

Signed, Sealed, Delivered, and ?: The Correlation Between Policy Areas, Signing, and Legal Ratification of Organization of American States' Treaties by Member States.

Alexandra R. Harrington

Part I – Introduction

Like any organization, the Organization of American States (OAS)'s ability to affect lasting policy changes through treaties is only as strong as the will of the federal legislative bodies of its member states. No matter how lofty or well-meaning the OAS's goals in any area or matter addressed by a treaty might be, or the number of OAS member states ("member states") which sign onto a treaty reflecting these goals, under the OAS Charter, and the federal constitutions of most member states, these treaties are merely aspirational unless they are ratified by the federal legislatures of the member states.¹ Although it could be assumed that a member state's signing of an OAS treaty is indicative of the member state administration's policy goals - and hence the policy goals of the member state as a whole - there is often a counter-intuitive negative correlation between the number and type of treaties signed by member states and those treaties which are ultimately ratified by the member state's federal legislature² and adopted as binding law on the state.³ Even in the event of ratification, many member states have federal constitutional provisions which subsume the primacy of treaty law to domestic law,⁴ regardless of when the law was promulgated or the policy choices behind it.⁵

Given the disconnect between OAS policy goals and member states' federal legislative choices, it can easily seem that there is little political or legal force behind

¹ See *infra* Part II.

² See *infra* Parts III, IV.

³ See *infra* Parts III, IV.

⁴ See *infra* Part II.

⁵ See *infra* Part II.

treaties promulgated by the OAS. Examining OAS treaties promulgated during the period from post-World War II to the present, however, sheds light on the incidents of positive and negative signing to ratification correlations. This article conducts such an examination, focusing on several themes of treaty promulgation and signing to ratification correlation.⁶

Part II of this article addresses the legal requirements of the OAS Charter in regards to treaty promulgation and signing,⁷ as well as the sovereignty ultimately retained in member states for ratification decisions.⁸ Part II also discusses the federal constitutional law requirements of member states as they apply to the ratification and role of treaties that the executive has either signed or entered into.⁹ Many of these member state constitutions have express provisions addressing international relations, or treaties in general¹⁰; the requirements and ramifications of these provisions will be discussed as a corollary to the overall procedural requirements for treaty ratification.¹¹

Part III addresses basic signature-to-ratification correlations, including the practice of member states reserving on full treaty ratification.¹² The author extrapolates that reservations are often used as a way to help ensure domestic ratification of treaty provisions, and points to the effectiveness of this political/legal strategy.¹³

Part IV presents a slightly different view on the signing and ratification issue. In this part, the fifty-five treaties selected for this study are broken into thirteen policy area classifications. From these classifications, Part IV examines the general propensity of

⁶ See *infra* Parts II, III, IV, V.

⁷ See *infra* Part II.A.

⁸ See *infra* Part II.B.

⁹ See *infra* Part II.B.

¹⁰ See *infra* Part II. B.

¹¹ See *infra* Part II. B.

¹² See *infra* Part III.

¹³ See *infra* Part III.

member states as a whole towards negative or positive signing to ratification correlations for specific policy areas.¹⁴ Finally, Part IV concludes with observations and the author's predictions for policy areas in which international political policy and domestic legal policy will coalesce or divide.¹⁵

Part V, the conclusion of this article, uses the legal, political, and statistical information offered in the previous parts to go beyond a historical summary of OAS treaty policy and the actions of member states to predict policy areas which will be maximally or minimally accepted by member states as areas in which domestic legal primacy will or will not be ceded to OAS community ideas and goals. The author argues that, however laudable many of the OAS treaties have been, the OAS and its member states should consider focusing their calls for cooperation and treaty law ratification on several policy areas with proven records of signing to ratification correlative success.

Part II – Charter and constitutional requirements

A. OAS Charter requirements

The OAS Charter makes explicitly clear that, regardless of the issue or the goals which inform the OAS and its decisions, the OAS's authority is secondary to the sovereignty of its member states.¹⁶ Indeed, as an entity which was created by sovereign member states, the OAS Charter preserves the primacy of member states' domestic law and legislation as a fundamental right and duty.¹⁷ Thus, from the outset, any attempted

¹⁴ See *infra* Part IV.

¹⁵ See *infra* Part IV.

¹⁶ ORGANIZATION OF AMERICAN STATES CHARTER, CHAP. 1, ART. 1.

¹⁷ *Id.* at CHAP. IV, ART. 13 (providing that “[t]he political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The existence of these rights is limited only by the exercise of the rights of other States in accordance with international law.”).

OAS actions which involve the promulgation of law, and are in the form of a treaty to be ratified by the legislatures of member states,¹⁸ are limited to the diplomatic act of treaty signing, accompanied by the hope that the treaty will be ratified by the federal legislatures of the signatory member states.

B. Member states' constitutional requirements

Of the thirty-five member states comprising the OAS,¹⁹ twenty-three have specific constitutional requirements for the division of treaty authority between signing and ratification,²⁰ while twelve member states' constitutions are silent on this issue.²¹ The

¹⁸ See Chapter XVI, art. 112.

¹⁹ See ABOUT THE OAS, MEMBER STATES, ORGANIZATION OF AMERICAN STATES, *available at* <http://www.oas.org/main/main.asp?sLang=E&sLink=../documents/eng/memberstates.asp> (last visited Dec. 29, 2006) (providing a full list of the OAS member states).

²⁰ These member states are: Argentina, CONST. ARG. §§ 27, 44, 75(22), 99(1), *available at* http://pdba.georgetown.edu/Constitutions/Argentina/argen94_e.html (last visited Dec. 29, 2006); Bolivia, BOLIVIA CONST. arts. 52(12), 96(2), 120(9), *available at* <http://www.georgetown.edu/pdba/Constitutions/Bolivia/consboliv1615.html> (last visited Dec. 29, 2006); Brazil, C.F. arts. 4, 102(III) (b), 109(III), *available at* <http://pdba.georgetown.edu/Constitutions/Brazil/brazil.html> (last visited Dec. 29, 2006); Canada, CANADA CONST. art. 132, *available at* http://laws.justice.gc.ca/en/const/c1867_e.html#executive (last visited Dec. 29, 2006); Chile, CHILE CONST. art. 50, *available at* <http://www.georgetown.edu/pdba/Constitutions/Chile/chile01.html> (last visited Dec. 29, 2006); Colombia, COLOMBIA CONST. arts. 44, 93, 101, 150(16), 189(2), 241(10), *available at* <http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html> (last visited Dec. 29, 2006); Costa Rica, COSTA RICA CONST. arts. 121(4), 140(10), (12), *available at* <http://pdba.georgetown.edu/Constitutions/Costa/costa.html> (last visited Dec. 29, 2006); Cuba, CUBA CONST. arts. 90, 98, *available at* <http://www.georgetown.edu/pdba/Constitutions/Cuba/cuba2002.html> (last visited Dec. 29, 2006); Dominican Republic, DOMINICAN REPUBLIC CONST. arts. 37, 55, *available at* <http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep02.html> (last visited Dec. 29, 2006); Ecuador, ECUADOR CONST. arts. 161, 162, 163, 171(12), 210, 272.74, *available at* <http://www.georgetown.edu/pdba/Constitutions/Ecuador/ecuador98.html> (last visited Dec. 29, 2006); El Salvador, EL SALVADOR CONST. arts. 131(7), 144 – 149, 167(4), 182(3), *available at* <http://www.georgetown.edu/pdba/Constitutions/ElSal/ElSal83.html> (last visited Dec. 29, 2006); Guatemala, GUATEMALA CONST. arts. 46, 102(u), 171(1), 183(k), 272(e), *available at* <http://www.georgetown.edu/pdba/Constitutions/Guate/guate85.html> (last visited Dec. 29, 2006); Haiti, HAITI CONST. arts. 98-3(3), 139, 276, 276-2, *available at* <http://www.georgetown.edu/pdba/Constitutions/Haiti/haiti1987.html> (last visited Dec. 29, 2006); Honduras, HONDURAS CONST. arts. 15 – 21, *available at* <http://www.georgetown.edu/pdba/Constitutions/Honduras/hond05.html> (last visited Dec. 29, 2006); Mexico, CONST. arts. 15, 76, 89, 104, 117, 133, *available at* <http://pdba.georgetown.edu/Constitutions/Mexico/mexico.html> (last visited Dec. 29, 2006); Nicaragua, NICARAGUA CONST. arts. 138(12), 150(8), *available at* <http://www.georgetown.edu/pdba/Constitutions/Nica/nicarefs.html> (last visited Dec. 29, 2006); Panama, PANAMA CONST. arts. 153(3), 179(8), *available at*

