IO Independence and Dispute Settlement:
Representative Delegation and the Case of the European Community

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ABSTRACT

International organizations (IOs) have proven to be one of the most intriguing topics in the field of international relations (IR). Although the notion that IOs have acquired independence from their member states is gaining support among academics in IR, this phenomenon remains a murky and under-researched topic across the field. Although notable efforts to tackle the issue of IO independence, both conceptually and empirically, come from Haftel and Thompson (2006) and Powers (2010), both works fail to sufficiently explain the case of the European Community (EC), which has the ability to bring and receive claims *as an independent party* in the World Trade Organization's (WTO) dispute settlement mechanism (DSM), a phenomenon which I call *representative delegation*. This is a substantial development in international law and IO independence that has been generally overlooked. This paper addresses this shortcoming by expanding upon the work of Haftel and Thompson (2006) and Powers (2010) by exploring the concepts of international legal personality (ILP) and representative delegation in the case of the EC. Finally, I suggest a refined version of Haftel and Thompson's original empirical measure of IO independence by adding "participation in dispute settlement" as an indicator of ILP. In sum, these two contributions will advance our general theoretical and pragmatic understanding of the capabilities of IOs and the conditions under which they can achieve independence from member states.

INTRODUCTION

International organizations (IOs) have proven to be one of the most intriguing topics in the field of international relations (IR). As such, they have become a fundamental aspect of any study of IR or international governance, primarily because they function as mediums through which states can coordinate peacefully to address global issues. In fact, some scholars believe that they have developed and evolved to the point that they are beginning to have an independent effect on state behavior. Although the notion that IOs have acquired independence from their member states is gaining support among academics in IR, this phenomenon remains a murky and under-researched topic. Resultantly, the theoretical articles addressing IO independence are few, and fewer still are the efforts made to study the topic empirically. However, a notable effort to tackle the issue of IO independence, both conceptually and empirically, comes from Haftel and Thompson (2006).

These authors argue that the concept of independence has not previously been applied to the study of IOs in a systematic way; therefore, they re-conceptualize independence and develop a measurement for the concept as it applies to IOs, using *neutrality*, *delegation*, and *autonomy* as explanatory factors. The indicators they use to capture these three concepts are: 1) decision-making procedures, 2) the existence and discretion of supranational bureaucracies, and 3) the existence and legalization of third-party dispute settlement mechanisms. Further, they use two quantifiers to operationalize each of the indicators (for a total of six quantifiers) (2006).

Though their article represents some of the foremost research on IO independence, it fails to explain the case of the European Community (EC), which, unlike their third indicator (which accounts for IOs that are designed to have a dispute settlement mechanism built *within* the organization), has the ability to bring and receive claims *as an independent party* in the World

Trade Organization's (WTO) dispute settlement mechanism (DSM). Haftel and Thompson, like the majority of scholars who research IO dispute settlement, only discuss IOs as the venue through which member states settle disputes. The EC, on the other hand, represents a new frontier of IO independence; we now see that IOs can use dispute settlement mechanisms in other IOs to resolve disputes with states and other IOs. This is a substantial development in international law and IO independence that has been generally overlooked. Therefore, the inability of Haftel and Thompson's (2006) study to account for this case signifies a considerable gap in their measure. As such, this paper addresses this shortcoming by re-evaluating and expanding upon the concept of IO independence, as is offered by Haftel and Thompson (2006), by examining this revelation.

I do this, in part, by utilizing the work of Powers (2010), who, like Haftel and Thompson (2006), argues that delegation is an important source of IO independence that is often overlooked in IR scholarship. She claims that delegation occurs when member states collectively make the decision to grant to IOs the authority to "implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules." However, Powers (2010) takes the topic of delegation a step further by arguing that a specific form, called *signatory delegation*, allows IOs to actually sign international treaties. While she astutely examines the overall relationship between delegation and independence, Powers (2010) limits her study to the ability of IOs to make international law (i.e. by signing international treaties). Thus, I expand upon her work as well, by exploring the prospect of the second aspect of delegated authority: the ability of IOs to represent their member states in international disputes (i.e. by participating in an international DSM), which, from this point on, I shall refer to as *representative delegation*.[1] Powers (2010)

[1] By the term "representative delegation," I refer only to cases in which an IO resolves disputes *on behalf* of member states, as opposed to cases in which the IO itself is involved in dispute settlement procedures.

states that both of these occurrences require the relevant party (in this case, an IO) to possess *international legal personality* (ILP), which she explains is the "legal right and capacity to possess rights and duties as a legal person under international law." IOs with ILP are able to "make and challenge international law through signing treaties and bringing claims to international courts." Although Powers (2010) introduces the concept of ILP to Haftel and Thompson's (2006) study of independence, she only evaluates the occurrence of signatory delegation.

Therefore, this paper contributes to the literature in two ways: first, I expand upon the arguments made by Haftel and Thompson (2006), as well as upon the work by Powers (2010), by introducing to their research the concept of representative delegation; the evidence of which I demonstrate by examining the case of the EC bringing and receiving claims in an international dispute settlement mechanism (specifically, the WTO DSM), and I also describe the implications of such a phenomenon for IO independence. Second, I suggest a refined version of Haftel and Thompson's original empirical measure of IO independence by adding "participation in dispute settlement" as an indicator of ILP. This will, I believe, establish a more accurate and useful means of quantifying and studying IO independence. In sum, these two contributions will advance our general theoretical and pragmatic understanding of the capabilities of IOs and the conditions under which they can achieve independence from member states. This topic is important for IR because one cannot understand the full capacity of IOs, nor their influence on international politics, if one does not fully understand 1) the conditions under which IOs are independent; 2) where the independence comes from; 3) how it is used; and 4) its implications for world politics.

This paper is organized in the following way: in the next section, I broadly describe the major tenets of realism, liberalism, and constructivism. I also consider if and how each theory speaks to the concept of IO independence and whether or not it can adequately explain the occurrence of representative delegation. In the third section, drawing upon existing literature from IR as well as from international law, I explain the case of the EC and its participation in the WTO DSM and describe how this phenomenon changes our current understanding of IOs and their subsequent levels of independence. In the fourth section, I examine Haftel and Thompson's (2006) article as well as Powers (2010) research and explain how representative delegation, exemplified by the EC, contributes to their theoretical arguments. In the fifth section, I propose a more refined version of Haftel and Thompson's independence model by including a measure of IO participation in dispute settlement, as an indicator of international legal personality. The usefulness of this new model is demonstrated through descriptive statistics. Finally, the last section sums up my arguments, addresses the broader implications of this research for the field of IR, as well as proposes future research possibilities on this topic.

THEORY

As we continue our progression towards a more globalized world, the degree of international collaboration, specifically via international organizations, has increased dramatically. Despite countless debates and opinions, one fact has held constant: there has been a significant proliferation of IOs, in all issue-areas, in recent years. For example, from the year 1972 to 1992, "the number of environmental treaties rocketed from a few dozen to more than 900" (Matthews 1997). Although there still exists a relatively contentious debate between scholars, as well as policymakers, concerning IOs, the nature of this debate has evolved in the past few decades.

Realism

During the mid-to-late-1900's, the key question was "do IOs matter?" In the years surrounding the Cold War, this debate was dominated by those of the realist school of thought, which insisted on the general irrelevance of IOs in the international political sphere. In a sense, the Cold War illustrated the result of centuries of a very realist international system. This was a system which consisted only of the interactions between territorially, politically, and culturally sovereign states; a system in which a state's militaristic capabilities defined the balance of power- states with the largest and best equipped militaries enjoyed the positions of global superpowers. This is essentially what drove the arms race between the U.S. and the Soviet Union. According to Charles W. Kegley Jr., realist perspectives dominated the "conflict-ridden fifty year system between 1939 and 1989 when lust for power…struggle for hegemony, a super-power arms race, and obsession with national security were all in strong evidence" (Kegley 1993).

