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THE TREATY/IGO NEXUS: DEFINITIONAL RIGOR AND A 500 YEAR TEST

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The Treaty/IGO Nexus: Definitional Rigor and a 500 Year Test

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Abstract:

Today's world has become increasingly globalized; nearly every aspect of society is related to events in other parts of the world. Whether the issue be humanitarian, economic, environmental, or any other, international regimes constantly interact with one another. They often do so through inter-governmental organizations (IGOs) that provide a formal structure for states to convene to address specific international issues. Additionally, since treaties are the primary source of international law, the relationship between IGOs and treaties must be understood all the more because most IGOs are created by treaties. This thesis examines that relationship through the Comprehensive Statistical Database (CSDMT), a compilation of all multilateral treaties signed over the past 500 years. Results of quantitative analyses conducted through the application of several variables developed for this project to measure the relationship between IGOs and multilateral treaties are analyzed. The result is a macroscopic quantitative picture of trends and details in this complex and important relationship over time.

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I. Introduction

Importance of Inter-governmental Organizations

Inter-governmental organizations (IGOs), also commonly referred to as international organizations (IOs), are prominent and important actors in the international system. IGOs are governing bodies composed of representatives from various states that have agreed to belong to the organization.¹ As international issues such as nuclear proliferation, conflict, terrorism, climate change, poverty, disease, and the world economy affect many individual countries, IGOs provide the institutional structure to address international problems more effectively. IGOs can be regional, such as the European Union (EU), or global, such as the United Nations (UN).² Some IGOs address a wide range of issues, but many, such as the World Trade Organization (WTO) or World Health Organization (WHO) are created to address specific areas.³

IGOs often are the preferred method of addressing international issues.⁴ This is because IGOs have formal permanent structures and negotiation procedures that provide a forum for policy formation and conflict resolution that is more organized and efficient than if states were to attempt to conduct negotiations through more informal ad hocs. IGOs are often very specialized, which allows many states, all of which must address various complex issues on a daily basis, to go through an agency focused, with specific expertise, on the particular topic at hand. Therefore, IGOs can create a much more efficient and effective mode of international negotiation than states could achieve through informal negotiations among themselves. Anthony Aust characterizes this development: “International organizations grew out of the diplomatic conferences of the

¹ C. Joyner, *International Law in the 21st Century: Rules for Global Governance*, New Millennium Books in International Studies, 2005, pp. 86.

² M.P. Karns & K.A. Mingst, *International Organizations: The Politics and Processes of Global Governance*. Lynne Rienner, 2010, pp. 5.

³ *Id.*

⁴ K.W. Abbott & D. Sindal, *Why States Act Through International Organizations*. *Journal of Conflict Resolution*, 42.1, 1998, pp. 4.

nineteenth century as states sought more effective ways to deal with problems caused by the rapid development of international society.”⁵ Abbott and Sindal describe the advantages IGOs provide:

IOs allow for the centralization of collective activities through a concrete and stable organizational structure and a supportive administrative apparatus. These increase the efficiency of collective activities and enhance the organization’s ability to affect the understandings, environment, and interests of states.⁶

Diehl and Frederking view it this way:

[International issues] cannot be solved without multilateral cooperation...no one state, not even the most powerful state, can manage these problems alone. Today’s world requires both state and nonstate actors to coordinate actions through international organizations to address these issues.⁷

Because they play such a major role in international affairs, it is important to understand the structure and function of IGOs. Many illustrate the profound effect IGOs currently have on international relations. The UN, through the International Atomic Energy Agency (IAEA), deploys inspectors to ensure that countries are complying with international rules regarding nuclear weapons. These weapons inspectors have gained much attention in recent years for their role in Iraq, Iran, North Korea, and other countries. Efforts to bring/sustain peace in areas of conflict in Africa and the Middle East are typically functions of the UN and other IGOs. IGOs such as the International Monetary Fund (IMF) and World Bank have been instrumental in the recent global economic crisis. Greece and Ireland recently faced government debt and banking crises, respectively, which threatened the viability of the euro and subsequently the world

⁵ A. Aust, *Modern Treaty Law and Practice*, Cambridge, 2nd Ed., 2007, pp. 392.

⁶ Abbott & Sindal, *supra* note 4.

⁷ P. Diehl & B. Frederking, *The Politics of Global Governance: International Organizations in an Interdependent World*. Lynne Rienner, 2010, pp. 1.

economy as a whole. These crises were dealt with through emergency loans and other remedial actions from the EU and IMF.⁸ Recently, the United Nations Security Council passed a resolution authorizing military action to enforce a no-fly zone over Libya to prevent the mass slaughter of civilian rebels by dictator Muammar el-Qaddafi.⁹ These are only two recent examples revealing how important IGOs are in addressing international issues, and the difference in focus of these two organizations shows that IGOs deal with all aspects of international relations.

Defining IGOs

The specific findings of this analysis can only be discussed after establishing a proper understanding of what IGOs are and how they function. Christopher Joyner states that IGOs “function as intergovernmental political bodies and forums (*sic*) where representatives from states convene to discuss and negotiate issues involving their mutual political, social, and economic concerns.”¹⁰ Buerghenthal and Murphy offer further criteria for defining an IGO: that they are established by a treaty, which serves as the “charter” of the organization, that they are composed of members, such as states or other IOs, that they are regulated by international law, and that they are endowed with a legal personality.¹¹ Anthony Aust, while acknowledging the lack of a formal agreed-upon definition of an IGO,¹² also includes establishment by multilateral treaty in his definition, as well as an international legal personality and states as principal members.¹³ Rebecca Wallace defines an IGO as “an entity established by an agreement with

⁸ “Time for Plan B” *The Economist*, January 13, 2011

⁹ D. Bilefsky & M. Lander, “As U.N. Back Military Action in Libya, U.S. Role is Unclear” *The New York Times*, March 17, 2011.

¹⁰ C. Joyner, *supra* note 1.

¹¹ *Id.* at 42.

¹² Aust, *supra* note 5.

¹³ *Id.*

states as its principal members.”¹⁴ Peter Malanczuk uses a similarly broad definition of an IGO, describing it as “an organization set up by an agreement between two or more states.”¹⁵ Clearly many international law scholars include the criterion of establishment by an agreement or “charter” in their definition of IGOs. In fact, Judge Hersch Lauterpacht, a member of the United Nations International Law Commission and Judge on the International Court of Justice,¹⁶ includes this criterion in his own definition.¹⁷ While this makes for an admittedly more specific, and thus easier to use, definition, it does not appear to be accurate in practice. Seyersted was one of the first to challenge this widely agreed-upon definition, claiming:

It is not the provisions of the constitution or the intention of its framers which establish the international personality of a State or an intergovernmental organization, but the *objective fact of its existence*.¹⁸

While Seyersted’s point is well taken, it might go too far. Peter H.F. Bekker expands on Seyersted’s notion in his book *The Legal Position of Intergovernmental Organizations: A Functional Necessity Analysis of Their Legal Status and Immunities*, providing further rationale for the exclusion of a multilateral charter or constitution in the definition of an IGO:

The existence of a ‘constitution’ is not a necessary requirement: in fact, any document may constitute a constituent instrument, whether it is a treaty or mere resolution. The absence of a constituent instrument does not prevent an international organization from having international personality.¹⁹

Other scholars have since adopted similar definitions that do not require the existence of a charter as a requirement for an organization to cross the threshold as an official IGO. Evans

¹⁴ R. Wallace, *International Law*, Sweet & Maxwell 2nd Ed., 1992, pp. 67.

¹⁵ P. Malanczuk, *Akehurst’s Modern Introduction to International Law*, Routledge, 7th Ed. 1997, pp. 92.

¹⁶ E. Lauterpacht, *Sir Herschel Lauterpacht: 1897-1960* EJIL, 1998, pp. 313-315.

¹⁷ H. Chiu, *The Capacity of International Organizations to Conclude Treaties*, Martinus Nijhoff, 1966, pp. 4.

¹⁸ F. Seyersted, *International Personality of International Organizations. Do Their Capacities Really Depend upon Their Constitutions?* 4 IND JIL 1, 1964, 31-32.

¹⁹ P.H.F. Bekker, *The Legal Position of International Organizations: A Functional Necessity Analysis of Their Legal Status and Immunities*, T.M.C. Asser Institute, 1994, pp. 56.

and Newham define IGOs as organizations “founded by governing states. These organizations are established to engage in problem-solving in the interests of, and possibly on behalf of, their member states.”²⁰ Cathal J. Nolan’s definition in *The Greenwood Encyclopedia of International Relations*, is more specific and also makes no mention of an official organization charter: “[IGOs are] functional associations set up by the states, ranging from subregional and regional bodies to universal agencies enjoying some of the attributes of international personality.”²¹ These definitions reflect the views of Seyersted and Bekker that the most important factor in determining whether an organization qualifies as an IGO is the organization’s structure, behavior, and international legal personality. Although this definition makes it more difficult to determine if an organization is officially an IGO, it is more pragmatic in reality, since most international negotiations and procedures are conducted by or through IGOs. If an organization has a formal structure and an international legal personality, and is responsible for many important international policies, it is illogical to exclude it from an analysis of IGO behavior simply because it lacks a formal charter.

The existence and behavior of the Commonwealth of Nations supports the theory that a formal constitution is not a necessary requirement of an official IGO. As British colonies moved toward independent status in the first half of the twentieth century, former colonies, as well as Great Britain, formed an unofficial agreement to continue a voluntary partnership to consult with each other and work collectively toward international goals.²² The Commonwealth’s official website provides a description of the organization’s function:

Intergovernmental consultation is its main source of direction, enabling member governments to collaborate to influence world events, and setting up programmes

²⁰ G. Evans & J. Newham, *The Penguin Dictionary of International Relations*, Penguin Books, 1998, pp. 238.

²¹ C. Nolan, *The Greenwood Encyclopedia of International Relations*, Greenwood Publishing, 2nd Ed., 2002, pp. 807.

²² *Commonwealth of Nations*, official website. www.commonwealth-of-nations.org.

carried out bilaterally or by the Commonwealth Secretariat, the association's main executive agency.²³

With this official structure – including a Secretariat, as well as other organs, and 54 member states,²⁴ the Commonwealth clearly possesses all the attributes of an inter-governmental organization. Yet, the organization has no official charter, as also stated on the website:

“However, the Commonwealth has no formal constitutional structure. It works from understood procedures, traditions, and periodic statements of belief or commitment to action.”²⁵

The example of the Commonwealth of Nations refutes the theory that organizations must be created and governed by an official charter in order to be considered an official IGO. As the Commonwealth shows, behavior and legal personality are the most important factors in defining an IGO, supporting the view put forth by Seyersted, Bekker, Evans, Newham, and Nolan. While IGOs of this nature are not common, the existence of even one renders a definition requiring a formal constitution inappropriate. Therefore, the definition used here is a synthesis of those offered by these scholars. For the purposes of this analysis, an IGO is defined as an organization created by and composed of multiple state governments, which engages in international problem solving, and possesses a legal personality.

History of IGOs

International organizations are a recent phenomenon. Many cite the Central Commission for Navigation of the Rhine, created in 1815, as the first IGO, as they are understood today.²⁶

Also among the first founded were the International Telegraph Union (later International

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ H. Jacobsen, *Networks of Interdependence: International Organizations and the Global Political System*, Alfred A. Knopf, 1979, pp. 9.

Telecommunications Union) (ITU) and the Universal Postal Union (UPU), created in 1865 and 1874, respectively.²⁷ The International Labour Organization (ILO) and the League of Nations, the predecessor to the UN, were created shortly after World War I.²⁸ However, it was only after World War II and the creation of the UN in 1945 that the number of international organizations, as well as the power they wielded on the international plane, increased precipitously.²⁹ This phenomenon was likely due to the increased realization of the benefits of such organizations, as explained by Aust, in response to the “rapid development of international society”³⁰ With this rapidly developing international society, international organizations not only increased in number, but in their range of roles played on the international stage.

The Legal Personality of IGOs

As IGOs rose in number and influence in the second half of the twentieth century, states faced the issue of the international legal personality of IGOs. What exactly constitutes international legal personality is a complex issue in itself. Nolan’s definition states that any international entity that “enjoys rights and has duties under international law” possesses legal personality.³¹ The question of the international personality of IGOs was addressed by the International Court of Justice in its advisory opinion on *Reparations for Injuries Suffered in the Service of the United Nations*, of 11 April 1949.³² In assessing whether the UN had standing to bring a case before the ICJ, the Court determined that the issue depended upon whether the UN possessed international personality.³³ In this case, the Court ruled that the UN did possess international personality, which it ruled means that an organization is “a subject of international

²⁷ T. Buergenthal & S. Murphy, *Public International Law*, Thomson West, 2007, pp. 44.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Aust, *supra* note 5.

³¹ Nolan, *supra* note 21.

³² *Reparations for Injuries Suffered in the Service of the United Nations*, ICJ Advisory opinion of 11 April 1949.

