THE LEGALIZATION OF CONVENTIONAL INTERNATIONAL GOVERNMENTAL ORGANIZATIONS: AN EMPIRICAL SURVEY

by

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A Dissertation Submitted to the Faculty of the

DEPARTMENT OF POLITICAL SCIENCE

In Partial Fulfillment of the Requirements
For the Degree of

DOCTOR OF PHILOSOPHY

In the Graduate College

THE UNIVERSITY OF ARIZONA

2003

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ABSTRACT

International legalization refers to the idea that states voluntarily accept legal constraints in certain issue areas. Although the phenomenon of international legalization has become increasingly prominent in world affairs, its growth has been uneven. The purpose of this project is to perform a systematic examination of international legalization by providing an empirical survey of conventional international governmental organizations (IGOs). Due to the lack of a supranational sovereign government, most activity in the international system is not very legalized. IGOs are the most legalized international institutions. They are created by international agreements of states and they include substantive rules that states must follow as well as procedural rules that allow institutions of the organization to conduct its functions.

These IGOs exhibit a wide variation in legalization. This observation raises a question as to what can account for this variation? The first step in approaching this task is to build upon the concept of legalization and develop a measure of legalization that is applicable to IGOs. An analysis of the constitutional mandates of these organizations reveals certain characteristics in their respective texts that can be used to create an index of legalization that will allow for a comparison of legal structures across organizations. The next step is to evaluate hypotheses deriving from functionalism, collective action, realism, and neoliberal institutionalism to explain the variation in these observations. These hypotheses are based upon potential explanations at the organizational and at the state level. Using evidence from descriptive data and appropriate methodologies, the findings of the project reveals that the number of members in an organization is an

influential characteristic in regard to the level of IGO legalization. It also indicates that the wealth of a member state is also a positively related factor to whether a state will be a party to a highly legalized IGO agreement.

CHAPTER 1
INTRODUCTION

International institutions serve as important vehicles of cooperation in a variety of issue areas. Although there is no widely agreed upon definition of institutions, a common feature of various definitions is that institutions are associated with sets of rules. One particular form of institutionalization is legalization. At the international level, legalization is the idea that states make decisions to place legal constraints, such as formal obligations and dispute resolution mechanisms, upon themselves in certain issue areas. The phenomenon of international legalization has become an increasingly prominent aspect in world affairs in some areas. International trade has become more legalized through dispute resolutions provisions in the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). International tribunals have become involved in highly visible cases, such as the extradition of Slobodan Milosevic from the former Yugoslavia to the international criminal tribunal in the Hague. Additionally, the Statute of Rome, which created an International Criminal Court, entered into force in July, 2002. At the same time, the growth of legalization has been uneven. The recent notification by the United States of its intention to withdraw from the 1972 Antiballistic Missile (ABM) Treaty demonstrates a turn away from legalization in the area of arms control. Despite indications of a growing presence of legalized institutionalism, it remains an area that is largely unexplored.

Scholars have examined legalization using case studies in analyzing particular regions (Abbott 2000, Alter 2000, Kahler (2000a) and issue areas (Simmons 2000,

Goldstein and Martin 2000, Lutz and Sikkink 2000). However, an extensive, systematic examination of international legalization and the commitments that states make to legalization has not been conducted. The purpose of this study will be to perform such an examination.

The growth of legalization in the international system is illustrated by the proliferation of international institutions during the twentieth century, particularly in the post-World War II period. Governments have been conducting a growing proportion of their foreign affairs in a wide variety of international institutions (Shanks, Jacobson, and Kaplan 1996). Because of this trend, international relations scholars have become increasingly interested in the form of these institutions (Abbott and Snidal, 1998, 2000, Abbott et. al. 2000, Lipson 1991). Some of the attention on the form of institutions has been on their legalization. The European Union (EU) serves as the most prominent example of a legalized institution with the national courts of member states cooperating with the supranational European Court of Justice in the development of supranational law. Other international institutions, however, such as WTO and NAFTA have also become increasingly dependent on legalized dispute resolution (Slaughter et al. 1998). Legalization, however, varies considerably among different international institutions. While some like the EU and the WTO have become highly legalized, many other institutions such as the Association of Southeast Asian Nations (ASEAN) have not. Despite the fact that legalization has become an increasingly prominent feature of the international landscape, there has been no systematic survey of its features let alone any attempt to explain how states vary in their commitments to legalized international

institutions. This research project will attempt to fill this void. Specifically, why do states choose to legalize some international institutions more than others? What characteristics of states can explain why they would form a highly legalized institution in a particular issue area?

The concept of legalization has its roots in the international relations literature on international cooperation. More specifically, it emerges from three streams: international regimes, international law, and international organizations. This literature grew significantly in the field of international relations during the 1970s and the 1980s as a result of increasing interdependence and the proliferation of international institutions. In response to these phenomena, international relations scholars developed "regime theory", a study of principles, norms, rules, and decision-making procedures that converge in specific issue areas (Haas 1975, Ruggie 1975, Keohane and Nye 1977). This theory was a response by liberal institutionalists and international political economists to the dominance of realist, state-centric approaches in the field through the mid-1970s. Until the advent of regime theory, international systems theories focused on the distribution of power in the system as the major determinant of state behavior. The minimal work on international organizations focused on formal organizations. Any form of international governance in the system was based on the functions of these organizations. In examining the functions of these organizations, these studies focused on their formal attributes, such as voting procedures rather than the extent to which these organizations influenced the behavior of states.

International law was also minimized by international relations scholarship during

this period. The failure of Wilsonian idealism and the League of Nations to prevent war and international conflict led to the primacy of realist theory in international relations. Morgenthau's *Politics Among Nations* was a highly influential study in the field. His premise was that states defined their national interests in terms of power, and the international system was a struggle for power. He also contended that politics was an autonomous sphere of action. Since the system did not have a governing body or universal moral principles, states were not constrained in promoting their interests. International legal scholarship with its emphasis on legal principles and custom was incompatible with realists' focus on power and anarchy. Because of this theoretical divergence, the fields of international law and international relations developed separate analyses and conclusions even though they examined much of the same phenomena.

Regime theory provided for a more enhanced role for international organizations and international law in the field of international relations. The concept of international governance was substantially expanded by the incorporation of regime analysis. It was no longer viewed as simply the basic functions of international organizations. Instead, it went beyond organizations to include a variety of governmental arrangements, both formal and informal, constructed by states to facilitate cooperation and coordinate behavior in certain issues (Krasner 1983, Keohane 1984). Analyses of organizations were extended to examine the impact of organizations to solve certain problems and facilitate integrative schemes (Abbott and Snidal 1998). Organizations became viewed as one aspect of international governance rather than synonymous with it.

International law also received a renewed interest in the international relations

literature since the concepts of regime theory drew from it. Even though regime theory was derived from international law, international relations scholars did not recognize this fact. Legal scholars Abram and Antonia Chayes, for instance, remarked that political scientists were reluctant to use the "L-word" (law) even though regime theory was based on the same concepts as international law (Chayes and Chayes 1995). Studies by Keohane (1984, 1989) and Young (1989, 1994) recognized that rules did facilitate compliance with regime norms by supplying information and providing mechanisms for settlement of disputes. The insights provided by these literatures has led to the development of the concept of legalization, and the recognition that it is particular type of institutionalization.

Both international organizations and international law are vehicles of cooperation and can be viewed as international institutions. International organizations created by the agreement of states, usually intergovernmental organizations (IGOs), not only provide a forum where states can interact, they also perform regulative and distributive functions. IGOs can make rules that are designed to influence the behavior of states. IGOs can also distribute resources, such as loans, to states. They enhance cooperation by providing information to member states that reduces uncertainty in international interactions. In addition, rules on representation and voting create more structure for state interaction and allow for more of a balance among states that differ in terms of power and capabilities. Although international law is also a vehicle of interstate cooperation, it is a much more diffuse source. International law is composed of formal rules, such as treaties. But it is also composed of norms, such as customary rules and general principles of law that are

considered to be legally binding. As a result, rules developed through international law may not necessarily derive from a "constitutional" source.

IGOs and international law have a close relationship as indicated in the definition of international law in the 1986 revision of the American Law Institute's Restatement of Foreign Relations Law. Restatement Section 101 defines international law as consisting of rules and principles of general application "dealing with the conduct of states and of international organizations..." (American Law Institute 1986). As with states, international law operates as a constraint on the behavior of IGOs. In addition to being governed by international law, IGOs also serve as both products and as sources of international law. IGOs are not sovereign entities, but are created by agreements of states or by other IGOs previously created by state agreements. These agreements provide the authority for IGOs to act and they usually specify the procedures that the IGO must follow in order to do so.

The EU and ASEAN provide contrasting examples of how states create and delegate authority to an international organization and the consequences of such action. Western European states delegated substantial authority to the supranational institutions of the European Community through the Treaty of Rome in 1957. The Council was given power to pass legislation that is binding on member states. The Commission was created to monitor the execution of policies and initiate proceedings against member states for noncompliance. The Treaty also established the European Court of Justice (ECJ) to resolve disputes, to review challenges to legislation, and to possibly invalidate Community rules. The ECJ expanded its authority by creating judicial doctrines that were

based on the treaty. This expansion, however, was not completely unfettered. The ECJ still had to rely on states and national courts to implement its decisions. These circumstances, however, have developed the EU into the world's most legalized organization. In fact, due to the expansive authority of supranational institutions, the EU has been regarded as much more than an international organization. It has been commonly acknowledged as exhibiting features of a state. The judicial doctrines of the ECJ have made the EU treaties operate as a *de facto* constitution (Stone Sweet 1998), which has called into question whether the EU has a constitutional or international legal order (Weiler and Haltern 1998).

ASEAN, however, was not created by a highly legalized document such as the Treaty of Rome. It was established by a multilateral declaration that was both signed and came into force in Bangkok, Thailand in 1967. While the Treaty of Rome created such formal supranational institutions such as the Commission, the Council and the ECJ, the Bangkok declaration only provided for informal institutions such as an annual meeting of Foreign Minister, a Standing Committee to carry on work in between meetings, and ad hoc committees to deal with specific subjects. It did not provide for any authority to interpret the provisions of the declaration or resolve disputes between member states or between states and the governing institutions.

In addition to its lack of institutionalization, the economic goals stated in the Bangkok declaration were faced with obstacles created by differing levels of development and similarity of exports (Banks et al. 2001). As a result, ASEAN remained largely dormant until 1976 when ASEAN widened its concerns with the Treaty of Amity

and Cooperation. This treaty, however, did not directly modify the Bangkok declaration. While this treaty bound states to respect sovereignty and settle disputes peacefully, it did little in terms of granting more institutional authority. The treaty did establish a High Council to resolve disputes. It was, however, to be used only in case of the failure of direct negotiations and even then it was limited to making recommendations, or acting as a mediator if requested by the parties. Despite this minimal grant of authority, the High Council has not been activated (Kahler 2000a).

In the case of IGOs, the EU and ASEAN lie at different ends of the legalization spectrum. While both have existed for over thirty years and were both established for purposes of economic development and regional harmony, member states in Europe were willing to create a highly legalized institution that even exhibited some features traditionally reserved for states. In Southeast Asia, however, member states developed an organization with weak institutions that was designed primarily for facilitating diplomatic collaboration rather than implementation of a common policy. While the EU and ASEAN represent opposite ends of the spectrum, other IGOs such as the United Nations (UN) and the Organization of American States (OAS) lie somewhere in between.

IGOs can also operate as sources of international law. The charters of these organizations provide rules that govern international interactions. States conduct much of their business in forums provided by IGOs and follow the rules and procedures of these organizations in doing so. In most instances, states' obligations are limited to the terms of the agreement. In some instances, states establish institutions that have the capacity to establish binding rules on states. The most prominent examples of institutions

with this kind of authority are the EU Council and the UN Security Council.

In addition to obligations contained in charter agreements and the promulgation of rules by institutions, IGOs can also assist in the creation of international law through less formal means. Resolutions and declarations of the UN General Assembly provide an example of this process. These resolutions are not a formal source of international law as defined by the International Court of Justice. Even under the UN charter, the General Assembly does not have power to make law or binding decisions, except for certain organizational matters. Despite these limitations, General Assembly resolutions have an influence on the development of international law. It provides a major instrument for states to express their interests. This implies that General Assembly resolutions express the general "will" of the international community. Resolutions can serve as a starting point for a negotiation of a treaty because they help establish a common set of interests among states. Resolutions can also help establish norms in the international system. If most states adhere to the principles established in the resolution over a significant amount of time and believe they are obligated to follow them, then the principles become norms that are legally binding as customary international law even though they have not been codified in an international agreement.

Organization of Dissertation

The purpose of this dissertation is to provide a systematic survey of the features of legalization. Since legalization comes in many different forms ranging from formal treaties to informal understandings, it is import to define specific sample for such a purpose. For this project, my sample will be formal agreements that create conventional

International Governmental Organizations (IGOs). Although this sample represents the most institutionalized form of international law, legalization varies within this subset of international institutions. This sample does provide a defined framework for analysis on rules agreed upon by states to facilitate international cooperation. It provides a means to examine the extent of state commitments to international law and whether different types of IGOs are more legalized than others. This project seeks to systematically identify and categorize the legalization of IGO charters. The original data is then used to analyze hypotheses employing appropriate methodologies to estimate the influence of IGO characteristics and of various states on the legalization of IGOs.

Chapter Two of this dissertation, will provide a review of the streams of literature from which the concept of legalization is derived as well as the literature that has applied the concept. This will be followed by Chapter Three, which will further develop the concept of legalization as well as describe the operationalization of the concept and the coding and data used in this project. Chapter Four will examine hypotheses relevant to particular characteristics of IGOs that may explain the extent of their legalization. For example, does the purpose of the IGO explain how legalized its charter will be? Are IGOs devoted to low politics areas, such as fishing, more legalized than those designed in high politics area, such as security? States are relinquishing some sovereignty by entering into such an agreement. Even if they do not comply with these agreements, they still face a reputational cost. In low politics areas, states may be more willing to agree to more legalized arrangements since sovereignty costs are not as great.

Chapter Five examines hypotheses concerning states' variation in legalization based upon their membership in conventional IGOs. For example, are states that more developed economically members of more legalized IGOs? Do powerful states tend to eschew highly legalized organizations because they have a greater capacity to pursue their objectives through unilateral means and face a greater loss of sovereignty? Additionally, interdependence, and democracy, in terms of domestic rule of law, will also be considered in this Chapter. This dissertation will conclude in Chapter Six with a summary of the findings and implications and possibilities for future research on legalization.

Caveats

Before proceeding, it should be pointed out that the analytical framework and corresponding findings of this dissertation are subject to some limitations. First of all, it assumes that states' decisions to agree to form an intergovernmental organization is based upon rational choice. It can be argued that this is not a realistic view. Non-rational motives such as images or ideas may be very important to understanding why states agree to these arrangements. As Keohane (1997) suggests, however, rational behavior and non-rational motives do not have to be mutually exclusive. Non-rational motives can shape state interests, and states can proceed rationally on the basis of these interests. It seems reasonable to suggest that an assumption of rationality can serve can serve as a useful standard to assess the influence of other motives (Hardin 1982). The goal of this project to provide an explanation for this empirical phenomena rather than support a particular theoretical approach.

Second, the focus of this project is exclusively on formal international institutions. As Finnemore and Toope (2001) justly point out, this is only small part of international law. Certainly, norms and traditions play a role in how the world is legalized. It must be taken into consideration that the findings of this project will be limited to a particular aspect of international law. Additionally, this study will examine a certain type of formal institution, IGOs. As a result, the observations will be based upon the most institutionalized form of cooperation in international system. It also examines the charter documents of the IGOs and not all of the agreements associated with it. Despite these limitations, this focus on the legalization of IGOs does have utility. The commitments that states make to formal institutions does play an important role in international politics. While it does not capture the diffuse role of international law in the world system, it does help to explain an aspect of it.

Third, this study does not address a prominent theme in the literature on international law: compliance. It only examines the commitments that states make to legalized institutions. It does not examine compliance or the impact of these commitments on the behavior of states. As discussed by Chayes and Chayes (1993), compliance with an agreement is difficult, if not impossible to measure. Although Simmons (2000) has measured compliance with the International Monetary Fund (IMF) Articles of Agreement, her analysis focused on compliance with a particular article of the treaty. Defining compliance with an entire treaty is very difficult to empirically verify. Designing such a model will be very dependent on making certain background assumptions on compliance. In this study, my premise that increasing international

legalization serves as an infringement on national sovereignty will rest on two assumptions: (1) states would not agree to form these organizations under these rules unless they intend to abide by them, and (2) as suggested by Abbott and Snidal (2000), legalization increases the cost of reneging on these agreements. Accepting these assumption serves to mitigate the concern that the infringement of sovereignty depends strictly on compliance.

Fourth, the coding of legalization discussed in Chapter Three has a subjective quality that poses a potential concern. The coding rules do not present absolute standards. Although fairly specific, they provide guidelines as to how these agreements should be coded. Some instances required the use of my judgement to code rules as close to the coding guidelines as possible.

Conclusion

Despite these limitations, this study does provide an effort to survey legalization among several different conventional IGOs. As a contribution to previous research examining international legalization, it includes an extensive, systematic examination of legalization as it pertains to conventional IGOs. This study provides a measure of legalization through an analysis of the formal international agreements that govern these organizations. In surveying these organizations in such a manner, data and analysis can be presented to allow for some explanation in regard to what factors can account for IGO legalization at both the organizational and state level.

CHAPTER 2
LITERATURE REVIEW

The three streams of literature that lead up to legalization: regimes, international organizations, and international law, are all ways of understanding the phenomenon of international cooperation. These streams can also be placed together under the general rubric of international institutions. The term "institutions" in international relations is an ambiguous one. Within the literature, there is no widely agreed upon definition (Goertz 2003). As pointed out by Keohane, "Institutions are often discussed without being defined at all, or after having been defined only casually" (1989, 32). In fact, the special issue of *International Organization* (2001) devoted to international institutions defines the term, but does not discuss the concept.

Although "institutions" is a vague term in international relations, Keohane (1989) suggests that they occur in three different forms: Formal intergovernmental or cross-national nongovernmental organizations, international regimes, and conventions. Organizations refer to entities with rules and assignments of certain roles and responsibilities. They are designed by states and are created for a particular purpose. Regimes have explicit rules, agreed upon by governments that pertain to a particular set of issues, such as the international monetary regime set up by the Bretton Woods agreement in 1944. Conventions are informal institutions, with implicit rules and understandings (Keohane 1989). Organizations are the most institutionalized form while conventions are the least. This distinction, as pointed out by Keohane (1989), is not always clear. Agreements may combine specific rules along with understandings.

Organizations are embedded within a regime and may not be distinguishable in practice (Keohane 1989). Goertz (2003), however, views institutions and regimes as being synonymous. He offers a much more minimal conception of institutions in stating that "an institution (or equivalently a regime) is a structure of norms and rules" (Goertz 2003, 15). This conceptualization brings together the literature on institutions and regimes by characterizing them as analyzing the same thing. His concept of institutions, however, also reflects international law. The primary sources of international law are conventions, usually in the form of treaties, general principles of international law, and customs among states. All of these sources can be defined as rules or norms for states to follow.

Even though research on institutions and regimes may be examining the same phenomenon, the three forms of institutions suggested by Keohane (1989) correspond to the three streams of literature from which the concept of legalization is derived. Intergovernmental and non-governmental organizations have been analyzed in the international organizations literature, regimes in the regime literature, and conventions in the international law literature, in terms of customary law. Since institutions come in different forms and have been analyzed in different streams of literature, the overall literature on international institutions has been fragmented. It has produced different concepts of institutions resulting in a lack of a comprehensive theory. The concept of legalization is neither the culmination of the institutional literature nor does it bridge the gaps among the different streams. It does, however, represent another form of institutionalization, the incorporation of law into international politics.

Since the three streams are from a broader area of international institutions, their respective literatures focus largely on some of the same issues: the structure of the international system and its influence, the institutionalization of organizations, and perspectives on international rules. The structure of the international system refers to how the international system can either hinder or facilitate international cooperation. Unlike domestically, where law is created, implemented, and enforced by a sovereign government, international law relies on states' agreements. States, by themselves, are responsible for developing and implementing international rules. The institutionalization of organizations focuses on how rules and procedures of organizations, such as dispute resolution, can influence the behavior of states. Perspectives on international rules refers to a general account as to how different theoretical perspectives have been used to explain the role and function of international law. The literatures on regimes and international law have emphasized the structure on the international system and whether rules operate as effective constraints on the behavior of states. The literature on organizations focuses more the institutionalization of the organization, referring to the design of the organization and role of procedures in providing an international legal order.

Structure of the International System

The different approaches between studies on international relations and international law is evident in how scholars examine the structure of the international legal system. Although both approaches acknowledge that the lack of a global

government in the international sphere creates a legal order much different from a domestic system, they differ on the order and the organization of the international system. International relations scholarship in the area has primarily been based on realist and neoliberal approaches. Both of these approaches make assumptions based upon a rational choice model. This contrasts with international legal scholarship, which generally examines law using constructivist and international society approaches. Realists do not find international law to operate as a significant constraint on the behavior of states. Since the international legal system lacks a centralized authority, states will disregard international law if legal rules are counter to their interests (Hoffman, 1968). Without a coercive mechanism, states have little incentive to comply with international law. Neoliberals, however, believe that states do have an incentive to follow international law. Since states are not isolated, but linked together in an interdependent system, they must create a stable set of rules to guide their interactions. States will comply with international law even if it is contrary to their interests, because they have a long term interest in maintaining a stable order and establishing reciprocity in future transactions.

Regime theorists such as Axelrod (1984) and Keohane (1984) consider these calculations in explaining compliance with international rules. Axelrod emphasizes this point of long-term interests and future transactions. If a state complies or does not comply with the rules with other states, other states will reciprocate. Keohane's explanation for the formation and maintenance of regimes follows the same logic. States have an incentive to form regimes because regimes reduce transaction costs, especially by reducing uncertainty. Creating a regime, however, has certain costs as well, such as

relinquishing some sovereignty in a particular issue area. Regimes shape the reputations of their members by providing standards of behavior. Noncompliance with behavioral standards is costly in that states will not be easily accepted as cooperative partners and will not receive as many benefits from the regime (Keohane 1984).

Although regime theorists concern themselves with compliance (Keohane 1984, 1989, Young, 1989, 1994), the literature focuses more on formation and effectiveness of regimes. Mitchell (1994), for instance, examines the role of compliance mechanisms in forming effective regimes. He finds that in the regime regulating international oil pollution, governments and corporations complied more frequently when the regime had a more integrated system of rules and processes promoting compliance. If a regime is designed to have rules that promote transparency of behavior, forceful responses to violations, built on existing institutions, and prevent actors from noncompliance rather than deterring them, then it will be more effective (Mitchell 1994). Developing a means for efficient information and noncompliance response systems is important for an effective regime. Although compliance is related to effectiveness it is not identical to it. Compliance is a necessary, but not a sufficient condition of regime effectiveness. States must comply with international rules if a regime is to be effective, but regimes still might not be effective even if states do comply with them.

The distinction between compliance and effectiveness in international law has also been emphasized by studies of international law utilizing a rational approach (Jacobson and Weiss 1998, Lipson 1991). For international law to influence state behavior, states

must implement international law into their domestic law. To comply, states must adhere to the principles of international law and the measures that they instituted domestically. Compliance involves both procedural aspects, such as a requirement to report behavior, and substantive aspects, such as a requirement to refrain from engaging in a specified activity. Even if states do comply with international law, such as a treaty, the design of the treaty may prevent the parties from achieving the treaty's objectives. In some cases, even meeting the objectives of a treaty may be insufficient to solving the problems that the treaty was intended to address.

