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Conflict, Cooperation, and the World's Legal Systems

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To My Family

I dedicate this dissertation to my wonderful family, both in Poland and in America. To my husband Charles Wesley, whose never-ending support, love, and patience with my efforts have made my journey through the graduate school such a pleasure. Without your constant support, encouragement, and smile I could have not even tackled this challenge. Thank you for enduring four long years of commuting between Mobile and Tallahassee. To my daughter Scarlett Sophia, yet unborn, whose amazing presence made this project so unique and gratifying. We both wrote this dissertation. To my wonderful parents, Elżbieta and Jerzy, brother Tadeusz, and grandmother Zofia, who have always believed in my abilities, and supported me through my education both in Poland and in America. Never have any of you doubted even for a moment that I could achieve my goals. Thank you for all that you have done for me.

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ABSTRACT

In this dissertation, I explore the relationship between legal systems, the rule of law, and states' cooperative and conflictual behavior. I analyze how domestic legal systems (common, civil, Islamic, etc.) influence a state's foreign policy behavior towards other states and international regimes. I also consider the extent to which the legitimacy of a domestic legal system modifies the relationship between legal systems and foreign policy behavior. In particular, I address the following questions: 1) How does the similarity of domestic legal system influence a state's foreign policy behavior towards other states and international institutions?, and 2) How does the legitimacy of a domestic legal system shape states' behavior towards other states and international institutions. I put forth a legal normative argument, which traces the reasons standing behind states' actions to their internal legal structure. I argue that states with similar and highly legitimate legal systems are more likely to cooperate with one another than states representing divergent and weakly legitimate legal traditions. In the same way, a nation is more likely to be supportive of an international institution if its legal rules and procedures resemble the nation's domestic legal order. My argument can be summarized as follows: International cooperation, both formal and informal, can be understood as contractual relationships. Domestic legal systems have an important effect on the way that states bargain over international contracts, because they affect the costs, benefits, and uncertainties of interstate cooperation. In particular, domestic legal system types and legitimacy influence contractual relations as far as the probability of signing interstate contracts, design of contracts, and their enforcement. I test my argument empirically in three different areas: states' propensity to accept the compulsory jurisdiction of the International Court of Justice; alliances; and the link existing between states' legal tradition and their conflictual interstate behavior. I find that both of the characteristics of the internal legal structure, legal system type and legitimacy, have a substantial impact on the way that states behave on the international arena.

CHAPTER ONE

INTRODUCTION

The relationship between internal characteristics of a state and its behavior on the international arena has constituted for a relatively long time a vibrant and thriving area of scientific research. In particular, a substantial number of scholars have argued that certain characteristics of an internal design, be it political or economical, play a substantial role in shaping states' external conduct in relation to other states and international institutions. Factors such as regime similarity, cultural, and economic correspondence between two states have been shown to account for increased cooperation between them.

First of all, the leading focus within the body of literature that investigates the connections between domestic and international politics has been on regime type. Especially the proposition that democratic regimes are less likely to go to war with one another has received the most extensive attention (Russett, 1993, Maoz and Russett, 1993, Bueno de Mesquita, Morrow, Siverson, and Smith, 1999). While some scholars posit that it goes much too far to claim that the lack of war between democracies "comes as close as anything we have to an empirical law in international relations (Levy, 1989:270), until this time no one has discovered a stronger empirical regularity (Levy, 2005). The two leading explanations of the 'democratic peace', the normative and structural, have attempted to elucidate our understanding of the relationship between democratic regime type and states' propensity to engage in international disputes. The normative argument suggests that democracies are inherently averse to war due to the fact that they share norms of peaceful resolution of disputes. These internal norms are projected to relations among states. Both democratic and nondemocratic regimes project abroad norms that typify their domestic political processes. The crux of the normative argument can be very simply summarized as follows: democracies prefer to act toward

one another according to the norms characteristic to their internal institutional design. Because political conflicts in democracies are resolved through peaceful means, these norms projected outside the borders of democratic states lead to peaceful relations between democracies. Thus, a type of consensus has developed between democracies, which allows them to "build a separate peace among them" (Kacowicz, 1995:266). In short, the shared common value system such as respect for individual freedoms and fair competition has led to peace among democratic states.

The structural explanation,[1] on the other hand, implies that due to the complexity of democratic processes and the requirement for securing a broad base of support for risky policies, "democratic leaders are reluctant to wage wars, except in cases wherein war seems a necessity or when the war aims are seen as justifying the mobilization costs" (Maoz and Russett, 1993:626). This explanation emphasizes check and balances, the distribution of power, and the role of free press. Institutions such as these push political leaders to consult the publics before adopting risky policies. Additional insights to the democratic peace theory are provided by the rationalist explanations. Schultz (1998), for example, provides an alternative rationalization for the democratic peace, which is based on a signaling game and the transparency of the democratic processes and institutions. Also, Bueno de Mesquita et al. (1999) in a institutional explanation of the democratic peace provide additional insights into behavior of democracies on the international plane. They present a game-theoretic model that incorporates strategic interactions between democracies and their adversaries. The model presented by these scholars puts emphasis on political survival as the primary goal of political leaders.

Scholarly efforts to investigate the link between regime type and international behavior are not, however, limited to the notion of the democratic peace. The 'similarity' argument has also been extensively used in the alliances literature, where the main argument has been that a state may seek an alliance partner with a political system similar to its own. Findings in this area suggest that states with similar regimes prefer to align with one another rather than with states whose domestic characteristics are divergent (Walt, 1987, Siverson and Emmons, 1991, Leeds, 1999, Lai and Reiter, 2000). According to Leeds (1999), for example,

[1] The structural model is also called the 'institutional constraints model.'

> "Domestic political institutions affect international behavior because they affect the costs and benefits that leaders expect from different foreign policy actions. The systems of incentives and constraints that arise as a result of the rules of domestic politics influence the behavior of leaders. Not only do domestic politics influence the decisions of a state's chief executive in international affairs, but domestic politics also affects the expectations and decisions of other leaders interacting with the state in question" (p.997).

This relationship is shown to hold not only among democracies but also among other types of regimes, such as, for example, autocracies (Peceny et al, 2002). The crux of the institutional similarity argument in the alliance literature is that similarity of internal political design encourages formation and survival of alliances.

Secondly, quite a few scholars have investigated the relationship between cultural similarity and states' behavior in the international realm. Perhaps the most well known argument in this group is Huntington's clash of civilizations thesis (1993, 1996). Huntington's central assertion is that states belonging to divergent civilizations, and thus culturally diverse, are more likely to engage in conflict with one another. By the same token, conflict among states belonging to the same civilization, and thus culturally alike, is much less likely. According to this influential view, the world is fundamentally separated along cultural or civilizational lines and it is these main divisions that are most likely to shape global politics after the Cold War. Thus, Huntington claims that state behavior in this time frame will no longer reflect calculations of power or ideology, but rather civilizational, cultural, and religious affiliations (Cederman, 2005). It is similarity and dissimilarity along these lines that should determine patterns of international conflict.

Thirdly, the similarity argument has been developed in the literature on formation of international institutions. States, according to Koremenos et al. (2001), "spend significant amounts of time and effort constructing institutions precisely because they can advance or impede state goals in the international economy, the environment, and national security" (p.762). The argument in this strand of the literature is that states design institutions that reflect their internal institutional design. Ikenberry (2001), for example, argues that democratic hegemons create institutions with democratic features, such as transparency, and popular voice. The purpose of such design is to 'lock in' a favorable and durable international order, which in the process takes on 'constitutional' characteristics. As a result, the democratic design of international institutions causes them

to be more credible and more effective in mitigating implications of power asymmetry in the international system. Also, Mansfield and Pevehouse (2006) argue that states' domestic institutional design explains decisions of states to join international institutions. They show that when states seek to democratize, their join certain international institutions in order to send credible signals about their inherent commitment to international organizations. Also, according to the constructivist view, institutions are seen as overarching patters of relations between states that in fact define and reproduce the interest, identities, and actions of states (Wendt, 2001).

These strands of literature have demonstrated that internal characteristics, such as regime type, historical, cultural, and religious features are crucial in understanding behavior of states on the international arena. First of all, domestic characteristics seem to shape the relations between states. Secondly, features of internal institutional design influence how states behave towards international institutions. While the above-described scholarship has significantly increased our understanding of international relations, neither of these literatures has adequately considered another very important dimension of similarity, namely, similarity of domestic legal institutions. Thus, legal characteristics such as the domestic legal system type and the degree of respect for the rule of law (legitimacy of a domestic legal system) have not been focused upon.

My approach allows me to explain cooperative and conflictual behavior of states that the above-described literatures cannot account for. For example, the democratic peace literature focuses on increased levels of cooperation between democracies, but cannot fully explain why states with different regimes often times cooperate with one another, or why democracies are sometimes involved in conflict with each other. Why are alliances signed not only between two democracies, but also between states with divergent regime types? The same argument could be applied to Huntington's clash of civilizations thesis, which explains why states belonging to divergent civilizations are more likely to fight one another. What about conflict between states that belong to the same civilization? Huntington's theory cannot fully explain why conflict between states of the same cultural/religious background occurs. Table 1.1 incorporates information regarding conflict between states with similar/different regime types, Table 1.2 regards conflict between states belonging to similar/different civilizations, and Table 1.3

considers propensity of states with similar/different regime types to form alliances.[2] As Table 1.1 shows, conflict occurs within mixed dyads (66%), autocratic dyads (30%), and democratic dyads (4%). In the same way, conflict occurs, as Table 1.2 shows, not only between states belonging to different civilizations (65%), but also between states belonging to the same civilization. In addition, alliances (Table 1.3) are formed not only between democracies (47%), or autocracies (28%), but also between states with different regime types (mixed dyads) (25%). These statistics show that there exists a puzzle that existing approaches cannot fully account for. Cooperation (or the absence of conflict) often occurs in pairs of states that have seemingly divergent interests based on their regime types or civilization memberships. In other words, existing accounts cannot explain cooperation "perfectly" because they are missing an important dimension of similarity that has a strong influence on contractual bargaining in international politics.

This dissertation's main goal is to fill the gap present in the body of literature devoted to the link between nations' domestic characteristics and their international actions. I attempt to do so by looking at the link existing between 'legal similarity' and states' behavior in the international realm. In particular, I address the following questions:1) How does the similarity of domestic legal system types influence a state's foreign policy behavior towards other states and international institutions?, and 2) How does the legitimacy of a domestic legal system shape states' behavior towards other states and international institutions? I argue that the best way to answer these questions is to build a theory that links characteristics of domestic legal design to states' behavior. My argument, developed and tested in this dissertation, can be summarized as follows: International cooperation, both formal and informal, can be understood as contractual relationships. Domestic legal systems (their type and degree of legitimacy) have an important effect on the way that states bargain over international contracts, because they affect the costs, benefits, and uncertainties of interstate cooperation. In particular, domestic legal system types and legitimacy influence contractual relations as far as the probability of signing of interstate contracts, design of contracts, and their enforcement. States which are 'legally similar' to one another are more likely to cooperate with one

[2] These data are described more fully in Chapter 5. Each case is a politically relevant dyad. A MID is a militarized interstate dispute (with one or more fatalities), while an alliance is a formal treaty with defense, offense, neutrality, non-aggression, and/or consultation provisions.

another than states with divergent legal characteristics. This similarity argument applies to both domestic legal system type and legitimacy of legal systems.

My theory and empirics included in this study shed light on the patterns of international conflict and cooperation. Perhaps the most insightful contribution of this dissertation is that it shows the importance of taking into consideration domestic legal system types and legitimacy present within each state. This study complements research devoted to the link between domestic and international realms by focusing on yet another internal feature of a state- its legal structure. The empirical results show that apart from the cultural heritage of a state and apart from its regime type, the features of its domestic legal system substantially shape foreign policy choices.

In Chapter 2, I define and describe the three major domestic legal systems present in the world: civil, common, and Islamic. Based on legal scholarship, I present in this chapter the historical evolution of these three principal legal traditions and the evolution of the 'law among nations,' or international law. I also elaborate upon the fundamental differences between the major domestic legal systems. I especially focus on the substantive and procedural differences in the law of contract, which constitutes a crucial part of any legal system. I elaborate upon vital legal principles that govern the law of contracts such as *pacta sunt servanda* (promises must be kept), *bona fides* (good faith), the right to appeal, and others. I argue that all of these differences have a significant effect on state's behavior on the international arena. Nations are familiar with legal concepts and principles that are inherent to their domestic legal order; they are, therefore, naturally inclined to apply their own understanding of legal constructs to their external behavior. Because these domestic legal systems (civil, common, and Islamic) differ according to procedures and substance, states representing different legal traditions will be less likely to cooperate with one another than states of a similar legal origin. Striking an international deal is much more likely if the two bargaining sides come from a similar legal tradition.

In Chapter 3, using a constructivist framework, I proceed to describe the evolution of domestic legal systems, and their legitimization. I argue that a domestic legal system, after being born out of inherent societal need for order and perseverance, can become a part of a state's identity through the process of norm internalization. This process ends in

a stage at which a domestic legal system is fully internalized by the state, after which the legal system is able to alter the way in which a state behaves towards other states and international institutions. In this chapter, I also describe various ways in which a state's internal legal system can become fully legitimized, such as norm-promoting agents, or through legal and religious doctrines. In the latter part of Chapter 3, I proceed to define, describe, and elaborate upon the legitimacy of a domestic legal system, or the degree of respect for the principle of the rule of law. I argue that legal structures of each state in the system vary not only according to the type of legal system (civil, common, and Islamic), but also according to the degree of legitimization of a legal system.

Chapter 4 is devoted to the discussion of the link existing between states' international behavior and their legal systems. Here, I present my arguments using a rationalist bargaining model. Following rationalist logic, I argue that we can perceive international cooperation as the result of successful bargaining. International conflict, on the other hand, can be perceived as the failure of bargaining. In this chapter, I show that we can look at all types of interstate cooperation such as alliances, trade treaties, membership in international institutions, etc., as legal contracts. In the process of bargaining between states (or between states and international institutions), legal systems and their legitimacy play a crucial role in determining whether states reach a consensus or not. I base my expectations regarding types of legal systems and their legitimacy on a simple cost-benefit argument. The costs of cooperation between two states with similar legal orders and cost of cooperation between states with strongly legitimate legal orders are much lower and more predictable than the costs of striking a deal between two states representing divergent legal traditions. Similarity of legal systems and their legitimacy significantly reduce the uncertainty of an international contractual obligation and thus increases the probability of interstate cooperation. In this part of my argument, I focus on a particular bargaining model, Fearon's (1998) model of interstate bargaining and enforcement, and show how taking into consideration internal legal structures can change predictions of this model. My examination of the cooperation between different legal system types allows me to construct specific predictions regarding behavior of civil, common, and Islamic states. These expectations deal with both the relations between states and also between states and international institutions.

Chapters 5, 6, and 7 are devoted to empirical testing of my theoretical arguments. First, in Chapter 5, I empirically test several hypotheses regarding international conflict (failure of bargaining) that stem from my theory. I expand upon Huntington's clash of civilizations thesis (1993), arguing that distinctions among legal traditions create an additional dimension of cultural variation. My argument also pertains to the broad literature on the democratic peace in that it shows that democracies, despite numerous similarities, often project abroad quite different legal norms. Thus, my argument based on the impact of 'legal similarity' on states' foreign policy choices differs substantially from the 'civilizational similarity' argument advanced by Huntington. It is also considerably different from the theoretical assertion advanced by the democratic peace, which is based on the 'similarity of regime types' arguments. In this chapter I attempt to show that legal system characteristics (type of domestic legal system and its legitimacy) have a strong effect on the likelihood of cooperation or conflict between states. Focusing on militarized interstate disputes, I hope to find that states with similar legal systems are less likely to engage in international conflict. Also, I expect that states with highly legitimate legal systems are less likely to solve their disputes in a violent way.

In Chapter 6, I test my theoretical expectations regarding cooperation between states and international institutions. The institution that I focus on is the International Court of Justice, which for nearly ninety years[3] has been accessible to all states for the peaceful settlement of disputes. In particular, I compare the three major legal systems (especially their procedural characteristics) with the structure and procedures of the World Court, arguing that the civil law states due to the inherent similarity of this legal tradition to the rule of the ICJ should be most likely to accept the compulsory jurisdiction of the Court. Islamic law states, on the other hand, should be least likely to accept the jurisdiction. I hope to find that also the degree of legitimacy of a domestic legal system strongly impacts the way that states behave towards the ICJ. I anticipate that states with high internal respect for the rule of law will be less likely to accept the jurisdiction of the Court. This expectation flows from my belief that these states only sign international commitments that they can keep. In addition to testing the initial formation of states'

[3] I consider both the International Court of Justice and its predecessor, the Permanent Court of International Justice.

commitment to the World Court (initial acceptance of the compulsory jurisdiction) and the survival of commitment, I look at the relationship between legal characteristics (both legal system type and legitimacy) and the design of states' optional clause declarations.

Chapter 7 is devoted to testing my theoretical expectations dealing with interstate cooperation. More specifically, this chapter is dedicated to testing my hypotheses regarding characteristics of domestic legal systems (type and legitimacy), and states' propensity to form and keep alliance commitments. In addition, I also look at how domestic legal system types and legitimacy can explain the design of alliances. Alliances, as a particular type of a treaty, constitute a prime example of contractual relationships between states. I hope to find that characteristics of domestic legal systems (type and legitimacy) have a strong effect on states' propensity to sign alliances, to stay committed, and also on the design of alliances. Most importantly, I assert that states with similar legal systems are more likely to form alliances with one another. Also, I expect that alliances formed by these states are more durable than alliances formed by states with different legal systems. As far as the impact of legitimacy, I argue that states with highly legitimate legal systems should be more likely to sign alliances with one another. In addition to investigating the impact of legal characteristics on the formation and survival of alliances, I also empirically examine the link between legal system types, their legitimacy, and design of alliance treaties.

I conclude in Chapter 8 with a summary of the major findings in this dissertation and I discuss several potential avenues for future research. I also talk about the importance of findings included in this dissertation and point to other areas of scientific research where the characteristics of domestic legal systems could increase our understanding of international relations.

Table 1.1 Conflict and Regime Type.

Regime Type				
		Joint Democracy	**Joint Autocracy**	**Mixed Dyad**
MID with fatalities	**No**	**16% (9,726)**	**23% (14,028)**	**61% (37,524)**
	Yes	**4% (35)**	**30% (249)**	**66% (543)**

Chi2(1) = 91.430, Pr. = 0.000

Table 1.2 Conflict and Civilization Membership.

Civilization Membership			
		The Same	**Different**
MID with fatalities	**No**	**24% (4,385)**	**76% (14,278)**
	Yes	**35% (61)**	**65% (113)**

Chi2(1) = 12.7800, Pr. = 0.000

Table 1.3 Alliances and Regime Type

Regime Type				
		Joint Democracy	**Joint Autocracy**	**Mixed Dyad**
Alliance	**No**	**36% (200,333)**	**25% (142,118)**	**39% (219,970)**
	Yes	**47% (20,232)**	**28% (11,978)**	**25% (10,832)**

Chi2(2) = 3600, Pr. = 0.000

CHAPTER TWO

LEGAL SYSTEMS- HISTORY AND TYPES

Legal Systems- Introduction

A legal order constitutes one of the crucial characteristics of a state. Each nation in the international system, as a political entity, possesses its own legal framework, which is manifested at any point in history by a complicated system of rules, norms, and principles. These rules, norms, and principles govern behavior of and relations between individuals, countless sorts of entities, and also the state itself.

A legal framework present within each state, in its entirety, is unique as far as its evolution, internal characteristics, and methods of operation. Nevertheless, according to numerous legal scholars, despite the multitude of differences existing between legal orders present in the world, both today and in the past, we can speak of so called legal families, or legal traditions (Glenn, 2000, David and Brierley, 1985). It is not only possible, but also conceptually useful to classify legal systems into some sort of groupings that share truly significant characteristics. As most scholars agree, this process of classification should be based on identifying fundamental elements of a legal order, through which "the rules to be applied are themselves discovered, interpreted and elaborated" (David and Brierley, 1985:20). Although there exist quite a few classifications of legal families, or legal systems, here I focus on three major legal systems present in the world: civil, common, and Islamic. For the purpose of this study, I define major legal systems following Gamal Moursi Badr (1978) as legal systems, "whose application extended far beyond the confines of their original birth places and whose influence, through reception of their principles, techniques or specific provisions

has been both widespread in space and enduring in time." (p.187). If we use this definition, only three legal traditions are able to be granted the name of a major legal system, and these are civil, common and Islamic law. [4]

Each of these legal families is, of course, internally intricate and complex. The legal order of the United Kingdom, which constitutes a prime example of the common law tradition, is somewhat different from the system of the United States of America, or the legal framework present in Ghana and India, which also belong to the common law legal tradition. Nevertheless, some degree of external coherence, which allows us to identify each of the legal systems, is maintained (Glenn, 2000:329). What is also characteristic of major legal systems, or families of laws, is that their boundaries are far from being impenetrable. Throughout the history of law certain legal rules and principles, such as equity, or contractual obligations, have, after originating in one legal tradition, become established in other legal systems. Here, the prime example can be provided by nations, whose legal system is sometimes categorized as mixed, where common, civil, and often times Islamic legal systems have interacted with one another and created an amalgamation of legal institutions, norms, and principles (Thailand, Israel, Niger and Brunei are examples of a mixed legal system).[5]

Legal systems are, for the most part, not static. Like any other social constructs, law undergoes never-ending changes. The world that we live in constantly evolves. Relations between humans, political and social entities and states go through continuous transformations, some of which are more or less abrupt and severe. Because of this steady process, legal orders and legal systems mature and become established. Change begins with particular legal institutions, or norms, which become unnecessary and cease to exist. Slavery in the form present under the Roman *ius civile* or pre-Civil War United States

[4] Quite a few legal scholars propose divergent classifications of legal systems, families, or traditions of the world. See Rene David and John E.C. Brierley, 1985; H. Patrick Glenn, 2000; Joireman, 2001 and 2004; La Porta, Lopez-de-Silanes, Schleifer, and Vishny, 1999. By far the most known and frequently used in classical science literature is the 'legal origin' variable constructed by La Porta et al. This variable has the following categories: English, Socialist, French, German, and Scandinavian legal origin. If we adopt the above specified definition of a major legal system, only civil (Roman), common, and Islamic legal systems are able to fulfill the requirement of the definition. Splitting the civil law family into French and German yields an unnecessary sub-categorization, since both of these legal families are based on highly similar, and often times identical procedural and substantive concepts. Also, La Porta et al.'s omission of the Islamic legal system constitutes one of major shortcomings of that categorization, since Islamic law is considered by the majority of legal scholars as one of the most important legal traditions of the world, present and past.

[5] A further elaboration on the mixed legal system takes place later in the text.

constitutes just one example. Changes in institutions, norms and rules sometimes lead to more incremental transformations in the very nature of legal orders or systems. Here, the best example is provided by the hasty dilapidation of the Socialist legal orders in Eastern Europe. After the 1989 fall of the 'iron curtain,' major principles and concepts underpinning the socialist tradition of law have been removed from domestic laws of states that belonged to the Soviet block. The major point is that law continuously changes and evolves over time. There are unquestionably lows and highs in the stability and the credibility of each legal system, as they continue to coexist in the world. National legal orders belonging to each system go forward and evolve, allowing for movement within each legal tradition itself. Yet the defining characteristics of each of the legal systems, such as distinct procedures (doctrine of precedent, codes as written sources of law, Sharia), major concepts, and principles, continue to relatively sharply delineate them.[6]

Even though the main characteristics of legal systems remain, for the most part, the same over time, they tend to differ according to their degree of legitimization. Changes in the degree of legitimization (degree to which the rule of law is respected within a legal system) account for the degree to which a legal system is able to impact states' behavior on the international arena. The issue of legitimization, its connection to the principle of the rule of law, and its impact on states' actions will be extensively discussed in chapters three and four of this dissertation.

Having elaborated on the general concept of a major legal system, I now turn to description of the historical evolution of the three principal legal traditions, civil, common, and Islamic. In addition to these three domestic legal systems, I also describe the evolution of the 'law among nations,' or the international law.

[6] In the empirical part of this dissertation, I assume that all of the legal system types remain static over time. The time frame for most of my empirical analyses is 1920-2002, and during this period we do not see any significant shifts in the characteristics of legal systems that would justify temporal variation in legal system types. I reached this conclusion after careful reading of a four volume set by Herbert Kritzer (ed.) Legal Systems of the World. A Political, Social, and Cultural Encyclopedia. I decided to focus on the time period 1920-2002 because I believe that patterns of international conflict and cooperation (alliances) in this time frame differ fundamentally from earlier times. Also, the World Court (PCIJ and the ICJ), which constitutes subject of my empirical analyses in chapter 6 was created in 1920. The types of legal systems would change time-wise, if I adopted a different categorization, for example the one including the socialist domestic legal system.

The History of Civil, Common, Islamic, and International Legal Systems

Throughout the history of human civilization, separate legal systems have developed in different parts of the world. As noted above, we can speak of three major legal traditions: civil, common, and Islamic.[7] In addition to these domestic legal orders, another important legal tradition should be mentioned, namely, that of international law. All of the four juridical traditions have developed over time into separate and distinct legal frameworks.

Civil law

The civil legal system has its roots deeply anchored in the Roman legal tradition, one of the most celebrated legal frameworks of all times. The Roman law originated, as its name suggests, in Rome, but very quickly it was able to become the law of the land in a great part of continental Europe and beyond. It came to being when Roman jurists started to record written legal opinions, legal treatises, and commentaries. Roman law, therefore, found its origins in advice given by jurisconsulta, with respect to particular cases and disputes between Roman citizens (Glenn, 2000:119). The law that emerged as a result of this practice mirrored the intricacies of relations among people under the Empire's rule. The jurisconsulta did not, however, codify their *responsa* (their legal advices concerning specific legal issues brought to them by the people). With the growth of the Roman empire, *responsa* and other forms of law accumulated and were slowly incorporated into scholarly commentaries and imperial legal pronouncements (Shapiro, 1986: 128). After the split of the Roman Empire, Roman law was eventually codified in the eastern part governed from Constantinople, where under the rule of the Emperor Justinian (527-565), the famous *Corpus Juris Civilis* was created.

[7] Table 2.1 incorporates information regarding the legal systems of the world. In addition to states belonging to the civil, common, and Islamic legal traditions, I include in this table states that have mixed legal systems. Further elaboration on this legal system is included in the first empirical chapter of this dissertation.

In this way, the legal tradition of Rome has over time developed into a mature and well-systematized system of norms, rules and principles, which became known as Roman law. When the Empire expanded, the Romans took their law with them all over Europe; the strength and authority of the Roman state stood behind all of the institutions and practices of that law. As an effect, numerous regions of Europe although familiar with this legal order, always regarded it as the law of the conqueror. After the crumbling of the Roman Empire, the influence of its law naturally diminished, and the conquered nations came back to their old, primitive, folk legal practices, which continued to remain in the knowledge of the people (Glenn, 2000:121).

This situation, however, did not last long. Roman law made a triumphant reentry to the legal circles of Europe in the turbulent events of the eleventh to thirteenth centuries, when legal proof was fundamentally changed and Roman *ius civile* was rejuvenated. The rediscovery of this ancient system of laws did not, however, happen over night. The great new universities, which took on law and theology as their principal disciplines, played a momentous role in adapting Roman law to the new ways of the times. Universities had taken on the role of entrepreneurs in once again establishing the hegemonic position of *ius civile.* As time went by, legal scholars worked on adapting the old Roman law to the new reality of the Middle Ages and then the time of the Enlightenment. As a result, Roman law taught in the universities in the fourteenth and fifteenth centuries moved further and further away from the original *ius civile*. The new Roman law was tailored, often times substantially, to new challenges of modern times (David and Brierley, 1985:44).[8] This reception of Roman law in Europe was widespread. Some countries, such as Italy, accepted principles and institutions of that law in their entirety; other nations received Roman law only as a subsidiary legal system (example: Germany, France). Thus, the Roman genius of law, as the mature and well-specified legal tradition was bound to prevail in Europe by the sole authority of its reason (Seagle, 1946:170).

From this tradition come such magnificent legal codifications as the Civil Code of Napoleon (Code Napoléon, originally called the Code civil des français, or civil code of the French) of 1804, the German Civil Code (Bürgerliches Gesetzbuch) of 1900, and the

[8] The modernized Roman law became known as the *usus modernus Pandectarum.*

Italian Civil Code (Codice Civile Italiano). These codes, by the power of their nations and by their sound legal reasoning, have been able to influence the written law of several smaller nations. The process of colonial expansion of the European powers drastically altered the legal structures of colonized African and Asian nations by introducing the concepts, principles, and procedures of civil origin into their basic domestic legal designs. The authority of this legal tradition has been and still is truly enormous. As Gamal Moursi Badr stated, "Judged by its geographical scope and its durable influence, Roman law indeed qualifies as the major world legal system *par excellence"* (1978:187). Civil legal system deeply anchored in the Roman juristic tradition constitutes, therefore, one of the most important legal systems in the world.

Common law

There were only a few islands that remained in the sea of Romanism (Seagle, 1946:168). Britain was one of them. On the territories of Great Britain, a quite divergent system of law came to prevail, that of the common law. The birth of this legal tradition is interpreted by some legal scholars as simply the result of a historical accident, the military conquest of England by the Normans (Glenn, 2000:206). The Battle of Hastings in 1066, won by the Norman invaders, had for the most part shattered the existing British feudal systems. King Harold and his knights were killed or chased out by the Norman invaders, who put together the most fundamental constituents of the common law system. As the result of this historical event a separate and quite unique legal system developed.

The tradition of common law was, through the power of the English kings, able to resist most of the continental influences of Roman law. England throughout its history remained beyond the Roman sphere of authority not only when its civil counterpart reached the highest stage of its development, but also when the civil law was rediscovered in the Middle Ages (Whincup, 1992:1). In this way, the British Isles became dominated by a legal system where the written letter of law has not played such a crucial role as under the Roman *ius civile.* The development of the peculiar system of common law has been attributed by some scholars to this absence of any written law equivalent to the written sources of Roman law (Seagle, 1946:173). As the result, the practice of *stare*

decisis has developed and become stronger over time. Judges, instead of looking at written sources of law, such as codes, are bound by precedents established by previous judgments.[9] The English legal system has evolved into a distinct and robust jural tradition.

The common law tradition, just as its civil counterpart, has expanded beyond the borders of England. Beginning from the 16th century, this legal structure has impacted North America and Australia. In later times, as the British colonial rule flourished, common law was transplanted to copious African and Asian nations, whose present laws still mirror the common law concepts and principles (Gamal Moursi Badr, 1978:188). Some authors point to the fact that although both civil and common legal traditions have impacted legal orders of numerous nations other than their place of birth, their manner of doing so has been significantly diverse. As Ralf Rogowski points out: "Whereas the common law migrated through principles of private and public common law and by exporting distinct legal institutions- the jury, the writ of habeas corpus, an independent judiciary, and an adversarial procedural system- mainly to other Commonwealth countries, the civil law penetrated other systems through its comprehensive, systematic codes." (2002:305). Because of its enormous impact on legal systems outside the borders of England, common law tradition qualifies as one of the major legal systems of the world.

Islamic law

Islamic law is, unlike the civil and common legal systems, inherently bound to the religion of Islam. Thus, its development is inescapably intertwined with the birth of Islam, which dates back to the revelations of Muhammad. It evolved in the seventh century A.D. in the Arabian Peninsula and in the lower part of Mesopotamia (Gamal Moursi Badr, 1978:187). The sacred book of Koran, which is the major written source for Islamic religion, constitutes at the same time the major source of Islamic legal tradition. As the empire of the Arabs expanded, and as Islamic religion continued to reach more and more people, the Islamic legal tradition also continued to spread. In a relatively short

[9] A more elaborate explanation of this practice is included later in the text.

period of time, the Islamic way of life and the Islamic jurisprudence became established in numerous lands of Central Asia and beyond.

One of the unique characteristics of this legal tradition is that it notably influenced not only the lands dominated by the Arabs, but also the territories such as Indonesia and parts of Africa, which were never a part of the Arab empire (Gamal Moursi Badr, 1978:188). Due to the strong bond between Islam as religion and Islam as law, territories subject to this legal system have successfully resisted the influence of civil and common legal traditions. Thus, nowadays, we can speak of the third major legal tradition- the Islamic legal family.

International law

In addition to the primary three domestic legal frameworks, there exists another crucial legal order. Some legal scholars call international law the "greatest of the empires to be conquered for the reign of law" (Seagle, 1946:349). International law, usually defined as the law governing relations between states has also been called "the law of war and peace" and "the law of nature." Its history, unique and fascinating, begins with the ancient Greeks, who as the result of their political and economic interdependence, developed the principles of international arbitration to regulate potential conflict between their polis (Seagle, 1946:352).[10]

Immense growth of the idea of law among nations occurred much later, accompanied by the development of the doctrine of natural law from 14th century on. In essence, proponents of natural law theory, such as Saint Thomas Aquinas, Grotius, and Pufendorf, considered natural law as being superior to enacted legal frameworks. According to them, there existed an overarching universe-wide, perfect system of law, which is supreme to all the legal orders designed by the hand of man. It is not surprising, therefore, that the natural law principles were often times seen as supplying moral standards by which positive, human-created legal frameworks could and should be

[10] According to Von Glahn (1996), the Greek city-states developed comprehensive procedural details of arbitration, which were used to solve many disagreements between polis. Also, numerous treaties concluded between polis included provisions by which the parties agreed in advance to submit their disputes to arbitration (p.502).

judged, condemned or legitimized. As Saint Augustine succinctly put it, "a law that is not just is not a law" (Saint Augustine of Hippo, 1993:11).

These thinkers started to conceive of the international system of states as a type of society, whose members are bound by the law of nature and rules of *ius gentium*, or international law (Bull, 1977:27). The main purpose for evoking natural law as the basis for international law was to "liberate the law of nations from the constraints of existing practice and develop rules appropriate to the new situation" (Bull, 1977:28). As time went on, the doctrine of natural law gave place to positive international law comprised of treaties, principles, practices, and customs established in relations among nations. In other words, international law scholars during the 18th and 19th centuries turned their heads away from the doctrine of natural law. As Bull describes it: "In identifying the sources of the rules by which states are bound theorists of international society in the eighteenth and nineteenth centuries turned away from natural law and towards positive international law; more generally, they took as their guide not abstract theories about what states should do, but the body of custom and treaty law that was accumulating as to what they did do" (1977:34). This transition towards positive law was sealed when the term 'law of nations,' strongly associated with the term law of nature, gave way to the term 'international law', first used by Jeremy Bentham.

Each of the domestic legal systems and the 'law among nations' have evolved over time. Civil law, rooted in the laws of the Roman Empire managed to impact a large number of states, both big and small. Nations such as France, Germany, and Switzerland now continue to be faithful to this tradition. Common law, which originated on the British Isles, also maintains its position as one of the key legal frameworks. Nations such as United States of America and Australia are prime examples of how this legal tradition continues to be relevant in nowadays world. Islamic legal system also has been able throughout history to keep its prime position among the world's legal systems. It is still strongly anchored in the culture and religion of Islam. Last but not least, international law continues to evolve and progress in its applicability and relevance to the relations between states. Having described the evolution of all of these legal traditions, I now turn to description of the major differences that exist between them. All of the below

described differences stem form the history and slow evolution of each of the legal systems.

Types of Legal Systems: Civil, Common, and Islamic

The main purpose of this section is to discover potential similarities and discrepancies between the three major legal systems of the world. First, I describe the most fundamental differences existing between civil, common, and Islamic legal traditions, and then I turn my attention to substantive and procedural incongruities governing the law of contract that are present between these three major legal families.

Fundamental differences

Common versus civil legal system

As most legal scholars recognize, the most important difference between civil and common legal systems, is the presence of the doctrine of precedent.[11] This practice, frequent under common law, is known simply as case law. Case law is defined as the decisions of judges laying down legal principles derived from the circumstances and characteristics of particular disputes coming before them (Darbyshire, 1996). The reason why such a great importance is attached to case decision is explicated by the doctrine of *stare decisis,* which is also known as the doctrine of judicial precedent. The term *stare decisis* is an abbreviation of the Latin phrase "*stare decisis at not quieta movere*" (to stand by precedents and not to disturb settled points). In its most basic form, the doctrine of *stare decisis* states that a judge when trying a case is obliged to examine how previous judges have dealt with similar cases (precedents). In the process of looking back, a judge is expecting to discover principles of law relevant to a case under consideration.

[11] Some legal scholars argue that in practice this difference does not play a very crucial role. Although formally present in the common law countries and absent in civil law nation, *stare decisis* is often times seen as not constituting the most important disparity between the two systems (Shapiro, 1986).

Decisions taken by a judge will be consistent with the existing principles in that branch of law. Stated in a general form, *stare decisis* signifies that when a point of law has been once settled by a judicial decision, it forms a precedent, which is not to be departed from afterward. Expressed in a different way, a prior case, being directly relevant, must be followed in a subsequent case (Opolot, 1980). The main advantage of the doctrine of judicial precedent is that it leads to consistency in the application and creation of principles in each branch of law. It also enables common law lawyers to forecast with some degree of certainty what kind of judgment may be expected in a particular case.[12]

Prime characteristics of the second major legal system, the civil tradition, differ sharply from the features of common law. In contrast to common law, civil legal system lacks formal judicial precedent in the activity of majority of the courts. The Romano-Germanic, or civil, law system refers to legal science that has been developed on the basis of Roman *ius civile,* civil law of the Roman Empire. According to tradition represented by civil law systems, law making is a function of the legislature. A judge's task is, contrary to a common law judge, considered to be passive: he or she must implement legal rules contained mainly in various codes and laws of lower status. Civil law judges are to refrain from any creative role; their task is to invoke the aforementioned sources. This procedure prevents them from relying on previously decided cases. Each case is treated as a separate and a unique circumstance without any precedent. As far as the predictability of judgments, even though there is no legal rule that would bind a judge to decide according to previously established case law, civil law judges in justifying their decisions indicate how they will solve similar disputes in the future.

The above section clearly shows that one of the most important differences between the two legal systems is the doctrine of judicial precedent present under common law and absent in civil law systems (few other crucial differences regarding contractual

[12] Prior to 1966, the highest courts of England and the United States of America took conflicting positions on the question of what a judge should do if he or she is confronted with an unreasonable or outdated precedent. The House of Lords decided in 1898 that it was bound by its own decisions. In the United States, on the other hand, the principle of *stare decisis* has never been considered an absolute command, and the duty to follow a precedent is held to be qualified by the right to overrule prior decisions. The highest courts of the states, as well as the Supreme Federal Court have the right to depart from a rule previously established by them. In Great Britain, the situation changed in 1966, when the Practice Statement of the House of Lords established that previous decisions of the House are treated by it 'as normally binding', but this is subject to a right 'to depart from a previous decision when it appears right to do so' (Shahabuddeen, 1996).

relationships between these two major legal traditions will be discussed later in this chapter).[13] This generalization must be, however, qualified. On the one hand, case law and judicial precedents, to some extent, appear in some civil law nations, especially in the context of the supreme or constitutional courts. On the other hand, statutes which comprise written legal principles and rules, have become an important form of law in common law nations.[14]

The Islamic legal system versus the Western legal traditions

Apart from the aforementioned two domestic legal systems, many states in the world follow the Islamic legal tradition. Islamic law is to a large extent based on religious principles of human conduct. Its characteristics and sources are in numerous ways different from those of civil and common law traditions: "Islam, probably more than any other religion, has the character of a jural system which regulates the life and thoughts of the believer according to an ideal set of rules regarded as the only correct and valid one. This system, unlike positive law, proceeded from a high divine source embodying God's will and justice" (Khadduri, 1956:359). This feature makes the Islamic legal tradition similar to the natural law doctrine, which, as stated above, believed that there exist 'the law of nature', which is superior to any legal system drafted by the hand of man. Islamic legal tradition, paralleling this view of law, draws its legitimacy from a divine source. This legal ordering, unlike the previously discussed systems, is not a fully independent branch of knowledge. Law is integral to Islamic religion (Al-Azmeh, 1988, Lippman et al., 1988). Islamic legal tradition is, therefore, to a large extent based on religious principles of human conduct. The Sharia, the law of Islam, constitutes the path to

[13] There exist other very important dissimilarities between the two legal systems. The most crucial differences pertain to trial procedures (the main principles that govern criminal procedure in the civil law traditions are referred to as "inquisitorial", and in the common law tradition as "accusatorial"), appeal, existence and functioning of specialized courts, doctrine of judicial independence, and relations between administrative and civil law (Rogowski, 2002; Shapiro, 1986). Some scholars hold that civil law systems are much more abstract and their common counterparts are much more concrete, seeking pragmatic answers to legal questions (Cruz, 1995:36).

[14] This is particularly true for the United Kingdom, which is faced with unremitting pressure to introduce new legislation because of its membership in the European Union (Rogowski, 2002).

righteousness. Rather than prescribing a minimum of satisfactory conduct, it points the faithful to an ideally wholesome life (Shapiro, 1986).

In short, in this legal culture, there exist no sharp division between morals, religion, and legal obligations. As Van Hoecke and Warrington put it, "All law is based on and deduced from the Koran, despite legal doctrine in practice being generally considered a source of law, and sometimes even against the literal wording of the Koran" (1998:507). Islamic courts are held responsible for retaining control over the religious practices which have been specified in the Koran. In order for the Islamic community to remain moral and faithful in the eyes of God, Muslim courts must fulfill their responsibility in a due way (Rosen, 2000:35).

Unlike other systems of law based on judicial decisions, precedents (common law), and legislation (civil law), Islamic law is derived from four principle sources (Vago, 2000). They include, first of all, the Koran as the main source. The Sunna, the second source, is comprised of sayings, acts, and allowances of the Prophet Muhammad as recorded by reliable sources in the Tradition (*Hadith).* The third source is judicial consensus (historical consensus of qualified legal scholars), which limits the discretion of the individual judge. Analogical reasoning, which is used in circumstances not provided for in the Koran or other sources, constitutes the fourth main source of Islamic law (Vago, 2000). Various countries, which adhere to this type of legal scheme, apply Sharia to versatile aspects of human behavior such as commercial law, civil matters, and family law.

The reality of Islamic legal tradition and especially its practice of direct incorporation of religious principles into its legal framework contrasts sharply with the Western legal orders (both common and civil). The separation between religion and law in both the civil and common legal families is obvious and has a long history. It dates back to the 11th century universities, when theology, philosophy, and law became separate and independent disciplines. Academic scholarship was decidedly based on written texts, and the texts that lawyers and theologists used (*Corpus Juris Civilis* and the Bible, respectively) were different (Mattei, 1997:24).

The second unique characteristic of the Islamic legal tradition is its rejection of legislation other than the Koran, and the sayings ascribed to the Prophet Muhammad.

This feature accounts for the relatively static character of this family of law. In contrast to both civil and common law, Islamic tradition denied the opportunity to make new law, and has been especially conservative and reluctant to any modifications (Shapiro, 1986:195-196). This absence of unified and comprehensive legislation has determined the shape of this jural tradition as being highly fragmentized. Because most of the laws established by Muhammad are very specific and unsystematic, the Islamic law stands in sharp contrast with the Western legal traditions which usually comprise quite complete and general legal principles.

Numerous scholars point to the fact that, unique to Islam, legal practices must be examined within the philosophy of Islam and in the spirit of genuine inquiry for justification (Souryal and Potts, 1994). These underlying practices are, nevertheless, fundamentally different from civil and common legal systems. Moreover, the philosophy underlying Islamic legal tradition is somewhat different from that of the 'law among nations.' The similarity remains, however, between the view of international law as a natural law and the religious sources of the Islamic legal tradition.

The procedural differences between the three domestic legal systems and the international law are indeed very important. Judges in all of these traditions reach their conclusions in a quite divergent ways. In civil legal tradition, they for the most part look at the written letter of law. In common legal system, they look at the past judicial decisions relevant to a particular case. The underlying logic of both of these systems contrasts sharply with the Islamic law, which is strongly and inseparably connected with the religion of Islam. All of these procedural characteristics of the three legal frameworks are important and should not, therefore, be overlooked in any suitable analysis. Apart from these rather technical differences, the three legal traditions differ sharply in their substance. In particular, some crucial concepts and principles connected to the law of contracts can be distinct under civil, common, and Islamic law. Below, I describe these differences, which in the latter part of this dissertation will help us understand why legal systems significantly determine a state's behavior on the international arena.

Substantive and Procedural Differences in the Law of Contract

The law of contract constitutes a momentous part of any legal system. This section explores the major differences existing between the three major legal families on the turf of contractual relationships. Because relations between states on the international arena can be perceived as constituting contractual obligations, understanding distinctions existing between basic contract-related concepts in the civil, common, and Islamic legal families is crucial.[15]

The principle of good faith (bona fides)

Numerous modern domestic legal orders, as part of their general overarching legal concepts, oblige the contracting parties to act in accordance with the principle of good faith. We can say that *bona fides* has three moral elements which constitute its unquestionable parts: honesty, fairness, and reason. As other general doctrines, the concept of good faith is very difficult to define. Some legal scholars even hold the position that due to its vagueness, the concept of good faith cannot be defined; others attempt to pin point its meaning by spelling out numerous situations in which this requirement can be violated (Zimmermann and Whittaker, 2000:93). Perhaps the best description of what the principle of good faith really means has been provided by medieval jurists. According to them, good faith meant that a party "must keep his word, refrain from deceit and overreaching, and honor obligations that are only implicit in his contract" (Zimmermann and Whittaker, 2000:93). In general, the concept of good faith requires, therefore, that parties to a contract abstain from dishonesty, and keep their promises. Furthermore, the parties are not only obliged to behave according to standards of fair dealing during contract negotiations, but also to observe the fundamental norm of *pacta sunt servanda* (contracts once signed must be fulfilled) (Zimmermann and Whittaker, 2000:136).

[15] Further elaboration regarding understanding international cooperation between states and its relation to contractual obligations is included in chapter four.

The concept of good faith originated, as many other legal constructs, in Roman law, where it gave the judge an equitable discretion to decide a case brought before him according to what seemed to be reasonable and fair. Thus, *bona fides* associated with trustworthiness and honorable conduct, permitted the judge to denounce breaches of good faith by taking into consideration the particularities of each case (O'Connor, 1991:117). As such, *bona fides* has significantly affected the entire civil legal family, whose roots, as discussed above, are deeply anchored in the doctrine and practice of Roman *ius civile.* Despite the fact that modern civil systems vary to some extent, the general concept of *bona fides* constitutes in this legal family one of the most important abstract rules. References to good faith appear in numerous civil law codes in both general clauses and specific legal prescriptions, which regulate a particular subject-matter.[16] The Swiss Civil Code (*Schweizerisches Zivilgezetzbuch* of 1907), for example, contains a general good faith provision, which states "In exercising his rights and in performing his duties everyone has to act in accordance with good faith."[17] Another example is provided by Article 242 of the German Civil Code, which stipulates that the obligor is bound to perform the contract in good faith (*Treu und Glauben).* Such a general statement pertaining to the position of the doctrine of good faith appears repeatedly in a multitude of civil codifications regulating contractual obligations in civil legal systems.

The incorporation of bona fides into both specific and general regulations has given this doctrine a prime position among legal concepts in civil legal systems. Because of such a high esteem that this principle has been granted, "the perception of good faith as an important legal principle appears to be much clearer in civil law systems than it is in the common law" (O'Connor, 1991:85).