At its core, realism posits that states are the only relevant actors in international relations. States are also autonomous and behave rationally in pursuit of their own self-interest. Further, the sovereignty of states should not be violated by other states, and cannot be diluted by non-state actors, which do not have the ability or power to influence state behavior. Today, many realists also subscribe to the position that IOs are nothing more than tools manipulated by states in order to facilitate desired outcomes (Grieco 1988). As Mearsheimer (1994) states, "they matter only on the margins." Because IOs are merely the products of deliberation and agreement among member states, they are intrinsically subject to the will of their creators and are, therefore, only as powerful or significant as the most powerful states that created them. Mearsheimer

reinforces this view with his assessment that international institutions are "based on the self-interested calculations of the great powers and they have no independent effect on state behavior" (1994). According to realists, the advancement of IOs is simply a reflection of the desire of states to have alternative venues through which they may address various issues. IOs have no independent identity or authority because they are constituted by a group of member states that control the actions and operations of IOs and have the power to dismantle them at any time. The international system, where self-interested states are the sole actors, with the sole ability to effect change, has not really changed.

However, though realism offers a cohesive, parsimonious view of the international system, it is difficult to justify, from a realist perspective, the extent to which Member States of the EC have pooled sovereignty, delegated authority, and integrated in key areas of their national jurisdiction. Though attempts have been made by realists to marginalize the achievements of the EC, in terms of attaining an independent identity from its Members, it appears that the evolution of the EC—in scope, authority, and behavior— continues to fly in the face of realism.

Liberalism

In the years since the Cold War, more and more scholars began to reject the realist notion that states are the *only* relevant actors in the international system and began to realize that many non-state actors (i.e. international organizations) were gaining the capacity to influence international relations (Martin 2007).[2] Currently, alongside the expansion, and subsequent refinement, of IOs are a growing number of academics, often labeled liberals or neo-liberal institutionalists, who also sense a new and changing international political landscape; one largely

[2] Despite their common recognition of the significance of non-state actors, liberals still largely contend that states are still the most important actors in the international system.

shaped by international institutions. Reinalda and Verbeek (1998), for example, contend that three major developments have effectively altered international relations: increased economic, social, and cultural globalization; the development of regional cooperation, fueled by the new "European Polity," and finally, a new sense of general uncertainty brought about by the end of the Cold War, which signified that all matters in IR are no longer defined by the security conflict between the East and the West. Instead, IOs have become crucial actors in attacking some of the world's most pressing issues.

Thus, the new question became "how do IOs matter?" This debate has been effectively controlled by the liberal, more specifically the neo-liberal institutionalist, school of thought. As opposed to realism, neo-liberals reject the notion that security is the sole concern for states and suggest that economic and political interests are just as important. They also accept that states are not simply "black boxes" that always act in calculated, uniform ways. Instead, neo-liberals contend that we should dismantle the boxes and recognize, not only that states have unique identities, cultures, and histories that affect their behavior, but also that states are not the only actors that have the ability to influence international relations. They consider IOs to be significant and influential entities that have attained the capability to achieve a wide range of different objectives at the international level. As stated by Keohane and Martin (1995), these "institutions can provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination, and in general facilitate the operation of reciprocity." IOs have been and continue to be vital in solving some of the world's most urgent concerns, such as nuclear non-proliferation, global climate change, human rights, even security issues. Though neo-liberals regard IOs as significant global actors, and thus worthy of continued study, less common is the explanation of how IOs come to possess the power and authority

required to effectively operate in IR.

However, occasionally contained within the liberal discussion of IOs is the mention of IO independence. Abbott and Snidal (1998), for example, define independence as "the authority to act with a degree of autonomy." Further, they argue that, although states establish and delegate authority to IOs, undermining their independence essentially reduces their effectiveness to perform assigned tasks. Therefore, IO independence is a key factor to their successful operation. However, working from within a rationalist framework, these authors concede that states are still the most significant actors internationally, which explains their emphasis on the fact that "IO independence is highly constrained: member states, especially the powerful, can limit the autonomy of IOs, interfere with their operations, ignore their dictates, or restructure and dissolve them" (1998). Though certainly accepted by a large segment of IR scholars, this "highly constrained" conception of IO independence portrayed by Abbott and Snidal (1998) has become increasingly contested by academics across the field.

Though neo-liberalism undoubtedly recognizes the unprecedented evolution of IOs, as well as the position they have attained among states in today's international system, this paradigm suffers from two weaknesses. First, the majority of neo-liberal studies offer explanations and hypotheses concerning the creation of IOs, yet very few neo-liberal scholars have attempted to explain the subsequent behavior of IOs or the mechanisms that enable them to operate internationally.[3] Secondly, neo-liberals tend to focus solely on the ability of IOs to facilitate interstate cooperation (Hawkins et al. 2006). The bulk of this research portrays IOs simply as "sets of rules" used by states to engage in cooperative interactions, as opposed to independent and autonomous actors with self-determined interests and preferences. Thus, like

[3] Exceptions being Martin (2007), Martin and Simmons (1998) etc.

realism, neo-liberalism is a rationalist theory that regards institutions as being rationally created by states for no reason other than the pursuit of their own goals.

Constructivism

Barnett and Finnemore (1999) depart from the prevailing rationalist perspective (assumed by both realists and liberals), which maintains that IOs are instruments used to further state interests, and thus, facilitate desirable outcomes. Instead, they use constructivist ideas to argue that, in addition to brandishing authority independently from member states, many IOs can use this authority in ways unintended and unexpected by their creators. Drawing on well-established Weberian theories of bureaucracy and sociological approaches to organizational behavior, they argue that "the rational-legal authority that IOs embody gives them power independent of the states that created them and channels that power in particular directions" (1999).[4] In other words, IOs often possess power and authority independent from their member states and, more importantly, the ability to "[channel] that power" based on a set of preferences that the organization has subsequently developed. These authors go further to claim that "IOs often produce undesirable and even self-defeating outcomes repeatedly, without punishment much less dismantlement" (1999).

After the liberals established the significance and influence of IOs in the international system, it became apparent that most views about IOs were positive; most literature was about their benefit to states and to international politics. However, fueled by the work of constructivist theorists, such as Barnett and Finnemore (1999), these ideas were called into question. For example, the matter of whether IOs can exist as entities independent of their member states, or if they have enough authority or power to form goals and interests not only separate from, but

[4] Similar arguments are made by Cox et al. (1974) and Snidal (1996).

sometimes opposing, those of their creators, entered the debate. As a result, the questions mainly asked today are "What are the consequences of IOs? Can they be adverse or unintended?" This debate largely involves constructivist thinkers.

According to Alexander Wendt, a prominent constructivist scholar, constructivism emerged in response to the widespread "'economic' theorizing that [was dominating] mainstream systemic international relations scholarship" (1992). In effect, this school of thought challenged many assumptions of neo-realism and neo-liberalism, such as the idea that states, the primary actors in IR, are rational and unitary and determine their preferences based on the constraints of the anarchic system in which they find themselves; and that the self-interested and sovereign identity of states is uniform and exogenously given. Also, constructivism contradicts the rational choice assumption that actors always act rationally and solely in pursuit of their preferences and interests (Allison and Zelikow 1999). This implies that if states create IOs for the advancement of their interests, and those IOs establish interests of their own, then states might be perceived to be acting "irrationally" and, in some cases, in opposition to their own interests. For example, the World Bank has been "widely recognized to have exercised power over development policies far greater than its budget, as a percentage of North/South aid flows" (Barnett and Finnemore 1999). While expertise in development has been largely pursued by various organizations in the past few decades, the World Bank has remained "a magnet for the 'best and brightest' among 'development experts'" (Barnett and Finnemore 1999). This degree of expertise, together with its declaration of political "neutrality" have led to the authoritative voice of the World Bank in international policy, which it has used to direct and manage the reach of global development for the last fifty years (1999). The independence of the World Bank is clearly illustrated in the following example offered by Nielson and Tierny (2003):

> "In the early 1980s, the World Bank came under fire for having financed multiple projects that led to spectacular environmental disasters in Brazil and Indonesia. As a result, an international coalition of environmentalists organized protests and lobbied the Bank's staff for a change in lending practices. But Bank policy did not waver. When direct appeals to the Bank failed, these critics turned to the Bank's member governments in the developed world, where environmental issues had become politically salient. They focused most of their attention on the U.S. government… During the mid-1980s, the U.S. Congress threatened to withhold future funds from the Bank unless the organization changed its practices. The Bank complied, but only in part." [5]

For almost ten years, the World Bank exercised a considerable display of independence from its member governments. Although it eventually responded to increasing pressure and threats by the U.S., primarily, this example reveals that neither neo-realism nor neo-liberalism, as currently conceived, can explain this degree of independent action by an IO within their state-centric paradigms (Nielson and Tierny 2003).