³³ *Id.*

law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.”³⁴ The Court linked international personality to an organization’s purposes and functions:

[the United Nations] was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights, which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane.³⁵

The *Reparations* case clarified that IGOs can possess international legal personality. However, because the Court’s opinion did not state that all IGOs inherently possess a universal international personality, but rather that the extent of international personality was dependent on the individual organization’s purposes and functions,³⁶ a new issue arose: how to assess the international personality of IGOs on a functional basis. Seyersted offers criteria for determining whether an organization possesses international personality:

(1) The existence of international organs which are not subject to the authority of any other organized community, which perform ‘sovereign’ and/or international acts in their own name, and (2) which are not authorized by all their acts to assume obligations on behalf of the several participating communities.³⁷

While the situation remains complex, it is clear that IGOs have grown in influence since the ICJ *Reparations* opinion of 1949 confirmed their legal personality. This includes being granted rights under international law that often closely resemble those of states, such as the right to facilitate international negotiations, the right to institute international policies,³⁸ the right to

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Bekker, *supra* note 19.

³⁸ Evans & Newham, *supra* note 20.

legal protection under international law, and the right to conclude and enter into treaties with other organizations and/or states. Thus, the focus of this analysis is the ability of IGOs to participate in multilateral treaty-making.

The Statute of the International Court of Justice, concluded in 1945 as part of the UN Charter,³⁹ places international treaties first in its list of sources of international law.⁴⁰ While the statute does not specify that the list is hierarchical, states and international courts generally accept that treaties are the primary source of international law,⁴¹ and thus treaties are typically the first source of law consulted in international issues.⁴² Because IGOs often are the preferred route of states in international negotiations, the relationship between these organizations and treaties, the primary source of international law, is one worth analyzing.

The CSDMT at Penn State Behrend

This thesis offers an overview of the role and influence of IGOs in international law and relations through a quantitative analysis of the relationship between IGOs and multilateral treaties⁴³ using the Comprehensive Statistical Database of Multilateral Treaties (CSDMT), created in 1998 at Penn State Behrend. The database collects data (about 35 variables) on all multilateral treaties (those with at least three parties) signed between the years 1500-2007. The database presently contains approximately 6,500 multilateral treaties, yielding over 350,000 data points. The CSDMT was inspired in part by Christian Wiktor's Multilateral Treaty Calendar.⁴⁴ Most studies of treaties and/or IGOs focus narrowly on a small number of the most prominent

³⁹ *Id.*, at 78.

⁴⁰ Statute of the International Court of Justice, Article 38 (1), 1945.

⁴¹ Buergenthal & Murphy, *supra* note 27, at 21.

⁴² *Id.*

⁴³ "Treaty" and "Instrument" will be used interchangeably.

⁴⁴ C. Wiktor, *Multilateral Treaty Calendar*, 1998.

treaties or organizations, those considered to be the most important or influential. This type of analysis does not always provide for the most accurate understanding of the common concepts and developments in international law. The CSDMT allows for a much broader quantitative analysis of all IGOs and multilateral treaties, following Peter Rohn's philosophy of understanding "the proverbial forest," as well as the "individual trees,"⁴⁵ providing a macroscopic view of trends in international law across time.

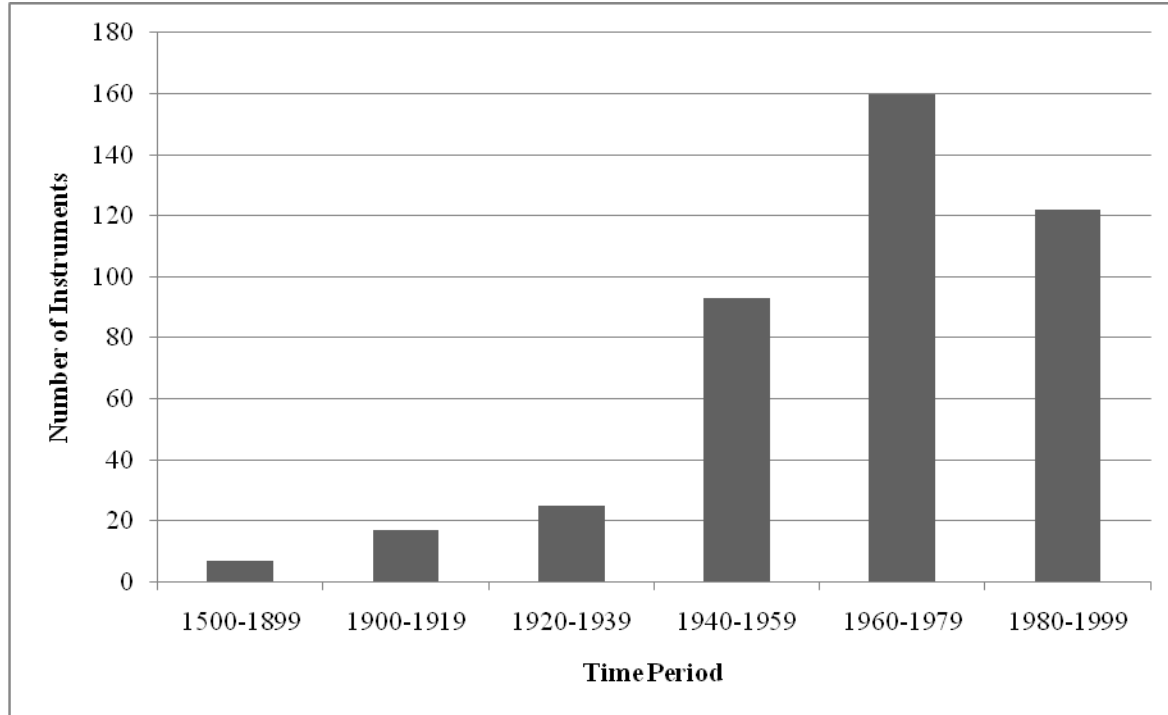
The CSDMT is an all-inclusive collection of all multilateral treaties – those with at least three parties. Bilateral treaties (only two parties) are not included. Due to the sheer number of bilateral treaties in existence,⁴⁶ assembling a complete collection of bilateral treaties is impossible. Therefore, the CSDMT deals exclusively with multilateral instruments. Since most IGOs are composed of a large number of member states, it follows that most treaties with significant IGO involvement are multilateral.

Figure 1 displays the total number of multilateral treaties signed from 1500-1999, broken down into time intervals. It's been widely theorized that treaty-making increased greatly in the 20th century, reaching a pinnacle in the 60s and 70s, and the CSDMT provides the statistics to confirm this and offer a precise answer. It is important to establish this overall trend in treaty-making, because much of the more detailed analysis to follow must be understood in this broader context.

⁴⁵ P. Rohn, *World Treaty Index* 15, 1983.

⁴⁶ About 90% of all treaties concluded; see J.K. Gamble & C. Ku, *Choice of Language in Bilateral Treaties: Fifty Years of Changing State Practice*, 3 *Indiana International & Comparative Law Review*, 1993, pp. 241.

FIGURE 1: MULTILATERAL TREATIES OVER 500 YEARS



IGOs and Multilateral Treaties

The relationship between IGOs and multilateral treaties has received relatively little attention in the literature. One of the best sources available today on the topic is the chapter devoted to IGOs and treaties in the book *Modern Treaty Law and Practice* by Anthony Aust. Aust states that one reason the IGO-treaty relationship is important to understand is that IGOs are usually creations of multilateral treaties.⁴⁷ While establishment by treaty does not seem to be *necessary* for an IGO to exist and function, this is how *most* IGOs are established. When a multilateral treaty establishes an IGO, the agreement is usually described as the “charter” or “constitution” of the organization,⁴⁸ meaning the treaty specifies the rights, duties, and functions of the organization, procedures for adopting policies and resolutions, and terms for membership

⁴⁷ Aust, *supra* note 5.

⁴⁸ *Id.* at 393-394.

for the consenting states.⁴⁹ Article 7 of the UN Charter creates the General Assembly, Security Council, Secretariat, International Court of Justice, Economic and Social Council, and Trusteeship Council.⁵⁰ Subsequent articles outline the composition, authority, and voting procedures of each organ.⁵¹

IGOs have become central to multilateral treaty making, particularly since WWII and the creation of the UN.⁵² As previously discussed, states increasingly use IGOs as a forum for negotiating international policies as the world rapidly became more globalized.⁵³ Consequently, many treaties were negotiated and concluded under the auspices of IGOs. In fact, Aust believes that “today, most multilateral treaties are negotiated and concluded within international organizations or at conferences convened by them.”⁵⁴ Jose Alvarez analyzed it this way:

... The majority of today’s multilateral treaties are the product of institutionalized events. They result from treaty-making conferences authorized by IOs with IO-dictated time frames and locales.⁵⁵

Alvarez further explains the trend and indicates that IGOs have contributed to an increase in the efficiency and accomplishments of multilateral treaty making:

IO venues have generally made it easier to conclude the ambitious multilateral treaties that characterize the modern era – treaties that both aspire to and nearly achieve universal participation to achieve their grandiose goals.⁵⁶

⁴⁹ *Id.*

⁵⁰ *Charter of the United Nations*, Article 7, 26 June 1945, 9 Hudson 327.

⁵¹ *Id.* Articles 7-101.

⁵² S. Scott, *International Law in World Politics: An Introduction*, Lynne Reinner, 2nd Ed., 2010, p. 31.

⁵³ Aust, *supra* note 5.

⁵⁴ *Id.* at 393.

⁵⁵ J. E. Alvarez, *International Organizations: Then and Now*, 100 AJIL 2, 2006, pp. 329.

⁵⁶ *Id.* at 330.

Alvarez's assessment of the impact of IGOs on multilateral treaty is confirmed by our findings. Specialized agencies with a specific mandate and formal procedures, such as the World Trade Organization (WTO), World Health Organization (WHO), International Labour Organization (ILO), or International Atomic Energy Agency (IAEA), allow for more efficient negotiation of specific but important global issues, and broader participation in the resulting treaties. Organizations such as these have been responsible for an array of regulations and directives under international law; in fact, the ILO has become so prolific in creating international labor standards that Alvarez characterizes it as "an effective treaty machine."⁵⁷

The practice of creating IGOs through multilateral treaties, as well as IGOs creating (or facilitating the creation of) multilateral treaties has become standard practice in international law. A more complicated issue in the relationship between IGOs and treaties is the practice IGOs acting as parties to treaties. This was addressed by the International Law Commission (ILC) in the 1962 draft articles of the Law on Treaties: "the capacity [of international organizations] to conclude treaties depends on the constitution of the organization concerned."⁵⁸ The ILC commentary to Article 3, paragraph 3, provides further insight into how the ILC viewed the practice of IGOs concluding treaties:

...the treaty-making capacity of an international organization does not depend exclusively on the terms of the constituent instrument of the organization but also on the decisions and rules of its competent organs. Comparatively few constituent treaties of international organizations contain provisions concerning the conclusion of treaties by the organization; nevertheless, the great majority of organizations have considered themselves competent to enter into treaties for the purpose of furthering the aims of the organization.⁵⁹

⁵⁷ *Id.* at 327.

⁵⁸ Chiu, *supra* note 17, at 21.

⁵⁹ *Id.*

Despite the ILC report, the final version of the 1969 *Vienna Convention on the Law of Treaties* did not contain provisions explicitly acknowledging treaty-making rights to international organizations.⁶⁰ However, because this practice may have become part of customary international law despite the 1969 Convention,⁶¹ in 1986 the UN General Assembly adopted the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*.⁶² Article 6 of the 1986 Convention states “the capacity of an international organization to conclude treaties is governed by the rules of that organization.”⁶³ The 1986 Convention (the rest of which is very similar to the 1969 Convention) clearly acknowledges the ability of international organizations to serve as parties to treaties. The Convention was seen as a means of codifying a practice that was already part of customary international law,⁶⁴ and although the treaty has not yet entered into force,⁶⁵ it is seen as reflecting general agreed-upon principles of international law.⁶⁶ Most scholars seem to agree, and treaty-making practice appears to confirm, that the practice of IGOs acting as parties to treaties is so prolific as to be part of customary international law.

As IGOs and multilateral treaties each have a substantial impact on international law and relations, it is important to understand the interaction and relationship between these two megaforges. This paper examines the relationship between IGOs and multilateral treaties through a quantitative analysis of approximately 6,500 multilateral treaties using the CSDMT database. Data were coded into variables developed specifically for this project in a process described below. The result is a statistical analysis of the complex relationship between IGOs

⁶⁰ Aust, *supra* note 5, at 400.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, Article 6, 1986.

⁶⁴ Scott, *supra* note 52, at 32.

⁶⁵ *Id.*

⁶⁶ Aust, *supra* note 5, at 400.

and multilateral treaties, examining historical trends of treaties related to IGO, as well as treaties to which one or more IGO is a party. Several variables were created to analyze the various types of treaties that are related to IGOs, and provide a macroscopic analysis of the trends in such relationships over time.

II. Methods

Variables

A variable assessing the relation of each treaty to an IGO was created as part of an earlier phase of CSDMT development, long before this thesis began. The lack of functionality and inaccuracies in the variable led to revision and expansion, and the creation of several new variables to better understand the relationship between multilateral treaties and IGOs.

The previous IGO Relation variable contained three values:

- “Creates”
- “Modifies/Action by”
- “No Relation.”