English law stands in a stark contrast to its civil counterpart in that it does not recognize a general duty to negotiate nor to perform contracts in good faith.[18] Lord Ackner, for example, in the case *Walford v. Miles* [1992], has stated

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[16] The exact expression the *bona fides* principles varies somewhat across civil domestic legal systems. Nevertheless, the general rule is to incorporate this concept in both general and particular legal stipulations.
[17] Art 2I. Also quoted in Zimmermann and Whittaker, 2000:51.
[18] This discussion is based mostly on the common system of UK. Certainly there exists variability in the way that all of the common law states treat the principle of bona fides. The English legal tradition, being the 'mother' of all the common law systems constitutes the prime example of how the civil and common legal traditions can differ. The US does have a better developed theory of good faith than the UK, but even

> "the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations. Each party to the negotiations is entitled to pursue his (or her) own interest, so long as he avoids making misrepresentations. A duty to negotiate in good faith is as unworkable in practice as it is inherently inconsistent with the position of the negotiating parties" (Zimmermann and Whittaker, 2000:40).[19]

Thus, there is no overarching doctrine of *bona fides* in English law regulating contract. As a general rule, a person who has obtained a right under a contract can exercise it for either good or bad reason. An example of a party to a contract exercising its right out of an unjustified reason in provided in the decision of the British Court of Appeal in the case of *Chapman v. Honig.*[20] The judge presiding over this case upheld the exercise by a landlord of his contractual right to give notice to his tenant, even though the landlord's decision had been triggered by the tenant giving evidence against the landlord in a dispute with another tenant. The landlord's decision to give notice to his tenant constitutes a good example of how a person can exercise his or her duty out of 'a bad reason.' Under English law, however, this 'unjustified' motive does not hamper the legal right of the landlord to exercise his right. Obviously, this position differs sharply from the civil law tradition where the doctrine of *bona fides* has been granted a prime position. In United Kingdom, the birthplace of the common law tradition, the doctrine of good faith has often times been perceived by lawyers as threatening and simply unworkable in the British law system. Some scholars even argue that good faith "could well work practical mischief if ruthlessly implanted into our system of law" (Bridge, 1984:426).[21] The resentment which a general idea of *bona fides* has met among most English lawyers is inherently bound to England's extensive affection to the liberal concept of contract and the free choice of contracting parties. An extreme version of this liberal approach postulates that one of the privileges stemming from having a right is the freedom of its abuse; an old Latin maxim *neminem laedit qui suo iure utitur* (if you are exercising your right you are not harming anybody) expresses that thought (Zimmermann and Whittaker,

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in the US there are situations, where this doctrine does not apply (Zimmermann and Whittaker, 2000:134). In comparison with the UK, however, the US has a developed doctrine of good faith (Sim, 2001).

[19] Case 2 AC 128, 138.

[20] This example has been elaborated upon in Zimmermann and Whittaker, 2000:40.

[21] Quoted in Zimmermann and Whittaker, 200:15.

2000:696). Such an approach is piercingly different from the civil law approach, where the abuse of a right could constitute a breach of the doctrine of good faith.

Despite the lack of a general principle of good faith, English common law courts have tried over time to mitigate the negative impact of such a lacuna by developing various legal doctrines which are to put limits on the absoluteness of contractual rights and obligations. Examples include the doctrine of economic duress, the doctrine of frustration and others (Zimmermann and Whittaker, 2000:47).[22] In that way, common law has resorted to patching the legal system with specific institutions and doctrines in order to alleviate the lack of the *bona fides* doctrine. English modern treatises still do not, however, refer expressly to good faith in their general part in the context of contract formation. Instead it is referred to incidentally.

The differences between civil and common law in the way that they treat the doctrine of *bona fides* are enormous. On the one hand, in the civil legal tradition, this concept is granted a prime position, and is included in both general and particular law regulations. Thus, its status is of an overarching legal principle. In the common law tradition, on the other hand, there exists no general requirement of good faith in contractual relations. Some legal institutions and doctrines attempt to fix this gap in the context of specific contracts and obligations; nevertheless the position of *bona fides* in this tradition is by far weaker than under the Roman, and thus civil law.[23]

Good faith constitutes one of the most important principles in the Islamic legal tradition. Numerous stipulations of both Koran and Sunna state that trade is permitted so long as it is able to be carried out according to the principle of good faith and honesty. The broad conception of any type of fraud, dishonesty, and untruthfulness directly contradicts the Muslim equitable protection against any type of deception. The principle of *bona fides* holds a particularly strong position in this legal system due to the fact that religious sources, which are of utmost importance to every Muslim, admonish the faithful

[22] Especially until the Unfair Contract Terms Act of 1977, the English courts had no general power to monitor against unfair contracts. This act has significantly improved the position of the principle of *bona fides* in UK. Introduction of this act has not, however, changed the basic philosophy of English law (Whincup, 1992:57).

[23] Over time, however, quite a few legal systems, if not the majority, have moved away from the stark paradigm of contractual relationships that emphasize autonomy of the parties. Instead, numerous elements of *bona fides* such as fairness of contract and the obligation to fulfill promises have gained significance (Zimmermann and Whittaker, 2000:700).

to keep their agreements.[24] In general, Islamic jurisprudence perceives of fraud and dishonesty as a "serious moral wrong" (Rayner, 1991:206). The general requirement of *bona fides* is thus strongly anchored in Islamic contract theory. It applies both to the believers and to the non-believers.

Bona fides constitutes one of the general principles of law recognized by civilized nations, and it is, therefore, one of the formal sources of international law (O'Connor, 1991:1). Quite a few international law scholars consider it a cornerstone of relations between nations in that it can ensure international order and guard against arbitrary behavior and even anarchy (Bull, 1977, Lukashuk, 1989, Virally, 1983). Mann, for example asserts that *bona fides* "unquestionably pervades public international law" (1973:162).[25] The history of the *bona fides* principle is of an ancient origin. Just as with the civil law tradition, international law derives its understanding and perception of this principle from the laws of the Roman Empire. The first crucial writer on the law among nations, Gentili, argued that good faith constitutes a wide ethical and legal principle, which is to be upheld in interstate relations. Also Grotius, one of the most famous fathers of international law, drawing on the tradition of Roman law, granted the *bona fides* principle a place among the universally accepted foundations of the law among nations (O'Connor, 1991:120). In that way, the principle of good faith has found its firm place among other important general principles of international law.[26] Numerous international law treatises have firmly established *bona fides* as one of the most fundamental cornerstones of the law among nations. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (1945) and the Final Act of the Conference on Security and Co-operation in Europe (1975) refer to the principle of good faith in the following way:

> 1. Every state is obliged to fulfill in good faith its obligations:
> a. under the UN Charter,
> b. under the generally recognized principles and rules of international law; and
> c. under treaties valid in accordance with the generally recognized principles and rules of international law.

[24] Examples include Quran, Suras V:1; IV:33; and XVI:91 (quoted in Rosen, 2000:143)
[25] Also quoted in O'Connor, 1991:1.
[26] Such a strong position of this concept in international law has been characteristic to the period in which the natural law constituted the basis for the law of nations, and to the period of positive law.

2. In the event of a conflict between obligations arising under treaties and the obligations of the members of the United Nations under the UN Charter, their obligations under the Charter shall prevail.
3. In exercising their sovereign rights, including the right to determine their laws and regulations, states have the duty to conform with their legal obligations under international law.

In addition, the International Court of Justice in the *Nuclear Tests* cases proclaimed that "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith."[27] The general rule in international relations is that both rights of states and their duties are to be subject to the principle of *bona fides*.[28] Of course, as with any other principle inherent to international law, fulfillment of good faith is based on reciprocity, and this underlying standard is often times expressed in domestic legislations of divergent states (Lukashuk, 1989:517). Thus, if a state has in its relations with other member of the system violated the *bona fides* principle, it has no explicit right to demand its implementation by other parties.

Apart from *bona fides,* several other principles closely related to the law of contract seem to differ across the legal systems. Below, I elaborate upon the following legal constructs: *pacta sunt servanda, rebus sic stantibus, and force majeure.*

Pacta Sunt Servanda, Rebus Sic Stantibus, and Force Majeure

Pacta sunt servanda, as one of the most important faces of the good faith doctrine has been granted a prime position in the Western legal tradition. As a general rule, contracts are to be binding and observed by the parties. There exists, however, an important difference between the civil and common legal systems. The latter has for a long time accepted that events occurring after a contract had been signed might make the contract impossible or impracticable to fulfill, because the subject matter of the contract has been destroyed, or the obliged party is prevented from fulfilling his obligations due to sickness, or the contract as a whole may have become prohibited by law (Whincup,

[27] 1974 ICJ Rep. 253, 268, also quoted in Virally, 1983:130.
[28] Just a few scholars of international law argue that no general obligation to behave according to the principle of good faith exist in international law. Elisabeth Zoller (1977), for example argues that *bona fides* constitutes no more than an ethical

1992:235). In the event of these circumstances, the contract is brought to an end by operation of law and the parties are released from their contractual obligations. Two important common law nations, Great Britain and the United States of America, include similar provisions related to the *pacta sunt servanda* rule. This Anglo-American approach stands in sharp contrast with that of civil law, where the above-mentioned situations may lead only to a partial release from a contract until the situation conducive to the fulfillment of contract is restored.

Stipulations regarding *force majeure* differ markedly across different legal traditions. *Force Majeure* literally means "greater force." These clauses excuse a party from liability if some unforeseen event beyond the control of that party prevents it from performing its contractual obligations. Example of *force majeure* include natural disasters or other "acts of God", war, or the failure of third parties (for example suppliers). Historically, the principle of *force majeure* has been used to excuse a party from his obligations only if the failure to perform could not be avoided by the exercise of due care by that party. *Force majeure* under the British legal system can lead to termination of a contract (Rayner, 1991:262). Thus, if a party is unable to fulfill his contractual obligations because of *force majeure*, the contract is terminated. Under both of the Western legal systems, *force majeure* clauses cannot be in any case invoked unless the problems are indeed beyond the control of the parties. Both of the Western legal systems also recognize the principle of *rebus sic stantibus.* The German concept of *Geschäftsgrundlage,* the French principle of *imprévision,* and English construct of 'frustration of a contract' all "accept the logic of changed circumstances as a grounds for violating previous promises" (Kegley and Raymond, 1990:93).

In the Islamic legal tradition, the principle of *pacta sunt servanda* has been granted a prime position among general concepts of that legal system. First and foremost, one of the characteristics of contractual obligations governed by Muslim law is that both parties to a contract are obliged to uphold their commitments. As a general rule, all of the contracts, be it treaties, public, administrative, civil, or commercial, fall under the *pacta sunt servanda* rule "because it is God Who is the witness of all contracts" (Rayner, 1991:100). Even though there exists no general theory of contract, the basic sources of this legal tradition such as the Koran have formulated very broad principles which are to

be applied to all contractual obligations. The principle of *pacta sunt servanda* constitutes one of these broad legal concepts. The Koran states that *" Aufū bi al-'Uqūd"* or: "Fulfill your obligations." According to the strict rule of sanctity of legitimate contract under Islamic law, "a national Islamic state has no vested right to cancel or alter a contract by unilateral action, whether such action takes the form of an administrative, judicial or even legislative act" (Rayner, 1991:87). This obligation of the faithful to respect their contractual obligations is binding not only in relation to other Muslims, but also towards non-believers. According to the Koran, even the state of war by itself does not constitute a sufficient justification for contract violation (Rayner, 1991:87).

A contract may, under Islamic law, be prematurely terminated by subsequent clauses such as impossibility of performance (*rebus sic stantibus)* and *force majeure.* Thus, in this legal tradition, any contract should cease to bind when a fundamental change, wholly unforeseen by the parties, has occurred, or when the contract has become especially onerous on the obliging party (Rayner, 1991:260). *Force Majeure* leads under this legal system to a temporary invalidation of a contract. When factors causing impossibility of performance cease to exist, the contract is redeemed and may be enforced.

Pacta sunt servanda, as one of the most important faces of the concepts of *bona fides* constitutes an important principle of international law. It provides for a necessary foundation for the society of states (Bull, 1977, Wehberg, 1959, Mitchell and Fattore, 2003). It also ensures that international contracts are binding not only between the contracting parties, but also between them and the international community as a whole. Kegley and Raymond, for example, state: "Against this ever-present reservation of the sovereign right of states to remain unencumbered by moral edicts, there has been a recognition of the need for faithful performance of treaty obligations." (1990: 87). The importance of the p*acta sunt servanda* principle in the relations between states is ensured by its status as one of the general principles of law and also as a part of customary law. Of course, as under majority of the domestic legal systems, in case of "a radical transformation of the extent of the obligations still to be performed" parties can be released from their obligations.[29] Thus, the doctrine of *rebus sic stantibus* has been

[29] Fisheries Jurisdiction Case, I.C.J. Rep. 1973, p.21.

granted an important place in the law among nations. Also, in the event of impossibility of performance, a party to a contract may invoke this reason as a ground for terminating the contract if the impossibility results from the permanent disappearance or destruction of an object indispensable for the fulfillment of the treaty (Vienna Convention). Examples of this situation would include the submergence of an island, an earthquake, or drying up of a river (Brownlie, 2003:594). Unfortunately, as with many legal rules, the *clausula rebus sic stantibus* is vague and hard to define. On the international arena states have often invoked this rule in order to free themselves from their contractual commitments. Prussian King Frederick II, for example, justified his termination of a neutrality treaty with Breslau in 1741 on the grounds of *rebus sic stantibus*, which resulted in him occupying the town (Kegley and Raymond, 1990:91).

This section shows that civil, common, Islamic, and international legal systems differ markedly in their stipulations regarding basic principles of contractual obligations. Understanding of *pacta sunt servanda, rebus sic stantibus, and force majeure* varies across the legal systems. This variation in the basic law of contract has noteworthy impact on states' behavior on the international arena. Apart from these three legal concepts, the right to appeal a court's judgment constitutes another crucial point of divergence between the three legal traditions. Below, I elaborate on this important issue.

Appeal

The major legal systems of the world differ markedly in respect to the right of a litigating party to appeal the verdict of a first instance court. The sharp line of division exists between the Western legal systems on the one hand, and the Islamic legal tradition on the other. Both civil and common legal traditions allow for multiple instances appeal in all contract-related cases. As a general rule, depending on a nature of a case, there exist different routes for appeal. Appeals from administrative cases will, for example, take a different appeal route than will civil or criminal cases. In France, a major civil law state, an individual can appeal from the decision of a first instance court to the Court of Appeal, and finally from a decision of that court to the Court of Cassation. A similar route of appeal is allowed under British law, where depending on the nature of a case, one can

appeal from the first instance to the High Court, then to the Court of Appeal, and finally to the House of Lords.[30]

The general point is that an individual under both civil and common legal systems has a full right to appeal to a court of higher instance if he or she disagrees with the verdict of a lower instance court. One of the major reasons for existence of appellate procedure under both legal traditions is to "provide uniform legal rules so that the law will not be one thing in one trial court and quite different thing in another." (Shapiro, 1986:201). Courts of higher instance are able to provide a degree of verdict standardization through the announcement of general interpretations and definitions, which in the future are able to give direction for the subsequent verdicts of the lower courts.

Under Islamic law, there is generally no appeal. Islamic judges (*kadi*) work, due to the particularities of their legal tradition, with very specific legal rules provided by the Koran. There exists, for the most part, no need for the pronunciation of general principles and interpretations because "only the words of the prophet or the consensus of the community of the faithful can do that" (Shapiro, 1986:202). Islamic legal culture, as a rule, rejects legal generalization and any type of reinterpretation of the basic obligations. Moreover, no overpowering doctrinal obligation exists which would necessitate standardization and consistency of law. In addition, the inherent link between Islamic law and Muslim religion provides by itself another explanation for the lack of appeal in this legal tradition. The Sharia and the Koran constitute not only legal sources, but also religious sources. Islam, in contrast to other world religions, is inherently non-hierarchical. This absence of hierarchy in Islam as religion has been simply carried over to Islam as a legal system (Shapiro, 1986:221).

Having elaborated on the divergence between the three legal systems regarding the right to appeal, I now turn to another very important difference, the freedom of contract.

[30] The last instance can be resorted to only in case of an appeal with leave on point of law of public importance (Hadfield and Sunkin, 2002:1700).

Freedom of contract

Freedom of contracting constitutes another point of divergence between the three major legal traditions. Again, just as with the ability to appeal, the primary difference seems to exist between the Western legal systems on the one hand, and the Islamic legal tradition on the other. In Western legal thinking, the concept of freedom of contracts has been, together with the principle of the autonomy of the will, considered as one of the major contract-related concepts. In its most simple form, the principle of freedom of contract stipulates that "one is perfectly free to enter into a contract with whomsoever one wishes" (Mohammed, 1988:126). The autonomy of the will concept, very closely intertwined with the freedom of contracts, states that each person can enter into a contractual obligation in order to transfer whatever one wishes. Thus, the object of a contract is to be specified freely by the parties. Both of those concepts stem from the *laissez faire* economic school of thought, which holds a pure free market view that the market performs best when it is left to its own devices. The basic idea dictated by that doctrine is that less governmental intrusion into private economic activities makes for a more efficient system (Webster's New World Dictionary).

The concept of freedom of contract has been carried over from Western domestic legal systems into the international realm. Here, the basic definition of a treaty adapted by the 1969 Vienna Convention on the Law of the Treaties indicates the validity of this principle in relations between states. A treaty is defined, for the purpose of this Convention in article 2 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*."[31] Thus, international law in its approach to the freedom of contracting between states is highly similar to both of the Western legal systems.

In contrast to the Western law of contract, which developed primarily during the eighteenth and nineteenth centuries, Islamic law started taking shape already in the seventh century (Mohammed, 1988:117). In addition, Islamic law, distinct from its

[31] Italics added by the author; The same definition is given to treaties by the 1986 Convention on Treaties between States and International Organizations.

Western counterparts, did not have to adjust to the needs of industrial revolution. As the result, Muslim law to this day basically reflects realities of the period in which it originally formed. As far as the freedom of contract, "Islamic law operates around rather diverse principles, in that the question as discussed by the jurists makes as the primary presumption the fact that no contract which derogates from any principle of the *Sharia* may be validly concluded" (Rayner, 1991:91). Thus, the freedom of the contracting parties is subject to the limitations placed on their actions by Sharia. Simply put, the autonomy of will is subject to the Islamic prohibition against certain actions and contracts, such as *riba, gharar*,[32] and others.

In Islamic law, the principle of freedom of contract is limited by the stipulations of the Koran. In order to explain and elaborate upon the Islamic doctrine of contract, the Congress of the Week of Islamic Law held in Damascus in 1961 accepted the prohibition against several nominate contracts. It was affirmed that "as the parties are free to make contracts of their own choice, all kinds of contract would be acceptable providing that they do not contradict the basic principles of the *Sharī'a* law of contract and the generally acknowledged principles of Islam" (Rayner, 1991:96).

It should be noted, however, that quite a few exceptions from this general doctrine exist in some Muslim nations. The Federal Civil Code of the United Arab Emirates, for example, specifies that a contract may contain certain stipulations that "are not prohibited by a provision of the law" and are "not contrary to public order or morals."[33]

Implications of legal differences on states' behavior

The main purpose of this chapter has been to describe the history, evolution, and major differences that exist between the three major legal systems of the world: civil, common, and Islamic. All of these domestic legal traditions, as well as 'law among nations' differ markedly in both procedural and substantive ways. Procedural differences, such as the absence/presence of the doctrine of precedent, or Islam's strict adherence to

[32] *Riba* translates to "usury." Yusuf Ali in his commentary asserts that *riba* is any increase sought through illegal means, such as usury, bribery, profiteering, and fraudulent trading (1946). *Gharar* refers to an entire range of commercial activities, which involve speculative and aleatory contracts (Mohammed, 1988).
[33] United Arab Emirates Federal Law of Civil Translations, *UAE Official Gazette,* no.158 (Dec. 1985), also quoted in Rayner, 1991:96, footnote 54.

the principles of the Koran constitute crucial points of divergence between these legal traditions. Moreover, substantive differences in the law of contract are also rather substantial. I argue that all of these discrepancies have significant effect on states' behavior on the international arena. I argue that we can understand cooperation as a successful bargain over a contractual relationship, and conflict as the failure of bargaining. Legal system types influence states' ability to cooperate. Nations are familiar with legal concepts and principles that are inherent to their domestic legal order; they are, therefore, naturally inclined to apply their own understanding of legal constructs to their external behavior. Because these domestic legal systems (civil, common, and Islamic) differ according to procedures and substance, states representing different legal traditions will be less likely to cooperate with one another than states of a similar legal origin. Striking an international deal is much more likely if the two bargaining sides come from a similar legal tradition.

The principle of *bona fides* constitutes a great example of how the fact that two states have different legal traditions can discourage them from cooperating. Two states with a similar legal origin are much more likely to understand one another and thus are much more likely to cooperate with one another. There will be no misunderstanding between two civil law nations concerning the meaning of *bona fides.* In relations between these two states, it will be *implicit* that this principle governs their relations. Thus, they will assume that their contract, be it a trade treaty or a military alliance, automatically falls under this concept of good faith. In other words, they will be inclined to externalize their fully internalized norm of *bona fides* to relations with other states. Situation will be much different if the two potential cooperating states are of divergent legal origins. Common law does not, generally, include good faith as one of the overarching principles. Civil law, as explained above, does. Thus, if states coming from these two legal traditions will attempt to cooperate with one another, the issue of *bona fides* will necessarily arise. Is their act of cooperation governed by that general principle or not? In this situation, the probability of striking a deal is much lower than in the case of cooperation between two civil law nations. A civil and a common law state will most likely have to bargain over the understanding of *bona fides.*

A similar reasoning also applies to the relations between states representing the Western legal tradition with Islamic nations. Which law should govern the act of cooperating? Can the international contract break a stipulation of the Koran? If states representing the Islamic legal tradition are not free to sign any contract, then certain acts of cooperation are much more likely to be concluded between the Western nations. The same argument can be applied to the principle of *force majeure* and *rebus sic stantibus.* If legal traditions differ as to their understanding of these legal constructs, states representing divergent legal families will tend to have much lower probability of striking an international deal. In case of a "greater force" precluding the states from fulfilling their contractual obligations, is the contract terminated (common law), or only temporarily invalidated (Islamic law)? There exist no firm and irrevocable set of rules that would apply to international acts of cooperation such as alliances and other treaties. Without a uniform law, states are naturally inclined to understand and interpret their external commitments through lenses of their internal legal systems. Both substantive and procedural differences matter in the ability of states to bargain on the international arena.

The three major legal systems differ markedly. Both procedural and substantial rules are unique to each of them. So far I have established that all of these differences have significant impact on states choice of enemies and friends on the international arena. Several questions, however, remain unanswered. First of all, what is the mechanism that underlies the impact of a legal system on a state's behavior? Secondly, is this impact constant overtime, or does it vary? In order to answer these questions, I construct a theory which comprises two elements, constructivist and rational. First of all, following the constructivist thought, I argue that throughout its evolution a domestic legal system can become part of a state's identity. In other words, the domestic legal system can become a significant part of a nation's identity through a process of norm internalization. In this way, a domestic legal structure is able to affect a state's external behavior.

In the second part of my theoretical argument, I take advantage of the insights provided by the rational thought, by arguing that cooperation and conflict between states can be understood in terms of bargaining (Fearon, 1995, 1998). I incorporate distinctions across civil, common, and Islamic law states (type of legal system, and its legitimacy) into a rationalist bargaining model. The model predicts that states with highly similar and

highly legitimate legal systems are more likely to cooperate with one another than states representing divergent and weakly legitimate legal traditions because legal system similarity lowers the costs of bargaining and the uncertainties surrounding contractual obligations. Legal systems and their legitimacy are able to affect the ability of states to strike an international bargain. The next two chapters include a much deeper theoretical discussion concerning these issues.

Table 2.1 Legal Systems of the World in 2002.

Civil Law Countries	Cuba, Haiti, Dominican Republic, Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Surinam, Ecuador, Peru, Brazil, Bolivia, Paraguay, Chile, Argentina, Uruguay, Netherlands, Belgium, Luxembourg, France, Monaco, Liechtenstein, Switzerland, Spain, Andorra, Portugal, Germany, Poland, Austria, Hungary, Czech Republic, Slovakia, Italy, San Marino, Albania, Macedonia, Croatia, Yugoslavia, Bosnia-Herzegovina, Slovenia, Greece, Bulgaria, Moldova, Romania, Russia, Estonia, Latvia, Lithuania, Ukraine, Belarus, Armenia, Georgia, Azerbaijan, Finland, Sweden, Norway, Denmark, Iceland, Cape Verde, Sao Tome and Principe, Guinea-Bissau, Equatorial Guinea, Mali, Benin, Ivory Coast, Guinea, Burkina Faso, Togo, Gabon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Burundi, Djibouti, Ethiopia, Angola, Mozambique, Swaziland, Madagascar, Mauritius, Turkey, Turkmenistan, Tajikistan, Kyrgyz Republic, Uzbekistan, Kazakhstan, Mongolia, Taiwan, North Korea, South Korea, Cambodia, Laos, Vietnam, Indonesia, East Timor

Table 2.1 - Continued

Common Law Countries	United States of America, Canada, Bahamas, Jamaica, Trinidad and Tobago, Barbados, Dominica, Grenada, St. Lucia, St. Vincent and Grenadines, Antigua & Barbuda, St. Kitts-Nevis, Belize, Guyana, United Kingdom, Ireland, Cyprus, Liberia, Sierra Leone, Ghana, Uganda, Tanzania, Zambia, Zimbabwe, Malawi, Lesotho, India, Bhutan, Bangladesh, Myanmar, Nepal, Malaysia, Singapore, Philippines, Australia, Papua New Guinea, New Zealand, Solomon Islands, Kiribati, Tuvalu, Fiji, Tonga, Nauru, Marshall Islands, Palau, Federated States of Micronesia, Samoa
Islamic Law Countries	Gambia, Nigeria, Namibia, Comoros, Morocco, Algeria, Tunisia, Libya, Sudan, Iran, Iraq, Egypt, Syria, Lebanon, Jordan, Saudi Arabia, Yemen, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Afghanistan, Pakistan, Maldives
Mixed Law Countries	Malta, Senegal, Niger, Cameroon, Kenya, Rwanda, Somalia, Eritrea, South Africa, Botswana, Seychelles, Israel, China, Japan, Myanmar, Sri Lanka, Thailand, Brunei, Vanuatu

CHAPTER THREE

EVOLUTION OF A LEGAL SYSTEM, ITS LEGITIMIZATION AND THE PRINCIPLE OF THE RULE OF LAW

Constructivist and Rational Frameworks- a State's Identity and Behavior

How do legal systems affect states' external behavior? What is the process underlying the relationship between domestic legal orders and states' actions on the international arena? Is this relationship affected by the degree of legitimacy of a legal system? Does the level of internal respect for the rule of law impact states' actions? The goal of this chapter is to answer these questions by looking at the connection between states' internal legal structures, their identities and their preferences. In the process of addressing these issues, I take advantage of insights provided by two broad approaches to the study of international relations, constructivism and rationalism. I argue that in order to understand the association between a state's internal legal structure and its foreign policy behavior towards other states and international institutions, we need to employ theoretical tools provided by each of these broad research camps. In the first part of my argument, I employ a constructivist approach to explain how a state's legal system can become part of its identity through the process of norm internalization. I argue that through gradual internalization, a legal system can structure a state's actions. Having explained the process of formation of states' legal identity, in the second part of my argument I employ a rationalist bargaining model in order to explain how differences in internal legal structures affect states' ability to strike international bargains. In this part of my analysis, following the rational approach, I treat the identity of a state as fixed and exogenous.

Utilizing both constructivist and rationalist theoretical perspectives constitutes an indispensable approach that will allow me to explain the intricate relationship between legal systems and states' external behavior. I see constructivist and rational approaches as complementary, not competing. As Katzenstein et. al note:

> "neither perspective is adequate to cover all aspects of social reality. But at one critical point they are joined. Both recognize - constructivism as a central research project and rationalism as a background condition – that human beings operate in a socially constructed environment, which changes over time. Hence, both analytical perspectives focus in one way or another on common knowledge – constructivism on how it is created, rationalism on how it affects strategic decision making. *The core of the constructivist project is to explicate variations in preferences, available strategies, and the nature of the players, across space and time. The core of the rationalist project is to explain strategies, given preferences, information, and common knowledge. Neither project can be complete without the other"* (1998:682).[34]

Thus, I see constructivism and rationalism as constituting two approaches that are able to complement one other. In short, constructivists focus on how actors acquire their identities and how their preferences are formed, which represent processes taking place prior to the exercise of instrumental rationality (Katzenstein, 1998: 681).[35] Rationalists, on the other hand, attempt to explicate states' actions on the international realm taking their preferences as exogenously given. Both of these camps are necessary to fully understand international relations.

In this chapter, I first utilize the constructivist approach to illuminate the process by which legal systems become part of a state's identity. I argue that through a process of norm internalization (Wendt, 1999; Hurd, 1999) a legal system can become a significant part of a state's identity. A legal system, before it becomes fully internalized by a state, goes through several stages of norm internalization, including coercion, self-interest, and

[34] Emphasis added by the author. The basic building block of decision-making is a preference relation. The concept of preference between two outcomes o and o' means that a person likes the outcome o at least as much as o' (the concept of preference between two outcomes, o and o' (o R o'). This concept is different from the strict preference, which is defined as a situation, in which "A person prefers o to o', written o P o', if and only if o R o' but not o' R o."(Ordeshook, 1999:12). An item of information in a game is common knowledge if all of the players know it and all of the players know that all other players know it (Dutta, 2000).

[35] According to Finnemore and Sikkink, there exists no clear, agreed-on definition of what identity means (2001:399). According to Wendt, identities are rooted in an actor's self-understandings and also depend on whether other actors recognize that identity (Wendt, 1999). He states that "identity is whatever makes a thing what it is" (1999:224).

legitimacy (Hurd, 1999). I adopt the rationalist approach in chapter four of this dissertation, where I explain how legal systems influence a state's foreign policy choices. I argue that we can understand international cooperation and conflict as success or failure of bargaining, in which states' domestic legal structures influence states' ability to strike a bargain. In this part of my theoretical argument, as noted above, I assume relatively stable state preferences.

Having explained the broad applications of both constructivist and rational frameworks to this argument, I now discuss the first part of my theoretical argument devoted to the formation of a 'legal part' of a state's identity. I describe how legal systems come into being, and how they can become internalized by a state. My general argument is that at the end of the process of legal evolution, a legal system can become a significant part of a state's identity, which influences a state's willingness to cooperate with other states in the international arena.

Legal Systems- The Evolution

Legal systems can play a crucial role in defining a state's identity. I argue that there exists an intricate relationship between the origins and the evolution of each legal order and the formation of a state's identity. In order to understand this intricate relationship, it is necessary to examine subsequent stages that can characterize this relationship. Below, I present several separate phases inherent to the relationship between a state and its law. Each of them has a powerful impact on the formation of a nation's identity. First I discuss how legal systems are born, and then I describe subsequent stages in their development.

The Birth of Legal Institutions and Domestic Legal Orders

I argue that legal orders are created out of need. Human relations must somehow be governed; certain behaviors/actions must be encouraged, others must be punished.

Thus, law in general, and each particular institution of law in its basic historical form, arise out of necessity. The Roman legal tradition recognized that where there is a society, there would also be law (*ubi societas ibi ius).* In the nascent stages of societal development, numerous human societies which functioned as very primitive political systems, developed rules that governed the behavior of their members (Kegley and Raymond, 1990:14). Certain obligations and gender-based role differentiation such as hunting and gathering were regulated by some type of rules. Human behavior was structured; actions beneficial for the group were rewarded and actions harmful to the group were chastised. These simple rules constituted just a beginning for much more complicated bodies of laws that were to come. As human societies continued to develop, legal rules managing their behavior became increasingly detailed. Forms of government and hierarchy started to appear, and new types of human responsibilities needed to be structured. In addition, communication between groups began to emerge, and these types of relations needed also to be somehow governed. Here lies the intricate relationship between society and law. Society plays a crucial role in the development of a legal framework by having certain needs for regulation of positive and negative behavior. As Alan Watson puts it, "A legal institution is a social institution which has been given legal effectiveness and which is being regarded from the legal point of view." (1985:117). Society creates the need for law.

Why do humans need legal institutions and norms?[36] We, as humans, want predictability of our behavior and the behavior of others. Norms are social regularities that "are determined primarily by shared ideas that enable us to predict each other's behavior" (Wendt, 1999:251). Humans need law. As societies evolve from primitive to more complex ones, formal norms, institutions and sanctions become indispensable if these societies desire to function in a predictable and well-established fashion. According to Vago, "The presence of law and a legal system is essential to the maintenance of societal order" (2000:36). Thus, law arises out of societal need for it. The needs of each polity are, of course, different, but each society has a need for self-preservation. Law is able to provide some degree of order to a human society: "In all societies, it has been

[36] Institutions according to Young (1982:277) can be broadly defined as "recognized patterns of practice around which expectations converge." Various definitions of norms are included in footnote 34.

argued, order is a pattern of behaviour that sustains the elementary or primary goals of social life. Order in this sense is maintained by a feeling of common interests in those elementary or primary goals; by rules which prescribe the pattern of behaviour that sustains them; and by institutions which make these rules effective." (Bull, 1977:53) It is obvious that legal evolution is fueled by the need of each society to be preserved.

The history of law provides countless examples of how legal institutions, principles and norms develop out of societal need. One of them relates to the origins of the *pacta sunt servanda* principle. This concept, thoroughly discussed in the previous chapter, in its most simple form states that "pacts made should be kept." As numerous legal scholars suggest, this legal concept of a very simple obligation was present already in the very embryonic stages of human society. As O'Connor puts it, "The fact of community – 'the cardinal fact in the history of civilization', and speculations about the origins of law have led to a wide acceptance of the view that in all communities a primary or basic rule about the obligation of 'promises' must have existed" (1991:6). It is reasonable to conclude that the roots of the doctrine *pacta sunt servanda* can be traced to the very beginnings of human organization. Even when the concept of a contract was unknown to the human society, the principle of pacta *sunt servanda* was widely accepted simple because of a societal need for it: "primitive rational man accepted the need to observe the rule *pacta sunt servanda* (in its general sense) simply to ensure that his community continued to exist" (O'Connor, 1991:7). The position of this principle was even strengthened by its connection to morality and religion (Wehberg, 1959:775). In ancient times Chaldeans, Chinese and Egyptians made this principle a part of their primitive legal orders: "According to the view of these peoples, the national gods of each party took part in the formation of contract. The gods were, so to speak, the guarantors of the contract and they threatened to intervene against the party guilty of a breach of contract. So it came to be that the making of a contract was bound up in solemn religious formulas and that a cult of contract actually developed" (Wehberg, 1959:775). Over time, *pacta sunt servanda* became independent from morality and religion. Nevertheless, the strength of this legal principle is noteworthy. *Pacta sunt servanda* arose in its simple version out of societal need for survival and predictability; its strength was increased by its religious and moral connotations. Nowadays, this legal principle is widely accepted in

all of the major legal systems of the world, both domestic and international (Wehberg, 1959, O'Connor, 1989, Rayner, 1991).

Another excellent example of the relationship between origins of legal institutions and societal need for them comes from the Roman legal order, one of the most celebrated legal frameworks ever created. A legal order is comprised of norms, rules, and principles.[37] As these particular elements of law appear and evolve, a legal framework as a whole develops and grows. Such was the case with the institution of the consensual contract, or *emptio venditio,* which came to be fully actionable in the Roman empire by around 200 B.C. This form of contract, which constitutes literally an agreement without formality, stood in sharp contrast to other highly formalized and ceremonious institutions, which regulated selling and buying up to this time (Watson, 1984, Kolanczyk, 1997, Bojarski, 1994). *Emptio venditio* appeared on the legal scene when a formless contract was needed due to the fact that foreign merchants, increasingly infiltrating the Roman Empire at that time, were unfamiliar with complicated Roman contractual formalities. Simply put, institutions regulating selling and buying were no longer adequate to efficiently structure legal interactions between Roman citizens and foreigners. Foreigners needed a legally binding contract that could be concluded without unnecessary Roman formalities. The needs arising out of these relations could be only satisfied with a relatively flexible and undemanding institution of *emptio venditio.* The need was there, and thus an adequate legal institution was created. Thus, necessity plays a large role in the birth of legal institutions; needs are met by legal creativeness.

Another great exemplification of the relationship between societal need and the birth of legal institutions comes from the history of the second largest system, that of common law. Here the origins of the institution of jury can further elucidate our

[37] There exist quite a few definitions of norms. I define norms as a standard of appropriate behavior for actors with a given identity (Finnemore and Sikkink, 1998:981). Norms, according to Krasner are "standards of behavior defined in terms of rights and obligations" (1983:2). An interesting definition of norms is also provided by Kai Alderson, who states that norms are "concrete recipes for action which set out the ingredients and proportions required to produce desired outcomes" (2001:422). Also Katzenstein's definition can prove to be useful; according to him, norms are "prefabricated action channels that establish links between the values that individuals hold and the problems they seek to solve" (1996:19). Rules constitute an explicit prescription of behavior or action (Krasner, 1983:2). Norms consist of rules. For example, slavery constitutes a norm, but specific provisions regarding slaves constitute rules. I define principles as substantive general guidelines for behavior. According to Krasner, norms are "standards of behavior defined in terms of rights and obligations" (Krasner, 1983:2).

understanding of the origins of law. The Battle of Hastings in 1066 had, for the most part, shattered the existing British feudal systems. King Harold and his knights had been killed or chased out by the Norman invaders, who put together the most fundamental constituents of the common law system. The jury is one of these institutions. The Norman Conquest created a unique situation where the new lords were culturally and linguistically different from their serfs and peasants. Moreover, their very understanding of "right" and "wrong" differed drastically from that of the population of the British Isles. The Norman feudal lords, who were for the most part unable to speak the language and understand local 'legal' practices of their serfs, had found it virtually unattainable to bestow some sort of justice among their newly subjugated people. Thus, the Norman kings, in whose interest laid peace in the British territories, were required to offer legal services, such as judging disputes (Ehrlich, 1983:48). The knowledge of local conditions and particularities was, however, indispensable. Because neither the king nor the lords were able to fully understand local customs, an institution was needed to gather the necessary information. As the result, the jury system was created to fulfill that need. It was to present local realities, traditions, and findings of a particular case to a royal judge. Simply because the common law was administered by itinerant judges, to whom local conditions were for the most part unfamiliar, the jury system was of growing significance. Somebody had to inform the judge about local realities and even the veracity of the witnesses in each particular case (Ehrlich, 1983).

Norms are necessary for a wide variety of human interaction (James, 1993), but social need is certainly indispensable for legal creativeness. Out of need come legal institutions and legal orders. Throughout history, as societies have become more complex and more demanding, the need for an explicit body of legal regulations becomes progressively more obvious. As one legal scholar noted, "The paradox… is that the more civilized man becomes, the greater is man's need for law, and the more law he creates. Law is but a response to social needs" (Hoebel, 1954:292, quoted in Vago, 2000).

Having described the general circumstances standing behind the creation of law, I now turn to the discussion of the internalization of a legal system inside the state and how it subsequently influences a state's identity and preferences. According to Wendt (1999) and Hurd (1999), there exist three separate reasons why an actor might obey a rule. He,

first of all, might follow a rule because he/she fears the punishment of rule enforcers. Secondly, he/she may obey a rule out of a sheer self-interest; it just simply pays of to follow a rule's prescriptions. Thirdly, an actor may follow a rule because of its legitimacy; in this case, one obeys legal stipulations because he/she feels that a rule is internally right and ought to be obeyed (Hurd, 1999:379). These three different motives for compliance with norms constitute three subsequent stages of norm internalization; at the end of this process, a norm can become a part of an actor's identity (Wendt, 1999). I argue that legal systems, similarly to norms, go through the process of internalization, at the end of which a legal system becomes a substantial part of a state's identity. Below, I discuss these three stages of norm internalization: coercion, self-interest, and legitimacy.[38]

Coercion

Because certain institutions regulating behavior were needed in societies, legal norms, principles, and rules were established. Need, however, constitutes a necessary but not sufficient condition for the creation of a properly functioning legal framework. Besides the need for law, we have to analyze the issue of social control, which is "central to international relations and to all social life" (Hurd, 1999:383). Coercion, which refers to a relationship between agents that is characterized by asymmetrical physical power among them, is considered by several social scientists as constituting the first step of norm internalization (Hurd, 1999, Wendt, 1999). At the same time, coercion, as a phase in the relation between a state and its law, is crucial for a legal system to become effective. Although the social need for a particular legal institution is fundamental to its inception, the force standing behind enforcement of that institution is indispensable. Credible enforcement of newly created legal institutions, norms, and principles facilitates the evolution towards a fully functioning legal order and respect for the rule of law.

[38] Coercion, self-interest, and legitimacy relate to already existing norms. But, where are these norms coming from? In this dissertation, I assume that norms come to being as exogenous to a state. My discussion of norm internalization relates to legal systems, and the brief history of birth and evolution of legal system is included earlier in the text.

When do people obey law out of coercion? This question can be answered by looking at human motivations. First of all, norms are obeyed out of coercion, when actors neither calculate their self-interest in obeying them, nor do they pay attention to the normative content of these rules. You obey the system because you have to. It does not matter how much you gain and how much you can lose. It does not matter if you agree with principles embodied in a norm. You obey because you are coerced to do so. Coercion does not, in general, lead to voluntary compliance (Hurd, 1999:384). Perhaps Wendt best describes the attitude of an actor coerced to follow a norm:

> "He is neither motivated to comply of his own accord, nor does he think that doing so is in his self-interest. He does it because he must, because he is coerced or compelled. His behavior is purely externally rather than internally driven…; remove the compulsion and he will break the norm. Even though he shares knowledge of the rules, he does not accept their implications for himself. Others are positioning him in a particular role, but he is contesting it" (Wendt, 1999:269).

It is initially the power of a society or a state that makes people comply with law. Behind Roman *ius civile* and *ius gentium* stood the power of the Roman Empire. Behind common law stood the power of the English kings. Religion of Islam and the power of Islamic states gave the necessary enforcement for the Islamic legal tradition.[39]

The Need, Coercion, and a State's Identity

If a norm is obeyed out of a sheer coercion, it does not contribute significantly to the formation of an actor's identity (Wendt, 1999:273). Thus, in the nascent stages of life of a legal order, it is nearly impossible for it to construct a polity's identity. In other words, a legal order does not yet become fully internalized. At this stage of legal evolution, people obey the legal system simply because they have to. It is out of a social need that legal institutions are established, but it is the power of a polity that makes them actually work. At that time, law does not constitute part of a nation's identity. It is too early for that.

[39] Hurd (1999) argues that most norms arise from coercion and evolve into compliance from self-interest and legitimacy. I pose that all legal systems arise out of societal need for them and out of coercion.

A great example of the situation when legal institutions are internalized only to the first degree (coercion) is provided by the situation of colonized states. Just as the language of a metropolis was imposed on a colony, the legal framework with most, if not all, of its unique characteristics and institutions was to be successfully implemented in newly subordinated territories. Colonies were coerced to obey the foreign laws and act according to someone else's understanding of right and wrong. At the time of colonization, it is hard to speak of any form of deep legal norm internalization; the legal orders were imposed with force on these territories. In this situation, foreign legal frameworks were able to stay in place simply due to the fact that the most important characteristic of coercive relationship was certainly in place; there existed a sharp asymmetry in physical power between a metropolis and a colony. Fear, therefore, produced acquiescence. There certainly existed a need for a legal framework, but the coercive relationship between colonies and colonizers played a decisive role in determining the choice of a legal system.

After the need of a society for a legal framework has been met, after the force of a polity behind a legal framework has strengthened its position in a society, a legal order has the opportunity to evolve further. Self-interest and legitimacy constitute, respectively, the second and third degree of norm internalization. Below, I elaborate on each of these.

Self-interest

Self-interest constitutes the second degree of norm internalization (Wendt, 1999). As Wendt underscores, it is not easy to distinguish between coercion and self-interest as the first and second degrees of the internalization process. Indeed, it is rather cumbersome to differentiate between being compelled to obey a norm/legal order, or obeying it out of self-interest. In the latter case, an actor will decide to follow a norm after a careful calculation of the net benefit flowing out of compliance and the cost of noncompliance. If he chooses to obey, it is because it was "the most rationally attractive option." (Hurd, 1999:385).

It is crucial to note that there is no fixed amount of time that has to elapse between the first two degrees of norm internalization. In other words, legal orders differ

significantly in the way that they are able to transform from being obeyed simply because of coercion to being obeyed out of self-interest. In the Roman Empire, numerous particular institutions traveled very swiftly from coercion to self-interest. It is almost impossible to clearly distinguish between the moments when institutions of *ius civile* traveled from the first to the second degree of internalization. Behind all of these institutions, stood the power of the Empire and its officials, but it was also out of self-interest that Roman citizens obeyed the intricate formalities of their contractual relationships. The main dilemma that a party to a contract faced was between disregarding all of the niceties of Roman contractual law, and having his or her obligations recognized by the state. If a party wanted his obligations arising out of a particular contract to be upheld be law, it was in this party's interest to follow the meticulous and complicated formalities associated with a specific contract. Again, people were not so much coerced to follow the formalities, but refusal to follow these norms would lead to a loss in a person's interest. Thus, people obeyed the law out of self-interest.

Another critical example is provided by the colonized African states that, without exception, adopted the legal orders of the colonizer at the time of independence (Joireman, 2001:576). At this particular time, newly independent states did not have to keep the civil or common law that their previous colonizers imposed on them. They did not keep the legal rules out of coercion because it was no longer an issue. At the dawn of independence, these new states had the opportunity to change their legal frameworks, perhaps by coming back to their pre-colonization legal customs. This, however, did not occur in a single African state. Why? The answer to this question is very simple. The newly independent states kept the legal orders of their metropoles out of self-interest. First of all, nationals of colonies were accustomed to the characteristics of the legal order of their colonizer. A certain lock-in occurred as nationals of former colonies accumulated experience with a specific set of legal institutions and norms (Joireman, 2001, Arthur, 1989). It is certainly the knowledge and familiarity with a particular legal framework that swayed the decision of former colonies to keep the legal order of their colonizers. It was in the self-interest of these new polities to keep the familiar legal systems of their metropoles.

Self-interest constitutes an important step in the norm internalization process. Actors simply see advantage in compliance with a norm, and that advantage prompts them to obey legal stipulations. Compared to coercion, compliance with a norm at this stage is more internally driven and thus is of "higher quality" (Wendt, 1999:27). Actors are no longer coerced to obey, and this encourages conformity with legal provisions. Just as with the first degree of norm internalization, at the stage of self-interest, a norm is still not able to construct the identity of an actor (Wendt, 1999:273). Norms have ability to truly construct agents only when they are fully legitimized. Below, I describe this last degree of norm internalization (Wendt, 1999).

Legitimacy

Legitimacy significantly contributes to compliance by "providing an internal reason for an actor to follow a rule" (Hurd, 1999:387). When an actor, be it individual or a state, deems a norm or a legal order as being legitimate, then he obeys it due to an internal sense of compulsion. He "fully accepts its [the norm's] claims on himself, which means appropriating as a subjectively held identity the role in which they have been positioned by the generalized Other" (Wendt, 1999:273). Legitimization is particularly crucial to any legal order that is to function properly. Rules, norms, and principles constituting a legal framework must be sooner or later legitimized in the eyes of persons to which they are to be applicable. According to Bull, "rules are legitimized to the extent that members of the society accept them as valid, or embrace the values implied or presupposed by the rules" (1977:54). In other words, legitimate rules are effective not because of enforcement or sanctions associated with their breach, but because of their intrinsic value to the society.

The status of a legal system in this third degree of norm internalization is very stable. Humans obey its prescriptions neither out of fear (coercion), nor because it is rational to do so (self-interest), but because they fully internalized its stipulations. Bull, in his discussion of the nature of order in world politics, noticed the distinction between these divergent degrees of norm internalization. He asserts that the maintenance of order in any society is conditioned by a presence of "common interests in the elementary goals

of social life" (1977:53). This sense of common interests may, first of all, be the consequence of fear. In this case, people still obey the law out of coercion. Secondly, according to Bull, the feeling of common interests "may derive from a rational calculation that the limitations necessary to sustain elementary goals of social life must be reciprocal"; in this case, humans abide by the prescriptions of law because of a rational self-interest. Thirdly, the sense of common interest "may express the ability of the individuals or groups concerned to identify with each other to the extent of treating each other's interests as ends themselves and not merely as means to an end; that is to say, it may express a sense of common values rather than common interests" (1977:54). This last statement constitutes a remarkable description of the last degree of norm internalization, namely, legitimization. It is in that stage that the society fully embraces the values and principles established in the normative system. The legal system is fully legitimate and accepted.

How do legal orders become legitimate? I argue that there exist two important ways, in which a legal order can go through the process of legitimization. First of all, legal and religious doctrines may help to provide a necessary underpinning for a legitimate legal framework. Secondly, norm entrepreneurs can also play a significant role in providing legitimacy to a legal order.

