UNIVERSITY OF CALIFORNIA

Santa Barbara

Resisting Globalization: The Institutional Constraints on Intellectual Property Rights Reform in Emerging Economies

A Dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in Political Science

by

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December 2004

UMI Number: 3159296

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ACKNOWLEDGEMENTS

I would like to express my gratitude to the many individuals who assisted me in countless ways as I researched and wrote this dissertation. To begin, I want to thank each of my committee members for their constant support, careful scrutiny of my research, and constructive comments. Each played an important role in the dissertation process. Fernando López-Alves always understood when I most needed emotional encouragement, while also teaching me the importance of placing my work in its larger theoretical context. Benjamin J. Cohen fostered my research ambitions at the onset of my graduate study by believing in my abilities as an emerging scholar, and providing me with instructive advice and direction. Lastly, I would like to express special gratitude to Kate Bruhn, who constantly challenged me to produce work of high quality. Her patience, faith, and guidance will always be appreciated. I also appreciate the institutional support for this project provided by UCSB and the Center for U.S.-Mexican Studies at UCSD.

Additionally, there have been many friends and family members who have provided me with encouragement and support throughout this arduous process. Any success I achieved at UCSB would not have been possible without the comradeship and assistance of many of my fellow graduate students. A debt is owed to Ross Pugia, Richard Huizar, Cindy Stavrianos, Lia Roberts and Joe Gardner for their humor and empathy these past years. Special thanks should also be given to Diane

Johnson, whose advice and optimism enabled me to realize that there is a conclusion to this dissertation process.

Much gratitude is owed to Rocio and Bill Gronachon, Cindy Fan, Joan Rueben, Christy Chaloff, Kelly Forebaugh, Heather Chiamori, Beth Curtis as well as the entire Robles, Reyes, and Enriquez families for their encouragement and prayers throughout this entire process. I am also extremely grateful to Anne and Vincent McKoy for their wise counsel and frequent assistance.

Finally, I am forever in debt to my immediate family for always supporting me in this endeavor. My brother Arthur's advice "to pray as if everything depended on God and study as if everything depended on you" has never been forgotten. My brother Carlos taught me to brave whatever obstacle came my way. Moreover, my brothers' families provided me with the emotional support and love necessary to see this project to its completion. Importantly, I want to express my deepest gratitude to Chris McKoy, who has always been my biggest advocate, and a great source of joy and comfort, throughout this shared experience. I deeply appreciate his enduring patience, kind assistance, and emotional support these past years. And most of all, I would like to thank my parents, Mary and Pete Reyes, who serve as the source of inspiration in all that I do. I am so blessed to have such wonderful parents who always encouraged me to follow my dreams and who assisted me in so many ways. This dissertation is dedicated to you both, Mama and Papa.

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ABSTRACT

Resisting Globalization: The Institutional Constraints on

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by

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In today's globalized economy, emerging economies face intense pressure to converge their economic policies toward common norms to remain competitive in the marketplace. Yet legal structures, in particular intellectual property rights (IPRs) are curiously withstanding these calls for convergence. This dissertation investigates why legal structures in emerging economies deviate from the convergence norm by examining the problematic process of IPR reform. Highlighted is the role of domestic institutions and their unanticipated effects on convergence efforts. Cross-national regression analyses are conducted to assess global correlation trends. To further detail those variables that counteract and encourage reform, comparative analysis of a case of successful convergence, Chile, and one of non-convergence, Mexico is utilized. This research illustrates how a particular set of government institutions can undermine states' abilities to respond to the calls for convergence. The findings indicate that the institutional variables of presidentialism and centralized agency authority, as well as the structural variable of trade negotiations, support IPR reform efforts. However, they are insufficient to secure successful

convergence. Rather, the critical causal variable necessary is the existence of a well trained and funded judiciary capable of enforcing relevant legislation. Unlike trade and financial policy convergence which occurs within one branch of government, IPR convergence is contingent on the historical evolution of the judiciary vis-à-vis the executive. The study fills gaps in both the globalization and economic development literatures by illustrating how domestic variables mitigate pressures for policy harmonization.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF GRAPHS

LIST OF ABBREVIATIONS

Works frequently cited throughout this dissertation have been identified by the following abbreviations.

ACHIPI	Chilean Association of Industrial Property
ADV	(Chilean) Association of Videogame Distributors
AFOCHI	Chilean Association of Phonogram Producers
AIPLA	American Intellectual Property Law Association
AIPPI	International Association for the Protection of Intellectual Property
AMITI	Mexican Association of Information Technologies
AMPROFON	Mexican Association of Phonograph Producers
ANDI	National Association of (Artistic) Interpreters
ASAIECH	Chilean Association of Artists, Performers, and Executors
BSA	Business Software Alliance
CCE	(Mexican) Business Coordinating Council
CD	(Chilean) Concert for Democracy
CIF	Chamber of the Pharmaceutical Industry of Chile
CIM	Contract-Intensive Money Ratio
CNC	(Chilean) National Chamber of Commerce
CPC	(Chilean) Confederation of Production and Commerce
DPI	(Chilean) Industrial Property Office
FDI	foreign direct investment
FTA	free trade agreement
FTAA	Free Trade Area for the Americas
GATT	General Agreement of Trade and Tariffs
GDP	Gross Domestic Product
IDB	Inter-American Development Bank
IIPA	International Intellectual Property Alliance
IMPI	Mexico's Institute of Industrial Property
INDAUTOR	(Mexican) National Institute of Copyright
IP	intellectual property
IPR	intellectual property rights
LES	Licensing Executive Society
NAFTA	North American Free Trade Agreement
NGO	non-governmental organizations
NIE	new institutional economics
NLCIFT	National Law Center for Inter-American Free Trade
OAS	Organization of American States
OPEC	Organization of Petroleum Exporting Countries
PGR	(Mexican) Attorney General's Office
PhRMA	Pharmaceutical Research and Manufactures of America

PRI	Institutional Revolutionary Party
PTO	U.S. Patents and Trademarks Office
SACM	(Mexican) Society of Authors and Composers of Music
SCD	Chilean Copyright Society
SECH	Chilean Society of Writers
SOGEM	General Society of Mexican Writers
TNC	transnational corporation
TRIPS	Trade-Related Aspects of Intellectual Property Rights
USAID	Agency for International Development
USTR	United State's Trade Representative
WIPO	World Intellectual Property Organization
WITSA	World Information Technology and Services Alliance
WTO	World Trade Organization

CHAPTER ONE

THE INSTITUTIONAL BARRIERS TO INTELLECTUAL PROPERTY RIGHTS CONVERGENCE

1.1 The Question

Since the early 1980s, scholars have intensely debated how the process of economic globalization alters the power and functions of the modern state.[1] One side argues that the rise of a globalized economy marks the demise of the nation-state while the other faction counters that it merely represents a period of state transformation. The one point that both sides generally agree upon is that economic globalization places intensified pressure on states to remodel themselves and harmonize their economic policies to global norms to remain competitive in the contemporary marketplace. Commonly referred to as the 'policy convergence hypothesis,' it also asserts that emerging economies in particular face acute pressure

[1] To discern globalization, indicators are drawn from Lairson and Skidmore's definition of economic globalization. They define economic globalization as rising levels of involvement in the world economy, increasing interdependence, the establishment of global markets, prices, and production, and the diffusion of technology and ideas. Indicators of globalization will be drawn from Lairson and Skidmore's contention that increased openness in the world economy characterizes the contemporary era of economic globalization. Thomas D. Lairson and David Skidmore, *International Political Economy* (Fort Worth, NY: Harcourt Brace College Publishers, 1997), 3.

to converge their economic policies and institutions toward new norms to attract much needed foreign investment and promote growth.[2]

In keeping with the hypothesis, normative analyses of how states should transform themselves have become abundant. Yet there is a surprising lack of empirical investigations of the dynamics of convergence. Much of the academic literature simply assumes that states automatically respond appropriately to the pressures of globalization. However, within the area of legal structures, the historical record does not support this assumption. States are not uniformly reforming their legal institutions and policies as predicted by the policy convergence hypothesis. Curiously, legal structures converge less than trade and financial structures. This is most evident in the developing world where emerging economies are resisting the calls for legal convergence.

Unlike other institutions, legal structures continuously withstand the pressures for convergence in light of many analyses explaining the economic benefits of doing so. For example, during the current wave of institutional reform in emerging economies, state responses within the legal issue-area of property rights vary in type and degree.[3] This is especially true in the arena of intellectual property

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[2] The term emerging economy refers to the phrase first coined by Antoine W. van Agtmael of the International Finance Corporation of the World Bank in 1981. The term refers to an economy with low-to-middle per capita income. Such countries constitute approximately 80% of the global population, representing about 20% of the world's economies. Throughout this study, the term will be used interchangeably with 'developing economy.'

[3] Property rights are generally conceived as rights of ownership, use, sale, and access to wealth. Categories of property include physical property (land, consumer objects, capital equipment) and intangible property (ideas, inventions). As Caporaso and Levine explain, a well-defined system of property rights limits permissible uses of owned capital as well as determines who has what claims to

rights (IPRs).[4] Federal policies governing the protection of intellectual property (IP) vary throughout the developing world. As a result, product piracy and theft of protected trade secrets continue to rise in these countries costing the producers of IP billions of dollars annually. In Latin America for instance, despite embracing financial and trade convergence, only a number of governments choose to prioritize the issue of IPR convergence. For those that have begun the reform process, the path has proven to be more problematic than originally believed with rates of success differing radically throughout the region. Despite the role that IPR convergence plays in securing foreign investment monies and technology transfers, partial and delayed reform has become the norm in Latin America. Consequently, IPR convergence is an especially illuminating area to examine because it departs from the theoretical prediction.

It is this unexplained deviation from the policy convergence hypothesis that this study undertakes to explain. If private economic actors, specifically transnational corporations and foreign investors, are trying to compel states to converge their intellectual property rights, why is non-convergence prevalent? What factors counteract such pressures for convergence? What factors encourage

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the output. James A. Caporaso and David P. Levine, *Theories of Political Economy* (New York: Cambridge University Press, 1992), 87.

[4] Intellectual property is commonly defined as creations of the mind. Legal protections of intellectual property are known as intellectual property rights and are generally divided into the categories of copyrights, patents, trademarks, and trade secrets. The purpose of an IPR is to confer to the title holder a temporary monopoly on the use of the protected item. In Latin America, intellectual property rights also include "moral rights" which are a set of rights related to the honor, prestige and reputation of the author. They are granted to the author and perpetually protected. In the United

convergence? In short, why do some states converge toward international norms in intellectual property rights, while others do not?

To address these questions, I conduct both quantitative and qualitative analyses to discern those factors that support and undermine property rights convergence in emerging economies. Employing the analytical tool of the comparative method, I examine a case of failed convergence and one of successful convergence within Latin America -- Mexico and Chile respectively.[5] I argue that the variables of presidentialism, liberal trade regimes, and centralized agency authority support IP reform efforts but are insufficient to secure successful convergence. Rather the variable instrumental to convergence is the existence of an effective judiciary to enforce newly created IP legislation. As illustrated in the case studies, the historical evolution of the federal judiciary vis-à-vis the executive explains why convergence occurs in Chile but remains delayed in Mexico. Without a well qualified and funded judiciary, IPR reform will remain indefinitely stalled and incomplete.

This study illustrates how a particular set of governmental institutions can produce unanticipated consequences when states respond to the pressures of economic globalization. It is not that the developing world fails to hear the calls for

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States, moral rights are not exclusively granted, solely copyrights. A more detailed discussion of intellectual property can be found in Chapter 4.

[5] As discussed in more detail below, both nations embraced the neoliberal economic project and appeared posed to embark on IPR reform but only Chile's program has garnered the approval of international business. The comparative cases were chosen from the single region of Latin America because a number of economic competitors exist within the geographical area theoretically resulting in intensified convergence pressures.

convergence in this issue-area but rather that domestic institutional contexts block states' abilities to respond to these calls. Whereas scholars first believed that policy convergence was a relatively straightforward process, this study illustrates that as the scope for convergence expands beyond trade and finance, the process of reform will become far more problematic than scholars initially predicted.

1.2 Academic Contributions

This study makes a number of valuable contributions to two sub-fields in political science that are increasingly finding areas of commonality --international relations (IR) and comparative politics (CP). Scholars in both sub-fields increasingly recognize that the structural processes examined by IR scholars affect the political processes examined in the comparativist literature. This bridge between the two sub-fields is especially evident in the subjects of international political economy (IPE) and economic development.

The most important contribution made by this study is that it highlights the significant role of new actors to policy convergence. Unlike convergence in the issue areas of trade and finance, legal structures do not conform to the theoretical prediction because it is contingent on the actions of two branches of government. Existing scholarship does not call attention to the important role of multiple institutional actors on the process of policy convergence. Scholars examining the process of policy convergence must expand their analysis beyond a mere examination of the executive or their assessments will prove to be incomplete and inaccurate. Whereas trade and finance reform is initiated, administered, and

enforced within one branch of government —the executive— convergence of legal structures differs from the traditional reform process because a new institutional actor is introduced into the equation. Regrettably, much of the literature examining policy convergence confine their analysis to the executive branch alone assuming that once legislated policy is automatically enforced. However, in the arena of legal convergence this assumption is grossly incorrect. The result is that existing scholarship on policy convergence cannot adequately explain the rise of non-convergence in legal structures because it is a much more problematic process than reform in other issue-areas. However, this study addresses this weakness by incorporating new institutional actors in the analysis.

Importantly, as the calls for convergence expand to the arena of commercial law, successful convergence becomes dependent on both the executive *and* the judicial branches of government. Although the executive initiates and shapes the direction of IPR policy, the responsibility to enforce the new legislation falls on the shoulders of the often ignored judiciary. Furthermore, as discussed in more detail below, the historical development of the institution of the executive may ultimately undermine effective policy convergence if it occurred at the expense of the development of the judiciary. As calls for policy convergence expand to the arena of legal structures, effective convergence will increasingly become contingent on new actors previously ignored in the relevant literature. This study contributes to existing globalization scholarship by introducing the view that policy convergence is much

more complex process then scholars originally believed owing to the introduction of new institutional actors to the analysis.

Within the subject of IPE, in particular the topic of globalization, the study contributes a much-needed empirical study of policy non-convergence in a neglected but increasingly discussed policy area. Although many normative analyses extolling the merits of IPR convergence exist, little investigation has been conducted regarding why states fail to converge this particular arena of commercial law. This dissertation addresses this void in the literature by providing an empirically based discussion of the factors that support convergence in Chile and those that undermine it in Mexico. Rather than simply proposing speculative explanations of non-convergence, this study tests a number of proposed theoretical relationships and provides an explanation based on the historical record.

This study also demonstrates the limits of globalization in the developing world. Although emerging economies face intense pressure to converge to the competition model, institutional obstacles may exist that restrict a state's ability to reach global norms. Specifically, state responses to globalization can vary depending on the historical development of domestic institutions. Rather than assuming that IPR non-convergence is the result of a reduction of global pressures for reform or a rise in opposition to the reform project, I argue that globalization pressures are mitigated by domestic institutions. Thus, it is not that globalization is slowing down or weakening but rather that it cannot affect all policy areas in a uniform manner.

Such analysis is also relevant to the CP topic of development economics because it sheds new light on the limits to and possibilities for state policy autonomy in emerging economies. In this dissertation, I demonstrate the critical role that states continue to play in the creation of a stable and transparent legal regime essential for efficient market activity. Legal structure convergence necessitates active state involvement to create and manage particular legislation as well as secure compliance to these new laws. Contrary to a number of economic development studies that view domestic legal environments as exogenous variables to growth, the analysis I present is consistent with the thesis that states continue to play a very important role in the creation of a stable and transparent legal regime essential for long-term development. Thus as nations are increasingly called on to reform their property rights structure to further economic growth, avenues for state action are increased rather than diminished as numerous scholars predicted. Accordingly, this study contributes to the debate regarding the relationship between globalization and the modern state by providing evidence that economic globalization does not render the state useless or mark its decline. I argue that states are transforming themselves in unpredicted ways to respond to the pressures of globalization.

At the same time, this dissertation contributes to the CP paradigm of new institutional economics (NIE). The emphasis I place on the historical evolution of government institutions and its impact on convergence illustrate the important nature of institutional development and effectiveness to the policy process. Whereas presidentialism supports the initiation of appropriate IP legislation it may ultimately

undermine the successful realization of the final stage of convergence if powerful executives achieved their privileged position at the expense of the judiciary. When strong executives choose to deliberately weaken the quality of the judiciary by withholding resources and ignoring its authority, federal courts will not possess the necessary training and means to effectively adjudicate IP disputes or enforce IPRs. My thesis that a particular set of governmental institutions can both support and undermine the IP reform process joins a body of NIE literature highlighting how institutional contexts affect policy outcomes.

Also relevant to NIE scholarship is the issue of institutional change. Information emerges regarding why some institutions are more sensitive than others to convergence pressures within different national contexts. As expanded on in Chapter 7, nations undergoing trade negotiations are much more susceptible to convergence pressures from actors shaping the direction of the trade talks. This is especially true for developing economies that view free trade agreements as a way to advance development. Institutional change is therefore more likely to occur when the structural variable of trade negotiations is included in the equation.

Also significant to NIE scholarship as well as literature concerning property rights reform are the contradictory results that the quantitative models in this study produced. This indicates that using this methodology alone is inappropriate for studying the variable of divided authority. As discussed in further detail in both chapters 3 and 8 of this dissertation, Charles Cadwell argues that an impediment to

successful legal reform is divided authority over policy implementation.[6] Theoretically fewer agencies responsible for policy administration promote successful convergence in the issue-area of intellectual property rights. To test this hypothesis, in the quantitative analyses presented in this dissertation, the proxy measure of government committees was used to discern divided authority with higher numbers of committees indicating more administrative complexity. In the regression analyses, this measure proved to be the only statistically significant variable but the causal variable did not perform as predicted.[7]

Unfortunately, explanations in the relevant literature for this unexpected relationship do not exist. Whereas quantitative methodologies discern variable correlations and probability relationships, they do not provide explanations for 'why' particular relationships exist. By contrast, I explain the paradoxical regression results in the qualitative case studies. In the statistical model, the positive relationship between higher divided authority measures and convergence reflected the growth in specialized agencies to deal with particular governmental issues. With the creation of each new specialized agency, although the total number of executive offices increases and administrative complexity increases, there is less divided

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[6] If the implementation or enforcement of new laws is the responsibility of several ministries or levels of government, the chances for authority disputes and overlapping implementation increases. Charles Cadwell, "Implementing Legal Reform in Transition Economies" in *Institutions and Economic Development*, ed. Christopher Clague (Baltimore: John Hopkins University Press, 1997), 1–23.

[7] In the models, it was assumed that lower proxy measures indicate that implementation authority is concentrated within a small number of actors. However, in the statistical model, the reverse relationship proved statistically significant with a positive relationship existing between more actors involved in policy implementation and convergence.

authority in policy implementation because each new agency is solely responsible for a particular area of policy. Therefore, increases in the proxy measure reflect the creation of more agencies to handle particular policy rather than dispersed responsibility. This example of counter-intuitive statistical results illustrates the limits of quantitative methodologies in which only a partial picture of causal relationships is presented.

In sum, this dissertation not only explains the lack of uniformity in policy convergence throughout the developing world in an increasingly discussed issue-area but it also reveals important information regarding the ever changing relationship between the state and economic globalization. As a result, it imparts relevant lessons in a number of areas of interest to academics and policymakers alike.

1.3 The Empirical Puzzle of Policy Divergence

Although there are various ways that globalization allegedly transforms the state, as previously noted the focus of this study is on the policy convergence hypothesis. To reiterate, according to the hypothesis pressure is placed on states to bring their financial, trade and legal institutions into line in specific ways to remain competitive in an era of increasingly unbridled capital mobility and arbitrage capabilities by transnational corporations (TNCs). Such pressures are notably acute

for emerging economies, such as Chile and Mexico, where foreign investment is a significant component of economic growth.[8]

If the hypothesis is correct, state institutions should converge to the model that the globalized marketplace commands. This model is currently characterized by the liberalization of trade and finance as well as the strengthening of IP regimes.[9] Yet institutional reform in developing economies is not uniform; legal structures such as IPRs converge less than trade and financial structures. For example, of the six Latin American economies considered to be highly subject to globalization pressures, the two nations that symbolized successful trade and financial convergence markedly differed in respect to IPR reform. According to one well respected study, Chile ranked as the best protector of IP in the Latin America whereas Mexico ranked in the bottom half of this grouping.[10] Such variance in IP protection is also documented in the work of scholar Edward Mansfield. He found that Mexico's IPR regime was poorly perceived by investors whereas Chile was

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[8] For an analysis of the importance of foreign direct investment and economic growth in the Third World see "Foreign Direct Investment in Developing Countries" by Joel Bergsman and Xiaofang Shen in *Finance and Development* (1995).

[9] Paul Hirst and Grahame Thompson, *Globalization in Question: The International Economy and the Possibilities of Governance*, (Cambridge: Polity Press, 1996).

[10] Study conducted by William Lesser in which he compared the level of protection given to IP in 44 developing countries. In the study, IPR protection was measured on a 12 point scale with higher scores indicating greater protection. Chile topped the list of Latin American countries with a score of 7.2, followed by Brazil and Costa Rica. Mexico ranked fourth with a score of 6.0. "The Effects of TRIPs-Mandated Intellectual Property Rights on Economic Activities in Developing Countries." Study prepared under WIPO Special Service Agreement. www.wipo.org. Accessed on September 21, 2002.

generally regarded as among one of the best protectors of IP within the developing world.[11]

Thus, rather than uniformity in convergence, a pattern of non-convergence has emerged in this field of commercial law reform. Although scholars have examined trade and financial convergence largely confirming the "competition state" hypothesis, the deviant case of legal structure convergence remains unexplored in current academic literature.[12] This neglect of property rights divergence is surprising considering the vast number of studies emphasizing the importance of these particular legal reforms to competitiveness.[13] This is most puzzling considering the vast number of normative analyses advocating IPR reform as critical

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[11] Edwin Mansfield, *Intellectual Property Protection, Foreign Direct Investment, and Technology Transfer* (Washington D.C.: International Finance Corporation, 1994).

[12] The term "competition state" is borrowed from Phillip Cerny's thesis in "Globalization and Other Stories" that the nation-state is becoming a "competition state" whose primary mission is to secure its global market-share. In this competition state, the goal of political agents is to enhance a nation's international competitiveness. For a more detailed discussion of Cerny's argument see Chapter 2. Analyses of trade policy, convergence and strategic trade theory are well discussed in Manuel R. Agosin and Diana Tussie's *Globalization, Regionalization and New Dilemmas in Trade Policy for Development* (Buenos Aires: Facultad Latinoamericana de Ciencias Sociales, 1992). For a comprehensive review of policy convergence in the fields of trade and finance, see Thomas D. Lairson and David Skidmore's *International Political Economy* (Forth Worth, NY: Harcourt Brace College Publishers, 1997).

[13] Scholars who have stressed the importance of particular legal institutions in the contemporary globalized economy include Joseph Stiglitz and Lyn Squire, Managing Director of the International Monetary Fund Michel Camdessus, Lawrence H. Summers and Vinod Thomas, Paul Hirst and Grahame Thompson, Luciano Cafagna, Saskia Sassen, Nathan Keyfitz and Robert Dorfman, and Bruce R. Scott. Joseph Stiglitz and Lyn Squire, **"**International Development: Is It Possible," Foreign Policy 110 (1998); Michel Camdessus, *The Challenges of Globalization in an Interdependent World Economy* (Washington D.C.: International Monetary Fund, 1997); Lawrence H. Summers and Vinod Thomas, "Recent Lessons of Development" in *International Political Economy*, eds. Jeffry A. Frieden and David A. Lake (New York: St. Martin's Press, 1995); Paul Hirst and Grahame Thompson's *Globalization in Question* (Cambridge: Polity Press, 1996); Luciano Cafagna, "Administrative Reform and State Capacity" in *Redefining the State in Latin America* (Paris: Organization for Economic Co-operation and Development, 1994), 213-238; and Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization*, (New York: Columbia University Press, 1996); Nathan Keyfitz and Robert Dorfman in Michael P. Todaro's *Economic Development* (Menlo

to attracting foreign investment and promoting economic growth.[14] A recent World Bank study of 73 countries, for example, concluded that low credibility of rules is associated with lower rates of investment and growth.[15] If policy reform in these fields is critical to economic development, attention should be drawn to the question of why policy responses have varied.

As noted above, in the issue-area of property rights there is one category in particular that is increasingly highlighted as instrumental to the competition state model -- IPRs. In an era marked by the globalization of finance and production processes, emerging economies face mounting pressure to address IP protection to remain competitive in their quest for investment monies and technology transfers. As economist Keith E. Maskus recently remarked, "The world is witnessing the greatest expansion ever in the international scope of intellectual property rights."[16]

Additionally, convergence pressures should be particularly acute for emerging economies such as Mexico and Chile that have the best chance of receiving foreign direct investment (FDI).[17] Generally, regarded as safer and more profitable

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Park, CA: Addison-Wesley, 2000), 642-643; Bruce R. Scott, "The Great Divide in the Global Village," *Foreign Affairs* 80 (January/February 2001).

[14] Clague, Christopher, Philip Keefer, Stephen Knack and Mancur Olson, "Institutions and Economic Performance: Property Rights and Contract Enforcement," *Institutions and Economic Development*, ed. Christopher Clague (Baltimore: John Hopkins University Press, 1997), 70.

[15] Aymo Brunetti, Gregory Kisunko and Beatrice Weder, "Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector," *The World Bank Economic Review* 12 (September 1998), 353-384.

[16] Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Washington D.C.: Institute for International Economics, 2000).

[17] The classification system presently used in this study to define the various sub-groups is from the World Bank Group. The World Bank Group classification system divides economies according to 1999 GNP per capita, calculated using the World Bank Atlas method. The groups are: low income, $755 or less; lower middle income, $756-$2,995; upper middle income, $2,996-$9265; and high

investment environments than the low-income economies, competition among the upper middle-income economies for FDI is acute.[18] In 1994, the majority of FDI investment (52%) went to one region, East Asia, with Latin America coming in second with 29%.[19]

Moreover, foreign investors' willingness to consider such countries as investment sites is also increasingly. Although the bulk of FDI flows traditionally remained within the "Triad" of North America, Europe and Japan, they are increasingly becoming more dispersed to middle-income economies. Whereas 80% of FDI remained within the Triad between 1982 and1986, FDI flows will be equally divided between developed and developing states by 2010.[20] This presents a considerable opportunity for upper middle-income economies to attract foreign investment. Yet poor IP protection may undermine their ability to attract this investment. The initiation of reforms that secure property-rights, in particular IPRs, would appear to be a rational step for middle-income economies, such as those found in Latin America, to ensure development. But developing economies have been slow to reform these institutions. Empirical analysis into the dynamics of this problematic process is necessary to fully understand why policy convergence is achieved much

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income $9,266 or more. This classification system designates 55 economies as lower-middle-income and 38 economies as upper-middle-income for a total of 93 middle-income economies. The World Bank Group. "Classification of Economies." www.worldbank.org/data/databytopics/class.htm

[18] FDI, unlike portfolio investment, brings additional resources --such as technology, management expertise, and access to markets—to developing countries.

[19] In a category of approximately 100 countries, only eleven accounted for 76% of total FDI flows to developing countries. Joel Bergsman and Xiaofang Shen, "Foreign Direct Investment in Developing Countries: Progress and Problems," *Finance and Development* (Washington DC: IMF and IBRD, 1995), 6.

more quickly and easily in trade and finance but not in this particular arena of commercial law.

As noted above, there are four distinct questions that this dissertation addresses. Within the comparative case studies, the theoretical puzzle is further specified to address the specific issue of IPR variance in two upper middle-income Latin America nations. The theoretical puzzle for the qualitative chapters is as follows. If private economic actors, specifically TNCs and foreign investors, are trying to compel states to converge their intellectual property rights regimes, why is non-convergence prevalent in Mexico but not in Chile? What factors counteract such pressures for convergence? What factors encourage convergence? In short, why do some states, such as Chile, converge toward international norms in intellectual property-rights, while Mexico, according to many comparative measures, does not? Importantly, in the case analysis I carefully examine how particular domestic variables affect IPR convergence in each stage of the reform process. Highlighted in the analysis is the degree to which the variables under study support convergence as the process evolves from the initiation of new laws to their implementation and administration, and subsequent enforcement.

To examine the paradox of global IPR divergence, I employ the paradigm of new institutionalism.[21] This theoretical approach offers a rationalist style of analysis

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[20] *The Economist*, "Big is Back," 24 June 1995, 7.

[21] The definition used in this study of an institution is the formal and informal rules that constrain individual behavior and shape human interaction. For a detailed discussion of the conceptualization of institutions see Thráinn Eggertsson's "A note on the economics of institutions" in *Empirical Studies*

in which institutions are endogenous variables used to explain public policy. Institutional arrangements are viewed as creating constraints and opportunities for actor mobilization. Central to this approach is the assumption that institutions matter and should no longer be viewed as residual variables in the study of politics.[22] As summarized by NIE scholar Simon J. Bulmer, "institutions structure the access of political forces to the political process while also developing endogenous institutional impetus for policy change that exceeds mere institutional mediation."[23] This approach draws heavily from the economic rational choice model by focusing attention on the way actors pursue their goals in particular institutional contexts.[24] Applying this analysis to the subject at hand, I employ rationalist analytical tools to assess the role of societal actors and domestic institutions on policy convergence. Government institutions and the structural constraints they present to collective action opportunities are at the center of my analysis of the determinants of policy convergence.

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in Institutional Change, edited by Lee J. Alston, Thráinn Eggertsson, and Douglass C. North (Cambridge: Cambridge University Press, 1996)

[22] In this approach, the New Institutional Economics (NIE) is increasingly used in both the economics and political science disciplines to examine a various number of policy outcomes. NIE in particular assumes that institutions can be used by states to address and correct issues of market failures, lack of full information, and aggregate irrational social outcomes. Institutions can facilitate the distribution of accurate information, monitor and enforce contracts, and establish rules of interaction that can serve to improve economic transactions. Thus, institutions reduce the transaction costs of market exchange while also reducing risk for economic agents.

[23] Reform can be a function of either a change in the demands of constituents (those who use the institution) or in the power of suppliers of institutions (government actors). For example, actors benefiting from the status quo may use the state institutional context to support their economic interests and block reforms. Institutional reform may also be driven by international actors who pursue new goals through existing domestic institutions. Simon J. Bulmer, "New Institutionalism, the Single Market and EU Governance," *ARENA Working Papers* (1997/25).

This dissertation examines four key problems. First, it demonstrates empirically that state responses to pressures for conformity have varied even among middle-income countries within a particular geographic region. Second, it tests a number of hypotheses about the factors that most encourage convergence. Third, it proposes factors that impede states from conforming. Lastly, it explains the variance in policy responses in the issue area of IPR convergence.

1.4 Methodology

To examine obstacles to IPR convergence, I draw from two key intellectual sources to develop four rival causal hypotheses: the new institutionalism variant of NIE literature, and Sylvia Maxfield's work on interest coalitions and economic policy. Consistent with NIE scholarship, I examine the propositions that convergence is mediated by the domestic institution of a strong presidency, and divided authority. Drawing from Maxfield's analysis, I investigate the alliances pushing for and against convergence and assess the effectiveness of their activities.[25] The specific hypotheses examined in the study are listed below.

1a. Effective property rights reform is more likely when the political regime is characterized by a balance of power between the executive and legislative branches of government.

1b. Effective property rights reform is less likely when the political regime is characterized by a balance of power between the executive and legislative branches of government.

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[24] Steinmo, Sven and Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Structuring Politics: Historical Institutionalism in Comparative Analysis*, eds. Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992), 16-18.

[25] Sylvia Maxfield, "Bankers' Alliances and Economic Policy Patterns: Evidence from Mexico and Brazil," *Comparative Political Studies* 23, 4 (January 1991).

2. Effective property rights reform is more likely when the executive branch does not divide authority for reform implementation into multiple competing offices.

3a. Effective property rights reform is more likely when domestic interest coalitions of private business owners (capitalists) and public actors mobilize to push for such reform.

3b. Effective property rights reform is less likely when domestic interest coalitions of private business owners (capitalists) or public actors mobilize to oppose such reform.

4. Effective property rights reform is more likely when interest coalitions pushing for such reforms include foreign actors.

To test the hypotheses listed above, I first examine property rights reform across both upper and all middle-income economies using cross-national regression analyses. Due to the lack of data measuring IPRs in emerging economies, in the quantitative models I measure the dependent variable as the aggregate variable, property rights. I assess global correlation trends between property rights reform and a number of independent variables under study. Two models are used in the regression analyses of the complete universe of cases, 81 middle-income economies, and three in the restricted sample of 30 upper middle-income economies. In total I employ five regression models and two sample sizes in the study. Using the smaller sample, no variable proves to be statistically significant. In the expanded sample, only one variable emerges statistically significant yet it is weakly correlated to the dependent variable. Therefore, rather than specifying the determinants of policy convergence, the regression analyses demonstrate the severe limitations of quantitative methods when adequate data is unavailable.

Due to the limitations of existing data on relevant variables, regression analyses provide only a partial and unsatisfactory explanation of non-convergence. Therefore, to understand the phenomenon of non-convergence, in-depth investigation is conducted of two comparative cases. To uncover how the variables of presidentialism, divided authority, domestic interest alliances, and external interest alliances affect convergence, examination is conducted of two poster children for neoliberal policy reform, a case of failed IPR convergence and one of successful convergence — Mexico and Chile, respectively. The dependent variable, property rights, is further specified in the qualitative analysis to the specific issue-area of IPRs.

Both cases serve as critical tests of the policy convergence hypothesis because they possess many of the characteristics that scholars claim make nations susceptible to convergence pressures. In terms of their level of economic development, type of economy, number of economic competitors and governmental economic agenda (market liberalization), both nations appeared primed to enact IPR reform throughout the 1990s and early 21st century consistent with the policy convergence hypothesis. Yet Mexican reform efforts in this area of law, judged by international rankings, remain comparatively weak whereas Chilean efforts are praised as a model of successful convergence.

Notably, the dependent variable, IPR convergence, is a political process and as such is measured as a continuous variable with three distinct, sequential, and dependent components. Specifically, policy convergence entails three stages: policy

initiation (the creation of legislation), policy harmonization (the administration of the legislation), and policy enforcement (the legal defense of the policy). To begin the process of convergence, governments must first enact the appropriate legislation consistent with global norms. In the case of IPR convergence this indicates the creation of laws that meet international standards regarding the rights of IP title owners specified by the developed world, in particular the United States. Secondly, once appropriate laws are passed, they must be well implemented by an IP management structure to conform to global standards. Lastly, for policy convergence to be complete the laws must be consistently enforced by the federal courts. National courts must enforce IP regulations without undue procedural entanglements or delays to serve as a real deterrent to violators.

Successful convergence is therefore contingent on the realization of each stage of the reform process. Accordingly, I examine the entire process of policy convergence to assess where reform breaks-down in Mexico but not in Chile. This approach departs from other scholarship that simply looks at existing legislation as a measure of policy convergence. In such scholarship, explanation cannot be offered as to why variance in IP rankings does not coincide with the comprehensiveness of IP legal regimes. Additionally, those scholars who only examine enforcement cannot explain the historical dynamics of how and why particular legislation appeared in the first place, and how the administration of the policy affects enforcement. I address these limitations by providing a much more comprehensive analysis of the entire process of convergence in the comparative case studies.

1.5 Unraveling the Puzzle of Property Rights Divergence

The evidence presented in this dissertation suggests that the process of IPR convergence is contingent on the combination of four variables – presidentialism, liberal trade regimes, centralized agency authority and a well-trained, effective judiciary. Each variable supports successful convergence but at particular stages of the reform process. The first three variables support policy convergence by fostering appropriate policy initiation and implementation. Yet to secure policy convergence a well-trained and funded judicial branch is needed to ensure that the legal reforms recently legislated are properly enforced in the courts. Unlike policy convergence in the other policy areas where convergence is the responsibility of one branch of government, the executive, IPR convergence necessitates the involvement of a second branch of government, the judiciary.

I argue that IPR convergence deviates from the theoretical prediction because in the developing world, judiciaries are too corrupt, inefficient, and poorly trained to properly adjudicate IPR disputes. As I demonstrate in the case studies, the historical evolution of governmental institutions can both support and undermine the IPR reform process. For example, due to historical development of the Mexican executive at the expense of the judiciary, convergence remains seriously undermined in Mexico. As a result, I believe that analyses legal convergence must include the development of the judiciary vis-à-vis the executive as an endogenous variable to fully understand the process of reform. In the case of IPR convergence, the key role

that the judiciary plays in enforcing legislation is the primary reason for global divergence.

To better understand the process of reform, I must first explain how the variables of presidentialism, liberal trade regimes and centralized agency authority support policy convergence. The institution of presidentialism initially facilitates convergence by allowing for the adoption of undiluted policy reform. In both Mexico and Chile, the existence of an extremely powerful executive enabled their respective governments to develop comprehensive IP legislation without extensive debate or amendments from the legislature. Presidentialism thus promotes the first stage of convergence, policy initiation, by enabling presidents supportive of reform to quickly enact legislation consistent with global norms.

When this variable is combined with the external condition of trade negotiations, the probability further increases for successful policy convergence. In both qualitative cases, strong presidents were more likely to take policy content cues from external actors than domestic groups; especially during periods of trade negotiations. Trade talks provided external actors such as the U.S. Trade Representative and American IP industries the opportunity to pressure states to reform their IP regimes in exchange for passage of the trade accord.

Whereas these variables explain the initiation of IP legislation, effective convergence remains dependent on the administration and enforcement of these new laws. Creating a specialized agency to oversee the implementation of IP legislation and manage IP titles further advances policy convergence. However, convergence

remains incomplete until the newly legislated policy is effectively enforced. Without enforcement, even the most well written and comprehensive laws become insignificant and will not affect societal behavior. Thus, the institutional development of the judiciary significantly affects IPR convergence [See Table 1.1].

Table 1.1: Causal Model for Property Rights Convergence

Policy Convergence	Stage One: Policy Initiation	Stage Two: Policy Implementation	Stage Three: Policy Enforcement
Causal Variables	Presidentialism and Free Trade Negotiations	Centralized agency Management	An effective federal Judiciary

As previously noted, Chile is generally regarded as a model of IP convergence and Mexico an example of divergence. In my efforts to find out why Chile has been able to effectively implement IP reforms but Mexico has failed in this particular issue area, I found the process of reform in the case studies to be rather paradoxical. A contradictory picture emerged when I evaluated existing IP legislation. Surprisingly, Mexico possesses a more comprehensive IP legal regime than Chile. This suggests that variance in IP rankings between the two nations is clearly not a product of differences in the first stage of convergence, the initiation of appropriate legislation, otherwise Mexico would be ranked as the better protector of IP.

Additionally, examining societal causes of IPR convergence fails to explain the divergent rankings of the two cases as well as the initiation of IP legislation in

either case. In both nations domestic support for IPR convergence largely emerged after landmark legislation had already been passed by powerful executives. Thus, domestic demand for reform did not appear to be a causal variable for the initiation of reforms although policy administration is supported by the activities of domestic interest alliances. Domestic organizations worked with both the Chilean and Mexican governments, to a slightly larger degree in the latter, to publicize the importance of protecting IP and deter piracy. However, significant differences did not exist in terms of the size or activities of domestic interest alliances in either case, indicating that this variable also fails to account for the divergent IPR rankings.

My examination of the role of external actors in policy reform uncovers evidence consistent with the convergence hypothesis that international economic actors are important determinants to policy convergence. Yet this variable appears to play a larger causal role in the case of Mexico. This indicates that trade negotiations fail to explain the variance between Chile and Mexico in comparative IP rankings. Rather if I stop the analysis at this point, it would be easy to incorrectly assess Mexico as the better protector of IP.

Notwithstanding the importance of trade negotiations and presidentialism to promoting the first stage of policy convergence, as previously noted the subsequent two stages of convergence are supported by the variables of centralized agency authority, and a well-trained, effective judiciary. Only once I explore the specific dynamics of policy administration does it become clear that judicial effectiveness explains the divergent rankings. At first glance, Mexico and Chile once again share

a similar characteristic of employing a centralized executive agency to administer their respective IP legal regimes. In the early 1990s, both nations created specialized agencies with the authority to implement and manage IPRs contributing to the effective administration of new IP laws. Thus centralized authority supported the second stage of convergence in both cases.

But this investigation of policy administration fails to account for Chile's ability to successfully converge to global IP norms and Mexico's inability to effectively complete the process of reform. If my analysis stopped at this point, it would once again appear that Mexico should be ranked much higher than Chile in comparative rankings. Mexico's IP laws are more comprehensive, she possessed a strong executive with both the desire to reform the IP system and the power to do so, and she faced greater external pressure for convergence from the United States than Chile did. The questions remains, where does the convergence process break down in Mexico and why?

The key to unraveling why convergence variance exists between the two countries lies in the policy enforcement stage of convergence and in the institution of the judiciary. In Mexico, notwithstanding its impressive IP laws and policy administration, enforcement is horribly lax due to the existence of a judiciary characterized by ineffectiveness, corruption, and largely ignorant of federal IP laws. In contrast, in Chile although the judiciary was historically a passive institution it is a more effective and professional institution. This difference in judiciary

effectiveness, explained by their historical evolution of the past thirty years, explains the divergent IP rankings between the two cases.

Specifically, without an effective and well trained judiciary to adjudicate IP violations, the reform process remains incomplete and fundamentally undermined. Nations can create comprehensive IP legislation and effective administrative agencies to implement the registration of IPRs but without adequate enforcement mechanisms and infringement prosecutions, the existing laws are simply disregarded and meaningless. Accordingly, whereas the institutional variables of presidentialism, liberal trade regimes, and centralized agency authority support IP convergence, they are not sufficient to achieve successful convergence. Rather the institution of an effective judiciary is the one critical variable in the causal model. Notably though, it is not a sufficient variable because a judiciary cannot enforce what does not exist.

Therefore, to fully understand why the calls for convergence appear to have been better received by Chile compared to Mexico, the role of domestic institutions must be included in the analysis. As the case of Mexico clearly illustrates, it is not that the calls for convergence are being rejected or ignored by the developing world but rather domestic institutional arrangements may inhibit a state's ability to respond to these calls. Consequently, legal structures deviate from the policy convergence hypothesis because of the historical evolution of an institutional actor often ignored in the current scholarship, the judiciary.

1.6 Organizational Structure of the Dissertation

The logic underpinning the organization of this study is to first address the theoretical foundation of the subject followed by a broad examination of property rights convergence in the developing world. This general examination is complemented with a detailed comparative examination of two case studies to better understand the precise nature of policy convergence. Highlighted in Chapter 2 is the tension between neoliberalism's calls for both limited state intervention into the economy and active state involvement in the creation of an environment conducive for investment. This is followed by a discussion of the importance of property rights to economic activity and how this issue-area is also subject to convergence pressure.

In Chapter 3, I address the lack of empirical examinations of legal structure convergence in the developing world. It is in this chapter that I conduct statistical analyses of property rights convergence and a number of relevant variables. Unfortunately, due to data constraints the regression analyses proved to be of limited utility. Until more quantified data are available, scholars will have to continue to rely on qualitative methodologies to uncover what factors compel and counteract legal structure convergence.

To address the limitations of the statistical models, longitudinal qualitative analyses of two Latin American middle income economies is employed in Chapters 4 – 8. In Chapter 4, the methodology of the comparative case studies is discussed. Explanation is given regarding the choice of Mexico and Chile as case-studies as well as the time period examined (mid-1980s to present). Additionally, I review how emerging economies face mounting pressure to converge their IPR regimes to global

norms thus justifying the specification of the dependent variable in the subsequent chapters.

In Chapters 5-8, in-depth investigation is conducted of each proposed hypothesis. The institution of presidentialism is examined in chapter 5 by first detailing the existing balance of power between the executive and legislature of each respective case during the period under study. Following this section, I examine the sources of IP legislation during the appropriate time period and analyze how changes in the balance of power affect the development of IP legislative bills. I find that presidentialism does facilitate IP reform efforts in both nations because legal reforms consistent with global norms were largely initiated by powerful executives.

Yet, policy reform rarely occurs in a governmental vacuum. Rather interest coalitions often play an important role in the development, implementation and evaluation of policy. In view of the impact that interest groups have on policy development, in Chapters 6 and 7 I examine societal sources of policy reform. In Chapter 6, I conduct three distinct investigations to assess the role of domestic interest alliances on the evolution of Mexico's and Chile's respective IPR regimes. The first two investigations employ analytical tools from the paradigm of rational choice to assess actor behavior and subsequent reform activities. The third examines the specific activities of a number of domestic interest groups active in IPR protection to evaluate their individual impact on IPR reform. The evidence from Chapter 6 is consistent with a state-centered approach of policy development in

which the executive drives the creation of important federal policy and domestic interest groups play a more secondary and supportive role.

By contrast, in Chapter 7 I examine external interest alliances and conclude that they play a significant role in each stage of the reform process. Thus this variable proves to be a causal factor to IPR convergence. In this chapter, I investigate the specific activities of four categories of external actors to discern their impact on IPR convergence: foreign non-governmental organizations (NGOs), international institutions, foreign nation-states, and international trade regimes. Two significant trends emerged from this investigation. Firstly, foreign interest alliances and the U.S. government were extremely influential throughout the convergence process by maintaining pressure on and providing training to both governments. Secondly, the global economy of the 1990s structured the opportunities for successful external actor mobilization. The structural shift to regional trading regimes during this period of economic globalization provided a conducive international environment from which to promote IP convergence.

Finally, in Chapter 8, my analysis focuses on the issue of divided authority. I examine how IP reforms were implemented and by what government agency to discern the differing global rankings between the cases. Whereas the variables of presidentialism and trade negotiations promote the first stage of convergence, in Chapter 8 the variables of centralized agency authority and an effective judiciary are important to the last two stages of convergence, policy implementation and enforcement. In both nations, specialized agencies were created to implement and

manage IPRs thereby furthering the process of effective convergence. Importantly, in this chapter, critical differences in each nation's judiciaries explain the divergent rankings of the two cases in numerous comparative rankings. I present detailed analysis of the critical role the judiciary plays in the final stage of convergence, and how the historical evolution of this institutional context affects a state's ability to respond the calls for convergence. In Chapter 9, I conclude my analysis by listing the conditions that give rise to global IP infringement and strategies to improve enforcement.

CHAPTER 2

CONVERGENCE VERSUS DIVERGENCE: EXPECTATIONS IN THE GLOBALIZATION LITERATURE

2.1 Introduction

In the past two decades we have been barraged with analyses of the effect of economic globalization on the nation-state. Economists, political scientists, historians, and sociologists have written insightful and at times alarming analyses of the way that contemporary globalization has altered various dimensions of the state.[26] However, a growing dissenting opinion is emerging in response to the initial deterministic prediction of the retreating state.[27] The central argument of much of this scholarship is that rather than marking the demise of the state, this contemporary

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[26] For analyses of the effect of globalization on the modern nation-state please see Paul Bowels and Barnet Wagmans's, "Globalisation and the Welfare State," *Eastern Economic Journal* 23 (Summer 1997); Barry Eichengreen, "The Tyranny of the Financial Markets," *Current History* (November 1997); David Goldblatt et al., "Economic Globalization and the Nation-State: Shifting Balances of Power," *Alternatives* 22 (1997); Dani Rodrik "Has Globalization Gone Too Far" Washington, D.C.: Institute for International Economics, 1997; Susan Strange *The Retreat of the State: The Diffusion of Power in the World Economy" (Cambridge: Cambridge University Press, 1996).*

[27] Studies that present a changed yet still significant role of the nation-state under globalization include Philip G. Cerny's "Reconstructing the Political in a Globalising World" in *Globalisation and the Nation-State*, ed. Frans Buelens (Northampton: Edward Elgar, 1999) 89-138; James H. Mittelman, "How Does Globalization Really Work" and Saskia Sassen "The Spatial Organization of Information Industries: Implications for the Role of the State" in *Globalization: Critical Reflections*, ed. Mittelman (Boulder: Lynne Rienner Publishers, 1996).

era of economic globalization represents a period of fundamental state transformation.

Although debate continues regarding precisely how states are affected by globalization, many analysts do acknowledge that the current age of economic globalization is marked by harmonization of economic policies along the neoliberal model. Specifically, economic globalization places intensified pressure on states to remodel themselves to remain competitive in the contemporary marketplace. For example, this phenomenon was clearly evident in Latin America where similar neoliberal reform projects emerged in the region's largest economies. From Brasil to Mexico, governments embraced the policies of trade and finance liberalization, privatization, and deregulation. Due in part to the necessity of complying with the conditions of the International Monetary Fund and the desire to find a new path towards economic development, policy convergence became the norm throughout Latin America.[28]

As a result, normative analyses of how states should transform themselves in this contemporary era of economic globalization are abundant but lacking are empirical analyses of the dynamics of change. Rather, much of the academic literature often assumes that states automatically respond appropriately to the pressures of globalization. Although there are various ways that globalization allegedly transforms the state, the focus of this study is on policy convergence

theory.[29] This dissertation examines the assertion that economic globalization forces states to converge their economic institutions and policies toward common norms (of a "competition state").

According to the policy convergence hypothesis, globalization places pressures on states to bring their financial, trade and legal institutions into line in specific ways to remain competitive in an era of increasingly unbridled capital mobility and arbitrage capabilities by transnational corporations (TNCs). Such pressures for convergence are mostly acute for developing countries where foreign investment is a significant component of economic growth, such as Chile and Mexico.[30] If the policy convergence hypothesis of globalization is correct, state institutions in such countries should converge to the model that the globalized marketplace seems to command. This new model is characterized by the liberalization of trade and finance as well as the strengthening of property rights, in particular intellectual property rights.[31]

Yet, as discussed in the previous chapter, states are not uniformly reforming economic institutions as the normative analyses recommend. During the current wave of institutional reform in middle-income economies, state responses within the issue area of property rights, in particular, vary in type and degree. Even more

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[28] Sebastion Edwards, *Crisis and Reform in Latin America* (New York: Oxford University Press, 1995), 6-13.

[29] Policy convergence is also commonly referred to as either policy harmonization or policy diffusion.

[30] For an analysis of the importance of foreign direct investment and economic growth in the Third World see "Foreign Direct Investment in Developing Countries" by Joel Bergsman and Xiaofang Shen in *Finance and Development* (1995).

curiously, legal structures converge less than trade and financial structures. Unlike other institutions, legal structures continue to withstand pressures for convergence despite numerous analyses explaining the economic benefits of convergence. Thus, legal structures –and specifically, property rights law-- prove an especially illuminating area for the academic study of policy convergence because it departs from the theoretical prediction. This dissertation examines the general question of why property rights law deviate from the policy convergence norm; with particular attention being placed on the issue area of IPR convergence.

Yet before investigating the potential causes of variation in property rights regimes in middle-income economies, in particular in Latin America, a review of the existing scholarship on policy convergence theory is necessary to understand its policy predictions. In the subsequent section, I survey the academic literature that examines the relationship between economic globalization and the nation-state, placing particular attention on policy harmonization. Following this survey, I review the literature discussing the importance of property rights to economic activity. The significance of this section is to clarify why property rights should be subject to the same convergence pressures as trade and finance.

2.2 Duel to the Death? The relationship between globalization and the state

Spurred by the revolutions in information technology and transnational production processes, the world has increasingly become integrated and competitive.

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[31] Paul Hirst and Grahame Thompson. *Globalization in Question: The International Economy and the Possibilities of Governance*, (Cambridge: Polity Press, 1996), 4-7.

In very general terms globalization is defined by Hans-Henrik Holm and Georg Sorensen as the intensification of economic, political, social and cultural relations across borders.[32] The more precise definition of economic globalization used in this study comes from Thomas D. Lairson and David Skidmore. They define economic globalization as:

> "rising levels of involvement in the world economy, increasing interdependence, the establishment of global markets, prices, and production, and the diffusion of technology and ideas . . . brought on by an explosion of international transactions in money, including foreign direct investment by transnational corporations, declines in the cost of transportation and communication, and technological developments."[33]

Although economic globalization affects the lives of millions of people on a daily basis, scholars are still uncertain how it affects different dimensions of the modern state. Instead, a lively debate rages over how globalization threatens the traditional role of the state and how it affects state autonomy. Specifically, must states actually converge toward international norms their economic institutions and policies in order to enhance national competitiveness? Or do they retain more viable options than is usually assumed?

There are many major perspectives on these important questions. Within the field of development economics, some scholars argue that the state continues to play

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[32] Holm and Sorensen, "Introduction: What Has Changed," *Whose World Order? Uneven Globalization and the End of the Cold War*, (Boulder, Colorado: Westview Press, 1995), 1.

[33] Thomas D. Lairson and David Skidmore, *International Political Economy*, (Fort Worth: Harcount Brace College Plublishers, 1997), 3.

a major role in economic development.[34] Governments have a unique role in creating the infrastructure necessary to ensure long term economic growth. They also continue to have the responsibility to correct market failures when appropriate. Thus, analyses predicting the demise of the state due to the forces of globalization have serious implications for economic development programs that call for active state involvement.

This hypothesis counters a larger body of realist or neoclassical IPE literature that suggests that state power and sovereignty are undermined by globalization.[35] According to this argument the actions of private actors increasingly challenge traditional state power and sovereignty as the world becomes increasingly economically integrated. For example, Susan Strange contends that state authority is undergoing a period of diffusion to supranational actors, regional authorities, and

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[34] For example, Jeffry Sachs and Andrew Warner conclude their examination of economic convergence theory with the argument that effective economic institutions and governmental policies are instrumental to a nation's ability to "converge" to the levels of productivity and income of richer countries. Additional scholarship emphasizing the continued role of the state in economic development include: Joseph Stiglitz and Lyn Squire, "International Development: Is It Possible" Foreign Policy, 110 (1998); World Bank, "The State in a Changing World," *World Development Report 1997* (New York: Oxford University Press, 1997), 162; Lawrence H. Summers and Vinod Thomas in "Recent Lessons of Development," *International Political Economy*, eds. Jeffry Frieden and David Lake (New York: St. Martin's Press, 1999), 426; Sunil Kukreja, "The Development Dilemma," *Introduction of International Political Economy* (New Jersey: Prentice Hall, 1996), 334; and *The New Globalism and Developing Countries*, eds. John H. Dunning and Khalil A. Hamdani (New York: United Nations University Press, 1997).

[35] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (New Jersey: Princeton University Press, 1999); Clive Crook "The Future of the State," *Economist* 344 (20 September 1997); Peter F. Drucker, "The Global Economy and the Nation-State," *Foreign Affairs* 76, 5 (September/October 1997); Helen Thompson "The Modern State, Political Choice and An Open International Economy," *Government and Opposition* 34, 2 (Spring 1999); David Potter "The Autonomy of Third World States within the Global Economy, *Global Politics* (Cambridge: Polity Press, 1993) , eds. Anthony McGrew and Paul G. Lewis; Richard Falk, "State of Seige: Will Globalization Win Out," *International Affairs* 73, 1 (1997);

transnational corporations (TNCs).[36] Likewise, Peter Evans argues that the transnational mobility of capital, the creation of global production networks, and the emergence of an international globalized financial system "poses a fundamental challenge to public authority in the economic realm."[37] Thus, the ability of states to develop autonomous economic policies weakens as global integration progresses. Where states once dominated in policy-making, non-state actors (in particular TNCs) increasingly affect economic policy. As a consequence, policies consistent with the interests of TNCs increasingly replace policies aimed at protecting domestic industries and labor.

A third perspective focuses on which state roles might be most affected by economic globalization. For example, Herbert Dittgen examines the impact of globalization on five traditional political and social functions of the state. He concludes that interdependence and economic integration do not result in a general loss of functions for the state but rather that state autonomy is undermined in the arena of economic policy development.[38] Similarly, John Ruggie argues that globalization undermines the ability of states to continue to provide domestic safety

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[36] Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (New York: Cambridge University Press, 1996); with John M. Stopford *Rival States, Rival Firms* (New York: Cambridge University Press, 1991) and "The Defective State," *Daedalus* 24:2 (Spring 1995), 2.

[37] Evans, "The Eclipse of the State? Reflections on Stateness in an Era of Globalization," *World Politics* 50 (October 1997), 63.

[38] Herbet Dittgen, "World Without Borders? Reflections on the Future of the Nation-State," *Government and Opposition* 34, 2 (Spring 1999).

nets.[39] Instead states must choose between social welfare or neoliberal policies that undermine the government's ability to protect its poor.

In a distinct analysis of the changing role of the state, Saskia Sassen acknowledges that global capital has made claims on the state but proposes that states can respond through the production of new forms of legality. Legal regimes governing issues such as environmental protection, trade relations, and commercial arbitration are examples of how states can innovate and expand their traditional role. Under globalization, according to Sassen, states can continue to negotiate multilateral agreements that create the frameworks within which new global economic systems operate.[40]

In keeping with the idea of state innovation in response to globalization, Philip G. Cerny expands on the idea of the "competition state" previously explored in differing degrees by Friedman and Strange.[41] Cerny begins by arguing that globalization reduces the ability of states to perform a number of regulatory, productive and redistributive functions.[42] States' ability to tax TNCs, protect intellectual property rights, and provide public services and redistribute public goods are most deeply undermined by globalization because of increased capital mobility

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[39] John Gerald Ruggie, "Trade, Protectionism and the Future of Welfare Capitalism." *Journal of International Affairs*, 48, 1 (Summer 1994).

[40] Saskia Sassen. "The Spatial Organization of Information Industries: Implications for the Role of the State" in *Globalization: Critical Reflections*, ed. James H. Mittelman (Boulder: Lynne Rienner Publishers, 1996), 33-52.

[41] Thomas Friedman. *The Lexus and the Olive Tree* (New York: Farrar, Straus and Giroux, 1999), 6-9 and Susan Strange's *The Retreat of the State: The Diffusion of Power in the World Economy* (New York: Cambridge University Press, 1996).

[42] Phillip Cerny, "Globalization and Other Stories: The Search for a New Paradigm for International Relations," *International Journal*, (Autumn 1996), 618.

and neoliberal policy pressures. Yet, he also believes that states can change some of the conditions that determine national competitive advantage. Neoliberalism does not reduce the role of state intervention overall, argues Cerny, but shifted it from 'decommodity bureaucracies' to marketing ones, and redistributive functions to enforcement ones. Consequently, the nation-state is becoming a "competition state" whose primary mission is to secure its global market-share. In this competition state, the goal of political agents is to enhance a nation's international competitiveness. Therefore, "the challenge of today's competition state is one of getting the state to do both *more* and *less* at the same time." [43]

The general conclusion drawn from this literature is that the state's traditional economic and social functions are undergoing a period of radical transformation.[44] As capital movements and transnational production expand, the non-state actors of TNCs and foreign investors increasingly influence economic policy development. As one scholar noted, "The world's financial markets have become the watch dogs over domestic economic, political, social and legal policies."[45] Investors are responding to policy cues and those states that converge are judged more competitive than those that do not converge.

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[43] Cerny, "Reconstructing the Political in a Globalising World: States, Institutions, Actors and Governance" in *Globalisation and the Nation-State*, ed. Frans Buelens (Northampton: Edward Elgar, 2000), 89-138.

[44] For additional analysis on changing state functions see Martin Shaw, "The State of Globalization," *Review of International Political Economy* 4, 3 (Autumn 1997); Paul Hirst and Grahame Thompson, "Globalization and the Future of the Nation State," *Economy and Society* 24, 3 (August 1995); and Dani Rodrik, "Sense and Nonsense in the Globalization Debate," *International Political Economy*, eds. Jeffry A. Frieden and David A. Lake (New York: Bedford/St. Martin's, 2000).

