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Premises and Promises of International Law

An Empirical Analysis of Treaty
Commitment (1945–2007)

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Chapter 1

Introduction

At no time since the end of World War II has the notion of global constitutionalisation seemed more urgent and promising than in the aftermath of the Cold War. It is only recently that the idea of reconstructing the development of international law as a process of global constitutionalisation has received intellectual appraisal (Falk, Johansen and Kim, 1993). Scholars of international law have started to unfold the concept of global constitutionalisation focusing on the prospects of establishing an international legal order based on constitutional principles. This normative angle on global constitutionalism is not surprising given its strong anchor in international law. Still, the recent debate on global constitutionalisation lacks empirical insights. So far, hardly any attempts have been made to examine empirically the process of global constitutionalisation. Such attempts, however, are crucial in order to make feasible suggestions about the future direction of the constitutionalisation of international law. To close this gap, this thesis embarks upon such an undertaking and studies the process of global constitutionalisation on empirical grounds. The thesis seeks a big “global constitutional” picture. Unlike the prospective view on global constitutionalisation in the recent academic debate, the thesis captures the process of global constitutionalisation in retrospect. To this end, it is particularly concerned with the shape of and antecedents to global constitutionalisation since the end of World War II.

While the attention to global constitutionalisation is a recent phenomenon, the idea of constitutionalising international law is not. The stage for global constitutionalisation had already been set at the end of World War II. And, the way for global constitutionalisation has not been paved by academics. Quite the contrary, efforts in support of an international legal order

based on constitutional principles were originally made in the aftermath of World War II by policymakers. These efforts set in motion a slow process through which international norms with constitutional properties have gradually been brought into being. This process has opened up new issue-areas and ways of norm creation and redefined the relationship between state and the individual. Turning back the clock sixty years, one will spot the origin of the process of global constitutionalisation ([Ackerman, 1997](#)).

1.1 A Global Constitutional Moment

Much as constitutional law in the national context is a reflection of the history of a country, the evolution of international law has been profoundly influenced by world events and the lessons that statesmen drew from those experiences. Most notably, World War II was the turning point in the development of international law and the catalyst that led to the establishment of the post-war international legal system ([O'Brien, 2001](#), 4).

The end of World War II left the United States (US) as the only major power capable of taking a lead in the reconstruction of the international order. Unlike many other states, the US was spared the massive devastation of World War II. The US had a sound industrial capacity and military control over sizeable segments of Europe and other regions of the world. It was the only state in possession of nuclear weapons, and one of the few states with both a political elite and a constitutional structure that had remained intact ([Robertson, 1997](#), 23–24). The international order was restored by the efforts of the United States as part of an ambition born out of both American idealism and realism. From experience with the League of Nations and with much of the impetus coming from US Secretary of State Cordell Hull¹ who wished to establish an effective system of international dispute resolution, grew the conviction that the new post-war international order ought to be built on the premises of international constitutionalism. Just as the United States had been held together by the Constitution of 1787, the vision for the international community was to unite based on agreed rules drawing upon principles of America constitutional law ([O'Brien, 2001](#), 39–40; [Rubinfeld, 2004](#), 1974–1976; [Russell, 1958](#); cf. [Klug, 2000](#)).

¹Cordell Hull was US Secretary of State in the Roosevelt administration. For his role in establishing the United Nations, he received the Nobel Peace Prize in 1945. He is often referred to as the Father of the United Nations.

However, the plan to build an international order modelled on American constitutional law had to yield to events. The rise of communist forces in China and the Soviet influence in Eastern Europe, as well as the consequent ideological conflicts between the Eastern and Western hemispheres forestalled a prompt realisation of the constitutionalist plans (O'Brien, 2001, 40).

Despite the difficulties, the post-1945 period witnessed a number of advances in international law, which most notably have found expression in the extension of the source, scope, and subject of international law, and which are considered to be essential to the concept of global constitutionalisation.

1.2 Developments in International Law: Source, Scope and Subject

Source One significant trend in international law has been the growth in the number of multilateral treaties designed not only to set in place a legal framework but also to promote cooperation in an interdependent world. Indeed since 1945 over 30,000 treaties have been registered with the United Nations (UN).² Treaties as well as custom are the most common methods and procedures by which rules of international law are created. They constitute the source of international law articulating what the law is and where it can be found (O'Brien, 2001, 79–81).

However, until the beginning of the twentieth century, rules of customary international law comprised the greater part of international law. Customary international law developed in the eighteenth century as statesmen began to formulate the rules that should govern the relations between sovereign states. Customary rules are rules of acceptable behaviour. They refer to general state practices recognised by the international community as laying down patterns of conduct that have to be complied with and that are accepted as law (cf. Villiger, 2003).

In contrast to the traditional method of creating law through custom, treaties (or international agreements) is a more modern and more deliberate method of law-making (McNair, 1961; Jennings and Watts, 1992). Having its origins in the Peace of Westphalia (1648), treaties have played a significant role in the development of international law. Today, international law is

²The evidence is set out in the United Nations Treaty Series and the United Kingdom Treaty Series.

primarily formulated by treaties. Treaties are a form of substitute legislation undertaken by states. They are written agreements between states which lay out rules of general or universal relevance and which oblige states participating legally to act in a particular way or to set up particular relations between themselves (Shaw, 2003, 88–89). Treaties are voluntary agreements which in principle bind only those states that are party to them. Thus, in contrast to the sometimes vague and general propositions of customary international law, treaties require the express consent of the contracting parties.³ They set out rules clearly and in detail, and represent the most tangible and most reliable method of identifying what has been agreed between which states. (Wallace, 2005, 21).

For many legal scholars, treaties constitute the most important source of contemporary international law and are seen as superior to the tacit agreement of custom. The primacy of treaties does not come as a surprise. In fact, it is a reflection of important changes in the course of the second half of the twentieth century within international law itself. The international legal system expanded horizontally to embrace newly independent states mainly through the process of decolonisation. Accordingly, the number of issues in need of international regulation has multiplied. These factors have necessitated adjustments in the international legal system and detailed rules in treaty form (O'Brien, 2001, 80–81; Shaw, 2003, 89).

Scope Thus, in the past sixty years, international law has made a revolutionary development from a relatively narrow system of interstate norms of coexistence into a wide-ranging and organised system of cooperation (Friedmann, 1964) by virtue of rules touching on nearly all aspects of life of contemporary society. The range of topics covered by contemporary international law has expanded hand in hand with the upsurge of new global pressures reflecting the greater interdependence founded upon economic, communications and cultural bases and operating beyond national regulation (e.g., Giddens, 1990; Simma and Paulus, 1998). The growing network of treaties has opened up non-traditional spheres of international law imposing obligations and fostering cooperation among states (Shaw, 2003, 44–47). Human rights law and environmental law have emerged as the most vital spheres

³Exceptions to this rule are certain treaties which attempt to establish a regime. The United Nations Charter, the General Agreement on Tariffs and Trade of 1947 and the Agreement Establishing the World Trade Organization, for instance, have an effect on non-party states.

of contemporary international law. Other traditional areas, for example the law of the sea has expanded into a vast system encompassing issues of conservation, exploration, and exploitation of the resources of the oceans and seabed. The traditional law of war has also grown into a larger area of humanitarian law. Other new or expanding areas of international law include international labour standards, international economic law covering financial, trade and development matters and international administrative law as well as the striking proliferation of international tribunals and quasi-judicial bodies adjudicating disputes between states, to name but a few (cf. [Boczek, 2005](#)).

Subject Another distinguishing feature of contemporary international law is the wide range of participants, including states, international and non-governmental organisations, as well as multinational companies. As international law has developed and expanded in scope, new entities capable of possessing international rights and duties have been granted legal personality on the international scene. While the rise of positivism in the eighteenth century emphasised the centrality and exclusivity of the state as the subject of international law ([Oppenheim, 1912](#)), one major feature of developments after 1945 has been the recognition of other legal persons on the international plane. Though states remain the most important subjects of international law, they are no longer the exclusive subjects of the international legal system. International organisations proliferated during the twentieth century. And, endowed with international legal personality, they became the guardians of international cooperation in an increasingly interdependent world ([Amerasinghe, 2005](#); [Wallace, 2005](#), 70–71). At the same time, the status of the individuals in international law has been transformed too. While positivist theory maintained that individuals constitute only the subject-matter in international law, modern practice does demonstrate that individuals are increasingly recognised as participants and subjects of contemporary international law ([Lauterpacht, 1950, 1977](#)). Human rights law, the law relating to armed conflicts and international economic law have been especially important in this regard. They grant individuals legal personality by providing them directly with rights and enabling them to have direct access to international courts and tribunals.

1.3 The Global Constitutional Project Resumed

Sixty years after the original post-World War II intentions to create a global legal order based on constitutional principles, the developments of international law are being viewed once more in a constitutional light. The topic of constitutionalisation of international law is again under intense debate. This time, however, the impetus is coming from somewhere other than the American constitutional lawyers. While the predominant attitude among American constitutional lawyers towards the prospects of global constitutionalism nowadays is indifference ([Ackerman, 1997](#)), European scholars, having rehearsed their constitutional skills within the European Union, have enthusiastically started to employ the “constitutional” vocabulary in their communications to the wider world. To them, global constitutionalisation is a shorthand term for both the emergence of constitutional law within the international legal order and for the spread of constitutionalism as a “mindset” ([Koskenniemi, 2007](#)).

In the current constitutional debate, particular attention is given to the identification of constitutional trends and challenges in establishing international organisational structures, and designing procedures for standard-setting, implementation and judicial functions. The issue of what a constitutionalised international legal system could and should imply is central in this context. However, despite the emphasis on the prospective significance of global constitutionalisation, almost no attempts have been made to approach the concept of global constitutionalisation empirically. Against this background, this thesis has examined the process of global constitutionalisation from an empirical viewpoint.

My research on global constitutionalisation has focused on three related aspects: (1) the conceptualisation and operationalisation of global constitutionalisation, (2) the study of the shape of global constitutionalisation, and (3) the antecedents of global constitutionalisation.

1.3.1 Approaching Global Constitutionalisation Empirically

In order to approach the normative concept of global constitutionalisation, one needs clear and consistent definitions that would allow for empirical inves-

tigations. The concept of global constitutionalisation still lacks such clarity. While there is considerable consensus about what global constitutionalisation ought to be, there is considerably less understanding about what global constitutionalism actually is, and how it should be captured empirically.

In an article published in the *Indiana Journal of Global Legal Studies* (Chapter 2), I have explored a preliminary conceptual framework of global constitutionalisation that would make an empirical examination possible. Drawing a parallel to the evolution of constitutional norms in the nation-state setting, I have reduced the notion of global constitutionalisation to the process through which international norms with constitutional properties are institutionalised. Thus, global constitutionalisation is a process of the emergence, creation, and identification of constitution-like elements.

I argue that this process brings about two specific sets of constitution-like elements: formal norms that structure the legal system and that generate the rule of law, and substantive norms that provide fundamental guarantees for the individuals.

I have distinguished between three types of global constitutionalisation: formal constitutionalisation, which indicates the institutionalisation of procedural and institutional guidelines for interstate relations; substantive constitutionalisation, which indicates the institutionalisation of fundamental rights provisions for individuals comprising civil-political and socio-economic rights; and encompassing global constitutionalisation, which implies the simultaneous emergence, creation, and identification of formal and substantive international norms.

Given that global constitutionalisation is closely linked to specific constitution-like norms, I propose that an empirical investigation of global constitutionalisation should be based on a “multi-treaty framework”. As outlined above, treaties are the most conventional norms in contemporary international law. They are written and binding international agreements. They regulate a variety of issue-areas and establish legal rights and duties not only for states but also other legal entities. If there are norms reflecting constitutional characteristics on the international plane, then they are likely to be found in multiple international agreements, which require ratification by nation states.

As the body of international law resembling constitutional norms is not concentrated in one single document, but is codified in various binding international agreements, I have compiled for the purpose of the empirical

analysis a data set comprising a selection of international agreements with constitution-like characteristics. The data set encompasses ratification entries made by states between 1945 and 2007 for 34 international agreements. The selected international agreements contain some important constitutional features. They address (1) the formal aspect of the international rule of law, as well as (2) substantive guarantees covering the most important issue-areas of international law, such as human rights law, humanitarian law, fundamental international labour standards and trade law. However, they do not cover the entirety of a constitutional document. As such, I call these agreements “quasi-constitutional”.

1.3.2 Shape of Global Constitutionalisation

Despite the importance of normative reasoning, it is crucial to investigate empirically the real developments in international law through the lens of global constitutionalisation. The lack of conceptual clarity of global constitutionalisation is combined with a dearth of empirical research. Systematic empirical research on global constitutionalisation is scant. It is far from clear how far the international legal order has been coined by the process of constitutionalisation. In a forthcoming paper in the *Review of International Studies* (co-authored with André Bächtiger and Arne Nothdurft) we have investigated the shape of global constitutionalisation (Chapter 3).

To this end, we have identified two stylised views of constitutionalisation: constitutionalisation as a unitary and all-embracing process on the one hand, and constitutionalisation assembling several differentiated processes on the other hand. While global constitutional unity aims at the creation of a global unitary constitution, differentiated constitutionalisation in contrast seeks to realise a multiplicity of autonomous subsystems in international politics – it suggests global constitutional plurality. We have asked whether international law is moving towards a more unified constitutional order or whether differentiated types of constitutional processes are emerging. In this regard, our goal has been to explore the degree of unitarism or pluralism in international law. On the basis of the multi-treaty framework, we have studied the sequencing (i.e., the time of treaty inauguration) and ratification pace of the quasi-constitutional international agreements.⁴

⁴This analysis is based on 32 agreements, and not the full sample of 34 agreements. Ratification entries for two agreements – the Protocol Additional to the Geneva Con-

As the empirical analysis on global constitutionalisation is faced with methodological challenges, we have employed sophisticated statistical methods – event history techniques combined with a counting process style of data imputation. Event history modelling offers an appropriate method for analysing the timing of political change, i.e., the change in status from non-ratification to ratification. It not only considers which states ratify international agreements, but also takes into account that some states do so with different time lags. The method takes into account that states may resign from a particular treaty and re-ratify it later. In addition, it accommodates censored and truncated data. In our analyses we have been confronted with fixed and random right-censoring as well as left-truncation. Finally, event history techniques can be applied to data with “multiple events per subject”. As our interest has been to examine a superordinate institutionalisation pattern of international quasi-constitutional agreements, we had to take into account that each state can ratify up to 34 international agreements. Our data has been formulated in terms of a counting process according to Andersen and Gill (1982) and combined with the marginal risk set approach of Wei, Lin and Weissfeld (1989) (WLW). The WLW counting process data consists of multiple records and is set up as annual intervals. The WLW counting process formulation takes into account that treaty ratifications by a specific state are not independent, but are not bound to have experienced a prior event (ratification).

Our statistical examination provides evidence for a “multi-speed globe” of differentiated constitutionalisation. Following a generation-based distinction of rights (constitution-like elements), we have found that the ratification of quasi-constitutional agreements embodying rule-of-law provisions and civil and political liberties is faster than the ratification of agreements containing socio-economic rights. While this analysis is unable to describe global constitutionalisation with its all-embracing characteristics, it is the first to examine the shape of global constitutionalisation in a systematic and sophisticated manner.

ventions relating to the Protection of Victims of International Armed Conflicts and the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts – have been included into the data set later.

1.3.3 Antecedents of Global Constitutionalisation

Beyond a mere descriptive analysis of global constitutionalisation, we have also explored the forces impeding or facilitating the process of constitutionalisation. In the article forthcoming in the *Review of International Studies*, we have made a first attempt to study antecedents to global constitutionalisation focusing on democratisation levels, state duration, and regional variation. We were able to demonstrate that the process of global constitutionalisation varies across political regime types and world regions. In contrast, there was no significant effect for state duration. While these findings provide important insights into the process of global constitutionalisation, they serve only as a starting point for more detailed and sophisticated analyses on the forces impeding or facilitating the process of constitutionalisation.

In a recent paper entitled *Hard Men and Soft Law* (co-authored with André Bächtiger and Arne Nothdurft), we have embarked upon such an undertaking and have studied the antecedents of global constitutionalisation in a systematic manner (Chapter 4). Drawing from the two major theoretical approaches in international relations, namely realism and liberalism, we have maintained that the gradual institutionalisation of the 34 quasi-constitutional international agreements since 1945 takes place in the context of a hegemonic order (with the United States as the hegemon). Against this background, we have asked how hard power (material capabilities of states) in combination with domestic political values (political regime type) and trade interdependence with the US would affect commitment to international quasi-constitutional agreements. Linking power-based, domestic politics, and interdependence-based explanations, we have proposed two conditional sets of hypotheses, one combining the power-based and domestic-politics-based explanation, and the other combining the power-based and trade-interdependence-based explanation. With regard to the former, ratification was expected to be most likely in the case of powerful democratic states, and least likely in the case of weak autocratic states. Linking state power and trade interdependence with the US, we have assumed that powerful states with a strong trade link to the US would have the highest likelihood of treaty ratification. In contrast, weak states with few trade links to the US were expected to have the lowest likelihood of treaty ratification.

Statistically, we have tested our assumptions employing as in Chapter 3 event history techniques; strictly speaking, the Cox proportional hazards

regression model with the modified partial likelihood. To minimise the possibility that our findings are spurious, we have included a set of controls in our statistical models: state duration, colonial past, political constraints, Muslim denomination, and a regional ratification intensity score.

Our findings reveal that both state power and regime type, as well as state power and trade dependence vis-à-vis the United States significantly shape the likelihood that states have ratified the 34 selected quasi-constitutional agreements. Ratification of quasi-constitutional agreements is most likely in the case of powerful democratic states, and least likely in the case of powerful and less powerful autocratic states. As regards the conditional effect of power and trade interdependence with the US, we have found that both powerful states with a strong trading link to the US and powerful states with a weak trading link to the US have the highest likelihood of treaty ratification. In contrast, weak states with few trade links to the US have the lowest likelihood of treaty ratification. Our findings clearly challenge a simple and linear view of global constitutionalisation. They show that global constitutionalisation is not only driven by a cost-benefit calculus of hard men; nor is it solely driven by domestic political values or trade interdependence with the US. The process through which international norms become institutionalised is the complex synthesis of power, regime type, and interdependence.

1.4 Outline of the Thesis

The thesis is composed of the three papers, as outlined above. The conceptual framework of global constitutionalisation as published in the article “Emerging Patterns of Global Constitutionalization: Toward a Conceptual Framework” in the *Indiana Journal of Global Legal Studies* is laid out in Chapter 2. Chapter 3 presents the empirical results on the shape of global constitutionalisation as well as the first empirical attempt to study antecedents to global constitutionalisation from the article “Constitutional Pluralism or Constitutional Unity? An Empirical Study of International Commitment (1945–2007)” forthcoming in the *Review of International Studies*. The more detailed and sophisticated analysis on the forces advancing the process of constitutionalisation are offered in the paper “Hard Man and Soft Law. An Advanced Commitment Analysis of Quasi-constitutional International Agreements in the Age of Hegemony”, Chapter 4. I conclude with Chapter 5, outlining the implications for future research on global constitutionalisation.

Additional information underlying the empirical analyses is presented in three appendices. Appendix A gives an overview of the 34 international agreements selected for analyses in Chapters 3 and 4. Section A.1 provides a brief characterisation of the subject-matter of each agreement. It is arranged according to the superordinate issue-areas of international law: the international rule of law, international human rights law, international humanitarian law, fundamental international labour standards and international trade law. In Section A.2 summary statistics of the ratifications of the selected agreements are presented in tables and charts.

Appendix B provides some additional information on the statistical methods and data structure underlying the analyses in Chapters 3 and 4. Basic event history quantities are introduced in Section B.1. In Section B.2 the construction of the data set for the ratification events is described. The non-parametric event history methods applied in Chapter 3 are specified in Section B.3. In Section B.4, the semi-parametric Cox proportional hazards model from Chapter 4 is defined and statistical inference is given.

Appendix C presents some diagnostic checks for the final Cox proportional hazards model from Table 4.5 in Chapter 4, as well as tests of the overall goodness-of-fit of the model, outliers, influential observations and the proportional hazards assumption.

Chapter 2

Emerging Patterns of Global Constitutionalization

Toward a Conceptual Framework

2.1 Introduction

An exploration of the patterns of global constitutionalization raises a number of important questions. What is a constitution? What is global constitutionalization? How do we get a handle on the concept? Whether their background is political or legal, researchers responding to the question “what does a constitution address?” primarily list characteristics that are typically associated with constitutions in nation-states. Depending on the research objective, most scholars would consider the issues of written versus unwritten constitutions (writtenness), flexible versus rigid constitutions (rigidity), political revolution versus continuous evolution, the rule of law, division of powers, checks and balances, containment, the incorporated governmental structure, the hierarchy of law, and some basic political and civil rights as the fundamental features of a constitutional debate ([Gavison, 2002b](#); [Lijphart, 1999](#); [Peters, 2006](#); [Sartori, 1962](#)).

When a definition of “global constitutionalization” is requested, no straightforward pattern-fitting reply can be expected. Initially, the concept of “constitutionalization beyond the state” was addressed in the context of European integration ([Weiler and Wind, 2003b](#)). However, processes of constitutionalization are not unique to the European Union. Recently, the con-

cept has gained considerable attention on the international plane. Scholars of international law concur that the normative idea of global constitutionalism and global constitutionalization are recent phenomena, decisively changing the character of the global order. When the need to define global constitutionalization arises, any attempt at a common definition causes disagreement.¹

Due to the variety of definitions proposed by scholars of international law, the concept of global constitutionalization still lacks clarity. Although its importance grew in the legal discipline and became the subject of discussion at the start of the twenty-first century, there is no consensus about the meaning of global constitutionalization. This is not only the case for the international law discipline, but also, and even more so, in the field of international relations.

¹Some researchers stress the blurred boundary between national politics and international law. In this manner, the core of constitutionalism is conceived by [Cottier and Hertig \(2003\)](#) as interfacing different layers of governance from the local to the global level. For [Schorkopf and Walter \(2003, 1361, 1373\)](#), global constitutionalism reflects the shift from an “actor-centered” concept of international law focusing on the regulation of relations between sovereign states, to a “subject-centered” understanding of international law denoting the regulation of specific subject matters, such as trade, security, and environments, and questions the boundary between general international law and national constitutional law. [Peters \(2006, 580\)](#) defines global constitutionalization as a legal instrument compensating for the ongoing de-constitutionalization on the domestic level. Though states are not considered to have ceased to be primary actors in the international system, the claim is that the role of states with respect to constitutional processes and objectives is being challenged by the forces of globalization or denationalization ([Gerstenberg, 2001](#); [Rodrik, 1997](#); [Rosenau, 1997](#); [Zürn, 1998](#)). In this sense, state constitutions no longer regulate the totality of governance in a comprehensive way and thus are no longer “total constitutions.” Similarly, constitutionalism in neo-liberal tradition is seen as a shift from a statist to a global framework driven by globalist social forces, including non-state actors, with an interest in free trade ([Allen, 2004, 341](#)), which involves the “retreat of the state” and ascribes international agreements a quasi-constitutional effect ([Gill, 2002, 59–60](#)). Others apply the concept of global constitutionalization in the field of international trade by focusing on social practices to constrain political behavior, as well as the role of judicial power and review ([Cass, 2005](#); [Howse and Nicolaidis, 2003](#); [Schloemann and Ohlhoff, 1999](#); [Zangl, 2005](#)). By contrast, international constitutionalism, conceptualized in a more encompassing manner, refers to the fundamental structure and substantive norms of the international legal order as a whole ([de Wet, 2006, 611](#); [Trachtman, 2006](#)), first focusing on the common constitutional principles, such as the separations of powers, the rule of law and arguably even democracy, and second by bringing international law into greater conformity with individual constitutional rights ([Joerges and Petersmann, 2006](#); [Petersmann, 2006a, 641](#)).

Until recently, the concept of global constitutionalization was widely disregarded by scholars of international relations. The concept, however, concerns the scholarly sphere of international relations to the same extent as it does international law. Global constitutionalization must be taken into consideration when questions on the shape of the international order,² as well as its determinants, are raised. From the viewpoint of an empiricist, it is important to translate this rather normative concept into a consistent notion and a scientifically settled and operational definition that enables comparative political scientists and international relations scholars to conduct empirical research.

This article explores a preliminary conceptual framework of global constitutionalization with an eye toward approaching a consistent and scientifically operational definition of the concept that social scientists can cope with. The aim is not to prove the existence of global constitutionalization, nor to examine current developments in international law or the national and international conditions that might favor or hinder the emergence of a global constitutional setting. Rather, I discuss the basic, but essential, issue of how to conceptualize global constitutionalization so as to achieve an operational framework. Aiming at an operational scaffold for scholars of both political science and international relations, the underlying questions are: What are the basic characteristics of global constitutionalization? And how can these be captured empirically?

The article argues that global constitutionalization can be captured in terms of international relations as the “institutionalization of international norms”, namely the process of the emergence, creation, and identification of constitution-like elements (de Wet, 2006, 611–612; Peters, 2006, 582; Petersmann, 2006a; Zürn, 2007). This parallels the historical evolution of human rights in domestic law and refers to a process through which international norms are established.

This article begins with the notions of constitution, constitutionalism, and constitutionalization as originally developed in the nation-state setting. If we are to speak of global constitutionalization, the typology must incorporate three fundamental constitutional elements. First, the emergence of a global constitution must be considered to be a continuous and lasting pro-

²For a discussion of the international order and corresponding polarization of the concept of global constitutionalization and empire see Ikenberry (2001, 10–29), Cohen (2004), and Zürn (2007).

cess, rather than an ad hoc event. Second, there must be a formal dimension that denotes some procedural and institutional norms that structure the legal system, that is, the rule of law. Third, global constitutionalization must have a substantive dimension associated with the guarantee of fairness and security. Combining these three elements, this article argues that the emergence of a global constitutional order can be divided into three temporally distinct sub-processes of global constitutionalization. While the constitutionalization of formal norms (formal constitutionalization)³ is expected to emerge first, substantive constitutionalization, the institutionalization of civil-political rights and, later, socio-economic rights, comes to the fore only at a second stage. The final stage stands for the most encompassing form of global constitutionalization containing both formal and substantive elements (encompassing global constitutionalization). I conclude by stressing the operational viewpoints of such a global constitutional framework.

2.2 Essential Concepts and Definitions

To better understand what global constitutionalization is and how it differs from other related approaches, I first turn to the conceptual distinctions between the terms constitution, constitutionalism, and constitutionalization as originally defined in the nation-state setting.

2.2.1 Constitution

Although the term constitution is associated first and foremost with the nation-state, this notion lacks a clear and decisive definition. The understanding of this term differs according to national traditions (Gavison, 2002b; Preuss, 1998). Sartori (1962) described the term constitution as something vague and not easily simplified. Many state constitutions, however, follow comparable Western templates, which have some basic principles and functions.

First, state constitutions are linked by some formal characteristics. Constitutions have emerged either through a constitutional big bang, which aimed to end political or social revolutions (as in France) (Furet and Halévi, 1989), or they were created to avert a revolution and restore certain pre-

³For the definition of types of global constitutionalization, see Section 2.3.

revolutionary conditions (as in the German Reich of 1871–1918) (Huber, 1960). Still others have evolved over centuries, such as the British constitution (Stubbs and Cornford, 1979; Adams, 1934 (original 1921); cf. Peters, 2006, 585).

A further essential element of a constitution is its writtenness. Although most state constitutions are written legal charters (exceptions include the British, Israeli and New Zealand constitutions), the notion of constitution cannot be bound only to its writtenness (Elster, 1995). In addition, a constitution is characterized by its precedence over ordinary law, ensuring a special procedure for amending constitutional provisions and safeguarding it against modification through ordinary legislation or judicial review (Bryce, 1901, 167–173). In this sense, constitutions can have a different degree of rigidity. With respect to constitutional amendments, they can be constructed either as rigid constitutions or as flexible constitutions, depending on the required approval mechanism (Lijphart, 1999, 218–223).

Second, formal elements of a constitution imply that constitutions have to fulfill related procedural functions. Generally speaking, constitutions refer to the bulk of basic legal norms organizing and institutionalizing a polity, and therefore concern the regulation of the basic institutions of a polity that occupy the center of the community's life (Peters, 2006, 581, 585; Walker, 2003, 33–35; cf. Gavison, 2002b). Following Jellinek (1914, 505), constitutions set in place political institutions and define their competences. They lay down the terms of membership and the relation between the members and the community and regulate the institutions' core functions of lawmaking, conflict resolution, and law enforcement. In other words, constitutions constitute a political entity as a legal entity, organize it, limit political power, offer political and moral guidelines, justify governance, and contribute to integration (Peters, 2001, 38–92).

The link between constitutions and political institutions can also be captured by the concept of the rule of law as legally employed in the Anglo-American context. The rough equivalent used in Europe is known in German as *Rechtsstaat* or in French as *état de droit*. The rule of law reflects a common idea in the various concepts of constitution and means “that the state's bodies act according to the *prescriptions of law*, and law is structured according to principles restricting arbitrariness” (Sajó, 1999, 205).

In a rule of law system the special relationship between the branches of power is guaranteed. Simply put, the set of formal rules that constitute law

must be obeyed, implying that a political community lives under the rule of law and not under the rule of men (Sajó, 1999, 206; cf. Hart, 1961; Maravall and Przeworski, 2003a). According to a standard formulation by Fuller (1964, 39), the list of formal requirements for this set of rules that constitute law, are norms that are general, publicly promulgated, not retroactive, clear and understandable, logically consistent, feasible, and stable over time.

2.2.2 Constitutionalism

Constitutionalization should, in normative terms, account for more than simple formal elements regulating, in the international context, for example, relationships between nation-states as well as between nation-states and international organizations. Although constitutions restrict the will of authorities and prevent them from misusing power, neither a constitution nor the embedded idea of the rule of law are absolute categories. The very idea of restriction and containment implies that citizens are at the mercy of the government's impersonal and formal legal procedures. Strictly applied, a constitution and the historically narrow conception of the rule of law, as defined above, allow for no consideration of equity or the human condition (Sajó, 1999, 207–211).

Therefore, it is important to address the term constitutionalism itself (cf. Casper, 1986; Preuss, 1998). Originally, constitutionalism described a political movement and an intellectual trend in the quest for a written constitution during the seventeenth and eighteenth centuries. It aimed at making the political power (monarchy) subject to law and at creating a government of laws and not of men. Today constitutionalism is a value-laden concept and refers to the inclusion of basic substantive principles (Peters, 2006, 582; cf. Koskenniemi, 2007).

The concept of constitutionalism goes beyond the simple articulation of formal rules and procedures of a constitution. It defines rights of, and obligations to, individuals and thus refers to human dignity and the guarantee of fundamental rights to individuals. According to Weiler and Wind (2003a, 3), constitutionalism “embodies the values, often non-stated, which underlie the material and institutional provisions in a specific constitution”.

By uncoupling the term constitutionalism from the notion of constitution, it is possible to capture constitutionalism as a term connecting and accounting for a vindication of neo-Kantian values and the idea of *Rechtsstaat*

(Weiler and Wind, 2003a, 3). On the one hand, there is the formal rule of law. This is the institutionalization of procedures that refer to the concept of legality or legal authorization. On the other hand, there is the value-laden conception of the fundamental rights that should be guaranteed in a classic constitution. Therefore, unlike the notion of constitution, the principle of constitutionalism comprises both the requirement of legal certainty and the protection of acquired rights and legitimate expectations. Moreover, by including substantive elements, constitutionalism can both diminish the rule of law's one-sided inflexibility and the rule of law's alienation from real life. The idea of constitutionalism contains formal and substantive elements that together account for equality in the rule of law and the realization of equality in both form and content (Sajó, 1999, 208, 217).

2.2.3 Constitutionalization

Most written constitutions were developed in reaction to revolution or revolutionary movements pushing for a constitution. The accomplishment and refinement of a constitution is, in contrast, a long-term process taking into account the experience of constitutional violation, restriction of freedom and oppression, as well as the questionable practices of unsuccessful and despotic governments. It is precisely this requirement for process over time that can be derived from the principle of constitutionalization. Unlike the static language of the formal and substantive characteristics that form the basis of constitutionalism, constitutionalization indicates an underlying process. It embeds a time dimension, which means that a constitution or constitutional law can come into being as part of a process over time. Constitutionalization implies that a legal text can acquire or may eventually lose constitutional properties in a feedback process and can thus be a long-lasting development. It indicates a process encompassing the emergence, creation, and identification of constitution-like elements. In short, it denotes a constitution-in-the-making (Peters, 2006, 582).

Two further conceptual notes on constitutionalization are in order. First, while constitutionalism describes a "mindset" (Koskenniemi, 2007, 18) or what Weiler (1999, 223) calls an "academic artifact" denoting what (international) law ought to be, constitutionalization describes the concrete process of developing the (global) constitutional order (Bellamy and Castiglione, 1996, 414; Fischer-Lescano, 2005, 346–348). Second, constitutionalization should

not be put on par with legalization ([Abbott et al., 2000](#)). Although both concepts refer to the process of creating legal arrangements, they differ with regard to the type of legal process they induce and the scope of legal arrangements they cover. Legalization refers to the formal practices creating legal arrangements that gain binding force through bureaucratic details, such as precision, the degree of obligation, and the possibility of delegation ([Abbott et al., 2000](#)). Constitutionalization, to the contrary, covers a much broader process. It not only refers to the formal process ([Finnemore and Toope, 2001, 750](#)), but also political and social practices that establish law-like rules and institutions in the (international) community ([Wiener, 2003, 8](#)). Thus, it raises considerably more substantial questions about the systemic and substantive quality of international law.⁴

2.2.4 Bringing it Together

Starting from the nation-state perspective, this article has relied on the three-fold distinction between constitution, constitutionalism, and constitutionalization. From this, it was possible to extract three elements that should be considered in conceptualizing a global constitutionalist framework. First, a constitutional system cannot exist without the rule of law; therefore, the concept of global constitutionalization should include some formal norms ensuring legitimate governance. Second, the rigidity of the rule of law system must be offset by substantive values that facilitate the effective endorsement of the public well-being of a political community. Finally, a framework for the emerging global constitutionalism must be tied to the idea of process and must not be restricted to the vision of attaining an exclusive final good that resembles a completed constitutional system. A global constitutional system is not an ad hoc event, but rather a process of continuous development.

⁴Constitutionalization as a process of creating constitution-like elements also contrasts with the moment of constitutional creation. The “constitutional moment” refers to the act of constitution-making in a revolutionary event ([Ackerman, 1989](#)). In a recent contribution, [Slaughter and Burke-White \(2002, 1\)](#) have denoted the fight against terror to be an “international constitutional moment”. They argued that the global events following September 11, 2001 galvanized the international system to action in a short period of time, consequently giving rise to new rules transforming international norms on the prohibition of the use of force.

2.3 Constitutionalization Beyond the State

Despite a discussion primarily rooted in the national setting, the terms constitution, constitutionalism, and constitutionalization are not exclusively applicable to the nation-state (Walker, 2002). It should be possible to transfer them to a setting beyond the nation-state following the three characteristics: the formal dimension; the substantive dimension; and the time dimension.

With regard to the international level, I refer to global constitutionalization as the process toward the institutionalization of international legal norms. Such a process implies the emergence, creation, and identification of two distinct constitutional elements that regulate international politics: institutional and organizational guidelines for interstate relations and fundamental human rights provisions for individuals (Teubner, 2004, 17). This process changes the character of the international order and brings about the normative idea of global constitutionalism – the idea that the rule of law and human rights protection exist on the global scale. Proceeding from the value premise of “normative individualism”, several scholars define global constitutionalism according to a citizen’s perspective (Bellamy, 1996, 25, 43; Petersmann, 1991; 2006a, 641). Such a value-laden constitutional reading is strongly linked to the recognition of individuals as the new subject of international law via the promotion of fundamental rights (Bellamy, 1996, 43; Petersmann, 2006b, 9).⁵ This reading implies that modern international law is no longer exclusively concerned with the regulation of state-to-state relations, but also with individual-state relations (Lauterpacht, 1950, 60–67).

In this sense, the emerging idea of global constitutionalism is considered to be a linkage of two specific sets of norms that evolve over time: the formal norms, which comprise primarily the principle of the rule of law, and the substantive norms, most importantly the guarantee of fundamental rights to individuals (Kumm, 2004, 909). By analogy to a domestic constitution, the global constitution is the sum of basic legal norms that comprehensively regulate the social and political life of an international polity. These legal

⁵There is a rough parallel to the perception of constitutionalism as an “essentially liberal legalistic conception”, which is “a formal framework of rights”, on the one hand, and a “political and republican understanding of constitutionalism” that acknowledges the historically embedded role of politics as the “art of balancing, reducing and managing conflicts”, on the other (Bellamy and Castiglione, 1996, 414; cf. Bellamy, 1996, 24).

norms establish the rule of law and guarantee certain liberties and rights (Dippel, 2005, 154).

The most recent and prominent example of an emerging constitutional system beyond the nation-state is the attempt to set up a European constitutional order for the European Community and the European Union (Lacroix, 2002; Peters, 2001; Rittberger and Schimmelfennig, 2006; Weiler and Wind, 2003b). In addition, arguments in favor of global constitutionalization have been put forward with respect to global trade and the related establishment of the World Trade Organization (WTO) (Cass, 2005; Cottier and Hertig, 2003; Howse and Nicolaidis, 2003; Petersmann, 2006a; 2006b, 11–18; Schloemann and Ohlhoff, 1999; Schorkopf and Walter, 2003; Trachtman, 2006).

So far, little effort has been made to advance a comprehensive and operational framework of global constitutionalization. Depending on normative and disciplinary preferences, scholars have focused instead on single components of this concept (Walker, 2002, 339–340). Law scholars may be inclined to view constitutionalization in merely formal or procedural terms. Liberal economists usually concentrate on the liberal aspects related to constitutionalism, while many social scientists focus primarily on the social and political instances of constitutionalization.

Despite widely varying readings of the global constitutional debate, two perceptions of global constitutionalization stand out: constitutionalization as a unitary and all-encompassing process on the one hand, and constitutionalization as an assembly of several differentiated processes on the other. Although in practice these positions fall more or less along a continuum, for illustrative purposes I simplify the situation by distinguishing between the two extremes. Some theorists – especially European law scholars – understand constitutionalism as a concept that tries to establish international legal unity (Fassbender, 1998b, 533–534, 552; Peters, 2006; de Wet, 2006). In this respect, constitutionalism is about a legal integration of states. Several scholars have postulated a universal world constitution beyond the nation-state that is put into force by a world sovereign and legitimizes the exercise of global political power. In this regard, the UN Charter is referred to as the constitutional document of the international community. Accordingly, the United Nations is viewed as the primary institution that furnishes the international community with the necessary international organs (Fassbender, 1998a, 86–87; 1998b, 567–568; Dupuy, 1997, 19; Macdonald, 1999, 206; but see Teubner, 2004, 5).

The alternative to constitutionalization in terms of global constitutional unity is global constitutional pluralism. Walker (2002, 339–340) – a staunch critic of global constitutional unity – argues that a range of different constitutional sites and processes exists. In his view, constitutionalism and constitutionalization are a “set of loosely and variously coupled factors” that allow one to distinguish between different forms of constitutionalism and to identify modes and degrees of constitutionalization. This contrasts with a constitutional reading in terms of black-and-white and all-or-nothing. For instance, Krisch (2006, 248) understands pluralism in the context of global administrative law as an alternative to the attempts at constitutionalizing the global political order into a coherent unified framework. He argues that a unified understanding of constitutionalization tends to downplay “the extent of legitimate diversity in the global polity”. This diversity is triggered, on the one hand, by the variety of global constituencies that cannot claim full regulatory legitimacy and, on the other hand, by the diverging ways of exercising participatory rights in the determination of the scope of the polity (Krisch, 2006, 249).

Another strand of the pluralist conception is inspired by the sociological approach of Niklas Luhmann. Teubner (2004, 8), the most influential proponent of the Luhmannian system theory within legal studies, describes the difference between constitutional unity and constitutional plurality:

The constitution of world society does not come about exclusively in the representative institutions of international politics, nor can it take place in a unitary global constitution which overlies all areas of society, but, instead, emerges incrementally in the constitutionalisation of a multiplicity of autonomous subsystems of world society.

Global constitutional pluralism is thus associated with the emergence of different constitutional sites and processes that are configured in a horizontal, rather than a hierarchical and vertical, pattern (Walker, 2002, 337; cf. Teubner, 1997). It is concerned with the fragmentation of international law – “the rise of specialized rules and rule-systems that have no clear relationship to each other” (International Law Commission, 2006, 483) – emerging from the horizontal nature of the international legal system. Constitutionalization, in this regard, does not seek to overcome fragmentation by creating legal unity in the international sphere, but rather attempts to adapt to it by acknowl-

edging the fragmented nature of the international system. In other words, while global constitutional unity aims at the creation of the global unitary constitution, differentiated constitutionalization seeks to realize a multiplicity of autonomous subsystems in international politics. It suggests global constitutional plurality.

In this context it is crucial to distinguish between two debates. One focuses on the idealized distinction between unity and plurality of international law, and the other focuses on societal versus state-based constitutionalization. While this article focuses on the unity-plurality divide from a state-based perspective, it does not reflect on the role of societal forces (such as non-governmental actors) in the constitutionalization process. There are two reasons for this state-focused approach. First, current research is not able to quantify current societal developments in international relations. This prevents any empirical research on the topic. Second, even though societal actors might be pivotal in advocating global constitutionalization (for example, by stimulating the content of international law, setting the international legal agenda, promoting human rights, humanitarian and environmental law, or mobilizing states and leveraging public opinion) (Albert, Brock and Wolf, 2000; Charnovitz, 2006, 359–361; Meyer et al., 1997), it is the states that produce international law. In this regard, Cohen also argues that the importance of emerging societal forces is overestimated by systems theorists. According to Cohen, the “international society of states” – in contrast to the cosmopolitan order of societal forces – remains the core of the world political system (Cohen, 2004, 13, 24).

2.4 Steps Towards Global Constitutionalization

In order to counteract the tendency to segregate constitutional aspects and to develop a comprehensive typology of global constitutionalization that captures the diversity, plurality and heterogeneity of the international order at the beginning of the twenty-first century, it is necessary to include both formal and substantive dimensions. At the same time, it is essential to take into account the underlying time dimension in a single framework. In referring to emerging global constitutionalism as a process of building up a legal order based on fundamental norms of a polity, we must understand that it is

not only an encompassing and completed global constitutional system that ought to be labeled global constitutionalism; the intermediate steps representing the ongoing process of constitutionalization must be considered of equal importance.

2.4.1 Formal Aspects of Global Constitutionalization

Law at the international level, just as at the nation-state level, undergoes a process of organization and institutionalization. The principle of the rule of law refers in a strictly national context to the control and limit of political power, including a scheme of checks and balances achieved through the separation of powers (Fuller, 1964, 33–94; Hart, 1961; Sajó, 1999, 205–206). Translated to the international sphere, this implies that political entities must act within established legal frameworks and according to established procedures. It is a selection of rules providing an institutional setting with formal guidelines for political and legal actions in the field of international relations (Jackson, 2006, 45; Steiner and Alston, 2000, 990). The principle of the rule of law empirically refers to relations between nation-states, and thus implies that international law is a regulatory instrument limited to the regulation of interstate relations. The rule of law principle, as embedded in the idea of constitutionalization, lends international law its formal character (Lauterpacht, 1950, 60–67).

Therefore, before becoming capable of constituting the substance of law, the formal principle of an international rule of law must be expressed in law. This process of establishing an international legal order is called formal constitutionalization (type I in Table 2.1) and is considered to be the starting point of global constitutionalization. Examples include the UN Charter, the Vienna Convention on the Law of Treaties, and the Vienna Convention on Diplomatic Relations.

The establishment of norms regulating interstate relations may change nothing for individuals since they do not address the relationship among individuals or between individuals and states. These norms are, however, a necessary requirement for the guarantee of individual rights in the international community. In order to make a difference to the individual, it is essential to integrate the substantive dimension into the concept of global constitutionalization.

2.4.2 Substantive Aspects of Global Constitutionalization

The substantive dimension embodied in the concept of constitutionalization refers to the international protection of fundamental human rights (cf. [Tomuschat, 2003](#)).

In contrast to the formal understanding of international law based on the old doctrine of state sovereignty, which was mainly devoted to the immunities of states, their diplomatic representatives, and their property, the emergence of international fundamental rights is a rather recent phenomenon. It goes hand in hand with the recognition of the individual as the ultimate subject of modern international law by acknowledgement of fundamental rights. Thus, the recognition of human rights is synonymous with the recognition of the individual as the subject of international law. It implies that modern international law is no longer exclusively concerned with the regulation of state-to-state relations but also with relations between the individual and the state. Further, it brings to mind that the often conflicting collective good, as represented internally and externally by the sovereign, is conditioned by the goods of the individual human beings who compose the collectivity ([Lauterpacht, 1950](#), 61–67). I call this constitutional component substantive since international law functions in this respect as a patron and safeguard of fundamental rights granted to individuals.

When referring to fundamental human rights, it is unavoidable to speak of human rights in terms of “generations”,⁶ implying that international human rights have evolved throughout history following a temporal sequence. Although this generational concept is far from being a popular theoretical and

⁶Note that the generational account of rights is often associated with the conception of negative and positive rights. Negative rights come close to the first generation of human rights. They prohibit certain government actions. Positive rights correspond to the second and third generations of human rights. They impose moral obligations on governments to provide public goods and services ([Berlin, 2002 \(original 1958\)](#), 166–181). Negative and positive rights should be not confused with claim rights and liberty rights. Both liberty and claim rights can take on positive and negative features. Claim rights impose a duty or obligation for a party. Liberty rights, by contrast, are associated with a freedom from duty. A positive claim right is the duty of one party to do something for another party, and a negative claim right is the duty of one party to refrain from doing something to another party. The freedom to do something is a positive liberty right, the freedom to refrain from doing something is a negative liberty right (cf. [Finnis, 1980](#), 198–205).

analytical tool in scholarly literature, it is a useful framework for the purpose of conceptualizing the emerging patterns of global constitutionalization.

International human rights are considered to be the “offspring of the human rights that were originally codified at the national level”. The substance of what was first guaranteed within a national framework was only later adopted in an international set of rules (Tomuschat, 2003, 25). With regard to the national level, Marshall (1950) conceptualizes human rights by the notion of citizenship.⁷ He distinguishes between civil, political, and social citizenship, the last denoting a range of rights ensuring a basic minimum of economic welfare and security (cf. Dahrendorf, 1974; 1995). Following this, the earliest version of citizenship was conceived of as a collection of civil rights, which were subsequently supplemented by political rights and, lastly, by social rights.

Like Marshall, the international law scholar Vasak (1977) makes a similar distinction. Drawing on the French Revolution, he differentiates between three generations of international human rights: *liberté* (civil and political rights, first generation); *égalité* (economic, social, and cultural rights, second generation); and *fraternité* (solidarity rights, third generation).⁸ Finding their expression in the Universal Declaration of Human Rights, human rights of the first generation are civil and political liberties. When referring to human rights of the second generation, one means economic and social rights.

As the process of global constitutionalization is also expected to embrace substantive norms, civil-political as well as socio-economic rights are considered to be integral parts of this development in international law. I call the institutionalization of international human rights provisions substantive constitutionalization (type II in Table 2.1).

⁷For a description of the nation-based development of human rights, see also Tomuschat (2003, 70–83).

⁸Human rights of the third generation comprise rights such as the right to development, peace, environmental protection, and self-determination. In contrast to rights of the first and second generation, these collective rights have not yet reached the formal status of “hard law” and thus do not find expression in international law documents, but rather have the nature of political proposals (Fabre, 1998, 263; Tomuschat, 2003, 24) and are not considered further here.

2.4.3 Civil-Political Dimension of Constitutionalization

Most contemporary scholars view civil and political rights as being prior and primary when compared to social and economic rights.⁹ They are considered to be the first generation of rights dealing exclusively with the concern of liberty as expressed in freedom of speech, movement, and religion, security of person, and the right to political participation (Donnelly, 1985, 61–67; Kaufmann, 2005). From a historical, national perspective, citizenship in its earliest version included civil rights comprised of the rights necessary for the freedom of the individual – liberty of the person, liberty of thought, and liberty of faith, the right to own property and to conclude valid contracts, and the right to justice (Fabre, 1998, 265; Tomuschat, 2003, 24). However, since civil rights are bound to remain empty promises for those who lack not only the economic means to make use of them, but also the political rights to make sure that the rule of law is not systematically turned to the advantage of some groups over others, political rights have emerged over time to supplement civil rights. This political element stands for the right to participate in the exercise of political power and the guarantee of political freedom, including the right to vote, to stand for election, to form political groups, and to voice political views freely (Dahrendorf, 1974, 680–681). These political rights are important additive elements that enrich the global constitutional order.

The civil-political dimension of constitutionalization indicates the simultaneous emergence of civil and political rights. With regard to the international context, human rights of the first generation do not imply that a global political citizenship – with citizens equipped with the right to vote for international governing bodies – is feasible. Rather, these rights indicate the opportunity for individuals to claim their personal freedoms, such as the right to seek redress if injured by another, the right of peaceful protest, and the right to a fair investigation and trial if suspected of a crime. This concept also refers to equal treatment of individuals irrespective of race, sex, or class.

⁹Note that issue of priority among types of human rights is subject to controversy (Fried, 1978, 178; Gavison, 2002a, 36). Bedau (1979, 35) and Cranston (1964) argue that due to the essentially negative character of first generation rights, traditional civil and political rights deserve priority over social and economic rights. Shue, on the other hand, maintains that the distinction between negative and positive rights bears no moral significance. He argues that all human rights have both negative and positive components (1979, 71–75; 1980, 35–37). Also, according to the UN ideology, human rights are regarded to be “interdependent and indivisible” (United Nations General Assembly, 1948, 71).

In other words, institutionalization of civil and political rights means that individuals are protected from the coercive power of governing authorities and are granted the liberty to participate in (international) politics. Civil and political rights are concerned with individual freedoms, implying the negative right not to be interfered with in forbidden ways (Fried, 1978, 110). The international institution most concerned with basic standards of personal liberties is the Human Rights Committee,¹⁰ a UN entity comprised of a body of independent experts that monitors implementation of the International Covenant of Civil and Political Rights by the state parties.

2.4.4 Socio-Economic Dimension of Constitutionalization

Substantive global constitutionalization cannot be limited to civil and political rights. Although this category of rights is awarded primacy because it is concerned with individual freedoms (Gavison, 2002a, 36), it, too, is bound to remain insufficient so long as economic and social differences prevent people from acquiring the means to exercise their liberties.

At the beginning of the twenty-first century, increasingly global transactions call for the consideration of redistributive aspects addressing “new global risks”. These risks are related to the principle of equality, which finds expression in the second generation of human rights. These rights are social and economic in nature. Social and economic rights pursue the creation of a level playing field for all individuals by setting common standards with regard to economic liberalization as well as social development (Fabre, 1998, 265; Tomuschat, 2003, 24).

Economic rights¹¹ comprise market-enabling measures aimed at the abolition of protectionist rules and the redress of inequality of opportunities for economic activity between citizens of different nations (Donnelly, 1985, 90–96; Fabre, 1998, 265; Kaufmann, 2005; Tomuschat, 2003). The creation of the Internal Market of the European Community, the WTO and its General

¹⁰The UN Commission on Human Rights was replaced as of March 15, 2006 by the newly created UN Human Rights Council (United Nations General Assembly, 2006).

¹¹Recent literature has also pointed to economic rights as elements of an enlarged concept of civil rights, indicating the right to trade and the right to market access, as well as the protection of civil liberties and properties (Barfield, 2001; Bottomore, 1992; Petersmann, 2000).

Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) are major examples of such a “negative integration”. Economic rights brought about by the WTO can be seen as important means of global constitutionalization.