One of the most important legal doctrines used to legitimize legal orders is the doctrine of natural law, which states that there exists an overarching, universe-wide, perfect system of law that is supreme to all the legal orders designed by the hand of man. The latter should be, therefore, consistent with the supreme natural law. The idea that there exist general values and principles of wrong and right that are able to be exposed by human reason can be traced to ancient Greece. Aristotle, for example, thought of natural law as having a universal validity. To him, natural law is based on reason that is liberated from all human passion (Vago, 2000). In essence, proponents of natural law theory, such as Saint Thomas Aquinas, considered natural law as being superior to enacted legal frameworks. According to them, there existed a overarching universe-wide, perfect system of law, which is supreme to all the legal orders designed by men. It is not surprising, therefore, that natural law principles were often times seen as supplying moral standards by which positive, human-created legal frameworks could and should be

judged, condemned or legitimized. As Saint Augustine succinctly put it, "a law that is not just is not a law" (Saint Augustine of Hippo, 1993:11).

The Natural Law School drastically altered the very heart of legal science by changing the way in which a legal framework was to be considered just and legitimate. Numerous legal scholars used the natural law arguments to support or criticize a legal framework of a polity. According to David and Brierley, for example, "the Roman law of the universities (*usus modernus Pandectarum*) and Natural Law became in the end one and the same" (1985:47). In other words, philosophers of 15th and 16th century widely used the natural law doctrine to support the usage of Roman law. Grotius, one of the most ingenious Dutch jurists, in his famous *Introduction to the Jurisprudence of Holland* convincingly rationalized the application of Roman law in the Netherlands, invoking its consistency with natural law principles. The impact of the natural law doctrine on the process of legitimization of law has been enormous. It significantly contributed to the revival of Roman law in the Middle Ages.

Beyond legal doctrines, religious beliefs can also constitute just as strong, if not a stronger basis, for the legitimization of the legal system. Islamic law, stemming from the revelation of the Prophet Muhammad, constitutes the prime example. Islamic law has a multitude of sources, including writings of mostly religious character, such as the Koran and Sunna, elaborated upon in the previous chapter. Unlike the common and civil legal systems, Muslim law does not constitute an independent branch of knowledge, but it is merely only one of the aspects of Islamic faith. The Sharia, which literally means "the way to follow," spells out the rules of conduct for believers, without making a sharp distinction in principle between a person's obligations towards others and his or her obligations towards God (David and Brierley, 1985:455). Thus, the religious doctrine of Islam not only constitutes an internal part of Islamic law, but also provides a sound basis for legitimacy of this legal framework. Not only does Islam proclaim general moral principles to which a Muslim should adhere; Islamic jurists in collaboration with theologians have constructed an all-encompassing and meticulous system of rules, norms and principles, whose roots are deeply anchored in the divine revelation. It does not come as a surprise, therefore, that Muslim law "can only be really understood by someone with a minimum general knowledge of Islamic religion and the civilization to which it is so

closely connected" (David and Brierley, 1985:456). The Islamic religion provides the basis for the general principles incorporated into the sources of Islamic law, and also for numerous detailed prescriptions for each believer's conduct.

The entire legal system of Islam and particular legal institutions acquired their legitimacy from the religion of Islam. A great example of such an institution is the holy oath, which may be required by a court to support a litigating party's statements. The holy oath is often times incorporated into the proceedings if testimonies of the litigating parties are contradictory. The parties simply swear that what they are saying is true in order to support their claims. The form of the holy oath draws on its religious importance, in that it is commonly taken in the presence of two notaries at a shrine, a mosque, or in the lodge of a religious brotherhood (Rosen, 2000:10). The majority of the Islamic people believe that a bogus oath will result in a vindictive supernatural punishment. Thus, "it is not unusual for an individual to maintain a particular testimony right up to the moment of oath-taking and then to stop, refuse the oath, and surrender the case" (Rosen, 2000:11). The institution of the holy oath certainly draws its legitimacy from the religion of Islam. Its effectiveness depends solely on the belief that God will punish fraudulent behavior.

Legal and religious doctrines provide in numerous instances a necessary underpinning for a legitimate legal system or for a legitimate legal institution. In addition to these two factors, entrepreneurs can also play a significant role in providing legitimacy to a legal order. Who are norm entrepreneurs? In the language of Finnemore and Sikkink, "Norm entrepreneurs are critical for norm emergence because they call attention to issues or even "create" issues by using language that names, interprets, and dramatizes them" (1998:987). The term 'norm entrepreneurs' relates, therefore, to agents that are able to actively participate in establishing and promoting of a norm, or a desirable behavior (Finnemore and Sikkink, 1998:896). I pose that the role of norm entrepreneurs is not limited only to promoting a norm at its nascent stages of development; on the contrary, powerful actors can play an enormous role in helping the norm to become legitimate. As Kai Alderson puts it,

> "normative internalization depends crucially on how well norm advocates cement their gains within the domestic institutional framework. Committed individuals exercising political power can produce behavioural compliance, *institutionalization* is requires to make it stick…Attitude

> change on the part of judges, business leaders, politicians, students and members of the public is part of what we mean when we say that a state 'internalizes' norms arising elsewhere in the international system" (2001:418).

In both domestic and international legal systems, these norm-promoting agents can play a crucial role in the way that a norm is perceived by the society. The concept of norm entrepreneurs is very similar to Haas' notion of epistemic communities, which constitute in essence "networks of knowledge-based experts" (Haas, 1992:2). Members of an epistemic community are able to influence a state's interests, elucidate the cause-and-effect relationships, formulate policies, and so forth (Haas, 1992:15). In case of legal systems, norm entrepreneurs, or members of a legal epistemic community are able to promote the legitimacy of a legal system. They posses knowledge that is necessary to give a legal framework basis for public acceptance and approbation. The history of law is filled with examples of how certain norm entrepreneurs were able to create and reinforce legal institutions and rules.

As far as legitimacy of legal systems and norms, reception of Roman law between the eleventh and twelfth centuries clearly points to the importance of norm entrepreneurs. As discussed in the previous chapter, after the crumbling of the Roman Empire, the impact of its law on other nations significantly diminished as people of previously conquered lands came back to their traditional primitive laws.[40] Roman law made a triumphant reentry to the legal circles of Europe in the turbulent events of the eleventh to thirteenth centuries, when legal proof was fundamentally changed and Roman *ius civile* was rejuvenated. The success of reception of Roman law in these times can be largely attributed to the support that it received from numerous universities. Legal academia played a momentous role in adapting Roman law to the new ways of the times. Universities took on the role of entrepreneurs in once again establishing the hegemonic position of *ius civile.* As time went on, legal scholars worked on adapting the old Roman law to the new reality of the middle ages and then the time of the Enlightment. Because

[40] This situation provides an excellent example of how the process of internalization of a legal system can stifle. Even though the Roman law was imposed on the conquered territories, after a while these lands returned to their primitive laws. Thus, in this case the Roman law could not proceed from coercion (the first step of norm internalization) to self-interest (the second step of norm internalization). This situation is very different with my above described example of the African colonized states, who, without exception, accepted the legal system of their previous colonizers. In this case, the process of internalization of these legal systems proceeded from coercion, through self interest, to legitimacy (later on in the process).

of the legal scholarship in Italian, German, and French universities, Roman law was rejuvenated. As such it still continues to have enormous influence on legal thought nowadays.

The impact of universities and legal scholarship is not limited to the Middle Ages and the time of Enlightment. Throughout the history of legal systems, the legal profession has played a crucial role in the process of legitimization of law in general. Certain legal institutions are able to take on a life of their own whenever and wherever there exist entrepreneurs who are willing to support these institutions in a "highly contested normative space," where legal institutions compete against each other (Finnemore and Sikkink, 1998:897). Alan Watson has adequately expressed the reality of law formation: "Legal ideas and legal tradition result from the amalgam of law as (a) involving standards having a distinct status, (b) human ingenuity, and (c) an elite making or finding the standards, all dependent on social ends which may to some extent be not expressed, or be forgotten or ignored" (1985:72).

Universities, lawyers, and other entrepreneurs play a crucial role in the process of legitimization of a legal order. Also the government can significantly contribute to the legitimization of a legal system through public information and its power to persuade the citizenry. As Bull puts it, government can "project itself as the symbolic embodiment of the values of the society" and can "mould the political culture in a manner favourable to acceptance of the rules as legitimate" (2002:56). The government can, therefore, promote certain values and principles, which are supportive of a legal system; it can also affect the process of compliance with it.

Having described the meaning of legitimization and the process by which legal systems can become legitimate, I now turn to the discussion of the relationship between legitimacy and a state's identity.

Legitimacy and a state's identity

If a norm or a legal order is at the third degree of internalization, it is truly able to construct agents, their identities and interests. At the heart of this process of construction, lies internalization by an actor of an external standard (Hurd, 1999:388). From this point

on, therefore, an actor perceives his own interests in close relation to a norm. If a person obeys norms out of coercion or self-interest, then he or she is blasé as far as the existence of a norm; there is no real concern whether a norm functions properly. After a norm, or a legal order as a whole becomes legitimate, then it constitutes a part of an agent, or his identity. At that time, a true interest in the well-being of a norm or a legal order on the part of an actor is present. Alexander Wendt (1999) provides a great explanation of the relationship between norm internalization and law:

> "We obey law initially because we are forced to or calculate that it is in our self-interest. Some people never get beyond that point, but this is not true for most of us, who obey the law because we accept its claims on us as legitimate. Implicit in this legitimacy are identities as law-abiding citizens, which lead us to define our interests in terms of the law's "interest." External norms have become a voice in our heads telling us that we *want* to follow them. The distinction between "interest" and "self"-interest is important here: our behavior is still 'interested," in the sense that we are motivated to obey law, but we do not treat the law as merely an object to be used for our own benefit. The costs and benefits of breaking the law do not figure in our choices because we have removed that option from our decision tree" (p. 289).

A legal system becomes at this stage a part of a state's 'ego'. It is able to construct a state's identity and affect its preferences and actions.

In this section, I presented the main stages of norm internalization which characterize the life of a legal system. Each legal order arises out of a societal need for it and then goes through the different phases of internalization: coercion, self interest, and legitimacy. At the end of this process, when a domestic legal system is fully internalized by a state, it is able to constitute a significant part of this state's identity (Wendt, 1992, 1999).

After having discussed how a legal system can become a component of a state's identity, I now turn to the discussion of the relationship between legitimization and the principle of rule of law. My argument is that both of these constructs are closely intertwined in that only in a highly legitimized legal system can the law be fully respected. Thus, if a legal order within a state can be characterized as legitimate, only than can the rule of law abide.

Legitimacy and the Rule of Law

The legitimacy of a legal order is intricately intertwined with the notion of the rule of law. In other words, the ideal of the rule of law, which can be traced all the way back to Ancient Greece, constitutes an important characteristic of a legitimate legal order. If a legal order within a state can be characterized as legitimate, than the rule of law abides. In order to engage in a theoretical discussion of the connection between the rule of law and legitimacy, first I have to establish what the principle of the 'rule of law' denotes.

The doctrine of rule of law represents a rather controversial political ideal that has been defined by legal scholars in quite numerous ways. Some definitions are more extensive and encompassing than others. In Ancient Greece, for example, where the doctrine originated, the rule of law was to be understood as describing a system in which even a government was not to be above the law. Many Greek philosophers deliberated about the paramount form of a polity's government. Would the government by 'the best men' such as Plato's Philosopher King be the best? Or, would the rule of law be superior (Plato, 1995)? According to Aristotle, who analyzed copious constitutions of the Greek city-states, the government based on the rule of law presented the most realistic choice (Aristotle, 1954).

Later, several legal scholars devoted their scholarly effort to defining the rule of law. A.V. Dicey, for example, in his 1885 work *Introduction to the Study of the Law of Constitution,* delineated the basis of what the principle of rule of law means for a domestic legal system. According to him, the rule of law is comprised of three basic elements: "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power"; "equality before the law" for all of the citizens and the government; and thirdly, the necessity for individual rights to derive from court precedents rather than from constitutional codes (2000:195, 202).[41] If the rule of law is to abide, then law must reign supreme above every person, the sovereign notwithstanding. According to one contemporary legal scholar, Ronald Dworkin, the doctrine of the rule of

[41] Also quoted in Allain, 2000:3.

law "requires nothing less than that a community is ruled by an accurate public conception of individual rights" (Dworkin, 1985:11-12). Despite numerous definitions of the doctrine of rule of law, its most important characteristic is that it firmly stands against legal caprice and arbitrariness. Perhaps the phrase "the rule of law and not of men" best summarizes its gist (Macedo, 1994:149).

How is the doctrine of rule of law related to legitimacy? A closer look at the definition of legitimization will help me to describe that relationship. Quite a few legal scholars offer definitions of legitimization. According to Franck (1990), for example, this concept constitutes "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right processes." (1990:25). Legitimacy constitutes a feature of a legal system or of a single rule which derives from a perception on the part of those to whom it addresses that its roots are just and good (Franck, 1988). This definition directs our attention towards the link between legitimacy and the rule of law, by showing that legitimacy results in high respect and compliance with law. If a norm or an entire legal system is legitimate, then humans subject to it feel a pull towards compliance. The genesis of a legal system (its coming into being as the result of a 'right process') generates a perception within actors that this particular legal system is legitimate.

Numerous insights as to what legitimization really stands for come from sociology, where quite a few scholars offer interesting definitions of internalization. Campbell, for example, asserts that internalization is "a condition of incorporation of norms and/or rules into one's own personality, with a corresponding obligation to act accordingly or suffer guilt" (1964:392). Rommetveit describes internalization as 'the subtle change occurring when an enduring social pressure exerted by a norm-sender gradually is felt or experienced by the norm-receiver as an obligation toward himself" (1954:56-57). Thus, when a norm is fully internalized, or legitimized, it is simply a part of a norm-receiver, who automatically expresses this norm in his or her behavior. Studies devoted to the topic of internalization of moral rules by children argue that "once a child

has completed the process of patterning himself after important adults, the external observer is replaced by an inner voice" (Miller and Swanson, 1958:136).[42]

All of these descriptions of both legitimacy and internalization help us understand the relationship that this concept has with the principle of the rule of law. I assert that both of them are inescapably intertwined. In particular, I pose that only under a fully legitimized legal system, can the rule of law be in its entirety respected. As most scholars agree, legitimacy encourages compliance (Koh, 1997, Franck, 1988 and 1990). Max Weber in his seminal writings emphasized the intricate link between legitimacy and obedience of law. In his view, a command of a sovereign is much more likely to be observed if the subjects see both the sovereign and the rule as legitimate (Weber, 1968).[43] When a legal system becomes fully legitimized, compliance with it occurs due to noncoercive factors.[44] Actors subject to a system of rules have internalized legal prescriptions and fully accept their claims as being right. Each legitimate rule and each legitimate legal system has at this stage an inherent positive 'pull power' towards compliance. Of course, different legal systems can differ in their ability to encourage compliance (Franck, 1988:712). Some are much stronger and much more effective than others. International law provides many examples of how certain rules have strong compliance pull and others do not. For example, the rule that makes it unacceptable for states to infiltrate spies into other states in the guise of diplomats is, although recognized by most states, actually disregarded. It has no pull towards compliance (Hart, 1961:209). Other international norms, such as those proscribing chemical warfare have been highly effectual. Their pull towards compliance is very high (Legro, 1997).[45]

Just as divergent international norms can differ according to their 'pull towards compliance', so can legal systems vary according to their degree of legitimization. Some legal systems, although old and well established within a nation, have a very low degree of probable compliance. Some call these rules 'dead letters' (Schachter,1968:311). Even though there exists a complete legal system, people do not respect it. Law, although

[42] Also quoted in Campbell 1964:393. The role of important adults is very similar to that of norm entrepreneurs. Again, powerful actors have the ability to reinforce the process of norm internalization.
[43] This view is highly similar to that of Wendt (1999).
[44] Of course, compliance due to noncoercive factors will constitute the norm; even in law-abiding states, some people do not comply, thus deviating form the norm.
[45] These facts suggest that international law as a whole is usually not viewed as legitimate by all states. Some norms are legitimate, and some are not.

present, does not *de facto* rule over the people. Examples of states, where the rule of law consistently continues to be low include Panama, Mexico, and Venezuela. On the other side of the spectrum, we have nations such as the Netherlands, Norway, Luxemburg, and the United States of America who consistently score very high on the index of the rule of law.[46] Thus, legal characteristics of states in the system can vary not only according to the type of a legal system, but also according to the degree of legitimization of their domestic legal system.

The relationship between legal systems and the rule of law constitutes a very significant element of my theoretical argument. I argue that legal structures of each state in the system vary not only according to the type of a legal system (civil, common, and Islamic), but also according to the degree of legitimization of a legal system. In other words, two states who belong to the same major legal tradition can have a different degree of legitimization of this legal system. France and Mexico, for example, even though they both represent the civil legal tradition, differ in the degree of legitimization of their law. Mexico's legal system is not nearly as legitimate as the legal system of France. According to the International Country Risk Guide data set, in Mexico the rule of law score continues to be around 3 for the years 1984-2004, and in France, it hovers around 5 and 6. The same pattern repeatedly occurs in the other two major legal systems. In the common law family, Ghana's levels of support for the rule of law, for example, are very low and move between 1 and 3. The United States of America, on the other hand, continues to score very high (6). Also in Islamic legal systems, we can see definite variation in legitimacy. Some states, such as Iraq continue to score low on the scale

[46] This is taken from the International Country Risk Guide (ICRG) data set, which is used and thoroughly elaborated upon in the empirical chapters of this dissertation. International Country Risk Guide (ICRG) scale is a scale from 0 to 6, and 0 denotes the lowest respect for the rule of law and 6 denotes the highest possible level of respect for this legal principle. This measure is available for years 1984-2002 and it provides quantitative assessments by unidentified experts of the strength of the law and order tradition in various countries. According to the ICRG, the law and order variable is constructed as follows: "Law and Order are assessed separately, with each sub-component comprising zero to three points. The Law sub-component is an assessment of the strength and impartiality of the legal system, while the Order sub-component is an assessment of popular observance of the law." Thus, a country can enjoy a high rating "3" in terms of its judicial system, but a low rating "1" if it suffers from a very high crime rate of if the law is routinely ignored without effective sanction (for example, widespread illegal strikes) (International Country Risk Guide codebook, p.33).
In all of my empirical analyses I treat the ICRG measure of the rule of law as a state level variable. The Law component of this scale explicitly refers to the domestic legal system as a whole (its impartiality and strength), which justifies my approach.

(between 1 and 2) during the time period of 1984-2004. Other nations experience growth in the legitimacy of their system like Kuwait, who started with 2.6 in 1984, and reached a high of 5.75 on the scale in 2004. According to my theory, the impact of Kuwait's legal system on its international behavior would be much more substantial in 2004 than in 1984.

Introducing the concept of legitimization into my theoretical argument can provide a noteworthy insight into the legal structures of states. Because the type of a legal system of a state does not usually vary,[47] the notion of the rule of law (legitimacy) introduces a degree of variation to the jural design of each state. I argue that both of these legal characteristics, legal system type and legitimacy, can impact the behavior of states on the international arena. Domestic legal system types and their legitimacy influence the propensity of countries to cooperate and to solve their disputes in a violent way. Through affecting transaction costs, uncertainty and enforcement of interstate contractual obligations, these two legal characteristics have an effect on the likelihood of international cooperation and conflict.

Conclusions

In this chapter, I described the process of internalization of a legal system into a state's identity. I argued that legal systems are born out of a societal need for order and perseverance. After birth, each legal order goes through the process of internalization, starting from coercion, and then going through self-interest, and legitimacy. Having described this intricate process of identity formation, I now turn to a discussion of the impact of legal characteristics (domestic legal system types and legitimacy) on states' ability to strike international bargains. While in this chapter, drawing from the constructivist literature, I elaborated upon the process of how states acquire a legal identity, in the next chapter, I follow a rationalist framework, which assumes that states

[47] Legal systems constitute a rather stable characteristic of a state's internal design. In the data sets used in the empirical chapters of this dissertation, covering the years 1920-2002, there is no variation across time in legal system types.

have fairly stable preferences. I argue that we can perceive international cooperation as a form of contract concluded between two or more states. If we understand relations between states in contractual terms, domestic legal system types and the rule of law (legitimacy) affect states' ability to successfully cooperate with one another. I capture variance in states' preferences over time by considering both, a state's legal system type and its degree of legitimization.

CHAPTER FOUR

LEGAL SYSTEMS AND INTERSTATE BARGAINING

Introduction

This chapter is devoted to the discussion of the link existing between states' international behavior and their legal systems. Following rationalist logic, I argue that we can perceive international cooperation as the result of successful bargaining. International conflict, on the other hand, can be perceived as the failure of bargaining. If the process of bargaining ends in a success, states cooperate by signing contracts with one another. During the extensive process of bargaining, states negotiate many contract-related issues. Sometimes interstate bargaining leads to a successful contractual obligation, at other times, states are not able to strike a deal. Just as within a domestic legal system, individuals engage in contractual relationships, so do states sign contracts with one another. Just as humans prefer some bargains to others, so do states carefully choose their contractual obligations. In this chapter, I attempt to show that we can look at all types of interstate cooperation such as alliances, trade treaties, membership in international institutions, etc., as legal contracts. In the process of bargaining between states (or between states and international institutions), legal systems and their legitimacy play a crucial role in determining whether states reach a consensus or not. Bargaining that takes place among states and international institutions is quite unique; it takes place where uncertainty and anarchy rule. Thus, each side is unsure about the other's true intentions and each side can successfully withhold private information from the other parties. Legal systems are able to reduce this uncertainty. Whereas in the previous chapter, using the

constructivist framework, I explained how legal systems can become part of a state's identity, in this chapter I assume fixed and exogenous preferences.

First of all, types of legal systems (civil, common, and Islamic) significantly affect the ability of states to strike international deals. I assert that states with similar legal systems are much more likely to sign a contract with one another than are states representing divergent legal traditions (all else being equal). For example, I propose that two civil law states will be more likely to cooperate with one another on the international arena than a civil law state and an Islamic law state. In the same way, two Islamic states should strike a deal much easier with one another than with civil or common law states. Secondly, I argue that the degree of legitimacy of a legal system significantly affects states' ability to strike international bargains. As suggested in the previous chapter of this dissertation, I argue that the more legitimate a legal order, the easier it is for a state to cooperate internationally. I base my expectations regarding types of legal systems and their legitimacy on a simple cost-benefit argument. The costs of cooperation between two states with similar legal orders are much lower and more predictable than the costs of striking a deal between two states representing divergent legal traditions. Benefits stemming from an international contract between two states of similar legal origins are very likely to exceed the costs. The same argument can be applied to legitimacy. Costs of cooperation between states with legitimate legal orders of the same type are not only predictable but also relatively low. Similarity of legal systems and their legitimacy significantly reduce the uncertainty of an international contractual obligation and thus increase the probability of interstate cooperation.

The theoretical discussion in this chapter proceeds as follows: First, I offer a brief literature review regarding interstate cooperation and the effectiveness of international law. Secondly, I explain my argument that international cooperation between states (or between states and an international institution) usually involves a contractual relationship. Thirdly, I discuss how states' behavior on the international arena can be explained in bargaining terms. Lastly, I focus on the impact of legal systems and the rule of law on interstate bargaining. In this part of my argument, I focus on a particular bargaining model, Fearon's (1998) model of interstate bargaining and enforcement, and

show how taking into consideration internal legal structures can change the predictions of this model.

Interstate Cooperation and Enforcement of Agreements

Why do states cooperate? Why do they sign and uphold agreements? Does international law matter at all? Answers to these three questions are many, but there are three broad perspectives that have, for the most part, dominated debate in contemporary international relations: Realism (Neorealism), Neoliberalism, and Constructivism.

According to Realism, which was articulated and systematized by scholars such as Hans Morgenthau, E.H. Carr, and Kenneth Waltz, states are the main actors in world politics and they are seen as continuously immersed in a never-ending struggle for power or security. Realism depicts states as maximizing their relative material power and concerned with their own survival in an anarchic system. According to this view, states will cooperate only to further their own selfish interests. Rules and norms matter if they affect the estimation of their interests. International institutions exist only because they can perform valuable functions. According to Morgenthau, "Where there is neither a community of interests nor balance of power, there is no international law" (1985:296). This pessimistic conclusion is connected to Morgenthau's view of international morality, or ethics. To him, nationalism (the rise of the nation state) spelled the end of international ethics, because it shattered transnational connections among aristocratic elites (Morgenthau, 1948b). What is, therefore, the role of international law? According to the Realist thought, international law simply mirrors politics, and it should be regarded as serving purposes of powerful nations (Reus-Smit, 2004:16). Compliance with international agreements takes place only due to states' interests and power, not legitimacy (Waltz, 1979). States accede to rules that are able to further their selfish interests; when these interests start to diverge from the rules, states will simply modify or break the rules.

A quite different view is presented by the Neoliberal school of thought (Keohane 1984, Axelrod, 1984). Neoliberals pose that states cooperate, sign and uphold international treaties because of efficiency gains and reputational costs. While accepting many of the assumptions of Realism,[48] Neoliberals argue that cooperation can occur on the anarchical international plane. States, who are depicted as rational egoists, recognize that their individual and collective interests are often times best achieved through mutual cooperation (Keohane, 1984, Axelrod and Keohane, 1993). States, if working together, can overcome the problems of incomplete information, cheating, and high transaction costs through international institutions (Reus-Smit, 2004:18). International regimes can enhance compliance with international agreements in a variety of ways, from boosting reputation, to "establishing legitimate standards of behavior for states to follow" (Keohane, 1984:244-45). Institutions do not dictate what states must do, but they "help governments pursue their own interests through cooperation" (Keohane, 1984:246). Selfish states, through institutions and the shadow of the future, can overcome the conditions caused by anarchy.[49] In short, the Neoliberal cooperation scholars argue that both, institutions and a longer shadow of the future, can substantially increase the probability of interstate cooperation. What is the role of international law according to Neoliberals? Keohane sees international relations as to some extent institutionalized through formal international organizations and codified rules and norms, such as international regimes. These regimes foster international cooperation. States will, therefore, adhere to their international commitments due to efficiency gains and reputational costs. Cooperation is possible.

The Constructivist approach has over the past decade contributed significantly to the growth of IR scholarship (Wendt, 1992 and 1999, Checkel, 1998, Finnemore and Sikkink, 2001). Constructivists advance two core propositions regarding the nature of international relations. First of all, they pose that both material and non-material factors, such as norms and common understandings, shape the behavior of actors on the international arena (Wendt, 1999). Secondly, norms and intersubjective beliefs can shape

[48] Neoliberal Institutionalism assumes that states are primary actors in international relations. They also accept the Realist assumption of anarchy in the international realm.
[49] Robert Axelrod (1984) in his argument focuses on cooperation via bilateral reciprocity, and Keohane (1984) emphasizes the role played by institutions.

actors' identities, interests, and thus actions (Finnemore and Sikkink, 2001). Constructivists explain international cooperation by looking at evolution of identity and emergence of international norms (Kratochwil, 1989). Normative and ideational structures, which are able to constitute actors' identities, are also able to shape their definitions of "who they are" and "what they want" (Reus-Smit, 2004:22). In simple words, states cooperate because they internalize norms of mutual cooperation, or because they are friends. Through a gradual internalization of international legal norms, nations identify themselves with the standards set by these norms. Rules and norms of international law can actually shape states' behavior.[50]

As the preceding discussion explains, there exist quite a few explanations of *why* states cooperate. Also, these contrasting points of view differ as to the role of international law in shaping international outcomes. Realists, skeptical about international cooperation, point to states' self-interest and power. According to them, balance of power and security needs can, to a certain extent, promote cooperation. Neoliberals argue that it is efficiency gains and reputational costs that encourage states to cooperate. Factors such as regimes/institutions, long shadow of the future, legal liability, and low transaction costs can encourage interstate cooperation. Finally, according to constructivists, states cooperate because they are friends; international norms can also, according to this view, influence states' behavior. In other words, shared interests and norms can foster cooperative behavior. Although Realism (Neorealism), Neoliberalism, and Constructivism shed light on interstate cooperation, I pose that all three of these frameworks fail to fully explain *why* some states are more likely to cooperate with one another. Rethinking these three approaches is thus indispensable if we are to reach a more comprehensive understanding of international relations. None of these approaches takes into consideration the characteristics of internal legal design of cooperating states. My approach is designed to fill that lacuna. In the section that follows, I present my argument that international cooperation can be understood as constituting the result of a successful interstate bargain over a contractual relationship. Conflict, on the other hand, can be interpreted as a failure of bargaining (a failure to sign a contract). I argue that legal

[50] This approach stands in contrast with the Rationalist school of thought that argues that full information, ability to make credible commitments, and divisibility of issues make international cooperation possible (Fearon, 1995).

systems (their type and legitimacy) can help us understand why some states are more likely to strike an international bargain than others.

Interstate Cooperation and Interstate Contracting

What is a contract? There exist quite a few definitions of this legal construct. Law of contracts constitutes a substantial part of each state's domestic legal framework. It is in this body of laws that one can find an explicit definition of a 'contract' and all the requirements of its validity. Characteristics of a 'contract,' as well as the general description of what a contract is, are, for the most part, constant across legal systems. Definitions of a 'contract' present in domestic legal orders (civil, common, and Islamic) and international law have numerous features in common. According to Whincup, the word 'contract' is very often used interchangeably to "signify both the fact of agreement and any written record of it" (1992:13). Thus, a 'contract' denotes not only the actions of contracting parties, but also the effect of their actions (a written description of their obligations). Most legal systems treat an agreement or an arrangement between two or more persons as a contract with legal effects if it meets key requirements (form, eligibility of parties, etc.) stipulated by an adequate part of law. Specific formalities and substantial prerequisites may be slightly different under each municipal law.[51]

According to English law, for example, a contract must meet four requirements. These are: "the intention [of the parties] to be legally bound, certainty as to terms, offer and acceptance, and valuable consideration" (Whincup, 1992:13). The first prerequisite obliges the parties to be determined to make a legally binding agreement. In other words, their intent should be to create a valid contractual obligation. Secondly, overlapping with the first requirement, is the need for certainty and clarity of expression; doubt as to the meaning of a crucial contractual term (examples include prices, salaries, dates, quantities) will result in the inability to enforce a contract. This requirement is commonsensical;

[51] Municipal law is yet another term that refers to domestic legal systems.

everybody must understand the basics of his/her contractual obligations. Thirdly, an agreement requires a 'meeting of minds - a 'consensus'" (Whincup, 1992:31); a contractual consensus consists of an *offer* by one party and an *acceptance* of the terms of this offer by the other person. Fourthly, English law requires a valuable consideration for a contract to be valid. The basic idea is that something of economic value must be given or done in return for the other party's promise. Other legal systems define a contract in very similar terms. Dutch law (belonging to the civil law family), for example, defines a contract as a "multilateral juridical act whereby one or more parties assume an obligation towards one or more other parties" (Whincup, 1992:25). It is formed, just as under English law, by one party giving an offer and another party accepting it. According to the German code (also belonging to the civil law tradition), a clear declaration of will on each side (offer and acceptance), and a common serious intention to be bound constitute necessary elements of a contract. All of these definitions of a contract point to the importance of two general requirements. First of all, all of the parties must intend to be legally bound by their contract. Secondly, one party must *offer* something and the other must *accept* the offer.

I pose that all of these definitions can help us see that acts of cooperation between states can be easily understood as contractual obligations, or contracts. Apart from domestic legal systems, international law can also help to shed light on the meaning of a contractual commitment between states. In international law, a 'treaty' is regarded as the closest legal construct related to a contract. In a treaty, states or other legal entities come together in order to regulate some type of a relationship between them. There exist numerous types of international treaties, such as alliances, trade treaties, and environmental agreements. At the heart of each type, however, lies a contractual obligation. How do we define a treaty according to international law? Perhaps the most adequate definition of a treaty is provided by the 1969 Vienna Convention on the Law of Treaties. A treaty is defined, for the purpose of this Convention in article 2 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." The same definition was also adapted by the 1986 Convention on Treaties between States and International

Organizations. Thus, a treaty (an international contract) can be concluded between states and also between states and international institutions. In simple terms, a treaty is "basically an agreement between parties on the international scene" (Shaw, 2003:811).

When we compare domestic law with international law, it is easy to note that legal rights and duties may be created according to each of them in a slightly different way. The difference is not substantial, however, but formal. Domestic laws differ from the 'law among nations' in the degree of formalization. Whereas legal obligations within a municipal legal framework are highly specified, international law regulates rights and duties of states and other legal persons in a relatively simplistic way. Thus, in each domestic legal system, there exist copious types of contracts such as a contract of sale, a contract for services, lease, exchange, and many others. Each of them has its own formalities that have to be fulfilled in order for it to become legally valid. The situation is diametrically different in international law. The simple notion of international contract - treaty - is used to legally regulate all of the many relationships between nations. As Shaw puts it:

> "States transact a vast amount of work by using the device of the treaty, in circumstances which underline the paucity of international law procedures when compared with the many ways in which a person within a state's internal order may set up binding rights and obligations. For instance, wars will be terminated, disputes settled, territory acquired, special interests determined, alliances established and international organizations created, all by means of treaties. No simpler methods of reflecting the agreed objectives of states really exists and the international convention has to suffice both for straightforward bilateral agreements and complicated multilateral expressions of opinions" (2003:810-811).

There are no specific requirements regarding the exact form of treaties concluded on the international realm. General principles related to contracts present in domestic legal systems are, however, still applicable to contractual relations between states. Just as in municipal law, parties to a treaty must *intend* to be legally bound by their agreement. However, some agreements concluded between states are not seen as constituting a legally binding obligation. For example, a declaration by a number of states regarding support of a particular political aim may not carry legal significance because these states may not intend it to constitute a legally binding contract (Shaw, 2003:812-813). The Final Act of the Conference on Security and Co-operation in Europe, 1975, constitutes an

example of a non-binding international agreement. Despite its enormous impact on interstate relations in Europe, the Final Act was understood as the means by which the post-war European territorial settlement would be acknowledged (Shaw, 2003:347 and 813). Also, informal arrangements between nations, which contain an informal exchange of letters or notes which record an 'understanding' between governments, do not carry a legal significance.[52] In cases when states do not have in mind creation of a legal relationship, although the agreement will not be a treaty, it can still carry substantial political consequences. There are, however, numerous situations where states explicitly intend to confer upon themselves rights and obligations. An alliance, for example, where the parties are determined to create a legally valid obligation, has a status of a legally binding contract. The proportion of states fulfilling their commitments arising out of these international contract supports the view that states intend to be legally bound by them. According to Leeds, Long, and Mitchell, considering the specific obligations incorporated in alliance agreements, alliances are reliable 74.5% of the time (2000:686). A great example of a contract that can be signed between a state and an international institution is provided by optional declarations with regard to the compulsory jurisdiction of the International Court of Justice (Shaw, 2003:813). States, by accepting the compulsory jurisdiction of the ICJ, sign a legally binding treaty with this international institution.

Looking at both the domestic principles governing the law of contracts and the international law of treaties, one can easily note the similarities between the two. Just as individuals, under the guidance of domestic law, are able to sign contracts with one another, so are states able to engage in contractual relationships. The most important difference between domestic and international realms is that, in the latter realm, there are not nearly as many contract-related formalities. Under both legal domains, parties to a contract must be willing to be legally bound by it, and must understand their basic

[52] United Kingdom Materials in International Law, 71 British Year Book of International Law, 2000:534. Also quoted in Shaw, 2003:814. Interestingly, some of the oral agreements can be in certain circumstances considered binding on the international plane. An excellent example is provided by the agreement between the Danish and Finnish Prime Minister who had a phone conversation in which they agreed that Finland would drop its claim in the International Court of Justice if Denmark paid Finland some money (Aust, 2000:7).

obligations. Domestic law requires, however, that many more formal requirements be met before a contract can be legally recognized.

In addition to the intention to be legally bound, a contract must consist of an *offer* made by one contracting party, and *acceptance* of an offer by the other party. Generally speaking, all domestic legal systems list these two actions as requirements of a contract. International contractual obligations also involve *offers* and *acceptance of offers*. States while cooperating offer something to the other side or accept the other party's offer. Specific objects of an offer and acceptance vary according to the type of a treaty; it can be protection, military assistance, trade, and promise of non-aggression. A state accepting the compulsory jurisdiction of the International Court of Justice is accepting the Court's offer of a legal resolution of a dispute. States engage in lengthy negotiations before one side accepts a final offer.

Also, states' representatives make sure that all contractual terms are clearly specified in each treaty so that all of the signatories would not have any doubt as to what the crucial terms of an agreement are. Of course, just as with contracts concluded under any municipal law, treaties can be often times ambiguous. There are quite a few reasons for treaty vagueness. First of all, legal stipulations included in an international treaty may not be able to provide the signatories with unequivocal answers to specific contentious questions (Chayes and Chayes, 1993:188). Treaty drafters, who in most cases are lawyers, are not able to anticipate all the possible circumstances that the treaty might come up against in the future. As Chayes and Chayes state: "Economic, technological, scientific, and even political circumstances change. All these inescapable incidents of the effort to formulate rules to govern future conduct frequently produce a zone of ambiguity within which it is difficult to say with precision what is permitted and what is forbidden" (2003:189). Treaties, just like domestically concluded contracts, come against uncertainties of the future. That is why domestic legal systems play such a crucial role in reducing the uncertainty that states face on the international plane. I will elaborate on this issue further in the latter part of this chapter.

All of the arguments specified above clearly support my assertion that we can understand international cooperation as contractual relationships. It is important to add that in my theory I treat all types of international cooperation as constituting a contract.

Not only written agreements such as treaties and alliances, but also informal acts of cooperation constitute examples of a contract. Signing alliances, trade agreements, and other international treaties, and unwritten acts of cooperation constitute nothing more than contracts between states or between states and international institutions. Parties to these types of contracts are willing to be legally bound by them. By signing an alliance treaty, for example, states are willing to bind themselves by a contractual obligation to come to each other's aid in times of need,[53] treaties consist of an *offer* and *acceptance* of an offer. Unwritten informal acts of international cooperation also contain both of these contractual elements. Relations between states and international institutions consist of these two contractual characteristics.

Interstate Cooperation and Bargaining

There are many ways in which states can cooperate with one another. The subject of a treaty can vary a great deal from stabilizing exchange rates to environmental protection. I assert, following numerous IR scholars, that we can frame interactions between states and also between states and international institutions, as a bargaining process (Schelling, 1960; Rubinstein, 1982; Fearon, 1995 and 1998, Powell, 1996). Actors on the international arena bargain over numerous issues. Sometimes bargaining allows the parties to strike a deal; sometimes failure of bargaining leads to a conflict.

What is bargaining? According to the classical approach to bargaining, it refers to a situation "where there are multiple self-enforcing agreements or outcomes that two or more parties would all prefer to no agreement, but the parties disagree in their ranking of the mutually preferable agreements" (Fearon, 1998:274). At the heart of bargaining, therefore, lies a situation where there, first of all, exist multiple possible agreements that the parties could react to. All of these agreements are, according to the bargaining parties, better than not reaching agreement at all. Secondly, each party ranks the mutually

[53] Of course, this argument is heavily criticized by the realist camp. Also Smith (1996), for example, shows that only unreliable alliances will be challenged.

preferred agreements in a different way. Thus, even though all parties prefer agreement (A, B, or C) to no agreement, one party may prefer agreement A to B to C, and the other party may prefer C to A to B (Nash, 1950, Schelling, 1960, Fearon, 1998).[54] As such, bargaining can be seen as the coexistence of both cooperation and conflict; all sides to a bargain prefer agreement to no agreement (cooperative element), and each side wants the outcome of the bargain to constitute its most preferred agreement (conflictual element). As Ikle put it: "Without common interest there is nothing to negotiate for, without conflict nothing to negotiate about" (1964:2).[55]

The process of bargaining is not static. Quite the opposite; bargaining is dynamic (Fearon, 1998). It can be understood as "the exchange of offers and counter-offers, concessions and retractions; as bazaar-like haggling in contrast to joint problem-solving" (Jonsson, 2005:218). Because actors' preferences differ as to the ranking of mutually preferable agreements, each side tries to reinforce its preferences. Thus, multiple offers and counteroffers are considered, and each side tries to test the determination and resolve of the other side. According to Keohane, cooperation is a process, which requires "active attempts to adjust policies to meet the demands of others" (1984:12). The logic of cooperation, in other words, demands that actions of individuals, organizations, or states, which are not in a prior harmony, must be conformed (Keohane, 1984:51). The extent of adjustment that each side has to make in order to meet the actual or anticipated preferences of the other partner can vary significantly (Werner, 2000). Sometimes preferences of negotiating states are diametrically opposed. In this situation, the bargaining process might be lengthy and problematic. It might even fail to end in an agreement that is acceptable to both sides. Sometimes, on the other hand, preferences of states, even though not identical, may be very similar. In this case, the bargaining process should be smooth and should lead to a quick agreement.[56] Bargaining that takes place among states is quite unique; it takes place where uncertainty and anarchy rule. Thus,

[54] Sometimes, states may be unable to strike an international bargain that both would prefer to war due to issue indivisibilities (Fearon, 1995:381-382). Some issues, because to their very nature "simply will not admit compromise" (Fearon, 1995:382). This situation is, according to Fearon, rather rare, because issues over which states usually bargain are multidimensional and intricate.

[55] Also quoted in Jonsson, 2005:218. In this case, conflict should be perceived as a conflict of interests, and not militarized conflict.

[56] Another possibility is, of course, that states simply do not need a treaty to cooperate.

each side is unsure about the other's true intentions and each side can successfully withhold private information from the other parties.

Just as cooperation can be perceived as the success of bargaining, conflict[57] can be understood as the failure of bargaining. Sometimes, despite lengthy negotiations, states are unable to reach an agreement with terms acceptable to both sides. This situation often times occurs if preferences of states are dissimilar. In this case, convergence of preferences which leads to an agreement is unlikely: "the greater the conflict of interests between the players, the greater the likelihood that the players would in fact choose to defect" (Axelrod and Keohane, 1993:87). On the international arena cooperation is, therefore, rather difficult simply due to the fact that states have different or even diametrically opposed preferences.

International law throughout its history, has evolved to deal with numerous situations that might prevent states from cooperating. Reservations to treaties constitute one of the legal constructs that allow states to sign agreements without a complete adjustment of their preferences. A state may use a reservation if it is, for the most part, satisfied with the terms of a treaty, but it is dissatisfied with certain stipulations. In such circumstances this state may, while consenting to the rest of a treaty, choose not to be bound by such 'uncomfortable' provisions. The institution of a reservation constitutes a useful device of international treaty law, which promotes cooperation. As Shaw puts it, " By the device of excluding certain provisions, states may agree to be bound by a treaty which otherwise they might reject entirely" (2003:822). The ability of states not to be bound by certain provisions is especially beneficial in the case of multilateral conventions because it encourages many states to sign a treaty. Despite social, political, and economic divergence, nations can come together and agree to the main provisions of a treaty (Shaw, 2003:822).

States attach reservations to numerous treaties. An example is provided by reservations that states can place on their optional clause declarations when they accept the compulsory jurisdiction of the International Court of Justice. States, even though recognizing the general competence of the ICJ to preside over interstate disputes, limit

[57] This type of conflict (conflict as a failure of bargaining) should be distinguished from the conflict of interests, which can lead to cooperation. Conflict as a failure of bargaining can even be militarized.

the Court's jurisdiction in certain type of disputes. Restrictions thus created may relate to particular states (*ratione personae*), certain times of disputes (*ratione temporis*), or divergent areas of international law (*ratione materiae*) (Alexandrov, 1995). Another example is provided by reservations placed by states regarding the Convention on the Rights of the Child (entry into force 09/02/1990). The total number of reservations placed on that treaty by all states is 68. Islamic nations, such as Iran, Iraq, Kuwait, and Afghanistan make reservation "to the articles and provisions which may be contrary to the Islamic Shariah" (reservation of Iran, Convention on the Rights of the Child).[58] Iraq places a reservation in respect to article 14 of the Convention, paragraph 1, concerning the child's freedom of religion, "as allowing a child to change his or her religion runs counter to the provisions of the Islamic Shariah" (reservation of Iraq, Convention on the Rights of the Child). Andorra, on the other hand, "deplores the fact that the Convention does not prohibit the use of children in armed forces" (reservation of Andorra, Convention on the Rights of the Child).

The ability of states to make reservations to a treaty is, however, not possible in the case of bilateral treaties. According to international law, an agreement between two states cannot be valid if some provisions of the treaty do not bind one contracting party.[59] If one state disagrees with some of the stipulations of an agreement, it simply means that the bargaining process between negotiating sides cannot yet be concluded, and the draft of this agreement must be renegotiated. In bargaining terms, such a situation forces the parties to exchange yet another set of offers and counteroffers. Because of the necessity of both sides to agree to all of the stipulations of a bilateral treaty, these types of agreements can often times fail to produce an agreement acceptable to both sides. Preferences of states might prove to be too opposed for the negotiations to produce a successful outcome. In this case, even a repeated exchange of offers and counteroffers might not lead to a consensus. Numerous analyses of cooperation failures show that often

[58] These reservations reflect the fact that the freedom of contracting parties under the Islamic law is subject to the limitations placed on their actions by Sharia.

[59] Yearbook of the International Law Commission, 1966, vol.II:203; also quoted in Shaw, 2003:822. The inability to place a reservation on a bilateral treaty does not preclude a treaty to confer asymmetrical rights or place asymmetrical obligations on the contracting states (example: military alliances where the parties have different obligations). In the latter case, both parties agree to an asymmetrical distribution of rights and obligations. A reservation to a bilateral treaty, on the other hand, would mean that one party intends to either omit a particular provision of a treaty, or understand it in a certain way (Shaw, 2003:822).

states do not cooperate with one another due to obvious "deadlock" in negotiations (Fearon, 1998, Oye, 1986a). As Oye put it: "When you observe conflict, think Deadlock-the absence of mutual interest-before puzzling over why a mutual interest was not realized" (1986a:7). In some cases, states are just not able to find an agreement with terms that would be preferred to no agreement. In such situations, conflict as the failure of bargaining is likely to occur.[60]

It is obvious that we can understand international cooperation (both written acts of cooperation such as treaties and informal agreements) as a process of bargaining over contractual obligations. As Fearon puts it: "Given this understanding of the nature of a bargaining problem, it is immediately apparent that virtually all efforts at international cooperation must begin by resolving one" (1998:274). Two or more states (or states and an international institution) during the process of negotiations bargain over who will be required to do what. Rights and obligations, an offer and its acceptance, and willingness to be legally bound, all constitute defining elements of a contract. All of these elements are present in international treaties, and all of them are subject to the bargaining process. States bargain over their treaty obligations, and over obligations of other contracting parties. Each side has quite different preferences even if both sides prefer an agreement to no agreement. The degree of divergence in preferences determines what type of game is being played.

One can picture this situation by imagining that each party constructs a continuous scale of its preferences ranging from its most preferred outcome to its least favorite acceptable outcome. If each side creates such a scale, then an agreement can occur if all of these continua are able to overlap creating a space where an acceptable to all sides agreement can be reached (Jonsson, 2005:213). This space, often labeled the 'contract zone', constitutes an area within which a contract can be signed. Through repeated exchange of offers and counteroffers, negotiating states can establish whether this bargaining space exists or whether it does not. Sometimes these continuous scales of preferences constructed by each side are not able to overlap with one another precluding the parties from striking a deal (Jonsson, 2005:224). The probability for these continua to

[60] Opposed preferences constitute, of course, only one of the possible obstacles to successful bargaining. Private information and commitment problems can also cause bargaining to fail (Fearon, 1998).

overlap is higher in negotiations of multilateral treaties where states can sign reservations. In bilateral treaties, on the other hand, where both parties must agree to all the stipulations, bargaining may fail and conflict can occur. Again, because multilateral treaties allow reservations, a state can sign a treaty even though it disagrees with certain provisions of that treaty. In the case of a bilateral treaty, negotiations cannot be concluded if both parties do not agree to all the stipulations of a treaty. Figure 4.1 represents a bargaining process between two states A and B.[61] In the first scenario, a successful bargain cannot be struck, because preferences of both states do not overlap with one another. There is no contract zone, or bargaining space within which a deal can be struck. In the second scenario, on the other hand, preferences of the two states, A and B, do overlap creating a contract zone.[62]

Having argued that, regardless of the substantive area, international cooperation involves a bargaining problem, I now turn to the discussion devoted to the role of legal systems and their legitimacy in fostering cooperation between states. In a discussion of Fearon's (1998) bargaining model, I show how legal systems can change the model's predictions regarding interstate cooperation. I propose that states with similar legal systems are more likely to strike successful bargains with one another than with states of divergent legal origins. In addition, I assert that states with highly legitimate domestic legal systems are more likely to cooperate with one another.