This approach was inadequate. A treaty that modifies an IGO is much different in its objectives and substance from a treaty that is the result of an action taken by an IGO, and must be measured to provide an accurate and descriptive analysis. For this reason, one of the initial steps in the revision of this variable was splitting “Modifies/Action by” value into two values, “Modifies” and “Action by.” However, the difference between these two values can be difficult to ascertain, as a precise definition is challenging to formulate, and many treaties could be interpreted as being either, or both, a modification of or an action by an IGO (which was likely the reasoning behind combining the two into one value in the first place). For example, it is reasonable to assume that treaties that modify an IGO are actions taken by the organization to modify itself. It is necessary to establish a functional definition for each of these new values in order to properly and consistently apply them to individual treaties. This issue has received little attention from international law scholars, leaving little scholarly foundation from which to develop precise

definitions. Christopher Joyner briefly addresses the issue by differentiating between “prescriptive” and “administrative” laws created by IGOs. Joyner states that prescriptive law

...aims to lay down authoritative rules, set out written directives, or establish customary norms that must be followed. It consists of laws that impose obligations to do (or forbear from doing) certain things, the infraction of which is considered to be an offense not only against that IO but also against international society as a whole. Prescriptive laws may be backed up by punitive sanctions, which can be applied by the IO when certain charter norms and principles are egregiously breached.⁶⁷

This type of law is substantially different from administrative law, as Joyner explains

...aims to manage or supervise the execution of international affairs. Such administrative law includes the rules and regulations governing the operation of the IO and its various agencies; the substantive and procedural rules that these agencies formulate and apply pursuant to their regulatory and other administrative functions.⁶⁸

Joyner’s definitions correspond with the CSDMT values of Modifies and Action by; treaties that would be considered to modify an IGO correspond to Joyner’s definition of administrative law, and treaties that are an action by an IGO fit the definition of prescriptive law. Using Joyner’s work, we define the “Modifies” value as “an action the IGO takes on/regarding its own function, structure, and power,” such as an amendment, protocol, or a new constitution. Examples of treaties that would be coded as “Modifies” include *Amendment to Article 25, paragraph (a) of Statute of the Council of Europe of May 5, 1949*, and *Revised Convention of the Austro-German Telegraph Union*.

⁶⁷ Joyner, *supra* note 1, at 87.

⁶⁸ *Id.*

The “Action by” value is defined as “an action the IGO takes in an effort to set rules/standards and/or impose obligations among its members, or to provide aid (financial, humanitarian, or otherwise) on the international plane.” For example, the International Labour Organization (ILO) creates many treaties setting international labor and wages standards, e.g., *Convention (No. 81) concerning labor inspection in industry and commerce*.⁶⁹

A challenge regarding the “Action by” value arose during the coding process. Treaties were coded in consultation with the Wiktor calendar, in a process described below. One descriptor of each treaty in the calendar is with what state or organization the treaty is deposited or registered.⁷⁰ Many treaties that did not initially appear to have a direct relation to an IGO were nonetheless deposited or registered with an IGO. This would appear to indicate some sort of IGO involvement, and it is thus necessary to understand the exact meaning of a treaty being deposited with an IGO.

Registration is the easier of these two concepts. Article 102 of the UN Charter states:

Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.⁷¹

This rule of registration with the UN is further emphasized in the *Vienna Convention on Law of Treaties*.⁷² These provisions clearly do not indicate direct IGO involvement, merely that any treaty concluded by a member state of the UN

⁶⁹ 54 UNTS 3.

⁷⁰ Wiktor, *supra* note 44.

⁷¹ *Charter of the United Nations*, *supra* note 50, Art. 102(1).

⁷² *Vienna Convention on the Law of Treaties*, Art. 80, 1969. 1155 UNTS 331.

is to be registered with the UN. It is feasible that the constituent documents of many other IGOs contain similar provisions regarding mandatory registration. If registration were assumed to mean direct IGO involvement, then nearly every treaty concluded since 1945 would be connected to the UN, and a substantial number would also be linked to various other IGOs.

IGOs acting as depositaries to treaties is a more complex issue.

Depositaries of multilateral treaties are much more involved in the administration of the agreement, provided with the tasks of

- Keeping custody of the original text of the treaty
- Preparing and transmitting certified copies of the treaty, including in additional languages
- Receiving signatures, instruments of ratification, acceptance, accession, reservations, declarations, and any other treaty-related correspondence.
- Examining the validity of signatures
- Informing the parties of notifications and changes relating to the treaty
- Monitoring factors relating to the treaty entering into or going out of force.⁷³

These responsibilities indicate that depositaries, as described by Aust, are typically given the role of chief administrators of a treaty,⁷⁴ and in the case of IGOs would seem to indicate a direct involvement with the treaty itself. One would question why an IGO would take on such a role concerning a treaty it has little connection to. Aust affirms this notion, stating that an organization “will not normally agree to be depositary of a treaty with which his organization has no substantial involvement.”⁷⁵ Therefore, when the Wiktor calendar indicated that an IGO acted

⁷³ Aust, *supra* note 5, at 332.

⁷⁴ *Id.*, at 327.

⁷⁵ *Id.*

as depositary to a treaty, we assumed this meant direct IGO involvement; the actual text of these treaties was consulted to verify.

The initial revision of the IGO Relation variable made only one, yet very important, change: creating two separate values for “Modifies” and “Action by.” Applying the new variables to a randomly selected sample of treaties from the database revealed that these values still failed to provide sufficient detail and accuracy in the measurement of IGO relation to multilateral treaties. The database contains a substantial number of instruments that amend, supplement, extend, terminate, or otherwise modify past treaties that were actions by an IGO. These treaties revealed a gap between the “Modifies” and “Action by” values because they do not modify the IGO itself, but are also not original actions of the IGO. The “Modification of Former Action” value was created to address this shortcoming.

The “Creates” value might seem straightforward, such as the *Statute of the Council of Europe*. However, a fundamental problem emerged as the value was applied to the sample: it is common for IGOs to create subsidiary organs that themselves fit all the attributes of an independent IGO.⁷⁶ The UN Charter even contains a provision stating that organs of the UN may create their own agencies and committees.⁷⁷ In 1946, the WHO was created by the multilateral treaty suitably titled *The Constitution of the World Health Organization*.⁷⁸ This is similar in name to the Council of Europe’s founding document, yet the WHO is a specialized agency of the UN. Such specialized agencies, while created under the auspices of the UN, have most of the attributes of independent intergovernmental agencies, as Joyner explained:

⁷⁶ Alvarez, *supra* note 55, at 334.

⁷⁷ *Charter of the United Nations*, *supra* note 50, Art. 7(2).

⁷⁸ 14 UNTS 185.

In acting as an independent body, each agency has its own institutions, membership, rules, procedure, and lawmaking capability. Consequently, each agency functions lawfully as a separate administrative organization with responsibility over its own internal affairs and legal dealings.⁷⁹

Based on this, and the definition of an IGO developed earlier in this paper, specialized agencies are undoubtedly IGOs in their own right. Other UN specialized agencies include vitally important organizations such as the Food and Agricultural Organization (FAO), International Civil Aviation Organization (ICAO), International Maritime Organization (IMO), World Intellectual Property Organization (WIPO), the IAEA, ILO, WTO, and many others. The constitutions of specialized agencies (created by the UN or any other IGO) presented a dilemma for the “Creates” variable. While it might be accurate to categorize these treaties as simply creating an IGO, this would obscure important distinctions in trends in IGO creation and actions over time. Alvarez’s analysis acknowledged this practice, stating that IGOs have “become adept at reproducing themselves.”⁸⁰ In order to quantify just how prolific IGOs have become at “reproducing” themselves, we created the value “IGO created by an IGO.” This value was applied to treaties concluded under the authority of an existing IGO, which establish a subsidiary body that meets the criteria of an IGO. We finally have developed appropriate values to measure every relevant distinction in IGO involvement, and the final values used for this analysis are:

⁷⁹ Joyner, *supra* note 1, at 99.

⁸⁰ Alvarez, *supra* note 55, at 334.

- No Relation⁸¹
- Creates⁸²
- IGO Created by an IGO⁸³
- Modifies⁸⁴
- Action by⁸⁵
- Modification of Former Action⁸⁶

The “IGO Relation” variable does not measure whether an IGO is a party to a treaty. Therefore, we created one additional variable. It is central to modern international law that IGOs possess the capacity to act as parties, with some legal personality, to a treaty.⁸⁷ Any analysis of IGO treaty behavior must assess this practice. Therefore, we created the “IGO Party” variable, with the following values:

- One IGO
- Multiple IGOs
- No IGO Parties

One complexity did arise. States that are members of an IGO may all sign a treaty; however, this does not mean that an IGO is acting as a party to the treaty itself. For an IGO to be considered a party to a treaty, that IGO must be a distinct, separate signatory to the treaty. For example, the European Economic Community (EEC) (later on the EU) regularly signed multilateral treaties on behalf of all member states, which constitutes the organization acting as a single party. An example of one such treaty is the *Agreement on*

⁸¹ e.g., *Military Agreement between Egypt, Saudi Arabia, and Yemen*, 21 April 1956, 162 BFSP 943.

⁸² e.g., *Statute of the Council of Europe I*, 05 May 1949, 87 UNTS 103.

⁸³ e.g., *Constitution of the Asian Pacific Telecommunity*, 27 March 1976, 1129 UNTS 03.

⁸⁴ e.g., *Amendment to Article 61 of the Charter of the United Nations*, 20 December 1971, 892 UNTS 119.

⁸⁵ e.g., *International Convention for the Suppression of Terrorist Bombings*, 12 January 1998, 2149 UNTS 284.

⁸⁶ e.g., *Protocol to the European Code of Social Security*, 16 April 1964, 648 UNTS 304.

⁸⁷ See Chiu, *supra* note 17, at 21, and *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, *supra* note 63.

*the regulation of fisheries in the Skagerrak and Kattegat in 1983.*⁸⁸ However, many treaties contain the individual signatures of each member state of the EEC, in which case the organization would not be considered to be an individual party to the treaty. For example, the *Convention on the Provision of Mutual Assistance by Customs Administrations*⁸⁹ was signed individually by each member state of the EEC.

Data Entry and Analysis

After months of research (and some false starts) the new IGO variables were finalized so they could be applied to the entire CSDMT. The database is contained in a computer spreadsheet program, with each row an individual treaty and each column one of the variables being measured. The first column contains the name (“headnote”) of the treaty. CSDMT research associate Lauren Kolb and I went through each treaty and applied the new IGO variables using the information given in the headnote and often many helpful notes on each treaty in the Wiktor calendar. It was not feasible to visit the full text of 6,500 treaties; possible problems were flagged to be checked later. Once we completed this initial round of coding, we returned to the full text of treaties that had been marked for follow-up and finished coding, entering appropriate values. As a final quality control check we sorted the database by the “Grouping” variable. This variable links original treaties to any later related treaties, such as amendments and protocols. This ensured that treaties that modify an IGO or a former action were not overlooked, and were accurately linked to the original instrument through the appropriate “IGO Relation” value.

⁸⁸ Cmnd. 8990.

⁸⁹ BTS 93.

III. Results and Discussion

General Findings

As discussed earlier, this research was undertaken to better understand the complex relationship between IGO and multilateral treaties. Figure 2 displays the number of instruments within each previous CSDMT “IGO Relation” value before the new values were applied, with Table 1 displaying the percentage of total treaties in the database for each value. Figure 3 expresses the total number of instruments in each of the new “IGO Relation” values, with Table 2 showing the percentage of total treaties in the database for each value.

FIGURE 2: NUMBER OF TREATIES IN EACH IGO RELATION VALUE 1500-1999 (PREVIOUS SYSTEM)

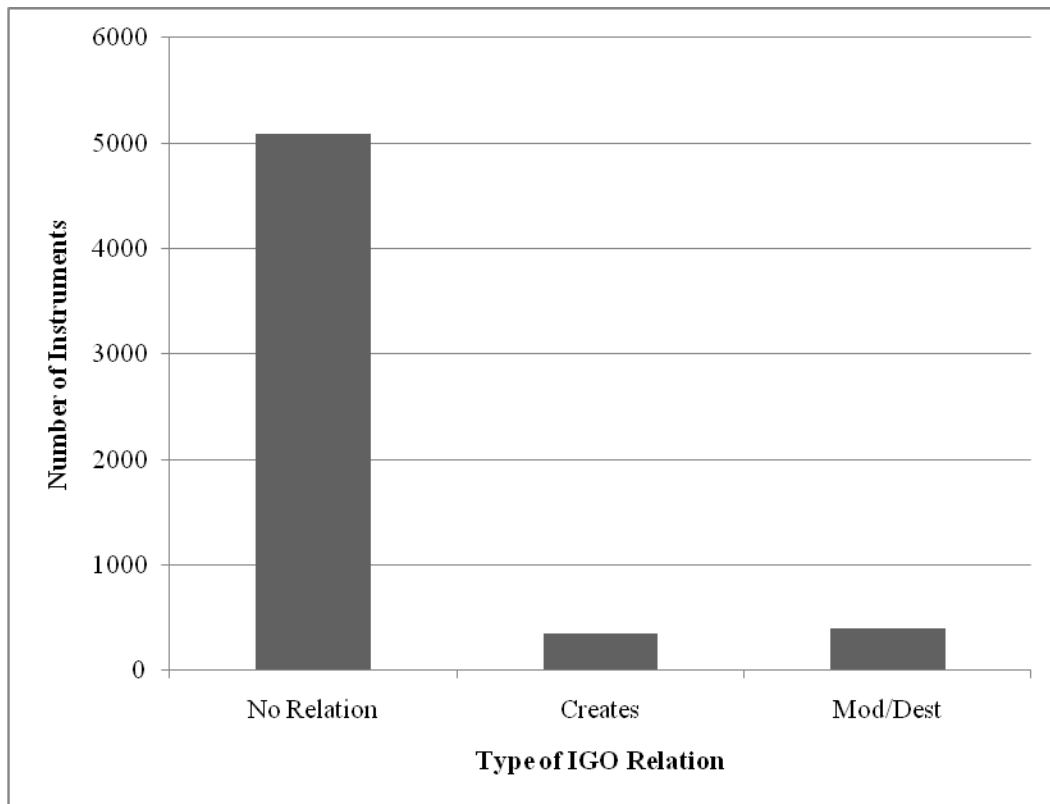


TABLE 1: PERCENTAGE OF TREATIES WITHIN NEW IGO RELATION VALUES (PREVIOUS SYSTEM)