The specific focus of Jacobson and Weiss (1998) is to examine the factors that affect a state's implementation and compliance with international environmental accords. They examine three specific areas: factors involving treaties, factors involving the country, and the international environment. They find all of these various factors influence whether a state will implement and comply with provisions of environmental treaties. The precision of the instrument is an important factor. It becomes difficult to determine whether or not a state has complied with a treaty if its provisions are vague. The most influential country characteristics are tradition and administrative capacity. If a state has incorporated pre-existing legislation involving the issue in their domestic law, they will be very likely to comply with an international agreement on the issue. States that have a well developed administrative capacity are better able to comply with international treaties. States that have an undeveloped administrative capacity may be unable to comply with agreements because they lack the technical and managerial expertise to do so.

Economic and political factors are also important, but they are more indirect. National income reflects administrative capacity. Economic collapse, of course, makes it much more difficult for states to comply because they may lack the financial means to do so. Democracy also contributes to improved compliance. Since democracies tend to be more transparent, it is easier for citizens to monitor treaty compliance. The most prominent system level factor is a contagion effect. As more treaties are signed and more states become parties to a treaty, more pressure is placed upon states to comply. States do not want to be viewed as laggards. It is also easier for states to comply with obligations if most other states are complying with the same obligations as well. Uncertainty is reduced and it becomes easier for states to coordinate policies.

One aspect of compliance that is problematic is difficulty in measuring it. Chayes and Chayes (1993) suggest that general levels of compliance with international agreements can not be empirically verified. As a result, some studies make the assumption that states tend to comply with international agreements because it is in their interest to do so (Chayes and Chayes 1993, Lipson 1991). This assumption is based upon rational choice expectations that states desire to move closer to a Pareto optimal outcome. If states do not desire to comply with an international agreement, then they would not have entered into it in the first place. Chayes and Chayes (1993) argue that states have a propensity to comply with agreements and do not deviate from them on the basis of interests. When states decide not to comply with international agreements, it is not due to deliberate behavior based on a rational calculation, but due to particular factors involving

the treaty, the state, or the international environment. These factors are similar to Jacobson and Weiss' (1998) criteria for compliance. If treaties are vague or if states lack capacity to fulfill obligations, then they will not comply. Because of this, compliance with an agreement has a subjective element. Whether or not a state complies with a treaty is largely based on the perceptions and the capabilities of the state involved.

The assumption that states tend to comply with international agreements helps to explain why states may decide to make informal, rather than formal, agreements. In analyzing this issue, Lipson (1991) explains that the more formal and public the agreement, the higher the reputational costs will be for noncompliance (Lipson 1991). This argument implicitly assumes that states seek to comply with international law. Even when a state considers noncompliance with an international rule, its credibility in future negotiations is an important consideration in making this decision. Since informal agreements involve less of reputational stake, states have an incentive to make them. Informal agreements also can be made much more quickly than formal agreements and they are also easier to renegotiate and less costly to abandon. These features make informal agreements attractive to states, particularly in areas were long term costs and benefits of a treaty would be uncertain. Clearly, however, states are not making as much of commitment by using informal agreements rather than treaties.

While realists and neoliberals differ on whether states have an incentive to comply with international rules, they both explain compliance in terms of a process based on rational choice. Legal scholarship, however, has traditionally explained state compliance by using a normative approach (Henkin 1979, Franck 1995). Franck (1995),

for example, suggests that states will comply with rules if they view the rules as "fair." His criteria for fairness is that a rule should be created through a "right process" in its creation and enforcement, and it should equitably distribute justice. The legitimacy of international law is dependent on the state's perception that the law was developed by discourse, reasoning, and negotiation (Franck 1995). At the same time, even if rules are established by such a process, they may not be deemed fair unless they are also perceived by the state to be fair to all participants.

Although Franck describes compliance as being shaped by a norm of fairness, he does not develop the process of how this norm becomes internalized by states. Koh (1997) seeks to address this issue by explaining norm internalization through a transnational legal process. According to this process, a transnational actor provokes interactions with other parties, which compels an interpretation of a global norm that is applicable to the situation. This norm then becomes internalized by the receiving party. The transaction between the parties creates a legal rule, which guides future interactions and results in a more extensive internalization of these norms. An epistemic community, for example, could interact with various governments and seek to internalize a particular rule into the government's system. In this manner, a state would perceive the rule as being compatible with the fairness norm.

Koh's (1997) transnational legal approach is similar to constructivist and international society approaches. An assertion of constructivism is that the international system is a social structure, and therefore legal rules are a part of this structure (Arend 1998). Certain constitutive legal rules of the international system help structure it. Since

constructivists claim there is a mutually constitutive relationship between agent and structure, these rules create the identity and interests of the agents in the system, which are the member states. Similarly in the transnational legal approach, interactions between actors internalize norms, which becomes part of their identity. The international society approach follows this assumption in that it views norms and values as shaping the identity of actors operating within the international arena. In particular, this approach emphasizes the social structure of international society and how it constitutes the identity of states. Hurrell (1993) argues that a shared sense of international community plays an important role in understanding compliance with international law. States follow rules, even when they are counter to their interests, because they value being a part of a stable and ethical international order. As legal rules become more internalized by actors, they become part of the international community and so states are compelled to follow these rules as agents of the system.

Scholarship on international law generally view compliance in a normative manner. These examinations, such as Henkin (1979) and Franck (1995), are driven by more of a theoretically motivated explanation of compliance. They view state compliance as deriving from the national identities of states and the desire to have a stable international order. Regime studies, however, focus more on empirical concerns. Mitchell's (1994) research, for example, emphasizes the utility of the rules of the regime rather than the normative features of state compliance. Jacobson and Weiss's (1998) study is an example of study on international law that is also more empirically oriented. It examines the influence of certain characteristics of treaties and states.

This study, however, is not typical of international law studies examining compliance. Legal scholars, in particular, view compliance as following a constructivist, rather than an utilitarian analysis. They redefined the form of law from substantive rules to a process. The focus on process led to an examination of law as a policy process with a large range of functions such as communication and monitoring rather than whether legal rules constrain behavior (Slaughter 1993).

This literature on the structure of the international system has helped shaped legalization by demonstrating that state behavior may be influenced by different sources with varying degrees of formality. This influence indicates a need for an expansion on the concept of legal rules. Since the system does not have a centralized enforcement mechanism, expanding the concept of legal rules allows for more implications in explaining compliance with legal rules. For example, Lipson (1991) relies on a dichotomy of formal vs. informal agreements. Legalization expands this idea by incorporating more dimensions, which allow for more variation in different types of legal rules. Certain aspects of legalization may help provide a more nuanced account to help explain compliance within the system.

Institutionalization of Organizations

In addition to issues of the role of international law in regard to the structure of the international system and cooperation, another important issue is how formal institutions, such as international organizations, are structured. As Mitchell's (1994) analysis suggests, design matters. International organizations are not sovereign entities.

They are created by the agreement of states. As a result, the rules, procedures, and authority granted to these organizations are instrumental to their influence on international affairs. One important function that an international organizations may perform is in resolving disputes. Due to the lack of a central authority in the international system, states must resolve disputes among themselves. International organizations, in addition to reducing transaction costs through monitoring and sanctioning, can serve the purpose of resolving disputes among member states. This organizational mechanism for resolving disputes, however, does have some limitations. Many organizations, for instance, do not have a dispute resolution mechanism. Although these organizations may produce certain rules upon member states that are binding under the terms of the agreement, they may not provide for specific procedures for states to resolve a disagreement arising under the terms of the treaty. As a result, the dispute is resolved through political bargaining. Another limitation is jurisdiction. Even if an organization has procedures for resolving disputes, the scope of its authority will be limited by the terms of the treaty. International organizations provide for different procedures in resolving disputes ranging from informal measures, such as institutionalized mediation, to a permanent court.

Although permanent international courts are rare, they have received the majority of scholarly attention in regard to institutionalized dispute resolution. The most prominent international judicial institutions are the European Court of Justice (ECJ) and the International Court of Justice (ICJ). At least in regard to its members, the ECJ has been the most influential transnational court on state policy. The judicially created

doctrines of supremacy and direct effect gave authority to the ECJ to provide access to the European legal system to individual actors to contest national legislation in favor of supranational law. Alter (1998) explains the increasing autonomy of the Court based upon the gradual co-optation of national lower courts. Lower courts began to circumvent high level national courts by referring cases to the ECJ. This process allowed the ECJ to penetrate national law more extensively than if references were only allowed to come have much more influence over member states than other international courts.

The major reason why the ICJ does not have as much of an impact among states is jurisdiction. States in the EU consent to mandatory jurisdiction to ECJ by virtue of their membership. The ICJ does not have jurisdiction over states unless states consent to jurisdiction or if states declare that the ICJ has jurisdiction prior to a judicial controversy. Additionally, only states, not individuals can participate in the ICJ. An early study on the ICJ revealed that Western, developed, and open states were much more likely to use the ICJ, and its predecessor, the Permanent Court of International Justice (PCIJ) (Coplin and Rochester 1971). Undeveloped states were much more likely to try to resolve disputes in the United Nations, and the League of Nations respectively. Coplin and Rochester (1971) suggest that states perceive the courts as a means to protect the status quo while the UN and the League are seen as a means for change. They also found the ICJ has not taken as much action over disputes as the PCIJ, which indicates that international courts have been having less of an impact on international bargaining in the post-World War II period. A more recent analysis of the role of the ICJ by Bodie (1995) presents a different view. Bodie argues that in recent

years, the Court has become increasingly activist. Traditionally, the Court would not accept cases that were nonjusticiable or "political". It was thought that these questions were better resolved through informal means. Bodie finds, however, that the Court tends to favor justiciability on all issues. It will accept cases that involve important political as well as legal questions.

In addition to the activity of the ICJ, another feature of international courts discussed by Coplin and Rochester is that they were used more frequently by powerful states. The question of whether powerful states comply with ICJ decisions is examined by Stiles (2000). In particular, he analyzes why the United States has often complied with adverse rulings by international courts. Stiles explains this behavior by means of a model based on game theoretic constructs. According to the model, the U.S. exhibits four possible responses to adverse rulings: "Play by the Rules" which means the U.S. will endorse the rule while repudiating adjudication, "Loyal Opposition" which is conveyance of commitment in spite of cost, "Foot-dragging" which is a repudiation of the norm and the adjudication, and "Open Defiance" which indicates unwillingness to repudiate norm, but also unwillingness to accept domestic costs (Stiles 2000). This model explains the conditions for each of these responses to apply. According to the analysis, most adverse rulings are responded by the "Play by the Rules" option. This response means that the Executive is willing to accept the decision whether or not the U.S. brings the suit or legislation is required to implement the ruling. Domestic politics may play an important role in this process. Goldstein's (1996) examination of the Canadian-U.S. Free Trade

Agreement finds that President Reagan delegated control to a binational panel set up by the FTA in order to constrain opponents of trade liberalization in Congress and the bureaucracy. This case demonstrates how international bargains can empower certain domestic actors (Goldstein 1996). Since treaties are "law of the land" under the U.S. Constitution, the executive branch may use international agreements to promote policies that are unlikely to be supported by Congressional legislation.

Other characteristics of organizations that have been examined include its membership and its form of governance. Shanks, Jacobson, and Kaplan (1996) have analyzed influences on states' propensity to belong to IGOs. They found that states with the largest aggregate GDP and highest per capita GDP were more involved with IGOs. Additionally, they also discovered that although states designated as "free" societies by Freedom House have higher levels of membership, democratizing countries reduced their memberships during the 1980s. States that increased their membership during the 1980s tended to be powerful states or states actively seeking greater involvement in international society. Shanks, Jacobson, and Kaplan suggest that memberships in IGOs has developed a polarization between industrial states and undeveloped states even as more IGOs were created that were not based on geography. Although their analysis does not include much information for the post-Cold War period, it does provide a detailed account of IGO membership in the latter stages of the Cold War. In regard to dispute settlement mechanisms in institutions, Smith (2000) has found that among regional trading arrangements (RTAs), legalistic mechanisms are unlikely when economic power asymmetry is high among member states.

A closely related issue to the composition of IGO membership is governance in IGOs. Woods (1999) develops a concept of good governance, in which principles such as participation, accountability, and fairness are promoted. Participation refers to more involvement by actors in institutions. Accountability requires that institutions inform members of decisions and the grounds upon which they were made. Fairness means that institutional rules are created and enforced in an impartial manner and that outcomes of an institution are equitable as well as an equitable distribution of power, influence, and resources within an organization. His argument is primarily normative in that he argues how international organizations need to ensure greater participation and accountability. Since institutions have been gaining greater sovereignty, IGOs need to recognize the principles of good governance to help promote democracy in the international system.

This literature on the institutionalization of organizations adds to legalization in that it establishes the dimension of delegation as an integral part of the concept. Although states may make legalized commitments without delegating any authority to an independent third party, their commitments will be mitigated if they do so. The literature on formal organizations demonstrates that organizations can play an independent role in constraining state behavior. Dispute resolution mechanisms and authority for independent third parties are important elements of any legal system. The importance of these features at the international level have been developed within this literature.

Perspectives on International Rules

As noted, examinations of international rules in the fields of international relations

and international legal scholarship, have incorporated different perspectives. These perspectives have included interest-driven approaches as well as normative explanations. Studies have also ranged from theoretically-driven research, such as regime theory, to more descriptive accounts. Despite the theoretical divergence that has been present between the two fields, recent efforts have been made to synthesize their approaches (Slaughter 1993, Keohane 1997, Abbott and Snidal 1998). Slaughter (1993), for instance, suggests that great potential exists for interdisciplinary collaboration. International Relations theories, particularly neoliberal institutionalist, can provide a conceptual apparatus to assist lawyers in analyzing international law. Keohane (1997) describes rationalist and normative approaches as being two different "optics". Both views recognize the importance of interests and reputation, and with the exception of realists, both also acknowledge the role of institutions. They happen to view these concepts differently. Rationalists view interests as power, wealth, and position. States' behavior is based upon the pursuit of self-interest. Normativists view interests as being socially constructed. Interests are not exogenous, but are shaped by international norms. In regard to reputation, rationalists examine reputation in terms of context. States may be willing to not comply with rules if reputational costs are low and are outweighed by the benefits of noncompliance. Normativists, however, view reputation more in absolute terms. State concerns for reputation drive their commitments to international rules. Institutions are important. Both approaches view institutions as facilitators of cooperation.

Keohane suggests that normative and rational approaches are compatible with one another in understanding international relations and international law. Interests shape

institutions, which can promote and affect norms, which then affects interests (Keohane 1997). Norms help constitute interests, but states do pursue self-interests in this cycle. Kocs' (1994) law-based approach is indicative of this view. According to this approach, international law serves as the principal structure of the international system. This structure is based on underlying norms of international law. These norms shape behavior of states. Unlike realism, in which states survive by maximizing power, states survive by upholding system norms (Kocs 1994). Interests and power, however, are also important in the law based model. Although behavior is structured by norms, these norms are likely to reflect the preferences of more powerful states. Norms are not simply functions of power, but they are indirectly related to it.

These perspectives have helped developed legalization into a flexible concept that can be utilized with either rationalist or constructivists approaches. Under rationalism, it can be used to explain why a state would seek to develop a highly legalized institution despite the loss of autonomy. If a state decides to join a highly legalized IGO, it would do so because it perceives the benefits from membership in the organization to outweigh the costs posed by its institutional constraints. Under constructivism, legalization could be used to explain why some norms may be more influential than others. Depending on how these norms developed, some may be more binding on state behavior than others. The influence of state interests and differences in legal norms were not easily accounted for by traditional legal approaches.

Legalization

These streams of literature have been influential in the development of the concept of legalization. This concept was developed by Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal and appeared in a special issue of *International Organization* in Summer 2000. The concept of legalization refers to characteristics that institutions may possess: obligation, delegation, and precision. Obligation means that actors are bound by certain rules or commitments. Delegation means that third parties have been granted some authority over the rules and authority to resolve disputes. Precision means that the rules and commitments are unambiguously defined (Abbott et al. 2000). These scholars from both legal and international relations backgrounds, had the objective of developing a concept that could address the legal process in international affairs, a process that was not expressly examined in the regime literature. From the literature on international organizations, legalization incorporated the concept of delegation and how states can grant authority to a nonstate entity. The regime literature and literature on international law, while utilizing different theoretical perspectives, provided support that systemic constraints on state behavior could result from informal rules and understandings as well as formal sources such as treaties and activities of organizations.

Interestingly, the concept of legalization and its dimensions was quite similar to Keohane's dimensions of institutionalization developed a little over a decade earlier (Keohane 1989). He suggested that institutionalization could be measured in terms of commonality, specificity, and autonomy (1989). The dimensions of precision and

delegation clearly correspond to the institutional measures of specificity and autonomy. A slight difference, however, is present between obligation and commonality. While obligation refers to the binding effect of a rule or commitment, commonality refers to mutual expectations about behavior. The key difference between the two concepts being the psychological aspect known as *opinio juris sive necessitatis* (Starke 1984), the mutual sense of a compulsory rule, rather than merely an understanding or an expectation. It appears that *opinio juris* distinguishes legalization as a particular form of institutionalization. Legalization does present a step towards bringing international law back into international relations theory and bridging the gap between legal and international relations scholarship. It also serves as an acknowledgement that law is a particular type of institutionalization, and should receive some recognition other than under the general rubric of "international institution," or "regimes" as had usually been the case in international relations literature.

An important aspect of legalization, is that it recognizes that international law features different kinds of organizational arrangements. Indeed, this is consistent with the definition of the ICJ of the sources of international law.[1] Legalization makes a distinction between "hard" law and "soft" law. Abbott and Snidal (2000) use the term "hard law" to refer to a type of law that is composed of legally binding obligations, precise rules and a delegation of authority for implementing or interpreting law. The

[1] Article 38 of the Statute of the International Court of Justice says that the Court will resolve disputes according to 1) international conventions, 2) international custom as practice generally accepted as law, 3) general principles of law recognized by nations, and 4) judicial decisions and teachings of most highly qualified publicists, as subsidiary means for determining the rule of law.

advantages of hard law are that states can use it to reduce transaction costs, strengthen credibility of commitments, expand available political strategies, and resolves problems of incomplete contracting (Abbott and Snidal 2000). Hard law, however, provides more of a restriction on sovereignty. The North American Free Trade Agreement (NAFTA) provides an example of hard law and why a state may perceive its benefits outweighing sovereignty costs. In this case, Mexico supported a highly legalized agreement and reversed a traditional policy of opposing binding international arbitration in order to make its commitments more credible and attract foreign investors (Abbott 2000).

Soft law refers to alternative arrangements, which are deviations from hard law. This can include customary law as well as informal arrangements that are mostly political. Soft law has some advantages in that it does not act as much of a constraint on sovereignty and allows more flexibility in case uncertainties develop over time. Soft law facilitates cooperation because it is less costly. It, of course, is not as effective as hard law in providing credible commitments and reducing transaction costs. The 1985 Vienna Ozone Convention provides an example of soft law. This agreement imposed legally binding obligations, but the commitments are expressed in imprecise language and it does not provide any independent grants of authority to a third party institution. The relationship between hard and soft law is not one of mutual exclusion. Many varieties of international legal arrangements exist. Hard law and soft law are part of a continuum of international law. It ranges from the ideal type of hard law, which would be much of European Community law, to anarchy.[2]

[2] For a more detailed representation of the varieties of international legalization, see Abbott et al. (2000), p. 406.

In addition to incorporating *opinio juris* another distinguishing characteristic of legalization is institutionalized dispute resolution. Keohane, Moravcsik, and Slaughter (2000) developed a typology of dispute resolution mechanisms based on three explanatory variables: independence, access, and embeddedness. Independence measures the extent to which adjudicators can act independent of national governments. Access refers to the range of actors who have standing to submit a dispute to an international body. Embeddedness refers to the control of formal implementation of the law. The ECJ ranks high in each category. Judges are appointed with long tenures and can assert the supremacy of Community law over national law. Individuals can have access to the Court if they can get a referral from a national court, and national courts recognize the supremacy of Community legislation. The International Court of Justice (ICJ), however, does not rate as nearly as high. Judges have moderate independence, but only states can have access to the Court and the implementation of decisions depends upon domestic enforcement.

Although legalization exhibits potential utility to different theoretical approaches, it has been argued that it is a narrow conception of international law that hinders empirical research (Finnemore and Toope 2001). Finnemore and Toope (2001) suggest that this conception is limited to formal and institutionalized features of law. It does not take informal characteristics, such as legitimacy. In fact, they argue that Lutz and Sikkink's (2000) article that examines the least institutionalized arrangement in the special issue, human rights law, finds its effects to be limited. Some of the proponents of legalization,

have responded to these comments (Goldstein et al. 2001). They suggest that Finnemore and Toope have "misinterpreted" the concept (Goldstein et al. 2001). Although the focus of the research had been on formal phenomena, they have tried to relate legalization to various conceptions of law as, such as the relationship between "hard" and "soft".

Legalization and international agreements

In international relations scholarship, studies and conceptions of international institutions have certainly evolved since the special issue of *International Organization* on regimes in 1983. Much of the research on regimes in 1980s and 1990s focused the theoretical implications of the regime concept and an evaluation on whether it matters. As the development of the concept of legalization suggests, the term "law" has been brought into the field of international relations. It has become more recognized that the study of international law and international institutions and regimes cover many of the same phenomenon. The concept of legalization covers much of the same ground as regimes and institutions. Indeed, Krasner's (1983) commonly accepted definition of regimes as '...norms, rules, and decision-making procedures around which actor expectations converge in a given issue area" (Krasner 1983, 275), can be evaluated using the obligation, delegation, and precision measures of legalization.

Although the concepts of regimes, institutions, and legalization may be merging together, a major question remains as to how to evaluate this phenomenon of international cooperation. The more recent trend in this area is to examine the question of how do institutions matter? rather than the more traditional question in this area of do institutions matter? Analyzing treaties and other formal international agreements has

emerged as a part of this trend. In addition to Jacobson and Weiss's (1998) research of environmental accords and Smith's (2000) treaty analysis of regional trade agreements, Leeds et al.(2002) has examined treaties covering military alliances and Mitchell (2001) has argued for the usefulness of assessing international environmental regimes by analyzing environmental treaties to move from general claims of state capacity to comply to specific types of regimes.

My study follows this same process of using data gathered from international agreements to evaluate theoretical concepts and expectations. In my case, I am evaluating the concept of legalization and how it applies to the constitutional mandates of conventional IGOs. By following the coding procedure, the data gathered from the analysis will be used to examine specific theoretical claims in regard to the legalization of the IGOs and the legalization of states based upon their membership in the IGOs. The coding procedure and the analysis of the organization and state variables will be covered in the subsequent chapters.

CHAPTER 3
MEASURING IGO LEGALIZATION

To provide an empirical measurement of legalization in the international system, I will focus on agreements forming international governmental organizations (IGOs) as a measuring device. IGOs provide a well-defined sampling frame. They are finite in number and information on their legal structure can be ascertained by examining their constitutional mandates. These mandates establish the IGO and spell out the internal functions necessary for its governance. Depending on the organization, they may be called constitutions, charters, or treaties. In all cases, they are international agreements. Additionally, IGOs provide a conceptually appropriate sample of international legalization. Due to the lack of a supranational sovereign government to regulate international affairs, most activity in the international system is not very legalized. The most legalized institutions are IGOs. They are created by a formal agreement by states and require obligations on behalf of states to perform their designated tasks.

Even though IGOs tend to be the most legalized international institutions, they still exhibit a wide variation in legalization. State membership in IGOs exhibits a formal commitment that states make to international legalization. IGOs are organizations composed of states, and individuals who are sent as delegates to such organizations to represent the interests and policies of their respective governments. I follow a similar procedure to that of Shanks et al. (1996) in my case selection. In their study, they derived their data from the Union of International Associations (UIA). The selection of IGOs to be included in my sample will be derived from the IGOs defined as conventional

intergovernmental organizations by the UIA. The UIA is a nonprofit, independent body headquartered in Brussels, Belgium. It serves as a clearing house on over 20,000 international organizations and constituencies. It has played a pioneering role in gathering information on international organizations since its founding in 1910.