Bargaining and Legal Systems

Theoretical Background

Many IR scholars depict interstate cooperation as a bargaining problem (Fearon, 1994, 1998; Leeds, 1999, 2003, Powell, 1996, Morow, 1989). Of interest here are studies that argue that domestic characteristics of states can influence the probability of interstate

[61] All of the figures and tables are displayed at the end of each chapter.
[62] This model is similar to the one in Fearon 1995.

cooperation. Most of the discussion in the literature devoted to this subject revolves around the ability of democracies to make credible commitments and to enter into international agreements (Fearon, 1994; Gaubatz, 1996; Leeds, 1999). Some scholars argue that domestic political institutions help determine whether benefits of cooperation are able in the future to exceed the costs of policy failures (Leeds, 1999, Werner, 2000). Others, such as Fearon (1994) assert that regime characteristics inherent to democracies (high domestic audience costs) enable these types of states to signal their commitments more credibly on the international arena, which can substantially alleviate the security dilemma between democratic nations. Although these arguments can significantly elucidate our understanding of the link between domestic political institutions and international commitments, they omit two very important internal characteristics of a state- its type of legal system and the legitimacy of its legal system. If we understand an act of cooperation, be it an alliance, or a trade treaty, as constituting a contractual obligation, a legal system and its legitimacy represent important determinants of a state's external behavior.

Legal systems influence the magnitude of costs of striking an international deal. Cooperation between states is costly because it entails imposing obligations and giving up rights. During the dynamic bargaining process, which precedes any act of interstate cooperation, states exchange numerous offers and counteroffers in the hope of striking a deal that is acceptable to both sides. This process requires, as discussed above, adjusting preferences and coordination of policies. Because bargaining parties disagree in their ranking of mutually preferable agreements, most of the time the final version of a treaty is located somewhere in the middle of the 'contract space.' The exact location of the final deal can, naturally, vary according to numerous factors, such as the power of each bargaining side, their negotiating abilities, and their resolve. The point is that rarely do international treaties mirror the exact preferences of one contracting party while totally disregarding preferences of other sides. Most of the time, all parties must adjust their preferences and give up some rights in order to find an agreement that would be acceptable to all of them. As Keohane stated "Cooperation occurs when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination" (1984:51).

Preference adjustment often imposes substantial costs on all negotiating sides. In order for the bargaining process to succeed, all of the contracting parties must prefer an agreement to no agreement. Obviously, if signing a treaty is more costly than not signing an agreement, the deal will fall through, and cooperation will not take place. In other words, in order for the bargaining process to produce an agreement (written or informal), the benefits of cooperation must exceed the costs. The magnitude of costs incurred by each contracting party depends on the degree of policy adjustment that it has to make. The more the final outcome of bargaining differs from *a priori* preferences of an actor, the higher the costs of cooperation are for this actor. Of course, the extent of adjustment that each side has to make in order to meet the actual or anticipated preferences of the other partner can significantly vary (Werner, 2000). The magnitude of necessary change depends on numerous factors, such as economic, political and social characteristics of each contracting state. In addition to these determinants, I pose that the degree of policy adjustment and the magnitude of costs vary depending on the characteristics of the internal legal systems of negotiating sides.

The two characteristics that especially play a role in fostering or hampering cooperation are the type and legitimacy of a legal system. Because any type of international cooperation can be understood as a contractual relationship, which incurs legal obligations and rights, characteristics of legal systems of the parties involved are bound to play a role. An analogy can be provided by a contractual relationship that takes place within a domestic legal framework. If two sides to a contract come from the same legal system, their understanding of basic concepts and legal principles are similar. If, on the other hand, the two contracting parties come from different legal backgrounds, it is much harder to establish a common legal understanding between them. It is simply much more convenient for an American citizen to buy a house located in the United States of America from another American citizen, than to attempt to buy a house located in Germany from a German citizen. Although feasible, the second situation is bound to incur much higher costs simply due to the conflicting legal systems.

Fearon's (1998) Model of Bargaining and Enforcement

In order to show the importance of legal systems for interstate cooperation, I will now discuss one of the most interesting examples of a bargaining model, namely, Fearon's (1998) bargaining model. This model assumes that international cooperation typically entails first a bargaining problem, and secondly, an enforcement problem. In the first phase of interstate cooperation, "states bargain over the particular deal to be implemented in the second 'enforcement phase' of the game" (p.270). Fearon argues that expectations about what will happen in the enforcement phase of cooperation are bound to have an effect on how the states bargain in the first place. If states foresee that obstacles to monitoring and enforcement would make the future of an agreement doubtful, they have no motivation to engage in serious negotiations.[63] When enforcement and monitoring problems are likely to be solved, then, he argues, states should negotiate seriously (p.279). According to Fearon's model, "though a long shadow of the future may make *enforcing* an international agreement easier, it can also give states an incentive to *bargain harder,* delaying agreement in hopes of getting a better deal" (p.270). The implications of his model challenge the assertions of Neoliberal cooperation theorists, who argue that a longer shadow of the future increases the likelihood of cooperation (Axelrod, 1984; Keohane, 1984).

Figure 4.1 portrays per-unit-time payoffs in the enforcement phase of Fearon's (1998) model. In his model, there are two states, 1 and 2, that attempt in the first phase of the game to select a particular cooperative deal from a set of possible deals. The interval (0,1) is the policy space, and state 1's utility for the deal, z € X is z, and state 2's is 1-z, which suggests that states 1 and 2 have conflicting preferences over the deals in the interval X. In this model, only two deals in X can be concluded, and the set of feasible agreements is A = (x,y), where x>y. Thus, state 1 prefers agreement x, and state 2 prefers agreement y. If the two states are able to agree on a particular deal z € X in the bargaining phase, they will play a continuous-time Prisoner's Dilemma with payoffs per unit represented in Table 4.1. a>1 is the per-unit-time gain from defecting while the other

[63] As Fearon (1995) argues, states might be incapable to successfully conclude a bargain if for some reason they cannot trust each other to stay committed to a deal (p. 401). In the conditions of anarchy, states become suspicious about each others intentions.

player cooperates, and b>0 represents the costs of being "the sucker." c_1 and c_2 are the states' per-unit-time costs for mutual defection. Finally, in order to make it feasible for a state to gain from defecting, Fearon's model assumes that if a state switches strategies at time t, the other state is unable either to detect or to respond to this switch for a length of time $\Delta > 0$. The term Δ represents the detection lag, and it is interpreted as a measure of how easy or difficult it is to monitor the terms of an agreement (smaller Δ implies efficacy of monitoring arrangements) (Fearon, 1998:278). Fearon also shows that an agreement $z \in X$ will be enforceable by trigger strategies when the following condition holds:

$$R\Delta \leq \min \left[\ln \frac{a + c_1}{a - z}, \ln \frac{a + c_2}{a - (1 - z)} \right]$$

This equilibrium means that it is more probable that an agreement will be enforceable the longer the shadow of the future (the smaller r); the better the technology for monitoring and responding to violations (smaller Δ); the lower the short-run benefits of defection (a); and the greater the costs of noncooperation (c1 and c2) (p. 280).

I pose that legal systems (their type and degree of legitimacy) can change the predictions of this bargaining model. In order to correctly predict behavior of states on the international plane, we must distinguish between their internal legal structures, which can influence costs of interstate bargaining. According to Fearon's model, bargaining between states takes place in a certain way regardless of the internal legal structure of the negotiating sides. The general rule is that if two bargaining states know that the shadow of the future is long, they will bargain very hard, possibly making cooperation harder to reach. But, do states with divergent legal systems and divergent respect for the rule of law bargain in the same way? The answer is 'no.' Some states, depending on their legal system, consider themselves much more bound by their international commitments than other states.

States, whose legal systems view contractual obligations as stringent and unbreakable, will bargain much harder than states whose domestic law treats a contract as a more flexible commitment. This relationship holds regardless of the length of the shadow of the future. Even if two states expect to interact with one another for a long

time, states with 'stringent' contractual laws will bargain much harder than states with more 'flexible' laws. According to Islamic law, for example, contractual obligations of any type are very serious and sacred. Western legal systems (both civil and common), on the other hand, although holding contracts in a high esteem, do not attach to a contract any religious importance. Upholding contractual obligations is in the Western legal tradition, simply put, a little more flexible depending on the circumstances. *Force majeure* and *rebus sic stantibus* mitigate the stringency of the legal principle of *pacta sunt servanda.* Thus, I expect states representing the Islamic legal tradition to be much more careful in drafting their international agreements.[64] Legal systems also change Fearon's model predictions regarding monitoring and enforcement. According to Fearon (1998), "if states anticipate that obstacles to monitoring and enforcement would make any cooperative agreement in an issue area unstable, they have no incentive to negotiate or to negotiate seriously." If, on the other hand the enforcement and monitoring dilemmas are resolvable, "we should observe serious attempts at international cooperation" (p.279). The costs of international cooperation are higher for states, whose legal system places stringent conditions on contractual obligations.[65]

Characteristics of a legal system (type and legitimacy) can influence costs and benefits of cooperation. Both of these features can change predictions of Fearon's (1998) model of bargaining and enforcement. First of all, characteristics of domestic legal systems affect the detection lag, Δ. States with internally high respect for the rule of law are better able to keep their international commitments, thus in the case of agreements between states with highly legitimate legal systems, Δ is smaller. Δ is also smaller for states whose legal systems (e.g. Islamic) value the *bona fides* and *pacta sunt servanda* principles. These states simply keep their word in relation to other states. Contractual relationships between these states have a higher rate of survival. In addition, legal systems affect values of c_1 and c_2. Fearon argues that agreements are more enforceable if the costs of noncooperation are greater (c_1, c_2). In other words, "the lower a state's costs

[64] A much more detailed discussion of the impact of legal systems on interstate bargaining is included later in the text.

[65] According to this argument, problems of monitoring and enforcement of a contract concluded between two Islamic states should be much smaller than in the case of a contract concluded between two states representing the Western legal tradition. It is more costly for an Islamic state to cooperate due to its internal legal stipulations regarding contracts. After all, according to Islamic law, signed contracts are to be binding even in case of war.

for noncooperation, the more likely it is that only agreements favoring this state will be enforceable and so the subject of negotiations" (p.280). Similar legal systems and their legitimacy make future violations of an agreement easier to predict. Costs of noncooperation are higher especially states with strong norms for *pacta sunt servanda,* and those whose legal system interprets *force majeure* in a rigid, narrow way.[66] In the same way, higher legitimacy means higher likelihood of enforcement of a bargain. For these states, costs of defection will be higher. If a state's legal system is highly legitimate (if the rule of law is highly respected in that nation), then this state is less likely to break its contractual obligations on the international arena. In other words, a high internal respect for the rule of law automatically translates in a high respect for the rule of law externally. Citizens of a state with highly legitimate domestic legal system will expect their government to keep its international promises.[67] After having described the theoretical underpinnings of my approach to interstate cooperation, I now turn to specific predictions regarding behavior of states on the international arena, which will further elucidate the changes that legal system type and the degree of legitimacy introduce into Fearon's (1998) bargaining model. In the section below, I present my expectations about the likelihood of striking international bargains among states with divergent and similar legal systems.

Specific Predictions Regarding Cooperation

Because in this chapter I construct a rationalist model of bargaining, I treat preferences of states as fixed and exogenous. In other words, my predictions are specific to particular types of legal systems. Thus, I must explain how the types of legal systems and legitimacy of domestic legal systems relate to this approach. I argue that states in the dyadic bargaining model differ according to their domestic legal system type and the degree of respect for the rule of law. Table 4.2 incorporates this information.[68] States in

[66] A narrow interpretation of *force majeure* prevents a variety of incidents to justify invalidity of a contract.
[67] I elaborate in detail on the link between legitimacy and compliance with international agreements on pages 94 and 95.
[68] This table contains only cross-sectional description of legal systems according to legitimacy. The temporal shifts in the respect for the principle of the rule of law will be captured in the multivariate

this table fit one of nine possible types, which are constructed according to the type of a legal system (civil, common, and Islamic), and the degree of respect for the rule of law (low, medium, high).[69] In order to capture the degree of respect for the rule of law, I use the International Country Risk Guide data set, described in the previous chapter.[70] Theoretically this measure of the rule of law is capturing the move of a legal system from coercion (0 on the ICRG scale) to legitimacy (6 on the ICRG scale), but it does not constitute a perfect mapping of the process of legitimization. I construct the following three categories based on the ICRG scale: 1 and 2 on this scale means that the internal respect for the rule of law is low; 3 and 4 designate that the respect for the rule of law is medium; 5 and 6 describes a legal system which is legitimate, so the degree of respect for the rule of law is high. I use information about each nation's respect for the rule of law in 2004.[71]

Information included in the above table is monadic and does not allow us to make specific predictions about dyadic relations between states with divergent legal systems. Thus, a question "How does the internal legal system influence a state's relations with other states?" remains unanswered. Table 4.3 presents predictions of the bargaining model concerning dyadic relations between states. Each cell includes expectations regarding the likelihood of reaching an agreement and also the variance in the design of agreement reached. First of all, legal systems determine the probability of reaching an agreement (by affecting the costs of noncooperation (c_1, and c_2), and the efficacy of monitoring arrangements (Δ). Secondly, characteristics of a contract in each legal tradition shape the form (complexity) of an interstate agreement. [72]

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regression analyses that will be performed in the empirical chapters of the dissertation (the rule of law measure captures changes in legitimacy from 1984 to 2002).

[69] Extensive information on the coding on legal systems is included in the empirical chapters of the dissertation.

[70] This scale, ranging from 1 to 6, captures each state's internal respect for the rule of law. 1 denotes the lowest respect for the rule of law and 6 denotes the highest possible level of respect for this legal principle.

[71] Law and Order are assessed separately, with each sub-component comprising zero to three points. The Law sub-component is an assessment of the strength and impartiality of the legal system, while the Order sub-component is an assessment of popular observance of the law. The state level indicator (the Law component) is better suited to test my theory because I treat the state as a unitary, corporate actor. I was, however, unable to get data for these two components separately.

[72] Fearon's (1998) model assumes that state 1's utility for the deal $z \varepsilon X$ be z, while state 2's is 1-z (a split pie). Use of reservations in international treaties allows for something else.

The probability of cooperation between states representing the same legal tradition (Pvv(agreement); Pmm(agreement); Pii(agreement)) is very high. First and foremost, states whose legal systems are similar do not necessarily have to go through an extensive process of policy coordination because their preferences are already convergent. This convergence stems from their legal systems, which determine their subsequent preferences and actions. In other words, if we understand the crux of cooperation as the process of policy coordination (i.e. adjusting preferences), when legal orders of two states are similar, then the costs of their transaction are lowered by an a priori convergence of a significant part of their preferences. States at the outset of the bargaining process must establish the rules and principles that are going to govern their contractual relationships. For two or more states with similar legal orders, negotiating the general legal principles that will govern their contractual relationship becomes unnecessary. Because preferences of these states are similar in the 'legal part,' potential costs of cooperation between them are substantially lower. Such similarity leads to expansion of the 'contract zone' between two or more negotiating states; the bargaining space within a deal can be struck is much bigger than if the bargaining sides differed in their legal structures.

In simple words, the relationship between legal systems and costs of bargaining can be related in a straightforward way to the number of possible agreements that all sides prefer to no agreement. Similarity of legal systems for all the bargaining sides cuts down on the possible ways of writing a treaty or concluding an informal agreement. Also, exchange of offers and counteroffers regarding legal principles becomes redundant. Although the sides will still negotiate numerous particularities of their contract, they all prefer a certain legal outlook of their contract (particular stipulations and general principles that govern a contract). States with similar legal traditions share the same concepts of commitment, and they share the same understanding of contract and law in general. They also understand basic legal principles such as *pacta sunt servanda, force majeure, bona fides,* and others, in the same way. Thus, principles such as these do not even have to be discussed, which significantly lowers the costs of negotiations. My expectations concerning the likelihood of cooperation vary according to type of the legal

system. I also anticipate the design of agreements reached to be different depending on the legal system of both states.

Civil law states

Among the three legal families, I expect that cooperation between two civil nations will be most likely. Civil law countries accept the principle of *bona fides* (good faith) as one of the most important legal constructs, which makes contracting among civil law states very likely. Both sides of an international contract are aware of the fact that the fulfillment of their contractual obligation will be governed by the principle of good faith, which increases the likelihood of fulfilling the contract. Similar legal systems and their legitimacy increase the predictability of future violations of an agreement. Legal system types and their legitimacy influence costs of noncooperation (c_1 and c_2 in Fearon's (1998) model). In the case of two civil law states, the shared respect for the *bona fides* principle makes the costs of noncooperation higher. On the other hand, the principle *pacta sunt servanda* is not held in such a high esteem as under Islamic law, which may slightly lower the costs of noncooperation.

I also expect agreements between two civil law states not to be very detailed. Contracts in this legal system do not have to spell out all of the general contractual principles because the written codes already contain these general overarching principles. Thus, in a domestic situation, it would be redundant for two parties to include *bona fides* as one of the stipulations of their contract. In all civil law nations, it is explicitly understood that this principle governs over contractual relations, regardless of their type. According to my theory, the same logic can be applied to the relations between states. Because civil law nations understand that their contractual relations are *automatically* governed by the abovementioned legal principles, they deem it unnecessary to repeat them in the terms of their contract. Thus, civil law states should be least likely to place reservations on their multilateral treaties.

Common law states

Cooperation between two common law nations is also very likely. These nations are familiar with the common law principles, and thus it is natural for them to feel most comfortable cooperating with other common law states. However, because the principle of *bona fides* does not constitute an overarching general concept under this legal system, cooperation between two common law states is less likely than between two civil law states (Pmm(agreement)<Pvv(agreement). The costs of cooperation between two common law states are higher than between two civil law nations, because several legal concepts must be explicitly agreed upon and included into the terms of a contract (*bona fides,* for example). I also expect the design of agreements between two common law states to differ substantially from a contract concluded between two civil law states. Whereas agreements between the latter should not be overly detailed, I expect a contract between two common nations to be very detailed and meticulous. Common law nations should place numerous restrictions (reservations) on their international contractual obligations to ensure that all of their rights and obligations are clearly specified. In the domestic setting, common law contracts are much more detailed and lengthy when compared with contracts concluded under civil law. Because in common law, there are, for the most part, no codes that would enumerate all of the general principles applicable to a contractual relationship, parties to a contract must make sure that all of the rules that are to govern their agreement are explicitly specified in their contract. I expect the same rule to apply on the international plane.

Islamic law states

The probability of cooperation between two Islamic law states is also good. Again, the costs of cooperation between states belonging to the Islamic legal family should be lowered by a similar understanding of basic legal concepts, and, in this case, religious principles. The probability of cooperation between two Islamic states is, however, lower because of the simple fact that Islamic law places limitations on the freedom of contract. This fact substantially limits the number of possible international

agreement that Islamic states can sign. In addition, contracts are considered extremely binding in that legal system. The principle of *bona fides* holds a particularly strong position in this legal system due to the fact that religious sources, which are of utmost importance to every Muslim, admonish the faithful to keep their agreements. According to the strict rule of sanctity of legitimate contract under that law, the faithful are expected to respect their contractual obligations not only in relation to other Muslims, but also towards non-believers. According to Koran, even the state of war by itself is not a sufficient justification for violation of a contract. Thus, contracts are treated as sacred. Because of all these factors, I expect that Islamic states will be very careful in signing international contracts with each other and with other nations. As Fearon's (1998) model predicts, strong enforcement makes states less likely to reach agreements. I expect the time of bargaining to be long, and the agreements to be somewhat detailed. If a state knows that it has to keep its international commitment, it will want to make sure that its obligations are very clearly specified and thorough. Simply put, if you know you have to do something in the future, it is better to exactly know your obligations. Nobody wants to commit to a contract that is very vague and unclear. Certainty lowers the costs of future enforcement. Islamic nations want to make sure that in the future they will be able to fulfill their contractual obligations. Any degree of haphazardness is extremely unlikely. Therefore, I anticipate these states to be very careful in signing contracts even among themselves.

States with divergent legal systems

The situation is quite different if the negotiating states have divergent legal systems. In this case, all of the procedural and substantial differences between legal orders can increase the costs of international cooperation. Simply put, before a final deal can be struck, all sides must adjust their preferences relating to these legal constructs. If the negotiating sides differ in their understanding of the relationship between law and religion, *bona fides*, *pacta sunt servanda*, or *force majeure*, the bargaining process may be prolonged because these states must decide how these principles are going to be interpreted. Should *bona fides* be considered as an overarching principle that will govern

their contractual obligation (similar to the civil legal systems), or should they explicitly incorporate the *bona fides* requirement into their contract (common law)? Three possible combinations of legal systems are possible.

First of all, a civil law state may cooperate with a common law nation. I expect the probability of such contract to be relatively high, but smaller than the probability of cooperation between two civil or two common nations (Pvm(agreement)<Pmm (agreement)<Pvv(agreement)). Both of these legal systems represent 'Western legal traditions,' both espouse the concept of freedom of contract, and thus they are likely to cooperate despite the differences in their legal systems. I also expect the agreements between common and civil law states to be relatively detailed, because of the common law theory of contracts.

Secondly, the nations representing the 'Western legal tradition' (civil law and common law) may cooperate with Islamic nations. Here, I expect that probability of such agreements to be rather small. First of all, Islamic law does not accept the doctrine of freedom of contract, thus Islamic states are not free to sign just any international agreement. I expect, however, the likelihood of cooperation between civil law states and Islamic states to be higher that between the latter and common law states. What encourages international agreements between Islamic and civil law nations is the principle of *bona fides,* which is strongly anchored in both of these legal families. Thus, I expect: Pmi(agreement)<Pvi(agreement)<Pii(agreement). In addition, agreements between states belonging to 'Western legal tradition' and the Islamic states should be detailed because of the numerous differences existing between the domestic legal systems. Of course, contracts between Islamic states and common law states will be more detailed than agreements between Islamic states and civil law states. Always, if a common law nation constitutes one of the parties to an international agreement this agreement will be very detailed due to specified earlier characteristics of that legal system.[73]

[73] Type of legal system substantially influences the design of international agreements. There are also additional factors that may contribute to specificity of international contracts. For example, contracts that incorporate asymmetric obligations may be slightly more specific than those that talk about symmetric obligations.

In addition to type, each domestic legal system can have a certain degree of legitimacy, or respect for the rule of law. In the section below, I explain how legitimacy can influence the costs and benefits of cooperation.

Legitimacy

In addition to the type of a legal system, its legitimacy constitutes another important factor that profoundly affects a state's behavior on the international arena. As explained in the previous chapter, I assert that states with more legitimate legal systems are more likely to cooperate with one another. The exact mechanism that underlies the impact of legitimacy on a state's cooperative and conflictual behavior is very similar to the mechanism discussed in the context of types of legal systems. It is, again, a simple cost-benefit analysis. States with legitimate legal systems are able to cooperate with one another more easily due to the fact that a significant part of their preferences is already convergent. Both sides to an agreement have fully internalized their legal system, in both states the principle of the rule of law is highly respected. Even though there exist numerous matters according to which state's preferences might differ, legitimacy of their legal system will not constitute an obstacle in bargaining. Quite the opposite- a high degree of legitimacy will enhance the probability of interstate cooperation.

Legitimacy of a domestic legal system of a state will increase the probability of its cooperation only with other states whose legal systems are legitimate. On the other hand, a state with highly legitimate legal system will not be likely to cooperate with a state whose legal system is weakly legitimate. In the latter case, the enforcement of an agreement might be problematic. Because states with high internal respect for the rule of law are more likely to keep their international commitments, they will enter only into agreements with high probability of compliance. A similar argument in advanced by Goldsmith and Posner (2005) in the context of international commitments of democracies. These scholars, following mainstream international law scholarship, pose that "the institutions needed to make liberal democracy work make it difficult to engage in strong cosmopolitan action" (p.205). In every democracy, foreign policy decisions are closely tied to voter preferences. Thus, democracies, on average, commit only to these

agreements that, first of all, fulfill voter preferences, and, secondly, are likely to be kept. Political leaders who care about being reelected cannot easily make decisions that are inconsistent with the will of the voters.

Legitimacy of a legal system and its role in promoting international cooperation is thus closely bound to the notion of enforcement of a legal contract. Once a deal regarding the terms of interstate cooperation (alliance, a trade treaty, an informal agreement) is struck, the next issue that all of the bargaining sides have to face is the enforcement of the agreement (Fearon, 1998:274). Due to the lack of domestic-like enforcement in the international system, all of the contracting parties recognize that in the future it might be beneficial to some of them to renege on their commitment. Such a breach of a promise is especially tempting when the circumstances of interstate cooperation change. Unfortunately, situation in the international realm is quite different from the domestic legal environment, where each party to a contract may collect damages and demand fulfillment of a contractual obligation. In every state, there exist domestic civil courts, which might be called upon if a contract has been breached. In the international system, where anarchy and uncertainty rule, reputation and reciprocity constitute most of the time the only brakes on states' incentives to renege on their commitments.

Reputation refers to other nations' beliefs concerning probability that particular states will keep it international commitments. If states frequently break their international contracts, other states in the system will be reluctant to cooperate with them in the future. States that fulfill their contractual obligations, on the other hand, are deemed to be reliable. Such states tend to attract contractual partners in the future.[74] I pose that there exists a strong link between states' compliance with international commitments and legitimacy of their domestic legal system. If a state's legal system is highly legitimate (if the rule of law is highly respected in that nation), then this state is less likely to break its contractual obligations on the international arena. In other words, a high internal respect for the rule of law automatically translates in a high respect for the rule of law externally.

States that are able to sustain a high respect for the rule of law in the domestic realm, should be also able to uphold their commitments internationally. Legitimacy of a

[74] But, as Keohane (1997) asserts, reputation for compliance with international law is not always the best way for achieving a state's policy goals. Powerful states, for example, may benefit by violating international law if such acts suggest that they will retaliate against threats to national security.

legal system influences costs and benefits of cooperation, thus changing predictions of Fearon's (1998) model of bargaining and enforcement. For example, Fearon argues that agreements are more enforceable if the short-run benefits of defection (a) are lower (p.280). For a state with high internal respect for the rule of law, short-term costs of defection are much higher than for a state with a weakly legitimate legal system. Citizens used to the state guarding and obeying the law internally will punish leaders who break it externally.

Thus, I assert that a legitimate legal system provides a clue for potential contracting partners that all of the contractual rights and obligations will be upheld. This high probability of enforcement (on both sides of a contractual relationship) lowers the potential costs of cooperation; all of the potential remedies for the breach of contract do not have to be as thoroughly elaborated upon as when at least one of the contracting parties does not internally respect the rule of law.

Both legal system types and the degree of legitimization can have a germane impact on a state's foreign policy. Both of these factors affect costs and benefits of cooperation between states and between states. All of the above discussion has been devoted to the relations between states. In the section that follows, I develop my theory regarding the relations between states and international institutions.

Cooperation Between States and International Institutions

States can sign a contract not only with one another, but also with an international institution. Examples of such a contractual relationship are many- International Court of Justice, International Criminal Court, World Trade Organization, Organization for Economic Cooperation and Development, and others. In order to further elucidate my argument regarding international institutions, I first define what an international institution is. Although a wide range of definitions exists, most scholars have come to understand international institutions as "sets of rules meant to govern international behavior" (Simmons and Martin, 2005). Rules, on the other hand, are perceived as statements that are able to forbid, require or permit particular kinds of action (Ostrom, 1990:139). An interesting definition of institutions is provided by John Mearsheimer,

according to whom institutions are "sets of rules that stipulate the ways in which states should cooperate and compete with each other" (1994:95). A similar definition is provided by Krasner, who understands international regimes to be "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1983:2)

All of these definitions can be summarized as follows: an international institution consists of rules. This perception of an institution is crucial in explaining how legal systems (type and legitimacy) can influence states' propensity to join (support) an institution. Both legal systems and institutions are comprised of rules, norms, and principles. At the heart of both lie enforcement, compliance, and legitimacy. If rules and procedures of a state's domestic legal system are similar to those of an international institution, the cost of this state joining an institution are substantially lower than if domestic law differs from the institution's rules. A state is much more likely to support an institution if its rules resemble the state's internal legal design.

Cooperation between states and institutions is somewhat different from cooperation among states. Negotiations and bargaining is much more limited in the first case, due to the fact that an institution already consists of a set of rules *before* negotiations with a particular state start. For example, the International Court of Justice operates according to its Statute, which specifically spells out the rules and procedures of the Court. A state that accepts compulsory jurisdiction of the ICJ is not able to negotiate the specific rules by which the Court abides. Moreover, the rules and procedures of the ICJ cannot differ in relation to each particular state.[75] For example, the formal prohibition of precedent (Article 59 of the ICJ Statute) relates to the ICJ's method of deciding all cases, regardless of the type of domestic legal system of litigating parties. When two states negotiate with one another, all the terms of their cooperation, both substantial and procedural, are subject to bargaining; not so with international institutions.

The stringency of rules (procedures) on the part of an international institution, affects the costs of cooperation. It is much easier for a state to join an institution if its procedures are similar to those of a state's domestic institutions. In the case of the ICJ

[75] Some variability in states' commitment is allowed by the institution of a reservation. Reservations, however, relate to substance (jurisdiction), and not procedure.

elaborated above, civil law states should be more likely to support this institution due to the formal prohibition of the doctrine of precedent present in the civil law tradition. The costs that the civil law states incur because of joining the ICJ are lower because legal procedures characteristic to these states are very similar to that of the ICJ. Common law states, on the other hand, must incur higher costs associated with joining the World Court due to diametrically different procedures of adjudication present in these states. Also, the costs of accepting the jurisdiction of the ICJ will be high for Islamic states, whose domestic legal system is interconnected with Islam as religion. Because the legal principles on which the ICJ relies are secular, Islamic states will have to undergo an extensive adjustment of their preferences. Generally speaking, the extent of preference adjustment is much smaller for states whose internal legal systems resemble rules of an institution.

Also, degree of legitimacy of a domestic legal system can affect a state's propensity to join/support an international institution. I pose that states whose legal systems are highly legitimate will be very careful in joining an international institution. A high internal respect for the rule of law makes compliance with a treaty (bilateral, multilateral) more likely, thus such states will sign only those international commitments that are likely to be kept. The high probability of fulfillment of an obligation relates not only to the signing state, but also to other signatories. As Goldsmith and Posner put it:

> A related cost of treaty regimes is international noncompliance. State leaders are always uncertain about the information, preference, and motivations of other states. As a result, they worry about other nation's noncompliance with norms and agreements. The noncompliance consideration, which takes us from ideal to nonideal theory on the international stage, counsels caution in embracing international regimes that involve national sacrifices *and* that depend for their efficacy on compliance by other states." (2005:217)

Thus, states with high internal respect for the rule of law will only obligate themselves to those international commitments that are likely to be kept by them and all other signatories. Just as with cooperation between states, short-term costs of defection ('a' in Fearon's (1998) model of interstate bargaining and enforcement) are higher for a state with highly legitimate legal system. Again, citizens used to the state guarding and

obeying the law internally will be likely to punish leaders who break the rule of law externally.

Conclusions

In this chapter I have argued that the type and legitimacy of domestic legal system constitute powerful determinants of states' choice of friends and enemies on the international arena. I argued that, following rationalist logic, we can perceive international cooperation as constituting the result of a successful bargain. International conflict, on the other hand, can be perceived as the failure of bargaining. I focused on Fearon's (1998) model of interstate bargaining and enforcement and showed that taking into consideration internal legal structures (type of a domestic legal system and legitimacy) can change predictions of this model. States with highly similar and highly legitimate legal systems are more likely to cooperate with one another than states representing divergent and weakly legitimate legal traditions because legal system similarity lowers the costs of bargaining and the uncertainties surrounding contractual obligations. My expectations about the impact of legal systems and legitimacy on states' behavior relate also to cooperation between states and international institutions. First, I expect that states are more likely to join an international institution if its internal rules resemble rules and procedures characteristic to the legal system of a state. Also, legitimacy of a domestic legal system can influence the probability that a state will join an international institution. I expect that states with highly legitimate legal systems are more cautious in joining international institutions, but are more likely to keep their international commitments. The theoretical discussion included in this chapter leads me to construct the following hypotheses:

Hypothesis 1: States with similar legal systems are more likely to cooperate with one another.

Hypothesis 1A: The probability of cooperation between two civil law states is higher than the probability of cooperation between two common law states.

Hypothesis 1B: The probability of cooperation between two common law states is higher than the probability of cooperation between two Islamic law states.

Hypothesis 2: States with highly legitimate legal systems (with high internal respect for the rule of law) are more likely to cooperate with one another.

Hypothesis 3: States are more likely to join an international institution if its internal rules resemble rules and procedures characteristic to the legal system of a state.

Hypothesis 4: States with highly legitimate legal systems are more cautious in joining international institutions, but are more likely to keep their international commitments.

Having laid out my theoretical argument, I now turn to the empirical testing of my argument. In the next three chapters, I test my argument in three different areas: states' propensity to accept the compulsory jurisdiction of the International Court of Justice, the formation and design of military alliances, and the link between states' legal traditions, the rule of law, and their propensity to fight militarized interstate disputes.

Table 4.1 Per-Unit-Time Payoffs in the Enforcement Phase of Fearon's Model

	Cooperate	Defect
Cooperate	z, 1-z	-b, a
Defect	a, -b	-c1, -c2
Note: a>1, b>ci (I=1,2), z € (0,1), and a-b<0.		

Table 4.2 Types of States in the Bargaining Model.

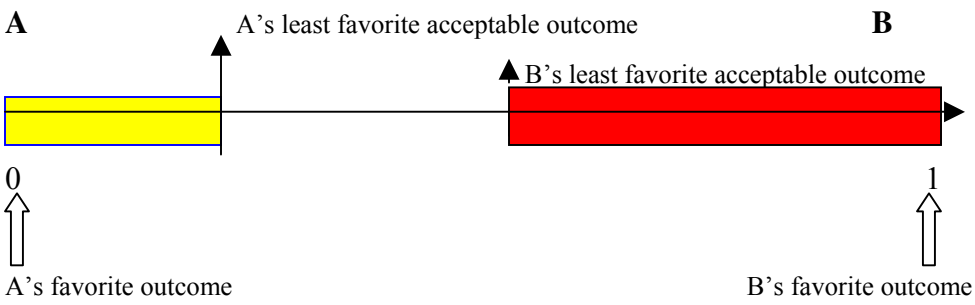
Types of Legal Systems[76] / **Rule of Law**	**Civil**	**Common**	**Islamic**
Low	Albania (2) Angola (3) Congo (2) Mexico (2.92)	Ghana (2) Guyana (2.29) Jamaica (1.5) Liberia (2)	Iraq (1.5) Sudan (2.5) Yemen (2)
Medium	Mali (3) Mongolia (4) Mozambique (3)	Bahamas (4.29) Malawi (3) Malaysia (3.66) India (4)	Iran (4) Jordan (4) Pakistan (3)
High	France (5) Switzerland (5) Germany (5) Canada (6)	United States of America (5.79) Great Britain (5)	Kuwait (5) Morocco (5) Oman (5) Qatar (5)

[76] A detailed description of the measure of types of legal systems is included in the first empirical chapter of this dissertation.

Table 4.3 Cooperation Between States.

	Civil	**Common**	**Islamic**
Civil	Pvv (agreement)=high Agreements are least detailed	Pvm(agreement)=good Agreements are very detailed	Pvi (agreement)=small Agreements are somewhat detailed
Common		Pmm(agreement)=high Agreements are very detailed	Pim(agreement)=small Agreements are very detailed
Islamic			Pii(agreement)=good Agreement are somewhat detailed

Scenario 1: NO AGREEMENT



Scenario 2: AGREEMENT

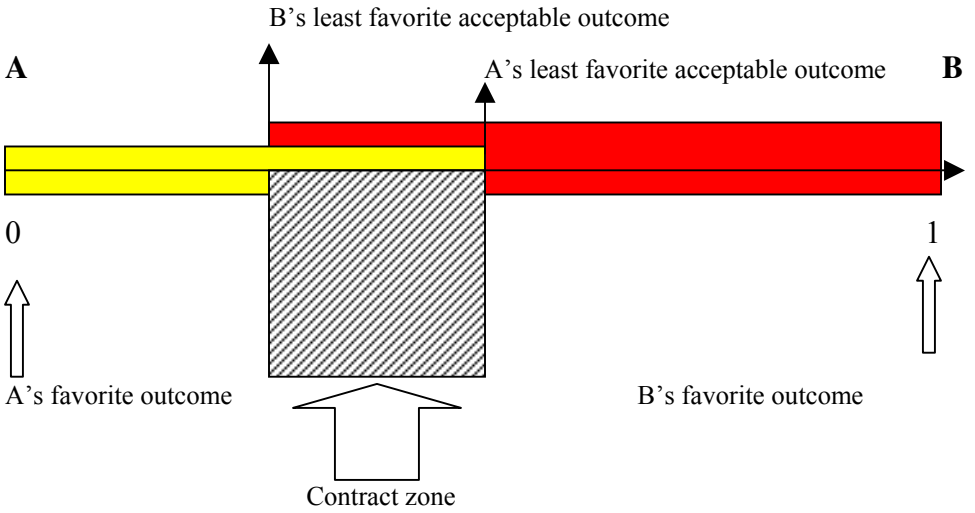


Figure 4.1. Contract Zone.

CHAPTER FIVE

THE CLASH OF LEGAL SYSTEMS

Introduction

In Chapters two, three, and four, I developed a theory of the relationship between legal systems, legitimacy, and states' behavior on the international arena. Two important expectations regarding interstate relations are that 1)states with similar legal systems are more likely to strike an international bargain than states representing divergent legal traditions, and 2)states with highly legitimate legal systems are more likely to cooperate with one another than states representing weakly legitimate legal traditions. The bargaining model presented in Chapter four predicts that states with highly similar and highly legitimate legal systems are more likely to cooperate on the international arena because legal system similarity lowers the costs of bargaining and the uncertainties surrounding contractual obligations. High internal respect for the rule of law, on the other hand, makes enforcement of international contracts easier. Because international conflict can be perceived as the failure of bargaining, characteristics of domestic legal structures can help us understand why certain states are more likely to solve their grievances in a belligerent way.[77]

In this chapter, I empirically test several hypotheses regarding international conflict that stem from my theory. I expand upon Huntington's clash of civilizations thesis (1993), arguing that distinctions among legal traditions create an additional dimension of cultural variation. My argument also pertains to the broad literature on the

[77] States due to their differences in legal systems may fail to conclude a successful bargain with each other. Thus, instead of cooperation, there is an unsolved conflict of interests, which may or may not lead to a militarized conflict. In this dissertation, I understand conflict as the failure of bargaining, which includes both post-bargaining conflict of interests and militarized conflict. The latter constitutes an extreme version of the post-bargaining conflict of interests.

democratic peace in that it shows that democracies, despite numerous similarities, often project abroad quite different legal norms.

The remainder of this chapter is organized as follows. First, I offer a review of Huntington's clash of civilization thesis and the democratic peace, arguing that both of these strands of literature fail to consider the legal characteristics of states. Next, I present results of statistical analyses that test my argument about the influence of legal systems on states' propensity to engage in international conflict. Third, I present results of analyses regarding the impact of legitimacy on international conflict. Fourth, I present results of further analyses that compare impact of legal similarity (type of legal system and legitimacy), political similarity (joint democracy and similar foreign policy portfolios) and cultural similarity (civilization membership). Finally, I conclude with a discussion of my results. I find that legal system characteristics, both domestic legal system type and legitimacy, have a strong effect on the likelihood of conflict between states. Most importantly, I discover that states with similar legal systems are less likely to engage in militarized interstate violence. Also, states with highly legitimate legal systems are less likely to solve their disputes in a forceful way.

The Clash of Civilizations, Democratic Peace, and Legal Systems

Empirical analyses in this chapter aim to shed light on our understanding of international conflict by looking at two fundamental theses present in the contemporary study of international relations- Huntington's clash of civilization theory, and the democratic peace theory. Both of these strands of scholarship belong to a broad literature devoted to 'similarity' between states, which proposes that factors such as regime similarity, cultural, and economic correspondence between two states account for increased cooperation between them.

The central contention of Huntington's thesis is that states belonging to divergent civilizations are more likely to engage in conflict (Huntington, 1993a, 1993b, 1996). Huntington asserts that "the principal conflicts of global politics will occur between

nations and groups of different civilizations" (Huntington, 1993a:207). His seminal work, *Clash of Civilizations, and the Remaking of the New World Order* (1993), is considered as one of the most controversial works on international conflict because Huntington pioneered the idea that civilizations constitute nowadays the pivotal force behind interstate violence. A civilization, according to him, constitutes "the highest grouping of people and the broadest level of cultural identity people have short of that which distinguishes humans from other species. It is defined both by common objective elements, such as language, history, religion, customs, institutions, and by the subjective self-identification of people" (Huntington, 1993a: 207).

In addition, Huntington postulates that cultural identities are shaping patterns of cohesion, conflict, and international disintegration in the post-Cold War World (1996:20). Thus, instead of differences in capabilities, trade interdependence, or regimes, differences among civilizations should constitute the major source of international unrest. When speaking about divergent civilizations, Huntington has in mind nine major cultural blocks – Western, Orthodox, Islamic, Sinic, Latin America, Hindu, Buddhist, Japanese, and possibly African. Since shared religion is the single most important indicator of a civilization, Huntington maintains that intercivilizational clashes are usually conflict "between peoples of different religions" (Huntington, 1996: 253). For him, the question "Which side are you on?" has been successfully replaced by a much more crucial one, namely, "Who are you?" (Henderson and Tucker, 2001:321). The answer to the later question is, for the most part, provided by religion. Religious beliefs, which shape states cultural identity, define each state's place on the international plane. According to Huntington, conflict will occur on the fault lines of civilizations because differences among cultures and religions will not change in the future. Increased interaction in the nowadays world exacerbates these differences and leads to amplified negative reactions to the culture of the West. In addition, regionalism aggravates these pivotal differences between civilizations (Huntington, 1993).

Perhaps the most comprehensive test of Huntington's assertions has been offered by Henderson and Tucker (2001), who find that in the pre-Cold War era (1816-1945), "states of similar civilizations were more likely to fight each other, than were those of different civilizations," and that during the post-Cold War times (1989-1992),

"civilization membership was not significantly associated with the probability of interstate war" (2001:317). Thus, their study seems to contradict Huntington's expectations regarding the patterns of international conflict. Interesting also are the results presented by Russett, Oneal and Cox (2000) regarding Huntington's theory. These scholars find that traditional realist influences such as alliances, contiguity, relative power, and liberal influences of joint democracy and interdependence, provide a much better explanation for international conflict. In particular, Russett et al. (2000) find that pairs of states belonging to different civilizations are no more likely to become engaged in disputes than dyads belonging to the same civilization.[78]

The clash of civilizations argument does not constitute the only theory invoking similarities between states as determinants of interstate conflict and cooperation. One of the most successful efforts to explain variation in conflict and cooperative behavior by relying on the 'similarity argument' is the democratic peace. This research program offers systematic and compelling evidence that democracies rarely if ever go to war with one another (Ray, 1995; Doyle, 1997). It is widely recognized that democratic states are in general about as conflict- and war- susceptible as nondemocracies, but "democracies have rarely clashed with one another in violent conflict" (Maoz and Russett, 1993:624). In order to explain this phenomenon, scholars of the democratic peace have advanced two separate arguments, labeled as 'structural' and 'normative' models of the democratic peace. The first explanation implies that due to the complexity of the democratic processes and the requirement of securing a broad base of support for risky policies, "democratic leaders are reluctant to wage wars, except in cases wherein war seems a necessity or when the war aims are seen as justifying the mobilization costs" (Maoz and Russett, 1993:626). The structural argument sustains, therefore, that domestic political institutions constrain choices of democratic decision-makers, thus reducing the likelihood of war with other democratic states (Kacowicz, 1995:266).

The normative argument, on the other hand, is often times traced back to political thinkers such as Immanuel Kant and Woodrow Wilson (Maoz and Russett, 1993). Its basic logic suggests that divergent norms of domestic political conduct are expressed in

[78] These results do not necessarily mean that Huntington's assertions are wrong. The time span of both of these analyses (Henderson and Tucker (2001), and Russett et al. (2000)) does not adequately reflect Huntington's theory. A more detailed explanation of these two analyses is included later in the text.

terms of diverse prototypes of international behavior. According to this approach, states, to the extent possible, tend to externalize norms of behavior that are characteristic of their domestic system. Both democratic and nondemocratic regimes project abroad norms that typify their domestic political processes. The crux of the normative argument can be very simply summarized as follows: democracies prefer to act towards one another according to the norms characteristic to their internal design. Because political conflicts in democracies are resolved through peaceful means, these norms transported outside the borders of democratic states lead to peaceful relations between democracies. Thus, a type of consensus has developed between democracies, which allows them to "build a separate peace among them" (Kacowicz, 1995:266, also Dixon, 1994). The fact that democracies share a common value system with respect for individual freedoms and fair competition promotes peaceful relations between them.

Additional insights to the democratic peace theory are provided by the rationalist explanations. Schultz (1998), for example, provides an alternative explanation of the democratic peace, which is based on a signaling game and the transparency of the democratic processes and institutions. The crux of his argument is that because a free press guarantees transparency and because the political opposition has divergent incentives than the leaders, democracies are better able to send credible signals of their resolve in crises and other types of conflicts. This credibility reduces the probability of escalation of crises due to misperceptions (Levy, 2005). This is critical, because misperceptions have been shown to play a central role in the outbreak of war (Jervis, 1976). Also, Bueno de Mesquita et al. (1999) in an alternative institutional explanation of the democratic peace provide additional insights into behavior of democracies on the international plane. They present a game-theoretic model that incorporates strategic interactions between democracies and their adversaries. The model presented by these scholars puts emphasis on political survival as the primary goal of political leaders. It suggests that the political survival of leaders with larger winning coalitions (present in democracies) depends on successful public policies, and the political survival of leaders with smaller winning coalitions (present in autocracies) depends on their ability to satisfy their main supporters through the distribution of private goods (Levy, 2005). Because of this, democratic leaders are much more sensitive to the outcome of wars than are

autocratic leaders, and thus democracies are expected to initiate only those wars they are likely to win.

The clash of civilization thesis and the democratic peace literature provide interesting insights into the reasons standing behind international conflict. Unfortunately, up to this date scholars studying conflict have not adequately considered another very important dimension of similarity, namely, similarity of legal systems. In addition, the relationship between the degree of legitimacy of a legal systems and a state's conflictual behavior has also been overlooked. This fact is especially puzzling given that international cooperation can be understood as constituting a form of a contract. As explained in the previous chapter, I see both explicit acts of cooperation (treaties) and informal agreements as forms of a contractual relationship.

Table 5.1 compares democracy with legal system type. As Table 5.1 shows, there exist quite a few democracies that have divergent legal systems. 54% of all democratic dyads have different domestic legal systems. Also, out of all non-democratic dyads (dyads in which at least one state is not a democracy), 38% have a similar domestic legal system. As mentioned above, the normative democratic peace argument asserts that states externalize norms of behavior, which are characteristic to their domestic system. Democracies, by projecting norms promoting peaceful resolution of conflict, are able to maintain a separate peace among them. This argument treats all the democratic countries as supporting and thus projecting identical legal norms. It does not allow for differentiation between norms exported by a common law, civil law, or Islamic law democracy. As explained in the theoretical chapters of the dissertation, different legal systems promote quite divergent procedural and substantive norms. I thus pose that different democracies can, depending on the type and legitimacy of their legal system, transmit abroad very different norms regarding interstate contractual relations. These norms (*bona fides, pacta sunt servanda, freedom of contracting*) make cooperation between some democracies easier (those with similar and highly legitimate legal systems), and others more difficult (those with different and weakly legitimate legal systems).

