright.

Plan vs Counterplan

When Neg introduces a counterplan they give up their greatest advantage, the status quo. At times the status quo may not seem like an advantage, but the status quo "is": it does not have to be justified. The counterplan requires the same burden of proof as the Aff plan. Neg must show how it will overcome the real-world constraints that limit effective action to solve the problem posed by the resolution.

Counterplans often arise because Neg feels a need to solve that problem, but Neg is not required to solve anything in order to win the round. They need only show Aff will fail or will cause additional problems. When Neg presents a counterplan Neg must show they solve the problem better than Aff does.

It is also likely the status quo is already working to solve the problem. Explaining those activities, and how minor improvements in funding or effort can improve their effectiveness can often win the debate for Neg. A counterplan doing the same thing comes with a much higher degree of difficulty.

Competitive

Counterplans must be "competitive," a term of art which means that it cannot be implemented simultaneously with the plan. If a counterplan is introduced, there are four possible worlds: the status quo, the plan, the counterplan, and the plan plus the counterplan. If the status quo is the best option, Neg wins. But by introducing a counterplan Neg abandons the status quo and we are left with the other three choices. If either the plan or the plan plus the counterplan are the best choice then Aff wins, because in either of those worlds the resolution is adopted. Only if the counterplan is superior to the other options will Neg win.

Competitiveness excludes frivolous proposals by the Neg. Any Aff plan can be improved by saying, "lets adopt the plan and give everyone \$1 million." But saying that means Neg accepts the resolution, so Aff should win even though the "counerplan" is better. If the plan and counterplan can both be adopted, then the resolution wins.

No Magic Wand

Neither the plan nor the counterplan are panaceas that can eliminate real world constraints. Fiat, the ability of Aff or Neg to call a plan or counterplan in to existence, only extends to the ability to ignore the political difficulties of getting the resolution enacted. But neither team has the power to waive real-world issues that affect any activity, especially those at the heart of the resolution. For example, you can assume Congress will pass legislation granting everyone \$1 million, but you have the problem the money has to be raised somehow and the subsequent spending is likely to cause inflation. In particular you cannot fiat results—peace, prosperity, justice, international agreement—you must show how your plan or counterplan will achieve them.

This is another reason to use counterplans sparingly. A counterplan written to correct flaws in the Aff case is a list of disadvantages. Why not simply use that list to attack Aff without the complications of a counterplan? Remember, Neg does not have to solve the problem, just show Aff won't or that Aff will cause worse problems.

Simsbury Final Round

Let's look at the Neg counterplan from the December tournament. You can find my flow of the round on the same page of the web site where you found these notes. But for this discussion you can use the following summaries of the Aff and Neg cases.

Affirmative	Negative
<p>Definition: "join" means ratify the Treaty of Rome creating the ICC</p> <p>A1: The ICC prosecutes crimes where others are ineffective</p> <ul style="list-style-type: none"> • It's the court of last resort for genocide and war crimes. <p>A2: The ICC is reforming to be more relevant</p> <ul style="list-style-type: none"> • It's expanding to human rights, human trafficking, protecting cultural heritage. <p>A3: A1 and A2 provide the reason for the US to join the ICC</p> <ul style="list-style-type: none"> • US membership will expand ICC jurisdiction, increase prosecution and by example cause others to support the ICC 	<p>We accept the definitions</p> <p>N1: The ICC is inherently limited by charter</p> <ul style="list-style-type: none"> • It can only investigate crimes by countries who have ratified the treaty or those referred to it by the UN Security Council • As a result, prosecutions almost never happen. <p>N2: Past actions have diminished the ICC' authority</p> <ul style="list-style-type: none"> • All those tried have been Africans, ignoring crimes elsewhere • This has caused countries to withdraw. <p>Counterplan: US should lead the creation of a new court</p> <ol style="list-style-type: none"> 1. Led by judges, one from each country, 50% of countries must approve each judge 2. 2/3rd of judges must rule a crime has been committed for court to act 3. UN Peacekeeping Forces will enforce the court rulings

The first problem is the counterplan is presented as an afterthought, after two other contentions. In the round the First Negative actually labeled it their third contention. When you present a counterplan you are going all in: the debate will now be between the plan and the counterplan. Always lead with the counterplan at the start of the 1NC and spend the speech emphasizing the contrast with the Aff position.

