

**LEGALIZING HUMAN RIGHTS AND DEMOCRACY:  
COMPARING THE EU, OAS AND CE**

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**Abstract:** States have increased their international commitments to human rights and democracy norms by legalizing them in prominent regional organizations such as the European Union, the Council of Europe, and the Organization of American States. In these organizations, human rights and democracy norms have become increasingly obligatory through binding legal documents and increasingly precise through the development of new treaties and case law. Additionally, states have delegated substantial oversight authority for human rights and democracy issues to IOs. We explain this development by arguing that *interests* provide state *motives*, that *decreasing security threats* and other events provide *opportunities* to act, and that *preexisting norms* help determine *which principles* will be subject to higher levels of legalization. In particular, states have functional interests in more credible commitments and principled interests in human rights, democratic social groups have interests in binding the hands of more authoritarian groups, and IOs have interests in increasing their authority. We find, however, that systemic opportunities and preexisting norms are more powerful explanations of legalization across multiple cases than these various motives.

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## Introduction

In the past 20 years states have strengthened and deepened their commitments to democracy and human rights in international organizations (IOs). Three prevalent examples are the European Union (EU), the Council of Europe (CE), and the Organization of American States (OAS). In the EU, treaties now require member states to practice democracy and authorize the punishment of violators. Further, states have adopted a new Charter of Fundamental Rights and may incorporate it into a new European constitution. In the CE, states deleted treaty articles allowing members the option of recognizing individual petition to and jurisdiction of the European Court of Human Rights, thereby making those features mandatory. Perhaps most surprisingly, the OAS also amended its Charter to require democracy from member states and to punish violations and has continued strengthening its commitment to human rights.

What accounts for the deepening of human rights and democracy in international organizations and what sets it in motion? Who are the key actors propelling the process and under what conditions is it most likely to occur? Unfortunately, we still know very little about the evolution of international human rights norms because, as Hans Peter Schmitz and Kathryn Sikkink (2002: 528) observe, the subject “has not (yet) featured as a major research question for international relations theorists.” Moreover, the deepening of human rights and democracy is puzzling because it is costly. It subjects states to closer scrutiny and, in some cases, even punishment. Why would states yield their sovereignty to IOs on human rights and democracy issues? We aim for a better understanding of the deepening of human rights and democracy in IOs using the EU, the CE, and the OAS as our cases.

More broadly, scholars are just coming to grips with questions of institutional change. For a long time now, scholarly debates in international relations have focused on the emergence and effects of international institutions. Institutional change has been largely absent from the analysis. Moreover, other theoretical traditions do not offer as much support as one might hope. Various forms of historical institutionalism are better at explaining institutional continuity than institutional change. This situation is beginning to change. In 1998, Finnemore and Sikkink published an influential and pathbreaking analysis on the “life cycle” of norms and in 2000, *International Organization* published a special issue on legalization, one important form of institutional change. Most of the observed deepening of human rights and democracy norms can be labeled as legalization, which we adopt as our dependent variable. Legalization has three dimensions: increasing obligation, increasing precision, and increasing delegation.

Broadly, we suggest that legalization is driven by the dynamic interaction of motivated state and non-state actors, windows of opportunity, and the normative context in which these organizations are situated. More specifically we identify four motives that are likely to drive legalization: (1) Functional state interests in increased credibility of commitments; (2) Principled interests in human rights norms; (3) Democratic domestic social group interests in tying the hands of authoritarian competitors; (4) IO interests in increasing their own authority. We associate windows of opportunity with declining

security threats, especially the end of the Cold War, and the rise of new problems that cannot be resolved by existing institutions. Finally, we argue that the strongest preexisting norms are the most likely to be legalized.

The remainder of the paper is divided into six sections. Following a brief discussion regarding the case selection and our data sources, we define what we mean by legalization and provide empirical evidence of how it applies to the three organizations. Drawing eclectically on rationalistic and constructivist approaches, we develop the three factors that we consider crucial for further legalization in three separate sections and probe their explanatory power in each of the organizations. Finally, we conclude with a discussion of our findings and their implications for the study of international organization.

## **Case Selection**

Given that these organizations differ significantly from each other, a comparison of the OAS, the CE, and the EU regarding the development of human rights might be surprising to students of regional integration if not considered foolish. Our case selection is driven by Mill's method of agreement (Collier and Mahoney 1996, 72-74). In essence, we have three very different organizations that exhibit similar outcomes on the dependent variable. By comparing these three organizations we should be able to identify common features that could then be considered the most potent causal factors in producing the similar outcome.

First, the similarities on the dependent variable, as we show later, are striking and intriguing. Both the OAS and the EU have adopted enforcement mechanisms, endowing the organization with the right to expel member states violating human rights and democracy principles. In addition, in all three cases the respective courts have gained in power, extending their authority through an increasing number of cases brought before and decided by them. Moreover, in all three organizations, we see a deepening of human rights that is strong on political and civil issues, but softer on social and economic rights. Although social and economic rights have gained in visibility, member states have treated them as goals or principles instead of explicit guarantees.

Second, the comparison is also warranted because the three organizations exhibit interesting differences. The Council of Europe developed the first and most comprehensive set of human rights norms; hence, it sets the standards for all others. Given that the regime is already highly developed, the CE constitutes somewhat of a "hard case" with respect to legalization since it requires additional transfer of authority on the part of already deeply committed states. With respect to the EU, the development of a separate human rights regime vis-à-vis the regime of the CE raises questions as to how these two overlapping regimes will bode with each other. Legal scholars are already debating whether the two regimes will compete with each other, nicely complement each other, or peacefully coexist. Furthermore, the EU is interesting because of its presumed *sui generis* status -- resembling neither a conventional organization nor yet a state -- which we want to probe. Given that the level of integration is highest in the economic

realm, but less in political issue areas (e.g. justice and home affairs or foreign and security policy), there is reason to suspect that the EU behaves more like a conventional organization when it comes to human rights and democracy issues.

Finally, the selection of the OAS might be the least obvious. However, like the CE, it has a comprehensive regime comprised of the Inter-American Commission and the Inter-American Court of Human Rights. Moreover, the organization has borrowed heavily in the past from both the CE and the EU in terms of institutional procedures and structures. Therefore, it might help us to detect whether the legalization we are observing is the result of diffusion starting in Europe, a case of emulation with some organizations copying institutional elements of others, or the result of other forces that act on all three organizations.

To increase the number of observations, and consistent with the institutional complexity of these organizations, we engage in some within-case comparisons (King, Keohane, and Verba 1994). Each of these organizations is really comprised of different bundles of institutional rules and smaller organizations that can change independently of each other. We use this fact to our advantage by comparing these smaller institutions in 1980 and 2002. In the EU, we focus on human rights changes in (1) the major treaties; (2) the ECJ and its associated case law; and (3) the Charter of Fundamental Rights (CFR). Major treaties analyzed include the 1950 Rome Treaty, the 1986 Single European Act, the 1992 Maastricht Treaty, the 1997 Amsterdam Treaty, and the 2000 Nice Treaty. Regarding the Council of Europe, we analyze (4) the European Convention on Human Rights and its related protocols and issue-specific treaties, as well as (5) the European Court of Human Rights. Finally, with respect to the OAS, we focus on changes in (6) the Charter and closely related resolutions; (7) the American Convention of Human Rights (ACHR) together with various protocols and issue-specific treaties; and (8) the Inter-American Court of Human Rights and its associated case law. We thus have multiple observations at two different points in time regarding these three organizations.

### **The Dependent Variable: Legalization in International Organizations**

Scholars have identified a wide variety of concepts to analyze institutional change in international organizations. Most prominently, Goldstein, Kahler, Keohane, and Slaughter (2000, 387) refer to legalization as one form of institutional change and define it as a process in which institutional rules become more obligatory and precise and in which institutional actors receive more delegated authority to interpret, monitor, and implement those rules. Finnemore and Toope (2001, 746-751) critique this definition by arguing that legalization also involves issues such as legitimizing the law and recognizing that international law consists of a process as much as an institutional form. In an alternative approach examining the evolution of norms (one institutional form), Finnemore and Sikkink (1998, 904-905) argue that norms embedded in international institutions can become internalized in states to such a degree that they become taken for granted so that adherence is nearly automatic.

Beyond these prominent examples, many analyses of institutional change in IOs have come from studying the EU. In this context, it is common to refer to “deepening,” which Moravcsik (1998, 21) defines as the “intensification of cooperation in specific substantive areas.” Constitutionalization is a favored buzzword in analyzing the EU, and has been defined as the process of “converting institutions such as beliefs, ideas and procedures into a system of legally entrenched and hence enforceable rules and norms” (Wiener, 2001: 4). This notion of constitutionalization has much in common with legalization, but with the disadvantage of being too closely associated with state-building and the EU. For Stone Sweet, Fligstein, and Sandholtz (2001: 12) institutionalization is the process by which actors come to share a system of rules that help define the actors, tell them how to make sense of each other’s actions, and identify what types of action are possible. More generally, institutional change refers to any kind of change in the nature of the broad rule systems that structure human interaction (Cortell and Peterson, 2002: 3-4).

As is common in political science, conceptual confusion reigns. Rather than contributing to the confusion through the creation of additional terms or by redefining old terms in new ways, we prefer to build on the existing literature. Institutional change and institutionalization are undoubtedly significant topics, but are too broad to address in a single article, and we even question whether a general theory of institutional change is possible.