However, economic liberties may damage the individuals’ social rights. One could even argue that, while economic rights, in constitutional terms, protect individuals by creating a level playing field, they simultaneously damage the principle of protection of the individual because individuals are now exposed to international markets and thus are much more vulnerable than in a closed economy (Cameron, 1978, 1251; Katzenstein, 1985). Liberalization is acceptable only if there is concomitantly some sort of compensation offered in the field of labor and social security.

Therefore, social rights must also be considered. Social rights are rights to claim some limited goods (cf. Fried, 1978, 110), such as the right to work, education, health care, social security, and a minimum standard of living. Social rights provide a response to these new requirements. These rights also include social provisions covering the risks of loss of income after retirement or during periods of unemployment (Fabre, 1998, 265; Tomuschat, 2003, 24). In contrast to the establishment of economic rights via the liberalization policies of the WTO, the creation of social security implies the setting of common standards. Arguably, the international institutions that are most concerned with the setting of basic social standards are the International Labour Organization (ILO), the World Health Organization (WHO), and the Food and Agriculture Organization of the UN (FAO).

In sum, global constitutionalization is closely linked to the substantive idea of fundamental rights of the first and second generations as well as the formal principle of the rule of law. Since global constitutionalization is not an ad hoc event, but rather a long-term process consisting of intermediate stages, its elements can be divided into three sub-processes. At the first stage, the emergence of the formal aspect should become visible. At the second stage, global constitutionalization is supplemented by substantive rights, comprised primarily human rights of the first generation and followed by human rights of the second generation. Combining basic civil liberties and political freedoms, the substantive constitutional norms meet in the form of the civil-political dimension of global constitutionalization. Only then do social

and economic rights of the second generation enter the field. Since economic rights threaten the individual's right to social security, and social rights endanger the individual's right to economic freedom, they can be considered both conflicting and subsidiary in nature. Supplementation with this socio-economic constitutional dimension accomplishes the process of substantive constitutionalization.

Global constitutionalization, in its final stage, encompasses both formal and substantive entities, the latter being based on the effective institutionalization of civil and political rights as well as of economic and social rights. This encompassing global constitutionalization (type III in Table 2.1) represents a combination of formal norms guiding interstate relations and the institutionalization of human rights provisions for individuals. It is a manifestation of the balancing between individual and collective rights, positive and negative rights, and formal mechanisms and substantive norms.

Institutionalization of formal norms (procedural guidelines for interstate relations)			
		<i>no</i>	<i>yes</i>
Institutionalization of substantive provisions (human rights for individuals)	<i>no</i>	No constitutionalization	I. Formal constitutionalization
	<i>yes</i>	II. Substantive constitutionalization	III. Encompassing global constitutionalization

Table 2.1: Types of global constitutionalization.

2.5 Conclusion

This article addresses a basic, but essential, issue of global constitutionalization, thus far neglected by scholars of international relations, and argues that this originally legal concept requires a consistent definition that would enable scholars of international relations, as well as of comparative politics, to examine, in an empirical manner, its significance with regard to the changing international order. The purpose of this article was to explore a consistent and operational framework of global constitutionalization. Such a framework

should take into account the diversity of the international order, but at the same time not reduce its meaning to an overly exclusive definition.

Starting from the nation-state setting, three fundamental constitutional elements have been identified: the formal principle of the international rule of law, the substantive dimension representing human rights provisions, and the time factor allowing for gradual emergence of a global constitutional order. Drawing a parallel to the developments of domestic law, I distinguished among three types of global constitutionalization: formal constitutionalization, suggesting the institutionalization of procedural guidelines for interstate relations; substantive constitutionalization, indicating the institutionalization of human rights provisions for individuals comprising civil-political and socio-economic rights; and encompassing global constitutionalization, implying the simultaneous emergence, creation, and identification of formal and substantive international norms.

This article neither proves the existence of global constitutionalization nor examines which national and international conditions might favor or hinder the emergence of a global constitution. But it provides some structural guidance on how to make operational the concept of global constitutionalization and thereby make it empirically approachable by scholars of international relations and political science. So far, studies concerned with global constitutionalization have mainly approached this subject area from a normative angle. Since the concept has a strong anchor in international law, this is not surprising. Almost no attempts have been made to assess the process of global constitutionalization empirically. The exceptions are studies conducted in the European context ([Stone Sweet, 2000](#); [Rittberger and Schimmelfennig, 2006](#)).¹²

This article offers some guidelines for making this framework operational insofar as it distinguishes among elements embedded in the concept of global constitutionalization. As outlined above, these constitutional elements refer, in general, to norms. The most conventional norms on the international plane

¹²These studies demonstrate that constitutionalization as an ongoing project is empirically quantifiable when compared to the normative concept of constitutionalism. They also demonstrate that constitutional mechanisms, such as judicialization and politicization of policymaking ([Stone Sweet, 2000](#)), as well as parliamentaryization and institutionalization of human rights ([Rittberger and Schimmelfennig, 2006](#)), have an impact on European Union and member-state politics.

are international agreements.¹³ International agreements have some common elements. They are written and binding instruments that establish legal rights and duties and require ratification¹⁴ by state parties. National ratification behavior might be an essential starting point for an empirical examination of global constitutionalization. Although studies concerned with the issue of state commitment to international agreements are frequent in the field of international relations, they tend to focus on one agreement or a small selection of agreements (Goodliffe and Hawkins, 2006; Hafner-Burton and Tsutsui, 2005; Hathaway, 2007; Neumayer, 2008; Simmons, 2000; Vreeland, 2008; Wotipka and Ramirez, 2008). With regard to global constitutionalization, a more appropriate structure would need to provide for a “multi-treaty” framework and allow one to study “cross-treaty” ratification behavior. So far, no systemic analyses providing for such a multi-treaty framework have been conducted. To this end, it would be necessary to compile suitable data on the ratification of international agreements relevant to the concept of global constitutionalization.

This article offers some direction for the selection of international agreements relevant to the concept of global constitutionalization. Given that the legal elements central to global constitutionalization have been defined as international norms containing formal guidelines for interstate relations on the one hand, and substantive fundamental human rights provisions for individuals (covering the first and second generation of human rights) on the other, systematic empirical investigation of global constitutionalization should in particular focus on a choice of international agreements having these constitution-like characteristics.¹⁵

¹³By “international agreement” I refer to international norms. International agreements embrace the widest range of international instruments, including treaties, conventions, charters, and covenants, which are rather formal and universal, covering a relatively broad range of functional areas, as well as protocols and amendments that generally refer to less formal agreements. Following the [Vienna Convention on the Law of Treaties \(1969\)](#), art. 2(1)(a), an “international agreement” is “concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designations” (Evans, 2007, 129).

¹⁴“Ratification” means several possible treaty actions – acceptance, approval, and accession – that have the same legal effect as ratification and lead to an internationally binding arrangement (art. 2(1)(b), [Vienna Convention on the Law of Treaties, 1969](#)).

¹⁵Note that the number of international agreements in force is incredibly large and increasing (Jackson, 2006, 42). A few examples representing some constitution-like elements on the international plane are the UN Charter, core human rights treaties with amend-

Certainly, by focusing on the ratification of constitution-like international agreements, only part of the constitutionalization process can be captured. Such an approach does not capture global constitutionalization characteristics like societal forces and judicial review. Nonetheless, ratification of quasi-constitutional agreements represents a *conditio sine qua non* for the emergence of a global constitutional order, and a feasible starting point for empirical research.

In studying a systematic, multi-treaty global constitutionalist framework, three questions could be tackled empirically. First, we might address the issue of whether the process of global constitutionalization is actually taking place around the globe, measuring the frequency and pace of national commitment to international, constitution-like agreements over time and space. Second, following the normative distinction between global constitutional unity and global constitutional pluralism, we might study which constitutional model – the unitary or the pluralist (differentiating between the formal and substantive, and in turn, the civil-political and socio-economic constitutional processes) – is best suited to describe real developments in international law. Finally, moving beyond mere descriptive research objectives, empirical analysis should be able to identify forces impeding or facilitating constitutionalization processes on the global scale by examining the effects of specific national and international conditions on national commitment to these constitution-like international agreements.

This article does not claim that this constitutional scaffold and the study of state commitment to international constitution-like agreements represent global constitutionalization with its all-embracing characteristics. This formulation captures only part of the larger constitutional picture. As such, it ignores structural issues of global authority, including principles and structures for the establishment of global legislation, the exercise of global executive power, and the operation of global adjudicatory capacity. Furthermore, such a conceptualization omits the role of societal forces, like non-governmental organizations, transnational actors, or publicprivate partnerships, in the international system.¹⁶ However, it might provide for a first

ments and optional protocols, the Geneva Conventions, the Vienna Convention on the Law of Treaties, the Convention on the Law of the Sea, the GATT (1947), the Agreement Establishing the WTO, and fundamental international labor conventions.

¹⁶As lawyers with a systems theory background argue, the process of global constitutionalization not only incorporates states, but also societal forces ([Albert, Brock and Wolf](#),

empirical insight into the pace and process of global constitutionalization and thus deepen our understanding of the phenomenon.

2000; Meyer et al., 1997; Teubner, 1997; 2004). Cohen counters that the importance of these newly emerging societal forces is overestimated by systems theorists. According to Cohen (2004, 13, 24), the “international society of states”, in contrast to the cosmopolitan order of societal forces, remains the core of the world political system. It aims first and foremost at the coordination of the two main principles as evident in international relations today: sovereign equality of states and fundamental human rights.

Chapter 3

Constitutional Pluralism or Constitutional Unity?

An Empirical Study of International Commitment (1945–2007)

3.1 Introduction

The topic of “global constitutionalisation” or “constitutionalisation beyond the state” ([Weiler and Wind, 2003b](#)) is moving to the forefront in international law and international politics. In the coming of age of the “world society” ([Albert, 1999](#)), constitutionalisation¹ is a project which is concerned with the strengthening of international law and supranational institutions, and the fostering of a global rule of law based on the principles of equality and human rights ([Cohen, 2004](#), 3). It is associated with a shift from the Westphalian sovereignty paradigm in international relations towards a cosmopolitan legal order ([Cohen, 2004](#), 7, 17).

Initially, the concept of “constitutionalisation beyond the state” was addressed in the context of European integration. However, processes of constitutionalisation are not unique to the European Union. Recently, the concept has gained considerable attention on the international plane, for instance

¹Note that we use the terms “constitutionalisation” and “global constitutionalisation” synonymously.

within the framework of the WTO (Cass, 2005; Howse and Nicolaidis, 2003; Schloemann and Ohlhoff, 1999).

Despite widely varying perceptions, we identify two stylised views of constitutionalisation: constitutionalisation as a unitary and all-embracing process on the one hand, and constitutionalisation assembling several differentiated processes on the other hand. In other words, while global constitutional unity aims at the creation of a global unitary constitution, differentiated constitutionalisation in contrast seeks to realise a multiplicity of autonomous subsystems in international politics – it suggests global constitutional plurality.

So far, processes of global constitutionalisation have been mainly studied from a normative angle. This is not surprising since the concept has a strong anchor in international law. Notwithstanding the importance of normative reasoning, we think that it is crucial to investigate *empirically* which “constitutional model” – the unitary or the differentiated one – is the most suitable to describe real developments in international law.

In concrete terms, we ask whether international law is moving towards a more unified constitutional order or whether differentiated types of constitutional processes are emerging. We do so in a comparative and quantitative fashion. First, we study the sequencing (i.e., the time of treaty inauguration) and the ratification pace of 32 so-called *quasi-constitutional* international agreements that entered into force between 1945 and 2007 containing (1) institutional and organisational guidelines for inter-state relations and (2) fundamental human rights provisions for individuals. Second, we also make a first attempt to study antecedents to global constitutionalisation. Thereby, we focus on democratization levels, state duration, and regional variation.

But why should scholars of international relations be interested in the different shapes of global constitutionalisation? We see two reasons. First, systematic empirical research on global constitutionalisation is scant. It is far from clear how far the international order has moved towards a unitary or a pluralist conception. In this regard, our goal is not so much to establish *whether* the global legal order is unitary or plural; rather, we seek to explore the *degree* of unitarism or pluralism. The dearth of empirical research on global constitutionalisation also combines with inappropriate methodology. Even though studies concerned with patterns of commitment to international agreements are numerous, they merely focus on one particular agreement or a selection of a few agreements rather than on the broader process of global

constitutionalisation (Goodliffe and Hawkins, 2006; Hafner-Burton and Tsutsui, 2005; Hathaway, 2007; Neumayer, 2008; Simmons, 2000; Vreeland, 2008; Wotipka and Ramirez, 2008). In addition, these empirical analyses do not take into account the possibility of multiple ratification events across agreements. Using event history techniques combining the marginal risk set approach of Wei, Lin and Weissfeld (1989) (WLW) with a counting process style of data input, we provide a more comprehensive empirical picture of global constitutionalisation. Second, the debate on unitary and pluralist conceptions of the “global constitutional order” also taps into an efficiency and effectiveness debate. Building on economic “complementarity” approaches, Hall and Soskice (2001, 17) argue that “two institutions can be said to be complementary if the presence (or efficiency) of one increases the returns from (or efficiency of) the other”. This line of reasoning – being prominent in the context of the political economy of national states – can be extended to the process of global constitutionalisation. In this regard, we think that coherence – as in line with the unitary conception – is an important condition for the efficiency and effectiveness of global regimes. If both the sequencing and the ratification pace of quasi-constitutional international agreements occur with a substantial gap in time, then the emerging global legal order may have efficiency or effectiveness gaps. For instance, if there is a substantial time gap between general provisions and related legal instruments with a high degree of precision, or between political and related social rights, then effective and efficient governance at the international plane tends to be undermined. Such reasoning is also in line with functional theories in international relations theory (Haas, 1958). From a functional perspective, incomplete integration undermines the effectiveness of existing policies, thereby creating pressures for additional policy-coordination. Thus, from an efficiency vantage point, it is crucial to better capture which type of global constitutionalisation is emerging.

Certainly, by focusing on the ratification of quasi-constitutional international agreements, we only capture part of the constitutionalisation process. We do not claim to capture global constitutionalisation with its all-embracing characteristics including societal forces and judicial review. Nonetheless, ratification of quasi-constitutional agreements represents a *conditio sine qua non* – or a necessary condition – for the emergence of a “global constitutional order”. While societal actors might be pivotal in advocating global constitutionalisation, it is the states which *produce* international law.

The paper proceeds as follows: first, we focus on some definitional and conceptual questions of global constitutionalisation. Second, we outline how we can study constitutionalisation empirically. Third, we discuss our methodological approach. Fourth, we present the results of our empirical investigation. This is followed by the conclusion where we discuss some normative and empirical implications of our study.

3.2 Global Constitutionalisation: Some Conceptual Notes

To better understand what global constitutionalisation is and how it differs from other related approaches, let us first turn to the conceptual distinction of three related terms: constitution, constitutionalism, and constitutionalisation.

A *constitution*² is first and foremost associated with the national context. Following Western templates it is a framework which refers to the bulk of basic legal norms organising and institutionalising a polity (Peters, 2006, 581, 585). The link between the constitution and political institutions is captured by the concept of the rule of law³ (as legally employed in the Anglo-American context).⁴ It reflects a common idea of a constitution “that the state’s bodies act according to the *prescriptions of law*, and law is structured according to principles restricting arbitrariness” (Sajó, 1999, 205). Put simply, the term constitution is closely linked to the rule of law which provides for a formal requirement guaranteeing the special relationship between the branches of power (Hart, 1961; Maravall and Przeworski, 2003b; Fuller, 1964, 33–94). Translated to the international sphere, it implies that political entities must

²The term constitution is far from having a clear definition (cf. Sartori, 1962). However, most scholars would consider the issue of written versus unwritten constitutions (writtenness), flexible versus rigid constitutions (rigidity with regard to constitutional amendments), constitutional revolution (constitutional big-bang) versus evolution, the concept of the rule of law and the hierarchy of law to be the fundamental formal features of a constitution (cf. Gavison, 2002b; Lijphart, 1999; Peters, 2006).

³The principle of the rule of law, in a strict national context, means the control and limit of political power, including a scheme of checks and balances through the separation of powers (Fuller, 1964, 33–94; Hart, 1961; Maravall and Przeworski, 2003b; Sajó, 1999, 205–206).

⁴The rough equivalent used in Europe is known in German as *Rechtsstaat* or in French as *état de droit*.

act within established legal frameworks and according to established procedures (Jackson, 2006, 45; Steiner and Alston, 2000, 990).

Constitutionalism, by contrast, implies more than the term constitution. Constitutionalism goes beyond the simple articulation of formal rules and procedures of a constitution. It is a “mindset” providing also for a tradition and a sensibility about how to act in a political world (Koskeniemi, 2007). Constitutionalism defines rights of and obligations to individuals. Weiler and Wind (2003a, 3) concur that

there is a difference between constitution and constitutionalism. Constitutionalism [...] embodies the values, often non-stated, which underlie the material and institutional provisions in a specific constitution. At this level, separating constitution from constitutionalism would allow us to claim, rightly or wrongly, for example, that the Italian and German constitutions, whilst very different in their material and institutional provisions, share a similar constitutionalism vindicating certain neo-Kantian humanistic values, combined with the notion of the *Rechtsstaat*.

Constitutionalism explicitly refers to the safeguard of *fundamental human rights*. Proceeding from the value premise of “normative individualism”, several scholars define *global constitutionalism* in the context of a citizen’s perspective (Petersmann, 1991; 2006a, 641; cf. Bellamy, 1996, 43). Such a value-laden constitutional reading is strongly linked to the recognition of individuals as the new subject of international law via the promotion of fundamental rights (Petersmann, 2006b, 6, 9; Bellamy, 1996, 43).⁵ This implies that modern international law is no longer exclusively concerned with the regulation of state-to-state relations but also with individual-state relations (Lauterpacht, 1950, 60–67). In sum, constitutionalism can be captured as a “mindset” or what Weiler (1999, 223) calls an “academic artefact”.

Constitutionalisation, in turn, indicates a process towards the emergence, creation and identification of constitution-like elements. It embeds a time dimension, which implies that a constitution or constitutional elements can

⁵There is a rough parallel to the perception of constitutionalism as an “essentially liberal legalistic conception”, which is “a formal framework of rights”, on the one hand, and a “political and republican understanding of constitutionalism” that acknowledges the historically embedded role of politics, as the “art of balancing, reducing and managing conflicts”, on the other hand (Bellamy and Castiglione, 1996, 414; Bellamy, 1996, 24).

come into being as part of a process extending through time. In short, it denotes a constitution-in-the-making (Peters, 2006, 582). Constitutionalisation as a process of creating constitution-like elements also contrasts with the *moment* of constitutional creation. The “constitutional moment” refers to the act of constitution-making in a revolutionary event (Ackerman, 1989).⁶

Two further conceptual notes on constitutionalisation are in order. First, while constitutionalism describes a “mindset” denoting what (international) law “ought to be”, constitutionalisation describes the concrete process towards the “global constitutional order” (cf. Bellamy and Castiglione, 1996; Fischer-Lescano, 2005; Koskeniemi, 2007). Second, constitutionalisation should not be put on a par with legalisation (Abbott et al., 2000). Although both concepts refer to the process of creating legal arrangements, they differ with regard to the type of legal process they induce and the scope of legal arrangements they cover. Legalisation refers to the formal practices creating legal arrangements which gain in binding force through bureaucratic details, such as precision, the degree of obligation and the possibility of delegation (Abbott et al., 2000). Constitutionalisation, to the contrary, covers a much broader process. It not only refers to the formal process (Finnemore and Toope, 2001), but also involves political and social practices that establish law-like rules and institutions in the international community (Wiener, 2003). Thus, it raises considerably more substantial questions about the systemic and substantive quality of international law.

Having provided a conceptual understanding of global constitutionalisation, we now turn to the pivotal distinction between global constitutionalisation as a unitary and all-embracing process on the one hand, and constitutionalisation assembling several differentiated processes on the other. Although in practice the positions we present fall more or less onto a continuum, for illustrative purposes we simplify the task by distinguishing between the two extreme types.

Some theorists – especially European law scholars – understand constitutionalisation as a process that has a tendency towards international legal

⁶In a recent contribution, Slaughter and Burke-White (2002) have denoted the fight against terror to be a “international constitutional moment”. They argued that the global events following September 11, 2001 have galvanised the international system to action in a short period of time, which consequently gave rise to new rules transforming international norms on the prohibition of the use of force. More prominent constitutional moments having far-reaching effects on the development of the international legal order were World War II or the breaching of the Berlin Wall.

unity (de Wet, 2006; Fassbender, 1998b; 1998a; Peters, 2006). In this respect, constitutionalisation is about the legal integration of states. Several scholars have postulated a universal world constitution beyond the nation-state, which legitimises the exercise of global political power. In this regard, the UN Charter in particular is referred to as the constitutional document of the international community. Accordingly, the United Nations is viewed as *the* primary institution which furnishes the international community with organs (Fassbender, 1998b, 567–568; 1998a; Dupuy, 1997; Macdonald, 1999).

The alternative to constitutionalisation in terms of global constitutional unity is global constitutional *pluralism* (International Law Commission, 2006). Walker (2002, 339–340) – being a staunch critic of the global constitutional unity – argues that there exist a range of different constitutional sites and processes. In his view, constitutionalism and constitutionalisation are a “set of loosely and variously coupled factors” which allow one to distinguish between different forms of constitutionalism and to identify modes and degrees of constitutionalisation. This contrasts with a constitutional reading in terms of black-and-white and all-or-nothing. Krisch (2006, 248–249) for instance understands pluralism in the context of global administrative law as an alternative to the attempts at constitutionalising the global political order into a coherent unified framework. He argues that a unified understanding of constitutionalisation tends to downplay “the extent of legitimate diversity in the global polity”. This diversity is triggered, on the one hand, by the variety of global constituencies which cannot claim full regulatory legitimacy and on the other hand, by the diverging ways of exercising participatory rights in the determination of the scope of the polity.

Another strand of the pluralist conception is inspired by the sociological approach of Niklas Luhmann. Teubner (2004, 8), the most influential proponent of Luhmann’s systems theory within legal studies, describes the difference between constitutional unity and constitutional plurality as follows:

The constitution of world society does not come about exclusively in the representative institutions of international politics, nor can it take place in a unitary global constitution which over-
lies all areas of society, but, instead, emerges incrementally in the constitutionalisation of a multiplicity of autonomous sub-systems of world society.

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Global constitutional pluralism is thus associated with the emergence of different constitutional sites and processes which are configured in a horizontal rather than a hierarchical, vertical pattern (Walker, 2002, 317; cf. Teubner, 1997). It is concerned with the fragmentation of international law – “the rise of specialized rules and rule-systems that have no clear relationship to each other” (International Law Commission, 2006, 245) – emerging from the horizontal nature of the international legal system. Constitutionalisation, in this regard, does not seek to overcome fragmentation by creating legal unity in the international sphere, but rather attempts to *adapt* to it by *acknowledging* the fragmented nature of the international system.

In this context it is crucial to distinguish between two debates: one focusing on the idealised distinction of unity versus plurality of international law and the other focusing on societal versus state-based constitutionalisation. In this paper, we only deal with the first debate and do not reflect on the role of societal forces (such as non-governmental actors) in the constitutionalisation process. There are two reasons for this concentration on the state. First, current research is not able to quantify current societal developments in international relations. This forestalls any empirical research on this topic. Second, even though societal actors might be pivotal in advocating global constitutionalisation (e.g., by stimulating the content of international law, setting the international legal agenda, promoting human rights, humanitarian and environmental law, or mobilising states and leveraging public opinion) (Charnovitz, 2006, 359–361; cf. Albert, Brock and Wolf, 2000; Meyer et al., 1997), it is the states which produce international law. In this regard, Cohen (2004) also argues that the importance of the emerging societal forces is overestimated by systems theorists. According to Cohen (2004, 13, 24), the “international society of states” – in contrast to the cosmopolitan order of societal forces – remains the core of the world political system. Thus, by studying the commitment of states to constitution-like international norms, we capture one crucial aspect of the constitutionalisation process.

So far, the distinction between global international legal unity and global constitutional pluralism is mostly a theoretical one. Almost no attempts have been made to assess the process of global constitutionalisation empirically. The exceptions are studies conducted in the European context (Rittberger and Schimmelfennig, 2006; Stone Sweet, 2000; Kaeding, 2006, cf.; Zürn and Joerges, 2005). They not only demonstrate that constitutionalisation as an ongoing project is empirically quantifiable when compared to the theoret-

ical concept of constitutionalism. They also demonstrate that constitutional mechanisms such as judicialisation and politicisation of policy making (Stone Sweet, 2000), as well as parliamentaryisation and institutionalisation of human rights (Rittberger and Schimmelfennig, 2006) have an impact on European Union and Member-State politics. In this study, we shall provide a systematic empirical analysis of the shape of constitutionalisation. In concrete terms, we explore whether international law in the post-1945 era is moving towards a more unified constitutional order or whether it takes the shape of differentiated types of constitutional processes. Our analysis focuses on the development of core international law documents containing (1) *organisational and institutional guidelines* for inter-state relations and (2) *fundamental human rights* provisions for individuals.

3.3 Empirical Analysis: Generations of Rights and State Commitment

Our aim is to examine whether international law is moving towards a more unified constitutional order or whether it takes the shape of differentiated types of constitutional processes. If the international order does indeed reveal constitutional pluralism, we might capture it in terms of issue-area-based sub-systems.

One way to think of different issue-areas in the field of international relations is in terms of generations of human rights.⁷ A generation-based distinction of rights was originally proposed by Vasak (1977). He distinguishes between three generations of international human rights – *liberté* (civil and political rights – first generation), *égalité* (economic, social, and cultural rights – second generation) and *fraternité* (solidarity rights – third generation).

⁷International human rights are considered an offshoot of human rights that were originally codified at the national level. Marshall (1950) conceptualises human rights in the national context by the notion of citizenship. He distinguished between civil, political and social citizenship. A description of the nation-based development of human rights is presented in Tomuschat (2003).

Human rights of the first generation refer to civil and political liberties,⁸ such as freedom of speech, movement and religion, right to property, security of person and the right to political participation (Donnelly, 1985; Kaufmann, 2005). With regard to the international context, human rights of the first generation do not imply that a global political citizenship is feasible. Rather they indicate the opportunity of individuals to claim their personal freedoms, including the right to seek redress if injured by another, the right of peaceful protest and the right to a fair investigation and trial if suspected of a crime. This concept also refers to equal treatment of all individuals irrespective of race, sex or class. In other words, civil and political rights mean that individuals are protected from the coercive power of governing authorities and are granted the liberty to participate in (international) politics.

In addition, procedural guidelines organising inter-state relations also fall under this category of rights. These are formal provisions⁹, which structure the international legal system and provide an institutional setting in which international political and legal action takes place. They refer to the international rule of law that ensures a set of guiding rules and procedures according to which political entities must act (Jackson, 2006, 45; Steiner and Alston, 2000, 990). Even though these provisions do not address the relationship between individuals or individuals and states, they are a necessary requirement for the guarantee of individual rights in the international community.

Second-generation rights are social and economic in nature. Social rights include the right to work, education, health care, social security and a minimum standard of living. Economic rights, on the other hand, comprise market-enabling measures aimed at the abolition of protectionist rules and the redress of inequality of opportunities for economic activity between citizens of different nations (Donnelly, 1985; Fabre, 1998, 265; Kaufmann, 2005; Tomuschat, 2003, 24). The recent literature has also pointed to economic rights as elements of an enlarged concept of civil rights, including the right to trade and the right to market access, as well as the protection of civil lib-

⁸Political rights emerged in history of national development for the supplementation of civil rights, since civil rights are bound to remain empty promises for those who lack even the economic means to make use of these fundamental civil rights. In a way, political rights are closely linked to the principle of the rule of law. They serve as guarantor that the rule of law will not systematically be turned to the advantage of certain groups over others (Dahrendorf, 1974, 680–681).

⁹In the following we refer to these formal and procedural provisions as formal rights or rules, and the (international) rule of law principle.

erties and properties (Barfield, 2001; Bottomore, 1992; Petersmann, 2000). Social and economic rights pursue the creation of a level playing field for all individuals by setting common standards with regard to economic liberalisation as well as social development.

Third-generation rights comprise rights such as the right to development, peace, environmental protection and self-determination. In contrast to rights of the first and second generation, these collective rights are less frequently embodied in international law documents but rather take the form of political proposals. In this paper, we focus only on the first two generations of rights, since they are uncontroversial in the egalitarian liberal literature. Unlike human rights of the third generation, they are not subject to continuing disagreement regarding the holders, duty-bearers and their substance (Fabre, 1998, 263; Tomuschat, 2003, 24, 50–52).

Notice further that the “generations” account of rights is often associated with the conception of negative and positive rights (Berlin, 2002 (original 1958), 166–181).¹⁰ Negative rights closely resemble the first generation of human rights. They require prohibition of certain actions, as in the right not to be subjected to violent actions by governments. Positive rights, in turn, correspond to the second (and third) generation(s) of human rights. They impose a moral obligation on governments to provide public goods and services (Donnelly, 1985).

Although the generations concept is far from being a popular analytical tool in the scholarly literature¹¹, we find it a useful framework for the purpose of our empirical analysis on emerging patterns of constitutionalisation. Our

¹⁰Negative and positive rights should be not confused with claim rights (rights in a strict sense) and liberty rights (liberty). Both liberty and claim rights can take on positive and negative features. Claim rights impose a duty or obligation for a party (person, government). Liberty rights, by contrast, are associated with a freedom of duty. A positive claim right is the duty of one party to do something for another party, and a negative claim right is the duty of one party to refrain from doing something to another party. The freedom to do something is a positive liberty right, the freedom to refrain from doing something is a negative liberty right (Finnis, 1980).

¹¹Note that issue of priority among types of human rights is however subject to controversy (Fried, 1978, 178; Gavison, 2002a, 36). Bedau (1979) and Cranston (1964) argue that due to the essential negative character of the first-generation rights, traditional civil and political rights deserve priority over social and economic rights. Shue (1979; 1980), on the other hand, maintains that the distinction between negative and positive rights bears no moral significance. He argues that all human rights have both negative and positive components.

expectation is as follows: if international law is moving towards a more unified constitutional order, then we should see no difference in the sequencing and ratification pace according to the different issue-areas (as embodied in the generations account of rights). Conversely, if international law takes the shape of differentiated types of constitutional processes, then we should see a difference in sequencing and ratification pace according to the different issue-areas (as embodied in the generations account of rights).

In concrete terms, we study the sequencing (i.e., the time of treaty inauguration) and the pace of state commitment to these agreements incorporating basic formal rules (the international rule of law providing for an institutional setting of inter-state action) and human rights (comprising civil and political liberties as well as social and economic rights for individuals). We use the term “international agreement” to refer to all international norms included in the sample. International agreements comprise the widest range of international instruments. Following art. 2(1)(a) of the [Vienna Convention on the Law of Treaties \(1969\)](#), an international agreement is “concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designations” ([Evans, 2007](#), 129–130). For the purpose of our analysis, we have compiled a data set containing ratification entries of international agreements. By ratification we mean several possible treaty actions – acceptance, approval, accession and succession – which all have the same legal effect as ratification and consequently lead to an internationally binding arrangement (art. 2(1)(b), [Vienna Convention on the Law of Treaties, 1969](#)).

The data set encompasses ratification entries for 32 international agreements¹² made since World War II over 199 nation states (1945–2007). The entries include ratifications of charters, conventions and covenants as well as documents of lower hierarchical order such as amendments and optional

¹²Note that the number of international agreements in force, and newly added each year is incredibly large, and by far exceeds the 32 selected agreements ([Jackson, 2006](#), 42). The choice of treaties presented serves the sole aim of covering the most important agreements containing some constitutional characteristics.

protocols.¹³ A detailed inventory is given in Table A.1 (Appendix A).¹⁴ The selected agreements have in common that they are written and binding instruments that establish legal rights and duties and require ratification by the states. All provisions covered by these legal documents primarily address the protection of human rights of the first (civil and political rights) and the second generation (economic and social rights) and the international rule of law principle. After careful consideration of all legal instruments related to the process of global constitutionalisation, we have decided to drop several international agreements. These concern the collective rights of the third generation (e.g., legal instruments dealing with refugees, migrant workers and stateless persons). In so doing, we limit ourselves to the most important and fundamental constitutional documents.

Formally, these international law instruments are not ranked in any general order of priority. However, legal vocabulary indicates some informal hierarchy of international law ([International Law Commission, 2006](#), 166–167). The selected agreements differ with regard to the degree of universality (precision) and the level of formality. In order to obtain a realistic and relatively unbiased reflection of state commitment to these agreements, we need to distinguish between conventions, charters, and covenants on the one hand, and protocols and amendments on the other hand. To do so, we assigned weights to each international agreement. In assigning weights to the international agreements, we draw from the definition of international agreements as laid down in art. 2(1)(a) of the [Vienna Convention on the Law of Treaties \(1969\)](#). Consequently, an international agreement can be embodied in one

¹³The terms convention, charter and covenant embrace all formal international agreements, in the same way as the term “treaty” does. They are normally open for participation by the international community as a whole and are negotiated under the auspices of an international organisation. Thus, in character they are rather formal and universal covering a relatively broad range of areas. Protocols and amendments, in contrast, generally refer to agreements less formal than those entitled treaty, convention or covenant ([United Nations, 1999](#)).

¹⁴To name but a few examples, the UN Charter, core human rights treaties with amendments and optional protocols, the Geneva Conventions (1949), the Vienna Convention on the Law of Treaties, the Convention on the Law of the Sea and fundamental international labour standard conventions are incorporated. Due to the time-frame of the study (1945–2007), the Forced Labour Convention No. 29 of 1930 is not incorporated into the analysis. We also include the GATT (1947) and the Agreement Establishing the WTO since they point to economic rights like the right to trade, market access and the protection of civil liberties and properties as an enlarged concept of civil rights.

instrument or in two or more related instruments. The coding rules are as follows: we assign a weight of 6 to an international agreement (such as treaty, charter, convention or covenant) of higher hierarchical order comprising only one particular legal instrument. International agreements of higher hierarchical order which embody several legal instruments concerning the same subject-matter are assigned proportional weightings. The theoretical range of these proportional weightings goes from 2 to 5; in practice, however, the range goes only from 3 to 5 (see below). We weight the instruments in such a way that their sum representing one particular international agreement does not exceed the value of 6. Thereby, instruments of lower hierarchical order such as protocols and amendments are assigned a value of 1. Instruments of higher hierarchical order (treaty, charter, convention or covenant) are assigned a value ranging between 3 and 5, depending on the number of additional issue-related instruments of lower hierarchical order. Since no international agreement is composed of more than three instruments of lower hierarchical order (each assigned a weight of 1) and one instrument of a higher hierarchical order, the minimum value for an instrument of a higher hierarchical order is 3. The concrete weights are displayed in Table 3.1.¹⁵

¹⁵In order to demonstrate the assignment of weights to international agreements embodied in several legal instruments consider the following examples. The International Covenant on Civil and Political Rights (ICCPR) has two additional instrument – the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (IOP-ICCPR). To assure that this international agreement providing for the guarantee of civil and political rights does not exceed the maximum weighting of 6, the ICCPR as a major document is assigned the value 4 and the two protocols each the standard value of 1. Rights of the child are embodied in 4 legal instruments: one major document – the Convention on the Rights of the Child (CRC), and three minor documents – the Amendment to art. 43(2) of the Convention on the Rights of the Child (A-CRC), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (IOP-CRC). The major document is assigned the weighting 3, the three minor documents the value 1 each. Except from the Convention No. 105 concerning the Abolition of Forced Labour which is assigned the full weight of 6, the remaining six fundamental ILO conventions represent three categories of labour-related rights: freedom of association (Convention No. 87 and No. 98), child labour (Convention No. 138 and No. 182) and discrimination (Convention No. 100 and No. 111). All are weighted with the value 3, since two each represent a particular labour principle. Note that an exception is made with regard to the weighting of the Vienna Convention

Agreement	Weights	1st generation rights			2nd generation rights	
		civil	political	rule of law	social	economic
CUN	6			RoL		
GATT	6					E
CPPCG	6	C				
C87	3		P			
GC	6	C				
C98	3		P			
C100	3				S	
C105	6				S	
C111	3				S	
VCDR	6			RoL		
CERD	5		P			
ICESCR	6				<i>S</i>	<i>E</i>
ICCPR	4	<i>C</i>	<i>P</i>			
OP-ICCPR	1	<i>C</i>	<i>P</i>			
VCLT	6			RoL		
C138	3				S	
CEDAW	4	C				
UNCLS	6			RoL		
CAT	4		P			
VCIO	3			RoL		
CRC	3				S	
IIOP-ICCPR	1	<i>C</i>	<i>P</i>			
A-CERD	1		P			
A-CAT	1		P			
WTO	6					E
A-CEDAW	1	C				
A-CRC	1				S	
C182	3				S	
OP-CEDAW	1	C				
OP-CRC	1				S	
IIOP-CRC	1				S	
OP-CAT	1		P			

Table 3.1: Classification of agreements and corresponding weights.

Notes: C: civil rights; P: political rights; RoL: formal provisions; S: social rights; E: economic rights. Due to their overarching characters, four agreements are allocated twice: ICCPR, OP-ICCPR, IIOP-ICCPR are each assigned to the subgroup of political and of civil rights, and ICESCR is assigned to the subgroup of social and economic rights (double assignments indicated by italics). The key to treaty abbreviations is provided in Table A.1 of Appendix A.

For this analysis we classified the selected 32 international agreements into issue-areas as presented in Table 3.1. Our classification is based on the main aim of a particular treaty. We consider the designated function of a treaty to be the decisive factor for its classification into an issue-area-based subgroup. We acknowledge that classifying international agreements into specific issue-areas can entail ambiguity. It is not always easy to distinguish between different rights, or to decide whether a treaty providing both for a strong dispute settlement mechanism and regulating economic affairs should be classified as a rule of law provision or as an economic right. To deal with such classification ambiguities we strongly relied on legal expertise. In concrete, we studied the (available) *travaux préparatoires* as well as the literature outlining the history and purposes of each international agreement. In addition, we consulted scholars specialised in public international law.

Let us take the UN Charter to illustrate the classification process. The UN Charter is the most important international agreement and it is designed to introduce a comprehensive public order system. As mentioned before, a number of international law scholars call the Charter *the* constitutional document of the international community. However, the fact that the purposes of the Charter are relatively wide-ranging makes it difficult to provide a clear-cut classification of its main aim. The Charter established the United Nations, lays down its functions and prescribes its limitations, deals with the issues of peace, security and the use of force, and provides the base line for human rights. Nevertheless, its major objective is to promote international cooperation and to establish peaceful relations between nation states. Consequently, it is an instrument providing institutional and organisational guidelines for inter-state relations, and was therefore classified as a rule of law provision.

With regard to the operationalisation of the process of global constitutionalisation by way of the sequencing of international agreements and the pace of state commitment to these agreements, there are three alternatives to consider. First, we might focus on the creation and initiation of international agreements. This would allow exploring the negotiation and bargaining capabilities of states during the drafting process of an agreement. Empirically, this

on the Law of Treaties between States and International Organizations or between International Organizations (VCIO). The VCIO is embodied in a single instrument and is the only convention selected which is not yet in force. Considering this convention of being thus of secondary importance, it is only assigned the value 3 instead of 6.

would require us to take an in-depth look at documentary sources from the years of preparatory discussions and negotiations (the *travaux préparatoires*). However, *travaux préparatoires* are not publicly accessible for all the international agreements under consideration. Thus, focusing on the drafting process might lead to a biased empirical investigation of the process of global constitutionalisation. Second, we could operationalise global constitutionalisation via the overall rates of compliance with international provisions. This approach, however, also has drawbacks. On the one hand, this would require extensive data gathering. On the other hand, it would also imply a standardised translation of qualitative materials into quantifiable levels of compliance rates. At this stage of research on global constitutionalisation, however, the paucity of relevant data forestalls such an analysis in a broad quantitative design. Third, we might simply focus on the overall ratification rate of international agreements. But this approach also has severe limitations. It would involve omitting the time dimension, thus confronting us with the problem of relatively low variance both among states and the generations of international rights. As such, this way of operationalising global constitutionalisation leads to a fairly simplistic empirical analysis. Consider the following example: Namibia and Egypt both ratified 75% of the 32 selected quasi-constitutional international agreements, but did so over a different period of time. While Namibia ratified these agreements within a time frame of 19 years (between 1983 and 2002), it took Egypt 57 years (from 1945 to 2002) to achieve the same rate of ratification. Thus, limiting our analysis to the simple rate of ratification, we would lose important information with regard to the sequencing and ratification pace of international agreements.

Hence, compared to the alternatives, a method that takes into account the sequencing and ratification pace of international agreements provides a feasible way of operationalising global constitutionalisation. Furthermore, as argued above, such an approach represents a *conditio sine qua non* for global constitutionalisation. Nonetheless, we acknowledge that by measuring the sequence and ratification pace of international agreements, we capture only parts of the larger constitutional picture. Our analysis focuses only on the institutionalisation of some international rule of law provisions and the legal protection of human rights. As such, we do not address structural issues of global authority, e.g., principles and structures for the establishment of global “legislation”, the exercise of global “executive power”, or the operation of global adjudicatory capacity. Therefore, it would be misleading to call

these international agreements *constitutional*. Rather, we shall call them *quasi-constitutional* norms: while they have some important constitutional characteristics, they do not refer to the entirety of a constitutional document.

3.4 Statistical Techniques

In order to analyse the sequencing and ratification pace of international quasi-constitutional norms, we use event history techniques. An event history model offers an appropriate method for analysing the timing of political change, i.e., the change in status from non-ratification to ratification. It not only considers which countries ratify international agreements, but also takes into account that some countries do so with different time lags. Furthermore, event history analysis can take into account that countries may resign from a particular treaty and re-ratify it later (Box-Steffensmeier and Jones, 1997, 1414). In addition, it can accommodate censored and truncated data (Klein and Moeschberger, 2003, 63–64, 72–73; Tableman and Kim, 2004, 17). In this study, we are confronted with fixed and random right-censoring as well as left-truncation.¹⁶

Finally, event history techniques can be applied to data with “multiple events per subject” (Therneau and Grambsch, 2000, 169–229). In this study, we do not examine ratification behaviour for each treaty separately, but are interested in finding a superordinate institutionalisation pattern of international quasi-constitutional norms; thus we need to take into account that each country can ratify up to 32 international agreements.¹⁷ Our data is formulated as a counting process according to Andersen and Gill (1982)

¹⁶Fixed right-censoring applies to all countries which have not yet ratified a particular international agreement (at termination of the analysis). Cases in point for random right-censoring are Czechoslovakia (state termination in 1992), the Socialist Federal Republic of Yugoslavia (terminated in 1991), the German Democratic Republic (1990), Zanzibar (1964) or South Yemen (1989). At the treaty-level of analysis random right-censoring affects only the GATT, which was adopted in 1947 and expired before the end of the study in 1994. Left-truncation is determined by a delayed entry time. Delayed entry times apply for instance to follow-up countries of the Socialist Federal Republic of Yugoslavia and the Soviet Union or countries which gained independence during the process of decolonialisation.

¹⁷In the language of event history analysis, each country is potentially “at risk” to ratify 32 international agreements; it is repeatedly “at risk” of ratifying an international agreement.

and combined with the marginal risk set approach of [Wei, Lin and Weissfeld \(1989\)](#) (WLW) (cf. [Box-Steffensmeier and Zorn, 2002](#); [Therneau and Grambsch, 2000](#), 185–189, 227–229). The WLW counting process data consists of multiple records and is set up as annual intervals.¹⁸ By clustering on countries, the WLW counting process formulation accounts for the fact that ratifications of international agreements by a specific country are not independent, but are not bound to experience a prior event ([Box-Steffensmeier and Jones, 2004](#), 158). The defining characteristic of the WLW approach is that all subjects are “at risk” for all events at all times prior to experiencing that event ([Box-Steffensmeier and Zorn, 2002](#), 1074; [Therneau and Grambsch, 2000](#), 186–187).

In order to obtain a realistic account of the sequencing of the international agreements and the pace of ratification, we do not standardise the time of treaty inauguration, i.e., the time, when the agreement becomes open for signature and ratification. Rather, we focus on the inauguration of each international agreement. At first glance, one might think that such an approach leads to a biased view of the process of global constitutionalisation. However, we believe that it is a more appropriate method to study both the sequencing of international agreements and the pace of ratification, since it takes into account additional information about the timing and emergence of international agreements. For an illustration, consider the provisions regarding rights granted to children as laid down in several issue-related legal international instruments. The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, recognises children as possessors of human rights at the international level without laying down the specific rights of children. More elaborate provisions – such as the protection of children from economic exploitation – were incorporated into the Convention on the Rights of the Child (CRC), which was only adopted by the UN in 1989. A state which ratified the ICCPR 7 years after its adoption (in 1973) and the CRC 1 year after its adoption (in 1990) would have ratified these two agreements on the rights of children with a time gap of 17 years. Standardising the adoption of agreements to zero, we would imply that both agreements were adopted in the same year. This would reduce the time gap to 6 years (ratification of the ICCPR 7 years after adoption minus ratification of the CRC 1 year after adoption) and would bias the actual time elapsed between

¹⁸The data for a subject is presented as multiple rows or “observations”, each of which applies to an interval of observation (start, stop].

the first and the second ratification. In statistical terms, standardisation does not enable us to depict the temporal relation between distinct “out-sets” of each international agreement (the time of opening an international agreement for signature and/or ratification). The ICCPR, for instance, was opened for signature and ratification in 1966, while the CRC was opened for signature and ratification in 1989. Standardising the time of outset of each international agreement to zero, we would omit information accounting for the difference in years between the launching of international agreements. In our analysis, we take into account both the sequencing of international agreements and the pace of ratifications.

Results of the analysis are reported on the basis of descriptive event history quantities.¹⁹ Adjusting for the presence of left-truncated and right-censored data by Greenwood’s formula (cf. [Klein and Moeschberger, 2003](#); [Tableman and Kim, 2004](#); [Therneau and Grambsch, 2000](#)), we compute the modified Kaplan-Meier (hereafter K-M) estimate for the survival function together with the restricted mean survival time (time to ratification) and its variance, as well as the median and confidence intervals of the survivor function.²⁰

3.5 Empirical Findings

3.5.1 Unitary or Plural Constitutionalisation?

Concerning the empirical analysis, we speak of constitutional pluralism when the difference in sequencing and ratification pace of distinct international quasi-constitutional agreements is statistically significant. Conversely, a statistically insignificant difference in sequencing and ratification pace according to the issue-areas is an indicator for the emergence of a unified international constitutional order. We distinguish between statistically significant and statistically insignificant differences by means of confidence limits. Overlapping confidence limits suggest that distinct quasi-constitutional subsystems are not evident. Non-overlapping confidence limits indicate that issue-area-based

¹⁹Our estimations were computed in [R Foundation for Statistical Computing \(2008\)](#) with [Survival Version 2.34-1 R Package \(2008\)](#).

²⁰A detailed and formal description of these measures is presented in the Appendix [B](#), Sections [B.1](#) and [B.3](#).

perception of global constitutionalisation is of considerable importance. An overview of descriptive summary statistics is provided in Table 3.2.²¹

A first picture emerges when we classify²² the full sample of 32 quasi-constitutional international agreements into two issue-areas, representing the first and the second generation of rights – the formal-civil-political stratum and the socio-economic stratum. The sequencing and ratification pace differ significantly between these two subgroups with regard to the average year of ratification (see table 3) as well as the median time to ratification. Fifty per cent of international agreements within the formal-civil-political subgroup had been concluded in the first year after the drawing up of agreements. On the other hand, it took 13 years to reach the median number of ratifications of socio-economic treaties. As indicated by the non-overlapping confidence limits, the two-step functions differ significantly (see Figure 3.1). The ratification of socio-economic rights proceeds more slowly than the ratification of civil-political rights.

Our second categorisation is a more thorough refinement of quasi-constitutional agreements into four issue-areas distinguishing between (1) civil rights, (2) political rights and the rule of law, (3) social rights, and (4) economic rights. K-M survival curves for the first three strata progress almost proportionally from the outset of the study, supplemented by the economic strata from the mid 1960s onwards (see Figure 3.2). Significantly distinct confidence levels confirm the appropriateness of this four-fold stratification. Again, ratification of political rights with rule of law provisions and civil liberties is faster than ratifications of agreements containing social or economic rights.²³

²¹Results are presented for weighted values. As an alternative, we also examined ratification for non-weighted international agreements. The results are qualitatively similar.

²²Several other classification of international agreements into distinct issue-areas have been accomplished in the analysis. Here, we only present findings on the most important quasi-constitutional distinctions.

²³Note that a quasi-constitutional divide into five constitutional subcategories – formal, civil, political, economic and social – has been tested. Overlapping confidence intervals indicate that this 5-group stratification is not statistically significant.

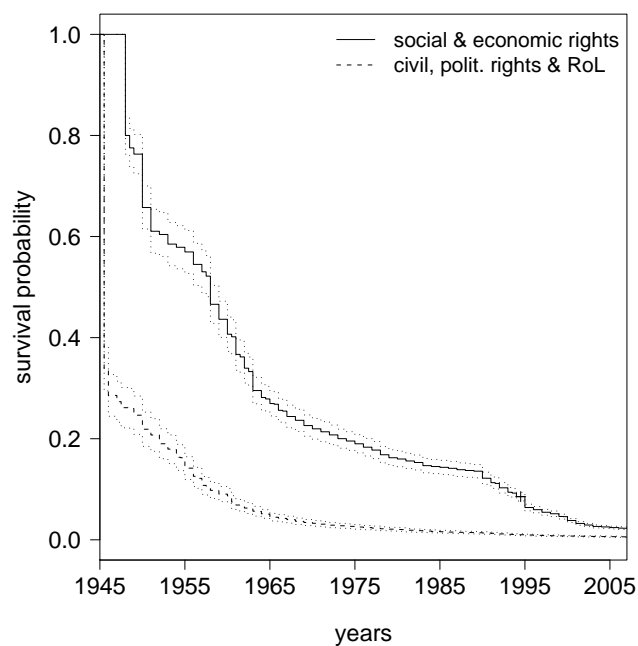


Figure 3.1: Kaplan-Meier survivor curve for 1st and 2nd generation of rights (weighted values) covering 32 international agreements.

Notes: Survival probability refers to the probability that a state does not ratify a group of international agreements to a particular time.

Global legal pluralism	no.events	rmean	se(rmean)	median	95% LCL	95% UCL
1st & 2nd generation						
1st generation	2396	4.244	0.292	0.5	0.5	0.5
2nd generation	1707	17.406	0.547	13.0	12.0	14.0
4 issue-areas						
Political rights & rule of law	1745	4.744	0.336	0.5	0.5	0.5
Civil rights	987	13.816	0.338	9.0	9.0	10.0
Economic rights	431	20.762	0.713	18.0	17.0	18.0
Social rights	1435	22.693	0.541	16.0	15.0	16.0

Table 3.2: Descriptive statistics of treaty ratification (weighted values).

Notes: Total number of subjects “at risk” (country years) to ratify an international agreement is 128205; no.events: number of ratifications that occurred; rmean: restricted truncated mean time to ratification; se(rmean): standard deviation of the restricted truncated mean survival time; median: median time to ratification; 95% LCL and UCL: upper and lower confidence intervals (95%) for the median.

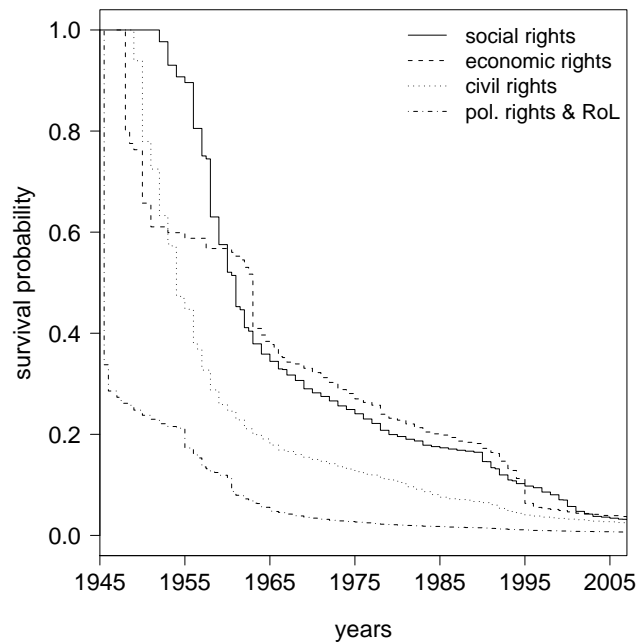


Figure 3.2: Kaplan-Meier survivor curve for 4 issue-areas (weighted values) covering 32 international agreements.