Essentially, the constructivist school of thought aims to show how various parts of international relations, such as the interests and identities of the actors, are socially constructed. The concepts, issues, and actors existing in IR are ultimately shaped, not by power or military capabilities, but by ideas, norms, repeated interactions, and ongoing processes of social behavior. Evidence of these claims are found in the evolving relationships among Member States and the supranational institutions of the EC. The European Court of Justice (ECJ) Opinion 1/94 stipulates what is called the "duty of co-operation," which requires that the EC and the Member States reach a *common position* on matters where competency (or authority) is shared, such as in

[5] It should be noted that, following this episode, in 1994, "Congress followed through on the previous threat, withholding $1 billion from the Bank…Shortly thereafter, the World Bank adopted sweeping institutional reforms and significantly altered its lending portfolio by increasing environmental lending and decreasing projects that caused environmental harm" (Nielson and Tierny 2003).

the case of WTO trade policy (Meunier and Nicolaidis 1999). Though this obligation is not documented in either the TEC or in the TEU, the ECJ legitimizes its opinion based on existing case law. The ECJ states that the purpose of the duty of co-operation is to unify the EC and the Member States, so that they may be represented in international negotiations as "a single voice." Although this ruling calls for a unified representation of the EC at the international level, especially in trade relations, many Member States (France, in particular) actively tried to achieve their own interests in matters of external trade; one example being the application of voting rights in the Food and Agriculture Organization. However, following these attempts by Member States to increase their external independence, the ECJ ruled that the Member States were in violation of their duty to co-operate (Meunier and Nicolaidis 1999). This exemplifies the changing identity of the EC, which may have been ultimately constructed by Member States, in how they perceive the EC, as well as their continued interactions (Koskenniemi and Takamaa 1998).

Further, Wendt illustrates that, even at the most basic level, the organization of human interaction is influenced by shared ideas rather than material forces (Wendt 1992). The tenets of this paradigm have important implications for the study of IOs; the identities and interests of "purposive actors" (i.e. IOs) are diverse and shaped by these shared ideas and not imposed on us by "the system" (i.e. states); alternatively, the environments in which IOs operate mutually constitute their identities and preferences, which, in some cases, may contradict those of their creators (Wendt 1992). For instance, the United Nations High Commissioner for Refugees (UNHCR) has been endowed with "expert" status and enjoys subsequent authority in matters concerning the world's refugee population. This expertise, added to its role in implementing international law (via Conventions dealing with refugees), has "allowed the UNHCR to make life

and death decisions about refugees without consulting the refugees themselves, and to compromise the authority of states in various ways [associated with] setting up refugee camps" (Barnett and Finnemore 1999). The UNHCR is generally regarded as a key example of an IO whose autonomy and authority has continued to increase over the years.

In sum, this section addressed the broad theoretical debates as they apply to IO independence and established that, although neo-liberalism may speak most directly to international organizations in general, constructivism perhaps provides us with the most useful means of explaining the identities and behavior of IOs, which is the primary objective of this paper. However, many principals of both neo-liberalism *and* constructivism are embodied in the case of the European Community (EC), which is the foundation on which I build my arguments. Under international law, the EC has achieved the status of a legal person— a truth that many realists continue to resist. As such, the next section breaks down the case of the EC as a participant in the World Trade Organization's Dispute Settlement Mechanism (WTO DSM). Specifically, it offers a brief background of the WTO DSM and of the EC, focusing specifically on the possible institutional mechanisms (i.e. representative delegation and international legal personality) that led to its membership in the WTO and subsequent involvement in the WTO DSM. This explanation will be useful for the following section, in which I introduce the concept of representative delegation (using the example of the EC) to the works of Haftel and Thompson (2006) and Powers (2010).

THE EC AND INTERNATIONAL DISPUTE SETTLEMENT

The World Trade Organization and the Dispute Settlement Mechanism

The World Trade Organization (WTO) was officially established in 1995, succeeding the General Agreement on Tariffs and Trade (GATT). The WTO began as a result of the Uruguay Round of multilateral trade negotiations (which took place from1986-1994). It is an international organization that establishes international rules of trade between states. The foundation of the WTO structure, (called the multilateral trading system), are the WTO treaties, which outline the legal terms of international trade as well as the commitments made by its members upon joining the WTO (WTO 2009). The WTO is made up of states and other political institutions, such as the EC. It describes itself as "a member-driven organization with decisions mainly taken on a consensus basis. Membership implies a balance of rights and obligations" (WTO 2009). As of 2007, there are 151 members, with about 25 currently negotiating accession. Though traditionally composed of states, the largest and most comprehensive member today is the EC, which, in addition to its 27 Member States, each having individual standing, is also an independent member (EU & WTO 2009).

The Dispute Settlement Mechanism (DSM) built within the WTO provides Members with the incentive to uphold the terms of their trade agreements. The purpose of the DSM is to foster the resolution of disputes or disagreements concerning the terms or practice of trade agreements between member states. According to the WTO, dispute occurs "when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations" (WTO 2010). The Dispute Settlement Understanding (DSU) is a document that "provides Members with a clear legal framework for solving disputes which may arise in the course of implementing

WTO agreements" (EU 2009). If initial settlements do not suffice, Members can request panels, as well as appeal decisions made by the panel. If a Member fails to comply with WTO recommendations or fails to conform to WTO rules in general, then the WTO may impose trade compensation or sanctions, sometimes taking the form of duty increases or suspension of WTO obligations. The EC Commission on Trade claims, "WTO Members, including the EC, are consistently making use of the mechanism. However, the EC never initiates a dispute settlement case before exhausting all other ways of finding solutions" (European Commission 2007).

Currently, the EC is the first and only IO to have achieved full membership in the WTO, as well as access to its DSM; thus, it is viewed among the international community at large as the archetype for regional integration.

The European Community

The European Union (EU), as currently conceived, began in 1957 as a customs union and exists today as the foremost example of regional integration.[6] The EU rests on two treaties: 1) Treaty Establishing the European Community (TEC) [this is the original Rome Treaty, which was amended by the Single European Act (1986), Maastricht Treaty (1991), Amsterdam Treaty (1997), and Nice Treaty (2001)]; and 2) Treaty on European Union (TEU) [the original Maastricht Treaty (1991), amended by the Amsterdam Treaty (1997) and Nice Treaty (2001)].

In 1993, the European Community (EC) was absorbed by the European Union (EU) and became the "first pillar" of the new EU, which includes two more pillars: 2) the Common Foreign and Security Policy, including the European Security and Defense Policy and 3) the police and judicial cooperation. Decision-making in the EC is supranational; it involves all of the

[6] In 1957, six countries signed the Treaties of Rome, which extended the earlier cooperation within the European Coal and Steel Community and created the European Economic Community (EEC), and by doing so, established a customs union (EC 2007).

EU's institutions, such as the Commission (the executive body), the European Parliament (the legislative body), and the European Court of Justice (the judicial body). Decision-making in the other two pillars is intergovernmental, meaning that national governments are mostly in control (Pollack 2003). This is important to note because, in this paper, my focus is on the first pillar (the EC) and the independence it possesses separately, not only from member states, but also from the other two pillars. Also, until very recently, Member States have been represented in the WTO by the "European Community" rather than the "European Union" (WTO).[7] Further, the EC remains the only organ of the EU that has ILP.[8] I therefore refer to "the EC" throughout this paper.