majority of the twelve member states which do not have constitutional provisions addressing the signing and ratification of treaties are still members of the British Commonwealth system.²²

<http://www.georgetown.edu/pdba/Constitutions/Panama/panama1994.html> (last visited Dec. 29, 2006); Paraguay, PARAGUAY CONST. arts. 137, 141, 142, 202(9), 224, *available at* http://www.oefre.unibe.ch/law/icl/pa0000_.html (last visited Dec. 29, 2006); Peru, PERU CONST. arts. 55 - 57, 102(3), *available at* <http://www.georgetown.edu/pdba/Constitutions/Peru/per93.html> (last visited Dec. 29, 2006); Suriname, SURINAME CONST. 72, 103 – 105, 144, *available at* <http://www.georgetown.edu/pdba/Constitutions/Suriname/english.html> (last visited Dec. 29, 2006); the United States; Uruguay, URUGUAY CONST. arts. 168(20), 239(1), *available at* <http://www.georgetown.edu/pdba/Constitutions/Uruguay/uruguay04.html> (last visited Dec. 29, 2006); Venezuela, VENEZUELA CONST. arts. 154, 336(5), *available at* <http://www.georgetown.edu/pdba/Constitutions/Venezuela/ven1999.html> (last visited Dec. 29, 2006).

²¹ These member states are: Antigua & Barbuda, ANTIGUA & BARBUDA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Antigua/antigua-barbuda.html> (last visited Dec. 29, 2006); The Bahamas, BAHAMAS CONST., *available at* http://www.georgetown.edu/pdba/Constitutions/Bahamas/bah73_.html (last visited Dec. 29, 2006); Barbados, BARBADOS CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Barbados/barbados66.html> (last visited Dec. 29, 2006); Belize, BELIZE CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Belize/belize81.html> (last visited Dec. 29, 2006); Dominica, DOMINICA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Dominica/sch2.html#1> (last visited Dec. 29, 2006); Grenada, GRENADA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Grenada/gren73eng.html> (last visited Dec. 29, 2006); Guyana, GUYANA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Guyana/guyana96.html> (last visited Dec. 29, 2006); Jamaica, JAMAICA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Jamaica/jam62.html> (last visited Dec. 29, 2006); St. Kitts & Nevis, ST. KITTS & NEVIS CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Kitts/kitts83.html> (last visited Dec. 29, 2006); St. Lucia, ST. LUCIA CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Lucia/Luc78.html> (last visited Dec. 29, 2006); St. Vincent & the Grenadines, ST. VINCENT & THE GRENADINES CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Vincent/stvincent79.html> (last visited Dec. 29, 2006); Trinidad & Tobago, TRINIDAD & TOBAGO CONST., *available at* <http://www.georgetown.edu/pdba/Constitutions/Trinidad/trinidad76.html> (last visited Dec. 29, 2006).

²² See THE CONSTITUTION OF ANTIGUA & BARBUDA, GOVERNMENT OF ANTIGUA & BARBUDA, *available at* http://www.ab.gov.ag/gov_v2/shared/constitution.html (last visited Dec. 29, 2006); OVERVIEW AND STRUCTURE OF THE GOVERNMENT, THE GOVERNMENT OF THE BAHAMAS, *available at* <http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/AD50C97FCEE345FE06256F02007F60C0> (last visited Dec. 29, 2006); THE POLITICS, ABOUT BELIZE, THE GOVERNMENT OF BELIZE, *available at* <http://www.belize.gov.bz/belize/political.html> (last visited Dec. 29, 2006); GOVERNMENT INFORMATION, BARBADOS, *available at* <http://www.barbados.gov.bb/govt.htm> (last visited Dec. 29, 2006); GRENADA, CIA WORLD FACTBOOK, *available at* <http://www.cia.gov/cia/publications/factbook/geos/gj.html> (last visited Dec. 29, 2006); GUYANA, CIA WORLD FACTBOOK, *available at* <http://www.cia.gov/cia/publications/factbook/geos/gy.html> (last visited Dec. 29, 2006); JAMAICA, CIA WORLD FACTBOOK, *available at* <http://www.cia.gov/cia/publications/factbook/geos/jm.html> (last visited Dec. 29, 2006); ST. KITTS & NEVIS, CIA WORLD FACTBOOK, *available at* <http://www.cia.gov/cia/publications/factbook/geos/sc.html> (last visited Dec. 29, 2006); ST. LUCIA, CIA WORLD FACTBOOK, *available at* <http://www.cia.gov/cia/publications/factbook/geos/st.html> (last visited Dec. 29, 2006); ST. VINCENT & THE GRENADINES, CIA WORLD FACTBOOK, *available at*

Generally, member states with constitutional treaty signing and ratification provisions divide treaty authority between the executive, legislative, and, frequently, judicial branches.²³ In these systems, the executive is empowered to enter into and sign international treaties, including those promulgated by the OAS, on behalf of his country.²⁴ However, in order for a signed treaty to become legally binding on the member state, the legislative branch must receive the treaty text from the executive and vote to either ratify or reject the treaty provisions²⁵; if the provisions are ratified, the treaty

<http://www.cia.gov/cia/publications/factbook/geos/vc.html> (last visited Dec. 29, 2006). Trinidad & Tobago is the only member of this constitutional group that is not part of the British Commonwealth. See TRINIDAD & TOBAGO, CIA WORLD FACTBOOK, *available at*

<http://www.cia.gov/cia/publications/factbook/geos/td.html> (last visited Dec. 29, 2006).