	No Relation	Creates	Modifies/Action by
Percentage	87%	6%	7%

FIGURE 3: NUMBER OF TREATIES IN EACH IGO RELATION VALUE 1500- 1999 (NEW SYSTEM)

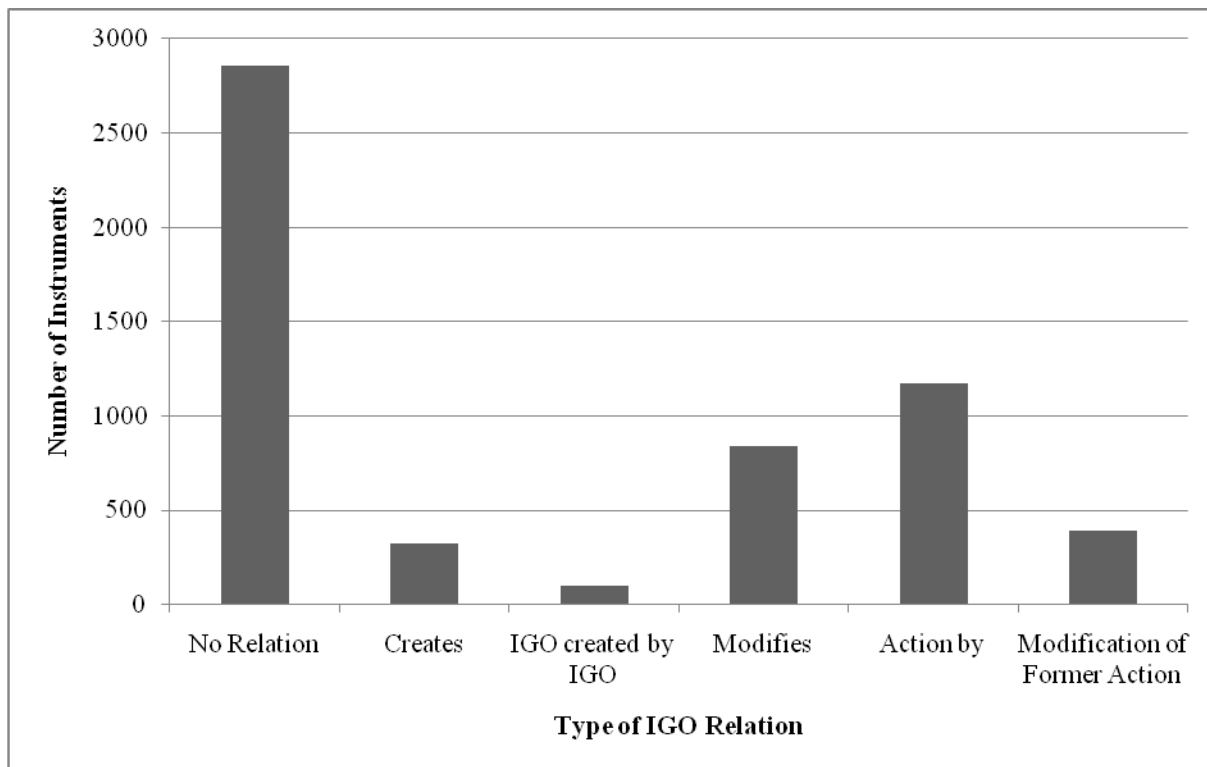


TABLE 2: PERCENTAGE OF TREATIES WITHIN NEW IGO RELATION VALUES (NEW SYSTEM)

	No Relation	Creates	IGO Created by an IGO	Modifies	Action by	Modification of Former Action
Percentage	50%	6%	2%	15%	21%	7%

Tables 2 and 3 clearly show that important information was not captured with our previous approach. Previously, information in the CSDMT indicated that approximately 87% of all multilateral treaties were not related to an IGO. The new system and added values allowed us to include more detailed and complex relationships between IGOs and multilateral treaties. As explained in the introduction, IGOs are a major force in international law. Adding new variables helps us to understand not only the complex relationship between IGOs and multilateral treaties, but the evolution of the law-making process in international law in general.

Turning to our statistical analysis, we see that almost 50% of multilateral treaties over the last 500 years have some demonstrable relation to an IGO. Recalling that IGOs were rare until the twentieth century,⁹⁰ only began to regularly engage in multilateral treaty-making following WWI,⁹¹ and became increasingly involved in the practice following WWII,⁹² it appears obvious that it has become common, perhaps even “the norm” for multilateral treaties since the end of WWII and the creation of the UN to have some significant relation to an IGO. Trends will now be analyzed in more depth.

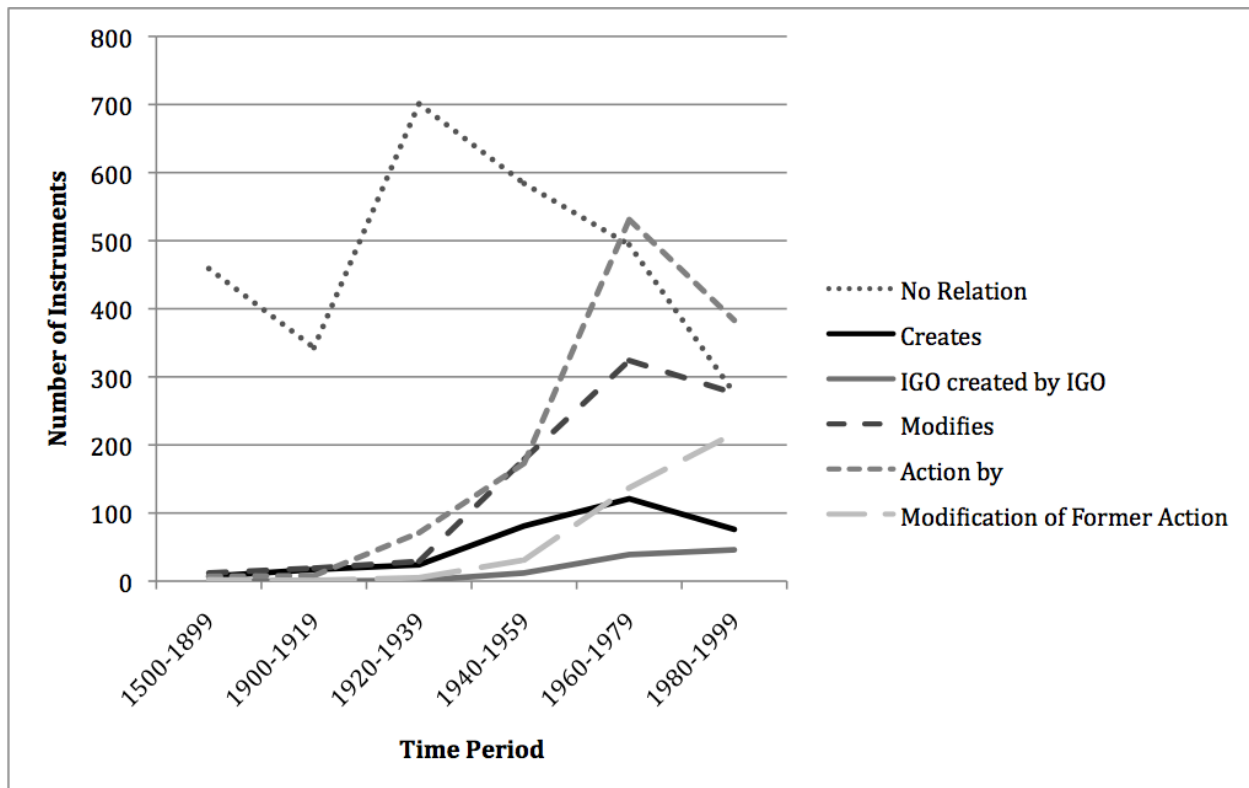
⁹⁰ Buergenthal & Murphy, *supra* note 27.

⁹¹ *Id.*

⁹² *Id.*

One of the principal goals of this paper is to provide not only an overview of the relationship between multilateral treaties and IGOs, but also how that relationship has changed and evolved over time. Figure 4 builds upon Figure 3 by showing the trends in each new value of the “IGO Relation” variable. Looking at the first 300-400 years depicted in the graph, we see that nearly every multilateral treaty was in the “No Relation” category. This is expected, based on the fact that IGOs hardly existed before the 20th Century.⁹³ However, IGO involvement began to increase in the early part of the 20th century, following WWI and the subsequent creation of the League of Nations and the ILO.⁹⁴

FIGURE 4: IGO RELATION TO MULTILATERAL TREATIES OVER 500 YEARS



⁹³ *Id.*

⁹⁴ *Covenant of the League of Nations*, 1919, 225 Parry 195.

The sharp rise in treaties unrelated to an IGO that also followed the end of WWI must not be misinterpreted; this rise merely corresponds with a surge in treaty-making in general in this time period, and does not indicate a movement towards less IGO involvement with multilateral treaties. We see an explosion in IGO involvement beginning after WWII, accompanied by a corresponding drop in the number of treaties with no relation to an IGO. This is also to be expected, since the number and influence of IGOs began to increase drastically with the creation and development of the UN and its specialized agencies, as well as the broader acceptance of IGOs as legal players on the international stage. Figure 4 clearly demonstrates a reversal of the behavior of the first 400 years in treaty-making, when IGO involvement was almost nonexistent. In fact, we see that by the end of the 20th century, the plurality of multilateral treaties concluded were actions by an IGO, with the number of treaties bearing no relation about equal to the number that modify an IGO.

Figure 4 also shows plateau in treaty-making following the post-WWII boom.⁹⁵ Treaties that are actions by IGOs saw an especially steep decline, after an enormous post-WWII spike. This may be explained by the trend in treaties that modify a former action over the same time period. It is not surprising that the number of treaties that are actions by an IGO rose sharply following WWII. Such a world crisis would have been expected to prompt a flurry of remedial and preventative measures.⁹⁶ In addition, the creation of the UN and its specialized agencies allowed for more efficient and ambitious treaty-making. When this flurry of activity waned, the role of IGOs shifted to modifying their past actions, as indicated by the fact that as “Actions by” fell, “Modifications of Former Action” correspondingly rose.

⁹⁵ This trend is likely explained by the rise in the number of more specialized IGOs, which were able to handle many matters that would have previously required new multilateral treaties.

⁹⁶ A past article used CSDMT data to provide statistical evidence of this. See J.K. Gamble & D.P. Hido, *Empirical Approaches to International Law: The Laws of War as Reflected in 500 Years of Multilateral Treaty-Making*, 16 *Willamette Journal of International Law and Dispute Resolution* 2, 2008, pp. 321.

The CSDMT also tracks whether treaties are general or plurilateral in nature. This classification deals with the rules of participation in the treaty. Plurilateral treaties limit participation based on factors such as region or subject matter,⁹⁷ while general treaties are open to any state, and typically strive for universal participation.⁹⁸ Approximately 80% of the treaties in the CSDMT are plurilateral, and approximately are 20% general. One might expect that treaties related to an IGO would contain a somewhat higher percentage of plurilateral instruments; many IGOs focus on specific regions (e.g., the EU), or subject matter (e.g., the IMO), it follows that subsequent treaties relating to IGOs will be similarly narrow in focus. Figure 5 shows the distribution of each “IGO Relation” value between general and plurilateral instruments, with Table 3 showing the respective percentage of total treaties contained within each category. To better assess if treaties related to an IGO are more likely to be plurilateral than those with no relation, Tables 4 and 5 show the percentage of general vs. plurilateral treaties when those bearing no relation are included or excluded, respectively.

⁹⁷ D.P. Myers, *The Name and Scope of Treaties*, 51 AJIL 3, 1957, pp. 575.

⁹⁸ Aust, *supra* note 5, at 17.