Notes: For the sake of clarity, no confidence limits are displayed. Survival probability refers to the probability that a state does not ratify a group of international agreements to a particular time.

In sum, our results show that global constitutionalisation can be captured to some extent as the multiplicity of its functions, rather than as a fully-fledged integrative constitutional process. The emergence of quasi-constitutional subsystems according to a two-tier generation-based conception of rights and a four-tier specification of those rights seem to provide a more accurate account of the present nature of international law than a constitutional reading of the ongoing developments as a unitary process leading towards global harmonisation.

3.5.2 Antecedents of Global Constitutionalisation

In this section, we make a first attempt to study antecedents of global constitutionalisation. Our goal here is not to identify the exact causal mechanisms underlying global constitutionalisation. Given the infant stage of this type of research, we merely seek to establish associations between specific factors

and quasi-constitutional agreements. Since global constitutionalisation is of a plural nature, our analysis distinguishes between the two subgroups of international agreements, namely between the first generation and the second generation of rights.

First, we consider the effects of democratisation on the sequencing and pace of ratification of quasi-constitutional agreements. There is widespread evidence that democratic states are more willing to ratify international agreements than autocratic states (e.g., [Cole, 2005](#); [Moravcsik, 2000](#); [Neumayer, 2008](#)), since international agreements are generally in accordance with their domestic practices. However, to properly explore the link between the *regime type* and ratification behaviour, we need to distinguish between autocracy, hybrid regimes, and full democracies ([Hathaway, 2007](#)). To do so, we employ the Polity2 scale. The scale ranges from +10 (strongly democratic) to -10 (strongly autocratic), and provides data for 7294 country years between 1946 and 2003 ([Marshall and Jaggers, 2007](#)). Following [Epstein et al. \(2006\)](#), we re-classify the Polity scale into three categories: values greater than 7 indicate a full democratic regime; values ranging from 1 to 7 indicate a hybrid political system; and values less than 1 indicate an autocratic regime. Our findings show that the sequencing and ratification pace of both treaty generations differ significantly within each polity regime (see Figure 3.3 and Table 3.3). On average, democratic states ratify international quasi-constitutional agreements at a higher pace than autocratic states.²⁴ This confirms that democratic states are more willing to ratify international agreements than autocratic states. However, the ratification pace with regard to the two generations of international agreements differs across the regime types. In the case of authoritarian regimes it took 9 years to reach the median number of ratifications of civil-political rights and rule of law provisions, and 18 for socio-economic treaties. This is in stark contrast to democratic regimes, where the median time to ratification is lower and the sequencing and ratification pace of the two treaty generations is reversed compared to the autocratic regime (3.25 years for second generation rights and 7 years for provisions of the first generation). In the context of hybrid regimes, the ratification pattern is similar to fully democratic regimes (the median time to ratification

²⁴As an alternative to the distinction of treaties according to the two generations, we also examined the effect of polity regimes in the context of the full sample of the 32 quasi-constitutional agreements. The results underline that democracies have a higher ratification pace than autocracies.

was 9 years for agreements of the first generation and 5 years for rights of the second generation). While second generation rights are ratified at a higher pace at the outset of the study, the ratification pace decelerates from the late 1950s and reverses the overall ratification pace of the two subgroups of agreements. The variance across regime types and treaty generations documents that the ratification pattern of quasi-constitutional agreements is more complex than is captured by simple theoretical assumptions. Future research might need to adopt a sovereignty-centred view which emphasises national “sovereignty costs” of policy change imposed by treaty ratification as well as by national interests and power ([Hathaway, 2003](#); [Moravcsik, 2000](#)).

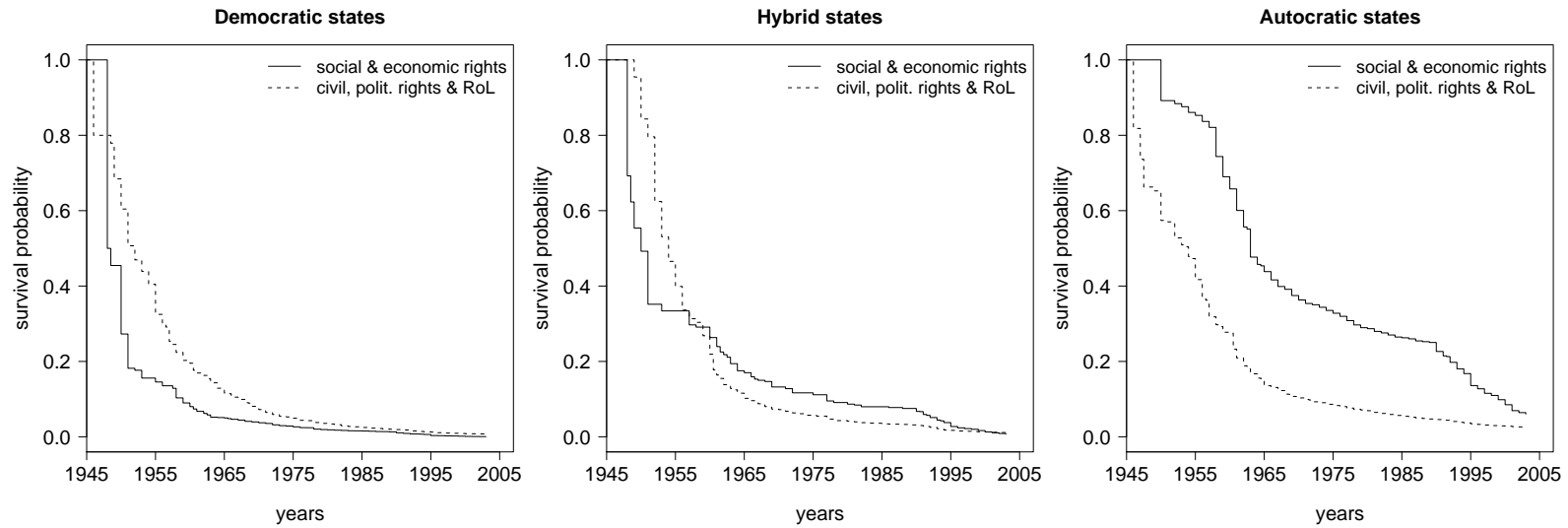


Figure 3.3: Kaplan-Meier survivor curves for 1st and 2nd generation of rights according to polity regime (weighted values) covering 32 international agreements.

Notes: For the sake of clarity, no confidence limits are displayed. Survival probability refers to the probability that a state does not ratify a group of international agreements to a particular time.

Second, we focus on *state duration*. State duration distinguishes between the ratification pace of countries which gained independence after 1945 (in the process of decolonisation or the collapse of the Soviet Union) and states which have a longer duration. We expect state duration to be negatively correlated with the commitment to quasi-constitutional agreements. New states generally have no standing in the international community and must convince other states that they are willing to become good members of the international community. Thus, by openly and publicly committing to international norms, new states can establish a reputation at the international level. In addition, new states may also feel a specific need to break with past practices of their country. They may want to distance themselves from prior abuses within the country in order to obtain collateral benefits such as investment, trade, and political support. By joining an international agreement, they may signal an intention to become a good member of the international community (Hathaway, 2005; 2007). We therefore expect that new states are more likely to join an international agreement than older states. We capture state duration via state independence or via the introduction of the first national constitution.²⁵

For the purpose of graphical clarity, we transformed the variable *state duration* into a binary measure distinguishing between *old states* which existed before 1945 and *new states* which came into existence after 1945. Focusing on the data presented in Table 3.3 and Figure 3.4, there are pace differences between the two subgroups of agreements. Both, new and old states ratify civil and political rights as well as rule of law provisions on average at a higher pace than socio-economic treaties. However, the difference in ratification pace between old and new states is not statistically significant. Comparing the pace differences of each generation of treaties between new and old states, we do not find support for our assumption that new states have an overall higher likelihood of treaty ratification than old states.

²⁵Corresponding data has been taken from and verified by several sources: [Central Intelligence Agency \(2008\)](#), and [Der Fischer Weltalmanach \(2006; 2008\)](#). Furthermore, we have cross-checked these sources with the [Correlates of War Project \(2008\)](#).

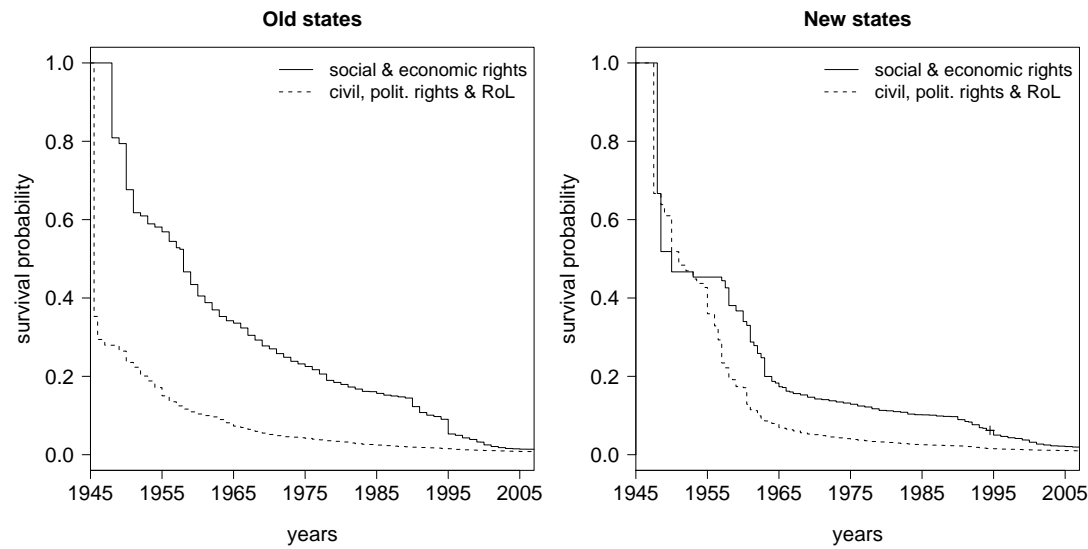


Figure 3.4: Kaplan-Meier survivor curves for 1st and 2nd generation of rights according to state duration (weighted values) covering 32 international agreements.

Notes: For the sake of clarity, no confidence limits are displayed. Survival probability refers to the probability that a state does not ratify a group of international agreements to a particular time.

Global legal pluralism	no.events	rmean	se(rmean)	median	95% LCL	95% UCL
1st & 2nd generation & polity regime						
1st gen. & autocratic	850	11.454	0.868	9.0	5.0	10.0
2nd gen. & autocratic	607	25.849	0.678	18.0	18.0	19.0
1st gen. & hybrid	379	11.698	0.473	9.0	8.0	10.0
2nd gen. & hybrid	309	11.762	1.209	5.0	4.0	6.0
1st gen. & democratic	614	9.781	0.866	7.0	5.0	9.0
2nd gen. & democratic	492	6.499	0.54	3.25	3.0	5.0
1st & 2nd generation & state duration						
1st gen. & new states	1378	9.255	1.16	6.0	2.5	10.0
2nd gen. & new states	1041	13.643	1.545	5.0	3.5	13.0
1st gen. & old states	981	5.011	0.365	0.5	0.5	0.5
2nd gen. & old states	651	18.329	0.635	13.0	11.0	14.0

Table 3.3: Descriptive statistics of treaty ratification with antecedents (weighted values).

Notes: Total number of subjects “at risk” (country years) to ratify an international agreement is 128205; no.events: number of ratifications that occurred; rmean: restricted truncated mean time to ratification; se(rmean): standard deviation of the restricted truncated mean survival time; median: median time to ratification; 95% LCL and UCL: upper and lower confidence intervals (95%) for the median.

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Global legal pluralism	no.events	rmean	se(rmean)	median	95% LCL	95% UCL
1st generation & regions						
1st gen. & Asia & Pacific	310	8.113	1.313	1.0	1.0	2.5
1st gen. & Latin America & Caribbean	422	0.5	0	0.5	Inf	Inf ^a
1st gen. & Eastern Europe	447	5.6	0.836	0.5	0.5	0.5
1st gen. & Western countries	448	7.975	0.69	1.0	0.5	4.0
1st gen. & Africa & Middle East	769	1.847	0.402	0.5	0.5	0.5
2nd generation & regions						
2nd gen. & Asia & Pacific	220	26.12	2.404	15.0	5.0	28.0
2nd gen. & Latin America & Caribbean	332	15.821	0.902	13.0	9.0	14.0
2nd gen. & Eastern Europe	261	28.073	1.359	26.0	21.0	28.0
2nd gen. & Western countries	271	11.009	0.826	5.0	5.0	6.0
2nd gen. & Africa & Middle East	623	20.873	0.944	16.0	16.0	17.0

Table 3.3: (*continued*) Descriptive statistics of treaty ratification with antecedents (weighted values).

^aNotice that no reliable estimates can be reported in the case of Latin America & Caribbean for agreements of the first generation. In this case, all international agreements which were open for ratification in the first year of the study were ratified in the very same year. This leads to a zero survival rate after the first year (see Figure 3.5) which is due to the nature of the K-M estimator modified for the presence of left-truncated observations on the country level. This measure takes into account that countries can enter the study with a delayed entry time and that times of treaty inauguration are not standardised. In general, the K-M estimator considers the temporal process of the ratification behaviour. However, due to the construction of the non-parametric K-M as product-limit estimator, the curve cannot decrease below the initial value of zero, which was already reached after the first year. For this specific case the survival curve obtained by the non-parametric K-M estimator provides no useful information about the process of ratifications.

Third, we focus on *regional variation* in the ratification of quasi-constitutional agreements. We propose that there are similarities in ratification behaviour among states from the same geographical region. This argument draws from constructivist approaches in international relations. [Finnemore \(1996\)](#), for instance, argues that dense networks of transnational and international social relations shape states' perceptions of the world and their role in that world. As more states commit to international quasi-constitutional norms, other states feel pressured to commit as well. [Simmons \(2000\)](#) introduced a global and regional measure to control for states among which the influence of norms is likely to exist.²⁶ Since our goal is to detect regional variation in ratification behaviour, we classify world regions into five categories: (1) Western countries (including Western Europe, Australia, New Zealand, United States and Canada), (2) Asia and the Pacific, (3) Eastern Europe and post Soviet Union (including central Asia), (4) Africa and the Middle East, and (5) Latin America and the Caribbean ([Hadenius and Teorell, 2005](#)). Our results show that the ratification pace of agreements of the first and second generation differs significantly within each region. In all regions, agreements of the first generation are ratified more rapidly than second generation rights (see Table 3.3). However, the difference in the ratification pace between the two generations is smaller in Western countries than in the other world regions (see Figure 3.5). This finding is in line with [Kagan's](#) claim that Western democracies are the vanguards of international cooperation ([2008](#)).

²⁶For a similar application see also [Goodliffe and Hawkins \(2006\)](#).

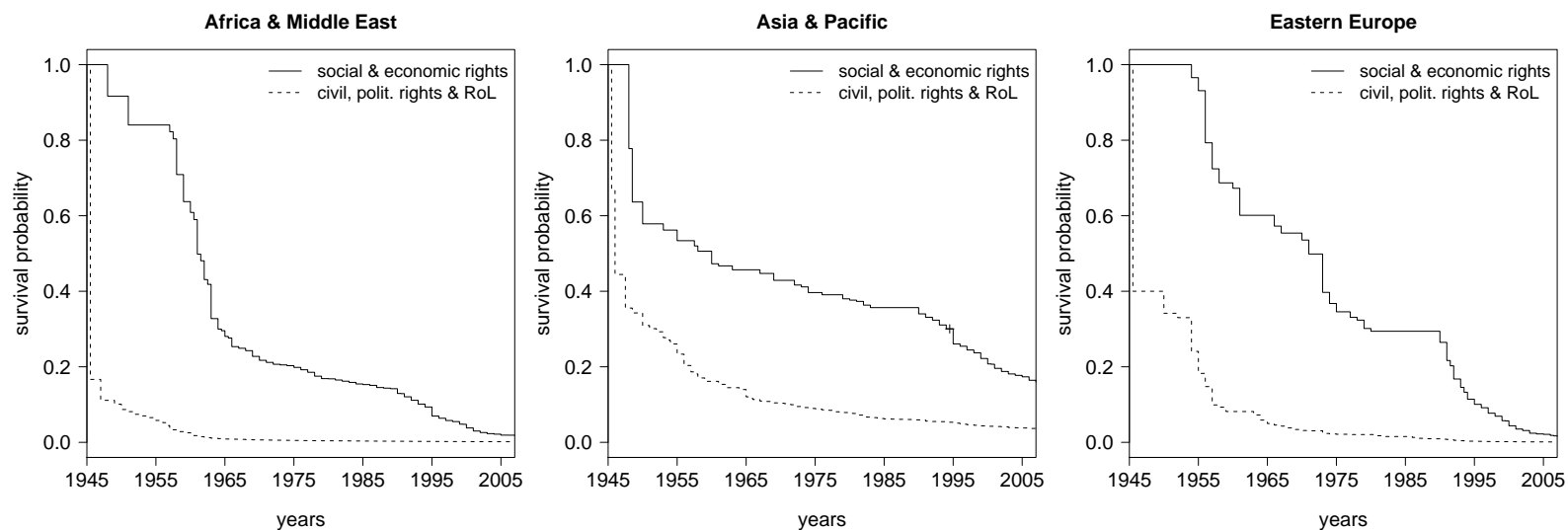


Figure 3.5: Kaplan-Meier survivor curves for 1st and 2nd generation of rights according to geopolitical regions (weighted values) covering 32 international agreements.

Notes: For the sake of clarity, no confidence limits are displayed. Survival probability refers to the probability that a state does not ratify a group of international agreements to a particular time.

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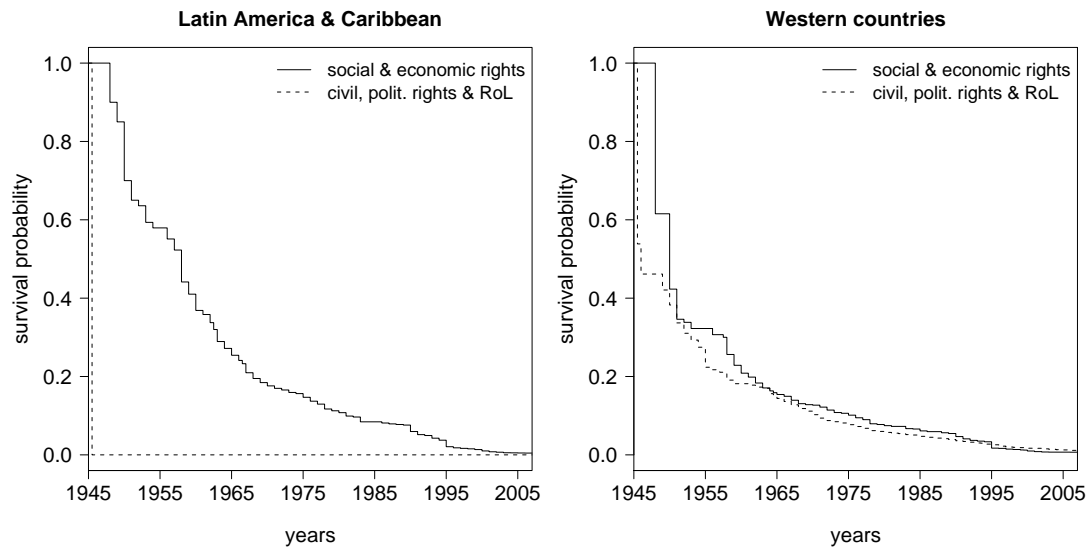


Figure 3.5: (*continued*) Kaplan-Meier survivor curves for 1st and 2nd generation of rights according to geopolitical regions (weighted values) covering 32 international agreements.

3.6 Concluding Remarks

In this study, we investigated the shape of global constitutionalisation. Defining global constitutionalisation in terms of state commitment to international *quasi-constitutional* agreements, we explored the degree to which international law is moving towards a more unified constitutional order or whether it takes the shape of differentiated types of constitutional processes. To this end, we analysed the sequencing and ratification pace of 32 selected quasi-constitutional agreements drawn up in the period between 1945 and 2007. The results of our study are sobering news for those devoted to the ambitious project of a unified “global constitutional order”, as they indicate that the development in international law displays a tendency towards differentiation. Following a generation-based distinction of rights, we find that the ratification of quasi-constitutional agreements embodying political rights with rule of law provisions and civil liberties is faster than the ratification of agreements containing social or economic rights. Certainly, these findings may not come as a big surprise for many scholars; but our analysis is the first to examine the shape of *global* constitutionalisation in a systematic and sophisticated manner.

Four implications follow from our study. First, the fact that global constitutionalisation has a distinct pluralist shape reflects challenges of effectiveness and efficiency. Substantial gaps in the sequencing and ratification pace mean a lack of coherence of the international legal order, and as such tend to imply a gap in effective and efficient governance.

Second, our analysis provides a starting point for further elaboration on the future legal and constitutional shape of the international polity. Based on their experiences with the European Union, European lawyers enthusiastically started to employ the constitutional vocabulary on a global scale. Our findings, however, may dampen this enthusiasm. They do not lend support to a unified and quick process of global constitutionalisation, but rather lend support to the idea of a “multi-speed globe” of differentiated constitutionalisation. Such a “variable geometry” on the global scale could also acknowledge irreconcilable differences among nation states. Thus, proponents of global constitutionalism may be well advised to focus primarily on groups

of states able and willing to pursue common objectives, while acknowledging that others may follow but with a considerable time lag.²⁷

Third, we have also focused on three antecedents of global constitutionalisation, namely regime type, state duration, and regional effects. We could demonstrate that processes of global constitutionalisation vary across regime types and world regions (while there is no effect for new and old states). These findings provide an important starting point for more detailed, case-based analyses of the exact mechanisms underlying processes of global constitutionalisation.

Fourth, to study ratification patterns we employed sophisticated statistical tools, namely the analysis of multiple ratification events using the WLW formulation combined with a counting process style of data input. Most studies concerned with the issue of commitment to international agreements focus on one agreement or a selection of a few agreements (Goodliffe and Hawkins, 2006; Hafner-Burton and Tsutsui, 2005; Hathaway, 2007; Neumayer, 2008; Simmons, 2000; Vreeland, 2008; Wotipka and Ramirez, 2008). This approach, however, is deficient since it raises the problem of generalisability. Our statistical tools (combining the WLW approach with the counting-process data imputation style) provide a more appropriate framework for studying cross-treaty ratification effects in an encompassing manner and for analysing multiple ratification events. By examining all quasi-constitutional agreements since 1945, we have been able to draw more generalisable conclusions than is possible when analysing evidence from individual agreements. By studying ratification patterns of 32 international quasi-constitutional agreements, we have been able to provide a more comprehensive evaluation of these agreements and to investigate research questions which cannot be tackled in a one-agreement analysis or a series of one-agreement analyses.

Finally, we acknowledge that our analysis is mainly descriptive. While we made a first attempt to explore antecedents of global constitutionalisation, future research must take a more extensive look at the forces impeding or facilitating constitutionalisation processes, while at the same time specifying the exact mechanisms. These crucial issues should be tested and assessed in our comprehensive multi-treaty framework.

²⁷For “multi-speed Europe” and “variable-geometry Europe” see e.g. Alesina and Grilli (1993), Krugman (1991), and Stubb (1996).

Chapter 4

Hard Man and Soft Law

An Advanced Commitment Analysis of Quasi-constitutional International Agreements in the Age of Hegemony

4.1 Introduction

The twentieth century has witnessed an unrivaled *expansion of international law*, involving new subject-matters and ways of norm creation, redefining the relationship between state and individual, changing the attitude towards conflict and security, and transitioning state relations from coexistence to cooperation. These developments have been profoundly influenced by World War II and the goal of preventing a new global disaster that many observers and analysts associated with the use of hard power in international politics.

In recent years, the *deepening of international law* gained new momentum in the debate on global constitutionalization. *Global constitutionalization* is the process of institutionalizing international legal norms (e.g., [de Wet, 2006](#); [Peters, 2006](#); [Petersmann, 2006a](#); [Zürn, 2007](#)). For quite some time, this process has been mainly studied from a normative angle. This is not surprising given its strong anchor in international law. In recent years, however, the phenomenon has also been investigated empirically, with a main focus on the European context ([Rittberger and Schimmelfennig, 2006](#); [Stone Sweet, 2000](#)). In addition, the topic of state commitment to *specific* international agreements has been extensively studied by international relations scholars

(e.g., [Goodliffe and Hawkins, 2006](#); [Hafner-Burton, Tsutsui and Meyer, 2008](#); [Hathaway, 2007](#); [Simmons, 2000](#)). What is lacking, however, is a *comprehensive* analysis of international commitment at the global level.

In this article, we embark upon such an undertaking and study the antecedents of global constitutionalization. In this regard, we focus on the gradual institutionalization of so-called *quasi-constitutional international agreements with soft law character*. These are core international law documents which slowly build up a body of binding *quasi-constitutional* law containing (1) *organizational and institutional guidelines* for inter-state relations and (2) *fundamental human rights* provisions for individuals. Our analysis focuses on a selection of 34 international agreements that entered into force between 1945 and 2007. We draw from the two major theoretical approaches in international relations, namely realism and liberalism. First, we argue that the process towards the creation of quasi-constitutional law with soft law character takes place in the context of a hegemonic order (with the United States as the hegemon). Second, we propose that hard power (measured as material capabilities of states), domestic political values (democracy and autocracy), and trade interdependence (with the United States) affect international legal commitment. Third, we argue that it is necessary to link power-based, domestic politics, and interdependence-based explanations. In concrete terms, we propose two conditional hypotheses, one combining the power-based and domestic-politics based explanation, and the other combining the power-based and trade interdependence-based explanation. With regard to the former, we argue that ratification is most likely in the case of powerful democratic states, and least likely in the case of less powerful autocratic states. Linking state power and trade interdependence, we argue that powerful states with strong trading ties to the US have the highest likelihood of treaty ratification. In contrast, weak states with few trade links to the US are expected to have the lowest likelihood of treaty ratification.

From a methodological point of view, we study the sequencing (i.e., the time of treaty inauguration) and the ratification pace of these agreements. We do so by employing sophisticated statistical tools, namely event history techniques for multiple (ratification) events. This method combines the marginal risk set approach of [Wei, Lin and Weissfeld \(1989\)](#) with a counting process style of data imputation according to [Andersen and Gill \(1982\)](#).

The paper is structured as follows: first, we define and operationalize our dependent variable – state commitment to quasi-constitutional international

agreements with soft law character. Next, we present our theoretical arguments (including the conditional hypotheses linking power-based, domestic politics, and interdependence-based arguments). This is followed by the operationalization of the predictor variables and the control variables as well as a detailed account of the methodology we employ. Then we present our empirical findings, and follow these with some concluding remarks.

4.2 Global Constitutionalization & Soft Law

The debate on global constitutionalization suffers from conceptual confusion. To better understand what global constitutionalization means, we first need to situate this discussion into a more general context which takes account of the key terms: constitution, constitutionalism, and constitutionalization.

Even though *constitutions* differ according to national traditions (cf. [Preuss, 1998](#)),¹ they serve common functions. They set in place political institutions and define their competences. They lay down the terms of membership and the relation between the members and the community, and regulate the institutions' core functions of law-making, conflict resolution, and law enforcement ([Jellinek, 1914](#), 505). In other words, constitutions constitute a political entity as a legal entity, organize it, limit political power, offer political and moral guidelines, justify governance, and contribute to integration ([Peters, 2001](#), 38–92). Put simply, the term constitution is closely linked to the rule of law which provides for a formal requirement guaranteeing the special relationship between the branches of power (cf. [Hart, 1961](#); [Fuller, 1964](#); [Maravall and Przeworski, 2003b](#)). The list of formal rules, which constitute law, are general norms, publicly promulgated, not retroactive, clear and understandable, logically consistent, feasible, and stable over time ([Fuller, 1964](#), 39). *Constitutionalism* goes beyond the simple articulation of formal rules. Originally, the term constitutionalism described an intellectual movement engaged in the quest for a written constitution. It aimed at making political power (monarchy) subject to law and at creating a government of laws and not of men. Today constitutionalism is a value-laden concept and refers to the inclusion of basic rules and principles into a written constitution ([Peters, 2006](#), 582; cf. [Koskeniemi, 2007](#), 9). Constitutionalism defines

¹[Sartori \(1962\)](#) describes the term constitution as something vague and not easily simplified.

rights of, and obligations to, individuals. It is a sort of mindset, “a tradition and a sensibility about how to act in a political world” (Koskenniemi, 2007). Unlike the notion of constitution, constitutionalism comprises both the requirement of legal certainty, and the protection of acquired rights and legitimate expectations. *Constitutionalization*, finally, indicates a process towards the emergence, creation and identification of constitution-like elements. It embeds a time dimension, which implies that a constitution or constitutional law can come into being as part of a process extending through time. In short, it denotes a constitution-in-the-making (Peters, 2006, 582).

The emerging idea of global constitutionalism is viewed as the combination of two specific sets of norms which evolve over time: the *formal norms*, which comprise primarily the principle of the rule of law and the *substantive norms*, most importantly the guarantee of fundamental rights to individuals. By analogy to a domestic constitution, a *global constitution* would be the sum of basic legal norms that comprehensively regulate the social and political life of a global polity.

To be sure, there is no world constitution. The body of international law resembling constitutional rules and principles is not concentrated in one single document. Rather it is codified in various binding international agreements – *soft law* texts (Boyle, 1999; Abbott and Snidal, 2000; cf. Chinkin, 1989; Christians, 2007; Raustiala, 2005). In this context, soft law denotes that these international agreements slowly build up a body of binding *quasi-constitutional* law (Eskridge Jr. and Ferejohn, 2001), without any central authority to legislate hard law. Unlike national law, the body of international law is not subject to a formal hierarchical order. There is no explicit global authority. Soft law represents a way for gradual institutionalization of international constitutional rules and principles via various international agreements. We call these international agreements *quasi-constitutional*. While they have some important constitutional features, they do not cover the entirety of a constitutional document. Put differently, they do not refer to the creation of a single “big C” written Constitution, but to the creation of the “small c” constitution (Gersen and Posner, 2008), a “constitution outside the [national] Constitution” (Young, 2007, 415).

The object of our study is to analyze state commitment to international agreements containing basic legal rules and human rights. In concrete terms, we focus on the sequencing (i.e., the time of treaty inauguration) and the pace of state commitment to international agreements. For the purpose of

this analysis, we have compiled a data set on ratifications² of international agreements.³ The data set encompasses ratification entries for 34 post-World War II international agreements over 199 nation states.⁴ It includes ratifications of charters, conventions and covenants, as well as amendments and protocols.⁵ All provisions covered by these legal documents address (1) the protection of human rights (civil, political, economic and social rights) and/or (2) the rule-of-law principle.⁶ In this sense, our collection of documents reflects these two fundamental aspects of global constitutionalization.⁷

The past six decades have witnessed a proliferation of international agreements. The total number of international agreements exceeds the 34 selected agreements by far. This makes it impossible to derive the selection of agreements on an empirical basis. The choice of treaties has the sole aim of covering the most important agreements containing some constitutional characteristics. A detailed inventory is given in Appendix A.

We acknowledge that by measuring the sequence and ratification pace of international agreements, we capture only parts of the larger global con-

²We use “ratification” to cover several possible treaty actions – acceptance, approval, accession and succession – which all have the same legal effect as ratification and consequently lead to an internationally binding arrangement (art. 2(1)(b), [Vienna Convention on the Law of Treaties, 1969](#)).

³By “international agreement” we refer to all international norms included into the sample. International agreements embody the widest range of international instruments. Following art. 2(1)(a) of the [Vienna Convention on the Law of Treaties \(1969\)](#) an “international agreement” is “concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designations”.

⁴For the selection, we also consulted scholars specialized in public international law.

⁵The terms convention, charter and covenant embody all formal international agreements in the same way as the term “treaty” does. They are normally open for participation by the international community as a whole and are negotiated under the auspices of an international organization. They cover a relatively broad range of functional areas. Protocols and amendments, in contrast, are more limited in scope ([United Nations, 1999](#)).

⁶Following the terminology of [Sartori \(1962, 857\)](#), the rule-of-law principle is conceived here in the “formal, *cosmic* meaning” referring to “the formalization of the power structure”, and not merely in a substantive, “*garantiste* meaning” as part of human rights guarantees.

⁷The issues of universality ([Somers, 1994](#)) and priority of rights ([Bedau, 1979](#); [Cranston, 1964](#); [Fried, 1978](#); [Shue, 1980](#)) are disputed in the literature. In this study, however, we refrain from analyzing the agreements according to the different issue-areas of rights. ([Milewicz, Bächtiger and Nothdurft, forthcoming](#)) provide a preliminary descriptive analysis based on a generations account of rights ([Marshall, 1950](#); [Vasak, 1977](#)).

stitutional picture. Our analysis focuses only on the institutionalization of some international rule-of-law provisions and the legal protection of human rights. Our analysis is limited by the ability to quantify international agreements.⁸ As such, we do not address structural issues of global authority, e.g., principles and structures for the establishment of global “legislation”, the exercise of global “executive power”, or the operation of global adjudicatory capacity. We shall therefore refer to the selected international agreements as *quasi-constitutional agreements with soft law character*.

Formally, the selected agreements all have in common that they are written and binding instruments. They establish legal rights and duties and require ratification. Strictly speaking, with regard to their *legal form*, the selected agreements could be labeled *hard law* instruments. However, the selected agreements differ with regard to *content* and *enforceability*. Content and enforceability can decisively soften the character of binding international agreements. As to content, the selected agreements either involve clear and specific commitments in the form of rules or more general statements laid out in the form of norms and principles. Such general statements, while having legal significance similar to constitutional principles (Dworkin, 1977, 137–140), are vague and universal in wording leading to a considerable softening of a formally binding agreement. Furthermore, binding international agreements also vary according to compliance procedure, and more specifically to the method of *dispute settlement* in case of non-compliance. Consequently, international agreements can involve a sophisticated scheme of compulsory adjudication in the case of a dispute, or non-binding conciliation or compliance procedure before an independent third party. Thus, our selected quasi-constitutional international agreements are hard law in only one sense

⁸There are three alternative ways of operationalization to consider, which, however, are not feasible at this stage of research. First, we might focus on the creation and initiation of international agreements in order to explore the negotiation and bargaining capabilities of states during the process of drafting an agreement. However, documentary sources from the years of preparatory discussions and negotiations (the *travaux préparatoires*) are not publicly accessible for all the international agreements under consideration. Second, we could study the overall rates of compliance with international provisions. This approach, however, requires extensive data gathering and would imply a standardized translation of qualitative materials into quantifiable levels of compliance rates. Third, we might focus on the overall ratification rate of international agreements. This would, however, involve omitting the time dimension, thus confronting us with the problem of relatively low variance both among states and international agreements. We would lose important information with regard to the sequencing and ratification pace of international agreements.

– they are formally binding. However they are soft in all the ways international law scholars use to characterize soft law. Soft law is predominantly distinguished from hard law according to three criteria: legal form, content and dispute resolution mechanisms (Boyle, 1999; cf. Chinkin, 1989; Christians, 2007; Raustiala, 2005). The threefold distinction is analogous to what Abbott and Snidal (2000) call legal obligation (soft law has a lower degree of obligation than hard law); precision (soft law involves a less detailed and precise language, and therefore has a lower degree of precision than hard law); and delegation (soft law keeps enforcement within the parties, while hard law delegates enforcement to an independent third party). Thus with regard to content and enforceability, the selected agreements are better seen as soft law.

4.3 Theoretical Argument

Our theoretical points of departure are the two dominant schools of thought in international relations, namely realism and liberalism. We think that both approaches offer plausible explanations of how international cooperation works; we also think that by linking power-based, domestic politics-based, and interdependence-based explanations we obtain a deeper and more comprehensive picture of international legal commitment. In the first step, we present hypotheses based on the realist and liberal school separately. In the second step, we combine the two schools and present conditional hypotheses, linking power and domestic politics as well as power and trade interdependence.

4.3.1 Realism

Realist approaches make the following well-known assumptions: (1) states, the primary actors in international politics, are rational, functionally identical, and unitary; (2) states' preferences are exogenous and fixed; and (3) the anarchic structure of the international systems creates uncertainty and mistrust so that power is the only constant in the international sphere (Legro and Moravcsik, 1999).

While these core assumptions remain untouched, the realist school has seen a number of theoretical revisions in recent years. One concerns the structural dimension of international politics, namely the conditions under

which international politics operate. There is increasing recognition of the outstanding role of the US in the international system (labeled the *Pax Americana*, American empire, hegemony or superpower in a unipolar international system).⁹ Realists have started to unravel the prevalent state-under-anarchy framework. Instead of conceptualizing the international system in Waltzian terms of either anarchy or hierarchy (Waltz, 1979, 114–116),¹⁰ they now give attention to hierarchy *in* anarchy (Donnelly, 2006, 141). And since anarchy is associated with formal equality of sovereign states (Brownlie, 2003, 287–288), hierarchy is associated with the principle of (formal or informal) sovereign *inequality* (Donnelly, 2006; Krisch, 2003).

In this regard, Nexon and Wright (2007) provide a useful distinction between empire, unipolarity and hegemony (cf. Ikenberry, 2001). The three approaches to hierarchy differ in terms of their network properties. Network properties entail strength (or intensity) and density of (network) ties between the single units (states).

Imperial orders are characterized by a “spoke” or “star-shaped” network structure (Montgomery, 2005, 169–170). They have two features: on the one hand, central authorities are connected by ties of authority to local intermediaries who, in turn, exercise authority over a variety of other local actors; on the other hand, routine political ties among peripheries are sparse and weak. *Unipolar orders*, in contrast, do not embody a specific vector of authority. They operate in an anarchic environment (Waltz, 1979, 104–105) and their network ties are extremely weak and sparse (Granovetter, 1973). There is little integration and weak collective identification between states (e.g., Layne, 1997; cf. Waltz, 2000; Wohlforth, 1999). Finally, *hegemonic orders* involve the existence of at least some weak and sparse ties of authority between the hegemon and the lesser powers. These represent a minimal level of authority, or asymmetric influence, created by the hegemonic bargain, which is often conceptualized as being relatively uniform (asymmetric influence by the hegemon). Hegemonic orders also differ from the concept of unipolarity insofar as they involve greater interdependence. Hegemony refers to a preponderance

⁹The terms have in common that they represent systems with pre-eminent powers in world politics. However, the usage of these terms is blurred. Scholars refer to them in an ambiguous way, without providing clear lines for demarcation.

¹⁰Anarchy means the absence of government; hierarchy means the “relations of super- and subordination” in which “actors are formally differentiated according to the degree of their authority, and their distinct functions” (Waltz, 1979, 81, 114).

of power, which allows the hegemon to exert substantial influence over international issues. However, a hegemon does not have complete control over the international outcome which creates incentives for cooperation. Hegemonic orders encourage the formation of cross-cutting political ties among states. A hegemon has incentives to exploit the subordinate states. But subordinate states are not powerless. They have a strong incentive to challenge hegemony and to reduce the level of exploitation. This can be reflected in the formation of coalitions to counterbalance the hegemon (Goodin, Güth and Snidal, 2008, 4–6, 31–32; cf. Pape, 2005).

The ability of states to reap gains from limited economic specialization, or from the creation of a network of security guarantees, is an important component of most accounts of the factors that stabilize hegemonic orders (Ikenberry, 2001; 2002, 10). Within a hegemonic system states can only challenge the hegemonic power if they enjoy significant internal coherence and autonomy in international politics. The fate of hegemonic systems thus depends largely on the interaction of three factors: the ability of the hegemon to sustain its leadership (in economic, military, and technological terms); the degree to which potential challengers perceive themselves as benefiting from the existing hegemonic order; and the propensity for hegemonic overextension. Thus, hegemony is also about how power is used and how it is resisted (Goodin, Güth and Snidal, 2008, 6).

We think that the concept of hegemonic order is the most appropriate one for our analysis. The time frame of our analysis is the period from 1945 to 2007. As Cox (2004) argues, considering the US as *Empire* is a recent phenomenon and does not apply to the entire post-World War II era. The same is true for unipolarity: there is no anarchic environment with extremely weak and sparse network ties in the period under investigation. As for bipolarity, the existence of poles is crucial, no matter the number (whether 1, 2 or any small number). Thus, the hegemonic approach seems to provide a better account of American dominance in international politics since 1945. Looking at our own empirical data (see Figure 4.1, below), we witness a steady and continuous rise of the US dominance measured in terms of its material capabilities since 1945. “Material capabilities” is a composite power indicator. Roughly speaking it combines three dimensions of material resources: demographic, economic and military. Full details will be provided below, in section 4.4.

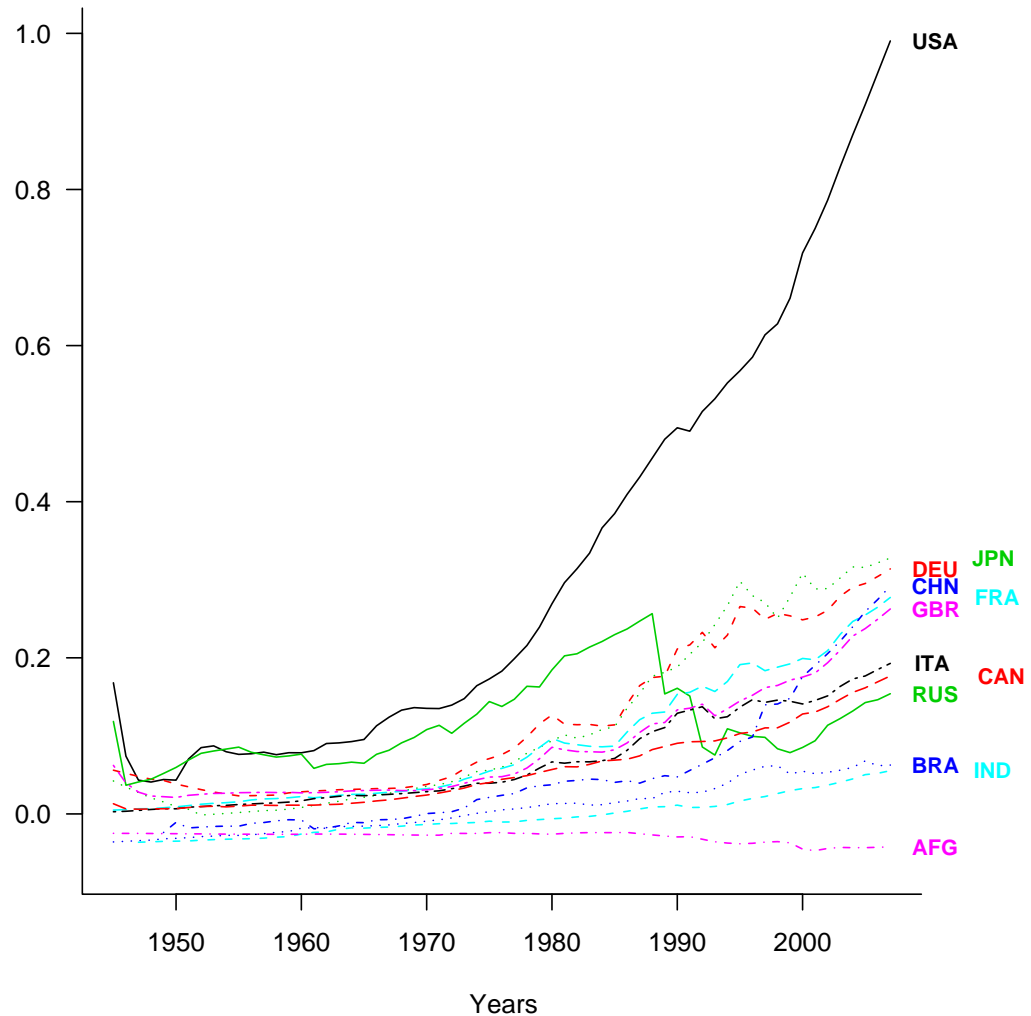


Figure 4.1: Development of state material capabilities for 12 states.

Notes: The US displays by far the highest degree of material capabilities, compared to other powerful states (the G8 states, Brazil, China and India). RUS refers to the Soviet Union until 1990 and Russia afterwards, DEU to West Germany until 1990 and Germany afterwards.

Even though the US is the major founder of the international order and a strong supporter of internationalism and multilateralism, it is also a chief force of resistance against it. The US pursues a twofold strategy in international politics. On the one hand, it extols the virtues of the international

law as a way of moving the world towards greater peace, democracy and a “new (legal) world order”. On the other hand, the US does not seem to lend the same support for international law and institutions. Rather, it opts for unilateral action when its own interests are concerned, but is simultaneously eager to enhance multilateralism when it is not affected or when it is convenient for the US to do so (Krasner, 2000; Goodin, 2003).

Thus, legal scholars perceive the US attitude towards international law as exceptional (Byers, 2003; Rubinfeld, 2004; Scott, 2004). Exceptionalism does not mean that one state is more equal than the rest; in line with realism it also means that international law is ineffective and merely reflects the distribution of power. Thus, a superpower stands above international law, in the same (old-fashioned) way as the sovereign (king) stood above domestic law (D’Amato, 2008, 19–20; Goodin, 2005; cf. Hart, 1961, 55–56). Indeed, when it comes to ratifying international quasi-constitutional agreements, the US is a laggard. Out of 34 selected international quasi-constitutional agreements addressing human rights issues and inter-state relations (in the period between 1945 and 2007) the US has only ratified thirteen.

Given the hegemonic order with the US as a pre-emptive power in the international system, we *focus on the behavior of the states under the hegemonic umbrella of the US*. Following realist assumptions, we expect states to secure their national interests and security; they are primarily concerned with the perpetuation (or extension) of their own power position. As such, all states are interested in constraining hegemonic power. But this is particularly true of powerful states, whose strong position in the international system is most likely to be jeopardized under the rule of a pre-emptive power. The existence of a hegemon undermines their relatively great control over international outcomes, increases their need of international protection, and reduces their high sovereignty costs associated with international cooperation (Abbott and Snidal, 2000, 448). A hegemonic order will thus make powerful states vulnerable to international cooperation and provide strong incentives to balance against the hegemon. But rather than employing the costly use of hard power such as military force, powerful states may be keen on using “soft-balancing”¹¹ (Pape, 2005) measures such as international legal instruments to reverse the one-sided hegemonic direction of authority into

¹¹ “Soft balancing” parallels the concept of “soft power” (Nye Jr., 2004), but might run counter to the traditional realist view confined to “hard balancing”.

a more symmetric or even an asymmetric “constitutional order”.¹² Quasi-constitutional agreements of soft character are particularly responsive to variable preferences and capabilities of states. They can pave the way for harder international constitutional law (Abbott and Snidal, 2000, 448; cf. Shelton, 2000). They reflect the constitutional effort to create a government of law and not of “hard men”. If effective, this law can offer protection, certainty about the others’ behavior and credibility of legal commitment. As Krisch (2003, 152) concurs: “The structure of law thus tends to resist inequality, and this resistance increases with the strength of the legal order – the more international law moves from contracts to law and from primary to secondary rules and institutions, the more the resistance grows. The more international law becomes constitutionalized, the more it pulls towards equality”.

Moreover, states with relatively large material capabilities are also concerned with reputation or what Grant and Keohane (2005, 37) call “reputation accountability”. By ratifying quasi-constitutional agreements, they can present themselves as credible leaders in world politics. Finally, powerful states possess more negotiation power. Studies analyzing international treaty-making point out that throughout history “great powers”¹³ have enjoyed special rights to fix the shape of the international legal order and manage international society. Powerful states occupy a position of cultural, material and legal superiority. Therefore, they have the regulatory authority to police the international order and to exercise unequal influence over international peace- and law-making efforts (Donnelly, 2006, 152; Simpson, 2004, 5–6). Powerful states can use material rewards and punishment to coerce the self-interest of weaker states during the treaty-negotiation process and thus promote their own self-interest (Goldsmith and Posner, 2005; Hathaway, 2003; 2005). This allows them to exert disproportionate influence on the substance of an international agreement (Abbott and Snidal, 2000, 448)

¹²Following Ikenberry (2001, 29), the constitutional order is a distinctive form of a hegemonic order. It is a “political order organized around agreed-upon legal and political institutions that operate to allocate rights and limit the exercise of power”. Within such a system, lesser powers can exert influence over the decisions of a hegemonic power, diminish the political autonomy of the hegemon, restrain power institutionally and make credible commitments (Ikenberry, 2001, 29–49). According to Reus-Smit (1997), actual hegemonic orders combine elements of both hegemonic and constitutional orders.

¹³According to Simpson (2004, 6), “great powers” are defined as “an elite group of nations acting ‘with public authorisation’ through legalised hegemony”.

– which then makes it easier for them to commit to international law. This leads to hypothesis 1:

H_{power} – Powerful states under the hegemonic umbrella are more likely to take part in international legal cooperation by ratifying international quasi-constitutional agreements, compared to non-powerful states.

4.3.2 Liberalism

Liberals emphasize the “nature of domestic representation” as the decisive link between societal demands and state policy (Moravcsik, 1997, 524; cf. Slaughter, 1995). Scholars of the liberal school argue that state preferences are neither fixed nor autonomous but are the aggregation of individual and group preferences and that these preferences are the primary determinant of how states behave in international politics. Put differently, a state’s behavior is dependent on how states are internally constituted. According to Moravcsik (1997, 518) “[r]epresentative institutions and practices constitute the critical ‘transmission belt’ by which the preferences and social power of individuals and groups are translated into state policy”. What matters is the relationship between domestic ratification hurdles (such as power and preferences of the constituents as well as specific institutions) and the likelihood of international agreement (e.g., Martin, 2000; Milner, 1997; Milner and Rosendorff, 1996; Moravcsik, 1998; Putnam, 1988). As such, liberal theory allows “more general distinctions among different categories of States based on domestic regime-type” (Slaughter, 1995, 509). The regime type of a state expresses the underlying political (democratic versus authoritarian) values, structures, institutions and preferences of a society. Regime type is considered the key variable reflecting “the scope and density of domestic and transnational society, as well as the structure of government institutions and the mode and scope of popular representation” (Slaughter, 1995, 509). In this regard, democratic states are generally expected to be more likely to ratify international quasi-constitutional agreements, as the content of such agreements reflects at the international level their domestic (western liberal) political values. Unlike autocratic states, democracies do not face high adjustment costs in ratifying an international agreement.¹⁴

¹⁴Note that even though liberal scholars conceive states or governments as mere representatives of their diverse (and conflicting) societal preferences, their concrete behavior

This is not to say that democratic states are necessarily committed to universal values embedded in international law. But the key is that international law enables democratic states to realize goals that would be otherwise impossible to realize at the domestic level. For instance, the effective provision of specific domestic policies (such as economic policy) frequently requires international coordination (e.g., [Moravcsik, 1997](#)). While this argument applies to both democratic and autocratic states, the former have a wider range of policies that fall under this rubric ([Slaughter, 1995](#), 531). This leads to hypothesis 2:

H_{polity} – Liberal or democratic states are more likely to cooperate internationally in legal matters, ratifying international quasi-constitutional agreements, than non-liberal or autocratic states.