2.3 To Converge or Not to Converge?

Thus, two principal issues remain unresolved by the current literature. The central question is one of policy convergence: When and why are states forced to adopt the same pro-market policies and regulatory standards as other states to remain internationally competitive? Moreover, are some policy areas more sensitive to international pressures for convergence than others?

In response to the first question of when and why policy convergence occurs, scholars contend that the demands of the contemporary "global marketplace" produce convergence. In this era of economic globalization, states are faced with the increasing global pressures of remaining internationally competitive and attaining larger market shares. The pressure for states to change economic policies and institutions, to converge to a single model, is enhanced by highly mobile capital. Thus, as Susan Strange claims, states are increasingly aware that they are competing to attract investment and this has resulted in greater State/Firm bargaining.[46] Technological development, the growing mobility of capital, and the decreasing costs of communication and transportation led more firms to conduct their business activities on a global scale. This has increased competition between states to attract MNCs to locate within their territories. As a response, states will increasingly waive rules, regulations, taxes and other economic policies to remain competitive. MNCs

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[45] William C. Freund, "The Road to Third World Prosperity," *Developing World-Annual Editions 1997/98*, ed. Robert J. Griffiths (Guilford, CT: Dushkin Publishing Group, 1997), 62.

ability to arbitrage between states enables them to seek policy harmonization in fields that promote their economic interests. Policy harmonization consists of liberalized trade policies, liberalized financial policies, protection of contract law and property rights, deregulation, and privatization.

For these specific reasons, a number of scholars predicted policy convergence. Suzanne Berger contends that international competition, imitation, diffusion of best practices, trade and capital mobility naturally operate to produce convergence in structures of production and economic policies.[47] Consequently, all advanced industrial countries will converge toward common ways of producing and organizing economic life. Unfortunately, Berger's analysis focuses solely on industrialized countries, and does not address the issue of convergence pressures on developing countries.

Lester Thurow agrees with Berger that globalization forces states to harmonize economic policies, but he stresses the role of international investors as opposed to Berger's emphasis on best practices and imitation as primary causes of convergence. According to Thurow, states have lost their traditional levers of economic control over private actors, in particular international investors (of both FDI and portfolio investment). Thus, the demands and interests of private market actors may often supersede those of government actors and domestic interests (labor

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[46] Susan Strange, "The Defective State," *Daedalus* (Spring 1995); "States, Firms, and Diplomacy," *International Political Economy* (New York: Bedford/St.Martin's, 2000); with John M. Stoppard, *Rival States, Rival Firms* (New York: Cambridge University Press, 1991).

[47] Suzanne Berger, "Introduction," *National Diversity and Global Capitalism*, eds. Suzanne Berger and Ronald Dore. (Ithaca, NY: Cornell University Press, 1996).

and protected industries) because of the need to appeal to foreign capital.[48] As a result, nations will converge economic policies toward the Washington Consensus to appease international investors.

Mirroring Thurow's emphasis on the power of international investors, Thomas Friedman also strongly argues that to succeed in the contemporary era of globalization states must adopt the policies that international financial markets demand.[49] For Friedman, globalization is an inevitable and irreversible process that provides states with new opportunities rather than a death sentence. Yet to capitalize on these new opportunities, states must respond in a manner that attracts international investors, the "Electronic Herd." How can states attract the monies of the "Electronic Herd?" This depends on states willingness to adopt the "Golden Straitjacket." To attract foreign investment, according to Friedman, states must enact neoliberal structural reform programs as well as install the institutional prerequisites for reliably functioning markets. Thus, not only is neoliberal policy convergence necessary but an institutional environment characterized by transparency and predictability must also be established. Friedman believes that convergence to this "Golden Straitjacket" remains the only alternative for states wishing to achieve economic growth in the globalized marketplace.

To test the theoretical arguments of policy convergence, Simmons and Elkins further specify the determinants of policy convergence in their quantitative

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[48] Lester Thurow, *The Future of Capitalism* (New York: William Morrow and Company, 1996).

examination of how liberal economic policies spread throughout the world. Employing a logit model of 180 nations, they examine four possible mechanisms for policy diffusion in the areas of trade, finance, and exchange rate regimes.[50] They conclude that policy convergence is largely caused by competition for international capital, thus supporting the analyses of Berger, Friedman, Strange, and Thurow. Yet, unlike other scholars, Simmons and Elkins also suggest that policy is conditioned by the foreign ideas ("policy emulation") to which governments are exposed.[51] Therefore, contemporary policy convergence is highly correlated with the existence of competition for international capital (among countries with similar bond ratings) and complemented with the diffusion of new ideas regarding economic policy.

For those who challenge the idea of policy convergence, a variety of possible reasons are discussed. Goldblatt et al. argue that it is rarely the case that globalization has rendered any policy impossible.[52] Rather, the costs and benefits of any given policy have shifted. States retain the capacity to invoke trade protectionism and fixed exchange rates yet the costs of certain policies may be so high that they are virtually inoperable. Theoretically, autonomous policy development is possible but in practice the costs of a particular policy may make

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[49] Thomas Friedman. *The Lexus and the Olive Tree* (New York: Farrar, Straus and Giroux, 1999).

[50] Beth Simmons and Zachary Elkins, "Globalization and Policy Diffusion: Explaining Three Decades of Liberalization," *Governance in a Global Economy: Political Authority in Transition*, eds. Miles Kahler and David Lake (Princeton: Princeton University Press, 2003).

[51] Simmons and Elkins contend that social influence, ties of contact and communication as well as shared linguistic, religious, or historical ties also influence policy contagion. Although this hypothesis remains to further tested in their study, they suggest that business contacts and shared religious values in particular are important influences on policy convergence.

such choices highly unfeasible. Thus, rather than providing a practical explanation of non-convergence, Goldblatt et al. continue to provide a probabilistic prediction of convergence.

In contrast, Paul Krugman does provide an explanation of non-convergence in the issue-area of trade policy. Krugman contends that non-convergence in trade policy is caused by states' decisions to establish new comparative advantages. Rather than converge to the norm of liberalized trading policies, states design strategies in cooperation with domestic firms to enable these firms to compete effectively in the global marketplace.[53] Krugman uses Japanese policies of infant industry protection and trade promotion to illustrate his thesis. Unfortunately, Krugman does not address the issue of enhancing competitiveness by deviating from the convergence model in other issue-areas. Nonetheless, it is highly improbable to imagine a scenario in which weak property rights constitute a comparative advantage in attracting investment. Therefore, Krugman's analysis provides little insight into the subject of commercial law convergence because the logic of his argument does not apply to this issue-area.

Like Krugman, Kenneth Waltz criticizes the convergence hypothesis and believes that non-convergence remains a viable option to establish competitiveness. "I find it hard to believe that economic processes direct or determine a nation's policies, that spontaneously arrived at decisions about where to place resources

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[52] David G. Goldblatt, David Held, Anthony McGrew, and Jonathon Perraton, "Economic Globalization and the Nation-State: Shifting Balances of Power," *Alternatives* 22 (1997), 280-285.

reward or punish a national economy so strongly that a government either does what pleases the "herd" or its economy fails to prosper or even risks collapse."[54] To support his argument, Waltz cites the work of Stephen Woolcock (1996), Linda Weiss (1998), and Willam H. McNeill (1997). According to Waltz, if convergence theory were true, various forms of corporate governance should not exist (as Woolcock finds). The "transformative capacity" of states to adapt to new technologies should also be uniform, yet it is not (as Weiss and McNeill find). He concludes that states are continuing to adapt and protect themselves in different ways (non-convergence). Notably, Waltz acknowledges that developing nations often do "imitate the practices and adopt the institutions of the countries who have shown the way."[55] Thus Waltz recognizes that non-convergence is more of an option of wealthy nations and, like Krugman, he does not discuss commercial law convergence.

Hence the central question remains, what factors account for non-convergence in the issue area of commercial law, in particular in developing economies? Berger maintains that where convergence does not occur, the explanation lies in historical legacies. The converging effect of globalization is mediated by domestic politics. She proposes different partisan alignments, social alliances, and national ideologies as the determinants of policy variation.

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[53] Paul Krugman, *Strategic Trade Policy and the New International Economics* (Cambridge, Mass: MIT Press, 1990), 52-56.

[54] Kenneth N. Waltz, "Globalization and Governance," *PS: Political Science and Politics* (December 1999), 5.

[55] Ibid, 4.

2.4 Should Policy Convergence in the Arena of Commercial Law be Expected

Similar to the arguments used to advocate trade and finance convergence, pressures for commercial law convergence increased as institutional reforms, in particular legal and judicial reforms, were recognized as being critical to economic development. Throughout the 1980s, many developing nations enacted a variety of macroeconomic stabilization and structural reforms aimed to enhance economic growth. These reform programs focused on trade and finance liberalization policies similar to those practiced in the developed world. Therefore, as previously discussed, policy convergence in these two arenas did occur throughout the developing world in the 1980s and 1990s.

Yet despite achievements, economic development failed to reach the levels of growth and poverty reduction that both governments and academics anticipated in their initial analyses. "And in light of this experience (first generation structural reforms), what kind of policies are ultimately required to achieve the sustained growth and social progress that all of us desire so much . . . ?" asked then Managing Director of the International Monetary Fund, Michel Camdessus.[56] In response, the international economic community began to discuss the need for second generation neoliberal reforms.[57]

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[56] Michel Camdessus, "Toward a Second Generation of Structural Reform in Latin America" in *The Challenges of Globalization in an Interdependent World Economy* (Washington, D.C.: International Monetary Fund, 1997), 3.

[57] For example, the United Nations Development Programme (UNDP) began to address the issue of institutional reform in its 1994 Initiatives for Change. According to the UNDP it has continued to be at the forefront of a growing international consensus that good governance and sustainable human

Central to the second generation reform program, as explained by Camdessus and Moisés Naím, is the creation and rehabilitation of government institutions to better sustain and promote long-term economic growth.[58] Also referred to as "good governance" reforms, states are cautioned to continue to reduce the amount of state intervention in the economy while also creating a sound economic environment for investment. Therefore, the rebuilding of state institutions not only calls for the state to transform its role in the economy but also to establish an environment in which efficient and productive economic transactions can occur.[59] According to both the UNDP and the World Bank, one way that states can foster sustainable private sector development is to promote the rule of law.[60] To establish a "proper" economic environment, a state needs to establish and maintain stable, effective and fair legal-regulatory frameworks for economic activity. In order to achieve this goal, laws

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development are indivisible. UNDP, "UNDP Governance Policy Paper: Good governance – and sustainable human development" (New York: UNDP, 1997).

[58] Moisés Naím. "Latin America: The Second Stage of Reform" in *Economic Reform and Democracy*, eds. Larry Diamond and Marc F. Plattner (Baltimore: John Hopkins University Press, 1995), 28-33.

[59] Notably, such policy prescriptions are consistent with the analyses from many new institutional economic (NIE) scholars who argue that the proper institutions reduce transaction costs market exchange while also reducing risk for economic agents. The NIE paradigm claims that institutions can be used by states to address and correct issues of market failures, lack of full information, and aggregate irrational social outcomes. Institutions can facilitate the distribution of accurate information, monitor and enforce contracts, and establish rules of interaction that can serve to improve economic transactions. For further information please see Douglass North's *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1994) and Vivien Lowndes. "Varieties of New Institutionalism: A Critical Appraisal," *Public Administration* 74 (Summer 1996).

[60] Camdessus, Michel. "Toward a Second Generation of Structural Reform in Latin America" in *The Challenges of Globalization in an Interdependent World Economy* (Washington, D.C.: International Monetary Fund, 1997), 16; and the World Bank's "Helping to Improve Governance in IDA Countries" available at www.worldbank.org/ida/idagover.htm (September 2000).

governing property rights, corruption, contract-enforcement and judicial transparency must be reformed.

The degree of significance granted to such second generation reforms by global institutions should not be underestimated. In 2000, the World Bank declared that "if (countries) do not have good governance , if they do not confront the issue of corruption, if they do not have a complete legal system which protect human rights, property rights and contracts . . . their development is fundamentally flawed and will not last."[61] The Bank's continued belief in the importance of legal reforms to economic growth is highlighted in their 2002 World Development Report entitled "Building Institutions for Markets." Based on their research, the Bank asserts that market-supporting institutions that define and enforce property rights are critical to economic development.[62] Therefore, pressure from international institutions for policy convergence in the arena of commercial law reform, in particular property rights, increased throughout the 1990s and continues to be advocated and financed by these institutions.

Similar to the academic studies that emerged in the 1980s and 1990s describing the benefits of policy convergence in trade and finance, much scholarship has surfaced describing the benefits of sound legal institutions in the globalized

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[61] World Bank, "Helping to Improve".
[62] World Bank, *World Development Report 2002: Building Institutions for Markets* (New York: Oxford University Press, 2002), 2.

economy. [63] According to these analyses, developing countries should focus on establishing credible legal environments to attract investment monies and promote economic innovation. Emphasis is placed on the dilemma of developing countries who typically have weak legal institutions yet need foreign investment to supplement a lack of domestic savings. As Bruce R. Scott recently argued, "Many observers now admit that the transition economies needed appropriate property rights and an effective state to enforce those rights as much as they needed the liberalization of prices."[64] Therefore, Dabla-Norris and Freeman argue that without secure property rights, the private sector reaction both reduces aggregate investment and distorts the allocation of resources. This remains a guiding principle of contemporary donor-supported judicial reform programs.[65]

However, the importance of property rights protection to economic development is not a new idea to either economists or political scientists. Harold

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[63] Scholars who have stressed the importance of particular legal institutions in the contemporary globalized economy include Stiglitz and Squire, Managing Director of the International Monetary Fund Michel Camdessus, Lawrence H. Summers and Vinod Thomas, Paul Hirst and Grahame Thompson, Luciano Cafagna, Saskia Sassen, Nathan Keyfitz and Robert Dorfman, and Bruce R. Scott. Stiglistz and Squire, **"**International Development: Is It Possible," Foreign Policy 110 (1998); Michel Camdessus, *The Challenges of Globalization in an Interdependent World Economy* (Washington D.C.: International Monetary Fund, 1997); Lawrence H. Summers and Vinod Thomas, "Recent Lessons of Development" in *International Political Economy*, eds. Jeffry A. Frieden and David A. Lake (New York: St. Martin's Press, 1995); Paul Hirst and Grahame Thompson's *Globalization in Question* (Cambridge: Polity Press, 1996); Luciano Cafagna, "Administrative Reform and State Capacity" in *Redefining the State in Latin America* (Paris: Organization for Economic Co-operation and Development, 1994), 213-238; and Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization*, (New York: Columbia University Press, 1996); Nathan Keyfitz and Robert Dorfman in Michael P. Todaro's *Economic Development* (Menlo Park, CA: Addison-Wesley, 2000), 642-643; Bruce R. Scott, "The Great Divide in the Global Village," *Foreign Affairs* 80 (January/February 2001).

[64] Ibid, 161.

[65] Era Dabla-Norris and Scott Freeman. "Working Paper of the International Monetary Fund: The Enforcement of Property Rights and Underdevelopment" (IMF, 1999), 26-28.

Demsetz explained in his 1967 article, "Toward a Theory of Property Rights," how property rights serve as an instrument to help form expectations regarding dealings with others. Specifically, the primary function of property rights is to guide incentives to achieve a greater internationalization of externalities (such as costs and benefits).[66]

Moreover, in 1973 North and Thomas conducted a historical analysis that demonstrated the importance of property rights in explaining the growth of Western economies. They argued that when private agents are freed from the fear of expropriation of their return, more productive and innovative economic activity will occur.[67] Thus, in an environment of secure property rights, incentives exist for agents to take the risk to engage in new economic activities because these secure property rights reduce the risk that they will not receive the benefits of their activity. This also creates a spillover effect throughout the community that encourages others to undertake new forms of economic activity. When people are guaranteed that they will receive the benefits of their economic activity, they will be more motivated to take the risk of innovating. The contribution to academic scholarship of these three

[66] Harold Demsetz, "Toward a Theory of Property Rights," *The American Economic Review* 57 (1967).

[67] Douglass North and R.P. Thomas. *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973).

scholars was to explain how legal institutions create the micro-foundations for market activity.[68]

In keeping with the preceding analyses, a recent publication by William Baumol extols the virtues of property rights in driving economic growth.[69] Capitalism, argues Baumol, is the best economic system for generating growth because it is based on the rule of law. Protection of property and enforcement of contracts motivates innovators because it guarantees some return for their efforts. Hence, the resourceful do not fear that the spoils of their hard work must be shared with the idle. In non-capitalist systems, innovators do exist but their activities are often motivated by political or short-term interests rather than contributing to growth.

Importantly, a number of quantitative analyses appeared substantiating the claim that property rights enforcement is positively associated with either increased investment levels or economic development. Cross-country statistical studies by both Keefer and Knack, and Mauro employing institutional indicators obtained from two private international investment risk services concluded that property rights is positively and significantly associated with economic growth.[70] In the Knack and

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[68] Jeremy Adelman, "Institutions, Property Rights, and Economic Development: Douglass North in Latin America," *The Other Mirror: Grand Theory Through the Lens of Latin America*, eds. Miguel Angel Centeno and Fernando Lopez-Alves, (Princeton: Princeton University Press, 2001).

[69] William Baumol. *The Free-Market Innovation Machine* (Princeton: Princeton University Press: 2002).

[70] Stephen Knack and Philip Keefer, "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures," *Economics and Politics* 7, 3 (1995), 207-227. Paolo Mauro, "Corruption and Growth," *Quarterly Journal of Economics* 110 (1995), 681-721.

Keefer study, one standard deviation increase in their indices of property rights' security increases growth approximately 1.2 percentage points.

Additionally, Clague et al. contend that the results of series of multivariate growth regression tests indicate that societal differences in property rights are an important part of the explanation of why some countries prosper while others do not. They argue that poorer countries fail to grow at the same rate as richer countries because the majority of the poorer countries failed to establish mechanism for securing rights to property, enforcing contracts, and establishing efficient public bureaucracies. Controlling for initial income and human capital levels, Clague et al. find that that an increase of one percentage point in investment/GDP is associated with increases of approximately .06 of the independent variable "contract intensive money ratio" (CIM).

Brunetti et al., provide further evidence to strengthen the claim that property rights enforcement promotes economic development. In 1998 Brunetti et al. employed firm-level survey data to measure "credibility of rules." Drawing from a private sector survey conducted in 73 countries and covering over 3,800 enterprises, Brunetti et al. conducted cross-country growth and investment regressions to test the relationship between credible rules and economic growth. Brunetti et al. concluded

that low credibility of rules is associated with lower rates of investment and growth.[71]

Although criticisms regarding the measurement of property rights continue to exist as reported by the World Bank itself**,** and the direction of causality remains tentative, scholars and policy analysts increasingly advocate commercial law reform as key to sustainable economic development. In response to this renewed interest in the rule of law, donor-supported judicial reform programs also experienced a rebirth in the past decade.[72] Unlike the law and development movement of the 1960s, developing countries are impelled to become a part of this rule of law movement in the implicit belief that judicial reform is positively associated with economic performance.[73] Moreover, investors themselves increasingly note the importance of credible rules, such as well defined property rights, to their economic activity. For

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[71] Aymo Brunetti, Gregory Kisunko and Beatrice Weder, "Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector," *The World Bank Economic Review* 12 (September 1998), 353-384.

[72] In a recent article discussing the "rule of law revival" Thomas Carothers observes that external assistance in this field has mushroomed in recent years, becoming a major category of international aid. "The Rule of Law Revival," *Foreign Affairs* 77, 2 (1998), 5. As recorded by one World Bank scholar, Richard E. Messick, since 1994 the World Bank, the Inter-American Development Bank (IDB), and the Asian Development Bank have either approved or initiated more than $500 million in loans for judicial reform projects in 26 countries. The US Agency for International Development (USAID) alone has spent approximately $200 million on similar judicial reform projects in the past decade. "Judicial Reform and Economic Development," *The World Bank Research Observer* 14 (February 1999).

[73] The logic underlying this relationship is that absent clearly defined property rights and enforceable contract law, productive business transactions are jeopardized due to high transaction costs and risk. For comprehensive discussions of the relationship between the rule of law and economic performance please see Douglas North's *Institutions, Institutional Change, and Economic Performance*, Cambridge, UK: Cambridge University Press, 1990 and Richard E. Messick's "Judicial Reform and Economic Development," *The World Bank Research Observer* 14 (February 1999). Empirical studies of this relationship can be found in Stephen Knack and Philip Keefer's "Institutions and Economic Performance," *Economics and Politics* 7 and Beatrice Weder's "Legal Systems and

example, in a World Bank survey of 3,600 firms in 69 developing countries, more than 70 percent of the respondents answered that an unpredictable judiciary was a significant problem in their business operations. Therefore, policy convergence pressures should be particularly acute for developing countries that wish to attract foreign direct investment (FDI); namely, the upper middle-income economies who have the best chance of receiving FDI.[74]

Consequently, the initiation of reforms that secure property rights would appear to be a rational step for upper middle-income economies to ensure the final phase of development. But states have been slow to reform these institutions.[75] As previously noted, institutional reform in developing countries is not uniform. Significantly, legal structures converge less than trade and financial structures. In Latin American, although many nations altered their trade and financial structures along the neoliberal model, legal reforms remain partial and varied. Rule of law rankings devised by the World Bank range from a high of 85% for Chile to a mere 35% for Mexico and 30% for Venezuela.[76] Thus, rather than uniformity in convergence, a pattern of non-convergence and partial convergence is emerging in

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Economic Performance: The Empirical Evidence," in *Judicial Reform in Latin America and the Caribbean*, eds. Rowat, Malik and Dakolias, Washington D.C.: World Bank, 1995.

[74] The classification system presently used in this study to define the various sub-groups is from the World Bank Group. The World Bank Group classification system divides economies according to 1999 GNP per capita, calculated using the World Bank Atlas method. The groups are: low income, $755 or less; lower middle income, $756-$2,995; upper middle income, $2,996-$9265; and high income $9,266 or more. This classification system designates 55 economies as lower-middle-income and 38 economies as upper-middle-income for a total of 93 middle-income economies. The World Bank Group. "Classification of Economies: 2002." www.worldbank.org/data/databytopics/class.htm

[75] Weder, "Legal Systems and Economic Performance," in *Judicial Reform in Latin America and the Caribbean*, eds. Rowat, Malik and Dakolias (Washington D.C.: World Bank, 1995) 18-20.

[76] World Bank Institute. *Governance Research Indicator Country Snapshot,* April 2001.

the field of commercial law reform. Additionally, attention is increasingly being placed on the need for developing economies to converge their property rights (especially their IP) regimes towards the norms consistent with the competition state model.[77] This is most puzzling considering the vast number of normative analyses advocating legal reforms as critical to attracting foreign investment and promoting economic growth.

2.5 Conclusion

Although scholars continue to debate the benefits and costs of economic globalization, scholars agree that this phenomenon has fundamentally altered the functions and capabilities of the modern state. Few would disagree with the assertion that capital has become highly mobile and that as a result, the power of international capital has grown relative to the state. This change in power distribution has resulted in increased pressure for states to adopt common policies and institutions consistent with the "competition state." Not only do investors prefer states that converge their economic policies and property rights regimes to the neoliberal model but within international institutions, such as the World Bank and UNDP, convergence is viewed as the means to achieving long-term economic development. Yet policy convergence is not uniform. Such policy divergence is most notable in the arena of property rights, in particular intellectual property rights.

[77] See Chapter 4, for a more in-depth discussion of IP and the convergence pressures placed on nations' to converge their IPRs to global norms.

Nonetheless, lack of convergence on property rights reform has yet to warrant much academic attention. This is most unanticipated considering that differences in legal institutions are an important part of the explanation of why some countries prosper while others do not. If policy reform in these fields is critical to economic development, attention should be drawn to the question of why policy responses have varied, especially in the developing world. It is this issue of legal structure divergence that I proceed to investigate in the following chapter.

CHAPTER THREE

GLOBAL TRENDS: A CROSS-NATIONAL EXAMINATION OF DOMESTIC DETERMINANTS TO PROPERTY RIGHTS REFORM

3.1 Theoretical Review

As previously reviewed, few empirical analyses of the dynamics of property rights convergence in the developing world exist. This lack of empirical research is even more pronounced when the arena of property rights is narrowed to a specific examination of IPR reform. Whereas scholars such as Simmons and Elkins (2000), and Bartolini and Drazen (1997) examined the determinants of trade and financial policy convergence, no such comparable cross-national study exists that examines either property rights or IPRs.[78] To address this void in the literature, in this chapter I examine the institutional determinants of property rights reform across both upper and all middle-income economies using cross-national regression analyses. Due to the lack of data measuring IPRs in emerging economies, in the following regression models the dependent variable is measured as the aggregate variable, property rights.

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[78] Beth Simmons and Zachary Elkins, "Globalization and Policy Diffusion: Explaining Three Decades of Liberalization," *Governance in a Global Economy: Political Authority in Transition*, eds. Miles Kahler and David Lake (Princeton: Princeton University Press, 2003); and Leonardo Bartolini and Allan Drazen, "Capital Account Liberalization as a Signal," (NBER Working Paper No. W5725, 1997).

Specifically, I assess global correlation trends between property rights reform and a number of independent variables throughout the universe of emerging economies.

In total five regression models and two sample sizes are employed in the study. Two models are used in the statistical analysis of the complete universe of cases, 81 middle-income economies, and three in the restricted sample of 30 upper middle-income economies. In the three multivariate regression models employed using the smaller sample, no variable proves to be statistically significant. In the expanded sample, only one variable (divided authority) emerges statistically significant yet it is weakly correlated to the dependent variable and the relationship did not perform as predicted. Unfortunately, the strength of using regression analysis is to discern correlations between variables not in providing explanations for the correlations. Hence, the counter-intuitive statistical results presented below illustrate the limits of quantitative methodology and the necessity of complementing the analysis with qualitative research to explain the paradoxical correlation between divided authority and policy convergence.[79]

Therefore, rather than specifying the determinants of policy convergence, the regression analyses demonstrates the severe limitations of quantitative analysis when adequate data is unavailable. Until better data on divided authority, and interest alliances are collected for a larger range of countries and time periods, quantitative

[79] For the detailed explanation of this unexpected statistical relationship see Chapter 8, section 8.2.

testing of my hypotheses will not produce satisfactory results.[80] Moreover, until better data becomes available assessing IPR regimes across the developing world, regression analysis of IPR convergence specifically will not be possible.

3.2 Sample Selection

The sample used in this cross-national study include all middle-income economies as well as a subset of upper-middle income economies as defined by the World Bank's classification of economies.[81] Upper-middle income economies comprise the sample used in the first three statistical models, and the larger universe of all middle income economies comprised the sample for the last two models. The statistical analyses are re-estimated to the expanded sample due to the lack of statistical significance found in the initial models.

These economies are chosen because they meet two important qualifications. The first and most fundamental qualification is that the countries be subject to pressures of policy convergence. To assess if a country is subject to such pressures, the degree to which the country is exposed to foreign direct investment as well are debt are commonly employed as measures of sensitivity to external economic actors such as international lending institutions and foreign investors. The second

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[80] Unfortunately, neither is there a generally agreed upon measure of judicial effectiveness for developing economies to use in the statistical models to better assess divided authority.

[81] The World Bank Group classification system divides economies according to 1999 GNP per capita, calculated using the World Bank Atlas method. The groups are: low income, $755 or less; lower middle income, $756-$2,995; upper middle income, $2,996-$9265; and high income $9,266 or more. This classification system designates 55 economies as lower-middle-income and 38 economies as upper-middle-income for a total of 93 middle-income economies. The World Bank Group. "Classification of Economies." Available at www.worldbank.org/data/databytopics/class.htm. For a complete listing of the universe of cases see Appendix 1: Middle Income Economies.

qualification is possession of the political and financial resources to enact legal reform.

Upper middle-income economies demonstrate that they meet this first condition of being increasing subject to neoliberal convergence pressures to attract foreign direct investment (FDI). Generally regarded as safer and more profitable investment environments than the poorer economies, competition among the upper middle-income economies for FDI is acute. In 1994, the majority of FDI investment (52%) went to one region, East Asia, with Latin America coming in second with 29%. In a category of approximately 100 countries, only eleven accounted for 76% of total FDI flows to developing countries.[82] According to more recent statistics, FDI net inflows account for 13.1% of gross capital formation and 3.3% of GDP in middle-income economies. In contrast, for low-income economies FDI only accounts for 2.5% of gross capital formation and .6% of GDP. Within the group of middle-income economies, FDI played a more important role in the economy for upper middle-income economies than for their lower middle-income counterparts. In both categories, upper middle-income economies received a higher proportion of gross capital formation and GDP from FDI than their lower middle-income counterparts; 19.1% versus 8.9% and 4.2% versus 2.4% respectively.[83]

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[82] Bergsman, Joel and Xiaofang Shen. "Foreign Direct Investment in Developing Countries: Progress and Problems," *Finance and Development* (Washington DC: IMF and IBRD, 1995), 6. The developing countries listed as receiving significant levels of FDI include China, Brazil, Mexico, Indonesia, Poland, Malaysia, Argentina, Chile, India, and Venezuela.

[83] World Bank, "Developing Countries – Private Sector Development 2001," *World Development Indicators Database*; available from http://devdata.worldbank.org.

The above information indicates the importance of foreign investment to furthering economic development for this subset of economies. Therefore, throughout the 1980s and 1990s, as part of larger structural reform programs, these economies faced pressure from both international financial institutions as well as foreign investors to converge their trade and finance policies along the model of the "competition state" to attract much needed foreign investment. Moreover, foreign investors' willingness to consider such countries as investment sites is also increasingly. Although FDI flows traditionally remained within the "Triad" of North America, Europe and Japan, they are increasingly becoming more dispersed to middle-income economies. Whereas 80% of FDI remained within the Triad between 1982 - 1986, the *Economist* forecasts FDI flows to be equally divided between developed and developing states by 2010.[84]

Notably, this trend is likely to continue. In a recent *Economist* article the Institute of International Finance, a Washington club of financial firms, expected private capital flows to emerging markets to continue to rise in the near future.[85] Although there was a slight dip in 2001, due in large part to the U.S. economic recession, investment to emerging economies rebounded in 2002. Net private capital outflows, forecasted to total $159 billion, primarily went to those regions with a large concentration of middle-income economies; approximately 43% went to Asia

[84] *The Economist*, "Big is Back," 24 June 1995, 7.
[85] *Economist*, "Capital Flows to Emerging Markets," 4 May 2002, 38.

and 33% to Latin America.[86] This presents a considerable opportunity for upper middle-income economies to attract foreign investment. Yet weak property rights may undermine their ability to attract this investment.

The second measure of exposure to external economic actors, national debt, also indicates that pressures for policy convergence are particularly acute for middle-income economies. In 2001, developing countries' external debt totaled 2.4 trillion dollars. Of this total, $1.8 trillion was held by middle-income economies compared to $552.1 held by low-income economies. Additionally, the percentage of gross national income spent on debt servicing was 7.0% for middle-income economies compared to 4.8% for low-income economies.[87] Consequently, in terms of both FDI and levels of debt, middle-income economies, in particular upper middle-income, are exposed to significant pressure from external economic actors to converge their economic policies along the model of the "competition state." Failure to do so may result in a loss of much needed foreign investment and financial credit that is needed to support short-term macroeconomic stability and long-term economic development.

Upper middle-income economies also fulfill the second condition of having the political and financial resources to enact legal reform. Generally, these economies succeeded in implementing first generation neoliberal reforms, commonly referred to as structural adjustment programs, and embarked upon second generation

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[86] Ibid.
[87] World Bank, "Developing Countries – Economic Policy 2001,"

institutional reforms, including property rights reform. In these economies, political capital is generated for further intensification of the neoliberal reform project, once the reform project begins to generate positive results such as stabilization of the currency and increasing growth rates. Importantly, as the reform project intensifies a growing number of political actors emerge who not only support the project but whose careers are directly linked to the continuation of such policies. For example, in the case of many middle-income economies in Latin America, 'technicos', or the technical managers of the neoliberal projects, rose to considerable political power in various reformist governments throughout the 1990s. This suggests that in such competition states, state agents often drive the convergence process by deliberately pursuing those policies that enhance international competitiveness including the creation of a transparent and stable legal system.[88]

Moreover, the number of private sector actors interested in convergence may also increase due to economic globalization. Specifically, globalization increases the number of market actors who desire secure property rights to protect new FDI. This indicates that the political capital necessary to enact further institutional reforms, including legal reform, exist within the set of economies. Additionally, Dabla-Norris and Freeman argue that economic reform not only creates increased incentive for property rights enforcement but it also generates the resources

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World Development Indicators Database, available at http://devdata.worldbank.org.

[88] Philip G. Cerny, "Reconstructing the Political in a Globalising World," *Globalisation and the Nation-State* (Northhampton, MA: Edward Elgar, 1999).

necessary for the latter.[89] In comparison to other economies within the developing world, upper middle-income economies possess more financial resources to enact effective property rights reform.

Despite similar pressures to converge, the property rights reforms of these economies vary widely. One indicator is the contract-intensive money ratio (CIM), developed by Clague et al., as a proxy measure for property rights.[90] The CIM measures the state of contract compliance and security of property rights in a country. In societies where economic contracts and property rights are secure, people have little reason either to use currency for large transactions or to maintain extensive currency holdings. Therefore, the CIM ratio indicates how conducive an institutional environment is for contract-intensive activity, in part measured by how securely property rights are protected in that economy.[91]

Clague et al found that the CIM average for the time period 1969-1990 ranges from 0.83 for East Asia to 0.80 for Latin America and 0.68 for Sub-Saharan Africa.[92] Variance is even greater within regions. For example, within Latin America upper middle-income countries, CIM scores range from .844 to .944. Moreover, the World Bank's "rule of law" rankings, in which property rights

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[89] Era Dabla-Norris and Scott Freeman, "Working Paper of the International Monetary Fund: The Enforcement of Property Rights and Underdevelopment," (New York: IMF, 1999).

[90] Christopher Clague, Philip Keefer, Stephen Knack and Mancur Olson, "Institutions and Economic Performance: Property Rights and Contract Enforcement," *Institutions and Economic Development* (Baltimore: The John Hopkins University Press, 1997), 67-90.

[91] The more secure the economic environment, the higher the contract CIM ratio. Ratios range from 0.0 – 1.0, with higher ratios indicating increasing security. For instance, a CIM ratio of .95 indicates a more secure environment for property rights enforcement than a ratio of .70. Therefore, CIM ratios closer to 1 indicate a more secure economic environment and thus better protection of property rights.

enforcement is included, range within Latin America from a high of 85% for Chile to a mere 35% for Mexico and 30% for Venezuela.[93] [See Table 3.1]

Table 3.1: Proxy Measures for Property rights Enforcement for Upper-Middle Income Latin American Economies

Country	CIM Ratio	Rank within this grouping	Rank using the World Bank's Rule of Law Measure
Argentina	.844	8th	3rd
Brazil	.923	3rd	5th
Chile	.933	2nd	1st
Costa Rica	.890	5th	2nd
Mexico	.861	7th	7th
Panama	.944	1st	6th
Uruguay	.920	4th	4th
Venezuela	.872	6th	8th

(Source data to compute the CIM scores was obtained from the International Monetary Fund's *International Financial Statistics.* The Rule of Law rankings are from the World Bank's *Governance Indicator Country Snapshots.*)

In designing the statistical model, two restrictions eliminate eight countries from the World Bank's original list of upper middle-income economies: national independence and minimal oil production. The first restriction is that the economy be an independent nation-state. Because legal policy reform is the subject under study, all cases in the sample should have the right to develop their own laws. This

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[92] Christopher Clague et al., "Institutions and Economic Performance," 80-82.

[93] World Bank Institute, *Governance Research Indicator Country Snapshot,* April 2001. The disparity between the World Bank and the CIM rankings may be attributed to the fact that the World Bank's Rule of Law indicator measures a number of legal concepts beyond property rights enforcement. Rather eight distinct concepts are measured of which two directly relate to property rights protection. The other concepts measured in this indicator include enforceability of contracts, costs of crime, ability of citizens to file lawsuits against the government, independence of the judiciary, citizens accepting legal adjudication and tax evasion. Therefore, the inclusion of other concepts may weaken the internal validity of the World Bank indicator when using it to measure property rights enforcement.

first criterion reduces the sample size from its original 38 economies to 33 countries.[94]

The second criterion eliminates all but one 'petro-state'. A petro-state, as termed by Terry Lynn Karl, refers to oil-rich countries that are members of the Organization of Petroleum Exporting Countries (OPEC). The logic behind the exclusion of the petro-states of Gabon, Oman and Saudi Arabia is that despite their incomes, petro-states do not face the same kind of external pressures from either debt payments or need for FDI that are consistent with the convergence hypothesis.[95] Rather, policy inertia in various sectors of petro-states' economies is common.[96] Foreign investment in other areas of the economy is not prioritized and second-generation economic reforms are largely ignored.

Unlike their middle-income counterparts, members of OPEC are not as dependent on the activities of international financial actors to secure economic stability and development. In terms of foreign investment sensitivity, net FDI inflows for the excluded OPEC members in this sample were at significantly lower levels than for their sample peers.[97] For example, whereas Oman and Gabon

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[94] The economies that did not meet the criterion of independent nationhood include America Samoa, Isle of Man, French Mayotte, and Puerto Rico. The nation of Palau was also excluded because it only recently became an independent nation in 1994.

[95] The three economies excluded are Gabon, Oman, and Saudi Arabia. The respective percentages of GDP derived from petroleum production are 50%, 40%, and 40%. Data taken from the CIA's country listing found in its *World Factbook 2001*, available at www.cia.gov/cia/publications/factbook/index.html.

[96] Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (Berkeley: University of California Press, 1997), 5-12.

[97] Notably, economic data concerning Saudi Arabia was not available for this analysis. Nonetheless, Saudi Arabia and Oman share the same percentage of GDP based on petroleum production therefore similar trends in foreign investment and debt should be expected to exist between

received net FDI inflows ranging from -$311 million to $252 million per year between 1997 -2001, Mexico's FDI inflows for this period ranged between $12-25 Billion per year. Unlike its OPEC peers, Venezuela received FDI inflows more closely resembling those of its middle-income peers; $3.5-6 billion per year. Additionally, in terms of total debt service as a percentage of exports, the members of OPEC (excluding Venezuela) once again maintained lower levels compared to their sample peers; 7-19% versus 23-28% respectively.[98] Conversely, Venezuela's share of total debt service ranged from 16-32% for this same period. Again, Venezuela's numbers more closely approximate those of its regional neighbor Mexico (21-32%) than its OPEC peers. Therefore, the economies of Gabon, Oman and Saudia Arabia are excluded from the sample because they do not face the same kind of external pressures from either debt or foreign investment sensitivity as other middle-income economies. By extension, pressures for policy convergence are largely absent in these three petro-states -- including in property rights.

Thus to meet these two requirements placed on the original sample of upper middle-income economies, the sample size is reduced from its original 38 cases to 30 cases.[99] The 30 countries constitute the units of observation in the regression models below. Although the use of a time series study would better ascertain the causal

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the two countries. World Bank, "Data Query: Foreign Direct Investment," available at http://devdata.worldbank.org/data-query.

[98] World Bank, "Data Query: Total Debt Service," available at http://devdata.worldbank.org/data-query.

[99] The thirty economies used in the sample are: Antigua & Barbuda, Argentina, Bahrain, Botswana, Brazil, Chile, Costa Rica, Croatia, Czech Republic, Dominica, Estonia, Grenada, Hungary, Republic of Korea, Lebanon, Llibya, Malaysia, Mauritius, Mexico, Panama, Poland, Seychelles,

relationship between variables, due to existing data constraints (discussed below) cross-sectional data covering the two-year period of 2000-2001 are used in the statistical models.

3.3 Tested Hypotheses

To address the set of questions posed in this dissertation's introduction, I test four rival explanations of property rights convergence. The general analytic approach employed is that policy convergence, as Berger contends, is mediated by domestic politics. As previously noted, potential causal independent variables are drawn from Maxfield's analysis of the critical role that political coalitions play in shaping economic policy, and NIE's emphasis on institutional constraints and rent-seeking behavior. Although Maxfield and NIE do not directly address the issue-area of property rights, their analyses do discuss determinants of policy development. Following the logic of their analyses, to examine the causes of convergence, the study will focus on the following four variables: presidentialism, divided authority in the executive, domestic business actors (interest coalitions), and foreign business actors (interest coalitions). These variables suggest the following four hypotheses.

1a. Effective property rights reform is more likely when the political regime is characterized by a balance of power between the executive and legislative branches of government.

From this point of view, strong presidentialism can undermine reform efforts because a strong central office is more easily captured by special interests. If one

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Slovak Republic, South Africa, St. Kitts & Nevis, St. Lucia, Trinidad & Tobago, Turkey, Uruguay

branch of government serves as the primary agency issuing policy, the opportunities for rent-seeking activities and manipulation of the political institution increase. As NIE scholar Vivien Lowndes contends, an institution may be manipulated by a particular interest group and become an obstacle to effective exchange.[100] Actors benefiting from the status quo use the state institutional context to support their economic interests and block reforms. This is more easily accomplished if there is only one institution to capture such as the presidency. This viewpoint is further supported by Charles Cadwell's thesis that politically influential economic actors, termed "politically connected entities", have less need for the rule of law because they can obtain administrative rather than judicial recourse to address grievances.[101] For example, historically, presidentialist systems in Latin America were captured by economic elites (usually large landowners) who felt that property rights reforms may be used by other actors to undermine the elite's de facto claims to ownership.[102] These economic elites felt that changes to the status quo were not only unwarranted but potentially threatening to their position of power.

In contrast, in a system characterized by a division of power between the legislature and executive branch, minority and new interests get increased

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and Venezuela.

[100] Vivien Lowndes, "Varieties of New Institutionalism: A Critical Appraisal," *Public Administration* 74 (Summer 1996), 181.

[101] Charles Cadwell, "Legal Reform in Transition Economies," *Institutions and Economic Development* (Baltimore: John Hopkins University Press, 1997), 249-267.

[102] This analysis is supported by Jeremy Adelman's study of the development of property rights in Latin America that indicated land ownership patterns favoring large-sized holdings conditioned property rights. Or as Adelman succinctly claims, "rights flowed from relations." In "Institutions, Property, and Economic Development in Latin America," *The Other Mirror: Grand Theory Through*

representation and political power in the legislature even if excluded from the executive. As NIE scholarship contends, such political balance of power considerations affect how old institutions are put in the service of different ends. This increased political power can be used against the interests of the large landowners and codification of property rights might ensue.

1b. Effective property rights reform is less likely when the political regime is characterized by a balance of power between the executive and legislative branches of government.

According to the analyses of Maria Dakolias, Acting Chief Counsel of Legal and Judicial Reform in the World Bank's Legal Department, in many countries government legal and judicial reforms occur on the basis of Presidential Decree. Presidentialism assists international pressures for policy convergence because policies can be implemented without the consent of the legislature. Therefore the reform process may be speedier and more effective in the short term.[103]

2. Effective property rights reform is more likely when the executive branch does not divide authority for reform implementation into multiple competing offices.

A major impediment to successful legal reform, according to Charles Cadwell, is divided authority in the executive branch regarding policy implementation.[104] If the implementation or enforcement of new laws is the responsibility of several ministries or levels of government, the chances for authority

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the Lens of Latin America, eds. Miguel Angel Centeno and Fernando Lopez-Alves (Princeton: Princeton University Press, 2001).

[103] Maria Dakolias, "Legal and Judicial Reform: The Role of Civil Society in the Reform Process," *Rule of Law in Latin America: The International Promotion of Judicial Reform*, eds. Pilar Domingo and Rachel Sieder (London: Institute of Latin American Studies, 2001).

[104] Cadwell, "Legal Reform in Transition Economies," 249-267.

disputes and overlapping implementation increases. Divided authority exacerbates the uncertainty that the adoption of new legal rules aims to reduce. He concludes that "conflict and confusion over authority may be the main source of problems of contract enforcement rather than problems with the contract norms themselves."[105] Therefore, inconsistent formulation and dispersed implementation undermine convergence in the issue-area of property rights.

3a. Effective property rights reform is more likely when domestic interest coalitions of private business owners (capitalists) and public actors mobilize to push for such reform.

The analyses of Suzanne Berger, Sylvia Maxfield, and Hay et al. form the theoretical basis in which this hypothesis is rooted. This third hypothesis focuses on the impact of domestic interest coalitions,[106] complemented by Hay et al.'s recent examination of legal reform in contemporary Russia. Hay et al. maintain that legal reforms are the result of political pressure from property owners, and in particular from alliances of new and privatized capitalists.[107] Drawing from these three works, this hypothesis focuses on the relationship between interest coalitions and convergence by investigating which, if any, interest coalitions formed, either independently or by the state, to push for property rights reform.

Interest coalitions play an important role in influencing policy development and thus convergence possibilities. Once formed, interest coalitions lobby

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[105] Ibid, 258.
[106] Sylvia Maxfield, "Bankers' Alliances and Economic Policy Patterns: Evidence from Mexico and Brazil," *Comparative Political Studies* 23, 4 (January 1991), 419-458.

government officials to vote according to the preferences of the alliance. Utilizing media attention, campaign funding leverage, and political support, coalitions lobby politicians for particular policies. In this study, I examine the number of interest coalitions formed to assess the strength of this lobbying sector. Particular attention will be placed on those coalitions that support reform as well as those that oppose reform.

3b. Effective property rights reform is less likely when domestic interest coalitions of private business owners (capitalists) or public actors mobilize to oppose such reform.

However, interest coalitions may also form that oppose property rights reform. The motivations of reform opponents range from both self-interested considerations, such as directly benefiting from the existing status quo, to ideological. For example, in a study of intellectual property rights reform in Argentina, Edgardo Buscaglia found that the Argentine pharmaceutical industry lobbied successfully against reforms to strengthen patent laws.[108] In this case, it was in the self-interest of a specific industrial sector to resist reform to protect itself from foreign competition and retain their right to produce foreign-patented drugs. Moreover, as noted above, landed elites historically resisted efforts to improve property rights regimes.

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[107] Jonathan R. Hay, Andrei Shleifer and Robert W. Vishny, "Privatization in Transition Economies: Toward a Theory of Legal Reform," *European Economic Review* 40 (1996), 559-567.

[108] Edgardo Buscaglia, "Can Intellectual Property in Latin America be Protected?" *Intellectual Property Rights in Emerging Markets*, ed. Clarisa Long (Washington D.C.: American Enterprise Institute Press, 2000), 121.

Ideological critiques of property rights may also serve as the basis for anti-reform coalitions. According to socialist doctrine, private property is generally regarded as a threat to liberty. By extension, property rights are then considered the means by which social inequality and economic control are sustained in an economy. Similarly, Marxists view private property as inevitably leading to exploitation, class oppression and proletariat alienation.[109] Therefore, reform measures that extend property rights protection would be rejected by those interest coalitions who favor common property or land reform measures.

Accordingly, analysis of interest coalitions attempting to block or undermine property rights reform efforts will also be incorporated into the study.

4. Effective property rights reform is more likely when interest coalitions pushing for such reforms include foreign actors.

Complementing the preceding discussion highlighting the importance of interest coalitions, Kathleen Thelen and Sven Steinmo argue that international actors may also employ existing institutions to pursue new goals.[110] In a study of sources of institutional change, Thelen and Steinmo propose that change is driven by international political actors who pursue their goals through existing domestic institutions. Applying this analysis to the subject at hand, the current era of economic globalization constitutes a change in socioeconomic context in which foreign investors and multinational corporations may choose to advance their

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[109] Andrew Heywood, *Political Ideas and Concepts* (New York: St. Martin's Press, 1994), 308-310.

interests through lobbying activities. Yet, as Susan Berger strongly argues, exogenous pressures alone do not bring about convergence.[111] Rather pressures for policy reform may be more effective when foreign actors combine with domestic actors. Following this lead, this hypothesis contends that policy convergence is mediated by the activities of domestic/foreign capitalist alliances.

Foreign commercial actors have a distinct interest in the promotion of commercial law reform, particularly intellectual property law, because these same reforms protect their own investments. Foreign investors increasingly recognize how state institutions can facilitate the distribution of accurate information, monitor and enforce contracts, and establish rules of interaction that can serve to reduce transaction costs. Thus, state institutions are considered key to reducing the transaction costs of market exchange while also reducing risk for economic agents. Foreign actors may push for policy reform within the forum of an international organization (such as the World Trade Organization) or directly through lobbying activities to government officials. Such an interest coalition can place pressure on a state by demonstrating how they can privilege states with secure property law in foreign investment decisions.

When foreign commercial actors combine their efforts with domestic actors in an interest coalition, rather than act unilaterally, reform is more likely. Foreign

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[110] Steinmo, Sven and Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Structuring Politics: Historical Institutionalism in Comparative Analysis*, eds. Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992), 16-18.

[111] Suzanne Berger. *National Diversity and Global Capitalism*, eds. Suzanne Berger and Ronald Dore (Ithaca, NY: Cornell University Press, 1996), 16.

commercial actors may assist the activities of domestic interest coalitions not only by broadening the support base for policy reform but also by contributing funding and managerial expertise to the coalition's program. Foreign actors will benefit from the political leverage and knowledge that domestic allies can provide. Therefore, this study examine if interest coalitions of both domestic and foreign actors formed to push for property rights reform. In the quantitative analysis, only the number of such organizations will be used to assess this variable whereas in the following chapters the specific activities of interest coalitions will be examined using historical process tracing.

3.4 Research Design

Choosing the Tests

To examine the institutional determinants of property rights convergence, I use cross-sectional data. Unfortunately, there is no existing data set for the sample of cases that covers the entire time-period, 1980 to the present. Moreover, I was unable to compile a time series data set because of the absence of collected data on particular independent variables. For example, figures regarding civil society membership have not been systematically collected in either the developed or developing worlds. Only since 1996 have data of this sort been gathered for a small number of developing countries; therefore no data set that covered the economies under study currently exists. The period of analysis was limited to the calendar years 1999-2000 because of limited data availability; for many of the economic variables, data were only available for the year 1999. Proxy indicators to measure both

domestic alliances and international alliances pushing for property rights convergence were available for only 2000.

This lack of data barred me from conducting a longitudinal regression analysis. Rather, to test the preceding four hypotheses a cross-sectional multiple regression model is employed. A data set was compiled from various sources covering ten political and economic independent variables in the universe of cases: 30 upper middle-income economies. A multiple regression model was chosen to measure the partial effects of the variables under study as well as a number of control variables.

Measuring the Dependent Variable

Regarding the measurement of the dependent variable of policy convergence in property rights enforcement, I use the indicator that Clague et al. develop to measure how conducive an institutional environment is for contract-intensive activity, the contract-intensive money ratio (CIM).[112] CIM indirectly measures the state of contract compliance and security of property rights in a country. In societies where property rights are secure, people have little reason to use currency for large transactions or to maintain extensive currency holdings. Rather, people should prefer using checks and credit cards to facilitate their own record keeping and tax needs. Thus, in such countries, people will make less use of currency to carry out their transactions. Therefore, I employ CIM as a measure of property rights security.

[112] Therefore, the higher the value the better property rights are protected. Clague et al., *Institutions and Economic Development*, 67-90.

Clague et al. operationalize this variable as ". . . the ratio of noncurrency money to the total money supply, or $(M_2\text{-}C)/M_2$, where M_2 is a broad definition of the money supply and C is currency held outside banks. The numerator of this ratio consists of financial assets such as checking accounts, time deposits, and other claims on financial institutions, while the denominator is the sum of these assets and currency holdings."[113] Data to measure the CIM ratio was taken from the International Monetary Fund's International Financial Statistics 2000.[114] The closer the CIM ratio is to one the less currency is held by the public for economic transactions. This further implies, according to Clague et al., that property rights enforcement is stronger in those countries where the CIM ratio approaches one.

Measuring the Independent Variables

To measure the balance of power between the executive and legislative branches of government, I use the Bank's World Governments Database.[115] Two variables are used, method of selection of the executive (#120) and effectiveness of legislature (#105). Although the method of executive selection does not change much over time, it is used to confirm whether the executive was selected by a direct or indirect election or by a nonelective procedure. Effectiveness of legislature was

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[113] Ibid, 70.

[114] Once again, due to data constraints (the IMF does not collect M_2 figures for many developing countries) an approximate CIM ratio was used. Upon the recommendation of Peter B. Kenen, the approximate calculation of CIM for the cases under study include the sum of the International Monetary Fund's annual publication "International Financial Statistics" lines 24+25+14a to estimate M_2 and line 14a to estimate C. Therefore, the estimated calculation of CIM is as follows: {(Lines 24+25+14a)-(14a)}/(Lines 24+25+14a) $\approx (M_2 - C)/ M_2$.

[115] Arthur Banks, *World Governments Database: Cross-National Time Series, 1815-1999,* ICPSR 7412.

coded by experts in an ordinal scale ranging from 0-3; with 0 representing no legislature and 3 representing an effective legislature. A largely ineffective legislature (1) meets at least one of three possible scenarios: the legislature acts simply as a "rubber stamp" institution; domestic turmoil make implementation of legislation impossible; or the executive impedes the legislature from exercising its functions. If the power of the executive substantially outweighs but does not dominate that of the legislature it is coded as a partly effective legislature (2). A completely effective legislature (3) is characterized by significant governmental autonomy, specifically including the ability to override executive vetoes of legislation as well as taxation and disbursement powers. A control variable, democracy, was also added to the model to guard against the corresponding possibility of spurious inference.[116] Data for this control variable are drawn from Freedom House's country freedom ratings.[117] From these data, I construct three widely used proxy indicators of democracy; countries are coded 3 for free, 2 for partly free, and 1 for not free.

Measurement of the other political variables is not as (relatively) straightforward given that existing data quantifying divided authority and interest alliances are not readily available. Because there is no available data set covering a satisfactory measure of divided authority in the executive, institutional veto points

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[116] A spurious relationship exists between variables when they are correlated with one another but not because a hypothesized independent variable causes a hypothesized dependent. Rather, the cause of the spurious relationship is due to some third variable. Leonard Champney, *Introduction to Quantitative Political Science* (New York: Harper Collins, 1995), 132-133.

are used as a proxy. Veto points refer to those actors and institutions that have the formal power to object to the formulation and/or implementation of policy. Institutional veto points, as described by Lamping and Vergunst, refer specifically to those institutions in which actors can utilize to intervene and block policy development, such as legislative houses and executive committees. For that reason, institutions constitute a measure of potential divided authority in policy development and implementation.[118] Two veto points indicators are used as proxy measures for divided authority with a score range of 6-31 for veto points #1 and 7-46 for veto points #2. To construct the first measure, I collected data on the existence of a directly elected executive, the number of houses in the legislature, and the number of ministries. If the executive was directly elected it is scored 1. This score is then added to the number of legislative houses and government ministries. Combined scores constitute the first veto points measure. A second measure adds the number of political parties who won legislative seats in the most recent election to the previously discussed combined score. For example, if a country had a directly elected president, a bicameral legislative branch, and 8 ministries it would possess a total veto points #1 score of 11. If five parties currently hold legislative seats the

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[117] Freedom House, *Comparative Measures of Freedom, 1999-2000,* available at www.freedomhouse.org/ratings/index.htm.

[118] Wolfram Lamping and Noël P. Vergunst, "Corporatism, Veto Points, and Welfare State Reform in Germany and the Netherlands. Institutions, Interests, and Policies," (paper prepared for presentation at the IPSA World Congress in Quebec, Canada: August 2000.) For more information on the utility of veto points please see Thomas H. Hammond's "Veto Points, Policy Preferences, and Bureaucratic Autonomy in Democratic Systems," unpublished study, draft 2.0 dated January 2001; Witold J. Henisz's "The Institutional Environment for Economic Growth," *Economics and Politics* 13 (2000), 1-31; and Barry Ames' *The Deadlock of Democracy in Brazil* (Ann Arbor: The University of Michigan

veto points #2 score would increase to 16. Data to construct this measure were taken from *The Political Science Reference Almanac: 2000*.[119]

As noted, data regarding either domestic or international interest alliances are difficult to obtain due to the lack of existing information collected on this subject.[120] To measure this concept, I use data from CIVICUS's *The Civic Atlas* (2001) to construct a proxy indicator for domestic interest alliances[121] based on the number of civil society organizations registered with CIVICUS. Although the numbers provided by CIVICUS are not the actual number of civil society organizations within member states, they do provide a good relative measure of the extent to which interest alliances exist within a country. In countries with high numbers of affiliated CIVICUS organizations, the probability that domestic interest alliances involved in the property rights reform project increases relative to states with a small civic sector.

Although domestic interest alliances may form to oppose reform efforts, in this model the emergence of interest groups is associated with the pro-reform movement based on the analysis of Hay, Shleifer and Vishney. In their study of property rights reform in Russia, Hay et al found that the reform process was marked

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Press, 2000).

[119] *The Political Science Reference Almanac: 2000*, available at www.polisci.com/almanac.nations.

[120] For example, the John Hopkins Comparative Nonprofit Sector Project (CNP) is the largest academic data collecting agency examining civil society membership but its data are too limited for me to construct a time series data set. The CNP began in 1989 to measure civil society membership in eight developed countries, and only in 1996 were an additional 17 countries added. Of the sample used in my model, only three cases are included in the CNP data set.

by the rise of pro-reform alliances of new capitalists rather than anti-reform alliances.[122] Therefore, in the present analysis an increase in the number of civic organizations is associated with an increase in pro-reform interest alliances. The problematic nature of this measure, in that it fails to differentiate between supporters and opponents of reform, illustrates the need to conduct qualitative examination of this variable to ascertain what interest groups are forming and exactly how they are affecting the reform process.

The proxy measure for interest coalitions that include foreign actors is constructed using data from idealist.org, a project of Action Without Borders.[123] As in the case of domestic interest alliances, an increase in the number of civic organizations is associated with an increase in pro-reform interest alliances. Idealist.org posts nation-by-nation lists of civic society organizations that solicit international membership and assistance. Specifically, the number of organizations listed by idealist.org for the countries in my sample is used as a proxy indicator for this political variable. Due to the limited construct validity of these measures, to adequately examine the impact of interest coalitions on the process of property rights reform, much more in-depth investigation is needed. Such examination is only possible using qualitative research methods.

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[121] CIVICUS, *The Civic Atlas: 2001*. Membership information was provided via internet correspondence by Patricia Sipher, Membership Coordinator of CIVICUS: World Alliance for Citizenship Participation, November 12, 2001.

[122] Jonathan R. Hay, Andrei Shleifer and Robert W. Vishny. "Privatization in Transition Economies: Toward a Theory of Legal Reform," *European Economic Review* 40 (1996), 559-567.

[123] idealist.org, available at www.idealist.org/ip/org.