An intergovernmental organization is considered to be conventional according to specific criterion adopted by the UIA. These organizations are classified by alphabetic codes A through D. Type A organizations are federations of organizations, of which the only IGO is the United Nations (UN). Type B organizations have a "widespread geographically balanced membership and management." (UIA 2000). The World Health Organization (WHO) is an example of such an organization. Type C organizations include countries in more than one geographical area but may not have a geographically balanced membership. The Organization of Economic Cooperation and Development (OECD) would be an example of this type of organization. Type D organizations are IGOs that have membership restricted to a particular geographic region. Other kinds of intergovernmental organizations are classified by alphabetic codes E through G. These organizations include those that are considered as emanations of a particular organization; organizations of a special form, including foundations, banks, and courts; and internationally oriented national organizations as well as bilateral intergovernmental bodies. These "other" international organizations will not be included in the study. The most prominent organization to be excluded on this basis is the European Union (EU). Although the EU is categorized as an IGO, it is the world's most institutionalized organization and it exhibits features of a state and a domestic legal order. It is a unique

organization, and has been classified by the UIA as "unconventional".

The IGOs that are included in this study are conventional IGOs that are currently in existence and whose members are state governments. These IGOs also have their founding documents registered with the United Nations. Article 102 of the United Nations (UN) Charter states that every treaty and international agreement entered into by a member state must be registered with the UN Secretariat. States that do not register their agreements with the UN may not invoke that agreement before any organ of the UN.[1] For purposes of this project, I will examine those IGOs that have fulfilled this registration requirement. These agreements creating IGOs are not only binding among states that ratify the agreement, but they may also be invoked before UN organs. A list of organizations used in this study is in the Appendix.

The development of a framework for measuring legalization should begin with a discussion on the different dimensions of legalization and how they may be operationalized in a systematic fashion. The dimensions of legalization: obligation, delegation, and precision vary in degree and are independent of one another. An international institution or regime, for example, may have a high degree of obligation but may not necessarily have high degree of delegation or precision. Different levels of each of these dimensions may be combined by drafters of legal instruments to develop an instrument that is designed to suit particular needs. As a result, the concept of legalization encompasses a multidimensional continuum, where all three dimensions are maximized so that they form "hard" legalization, to multiple forms of "soft" legalization where the

[1]United Nations Charter, Article 102.

dimensions vary in terms of strength. This concept is applicable to international norms, regimes, as well as international agreements.

In their discussion on the concept of legalization, Abbott, Keohane, Moravcsik, Slaughter, and Snidal (2000) characterize the dimensions of legalization as either high or low. Using this characterization they find that legalization can be arranged into eight different possible combinations, (Abbott et al. 2000). Combinations of values that are high are considered to be hard law and values that are considered to be low are considered to be soft law. They find that much of the European Community (EC) law is high on all three dimensions and is representative of an ideal type of hard legalization. At the other end of the spectrum, lies a system of rules with low levels of legalization such as "balance of power" and "spheres of influence". Balance of power referring to diplomatic practice, and sphere of influence referring to largely tacit agreements and understandings that were mostly developed during the Cold War. These arrangements are not legal institutions, but they are norms of behavior with low levels of obligation, delegation, and precision. They represent the slightest forms of institutionalization in the international system.

The concept of legalization can also be applied to portions of legal instruments as well as international norms and regimes. Gamble (1985), for example, utilizes an analysis of the UN Convention on the Law of the Sea. In his analysis, Gamble employs a content analysis of different sections of the treaty focusing different issues to test for the softness of law. Specifically, he focuses on the obligations in the treaty's articles and the concreteness of the provisions. He finds that sections of the treaty dealing with

the exclusive economic zone and the marine environment tend to be soft, while substantive provisions dealing with the continental shelf are the hardest (Gamble 1985).

Operationalizing the concept of legalization is a difficult task. In fact, the developers of the concept point out that none of the dimensions of legalization can be fully operationalized (Abbott et al 2000). They do suggest, however, that indicators of strength and weakness of the dimensions of legalization are present in a variety of international institutions and regimes Additionally, they also provide indicators of the three different dimensions of legalization. For example, indicators of obligation include "unconditional obligations," and "implicit conditions on obligation" on the high end of legalization, while recommendations and guidelines would be on the low end (Abbott et al. 2000). While these indicators provide some guidance as to the varying aspects of these legalization dimensions, they are broadly defined and are not developed to be applied in a systematic fashion. These indicators are illustrative of the concept and are not specified rules for coding data.

Abbott and Snidal (2000), Smith (2000), and Gamble (1985) have provided efforts designed to provide operationalized indicators of international law. Abbott and Snidal (2000) use the concept of legalization to explore the variety and forms of legalization in international governance to explain why actors choose a particular form of legalization. They use examples of legal arrangements along the legalization continuum, characterizing each of the three dimensions in each example as high, moderate, or low. Although, admittedly, their measure does not provide a true empirical test of their arguments; it does provide some supporting evidence (Abbott and Snidal 2000).

A measure of international law is also provided by Smith (2000) in his analysis of legalism in international trade pacts. His measure of legalism in these agreements is based upon the dispute settlement mechanism. Institutional features in these agreements render one dispute resolution mechanism more or less legalistic than another (Smith 2000). The level of legalism is designated in grades of very high, high, medium, low, or none. Smith argues that the design of the mechanism is a crucial determinant in the legalism of a trade agreement. Designing such a mechanism requires states to find a balance between two mutually exclusively goals: States are concerned about compliance by the other states that are parties to the agreement. States are more likely to comply with a more legalistic design. They are also concerned about their policy discretion, and the more legalistic the design, the less discretion the state has in making policy.

Gamble (1985) provides an alternative measure of international law through a content analysis of the 1982 Law of the Sea Convention . He analyzes each provision of the treaty in terms of whether a right or an obligation was created, the importance of the provision, the concreteness of the provision, and the verb used to "condition" the provision. He tabulates the data based on a five-point scale for these areas. Using this data, Gamble compares different sections of the treaty to determine which provisions are the hardest, and which provisions are the softest.

All of these efforts have faced significant limitations and demonstrate the problems inherent in measuring dimensions of international law. While Abbott and Snidal do demonstrate that the distinction between hard and soft law is multidimensional, rather than binary, their measure is too broad and imprecise. Smith's measure provides

more specificity, however, it measures law largely on the delegation dimension of legalization. Gamble's analysis, while incorporating obligation and precision in his measure of the LOS convention, does face some difficulties in regard to the admittedly somewhat arbitrary and subjective nature of the procedure (Gamble 1985). For example, he scores all major substantive provisions as a 4 or a 5 in terms of importance and does not code any values below a 2 even though the scale ranges from 5 to 1. He also purports to have a four-point scale of concreteness, but does not characterize how to define those points. His analysis also provides a measure for different portions of one treaty rather than a method for comparison across several treaties. Despite these ambiguities and shortcomings, Gamble's analysis does demonstrate the concept of law can be operationalized to a certain extent and applied systematically to international treaties. In developing a framework for measuring international legalization, I rely on the concept of legalization devised by Abbott et al. and operationalizing the concept using a similar coding system to that utilized by Gamble in his analysis of the Law of the Sea convention. Although Gamble's system relies on the concepts of "hardness" and "softness" of law rather than specific dimensions of legalization, it is consistent with the varying dimensions of legalization

The measure of legalization in this study is the legalization of the constitutional mandate that serves as the document, or in some instances, the documents establishing the functions of the IGO. Although my study and Smith's (2000) deal with the same dependent variable, the institutional design of legalization, our studies differ significantly in regard to our cases and our measurement of the dependent variable. The cases in my

study are conventional IGOs while Smith examines regional trade pacts. Some overlap, however, does exist between the two. For example, the Caribbean Community (CARICOM), the European Free Trade Association (EFTA), the Economic Community of West African States (ECOWAS), the Mano River Union, the Gulf Cooperation Council (GCC), and the Southern African Customs Union (SACU) are included in both our data sets. The primary difference between the selection of cases is that this present study examines a wider organizational framework. While Smith's study examines legalization in regard to trade liberalization, my study provides a broader survey that incorporates other areas such as security, science, and social welfare into the analysis of international legalization.

Our measurements of legalization also differ significantly. While both studies include the dispute resolution mechanism as an important determinant of legalization, Smith focuses on it exclusively as his measure. In my measure the membership rules and the organizational rules for the other governance structures are taken into account. These rules help to account for the substantive and procedural regulations provided in the agreement. The dispute resolution mechanism is only part of the measure. Distinguishing among different types of rules in developing a measure of IGO legalization, allows for the inclusion of procedures for resolving disputes as well as the substantive rules agreed upon by the parties, and the procedures for conducting the activities of the organization.

Similar to Gamble's approach, my coding system is based on a content analysis of the articles in international treaties. The language used in treaties is assumed to provide a valid indicator of the level of legalization of a treaty. The language is a

critical determinant of the commitments that states make in their international agreements. For instance, Article 32 of the Vienna Convention on Treaties, requires that interpreting bodies may only look at other means beyond the text to interpret the intent of the states when the text is obscure or unreasonable. As a result, it poses a constraint upon national governments in implementing international agreements. Scholars such as Gold (1983) and Weil (1983) suggest that soft law can be identified by vague obligations and the wording and phrases used in agreements. Gold, in fact, argues that law may be soft for two reasons. It may create obligations that are sufficiently ambiguous that the prescribed conduct is uncertain, or it may temper obligations by using permissive language such as "may" or "should" (Gold 1983).

In measuring the legalization of an IGO treaty, the unit of observation is the article. These units are common features across the IGO treaties examined in this study[2]. Of these treaties, however, the agreement establishing the World Trade Organization (WTO) presents an unusual arrangement among these cases. Its format differs from most of the constitutional mandates of the other organizations in that it consists of several treaties. The Marrakesh agreement establishing the WTO only has 16 articles. According to Article 2(2), however, associated legal instruments in the Annexes are integral parts of the agreement. These annexes, which are binding on all WTO members, are included as the WTO's constitutional mandate for purposes of this study.[3] The legalization of a

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[2] Of the 90 treaties examined, only 3 are not explicitly subdivided into articles. Even so, such treaties are organized into enumerated paragraphs that are functionally equivalent to articles.

[3] This includes several multilateral agreements on Trade in Goods, General Agreement on Trade in Services, Agreement on Trade-Related Aspects of Intellectual Property (TRIPs), and the Understanding on Rules and procedures Governing the Settlement of Disputes.

treaty, will be based on a cumulative index of the legalization of each individual article of the treaty. For purposes of measuring the legalization of treaty, annexes, protocols, and agreements of understanding that supplement the treaty will be included if the treaty explicitly states that these supplements are integral parts of the treaty. These supplements will also be included as part of the treaty if the supplements themselves state that they are a modification of the treaty that is currently in force. The measure also includes all modifications to treaty including amendments that add at least one additional article to the original agreement, and new treaties that are currently in force such as the Constitutive Act of the African Union of 2001, which officially replaced the charter of the Organization of African Unity (1963) in 2002. The measures correspond to what is in force as of the summer of 2002.

To measure the legalization of these IGOs, I analyze them by applying the coding system to their constitutional mandates. In my coding system, the dimension of obligation will be measured using a four point scale to determine the extent of legalization of each relevant article in the agreement. This scale will divide obligation in "high", "medium", "low" and "none" categories. The scale of obligation will range from "3"(most obligatory) to "1" (least obligatory). If an article only provides for a definition of terms and does provide for any obligation it will score a "0". These articles only provide for meanings of terms or statements of fact. Obligations can both prescribe behavior (states shall contribute to the budget of the organization) and prohibit behavior (states shall not impose tariffs on trade with other member states). As in Gamble's scale, the verb that conditions the provisions provided in the article determines where the article fits in the

obligation scale. A list of these verbs can be found in Table 3.1. While this is not an exclusive list of all possible verbs that could be used in the agreements, it does provide a general indication of the kinds of verbs that have been used in the agreements that have been analyzed in this project. The most obligatory rules expressly prescribe or prohibit state behavior. Rules that provide normative standards for states exhibit moderate obligation. Permissive rules are the least obligatory for states.

Of course, not all articles are clearly prescriptive, normative, or permissive. Combinations of different rules within a single article are quite common. Certainly, many articles in these agreements use more than one verb to condition provisions and many articles are divided into paragraphs and sub-paragraphs. In this case, the article will be scored based on an average score of the verbs in the article. For example, if an article contained three sentences with obligations that used language such as "may", "shall", and "shall". These obligations would receive scores of "1", "3", and "3" respectively, and the obligation score for the entire article would be 2.33.

Measuring the precision dimension of legalization provides the most difficult task in developing a scheme to code these international agreements. Precision is an ambiguous concept due to its subjective nature. The precision of an agreement, an article, or even a sentence is subject to interpretation. Unlike measuring obligation, certain verbs do not provide an indication of the level of legalization in an article. Nevertheless, precision is an integral element of the concept of legalization. Measuring obligation provides an indication of the level of commitment that states are willing to make to an agreement. Precision, however, must be taken into consideration because it provides guidance as to

whether these commitments are ascertainable. Precision can mitigate the impact of obligation. If states bind themselves to vague obligations, then they are not, in fact, making much of a commitment in the agreement. Gamble, for example, found in his analysis of the Law of the Sea convention that the verb operationalizing an obligation did not provide enough variation to be a useful indicator of soft law (Gamble 1985). He suggests that concreteness provides the most useful indicator.

In this study, I have also developed a three-point scale denoting precision in these agreements. Although this scale provides a very simplified view of precision, it does present some indication of the extent to which an agreement provides determinant and coherent rules. As with obligation, precision will be measured by analyzing articles. If an article does not contain any exceptions or ambiguous language, it will be scored a "3". If an article contains an exception to an obligation or is made conditional on a particular act that reduces the specificity of the prescripted or prohibited behavior, it will be scored a "2". If an article contains more than one exception, or if calls upon the use of discretion by the parties or the organization, or if it contains language which requires a subjective determination for standards of behavior, it will rate a "1". After examining several agreements, I have compiled a list of phrases that satisfy the criteria for an article to coded a "1". All articles will receive a precision score of at least "1". Unlike obligation where an article may provide for a definition without any obligation, all articles have some degree of precision even if it is extremely ambiguous. A list of these categories and their criteria are in Table 3.2. As with obligation, an article will be scored based on an average of the sentences in which the conditions or the phrases appear.

The delegation dimension of legalization will be measured according to a five point scale that will range from "5" (binding adjudication) to "1" (political bargaining). If an agreement requires for disputes to be resolved according to a court decision or a binding arbitration procedure, the delegation score would rate a "5". If an agreement calls for a binding resolution as a last resort, it would rate a "4". Agreements calling for dispute resolution through nonbinding arbitration, conciliation, or mediation would rate a "3". If an agreement calls for a dispute to be settled through institutional bargaining or it requires parties to settle the dispute but is ambiguous in regard to the means, it will rate a "2". If an agreement does not mention how disputes will be resolved under the provided terms, then it can be assumed that disputes are resolved through political bargaining, which will be scored a "1". A list of these categories can be found in Table 3.3.

Coding a delegation score for an agreement forming an IGO is generally fairly simple compared to obligation and precision. These agreements often do not contain a dispute resolution procedure, and when then they do, the dispute resolution is usually clearly stated within a single article. In some agreements, however, this is not the case. For example, the charter of the Organization of American States (OAS) provides for dispute resolution in three articles. These articles require member states to settle disputes within a reasonable time. It, however, does not require states to submit to any particular form of dispute resolution. As a result, the delegation score would be a "2". Since the OAS requires dispute resolution, it demands something more than political bargaining. It, however, does not reach the higher levels of delegation because it falls short of requiring a formal, binding resolution.

Index of Legalization

In order to compare the level of legalization among IGOs, the measures for the dimensions of the concept of legalization: obligation, precision, and delegation will be used to create a legalization index. Comparing these agreements, however, reveals an important consideration in characterizing the legalization of IGOs. The number of articles in an agreement is an indicator of IGO legalization. As Gamble found in his analysis of the LOS convention, not a substantial amount of variation was present in the use of verbs operationalizing obligations in these agreements. The majority of the verbs used in these articles were "shall", although "may" was used in several instances as well. More variation is present in the number of articles in the agreements. As member states agree to include more articles in the agreement, they are assuming more obligations and in doing so they are extending the legalization of the IGO. In measuring legalization in the manner depicted for this project, it is important to point out that the number of articles agreed on by the parties most also be taken into account when categorizing the legalization of an IGO agreement.

An issue that has to do with the number of articles in an IGO treaty, however, is the diminishing marginal effects in the legalization of a treaty. Legalization in IGO agreements reaches a point where it has a diminishing effect. For example, the constitutional mandate of the African Civil Aviation Commission has 15 articles and the convention of the Asian Productivity Organization has 47 articles. Although the influence of the number of articles on the legalization index can be mitigated by the treaty language, at first glance it would appear that the Asian Productivity Organization is much

more legalized.

Legalization in an IGO agreement, however, reaches a point where it is highly legalized and the addition of several more articles does not make much of a difference. For example, while the UN charter and annex may have 181 articles and the charter of the OAS and its amendments may have 145, they are similarly legalized. On the basis of the number of articles, it would appear that the UN is the more legalized organization. They, however, are both highly legalized IGOs and the gap in legalization is not as significant as that between the African Civil Aviation Commission and the Asian Productivity Organization. This index of legalization is on a relative scale. While the UN is far more legalized than the Asian Productivity Organization, it is not entirely accurate to suggest that it is three or four times as legalized. By converting the number of articles into logarithms, the diminishing effect of legalization will be taken into account.

Another source of variation in IGO charters that may mitigate the legalization is the different types of articles that are in these agreements. These articles can be divided into three different categories: definitional rules, membership rules, and organizational rules. Definitional rules provide statements of fact or provide meanings of terms used in the agreements. These articles do not provide for obligations on behalf of either the member states or the organization. Membership rules are those that provide for the rights and the duties of the states and the organization[4]. These articles usually provide for substantive obligations for member states, but they also may include some procedures that states must follow as part of this membership, such as the procedures that state

[4] These articles generally use some form of the term member state or the name of the IGO as the subject of the article.

administrative agencies must follow under the terms of the agreement. Organizational articles provide for rules regarding the conduct of activities within the organization. More specifically, these articles provide the bureaucratic rules for organs and institutions within the IGO. These rules typically include procedures for voting and decision-making in the organization, composition and responsibilities of the staff, and the functions of the organs within the IGO.

The distinction between membership and organizational rules is important in assessing the legalization of any international organization. Although membership articles provide the commitments that states make to an organization and the responsibilities that the organization assumes to carry out the purposes of the agreement, without organizational rules; IGOs do not have guidelines, procedures, or designated powers to implement the substantive provisions of the agreement. For instance, Kahler (1995) suggests that institutions, which rely more on procedural rules rather than substantive rules by states, are more efficient in promoting their goals. Organizational rules allow for better capability for the institution to deal with changing conditions without requiring a thorough renegotiation of the agreement by member states. Institutions based on substantive rules "are unlikely to cover all contingencies, and, as soon as conditions change, countries are unlikely to stick to the rules" (Dominguez 1993). As a result, IGOs with highly legalized organizational rules are more legalized than those that rely primarily on membership provisions. States place greater legal constraints on themselves when they establish more obligatory organizational rules because in this case they are providing authority to institutional organs to regulate the

rules of the IGO in addition to agreeing on rules among themselves. Highly legalized organizational rules provide more institutional bargaining involving issues under the purview of an IGO. Unlike definitional articles, both articles based on membership rules and articles based on organizational rules require obligations. While some articles may exhibit characteristics of both membership and organizational rules, these articles were rated based on the preponderance of their content.[5]

The different types of articles can mitigate the legalization of an IGO due to the fact that these agreements create different kinds of obligations that a state assumes when entering into an IGO agreement. Membership commitments entail states to follow certain rules to achieve the objectives provided in the agreement. These commitments, however, can be mitigated by a lack of obligation to organizational rules, which allow the organs of the organization to function and assist in implementing the provisions of the agreement. If a state incurs a high level of membership obligations by entering into an IGO agreement, this commitment must be balanced by the commitment it makes to organizational obligations that provide the institutional framework for the organization.

While the dimensions of legalization are applicable across a broad range of institutional forms, the different types of rules and number of articles provided by IGO charters should be taken into consideration when evaluating its legalization Due to these considerations, the obligation score for an IGO will be determined by taking the sum of the obligation scores for the membership articles (O_m) and then multiplying that sum

[5] For example, if an article is composed of three sentences and two of the sentences involve membership obligations and one article involves an organizational obligation, then the article would be rated as a membership rule.

by the sum of the obligation scores for the organizational articles (O_p). Then the logarithm of the resulting product (L_o) will be used as the obligation score for the treaty. To define this obligation score in more formal terms, $L_o = \ln(\Sigma O_{mi} * \Sigma O_{pi})$ for all *i*, where *i* refers to the score of each obligation in the data set.[6] This formula will take account both the relationship between the membership and organizational articles by multiplying the sum of the articles, and the diminishing effect of the number of articles by converting the product into logarithms.

The next step is to transform the logarithmic scores into gradations ranging from "1" (very low) to "5" (very high). The transformation procedures first involves subtracting the lowest logarithmic score from every value. So, in this case, the modified logarithmic score ranges from 0 to 8.52. These scores were then rescaled to range between 0 and 5 by dividing each score by 1.7[7]. Scores that ranged from 0 to 1 received a value of "1" (very low), scores from 1 to 2 received a value of "2" (low), scores from 2 to 3 received a value of "3" (moderate), scores from 3 to 4 received a value of "4" (high), and scores from 4 to 5 received a value of "5" (very high). Of course, it is important to note that these scores are based on a relative scale rather than an absolute scale. Each organization's score's weight is reflective of how it compares to the other IGOs in the data set.

The precision score of an IGO was measured in the same way as obligation using

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[6] Since definitional articles only provide meanings of terms, and do not impose much in a way of an obligation upon states or the institutions of the organization, these articles will be excluded from the measurement of legalization. These article are rare are not even included in several IGOs. As the result, the exclusion of definitional articles should pose negligible impact on the legalization of an agreement

[7] In order to rescale, the maximum score of 8.5 had to be divided by 1.8 in order to convert the maximum score to 5 and allow for the range of the new scale to be between 0 and 5.

the precision measurement. It can be formally expressed as $L_o = \ln(\Sigma Pr_{mi} * \Sigma Pr_{pi})$ where (Pr) is the precision score for the membership and organizational articles and i refers to the score of the organization. The precision scores were also rescaled between 1 and 5 in the same manner as the obligation scores. Of course, since precision has been described by the proponents of the concept of legalization as an independent dimension of legalization, the rationale for multiplying the substantive and procedural scores is different. In this instance, substantive commitments may be ambiguous or may allow discretionary interpretation. Organizational rules, however, allow organs of the institution to provide clarity to commitments made in the agreement. Although membership commitments may provide determinate rules, if the organizational procedures for implementing rules are ambiguous then the overall commitments that states are making to the agreement are not as clear.

After converting the logarithmic scores into the gradations ranging from 1 to 5, these gradation scores will be added together along with the dispute resolution scores to create the index of legalization. Adding together the values of these different areas allows for a more complete measure of the legalization of an IGO charter. As discussed, the distinction between the different types of rules is important in capturing legal structure and the procedures provided by organizational rules are important elements of IGO legalization. Dispute resolution mechanisms also can be a mitigating factor. If an IGO agreement does not provide for a resolution of disputes, it weakens the commitment that states are making to the organization. Dispute resolution is indicative of delegation of authority, which is one of the elements of legalization. Additionally, the influence of

membership and organizational rules will be reduced if it is unclear how any discrepancies or interpretational differences of the rules between will be resolved.