²³ See CONST. ARG.; BOLIVIA CONST.; C.F. (Brazil); CANADA CONST.; CHILE CONST.; COLOMBIA CONST.; COSTA RICA CONST.; DOMINICAN REPUBLIC CONST.; ECUADOR CONST.; EL SALVADOR CONST.; GUATEMALA CONST.; HAITI CONST.; HONDURAS CONST.; CONST. (Mexico); NICARAGUA CONST.; PANAMA CONST.; PARAGUAY CONST.; PERU CONST.; SURINAME CONST.; U. S. CONST.; URUGUAY CONST.; VENEZUELA CONST.

²⁴ CONST. ARG. § 99(1)(11) (“He concludes and signs treaties, concordats and other agreements required for the maintenance of good relations with international organizations and foreign powers, he receives their ministers and admits their consuls.”); BOLIVIA CONST. art 96(2) (stating that the President of the Republic of Bolivia is to negotiate international treaties, subject to the approval of the legislature); CHILE CONST. art 50 (stating that the President must send any treaties to the Congress for ratification prior to their becoming legally valid); COLOMBIA CONST. 189(2) (providing that the President, as well as his diplomatic representatives, has the power to negotiate international treaties); COSTA RICA CONST. art. 140(10) (providing that the President and his ministers have the ability to carry out Costa Rican treaty negotiations); CUBA CONST. art 98 (providing that the Council of Ministers acts as the executive body which signs treaties and refers them on for legislative approval); DOMINICAN REPUBLIC CONST. art 55 (designating the President as the officer who directs international treaty negotiations); ECUADOR CONST. art. 171(12) (providing that the President acts as the negotiator for treaties); EL SALVADOR CONST. art. 167(4) (designating the Council of Ministers as the treaty negotiating body for El Salvador); GUATEMALA CONST. art. 183(o) (requiring that the President ensure that any treaties signed conform with the constitution before sending them to the Legislature for approval); HAITI CONST. art. 139 (stating that the President negotiates treaties and sends them to the Legislature for ratification); HONDURAS CONST. art. 21 (requiring that the President, as the chief executive, negotiate treaties with other nations and international organizations, and send them to the Legislature for immediate debate and ratification vote); CONST. (Mexico) art. 89 (stating that the President’s powers include “direct[ing] diplomatic negotiations and mak[ing] treaties with foreign powers, submitting them to the ratification of the federal Congress.”); NICARAGUA CONST. art. 150(8) (naming the President as the source of treaty negotiations); PANAMA CONST. art. 179(8) (providing that the President alone retains the ability to negotiate treaties); PERU CONST. art. 57, 118 (1), (11) (providing that the President is to negotiate international treaties, which must conform with the constitution); SURINAME CONST. art. 103 (granting the President the power to sign and ratify treaties, but also requiring the consent of the National Assembly before the treaty becomes law); U.S. CONST. art. II § 2, cl. 2; URUGUAY CONST. art. 168(20) (allowing the President and Council of Ministers to enter into treaties); VENEZUELA CONST. art. 154 (designating the President as the official treaty negotiator).

²⁵ CONST. ARG. § 75(13), (22), (24); BOLIVIA CONST. art. 59(12); CANADA CONST. art. 132 (“The Parliament and Government of Canada shall have all Powers necessary or proper for performing the

assumes the status of domestic law,²⁶ if the treaty is rejected, the member state still remains a signatory of the treaty, however the treaty terms are not valid domestic law and do not bind the member state. If a treaty is ratified and a question of compatibility between the member states' constitution and/or domestic laws and the treaty provisions arises, a federal court will typically have jurisdiction to decide the constitutionality of the treaty provision and/or its applicability in the face of domestic law or pre-existing treaties.²⁷ A minority of member states' constitutions provide that international treaty provisions, once ratified, will trump constitutional and domestic law provisions.²⁸ The majority of member states' constitutions, however, provide for the use of a balancing test

Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.”); CHILE CONST. art. 50; COLOMBIA CONST. 101, 150(16); COSTA RICA CONST. art. 105, 121(4); CUBA CONST. art. 90; DOMINICAN REPUBLIC CONST. art. 37; ECUADOR CONST. arts. 130(7), 161, 162; EL SALVADOR CONST. 131(7), 148; GUATEMALA CONST. arts. 102(u), 171(1); HAITI CONST. art. 98-3(3), 276; HONDURAS CONST. arts. 16, 20, 21; CONST. (Mexico) art. 76; NICARAGUA CONST. art. 138(12); PANAMA CONST. art. 153(3); PARAGUAY CONST. arts. 141, 224; PERU CONST. arts. 56 – 57, 102(3); SURINAME CONST. art. 103; U.S. CONST. art. II § 2, cl. 2; URUGUAY CONST. art. 168(20); VENEZUELA CONST. art. 154.

²⁶ See CONST. ARG. § 75(22), (24) (providing the requisite majority number of votes necessary to ratify treaties; the majority requirements depend on the scope of the treaty and the entity with whom the treaty is to be entered into with); BOLIVIA CONST. art. 59(12); CANADA CONST. art. 132; CHILE CONST. art. 50; COLOMBIA CONST. art. 150(16); COSTA RICA CONST. art. 105(4) (providing the majority votes required to ratify treaties, as well as a small exception to the ratification requirement); CUBA CONST. art. 90; DOMINICAN REPUBLIC CONST. art. 37; ECUADOR CONST. art. 162 (providing the required majority votes needed to ratify a treaty); EL SALVADOR CONST. 148 (describing the required votes necessary to pass treaties and providing a list of considerations which the Legislature must go through before ratifying a treaty); GUATEMALA CONST. arts. 102(u), 171(1); HAITI CONST. arts. 98-3(3), 276; HONDURAS CONST. art. 16; CONST. (Mexico) art. 117; NICARAGUA CONST. art. 138(12); PANAMA CONST. art. 153(3); PARAGUAY CONST. art. 141 – 142; PERU CONST. art. 56 – 57, 102(3); SURINAME CONST. art. 104; U.S. CONST. art. II § 2, cl. 2 (requiring a 2/3 majority vote in the Senate to ratify a treaty); URUGUAY CONST. art. 168(20); VENEZUELA CONST. art. 154.

²⁷ See BOLIVIA CONST. art. 120(9); BRAZIL CONST. arts. 102 (III)(b), 109 (III); COLOMBIA CONST. art. 241(10); ECUADOR CONST. arts. 162, 210; EL SALVADOR art. 182(3); GUATEMALA CONST. art. 272(e); HONDURAS CONST. art. 17; CONST. (Mexico) art. 104; SURINAME CONST. art. 144; U.S. CONST. art. III § 2; URUGUAY CONST. art. 239(1); VENEZUELA CONST. art. 336(5).