For the purpose of this paper, we employ the term legalization. Even though the term has a variety of connotations (Finnemore and Toope, 2001) and sometimes is mistaken as capturing all important international developments that have some legal character, we nevertheless consider it appropriate. Legalization as a concept is broader than constitutionalization, but narrower than institutionalization. Moreover, it travels well across different organizations. It captures a group of three related phenomena that have been widely discussed in separate literatures. Fully legalized institutions (also labeled “hard law”) contain (1) precise rules, (2) impose obligations on member states, and (3) delegate authority to agents to interpret and enforce those rules.

In the spirit of theoretical clarity, we define obligation, precision and delegation in substantially the same way as the *International Organization* special issue on legalization (Abbot et. al. 2000, 401). “*Obligation* means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specifically, it means that they are *legally* bound by a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as well.” The notion of an obligatory international institution runs directly counter to the common assumption that states jealously guard their sovereignty and that the international arena is characterized by anarchy. The desirability of such obligatory rules is a theoretical debate at least as old as Grotius and Westphalia. The apparent increase in the number of obligatory institutions in recent years (the EU broadly, the European Central Bank, the WTO, the International Criminal Court) has renewed scholarly interest in the concept. As usual, however, theories have lagged real-world developments.

*Precision* “means that rules unambiguously define the conduct they require, authorize, or proscribe” (Abbott et. al. 2000, 401). In turn, “*Delegation* means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules.” Delegation is widely discussed in the principal-agent literature, a tradition that is just now finding an echo in international relations scholarship despite some earlier efforts (Dombrowski; Pollack 2003; Nielson and Tierney 2003). Certainly, scholars have long been interested in IO autonomy, but it remains the case that we have few explanations of that autonomy. Rather scholars have been focused on explaining the existence of institutions themselves, rather than particular characteristics such as obligation and delegation. More broadly, a movement is afoot to move past the debate on whether institutions matter. Scholars are now more interested in explaining variation in the nature of those institutions and the conditions in which they matter. This paper forms part of that broader effort.

To operationalize the concept of legalization, we examine not only treaty language but also the statements and behavior of relevant IOs and states. Specifically, we rank the three organizations and the various observations within them (e.g. the conventions, courts, etc.) on a five-point scale ranging from none, to low, moderate, moderately high, and high.

We also should note, that treaties which claim to be obligatory are not actually obligatory if states widely ignore their provisions, or if IOs that implement those provisions do not behave as if the treaties are obligatory. International treaties can become more precise as interpretive bodies like courts create rulings and case law and as states adopt more specific treaties that fall within the domain of existing treaties. Further, it is important to recognize that not all delegation occurs formally through treaties; informally, states also delegate tasks to IOs, and IOs can sometimes expand the scope of their delegation through their own initiative (Pierson 1996).

Although obligation, precision, and delegation are three separate dimensions, they can affect each other and in fact be closely tied together, depending on the nature of the institutions. International courts by nature require high levels of obligation from states. When states delegate to courts, they also automatically increase their level of obligation. Likewise, when those courts increase the level of precision in a given issue area through case law, a state’s level of obligation rises. In such situations, states can no longer claim to meet vague standards, they are obliged to meet more precise standards. This is not to say that the three dimensions are always so closely linked. When states delegate foreign aid allocation to humanitarian organizations, they are under no immediate obligation to continue to delegate such aid or even to ensure that the aid actually helps people (though they may wish to ensure this outcome even when not obliged to). Likewise, when states sign treaties obliging themselves to not abuse human rights, they do not necessarily delegate any authority to oversee their compliance.

## Empirical analysis of the dependent variable

Empirical analysis of the CE, the EU and the OAS suggests that legalization has increased in each of these organizations. Since the end of the Cold War, states have developed more obligatory norms of human rights and democracy, called for more precision, and delegated more authority to third parties to deal with those issues. However, there have been variations in intensity. Our summary codings may be found in Table One. The most important language from the key documents may be found in the Appendix.

### TABLE ONE HERE

*The European Union.* Legalization appeared to be most dramatic in the European Union. This is particular evident in the case of obligation and precision. In the case of *obligation*, member states went from a relatively low level in the 1980s to moderately high levels in 2002 with respect to the EU treaties. In particular, instead of having only an implicit commitment to human rights for most of the Cold War period and the guarantee of free movement, equal enumeration between men and women, and an anti-discrimination in the foundational treaty, member states opted for an explicit commitment in the late 1980s. Starting with the Single European Act in 1987 and the Treaty of Maastricht in 1992, EU governments declared their commitment to the “principles of democracy and compliance with the law and with human rights” as guaranteed by the European Convention of Human Rights and the constitutional traditions of the member states (Maastricht Treaty 1992, Art. F1). While these commitments were still relatively soft, member states increased the level of obligation in the Amsterdam Treaty of 1997, devoting two explicit articles to human rights and democracy. While Article 6 of the Treaty identifies the principles of liberty, democracy, respect of human rights and fundamental freedoms, and the rule of law to be principles common to the member states and ones upon which the Union is founded, Article 7 of the Treaty adds an enforcement mechanism in case of a serious and persistent breach with respect to these principles. In particular, it empowers the Council of Minister, acting on the basis of a qualified majority, to “suspend certain of the rights deriving from the application of this Treaty to the Member State in question.”

Further changes regarding obligation occurred with the adoption of the CFR in 2000. Although the CFR is the first concrete set of rights in the EU, the level of commitment went from none to only moderate. As already mentioned in the beginning, the CFR is not yet a binding document and no further obligations result from it for member states. Although the provisions of the CFR “are addressed to the institutions and bodies of the Union with due regard of the principle of subsidiarity,” Article 51 (2) explicitly states, that “the Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties. Nevertheless, there are signs that its status is likely to change. The constitutional convention of the EU is currently debating a proposal turning the CFR into a binding document.

With respect to *precision* of human rights and democracy norms, we observed the following. Precision in the EU treaties went from low to moderate. Although more specific rules and norms have been adopted over the course of the past two decades, they are still fairly broad and do not comprise a list of rights that needs to be protected. Noteworthy is, however, the sharpening of language with respect to the possible suspension of member states in the Nice Treaty of 2000, making action on behalf of the EU already possible when there is a “clear risk of a serious breach by a Member State” (Art. 7).

The CFR is thus far the most precise document regarding fundamental rights. It codifies rights ranging from human dignity (e.g. the right to life or prohibition of torture and inhuman or degrading treatment or punishment), to solidarity (e.g. the right of collective bargaining and action or the right to fair and just working conditions), and justice (e.g. the right to an effective remedy and to a fair trial or the presumption of innocence and right of defence). Nevertheless, we coded the level of precision as only moderately high since, compared to other human rights documents, some of its articles are still ambiguous. For example, Article 18 of the CFR grants the right to asylum, but does not specify the conditions under which it should be granted or assign responsibility to any particular body for handling the problem. Similarly, Article 42 grants the right of access to documents of the European Parliament, the Council and the Commission, without addressing the problem this clause might cause for security related documents.

With respect *delegation*, the EU has moved from rather moderate in the 1980s to moderately high in 2002 because, as Laurent Scheek (2003) and others (e.g. Alter, 2000) have demonstrated, the authority of the European Court of Justice has expanded as a result of increasing case law. It is interesting to note, that the act of delegation, followed only after the Court had already established its authority in this area in 1974, arguing that “fundamental human rights [are] enshrined in the general principles of the Community law and protected by the Court.” Member states endowed the ECJ with the right to rule over human rights cases in the Amsterdam Treaty.

*The Council of Europe.* In the case of the Council of Europe, further legalization has also occurred along the three specified indicators. The most important changes took place in 1994 when Member States decided with the adoption of Protocol 11 that individual petitions and the acceptance of the Court of Human Rights were no longer optional, but a part of states’ adherence to the European Convention of Human Rights. While the former brought with it a heightened degree of obligation by allowing private parties, whether individuals, non-governmental organizations, or associations of persons, to file complaints with the Human Rights Committee, the latter delegated more authority to the European Court of Human Rights establishing its jurisdiction in all complaints (see Forsythe, 2000). The effects were particularly noticeable in the case of private petitions. While in the past, the European Commission of Human Rights threw out around 90 percent of the petitions filed in support of an alleged violation of the ECHR as being ill-founded, the number of petitions being considered increased from 8 per cent between 1955 and 1994 to 25 per cent in 1994 (Storey, 1995: 131-151).



In addition, further *precision* occurred between 1980 and 2000. Member states adopted close to seventy-two additional protocols to the ECHR as well as issue-specific conventions. Particularly noteworthy are the Convention on Torture, which went into effect in 1987 and the Framework Convention on the Protection of Minorities, which was adopted in 1995 and became effective in 1998. While under the former convention a committee of uninstructed persons has the right to regularly visit ratifying states to inquire into measures and conditions pertaining to torture,<sup>1</sup> the Framework Convention urges governments to accommodate national minorities.

*Organization of American States.* In the OAS, legalization of human rights and democracy has moved from low to moderate levels in the Charter and from moderate to somewhat higher levels with respect to the human rights convention and its associated Court. The original 1948 Charter broke new ground by declaring that American solidarity was based on respect for democratic governance and by proclaiming the importance of individual rights. These principles, however, remained very vague and oversight was not delegated to any OAS organ. While the Charter was legally binding, these particular norms were simply “reaffirmed” as “principles,” and thus were not particularly obligatory—an observation confirmed by long experience with brutal authoritarian rule in multiple countries in subsequent years.