Since the 1970s, the EC has become an active participant in international relations. Specifically, its external relations have increased dramatically; both in the number of treaties signed on behalf of Member States (Powers 2010), as well as in the expanded scope of its involvement in international affairs, including its participation in the WTO dispute settlement mechanism (DSM). Article 133 TEC is the legal foundation of the EC common commercial policy (CCP). The CCP designates the EC with the ability to "negotiate, conclude, and implement trade agreements with other countries of the world" (TEC). In addition to these delegated powers, the authority to represent Member States in trade disputes, or representative delegation, was first awarded to the EC during the formation of the CCP (Leal-Arcas 2004). Today, the legal foundation for the EC's trade policy is found in Article 133 of the TEC. On this

[7] However, since December 2009, the "European Union" has been the official name in the WTO. Before that, "European Community" was the official name in WTO business for legal reasons, and that name continues to appear in older material. Because much of the research for this paper was done before December 2009, I maintain the use of the EC throughout.

[8] During the drafting of the Treaty of Maastricht, there was some disagreement concerning the granting of ILP to the EU. Some members felt that giving ILP to the EU would compromise Member State sovereignty in foreign affairs. Others felt that it might detract from the legal personality of the EC. Ultimately, it was agreed that the Union would not have ILP; this position, however complicated and contradictory, was unanimous (Andoura and Schoutheete 2007).

basis, the Commission negotiates on behalf of the Member States, in consultation with a special committee, "the Article 133 Committee." The 133 Committee is composed of representatives from the 27 Member States and the European Commission. Its main function is to coordinate EC trade policy, thus creating a "single voice" (EUC 2009). In this Committee, the Commission presents and secures endorsement of the Member States on all trade policy issues. The Commission is also the organ that represents Member States in the DSM. While Member States harmonize their position in Brussels and Geneva, the Commission alone speaks for the EC at almost all WTO meetings. An example of this occurrence is illustrated in "The Responsibility of International Organizations," by the ILC:

> "[If] the European Community has contracted a certain tariff treatment with third States through an agreement or within the framework of the World Trade Organization. The third States concerned find that this agreement is being breached, but by whom? Not by the European Community's organs, but by the member States' customs authorities that are charged with implementing Community law. Hence their natural reaction is to blame the member States concerned. In short, there is separation between responsibility and attribution: the responsibility trail leads to the European Community, but the attribution trail leads to one or more member States. This example illustrates why we feel that there is a need to address the special situation of the Community within the framework of the draft articles. One could think of the following ways to accommodate the special situation of the European Community and other potentially similar organizations: (1) Special rules of attribution, so that actions of member States' organs can be attributed to the organization; (2) Special rules for responsibility, so that responsibility can be charged to the organization, even if member States' organs were the prime actors of a breach of an obligation borne by the organization" (2005).

Thus, responsibility and attribution were bestowed upon the organization itself.

Though the EC, as a unified entity, has proven to have an unprecedented influence over international trade relations, there exist numerous points of contention between the EC itself and its Member States. One example is the European Court of Justice (ECJ) Opinion 1/94, which stipulates what is called the "duty of co-operation," which requires that the EC and the Member States reach a *common position* on matters where competency (or authority) is shared, such as in the case of WTO trade policy and negotiations. Though this obligation is was not documented in either the TEC or in the TEU, the ECJ legitimized its opinion based on existing case law; it has

since been added to EU treaties (Meunier and Nicolaidis 1999). Opinion 1/94 is the same rationale that the ECJ and Member States ultimately extended to the Commission with regards to trade disputes; EC-members stand unified as either claimants or defendants, just as the decisions reached in the WTO DSM apply uniformly across the Community. As a result of this unique example of IO independence, questions concerning the implications for other IOs come to mind, such as: how exactly does an IO acquire these abilities? What are the sources of its authority?

International Legal Personality, Representative Delegation, and International Law

As the EC is essentially "paving the way" for the future generation of IOs, this example alone does not give us clearly defined answers to many of the questions raised in response to its development. However, international legal scholarship provides us with a reasonable legal framework with which we may understand the behavior and potential trends of future IOs. To begin answering these questions, I draw upon a statement made by the International Legal Commission's (ILC) in a report, entitled "The Responsibility of International Organizations," which states that "by acquiring international legal personality an organization acquires the *capacity* to act in the international sphere, but it does not acquire the *competence* to do so. That competence depends on its constituent texts and varies therefore from one organization to another" (2005).[9] In other words, international legal personality (ILP) only gives IOs the *ability* to perform state-like functions, not the specific *authority* to do so, which generally must come from member states.

[9] International legal personality (ILP) is a form of legal legitimacy under international law. ILP is needed in order to be recognized as a subject of international law that is capable of "possessing international rights and duties, and has the capacity to maintain its right by bringing international claims. Establishing such personality depends upon the terms of the constituent instrument/ treaty creating the organization, or its scope of powers or purposes of the organization and its practice. In other words, legal personalities of IOs are implied from their functions" (Andoura and Schoutheete 2007).

Historically, ILP has only rested in the hands of states and, thus, given them the exclusive power to legally create and influence international law. As I have previously demonstrated, today IOs actively exhibit these components of ILP; most often by signing international treaties and, in this case, by bringing claims in international venues—a reality that many scholars have largely ignored in recent literature. The ILC reinforces this claim by stating, "international organizations shall enjoy legal personality under international law and under the internal law of their member States. They shall have the capacity, to the extent compatible with the instrument establishing them, to contract; acquire and dispose of movable and immovable property; and institute legal proceedings" (1992). It is important to note that, despite the attempts made in this paper to emphasize the importance of ILP as a developing phenomenon in IR, there are three points that should not be misinterpreted by the content of this study: 1) ILP does not indicate the first step towards the materialization of a supranational organization. The UN has enjoyed ILP for almost a quarter of a century and is surely not approaching a supranational status. 2) ILP does not solely account for the legitimization or other legal character of the organization that possesses it: many IOs have it and others do not. 3) Finally, ILP does not determine the competence of the organization that acquires it: competence is often a result of its principal documents or treaties, regardless of the existence of ILP (Andour and Schoutheete 2007). Though I generally agree with the last assertion that competence comes from constituent treaties, in this paper, I argue further that IO competences also come from specific authority delegated to IOs by member states. Whether member states grant signatory delegation (the ability to sign international treaties) (Powers 2010), representative delegation (the ability to represent member states in international disputes), or another form of delegation, it is through this particular authority-transfer mechanism, coupled with their status as international legal persons, that IOs

come to possess the competence to perform specific tasks in the international arena (Powers 2010). [10] In order to further illustrate the importance of delegation for the study of IO independence, I now explain representative delegation and how it is characterized by the EC.

Under international law, legal persons "who cause damage to another may be called upon to answer for it and to make reparation. This principal applies to every international organization which is a legal person" (Frid 1995). Thus, the power to bring international claims against other actors, as well as to be the recipient of claims depends upon whether or not the actor has ILP. The most prominent example is when the International Court of Justice (ICJ), after observing the functions and rights that the UN actively possesses, determined that in the *Reparation for Injuries Suffered in the Service of the United Nations* case (1949), the UN is an international legal person having rights and duties under international law whereby it may claim reparation for injuries suffered by persons under its service. In other words, the ICJ ruled that IOs potentially have the capacity to bring international claims. Though the ICJ established that the UN indeed had the right to bring a claim, it failed to specify the exact source of the "capacity," stating simply that it "cannot be doubted" that the UN could file a claim against a member state (Bedjaoui 1991). So where did this authority come from? After analyzing the UN Charter and its treaties, as well as its procedures, duties, and obligations, the Court concluded that the members of the UN "*by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged"* (1949). While it used different language, the Court essentially ruled that the authority to pursue a claim was delegated by Member States. Though the *Reparations for Injuries* case represents the first example of IO involvement in international dispute settlement, it

[10] Pollack (2003) makes a similar argument in which he claims that "EU member governments have delegated extensive powers of monitoring, enforcement, and the completion of incomplete contracts to the Commission and the Court, thereby increasing the credibility of member states' commitment to their agreements."

is not a case of representative delegation for two reasons: first, as opposed to resolving a dispute *on behalf* of its Member States, the UN, representing itself, initiated the claim *against* a Member State.[11] Second, UN Member States neither explicitly nor intentionally endowed the UN with the authority to pursue claims in an international judicial venue. Instead, because of the various functions the UN was responsible for at the time, it was simply deemed "competent" to undertake this task. As a result, the UN was considered to possess ILP. The EC, on the other hand, in Article 133 TEC and by the CCP, is delegated explicitly the specific and intentional authority to represent each of its members in the DSM, thus possessing ILP and representative delegation.[12]

The EC: An Exception or a Trendsetter?