Liberal theories also focus strongly on the effect of economic interdependence on international peace and cooperation. The liberal argument is that economically open and trade-interdependent states will be more willing to cooperate in international politics ([Oneal and Russett, 1997](#)):¹⁵ States are deterred from initiating conflict against a trading partner for fear of losing the welfare gains associated with trade. Mutual trade as well as economic dependence makes conflict more costly, thereby increasing the incentives toward cooperation and peace. The accruing benefits associated with trade affect rational leaders' foreign policy behavior, as they attempt to maximize social welfare. In a leader's expected utility calculus, international cooperation is associated with welfare gains and trade benefits ([Polachek, 1980; 1997](#)).¹⁶ Thus trading nations are internationally more cooperative than non-trading nations. The majority of empirical studies lend strong support to this argument (e.g., [Hegre, 2000](#); [Mansfield, 1994](#); [Oneal and Russett, 1999](#); [Polachek, 1980](#); [Polachek, Robst and Chang, 1999](#); [Russett and Oneal, 2001](#); but see, [Barbieri, 1996](#)).

in international politics can still be considered in terms of one single entity of aggregated individual and group preferences.

¹⁵The argument that trade promotes peace is not exclusively attributed to the liberal school. Functionalists and neo-functionalists have also argued that the expansion of interstate linkages in one area stimulates further cooperation in other areas (e.g., [Dougherty and Pfaltzgraff Jr., 1990](#); [Haas, 1964](#)). The argument is that the recognition of mutual benefits through cooperation fosters peace as national interests converge.

¹⁶[Alt and Gilligan \(1994\)](#) provide detailed theoretical insight into the effects of trade on the aggregate domestic economic welfare and the distribution of wealth and costs.

Given the hegemonic structure of international politics, however, the trade-interdependence hypothesis must also consider the economic relationship between the hegemon and the other states. We propose that states which are economically strongly dependent on the hegemon will have an incentive to advance the creation of international norms. Constraining the hegemon by legal means will facilitate the regulation and maintenance of the (trading) relationships with the hegemon and thus help to secure welfare gains. Of course, this mainly concerns the economic and rule-of-law aspects of global constitutionalization. But drawing from functional theories of international politics, it is reasonable to assume that trade interdependence has “spill-over” effects on other regulatory issue-areas. In other words, the creation of economic and rule-of-law provisions provides incentives to promote binding civil, political and social rights as well. Or, as Copeland (1996, 8) argues, trading ties can increase corresponding political ties. In so doing, the institutional arrangement can become more effective, allowing the full potential of welfare gains to be realized. Thus, trade can improve the prospects for long-term cooperation. In the empirical analysis, we thus focus on the trade (inter-)dependence structures with the US as the hegemonic power. This leads to hypothesis 3:

H_{trade} – States which are economically dependent on the hegemon are more supportive of international legal cooperation and thus are more likely to ratify international quasi-constitutional agreements, than non-trading states.

4.3.3 Interacting Power and Regime Type

In examining the interaction between power¹⁷ and regime type, we expect the effect of regime type to be conditioned by a state’s power position. Overall, we expect that the democracy-autocracy divide will be stronger than the power effect. Democratic states are expected to have a higher likelihood of ratification than non-democratic states, regardless of whether they possess more or less material capabilities. However, power would be expected to make a difference to the pace of ratification. Interacting power and regime type, four ideal-type constellations can be identified: powerful democracy, weak democracy, powerful autocracy and weak autocracy (see Table 4.1).

$H_{powerful\ democracies}$ – Powerful democracies are most likely to ratify international agreements.

¹⁷By “power” we mean the material capabilities indicator, as mentioned above.

First, as mentioned before, these states hold domestic political values that are congruent with international quasi-constitutional treaties. Second, drawing from the democratic peace literature, these domestic values also prevent powerful democratic states from using hard forms of power, at least against other democratic states (e.g., [Lipson, 2003](#)). Third, by committing to quasi-constitutional agreements, powerful democracies can promote their reputation as leaders in the democratic world. Fourth, greater material resources mean that these states can influence the content of an international agreement in favor of their own interest. Thus, we expect a very strong positive multiplicative effect for powerful democracies on treaty ratification.

H_{weak democracies} – Weak democracies are less likely to ratify international agreements than powerful democracies.

Weak democracies resemble powerful democracies in the sense that they share domestic political values underpinning quasi-constitutional treaties. However, unlike powerful democracies, weak democracies cannot exert the same influence on the content of international norms during the negotiation process. Thus, international treaties may not reflect the specific interests of weak democracies, leading to a lower likelihood of ratifying international quasi-constitutional agreements. The distinction between strong and weak democracies should not be confused with the issue of democratic consolidation; this is controlled in the empirical analyses by the measure of state duration.

H_{weak autocracies} – Weak autocracies are less likely to ratify international agreements than democracies.

Weak autocracies will be more reluctant to commit to quasi-constitutional agreements than democratic states, since these agreements may run counter to their domestic political values. In addition, weak autocracies do not possess much negotiation power to influence the content of international law. Thus, we assume that weak autocratic states are less likely to ratify international quasi-constitutional treaties than democratic states.

H_{powerful autocracies} – Powerful autocracies are less likely to ratify international agreements than democracies, but more likely to do so than weak autocracies.

Similarly to weak autocracies, powerful autocracies potentially face high domestic adjustment costs when ratifying quasi-constitutional agreements. Quasi-constitutional agreements are frequently in sharp contradiction with their domestic political values. But powerful autocracies may have a specific

interest in containing the power of the hegemon and in advancing their reputation in international politics; moreover, they have more negotiation power to shape the treaty-making process. This should lead to a higher ratification rate by powerful autocracies than by weak autocracies.

		Power	
		<i>strong</i>	<i>weak</i>
Regime	<i>democratic</i>	+	+ –
type	<i>autocratic</i>	–	– –

Table 4.1: Expected *power*political values* effect.

4.3.4 Interacting Power and Trade

When interacting power and trade, four ideal-type constellations can be identified: powerful traders-with-the-US, weak traders-with-the-US, powerful non-traders-with-the-US and weak non-traders-with-the-US (see Table 4.2). Note that the rationales for these four ideal-type constellations are independent of regime type. In other words, powerful traders-with-the-US are not automatically democratic states (nor are powerful non-traders-with-the-US automatically autocratic states).

$H_{\text{powerful traders-with-the-US}}$ – Powerful states with a high level of trade interdependence with the US have a strong likelihood of ratification of quasi-constitutional agreements.

On the one hand, trade interdependence with the US makes these states vulnerable to losses of welfare gains associated with trade. As such, they are particularly concerned about checking the power of the hegemon. On the other hand, powerful traders-with-the-US have a high degree of negotiating leverage in the process of treaty making and thus can shape the content of the treaty. This should lead to a high likelihood of treaty ratification.

$H_{\text{weak traders-with-the-US}}$ – Weak states with a high level of trade interdependence with the US are less likely to ratify international agreements than powerful traders-with-the-US.

Weak traders-with-the-US will also have an incentive to preserve their welfare gains associated with trade. However, since they do not possess much

power in terms of material capabilities, they have less negotiation power in the treaty-making process. Consequently, international agreement might not always reflect their preferences and we expect weak traders-with-the-US to have a lower likelihood to ratify an international agreement, compared to the powerful traders-with-the-US.

$H_{\text{powerful non-traders-with-the-US}}$ – Powerful states with weak trading ties to the US are also less likely to ratify quasi-constitutional agreements than powerful states with strong trading ties to the US.

Powerful non-traders-with-the-US have a weak trade link to the US but are vested with great material resources. These states may be keen to compensate for disadvantages caused by welfare losses produced by the absence of trade links with the hegemon; moreover, they might be interested in advancing their reputation in international politics. For these states we expect a relatively high likelihood that they will join international quasi-constitutional agreements, comparable to that of weak states with a high trade interdependence with the US.

$H_{\text{weak non-traders-with-the-US}}$ – Less powerful states with weak trading ties to the US have the lowest likelihood of treaty ratification.

We consider these states to be the outsiders in the international system. They are not concerned about welfare gains (or losses) in their trade-relationship with the US. At the same time they do not possess the necessary power capabilities to check hegemonic influence. They have few possibilities to influence the drafting process of an international agreement and to bring international norms in line with their own preferences. Therefore, we expect that this group of states has a low likelihood of ratifying international agreements.

		Power	
		<i>strong</i>	<i>weak</i>
Trade interdependence with the US	<i>strong</i>	+	+ –
	<i>weak</i>	+ –	–

Table 4.2: Expected *power*trade* effect.

4.4 Operationalization

For our dependent variable, quasi-constitutional agreements with soft law character, we have already provided a detailed account of how we operationalize it. In the following, we concentrate on our main explanatory variables – power, domestic regime type, and trade interdependence – and on a batch of control variables.

To measure power, we focus on the material capabilities of states. We have constructed a power indicator (POWER) with three dimensions containing demographic, economic and military resources. The indicator is made up of 10 variables: MILITARY EXPENDITURE (in thousands of current year US\$), MILITARY PERSONNEL (in thousands), ENERGY CONSUMPTION (in thousands of coal-ton equivalents), TOTAL TRADE (in millions of current year US\$), GDP PER CAPITA (log), GOVERNMENT EXPENDITURE (in current US\$), LITERACY RATE (as percentage of adult population), number of PHYSICIANS (per 1,000 people), TOTAL POPULATION (log), and POPULATION AGES 15–64 (as percentage of total population). An overview of all constituent variables, their definitions and measurements is provided in Table 4.3.

variable	definition	source
MILITARY EXPENDITURE	Total military budget in thousands of current year US\$.	Correlates of War Project 2005
MILITARY PERSONNEL	Troops under the command of the national government (in thousands) ready for combat as of January 1 of the referent year.	Correlates of War Project 2005
ENERGY CONSUMPTION	Primary energy consumption measured as the industrial capacity; sum of four categories of sources – coal, petroleum, electricity, and natural gas, converted into thousands of coal-ton equivalents.	Correlates of War Project 2005
TOTAL TRADE	Sum of imports and exports in millions of current year US\$.	Gleditsch 2006
GDP PER CAPITA (LOG)	REAL GDP PER CAPITA – Chain index in constant 1996 US\$.	Heston, Summers and Aten 2006
	GROWTH RATE OF GDP PER CAPITA – Annual percentage, based on constant local currency.	World Bank 2007
	GDP PER CAPITA – GDP in constant 2000 US\$ divided by midyear population.	World Bank 2007
	GDP DEFLATOR – Ratio of GDP in current local currency to GDP in constant local currency.	World Bank 2007

Table 4.3: Constituent variables of the POWER indicator.

Notes: For GDP PER CAPITA (LOG) we used as a basis the REAL GDP PER CAPITA from Penn World Table (PWT) 6.2 ([Heston, Summers and Aten, 2006](#)). The data was interpolated and extrapolated with estimates of GDP GROWTH RATE PER CAPITA from World Development Indicators (WDI) 2007 ([World Bank, 2007](#)). For states, for which neither PWT 6.2 nor WDI 2007 data was available, GDP PER CAPITA, deflated with the GDP DEFLATOR from WDI 2007 ([World Bank, 2007](#)) for the basis year of the PWT 6.2 estimates, was used.

continued on next page

variable	definition	source
GOVERNMENT EXPENDITURE	General government final consumption expenditure in current US\$ including all government current expenditures for purchases of goods and services (compensation of employees, expenditures on national defense and security), and excluding government military expenditures that are part of government capital formation.	World Bank 2007 ; Banks 2006
LITERACY RATE (% OF ADULT POPULATION)	Percentage of people aged 15 years and above who can, with understanding, read and write a short, simple statement on their everyday life.	World Bank 2007 ; Banks 2006
PHYSICIANS	Graduates of any facility or school of medicine who are working in the country in any medical field (practice, teaching, research) per 1,000 people.	World Bank 2007 ; Banks 2006
TOTAL POPULATION (LOG)	All residents regardless of legal status or citizenship – except for refugees not permanently settled in the country of asylum, who are generally considered part of the population of a state of origin.	Heston, Summers and Aten 2006 ; World Bank 2007
POPULATION AGES 15–64 (% OF TOTAL)	Percentage of the total population in the age group 15 to 64.	World Bank 2007

Table 4.3: (*continued*) Constituent variables of the POWER indicator.

Notes: In order to estimate GOVERNMENT EXPENDITURES, LITERACY RATE (% OF ADULT POPULATION) and PHYSICIANS (PER 1,000 PEOPLE), we used WDI 2007 data ([World Bank, 2007](#)). Where not available, we imputed estimates from the Cross-national Times-series Data Archive ([Banks, 2006](#)). For the estimation of TOTAL POPULATION (LOG) we first used PWT 6.2 data ([Heston, Summers and Aten, 2006](#)), and then imputed it by WDI 2007 estimates ([World Bank, 2007](#)).

To handle missing observations, we used several data sources and applied statistical imputation techniques. As a rule, we employed generalized additive model (GAM) fitting for extrapolation and interpolation of the data (Wood, 2006). After careful graphical examination of all variables for all states, we applied linear fits to individual cases. The POWER indicator was computed on the basis of a factor analysis for time series (Gilbert and Meijer, 2005). Separate time-series factor models were estimated for all variables and for each state. The factor loadings obtained were then averaged for each variable over all states. Based on the linear combinations of the mean factor loadings and the standardized observations, we calculated a singular factor quantifying material state capabilities. The POWER indicator covers 164 states from 1945 to 2007. We transformed the indicator to a quantity revealing *state power positions relative to the most powerful state*, namely the US.¹⁸

To measure political values, we employ the polity2 score from the Polity IV index (POLITY). The scale ranges from -10 (strongly autocratic) to +10 (strongly democratic), and provides data for 163 states between 1946 and 2003 (Marshall and Jaggers, 2007).

We capture interdependence structures by means of *trade-interdependence between the US and other states* (TRADE) (Barbieri, 1996). As mentioned above, the US is, in terms of material resources, the most powerful state. Our measure for trade interdependence is based on the proportion of bilateral trade in relation to total trade or “trade share”. In our analysis, “trade share” attempts to measure the political importance of a trading relationship between the US and a given state, as compared to trade between the US and another state. The concentration of “trade share” in a single partner (here the US) is considered to be indicative of vulnerability and political manipulation (Gartzke and Li, 2003). The variable is incorporated into the models as trade dependence of a given state on the US.¹⁹ It is available for 188 states from 1948 to 2000.

¹⁸The relative measure of states’ power positions is also meant to reflect the existence of bipolarity.

¹⁹Although a measure of trade is incorporated in the composite TRADE indicator as TOTAL TRADE, the correlation between POWER and TRADE (trade interdependence between the US and other states) is only 0.42. Therefore, potential problems associated with multicollinearity are negligible.

To minimize the possibility that our findings are spurious, we include a set of controls in our models. First, we focus on state duration and colonial past. The variable `STATE DURATION` determines the lifespan of a nation.²⁰ It controls for the pace of ratification by states which gained independence in the process of decolonialization and the collapse of the Soviet Union. States created after 1945 display an overall high intensity of treaty ratifications immediately after state formation. Thus, we expect state duration to be negatively correlated with the commitment to international agreements. The variable is available for 199 states from 1945 to 2007.

Second, we include a dichotomous variable `COLONIAL PAST`. This variable determines whether a state has been colonized by a Western colonial power since 1700. The focus is exclusively on “Western overseas” colonialism (Hadenius and Teorell, 2005). Previous research on economic regionalism (Mansfield, Milner and Rosendorff, 2002) and economic trading networks (Goldstein, Rivers and Tomz, 2007) has found positive correlations with regard to former colonial relationships. A former colonial link serves as a proxy for the former colonial legal order that might have persisted after independence. We assume that states with a colonial past are more likely to commit to international agreements. Data is available for 195 states from 1945 to 2007.

As mentioned before, domestic political institutions are another factor that affects a state’s decision to commit to international agreements. An important aspect of domestic political institutions is the number of veto institutions in a state. Such veto points can include the separation of the executive and legislative branches of government, bicameralism, a strong supreme court, or federalism. States with a high number of veto points (or institutional constraints) will find it more difficult to commit to international agreements, since multiple domestic veto players tend to narrow the winset of the status quo (Tsebelis, 2002). We measure the degree of institutional constraints via the Political Constraints Index III (`POLITICAL CONSTRAINTS`) (Henisz, 2000; 2002). The index is available for 187 states between 1946 and 2004.

We also control for religion. We apply a dichotomous variable, measuring whether the majority of a state’s population is of Muslim or another

²⁰Calculation is based on [Central Intelligence Agency \(2008\)](#); and [Der Fischer Weltalmanach \(2006; 2008\)](#); cross-checked with the [Correlates of War Project \(2008\)](#).

denomination (MUSLIM) (La Porta et al., 1999).²¹ Islamic law, in particular, is considered to be in conflict with universal human rights standards (Mayer, 2006; cf. Steiner and Alston, 2000, 392). One would therefore expect states with a predominantly Muslim population to have a lower likelihood of ratifying quasi-constitutional agreements. The variable is available for 192 states for the period from 1945 to 2007.

Finally, we control for the geographic distribution of international norms. Finnemore (1996) argues that dense networks of transnational and international social relations shape states' perceptions of the world and their role in that world. As more states commit to international quasi-constitutional norms, other states feel pressured to commit as well.²² Following Simmons (2000), we have constructed a measure to control for states among which the influence of international norms is likely to exist. We think that the power of international norms is strongest among states which share the same geographic region. Based on regional demarcation,²³ we have created a time-varying regional ratification measure – the regional ratification intensity score (RRIS). The score provides data for 199 states from 1946 to 2007. Table 4.4 presents an overview of all explanatory variables.

²¹This variable might be also thought of as a proxy for the ex-Ottoman empire reflecting the colonial legacy of the vast majority of Muslim states.

²²As for the causal logic connecting norms to behavior, scholars suggest two arguments: the “logic of appropriateness” and the “logic of consequence”. Both logics have in common that they see norms as a powerful source of international politics (Scott, 1994). Following the “logic of appropriateness”, states commit to international standards when other states have already committed and such commitment seems to be generally accepted. States act in accordance with these norms, because they understand them to be appropriate for any actor claiming statehood (Finnemore, 1996). The “logic of consequence” implies that states commit to norms in order to establish their credibility on a given issue. With credibility established, other states and third parties (corporations, nongovernmental organizations) reward that state through investment, trade, aid and positive political relationships (Schimmelfennig, 2001). Both logics can coexist and reinforce each other by changing the preferences of states. However, this makes it difficult to tell which causal mechanism is at work.

²³Based on Hadenius and Teorell (2005), we distinguish seven world regions: Western Europe, Asia & the Pacific, Eastern Europe & post Soviet Union (including central Asia), sub-Saharan Africa, North Africa & the Middle East, Latin America & the Caribbean, and North America.

variable	definition	source
POWER	Power indicator transformed to state power position relative to the US; original scale: -0.061...0.99 transformed to relational scale: -1.42...1.377, higher values indicate more material capabilities (in relation to the US).	Own estimation, see Table 4.3
POLITY	(Revised Combined) Polity2 Score (Polity IV Index); scale: -10...10, higher values indicate more democracy.	Marshall and Jaggers 2007
TRADE	Trade dependence on the US; based on the proportion of bilateral trade with the US to each state's total trade (trade share). <i>Trade share</i> for a given state is formulated as $\text{trade share}_{i,US} = \frac{\text{imports}_{i,US} + \text{exports}_{i,US}}{\text{imports}_i + \text{exports}_i} = \frac{\text{trade}_{i,US}}{\text{trade}_i}$; for the US as $\text{trade share}_{US,i} = \frac{\text{imports}_{US,i} + \text{exports}_{US,i}}{\text{imports}_{US} + \text{exports}_{US}} = \frac{\text{trade}_{US,i}}{\text{trade}_{US}}$. It is transformed to <i>trade salience</i> equaling the square root of the product of trade share measures for the US and the trading partner $\text{trade salience}_{i,US} = \sqrt{\text{trade share}_{i,US} \times \text{trade share}_{US,i}}$; and trade symmetry assessing the balance of the two trade share measures $\text{trade symmetry}_{i,US} = 1 - \text{trade share}_{i,US} - \text{trade share}_{US,i} $. <i>Trade interdependence</i> summarizes the interaction of salience and symmetry by $\text{trade interdependence}_{i,US} = \text{trade salience}_{i,US} \times \text{trade symmetry}_{i,US}$; scale: 0...0.238, higher values indicate greater trade dependence of a given state on the US.	Own calculation based on Gleditsch 2006

Table 4.4: Explanatory variables in the principle models.

continued on next page

variable	definition	source
STATE DURATION	Lifespan of state in years, based on state independence or state formation, following 1945; scale: 0...61, higher values indicate longer existence of state.	Own calculation based on Central Intelligence Agency 2008 ; Der Fischer Weltalmanach 2006 ; 2008 , cross-checked with Correlates of War Project 2008
COLONIAL PAST	Dichotomous variable measuring whether a state has been colonized since 1700; it covers the following colonial powers: Dutch, Spanish, Italian, US, British, French, British-French, Portuguese, Belgian and Australian.	Based on Hadenius and Teorell 2005
POLITICAL CONSTRAINTS	Political Constraints Index III; scale: 0...0.714, higher values indicate more political constraint and thus less visibility of political change.	Henisz 2000, 2002
MUSLIM	Dichotomous variable measuring whether the majority of a state's population is of Muslim or other denomination.	Based on La Porta et al. 1999
RRIS	Regional Ratification Intensity Score: ratio of the number of actual ratifications to the number of possible ratifications (not yet ratified agreements for all existing states) in a given year for a given region, lagged by one year; scale: 0...0.75, higher values indicate higher ratification intensity.	Own calculation

Table 4.4: (*continued*) Explanatory variables in the principle models.

4.5 Statistical Techniques

Event history modeling offers an appropriate method for analyzing the timing of political change, i.e., the change in status from non-ratification to ratification. It not only considers which states ratify international agreements, but also takes into account that some states do so with different time lags. Furthermore, event history analysis can take into account that states may resign from a particular treaty and re-ratify it later (Box-Steffensmeier and Jones, 1997, 1414). In addition, it can accommodate censored and truncated data (Klein and Moeschberger, 2003, 63–64, 72–73; Tableman and Kim, 2004, 17). In this study, we are confronted with fixed and random right-censoring as well as left-truncation.²⁴

Finally, event history techniques can be applied to data with “multiple events per subject” (Therneau and Grambsch, 2000, 169–229). In this study, we do not examine ratification behavior for each treaty separately, but are interested in finding a superordinate institutionalization pattern of international quasi-constitutional norms; thus we need to take into account that each state can ratify up to 34 international agreements. Our data is formulated in terms of a counting process according to Andersen and Gill (1982) and combined with the marginal risk set approach of Wei, Lin and Weissfeld (1989) (WLW). The WLW counting process data consists of multiple records and is set up as annual intervals.²⁵ By clustering on states, the WLW counting process formulation takes into account the fact that ratifications of international agreements by a specific state are not independent, but are not bound to have experienced a prior event (Box-Steffensmeier and Jones, 2004, 158). The defining characteristic of the WLW approach is that all subjects are “at risk” for all events at all times prior to experiencing that

²⁴Fixed right-censoring applies to all states which have not yet ratified a particular international agreement at termination of the analysis. Cases in point for random right-censoring are Czechoslovakia (state termination in 1992), the Socialist Federal Republic of Yugoslavia (terminated in 1991), the German Democratic Republic (1990), Zanzibar (1964) or South Yemen (1989). At the treaty-level of analysis, random right-censoring affects only the GATT, which was adopted in 1947 and expired before the end of the study in 1994. Left-truncation is determined by a delayed entry time. Delayed entry times apply to follow-up states such as the Socialist Federal Republic of Yugoslavia and the Soviet Union or states which gained independence during the process of decolonialization.

²⁵The data for a subject is presented as multiple rows or “observations”, each of which applies to an interval of observation (start, stop].

event (Box-Steffensmeier and Zorn, 2002, 1074; Therneau and Grambsch, 2000, 186–187).

We use a Cox proportional hazards regression model with the modified partial likelihood²⁶ for left-truncated and right-censored data (Tableman and Kim, 2004, 209–211). Furthermore, we account for correlated groups of observations (non-independence of multiple observations per state) with robust sandwich variance estimators based on a grouped jackknife.²⁷

Our data set contains ratification entries for 34 international agreements over 199 nation states during the period 1945–2007. In our analysis, some data were not available for the entire period. Therefore, our full model (including the conditional effects) is based on 152 states in the period from 1948 to 2000.

4.6 Findings

Table 4.5 presents the findings of the Cox proportional hazards estimations for the variables discussed above. In event history analysis, the measure of effect is the hazard ratio,²⁸ which is the exponential of the regression coefficient ($\exp(\text{coef})$) in the model. A hazard ratio of 1 indicates that there is no effect concerning state commitment to international agreements. A ratio of more than 1 indicates an increase in the rate of ratification, and a ratio of less than 1 indicates a reduction in the rate of ratification. Any statement that a state is more likely to commit is also a statement that the state will commit earlier and vice versa.

²⁶Statistical analysis was computed in R Foundation for Statistical Computing (2008, Version 2.8.0). The likelihood is approximated by the Efron method.

²⁷Detailed description of data structure and statistical techniques is provided in Appendix B.

²⁸The hazard ratio must be independent of time. This defines the proportional hazards property. Results from the test for constancy of the coefficients based on scaled Schoenfeld residuals indicate that the assumption of the proportional hazards is satisfied by all covariates. Additional results of model checks and data diagnostics are provided in Appendix C.

	Model 1		Model 2	
	coef (exp(coef))	robust se (p)	coef (exp(coef))	robust se (p)
POWER	0.51 (1.67)	0.25 (0.04)**	0.82 (2.27)	0.33 (0.01)**
POLITY	0.03 (1.04)	0.01 (0.00)***	0.04 (1.04)	0.01 (0.00)***
TRADE	-1.35 (0.26)	1.69 (0.43)	0.53 (1.69)	1.91 (0.78)
RRIS (LAGGED)	8.22 (3706.72)	0.76 (0.00)***	8.15 (3460.0)	0.75 (0.00)***
STATE DURATION	-0.01 (0.99)	0.00 (0.01)***	-0.01 (0.99)	0.00 (0.00)***
COLONIAL PAST	-0.03 (0.98)	0.09 (0.78)	0.02 (1.02)	0.09 (0.86)
MUSLIM	-0.08 (0.92)	0.1 (0.38)	-0.06 (0.95)	0.1 (0.56)
POL.CONSTRAINTS	0.1 (1.11)	0.25 (0.68)	-0.00 (0.996)	0.25 (0.99)
POWER*POLITY	—	—	0.09 (1.09)	0.04 (0.01)***
POWER*TRADE	—	—	-16.080 (0.00)	7.57 (0.03)**
No. Observations	48665		48665	
No. Events	2817		2817	
No. States	152		152	
Period	1948–2000		1948–2000	
LRT	671		691	
(p)	0.00		0.00	
Wald test	284		297	
(p)	0.00		0.00	
Robust (score) test	56.9		57.4	
(p)	0.00		0.00	

Table 4.5: Results – Cox proportional hazards models.

Notes: the likelihood ratio test assumes independence of observations within a cluster, the Wald and robust score tests do not. *** $p|z| < .01$, ** $p|z| < .05$, * $p|z| < .10$.

Model 1 presents the effects of the main variables. Model 2 presents the conditional effects of the POWER*POLITY and POWER*TRADE assumptions.²⁹

The variable POWER has a positive and significant effect on state commitment ($p|z| = < .05$). A state with a relative power position at the 90th percentile (value equal to 0.105) of the distribution function of the power indicator, is 1.19 (1.32, Model 2) times more likely to commit to international standards than a state with a relative power position at the 10th percentile (value equal to -0.23). The POLITY variable has the expected positive and significant effect on a state's commitment to international agreements. In democratic regimes, the likelihood of commitment is 1.97 (2.18, Model 2) times higher than that of an autocratic government. An increase by one unit in the polity regime type, increases the likelihood of commitment by 3.5% (in Model 1), 4% (in Model 2). Finally, trade interdependence with the US (TRADE) is statistically unreliable.

4.6.1 The Interaction Effect of Power and Political Values

Let us now turn to Model 2 which focuses on the conditional effects. In order to assess the adequacy of our models we compared the likelihood scores of the simpler Model 1 and the saturated Model 2. As a diagnostic we used the likelihood ratio test and the Wald test (the latter controlling for the clustered data structure at the state level). Both tests reveal that Model 2 – including the two interactions – fits the data much better than the simpler Model 1 ($p|z| = < .0001$). To assess the direction of influence of our conditional hypotheses, we visualize our findings graphically.³⁰ In addition, we present the estimated relational hazard ratios. We interpret the hazard ratios for the four ideal-typical categories of state groups in two ways: first, in relation to a state with a median position; second, in relation to the hazard rates of the other ideal-typical categories of states. Model 2 shows that the interaction

²⁹We estimated several other models based on one or two interaction terms (models not shown). In these models, the interaction effect POWER*POLITY proved to be robust. For the interaction effect POWER*TRADE we found no or weak statistical significance. This, however, is due to the unreliable impact of the trade-interdependence measure as such.

³⁰The interpretation of interaction terms in non-linear models is not as straightforward as in linear models (Ai and Norton, 2003), and must be examined more carefully (Berrington de Gonzalez and Cox, 2007; Brambor, Clark and Golder, 2006; Cox, 1984).

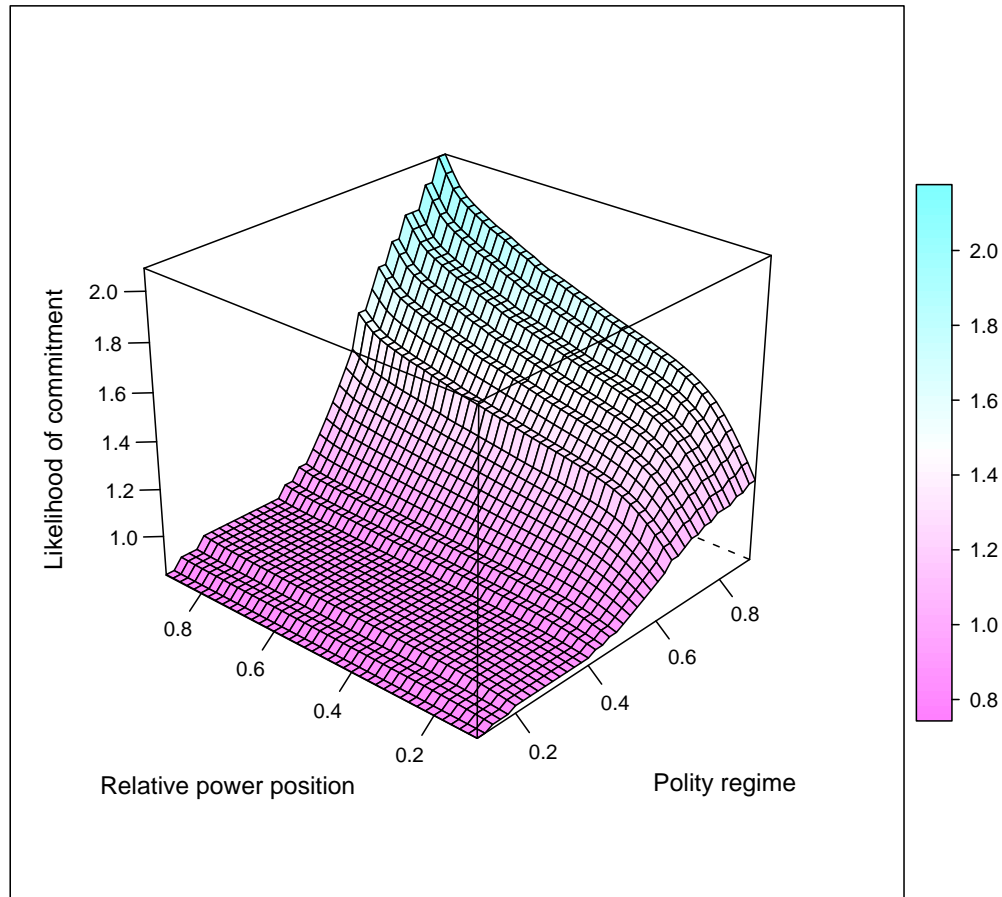


Figure 4.2: Visualization of the POWER*POLITY effect.

Notes: The axes values for the two variables constituting the interaction term are rescaled to percentiles.

term POWER*POLITY is statistically significant (see Figure 4.2 and Table 4.5).

As expected, democratic states are more likely to commit to quasi-constitutional agreement than autocratic states. However, the likelihood of commitment differs with respect to the relative power position of a state. For less powerful democracies, the likelihood increases by 18%, compared to the

median state.³¹ Powerful democracies (90th percentile) have the highest likelihood of commitment: their ratification rate is 2.09 times higher than that for the median state (see Table 4.6).

The likelihood of commitment for a weak autocracy is 83% compared to the median state (50th percentile). Contrary to our expectations, however, powerful autocracies are not more likely to ratify than weak autocracies. A powerful autocracy has the same likelihood of ratifying international quasi-constitutional agreements. The likelihood of commitment is also 83%.

		Political Regime	
		<i>autocracy</i> (10th percentile)	<i>democracy</i> (90th percentile)
Relative Power Position	<i>weak</i> (10th percentile)	0.83	1.18
	<i>strong</i> (90th percentile)	0.83	2.09

Table 4.6: Hazard ratios for the POWER*POLITY effect.

Setting the respective hazard ratios for the four categories of states in relation to each other, we can make statements about how the likelihood of commitment differs between these groups. An overview of the relational hazard rates is presented in Table 4.7.

In sum, our *power*polity* assumption finds empirical support. Commitment to quasi-constitutional agreements is neither shaped by power resources alone, nor is it an effect of the political regime type. Rather, the combination of political values and material resources yields insight about which states commit to international standards.

³¹Note that multiple event data can be unbalanced for two reasons. First, states are observed for a different period of time; they have a varying lifespan. Second, the pace of ratification can vary between states. Consequently, each state cluster can have a different number of observations (state years). Therefore, it would be more appropriate to refer to a “median state” as a “state with covariates values equal to the median”. For the sake of simplicity, we use in the following “median state” or a “state with a median position” meaning a “state with covariate values equal to the median”.

	autocratic & powerful less powerful		democratic & powerful less powerful	
autocratic & powerful		1.004	0.399	0.709
autocratic & less powerful	0.997		0.398	0.707
democratic & powerful	2.505	2.513		1.776
democratic & less powerful	1.41	1.415	0.563	

Table 4.7: Relational hazard rates for the POWER*POLITY effect.

Notes: Hazard rates are presented for the group of states as indicated in the left-hand column in relation to the group of states as indicated in the header.

4.6.2 The Interaction Effect of Power and Trade Interdependence with the US

The interaction effect for trade interdependence with the US and the state's relative power position is presented in Figure 4.3. The graphical visualization of the POWER*TRADE effect shows that powerful states, irrespective of the intensity of their trading ties with the US, are most likely to ratify international quasi-constitutional agreements. This result is only partially consistent with our hypothesis: we expected powerful states with weak trading ties to the US to have a lower ratification rate than powerful states with strong trading ties to the US. Future research will be needed to shed further light on this somewhat puzzling result. The other results are consistent with our expectations: the lowest ratification probability is held by weak states with a low degree of trade interdependence with the US, while weak states with a high degree of trade interdependence with the US have a moderate likelihood of treaty ratification.

The hazard rates (see Table 4.8) reveal that the likelihood of commitment for a powerful state with weak trading links to the US increases by 10.8% compared to the median state. For a powerful state with a strong trading link to the US, the likelihood of commitment increases by 6.6%. Weak states with a strong trading link to the US have a ratification likelihood of 97%,

compared to a median state. Weak states with a weak trading link to the US only have an 84% likelihood of commitment, compared to a median state.

		Trade Interdependence with the US	
		<i>weak</i> (10th percentile)	<i>strong</i> (90th percentile)
Relative Power Position	<i>weak</i> (10th percentile)	0.84	0.97
	<i>strong</i> (90th percentile)	1.108	1.066

Table 4.8: Hazard ratios for the POWER*TRADE effect.

To assess how the ratification likelihood differs between the four groups of states, we consider the relational hazard ratios from the full model. Table 4.9 demonstrates the relational likelihood of commitment as regards the POWER*TRADE effect.

		weak US-trade link & powerful less powerful		strong US-trade link & powerful less powerful	
weak US-trade link & powerful			1.315	1.04	1.141
weak US-trade link & less powerful		0.761		0.791	0.867
strong US-trade link & powerful		0.962	1.265		1.097
strong US-trade link & less powerful		0.877	1.153	0.912	

Table 4.9: Relational hazard rates for the POWER*TRADE effect.

Notes: Hazard rates are presented for the group of states as indicated in the left-hand column in relation to the group of states as indicated in the header.

In sum, there is considerable evidence supporting our interactive *power*trade* argument. The effect of states' material power resources is conditioned

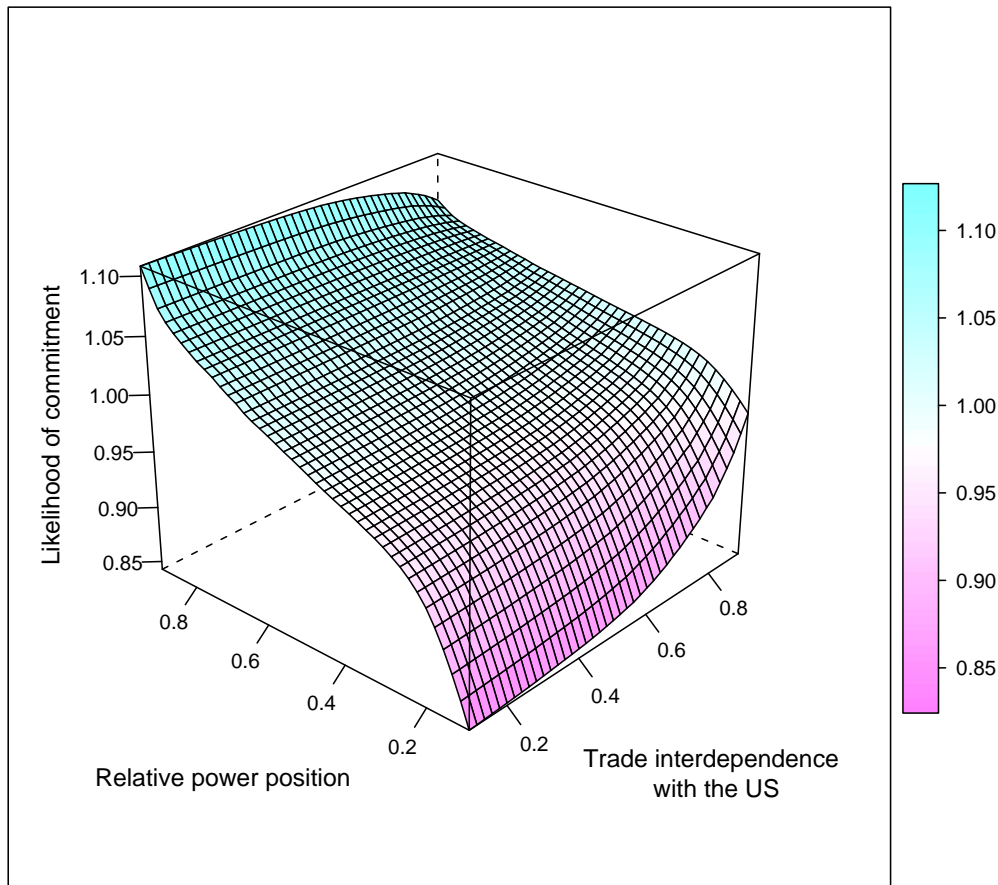


Figure 4.3: Visualization of the $\text{POWER} \times \text{TRADE}$ effect.

Notes: The axes values for the two variables constituting the interaction term are rescaled to percentiles.

by trade interdependence with the US. Strong interdependence with the US makes a difference for states with relatively weak power resources. State power, on the other hand, can be considered to have a supportive effect for treaty ratification.

Finally, the controls perform mostly as expected.³² We find a significant negative effect for STATE DURATION. As to predominately MUSLIM population, domestic POLITICAL CONSTRAINTS and COLONIAL PAST³³ we find no statistically reliable effect. Regional ratification intensity (captured by our RRIS variable) is positively correlated with the likelihood of treaty ratification. An increase by one percentage point in the RRIS increases the likelihood of commitment for a state from the same region by about 8.57% (8.49%, Model 2).

4.7 Conclusion

So far, no comprehensive empirical investigation on the antecedents of global constitutionalization has been conducted. To close this gap, we analyzed state commitment to 34 international quasi-constitutional agreements with soft law character containing basic rule-of-law and human rights provisions (in the period 1945–2007). We asked how state power in combination with political values and trade interdependence affect states' commitment to these international agreements (in the context of hegemony).

The most interesting findings of our study concern the strong conditional effects of both state power and regime type and state power and trade dependence vis-à-vis the United States. We find that ratification is most likely in the case of powerful democratic states, and least likely in the case of powerful and less powerful autocratic states. Moreover, we find that both powerful trading states and powerful non-trading states have the highest likelihood of treaty ratification. In contrast, weak states with few trade links to the US are expected to have the lowest likelihood of treaty ratification. Thus,

³²We also controlled for the effect of ethnic fractionalization, defined as the probability that two randomly selected people from a given state will belong to different ethnic groups (Fearon and Laitin, 2003). However, ethnic fractionalization did not alter the results. Due to the tenuous theoretical link, we decided to exclude this variable from our models.

³³Since different colonial powers might have different imperial legacies, we also estimated models based on a disaggregated COLONIAL PAST variable. However, results did not change.

international commitment to quasi-constitutional agreements with soft law character is not only driven by a cost-benefit calculus of *hard men*; nor is it solely driven by domestic political values or trade interdependence. Rather, it is the complex synthesis of power, regime type, and interdependence that drives the process of global norm institutionalization.

To be sure, our study does not unravel the exact causal mechanisms underlying these effects. Thus, our study is far from the final word on state commitment to quasi-constitutional agreements. Nonetheless, our findings clearly challenge a simple and linear view of global constitutionalization.

Future research will need to take a much more detailed look at concrete state motivations for ratifying quasi-constitutional agreements. This, however, can only be accomplished via case study research. There is also room for improvement with regard to the analysis of the exact effects of power. By disaggregating our power indicator into its sub-dimensions, we might obtain deeper insights into commitment to specific issue-areas of quasi-constitutional treaties. Future research also needs to explore how regional power structures and regional trade interdependencies affect ratification of quasi-constitutional agreements in the non-Western world. Preliminary observations (based on our data) indicate strongly divergent effects of national power on treaty commitment across regions when conditioned by political values. Finally, we acknowledge that there is a need to investigate not only commitment to, but also compliance with quasi-constitutional agreements. However, due to data limitations, this is not yet possible.³⁴ Nonetheless, we think that our study paves the way toward a deeper understanding of the driving forces of global constitutionalism.

³⁴Data are not available for the full sample of agreements and the entire period of analysis.

Chapter 5

Conclusion

5.1 Achievements and Limitations

In this thesis I have examined the process of global constitutionalisation from an empirical vantage point. Conceptualising global constitutionalisation as the process towards the institutionalisation of international norms with constitutional properties (Chapter 2), I have studied ratification patterns of 34 selected international “quasi-constitutional” agreements comprising formal norms establishing an international rule of law, and substantive norms providing fundamental guarantees to individuals.

The thesis gives empirical insights into the shape of and the antecedents to global constitutionalisation. With regard to the shape of global constitutionalisation, I have found evidence for a “multi-speed globe” of differentiated constitutionalisation. Following a generation-based distinction of quasi-constitutional norms, I have found that the ratification of quasi-constitutional agreements embodying political rights with rule of law provisions and civil liberties is faster than the ratification of agreements containing social or economic rights (Chapter 3). As regards the analysis of factors impeding or facilitating the process of global constitutionalisation, I have focused on the impact of national power, political values and trade interdependence on states’ commitment to these international quasi-constitutional agreements. The findings clearly challenge a simple and linear view of global constitutionalisation. They reveal that international commitment to quasi-constitutional agreements is not merely driven by a cost-benefit calculus; nor is it solely driven by domestic political values or trade interdependence with the US. Rather, the global process of norm institutionalisation is the result of a com-

plex synthesis of power, regime type, and trade interdependence (Chapter 4).

The thesis is certainly the first to investigate empirically the process of global constitutionalisation. It provides a systematic and methodologically sophisticated analysis of the process towards the institutionalisation of international norms with constitutional properties. It reflects the attempt to overcome the normative debate on the prospects and functional prerequisites of global constitutionalisation prevalent in legal writings. Building on a “multi-treaty framework”, the research presented in this thesis stands out from numerous other studies analysing treaty commitment based on one particular treaty or a selection of a few treaties. It provides a more comprehensive empirical picture of treaty commitment. This goes hand in hand with methodological advances made in this thesis. As stressed throughout the chapters, the applied statistical tools provide a more appropriate framework for studying multiple ratification events. By examining all quasi-constitutional agreements since 1945, I have been able to draw more generalisable conclusions than is possible when analysing evidence from individual agreements. This approach allowed for a more comprehensive evaluation of these agreements and the investigation of research questions which cannot be tackled in a one-agreement analysis or a series of one-agreement analyses.

However, despite the achievements of the thesis, an empirical approach to a normative concept of global constitutionalisation faces some shortcomings. Certainly, the comprehension of global constitutionalisation as the process through which international quasi-constitutional agreements are institutionalised presents a feasible starting point for empirical research. However, this approach does make it impossible to depict global constitutionalisation with its all-embracing characteristics. It reduces the concept of global constitutionalisation to an operationalisable term. With the focus on ratification patterns of constitution-like international agreements, I only capture part of the constitutionalisation process. As such I fail to account for characteristics of global constitutionalisation other than those clearly expressed by states. This is particularly true for global constitutional characteristics that cannot be easily transformed into figures, such as the role of societal forces and judicial authorities. Societal actors might be pivotal in advocating global constitutionalisation by setting the international legal agenda, promoting human rights, humanitarian and environmental law, or mobilising states and leveraging public opinion. Likewise, judicial authorities might have the capacity

to advance global constitutionalisation by means of legal interpretation. Current research, however, is not able to quantify societal forces and adjudicative capacity in international relations. This has so far forestalled any empirical research on these topics.

5.2 Towards Future Research

Future research on global constitutionalisation will thus be faced with two particular tasks. First, in order to gain deeper insight into the process of global constitutionalisation, it is necessary to proceed with the existing research on states' commitment to quasi-constitutional agreements. Taking advantage of the unique data collection, I shall (1) extend the multi-treaty framework to other less traditional areas of international law, (2) study patterns of treaty ratification according to issue-areas underlying the sample of international quasi-constitutional agreements, (3) extend my research agenda from the global to the regional level of analysis, and (4) approach the issue of constitutionalisation by means of methodological tools allowing one to track the exact causal mechanisms behind this process. Second, research on global constitutionalisation can no longer neglect the crucial role of societal forces and adjudicative capacity in the process of global constitutionalisation. We need to move beyond commitment research. Unfolding the narrow conceptualisation of global constitutionalisation and investing considerable effort in collecting related data, future research should be able to provide an even more sophisticated understanding of global constitutionalisation.

Extending the multi-treaty framework The empirical research on global constitutionalisation has been based on a data set encompassing ratification entries for 34 international quasi-constitutional agreements. These selected quasi-constitutional agreements contain some important constitutional features like the rule-of-law principle and protection of certain substantive guarantees. However, it is important to note that the choice of agreements does not represent an absolute category. It is not all-inclusive. Take for instance the selection of substantive guarantees: there is an exclusive focus on the first and second generations of rights. Human rights of the third generation, such as provisions related the environmental protection, the status of refugees or migrant workers, are not covered by the data set. The reach of these issues goes further than the national territory. They reflect new

global and collective risks which are often beyond the regulatory capacity of a nation state. As such, in the last couple of years, they have received increasing attention on the international plane. Extending the multi-treaty framework to these agreements, we would be able to give consideration to the more recent developments in international law.

Studying issue-areas of quasi-constitutional agreements At the same time, there are more possibilities to leverage the existing multi-treaty framework. As regards the study of antecedents to global constitutionalisation, I have examined the sample of the 34 quasi-constitutional treaties only en bloc, implying universality of constitutional rights. The issues of universality and priority of rights are however contested in the literature. My future empirical research shall bring this aspect into focus. Dismantling the quasi-constitutional sample into its constituent sub-categories in terms of “generations” or “issue-areas” of quasi-constitutional agreements, we would be able to refine our understanding about the factors contributing to global constitutionalisation. Such an undertaking would also allow us to reconsider the aspect of the shape of global constitutionalisation. Studying ratification patterns according to issue-areas of quasi-constitutional agreements, we would be able to discern distinct micro-processes of global constitutionalisation according to country clusters. In this context, there is also room for improvement with regard to the analysis of the exact effects of power. By disaggregating the power indicator into its sub-dimensions, we might obtain deeper insights into commitment to specific issue-areas of quasi-constitutional treaties.

Regional patterns of constitutionalisation While the empirical research presented has started to explore patterns of constitutionalisation at the global scale, I have neglected corresponding trajectories in the less developed world (Africa, Asia, Middle East, and Latin America). My future research shall also explore how regional power structures and regional trade interdependencies affect ratification of quasi-constitutional agreements in the non-Western world. Indeed, when analysing ratification patterns of quasi-constitutional agreements, I have found that ratification patterns in the non-Western world do not necessarily follow the ratification patterns of Western countries. For instance, while trade interdependence with the US does affect treaty ratification in Asia, this factor does not affect treaty ratification in sub-

Saharan Africa. Preliminary observations also indicate strongly divergent effects of national power on ratification of quasi-constitutional agreements across regions when conditioned by political values. Since major components of global constitutionalisation – such as fundamental guarantees and the rule-of-law principle – are particularly relevant in the context of the non-Western world, a better understanding of these divergent ratification patterns seems imperative. Such patterns would allow us to detect specific cultural and regional requirements for global constitutionalisation.

Tracking causal mechanisms Future research will also need to take a much more detailed look at concrete state motivations for ratifying quasi-constitutional agreements. While the empirical results yield insight as to why states commit to international quasi-constitutional agreements, we learn little about the causal mechanisms. This, however, can only be accomplished through case study research. Hereby, the plan would be to conduct two or three case studies. Taking advantage of the statistical analyses, it would be possible to extract appropriate cases from the estimated statistical models. On this basis, it would be possible to identify a set of cases in which the value for the dependent variable (here, ratification of quasi-constitutional agreements) is strongly influenced by a particular theoretical variable of interest, holding other factors constant. Such a case-based approach would offer greater insight into the causal mechanisms of global constitutionalisation.

Beyond commitment research Moreover, I acknowledge that there is a need to transcend mere commitment analysis and to investigate compliance with quasi-constitutional agreements. In this regard, emphasis might be put on the role of national supreme courts in the process of constitutionalisation. Judicial practice and judicial review, in particular, provide in the national context a tacit way of modifying and transforming constitutional law. By means of legal interpretation, international quasi-constitutional agreements can be given significance and put into national practice. However, an empirical investigation of “judicial constitutionalisation” and the judicial enforcement of international quasi-constitutional agreements will require extensive data gathering on judicial decisions and a standardised translation of qualitative materials into quantifiable measures of national compliance rates. Still, even if the paucity of relevant data forestalls such an analysis in the

immediate future, it would allow us to shed light on the actual performance of national states with respect to global constitutionalisation.

As global constitutionalisation is also concerned with individual rights and the inclusion of citizens in international politics, the role of citizens must not be ignored in the debate on global constitutionalisation. However, measuring citizens' participation in international politics is a hopeless venture. A more promising way for exploring the role of societal forces in the process of global constitutionalisation is to think about less conventional channels of international agenda-setting and policy-making. Conflating the global constitutionalist project with a deliberative and citizen-based research approach, we might investigate by means of a real-world experiment ways of strengthening the voice of world citizens in international politics. While such an undertaking would present a prospective approach to global constitutionalisation that will certainly not be realisable in the near future, the project might break new ground for a "citizens-based constitutionalisation" of international politics.