Changes to the Charter began in 1985 and picked up substantial steam after 1990. In a 1985 amendment to the Charter, the OAS first proclaimed the promotion and consolidation of representative democracy as an “essential purpose” of the organization. Six years later, in a splashy ceremony in newly democratic Chile, the OAS approved the “Santiago Commitment,” reiterating states’ commitment to human rights and democracy. More significantly, the OAS approved Resolution 1080, which authorized states to meet quickly and “to adopt any decisions deemed appropriate, in accordance with the Charter and international law” in response to authoritarian reversals in any state. Demonstrating its obligatory nature and utilizing its newly delegated powers, the OAS then invoked the resolution four times in the next five years in response to events in Haiti, Peru, Guatemala, and Paraguay and even imposed economic sanctions on Haiti (Parish and Peceny, 2002: 237-243; Acevedo and Grossman, 1996: 140-145; Valenzuela, 1997).

After this beginning, states continued to legalize the democracy norm in the OAS, reaching moderate levels by 2002. In 1992, states approved an important amendment to the OAS Charter, the Washington Protocol, authorizing suspension of any government that had seized power by force with a two-thirds vote of member states. On Sept. 11, 2001, American states deepened and broadened their commitment to democracy by adopting the Inter-American Democratic Charter, which broadened the conditions under which a member state can be suspended from the OAS for anti-democratic behavior. Despite its name, the Democratic Charter is not a treaty. Thus, the level of obligation to democracy is moderately high: the OAS Charter obliges states to maintain democracy, but some of the language and penalties associated with that obligation are developed by resolution rather than treaty. Further, the Charter delegates norm implementation to OAS

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<sup>1</sup> All member states, but France, have ratified the Convention.

political bodies, but there is no judicial equivalent of the ECJ, thus producing moderate levels of delegation.

Separate from the OAS Charter, states have legalized human rights norms in the American Convention on Human Rights (ACHR) and related conventions. States first adopted the ACHR in 1969, modeling it on the European convention, but it did not take effect until a decade later. In 1980, the convention's level of obligation and precision should be considered moderate because it was a binding treaty with some details on the nature of human rights, but a number of states had not yet ratified it—and in practice many states ignored it. Like the ECHR, the convention included articles allowing states optional recognition of the Court's jurisdiction; in practice, few recognized such jurisdiction and thus delegation remained low.

By 2002, the picture had changed substantially. While the optional clause was still in place, most states had recognized the Court's jurisdiction without limits. Further, states routinely implemented adverse Court decisions. Levels of obligation and delegation were therefore at moderately high levels. They are not as high as in the European system, where the court's jurisdiction is compulsory and the sense of obligation is very high. With respect to precision, states in the late 1980s and early 90s adopted a number of additional human rights conventions giving more specific meaning to many of the ideals laid out in the ACHR. Additionally, the Court itself had produced a growing body of case law further specifying those norms. As a result, precision was also at moderately high levels. Again, the European Court has produced a much larger body of case law, thereby attaining higher levels of precision.

What accounts for the increase in legalization in these three organizations? Traditional approaches in international relations point to a number of factors ranging from changes in material interests, to the influence of domestic interest groups and institutions, and the impact of intersubjective processes, intrinsic beliefs or norms. In our opinion none of these explanations is sufficient. We therefore develop a theoretical framework that draws eclectically from these approaches suggesting that the dynamic interaction of motivated actors, windows of opportunities and normative contexts plays a critical role in the legalization process. In the following three sections we develop the theoretical explanations and analyze their implications for the EU and the OAS, leaving the CE for a future date.

### **Motivated Actors**

For states to engage and support further legalization seems counter-intuitive and even antithetical to their interests when, as a result, their behavior will be subject to closer scrutiny and constrain their autonomy. Moreover, further legalization may be costly to negotiate and may not entirely eliminate the risk of free-riding and cheating. So what does provoke nations to seek further, rather than less, legalization. We posit that states' motives can be varied. They can have both strategic as well as normative interests for pursuing such a course of action. In fact, we assume that these motives are often deeply intertwined. At the same time as states are concerned about democracy, they might

pursue free trade or security agreements to accomplish it. Moreover, we also posit that states are not the only engines of further legalization. Granted, that they are the essential actors in the process, non-governmental organizations and other non-state actors are increasingly key to the legalization of international politics (e.g. Keck and Sikkink, 1998), and might even be an explanatory force why states increasingly deepen their commitments at the international level. However, they also might pursue legalization independently and on their own. Following the discussion of states, we therefore, briefly discuss the competing interests and values of non-state actors.

With respect to states, the most obvious reason for further legalization might be (1) the anticipated consequences and benefits of tighter agreements. This perspective is concurrent with liberal approaches, which view of states as unitary actors and attribute the existence of institutions to the functions they perform, ranging from problem-solving and monitoring to enforcement. According to this line of thinking, further legalization is expected to bring with it not only a reduction of transaction costs, but also more credible commitments (Abbott and Snidal, 2000). We therefore assume that states negotiate more precise rules and norms, because it reduces opportunistic behavior, as for example, taking advantage of existing loopholes in existing agreements. Similarly, states are more likely to delegate more authority to a third party, as for instance a court, when it decreases the likelihood to engage in self-serving auto-interpretation. Furthermore, further legalization will be pursued by states because it increases the cost of reneging. Not only might states suffer damages in their reputation if allegations are tested based on accepted standards and found to be valid, but they also might be subjected to punishment, if they do not adhere to the principles of the respective agreements.

In addition to reducing transaction costs and promising more credible commitments, further legalization might also serve as selection device. According to Abbott and Snidal (2000: 429) this is particularly true for organizations, which exhibit the characteristics of “clubs”, such as NATO or the EU. “[B]ecause hard legal commitments impose greater costs on violators, a willingness to make them identifies one as having a low propensity to defect.” More obligation, precision, and delegation can, hence, function as gatekeeper and strengthen the identity of a particular community. On the one hand, they can help states to delimit membership in the organization to only such countries, which can live up to the existing rules and obligations, and on the other, they also provide checks for members by keeping them from breaching existing agreements.

Finally, legalization might also be considered beneficial for regional stability. While free trade or other mechanisms could help to accomplish this goal, harder agreements might be preferred. Although more costly and more difficult to negotiate, they offer more certainty in the long-run by raising the ante for defectors and, once in place, require less adjustments.

(2) States might be in favor of further legalization because of domestic reasons. Legalization might reflect the interests of powerful groups in a society, which associate certain benefits with the outcome. In particular, more legalization could be desired by these groups to raise the costs of violations for other parties and facilitate enforcement

against resister groups and governments. Furthermore, interest groups might count on a change in the domestic political landscape. Because international agreements affect actors differently, certain interest groups might expect a change in the balance of power and greater access to policymakers. In addition, legalization also brings into play other actors, particularly courts and lawyers, which might offer interest-groups additional venues to pursue their cause.

Given the role of domestic groups, states might use further legalization to dampen the influence of these groups or to bolster their own position vis-à-vis them. For example, Andrew Moravcsik (2000) argues that weak democracies are more likely to enter into binding agreements to stabilize the fledgling regime against non-democratic opposition. In this case, international agreements may not only offer state leaders with arguments in the domestic arena as to why they have to pursue a certain course of action instead of another, but they also can be used to lock in future leaders to continue in a certain direction.

(3) States might also push for more legalization because, as constructivists suggest, they intrinsically believe in and are committed to the idea of human rights and democracy. This logic of appropriateness can have several roots. First, historical experiences might be a catalyst. Jack Donnelly (1991), for example, explains the establishment of the UN human rights regime in the late 1940s with the gross human rights violations and the horror of the Nazi regime during World War II. These events produced a “moral demand” for international mechanisms, which would prevent similar events from happening in the future.

Second, and as we will argue later, the intrinsic belief in human rights can also be a consequence of states having been exposed to and been socialized by human rights norms over long periods of time. This is particularly plausible in the case of further legalization where states have already been exposed to and been socialized by existing human rights norms. As a result one would expect them to have internalized these norms, be convinced of their “appropriateness,” and expect that good things will come of them.

Third, states might also delegate further authority to international organizations and adopt a certain institutional framework because they perceive such a framework as more legitimate (see Pollack 2003). For example, the empowerment of international courts might be desirable because they are perceived as neutral and objective arbiters in dispute settlements.

(4) Legalization might also be the result of the growing activities of non-state actors, including firms, non-governmental organizations, epistemic communities, or supranational organizations as various scholars have aptly demonstrated (e.g. Keck and Sikkink, 1998; Haas, 1992). These non-state actors have gained increasingly access to the international policy process and can therefore pursue their aims more readily. Although these actors might be the reasons for states to engage in further legalization, evidence suggests that they have interests in pursuing harder agreements independently. In this respect, we would especially expect institutional actors such as courts or

commissions to be interested in legalization as they are likely to benefit from the process. More obligation, precision and delegation might not only result in an increase of authority and power of these institutions, but it can also enhance the autonomy of these agents vis-a-vis their patrons since legal discourse affords a particular expertise and knowledge.