Before proceeding any further, it is important to acknowledge a common critique of the rather extensive segment of international organization literature that references the EC as a main example. Because the EC has reached an unprecedented level of integration, it remains a unique case in the universe of IOs. Thus, an important distinction for EC scholars to make is whether the EC should be treated as an isolated anomaly or as a trendsetter for other regional organizations; the implications of which will vary greatly depending on one's position. This paper operates from the perspective that the EC should not be regarded as a solitary abnormality among the universe of IOs— which, in this view, will not develop to the level of the EC. Instead, we should look at the theoretical incentives for initiating the creation of the EC and, in doing so, we may be able to recognize the attraction for other organizations to follow suit. In the initial treaties

[11] Though this situation is certainly conceivable for the EC, if it ever opposed a Member State in the WTO DSM, it would also not be considered a case of representative delegation.

[12] An IO can acquire ILP by including mention of it in its constitutional charter or treaties establishing the organization. This was done in each of the three treaties establishing the EC in the 1950s. Also, under international public law, legal personality can also be implicitly conferred to an IO, as in the case of the *Reparations for Injuries*.

establishing the EC, primarily in the Treaty of Rome, it was collectively decided that integration would "increase their countries' security and economic well-being in an increasingly interdependent and competitive global environment" (Wim Kok et al. 2004). Further, Europe has a colorful history of instability and war and the dominant liberal perspective was generally assumed, which advocated that binding countries together politically and economically would secure democracy and eliminate the traditional causes of conflict (Oneal and Russett 2001). Also, in granting representative delegation, Member States of the EC enjoy the benefits of having a safeguard, in a sense, against the direct attack of other political entities, like the U.S. in international dispute settlement mechanisms.

Aside from the EC, the international stage has essentially become a web of international organizations varying in size, function, and scope, which connects individuals across the globe. This is evident in the exponential growth in regional, bilateral, multilateral, and universal organizations, not only between states, but between states and other IOs, and even between IOs and other IOs. Powers (2010) illustrates this point by claiming that "almost every country in the world is a member of at least one REI [(regional economic institution)]. REI treaty complexes range from under 10 treaties (e.g. SACU) to hundreds of treaties (e.g. EU, CIS)…Most of the treaties in the REI treaty complex are REI treaties signed in which only member states are the signatories," however, she later mentions that REIs are increasingly signing treaties with non-member states and other REIs.[13]

In addition to the increasing variation in the sizes and types of IOs are the unanticipated functions that they now fulfill, such as creating international law by signing treaties and participating in dispute settlement (Powers 2010). Although the incidence of an IO participating in the DSM of another organization currently remains with the EC exclusively, this appeal has

[13] For further details, see Powers (2010).

only become more prevalent. According to the WTO, gradually, more countries are integrating to form coalitions and alliances in the WTO. In many cases, "they even speak with one voice using a single spokesman or negotiating team. In the agriculture negotiations, well over 20 coalitions have submitted proposals or negotiated with a common position, most of them still active" (WTO). Further, the increase in the number of coalitions involving, not just powerful and developed countries, but developing countries as well, "reflects the broader spread of bargaining power in the WTO. Coalition-building is partly the natural result of economic integration — more customs unions, free trade areas and common markets are being set up around the world" (WTO). So far, second to the EC, the furthest degree of economic integration that has been achieved by WTO members exists in the Association of South East Asian Nations (ASEAN), which includes Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand, Singapore and Viet Nam.[14] Though ASEAN has not yet become an independent member of the WTO, they have "many common trade interests and are frequently able to coordinate positions and to speak with a single voice. The role of spokesman rotates among ASEAN members and can be shared out according to topic" (WTO). Another example is MERCOSUR, the Southern Common Market (which includes Argentina, Brazil, Paraguay, Uruguay and Venezuela, with Bolivia, Chile, Colombia, Ecuador and Peru as associate members). MERCOSUR, ASEAN, and numerous other efforts at regional integration, though not yet at the level of the EC, are evidence that the EC should not be viewed as merely a "usual suspect," but as the obvious point of reference when attempting to analyze the trends and evolution of IO behavior.

The purpose of this section was: 1) to give a background of the WTO DSM and the EC; 2) to introduce and explain the institutional features: representative delegation and international

[14] The remaining member Laos is currently in the process of applying to join the WTO.

legal personality; both of which have contributed to the EC's status as an independent IO; and 3) to establish the applicability of these dimensions of independence for IOs in general. The next section carefully examines the independence research by Haftel and Thompson (2006) and Powers (2010), respectively, as well as brings to light a gap that exists in both bodies of work—one that may be filled with the addition of representative delegation. Ultimately, I show how representative delegation might improve each of their studies, and thus, advance the study of IO independence at large.

IO INDEPENDENCE LITERATURE

Haftel and Thompson (2006)

In spite of the small, but growing, literature on IO independence, Haftel and Thompson (2006) provide the IR academic world with one of the few theoretical conceptions of IO independence, as well as one of even fewer empirical measures. This study first establishes a conceptualization of IO independence based on three components: *neutrality, delegation,* and *autonomy* (each is discussed in more detail below). The authors capture various aspects of these three elements of independence by looking at three institutional design features: decision-making procedures (which they claim is relevant to autonomy and neutrality), supranational bureaucracy (which captures neutrality and delegation), and dispute settlement (which captures all three). Each of the three institutional design mechanisms is further measured by two subsequent indicators, for a total of six variables.[15] Their unit of analysis is regional integration arrangements (RIAs), which are designed "to facilitate economic cooperation, although many

[15] Decision-making procedures are measured by: 1) the presence of a majority rule voting structure; and 2) whether a council of ministers holds decision-making power. Supranational (regional) bureaucracy is measured by: 1) whether the IO has a permanent secretariat; and 2) whether or not the secretariat can make or initiate recommendations. Finally, dispute settlement mechanism is measured by: 1) whether or not the IO contains a binding dispute settlement mechanism; and 2) whether or not the IO has a standing tribunal.

also have political and security components. While some are not highly formalized, they all go beyond mere treaties insofar as they have regular meetings and well-specified decision-making procedures" (2006). These authors use RIAs as their unit of analysis because this subset of IOs has seen rapid and complex development in recent years. Universal IOs, such as the UN, are fewer in number and are more difficult to measure for features such as independence. Their dataset includes 31 RIAs.[16] Throughout their article, Haftel and Thompson illustrate the institutional independence of IOs by referencing domestic institutions, i.e. independent judiciaries and tribunals, as well as central banks (2006). Drawing on various sources from IR and political science, the following paragraphs explain the general dimensions of IO independence included in their study.

Neutrality

Although many liberal scholars contend that IOs are important actors in IR, it is not yet a widely held notion that IOs can exist as entities independent of their member states, or that they have enough authority or power to form goals and interests not only separate from, but sometimes opposing, those of their creators. This is the basis for Haftel and Thompson's first element of independence, *neutrality.* The authors elaborate on this concept by discussing international courts or tribunals where independence determines "the extent to which adjudication is rendered impartially with respect to concrete state interests."[17] Therefore, for an IO to be independent, it must have interests or preferences that are not biased toward any other

[16] However, to their list of RIAs, I add the EC, for the following reasons: 1) the EC possesses independence separately, not only from member states, but also from the other two pillars of the EU; 2) until very recently, Member States have been represented in the WTO by the "European Community" rather than the "European Union"; finally, 3) the EC remains the only organ of the EU that has ILP. I believe that this addition improves the overall representation of independence among RIAs in Haftel and Thompson's (2006) measure.

[17] In their article, Haftel and Thompson (2006) use the words "neutrality" and "impartiality" interchangeably.

political actor, as well as "act as a 'neutral third' in disputes" (Haftel and Thompson 2006). In addition to citing judiciaries and tribunals, they also reference the independence of central banks, which "provide information regarding policy choice and their consequences. Their ability to do so depends on their expertise and perceived neutrality, which render the information credible" (2006). In the case of IOs, neutrality is dependent upon who is making decisions and "how closely these decision makers are tied to national interests." Haftel and Thompson explain that, although heads of state usually wield the most authority concerning IO operations, many RIAs contain ministerial councils (often made up of foreign or finance ministers), which are the main decision-making bodies (2006).