²⁸ See COLOMBIA CONST. arts. 44, 93; ECUADOR CONST. art. 162; EL SALVADOR CONST. art. 144; GUATEMALA CONST. art. 46; HAITI CONST. arts. 276, 276-2; HONDURAS CONST. art. 18; CONST. (Mexico) art. 133 (subsuming the laws of individual Mexican states to federal law, including treaty law); PARAGUAY CONST. art. 142 (limiting the ways in which treaty provisions addressing human rights can be renounced or otherwise changed).

of validity or explicitly state that treaty provisions are subservient to constitutional and domestic law provisions.²⁹

Ecuador,³⁰ El Salvador,³¹ Honduras,³² and Peru³³ have constitutional articles specifically addressing international treaties. The Ecuadorian article sets out the instances in which international treaties may be entered into, as well as the procedural requirements for treaty ratification and potential judicial deliberation.³⁴ The Salvadorian article contains more expansive limits on treaties on the policy areas of treaty promulgation and their interaction with constitutional and domestic laws in addition to the procedural requirements necessary to debate and ratify treaties, and for later judicial proceedings regarding the treaty provisions.³⁵ Besides the standard procedural requirements for treaty consideration and ratification, the Honduran article contains an initial statement of the motivating societal and political goals for Honduran participation in international organizations and societies.³⁶ Finally, the Peruvian article allows the executive to enter into international treaties for the purposes of human rights, national integrity, national defense, and financial obligations of the state, subject to Congressional approval.³⁷

Even member states which lack specific constitutional provisions relating to treaty signing and ratification use the two-step signing and ratification to express a collective,

²⁹ See BOLIVIA CONST. art. 120(9); BRAZIL CONST. art. 109(III); PARAGUAY CONST. art. 137 (reaffirming that the Paraguayan Constitution is the primary source of law in the nation); PERU CONST. art. 57; SURINAME CONST. art. 144.

³⁰ ECUADOR CONST. chap. 6.

³¹ EL SALVADOR CONST. arts. 144 – 149.

³² HONDURAS CONST. chap. 3.

³³ PERU CONST. chap. 2.

³⁴ *Id.* at arts. 162 – 163.

³⁵ EL SALVADOR CONST. arts. 144 – 149.

³⁶ HONDURAS CONST. chap. 3.

³⁷ PERU CONST. arts. 56 – 57.

national decision as to whether to adopt treaty provisions as part of the member states' binding legal structure.³⁸

Part III – General correlations and the impact of treaty reservations

A. Timeline observations

The treaties addressed in this article were promulgated from 1947 to 2002. This time period was selected because it encompasses several important phases in OAS history: the immediate post-World War II period, the Cold War, and the post-Cold War period. What is interesting to note is that, across a timeline, the much-vaunted opinion that the OAS was inhibited from fully functioning during the Cold War period appears to lose some of its validity.³⁹

Fifty-five treaties were selected for study in this article. Across a timeline, treaty promulgation figures for the period of study are as follows: One treaty in 1947⁴⁰; three treaties in 1948⁴¹; one treaty in 1949⁴²; one treaty in 1952⁴³; three treaties in 1954⁴⁴; one treaty in 1957⁴⁵; one treaty in 1958⁴⁶; one treaty in 1959⁴⁷; one treaty on 1963⁴⁸; one treaty in 1967⁴⁹; one treaty in 1969⁵⁰; one treaty in 1971⁵¹; three treaties in 1975⁵²; one

³⁸ See *infra* Parts II, III, IV (discussing the signing and ratification processes occurring in OAS member states with and without constitutional provisions addressing treaty ratification procedures and primacy issues).

³⁹ See generally CAROLYN M. SHAW, COOPERATION, CONFLICT AND CONSENSUS IN THE ORGANIZATION OF AMERICAN STATES (2004) (discussing the history of OAS actions and placing heavy emphasis on the role of the Cold War on diplomatic relations between OAS member states).

⁴⁰ Inter-American treaty of reciprocal assistance (Rio treaty).

⁴¹ Inter-American Convention on the Granting of Political Rights to Women (I); Inter-American Convention on the Granting of Political Rights to Women (II); Economic Agreement of Bogotá.

⁴² Agreement on Privileges and Immunities of the Organization of American States.

⁴³ Additional Protocol to the Pan-American Sanitary Code.

⁴⁴ Convention on Diplomatic Asylum; Convention on Territorial Asylum; Convention for the Promotion of Inter-American Cultural Relations.

⁴⁵ Protocol to the Convention on Duties and Rights of States in the Event of Civil Strife.

⁴⁶ Protocol of Amendment to the Convention on the Inter-American Institute of Agricultural Sciences.

⁴⁷ Agreement Establishing the Inter-American Development Bank.

⁴⁸ Inter-American Convention on Facilitation of International Waterborne Transportation (Convention of Mar del Plata).

⁴⁹ Protocol of Amendment to the Charter of the OAS "Protocol of Buenos Aires".

treaty in 1976⁵³; seven treaties in 1979⁵⁴; one treaty in 1981⁵⁵; four treaties in 1984⁵⁶; two treaties in 1985⁵⁷; one treaty in 1988⁵⁸; three treaties in 1989⁵⁹; one treaty in 1990⁶⁰; one treaty in 1991⁶¹; three treaties in 1992⁶²; three treaties in 1993⁶³; four treaties in 1994⁶⁴; one treaty in 1996⁶⁵; one treaty in 1997⁶⁶; two treaties in 1999⁶⁷; and one treaty in 2002.⁶⁸

⁵⁰ American Convention on Human Rights, “Pact of San Jose, Costa Rica”.

⁵¹ Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes Against Persons and Related Extortion that are of International Significance.

⁵² Inter-American Convention on the Taking of Evidence Abroad; Inter-American Convention on International Commercial Arbitration; Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance (Rio treaty).

⁵³ Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations (convention of San Salvador).

⁵⁴ Convention on the Inter-American Institute for Cooperation on Agriculture; Inter-American Convention on Execution of Preventive Measures; Inter-American Convention on General Rules of Private International Law; Inter-American Convention on Domicile of Natural Persons in Private International Law; Inter-American Convention on Conflicts of Laws Concerning Commercial Companies; Inter-American Convention on Proof of and Information on Foreign Law; Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

⁵⁵ Inter-American Convention on Extradition.

⁵⁶ Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments; Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors; Inter-American Convention on Personality and Capacity of Judicial Persons in Private International Law; Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad.

⁵⁷ Protocol of Amendment to the Charter of the OAS “Protocol of Cartagena de Indias”; Inter-American Convention to Prevent and Punish Torture.

⁵⁸ Additional Protocol to the American Convention on Human Rights in Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador”.

⁵⁹ Inter-American Convention on the International Return of Children; Inter-American Convention on Support Obligations; Inter-American Convention on Contracts for International Carriage of Goods by Road.

⁶⁰ Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

⁶¹ Inter-American Convention to Facilitate Disaster Assistance.

⁶² Agreement Establishing the Inter-American Institute for Global Change Research; Protocol of Amendments to the Charter of the OAS “Protocol of Washington”; Inter-American Convention on Mutual Assistance in Criminal Matters.

⁶³ Inter-American Convention on Serving Criminal Sentences Abroad; Protocol of Amendment to the Charter of the OAS “Protocol of Managua”; Optional Protocol related to the Inter-American Convention on Mutual Assistance in Criminal Matters.