Similar to states, we assume non-state actors to also be driven by normative aims. For example, they might be interested in institutional arrangements, which provide more opportunities for deliberation and civil society actors to participate in the political process. In addition, non-state actors might be in favor of more precision and delegation to reduce the externality costs of existing international agreements (Abbott and Snidal, 2000). For example, labor groups might seek further precision of international rules, to negate the negative impacts of free trade agreements.

In summary, even though further legalization might appear counter-intuitive, we identified both strategic and normative motives that might prompt state as well as non-state actors to pursue such a course of action. How do these theoretical propositions bode with empirical reality?

### Empirical analysis

*EU.* In the case of the European Union, we can find support for several of the propositions advanced above with respect to the legalization of human rights and democracy. To begin, *credibility* played a role. EU member states were interested in making the EU more credible to European citizens because it suffered from a legitimacy crisis. With the increase in power of the EU and its growing effects on peoples' lives, its lack of institutional transparency and democratic participation became a subject of contestation.<sup>2</sup> Commitment to human rights and democracy became a means to address this criticism. Studying the 1996-97 Inter-governmental Conference in Amsterdam, Erik Fossum (2000), for example, points out, that policy makers increasingly refrained from legitimizing their actions through outcomes, and instead employed a rights discourse to justify further integration. Evidence for this can also be found in the way in which the drafting of the CFR was justified at the Cologne summit in 1999: "[P]rotection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy (...). There appears to be the need (...) to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens."<sup>3</sup> In other words, EU policy-makers began to perceive the rights framework as a vehicle to get Union citizens to identify more strongly with the supranational institutions and its processes.

In addition, the legalization of human rights and democracy served, as I will discuss in greater detail later, a *screening device* for accession countries. In the face of pending Eastern and Southern enlargement, a more developed human rights accord provided a

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<sup>2</sup> E.g. opposition toward the Maastricht Treaty in many European countries and the "no" vote in Denmark during a public referendum.

<sup>3</sup> <http://db.consilium.eu.int/DF/intro.asp?lang=de>.

means for the EU to signal to applicant states what it takes to be European state. Adherence to human rights and the rule of law became part of the Copenhagen Criteria adopted in 1993, the guidelines for accession.

Furthermore, increasing obligations, precision, and delegation also reflected the interests of individual state and non-state actors. With respect to the non-state actors, the ECJ and the EP contributed especially to the development of human rights law. As we already mentioned in connection with the dependent variable, the European Court of Justice has developed case law in the area since the 1970s, although it had no legal basis for doing so. In addition to its ambition in establishing its authority vis-à-vis national courts (e.g. Alter, 2001; Burley and Mattli, 1993), the legal activism of the ECJ was prompted by the growing number of cases in which individuals complained about Community decisions that allegedly affected their fundamental rights as laid down in their national legislation or in international instruments. Case law provided a means to limit the discretion of the supranational institutions (von Bogdandy 2000: 1308) and “offered a way out for the Court from deadlock into which it had worked itself through its refusal to enforce fundamental rights protected in national constitutions” (Leanerts and DeSmitjer 2001: 276). However, it also had certain pitfalls. In particular, it lacked certainty as well as predictability and contributed, according to Macía (2000: 186), to the development of a more coherent system of which the Charter is a beginning.

In addition to the ECJ, the European Parliament (EP) has been an outspoken proponent of human rights in the past, though in a much more political fashion. Being the voice of civil society, the EP seems a likely candidate. However, its leadership has also other roots. Given the silence of other institutional bodies on the subject, the European Parliament, according to Rack and Lausegger (1999: 801), was not only able to bring human rights within its own sphere of influence, but also to expand its powers and responsibilities into policy areas which did not actually fall into its normal remit.

The EP has contributed to further legalization of human rights and democracy in various ways. Apart from regular human rights reports and its demand for the establishment of a European Agency for Human Rights and Democratization, the EP has issued an extensive series of political papers, which paved the way for the Charter of Fundamental Rights.<sup>4</sup> Among them was the *Parliament's Declaration on a List of Fundamental Rights* or the *De Gucht Report* from April 12, 1989, which is probably the most important in terms of EP initiatives.<sup>5</sup> Comprising for the first time an explicit list of rights as they derive from the common constitutional orders of the Member States, the report constituted an attempt towards the creation of a legally binding Community instrument guaranteeing

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<sup>4</sup> Among them was the *Joint Declaration on Human Rights for the European Parliament in 1977*, which provided, at least in part, political support and democratic legitimacy to the case of law of the EJC regarding human rights (Rack and Lausegger, 1999: 805) or the *Parliament's Draft Treaty on the European Union* or what came to be known as the *Spinelli Report* of February 14, 1984, which contained important references to human rights, that were considered indispensable for the legitimacy of the Community. For example, the report identified the recognition of economic and social rights in addition to political and civil rights to be vital and encouraged the accession of the EU to existing international human rights conventions ([1984] OJ C77/33.)

<sup>5</sup> [1989] OJ C120/51.

fundamental rights.<sup>6</sup> Subsequent reports by the European Parliament continued to stress the need for drawing up a list of human rights at the Community level,<sup>7</sup> or expanded the notion of rights.<sup>8</sup>

On behalf of the states, Germany assumed leadership in the development of the CFR when it took over the EU presidency in 1999. As part of its presidential portfolio, Germany proposed a European bill of fundamental rights outlining its operational structure at the Cologne and Tampere European Councils of June and December. Germany's leadership on the subject highlights the role of domestic level factors. As a result of its history and its semi-dualist political system, Germany had been pushing for a comprehensive EU catalogue of fundamental rights for quite some time (Lenaerts and De Smijter, 2001: 277).<sup>9</sup> Moreover, reflecting the beliefs and views of a coalition comprised of Social Democrats and the Green Party, the idea of a Charter also provided opportunities to establish leadership on a new issue and for moving the debate on a European constitution further.<sup>10</sup>

Germany's government was aiming for a binding document which would be integrated into the existing Treaties and be comprehensive with an emphasis on social and economic rights, as SPD spokesperson for European affairs, Günter Gloser stated: "A Charter without social rights would constitute a step back for Europe and would send wrong signals to the international community."<sup>11</sup> However, confronted with both internal opposition as well as resistance from other Member States, the enthusiasm of many governmental officials such as Gloser was dampened. With respect to the former, the euroskeptic Christian Social Union (CSU) in the German *Bundestag* opposed the inclusion of social and economic rights in the Charter of Fundamental Rights. According to its spokesperson on European Affairs, Gerd Müller, a right to education, to work, a home, or a right to a class action suit did not belong into a document that "would establish a common foundation of values for the EU" only, "strengthen solidarity among members and encourage cooperation on the basis of common values."<sup>12</sup>

Among the member states, the most vocal opponent was not surprisingly Great Britain, interested in toning down the social and economic rights dimension and keeping it a non-

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<sup>6</sup> The list included among others the right to life, freedom of opinion and information, freedom to choose an occupation, collective social rights, right of petition, environment, or consumer protection, many of which also feature also in the CFR ([1989] OJ C120/51).

<sup>7</sup> E.g. *the Report on the Treaty of Amsterdam*, November 5, 1997 (Doc. A4-0347/97).

<sup>8</sup> E.g. *the Draft Constitution of the Committee on Institutional Affairs (the Herman Report)*, which added the "right to work," a right which was the subject of heated debate in draft versions of the CFR ([1994] OJ C61/155).

<sup>9</sup> For example, when the European Court of Justice declared its authority on fundamental rights, German and Italian courts were influential (Lenaerts and De Smijter 2001: 276): Solange judgement of the German *Bundesverfassungsgericht* of 29 May 1974, BverfGE, 37, at 271 (for an English translation, see [1974] CMLR, 540).

<sup>10</sup> Symbolic in this regard was the speech of Foreign Minister Joschka Fischer at the Humboldt University in Berlin calling for a European federation with parliament, a legislative government, a constitution and perhaps an elected president.

<sup>11</sup> „Grundrechtscharta soll Bürger im Streit mit Brüssel helfen," *Associated Press*, April 15, 2000.

<sup>12</sup> "Fischer sieht Fortschritt für EU-Grundrechtecharta," *AP Worldstream – Germany*, August 25, 2000.

binding document. According to the spokesperson of Prime Minister Tony Blair, Lord Goldsmith, the Charter was nothing more than a “declaration of existing rights” which would give Brussels no new powers.<sup>13</sup> Britain’s position regarding the Convention mirrored domestic opposition from business and conservatives. The Confederation of British Industry and the British Chamber of Commerce considered the Charter a serious threat to business and as a means to extend EU social and employment rights. In the eyes of the Chamber, articles on worker’s rights were likely to “reverse many of the labour market flexibility reforms of the 1980s.”<sup>14</sup> Similarly, Tories branded the CFR a “job destroying charter,” but also perceived it as a move “by stealth” towards a European superstate. Francis Maude, British Shadow Foreign Minister, expressed fears that a binding Charter would “become another burden on British jobs and another bind on British independence. It [would] give unelected EU judges more power to dictate to our politicians what our laws should be.”<sup>15</sup> British conservatives and the business community feared further intrusion from the European Union. Together with the support of Spain, Finland, Sweden, and Denmark, the British government was able to obtain a number of compromises on worker rights, the most contested in the Charter document, and the insertion that economic and social rights need to be in accordance not only with Community law, but also with national laws and practices. Moreover, contrary to the hopes of Germany, France, Italy, the Benelux countries and others, the CFR has until this point only declaratory status.