In the EC, the Commission is body that is endowed with the power to manage internal political functions as well as to facilitate international relations on behalf of the EC. For example, Pollack (2003) states that the Commission "performs a central monitoring function as guardian of the treaties, monitoring member state compliance with EC law, and, under Article 169 of the Treaty of Rome, initiating legal proceedings against member states found to be in noncompliance with their legal obligations… Further, member states also have charged the Commission to monitor the implementation of specific EC programs in the member states." Thus, neutrality is essential for the Commission to effectively function in the aforementioned areas.

Another area where neutrality is a key trait for the Commission is in its performance in WTO DSM. Regardless of which state is involved, what the claim concerns, or whether the state is a defendant or a plaintiff, any claims in the DSM that are brought by or against an EC member state, are carried out by the EC, not the member state itself. The EC, as a separate entity, represents its member states because of the integrated economy it has achieved; thus, the

outcome of a case involving one state affects the economic operations of the remaining member states (International Law Commission 2005). One could even argue that "[its] ability to do so depends on [its] expertise and perceived neutrality, which render the information credible" (Haftel and Thompson 2006). It is for these reasons that Haftel and Thompson's conception of neutrality, and thus IO independence, would be improved by the addition of IO participation in dispute settlement.

Delegation

Combining principal-agent theory with delegation theory, Hawkins et al. (2006) define *delegation,* which is the second element of Haftel and Thompson's (2006) conceptualization of independence, as a "conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former." Delegation to an IO is most likely to occur when the costs to an individual state of establishing an institution for a particular task outweigh the benefits; if the costs can be distributed among a group of member states, however, then the individual costs are minimized. Klabbers (2002) asserts that delegation theory is one of the most accepted explanations of how IOs create binding law for its member states when its constitution does not explicitly permit this undertaking. In these cases, states consent upon, and thus delegate, this supplementary law-making authority to the IO. Haftel and Thompson state that "delegation of authority to a bureaucracy (to make and implement rules) or to a third party dispute settlement mechanism (to resolve disputes) has been identified as a key element of an institution's degree of legalization" (2006). Also assuming a principal-agent approach to delegation, Pollack (1997) argues that principals (states) often delegate to agents (IOs) the following authorities: 1) the authority to monitor member state compliance with, or violation of, the terms of their treaties; 2)

the authority to solve problems of incomplete contracting; 3) the authority to implement rules that are "either too complex to be considered and debated in detail by the principals or that require the credibility of a genuinely independent regulator"; and 4) the power to determine a formal agenda, or in other words, the ability of an agent to establish policy proposals for the consideration of their principals.

Haftel and Thompson argue that a bureaucracy or a DSM that has been delegated the authority to undertake tasks specific to its purpose of creation implies a level of independence. Though I do not disagree with this stance, I argue that, once again, this logic extends to the EC as well. None of the aforementioned authors, nor the majority of delegation scholars, mention even the possibility that the authority to represent Member States in a *separate* DSM can be delegated to an IO. However, the EC has been given representative delegation by its Member States, or the power to bring or receive trade dispute claims, not merely against its own member states, but against *non-member states* on their behalf. The difference between Haftel and Thompson's (2006) examples of authority delegated to a DSM and my example of the authority delegated to the EC is that DSMs that were built *within* RIAs exist to be a DSM solely for the use of its own member states. Also, the subsequent decisions apply only to the individual member states involved, should they so choose to accept them. The EC, however, is an IO that, because of the ILP that it possesses, has been granted the authority by its member states, as well as legitimacy by the international community, to have legal standing in the WTO, and thus in the DSM, which has traditionally only been a venue through which states could engage in dispute settlement cases against other states. Though Haftel and Thompson argue that the IOs that have been delegated the authority to settle the disputes among their members have more independence that those that have not, they do not address the occurrence of an IO as a *party* to a dispute settlement claim, let

alone the amount of independence this implies. This weakness would be eliminated with the addition of IO participation in dispute settlement, upon which I elaborate in the Methods section.

Autonomy

The varying degree of influence that IOs can have on state behavior is usually attributed to their degree of *autonomy*, the last element of Haftel and Thompson's measure of independence. Hawkins et al. (2006) define autonomy as "the range of potential independent action available to the agent after the principal has established mechanisms of control." They define the "mechanisms" as "the screening, monitoring, and sanctioning mechanisms intended to constrain their behavior." Similarly, Reinalda and Verbeek (1998) contend that "one can speak of an international organization's autonomy if international policy cannot be explained simply as a compromise between its most important member states." As such, a clear mark of IO autonomy is when powerful states yield to the policy proposals that come from IOs, some of which may not necessarily support their exclusive national interests. These proposals can relate to "agenda setting, policy making, as well as to policy implementation" (1998). Haftel and Thompson (2006) assert that autonomy is "a key element of any conceptualization of political independence."

This is perhaps the component of independence to which ILP and representative delegation speak most directly. In addition, the EC is the frontier, the protégé, of autonomous IOs. It is the first and only IO to have standing in the WTO, which means its actions and agreements are recognized and respected by other international legal persons (i.e. states). Under international institutional law, IOs have become entities of their own right and have displayed a substantial degree of influence over international politics. For instance, "no state can afford to

use rules for air navigation, meteorology, or international mail with conflict with the rules accepted by international organizations" (Frid 1995). International recognition (i.e. ILP) is a clear factor in determining the degree of autonomy, and thus, of independence that an IO possesses. Further, for the EC to be taken seriously in the WTO DSM, it must not be perceived to be dominantly controlled by one state. Thus, IO participation in dispute settlement would be a clear indicator of the ILP required for an IO to be granted representative delegation, and thus exert itself as an autonomous entity.

Overall, the conceptualization of IO independence presented by Haftel and Thompson (2006) currently lacks an adequate explanation for the unprecedented level of independence exhibited by the EC. As such, by utilizing the ILP and delegation work of Powers (2010) (discussed at length below), I was able to add to the usefulness and applicability of their arguments by introducing representative delegation to the various components of their conceptualization of IO independence. Next, I discuss Powers' (2010) research in detail, as well as expand upon her conceptualization of IO autonomy by introducing the concept of representative delegation as is exemplified by the EC.

Powers (2010)

In her research, Powers (2010) establishes the relationship between international delegation and IO autonomy. Specifically, delegation is an important source of IO autonomy that is often overlooked in IR scholarship. Delegation occurs when member states collectively make the decision to grant to IOs the authority to "implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules." She constructs her re-conceptualization of IO autonomy through presenting two key forms of delegation: administrative delegation and

signatory delegation, thought the focus of her article is on signatory delegation. According to the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986), a treaty is "an international agreement governed by international law and concluded in written form: between one or more States and one or more international organizations; or between international organizations." Previous to this treaty, the power to sign international treaties rested solely in the hands of states. As treaties are the main source of international law, the newly gained ability of IOs to sign international treaties, and thus, create international law, is no trivial feat (Powers 2010).

Further, she argues that, in the context of treaty commitment, signatory delegation illustrates states ceding authority to IOs to sign treaties, which are often binding among their member states as well as the non-member states with which they negotiate. By allowing IOs to actually sign international treaties, and agreeing to oblige by the terms of the treaties, states are essentially pooling a substantial amount of their sovereignty. Powers succinctly illustrates the relationships between the ability of IOs to sign treaties, ILP, and IO autonomy:

> "Signatory delegation grants treaty-making power to IOs. In order to be a signatory to an international treaty under international law, each party must possess international legal personality. When states delegate treaty-making power to IOs, they inherently grant such legal right and capacity under international law to perform this particular task" (2010).

Thus, any model aiming to accurately measure IO independence from states would gain much by accounting for this aspect of IO autonomy.