Is it possible that the structure of the economy and the level of economic development could also affect a nation's respective CIM rating? To what extent is increased integration in the global economy correlated with CIM ratings? To test for spurious correlation between political variables and the dependent variable, four control variables are also incorporated into the model. The measurement of these economic variables is relatively straight-forward in contrast to the preceding variables. Three indicators are used to measure the relative importance of FDI for a particular economy: FDI as a percentage of total investment, FDI as a percentage of the financial account balance, and FDI as a percentage of total GDP. Gross domestic product is used to measure the level of economic activity, while trade as a percentage of GDP is used to measure trade exposure. Data on membership in a regional trade organizations were also collected but dropped in the regression model due to lack of variation. All economic data were obtained from the World Bank (2000) and the IMF's International Financial Statistics (2000).[124]

These economic measures combine independent and dependent variables into the model. For example, foreign investment measures may serve as a source of pressure for convergence but also, potentially, an outcome of successful reforms. Moreover, GDP may be so highly correlated with CIM ratios that income may serve as a proxy measure for the dependent variable. To assess the degree of multicollinearity between variables, correlation matrixes are constructed for the

[124] Data collected from the World Bank can be found at http://devdata.worldbank.org/data-query/SMResult.asp. IMF and World Bank data for the year 2000 was unavailable so 1999 data was

economic variables (Table 3.2) and all variables used in the final regression model (Table 3.3) of upper-middle income economies respectively.[125] As the matrixes indicate, high multicollinearity among explanatory variables does not exist.

Therefore valid statistical inferences can be drawn from the regression models. [See Tables 3.2 below and Table 3.3 on the following page.]

Table 3.2: Correlation Matrix – economic variables

	GDP	Trade Exposure	FDI/Ttl. Invest.	FDI/FinAcc Balance	FDI/ GDP	CIM
GDP	1.00					
Trade Exposure	0.39	1.00				
FDI/Total Investment	0.09	0.16	1.00			
FDI/FinAcc Balance	-0.38	-0.10	0.13	1.00		
FDI/GDP	-0.004	0.02	0.31	0.14	1.00	
CIM	0.06	-0.44	0.15	0.19	0.03	1.00

used in the model.

[125] Additionally, to test for a causal relationship between the economic variables and the CIM ratio, the economic variables were taken for the year 1998 to complete the regression model.

Table 3.3: Correlation Matrix – all variables employed in the full regression model

	GDP	FDI	Legis.	Veto	Dem.	Dom. I.A.	Intl. I.A.	CIM
GDP	1.00							
FDI Dependence	-0.02	1.00						
Legislature Strength	-0.10	0.005	1.00					
Veto Points	0.19	-0.24	0.03	1.00				
Democracy	-0.06	0.01	0.36	-.34	1.00			
Domestic Interest Alliances	0.10	0.02	0.33	0.52	-0.06	1.00		
International Alliances	0.51	0.18	0.25	0.47	0.05	0.34	1.00	
CIM	0.01	0.21	-0.16	0.39	0.27	0.21	0.11	1.00

3.5 Statistical Results

Five regression models are employed to estimate the effects of the preceding variables on the dependent variable. Upper-middle income economies comprise the sample used in the first three models. The last two models are drawn from the larger middle-income sample.

The first multiple regression model examines the four political variables associated with the hypotheses discussed above. The second model examines the effects of the economic control variables on the dependent variable. The third model estimates all eight variables; five political and three economic. In each model all

variables are statistically insignificant. Additionally, signs are not as expected for a number of variables but even this irregularity varied from test to test.

Only when two-variable, or simple, linear regression analyses are conducted for each indicator does statistical significance emerge at the 0.05 level. Of the 15 two-variable regression analyses conducted, only the indicators for divided authority proved to be statistically significant with P values of .003 (veto1) and .027 (veto2) respectively. It was predicted that as "veto points" increase, the CIM ratio would be lower as suggested in the second hypothesis pertaining to divided authority. Yet in all regression analyses the sign for the variable "veto points" is not as expected; it is positively correlated with CIM, rather than negatively.

This surprising relationship may be due to the fact that the indicators for veto points are not an adequate measure of the variable "divided authority." In the second hypothesis, the executive is specifically referred to in which divided authority may undermine property rights reform implementation. However, the indicators veto1 and veto2 include data on the number of houses in the legislature, and political parties who won seats in either the executive or the legislature. Whereas "divided authority" refers only to veto points in the executive, veto1 and veto2 encompass veto points in another branch of government. Therefore, the validity of this indicator

is weakened and may be linked to the unexpected and contradictory effect on the dependent variable.[126]

Or it may be possible that the relationship between the measure veto points and the dependent variable truly is positively correlated. This implication of this relationship is that as the number of actors involved in the policy process increases, property rights reform is more likely to occur. Similar to the argument used in hypothesis 1b, as more actors are involved in the policy process there may be more avenues for actors to advocate and lobby for property rights reform. As previously discussed in reference to interest coalitions, more rigorous investigation of this relationship is needed. Once again, qualitative case studies should prove particularly informative in explaining the relationship between veto points and property rights reform.

To test whether confining the indicator to only those veto points pertaining to the executive branch would produce different results, I re-estimate the model using a new measure for divided authority including only data regarding executive type and number of government ministries. In a simple linear regression, this new measure is once again positively correlated with CIM, with a coefficient of 0.005 and statistically significant with a p-value of 0.01. Yet, in a multiple regression model that included the other three explanatory political variables, the new measure fails to remain statistically significant at the 0.05 level. Its p-value is 0.357 and its

[126] Moreover, the contradictory effect might be due to the fact that "veto2" is another indicator for strength of the legislature. For this to be true, the indicators "indleg" and "veto2" should be correlated

coefficient is lowered to 0.002. Notably, the original veto points indicator used in the first regression model has a lower p-value than the new measure in both simple and multiple regression tests. Re-estimating the model with a new measure of divided authority does not provide new information to clarify the unexpected relationship.

Importantly, due to data limitations, in each of the three multiple regression models the number of observations is less than the sample size of 30 countries. When data on all independent variables tested in the model were not available, the country case was automatically dropped from the statistical model. Whereas the second model had 21 observations, the number of observations is reduced in the first model to 19, and in the final model there are only 16 observations. Such restricted degrees of freedom make it extremely difficult to achieve statistical significance for any of the variables in any of the three models. Nonetheless, the results of all three models are presented in table 1 below.

Summarized in table 3.4 (see the next page) are the coefficient results and standard errors of the three multiple regression models. Independent variables are listed in the left hand column with the respective regression results for each model listed in the following three columns.

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however, neither veto1 nor veto2 are highly correlated with legislature independence.

Table 3.4: Determinants of Property rights Reform in Upper Middle-Income Economies

Independent Variables	Model 1: Political Variables Obs.=19	Model 2: Economic Variables Obs.= 21	Model 3: Complete Data Set Obs.=16
Legislature Strength	-.016		.017
	(.02)		(.042)
Veto Points	.002		.005
	(.002)		(.004)
Democracy			.016
			(.046)
Interest Alliances	.001		-.003
	(.003)		(.006)
Intl. Alliances	-.0001		-.001
	(.0004)		(.001)
GDP		-2.68e-14	7.06e-15
		(6.12e-14)	(1.02e-13)
Trade Exposure		-.005	-.002
		(.006)	(.001)
FDI Dependence		-.002	-.006
		(.003)	.005
Constant	.87*	.93*	.80*
	(.07)	(.03)	(.167)
Adjusted r-squared	-0.03	-0.11	-0.35

Standard errors are in parentheses. *Indicates significance at the 95% level.

Apart from the overall lack of statistical significance, it is worth noting that a number of the correlations between independent variables and the dependent variable did not perform as expected. Three of the four variables in first multivariate model have signs that were not expected. Whereas domestic interest alliances confirm to the expected positive correlation, legislature strength and international interest

alliances are negatively correlated with the dependent variable. The failure of these two variables to perform as expected may mean that the presence of an effective legislature and foreign actors in the policy process does not advance the reform project. The coefficient for international interest alliance is less than .0001 and therefore can be interpreted as having no effect on the dependent variable. As previously discussed, veto points continue to be positively correlated with the dependent variable, CIM. The contradictory findings that increasing veto points promote reform while effective legislatures undermine reform may indicate that veto points emerging from the executive may be of particular importance to the reform process.

What is interesting about the second multivariate model is that the economic control variables (GDP, trade exposure and FDI dependence) are not correlated with the dependent variable. Not only are all three variables unreservedly statistically insignificant but none of their respective coefficients are more than 0.001; hence it can be understood that the economic variables have little, if any, effect on the dependent variable.[127] In the last model, the problem of limited degrees of freedom is most pronounced with only 16 observations and 8 independent variables. Once again, none of the variables are statistically significant at the .05 level and only two

[127] An explanation for the lack of statistically significant correlations between the economic control variables and the dependent variable may lie in the narrow range of values of the economic variables. The explanatory impact may have already been absorbed by the use of the selected sample, middle-income economies and thus undermined the ability to produce statistically significant results in the model discussed above.

variables have the expected sign (strong legislature and GDP). See below, Table 3.5, for a summary of p-values for each model.

Table 3.5: P-values for the Tested Determinants of Property rights Reform in Upper Middle-Income Economies

Independent Variables	Model 1: Political Variables Obs.=19	Model 2: Economic Variables Obs.= 21	Model 3: Complete Data Set Obs.=16
Legislature Strength	0.46		0.70
Veto Points	0.27		0.18
Democracy			0.73
Interest Alliances	0.71		0.64
Intl. Alliances	0.81		0.47
GDP		0.67	0.95
Trade Exposure		0.44	0.17
FDI Dependence		0.50	0.31
Constant	0.00	0.00	0.002

Variables tested for statistical significance at the 95% level.

To examine if the general lack of statistically significant results is due to the limited sample size, the original dataset of upper-middle income economies was expanded to include all middle-income economies holding the original restrictions constants. This increased the sample from the 30 to 81 economies. Select independent variables, the political variables under examination and GDP, are tested in these re-estimated models.

In contrast to the results from the limited sample, statistical significance occur more frequently in the re-estimated fourth and fifth models. When two-variable linear regression analyses are conducted for the expanded dataset, three variables emerge as statistically significant. Legislature strength, veto points and

democracy all are significant at the 0.05 level. The indicator for divided authority, veto points, thus proves to be the only measure that remains statistically significant in both datasets. However, the direction of the coefficient changes in this later model. Earlier, increasing veto points were positively correlated with higher CIM ratios but in the expanded model veto points become negatively correlated with CIM. This change is consistent with the hypothesis that postulates that divided authority in the executive undermines reform implementation. The contradictory results of the first models may have been caused by the limited sample size.

The other two statistically significant variables also reveal some unanticipated results. In model 4, the variable democracy was negatively associated with CIM whereas a strong legislature is positively associated with the dependent variable. The directions of these two measures are odd considering that independent and effective legislatures are commonly functions of a democracy. When these two variables are correlated independently of the other variables in the model, their correlation statistic is -.5177 with 82 observations. Rather than infer causal relationships from this data, the negative correlation between the variables may point to the lack of measurement validity in one of the indicators.

In contrast to the simple linear regression results, in the multiple regression analyses only one variable is statistically significant, domestic interest alliances. However, the coefficient for this variable (.005) indicates a marginal positive correlation between this independent variable and the CIM. [See Table 3.6 for regression models 4 and 5.]

Table 3.6: Select Determinants of Property Rights Reform in Middle-Income Economies

Independent Variables	Model 4: Simple Linear Regressions	Model 5: Multiple Regression Obs.=47
Legislature Strength	.028*	-.0002
	(.013)	(.015)
	Obs. = 75	
Veto Points	-.004*	-.0014
	(.001)	(.002)
	Obs. = 76	
Democracy	.031*	.0125
	(.013)	(.018)
	Obs. = 76	
Interest Alliances	.004	.005*
	(.002)	(.002)
	Obs. = 48	
International Alliances	-.0001	-.0006
	(.0003)	(.0003)
	Obs. = 69	
GDP	5.46e-14	8.25e-14
	(6.15e-14)	(5.49e-14)
	Obs. = 75	
Constant		.89*
		(.055)
Adjusted r-squared		0.085

Standard errors are in parentheses.
*Indicates significance at the 95% level.

Table 3.7: P-values for the Tested Determinants of Property Rights Reform in Middle-Income Economies

Independent Variables	Model 4: Simple Linear Regression	Model 5: Multiple Regression Obs.= 47
Legislature Strength	0.039*	0.990
Veto Points	0.011*	0.409
Democracy	0.017*	0.498
Interest Alliances	0.076	0.028*
Intl. Alliances	0.765	0.081
GDP	0.377	0.141
Constant	0.00	0.00

Variables tested for statistical significance at the 95% level.

3.6 Conclusion

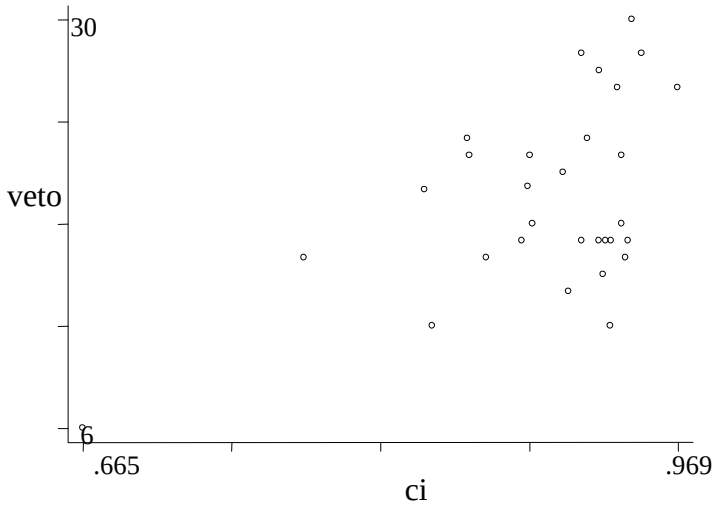
In response to the many studies detailing the economic benefits of property rights reform for developing countries, a number of scholars have begun to explore the difficulties of enacting legal reforms. However, such studies are often limited to developed or transition economies and rarely explore other cases within the developing world. Notwithstanding the important insights that these analyses produced, a serious gap continues to exist in the literature regarding the determinants of property rights convergence among developing economies. Although empirical studies exist of trade and finance policy convergence within the developing world, little attention is addressed to the issue-area of property rights (let alone IPRs). In light of this, the goal of this chapter is to begin to fill this void in the literature.

In this chapter, I sought to contribute a much needed cross-national regression analysis of the institutional determinants of property rights convergence.

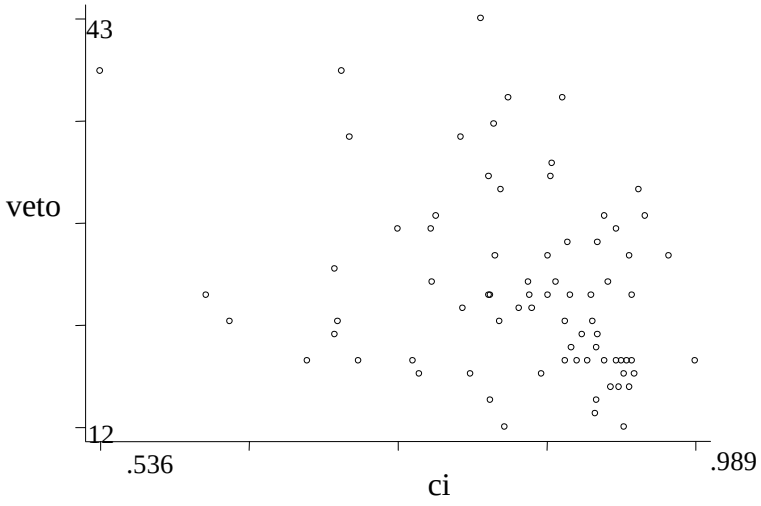
By providing a cross-national study, I avoided the shortcomings of current scholarship which only examine individual cases of legal reform. Additionally, the study focuses on an increasingly important issue-area that is either ignored or combined under the larger heading of legal reform in much of the existing literature. The goal is to disentangle the determinants of property rights reform from larger legal reform programs that often are largely administration of justice programs. Statistical methods were used to test my theoretical hypotheses regarding the determinants of property rights convergence across a number of countries and regions.

Regrettably, due to data constraints, statistical methods turn out to be of little utility in ascertaining the determinants of property rights convergence or divergence. When using the sub-sample of upper-middle income economies, simple two-variable regression analyses produce only one statistically significant variable at the 0.05 level. When the model is re-estimated to draw from a larger sample including both upper and lower middle income economies, consistency in the direction of the initially significant variable is reversed. This suggests that a non-linear relationship may exist between the independent variable, veto points, and the dependent variable, CIM, when lower income countries are included in the second model. [See Graphs 3.1 and 3.2 for scatterplot representations of the relationship between the two variables for each subset of countries.]

Graph 3.1: Veto Points and Contract Intensive Money Ratio for Upper Middle-Income Economies



Graph 3.2: Veto Points and Contract Intensive Money Ratio for Lower Middle-Income Economies



In the three multivariate regression models employed using the smaller sample, no variable proves to be statistically significant. After the sample is

expanded, the one variable that emerges statistically significant is weakly correlated to the dependent variable. Rather than specifying the determinants of policy convergence, the regression analyses demonstrates the limitations of quantitative analysis. Until better data on the relevant variables are collected for a larger range of countries and time periods, quantitative analysis will be of limited utility.

The inability of the preceding models to produce statistically significant results confirms the need for further research on this subject employing qualitative research methods. Until more quantified data are available, scholars will have to continue to rely on qualitative methodologies to uncover what factors compel and counteract policy convergence in the issue-area of property rights. Moreover, globalization and institutional reform are both processes in which longitudinal investigation may be more productive. Cross-sectional analysis that examines indicators at a specific point in time may fail to recognize partial reform and changing dynamics in both the independent and dependent variables.

To address this weakness of cross-sectional data as well as the limitations of the preceding statistical models, longitudinal qualitative analyses of two Latin American upper-middle income economies who earn divergent rankings in various comparative studies is employed in the following chapters to ascertain change over time. Specifically, I conduct case-studies of Mexico and Chile, from the mid-1980s to present, to study the process of legal structure convergence. Rather than examine other types of property rights that are not included in the competition state model, the issue-area of property rights is further specified to IPRs in the case studies. This

alternate research methodology not only addresses the limitations that exist in the statistical models presented above but it allows for more detailed discussion regarding the precise role of each variable under study in the process of IPR convergence.

CHAPTER FOUR

EXAMINING INTRA-REGIONAL VARIATION: THE METHODOLOGY OF THE LATIN AMERICAN QUALITATIVE ANALYSES

4.1 Introduction

The objective of this section is to explain why and how in the following four chapters I narrow my examination in legal structure convergence from a general study of the correlates of property rights reform to a comparative analysis of two cases of attempted IPR convergence within one geographic area. Therefore in the following pages, I review the methodology employed in the selection of the time period, case studies, and unit of observation.

Above all I chose to conduct longitudinal qualitative analyses to address the weaknesses of statistical and case-oriented techniques. Statistical analyses assess probabilistic relationships between variables only when sufficient data exist to establish statistical control, while the case-oriented approach may ignore multi-causal relations. By contrast, as political scientist Charles Ragin contends, the comparative method is "more consistent with the goal of interpreting specific cases

and addressing historical specificity."[128] Hence this method allows me to examine a small number of cases while placing attention to causal complexity.

4.2 Time Period Examined

Given that this study is concerned with the validity of the convergence hypothesis in the arena of legal structures, the time period examined must correspond to that associated with the rise of such convergence pressures: the early 1990s to present. As explained by renowned economist Jeffrey Sachs, changes in technology and economic policy since the 1980s have linked economies that were previously separated into a dense network of economic interactions.[129] This new era of economic globalization is distinctively marked by the high degree of incorporation of developing nations into the global economic system and the increased convergence of economic policies and institutions.

Importantly, the convergence of legal structures is part of second stage neoliberal reforms that occurred later in this current era of economic globalization. Whereas macroeconomic policy convergence began in the 1980s, institutional convergence is a phenomenon of the 1990s. Coining the term, "the second stage of reforms," Moises Naim explains how in the early 1990s it became apparent that institutional reform was needed to complement macroeconomic policy changes.[130] Therefore it is not until after the macroeconomic reforms of the 1980s that

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[128] Charles Ragin, *The Comparative Method* (Berkeley: University of California Press, 1987) 16.
[129] Jeffrey Sachs, "Interlocking Economics: Unlocking the Mysteries of Globalization," *Foreign Policy* Spring 1998.

convergence pressures began to shift to institutional structures, including IPR regimes. Accordingly, the period examined in the following analyses will be 1990 - 2002.

4.3 What is so special about IPRs? The justification for the unit of observation examined in the qualitative case studies.

Studies advocating legal reforms consistent with the competition state model often call for reforms in commercial law. Generally, commercial law covers the broad areas of business, commerce and consumer transactions. Yet one category of commercial law in particular has increasingly raised the attention of international investors, scholars, and governments alike: intellectual property law.

Specifically, developing countries are called on more and more to establish transparent, stable and well-enforced IPR regimes to attract much needed technology transfers and investment monies. IPRs give the author or inventor exclusive legal right over the use of his/her creation for a limited period of time. This legal protection, as explained by IP scholar Jayashree Watal, also normally excludes "third parties from exploiting protected subject matter without explicit authorization of the right holder for a certain duration of time."[131] IP law typically covers the protection of both copyrights and industrial property: trademarks, patents, and trade secrets. Developed to reward creative work, copyright protection is given to works of literary and artistic works. In contrast, trademark protection refers to the protection of

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[130] Moises Naim, "Latin America: The Second Stage of Reform," *Journal of Democracy* 5 (October 1994), 28-44.

distinctive signs and geographical indications that distinguish a good or service as either being a product of a distinct producer or from a distinct geographical origin. Patents and trade secrets (including industrial designs) protect the results of investment in the development of a new technology.[132] For the purposes of this study, laws pertaining to either of the two IP categories, copyrights and industrial property, serve as units of observation.

In this new global economy, IP protection is considered a critical area that developing countries must reform to secure long-term economic growth. Legal scholars Arter Hadden and James C. Scott refer to intellectual property as "one of the hottest commodities of the new economy . . . (because) the value of new ideas for products and business models can far exceed that of hard assets."[133] As innovations in both product and process cycles become increasingly based on technological advancements, IP increasingly provides the key competitive advantage by which companies can expand their market share.

Due to the technology transfers that occur in the expansion of global production processes, transnational corporations (TNCs) understand that IPR protection is important to protect both their production and product secrets. Therefore, in keeping with the convergence hypothesis, international investors have a vested interest in pursuing IPR convergence. Not only will their trade secrets be

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[131] Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (Boston: Kluwer Law International, 2002).

[132] The World Trade Organization (WTO) defines IPRs as the rights given to persons over the creation of their minds. For more information, please see the website of the WTO at www.wto.org.

protected but, with trademark protection, product recognition is also protected. Additionally, investors often request adequate IPR protections to ensure a fair return for the costs of conducting research and marketing associated with their investment.

But what are the benefits of strengthened IP protection for developing countries? Governments typically view the protection of IP as a way to promote domestic innovation and dynamic, long-term economic growth by ensuring that the externalities of an innovation go to the legitimate creator. In light of the scholarship documenting a positive relationship between property rights enforcement and foreign investment, IPR reform is also viewed as yet another way to attract much needed foreign investment for developing nations. As competition for foreign investment increases in this new global economy, developing nations are turning their attention to ways to establish new strategic comparative advantages. For example, as Edgardo Buscaglia and Clarisa Long claim, "as they struggle to attract world-class technologies to their shores, Latin American countries are slowly realizing that they must reform their systems of intellectual property rights if they are to succeed in an age of high technology."[134]

Therefore, IPR convergence is now viewed as yet another way to increase global competitiveness and attract much needed technology transfers. Termed "technology racing" by Robert Sherwood, evidence is emerging that investors do

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[133] Arter Hadden and James C. Scott. "Do You Know your Intellectual Property?," *Find Law*, November 2000, available at http://library.lp.findlaw.com.

[134] Edgardo Buscaglia and Clarisa Long, "U.S. Foreign Policy and Intellectual Property Rights in Latin America," *Essays on Public Policy of the Hoover Institution on War, Revolution and Peace: Number 77.* (Stanford University Press, Palo Alto: 1997), 2.

consider the risk-reducing effects of IP protection when deciding where to make investments that will provide new products and services. Robert Sherwood and Carlos Braga argue that Latin American IPR convergence will generate three significant benefits: greater technology, more FDI and domestic inventions fostered by higher research and development expenditures.[135] Additionally, consumers in the developing world may also gain from the strengthening of IPRs in terms of gains in efficiency and quality associated with protected products and production processes.

Empirical analyses support these theoretical claims regarding the positive relationship between both property rights and IPR in particular and economic growth. For example, a recent World Bank study of 73 countries concluded that low credibility of rules is associated with lower rates of investment and growth.[136] Additionally, utilizing cross-national panel data from 1960-90, David Leblang concluded that economies that protect property rights grew more rapidly than those where insecure property rights are the norm.[137]

Specific IP protection is considered by many scholars to be a critical component of long-term economic growth. Focusing exclusively on IPR (using patent protection as a measure for IPR), David M. Gould and William C. Gruben find in their cross-country regression analysis of 76 countries that IP protection is an

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[135] Robert M. Sherwood and Carlos A. Primo Braga, "Intellectual Property, Trade and Economic Development: A Road Map for the FTAA Negotiations," *The North-South Agenda Papers*, no. 21 (September 1996), 1-17.

[136] Aymo Brunetti, Gregory Kisunko and Beatrice Weder, "Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector," *The World Bank Economic Review* 12 (September 1998), 353 - 384.

important determinant of economic growth.[138] With regards to investment inflows, Belay Seyoum finds that IPR is positively associated with FDI. Drawing from his quantitative analyses of 27 nations, Seyoum find that IPR protection is a strong determinant of inward FDI for upper middle-income economies.[139] Therefore, if policy reform in this field is critical to economic development, an attempt should be made to explain why policy responses vary in the developing world.

One reason may be that there are also costs associated with IP protection. Consumers, for example, may lose easy access to lower priced goods because protected products are often more expensive than counterfeited goods. Knowledge intensive products in particular, such as computer programs, may increase prices as 'pirate' producers are displaced from the local market.[140] A second potential cost is the creation of a permanent monopoly, rather than simply a temporary one, of either an idea or a particular product. Drawing from the analysis of historical structuralism, throughout the 1960s and 70s, many developing countries maintained that IPRs were an instrument to further exclude them from technological and general knowledge. Strengthened IP protection was viewed as a way to limit the benefits of new medical and technological developments to only the wealthy. Yet, many of these welfare costs are short term and theoretically should be off-set by the long-term dynamic

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[137] David Leblang, "Property Rights, Democracy and Economic Growth," *Political Science Quarterly* 49 (March 1996), 5-26.

[138] David M. Gould and William C. Gruben, "The Role of Intellectual Property Rights in Economic Growth," *Journal of Development Economics* 48 (March 1996), 323-350.

[139] Belay Seyoum, "The Impact of Intellectual Property Rights on Foreign Direct Investment," *Columbia Journal of World Business* 31 (Spring 1996), 50-59.

effects of IP protection.[141] Moreover, these costs are not commonly viewed as being substantially greater than the costs associated with trade and finance convergence.

Notwithstanding the costs of IPR reform, there is mounting pressure on developing countries to reform their IPR regimes. This pressure is more pronounced for emerging economies because they possess the financial and political resources to embark on such IPR reforms. For example, all of the upper-middle income economies in Latin America (Argentina, Brazil, Chile, Costa Rica, Mexico, Panama, Uruguay, and Venezuela) instituted neoliberal trade and finance reforms consistent with the competition state model, indicating adequate government resources to reform the economy. Reform in these two arenas suggests to an increased probability of reform in their IPR regimes as well.

In addition to enacting economic liberalization programs, these nations explicitly stated their desire to attract foreign investment. Consequently, the issue of how to compete for foreign inflows has become a higher priority for all these countries. For example, in Seyoum's study examining whether governments affect inward FDI more effectively through macroeconomic policy or IPR protection, he

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[140] Robert M. Sherwood and Carlos A. Primo Braga, "Intellectual Property, Trade and Economic Development," 3-4.

[141] One of the most controversial areas concerning the costs of IPRs is the issue of pharmaceuticals. According to many activists in the field, life saving drugs should be exempt from IPR agreements and emerging regimes because of their immediate and significant effects on national welfare. For example, to ensure access to much sought after yet expensive drugs (such as AIDS drug cocktails), some governments permit the production and distribution of pirated pharmaceuticals within their borders. Governments justify their actions based on their fundamental responsibility to protect the general welfare of their citizenry. In response to this claim, joint agreements between pharmaceutical producers and particular governments, as well as special clauses in IP agreements are emerging and being incorporated into IP regimes.

finds that IPR protection is critical for emerging economies, in contrast to poorer countries. Although Seyoum concludes that for least developed countries policy factors explained more variation in FDI flows, the relationship was reversed for emerging economies. Rather, for emerging economies IPR captures 43 percent of the FDI flow variation versus 28 percent for policy variables.[142]

Hence, emerging economies have yet another tool to use to attract the foreign investment they seek. Accordingly, within the developing world, IPR convergence is given more and more attention as investors increasingly call for strengthened IPR protection as a condition for investment. Yet IPR convergence remains varied throughout the developing world, including the emerging economies of Latin America.

4.4 Why Examine Mexico and Chile? A review of the case-selection methodology employed in this study.

Beginning in the 1980s Latin America experienced a wave of economic policy convergence in the issue areas of trade and finance.[143] Either voluntarily, through obligation in loan conditions, or via a combination of the two, they began to liberalize their trading regimes and deregulate industries and finance as well as to privatize state-owned enterprises according to the 'competition state' model. To illustrate the extent to which the region has begun the process of convergence, a summary of the reforms enacted before 1995 in five areas of the economy – fiscal

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[142] Belay Seyoum, "The Impact of Intellectual Property Rights," 58-59.

[143] For a more detailed discussion of the neoliberal reforms conducted in the region, see Sebastian Edwards' *Crisis and Reform in Latin America* (New York: Oxford University Press, 1995); and

adjustment, trade liberalization, financial market reform, labor market deregulation and privatization – is presented for a select sample in Table 4.1. The radical shift in economic programs is best exemplified in the rejection by many of the region's leading economies of the Import Substitution Model of economic development. Instead, they institutionalized the new economic program of neoliberalism and become members of the institution that best embodies this doctrine, the World Trade Organization.

Table 4.1: Select Overview of Structural Reforms in Four Latin American Countries

Country	Fiscal Reform	Trade Reform	Financial Market Reform	Labor Market Reform	Privatiza-tion
Argentina	Reform in 1990; tax administratio n improves; expenditures reduced	Significant since 1990; tariffs reduced to 0-22 percent range	Free Currency convertibility but high reserve requirements	Wage and employment bargaining reforms; employment act increases flexibility	Aggressive since 1991
Brazil	Limited action taken	Tariffs reduced gradually; NTBs removed in 1990	Limited reform	Limited reform	Important steps taken in the early 1990s
Chile	Significant tax reforms enacted	Major reforms began 1975-9	Major reforms 1975-9	Major reforms in 1979 and 1990	Major; most state-owned enterprises sold
Mexico	1985 fiscal adjustment; tax reforms	Major tariff reductions since 1985	Since 1986; capital account open	Minor	Major; over 100 state-owned enterprises sold

Daniel Chudnovsky, "Beyond Marcroeconomic Stability in Latin America," in *The New Globalism and Developing Countries* (New York: United Nations University Press, 1997).

Moreover, the region is home to 8 of the 30 upper middle-income economies employed in the quantitative analyses; also, variation on the dependent variable exists within this subgroup. Cases were chosen within a particular region in order to hold particular independent variables constant, such as economic structure and history as well as colonial legacy.

Additionally, many Latin American nations face mounting pressures to create stable and transparent legal environments that predictably protect property rights. But within the region, reform in the issue-area of property rights is not uniform. As discussed in previous chapters, this lack of convergence is puzzling considering the amount of scholarship that exists detailing the positive relationship between such reforms and economic growth. Belay Seyoum, for example, finds that IPR protection is positively and strongly associated with FDI for emerging economies.[144]

Yet legal protections to creations of the mind vary throughout the region. To date no comparative study exists that explains why convergence in this field of property rights has not uniformly occurred in either Latin America or the developing world in general. Accordingly, in the following chapters, IPR reform in two regional emerging economies is examined to better evaluate the role of the variables under study in the reform process.

Within this region, Mexico and Chile are worthy of examination because they meet two qualifications that enable the use of the comparative method. First, as

discussed in more detail below, these two cases demonstrate variance on the dependent variable. Therefore, use of the comparative method allows me to examine the similarities and differences among the cases to better elucidate the causes for property rights convergence.

Second, both cases serve as critical tests of the convergence hypothesis because they possess many of the characteristics that scholars claim make nations susceptible to convergence pressures. Beginning in the early 1980s with the presidency of Miguel de la Madrid presidency (1982-88), Mexico began to enact neoliberal trade and finance reforms consistent with the competition state model. The deepening of the neoliberal project by Carlos Salinas de Gortari (1988-94), represented governmental acknowledgment of the importance of second-stage institutional reforms and the creation of an economic environment favorable to international investors. The initiation and signing of the North American Free Trade Agreement (NAFTA) by President Salinas best illustrates the extensive restructuring of Mexico's economic program along the competition state model. Following the Salinas presidency, the Yale trained economist Ernesto Zedillo (1994-2000) continued the neoliberal project his predecessors had established by signing Mexico to free trade agreements with the European Union, Israel, and the Northern Triangle Group (El Salvador, Guatemala and Honduras).

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[144] Belay Seyoum, "The Impact of Intellectual Property Rights on Foreign Direct Investment," *Columbia Journal of World Business* 31 (Spring 1996), 50-59.

This twenty-year project of neoliberal reforms consistent with the competition state model does not appear to be threatened by the presidency of former Coca-Cola executive Vicente Fox (2000-2006). Rather, as a member of the right of center National Action Party (Partido Acción Nacional, PAN), Fox's political platform is solidly founded on a belief in the importance of private enterprise. Therefore, beginning with the de la Madrid administration, the Mexican state has increasingly liberalized its economy and sought the monies of international investors, making it subject to convergence pressures for policy reform.

Similarly, Chile has undergone an extensive neoliberal reform project in the past three decades. Following the 1973 coup against Socialist Salvador Allende and the rise to power of General Augusto Pinochet, Chile embarked upon a radical reform of its economy. Notably, the Pinochet regime was initially backed by industrialists, landowners and foreign investors who called for a reversal of much of the previous government's economic policies. In view of that, Pinochet's reforms were led by a group of economists trained at the University of Chicago under Milton Friedman, thus marking the rise of the technocrat in Chilean politics. Within a year of Pinochet taking power, the "Chicago Boys" began to introduce reforms consistent with the free-market doctrine in various sectors of the economy.

In 1975 an economic "shock treatment" was implemented to combat high inflation that in many ways went beyond standard IMF structural adjustment programs. Between 1976-82, as described by Cockcroft, tariffs were reduced to below 10 percent, wages were reduced, the value-added tax system was expanded,

the money supply was reduced, industries were privatized, social welfare programs eliminated and foreign investment regulations were relaxed. In response to the financial fallout caused by the 1982 Mexican debt crisis, Chile installed a new set of technocrats who prioritized opening the Chilean economy to international investors and trade. Throughout the tenure of Pinochet (1973-1990), the neoliberal project continued with further privatization of state industries, elimination of government subsidies, trade liberalization, industry deregulation, and a significant reduction of the size of the public sector.

The 1990 transition to a democratically elected president did not reverse the neoliberal policies of the dictatorship. Rather, President Patricio Aylwin continued the neoliberal policies of the previous regime by once again relying on a heavily technocratic cabinet.[145] Reliance on an orthodox economic doctrine proved successful for Chile throughout the Aylwin presidency as foreign investment increased, inflation remained controlled, foreign debt was reduced, and growth rates continued to rise. As a result, Chile became commonly known as the successful model of neoliberal convergence.

In 1993 Eduardo Frei assumed the presidency under the banner "growth with equity".[146] To ensure economic growth, Frei continued the neoliberal policies of his predecessors, with much success. During this period, Chile's GDP (6.7 percent per year) became the highest within Latin America and one of the highest globally. Frei

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[145] Thomas E. Skidmore and Peter H. Smith, *Modern Latin America* (New York: Oxford University Press, 2001), 134 -136.

demonstrated his commitment to the neoliberal model by signing Chile to free trade agreements with Canada (December 1995) and Central America (October 1999) as well as a number of economic agreements with various countries in the region.

Surprisingly, the recent of election of Socialist Ricardo Lagos in January 2000 does not appear to mark the end of the neoliberal project in Chile. Rather than return to the policies of fellow socialist president Allende, Lagos advocates "a market economy but not a market society." [147] With a PhD in economics from Duke University, Lagos has further institutionalized market reforms with the signing of an economic agreement with the European Union (November 2002) and a free trade agreement with the U.S. (June 2003). Whereas changes have been made to policies affecting labor in hopes of addressing rising unemployment, the Lagos's presidency clearly demonstrates the strength of economic neoliberalism as a doctrine in Chile. Moreover, since the Pinochet tenure, Chilean governments have prioritized the interests of international investors making it subject to convergence pressures for policy reform.

Not only do Mexico and Chile's neoliberal economic programs make them susceptible to convergence pressures but the number of similarly placed economies in the region also affects the degree to which they are subject to convergence pressures. As previously noted, Simmons and Elkins argue that convergence

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[146] Ibid, 135.
[147] Andrea Elliot, "Leading Candidate Promises to Restore Chile's Economy," *Miami Herald* (December 10, 1999), A18.

pressures are more acute between economic competitors.[148] Within Latin America, many of the eight countries employed in my quantitative analysis (Argentina, Brazil, Chile, Costa Rica, Mexico, Panama, Uruguay, and Venezuela) can be classified as economic competitors. In terms of sovereign credit ratings, all of the eight countries shared similar foreign and domestic currency ratings for the year 2000 (See Table 4.2 below). With the exception of Chile, which was given slightly higher ratings, all of the listed countries received ratings within the B range indicating average credit worthiness. With the exception of Uruguay, Standard and Poor's outlook reports for the countries were either "positive" or "stable".[149]

Simmons and Elkins also argue that trade composition and trade exposure affects the intensity of convergence pressures. Latin American countries with similar trade exposure measures in 2000 (within the range of approximately a quarter to a third of GDP) include Chile, Mexico, Panama, and Venezuela. With regards to trade composition, with the exception of Venezuela each of the countries has undergone a similar trend towards export diversification. Within the past decade the emerging economies of Latin America significantly reduced the proportion of primary products exported and increased the share of exported processed food and manufactured goods. (See Table 4.3. below)

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[148] Beth Simmons and Zachary Elkins, "Globalization and Policy Diffusion: Explaining Three Decades of Liberalization," *Governance in a Global Economy: Political Authority in Transition*, eds. Miles Kahler and David Lake (Princeton: Princeton University Press, 2003), 1 - 32.

[149] Standard & Poor's, "Sovereign Ratings List," dated August 22, 2002 and "Sovereign Ratings History Since 1975," dated July 31, 2002. Both documents are available at www.standardandpoors.com/RatingsActions/Sovereigns.

Table 4.2: Economic Competitors in Latin America Notes -- Sovereign Bond Ratings for Foreign and Domestic Currency

Country	Date	Standard & Poor's Ratings* 2000** Long term/Outlook		Moody's Rating August 9, 2002***	
		Foreign	Domestic	Foreign	Domestic
Argentina	Feb. 10, 2000	BB/Stable	BBB-/Stable	Ca	Ca
Brazil	Feb. 29, 2000	B+/Positive	BB-/Stable	B1	B1
Chile	April 16, 2002	A-/Positive	AA/Stable	Baa1	A1
Costa Rica	July 27, 2000	BB/Positive	B+/Positive	Ba1	Ba1
Mexico	Mar. 10, 2000	BB+/Positive	BB+/Positive	Baa2	Baa1
Panama	July 6, 2000	BB+/Stable	BB+/Stable	Ba1	
Uruguay	Jan. 11, 2002	BBB-/Negative	BB+/Negative	B3	B3(5)
Venezuela	Dec. 21, 1999	B/Stable	n/a	B2	B3

* Local and foreign currency credit rating histories of sovereign issuers rated by Standard and Poor's as of July 31, 2002.
**For the countries of Chile and Uruguay, data for the year 2000 was not available therefore ratings for the date nearest to the year 2000 were used.
***Moody's Ratings List for government bonds: long term foreign and domestic currency ratings.

Table 4.3: Economic Competitors in Latin America Notes -- Export Composition and Trade Exposure (expressed as share of total exports)

Country	Agricultural raw	Food	Fuel	Ores & Metals	Manufactures
Argentina	2.1	49.6	12	3.5	31.6
Brazil	4.5	28.9	0.8	9.9	54.1
Chile	9.0	28.5	0.4	42.9	17.3
Costa Rica	2.5	28.6	.04	0.5	68.0
Mexico	0.6	5.4	7.1	1.5	85.2
Panama	0.8	71.9	9.1	1.7	16.6
Uruguay	9.3	51.3	0.6	0.4	38.3
Venezuela	.02	2.6	81.4	4.0	11.7

Source: Jeffrey D. Sachs and Joaquín Vial. "Can Latin America Compete" in *The Latin American Competitiveness Report 2001-2002* (Oxford: Oxford University Press, 1992).

Therefore, in terms of sovereign credit ratings, trade exposure, and trade composition, the countries of Argentina, Brazil, Mexico and Chile can be considered economic competitors. Thus, in keeping with the Simmons and Elkins's thesis, Mexico and Chile have a number of economic competitors in the region that should

result in increased pressure for both countries to conform to the convergence model. Moreover, the rate and degree of the convergence pressures should also be similar for both countries.

Consequently, in terms of its level of economic development, type of economy, number of economic competitors and government priorities, both Mexico and Chile appeared primed to enact property-rights reforms, including IPR reform, during this period of economic restructuring. Yet Mexican reform efforts in this area of law, judged by international rankings, remain comparatively weak whereas Chilean efforts have been much more extensive. In the preceding chapter examining the institutional determinants of property-rights reform in upper middle-income economies using statistical analysis, Mexico continues to rank poorly and Chile ranks among the top in the region. Using an indicator developed by Clague et al. to measure the degree to which nations created an environment of secured property rights (the contract-intensive activity money ratio, CIM), I find that Mexico ranks 7th out of a field of eight nations and Chile ranks 2nd.[150]

Moreover, according to the World Bank, Mexico's "rule of law" ranking falls below that of many of its economic competitors in the region. With a score of a mere 35%, Mexico lagged far behind the best-ranked nation in the region, Chile at 85%, as well as Argentina (64%), Uruguay (65%), and Brazil (49%). Although the

[150] CIM measures the ratio of noncurrency money to the total money supply. The logic behind this measure is that in nations where property rights are secure, people have little reason to use currency for large transactions or to maintain extensive currency holdings. The closer the CIM ratio is to 1 the stronger the protection of property rights. Of the eight Latin American countries included in

Bank's rankings are a composite of various indicators, the measure I am interested in, "protection of property rights," is explicitly included in this composite score. Importantly the Bank's data sources include a number of commercial surveys and investor risk studies indicating that the rankings largely reflect the viewpoint of international investors.

This low reputation of Mexico's but high esteem for Chile's property rights regime by international investors is also documented in other studies. For example, in an examination of the perception of IPR strength in various countries and its effect on the composition of U.S. foreign direct investment (FDI), Edward Mansfield found that Mexico's IPR regime was poorly perceived by investors.[151] In the three areas in which investors were asked their opinion of whether IP protection would affect their investment decisions, Chile was generally regarded as among developing nations with the strongest protection. Mexico did score comparatively well within Latin America in the percentage of firms not reporting that IP protection is too weak to permit them to transfer their newest or most effective technology to wholly owned subsidiaries. But it did not fare as well in the other two rankings. Once again Mexico was ranked below Argentina, Venezuela, and Chile in terms of the percentage of firms that reported that IP protection is too weak to permit them to invest in joint ventures with local partners or license their newest or most effective technology.

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my dataset, Mexico ranked in 7th place with a score of .861 whereas the top ranked country, Panama, received a score of .944 and the bottom ranked country, Argentina, received a score of .844.

In another study by William Lesser, in which he calculated IPR scores for 44 developing countries, Mexico once again ranked comparatively low in the region. In this study IPR scores were constructed by looking at the protection granted to living organisms and genetically modified life forms as a proxy for the national IP system. Lesser chose to employ this measure because "such forms of protection tend to be both technically complex and socially controversial, so that systems which provide complete coverage in those areas likely provide substantial coverage for other forms of creation as well."[152] Of the six Latin American countries included in the study, Chile ranked as the best protector of IP in the region whereas Mexico ranked in fourth place.[153]

Undoubtedly, a number of other economic indicators (*e.g.* size of the domestic market and macroeconomic stability) continue to be extremely important determinants of investment decisions. Yet, as previously reviewed, other things being equal, a positive relationship does appear to exist between IPR protection and foreign investment. Moreover, scholarship has emerged detailing the relationship between property rights and Mexican investment flows. According to Aldo Flores-Quiroga, throughout the 1980s and 1990s weak property rights helped create an environment of economic uncertainty in Mexico that in turn resulted in lower rates of

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[151] Edwin Mansfield, *Intellectual Property Protection, Foreign Direct Investment, and Technology Transfer* (Washington D.C.: International Finance Corporation, 1994).

[152] William Lesser, "The Effects of TRIPs-Mandated Intellectual Property Rights on Economic Activities in Developing Countries," study prepared under WIPO Special Service Agreement, available at www.wipo.org, 6.

[153] Lesser's IPR score had a possible 12 point scale, higher scores indicating greater IP protection. Chile topped the list of Latin American countries with a score of 7.2, followed by Brazil and Costa

investment, insufficient job creation, and a general decline in living standards.[154] Overall, there is growing recognition of the role that IPR protection plays in Mexico's economic future, yet no study exists that examines why convergence in this legal field has been slow to emerge in an otherwise "convergence successful" nation.

Additionally, the deviant case of Mexico poses serious implications for the extent to which the competition state model will be successfully applied in the developing world. IP scholar James M. Cooper argues that IPR convergence in Mexico is a test case for economic globalization because as one of the first developing nations to join the new economy, Mexico serves as both an example and a leader to other developing countries with regards to convergence to the competition state model. Therefore examining the case of Mexico should prove quite informative to discovering general obstacles to IPR convergence that exist throughout the developing world. Comparison of the Mexican case to the successful Chilean example should further differentiate between those variables that support and those that undermine the convergence process.

4.5 The historical roots of Chile and Mexico's IPR regimes

The strengthening of IPR protection is not a new topic for either global politics or the countries of Mexico and Chile. Beginning with the Paris Convention of 1883 and continuing with the Berne Copyright Union of 1886, efforts to protect IP

Rica. Mexico ranked fourth with a score of 6.0. Surprisingly, Argentina and Venezuela both scored below Mexico in this study.

[154] Aldo R. Flores-Quiroga, "Economic Crisis and the Mexican State: Toward a New Institutional Interpretation," *Mexican Studies/Estudios Mexicanos* 17 (Winter 2001), 1-11.

are firmly grounded in international law. Mexico first joined the international IP regime in September 7, 1903 when it became a contracting member[155] of the Paris Convention.[156] In contrast, Chile did not become a member until June 1991.

In 1970 the Bureau of Paris and the Berne Union were replaced with the World Intellectual Property Organization (WIPO).[157] Both Mexico and Chile became members of the WIPO in June 1975.[158] The WIPO oversees 15 international IP agreements. Mexico is member to 12 of these organizations and Chile to 8. Such extensive involvement in international IPR regimes indicates that both the Mexican and Chilean governments were well versed in the issue of IPR protection even prior to the time period examined in this study.

However, Mexico's commitment to global norms regarding the protection of private property has not been automatic. Rather, the 1917 Mexican Constitution addresses the issue of property rights but in two very contradictory articles. In Article 14 of the constitution, the sanctity of private property is declared. Regarding IPR in particular, Article 89 grants the executive the power to 'grant exclusive privileges, for a limited time, in accordance with the respective law, to discoverers, inventors, or improvers in any branch of industry'. Yet, until 1992, Article 27 granted the government the power to expropriate private property and restrict real

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[155] The phrase 'contracting member' is the standard term employed by the WIPO to refer to 'a signatory to a treaty'.

[156] However, Mexico did not join the Berne convention until June 11, 1967.

[157] Further information regarding the history and activities of the WIPO, can be found at the WIPO's own web page www.wipo.org.

[158] To date, the WIPO enjoys the membership of approximately 179 nations.

property ownership by religious groups and foreigners. Although property rights protection, including IPR, is initially set out in the 1917 Constitution as a goal of the Mexican government, the economic interests of the national citizenry were for a time given priority over the interests of the private individual. Therefore, constitutionally, "private property rights are not absolute."[159]

Notwithstanding Mexico's long-standing involvement in international IP agreements, its IPR regime has undergone significant changes in the last 30 years. As previously noted, developing countries have not always shared the view that IP reform is a desirable strategy. In countries that did not posses a technological comparative advantage, strengthened IPR protection may only increase the price of newly protected goods and technology transfers. Poor nations framed the debate in terms of protection of national welfare. They viewed lax IPR protection as a way to improve the standard of living of their citizens by ensuring inexpensive access to pharmaceuticals and hi-tech goods.[160]

This difference of opinion regarding the need for IP reform between the developed and developing worlds was played out in Mexico throughout the 1970s. According to Van R. Whiting Jr., Mexico's laws were singled out by developing

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[159] Francisco Avalos and Elisa Donnadieu, "Electronic Guide to Mexican Law," Law Library Resource Xchange, LLC (March 1, 2002). Report available at www.llrx.com/features/mexican.htm#history.

For further information regarding the evolution of Mexico's current legal system and its distinguishing characteristics, see Francisco A. Avalos's *The Mexican Legal System* (New York: Greenwood Press, 1992).

[160] William Lesser, "The Effects of TRIPs-Mandated Intellectual Property Rights on Economic Activities in Developing Countries," study prepared under WIPO Special Service Agreement, article available at www.wipo.org, 1-24.

countries as model legislation to ensure needed technology transfers.[161] But rather than follow the preferences of the developed nations, Mexico's IPR regime was characterized by statist intervention and weak IP protection. Complementing Whiting's observations, IP scholar Alejandro Perez Serrano characterized President Luis Echeverria's (1972-1976) IP policies as extremely restrictive resulting in an "extremely unfriendly atmosphere for foreign trade".[162]

But why did Mexico incorporate restrictive IP policies? Whiting argues that IP policies of this period were conditioned by two factors: the structural characteristics of the international economy, and the position of foreign corporations in the Mexican economy. Nationalist priorities, especially the need to address Mexico's balance of payments deficit, resulted in the creation of "the first major attempt in Mexico to regulate technology, patents, and trademarks imported from outside."[163] The Law on the Transfer of Technology (1973), its 1982 revision, and the Law on Inventions and Trademarks (1976) collectively served to reduce the costs of technology transfers, thus reducing Mexico's balance of payments deficit. Moreover, the 1976 law eased access for Mexican nationals to technology deemed

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[161] Van R. Whiting Jr., *The Political Economy of Foreign Investment in Mexico* (Baltimore: John Hopkins University Press, 1991), 102-134.

[162] Alejandro Perez Serrano, "Overview of Intellectual Property Enforcement in Mexico," *NatLaw: Publications* published by the National Law Center for Inter-American Free Trade (1998). Report available at www.natlaw.com.

[163] Van R. Whiting Jr., "The Political Economy,"120.

important for the national welfare, while also requiring trademarks to be linked to domestic producers. Thus, throughout the 1970s and early 1980s, Mexico's IPR regime was shaped by the government's desire to reduce its trade deficit and enhance the power of Mexican subsidiaries vis-à-vis their foreign parent companies.

However, by the late-1980s, Mexico began to reverse its previous policies of nationalist priorities and excessive regulations. In response to the weaknesses of ISI, the debt crisis of 1982, and IMF conditions attached to relief packages, by the mid-1980s Mexico began to radically restructure its economy. The restructuring of the economy was not a result only of external pressures; internal changes also played an important role. As investigated by Roderic Ai Camp, the Mexican political class began to consist of "technicos" who believed that neoliberal restructuring was essential to further economic growth.[164] Educated in the fields of public policy and economics in Ivy League institutions, the emerging political leadership strongly believed that the neoliberal economic model would bring economic prosperity to Mexico. Whiting also points to this change in political leadership, specifically the rise of Carlos Salinas to the presidency, as indicative of not only a reversal of past economic policies but also IP policy.

Consequently, not only were Mexico's trade and finance regimes affected but also its property rights, in particular IPR, regime throughout the 1990s. Rather than continue with the existing restrictive IPR regime, Mexico's IPR regime underwent a

radical transformation. With a doctorate in political economy from Harvard University, Carlos Salinas de Gortari was a man well versed on the relationship between IP protection and economic development. As President, Salinas oversaw the creation of a number of laws pertaining to IP. His successor, Ernesto Zedillo also understood the importance of IPRs in promoting innovation and foreign investment. In 1993, for example, Zedillo helped create an Interministerial Commission for the Protection, Vigilance and Safeguard of IPRs but it only met once before it was disbanded. Significantly, throughout the presidencies of both men, the national IP legal framework was greatly expanded and strengthened.

To illustrate the extent to which Mexico's IPR regime underwent rapid change, a listing of relevant Mexican IP laws, decrees, and accords passed during the time period under study is presented in Tables 4.4, 4.5, and 4.6 (see the next four pages).[165] Because local and state governments do not have the constitutional power to institute their own IP directives, I examine only the federal laws of Mexico and Chile. The laws listed below are those regarded by Mexico's Institute of Industrial Property (IMPI), the principal governmental organization responsible for the administration of IPR, as directly pertaining to IP protection.

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[164] Roderic Ai Camp, *Political Recruitment across Two Centuries, Mexico* (Austin: University of Texas Press, 1995), 12-15.

[165] Unlike the U.S.'s 'common law' tradition, the Mexican legal system is based on 'civil law'. Civil law, also known as 'legislative law', is largely based on legislative acts rather than legal precedents (case law). Consequently, there is little room for judicial interpretation. Rather, in the civil law tradition the hierarchy of sources of law is as follows: constitution, legislation, regulation, and custom.

Table 4.4: Mexican Intellectual Property Laws & Regulations[166]

LAW AND REGULATIONS	DATE OF PROMULGATION
Industrial Property Law	June 27, 1991 Amended: August 2, 1994, December 26, 1997 May 17, 1999
-Regulations under the Industrial Property Law	November 23, 1994
-Regulations of the Mexican Institute of Industrial Property	December 14, 1999
-Organic Statutes of the Mexican Institute of Industrial Property	December 27, 1999
-Reform of the Regulations of Mexican Institute of Industrial Property	July 1, 2002
Federal Plant Variety Law	October 25, 1996
-Regulations under the Federal Plant Variety Law	September 24, 1998
Customs Law	December 15, 1996
Federal Copyright Law	December 24, 1996 Amended: May 19, 1997
-Regulations under the Federal Copyright Law	May 22, 1998
Federal Criminal Code	Amended: December 24, 1996 May 19, 1997 May 17, 1999

Source: Mexican Institute of Industrial Property. "Marco Juridico Nacional en Propiedad Industrial" (www.impi.gob.mx). Accessed on October 16, 2002.

[166] Date of Promulgation refers to the date that the legislation was published in Mexico's Official Daily of the Federation. Regulations to the law refer to the rules that give effect to the more general provisions of the law. Issued by the executive, it must be signed by the head of the administrative department concerned with the subject matter in order for the 'reglamento' to have the same force as the new law to which it is associated with. Explanations of the 'reglamentos de la ley' and 'decretos' come from "Introduction: Selected Aspects of the Mexican Legal System" authored by William D. Signet (2002), available at www.signetramos.com.

Table 4.5: Mexican Intellectual Property Accords

ACCORDS	DATE OF PROMULGATION
Accord by which the Interministerial Commission for the Protection, Monitoring and Safeguard of intellectual property rights is created	October 4, 1993
Accord by which the rules for the submission of applications before the Mexican Institute of Industrial Property is published	December, 14 1994 Amended March 22, 1999
Accord by which the tariffs for the services that the Mexican Institute of Industrial Property offers is published	August 23, 1995; Amended December 28, 1995; Dec. 10, 1996; May 2, 1997; May 4, 1998; February 23, 1999; October 11, 2000
Accord by which the maximum response times for procedures are established in the Mexican Institute of Industrial Property	December 10, 1996
Accord by which the list of institutions recognized by the Mexican Institute of Industrial Property for the deposit of biological material.	May 30, 1997
Accord by which powers are delegated to Deputy Directors General, Coordinator, Divisional Directors, Heads of Regional Offices, Divisional Underdirectors, Department Coordinators and other subordinates of the Mexican Institute of Industrial Property	December 15, 1999 Amended February 4, 2000
Accord by which the organization, activities and area of influence of the Regional Offices of the Mexican Institute of Industrial Property are established	April 7, 2000
Accord by which the procedures recorded in the Federal Register of Procedures and Services that apply to the Ministry of Commerce and Industrial Promotion and its coordinated sector is published	November 27, 2000

Source: Mexican Institute of Industrial Property. "Marco Juridico Nacional en Propiedad Industrial" (www.impi.gob.mx). Accessed on October 16, 2002.

Table 4.6: Mexican Intellectual Property Decrees[167]

DECREE	DATE OF PROMULGATION
Decree by which the Mexican Institute of Industrial Property is created	December 10, 1993
Decree by which the Mexican Institute of Industrial Property is reformed	September 10, 2002

Source: Mexican Institute of Industrial Property. "Marco Juridico Nacional en Propiedad Industrial" (www.impi.gob.mx). Accessed on October 16, 2002.

In total, IMPI recognizes 35 distinct law, accords, decrees and regulations as constituting the legislative framework for IP protection. However, the Industrial Property Law of 1991 and the Federal Copyright Law of 1996 form the basis of Mexico's current IPR regime. The latter strengthened copyright protections and created a decentralized body of the Department of Public Education (SEP) responsible for enforcing copyright law, the National Institute of Copyright (INDA). The 1991 law reversed many of the nationalist IP regulations of the previous decade and mandated the creation of an independent organization responsible for the administration of industrial property, IMPI. Due to their importance, particular emphasis will be placed on these two laws in the following analysis.

The historical evolution of Chile's national IP regime closely mirrored that of Mexico's in its initial stages. As a member of the WIPO Convention, Chile adhered

[167] Mexican decrees (decretos) are issued by either the President or the Congress. Decrees govern particular situations that do not rise to the level of statutory treatment. The head of the administrative department to which the subject matter of the decree relates must also sign presidential decrees.

to a number of international IP agreements governing literary, phonograph[168], and artistic works. Yet, Chile shared with many of other developing countries the view that IPR protection only increased the price of newly protected goods and technology transfers. Rather than improve national welfare, it was believed that IP protection fostered the growth of monopolies of protected imports at the expense of citizen access to inexpensive pharmaceuticals and hi-tech goods.[169] However, unlike many of its South American neighbors, Chile did not openly contest the IP protections negotiated in the Uruguay Round of the General Agreement on Trade and Tariffs.

Although the Pinochet regime actively sought foreign investment and greatly reformed the Chilean economy to converge to the neoliberal model, in the issue-area of IPR few national reforms were made during his tenure. Rather the Pinochet government relied on the IP laws of the previous Allende administration to govern copyright protection (the 1970 Law on Intellectual Property, its 1971 Regulations Law and 1972 Amending Law). These laws were not excluded from the 1980 Constitution and traditional declarations regarding the protection of private property were incorporated into the new Constitution.

Significantly, the current Chilean national IP regime is generally considered to a strong protector of IP. The majority of laws comprising Chile's IP regime were produced during the administrations of Aylwin and Frei. The relevant Chilean IP

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[168] A phonograph is defined as an exclusively aural fixation of sounds of a performance or of other sound. Therefore, a phonograph includes musical recordings as well as other recorded material such as speeches or sound recordings.