Surveying Legalization

As mentioned, the cumulative index of legalization emerges from the gradation scores of the three dimensions of legalization: obligation, delegation, and precision. The gradation scores for the obligations of some well-known IGOs are found in Figure 3.1, which depicts the scores for the dimensions of legalization. These articles provide obligations for states in signing the constitutional mandate and its modifying agreements as well as obligations for the IGO as a whole. The scores range from 1 for the Organization of the Petroleum Exporting Countries (OPEC) and the North Atlantic Treaty Organization to 5 for the United Nations (UN). The Benelux Economic Union and the International Civil Aviation Organization (ICAO) are organizations on the high end of legalization with scores of 4. The Association of Southeast Asian Nations (ASEAN) lies on the low end of legalization with a score of 2.

The precision scores of the IGOs are also found in Figure 3.1. These articles provide for the precision of the rules of the organization. In this area of legalization, the scores range from 1 (NATO, OPEC) to 5 (UN). The Benelux Economic Union and the OAS are also at the high end of precision legalization with scores of 4. OPEC, as with the obligation scores also lies at the low end of legalization in this area as well.

The third area, delegation, is based on the dispute resolution score of the IGO treaty. The dispute resolution mechanism chosen by states to be used by an IGO is a very important element in determining the extent of legalization of a treaty. The dispute

resolution score for the selected IGOs are also depicted in Figure 3.1. The specific type of dispute resolution mechanism used by the IGO can found in Table 3.4. Neither ASEAN, NATO, or OPEC provide for a dispute resolution mechanism, so they receive a score of 1, since this implies that disputes are resolved through political bargaining . The dispute resolution mechanism of the OAS receives a score of 3 since it provides for more than institutionalized bargaining and it provides for a means of peaceful procedures for settling disputes. The OAS, however, does not require states to seek a binding resolution. The UN receives a score of 4, however, its procedures reveal a borderline case between a 3 and a 4. Under Article 33 of the UN charter, parties to any dispute shall seek a solution by peaceful means of their choice. This provision is similar to that in the OAS charter. The UN charter, however, differs in two respects. It allows for a third party, the UN Security Council, to call upon parties to settle their disputes by peaceful means. The UN charter also establishes a permanent court, the International Court of Justice (ICJ) as the principal judicial organ of the UN. Although states under the charter are not always required to submit cases to the ICJ, the UN charter does provide them a means for a binding judicial settlement.[8] Since the UN provides procedures for third parties to influence the means of how states will settle their disputes, it receives a dispute resolution score of 4.

ECOWAS, the ICAO, and the International Atomic Energy Agency (IAEA) also received dispute resolution scores of 4. All of these organizations have similar dispute

[8] According to Article 36 of the Statute of the International Court of Justice, the Court has jurisdiction over a case when the parties agree to refer a dispute or when called upon to do so by a treaty. The Court also has jurisdiction when a state makes a declaration of compulsory jurisdiction over a particular issue area or blanket declaration of jurisdiction in disputes arising under international law.

resolution provisions. They all require their member states to settle their disputes. If the states are unable to settle their disputes, then they are required to submit the dispute to a third party, whether it be a court or another governance structure, which will decide the dispute. The Benelux Economic Union represents the high end of dispute resolution with scored of 5. The charter requires disputes to be submitted to institutions of the organization to make a binding decision.

A comparison of the cases that were included in both my data set and Smith's data set on regional trade pacts is in Table 3.5. In the cases of ECOWAS, the Mano River Union, and SACU the dispute resolution scores are based on the same level. Our rating of EFTA, GCC, and CARICOM, however, does vary slightly. For example, Smith rates EFTA as "very high" since it has a standing tribunal that make binding rulings. I, however, score it as "high" because under article 48 of the EFTA convention, it says that states "may" refer matters to arbitration. This permissive language of "may" means that states are not required to submit a dispute to binding arbitration, which reduces its score compared to an organization that require use of its dispute resolution mechanism. The GCC and CARICOM differences have to do with our respective scales. While third parties in these IGOs make non-binding decisions, I still score these organizations as "medium" because they do have a dispute resolution procedure, which is more than those IGOs that do not; and they do specify third party review, which is more than IGOs that require institutional bargaining or that specify the need for dispute resolution, but do not specify any procedures.

The legalization scores for the selected IGOs are in Figure 3.2. The index of

legalization for the organization is taken by adding together the scores for the three dimensions. As a result the legalization scores an IGO range from a minimum of 3 to a maximum of 15. These results indicate that the European Atomic Energy Community (EURATOM) and the WTO are the most legalized organizations examined in this study, exhibiting very high levels of obligation, delegation, and precision. The least legalized organizations were the Intergovernmental Committee of the River Plate Basin Countries, the International Council for the Exploration of the Sea, NATO, and OPEC, which all exhibited very low levels in the three dimensions of legalization. The other organizations in the data set lie in between these poles. These scores do show variation in legalization among the selected IGOs.

After examining the results, it is important to note that very little variation is present between the obligation and precision scores. The measures used in the study are somewhat crude in that they rely on certain words and phrases, and so better measurements could be developed to provide greater distinction between the two concepts. This lack of variation, however, may be in part explained by the relationship between obligation and precision. Although the proponents of legalization point out that obligation and precision are conceptually distinguishable in practice, at least as applied to IGO agreements, they seem to be very closely connected. Prior research utilizing the concept of legalization has demonstrated some ambiguity between distinguishing the two. For example, Alter (2000) says very little in her article on legalization in the EU about precision. She says that EU is highly precise because it has specific and unambiguous rules. It also has the European Court of Justice (ECJ) to provide meaning when there is

ambiguity. While Alter describes EU precision as high, Abbott describes EU precision as "moderate" (Abbott 2000). His qualification is that the EU is moderately precise in comparison with the North American Free Trade Agreement (NAFTA) because the EU has institutions that can promulgate secondary rules. He suggests that legalization is composed of an interaction among the dimensions when he states that "Hard legalization in the EU trade context is achieved by a relatively imprecise charter coupled with a degree of delegation to institutions that may promulgate secondary rules with more precise content" (Abbott 2000, 521).

Additional ambiguity in distinguishing obligation and precision in an empirical case is also apparent in how Abbott et al. characterize the 1985 Vienna Ozone Convention. They say the convention has a high level of obligation because of its binding terms. In terms of precision and delegation, they describe the convention as having low levels of legalization because "most of its substantive commitments were expressed in general, even hortatory language and were not connected to an institutional framework with independent authority" (Abbott et al. 2000, 407). However, in comparing their tables of indicators of obligation and precision, they associate the term "hortatory" as an indicator of obligation rather than precision.

This study indicates that at least in regard to conventional IGO agreements, obligation and precision are closely related. In fact, the two measures were very highly correlated at .95. Variation is present at the article level as some articles demonstrate obligatory language along with ambiguous or discretionary language (although many articles use obligatory language without ambiguous or discretionary language). However,

some articles do not have binding language, but do have precise terms. At the aggregate level of the agreement, this variation in articles may balance as indicated in the present case.

Distinguishing between obligation and precision does have utility. For example, international conventions and international custom are both recognized as primary sources of international law[9]. Neither is superior to another and both may be equally binding. In terms of precision, however, international conventions are much more precise. They are written documents that use language consented to by the parties involved. Customary law is not codified in this way, and so it is more difficult to ascertain. In analyzing IGO agreements, the conceptual distinction remains. Empirically, however, it becomes more difficult to dichotomize the concepts.

[9] see Article 38 of the Statute of the International Court of Justice.

Table 3.1 Obligation

Score	Category	Verbs
3	High	must, shall, require, bind, pledge, will undertake, has right/duty, obliged, forbids
2	Medium	should
1	Low	try, may, endeavor, declare, allow, agree, recognize, authorize, decide
0	None	is, are, means

Table 3.2 Precision

Score	Category	Resolution
3	High	obligations have no exceptions or ambiguous language
2	Medium	obligation has limited exception **key phrases:** unless, provided that, subject/pursuant to, should be, except if any requests, as a general rule, is relevant,
1	Low	several exceptions,discretionarylanguage, subjective standards **key phrases:** as may be required/determined/decided/agreed, to be approved by, as/if possible, is/considered/deems desirable, deems appropriate, designate, delegate, in opinion/judgment/wishes of, as is necessary, if it is satisfied, without prejudice, common interests, may be entrusted to, as circumstances warrant, is reasonable, just, in good faith

Table 3.3 Delegation

Score	Resolution
5	requires: adjudication, binding arbitration
4	requires: binding resolution as a last resort
3	nonbinding arbitration, mediation, conciliation
2	institutional bargaining, requires resolution but is ambiguous to means
1	agreement does not mention resolution, political bargaining

Table 3.4 Dispute Resolution Scores

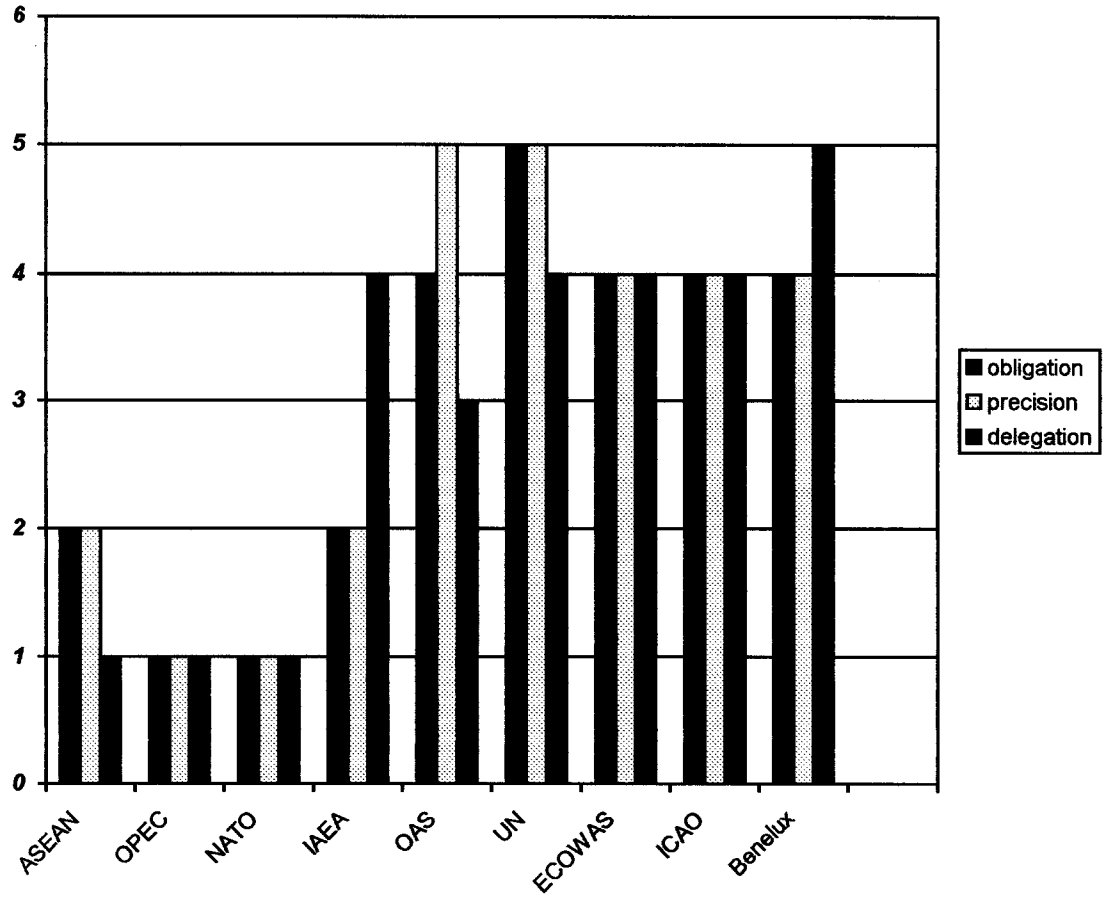
IGO	Dispute Resolution Score	Type of Resolution
ASEAN	1	political bargaining
NATO	1	political bargaining
OPEC	1	political bargaining
OAS	3	disputes shall be decided by peaceful procedures binding or nonbinding
ECOWAS	4	failure to settle dispute through direct agreement, parties may refer matter to Court of Community for final decision.
IAEA	4	unless parties agree to another mode of settlement, dispute shall be referred to the International Court of Justice
UN	4	parties shall settle dispute by either binding or non-binding means.Security Council can call upon parties to settle disputes by such means
Benelux	5	College of Arbitrators that has authority to make final judgments not open to appeal

Association of South East Asian Nations (ASEAN)
Organization of Petroleum Exporting Countries (OPEC)
North Atlantic Treaty Organization (NATO)
International Atomic Energy Agency (IAEA)
Organization of American States (OAS)
United Nations (UN)
Economic Community of East African States (ECOWAS)
International Civil Aviation Organization (ICAO)
Benelux Economic Union (Benelux)

Table 3.5 Comparison between Cockerham's and Smith's measure of Dispute Settlement in selected regional organizations

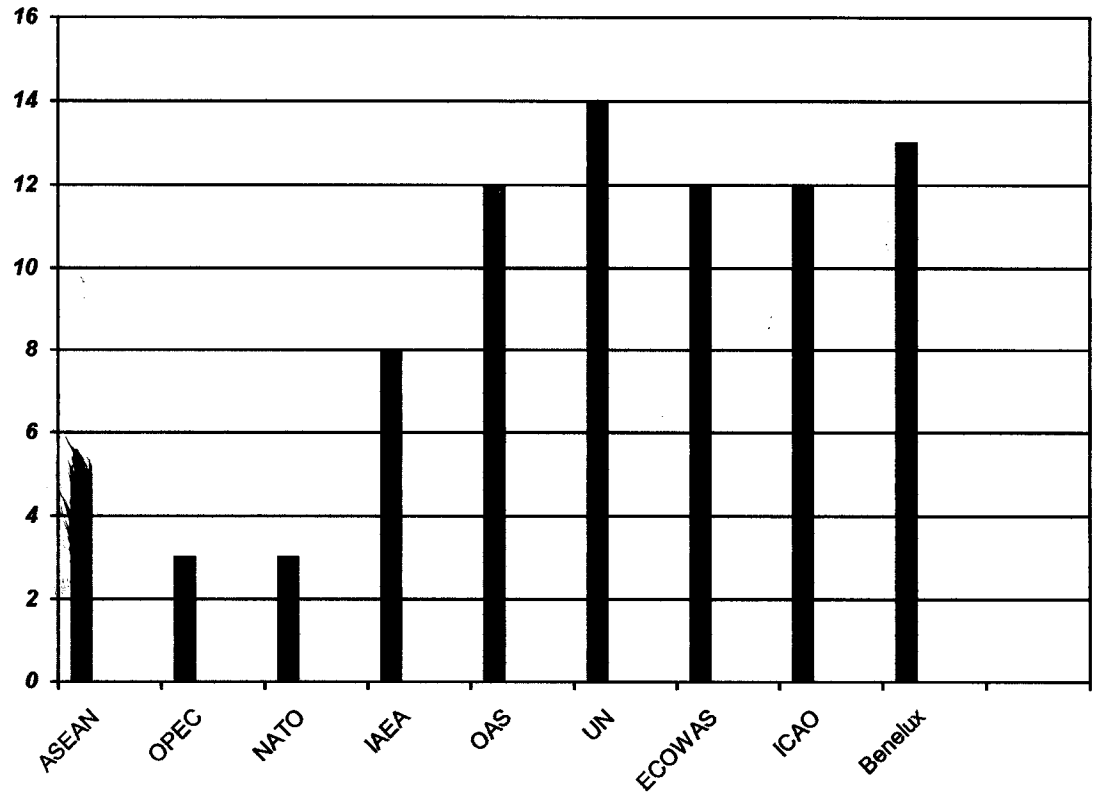
Organization	Cockerham's measure (2003)	Smith's measure (2000)
CARICOM	Medium=3	Low
ECOWAS	High=4	High
EFTA 1992	High=4	Very High
GCC	Medium=3	Low
Mano River Union	Low=1	None
SACU	Low=1	None

Figure 3.1 Dimensions of Legalization Scores for IGOs



Association of South East Asian Nations (ASEAN)
Organization of Petroleum Exporting Countries (OPEC)
North Atlantic Treaty Organization (NATO)
International Atomic Energy Agency (IAEA)
Organization of American States (OAS)
United Nations (UN)
Economic Community of East African States (ECOWAS)
International Civil Aviation Organization (ICAO)
Benelux Economic Union (Benelux)

Figure 3.2 Legalization Scores for IGOs



Association of South East Asian Nations (ASEAN)
Organization of Petroleum Exporting Countries (OPEC)
North Atlantic Treaty Organization (NATO)
International Atomic Energy Agency (IAEA)
Organization of American States (OAS)
United Nations (UN)
Economic Community of East African States (ECOWAS)
International Civil Aviation Organization (ICAO)
Benelux Economic Union (Benelux)

CHAPTER 4
LEGALIZATION AND IGO CHARACTERISTICS

The study of international organizations in international relations has proceeded in an uneven fashion with a capricious dependent variable. Analytical focus has shifted from formal organizational analysis, to institutional processes, to organizational roles, to international regimes. Over the course of time, the concept of international organization became associated with any patterns of repetitive behavior (Kratochwil and Ruggie 1986, Rochester 1986). The first focus, formal institutions, assumed that international governance was synonymous with the activities of international organizations and that the attributes of the organizations, charters, voting procedures, etc., account for these activities. This analysis was characterized by an examination of how closely the actual operation of the organization followed its constitutional mandate (Goodrich and Simons 1955). The second focus, institutional processes, abandoned the premise that activities can be explained by formal arrangements and emphasized the patterns of influence shaping organizational outcomes (Cox and Jacobson 1973). The third perspective, organization role, shifted focus from the role of international organizations to a more broad conception of international governance. International regimes expanded the concept to include norms and state practices with organizational roles.

The dependent variable in this study is based upon the first focus, formal institutional arrangements. These arrangements, in terms of conventional IGOs, will be used as indicators of legalization. Although the emphasis in most current studies on international governance use a broad conception of international organization, analyses of

formal institutions continue to have scholarly merit in the field. In fact, it has been suggested that in order for a research program in international relations to better reflect international practice, it is necessary to connect regime analysis with the formal mechanisms utilized by global actors (Kratchowil and Ruggie 1986). The specific question examined in this chapter is what accounts for the variation in legalization among conventional IGOs? To analyze this question, the index of legalization described in the preceding chapter will be utilized to develop certain hypotheses that might help elaborate on explanations as to why legalization in IGOs may vary.

Functionalism and IGO legalization

A possible explanation for the differences in legalization among conventional IGOs comes from functionalist approaches to international relations. While functionalist theories do not directly addresses legalization or international law, their assumptions can be analogized to explain legalization. Functionalism suggests that advances in areas of "low" politics such as communications and transportation technologies lead to pressure on governments to cooperate with each other (Mitrany 1966). Political elites must turn to international institutions, such as IGOs, to assist in accomplishing this task. This theory was extended in the neofunctionalist writings of Haas (1958, 1964). He emphasizes the utilitarian nature of the actors in the process. The primary actors are above and below the state. Actors above the state are supranational institutions. Actors below the state include interest groups and political parties. These actors, while pursuing their own interests, promote integrative practices. Governments, while ultimately making the decision whether to institutionalize these practices, play a reactive role in this process. As a result,

they may be constrained by the primary actors. During the course of the process, as one sector of the economy becomes integrated, it creates a situation where it "spills over" into another sector. Political spillover is present as well. As integration proceeds, expectations and values change among actors involved in the process. Institutions, such as IGOs, are formed because they "possess or demand jurisdiction over preexisting national states" (Haas 1958).

Neofunctionalism received a substantial amount of criticism following the slowdown of integration in Europe during the 1960s. It was claimed that the theory had exaggerated the expansive effects of functional and political spillover (Nye 1965). Neofunctionalists accepted this criticism and acknowledged the possibility that it might be obsolete (Haas 1975). The growth of European integration in the 1980s, however, brought renewed interest in neofunctionalism (Mattli 1999). In particular the relevant focus on the roles of supranational and subnational actors have influenced studies on regional integration (Mattli and Slaughter 1998, Stone Sweet and Brunell 1998).

Neofunctionalism suggests that pressure to perform economically compels governments to create and join IGOs. Since subnational actors are pursuing their own interests, most notably economic gains, they are encouraging governments to pursue integrative strategies when they appear to be profitable (Haas 1958). States are more likely to institutionalize cooperation in areas that are more technical or economic. Because of economic motivations, it would be expected that IGOs devoted to economic tasks would be the most legalized. Not only do economic incentives motivate states to join IGOs, but they also pose fewer sovereignty costs. A more legalized IGO provides

benefits in that it increases transparency and provides a more viable means of dispute resolution. It, however, is also more of an infringement on the policy discretion of governments. Although this infringement is a sovereignty cost to states, it is not as costly in the economic area. Since economics are less of a sovereignty concern than security, legalized agreements in this area are not as considered as burdensome.

In this way, liberal approaches, such as functionalism, and realism can be reconciled in how they would characterize the relationship between IGOs serving a security function and the extent of its legalization. IGOs devoted to security functions pose much greater sovereignty costs. Realism would suggest that in a world of international anarchy where states must rely on self-help, IGOs serving a security function would not be very legalized. This is consistent with functionalist expectations that economic IGOs would be more legalized because of the demand by subnational actors for more extensive economic integration.

As functionalist approaches suggest, a characteristic of IGOs that may relate to legalization has to do with the purpose of the organization. IGOs can serve specific purposes or act as a general purpose organization. Jacobson's (1996) data set divides the functions of IGOs into four separate categories: general purpose, political/military, social welfare and human rights, and economic. These functions are categorized based upon which area IGOs devote their primary energies (Shanks et. al. 1996). An example of a general purpose organization is the OAS. The charter of the OAS, which was signed in 1948, proclaims several essential purposes. It considers a variety of issues that may affect members. These purposes include everything from strengthening peace and security to

economic, social, and cultural development.

NATO and the Western European Union (WEU) provide examples of organizations that are in the political/military category. The NATO Treaty describes the purpose of the organization to safeguard the North Atlantic area and for member states to unite their efforts in collective self-defense. The treaty creating the WEU provides that member states will refrain from engaging in economic conflict with one another as well as obligating the parties to assist any of the other parties to the treaty that comes under military attack. Unlike organizations in the general purpose category, these organizations are dedicated to a specific purpose. Their purpose, however, is not predominantly social welfare or economic.

Social welfare and human rights IGOs include such organizations as the World Health Organization (WHO) and the Food Aid Committee. The WHO deals with a variety of health issues of international concern form child immunizations to the prevention of AIDS. Its purpose is to institutionalize international cooperation in health matters. The Food Aid Committee also serves a humanitarian purpose. Its goal is to improve the ability of the international community to respond to the food needs of developing states.

Most IGOs in this sample are members of the fourth category, economic specialization. These organizations include regional trading arrangements as well as with trade in a certain commodity, such as the Association of Tin Producing Countries and the International Tea Promotion Association. The economic categorization also includes scientific areas such as the International Telecommunications Satellite Organization

(INTELSAT), which regulates the space segment of the global commercial telecommunications satellite system. The inclusion of IGOs that are devoted to traditional economic activities, such as trade and finance, with scientific organizations that are not as directly related to economic tasks results in a broad categorization of economic specialization.

A distribution of the functional categorization of the selected IGOs can be found in Figure 4.1. Given the broad categorization of economic specialization, it is not surprising that economic organizations comprise the vast majority of organizations in this analysis. In fact, economic IGOs make up 72 percent of the distribution compared to 13 percent social, 9 percent political, and 6 percent general purpose. Although Shanks, Jacobson, and Kaplan include over one thousand IGOs in their data set (including IGOs defined by the UIA as unconventional as well as conventional), their distribution of IGOs in 1992 is similar with 61 percent economic, 28 percent social, 10 percent political, and 2 percent general purpose (Shanks et. al. 1996, 601).