The same argument can be applied to Huntington's civilizations. Table 5.2 compares civilization membership with legal system type. Table 5.2 reveals that 42% of

dyads (1989-2002) that belong to the same civilization have dissimilar legal systems. Also, among dyads that are composed of states belonging to different civilizations, 28% have similar legal systems. A great example is provided by the African civilization, where states differ greatly as to the type of legal system. Some states such as Uganda, Liberia, Sierra Leone, and Ghana represent the common law tradition. Many others, on the other hand, such as Gabon, Central African Republic, and Chad belong to the civil law family. Also, Turkey and Iran provide another insightful example. Although both of these nations belong to the Islamic civilization, their domestic legal designs significantly diverge from one another. The constitution of Iran and other Iranian legal sources directly incorporate Islamic principles; Islamic tradition, therefore, constitutes a significant part of this country legal structure. Turkish law, on the other hand, should be characterized as secular. Its legal system is rooted mostly in Romano-Germanic legal tradition. I pose that these two states transmit abroad truly divergent norms. My approach allows us to unpack the broad category of a 'civilization'.

As Tables 5.1 and 5.2 demonstrate, there is a significant degree of 'legal variation' within the broad categories of democracy and civilization. Accordingly, I pose that divergent types of democracies, and states belonging to the same civilization who possess divergent legal structures, externalize substantially different norms. More specifically, I assert that in order to fully understand causes of international conflict, one needs to distinguish between three major legal traditions – civil, common, and Islamic. Countries representing each of these legal systems tend to externalize quite divergent norms of conflict resolution. Conflict constitutes a failure of bargaining, and states with similar legal systems find it much easier to strike bargains with one another. States with different internal legal characteristics are more likely to fail in producing a bargain acceptable to both sides. In the latter case, there might exist no contract zone, and negotiations might end in a deadlock.

One question that might arise in the context of this chapter regards the relationship between Militarized Interstate Disputes, or in general, international conflict, and my framing of interstate cooperation as a contractual relationship. As I explained in the theoretical part of this dissertation, I understand international conflict as constituting a failure of bargaining. In order to adequately test my theory regarding international

conflict, I need to explain what a contract means in the context of this particular chapter. First of all, as explained below, all of my empirical tests are performed on a data set that comprises only politically relevant dyads, which are dyads with direct land contiguity and/or major power status. I assume that these dyads by not engaging in conflict with one another choose to cooperate (have a tacit contract with one another). Politically relevant dyads interact regularly with one another either because of the fact that they share a border, or because of their major power status in the international system. Due to their increased interaction compared with all other dyads in the system, states in politically relevant dyads make a tacit agreement with one another concerning their peaceful relations.

Thus, in the context of Militarized Interstate Disputes, or international conflict in general, the lack of a MID constitutes a form of agreement between two states (politically relevant dyads). As explained in the theoretical part of this dissertation, a contract comprises an offer and an acceptance. In this chapter, the two states agree not to fight with one another, so both states' offer encompasses a promise of nonagression. Because politically relevant dyads interact with one another on a regular basis, such a tacit agreement concerning nonagression constitutes an example of a contractual relationship. Thus, the US and Canada (a politically relevant dyad), for example, according to my approach have a tacit informal contract with one another in which they both promise not to fight with each other. By the same token, my approach in this chapter does not deal with a dyad such as Cuba and Algeria, which is not politically relevant. These two states do not interact with one another often enough to conclude that the lack of a MID between them is an interstate contract.

The above discussion leads me to formulate the following testable propositions:
Hypothesis 5.1: States with similar legal systems are less likely to engage in international conflict.

Hypothesis 5.2: States with highly legitimate legal systems are less likely to engage in international conflict.

In the sections the follows, I empirically test my argument regarding the impact of legal system type and legitimacy on states' propensity to engage in international conflict.[79]

Testing the Argument

Temporal and spatial domain of the study

The temporal domain of this analysis is 1920-2001,[80] and the basic unit of analysis is the dyad year. I use politically relevant dyads with direct land contiguity and/or major power status.[81] Focusing on dyad years allows me to capture the dynamics of states' behavior. The primary data sets used in this analysis is the Correlates of War data set (Jones et al., 1996), and Zeev Maoz's (2005) Dyadic MID data set version 2.0.[82] The assembling of the necessary data has been enhanced by using the Expected Utility Generation and Data Management Program (EUGene) (Bennett and Stam, 2000).

Dependent variables

In this chapter, I treat the absence of Militarized Interstate Disputes as cooperation (conflict is considered as failure of bargaining). I look explicitly at the formation of cooperation agreements between states in Chapter 8 devoted to alliances. I also consider the contractual relationship between states and international institutions in Chapter 7, where I analyze states' propensity to accept the compulsory jurisdiction of the International Court of Justice. In my empirical models, I employ two separate dependent

[79] Because in this chapter I focus on militarized conflict (conflict with fatalities, and conflict with the use of force or war), I do not test hypotheses relating to specific legal system types (ie. the probability of conflict between different legal dyads: civil-civil, common-common, Islamic-Islamic). These specific dyads are more likely to cooperate with one another, thus post-bargaining conflict of interest is less likely between these dyads.
[80] I believe that conflict post 1920 is fundamentally different than conflicts prior to this date.
[81] I use politically relevant dyads because these types of dyads are much more likely to fight with one another (Lemke and Reed, 2004)
[82] Available at http://psfaculty.ucdavis.edu/zmaoz/dyadmid.html.

variables from Zeev Maoz's (2005) Dyadic MID data set version 2.0. My first dependent variable is a Militarized Interstate Dispute with one or more fatalities (onset).[83] This is a dichotomous variable where 1 indicates that in a particular year a dyad was involved in a MID with fatalities, and 0 indicates otherwise. My second dependent variable is a Militarized Interstate Dispute with use of force or war. This is a dichotomous variable where 1 indicates that the MID involved use of force or war (4 or 5 on the hostility scale), and 0 indicates otherwise (0, 1, 2, or 3 on the hostility scale).[84] Table 5.3 presents information regarding the frequencies of 0 and 1 values in both dependent variables.[85] Focusing on the most extreme forms of violence between states allows me to adequately test my theory regarding interstate conflict. Both MIDs with fatalities and MIDs with the use of force or war constitute definite breaches of tacit contracts signed between states in politically relevant dyads. These states by choosing to fight by the same token make a decision to break their contractual relationships regarding peaceful relations between them. Again, because legal systems pertain particularly strong to interstate contracts, differences and similarities existing between them affect states' decisions to engage in interstate violence.

The primary independent variables[86]

1. Legal system

In order to capture the impact of divergent legal systems on the propensity of states to engage in a MID, I constructed a variable called Legal System, where 1 indicates that states in a dyad year represent the same legal tradition, and 0 suggests otherwise. Information about domestic legal systems has been gathered using the *CIA Fact Book*, which describes major characteristics of legal traditions of each state in the international

[83] According to Correlates of War Project, the term Militarized Interstate Dispute can consist of threat, display, or use of military force, or war (Ghosen and Palmer, 2003).

[84] 0 on the hostility evel means no hostility (no MID), 1 no militarized action, 2 threat to use force, 3 display of force, 4 use of foce, and 5 war (Bennett and Stam, 2005).

[85] I decided to use both of these variables, because I wanted to test the hypothesis that states with different legal systems are more likely to engage in most severe conflict. Focusing on less severe types of conflict, or, for example, all MIDs would be better if I wanted to test hypotheses relating conflict of interests in general.

[86] Information regarding correlations between variables, the means, standard deviations, modes, minimum and maximum values is included in Table 5.13.

system, and several other subsidiary legal sources.[87] I took into consideration whether a state's internal legal system was civil, common, or Islamic. The variable Legal System is 1 only when both states in a dyad represent civil, common, or Islamic legal systems. Because I do not have any theoretical expectations regarding the mixed law dyads (dyads, in which both states have mixed legal systems), I assign a value of 0 to the Legal System variable for these this type of dyads. If my expectations regarding the impact of legal system type on states' propensity to engage in international conflict are true, then variable Legal System should have a negative sign and be statistically significant. Table 5.4 presents information regarding the frequencies of the Legal System variable.

2. Rule of Law

In order to measure the degree of respect for the rule of law, I use the International Country Risk Guide (ICRG) scale (0 to 6). This measure is available for years 1984-2002 and it provides quantitative assessments by unidentified experts of the strength of the law and order tradition in various countries. 0 indicates a low respect for the rule of law, and 6 indicates a high respect. According to the ICRG, the law and order variable is constructed as follows.

> Law and Order are assessed separately, with each sub-component comprising zero to three points. The Law sub-component is an assessment of the strength and impartiality of the legal system, while the Order sub-component is an assessment of popular observance of the law. Thus, a country can enjoy a high rating "3" in terms of its judicial system, but a low rating "1" if it suffers from a very high crime rate of if the law is routinely ignored without effective sanction (for example, widespread illegal strikes) (International Country Risk Guide codebook, p.33).

I construct the dyadic measure of the rule of law by multiplying the rule of law scores for both states in a dyad. Thus the dyadic minimum on this scale is 0 (at least one state in a dyad scores 0 on the ICRG scale) and maximum is 36 (both states have 6 on the ICRG scale). The mean score for the Rule of Law variable for the entire sample is 17.08887.

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[87] The following sources have been utilized: M. Glendon, M. Gordon, C. Osakwe, 1994, *Comparative Legal Traditions; Text, Materials and Cases on the Civil and Common Law Traditions, with Special Reference to French, German, English and European Law*, West Publishing Co.; Kritzer, Herbert M. (ed.). 2002. *Legal Systems of the World. A Political, Social, and Cultural Encyclopedia*. ABC-CLIO.J. Opolot, 1980, *An Analysis of World Legal Traditions*, Pilgrimage Press; website created at the Law Faculty of the University of Ottawa: http://www.droitcivil.uottawa.ca/world-legal-systems/eng-generale.html

Because this measure is available only for the years 1984-2002, all of my analyses including this measure are limited to this time period.[88]

Model

The model that I believe best captures the phenomenon under investigation is logit. This model is appropriate for data where the dependent variable is dichotomous (Long, 1997). In order to account for some problems that may arise due to the characteristics of cross sectional time series data (autocorrelation and heteroscadasticity), I estimate robust standard errors (Beck, Katz, and Tucker, 1998).

Control variables

Table 5.5 includes information regarding the control variables used in this chapter. I use the composite CINC (Composite Index of National Capability) index to measure power parity between two states in a dyad. The CINC score is based on the following six characteristics: total population, urban population, iron and steel production, energy consumption, military personnel, and military expenditure of all state members. In order to capture the relative ration of states' capabilities in a dyad, using the Correlates of War's National Capabilities Index, I divided the larger of the two military capabilities scores by the sum of the two. A resulting .5 indicated perfect parity, or symmetry, while a 1.0 assumed total domination by one side, or total asymmetry. These scores were subtracted from 1 to invert the scale, achieving the effect that being on the scale moved toward symmetry, or power parity, while decreases moved toward asymmetry, or dominance. The Foreign Portfolio Similarity Variable comes from Signorino and Ritter (1999), and it evaluates the rank order correlation for two states' alliance portfolios. It takes into account the presence or absence of an alliance in the

[88] In all of my empirical analyses I treat the ICRG measure of the rule of law as a state level variable. The Law component of this scale explicitly refers to the domestic legal system as a whole (its impartiality and strength), which justifies my approach in that I treat the state as a unitary actor. I was unable to get data on the Law and Order components separately, which would be more ideal for measuring my concept of legitimacy at the state level.

correlation calculation. I use the score calculated on the global level, where all states in the international system are included (Bennett and Stam, 2005).

The Distance variable is calculated using the between national capitals using the "great circle" distance formula (Bennett and Stam, 2005). In order to measure democracy, I use the Polity IV scores for both states in a dyad (Jaggers and Gurr, 1995), which combines information from four institutional characteristics into a single democracy score ranging from 0 (least democratic) to 10 (most democratic). This includes the competitiveness of political participation, the level of constraints on the chief executive, and the openness and competitiveness of chief executive recruitment. A dyad is considered to be democratic if both states score 6 or higher on the Polity IV measure. I measure the Peace Years variable using Zeev Maoz's (2005) Dyadic MID data set version 2.0.- his variable 'peace years.' This variable counts the number of years since the end of the last dispute of any type (whether states were originators, joiners, or revisionist).

In order to measure the civilization membership (Huntington, 1993), I use measure constructed by Henderson and Tucker (2001). It is a dichotomous variable, where 1 indicates that two states in a dyad belong to the same civilization, and 0 indicates otherwise. The civilization categories include Sinic, Japanese, Hindu, Islamic, Orthodox, western, Latin American, African, and Buddhist civilizations.

Models 1 and 2: Legal Systems and International Conflict (1920-2001)

First, I test my general argument regarding the impact of domestic legal systems on the likelihood of states engaging in international conflict. As hypothesis 5.1 states, I expect that countries with similar legal systems are less likely to engage in international conflict. I test my hypothesis in two different models. The dependent variable in Model 1 is Militarized Interstate Dispute with fatalities (onset), and the dependent variable in Model 2 is Militarized Interstate Dispute with the use of force or war (onset). Model 1 can be written as:

$$\text{FatalMID}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Democracy}_t + \delta_3\text{Capabilities}_t + \delta_4\text{S-score}_t + \delta_5\text{Distance}_t + \delta_6\text{Peace Years}_t + \varepsilon_{1t}$$

Model 2 has identical independent variables, but a different dependent variable, namely, MID with the use of force, and it can be written as:

$$\text{MIDforceorwar}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Democracy}_t + \delta_3\text{Capabilities}_t + \delta_4\text{S-score}_t + \delta_5\text{Distance}_t + \delta_6\text{Peace Years}_t + \varepsilon_{1t}$$

Table 5.6 presents the results for the estimation of both models. The results of Model 1, presented in the first column, strongly support my theoretical expectations regarding the impact of legal systems on states' belligerent behavior. The coefficient for the Legal System dichotomous variable is negative and statistically significant, which suggests that, as expected, states with similar legal systems are much less likely to be involved in a MID with fatalities. Model 2 also provides support for my expectations, suggesting that states with similar legal systems are less likely to engage in a MID with a use of force or war. In this model the coefficient for the Legal System dummy is, again, highly statistically significant and negative. Indeed, similarity of legal systems lowers the costs of striking an international bargain, and thus states with similar legal traditions prefer solving their disputes in a peaceful way. Resemblance of internal legal design, common understanding of basic legal principles such as *bona fides,* or *pacta sunt servanda,* encourages states to sign international contracts (both formal contracts such as treaties, and also informal agreements). Failure of bargaining is, on the other hand, much more likely if the two states in a dyad do not have similar legal systems. Procedural and substantive divergences between civil, common, and Islamic legal systems considerably increase the cost of interstate bargaining, and may produce a deadlock in negotiations leading to conflict.

In Model 1 and in Model 2, all of the control variables are statistically significant and in the expected directions. In both models, the relationship between joint democracy and occurrence of international conflict is negative and statistically significant, which indicates that democracies are less likely to be involved in a conflict, which provides strong support for the democratic peace argument. As argued by the proponents of the structural, normative, and rationalist explanations of the democratic peace, democratic

dyads are more peaceful.[89] Results regarding capabilities also provide important insights into interstate conflict. The capabilities variable captures the ratio of capabilities in a dyad (power parity). Increases on the scale (0 to 1) indicate movement toward symmetry, or power parity, while decreases indicate asymmetry, or dominance. The coefficient for capabilities is highly statistically significant and positive, which suggests that states more equal in power are progressively more likely to be involved in a MID with fatalities, and also in a MID with a use of force or war. These results strongly support previous findings in the literature that indicate that power parity between states is associated with an increased likelihood of war, while asymmetries of power increase the probability of peace between them (Moul, 1988, Geller, 1993, Kim, 1996).

Like democracy, similarity of foreign policy portfolios dampens the probability of interstate violence. In both models, the coefficient for foreign policy portfolio similarity, measured by Signorino and Ritter's (1999) S-score, is statistically significant and negative. This suggests that states whose foreign policy portfolios are similar are less likely to fight with one another. This result is very interesting because it implies that in addition to legal similarity and regime similarity, also alignment of foreign policy portfolios in a dyad is very important. As expected, increases in distance between two states in a dyad decrease the likelihood of conflict between them. As the literature suggests, the potential for interstate violence exists when at least one member of a dyad can reach the other with effective military force. For the majority of states, the ability to do so is mainly determined by geographic proximity. Numerous studies up to this date show that the constraint of distance reduces the capability to fight (Midlarsky, 2003). Last, but not least, the coefficient for peace years variable is also statistically significant and negative in both models, suggesting that dyads with violent history are more likely to experience recourse to violence.

As with any maximum likelihood model, a clearer picture of the results can be obtained by calculating predicted probabilities. Table 5.7 presents predicted effects of

[89] My results cannot explain which theory of the democratic peace explains the patterns of behavior between democracies.

each of the independent variables for both of the models.[90] Table 5.7 reveals important information about the influence of each of the independent variables on the propensity of states to engage in militarized conflict The predicted probability that two states with similar legal systems will be involved in a MID with fatalities is .00043 lower than for states with different legal systems (53% decrease).[91] The drop in likelihood is also substantial for a MID with the use of force or war, which is .004 (40% decrease). Democracy lowers the predicted probability of a MID with fatalities by .00062 (69% decrease), and the predicted probability of a MID with the use of force or war by .007 (70% decrease). Both types of similarity, joint democracy and alike legal systems, substantially lower the likelihood of international conflict. For similarity of foreign policy portfolios, the likelihood of a MID with fatalities drops from .001 to .0007 (30% decrease) when I change the dyadic value of the S-score from one standard deviation below the mean to one standard deviation above the mean. Correspondence of foreign policy position has a similar effect on the probability of a MID with the use of force or war, where the likelihood drops by .0024 (21% decrease). The magnitude of the effect of this factor is, however, lower than the effect of legal system and joint democracy. All of the control variables, capabilities, distance, and peace years, have strong impact on the likelihood of both types of MIDs.

Models 3 and 4: Legal Systems, Rule of Law, and International Conflict (1984-2001)

As hypothesis 5.2 states, I expect that countries with highly legitimate legal systems are less likely to engage in international conflict.[92] Again, I test my hypothesis in two different models. The dependent variable in Model 3 is the Militarized Interstate Dispute with fatalities (onset), and the dependent variable in Model 4 is Militarized

[90] Predicted probabilities were obtained using Clarify, *Clarify: Software for Interpreting and Presenting Statistical Results* uses logic of survey sampling in order to estimate parameters of a model, G. King, M. Tomz, and J. Wittenberg, 2000, *American Journal of Political Science, V.44: 2, pp 341- 355.*

[91] Predicted probabilities for each of the independent variables are calculated by setting all other variables to their mean or mode values. Each independent variable of interest is set at two values: one standard deviation below the mean and one standard deviation above the mean.

[92] As in all empirical chapters in this dissertation, I treat legitimacy and legal system types as separate dimensions of legal characteristics of states. I elaborate about their possible interactive effect on interstate cooperation and conflict in the concluding chapter.

Interstate Dispute with the use of force or war (onset). There are two differences between the two Models presented in the previous section and Models 3 and 4. First, Model 3 and Model 4 incorporate rule of law (legitimacy) as one of the independent variables. Secondly, the time frame for both of these models is 1984-2001, since the International Country Risk Guide measure of the rule of law is only available for this time frame. Model 3 can be written as:

$$\text{FatalMID}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Rule of Law}_t + \delta_3\text{Democracy} + \delta_4\text{Capabilities}_t + \delta_5\text{S-score}_t + \delta_6\text{Distance}_t + \delta_7\text{Peace Years}_t + \varepsilon_{1t}$$

Model 4 has identical independent variables, but a different dependent variable, namely, MID with the use of force or war, and it can be written as:

$$\text{MIDforceorwar}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Rule of Law}_t + \delta_3\text{Democracy} + \delta_4\text{Capabilities}_t + \delta_5\text{S-score}_t + \delta_6\text{Distance}_t + \delta_7\text{Peace Years}_t + \varepsilon_{1t}$$

Table 5.8 presents the results for the estimation of both models. The results of Model 3, presented in the first column, provide strong support for hypothesis 5.2 about the impact of legitimacy of legal systems on states' propensity to engage in international conflict. The coefficient for the Rule of Law is negative and statistically significant (p=-2.93), which suggests that, as expected, dyads with highly legitimate legal systems are much less likely to be involved in a MID with fatalities. Also, Model 4 provides support for my expectations, suggesting that dyads composed of states with high internal respect for the rule of law are less likely to engage in a MID with a use of force or war (p=-7.61). Indeed, states with more legitimate legal systems (high internal respect for the rule of law) are more likely to strike peaceful international bargains and less likely to employ militarized force to pursue their goals. High internal respect for the rule of law makes enforcement of international contracts easier. Failure of bargaining is, on the other hand, much more likely if the dyadic respect for the rule of law is low. Just as in models 1 and 2, all of the control variables in models 3 and 4 are statistically significant and in the expected directions. Table 5.9 presents predicted probabilities for models 3 and 4.

Table 5.9 reveals important information about the substantive impact of the rule of law (legitimacy) on states' propensity to engage in international conflict. When the dyadic rule of law (rule of law(state A)*rule of law (state B)) increases from the lowest possible (0) to the highest possible (36) value, the likelihood of a MID with fatalities decreases from .0005 to .0001 (80% decrease). Similarly, the same increase in the dyadic rule of law leads to decrease of the predicted probability of a MID with the use of force or war from .002 to .0004 (80% decrease). These results illustrate that states with more legitimate legal systems (high internal respect for the rule of law) are more likely to strike peaceful international bargains. Thus, employment of military force to solve grievances between them is much less likely. Substantive effects of all the other variables are similar to those presented in Model 1 and Model 2. Figure 5.1 portrays the effect of dyadic rule of law (legitimacy) on states' propensity to solve their disputes in a forceful way.

All of the models presented so far provide support for both of my hypotheses. Both, similarity of legal systems, and legitimacy seem to have a strong dampening effect on the likelihood of international conflict. Another question, however, still remains unanswered: "How do these findings relate to Huntington's clash of civilization thesis?" In the next section, I present two models (Model 5, and Model 6), which incorporate civilization membership as one of the independent variables. Analyses presented below let me test the argument that legal systems and legitimacy have impact on states' foreign policy choices independently from civilization membership.

Models 5 and 6: Legal Systems, Rule of Law, Civilizations, and International Conflict (1989-2002)

In order to test hypothesis 5.1 and 5.2 together with Huntington's clash of civilization thesis, I design Model 5 and Model 6. The dependent variable in Model 5 is, as in Model 1 and Model 3, the Militarized Interstate Dispute with fatalities (onset). The dependent variable in Model 6 is, as in Model 2 and Model 4, Militarized Interstate Dispute with the use of force or war (onset). There are, again, two differences between models 3 and 4 and Models 5 and 6. First, the two models presented in this section incorporate civilization membership an as one of the independent variables. Secondly, the

time frame for both of these models is 1989-2001, since this time frame allows me to test Huntington's theory, which mainly refers to the time period after the Cold War. Model 5 can be written as:

$$\text{FatalMID}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Rule of Law}_t + \delta_3\text{Democracy} + \delta_4\text{Capabilities}_t + \delta_5\text{S-score}_t + \delta_6\text{Distance}_t + \delta_7\text{Peace Years}_t + + \delta_8\text{Civilization}_t + \varepsilon_{1t}$$

Model 6 has identical independent variables, but a different dependent variable, namely, MID with the use of force or war, and it can be written as:

$$\text{MIDforceorwar}_t = \delta_0 + \delta_1\text{Legal System}_t + \delta_2\text{Rule of Law}_t + \delta_3\text{Democracy} + \delta_4\text{Capabilities}_t + + \delta_5\text{S-score}_t + \delta_6\text{Distance}_t + \delta_7\text{Peace Years}_t + + \delta_8\text{Civilization}_t + \varepsilon_{1t}$$

Table 5.10 presents the results for the estimation of both models.Both models provide support for Huntington's clash of civilizations thesis. In Model 5, the coefficient for Civilization dichotomous variable is negative and statistically significant (p= -5.30), indicating that states belonging to the same civilization are less likely to engage in a MID with fatalities. Results provided by Model 6 suggest that these states are also less likely to be involved in a MID with the use of force or war. Indeed, just as Huntington predicted, in the post Cold War era, conflict is more likely along the fault lines of civilizations, and not between states belonging to the same civilization. These results contradict Henderson and Tucker's (2001) findings, which do not lend support for the clash of civilizations thesis. My results are also different from Russett et al. (2000) who show that pairs of states belonging to different civilizations are not more likely to become engaged in disputes than are other states *ceteris paribus*. There are two primary reasons for the disparity of findings. First, both of these studies use different dependent variables. Henderson and Tucker use interstate war, and Russett et al. use Militarized Interstate Disputes. In this chapter, I use MIDs with fatalities and MIDs with the use of force or war, because I believe that these two variables better reflect Huntington's propositions. Secondly, the time frame that I focus on is substantially different from the time frames used by other scholars. Huntington's clash of civilizations thesis relates specifically to the post-Cold War era, and this it the time frame of my analysis (1989-2002). Henderson and Tucker's time frames are 1816-1992, and 1989-

1992, which does not cover the entire post Cold War era. Russett et al., on the other hand, use the 1950-1992 time frame, which again does not test adequately Huntongton's propositions.

Interestingly, in both of my models, coefficients for the Legal System variable and the Rule of Law variable remain negative and significant, which suggests that similarity of legal system and legitimacy have distinct effects on international conflict patterns independently from civilization membership. Although I find support for Huntington's thesis, the results show that his theory is incomplete in that it fails to consider the differences in internal legal characteristics of states. Religion, which constitutes the single most important indicator of a civilization, fails to completely capture the reasons standing behind interstate violence. Both legal similarity (type and legitimacy) and joint democracy shape the choices that states make on the international arena regarding choices of their friends and enemies. In the post Cold War era, according to Huntington, "cultural identity is the central factor shaping a country's associations and antagonism" and thus, states increasingly define their interests in civilization terms" (1993a:125 and 34). My results show that characteristics of internal legal design are also able to shape states' foreign policy choices.

Just as in previous four models, all of the control variables in models 5 and 6 are statistically significant and in the expected directions. Again, in order to fully comprehend the impact of the civilization membership on states' propensity to engage in international conflict, one needs to look at the predicted probabilities. Table 5.11 presents the predicted probabilities for models 5 and 6. If two states in a dyad belong to the same civilization, the likelihood of their involvement in a MID with fatalities drops from .0006 to .0001, and the likelihood of their involvement in a MID with the use of force of war drops from .0013 to .0008.

All of the models presented so far support both of my hypotheses. Similarity of legal systems, and the dyadic level of respect for the rule of law seem to have a strong dampening effect on the likelihood of international conflict. These results are consistent over all six models, and remain robust even after introducing civilization membership as

one of the independent variables.[93] After having tested the impact of legal characteristics on states' involvement in conflict, I now compare the substantive effect of different types of similarities (legal, joint democracy, foreign policy portfolios, civilization membership) on states' conflictual behavior.

Substantive Effects of Dyadic Similarity on the Likelihood of International Conflict

There exist numerous ways in which two states in a dyad can be similar. They can have the same legal system, both can be democracies, both can have similar foreign policy portfolios, and both can belong to the same civilization. In this section, I present the joint effects of all of these kinds of similarity on states' propensity to fight. Table 5.12 illustrates the impact of these factors on states' involvement in a MID with fatalities and in a MID with the use of force or war.

The first column of Table 5.12 portrays a situation, in which two states in a dyad do not share any type of similarity. They have different legal systems, at least one state is not a democracy, and they have different foreign policy portfolios. In this case, predicted probability of a MID with fatalities is .00089, and the predicted probability of a MID with the use of force or war is even higher, .0099. If both of these states were to have a similar legal system, but remain different as far as the other characteristics, their probabilities of conflict drop to .00047 for fatal MIDs (47% decrease), and .0061 for use of force or war (38% decrease). If two states in a dyad are democracies (6 or more on the Polity IV scale), and they both have a similar legal system, the probability of a MID with fatalities drops to .0001 (88% decrease), and the probability of involvement in a MID with the use of force or war drops to .0019 (80% decrease). Indeed, the joint effect of legal and regime similarity substantially dampens the likelihood of interstate violence. If two states in a dyad are not only democracies with a like legal design, but also share a similar foreign policy portfolio, their predicted probability of conflict is 1 in 10,000 (fatalMID) and 1.5 in 10,000 (MIDforceorwar) (80% decrease) accordingly. Thus, the

[93] The impact of legal similarity on states' conflictual behavior remains strong even when I introduce colonial history as one of the independent variables. The fact that two states had in the past the same colonizer does not account for the strong impact that legal systems have on the probability of Militarized Interstate Disputes. The fact that two states had the same colonizer is not equivalent to them having the same legal system. Out of all dyads that had the same colonizer, 50% had divergent legal systems.

effect of this characteristic (the foreign portfolios similarity) on dyadic conflict is, by far, the weakest. What if the two states in a dyad share all the similarities possible i.e. they are both democracies with similar legal system, they both have similar foreign policy portfolios, and they both belong to the same civilization? In this case, the predicted probability of a MID with fatalities drops to .0000046 (99% decrease), and the probability of a MID with the use of force or war drops to .0002 (98% decrease).

Perhaps the best example of a pair of states that are highly similar is the US and Canada. Both of these states have similar legal systems (common), both are democratic, and both belong to the same civilization (Western). Their foreign policy portfolios are also very compatible (they score .86 on the Signorino and Ritter's scale, which has a maximum value of 1.0. Also, US and Great Britain share a lot of features. Both of these nations are democratic, both belong to the same civilization, and both have the same legal system (common). Their S-score is relatively high (.709). States in Western Europe share also numerous similarities. First of all, the majority of these states have similar legal system (civil), and all of them belong to the same civilization (Western). Most of them are also stable democracies. France and Spain, for example, have exceptionally similar foreign policy portfolios (score .99 on Signorino and Ritter's scale).

In this section, I demonstrated the impact of different types of similarities on states' propensity to use violence as a means of conflict resolution. Indeed, the probability of interstate violence is by far the lowest if two states in a dyad have numerous features in common. Even though each of these characteristics (legal similarity, joint democracy, similar foreign policy portfolios, civilization membership) has a strong individual effect on states' behavior, their joint effect is the most substantial.

Conclusion

In this chapter, I presented analyses of six different models designed to test the theoretical propositions stemming from the theory delineated in Chapters 2, 3, and 4. I tested the argument in one of the areas of international relations, namely, international

conflict. My analyses expand upon Huntington's clash of civilization thesis by showing that legal systems constitute yet another characteristics of a civilization that needs to be considered. Also, findings included in this chapter pertain to the democratic peace literature in that they demonstrate that legal systems, their type and legitimacy, have an independent from regime type effect on states' propensity to engage in international conflict. The clash of civilization thesis and the democratic peace literature provide interesting insights into the reasons standing behind international conflict. Unfortunately, up to this date scholars studying conflict have not adequately considered another very important dimension of similarity, namely, similarity of legal systems. In addition, the relationship between the degree of legitimacy of a legal systems and a state's conflictual behavior has also been overlooked. My analyses suggest that legal system types and legitimacy can provide important insights into the study of international conflict. My results can be summarized as follows:

1. Legal system characteristics (type and legitimacy) have a strong effect on the likelihood of cooperation or conflict between states. This conclusion further supports findings by the literature that links internal characteristics of states to their external behavior, such as the democratic peace literature or the clash of civilizations thesis. Features of states' domestic structures, be it institutional, cultural, or legal, seem to have a substantial effect on the way that countries behave on the international arena. Just as joint democracy dampens the likelihood of interstate conflict (Maoz and Russett, 1993, Ray, 1995, Doyle, 1997, Kacowicz, 1995), so does similarity in legal design decrease the probability that two states will resort to violence. Results presented in this empirical chapter appeal to the literature that shows the centrality of domestic politics to any understanding of the strategic interactions in the world of international politics (Bueno de Mesquita, 2000, Lake and Powell, 1999). Findings included in this study and also findings of other scholars who focus on the link between domestic politics and international relations show that we, as scholars should see "the domestic and international dimensions as part of a whole" (Gourevitch, 2005).
2. States with similar legal systems are less likely to engage in international conflict. This relationship holds for Militarized Interstate Disputes with fatalities and for

Militarized Interstate Disputes with the use of force or war. Thus, hypothesis 5.1 is fully supported. An interesting extension of analyses performed in this chapter would be to focus more specifically on the differences existing between Islamic legal traditions and the two Western legal traditions (both civil and common legal systems). According to Huntington, conflict is especially likely between "the West and the Rest" (Huntington, 1993:223). In particular the Islamic civilization seems to be the most dangerous as far as the West's relations with other civilizations. Because the link between law and religion in Islamic law states is extremely strong, this difference between the Western and Islamic legal systems may be most crucial for explaining international cooperation and conflict. It is, therefore, conceivable to expect that the probability of interstate violence will be most likely between Western and Islamic legal traditions. An analysis focused on the differences between these two families could perhaps further explain why interstate bargaining fails and why conflict occurs. My preliminary results concerning the propensity of different dyads to engage in conflict show that Islamic law dyads are more likely fight than are common law or civil law dyads. This result also supports Huntington's predictions by showing that Islamic nations are most belligerent than Western states.

3. States with highly legitimate legal systems are less likely to engage in militarized disputes. This relationship also holds for Militarized Interstate Disputes with fatalities and for Militarized Interstate Disputes with the use of force or war. Thus, hypothesis 5.2 is fully supported. These findings support the view that states export abroad norms characteristic to their domestic structure. These results relate to the normative argument of the democratic peace, which proposes that democracies prefer to act towards one another according to the norms characteristic to their internal design (norms of peaceful conflict resolution) (Russett, 1993, Dixon, 1993). I show that dyads with high joint degree of legitimacy act towards one another in a peaceful way. Because these state uphold the rule of law internally, they also respect it on the international arena.

4. The likelihood of interstate conflict is the lowest when two states in a dyad have multiple sources of similarity (legal systems, regime type, alliance portfolios, and civilization membership) (Leeds, 1999, Werner, 2000).
5. My results support Huntington's clash of civilizations thesis showing, however, that legal characteristics of states should be considered as yet another characteristics of a civilization. At the same time, my results contradict the findings by Henderson and Tucker (2001), and Russett, Oneal and Cox (2000), who do not find support for the clash of civilizations thesis.

Table 5.1 Legal Systems and Democracy (1920-2001).

Legal Systems			
		Similar	**Dissimilar**
Both States Are Democratic	**Yes**	**46% (4,492)**	**54% (5,244)**
	No	**38% (20,616)**	**62% (33,583)**

Pearson Chi2(1) = 227.0816, Pr = 0.000

Table 5.2. Legal Systems and Civilization Membership (1989-2001).

Legal Systems			
		Similar	**Dissimilar**
Civilization (Religion, Culture)	**Similar**	**58% (2,788)**	**42% (2,022)**
	Dissimilar	**28% (4,368)**	**72% (11,253)**

Pearson chi2(1) ==1500, Pr =0.000

Table 5.3 Dependent Variables Frequencies in Chapter Five.

MID with fatalities	**Frequencies**	**Percent**
0	61,278	98.67
1	827	1.33
MID with use of force or war		
0	60,425	96.7
1	2,060	3.30

Table 5.4. Frequencies of the Legal System Variable.

Legal System	**Frequencies**	**Percent**
0 (different legal systems)	38,827	60.73
1 (similar legal systems)	25,108	39.27

Table 5.5 Control Variables in Chapter Five.

	Theoretical Expectation	**Measure**	**Source**
Capabilities (Power Parity measure)	+	Composite CINC Score[94] = 1-cap(ccode1)/cap(cccode1)+cap(ccode2) if cap(ccode1)>cap(ccode2) = 1-cap(ccode2)/cap(cccode1)+cap(ccode2) if cap(ccode2)>cap(ccode1)	Singer, Bremer, and Stuckey (1972)
Foreign Policy Portfolio Similarity	-	s-score, weighted, global computation using all states; scale –1(maximally different) to 1 (identical)	Signorino and Ritter (1999)
Distance	-	Distance between two states in a dyad (distance between capital cities)	Correlates of War Project
Democracy	-	1 if both states score six or higher on democracy scale	Polity IV
Peace Years	-	Years without dispute	Based on occurrence of disputes in Maoz-based dyadic data set and MID 3.0 data set
Civilization	-	1 if states in a dyad belong to the same civilization, 0 otherwise categories: Sinic, Japanese, Hindu, Islamic, Orthodox, Western, Latin American, African, Buddhist	Henderson and Tucker (2001)

[94] A more detailed description is included in the text.

Table 5.6. Logit Models: Legal Systems and International Conflict (1920-2001).

	Model 1: MID with Fatalities (Onset)	**Model 2: MID with the Use of Force or War (Onset)**
Legal System	-.637 *** (-8.23)	-.476 *** (-9.18)
Democracy	-1.18 *** (-6.85)	-1.14*** (-10.96)
Capabilities	3.36 *** (14.63)	3.25*** (19.91)
S-Score	-.508 *** (-4.97)	-.43 *** (-6.23)
Distance	-.0002 *** (-8.77)	-.0001*** (-9.75)
Peace Years	-.159 *** (-9.21)	-.091*** (-13.19)
Constant	-2.209 *** (-18.89)	-1.78 *** (-22.11)
	N=60,436	N=60,436

*p<.10, ** p<.05, *** p<.01, (z-score); robust standard errors

Table 5.7. Substantive Effects (Predicted Probabilities) for Model 1 and Model 2.

Legal Systems and International Conflict (1920-2001)		
	Model 1: MID with Fatalities (Onset)	**Model 2: MID with the Use of Force or War (Onset)**
Legal System (Different to Similar)	.00089, .00046	.01, .006
Democracy (both nondemocracies to both democracies)	.00089, .00027	.01, .003
Capabilities (0 to .21)	.00057, .0013	.0066, .0149
S-Score (.16 to .82)	.001, .0007	.011, .0086
Distance (755 to 6311)	.0016, .0005	.015, .007
Peace Years (0 to 53)	.051, .000016	.09, .0009

Table 5.8. Logit Models: Legal Systems, Rule of Law, and International Conflict (1984-2001).

	Model 3: MID with Fatalities (Onset)	**Model 4: MID with the Use of Force or War (Onset)**
Legal System	-.57 *** (-3.11)	-.369 *** (-3.25)
Rule of Law	-.027*** (-2.93)	-.049 *** (-7.61)
Democracy	-.784 ** (-2.06)	-.42 ** (-2.11)
Capabilities	1.9 *** (3.28)	1.9*** (4.73)
S-Score	-.721 ** (-2.43)	-.83 *** (-4.06)
Distance	-.0004 *** (-4.82)	-.0002 *** (-6.71)
Peace Years	-.13 *** (-5.37)	-.13*** (-9.36)
Constant	-1.17*** (-3.95)	-.138 (-.64)
	N=15,644	N=15,714

*p<.10, ** p<.05, *** p<.01, (z-score); robust standard errors.

Table 5.9. Substantive Effects (Predicted Probabilities) for Model 3 and Model 4.

Legal Systems, Rule of Law and International Conflict (1984-2001)		
	Model 3: MID with Fatalities (Onset)	**Model 4: MID with the Use of Force or War (Onset)**
Legal System (Different to Similar)	.0003, .0001	.001, .0007
Rule of Law (0 to 36)	**.0005, .0001**	**.002, .0004**
Democracy (both nondemocracies to both democracies)	.0003, .0001	.001, .0006
Capabilities (0 to .21)	.0002, .0004	.0008, .001
S-Score (.16 to .82)	.0004, .0002	.001, .0007
Distance (755 to 6311)	.001, .0001	.002, .0004
Peace Years (0 to 53)	.02, .00004	.08, .00009

Table 5.10. Legal Systems, Rule of Law, Civilizations, and International Conflict 1989-2001.

Legal Systems, Rule of Law, Civilizations and International Conflict (1989-2001)		
	Model 5: MID with Fatalities (Onset)	**Model 6: MID with the Use of Force or War (Onset)**
Legal System	-.523*** (-2.5)	-.23* (-1.75)
Rule of Law	-.03*** (-3.07)	-.05*** (-6.51)
Democracy	-1.12** (-2.28)	-.768*** (-2.89)
Capabilities	1.87** (2.65)	1.89*** (3.85)
S-Score	-.333 (-.85)	-.654*** (-2.50)
Distance	-.0006*** (-4.77)	-.0003*** (-6.29)
Peace Years	-.113*** (-4.64)	-.12*** (-7.46)
Civilization	-1.21*** (-5.30)	-.496*** (-2.83)
Constant	-.733** (-2.03)	.03 (-0.13)
	N=11,959	N=11,959

*p<.10, ** p<.05, *** p<.01, (z-score), standard errors

Table 5.11 Predicted Probabilities for Model 5 and Model 6.

Legal Systems, Rule of Law, Civilizations and International Conflict (1989-2001)		
	Model 5: MID with Fatalities (Onset)	**Model 6: MID with the Use of Force or War (Onset)**
Legal System (Different to Similar)	.0006, .0003	.0013, .0010
Rule of Law (0 to 36)	.001, .0003	.003, .0005
Democracy (both nondemocracies to both democracies)	.0006, .0002	.0013, .0006
Capabilities (0 to .217)	.0004, .0007	.001, .0016
S-Score (.16 to .82)	.0007, .0005	.0016, .0010
Distance (755 to 6311)	.004, .0001	.0044, .0005
Peace Years (0 to 53)	.025, .0001	.07, .0001
Civilization (Different to the Same)	**.0006, .0001**	**.0013, .0008**

Table 5.12 Effect of Dyadic Similarity on International Conflict.

	Legal Systems, Rule of Law, and Alliance Portfolios (1984-2001)				**Legal Systems, Rule of Law, Alliance Portfolios, and Civilizations (1989-2001)**
Similar Legal Systems	*No*	***Yes***	***Yes***	***Yes***	***Yes***
Joint Democracy	*No*	*No*	***Yes***	***Yes***	***Yes***
Similar Alliance Portfolios	*No*	*No*	*No*	***Yes***	***Yes***
The Same Civilization	**----**	**----**	**----**	**----**	***Yes***
Predicted Probability of MID with Fatalities	*.00089*	*.00047*	*.0001*	*.0001*	.0000047
Predicted Probability of MID with the Use of Force or War	*.0099*	*.0061*	*.0019*	*.0015*	.0002

Table 5.13. Descriptive Statistics for the Clash of Legal Systems Chapter.

Variable	Mean	Std. Dev.	Min.	Max	Mode
Same Legal System	.392	.48	0	1	0
Dyadic Rule of Law (Legitimacy)	17.08	9.4	0	36	10
Capabilities (Power Parity Measure)	.08	.07	0	.38	.05
Foreign Policy Portfolio Similarity	.49	.33	-.60	1	.3
Distance	3533.2	2778.46	5	11989	1002
Joint Democracy	.12	.32	0	1	0
Peace Years	26.49	27.48	0	185	9
Same Civilization	.33	.47	0	1	0

Table 5.14 Correlations for the Clash of Legal Systems Variables (1920-2001)

	Similar Legal Systems	Joint Democ.	Relative Cap.	Similar Foreign Policy Portfolios	Distance	Peace Years
Similar Legal Systems	1.00					
Joint Democ.	.05	1.00				
Relative Cap.	-.21	-.005	1.00			
Similar Foreign Policy Portfolios	.13	.03	-.4	1.00		
Distance	-.27	-.044	.34	-.39	1.00	
Peace Years	.005	.04	.12	.12	.26	1.00

Table 5.15 Correlations for the Clash of Legal Systems Variables (1984-2001)

	Similar Legal Systems	**Rule of Law**	**Same Civ.**	**Joint Democ.**	**Relative Cap.**	**Similar Foreign Policy Portfolios**	**Distance**	**Peace Years**
Similar Legal Systems	1.00							
Rule of Law	-.06	1.00						
Same Civ.	.31	.11	1.00					
Joint Democ.	.11	.12	.14	1.00				
Relative Cap.	.21	-.05	.38	.02	1.00			
Similar Foreign Policy Portfolios	.17	-.13	.43	.07	.34	1.00		
Distance	-.26	.02	-.4	-.0002	-.4	-.4	1.00	
Peace Years	-.02		-.09	.06	-.16	.1	.2	1.00

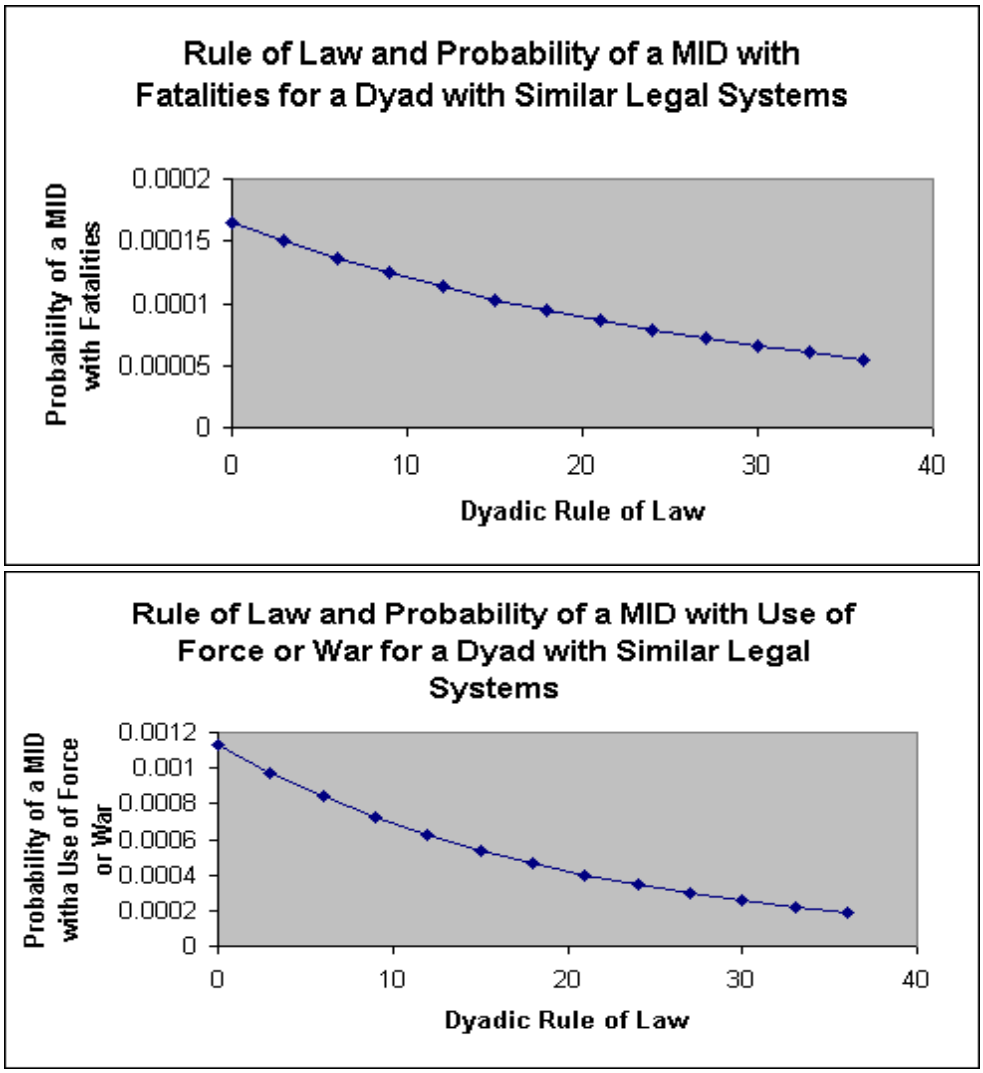

Figure 5.1. Rule of Law and International Conflict

CHAPTER SIX

THE INTERNATIONAL COURT OF JUSTICE

Introduction

This chapter is devoted to testing my theoretical expectations regarding cooperation between states and international institutions. The institution that I focus on is the World Court, which for nearly ninety years has been accessible to all states for the peaceful settlement of disputes. The impetus to construct a world court developed in response to the Hague Conferences of 1899 and 1907. The establishment of the Permanent Court of Arbitration marked an important step forward in the consolidation of an international legal order. Yet, no long-lasting steps were undertaken until after the conclusion of the First World War, when the Permanent Court of International Justice (PCIJ) was created. The main reason behind its creation was to prevent outbreaks of violence by facilitating dispute settlement within a legal framework. The PCIJ was superceded after the Second World War by the International Court of Justice, which is the 'principal judicial organ' of the United Nations, as described in article 92 of the UN Charter.