FIGURE 5: GENERAL AND PLURILATERAL INSTRUMENTS BY IGO RELATION

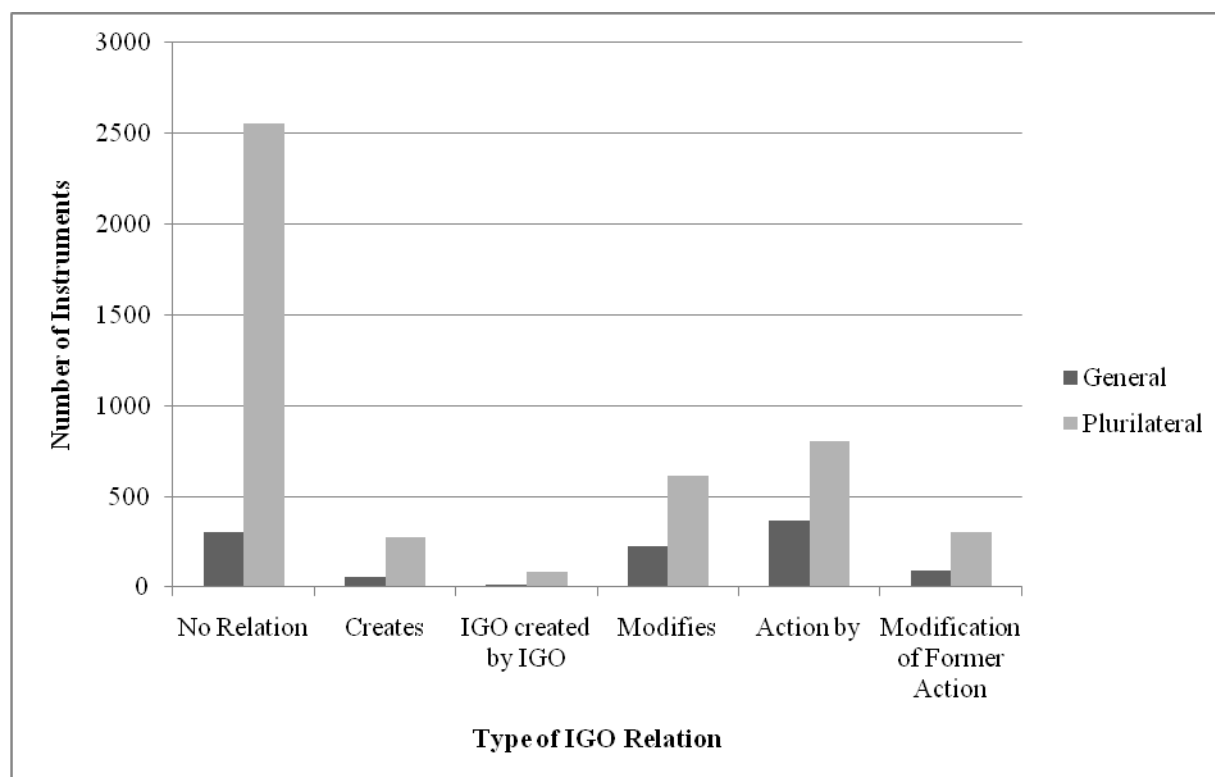


TABLE 3: PERCENTAGE OF GENERAL AND PLURILATERAL TREATIES BY IGO RELATION

IGO Relation	Plurilateral	General
No Relation	45%	5%
Creates	5%	1%
IGO Created by IGO	1%	0% ⁹⁹
Modifies	11%	4%
Action by	14%	7%
Modification of Former Action	5%	2%

⁹⁹ Technically .25%, but I was convinced to round off to whole integers in the tables.

TABLE 4: PERCENTAGE OF GENERAL AND PLURILATERAL TREATIES INCLUDING
“NO RELATION” TO AN IGO

	Plurilateral	General
Percentage	81%	19%

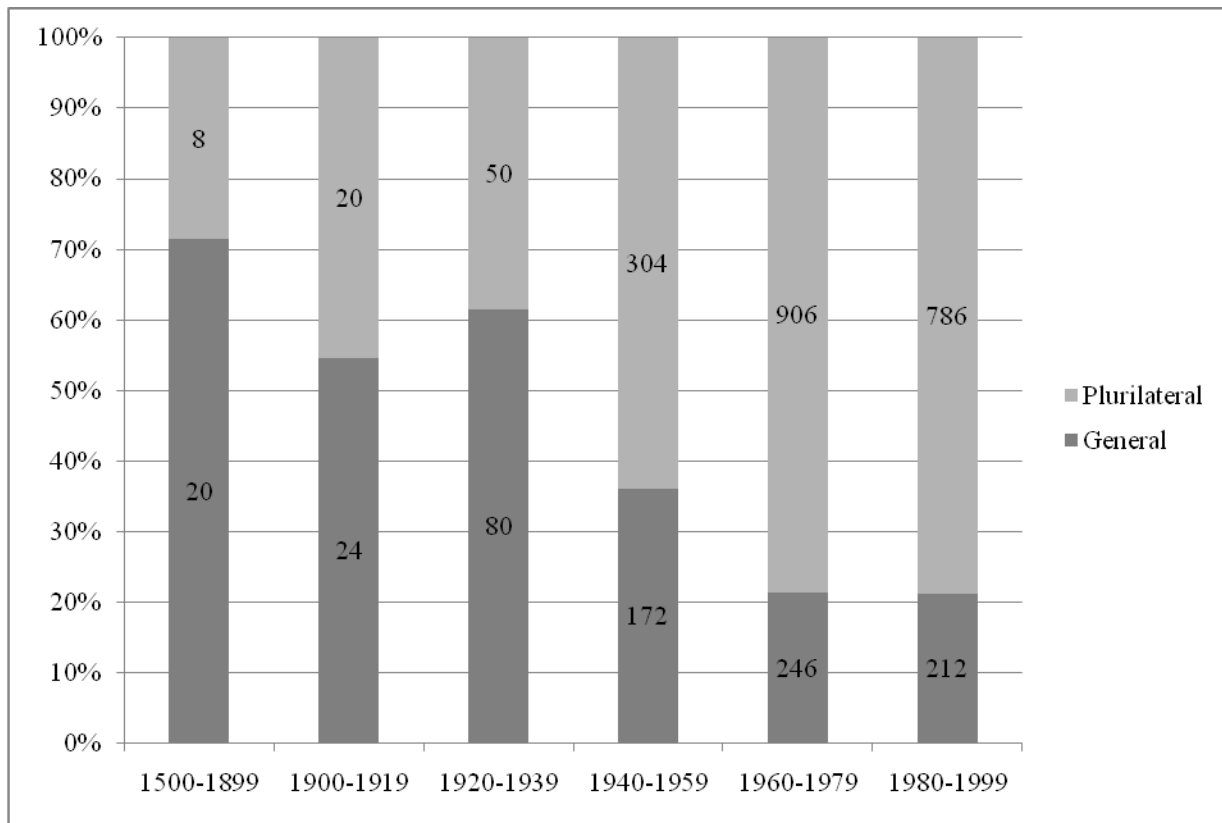
TABLE 5: PERCENTAGE OF GENERAL AND PLURILATERAL TREATIES EXCLUDING
“NO RELATION” TO AN IGO

	Plurilateral	General
Percentage	73%	27%

Contrary to what might be expected, Tables 4 and 5 reveal that treaties which are related to an IGO are actually less likely to be plurilateral than those bearing no relation. This apparent anomaly may be explained, however, if Epps’ claim is accurate that general treaties became much more common after WWII and the creation of the UN.¹⁰⁰ As shown in Figures 1 and 4, the number of treaties concluded exploded in this time period, which lends credibility to Epps’ assertion. In order to test this theory, Figure 6 provides a chronological view of general vs. plurilateral treaties as they relate to IGOs.

¹⁰⁰ V. Epps, *International Law for Undergraduates*, Carolina Academic Press, 1998, pp. 16.

FIGURE 6: PERCENTAGE OF GENERAL AND PLURILATERAL TREATIES OVER TIME AMONG THOSE WITH IGO INVOLVEMENT



The data in Figure 6 reveal that over time treaties with direct IGO involvement become increasingly more likely to be plurilateral rather than general, a trend that becomes especially pronounced following WWII. This result does not follow from Epps’ assertion, and seems to confound the data in Tables 4 and 5. However, it is important to note that this chart is in percentage terms; the corresponding total number of instruments is shown within each bar segment. The small number of instruments concluded before 1900 make these data difficult to compare meaningfully to the rest of the data. The rise of UN specialized agencies likely is another explanation for the Epps anomaly. While it is logical to assume that a very powerful and nearly universal IGO such as the UN would lead to an increase in general treaties, we must keep in mind that, along with the UN, came the establishment of an array of specialized

agencies.¹⁰¹ As these agencies typically are narrowly focused, it follows that a large percentage of the treaties concluded as functions of these organizations would be plurilateral rather than general, a finding confirmed by the data. The existence of specialized agencies and the data in Figure 6 would then seem to be inconsistent with the data in Tables 4 and 5. However, it must be remembered that specialized agencies, particularly the most active and influential, are for the most part a post-UN phenomenon.¹⁰² Figure 6 indicates that the data in Tables 4 and 5 are carried by treaties concluded in the pre-WWII era, which contained a higher percentage of general opposed to plurilateral instruments. The emergence of specialized agencies allowed for more narrowly-focused treaty-making than did the more generally focused organizations of previous eras. It is likely that this trend will continue, and the data in Tables 4 and 5 will reverse in coming years.

Actions by IGOs

Moving to a more in-depth analysis of the findings, a specific evaluation of the “Action by” value is needed. Not only is this the most frequent occurrence of IGO involvement with multilateral treaties,¹⁰³ but arguably it is the most important. To summarize the earlier section of this paper, *The Importance of IGOs*,¹⁰⁴ international relations are as important as ever in today’s globalized society, and states often rely on the organizational structure and specialization of IGOs to address the most pressing international issues.¹⁰⁵ Therefore, it is not surprising that such a large number of recent treaties are actions by IGOs. Furthermore, as these treaties set international standards and develop remedial and preventative measures, a detailed assessment of

¹⁰¹ Alvarez, *supra* note 55, at 334.

¹⁰² Joyner, *supra* note 1, at 100.

¹⁰³ See Figure 4

¹⁰⁴ See pp. 1.

¹⁰⁵ See Abbott & Sindal, *supra* note 4, Aust, *supra* note 5, and Diehl & Frederking, *supra* note 7.

such instruments is an important piece of the puzzle. Figure 7 represents the top six IGOs by number of actions taken.

FIGURE 7: MOST “ACTION BY” INSTRUMENTS BY IGO

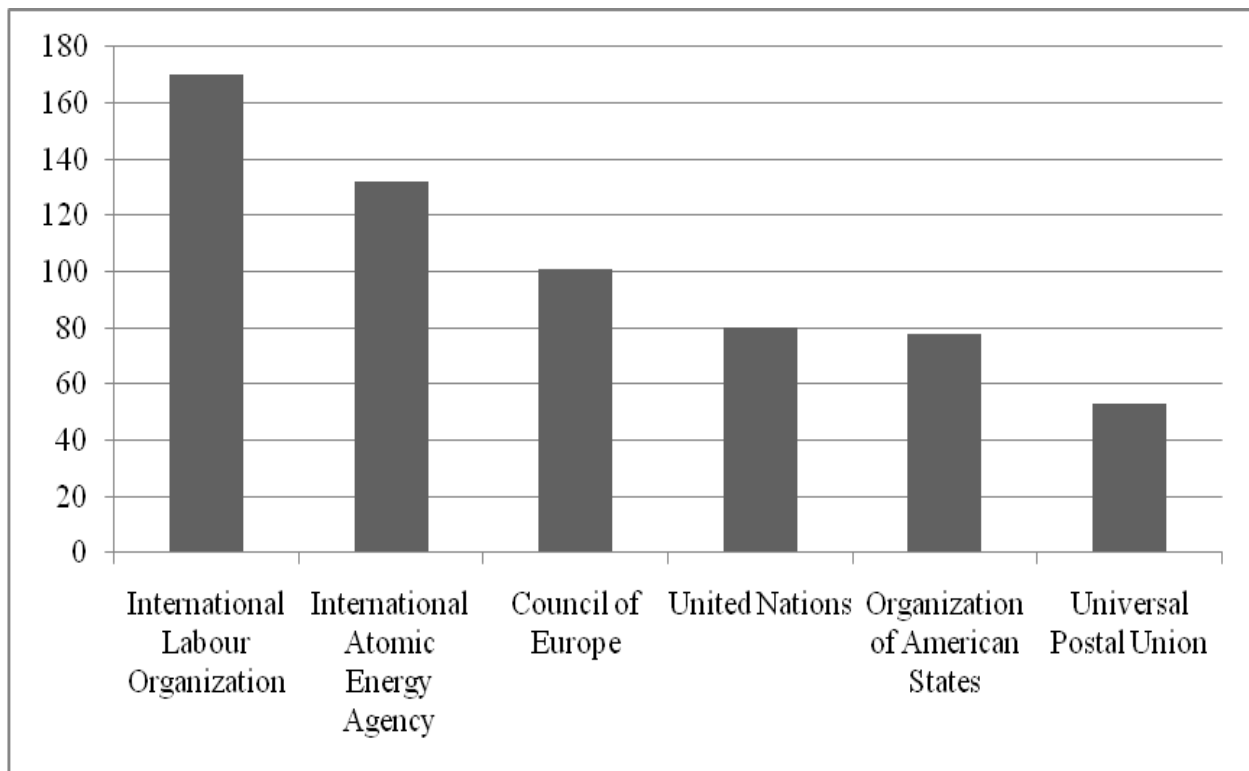


Figure 7 reveals the ILO to be the most active IGO. This organization has a long history (relative to the history of IGOs in general), a unique structure and universally applicable goals of social and economic justice through fair labor practices. These factors, along with the fact that the organization has concluded the most “Action by” instruments of any IGO, make it worth studying more in-depth.