⁶⁴ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women “Convention of Belem do Para”; Inter-American Convention on International Traffic in Minors; Inter-American Convention on the Forced Disappearance of Persons; Inter-American Convention on the Law Applicable to International Contracts.

⁶⁵ Inter-American Convention Against Corruption.

⁶⁶ Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.

⁶⁷ Inter-American Convention on Transparency in Conventional Weapons Acquisitions; Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

⁶⁸ Inter-American Convention Against Terrorism.

Assuming that the post-World War II period ended around the year 1954,⁶⁹ and that the Cold War period extended from 1954 – 1991,⁷⁰ the treaty promulgation figures indicate that six treaties were promulgated during the post-World War II period, thirty-four treaties were promulgated during the Cold War period, and fifteen treaties were promulgated during the post-Cold War period. It appears that, at least in the realm of OAS treaty law, the Cold War period was not a period of inactivity or inability to reach major consensus; nor was consensus during this period limited to a severely restricted policy area or areas. This observation undermines the general thought that the Cold War period in inter-American relations was one solely of tension and essentially a battle between democracy and communism which caused all other policy areas to fall by the wayside.⁷¹ To the author, these observations are indicative of a split between diplomatic policy and actions, which can – and indeed often must – be circumscribed by the shifting dynamic of world politics at a given time, and international legal policy.

B. General signing and ratification correlations

When a member state signs an OAS treaty, how indicative is this signature of future success in domestic ratification? Or, conversely, if a member state opts not to sign an OAS treaty, what are the chances that the treaty will be ratified by the member states' domestic legislature anyway? The answers to these questions vary by the member state, but are in no way intuitive.

⁶⁹ The author has selected 1954 as the end of the post-World War II period and the beginning of the Cold War period because of this year's relationship to the Korean Conflict.

⁷⁰ The author selected 1991 as the end of the Cold War period because of global events (particularly those in Europe and the Middle East) at the time.

⁷¹ For a discussion of the OAS which tends to emphasize the idea of increased friction between member states and policy goals during this time, see SHAW, *supra* note 50, at 95 – 132 (2004).

Antigua & Barbuda, having ratified twelve of the OAS treaties addressed in this study,⁷² was actually a signatory to eight treaties,⁷³ giving it a negative correlation ratio between signing and ratification. Argentina has been a signatory to thirty-eight OAS treaties,⁷⁴ and has ratified thirty-four overall,⁷⁵ giving it a positive correlation ratio of approximately 90%.

The Bahamas is a signatory to thirteen OAS treaties,⁷⁶ and has ratified eleven,⁷⁷ giving it a positive correlation ratio of approximately 85%. Barbados, a signatory to just nine OAS treaties,⁷⁸ has ratified eight treaties,⁷⁹ for a positive correlation ratio of 89%. Belize, a signatory to a mere six OAS treaties,⁸⁰ has in fact ratified eleven OAS treaties overall,⁸¹ giving it a negative correlation ratio. Bolivia, an active signatory member state having signed forty-seven OAS treaties,⁸² has ratified only twenty-five,⁸³ for a positive correlation ratio of 53%. Likewise, Brazil is also a signatory to forty-seven OAS

⁷² See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *id.*

treaties,⁸⁴ although its positive correlation ratio is higher (81%), as it has ratified thirty-eight of these treaties.⁸⁵

Canada has signed thirteen OAS treaties⁸⁶ and ratified eleven of them,⁸⁷ for a positive correlation ratio of approximately 85%. Chile has signed forty-eight OAS treaties,⁸⁸ yet has ratified only twenty-seven,⁸⁹ for a positive correlation ratio of 56%. Colombia is a signatory to forty-three OAS treaties⁹⁰ and has ratified thirty-two,⁹¹ for a positive correlation ratio of 75%. Similarly, Costa Rica has signed forty-seven OAS treaties,⁹² ratifying thirty-six,⁹³ for a positive correlation ratio of 77%. During the years when Cuba was allowed to be an active member of the OAS, it was a signatory to eleven OAS treaties,⁹⁴ and ratified six,⁹⁵ for a positive correlation ratio of 55%.

Dominica is a signatory to only eight OAS treaties,⁹⁶ yet has ratified twelve of them overall,⁹⁷ giving it a negative correlation ratio. The Dominican Republic, a

⁸⁴ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁸⁵ See *id.*

⁸⁶ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁸⁷ See *id.*

⁸⁸ See *id.*

⁸⁹ See *id.*

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ See *id.*

signatory to thirty-nine OAS treaties,⁹⁸ has ratified only twenty,⁹⁹ for a positive correlation ratio of 51%. Ecuador, a signatory to fifty-one OAS treaties,¹⁰⁰ has ratified forty-one of them,¹⁰¹ for a positive correlation ratio of 80%. El Salvador, with thirty-seven OAS treaties signed,¹⁰² has ratified twenty-eight of them,¹⁰³ giving it a positive correlation ratio of 75%.

Grenada, a signatory to ten OAS treaties,¹⁰⁴ has also ratified ten treaties,¹⁰⁵ giving it a perfect positive correlation ratio; however, it should be noted that two of the treaties ratified were not signed first, and two of the treaties signed were not ultimately ratified.¹⁰⁶ Guatemala has signed forty-three OAS treaties,¹⁰⁷ and ratified thirty-six,¹⁰⁸ for a positive correlation ratio of 84%. Guyana, a signatory to only eight OAS treaties overall,¹⁰⁹ has ratified six of them,¹¹⁰ for a positive correlation ratio of 75%.

⁹⁸ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ See *id.*

¹⁰⁹ See *id.*

¹¹⁰ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

Haiti, having signed forty OAS treaties, has the lowest positive correlation ratio, 43%, as it has only ratified seventeen of those treaties signed.¹¹¹ Honduras signed thirty-three OAS treaties,¹¹² ratifying twenty-three,¹¹³ for a positive correlation ratio of 70%. Jamaica has signed thirteen OAS treaties¹¹⁴ and has ratified none of them,¹¹⁵ for a positive correlation ratio of 70%.

Mexico, one of the more prolific signatories, having signed forty-three OAS treaties overall,¹¹⁶ has ratified forty treaties,¹¹⁷ for a positive correlation ratio of 93%. Nicaragua has signed thirty-seven OAS treaties,¹¹⁸ and has ratified twenty-six,¹¹⁹ for a positive correlation ratio of 70%. Panama, a signatory to forty-five OAS treaties,¹²⁰ has ratified thirty-seven such treaties,¹²¹ giving it a positive correlation ratio of 82%. Paraguay, the second-most frequent OAS treaty signatory, having signed fifty treaties, has ratified forty-one, for a positive correlation ratio of 82%.¹²² Peru has signed forty-six OAS treaties,¹²³ and has ratified thirty-seven,¹²⁴ giving it a positive correlation ratio of 80%.