The International Court of Justice derives its jurisdiction from numerous sources (Alexandrov, 1995). Generally speaking, the major source of the ICJ's competence lies in the consent of states that are parties to a particular dispute (Szafarz, 1993). This consent may be expressed in advance, with reference to all possible legal quarrels that may arise in the future (*ante hoc; compulsory jurisdiction).* States recognize the compulsory jurisdiction of the ICJ, with or without reservations, through acceptance of the Optional Clause, Article 36(2) of the ICJ Statute. Acceptance of the compulsory jurisdiction clause

signifies that a nation is willing to acknowledge the adjudication powers of the ICJ in all legal disputes regarding the interpretation of a treaty, any question of international law, and interpretation of other international obligations (Bederman, 2001: 243). The Court's jurisdiction may also be established in compromissory clauses contained in multilateral or bilateral treaties. Further, a party may express its consent when the case has already been brought before the Court by the other disputant (*post hoc).* Lastly, consent may be articulated by states once a dispute has arisen (*ad hoc).*

Creation of the World Court in 1920 was associated with great hopes that states would view the Court as a legitimate and effective conflict manager. However, these initial expectation have not been fully realized. As of 2002, the number of states accepting the compulsory jurisdiction of the Court was 63 out of 191, only one third of all states (Powell and Mitchell, 2006).[95]An overwhelming majority of these states (84%) place some kind of reservations on their optional clause, thereby significantly limiting the Court's adjudication prerogatives. Further, because such reservations are reciprocal, states may find themselves even further restricted in their ability to sue other states. Pessimistic views of the Court as conflict manager in world politics emphasize its under-utilization, its flawed internal organization, and various external factors, such as power disparities, that undermine its authority (Elkind, 1984; Eyffinger, 1996; Gross, 1987; Janis, 1987; McWhinney, 1991; Oduntan, 1999; Powell and Mitchell, 2006; Scott & Carr, 1987; Scott & Csajko, 1988; Singh, 1989). On the other hand, more optimistic views of the ICJ stress the Court's role in pushing parties towards conflict resolution, even if the disputants never go to court (Mitchell, 2005a). The presence of the International Court of Justice (ICJ) could increase the probability of conflict resolution between states because it provides a legal course of action for the disputants (Bilder, 1998; Gamble & Fischer, 1976). The influence of the ICJ on conflict management could be substantial; even if disputants never bring their grievances to the ICJ, the Court could have an *indirect* effect on conflict management simply by providing a "last resort" outlet. If these indirect effects on international bargaining are substantial, then the inclination of

[95] I employ the Correlates of War definition of a state (Small and Singer, 1982), which is based on population size, international recognition, and the exercise of sovereignty and independence.

numerous scholars to focus only on cases where the ICJ is directly involved may have contributed to a deficient and excessively pessimistic view of the Court.

Domestic Legal Systems, Legitimacy, and the World Court

Legal System Types and the World Court

As stated in the theoretical chapters, cooperation between states and institutions differs from cooperation between states in that negotiations and bargaining are limited because an institution already consists of a set of rules *before* negotiations with a particular state start. Cooperation between states is much more flexible in that both the substantive and procedural characteristics of a contract are subject to bargaining. The rigidity of procedural and substantive rules on the part of an international institution significantly affects the costs and benefits of cooperation. Because the majority of institutional rules are nonnegotiable, it is much easier for a state to join an institution if its legal design is similar to the domestic legal system of a state.

The International Court of Justice provides a great example of an institution, which consists of a well-defined set of rules and procedures. Because the ICJ is a state-created institution, a large amount of its internal rules and procedures resemble rules and procedures characteristic to domestic legal systems. In this chapter, the similarity between the legal design of the World Court and domestic legal traditions constitutes the theoretical basis for my empirical analyses.

The history of the World Court clearly illustrates that domestic legal systems played a crucial role in determining the legal underpinnings of the Court. Already in the nascent stages of international adjudication, there existed disagreement as to which legal principles should an international court adhere: “In addition to differences governing the laws of naval warfare, there was also believed to be a difference between the ‘Anglo-Saxon’ (i.e., Anglo-American) approach to international law and the ‘continental’ (i.e., European) approach to international law” (Lloyd, 1985:35). The crux of the problem is

that judges of divergent legal traditions are naturally inclined to lean towards their own jurisprudence, which can lead to a clash between opposing legal orders. Such a concern was very clearly expressed by numerous English judges and politicians involved in the formation of the international court: "It was inevitable that the majority of judges on the Court would be 'continental' lawyers or would follow that school (for example, the Latin Americans). By virtue of sitting at the Hague they would be exposed to the pernicious influence of extreme German doctrines" (Lloyd, 1985:35). As a result, the Romano-Germanic legal tradition embodied in civil law systems was able to shape the rules and procedures adopted by the Permanent Court of International Justice (and later the ICJ). The influence of the continental approach to international law early on created varying levels of enthusiasm for the Court's involvement as a conflict manager around the globe.

The major influence of the civil law family was later embodied in Article 59 of the ICJ Statute, which forbids the Court from relying on precedents. In other words, the doctrine of *stare decisis* does not bind the ICJ. Article 59 provides that "The decision of the Court has no binding force except as between the parties and in respect of that particular case". As most legal scholars agree, the object of this article is simply to prevent legal principles accepted by the Court in a particular case from being binding on other states or in other disputes (Brownlie, 1998). According to Judge Jennings, Article 59 asserts that "the principles of decision of a judgment are not binding in the sense that they might be in some common law systems through a more or less rigid system of binding precedents".[96] The ICJ is, therefore, forbidden from formally introducing jurisprudential continuation by invoking its previous judgments.[97] Nevertheless, judges often invoke previous decisions of the Court, in order to support their decision in a

[96] *Continental Shelf (Libyan Arab Jamahiriya/ Malta), ICJ Rep 1984,* p. 157, para. 27, in Shahabuddeen, 1996:102.

[97] Despite the inability of the ICJ to formally rely on its previous judgments, some degree of legal certainty could be acquired by the Court maintaining its judicial consistence. In other words, the ICJ could, without explicitly invoking its previous judgments, stick to the same line of legal reasoning. This practice could significantly reduce uncertainty for cases coming before the Court. The ICJ has, for the most part, retained a form of judicial consistency by invoking its previous judgments and the judgments of its predecessor, the PCIJ. These prior judgments are often invoked in both arguments and decisions (Oppenheim, 1992:41). Some authors, however, accuse the ICJ of defecting from this stabilizing practice (Reisman, 1989). On a few occasions in recent years, the ICJ misstated its own prior holdings by selective quotation (Military and paramilitary Activities in and against Nicaragua, Merits, 1986 ICJ Rep.14, Judgment of June 27). This practice "undermines the confidence of others in its reliability, deters litigants from resorting to it and reduces in consequence its own potential contribution to the community" (Reisman, 1989:317).

particular case. Invoked previous judgments do not, however, constitute a binding precedent, but are merely treated as "a statement of what the Court regarded as the correct legal position" (Shahabuddeen, 1996:63). Professor Kisch best describes this feature of the ICJ in the *Guardianship Convention* case, where he states:

> "Of course I am well aware that the Court is not bound by the *stare decisis* principle, British or American style. Of course I use the word 'precedents' in the general and not in the strictly technical sense, and what I wanted to convey was this: that any lawyer in any country, any judge, and any advocate, when confronted with a difficult case, tries to find, if not some support, at least some enlightenment and some inspiration, from what judges, and particularly the best judges, have found in similar cases. I refer to precedents in that wide sense, including even such situations - as we have had in this very country – where a judge has explicitly declared himself inspired by French or English or German decisions. Certainly that is not a phenomenon of precedents in the Anglo-American sense."[98]

It is therefore clear that the doctrine of *stare decisis* does not apply to the International Court of Justice (Rosenne, 1997). The ICJ is not legally bound by its previous decisions, but by the international law as authoritatively expressed in a decision. The two forms of legal activity (i.e. being bound by previous cases, and being bound by international law) have been made explicit by Judge Zoricic in the *Peace Treaties* case, where he states, "it is quite true that no international court is bound by precedents. But there is something, which this Court is bound to take into account, namely the principles of international law. If a precedent is firmly based on such a principle, the Court cannot decide an analogous case in a contrary sense, so long, as the principle retains its value".[99] The lack of formal judicial precedent in the activity of the ICJ makes it very similar to civil legal systems where this doctrine is, as explained in the theoretical chapters, forbidden. Also, rules and procedures of the Court are secular in nature, which makes them very different from Islamic law. As explained in the theoretical part of the dissertation, Islam as law is closely connected to Islam as religion.

The influence of the continental approach to international law in the creation of the Permanent Court may have produced unintended effects. In particular, I assert that it

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[98] ICJ Pleadings, Application of the Convention of 1902 Governing the Guardianship of Infants, p. 259, in M. Shahabuddeen, 1996:237.

[99] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, ICJ Rep 1950,* p. 104, Judge Zorcic, dissenting opinion, in M. Shahabuddeen, 1996:237.

produced variation in states' willingness to view the Court as a legitimate conflict manager in world politics. States whose domestic legal orders resemble the rules and practices of the international legal order should be more accepting of the ICJ's jurisdiction. In short, institutional similarities between domestic and international legal orders help to explain the variation in states' acceptance of compulsory jurisdiction. Since the rules and procedures of the ICJ cannot be negotiated with each state that decides to accept the compulsory jurisdiction of the Court, the costs of joining are much lower for civil law states, whose domestic legal system most resembles that of the World Court. On the other hand, the costs of joining the ICJ are very high for the Islamic law states, whose domestic legal system is so closely intertwined with Islam as religion. In short, civil law states will find the ICJ attractive because the institutional similarities between their domestic law and the international Court reduce bargaining costs. Common and Islamic law states, on the other hand, face greater costs when signing onto an international Court that employs less familiar legal rules and procedures. Because of particularities of the Islamic legal tradition, costs of joining the Court for these states are still higher than the costs incurred by common law states. Thus, I expect the civil law states to be most likely to initially accept the compulsory jurisdiction of the ICJ, and the Islamic law states to be least likely to do so.

My theory allows me to form certain expectations regarding not only the initial commitment of states to the ICJ (acceptance of the compulsory jurisdiction of the Court), but also the survival of states' commitment to the World Court. In other words, characteristics of domestic legal systems can provide us with insight into the design and durability of international contractual obligations. Due to the structure of common law contracts (elaborate and very detailed), I expect states representing this legal tradition to place a large number of reservations on their commitments. These restrictions should augment the stability of common law states' commitments to the World Court, because they will limit substantially the ICJ's jurisdiction, especially over salient issues (Powell and Mitchell, 2006). I expect the relations between the ICJ and civil law states to be substantially different. First of all, the strong position of the good faith principle in these countries should encourage civil law states to place a small number of reservations on their optional clause declarations. Also, although states representing civil law tradition

should abide by the *pacta sunt servanda* principle, their commitments to the ICJ may be shorter than those for common and Islamic law states. States representing Islamic legal tradition, although very careful in initially signing onto the World Court, should continue to stay steadfastly committed to the Court. Because this legal tradition treats contracts as sacred (the supremacy of the *pacta sunt servanda* norm), Islamic law states will only in extreme situations renege on their commitments to the World Court.

Legitimacy and the World Court

In addition to domestic legal system types, I expect that degree of legitimacy (the rule of law) of a domestic legal system can affect a state's decision to join and keep supporting an international institution. Because states with a high internal respect for the rule of law are more likely to comply with a contract, they enter only into international commitments that they can keep. Citizens in countries where the rule of law is respected internally expect the government to abide by the same rule of law internationally. This expectation relates to both relations between states and relations between states and international institutions. Thus, I expect that states with highly legitimate legal systems will be less likely to initially accept the compulsory jurisdiction of the International Court of Justice. These states hold in a very high esteem the *pacta sunt servanda* rule, and thus they are unlikely to provide an initial support for an institution that they plan to give up on afterwards. Also, I expect states with highly legitimate domestic legal systems to have a high degree of survival of their commitment to the ICJ. In other words, states with high internal respect for the rule of law will have a very high degree of compliance with the *pacta sunt servanda* principle in relation to the World Court (similar arguments can be found in Putnam, 1988, and Fearon, 1998).

In addition to elucidating our understanding of states' transition to acceptance and survival of commitment to the ICJ, legitimacy can also give us insight into the design of international legal commitments. States with highly legitimate domestic legal systems should be more likely to place a large number of reservations on their optional clause declarations. These states are very careful in drafting their contracts with the World Court

because they plan on keeping their commitments. A large number of restrictions can improve the chances of a state staying committed to the ICJ.

The above discussion leads me to formulate the following testable propositions:

Hypothesis 6.1 (Domestic legal system types and acceptance): States with civil law systems are most likely to accept the compulsory jurisdiction of the ICJ, while states with Islamic law states are least likely to initially sign onto the Court.

Hypothesis 6.2 (Domestic legal system types and durability): Islamic law and common law states will have more durable commitments to the ICJ than civil law states.

Hypothesis 6.3 (Legitimacy and acceptance): States with highly legitimate legal systems are less likely to accept the compulsory jurisdiction of the ICJ than states with weakly legitimate legal systems.

Hypothesis 6.4 (Legitimacy and durability): States with highly legitimate legal systems will have more durable commitments to the ICJ than states with weakly legitimate legal systems.

Hypothesis 6.5 (Domestic legal system types and design): Common law states will place the greatest number of reservations on their optional clause declarations, while civil law states will place the fewest restrictions.

Hypothesis 6.6 (Legitimacy and design): States with highly legitimate domestic legal systems will place more restrictions on their optional clause declarations than states with weakly legitimate legal systems.

In the section that follows, I empirically test my argument regarding the impact of legal system type and legitimacy on states' attitudes towards the International Court of Justice.

Testing the Argument

Temporal and spatial domain of the study

The temporal domain of this study is 1920-2001. Thus, this period covers both the Permanent Court of International Justice (PCJI) and the International Court of Justice (ICJ). The basic unit of analysis is the state-year. In order to test my hypotheses about state acceptance of the ICJ's compulsory jurisdiction, I need to capture the dynamics of this process. It is important to keep in mind that a state can accept the Court's compulsory jurisdiction without any reservations; after some time, however, the same state may add a restrictive reservation to its declaration, or else withdraw its declaration. Using state-year as the unit of analysis lets me capture the behavior of states over time.

In my analysis, I investigate states' attitude towards both of these courts, the PCIJ and the ICJ. Are the two courts, the PCIJ and the ICJ similar enough to include both of them in one analysis? I pose that these two judicial organs can be, for all practical purposes, treated as an equivalent and functionally unchanged highest court of international law, or the "World Court." As most, if not all, legal scholars agree the ICJ was created in the aftermath of WWII as a *successor* of the PCIJ (Jennings, 1995, Gamble and Fischer 1976, Shaw 2003). In essence, the ICJ constitutes simply a continuation of the pre-war World Court. As Janis put it, statutes of both courts, the scope of their jurisdiction, organization, and their purpose are virtually the same. Both rely on equivalent sources of international law, both are to be comprised of fifteen members that shall be elected for nine years, and both are to provide states with an alternative to a forceful resolution of disputes. The ICJ Statute, therefore, in most substantive respects simply mirrors the corresponding provisions of the PCIJ Statute. Moreover, no distinction is made between cases decided by the PCIJ and those by the ICJ (Shaw, 2003:960). In other words, many crucial decisions of the PCIJ are still recurrently relied upon by the Court today. Actually, some of them constitute bedrock of international adjudication.[100] An excellent example is provided by the *Mavrommatis Palestine Concessions*

[100] Examples include *Factory at Chorzow, the Legal Status of Eastern Greenland.*

(Jurisdiction) case, in which the PCIJ offered an interpretation of Article 36(2) of the Statute of the Court, which states that a matter brought before the court should consist of a legal dispute. In its judgment, the PCIJ established that a legal dispute is "a disagreement over a point of law or fact, a conflict of legal views or interests between two persons." The same interpretation has been throughout time upheld by the ICJ.[101]

Dependent variables

In this study, I have two main dependent variables, namely, acceptance of the compulsory jurisdiction of the International Court of Justice, and the number of reservations that each state places on its declaration in each year. The first dependent variable is used in empirical models testing my hypotheses regarding transition to acceptance and survival of commitment to the ICJ. I use the second dependent variable to test my hypotheses regarding the design of states' commitments to the Court. Below, I describe each of these variables.

1. Acceptance of the compulsory jurisdiction of the International Court of Justice.

Since states can place reservations on their declarations, the outcome variable could be coded to have three categories: 1) a state accepts compulsory jurisdiction without reservation, 2) a state accepts compulsory jurisdiction with one or more reservations, and 3) a state does not accept compulsory jurisdiction. Due to the fact that the overwhelming majority of states accepting the jurisdiction place some type of restriction on their declaration, a much simpler approach is to code the dependent variable as having only two categories. The first one (coded 1) captures a situation when a state accepts the compulsory jurisdiction with or without restrictions (again, both courts are taken into consideration; the PCIJ 1920-1944, and the ICJ 1945-2001). The second category (coded 0) represents a situation when a state fails to recognize the ICJ's jurisdiction.[102]

[101] This decision of the ICJ to follow the interpretation of a legal dispute established by the PCIJ does not constitute a violation of the non-use of precedents, because this interpretation is not included in the legally binding part of ICJ's judgment).

[102] I ran some analyses with the ordinal scale employing ordered logit (Long, 1997). Ordered logit models make a parallel regression assumption, which holds that the slope of the line expressing the relationship between independent and dependent variables is constant across categories (Long, 1997). The parallel regression assumption does not hold in this case, which is one reason for my use of the simpler logit model.

To better illustrate the above categories of the dependent variable, consider an example of how a state may respond to the ICJ. In 1945, France joined the ICJ, making an optional clause declaration. Two years later, however, it placed a reservation on its declaration (reciprocity). Reciprocity indicates that any reservation declared by country "A" can be employed by country "B" in a dispute with country "A". Generally speaking, there exist numerous types of reservations that states may choose to place on their optional clause declarations. The main goal of any reservation, however, is to limit the ICJ's adjudication prerogatives. Restrictions thus created may relate to certain states (*ratione personae*), certain times of disputes (*ratione temporis),* or divergent areas of international law (*ratione materiae*) (Szafarz, 1993).

The data are collected from the annual volumes of the Yearbook of the International Court of Justice (see Mitchell et al., 2005 for a detailed description), noting any declarations by states with respect to the optional clause and any reservations placed on these declarations. When considering all state-years from 1920 to 2001 (since the inception of the PCIJ) states accept the optional clause (with or without reservations) in 34.4% of the total state-years. The majority of states, which accept ICJ compulsory jurisdiction, place some reservations on it (27.5% of state-years). Only a minority accepts the optional clause without any reservation (6.9% of state-years).

2. Number of restrictions placed on each state's optional clause declaration in each year. Based on information from the book, *Reservations in Unilateral Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice,* (Alexandrov, 1995), I constructed a variable, NUMBER OF RESERVATIONS, which is a count variable that sums up all of the reservations that each state has on its declaration in each year. The following reservations were coded: general conditions, reservations ratione temporis, reservations ratione materiae, reservations ratione personae, others. The number of reservations placed by states on their optional clause declarations vary from 0 to 19, and there are quite a few types of these reservations. Numerous states choose not to place any type of reservation on their declarations. Examples include Georgia, Iceland, Gabon, Turkey, and Laos. Some states, on the other hand place a few more, such as Malawi and Canada, who place 10 reservations. Finally, there are states, such as India (19

reservations) that choose to make their commitments to the ICJ very detailed, thus restricting the jurisdiction of the World Court. The specific types of categories within each of these five categories are spelled out in Table 6.16.

The primary independent variables

1. Legal system

In order to capture the impact of divergent legal systems on the propensity of states to accept the compulsory jurisdiction of the ICJ, I constructed four dichotomous (0/1) variables: CIVIL, ISLAMIC, and MIXED; my baseline category is ISLAMIC (it is excluded from the model). MIXED describes the legal system of countries where two or more systems apply interactively or cumulatively.[103]

2. Rule of law (legitimacy)

In order to measure the degree of respect for the rule of law, I use the International Country Risk Guide (ICRG) scale 0 to 6. This measure is described in the Chapter 5 of this dissertation. Again, due to the time frame that this scale is available (1984-2002), all of my analyses including the rule of law measure are limited to this time period.

Models

I use two types of estimation models in order to test my hypotheses. First of all, I use Markov transition logit in order to estimate the relationship between domestic legal system types, legitimacy, and the propensity of states to accept the jurisdiction of the World Court (and also keep their commitments). One concern with employing a state-year design is the possibility to equate transitions to compulsory jurisdiction acceptance with continued acceptance year to year. In other words, if I simply coded in each year whether a state accepts compulsory jurisdiction or not, I would be treating the emergence and survival of commitments as equivalent (Powell and Mitchell, 2006).

[103] Countries belonging to the mixed category constitute a rather small portion of the entire data set. This group includes hybrid, or composite legal systems, in which civil, common, and Islamic traditions are mixed with one another, or in which either of these is amalgamated with the customary law of nations. Examples include Botswana, Brunei, Cameroon, China, Israel, and Japan.

Various modeling strategies have been developed to capture the non-independence of cases (or duration dependence) including the use of cubic splines (Beck, Katz, and Tucker, 1998), discrete hazard models (Box-Steffensmeier and Jones, 2004), and Markov transition models. I employ the Markov transition (logit) model, because as noted above, this allows us to distinguish between states that transition from not accepting to accepting compulsory jurisdiction from those that continue to recognize the jurisdiction of the ICJ year to year. The model can be written as follows:

$$P(y_{i,t} = 1 \mid y_{i,t-1} = 0) = \text{Logit}(x_{i,t}\beta)$$
$$P(y_{i,t} = 1 \mid y_{i,t-1} = 1) = \text{Logit}(x_{i,t}\alpha)$$

The model can be estimated in one of two ways. I can estimate the two models separately, conditional on the value of the lagged dependent variable (0 or 1). Alternatively I could create a series of interaction terms, which multiply each independent variable by the lagged dependent variable. I employ the first strategy, which will facilitates an easier presentation of my results. The Markov transition model allows me to distinguish between a decision on the part of a state to initially accept the jurisdiction of the World Court and the survival of states' commitment to the Court.

Secondly, I use a simple Ordinary Least Squares regression to estimate the relationship between domestic legal characteristics (type of legal system and legitimacy) and the number of reservations that states place on their optional clauses.

Control variables

Table 6.1 includes information regarding the control variables used in this chapter.[104] I expect that stronger states will be less likely to accept the jurisdiction of the ICJ. An international court with compulsory jurisdiction provides the weak states with a forum where they can take their grievances against the strong states and "where the outcome would not be decided by the number of guns or economic power of a state"

[104] A more elaborate explanation of the measurement of capabilities and democracy is included in the previous empirical chapter.

(Lloyd, 1985:28-51). Powerful states, on the other hand, prefer to bargain bilaterally, because their material advantages translate into bargaining leverage. "In theory, one may expect a particular reluctance to accept compulsory jurisdiction by powerful nations, or at least nations which see themselves as likely to be in a superior bargaining position in the kinds of disputes that they think might arise" (Bilder, 1998:249). Less powerful nations see impartial adjudication more as a protection than a risk; it allows these states to feel "legally equal to the world's powers" (Scott and Carr, 1987:57).

I also expect that democracies will be more likely to accept the jurisdiction of the ICJ. When two democratic states disagree over an issue, they should be more likely to resolve the dispute peacefully because they realize that their adversary is operating under a norm of bounded competition, which supports the use of compromise (Dixon, 1996). These conciliatory democratic norms should increase the likelihood of democracies adopting peaceful methods of conflict resolution, such as international adjudication. Also, the democratic legalist perspective asserts that democratic states' respect for judicial processes and regard for constitutional constraints carries over into international relations (Simmons, 1999), and that democracies are apt to engage third parties in the resolution of disputes in binding ways such as adjudication or arbitration due to their trust in legal procedures (Raymond, 1994).

Legal Systems and Acceptance of ICJ's Jurisdiction (1920-2001)

I begin by examining some simple descriptive statistics. Information regarding correlations between variables, the mean, standard deviation, mode, minimum and maximum values is included in Table 6.13. Table 6.2 reports the percentage of state years representing each of the legal traditions (1922, 1946, 2002, and all state years), and Table 6.3 reports the percentage of all state years representing each legal tradition accepting the ICJ jurisdiction (1922, 1946, 2002, and all state years).

As Table 6.2 shows, civil law countries represent the largest group of state-years in the sample (57.68%). Civil law states also prevail in the group accepting the ICJ's jurisdiction in 1922 (92.3), 1946 (67.7%), and 2002 (61.9%). Common law countries constitute the second largest group in the sample; we see acceptance of the Court's

jurisdiction in 19.7% of state-years. Further, in 1922, 0%, in 1946 19.3%, and in 2002, 20.6% of countries accepting the Court's compulsory jurisdiction represent this legal tradition. Islamic countries, as I anticipated, make up a much smaller set in the number of states accepting the ICJ's jurisdiction (1922- 0%, 1946- 3%, and 2002- 6.4%). They are also the smallest group in all state-years (13.84%). Mixed legal systems account for 8.85% of all state-years, with an average number of states accepting the ICJ's jurisdiction (1922 - .7%, 1946 - 9.7%, and in 2002 - 11.1%).

A more adequate picture of the phenomenon under investigation is provided by a multivariate analysis, which allows me to capture the effect of domestic legal systems and other factors on states' acceptance of the ICJ's jurisdiction. First of all, I want to test my general argument regarding the impact of domestic legal systems (type) on states' propensity to accept the jurisdiction of the International Court of Justice. Hypothesis 6.1 states that countries with civil law systems should be more likely to accept the compulsory jurisdiction of the ICJ, and states with Islamic law states should be least likely to accept. In this section, I present three models that are designed to test hypothesis 6.1. In order to correctly identify the magnitude of impact of each independent variables on transition to acceptance of the ICJ's jurisdiction and survival of commitment, I first start with a very simple model (Model 1), where the only independent variables are the three legal dichotomous variables (one dummy (Islamic law) remains as a benchmark category). Next, I add Capabilities as an independent variable (Model 2), and then Democracy (Model 3). Table 6.4 presents results of all three models, and Table 6.5 presents the predicted probabilities for each model, to ascertain the substantive effects of each independent variable while all others are held at their mean or mode.

Tables 6.4 and 6.5 reveal important information about the impact of legal system type on states' propensity to accept the jurisdiction of the International Court of Justice. Model 1a, 2a, and 3a present the estimates for transition from non-acceptance to acceptance, while Model 1b, 2b, and 3b provide the estimates for survival, e.g. whether states that accepted the jurisdiction of the ICJ last year continue to do so. The coefficient for the civil law dummy variable is positive and statistically significant in the transition Models 1 and 2. It remains positive, but becomes statistically insignificant at the conventional levels in Model 3. The transition model results provide support for

hypothesis 6.1 showing that civil law states are more likely than common or Islamic law states to accept the compulsory jurisdiction of the International Court of Justice. Islamic law states are, as expected, least likely to accept the jurisdiction of the World Court. In Table 6.5, we see that the transition probability for civil law states is 1.6 as large as the probability of acceptance for common law states, and more than three times as large as the probability of acceptance for Islamic law states. Unfortunately, I cannot distinguish significantly between common law and Islamic law states in the transition analyses, because the coefficient for the common law dummy is positive, as predicted, although not significantly different from 0. Thus, while I cannot distinguish significantly between common law and Islamic law states in the transition analyses, I can conclude that countries representing Islamic legal tradition are less likely to accept compulsory jurisdiction than civil law states.

States with mixed legal systems have the highest probability of acceptance overall (.02). This result might be explained by looking at the actual functioning of the ICJ, as far as the application of legal principles characteristic to the three major legal systems. Although legally the World Court is prohibited from relying on its previous judgments, the reality might be sometimes different. Quite a few times in its justification of a judgment, the ICJ has invoked its prior judgments (Jennings and Watts, 1992, Reisman, 1989). This practice makes the rules and procedures of the ICJ become over time increasingly similar to the mixed legal systems, where the doctrine of judicial precedent is obligatory only in certain branches of law (for example only in criminal cases, but not in civil cases). In other words, a mixed legal system constitutes a hybrid, where two or more systems apply interactively or cumulatively. One could say that this is how the practical legal framework of the ICJ is starting to look.

The low values of these predicted probabilities reflect the reality that most countries do not recognize the Court's jurisdiction in a given year. However, the variance in domestic legal system types does allow me to explain why some states are willing to make optional clause declarations more readily than others.

Interesting is the relationship between legal systems and states' willingness to uphold their commitment to the World Court (hypothesis 6.2). I report predicted probabilities in Table 6.4, although one should interpret these results with caution

because all of the legal dummies are statistically insignificant in all three models (except the mixed law dummy in Model 2B). Common law states are most likely to uphold their commitments to the ICJ, followed by the Islamic law states. Civil law countries are least likely to keep their commitment to the World Court. The results are not surprising. Common law states construct their international commitments in a way that resembles design of contracts concluded under domestic law. Contracts in this legal tradition are very detailed and they contain a large amount of stipulations, rules, and principles that are to govern each particular contractual relationship. Thus, common law states are very careful in designing their international contracts. Although very difficult to negotiate due to their complexity, contracts signed by common law states are, most of the time, upheld. Since these countries in the lengthy process of negotiations make sure that all of the necessary stipulations are included in a contract, upholding international commitments is not as difficult. It is not hard to uphold a contractual obligation that has been drafted according to one's will.

Secondly, Islamic law states are also very likely to uphold their commitments to the ICJ. As stated in the theoretical chapters of this dissertation, according to Islamic legal tradition contracts are sacred. Thus, once signed they need to be upheld. For example, the Koran stipulates that even war does not justify violating a state's international commitments. Moreover, this rule holds not only in relation to other Islamic states, but also in relation to non-Islamic nations. Islamic law states are thus very cautious in making a commitment to the International Court of Justice, but if they decide to make such a commitment, they are faithful to uphold it.

Survival of commitment is, on average, the smallest for the civil law states. According to civil law, contracts are constructed in a very general way, which curtails intricacy of contractual obligations. Because most, if not all, general principles of law are included in codes, it is not necessary to repeat them in any particular contract. One could thus say that states may feel as though it is much easier to get out of such a contract. Because civil law states do not negotiate their contractual obligations intensely, they feel a greater freedom to break or rescind a contract. Of course, it is important to stress that the probability of survival for all legal types is very high, which justifies an optimistic conclusion that states do uphold their international commitments to the ICJ.

The results also provide interesting insights into the impact of capabilities and democracy on states' propensity to accept the jurisdiction of the International Court of Justice. The coefficient for capabilities is positive and statistically insignificant in the transition models, and negative and statistically significant in the survival models. While I cannot distinguish significantly between stronger and weaker states in the transition analyses, I can conclude that stronger states are more likely to renege on their commitment to the ICJ. Furthermore, the substantive effect of capabilities in the survival model is very large. The probability that a very powerful state (.25 capability) will continue to recognize the ICJ's adjudication powers in a given year is only around 60% (Model 2 b and Model 3 b), while a very weak state almost always remains committed to the World Court (99% chance of survival). Although strong states are likely to sign on to the Court, if a possibility of an unfavorable judgment arises, these states are very likely to withdraw from the Court. The attitude of strong nations towards the ICJ is perhaps best illustrated by the withdrawal of the United States' optional clause declaration in 1986 in response to the US-Nicaragua case.

Intriguing are results regarding the impact of regime type on states' willingness to sign on to the ICJ and to keep their commitments towards that institution. Democratic states are much more likely to accept compulsory jurisdiction of the ICJ and they are also more likely to remain committed over time. Models 3a and 3b illustrate that relationship. In both transition and survival versions of Model 3, the coefficient for democracy is positive and highly statistically significant. Fully democratic states (ten on the Polity IV democracy scale) are over four times as likely to make a commitment to the World Court. They also almost always uphold their commitments (99%). It seems that, as the democratic peace asserts, democracies share a common value system, including the respect for individual liberties, and competition, which carries over into a willingness to recognize the legitimacy of the International Court of Justice (Simmons, 1999). These results are highly consistent with the literature that suggests that democracies make more credible commitments (Leeds, 1999, Gaubatz, 1996, Simmons, 2000).

In this section, I tested hypotheses 6.1 and 6.2 that deal with the relationship between domestic legal system types and behavior of states towards the ICJ (acceptance of ICJ compulsory jurisdiction, and survival of commitments). As anticipated, civil law

states are often most likely to accept the adjudication powers of the World Court, while states with Islamic law systems are least likely to accept. Also, common and Islamic law states stay more committed to the World Court than civil law states. These results demonstrate the importance of taking into consideration domestic legal systems in seeking to uncover the mechanisms of acceptance of international institutions. These results are consistent with my argument that states are more likely to join international institutions when the rules and practices of those institutions resemble their own domestic institutions. However, these results are not always robust, depending on the model specification employed, thus we can interpret these findings as providing partial support for my theoretical hypotheses.

In the next section, I perform empirical tests of hypotheses 6.3 and 6.4 regarding the relationship between the rule of law (legitimacy) and states' willingness to accept the jurisdiction of the ICJ. Again, my analyses are devoted to testing both the initial acceptance of the ICJ's jurisdiction and the survival of commitment.

Legitimacy (Rule of Law) and Acceptance of ICJ's Jurisdiction (1984-2001)

First, I start with some simple descriptive statistics relating to the period of this analysis (1984-2001). Table 6.6 and 6.7 report the percentage of state-years representing each legal tradition and state-years with different degrees of respect for the rule of law (1984, 1992, 2002, and all state-years), and percentage of state-years accepting the ICJ's compulsory jurisdiction. As Table 6.6 shows, civil law countries represent the largest group of state-years in the sample (1984-2002) (51.31%). Civil law states also prevail in the group accepting the World Court's jurisdiction in 1984, 1992, and 2002. Common law states constitute the second largest group in the sample (24.18%), Islamic states the third largest (14.67%), and mixed law – the smallest (9.84%). Thus, the descriptive statistics regarding legal systems types in the time frame 1984-2002 resemble the statistics for the time frame 1920-2002. The major difference is the higher percentage of Islamic law states accepting the ICJ's jurisdiction in the time frame 1984-2002, which is substantially higher than under the Permanent Court of International Justice (1920-1944), or under the beginning years of the ICJ (3% in 1946). In 1984, almost 11% of state-years

accepting the World Court's jurisdiction represented the Islamic legal tradition. The percentage is also high for 1992 (8.9%), and 2002 (6.3%).

Interesting also are the descriptive statistics regarding the rule of law presented in Table 6.7. Among all state years, states ranking very low in their internal respect for the rule of law (low on the ICRG scale (0-2) constitute the smallest group in the sample (18.2%), and also the smallest group accepting the ICJ's jurisdiction (24%). The second largest group (31.22%) is composed of states that score medium on the ICRG scale (3-4), meaning that the respect for the rule of law in these states is relatively mediocre. These states, on average, tend to constitute the second largest group of states accepting the World Court's compulsory jurisdiction (30%). Finally, states that score high on the ICRG scale (5-6) tend to be, on average, most likely to accept the ICJ's adjudication powers (46%).

A more adequate picture of the phenomena is provided by the multivariate empirical analyses. As hypothesis 6.3 states, I expect that states with highly legitimate legal systems are less likely to accept the compulsory jurisdiction of the ICJ than states with weakly legitimate legal systems. As far as the survival of commitment to the ICJ, I also expect that states with highly legitimate legal systems will have more durable commitments to the ICJ than states with weakly legitimate legal systems. To test both of these hypotheses, I construct five separate models, which portray the impact of independent variables (separately and cumulatively) on the likelihood of states to accept the jurisdiction of the World Court.

First, I start with a very simple model, which is designed to test the impact of legal systems during the time period 1984-2002, for which the ICRG measure of rule of law is available (Model 4). Next, I test the impact of the rule of law on states' behavior towards the Court (Model 5), where the rule of law constitutes the only independent variable. In Model 6, I incorporate both of the legal characteristics (domestic legal system type and the rule of law). Finally, Model 7 and Model 8 are designed to test the joint effect of all of the independent variables, including capabilities (Model 7 and 8), and democracy (Model 7). Tables 6.8 and 6.9 present result of all five models, and Tables 6.10 and 6.11 present the predicted probabilities for each model, to ascertain the

substantive effects of each independent variable while all others are held at their mean or mode.

Results of all five models provide interesting insights into the dynamic of international adjudication in the time frame 1984-2001. First, the impact of legitimacy of a domestic legal system on propensity of a state to accept the jurisdiction of the ICJ is as Hypothesis 6.3 states. Models 5, 6, 7, and 8 show that countries with higher respect for the rule of law (higher legitimacy of a domestic legal system) are less likely to accept the adjudication powers of the World Court. These results, however, are statistically insignificant in models 5 and 6, and highly statistically significant in models 7 and 8.[105] Predicted probability of acceptance for a state with very weakly legitimate domestic legal system (0 on the ICRG scale) is about ten times higher (.07 in Model 7, and .08 in Model 8) than for a state with a high internal respect for the rule of law (.006 in Model 7, and .009 in Model 8). As expected, states with highly legitimate legal systems enter only into international commitments that they can keep. Citizens in these countries, as explained above, expect the government to abide by the rule of law not only internally, but also externally. States with high internal respect for the rule of law are also more likely to stay committed to the ICJ. In all four survival models, the coefficient for the rule of law is positive. It is statistically significant in models 7 and 8. As expected, states with highly legitimate legal systems hold the *pacta sunt servanda* principle in a very high esteem. Thus, the likelihood of survival of their commitment to the ICJ is high.

Quite puzzling is the effect of legal systems types on states' attitudes towards the Court (both transition to acceptance and survival of acceptance) in the 1984-2002 period. In very simple models, Model 4 and Model 5, results are as expected. Civil law states are most likely to accept the jurisdiction of the World Court, and Islamic states are least likely to accept. These results are also highly statistically significant. Results somewhat change in models 7 and 8 when I include capabilities and democracy as independent variables. Also, results regarding survival of commitments to the ICJ are puzzling. In models 4 and 6, civil law states have the highest likelihood of continued commitment, and in models 7 and 8 common law states slightly take the lead. Islamic law states, on the

[105] This change in significance may be due to a relatively high correlation between rule of law and democracy for the 1984-2001 period (.45).

other hand, are least likely to stay committed. These results may suggest that dynamics of states' attitudes towards the Court in the time frame 1984-2002 may be unique.[106] It seems that common and civil law countries have come to increasingly revere the *pacta sunt servanda* principle. Survival rates of their commitments to the ICJ are very high. Islamic law states, on the other hand, have become more lax in their interpretation of a contract as a sacred obligation. These results confirm the thesis that legal systems are becoming increasingly alike over time. Civil law courts tend to rely on precedents more, and contractual relations in common law states become gradually more codified. Also, Islamic law has, over time, become more and more 'westernized.' Because the World Court is a 'western' institution, Islamic law states do not feel as committed to it, as they perhaps would be to a more Islamic court.

The two control variables, democracy and capabilities perform, as expected. Strong states are both less likely to initially accept the jurisdiction of the ICJ, and are also less likely to stay committed. Democracies are more likely to sign onto the Court. Interestingly, the coefficient for democracy in the survival model (7b) is negative but statistically insignificant. Perhaps incorporating the rule of law as one of the independent variables accounts for such a result (bivariate correlation between the rule of law and democracy for the time frame 1984-2001 is relatively high .45). Although democratic institutions contribute to a state initially accepting the jurisdiction of the World Court, they do not contribute to the survival of the commitment. It is the high degree of respect for the rule of law that keeps states committed to the World Court. This finding suggests that in studding states' commitment to international institutions we should focus not only on the regime type, but also on the degree of legitimacy of domestic legal systems. This finding is particularly important in relation to the behavior towards the ICJ of states that score low on the democracy scale, but have a relatively legitimate domestic legal system. Examples of such states include Gambia (in year 2000, rule of law (ICRG scale): 5, Polity IV democracy scale:0), Morocco (in year 2000, rule of law (ICRG scale): 6, Polity IV democracy scale:0), or Tunisia (in year 2000, rule of law (ICRG scale): 5, Polity IV democracy scale: 1). My findings would suggest that commitment of these states to the

[106] Alternatively, these results may be attributed to the higher level of multicollinearity between the independent variables in the data for this period (Tables of correlations between the independent variables for the periods 1920-2001, and 1984-2001 are included in Tables 6.14 and 6.15).

World Court should be relatively high providing that these states score moderate to high, on the ICRG scale of the rule of law.

So far in this chapter, I tested hypotheses relating to the initial acceptance of the ICJ's jurisdiction and the survival of states' commitment to the Court. As anticipated, both domestic legal system types and their legitimacy have significant impact on states' decisions to sign onto the Court and to stay committed to it. In the next section, I perform empirical tests of hypotheses 6.5 and 6.6 that relate to the design of international commitments.

OLS Models: Legal Systems, Rule of Law, and Reservations on States' Commitment to the International Court of Justice (1920-2001)

As hypothesis 6.5 states, I expect that common law states will place the greatest number of reservations on their optional clause declarations, while civil law states will place the fewest restrictions. This expectation flows from the characteristics of contractual obligations in each legal system. Among the three legal traditions, contracts concluded under common law are definitely most detailed and thorough. I expect the same thoroughness to typify international contracts of common law states. Contracts governed by civil law, on the other hand, are very general and not too meticulous. Thus, I expect contractual relations between the World Court and civil law states to be framed in a relatively general way. My expectations also relate to the relationship between legitimacy and design of international legal commitments. As hypothesis 6.6 states, I expect that countries with highly legitimate domestic legal systems will place more restrictions on their optional clause declarations.

I test my hypotheses using two Ordinary Least Squares models (Model 9 and Model 10), where the number of reservations constitutes the dependent variable, and legal dummies, capabilities, democracy, and the rule of law constitute independent variables. Model 9 is designed to test hypothesis 6.5 relating to domestic legal system types (1920-2001), and Model 10 tests both hypotheses 6.5 and 6.6 (both domestic legal system types and legitimacy) (1984-2001). In both models, Islamic legal systems are treated as the omitted category. Table 6.12 presents results of both models.

Both models provide interesting insights into the design of international commitments. As predicted, common law states place, on average, a few more restrictions on their optional clause declarations than Islamic law states (1.5 in Model 9 and 2.06 in Model 10). Civil law states place the fewest restrictions (2.98 fewer than Islamic law states in Model 9 and 3.4 fewer in Model 10). Islamic states are more likely than both civil and mixed law states to have a higher number of reservations. Unexpectedly, states with highly legitimate legal systems place fewer restrictions on their optional clause declarations, which contradicts my expectations. The coefficient for the rule of law variables is negative, but statistically insignificant. I anticipated that states with highly legitimate domestic legal systems will be more careful in designing their international commitments, and thus will place more restrictions on their declarations. Perhaps these states trust the International Court of Justice as a court of law to keep its jurisdiction within legal limits. Thus, these states portray the World Court as an ultimate expression of the international rule of law, against which excessive legal 'safeguards' are not necessary. It might be that states with high internal respect for the rule of law would be more cautious in designing their commitments with another non-adjudicating international institution or another state. At that time, perhaps, these states would be placing on their contracts a larger number of reservations or other specific stipulations. With respect to the control variables, democratic and more powerful states place more reservations on their declarations. The coefficient for democracy is positive and highly statistically significant in both models, and the coefficient for capabilities is significant in Model 10. The overall model explains quite a bit of variance in the dependent variable, with an R-squared of .3566.

Conclusions

In this chapter, I tested hypotheses relating to the relationship between domestic legal system types, legitimacy, and states' propensity to accept the jurisdiction of the International Court of Justice. My theoretical expectations dealt with the states' initial decision to make a commitment to the World Court. The results show that both

characteristics of domestic legal systems (type and degree of legitimacy) have substantial impact on states' decisions to sign onto the Court, stay committed, and decisions regarding the design of their contractual obligations. Analyses presented in this chapter show that taking into consideration the characteristics of domestic legal structures is crucial not only in studies devoted to relations between states, but also relations between states and international institutions. My results can be summarized as follows:

1. Characteristics of domestic legal systems (type and legitimacy) have a strong effect on states' propensity to sign onto the ICJ, to stay committed, and also on the design of contractual agreements between states and the Court. This conclusion further supports findings by the literature that links internal characteristics of states to their external behavior towards international institutions (Simmons, 2000, Ikenberry 2001, Mansfield and Pevehouse 2006, Wendt, 1999). A State's domestic legal structure plays an important role in shaping its ability and willingness to commit to international institutions. Just as regime type matters in the way that states behave towards international regimes, so do legal system types and its legitimacy shape states' foreign policy choices.
2. States with civil law systems are most likely to accept the compulsory jurisdiction of the ICJ, while states with Islamic law states are least likely to initially sign onto the Court. Thus, hypothesis 6.1 is supported in most of my models.
3. Common law states and Islamic law states have more durable commitments to the ICJ than civil law states. Thus, hypothesis 6.2 is supported in most of my models.
4. A quite different dynamic of the impact of legal systems on states' behavior towards the Court (initial acceptance and survival of commitment) during the period 1984-2002 shows the evolving nature of legal systems. Domestic legal systems seem to, over time, become increasingly similar to one another. This process accounts for divergent relationship between legal system types and states' behavior towards the Court. Numerous legal scholars have pointed to the fact that common law and civil law have become increasingly similar over time (Shapiro, 1986, Shahabuddeen, 1996, Markesinis, 2000). In common law states, courts of last resort have come to accept that they are not compelled to follow their previous judgments, but within well-defined boundaries they might depart from

them (Shahabuddeen, 1996). Moreover, statute law has recently become a much more important source of law in certain common law countries. Also, highest courts in some of the civil law states have started to look more carefully at their previous decisions, although not legally bound by the doctrine of judicial precedent (Shapiro, 1986). Apart from the domestic legal systems, also the practice of the ICJ has evolved over time. Especially, the jurisprudence of the World Court has developed in the direction of a powerful inclination to adhere strongly to its previous decisions. The practice of common law courts is, therefore, becoming progressively more similar to the rules and practices of the International Court of Justice, which may produce an increasing willingness on the part of common law states to recognize the Court's jurisdiction. As the result, the output of enacted law in the United Kingdom has noticeably increased mostly as a result of the integration of British law with the European legal culture (Markesinis, 2000). These changing processes within the ICJ and within common legal systems have brought the two legal orders closer together. The Court seems over the years to gradually adhere more often to its previous holdings, and common law systems have become progressively more similar to civil legal systems. These developments may suggest shifting dynamics of states' behavior towards the ICJ.

5. States with highly legitimate legal systems (a high internal respect for the principle of the rule of law) are less likely to accept the compulsory jurisdiction of the ICJ than states with weakly legitimate legal systems. Thus, hypothesis 6.3 is strongly supported.
6. States with highly legitimate legal systems (a high internal respect for the principle of the rule of law) have more durable commitments to the ICJ than states with weakly legitimate legal systems. Thus, hypothesis 6.4 is supported. This result further supports the findings in the literature devoted to legitimacy of international institutions and states' willingness to stay committed (Boehmer, Gartzke, and Nordstrom, 2004, Simmons and Hopkins, 2005). Boehmer et al., for example, argue that if international institutions are view with legitimacy by member states, the chances for compliance increase. It would stand to reason that

states with highly legitimate domestic legal systems view the ICJ as the embodiment of the international rule of law, or a highly legitimate international institution. States with weakly legitimate legal systems, on the other hand, are not concerned with keeping their commitment to the World Court because they do not have the internal motivation to do so. States that respect the rule of law internally are simply more likely to abide by the norm *pacta sunt servanda* also on the international arena. Otherwise, their reputation may be damaged (Simmons, 2000). Internal respect for the rule of law plays an important role in shaping states' ability and willingness to stay committed to the ICJ. Just as Gaubatz (1996) stated, " Whether the respect for law emerges from practice, from ideology, or from some other primitive of inclination, if democratic peoples hold legal norms to be of some overarching legitimacy, then this will increase their sense of the binding nature of international commitments" (p.119).

7. Common law states place the greatest number of reservations on their optional clause declarations, and civil law states place the fewest restrictions, which provides a robust support for hypothesis 6.5.
8. States with highly legitimate legal systems (a high internal respect for the principle of the rule of law) place fewer restrictions on their optional clause declaration than states with weakly legitimate legal systems. This result is somewhat surprising, and shows that states' attitudes towards an international Court may differ sharply from their attitudes towards other states and other non-adjudicating institutions.

Table 6.1. Control Variables for Chapter Six.