In order to examine the relationship between the functions of an IGO and its legalization, reference will be made to some statistical models. One measure of function will be based on a dichotomy of whether the organization is devoted to a specific purpose, such as economic or political/military, or is a general purpose organization. This measure will be a binary independent variable, where the IGO will receive a score of "1" if it has a specific purpose or "0" if it serves a general purpose. Measuring function in this way will provide some evidence in determining if the purpose of an organization matters in regard to its legalization. Another functional variable will use a variable based

on whether an IGO serves an economic function or not. In this case, the variable will be coded "1" for economic function and "0" for non-economic. A functional variable that will also be included in a statistical model will be a binary variable based upon political/military organization. The coding will be "1" for political/military and "0" for any other organizations.

Functionalist theory does not directly address the feature of membership criteria. It does not suggest that geographic proximity should make a difference in international cooperation other than reduced transaction costs. For instance, in examining the changes in the IGO constellation from 1981 to 1992; Shanks, Jacobson, and Kaplan found that most conventional IGOs have regionally-oriented memberships, but the decreasing proportion of regional IGOs is consistent with functionalist expectations (Shanks et al. 1996). As applied to legalization, it can be inferred from functionalism that legalization would be similar in IGOs that have global and regional membership.

The criteria for organization membership reflect both the goals of the IGO and which parties it wants to include. Some IGOs have universal membership. The UN, of course, is the most prominent example of an organization with universal membership. The basis for this membership is found in Article 4 of the UN charter, which states that membership is open to all peace-loving states that both accept the obligations of the charter and are judged by the UN as being able and willing to carry out these obligations. For a state to be granted membership in the UN, it must petition the UN Security Council, which will make a recommendation to the General Assembly for a final decision on whether membership is granted. So, although membership in the UN is potentially open

for all states, it is not automatic. The IAEA and the International Maritime Organization (IMO) have similar provisions in regard to potential membership of states.

Most IGOs, however, have some form of limited membership. Jacobson's (1996) data set on IGOs bases membership on three criteria. In addition to the possibility of universal membership, the basis of membership may be limited by geography or by purpose. Memberships limited by geography are generally regional organizations, such as ASEAN, ECOWAS, and the European Free Trade Association (EFTA). The goal of these organizations is to strengthen ties within a particular geographic area. The International Coffee Organization and the International Sugar Organizations are examples of IGOs that limit their membership by purpose. These organizations limit membership to states trading in their respective commodities that are willing to accept the obligations created by the IGO agreement. The distribution of membership criteria among IGOs in this study can be found in Figure 4.2. As indicated in the figure, 90 percent of the IGOs in the sample have some limitation on membership. In addition to membership rules and function, IGOs also differ according to its number of members. IGOs included in the data set range from 3 (Benelux Economic Union) to 191 (World Health Organization).

The issue of global versus regional organizations has been part of a debate between regionalists and functionalists as to how the world should be divided. Both sides agree that the world should include multinational political units, but they differ as to whether these should be regional or global units (Bennett and Oliver 2002). Regionalists claim that a natural tendency exists among states to integrate regionally rather than globally. States have very different economic, political, social, and geographic factors

that makes it very difficult to organize within a global framework. Organization is easier within regions because it limits the number of states involved, which makes it easier to cooperate. Universalists, however, argue that global organizations are important because global interdependence has increased the number of global problems in the world. As a result, regional organizations are not capable of handling many of the political, social, and economic difficulties that are faced by states. From this debate, it can be inferred from these viewpoints that regionalists would suggest that regional organizations would be more legalized, while universalists would argue that global organizations would tend to be more legalized in order to solve the increasing number of global problems.

In the statistical models, membership is measured as a dichotomy based on whether the organization is regional by restricting the geographic scope of its members. This measure will also be a binary independent variable, where the IGO will receive a score of "1" if the organization limits its members based upon geography or "0" if it is does not pose a geographic restriction. Measuring function in this way will provide some evidence as to whether or not regional organizations tend to be more legalized.

Collective Action and IGO legalization

Theories of collective action also can provide an explanation for variation in legalization. Law is a collective good (Cowen 1992). The characteristics of collective goods are goods that provide benefits that are nonrivalrous in consumption and nonexcludable. Nonrivalrous refers to the idea that one party's use of a good does not detract from the utility of the good for other parties. Nonexcludability means that all parties can receive the same benefit from the good regardless of how many other parties

use it. Law provides a benefit by creating more certainty in international interactions. Certainty is created by the legal constraints that make state behavior more predictable. All states face the same constraints and benefit from this good, regardless of how other states benefit from it.

Even though law is a collective good, international law is limited by the lack of a world government and court that can effectively implement and enforce it. As a result, international law is largely composed of rules created by agreements among states in particular issue areas. Although custom and general principles of international law are also recognized as primary sources of international law by the International Court of Justice (ICJ), these sources are not invoked as often as a rule of law as treaties. The vast majority of these treaties do not apply universally. Their scope is limited to particular states that have consented to a certain set of rules. International organizations provide a means for states to achieve collective goods (Russett and Sullivan, 1971). These organizations are created by legal instruments and are themselves collectivities that can furnish collective goods, such as defense, telecommunications, and free trade.

An important issue in forming a collective good, such as international organizations, involves the number of parties. For instance, Olson argues that an inverse relationship exists between the optimal amount of a collective good and the size of a group (Olson 1968). One reason for this relationship is that the benefits of a collective good received by a party are reduced as the group size increases. Another reason is that organization costs increase with size increase. As applied to the collective goods legalization and international organizations, it would appear from this argument that

international organizations with a large number of members would not be as legalized as smaller organization. The larger membership makes it is more difficult for states to come to come to an agreement on a common set of rules, and they also receive less of a benefit from legalization because states must share more of the potential benefits.

Additionally in Downs et al.'s (1996) study on international cooperation and compliance, they suggest that due to mixed motives concerns of states in regard to cooperation, a possible strategy to deal with the compliance problem is to restrict regime membership to states that that are unlikely to defect. For this reason, many regimes with deep levels of cooperation limit their membership. Regimes with a large number of members do not have as an extensive level of cooperation. In applying this argument to legalization and IGOs, it suggests that IGOs with a small numbers of members will not be as legalized as those with a small number of members. Since legalization is a more constraining form of cooperation, concerns over defections would hinder states from entering into highly legalized IGOs where a greater possibility exists that some of the other members will not comply with the IGO's rules.

Olson's hypothesized relationship between group size and the efficiency of collective action has been questioned by Hardin and Kahler, at least as it pertains to regimes. Hardin, for instance, argues that the negative effects of increasing size may be offset by economies of scale in the production of a collective good (Hardin 1982). Kahler also notes that while Olson's argument that individual benefits decline with increasing group size holds for goods characterized by crowding, such as a private club, goods provided by many international regimes are not of this type (Kahler 1993). In his

examination of the third United Nations Conference on the Law of the Sea, Kahler finds that large number participation approached a much better outcome than would have been possible in an arrangement with a smaller number of participants. In this case, as membership grew, states would receive more of a benefit from developing an arrangement for a global regime with rules regarding maritime issues rather than a series of smaller arrangements. Even though the bargain failed, it was do to the lack of support of a hegemonic power, the United States, rather than the large number of participants.

Hardin and Kahler's arguments suggest that organizations with a large number of members may not necessarily be less legalized than those with a small number of members. Since legalization provides greater transparency and legitimacy for international rules, more universal arrangements in certain issue areas may be more beneficial for states in establishing global rules that would greater enhance the benefits from legalization. In issue areas of global concern such as the environment, maritime rights, proliferation of weapons of mass destruction, and trade, states may receive more benefits from more legalized rules on a global scale. Organizations with a large number of members also have the potential for spillover into other areas. As Hardin points out, other collective ventures can emerge from large collective arrangements. These future ventures may offset diminishing benefits from the initial arrangement. In examining the collective action hypothesis, in which IGOs with a large number of members would not be as legalized as smaller organization, the number of members of an IGO will be used as an independent variable in the statistical model.

Realism, neoliberal institutionalism and IGO legalization

After examining the relationship between legalization and the characteristics of IGOs, it is also important to examine the influence of the member states on the legalization of these organizations. The major competing theories in international relations, realism and neoliberal institutionalism, provide more of a state-centric view of international cooperation than theories of functionalism and collective action. Neither realism or neoliberal institutionalism, however, explicitly address the role of formal organization in international affairs or why states choose to join or act through formal organizations (Abbott and Snidal, 1998). These approaches, however, provide important insights as to how and why formal organizations are formed as well as the extent to which they are legalized. In particular, these approaches can be useful tools in generating hypotheses to help explain what factors would influence states to enter into an IGO that exhibits a high, moderate, or low degree of legalization.

Realists assume that states are the dominant actors in the system, they behave rationally, and that the internal attributes of states do not significantly influence their behavior. Additionally, realists are pessimistic about cooperation in an anarchic world. Grieco (1988), for example, suggests that states are positional actors that are concerned with relative gains from cooperation. Since states are primarily motivated by security concerns, they fear that a current ally has potential to become an enemy in the future. As a result, states must recognize the gains of their partners and are less willing to cooperate even if they may benefit from the transaction. Even when states gain mutual benefits from cooperation, very rarely are those benefits equally distributed. For instance, Krasner

(1991) finds that the global communications regime is characterized by a conflict over the distribution of preferences. Although states benefit from the regime, they may not receive their preferred outcome. The conflict over preferences is determined by the relative power capabilities of the states. The more powerful states will have more influence and ultimately determine the structure of the regime.

Because powerful states dictate the form of cooperation and international institutions, realists argue that these institutions have a weak influence on the behavior of states. Mearshimer (1995), for example, suggests that even though states may sometimes use institutions, the rules that compose institutions are reflective of the international distribution of power. The most powerful states create and develop institutions to maintain their power. NATO, he argues, was essentially a tool of American power. It was a manifestation of the bipolar distribution of power in Europe (Mearshimer 1995).

Neoliberal institutionalists have a much more optimistic view of international cooperation. States pursue absolute rather than relative gains. They are more willing to enter into mutually cooperative arrangements than realists would suggest. Regime theory recognized institutional organization of cooperation and that this organization can help states reach agreements by reducing transaction costs, supplying information, and raising costs of noncompliance (Keohane 1984). This theoretical approach, however, deals with institutions at a general level and does not provide much analysis about formal organizations (Abbott and Snidal 1998). The lack of emphasis on IGOs has created a gap in understanding the role of formal organization in international politics. Part of the reason for this gap has been the focus by theoretical approaches on whether institutions

matter rather than how they matter (Martin and Simmons 1998).

Despite the differences between neorealists and neoliberal institutionalists in how they perceive international cooperation, these approaches can be reconciled to a certain extent by some mutual assumptions and expectations. Both approaches assume that states are rational decision-makers. They also find that behavior is structured by an international system of anarchy. Although both approaches view prospects for international cooperation differently, they do recognize that these prospects may be influenced by the type of cooperative arrangement sought by states. With an emphasis on self help in the international system, realism would suggest that security arrangements would be the most difficult to develop because they impose much greater sovereignty costs on states. The devastating impact of the entangling alliances preceding World War I, for example, demonstrated the potential high cost of entering a security arrangement. Liberal institutionalists do recognize that different institutional arrangements are associated with economic and security issues (Lipson 1984). Cooperation surrounding economic arrangements is more sustainable.

State power and IGOs

As the debate between neorealism and neoliberal institutionalists suggests, the disparity of power among states in the international system plays a role in the structure of a cooperative arrangement and the extent to which it is legalized. In international legal scholarship, Steinberg (1997) argues that rules promoting the environment develop more quickly and thoroughly in the EU and NAFTA than in the WTO because of the relative

differences in power between the wealthier, environmentally-oriented states and the poorer states that are not as concerned about the environment. As integration deepens, the more powerful states are able to promote their interests. Powerful states value "soft" legalization (Abbott and Snidal 2000). They are reluctant to make international commitments when those commitments can constrain their bargaining power. These states are more willing to enter into highly legalized agreements if the more extensive commitments can be used to promote their interests. Powerful states in particular are wary of a high level of delegation. Any reduction in bargaining power by binding and precise rules can be countered by long term reduction in bargain costs caused by greater monitoring of commitments (Abbott and Snidal 2000). Delegating dispute resolution authority to a third party, however, poses a greater sovereignty cost because it is less controllable and more likely to produce an undesirable outcome.

It can be suggested that a highly legalized IGO can be explained by asymmetries in the power distribution among member states. Scholars have argued that legalization aids weak states. Hard law offers protection to weak states by constraining the likely behavior of strong states. Weaker states in the EU have been shown to be the major lobby for maintaining existing levels of legalization (Alter 1998). It has also been suggested that powerful states are likelier to form a more legally binding agreement in regularizing their relations with weak states (Abbott and Snidal 2000). In this instance, powerful states can exert influence over weak states by having more bargaining power over the substance of legally binding rules. Powerful states can also use a more legalized agreement to gain support from weaker states. In the 1991 Gulf War, for instance, the U.S. utilized the UN

Security Council to gain support for its actions from weaker states, even though the process required a time delay by complying with the Council's rules and procedures. Even with the U.S. invasion of Iraq in 2003, the U.S. sought the support of weaker states. Although the U.S. did not pursue formal authorization for military action through the Security Council because of certainty of a veto by at least one of the permanent Security Council members, the U. S. did pursue the acquiescence and symbolic support of weaker states through a "coalition of the willing". It can be hypothesized from these arguments that IGOs that have member states with a greater disparity of power would be more legalized than IGOs that have a low disparity of power.

Another aspect of state power and the formation of IGOs involves state hegemony. After World War II, the U.S. emerged as the world's most dominant state. It was the only state in position to restructure the global order. To accomplish this task, the U.S. sought to revitalize the world's economic and financial institutions and create the United Nations to facilitate social and economic cooperation among states as well as provide greater assurances for international peace and security. The charter of the United Nations was based upon principles of American idealism. It encouraged respect for human rights and the freedom of individuals. It also sought to incorporate the rule of law into international affairs by creating an international court to adjudicate international disputes. In its initial years, the UN became an extension of U.S. foreign policy and the U.S. used the UN as an instrument in its growing conflict with the Soviet Union (Ziring et al. 2000). Over time, however, with the creation of additional independent states from post-War decolonization, the U.S. began to lose its preponderant influence over UN

policies. These newly independent were weak both militarily and economically and used the UN to express their frustration with the powerful Western states. With the collapse of the Soviet Union, the UN became less conflictual and more consensual on issues of free markets and democratization. States varied in their support of these issues, but there was no longer a viable alternative model or a sustained ideological challenge.

The relationship between the U.S. and the UN represents the tension between the utility of IGOs and state sovereignty. Scholars have argued that a stable hegemon is necessary to provide a global collective good such as an open trading system (Gilpin 1987, Kindleberger 1973). To support this contention, it is suggested that the rise to global hegemony by the United States was instrumental for an open trading system and the development of durable organizational arrangements such as GATT/WTO, the International Monetary Fund (IMF) and World Bank and NATO. Although the U.S. has frequently promoted such arrangements and international cooperation generally, evidence suggests that the U.S. plays a unilateral role in IGOs, such as the UN. Holloway (2000) found that U.S. negative voting in the General Assembly increased from 1968 to 1993. The U.S. tended not to vote either with the majority bloc or with close NATO allies. This American unilateralism may be explained by the lack of strategic purpose that these organizations provide for hegemonic interests. Strange (1982), for instance, suggests that only a few organizations can serve U.S. strategic purposes better than bilateral diplomacy. As a hegemon and the world's lone superpower, the U.S. is in a superior position to achieve its interests without the support of an institutional framework. Although the U.S. formed some major institutions and promoted the

growth of international organizations and international law in both post-War periods, these collective activities have, at times, conflicted with its national interests and its position in the world. The characterization of this relationship between the U.S. and IGOs suggests that organizations with the U.S. as a member may not be as legalized as those that do not have the U.S. as a member.

To test the hypothesis on the relationship between legalization and power asymmetry, I rely on a measure based upon Smith's (2000) proportional asymmetry index. Smith's index is developed from the Herfindahl-Hirschman index (HH), which is a standard measure for market concentration in economics. This measure is theoretically useful for examining the differences in the power of member states in an IGO because the Gross Domestic Product (GDP) of states is commonly used a proxy measure for state power. The HH index is equal to the sum of the squared market shares of the firms in a given industry. For example, if two firms divide the market evenly, $HH = (0.5)^2 + (0.5)^2 = 0.5$. Smith argues that this division reflects a situation of perfect symmetry where two firms have a bilateral agreement with equal market shares. However the same index score (0.5) could also be derived from a situation where there are several firms with disproportionate GDP shares.[1] To correct for this problem, he subtracts what the index would be in a case of perfect symmetry, where all parties have equal shares of GDP from the HH index. This representation of perfect symmetry would be 1 divided by the number of parties (N). This subtraction creates a new measure (P) of proportional asymmetry. In formal terms,

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[1] An example is $HH = (0.68)^2 + (0.17)^2 + (0.10)^2 + (0.02)^2 + (0.02)^2 + (0.01)^2 = 0.5$ (Smith 2000, 159).

$P= \Sigma x_i^2 - 1/N$ for all i where x_i = each member's share of total pact GDP, such that $\Sigma x_i = 1$ The measure, P, represents the sum of the squared deviation from of individual GDP (MAX) of P, which is equivalent to 1-1/N, varies with the number of signatories. To control for differences in the upper bound (MAX), Smith uses the ratio of the proportional asymmetry index to its range (P/MAX). This measure, P/MAX, accounts for the number of parties involved in the market. It is a score between 0 and 1. The closer the score is to 1, the more asymmetrical the market shares.

To evaluate power asymmetry in IGOs, I am adopting Smith's P/MAX measure. For the purpose of asymmetry hypothesis, I am using GDP as a proxy for power rather than a statistic for market shares. A state's economy is crucial to its ability to exercise influence in international affairs. A state with a larger economy is more self-sufficient and can exert more leverage on other states that depend more upon international cooperation for their prosperity. GDP is a valid indicator of state's bargaining leverage in an IGO. Military capability, by itself, does not have much relevancy in bargaining within these IGOs due to international norms prohibiting the use of force. Economic strength, however, indicates potential international influence and the capacity for unilateralism. In this case, the P/MAX measure represents the power asymmetry within an IGO. As discussed in the previous chapter regarding the dependent variable, due to the static nature of these agreements and the need for cross-national uniformity the benchmark year for comparison is 2002. This time period corresponds to same time as the data for the dependent variable on legalization. This will include the GDP data from each state and will be converted into the P/MAX measure, as previously described. This data and the

resulting P/MAX measure will come from the 2001-2002 GDP data from the 2002 CIA World Factbook[2].

The state power hypotheses will be evaluated in a statistical model. The dependent variable is the legalization scores of the selected IGOs, as described in chapter four. A binary variable of "0" or "1" will be used to denote whether the U.S. is a member of the IGO. The other independent variable in the model will be the P/MAX score of the IGO. These variables of power asymmetry and U.S. hegemony will also be included with the other independent variable from functionalism and collective action in some of the other statistical models.

Legalization of IGOs over time

An important issue in considering the legalization of an IGO is the possibility that it will change over time. Legalization in IGOs can change in two ways. One way is through changes in institutional design. States can change their constitutional mandates through amendments and by creating supplemental agreements that modify the agreement. Another way in which legalization changes is through organizational and structural changes. IGOs may develop resolutions and directives that are binding on member states. States and IGOs may also create supplemental agreements and treaties that are binding, but do not directly modify the constitutional mandate. These changes in legalization are analogous to national legalization. National governments have constitutional mandates that provide for their authority. These mandates can be amended

[2] The state data that is unavailable for the 2001-2002 time period is taken from the most recent available year. The states that are exceptions and their respective years are Afghanistan (2000), Andorra (2000), Antigua and Barbuda (2000), Guyana (2000), Montserrat (1999), Netherlands Antilles (2000), St. Lucia (2000), Suriname (2000), Tonga (2000), and Tuvalo (2000).

over time or they can be superceded by a subsequent mandate. National governments also develop domestic legalization by entering binding international agreements and through its national legislative process. Since this study analyzes legalization by categorizing IGO charters, the focus of changes in legalization is on the changes of the design of the constitutional mandate. Unlike organizational changes, which change fairly frequently over time with the promulgation of new rules, IGO charters tend to remain fairly static over time. The UN charter, for example, has only been amended five times with the last amendment coming into force in June 1968. Even these amendments had little impact on the overall legalization of the charter. These amendments did not create any new obligations for UN members. They provided for the enlargement of membership in UN organs and changes in the number of votes required for decisions on certain issues

This static nature of IGO charters is typical of the cases in this study. Of the 90 organizations included in the analysis, only 22 added at least one new article to the original founding agreement. In order to account for changes in legalization over time, a control variable will be used for the date that the IGO agreement was most recently amended. This control will indicate whether recently amended agreements are more legalized than older agreements, which have not been amended in a while.

An IGO that has undergone substantial change, however, including its name is the African Union. It was founded in 1963 as the Organization of African Unity (OAU). The Constitutive Act of the African Union was signed in 2000 and entered into force in May 2001. During the transitional period, the OAU charter was still operative until May 2002. The major changes in the African Union have been to specify democratic principles and

institutions as an objective of the Union and calling for sanctions to be imposed on any member state who fails to comply with their obligations and the decisions and policies of the Union. The Act also says that a Court of Justice will be established, but its composition and functions will be defined in a protocol that is not yet in force. As a result, it is unclear at the present as to how much authority will be delegated to the Court. Once the Court becomes officially established the African Union will be significantly more legalized than its predecessor.

Other IGOs that have undergone substantial legal change over time are EFTA and ECOWAS. In addition to legal change, EFTA also experienced significant membership change. From 1960, the signing date of the Convention, to 2001, the date of the Vaduz amendments, five of the seven original founding members have left the organization. Currently two of the founding members, Norway and Switzerland, have been joined by Iceland and Liechtenstein. The organization has also become significantly more legalized over this time. The number of articles in the Convention expanded from 44 to 59. Additionally, several more annexes to the convention were added. The dispute resolution procedure also became more legalized. In the 1960 agreement, member states could submit grievances to the Council. The Council, may, after a majority vote make appropriate recommendations to the member state if it finds that an obligation under the treaty has not been fulfilled. The amended treaty provides for an arbitration tribunal. In this case, if a member considers that actions by another member violate the Convention and the matter has not been resolved within 45 days after consultations, the dispute may be submitted to arbitration. The tribunal is empowered to make binding decisions on

member states.

ECOWAS has also became more legalized as the Treaty of Lagos in 1975 was revised the Treaty of Cotonou in 1993. This revision expanded the political mandate of the organization to include agreement on peaceful settlement of interstate disputes, the protection of human rights, and the promotion of democracy. The number of articles in the agreement also increased from 65 to 93. While the dispute resolution process remained the same with the 1993 agreement, the revision did include a provision for sanctioning member states that failed to fulfill obligations under the treaty.

It is also important to note that some organizations have been on temporary treaties that must be renewed in a certain period of time. The Food Aid Committee, for instance, is based a series of Food Aid conventions that expire once every three to five years. The International Coffee Organization (ICO), the International Cocoa Organization (ICC), and the International Sugar Organization have also been subject to several superceding agreements over the years. In 2001, member states of the ICO and ICC have signed new agreements that have yet to be ratified as of summer 2002.