Appendix A

Selected International Agreements

A.1 Subject Matter of the Agreements

A.1.1 International Rule of Law

The international rule of law refers to the general rules and principles dealing with the conduct of states and of intergovernmental organisations as well as their relationships. It is the overall international legal framework governing inter-state relations and defining acceptable behaviour for the international community. Five treaties providing for such a comprehensive framework are considered here: The Charter of the United Nations – sometimes also labelled the World Constitution; the United Nations Convention on the Law of the Sea – the Constitution of the Oceans; the Vienna Convention on Diplomatic Relations establishing rules for political or legal transactions; the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations providing legal procedures and methods for the creation of rules of general application.

1. Charter of the United Nations Among the law-making treaties, the Charter of the United Nations (CUN), subscribed by practically all states (197), occupies the most prominent place. It was signed on 26 June 1945 at the conclusion of the United Nations Conference on International Organiza-

tion in San Francisco¹ and entered into force on 24 October 1945. The Charter is the major example of a law-making treaty of a constitutional nature. It defines the ends, powers, purposes, and principles of the United Nations (UN) as well as the limitations and commitments accepted by member states (Boczek, 2005, 33; Langley, 1999, 291; cf. Simma, 2002a).

The Charter is the constituent instrument of the UN. The purpose of the UN, as stated in the preamble, is the promotion of the common interests of member states in peace, security and general well-being, as well as the development of friendly relations among states and the achievement of international cooperation in solving international problems. The Charter also provides the baseline of human rights. It is the first international treaty employing the terminology of human rights, and directly promoting and encouraging human rights and fundamental freedoms (Brownlie, 2003, 531–532; Goodrich and Hambro, 1949, 22–23; Langley, 1999, 291).

The Charter contains detailed provisions on the question of UN membership. It distinguishes between original members – those states which participated in the UN Conference in San Francisco or have previously signed the Declaration of the United Nations of 1 January 1942, signed and ratified the Charter – and elected members – those states admitted to membership by decision of the General Assembly upon recommendation of the Security Council (Goodrich and Hambro, 1949, 23–24).

The Charter also provides a list of principle UN organs. The General Assembly is the first-named principle organ, and can be also called – in analogy to a nation state – the Parliament or Congress with some *quasi-legislative* powers. It is composed of UN members with up to five representatives, each with one vote. The General Assembly has several functions: the deliberative function, meaning the power of discussion and recommendation; the supervisory function exercised through grants of power to control and regulate the activities of other organs and agencies; the financial function, meaning the responsibility for approving financial and budgetary arrangements with specialised agencies and examining the administrative budgets of such agencies; the elective function like the election of the non-permanent members of the Security Council, the members of the Economic and Social Council and some of the members of the Trusteeship Council; and the constituent function finding expression in the provisions that amendments to the Charter should be adopted by two-thirds vote of the Assembly and the decision

¹On the history of the Charter see Russell (1958).

to call a General Conference to review the Charter should be taken by the Assembly ([Goodrich and Hambro, 1949](#), 24–28).

Quasi-executive functions and powers are divided in the Charter between three organs: the Security Council, the Economic and Social Council and the Trusteeship Council. The Security Council has the primary responsibility for the maintenance of peace and security. Composed of five permanent members (China, France, Russia (former Soviet Union), the United Kingdom and the United States) and six non-permanent members elected for two-year terms, the Security Council has the power to intervene in any situation or dispute which might endanger the maintenance of peace and security and decide about the measures to be taken. The voting procedures provided for the Security Council reflect the larger responsibility of the great powers and make any effective action by the Security Council dependent upon agreement between the great powers. Decisions on procedural questions can be taken by the affirmative vote of any seven members. Decisions on all other matters require consensus of all permanent members of the Council. The Economic and Social Council (ECOSOC) is concerned with the creation of conditions of international peace and security. The Council consists of eighteen UN members, each with one vote. Decisions are taken by a majority vote. The Council is empowered to: make or initiate studies and reports on economic, social, cultural, educational, health and related matters; make related recommendations to the General Assembly, UN members and the specialised agencies, also with respect to the promotion of fundamental rights and fundamental freedoms; prepare draft conventions; enter into agreements with specialised agencies and coordinate their activities through consultation; provide information to the Security Council; perform services requested by members and specialised agencies and functions recommended by the Assembly. The Charter provides for the establishment of an international trusteeship system for the administration and supervision of territories which have not attained a full measure of self-government. The Trusteeship Council assists the General Assembly in carrying out this function. The Council consists in equal shares of those members administering trust territories and elected UN members. The Council is given specific powers. It may consider reports submitted by the administering authority, accept petitions and examine them in consultation with the administering authority ([Goodrich and Hambro, 1949](#), 28–30, 38–42).

The International Court of Justice is identified in the Charter as the *judicial* organ of the United Nations. The Court is composed of fifteen independent judges elected by the General Assembly and the Security Council for nine-year terms from a list of nominations submitted by national groups. Jurisdiction of the Court comprises all cases which the parties (primarily states) refer to and all matters provided for in the Charter or in treaties in force. Compulsory jurisdiction may be accepted by specific declaration in enumerated categories of legal disputes. The Charter also provides that the General Assembly and the Security Council as well as specialised agencies or other UN organs (authorised by the General Assembly) can request the Court advisory opinion on any legal question (Goodrich and Hambro, 1949, 30–31).

The Charter defines the Secretariat as the *administrative* agency of the United Nations. The Secretariat is overseen by the Secretary-General appointed by the General Assembly upon the recommendation of the Security Council. The Secretary-General is the chief administrative officer of the United Nations and acts in this function at all meetings of the General Assembly, the ECOSOC, the Trusteeship Council and the Security Council. The Secretary-General can bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security (Goodrich and Hambro, 1949, 31–33).

The UN Charter is not only the multilateral treaty which creates the six principle UN organs, outlines the rights and obligations of its members and lays down its functions and prescribes its limitations. The Charter also recognises the sovereignty and independence of the member states. It obliges both the United Nations and its member states to act in good faith and in accordance with the principle of the sovereign equality of states by means of peaceful settlement of disputes and measures not involving the use of armed forces. It provides that member states must assist the organisation in its activities and must refrain from assisting states against which the UN is taking preventive or enforcement action (Shaw, 2003, 1083–1084; cf. Simma, 2002a; 2002b).

2. United Nations Convention on the Law of the Sea The law of the sea is the part of public international law which primarily governs states in their international relations concerning the utilisation of the oceans. The seas have historically performed important functions. They have been

the medium of communication, trade and commerce; shaped the planet's climate and weather; and provided nourishment for a sizeable portion of the world's population and supplied other vital resources. These functions have stimulated the development of legal rules (Boczek, 2005, 295; Shaw, 2003, 490; Wallace, 2005, 146).

In the twentieth century, there have been four major inter-governmental attempts to codify the peacetime rules of the international law of the sea. The first was investigated by the League of Nations. In 1924 the League appointed a Committee of Experts to draw up a list of subjects ripe for codification. However, the conference, which was convened in The Hague in 1930 did not succeed in reaching an agreement on the crucial question of the breadth of territorial waters and postponed the endeavour of codifying international law of the sea. The Hague draft articles were, however, not without influence. When the League of Nations was replaced by the United Nations in 1945, the International Law Commission (ILC) was charged with the "progressive codification" of international law and drafted four conventions related to the law of the sea (the Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas; the Convention on the Continental Shelf; and the Convention on Fishing and Conservation of the Living Resources of the High Seas). The Conventions were adopted by the 1st Geneva Conference on the Law of the Sea of 1958 (UNCLOS I). The first three conventions reached a substantial number of ratifications. The Convention on the Territorial Sea and the Contiguous Zone, and the subsequent 2nd Geneva Conference on the Law of the Sea of 1960 (UNCLOS II), however, failed to resolve the then controversial issue of the width of the territorial sea and fishery jurisdiction beyond that zone (Boczek, 2005, 296; Churchill and Lowe, 1999, 14–15).

Several factors then led to a major transformation of the law of the sea. There was a major trend towards extending the coastal states' sovereignty seaward by claiming a wider territorial sea and expanding the fishing jurisdiction to ever wider areas. Claims to offshore sovereign rights in the continental shelf and to the resources of the deep seabed had been raised. The emergence of many newly independent states, which had no voice in the formulation of the 1958 Conventions, provided a substantial majority in favour of reviewing the traditional law of the sea in a way that would allow the redistribution of marine resources. The newly independent states also supported the expansion of coastal jurisdiction, in reality amounting to the shrinking of the high

sea. In 1970 it was agreed to convene a 3rd UN Conference on the Law of the Sea (UNCLOS III, 1973–82) with the task of producing a new comprehensive convention on the law of the sea to govern the oceans and to take into account the changes in states' practice (Boczek, 2005, 296; Churchill and Lowe, 1999, 16).

In contrast to the former conferences, UNCLOS III was seen as a political rather than a narrowly legal enterprise. It was attended by about 150 states, which soon became allied to a number of loose groupings. The Group of 77 (in fact a group of around 120 developing states) wished to develop an exclusive economic zone, by which coastal states would have extensive rights over a 200-mile zone beyond the territorial sea, and were keen to establish international control over the deep seabed, so as to prevent the technologically advanced states from being able to extract minerals from this vital and vast source freely and without political constraint. The group of Western states sought to protect their navigation routes by opposing any weakening of the freedom of passage particularly through international straits, and wished to protect their economic interests through free exploitation of the resources of the high seas and the deep seabed. There were many other special interest groups, like the groups of landlocked and geographically disadvantaged states, archipelagic and straits states, and coastal and maritime states. All played important roles during negotiations on at least some parts of the Convention (Churchill and Lowe, 1999, 17; Shaw, 2003, 492).

Officially, the conference was divided into three main committees: Committee I dealt with the problem of the legal regime of the deep sea bed; Committee II dealt with the regimes of the territorial sea and contiguous zones, the continental shelf, exclusive economic zone, the high seas, as well as with specific aspects of these topics, such as the questions of straits and archipelagic states; Committee III dealt with the questions of the preservation of the maritime environment and scientific research (Churchill and Lowe, 1999, 16).

UNCLOS III held its first session in 1973, and worked for several months each year until it finally adopted the UN Convention on the Law of the Sea (UNCLS) on 30 April 1982. The Convention has been universally acclaimed as an unprecedented achievement in codification and the major milestone in the history of the law of the sea. It provides the basic framework for a comprehensive regulation of maritime matters governing states in times of

peace and is also referred to as the Constitution of the Oceans (Boczek, 2005, 296, 320; Churchill and Lowe, 1999, 16).

The Convention contains three hundred and twenty articles and nine annexes. Many of the provisions of the Convention repeat principles enshrined in the earlier instruments and largely reflect customary international law dealing with traditional jurisdictional issues, such as the territorial sea and the high seas. Other important areas of the law of the sea in the Convention can be classified as progressive development of international law, in some respects crystallising evolving state practice and in others setting forth new rules. The most significant are: the protection and preservation of the marine environment and conservation of the living resources of the oceans; contiguous zone; the endorsement of the 12-mile territorial sea; the transit passage through international straits; rights of archipelagic and landlocked states; the 200-mile exclusive economic zone; a new approach to the continental shelf; high seas; islands; enclosed and semi-enclosed seas; the regime of the deep seabed beyond the limits of national jurisdiction; development and transfer of marine technology; and settlement of disputes (Boczek, 2005, 320–321; Shaw, 2003, 492).

The Convention was opened for signature for a period of two years. However, in the period from 1982 until 1994, it was clear that a considerable number of Western states including the United States, Germany and the United Kingdom might refrain from ratifying the Convention if changes were not made in respect of Part XI of the Convention dealing with the subject of the International Seabed Area.² In order to allay Western concerns and enable the Convention to enter into force an Agreement relating to the Implementation of Part XI of the Convention was adopted on 29 July 1994. The Agreement accelerated the progress of ratification. The Law of the Sea Convention entered into force on 16 November 1994 (Churchill and Lowe, 1999, 19; O'Brien, 2001, 396).³ To date the Convention has been ratified by 154 states.

3. Vienna Convention on Diplomatic Relations Rules regulating the various aspects of diplomatic relations constitute one of the earliest ex-

²For the most significant impediments to ratification of the Convention by Western states see Stevenson and Oxman (1994).

³On the importance of the 1982 UN Convention on the Law of the Sea, its future development and remaining unresolved issues see also Burke (1996).

pressions of international law. Diplomacy as a method of communication and negotiations between states and their recognised agents is an ancient institution. Diplomatic law is the result of centuries of state practice and constitutes the procedural framework for the construction of international law and international relations (Denza, 2008, 2; Shaw, 2003, 668).

The Vienna Convention on Diplomatic Relations (VCDR) is a comprehensive formulation of the rules of modern diplomatic law. Parts of the Convention are based on customary international law reflected in the legislative provisions and judicial decisions of national law. Other parts constitute a progressive development of the law establishing new rules which have sought to resolve issues where practice conflicted (Brownlie, 2003, 341; Denza, 2008, 1–3; O’Brien, 2001, 300; Shaw, 2003, 670).

The Vienna Convention on Diplomatic Relations is a multilateral treaty of fifty-three articles, based upon the draft articles prepared by the ILC and adopted by the UN-sponsored international conference in Vienna on 18 April 1961. The Convention entered into force on 24 April 1964 (Boczek, 2005, 58), and has to date obtained 188 ratifications.

The fundamental nature of the Convention is its important role in facilitating peaceful intercourse between states. In this regard, the Convention emphasises the functional necessity of diplomatic privileges and immunities as well as of diplomatic missions as representing their states. The Convention codifies the rules for the exchange of embassies among sovereign states, as well as the rules protecting the special privileges of ambassadors and enabling them to carry out their functions (O’Brien, 2001, 300; Denza, 2008, 1; Shaw, 2003, 669–670).

The following six provisions of the Convention may be singled out as representing a major advancement in the development of customary international law. Two of these provisions increase, for the benefit of diplomatic missions as such, the degree of immunity. Art. 22 established the inviolability of mission premises implying that authorities of the receiving state are prohibited from entering mission premises, even in situations of public emergency. This provision is central given the danger of seizure of embassies by terrorists as well as demonstrations and violence directed at embassies. As methods of communication have proliferated and undetected inspections have become easier, art. 27 specifies rules for the protection of all forms of diplomatic communication, as being crucial to the functioning of a diplomatic mission. The provision prohibits search of diplomatic bags. The other

four provisions relate to individual members of missions. They seek to reduce the protection and privileges enjoyed by the diplomats, other members of diplomatic missions, and their families. In this regard, art.31 represents a compromise between the need to protect a diplomat from wrongful lawsuits which could impede his or her effectiveness in his or her post and the conflicting need to minimise abuse of diplomatic immunity. It sets out the exceptions to the immunity of a diplomat from civil jurisdiction (related to the diplomat's private holding of real property in the receiving state and his professional or commercial activities there). Art.31 also gives diplomats exemptions from the duty to give evidence as a witness. Art.34 relates to the basic principle of exemption from taxes. It relieves the diplomat and his or her family from the need to deal with the tax regimes of host states while minimising the possibility of the diplomat profiteering from extraneous activities or investments. Art.37 settles immunity of administrative and technical staff of diplomatic missions. It limits the civil immunity of administrative and technical staff to acts performed by them in the course of their duties, while allowing them full immunity from criminal jurisdiction. The Article sets international standards with regard to the range of mission members entitled to privileges. For states like the United Kingdom and the United States, the provision meant, at the time of adoption, a drastic cut in the range of privileged persons. For other states the provision led to increased privileges and immunities of service staff. Art.38, finally, excludes nationals and permanent residents of the receiving state from all privileges and immunities ([Denza, 2008](#), 4–6).

4. Vienna Convention on the Law of Treaties The Vienna Convention on the Law of Treaties (VCLT) is one of the essential foundations of the codification and progressive development of international law. It is described as the “treaty of treaties” and is regarded as the most authoritative source for guidance in the conduct of inter-state relations. It is considered to be a primary source of international law ([Brownlie, 2003](#), 580; [Elias, 1974](#), 5, 13; [Sinclair, 1973](#), 144).

Following [Sinclair \(1973\)](#), the real value of the Convention lies not in its status as a treaty, but as a re-statement and consolidation of existing or emergent principles. As such it has had a “dynamic and continuing influence” on the development of customary law (cf. [Boyle, 1985](#), 637). The Convention as a whole is not declaratory of general international law. Various of its provi-

sions also involve progressive development of the law, e.g., art. 53 (Brownlie, 2003, 580; Wallace, 2005, 253).

International agreements provide the legal basis of international organisations and are utilised to regulate the practical content of inter-state relations. The question of the codification of international law and inter-state relations has been on the agenda of international organisations since the early days of the League of Nations. Since no progress was made regarding the codification of the law of treaties, the problem was in effect dropped from the codification programme of the League of Nations. Under the umbrella of the United Nations the ILC resumed the issue of codification of international law and in 1966 adopted a set of fifty-seven draft articles. These draft articles formed the basis for the Vienna Conference which in two sessions (1968 and 1969) completed work on the Vienna Convention on the Law of Treaties, consisting of eighty-five articles and an Annex (Brownlie, 2003, 579; cf. Jacobs, 1969; Rosenne, 1970, 30; Wallace, 2005, 253).⁴

The provisions of the Vienna Convention are confined to treaties between states, but the Convention also maintains that international organisations have the capacity to make treaties depending on the constitution of the organisation concerned. However, it does not deal explicitly with treaties between states and international organisations, or between international organisations (see below p. 135). The Convention defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (art. 2(1)(a)). The Convention refers to agreements which are “governed by international law” (art. 2), and thus excludes various commercial agreements made between governments and operating only under one or more national laws. It also provides for the treaty-making competencies, including the adoption, accession and reservation mechanisms as well as the legal effects and the entry into force of a treaty; and the ways in which a treaty is to be interpreted (Brownlie, 2003, 580–581; Elias, 1974, 13; Wallace, 2005, 253–275).

The Convention was the product of twenty years’ work by the ILC and of many conflicting interests and viewpoints (Sinclair, 1973, 1). It was adopted by a substantial majority at the Conference on 23 May 1969 and entered into force on 27 January 1980. To date 111 states have ratified the Convention.

⁴For the legislative history of the Vienna Convention on the Law of Treaties see Rosenne (1970).

5. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCIO) is the result of work completed in 1982 by the ILC and was adopted on 21 March 1986 (Shaw, 2003, 858).

Originally, matters concerning relations between international organisations and between international organisations and states were intended to be dealt with in the Vienna Convention on the Law of Treaties of 1969. The ILC, however, came to the conclusion that treaties drafted by international organisations had a number of special characteristics, which should have been taken care of separately. This allowed the scope and complexity of the Vienna Convention of 1969 to be limited and avoided possible delay in its adoption (O'Brien, 2001, 358–359).

The content of the Convention is very similar to that of the Vienna Convention on the Law of Treaties of 1969. This Convention, however, gives special emphasis to international organisations in their ability to assume a treaty-making power. Organisations participating in the Vienna Conference which adopted the Convention have the competence to sign the Convention and to execute acts of formal confirmation (equivalent to ratification by states) (Brownlie, 2003, 651–652). To date, the Convention has not obtained the required number of 35 ratifications (only 29 states are parties to the Convention), and it is therefore not yet in force.

A.1.2 International Human Rights Law

International human rights law is the area of public international law which is concerned with the legal and social protection of human rights and fundamental freedoms. It seeks to regulate those fundamental rights which are essential for life as a human being at the international level in order to protect the individual from any abuse of state authority.

Under the auspices of the UN, a number of international agreements guaranteeing specific human rights have been concluded. The agreements fall into three categories of human rights treaties: (1) two comprehensive International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights adopted in 1966 with optional protocols; (2) treaties dealing with specific wrongs, such as genocide, torture, or racial discrimination; and

(3) treaties related to the protection of particular categories of people, such as women and children.

6. International Covenant on Civil and Political Rights The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly on 16 December 1966, and entered into force upon receiving the requisite number of ratifications on 23 March 1976.

The Covenant with its two Optional Protocols is a constituent instrument of the International Bill of Human Rights.⁵ The ICCPR is an expanded hard-law version of the 1948 Universal Declaration of Human Rights (UDHR). The ICCPR is considered to be the most important human rights instrument. It is a universal instrument which contains binding legal obligations for the states parties to it. The rights enshrined within it represent the basic minimum set of civil and political rights recognised by the world community. Unlike single-issue treaties (e.g. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see below p. 145), the ICCPR covers a wide variety of rights and it purports to apply to all classes of person (unlike e.g. the Convention on the Rights of the Child, see below p. 148). In contrast to its sister treaty, the International Covenant on Economic, Social and Cultural Rights, a large body of jurisprudence has emerged under the ICCPR. Its provisions are more specific than those of the UDHR. The ICCPR is designed to protect civil and political rights, such as the right to life, to fair trial, movement, and asylum, as well as to protect freedom from arbitrary detention, freedom of expression, and the right to vote. As such, it contains a list of substantive human rights guarantees and provides supporting guarantees, such as the necessary obligation upon states parties to provide domestic remedies for abuse of ICCPR rights. The Covenant establishes a monitoring and supervisory system, under which records of states parties implementing the ICCPR can be tracked, and the Human Rights Committee (HRC), the treaty-monitoring body for the ICCPR ([Harland, 2000](#), 187–190; [Joseph, Schultz and Castan, 2004](#), 4; [Langley, 1999](#), 164; [Lawson, 1991](#), 943; [McGoldrick, 1991](#), 20; cf. [Bair, 2005](#); [Bossuyt, 1987](#); [Carlson and Gisvold,](#)

⁵The International Bill of Human Rights forms the core of the universally recognised human rights. It comprises the Universal Declaration of Human Rights (UDHR), the International Covenant of Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with its two Optional Protocols.

2003). As of 26 August 2007 the ICCPR had been ratified by 163 states. The ICCPR has two subsidiary treaties, namely the two Optional Protocols.

7. 1st Optional Protocol to the International Covenant on Civil and Political Rights

The 1st Optional Protocol (OP-ICCPR) was adopted by the UN General Assembly on 16 December 1966 and entered into force concomitantly with the ICCPR itself on 23 March 1976. The Optional Protocol authorises the Committee to deal with complaints from individuals who are victims of human rights abuse. Under the Protocol, individuals who claim to have suffered a violation of any of the Covenant's provisions and who have exhausted available domestic remedies may submit a complaint to be reviewed and considered by the HRC. However, states parties to the ICCPR have the option of accepting, or not accepting, the Optional Protocol; and such communications can only be considered by the Committee if the complaint is directed against a state which has ratified or acceded to the Optional Protocol (Carlson and Gisvold, 2003, 2; Joseph, Schultz and Castan, 2004, 4; Langley, 1999, 164; Lawson, 1991, 950; Office of the United Nations High Commissioner for Human Rights, 2007, 1). As of 26 August 2007, 112 states parties to the Covenant had also become parties to the 1st Optional Protocol.

8. 2nd Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty

The 2nd Optional Protocol (IIOP-ICCPR) provides further substantive civil rights guarantees by prohibiting the application of the death penalty. The Protocol seeks to abolish the use of the death penalty. Specifically, this protocol prohibits the execution of any individual within the jurisdiction of a state. In case of a violation, the HRC assumes the same competence as under the 1st Optional Protocol and may receive and consider communications from individuals. In general, signatories are not to submit reservations to, or seek to derogate from, the Protocol. The purpose of the 2nd Optional Protocol is to ensure the enjoyment by everyone of the right to life as set out in art. 3 of the UDHR and in art. 6 of the ICCPR (Carlson and Gisvold, 2003, 2; Joseph, Schultz and Castan, 2004, 4).

The idea of a 2nd Optional Protocol was considered by the UN Commission on Human Rights in response to a request of the UN General Assembly on 18 December 1982. The draft text of the 2nd Optional Protocol was prepared by M. Bossuyt, a member of the Sub-Commission on Prevention

of Discrimination and Protection of Minorities of the UN Commission on Human Rights. The 2nd Optional Protocol was adopted and opened for signature and ratification (or accession) by the UN General Assembly on 15 December 1989. The Protocol entered into force on 11 July 1991 ([Lawson, 1991](#), 951). Consistent with its subject, the 2nd Optional Protocol remains somewhat more controversial than its predecessor, and as of 26 August 2007 only 61 states parties to the Covenant had become party to the 2nd Optional Protocol.

9. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is at the centre of the international human rights legal order, forming part of the International Bill of Human Rights alongside the UDHR and the ICCPR. The ICESCR translates art. 22–27 of the UDHR into legal obligations ([Dowell-Jones, 2004](#), 1).

The Covenant defines the economic, social and cultural rights that individuals have. It guarantees the rights to work, to just and fair conditions of employment, to join and form trade unions, to social security, to protection of the family, to an adequate standard of living, health care, education and participation in cultural life. Along with its sister covenant, the ICCPR, the Covenant proclaims the right of all the peoples to self-determination including the right freely to pursue their economic, social, and cultural development and freely to dispose of the natural wealth and resources. The intention of this provision appears to have been to ensure that the developed states did not interfere excessively, by means of the supervision system, in the utilisation of the natural resources within developing countries. It also outlines general clauses that apply to all its substantive provisions, including clauses relating to general obligations and limitations, non-discrimination and equal rights for men and women. Furthermore, the Covenant lays down the main elements of the system of supervision. Unlike the ICCPR, it does not provide for the receipt of individual or state complaints, but rather envisages a system in which states are required to submit periodic reports to the UN on the measures adopted and the progress made in achieving the observance of the rights in the Covenant. It authorises the ECOSOC to monitor the implementation of its provisions. The ECOSOC established the Committee on Economic, Social and Cultural Rights in 1985 to assist it in this task. The Covenant was adopted by the UN General Assembly on 16 December 1966,

and entered into force on 3 January 1976 (Craven, 1995, 6–9, 22–26; Dowell-Jones, 2004, 1–4; Kaufmann, 2007, 35–41; Langley, 1999, 165; Lawson, 1991, 952). As of 26 August 2007, 157 states had ratified the ICESCR.⁶

10. Convention on the Prevention and Punishment of the Crime of Genocide The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) is the centrepiece in any discussion on the law of genocide. The Convention was adopted on 9 December 1948 and entered into force on 12 January 1951. To date the CPPCG counts 136 state parties.

The Convention is an international treaty embraced by the realm of public international law. Within this general field, it draws on elements of international criminal law, international humanitarian law and international human rights law. By defining an international crime, and spelling out obligations upon states parties in terms of prosecution and extradition, the Convention falls under the rubric of international criminal law. The inclusion of the crime within the jurisdiction of the two ad hoc tribunals charged with prosecuting violations of humanitarian law supports its status as an international humanitarian law treaty. Nevertheless, the scope of international humanitarian law is confined to international and non-international armed conflicts (see below p. 152), and the Convention clearly specifies that the crime of genocide can occur in peacetime. Consequently, it may more properly be deemed an international human rights law instrument. The prohibition of genocide is closely related to the right to life, one of the fundamental human rights defined in international declarations and conventions, in particular the UDHR and the ICCPR. The substantive part of the Genocide Convention confirms that genocide, whether committed in times of peace or war, is a crime under international law. The heart of the Convention is the definition of genocide. The Convention defines genocide⁷ according to the different techniques; physical, political, social, cultural, biological, economic, religious

⁶See for the relation of the ICESCR with other human rights treaties (Sepúlveda, 2003, 46–53). A detailed description of specific ICESCR provisions is provided by Kaufmann (2007); Kirilova Eriksson (2002); Künnemann (2002); Lamarche (2002); Van Bueren (2002).

⁷The new word “genocide” was coined by Raphael Lemkin (1944, 79) in his study *Axis Rule in Occupied Europe*. It was defined as the “destruction of a nation or ethnic group”, “not only through mass killings, but also through a coordinated plan of different actions aiming at the destruction of essential foundations of the life of a national group, with the aim of annihilating the groups themselves”.

and moral genocide are distinguished by way of enumeration. The list of acts constituting the crime of genocide comprises: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and, forcibly transferring children of the group to another group. The Convention establishes four further crimes connected with genocide: conspiracy, attempt, complicity and direct and public incitement to commit genocide, and defines the authors of the crime as private individuals, public officials and constitutionally responsible rulers as equivalent to “governments”. It also deals with the problem of procedure (Langley, 1999, 71–72; Lawson, 1991, 280–281; Kunz, 1949, 738–746; Schabas, 2000; cf. Kuper, 1981).

11. International Convention on the Elimination of All Forms of Racial Discrimination The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is considered to be the only international legal instrument specifically addressing comprehensive issues of racial discrimination. It was adopted by the UN General Assembly on 21 December 1965, and entered into force on 2 January 1969. As of 26 August 2007, 176 states have ratified the CERD. The establishment of the CERD was inspired by several factors: (1) a conviction that a doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, and socially unjust; (2) that such doctrines had played a major role in the genocidal actions against Jews and others during World War II; (3) that the exercise of racial barriers is repugnant to the ideals of human society, as expressed in human rights instruments; and (4) that manifestations of racial discrimination are still evident in many areas of the world, threatening international peace and security (Langley, 1999, 160–161; Lawson, 1991, 929).

The scope of the Convention is very wide: it covers discrimination in regard to “human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (Schwelb, 1966, 1003). The CERD is divided into two parts. Part I consists of a definitions article (art. 1) and the fundamental obligations of states parties. In its definitions art. 1(1) provides that “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national

or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural rights or any other field of public life". According to the Convention "decent" suggests social origin, such as heritage, lineage, or parentage. "National or ethnic origin" denotes linguistic, cultural, and historical roots. The concept of race clearly is not limited to objective, mainly physical elements, but also includes subjective and social components. Race is not simply understood in terms of skin colour, but linguistic and cultural functions as well as social determinants are also considered to be central. The fundamental obligations are elaborated in regard to substantive law, and the procedural safeguards and remedies. Part I of the Convention also deals with measures to be adopted in the fields of teaching, education, culture and information. Part II of the Convention provides for the creation of international supervisory machinery, in particular for the establishment of an international Committee on the Elimination of Racial Discrimination, for a reporting system in which states parties undertake to cooperate, for inter-state complaints between states parties through the Committee and through *ad hoc* Conciliation Commissions, for the competence of the Committee to receive communications from individuals relating to states parties which recognise this right of individual complaint, and for a *sui generis* procedure by which the Committee is expected to cooperate in the consideration of petitions relating to non-self-governing territories (Felice, 2002, 205–207; Schwelb, 1966, 997–1033; Tanaka and Nagamine, 2001; cf. Lerner, 1970).

12. Amendment to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination A minor amendment to art.8(6) of the CERD (A-CERD) was adopted by the UN General Assembly as of 16 December 1992. Art. 8 of the Convention makes provisions for the financing of the Committee on the Elimination of Racial Discrimination. According to this provision, states parties are responsible for the expenses of the Committee's activities. The amendment to art. 8(6) of the Convention was proposed by the government of Australia. The suggestion to modify the provision originates from the fact that a number of states parties to the CERD have still not fulfilled their financial obligations, as requested in art.8(6) of the Convention. The amending document provides for the financing of the Committee's activities from the regular UN budget,

instead of by the state parties ([United Nations General Assembly, 1992](#)). The Amendment, however, has, not been accepted by a two-thirds majority of states (only 43 states have ratified the instrument to date), and it is not yet in force.

13. Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an innovative and ambitious international treaty which captures the complexity of the human rights movement since the end of World War II. As the title suggests, the goal of the Convention is to end the discrimination faced by women in their pursuit of civil, political, economic and cultural rights. It elaborates upon and puts into the form of a multilateral treaty the substantive provisions of the Declaration on the Elimination of Discrimination Against Women. Adopted on 18 December 1979 by the UN General Assembly: the CEDAW was considered to be an important milestone which marked an international commitment to the cause of women's rights ([Lawson, 1991, 267](#); [Steiner and Alston, 2000, 158](#); [Tang, 2004, 1174](#)).

The Convention's underlying philosophy is that discrimination against women is incompatible with human dignity and constitutes an obstacle to the full realisation of the potentialities of women; therefore, the right of women to share equally in improved conditions of life must be promoted and protected. The CEDAW entered into force on 3 September 1981 ([Lawson, 1991, 267](#)). As of 26 August 2007, 187 states had ratified the Convention.

The organisation of the Convention follows that of the CERD. In its preamble, the Convention acknowledges that "extensive discrimination against women continues to exist", and emphasises that such discrimination "violates the principles of equality of rights and respect of human dignity". Part I of the Convention provides for a definition of the term "discrimination against women" (art.1); it obliges the contracting parties to embody the principle of non-discrimination in their constitutions and other legislation and to ensure the practical implementation of these principles. Accordingly, states parties are required to undertake all appropriate measures in the political, cultural, social and civic sphere in order "to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men". The Convention further provides for a limited form

of positive discrimination or affirmative action, as well as exceptions to the definition of discrimination against women. It allows states parties to “adopt temporary special measures aimed at accelerating de facto equality between men and women”. It places two further obligations on states parties: first, it obliges them to take appropriate measures to modify social and cultural patterns of conduct based on “the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for women and men”, and second, to institute a system of family education stressing the importance of maternity and the sharing of parental roles. The CEDAW refers to the obligation on states parties to suppress both traffic in women and exploitation of prostitution. Part II of the Convention covers political rights: political rights per se, the right to take part in the work of international organisations, and national rights. Part III addresses social and economic rights of women, such as education, employment, rights to equal treatment in health care, and equality of access to financial benefits. Special emphasis is put on problems of women in rural areas. The Convention seeks to ensure rural women’s participation in development planning, access to adequate health care facilities, benefits from social security programmes, access to training and education, opportunities to organise self-help groups and cooperatives, participation in all community activities, access to agricultural credit, marketing facilities, equal treatment in land settlement schemes and enjoyment of adequate living standards. Part IV deals with matters of civil law. It grants women equality before the law and in all legal proceedings. It addresses private matters by requiring states parties to ensure, on a basis of equality of women and men, the same rights to enter marriage, and the same rights and responsibilities during marriage, with respect to children and at dissolution of marriage. To ensure compliance, the Convention establishes the Committee on the Elimination of Discrimination against Women to monitor the progress of the CEDAW (Part V). The main function of the Committee is the consideration of the reports submitted by states parties within one year of ratification or accession, and thereafter every four years. The Committee comprises twenty-three independent experts who regularly review the reports submitted by individual states indicating the measures taken to implement the provisions of the Convention ([Kathree, 1995](#), 422–425; [Langley, 1999](#), 68–69; [Tang, 2004](#), 1175–1176).

14. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women When it comes to legal

redress, the CEDAW has narrow powers: it does not provide for any individual complaints procedures. On 6 October 1999 an Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (OP-CEDAW) was adopted by the UN General Assembly (Tang, 2004, 1179).

The Protocol contains two procedures. First, a communications procedure allows individual women, or groups of women, to submit claims of violations of rights protected under the CEDAW to the Committee. The Protocol establishes that in order for individual communications to be admitted for consideration by the Committee, a number of criteria must be met, including that domestic remedies must have been exhausted. Second, the Protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. In either case, states must be party to the Convention and the Protocol. The Protocol includes an "opt-out clause", allowing states upon ratification or accession to declare that they do not accept the inquiry procedure. Art. 17 of the Protocol explicitly provides that no reservations to its terms may be entered (Tang, 2004, 1179–1181).

The Optional Protocol entered into force on 22 December 2000, following the ratification of the tenth state party to the Convention. The entry into force of the Optional Protocol puts it on an equal footing with the ICCPR, the CERD, and the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (see below p. 145), which all have communications procedures. The inquiry procedure is the equivalent of that under the Convention against Torture (Tang, 2004, 1181). As of 26 August 2007, 86 states had ratified the Optional Protocol.

15. Amendment to Article 20(1) of the Convention on the Elimination of All Forms of Discrimination against Women An Amendment to art. 20(1) of the Convention on the Elimination of All Forms of Discrimination against Women (A-CEDAW) was proposed by the governments of Denmark, Iceland, Finland, Norway and Sweden. The Amendment instrument would allow the Committee to meet for more than the annual two weeks specified in the Convention. This was considered to be a very short time to consider and evaluate reports from the 187 parties to the Convention. The Amendment was adopted by the UN General Assembly on 22 May 1995

([United Nations General Assembly, 1996a](#)). The Amendment is however not yet in force; to date only 49 states have ratified the Amendment.

16. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment One of the most reprehensible areas of states' conduct has been that of torture or other forms of cruel and degrading treatment. On 10 December 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Convention entered into force on 26 June 1987 for the first twenty states that ratified it ([Langley, 1999, 63](#)).⁸

The objective of the Convention is based upon the recognition that practices, such as torture and other cruel, inhuman or degrading treatment or punishment, are already outlawed under international law. The principle aim of the Convention is to strengthen the existing prohibition of such practices by a number of supportive measures. In aiming at the effective elimination of torture and other forms of cruel, inhuman or degrading treatment or punishment, the Convention pays particular attention to influencing the behaviour of persons who may become involved in situations in which such practices might occur. The Convention builds particularly upon the Declaration on the same subject matter adopted by the UN General Assembly in 1975 ([Lawson, 1991, 244](#)).

The Convention is divided into three parts. Part I contains the substantive provisions. Most of these provisions relate only to torture and not to other forms of cruel, inhuman or degrading treatment or punishment. However, a limited number of provisions apply to all categories. This substantive part opens with an elaborate definition of torture for the purposes of the Convention. The definition refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by – or at the instigation of or with the consent or acquiescence of – a public official or other person acting in an official capacity. The states parties to the Convention are duty-bound to take measures to prevent such activities in

⁸The history of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment spans from 1977 to 1984. In December 1977, on the initiative of the Swedish government, the UN General Assembly requested the Commission on Human Rights to prepare a draft convention against torture and other cruel, inhuman or degrading treatment or punishment. Since then, the elaboration of the Convention in the following years has been the work of several bodies under the aegis of the UN. A detailed outline of the drafting process is presented in [Burgers and Danelius \(1988, 31–35\)](#).

territories under their jurisdiction, not to return a person to a country where he or she may be subjected to torture, to make torture a criminal offence and establish jurisdiction over it, to prosecute or extradite persons charged with torture, and to provide a remedy for persons tortured. The Convention further contains provisions concerning extradition to other states parties and the assistance to other states parties in connection with criminal proceedings. Part II contains the implementation provisions, and provides for several forms of international supervision. It establishes an international supervisory body, the Committee against Torture. The Committee commenced its work in 1987. It consists of ten experts who are elected by the states parties. The experts perform their functions not in the capacity of government representatives but in their personal capacity. States parties are to submit to the Committee reports on the measures taken to give effect to their undertakings under the Convention; these reports are also transmitted to all states parties. If the Committee receives reliable information which contains well-founded indications that torture is systematically practised in the territory of a state party, it may initiate a confidential inquiry. The Convention provides for two optional procedures⁹ enabling the Committee to consider complaints against states parties. Under the first procedure the Committee may consider communications from a state party which claims that another state party is not fulfilling its obligations under the Convention. Under the second procedure the Committee may consider communications from or on behalf of individuals who claim to be victims of a violation of the Convention by a state party. Part III contains the final clauses ([Burgers and Danelius, 1988](#), 1–4; [Shaw, 2003](#), 304–305). As of 26 August 2007, 147 states had ratified the Torture Convention.

17. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment In April 2002 the UN Commission on Human Rights adopted the text of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). This text was subsequently approved by the ECOSOC in July 2002 and then by the UN General Assem-

⁹These procedures are optional because each of them applies only to those states parties which have declared explicitly that they recognise the competence of the Committee under the procedure.

bly itself on 18 December 2002. It entered into force on 22 June 2006 (Evans and Haenni-Dale, 2004, 19).

The Optional Protocol is considered to be a ground-breaking instrument. It features a “twin-pillar” approach to torture prevention, based on the creation or designation of national preventive mechanisms by states parties, as well as the creation of an international preventive mechanism, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (also referred to as the Subcommittee on Prevention). The core of the Optional Protocol lies in the interplay between the international and national preventive mechanisms (Evans and Haenni-Dale, 2004, 20).

As adopted, the Optional Protocol has six parts. Part I sets out the general principles underlying the instrument and, as art. 1 makes clear, its objective is to “establish a system of regular visits undertaken by independent international and national bodies” to places where people are deprived of their liberty. Art. 2 provides for the establishment of the international prevention mechanism, the Subcommittee. Art. 3 requires states to “set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture” (national preventive mechanisms). Art. 4 provides that “Each State Party shall allow visits [...] by the mechanisms referred to in Articles 2 and 3” to places of detention. Parts II and III of the Optional Protocol provide for the establishment and functioning of the Subcommittee, including the election of members, the mandate of the Subcommittee and *modus operandi* of the Subcommittee. Part IV deals with the National Preventive Mechanism. The Optional Protocol does not require any state to establish a new human rights body or mechanism. Rather it requires states to “maintain, designate or establish” within one year “one or several independent national preventive mechanisms for the prevention of torture” (art. 17 and art. 18). The Optional Protocol makes acceptance of both the international and national mechanisms compulsory, except that under Part V of the Protocol, a state may make a declaration postponing the implementation of its obligations in respect of either the international or the national mechanism for a period of three years. Finally, the Optional Protocol expressly provides for a number of essential capacities that national preventive mechanisms must enjoy. These largely mirror the requirements for effective access to persons and places of detention as well as the right to have contact with

the Subcommittee on Prevention ([Evans and Haenni-Dale, 2004](#), 30–52). As of 26 August 2007, 35 states were parties to the Optional Protocol.

18. Amendments to Articles 17(7) and 18(5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Amendments (A-CAT) make provisions for the financing of the Committee against Torture. Following the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states parties are responsible for expenses of the members of the Committee (art. 17(7)), as well as for expenses incurred in connection with the holding of meetings of the states parties and of the Committee, including cost of staff and facilities (art. 18(5)). Similar to the modification of art. 8 of the CERD (see above p. 141), these Amendments were proposed by the government of Australia, and would replace the two provisions related to the rule of financing the Committee's activities (new art. 18(4)). In accordance with the Amendments, members of the Committee would receive emoluments from UN resources on such terms and conditions as may be decided by the UN General Assembly. The Amendments were adopted on 8 September 1992 ([United Nations General Assembly, 1998](#)). However, having not yet been accepted by a two-thirds majority of states (only 27 states have ratified the instrument to date), the amendment did not enter into force.

19. Convention on the Rights of the Child One of the most important human rights instruments ever adopted by the international community is the Convention on the Rights of the Child (CRC). This Convention is unique, because it protects the broadest scope of fundamental human rights ever brought together within one treaty – economic, social and cultural, as well as civil and political rights. It is designed to ensure the basic dignity, survival and development of over half of the population of the globe. It awards children international recognition as persons with interests and rights independent of families, parents and adults, and affirms that children's rights require special protection. The Convention aims not only to provide such protection but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security ([Detrick, Doek and Cantwell, 1992](#), ix; [Langley, 1999](#), 45–46; [Lawson, 1991](#), 287).

The world's first international legal instrument on children rights was the product of ten years of negotiation among government delegations, inter-governmental and non-governmental organisations.¹⁰ The process of drafting and redrafting was considerable and consensus was difficult to achieve. Freedom of thought, conscience and religion was one stumbling block. There were differences of opinion on the rights of the unborn child, both with regard to religious concerns and between developed and developing countries on policies for curbing over-population. Other differences persisted on whether children should have duties: these found their way into the Charter on the Rights and Welfare of the African Child, but were excluded from this Convention. Traditional practices, in particular female genital mutilation, were also divisive, with a number of African nations being resistant to any norm that would undermine them (Freeman, 2000, 277–278).

The Convention on the Rights of the Child was adopted by the UN General Assembly on 20 November 1989, and entered into force on 2 September 1990. In comparison with other human rights treaties concluded within the context of the UN, the CRC entered into force very soon after its adoption by the General Assembly. Moreover the CRC acquired a very large number of states parties in a relatively short period following its adoption. It has almost reached universal ratification (195 states parties), a feat achieved for the first time in the history of the international human rights standard-setting activities of the UN (Detrick, 1999, 1).

The rights protected under the Convention can be grouped under three major headings: (1) those setting forth fundamental rights and freedoms, such as rights of a child to life, to equality, to a name and a nationality, as well as freedom of conscience, expression and religion; (2) those providing certain and special protection from dangers to which children are particularly susceptible such as physical or mental abuse or maltreatment, abduction or trafficking, and economic or social exploitation; and (3) those that seek to promote a child's proper development through access to such basic necessities as education and information, leisure, play and cultural activities. In

¹⁰A draft of the Convention was submitted to the Commission on Human Rights, at its 1978 session, by Poland. Between 1979 and 1989, the Commission elaborated the draft with the assistance of an open-ended working group. In 1988, the General Assembly requested the Commission to give the highest priority to this task and to make every effort to complete the text in 1989, the year marking the 30th anniversary of the Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child (Detrick, 1999, 13–18).

a number of areas, such as adoption, the protection of children from sexual exploitation, drug abuse, and neglect and safeguarding of a child's identity, the Convention went beyond the legal norms and practices existing at the time of its adoption. The Convention has a built-in implementation mechanism. This centres on the establishment of a Committee on the Rights of the Child and a system of periodic reporting, according to which states parties are required to submit to the Committee reports on the measures adopted and on the progress made to give effect to the rights. Initial reports are to be submitted within two years of the entry into force of the Convention for the state concerned. Subsequent reports have to be submitted every five years. The reports submitted are to indicate difficulties, if any, affecting the degree of fulfilment of their obligations under the Convention. They should also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the reporting country. Every two years the Committee is to submit reports on its activities to the General Assembly through the ECOSOC ([Detrick, 1999](#), 1–4, 21–22; [Santos Pais and Bissell, 2006](#), 689; [Shaw, 2003](#), 307).

On 25 May 2000, the UN General Assembly adopted by consensus two Protocols to the Convention on the Rights of the Child: the Protocol on the Involvement of Children in Armed Conflicts (Children in Armed Conflict Protocol) and the Protocol on the Sale of Children, Child Pornography and Child Prostitution (Sale of Children Protocol). These two instruments represent major advances in the international effort to strengthen and enforce norms for the protection of the most vulnerable children ([Dennis, 2000](#), 789).

20. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict The Children in Armed Conflicts Protocol (OP-CRC) deals realistically and reasonably with the difficult issues of minimum ages for compulsory recruitment, voluntary recruitment, and participation in hostilities. The Protocol raises the age of military conscription from fifteen to eighteen years, as stipulated under existing international law. It obliges states parties to raise the minimum age for voluntary recruitment to an age above the current fifteen-year international standard and requires states parties to take all feasible measures to ensure that personnel of national armed forces younger than eighteen years do not take a direct part in hostilities. States parties to the Protocol must

also prohibit the recruitment and use of persons below the age of eighteen years by nongovernmental armed groups (Dennis, 2000, 789).

Throughout the negotiations of the Protocol, the central issues were the minimum age for entry into the military (recruitment) and participation in armed conflict. Many delegations, nongovernmental organisations, the International Committee of the Red Cross (ICRC), the UN High Commissioner for Human Rights, and the Special Representative of the Secretary-General for Children in Armed Conflict urged the prohibition of any military service by those under the age of eighteen years. While almost all states accepted that the minimum age for conscription (compulsory or obligatory military service) should be set at eighteen years, the debate focused on voluntary recruitment and participation in hostilities. Nearly half of the UN members permit voluntary recruitment below the age of eighteen years (Dennis, 2000, 790–791).¹¹

21. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Sales of Children Protocol (IIO-P-CRC) is the first international instrument to define the terms “sale of children”, “child pornography”, and “child prostitution”, and should help guarantee that the perpetrators of these offences are brought to justice. The Protocol requires states parties to treat acts relating to such conduct as criminal offences, and provides for cooperative law-enforcement mechanisms to prosecute offenders. Additionally, the Protocol establishes broad grounds for jurisdiction over offences and commitments to extradite offenders, with the aim of ensuring that offenders can be prosecuted regardless of where they are found (Dennis, 2000, 789).

Both Protocols also contain provisions that promote international cooperation and assistance in the rehabilitation and social reintegration of children who have been victimised. Though styled as Protocols to the Convention

¹¹With regard to art. 3 a consensus text based on a United States proposal was adopted by the delegations. Art. 3 was essential for the United States, given its long-standing tradition of allowing seventeen-year-olds with parental consent to enter the military service and its difficulty in meeting recruiting goals in recent years. Art. 3 obliges states parties to maintain safeguards with respect to voluntary recruitment ensuring that such recruitment is genuinely voluntary; requiring informed consent of the volunteer’s parents or legal guardians; informing recruits of the duties involved in military service; and requiring reliable proof of age prior to acceptance into military service (Dennis, 2000, 791).

on the Rights of the Child, each Protocol, by its terms, operates as an independent multilateral agreement under international law. Significantly, states ratify either Protocol without becoming a party to the Convention or being subject to its provisions. The Protocols complement the International Labour Organization Convention on the Worst Forms of Child Labour (see below p. 164), which requires states parties to take immediate and effective action to secure the elimination of the forced or compulsory recruitment of children for use in armed conflicts; the sale and trafficking of children; and the use, procuring, or offering of a child for prostitution, the production of pornography, or pornographic performances (Dennis, 2000, 790).

The Children in Armed Conflicts Protocol entered into force on 12 February 2002 and to date has been ratified by 66 states. The Sales of Children Protocol entered into force on 18 January 2002 and to date has been ratified by 67 states.

22. Amendment to Article 43(2) of the Convention on the Rights of the Child Art. 43(2) of the Convention on the Rights of the Child, lays out the composition of the Committee on the Rights of the Child. Recognising the importance of the Committee and its members for the evaluation and monitoring of the implementation of the Convention, the number of Committee experts has been increased from ten to eighteen. The Amendment to art. 43(2) of the Convention on the Rights of the Child (A-CRC) was adopted by the UN General Assembly on 21 December 1995 and entered into force on 18 November 2002 (United Nations General Assembly, 1996b). To date 142 states have ratified the Amendment.

A.1.3 International Humanitarian Law

International humanitarian law – also known as the law of armed conflicts or law of war – forms a major part of public international law and deals with matters of humanitarian concern arising directly from armed conflicts. The human interests which humanitarian law seeks to protect are largely similar to those safeguarded by human rights law. However, in contrast to international human rights law which applies at all times and which grants rights to individuals (and obligations upon states), international humanitarian law is applicable only in times of armed conflict and also imposes obligations on

the individual. The main instruments of international humanitarian law are the Geneva Conventions of 1949 and the Additional Protocols of 1977.

23. The Geneva Conventions One of the more divisive issues in international relations is centred on the fact that human rights must not be suspended during times of war. The Geneva Conventions (GC) comprise four treaties that represent agreements, updates and codifications of international humanitarian law for the protection of war victims, including prisoners of war and civilians. Sometimes called the Red Cross Conventions, all four conventions were drafted under the aegis of the ICRC and were approved by some 48 states on 12 August 1949 (Langley, 1999, 131–132). To date 193 states have ratified the four Geneva Conventions.

1st Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field The 1st Geneva Convention of 1949 is a successor of the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field and its two revisions of 1906 and 1929. The 1864 Convention constituted the foundation of the 1st Geneva Convention. The great innovation of the 1864 version made in international law by this document was the concept of neutrality. Doctors and nurses were not to be regarded as combatants and would be exempt from capture. The Convention went on to assure for all time and in all places respect for the wounded and their treatment in the same manner, regardless of the side to which they belonged. The 1864 Convention covered the following essential elements of humanitarian law: (1) military ambulances and hospitals were recognised as neutral and had to be protected; (2) their personnel, and also chaplains, shared this neutrality while performing their duties; (3) if they fell into the hands of the opposing side they were to be exempt from capture and permitted to return to their own army; (4) civilians coming to the assistance of the wounded were to be respected; (5) the military wounded and sick were to be cared for, regardless of the side to which they belonged; (6) hospital and medical personnel were to display a red cross on a white ground as an emblem which would assure them this protection. The Convention underwent a series of revisions. The first revision was made in 1906, when the number of articles was increased from ten to thirty-three, but without modification of the essence of the Convention. The second revision was made in 1929. This took into account the development of medical

aviation and eliminated the *si omnes* clause, a provision under which the Convention was not applicable unless both belligerents were parties to it. In addition, the right of Muslim countries to use a red crescent in place of a red cross was recognised. Although the Geneva Convention was relatively well respected during World War II, belligerents took advantage of the clause introduced in 1929 and held doctors and nurses from the opposing side in prisoner-of-war camps to treat their compatriots (Pictet, 1985, 29–32).