	Theoretical Expectation	**Measure**	**Source**
Capabilities	-	Composite CINC score	Singer, Bremer, and Stuckey (1972)
Democracy	+	1 if six or higher on democracy scale	Polity IV

Table 6.2. Percentage of State Years Representing Each Legal Tradition.

% of all state years representing each legal tradition				
	1922	**1946**	**2002**	**All state years**
Civil Law	76.19%	69.57%	51.31%	57.68%
Common Law	12.7%	13.04%	24.18%	19.63%
Islamic Law	4.76%	13.04%	14.67%	13.84%
Mixed Law	6.35%	4.35%	9.84%	8.85%

Table 6.3. Percentage of All State Years Representing Each Legal Tradition Accepting the ICJ Jurisdiction

% of state years representing each legal tradition accepting ICJ compulsory jurisdiction				
	1922	**1946**	**2002**	**All state years**
Civil Law	92.3%	67.7%	61.9%	62.7%
Common Law	0%	19.3%	20.6%	19.7%
Islamic Law	0%	3%	6.4%	7.3%
Mixed Law	.7%	9.7%	11.1%	10.3%

Table 6.4. Markov Transition Logit Models: ICJ Compulsory Jurisdiction Acceptance (1920-2001).

	Model 1: *Legal Systems* (1920-2002)		**Model 2: Legal Systems + *Capabilities* (1920-2001)**		**Model 3: Legal Systems + Capabilities + *Democracy* (1920-2001)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	1.22 *** (2.9)	-.47 (-.64)	1.2*** (2.76)	-.2 (-.31)	.7 (1.53)	-.55 (-.75)
Common Law	.7 (1.49)	.99 (.99)	.7 (1.43)	2.3 (1.37)	.01 (.62)	1.3 (1.03)
Mixed Law	1.4*** (2.94)	-.59 (-.71)	1.4*** (2.77)	-.3* (-.40)	.9* (1.8)	-.6 (-.82)
Capabilities			2.6 (.77)	-16.2*** (-2.97)	1.9 (.57)	-15.6*** (-3.69)
Democracy					.15*** (5.44)	.1*** (2.7)
Constant	-5.1*** (-12.79)	4.7*** (6.71)	-5.1*** (-12.57)	4.8 *** (6.81)	-5.2*** (-12.89)	4.6*** (6.52)
	N=6132	N=3196	N=6018	N=3145	N=5538	N=3007

*p<.10, ** p<.05, *** p<.01

Table 6.5. Substantive Effects: ICJ Compulsory Jurisdiction Acceptance (1920-2001).

	Model 1: *Legal Systems* (1920-2002)		**Model 2: Legal Systems + *Capabilities* (1920-2001)**		**Model 3: Legal Systems + Capabilities + *Democracy* (1920-2001)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	.019	.986	.019	.988	.016	.989
Common Law	.012	.996	.012	.997	.008	.996
Islamic Law	.006	.989	.006	.988	.008	.992
Mixed Law	.02	.983	.02	.986	.021	.986
Capabilities (from 0 to .25)			.018, .049	.989, .601	.016, .03	.99, .65
Democracy (from 0 to 10)					.011, .048	.97, .99

Table 6.6. Legal Systems and ICJ Compulsory Jurisdiction.

	% of all state years				% of state years accepting ICJ compulsory jurisdiction			
	1984	**1992**	**2002**	**All state years (1984-2002)**	**1984**	**1992**	**2002**	**All state years (1984-2002)**
Domestic Legal Systems Types								
Civil Law	48.77%	52.75%	51.79%	51.31%	53.2%	59%	62%	57.92%
Common Law	24.69%	23.63%	24.62%	24.18%	23.4%	21.4%	20.6%	21.37%
Islamic Law	16.05%	14.29%	13.85%	14.67%	10.6%	8.9%	6.3%	8.93%
Mixed Law	10.49%	9.34%	9.74%	9.84%	12.8%	10.7%	11.1%	11.8%

Table 6.7. Rule of Law and ICJ Compulsory Jurisdiction.

Points on the ICRG Scale	% of all state years				% of state years accepting ICJ compulsory jurisdiction			
	1984	**1992**	**2002**	**All state years (1984-2002)**	**1984**	**1992**	**2002**	**All state years (1984-2002)**
0-2 (low)	27.16%	20.88%	15.38%	18.2%	32%	29%	19%	24%
3-4 (medium)	22.22%	28.57%	34.87%	31.22%	15%	20%	41%	30%
5-6 (high)	50.62%	50.55%	49.74%	50.57%	53%	51%	40%	46%

Table 6.8: Markov Transition Logit Models 4, 5, and 6 with the Rule of Law Variable; ICJ Compulsory Jurisdiction Acceptance, 1984-2002

	Model 4: Legal Systems (1984-2002)		**Model 5: Rule of Law (1984-2002)**		**Model 6: Legal Systems + Rule of Law (1984-2002)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	3.98*** (5.02)	1.86 (1.32)	----	----	4.2*** (4.78)	1.45 (.99)
Common Law	3.04*** (3.86)	.87 (.61)	----	----	2.43*** (2.61)	.405 (.747)
Mixed Law	2.93*** (3.51)	.269 (.85)	----	----	3.17*** (3.41)	.088 (.95)
Rule of Law	----	----	-.242 (.211)	.326 (.88)	-.25 (-1.25)	.299 (.76)
Constant	-8.255	4.4*** (4.40)	-3.68*** (-5.60)	4.23*** (3.6)	-7.3*** (-6.75)	3.63** (2.31)
	N=2093	N=942	N=1364	N=829	N=1364	N=829

*p<.10, ** p<.05, *** p<.01

Table 6.9: Markov Transition Logit Models 7 and 8 with the Rule of Law Variable; ICJ Compulsory Jurisdiction Acceptance, 1984-2001

	Model 7: Legal Systems + Capabilities + Democracy + Rule of Law (1984-2002)		**Model 8: Legal Systems + Capabilities + Rule of Law (1984-2002)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	-.85 (-1.07)	1.8 (1.48)	-.03 (-.08)	1.6 (1.33)
Common Law	-2.6* (-2.29)	4.2*** (2.7)	-1.8* (-1.76)	4.2*** (2.69)
Mixed Law	-1.1 (-0.94)	.52 (.40)	-.3 (.37)	.51 (.40)
Capabilities	-67.1* (-1.63)	-75.2*** (-2.62)	-58.2 (-1.38)	-79.04*** (-3.19)
Democracy	.17** (1.85)	-.08 (-.74)		
Rule of Law	-.45*** (-2.78)	1.00*** (3.98)	-.4 *** (-2.38)	.94*** (3.45)
Constant	-2.3*** (-3.46)	2.3*** (2.53)	-2.4*** (-3.37)	2.2*** (2.71)
	N=1432	N=854	N=1469	N=887

*p<.10, ** p<.05, *** p<.01

Table 6.10: Substantive Effects (Probabilities), Models 4, 5, and 6.

	Model 4: Legal Systems (1984-2002)		**Model 5:Rule of Law (1984-2002)**		**Model 6: Legal Systems + Rule of Law (1984-2002)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	.014	.996	----	----	.0189	.997
Common Law	.006	.992	----	----	.004	.989
Islamic Law	.0003	.981	----	----	.0003	.986
Mixed Law	.0084	.986	----	----	.011	.986
Rule of Law (from 0 to 6)	----	----	.028, .007	.972, .995	.05, .012	.968, .998

Table 6.11: Substantive Effects (Probabilities) for 1984-2001 (with the Rule of Law)

	Model 7: Legal Systems + Capabilities + Democracy + Rule of Law (1984-2001)		**Model 8: Legal Systems + Capabilities + Rule of Law (1984-2001)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**
Civil Law	.009	.998	.012	.998
Common Law	.002	.999	.003	.999
Islamic Law	.023	.991	.013	.993
Mixed Law	.009	.990	.011	.993
Capabilities (from 0 to .25)	.017, .02	.999, .05	.02, .03	.999, .027
Democracy (from 0 to 10)	.005, .027	.999, .998		
Rule of Law (from 0 to 6)	.07, .006	.944 .9999	.08, .009	.95, .999

Table 6.12: Number of Reservations Placed by States Accepting the ICJ's Jurisdiction

	Model 9: Capabilities + Democracy + Legal Systems (1920-2002)	**Model 10: Capabilities + Democracy + Legal Systems + Rule of Law (1984-2002)**
Civil Law	-2.98*** (-15.85)	-3.4*** (-10.44)
Common Law	1.53*** (7.13)	2.06*** (5.85)
Mixed Law	-.52** (-2.23)	-1.3*** (-3.45)
Capabilities	.27 (.15)	78.4*** (10.67)
Democracy	.13*** (11.62)	.13*** (3.89)
Rule of Law		-.001 (-0.03)
Constant	6.1*** (34.63)	6.1*** (19.79)
	N=3075	N=870

*p<.10, ** p<.05, *** p<.01

Table 6.13. Descriptive Statistics for the ICJ Chapter.

Variable	**Mean**	**Std. Dev.**	**Min.**	**Max.**	**Mode**
Civil Legal System	.576637	.4941178	0	1	0
Common Legal System	.1963332	.3972442	0	1	0
Islamic Legal System	.1384116	.3472442	0	1	0
Mixed Legal System	.0884233	.2839243	0	1	0
Rule of Law	3.633348	1.542018	0	6	4.2
Democracy	3.678672	4.190956	0	10	0
Capabilities	.0088263	.0281425	0	.383864	.0001

Table 6.14. Correlations for the ICJ Chapter (1984-2001).

	Democracy	Capabilities	Mixed	Islamic	Common	Civil	Legitimacy
Democracy	1.00						
Capabilities	0.06	1.00					
Mixed	-.02	.13	1.00				
Islamic	-.4	-.08	-.14	1.00			
Common	.08	.08	-.16	-.22	1.00		
Civil	.25	-.08	-.34	-.48	-.53	1.00	
Rule of Law	.45	.13	-.06	-.08	.02	.09	1.00

Table 6.15. Correlations for the ICJ chapter (1920-2001).

	Democracy	Capabilities	Mixed	Islamic	Common	Civil
Democracy	1.00					
Capabilities	.10	1.00				
Mixed	.01	.10	1.00			
Islamic	-.27	-.09	-.12	1.00		
Common	.20	.13	-.13	-.18	1.00	
Civil	.02	-.09	-.36	-.5	-.5	1.00

Table 6.16. Categories of Reservations on States' Optional Clause Declarations[107]

a)General conditions
1. Repeat the text of article 36(2) "in relation to any other state accepting the same obligation" 2. Refer explicitly to reciprocity 3. Specify that declarations are or acceptance is made "in conformity with article 36(2) 4. Repeat or refer to the four categories of disputes in article 36(2)
b)Reservations ratione temporis
1. Object of exclusion 2. Exclusion date

[107] Source: Reservations in Unilateral Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice, (Alexandrov, 1995)

Table 6.16 - Continued

c)Reservations ratione materiae
1. Recourse to other method of peaceful settlement 2. Territorial disputes 3. Rights and status of adjacent sea areas, islands, delimitation of maritime boundaries, sea resources 4. Adjacent airspace 5. Matters exclusively within the domestic jurisdiction as determined by international law 6. Matters essentially within the domestic jurisdiction 7. Matters essentially within the domestic jurisdiction as determined by the state itself 8. Disputes relating to multilateral treaties unless parties to the treaty are also parties to the case before the court 9. Relating to a treaty or treaties 10. Suspension of proceedings regarding a dispute under consideration by the council of the League of Nations or the United Nations security Council 11. Subject to the right to submit the dispute to the Council of the League of Nations 12. Excluding disputed relating to hostilities, armed conflicts, individual and collective self-defense, resistance to aggressions and occupation, fulfillment of obligations imposed by international bodies 13. National security reservations 14. Other reservations ratione materiae
d)Reservations ratione personae
1. Excluding British Commonwealth Countries 2. Excluding Arab states 3. requiring recognition, diplomatic relations 4. Excluding non-sovereign states or territories 5. Only states parties to the statute or membership of the United Nations
e)Others
1. Reserve the right to add amend, withdraw reservations or declaration 2. The declaration of the other party should be deposited no les than twelve months prior to the filling of an application or the other party should not have accepted the compulsory jurisdiction exclusively for the purposes of the dispute 3. Declarations made for specific types of dispute 4. Modifications excluding disputes arising out of events occurring during World war II

CHAPTER SEVEN

ALLIANCES

Introduction

This chapter is devoted to testing my theoretical expectations regarding characteristics of domestic legal systems (type and legitimacy) and states' propensity to form and keep alliance commitments. In addition, I also look at how domestic legal system types and legitimacy can explain the design of alliances. Empirics performed in this chapter are designed to test three important expectations stemming from my theory. First, I expect that states with similar legal systems are more likely to strike an international bargain than states representing divergent legal traditions. Secondly, I theorize that states with highly legitimate legal systems are more likely to cooperate with one another than states representing weakly legitimate legal traditions. The bargaining model presented in the theoretical part of this dissertation predicts that states with highly similar and highly legitimate legal systems are more likely to cooperate on the international arena because legal system similarity is able to lower the costs of bargaining and the uncertainties surrounding contractual obligations. High internal respect for the rule of law, on the other hand, makes enforcement of international contracts easier. Thirdly, I expect that characteristics of legal systems (both type and legitimacy) influence the way in which states design their international commitments.[108]

Alliances constitute a prime example of contractual relationships between states. Countries usually specify their alliance obligations in a lengthy process of negotiations.

[108] The empirical tests performed in this chapter focus specifically on interstate cooperation (alliances), which further elaborates on the findings in Chapter 5, where I focus on Militarized Interstate Conflicts as failure of bargaining (lack of cooperation). In this chapter, I treat cooperation as the absence of MIDs.

As a result, an interstate contract is signed. Alliances are considered to be formal agreements.[109] Toscano (1966:21) defines formal international agreements as follows: "those acts which authorized organs of the respective states exchange with each other in their reciprocal contacts in the name of, and on behalf of, the states as members of the international community.[110]" Interestingly, most alliances are formed by the way of international treaties, which as explained in the theoretical part of this dissertation, constitute contracts.[111] Numerous contemporary scholars also present similar concepts of an alliance. Lai and Reiter (2000), for example, assert that an alliance is "a formal commitment by which two or more states agree to take military actions (or avoid taking certain military actions) under certain defined circumstances" (p.205). Thus, alliances understood as contractual agreements constitute a great testing turf for my theory.[112]

The remainder of this chapter is organized as follows. First, I offer a brief review of the literature on alliances and institutional similarity between states, arguing that characteristics of domestic legal systems can further elucidate our understanding of alliances. Next, I test my arguments dealing with the relationship between legal system similarity, domestic legal system types, and alliances. Secondly, I present results regarding the impact of legitimacy on states' propensity to sign and keep their alliance commitments. Finally, I test my arguments regarding the design of alliances.

I find that characteristics of domestic legal systems (type and legitimacy) have a strong effect on states' propensity to sign alliances, to stay committed, and also on the design of alliances. Most importantly, I discover that states with similar legal systems are more likely to form alliances with one another. Also, alliances formed by these states are more durable than alliances formed by states with different legal systems. As anticipated, states with highly legitimate domestic legal systems are more likely to form alliances

[109] In this chapter, I do not study the propensity of states to form and keep secret alliances. Their confidentiality probably dampens the effect of domestic legal systems on the way that states design them.
[110] Also quoted in Alliance Treaty Obligations and Provisions (ATOP) Codebook (Leeds, 2005).
[111] There exist also less formal written agreements that also qualify as legal documents binding upon states, such as official exchanges of notes, conventions, executive agreements, and *statements verbales* if they have been signed by all parties (Leeds, 2005:4).
[112] Alliances constitute security agreements, which accounts for the fact that alliances are a relatively hard test for my theory. Because in forming and designing security agreements, states take into consideration multitude of factors (power, past interactions with a particular state, threat), the effect of legal systems (their type and legitimacy) might not be as strong as on, for example trade treaties. The latter are not as much shaped by the power distribution and threat.

with one another than with states whose domestic legal systems are weakly legitimate. Interesting is also the impact of legal systems on the design of alliances. Similar to my findings in Chapter 6 devoted to the International Court of Justice, I discover that common law states place the greatest amount of contingencies on their alliances, and civil law states place the least amount of contingencies. Legal systems characteristics have a similar effect on the way that states design their international commitments both with other states and also with international institutions.

Alliances and Institutional Similarity Between States

The idea that institutionally similar states might be more likely to ally with one another has been present in the literature for quite some time. Perhaps the most important institutional factor that has been considered as one of the determinants of alliance formation is regime type (Siverson and Emmons, 1991, Dixon, 1994, Gaubatz, 1996, Simon and Gartzke, 1996, Leeds, 1999, Lai and Reiter, 2000). Scholars have argued that democracies are more likely to honor their international commitments, which in turn means that it is easier for them to make credible commitments. Factors such as democratic institutions, respect for competition, and democratic political culture have been mentioned as the main reasons for adherence of the democratic nations to the norm *pacta sunt servanda.* Democratic leaders, under the assumption that they want to stay in office, must pay attention to public opinion. This means that popular support is needed for entry into any type of international agreements. Reneging on such an agreement may lead to negative internal consequences such as loss of public support. This process makes democratic states more likely to honor their commitments. Other states are aware of this 'democratic' credibility and view democracies as very attractive alliance partners (Gaubatz, 1996, Leeds, 1999, Lai and Reiter, 2000). The credible commitments argument has been extended to the dyadic level by Leeds (1999), who predicts that states of similar regime type are more likely to ally with one another.

Other reasons for the increased likelihood of alliances between democratic nations have also been mentioned. Tocqueville, for example, argued that democracies are more likely to honor their international commitments because of their high internal respect for the rule of law (1969). According to the normative argument of the democratic peace, democracies may be more likely to cooperate with one another because they share a common value system, a common conception of liberalism, and stress nonviolent means of conflict resolution (Dixon, 1994, Owen, 1997). This emphasis on nonviolence in foreign policy decision-making diminishes security dilemmas and relative-gains fears between two democracies, which in turn increases the probability of alliance formation between these types of states. Also Wendt's version of constructivism implies that states with common regime type will be in general more likely to ally with one another. Characteristic to his 'Kantian culture' is an at least *de facto* rule of law, which "limits what states can legitimately do to advance their interests" (p.307). States through shared norms and political culture might be propelled towards "collective identification by 'domestic factors'" (p.387), and thus are more likely to cooperate with one another.

The similarity argument has been extended in the literature to relations between autocracies, as their structural and institutional characteristics may provide explanations for the formation and durability of alliances. Autocracies differ from more democratic states in numerous ways. First of all, the position of autocratic leaders does not hinge as gravely on the popular support. In other words, autocracies are much less susceptible to domestic audience costs, since the decision-making process is left to the dictator, the military, or the members of the dominant party (Peceny et al., 2002). The second important difference between democracies and autocracies deals with transparency. Although autocracies differ as to the degree of their openness, none of them are able to provide transparency characteristic to democratic states that allows the public to link audience costs to the failures of leadership. Because autocratic leaders are less likely to be punished for their actions, autocracies may be perceived by other states as less credible partners.

Why would autocracies be more likely to form alliances with one another? According to Peceny et al, "the political institutions of military and single-party regimes do not provide strong arguments for why these regimes might be peaceful toward one

another" (2002:19). It is shared interests and norms that can provide explanations for a possible separate peace among these states. Shared constraints, according to Peceny et al. "may provide the foundation for a separate peace among personalist dictatorships, while shared identities and normative values may generate peaceful relations among single-party regimes" (p.20). Thus, Peceny et al. predict varying levels of cooperation depending on the type of autocratic regime.

Apart from alliance formation, survival of alliance commitments has been debated in the literature. The most common argument is that democracies are less likely to renege on their international agreements (Leeds, 1999, Lipson, 2003). In order to make only long lasting and durable commitments, democracies seek out other democratic states for contracting partners. Autocracies, on the other hand, choose commitments that can be more easily abrogated in the future (Leeds, 1999). This expectation is in line with arguments advanced by Werner (2000), who asserts that "politically similar dyads are much more likely to enjoy a durable peaceful relationship than are politically disparate states" (p.369). According to her, political similarity tends to diminish the probability of conflict by "eliminating at least one important area of disagreement" (p.344).

Domestic Legal Systems and Alliances

Since alliances constitute a prime example of international contracts, I assert that characteristics of domestic legal systems, such as legal system type and legitimacy, can further elucidate our understanding of alliances (see also Nemeth 2006). First, I expect that states with similar domestic legal systems will be more likely to cooperate, or sign contracts with one another. Similarity of legal systems cuts down on the possible ways of writing an alliance. Also, exchange of offers and counteroffers regarding legal principles such as *bona fides, pacta sunt servanda*, and others, becomes unnecessary. Although these states will still have to negotiate numerous particularities regarding their alliance, they have a common understanding of basic legal doctrines and principles. States

representing the same legal tradition share the same concepts of commitment and fulfillment of contractual obligations.

As stipulated in the theoretical part of this dissertation, my expectations concerning the likelihood of cooperation vary according to type of the legal system. Among the three major legal families, I expect that cooperation between two civil law nations will be most likely. Characteristics of this legal family, such as the high respect for the *bona fides* principle and the lack of detail in contracts should make contracting between these states most likely. As far as the design of alliances, I expect that agreements concluded by civil law states will not be overly detailed and specific. I anticipate that cooperation between two common law states will be less likely than between two civil law states. The costs of cooperation between two common law countries are substantially higher because several legal concepts must be explicitly agreed upon and included in the terms of an alliance. Thus, an alliance signed by a common law state should contain a large amount of contingencies. Finally, I expect that the likelihood of alliance formation between two Islamic law states is rather low because of the fact that Islamic law places limitations on the freedom of contract. Also, Islamic states treat contracts as sacred, which leads them to enter only into a small number of agreements that are likely to be kept. As far as the design of alliances signed by an Islamic law state, they should be relatively detailed and specific. Alliances of Islamic law states, as far as their intricacy should be located somewhere between civil (the least detailed) and common law (most detailed) alliances.

In addition to alliance formation and design, my theory leads me to formulate expectations regarding the durability of alliance commitments. I anticipate that, first of all, alliances formed by states with similar domestic legal systems are more durable than alliances formed by states representing different legal traditions. This expectation relies on the cost-benefit arguments elucidated in my theory. Simply put, legally similar dyads are much more likely to enjoy a durable peaceful relationship than are legally different states, because legal system similarity lowers the costs and uncertainties of interstate bargaining. Again, my expectations regarding the survival of alliances differ according to legal system types. I anticipate that alliances formed by Islamic law and common law states will be more durable than alliances formed by civil law states. Because of the great

importance that Islamic law states attach to any contractual relationship, I argue that Islamic law states should keep their international commitments. Because common law states place such a large number of contingencies on their alliance commitments, I expect these states to adhere to the *pact sunt servanda* norm. Alliances formed by two civil law states should be, on the other hand, most volatile.

Apart from the domestic legal system types, I also expect legitimacy to have a strong impact on the formation, design, and survival of alliances. States with more legitimate legal systems are more likely to cooperate with one another on the international arena. If both sides to an alliance have fully internalized their legal system (they both have a high internal respect for the rule of law), legitimacy of their legal system will not constitute an obstacle in bargaining. Quite the opposite- a high degree of legitimacy will enhance the likelihood of alliance formation. As far as the survival of alliances, states that are able to sustain a high respect for the rule of law in the domestic realm should also be able to keep their commitments internationally. In order to ensure that their alliance obligations are carefully drafted and exhaustively enumerated, these states will also be more likely to place a larger amount of contingencies on their alliance commitments. Contingencies are detailed provisions of an alliance placed by the allying states that deal with specific issues and concerns that may arise in the future of that contractual commitment. There exist numerous types of alliance contingencies. Examples include provisions for new members to join an alliance, provisions allowing a signatory to renounce his obligations, provisions for renewal, and others,

The above discussion leads me to formulate the following testable propositions:

Hypothesis 7.1 (Legal similarity and alliance formation): States with similar domestic legal systems are more likely to sign alliances with one another than states representing different legal traditions.

Hypothesis 7.2 (Legal similarity and durability of alliances): Alliances formed by states with similar domestic legal systems are more durable than alliances formed by states representing different legal traditions.

Hypothesis 7.3 (Domestic legal system types and alliance formation): Civil law states are most likely to form alliances with one another and Islamic law states are least likely to form alliances with one another.

Hypothesis 7.4 (Domestic legal system types and durability of alliances): Alliances formed by Islamic law and common law states will be more durable than alliances formed by civil law states.

Hypothesis 7.5 (Legitimacy and alliance formation): States with highly legitimate legal systems will be more likely to form alliances with one another than with states whose legal systems are weakly legitimate.

Hypothesis 7.6 (Legitimacy and durability of alliances): Alliances formed between two states with highly legitimate legal systems will be more durable than alliances formed by states whose legal systems are weakly legitimate.

Hypothesis 7.7 (Domestic legal system types and the design of alliances): Common law states will place the greatest amount of contingencies on their alliances, while civil law states will place the least amount of contingencies.

Hypothesis 7.8 (Legitimacy and the design of alliances): States with highly legitimate legal systems will place a larger number of contingencies on their alliance commitments than states whose legal systems are weakly legitimate.

Testing the Argument

Temporal and spatial domain of the study

The temporal domain of this study is 1920-2001,[113] and the basic unit of analysis is the dyad year. I use all non-directed dyads rather than only politically relevant dyads, which are defined as dyads that are contiguous or have at least one major power. Politically relevant dyads are less appropriate when alliance rather than conflict is the dependent variable because "as many multilateral alliances include nonmajor power,

[113] As in previous empirical chapters, the temporal domain for analyses including the rule of law as one of the independent variables is 1984-2002.

noncontiguous states (e.g., Iceland and Denmark as members of the North Atlantic Treaty Organization (NATO) and Poland and Bulgaria as Warsaw Pact members)" (Lai and Reiter, 2000:213). The primary data set used in this analysis is the Alliance Treaty Obligations and Provisions (ATOP) data set, which includes information about the alliance commitments shared by a pair of states in a given year (Leeds, 2005). Assembly of the necessary data (control variables) has been enhanced by using the Expected Utility Generation and Data Management Program (EUGene) (Bennett and Stam, 2000).

Dependent variables

In this chapter, I have two main dependent variables, namely, existence of an alliance commitment, and the number of contingencies that characterize an alliance agreement. The first dependent variable is used in empirical models testing my hypotheses regarding initial formation and survival of alliances. I use the second dependent variable to test my hypotheses regarding the design of alliance agreements. Below, I describe each of these variables.

1.Existence of an alliance agreement. I adopt the definition of an alliance spelled out in the ATOP Codebook, which states that "an alliance is a formal agreement among independent states to cooperate militarily in the face of potential or realized military conflict" (p.4). From this conceptual definition, the ATOP project adopts also an operational definition: "alliances are written agreements, signed by official representatives of at least two independent states, that include promises to aid a partner in the event of military conflict, to remain neutral in the event of conflict, to refrain from military conflict with one another, or to consult/cooperate in the event of international crises that create a potential for military conflict" (Leeds, Ritter, Mitchell, and Long, 2002:238). This dependent variable is coded 1 if an alliance existed for a dyad in a year, and 0 otherwise.

2. Number of contingencies included in an alliance. This is a count variable that summarizes the amount of contingencies, or specific stipulations that are included in an alliance. If a state is part of multiple alliances, I treat each alliance as a separate and unique contractual obligation. Thus, my data set includes each alliance commitment that

a state is part of. When drafting an alliance agreement, states can incorporate into their treaty numerous details concerning the functioning and execution of an alliance. For example, they can include provisions for new members to join an alliance, provisions dealing with renewal of an existing agreement, specify a particular duration, terms of renunciation of the agreement, and so forth. Detailed descriptions of all the contingencies that I used to create this variable are included in Table 7.17. The minimum number of contingencies that states place on their alliances is 0, and the maximum is 20.

The primary independent variables

1. Legal system

In order to capture the impact of legal system types on the propensity of states to form and keep alliances, I constructed a variable called Similar Legal Systems, where 1 indicates that states in a dyad year represent the same legal traditions, and 0 suggests otherwise. Information about how I constructed this variable is included in Chapter 5. If my expectations regarding the impact of legal system type on alliances are supported, then variable Similar Legal System should have a positive sign and be statistically significant.

2. Rule of Law

In order to measure the degree of respect for the rule of law, I use the International Country Risk Guide (ICRG) scale (0 to 6), also described in Chapter five. I construct the yearly dyadic measure of the rule of law by multiplying the rule of law scores for both states in a dyad. Thus, the dyadic minimum on this scale is 0 (at least one state in a dyad scores 0 on the ICRG scale) and maximum is 36 (both states have 6 on the ICRG scale).

Model

I use two types of estimation models in order to test my hypotheses. First, I use a Markov transition logit model in order to estimate the relationship between domestic legal system types, legitimacy, and the propensity of states to form and keep their alliance commitments. One concern with employing a state-year design, just as with the acceptance of compulsory jurisdiction of the ICJ, is the possibility to equate transitions to

an alliance with continued existence of an alliance commitment year to year. In other words, if I simply coded in each year whether there exists an alliance commitment between two states in a dyad, I would be treating the emergence of an alliance and survival of commitment as equivalent.

I estimate the two models (transition and survival models) separately, conditional on the value of the lagged dependent variable (0 or 1). Secondly, I use a simple Ordinary Least Squares regression to estimate the relationship between domestic legal characteristics (type of legal system and legitimacy) and the design of alliances (number of contingencies states place on their alliance commitments).

Control variables

Table 7.1 includes information regarding the control variables used in this chapter.

Models 1, 2, and 3: Legal Systems and Alliances (1920-2001)

I begin by examining some simple descriptive statistics. Information regarding correlations between variables, the mean, standard deviation, mode, minimum and maximum values is included in Table 7.15. Table 7.2 includes information about the percentage of dyad-years with similar and dissimilar legal systems that form/do not form alliances. Table 7.3, on the other hand, reports the percentage of dyad-years representing each of the legal traditions and the percentage of dyad-years representing each of the legal traditions, that are members of an alliance in the sample. Finally, Table 7.4 presents the same information on a monadic level (percentage of state-years representing each legal traditions that are members of an alliance).

As Table 7.2 shows, of all 'allied' dyads, 66% are composed of states that have a similar legal system, and only 34 % are composed of states that represent different legal traditions. Thus, as the descriptive statistics show, legal system similarity increases the likelihood of interstate contracting. Table 7.3 presents information regarding the relationship between each particular legal system type in the sample and the propensity of each legal system type to sign alliances. Civil law dyads constitute the largest group of

alliance-years (45.4%) and a large percentage of all dyads (30.27%). The mixed dyads-dyads composed of states with divergent legal systems constitute the largest group in the sample (62.21%) and second largest group of all dyadic alliance years (34%). Islamic law dyads, although few (2.15% of all dyads), constitute the third largest group of alliance years (14.5%). The common law dyads are also fewer than the civil law dyads (4.53%), and 6% of all dyadic alliance years represent common law states. Mixed law dyads are the smallest group in the sample (.84), and also the smallest group in the dyadic alliance years (.1%). Important information is also included in Table 7.4 that deals with the link between alliances and legal system types on the monadic level. Civil law countries represent overwhelming majority of all state years in the sample that are members of an alliance (72%). Islamic law states constitute the second largest group in the sample (12%), but they are very closely followed by the common law states (11%). Finally, mixed legal systems account for only 5% of all allied state-years.

A much more adequate picture of the link between legal system types and alliances is provided by a multivariate analysis, which allows me to capture the effect of both domestic legal system types and also other independent variables. Hypothesis 7.1 states that countries with similar legal systems should be more likely to sign alliances with one another. Alliances formed by these states should also be more durable (hypothesis 7.2). My expectations also deal with each particular legal system type. I anticipate that civil law states are most likely to form alliances with one another and Islamic law states are least likely to form alliances with one another (hypothesis 7.3). As far as durability of alliances, I expect that alliances formed by Islamic law and common law states will be more durable than alliances formed by civil law states (hypothesis 7.4).

In this section, I present three separate models that are designed to test these theoretical expectations. In order to correctly identify the magnitude of impact of each independent variable on alliance formation and durability, I first start with a very simple model (Model 1), where the only independent variable is the domestic legal systems similarity. Next, I add control variables (joint democracy, major power status, MID, and distance) to the model (Model 2). Table 7.5 presents results of both of these models, and Table 7.6 presents the predicted probabilities.

Tables 7.5 and 7.6. reveal important information about the impact of legal systems types on states' propensity to sign alliances (transition models 1a and 2a). In addition, survival models (1b and 2b) provide crucial insights into durability of states' commitments. In both transition and survival models, the coefficient for the similar legal systems dummy variable is positive and statistically significant. This suggests that states that belong to the same legal tradition are more likely to ally with one another. Also, their commitment to an alliance is long lasting. Predicted probabilities presented in Table 7.6 show that the probability of signing an alliance between two states with similar legal systems is .0027 larger than the probability of an alliance between two states of divergent legal origins (85% higher probability of signing an alliance between states with similar legal systems). Also, the probability of survival of an alliance between countries with similar legal systems is .024 larger than the probability of survival for countries representing different legal traditions. These substantive effects remain large in Models 2a and 2b, where other control variables are introduced. Just as predicted, states with similar domestic legal systems exhibit a higher propensity to cooperate with one another. An alliance constitutes a great example of a contract concluded between two states. Similarity of domestic legal systems significantly lowers the costs of interstate bargaining and thus enhances the likelihood of international contracting. States feel most secure contracting with other states that share similar understanding of legal norms, procedures, and principles such as *bona fides, pacta sunt servanda*, and others.

The results also provide interesting insights into the impact of other factors on states' propensity to form and keep their alliance commitments. Democracies, for example, are less likely to initially sign alliances, which somewhat contradicts the literature. My results suggest that democratic nations sign only these international commitments that they can keep. These results are somewhat similar to the findings of Lai and Reiter (2000), who show that states with similar regime type are more likely to ally with each other after 1945, although two democracies are not more likely to ally than two autocracies during this period. Their primary finding is that democracies are more likely to ally with each other only in the post-1945 period, and even then this propensity is limited to alliances in the Americas and Europe. For the entire period of their analysis (1816-1992), the relationship between joint democracy and alliance formation is negative

and statistically insignificant, and for the 1816-1945 period, this relationship is negative and statistically significant. In the replication of Lai and Reiters' findings using the ATOP data, Leeds et al., however, find that democracies are more likely to ally with one another during the pre-1946 time period.

My results also show that once committed, democracies are very likely to keep their promises. The coefficient for joint democracy (-.12) is negative and statistically significant in the transition model 2a, and positive and statistically significant in the survival model 2b (1.38). Predicted probabilities show that probability of signing an alliance for two democracies is .0002 lower than the probability of signing for other dyads (12.5% smaller for democracies). Predicted probability of survival of alliances for two democracies is .025 higher than the probability for non-democratic dyads.

Interesting also are the results regarding the impact of major power status on states' likelihood of entering alliances. If at least one state in a dyad is a major power, the probability of transition to an alliance commitment is high. Also, the probability of survival of this international contract is larger. In both transition and survival models, the coefficient for major power is positive. It is statistically significant in the transition model, but loses its significance in the survival analysis. Major powers are more likely to have worldwide geopolitical and economic interests, which generates their willingness to form alliances. My results support the results of Lai and Reiter (2000), who show that dyads where at least one of the states is a major power have a higher propensity to form an alliance.[114]

As expected, if a dyad is involved in a MID, the survival of their alliance commitment is endangered. The coefficient for the MID variable in the survival model is negative and statistically significant indicating that states do not uphold their international commitments in relation to contracting partners who become their enemies. Predicted probability of survival of an alliance for two states involved in a MID is .231 smaller than the probability for states that are not involved in a MID with one another (24% decrease in probability for a dyad involved in a MID). As far as the relationship between MID involvement and signing of alliances, model 2a does not provide us with a

[114] The major power variable in their study is significant for only some models.

definite answer, since the coefficient for the MID variables is positive, but statistically insignificant at the conventional levels.

Distance, as anticipated, reduces the likelihood of states to both sign alliance commitments and also to keep them. The coefficient for distance in both models is negative and statistically significant. The predicted probability of forming an alliance for two contiguous states (distance of 5 miles) is 91% larger than for states separated by a distance of 11989. Also, the impact of distance on alliance durability is also large (81% larger for contiguous states).

So far, I tested hypotheses 7.1 and 7.2 that are related to the relationship between similarity of domestic legal systems and states' propensity to form and keep their alliance commitments. The two models presented in Table 7.7 test hypotheses 7.3 and 7.4, which deal with specific legal system types, civil, common, and Islamic. Table 7.8 presents the substantive effects. Results regarding each of the legal system types can provide numerous insights into the dynamics of alliances. The predicted probabilities presented in Table 7.8 elucidate the relationship between the three major domestic legal systems and signing of alliance treaties. As far as alliance formation, I hypothesized that civil law dyads would be more likely to form alliance with one another than common law or Islamic law dyads. Unexpectedly, it is Islamic law dyads that have the highest probability of signing alliance treaties (predicted probability for these dyads is .0042). They are followed by the common law dyads (predicted probability for these states is .0039), mixed dyads (.0036), and then the civil law dyads (predicted probability is .0017). As predicted, states belonging to divergent legal traditions are least likely to sign international contracts.

Very interesting are the results regarding the durability of alliance commitments. As anticipated, common law and Islamic law dyads are more likely to abide by the international norm *pact sunt servanda*. Predicted probabilities of alliance survival for these dyads are .987 and .995 respectively. Common law states construct their international alliance treaties in a way that highly resembles the design of contracts concluded under domestic law, which are very detailed. Because these contracts are so meticulously constructed, alliances formed by two common law states are, on average, upheld. Just as with obligations to the International Court of Justice, since common law

countries make sure that all of the necessary provisions are included in their interstate contract, keeping their promises is not as difficult. It is, in other words, much easier to uphold a contractual obligation that has been specifically tailored to one's needs.

Secondly, Islamic law dyads are also very respectful of the *pacta sunt servanda* norm in international relations. The alliance survival rate for these dyads is extremely high (.995). Alliances, which constitute a form of contract, once signed are treated as sacred. The provision of the Koran, which stipulates that even war does not constitute a sufficient justification for breaking a commitment, especially applies to alliances. Islamic law dyads treat their international contractual obligations with an utmost respect.

Survival of commitment is substantially lower for civil law dyads. Again, international contracts resemble contracts concluded domestically. According to this legal tradition, contracts need not be overly detailed due to good faith principles. This lack of legal demand for thoroughness substantially curtails meticulousness of contractual obligations. Because alliances formed by civil law states are rather general, these states probably feel less constrained by these 'full of loopholes' contractual obligations. Due to the fact that civil law dyads do not engage in a lengthy process of bargaining that characterizes both common and Islamic law dyads, civil law states feel a greater freedom to break their contractual obligations. The durability of their international alliance commitments is also lower for the mixed law dyads (.979). All of the control variables perform, for the most part, as in previous models.

An additional test of the survival of states' alliance agreements is presented in Table 7.9, where I used Leeds (2003) data on alliance reliability in times of war. Table 7.9 reveals important insights into the patterns of states' behavior as far as the survival of alliances. Civil law states are most likely to sign alliance treaties, but are also most likely to break them. Out of 102 alliances signed by these states, 23 of them were broken (22.5%). Common law states, on the other hand do not break their alliance agreements. Out of 10 alliances signed by these states, all of them were kept. Islamic law states have also a very high rate of alliance survival. Only 1 out of 12 alliances was broken (8.3%). Mixed law states also keep their alliance agreements.

The results of the multivariate survival model (Table 7.7) and the simple cross tab presented in table 7.9 are by far more supportive of my hypotheses than the results of the

transition model. Perhaps the best way to explain the latter is to look at the link between alliance formation and survival. It is very plausible that Islamic law states have such a high probability of signing alliances among themselves because they know that both sides will keep their promises. Also, testing my theory in the area of security agreements may produce somewhat unexpected results, because it is plausible that states only need alliances when they do not quite trust one another. Civil law states, although less likely to form formal alliances with one another may be perhaps more likely to be simply aligned with one another without the necessity to sign a legal contract. Civil law states do not need to write a treaty; their commitments to one another are durable even without a formal alliance agreement. Interestingly, my preliminary results regarding another area of interstate contracting, international trade, reveal that civil law dyads are most likely to engage in international trade transactions. Also, Islamic law dyads, as my theory would predict are least likely to trade with one another.[115] These results suggest that the patterns that we observe regarding alliances are quite unique to this type of agreements.

In this section, I tested hypotheses 7.1, 7.2, 7.3, and 7.4 that deal with the relationship between domestic legal system types and propensity of states to form and keep alliance commitments. These results undoubtedly demonstrate the importance of taking into consideration characteristics of domestic legal systems in studying alliances. Legal system types have a substantial impact on the way that states initially form alliances and keep their commitments. Results presented in this section are highly consistent with my theory, which argues that states with similar domestic legal characteristics are more likely to cooperate with one another on the international arena.

In the next section, I perform empirical tests of hypotheses 7.5 and 7.6 that deal with the relationship between the rule of law (legitimacy) and states' willingness to form and honor their alliance obligations.

[115] Empirical analyses regarding international trade were performed using data from Rose (2004), which covers time frame 1960-2002. The dependent variable that I used was levels of bilateral trade between two states in a dyad.

Legitimacy (Rule of Law) and Alliances (1984-2001)

As hypothesis 7.5 states, I expect that dyads with high internal respect for the rule of law will be more likely to cooperate with one another and thus more likely to form alliances. According to my theory, legitimacy of a domestic legal system of a state will increase the probability of this state's cooperation only in relation to other states whose domestic legal systems are also legitimate. On the other hand, a state with a highly legitimate domestic legal system will not be likely to cooperate with a state whose domestic legal system is weakly legitimate. In the latter case, the enforcement of an agreement might be problematic. Again, because states with high internal respect for the rule of law will, on average keep their promises, they will sign only international commitments with a high probability of compliance.

As far as the survival of alliance commitments, I expect that dyads composed of states with highly legitimate legal systems will have more durable international commitments (hypothesis 7.6). To test both of these hypotheses, I construct four separate models, which portray the impact of independent variables (separately and cumulatively) on alliance formation and survival. The time frame for all of the models containing the dyadic rule of law as one of the independent variables is, as in previous empirical chapters, 1984-2001.

First, I start with a very simple model, which is designed to test the impact of legal systems during the time period 1984-2002 (Model 4). Next, I test the impact of the dyadic rule of law on alliance formation and durability (Model 5). In Model 6, I incorporate both of the legal characteristics (domestic legal system type and the rule of law). Finally, Model 7 is designed to test the joint effect of all of the independent variables, including joint democracy, major power status, involvement in a Militarized Interstate Dispute, and distance. Table 7.10 and 7.11 present results of all four models, and Tables 7.12 and 7.13 present the predicted probabilities for each of the models.

Results of all four models provide fascinating insights into the formation and durability of alliances in the time frame 1984-2002. First, the impact of legitimacy of a domestic legal system on the propensity of states to form an alliance is positive and statistically significant. Models 5a, 6a, and 7a show that pairs of states with a higher

dyadic rule of law are more likely to sign alliances with one another. The coefficients for the rule of law variable are positive and statistically significant in all of these models. As far as predicted probabilities, the dyadic rule of law has a very substantial impact on the likelihood that an alliance will be formed. The predicted probability that two states with a highest possible dyadic rule of law (36) will form an alliance is 24.75 times higher than the probability of alliance formation for a dyad with a lowest possible rule of law score (0) (Model 5). This effect remains substantial for Models 6 and 7. Unfortunately, the impact of the dyadic rule of law on alliance survival is not statistically significant in any of my models.

The influence of domestic legal system types on formation and survival of alliances for the period 1984-2002 is the same as for the time frame 1920-2002. Thus, even if we account for the dyadic rule of law, legal system types still substantially impact the likelihood of alliance formation and durability. Joint democracy seems to have a statistically significant and positive impact on states' propensity to form alliances. This result differs from the result presented in the previous section (time frame 1920-2001). Also, the coefficient for democracy in the survival model (7b) becomes statistically insignificant. If at least one state in a dyad is a major power, this dyad is more likely to form an alliance. As far as the durability of alliance commitments, major power status seems to decrease the chances of alliance survival. These results are somewhat different from the results presented in the previous section, where the coefficient for major power was positive and statistically insignificant. As in previous analyses, the coefficient for MID is positive and statistically insignificant. In the survival analysis (Model 7b), the MID variables drops out of the model suggesting that non-occurrence of a MID perfectly predicts the success of an alliance. Also, the effect of distance remains, for the most part the same in that the larger the distance between two states, the lower the likelihood that they will form an alliance with one another.

Legitimacy seems to have a substantial effect on propensity of states to form alliances. As anticipated, states with highly legitimate domestic legal systems are more likely to sign alliance treaties with one another than with states whose domestic legal systems are weakly legitimate. A relatively high degree of respect for the rule of law significantly lowers the bargaining costs and increases the mutual trust between

contracting states. As far as the survival of alliance commitments, further research is needed to discover the true relationship between legitimacy and keeping of international commitments.

So far in this chapter, I tested hypotheses relating to the formation and durability of alliance commitments. As anticipated, both domestic legal system types and dyadic rule of law have significant and substantial impact on states' propensity to form and keep their alliance commitments. In the next section I perform empirical tests of hypotheses 7.7 and 7.8 that relate to the design of alliances.

OLS Models: Legal Systems, Rule of Law, and Design of Alliances (1920-2001)

As hypothesis 7.7 states, I expect that common law states will tend to formulate alliance agreements that contain the highest number of contingencies. Just as with accepting the compulsory jurisdiction of the International Court of Justice, I expect that countries representing common law tradition will sign most elaborate and detailed international contracts. I anticipate that civil law states, on the other hand, will sign the least complex alliance agreements. These expectations flow from the characteristics of contractual obligations in each legal system. Alliances formed by Islamic law states should be, for the most part, a little more detailed than the alliances formed by the civil law nations, and not as thorough as contracts formed by the common law states. My expectations also relate to the relationship between legitimacy and design of international legal commitments. As hypothesis 7.8 states, I expect that countries with highly legitimate domestic legal systems will design more detailed alliance agreements.

I test my hypotheses using three Ordinary Least Squares models (Model 8, 9, and 10), where the number of reservations constitutes the dependent variable, and legal dummies, capabilities, democracy, and the rule of law constitute independent variables. In Model 8, legal systems constitute the only independent variables, in Model 9, I introduce capabilities and democracy as additional control variables, and in Model 11, I incorporate the rule of law as one of the independent variables. In all three models, mixed legal systems are treated as the omitted category. Table 7.14 presents results of the models.

All three models provide interesting insights into the design of alliances. As I anticipated, alliances designed by common law states contain, on average, the largest amount of contingencies (1.7 more than mixed law states). Islamic law states come in second- alliances designed by these states have, on average, 1.5 more contingencies than the mixed law states. States representing civil law tradition, on the other hand, place the least amount of contingencies on their alliance agreements. These results hold in Model 10, where I account for the impact of democracy and capabilities. As expected, states with highly legitimate legal systems place more restrictions on their international commitments (Model 10). Unfortunately, the coefficient for the rule of law variable is, although, positive, statistically insignificant. In model 10, my results regarding the relationship between legal systems and the design of alliances are slightly different from the results of models 8 and 9. Again, the time frame for this particular empirical analysis is 1984-2002, which probably accounts for the disparate results. Just as with the International Court of Justice chapter, the dynamics of legal systems seem to be unique to the period after 1984. Legal systems seem to resemble one another to a higher extent as the time goes by.

With respect to the control variables, I cannot clearly define the relationship between capabilities and the design of alliances, due to the fact that in models 9 and 10 the coefficient for the capabilities variable changes both significance and its direction. Democracies, on the other hand, seem to place more restrictions on their alliance commitments (the coefficient for democracy is highly statistically significant and positive in Model 10). These results seem to be consistent with the literature that suggests that democracies make more credible commitments (Leeds, 1999, Gaubatz, 1996, Simmons, 2000). Because democratic states know that they will keep their international commitments, they design them in a very cautious way, making sure that all of their obligations and possible future circumstances are accounted for.