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ *See id.*

¹¹⁴ *See id.*

¹¹⁵ *See id.*

¹¹⁶ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹²³ *See id.*

St. Kitts & Nevis has signed ten OAS treaties,¹²⁵ and ratified six overall,¹²⁶ for a positive correlation ratio of 60%. St. Lucia has both signed and ratified eight OAS treaties,¹²⁷ although there were two treaties which were not both signed and ratified, thus lowering its overall positive correlation ratio to 80%. St. Vincent & the Grenadines, a signatory to eight OAS treaties,¹²⁸ has ratified six treaties,¹²⁹ giving it a positive correlation ratio of 75%. Suriname has signed thirteen OAS treaties,¹³⁰ and has ratified eleven,¹³¹ for a positive correlation ratio of 85%.

Trinidad & Tobago has signed eleven OAS treaties and ratified ten of them,¹³² giving it a positive correlation ratio of 91%, one of the highest of the OAS member states. The United States has signed twenty-five OAS treaties during the period covered by this study,¹³³ ratifying sixteen of them¹³⁴ for a positive correlation ratio of 64%. Uruguay, another prodigious signatory to OAS treaties, having signed forty-eight,¹³⁵ has ratified thirty-nine,¹³⁶ for a positive correlation ratio 81%. Venezuela has also signed forty-eight

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *See id.*

¹²⁷ *See id.*

¹²⁸ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹²⁹ *See id.*

¹³⁰ *See id.*

¹³¹ *See id.*

¹³² *See id.*

¹³³ *See id.*

¹³⁴ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹³⁵ *See id.*

¹³⁶ *See id.*

OAS treaties,¹³⁷ and ratified thirty-six of them,¹³⁸ for a total positive correlation ratio of 75%.

The above statistical information allows member states to be grouped into several categories – those with high positive correlation ratios (from 85% upwards), those with medium to standard positive correlation ratios (from 60% to 85%), those with low correlation ratios in relation to the ratios of other member states (under 60%), and those with negative correlation ratios. These categories in turn can act as predictors for the future relationship between policy preferences, as expressed through OAS treaty signing, and domestic legal and legislative preferences, as expressed through the ultimate decision on whether to ratify an OAS treaty.

The high correlation category includes Argentina, the Bahamas, Barbados, Canada, Mexico, Suriname, and Trinidad & Tobago. These member states are varied in terms of size, constitutional provisions, and types of government, indicating that there are few common denominators between member states which have high correlation ratios.¹³⁹ The medium to standard category includes Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, the United States, Uruguay, and Venezuela. Again, the member states in this category cut across the spectrum of size, governmental structure and policy, legal structure, and societal structure.¹⁴⁰ The low correlation category includes Bolivia, Chile, Cuba, the Dominican Republic, and Haiti. And finally, the negative correlation category includes Antigua &

¹³⁷ *See id.*

¹³⁸ *See id.*

¹³⁹ *See supra* Part II. A.

¹⁴⁰ *See id.*

Barbuda, Belize, and Dominica. All of the member states in the negative correlation category lack constitutional provisions addressing the procedure for signing and ratifying treaties,¹⁴¹ suggesting that, where there is no set procedure for submitting treaties to the legislature for ratification, it is more difficult to predict whether signing a treaty is indicative of future success in ratification and, perhaps more importantly, it is difficult to predict whether the lack of signing is indicative of a future lack of success for a treaty during the ratification process.

C. Use of Reservations in OAS Treaties

Although OAS member states become signatories to the entire body of a treaty, they do retain the ability to condition or alter the terms of their signing of a treaty through reservations. Some reservations are in the form of explaining the member states' policy reasons for signing the treaty; however, the relevant reservations for this article are those having to do with the application of specific treaty provisions to existing domestic law or other international agreements already in effect. This type of reservation is important because it tends to undermine some of the general statistics presented in Part II.B. and provides a more complete picture of the extent to which OAS treaties in their pure, unadulterated forms are signed and ratified by member states.

Of the member states included in the high correlation ratio category, Argentina reserved on seven treaties¹⁴²; the Bahamas reserved on none¹⁴³; Barbados reserved on one

¹⁴¹ *See id.*

¹⁴² *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁴³ *See id.*

treaty¹⁴⁴; Canada reserved on two treaties¹⁴⁵; Mexico reserved on fifteen treaties¹⁴⁶; Suriname reserved on none¹⁴⁷; and Trinidad & Tobago reserved on none.¹⁴⁸ This indicates that the wholesale primacy of international treaty law over domestic law is strongest in Trinidad & Tobago, Suriname and the Bahamas, and weakest in Argentina and Mexico, despite the high correlation between signing and ratification by these member states. Canada and Barbados have signed and ratified fewer OAS treaties overall than Argentina and Mexico, however their overall propensity to subsume OAS treaty law to domestic law is not as strong.

Of the member states in the medium/standard correlation ratio category, Brazil reserved on seven treaties¹⁴⁹; Colombia reserved on one treaty¹⁵⁰; Costa Rica reserved on none¹⁵¹; Ecuador reserved on seven treaties¹⁵²; El Salvador reserved on two treaties¹⁵³; Grenada reserved on one treaty¹⁵⁴; Guatemala reserved on fifteen treaties¹⁵⁵; Guyana reserved on one treaty¹⁵⁶; Honduras reserved on five treaties¹⁵⁷; Jamaica reserved on one

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *See id.*

¹⁴⁸ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁴⁹ *See id.*

¹⁵⁰ *See id.*

¹⁵¹ *See id.*

¹⁵² *See id.*

¹⁵³ *See id.*

¹⁵⁴ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*

¹⁵⁷ *See id.*

treaty¹⁵⁸; Nicaragua reserved on one treaty¹⁵⁹; Panama reserved on seven treaties¹⁶⁰; Paraguay reserved on one treaty¹⁶¹; Peru reserved on five treaties¹⁶²; St. Kitts & Nevis reserved on one treaty¹⁶³; St. Lucia reserved on none¹⁶⁴; St. Vincent & the Grenadines reserved on none¹⁶⁵; the United States reserved on seven treaties¹⁶⁶; Uruguay reserved on ten treaties¹⁶⁷; and Venezuela reserved on five treaties.¹⁶⁸ It is perhaps not surprising that many of the member states in the medium/standard category reserve on OAS treaties, as member states in this category generally display a strong sense of domestic law primacy over international treaties. It is surprising, however, that Colombia, Ecuador, El Salvador, Guatemala, and Honduras, member states with provisions expressly elevating the status of international law and international treaty law to higher than domestic law,¹⁶⁹ both fall in the medium/standard category and routinely use reservations in treaty signing.

Among the low correlation category, Bolivia reserved on none¹⁷⁰; Chile reserved on eight treaties¹⁷¹; Cuba reserved on one treaty¹⁷²; the Dominican Republic reserved on

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁶¹ *See id.*

¹⁶² *See id.*

¹⁶³ *See id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁶⁷ *See id.*

¹⁶⁸ *See id.*

¹⁶⁹ *See supra* Part II. B.

¹⁷⁰ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a

three treaties¹⁷³; and Haiti reserved on four treaties.¹⁷⁴ Given the status of these member states as part of the low correlation category, the addition of reservations suggests that the sense of domestic law primacy over international, and particularly OAS, treaty law in these member states is very strong.