After World War II the subject of retaining medical personnel was one of the most controversial questions relating to the Convention, and led to further revision of the Convention in 1949. On this particular point a compromise solution finally prevailed in the 1949 version. The arbitrary retention of some of the medical personnel was implicitly legalised to the extent justified by the number of prisoners. In addition, the revision of 1949 had to address the issue of medical aviation. Before 1949 it was sufficient to protect medical aircraft by painting them white with red crosses. The effectiveness of this measure was, however, illusory, since aircraft could be shot down before they became visible. In the 1949 revision, the protection of medical aircraft was made subordinate to an agreement between the belligerents, concerning the means of identification and the routes to be followed by the planes. However, since agreements between belligerents in the middle of a war would be very difficult, this revision resulted in the relative paralysis of medical aviation (Pictet, 1985, 32–33).

2nd Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea The 2nd Geneva Convention is almost identical to the 1st Geneva Convention. The main difference between the two is that the 2nd Convention concerns the wounded, sick and shipwrecked members of armed forces at sea (maritime warfare), while the 1st Convention relates to the wounded and sick in armed forces in the field. The principles underlying the two Conventions are otherwise identical and the same rules apply to protected persons and property, taking into account the different conditions prevailing on land and at sea (International Committee of the Red Cross, 1988; Pictet, 1985, 35).

3rd Geneva Convention relative to the Treatment of Prisoners of War The 3rd Geneva Convention replaced the 1929 Geneva Convention

relative to the Treatment of Prisoners of War and was accepted by all states parties to the earlier Convention ([Lawson, 1991](#), 619).

One of the main objectives of the revision made in 1949 was to increase the categories of persons who would be entitled to the status of prisoner of war in the event of capture. The most difficult point was that of the “partisans” who continued to fight in occupied territories. In World War II, the occupying power did not regard them as combatants but outlaws, and subjected them to harsh repression ([Pictet, 1985](#), 38).

The revision of 1949 adopted the provisions of the Hague Regulations in specifying four conditions which combatants had to fulfil to obtain the benefits of international law: (1) to have a responsible commander; (2) to wear a distinctive emblem; (3) to carry arms openly; and (4) to conduct operations in accordance with the laws and customs of wars. These provisions assimilated partisans to militias and volunteer corps fighting in support of the regular army. Specifying that such formations might also operate in occupied territory, the Convention broke new ground in comparison to the Hague text. The 1949 version also reached an improvement with regard to the reparation of prisoners of war at the end of the conflict. While the 4th Hague Convention of 1899, revised in 1907, stated that reparations should be done “after the conclusion of peace” and the Geneva Convention of 1929 expedited the return by relating it to the conclusion of an armistice, the revised text of 1949 provides that the prisoners shall be released and repatriated without delay after the cessation of active hostilities. Given the experience of World War II, which ended for many states without peace treaties and without armistice, the 1949 version was a considerable advance over the 1929 version ([Pictet, 1985](#), 36–40).

4th Geneva Convention relative to the Protection of Civilian Persons in Time of War The 4th Geneva Convention is concerned with the protection of civilians in time of war. It enunciates the principle that respect for the human person shall be assured in all circumstances, and accordingly forbids intimidation, torture, collective punishments, reprisals, the taking of hostages and deportations.

Though the Hague Regulations of 1899, revised in 1907, had made several basic provisions applicable to civilians in time of war, the protection of civilians was only considered in the event of occupation. The 4th Geneva Convention constitutes in this regard a major achievement of international

humanitarian law. It recognises the right of foreigners to leave a country at the beginning of or during a conflict, and also confirms the right of the state to retain those who may bear arms or may possess dangerous secrets. Persons to whom permission to depart is refused shall have prompt access to a tribunal qualified to reconsider this refusal. They must be permitted to live a normal life. With regard to occupied territories the Convention provides that civilians may not be compelled to work unless they are aged eighteen years or over and they may not be compelled to participate in military operations. The occupying power is obliged to ensure supplies of food and medicines, the operation of public services and maintenance of the health of the people, or otherwise accept relief shipments from abroad. The Convention also deals with legislation applicable in occupied territories. While protecting the population against arbitrary treatment, it provides that the occupying power shall be able to maintain order and combat insurrection. A great advance was also made in providing that all civilians deprived of their freedom, for any reason, would henceforth benefit from treatment equivalent to that of prisoners of war ([Pictet, 1985](#), 40, 43).

Protocols Additional to the Geneva Conventions The changing nature of armed conflicts, and the challenges posed by modern warfare, such as advances in weapons technology, called for further limits on the way wars may be fought and strengthened protection for victims of armed conflicts. This need was particularly claimed after decolonialisation by newly independent states which found it difficult to be bound by a set of rules which they themselves had not helped to design. Since revising the Geneva Conventions might have jeopardised some of the advances made in 1949, it was decided to strengthen protection for the victims of armed conflicts by adopting new texts in the form of protocols additional to the Geneva Conventions.

The Geneva Conventions were supplemented in 1977 by two Additional Protocols. The two Protocols seek to better protect civilians in both international (Additional Protocol I) and non-international armed conflicts (Additional Protocol II). They do so by giving legal emphasis to the distinction between civilians and combatants. Both protocols were adopted on 8 June 1977 and entered into force on 7 December 1978 ([International Committee of](#)

[the Red Cross, 2002](#); [Lawson, 1991](#), 600).¹² To date 166 states have ratified Additional Protocol I, and 162 Additional Protocol II.

24. Protocol I, Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts Additional Protocol I (AP-GC) revises and supplements the Geneva Conventions of 1949, broadening the scope of the protection of victims of armed conflicts. In particular, art. 1(4) of the protocol clarifies the definition of armed conflicts which appears in art. 2 common to each of the four Geneva Conventions so as to include “armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self determination as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations”. The protocol also establishes an international fact-finding commission, consisting of fifteen members elected by the contracting parties. The commission is authorised (1) to inquire into any facts alleged to be a grave breach or other serious violation of the Conventions or the Protocol; and (2) to facilitate the restoration of an attitude of respect for the Conventions and the Protocols ([International Committee of the Red Cross, 2002](#); [Lawson, 1991](#), 637).

25. Protocol II, Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of Non-international Armed Conflicts Given that most armed conflicts today take the form of civil wars, during which some of the worst crimes are committed, the Additional

¹²In 2005 the Geneva Conventions were supplemented by the Additional Protocol III. The Protocol, Additional to the Geneva Conventions and Relating to the Adoption of an Additional Distinctive Emblem establishes an additional emblem, the red crystal, equal in status to the red cross and red crescent. Like its two predecessors of 1977, Additional Protocol III is no more than an additional instrument and cannot be regarded as an independent document. It is formally linked to the four Geneva Conventions, making it impossible to become party to the Protocol without already being party to the Conventions (or becoming party to them simultaneously). The subject matter of Additional Protocol III, however, is relatively restricted compared with that of the two Additional Protocols of 1977; it supplements the Geneva Conventions by permitting the use of an additional distinctive sign ([International Committee of the Red Cross, 2002](#), 4; [Quéguiner, 2007](#), 178). Given its marginal scope, the Protocol was not included in the empirical analysis.

Protocol II (IIAP-GC) was specifically enacted to apply to certain situations of non-international armed conflict. The Protocol revises and supplements the Geneva Conventions of 1949, providing protection for victims of non-international armed conflicts such as civil wars, which had not been mentioned in the 1949 Conventions. It strengthened protection beyond the minimum standards contained in art. 3 common to the four Geneva Conventions. Like common art. 3, Additional Protocol II provides for the humane and non-discriminatory treatment of all those who are not, or who are no longer, taking a direct part in hostilities. In addition, however, it expands the protection provided by common art. 3, by including prohibitions on collective punishment, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage. It sets out specific provisions and protection for certain categories of persons such as children, persons deprived of liberty for reasons related to the conflict, persons prosecuted for criminal offences related to the conflict, persons who are wounded, sick and shipwrecked, medical and religious personnel, and the civilian population (attacks on civilian populations, starvation as a method of combat, and forced displacement are all prohibited) ([International Committee of the Red Cross, 2008, 9](#); [Lawson, 1991, 660](#)).

A.1.4 Fundamental International Labour Standards

Fundamental international labour standards are considered to be a sub-field of international human rights law. International labour standards are defined in the International Labour Organization (ILO) Declaration of Fundamental Principles and Rights at Work of 1998, and give expression to basic social and economic human values according to four categories of fundamental labour principles. These categories are: (1) freedom of association and the effective recognition of the right to collective bargaining, (2) the elimination of forced or compulsory labour, (3) the elimination of discrimination in respect of employment and occupation, and (4) the abolition of child labour. These four fundamental labour principles are laid down in eight fundamental ILO conventions. The freedom of association and the effective recognition of the right to collective bargaining are specified in the Convention concerning Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87) and the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (ILO Convention No. 98).

The Convention concerning Forced or Compulsory Labour (ILO Convention No. 29)¹³ and the Convention concerning the Abolition of Forced Labour (ILO Convention No. 105) concern the elimination of forced or compulsory labour. The elimination of discrimination in respect of employment and occupation is specified in the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100) and the Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111). The abolition of child labour is laid down in the Convention concerning Minimum Age for Admission to Employment (ILO Convention No. 138) and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).

26. Convention concerning Freedom of Association and Protection of the Right to Organise The Freedom of Association and Protection of the Right to Organise Convention (C87) was adopted on 9 July 1948 by the International Labour Conference and entered into force on 4 July 1950. To date 147 states are parties to the Convention.

Convention No. 87 is the basic instrument for the international protection of freedom of association. It deals, on the one hand, with the right of employers and workers to establish trade union organisations and, on the other, with the rights and guarantees which such organisations should enjoy. With regard to the right to establish and join organisations, the scope of this provision is very wide. In this regard the Convention (1) aims at excluding any discrimination in trade unions matters; (2) provides that the establishment of an occupational organisation should not be subject to previous authorisation, which means that formalities could be prescribed by law, but they should not be equivalent to previous authorisation nor constitute an obstacle amounting in fact to prohibition; (3) requires that there should be freedom of choice as to the organisations which workers may wish to establish or join, and (4) requires the diversity of trade union to remain possible. With regard to the rights and guarantees of trade union organisations, the Convention (1) defines the rights and guarantees which these organisations should enjoy; (2) specifies that the public authorities shall refrain from any interference which

¹³ILO Convention No. 29 was adopted by the International Labour Conference on 28 June 1930 and entered into force on 1 May 1932. Given that the time span of analysis is from 1945 to 2007, Convention No. 29 was not taken into account in the analysis.

would restrict the right or impede its lawful exercise; (3) recognises the right of the organisations to draw up their constitutions and rules; (4) provides for the right of organisations to elect their representatives in full freedom; (5) as well as the right to organise their administration and activities and to formulate their programmes; (6) provides for an additional guarantee by declaring that workers and employers' organisations shall not be liable to be dissolved or suspended by administrative authority (in order to ensure that dissolution or suspension are surrounded by the requisite guarantees which are normally ensured by judicial procedure); and (7) provides that occupational organisations shall have the right to establish and join federations and confederations, and that any such organisations, federations or confederations shall have the right to affiliate with international organisations of workers and employers (Böhning, 2005, 4; Lawson, 1991, 805; Valticos and Potobsky, 1995, 94–98).

27. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

The ILO Convention No. 98 (C98) concerns the application of the principles of the right to organise and bargain collectively. The Right to Organise and Collective Bargaining Convention was adopted on 1 July 1949 by the International Labour Conference and entered into force on 18 July 1951. It aims at providing safeguards against acts of anti-union discrimination. It seeks to protect workers and trade union leaders against victimisation by their employers both at the time of taking up employment and in the course of their employment relations. It specifies that such protection shall apply in respect of acts determined to make the employment of a worker subject to the condition that he/she shall not join a union or shall relinquish trade union membership. Another aim of this Convention is the protection of workers' and employers' organisations against acts of interference by each other or each other's agents or members. For instance, the establishment of workers' organisations under the dominion of employers' organisations, the support of workers' organisations by financial or other means, or placing workers' organisations under the control of employers' organisations constitute acts of such interference (Böhning, 2005, 4; Lawson, 1991, 847; Valticos and Potobsky, 1995, 99). As of 26 August 2007 Convention No. 98 had been ratified by 156 states.

28. Convention concerning the Abolition of Forced Labour

Following a study completed in 1953 by the ECOSOC and the ILO, compulsory

labour was seen to be a phenomenon still present in the aftermath of World War II. The study noted that compulsory labour was taking place not only in dependent territories, but in independent states. The study discerned two principle forms of compulsory labour: (1) that used as a means of political coercion – something that took place in Nazi Germany, for example, against Jews and others, in the former Soviet Union, and recently, in Cambodia; and (2) that used as a system of forced labour for economic purposes – for example, the Five-Year Economic Plans in the early Stalinist Soviet Union, the Great Leap Forward in China, and the forced prostitution of women and children (Langley, 1999, 125).

To deal with this problem, the International Labour Conference adopted on 25 June 1957 the Abolition of Forced Labour Convention as ILO Convention No. 105 (C105). Convention No. 105 entered into force on 17 January 1959. To date the Convention has been ratified by 166 states. It requires state parties to undertake to suppress and refrain from using forced or compulsory labour. The Convention calls for the immediate and complete abolition of any form of forced labour for the following five purposes: (1) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the political, social or economic system; (2) as a method of mobilising and using labour for purposes of economic development; (3) as a means of labour discipline; (4) as a punishment for having participated in strikes; (5) as a means of racial, social, national or religious discrimination (Böhning, 2005, 5; Lawson, 1991, 795; Valticos and Potobsky, 1995, 100–101).

Convention No. 105 does not constitute a revision of Convention No. 29 but was designed to supplement the earlier instrument. However, while Convention No. 29 calls for the abolition of forced or compulsory labour in all its forms, Convention No. 105 specifically requires the abolition of any form of forced or compulsory labour in the five specific cases listed above (Kern and Sottas, 2003, 45–46).

29. Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value The first binding international instrument to be adopted with the specific objective of promoting equality and eliminating discrimination was the Equal Remuneration Convention (C100). The Equal Remuneration Convention was adopted on 29 June 1951 by the International Labour Conference as ILO Convention No. 100. The

Convention entered into force on 23 May 1953 and counts to date 163 states parties.

Under this Convention, contracting states agree to enforce the basic principles – embodied in the Preamble of the ILO Constitution – that men and women shall receive equal remuneration for work of equal value. The term “remuneration” includes the ordinary basic minimum wage or salary and any additional emolument payable directly or indirectly, in cash or kind, by the employer to the worker and arising out of the worker’s employment. The term “work of equal value” aims, in particular, at avoiding indirect limitations in the implementation of the principle. Its meaning is wider than that of “equal work”. The Convention provides that the principle of equal remuneration for work of equal value is to be applied either by means of national laws and regulations, legally established or recognised machinery for wage negotiations, collective agreements, or a combination of these methods. It also requests cooperation on part of the states with workers’ and employers’ organisations for the purpose of giving effect to its provisions (Böhning, 2005, 7; Langley, 1999, 65; Lawson, 1991, 801; Thomas and Horii, 2003, 57; Valticos and Potobsky, 1995, 209–210).

30. Convention concerning Discrimination in Respect of Employment and Occupation Upon the adoption of Convention No. 100, it was recognised that equal pay could not be achieved without the elimination of discrimination in all areas of employment and that other grounds for discrimination should also be subject to prohibition. Thus, Convention No. 100 was quickly followed by the Discrimination (Employment and Occupation) Convention, which addresses all forms of discrimination concerning employment and occupation (Thomas and Horii, 2003, 57–58).

Following a resolution of the ECOSOC, the ILO adopted on 25 June 1958 the Discrimination (Employment and Occupation) Convention (C111). This Convention entered into force on 15 June 1960. As of 26 August 2007 Convention No. 111 had been ratified by 165 states. With the aim of completing the various previous instruments concerned with discrimination in the field of labour, Convention No. 111 sets comprehensive standards and is thus slightly broader in scope than Convention No. 100. It outlaws all discrimination including any distinction, exclusion or preference in the field of employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. It also encourages states

to add further grounds after consultation with employers' and workers' organisations in order to commit themselves internationally to prohibiting the use of disability, age, or HIV/AIDS status as criteria for discrimination in their domestic labour field. The discriminatory situations to which the Convention refers are those which have their origin, not only in law, but also in practice (Böhning, 2005, 7; Lawson, 1991, 799; Valticos and Potobsky, 1995, 119–121).

31. Convention concerning Minimum Age for Admission to Employment The Minimum Age Convention (C138) was adopted by the International Labour Conference on 26 June 1973 as ILO Convention No. 138. The Convention entered into force on 19 June 1976 and has so far been ratified by 149 states. The Convention is a key instrument in the development of a coherent strategy to combat child labour at the national level. It aims at the abolition of child labour and the establishment of a minimum age for employment high enough to ensure the fullest physical and mental development of young persons. It requires states to set and enforce a minimum age or ages at which children can enter into different kinds of work. The general minimum age for admission to employment should not be less than the age of completion of compulsory schooling and, in any case, not less than fifteen years. Developing countries, however, may make certain exceptions to this rule, and a minimum age of fourteen years may be applied as an initial step where the economy and education system are insufficiently advanced. Household chores, work in family undertakings and work that is part of education are excluded from minimum age requirements. A higher age (eighteen years) is laid down for any type of employment or work which might jeopardise the health, safety or morals of young persons (Böhning, 2005, 5–6; Hernández and Caron, 2003, 106; Lawson, 1991, 837; Valticos and Potobsky, 1995, 220).

In contrast to the Worst Forms of Child Labour Convention (see below p. 164), Convention No. 138 is intended to be “a dynamic instrument” aimed not only at setting a basic standard, but also at the progressive improvement of the Convention. It does not require a specified time frame for the implementation of measures to abolish child labour. Indeed, there are graduations in the obligation upon states to pursue a national policy. The development of the policy is conditioned by national circumstances and the level of standards already in force. Convention No. 138 revises ten earlier instruments on minimum age and provides a synthesis of the principles set out therein. It

applies to all sectors, whether or not they employ any children ([Hernández and Caron, 2003](#), 92–93; [Langley, 1999](#), 47).

32. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour The Worst Forms of Child Labour Convention (C182) was adopted by the International Labour Conference on 17 June 1999 as ILO Convention No. 182, and entered into force on 19 November 2000. The Convention is based on Convention No. 138 and sets forth the principles that certain forms of child labour cannot be tolerated. It obliges states ratifying this Convention not only to prohibit the worst forms of child labour but also to give priority to implementing measures to immediately eliminate the worst forms of child labour. Convention No. 182 enumerates in detail the types of work which are prohibited for children under the age of eighteen years. The worst forms of child labour include all forms of slavery or practices similar to slavery (such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour), prostitution, and the production of pornography or pornographic performances and illicit activities ([Böhning, 2005](#), 6; [Hernández and Caron, 2003](#), 107). The Convention counts to date 163 states parties.

A.1.5 International Trade Law

International trade law belongs to the broader field of international economic law. International economic law covers not only trade law, but also law governing the international financial system and the law of international development. International trade law has become, over the past twenty years, one of the fastest growing areas of public international law, and is one of the most developed forms of international economic law. It is concerned with the flow of goods and services across frontiers. The most significant agreements reached in the field of international trade law have been codified in the General Agreement on Tariffs and Trade of 1947 and the Marrakesh Agreement Establishing the World Trade Organization of 1994.

33. General Agreement on Tariffs and Trade 1947 Towards the end of World War II the establishment of an economic system based on multilateral relations rather than on bilateral treaties gained public support among allied powers. In 1944 the multilateral conference in Bretton Woods was

charged with the development of a post-war multilateral system of international economic relations. Its core mandate was to create three key international institutions, namely the International Monetary Fund (IMF), the International Bank of Reconstruction and Development (World Bank) and the International Trade Organization (ITO). Subsequently, the two Bretton Woods institutions - the IMF and the World Bank – were established. The ITO was intended to become the prime pillar of a new world trading regime. A charter to create the International Trade Organisation was drafted at the Havana Conference in 1948. However, the ITO charter had not been accepted by the United States Congress and the institution failed to come into existence (Cottier and Oesch, 2005, 19).

Although the ITO never came into being, the text of the Havana Charter remained important. The ITO project produced the General Agreement on Tariffs and Trade (GATT 1947) and absorbed the rules on commercial policy set forth in Chapter IV of the ITO Charter.

On the basis of a Protocol of Provisional Application, the GATT was adopted by the contracting parties on 30 October 1947 and came into force on 1 January 1948. Before the World Trade Organization (WTO) came into force in 1995, the GATT 1947 had 126 contracting parties (Cottier and Oesch, 2005, 21, 71; O'Brien, 2001, 620; cf. Irwin, 1995).

The GATT was originally meant to remain in place until the ITO was fully established; it was technically brought into force only provisionally and was applied on the basis of the Provisional Protocol of Application and on the basis of individual Protocols of Accession. In practice the GATT legal texts, however, applied as binding international treaty law. The GATT became effectively the centre of multilateral trade regulation and a de facto organisation until its replacement by the WTO in 1995 (Cottier and Oesch, 2005, 21, 69).

The GATT constituted the central framework and forum for trade negotiations and the coordination of national trade policies. With the objective of liberalising international trade, the GATT established a common code in respect of international trade by providing mechanisms both for consulting and for reducing and stabilising tariffs. The GATT set out a number of fundamental principles. The most important were: the principle of the most favoured nation (MFN); the reduction of tariff barriers; non-discrimination between imported and domestic goods; elimination of import or export quotas; restriction on export subsidies; and a prohibition on dumping. Special

provisions were made in respect of developing countries and those states experiencing balance of payment problems, and in circumstance of serious damage to domestic producers (Cottier and Oesch, 2005, 68; O'Brien, 2001, 620).

One of the essential functions of the GATT framework was to host a series of major multilateral trade negotiations, called “rounds”, of which there were eight during the GATT. These were the Geneva Tariff Conference (1947), the Annecy Tariff Conference (1949), the Torquay Tariff Conference (1950–51), the Geneva Tariff Conference (1956), the Geneva Tariff Conference (Dillon Round 1960–61), the Kennedy Round (1964–67), the Tokyo Round (1973–79) and the Uruguay Round (1986–93). The rounds operated under specifically negotiated frameworks and schedules with the purpose of reaching agreement on tariffs, which became binding when adopted by the contracting parties (Cottier and Oesch, 2005, 72–73).

Over time, GATT has increased considerably. The complete legal texts of the GATT included the tariff schedule of each contracting party and a series of agreements, protocols, interpretative notes and other supplementary texts. Special side agreements were concluded during the GATT years, in particular in the course of the Tokyo Round (Cottier and Oesch, 2005, 68).

34. Marrakesh Agreement Establishing the World Trade Organization In 1986 the Uruguay Round was launched with the objective of improving entry into traditional GATT areas, extending the GATT provisions into new areas and promoting institutional change. The Uruguay Round was a considerable success in this regard and was concluded on 15 April 1994 with the signing of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The Agreement came into force on 1 January 1995 and counts 147 member states (O'Brien, 2001, 620–621).

The WTO Agreement establishes the framework of the multilateral trading system in the form of the WTO and serves as an umbrella agreement defining the subject matter and instruments in various sub-agreements. It contains institutional and procedural provisions and provides the organisational structure for the administration in its four annexes. All these instruments together, consisting of about 30,000 pages of treaty text, constitute the WTO Agreement. Parties to the WTO Agreement are bound by all the agreements (Cottier and Oesch, 2005, 83, 86; O'Brien, 2001, 622).

Annex 1 comprises the unchanged text of GATT 1947, its basic principles, procedural and institutional provisions as well as seven understandings interpreting and further developing specific provisions of the GATT. Annex 1A to the WTO Agreement contains twelve additional agreements. The Agreement on Agriculture, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Textiles and Clothing, the Agreement on Trade-Related Investment Measures, the Agreement on Preshipment Inspection, the Agreement on Rules of Origin and the Agreement on Safeguards were newly concluded during the Uruguay Round. The Agreement on Implementation of Article VI of the GATT (Anti-Dumping Agreement), the Agreement on Implementation of Article VII of the GATT (Agreement on Customs Valuation), the Agreement on Technical Barriers to Trade, the Agreement on Licensing Procedures and the Agreement on Subsidies and Countervailing Measures are recodifications of existing GATT 1947 rules, often with substantial changes. The General Agreement on Trade in Services – GATS (Annex 1B) – establishes the multilateral framework for the liberalisation of services (Cottier and Oesch, 2005, 89; cf. Sauvé and Stern, 2000). The Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS Agreement (Annex 1C) – is the international legal framework for cooperation in the protection of intellectual property rights (Cottier and Oesch, 2005, 921–922).

One of the most significant features of the new WTO structure is the attention given to matters of enforcement. Annex 2 of the Agreement (Understanding on Rules and Procedures Governing the Settlement of Disputes – DSU) provides for a Dispute Settlement Mechanism. It establishes panels and the Appellate Body in order to deal with disputes between members. It is built upon customary practices developed under the GATT 1947. However, unlike the previous GATT dispute machinery, which was subject to justified criticism for undue delay and the absence of an identifiable appellate structure, the new mechanism has been substantially changed and juridified. Accordingly, a member violating WTO law can no longer block the verdict upon appeal and faces severe measures of retaliation in case of non-compliance with the decisions of the Dispute Settlement Body (Cottier and Oesch, 2005, 90; O’Brien, 2001, 622; cf. Petersmann, 1997). A second method of enforcement within the WTO is provided by the Trade Policy Review Mechanism as operated by the Trade Policy Review Body (TPRB) and codified in Annex 3 of the WTO Agreement. The Trade Policy Review

Mechanism is designed not to consider individual cases but to review the foreign trade regime of a member to ensure compliance with the WTO code and the principle of transparency. It ensures that all WTO members' trade policies are examined and evaluated regularly, the frequency with which each country is reviewed varying according to its share of world trade; the higher the share of a state, the more frequent the reviews (Cottier and Oesch, 2005, 90; O'Brien, 2001, 624).

Finally, Annex 4 provides two plurilateral agreements, both concluded during the Tokyo Round and recodified in the Uruguay Round: the Agreement on Trade in Civil Aircraft, which eliminates import duties on all aircraft and their components and establishes disciplines on subsidies; and the Agreement on Government Procurement which ensures that government tenders above a certain threshold are transparent and open to foreign competitors (Cottier and Oesch, 2005, 90).

A.2 Summary Statistics of the Agreements

Table A.1 summarises the 34 selected agreements described above, together with their year of adoption and entry into force. Summary statistics of the ratification events are presented in Tables A.2 and A.3. The statistical figures of ratifications are itemised in Table A.2 by treaty, and in Table A.3 by state. Based on the data presented in Table A.2, Figure A.1 displays the total number of ratifications for each treaty separately. Figure A.2 is a histogram of the numbers of ratifications conducted by states. The histogram shows the number of states grouped by intervals of numbers of ratifications. Figure A.3 is the empirical cumulative distribution function of ratifications. It shows the percentage of states (y-axis) which ratified a number of agreements less than or equal to a certain value (x-axis). In Figure A.4, the empirical cumulative distribution functions are stratified by world regions.

	treaty	abbreviation	adopted	in force
1	Charter of the United Nations	CUN	1945	1945
2	General Agreement on Tariffs and Trade 1947	GATT	1947	1947
3	Convention on the Prevention and Punishment of the Crime of Genocide	CPPCG	1948	1951
4	Freedom of Association and Protection of the Right to Organise Convention	C87	1948	1950
5	Geneva Conventions	GC	1949	1949
6	Right to Organise and Collective Bargaining Convention	C98	1949	1951
7	Equal Remuneration Convention	C100	1951	1953
8	Abolition of Forced Labour Convention	C105	1957	1959
9	Discrimination (Employment and Occupation) Convention	C111	1958	1960
10	Vienna Convention on Diplomatic Relations	VCDR	1961	1964
11	International Convention on the Elimination of All Forms of Racial Discrimination	CERD	1965	1969
12	International Covenant on Economic, Social and Cultural Rights	ICESCR	1966	1976
13	International Covenant on Civil and Political Rights	ICCPR	1966	1976
14	Optional Protocol to the International Covenant on Civil and Political Rights	OP-ICCPR	1966	1976
15	Vienna Convention on the Law of Treaties	VCLT	1969	1980
16	Minimum Age Convention	C138	1973	1976
17	Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts	AP-GC	1977	1978
18	Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts	IIAP-GC	1977	1978
19	Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	1979	1981
20	United Nations Convention on the Law of the Sea	UNCLS	1982	1994

Table A.1: Selected international agreements.

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	treaty	abbreviation	adopted	in force
21	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1984	1987
22	Vienna Convention on the Law of Treaties between States & International Organizations or between International Organizations	VCIO	1986	—
23	Convention on the Rights of the Child	CRC	1989	1990
24	2nd Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	IIOP-ICCPR	1989	1991
25	Amendment to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination	A-CERD	1992	—
26	Amendments to Articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	A-CAT	1992	—
27	Marrakesh Agreement Establishing the World Trade Organization	WTO	1994	1995
28	Amendment to Article 20 (1) of the Convention on the Elimination of All Forms of Discrimination against Women	A-CEDAW	1995	—
29	Amendment to Article 43 (2) of the Convention on the Rights of the Child	A-CRC	1995	2002
30	Worst Forms of Child Labour Convention	C182	1999	2000
31	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	OP-CEDAW	1999	2000
32	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	OP-CRC	2000	2002
33	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	IIOP-CRC	2000	2002
34	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	OP-CAT	2002	2006

Table A.1: (*continued*) Selected international agreements.

	treaty	mean	sd	min	max	N	%
1	CUN	1965	18	1945	2006	197	98.99
2	GATT	1969	17	1948	1994	126	63.32
3	CPPCG	1970	18	1949	2001	136	68.34
4	C87	1975	19	1949	2006	147	73.87
5	GC	1968	15	1950	2006	193	96.98
6	C98	1973	17	1950	2006	156	78.39
7	C100	1978	16	1952	2006	163	81.91
8	C105	1977	17	1957	2007	166	83.42
9	C111	1979	16	1959	2006	165	82.91
10	VCDR	1975	12	1962	2006	188	94.47
11	CERD	1980	12	1966	2006	176	88.44
12	ICESCR	1985	10	1968	2007	159	79.90
13	ICCPR	1986	10	1968	2006	163	81.91
14	OP-ICCPR	1989	9	1968	2006	112	56.28
15	VCLT	1987	11	1969	2006	111	55.78
16	C138	1995	9	1975	2007	149	74.87
17	AP-GC	1989	7	1978	2006	166	83.42
18	IIAP-GC	1990	7	1978	2006	162	81.41
19	CEDAW	1989	7	1980	2006	187	93.97
20	UNCLS	1994	6	1982	2007	154	77.39
21	CAT	1993	6	1986	2006	147	73.87
22	VCIO	1992	5	1987	2005	29	14.57
23	CRC	1992	2	1990	2006	195	97.99
24	IIOP-ICCPR	1997	5	1990	2006	61	30.65
25	A-CERD	1998	4	1993	2006	43	21.61
26	A-CAT	1996	4	1993	2005	27	13.57
27	WTO	1996	2	1995	2007	147	73.87
28	A-CEDAW	2000	3	1996	2006	49	24.62
29	A-CRC	2000	2	1996	2006	142	71.36
30	C182	2001	2	1999	2006	163	81.91
31	OP-CEDAW	2003	2	2000	2007	86	43.22
32	OP-CRC	2002	1	2000	2007	66	33.17
33	IIOP-CRC	2002	1	2000	2006	67	33.67
34	OP-CAT	2005	1	2003	2007	35	17.59

Table A.2: Summary statistics of ratifications by treaty.

Notes: mean: average year of ratification; sd: standard deviation of ratification in number of years; min: earliest year of ratification; max: latest year of ratification; N: total number of ratifications; %: percentage of ratifications. The key to treaty abbreviations is provided in Table A.1.

state	abb.	mean	sd	min	max	N	%
Afghanistan	AFG	1977	18.48	1946	2003	15	44.12
Albania	ALB	1986	18.13	1955	2003	24	70.59
Algeria	DZA	1980	14.39	1960	2001	23	67.65
Andorra	AND	2001	4.80	1993	2006	16	47.06
Angola	AGO	1988	8.89	1976	2001	19	55.88
Antigua & Barbuda	ATG	1990	7.58	1981	2006	21	61.76
Argentina	ARG	1980	18.01	1945	2007	30	88.24
Armenia	ARM	1998	5.91	1992	2006	25	73.53
Australia	AUS	1979	16.19	1945	2006	28	82.35
Austria	AUT	1979	18.04	1950	2002	30	88.24
Azerbaijan	AZE	1996	4.25	1992	2004	22	64.71
Bahamas	BHS	1988	11.70	1973	2003	20	58.82
Bahrain	BHR	1991	10.79	1971	2006	19	55.88
Bangladesh	BGD	1987	12.06	1972	2001	25	73.53
Barbados	BRB	1978	11.56	1966	2000	23	67.65
Belarus	BLR	1979	18.84	1945	2006	26	76.47
Belgium	BEL	1980	19.73	1945	2004	29	85.29
Belize	BLZ	1992	8.08	1981	2004	24	70.59
Benin	BEN	1982	16.44	1960	2006	23	67.65
Bhutan	BTN	1984	11.24	1971	1999	6	17.65
Bolivia	BOL	1986	14.00	1945	2006	26	76.47
Bosnia & Herzegovina	BIH	1995	3.78	1992	2003	26	76.47
Botswana	BWA	1991	12.19	1966	2007	23	67.65
Brazil	BRA	1980	19.81	1945	2007	25	73.53
Brunei Darussalam	BRN	1994	5.90	1984	2006	10	29.41
Bulgaria	BGR	1982	17.52	1950	2006	31	91.18
Burkina Faso	BFA	1986	16.59	1960	2006	27	79.41
Burundi	BDI	1987	12.89	1962	2002	21	61.76
Cambodia	KHM	1990	16.32	1953	2007	23	67.65
Cameroon	CMR	1982	14.47	1960	2005	25	73.53
Canada	CAN	1981	17.50	1945	2005	29	85.29
Cape Verde	CPV	1989	9.39	1975	2002	22	64.71
Central African Rep.	CAF	1977	13.43	1960	2000	21	61.76

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state	abb.	mean	sd	min	max	N	%
Chad	TCD	1984	16.66	1960	2005	24	70.59
Chile	CHL	1983	17.93	1945	2003	28	82.35
China	CHN	1990	15.48	1945	2006	23	67.65
Colombia	COL	1982	16.11	1945	2007	28	82.35
Comoros	COM	1990	11.24	1975	2004	16	47.06
Congo	COG	1986	14.47	1960	2003	23	67.65
Costa Rica	CRI	1980	17.95	1945	2005	31	91.18
Cte d'Ivoire	CIV	1981	16.83	1960	2003	24	70.59
Croatia	HRV	1995	4.35	1991	2005	31	91.18
Cuba	CUB	1974	19.61	1945	2001	23	67.65
Cyprus	CYP	1983	14.61	1960	2002	31	91.18
Czech Republic	CZE	1996	4.44	1993	2007	31	91.18
Korea, Dem. Peo. R.	PRK	1986	12.48	1957	2001	10	29.41
Congo, Dem. Rep.	COD	1984	14.97	1960	2002	26	76.47
Denmark	DNK	1980	18.98	1945	2004	34	100.0
Djibouti	DJI	1992	10.75	1977	2005	23	67.65
Dominica	DMA	1990	7.82	1978	2002	22	64.71
Dominican Rep.	DOM	1975	18.80	1945	2001	21	61.76
Ecuador	ECU	1978	18.68	1945	2006	27	79.41
Egypt	EGY	1977	18.29	1945	2002	26	76.47
El Salvador	SLV	1983	18.29	1945	2006	23	67.65
Equatorial Guinea	GNQ	1991	9.79	1968	2003	21	61.76
Eritrea	ERI	1999	2.83	1993	2002	14	41.18
Estonia	EST	1995	5.63	1991	2007	27	79.41
Ethiopia	ETH	1982	17.72	1945	2003	20	58.82
Fiji	FJI	1987	13.34	1970	2003	18	52.94
Finland	FIN	1978	16.69	1950	2002	31	91.18
France	FRA	1980	19.27	1945	2003	30	88.24
Gabon	GAB	1980	16.63	1960	2004	24	70.59
Gambia	GMB	1988	12.38	1965	2001	21	61.76
Georgia	GEO	1996	3.87	1992	2005	28	82.35
Germany	DEU	1980	17.21	1951	2002	31	91.18
Ghana	GHA	1976	17.29	1957	2000	22	64.71
Greece	GRC	1981	17.25	1945	2003	29	85.29
Grenada	GRD	1992	8.29	1974	2003	20	58.82

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state	abb.	mean	sd	min	max	N	%
Guatemala	GTM	1982	19.42	1945	2002	29	85.29
Guinea	GIN	1983	15.40	1958	2005	26	76.47
Guinea-Bissau	GNB	1984	7.61	1974	1995	15	44.12
Guyana	GUY	1982	12.72	1966	2005	24	70.59
Haiti	HTI	1977	19.88	1945	2006	20	58.82
Holy See	VAT	1985	16.93	1951	2002	12	35.29
Honduras	HND	1982	19.39	1945	2006	27	79.41
Hungary	HUN	1979	16.74	1952	2002	27	79.41
Iceland	ISL	1981	18.38	1946	2002	31	91.18
India	IND	1972	19.16	1945	2000	15	44.12
Indonesia	IDN	1986	19.49	1950	2006	20	58.82
Iran, Islamic Rep.	IRN	1974	19.17	1945	2005	14	41.18
Iraq	IRQ	1974	17.55	1945	2001	18	52.94
Ireland	IRL	1986	16.94	1955	2006	30	88.24
Israel	ISR	1974	18.56	1949	2005	20	58.82
Italy	ITA	1979	17.10	1950	2002	31	91.18
Jamaica	JAM	1978	14.14	1962	2003	25	73.53
Japan	JPN	1983	18.80	1953	2004	22	64.71
Jordan	JOR	1979	17.35	1950	2002	22	64.71
Kazakhstan	KAZ	1998	4.39	1992	2006	23	67.65
Kenya	KEN	1985	15.82	1963	2003	22	64.71
Kiribati	KIR	1998	6.96	1982	2005	11	32.35
Kuwait	KWT	1982	15.01	1961	2003	22	64.71
Kyrgyzstan	KGZ	1996	4.02	1992	2004	26	76.47
Lao Peo. Dem. Rep.	LAO	1983	19.18	1954	2007	15	44.12
Latvia	LVA	1994	5.18	1991	2006	24	70.59
Lebanon	LBN	1981	17.88	1945	2003	20	58.82
Lesotho	LSO	1990	13.97	1966	2007	29	85.29
Liberia	LBR	1985	21.32	1945	2005	25	73.53
Libyan Arab Jamahir.	LBY	1979	15.98	1955	2004	22	64.71
Liechtenstein	LIE	1992	11.90	1950	2006	24	70.59
Lithuania	LTU	1997	4.58	1991	2004	28	82.35
Luxembourg	LUX	1983	18.20	1945	2005	30	88.24
Madagascar	MDG	1982	17.29	1960	2007	23	67.65
Malawi	MWI	1985	14.24	1964	1999	22	64.71

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state	abb.	mean	sd	min	max	N	%
Malaysia	MYS	1984	18.16	1957	2002	14	41.18
Maldives	MDV	1996	10.38	1965	2006	22	64.71
Mali	MLI	1985	15.72	1960	2005	30	88.24
Malta	MLT	1984	13.55	1964	2003	27	79.41
Marshall Islands	MHL	1996	7.04	1991	2006	6	17.65
Mauritania	MRT	1987	17.05	1961	2004	22	64.71
Mauritius	MUS	1985	13.62	1968	2005	26	76.47
Mexico	MEX	1981	18.78	1945	2005	30	88.24
Micronesia, Fed. Sta.	FSM	1994	4.31	1991	2004	8	23.53
Monaco	MCO	1992	16.86	1950	2005	16	47.06
Mongolia	MNG	1985	15.39	1958	2005	27	79.41
Montenegro	MNE	2006	0.22	2006	2007	20	58.82
Morocco	MAR	1981	17.16	1956	2007	23	67.65
Mozambique	MOZ	1991	9.43	1975	2003	25	73.53
Myanmar	MMR	1980	20.44	1948	2000	13	38.24
Namibia	NAM	1995	4.54	1983	2002	26	76.47
Nauru	NRU	1995	11.70	1978	2006	8	23.53
Nepal	NPL	1985	14.63	1955	2004	19	55.88
Netherlands	NLD	1981	16.55	1945	2002	31	91.18
New Zealand	NZL	1985	15.60	1945	2007	30	88.24
Nicaragua	NIC	1978	18.00	1945	2005	24	70.59
Niger	NER	1979	15.93	1960	2004	25	73.53
Nigeria	NGA	1981	16.74	1960	2004	23	67.65
Niue	NIU	2000	7.78	1995	2006	2	5.88
Norway	NOR	1976	18.70	1945	2002	30	88.24
Oman	OMN	1992	12.38	1971	2006	15	44.12
Pakistan	PAK	1974	22.59	1947	2006	18	52.94
Palau	PLW	1996	2.57	1994	2002	7	20.59
Panama	PAN	1981	17.61	1945	2001	29	85.29
Papua New Guinea	PNG	1989	10.58	1975	2000	17	50.00
Paraguay	PRY	1987	16.67	1945	2005	30	88.24
Peru	PER	1980	18.50	1945	2006	28	82.35
Philippines	PHL	1979	19.13	1945	2003	29	85.29
Poland	POL	1978	18.82	1945	2005	28	82.35
Portugal	PRT	1985	15.84	1955	2004	31	91.18

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state	abb.	mean	sd	min	max	N	%
Qatar	QAT	1993	11.74	1971	2007	18	52.94
Korea, Rep.	KOR	1987	13.21	1950	2006	25	73.53
Moldova, Rep.	MDA	1997	5.13	1992	2007	28	82.35
Romania	ROU	1981	17.21	1950	2003	28	82.35
Russian Federation	RUS	1977	18.02	1945	2004	24	70.59
Rwanda	RWA	1982	12.77	1962	2002	24	70.59
Saint Kitts & Nevis	KNA	1995	7.70	1983	2006	18	52.94
Saint Lucia	LCA	1986	6.31	1979	2000	17	50.00
St. Vincent & Grena.	VCT	1991	9.15	1980	2006	24	70.59
Samoa	WSM	1989	7.79	1976	2002	9	26.47
San Marino	SMR	1991	12.73	1953	2006	22	64.71
Sao Tome & Principe	STP	1991	10.37	1975	2005	15	44.12
Saudi Arabia	SAU	1987	18.02	1945	2005	19	55.88
Senegal	SEN	1980	14.46	1960	2006	28	82.35
Serbia	SRB	2001	1.30	2000	2006	28	82.35
Seychelles	SYC	1990	7.62	1976	2000	24	70.59
Sierra Leone	SLE	1981	16.61	1961	2002	23	67.65
Singapore	SGP	1990	14.57	1965	2005	14	41.18
Slovakia	SVK	1995	3.17	1993	2006	29	85.29
Slovenia	SVN	1994	4.47	1992	2007	28	82.35
Solomon Islands	SLB	1990	8.04	1978	2002	13	38.24
Somalia	SOM	1976	13.86	1960	1990	11	32.35
South Africa	ZAF	1992	16.44	1945	2005	26	76.47
Spain	ESP	1982	14.86	1952	2006	32	94.12
Sri Lanka	LKA	1985	17.17	1948	2003	24	70.59
Sudan	SDN	1983	16.96	1956	2006	18	52.94
Suriname	SUR	1986	10.07	1975	2006	20	58.82
Swaziland	SWZ	1989	13.29	1968	2004	21	61.76
Sweden	SWE	1978	18.36	1946	2005	33	97.06
Switzerland	CHE	1987	14.81	1950	2002	29	85.29
Syrian Arab Rep.	SYR	1978	20.58	1945	2004	23	67.65
Tajikistan	TJK	1996	3.76	1992	2005	22	64.71
Thailand	THA	1988	17.51	1946	2004	16	47.06
Macedonia, F.Y.R.	MKD	1995	4.11	1991	2003	27	79.41
Timor-Leste	TLS	2003	0.82	2002	2005	14	41.18

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state	abb.	mean	sd	min	max	N	%
Togo	TGO	1982	11.33	1960	2000	25	73.53
Tonga	TON	1990	14.29	1972	2007	10	29.41
Trinidad & Tobago	TTO	1982	15.54	1962	2004	23	67.65
Tunisia	TUN	1977	16.57	1956	2003	26	76.47
Turkey	TUR	1984	21.15	1945	2006	25	73.53
Turkmenistan	TKM	1996	2.47	1992	2000	19	55.88
Tuvalu	TUV	1993	9.33	1981	2002	6	17.65
Uganda	UGA	1988	15.11	1962	2005	26	76.47
Ukraine	UKR	1981	18.73	1945	2006	28	82.35
United Arab Emirates	ARE	1990	11.42	1971	2004	16	47.06
United Kingdom	GBR	1982	19.05	1945	2004	32	94.12
Tanzania, Unit. Rep.	TZA	1983	15.75	1961	2006	24	70.59
USA	USA	1983	20.63	1945	2002	13	38.24
Uruguay	URY	1982	16.99	1945	2005	32	94.12
Uzbekistan	UZB	1994	2.00	1992	1999	19	55.88
Vanuatu	VUT	1997	10.32	1981	2006	13	38.24
Venezuela, Boliv. Rep.	VEN	1983	16.16	1945	2005	27	79.41
Viet Nam	VNM	1990	12.38	1957	2007	20	58.82
Yemen	YEM	1982	12.94	1947	2000	21	61.76
Zambia	ZMB	1984	11.65	1964	2001	23	67.65
Zimbabwe	ZWE	1992	11.04	1948	2003	23	67.65
Czechoslovakia	CSK	1975	16.09	1945	1991	12	35.29
Yugoslavia	YUG	1971	14.68	1945	1991	12	35.29
German Dem. Rep.	DDR	1979	7.56	1973	1990	11	32.35
Yemen, Dem. Rep.	YMD	1967		1967	1967	1	2.94
Zanzibar	EAZ	1963		1963	1963	1	2.94

Table A.3: Summary statistics of ratifications by state.

Notes: abb.: abbreviation of state; mean: average year of ratification; sd: standard deviation of ratification in number of years; min: earliest year of ratification; max: latest year of ratification; N: total number of ratifications; %: percentage of ratifications.

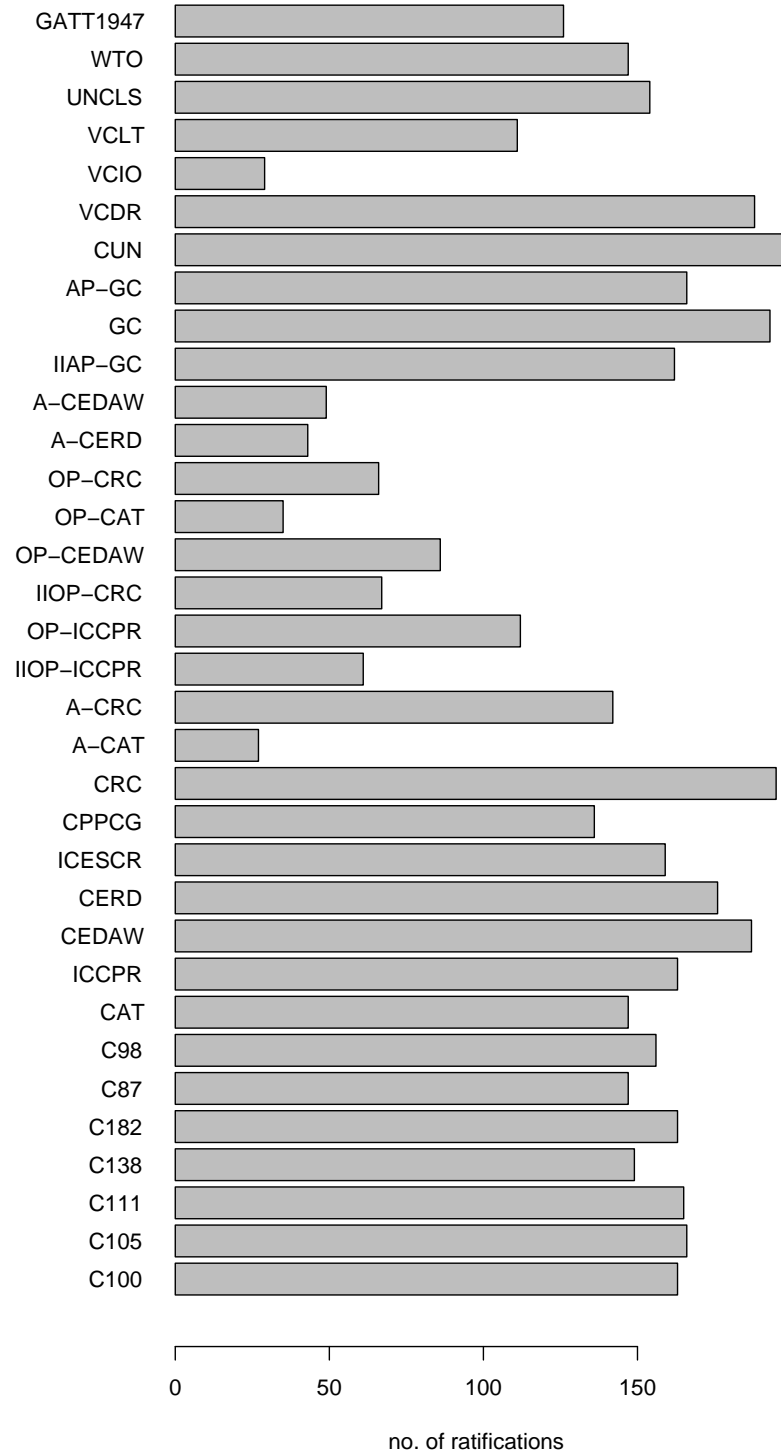


Figure A.1: Frequency of ratifications by treaty.

Notes: The key to treaty abbreviations is provided in Table [A.1](#).

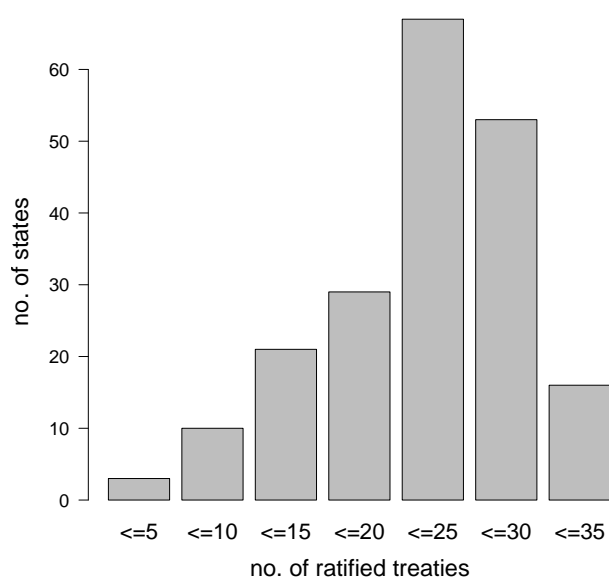


Figure A.2: Histogram of ratifications by state.