[169] William Lesser, "The Effects of TRIPs," 3-6.

laws, decrees, and accords passed during the time period under study is presented below. [See Table 4.7.]

Table 4.7: Chilean Intellectual Property Laws, Regulations & Decrees

LAW AND REGULATIONS	DATE OF PROMULGATION
Law on Intellectual Property	October 1970 Amended by Decree: October 1972 October 1985 March 1990 September 1992
-Regulations under the Law on Intellectual Property	May 1971
Decree on the Protection of Consumer Rights	September 1980
Law on Appellations of Origins, #18.455	November 1985 Amended by Decree: 1986
-Regulations under Law 18.455	1995
Industrial Property Law	January 1991
-Regulations under the Industrial Property Law	May 1991

Source: WIPO. "Country Legislative Profiles." Available at www.wipo.org. Accessed on July 02, 2003.

The Industrial Property Law of 1991 is the centerpiece in Chile's IP legal regime. Protections under this law are provided to patents, trademarks, and industrial designs. The associated Regulations of the 1991 Industrial Property Law created the Department of Industrial Property (el Departmento de Propiedad Industrial, DPI). As a subdivision of the Ministry of the Economy, the DPI is an

independent agency responsible for the administration of the Industrial Property Law. Therefore the registration of new patent and mark applications, the assessment of applications, the resolution of IP disputes and final distribution of titles is the responsibility of the DPI. This office also distributes information pertaining to information technology and affiliated IP matters. However, the Ministry of Education oversees the protection of copyrights in Chile. Specifically, the Intellectual Rights Department, which is a subdivision of the Directorate of Libraries, Archives and Museums administrates the registration and granting of Chilean copyrights.

In both the Mexican and Chilean cases the greater part of the legislative frameworks of their IP regimes were created during the 1990s. However, unlike the Mexican case, in Chile specialized courts have also been created to adjudicate cases pertaining to IPR violations. Under the jurisdiction of the Courts of Justice, an Industrial Property Tribunal and a Copyright Tribunal have the right to hear and decide on cases pertaining to IP law. This unique feature of Chile's judicial system distinguishes it from not only Mexico but many of its peers within the region.

4.6 An Introduction to the Analyses of the Evidence

Thus the puzzle remains: Why has Chile established an effective IPR regime but Mexico has not, despite international pressure for legal convergence to global norms? As the preceding discussion illustrates, despite ranking poorly in comparative measures of IPR protection, in the past decade Mexico has produced a good deal of IP legislation. Paradoxically, Chile has produced relatively less IP

legislation in the past decade but in regional IP rankings has routinely outranked Mexico as a better protector of IP. Mexico's IP legislation is now touted as a model for developing countries to follow in the creation of an IP legal framework. Yet, IP scholarship clearly demonstrates that Mexico's actual protection of IPR continues to be weak notwithstanding existing legislation. Importantly, many who work within IP-based industries are frustrated by this discrepancy between Mexico's laws and the actual protection of IP by Mexican authorities. In contrast, Chile with its more stream-lined IP legal regime is considered the best protector of IP in the region. This suggests that the creation of IP laws is not a sufficient condition for IPR convergence. Therefore, in terms of effective IPR convergence, Chile can be characterized as a success while Mexico remains relatively a failure. As discussed in greater depth in Chapter 8, important differences in judicial capability to enforce the law prove largely explains the divergent rankings between the two nations.

But what were the causal factors that brought about this expansion of Mexico's IP legal framework? Why did Chile not experience in the same degree an expansion of its IP legal framework? Moreover, what are the factors that explain Mexico's relatively poor performance in comparative rankings? What are the factors that explain Chile's positive performance in comparative rankings?

To better understand the evolution of Mexico and Chile's IPR regimes, I assess the effect of institutional and societal sources of policy convergence in the following four chapters. The hypotheses examined in the qualitative analysis are

identical to those employed in the quantitative analysis of emerging economies.[170] Comparative examination of these two cases reveals not only important information regarding the evolution of IPR convergence but it also sheds light on the variables that support or hinder general property rights convergence.

[170] The theoretical foundations of each of the respective hypotheses are explained in Chapter 2 entitled "Global Trends."

CHAPTER FIVE

THE ARCHITECTS OF IP LEGISLATION: PRESIDENTIALISM'S ROLE IN IPR CONVERGENCE

5.1 Introduction

As the preceding discussion of the Mexican and Chilean IP legal regimes illustrates, despite ranking poorly in comparative IPR rankings, in the past decade Mexico has produced a good deal of IP legislation. By contrast, Chile who routinely is ranked significantly above Mexico and is considered to be one of the best protectors of IP in the region has produced relatively less relevant IP legislation during the same time-period.[171] In this chapter, I argue that although the institutional factor of presidentialism supported IPR convergence in both cases, it does not explain Mexico's and Chile's divergent rankings. Moreover, variation in level of presidential power does not appear to produce significant variation either in the rate of IP legislation or its initiation.

To better understand the evolution of both countries' respective IP legal regime, in this chapter I examine the institutional sources of policy convergence.

Attention is placed on the first stage of the convergence process, policy initiation, and the role of presidentialism in either supporting or hindering the creation of IP legislation during the period under study. In the following pages, the validity of the hypotheses concerning the role of presidentialism on convergence is evaluated in the Mexican and Chilean cases. More specifically, in this chapter I assess whether the institution of presidentialism facilitated or impeded efforts to create the legal IP regimes that emerged in the early 1990s in both cases.[172]

Unfortunately, scholarship examining the effect of presidentialism on property rights reform is mixed. For example, according to the analyses of Maria Dakolis, balanced power between the executive and legislature undermines convergence because policies are implemented gradually and with more modifications. Yet, in Jeremy Adelman and Vivien Lowndes work, they argue that historically presidentialism has undermined reform efforts because it was more easily captured by special interests who oppose policy change. Due to the lack of academic agreement concerning the affect of presidentialism on policy convergence, in this

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[171] Notwithstanding the differences in the number of IP laws that exist between the two cases, it is important to note that in both cases landmark legislation was passed consistent with global norms that embarked both nations on the path of IPR convergence.

[172] The hypotheses tested in this chapter are listed as 1a and 1b in Chapter 3. The hypotheses compare the impact of presidentialism versus divided government on policy convergence. They are examined jointly because each is the inverse of the other. Both present opposing descriptions of the causal relationship between IPR convergence and the balance of power between the executive and legislative branches of government.

chapter I examine to what degree this institution has affected the development of each nation's legal IP regime.[173]

To begin, I first demonstrate that presidentialism existed in both cases during the time period under study. I follow this with an investigation of the timing and authorship of each nation's IP legal regime. Emphasis is placed on the extent to which divided government resulted in the obstruction of reform.

Importantly, the evidence presented in this chapter rules out the claim that presidentialism necessarily undermines the initiation of reform efforts. Rather, the evidence suggests that presidentialism supports the successful completion of the first phase of policy convergence: the development of stronger IP legislation consistent with the neoliberal economic model and thus global norms. Specifically, strong presidents played a positive role in the expansion of Mexico and Chile's IP legal regime in the early 1990s. Powerful executives dominated the development of landmark IP legislation that brought their countries' respective IPRs to global standards. In both nations, the same powerful presidents who embarked upon trade and financial policy convergence also started the process of IPR convergence proclaiming that such reforms were part and parcel of their neoliberal economic agendas.

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[173] Unfortunately, I cannot conduct a thorough test for divided government because both cases possessed presidentialist systems throughout most of the time period examined. Divided government did emerge in each case by the end of the 1990s but more time is needed to adequately assess the impact of this change on legal structure convergence.

As discussed in more detail in Chapters 7, it appears that in both cases presidents tended to take policy content cues consistent with IPR convergence from external actors (especially during times of free trade negotiations). The institutional arrangement of presidentialism enabled those who held the presidency in Mexico and Chile to respond to the demands for reform from external actors and to enact IP reform with few constraints from their respective legislatures. Yet the similarities between the two countries end when examining the historical evolution of the relationship between the executive branch and the justice system of each respective country. As discussed in Chapter 8, this point of departure between the two cases proves critical in the final stage of IPR convergence.

Although the variable of presidentialism initially supports IP policy reform, it does not appear to be a sufficient condition for convergence. For example, the emergence of divided government in Mexico in 1997 did not seriously undermine, halt, or reverse the IP reform process. Even though Mexican IP legislation continued to be strengthened after 1997, reform occurred at a more modest rate and degree than when the political system was characterized by a strong executive. Nonetheless the positive impact that presidentialism played as both countries embarked on IPR convergence cannot be ignored. In Mexico and Chile, the convergence process was greatly supported by the existence of strong presidents who possessed the power and desire to quickly initiate IP policy consistent with global norms. In both cases, presidentialist systems of government enabled their executive leadership with the authority to enact the neoliberal economic reforms that they believed would spur

long term economic growth including the commencement of IPR legal reforms. More detailed explanation of why strong presidents chose to enact such reforms is explored in the following chapters. In Chapters 6 and 7, historical process tracing is used to evaluate domestic and external sources of convergence pressures. Additionally, for a discussion of how presidentialism may negatively affect the last stage of convergence, policy enforcement, see Chapter 9.

5.2 What role does presidentialism play in IPR reform in Mexico?

To asses the extent to which a balance of power between the executive and legislative branches of government affects IPR reform, I use the 1997 mid-term elections as the dividing line between two distinct eras of Mexican politics: presidentialism and divided government. Until 1997, Mexican politics were marked by a very powerful president in an otherwise constitutionally defined more balanced governmental system.

Whereas Article 49 of the 1917 Constitution establishes the division of powers of the federal government, traditionally power has been heavily centralized in the office of the presidency. Officially, the Mexican federal government is divided into three branches similar to the governmental structure of the United States (U.S.): executive, legislature and judiciary. Likewise similar to the U.S., each branch of government is constitutionally independent of each other and given the ability to check the power of the other branches. For example, Mexico's bicameral legislature, composed of the Senate and Chamber of Deputies, has the constitutional power to reject presidential initiatives and override a Presidential legislative veto.

Additionally, both the executive and legislature are given the power to initiate legislation. However until recently the differences between the *de jure* and *de facto* balance of power between the executive and the legislature were rather significant.

By contrast to the laws outlined in the constitution, the Mexican government has often been characterized as 'a perfect dictatorship' and 'a presidentialist system'.[174] The powers of the presidency, both formal and informal, coupled with the political dominance of the Institutional Revolutionary Party (PRI) of almost all political positions for over six decades, resulted in a political system dominated by the executive. Moreover, due to the constitutional prohibition against immediate reelection of legislators, and the position of the President as party leader of the PRI, Congressional deputies were beholden to the President for future career advancement. Once a PRI deputy finished his or her term that person's political future was dependent on the wishes of the President rather than those of the electoral constituency.

Therefore to ensure career advancement, congressional deputies focused on currying favor within the executive. The most common way of doing so was to follow presidential directives. Importantly, the legislative branch had long been controlled by the PRI. As Roderic Camp describes, the PRIistas "controlled 90 percent of the district seats in the Chamber of Deputies, and until 1988, all Senate

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[174] For an excellent explanation of the Mexican political system please see Roderic Ai Camp's *Politics in Mexico* (New York: Oxford University Press, 1993) and Howard Handelman's *Mexican Politics: The Dynamics of Change* (New York: San Martin's Press, 1997).

seats".[175] This resulted in (effective) control of two-thirds of the Congress until 1988 and at least a majority from 1988-1997. Consequently, the legislative branch routinely approved Presidential initiatives with little debate or modification. Rather than serving as a check on the power of the president, the legislature merely served as a rubber-stamp.

But in 1997 Mexican presidentialism suffered a significant setback with the results of the midterm elections. Whereas presidentialism was slightly weakened before in 1988 when the opposition captured nearly fifty percent of the seats in the Chamber of Deputies[176], in 1997 the PRI lost its ability to pass legislation without the assistance of opposition congressional deputies. The PRI's loss of congressional dominance in the lower house signaled the beginning of a real balance of power between the executive and legislature. According to Joseph Klesner, this new political configuration meant that then President Ernesto Zedillo "lost the congressional basis for the six-year dictatorship that the Mexican presidency has been since the 1930s".[177]

The results of the 2000 presidential and congressional elections further eroded Mexican presidential power. In these elections, the PRI failed to retain their

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[175] Handelman, *Mexican Politics* (New York: San Martin's Press, 1997), 137.

[176] The effect only partially weakened the power of the PRI since two-fifths of the seats were already set aside for the opposition. Although the results of the 1988 Congressional elections were quickly reversed by the PRI's comeback in the 1991 and 1994 elections, since 1988 the President lost his ability to easily pass constitutional amendments. Since 1988, the PRI has lacked the necessary two-thirds majority to pass amendments resulting in 'forced negotiations' between the PRI and opposition congressional deputies.

[177] Joseph Klesner, "Democratic Transition? The 1997 Mexican Elections," *PS: Political Science and Politics* 30 (December 1997).

hold on the Presidency as well as to regain their majority position in the Legislature. Within the legislature, the percentage of seats they held in both chambers dropped to the point where now they fail to hold a plurality in either house. Additionally, the victory of the PAN candidate, Vicente Fox, suggests the end of the traditional basis for party discipline that existed within the legislature under PRI administrations. Prior to the 2000 elections, PRI presidents extracted strict party discipline from members of Congress due to the enormous power they held over the careers of party members. With the loss of the Presidency, the PRI lost the strongest motivation for party unity both within and outside of the legislature. Moreover, future opposition party Presidents will find it extremely difficult to replicate the informal power of past presidents due to the emergence of divided government and the differing organizational structures of the opposition parties. For example, President Fox cannot rely on both his party dominating the legislature and thus ensuring swift passage of executive proposals, or his ability to use threats of career derailment against his fellow party members to extract party obedience and unity. Therefore, since 1997 a Mexican President can no longer assume that their legislation would automatically be passed without debate, amendment, or negotiation. These elections marked the beginning of a true balance of power between the executive and the legislature in Mexico.

For that reason, in this study I use the 1997 mid-term elections as a point of departure regarding the traditionally skewed distribution of governmental power in Mexico. To test if either a balance of power between the executive and legislature

either promotes or hinders IPR reform, the point in which the 1997 Congress assumed office (September 1, 1997) is used as the dividing point between a presidentialist system and an otherwise more balanced distribution of power. To assess the role that divided government has played in IPR reform, I examine the thirty-five IP laws enacted before and after the fall of 1997 and who initiated the legislation. When available, I examine vote tallies to assess if a balance of power between the two branches of government has resulted in increased debate or obstruction to IPR reform.

To evaluate how divided government affects IP reform, I first examine to what degree the rate IP policy initiation is affected by this change. Using the previously listed IP legal framework as the universe of cases, it appears that divided government did not result in a great change in the amount of IP legislation produced in Mexico. Rather very little change occurred in terms of the number of IP laws passed. Of the 35 total IP related legislation, 18 were produced prior to September 1997 and 17 after that date.

Using this as a raw measure it appears that divided government neither greatly promoted nor hindered the IP reform process. However, the two laws considered the cornerstones of Mexico's IP legal framework were both produced during the period of presidentialism: July 1991 and December 1996 respectively. The majority of laws during the period of a more balanced distribution of power are

primarily amendments to the two formerly mentioned laws and the Federal Criminal Code.[178]

Due to the inconclusive nature of the preceding test, I also examine who authored IP legislation to assess if within a more independent legislature, congressional deputies propose their own IP legislation or if this remains the prerogative of the presidency. Randomly selecting the first collection of Mexico's IP legal framework, laws and regulations as a sample, I find that the executive branch remained throughout both periods the branch initiating IP legislation. Therefore, the claim that presidentialism undermines the first phase of the IP reform process, the drafting of stronger IP laws, is not substantiated by the evidence in the Mexican case. According to IMPI's General Director, Jorge Amigo Castañeda, and Alma Araiza from their Legal Affairs Office, all laws pertaining specifically to industrial property and copyrights emanated from the executive.[179] [See Table 5.1 below.]

[178] Changes to the Federal Criminal Code are included in the IP legal framework because the amendments pertained directly to IP infringements.

[179] Jorge Amigo Castañeda, interview by the author, electronic correspondence, 4 October 2002. Alma Araiza Hernandez, interview by the author, electronic correspondence, 16 October 2002.

Table 5.1: Mexican IP Legislation --Originating Branch of Government

Executive	Legislature
Industrial Property Law 1991 --including the 1994, 1997, and 1999 amendments	
Federal Plant Variety Law 1996	
Federal Copyright Law 1996	
Federal Criminal Code 1996	

Source: IMPI *Regulations are excluded from the list because constitutionally the Executive is the sole branch authorized to issue them.

Neither has IP legislation initiated by the executive faced major challenges in the legislature. Jorge Amigo Castañeda affirms that the 1991 Industrial Property Law was widely supported in the legislature. Of the major four parties holding seats (PAN, PRI, PRD, and PT), all gave overwhelming approval to this cornerstone of IP legislation. Neither did the amendments to the law in 1994, 1997 or 1999 face much opposition in either legislative chamber. For example, the Chamber of Deputies' Commission on Culture submitted a number of modifications to the 1996 Copyright law that resulting in 83 of the 200 articles being altered before passing into law. Although changes were made, indicating historically atypical negotiation between

the two branches of government, 88% of the original text remained unaffected.[180] Moreover, the 1997 amendment to the Industrial Property Law was unanimously approved in the Chamber of Deputies with a vote tally of 361. In the Senate, the amendment was also overwhelmingly passed with 105 votes in favor of the new legislation. Support for the law was so overwhelming that the Chamber of Deputies approved the bill on the recommendation of the United Commissions of Commerce, Patrimony and Industrial Promotion with no debate at its initial presentation to the full house.[181]

Even laws that do not solely pertain to IPR received considerable congressional approval. The 1999 amendment to the Penal Code that included a section on the penalties of industrial property right infringement passed in the Chamber of Deputies with only 6 dissenting votes. Importantly, the examples discussed above are indicative of a larger trend regarding congressional approval of executive IP initiatives. This does not imply that debate is nonexistent or that modifications of executive initiatives do not occur but rather that substantial support for such initiatives continues to exist within a divided government. Therefore, it does not appear that a balance of power between the two branches of government has hindered the passage of IP legislation.

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[180] Comisión de Cultura, "Ley Federal del Derecho de Autor," available at www.uam.mx/difusion/comcul/leyes (September 21, 2002).

[181] *Diario de los Debates*, "Sumario: Jueves 27 de Noviembre de 1997," Organo Oficial de la Camara de Diputados del Congreso de los Estados Unidos Mexicanos, Correspondiente al Primer de Sesiones Ordinarias del Primer Año de Ejercicio.

Although Mexico's legislature has yet to produce an IP law, congressional deputies assumed a much more active role in initiating IP legislation. For example, in 1999 a number of PVEM deputies petitioned the addition of a number of amendments to both the Industrial Property Law and the Plant Variety Law to include environmental assessments studies in the application process of genetic inventions.[182] Members of the PAN are also becoming active in IP legislation. In April 2001, PAN deputy Sonia Lopez Macias, proposed changing the Copyright Law expressly to permit the reproduction of protected literary and artistic works as long as the user does not seek commercial gain.[183] Albeit this suggested change may undermine existing IP law, it does indicate increasing interest and participation in the subject by congressional members across the ideological spectrum. That same month members of the PVEM once again attempted to modify existing IP law to better clarify that prior IMPI pronouncement of an infringement violation is not necessary to solicit payment of damages in a civil court.[184] Within the first six months of 2002, congressional deputes and senators from various parties proposed three amendments to the Industrial Property Law.[185]

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[182] *Gaceta Parlamentaria*, "Iniciativas: Que Reforma y Adiciona Diversas Disposiciones de la Ley de la Propiedad Industrial y de la Ley Federal de Variedad Vegetales,"available at http://gaceta.diputados.gob.mx/Gaceta (Accessed on December 2, 1999).

[183] *Gaceta Parlamentaria*, "Iniciativas: Que Reforma la Ley Federal de Derechos Autors," available at http://gaceta.diputados.gob.mx/Gaceta (Accessed on April 20, 2001).

[184] *Gaceta Parlamentaria*, "Iniciativas: De Reformas al Articulo 226 de la Ley de la Propiedad Industrial," available at http://gaceta.diputados.gob.mx/Gaceta (Accessed on April 20, 2001).

[185] *Gaceta Parlamentaría*, "Iniciativas," (March 26, 2002, April 4, 2002 and April 26, 2002), available at www.gaceta.diputados.gob.mx.

As the preceding discussion suggests, to date the emergence of a more balanced distribution of power between the Executive and Legislative branches of Mexico's government has not resulted in a great upsurge of IP legislation. No longer is the Mexican legislature simply a slave to the presidency but neither has it attained equal footing with the executive in terms of policy development. The executive continues to issue the majority of legislative bills, especially legislation pertaining to national economic strategy. But why has the Mexican legislature failed to initiate major legislation, including IP bills, after becoming more independent from the executive?

One reason for this lies in the prohibition against immediate reelection of legislatures. This makes it very difficult for congressional deputies and senators to develop the expertise and resources to draft major legislation, including IP proposals. Additionally, as the reputable Mexicanist scholar Roderic Ai Camp highlights in his review of the Mexican government, the legislature's weaker policy-making position can be partially attributed to their limited budget and staff. Whereas the executive employs a staff of "several thousand full-time permanent staff," the Chamber only has a staff of about sixty researchers.[186] Therefore the fact that the Mexican legislature failed to initiate major IP legislation after 1997 is not unique to the issue-area of IP.

[186] Notably, these figures are not included in the first two editions, 1993 and 1996, of Roderic Ai Camp's *Politics in Mexico* (New York: Oxford University Press, 1999), 103-104.

Yet Congressional deputies have begun to propose legislation in areas of concern for their party and constituencies. Bills regarding indigenous rights and culture, land reform and the environment are increasingly being submitted by members of the lower house. Accordingly, the existence of domestic groups both promoting and objecting to IP reform is discussed in further detail in the following chapter.

I suspect this emerging trend of the lower house issuing bills for full vote will not extend into the issue-area of IP. Legislation in this new field is notoriously complex and technical. Therefore without a fully developed legislative research agency and professional expertise in this field it would be extremely difficult for a congressperson or congressional committee to draft such a law within one term.[187] In issues such as IP, the much better staffed executive will continue to hold the upper hand in terms of directing the reform process through the power of policy development.

With regards to that fact that much of Mexico's IP legal regime was developed prior to the emergence of divided government, one explanation for this may be that the international pressures calling for IPR convergence lessened after 1997. Notably, with the 1991 passage of the landmark Industrial Property Law and the 1993 passage of the NAFTA, Mexico's IP legal regime largely conformed to global standards. Yet convergence pressures were not altogether eliminated.

Throughout the 1990s and early 2000s, Mexico continued to face criticism by various organizations and countries concerning loopholes in existing IP laws and calls for better enforcement of IPRs. Additionally, Mexico's trade negotiations with the E.U. and other countries served as another source of convergence pressures after the emergence of divided government. Whereas IPR convergence pressures continued to exist for both branches of government, the Mexican legislature continued to defer to the executive on this policy issue.

5.3 What role does presidentialism play in IPR reform in Chile?

Similar to the Mexican case, Chile also possessed a presidential form of government throughout the period under study, 1985-present. Even though Chile experienced a transition to democracy in 1990, the post authoritarian political system continued to employ the Constitution of the previous regime with only minor changes made to Presidential prerogatives. Therefore, the majority of Chile's IP legal regime was drafted and implemented by a political system characterized by the imbalance of power between the executive and the legislature.[188]

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[187] However, this is not to imply that all executive measures relating to IP protection are guaranteed to be successful. During his presidency, Zedillo's Secretary of Commerce did announce a "National Campaign Against Piracy" that failed to produce substantive results.

[188] Since the transition to democratic rule, the Chilean legislature has become more active in the process of policy development but its power remains limited vis-à-vis the executive's formal powers.

Prior to the 1973 coup the Chilean legislature, as described by one scholar, was "historically one of the strongest legislative bodies in the continent."[189] Between 1823 -1973, the legislature served as the arena for party negotiations and consensus in a multiparty political system. This informal function gave the legislature an important role in the development of national policy in light of a constitution that conferred the Presidency with more formal powers than those granted to the legislature.

However the September 11, 1973 overthrow of the democratically elected President Salvador Allende, marked a dramatic end to the relative stability and importance of the Chilean legislature. Led by General Augusto Pinochet, the new military regime quickly blamed Chile's political and economic problems on the unstable multiparty coalitions that previously existed in the legislature. The new regime argued that to eliminate the ineffectiveness of prior governments, a radical overhaul of the political regime was in order. In keeping with this belief, on September 24, 1973, the military junta issued a decree dissolving Congress and transferring all legislative and executive functions to the junta. Coupled with the depoliticization of society through use of repression, and the outlawing of political parties, the junta quickly consolidated their hold on political power. Throughout the 1970s, the junta ruled the country using military edicts (known as *bandos*), decree-

[189] Peter Siavelis, "Executive-Legislative Relations in Post-Pinochet Chile: A Prelimary Assessment," *Presidentialism and Democracy in Latin America*, eds. Scott Mainwaring and Matthew Soberg Shugart (Cambridge: Cambridge University Press, 1997), 315-342.

laws, and constitutional acts until the creation of a new Chilean constitution was completed in 1980.

Publicly advanced as outlining Chile's eventual transition to democracy, a Chilean constitution was approved by national plebiscite in September of 1980 and entered into force in March 1981. Yet, as Pinochet himself asserted, the 1980 Constitution produced a protected or authoritarian democracy marked by a very powerful President rather than a democracy marked by a balance of power between the branches of government.[190] In the new constitution, the Presidency was granted a number of powers that allow the executive to largely control the legislative agenda, and weaken the power of the legislature. Under Article 71, the President has the power to set the legislative agenda by means of declaring particular legislative proposals as executive urgencies. The legislature must act on an executive urgency within 30, 10, or 3 days depending on the specific classification given to the urgency.[191] When an executive urgency is given to Congress, the legislature must place on hold all other pending legislative proposals. Since 1981, Chilean presidents employed the use of executive urgency to expedite their own legislative proposals at the expense of legislative initiatives that must be placed on hold until the President's proposals are acted upon.

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[190] Lois Hecht Oppenheim, *Politics in Chile: Democracy, Authoritarianism, and the Search for Development* (Oxford: Westview Press, 1999), 127-130.

[191] Executive urgencies are classified into three groupings: simple urgencia, suma urgencia, and discusión urgencia. A simple urgencia must be acted on by Congress within the 30 day limit, the suma within 10 days and the discusión within 3 days.

Power within the legislative arena is further tilted in favor of the executive with the addition of a number of Presidential prerogatives. The President has the power to call the legislature into extraordinary sessions during which they can only act on those bills proposed by the executive branch. This power of agenda setting is further reinforced by areas of exclusive Presidential initiative. Article 62 of the 1980 Constitution grants that Presidency the exclusive right to propose laws relating to changes in the political or administrative division of the country as well as the financial or budgetary administration of the state. This power of exclusive introduction includes issues such as taxation and the creation of new public services. Under Article 62 Congress is granted the limited power to amend proposed expenditures but if a bill is not passed by Congress within 60 days, the president's proposal goes into effect as law. According to a scholar of Chilean politics, the vast majority of significant legislation contains an economic element and "when combined with the president's ability to set the legislative agenda . . . it (is) difficult for legislators to propose bills of any significance."[192]

Yet the legislature does possess a few key legislative functions. As a bicameral body composed of a 120 member Chamber of Deputies and a 38 member Senate (with nine additional designated senators) Congress can initiate legislation outside the domain of exclusive executive introduction. Additionally, the legislature can propose amendments to the constitution, and with a two thirds vote override presidential objections to proposed amendments. Yet it is important to note that the

[192] Peter Siavelis, "Executive-Legislative Relations in Post-Pinochet Chile," 328.

legislature does not possess a budget or staff on par to that of the executive. The result of this disproportionate balance of resources is a general lack of access to information for congressmen. Consequently, the ability of congressional deputies to introduce highly specified and complex legislation, such as IP proposals, is limited.

Also relevant to the examination of the balance of power between the executive and legislative branches of government in Chile is the constitutional provision that during the first eight years of its enactment, the government would be controlled solely by the executive. A new congress could not be inaugurated until 1990. Therefore, throughout the 1980s the presidency performed both roles of executive and legislature. Presidential power was weakened in 1989 and later again in 1991 when amendments to the constitution eliminated the president's power to dissolve the lower house, and restrict presidential use of forced exile and the banning of civil liberties during periods of crisis. Additional changes to the structure of the upper house of congress further weakened the power of the presidency. Although these changes modified the overall balance of power between the two branches of government, it did not reverse it.

Importantly, military rule ended with the October 1988 presidential plebiscite in which Pinochet was forced to schedule national elections for the offices of the presidency and legislature. In December 1989, presidential candidate Patricio Aylwin led the Concert for Democracy (CD) coalition to victory over the Pinochet sponsored candidate, Hérnan Büchi. Additionally, the coalition won a majority of the seats in both houses of the legislature. Yet, a working majority was not attained

by the CD due to the presence of the designated senators in the upper house. Throughout the 1990s, the CD has retained their simple majority control of Congress although the margin narrowed with the congressional elections of 1997, and the 1999 national elections. Therefore, initiatives originating from Congress would need to be the result of a multiparty consensus.

Notwithstanding the nation's return to an electoral democracy and public criticism of the powerful presidency established by the Pinochet regime, scholars argue that Chile remained highly presidential during the post authoritarian period.[193] Democratization did not result in a fundamental weakening of the power of the presidency because post authoritarian governance continues to be based in the 1980 Constitution. Elected Presidents Aylwin (1990-1994), Eduardo Frei (1994-2000), and Ricardo Lagos (2000-2006) continued to rely on the presidential legislative prerogatives outlined in 1980 to both promote their legislative agendas as well as gradually reform the political system. Although the regime has become more democratic in terms of the protection of civil liberties, the return of a legislature, the reduction of the military's power, and electoral power alteration, the Chilean political system remains largely a presidentialist system. The administration of Aylwin was especially cautious of proposing radical constitutional reforms that would alter the balance of power due to the looming threat of another military coup. Moreover, although the administrations of the 1990s emphasized the role of

establishing consensus with the legislature in the passing of major legislation, Articles 62 and 71 that conferred power of agenda setting remained largely unchanged. The presidents of contemporary Chile recognize the advantage of employing executive urgencies when they desire the quick consideration of their own legislative proposals.

Dissimilar to the Mexican case, Chile represents a case in which presidentialism existed throughout the period under study. However, attention should be placed on the changing role of the legislature with the demise of military rule in March 1991 when a slightly more balanced distribution of power began to emerge. To assess the role that Chile's legislature played in IPR reform, I begin with an initial examination of the institutions responsible for the drafting of IP legislation between 1985-2002. Drawing from the IP legal framework outlined in the previous chapter as the universe of cases, it is clearly evident that Chile's IP legal regime was developed by the executive. [See Table 5.2]

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[193] Peter Siavelis, "Executive-Legislative Relations in Post-Pinochet Chile" and "Disconnected

Table 5.2: Chilean IP Legislation --Originating Branch of Government

IP Laws and Regulations	Originating Branch
Law on Intellectual Property -Amended October 1985 -Amended March 1990 -Amended September 1992 -Amended January 1995	Executive*
Law on Appellations of Origins -November 1985 -Amended 1986	Executive*
Copyright Law -Amended October 1985	Executive
Geographical Indications -Law Consolidation July 1986 -Law Consolidation June 1999	Executive*
Industrial Property Law -January 1991 -Regulations May 1991	Executive*
Plant Variety Law -Law Consolidation October 1994 -Law Consolidation October 1996	Executive*

Source: WIPO. "Country Legislative Profiles." Available at www.wipo.org.
*including the listed amendments

Of the 13 IP laws and amendments noted above, 6 were produced prior to the March 11, 1990 alteration of power, and 7 in the post authoritarian period. Notably, one of Pinochet's last legislative acts before he transferred power to the Aylwin administration was to recognize the patent rights of US pharmaceutical

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Fire Alarms and Ineffective Police Patrols: Legislative Oversight in Postauthoritarian Chile," *Journal of Interamerican Studies and World Affairs* (Spring 2000).

laboratories.[194] Viewed by scholars as another effort of the military regime to further institutionalize Chile's neoliberal economic program, Pinochet had no reason to fear the future halt of IP reform. As the evidence indicates above, Pinochet's efforts at reforming Chile's IP legal regime was continued, rather than stopped, by the succeeding administrations.

Using this as an initial measure of the role of presidentialism on IP reform, it appears that the reemergence of a legislature, albeit a relatively weak one, did not greatly promote nor hinder the IP reform process. Moreover, the pace of the IP reform project remained consistent throughout both the military and post authoritarian regimes. Regardless of the regime in power, the executive branch controlled the drafting and initiation of IP legislation throughout the period under study. Additionally, many of the IP amendments were issued as presidential decrees indicating that congress chose to defer the development of such legislation to the executive rather than draft the legislation themselves.[195] Analogous to the Mexican case, the preceding evidence suggests that the institution of presidentialism promoted, rather than hindered, the successful implementation of the first phase of Chilean IP policy convergence.

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[194] "Chile: Breakthrough on Patent Rights," *Latin American Special Report* (15 February 1990), 7.

[195] The ability of the Chilean executive to issue decree legislation rests on the cooperation of the legislature. To issue a decree, the president requests from Congress the authorization to order provisions with the force of law. Once Congressional authorization is given, the executive initiates the legislative decree. For more information regarding the Chilean constitutional powers see the Appendix of *Presidentialism and Democracy in Latin America*, eds. Scott Mainwaring and Matthew Soberg Shugart (Cambridge: Cambridge University Press, 1997), compiled by John M. Carey, Octávio Amorim Neto, and Mathew Soberg Shugart.

Moreover, throughout the 1990s the Chilean legislature has been relatively supportive of the strengthening of the IP regime. For example, although President Aylwin introduced a small number of legislative proposals during his administration, in 1991 he chose to present to Congress an expansive Industrial Property Law. Marketed to both the legislature and public as an essential piece of legislation to aid Chile's efforts at building neoliberal trade relations, the executive administration worked closely with informal networks of governmental committees and legislative party leaders to ensure swift passage of the proposal once introduced to Congress.[196]

Notably, the legislature has recently taken a more active position in regards to Chile's IP legal regime. In both houses of the legislature, members initiated bills amending existing IP laws but without much success. For example, since 2000, the Senate and Chamber each submitted a number of motions to amend particular portions of the Industrial Property Law of 1991.[197] Although these motions remain in negotiation, they do signal the growing interest of the Chilean legislature in strengthening existing IPRs and combating piracy.

However, during the current Lagos administration, IP reform has not occurred as quickly as it did earlier in the post authoritarian period.[198] Since 1999, the Chilean government has been asked by the WIPO to conform Chilean IP laws to

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[196] Lois Hecht Oppenheim, *Politics in Chile: Democracy, Authoritarianism, and the Search for Development* (Oxford: Westview Press, 1999), 205-208.

[197] Cámara de Diputados, "Proyectos de Ley," available at http://www.camara.cl/legis/proyley (accessed March 01, 2004).

[198] "Diputados denuncian pirateria encubierta," *La Tercera* (27 January 2004) and "Aceleran proyecto de propiedad industrial," *El Mercurio* (19 August 2002).

international standards. Specific pressure has been placed on Chile, both by the WIPO and by local domestic interest groups, to adopt a new anti-piracy law that would increase the penalties of those found pirating protecting materials. Yet, since 2002 the executive has postponed the introduction of a new anti-piracy bill in light of growing interest in the topic by both congressional deputies and senators.[199] For example, in January 2004, a number of congressional deputies (accompanied by a few cinema stars) held a press conference publicly declaring their support for stronger sanctions against violators of intellectual property.[200] Reportedly, the executive has chosen to wait until March 2004 to utilize the Presidential prerogative of legislative urgency on this issue.[201] Unlike past administrations who routinely made use of presidential legislative urgency and decree powers to reform the existing IP legal regime, since 2000 it appears that the Chilean executive has chosen to more slowly reform Chile's existing IP legal regime.

5.4 Conclusions

The evidence presented above suggests that in both the Mexican and Chilean cases, the executive branch of government has dominated the development of IP legislation. Within Mexico, the 1997 emergence of a balance of power between the executive and legislative branches does not appear to have either radically altered or hindered the IP reform process. Whereas the emergence of divided government in Mexico did not lead to an acceleration of IPR laws it is important to note that neither

[199] "Aceleran proyecto de propiedad industrial," *El Mercurio* (19 August 2002).

were IP laws reversed or vetoed in Congress. Therefore, the institutional actor who continued to play a pivotal role in the restructuring of Mexico's IPR regime throughout the period under study appears to be the executive. Not only were the two foundational laws of Mexico's strengthened IP legal framework proposed by the president's office but all subsequent IP legislation also emanated from the executive. Similarly, in the case of Chile, the Pinochet military government and the post authoritarian governments of Aylwin and Frei continued to dominate IP policy making. Drawing on the power of the presidency to set the legislative agenda, Chilean executives reformed the IP legal framework initially without the existence of a legislature then later with a largely cooperative legislature. Rather, after 1990 the legislature continued to defer the responsibility of drafting IP legislation to the executive.

Moreover, during the period of presidentialism, both countries signed free trade agreements that contained guidelines for the protection of IP. Mexico became a member of NAFTA that served to dramatically strengthen Mexico's IPR regime. Importantly, President Salinas proposed and negotiated NAFTA recognizing the effect it would have on Mexico's IP regime thus further illustrating the power of the executive in effecting IPR convergence. Chile also signed free trade agreements with Mexico (1991) and Canada (1996), and began negotiations with the European Union (EU) and NAFTA (recently approved in 2003), with the knowledge that each

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[200] Ibid.
[201] "Proyecto de ley duplica sanciones contra la piratería," *La Tercera* (22 January 2004).

agreement would contain a specific IP section that would affect existing Chilean IP law.

However, it is not solely the institution that promoted IPR convergence but external conditions also impacted the timing of reforms. The institutional arrangement of presidentialism enabled those who held the presidency in Mexico and Chile, especially during times of trade negotiations, to enact IP reform with few constraints. In the case of Mexico, what was critical to IPR convergence is that men who believed in the neoliberal economic model and worked to institutionalize this economic strategy by creating a series of bilateral free trade agreements, held the office of the Mexican presidency during the period under study. Both Salinas and Zedillo responded to mounting international pressures for convergence and utilized the presidency to pursue their agendas of neoliberal reform. IPR convergence was one component of this larger economic model. Likewise, Pinochet was the architect of Chile's neoliberal economic program, but his democratic successors shared his belief that the neoliberal model was the only viable economic system to sustain Chile's developmental goals. As noted above, Chilean presidents have been subject to increased scrutiny of their IP legal regime. Chile also faces continued pressures for IPR convergence during each round of trade negotiations it chooses to participate in. When the executive holds an immense amount of power, it can more easily react to these calls for convergence throughout the period of trade negotiations.

Consequently, I conclude that although presidentialism may not be a sufficient condition for policy convergence, in both the Mexican and Chilean cases

presidentialism played an important and positive role in the initiation of IPR legal reform. Specifically, the institution of presidentialism increases the likelihood of undiluted convergence. Presidentialism enables governments to quickly develop comprehensive IP legislation consistent with global norms. As explored in further detail in the following two chapters, in both cases presidents were more likely to take policy content cues consistent with convergence from external actors than domestic interest groups. This trend was especially acute during periods of trade negotiations when countries used policy reforms as a means to improve their image to potential trade partners.

The Mexican case demonstrates how a particular set of governmental institutions can both support and undermine the IPR reform process. Mexico's presidentialist form of government proved to be a positive factor in the initiation of the reform process, the creation of stronger IPR laws, but as will be discussed in more detail in a following chapter examining divided authority in reform implementation, presidentialism later served to undermine the enforcement of the same laws it produced. A consequence of the privileged position of the Mexican presidency was that the judiciary historically remained a weak and ineffective institution. Although Mexico's IP legal framework converges to global norms, without an effective judiciary to enforce these laws convergence remains incomplete. By contrast, although the Chilean judiciary is weak compared to the executive, it is often judged to be a relatively efficient and effective institution. The historical evolution of the judiciary vis-à-vis the executive in Chile proved critical to the

development of a judiciary capable of enforcing the IP legal regime the executive had created throughout the 1990s. Therefore, in the Mexican case, an ineffective judiciary explains why convergence in legal structures is not occurring as rapidly as that witnessed in trade and financial structures.

Importantly, policy convergence is a process comprised of three consecutive stages. To successfully achieve convergence all three phases must be completed. The first stage of this process is the legislation of appropriate laws pertaining to the issue area. In the issue area of IPRs, the creation of legislation governing this area of law consistent with the "competition state" model constitutes the completion of the first stage of reform. Once a legal regime is created, the administration and enforcement of the new laws complete the process of reform. Notably, both Mexico and Chile successfully completed the first stage of IPR convergence, the creation of appropriate IP laws that converge to the 'competition state' model. This indicates that explanation of both nations' divergent rankings in various comparative measures is not rooted in the first stage of convergence. Rather it must be the result of differences in the later stages of the convergence process. Yet, as highlighted in the following two chapters, slight differences in the activities of interest alliances do not adequately explain the divergent rankings either. Rather as examined in Chapter 9, it is the final stage of convergence that is more problematic for the Mexican state to reach thus explaining its poor performance in comparative rankings.

CHAPTER SIX

EVALUATING THE IMPACT OF DOMESTIC INTEREST COALITIONS ON INTELLECTUAL PROPERTY REFORM

6.1 Introduction

Policy reform does not occur in a political vacuum. Rather domestic interest coalitions often play an important role in the development and implementation of policy.[202] In view of this, it is essential to supplement the previous examination of the role of presidentialism on IPR convergence with an analysis of societal sources of policy reform. Might different levels of domestic support for IPR convergence explain why Chile does better than Mexico?

My answer to this question is no. Significant differences in either the number or activities of domestic interest alliances do not exist between the two cases. This indicates that similar to the variable of presidentialism, this variable also fails to explain the divergent rankings of the two nations. Moreover, in both cases domestic pressure appears to have played a surprisingly small role in the convergence process. Accordingly, the analysis presented in this chapter is consistent with a state-centered approach of policy development in which the executive drives the creation of

important federal policy and domestic interest groups play a more secondary and supportive role.[203]

As the evidence presented below demonstrates, domestic interest alliances are not a causal variable for the initiation of IPR convergence. Although the institutional structure of Mexico and Chile in the 1990s lowered the costs of supporting such reforms, domestic demand for the strengthening of IPRs remained marginal at best. Additionally, in both cases strong presidents did not appear to take policy content cues from domestic groups. Rather, as discussed in further detail in the following chapter, external actors played a much more significant role in the reform process than domestic interest alliances. Although domestic organizations emerged supportive of government reform efforts, their activities did not prove critical to any stage of the convergence process.

To better understand the extent to which Mexico's and Chile's IPR regimes were affected by the activities of domestic interest groups, I conduct three distinct investigations to examine their role in IPR reform. The first two examinations employ the analytical tool of rational choice; specifically that political behavior is the result of rational decisions made by individuals seeking to maximize their utility. In these models, it is assumed that policy development contains both supply and

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[202] Interest groups influence the reform process by lobbying for, drawing media attention to, consulting on, and helping to draft particular policies.

[203] For a detailed discussion of state-centered approaches to policy development see Eduardo Silva and Francisco Durand's "Organized Business and Politics in Latin America," *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand (Miami: North-South Center Press, 1998), 1-50.

demand side components. In terms of IP policy reform, it implies that the policy process is conditioned by those actors who demand a particular set of policies and the government structure that supplies the final legislation. Accordingly, the first investigation comes from the work of Buscaglia and Long, who argue that IPR reform is conditioned by electoral politics and the rational behavior of politicians campaigning for office. This supply side model focuses on the political deterrents faced by politicians in reforming national IP systems. The second assesses the degree to which domestic demand exists for IPR reform. Finally, the third examines the specific activities of a number of domestic interest groups active in IPR protection to asses their individual impact on IP policy convergence.

Drawing a distinction between the various stages in which domestic interest alliances can affect the policy process – policy formulation, implementation and enforcement – it appears that domestic groups interested in IPR reform played a much more active role in the latter stages. Although domestic interest alliances do not explain the initiation of IP policy, especially the landmark legislation of the early 1990s in both countries, they impacted the administration of the reforms and are increasingly active in the final stage of policy enforcement. Only in the late 1990s do domestic actors begin to more aggressively lobby their respective governments for stronger IP protection and thus become involved in the policy formulation stage of convergence. Also at this time, in Mexico and Chile a partnership emerged between the government and a number of domestic groups to strengthen IPRs. In coordination with public officials, interest alliances began to assist in publicizing

new legislation, organizing educational workshops, and collaborating with public ministries in the management of particular aspects of IP regulations. Additionally, they are increasingly collaborating with public officials in anti-piracy campaigns to improve government enforcement efforts. Therefore, although domestic groups play a role as a support coalition for their respective government's IPR reform agenda, their presence and activities fail to account for why Mexico and Chile embarked on the transformation of their IP regimes.

6.2 Investigation 1 -- Electoral Politics and IPR Reform

To examine the determinants of property rights reform, I use a demand and supply framework in this section. In this model, variation in property rights is the result of the interaction of domestic demand for a particular set of property rights regime and the ability of political institutions to supply or respond to the demands made on it.[204] Preferences for property rights are treated as endogenous in the analysis. Demand forces, according to property rights scholars Alston and Mueller, include the various winners and losers associated with either the status quo or some potential changes to the regime. By contrast, the supply forces include the incentives that political actors face in a given political institution.[205]

Such an analytical model was used by IP scholars Edgardo Buscaglia and Clarisa Long, in their study of IPRs in Latin America. In their work, they contend that "the feasibility of enacting intellectual property rights reforms depends on the

[204] Alston, Lee J. and Bernardo Mueller, "Property Rights, Violence, and the State," draft prepared for *The Handbook of the New Institutional Economics,* November 14, 2002.

politicians' assessment of the costs and benefits of providing enhanced protection."[206] By contrast to the second test in which I assess domestic demand for IPR convergence, Buscaglia and Long focus their attention on the suppliers of reform, politicians. Although they maintain that IPR divergence in Latin America is partially explained by the failure of local constituencies to lobby for stronger IP protections, Buscaglia and Long also argue that political cost-benefit analyses play an influential role in the reform process.

Drawing from their research on Argentina, Buscaglia and Long argue that IPR reform is only feasible when politicians perceive that the long-term benefits are greater than the short-term costs. For politicians to realize long-term benefits the political system must be stable and elections periodic. By contrast, when the political system is unstable, politicians prioritize short term gains and losses. According to Buscaglia and Long, this former scenario characterized the case used in their analysis, Argentina. With regards to IPR convergence, the authors argue that Latin American politicians must routinely confront the very real short-term cost of losing campaign funding from domestic pirate industries. For example, Buscaglia and Long contend that Argentine legislators were in danger of losing campaign support from pirate pharmaceutical companies if they voted in favor of pending IP legislation. Consequently, IP legislation was hotly debated, weakened, and passed with a much smaller margin in the Argentine legislature. Therefore, the short-term

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[205] Ibid, 2.

costs of supporting IPR reforms were too high for politicians to ignore because it jeopardized their re-election aspirations.

Yet the case of Argentina, on which Buscaglia and Long base their entire analysis, does not mirror the political environment of either Mexico or Chile. Hence this model does not adequately explain differences in comparative rankings between the two cases. For example, unlike in Argentina, landmark IP legislation in Mexico was passed with little opposition from members of the Mexican Congress. The 1991 Industrial Property Law was passed, notwithstanding the existence of a domestic pirate pharmaceutical industry. In the case of Chile, its landmark IP legislation –its own 1991 Industrial Property Law—was also passed with little domestic opposition. Why was it possible for the Mexican government to pass such legislation in spite of the existence of a pirate pharmaceutical industry, whereas in Argentina such legislation is routinely blocked by the lobbying activities of precisely this interest group? Why did opposition not emerge in the Chilean case to oppose the dramatic strengthening of its IP regime?

One possible reason may lie in the variable highlighted by Buscaglia and Long themselves: political environment. As they previously noted, a stable political environment may benefit reform efforts whereas political instability benefits efforts to undermine IPR reform. In this regard, since its Revolution of 1917, Mexico has not experienced the pattern of civil wars and coups that so many other nations in the

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[206] Edgardo Buscaglia and Clarisa Long,*U.S. Foreign Policy and Intellectual Property Rights in Latin America,"* Essays in Public Policy of the Hoover Institution, No.77 (1997).

region did throughout the 20th Century. Rather, Mexico is generally considered relatively stable, with elections that occur predictably and regularly. In addition, because of the PRI's dominance of the legislature (until 1997), Mexican Congressional approval of executive legislation was also a generally predictable occurrence, indicating an unusually stable political environment.

Likewise, the Chilean political system can also be described as relatively stable throughout the late 1980s and 1990s. The demise of Pinochet's military regime in 1990 was not due to a bloody civil war or coup d'état but was the result of a national referendum organized by Pinochet himself. In October 1988 plebiscite, the Chilean people decided against an additional eight-year term for General Pinochet thus opening the way for national elections. Rather than oppose the results, Pinochet respected the will of the people and organized elections for the following year that ultimately ousted him from power. In 1990, he peacefully transferred power to the opposition led civilian government of Patricio Aylwin**.** Since then, Chile has been ruled by a number of civilian governments who reached power through the ballot box. Throughout the 1990s, Chilean politics were marked by political stability and the continuation of Pinochet's neoliberal economic program. Therefore, unlike in the case of Argentina but similar to Mexico, Chile possessed the stable political environment supportive of property rights reform efforts.

Moreover, Mexican politicians are less affected by short term costs (or benefits) because of laws barring re-election for political leadership. Presidential re-election and direct (immediate) re-election of members of the Legislature are

unconstitutional in Mexico. This enables Mexican politicians to create policy without concern for how it will affect re-election campaign financing. Unlike the Argentine case, the short-term cost of the withdrawal of campaign financing is not part of the political cost-benefit analysis.

This does not mean that Mexican politicians are entirely free from interest group constraints. Throughout the 20th Century, the PRI actively sought the support of key sectors of society by granting them occasional policy concessions and state recognized representation. Moreover, a common practice for members of Congress was to hold office in one house then follow with a term in the other house of Congress or in a state-level elected position. As a result, Mexican politicians seeking new political office remained concerned about appeasing key supporters as well as their respective party. Yet in Mexico's corporatist government concern for constituent support was limited due to the leverage granted to state under this political system. For example, the Mexican government routinely used its power over key sectors of society to establish social contracts advancing governmental objectives (such as economic development). In these social contracts, the government requested interest groups to sustain short-term costs in exchange for future gains and other benefits. Use of these social contracts allowed Mexican politicians to once again favor long-term, not short-term, consequences.

In the case of Chile the scenario is slightly different. In Chile, Congressional deputies are eligible for re-election while Senators and Presidents may only serve one term. Therefore, the potential benefit of receiving re-election campaign funding

from pirate industries does exist in the lower house of Chile's Congress, but this incentive is not shared throughout the federal government. Moreover, much of Chile's landmark IP legislation was created early in the Aylwin administration and, as previously discussed, generally supported in Congress. As a result, it appears that the campaign donations that swayed the vote of Argentine politicians against IPR reform were not as seductive to Chilean congressional deputies.

Notwithstanding the previous discussion regarding how the Mexican and Chilean cases deviate from the model described by Buscaglia and Long, examination of the extent to which interest groups opposed to IPR reform funded political campaigns remains warranted. Unfortunately, data regarding campaigning financing throughout the 1990s in Mexico and Chile are unavailable for investigation. It was not until the passage of the 1997 Código Federal Electoral, that Mexican political parties were legally required to make such data public. In Chile, parties are obligated by a 1986 law to disclose such data to the Electoral Services Office but information regarding specific donors and the amount of their contributions are not routinely gathered. Accordingly, the subject of who funds which political campaigns and how this funding has affected subsequent policy decisions remains an area to be explored as reliable data becomes available for scrutiny. But for the purposes of this study, the lack of detailed information regarding campaign funding limits my ability to employ the Buscaglia and Long model to the Mexican and Chilean cases.

Nonetheless, using the information that is available regarding the political cost-benefits analyses politicians make and the time horizons employed when

considering IPR reform, it is evident that Mexican and Chilean politicians face an institutional environment distinct from that in Argentina. Electoral politics in Mexico and Chile do not share the political instability and emphasis on short term consequences that helped undermine IPR reform efforts in Argentina. Thus, the influence of domestic coalitions should be small in both cases and unlikely to influence disparity in outcomes. To determine with greater certainty if the activities of domestic interest alliances affected the divergent rankings among the cases, I further scrutinize this variable below.

6.3 Investigation 2 -- Domestic Demand for IPR Reform

Rational choice theory predicts that individuals will make conscious and rational decisions to maximize their gains and minimize their losses. Central to the theory is the idea that individuals act strategically to obtain their desired ends. Individuals who stand to gain from a political decision, according to rationalism, should therefore engage in activities to realize their desired goals.[207] This model assumes that demand generally precedes supply and that politicians do not create the demand themselves through agenda setting or marketing particular political issues. With regards to the specific arena of IPR reform, this implies that those actors who would benefit from strengthened IPR regimes, such as producers of artistic works and technology, will lobby to push for such reforms. For that reason, according to economist Stephen Haggard, we should expect to see IPR convergence occur in those

countries in which domestic demand for such convergence exists.[208] Where domestic actors interested in IPR reform do not exist, reform should not occur.

In the cases of Mexico and Chile, throughout the 1990s a significant number of IP legislation was passed that greatly strengthened each country's IPR legal regime. Rational choice theory would explain this increase in IP legislation in terms of the existence of domestic demand; specifically, that the IP legislation of the 1990s directly resulted from the pressures by domestic actors pushing for reform.

To assess if there existed the necessary domestic direct demand for reform, I examine whether or not actors exist who did support IPR reform in Mexico.[209] To measure Mexican demand for reform, I use as a proxy measure the number of patent applicants drawn from IMPI's own statistics for the period 1990-2000. The number of patent applications separated by nationality of holder, Mexican and foreign, are listed below.

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[207] Margaret Levi, "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis," *Comparative Politics: Rationality, Culture and Structure*, eds. Mark Irving Lichbach and Alan S. Zuckerman (Cambridge: Cambridge University Press, 1997), 19-41.

[208] One way to assess the existence, and their relative size, of domestic supporters of IPR reform is to examine the numbers of those who seek IP protection. Actors who seek IP protection from the Mexican government have a vested interest in seeing their IP being securely protected from piracy and thus would be expected to support IPR reform efforts. The author would like to thank Stephen Haggard who suggested that I employ this rational choice theory test during the fall of 2002.

[209] In the following assessments, the proxy measure reflects direct demand for IPR reforms rather than indirect demand emanating from support for the consequences of IPR convergence. For example, if IPR reform facilitates foreign investment, the potential domestic support may be larger for reform when sectors supportive of measures to increase investment monies are included in the model. Due to the speculative nature of indirect demand it is difficult to develop an accurate and reliable proxy measure and thus only direct demand is used in the following model.

Table 6.1: Patent Applications in Mexico 1990-2000

Year	Mexican Patent Applications	Percent of Total	Non-resident Patent Applications	Percent Of Total	Total
1990	661	13%	4,400	87%	5,061
1991	564	11%	4,707	89%	5,271
1992	565	7%	7,130	93%	7,695
1993	553	7%	7,659	93%	8,212
1994	498	5%	9,446	95%	9,944
1995	432	8%	4,961	92%	5,393
1996	386	6%	6,365	94%	6,751
1997	420	4%	10,111	96%	10,531
1998	453	4%	10,440	96%	10,893
1999	455	4%	11,655	96%	12,110
2000	431	3%	12,628	97%	13,059

Source: Mexican Institute of Industrial Property, "Base de Datos de Patentes, 2000," (www.impi.gob.mx). Data accessed January 2003.

As illustrated by the data above, throughout the 1990s the percent of patent applicants by Mexican nationals ranged from a low of 3% to a high of 13% of total applications received by IMPI. In sharp contrast, foreigners filed Mexican patent applications at much higher rates. Their percentage of total applications filed ranged from 87%-97%. This indicates that throughout the past decade, demand for patent protection from the Mexican government emanated not from domestic actors but primarily from foreign actors.

When compared to demand emanating from the U.S., who is one of the strongest advocates for global IPR convergence, it is once again clearly evident that Mexican demand was dwarfed relative to that of its northern neighbor.

Table 6.2: Patent Applications by Nationality of Holder, 1990-2000

Year	Mexican Patent Applications	Percent of Total	United States Resident Patent Applications	Percent of Total	Total
1990	661	13%	2,824	56%	5,061
1991	564	11%	3,087	59%	5,271
1992	565	7%	4,358	57%	7,695
1993	553	7%	4,948	60%	8,212
1994	498	5%	6,191	62%	9,944
1995	432	8%	3,139	58%	5,393
1996	386	6%	3,835	57%	6,751
1997	420	4%	6,023	57%	10,531
1998	453	4%	6,088	56%	10,893
1999	455	4%	6,869	57%	12,110
2000	431	3%		%	13,059

Source: Mexican Institute of Industrial Property, "Base de Datos de Patentes, 2000," (www.impi.gob.mx). Data accessed January 2003.

Relative to the direct demand for reform originating from the United States, it does not appear that there existed a significant domestic demand that could have pushed for the legal reforms to Mexico's IPR regime. Although there did exist a small number of actors in Mexico who had an interest in seeking stronger IP protection from their government, relative to foreigners their numbers were small. Consequently, it does not appear that the IP legal reforms of the 1990s were a result of a large domestic demand for such reforms.

Domestic direct demand for IPR reforms was also lacking in the case of Chile. Analogous to the Mexican case, throughout the 1990s much IP legislation was passed that greatly strengthened Chile's IP legal regime. The process of reform began with the landmark Industrial Property Law of 1991 and followed by the Copyright Law of 1992. Drawing from rational choice theory, the emergence of

these two pieces of IP legislation should be explained by the existence of domestic interest groups calling for IPR reforms. Yet, as indicated in the tables below, domestic demand for IP protections remained too small to adequately explain the emergence of these laws.

Table 6.3: Patent Applications in Chile 1991-2003

Year	Chilean Applications	Percent of Total	Non-resident Applications	Percent of Total	Total
1991	122	14%	779	86%	901
1992	175	16%	948	84%	1123
1993	155	12%	1179	88%	1334
1994	219	13%	1411	87%	1630
1995	170	10%	1532	90%	1702
1996	175	9%	1768	91%	1943
1997	161	6%	2409	94%	2570
1998	207	7%	2570	93%	2777
1999	205	7%	2609	93%	2814
2000	243	8%	2857	92%	3100
2001	246	9%	2504	91%	2750
2002	391	15%	2147	85%	2538
2003	329	14%	2077	86%	2406

Source: Departmento de Propiedad Industrial – Minecon, "Estadísticas: Solicitudes de Patentes de Invención," (www.dpi.cl). Data accessed February 2003.

As the data above indicate, the Chilean domestic demand for patent applications is very much analogous to the demand that existed in Mexico. Throughout the 1990s and early 2000s, the percent of patent applicants by Chilean nationals ranged from a low of 6% to a high of 16% of total applications received by the Chilean Department of Intellectual Property (DPI). By contrast, the proportion of Chilean patent applications filed by foreigners ranged from 84%-94%. As was the case in Mexico, demand for patent protection from the Chilean government emanated not from domestic actors but rather from foreign actors.