*OAS.* In the inter-American case it is difficult to find clear evidence of a motive for the changes that is consistent across a variety of actors. Because the wave of democracy sweeping Latin America coincided with the legalization of democracy norms within the OAS, Moravcsik’s argument would appear to hold the most promise (Parish and Peceny, 2002: 236). Yet, as we demonstrate below, a careful analysis turns up insurmountable difficulties for this argument. Additionally, IOs have helped drive the legalization process, but their influence is less than in Europe. We are therefore left with the possibility that states were either motivated by the need for more credible commitments or by principles, or both. It seems plausible that they were motivated by both, but frankly have little evidence for this argument yet.

At first glance, Moravcsik’s explanation helps make sense of Resolution 1080, the Washington Protocol and subsequent OAS actions. A wide variety of Latin American countries made transitions to democracy in the 1980s and early 1990s, including some of the largest and most influential, such as Brazil, Argentina, Chile, and Peru. Almost all faced serious threats from domestic actors with more authoritarian preferences. An analysis of the resolution’s sponsors suggests that new democracies took the lead in multilateral efforts to promote democratic governance. Chile, for example, played a key role in drafting and promoting the Santiago Commitment to democracy. Argentina took

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<sup>13</sup> Patrick Wintour, “Britain calls for EU Charter changes,” *The Guardian – London*, August 1, 2000, p. 4.

<sup>14</sup> Kevin Brown and Peter Norman, “Blair urged by business to block EU Charter,” *Financial Times – London*, September 21, 2000.

<sup>15</sup> Philip Webster and Martin Fletcher, “Blair ‘misled nation over EU Charter,’” *The Times – London*, October 13, 2000.



the lead in proposing the Washington Protocol.<sup>16</sup> By the same token, Mexico was the only country to oppose the Washington Protocol, and Mexico was one of the most notably nondemocratic countries in Latin America in 1992. News reports that interviewed diplomats tend to confirm the impression that new democracies are especially interested in international protection. "Look, I am part of an entire generation that came into adulthood under a military regime," said Heraldo Munoz, Chile's delegate to the O.A.S. "We have established democracies out of our own traumatic experiences. We are tired of internal war. So you've got to try to set up some kind of mechanism to protect these democracies."<sup>17</sup>

A closer examination, however, reveals a series of problems with this argument. First, established democracies generally supported Resolution 1080 and the Washington Protocol and sometimes were very strong advocates (see Table Two). According to Moravcsik's logic, such established democracies should oppose measures that impinge on sovereignty because they have no domestic threats to fear and will not benefit from the sovereignty loss. In 1992, the OAS had four stable democracies (Canada, Costa Rica, the United States, and Venezuela). All four supported the Washington Protocol, and the United States and Venezuela played key roles in beating back attempts to weaken it.<sup>18</sup> During debates, the United States stood most strongly against a provision that would retain state sovereignty by giving veto power to any single state. When discussing Resolution 1080 the previous year, Venezuela favored automatic sanctions. All four ratified the protocol before it went into effect in 1997; Canada was the first to ratify the protocol and the United States fourth. Venezuela's ratification put the protocol into effect, but also came after Venezuela which had slipped from the stable democracy category into the unstable category.

#### TABLE TWO HERE

Second, new democracies split on their verdict of the protocol. Argentina, Chile, and Honduras strongly favored it and others like Bolivia and Uruguay were happy to go along. Yet Brazil and the Dominican Republic both registered strongly skeptical stances, and the Dominican Republic is the only other state (in this sample) besides Haiti and Mexico that still has not ratified the protocol. When Argentina first made a proposal for the protocol, Brazil was the first state to respond in writing, arguing that democracy is not a matter of international law. When it became apparent that states would move forward anyway, Brazil opposed any yielding of sovereignty by proposing that any state save the one being punished could wield veto power over the decision to suspend. During the negotiations, Brazil favored this position to the very end before finally giving in. The Dominican Republic argued strenuously against the resolution by raising the specter of intervention.

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<sup>16</sup> "Acta de la Cuarta Sesión," Comisión General, OAS, 20 May, 1992. See also Agence France Presse, "Peruvian president receives limited support for democracy plans," May 19, 1992; Inter Press Service, "Latin America: OAS committed to democracy and human rights," May 20, 1992.

<sup>17</sup> New York Times, June 9, 1991.

<sup>18</sup> My analysis draws on the primary sources listed in footnote 25.

The best evidence for Moravcsik's argument is that non-democracies were generally skeptical of the Washington Protocol and even opposed it outright. Colombia, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, and Peru all fell into the non-democratic category in 1992. Of these, Colombia and Guatemala were clearly skeptical and tried to weaken the proposal while Mexico opposed it outright. Haiti, El Salvador, Nicaragua, and Peru all remained silent during the debate. Even this evidence is problematic. Colombia, El Salvador, Guatemala, Nicaragua, Paraguay and Peru all ratified the Protocol while still lacking fully democratic governments. Even more strikingly, Panama and Paraguay essentially supported the protocol and ratified it relatively quickly. Of the non-democracies, only Haiti and Mexico failed to ratify the protocol. Even the new democratic regime in Mexico has so far failed to ratify the protocol.

Moravcsik's theory does not fit terribly well in part because differences among states are not as pronounced as the similarities. In 1991-92, the OAS acted extraordinarily quickly and with near-unanimity to adopt enforcement mechanisms for the democracy norm. Legalization garnered support from both powerful and weak states as well as from states with a variety of domestic structures and regime types. Even states who began as skeptics were, within a few months, voicing their approval of the Washington Protocol. As we have shown, similar proposals had been advanced for decades without prospering. None of the motives surveyed above can explain such a dramatic convergence of state preferences following decades of disagreement. The most that might be said is that system-level variables rather than unit-level variables have a better chance of explaining the convergence of state interests (Finnemore, 1996). All unit-level theories would expect important differences to emerge across states, yet such differences are relatively minor in the post-Cold War OAS.

Nonstate actors have helped push the legalization process in the Americas, but their influence has been much less than in Europe. The most important IOs are the Inter-American Commission of Human Rights and its counterpart, the Inter-American Court of Human Rights. The Commission has helped bring greater precision to the human rights convention by promoting new issue-specific treaties and regional human rights initiatives. The Court has helped increase the level of obligation and precision by gradually developing a body of case law that fleshes out the underlying human rights convention and by formally holding states responsible for their abuses. States have generally complied with the court's cautious and well-reasoned rulings, building important precedents for ever-tighter obligation. At the same time, it is important to note that these bodies have contributed to the legalization of human rights, but not to democracy—at least, not in any direct or discernible way.

What then more fully accounts for the legalization of democracy and human rights. Though we do not yet have systematic evidence, it seems likely that some states were motivated at least in part by principle. Venezuela and Costa Rica have both long viewed themselves as champions of human rights and democracy in a region marred by chronic instability and massive government abuses. For decades, they have consistently

supported a bigger role for human rights and democracy in the OAS. They were some of the strongest, earliest, and most influential states supporting legalization in the 1990s.

Other states were probably concerned with reducing the costs of instability and creating more credible commitments. The United States, in particular, was looking in the early 1990s for ways to scale back the military costs of the Cold War and eager to find new mechanisms for helping ensure stability in the region. Though loath to bind itself to human rights agreements that can be adjudicated, it has been more willing to subject itself to a stronger commitment to the broad notion of democracy. For the United States, this is a rather low-cost way to help ensure democratic continuity in the region and to legitimize interventions if necessary. The political rather than judicial nature of the enforcement mechanism helps ensure that the United States can strongly influence the enforcement process and will not become subject to punishment for norm violation.

### **Window of Opportunity**

One important difficulty with interest-based approaches is that scholars often highlight one set of interests that are likely to produce the outcome in question, but fail to develop or even mention countervailing interests that might push the other way. As a case in point, we have argued that state interests in regional stability are likely to lead states to legalize relevant international institutions. Yet powerful states also have a countervailing interest in fluidity and being able to influence events in other countries in beneficial ways. Powerful states sometimes even have an interest in undermining (short-term) stability within a given country or region if it helps them attain other goals such as political control. For example, during the Cold War the United States sometimes fomented regional instability, as when it armed the Contras, in order to serve (perceived) interests related to anti-Communism. Legalization, which would have helped bind the hands of the United States, was perceived to be a poor policy option in this context.

The point here is that the broad political-strategic context matters. Events help determine which interests will rise to the fore and are most likely to be acted upon. We reject the notion that state interests can be rank-ordered in any meaningful way independent of the political and strategic context in which states find themselves. Further, as Keohane and Nye (1989) have continually pointed out, state interests and power resources vary by issue area. It is also important to recall that any given interest can be consistent with a range of policy options. Different political and strategic contexts bring different interests to the fore and make different policy options more or less appealing.

We refer to significant changes in a state's political and strategic context as a "window of opportunity." By political and strategic context, we mean the distribution of issue-relevant power resources, the nature and severity of threats facing the state, and events that shape these two factors. This definition provides significant content to a notoriously slippery term. The underlying concept remains focused on the idea that some kinds of events provide opportunities for states to change their behavior and that events can affect both state calculations and perceptions. Although windows of opportunity are difficult to operationalize, they are not impossible. Above all, scholars should not fall into the

circularity trap of identifying windows of opportunity by changes in state behavior. Such an approach is obviously nonfalsifiable.