Since changes in the constitutional mandate and the date in which the agreement entered into force among the members may influence the relationship of the IGO characteristics and legalization, the year that the constitutional mandate establishing the organization comes into force will be used in the statistical model as a control variable. Another control variable will be a binary variable denoting whether or not the mandate has been amended by a formal amendment, subsequent treaty, or a protocol that expressly modifies the original document. These variables will allow for the changes in the

constitutional mandate to be taken into account as well as the age of the organization, since the majority of these agreements have not changed since they entered into force. These amendments include anything from minor amendments that may only change the wording expressed in a single article or sentence, to protocols that specifically state that they are modifying the original agreement, to new agreements that replace the original constitutional mandate. This variable will allow for an assessment of any changes that have taken place over time.

It is expected that IGOs that were established later in time will be more legalized. Since more and more international organizations of various kinds have been created since World War II, it is anticipated that as states engage in more cooperation, they are more willing to enter into highly legalized agreements establishing IGOs. In regard to amendments, it is expected that IGOs that have their charter agreement amended over time would be more legalized than those that do not. Since amendments rarely diminish legalization, it follows that IGOs that amend their charter would be more legalized.

Disaggregated Legalization

In addition to the hypotheses regarding the legalization of IGOs, the nature of the concept and the aggregation of three dimensions in the legalization index brings the question of whether these same hypotheses can also explain variation among the different dimensions within an IGO. As discussed in the previous chapter, using the measurements applied in this study did not reveal much variation between the obligation and precision dimensions. At least in regard to the cases examined in this study, IGO agreements that entailed a high level of obligation also had a high level of precision.

Organizations with a low level of obligation also were not nearly as precise as those IGOs with high or moderate degrees of precision. Variation, however, was present between obligation and delegation. The correlation between these two dimensions was only .44.[3] This measure indicates that highly obligatory organizations may not have high levels of delegation and vice versa. The International Tea Promotion Association, for example, exhibits a moderately low level of obligation and precision. Delegation as measured in this study, however, is quite high. Article 16 of the 1977 agreement establishing the International Tea Promotion Association states that any interpretation on any clause shall be referred to the Governing Board of the Association, who has the power to make a final and binding decision. In the case of disputes, Article 17 of the agreement provides for an ad hoc arbitration body to make a final and binding decision. In contrast, the Latin American Integration Association, which was founded by the Treaty of Montevideo in 1980 to promote the harmonious and balanced economic and social development of the region, exhibits a moderately high level of obligation and precision but a low level of delegation. Although the parties to some significant commitments to the treaty, such as an explicit article that says the agreement is for an unlimited duration, it does not provide for an institutional mechanism for the parties to resolve disputes.

Of course, other organizations such as the WTO and EURATOM are both highly obligatory and with a high level of delegation and OPEC is an example of an organization with a low level of obligation and delegation are also included in the study. As a result, the hypotheses derived from functionalism, collective action, and realism will

[3] The correlation between precision and delegation was similar at .45

be applied to obligation and delegation. Since precision is so highly correlated to obligation, any conclusion involving variation in terms of obligation can also be applicable to precision. Since obligation and delegation do differ in IGOs, it may be interesting to compare whether the same conclusions regarding IGO legalization can also apply to the disaggregated dimensions.

Results and Analysis

The various hypotheses previously posed concerning the relationship between various IGO characteristics and IGO legalization index that have been drawn from assumptions of functionalism, collective action, realism, and neoliberal institutionalism have been evaluated using Ordinary Least Squares (OLS) regression. These results are in Table 4.1 and Table 4.2.[4] Model 1 examines the relationship of IGO characteristic variables and the legalization of conventional IGOs. As indicated in the results, size of the organization, in terms of the number of members appears to be the characteristics of IGOs that has an influence on legalization. The other independent variables, as indicated in Model 1, did not demonstrate a significant relationship to legalization. The models also indicate some support for the proposition that the constitutional mandates of IGOs that have been recently amended are more legalized. The evidence, however, for this point is fairly weak. None of the models provide support for the idea that IGOs established later in time are more legalized.

The hypotheses concerning the relationship between power asymmetry, U.S. hegemony and legalization are evaluated using OLS regression in Model 2. The statistical

[4] The independent variables were tested for interaction effects. None were found to be present.

results of the model indicate that power asymmetry demonstrates weak statistical significance, while U.S. membership does not exhibit significance. Power asymmetry was only significant at the .10 level. It was also in a negative direction, indicating that IGOs where power was relatively evenly distributed tended to be more legalized.
In examining power asymmetry in the selected IGOs, the North Atlantic Salmon Conservation Organization was the most asymmetrical with a P/MAX score of .604. This organization was followed by the Secretariat of the Pacific Community with a score of .534. The least asymmetrical organizations were the European Organization for the Safety of Air Navigation at .042 and the International Sugar organization at 0.051. Of the ten IGOs with the most asymmetry, only three had legalization scores above the mean of 7.8.

The IGO characteristic variables and the membership characteristic variables are all included in Model 3. In this model, the size of the organization was the only variable that was highly significant. The restriction on geographical membership and the power asymmetry of the members did not demonstrate statistical significance. The variable for U.S. membership, however, did exhibit a negative relationship with IGO legalization at the .05 level. Model 4 is trimmed version of Model 3 where the significant variables of size, amendment, and U.S. membership are demonstrated. Model 5 and Model 6 in Table 4.2. are revised versions of Model 3 where the variable of special function is replaced by economic function and political/military function in each respective model. Both of these variables do not demonstrate significance as these models indicate.

The results that demonstrate the impact of size from the OLS estimation are

supported by an examination of the cases included in this study. Of the 90 organizations included in this study, 10 of 13 organizations included in the sample that had over 100 members had legalization scores above the mean of 7.82. The UN, the Universal Postal Union, the International Civil Aviation Organization, and the World Trade Organization (WTO) all had over 130 members and were among the ten most legalized organizations. In comparison, the 10 organizations with the lowest legalization scores had an average membership of 15.4 members.

In regard to collective action, the results indicate that organizations with large numbers of members may actually be more legalized than those organizations with a small number of members. These results are contrary to Olson's theory of collective action. They suggest that a large number of states are able to overcome their self-interests and form an IGO that is more legalized than one with a smaller number of members and fewer potentially conflicting interests.

In addition, these results differ from Downs et al. (1996) and their argument that regimes with a limited number of members engage in deeper cooperation. At least in regards to the conventional IGOs in this sample, it appears that more legalized cooperation is associated with a larger membership. Certainly, these results are based on a limited set of cases and excludes highly legalized institutions with smaller memberships such as NAFTA and the EU. This finding, however, does suggest that when states agree to adhere to the constitutional mandates of conventional IGOs they may be more concerned with resolving coordination problems than mixed motives of other states.

This observation is closer to Hardin and Kahler's expectation concerning multilateralism with large numbers. States may realize that highly legalized rules are desirable in areas of global concern. A reason that supports this viewpoint has to do with functional necessity. With a larger organization, more coordination problems exist for members to achieve benefits from cooperation. They may require more rules and a more authoritative method of resolving disputes than smaller organization in order to function. Smaller organizations with fewer members may not have as many coordination problems and states may be able to rely more on political bargaining to achieve their goals.

In regard to the functionalist variables, purpose of the organization and membership criteria, the distribution of organizations appears to be much more random. For instance, organizations with an economic function included the most legalized organization, the WTO, as well as two of the least legalized organizations, OPEC and the Southern African Customs Union. While the characteristic of membership criteria did not reflect this extreme difference among cases as economic function, organizations permitting universal membership were legalized both above and below the mean. Universal organizations included those that are fairly highly legalized such as well as those that were on the low end of the spectrum such as the World Intellectual Property Organization and the International Centre for the Study of the Preservation and the Restoration of Cultural Property.

The descriptive data and the results of the OLS estimation reveal mixed support for functional expectations. The fact that in both Shanks, Jacobson, and Kaplan's comprehensive set of observations and my much more limited data set, a substantial

majority of the IGOs were devoted to economic and technical tasks is consistent with functionalism. States seem to be more willing to institutionalize cooperation in these areas. Also, large organizations may be more legalized as a necessity for effective functioning. In terms of legalization, however, the purpose of an organization does not appear to make a difference. Whether the organization is for a general purpose, economic purposes, or political, it does not seem to exhibit much of a relationship to the legalization of the organization. So, although states may be more willing to cooperate in economic areas, they are not creating IGOs in these areas that are more significantly legalized than other areas.

The results also show, however, that consistent with functional expectations, geographic proximity does not seem to make a difference in the extensiveness of legalization in an IGO. Organizations that permit universal membership are not any more legalized than those that restrict membership. In regard to the empirical debate between regionalists and universalists, this evidence does not support either side as to legalization. States do appear to create more organizations that are restricted to a geographical region. These organizations, however, do not generally appear to be any more legalized.

The statistical results from the models also do not support the proposed hypothesis that IGOs that have member states with a greater disparity of power are more legalized than IGOs with a low disparity of power. The evidence suggests that power asymmetry does not seem to matter in regard to IGO legalization. The selected cases reveal that powerful states do not necessarily join highly legalized IGOs to bind weak states. States that are relatively more powerful than other members may have more

influence on the rules of the organization, but these states may be members of more legalized organizations when other relatively powerful states are also members. This observation can be explained by neoliberal institutionalism. As indicated by examinations of international cooperation, states benefit from cooperating with other states (Axelrod 1984, Keohane 1984). Assuming states are acting as rational egoists, however, they will be inclined to use unilateral means to achieve their objectives when they can reach these objectives just as easily as if they receive cooperation of another state. Since states, of course, vary significantly in their power in the international system, some states will be much more capable than others of promoting their interests through unilateral means. In creating cooperative arrangements such as IGOs, these relatively powerful states may seek to bind weaker states to their interests.

Since conventional IGOs are highly institutionalized cooperative arrangements, however, they tend to require the delegation of more authority than other kinds of arrangements. Dispute resolution mechanisms in particular take power away from the state and give it to a third party. For a relatively powerful state, joining a highly legalized IGO is greater loss of authority when the other members are relatively weaker. It loses more of its ability to exert leverage of these weaker states when it grants more authority to the organization. This loss of authority is not as much of a concern when the other states in the organization are comparable in power. In this case, a state does not have as much power to pursue it goals unilaterally in the organization, so it may see more benefits from harder legalization.

Of course, due to the small number of observations examined in this study, it is

difficult to apply these results in any general sense to the international system. States engage in far more different kinds of cooperative arrangements. Even in regard to formal arrangements, very few international treaties are designed to create international organizations. In practice, strong states may in fact use international law to bind weak states, and vice versa. At least in regard to more institutionalized arrangements, such as conventional IGOs, the rules of these organizations do not indicate this situation to be the case.

Although U.S. membership was insignificant in Model 2, it was statistically significant in the other models that used it as a variable. The significance for U.S. membership suggests that, at least in regard to conventional IGOs, U.S. membership has a negative relationship to IGO legalization. This evidence reveals some support for the hegemony hypothesis in that since the U.S. is the dominant state in the system, it has the greatest means to achieve its goals unilaterally and has less incentive to bind itself to highly legalized agreements. This behavior has been manifested by the U.S. in regard to other significant international agreements. Prominent examples have been the refusal by the U.S. to become a party to the Kyoto Protocol on global warming and the International Criminal Court. In examining the organizations in this study, however, it should be noted that the U.S. has membership in organizations on both ends of the legalization spectrum. The U.S. has membership in both highly legalized IGOs such as the World Trade Organization (WTO), the United Nations, and the Universal Postal Union as well as some the least legalized IGOs, such as NATO and the International Council for Exploration of the Sea. Of these conventional IGOs, the U.S. is a member of far fewer organizations

than other powerful states such as France and Britain. Also, most of the IGOs in which the U.S. has membership that have above average legalization, were formed soon after World War II have not significantly modified their constitutional mandates since. Despite these facts, however, the U.S. does agree to be bound by significantly legalized rules. In addition to the highly legalized organizations previously mentioned in which the U.S. has membership, the U.S. has also bound itself to some other highly legalized international agreements, most notably the North American Free Trade Agreement (NAFTA).

Tables 4.3, 4.4, 4.5, and 4.6 display the same hypotheses as applied to obligation and delegation. These results indicate that although obligation and delegation are dissimilar in some IGOs, similar conclusions drawn from the explanations for legalization can also apply to these dimensions. The size of the organization demonstrated a significant positive relationship to the level of obligation and delegation in an IGO. U.S. membership also is negatively related to these dimensions indicating that organizations that have the U.S. as a member tend to demonstrate lower levels of obligation and delegation. One difference, however, has to do with the variables of the year that the original mandate came into force, and whether the mandate was amended. In regard to obligation, the model provides some evidence to suggest that agreements that came into force later in time are more obligatory than those established earlier. This same observation does not appear to hold for delegation. It also differs from the results for legalization. This finding suggests that while later IGOs may not tend to be more legalized, they may at least provide a higher degree of obligation. The models using delegation as a dependent variable provide some indication that amended agreements

may provide for higher levels of delegation. This observation indicates that conventional IGOs with a more binding dispute settlement resolution may be more likely to have their charter document amended later in time. Other important variables such as the function of the organization, regional membership, and power asymmetry did not exhibit a significant relationship to any of the disaggregated dimensions.

Conclusion

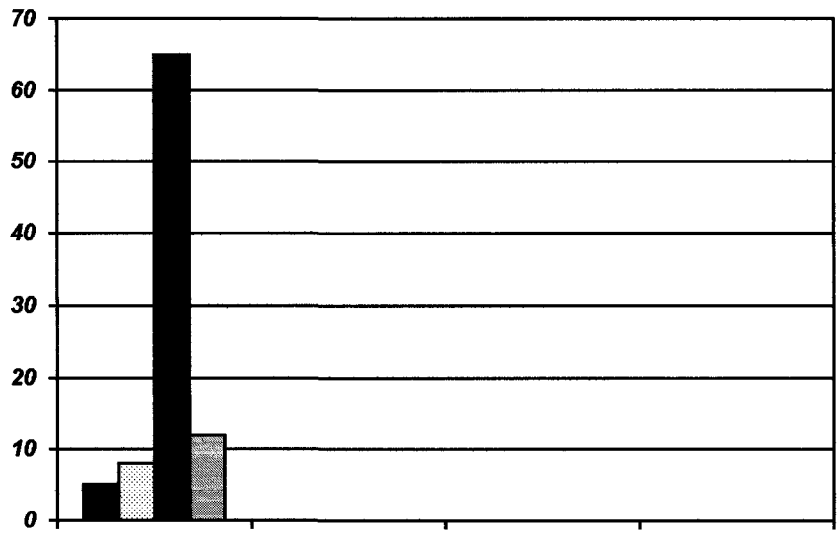
The results of the descriptive data and the statistical model indicate mixed support for functionalist expectations. While states are more willing to enter into IGO agreements that have a predominantly economic purpose, the legalization of an IGO does not seem to be related to whether or not it serves an economic purpose, or even whether the organization is designed for a specific or general purpose. Of the IGO characteristics and their relationship to legalization, size, in terms of number of members seems to be the most important factor. Large organizations tend to be more legalized. The results and analysis of the statistical models also suggest that the distribution of power within an IGO does not influence on its level of legalization. IGOs that have members with a more even distribution of power do not tend to be any more legalized than those that are more asymmetrical. U.S. membership does seem to have an influence on the level of legalization of an IGO. With some notable exceptions, IGOs that have the U.S. as member do not tend to be as legalized as those that do not.[5]

Similar conclusions can also be applied to the individual dimensions of legalization. Although obligation and delegation, unlike obligation and precision, are not

[5] Of course, it can also be implied that legalization has an effect on U.S. membership.

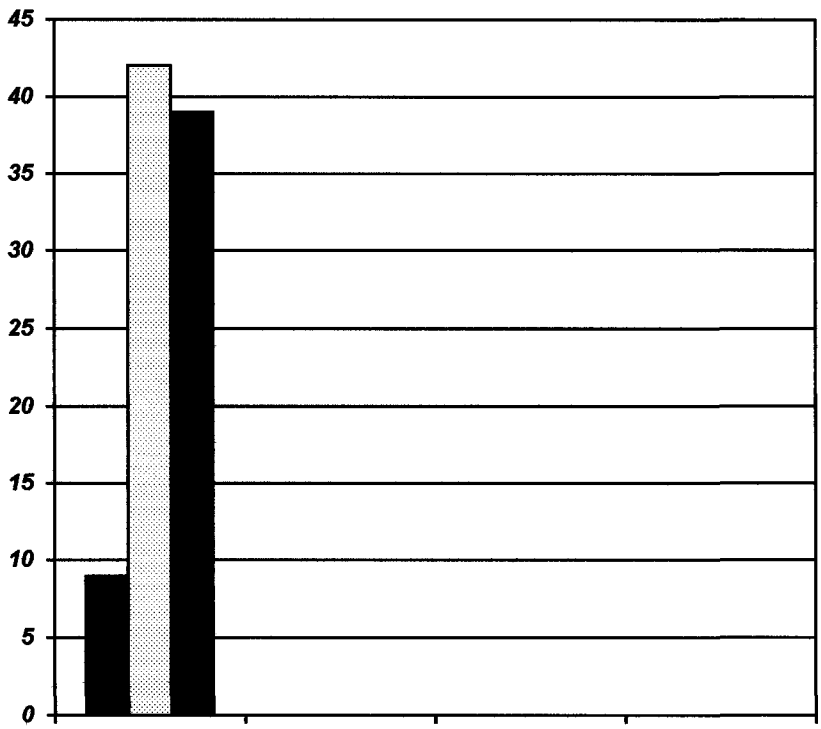
highly coordinated among these IGOs, they exhibit the similar relationships with the independent variables as legalization. IGOs that were established later in time, however, tended to be more obligatory, and IGOs that amended their constitutional mandate were associated little more IGOs that had more binding dispute resolution procedures. The size of the organization was positively related to all of the dimensions. The variable of U.S. membership also demonstrates a negative relationship to the dimensions.

Figure 4.1 IGO Functions



general purpose	5			
political-military	8			
economic	65			
social welfare	12			

Figure 4.2 Membership criteria



Universal	*9*			
Geographic	*42*			
Purpose-oriented	*39*			

Table 4.1 OLS estimates of characteristics of IGOs and Legalization

Parameters	Model 1	Model 2	Model 3	Model 4
Size	0.024*** (0.007)	-	0.033*** (0.009)	0.030*** (0.007)
Regional Membership	1.036 (0.746)	-	0.705 (0.745)	-
Year in Force	0.045 (.029)	-	0.038 (.028)	-
Amended	1.012 (0.625)	-	1.085* (0.623)	0.939 (0.117)
Power Asymmetry	-	-4.53* (2.440)	-0.142 (2.548)	-
U.S. Membership	-	-0.112 (0.697)	-2.13** (0.861)	-2.33*** (0.840)
Special Function	-0.826 (1.389)	-	-1.25 (1.407)	-
Economic Function	-	-	-	-
Political/Military Function	-	-	-	-
Constant	-83.01 (56.43)	8.66*** (0.583)	-67.43 (55.65)	6.72*** (0.493)
n	90			
R^2	0.16	0.016	0.21	0.18

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 4.2 OLS estimates of characteristics of IGOs and Legalization

Parameters	Model 5	Model 6
Size	0.0342***	0.0344***
	(0.009)	(0.009)
Regional Membership	0.975	0.950
	(0.715)	(0.721)
Year in Force	0.015	0.027
	(0.030)	(0.028)
Amended	1.29**	1.16*
	(0.020)	(0.020)
Power Asymmetry	0.882	0.381
	(2.60)	(2.60)
U.S. Membership	-1.943**	-2.091**
	(0.889)	(0.892)
Special Function	-	-
Economic Function	1.167	-
	(0.723)	
Political/Military Function	-	-1.16
		(1.050)
Constant	-25.57	-47.32
	(58.08)	(55.72)
n	90	
R^2	0.23	0.22

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 4.3 OLS estimates of characteristics of IGOs and Obligation

Parameters	Model 1	Model 2	Model 3	Model 4
Size	0.007*** (0.002)	-	0.009*** (0.003)	0.009*** (0.002)
Regional Membership	0.279 (0.244)	-	0.176 (0.72)	-
Year in Force	0.022** (0.009)	-	0.019** (0.009)	0.016* (.0092)
Amended	0.209 (0.204)	-	0.215 (0.206)	0.237 (0.202)
Power Asymmetry	-	-1.272 (0.805)	-0.308 (0.860)	-
U.S. Membership	-	-0.037 (0.230)	-0.588** (0.296)	-0.606** (0.283)
Special Function	-0.681 (0.454)	-	-0.838 (0.464)	-
Economic Function	-	-	-	-
Political/Military Function	-	-	-	-
Constant	-40.14** (18.47)	2.94*** (0.192)	-36.13* (18.36)	-28.99 (18.21)
n	90			
R^2	0.16	0.03	0.21	0.16

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 4.4 OLS estimates of characteristics of IGOs and Obligation

Parameters	Model 5	Model 6
Size	0.010***	0.010***
	(0.003)	(0.003)
Regional Membership	0.318	0.325
	(0.240)	(0.240)
Year in Force	0.012	0.013
	(0.010)	(0.009)
Amended	0.302	0.266
	(0.208)	(0.007)
Power Asymmetry	0.203	0.051
	(0.874)	(0.866)
U.S. Membership	-0.519*	-0.599**
	(0.299)	(0.288)
Special Function	-	-
Economic Function	0.329	-
	(0.243)	
Political/Military Function	-	-0.546
		(0.350)
Constant	-21.09	-25.02
	(19.53)	(18.52)
n	90	
R^2	0.19	0.20

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 4.5 OLS estimates of characteristics of IGOs and Delegation

Parameters	Model 1	Model 2	Model 3	Model 4
Size	0.010*** (0.004)	-	0.014*** (0.005)	0.013*** (0.004)
Regional Membership	0.501 (0.386)	-	0.367 (0.391)	-
Year in Force	0.004 (0.015)	-	0.0006 (0.015)	-
Amended	0.536* (0.324)	-	0.576* (0.011)	0.515* (0.097)
Power Asymmetry	-	-2.230* (1.233)	0.181 (1.412)	-
U.S. Membership	-	-0.067 (0.352)	-0.934** (0.457)	-1.02** (0.434)
Special Function	0.698 (0.720)	-	0.544 (0.738)	-
Economic Function	-	-	-	-
Political/Military Function	-	-	-	-
Constant	-7.29 (29.26)	2.81*** (0.295)	-0.189 (29.20)	1.87*** (0.255)
n	90			
R^2	0.11	0.04	0.15	0.14

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 4.6 OLS estimates of characteristics of IGOs and Delegation

Parameters	Model 5	Model 6
Size	0.014***	0.014***
	(0.005)	(0.005)
Regional Membership	0.334	0.294
	(0.377)	(0.381)
Year in Force	-0.004	0.003
	(0.016)	(0.015)
Amended	0.600*	0.544*
	(0.325)	(0.325)
Power Asymmetry	-0.542	-0.071
	(1.329)	(1.376)
U.S. Membership	-0.894*	-0.952
	(0.469)	(0.471)
Special Function	-	-
Economic Function	0.474	-
	(0.381)	
Political/Military Function	-	0.020
		(0.556)
Constant	9.73	-3.64
	(30.64)	(29.40)
n	90	
R^2	0.16	0.15

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

CHAPTER 5
IGO LEGALIZATION AND STATES

After examining the relationship between IGO legalization and characteristics of IGOs, it is also important to examine the state as a unit of analysis and what features of states may explain why some states make more legalized commitments to conventional IGOs than others. The findings of the previous chapter indicated that power asymmetry of member states in a conventional IGO did not seem to influence its level of legalization, while U.S. membership was negatively related to IGO legalization. These findings revealed mixed support for realist expectations. Differences in power did not seem to make a difference, but U.S. hegemony did. Realists do not give much weight to the domestic factors in influencing international behavior. They believe that behavior is largely determined by power, in terms of state capacity, and the anarchic structure of the international system.