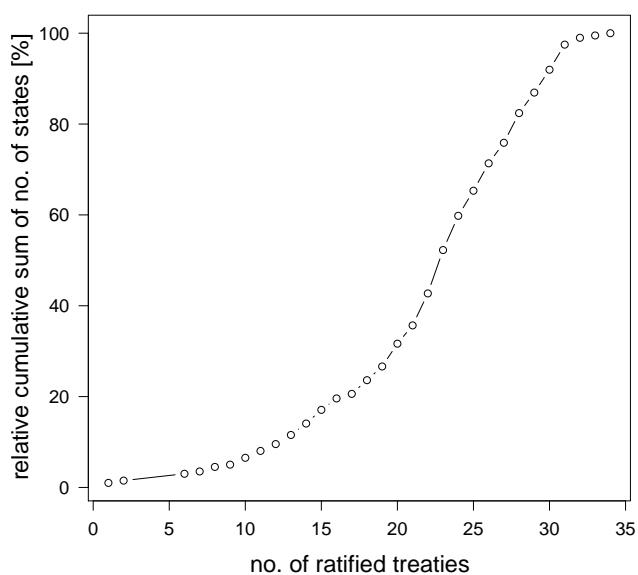


Figure A.3: Empirical cumulative distribution function of ratifications.

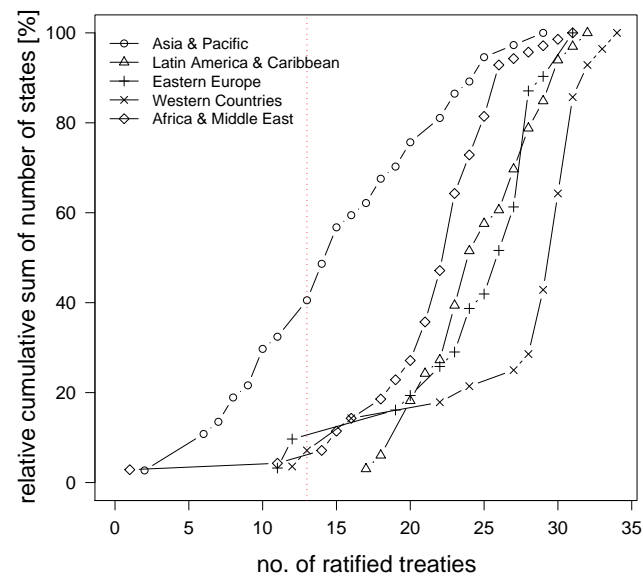


Figure A.4: Empirical cumulative distribution functions of ratifications for world regions.

Notes: Vertical reference line indicates the number of ratified agreements by the US.

Appendix B

Event History Methods and Data Structure

B.1 Introduction to Event History Analysis

The basic quantity applied to describe time-to-event processes is the survival function. It is the probability that a subject survives to time t (Klein and Moeschberger, 2003, 22; Tableman and Kim, 2004, 5). With T denoting a nonnegative random variable representing the lifetime of subjects, the survival function is defined as

$$S(t) = \Pr(T > t). \quad (\text{B.1})$$

Expressing this with regard to the analysis of ratification events, let us first consider a risk set¹ with only one potential international agreement to be ratified. Then, the survival function denotes the probability that a state does not ratify the international agreement to a particular time. Within the framework of multiple ratification events, the survival function can be thought of as the proportion of not-ratified international agreements over all states to a particular time. Over the course of time, the proportion of states that has not ratified the agreements must decrease; hence the survival function is a monotonous decreasing function. It is the complement of the cumulative distribution function $F(t)$ (Klein and Moeschberger, 2003, 22) defined as

$$S(t) = 1 - F(t), \text{ where } F(t) = \Pr(T \leq t) = \int_0^t f(x)dx. \quad (\text{B.2})$$

¹A formal description of the risk set is offered in Section B.3.

Therefore, it is also described by the integral of the probability density function $f(t)$ (Tableman and Kim, 2004, 5) as

$$S(t) = \int_t^\infty f(x)dx, \text{ where } f(x) = -\frac{dS(t)}{dt}. \quad (\text{B.3})$$

However, given that the ratification data is left-truncated and/or right-censored, the upper limit of the integral of $S(t)$ is generally not ∞ , and the lower limit not t . C denotes a mixed censor time² with the cumulative distribution function $G(y)$, the probability density function $g(y)$ and the survival function $S_g(y)$. Each subject i has a lifetime T_i and a censored time C_i . On each of n subjects the pair (Y_i, δ_i) can be observed (Tableman and Kim, 2004, 13) where

$$Y_i = \min(T_i, C_i) \text{ and } \delta_i = \begin{cases} 1 & \text{if } T_i \leq C_i \\ 0 & \text{if } C_i < T_i. \end{cases} \quad (\text{B.4})$$

Reflecting the presence of left truncation, each subject must be considered to have a left-truncation time (delayed entry time) X_i , a lifetime Y_i , and a censoring time C_i . Then each of n subjects observed is described by the triple (X_i, Y_i, δ_i) where

$$Y_i = \min(T_i, C_i) \text{ and } \delta_i = \begin{cases} 1 & \text{if } X_i < T_i \leq C_i \\ 0 & \text{if } X_i < C_i < T_i. \end{cases} \quad (\text{B.5})$$

Thereby, $k(x)$ denotes a probability density function of X , $f(t)$ and $S(t)$ the probability density function and the survival function of T , and $g(y)$ and $S_g(y)$ a probability density function and a survival function of C . The times X_i , T_i , C_i are assumed to be independent (Tableman and Kim, 2004, 205).

B.2 Data Structure

The ratification study is confronted with multiple ratification events per subject (state) as well as right-censoring and left-truncation. This leads to two fundamental restrictions. First, since traditional event history analysis assumes that event times are independent, this assumption is most likely to be

² C can either assume a fixed censor time at the termination of the study in 2007 or a random censor time for the termination of a state or an international agreement.

violated when multiple events data is applied (Box-Steffensmeier and Jones, 2004, 155). Second, with regard to censored and truncated data it is assumed that censoring and truncation times and the subject's lifetime are independent (Klein and Moeschberger, 2003, 74). In order to cope with these restrictions, the ratification data is formulated as a counting process according to Andersen and Gill (1982) and combined with the marginal risk set approach of Wei, Lin and Weissfeld (1989) (WLW).

Counting process methodology is particularly suited to develop most nonparametric techniques for censored and truncated data, and to take account of multiple events data (Box-Steffensmeier and Zorn, 2002; Klein and Moeschberger, 2003, 74). The counting-process formulation is characterised by a start-stop nature of event data, where each observed period of time is described by the triple – *start*, *stop*, *status*. Each subject i is represented by a set of observations, each containing information on the beginning (*start*) and the ending (*stop*) of the observation, along with the *status* and covariate variables. The beginning and ending of the observation can be annotated as an interval of risk (*start*, *stop*].³ The *status* variable is 1 if the state had an event at time *stop*, and is 0 otherwise (either no ratification or right-censoring). Each state is observed throughout (*start*, *stop*] and either ratifies (*status* = 1) or does not ratify (*status* = 0) an agreement (Box-Steffensmeier and Jones, 2004, 98–99; Therneau and Grambsch, 2000, 68–69).

However, a simple and straightforward formulation of data as a counting process is challenged by a major issue – the structure of the risk set (cf. Expression (B.8) below). The risk set $\mathcal{R}(t_{(i)})$ defines which subjects are at risk of experiencing an event at a particular time (t) (Hougaard, 2000, 70). Depending on the definition of the risk set, the data structure for multiple events might look different and have implications for the event process under study. While creating the data set, one must thus pay attention to the definition of the risk set. On this note, several approaches exist for the analysis of multiple events, which are based on distinct compositions of the risk set: the independent increments approach by Andersen and Gill (1982) (AG approach), the marginal risk set approach of Wei, Lin and Weissfeld (1989) (WLW approach)

³The interval (*start*, *stop*] is open on the left and closed on the right. The choice of an open bracket on the left and a closed on the right is crucial, since it clarifies the issue of overlap. Consider an example with two intervals (1945, 1956] (1956, 1978]. Any internal computation at time = 1956 will involve the former interval not the latter (cf. Therneau and Grambsch, 2000, 69).

and the conditioned risk set approach developed by [Prentice, Williams and Peterson \(1981\)](#) (PWP approach) (cf. [Box-Steffensmeier and Zorn, 2002](#); [Therneau and Grambsch, 2000](#), 169–170). By clustering on subjects, all three approaches account for the fact that observations are not independent and that they are of repeated (multiple) nature ([Box-Steffensmeier and Jones, 2004](#), 158).

The AG approach is the simplest but is also the one which makes the strongest assumption. That is, multiple events for any particular subject are assumed to be conditionally independent. The risk of experiencing the event for a given subject is unaffected by any earlier events that happened to the same subject. The AG approach is suited to the situation of mutual independence of the observations within a subject ([Box-Steffensmeier and Zorn, 2002](#), 1073; [Therneau and Grambsch, 2000](#), 185–186). The WLW approach applies a traditional competing risks set-up for multiple events to repeated events. The competing risk set-up refers to analyses of different kinds of events, where the observation is at risk of experiencing one of several kinds of events ([Box-Steffensmeier and Jones, 2004](#), 166). The ordered data set is treated as though it were an unordered competing risk problem. If there is a maximum of four events in the data set, then there will be four strata in the analysis. Every subject will have four observations, one in each stratum. This approach is also referred to as the marginal model, since marginal data is used within the event-defined strata. Generally speaking, the defining characteristic of the WLW approach is that all subjects are at risk for all events at all times prior to experiencing that event ([Box-Steffensmeier and Zorn, 2002](#), 1074; [Therneau and Grambsch, 2000](#), 186–187). The PWP approach assumes that a subject cannot be at risk for the 2nd event until the 1st event occurs; in general, a subject is not at risk for the m th event until it has experienced event $m - 1$ ([Therneau and Grambsch, 2000](#), 187).

To illustrate the differences between these three approaches for multiple events, let us consider the risk set. Suppose that a given state – Italy – has experienced its 2nd event (e.g., ratification of the International Covenant on Civil and Political Rights, ICCPR, adopted in 1966) in the 12th year (1978, since start time for ICCPR is 1966). Which are the states at risk when Italy ratifies the ICCPR in 1978?

AG approach	All states which were under observation in the 12th year (1978) are at risk.
WLW approach	All states which were under observation in the 12th year (1978), and have not yet ratified the ICCPR.
PWP approach	All states which were under observation in the 12th year (1978), have not yet ratified the ICCPR, and have experienced a 1st ratification (1st event).

The AG approach would assume that a state can repeatedly ratify one and the same international agreement. The PWP approach treats the data as time-ordered outcomes, implying that the ratification of an agreement is conditioned by another ratification event (Therneau and Grambsch, 2000, 189). Both approaches seem to be less suited than the WLW approach for the nature of ratification data. Since ratifications of international agreements by a state are non-independent on the one hand, though not bound to experience a prior event on the other, the WLW approach is the most appropriate one. It specifies the data structure in a way which allows a unique record of data for each type of event (ratification of the 1st, 2nd, 3rd agreement, etc.) per subject. To account for the presence of left-truncated and right-censored data, the WLW approach is combined with the counting-process data imputation style. By constructing the intervals on an annual basis, this combined approach further allows for the inclusion of time-dependent covariates. The data structure is presented in Table B.1.

The excerpt in Table B.1 displays a counting-process style of data imputation for a maximum of two kind of events (*strata*), the ratification of the GATT adopted in 1947 and the ICCPR opened for signature in 1966, for two states – Italy and Marshall Islands. Following the WLW approach, there are no restrictions on when and how many of these two events a state can experience. Therefore, it is assumed that each state can experience up to two events, one in each stratum. The data consists of multiple records and is set up as annual intervals. Intervals for Italy represent a regular counting process, ending with the experience of an event in each stratum. Marshall Islands reveal for both strata a left-truncated case due to a delayed entry time in 1992. They are censored to the right, fixed-censored for ICCPR at the end of the study in 2007 and randomly censored in 1994 when GATT terminated. The multiple ratification events for the entire data set are shown in Figure B.1.

country	treaty	interval	start	stop	status
ITA	GATT	(2, 3+]	1947	1948	0
ITA	GATT	(3, 4+]	1948	1949	0
ITA	GATT	(4, 5]	1949	1950	1
ITA	ICCPR	(21, 22+]	1966	1967	0
ITA	ICCPR	(22, 23+]	1967	1968	0
ITA	ICCPR	(23, 24+]	1968	1969	0
ITA	ICCPR	(24, 25+]	1969	1970	0
ITA	ICCPR	(25, 26+]	1970	1971	0
ITA	ICCPR	(26, 27+]	1971	1972	0
ITA	ICCPR	(27, 28+]	1972	1973	0
ITA	ICCPR	(28, 29+]	1973	1974	0
ITA	ICCPR	(29, 30+]	1974	1975	0
ITA	ICCPR	(30, 31+]	1975	1976	0
ITA	ICCPR	(31, 32+]	1976	1977	0
ITA	ICCPR	(32, 33]	1977	1978	1
MHL	GATT	(46, 47+]	1991	1992	0
MHL	GATT	(47, 48+]	1992	1993	0
MHL	GATT	(48, 49+]	1993	1994	0
MHL	ICCPR	(46, 47+]	1991	1992	0
MHL	ICCPR	(47, 48+]	1992	1993	0
MHL	ICCPR	(48, 49+]	1993	1994	0
MHL	ICCPR	(49, 50+]	1994	1995	0
MHL	ICCPR	(50, 51+]	1995	1996	0
MHL	ICCPR	(51, 52+]	1996	1997	0
MHL	ICCPR	(52, 53+]	1997	1998	0
MHL	ICCPR	(53, 54+]	1998	1999	0
MHL	ICCPR	(54, 55+]	1999	2000	0
MHL	ICCPR	(55, 56+]	2000	2001	0
MHL	ICCPR	(56, 57+]	2001	2002	0
MHL	ICCPR	(57, 58+]	2002	2003	0
MHL	ICCPR	(58, 59+]	2003	2004	0
MHL	ICCPR	(59, 60+]	2004	2005	0
MHL	ICCPR	(60, 61+]	2005	2006	0
MHL	ICCPR	(61, 62+]	2006	2007	0

Table B.1: Excerpt of the data structure.

country	ITA: Italy; MHL: Marshall Islands.
treaty	GATT: General Agreement on Tariffs and Trade (adopted in 1947); ICCPR: International Covenant on Civil and Political Rights, opened for signature in 1966.
interval	The interval $(start, stop]$ is open on the left and closed on the right; it indicates the beginning and ending of the counting process (based on the starting year 1945=0) for each treaty (<i>stratum</i>) within a country. + indicates the incomplete nature of the counting process (no event or right-censoring).
start	Beginning of the counting process.
stop	Ending of the counting process.
status	1: ratification; 0: no ratification.



Figure B.1: Multiple ratification events.

Notes: Circle indicates one ratification event for a given state in a particular year. Different overlapping symbols indicate multiple ratification events for a given state in a particular year. The key to state abbreviations is provided in Table [A.3](#).

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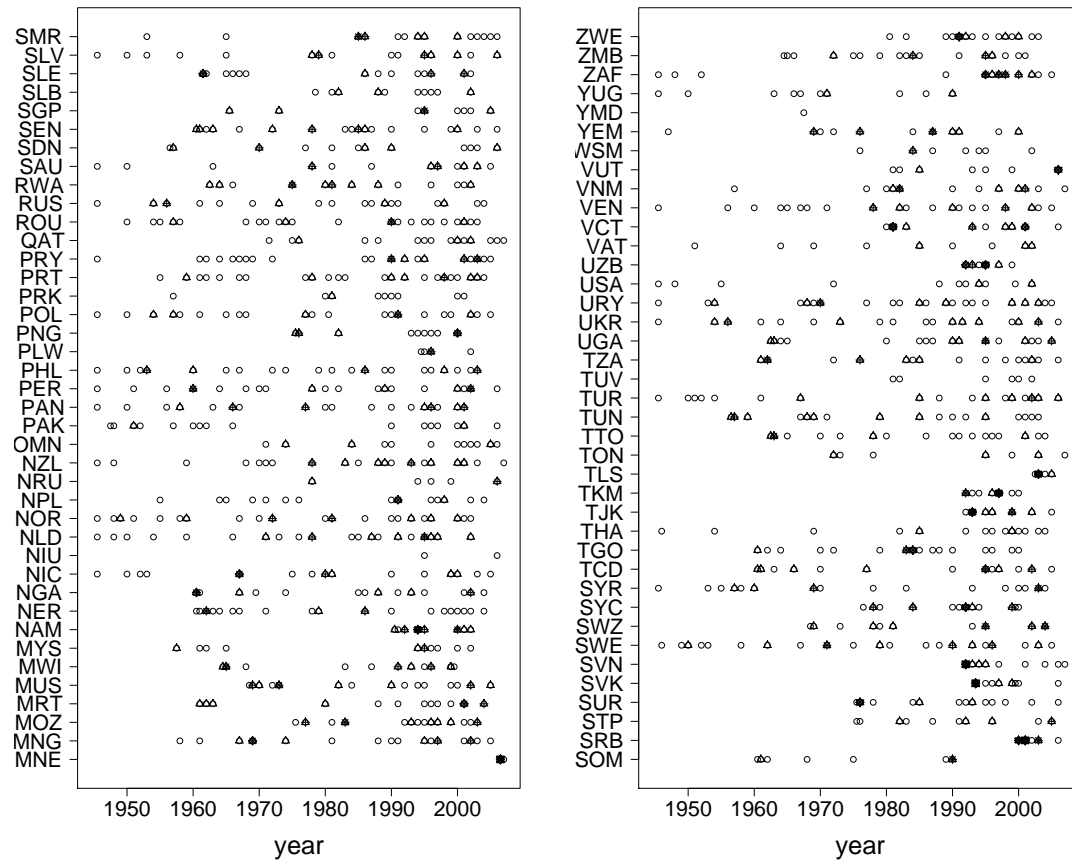


Figure B.1: (*continued*) Multiple ratification events.

B.3 Non-parametric Methods

In order to estimate the survival function, the nonparametric modified Kaplan-Meier (K-M) estimator is applied.⁴ In contrast to the empirical survival function which treats data as if there were no censored observations, the K-M estimator reflects the presence of right-censored observations, formulated by means of the survival function. The K-M estimator is defined as

$$\begin{aligned}\widehat{S}(t) &= \prod_{y_{(i)} \leq t} \widehat{p}_i = \prod_{y_{(i)} \leq t} \left(\frac{n_i - d_i}{n_i} \right) \\ &= \prod_{i=1}^k \left(\frac{n_i - d_i}{n_i} \right), \text{ where } y_{(k)} \leq t < y_{(k+1)},\end{aligned}\quad (\text{B.6})$$

and where $y_{(i)}$ denotes the i th distinct ordered censored or uncensored observation and the right endpoint of the interval I_i , $i = 1, 2, \dots, n' \leq n$, and k the number of the interval endpoints. The K-M estimator is based on $\mathcal{R}(t)$ indicating the risk set just before time t (the number of subjects at risk at the beginning of the interval I_i equals the number of subjects which survived the previous interval I_{i-1}) and comprising

$$\begin{aligned}n_i &= \text{number of subjects in the risk set } \mathcal{R}(y_{(i)}) \\ &= \text{number of subjects which did not experience the event (and which} \\ &\quad \text{are not censored) just before } y_{(i)} \\ d_i &= \text{number of subjects which experienced the event at time } y_{(i)} \\ p_i &= \text{surviving probability } P \text{ (not experiencing the event through } I_i \mid \\ &\quad \text{not having experienced the event at beginning } I_i) \\ &= P(T > y_{(i)} \mid T > y_{(i-1)}).\end{aligned}$$

The modified K-M estimator adjusts, in addition, the empirical survival function for the presence of left-truncation, by redefining the K-M estimate

⁴The major advantage of this non-parametric method is its fit, which can handle any distribution. However, it is much more difficult to report on non-parametric estimates, and results must be shown in figures or tables (Hougaard, 2000, 69).

to be zero beyond the largest observation. Extended to left-truncated data the modified K-M estimator is

$$\begin{aligned}\widehat{S}(t) &= \prod_{t_{(i)} \leq t} \widehat{p}_i = \prod_{t_{(i)} \leq t} \left(\frac{n_i - d_i}{n_i} \right) \\ &= \prod_{i=1}^k \left(\frac{n_i - d_i}{n_i} \right), \text{ where } t_{(k)} \leq t < t_{(k+1)}.\end{aligned}\quad (\text{B.7})$$

It is based on a modified risk set $\mathcal{R}(t_{(i)})$ at $t_{(i)}$ defined by

$$\mathcal{R}(t_{(i)}) = \{j \mid x_j \leq t_{(i)} \leq y_j\}, \text{ with } j = 1, \dots, n, \quad i = 1, \dots, r, \quad (\text{B.8})$$

with $t_{(1)}, \dots, t_{(r)}$ indicating the $r \leq n$ distinct ordered (uncensored) death times, so that $t_{(j)}$ is the j th ordered death time, where

- n_i = number of subjects in the risk set $\mathcal{R}(t_{(i)})$
- = number of subjects which are left-truncated before time $t_{(i)}$ and which did not experience the event (but which are not censored) just before time $t_{(i)}$
- d_i = number of subjects which are left-truncated before time $t_{(i)}$ and which experienced the event at $t_{(i)}$
- p_i = surviving probability P (not experiencing the event through time $t_{(i)} \mid$ left-truncated before time $t_{(i)}$ and not having experienced the event just before time $t_{(i)}$).

The K-M estimator yields a right continuous decreasing step function, which steps down at each $t_{(i)}$. The size of the steps depends not only on the number of events observed at each time $t_{(i)}$, but also on the pattern of the censored and truncated observations prior to time $t_{(i)}$ (Hougaard, 2000, 71; Klein and Moeschberger, 2003, 99–100; Tableman and Kim, 2004, 27–30, 34, 205; Therneau and Grambsch, 2000, 13–17).

Another summary measure of the event experience is the mean or median time to the event. The mean time to the event (mean survival time) $E(T)$ is the total area under the survival curve $S(t)$. For a given time t the mean survival time $E(T)$ becomes shorter, the greater the risk, the smaller $S(t)$ (Klein and Moeschberger, 2003, 118; Tableman and Kim, 2004, 7). The mean survival time is given by

$$E(T) = \int_0^\infty S(t) dt. \quad (\text{B.9})$$

Note that the modified K-M estimator is not defined beyond the largest time value. Therefore, the mean lifetime cannot be estimated, and comparison of the “survival time” for the different issue-areas of agreements (in Chapter 3) becomes complicated by the differences in the largest time values between the categories of agreements. To make a comparison which adjusts for these differences, the estimated mean, restricted to the specified interval (the observation period) is constructed for each issue-area of agreements. This estimation is based on the assumption that the survival function is 0 after the largest time (Hougaard, 2000, 71; Klein and Moeschberger, 2003, 119). The estimated *restricted truncated* mean survival time is then taken to be

$$\widehat{mean} = \int_0^{y_{(n)}} \widehat{S}(t) dt, \text{ where } y_{(n)} = \max(y_i). \quad (\text{B.10})$$

If the largest time value $y_{(n)}$ is uncensored, then a truncated interval is the same as the integral over $[0, \infty)$ since over $[y_{(n)}, \infty)$, $\widehat{S}(t) = 0$. But if the maximum time value is censored, the function will have a non-zero value at that point and be undefined afterwards, the $\lim_{t \rightarrow \infty} \widehat{S}(t) \neq 0$. Thus, the integral over $[0, \infty)$ is undefined, and $\widehat{mean} = \infty$. In order to avoid this, the integral is truncated. By taking the upper limit of integration to be the $y_{(n)}$, the K-M estimate is redefined to be zero beyond the largest time value (Hougaard, 2000, 1; Tableman and Kim, 2004, 34–35). As $\widehat{S}(t)$ is a step function, \widehat{mean} is computed as

$$\widehat{mean} = \sum_{i=1}^{n'} (y_{(i)} - y_{(i-1)}) \widehat{S}(y_{(i-1)}), \quad (\text{B.11})$$

where n' = number of distinct observed y_i 's, $n' \leq n$, $y_{(0)} = 0$, $\widehat{S}(y_{(0)}) = 1$, and $\widehat{S}(y_{(i-1)})$ is the height of the function at $y_{(i-1)}$.

The estimated variance of the estimated restricted truncated mean survival time is

$$\widehat{var}(\widehat{mean}) = \sum_{i=1}^{n'} \left(\int_{y_{(i)}}^{y_{(n)}} \widehat{S}(t) dt \right)^2 \frac{d_i}{n_i(n_i - d_i)}. \quad (\text{B.12})$$

It is reported as the standard error, which is the square root of the Greenwood's formula for the estimated variance (Tableman and Kim, 2004, 37–38).

Greenwood's formula modified for truncated observations (Tableman and Kim, 2004, 207) is described by

$$\begin{aligned}\widehat{var}(\widehat{S}(t)) &= \widehat{S}^2(t) \sum_{t_{(i)} \leq t} \frac{d_i}{n_i(n_i - d_i)} \\ &= \widehat{S}^2(t) \sum_{i=1}^k \frac{d_i}{n_i(n_i - d_i)}, \text{ where } t_{(k)} \leq t < t_{(k+1)}. \quad (\text{B.13})\end{aligned}$$

The K-M estimator is also used to provide estimates of quantiles of the time-to-event distribution. In this manner the median survival time can also be determined. This is a descriptive measure preferred even over the mean survival time, as time-to-event data are right skewed. The p th quantile t_p follows from $F(t_p) = p$ or $S(t) = 1 - p$ and is defined as $t_p \leq S^{-1}(1 - p)$. t_p is the smallest time at which the survival function is less than or equal to $1 - p$. When $p = 0.5$, t_p is the median survival time. The estimated quantile is then

$$\widehat{t}_p = \min\{t_i : \widehat{S}(t_i) \leq 1 - p\}. \quad (\text{B.14})$$

Likewise, upper and lower confidence intervals for the median are defined in terms of the confidence intervals for the $S(t)$: the upper and lower confidence limit is the smallest time at which the upper or lower confidence limit for $S(t)$ is ≤ 0.5 (Hougaard, 2000, 71; Klein and Moeschberger, 2003, 120; Tableman and Kim, 2004, 33, 36). Confidence intervals are obtained by the Greenwood's standard error on an approximate $(1 - \alpha) \times 100\%$ confidence level (Tableman and Kim, 2004, 207; Therneau and Grambsch, 2000, 16) and are computed as

$$\widehat{S}(t) \pm z_{\frac{\alpha}{2}} \sqrt{\widehat{var}(\widehat{S}(t))}. \quad (\text{B.15})$$

B.4 Semi-parametric Methods

The hazard function $h(t)$ specifies the instantaneous rate of failure at $T = t$ given that the subject survived up to time t (Tableman and Kim, 2004, 6) and is defined as

$$\begin{aligned}h(t) &= \lim_{\Delta t \rightarrow 0^+} \frac{P(t \leq T < t + \Delta t | T \geq t)}{\Delta t} = \frac{f(t)}{S(t)} \\ &= -\frac{dS(t)/dt}{S(t)} = -\frac{d \log(S(t))}{dt}. \quad (\text{B.16})\end{aligned}$$

The Cox proportional hazards model $h(t|x)$ is a semi-parametric approach and specifies the hazard as

$$h(t|x) = h_0(t) \exp(x'\beta), \quad (\text{B.17})$$

where $h_0(t)$ is an unspecified non-negative *baseline hazard* function of time, free of covariates x . The Cox proportional hazards model, in its original form, assumes that covariates are fixed over time for one subject. The covariates affect the hazard multiplicatively. The Cox model is called the proportional hazards model, because the hazard ratio for two subjects with fixed covariate vectors x_1 and x_2

$$\frac{h(t|x_1)}{h(t|x_2)} = \frac{h_0(t) \exp(x'_1\beta)}{h_0(t) \exp(x'_2\beta)} = \frac{\exp(x'_1\beta)}{\exp(x'_2\beta)} \quad (\text{B.18})$$

is a constant proportion over time (Tableman and Kim, 2004, 123).

As the baseline hazard function is unspecified in the Cox model, the likelihood function cannot be fully specified. Cox (1975) defines a likelihood based on conditional probabilities which are free of the baseline hazard. His estimator is obtained from maximising this likelihood. The modified partial likelihood function accounting for left-truncated and right-censored data, denoted by $L_c(\beta)$, is defined in terms of all n observed times as

$$L_c(\beta) = \prod_{i=1}^n \left(\frac{\exp(x'_i\beta)}{\sum_{l \in \mathcal{R}(y_i)} \exp(x'_l\beta)} \right)^{\delta_i}. \quad (\text{B.19})$$

In the model with left-truncated and right-censored data the times y_i, \dots, y_n are observed along with the associated indicator variables $\delta_1, \dots, \delta_n$ from Equation (B.5) and $\mathcal{R}(y_i)$ being the risk set at y_i defined in Expression (B.8) (Tableman and Kim, 2004, 157–158, 209).

The extended Cox proportional hazards model that incorporates both u_1 time-fixed and u_2 time-varying covariates is specified as:

$$h(t|x(t)) = h_0(t) \exp \left(\sum_{v=1}^{u_1} x^{(v)} \beta_v + \sum_{q=1}^{u_2} x^{(q)}(t) \gamma_q \right) \quad (\text{B.20})$$

$$x(t) = \left(\underbrace{x^{(1)}, x^{(2)}, \dots, x^{(u_1)}}_{\text{time-fixed}}, \underbrace{x^{(1)}(t), x^{(2)}(t), \dots, x^{(u_2)}(t)}_{\text{time-varying}} \right), \quad (\text{B.21})$$

where β_v and γ_q are regression coefficients corresponding to covariates, $h_0(t)$ is a baseline hazard function, and $x(t)$ denotes the entire collection of covariates at time t ([Tableman and Kim, 2004](#), 183; [Therneau and Grambsch, 2000](#), 39; [Venables and Ripley, 2002](#), 366).

Appendix C

Model Checking and Data Diagnostics

Cox-Snell residuals To assess the overall goodness-of-fit of the final Cox proportional hazards model from Table 4.5, the Cox-Snell residuals are examined. The overall fit of the model is checked by plotting the estimated cumulative hazard rates of the Cox-Snell residuals against the Cox-Snell residuals. If the final Cox proportional hazards model is correct and the coefficient estimates obtained from maximising Cox's partial likelihood (maximum partial likelihood estimates) are close to the true values of the coefficients, the plot should be a 45°-line through the origin ([Tableman and Kim, 2004](#), 159–160).

The Cox-Snell residual plot, Figure C.1, shows that the final model gives a reasonable fit to the data. Overall the residuals fall on a straight line with an intercept zero and a slope one. There are no large departures from the straight line.

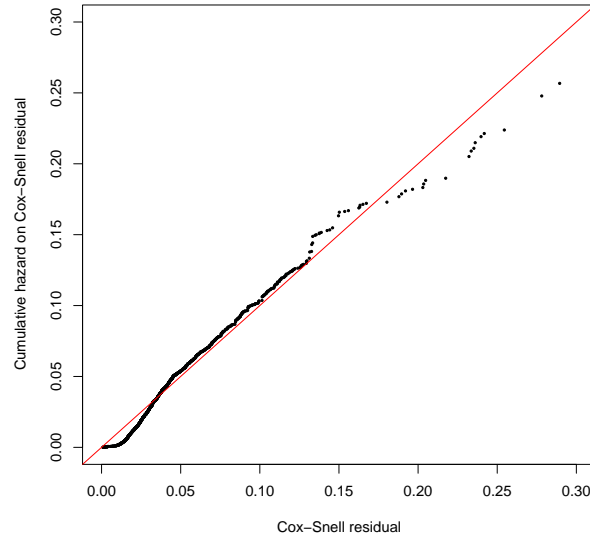


Figure C.1: Cox-Snell residuals to assess the overall goodness-of-fit of the final model.

Deviance residuals Deviance residuals are useful for detecting outliers. The deviance residuals are expected to be symmetrically distributed around zero, but do not necessarily sum to zero. Outliers would be set apart with large absolute values. A symmetrical distribution of residuals can however only be expected when the fraction of censored observations is minimal. In the case of strongly censored and truncated data the distribution of residuals can be skewed (Tableman and Kim, 2004, 161–162; Therneau and Grambsch, 2000, 83).

In Figure C.2 the deviance residuals are plotted against the covariate values from the final model (Table 4.5). A plot of the deviance residuals against the observation (index) number is given in the upper left-hand graph of the same Figure. Due to the considerable amount of censored and truncated observations in the data from the final Cox model, the residuals are asymmetrically distributed around zero. What is more important however for the diagnostics is that all plots show that there are no outliers.

dfbetas To detect influential observations on the coefficient estimates, the dfbetas are examined. The dfbetas are approximations of the changes in

the coefficient estimates scaled by their standard errors. The *dfbeta* for one particular observation is the difference between the coefficient estimate computed on all observations and the coefficient estimate computed on the sample with this one particular observation deleted. To assess the influence of each observation on the coefficient estimates, the standardised *dfbetas* are plotted against the observation (index) numbers for each covariate (Tableman and Kim, 2004, 164–165; Therneau and Grambsch, 2000, 155–159).

The plot of the *dfbetas*, Figure C.3, shows that most of the changes in the regression coefficients from the final model (Table 4.5) are less than $\pm 0.2 \times s.e.$'s. It can be concluded that there are no influential observations.

Cox proportional hazards assumption A key assumption of the Cox model, as applied in Chapter 4, is *proportional hazards*. In a Cox model the proportional hazard is the relative hazard for any two subjects. When estimating a Cox model with time-fixed covariates, the proportional hazard between two subjects is independent of time.

When estimating a Cox model with time-varying covariates, the proportional hazard between two subjects is not independent of time. However, the relative impact of any two given *values* of a covariate is still summarised by a single coefficient (Therneau and Grambsch, 2000, 127–130).

The Cox models estimated in Chapter 4 are based on time-varying covariates. To assess whether the Cox models with time-varying covariates are correct, one must test whether the proportional hazards assumption can be upheld and the constancy of the coefficients over time is satisfied for the models. For diagnostics, Schoenfeld residuals and the Grambsch-Therneau test are particularly useful methods.

Schoenfeld residuals One useful graphical approach for assessing proportional hazards is the cumulative sum of Schoenfeld residuals. In Figure C.4, the cumulative sum of Schoenfeld residuals is plotted against the ordered survival time. If the proportional hazards assumption is satisfied, large Schoenfeld residuals are not expected to appear at late failure times. Under proportional hazards each curve should be a Brownian bridge (a random walk starting and ending at 0) (Tableman and Kim, 2004, 162–163; Therneau and Grambsch, 2000, 85–86, 128). Each curve in Figure C.4 starts and ends at 0. Therefore, the proportional hazard assumption seems to be appropriate.

Grambsch-Therneau test An alternative test for assessing the proportional hazards property is the Grambsch-Therneau test for time-varying coefficients. The Grambsch-Therneau test is a method for visualising the nature and extent of nonproportional hazards. It suggests plotting the scaled Schoenfeld residuals plus the coefficient estimate against the ordered survival time. If the scatter plot shows no trend over time, this indicates proportional hazards (Tableman and Kim, 2004, 164; Therneau and Grambsch, 2000, 130–131).

Figure C.5 shows the plot of the scaled Schoenfeld residuals plus the coefficient estimate versus time for the data from the Cox model as shown in Table 4.5. The plot is augmented with a spline smooth to the data points and $\pm 2 \times s.e.$ pointwise confidence bands for the spline smooth. The spline smoothers show a nearly linear shape and a zero slope for all covariates. There is no trend over time in the scatter plots. The results from the test for constancy of the coefficients based on scaled Schoenfeld residuals indicate that the proportional hazards assumption is satisfied by all ten covariates in the final model.

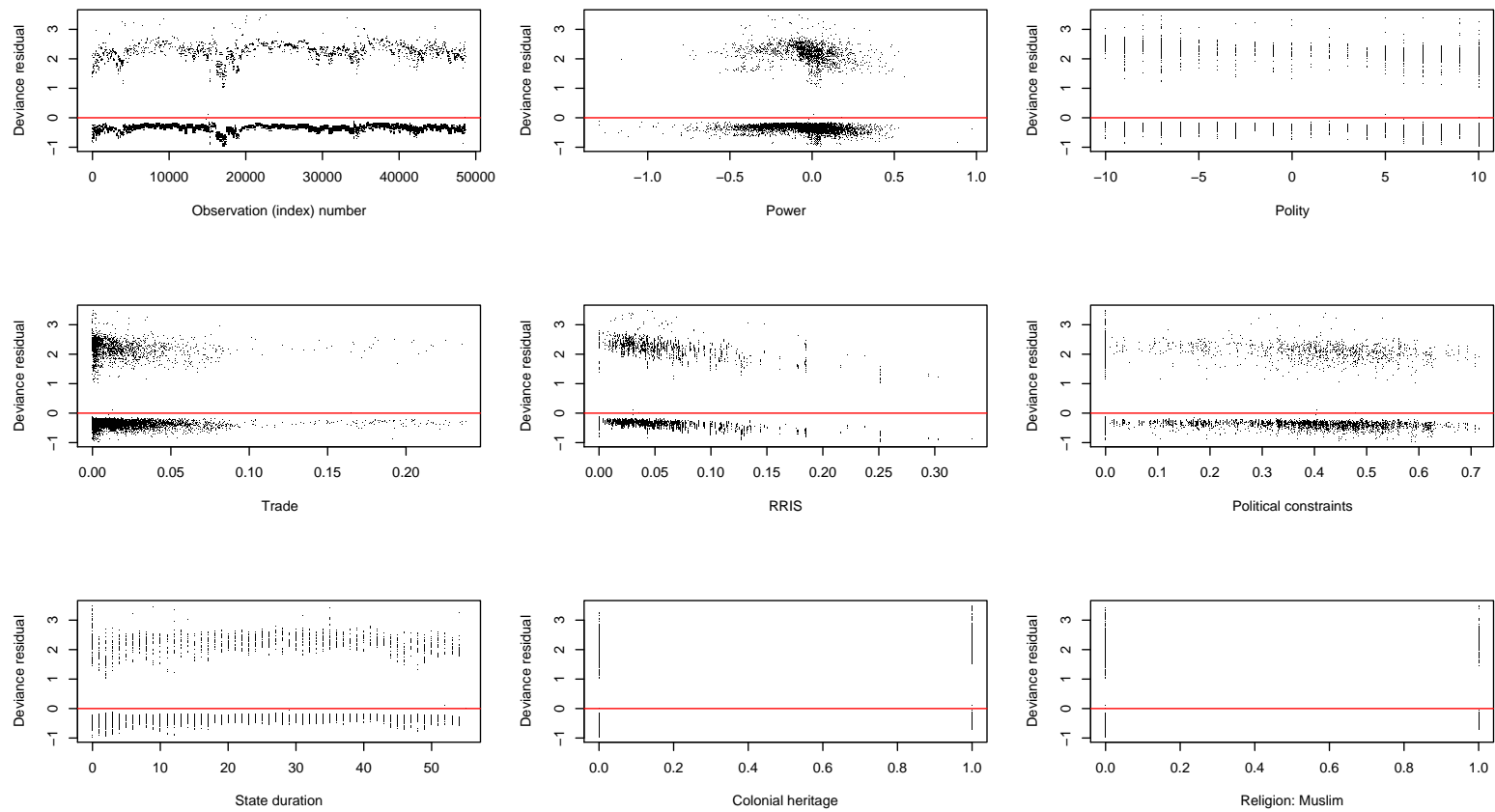


Figure C.2: Deviance residuals to check for possible outliers in the final model.

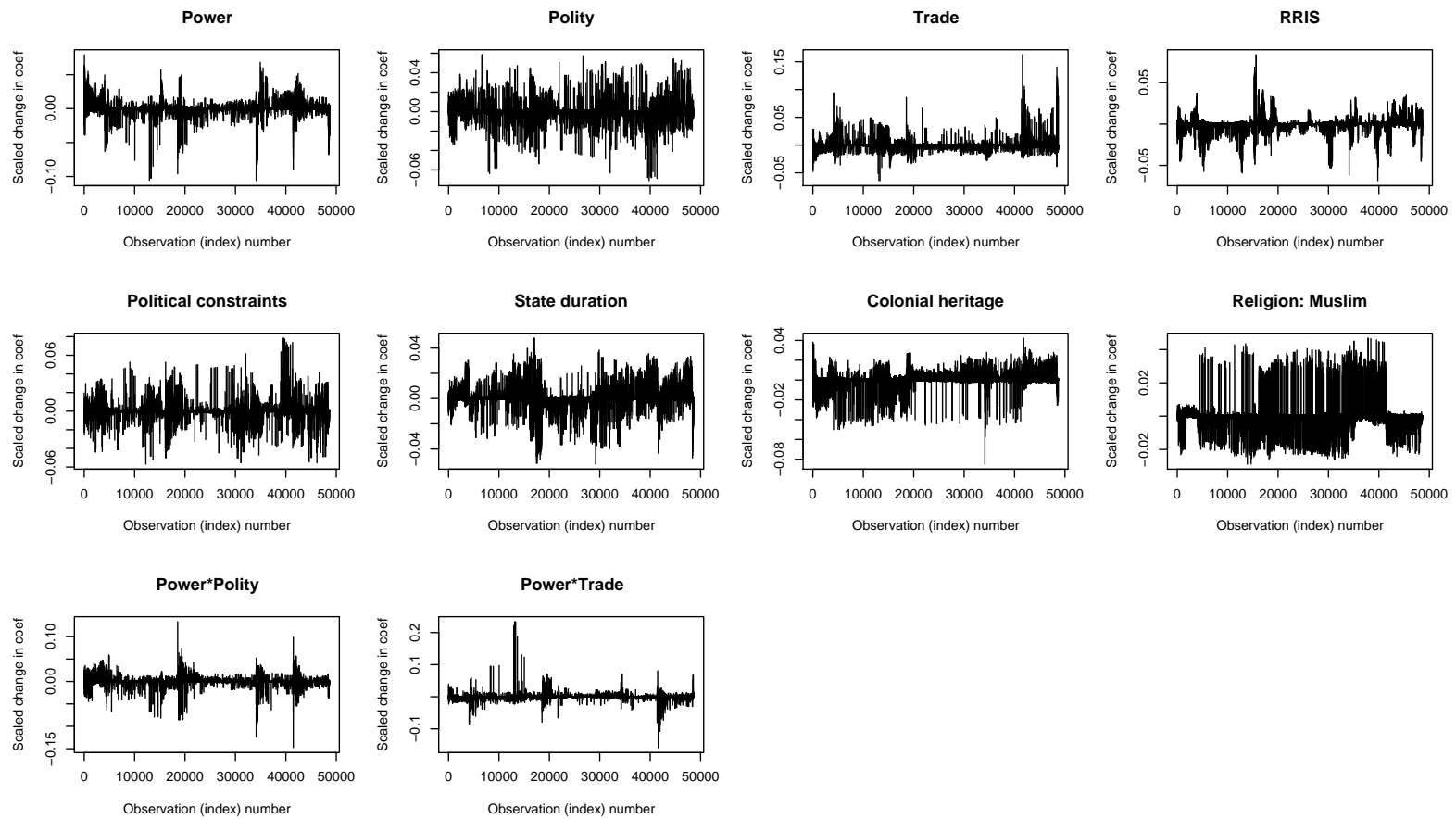


Figure C.3: The dfbetas to detect influential observations on the estimated coefficients from the final model.

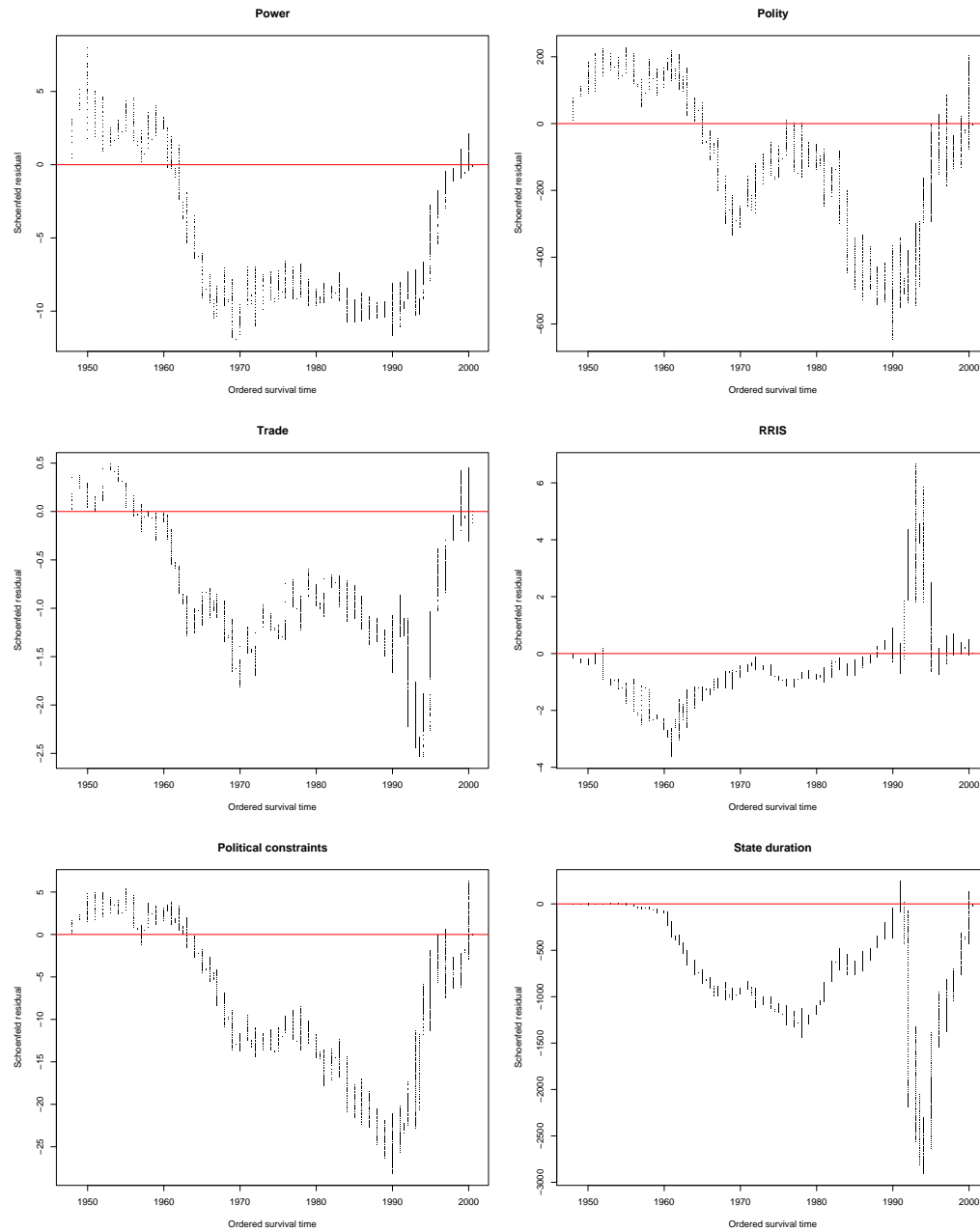


Figure C.4: Cumulative Schoenfeld residuals against ordered survival time for the final model.

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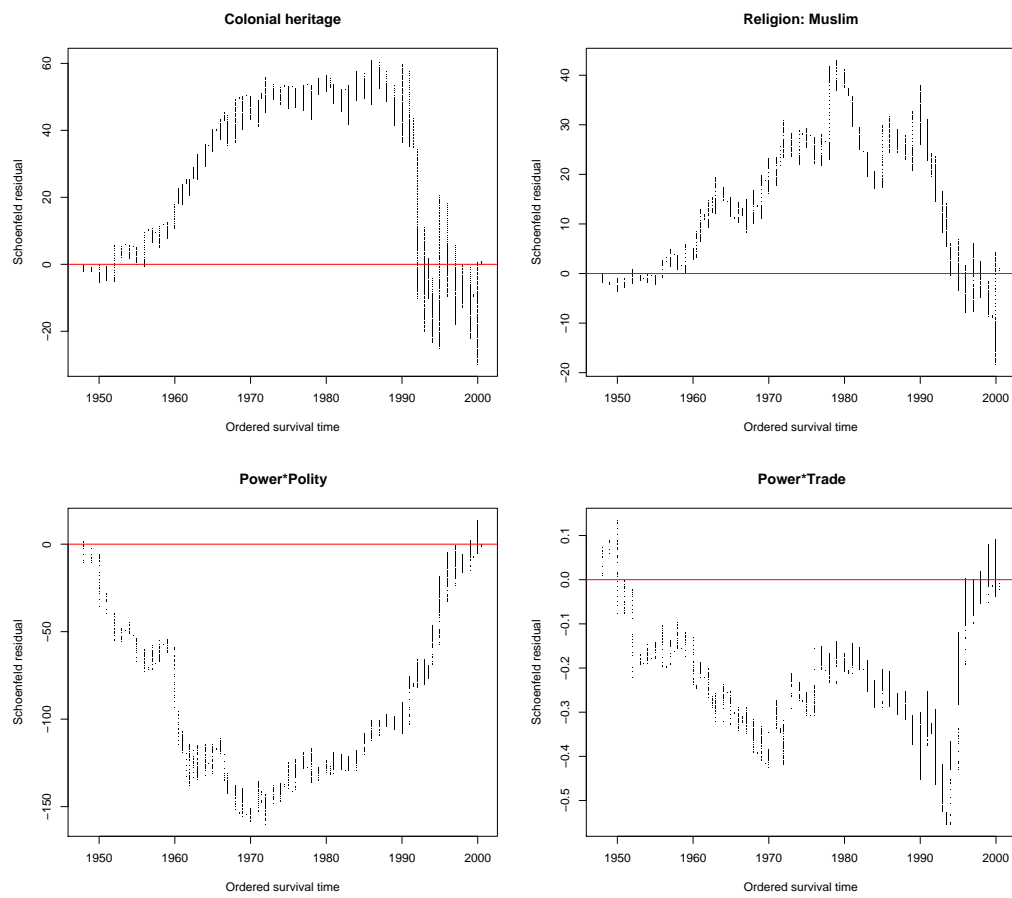


Figure C.4: (*continued*) Cumulative Schoenfeld residuals against ordered survival time for the final model.

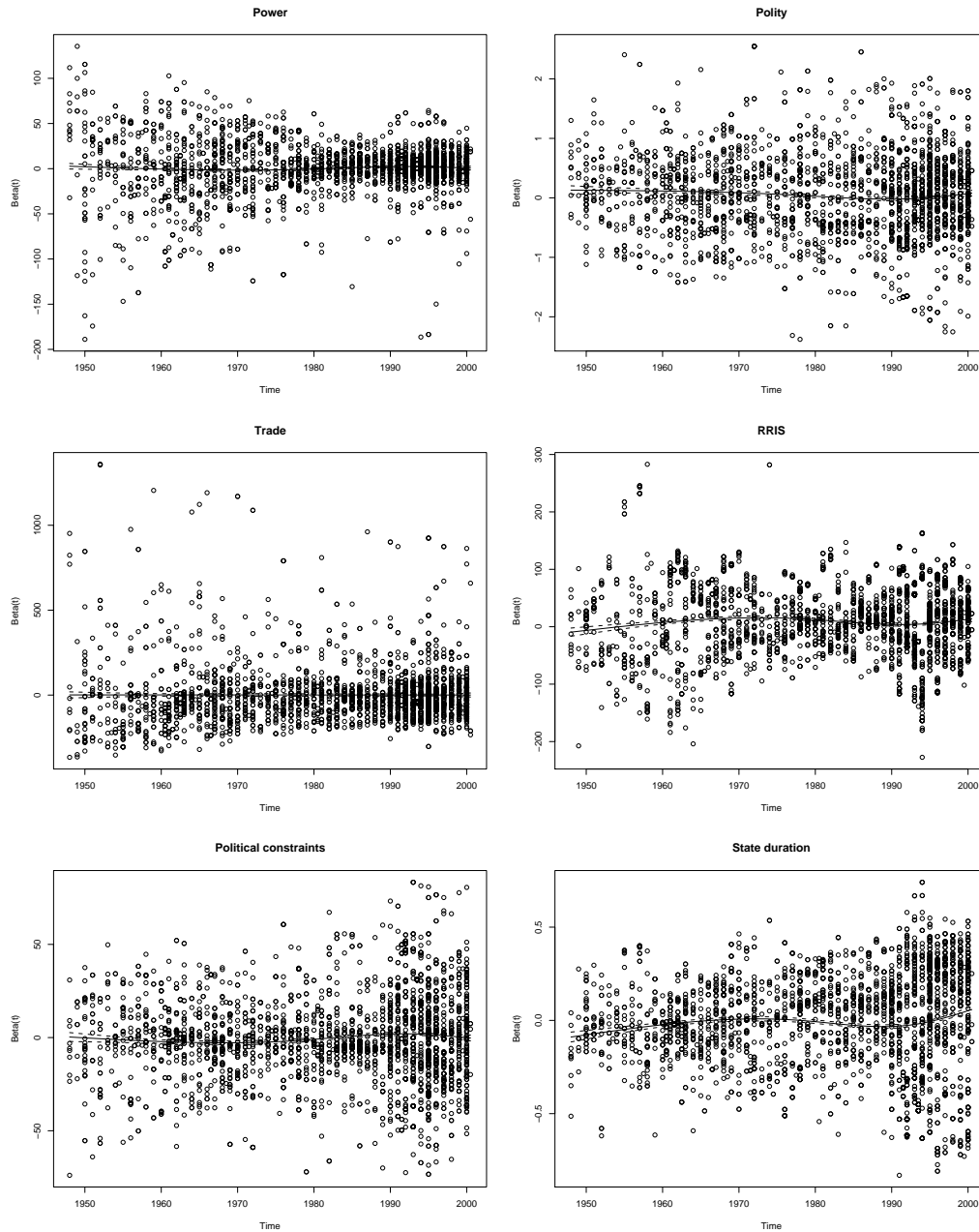


Figure C.5: Diagnostic plots of the constancy of the coefficients in the final model.