Under what political-strategic context should states pursue legalization as a policy option? Generally, we expect legalization to become a more attractive option as security threats fade and as shifts in power resources demonstrate the inadequacy of less legalized institutions. In the face of strong security threats, states will prefer flexibility over legalization. While legalization can increase a state's confidence that others will adhere to the rules, it also places more constraints on that state. Where states face significant security threats, they will be reluctant to engage in legalization that restricts their freedom of action. The difficulty is that no amount of legalization can ever ensure that other states will be completely bound by those rules. Even states that commit to a legalized system of liberal values (free trade, human rights, etc.) can have their governments threatened or replaced by force. Where existing threats are high—and thus the possibility of force is real—naturally risk-averse states will avoid legalization. In this perspective it was no surprise that, while the George W. Bush administration was generally opposed to legalization when it took office, U.S. concerns about the ICC and other legalized institutions turned into outright hostility in the wake of Sept. 11.

As security threats fade, however, legalization becomes a more attractive policy option. As we argued above, legalization offers predictability and lower transaction costs. Where states do not foresee any serious threats that would require freedom of action, they will be more attracted by these kinds of benefits. Flexibility comes with its own set of costs, including the substantial costs of reacting to adverse events rather than attempting to prevent problems in the first place. These costs are more onerous when states face no serious security threats because they are not offset by the high benefits of unrestricted action.

Events that trigger or signal important shifts in issue-relevant power resources can also open opportunities for legalization when they demonstrate the inadequacy of existing, less-legalized institutions. Typically, scholars have examined policy failure as a window of opportunity. We would like to shift the focus, however, to changes in resource distribution that raise important questions about the ability of existing policies to benefit from those changes. This conceptualization would include most cases of policy failure, but is broader because it also includes policies that have not yet failed but come under increasing scrutiny in the face of “real-world” changes.

In other words, we suggest, rather commonsensically, that policymakers are forward-looking when assessing opportunities, and do not only react to past failures. States are quite capable of identifying ongoing and future changes in resource distribution and of assessing the adequacy of existing policies in the face of those changes. They need not wait for policy failure to occur to see opportunities. The Reagan administration's position on the ozone regime helps illustrate our point. Generally, the administration generally opposed legalized international agreements and had no strong international environmental platform. Nevertheless, it correctly predicted a significant change in the issue-relevant resource area when DuPont developed viable CFC substitutes ahead of

rivals in other states. Because the existing ozone agreements were too weak to take advantage of this predicted resource shift, the administration successfully pushed for a more legalized agreement.

## Empirical analysis

*EU.* As we already mentioned in the beginning, the end of the Cold War provided opportunities for further legalization in the different organizations. In the case of the European Union, it triggered a series of events that placed human rights and democracy front and center on the European agenda. The civil war and the ethnic cleansing in the former Yugoslavia occurred in the immediate backyard of the European Union. Moreover, with the dissolution or breakdown of states, the influx of refugees, victims of trafficking, and political asylum seekers increased dramatically as did racism and racially motivated crimes throughout Europe.<sup>19</sup> The European Union responded to these problems with institutional changes. For example, it introduced the European Initiative for Democracy and Human Rights in 1994 as separate budget item (B7-70) intended, among other things, to support democracy in Central and Eastern European countries, including the former Yugoslavia, human rights NGOs, or the activities of international courts.<sup>20</sup>

More importantly, in the early 1990s the European Union moved away from being an exclusively economic community and toward being a political union held together by common values and beliefs. The Treaties of Maastricht (1992) and Amsterdam (1997) played a crucial role in this respect. The Maastricht Treaty added two new pillars to the already existing common market -- justice and home affairs and the common and foreign security policy (CFSP) -- which paved the way for discussing non-economic issues, including human rights and democracy. Moreover, the legislative powers of the European Parliament (EP) —a major proponent of human rights and democracy — were augmented. While the Maastricht Treaty granted the European Parliament the right to vote on a new and incoming Commission, the Amsterdam Treaty endowed it with the right to co-decision with the Council of Ministers in a number of issue areas (Falkner and Nentwich, 2000).

In addition to the movement towards a political union, enlargement also played an important role in the increasing legalization of human rights and democracy. As already mentioned, respect for fundamental rights and the rule of laws functioned partly as a screening mechanism and was included as one of the three requirements for the accession countries in the Copenhagen Criteria of 1993 – the blueprint for enlargement.

The deepening of human rights in light of enlargement is not new. According to Menéndez (2001:15) it is the continuation of a pattern because “any major step in the road of European integration came hand in hand with the symbolic affirmation of fundamental rights as the founding principle of the Communities.” Previous accessions

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<sup>19</sup> See annual human rights reports of the European Parliament and Amnesty International.

<sup>20</sup> European Commission: European Initiative for Democracy and Human Rights. 1998 Compendium of Activities financed under Chapter B7-70 of the European Union budget and managed by DG IA, p. 3.

already prompted Member States to strengthen human rights, although in a less stringent manner. The accession of the United Kingdom, Ireland and Denmark was preceded by the affirmation of fundamental rights by the European Court of Justice in 1974 and followed up with the adoption of the *Copenhagen Resolution on European Identity*. Furthermore, prior to the accession of Greece, Spain, and Portugal – all of which were relatively new democracies -- the European Parliament issued a declaration of political principle on the definition of fundamental rights, which culminated in an inter-institutional declaration on the protection of fundamental rights between the Parliament, the Council of Ministers and the Commission on April 5, 1977.<sup>21</sup> Finally, the creation of the European Economic Area and the enlargement of the EU to include Sweden, Norway, Finland, and Austria revived the debate about whether the Union should sign the European Convention of Human Rights. The European Parliament called for legal conditions to be created to enable fundamental rights to be codified, so as to ensure that rights are comprehensively safeguarded under Community law.

*OAS.* In the case of the Organization of American States, the declining security threat, symbolized by the end of the Cold War, clearly opened an opportunity for legalization in the hemisphere. By the early 1950s the Cold War was already well under way and its effects were reverberating throughout Latin America. In the face of perceived or real domestic threats to Latin American governments, the United States and others were unwilling to consider enforcement mechanisms that would strengthen the democratic norm. Obviously, the United States realized that anti-Communism took priority over democracy-promotion, though it was unwilling to say so explicitly. The 1954 US-sponsored coup against a relatively democratic government in Guatemala made this point exceptionally clear. Efforts to give some teeth to the democracy norm in the Americas were hopeless pipe dreams during the Cold War. Perceived security interests in the US and other Latin American states overrode any interest in strengthening democracy.

The end of the Cold War created a remarkable opportunity for states favoring the democracy norm. Freed from security concerns and caught up in the rhetoric of freedom's triumph over communism, the United States suddenly favored enforcement mechanisms to spread democracy. Washington even loaned its name to the protocol adopted in that city that authorized the OAS to suspend authoritarian governments. The United States may yet regret the decision, but the happy correspondence between democracy and hemispheric security has so far been strained only in Colombia. It is difficult to imagine US agreement to the protocol—let alone sponsorship—absent the window of opportunity created by the end of the Cold War.

Of equal importance, the Cold War's demise also altered the security calculations of Latin American states. Although some Latin American countries favored the creation of multilateral mechanisms and actions during the Cold War, more opposed them due to fear of US intervention (Parish and Peceny, 2002: 235). Fear of multilateral discourse and institutions that would give the United States a pretext to intervene in runs extremely

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<sup>21</sup> [1977] OJ C 103/1. According to Rack and Lausegger (1999: 805) part of the reason why the Declaration was adopted was that by 1977 all the Member States had ratified the CE's Human Rights Convention.

deep in Latin America (Smith, 1996). Since their independence in the 1820s Latin American states have attempted to fashion international rules that would constrain US interventionism and have ardently opposed international rules that might facilitate it. To some governments—most especially Mexico—proposals to allow multilateral enforcement for democracy look like blank checks for the US to intervene and to anoint its action with the OAS's blessing. The 1965 US invasion of the Dominican Republic, which was done in the name of democracy and subsequently garnered a somewhat forced approval from the OAS, provided a case in point.

Yet the end of the Cold War altered Latin Americans' security calculations with respect to intervention. The long-standing motive for US intervention, Communism, quickly vanished. Absent a clear motive, Latin American states had less to fear from their powerful northern neighbor. At the same time, the United States finally built some trust in the region in the waning years of the Cold War by aiding the emergence of new democratic governments (Parish and Peceny, 2002: 236). When the United States supported the Washington Protocol, only the Dominican Republic and Mexico raised the banner of nonintervention.<sup>22</sup> It seems unsurprising that these states are among the closest Latin neighbors and therefore perhaps have the most to fear from US meddling. Only Mexico pushed the issue and offered outright opposition to the Protocol. In 2001, after a decade of remarkably little US interventionism in Latin America, even Mexico supported the Inter-American Democratic Charter that strengthened the OAS's multilateral commitment to democracy.

## Normative Context

Although state interests can create a demand for more obligation, precision, and delegation, and decreasing security threats can provide windows of opportunity for states to act, the *content* of that action cannot always be determined by motives and opportunities. That is, states need to decide *which principles* they prefer to strengthen through higher levels of legalization. In many cases, interests and strategic context alone are insufficient to inform states which principles they should choose to legalize.