A domestic variable that realists are interested in is Gross Domestic Product (GDP) because, as in this study, it often used as a proxy for power. Neoliberals, however, view other domestic variables as having relevance in explaining state behavior. Other economic variables such as trade, wealth, and finance as well as the type of regime of particular state may influence how a state conducts its international affairs. This chapter will examine the international legalization of the state as it pertains to conventional IGOs. As demonstrated in the previous chapters, IGOs vary in terms of their level of legalization. A question remains, however, as to what features of a particular state may motivate it to join a more legalized organization.

Economic development, interdependence and IGOs

It can be hypothesized from neoliberal approaches that states that are more developed economically may be more likely to form highly legalized IGOs. These states not only benefit from the reduction in transaction costs, but they also have greater resources to comply with the obligations of the charter and resolve conflicts under the dispute resolution procedures provided in the charter. Shanks et al. (1996) have found that between 1981 and 1992, states with the highest aggregate GDP and highest GDP per capita have become more enmeshed in the IGO network. Since developed states have greater capacity to make credible international commitments, they may be more amendable to forming legalized IGOs.

In addition to development, economic interdependence may also be related to IGO legalization. An aspect of neoliberalism that is very relevant to legalization is the importance of international institutions. By providing information to states and reducing transaction costs these institutions may facilitate international cooperation. International institutions and organizations can help shape the reputation of states and raise costs associated with noncompliance. They institutionalize reciprocity and reduce some of the problems associated with cooperation in an anarchical system (Keohane 1984). The importance of institutions in reducing transaction costs would suggest that states that are more integrated in the international economy would be more likely to form highly legalized IGOs. As the most institutionalized vehicles of cooperation, IGOs are in position to promote interdependence among states. States that are more integrated in the global economy have more to gain from membership in highly legalized IGOs due to the

reduction of transaction costs that these IGOs can provide. These states are more dependent on international transactions and are less concerned with a loss of sovereignty through legalization.

Democracy and IGO legalization

Neoliberalism also suggests that power and economics may not be the only factors that influence state behavior. National attributes such as a state's type of regime and the domestic role of the rule of law may also impact international behavior. These attributes seem particularly relevant to legalization. One important national attribute involves how states incorporate international law into their domestic legal system. Scholars have debated whether the relationship between domestic law and international law should be monist, where law is conceived as unitary and domestic law is subordinate to international law; or whether it should be dualist, where law is divided into to separate realms of domestic law and international law (O'Connell 1970). The United States Constitution, for example, does not make direct reference to the relationship between domestic law and international law. Article VI of the Constitution does state that treaties made by the U.S. are the law of the land. This article, however, has been interpreted to mean that treaties must not be inconsistent with the Constitution or a subsequent Act of Congress.[1] In contrast, the Italian Constitution provides for a monist approach towards international law. Article 10 of the Italian Constitution states that the Italian legal system shall conform with the generally recognized principles of international law. Unlike the United States, international law has primacy in Italy. However, Italy represents an

[1] see Reid vs. Covert 534 U.S. 1 (1957).

exceptional case. Most states find that international law must defer to national legislation (Brownlie 1998).

Although democracies may vary in how they view international law and how it is incorporated into their domestic system, democracies value the rule of law more than non-democracies. All modern democracies are openly competitive systems of government. This competition, however, is constrained by rules, procedures, and guidelines. Democracy is feasible only as long as these rules are followed by political leaders and citizens. Since democratic political systems value the rule of law, it can be inferred that democracies would seek to extend the rule of law by legalizing international institutions. The United States and the principal democratic states of Western Europe have played the biggest role in developing international institutions including the most prominent global institution, the United Nations, and the most prominent regional institution, the European Union. In regard to security regimes, Crawford (1994) suggests that regimes composed of democracies were more stable because they consist of members who value the rule of law and the process of arbitration.

In addition to valuing the rule of law, the structure of democracies allows these states to be more amendable to international legalization. Democracies allow greater access to interest groups to the policy-making process. This allows pro-legalization lobbies to have more opportunity for input into decision-making. The structure of democracies also allows a branch of the government to use legalization to empower itself. Goldstein (1996), for example, has found under the North American Free Trade Agreement (NAFTA) and its predecessor, the Canada-U.S. Free Trade Agreement, the

U.S. executive used the binding arbitration procedures in these agreements to constrain protectionist lobbies in Congress and within the trade bureaucracy. This executive empowerment would not have been as necessary in a state that is not very democratic. These features of democracy suggest that democracies would enter into more highly legalized IGO agreements.

The hypotheses regarding economic development, interdependence, and democracy will be evaluated in a statistical model. The dependent variable in this model will be a state measure of legalization. This measure is based upon the mean legalization score for each state for each IGO in which they are full members. For example, if a state is a member of four IGOs with respective legalization scores of 12, 9, 7 and 3; then the mean legalization score for that state would be 7.75. In determining the extent that a state is legalized in IGOs, however, the mean legalization score may be misleading. States exhibit substantial variation in the number of organizations that they join. Of the IGOs included in this study, Niue and Palau are only members of 5 organizations while France and Germany hold membership in 44 organizations. To take into account this variation in the number of organization that a state joins, while maintaining the variation in mean legalization, the state legalization measure will result from the multiplication of the mean legalization score of the state and the logarithm of the number of organizations in which that state holds membership. Using the logarithm of the number of organizations will allow the measure to include the influence of this factor while mitigating its weight relative to the mean legalization.

The state legalization scores of some of the world's more powerful countries are

listed in Figure 5.1. Of these states, France and Germany were the most legalized followed by Brazil, which is a regional power in South America. Asian powers Japan, China, and India were similarly legalized below Brazil. The United States and Russia are the least legalized in terms of IGO members of these powerful states. The relatively low score of the U.S. is consistent with the finding in the previous chapter. This statistic also indicates that U.S. does not tend to be enter into highly legalized IGOs.

The independent variable for economic development will be GDP per capita for each state. This measure provides a good indicator of economic development as it measures economic production relative to population. Economic interdependence will be measured on the basis of a ratio between a state's trade and its GDP. The trade data consists of both imports and exports for a state. In this instance, trade serves as a proxy for international transactions. The ratio between trade and GDP provides an indication of how dependent a state is on international transactions. The higher the ratio, the more international trade plays a role in the economy of a state and the more dependent the state is on international transactions. The GDP variable is included in the model as a realist variable to control for power. The data for GDP, GDP per capita, and exports and imports are taken from the 2002 CIA World Factbook The independent variable for democracy is based upon the Freedom House democracy ratings. Freedom House has provided assessments of the political rights and civil liberties of countries around the world since the early 1970s. Political rights of states are scored between "1" and "7". States that score a "1" are closest to the ideal type of democracy with free and open elections, citizens enjoy self-determination, and minorities that have a means of

participation. At the other end of the spectrum, states that score a "7" are extremely oppressive with almost no political rights for citizens. States with scores between 2 and 6 fall somewhere between these extremes. The scores for civil liberties also range from "1" to "7". In this case, a score of "1" means that a state is close to ideal in terms of freedom of expression and economic activity. A "7" means almost no political freedom with an extremely repressive government. The measure to be used for the democracy independent variable in the models, will be an average of the of the political rights and the civil liberty scores for each state. The Freedom House scores for this measure will be taken from the ratings of 2001-2002 to correspond to the same period as the other independent variables and the dependent variable of state legalization.

Dimensions of legalization and states

As in the previous chapter, a disaggregated measure of legalization including the three dimensions of obligation, delegation, and precision may differ from the aggregate measure of legalization at the state level of analysis. Since the measures of obligation and delegation are not highly correlated, states may vary in whether they choose to enter into an agreement with high level of obligation and a high level of delegation. As mentioned in the previous chapters, the high correlation between obligation and precision in the cases involved in this study means the results and findings are applicable to both dimensions. Realist approaches would expect that powerful states, in particular, would be wary about entering into agreements with a high level of delegation. Even if a powerful state enters into an agreement that commits it to an IGO with a high level of obligation, it still may be able to mitigate its commitments if it does not delegate much authority to the

IGO to resolve disputes through institutional means. Neoliberal approaches would suggest that other state variables such as wealth and regime type may provide an indication of whether a state will tend to favor high levels of obligation and delegation. State commitments to obligation and delegation will be modeled in the same way as the legalization commitments that were described previously.

Results and Analysis

The hypotheses regarding economic development, economic interdependence, and democracy are evaluated using OLS regression in Model 2. These results are displayed in Table 5.1. The results of Model 1 indicate that economic development, expressed in terms of GDP per capita, is the most significant factor in a state's legalization. It has a high level of statistical significance at the .01 level in a positive direction, indicating that wealthier states tend to be more legalized, at least in regard to their commitments to conventional IGOs. The economic interdependence variable also was statistically significant at the .05 level.. Its significance, however, was in the negative direction. Neither democracy nor GDP were significant in this model.

From these results, it can be inferred that wealth is the most influential factor in a state's legalization. In examining the individual cases, this result seems consistent. States that are small, but are also wealthy, such as Denmark, Belgium, and Luxembourg tend to be more legalized. Poor states, such as Somalia, Afghanistan, and Kiribati do not tend to be very legalized. An explanation for this result would seem to be the importance of economic resources. States do incur more sovereignty costs when they join legalized IGOs. Even if they do not necessarily comply with the agreement, they can still suffer

costs to their reputation and credibility when they deviate too much from the agreement. Wealthier states are in a better position to comply. As suggested by Jacobson and Weiss (1998), wealthier states have the administrative capacity as well as the financial resources to obtain the technical and managerial skill to assist the state in adhering to an agreement. Because of this increased economic capacity, wealthier states can make more credible commitments. This is important in international cooperation, because as Abbott and Snidal (2000) point out, repeated violations of international law weaken the international legal system.

The long term costs suffered by a reduction in credibility can outweigh any short term benefits. Wealth can also provide a state with a greater capacity for legal resources. In this case, the wealthier state may have more of an advantage in utilizing dispute settlement mechanisms. A state with superior legal resources may also have advantages in interpreting the agreement and its relationship to international law as well as its ability to obfuscate the agreed upon rules so that noncompliance is more difficult to ascertain. This reasoning fits in with the results of the model, which indicate that wealthier states are more likely to enter into a highly legalized IGO.

It is also interesting to note that while wealth was a highly statistically significant indicator of state legalization, the control variable for power, GDP, was not significant. This result can also be explained by looking at a state's entrance into an IGO agreement as a rational choice. While some states, such as the U.S., Germany, and Japan, are both wealthy and powerful. States can also be wealthy, but not that powerful such as Belgium and the Scandinavian states or they are powerful, but not that wealthy such as

China and India. The characteristics of power and wealth provide different incentives for states in their view of international legalization. Unless powerful states can use law to bind weaker states to their will, their incentive is to avoid extensive legalization. Wealthier states, however, have incentive to become more legalized because they receive the benefits provided by hard legalization and they are better able to comply with their commitments. They may not necessarily have the same sovereignty concerns as a powerful state, and they are more capable of meeting their obligations. States that are both powerful and wealthy have both incentives and disincentives in regard to legalization. In this case, these states could vary in their legalization to be more or less legalized.

In this present study, the states that made the most legalized commitments to IGOs were Switzerland, Belgium, Austria, and the Netherlands. These states are very similar in that they are small, relatively wealthy European countries and, with the exception of Switzerland are all EU members. All of these states have the financial resources to take advantages of IGO legalization and constrain the behavior of more powerful states. Other states fitting this profile such as Sweden and Norway were also highly legalized. In regard to states that are both wealthy and powerful, only Germany and France ranked among the top ten in both their legalization score, power in term of GDP, and were in the top twenty in terms of wealth.

What distinguishes Germany and France from the other states that can be considered both wealthy and powerful, the U.S. and Japan, is the post-World War II history of France and Germany in regard to international legalization. The world's most

legalized institution, the EU, has its roots in an economic cooperative arrangement between France and Germany following the War. France needed to find a way to recover from the War while simultaneously restraining German economic growth and appeasing American and British interests in maintaining a stable Germany. As a result, the Schuman plan was adopted and supported a French policy of extensive cooperation with Germany. Schuman was able to reach an agreement with Germany to create a High Authority to regulate a common production of coal and steel. This agreement soon included other Western European peace in the form of the European Coal and Steel Community (ECSC), which was the precursor to the European Economic Community, which developed into the EU. The motivation for the Schuman plan was not just economic development. It was also seen as a crucial step for world peace to avoid the future possibility another devastating war on the European continent.

From this point forward, Western European states have tended to become more supportive of IGOs in promoting their welfare. Of the cases examined in this study, the most legalized IGOs in which the U.S. and Japan have membership are the UN, the WTO, and the Universal Postal Union. All of these organizations have very large memberships that include the majority of states in the world. Membership in these organizations does not provide much distinction for members as to making any exceptional commitments to IGO legalization. In fact the WTO did not become established until 1995 because the U.S. chose not to ratify the 1948 agreement that would have established the International Trade Organization. As a result, global trade had to

rely on the less institutionalized and intended interim measure, the General Agreement on Tariffs and Trade (GATT), for about the next fifty years.

The model also suggests that states that are more dependent on international trade for their economy are not as legalized as those that are less dependent. This result is contrary to the interdependence hypothesis that says that states that are more dependent on international transactions are less concerned with a loss of sovereignty through legalization. In examining the cases, the states with the highest ratio of trade to GDP were Eriteria, Liechtenstein, Equatorial Guinea, and Singapore. It seems that these states may not be as legalized in conventional IGOs also because of economic capacity. While states may receive decreased transaction costs from entering into IGO agreements, states that are more dependent on international transactions may not have the domestic economic base to make significant commitments to IGOs since they have to rely more on international transactions. Legalization may be more of a function of wealth. This possibility is indicated in a bivariate analysis of the relationship between state legalization and interdependence. Using only these two variables, interdependence did not exhibit a statistically significant relationship.[2]

Using a bivariate model analysis of the relationship between state legalization and democracy revealed that the democratic variable had a significant relationship with legalization. In this case, the coefficient for democracy was in a negative direction. indicating that states that were more authoritarian in regard to their political and civil rights, were not as legalized. The results of the bivariate analysis are consistent with

[2] In this case, the interdependence variable had a coefficient of -.373 with a standard deviation of .248.

theoretical expectations of the relationship between democracy and legalization.[3] Law occupies a central role in the institutions of democratic countries. International legalization can be viewed as an extension of domestic policies. Democracies also allow more influence domestically for pro-legalization lobbies in the policy-making process.

As indicated in Model 1, however, democracy; while still exhibiting a negative coefficient, was not a statistically significant variable in this multivariate model. This result indicates that at least in relation to other independent variables, particularly wealth, democracy does not have as much influence on a state's legalization. Although a clear theoretical link exists between democracy and international legalization, and it is apparent that democratic states have an incentive to legalize in order to extend the rule of law, Kahler (2000b) suggests that democratic states also have a disincentive to legalize. Democracies, by their nature, are subject to political change. These changes provide more incentives for short term benefits from international cooperation. Democratic regimes may be disinclined to pursue hard legalization by entering into highly legalized IGO agreements when short-term benefits are difficult to ascertain.

The relationship between the state variables and state commitments to obligation and delegation are included in Models 2 and 3 depicted in Tables 5.2 and 5.3 respectively. The results are comparable to the legalization findings. Wealth has a significant positive relationship to states commitments to IGOs with high levels of obligation (and also precision) and delegation. Power and level of democracy do not reveal a significant relationship with these dimensions of legalization. One difference

[3] In this case, the democracy variable had a coefficient of -.391 with a standard deviation of .101.

between these models and the legalization model is that economic interdependence does not exhibit as strong of relationship to these dimension as is it does to the aggregate measure of legalization. It has a weak negative relationship to obligation and it does not exhibit a significant relationship at all to delegation. This observation suggests that states that are more economically dependent on others may not make as extensive legal commitments to conventional IGOs as states that are more independent, this relationship does not necessarily hold for IGOs that exhibit a high level of delegation.

Conclusion

In this chapter, explanations for legalization based on state characteristics were explored. The most compelling statistical evidence presented in this chapter, however, was the relationship between wealth and a state's commitment to legalization in these conventional IGOs. Wealthier states tend to be much more legalized than poor states. Some support was provided in multivariate and bivariate analysis for explanations based upon economic interdependence and democracy. Neither explanation, however, received as much support as the wealth explanation. Small Western European states are prototypes for the type of state that seeks hard international legalization. These states tend to be financially stable with a high standard of living, but they do not have much influence on world affairs. These states have strong incentives to seek hard legalization. They can constrain more powerful states by binding them to legal instruments. They also possess disproportionate legal resources relative to their power capabilities (Kahler 2000b). Weaker states do not have the same resources or the domestic institutions that would give them the incentive to pursue more legalized commitments. The results also indicate that

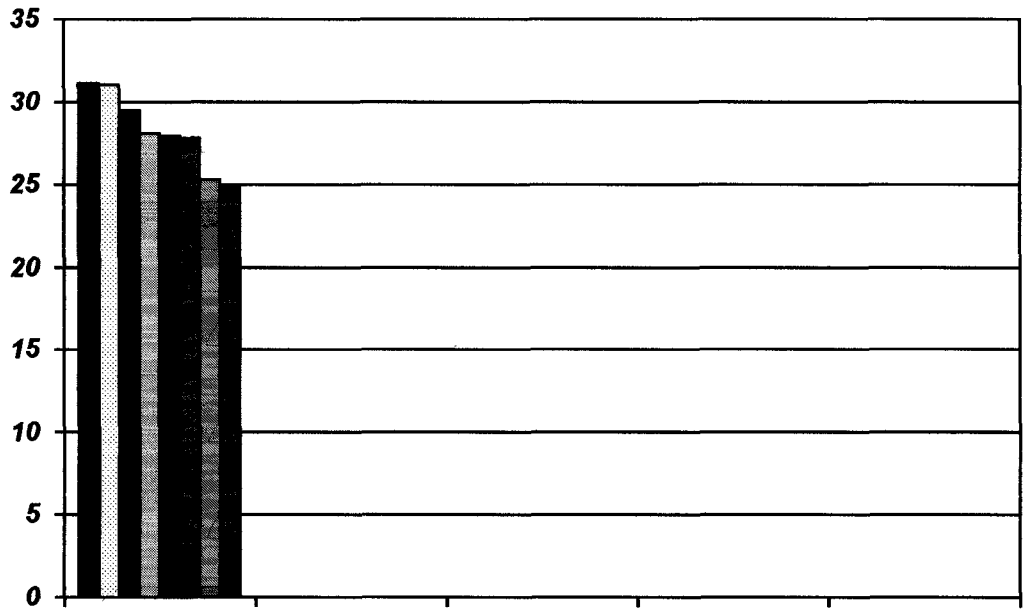
these same findings are also applicable to the individual dimensions of legalization: obligation, delegation, and precision.

These findings suggest that state legalization can be explained through a neoliberal institutionalist framework. States are motivated to make legal commitments and relinquish some sovereignty if they possess the economic capacity to benefit from these commitments. State power does not make much of a difference in regard to legalization. Powerful states face both incentives and disincentives to legalize. At least in regard to conventional IGOs, powerful states seem to be more willing to enter into highly legalized agreements when power is relatively evenly distributed.

Although this rationalist explanation can account for relationship between sovereignty and legalization, it still presents a rather simple view of legalization even in terms of the limited case selection presented in this study. Evidence suggests that cultural and societal factors may also explain state tendencies toward legalization. In Asia, for example, states differ from the West in regard to legal culture and institutions. Asian states are less adversarial and are more concerned with avoiding conflict over legal disputes (Kahler 2000a). These states approach disputes with an emphasis on informality and consensus. These values are deeply entrenched in Asian legal culture and are reflected in both domestic institutions and international practices (Green 1995). Along with Africa, the Middle East, and Latin America, Asia also shares in a history of colonization by Western powers. The modern state system and the modern system of international law arose from Western Europe. The system was established globally through European colonization in the 17th through the 19th centuries. Developing states

have enthusiastically adopted the principle of sovereignty from the state system, but they are also skeptical of international law due to their colonial heritage and the Western culture and values upon which the system was based.

Figure 5.1 State Legalization scores



Germany	31.12				
France	31.04				
Brazil	29.46				
Japan	28.07				
India	27.94				
China	27.82				
U.S.	25.31				
Russia	25.02				

Table 5.1 OLS estimates of state economic and regime characteristics and Legalization

Parameters	Model 1
GDP	-.00014 (0.0002)
GDP per capita	.00013*** (.000027)
Democracy	-.1170 (.1115)
Interdependence	-.510** (.2091)
Constant	26.17*** (0.549)
n	188
R^2	0.19

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 5.2 OLS estimates of state economic and regime characteristics and Obligation

Parameters	Model 2
GDP	-.00002 (.00007)
GDP per capita	.00004*** (.000009)
Democracy	-.0063 (.0374)
Interdependence	-.120* (.0708)
Constant	8.74*** (0.197)
n	188
R^2	0.14

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level
**indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

Table 5.3 OLS estimates of state economic and regime characteristics and Delegation

Parameters	Model 3
GDP	-.00009 (0.00008)
GDP per capita	.00004*** (.000009)
Democracy	-.0403 (.0397)
Interdependence	-.104 (.2091)
Constant	8.20*** (0.197)
n	188
R^2	0.11

Numbers in Parantheses are standard errors. ***indicates statistical significance at the >0.01 level **indicates statistical significance at the >0.05 level, *indicates statistical significance at the >0.10 level.

CHAPTER 6
CONCLUSION

Legalization is the idea that legal constraints, such as formal obligations and dispute resolution mechanisms, are placed upon states in certain issue areas. Due to the anarchic nature of the international system, states relinquish some of their sovereignty in order to commit to mutually agreed upon rules to enhance prospects for international cooperation and provide for more order in global affairs. Legalization has become more prominent in the post-Cold War world. The European Community has expanded its goals of a common market with when Treaty of Maastricht came into force in 1993. Further extensions of legalization in Europe include the Amsterdam and Nice treaties as well as the extension of EU membership to ten additional states in 2004, which will almost its double its current membership. The international trade regime was further strengthened with the enhanced legal procedures provided by the establishment of the World Trade Organization (WTO) in 1995 and the inclusion of the state with the world's largest population and fastest growing economy, China, in 2001. The post-Cold War world has also witnessed the establishment of the world's first permanent criminal court, the International Criminal Court (ICC) in 2002. Also, treaties and international institutions have proliferated in this era. States have sought to codify long-standing customs, such as the entry into force of the Law of the Sea Treaty in 1994. States have also been more willing to enter into agreements in areas that been part of the traditional purview of international law, such human rights and the environment.

Despite these trends, states are not rushing towards creating a highly legalized international order. The international system remains far closer to anarchy than a system

resembling a domestic legal order. The United States, in particular, has been by criticized by disarmament and human rights experts for undermining efforts to strengthen the international rule of law. International organizations and European allies have made clear their concerns over American reluctance to enter into international agreements at a time when the U.S. has unrivaled power (Crossette 2002). The U.S. led invasion of Iraq in 2003 has led to divisiveness in the international community, which strained relationships and has created some uncertainty as to the effectiveness and the future role of the UN and NATO. Even in the world's most legalized organization, the EU, states are still wary of the infringement of supranational influence on national policies. Member states have sought to include clauses in treaties and EU legislation protecting national policies, even if they contravene EU policy. They have also excluded the ECJ from some areas of EU powers, such as foreign policy and both international and domestic security (Alter 2000). These contrasting trends create a puzzle in explaining the causes of legalization. Questions arise such why are some international institutions more legalized than others? or why do some states make more international commitments to others?