The ILO was created in 1919, following WWI, as part of the Treaty of Versailles, which simultaneously established the League of Nations.¹⁰⁶ The ILO was thus one of the first IGOs created that would be given the status of a specialized agency. When the League of Nations was

¹⁰⁶ *Covenant of the League of Nations*, *supra* note 93.

replaced by the UN in 1945, the ILO subsequently became a specialized agency of the UN.¹⁰⁷ Among UN specialized agencies, the ILO is unique in that, due to its early creation, it is often referred to as the “old lady” of UN specialized agencies,¹⁰⁸ yet is viewed as a revolutionary organization due to its tripartite structure.¹⁰⁹ This tripartite structure means that the ILO functions as a collaboration not only among member states, but also among employers and worker unions.¹¹⁰ The ILO is the only UN specialized agency, and one of the only IGOs in general, to operate within a tripartite structure,¹¹¹ which is likely a major factor contributing to its success in treaty-making, leading to its recognition as a “machine” in reference to actions through treaties.¹¹² Looking at the policies the ILO aims to enact, this prolific treaty output is a great benefit to workers around the world, and the international community as a whole.

ILO Director-General Juan Somavia explains the goals of the organization:

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity.¹¹³

Additionally, the ILO has four main objectives:

- Promote and realize standards and fundamental principles and rights at work
- Create greater opportunities for women and men to decent employment and income
- Enhance the coverage and effectiveness of social protection for all
- Strengthen tripartism and social dialogue¹¹⁴

¹⁰⁷ F. Maupain, *The ILO's Standard-Setting Action: International Legislation or Treaty Law?* In: *Multilateral Treaty-making*, American Society of International Law 41, Martinus Nijhoff Publishers, 2000, pp. 129.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ International Labour Organization official website, www.ilo.org.

¹¹¹ *Id.*

¹¹² Alvarez, *supra* note 55, at 327.

¹¹³ ILO official website, *supra* note 110.

¹¹⁴ *Id.*

This is certainly a noble agenda, and, along with the organization's unique government/employer/worker tripartite cooperation and remarkably efficient treaty-making, reveals the ILO to be one of the most important IGOs from its inception in 1919 through today. Below are several examples of important ILO "Action by" treaties.

- Convention (No. 5) fixing the minimum age for admission of children to industrial employment, 28 November 1919.¹¹⁵
- Convention (No. 62) concerning safety provisions in the building industry, 23 June 1937.¹¹⁶
- Convention (No. 121) concerning benefits in the case of employment injury, 8 July 1964.¹¹⁷
- Convention (No. 155) concerning occupational safety and health in the working environment, 22 June 1981.¹¹⁸
- Convention (No. 156) concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities, 23 June 1981.¹¹⁹

In addition to assessing which IGOs are most active in multilateral treaty-making, it is important to understand what type of actions IGOs typically take through treaties. The CSDMT also tracks the category of each treaty, which allows for such an analysis. Figure 8 breaks down IGO actions by category.¹²⁰

¹¹⁵ 38 UNTS 81.

¹¹⁶ 40 UNTS 233.

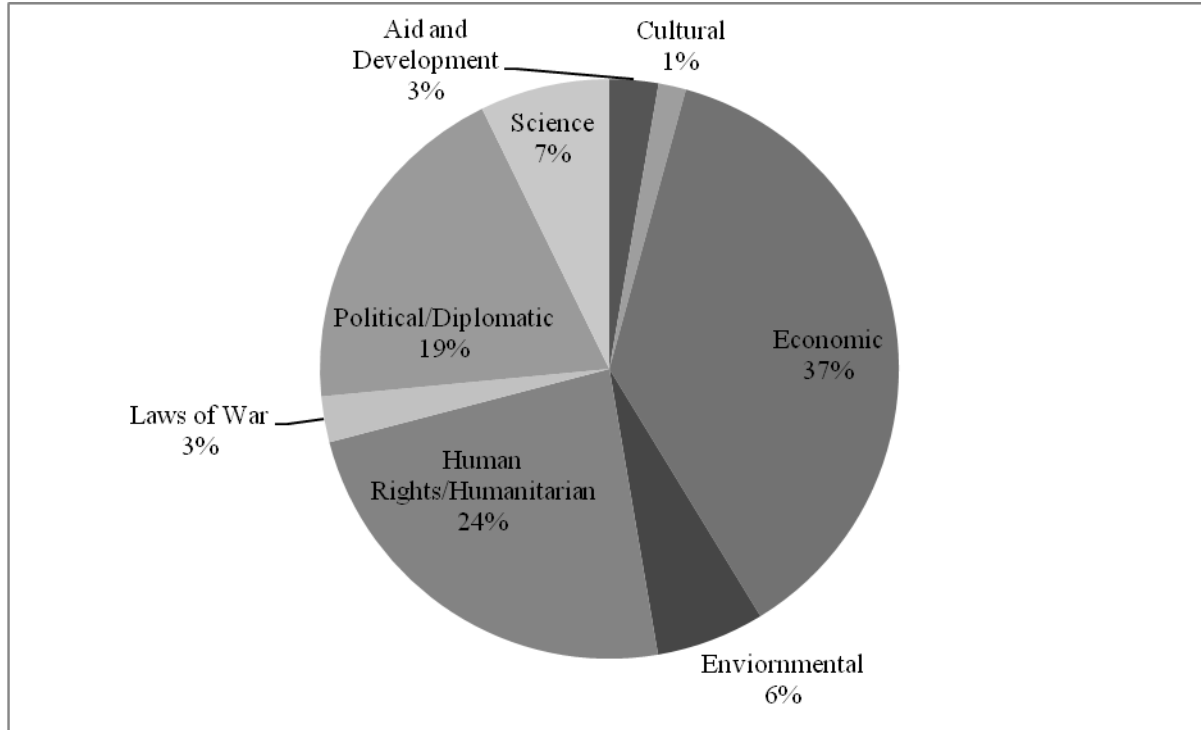
¹¹⁷ 560 UNTS 201.

¹¹⁸ 1331 UNTS 279.

¹¹⁹ 1331 UNTS 295.

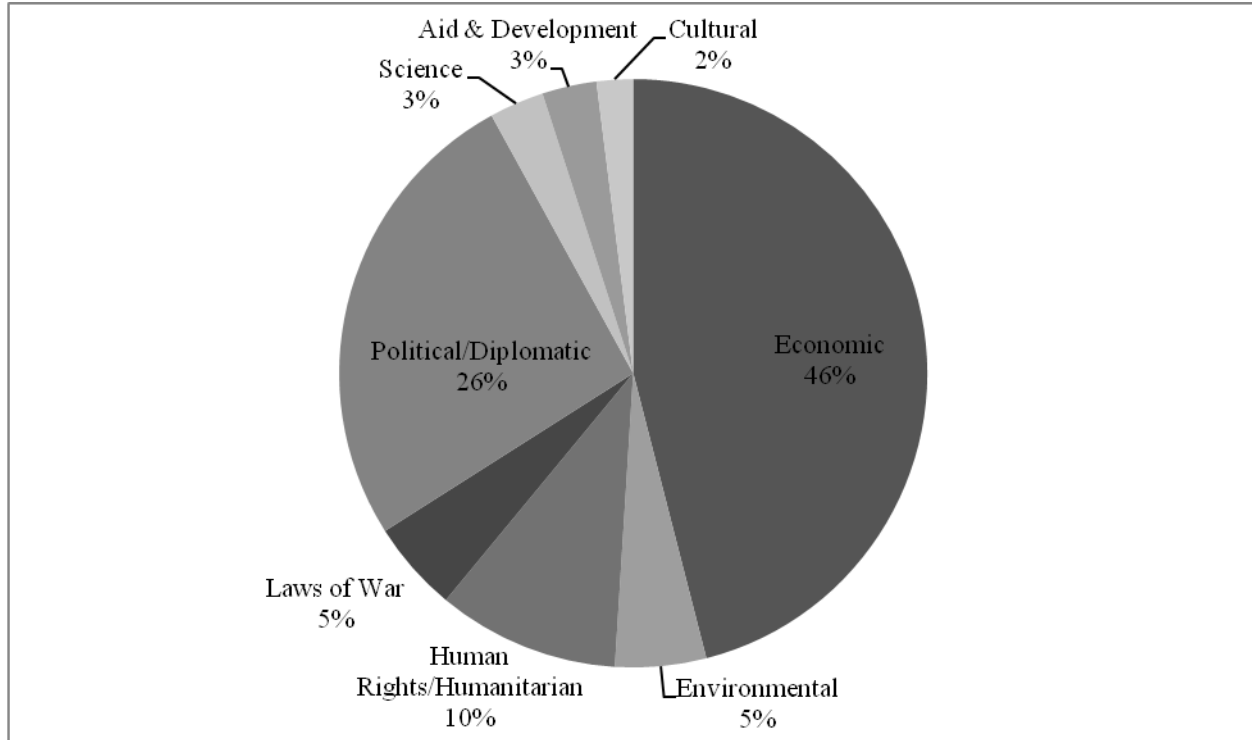
¹²⁰ Categorizing multilateral treaties can be an objective practice, with inevitable overlap. Fortunately, Christine Giuliano re-categorized the CSDMT in the 2010 honors thesis *Categorizing Multilateral Treaties by Subject*; therefore, these categories have been recently analyzed and updated.

FIGURE 8: IGO ACTIONS BY CATEGORY



These data show that the plurality of IGO actions are economic in nature, with “Human Rights/Humanitarian” and “Political/Diplomatic” completing the top three categories. This graph is useful in that it offers a broad picture of the principal foci of IGOs. It is also worth noting how this breakdown compares to all treaties contained in the database, across all “IGO Relation values.” This categorical distribution is shown in Figure 9.

FIGURE 9: CATEGORIES OF ALL CSDMT TREATIES



Comparing the two graphs, we see that the percentage of “Economic” treaties drops from 46% in the general sample to 37% in the IGO action sample, while “Political/Diplomatic” treaties drop from 26% to 19%. As we can see, these percentages were generally “redistributed” into the “Human Rights/Humanitarian” category, which rose from 10% of total treaties in the general sample to 24% in the IGO action sample. The shift in categorical distribution caused by IGO actions is certainly a product of the ILO. Nearly every treaty coded as an “Action by” the ILO is also coded as “Human Rights/Humanitarian,” and as the ILO has more “Action by” treaties than any other IGO,¹²¹ these treaties can be concluded to be the driving force behind this change.

¹²¹ See Figure 7.

IGO Creation

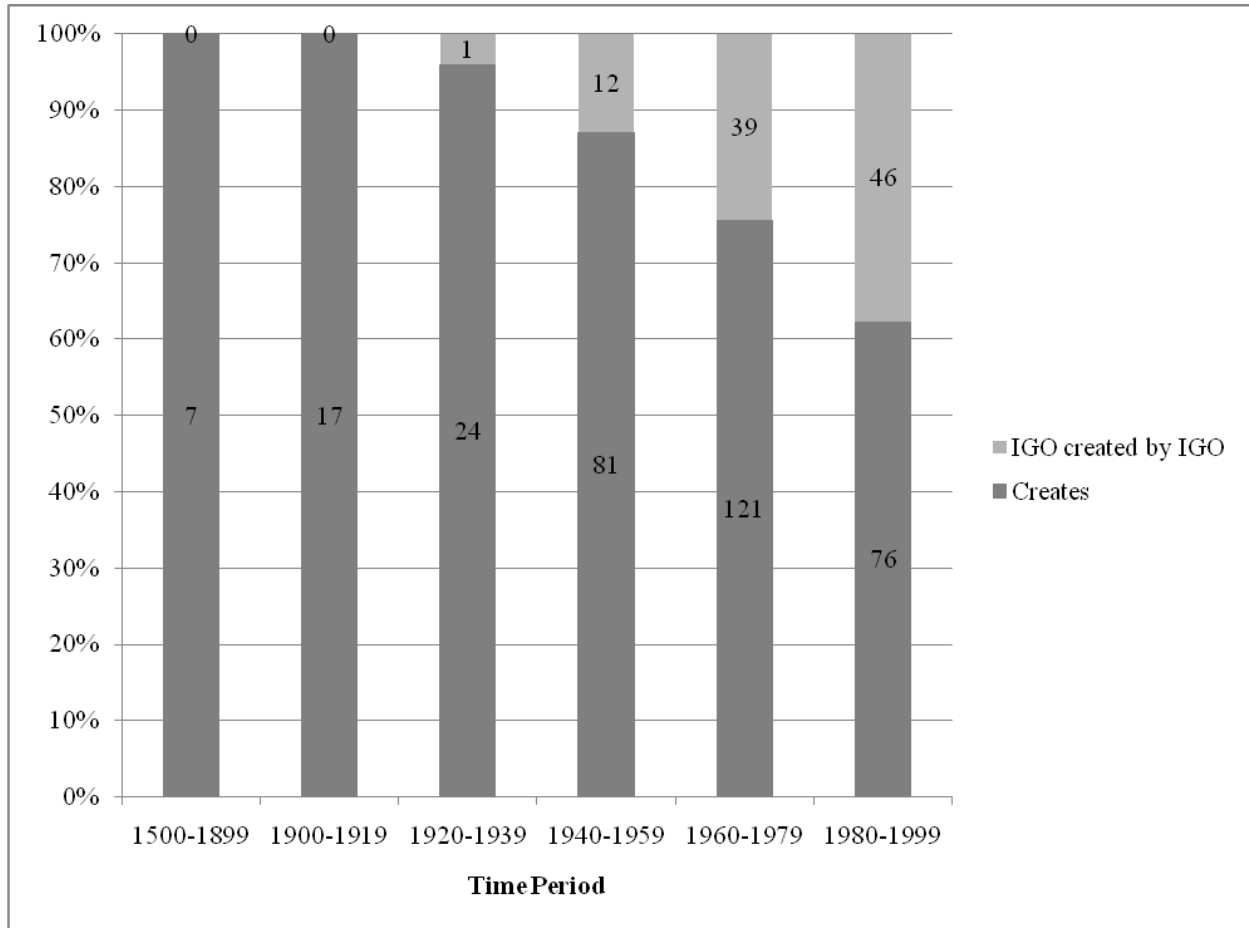
As discussed in the previous section, *History of IGOs*,¹²² there is a consensus that IGOs were not major international actors until the 20th century, particularly following WWII.¹²³ However, as a primary goal of this work is using quantitative data to test assertions that have been mostly qualitative or speculative, I again refer back to Figure 4. We indeed see a rise in IGO creation, both through the “Creates” and “IGO Created by an IGO” values, confirming that IGOs are a relatively recent phenomenon.