Second, the counterplan isn't competitive. Aff wants the US to join the ICC; Neg wants the US to sponsor and join a new court. Why can't the US do both? There are some weak arguments that two courts divert attention and incur extra expense, but the US belongs to many international organizations, so it's hard to see why one more would much of a stretch.

Third, the Neg tries to fiat around problems that are inherent in any international court. Their first contention is that the ICC charter limits its actions, but any court would have to have a similar document authorizing its activities. A court without a charter either has no authority to do anything or has no limits and can do anything. Either option is bad. Neg never specifies a charter but this is the sort of magic wand debaters use to fend off objections: "How will the court be able to prosecute bad tango dancing in Argentina?" "Oh, it'll be in the charter!"

Neg argues in its first contention that the ICC is ineffective because the UN Security Council can't agree to refer crimes to it. But the counterplan only works if 50% of the members approve the judges and 2/3rd of the judges agree a crime has occurred. Similarly, why would the Security Council agree to send Peacekeepers to enforce court decisions. If that sort of international comity existed today, the ICC would be robust, and we wouldn't be debating this topic.

Essentially the Neg counterplan is the ICC in a Superman (or Supergirl) suit!

Reason for Decision

I would have voted for Neg. As I said above, sometimes it's better to be lucky than smart. You will have to look at my full flow for some of the details I cite.

Aff does realize the Neg counterplan is essentially the same as the plan, but only in the 1AR. This is a new argument in rebuttal and so I discard it. There are hints in cross-ex and the 2AC, but no clear statement. Had this issue been clearly raised in the 2AC it would have been an Aff win.

But I don't give Neg any credit for the counterplan. Based on both sides' discussion of the ICC, the counterplan is simply not a credible alternative. The counterplan takes up a lot of speaker time but doesn't figure in my result.

Instead I would vote on the relatively narrow grounds that Aff never responds to N2, and Neg does respond to A1, A2 and A3. N2 states that past actions by the ICC have been biased and this is causing countries to withdraw from the court. Aff does note the bias may be the natural result of the number and types of crimes committed in Africa, but not to the damage this has caused. Neg does respond directly to A1 and A2 (Aff links A3 to A1 and A2 so if they fall it falls, and Neg notes this). The counterplan may have been effective in one sense, that it distracted Aff enough to let these arguments slip through.

Practicing Cross-Ex

I was asked by one of my students if I had any books or tips on practicing cross-ex. Every debate text has a section on cross-ex, but like most of the material in most debate texts it's pretty general and not well illustrated with useful examples. Every debater should read at least one—or several—texts to learn the vocabulary needed to analyze debates. I also have several books that deal specifically with cross examination and the art of asking questions, but the first are directed to lawyers and the second are about inquiry in general. All provide useful principles to follow, but when the 1NC is ending and you have to start cross in about 30 seconds you really don't have time to start from first principles.

Practicing cross-ex, like practicing debate, is hard. A CDA round takes about 1 hour. Finding an opponent, a judge, a topic and prepping take additional time. If your school debate team has 20 members that's 10 teams or 5 practice debates, probably 10 hours a week if you have the time and resources. While I hate to fall back on sports metaphors, your football/basketball/soccer/whatever team doesn't practice by running a full game. They focus on specific skills and try to find drills that emphasize these.

I've suggested activities elsewhere that can help improve your debate skills: read aloud for 10 to 15 minutes each day to exercise your voice; read the newspaper or a news magazine regularly to increase your background knowledge; assign each team member a potential resolution topic and have them make a 5 or 10 minute presentation at your team meeting introducing the background facts and important issues; follow up each tournament by reviewing the arguments you used and the arguments you heard for structure, strengths and weaknesses; look up anything anyone said that you didn't know. There isn't a single original, exciting or brilliant idea in that list, and it's all work, but it's exactly what you should be doing between tournaments.

Why not do the same thing with cross-ex: What questions did you or your opponents' ask? Why? Were they any good? How could they be better? What questions should have been asked but weren't? Same thing with answers. You can add some work on questions and answers to many of the exercises listed in the previous paragraph.

One thing I learned from books for trial lawyers is the importance of planning out your questions, likely responses and follow ups. You can't do this prospectively at a tournament—well, actually you can think about likely questions as part of your prep—but you can certainly do it retrospectively. Practice enough and it will come to you naturally during the round.

If you have read my previous pieces on the CDA web site you know I follow my own advice. The October 2016, March 2014, February 2014 and other editions have examples and analyses of questions and answers based on rounds I observed. You can't teach debate if you don't have examples to present and discuss with your students.