When Chilean demand for IP protection is compared to demand emanating from the U.S., it is clear that Chile lacked a large domestic base of actors calling for IP protection. (See Table 6.4)

Table 6.4 : Patent Applications in Chile by Nationality of Holder, 1995-2003

Year	Chilean Applications	Percent of Total	United States Resident Applications	Percent of Total	Total
1995	170	10%	732	43%	1702
1996	175	9%	807	42%	1943
1997	161	6%	1226	48%	2570
1998	207	7%	1362	49%	2777
1999	205	7%	1292	46%	2814
2000	243	8%	1346	43%	3100
2001	246	9%	1097	40%	2750
2002	391	15%	893	35%	2538
2003	329	14%	831	34%	2406

Source: Departmento de Propiedad Industrial – Minecon, "Estadísticas: Solicitudes de Patentes de Invención por País," (www.dpi.cl). Data accessed February 2003.

Similar to the Mexican case, direct demand for Chilean IPR reform originated primarily from the United States rather than from domestic actors. According to the data, it does not appear that there existed a significant domestic demand in Chile that could have lobbied the government for IPR reforms.

Therefore, the results of this second test indicate that in neither Mexico nor Chile sufficient domestic direct demand for IPR convergence existed to explain the emergence of legislative reforms in the 1990s in both countries, respectively. Nonetheless, the existence of domestic actors calling for IP protection does suggest that a small number of actors did exist that had an interest in strengthening the IP regimes of each country. To assess the role of these actors in the reform process,

further examination is conducted below of the specific activities of domestic interest groups concerned with IP in each case under study.

6.4 Investigation 3 -- Activities of Domestic Interest Groups

In the preceding two investigations, it was demonstrated that relative to other countries, neither Mexico nor Chile appear to be constrained by short-term political costs of enacting such reforms or possess large domestic demand for IPR convergence. Yet, the preceding examinations do not delve into the specific activities of domestic interest groups interested in IPR reform. Therefore to further ascertain the role of domestic actors in the reform process, I draw from Sylvia Maxfield's work on interest coalitions and economic policy formation in Mexico.[210] In her work examining the financial liberalization of the 1980s and 1990s, Maxfield concludes that the domestic banking sector actively lobbied and thus influenced the process of reform. Accordingly, in the following section, I examine the specific activities of a number of domestic interest groups active in the IPR reform process. Although the following discussion is not exhaustive, the interest alliances reviewed do constitute those that have been the most active in shaping the IPR reform process of the 1990s and early 21st Century.

Domestic interest groups affect the policy making process in ways beyond simply lobbying politicians. Therefore, in this study a more precise conceptual framework for evaluating interest groups is used to better assess the various roles

[210] Sylvia Maxfield, "Bankers' Alliances and Economic Policy Patterns: Evidence from Mexico and Brazil," *Comparative Political Studies* 23, 4 (January 1991), 419-458.

that they may play in different stages of the policy process. Interest alliances can impact policy development in three particular ways; by agenda-setting, policy formulation (this is where lobbying activities generally focus), and policy implementation. Specific attention is given to the various activities of domestic interest groups in Chile and Mexico to ascertain if they had a significant effect on IP policy reforms, and if so, in what stage did their activities make an impact on the policy process.

Unfortunately, there is very little existing information regarding the activities of anti-IPR reform interest groups. In the historical records, groups that stand to lose from strengthened IPRs did not form organizations that publicized their activities. Therefore, in the cases of Chile and Mexico there is scant information regarding domestic groups that attempted to block IPR convergence. The most surprising is the relative lack of public lobbying from the Chilean and Mexican pharmaceutical industries, compared to the very vocal and powerful pharmaceutical organizations in India and Brazil that openly blocked IPR reform efforts affecting their commercial interests. By contrast Mexico and Chile had in place very powerful authoritarian governments who had immense leverage over domestic industries when legislation affecting the pharmaceutical industry was introduced. Thus, these governments possessed the political resources to enact policy counter to entrenched domestic resistance. If domestic groups did oppose government efforts, their criticisms as well as governmental concessions were usually made through private channels. For example, in Mexico domestic pharmaceutical producers almost certainly opposed

efforts to strengthen patent laws but documentation of any efforts made by this sector to impede particular reform is not available. Unfortunately, reliable information regarding whether such discussions ever occurred do not exist for either case.

The Role of Mexican Domestic Interest Alliances

Within the past two decades, a number of domestic interest groups have become active in the Mexican IPR reform process. In the following section, the activities of these domestic actors are examined to assess their particular affect on IPR convergence. Special attention is placed on the specific stage of policy development an organization has made an impact on – agenda setting, policy formulation, or policy implementation.[211]

In Mexico as well as in Chile the majority of domestic organizations involved in the IPR reforms of the 1990s and 2000s belong to either the entertainment or technology industries. Organizations such as the National Association of (Artistic) Interpreters, the Society of Authors and Composers of Music, the Licensing Executives Society International – Mexico chapter, and the Mexican Association of Information Technologies are some of the most prominent organizations. These interest groups actively lobbied the federal government for IPR reforms, and have organized conferences to educate members, the public and government officials of the importance of IPR convergence, as well as how to protect the intellectual property of their membership. In addition to interest groups, the late 1990s saw a

number of academic institutions also begin to involve themselves in IPR convergence by educating institutional members on IP training, including what constitutes IP, how to apply for a patent, and drafting a licensing contract.[212] Although these academic institutions rarely directly involve themselves in the policy making process, their activities do go far in the promotion of respect for and an understanding of laws governing IPRs.

Scholars acknowledge that unlike the experiences of India, Argentina and Brasil, Mexico has enacted a number of IPR reform in light of domestic interest groups negatively affected by such legislation. For example, although the Mexican pharmaceutical industry was hurt by the new patent regulations contained in the Mexican Industrial Property Law of 1991, the industry voiced little public opposition. Rather, according to IP scholar Edgardo Buscaglia, the Mexican government was able to introduce and pass the patent law in the presence of a powerful domestic pirate pharmaceutical industry.[213]

One reason for the lack of a well organized and vocal opposition to the 1991 Law may be the effective use of social pacts by Mexico's corporatist government to garner concessions regarding wages and prices from the business community. Beginning with the Economic Solidarity Pact of 1987 in which the executive crafted

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[211] I am indebted to Jorge Amigo Castańeda, General Director of IMPI, for his assistance in identifying the domestic actors involved in Mexico's IPR reform process.

[212] Academic institutions offering IP training include some of the nation's most prestige universities such as the Engineering Institute of the National Autonomous University of Mexico (UNAM), the Technological Institute of Mexico (ITAM), and the Iberian-American University (UIA).

a bargain with business and labor to secure the passage of anti-inflationary policies, the Mexican government routinely employed pacts throughout the 1990s to further advance its neoliberal economic project. Therefore, the concerns of those industries opposed to reforms consistent with the competition state, including IPR reforms, were moderated within a social pact.

The most important organization representing Mexican commercial interests in these social pacts is the Business Coordinating Council (Consejo Coordinador Empresarial – CCE). Created in 1975 in response to the statist economic policies of the Luis Echeverría administration, the CCE unified the private sector under a single representative organization. Representing eight major business associations, the CCE is largely regarded as the voice of Mexico's business sector.[214] Accordingly, throughout the late 1980s and 1990s, to garner support for its economic programs, the Mexican government routinely consulted members of its business community prior to enacting important economic policies. Such a close relationship between the government and private sector, according to scholar Ricardo Tirado, conferred to the business community an "implicit veto" of government policy.[215] Therefore, if

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[213] One explanation for this may be that in the other countries, the domestic drug industries disputed U.S. claims on particular patents. Therefore the opposition to convergence was based on patent disputes but in Mexico the issue was the survival of an illegal industry.

[214] The member organizations of the Entrepreneurial Coordinating Council are: the Mexican Bankers' Association (ABM), the Mexican Securities Industry Association (AMIB), the Mexican Insurance Institutions (AMIS), the Business Coordinating Council (CCE), the Mexican Businessmen's Council (CMHN), the National Agricultural Council (CNA), the Confederation of Chambers of Industry (Concamin), the National Confederation of Chambers of Commerce (Concanaco), and the Employers Confederation of the Mexican Republic (Coparmex).

[215] Ricardo Tirado, "Mexico: From the Political Call for Collective Action to a Proposal for Free Market Economic Reform," in *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand (Miami: North-South Center Press, 1998), 183-216.

significant opposition to IPR reforms in the business community existed, the CCE would be the most effective organization to use as a weapon against IPR reform. Although divisions did emerge within the Council regarding the interests of small and medium sized businesses, an anti-IPR reform faction never appeared to surface within the CCE.[216] Its firm belief in liberal economic theory, in particular the belief in the natural right to private property, would make it hard for any internal group taking a stance against IPRs to find support. Consistent with its ideological roots, the CCE become a key ally to the Salinas government's efforts at liberalizing the economy by playing a significant role in the social pacts of the 1990s as well as in the North American trade negotiations. Rather than becoming the voice of anti-IPR reform factions, the evidence suggests that the Council did not object to government efforts of neoliberal policy convergence, including IPR convergence. But neither does it appear that they openly advocated or lobbied the government to enact stronger IPRs.

In this domestic support of IPR convergence, the CCE was definitely not alone. A number of organizations publicly aligned themselves with the government in strengthening the nation's IP regime. According to one of most active participants in the reform process and the current head of IMPI, Jorge Amigo Castañeda, practically all sectors of industry supported the 1991 Industrial Property Law.[217] A similar statement was made by Oliva Quevedo Bello, from the National Copyright

[216] Ibid, 197-199.
[217] Jorge Amigo Castañeda, personal interview, October 4, 2002.

Institute, who affirmed that members of the entertainment, editorial and legal sectors supported the passage of the 1996 Copyright Law.[218] One of the oldest civil society organization interested in IP is the Mexican Bar Association. Established in 1922, the Mexican Bar's primary mission is to encourage respect for the rule of law by the citizenry, members of government as well as the legal profession. To fulfill this goal, they created approximately 13 commissions focusing on a particular area of legal practice, including IP. As the legislature gained a more effective role in policy development in 1997, the Mexican Bar recognized the need to establish a permanent institutional linkage with this body to have a more direct impact on policy formation. In the late 1990s, a permanent link between the legislature and the Bar was established that organizes periodic meetings between the Bar's IP commission and members of each legislative house to discuss IP legislative amendments. At these meetings, Congressional representatives have the opportunity to explain to the Bar the bill being considered while the IP Commission formally submits a set of policy recommendations specific to the legislation discussed at that meeting.[219] The commission also enjoys a relatively strong relationship with the executive and is asked to routinely review and analyze pending legislative drafts regarding IPRs.

In addition to the Bar's consulting activities in the formulation of IPR reforms, the Bar also is active in the dissemination of information regarding the existing IP legal regime. To this end, seminars are organized for the membership to

[218] Oliva Quevedo Bello, personal interview, October 17, 2002.

better understand new legal rulings and legislative changes to IP norms. Workshops and conferences are organized with the assistance of IMPI to help train lawyers in IP law, especially as it pertains to new types of property such as the human genome and internet commerce.[220] Forums are also conducted regarding the impact of recently passed trade agreements, such as NAFTA and the Mexico – European Union Free Trade Agreement, on Mexico's existing IP legal regime. Written reports are drafted in conjunction with the forum that are published in the Bar's internal journal, *El Foro*, that thoroughly examine changes to IP laws.[221]

Although the Mexican Bar is concerned with the effective protection of IP, there is little evidence that they played a significant role in the emergence of the IPR reforms in the early 1990s. Rather than being major players in agenda setting, the creation of landmark legislation or policy implementation, the Bar's role is largely limited to affecting IP legislative amendments of the late 1990s and early 2000s. Its energies are primarily devoted to policy consultation and information dissemination.[222]

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[219] Barra Mexicana, "Plan de Trabajo Consejo Directiva Barra Mexicana – Colegio de Abogados: 2001-2002." Report available at www.bma.org.mx/pdf/plan.pdf. Accessed September 2002.

[220] For example, in December of 1997 the IP Commission organized a one day conference for interested members entitled "Las Nuevas Tecnologias y la Protección del Derecho de Autor" (New Techonologies and Copyright Protection). Barra Mexicana, "Directorio de Funcionarios: 2001," and "BAA: Publicaciones" available at www.bma.org.mx/socios/Direcc_Func.htm. Accessed September 2002.

[221] Publications are often distributed to their membership after the forum to better communicate the information to the full membership. For examples of such reports, please see *El Foro*, 1985 – 2004, available at www.bma.org.mx/publicaciones/elforo.

[222] Notably, one organization that is closely associated with the Mexican Bar as well as the subject of IP is the Mexican chapter of the International Federation of Industrial Property (FICPI). Although FICPI's membership consists solely of intellectual property professionals in private practice, which in the case of Mexico means that the vast majority of their members are IP attorneys, the organization has specifically chosen to remain non-political. Although FICPI does routinely publish

Another organization that has increasingly participated in IP policy consultation is the Mexican Association of Information Technologies (Asociación Mexicana de la Industria de Tecnologías de Información – AMITI). Yet, unlike the Mexican bar that represents an older and better established profession in Mexico, this interest alliance represents firms associated with modern technologies such as electronic commerce and computer software. Created in 1997, AMITI's mission is to support the development of technology in Mexico by bridging together those firms involved with information and communications technologies.[223] It is affiliated with the World Information Technology and Services Alliance (WITSA) but the focus of AMITI's energies are on representing the commercial interests of its membership. To this end, the organization has taken up the fight against information technology piracy and thus become intimately involved in the IP policy reform process.

To realize its goal of the eradication of computer hardware and software piracy, AMITI lobbies the Mexican government for tougher penalties against IP violations. The method used by AMITI is to draft reports highlighting the destructive effects of piracy on its industry members, and thus the overall development of Mexican information technology, and disseminate the information to members of both the executive and legislative branches of government.[224] AMITI also engages in direct lobbying of government officials when amendments to existing

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opinion papers regarding pending IP legislation, it does deliberately attempt to affect policy development. Rather, FICPI serves as an additional source of IP legal training for its membership. Therefore, FICPI serves as an example of an organization concerned with Mexico's IP legal regime but not active in the reform movement. For further information regarding FICPI, see www.ficpi.org.

[223] AMITI, "Historia," available at www.amiti.org.mx/historia.asp. Accessed October 2002.

IP laws are considered. Yet, as a relatively young interest alliance the impact of AMITI on the reform process has been limited both in time and in scope. The process of IPR convergence began almost a decade before the arrival of AMITI and its activities have been confined to addressing what it believes are weaknesses in existing IP laws. Therefore, AMITI has not significantly involved itself in the agenda-setting or policy implementation stages of the policy process. Rather it has worked to amend existing IP laws by asking for stiffer penalties against copyright violations. In this regard, the existence of AMITI as an up and coming IP interest alliance does not provide any additional evidence to support the hypothesis that IPR convergence of the early 1990s was in response to the existence of domestic interests groups lobbying for such policy reform.

By contrast to AMITI and the Mexican Bar who directly lobbied the Mexican government for IPR reforms, and thus focus their activities on policy formulation, other interest alliances in the technology industry devote their energies on more effective policy implementation. These organizations devote much of their time to educational activities, information dissemination, and occasional consultation for specific government agencies. One such organization is the Mexican chapter of the Licensing Executive Society (LES).[225] LES is a business-oriented association that concerns itself with the licensing of IPRs and the transfer of technology. Created in

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[224] AMITI, "Piratería," available at www.amiti.org.mx/denucia.asp. Accessed October 2002.
[225] Unlike the Mexican case, in Chile there is no Chilean chapter of LES.

the mid-1990s, its membership includes business executives, members of academe, engineers, IP attorneys and government officials.[226]

LES has become an important actor in Mexico's IPR reform process by routinely organizing educational workshops and generating a series of reports for the benefit of its membership as well as specific agencies of the Mexican government. For example, Mexico's office of industrial property, IMPI, often calls upon LES to advise on matters concerning the promotion of industrial property licensing and the protection of technology transfers, such as industrial secrets and circuit board IP.[227] Additionally, LES holds bi-monthly breakfast meetings, organizes educational seminars and national conferences addressing issues such as the payments of royalties, amendments to the Industrial Property Law, generic pharmaceutical marketing, and new trends in IP.[228] IMPI representatives are often asked to participate in these educational meetings to explain the activities and services that the office provides regarding the registration and protection of IP. These meetings also provide IMPI representatives with the opportunity to hear industry concerns and criticisms of its practices and existing IP laws. It is in this exchange of information that LES has most impacted the IPR reform process in Mexico by affecting the implementation of IP policy.

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[226] Licensing Executives Society International, "History of LESI," October 2000. Available at www.lesi.org. Accessed on October 2002.

[227] LES, "LES Offers More than Networking," *Les Nouvelles* (December 1998), 1.

[228] LES, "Society Reports: LES Mexico," *Annual Report*, for the years 1996 – 2003. Available at www.lesi.org. Accessed on October 2002.

In addition to the legal profession and the technological sector, the entertainment industry has also been very much concerned with the state of IPRs in Mexico. With a membership ranging from screenwriters to ballerinas, this industry views IP protection as a vital component to the preservation and just compensation of their artistic works. In this industry, copyright infringement is considered to be analogous to robbing someone of their livelihood. As a result, a number of organizations exist in Mexico representing various sectors of the entertainment industry that have an interest in the strengthening of the nation's IP regime.[229] Yet the extent to which these organizations became active in the policy reform varies in both type and degree. For example, organizations such as the Society of Authors and Composers of Music (Sociedad de Autores y Compositores de Música – SACM) and the General Society of Mexican Writers (Sociedad General de Escritores de México – SOGEM) publicly advocated the strengthening of copyright protections yet the bulk of their activities focus on establishing licensing agreements between their members and various business sectors to ensure the payment of appropriate

[229] For example, the World Intellectual Property Organization (WIPO) lists 14 distinct organizations, within the entertainment field, involved to some degree in the IPR reform process. The primary area of concern for these groups is in copyright protection although some organizations also include the protection of marks into their IP agenda. The (WIPO) listing includes the following organizations: Sociedad de Autores y Compositores de Música, Sociedad General de Escritores de México, Sociedad Mexicana de Coreógrafos, Sociedad Mexicana de Directores, Realizadores de Cine, Radio, Televisión y Obras Audiovisuales, Sociedad Mexicana de Productores de Fonogramas, Sociedad Mexicana de Autores de las Artes Plásticas, Sociedad Mexicana de Caricaturistas, Centro Mexicano de Protección y Fomento a los Derechos de Autor, "Eje" Ejecutantes, Asociación de Intérpretes, Sociedad Mexicana de Autores de Obras Fotográficas, and Asociación Nacional de Bailarines e Intérpretes. *WIPO Guide to Intellectual Property Worldwide: Country Profiles*, available at www.wipo.org/aboutrip/en.

royalties.[230] Therefore, SACM's and SOGEM's role in the policy process is minor in comparison to other much more active domestic interest alliances within the entertainment industry such as the Mexican Association of Phonograph Producers (la Asociación Mexicana de Productores de Fonogradas – AMPROFON) and especially the National Association of (Artistic) Interpreters (Asociación Nacional de Intérpretes – ANDI).

Unlike the previously noted entertainment interest alliances, AMPROFON devotes much more attention to working with the government to eradicate piracy of artistic works. Since the early 1990s, AMPROFON has collaborated with various ministries within the federal government to improve the enforcement of Mexico's copyright laws citing that without adequate IP protection the government was allowing the destruction of Mexico's national culture and musical legacy.[231] Focusing on the illegal reproduction, distribution, and commercialization of musical recordings, AMPROFON has assisted government's efforts in stopping piracy by providing the government with information regarding illegal production facilities and distribution methods. In 1993, the organization's efforts bore fruit with the creation of the 'Intersecretarial Commission for the Protection, Vigilance, and Safeguarding of Intellectual Property' headed by future Mexican President Ernesto Zedillo. Yet ass AMPROFON acknowledged itself, the creation of the commission was motivated

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[230] Sociedad de Autores y Compositores de Música, "History," available at www.sacm.org.mx, and Sociedad General de Escritores de México, "Qué es Sogem?" and "Reformas," available at www.sogem.org.mx.

[231] Procurador General de la República, "Boletín," No. 1011 (November 2002). Available at www.pgr.gob.mx/cmsocial/bol02. Accessed on November 2002.

primarily by the government's desire to respond to criticisms made against Mexico's enforcement record by the International Intellectual Property Alliance and not solely in response to domestic demands for improved copyright enforcement.[232] Nonetheless the short lived commission (it existed for less then two years) demonstrated that collaboration between the public and private sectors was possible and gave organizations such as AMPROFON a privileged position from which to lobby the government for future reforms.

Throughout the Zedillo administration, AMPROFON enjoyed access to the executive to voice its concerns that other like minded organizations did not share. For example, in 1995 the government signed a "covenant of collaboration" with AMPROFON promising to jointly work to confront the national problem of piracy. For its part, the Mexican government vowed to increase spending on enforcement measures and AMPROFON would more aggressively investigate piracy networks and methods with the intention of sharing this information with the Attorney General's office.

This collaboration has continued into the 21st Century. Annually a workshop is held between the interest alliance and the Attorney General's office to discuss new forms of manufacturing and distributing pirated music, and the newest technological resources available for combating the problem. An important subject examined in these workshops is the growing role of criminal organizations involved piracy.

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[232] Secretaría de Hacienda y Crédito Público Unidad de Comunicación Social, "Información de Prensa 102/95." (May 22, 1995). Available at www.shcp.gob.mx/estruct/unicoms. Accessed

Additionally, in 2001, a new 'Accord of Collaboration and Mutual Assistance' was signed between the government and AMPROFON as well as SACM in which a specialized unit within the Attorney General's office was created to specialize in IP crimes.[233] In this new accord, emphasis was placed on pursuing the persecution of IP violators through the court system rather than allowing cases to fall apart as they made their way through Mexico's often slow judicial system.

Another interest alliance concerned with IP policy reform is the National Association of (Artistic) Interpreters, known by their Spanish acronym ANDI. Since the 1990s, this organization has become the most prominent domestic interest group involved in the IPR reform process. Created in 1957, ANDI is a civil society group with a membership of over 8,000 Mexican artists, affiliated with the Ibero-Latin American Federation of Artistic Interpreter and Executives. The overarching goal of ANDI is to secure the legal protection of creative works and respect for the creator's rights regarding the commercial use of their works.[234] Accordingly, ANDI has been one of the most vocal proponents of Mexican membership to international agreements governing IPRs as well as internal legislative reforms to strengthen Mexico's IP regime.

Unlike domestic interest groups in the legal and technology sectors, ANDI can capitalize on the popularity of many of its members who are entertainment stars

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December 2002.

[233] Procurador General de la República, "Boletín," No. 868 (December 18, 2001). Available at www.pgr.gob.mx/cmsocial/bol01. Accessed on October 2002.

[234] Asociación Nacional de Interpretes, "Que es la ANDI?". Available at www.andi.org.mx/bienveni/quesandi.html. Accessed on October 2002.

to acquire the attention of both the government and the media. Legislative commissions studying IP amendments enjoy advertising their relationship with ANDI to the mass media to improve their public image with the electorate. For example, before passage of the Federal Copyright Law of 1996 the lower house asked the Commission of Culture to analyze the proposed legislation. Organized by the Secretariat for Public Education, the Commission of Culture held a series of public consultative roundtables in which interested domestic groups were asked to comment and make recommendations on the proposed legislation.[235]

In the ten roundtables held between in 1995, ANDI assumed a position of leadership among the public groups. Although ANDI in large part welcomed the new legislation, they loudly criticized some aspects of the initiative that they felt failed to grant adequate copyright protection in the arenas of video, electronic media, and radio broadcasting.[236] Nonetheless, government officials routinely expressed their support of ANDI's agenda to conserve national culture and voiced their commitment to ensuring the strengthening of IP.

However, the most notable of ANDI's activities is its use of the legal system to address its concerns regarding Mexico's IP regime. In response to what ANDI perceived as weaknesses in the 1996 Federal Copyright Law, ANDI sought and was

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[235] ANDI, "Noticias de la ANDI," for the years 1997 – 2003. Available at www.andi.org.mx/noticias.

[236] Comisión de Cultura, "Actividades Legislativos: Ley Federal Del Derecho de Autor," for the years 1994-1996. Available at www.uam.mx/difusion/comcul/leyes/leyes6.html. Accessed December 2002.

granted an "amparo suit" against the legislation.[237] In the Mexican judicial system, as explained by Mark Ungar, amparo suits are a form of legal recourse against perceived illegal actions of the state.[238] In the case of the ANDI suit, the amparo suit was asked for on the basis of a defense against what the organization considered an unconstitutional law, the Federal Copyright Law. Citing the lack of protection the law granted creators of artistic works in the global economy, due in large part to the rise of new technologies that make piracy easier and faster than ever, the suit asked the Judiciary to intervene and halt the implementation of the 1996 Copyright Law. The central argument made by ANDI was that the Mexican government was not providing strong enough legal protections, as mandated in the 1917 Constitution, to creative works. Citing the importance of such works to Mexico's cultural sovereignty and heritage, ANDI challenged the 1996 law seeking more severe punishments for copyright violations. In response to ANDI's amparo suit, the federal government included a number of amendments to the law the following year.

Additionally, to address newer concerns with the existing law, ANDI routinely meets with special commissions of both houses of Congress to address IPR reform. For example, in November of 2001, the ANDI met with a Senate commission to discuss proposed changes to the existing law. Entitled "El Derecho de los Artistas en la Reforma a la Ley Autoral Mexicana", ANDI representatives expressed their discontent with the current lack of copyright enforcement. One issue

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[237] ANDI, "Ámbito Político," prepared for ANDI's General Assembly Meeting III (2002). Available at www.andi.org.mx. Accessed on December 2002.

that ANDI has been extremely critical of is the commercial use of recorded music without adequate payment of royalties to the author. Asking for reforms to articles 18, 133, 202, and 213 of the existing law, ANDI did warn that lack of action by the government may result in a subsequent amparo suit. As one ANDI member asserted, "Intellectual property is a right . . . an inherent right to liberty."[239] This central idea that IP protects the inherent rights of its creators has been the founding logic and legal justification for the activities of ANDI in the IPR reform process.

ANDI's efforts to strengthen the Mexican IP regime have not been ignored by the international community. When the World Intellectual Property Organization (WIPO), for example, meets with Mexican government officials to discuss the status of Mexico's IP regime, ANDI's leadership is often invited to join the meetings and provide their own assessment to the WIPO.[240] Accordingly, ANDI has enjoyed the respect of international and national IP professionals and has had ample opportunity to shape the course of IPR reform in Mexico.

Notably, ANDI recognizes both the benefits and costs that the new global economy provides for their membership. While acknowledging that economic globalization will result in a larger market for their works, they are also aware that advances in technology and transport have increased the level of global piracy. Accordingly, the WIPO and ANDI joined together to organize seminars concerning

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[238] Mark Ungar, *Elusive Reform: Democracy and the Rule of Law in Latin America*, (Boulder: Llynne Rienner Publishers, 2002), 153 and 241.
[239] Ivett Rangel, "Presentan Propusestas para la ANDI," *Reforma* (February 26, 2002).

IP protection. One illustration of the collaborative efforts of the WIPO and ANDI was the jointly sponsored international conference entitled "Tratados Internet" (November 2001) in which the subject of internet piracy, its affect on Mexico and ways to confront the issue were addressed.[241]

As the preceding survey of Mexican interest groups concerned with IP demonstrates, a growing number of organizations connected to either the legal, technology, or entertainment sectors have become active in the policy reform process. Yet there is not a clear link between the creation of these groups or a rise in their activities and the initiation of landmark IP legislation. Although a number of organizations, such as ANDI and the Mexican Bar Association, were created decades before the government enacted the 1991 Industrial Property Law, there is a lack of evidence indicating that their activities were instrumental to prioritizing IPR convergence for the Salinas Administration. Moreover, the majority of domestic interest alliances were formed after the initiation of the IPR reform process.

Although Mexican organizations did not play an important role in the agenda-setting stage of the policy process, they increasingly began to lobby the government for legislative amendments. Many of the interest alliances reviewed also play an active part, often in collaboration with the federal government, in improving the administration of existing legislation. Either by working to publicize existing IP

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[240] WIPO, "El Director General Recibe a Una Delegacióon de Artistas Intérpretes y Ejecutantes de México," *WIPO Updates*, December 3, 2001, available at www.wipo.int/pressroom/es/updates. Accessed on December 2002.

[241] Ibid.

regulations, or by conducting studies on the current state of IP protections, many Mexican organizations are tirelessly working on strengthening the level of IPRs in Mexico. Yet, as ANDI's amparo suit against the 1996 Copyright Law indicates, interest groups are employing novel methods to extract policy concessions when traditional lobbying techniques are unsuccessful in shaping IP policy reform. With regards to policy enforcement, improvements have been made since the rise of domestic interest alliance activity but as discussed in greater detail in the following chapter, these improvements are largely the result of the actions of external, not internal, interest alliances. Whereas domestic organizations aided the government in organizing and publicizing anti-piracy campaigns, external actors provided the Mexican government with much needed technical assistance and funding to support the enforcement stage of convergence.

The Role of Chilean Domestic Interest Alliances

Similar to the Mexican case, in Chile the majority of domestic organizations involved in the IPR reforms of the 1990s belong primarily to either the technology or entertainment industries. Yet, unlike the Mexican case, opponents to IPR reform have been slightly more open and vocal.[242] In the late 1980s Chilean pharmaceutical firms voiced their discontent at a statement made by a U.S. trade official that Chilean pharmaceutical manufactures are stealing the IP of American companies.[243] The

[242] But as discussed in greater depth in Chapter 8, notwithstanding more the existence of more open opposition to IPR reform, the Chilean government has done a better job of enforcing existing IP statutes.

[243] *Miami Herald*, "Pharmaceutical Flap" (14 March 1988), B7.

Chilean firms found support in the country's most well established business association, the Confederation of Production and Commerce (Confederación de la Producción y Comercio -- CPC). The CPC openly rebuked the U.S. trade official, arguing that domestic companies were simply complying with Chilean IP legislation. Unfortunately, there is little information about other activity of the pharmaceutical industry either to block the initiation of or to respond to Chile's landmark Industrial Property Law of 1991.

Rather, in 2004 the two largest pharmaceutical organizations, the Industrial Association of Chilean Pharmaceutical Laboratories (Laboratorios Farmacéuticos Chilenos – Asilfa) and the Chamber of the Pharmaceutical Industry of Chile (Cámara de la Industria Farmacéutica de Chile – CIF) widely publicized their joint creation of an ethics commission formed to address the issue of patent violations within their industry. In creating this commission, the CIF and Asilfa reaffirmed their 2002 commitment to the Chilean government to help Chile converge its patent protections to the global norms outlined in the WIPO and the Chilean – U.S. free trade agreement.[244] While pharmaceutical manufactures in developing countries traditionally resist pressures for IP policy convergence, it appears that in the Chilean case any opposition to the government's reforms was voiced via private channels rather than direct and open lobbying of political officials. Moreover, by the end of the beginning of the 21st Century, rather than resisting IPR reforms, industry

[244] *El Mercurio*, "Farmacéuticos Sortean Pugna con Código Ético" (22 January 2004).

members partnered with the government in meeting global patent norms and thus became active in the convergence process.

What is more, although the CPC officially issued a statement concerning IPRs in 1988, Chilean business associations do not appear to have opposed or actively involved themselves in the executive's IP legislation of the early 1990s. Analogous to the Mexican scenario, in the beginning of the Pinochet dictatorship, the executive branch controlled important policy decisions including the restructuring of Chile's economy along the neoliberal model. Characterizing the Chilean state of the 1970s as "tight, and hierarchical," Chilean scholar Eduardo Silva affirms that although the Chilean executive authored all legislation considered vital to economic development, after the economic recession of 1982-83 it increasingly sought the counsel of business organizations to assure effective policy implementation. [245] Although Chilean policymakers were highly insulated from the demands of most pressure groups, by the mid-1980s organized business had gained institutionalized access to policy-making.[246] The nature of this collaboration between organized business and the government meant that the CPC as well as the National Chamber of Commerce (Cámara Nacional de Comercio – CNC) increasingly relied on their research departments to negotiate the technical aspects of economic initiatives.

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[245] Eduardo Silva, "From Dictatorship to Democracy: The Business –State Nexus in Chile's Economic Transformation, 1975-1994," *Comparative Politics*, Vol. 28, No. 3 (April 1996).

[246] Eduardo Silva, "Organized Business, Neoliberal Economic Restructuring, and Redemocratization in Chile" in *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand (Miami: North-South Center Press, 1998), 217-252.

This alliance between business and government was possible because they both were fully committed to economic neoliberalism. With the defeat of Pinochet in 1989 and the rise to power of the Concertación administrations of Patricio Aylwin and Eduardo Frei, no great change emerged in the business-state relationship. Aylwin, employing a practice commonly referred to as 'consensus politics', affirmed his government's commitment to the existing economic program and continued to consult organized business in important economic initiatives.

In terms of IP policy convergence, one reason for a lack of a well organized, vocal opposition to the IPR reforms of the early 1990s may be that there was general agreement between the major business organizations and the executive on their desire to strengthen Chile's IP legal regime. Opposition groups, such as pharmaceutical manufactures, were likely offered little opportunity to voice their resistance to IPR convergence within such business associations. According to Chilean scholar, Eduardo Silva, the organizational structure (of limited membership) and typical function allocation of these associations limited the avenues of internal debate and conflict. Therefore, by contrast to Mexico, in Chile business associations are characterized by focused representation and narrowly defined agendas. For example, a survey of published studies produced by the CPC and CNC during this period found no major investigation of either the costs or benefits of IPR reforms to Chilean business. Moreover, neither organization created a specialized IP division or

committee.[247] Inferring from this evidence, it appears that IPR reforms were not a high priority for either business organization during the time period examined.

Notwithstanding the lack of evidence regarding lobbying or agenda-setting activities, the CNC and CPC did become active in the early 21st Century in promoting IP policy implementation. In 2001, after some of the Mexican groups began similar activities, the CNC began a campaign for the certification of legal software entitled "I play clean, I certify. Don't risk your own or your business' prestige." The CPC later joined the campaign. Its goals are twofold: to change public opinion regarding the illegal use of copyrighted software, and to certify businesses as operating within the law regarding commercial use of software.[248] The campaign has aggressively publicized its goals in the mass media by explaining how the illegal use of software is unethical, hurts consumers because of the inferior quality of pirated goods, and negatively affects Chilean economic development. Businesses are asked to participate by agreeing to investigations of their facilities and signing new licensing agreements without fear of criminal penalties. Additionally, in early 2003 the CNC participated in a panel discussion on IP and the Chilean – U.S. free trade agreement organized by the Chilean government. Both the CNC and CPC were asked to specifically comment on the IP provisions of the trade agreement to

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[247] Searchable databases of published reports can be found at www.cnc.cl and www.cpc.cl for each business association. Accessed on March 28-30, 2004.

[248] *Chiletech*, "CNC Informo Sobre Exitoso Avance en la Campaña de Certificación de Legalidad del Software" (5 July 2002). Available at www.chiletech.com. Also, "Campana de Certificación de Licenciamiento de Software", accessible at www.cnc.cl Accessed February 2003.

members of congress that same year.[249] More recently, in March 2004, the CNC co-organized a national competition entitled "Inventing Publicity" to promote commercial innovation.[250] Such an increase in activities relating to the protection of IP marked a turning point in the role of business organizations and IP policy convergence. Rather than simply supporting government actions regarding IPR reform, organizations such as the CNC and CPC are increasingly promoting adherence to existing IP legislation.

Yet organized Chilean business associations are not the sources for domestic support of IPR convergence. A number of organizations either conducted studies regarding IPR reforms, lobbied public officials, or joined with the government in promoting effective IPRs enforcement. However it should be noted that the Chilean legal sector has not been as involved in IP policy consultation, and thus the first stage of convergence, as the Mexican Bar Association. Nonetheless, the Chilean legal sector, for the most part represented by the College of Lawyers (el Colegio de Abogados) remains active in the IPR reform process by conducting a number of studies regarding the proper implementation of existing laws relating to this field.[251] Published either as articles in their well read legal journal, Magazine of the Lawyer (Revista del Abogado) or as textbooks, this organization has published extensively

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[249] *El Diario*, "Mientras Chile Logra Acuerdos, Legislación sobre Propiedad Intelectual no Prospera" (16 December 2003), B11.

[250] CNC, "CNC Lanza Concurso Publicidad Callejera," *Noticias CNC* (17 March 2004). Available at www.cnc.cl. Accessed March 2004.

[251] Survey of IP related articles conducted of the *Revista del Abogados* for the years 1997-2004. During this period, the journal published articles on IP topics such as software piracy, the prosecution of IP violations, copyright legislation, free trade agreement's impact on existing IP laws, as well as the

on an array of IP topics that public officials in IP department at times consult regarding policy enforcement. Individual members of the legal field also participate in the policy process by consulting government committees in the draft of IP legislation.[252] Although members of the legal field individually are often asked to consult the government on various aspects of pending IP legislation, there is little evidence that the profession has directly lobbied the government for specific IPR reforms.

Within the technology industry, a number of interest alliances emerged who actively tried to shape the formulation of Chile's IP regime similar in nature to AMITI in Mexico. The most active interest alliance within this sector is the Association of Chilean Distributors of Software (Asociación Chilena de Distribuidores de Software – ADS). Created in 1991, six years before the creation of Mexico's AMITI, ADS enjoys the membership of software producers and distributors. This organization's principal objective is the promotion and development of IPRs in the Chilean software industry. To achieve this goal, a wide variety of activities are conducted such as publicizing the importance of software licensing, distributing informative mailings, organizing a series of educational

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extension of patent protections on plant varieties and copyrights on the internet. Data base for these articles as well IP texts available at www.colegioabogados.cl.

[252] Colegio de Abogados de Valparaíso A.G., "Historia." Available at www.abogados-valparaíso.cl. Accessed on June-July 2003.

workshops, and actively lobbying the federal government to improve the protection of IP.[253]

In their attempts to affect IP legislation (similar to actions of various Mexican interest alliances such as AMPROFON, ANDI and SACM) ADS relies heavily on its own research to educate the public and government on the costs associated with piracy. The ADS produces an annual report documenting software piracy within Chilean private industry, academic institutions, and public institutions. They also include data regarding the costs of other forms of copyright infringement such as musical recordings, books, and movie videos. In these reports, the ADS highlights the link between better enforcement of IPRs to higher rates of foreign investment, larger government tax revenues, and economic development.[254]

The wide distribution of their research has proven very effective in gaining national publicity for the interest alliance's mission. For example, in April 2001, members of ADS were invited to present their research to the Committee on Science and Technology of the Chamber of Deputies. Thus began a three year period of serious negotiations between the ADS, CNC, other domestic interest alliances, and the government regarding strengthening current IP legislation.[255] This collaboration bore fruit when the executive sent to Congress an urgency bill entitled "The

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[253] ADS, "Quines Somos." Available at www.ads.cl/quines.htm. Accessed on June-July 2003.
[254] Ibid.
[255] Other interest alliances in attendance included the Association of Videogame Distributors (Asociación de Distribuidores de Videogramas – ADV), and the Chilean Copyright Society (Sociedad Chilena de Derechos de Autor – SCD).

Proposed Law on Anti-Piracy," which would increase the fines and penalties issued against violators of IP.[256]

The ADS is also very much involved in improving the enforcement of IPRs. The ADS has created a national call center for the public to use to report IP violations as well as inquire regarding the proper use of software. On the organization's web page a similar link is available to report violations.[257] Information gathered from both the call center and their website is used to begin preliminary investigations, conducted by ADS, of the suspected IP violators. Once sufficient evidence is gathered, the case is reported to the appropriate government authorities for further investigation and possible prosecution. To draw attention to the issue of copyright infringement, in June 2000, they embarked on a "Zero Tolerance" campaign that was highly publicized in the mass media. Highlighting the financial costs of piracy in Chile, nearly $900,000 in the years 1995-2000, the ADS emphasized the fact that piracy is robbery, and as such should be sanctioned to the same degree as other forms of theft.[258]

They also actively seek criminal prosecution against IPR violators by routinely bringing cases before the courts. Acting as the plaintiff, the ADS's own research division assists their legal representation by drawing from its database of

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[256] *El Mercurio*, "Propuesta de Nueva Ley de Propiedad Inteletual" (6 March 2004).
[257] ADS, "Campañas y Seminarios." Available at www.ads.cl/eventos.htm. Accessed on July 2003.
[258] ADS, "Presentación Preparada Por la Comisión de Ciencia y Tecnologia, 4-8-01." Available at www.ads.cl. Accessed on July 2003.

software licensing agreements to better document piracy.[259] In 1999, the ADS filed approximately 200 charges against software violators. Within the first four months of 2000, over 220 charges had already been made by the ADS.[260] This differs from the actions of ANDI in Mexico who used the courts to block the implementation of a particular law rather than use the courts to enforce existing IP laws.

Recognizing that software piracy has its roots in cultural norms, the ADS organizes seminars at secondary schools, universities, and industry association conferences to educate people on what constitutes piracy and the legal punishments of infringement. They have also joined with the CNC and its campaign for the certification of legal software by assisting businesses who are interested in legalizing their use of software. Interested business owners can contact the ADS office to schedule an audit from a consultant to examine whether any illegal software is currently being used within the firm. If any pirated software is found, a temporary one year licensing agreement can be immediately drafted by the consultant and no charges are filed against the company. Another way that the ADS is assisting the efforts of the CNC is by organizing informational workshops, at no cost to participants, to educate firms on what constitutes examples of software piracy and how to properly license software.[261] This joint collaboration is just one example of the strong links being made between domestic interest alliances to strengthen IPRs.

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[259] ADS, "Quines Somos." Available at www.ads.cl/quines.htm. Accessed on July 2003.
[260] Aguilera, Pedro F. "Piratería de software en Chile bajará al 40% en el 2005," *La Tercera* (April 22, 2000).

ADS views such collaboration as an important way to demonstrate to foreign businesses that technology transfers to Chile are safe and secure. Hence, ADS has become one of Chile's most vocal supporters of IPR convergence to global norms.

Analogous to the Mexican case, it is not only members of the technology industry who are interested in IPR reform, but also members of Chile's entertainment industry. Interest alliances supportive of IPR convergence include the previously mentioned ADV and SCD as well as the Chilean Association of Artists, Performers, and Executors (Asociación de Artistas, Interpretes, y Ejecutantes de Chile -- ASAIECH), the Chilean Society of Writers (Sociedad de Escritores de Chile – SECH) and the Chilean Association of Phonogram Producers (Asociación de Productores Fonográficos de Chile – AFOCHI). Established prior to the introduction of significant amendments to the 1990 and 1991 IP laws, each organization has long advocated the strengthening of IPRs. The method traditionally employed has been to draw media attention to their position and issue public statements in response to government IP activities, including the often widely publicized raids of producers of pirated goods. Yet, there is little evidence that the existence of these interest alliances resulted in the Chilean government's decision to prioritize IPR reform in the early 1990s.

Rather, it is not until the late 1990s and early 21st Century that evidence emerges documenting the increased role of these interest alliances in policy

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[261] ADS, "Campaña de Certificación del Licenciamiento del Software Cámara Nacional de

formation similar to that witnessed in Mexico. For example, throughout the 1999 and 2000 legislative terms, members of SCD and AFOCHI were asked by the executive to make recommendations regarding how Chile could reform its IP legal regime to meet the standards outlined by the World Trade Organization (WTO).[262] These interest alliances were also included in a WTO 'Committee of Experts' and asked to submit analyses of Chile's current level of IPRs protections. Their policy recommendations were forwarded to the appropriate government offices for consideration.

Citing the importance of copyright protection to the preservation of national culture, both interest alliances advocated Chile's convergence to global IP standards and supported the final version of the bill forwarded by the commission to a full vote by the senate.[263] Another example of the increased role of domestic actors occurred in 2002 when the SCD and SECH jointly submitted a draft bill to the Ministry of Education, amending those sections of the Intellectual Property Law relating to copyrights.[264] The recommended changes centered on increasing the penalties associated with copyright violations, including an extension of the maximum possible jail term from 3 to 5 years.

Comercio." Available at www.ads.cl/certificacion.htm. Accessed July 2003.

[262] Senado de Chile, "Inform de la Comision de Educacion, Cultura, Ciencia, y Tecnologia recaído en el proyecto de auerdo, en segundo trámite constitucional que aprueba el Tratado de la Organización Mundial de la Propiedad Intelectual sobre Derecho de Autor," *Boletín* No. 2.414-10 (July 19, 2000). Report available at www.senado.cl. Accessed September 2003.

[263] Ibid.

[264] Ministerio de Educación, "Ministra de Educación Recibió Anteproyecto para Combatir Piratería," *Noticias* (July 2002). Report available at www.minedu.cl/noticias. Accessed September 2003.

Although not as old as the other interest alliances discussed above, the SCD has quickly become one of the most active involved in the IPR reform process. Created in 1987, the SCD mission is to insure the proper licensing of audiovisual and musical recordings. The organization works to secure the proper payment of royalties to its membership by promoting adherence to copyright laws and supporting the reform of these laws.[265]

Consistent with its mission, it increasingly lobbies government officials for stronger copyright legislation. In November 2002, for example, members of the SCD met with the President of the Senate to voice their concerns regarding the lack of attention placed on copyrights relating to music recordings in the proposed Chile – U.S. Free Trade Agreement.[266] They criticized what they believed to be government favoritism towards the software industry. In affirming the need for stronger copyright protections, the SCD argued that these rights should be viewed as 'cultural rights' for both the nation as a whole and the creators of these works. After this fall meeting, the SCD continued to make its case in meetings with legislators and the Ministry of Culture. SCD's lobbying efforts proved successful when the 'Law to Promote National Music' (Ley de Formento del la Música Nacional) passed in August 2003.[267] This new law not only addresses the issue of musical reproductions

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[265] Sociedad Chilena del Derecho de Autor, "Historia." Available at www.scd.cl/historia.htm. Accessed September 2003.

[266] *Galería SCD*, "SCD Llama a los autores a estar en alerta," (10 November 2002). Available at www.musica.cl/galeriascd. Accessed September 2003.

[267] *Galería SCD*, "Fue aprobada Ley de la Música" (6 August 2003). Available at www.musica.cl/galeriascd. Accessed September 2003.

on the internet but also creates the Council on Chilean Music and allocates monies for a 'Fund to Support National Music'.

In addition to advocating for IP reforms to the Chilean government, the SCD has also become active in global forums promoting IPR convergence. The SCD has created an 'international department' responsible for representing the organization in the international arena. Members of this department meet with their counterparts from other nations in various international conferences. They also solicit the assistance of foreign IP experts to assist them in drafting policy recommendations that will be later forwarded to government officials.[268]

Yet, unlike Mexican domestic interest groups who tend to lobby the government for reforms individually and on the behalf of a particular industrial sector, in Chile an umbrella organization representing all industries supportive of IPR convergence has emerged. The Chilean Association of Industrial Property (Asociación Chilena de la Propiedad Industrial – ACHIPI), originally created as a private corporation in 1969 but converted into a public interest organization in 2000 began to actively involved itself in Chile's IPR reform process by the end of the 1990s. ACHIPI is the Chilean affiliate of the International Association for the Protection of Intellectual Property (AIPPI). Its mission is to promote the protection of and respect for IP. ACHIPI advances this mission by conducting studies on existing IP legislation, and recommending ways to improve IPR enforcement and

strengthening current regulations.[269] Workshops are organized by ACHIPI to educate its membership and public officials. They also routinely forward their reports to congressional committees considering IP amendments and the executive.

To better accomplish its goals, in late 2000, four permanent commissions were established within the organization. The Legislative Commission conducts policy analysis and drafts legislative proposals for consideration by public officials. Within the first year of being established, this commission met with members of the DPI to discuss the inconsistencies between existing legislation and those mandated within the WTO. The commission also quickly established a clear line of communication with officials within the DPI to discuss technical matters of existing IP regulations and concerns of the interest alliance. For example, in 2001, the commission met with representatives of the Ministry of the Economy to lobby for the incorporation of provisions regarding cyber-squatting in a bill amending the Industrial Property Law.[270] Also in that year, reports were distributed to the members of both houses regarding additional changes to the proposed IP amendment.[271] In 2002 the leadership of ACHIPI continued to meet with members of the Chilean Senate to discuss the appropriate regulatory changes needed for

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[268] SCD, "Departmento Internacional" and "Expertos del Mundo Visitan SCD" (November 29, 2003). Both available at www.scd.cl. Accessed November 2003.

[269] ACHIPI, "Acerca de Achipi," "Objectivos", and "Informativos y Actividades." All reports are available at www.achipi.cl. Accessed on September 2003.

[270] ACHIPI, *Informativo Achipi*, No. 1 (January 2001). Available at www.achipi.cl. Accessed on September 2003.

[271] ACHIPI, *Informativo Achipi*, No. 2 (August 2001). Available at www.achipi.cl. Accessed on September 2003.

meeting the IP standards outlined in the World Trade Organization's Trade Related Aspects on Intellectual Property Rights.[272]

Another commission created was the International Commission. Responsible for the global distribution of information regarding Chile's IP regime, members of this commission often present their studies to various international IP forums such as the WIPO. Additionally, the WIPO assists the commission's efforts in coordinating educational workshops on new international IP treaties.[273] They also routinely meet with representatives of foreign governments to discuss IP related sections of pending free trade agreements.

Although ACHIPI has quickly become one of the most active Chilean organizations advocating convergence, the bulk of its activities did not begin until the 21st Century therefore eliminating it as a causal variable for the initiation of the government's IPR reforms. The evidence also suggests that this interest alliance was not instrumental in the formulation of landmark legislation. Rather ACHIPI's role in the policy process has grown in response to the reforms enacted by the government and thus has impacted the formulation of more recent legislation. Rather, the stage in which ACHIPI plays a significant role is primarily in policy implementation.

Another point of departure between Mexican and Chilean interest alliances is that former recognize that their efforts are more effective when they join together

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[272] AIPPI, *Activity Report 2002: Chilean National Group* (February 13, 2003). Available at www.aippi.org. Accessed on September 2003.

under a larger umbrella organization to promote their mission. Witnessing how Chilean business associations used their organizations to forge policy consensus and gain access to policy formulation, pro-IPR reform organizations followed the model set in the business community. In 2001, eleven Chilean interest alliances created the National Anti-Piracy Commission (Comisión Nacional Antipiratería – Conapi) to serve as an umbrella organization from which they would advance their objective to reduce the illegal reproduction of IPR protected products. Conapi unites interest alliances from the fields of entertainment, technology and academe.[274] Unfortunately, a similar umbrella organization has not emerged to combat piracy and thus promote the last stage of policy convergence in Mexico.

Since its foundation, Conapi has lobbied the Chilean government to increase the penalties and fines for copyright infringement. To draw media attention to the issue of piracy, Conapi regularly holds press conferences in which large quantities of pirated goods are destroyed in bonfires. Conapi also makes sure to have a good number of well known celebrity members at these bonfires to ensure receiving mass media attention. At a 2002 bonfire, they destroyed over 2,400 computer programs,

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[273] ACHIPI, *Informativo Achipi.* Reports No. 1-4 (January 2001 – January 2004). All reports are available at www.achipi.cl. Accessed on September 2003 and January 2004.

[274] The eleven organizations represented by Conapi are: the Association of Software Distributors, the Association of Videogame Distributors, the Association of Chilean Printers, the Association of Phonograph Producers, the Chamber of Chilean Books, the Chilean Librarian College, the National Council on Literature and Books, the Chilean Copyright Society, the Chilean Society of Interpreters, the Chilean Society of Writers, and the Society of Literary Rights in Chile. Chiletech, "Conapi: Nace Comisión Nacional Antipiratería" (May 3, 2001). Article available at www.chiletech.cl. Accessed on September – October 2003.

70,000 musical compact disks, 1,000 digital compact disks, and over a thousand books.[275]

They also conduct seminars in academic institutions to change popular opinion regarding piracy. In these talks, they stress the negative impact the practice has on national culture while providing the consumer with an inferior product. Special attention is placed on addressing university students who commonly avoid the high price of textbooks by photocopying texts or purchasing pirated books. To further this program of changing popular opinion, in 2002 Conapi began an annual Christmas campaign. Each December they hold a press conference to urge the public not to buy pirated goods as Christmas presents. Conapi representatives remind the public that by purchasing in the black market, they are "killing Chilean art and creativity."[276] At these press conferences, Conapi also opening criticizes the government for what it perceives as weaknesses in existing laws and enforcement practices.

With regards to affecting the formation stage of the policy process, in 2002 Conapi assisted the SCD and SECH in the drafting of a bill they jointly submitted to the Ministry of Education, amending sections of the Intellectual Property Law.[277]

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[275] *Observatorio*, "Comisión Nacional Anti Piratería Destruyó Milliones de Dólares en Productos Piratas" (19 June 2002). www.observatorio.cl/noticias_ecomic. Accessed on October 2003.

[276] CNC, "Piden Mayor Control de la Autoridad: Artistas y Empresarios Advierten por Fuerte Aumento de Piratería en Período de Navidad," *Comunicados* (December 11, 2002). Article available at www.cnc.cl. Accessed on October 2003.

[277] Ministerio de Educación, "Ministra de Educación Recibió Anteproyecto para Combatir Piratería," *Noticias* (July 2002). Report available at www.minedu.cl/noticias. Accessed on October 2003.

Members of Conapi also meet with representatives of the Ministry of Education themselves to lobby for the passage of the draft bill.[278] Conapi also lobbied on behalf of the 2003 Law to Promote National Music and in June 2003 submitted to the executive a report calling for further amendments to the existing IP law. Conapi representatives continue to meet with government officials to develop measures to improve the enforcement of existing IPRs. By placing the spotlight on piracy, Conapi has made the issue one that government officials cannot ignore.

Similar to the Mexican case, this survey of pro-IPR convergence interest groups in Chile demonstrates that although a number of organizations exist who champion reform, their activities do not adequately explain the emergence of landmark IP legislation. Rather, the majority of domestic interest alliances emerged after the government embarked on the IPR reform process. However, unlike Mexican interest groups, there is more collaboration among Chilean organizations to achieve their goals. Common to many of these groups is the objective of improving the enforcement of existing legislation by working with government officials to combat the illegal production of protected products and swaying public opinion on the subject. Consequently, Mexican interest alliances are more active in assisting public officials in the implementation of IP legislation whereas Chilean organizations devote their energy on improving enforcement of existing laws.

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[278] Ministerio de Educación, "Ministerio de Educación Recibió Anteproyecto para Combatir

Conclusions Regarding The Activities of Mexican and Chilean Interest Alliances

The evidence from this last investigation suggests that the IPR reforms of the 1990s in both Mexico and Chile are largely explained using a state-centered approach to policymaking.[279] Whereas society-centered explanations focus on the role of interest groups in policy change, state-centered explanations focus on the executive and bureaucracy as policy innovators. In the latter model, interest groups are viewed as intervening but not causal variables. The empirical evidence presented below demonstrates that domestic interest alliances in both countries failed to set the agenda for the reform process. In both cases the vast majority of organizations interested in IPR convergence emerged after their respective governments introduced landmark legislation. Moreover there is insufficient evidence to suggest that those groups that did exist prior to the initiation of the reform process were pivotal in shaping governmental priorities on the subject.

In terms of policy formulation, throughout the 1990s domestic interest groups increasingly became involved in calling on the government to continue strengthening existing IP laws. By the late 1990s and early 2000s, domestic actors appeared to more openly lobby their respective governments for specific legislative amendments. As time continued, many of these same groups were also more frequently asked to consult on draft law by government IP offices and the legislature. Once again

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Pirateria" *Comunicaciones 1998-2002* (July 18, 2002). Accessed on October 2003.

[279] Eduardo Silva and Francisco Durand, "Organized Business and Politics in Latin America," *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand (Miami: North-South Center Press, 1998), 1-50.

though, domestic interest groups were only granted a larger role in the reform process after the government had already embarked on the IPR reform process and important legislation had already been institutionalized.

The arena where domestic interest alliances played a more significant role is in policy implementation. In both cases, domestic interest groups actively assisted their respective governments in effectively implementing new reforms. Assistance from interest alliances took various forms such as publicizing new legislation, running educational workshops, and collaborating with industrial property departments in the management of particular aspects of IP registration. Groups also conducted their own studies of piracy and other IP infringements to help determine more effective measures for governmental IP protections.

To close, the activities of IP interested domestic groups in Chile and Mexico do not appear to constitute a causal variable for the emergence of IPR reform efforts but they have affected the shape and effectiveness of the reform process. Notably, Mexican interest alliances are making a bigger impact on the second stage of convergence whereas in Chile the impact is centered on the final stage. Although domestic interest alliances fail to explain the first stage of the reform process, they are increasingly becoming involved in the latter stages of policy enforcement. Yet because no significant differences exist in the activities of these groups among the cases, I contend that this variable cannot account for the divergence in comparative rankings.

6.5 Conclusions

The evidence presented throughout this chapter indicates that within the past two decades, a number of domestic interest groups emerged in both Mexico and Chile that support the goal of IPR convergence. Unlike in other economic arenas in which globalization has had a direct negative effect (such as uncompetitive industries), this is one arena of economic globalization in which public opposition to it is minimal. Due to the highly technical and complex nature of IP law, and the illegal practices of those who benefit from IP violations, the IPR reform process is not subject to much vocal societal opposition.

Notwithstanding their activities, the variable of domestic interest alliances does not appear to be a necessary or sufficient variable for policy convergence in this issue-area. Although both Mexican and Chilean interest alliances became more active in promoting IPR reform, their activities occurred largely after their respective governments initiated landmark legislation indicating that this variable does not play a role in the first stage of policy convergence. Rather, domestic interest alliances did begin to affect the second and third stages of convergence but to limited degrees when compared to the activities of external interest alliances (examined in the following chapter).

The logic of collective action is clearly played out in this examination of interest alliance activities. Those groups for whom the costs are high and the size of the organization is small enough that each member directly endures the loss, such as ANDI in Mexico and ADS in Chile, mobilized and lobbied in support of strengthen IP legislation. Such activities have significantly shaped the process of IP legislation

and will continue to affect the reform process in each country as it continues in the 21st Century. By contrast, the public for whom IPR reform may result in higher prices and reduced availability have not mobilized to undermine the reform process.

Such findings also support a state-centered approach of policy development in which the executive drives the creation of important federal policy and domestic interest groups play a more secondary and supportive role. The evidence presented in the three investigations employed in this chapter demonstrates that insufficient domestic demand for IPR reform emanating from domestic private interests existed in both Mexico and Chile. Yet, the political institutional environment existing in both countries throughout the 1990s was conducive to the initiation of such policies. Notably, my findings are consistent with those of Francisco Durand and Eduardo Silva in which they found that organized business in Latin America rarely plays a significant role in policy initiation. By contrast, they found that international and state actors dominate this stage of the policy process.

In conclusion, the findings of this chapter still do not explain two key questions. Why, if domestic demand did not exist for reform to occur, did the Mexican and Chilean governments choose to begin the IP process? Additionally, if many domestic interest alliances exist in both cases that support policy convergence, why is IPR reform more successful in Chile than in Mexico? To answer these questions, the impact of external actors on IPR convergence is examined in the following chapter. In chapter 8, the impact of divided authority in policy

implementation as well as the historical evolution of state structures is analyzed to determine how institutional factors affect IPR convergence levels.