Unlike Haftel and Thompson (2006), Powers (2010) uses Regional Economic Institutions (REIs) as her unit of analysis. REIs are IOs that "facilitate trade cooperation as well as other forms of economic integration among a limited number of states." Further, she explains that they "specify rules for trade liberalization in the form of reduced tariff barriers, tariff policy

harmonization…economic development…the economic implications of shared natural resources…and integration in infrastructure." The list of REIs that Powers (2010) uses in her data is much greater than the list of RIAs used by Haftel and Thompson (2006).[18]

To sum it up, by exploring the prospect of the second aspect of delegated authority mentioned by Powers, the ability of IOs to represent their member states in international disputes (i.e. representative delegation), I add to her conceptualization of IO autonomy and, in turn, apply her research on ILP to my conceptualization of representative delegation, both in the name of advancing Haftel and Thompson's (2006) study of IO independence. Thus, I have achieved my first contribution, which, once again, was to expand upon the arguments made by Haftel and Thompson (2006), as well as upon the work by Powers (2010), by introducing to their research the concept of representative delegation; the evidence of which I demonstrated by examining the case of the EC bringing and receiving claims in the WTO DSM. I also suggested the implications of such a phenomenon for IO independence.

As the second contribution of this article is to build upon Haftel and Thompson's (2006) overall measure of IO independence, in the following section I elaborate on Powers' (2010) suggestion to introduce ILP as a fourth indicator to their measure, by including "participation in dispute settlement" to her research that accounts for the prevalence of IOs signing international treaties. I believe these two elements sufficiently constitute an accurate measure of ILP, which will assist in measuring more precisely the independence of a wider scope of IOs.[19]

[18] Powers (2010) includes the EC in her REI data whereas, in their RIA data, Haftel and Thompson (2006) include the EU.

[19] According to many international legal scholars, the right of legation (which is the establishment of diplomatic relations between IOs and other international "legal persons") is also a component of ILP. In fact, the *1975 Vienna Convention on the Representation of States in their Relations with IOs of a Universal Character* stipulates that organizations have the right to send and receive missions. However, as my focus is on representative delegation, I only include these two aspects of ILP for this particular study.

In addition to presenting descriptive statistics of the previously mentioned concepts, I include a case example of a specific EC trade dispute, the EU-US banana dispute, in order to demonstrate how present ways of thinking about IO independence do not fully account for this case and how my expanded notion of IO independence does. Ultimately, I attempt to convey how my contributions change the current understanding of IO independence.

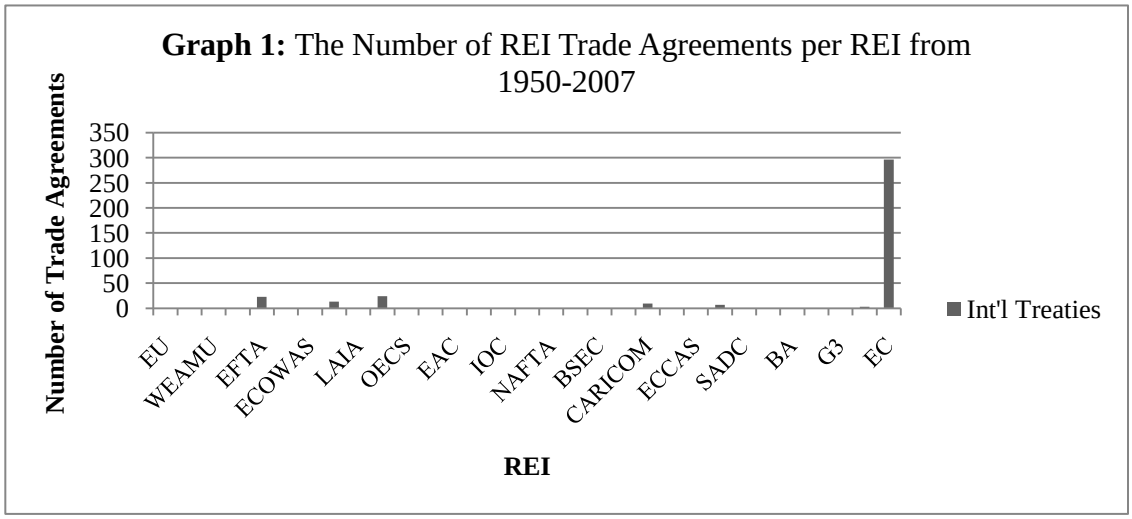
METHODS

Haftel and Thompson (2006) use the following indicators in their measure of IO independence: decision-making procedures; the existence and discretion of supranational bureaucracies; and the existence and legalization of third-party dispute settlement mechanisms. Decision-making procedures are measured by: 1) the presence of a majority rule voting structure; and 2) whether a council of ministers holds decision-making power. Supranational (regional) bureaucracy is measured by: 1) whether the IO has a permanent secretariat; and 2) whether or not the secretariat can make or initiate recommendations. Finally, dispute settlement mechanism is measured by: 1) whether or not the IO contains a binding dispute settlement mechanism; and 2) whether or not the IO has a standing tribunal. To this measure, I elaborate on Powers' (2010) suggestion to introduce ILP as a fourth indicator. In order to operationalize ILP, I add "participation in dispute settlement" to her measure of the "number of REI treaties per REI per decade." This will, I believe, expand the scope of the measure to account, not only for existing IOs (i.e. the REIs included in their current measure), but also for future IOs that emulate the EC and possess international legal personality.

The following descriptive statistics show 1) the "number of REI treaties per REI per decade" and 2) the number of cases brought by or against an RIA in the WTO DSM." I

operationalize the first aspect of ILP by using data collected by Powers (2010), which measures the frequency that RIAs that sign treaties (specifically, trade agreements) with states, RIAs, and other IOs. This measure effectively shows the occurrence of IOs signing treaties with other international legal actors over time (from the 1950's to the 2000's) by enumerating the number of treaties each RIA has signed. In order to operationalize participation in dispute settlement, I use Eric Reinhardt's (2001) dataset in which he codes the entire list of claims brought to the WTO dispute settlement mechanism (DSM) from the years 1948-1994; for more recent claims, I use the WTO's database: both of which conclude that the EC (as the only RIA to bring or receive a claim in the DSM) has, to-date, been the complainant in 81 cases and the respondent to 67 cases (WTO 2010).

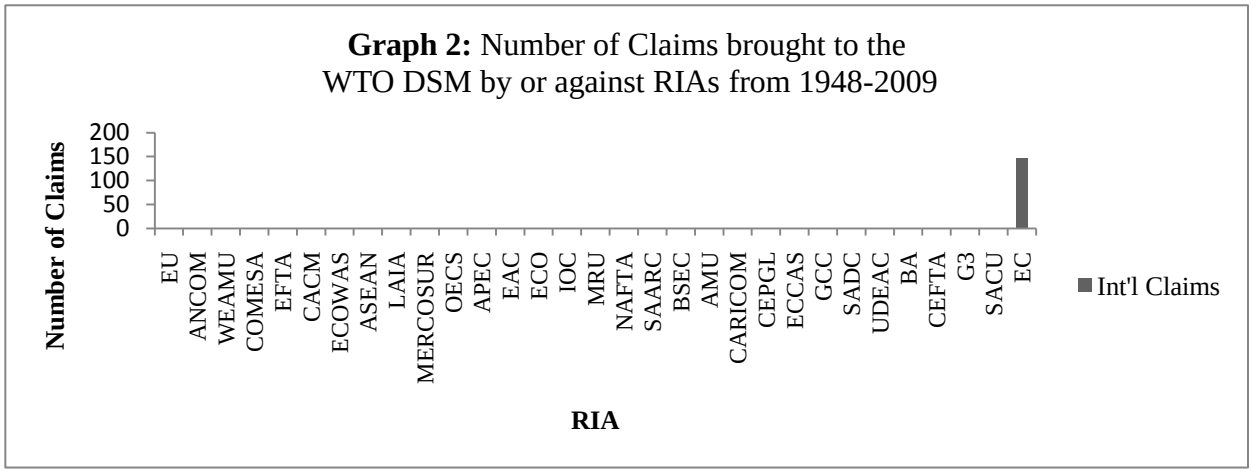
Descriptive Statistics



Graph 1 shows the frequency of REIs signing trade agreements with other international legal actors over time.[20] Once again, the EC far outnumbers any of the other RIAs in terms of

[20] To maintain consistency, this graph shows only the REIs included in Powers (2010) sample that are also included in Haftel and Thompson's (2006) sample of RIAs. Powers also looks at the number of trade agreements signed per decade in order to illustrate the increase in signatory delegation. For further information, see Powers (2010).

being treaty signatories. It is important to note that Powers (2010) has many more IOs included in her study, so it would be interesting to apply Haftel and Thompson's (2006) model to the other IOs included in Powers (2010) study. These results show that the signing of international treaties by IOs is weighed more heavily towards the RIAs with more independence (not including the EC, which was not included in Haftel and Thompson's original measure). Specifically, the EC has signed 75% of the entire number of treaties included in Powers' (2010) sample. Because ILP allows RIAs to sign treaties, and thus create binding international law, even for its member states, it is clearly an important facet of IO independence and it will exist among more IOs as the above trends continue to occur.