Above I said that the final round at Simsbury this month should have ended in the cross-ex of the First Negative. As an example, let's see how that might work.

Cross-ex of the First Negative

Effective cross-ex requires you know what your objectives are. It is unlikely that your opponent will admit your argument openly. You want to focus on facts—ideally facts presented by the speaker himself—that will make your point obvious to the judge and audience. Let them draw the conclusion: it makes them feel good about themselves. Then reinforce it by reviewing it in the following speech.

Goals

The first goal in this cross-ex should be to establish that the counterplan is not only not competitive, but also essentially the same as the status quo. The second should be to show the Neg's new court will have the same limitations as the ICC, specifically those identified in the first two Neg contentions. If you still have time after those, a third goal might be to establish that US participation is usually critical to the success of any international organization.

None of these are “one question and move on” issues. Each requires a series of questions that go into detail and pin the speaker down on his position, or else demonstrate the speaker has no firm position.

Q&A

Any cross-ex you make up is purely imaginary. But if you stick to facts and statements made by the speaker being examined, you can be fairly certain of the responses.

Aff: Okay, based on your speech, Neg is proposing the US help establish a new court to replace the ICC, is that correct?

Neg: Yes.

Aff: So clearly the US will be “joining” this court, and the debate is about which court the US should join?

Neg: Yes. The US will lead development and be a member of the court in our proposed counterplan.

Aff: Is there any reason the US can't join both courts, the ICC and your new court?

Comment: Neg has three possible answers here. If they say “no” you press for a reason, which is likely to evolve into the third choice. If they say “yes”, you'll emphasize that with this follow up:

Aff: So there is no reason the US couldn't join both courts?

Comment: The third option is Neg will say something like “it would be wasteful to join both, since the new court will be better than the ICC,” in which case you follow up with a question to emphasize the point.

Aff: But other than that it may cost a bit more or be redundant, there is no real reason the US could not be a member of both courts?

Comment: Note you have established two facts that you will use later. First, Neg wants the US to join a court. Second, the counterplan isn't competitive, so “do both” is an option. Unless you know the judge understands the theory behind counterplans, you

don't want to use the term, competitive. You do want to explain why Neg's counterplan is consistent with adopting the resolution.

Now let's go after the contentions and show the similarity between the two courts.

Aff: Will your new court have a charter or some defining document?

Aff: Will that charter outline the powers of the court? It's jurisdiction? The crimes it covers? The countries it covers?

Comment: Neg must answer "yes" to all of these. If they say "no" your follow up questions point out it would mean the court would either have no idea what it was supposed to do, or its powers would be unlimited, both of which work in Aff's favor. Neg is likely to extend each "yes" by emphasizing the new court will be better than the ICC. Let that go for the moment and draw your conclusion.

Aff: So, just like the ICC, your court will be limited by its charter?

Neg: Not as limited, because we will greatly expand its scope.

Aff: But if something comes up that isn't in the charter it wouldn't be able to deal with it without its powers being expanded?

Comment: Neg may say the new court's judges can, by 2/3rd vote, decide what to prosecute. Your followup is something like:

Aff: How do you know what they will choose to prosecute?

Aff: How can you be sure they will choose to prosecute anything?

Aff: How easy is it to get a 2/3rd majority in the UN? The US Congress? Any large body?

Comment: Neg is likely to repeat that the new court won't be as limited as the ICC, but you've made your point against N1: there is no inherent difference between the two courts.

For N2:

Aff: Are war crimes and crimes against humanity being committed in the US? In Western Europe?

Aff: How about Africa? The Middle East?

Aff: Aren't most prosecutions, either by the ICC or your court, likely to be about events in developing countries?

Aff: Won't countries who join your court be able to leave?

You may be out of time at this point, but if not, there one more thing you can go for:

Aff: You intend to allow your court to use UN Peacekeeping Forces to arrest those indicted and enforce decisions, is that correct?

Neg: Yes.

Aff: Doesn't the use of UN Peacekeepers require authorization by the UN Security Council?

Comment: You have to know this about UN Peacekeeping actions from the packet or elsewhere. If Neg agrees you follow up by noting lack of Security Council support was a flaw in the ICC cited by Neg in N1. If Neg says "no" you have to back it up in your speech. Neg might say something like:

Neg: Yes, but we will include a UN Peacekeeping Force at the disposal of the court as part of our plan, so it won't need to go to the UN Security Council every time.