A more complex issue concerning that of IGOs created by an existing IGO. These are the organizations typically referred to as specialized agencies, or subsidiary IGOs. As shown in Figure 7, in which the two most active IGOs are specialized agencies of the UN (the ILO and IAEA, respectively), these organizations have become very active in international relations. It is therefore instructive to understand how the practice of IGOs creating other IGOs has evolved in the context of the general development of IGOs themselves. Figure 10 shows what percentage of IGO creations are original vs. subsidiary over time, with the total number of instruments shown in the corresponding graph segments.

¹²² pp. 7.

¹²³ See Jacobsen, *supra* note 26, and Buergenthal and Murphy, *supra* note 27.

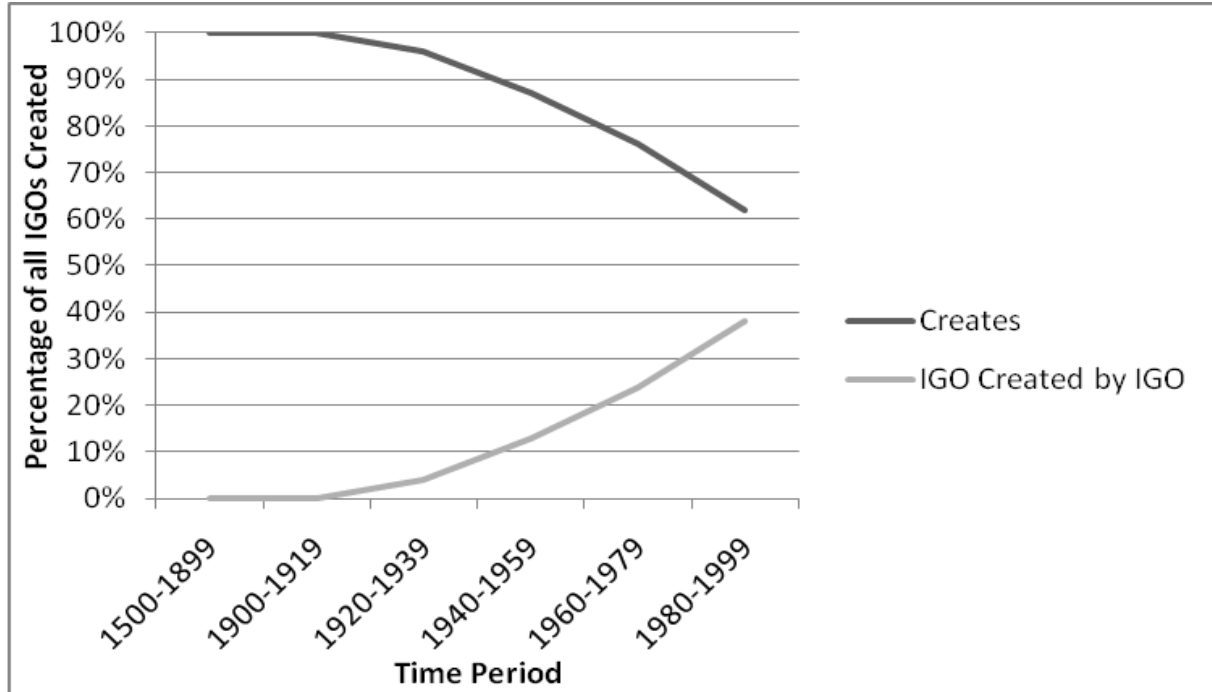
FIGURE 10: IGO CREATION OVER TIME: ORIGINAL V. SUBSIDIARY



As this graph shows, the creation of subsidiary IGOs, while beginning in the post-WWI era (the League of Nations and ILO immediately come to mind), became increasingly prevalent following WWII and the creation of the UN. These data indeed lend credibility to Alvarez’s claim that IGOs have become “adept at reproducing themselves,”¹²⁴ providing statistical evidence and a clear visual confirmation of the practice. Figure 11 represents the data in slightly different form, and shows the dramatic convergence of IGOs created as original vs. subsidiary.

¹²⁴ Alvarez, *supra* note 55, at 334.

FIGURE 11: ORIGINAL AND SUBSIDIARY IGO CREATION OVER TIME

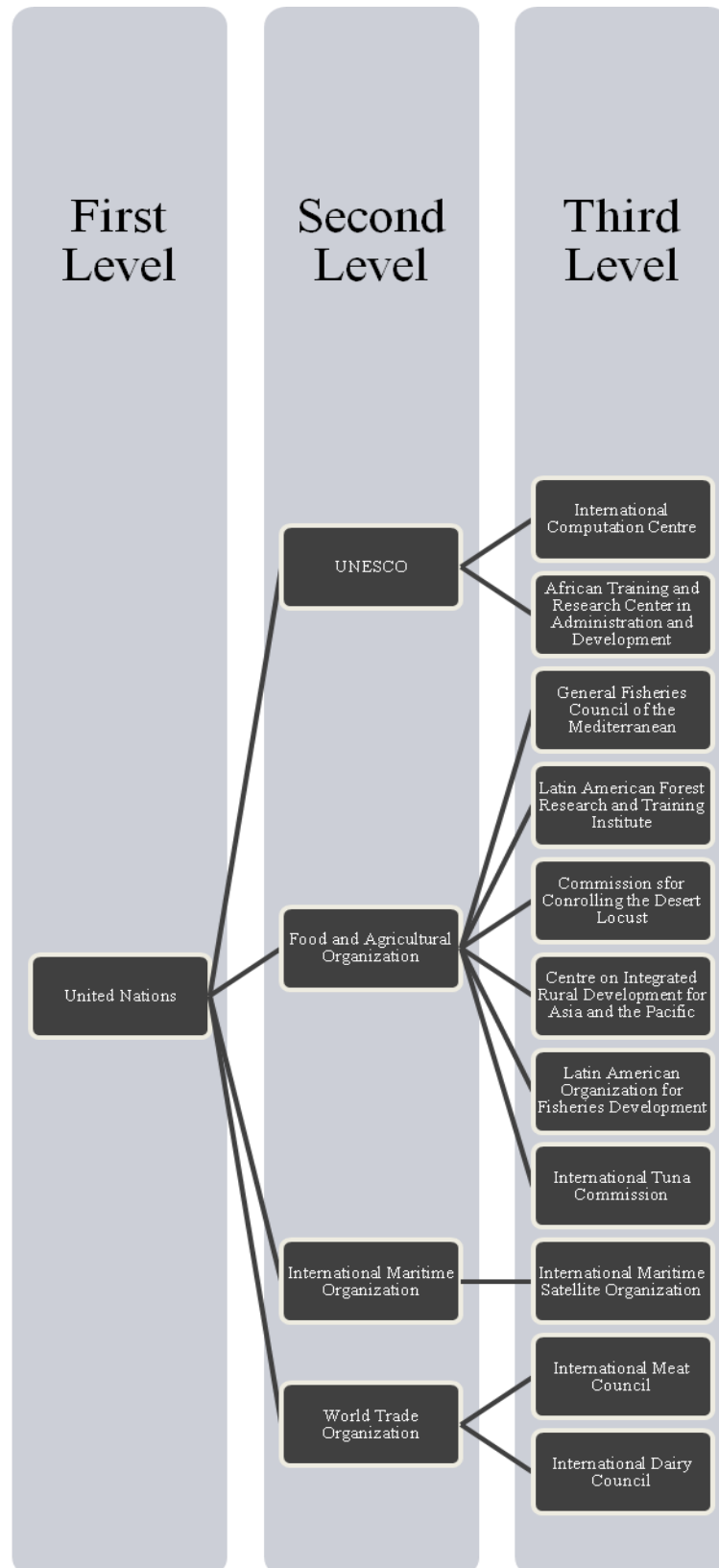


As each of these graphs show, the practice of IGOs creating new IGOs has become increasingly prevalent in the second half of the 20th century. This is likely due to the influence of the UN and its many specialized agencies. Furthermore, it is not uncommon for specialized agencies themselves to create subsidiary organizations. This is the process Alvarez referred to,¹²⁵ and Figure 12 illustrates how IGOs reproduce themselves, using the UN and its specialized agencies as an example.¹²⁶ The “first level” is the UN; the “second level” is composed of specialized agencies created directly by the UN, and the “third level” is composed of specialized agencies subsequently created by a “second level” agency. This figure was created using the “IGO Created by IGO” value.

¹²⁵ *Id.*

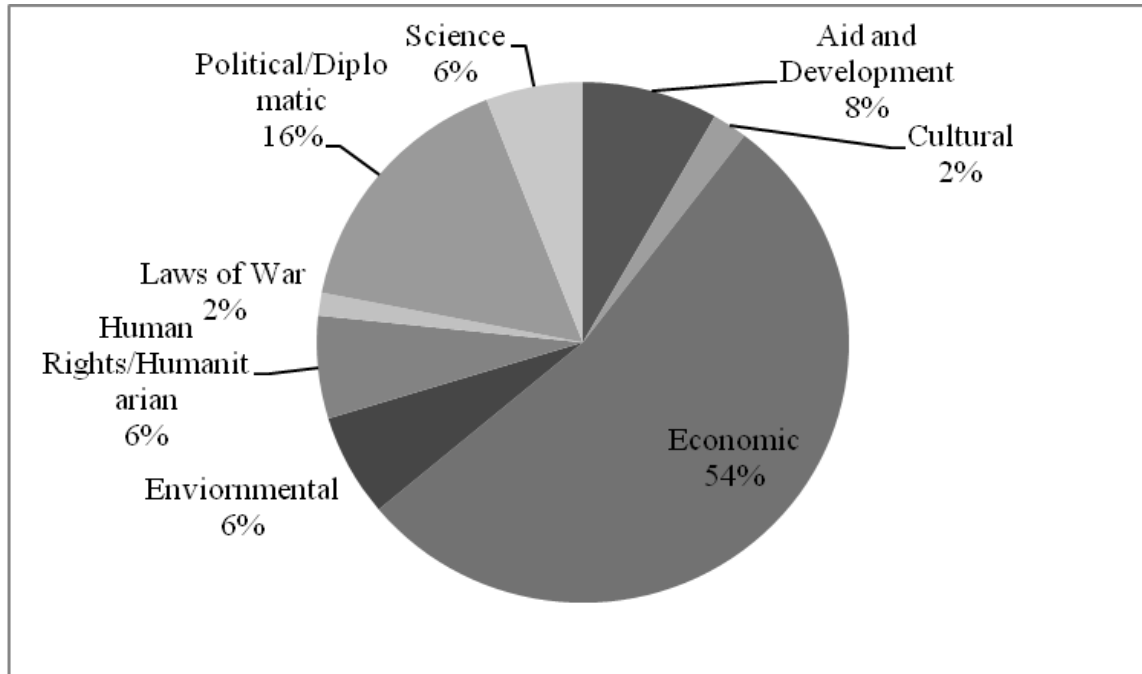
¹²⁶ This chart is not a comprehensive list of UN specialized agencies, merely a visual example of how the IGO “reproduction” process works.

FIGURE 12: SPECIALIZED AGENCIES OF THE UNITED NATIONS



As with the discussion of treaties that are actions by IGOs, it is instructive to investigate the purposes for which IGOs are created. Figure 13 shows the percentage of IGOs created by category.

FIGURE 13: PERCENTAGE OF IGOs CREATED BY CATEGORY



This chart illustrates that more than half of all IGOs created are economic in nature (54%), with “Political/Diplomatic” having the second highest percentage at 16%, and no other category containing more than 8%. This graph shows is fairly straightforward; it is an insight into the primary focus of states in creating IGOs. These data should also be understood in the context of IGO actions. While a plurality of IGO actions also have an economic focus,¹²⁷ at 37%, the percentage is considerably less than the 54% of IGOs created for economic purposes. Conversely, while 24% of IGO actions fall under “Human Rights/Humanitarian,”¹²⁸ this category constitutes only 6% of IGO creations. This sharp contrast confirms the role of the ILO.

¹²⁷ See Figure 8.

¹²⁸ *Id.*

Because the ILO is responsible for the most “Action by” treaties,¹²⁹ and that nearly all of these treaties are categorized as “Human Rights/Humanitarian,” one would expect that the respective percentages in Tables 8 and 13 would have a fairly large gap, since a single IGO is responsible for a large percentage of treaties in a single category. Furthermore, since there is no single IGO that creates such a large portion of economic treaties,¹³⁰ it also follows that the corresponding percentages would be higher in Table 13 than Table 8.