Finally, reservations by member states in the negative correlation category are limited to one treaty reservation by Dominica.¹⁷⁵ This is not surprising, as the majority of reservations are made at the time of treaty signing rather than ratification, and it is far less likely that states which tend to ratify, rather than sign and ratify OAS treaties, will have the opportunity to make express reservations during the signing process.

Part IV – The importance of policy areas

A. Policy area classification methodology

In order to better assess the impact of the OAS treaties studied in this article, the treaties were broken down into one of thirteen categories by the author. The categories, created by the author without regard to self-classifying categories used by the OAS itself, are: 1) banking; 2) children and children's rights; 3) contract and commercial law; 4) criminal law; 5) governmental law and policy; 6) health policy; 7) OAS housekeeping matters (additional, largely non-policy driven protocols to the original OAS agreements and documents); 8) human rights and cultural rights/preservation; 9) international law; 10) international security; 11) policy and research support; 12) science and technology support; and 13) women's rights and issues.

searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁷¹ *See id.*

¹⁷² *See id.*

¹⁷³ *See id.*

¹⁷⁴ *See id.*

¹⁷⁵ *See id.*

The banking policy area contains only one treaty, but it is a seminal one, the Agreement Establishing the Inter-American Development Bank of 1959.¹⁷⁶ Children encompasses four treaties¹⁷⁷; Contracts & Commercial law encompasses six treaties¹⁷⁸; Criminal law encompasses three treaties¹⁷⁹; Governmental law and policy encompasses three treaties¹⁸⁰; Health encompasses one treaty, although again this is an important protocol treaty¹⁸¹; Housekeeping encompasses seven treaties¹⁸²; Human rights and cultural rights/preservation encompasses ten treaties¹⁸³; International law encompasses nine treaties¹⁸⁴; International security encompasses five treaties¹⁸⁵; Policy and research

¹⁷⁶ Agreement Establishing the Inter-American development bank.

¹⁷⁷ Inter-American convention on international traffic in minors; Inter-American convention on conflict of laws concerning the adoption of minors; Inter-American convention on the international return of children; Inter-American convention on support obligations.

¹⁷⁸ Economic Convention of Bogotá; Inter-American convention on facilitation of international waterborne transportation; Inter-American convention on international commercial arbitration; Inter-American convention on conflicts of laws concerning commercial companies; Inter-American convention on Ks for the international carriage of goods by road; Inter-American convention on the law applicable to international contracts.

¹⁷⁹ Inter-American convention on mutual assistance in criminal matters; Optional protocol related to the Inter-American convention on mutual assistance in criminal matters; Inter-American convention on serving criminal sentences abroad.

¹⁸⁰ Protocol to the convention on duties and rights of states in the event of civil strife; Protocol of amendments to the charter of the OAS, "Protocol of Washington"; Inter-American convention against corruption.

¹⁸¹ Additional protocol to the Pan American sanitary code.

¹⁸² Agreement on privileges and immunities of the OAS; Convention on diplomatic asylum; Protocol amendment to the charter of the OAS, "Protocol of Buenos Aires"; Protocol of amendment to the Inter-American treaty of reciprocal assistance (Rio Treaty); Inter-American convention on execution of preventative measures; Protocol of amendment to the charter of the OAS, "Protocol of Cartagena de Indias"; Protocol amendment to the charter of the OAS, "Protocol of Managua".

¹⁸³ Inter-American treaty of reciprocal assistance; Convention for the promotion of Inter-American cultural relations; Convention on territorial asylum; American convention on human rights, "Pact of San Jose, Costa Rica"; Convention on the protection of the archeological, historical, and artistic heritage of the American nations; Inter-American convention to prevent and punish torture; Additional protocol to the American convention on human rights in the area of economic, social and cultural rights, "Protocol of San Salvador"; Protocol to the American convention on human rights to abolish the death penalty; Inter-American convention on forced disappearance of persons; Inter-American convention on the elimination of all forms of discrimination against persons with disabilities.

¹⁸⁴ Inter-American convention on the taking of evidence abroad; Inter-American convention on extraterritorial validity of foreign judgments and arbitral awards; Inter-American convention on proof of information and foreign law; Inter-American convention on domicile of natural persons in private international law; Inter-American convention on general rules of private international law; Inter-American convention on extradition; Inter-American convention on jurisdiction in the international sphere for the extraterritorial validity of foreign judgments; Additional protocol to the Inter-American convention on the

support encompasses two treaties¹⁸⁶; Science and technology support encompasses one treaty¹⁸⁷; and Women's rights and issues encompasses three treaties.¹⁸⁸

Where a treaty touches on more than one policy area, it has been placed in the policy area which is of paramount importance to the treaty. In determining general and individual member state correlation ratios, the author used a negative percentage ratio to indicate instances in which the member state was not a signatory of any treaty in the policy area but did in fact ultimately ratify the treaty. In instances where member states signed some but not all of the treaties they ultimately ratified, positive percentages over 100% were used to indicate that signing does in fact have a positive correlation at some point.

B. Overall signing to ratification correlation ratios by policy area

1. Banking

As mentioned above, the sole treaty in the Banking policy area is the Agreement Establishing the Inter-American Development Bank, which has gone on to have an important place in the politics and economics of OAS member states and the Americas. Twenty-seven of the thirty-five OAS member states are signatories to this treaty and all

taking of evidence abroad; Inter-American convention on personality and capacity of juridical persons in private international law.

¹⁸⁵ Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance; Inter-American convention to facilitate disaster assistance; Inter-American convention against the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; Inter-American convention on transparency in conventional weapons acquisitions; Inter-American convention against terrorism.

¹⁸⁶ Convention on the Inter-American institute for cooperation on agriculture; Agreement establishing the Inter-American institute for global change research.

¹⁸⁷ Protocol of amendment to the convention on the Inter-American institute of agricultural sciences.

¹⁸⁸ Inter-American Convention on the Granting of political rights of women (I); Inter-American Convention on the Granting of political rights of women (II); Inter-American convention on the prevention, punishment and eradication of violence against women, "Convention of Belem do Para".

member states both signed and ratified the treaty, making its positive correlation ratio 100%.¹⁸⁹

2. *Children*

The Children policy area has the weakest positive correlation ratio of all the policy areas at a 32.4% signing to ratification ratio. This figure indicates that, of the signatory member states to the treaties in this category, there is an imbalance in the priority of children's issues.¹⁹⁰

3. *Contracts & Commercial law*

The Contracts & Commercial law policy area has a positive correlation ratio of 50%, with the individual member states' ratios running the gamut from 0% to 100% correlation ratios.¹⁹¹

4. *Criminal law*

The Criminal law policy area has a positive correlation ratio of 53%, which is the result of a wide swing in the correlation ratios amongst the twenty-three member states involved.¹⁹²

5. *Governmental law and policy*

Interestingly, this is one of the policy areas in which all thirty-five of the OAS member states have at the very minimum signed treaties.¹⁹³ The positive correlation ratio for the Governmental law and policy policy area is 98% overall.¹⁹⁴