Comment: This is a “magic wand” argument, waiving away an inherent real world limitation. You should follow up with:

Aff: Didn't you say one problem with the ICC was the UN Security Council wouldn't vote to give it jurisdiction?

Aff: If the Security Council won't refer crimes to the ICC, why will they give your court an independent Peacekeeping Force?

Aff: Couldn't the UN Security Council give the ICC those resources today?

Discussion

Good cross-ex isn't flashy. Don't expect to your opponent to concede any major points—that certainly doesn't occur in my imagined dialog above.

The best use of cross-ex is to highlight and emphasize things your opponent has said that you intend to use in your attack. In this example it's difficult for Neg to deny that they are arguing for the US to join a court, that the US could join both courts, that any court has to be authorized and bounded by its establishing documents, that the UN Security Council isn't likely to give the Neg court more than what it is currently denying the ICC, and that most court cases are likely to be in the developing world. These points pretty much lay out the attack the Affirmative should use. I'll leave it as an exercise for you to outline a 2AC using all these.

Good cross-ex is patient. Neg probably won't answer as directly as I suppose above. But all of the questions are based on statements made in the 1NC or on fact. Don't be afraid to ask the same question over again, best with slightly different wording, to pull the discussion back in the direction you want it to go. And don't get frustrated if the answers contradict what the speaker just said, or deny the obvious. The judge will see what is happening, and you speak next so you can explain it.

Good cross-ex does require you follow up in your speech. Get into the habit of referring to the questions asked and answers given as you make your points. The strongest arguments you can make are those built on your opponent's words. Make sure your cross-ex and your speech address them directly.

What if you don't get to everything on your cross-ex list? You can take everything in the examples above and turn them directly into arguments without any support from cross-ex. But those arguments are much stronger if you can cite your opponent's answers.

Who's on First?

One question rarely discussed is how to decide which partner speaks first and which partner speaks second. If both debaters are about equal in skill, it probably doesn't matter much. But if one partner is clearly stronger than the other, it can make a big difference in how many rounds you win.

On Affirmative, there is no doubt in my mind that the stronger partner should speak second. The First Affirmative Constructive is a prepared speech and doesn't require any

fancy footwork. The First Affirmative Rebuttal is a different story—some call it the most difficult speech in the round as it follows the Negative block. But the Negative block also gives Aff time to think. Add in two or three minutes of prep time and Aff working together as a team should be able to outline a four-minute rebuttal as solid as the First Affirmative Constructive. This allows a less experienced debater to give two strong speeches benefiting from his partner's knowledge.

As Second Affirmative the stronger partner has to give a largely extemp constructive in response to the First Negative. Done well, it should cover the Neg case and any Neg refutation of the Aff case. In other words, done well the Second Affirmative Constructive should reset the debate to where it was at the end of the First Affirmative Constructive, with Aff in clear control. In rebuttal, the Second Affirmative gets to summarize the round, and in doing so can reply to anything still outstanding.

Negative is a bit less clear, but my preference is for the stronger partner to speak first. You've just heard the Aff case, which may or may not be what you expected. You can't take more than a minute or two of prep. While you have a Neg case prepped, you can't present it as written: you have to adapt it to Aff case you just heard. And don't forget it's critical that you cover the arguments in the 1AC as well.

The Second Negative has two more constructives to think about the round before speaking. He can listen to his partner's analysis and then the Aff reply. The Neg should always take the bulk of their prep time before the 2NC and prep both it and the 1NR as a single speech. Any new arguments have to come in the 2NC; rebuttal and refutation can be left to the !NR. Both partners can work together during the 1AR preparing a summary for the 2NR.

“Stronger” in the sense I use it above means being able to speak well with less preparation, and speak quickly with good organization to cover a lot of ground. At this point in the year, you and your partner should have a good idea of your relative skills. You need to take advantage of your strengths and protect your weaknesses to maximize your chances of winning.

One final note: this only works if teammates fully share all their arguments and coordinate their speeches. As a judge or observer, I never know what goes on in the minds of the teams I observe. But I often have the feeling each speaker is operating independently of his or her partner, and holding on to some arguments for their own speeches that would be better shared. Remember: you win or lose as a team.

In this final round, Aff presents the winning argument in 1AR, where it is a new argument and doesn't count, rather than the 2AC where it would have won the round. Did Aff just think of this argument after the 2AC finished? Or did the 1st Affirmative fail to share it with his partner prior to the 2AC? Hard to know. The former is just bad luck; the latter a bad mistake.