CHAPTER SEVEN

PRESSURES FROM WITHOUT: THE IMPACT OF EXTERNAL ACTORS ON INTELLECTUAL PROPERTY CONVERGENCE

7.1 Introduction

Drawing from the premise that interest coalitions can play an important role in the policy process, I now switch attention to external sources of policy reform. More specifically, the purpose of this chapter is to explain how foreign actors, in particular the U.S. government and international organizations, supported convergence in both cases. I also argue that the institutional context of international trade relations is an extremely important causal variable to convergence. This examination supplements my previous contention regarding domestic groups playing an intervening and support role to reform. Yet, as discussed in more detail below, the variable of external actors fails to explain the divergence in comparative rankings. Although strong evidence exists that international actors matter in IPR convergence, and that these actors are more active in Mexico, Chile continues to be ranked as the best protector of IP in Latin America. Explanation is still needed for the differing rankings of Mexico and Chile in comparative IP rankings.

Unlike my conclusions regarding domestic actors, the evidence in this chapter suggests that external actors play a much more significant role in each stage

of the reform process and are causal variables to IP policy convergence. While international institutions did not play a role in promoting IPR convergence, foreign non-governmental organizations (NGOs) and the U.S. government were extremely influential throughout the convergence process. These external actors were central to the initiation of landmark IP laws, the continued reform and administration of these same laws, as well as the prioritization of policy enforcement. In this chapter, I present detailed evidence to support my claim that the external actors of foreign NGOs and the U.S. government in particular are contributing variables to IPR convergence. Additionally, the institutional setting of a global economy characterized by a growth of liberal trade regimes structured the opportunities for successful external actor mobilization.

Yet, not all foreign actors are equal and some appear to be more effective then others at compelling emerging economies to prioritize IPR convergence. One of the most influential external actors in IPR convergence is the Office of the United States Trade Representative (USTR) during periods of free trade negotiations. Additionally, to improve the effectiveness of their pro-reform activities, a number of foreign NGOs recognized the power of the USTR and joined forces with it to promote convergence. Rather than simply lobbying the Mexican and Chilean governments directly, these foreign NGOs pursued IPR convergence indirectly by lobbying the U.S. government to act on their behalf and prioritize the issue in trade negotiations. The structural shift to regional trading regimes during this period of economic globalization provided a conducive international environment from which

to promote convergence. Due to the importance of informative intensive industries to the American economy, the U.S. incorporated IP protection into its trade agenda and made strong IPRs a condition of bilateral free trade accords. The USTR's strategy of linking free trade with IPR convergence proved to be an extremely effective catalyst for reform in the Mexican case and to a lesser degree the Chilean example. Yet within Latin America, the Mexican and Chilean cases are somewhat unique since each nation negotiated a bilateral trade deal with the U.S. during this period. As other emerging economies follow the example of Mexico and Chile in establishing free trade accords with the U.S., a similar pattern of IPR convergence is expected to emerge.[280]

Notably though, additional differences do surface in the degree of external activity and its causal impact on IPR convergence between the two cases under study. In terms of the level of external actor involvement (direct lobbying and providing policy administrative assistance), external interest alliances were more active in Mexico than in Chile throughout the 1990s. External actors also more frequently joined with the Mexican government in various campaigns to reduce piracy throughout the 1990s but such joint projects were rare in the Chilean case. Additionally, indirect lobbying via the U.S. government also proved extremely effective in the Mexican case but less so in Chile. This difference can be explained by the duration of the trade negotiations –in the Mexican case the U.S. government

[280] For example, the recently negotiated Central American and Panamanian trade agreements with the U.S. each include a chapter directly addressing IPR policy harmonization.

was granted a specified time limit to negotiate the agreement causing both countries to resolve differences quickly whereas for Chile the negotiations were continuously stalled by the U.S. congress for a period of over four years. These delayed negotiations undermined the effectiveness of U.S. demands for IP reform because the accord increasingly became viewed as an elusive goal by the Chilean government.[281] By contrast, Salinas' desire to get U.S. congressional approval of the North American Free Trade Agreement (NAFTA) before fast track authority expired proved to be a very powerful incentive for the Mexican government to reform its IPR regime.

Nevertheless, the strategy of promoting IPR convergence through the U.S. government during period of trade talks is a major explanation for the initiation of the legal reforms in each respective case. Consequently, the structural variable of international trade relations combined with the activities of key external actors (those involved in the formation of U.S. trade relations) explains why both Mexico and Chile initiated their respective landmark IP legislation of the early 1990s. Periods of trade talks provided external actors with new opportunities to successfully pressure

[281] Although the Chilean government was initially very enthusiastic about quickly acceding to North American Free Trade Agreement, the process was continuously delayed by President Clinton's inability to secure fast track authority to negotiate additional trade accords. Fast track authority, designed to allow the president the authority to negotiate international trade deals that would not be subject to Congressional amendment, was not granted to Clinton by many members of his own party. Notably, concerns for IP were not cited as a reason for denying fast track authority. Rather organized labor and environment groups, disappointed with the NAFTA side agreements relating to their respective causes, campaigned vigorously against fast track arguing that its use restricted the appropriate consideration of a trade accord's impact on American jobs and the environment. Opposition against fast track also emerged from some sectors of the Republican party, traditionally supportive of granting this authority, due to Clinton's decision not to concede on their demands regarding funding of international family planning programs.

the Mexican and Chilean governments, as well as petition the U.S. government to join in the IPR reform campaign.

Although the analysis in this chapter explains the first component of IPR convergence, policy initiation, and discusses the role of external actor in the second stage of IPR convergence, policy administration, it fails to explain the divergent rankings of the two cases. Therefore, although the variable of external actors is a necessary variable for policy convergence, it is not a sufficient variable. It largely explains why Mexico and Chile began reforming their respective IP regimes but it does not shed light on why Chile's reform efforts have proven more effective than those in Mexico. To resolve this paradox of why Mexico continues to rank below Chile in comparative IP rankings notwithstanding the presence of the causal variables of presidentialism and external actors, specific examination of the last stage of successful convergence, policy enforcement, is conducted in the following chapter where my analysis highlights the critical role of the judiciary to effective IPR convergence. The assessment elaborated on in the following chapter is that historical differences in the institutional development of each state's judicial branch shaped their ability to enforce IPRs and thus successfully realize the last stage of convergence, policy enforcement.

7.2: Activities of External Actors in Mexico and Chile

To analyze the extent to which Mexico's and Chile's IPR regimes was affected by the activities of foreign actors, I examine the specific activities of a number of external interest alliances. Within many of these interest alliances exist

foreign private actors whose business activities are information intensive (versus the capital intensive forms of traditional industrial production) and therefore promote IPR convergence because it protects their commercial investments. They place pressure on states by demonstrating how they privilege those economies with secure IPRs in foreign investment decisions. Therefore, reform is promoted when external actors begin to lobby, either alone or in a coalition, for convergence. External actors may also provide domestic interest alliances with additional resources with which to lobby governments for particular reforms as well as providing new rewards for policy compliance.

Accordingly, in this chapter examination of the methods employed by a number of external actors to either publicize the issue of IP reform, lobby the Mexican and Chilean governments, and/or support reform efforts is conducted to assess their individual impact on IP policy convergence. Four groupings of external actors are examined to assess their particular effect on IPR convergence: foreign NGOs, international institutions, foreign nation-states, and international trade regimes. Although each grouping is not entirely distinct (for example states can use international institutions and trade regimes as arenas to pursue their interests) each grouping deserves to be examined in terms of their particular role in IPR convergence. Within each grouping, the case studies are jointly examined due to the uniformity of external actors involved in the IP reform process. Employing the analytical tool of historical process tracing, attention is placed on how and when the

Mexican and Chilean governments reacted to the actions of the external actors promoting convergence.

A. External Non-Governmental Organizations

Within the past two decades, a number of external non-governmental organizations (NGOs) became active in promoting IPR reform both globally and within the two case-studies. In the following discussion, I focus my attention on those organizations that have been intimately involved in lobbying the Mexican and Chilean governments.[282] There are a number of foreign NGOs representing IP-related industries (such as entertainment and computer software) that focus their attention on popularizing the importance of IPR reform and educating practioners in how to administer IP legislation. Two in particular targeted Mexico and Chile in their global activities, the Global Alliance for eCommerce Law and the International Association for the Protection of Intellectual Property (AIPPI). Each has met with moderate success but neither appears to prove causal to the first stage of policy convergence. Rather, external NGOs should be viewed as intervening variables that employ the U.S. government to advance their IPR reform agendas. For example, the Global Alliance has lobbied IMPI to consider expanding existing IP legislation to include provisions that grant protection to internet commerce. However, the bulk of their activities center on educating private and public IP practioners on the extent to which existing legislation protects internet commerce.

AIPPI has also lobbied both governments to reform its IPR regime to converge to global norms. Established in 1897, its mission is to improve and promote the protection of IP globally.[283] It conducts studies of existing national IP laws and then proposes measures on how such laws can be harmonized to international norms. According to a fellow IP practioner, AIPPI lobbied Mexican public officials throughout the 1990s to amend existing IPRs and improve their enforcement.[284] This explicit desire to promote IPR convergence is further promoted by AIPPI's educational activities conducted in the organization's annual Congress and Forum meetings in which a number of Mexican and Chilean nationals attend.

In regards to specific AIPPI targeting Chile, the bulk of this NGO's activities are conducted by their national chapter, ACHIPI. As discussed in the previous chapter reviewing the activities of domestic groups, the Chilean affiliate of AIPPI routinely meets with officials of Chile's Department of Industrial Property to discuss draft legislation and enforcement problems. Additionally, Chilean members of AIPPI participated in numerous conferences sponsored by the WIPO as well as seminars focusing on potential Chilean membership to various global IP treaties.[285] The existing evidence suggest that while the activities of AIPPI support convergence in both cases, alone they are not a causal variable to convergence. However, this

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[282] I am indebted to Jorge Amigo Castañeda, General Director of IMPI, for his assistance in identifying the external actors involved in Mexico's IPR reform process.

[283] International Association for the Protection of Intellectual Property, "AIPPI – Aims and Purposes," available at www.aippi.org/aims/html. Accessed on September 2002.

[284] Jaime Delgado, General Director of the Mexican Institute of Industrial Property, interview by the author, electronic correspondence, September 20, 2002.

group has made a greater impact on the second stage of convergence, policy implementation, by providing training and draft legislation assistance to the Mexican and Chilean governments.

As previously noted, the degree to which foreign NGOs affected IPR reform is not uniform. Rather, some NGOs more actively and persistently targeted the Mexican and Chilean government than others. The American Intellectual Property Law Association (AIPLA) is one such organization that has promoted its agenda of IPR protection to these two governments primarily through education and direct lobbying of IP public and private practioners. This organization concentrates its activities in securing the last stage of convergence, policy enforcement. Established in 1897, AIPLA is a 13,000 member national bar association representing the interests of both owners and users of IP.[286] AIPLA's international activities focus primarily on its campaign to reduce the costs of procurement and enforcement of patents. To this end, AIPLA has become a regular participant in regional meeting while also lobbying national IP officials in issues relating to IP protection.

With regards to specific activity pertaining to Mexico and Chile, AIPLA has established an "IP Practice in Latin America" committee to oversee activities in the region. This committee organizes quarterly meetings to unite members and interested government officials interested in IPR reform. The goals of the IP Practice in Latin

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[285] AIPPI, *Activity Report 2002: Chilean National Group* (February 13, 2003). Report available at www.aippi.org. Accessed on November 2003.

[286] AIPLA, "Learn about AIPLA," available at www.aipla.org/html/learn.html. Accessed on August 2002.

America Committee (ASIPI) include education, advocacy, membership growth and services. In these meetings, Mexican and Chilean representatives are actively involved in creating national reports of IP legislation and discussing enforcement problems.[287] Specific lobbying activities have included the writing up of reports and news briefs on national legislation as well as administrative and judicial issues relating to IPR protection. The reports are distributed to both government officials associated in some degree to IPR protection as well as the media to draw attention to the importance of IP reform and enforcement.[288] Case in point, in 2003 the Mexican affiliate of AIPLA hosted a meeting specifically addressing the issue of enforcement. Once again, this external organization does not appear to be a causal variable to IPR convergence in either case although their activities support the successful completion of the last stage of the reform process, policy enforcement. Although the AIPLA is active in both cases, in the 21st Century their efforts have concentrated more on Mexican enforcement of IPRs due to its higher rates of piracy than Chile.

Another foreign NGO that has become very involved in promoting IP reform is the National Law Center for Inter-American Free Trade (NLCIFT). Founded in 1992, its mission is to promote the creation of the "legal infrastructure necessary to facilitate the movement of goods, services, and investment capital in the Western

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[287] Luis-Alfonso Duran, "Report on the First Ibero-American Forum on Innovation, Industrial and Intellectual Property and Development: Madrid, March 29-31, 2000." Report available at www.aipla.org/reports. Accessed on August 2002.

[288] AIPLA, "Committee Reports: IP Practice in Latin America," last updated February 2002, available at www.aipla.org/committees/reports/iplatin.htm.

Hemisphere".[289] To achieve this, it conducts comparative legal studies to identify and propose solutions to legal obstacles to free trade. Important to the issue of IPR convergence, one of the legal obstacles specifically examined by NLCIFT is the lack of IPR protection throughout the region.

In March 1995, NLCIFT publicly declared that the enforcement of IPR in Mexico would become one of two major issues the organization would focus on during the upcoming years. Accordingly, studies were produced relating to Mexican IPR enforcement with a special emphasis on computer software.[290] At the end of that same year a disparity study was drafted of existing Mexican protection of layout designs of integrated circuits and NAFTA regulations on this form of IP. The study was then sent to IMPI and a number of government ministries to promote the creation of a new IP law.

The organization also created the tri-national "Intellectual Property Project" that regularly brings together Mexican IP experts and government officials to discuss IP piracy. Importantly, representatives of the U.S. Patents and Trademarks Office (PTO) and their Mexican counterparts use these meetings as a forum to discuss possible legislative reforms. Draft recommendations are then circulated to officials of their respective governments.[291]

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[289] NLCIFT. "What is NLCIFT?" Report available at www.natlaw.com/nlcift.htm. Accessed on August 2002.
[290] NLCIFT, *Novedades* 3, no. 4 (April 1995). Accessed on August 2002.
[291] NLCIFT, *Novedades* 3, no. 5 (May 1996). Accessed on August 2002.

According to the current Director General of IMPI, Jorge Amigo Castańeda, the National Law Center has been a very important player in the modernization of Mexico's IP regime.[292] The Mexican government has turned to the center for assistance in drafting its own legislation to comply with regional trade agreements. In the spring of 1996, Mexico asked NLCIFT to provide suggestions for a semiconductor chip protection law.[293] Unlike other organizations, government officials who directly create and administer IP law regularly attend their annual meetings. Likewise, NLCIFT members routinely travel to Mexico to meet with attorneys, IMPI, Mexican Customs officials, federal police, and the Attorney Generals' Office to discuss ways to improve IPR enforcement.[294] This provides NLCIFT with a considerable amount of leverage in promoting its interests and thus directly affecting IPR reform.

With regards to NLCIFT activities in Chile, this NGO has primarily focused its attention on expanding trade between the U.S. and Mexico rather than promoting or assessing IPR convergence. Although a number of studies have been produced that assess the merits and pitfalls of establishing bilateral and hemispheric trade agreements, the issue of IP has not been substantively addressed in any of these publications. Moreover, NLCIFT has not directly lobbied for IP reforms or worked with Chilean officials to improve IPR enforcement as it has in Mexico. The bulk of its IP activities focused on Mexico and has yet to expand to other countries in the

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[292] NLCIFT, *Novedades* 4, no.5 (May 1997). Accessed on August 2002.
[293] NLCIFT, *Novedades* 3, no. 6 (June 1996). Accessed on August 2002.

hemisphere. Therefore, there is a lack of evidence demonstrating that NLCIFT has impacted Chile's convergence process. Moreover, the evidence indicates that Mexico has been greater impacted by foreign NGOs than Chile.

Another foreign NGO actively involved in lobbying governments to enact IPR reforms is the International Intellectual Property Alliance (IIPA). IIPA has supported convergence efforts in both cases and as discussed below their activities partially do explain the emergence of IPR convergence. Unlike the NGOs mentioned above, IIPA successfully employs the USTR to advance their agenda and thus support the first stage of convergence. Formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral forums, IIPA represents six very important U.S. trade associations: the motion picture, recording, music, business software entertainment software and book publishing industries. IIPA's mission is to improve the international protection of copyrights materials and thus deter piracy.[295]

Activities of the IIPA fall under three general categories: production of IP studies, participation in international IP regimes, and direct and indirect lobbying. IIPA routinely publishes a study documenting the costs of piracy. This report often receives a good deal of global media attention serving to not only highlight the

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[294] NLCIFT, *Novedades* 8, no. 4 (December 2001). Accessed on August 2002.
[295] IIPA, "Descriptions of the IIPA" (January 2002). Report available at www.iipa.com. Accessed on August 2002.

problem but also embarrass the countries discussed in the report.[296] Moreover, the IIPA has also been involved in the development and implementation of the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the IP chapter of NAFTA.[297] This NGO is also a regular participant in regional and global IP conferences making it one of the most well-known and active NGOs in the field.

As noted above, IIPA also routinely lobbies the U.S. government and asks them to stipulate IPR reforms in their trade relations. IIPA research reports are often used by the U.S. government to document the costs of global piracy on various American industries. Accordingly, since its creation, IIPA has worked closely with the USTR in its annual "Special 301" reviews. These reviews investigate whether acts, policies or practices of any foreign country deny adequate and effective protection of IPRs. Listed countries are threatened with trade injunctions if IP reform is not forthcoming. The USTR annually requests public comments documenting how industries are hurt by lax IP regulations in foreign countries. When deciding which countries to place on the Special 301 listing, the USTR heavily relies on these public comments to determine which countries to target. The IIPA routinely submits its own recommendations as a "public comment" to the USTR. As will be discussed in further detail in the section examining trade regimes, this indirect form of lobbying has proven to be extremely useful in promoting IPR

[296] IIPA, "IIPA Milestones" (July 2002). Report available at www.iipa.com/iipamilestones/html. Accessed on August 2002.

convergence in both Mexico and Chile. In both cases, members of the U.S. Congress openly solicited the counsel of the IIPA in deciding whether each nation's IP regime posed an obstacle to establishing a beneficial free trade agreement. Although critical of the level of IPR protections existing in both Mexico and Chile, the IIPA still supported the proposed free trade agreements (NAFTA and the Chilean FTA) arguing that both accords would go a long way to helping them achieve IPR convergence.

Mexico has not been excluded from the careful eye of the IIPA. It first recommended Mexico for placement on the Special 301 report in 1989. Since then Mexico has routinely been signaled out by the IIPA as being in violation of the IP provisions incorporated in NAFTA. In its reports, estimated losses due to piracy in Mexico ranged from $285 million to approximately $470 million a year. The IIPA also highlights the poor enforcement of IP laws in Mexico. For example, the IIPA continuously has noted in the past few years that the budget cuts faced by the attorney generals' office have led to its informal IP unit losing 80% of its personnel.

However, IIPA does not solely focus on police enforcement of IP protections but also problems existing in the judiciary that undermine the reform process. For example, according to IIPA the percentage of actual convictions for piracy relative to the number of raids is a mere 1.3%. To address this fact, in 1996 IIPA published a report entitled "Ten Point Emergency Action Plan" that outlines ways to improve

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[297] IIPA, "Descriptions of the IIPA," www.iipa.com (January 2002). Accessed on August 2002.

enforcement. The report later served as an important reference text for bilateral discussions in 1997 between the U.S. and Mexico covering trade and IP issues.[298]

IIPA also has directly lobbied the Mexican government for IP reforms. Primarily focusing their efforts on the Executive, IIPA has sent copies of their reports to the president's office as well as relevant government agencies such as IMPI, INDA, and the Secretary of Commerce.[299] This past March, IIPA presented the Fox and Bush administrations with a request for high-level bilateral negotiations to discuss the continuation of piracy in Mexico.[300] Moreover, in the spring of this year, the IIPA continued to publicly support the USTR's efforts to press Mexico for further IPR reforms. Mexico's placement by the USTR as a country warranting an "out-of-cycle review" to asses the degree to which Mexico has fulfilled its promises to reduce piracy was lauded by the IIPA as an overdue exercise.[301]

Chile has also not avoided the ever vigilant eye of the IIPA. Since the late 1990s, they have submitted testimony to the USTR advocating Chilean inclusion in the Special 301 Report. Noting that Chile is an important market for the copyright industries represented by IIPA, they provide the U.S. government with very detailed information regarding the annual financial losses to American industry due to piracy

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[298] Ibid. 2.
[299] Ibid, 3.
[300] IIPA, "Request for High-Level Bilateral Engagement on Copyright Piracy and Enforcement Problems in Mexico" (6 March 2002). Report available at www.iipa.com. Accessed August 2002.
[301] IIPA, "What's New." Report available at www.iipa.com. Accessed Septemer 2002.

in Chile.[302] This data are often later cited in USTR Reports to illustrate the importance of global IPR convergence to the future of the American economy.

In addition to documenting piracy losses, the IIPA provides the USTR with detailed reports of enforcement problems and suggests possible actions for Chilean authorities to take to address these issues. At times, IIPA representatives are asked by the Chilean government to comment on proposed IP draft legislation. In mid-2001, for example, IIPA reviewed a copy of the then latest version of a bill that would update existing Chilean copyright law to make it comply with TRIPS. In this review, the IIPA found that numerous areas that failed to meet TRIPS standards. The organization's findings were reported back to the Chilean government and consultations were held to discuss ways to improve the draft.[303]

The IIPA has also played a very prominent role in the U.S. – Chile FTA negotiations. Representing one of America's fast growing sectors in the economy, the IIPA routinely is asked to submit testimony to the USTR and Congressional hearings relating to the trade accord. In 2000, the office of the Trade Representatives made a request for public comments on the proposed agreement. During the period of trade negotiations, the IIPA submitted numerous public comments regarding the FTA IPR negotiations.[304] Early on, they argued for various provisions to be included

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[302] IIPA, "Special 301 Report" for the years 1998-2004. Reports available at www.iipa.com/countryreports/html. Accessed on February 2004.

[303] IIPA, "Special 301 Report: 2002." Accessed on February 2004.

[304] IIPA, "Public Comments on the Proposed U.S. – Chile Free Trade Agreement" dated 29 January 2001; 12 December 2001; 5 November 2002; and 8 May 2003. All reports available at www.iipa.com/countryreports/html. Accessed on February 2004.

in the IPR chapter of the FTA such as its provisions being stronger and more comprehensive than those stipulated in NAFTA as well as TRIPS. For example, they asked that the Chilean accord include modern provisions pertaining to digital and Internet piracy. As the IIPA is well versed in doing, in their public comments they list specific copyright conditions and language that they want incorporated into the agreement as well as remedies for piracy. In November 2002, merely a month before negotiations closed, the IIPA issued a scathing report critical of the Chilean proposal on copyrights that was being considered for inclusion in the IP chapter. They called for the rejection of the proposal and ask that much more progress be made in the FTA IPR Negotiating Group before a final draft is submitted for congressional approval.[305] Their concerns were conveyed to the Chilean government and within a few months, a new Chilean proposal was submitted that adopted a number of the IIPA's suggestions. By May 2003, they publicly endorsed the IP chapter of the proposed accord and became active promoters of its early approval in Capital Hill. The evidence from both cases indicate that unlike other foreign NGOs who directly lobby the Mexican and Chilean governments, IIPA's activities are more effective in promoting convergence because they also lobby the U.S. government to work on their behalf. In both cases, this indirect form of lobbying supports the first stage of convergence while their other activities support policy enforcement.

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[305] IIPA, "The IIPA Presidents' Letter to USTR Robert Zoellick about the Reported Inadequacy of Chile's Recent FTA Proposals Affecting Copyright and Enforcement as well as Services and E-Commerce," (5 November 2002). Available at www.iipa.com/countryreports/html. Accessed on February 2004.

The last foreign NGO that I review is one of the most active and vocal proponent of global IPR convergence, the Business Software Alliance (BSA). Similar to the IIPA, BSA publishes studies regarding IPR protection in Mexico and Chile but unlike other NGOs, BSA's research directly pertains to software piracy. They are involved in lobbying governments, both directly and indirectly, to promote their interests. BSA is a U.S. based NGO that is dedicated to promoting "a safe and legal online world."[306] Founded in 1988, BSA has programs in 65 countries including Mexico and Chile.

Importantly, through the IIPA and on its own, BSA regularly submits recommendations to the USTR's "Special 301 Report". Similar to the IIPA, BSA often recommends that both Mexico and Chile be placed under one of the USTR's watch lists due to the rates of software piracy occurring in each state respectively. In reference to Mexico's and Chile's progress on IP protection, BSA studies are routinely cited by the USTR as justification for pressuring each country for improved IPR enforcement. Therefore, BSA shares with IIPA a more causal impact on both nations initiation of IPR convergence because both organizations shaped the direction of U.S. trade negotiations.

With specific reference to Mexico, BSA often targets Mexico's customs office as an area in need of serious reform. According to BSA studies, counterfeit software enters Mexico from Hong Kong and other areas of China. Not only are the

[306] Business Software Alliance, "About BSA." Report available at www.bsa.org. Accessed

pirated goods illegally sold in Mexico but they are also transported across the border into the U.S. To address this problem BSA began to conduct training seminars for PGR agents, technical experts, customs personnel and IMPI inspectors to improve the quality of enforcement. It has also begun to organize seminars for Mexican judges to better inform them of IP law and prosecution procedures. BSA strongly believes that education and training are important elements of the reform process and are increasingly putting their resources towards these ends.

In the case of Chile, BSA has begun a campaign to combat software piracy. It has created a toll free 'piracy hotline' to report instances of illegal software use, production and distribution. Furthermore, the Chilean BSA office also distributes information regarding what constitutes software piracy and the disadvantages of using illegal programs to industry, public officials and educational institutions.[307] Not only has BSA focused on publicizing the issue of piracy in Chile but it also is active in presenting cases of infringement to the Chilean court. BSA routinely requests inspections of suspected piracy production and distribution centers, and then acts as plaintiff in court cases relating to the inspection. In 2000, for example, BSA brought thirteen and in 2002 twenty-four civil cases of copyright infringement to the courts.[308] The evidence concerning BSA suggests that it not only promoted the

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October 2002.

[307] BSA Latin America, "La Piratería de Programas de Computación y la Ley" available at www.global.bsa.org.latinamerica-spanish/antipiracy/chile.phtml. Accessed on February 2004.

[308] IIPA, " Special 301 Report: Chile" for the years 2001 - 2003 available at www.iipa.org. Accessed on February 2004.

initiation of reform indirectly but that its activities support enforcement in both cases.

In conclusion, the evidence from this section examining the role of foreign NGOs demonstrates that a growing number of private, external interest alliances are increasingly active in promoting IPR convergence. Whether producing informative reports, organizing workshops to improve policy administration and enforcement, or directly lobbying for specific legislative provisions, private interest alliances played a productive role in advancing IPR convergence, especially in the case of Mexico. When these organizations joined with domestic interest alliances, they were able to provide valuable resources (such as professional training, lobbying experience and consultations on draft bills) to more effectively advance the IP reform project.

The one method most effectively used by a few of the foreign NGOs reviewed in this section is the use of indirect lobbying via the U.S. government. The IIPA and BSA routinely submit to the USTR Special 301 recommendations that not only provide the trade representative with specific data on the costs of IP violations on American industries but they act as researchers for this public office when considering whom to list and what issues to prioritize. As discussed below in the sections entitled 'foreign nation-states' and 'international trade regimes' foreign NGOs have effectively capitalized on the USTR's call for societal recommendations for its Special 301 Reports and the need for congressional approval of American trade agreements to push for IPR convergence in Mexico and to a lesser degree Chile throughout the period under study.

Interestingly, as noted in this discussion, it appears that overall foreign NGOs have been more active in Mexico than Chile. Organizations such as NCLIFT and AIPLA collaborated with Mexican officials on a more frequent and extensive basis. This would suggest that Mexico should be a better protector of IP but according to various scholars the opposite is true. Therefore, the activities of foreign NGOs fail to explain the divergence in ranking among the two nations and further investigation is needed. Accordingly, in the following section I examine the activities of international institutions to discern how they affect IP convergence and if their activities can explain the divergence in rankings.

B. International Institutions

Within the past decade there has been renewed interest among international institutions in reforming the judicial systems of developing nations. Commonly referred to as the "rule of law revival" Thomas Carothers observes that external "assistance in this field has mushroomed in recent years, becoming a major category of international aid."[309] Yet unlike foreign NGOs, international institutions have not actively promoted IPR reform in either Mexico or Chile. The one exception to this pattern is the United Nations's specialized agency, the World Intellectual Property Organization (WIPO). Therefore, with the exception of the WIPO, international institutions do not appear to support IPR convergence in either stage of the reform process. By contrast, the WIPO has supported reform in both cases but as the evidence illustrates their activities supported the second and third stages of

convergence. Although WIPO activities promote policy implementation and enforcement in both cases, there is no evidence to suggest that it made a significant impact on the each government's decision to embark on IPR convergence.

Notably, many international institutions have begun to highlight the issue of IPR convergence. Institutions such as the World Bank, the Inter-American Development Bank (IDB) and the OAS recently acknowledged that such reform is needed in the region to promote economic growth. The OAS notes that IPR reform is an important issue for the region but it prefers to address the issue in the forum of the Free Trade Area for the Americas (FTAA) initiative. Additionally, beginning in April 2001 the IDB publicly announced that it supported the strengthening of IPR when it included IPR reform into the Sustainable Development Department's "Science and Technology for Development" strategy.[310] But with only a few years in practice, the IDB has yet to fund a project specifically addressing IP. Past projects addressing pharmaceuticals included an IP component but Mexico and Chile were not members of any of these projects. Hence, this institution does not appear to have supported IPR convergence in either of my cases.

Another institution that has not promoted IPR strengthening in either Mexico or Chile although is has become the leading external actor in the current rule of law

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[309] Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs* 77, 2 (1998).

[310] Castro, Claudio de Moura, Laurence Wolff, and John Alic, "Science and Technology; an IDB Strategy" *Inter-American Development Bank's Sustainable Development Department Sector Strategy and Policy Papers Series*, publication number EDU-117 (April 2001). See also Antonio Giuffrida's "Learning from the Experience: The Inter-American Development Bank and Pharmaceuticals" for IDB projects that did address IP reform in the pharmaceutical sector. Also available via the IDB, publication number SOC-123, May 2001.

movement is the World Bank.[311] Unlike many other external actors involved in the movement, the Bank judicial reform efforts can only assist judicial reform efforts that are relevant to the host country's economic development and thus ensure the success of the Bank's overall lending objectives.[312] These limitations, notwithstanding, the Bank has established a series of judicial programs throughout the Americas that promote the "creation of a predictable and secure environment for people to engage in production, trade and investment."[313] IP reform fits in well with this goal but to date Mexico has not received much assistance by the Bank in either reforming its judicial system or IPR regime.[314] Chile has received World Bank monies for three projects concerning the rule of law but none these projects explicitly addressed the issue of IPRs. Thus, similar to the IDB, it is evident that the World Bank has not played a role in IPR convergence in either Mexico or Chile.

Rather the one international institution that has actively supported IPR reforms both globally and specifically in both Mexico and Chile is the WIPO. As a specialized agency of the UN, the WIPO is an international organization dedicated to ensuring that the rights of creators and owners of property are protected worldwide. To accomplish its mission, the WIPO develops international norms by crafting IP

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[311] For an extremely comprehensive and informative review of the goals and components of the World Bank's judicial reform efforts in Latin America and the Caribbean see Maria Dakolias' *The Judicial Sector in Latin America and the Caribbean: Elements of Reform,* World Bank Technical Paper Number 319 (Washington DC: World Bank, 1996).

[312] Though it should be noted that the Bank often has a 'generous' view of what is relevant to economic development.

[313] Maria Dakolias, *The Judicial Sector,*2.

[314] The relationship between the World Bank and Mexico is discussed in-depth in another study conducted by this author entitled "Unlikely Alliances: The Politics of Judicial Reform in

treaties such as the 1996 WIPO Copyright Treaty (WCT).[315] The WIPO encourages all membership to sign on to such treaties and deposit their instruments of ratification or accession. The WIPO also provides international registration of patents, trademarks, and industrial designs to ensure that the filing will have effect in any of the relevant signatory states. Yet, membership to an international IP agreement does not ensure compliance. Rather, membership usually denotes a government's intention to comply the stated standards and regulations but there is rarely an effective enforcement or punishment mechanism in place to guarantee compliance. Therefore, membership in these treaties does not automatically achieve convergence although it can be viewed as indicative of a nation's promise to prioritize convergence. This difference between intention and treaty fulfillment may be one explanation for Mexico being a member of more IP treaties than the case of successful convergence, Chile. As of January 2004**,** Mexico and Chile were officially listed by the WIPO as members of the international IP bodies listed below. [See Table 7.1]

Contemporary Mexico" prepared for the XXII Annual Latin American Studies Conference, Washington D.C., September 6-8, 2001.

Table 7.1: World Intellectual Property Organization Administered Treaties

Treaty	Mexico Membership	Chilean Membership
WIPO	X	X
Paris Union	X	X
Berne Union	X	X
Nice Union	X	
Lisbon Union	X	
Locarno Union	X	
Patent Cooperation Treaty Union	X	
IPC Union	X	
Budapest Union	X	
Rome Convention	X	
WIPO Copyright Treaty	X	X
WIPO Performance and Phonograms Treaty	X	X

Source: World Intellectual Property Organization

In addition to overseeing the treaties above, the WIPO promotes IPR reform in Mexico and Chile through its Worldwide Academy to train individuals in both the public and private realms. The academy not only educates its students on new international norms but it also assists governments on how to converge their IP laws and administration to global norms. Mexican and Chilean public officials and private citizens participated in this the academy and its long distance learning center. Another way that the WIPO has affected IP reform is through the many conferences its produces and its active promotion of NGOs to participate in these conferences. Organized by the WIPO's Cooperation for Development Bureau for Latin America

[315] World Intellectual Property Organization, "General Information." Report available at www.wipo.org. Accessed on October 2002.

and the Caribbean, a number of educational programs and regional meetings have been held in which both Mexico and Chile routinely are participants.[316] In these regional meetings policy related issues such as enforcement are discussed as well as how to modernize and promote the use of the IP system. For example, Mexican officials have become active participants in the newly formed "Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore" and its related meetings.

Not only are Mexico and Chile involved with WIPO conferences but a few of their domestic organizations have also attended WIPO events. In September 2002, the WIPO began to admit national NGOs as permanent observers to the Organization. Notably, a Mexican NGO was one of the four organizations admitted to the WIPO with this status. This new position enables the NGO (the National Association of Interpreters, ANDI) to fully participate in all substantive WIPO discussions. The education of both public and private IP practioners will only serve to strengthen Mexico's and Chile's respective IP regimes.

Another important way the WIPO supports IPR reform is through its Nationally-Focused Action Plans (NFAPs) that prepare tailor-made assistance plans covering a one to three year time period. Mexico's INDA became a participant in the

[316] For a comprehensive listing of the various seminars, workshops, and conferences sponsored by the WIPO at which either Mexican or Chilean representatives attended, see the WIPOs annual "Legal and Technical Assistance to Developing Countries: Activities Report" for various years. Reports available at www.wipo.int/documents. Accessed October 2002 and February 2004.

WIPO's NFAP program in the late 1990s.[317] A NFAP was created to assist INDA modernize the technical and administrative infrastructure of the institute. Training of personnel and promotion assistance was also given to INDA under this program.

The WIPO also provides assistance to states in the creation of IP draft legislation. It greatly assisted Mexico when it drafted its 1991 Industrial Property Law. According to IMPI's General Director, the WIPO produced a comparative study of industrial property laws for Mexico's executive. It also provided specific advice regarding particular provisions that should be included in the Mexican bill.[318] Assistance was also granted in 1996 when the WIPO organized a diplomatic conference at the request of the Mexican government. The purpose of the conference was to discuss questions regarding copyright legal reform.[319] In February 2000, cooperation agreements were signed between the WIPO, Mexico's Minister for Trade and Industry, and IMPI.[320] These agreements outlined the framework for future WIPO assistance to Mexico in the strengthening of its legal framework, human resources training, and strategic planning.

In the case of additional involvement in Chile, their department of industrial property also collaborated with WIPO officials in assessing the state of its IP regime,

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[317] World Intellectual Property Organization, "Director General Pledges WIPO Support to Mexico" (25 February 2000). Report available at www.wipo.int/pressroom/en/updates/2000.

[318] Jorge Amigo Castañeda, General Director of the Mexican Institute of Industrial Property, interview by the author, electronic correspondence, 4 October 2002.

[319] WIPO, "Conferencia Diplomatica sobre Ciertas Cuestiones de Derecho de Autor y Derechos Conexos" (11 December 1996). Available at www.wipo.int/spa/diplconf/disrib/msword/42dc.doc.

[320] WIPO, "Director General Pledges WIPO Support to Mexico" (25 February 2000). Report available at www.wipo.int/pressroom/en/updates/2000.

legislative reforms and enforcement methods. Representatives of the WIPO provided the Chilean government with valuable assistance in the drafting of legislation that would amend its existing laws to comply with Chile's international commitments. Additionally, in September 2003, for example, the WIPO organized a series of national seminars focusing specifically on IPR enforcement with members of the judiciary and customs officials.[321]

As the evidence above indicates, international institutions such as the World Bank and the Inter-American Development Bank have not involved themselves the IP reform process of either case under study. Rather the international institution that has become active in promoting IPR convergence is the one created specifically for this purpose, the WIPO. Mandated to oversee the management of international IP treaties, the major instruments used by the WIPO to promote convergence are draft legislation consultations and the hosting of various educational meetings. WIPO-sponsored seminars and conferences provide Mexican and Chilean participants with valuable information and training on global IP norms, policy administration and IPRs enforcement. Even though the other two institutions examined are beginning to address broader legal and judicial issues, to date the only institution to promote IPR convergence within this groups of external actors remains the WIPO.

Similar to the role that external NGOs played in both nation's IPR reform process, the WIPO appears to be an intervening variable to convergence. Notably,

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[321] WIPO, "Enforcement-Related Activities by Different Sectors of WIPO from May to December

the activities of international institutions do not explain the divergence in rankings among Mexico and Chile. However, as discussed in detail below, the most important causal actor to convergence is the U.S. government during period of trade negotiations.

C. Foreign Nation-States

With regards to nations who promote IPR convergence, one in particular is at the forefront of this campaign: the U.S. Because it enjoys the position of being a world leader in advanced technologies, the U.S. government has a vested interest in the promotion of its IPR position in the world market. Moreover, powerful U.S. industries in the fields of software, entertainment and pharmaceuticals routinely petition their government to combat global piracy of their products. According to one study, U.S. businesses lose approximately $80 billion annually to piracy of IP in foreign markets. As a result, American businesses lose almost one dollar for every three dollars of revenue gained from exported products.[322] Accordingly, in this section the analysis focuses exclusively on the U.S. and the strategies it employs to promote IPR convergence. The evidence presented below demonstrates the causal role that the U.S. played in the initiation of IPR convergence in both cases but once again it does not explain the divergent rankings.

2003". Report available at www.wipo.int/enforcement/en/activities. Accessed on January 2004.

[322] Edgardo Buscaglia and Clarisa Long, "U.S. Foreign Policy and Intellectual Property Rights in Latin America," *Essays on Public Policy of the Hoover Institution on War, Revolution and Peace: Number 77.* (Stanford University Press, Palo Alto: 1997).

The U.S. government promotes IPR reform in foreign countries through three distinct institutional avenues: the USTR, the Department of Commerce's Patent and Trademark Office (PTO) and the Agency for International Development (USAID). Beginning with the former, USAID has been an active participant in a number of judicial projects in Mexico. As an arm of the US State Department, USAID pays particular attention to those countries for which a strengthened rule of law will positively affect US objectives.

Accordingly, USAID activities in Mexico and Chile center on a number of objectives (such as electoral reforms, combating drug related crime and consolidating democracy) but to date only one project has included an IP component.[323] In 1995 USAID began a project entitled "Improved Performance of Target Institutions in NAFTA-related Legal and Regulatory Areas, 523-SO01". With an estimated budget of $150,000 this project supported training programs in patents, trademarks, and other forms of IP. Working closely with IMPI, the project also addressed the issue of reducing the 8-11 year backlog in the processing of patent applications.[324] Although USAID embarked on an impressive rule of law project in Chile shortly before Pinochet stepped down from power that continued until 1996, it did not contain an IPR component. In 2002 it did launch a Latin American and Caribbean regional project entitled "Trade Capacity Building for FTAA" in which

[323]Corinna A. Reyes, "Unlikely Alliances: The Politics of Judicial Reform in Contemporary Mexico" paper prepared by this author for the XXII Annual Latin American Studies Conference, Washington D.C., September 6-8, 2001.

IPR reform is noted in the project's description as a critical area to address. However to date no specific programs have resulted from this project in either case under study.[325] Therefore, USAID in particular does not appear to have promoted IPR convergence in either case.

By contrast, the PTO has supported the reform efforts in both Mexico and Chile. The PTO promotes IPR convergence providing technical assistance in legislative reform and patent enforcement to developing nations. To assist in legislative reform the PTO conducts assessment studies of a country's laws to determine compliance with the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS). In addition, the PTO has a Visiting Scholars Program and conducts training programs to assist in IPR enforcement. For example, PTO representatives worked with IMPI during the mid-1990s to increase its operational efficiency, reduce patent backlogs and administration of the Industrial Property Law.[326] With regards to Chile, the Policy and International Affairs (PIA) division of the PTO directly negotiated with Chilean trade representatives throughout 2000-2002 during the drafting of the Chilean free trade agreement.[327] The PTO has also worked with the Chilean government to address areas of IP concern highlighted by the Trade Representative's office (discussed in greater detail below) and the

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[324] USAID, "Congressional Presentation FY1997: Mexico." Report available at www.usaid.gov/pubs/cp97/countries/mx.htm. Accessed on August 2002.

[325] USAID, "LAC Regional: Program Data Sheet 598-019." Report available at www.usaid.gov/country/lac. Accessed on August 2002.

[326] Office of the United States Trade Representative, *2001 International Trade Agenda*, May 2001.

development of legislation for compliance with TRIPS obligations.[328] Notwithstanding the PTO's actions supportive of convergence, there is little evidence to indicate that it is a causal variable to the initiation of the reform process. Rather their activities concentrate more on policy administration and enforcement. Nonetheless, no significant differences exist between levels of PTO involvement in either case suggesting that their activities fail to explain the divergent rankings among the cases.

Rather, the office most active in promoting IPR reform in both Mexico and Chile, and considered to be a causal factor to the first stage of convergence, is the USTR. As previously noted when assessing the impact of IIPA and BSA activities, the USTR is an active and influential actor in the promotion of global IPR reform. Responsible for directing negotiations with other countries on trade, commodity and direct investment, the USTR also monitors adherence to IPR provisions in trade agreements. Mandated by Congress in the 1988 Omnibus Trade and Competitiveness Act, USTR is required to publish an annual report listing countries accused of not providing adequate safeguards for IPRs. Therefore, countries in which piracy is especially prevalent and the government has not already made, or is in the processing of making, a concerted effort to strengthen its IP regime are targeted in this annual review. Commonly referred to as the Special 301 report, it

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[327] United States Copyright Office, "Annual Report" for the years 2000-2003 available at www.copyright.gov/reports/annual. Accessed on August 2002 and February 2004.

[328] United States Copyright Office, "Annual Report" for the years 2000-2003 available at www.copyright.gov/reports. Accessed on August 2002 and February 2004.

serves to warn governments of U.S concerns and possible future trade sanction.[329] The report distinguishes between a "high priority watch list" and a less serious, "watch list".

Mexico was first named to the "1988 Priority Watch List" in May 1989 by the USTR.[330] Citing Mexico's lack of process or product patent protection to many classes of inventions, shorter (relative to the U.S.) terms of protection, extensive compulsory licensing, deficient trademark protections, and lack of copyright protection for computer programs, Mexico found itself openly criticized by the American government in this widely publicized report.[331] In response to Mexico's inclusion in the Special 301 report, the Salinas administration promptly began to issue statements and policies to avert future U.S. trade sanctions as well as additional negative publicity that the report conferred to his government. Within days of the Special 301 publication, a series of discussions between Mexico's minister of trade and industry, Jaime Serra Puche, and the U.S.' Trade Representative, Carla A. Hills, began in which the concerns of U.S. IP owners were further detailed to the Mexican government. During these talks Minister Puche repeatedly assured Ambassador Hills that the Salinas administration was committed to enacting stronger IP laws and

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[329] Office of the United States Trade Representative, "Strategic Plan 2002 – 2006" available at www.ustr.gov/about-ustr/istrrole.html . Accessed on October 2002.

[330] The USTR had also voiced dissatisfaction with Mexico's IP regime in 1987 when it withdrew Generalized System of Preferences (GSP) treatment on some chemical products.

[331] The USTR's 1989 Special 301 Review received coverage in a number of widely circulated print news sources such as the Wall Street Journal, the Financial Times, the Economist, the Chronicle of Latin American Economic Affairs, the Miami Herald, the Los Angeles Times, and the Washington Post.

intended to introduce new IP legislation (which later become the landmark 1991 Industrial Property Law) during the current legislative session.[332]

The cornerstone of Mexico's campaign to improve its image to American industry and the USTR was a comprehensive economic plan, entitled the "National Program for Modernization of Industry and Foreign Trade," issued on January 18, 1990. Published amid much fanfare, the report outlined Mexico's intention to modernize its industrial property regime.[333] The Mexican report not only made the case for why Mexico's existing IP legal regime needed to be strengthened but it went further and actually outlined specific IP legislative reforms. Five days following this announcement, Minister Puche further publicized the Mexican government's intention to modernize its IP legal regime in a speech sponsored by the magazine *Business* Week to an audience of American business groups in New York City. By the end of that same week, he formally announced that the Salinas administration intended to introduce to the Mexican congress new IP legislation before the end of 1990.[334]

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[332] U.S. Congress, Senate, Committee on the Judiciary, "Statement of Ambassador Carla A. Hills, U.S. Trade Representative, before the Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks," *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, 100th Congress, First Session, 14 May 1991. Additional references to these series of discussions can be found in reports in the *Wall Street Journal* entitled "U.S. Exempts Mexico from Any Retaliation on Proprietary Rights" 25 January 1990 and *the Financial Times*, "Mexico to Improve Patent Protection" 22 January 1990.

[333] Joe W. Pitts, "Pressing Mexico to Protect Intellectual Property," *The Wall Street Journal* (January 25, 1991): A13.

[334] Ibid.

In response to these very public announcements and the direct negotiations between the two governments, the USTR decided to remove Mexico from both the Special 301 priority and regular watch lists.[335] In doing so, Mexico became the first country to be removed from both listings. For the USTR, the Mexican case proved an overwhelming success for this new strategy at combating global piracy. Whereas bilateral negotiations had been used in the past to voice American commercial concerns, inclusion in the highly publicized Special 301 report became a source of international embarrassment for targeted countries. In the case of Mexico, negative publicity of this kind was viewed by the Salinas Administration as a very serious impediment to their deep desire to attract foreign investment monies. Salinas felt that increasing foreign investment flows to Mexico was paramount to the success of his neoliberal economic agenda and thus the country's future economic development.[336] Additionally, for those countries that depended on the U.S. market to sell their goods, like Mexico, removal from the listing was in their economic self-interest. In sum, the USTR's Special 301 reports employ both the use of diplomacy

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[335] U.S. Congress, Senate, Committee on the Judiciary, "Statement of Ambassador Carla A. Hills, U.S. Trade Representative, before the Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks," *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, 100th Congress, First Session, 14 May 1991.

[336] Carlos Salinas' desire to attract foreign investment to Mexico has already been well documented in a number of studies. For an excellent discussion of the priorities of the Salinas administration's economic project see Hermann von Bertrab's *Negotiating NAFTA: A Mexican Envoy's Account* (Washington D.C.: Center for Strategic and International Studies, 1997), and Gustavo del Castillo's "NAFTA and the Struggle for Neoliberalism: Mexico's Elusive Quest for First World Status" in *Neoliberal Reform and Politics in Mexico*, eds. Gerado Otero (Boulder: Westview Press, 1996). This objective of Salinas was also repeatedly reported in the *Wall Street Journal*, such as in the articles "Pressure Building Inside, Outside Mexico to Liberalize its Investment Regulations" (December 23, 1988) and "Salinas Asks U.S. to Open Further to Mexican Goods" (October 3, 1989).

and threats, otherwise known as the carrot and stick approach to foreign policy, to address the issue of IPR convergence.

Even after being removed from the Special 301 listing, the Mexican government continued to make assurances to both American industry and public officials that it was fully committed to reforming its IP regime. For example, in a June 1990 speech before 500 business and government leaders at a Business Round Table Annual Meeting in Washington D.C., President Salinas reaffirmed his intention to converge Mexico's IPRs to a "world-class" level.[337] As discussions became more heated in the U.S. congress regarding whether to extend to President George H.W. Bush fast-track authority to negotiate a free trade agreement with Mexico and Canada, President Salinas and senior Mexican officials continued to make public statements in both the U.S. and Europe throughout 1990 regarding its pledge to converge Mexico's IPRs.[338]

These public announcements not only resulted in Mexico's removal from the 1988 Special 301 Report but they also worked to keep her off the general watch list for the next eight years. Although foreign NGOs such as IIPA and BSA continued to pressure the U.S. government to once again place Mexico on the Priority Watch List, the USTR preferred to use the NAFTA negotiations as leverage to secure IP

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[337] U.S. Congress, Senate, Committee on the Judiciary, "Statement of Gerald J. Mossinghoff, President, Pharmaceutical Manufactures Association, before the Subcommittee on Patents, Copyrights and Trademarks, May 14, 1991," *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, 100th Congress, First Session, 14 May 1991.

[338] Ibid.

improvements.[339] As discussed in further detail in the next section examining the impact of trade regimes on IPR convergence, according to a number of those intimately involved in the NAFTA negotiations as well as IP scholars, many within the Bush and later the Clinton administrations viewed Mexico's IPR convergence to U.S. norms as a prerequisite for securing a free trade agreement. Therefore, the Salinas administration's prompt and aggressive moves to have Mexico removed from the 1989 Special 301 report can also be viewed as one of many steps that Carlos Salinas undertook to smooth the way for American acceptance of free trade agreement with their southern neighbor.

Mexico remained off the Special 301 list until 1996 when estimated trade losses due to piracy reached over $400 million. It remained on the list for three years and since 1999 has not been placed on the Special 301 watch list.[340] Nonetheless, the USTR does not consider Mexico to be in full compliance with the IPR standards delineated in NAFTA and Trips. But rather than resorting to including Mexico on the Special 301 watch list, the USTR and Mexico continue to review progress on IPR reform in regular consultative meetings normally held three times a year.

The USTR's involvement in Chile's IP reform process also began in the early 1990s but proved not to be an effective convergence tool throughout most of the 1990s until formal negotiations of a free trade agreement between the U.S. and Chile

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[339] IIPA, "Priority Practice: Practices Violating the NAFTA – Mexico," excerpts from the IIPA Special 301 Recommendation, 01 March 1999. Report available at www.iipa.com/rbc/1999/rbc_mexico_301_99.html. Accessed on September 2002.

began in earnest in 2000. Similar to Mexico, Chile was also promptly included in the USTR's new weapon against global piracy, the Special 301 Watch List. Chile's first appearance on the list was in 1989 for failure to provide pharmaceutical patent protection deemed appropriate by the U.S. Its name was withdrawn from the listing after Chilean officials promised to enact legislation addressing the USTR's concerns. Spurred by the lobbying activities of the American pharmaceutical industry, U.S. officials and representatives of the Pinochet government began a series of direct consultations on this issue of drug patents.[341] USTR concerns were partially pacified when the Chilean legislature passed the landmark Industrial Property Law in 1990 that took effect in September of the following year.[342] Notwithstanding the new law, the USTR continued to voice concerns regarding particular provisions of the law that it deemed inadequate (such as the term length for patents) as well as Chile's existing copyright law. Once again, in response to USTR calls for reform, Chile's IP law was revised in 1992 to better conform to American and international (the Berne Convention) standards.

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[340] Office of the United States Trade Representative, "USTR Announces Results of Special 301 Annual Review" releases for the period 1996-2002 are available at the www.ustr.gov.

[341] The organization most active in this arena was the Pharmaceutical Research and Manufactures of America, commonly known by their acronym PhRMA. Whereas Mexico addressed most of PhRMA's concerns in its 1991 Industrial Property Law and again in NAFTA, Chilean authorities routinely met with the organization's disapproval. PhRMA routinely called for Chilean inclusion in the USTR's Special 301 Report throughout the 21st Century citing Chile's failure to meet its TRIPS commitments, extend its patent terms and fines for infringement, extend patent protection to processes, and failure to halt inappropriate copy registrations. See PhRMA's "Special 301 Submission" for the years 2000-2003 available at www.cptech.org/ip/health/c/chile and a position paper submitted to the SICE Foreign Trade Information System for the Fourth Business Forum of the Americas, San José, Costa Rica, (March 8, 1998). Position paper available at www.sice.oas.org/Ftaa/costa/forum/workshops/papers/wks4/phrma_e.asp.

[342] Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (Boston: Kluwer Law International, 2001), 175-176.

Chile enjoyed a respite from inclusion on the Special 301 report until the mid-1990s. In 1994 the USTR and Chile once again held direct talks on U.S. concerns with Chilean pharmaceutical protections. U.S. criticisms were partially addressed in further amendments to the 1991 Industrial Property Law that went into force the following year. But by 1996, Chile was once again listed on the USTR report for numerous 'weaknesses' in its existing IP legal regime relating to patent, copyright, and trademark protections. Reforms were enacted in Chile's Plant Variety Law in 1994 and 1996 to extend patent protections to plant varieties which partially addressed some of the criticisms voiced by the USTR but various areas of concern remained. Consequently, since this point the USTR has remained critical of Chile's level of IPR protections and has pressured successive Chilean governments for reform. Chile continued to be included in the Watch List throughout the late 1990s and into the 21st Century.[343]

But unlike the Mexican case in which USTR calls for reform were promptly answered, in the latter half of the 1990s Chilean responses to U.S. criticisms were comparatively slower and less comprehensive. Although promises were made of future reform, the ability of the Chilean president to ensure passage of these reforms lessened as the power of the legislature increased as the 1990s progressed. Moreover, use of presidential decree and legislative urgency designations of IP bills has also become more and more infrequent further undermining the prompt response

[343] Information regarding the USTR activities during this period was obtained from their *National Trade Estimate Reports*, for the years 1995-2004. Reports are available via their website located at

to USTR criticisms. For example, since 1998**,** one of the reasons for Chile's inclusion on the Special 301 Report was its inability to make its IP legal regime TRIPs-consistent. Not only were numerous direct talks held between the two governments throughout the period to address this issue but in 1999 draft legislation was presented to the USTR for review and comment.[344] The Chilean executive introduced the bill to congress in late 1999 but it did not meet legislative approval until 2004.

Yet progress was made on a few other issues during this time period. In 1998 the USTR was directed to advocate the legitimate use of software by foreign governments. The Chilean government responded by issuing a decree in 2001 mandating the use of only authorized software by government ministries.[345] Additionally, a campaign to reduce patent applications backlogs met with success in 1999 and garnered the Chilean government with some measure of USTR approval. Also in 2002 the Chilean executive called for the Institute of Public Health to stop issuing health registrations of drugs without regard to whether a patented version of the drug already existed (begun in November 2001). The cessation of this policy was largely in response to the intense USTR complaints and the highlighted placement of the issue in the 2002 Special 301 Report.[346]

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www.ustr.gov/reports. Accessed October 2002 and March 2004.

[344] USTR, *National Trade Estimate Report: 1997*, report available via their website located at www.ustr.gov/reports. Accessed October 2002.

[345] United States Department of State, "U.S. Releases Special 302 Report on Intellectual Property" *International Information Programs* (May 2003).

[346] Ibid.

Unlike the activities of PTO that provides assistance to foreign nation's IP reform projects, the USTR's method is more an application of punishments for lax IP protection. The strategies employed by this public institution clearly illustrate the carrot and stick approach to foreign policy. International Relations scholar, Susan K. Sell, refers to the U.S.'s use of the Special 301 report as a neorealist coercive strategy. She argues that placement on the list is an especially effective tool for reform because often the states are highly dependent on access to the U.S. market.[347] This logic holds true for the case of Mexico that has become quite dependent on the U.S. market in the past two decades. Throughout the 1980s and 1990s, Mexico increasingly exported its goods to their northern neighbor. With approximately 80% of its exports now entering the U.S., it is easy to see how the threat of trade sanctions explicit in the Special 301 report is a powerful tool to induce IPR reform in Mexico. In comparison, the Chilean economy is not as dependent on the U.S. market and although it has routinely found itself placed on the Special 301 Report, trade sanctions were not enacted against Chile in response to its perceived weaknesses in its IP regime. Nonetheless, as the evidence above illustrates, the USTR was successful in extracting some provisions from the Chilean government and was able to cultivate a strong relationship with Chilean IP officials. As elaborated on below, USTR activities proved most effective when conducted during period of trade negotiations. Thus, pressures for IPR convergence are much more successful when

[347] Susan K. Sell, "Intellectual Property Protection and Antitrust in the Developing World: Crisis, Coercion, and Choice" *International Organization* 49 (Spring 1995), 315-50.

made in the context of developing a bilateral trade accord. With regards to issue of Mexico and Chile's divergent rankings, unfortunately the factor of foreign nation-states does not appear to explain why Chile is continuously viewed as a better protector of IPRs.

D. International Trade Regimes

As observed in the preceding section, the issue of trade relations has seriously affected Mexico's IPR regime and to a lesser degree, Chile's IP reform process. In this section, three international trade regimes are examined to determine the extent to which the regimes affected IPR reform in the cases under study. The regimes examined are NAFTA, the U.S. - Chile FTA, and the WTO. In this section, the analyses of other scholars and historical process tracing are also utilized to determine if a connection exists between the timing of IP reforms and trade regime negotiations. The evidence presented in this section clearly demonstrates that the structural variable of international trade relations combined with the activities of key external actors (those involved in the formation of U.S. trade relations) largely explains why Mexico initiated its landmark IP legislation of the early 1990s and to a lesser degree Chile in 1991 and again later in the early 21st Century. Consequently, I argue that the activities of the USTR and foreign NGOs such as BSA and IIPA are intervening factors to IPR convergence whereas trade negotiations are a causal factor.

The USTR's contention that lax IPR regimes undermined legitimate trade formed the basis for the U.S.'s insistence that NAFTA set a precedent for liberal

trade regimes by specifically devoting an entire chapter of the agreement to IPR protection. Due to the importance of IP related industries (such as the entertainment, pharmaceutical, and computer technology industries) to the American economy, the U.S. government aggressively promotes the subject of IPR convergence into her free trade agreements. The U.S. contends that pirated goods undermine the free trade and as a consequence weak IPRs constitute a non-tariff barrier (NTB) to trade. Accordingly, between 1990 and 1992, representatives of the USTR actively negotiated with both the Mexican and Canadian governments for improved IPR protections consistent with American standards into the trade agreement.

As a result of their insistence, chapter 17 of the NAFTA agreement focuses exclusively on IPR standards, administration and enforcement. As scholars William White and David Walden explain the goal of this section of the agreement was to reinforce each country's domestic IPRs through the standardization of regulations.[348] The scope of IPR protection includes copyrights and industrial property as well as semiconductors, geographical indications, satellite broadcast signals, industrial designs, and sound recordings. Many of the standards mandated in NAFTA complied with those already in place in the U.S. while being revolutionary in terms of Mexico's IPR regime of the 1970s. For example, the inclusion of computer works as literary works and the requirement to treat nationals of other countries in a manner

[348] William White and David Walden, "Briefing Note for Regional Integration in the Americas" (2 February 1999). Report available at http://wehner.tamu.edu/mgmt.www/nafta/spring99/Groups99/5/group5_1.htm.

no less favorable than that accorded to its own nationals (national treatment) were novel concepts to Mexico.