The concept of legalization, developed by Abbott, Keohane, Moravcsik, Slaughter, and Snidal (2000), is based upon three dimensions: obligation, delegation, and precision. Obligation meaning that actors are bound by a rule or commitment. Delegation meaning that third parties have been granted some authority over the rules and authority to resolve disputes. Precision meaning that the rules and commitments are unambiguously defined (K. Abbott et al. 2000). Conceptually, these dimensions vary in degree and are independent from one another. Different levels of each of these

dimensions may be combined by drafters of legal instruments to develop an instrument that is designed to suit particular needs. As a result, the concept of legalization encompasses a multidimensional continuum, where all three dimensions are maximized so that they form "hard" legalization, to multiple forms of "soft" legalization where the dimensions vary in terms of strength.

To provide an empirical survey of legalization in the international system, I examined agreements establishing international governmental organizations (IGOs) as a measuring device. These IGOs provided a well-defined sampling frame. Their legal structure was also ascertainable by examining their respective constitutional mandates. Even though IGOs tend to be the most legalized international institutions, they still exhibit a wide variation in legalization. State membership in IGOs exhibits a formal commitment that states make to international legalization.

The selection of IGOs included in the study was derived from the conventional intergovernmental organizations as defined by the Union of International Associations (UIA). These organizations were in existence as of summer 2002 and their membership was composed of state governments. Additionally, these IGOS also have their founding documents registered with the United Nations. States must have ratified the agreement and be full members of the organization to be considered as a member state in this sample.

Chapter Four of this dissertation examined the relationship between the legalization of conventional IGOs and IGO characteristics. These IGOs vary in such areas as function of the organization, the rules of membership in terms of its exclusivity, and the number of

members in the organization. Hypotheses concerning the relationship between these variables and legalization were drawn from theories of functionalism and collective action. The evaluation of the hypotheses revealed that the size of the organization, in terms of the number of members, appeared to be the characteristics of IGOs that have an impact on legalization. The other independent variables did not demonstrate as much of a significant relationship to legalization.

The results of the analysis reveal mixed support for functional expectations. The fact that a substantial majority of the IGOs that met the sample criteria, were devoted to economic and technical tasks is consistent with functionalism. States seem to be more willing to institutionalize cooperation in these areas. In terms of legalization, however, the purpose of an organization does not appear to make a difference. The results also show, however, that consistent with functional expectations, geographic proximity does not seem to make a difference in the extensiveness of legalization in an IGO. Organizations that permit universal membership are not any more legalized than those that restrict membership. In regard to the empirical debate between regionalists and universalists, this evidence does not support either side as to legalization. States do appear to create more organizations that are restricted to a geographical region. These organizations, however, do not generally appear to be any more legalized.

An analysis of the hypothesis derived from collective action reveals that organizations with large numbers of members may actually be more legalized than those organizations with a small number of members. This result suggests that a large number of states are able to overcome their self-interests and form an IGO that is more legalized

than one with a smaller number of members and fewer potentially conflicting interests. States may realize that highly legalized rules are desirable in areas of global concern.

In addition to IGO characteristics, the characteristics of member states also can account for the legalization of an IGO. The major competing theories in international relations, realism and neoliberal institutionalism, provide more of a state-centric view of international cooperation than theories of functionalism and collective action. As the debate between neorealism and neoliberal institutionalists suggests, the disparity of power among states in the international system plays a role in the structure of a cooperative arrangement and the extent to which it is legalized. Asymmetries in power among member states and U.S. membership in IGOs were considered as explanatory variables for IGO legalization. The statistical results and analysis provide for some marginal support for the idea that IGOs that are more balanced in terms of power of their member states are more legalized. States that are relatively more powerful than other members may have more influence on the rules of the organization, but these states tend to be members of more legalized organizations whether or not other relatively powerful states are also members. In regard to U.S. membership, the results suggest that, at least in regard to conventional IGOs, the U.S. is not as likely to be in a highly legalized organization as it is to be in one that is not very legalized.

States vary in their commitments to IGO legalization. These commitments can potentially be explained by such state characteristics as power, wealth, economic interdependence and democracy. The results indicated that economic development was

the most significant factor in a state's legalization. The power of states did not appear to make much of difference. This finding was consistent with the individual cases. States that are small, but wealthy tend to be highly legalized. Wealth allows states to take advantage of their superior legal resources and administrative capacity. States that are powerful and wealthy have incentives and disincentives to make more legalized commitments. While they can take advantage of their superior administrative capacity, they also face more of a loss of their power by making binding commitments. France and Germany, however, represent instances of states that are wealthy and power, and have made highly legalized commitments. The results do offer some weak support for the propositions that more democratic states are more likely to commit to legalization, and states that are less dependent on international economic transactions are more likely to legalize. The wealth of a state, however, seems to be a much more of an influential factor.

The statistical analysis and the descriptive statistics in this study do provide a profile of international legalization, at least in regard to conventional IGOs, at both the organizational and state level. At the organizational level, states are more likely to enter into IGOs when they are designed for economic purposes. These organizations may not necessarily be more legalized. Large organizations, however, do tend to be more legalized than smaller ones. At the state level, wealth appears to be the most important factor. Wealthy states are more likely to be legalized. Sovereignty is a concern to states in making binding commitments. Powerful states appear to be more likely to make highly legalized commitments to IGOs when power within the IGO is evenly distributed. In areas where they can achieve their goals unilaterally or without the support of states with

relatively comparable power, they are not as likely to seek legalization. These findings suggest that neoliberal institutionalism provides a more adequate framework than realist perspectives in explaining the causes of international legalization.

The generalizability of these results, however, are subject to the limitations provided by the theoretical framework, the case selection, and the methodology employed to evaluate propositions involving legalization. It does assume that states' decision to enter into an IGO is based upon rational decision-making. While the findings of this study can be explained using such a framework, this does not imply that it is an exclusive explanation. International law is based on customs and norms that have developed over time. States do not simply abide by commitments as a rational choice. Alternative explanations such cultural and societal values, as well colonial heritage may also be able to account for the findings in this study.

The case selection is also limited. It views legalization solely in terms of IGOs. Additionally, due to the restrictive criteria on the case selection, it only includes a small number of all the IGOs that currently exist in the international system. The methodology employed in measuring legalization could also be improved. Although coding guidelines were established, application of the guidelines to the treaties did require some subjectivity as some judgments had to be made when the guidelines did not apply perfectly to the treaty rules. The dependent variable of IGO legalization could also be constructed differently. The measure used in this study relied heavily on the distinction between membership rules and the organization procedural rules. An alternative measure for legalization that does place as much emphasis on this distinction could be constructed.

Despite the theoretical and methodological limitations of this study, it does contribute to the literature on legalization and international law. This research project has sought to try to find some explanation to these questions. The goal here was to provide an extensive, systematic survey of international legalization and the commitments that states make to legalization. It contributes to the literature on legalization, and international law generally, by providing such a survey in an area that has focused mostly on case studies. Even with a limited sample, the results do provide more empirical evidence on the causes of legalization, at least as it pertains to conventional IGOs. The findings can also be reconciled with earlier studies and their explanations of international legalization. In addition, it also provides some evidence to support a neoliberal institutional account of the relationship between states and international law.

This project, however, raises two important questions that should be examined in future research. The first of which involves the generalizability of these findings. Due to the limited sample size, the hypotheses examined in this study should be applied to different kinds of cooperative arrangements. In addition to examining other kinds of IGOs that were not included, legalization could also be examined in areas that are not as institutionalized such as the environment or human rights. Other factors not accounted for in this study could provide alternative explanations that were not examined. Domestic political factors other the type of regime, for example, could be used to explain some of the variance. Also, a much more thorough examination could be made of the changing dynamics of these organizations over time.

Secondly, the consequences of legalization need to be explored much more. This study did not address the effect of these rules on state behavior, however, it is typical of most of the literature in this way. Compliance with these agreements is difficult to measure, which makes it difficult to specify the impact that legalized rules have on state behavior. This difficulty relates to the age-old debate about whether institutions matter. Although research should move past this debate and focus on the how question rather than whether, it still needs to engage the whether question in order to see the big picture. If a state is more likely to make legal commitments, does it follow that they are more likely to comply with rules? This study leaves this proposition as an open question.

APPENDIX: List of Conventional IGOs

Administrative Centre of Socical Security for Rhine Boatmen
African Civil Aviation Commission
African Groundnut Council
Agence de La Francophonie
Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
Amazonian Cooperation Council
Asian and Pacific Coconut Community
Asian-Pacific Postal Union
Asian Productivity Organization
Association of Caribbean States (ACS)
Association of Natural Rubber Producing Countries
Association of South East Asian Nations (ASEAN)
Association of Tin Producing Countries
Baltic Marine Environment Protection Commission - Helsinki Commission
Benelux Economic Union
CAB INTERNATIONAL
Caribbean Community (CARICOM)
Convenio Andrés Bello de integración educativa, científica y cultural de América Latina y España
Council of Europe
Danube Commission
Economic Community of West African States (ECOWAS)
Economic Cooperation Organization (ECO)
Entente Council
European Atomic Energy Community (EURATOM)
European Commission for the Control of Foot-and-Mouth Disease
European Conference of Ministers of Transport
European Free Trade Association (EFTA)

European Molecular Biology Conference
European Organization for the Exploitation of Meteorological Satellites
European Organization for the Safety of Air Navigation
European Organization for Nuclear Research
European Space Agency (ESA)
Food Aid Committee (FAC)
Group of Latin American and Caribbean Sugar Exporting Countries
Gulf Cooperation Council (GCC)
Intergovernmental Committee of the River Plate Basin Countries
International Atomic Energy Agency (IAEA)
International Baltic Sea Fishery Commission
International Centre for Scientific and Technical Information
International Centre for Settlement of Investment Disputes
International Centre for the Study of the Preservation and Restoration of Cultural Property
International Civil Aviation Organization (ICAO)
International Civil Defense Organization
International Cocoa Organization
International Coffee Organization
International Commission for the Conservation of Atlantic Tunas
International Commission for the Protection of the Rhine
International Council for the Exploration of the Sea
International Development Association (IDA)
International Hydrographic Organization (IHO)
International Jute Organization
International Maritime Organization (IMO)

International Organization of Legal Metrology
International Organization of Space Communications
International Sericultural Commission
International Sugar Organization (ISO)
International Tea Promotion Association
International Telecommunications Satellite Organization (INTELSAT)
International Whaling Commission (IWC)
Joint Institute for Nuclear Research
Latin American Centre for Physics
Latin American Civil Aviation Commission
Latin American Energy Organization
Latin American Integration Association (LAIA)
Latin Union
Mano River Union
Niger Basin Authority
Nordic Council for Tax Research
North Atlantic Salmon Conservation Organization
North Atlantic Treaty Organization (NATO)
Northwest Atlantic Fisheries Organization
Organization for Economic Cooperation and Development (OECD)
Organization for the Management and Development of the Kagera River Basin
Organization of African Unity/African Union (OAU/AU)
Organization of American States (OAS)
Organization of Arab Petroleum Exporting Countries
Organization of the Petroleum Exporting Countries (OPEC)
Permanent Commission for the South Pacific
Permanent Secretariat of the General Treaty on Central American Economic Integration
Southeast Asian Ministers of Education

Organization
Southern African Customs Union (SACU)
United Nations (UN)
Universal Postal Union (UPU)
Western European Union (WEU)
World Customs Organization
World Health Organization (WHO)
World Intellectual Property Organization (WIPO)
World Tourism Organization (WTO)
World Trade Organization (WTO)

REFERENCES

Abbott, Frederick, M. 2000. "NAFTA and the Legalization of World Politics," *International Organization.* 54 (3): 519-548.

Abbott, Kenneth, Robert Keohane, Andrew Moravcsik, Ann-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401-19.

Abbott, Kenneth and Duncan Snidal. 1998. "Why States Use Formal International Organizations." *Journal of Conflict Resolution* 42(1):3-32.

Alter, Karen. 2000. "The European Union's Legal System and Domestic Policy: Spillover or Backlash?" *International Organization.* 54 (3): 489-518.

Alter, Karen 1998. "Who are the Master of the Treaty?: European governments and The European Court of Justice," *International Organization.* 52: 121-148.

American Law Institute. 1987. *Restatement Third, Restatement of Foreign Relations Law of the United States.* American Law Institute.

Arend, Anthony. 1998. "Do Legal Rules matter? International Law and International Politics," *Virginia Journal of International Law* 38: 107-153.

Axelrod, Robert. 1984. *The Evolution of Cooperation.* New York: Basic Books.

Banks, Arthur, Thomas Muller, and William Overstreet (eds.). 2001. *Political Handbook of the World.* Binghamton, N.Y.: CSA Publications.

Bennett, A. Leroy and James K. Oliver (eds.). 2002. *International Organizations: Principles and Issues.* 7th ed. Upper Saddle River, NJ: Pearson Education.

Bodie, Thomas, J.1995. *Politics and the Emergence of an Activist International Court of Justice.* Westport, CT: Praeger Publishers.

Brownlie, Ian. 1998. *Principles of Public International Law.* 5th ed. Oxford: Clarendon Press.

Chayes Abram. and Antonia H. Chayes. 1995. *The New Sovereignty: Compliance with International Regulatory Agreements.* Cambridge, MA: Harvard University Press.

Chayes, Abram and Antonia H. Chayes. 1993. "On Compliance," *International Organization* 47: 327-352.

Coplin, William and J. Martin Rochester 1972. "The Permanent Court of International Justice, the International Court of Justice, the League of Nations, and the United Nations: a comparative empirical survey," *International Organization*.66: 529-550

Cowen, Tyler. 1992. "Law as a Public Good: The Economics of Anarchy," *Economics and Philosophy* 8: 249:267.

Cox, Robert and Harold Jacobson, (eds.). 1973. *The Anatomy of Influence: Decision Making in International Organization.* New Haven CT: Yale University Press.

Crawford, Neta C. 1994. "A Security Regime among Democracies: Co-operation Among the Iroquois Nations," *International Organization* 48(3): 345-385.

Crossette, Barbara. "Washington is Criticized for Growing Reluctance to Sign Treaties," *New York Times.* April 4, 2002.

Dominguez, Kathryn M. 1993. "The Role of International Organizations in the Bretton Woods System." In *A Retrospective on the Bretton Woods System,* edited by Michael D. Bordo and Barry Eichengreen, 357-404. University of Chicago Press.

Downs, George W., David M. Rocke, and Peter N. Basoom. 1996. "Is the Good News about Compliance Good News about Cooperation?" *International Organization* 50 (3): 379-406.

Finnemore, Martha and Stephen Toope. 2001. "Alternatives to 'Legalization': Richer Views of Law and Politics. *International Organization* 55 (3): 743-755.

Franck, Thomas. 1995. *Fairness in International Law and Institutions.* Oxford: Clarendon Press.

Freedom House. 2002. Freedom House Country Ratings.

Gamble, John King. 1985. "The 1982 United Nations Convention on the Law of the Sea as Soft Law." *Houston Journal of International Law* 8:37-47.

Gilpin, Robert. 1987. *The Political Economy of International Relations.* Princeton, NJ: Princeton University Press.

Goertz, Gary. 2003. *International Norms and Decision Making.* Oxford: Rowman & Littlefield Publishers, Inc.

Gold, Joseph.1983. "Strengthening the Soft International Law of Exchange Agreements," *American Journal of International Law* 77: 443-489.

Goldstein, Judith, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2001. "Response to Finnemore and Toope," *International Organization* 55 (3) 759-760.

Goldstein, Judith and Lisa L. Martin. 2000. "Legalization, Trade Liberalization, and Domestic Politics." *International Organization* 54 (3) 603-632.

Goldstein, Judith. 1996. "International Law and Domestic Institutions," *International Organization.* 50: 541-564.

Goodrich, Leland M. and Anne P. Simons. 1955. *The United Nations and the Maintenance of International Peace and Security.* Washington D.C: Brookings.

Green, Carl J. 1995. "APEC and Trans-Pacific Dispute Management," *Law and Policy in International Business* 26(3): 719-734.

Grieco, Joseph M. "Anarchy and the limits of cooperation: a Realist Critique of the Newest Liberal Institutionalism," *International Organization.* 42 (3): 485-507.

Haas, Ernst. 1975. "On Systems and International Regimes," *World Politics* 27 (2) 147-174.

Haas, Ernst. 1964. *The Uniting of Europe.* Stanford CA: Stanford University Press.

Haas, Ernst. 1958. *The Uniting of Europe.* Stanford, CA: Stanford University Press.

Hardin, Russell. 1982. *Collective Action.* Baltimore, MD: John Hopkins University Press.

Henkin, Louis. 1979. *How Nations Behave: Law and Foregin Policy.* 2d ed. New York: Columbia University Press.

Hurrell, Andrew. 1993. "International Societ and the Study of Regimes," in Volker Rittberger (ed.) *Regime Theory and International Relations* 49-72.

Jacobson, Harold K. and Edith Brown Weiss. 1998. "Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project, in Charlotte Ku and Paul F. Diehl (eds.) *International Law: Classic and Contemporary Readings.* Boulder, CO: Lynne Rienner Publishers.

Jacobson, Harold K. *International Governmental Organizations: Memberships and Characteristics, 1981 and 1992* (Computer File). ICPSR version. AnnArbor, MI: Inter-university Consortium for Political and Social Research (distributor), 1998.

Kahler, Miles. 2000a. "Legalization as Strategy: The Asia-Pacific Case. *International Organization*. 54 (3): 549-572.

Kahler, Miles. 2000b. "Conclusion on Legalization," *International Organization* 54 (3): 661-683.

Kahler, Miles. 1995. *International Institutions and the Political Economy of Integration*. Washington D.C.: The Brookings Institution.

Kahler, Miles. 1993. "Multilateralism with Small and Large Numbers," in John G. Ruggie (ed.) *Multilaterliam Matters: The Theory and Praxis of an Institutional Form*, New York: Columbia University Press.

Keohane, Robert O.1997. "International Relatioons and International Law: Two Optics," *Harvard International Law Journal*. 38 (2): 487-502.

Keohane, Robert O. 1989. *International Institutions and State Power: Essays in International Relations Theory*. Boulder, CO: Westview Press.

Keohane, Robert O. 1984. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, N.J.: Princeton University Press.

Keohane, Robert and Joseph Nye. 1977. *Power and Interdependence: World Politics in Transition*. Boston: Little, Brown.

Kindleberger, Charles P. 1973. *The World in Depression, 1929-39*. Berkeley: University of California Press.

Kocs, Stephen A. 1994. "Explaining the Strategic Behavior of States: International Law as System Structure," *International Studies Quarterly* 38: 535-556.

Koh, Harold. 1997. "Why Do Nations Obey International Law?," *The Yale Law Journal* 106: 2599-2659.

Krasner, Stephen. 1983. *International Regimes*. Ithaca, N.Y.: Cornell University Press.

Kratochwil, Friedrich and John G. Ruggie. 1986. "International Organization: A State of the Art on an Art of the State," *International Organization* 40: 753-775.

Leeds, Brett Ashley, Jeffrey M. Ritter, Sara McLaughlin Mitchell, and Andrew G. Long. 2002. Alliance Treaty Obligations and Provisions, 1815-1944. *International Interactions* 28: 237-260.

Lipson, Charles. 1991. "Why are some International Agreements Informal?"

International Organization 45(4):495-538.

Lipson, Charles. 1984. "International Cooperation in Economic and Security Affairs," *World Politics* 37: 1-23.

Lutz, Ellen and Kathryn Sikkink. 2000. "International Human Rights Law and Practice in Latin America." *International Organization* 54 (3): 633-660.

Martin, Lisa L. and Beth Simmons. 1998. "Theories and Empirical Studies of International Institutions," *International Organization* 52 (4): 729-757.

Mattli, Walter. 1999. *The Logic of Regional Integration.* Cambridge: Cambridge University Press.

Mattli, Walter. 1998. "Revisiting the European Court of Justice," *International Organization* 52: 177-209.

Mearshimer, John J. 1995. "The False Promise of International Institutions," *International Security* 19: 332-376.

Mitchell, Ronald. 2002. "A Quantative Approach to Evaluating International Environmental Regimes," *Global Environmental Politics* 2 (4): 58-83.

Mitchell, Ronald. 1994. "Regime Design Matters: International Oil Pollution and Treaty Compliance," *International Organization.* 48:425-58.

Mitrany, David. 1966. *A Working Peace.* Chicago: Quadrangle Books.

Morgenthau, Hans. 1965. *Politics among Nations.* 3d. ed. New York: Knopf.

Nye, Joseph. 1965. "Patterns and Catalysts in Regional Integration," *International Organization* (19) 870-884.

O'Connell, David. P. 1970. *International Law.* 2nd ed. London: Stevens.

Olson, Mancur. 1968. *The Logic of Collective Action.* New York: Schocken.

Rochester, J. Martin. 1986. "The Rise and Fall of International Organization as a Field of Study," *International Organization* 40: 777-813.

Ruggie, John G. 1975. "International Responses to Technology, Concepts, and Trends, *International Organization* 29(3): 557-83.

Russett, Bruce M. and John D. Sullivan. 1971. 'Collective Goods and International

Organization," *International Organization* 25 (4): 845-865.

Shanks, Cheryl, Harold Jacobson and Jeffrey Kaplan. 1996. "Inertia and Change in the Constellation of International Governmental Organizations, 1981-1992." *International Organization* 53:593-627.

Simmons, Beth. 2000. "The Legalization of International Monetary Affairs." *International Organization* 54 (3): 573-602.

Slaughter, Anne-Marie, Andrew S. Tulumello, and Stepan Wood. 1998. "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship." *American Journal of International Law* 92: 367-397.

Slaughter Burley, Anne-Marie.1993. "International Law and International Relations Theory: A Dual Agenda," *American Journal of International Law* 87: 205-239.

Smith, James McCall. 2000. "The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts," *International Organization* 54 (1): 137-180.

Starke, J.G. 1984. *Introduction to International Law*. 9th ed. London: Butterworths.

Steinberg, Richard H. 1997. "Trade-Environment Negotiations in the Eu, NAFTA and WTO: Regional Trajectories of Rule Development," *American Journal of International Law* 91: 231-257.

Stiles, Kendall. 2000. "U.S. Responses to Defeat in International Courts: A Contingent Model of Rule Compliance," *Political Research Quarterly* 53(2): 401-426.

Stone Sweet, Alec. 1998. "Constitutional Dialogues in the European Community," in Anne-Marie Slaughter, Alec Stone Sweet and JosephWeiler eds. *The European Court and National Courts-Doctrine and Jurisprudence*. Oxford: Hart Publishing.

Stone Sweet, Alec and Thomas Brunell. 1998. "Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community," *American Political Science Review* 92: 63-81.

Strange, Susan. 1983. "Cave! hic dragones: a Critique of Regime Analysis," in Stephen D. Krasner, ed. *International Regimes.* Ithaca, NY: Cornell University Press, 337-354.

Union of International Associations. 2002. *Yearbook of International Organizations.* New York: K.G. Saur.

United States Central Intelligence Agency. 2002. *World Factbook.* Washington D.C.:

Central Intelligence Agency.

Weil, Prosper. 1983. "Towards Relative Normativity in International Law?" *American Journal of International Law* 77: 413-42.

Weiler, Joesph and Ulrich Haltern. 1998. "Constitutional or International?: The Foundations of the Community Legal Order and the Question of Judicial Kompetenz-Kompetenz," In Anne-Marie Slaughter, Alec Stone Sweet and J.H.H. Weiler eds. *The European Court and National Courts-Doctrine and Jurisprudence*. Oxford: Hart Publishing.

Woods, Ngaire. 1999. "Good Goverence in International Organizations," *Global Governance* 5: 39-61.

Young, Oran. 1994. "International Environmental Governance," in Oran Young ed., *International Governance*. Ithaca, NY:Cornell University Press 12-32.

Young, Oran. 1989. "The Politics of International Regime Formation: Managing Natural Resources and the Environment," *International Organization* 43 (3): 349-75.

Ziring, Lawrence, Robert Riggs, and Jack Plano (eds.). 2000. *The United Nations: International Organization and World Politics*. Fort Worth TX: Harcourt College Publishers.