Graph 2 reports the number of claims brought to the WTO DSM from the years 1948-2009. Currently the EC, which is the only organ of the EU with ILP, is the only RIA with the capacity to bring claims in this DSM. The EC has, to-date, been the complainant in 81 cases and the respondent to 67 cases (WTO 2010). This speaks to my theory because in Haftel and Thompson's results, the EU emerged as the RIA with the most independence. It is expected, then, that its organ with the power to sign treaties and bring international claims would be the foremost example of an RIA with this unique ability.

The "EC — Bananas III" Dispute

Table 1: Regime for the Importation, Sale and Distribution of Bananas (Case: DS27)

Parties		**Agreement**	**Timeline of the Dispute**	
Complainant:	Ecuador, Guatemala, Honduras, Mexico, United States	*GATT Arts. I, III, X, XIII* *GATS Arts. II, XVII* *Licensing Ag Art. 1.3* *Lomé Waiver*	Establishment of Panel:	*8 May 1996*
Respondent:	European Community		Circulation of Panel Report:	*22 May 1997*
			Circulation of AB Report:	*9 September 1997*
			Adoption:	*25 September 1997*

Source: WTO

The following summary is taken from the WTO DSU records:[21]

The complainants alleged that the EC's regime for importation, sale and distribution of bananas was inconsistent with GATT Articles I, II, III, X, XI and XIII as well as provisions of the Import Licensing Agreement, the Agreement on Agriculture, the TRIMs Agreement and the GATS. On 11 April 1996, the five complainants requested the establishment of a panel and a panel was established at the DSB meeting on 8 May 1996. The report of the Panel was circulated to Members on 22 May 1997. The Panel found that the EC's banana import regime and the licensing procedures for the importation of bananas in this regime were inconsistent with the GATT.

[21] For more details, see World Trade Organization, DISPUTE SETTLEMENT: DISPUTE DS27 (European Communities — Regime for the Importation, Sale and Distribution of Bananas)

On 29 June 2007, the United States requested the establishment of a compliance panel as it considered that the EC failed to bring its import regime for bananas into compliance with its WTO obligations (the regime remains inconsistent today). At its meeting on 12 July 2007, after having examined the substantive claims raised by the Complainants, as well as the defenses presented by the European Communities, the Panel concluded that:

1) The preference granted by the European Communities to an annual duty-free tariff quota of 775,000 mt of imported bananas originating in ACP countries constitutes an advantage for this category of bananas, which is not accorded to like bananas originating in non-ACP WTO Members, and is therefore inconsistent with Article I:1 of GATT 1994.
2) With the expiration of the Doha Waiver from 1 January 2006 as it applied to bananas, there is no evidence that, during the period that is relevant for this Panel's findings, that is, from the time of the establishment of the Panel until the date of this Report, any waiver from Article I:1 of GATT 1994 has been in force to cover the preference granted by the European Communities to the duty-free tariff quota of imported bananas originating in ACP countries;
3) The European Communities' current banana import regime, in particular its preferential tariff quota reserved for ACP countries, is inconsistent with Article XIII:1, with the chapeau of Article XIII:2, and with Article XIII:2(d) of the GATT 1994;
4) The tariff applied by the European Communities to MFN imports of bananas, set at €176/mt, without consideration of the tariff quota for 2.2 million mt bound at an in-quota tariff rate of €75/mt, is an ordinary customs duty in excess of that set forth and provided for in Part I of the European Communities' Schedule. This tariff is therefore inconsistent with the first sentence of Article II:1(b) of the GATT 1994.

According to the WTO report, "trade policy officials on both sides of the Atlantic expressed hopes that the banana agreement would contribute to a climate for resolving other thorny trade disputes and for bilateral and multilateral cooperation. Members and committees of the 107th Congress will be monitoring implementation of the agreement and its effects on trade relations between the EU and the Complainants of this case."

There are two key relevant points demonstrated in this case example. The first is that nowhere in this case is a single EC Member State mentioned. This is a literal representation of the "single-voice" achieved by the CCP outlined in TEC. Consequently, the terms of the panel report become standard commercial policy across the EC. Secondly, the claim brought against the EC was dealt with by the Commission, and so no one Member State was forced to shoulder the costs of the attack. Because of the representative delegation granted by Member States, the

EC negotiated and, ultimately accepted the terms of the panel report, *on behalf of its Member States.* Thus, without the concept of representative delegation, Haftel and Thompson's (2006) measure, as currently exists, would be unsuccessful in adequately explaining this clear case of independence, as was exercised by the EC.

CONCLUSION

Thanks to the theoretical and empirical research offered by Yoram Z. Haftel and Alexander Thompson (2006), as well as the introduction of ILP and signatory delegation to the study of international organizations by Powers (2010), we now have a basis off of which we are able to expand our hypothetical and material knowledge and understanding of IO independence. Aside from the insightful theoretical contributions offered by Haftel and Thompson (2006) explaining the sources of independence (neutrality, delegation, and autonomy), they offer a strong and effective measurement of the topic itself, including such variables as decision-making procedures, the existence of a supranational bureaucracy, and the existence and design of a dispute settlement mechanism within the RIA. Further, by applying a concept from international law to the study of international relations, Powers makes a (2010) intelligent contribution to the discussion of IO autonomy by recognizing the fact that ILP has important implications for our entire knowledge of IOs and their effects on global politics.

The purposes of this paper are as follows: 1) in my own attempt to expand the general understanding of IOs and their varying degrees of independence, to utilize the research initiated by Haftel and Thompson (2006) and elaborate upon their conceptual explanation of independence by including Power's (2010) notion of ILP to their discussion. I achieved this by using the example of the EC and how its ILP has allowed it to be the first, and only, IO to participate in the WTO DSM, and thus possess representative delegation; 2) to reveal that the EC

is not an isolated case, but the forerunner of regional integration. As such, scholars should anticipate the emulation of the EC by other regional organizations. It is my belief that, like signatory delegation (Powers 2010), representative delegation is an institutional design mechanism that will appear in a growing number of IOs in due time; 3) by including "participation in dispute settlement" to Powers (2010) measure of ILP, to fill in the gap in Haftel and Thompson's (2006) original measure of independence; and finally 3) By using a case example of a specific EC trade dispute (e.g. Regime for the Importation, Sale and Distribution of Bananas), to demonstrate how current ways of thinking about IO independence cannot adequately explain this case and how my expanded notion of IO independence does.

Though, hopefully, this new measure brings us one step closer to a more accurate picture of IO independence, there is still much room for improvement and refinement. For example, as stated by Haftel and Thompson, this project "will benefit from expanding the data set to include other sets of IOs, such as universal IOs and those in other issue areas—security, human rights, environment, and so on" (2008). Further, the inclusion of more RIAs over a longer period of time would also benefit the study, as the common RIA seems to be changing and evolving to become more independent.

Finally, using this measure as a starting-off point, my personal future-research horizons include creating a more elaborate, complex, large-n dataset of IOs, which would provide the empirical framework needed to analyze the continued development of IOs as well as their expanding role in global politics. In addition, I would like to engage in an in-depth case study of the EU (the EC, in particular) in order to observe, over a longer period of time, the continued effects of ILP and representative delegation on its role in the international system, as well as the evolving interplay between its various institutions and domestic and international politics.

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