Importantly, the U.S. government's attention to IP during the NAFTA negotiations was largely motivated by American business interests. As discussed in detail above, a number of external actors such as the BSA and IIPA routinely lobbied public officials in both the American executive and legislature for improved IPR protections abroad. External actors routinely submitted reports to the USTR for consideration when evaluating which countries should be included in the Special 301 reports.

Entering into the NAFTA negotiations, Salinas was deeply committed to demonstrating to the U.S. that Mexico should be viewed as a new and formidable economic player in the global arena. As well documented in the work of Miguel A. Centeno and Philip L. Russell, no longer did Salinas want Mexico to be known as an agrarian and statist economy, but rather he marketed Mexico to global investors as one of the stars of the emerging economies characterized by a modern neoliberal economic policies and a stable political system.[349] This marketing of Mexico was conducted not only to lure foreign investment away from Russia and East Asia but also to quell fears in the U.S. regarding joining a free trade agreement with a

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[349]Miguel Ángel Centeno's *Democracy Within Reason: Technocratic Revolution in Mexico* (University Park: Pennsylvania State University Press, 1994), and Philip L. Russell's *Mexico Under Salinas* (Austin: Mexico Resource Center, 1994). Additional documentation of the Salinas administration's attempting at selling a modern image of Mexico to global investors can be found in Stephanie R. Golob's "Beyond the Policy Frontier: Canada, Mexico and the Ideological Origins of

significantly poorer and traditionally protectionist economy. Notwithstanding past Mexican criticisms of the pitfalls of a free market, the Salinas administration wanted to institutionalize Mexico's dramatic policy swing to economic neoliberalism by entering the world of free trade agreements.

This desire to continuously improve Mexico's image helps to explain Salinas' post Special 301 removal activities throughout the 1990s. As documented above, throughout the remainder of that year, the Mexican government continued to make assurances to both American industry and public officials that it was fully committed to reforming its IP regime. Notably, Salinas' very public marketing of its intention of dramatically reforming Mexico's IP legal regime coincided with the announcement of NAFTA negotiations.

By early 1991, Mexican trade negotiators realized that they faced an uphill battle in seeing NAFTA realized in the near future. As then U.S. Secretary of Commerce Robert A. Mosbacher declared at the time, "If we don't have fast track, your children will not be able to see the end of the negotiations."[350] Thus, for Salinas the first battle over NAFTA was ensuring that the U.S. congress extended fast-track authority another two years to the Bush administration to cover the NAFTA negotiations.[351]

NAFTA" in *World Politics* 55 (April 2003) and Patrick Cronin's "Explaining Free Trade: Mexico, 1985-1988" in *Latin American Politics and Society* 45: 4.

[350] Quote originally cited in Hermann von Bertrab's *Negotiating NAFTA: A Mexican Envoy's Account* (Washington D.C.: Center for Strategic and International Studies, 1997), 12.

[351] Fast-track authority, granted by Congress, empowers an American president to negotiate specified trade agreements and then present it to Congress for a simple up or down vote (approve or

Between February 5th and May 24th, fast track became highly debated in halls the Capitol Building. At the forefront of the debate was whether the U.S. had anything to gain from an institutionalized free trade agreement with its southern neighbor, especially in light of Mexico's lax labor and environmental regulations. During this time, USTR Carla Hills asserted that a key objective of the Bush administration's trade policy program was the global improvement of IP protection. Those countries that failed to provide adequate protections to American IP would not be permitted free access to the U.S. market.[352] This position was further articulated by Senator Dennis DeConcini, member of the Judiciary Committee, to President Salinas in a letter expressing the importance of Mexico's IP reform efforts to successful trade negotiations.[353] In view of such clear statements regarding the importance of IPR convergence for furthering U.S. trade relations, Mexico's commitment to IPR convergence would be a key component to securing fast track as well as NAFTA approval. The Salinas administration had already been publicly criticized for its weak IP regime and now found that Mexico's entire political and

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reject) within a specified time period. Congress cannot introduce any amendments to the trade agreement thus eliminating the need for continuous renegotiations. The objective of fast-track authority is to ease the process of creating trade agreements and demonstrate good faith to other countries to encourage their participation.

[352] U.S. Congress, Senate, Committee on the Judiciary, "Statement of Ambassador Carla A. Hills, U.S. Trade Representative, before the Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks," *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, 100th Congress, First Session, 14 May 1991.

[353] U.S. Congress, Senate, Committee on the Judiciary, "Letter to His Excellency Carlos Salinas de Gortari, President of the United Mexican States, from Senator DeConcini, May 24, 1991." Presented as an additional submission for the record. *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, 100th Congress, First Session, 14 May 1991.

economic systems were under scrutiny. Hoping to quell fears, Mexico embarked on a dramatic effort to lobby the American congress and project herself as a modern economy. This campaign included the promotion of Mexico as a country deeply committed to strengthening IP regime to converge to American norms.

During this period of fast track congressional debate, a number of interest alliances were asked to provide testimony at various congressional hearings to attest to Mexico's developing IP regime. At a Senate subcommittee hearing, for example, representatives from the BSA and IIPA as well as a number of IP-concerned company presidents testified to how they believed a free trade agreement with Mexico and Canada would affect their IP interests. Although all voiced concern with Mexico's existing IP regime, they were also cautiously optimistic of the commitments that Salinas made regarding reforming Mexico's IP legislation. When specifically asked by members of the subcommittee if the individual private witnesses supported the extension of fast track authority, the response was uniformly yes but that the U.S. government should continue to pressure Mexico further on the issue of IPRs and include into the agreement areas overlooked in the pending Mexican copyright and industrial property legislative bills.[354] The invitation by Congress of a number of American and international IP interest groups demonstrates the important role that these organizations were given in influencing the American legislature's opinion on both the state of Mexico's IP regime as well as the relevance

[354] Ibid. Please see the various testimonies of the members of the intellectual community property, listed as individual witnesses to the hearings.

of this issue for the proposed trade agreement. Importantly, interest alliances such as the BSA and IIPA stressed in their testimony how NAFTA could be used as an instrument to further Mexico's IPR convergence efforts.

After the May 23rd and 24th legislative votes on extending fast track authority, the Mexican government intensified its marketing campaign to ensure the passage of NAFTA. The Mexican government realized during the fast track debates that the issues of labor and the environment would take center stage as the debates continued. Therefore, according to the chief Mexican representative of NAFTA to the U.S., Hermann von Bertrab, it was in Mexico's self interest to resolve as many other issues areas of concern to the American congress to reduce the potential of larger alliance of NAFTA opponents.[355] This strategy of tackling the issues of less contention first included addressing American concerns regarding IP.

With formal NAFTA negotiations beginning in June 1991, the majority of direct IP discussions between the governments involved occurred in the IP negotiating group largely dictated by the U.S. team.[356] Owing to the importance of the technology and copyright industries to the U.S. economy, BSA and IIPA were both granted representation on advisory committees to the U.S. IP negotiating team. With the passage of Mexico's Industrial Property and Copyright Laws in the summer

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[355] Hermann von Bertrab's *Negotiating NAFTA: A Mexican Envoy's Account* (Washington D.C.: Center for Strategic and International Studies, 1997), 17 and 46.

[356] During the trade talks, 18 distinct negotiating groups were created based on a particular issue-area, such as transportation, energy, agriculture as well as IP. For a discussion of the powerful role of the U.S. team, see Sylvia Maxfield and Adam Shapiro's "Assessing the NAFTA Negotiations" in *The*

of that same year, many of the concerns of the USTR regarding Mexico's IP legal regime were already deal with although concern was still voiced regarding the implementation and enforcement of these new laws.[357]

To quell these reservations, the Mexican team made a number of commitments to improve enforcement by agreeing to particular NAFTA provisions regarding enforcement as well as provisions expanding copyright protection to computer software and patent protection to plant inventions. The Mexican team also promised to direct their government's attention to the need to enhance punishments against IP infringement and compensation for IP owners. Further concessions included the initiation of custom inspections for pirated goods and prosecution of those engaged in satellite signal theft.[358]

Notwithstanding the concessions made within the IP negotiating group, within the U.S. congress debate continued regarding the relationship between Mexican IPR convergence and NAFTA. In various congressional hearings interest groups were once again asked for their assessments regarding the IP reform project in Mexico. For example, in a congressional hearing on international piracy, members of the U.S. Senate Committee on the Judiciary directly asked a number of

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Post-NAFTA Political Economy, ed. Carol Wise (University Park: The Pennsylvania State University Press, 1998).

[357]Ibid as well as Hermann von Bertrab's *Negotiating NAFTA: A Mexican Envoy's Account* (Washington D.C.: Center for Strategic and International Studies, 1997), 17.

[358] Maxfield and Shapiro, Ibid. The Mexican team however did not concede to U.S. demands regarding compulsory licensing. Compulsory licensing refers to when a government forces a patent holder in a foreign country to license production of their invention to a domestic producer for a reduced fee. Mexico's position that the license holder need only provide "adequate compensation"

interest alliances if they approved ratification of NAFTA. Once again, the response received was approval for NAFTA and its IP provisions although many organizations voiced their desire to see Mexico continue reforming its current laws and enforcement methods. Case in point, the executive director of IIPA, Eric Smith, testified that its members remained concerned with Mexico's slow progress on enforcement yet believed that passage of NAFTA would prove critical to the strengthening of its IP regime. Mr. Smith also attested that the NAFTA negotiations helped to sensitize Mexico to the necessity of improving its IP regime by providing an incentive to Mexico –greater access to one of the world's largest markets—while providing various forums for IP interest alliances to voice.[359]

As Congress reviewed the submitted NAFTA agreement in the fall of 1993, the Mexican negotiating team realized that the chances for approval in the U.S. were in danger. Although the bitter debate that ensued remained focused on the issue of Mexico's lower labor and environmental regulations, members of congress were not ignoring the issue of IP. House Majority Leader Richard Gephardt warned, via a personal letter to Salinas in late 1992, that a failure by Mexico to improve IP enforcement would jeopardize the trade agreement's passage.[360] Salinas once again chose to very publicly address these persistent criticisms of Mexico's IP enforcement

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prevailed in the discussions, yet the U.S. team was able to add the stipulation that compulsory licenses would be used predominantly for the supply of the Party's domestic market.

[359] U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Patents, Copyrights, and Trademarks, "Statement of Eric H. Smith, Executive Director and General Counsel, International Intellectual Property Alliance, September 29, 1992." *Hearings on International Piracy on Intellectual Property*, 102th Congress, Second Session, 29 September 1992.

record. In late 1992, his government conducted a series of raids against two major illegal software producers resulting in criminal prosecutions.[361] The following year, on March 4, 1993, he announced his intention on creating an official Institute of Industrial Property[362] and a special tribunal to handle IP disputes. Later that same week Salinas presided over a special anti-piracy ceremony during which a steamroller crushed copies of pirated videos to demonstrate Mexico's commitment to IP reform.[363] To further sell the image of Mexico as a protector of IP to the American congress, in October 1993 the Interministerial Commission for the Protection, Monitoring and Safeguard of Intellectual Property Rights was created. Headed by future Mexican president Ernesto Zedillo, with the mission of combating IP piracy, it is no coincidence that this short lived commission (less than two years) was formed the month before the American congress were to vote on the NAFTA agreement.

The repeated cycle of U.S. criticism and Mexican response clearly demonstrates the strong link between the NAFTA negotiations and IPR convergence in Mexico. The evidence presently above confirms my contention that the

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[360] Tod Robberson, "Mexico Puts Software Pirates on Notice," *Washington Post* (6 March 1993: A.25)

[361] Reported in Tod Robberson, "Mexico Puts Software Pirates on Notice," *Washington Post* (6 March 1993: A.25); as well as the following *Washington Post* article "For the Record" (14 October 1993: A.30) and the Op/Ed submission of Bill Gates, "Protection From Pirates" (18 October 1993: A.19). Additional information regarding activities conducted by the Mexican government to secure the support of Bill Gates for NAFTA see, Paul B. Carroll's "Mexico, in deal with Microsoft, shows a commitment to intellectual property," *Wall Street Journal* (29 October 1993, A11).

[362] The institute Salinas ultimately created via presidential decree was IMPI on December 10, 1993.

[363] *Economic News and Analysis on Mexico*, "Government to Provide Copyright Advice and Prosecute Violators" (17 March 1993).

negotiation process was a critical catalyst to the initiation of Mexico's IP reform process. Whereas the Mexican constitution conferred Salinas with broad powers to enact IP reform, the variable that caused Salinas to prioritize IPR convergence and begin a series of significant reforms was NAFTA. Convergence truly began in Mexico as Salinas' desire to see a free trade agreement took root. Once rooted, Salinas conceded to U.S. demands in various areas of economic policy, including IPRs, to realize his dream. Beginning with the USTR's Special 301 report inclusion and extending into the halls of the Capitol Building, a song and dance-like routine emerged where the Salinas administration promptly responded to numerous condemnations of Mexico's IP regime by taking significant steps to reform existing legislation and create new public institutions.

Importantly, prior to the official adoption of NAFTA, Mexico began to dramatically strengthen its IPR legal regime in anticipation of U.S. congressional challenges to the trade agreement. Thus to secure quick approval of the trade agreement, Salinas enacted gradual IP policy reforms to narrow the differences between Mexico's IP legal regime and that of the U.S. and Canada. A number of scholars, such as Whiting and Moeckel, construe the 1991 law as quid pro quo for NAFTA consideration by the U.S. Congress. According to Moeckel, "the prospect of being part of NAFTA made Mexican lawmakers reconsider their restrictive import policies and led to amendments to the Copyright Act and the Industrial Property Law

in 1991 and 1993."[364] This analysis is markedly consistent with the assessments of actors involved in the process of the negotiations as well as scholars of the proceedings. For example, according to the IIPA's 1992 annual report on Mexico, the adoption of the 1991 industrial law was "a result of the U.S. government request for it to do so as a condition precedent to the opening of NAFTA negotiations.[365] Mexicanist scholar, Nora Lustig's analysis of the NAFTA negotiations is also consistent with my contention that the negotiation process was a critical catalyst to the initiation of Mexico's IP reform process. In an analysis of the Mexican neoliberal reforms of the Salinas administration, Lustig contends that the increased protections to IP provided in the 1991 Mexican laws was in response to demands of the U.S. business community voiced to the American congress. Moreover, she maintains that "the passage of this new Mexican legislation was crucial for free trade negotiations to proceed swiftly."[366]

Therefore, even prior to the enactment of NAFTA and the specific IP provisions included in the agreement itself, the negotiation process served as a powerful instrument of the U.S. government to pressure Mexico to converge its IP regime. Importantly, the U.S. was conferred this power instrument by Salinas himself. Initially proposed by Salinas, NAFTA quickly became the pinnacle of his economic strategy and even his presidential legacy. The trade agreement would not

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[364] Christina Moeckel, "Intellectual Property Protection and Enforcement in Mexico," 1995, accessed at www.natlaw.com/pubs/moeckel.htm. Accessed on September 2002.

[365] IIPA, *IIPA Annual Report: 1992.* Report available at www.iipa.com/rbc/1998/rbc_mexico_301_98.html. Accessed on September 2002.

only institutionalize the various neoliberal reforms the Salinas administration had enacted throughout his tenure but it would mark the entrance of Mexico into the world of modern and developed nations.

Proposed by President Salinas in 1990, signed in December 1992, and put into effect on January 1, 1994, NAFTA not only cemented Mexico's radical shift to a neoliberal economic program but it also committed Mexico to the most comprehensive multilateral IPR agreement of its time. Under Mexican law, international treaties are self-executing and immediately become a part of Mexico's legal framework. Therefore Mexico's IPR legal regime quickly converged to global norms simply with the adoption of NAFTA. Notably, many of NAFTA's IP provisions continue to be at standards higher than the global norms mandated by the WIPO or TRIPS. Accordingly to the US Trade Representative who negotiated NAFTA, Salinas agreed to NAFTA's IP provisions because he made the attraction of investment and technology a top priority of his administration's economic agenda.[367]

Chilean authorities were well aware of U.S. demands regarding IPRs during the NAFTA negotiations and the inclusion of a chapter devoted entirely to the subject because during the same period, Chile began its own bilateral trade agreements with both Canada and Mexico. Although the introduction of Chile's

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[366] Nora Lustig, *Mexico: The Remaking of an Economy* (Washington, D.C.: Brookings Institution Press, 1998), 129-130.

[367] U.S. Congress, Senate, Committee on the Judiciary, "Statement of Ambassador Carla A. Hills, U.S. Trade Representative, before the Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks," *Hearings on Fast Track: Intellectual Property – Hearings before the*

landmark Industrial Property Law of 1991 and Pinochet's proposed amendments to the IP Law approved by the civilian congress of 1990 predate the initiation of regional trade talks, and thus are not as clearly linked to the variable of trade regimes, they are connected to the concept of economic liberalization. As discussed in previous chapters, the Pinochet regime was deeply committed to the neoliberal economic project and enacted trade policies (such as the lower of import tariffs) entirely consistent with the future goal of establishing free trade accords. With the alteration of power to the civilian administration of Patricio Aylwin, Chile's role as the Latin American leader of neoliberal reforms continued unabated. Aylwin specifically marketed the landmark 1991 law as an essential piece of legislation to Chile's objective of creating vast networks of free trade relations.

After the initiation of the 1991 law and the inclusion of amendments to the IP law in 1990 and 1992 (largely in response to pressures from the USTR), Chile did not produce a serious of additional IP laws as occurred in Mexico. The one major law relating to this issue-area that was drafted was the Plant Variety Law of 1994 and later amended in 1996 which did address a number of concerns voiced by USTR representatives. These reforms, not unintentionally, coincided with the objectives of both Aywlin and Eduardo Frei's (1994-98) overtures at acceding to NAFTA in early 1994.[368] Later that year, negotiations continued between the Frei and Clinton

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Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary, 100th Congress, First Session, 14 May 1991.

[368] *Latin American Regional Reports*, "Chile's New Government To Push for Free-Trade Deal with the US" (15 March 1994), 7.

administration on this issue at the Summit of the Americas in Miami. At this meeting, NAFTA partners clarified entrance criteria relating for IPRs which had largely already been met by Chile except in some areas such as patent protection for plant varieties.[369] As discussions progressed, Chile signed a free trade agreement with Canada in 1996 as an interim measure. Therefore, the initiation of much of Chile's IP legislation of the early and mid 1990s was enacted to secure Chile's place in the world of liberal trade regimes.

Yet Chile's hopes at joining NAFTA were frustrated in 1996 when the American congress failed to grant Clinton fast track authority to negotiate with Chile due to matters unrelated to IPRs. Official talks for a bilateral agreement resumed in the fall of 2000 after years of private meetings in which the USTR increasingly criticized Chile's IP legal regime and enforcement mechanisms. As official talks commenced, the USTR once again made a request for public comments on the proposed U.S. – Chile FTA. Foreign NGOs such as IIPA and BSA once again took advantage of this opportunity to voice their concerns regarding Chile's IPR protections by submitting a series of reports documenting piracy, its costs to U.S. industry, weaknesses in the proposed IP chapter of the FTA draft, and their own respective 'wish-lists' of provisions they wanted included in the accords.[370]

In response to the public comments submitted to the USTR's office as well as comments made by European Union (E.U.) representatives made during this same

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[369] *Latin American Regional Reports – Southern Cone*, "NAFTA Invitation to Chile Caps

period at various E.U. – Chile FTA negotiating meetings, Chile began to enact a series of reforms to its IP legal regime.[371] Long called on to amend its laws to become consistent with international obligations (in particular TRIPS standards), in 1999 the Chilean executive began to re-introduce IP bills to the legislature. They approved an amendment to the Geographical Indications Law and began to discuss other IP bills. Additionally, in spring of 2002, Chile ratified the WIPO's Copyright, and Performance and Phonograms Treaties as called on to do so by the USTR to improve the likelihood of the FTA's approval in the U.S.[372] During this same period, Chilean trade representatives make commitments to the American negotiating team that propose legislation extending the plant variety law to include transgenic plants.

Once the negotiations concluded in December 2002, the Chilean government had agreed to implement new rules regarding patent and trademark protections as well as improve enforcement mechanisms.[373] In early 2003, congressional deliberations regarding the agreement began to occur in the U.S. legislature. In a July 14th hearing before the Committee of the Judiciary of the Senate, numerous Senators inquired about Chile's IPR regime and were assured that the FTA provided

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Americas Summit in Miami" (29 December 1994), 6.

[370] Please see the specific foreign NGO discussion above for further elaboration and citations.

[371] *Estrategia*, "EE.UU. Utilizará a Chile Como Referencia en Propiedad Intelectual" (29 November 2002).

[372] Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters, "The U.S. – Chile Free Trade Agreement (FTA): The Intellectual Property Provisions", February 28, 2003. Report available via the USTR's website, www.ustr.org/report.

for "state-of-the-art" protection for U.S. industries and exceeded most international standards.[374] The importance of IPR convergence to securing American approval of the FTA was also voiced in an early June 2003 congressional hearing. At this hearing, representatives of BSA and IIPA were asked to testify regarding Chile's commitment to IPR protections. They were also directly asked if they endorsed the FTA.

Similar to the Mexican case, these foreign NGOs strongly approved of the accord, contending that its provisions would go a long way to correcting some of Chile's existing IPR weaknesses. The BSA in particular commended the agreements inclusion of IP protections to data storage, web hosting and software implementation services. IIPA members highlighted the agreements provisions regarding digital recordings of music and film as well as protection of encrypted satellite signals. Yet, both organizations voiced their concern that the Chilean legislature make its legal regime consistent with international obligations. To quell these concerns, the Chilean executive resubmitted two revised draft bills approved by the legislature in 2003. These amendments to the existing IP law respectively adopted provisions to implement TRIPS and the U.S. – Chile FTA's immediate obligations.[375] In response

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[373] Neil King Jr., "Leading the News: Bush Seals a Trade Deal with Chile – Pact Sets New Standards on Intellectual Property and Monetary Controls," *The Wall Street Journal* (12 December 2002).

[374] U.S. Congress, Senate, Committee on the Judiciary, *Proposed United States – Chile and United States – Singapore Free Trade Agreements,* 108th Congress, First Session, 14 July 2003.

[375] International Intellectual Property Alliance, "Special 301 Report: 2004" available at www.iipa.com/countryreports/html. Accessed on February 2004.

to Chilean IP commitments and actions, the U.S. legislature approved the FTA in late July 2003.

Although the pattern of U.S. criticism and foreign government capitulation on IPR convergence is more clearly illustrated in the Mexican case than in Chile, the evidence does indicate a linkage between free trade regimes and Chile's process of IP reform. In the late 1980s and early 1990s both the military and civilian regimes enacted IP legislation with the stated goal that such legislation would clear the way for future success in trade negotiations. Therefore, Chile's desire to establish liberal trade agreements was instrumental to the development of the landmark legislation of the early 1990s. As formal negotiations with the U.S. of an FTA in 2000, the Chilean government once again reformed its existing legal regime to promote the successful conclusion of the trade talks and ensure American congressional approval.

Another important trade regime that is actively involved is the WTO. Beginning with the 1986 Uruguay Round of negotiations, the General Agreement of Trade and Tariffs (GATT) began to address lax IP protection as a barrier to trade. Included in this round of negotiations was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[376] According to IP scholar Jayashree Watal, initially there was little resistance from developing countries to the TRIPS talks because they believed the negotiations would be limited to the issue of trade in counterfeit goods and not expand into domestic IPR reform. However, in the text of

the Uruguay declaration, specific references are made to "the need to promote effective and adequate protection of TRIPS" and "to develop a multilateral framework of principles, rules, and disciplines".[377]

Within the first few years of negotiations the debate between the developing and developed countries regarding IPRs resurfaced. In Latin America, Argentina and Brazil were both very vocal critics of IPR reform. Notably, neither Mexico nor Chile was part of this North-South debate. Rather by the time the debate became very contentious in the 1991 Geneva negotiations, both Mexico and Chile had already agreed to introduce or begun the process of initiating comprehensive IP legislation. In the case of Mexico, it also had agreed to bring its IPR regime up to U.S. standards through NAFTA.[378] Accordingly, both nations signed onto TRIPS in April 1994.

Therefore, similar to the analyses of Moekel and Whiting, Watal argues that Mexico's desire to pass NAFTA led Mexico to disassociate itself from the grievances of other developing countries. He further argues that to ensure U.S. congressional passage of NAFTA, Mexico reformed its IPR regime to levels beyond

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[376] TRIPS is the result of over seven years of negotiations. Negotiations began at the Uruguay Round of the trade negotiations of GATT and were concluded in April 1994. Yet the agreement did not come into force until January 1, 1995, the day the World Trade Organization was also established.

[377] Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (Boston: Kluwer Law International, 2002), 21.

[378] One of the most issues most highly debated during this period was pharmaceutical patents. Many members of the global south contended that 'excessive' IPR protection negatively affected the level of health care available for citizens of poor countries by making much needed drugs far too expensive for the average citizen to afford. Mexico and Chile distanced themselves from this debate because both countries had already conceded to U.S. demands on this issue. In 1990 Mexico accepted a bilateral agreement with the U.S. of retroactive protection of 'new' pharmaceutical and agricultural products for which patent applications had already been filed in other member states. In the case of Chile, its 1991Industrial Property Law extended patent protection to pharmaceuticals and thus it would not be deeply affected by the provisions debated in the TRIPS negotiating round.

those later dictated by TRIPS. Thus in this analysis TRIPS is not considered to be a causal factor in the initiation of Mexican IP legal convergence although it has conditioned later stages of the reform process. In the case of Chile, TRIPS also does not appear to be an explanation for its IP legal reforms of the 1990s. As discussed above, although a member of the treaty, Chile was routinely criticized throughout the late 1990s by the USTR and various foreign NGO's for her inability to conform its IP regime to TRIPS standards. When she finally did amend her legal regime in 2003, thus conforming its law to TRIPS provisions, it was to secure FTA approval in the American congress. In sum, it took the emergence of the U.S. FTA to get Chile to finally fulfill its legal obligations to TRIPS.

Where TRIPS has proven significant to IPR convergence is in its capacity to affect policy administration and enforcement. Compliance with TRIPS is now part of the World Trade Organization's routine trade policy review of member states. With the inclusion of TRIPS into the WTO member states are now asked questions relating to their IPRs regime. This has also included Mexico and Chile who routinely face questions regarding its IPR regime in the WTO's trade policy review. Moreover, Article 63 of TRIPS requires members to improve the transparency of their respective IPR regime by making publicly available all relevant laws, regulations, final judicial decisions, and administrative rulings. To demonstrate compliance with the terms of TRIPS member states must deposit the preceding information with the WTO Secretariat.

Notwithstanding the fact that TRIPS does not radically strengthen IP law in Mexico, it has served to better monitor and document its IPR regime. In the Chilean case, TRIPS has improved IPR protections but the U.S. – Chile FTA IP Chapter goes beyond the stipulations embodied in TRIPS. Therefore, in both cases legal convergence has been achieved, not through its TRIPS membership but by the enactment of FTAs with the U.S. Nonetheless, the ability of TRIPS to monitor IPR protection in its member states promotes the reform process by placing continual pressure on states to fulfill the terms of the agreement. It also provides a forum for member countries to voice their complaints against other member states without resorting to trade sanctions. This forum of accountability and cooperation further promotes IPR reform efforts by forcing Mexico and Chile to provide full information regarding its IPR policies and directly addresses the criticisms of member states.

As the preceding discussion demonstrates, trade agreements play a causal role in the initiation of IPR convergence. Additionally, they support the administration of these agreements throughout various assistance and monitoring measures. This factor supported convergence in both cases but to a larger degree in the case of Mexico. Consequently, this factor does not explain the divergent rankings between the two cases.

7.3 Conclusions

As the preceding discussion illustrates, although a number of foreign NGOs are involved in promoting IPR convergence, their level of involvement and nature of activities varies depending on the mandate and resources of the particular

organization. Foreign NGOs realize that to promote reform in Mexico and Chile not only should they lobby the respective governments for reforms but also the U.S. government. This strategy of using the U.S. government as an indirect form of promoting the NGO's interests and concerns has proven extremely effective to advancing global IPR convergence. The USTR in particular has immense power in affecting IPR change through use of its "Special 301 Report" and its associated punitive consequences.

Additionally, the structure of the global economy has proven instrumental in Mexico's and Chile's decisions to reform its IPR regime. As the global economy became more and more integrated (and regional trade blocs were established), President Salinas in Mexico as well as Chilean Presidents Alywin and Lagos felt a greater urgency to incorporate their countries into this liberal trade environment and gain greater access to the U.S. market and American investors. The passage of FTA became a paramount priority to these administrations, in particular the Salinas government, and were viewed as an important method to ensure economic development. Enacting reforms to achieve this goal, including IPR reforms, were an acceptable cost considering what these presidents believed would be the long-term benefits of joining the neoliberal global economy.

To conclude, the evidence in this chapter suggests that external actors do play a significant role in each stage of the reform process (policy initiation, implementation, and enforcement) and are causal variables to IP policy convergence. Foreign NGOs such as BSA and IIPA as well as the U.S. government's USTR were

extremely influential throughout the period under study at pressuring both the Mexican and Chilean governments for IP reforms. Additionally, the institutional setting of a global economy characterized by a growth of liberal trade regimes proved critical to promoting IPR convergence. External actor mobilization and the effectiveness of their activities were augmented during period of free trade negotiations. Thus, the structural shift to regional trading regimes during this period of economic globalization provided a conducive international environment from which to promote IPR convergence

Accordingly, the variable of external actors is a necessary and causal but not sufficient variable for IPR convergence. Additionally, the institutional setting of a global economy characterized by a growth of liberal trade regimes structured the opportunities for successful external actor mobilization. Yet as noted in the introduction to this chapter, differences do surface in the degree of external actor activity and its causal impact on IPR convergence between the two cases under study. In terms of the level of external actor involvement (direct lobbying and providing policy administrative assistance), external interest alliances were more active in Mexico than in Chile throughout the 1990s. Yet in comparative measures, Chile continues to be ranked as better protector of IP than Mexico. Additionally, indirect lobbying via the U.S. government also proved extremely effective in the Mexican case but less effective in the Chilean example. Nonetheless, this strategy of promoting IPR convergence through the arm of the U.S. government during period

of trade talks is a major explanation for the initiation of the legal reforms in each respective case but it cannot explain the divergence in comparative rankings.

Although strong evidence exists that international actors matter in IPR convergence, and that these actors are more active in Mexico than in Chile, it is surprising that Chile continues to be ranked as the best protector of IP in Latin America. Explanation is still needed for the differing rankings of Mexico and Chile in comparative IP rankings. Why is it that Mexico, despite having an IP legal regime that exceeds global standards and a dense network of interaction with external organizations to assist in policy administration and enforcement, continues to be classified as an example of failed convergence in this issue-area? Conversely, why is it that Chile who shares a similar IP legal regime to Mexico's regime but does not possess as dense a network of external actor interaction to assist in policy reform is considered an example of successful IPR convergence? In sum, what explains divergence in Mexico and convergence in Chile? To answer these questions, an examination of the last two stages of policy convergence, administration and enforcement, are conducted in the following chapter. The analysis that is elaborated on in that discussion highlights the critical role of the judiciary to effective IPR convergence. The argument proposed is that historical differences in the institutional development of each state's judicial branch shaped their ability to enforce IPRs and thus successfully realize the last stage of convergence, policy enforcement.

CHAPTER EIGHT

TOO MANY COOKS IN THE KITCHEN? THE IMPACT OF DIVIDED AUTHORITY ON POLICY ADMINISTRATION AND ENFORCEMENT

8.1 Introduction

The purpose of this chapter is to identify at what point the process of IPR convergence breaks down in Mexico, and to explain its success in Chile. To do so, I analyze the final two stages of the convergence process: policy implementation and enforcement. The evidence presented below points to the critical role that the judicial branch plays in effectively enforcing legal reforms and thus achieving successful IPR convergence. Specifically, in this chapter I offer an explanation as to why Mexico continues to be seen as an example of IPR divergence and Chile as one of successful convergence. The answer lies largely in the ability of the judiciary to enforce the IP legal reforms of the 1990s. Whereas problems exist in both countries' ability to protect IPRs through administrative actions, the judiciary acts as the final arbitrator in all cases of domestic conflict, including IP disputes. Without an effective judiciary to enforce IP legal regimes, convergence remains unfinished and fundamentally undermined.

Although both nations possess traditionally subservient judiciaries, important differences in the quality of each judiciary do exist that impacted their respective

abilities to secure legal convergence. In Chile the judiciary was used by General Pinochet as an extension of his power and a tool to realize his neoliberal economic goals. Consequently, the Chilean judiciary entered the 1990s as one of the better-trained, more efficient and professional institutions in Latin America. By contrast, in Mexico the PRI-dominated executive intentionally weakened what was already a passive judiciary to prevent it from threatening the executive's position of power. This resulted in a judiciary lacking adequate resources to become an efficient and effective institution capable of enforcing the law. Thus I contend that the historical evolution of Mexico's and Chile's respective judiciaries explains their radically different rankings in various IPR studies.

However, it is worth noting that if my analysis had ended with the previous chapter, a contradictory and partial picture would emerge regarding the level of IP protections in Mexico and Chile. Without the analysis presented in this chapter, one could easily believe that Mexico possesses a stronger IPR system than Chile. For example, Mexico possesses a more comprehensive IP legal regime than does Chile. Additionally, Mexican interest alliances and public officials collaborated more frequently than their Chilean counterparts. Finally, external actors such as the USTR and various American interest groups more aggressively pursued IP reform in Mexico than in Chile.[379] Therefore if one measures successful IPR convergence in

[379] The USTR effectively used President Salinas' strong desire for a free trade agreement to extract a series of IP concessions that radically departed from Mexico's previous stance on IPRs. By contrast, although the USTR did place pressure on the Chilean government to reform elements of its IP legal system throughout the 1990s, Chile did not face the same degree of pressure or concede as automatically as Mexico did to U.S. demands.

terms of the existence of an appropriate IP legal regime and the activities of interest alliances, Mexico would appear to be the better protector of IP.

But according to various global and regional rankings this is not the case; Mexico is one of the worst protectors of IPRs in Latin America. This suggests that variance in IPR convergence is not a product of differences in the first stage of convergence: the initiation of appropriate IP legislation. Neither do the variables of domestic nor external interest alliances explain the variance in rankings. Only when the specific dynamics of policy enforcement are explored, can the variance among the cases be explained.

Notably, in both cases authority in policy administration is centralized rather than divided thus this factor (divided authority) fails to account for the divergent rankings. If the analysis were to stop at this point, it would once again appear that Mexico is the better IPR protector because her IP laws are more comprehensive, she possessed a strong executive with both the desire to reform the IP system and the power to do so, and she faced greater external pressure for convergence from the United States than Chile did. The question thus remains: Where and why did IPR convergence break down in Mexico but not in Chile?

The key to unraveling why variance exists between the two countries lies in the final stage convergence: policy enforcement.[380] In both cases, administrative

[380] The practical meaning of 'IP enforcement' used in this dissertation is taken from the WIPO's discussion of the term. The WIPO posits that the concept is understood as the ability of an IP rights holder to have his/her rights respected and obtain remedy of some kind. Remedies include stopping the unauthorized use of the IP, deterring future infringements, and obtaining recovery damages

enforcement is the responsibility of an executive agency responsible for IPR management, while criminal enforcement is the duty of the judiciary. When problems exist in administrative enforcement, which they do in both cases, the judiciary serves as the institution with the authority to address these weaknesses and secure adequate protection of IPRs. If the judiciary cannot fulfill its role as final arbitrator, impunity for IPR violators becomes the norm and the convergence remains a failed project. In Mexico, notwithstanding its impressive IP laws and policy administration, enforcement is weak due to the general and pervasive inefficiency of its judiciary. Unfortunately, it is routinely assessed as too slow, corrupt, and poorly trained to adequately adjudicate over various types of legal conflicts, including IPR disputes. By contrast, although the Chilean judiciary became a passive institution during the Pinochet period, it remained better trained and more efficient than the majority of its regional counterparts. This difference in institutional quality is largely explained by the historical evolution of each judiciary vis-à-vis the executive.

To better understand how domestic institutional structures mitigate convergence pressures, I analyze the administrative and enforcement policies employed by both nations to asses their affect on IPR convergence. First, examination is made of the institutions responsible for IP policy implementation and the degree to which policy administration has been successful. Particular attention is

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resulting from the infringement. For more information regarding this and other procedural IP definitions, see www.wipo.org.

placed on Charles Cadwell's assertion that an impediment to successful legal reform is divided authority over policy implementation.[381] According to this thesis, dispersed implementation responsibilities undermine policy reform; in other words, too many cooks in the kitchen can hinder IPR convergence. The evidence presented below indicates that Caldwell's thesis is borne out by the Mexican and Chilean cases. The creation of specialized agencies to manage IP policy in both nations streamlined the implementation of reforms. Differences in IPR convergence ratings among the cases then cannot be attributed to their respective IPR administrative agencies. Therefore, attention must be placed on the final stage of policy convergence, policy enforcement, to uncover the reason for Mexico's inability to converge to global IP norms.

Accordingly, I also examine the enforcement methods employed by each nation. The evidence from this investigation suggests that judicial weaknesses within Mexico undermine IPR enforcement efforts whereas Chile's more professional judiciary is better able to adjudicate IP conflicts. Therefore in Chile, it is generally recognized that piracy is not without risk because the law is more consistently applied by relatively uncorrupt courts that understand the complexities of IP law. By contrast, Mexico's judiciary is plagued by corruption, incompetence, and long delays that dissuade potential litigants from bringing cases of infringement to court thereby creating a general climate of impunity for IP violators.

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[381] Charles Cadwell, "Implementing Legal Reform in Transition Economies" in *Institutions and Economic Development*, ed. Christopher Clague (Baltimore: John Hopkins University Press, 1997).

In order to remedy Mexico's situation and thus promote IPR convergence, it is imperative that I examine how these two nations ended up with judiciaries of differing quality. Accordingly, I analyze the historical evolution of each nation's respective judiciary. Immediately prior to the 1990s, both judiciaries were passive institutions that submitted to the dictates of the executive. Yet important differences in each nation's executive – judiciary relationship later affected their abilities to converge to global norms. For example, although the Chilean judiciary was under the power of Pinochet throughout the 1970s and 1980s, it was also used by the dictator as another instrument to solidify his neoliberal policy objectives. To this end, the executive prioritized the continued modernization, and to a lesser degree the independence of the judiciary to adjudicate commercial law. As a consequence, Chile entered the period of IP reform possessing a well trained generation of judges and a high degree of institutional efficiency.

However, this was not the case in Mexico. Throughout the better part of the 20th Century, the Mexican judiciary was not only passive to the PRI dominated executive but it was also intentionally weakened by the executive. Rather than employing the judiciary as a means to consolidate the power and policy priorities of the executive, PRI presidents frequently engaged in metaconstitutional activities that severely undermined the professionalization of the judicial branch. Such historical legacies produced a Chilean judiciary that is better able to understand and enforce IP legislation, and an overwhelmed Mexican judiciary that often does not understand

the new laws it is asked to decide upon.[382] Without a way to compel compliance, IP piracy will continue in Mexico regardless of the existence of numerous laws or societal actors supporting the protection of IP.

8.2 Divided Authority in Policy Implementation

To assess the implementation stage of the convergence process, I draw from the analysis of economic development scholar Charles Cadwell. According to Cadwell, a major impediment to successful legal reform, including IPRs, is divided authority in the executive branch regarding policy implementation.[383] He argues that if the implementation or enforcement of new laws is the responsibility of several government offices, the chances for authority disputes increases. In effect, overall administrative complexity exacerbates the uncertainty that the adoption of new legal rules aims to reduce. Conversely, if fewer agencies are responsible for policy administration then the probability increases for successful convergence.

Notably, in the quantitative analyses presented in Chapter 3, the proxy measure for divided authority proved to be the only statistically significant variable in the regression analyses. However, the direction of the causal variable did not perform as predicted. In the models, lower proxy measures indicate that implementation authority is concentrated within a small number of actors. Thus the lower the proxy measure, the fewer number of "cooks" involved in IP policy

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[382] The issue of time should also not be ignored in this analysis of judicial effectiveness. Chile began its judicial reform program, as discussed in more detail below, sooner than Mexico resulting in more accumulated experience in Chile's judicial sector.

implementation in the proverbial "kitchen" of government. However, in the statistical model, the reverse relationship proved statistically significant with a positive relationship existing between more actors involved in policy implementation and convergence.

Explanations in the relevant literature for this unexpected relationship currently do not exist so only tentative reasons were proposed in Chapter 3. Fortunately, in the qualitative case studies the paradoxical regression results are finally explained. In the statistical model, the positive relationship between higher divided authority measures and convergence reflect the growth in specialized agencies to deal with particular governmental issues. With the creation of each new specialized agency, although the total number of executive offices increases, there is less divided authority in policy implementation because each new agency is solely responsible for a particular area of policy. Therefore, increases in the proxy measure do not represent increased administrative complexity but rather the creation of specialized agencies to handle particular policy areas.

To further explain this relationship between specialized government institutions and IPR convergence, it is necessary to examine the particular agencies responsible for IP policy implementation. In both nations, the structure and responsibilities of their IP administrative agencies are rather similar to those employed in developed economies. Within the developed world, the implementation

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[383] Charles Cadwell, "Implementing Legal Reform in Transition Economies" in *Institutions and*

of IPRs is largely conducted through two distinct offices; a copyright agency overseeing the management of creative works, and a patent agency regulating various types of industrial property. For example, in the United States, IP legislation is managed by the Copyright Office of the Library of Congress and the Department of Commerce's Patent and Trademark Office. As the following discussion illustrates, Mexico and Chile followed the model of the U.S. and did not divide authority among a vast number of agencies or levels of government. To specifically address the potential problem of authority disputes, the Mexican and Chilean governments of the early 1990s created centralized institutions to improve the efficiency of IPR management.

In the case of Mexico, its IP administrative structure was created to implement the Industrial Property Law of 1991. Recognizing that a specialized institution (akin to those in the developed world) was needed to effectively implement the many sweeping provisions of the new law, President Salinas issued a 1993 Decree creating the Mexican Institute of Industrial Property, commonly known by its Spanish acronym "IMPI".[384] By simplifying the administrative structure governing IP, Salinas hoped that the handling and granting of rights which had always been a long and tedious process discouraging innovation and technology

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Economic Development, ed. Christopher Clague (Baltimore: John Hopkins University Press, 1997).

[384] Prior to the Presidential Decree, the 1991 Law was under the administrative authority of the General Director of Technological Development of the Secretariat of Commerce and Industrial Development. All functions and personnel of the former institution were transferred to IMPI upon its creation. For a good review of the historical evolution of the IMPI see their report entitled "Towards a New Culture of Industrial Property" available at www.impi.gob.mx/web/docs/promocion/inf_99/nueva_cultural.html. Accessed on October 2002.

transfers would be dramatically improved.[385] Housed in the Secretariet of Trade and Industrial Development, IMPI's primary responsibilities are to administer and provide civil enforcement remedies consistent with existing Mexican IP legislation. Accordingly, IMPI manages the legal regulations pertaining to trademarks, patents, plant variety rights, industrial designs, geographical indications, layout designs of integrated circuits, protection of undisclosed information, as well as civil enforcement procedures. Duties of this agency include the granting of IP titles, maintenance of national registries for each type of IPR under its jurisdiction, prevent piracy, apply civil penalties of IP violations, promote innovation in industry, and further Mexican cooperation with foreign IP agencies and international organizations. To realize its goals, IMPI provides interested parties with information regarding how to apply for a title, customer support, educational programs to promote IP protection and enforcement, national statistics on IP registries, and civil dispute resolution services.[386]

Headed by its Director General, IMPI is comprised of seven subdivisions each addressing a particular aspect of its general objectives and two administrative branches. In addition to the more standard patent and trademark subdivisions there are also sections devoted entirely to protection of IP, juridical issues, international relations, information technology and regional offices. Rather than simply being an institution that evaluates IP title applications and maintains a registry of such titles,

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[385] Ibid, 3.

IMPI is also responsible for civil enforcement of administrative infractions of IPRs. To this end, IMPI is empowered to issue orders against presumed infringers to cease production and distribution of the alleged pirated goods, investigate and sit in judgment of IP conflicts, and impose civil sanctions.[387] The administrative procedure to address IP conflicts is for a plaintiff to issue a written complaint to IMPI and if it is determined by IMPI that the complaint has merit, IMPI officers will conduct an investigation and conduct a hearing where both parties are present. Administrative penalties generally take the form of monetary fines (usually in relation to the then extant minimum wage), facility closure and impose a maximum of thirty-six hours of administrative jail.[388] However, IMPI can only impose administrative sanctions and cannot enforce the criminal sanctions against IP violators, undermining its overall capacity to secure effective IPR convergence. IMPI investigations do commonly serve though as the basis for criminal investigations which are conducted by the Attorney General's Office and cases presented to any federal court.[389]

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[386] Instituto Mexicano de la Propiedad Industrial (IMPI), "Que es el IMPI?" "Guia de Contencioso Administrativo," and other various reports all available at www.impi.gob.mx. Accessed on September 2002.

[387] This included pirated goods that violated copyright law. As mandated in the Federal Copyright Law of 1996, the National Institute of Copyright no longer performs investigative activities or imposes administrative sanctions. Rather the authority to conduct such actions was granted to IMPI to further centralize IP administrative enforcement procedures.

[388] Edwin S. Flores Troy, "The Development of Modern Frameworks for Patent Protection: Mexico, a Model for Reform," *University of Texas Law Review* 6 (March 2001), 1-32. An example of an administrative infringement sanction is a fine for copyright infringement of 5,000 – 15,000 days of the general minimum wage payable in the Federal District to IMPI.

[389] Ibid, 15.

Despite that weakness, IMPI continues to promote IP protection by organizing training and educational services to private and public actors to inform them of the importance of IP to industry and national culture, and piracy prevention methods. With regards to the justice sector, IMPI conducts a series of seminars and workshops to educate judges, police, members of the Attorney General's Office, and private lawyers of any relevant legislative changes.

Whereas industrial property is the domain of IMPI, artistic works such as literary and audio creations are the domain of the Mexican National Institute of Copyright (Instituto Nacional del Derecho de Autor) known by its Spanish acronym INDAUTOR. Created in 1996 as a decentralized administrative agency of the Secretariat of Education, the institute's mission is to enforce the new Federal Copyright Law and promote copyright protection to advance the development of Mexican culture.[390] To meet this objective, INDAUTOR is empowered to issue copyright titles, maintain a national registry of such titles, distribute application and licensing information, and issue decisions regarding disputed claims on titles.[391] The Federal Copyrights Law of 1996 transferred authority to combat commercial copyright piracy (by conducting investigations and confiscating evidence) and unfair competition to IMPI to further streamline civil enforcement authority. Copyright infringements that are not commercial in nature remain the domain of INDAUTOR. To insure appropriate licensing arrangements, they work with a number of collective

[390] INDAUTOR replaced the General Copyright Bureau that traditionally issued and catalogued copyright titles.

management societies representing various categories of copyright holders (such as musicians and composers) to ensure the proper payment of royalties to title holders.

Similar to Mexico, Chile created its own specialized agency to handle IPRs. The Industrial Property Law of 1991 mandated the creation of two important governmental agencies: the Chilean Industrial Property Office (DPI) and a special Court of Appeals for Industrial Property.[392] The principal agency responsible for the administration of most forms of IP is the DPI.[393] Created with the goal of streamlining procedures regarding the granting of various types of IPRs, the DPI represents the government's attempt at reducing divided authority in policy implementation.[394] It is responsible for the implementation of IP laws and regulations concerning trademarks, patents, plant variety rights, industrial designs, and layout designs of integrated circuits.[395]

As a sub-division of the Ministry of the Economy, the DPI's mission is to administer relevant IP laws while also providing client services to those seeking IP information and protections. Specific responsibilities include: assessing mark and patent applications; resolving legal disputes regarding null mark and patent registrations; granting mark and patent rights; maintaining and certifying a registry of

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[391] Instituto Nacional del Derecho de Autor, "Misíon," "Antecedentes del Derecho de Autor", and other reports. All available at www.sep.gob.mx.

[392] DPI was formally institutionalized by a 1991 decree issued by the Ministry of the Economy.

[393] Departmento de Propiedad Industrial de Chile, "Institutionalidad DPI" and "Servicios." Both reports are available at www.dpi.cl.

[394] Sergio Escudero, "Achieving TRIPS Level Protection" (Toyko: APEC Industrial Property Rights Symposium, August 1996). Report available at www.jpo.go.jp.

[395] Notably, unlike in the case of Mexico, geographical indications are not the responsibility of the DPI. Rather, geographical indication regulations are administered by the Department of Agriculture Protection, Agriculture and Livestock Service placed within the Ministry of Agriculture.

legal marks and patents; and distributing public information regarding IP and the conferment of IPRs. Therefore, not only does the DPI handle IPR applications and issue titles but it is also partially responsible for civil enforcement. Yet unlike Mexico's IMPI, the DPI's enforcement duties are more limited thereby conferring more enforcement responsibilities to the judiciary. As discussed in section 8.4, one reason for this functional difference between IMPI and DPI is that Chile possesses a more effective court system that can assume the responsibility of enforcement. DPI's greater degree of specialization contributes to a more effective administration of policy.

To handle their administrative and jurisdictional duties the DPI is divided into five distinct sections. These include the sub-department on marks, the sub-department on patents, the sub-department on legal issues, the patent office, and the office on information technology. The sub-departments on marks and patents are primarily responsible for the handling of applications and registering of IP titles granted. The sub-department on legal issues and the patent office handle contentious legal proceedings such as deciding on an opposition filing and annulment procedures. In terms of its jurisdictional procedures, anyone interested in filing an opposition to an application for a particular IPR takes their case to the DPI for evaluation. The Head of the DPI requests an expert's opinion on the case which serves as expert testimony. The involved parties are granted a limited time to comment on the report before proceeding to the discovery period when evidence is presented and ends with a final judgment is presented before the involved parties.

This final judgment of the Head of the DPI is subject to appeal but only before the Industrial Property Court of Appeals. This specialized court has the authority to confirm or revoke DPI decisions but the court's decisions are also subject to appeal by the Chilean Supreme Court. In addition to the DPI's authority to decide IP title disputes, it also has the broad powers of investigation, prosecution of civil liability and the right to obtain the corresponding indemnity for damages.[396]

In addition to its administrative and jurisdictional responsibilities, the DPI is also very active in disseminating information to interested private parties and members of the justice sector. The DPI's office on information technology promotes IPR compliance through partnered public campaigns while also hosting training seminars for judges, lawyers and custom officials. Such educational services support enforcement by informing judges of any changes to existing IP legislation. Additionally, the DPI created an interactive website to ease the process of accessing information regarding IP legislation, checking the database of mark and patent holders, and submitting title application. Questions to the various DPI sub-departments can be submitted on-line as well as the filing of applications and the payment of fees.

With regards to copyrights, the Chilean copyright office is responsible for the administration of relevant legal regulations.[397] Since the early 1970s, the office has

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[396] Marcos Morales Andrade, "Contentious Competency of the Chilean Industrial Property Department," *ASIPINFORMA* (1998).

[397] For an overview of the administrative agencies responsible for all IP legislation in both Mexico and Chile please see the Asia-Pacific Economic Cooperation Forum's Intellectual Property Rights Expert Groups country reports on legislative frameworks available at

been housed within the Ministry of Education's Directorate of Libraries, Archives and Museums and placed under the authority of DPI. The Copyright Department's primary responsibility is to issue titles and maintain a national registry of copyrights. Akin to the DPI, they sponsor various community outreach campaigns on piracy and educational seminars on enforcement to members of the justice sector. When disputes arise regarding copyright titles, the Chilean Copyright Department has jurisdiction to investigate and settle the dispute. However, in cases of copyright violations, federal courts hold jurisdiction to hear the claim.[398]

Also mandated by the 1991 IP Law was the establishment of private management systems for collecting copyright fees within particular copyright sectors.[399] When legal conflicts arise regarding royalty payments these collective management organizations assist in the investigation and presentation of the case to a Chilean court.

Therefore, in terms of administrative agencies responsible for IP, in both cases a relatively similar organizational structure is employed to oversee the implementation of legislation and civil enforcement (See Table 8.1). The centralized IP administrative departments of both Mexico and Chile have received praise from USTR and WIPO officials and are lauded for improving the management of IP titles.

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www.apecipeg.org/member_economy_snapshot/legframewrk.asp. Additional IP legislative profiles denoting administrative and enforcement agencies can be found via the WIPO's web-page, www.wipo.org.

[398] Departamento de Derechos Intelectuales, various reports, all available at www.dibam.cl/derechos_intelectuales. Accessed on March 2004.

[399] For example, for authors of books and texts, the Chilean Cultural Corporation (Corporación Cultural Chilena) is the management system whereas for copyrights relating to music the Chilean

The global organization BSA has also praised IMPI as having "excellent, well qualified personnel" who have made a strong commitment to IP management and enforcement.[400] Notably, both IMPI and the DPI have seen steady improvements in the number of applications filed each year and are processing patent applications months faster than before their creation.[401] The number of complaint cases being resolved within each department has also steadily increased throughout the past decade indicating that centralization of authority improving IP policy administration.[402] One point of departure among the cases is that IMPI places a greater emphasis on coordinating educational workshops and participating in anti-piracy campaigns than the DPI.

Nonetheless, in both cases it appears that the creation of specialized public institutions to implement IP policy largely addressed the problems resulting from divided authority. Problems generally do not emerge regarding which government office is responsible for implementing the particulars of IP legislation or protecting and issuing IPRs. Whereas administrative complexity exacerbates the uncertainty

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Society on Copyrights (Sociedad Chilena de Derecho de Autor) oversees appropriate licensing contracts.

[400] Richard E. Neff, "Status of Administrative (& Civil) Remedies in Mexico," report presented to the Trinational Intellectual Property Committee – Session II (June 1997). Mr. Neff is a legal advisor for the BSA's Latin America division.

[401] For example, the average time taken to grant a patent in Mexico has been significantly been reduced from over three years to a little over two years as a result of the modernization of the office. IMPI, "Approximate Time Required for the Formalities," available at www.impi.gob.mx. Additional data confirming this trend can be found in the annual activities reports of both IMPI and DPI accessed at each institutions respective website.

[402] For example, throughout the latter half of the 1990s and early 21st Century, IMPI steadily enlarged its staff and improved its ability to investigate cases of piracy. As a result the number of inspections it conducted in the period 1997 to 2001 more than doubled from 1,504 in 1997, to 2,795 in 1999 and 4,221 in 2001. IMPI, "Informe de Actividades 2001" available at www.impi.gob.mx.

that the adoption of new legal rules aims to reduce, the creation of IMPI and DPI greatly reduced the uncertainty of the IP legislation of the 1990. For example, when coupled with the authority of the copyright agency of each country, over 90% of all forms of IP titles are administered by these two agencies. Coordination between the two agencies has also improved in the last decade evidenced by the number of joint anti-piracy campaigns, cooperative raids of suspected facilities, and joint appearances at international IP forums.

Moreover, the 'puzzling' results from the statistical models in which the proxy measure of divided authority produced a reverse relationship can be explained by the case-studies. The regression results of the model reflected the growth in specialized government agencies, such as IMPI and the DPI, rather than indicating overlapping policy authority. Although these agencies were not included in the measure used in the regression models, the indicator reflected administrative complexity. Increases in the measure suggest that policy responsibility becomes more convoluted and involves a greater number of actors. However, with the increased use of such targeted agencies, policy implementation is centralized in one office thus reducing administrative complexity. Consequently, although there may be more 'cooks' employed by the executive, each one is carefully contained to their particular part of the 'kitchen' to prevent the negative consequences of divided authority. In terms of IP policy in Mexico and Chile, as the principal agents in deciding how to execute policy, IMPI and DPI achieved policy uniformity and accountability largely consistent with global norms (see Chart 8.1 below).

Nevertheless, differences in IPR convergence levels cannot be attributed to the tenure of the administrative agency responsible for the implementation of IP legislation. The creation of IMPI and DPI respectively were mandated in each country's landmark 1991 IP legislation. Mexico and Chile started to centralize IP administration duties along the lines of developed countries, converging in this respect to global standards at the same time. The duration of IP titles is also similar among the cases and converges with global norms indicating that this variable also fails to explain divergent rankings.[403]

Consequently, differences in IPR convergence ratings cannot be attributed to their IP administrative agencies. Rather, attention must be placed on the final stage of policy convergence, enforcement, to ascertain the reason underlying Mexico's inability to convergence to global IP norms. Appropriately, in the next section the issue of enforcement is examined in greater detail followed by an analysis of each nation's judicial system.

[403] In both nations, terms for industrial property titles are shorter than terms for copyrights. Patent rights last for 20 years of the filing date, industrial designs for 15 years, utility models for 10 years, integrated circuits for 10 years, and trademarks for 10 years. By contrast, copyrights last for 70 years and moral rights, which are not available in the U.S., that pertain to the reputation of the creator cannot be terminated and pass on to the lawful heirs.

Table 8.1: Administrative Agencies Responsible for IP Policy Implementation

Mexico's Industrial Property Administration	**Chile's Industrial Property Administration**
Secretariat of Trade and Industrial Development ↓ Mexican Institute of Industrial Property	Ministry of the Economy ↓ Industrial Property Department
Mexico's Copyright Administration	**Chile's Copyright Administration**
Secretariat of Public Education ↓ National Institute of Copyright	Ministry of Education ↓ Directorate of Libraries, Archives and Museums ↓ Copyright Department

8.3 The Issue of Policy Enforcement

The popularity of the on-line music trading association, NAPSTER, in the U.S. illustrates that IPRs are not perfectly enforced in any country – even the largest advocate for global convergence. In a1998 BSA study it was documented that software piracy is a problem for both the developed and developing world. Within the developed world, according to the report, 228 million applications (four in every

ten) were pirated in 1997 alone.[404] Nonetheless, important differences do exist in enforcement levels that affect the degree to which a nation successfully reaches IPR convergence. Whereas the U.S. and Canada combined account for 27% of worldwide software piracy losses, Latin America's rate is more than doubled that of their northern neighbors (62%). Within the region, Mexico ranked as one of the worst places for piracy with an annual revenue loss of over $130 million in 1997 alone![405] This disparity between U.S. and Latin American piracy rates continued throughout the 1990s. In an updated report of the BSA study, Latin American piracy rates hit 59% compared to only 25% in the U.S., and an average of 34% in Western Europe.[406] Although the countries setting the standard for global IPR convergence continue to be plagued by their own IPR violations, the significant difference in infringement rates throughout Latin America indicate that progress still needs to be made by its southern neighbors (in particular Mexico and Brazil) to converge to global norms.

Even though its reform process began over a decade ago, the problem of weak IPR enforcement continues to plague Mexico. According to government reports, Mexico ranks the third worst protector of IP globally (below China and Russia) and the worst within Latin America.[407] In a 2002 – 2003 report on total

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[404] Software Publishers Association, "Worldwide Software Piracy Losses Estimated at $11.4 Billion in 1997," *Software and Information Industry Association eNewsletter* (June 16, 1998). Available at www.siia.net. Accessed on March 2004.