Notes: Each plot shows the sum of scaled Schoenfeld residuals and the maximum partial likelihood estimates of the coefficients against ordered time. A spline smoother is shown, together with $\pm 2 \times s.e.$ confidence bands.

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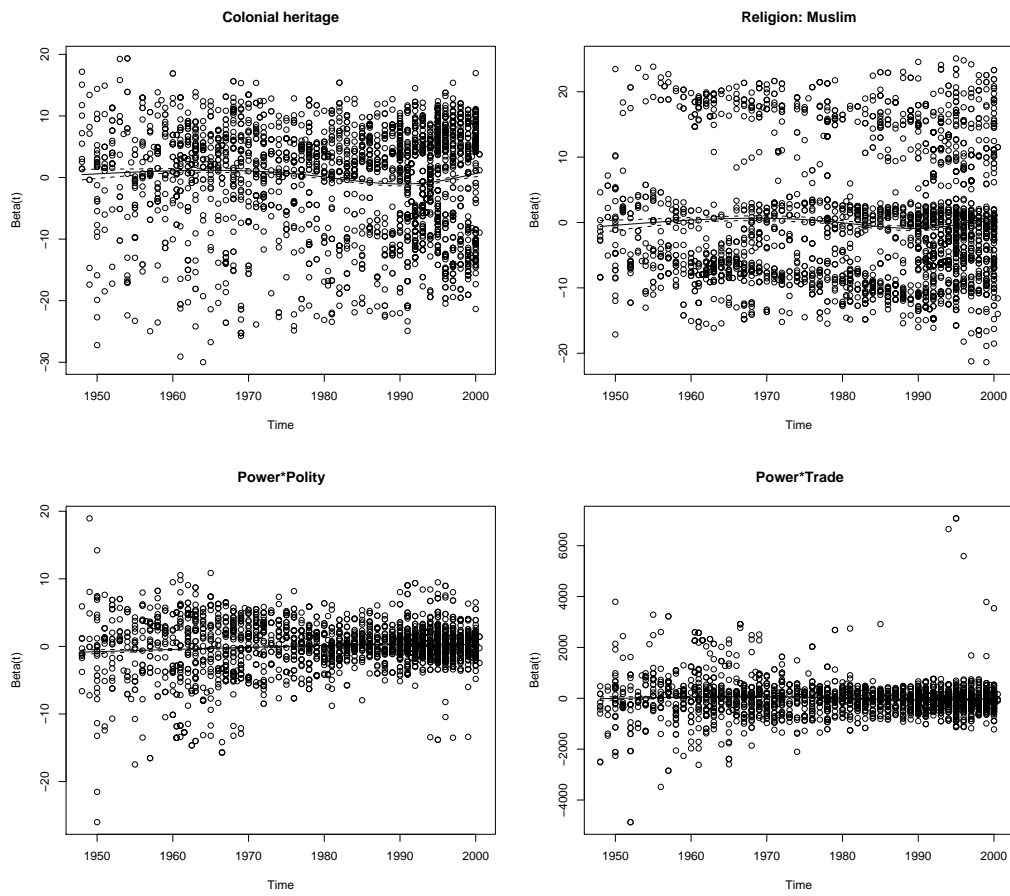


Figure C.5: (*continued*) Diagnostic plots of the constancy of the coefficients in the final model.

References

- Abbott, Kenneth W. and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54(3):421–456.
- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54(3):401–419.
- Ackerman, Bruce. 1989. "Constitutional Politics/Constitutional Law." *Yale Law Journal* 99(3):453–547.
- Ackerman, Bruce. 1997. "The Rise of World Constitutionalism." *Virginia Law Review* 83(4):771–797.
- Adams, George B. 1934 (original 1921). *Constitutional History of England*. revised ed. New York: R.L. Schuyler.
- Ai, Chunrong and Edward C. Norton. 2003. "Interaction Terms in Logit and Probit Models." *Economics Letters* 80(1):123–129.
- Albert, Mathias. 1999. "Complex Governance and Morality in World Society." *Global Society* 13(1):77–93.
- Albert, Mathias, Lothar Brock and Klaus Dieter Wolf, eds. 2000. *Civilizing World Society. Society and Community beyond the State*. Lanham, Md.: Rowman & Littlefield Publishers.
- Alesina, Alberto and Vittorio Grilli. 1993. "On the Feasibility of a One-speed or Multispeed European Monetary Union." *Economics & Politics* 5(2):145–165.
- Allen, Michael H. 2004. "Globalization and Peremptory Norms in International Law: from Westphalian to Global Constitutionalism?" *International Politics* 41(3):341–353.

- Alt, James E. and Michael Gilligan. 1994. "Survey Article: The Political Economy of Trading States: Factor Specificity, Collective Action Problems, and Domestic Political Institutions." *The Journal of Political Philosophy* 2(2):165–192.
- Amerasinghe, Chittharanjan F. 2005. *Principles of the Institutional Law of International Organizations*. 2nd ed. Cambridge: Cambridge University Press.
- Andersen, Per K. and Richard D. Gill. 1982. "Cox's Regression Model for Counting Processes: A Large Sample Study." *Annals of Statistics* 10(4):1100–1120.
- Bair, Johann. 2005. *The International Covenant on Civil and Political Rights and its (First) Optional Protocol. A Short Commentary Based on Views, General Comments and Concluding Observations by the Human Rights Committee*. Frankfurt a.M.: Peter Lang.
- Banks, Arthur S. 2006. "Cross-polity Time-series Data Archive." Binghamton University, New York.
- Barbieri, Katherine. 1996. "Economic Interdependence: A Path to Peace or a Source of International Conflict?" *Journal of Peace Research* 33(1):29–49.
- Barfield, Claude. 2001. *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*. Washington, D.C.: American Enterprise Institute.
- Bedau, Hugo Adam. 1979. Human Rights and Foreign Assistance Programs. In *Human Rights and U.S. Foreign Policy*, ed. Peter G. Brown and Douglas MacLean. Lexington, Mass.: Lexington Books pp. 29–44.
- Bellamy, Richard. 1996. The Political Form of the Constitution: the Separation of Powers, Rights and Representative Democracy. In *Constitutionalism in Transformation*, ed. Richard Bellamy and Dario Castiglione. Oxford: Blackwell Publishers pp. 24–44.
- Bellamy, Richard and Dario Castiglione. 1996. "Introduction: Constitutions and Politics." *Political Studies* 44(3):413–416.

- Berlin, Isaiah. 2002 (original 1958). Two Concepts of Liberty. In *Liberty*, ed. Isaiah Berlin and Henry Hardy. Oxford: Oxford University Press pp. 166–217.
- Berrington de Gonzlez, Amy and David R. Cox. 2007. “Interpretation of Interactions: A Review.” *Annals of Applied Statistics* 1(2):371–385.
- Boczek, Boleslaw A. 2005. *International Law, A Dictionary*. Lanham, Md.: Scarecrow Press.
- Böhning, W. Roger. 2005. *Labour Rights in Crisis, Measuring the Achievements of Human Rights in the World of Work*. New York: Palgrave Macmillan Press.
- Bossuyt, Marc J. 1987. *Guide to the Travaux Préparatoires of the International Covenant on Civil and Political Rights*. Dordrecht: Martinus Nijhoff Publishers.
- Bottomore, Tom. 1992. Citizenship and Social Class, Forty Years On. In *Citizenship and Social Class*, ed. Thomas H. Marshall and Tom Bottomore. London: Pluto Press pp. 53–93.
- Box-Steffensmeier, Janet M. and Bradford S. Jones. 1997. “Time Is of the Essence: Event History Models in Political Science.” *American Journal of Political Science* 41(4):1414–1461.
- Box-Steffensmeier, Janet M. and Bradford S. Jones. 2004. *Event History Modeling. A Guide for Social Scientists*. New York: Cambridge University Press.
- Box-Steffensmeier, Janet M. and Christopher Zorn. 2002. “Duration Models for Repeated Events.” *Journal of Politics* 64(4):1069–1094.
- Boyle, Alan E. 1985. “Book Review: The Vienna Convention on the Law of Treaties. By Ian Sinclair.” *International & Comparative Law Quarterly* 34(3):637–638.
- Boyle, Alan E. 1999. “Some Reflections on the Relationship of Treaties and Soft Law.” *International & Comparative Law Quarterly* 48(4):901–913.

- Brambor, Thomas, William Roberts Clark and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analyses." *Political Analysis* 14(1):63–82.
- Brownlie, Ian. 2003. *Principles of Public International Law*. 6th ed. Oxford: Oxford University Press.
- Bryce, James. 1901. Essay III: Flexible and Rigid Constitutions. In *Studies in History and Jurisprudence*, ed. James Bryce. Vol. I Oxford: Oxford University Press pp. 145–254.
- Burgers, J. Herman and Hans Danelius. 1988. *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Dordrecht: Martinus Nijhoff Publishers.
- Burke, William T. 1996. "Importance of the 1982 UN Convention on the Law of the Sea and Its Future Development." *Ocean Development & International Law* 27(1/2):1–4.
- Byers, Michael. 2003. "Preemptive Self-defense: Hegemony, Equality and Strategies of Legal Change." *Journal of Political Philosophy* 11(2):171–190.
- Cameron, David R. 1978. "The Expansion of the Public Economy: A Comparative Analysis." *American Political Science Review* 72(4):1243–1261.
- Carlson, Scott N. and Gregory Gisvold. 2003. *Practical Guide to the International Covenant on Civil and Political Rights*. Ardsley, N.Y.: Transnational Publishers.
- Casper, Gerhard. 1986. Constitutionalism. In *Encyclopedia of the American Constitution*, ed. Leonard W. Levy, Kenneth L. Karst and Dennis J. Mahoney. Vol. II New York: Macmillan Press pp. 473–480.
- Cass, Deborah Z. 2005. *The Constitutionalization of the World Trade Organization. Legitimacy, Democracy, and Community in the International Trading System*. Oxford: Oxford University Press.
- Central Intelligence Agency. 2008. *The World Factbook*. Washington, D.C.: Central Intelligence Agency.

- Charnovitz, Steve. 2006. "Nongovernmental Organizations and International Law." *American Journal of International Law* 100(2):348–372.
- Chinkin, Christine M. 1989. "The Challenge of Soft Law: Development and Change in International Law." *International & Comparative Law Quarterly* 38(4):850–866.
- Christians, Allison. 2007. "Hard Law, Soft Law, and International Taxation." *Wisconsin International Law Journal* 25(2):325–333.
- Churchill, Robin R. and A. Vaughan Lowe. 1999. *The Law of the Sea*. 3rd ed. Manchester: Manchester University Press.
- Cohen, Jean L. 2004. "Whose Sovereignty? Empire Versus International Law." *Ethics & International Affairs* 18(3):1–24.
- Cole, Wade M. 2005. "Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999." *American Sociological Review* 70(3):472–495.
- Copeland, Dale C. 1996. "Economic Interdependence and War: A Theory of Trade Expectations." *International Security* 20(4):5–41.
- Correlates of War Project. 2005. "State System Membership List, v2004.1." Available from: <http://correlatesofwar.org>.
- Correlates of War Project. 2008. "State System Membership List, v2008.1." Available from: <http://correlatesofwar.org>.
- Cottier, Thomas and Matthias Oesch. 2005. *International Trade Regulation: Law and Policy in the WTO, the European Union and Switzerland. Cases, Materials and Comments*. Berne: Staempfli Publishers.
- Cottier, Thomas and Maya Hertig. 2003. "The Prospects of 21st Century Constitutionalism." *Max Planck Yearbook of United Nations Law* 7:261–328.
- Cox, David R. 1975. "Partial Likelihood." *Biometrika* 62(2):269–276.
- Cox, David R. 1984. "Interaction." *International Statistical Review* 52(1):1–31.

- Cox, Michael. 2004. "Empire, Imperialism and the Bush Doctrine." *Review of International Studies* 30(4):585–608.
- Cranston, Maurice. 1964. *What are Human Rights?* New York: Basic Books.
- Craven, Matthew C.R. 1995. *The International Covenant on Economic, Social, and Cultural Rights. A Perspective on its Development.* Oxford: Clarendon Press.
- Dahrendorf, Ralf. 1974. "Citizenship and Beyond: The Social Dynamics of an Idea." *Social Research* 41(4):673–701.
- Dahrendorf, Ralf. 1995. "A Precarious Balance: Economic Opportunity, Civil Society, and Political Liberty." *Responsive Community* 5(3):13–42.
- D'Amato, Anthony. 2008. "International Soft Law, Hard Law, and Coherence. Public Law and Legal Theory Series No. 01." Northwestern University School of Law, Chicago.
- de Wet, Erika. 2006. "The Emergence of International and Regional Value Systems as a Manifestation of the Emerging International Constitutional Order." *Leiden Journal of International Law* 19(3):611–632.
- Dennis, Michael J. 2000. "Newly Adopted Protocols to the Convention on the Rights of the Child." *American Journal of International Law* 94(4):789–796.
- Denza, Eileen. 2008. *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relation.* 3rd ed. Oxford: Oxford University Press.
- Der Fischer Weltalmanach. 2006. *Staatenlexikon. Alle Staaten der Welt auf einen Blick.* Frankfurt a.M.: Fischer Taschenbuch Verlag.
- Der Fischer Weltalmanach. 2008. *2008 Zahlen-Daten-Fakten.* Frankfurt a.M.: Fischer Taschenbuch Verlag.
- Detrick, Sharon. 1999. *A Commentary on the United Nations Convention on the Rights of the Child.* Dordrecht: Martinus Nijhoff Publishers.
- Detrick, Sharon, Jaap Doek and Nigel Cantwell. 1992. *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires".* Dordrecht: Martinus Nijhoff Publishers.

- Dippel, Horst. 2005. "Modern Constitutionalism. An Introduction to a History in Need of Writing." *Legal History Review* 73(1):153–170.
- Donnelly, Jack. 1985. *The Concept of Human Rights*. New York: St. Martin's Press.
- Donnelly, Jack. 2006. "Sovereign Inequalities and Hierarchy in Anarchy: American Power and International Society." *European Journal of International Relations* 12(2):139–170.
- Dougherty, James E. and Robert Pfaltzgraff Jr. 1990. *Contending Theories of International Relations*. 3rd ed. New York: Harper Collins.
- Dowell-Jones, Mary. 2004. *Contextualising The International Covenant On Economic, Social And Cultural Rights: Assessing The Economic Deficit*. Leiden: Martinus Nijhoff Publishers.
- Dupuy, Pierre-Marie. 1997. "The Constitutional Dimension of the Charter of the United Nations Revisited." *Max Planck Yearbook of United Nations Law* 1:1–33.
- Dworkin, Ronald D. 1977. *Taking Rights Seriously*. Cambridge, Mass.: Harvard University Press.
- Elias, Taslim O. 1974. *The Modern Law of Treaties*. Leiden: A.W. Sijthoff International.
- Elster, Jon. 1995. "Forces and Mechanisms in the Constitution-Making Process." *Duke Law Journal* 45(2):364–396.
- Epstein, David L., Robert Bates, Jack Goldstone, Ida Kristensen and Sharyn O'Halloran. 2006. "Democratic Transitions." *American Journal of Political Science* 50(3):551–569.
- Eskridge Jr., William N. and John Ferejohn. 2001. "Super-Statutes." *Duke Law Journal* 50(5):1215–1276.
- Evans, Malcolm D. and Claudine Haenni-Dale. 2004. "Preventing Torture? The Development of the Optional Protocol to the UN Convention against Torture." *Human Rights Law Review* 4(1):19–55.

- Evans, Malcolm D., ed. 2007. *Blackstone's Statutes. International Law Documents*. 8th ed. Oxford: Oxford University Press.
- Fabre, Cécile. 1998. "Constitutionalising Social Rights." *Journal of Political Philosophy* 6(3):263–284.
- Falk, Richard A., Robert C. Johansen and Samuel S. Kim. 1993. *The Constitutional Foundations of World Peace*. Albany, N.Y.: State University of New York Press.
- Fassbender, Bardo. 1998a. *UN Security Council Reform and the Right of Veto: A Constitutional Perspective*. The Hague: Kluwer Law International.
- Fassbender, Bardo. 1998b. "The United Nations Charter as Constitution of the International Community." *Columbia Journal of Transnational Law* 36:529–619.
- Fearon, James D. and David D. Laitin. 2003. "Ethnicity, Insurgency, and Civil War." *American Political Science Review* 97(1):75–90.
- Felice, William F. 2002. "The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights." *Human Rights Quarterly* 24(1):205–236.
- Finnemore, Martha. 1996. *National Interests in International Society*. Ithaca, N.Y.: Cornell University Press.
- Finnemore, Martha and Stephen J. Toope. 2001. "Alternatives to "Legalization": Richer Views of Law and Politics." *International Organization* 55(3):743–758.
- Finnis, John. 1980. *Natural Law and Natural Rights*. New York: Clarendon Press.
- Fischer-Lescano, Andreas. 2005. Redefining Sovereignty via International Constitutional Moments? In *Redefining Sovereignty: The Use of Force after the Cold War*, ed. Michael Bothe, Mary Ellen O'Connell and Natalino Ronzitti. Ardsley, N.Y.: Transnational Publishers pp. 335–364.
- Freeman, Michael. 2000. "The Future of Children's Rights." *Children & Society* 14(4):277–293.

- Fried, Charles. 1978. *Right and Wrong*. Cambridge, Mass.: Harvard University Press.
- Friedmann, Wolfgang G. 1964. *The Changing Structure of International Law*. London: Stevens.
- Fuller, Lon L. 1964. *The Morality of Law*. New Haven, Conn.: Yale University Press.
- Furet, François and Ran Halévi, eds. 1989. *Orateurs de la Révolution française*. Paris: Gallimard.
- Gartzke, Erik and Quan Li. 2003. "Measure for Measure: Concept Operationalization and the Trade Interdependence-Conflict Debate." *Journal of Peace Research* 40(5):553–571.
- Gavison, Ruth. 2002a. On the Relationship Between Civil and Political Rights, and Social and Economic Rights. In *The Globalization of Human Rights*, ed. Jean-Marc Coicaude, Michael W. Doyle and Anne-Marie Gardner. Tokyo: United Nations University Press pp. 23–55.
- Gavison, Ruth. 2002b. "What Belongs in a Constitution?" *Constitutional Political Economy* 13(1):89–105.
- Gersen, Jacob E. and Erik A. Posner. 2008. "Soft Law: Lessons from Congressional Practice." *Stanford Law Review* 61(3):573–628.
- Gerstenberg, Oliver. 2001. "Denationalization and the Very Idea of Democratic Constitutionalism: The Case of the European Community." *Ratio Juris* 14(3):298–325.
- Giddens, Anthony. 1990. *The Consequences of Modernity*. Stanford, Calif.: Stanford University Press.
- Gilbert, Paul D. and Erik Meijer. 2005. "Time Series Factor Analysis with an Application to Measuring Money . Research Report No. 05F10." SOM Research School, University of Groningen, the Netherlands. Available from: <http://som.eldoc.ub.rug.nl/reports/themeF/2005/05F10/>.
- Gill, Stephen. 2002. "Constitutionalizing Inequality and the Clash of Globalizations." *International Studies Review* 4(2):47–65.

- Gleditsch, Kristian S. 2006. "Expanded Trade and GDP Data." Available from: <http://privatewww.essex.ac.uk/ksg/exptradegdp.html>.
- Goldsmith, Jack L. and Eric A. Posner. 2005. *The Limits of International Law*. New York: Oxford University Press.
- Goldstein, Judith L., Douglas Rivers and Michael Tomz. 2007. "Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade." *International Organization* 61(1):37–67.
- Goodin, Robert E. 2003. "How Amoral Is Hegemon?" *Perspectives on Politics* 1(1):123–126.
- Goodin, Robert E. 2005. "Toward an International Rule of Law: Distinguishing International Law-breakers from Would-be Law-makers." *The Journal of Ethics* 9(1):225–246.
- Goodin, Robert E., Werner Güth and Duncan Snidal. 2008. "Strategic Aspects of Hegemony." Unpublished manuscript, Australian National University, Canberra.
- Goodliffe, Jay and Darren G. Hawkins. 2006. "Explaining Commitment: States and the Convention against Torture." *Journal of Politics* 68(2):358–371.
- Goodrich, Leland M. and Edvard Hambro. 1949. *Charter of the United Nations, Commentary and Documents*. 2nd ed. London: Stevens & Sons.
- Granovetter, Mark S. 1973. "The Strength of Weak Ties." *American Journal of Sociology* 78(6):1360–1380.
- Grant, Ruth W. and Robert O. Keohane. 2005. "Accountability and Abuses of Power in World Politics." *American Political Science Review* 99(1):29–43.
- Haas, Ernst B. 1958. *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957*. London: Stevens & Sons.
- Haas, Ernst B. 1964. *Beyond the Nation-State: Functionalism and International Organization*. Stanford, Calif.: Stanford University Press.

- Hadenius, Axel and Jan Teorell. 2005. "Assessing Alternative Indices of Democracy. Political Concepts Working Paper 6." The Committee on Concepts and Methods, International Political Science Association.
- Hafner-Burton, Emilie M. and Kiyoteru Tsutsui. 2005. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology* 110(5):1373–1411.
- Hafner-Burton, Emilie M., Kiyoteru Tsutsui and John W. Meyer. 2008. "International Human Rights Law and the Politics of Legitimation." *International Sociology Journal* 23(1):115–141.
- Hall, Peter A. and David W. Soskice. 2001. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.
- Harland, Christopher. 2000. "The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey through UN Human Rights Committee Documents." *Human Rights Quarterly* 22(1):187–260.
- Hart, Herbert L.A. 1961. *The Concept of Law*. Oxford: Clarendon Press.
- Hathaway, Oona A. 2003. "The Cost of Commitment." *Stanford Law Review* 55(5):1821–1863.
- Hathaway, Oona A. 2005. "Between Power and Principle: A Political Theory of International Law." *University of Chicago Law Review* 71(2):469–536.
- Hathaway, Oona A. 2007. "Why Do Countries Commit to Human Rights Treaties?" *Journal of Conflict Resolution* 51(4):588–621.
- Hegre, Håvard. 2000. "Development and the Liberal Peace: What Does it Take to be a Trading State?" *Journal of Peace Research* 37(1):5–30.
- Henisz, Witold J. 2000. "The Institutional Environment for Economic Growth." *Economic and Politics* 12(1):1–31.
- Henisz, Witold J. 2002. "The Institutional Environment for Infrastructure Investment." *Industrial and Corporate Change* 11(2):355–389.

- Hernández, Ricardo and Tania Caron. 2003. Protection of Children and Young Persons. In *Fundamental Labour Rights at Work and International Labour Standards*, ed. International Labour Office. Geneva: International Labour Office pp. 89–126.
- Heston, Alan, Robert Summers and Bettina Aten. 2006. “Penn World Table Version 6.2.” Center for International Comparisons of Production, Income and Prices, University of Pennsylvania.
- Hougaard, Philip. 2000. *Analysis of Multivariate Survival Data*. New York: Springer Verlag.
- Howse, Robert and Kalypso Nicolaidis. 2003. “Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?” *Governance: An International Journal of Policy and Administration* 16(1):73–94.
- Huber, Ernst R. 1960. *Deutsche Verfassungsgeschichte seit 1789*. Vol. II Stuttgart: Kohlhammer.
- Ikenberry, G. John. 2001. *After Victory. Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*. Princeton, N.J.: Princeton University Press.
- Ikenberry, G. John. 2002. Introduction. In *America Unrivaled: The Future of the Balance of Power*, ed. G. John Ikenberry. Ithaca, N.Y.: Cornell University Press pp. 1–26.
- International Committee of the Red Cross. 1988. “Basic rules of the Geneva Conventions and their Additional Protocols, ICRC publication 1988 ref. 0365.” International Committee of the Red Cross, Geneva.
- International Committee of the Red Cross. 2002. “International Humanitarian Law. Answers to your Questions.” International Committee of the Red Cross, Geneva.
- International Committee of the Red Cross. 2008. “Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts.” International Committee of the Red Cross, Geneva.
- International Law Commission. 2006. “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International

- Law.” Report of the Study Group of the International Law Commission, finalised by Martti Koskenniemi, 13 April 2006 (UN-Doc. A/CN.4/L.682). United Nations, Geneva.
- Irwin, Douglas A. 1995. “The GATT in Historical Perspective.” *American Economic Review* 85(2):323–28.
- Jackson, John H. 2006. *Sovereignty, the WTO and Changing Fundamentals of International Law*. Cambridge: Cambridge University Press.
- Jacobs, Francis G. 1969. “Varieties of Approach to Treaty Interpretation: with Special Reference to the Draft Convention on the Law of Treaties Before the Vienna Diplomatic Conference.” *International & Comparative Law Quarterly* 18(2):318–346.
- Jellinek, Georg. 1914. *Allgemeine Staatslehre*. 3rd ed. Berlin: O. Häring.
- Jennings, Robert and Arthur Watts, eds. 1992. *Oppenheim’s International Law*. 9th ed. London: Longman.
- Joerges, Christian and Ernst-Ulrich Petersmann, eds. 2006. *Constitutionalism, Multilevel Trade Governance and Social Regulation*. Oxford: Hart Publishing.
- Joseph, Sarah, Jenny Schultz and Melissa Castan. 2004. *The International Covenant on Civil and Political Rights. Cases, Materials, and Commentary*. 2nd ed. Oxford: Oxford University Press.
- Kaeding, Michael. 2006. “Determinants of Transportation Delay in the European Union.” *Journal of Public Policy* 26(3):229–253.
- Kagan, Robert. 2008. *The Return of History and the End of Dreams*. New York: Knopf.
- Kathree, Fayeeza. 1995. “Convention on the Elimination of All Forms of Discrimination against Women.” *South African Journal on Human Rights* 11(3):421–437.
- Katzenstein, Peter J. 1985. *Small States in World Markets. Industrial Policy in Europe*. Ithaca, N.Y.: Cornell University Press.

- Kaufmann, Christine. 2007. *Globalisation and Labour Rights: The Conflict Between Core Labour Rights and International Economic Law*. Portland, Ore.: Hart Publishing.
- Kaufmann, Daniel. 2005. Human Rights and Governance: The Empirical Challenge. In *Human Rights and Development: Towards Mutual Reinforcement*, ed. Philip Alston and Mary Robinson. Oxford: Oxford University Press pp. 352–402.
- Kern, Max and Carmen Sottas. 2003. The Abolition of Forced and Compulsory Labour. In *Fundamental Labour Rights at Work and International Labour Standards*, ed. International Labour Office. Geneva: International Labour Office pp. 33–56.
- Kirilova Eriksson, Maja. 2002. Family Rights and the United Nations Covenant on Economic, Social and Cultural Rights: Article 10(1). In *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, ed. Audrey R. Chapman and Sage Russell. Antwerp: Intersentia pp. 115–146.
- Klein, John P. and Melvin L. Moeschberger. 2003. *Survival Analysis. Techniques for Censored and Truncated Data*. 2nd ed. New York: Springer Verlag.
- Klug, Heinz. 2000. “Model and Anti-Model: The United States Constitution and the “Rise of World Constitutionalism”.” *Wisconsin Law Review* 2000(3):597–616.
- Koskeniemi, Martti. 2007. “Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization.” *Theoretical Inquiries in Law* 8(1):9–36.
- Krasner, Stephen D. 2000. “Power and Constraint.” *Chicago Journal of International Law* 1(2):231–236.
- Krisch, Nico. 2003. More Equal Than the Rest? Hierarchy, Equality and U.S. Predominance in International Law. In *United States Hegemony and the Foundations of International Law*, ed. Michael Byers and Georg Nolte. Cambridge: Cambridge University Press pp. 135–175.

- Krisch, Nico. 2006. "The Pluralism of Global Administrative Law." *European Journal of International Law* 17(1):247–278.
- Krugman, Paul R. 1991. *Geography and Trade*. Cambridge, Mass.: MIT Press.
- Kumm, Mattias. 2004. "The Legitimacy of International Law: A Constitutionalist Framework of Analysis." *European Journal of International Law* 15(5):907–931.
- Künnemann, Rolf. 2002. The Right to Adequate Food: Violations Related to its Minimum Core Content. In *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, ed. Audrey R. Chapman and Sage Russell. Antwerp: Intersentia pp. 161–183.
- Kunz, Josef L. 1949. "The United Nations Convention on Genocide." *American Journal of International Law* 43(4):738–746.
- Kuper, Leo. 1981. *Genocide. Its Political Use in the Twentieth Century*. New Haven, Conn.: Yale University Press.
- La Porta, Rafael, Florencio López-de Silanes, Andrei Shleifer and Robert W. Vishny. 1999. "The Quality of Government." *Journal of Law, Economics and Organization* 15(1):222–279.
- Lacroix, Justine. 2002. "For a European Constitutional Patriotism." *Political Studies* 50(5):944–958.
- Lamarche, Lucie. 2002. The Right to Social Security in the International Covenant on Economic, Social and Cultural Rights. In *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, ed. Audrey R. Chapman and Sage Russell. Antwerp: Intersentia pp. 87–114.
- Langley, Winston E. 1999. *Encyclopedia of Human Rights Issues Since 1945*. London: Fitzroy Dearborn Publishers.
- Lauterpacht, Hersch. 1950. *International Law and Human Rights*. London: Stevens.
- Lauterpacht, Hersch. 1977. *International Law: Being the Collected Papers of Hersch Lauterpacht*. Vol. III. The Law of Peace. Cambridge: Cambridge University Press.

- Lawson, Edward. 1991. *Encyclopedia of Human Rights*. New York: Taylor & Francis.
- Layne, Christopher. 1997. "From Preponderance to Offshore Balancing: America's Future Grand Strategy." *International Security* 22(1):86–124.
- Legro, Jeffrey W. and Andrew Moravcsik. 1999. "Is Anybody Still a Realist?" *International Security* 24(2):5–55.
- Lemkin, Raphael. 1944. *Axis Rule in Occupied Europe, Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, D.C.: Carnegie Endowment for World Peace.
- Lerner, Natan. 1970. *The U.N. Convention on the Elimination of All Forms of Racial Discrimination, A Commentary*. Leiden: A.W. Sijthoff International.
- Lijphart, Arend. 1999. *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. New Haven, Conn.: Yale University Press.
- Lipson, Charles. 2003. *Reliable Partners: How Democracies Have Made a Separate Peace*. Princeton, N.J.: Princeton University Press.
- Macdonald, Ronald St. J. 1999. "The Charter of the United Nations in Constitutional Perspective." *Australian Yearbook of International Law* 20:205–231.
- Mansfield, Edward D. 1994. *Power, Trade, and War*. Princeton, N.J.: Princeton University Press.
- Mansfield, Edward D., Helen V. Milner and B. Peter Rosendorff. 2002. "Why Democracies Cooperate More: Electoral Control and International Trade Agreements." *International Organization* 56(3):477–514.
- Maravall, José María and Adam Przeworski. 2003a. Introduction. In *Democracy and the Rule of Law*, ed. José María Maravall and Adam Przeworski. Cambridge: Cambridge University Press pp. 1–16.
- Maravall, José María and Adam Przeworski, eds. 2003b. *Democracy and the Rule of Law*. Cambridge: Cambridge University Press.

- Marshall, Monty G. and Keith Jagers. 2007. "Polity IV Project. Political Regime Characteristics, and Transitions." Available from: <http://www.systemicpeace.org/polity/polity4.htm>.
- Marshall, Thomas H. 1950. *Citizenship and Social Class*. Cambridge: Cambridge University Press.
- Martin, Lisa L. 2000. *Democratic Commitments: Legislatures and International Cooperation*. Princeton, N.J.: Princeton University Press.
- Mayer, Ann E. 2006. *Islam and Human Rights: Tradition and Politics*. Boulder, Colo.: Westview Press.
- McGoldrick, Dominic. 1991. *The Human Rights Committee*. Oxford: Clarendon Press.
- McNair, Arnold D. 1961. *The Law of Treaties*. Oxford: Clarendon Press.
- Meyer, John W., John Boli, George M. Thomas and Francisco O. Ramirez. 1997. "World Society and the Nation-State." *American Journal of Sociology* 103(1):144–181.
- Milewicz, Karolina, André Bächtiger and Arne Nothdurft. forthcoming. "Constitutional Pluralism or Constitutional Unity? An Empirical Study of International Commitment (1945–2007)." *Review of International Studies*.
- Milner, Helen V. 1997. *Interests, Institutions, and Information: Domestic Politics and International Relations*. Princeton, N.J.: Princeton University Press.
- Milner, Helen V. and B. Peter Rosendorff. 1996. "Trade Negotiations, Information and Domestic Politics: The Role of Domestic Groups." *Economics & Politics* 8(2):145–189.
- Montgomery, Alexander H. 2005. "Ringing in Proliferation: How to Dismantle an Atomic Bomb Network." *International Security* 30(2):153–187.
- Moravcsik, Andrew. 1997. "Taking Preferences Seriously: A Liberal Theory of International Politics." *International Organization* 51(4):513–553.
- Moravcsik, Andrew. 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, N.Y.: Cornell University Press.

- Moravcsik, Andrew. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54(2):217–252.
- Neumayer, Eric. 2008. "Death Penalty Abolition and the Ratification of the Second Optional Protocol." *International Journal of Human Rights* 12(1):3–21.
- Nexon, Daniel H. and Thomas Wright. 2007. "What's at Stake in the American Empire Debate." *American Political Science Review* 101(2):253–271.
- Nye Jr., Joseph S. 2004. *Soft Power. The Means to Success in World Politics*. New York: Public Affairs.
- O'Brien, John. 2001. *International Law*. London: Cavendish Publishing.
- Office of the United Nations High Commissioner for Human Rights. 2007. "International Covenant on Civil and Political Rights, Selected Decisions of the Human Rights Committee under the Optional Protocol." Volume 8, Seventy-fifth to eighty-fourth sessions (July 2002 – July 2005), (CCPR/C/OP/8). United Nations, Geneva.
- Oneal, John R. and Bruce M. Russett. 1997. "The Classical Liberals Were Right: Democracy, Interdependence, and Conflict, 1950–1985." *International Studies Quarterly* 41(2):267–294.
- Oneal, John R. and Bruce Russett. 1999. "The Kantian Peace: The Pacific Benefits of Democracy, Interdependence, and International Organizations, 1885–1992." *World Politics* 52(1):1–37.
- Oppenheim, Lassa H. 1912. *International Law, A Treatise*. Vol. I (Peace) 2nd ed. London: Longmans Green.
- Pape, Robert A. 2005. "Soft Balancing against the United States." *International Security* 30(1):7–45.
- Peters, Anne. 2001. *Elemente einer Theorie der Verfassung Europas*. Berlin: Duncker & Humblot.
- Peters, Anne. 2006. "Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures." *Leiden Journal of International Law* 19(3):579–610.

- Petersmann, Ernst-Ulrich. 1991. *Constitutional Functions and Constitutional Problems of International Economic Law*. Fribourg: University of Fribourg Press.
- Petersmann, Ernst-Ulrich. 1997. *The GATT/WTO Dispute Settlement System. International Law, International Organizations and Dispute Settlement*. The Hague: Kluwer Law International.
- Petersmann, Ernst-Ulrich. 2000. "From 'Negative' to 'Positive' Integration in the WTO: Time for 'Mainstreaming Human Rights' into WTO law?" *Common Market Law Review* 37(6):1363–1382.
- Petersmann, Ernst-Ulrich. 2006a. "Human Rights, Constitutionalism and the World Trade Organization: Challenges for World Trade Organization Jurisprudence and Civil Society." *Leiden Journal of International Law* 19(3):633–667.
- Petersmann, Ernst-Ulrich. 2006b. Multilevel Trade Governance in the WTO Requires Multilevel Constitutionalism. In *Constitutionalism, Multilevel Trade Governance and Social Regulation*, ed. Christian Joerges and Ernst-Ulrich Petersmann. Oxford: Hart Publishing pp. 5–57.
- Pictet, Jean. 1985. *Development and Principles of International Humanitarian Law*. Dordrecht: Martinus Nijhoff Publishers.
- Polachek, Solomon W. 1980. "Conflict and Trade." *Journal of Conflict Resolution* 24(1):55–78.
- Polachek, Solomon W. 1997. "Why Democracies Cooperate More and Fight Less: The Relationship Between International Trade and Cooperation." *Review of International Economics* 5(3):295–309.
- Polachek, Solomon W., John Robst and Yuan-Ching Chang. 1999. "Liberalism and Interdependence: Extending the Trade-Conflict Model." *Journal of Peace Research* 36(4):405–422.
- Prentice, Ross L., Brian J. Williams and Arthur V. Peterson. 1981. "On the Regression Analysis of Multivariate Failure Time Data." *Biometrika* 68(2):373–379.

- Preuss, Ulrich K. 1998. Constitutionalism. In *Routledge Encyclopedia of Philosophy*, ed. Edward Craig. Vol. II London: Routledge pp. 618–622.
- Putnam, Robert D. 1988. “Diplomacy and Domestic Politics: The Logic of Two-Level Games.” *International Organization* 42(3):427–460.
- Quéguiner, Jean-François. 2007. “Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III).” *International Review of the Red Cross* 89(865):175–207.
- R Foundation for Statistical Computing. 2008. “R: A Language and Environment for Statistical Computing. R Version 2.8.0 (20 October 2008).” Available from: <http://www.r-project.org>.
- Raustiala, Kal. 2005. “Form and Substance in International Agreements.” *American Journal of International Law* 99(3):581–614.
- Reus-Smit, Christian. 1997. “The Constitutional Structure of International Society and the Nature of Fundamental Institutions.” *International Organization* 51(4):555–589.
- Rittberger, Berthold and Frank Schimmelfennig. 2006. “Explaining the Constitutionalization of the European Union.” *Journal of European Public Policy* 13(8):1148–1167.
- Robertson, Charles L. 1997. *International Politics since World War II: A Short History*. Armonk, N.Y.: ME Sharpe.
- Rodrik, Dani. 1997. *Has Globalization Gone Too Far?* Washington, D.C.: Institute for International Economics.
- Rosenau, James N. 1997. *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World*. Cambridge: Cambridge University Press.
- Rosenne, Shabtai. 1970. *The Law of Treaties. A Guide to the Legislative History of the Vienna Convention*. Leyden: A.W. Sijthoff.
- Rubinfeld, Jed. 2004. “Commentary: Unilateralism and Constitutionalism.” *New York University Law Review* 79(6):1971–2028.

- Russell, Ruth B. 1958. *A History of the United Nations Charter, The Role of the United States 1940-1945*. Washington D.C.: The Brookings Institution.
- Russett, Bruce and John R. Oneal. 2001. *Triangulating Peace: Democracy, Interdependence, and International Organizations*. New York: Norton.
- Sajó, András. 1999. *Limiting Government. An Introduction to Constitutionalism*. Budapest: Central European University Press.
- Santos Pais, Marta and Susan Bissell. 2006. "Overview and Implementation of the UN Convention on the Rights of the Child." *Lancet* 367(9511):689–690.
- Sartori, Giovanni. 1962. "Constitutionalism: A Preliminary Discussion." *American Political Science Review* 56(4):853–864.
- Sauvé, Pierre and Robert M. Stern, eds. 2000. *GATS 2000: new directions in services trade liberalization*. Washington, D.C.: Brookings Institution Press.
- Schabas, William A. 2000. *Genocide in International Law. The Crimes of Crimes*. Cambridge: Cambridge University Press.
- Schimmelfennig, Frank. 2001. "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union." *International Organization* 55(1):47–80.
- Schloemann, Hannes L. and Stefan Ohlhoff. 1999. "'Constitutionalization' and Dispute Settlement in the WTO: National Security as an Issue of Competence." *American Journal of International Law* 93(2):424–451.
- Schorkopf, Frank and Christian Walter. 2003. "Elements of Constitutionalisation: Multilevel Structures of Human Rights Protection in General International and WTO-Law." *German Law Journal* 4(12):1359–1374.
- Schwelb, Egon. 1966. "The International Convention on the Elimination of All Forms of Racial Discrimination." *International & Comparative Law Quarterly* 15(4):996–1068.
- Scott, Shirley V. 1994. "International Law as Ideology: Theorizing the Relationship between International Law and International Politics." *European Journal of International Law* 5(3):313–325.

- Scott, Shirley V. 2004. "Is There Room for International Law in "Realpolitik"?: Accounting for the US 'Attitude' Towards International Law." *Review of International Studies* 30(1):71–88.
- Sepúlveda, Magdalena M. 2003. *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*. Antwerp: Intersentia.
- Shaw, Malcolm N. 2003. *International Law*. 5th ed. Cambridge: Cambridge University Press.
- Shelton, Dinah. 2000. Law, Non-Law and the Problem of 'Soft Law'. In *Commitment and compliance: the Role of Non-binding Norms in the International Legal System*, ed. Dinah Shelton. New York: Oxford University Press pp. 1–20.
- Shue, Henry. 1979. Rights in the Light of Duties. In *Human Rights and U.S. Foreign Policy*, ed. Peter G. Brown and Douglas MacLean. Lexington, Mass.: Lexington Books pp. 65–81.
- Shue, Henry. 1980. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton, N.J.: Princeton University Press.
- Simma, Bruno and Andreas L. Paulus. 1998. "The "International Community": Facing the Challenge of Globalization." *European Journal of International Law* 9(2):266–277.
- Simma, Bruno, ed. 2002a. *The Charter of the United Nations, A Commentary*. Vol. I 2nd ed. Oxford: Oxford University Press.
- Simma, Bruno, ed. 2002b. *The Charter of the United Nations, A Commentary*. Vol. II 2nd ed. Oxford: Oxford University Press.
- Simmons, Beth. 2000. "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *American Political Science Review* 94(4):819–836.
- Simpson, Gerry J. 2004. *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*. Cambridge: Cambridge University Press.

- Sinclair, Ian M. 1973. *The Vienna Convention on the Law of Treaties*. Manchester: Manchester University Press.
- Slaughter, Anne-Marie. 1995. "International Law in a World of Liberal States." *European Journal of International Law* 6(1):503–538.
- Slaughter, Anne-Marie and William Burke-White. 2002. "The International Constitutional Moment." *Harvard International Law Journal* 43(1):1–21.
- Somers, Margaret R. 1994. "Rights, Relationality, and Membership: Rethinking the Making and Meaning of Citizenship." *Law & Social Inquiry* 19(1):63–114.
- Steiner, Henry J. and Philip Alston. 2000. *International Human Rights in Context. Law, Politics, Morals*. Oxford: Oxford University Press.
- Stevenson, John R. and Bernhard H. Oxman. 1994. "The Future of the United Nations Convention on the Law of the Sea." *American Journal of International Law* 88(3):488–499.
- Stone Sweet, Alec. 2000. *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Stubb, Alexander C.-G. 1996. "A Categorization of Differentiated Integration." *Journal of Common Market Studies* 34(2):283–295.
- Stubbs, William and James P. Cornford. 1979. *The Constitutional History of England: Selections (Classics of British Historical Literature)*. Chicago: University of Chicago Press.
- Survival Version 2.34-1 R Package. 2008. "S original by Terry Therneau, ported by Thomas Lumley (March 31 2008)." Available from: <http://www.r-project.org>.
- Tableman, Mara and Jong Sung Kim. 2004. *Survival Analysis Using S. Analysis of Time-to-Event Data*. London: Chapman & Hall.
- Tanaka, Atsuko and Yoshinobu Nagamine. 2001. *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*. London: Minority Rights Group.

- Tang, Kwong-Leung. 2004. "Internationalizing Women's Struggle against Discrimination: The UN Women's Convention and the Optional Protocol." *British Journal of Social Work* 34(8):1173–1188.
- Teubner, Gunther. 1997. Global Bukowina: Legal Pluralism in the World Society. In *Global Law Without a State*, ed. Gunther Teubner. Aldershot: Dartmouth Publishing pp. 3–28.
- Teubner, Gunther. 2004. Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory? In *Transnational Governance and Constitutionalism: International Studies in the Theory of Private Law*, ed. Christian Joerges, Inger-Johanne Sand and Gunther Teubner. Oxford: Hart Publishing pp. 3–28.
- Therneau, Terry M. and Patricia M. Grambsch. 2000. *Modeling Survival Data: Extending the Cox Model*. New York: Springer Verlag.
- Thomas, Constance and Yuki Horii. 2003. Equality of Opportunity and Treatment in Employment and Occupation. In *Fundamental Labour Rights at Work and International Labour Standards*, ed. International Labour Office. Geneva: International Labour Office pp. 57–87.
- Tomuschat, Christian. 2003. *Human Rights between Idealism and Realism*. Oxford: Oxford University Press.
- Trachtman, Joel P. 2006. "The Constitutions of the WTO." *European Journal of International Law* 17(3):623–646.
- Tsebelis, George. 2002. *Veto Players: How Political Institutions Work*. New York: Russel Sage Foundation.
- United Nations. 1999. "United Nations Treaty Collection. Treaty Reference Guide." Available from: <http://untreaty.un.org/English/guide.asp>.
- United Nations General Assembly. 1948. "Universal Declaration of Human Rights." G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).
- United Nations General Assembly. 1992. "Status of the International Convention on the Elimination of All Forms of Racial Discrimination." G.A. Res. 47/78, U.N. Doc. A/RES/47/78 (Dec. 16, 1992). Available from: <http://www.un.org/documents/ga/res/47/a47r078.htm>.

- United Nations General Assembly. 1996*a*. "Amendment to Article 20, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women." G.A. Res. 50/202, U.N. Doc. A/RES/50/202 (Dec. 22, 1996). Available from: <http://www.un.org/documents/ga/res/50/ares50-202.htm>.
- United Nations General Assembly. 1996*b*. "Conference of States Parties to the Convention on the Rights of the Child." G.A. Res. 50/155, U.N. Doc. A/RES/50/155 (Feb. 28, 1996). Available from: <http://www.un.org/documents/ga/res/50/ares50-155.htm>.
- United Nations General Assembly. 1998. "Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." G.A. Doc. 53/253, U.N. Doc. A/53/253 (Aug. 17, 1998). Available from: <http://www.un.org/documents/ga/docs/53/plenary/a53-253.htm>.
- United Nations General Assembly. 2006. "Human Rights Council." G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (Apr. 3, 2006). Available from: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf.
- Valticos, Nicolas and Geraldo W. von Potobsky. 1995. *International Labour Law*. 2nd ed. Deventer: Kluwer Law and Taxation Publishers.
- Van Bueren, Geraldine. 2002. The Minimum Core Obligations of States under Article 10(3) of the International Covenant on Economic, Social and Cultural Rights. In *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, ed. Audrey R. Chapman and Sage Russell. Antwerp: Intersentia pp. 147–160.
- Vasak, Karel. 1977. "A 30-year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights." *UNESCO courier* 29.
- Venables, William N. and Brian D. Ripley. 2002. *Modern Applied Statistics with S*. 4th ed. New York: Springer Verlag.
- Vienna Convention on the Law of Treaties. 1969. "1155 U.N.T.S. 331, reprinted in 8 I.L.M. 679 (May 23, 1969).".

- Villiger, Mark E. 2003. *Customary International Law and Treaties, A Manual on the Theory and Practice of the Interrelation of Sources*. 2nd ed. The Hague: Kluwer Law International.
- Vreeland, James Raymond. 2008. "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture." *International Organization* 62(1):65–101.
- Walker, Neil. 2002. "The Idea of Constitutional Pluralism." *Modern Law Review* 65(3):317–359.
- Walker, Neil. 2003. Postnational constitutionalism and the problem of translation. In *European Constitutionalism Beyond the State*, ed. Joseph H.H. Weiler and Marlene Wind. Cambridge: Cambridge University Press pp. 27–54.
- Wallace, Rebecca M.M. 2005. *International Law*. 5th ed. London: Sweet & Maxwell.
- Waltz, Kenneth N. 1979. *Theory of International Politics*. New York: McGraw-Hill.
- Waltz, Kenneth N. 2000. "Structural Realism after the Cold War." *International Security* 25(1):5–41.
- Wei, Lee-Jen, Danyu Y. Lin and Lisa A. Weissfeld. 1989. "Regression Analysis of Multivariate Incomplete Failure Time Data by Modeling Marginal Distributions." *Journal of the American Statistical Association* 84(408):1065–1073.
- Weiler, Joseph H.H. 1999. *The Constitution of Europe*. Cambridge: Cambridge University Press.
- Weiler, Joseph H.H. and Marlene Wind. 2003a. Introduction: European constitutionalism beyond the state. In *European Constitutionalism Beyond the State*, ed. Joseph H.H. Weiler and Marlene Wind. Cambridge: Cambridge University Press pp. 1–6.
- Weiler, Joseph H.H. and Marlene Wind, eds. 2003b. *European Constitutionalism Beyond the State*. Cambridge: Cambridge University Press.

- Wiener, Antje. 2003. "Editorial: Evolving Norms of Constitutionalism." *European Law Journal* 9(1):1–13.
- Wohlforth, William C. 1999. "The Stability of a Unipolar World." *International Security* 24(1):5–41.
- Wood, Simon N. 2006. *Generalized Additive Models: An Introduction with R*. London: Chapman & Hall/CRC Press.
- World Bank. 2007. *World Development Indicators (WDI) 2007*. Washington, D.C.: World Bank.
- Wotipka, Christine Min and Francisco O. Ramirez. 2008. World society and human rights: an event history analysis of the convention on the elimination of all forms of discrimination against women. In *The Global Diffusion of Markets and Democracy*, ed. Beth A. Simmons, Frank Dobbin and Geoffrey Garrett. Cambridge: Cambridge University Press pp. 303–343.
- Young, Ernest A. 2007. "The Constitution Outside the Constitution." *Yale Law Journal* 117(3):408–473.
- Zangl, Bernhard. 2005. "The Rule of Law: Internationalization and Privatization. 4 Is there an emerging international rule of law?" *European Review* 13(S1):73–91.
- Zürn, Michael. 1998. *Regieren jenseits des Nationalstaates: Globalisierung und Denationalisierung als Chance*. Frankfurt a.M.: Suhrkamp.
- Zürn, Michael. 2007. "Institutionalisierte Ungleichheit in der Weltpolitik. Jenseits der Alternative 'Global Governance' versus 'American Empire'." *Politische Vierteljahresschrift* 48(4):680–704.
- Zürn, Michael and Christian Joerges, eds. 2005. *Law and Governance in Postnational Europe: Compliance Beyond the Nation-State*. Cambridge: Cambridge University Press.