Consider state interests in regional stability. It is difficult to dispute the assumption that states prefer stability and difficult to argue that this preference is driven by norms rather than by functional need or obvious necessity. Yet that interest alone is insufficient to tell states which institutional activities will help them get what they want. States seeking regional stability might strengthen international institutions with respect to: 1-preventing transnational crime; 2-establishing market economies; 3-stabilizing immigration flows; 4-preventing military build-ups; 5-enabling economic development; or 6-establishing human rights and democracy. One can make the same kind of argument about each of

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<sup>22</sup> Detailed information on the positions of various states may be found in three principal sets of documents. The first is the series of documents compiled by the Special Committee on Amendments to the Charter of the Permanent Council of the OAS, each with a different title but denoted OEA/Ser.G, CE/Carta and then numbered 1/92 through 26/92 with dates from 14 Aug. to 6 Oct. 1992. The second is the "Report of the Special Committee on Amendments to the Charter," Nov. 23, 1992, OEA/Ser.P, AG/doc.6 (XVI-E/92), especially addenda 2-10. The third is the "Actas y Documentos" of the 16<sup>th</sup> Extraordinary Session of the OAS General Assembly in Washington, DC, OEA/Ser.P/XVI-E, 14 Dec. 1992.

the interests we identified above. Any given interest is likely to be broad enough to accommodate a variety of institutional strategies. How then do states decide which principles should be legalized?

We expect the most deeply held and most well-established norms to influence the content of the legalization process. Where two or more cooperative paths exist to help states achieve their interests and uncertainty arises, states are likely to choose paths that they have utilized before. Established norms play a key role in helping them decide for three reasons: 1-ease of achieving multilateral agreement; 2-path dependence effects; and 3-relatively higher levels of confidence.

First, it is simply easier to build a multilateral consensus around principles that are already widely accepted. As Finnemore and Sikkink (1998) point out, some norms become taken for granted and therefore difficult for any state to oppose. In fact, states would not routinely consider whether they really should oppose strengthening such norms. When motivated actors propose increasing legalization of a taken-for-granted norm, few will oppose the proposal. Even in cases where the norms are not taken for granted, well-established norms provide focal points around which actors tend to converge in order to achieve their interests (Goldstein and Keohane 1993).

Second, historical institutionalists have pointed out a variety of reasons why institutions and the norms embedded within them tend to persist and grow stronger over time. In the economic path-dependence literature, initial decisions constrain future behavior by structuring incentives in ways that reinforce the decision, even if it was suboptimal. Large initial investments provide incentives to continue investing in the same way in order to avoid fixed and startup costs necessary for new kinds of investments. Likewise, initial policy decisions encourage large investments of resources designed around that set of rules, creating vested interests opposed to large changes in the rules. Other self-reinforcing mechanisms of path dependence include learning effects, coordination effects, and adaptive expectations (Pierson 1996, 144-48).

Third, successful experience with a particular norm leads states to have confidence in that norm, which in turn eases fears about the costs of legalizing that norm. As realists argue, states must ultimately fear for their survival and therefore see substantial costs from processes such as legalization that can limit their behavior and sovereignty. At the same time, liberals of course point out the gains that can be achieved through cooperation. States navigating between these two poles are likely to be influenced by the degree of confidence they have in the norm and institution that they are being asked to legalize. Where states have substantial experience with and knowledge about a given institution, they will be relatively more willing to strengthen that institution.

Our argument here echoes familiar debates in the literature about whether norms inform state interests, but at the same time reflects important differences. When laying out state interests, we were agnostic about where they come from. We assume that interests may be informed by both relatively objective strategic situations and by preexisting understandings. We find an either/or position on this question unhelpful. At the same



time, we argue that norms influence states in consistent ways. In particular, we argue that norms help determine the institutional path that states pursue. This theoretical position sidesteps stale dichotomies of the past and opens new ways to think about how norms and interests interact.

## Empirical analysis

*EU.* Existing human rights norms have been critical for the development of human rights in the EU, particularly those of the Council of Europe. Considered the most developed human rights regime to date, it has been an important reference point for European member states and their citizens. More specifically, it helps to explain why the EU embarked on establishing a separate regime only in the 1990s rather than sooner. In the eyes of member states, the CE regime had provided sufficient protection until then, since all of them were party to it and subject to its scrutiny. In addition, the regime was a gatekeeper for accession states. Particularly for Eastern European countries, ratification of the ECHR became an antechamber leading to the doorway of the EU (Storey, 1995).<sup>23</sup> Finally, member states refrained from developing separate human rights instruments outside of the CE, due to the fear that they might create unnecessary tensions and conflict (Besselink, 1998; Lenaerts and de Smijter, 2001). Why then did EU governments reverse their position?

The legalization of human rights and democracy in the EU in the past decade was prompted by increasing gaps in the protection granted by the CE framework. First, neither the Council of Ministers nor the Commission or the European Parliament (EP) are party to the CE's Human Rights Convention, so that non-members of the EU enjoy at this point more comprehensive protection than members of the EU because European Union citizens have no legal recourse if their rights are violated by an EU institution.<sup>24</sup> Frequent attempts by the European Parliament to remedy this situation had been rebuffed by the European Court of Justice (ECJ) with a report issued on March 28, 1996.<sup>25</sup> In it the Court rejected the Community's accession to the CE's Human Rights Convention since this would be equivalent to an amendment of the Treaty or require concurrent changes. Moreover, accession would result in an essential change of the present community system for protecting human rights, as it would entail the Community's integration into a different institutional system governed by international law and the incorporation of all provisions of the CE's human rights convention into Community law.

In addition to the incomplete protection of Union citizens due to the non-membership of EU institutions, gaps also became apparent over time with respect to specific types of rights and contributed to the codification of the CFR. For example, the CE's Human Rights Convention focused exclusively on civil and political rights. Economic and social

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<sup>23</sup> All of the CEES states have become party to the human rights regime of the Council of Europe following the end of the Cold War. Even Turkey has accepted the right to private petitions and the role of the Court despite evident human rights problems, especially with respect to the Kurdish question.

<sup>24</sup> See Rengeling, Hans-Werner, "Eine Charta der Grundrechte: Die EU wird zur Wertegemeinschaft," *Frankfurter Allgemeine Zeitung*, 21. July, 1999, p. 13.

<sup>25</sup> [1996] ECR I-1759.

rights, which played a particularly important role in the EU, were only covered in the non-binding CE's Social Charter. Moreover, issue areas, such as biotechnology or information technology -- areas in which the EU became increasingly active and which involved personal rights questions -- were not covered by the CE's Human Rights Convention (Douglas-Scott, 2001: 6).

*OAS.* When the OAS incorporated democracy-promotion as one of its essential purposes in 1985, it did not create an entirely new norm, but rather built on a strong tradition of multilateral democratic discourse and norms stretching back to the early 1900s (Munoz, 1998). The first multilateral agreement to promote democracy in the Americas dates to the 1907 Conference on Washington, whose participants consisted of the United States and Central American states (Drake 1991, 11-12). Their commitment to not recognize any Central American governments that did not arise from free elections was obviously a hypocritical and self-serving US smoke screen, but it marked the advent of a multilateral discourse endorsing democracy. This discourse gained more widespread support in 1936 when all American states, in the face of trouble brewing in Europe, for the first time endorsed democracy as a "common cause" (Munoz, 1998: 3). They reiterated that commitment each year until 1945.

After World War II, American states endorsed democracy in more serious and consistent ways, thereby creating a clear, specific regional norm (Munoz, 1998: 3-5). Significantly, states first endorsed a democratic norm in the central security treaty for the Americas, the 1947 Inter-American Reciprocal Assistance Treaty, which states that peace is "founded on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms (...) and on the effectiveness of democracy (...)." The following year American states founded the OAS, whose Charter proclaimed that hemispheric solidarity requires that states organize themselves "on the basis of the effective exercise of representative democracy." This democracy norm obviously suffered from repeated violations throughout the Cold War, but norm violations do not necessarily mean that the norm ceases to exist. In fact, American states reiterated their commitment to the democracy norm in 1959, 1962, 1965, and 1980.

When states adopted democracy-promotion as an essential purpose of the OAS in 1985, they were simply increasing the centrality and importance of a norm established at the end of World War II. When states created enforcement mechanisms for the norm in 1991-92, they were also building on well-established prior understandings. The democracy norm was undoubtedly battered by authoritarian reversals in the 1960s and 70s and perhaps even disappeared. Yet it seems plausible that the move toward enforcement in the early 1990s was facilitated by the fact that states had long experience with the norm.

This conjecture finds additional support from the fact that a variety of states attempted to create enforcement mechanisms for the norm in the 1940s, 50s and 60s, but failed. In discussions surrounding the OAS Charter, Brazil, Uruguay and Peru all favored some kind of enforcement mechanism to penalize non-democracies, but they failed to gain wider support (Munoz, 1998: 3-5). In 1959, some states favored a proposal enabling the

OAS to take a variety of actions against non-democratic governments, but it again failed to achieve much support.<sup>26</sup> A final effort in 1965 produced a simple agreement that states would consult with each other on how to respond to authoritarian governments. Norm robustness (the length of time the norm has been in place) constitutes one key difference between these failed efforts and the successful efforts of the 1990s.