IGOs as Parties to Treaties

As the legal personality of IGOs was confirmed by the ICJ Advisory Opinion of 1949,¹³¹ the practice of an IGO being a party to a treaty has been moving into customary international law, and the UN even drafted a treaty codifying this practice.¹³² This is also a recent phenomenon in the history of IGOs. The first example of an IGO acting as a party to a multilateral treaty was in 1949, when the Belgo-Luxembourg Economic Union (BLEU) concluded the *Tariff Convention* with the Netherlands and Switzerland.¹³³

The BLEU presented a challenge in coding this variable. While it may feel uncomfortable to label an organization with only two states as an IGO, the definition developed in the introduction does not contain a requirement that an organization be composed of more than two states; most other scholars also have excluded this requirement from their definition of an IGO.¹³⁴ Rather, the definition of an IGO is focused on the organization’s structure and legal personality. The BLEU certainly meets this requirement, with a Mixed Administrative Council

¹²⁹ See Figure 7.

¹³⁰ Though one wonders if the WTO will eventually rise to this role.

¹³¹ *Reparations for Injuries Suffered in the Service of the United Nations*, *supra* note 32.

¹³² *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, *supra* note 63.

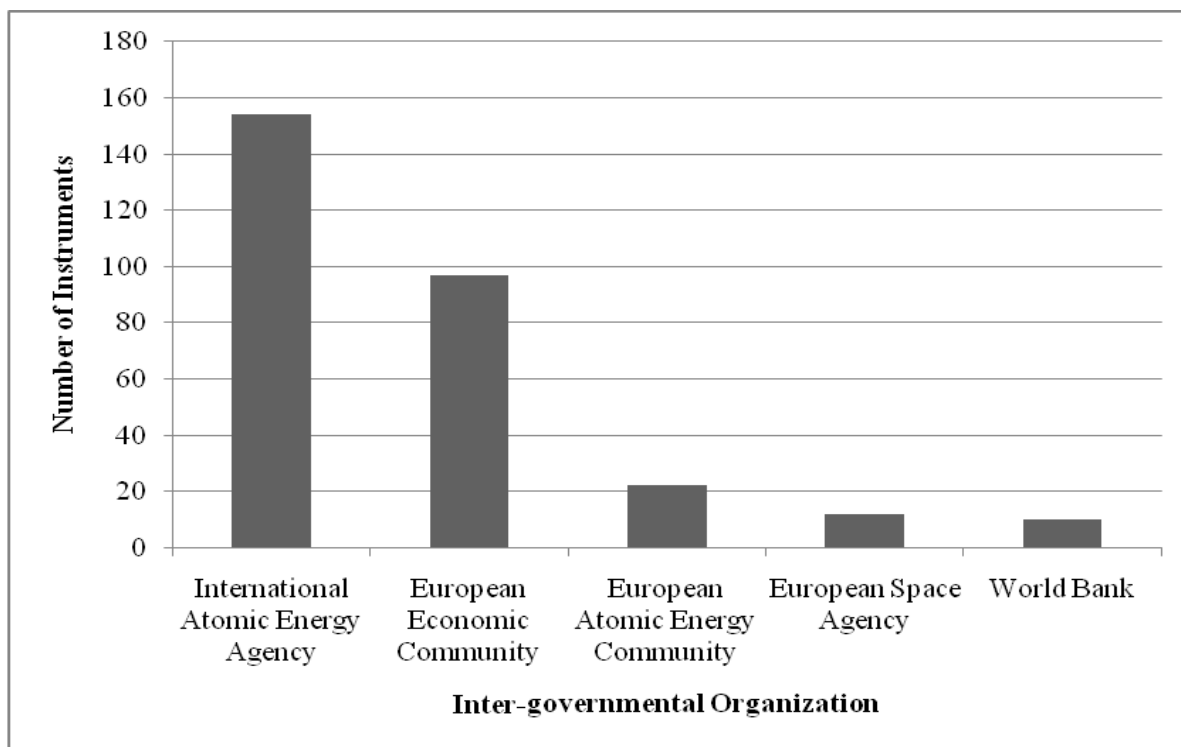
¹³³ *Tariff Convention*, 12 February 1949, 189 UNTS 33.

¹³⁴ See *Defining IGOs*, pp. 3.

and a Superior Council, composed of members of Belgium and Luxembourg, which conduct regular meetings.¹³⁵ The organization regularly concludes and acts as a party to treaties,¹³⁶ strengthening its case as an IGO under the legal personality standard.

As IGOs acting as parties to treaties is, like so many other aspects of IGO treaty behavior, principally a post-UN phenomenon, the next is analyzing which IGOs have been the most frequent treaty parties. Figure 14 displays the IGOs that have acted as a party to the most multilateral treaties.

FIGURE 14: TOP 5 IGOS TO ACT AS PARTIES TO TREATIES



¹³⁵ *Belgium and Luxembourg Convention for the establishment of an Economic Union between the two countries*, 25 July 1921, 9 LNTS 224, Articles 19 and 27.

¹³⁶ While BLEU serves as a party to a number of multilateral treaties, it has also concluded a large number of bilateral treaties with one other state, which were excluded from this analysis.

As shown in Figure 14, the IAEA has been party to substantially more multilateral treaties more than any other IGO. The IAEA has also completed more “Action by” treaties than any other IGO, except for the ILO.¹³⁷ This high level of activity makes the IAEA, like the ILO, an IGO worth studying more closely, especially given the IAEA’s important agenda and function.

The IAEA was formed in 1956 as a specialized agency of the United Nations.¹³⁸ The genesis of the organization was U.S. President Dwight D. Eisenhower’s famous “Atoms of Peace” address to the United Nations in 1953, in which Eisenhower called for an international body to oversee the development of projects dealing with recently discovered atomic energy.¹³⁹ The IAEA has a three-pillared mission (all pillars referring to the field of nuclear energy): to promote safety and security, science and technology, and safeguards and verification.¹⁴⁰ We see this mission implemented through many of the IAEA treaties, such as the examples below, many of which were instruments concluded explicitly to set nuclear safeguard provisions.

The IAEA’s impressive treaty-making record is best explained by the organization’s well-organized structure and global reach. The IAEA Secretariat is headquartered in Vienna, Austria, with regional liaison offices in Geneva, Switzerland; New York, USA; Toronto, Canada; and Tokyo, Japan.¹⁴¹ The IAEA conducts approximately 30-40 official conferences and meetings per year,¹⁴² more than most other IGOs. An additional explanation for the IAEA’s prominence in multilateral treaty-making may be the field that the agency addresses. Few would

¹³⁷ See Figure 7.

¹³⁸ *Statute of the International Atomic Energy Agency*, 26 October 1956, 276UNTS 003.

¹³⁹ International Atomic Energy Agency official website, www.iaea.org.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

argue that nuclear weapons are one of the foremost concerns in the world today,¹⁴³ as is the the field of nuclear power plants. Given the importance of proper regulation of the nuclear energy field, one must appreciate the IAEA's important role in international relations, particularly when it comes to multilateral treaty-making. Below are several examples of treaties to which the organization has served as a party.

- Agreement concerning cooperative research in reactor science, 10 April 1970.¹⁴⁴
- Agreement on the application of safeguards, 09 June 1982.¹⁴⁵
- Agreement concerning the transfer of enriched uranium for materials test reactor fuel development, 15 January 1995.¹⁴⁶

Figure 14 also shows the European Economic Community (EEC) as the IGO that has been a party to more multilateral treaties than any other, except for the IAEA. A detailed examination of the history and structure of the EEC is a complicated endeavor that is well beyond the scope of this thesis. However, an analysis of IGOs and multilateral treaties should not neglect this issue entirely.

The EEC was established in 1957 by what is known as the Treaty of Rome.¹⁴⁷ In 1965 the EEC, the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) merged into what became known as the European Communities, or European Community (EC) through a treaty concluded among member states of the three organizations.¹⁴⁸ However, even after the EEC became part of the EC, it continued to function as an independent organization; many treaties concluded after the creation of the EC nevertheless

¹⁴³ U.S. president Barack Obama was awarded the Nobel Peace Prize in October 2009, after less than a year in office, simply for his goal of creating a world free of nuclear weapons. See Nobel Prize official website, www.nobelprize.org

¹⁴⁴ 795 UNTS 029.

¹⁴⁵ 1312 UNTS 215.

¹⁴⁶ 1843 UNTS 252.

¹⁴⁷ *Treaty establishing the European Economic Community*, 25 March 1957, 294 UNTS 017.

¹⁴⁸ D. Dinan, *An Ever Closer Union? An Introduction to the European Community*, Lynne Rienner, 1994, pp. 63.

explicitly stated that the EEC signed as a party, while others explicitly stated that the EC signed as a party. Therefore, the EEC was still analyzed as a separate, independent IGO, when it was clear that the organization acted on its own accord and not as part of the EC. In 1992 the EC became what is now known as the European Union (EU) through the Maastricht Treaty.¹⁴⁹

While organizations such as the IAEA and EEC have served as a party to a large number of treaties, the number of total treaties that contain an IGO as a signatory remains small. Table 6 shows the total number of instruments and respective percentages in each of the “IGO Party” values.

TABLE 6: NUMBER OF INSTRUMENTS IN EACH “IGO PARTY” VALUE

IGO Party Variable	Number/Percentage of Treaties between 1500-1999
None	5393/93%
One IGO	339/6%
Multiple IGOs ¹⁵⁰	43/1%

The data in this table show that, while the large majority of total treaties do not contain an IGO as a party, there are a substantial number of treaties to which IGOs are parties. Remembering that IGOs acting as parties to treaties is a recent phenomenon,¹⁵¹ it is likely that the percentage and complexity of IGO parties will increase.

¹⁴⁹ *Treaty on European Union*, 07 February 1992, 31 ILM 0235.

¹⁵⁰ *The Agreement on the establishment of the Joint Vienna Institute*, 23 July 1994, 33 ILM 1505, was concluded among four IGOs (World Bank, IMF, European Bank for Reconstruction and Development, Organization for Economic Cooperation and Development). It is the only treaty in the CSDMT without a state as a party.

¹⁵¹ See Chiu, *supra* note 16, at 21, and *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, *supra* note 59.

IV. Conclusion

The principal goal of this thesis was to provide a quantitative overview of the relationship between IGOs and multilateral treaties, from its historical beginnings through the 20th Century. The data presented clearly show a dramatic increase in IGO involvement with multilateral treaties over the last 500 years, with an especially large role since WWII. This increase undoubtedly was a function of the creation of the UN and its specialized agencies, as well as the rise in number of IGOs in general. These organizations provided more structured and specialized methods for addressing international issues.

The increased role played by IGOs in multilateral treaty-making may permit the international system to address complex, multi-level issues. IGOs offer a centralized structure to address specific issues, allowing for fast and efficient action when necessary. From military alliances such as NATO, to economic institutions such as the World Bank and IMF, IGOs can confront nearly any international issue. This is especially important in the interdependent world of the late 20th and early 21st Centuries. The IAEA, discussed earlier, has been one of the most active and important IGOs, playing a major role in the last half century regulating the rapid development of nuclear technology. As rogue nations such as Iran and North Korea threaten to acquire nuclear weapons, the IAEA has been instrumental in bringing behavior closer to legal norms. In an ever volatile global economy, the World Bank and IMF, along with many other organizations, have stabilized the world economy and created the climate for global economic growth. Currently the International Criminal Court (ICC) is pursuing cases against many dictators and warlords for crimes against humanity.¹⁵² As the 2011 Arab revolutions burn through the Middle East, IGOs such as the UN, EU, NATO, and the Arab League, among others, have been crucial in providing military and economic assistance to minimize bloodshed and

¹⁵² “Will they go quietly?” *The Economist*, 29 December 2010.

chaos. IGOs would have had much less influence were it not for the intricate, interactive, complex treaty-making process of the 20th Century.

The importance of IGOs is the primary reason it is essential to understand their relationship to multilateral treaties, and appreciate the growing strength and complexity of that relationship. As treaties are the primary source of international law,¹⁵³ they often are the best, if not the only, way to create and modify IGOs capable of operating on today's international plane. The instruments that create IGOs typically grant the organization the power to take appropriate action against member states. These actions can range from economic sanctions to court proceedings to military intervention. The term "appropriate," while inherently vague, has become clearer because of incredible efforts drafting thousands of treaties. Most treaties create detailed requirements to be imposed upon the parties, and specific sanctions for noncompliance. The principle of sovereignty is important in international relations, and many states naturally guard their sovereignty closely. Often the only strong legal justification for outside intervention is when states fail to abide by the terms of treaties to which they are a party. International courts such as the ICJ, ICC, and European Court of Justice (ECJ), provide the venue for prosecution of treaty violations.

The relationship between IGOs and multilateral treaties is dauntingly complex. Defining an IGO is no easy feat; implementing even a very good definition is even more difficult. The definitions and approaches developed here improve our understanding of this complex relationship. Further work, some within the context of the CSDMT, is needed. One has the feeling that we have untangled a complex evolving relationship between treaties and IGOs. Successful future scholarship must acknowledge the developing multi-level linkages between IGOs and treaties to understand them better.

¹⁵³ Buergenthal & Murphy, *supra* note 27, at 21.

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