¹⁸⁹ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁹⁰ See *id.*

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See *id.*

6. Health policy

The Health policy area, which reflects a protocol treaty amending the Pan-American Sanitary Code, has a 71% positive correlation ratio over the seventeen member states which are signatories.¹⁹⁵

7. OAS Housekeeping agreements

This policy area also enjoys unanimous member state signing of at least one related treaty.¹⁹⁶ It features an 89% positive correlation ratio, reflecting that all member states have over 50% positive correlation ratios individually.¹⁹⁷

8. Human rights and cultural rights/preservation

Twenty-six member states have signed onto treaties relating to Human rights and cultural rights/preservation.¹⁹⁸ There is a 78% positive correlation ratio, with a disparate spectrum of individual member state correlations.¹⁹⁹

9. International law

The International law policy area tellingly only includes twenty-one member states as signatories of OAS treaties of some form.²⁰⁰ Between these signatories, there is an overall positive correlation ratio of only 38%, which is reflective of the fact that only

¹⁹⁴ *See id.*

¹⁹⁵ *See* SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

¹⁹⁶ *See id.*

¹⁹⁷ *See id.*

¹⁹⁸ *See id.*

¹⁹⁹ *See id.*

²⁰⁰ *See id.*

two of the signatories (the United States and Mexico) have a 100% positive correlation ratio.²⁰¹

10. International security

Much has been made in academic circles about the paramount role that security issues play in OAS policy formation, especially in light of the end of the Cold War; this is superficially supported by the fact that thirty-four of the thirty-five OAS member states have signed at least one related treaty.²⁰² However, this assertion is ultimately weakened by the data on signing to ratification correlation, which indicates that International security as a policy area only enjoys a 57% positive correlation ratio overall.²⁰³

11. Policy and research support

All thirty-five of the member states are signatories to treaties in this policy area²⁰⁴; further, this is the only policy area in which there is a positive correlation ratio of over 100%, in this case 103%.

12. Science and technology research

Only nineteen member states have signed the treaty which is classified under this policy area.²⁰⁵ Between these members, there is an 82% positive correlation ratio.

13. Women's rights and issues

All but one of the member states has signed some form of treaty relating to women's rights²⁰⁶; however there is an overall positive correlation ratio of only 84%.

²⁰¹ See SIGNATORIES AND RATIFICATIONS OF INTER-AMERICAN TREATIES BY SUBJECT, OFFICE OF LEGAL COOPERATION, DEPARTMENT OF INTERNATIONAL LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/tresigsu.html> (last visited Dec. 29, 2006) (providing a searchable list of OAS treaties, the member states which have signed them, and the member states which have ratified them).

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See *id.*

²⁰⁵ See *id.*

C. Putting the pieces together

The information provided above can be used to draw many political and legal inferences for OAS policy areas and member states.

In terms of general policy area trends, the most glaring bit of information is that treaties having to do with international security do not enjoy the highest rate of positive correlation between signing and ratification – indeed this area has one of the lowest correlations of the thirteen policy areas. Perhaps not surprisingly, other policy areas which enjoy low positive correlation ratios are those which would require changes to the domestic law and/or existing international treaty law of the member states. By and large, policy areas with the highest positive correlation ratios are those which are primarily aspirational rather than purely legal, such as governmental law and policy, human rights and cultural rights/preservation, and women’s rights and issues, and those which either support existing OAS activities and structures or support new OAS endeavors.

The legal lesson which comes from the above policy area analysis is that treaties promulgated in policy areas which address the OAS, its subsidiary or affiliated institutions, or more aspirational aspects of international law which are not binding on the domestic law of member states, or at the very least are not disruptive of the domestic law structure and preferences of member states, are the most successful types of treaties promulgated by the OAS as an organizational body. Conversely, treaties promulgated in policy areas which are often in direct tension with the domestic law and legal policy of member states, or would at least require changes to domestic law in order to be successfully ratified, are far less likely to be ratified by the federal legislatures of member states even if these treaties are initially signed by the member states’ representative. The

²⁰⁶ *See id.*

exception to this trend occurs where member states do not sign treaties but ultimately ratify them domestically. Although this does happen with some frequency throughout the data presented above, it does not disturb the general legal lessons learned from the data; indeed, the ability of federal legislatures to ratify treaties to which the member state is not a signatory is another measure of the ultimate power which federal legislatures yield in the effectiveness of the political and legal policies advanced by the OAS.

In terms of member state by member state correlation ratios by policy area, the overall legal lesson is that the best way to predict what policy areas a member state will embrace as domestic law tend to go along with the general trend of policy area success. There is a caveat to this lesson in that certain member states have demonstrated themselves to be particularly dedicated to some policy areas, and therefore have very high positive correlation ratios in these areas. Again, it is interesting to note that the success of the policy areas across the member states reflects domestic legal and political concerns rather than a demonstrable link between size, relative power of the member state, economy, or other indicators.

Part V. Conclusion

This article has two purposes – to present the historical data available regarding OAS treaty promulgation, signing, and ratification, and to use this historical data to make predictions for the future of OAS treaties. In today’s increasingly unstable international political environment, and especially in light of the acrimony which exists between some of the OAS member states,²⁰⁷ the ability to predict which policy areas will likely yield

²⁰⁷ See, e.g., *Mexico Recalls Ambassador from Venezuela*, ASSOCIATED PRESS, Nov. 14, 2005, available at <http://www.foxnews.com/story/0,2933,175524,00.html> (last visited Dec. 29, 2006) (detailing the recent increase in diplomatic tensions between Mexico and Venezuela as an outgrowth of disagreements over the proposed Free Trade Area of the Americas which failed at the Mar del Plata Summit); *Leaders End*

positive signing to ratification ratios is key to the continued legitimacy and authority of the OAS, as each failure of a member state to both sign and ratify promulgated treaties can undermine the public perception of the OAS and, consequently, its political standing and prowess among member states and the world community. Combined with public squabbles between member states, a decrease in at least the perception of the OAS's effectiveness is dangerous to the OAS and its ideals.

The evidence of the timing of treaty promulgation during the period of 1947 – 2002 indicates that, even in the face of the Cold War and the pressures it brought to the Americas, member states have been willing to work together towards international legal policy regardless of whether more public questions of diplomacy were met with the same reception. This is promising evidence for the future success of OAS treaties, provided that these treaties address policy areas which are likely to garner member state support at the OAS and at home.

In light of the data presented and the current international climate, it is the author's argument that the OAS should focus its treaty attention on policy areas addressing ways in which the OAS and its subsidiaries can act as agents of change or reform. The OAS should also continue to look towards aspirational treaties and international law ideals for treaties rather than attempting to fashion treaties which are in tension with, or offensive to, the existing domestic legal structures of at least a simple majority of the member states.

American Summit With No Deal, ASSOCIATED PRESS, Nov. 5, 2005, available at <http://www.foxnews.com/story/0,2933,174664,00.html> (last visited Dec. 29, 2006); *Brazilians Unconvinced on Bush-Backed Free Trade Zone*, ASSOCIATED PRESS, Nov. 6, 2005, available at <http://www.foxnews.com/story/0,2933,174704,00.html> (last visited Dec. 29, 2006).