## Conclusions

Legalization with respect to human rights and democracy is occurring in the EU, the CE, and the OAS, despite enormous differences in these three institutions. The EU is of course quite different from any other IO or state, apparently falling into a category of its own. Yet we have found that legalization occurs in other international institutions just as legalization also occurs in the EU. One might be tempted to claim that legalization in the EU is more advanced than in other institutions, but this would be incorrect. On human rights issues, the CE is clearly the most legalized institution, though the EU may soon catch up. On democracy issues, the OAS adopted an enforcement mechanism a few years before the EU did, thereby blazing a trail on the delegation component that the EU later followed.

Of course the EU is different, but it is incumbent on analysts to make this claim in more precise and accurate ways. The major difference is that human rights and democracy legalization in the EU is intricately linked to a very wide range of other issues that are also becoming legalized at a rapid pace. In the OAS and CE, in contrast, democracy and human rights legalization have much more tenuous links to the legalization of other issue areas—which in any case are not as broad as those in the EU and not being legalized as rapidly. When one examines the legalization of human rights and democracy specifically, however, it becomes apparent that all three organizations are becoming more (not less) legalized and that this process has advanced considerably in the past 20 years.

Is it possible to account for these similarities in dissimilar institutions? Frankly the task is difficult. We are tempted to say that there are multiple paths to legalization, just as some democratization scholars have decided that there are multiple paths to democracy. For the moment, nevertheless, we are still looking for unifying variables. Two factors are common to the three cases and therefore can best explain the similarity in outcomes.

First, in both the EU and the OAS, the end of the Cold War provided a window of opportunity for further legalization though with interesting differences. While the disappearing security threat decreased the fear of intervention on the part of Latin American countries, it confronted European governments with problems ranging from increases in refugees and racism as well as institutional challenges due to Eastern and Southern enlargement for which they needed an answer.

Second, the normative context in which the two organizations are embedded was critical for states to increase the level of obligation, engage in further precision of existing

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<sup>26</sup> “Documents of the Council of the OAS on the Draft Convention on the Effective Exercise of Representative Democracy,” OEA/Ser.E/XIII.1, Doc. 8, March 1, 1965.

institutions, and to delegate more authority to third parties. In particular, the revival of the dormant democracy norm facilitated the negotiation of tougher enforcement rules in the OAS context and the human rights regimes of the Council of Europe provoked the legalization of human rights and democracy in the EU.

Interestingly, motivated actors, which have figured prominently in other studies of legalization, proved to be a less fruitful explanation for our cases. Although actor motives are far from irrelevant, we observe a significant degree of variation in the relevant motives by institution and by state. While in the case of the OAS we found states to be the overriding force regarding legalization, both state and non-state actors pushed for changes in the EU. Moreover, in contrast to European actors, for whom the legalization of human rights represented a shared interest, served as a screening device for new members, or a means of enhancing the legitimacy of the organization vis-à-vis citizens, the movement from softer to harder law in the OAS was primarily driven by states' interest in regional stability.

Obviously, our findings are still preliminary and need to be contrasted with those of the CE. Nevertheless, they bring to the fore interesting dimensions about legalization that require further investigation. Although our comparison supports the claim that legalization is more widespread than previously assumed, it challenges the assumption that motivated actors are the key variable. Instead, we find systemic variables to play a greater role, which have thus far been neglected in the analysis.

## Appendix – Key Passages from Governing IO Documents

(all dates represent adoption dates, not dates of entry into force)

### Treaty on European Union, Consolidated Version, 2002

Article 6. 1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. 2. The Union shall respect fundamental rights. . . .

Article 7. 1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. 2. The Council . . . acting by unanimity [excluding the vote of the accused government] may determine the existence of a serious and persistent breach by a Member state of principles mentioned in Article 6(1). . . . 3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.

### Charter of Fundamental Rights, 2000

Article 51, Scope. 1. The provisions of this Charter are addressed to the institutions and bodies of the [European] Union . . . . They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers. 2. This Charter does not establish any new power or tasks for the Community or the Union, or modify powers and tasks defined by the Treaties.

### European Convention on Human Rights, 1950, as it existed in 1980

Article 25. The Commission may receive petitions . . . from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions.

Article 46. Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

Article 48. The following may bring a case before the Court, provided that the High Contracting Party . . . [is] subject to the compulsory jurisdiction of the Court. . . . : a. the Commission; . . . .

Article 52. The judgment of the Court shall be final.

Article 53. The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

European Convention on Human Rights, 1950, as it existed in 2001

All articles regarding the Commission have been removed and it has ceased to exist. As a result, individual petitions may be heard directly by the Court. Further, the Court's jurisdiction is no longer optional.

Article 32. 1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto. . . . 2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 34. The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.

Article 44. The judgment of the Grand Chamber shall be final.

Article 46. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The OAS Charter, 1948, as it existed in 1980

The essential purposes (found in Article 2) do not include promoting and consolidating democracy. There are no articles on penalizing nondemocratic governments.

Article 5 ("Principles") d). The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy; j) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.

The OAS Charter, 1948, as amended by the Washington Protocol, 1992

Article 2 ("Essential purposes") The Organization of American States . . . proclaims the following essential purposes: . . . b) To promote and consolidate representative democracy, with due respect for the principle of nonintervention.

Article 3 (Principles) d) The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy; l) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.

Article 9. A member of the organization whose democratically elected government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, and the Specialized Conferences as well as in the commissions, working groups and any other bodies established.

Inter-American Democratic Charter, 2001

Article 1. The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

Article 2. The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States

Article 3. Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms. . . .

Article 20. In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

Article 21. When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately.

American Convention on Human Rights, 1969

Article 62. 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

Article 63. 1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that

the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Article 67. The judgment of the Court shall be final and not subject to appeal.

Article 68. 1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.



**Table One: Summary Coding of the Dependent Variable**

Intl. Inst.	Obligation		Precision		Delegation	
	1980	2002	1980	2002	1980	2002
EU Treaties	Low	Mod. High	Low	Moderate	Low	Moderate High
CFR	None	Moderate	None	Moderate High	None	Moderate
ECJ	Moderate	High	Moderate	Moderate High	Moderate	Moderate High
ECHR	Mod. High	High	Mod. High	High	Mod. High	High
ECourtHR	Mod. High	High	Mod. High	High	High	High
OAS Charter	Low	Moderate High	Low	Moderate	Low	Moderate
ACHR	Moderate	Moderate High	Moderate	Moderate High	Low	Moderate High
IACourtHR	Low	Moderate High	Low	Moderate High	Low	Moderate High

ECHR: European Convention on Human Rights

ECourtHR: European Court of Human Rights

CFR: Charter of Fundamental Rights

ECJ: European Court of Justice

ACHR: American Convention on Human Rights

IACourtHR: Inter-American Court of Human Rights

**Table Two: Government Regime Type and Positions on Legalizing Democracy in the OAS**

	First Post-Authoritarian Elected Civilian President	Freedom House Free Rating <sup>27</sup>	Res. 1080 Position in Debates	Wash. Protocol Position in Debates	Wash. Protocol Ratification
Argentina	1983	1984-2000		Enthusiast	3/94
Bolivia	1982	1982-2000	Supporter	Supporter	12/94
Brazil	1985	1985-92	Skeptic	Skeptic	4/95
Canada	1800s	Pre-1977		Supporter	10/93
Chile	1990	1990-2000		Enthusiast	10/94
Colombia	1958	1972-88	Supporter	Skeptic	7/96
Costa Rica	1949	Pre-1972		Supporter	11/95
Dominican R	1978	1978-92; 98-00		Skeptic	Not Ratif.
Ecuador	1978	1979-95; 1998-99	Supporter		9/95
El Salvador	1984	1997-2000			3/94
Guatemala	1984	Never		Skeptic	6/99
Haiti	1990	Never			Not Ratif.
Honduras	1982	1984-92; 1997-98		Enthusiast	6/96
Mexico	1998	2000	Skeptic	Opponent	Not Ratif.
Nicaragua	1990	1998			5/95
Panama	1989	1994-2000		Enthusiast	5/95
Paraguay	1988	Never		Supporter	8/94
Peru	1980	1980-88	Supporter		9/96
United States	1788	Pre-1972		Enthusiast	6/94
Uruguay	1984	1985-2000		Supporter	12/97
Venezuela	1958	Pre-1972-1992; 1996-98	Enthusiast	Enthusiast	9/97

Sources: For column 1, a variety of standard secondary sources. For column 2, Freedom House data accessed at [www.freedomhouse.org](http://www.freedomhouse.org). For column 3, standard news sources located using Academic Universe database. For column 4, the primary sources cited in footnote 25, complemented by standard news sources located using Academic Universe.

*Washington Protocol Coded as follows:*

Enthusiast: Clearly oppose consensus vote for suspension action and favor 2/3 standard; favor wider grounds for state suspension.

Supporter: Support suspension measure, but want to make suspension slightly more difficult in some way, as with a ¾ vote.

Skeptic: Ultimately support the protocol, but try to weaken or delay it along the way by either favoring a consensus vote for suspension or by abstaining in Permanent Council vote to forward Argentine proposal.

Opponent: Oppose final proposal.

<sup>27</sup> Score of 5 or less when combining civil and political liberties.

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