Conclusions

In this empirical chapter, I tested hypotheses relating to the relationship between domestic legal system types, legitimacy, and alliances. My theoretical expectations dealt with states' propensity to form alliances, to keep their commitments, and the design of alliances. The empirical results show that both characteristics of a state's internal legal system (type of legal system and degree of respect for the rule of law) have considerable impact on a state's decision to form alliances, and uphold them. Also, these two features of interior legal structure play a crucial role in determining the way that each state's international alliance agreements are designed. My results can be summarized as follows:

1. Characteristics of domestic legal systems (type and legitimacy) have a strong effect on states' propensity to sign alliances, to stay committed, and also on the design of alliances. Just as in previous chapter, these results further support the literature that links states' external behavior to their internal design. In particular, my findings are consistent with the literature that proposes that state' domestic institutional structure can explain their propensity to form alliances (Siverson and Emmons, 1991, Dixon, 1994, Gaubatz, 1996, Leeds, 1999, Simmons and Gartzke, 1996, Lai and Reiter, 2000, Leeds et al. 2002). Just as regime type can explain why states tend to choose particular allies, so can domestic legal characteristics explicate formation and keeping of alliance commitments.
2. States with similar legal systems are more likely to form alliances with one another (hypothesis 7.1 is fully supported). Just as democracies tend to be more likely to form alliances with one another (Leeds, 1999, Werner, 2000, Leeds et al. 2002), so do states with similar domestic legal structure gravitate towards one another.
3. Alliances formed by states with similar domestic legal systems are more durable than alliances formed by states with different legal systems (hypothesis 7.2 is fully supported). As Werner (2000) asserts, "politically similar dyads are much more likely to enjoy a durable peaceful relationship than are politically disparate

states (p.369). My results show that the same is true for states' internal legal design.

4. Islamic law states are most likely to sign alliances with one another and civil law states are least likely to ally with one another. This result is unique to alliances. My preliminary research in the area of international trade reveals that civil law states are most likely to trade with one another, and Islamic law states are least likely to trade with one another. The latter results are supportive of my theoretical expectations regarding the propensity of states with similar legal systems to sign contracts on the international arena. Alliances as security agreements constitute a very hard test for my theory, and patters of states' behavior in this area may be shaped also by other factors such as power distribution and threat considerations.
5. Alliances formed by Islamic law and common law states are more durable than alliances formed by civil law states (hypothesis 7.4 is fully supported).
6. States with highly legitimate legal systems are more likely to form alliances with one another than with states whose domestic legal systems are weakly legitimate. (hypothesis 7.5 is fully supported). Again, this result further supports the findings of the literature linking domestic characteristics to states' propensity to form and keep alliances (Leeds, 1999, Werner, 2000, Leeds et al. 2002). Not only legal system type, but also legitimacy, matters in a state's choice of alliance partners.
7. Common law states place the greatest amount of contingencies on their alliances, and civil law states place the least amount of contingencies (hypothesis 7.7 is fully supported). As expected, states design their international commitments according to the rules established for domestic contracts by their legal systems. This result is highly consistent with my findings in Chapter 6, regarding the link existing between legal systems types and states' commitments to the International Court of Justice. It seems that states design their international agreements with other states and also with international institutions according to the rules established by their domestic legal system.

Table 7.1. Control Variables for the Alliances Chapter

	Theoretical Expectation	**Measure**	**Source**
Joint Democracy	+	1 if six or higher on democracy scale	Polity IV
Major Power Status	+	1 if at least one state in a dyad is a major power	Correlates of War Project
MID	-	1 if a dyad is involved in a MID	Correlates of War Project
Distance	-	Distance between two states in a dyad	Correlates of War Project

Table 7.2. Alliances and Legal System Similarity

Legal System of States in a Dyad			
Alliance exists		**Dissimilar**	**Similar**
	No	65%	35%
	Yes	34%	66%

Pearson Chi2(1)= 17000, Pr.=0.000

Table 7.3. Alliances and Legal Systems (Dyadic)

Legal System of a Dyad	**% of all dyads**	**% of all dyadic alliance-years**
Civil Law Dyads	30.27%	45.4%
Common law Dyads	4.53%	6%
Islamic Law Dyads	2.15%	14.5%
Mixed Law Dyads	.84%	.1%
Mixed Dyads[116]	62.21%	34%

[116] The two states in a dyad have a different legal system.

Table 7.4. Alliances and Legal Systems (Monadic)

Legal System of a State	**% of all monadic alliance-years**
Civil Law	72%
Common law	11%
Islamic Law	12%
Mixed Law	5%

Table 7.5. Markov Transition Logit Models: Alliances (1920-2001).

	Model 1: Legal Systems (1920-2002)		**Model 2: Legal Systems + Control Variables (1920-2001)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**
Similar Legal Systems	.65*** (14.49)	.84*** (13.61)	.52*** (11.74)	.47*** (6.34)
Joint Democracy	---	---	-.12*** (-2.64)	1.38*** (16.52)
Major Power	---	---	.92*** (15.82)	.04 (.52)
MID	---	---	.15 (.57)	-2.32*** (-8.04)
Distance	---	---	-.0004*** (-85.99)	-.0005*** (-31.9)
Constant	-5.9*** (-183.35)	3.14*** (74.26)	-4.46*** (-85.99)	4.24 *** (49.7)
	N=543,526	N=41,544	N=543,526	N=41,544

*p<.10, ** p<.05, *** p<.01

Table 7.6. Substantive Effects: Alliances (1920-2001).

	Model 1: Legal Systems (1920-2002)		**Model 2: Legal Systems + Control Variables (1920-2001)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**
Legal Systems (Different to Similar)	.0027, .005	.958, .982	.0016, .0027	.966, .978
Joint Democracy (both nondemocracies to both democracies)	---	---	.0016, .0014	.966, .991
Major Power (no major power in a dyad to at least one)	---	---	.0016, .004	.966, .968
MID (no MID to MID)	---	---	.002, .002	.966, .735
Distance (5 to 11989)	---	---	.0011 .0001	.9857, .188

Table 7.7. Markov Transition Logit Models: Different Legal Systems and Alliances (1920-2001).

	Model 3: Legal Systems (1920-2002)	
	a)Transition	**b)Survival**
Both Civil	-.500*** (-4.12)	-1.81*** (-8.79)
Both Common	-.068 (-.46)	-.997*** (-3.24)
Both Mixed	-.185 (-.69)	-1.367*** (-2.89)
Different Legal System	-.946*** (-7.85)	-1.9*** (-9.34)
Joint Democracy	-.129*** (-2.69)	1.350*** (15.56)
Major Power	.942*** (16.02)	.0387 (.42)
MID	.148 (.54)	-2.378*** (-7.86)
Distance	-.0003*** (-27.57)	-.0004*** (-30.57)
Constant	-3.51*** (-29.72)	6.248*** (30.18)
	N=543,526	N=41,544

*p<.10, ** p<.05, *** p<.01

Table 7.8. Substantive Effects: Different Legal Systems and Alliances (1920-2001).

	Model 1: Legal Systems (1920-2002)	
	a)Transition	**b)Survival**
Both Civil	.0025	.972
Both Common	.0039	.987
Both Islamic	.0042	.995
Both Mixed	.0036	.979
Different Legal Systems	.0016	.967

Table 7.9. Alliance Reliability and Legal Systems Types.

	Domestic Legal System Type					
		Civil	**Common**	**Islamic**	**Mixed**	**Total**
Alliance Violated	**No**	79	10	11	6	106
	Yes	23	0	1	0	24
Total		102	10	12	6	130

Pearson chi2(3) = 5.5725; Pr =.134

Table 7.10. Markov Transition Logit Models 4, 5, and 6 with the Rule of Law Variable; Alliances, 1984-2001

	Model 4: Legal Systems (1984-2002)		**Model 5: Rule of Law (1984-2002)**		**Model 6: Legal Systems + Rule of Law (1984-2002)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Similar Legal Systems	1.15*** (12.83)	.176 (.45)	----	----	.92*** (7.06)	.243 (.57)
Rule of Law	---	---	.088*** (9.68)	-.0045 (-.25)	.088*** (9.58)	-.004 (-0.25)
Constant	-6.73*** (-96.93)	6.5*** (22.4)	-7.8*** (-39.2)	6.36*** (18.49)	-8.18*** (-34.94)	6.2*** (12.26)
	N=255471	N=19355	N=130211	N=13051	N=130211	N=13051

*p<.10, ** p<.05, *** p<.01

Table 7.11. Markov Transition Logit Model 7 with the Rule of Law Variable; Alliances, 1984-2001

	Model 7: Legal Systems + Rule of Law + Control Variables (1984-2002)	
	a)Transition	**b)Survival**
Similar Legal Systems	.475*** (3.61)	.21 (.49)
Dyadic Rule of Law	.026*** (2.88)	.027 (1.00)
Joint Democracy	.987*** (5.54)	-.27 (-.53)
Major Power	.475*** (2.64)	-1.45* (-2.47)
MID	.422 (.79)	Non-occurrence of a MID predicts success perfectly
Distance	-.0009*** (-15.03)	.0005 (1.43)
Constant	-5.08*** (-20.84)	5.69*** (7.59)
	N=130211	N=13051

*p<.10, ** p<.05, *** p<.01

Table 7.12. Substantive Effects (Probabilities), Models 4, 5, and 6.

	Model 4: Legal Systems (1984-2002)		**Model 5:Rule of Law (1984-2002)**		**Model 6: Legal Systems + Rule of Law (1984-2002)**	
	a)Transition	**b)Survival**	**a)Transition**	**b)Survival**	**a)Transition**	**b)Survival**
Legal Systems (Different to Similar)	.0012, .0037	.9983, .9987	----	----	.0009, .0023	.997, .998
Dyadic Rule of Law (from 0 to 36)	----	----	.0004, .0099	.998, .997	.0003, .007	.998, .997

Table 7.13: Substantive Effects (Probabilities); Model 7.

	Model 7: Legal Systems + Rule of Law + Control Variables (1984-2001)	
	a)Transition	**b)Survival**
Legal Systems (Different to Similar)	.00007, .0001	.998, .999
Dyadic Rule of Law (0 to 36)	.00005, .0001	.998, .999
Joint Democracy (both nondemocracies to both democracies)	.00007, .0002	.998, .998
Major Power (no major power in a dyad to at least one)	.00007, .0001	.998, .994
MID (no MID to MID)	.00007, .0001	----, ----
Distance (5 to 11989)	.02, .0000002	.997, .998

Table 7.14. Ordinary Least Squares Models: Different Legal Systems, Rule of Law and Contingencies in Alliances (1920-2001).

	Model 8: Legal Systems (1920-2002)	**Model 9: Legal Systems, and Control Variables (1920-2001)**	**Model 10: Legal Systems and the Rule of Law (1984-2001)**
Civil Legal System	1.4*** (3.98)	1.2*** (3.5)	2.3*** (3.70)
Common Legal System	1.7*** (3.64)	1.6*** (3.43)	.77 (.79)
Islamic Legal System	1.5*** (3.73)	1.4*** (3.41)	1.6** (1.98)
Capabilities	----	-2.9* (-1.80)	7.9 (1.44)
Democracy	----	.18 (1.04)	1.08*** (2.4)
Rule of Law	----	----	.0004 (.03)
Constant	6.9*** (19.69)	7.05*** (20.06)	4.9*** (5.52)
	N=1558	N=1538	N=386

*p<.10, ** p<.05, *** p<.01

Table 7.15. Descriptive Statistics for the Alliances Chapter.

Variable	Mean	Std. Dev.	Min.	Max	Mode
Alliance	.071	.256	0	1	0
Similar Legal System	.369	.482	0	1	0
Joint Democracy	.364	.481	0	1	0
Major Power Status	.083	.277	0	1	0
MID	.002	.046	0	1	0
Distance	4762.969	2778.748	0	12347	40021
Dyadic Rule of Law	13.448	8.567	0	36	12
Both Civil	.264	.441	0	1	0
Both Common	.056	.230	0	1	0
Both Islamic	.020	.143	0	1	0
Both Mixed	.009	.095	0	1	0
Number of Reservations	8.38	3.22	0	20	6

Table 7.16. Correlations for the Alliances Chapter Variables.

	Similar Legal System	**Joint Democ.**	**Major Power Status**	**MID**	**Distance**	**Dyadic Rule of Law**
Similar Legal System	1.00					
Joint Democracy	.05	1.00				
Major Power Status	-.03	.05	1.00			
MID	.003	-.01	.02	1.00		
Distance	-.08	.01	-.02	-.05	1.00	
Dyadic Rule of Law	.03	.39	.18	-.01	-.07	1.00

Table 7.17.Number of Reservations Variable- Contingencies Used to Construct the Variable

ATOP Variable[117]	**Type of Reservation**
PROADD	provisions for new members to join an alliance
FUTMEM(A)	indicates whether specific states are indicated as potential future members
SPECLGTH(A)	term provided for in the alliance agreement
LENGTH(A)	particular duration
RENOUNCE(A)	provisions allowing a signatory to renounce obligations under an alliance agreement during the term of the agreement

[117] The below variables were recoded as dichotomous variables.

Table 7.17 - Continued

PROREN(A)	provisions in the initial agreement regarding its renewal
RENEWLGT(A)	if provisions for renewal exist in the agreement, this variable indicates the number of months of each renewal term, if specified
CONDITIO(M)	dummy variable coded 1 if any of the primary obligations undertaken by this alliance member are conditional upon particular circumstances
DEFCOADV(M)	1 if the defense obligation is conditional upon a particular adversary or type of adversary
DEFCOLOC(M)	1 if the defense obligation is conditional upon conflict in a particular location
DEFCOCON(M)	1 if the defense obligation is conditional upon a particular ongoing conflict
DEFCONUM(M)	1 if the defense obligation is conditional upon the number of adversaries
DEFCODEM(M)	1 if the defense obligation is conditional upon the ally or the adversary meeting certain demands detailed in the agreement
DEFCONPR(M)	1 if the defense obligation is conditional upon the ally not provoking the adversary
OFFOOADV(M)	1 if the offense obligation is conditional upon conflict in a particular location
OFFCOCON(M)	1 if the offense obligation is conditional upon a particular ongoing conflict
OFFCONUM(M)	1 if the offense obligation is conditional upon the number of adversaries
OFFCODEM(M)	1 if the offense obligation is conditional upon the ally or the adversary meeting certain demands detailed in the agreement
OFFCONPR(M)	1 if the offense obligation is conditional upon the ally not provoking the adversary
NEUOOADV(M)	1 if the neutrality obligation is conditional upon conflict in a particular location
NEUCOCON(M)	1 if the neutrality obligation is conditional upon a particular ongoing conflict
NEUCONUM(M)	1 if the neutrality obligation is conditional upon the number of adversaries

Table 7.17 - Continued

NEUCODEM(M)	1 if the neutrality obligation is conditional upon the ally or the adversary meeting certain demands detailed in the agreement
NEUCONPR(M)	1 if the neutrality obligation is conditional upon the ally not provoking the adversary
OLIMOB(M)	1 if an obligation undertaken by this alliance member is contingent upon a condition not covered by the above variables (9-24)
ASYMM(A)	1 if obligations vary for member of the alliance
OBVARY(M)	1 if this member has different obligations to different members of the alliance
NOTAIDEN(M)	indicates whether the alliance member promises to deny support to enemies of an alliance partner
DIPAID(M)	1 if the alliance member promises to respond to threats to an ally with diplomatic actions
TERRES(M)	1 if the alliance member promises to make some aspect of its territory or resources available to an alliance partner in the event of conflict or under other specified conditions relevant to the alliance
THIRDCOM(M)	indicates whether the alliance member promises not to make commitments to third parties or not to make commitments without consulting one or more alliance partners
NOOTHALL(M)	1 if the alliance member promises not to participate in any alliances with purposes contrary to those of the present alliance
SPECTHRT(A)	indicates whether the alliance agreement mentions a specific threat that the alliance is designed to counter
CONWTIN(A)	indicates whether the alliance agreement mentions the possibility of any kind of conflict among the members of the alliance
MILCON(A)	indicates whether the alliance agreement includes provisions requiring contact among the military planners/armed services of the alliance members

Table 7.17 - Continued

MILAID(A)	indicates whether there are any provisions in the alliance agreement for any members to provide any other members with military aid
INTCOM(A)	indicates whether the agreement provides for an integrates command among the allies
SUBORD(A)	indicates whether the agreement provides for the forces of one party to be subordinated to the forces of another party during conflict
ORGAN(A)	indicates whether the alliance agreement specifies the creation of any organizations associated with the agreement
BASE(A)	indicates whether the alliance agreement provides for joint troop placements, or for any member to station troops on the territory of another member
CONTRIB(A)	1 if the agreement specifies any details of the contributions to be made by each ally in troops, supplies, or funds, or how the costs incurred by the alliance are to be divided
ARMRED(A)	indicates whether the alliance agreement requires the members to limit or increase their arms
ACQTERR(A)	indicates whether there are any provisions in the agreement regarding acquisition of territory not currently held by the allies
DIVGAINS(A)	1 if there is any discussion in the alliance agreement of how gains from future should be divided among the allies
DEMWITH(A)	1 if there is any discussion in the alliance agreement of demobilization or withdrawal following conflict
REFLNUN(A)	indicates whether the alliance agreement includes any references to the League of Nations or the UN
REFOTHIO(A)	1 if any other international organizations are referred to in the alliance agreement other than the League of Nation , the UN, or other alliances
NATREFAL(A)	captures references to other alliances

CHAPTER EIGHT

CONCLUSION

Characteristics of a domestic legal system, such as type of the legal system and its legitimacy constitute crucial elements of each state's internal design. Each nation in the international system, as a political entity, possesses its own legal framework, which is manifested at any point in history by a complicated system of rules, norms, and principles. These rules, norms, and principles govern relations between individuals, countless sorts of entities, and also the state itself. Legal norms and principles present in a country differ from state to state. A legal framework present within each state, in its entirety, is unique as far as its evolution, internal characteristics, and methods of operation. Nevertheless, according to numerous legal scholars, despite the multitude of differences existing between legal orders present in the world, both today and in the past, we can speak of so called legal families, or legal traditions (Glenn, 2000, David and Brierley, 1985). Thus, a legal system of each state belongs to a particular legal tradition, or a group of legal systems. The three main legal system types that I distinguished in this dissertation are civil common, and Islamic. In addition to legal system types, domestic legal frameworks differ as to the degree of their legitimacy, a notion that is intricately intertwined with the principle of the rule of law. Legitimacy constitutes a feature of a legal system or of a single rule, which derives from a perception on the part of those to whom it addresses that its roots are just and good (Franck, 1988). As such, legitimacy encourages compliance with a domestic legal system.

In this dissertation, I argue that these two characteristics of a domestic legal structure, legal system type and legitimacy, are crucial to our understanding of international relations. Because legal systems, through a lengthy process of norm internalization can become a significant part of a state's identity, both of these features

can substantially influence each state's external actions. In short, states with similar identities should be more likely to exhibit cooperative behavior towards one another than states, whose identities differ. Accordingly, my main argument throughout this dissertation is that states with similar legal structures should be more likely to cooperate with one another. Also, states with highly legitimate legal systems should be more likely to cooperate with one another than with states whose legal orders are weakly legitimate. In addition to the relations between states on the international arena, my argument also extends to the dealings between states and international institutions. A nation is more likely to be supportive of an international institution if its legal rules and procedures resemble this nation's domestic legal order. Also, I argue that states whose domestic legal systems are highly legitimate will be very careful in joining international institutions. Thus, such states will sign only these international commitments that are likely to be kept. My theory can offer explanation of cooperation in mixed regime or same civilization dyads. As noted in the introductory chapter of this dissertation, existing theories of the democratic peace fail to fully explain why states with different regimes often times cooperate with one another, or why democracies are sometimes involved in conflict with each other. The same argument could be applied to Huntington's clash of civilizations thesis, in that it cannot fully explain why sometimes states that belong to the same civilization fight with one another. Legal characteristics of states add insights to our understanding of international cooperation and conflict. Both similarity in legal system types and in the degree of legitimacy of legal systems further explain why some states successfully cooperate with one another, and why other states fight. As Table 5.11 in chapter 5 shows, the effect of legal similarity on states' propensity to engage in international conflict is very similar to that of democracy, and civilization membership.

The theoretical and empirical results contained in this study indicate that characteristics of internal legal design can strongly influence patterns of international interactions. Through affecting costs, benefits, and uncertainties of international contracting, domestic legal systems affect the way that states behave towards other states and also towards international institutions. In particular, domestic legal system types and legitimacy influence contractual relationships as far as the probability of signing of interstate contracts, design of contracts, and their enforcement. To summarize, the main

question that has guided my theoretical and empirical research in this dissertation is: "What is the relationship between 'legal similarity' and states' behavior in the international realm?"

In this concluding chapter, I discuss both theoretical and empirical parts of my dissertation focusing on my theoretical approach for answering my research question, the results obtained in each empirical chapter, which relate to the interstate conflict, states' attitudes towards the International Court of Justice, and alliances. In subsequent discussion of each of these issues, I focus on imperfections of my approach, some unanswered questions, and extensions for future research.

In order to answer my research question, in the first three chapters of this study I construct a theoretical framework, which allows me to explore the convoluted world of legal norms, principles, and rules. By combining insights from two very important theoretical camps in international relations, the constructivist and rational frameworks, I present a theory, which links domestic legal characteristics to states' foreign policy choices. My theory and my empirical findings contribute to the study of international relations and our understanding of the link existing between states' behavior on the international arena and their internal institutional designs. One of the most insightful contributions of this study is that it shows the importance of taking into consideration domestic legal institutions present within each state. In addition to political institutions, which constitute the main focus of the democratic peace research, and also in addition to the cultural and religious divergences expounded upon by Huntington (1993), scholars should also consider states' internal legal characteristics. As I show in my empirical chapters, neither regime type, such as democracy or autocracy, nor civilization membership, are able to fully explain the fact that some states seem to be more likely to cooperate with one another. Also, these two factors fail to exhaustively explicate why some states tend to be more likely to join international institutions.

My theoretical framework, which portrays international cooperation and conflict as success or failure of interstate bargaining over contractual relationships, further explains interstate cooperation and conflict. I show that states with different domestic legal systems, irrespectively of their regime type and their civilization membership, project abroad very different contract-related norms. Domestic legal systems and inherent

to them basic legal principles such as *bona fides* and *pacta sunt servanda*, can explain why certain states feel more comfortable in signing contracts with one another. Also, legitimacy, which affects the costs, benefits, and uncertainties of interstate contracting, can account for the fact that cooperation is more likely between particular states. In the same way, these two legal characteristics, both type and legitimacy of a domestic legal system, can elucidate our understanding of international institutions.

Although the theoretical framework presented in this dissertation sheds light on how to understand the relationship between internal legal characteristics and states' foreign policy choices, number of questions remain unexplored. What's more, there are also quite a few alternate ways, in which one could frame the relationship between domestic legal system, legitimacy, and states' behavior on the international plane. Perhaps the most important issue that should be further elaborated upon is the classification of domestic legal systems types. In this study, I have adopted the definition of the major legal system provided by Gamal Moursi Badr (1978), according to whom major legal systems are only those legal systems "whose application extended far beyond the confines of their original birth places and whose influence, through reception of their principles, techniques or specific provisions has been both widespread in space and enduring in time." (p.187). If we use this definition, only three legal traditions can be granted the name of a major legal system, and these are civil, common and Islamic law. Thus, these three legal traditions are subject of this study.

In legal scholarship, however, there exist several other classifications of legal system types, which look beyond the substantive and procedural differences between the legal traditions, and focus also on the political regime. Perhaps the most intriguing among these classification is one constructed by Opolot (1980), who distinguishes in addition to the civil, common, and Islamic legal systems, a socialist legal tradition. According to him, "In studying the law of a socialist country, as in any other type of law, one must consider legal matters against their political background" (p.51). Although, this legal system still exhibits the main substantive and procedural characteristics of one of the three major legal families, some additional features are also present. The main traits that distinguish this legal tradition from others are inherently bound to the socialist political regime. Principles related to the nature of Man, God, the dominant class, and the special

courts such as comrades' courts, and people's courts were characteristic to this legal system. These differences, according to my argument, however, where not substantial enough to classify the socialist law as one of the major legal families. In addition, socialist legal systems, both in the past and in the present, have displayed the main features of one of the three major legal families. Thus, I have decided not to include the socialist law as one of the major legal tradition.

The domestic legal framework of Cuba, a contemporary communist state, provides a great example. The concepts that inform Cuba's legal system reflect the island's history as a Spanish colony, a satellite of the United States, and centrally planned socialist state. According to Raymond Michalowski, "Cuba's history as a Spanish colony left the island with deep civil law traditions. Even after the 1959 revolutionary victory, the Cuban legal system continued to emphasize written codes rather than court-based precedent as the source of law" (p.398). Although this state's postrevolutionary communist regime has impacted the understanding of law and functioning of its domestic legal institutions, the fundamental features of the civil legal tradition remain firmly planed in the procedural and substantive law of Cuba. Thus, socialist institutions such as a formal legal framework through which the government can manage economic production or guide distribution and future of socialist developments have not altered the fundamental civil structure of the Cuban legal system.

Apart from the classification of domestic legal systems, an important extension of the theory presented in this study would be to more carefully examine the interactive relationship between legal system types and legitimacy. In all of the empirical tests as well as in my theory, I assume that each of these two legal characteristics has an independent impact on states' foreign policy choices. Both legal system types and the rule of law are shown to have separate influence on states' decisions to go to war, to accept the compulsory jurisdiction of the International Court of Justice, and to form and keep alliances. Also, these two features are shown to have separate impact on the way that international commitments are designed. In the future, it might prove beneficial and insightful to focus on the joint effect of these two characteristics on states' behavior. In other words, it is plausible that legal system types and legitimacy have an interactive effect on the way that states act on the international arena. An argument could be made

that the relationship between a domestic legal system and a state's actions is modified by the degree to which a legal system is legitimized (the degree to which the rule of law is respected within this state). In particular, one might argue that the institutional effect of legal systems only significantly influences foreign policy decision making at moderate or high levels of rule of law. For example, did the Islamic legal system have any restraint on Saddam Hussein's decisions when he was dictator of Iraq? Or is Fidel Castro constrained by Cuba's civil law system? A research design that captured the interactive effects of legal system types and degree of respect for the rule of law would be a great improvement over the design employed in this study.

A similar modification between regime type (e.g. democracy) and state's external conduct is provided by the body of literature that argues that new democracies are more conflict-prone than old ones (Mansfield and Snyder, 1995). Some scholars assert that in the transitional period of democratization, "countries become more aggressive and war-prone, not less, and they do fight with democratic states." (Mansfield and Snyder, 1995:5). Although it is true that mature and stable, consolidated democracies are more peaceful in relation to one another, democratizing states can actually be more belligerent. In the same way, the relationship between legal systems and countries' behavior internationally could be possibly modified by the level of legitimization of the legal orders. Thus, a more careful study of the intricate relationship between the civil, common, and Islamic legal systems on the one hand, and legitimacy on the other, might shed more light on our understanding of international relations.

Table 8.1 presents a simple cross tabulation for international conflict and legitimacy according to domestic legal system types. Statistics presented in this table provide interesting information about patterns of international conflict. Civil law states and mixed law states are most likely to engage in a MID with the use of force or war if their internal respect for the rule of law is medium (42% of MIDs for civil law states and 50% of MIDs for mixed law states). Interestingly, common law states are most likely to engage in international violence if their legal systems are highly legitimate (5 – 6 on the ICRG scale), and Islamic law states are most prone to engage in interstate conflict when their respect for the rule of law is low (0 – 2 on the ICRG scale). The findings for common law states could reflect the active MID involvement of two major powers with

common law systems, the United States and Great Britain. In general, though, it is clear that future analyses of the interactive effect of domestic legal system types and legitimacy would be beneficial for understanding more clearly patterns of international violence and cooperation.

In addition to examining this interactive relationship, it would also be useful to more carefully examine variance in specific characteristics of legal systems, such as good faith, precedent, promissory estoppel and others. It might be useful to construct a categorization of legal systems based not on their types, as presented in this dissertation, but based on specific legal institutions. In other words, some civil law states seem to respect the doctrine of good faith to a greater degree than others. For example, the French courts do not rely as heavily on the doctrine of good faith as do the Italian and German courts. Also, some common law countries adhere to a greater degree to the strict doctrine of judicial precedent. The common law system in Great Britain relies, for the most part, on the doctrine of the precedent much more than the system of the US. is Classifying legal systems of the world according to these particular legal institutions might prove beneficial to understanding how specific features of legal institutions influence foreign policy processes and international contracting.

Having summarized my theoretical arguments, and having focused on its possible extensions and modifications, I now turn to the discussion of the three empirical chapters. Again, I will briefly recap my findings in each of these chapters, point to some shortcomings and possible venues for future research.

In Chapters 5, 6, and 7 I test my theoretical arguments. First, in Chapter 5, I empirically test several hypotheses regarding states' involvement in militarized interstate disputes that stem from my theory. Because communication between states that share a common understanding of basic legal principles such as *bona fides*, *pacta sunt servanda*, *force majeure*, and others, is easier, these states are more likely to conclude a successful bargain. In other words, the failure of bargaining, and thus conflict, is for these states less likely. The probability of conflict between states with divergent internal legal structures is, by the same token, higher (Hypothesis 5.1). In addition to the legal system types, my empirical test in Chapter 5 relate also to the relationship between legitimacy and

international conflict. I expect that states with highly legitimate legal systems are less likely to engage in international conflict (Hypothesis 5.2).

By expounding upon my understanding of conflict as the failure of bargaining, I find that characteristics of domestic legal systems strongly influence states' propensity to solve their disputes in a forceful way. Legal system characteristics (type and legitimacy) have a strong effect on the likelihood of both cooperation and conflict between states. In general, countries with similar internal legal structures are less likely to engage in international conflict. This relationship holds for militarized interstate disputes with fatalities and for militarized interstate disputes with the use of force or war. Also, states with highly legitimate legal systems are less likely to engage in militarized disputes. In addition, I find that the likelihood of interstate conflict is the lowest when two states in a dyad have multiple sources of similarity (legal systems, regime type, alliance portfolios, and civilization membership). Thus, my theoretical expectations regarding the probability of conflict as a failure of bargaining are strongly supported. Legal system similarity lowers the costs and uncertainties of bargaining, making conflict between states with divergent legal characteristics more likely.

Although this chapter provides interesting insights into the link between legal system types, legitimacy, and the propensity of states to engage in militarized disputes, quite a few questions still remain unanswered. First of all, in this chapter I focus only on two types of conflict between states, namely, Militarized Interstate Disputes with fatalities, and Militarized Interstate Disputes with the use of force or war. As stated in my theoretical chapters, I understand conflict as failure of bargaining. Even though both of these dependent variables undoubtedly constitute examples of failure of interstate bargaining, there are numerous other outcomes that can also be understood as such. Thus, empirical analyses of conflicts characterized by a lesser severity, such as display of force or threat of the use of force would constitute insightful extensions of the empirical tests presented in Chapter 5. Also, a closer analysis of the outcomes of specific crises in which the leaders of states were seriously considering choosing cooperation or conflict would increase our understanding of how internal legal characteristics seem to impact the decisions of states to continue or break negotiations. Perhaps a case study analysis of

failure of interstate bargaining such as arbitration, non-binding third party assistance, or bilateral negotiations, would shed light on particular cases of failure of contracting. A great example is provided by arbitration, where different legal traditions seem to often time clash with one another. Arbitration, one of the principal forms of international dispute resolution has a long and often times troubled history in the Islamic world (Brower and Sharpe, 2003). Many states representing the Islamic legal tradition had repeatedly viewed this type of peaceful dispute resolution "skeptically, if not with hostility" (Brower and Sharpe, 2003:643). Such a negative approach has been, for the most part, triggered by the fact that many Islamic states felt that they could not adhere to legal principles established by the 'Western states', whose fundamental values are often times inconsistent with Islamic legal tradition. Although in numerous aspects of international arbitration, Islamic states no longer are reluctant to agree with their Western counter partners, in some other areas the clash of legal and cultural traditions is still present. It is plausible that this hostility with which Islamic law states view international arbitration has precluded formation of contractual relationships between these states and states representing common and civil legal traditions.

Apart from focusing on particular instances where international bargaining has failed, another interesting venue for the future research would be to focus more specifically on the differences existing between Islamic legal traditions and the two Western legal traditions (both civil and common legal systems). Although there are numerous procedural and substantive differences between the three major legal systems, some could argue that the largest disparity exists between Islamic and Western legal families. As discussed in the theoretical part of this dissertation, the main distinction that exists between common and civil legal orders and the Islamic traditions that the latter directly incorporates philosophy and principles of a religion- Islam. This particular disparity is by far more crucial than differences in other legal principles such as *bona fides* or *pacta sunt servanda*. It is, therefore, conceivable to expect that the probability of interstate conflict will be most likely between states with Western and Islamic legal systems. A closer look at the differences between these two families could perhaps further explain why interstate bargaining fails and why conflict occurs. My results presented in chapter four support Huntington's clash of civilizations thesis showing,

however, that legal characteristics of states should be considered as yet another characteristics of civilization. My preliminary results concerning the propensity of different dyads to engage in conflict show that Islamic law dyads are more likely fight than are common law or civil law dyads. This result supports Huntington's predictions by showing that Islamic nations are more belligerent than Western states.

In Chapter 6, I test my theoretical expectations regarding cooperation between states and international institutions. The institution that I focus on is the International Court of Justice. I find a strong support for my theoretical expectations regarding the impact of legal system types on states' behavior towards the Court. In particular, I discover that civil law states due to the inherent similarity of this legal tradition to the rules and procedures of the ICJ are most likely to accept the compulsory jurisdiction of the Court. Islamic law states, on the other hand, are least likely to accept (Hypothesis 6.1 is fully supported). As far as the survival of states' commitments to the ICJ, I find, as anticipated, that common law states and Islamic law states have more durable commitments to the ICJ than civil law states (Hypothesis 6.2 is fully supported). Because contracts concluded by common law states are very detailed, these countries are more likely to keep them Islamic law treats contracts as sacred, and thus Islamic law states are faithful in keeping their international commitments. I also discover that the degree of internal respect for the rule of law has a significant impact on both probability of signing and staying committed to the World Court. States with highly legitimate legal systems are less likely to accept the compulsory jurisdiction of the World Court than states with weakly legitimate legal systems (Hypothesis 6.3 is supported). What's more, as expected, commitments of these states to the ICJ are much more durable (Hypothesis 6.4 is supported). States that uphold the rule of law internally, respect it also internationally.

Furthermore, both domestic legal system types and legitimacy have a strong effect on the design of optional clause declarations. As expected, common law states place the larges amount of reservations on their optional clause declarations, and the civil law states place the smallest number of reservations (Hypothesis 6.5 is supported). Thus, I find support for my argument that the design of states' international commitments should resemble the design of contracts in a domestic legal framework. In this chapter, I also discover that during the period of 1984-2002, the dynamic of the impact of legal systems

on states' behavior towards the World Court is somewhat different. As predicted by the legal scholarship, the three legal traditions, although still distinct, are becoming more and more similar over time.

Because of these unique results concerning the time frame 1984-2002, I would like to further investigate changes in the Court's practices over time and the implications of these changes for my theoretical argument and empirical analyses. Numerous legal scholars have pointed to the fact that common law and the practices of the ICJ have become increasingly similar over time (Shapiro, 1986, Shahabuddeen, 1996, Markesinis, 2000). The jurisprudence of the World Court has developed over time in the direction of a powerful inclination to adhere strongly to its preceding decisions. What's more, courts of last resort in the common law tradition have come to accept that they are not required to follow their earlier judgments, but within well-defined limits they might depart from them (Shahabuddeen, 1996). The practice of common law courts is, thus, becoming increasingly more comparable to the rules and practices of the World Court, which may create an increasing readiness on the part of common law states to recognize the Court's compulsory jurisdiction. Furthermore, statute law has recently become a much more important source of law in certain common law countries. Consequently, the output of enacted law in the United Kingdom has markedly increased mostly as a result of the integration of British law with the European legal culture (Markesinis, 2000). These changing processes within the ICJ and within common legal systems have brought the two legal orders closer together. The Court seems over the years to gradually adhere more often to its previous holdings, and common law systems have become ever more similar to civil legal systems. These developments may imply shifting dynamics of states' behavior towards the ICJ, something I have not fully considered in this study.

Another extension of my analyses presented in Chapter 6 would be looking at other sources of jurisdiction of the International Court of Justice, such as the placement of compromissory clauses in bilateral and multilateral treaties. This form of jurisdiction is granted much more frequently, with 80% of all states belonging to one or more compromissory clause treaties. One might argue theoretically that common law countries prefer recognition of the ICJ's jurisdiction through compromissory clauses, because such commitments are more precise and limited only to the treaty at hand. The lack of good

faith in bargaining creates specific and limited obligations, which can be done more easily through a bilateral or multilateral treaty. Compulsory jurisdiction is a more risky proposition, because it can be applied to any legal matter in international law. Thus, while the placement of reservations might help to limit the Court's prerogative, common law states may nonetheless prefer to limit the Court's potential involvement to the more specific subject matter of interstate treaties. Preliminary tests of that possibility are presented in one of my papers coauthored with Sara McLaughlin Mitchell (2006), where we show that civil law states have the highest average number of treaty memberships. Common law states have six fewer, and mixed law states close to eight fewer treaty memberships, while Islamic law states have 4.5 fewer memberships. More comprehensive tests are, nevertheless, still required to look more closely at the different sources of the ICJ jurisdiction and the role that legal system types play in recognizing this jurisdiction.

A multitude of other topics relating to the International Court of Justice are waiting to be explored. For example, the prevalence of civil law systems in the world raises the possibility that 'continental lawyers' might dominate the International Court of Justice. One very interesting topic to explore would be to examine the distribution of judges based on the legal system of their state of origin. Could this distribution influence countries' acceptance of the ICJ's adjudication? Is it possible that, for example, civil law nations are more likely to sign on when the Court's membership favors this legal system? Such study would require a much more careful examination of the composition of Court while presiding over particular cases.

Furthermore, it is very probable that if a state is sued in the ICJ multiple times and experiences suboptimal decisions, it could lead to changes in that state's optional clause declarations. In other words, a state's past experience with the Court may influence its future interactions with the ICJ. It would be useful to record information about a state's history with the ICJ when modeling the survival of ICJ commitments.

Finally, it is plausible that more peaceful states are more likely to submit themselves to the World Court's adjudication. Perhaps states that are members of other peace-promoting organizations are more prone to accept the jurisdiction of the World Court. In other words, acceptance of the Court may be part of a broader acceptance of

international institutions. The empirical finding that democracies are more likely to recognize the jurisdiction of the ICJ, for example, is consistent with Russett and Oneal (2001)'s argument that democracies are more likely to join international organizations in general. Sorting out the particular effect of international legal institutions on state behavior will be an important avenue for future research.

Chapter 7 is devoted to testing my theoretical expectations dealing with interstate cooperation. More specifically, this part of the dissertation is devoted to testing my hypotheses regarding characteristics of domestic legal systems (type and legitimacy), and states' propensity to form and keep alliance commitments. In addition, I also look at how domestic legal system types and legitimacy can explain the design of alliances. Alliances, as a particular type of a treaty, constitute a prime example of contractual relations between states. As my theoretical argument proposes, states with similar domestic legal structures should be more likely to cooperate with one another on the international arena. Because cooperation constitutes a successful bargain over a contractual relationship, similar understanding of basic legal rules and principles should enhance interstate contracting. Thus, costs of cooperation are lower between states that belong to the same legal tradition, and they are also lower for countries with high internal respect for the rule of law. As expected, I find that characteristics of domestic legal systems (type and legitimacy) have a strong effect on states' propensity to sign alliances, to stay committed, and also on the design of alliances. Most importantly, I discover that states with similar legal systems are more likely to form alliances with one another (Hypothesis 7.1 is fully supported). Also, as I anticipated, alliances formed by these states are more durable than alliances formed by states with different legal systems (Hypothesis 7.2 is supported).

What's more, legitimacy is found to have a strong impact on the propensity of states to sign and keep their alliance commitments. First of all, states with highly legitimate legal systems are more likely to form alliance with one another than with states whose domestic legal systems are weakly legitimate (Hypothesis 7.5 is supported). Moreover, features of domestic legal systems (both type and legitimacy) have a strong influence on the way that states design their alliance treaties. As predicted, common law states place the greatest amount of contingencies on their alliances, and civil law states place the least amount of contingencies (Hypothesis 7.7 is fully supported). This finding

is highly similar to the finding concerning the design of states' commitments to the International Court of Justice presented in Chapter 6. The design of states' international commitments, to other states and also to international institutions, seems to resemble the design of contracts characteristic to each domestic legal system. Contracts according to the common law should be rather elaborate and very detailed, and thus common law states design the mot elaborate international commitments. Civil law, on the other hand, does not require contracts to be as thorough because numerous legal principles are included in the written codes. Their reiteration is, thus, unnecessary. Contracts concluded by civil law states are thus much less elaborate and much more general.

Empirical results obtained in Chapter 7 are though provoking. In addition, it is very interesting that the patterns regarding the influence of legal systems on the design of states' international commitments are very similar to the regularities discovered in Chapter 6 devoted to the International Court of Justice. A fascinating extension of analyses performed in these two chapters would be to see if the same patters emerge in relations to other types of international commitments. For example, do legal systems influence design of states' commitments to other international judicial bodies, such as the International Criminal Court, the European Court of Human Rights, and others? Research in this area could further elucidate our understanding of how internal legal structures influence the way that states design their contracts with international institutions and also with other states. Apart from the design of international commitments, it would also be very interesting to further investigate the link existing between formation and survival of international commitments. Results presented in this chapter show that characteristics of domestic legal structures, both type of legal systems and the degree of internal respect for the rule of law have significant impact on states' propensity to initially sign and also keep international commitments. Do the same patterns emerge concerning other international institutions or other types of international contracting, such as trade treaties, or pacts of non-aggression, for example?

Another extension of the research on alliances presented in Chapter 7 would be to look at data covering an extended period of time. In this chapter, I focus on all alliances signed after 1920. One question that can be asked is: "Do the patterns discovered for the post WWI hold also for the earlier period of time?" As noted in the theoretical pat of this

dissertation, legal systems, although stable as far as some main characteristics, do change over time. Is it plausible that the differences between the three major legal families prior to 1920 were much sharper than after that date? If this is the case then we should expect the differences and similarities between legal system types to have an even stronger impact on states' decisions to sign and keep their alliance agreements prior to 1920. These and also numerous other issues wait for future scientific exploration.

In this dissertation, I tested my theory in three main empirical areas, namely, international conflict (Chapter 5), states' propensity to accept the compulsory jurisdiction of the International Court of Justice (Chapter 6), and formation and survival of alliances (Chapter 7). Although these three subjects provide very interesting insights into the role of international legal characteristics in shaping states' behavior on the international arena, there exist quite a few more empirical areas that could provide attractive turf for testing of my theory.

First of all, it would be interesting to see the impact of legal systems and legitimacy on international trade flows. Trade patterns between states have for a relatively long time constituted a popular subject of scientific research. Both political scientists and economists have been trying to identify factors that influence international trade flows. Numerous determinants of inter-state trade have been focused upon, and numerous explanations of this phenomenon have been put forth. Especially popular are the arguments that explicitly assume that domestic political institutions can impact patterns of international trade. Some scholars claim that joint democracy encourages trade within a dyad (Dixon and Moon, 1993, Morrow, Siverson, and Tabares,1998, 1999, Bliss and Russet, 1998, Li and Sacko, 2002). Why should democracy influence trade flows? Most scholars argue that this relationship exist because democracies are better able to provide property right protection and are more likely to uphold the rule of law (Bliss and Russett, 1998, Morrow, Siverson, and Tabares,1998). Some studies, however, seem to contradict these findings (Verdier, 1998, Gowa and Mansfield, 1993, Mansfield and Bronson, 1997a). It is plausible that focusing directly on the legal systems and the rule of law could solve that puzzle. In my research regarding this issue (Powell, 2006), I show that states with similar legal systems are much more likely to trade with one another than with states of a divergent legal tradition. Again, international trade

transitions constitute a great example of interstate contracts, and thus legal systems can significantly influence states' propensity to engage in trade transactions with certain types of states.

Despite its strengths, the theory presented in this dissertation has its limits. First, it is especially designed to explain any type of international cooperation that we can perceive as interstate contracting. In other words, my approach is useful in explaining patterns of international behavior that can be framed as constituting some sort of a contractual relationship between states, or between states and international institutions. It can also explicate why sometimes bargaining between states fails, which leads to interstate violence. Because I focus on characteristics of domestic legal systems, this theory can help us understand why some states seem to be supportive of international law and international institutions, and why other states chose not to support the 'law of the nations.' In addition, as mentioned in the previous paragraph, my theory, slightly modified, can be also applied to relations between individuals and firms on the turf of international trade. Here, legal systems and their characteristics can explain why levels of interstate trade between some states are higher than between others. The theory presented in this dissertation cannot explain, though, all the different phenomena that occur on the international arena. In general, it does not apply to any type of states' behavior that cannot be framed as a contractual relationship or a failure of bargaining over a contract, such as intervention or humanitarian aid. Any situations in which states seem to act in an altruistic way are not subject to interstate bargaining. Thus, these cases cannot be fully explained in my theory, which rests firmly on the link between states cooperation/conflict and bargaining. My approach is also not designed to explain the reasons standing behind particular distribution of power in the international system. My theory is simply not able to elucidate our understanding of power relations between states. Why does the polarity of international system change? Why some states become hegemons while others remain relatively week and dependent on powerful states? Why do some states choose to be economically powerful and do not put much emphasis on the military power? These and other issues are much better explicated by existing theories of international relations such as realism, neorealism, or neoliberalism.

In conclusion, this study provides interesting insights into the relationship between domestic legal design and states' behavior towards other states and towards international institutions. The theoretical and empirical results contained in this dissertation indicate that legal systems, both legal system types and legitimacy influence contractual relationships that are concluded in the international realm. In particular, these legal characteristics impact the probability of signing interstate contract, their design, and their enforcement, or survival. Through affecting costs, benefits, and uncertainties of international bargaining, legal system types and the degree of respect for the rule of law significantly shape states' foreign policy decisions. Because legal systems and legitimacy are neither static nor unchangeable, it remains unseen how these two features will affect the relationships between states and international institutions in the future. It is quite likely that, with the possible gradual fading of the sharp differences existing between the three major legal families, patterns of international interactions might change in the future. As of right now, my research shows that the differences between common, civil, and Islamic legal traditions are sharp enough to encourage states with similar legal systems to cooperate with one another, and discourage states with divergent legal traditions from signing contracts on the international arena.

Table 8.1 Legitimacy, Legal Systems, and Conflict.

MID with Use of Force or War	**1.Civil Law States**			
	Rule of Law			
		Low (0-2)	**Medium (3-4)**	**High (5-6)**
	No	**18% (2,043)**	**34% (3,912)**	**48% (5,382)**
	Yes	**32% (61)**	**42% (79)**	**26% (48)**
	2.Common Law States			
MID with Use of Force or War	**No**	**5% (393)**	**19% (1,295)**	**76% (5,240)**
	Yes	**18% (25)**	**19% (26)**	**63% (88)**
	3.Islamic Law States			
MID with Use of Force or War	**No**	**35% (390)**	**37% (566)**	**28% (311)**
	Yes	**53% (41)**	**22% (17)**	**25% (19)**
	4.Mixed Law States			
MID with Use of Force or War	**No**	**23% (345)**	**37% (566)**	**40% (608)**
	Yes	**22% (358)**	**50% (595)**	**28% (16)**
	1.Chi2(2)=42.9938, Pr = 0.000 2.Chi2(2)=37.6738, Pr = 0.000 3.Chi2(2)=11.2226, Pr = 0.004 4.Chi2(2)=4.5900, Pr = 0.1010			

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BIOGRAPHICAL SKETCH

I was born in Toruń and raised in Grudziądz, Poland. Following high-school, I attended the School of Law of the University of Nicholas Copernicus in Toruń, Poland, and the Jean Monnet Centre of European Studies in Toruń, Poland, where I became increasingly interested in the rules and laws that govern the relations between states. During that time, I also acquired the Diploma in an Introduction to the English Law and the Law of the European Union for the University of Cambridge. My legal education in Poland sparked my interest in the study of international relations and international law in the United States of America. Motivated to pursue a graduate degree in this field, I entered the Ph.D. program at Florida State University majoring in international relations and comparative politics. My research interests stem from both my education in legal systems and international relations, and they include international law, legal systems of the world, conflict, conflict resolution, human rights, and European integration. In my work, I attempt to bridge the gap often present between two important scholarly disciplines, international relations and international law.