[405] Ibid.

[406] Software Publishers Association, "1999 BSA/SIIA Piracy Study." Also available at www.siia.net. Accessed on March 2004.

[407] *Reforma*, "Es México 'rey' de la piratería" (11 August 2002).

losses due to the value of pirated products in the marketplace, the value of the losses in Mexico dwarfed those in Chile. In 2002 Mexican losses were estimated at $218.9 million versus $51.1 million in Chile. The following year the startling gap widened with losses in Mexico rising to over $700 million while they declined in Chile to below $50 million.[408]

Critical to successful IPR convergence is the effective enforcement of existing IPRs. As the Mexican case clearly demonstrates, a nation can initiate the proper laws and establish relatively efficient administrative agencies to implement IP legislation, but until they can secure enforcement convergence is not met. I contend that for many emerging economies IPR convergence breaks-down in this last stage of the convergence process, policy enforcement, because of the introduction of a new institutional actor into the process: the judiciary. Unlike policy convergence in the arenas of trade and finance where the entire convergence process is managed and enforced within one branch of the government, the executive, the issue-area of IP deviates from the norm because enforcement is outside the authority of the executive. Therefore, powerful presidents who desire IPR convergence no longer have the necessary control over the reform process to guarantee its completion. Rather this responsibility is transferred to the judiciary. Problems in enforcement exist in both Mexico and Chile but it is the vast differences in the ability of their respective judiciary to prosecute IP violators that explains the difference in

[408] International Intellectual Property Alliance, "IIPA 2002-2003 Estimated Trade Losses due to Copyright Piracy (in million of U.S. dollars) and piracy levels in-country." Report available at either

comparative rankings. Thus the decisive factor that enabled Chile to successfully converge to global IPR norms but inhibited Mexico is the existence of an effective judiciary.

As discussed above, Mexico's IMPI is responsible for civil enforcement of administrative infractions of IPRs. Administrative infractions include (but are not limited to) the placing of products in circulation indicating that they are protected by trademark when they are not, using a mark or trade name confusingly similar to a registered title, unauthorized use of marks, unauthorized manufacture of goods covered by patent or utility model titles, imitating protected industrial designs, unauthorized use of an appellation of origin, and unauthorized publication or use of copyrighted materials. By contrast criminal offenses are the repeated violation of administrative infringements, counterfeiting marks for commercial purposes, disclosure and use of trade secrets, as well as the unauthorized production, storage and distribution of trademark, patented and copyright goods for commercial purposes. The central factor that differentiates administrative from criminal IP violations is commercial financial loss. Criminal infringements all involve the intent of procuring profit and are viewed by the PGR as crimes against property. Infringement is a strict liability crime meaning that it only becomes a crime if it is known by the alleged perpetrator that a product was being used, sold, produced, or

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www.iipa.org or at the website of the USTR, www.ustr.gov, in the report entitled "USTR 2004 "Special 301" Decisions on Intellectual Property."

distributed without the consent of the IP title owner or a valid license.[409] Therefore, only when it can be proved that infringement is intentional theft does it rise to the category of criminal larceny. Administrative infractions primarily govern the unintentional or accidental misuse of IPRs.

To confront administrative infringements, IMPI is empowered to issue provisional remedies such as the seizing of production of illegal goods and their withdrawal from distribution, ordering the seizure of goods, and ordering alleged infringers to suspend acts constituting a violation of industrial property provisions. To process the claim of an IP dispute or violation IMPI investigates allegations of piracy, presides over administrative hearings, and imposes civil sanctions. The procedure employed is for a plaintiff to issue a written criminal complaint, or *denuncia*, to IMPI. A suitable bond must also be presented to IMPI to guarantee any damage caused to the defendant if the business is ultimately resolved in favor of the defendant. If it is determined by IMPI that the complaint has merit, departmental officers will conduct an investigation followed by a hearing where both parties are present. Additional evidence can be submitted in this phase of the procedure with the hearing ending with the rendering of a judgment on the case. Parties may petition the judgment but only within a limited time period and by written statement.

Penalties generally take the form of monetary fines, facility closures and in extreme cases the imposition of a maximum of thirty-six hours of administrative

[409] Edwin S. Flores Troy, "The Development of Modern," 1-15.

detention.[410] For example, as of calendar year 2004, punishments for trademark or industrial property violations include a fine for up to 20,000 days of the general minimum wage payable in the Federal District. Additional fines of up to the amount of 500 days of the general minimum wage can be placed for each day that the infringement persists, and temporary closure for up to 90 days of illegal facilities. In cases of copyright violations, the fine ranges from 5,000 – 15,000 days of the general minimum wage with an additional fine of 500 days for each day the infringement persists. However, sanctions of this magnitude were not always the case. After years of criticism from external actors (especially the USTR) and domestic NGOs that the existing level of penalties was not sufficient to deter piracy, the Mexican government increased the sanctions against infringement in the 1999 amendments to the Criminal Code and Industrial Property Law. Therefore, throughout the 1990s, administrative fines were commonly viewed as too small to serve as an effective deterrence.

Moreover, IMPI can only impose administrative sanctions and cannot enforce the criminal sanctions against violators further undermining its overall capacity to secure effective IPR convergence. Yet its investigations do commonly serve as the basis for criminal investigations conducted by the Attorney General's Office (Procuraduría General de la República, known by their Spanish initials as the PGR) and presented to a federal court.[411] To better prosecute IP infringers, in the mid

[410] Ibid.
[411] Ibid, 15.

1990s the PGR created the position of 'the Special Prosecutor of IPR'. This special prosecutor works closely with IMPI to collect evidence against repeat large scale infringers. However, due to the economic crisis of 1997, the PGR budget has suffered from routine cuts and in 1999 the intellectual property unit lost 80% of its personnel.[412] With few resources, the special prosecutor is extremely limited in the number of cases it can handle and how effectively it can enforce IPRs – even within its own neighborhood. Mexicans no longer find it surprising to learn that the main source of pirated merchandise in the capital city of Mexico City is the street market of Tepito which is only a few blocks away from the PGR's central office and one block away from the Federal Judicial Police headquarters. Although the PGR and IMPI coordinate to conduct raids of Tepito stands, illegal merchandise is sold in the marketplace openly and in clear violation of the law.[413]

The specific procedure for criminal prosecutions begins with the presentation of a complaint by the victim of the piracy to the federal police. If sufficient evidence is provided to substantiate a case then police can proceed against the alleged pirates. However, due to pervasive procedural delays and a lack of familiarity of IP laws by federal judges, it can take several weeks and even months before police can obtain the appropriate search warrant.[414] Moreover because treaties addressing IPR

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[412] IIPA, "Special 301 Recommendations: Mexico," (March 01, 1999). Report available at www.iipa.com. Accessed September 2002.

[413] International Intellectual Property Alliance, "Excerpt from the IIPA Special 301 Recommendations: Mexico," (February 20, 1996). Report available at www.iipa.com. Accessed on September 2002.

[414] Marion Lloyd, "Staggering Losses in Latin America," *The Chronicle of Higher Education* (April 2, 2004).

convergence (such as NAFTA) are self-executing, judges are generally unfamiliar with complex regulations outlined in the treaty. Unless a judge voluntarily receives regular supplemental training in IP law, they may only know those relevant sections of civil code that they remember from their days at law school. Unfortunately, IP law traditionally was not taught as a distinct subject in most Mexican law schools but instead was covered as a part of a commercial law course.

This general trend of insufficient academic training further limits the knowledge level that many judges possess on this increasingly complex and relatively new arena of law. As Mexican legal scholar Claudia Tellez Flores argues, the over all result is that infringement procedures are often non-transparent, slow and difficult in Mexico and the process of securing warrants is "rife with problems".[415] Judges are unwilling to issue *ex parte*[416] search orders and PGR officers are slow to execute them. According to Flores, " . . . it has been reported also that judges have often rejected such requests for warrants and have required specific evidence far beyond what is normally needed to secure such a warrant in most jurisdictions."[417] Consequently, lawyers are confused about what evidence is needed to obtain a search warrant while the corruption that exists throughout the justice sector makes leaks to the press or defendants common. Alleged infringers are said to use the delays in the

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[415] Claudia Tellez Flores, "Proposal for the Creation of a Specialized Intellectual Property Court in Mexico," (L.L.M. thesis, University of Arizona's College of Law, 1999) 68.

[416] *Ex parte* or *inaudita altera parte* refers to the constraint that no notification of the other party be made prior to the execution of the legal proceeding. Without *ex parte*, the law mandates notification of the other party allowing the alleged infringer time to remove or erase all evidence of piracy prior to the inspection.

courts to their favor, and move their facilities or hide illegal merchandise before official claims are issued against them. As a result of these combined problems, obtaining full compensation for the infringed is extremely rare and very difficult to obtain in Mexico.

Criminal remedies for the industrial property violations include imprisonment for two to six year, and fines corresponding to 100,000 days of the general minimum wage payable in the Federal District. If the illegal goods are sold in a commercial establishment or in an organized manner, then the imprisonment sentences increase to three to ten years. In cases of copyright violations, criminal sanctions include imprisonment from three to ten years, and fines from 300 to 3,000 days of the general minimum wage. However, as the IIPA argues, the Mexican judiciary continues to view piracy as a minor offense. Rarely is a jail term issued.[418] On the whole, enforcement in Mexico is too slow and unpredictable to serve as a real deterrent to piracy. Plaintiffs too often feel that there is little utility in attempting to prosecute infringers because the courts simply fail to execute the law. In this new and complex area of law, a judicial system that is poorly trained and corrupt undermines Mexico's ability to meet the final stage of IPR convergence.

With regards to Chilean procedures for administrative and criminal prosecution of IP violations, the scope of powers given to the DPI is more limited

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[417] Flores, "Proposal for the Creation" (L.L.M. thesis, University of Arizona's College of Law, 1999), 68.

[418] IIPA, "2002 Special 301 Recommendations: Mexico. Report available at www.iipa.com. Accessed February 2004.

than those granted to IMPI. Although the DPI is empowered to decide cases of title conflict, enforcement penalties are primarily the domain of the Chilean judiciary. Specifically, the DPI is the central institution that settles cases of IP title annulment and cancellation. Its judgments are subject to appeal before the Industrial Property Court of Appeals. This court has the authority to confirm or revoke the DPI judgment but its own decision can be overruled by the Chilean Supreme Court. Civil copyright infringement cases on average take two years before being adjudicated. Due to this delay, about half of all parties choose private negotiation with members of DPI serving as arbitrators to settle the dispute.

In addition to the DPI's authority to decide IP title disputes, it addresses issues of piracy in conjunction with the National Economic Prosecutor's Office. If DPI authorities believe that criminal infractions have occurred, they take the evidence of illegal production or distribution to the Economic Prosecutor for further investigation and prosecution. This office can then request from a federal court the authority to seize goods subject in an infringement lawsuit. Charges can be brought against the infringer for civil liability and corresponding indemnity for damages.[419] Under the 1991 IP and the 1973 Rules for the Defense of Free-Competition laws, private actors with legal representation can also petition the court to issue orders of retention of suspected goods, prohibition of celebrating acts or contracts with respect to certain IP titles, and investigation of alleged acts of infringement. According to

[419] Marcos Morales Andrade, "Contentious Competency of the Chilean Industrial Property Department," *ASIPINFORMA* (1998).

DPI officials, a good relationship exists between themselves and the Federal Civil Police resulting in effective raids of suspected illegal enterprises.[420] In 2003, for example, the local recording industry, DPI officials and the Chilean police began a joint campaign (entitled the 'Zero Tolerance Piracy Decree') in which the groups would sustain a visible public presence in the greater Santiago area, Monday throughout Saturday evenings to deter the sale of illegal merchandise.[421] Cooperative relations are a mark of the DPI's strategy to improve IP enforcement.

Those condemned for crimes against IP must pay damages pursuant to the Civil Code. For example, distribution of pirated software is punishable by incarceration for up to 540 days. Additional criminal sanctions include imprisonment, monetary fines, and the seizure of illegal goods and production equipment. Judges may choose between these alternatives with fines and seizures being the commonly issued sentences. Unique to Chile is the option of allowing the plaintiff to choose whether they desire to have the Court issue an order against the infringer in which he/she must pay the expenses of having their sentence published in a newspaper of the plaintiff's choice.

According to statistics compiled by IIPA and BSA, enforcement in Chile is not without its problems. Both organizations are calling for the Chilean government to improve the rate of prosecution against infringers. Praise is given to the number of raids conducted and their ensuing indictments but rarely are prison sentences

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[420] International Intellectual Property Alliance, "2004 Special 301 Report: Chile" report available at www.iipa.org. Accessed on March 2004.

brought against those convicted against piracy. To compensate for the rarity of incarceration of infringers, plaintiffs generally prefer to secure monetary (civil) judgments. Although statutory damages[422] were not used in Chile until 2004, the closure of illegal facilities and the confiscation of pirated merchandise have made the task of piracy more difficult in Chile relative to other Latin American nations including Mexico. Additionally, the Chilean government is viewed as serious about combating IP violations and open to coordination with local anti-piracy associations. There is optimism that with the implementation of the new legislation implementing TRIPS and the U.S. – Chilean FTA, coupled with the general lack of corruption existing in the Chilean justice sector, enforcement and prosecution rates will improve in the near future.[423]

Similar to the Mexican case, Chilean authorities did not issue *ex parte* search warrants throughout the period under study. Civil enforcement remedies in particular have been at times ineffective due to the failure of existing law to provide *ex parte* search warrants in civil cases. Consequently, in Chile suspected parties receive advance notification of a search thus allowing time for the removal of the evidence. In criminal cases, *ex parte* warrants can be issued but problems continue

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[421] Ibid.

[422] Statutory damages refer to when a court must impose a fixed sum or multiple to determine damages for IP violations. The alternative to statutory damages is the use of the court determining the amount of actual damages incurred by the plaintiff due to the violation. The U.S. – Chilean FTA mandates that statutory damages soon be implemented by the Chilean government in cases of copyright, trademark, and patent violations. Compensation for any harm suffered based on the value of the legitimate goods and the infringer's profits can also be ordered under the FTA. Once fully implemented, Chile will boast the highest level of IP legal protection in South America. Marco Morales, "How the U.S. – Chile Free Trade Agreement Impacts on IP," *Managing Intellectual Property Guide to the Americas* (June 2003).

to persist. Searches can be avoided by the defendant because the granting of civil *ex parte* searches can be tracked using a national identity number of the defendant or the plaintiff in a public electronic register before it has been executed. Thus until this detail is dealt with, investigative searches will remain undermined.

Chile's proximity to countries that producer pirated goods is also adding to the difficulties in securing IP enforcement. More and more illegal goods enter the Chilean marketplace from Peru and Paraguay. Efforts to reform customs procedures to address this problem were included as a part of the U.S. - Chile FTA; thus improvement should also soon occur in this issue.

Fortunately, the Chilean justice sector is judged by scholars and practitioners alike to be a rather transparent system free of corruption. Police raids are frequent and relatively effective but securing sentences beyond monetary fines can be difficult. When imprisonment is ordered, sentences are often suspended with the defendants rarely ever being incarcerated. Prosecutions do not occur as rapidly and criminal sentences are not as strong as these external actors desire so continued pressure is placed on the USTR to address these issues with DPI officials.[424]

To confront enforcement weaknesses, the Chilean government recently enacted a number of reforms. In 2000, the criminal procedure was amended to increase procedural efficiency in the courts and speed up criminal cases. The following year, the copyright law was twice changed to meet the requirements

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[423] Ibid, for the years 1998-2004.

required by TRIPS and the U.S. – Chile FTA. These reforms are of particular importance to the USTR because as digital piracy becomes easier and cheaper to do, the rate of copyright piracy increases in Chile. As noted in the previous chapter, the U.S.-Chilean FTA includes an entire chapter on enforcement indicating that Chile's already relatively well ranked IPR system should improve in the upcoming decade; thus once again outpacing those in the region.

In sum, although no country can claim perfection in IPR enforcement, important differences do exist in the extent to which IP is protected on a national basis. In the case of Mexico despite the existence of many legal provisions governing enforcement, in practice enforcement is extremely lax. Raids against infringers were rare throughout the 1990s and when they did occur, there was so much media attention given to the event that it was considered by many involved in the reform movement as nothing more than a well timed publicity event. As stated by one IIPA representative, those cases outside of media purview move at a "snail's pace" with procedures that are often random and ad hoc. For the most part of the 1990s, Mexican judges were unwilling to issue the appropriate warrants to conduct searches of suspected IP violators. Additionally, institutional corruption throughout the justice sector resulted in suspects routinely moving locations or clearing their inventory prior to the commencement of official searches.[425] Chilean raids, by

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[424] IIPA, "Chile: Special 301 Report" various years, available at www.iipa.org. Accessed March 2004.

[425] IIPA, "Excerpt from the IIPA Special 301 Recommendations: Mexico," (February 20, 1996). Report available at www.iipa.com. Accessed on September 2002.

contrast, are judged as largely effective tools in the government's efforts to enforce its IP legal regime.

Importantly, criminal prosecution of IP violators is viewed by many in IP related industries as the most effective deterrent to piracy. With consistent, severe, and public prosecution of violators, piracy becomes a crime with clear and predictable costs. But if prosecution is rare, then compliance to the law will also remain a rare occurrence. Throughout the end of the 1990s and early 21st Century, external NGO's concerned with IPR convergence such as BSA, IIPA and the Pharmaceutical Research and Manufactures of America (PhRMA) continued to submit reports to the USTR for the inclusion of Mexico, and to a lesser degree Chile, to the Special 301 report due to what they perceived as unsatisfactory enforcement of its IP legal regimes.[426]

Due to the existing problems and limited scope of administrative remedies in both cases, IPR holders may choose to take their cases to federal courts in hopes of finding resolution to their conflict. But as Mexican IP lawyer Abel Morales-Martir asserts, in Mexico judges often lack the necessary expertise in IP matters to preside over infringement cases.[427] Law partners Oscar M. Becerril and Patricia Becerril agree with this assessment adding that Mexican judges rarely interpret the law

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[426] Claudia Tellez Flores, "Proposal for the Creation of a Specialized Intellectual Property Court in Mexico," (L.L.M. thesis, University of Arizona's College of Law, 1999) 38.

[427] Abel Morales-Martir, "Patent Litigation in Mexico," *International Centre for Commercial Law: Law Development Reports* (June 2001).

uniformly thus making the procedures unpredictable and ineffective.[428] Throughout the reports presented to the USTR for Mexico's inclusion in the Special 301 Report, BSA and IIPA reiterate similar claims that the Mexican judiciary is too poorly trained and corrupt to effectively handle cases of IP infringement.[429] Such assessments are generally not made of the Chilean judiciary in these reports. Although BSA and IIPA are calling on Chilean judges to mandate criminal sentences on infringers and to begin issuing *ex parte* searches, criticisms are generally not made against the institution of the judiciary as an impediment to IP enforcement.

Sadly, Mexican federal courts are not effective courts of last resort and thus they do deter piracy. Even the current head of IMPI Jorge Amigo Castañeda insists that without judicial support the modernization of Mexico's IP reforms will remain stalled. He specifically noted that judicial protection needs to be improved to meet the level of protection provided in the developed countries.[430] Fortunately, IMPI and PGR officials have begun to more actively conduct raids and seizures but serious fines and criminal convictions continue to be a rare occurrence. According to a 1999 IIPA report, "the ratio in Mexico of the number of actual convictions for piracy relative to the number of raids is one of the world's lowest (1.3%)." By 2002 the

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[428] Oscar M. Becerril and Patricia Becerril, "Overview of Mexican Industrial Property Law," *International Centre for Commercial Law: Law Development Reports*, (May 2001).

[429] International Intellectual Property Alliance, "Special 301 Recommendations: Mexico," for the years 1999 - 2004. All reports available at www.iipa.com. Accessed on October 2002 and February 2004.

[430] Jorge Amigo Castañeda, "Modernización del Sistema de Propiedad Intelectual," *Comercio Exterior* 44 (11 November 1994), 1-2.

rate had improved but remained below 4%.[431] Unfortunately, similar data could not be found for Chile so direct comparisons cannot be made among the cases.

As the preceding discussion indicates, central to the issue of successful IP reform is the ability of a government to enforce its IP legal regime and thus reach the final stage of convergence. Unfortunately, the actions of the Mexican judiciary do little to deter piracy and secure convergence. As one scholar summarized it, "the system is not transparent, criminal remedies are not expeditious, and piracy is almost never actually prosecuted . . . (nor) punished."[432] The Chilean judiciary, as discussed above, does not receive such criticisms and by contrast is generally considered a well trained, honest and professional institution. To further assess how the judiciary as an institution affects the final stage of IPR convergence, comparative analyses and the historical evolution of both the Mexican and Chilean judiciaries is conducted in the following two sections. Attention is placed on the relationship between the executive and judiciary, and the impact it made on the overall quality of the judiciary.

8.4 Comparative Assessments of the Mexican and Chilean Judiciaries

The central purpose of a judicial system is to settle disputes. In addition to fulfilling this fundamental goal they also act to legitimate public policy. Not only is the enforcement of law important to the management of political order; it also is important to the management of economic interaction and development. However,

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[431] International Intellectual Property Alliance, "Special 301 Recommendations: Mexico," for the years 1999 and 2002. Both reports available at www.iipa.com. Accessed on October 2002.

the degree to which a judiciary fulfills these tasks is dependent on the formal powers it possesses, the degree to which it is free to exercise its authority, and the quality of the institution itself. In the cases of Mexico and Chile, both judiciaries possess similar authority to adjudicate cases of IP conflicts. Additionally, to various degrees the power of both institutions has been constrained by their executives -- thus affecting their ability to effectively carry out their duties including the enforcement of IPRs. However important differences in their respective historical evolutions (in particular during the1970s and 1980s) affected their respective abilities to enforce their IP legal regimes.

To begin assessing the relationship between the quality of the judiciary and IPR convergence, it is necessary to first explain how the Mexican judiciary differs from its Chilean counterpart. Latin American judiciaries are generally described as lacking in autonomy, resources and competence. Scholars William Ratliff and Edgardo Buscaglia describe Latin American courts as overburdened with judges who for the most part are poorly trained, paid, and lacking in the necessary resources to conduct appropriate investigations.[433] Legal scholar William C. Prillaman argues that most Latin American judiciaries lack independence and efficiency.[434] Sadly, intimidation and corruption continues to be used in some parts of the region to

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[432] Claudia Tellez Flores, "Proposal for the Creation of a Specialized Intellectual Property Court in Mexico," (L.L.M. thesis, University of Arizona's College of Law, 1999), 68.

[433] William Ratliff and Edgardo Buscaglia, "Judicial Reform: the neglected priority in Latin America," *The Annals of the American Academy of Political and Social Science* 550 (March 1997), 59.

[434] William C. Prillman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (Westport: Praeger, 2000), 18.

influence judicial decisions further undermining the administration of justice in Latin America.[435] Consequently, respect for the rule of law is often difficult to establish because illegal behavior often goes unpunished, including IP violations.

Adding to the burdens of these judiciaries is the wave of neoliberal reforms of the 1980s and 1990s that not only deregulated and opened economies but also increased the amount of litigation concerning market conflicts. These reforms introduced conflicts of a new and often complex nature, such as IP disputes and antitrust suits, to judiciaries that were already overburdened and poorly trained.[436] Throughout most of Latin America, neoliberal reforms were enacted without thought to the ability of the justice system to regulate and enforce these laws. But as discussed in more depth in Chapter 2, a well functioning and predictable legal system is essential to the creation of an environment where efficient and productive economic transactions can occur. Economic exchange, especially investment, prefers national environments in which the rules governing the transaction are easily enforced and conflicts quickly remedied.

Therefore, throughout the 1990s many Latin American governments found themselves confronting the conflicting forces of economic globalization that in part diminished the role of the state in enacting autonomous economic policies while also demanding that a well functioning legal environment exist to secure neoliberal

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[435] Pilar Domingo and Rachel Sieder, eds. *Rule of Law in Latin America* (London: Institute of Latin American Studies, 2001), 1-8.

[436] Jorge Correa Sutil, "Judicial Reform in Latin America: Good News for the Underprivileged?" in *The (Un)Rule of Law and the Underprivileged in Latin America*," eds. Juan E. Méndez, Guillermo O'Donnell, and Paulo Sérgio Pinheiro (Notre Dame: University of Notre Dame Press, 1999), 262-265.

economic transactions. This challenge has been only partially answered by those Latin American countries that realize that to remain internationally competitive their legal systems must be modernized and their quality improved.

But until this occurs, problems in the judiciary will continue to undermine the general state of the rule of law and the ability of the courts to execute their duties; including the enforcement of each state's IP legal regime. A World Bank survey, for example, concluded that these judiciaries are plagued by erratic and inconsistent decisions, and unreasonable resolution times that result in regional productivity losses of 23 percent.[437] This assessment is strongly similar to the criticisms of IIPA and BSA against the Mexican judiciary. Its inability to efficiently and predictably adjudicate over IP conflicts is but one example of regional judicial behavior.

However not all Latin American judiciaries are equal in terms of quality. Different sets of problems affect different judiciaries. Although institutional quality is difficult to assess, scholars have used various proxy measures to rank Latin American judicial systems.[438] One proxy measure commonly employed is the 'Corruption Perceptions Index' published annually by Transparency International. This index assesses the level of corruption in the public sector based on the perception of businessmen, analysts and the citizenry. In this index, nations are ranked on a score from 0 to 10 with higher scores indicating a more transparent (and thus less corrupt) public sector, including the judiciary. Chile ranked as the most

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[437] World Economic Forum, *World Competitiveness Report* (Geneva: World Bank Press, 1994).

transparent nation in Latin America with a high score of 7.5 whereas Mexico ranked 9th with a score half that of Chile's, 3.4. Without Chile's high score, the Latin American average would drop to 3.2 making the region the most corrupt in the world.[439]

A second popular ranking system utilized as a proxy measure for the quality of the judiciary comes from the World Bank's Governance Indicators Database.[440] The data are used to assess the quality of governance based on survey results from citizens, enterprises, and country experts. Two indicators from this database relevant to judicial quality are the 'rule of law' and 'control of corruption' measures. Using this dataset, Chile once again scores better than Mexico on both counts. In the years 1996-2002, Chile's rule of law score and control of corruption percentile rank (with scores closer to 100% indicating better governance on this measures) ranged from 85% - 87%, and 85% - 90% respectively. By contrast, Mexico's scores for this same period were 40% - 55% for the rule of law index and 39% - 52% for the control of corruption index.[441] Once again, using governance indicators as a proxy measure for judicial quality demonstrates that the Chilean judiciary is better respected and of higher quality than Mexico's judiciary.

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[438] Matthew Stephenson, "Economic Development and the Quality of Legal Institutions," *The World Bank's Legal Institutions Reports*. Report available at www.legal.worldbank.org. Accessed March 2004.

[439] Transparency International, "Corruption Perceptions Index 2002 - Latinoamérica and the (Spanish speaking) Caribbean," (October 15, 2003). Report available at www.transparency.org.

[440] Daniel Kaufmann, Andrew Kraay, and Michael Mastruzzi, "Governance Matters III: Governance Indicators for 1996 – 2002. Report available at http://info.worldbank.org/governance. Accessed March 2004.

[441] Ibid.

A third proxy measure for judicial quality comes from the joint Heritage Foundation and Wall Street Journal 'Index of Economic Freedom.' In this index, a property rights indicator is used as a proxy measure for judicial effectiveness and quality.[442] In a current study examining judicial efficiency, scholars Luc Laeven and Giovani Majnoni also utilized this indicator as a proxy measure to assess justice systems. They reversed the original scale of 1 - 5 thus making higher scores an indication of greater property rights protection (originally, scores closers to 1 indicated greater protection). In their study, Chile received a score of 5, indicative of very high protection and a judicial system that is efficient, independent and free of corruption. Mexico, on the other hand received a score of 3 suggesting moderate protection as well as an inefficient judicial system subject to delays, corruption, and influence from other government branches.[443]

In addition to this indicator, Laeven and Majnoni also employ a second proxy measure to ensure construct validity. This second measure, also used by Florencio López-de-Silanes and La Porta et al. in their studies of judicial quality, is the LAW variable from the International Country Risk Guide (ICRG) produced by the Political Risk Services Group.[444] This variable is employed as a measure of the quality of the legal system and the enforcement of legal contracts. Using the monthly index for the

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[442] Justice Studies Center of the Americas, "Quality of Justice and Economic Freedom: Index of Property Rights." Report available at www.cejamericas.org. Accessed on March 2004.

[443] Luc Laeven and Giovanni Majnoni, "Does Judicial Efficiency Lower the Cost of Credit?" *World Bank Policy Research Working Papers*, Working Paper 3159 (October 2003). Report available online at www.econ.worldbank.org. Accessed on March 2004.

year 2000, the scale ranges from 0 – 6 with higher scores indicating a better legal system. Drawing from their dataset, Chile once again performs better than Mexico (although at a smaller margin) with Chile receiving a score of 3 and Mexico a score of 2. Using this LAW variable, Mexico's score was the lowest in a grouping of regional economic competitors where Argentina received a 4, and Brazil and Venezuela both received a 3.[445] Yet again, on this fourth proxy measure for judicial quality Chile continues to outperform Mexico.

The Justice Studies Center of the Americas also uses the 'Opacity Index' as a proxy measure for the quality of Latin American legal and judicial systems. Compiled by PricewaterhouseCoopers, this index employs a scale of 0 – 150 with 0 indicating maximum transparence and 150 complete opacity. The average 2000 opacity score was 56.2 for the 11 Latin American countries included in the index. Chile received a score comparable to the United States, indicating that opaque practices generally do not exist, whereas Mexico was deemed to be largely affected by opaque practices.[446] Once again, on this fifth proxy measure the differences in quality between the two judiciaries are clear.

Recently the World Bank began to compile information on legal systems to develop a better dataset of comparable variables to assess judicial quality on

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[444] Florencio López-de-Silanes, "The Politics of Legal Reform", draft dated August 11, 2001 and Rafael La Porta, Florencio López-de-Silanes, Andrei Shleifer,and Robert W. Vishney, "Legal Determinants of External Finance," *Journal of Finance* 52 (1997).

[445] Ibid.

[446] Justice Studies Center of the Americas, "Judicial Systems and Transparancy: The Opacity Index and its Economic Impact." Report available at www.cejamericas.org. Accessed on March 2004.

objective indicators.[447] Drawing from this emerging set of statistics, information regarding the resources available to the Mexican and Chilean judiciaries can be made to discern if any similarities or differences exist between the two institutions. With regards to administrative personnel, differences exist that directly impact case backlog and the overall efficiency of the judiciary. In terms of employees in each country's respective judicial administration body, a glaring discrepancy emerged with Mexico possessing a federal staff of 6 whereas Chile's staff reached 195! Information was not made available by the Mexican government, consistent with its opacity rating, regarding the court system's total employee number (by contrast the total employees reported in this section for Chile was over 6,000). This relationship is reversed though in the number of judges and total judicial personnel employed in each case. According to the Mexican government, they possess 717 judges and over 26,000 judicial personnel while Chile has 570 judges and 5,071 judicial personnel on its payroll.[448] Oddly, the Mexican government does not provide detailed information regarding what type of jobs or which level of government these 26,000 employees belong, to making the total number a bit suspicious.

In terms of procedures governing the promotion and disciplining of judges, and thus directly affecting the quality of judges in the system, information regarding

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[447] World Bank, "Justice Sector at a Glance: Country Reports," all data discussed were reported for the year 2000. Reports available at www4.worldbank.org/legal/database. Accessed on March 2004.

[448] This significant difference in personnel size can be attributed to differences in the size of each nation's economy. In 2000, according to World Bank measures, the Chilean GDP reached $75,515,371,520 by contrast Mexico's GDP hit $581,326,012,416. This indicates that Mexico's GDP for that year was over seven times larger than Chile's GDP and thus the Mexican government

relevant institutional rules is assessed. In Chile there are annual evaluations of first and second tier judges (but not of Supreme Court Judges) where low grades on these evaluations are sufficient cause for removal from their position. Mexican first and second tier judges are not subject to periodic evaluations and can only be removed if they commit a crime or a second offense; not for evidence of ignorance of the law. This suggests that Chilean judges are by and large a better trained group with a solid understanding of recent legal changes, such as IP laws. The weeding out of incompetent judges sets the tone for the entire judiciary that professionalism and high educational standards are central to the institutional culture. Whereas the lack of similar procedures in Mexico implies that continued education and routine scrutiny of judges are not valued. Linked to this issue of judicial evaluation is the legal education of domestic lawyers. There are many more law schools in Mexico than in Chile (328 versus 38) of similar duration (4.5 versus 5.0) but whether this indicates a better quality education or simply a difference in intellectual preferences cannot be easily assessed by these statistics. No other data are available to complement these two indicators.

One statistic that scholars argue does directly affect the quality of judges and judicial personnel is the level of funding the institution receives from the federal government. The share of the public sector budget the judicial sector receives is actually higher in the Mexican case, 1.01%, than in Chile, .87%! Interestingly, a

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possessed more financial resources to hire more personnel than the Chilean government. *World Development Indicators*, access to the database available at http://devdata.worldbank.org/data-query.

much greater share of this judicial budget is allocated to personnel in Chile, 81.60%, than in Mexico, 36.78%. Unfortunately, in published reports of its budget there are few details regarding how the remainder of the budget is allocated. Therefore, there is no clear idea of how the Mexican judiciary is spending its resources leading some scholars to contend that their opaque bookkeeping enables corruption and embezzlement to occur rather easily.

Although the World Bank does not collect similar data from the United States or the United Kingdom, comparisons can be made to the developed countries of Japan and Norway. In these two developed economies the justice sector's share of the public sector budget and the percentage of the judicial budget devoted to personnel more closely mirrors that of Chile with figures of .03% and 53.25% for Japan, and .23% and 59% for Norway. This suggests that in developed economies characterized by effective and independent judiciaries, they do not receive a significant share of the total public sector budget. But from what it does receive, in developed countries at least 50% its share of funding is devoted to personnel.

Adequate salaries for judges and administrative staff is one factor that judicial reform scholars such as Maria Dakolias and Andrés Rigo Sureda et al. recommend be prioritized to attract and maintain highly qualified personnel. The long-term effects of doing so are improvements in overall judicial efficiency and independence.[449] However, it can also be suggested that Mexico's greater devotion

[449] Maria Dakolias, "The Judicial Sector in Latin America and the Caribbean: Elements of Reform," *World Bank Technical Paper: No. 319* (Washington D.C.: The International Bank for

of the judicial budget to non-personnel matters is simply a reflection of an institutional need to modernize its infrastructure. Therefore, rather than indicating a difference in priorities between Mexico and Chile, the fact may be that Mexico is simply at a different stage of reforming its justice sector. Whereas Chile has already upgraded its infrastructure and can thus redirect its monies to personnel rather than computers, Mexico may simply be a bit delayed in this process.

As the preceding review of various comparative rankings of judicial systems clearly illustrates, Chile's judiciary is consistently judged to be a more effective, transparent, and less corrupt institution than Mexico's judiciary. Many interest alliances and IP legal experts contend that the Chilean judiciary simply does a better job at enforcing its IP legal regime than in the case of Mexico. But to better understand how it is that such differences exist, it is necessary to examine why it is that Chile can better adjudicate increasingly complex cases of commercial law. To adequately do so, a discussion of the historical evolution of the Chilean and Mexican judiciaries is needed to discern why differences in quality emerged in the end of the 20th Century. Particular attention is given decades of the 1970s and 1980s, the period proceeding the current era of economic globalization.

8.5 The Historical Evolution of the Mexican and Chilean Judiciaries

Similar to the U.S. Constitution, Mexico's 1917 Constitution also mandates the separation of government power into three distinct branches of government. It

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Reconstruction and Development/World Bank Publications, 1996); and Andrés Rigo Sureda and Waleed Haider Malik's, eds., "Judicial Challenges in the New Millennium," *World Bank Technical*

further provides for a number of mechanisms to restrain and check the power of its individual branches. However, in practice the Mexican executive has enjoyed a privileged position in the government, often at the detriment of the judiciary and legislature. As detailed in Chapter 5, until the late 1990s the Mexican president possessed many formal and informal powers that secured the political supremacy of the presidency. Moreover, PRI dominance of electoral politics guaranteed the party control of essentially each branch of government, at both the federal and local levels.[450]

But this was not always the case. In the first years of the revolutionary regime, 1917 - 1928, the Mexican congress controlled judicial appointments. However, in 1928 the power to select Supreme Court Justice was transferred to the executive.[451] Until 1995, federal circuit and district circuit judges were selected by the Supreme Court. This power of judicial appointments, which was not reformed until the Zedillo Administration (1994-200), resulted in a Supreme Court that was

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Paper: No. 450 (Washington D.C.: The International Bank for Reconstruction and Development/World Bank Publications, 1999);

[450] For more in-depth analysis of the structure of the Mexican government see Howard Handelman's *Mexican Politics* (New York: St. Martin's Press, 1997) and Roderic Ai Camp's *Politics in Mexico* (New York: Oxford University Press, 1993).

[451] The official process used to select Supreme Court justices for the period 1928 – 1994 began with the Presidential nomination of a candidate. The Senate had ten days to confirm or reject the candidate. If the candidate was rejected, a second Presidential nominee would be submitted to the Senate. But if the Senate failed to act within the ten days, the candidate would automatically take office. Senate rejection of the first two candidates would result in a third Presidential candidate taking office until the next session of Congress began. In 1994, President Zedillo changes this selection procedure in an attempt to reform the judiciary and introduce a more balanced division between the branches of government. In the new procedure, the president submits a list of three candidates from which the Senate accepts to the position. If all three candidates are found by the Senate to be unsuitable, another list is sent by the President where failure to select a candidate as acceptable results in the President having the power to select the justice from the second list. The Senate must make their decisions within thirty days or the president once again assumes the power of selection.

known for its lack of independence and subservience to the executive.[452] Appointments to all levels of the judiciary were typically political appointments with either direct or tacit Presidential approval. To gain executive approval of a potential judicial nominee, it would need to be made clear to the executive that the nominee would not attempt to use their position to constrain or challenge the power of the President. Consequently, throughout much of the 20th Century the judiciary was extremely subservient to the executive, rarely challenging presidential acts. As summarized by scholar Howard Handelman, the executive branch routinely pressured, manipulated and intimidated lower level judges into rendering particular decisions.[453] When judges do assert independence, the costs are often severe and swift. For example, in 1995 Superior Court Judge Abraham Polo defied Executive pressure to issue arrest warrants against a number of prominent union leaders and publicly charged his superiors with intimidation. Within the year, Judge Polo Uscanga would be found shot to death. Although no clear connection was ever found implicating executive officials with the murder, it does illustrate the risks involved for judges who step outside the bounds of 'appropriate' judicial behavior.

Executive control over appointments, clientelism and rampant corruption throughout the justice system became well entrenched characteristics of the Mexican justice system. Passivity to the executive became the norm thus undermining the

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[452] Jeffrey Weldon, "Presidencialismo in Mexico" in *Presidentialism and Democracy in Latin America*, eds. Scott Mainwaring and Matthew Soberg Shugart (New York: Cambridge University Press, 1997.

[453] Howard Handelman's *Mexican Politics* (New York: St. Martin's Press, 1997), 59.

legitimacy of and greatly reducing the level of public trust in the judiciary.[454] A long-term result of this was the rise of judges appointed not because of their academic qualifications but because of their political connections. This in turn produced judges lacking in appropriate training and education who cared little for the rule of law. This culture of judicial passivity and incompetence greatly undermined the overall quality of the Mexican judicial system and its ability to effectively resolve legal conflicts.

Another method in which Mexican presidentialism weakened the institution of the judiciary was the repeated use of metaconstitutional acts by sitting presidents. According to renowned Mexicanist Roderic Ai Camp, throughout the PRI's dominance of Mexican politics (1929-2000), presidents routinely used 'extralegal authority' to intervene in political conflicts even when the situation clearly warranted the intercession of the judiciary. For example, President Salinas (1988 – 1994) intervened in a number of state electoral disputes totally bypassing federal judicial bodies. Questions of electoral fraud, assault and corruption which according to the constitution should be adjudicated by federal courts and the electoral institute (depending on the precise nature of the crime) were instead often resolved by the Mexican president.[455] Thus, the executive exercised power over the judiciary by simply ignoring judicial authority and constitutional jurisdiction.

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[454] Pilar Domingo, "Citizenship and Access to Justice to Mexico," *Mexican Studies/EstudiosMexicanos* 15, 1 (Winter 1999), 174-75.

[455] Roderic Ai Camp's *Politics in Mexico* (New York: Oxford University Press, 1993), 177–178.

Though the judiciary had at times been used to support presidential directives, the executive generally did not view the judiciary as an important instrument to further its agenda. Judicial rulings were not seen as viable means to validate and further executive goals. As discussed in detail in Chapter 5, executive control of the legislature, the dominant party (PRI), and local government offices were the principal means to secure support for presidential programs. Power conferred on the president gave him little reason to use another institutional arm to consolidate his political and economic programs. As long as the judiciary remained passive, which it usually did due to political nature of appointments, it was essentially disregarded by the executive.

This discounting of the judiciary as a possible extension of presidential power is further explained by the lack of appropriate resources historically conferred to this institution. Judicial budget autonomy in Mexico is rather limited. Up until 1976, the judicial budget and how it was administered was decided at the discretion of the executive. Although the management of monies is now under judicial control, it was not until 1994 that major revisions were made to the judicial budget. Until then, the only Constitutional stipulation governing judiciary financing was that the salaries of the members of the federal courts could not be reduced during the tenure of a judge. By the 1980s, salaries did begin to improve but the increases did not keep pace with the existing rate of inflation.[456]

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[456] Pilar Domingo, "Citizenship and Access to Justice to Mexico," *Mexican Studies/EstudiosMexicanos* 15, 1 (Winter 1999), 177-179.

Infrastructural problems also plague the Mexican judiciary. Although the number of district courts was increased during the 1980s, significant budget increases to modernize the courts was not forthcoming. This meant that many courts found themselves facing reduced budgets, especially in rural areas. Furthermore, they did not have the necessary funds to repair or replace old equipment (such as ordinary office equipment) or hire additional staff. By the 1980s, court delays and limited access to court services remained problematic while judge caseloads continued to increase despite the growth in the number of courts.

Consequently, members of the judiciary themselves believe that the administration of justice is severely undermined due to insufficient resources and low salaries.[457] Therefore, a third factor that undermined the quality of the Mexican judiciary was the limited resources made available to this branch of government. Modernization of the judiciary to meet the new demands placed upon it, including settling IP disputes, will not occur until significant budgetary increases are made that improve the productivity of the institution.

With this historical legacy of political manipulation and pervasive institutional weakness, the Mexican judiciary entered the current era of economic globalization unable to appropriately adjudicate traditional legal conflicts as well as new forms of commercial law. Throughout the 1990s, Mexican courts continue to be characterized as inefficient, unpredictable and corrupt. In light of this widely held characterization, the subject of judicial reform is not new to Mexican politics. By

the mid-1990s more vocal calls for judicial reform began to emerge from new societal groups such as IP interest alliances and human rights organizations. President Zedillo's 1994 judicial reforms improved the independence and administrative efficiency of the courts but much more still needs to be done.[458] Additional efforts to reform the judiciary occurred in 1997 when the USAID initiated a narrowly-targeted program addressing alternate dispute resolution (ADR), access to justice, and judicial education. Although a number of seminars and conferences were held to train judges and court staff, IP law was not included in any of the meetings.[459]

Yet, as legal scholar Pilar Domingo contends, "these reforms have been patchy and incomplete."[460] She further argues that throughout the 1990s the Mexican judicial system minimally met standards of impartiality, predictability, and rights protection normally found in a liberal order of rule of law. Due to deliberate executive actions directed to undermine the authority and quality of the judiciary, it

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[457] Ibid, 177.

[458] Recent reforms include the 1976 Budget Law that granted autonomy to the administration of the judicial budget, the 1982 Constitutional Reform that allowed the President to remove Supreme Court Justices for bad conduct, the 1987 Constitutional Reform that strengthened judicial review and extended the trial period for lower judges, and the 1994 Constitutional Reform that changed the Supreme Court nomination process and its composition, judicial tenure and the administration of Federal Courts with the creation of Federal Judicial Council. For additional information regarding these reforms see "Liberalismo Contra la Democracia: Recent Judicial Reform in Mexico," *Harvard Law Review* 108 (1995), 1919-1936; and Jorge A. Vargas, "The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995," *American University Journal of International Law and Policy* 11, 2 (1996), 295-340.

[459] Office of Democracy and Governance of the U.S. Agency for International Development, "Achievements in Building and Maintaining the Rule of Law," *Occasional Papers Series* (November 2002), 78.

[460] Ibid, 184.

does not possess the basic capabilities to adjudicate over and enforce Mexico's IP legal regime.

The Mexican government recently acknowledged that weaknesses in the judiciary have had a negative impact its ability to enforce IPRs and that it intends to remedy the situation. In addition to President Fox's recent anti-corruption and administration of justice initiatives, both the Zedillo and Fox administrations (2000 – 2006) made concerted efforts to more specifically address IP enforcement by federal courts. In 1999, a national campaign to strengthen enforcement was launched that targeted three distinct areas: legal reforms, increased enforcement and education in anti-piracy. As a result of this campaign, IP violations became classified as major crimes, and penalties were accordingly increased to correspond to the gravity of the crime. The maximum fine was increased from 3,000 times the daily minimum wage to 20,000, and prison sentences increased from 6 months - 6 years to 3 - 10 years. Funding was also slightly increased to fund more inspections and educational services to judicial and police authorities. In addition, IMPI sponsored a mass media campaign explaining the importance of IP to national culture, innovation, and economic development.[461]

Nonetheless, a 2002 study by the USAID once again characterized the Mexican judicial system as corrupt, inefficient, lacking in training and adequate resources, and repeatedly disregarding the law. Also that year, the 'Federal Law on

[461] Bruce Zagaris, "Mexico Initiates Intellectual Property Law Enforcement," *Latin American Law and Business Report* (January 31, 1999), 18.

Transparency and Access to Information' and 'Initiative for Criminal Reform at the Federal Level' were passed to further improve the quality of Mexico's administration of justice.[462] In 2004, the European Union initiated a project entitled "Strengthening and Modernization of Mexico's Judicial Administration" and President Fox introduced reforms to the Supreme Court and federal courts. Once appropriately implemented, these reforms should eventually produce a more professional and effective judiciary that can better enforce IP laws. But to date, the criminal prosecution of IP violators is unnecessarily complicated, costly, and extremely time-consuming. Therefore penalties are not having the deterrent effect that they were intended to have because the judiciary is not fulfilling its role as enforcer of the law.[463] The result is a nation with low levels of public faith in the justice system and little confidence that disputes can be properly resolved through the courts.

To address these criticisms, later that same year President Fox initiated a four year campaign to enhance the protection of IPRs and change its global image as a major location for piracy. In 2002 the government proclaimed the new campaign a success with over 23,000 illegal copies of software being confiscated in the commercial center of Tepito in Mexico City, over 4,000 pirated CDs in Tijuana and over 20 tons of duplication equipment.[464] Federal police began to participate in

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[462] For more information on Mexico's recent reform efforts please see the Centro de Estudios de Justicia de la Américas' "Mexico: Judicial Reform Projects Underway" available at www.cejamericas.org.

[463] Office of Democracy and Governance of the U.S. Agency for International Development, "Achievements in Building and Maintaining the Rule of Law," *Occasional Papers Series* (November 2002): 78.

[464] Jonathon Hernández Sosa, "Sigue la BSA con 'cero tolerancia'," *Reforma* (July 1, 2002).

training programs sponsored by the BSA and IMPI to apprehend internet crimes and cyber-pirates while also beginning a new campaign to reduce piracy by 10 – 15% by 2006. Piracy offenses were raised to the same level as organized crime and placed under the supervision of the Specialized Unit in Organized Delinquency. This unit will supplement the efforts of the PGR's Special Prosecutor for Intellectual and Industrial Property. Before the end of the calendar year, the PGR had raided 49 illegal production sites, detained approximately 230 suspects, and under 'Operation Tiger' broke-up a Korean mafia group that had been illegally importing and selling illegal goods from Asia in Mexico.[465]

Although the number of raids is impressive and garners much media attention, criminal prosecutions emanating from these raids remain scarce. For example, approximately 5 to 10 billion pages of copyrighted textbooks are illegally photocopied each year in Mexico but as of April 2004 no one had ever been convicted of book piracy.[466] Notwithstanding increased efforts at combating piracy, practitioners continue to claim that Mexico's judges lack familiarity with the IP legal regime. In particular, additional training in the 'recognition and punishment' of IP

[465] Various *Reforma* news articles including Jonathon Hernández's "Van Contra Piratas Cibernéticos" (September 29, 2002); Hugo de la Torre's "Fijan Metas Antipiratas" (December 5, 2002); Jorge Arturo Hidalgo's "Es Piratería Delincuencia Organizada" (December 4, 2002); Abel Barajas "Crece Lucha Contra piratas" (September 1, 2002) and "Apuntan a Piratería sin Armas" (December 6, 2002).

[466] Marion Lloyd, "Staggering Losses in Latin America," *The Chronicle of Higher Education* (April 2, 2004).

crimes is needed to fulfill the mandates of existing legal regime and thus successfully convergence to global norms. [467]

Even for those police units and federal prosecutors who specialize in combating IP violations, prioritization occurs regarding which goods to target. Top priority is placed on those illegal products that directly affect the safety of the citizenry such as pharmaceutical or food items that pose a health risk to domestic consumers. Following these items, trade secrets and industrial processes are listed as second priority IP infringements with pirated copyrighted goods being placed far down the list.[468] Nonetheless, criminal convictions are beginning to emerge in Mexico on copyright infringement. In July 2002, four people were sentenced to prison terms ranging from 14 months to 6½ years for sound recording piracy. This indicates that the efforts of IMPI and other organizations to train judges on the importance and specifics of IP law, as well as continued pressure by interest alliances and the USTR to secure improve Mexico's enforcement record, are beginning to bear fruit. Yet, as the various comparative measures of IPR convergence indicate, improvements still need to be made in order for Mexico to successfully converge to global IP norms.

Chile, on the other hand, is routinely described as the regional example of successful IPR convergence. The fundamental difference between Mexico and Chile lies in the ability of the Chilean judiciary to effectively enforce IP conflicts. Prior to

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[467] Bruce Zagaris, "Mexico Initiates Intellectual Property Law Enforcement," *Latin American Law and Business Report* (January 31, 1999), 18.

1970s, asserts legal scholar William Prillaman, Chile's tradition of judicial independence and professionalism was undisputed.[469] Chilean scholar supports Prillaman's claim arguing that it consistently attracted qualified applicants, maintained rigorous professional criteria and was one of the most coveted career paths in the public sector.[470] However, court independence began being undermined during the administration of Salvador Allende. President Allende repeatedly stated that the current judicial system was inconsistent with his socialist goals and would ultimately be replaced with a "Supreme Tribunal" selected by popular assembly. Until that time, new 'neighborhood tribunals' were created that ruled on local petty crimes, often without the defendant enjoying his/her right to counsel. These tribunals were completely outside the formal judicial system thereby posing a direct challenge to the authority of courts and legal procedures.

Additionally, senior administration officials began to ignore select Supreme Court rulings that conflicted with the Administration's policy agenda.[471] In response to the growing hostility between Allende and members of the Judiciary, the Supreme Court issued a public warning that the country was on the verge of lawlessness and asked the administration to adhere strictly to their decisions. Allende's retort was that "the government . . . should analyze each case and make its own judgments on

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[468] Marion Lloyd, "Staggering Losses in Latin America," *The Chronicle of Higher Education* (April 2, 2004).

[469] William C. Prillman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (Westport: Praeger, 2000), 139.

[470] Arturo Valenzuela, "Origins, Consolidation, and Break down of a Democratic Regime," in *Democracy in Developing Countries: Latin America*, eds. Larry Diamond, Juan Linz and Seymour Martin Lipset (Boulder: Lynne Rienner, 1989), 171.

the merits as to whether or not it will grant assistance . . . to carry them out."[472] Within a few short months, the military deposed Allende and assumed power. Not only did the coup abolish Chile's democratic government but it ushered in a new period of executive – judiciary relations.

Once in power, the military closed the legislature and declared a state a siege. Importantly coup leaders chose not to shut down the judiciary. Rather judges critical of the new government were purged and many of the civil court's duties were placed under the purview of military courts. Judicial purges were not widespread though because many of the senior judges shared an ideological sympathy with the military regime and welcomed the change in government.[473] Additionally, Pinochet made it clear to the Supreme Court that he would respect the internal and administrative autonomy of the courts if the judiciary confined its activities to a narrow range of issues that did not challenge the actions of his government. During this period of radical political change and the suspension of habeas corpus rights, rejection of Pinochet's terms was not an attractive option for the Court. Hence, under his dictatorship, the judiciary became extremely subservient and passive to the executive. The courts' submissiveness was most evident in their failure to investigate cases of human rights abuses such as illegal detentions, use of torture, and homicide.

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[471] Ibid, 171-175.

[472] Neal P. Panish, "Chile Under Allende: The Decline of the Judiciary and the Rise of a State of Necessity," *Loyola of Los Angeles International and Comparative Law Journal* 9 (Summer 1987), 702.

Though the judiciary's independence was weakened and its authority constrained, Pinochet's preference for 'legalism' meant he would not deliberately attempt to jeopardize the quality of the judiciary. Whereas PRI governments in Mexico intentionally disregarded the judiciary and failed to provide it with the necessary resources to become a competent and efficient institution, Pinochet made it a point to preserve the high degree of professionalism of the judges and court staff. In the Constitution of 1980, he strengthened the self-management and autonomy of the judiciary.[474] The Supreme Court became empowered with the authority to manage the entire judiciary budget, as well as its recruitment and staffing policies. These changes conferred an incredible amount of power to the high courts by introducing a vertical command structure where all lower courts were subject to the authority of the Supreme Court. The ideological affinity between the executive and the Court removed any suspicion Pinochet may have had that the judiciary would use their growing autonomy to challenge the position of the executive.

Importantly, Pinochet also recognized the importance of the judiciary to furthering his political and economic agendas.[475] As Chilean scholar Edmundo

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[473] Ideas that united the military regime and the judiciary were the rule of law, the importance of courts in settling disputes, and an anti-Communist bias.

[474] For a detailed discussion of the 1980 Constitution, see Lois Hecht Oppenheim's *Politics in Chile: Democracy, Authoritarianism, and the Search for Development* (Boulder: Westview Press, 1999).

[475] The courts suffered heavy criticism for its choice to not protect the civil liberties and human rights of many of the military regime's opponents. For example, in the months following the coup many Allende sympathizers were illegally detained and questioned. Although petitions were filed before the appeals courts to release the prisoners, all requests were denied. According to the president Supreme Court, there were so many petitions that to deal with them would be too time consuming and detract resources from other judicial business. Edmundo Fuenzalida Faivovich, "Law and Legal

Fuenzalida Faivovich contends, during the military period courts confined themselves to enforcement of Pinochet's new legislation.[476] Along with the radical restructuring of the economy, the Chilean dictatorship emphasized the modernization of the judiciary to adjudicate over new areas of commercial law. To attract foreign investment, the government touted Chile as not only a model of economic reform but as also possessing the appropriate legal environment to protect property rights and contracts. The rights of investors, businesses, and innovators were respected and would be enforced unlike in the Allende regime or other nations in the region sympathetic to socialism. To this end, funding for the judiciary increased during this period and capital improvements continued to be made throughout the federal courts. Furthermore, the executive increasingly came to view the High Court as another agent of the military government. Courts were empowered with extended powers including the review of draft congressional legislation involving constitutional questions, and the right for two High Court justices to sit on the Senate with no term limit to their position. Unlike in Mexico where the legislature was used by the PRI-dominated executive as an instrument to further its policy programs, Pinochet employed both the legislature and the judiciary to this task. The Chilean judiciary retained the resources to maintain a certain degree of professionalism as it became a highly politicized institution. In the years to follow, this preservation of judicial quality would prove important to Chile's IPR reform program.

Culture in Chile, 1974 – 1999," in *Legal Culture in the Age of Globalization* (Stanford: Stanford University Press, 2003): 114-115.

With the 1990 return of civilian rule, it was quickly realized that judicial reform would become an important aspect of the transition to democracy in an environment still largely influenced by the military. A more balanced distribution of power between the three branches of government would be central to consolidating democracy therefore actions were taken to eliminate the submissive nature of the judiciary. President Aylwin (1990 - 1994) began the process by attempting to pack the courts to produce a new set of independently minded judges but success was limited. This was followed by the very public prosecution of a few human rights cases to demonstrate a new tradition of accountability. To further improve the administration of justice, in 1994 Aylwin pushed for the creation of a judicial academy that would create and manage promotion criteria and disciplinary procedures. Although the first act reduced the independence and authority of the High Court, as described by Prillaman, the second act "built up their (the judiciary) institutional strength."[477] Chile's process of judicial reform not only began almost a half decade earlier than Mexico; it also began with a better quality judiciary. The central problems that the reform project targeted were accountability and passivity not rampant corruption, procedural delays or poorly trained judges. This suggests that Chile's higher rankings in comparative property rights and IP rankings in part reflect the skills and resources of its judiciary, necessary to enforce IPRs, years

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[476] Ibid.
[477] William C. Prillman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (Westport: Praeger, 2000), 143.

earlier than Mexico. Traditions of professionalism and effective enforcement of commercial law further advanced Chile's path to IPR convergence.

Also during the Aylwin administration a Court of Appeal for industrial property matters was created to better address the issue of IP enforcement. This specialized court was empowered to review, revoke, or confirm any decision of the DPI regarding the granting of or violation of IPRs under its authority. Initiated before Pinochet left office, the passage and implementation of the IP Law of 1991 demonstrated that the new government would not deviate from the IP policies of his predecessor. To preserve political and financial stability, the Aylwin administration made many clear that it did not intend to reverse or halt the neoliberal economic program. His support of continued economic liberalization along the 'competition state' model included the convergence to Chile's IP regime to global norms.

Once Eduardo Frei assumed power (1994 - 2000), he too began to initiate a series of judicial reforms that in turn affected the enforcement of Chile's IP regime. Under Frei's guidance, the Judicial Academy began to prepare judges for their formal duties and provide them with educational opportunities to acquaint themselves with new laws. Training and on-going education was also provided to all judicial personnel to improve the efficiency of the courts.[478] In 1997, as cases of corruption began to appear in the Chilean judiciary, calls for more judicial reforms began to increase. In response, Frei established a new Public Ministry responsible

for investigating alleged crimes thus removing from the courts any responsibility over the collection of evidence and the building of criminal cases. Officials from the Public Ministry often work with the DPI to conduct raids and build cases against alleged infringers. Cooperation between the two agencies has been lauded by IP professionals as a major factor behind the impressive indictment rate of IPR violations. Amendments were also made to the Supreme Court to once again change the composition of the court introducing a new set of judges that were not beholden to the military. Although Frei was unable to secure passage of any new sweeping IP legislation, amendments were made to aspects of existing law and work continued on draft bills to meet Chile's international IP obligations.

The IP efforts of the Lagos administration (2000 – 2004) have met with greater success. In spring of 2002, Chile ratified the WIPO's Copyright, and Performance and Phonograms Treaty. New rules governing patent and trademark protections as well as improve enforcement mechanisms were also passed under Lagos. Additionally, Chile's FTA with the U.S., signed by Lagos, requires Chile to further converge its IP legal regime to global norms.

As noted above, Chile is not above receiving criticism on its enforcement record. The lack of prison sentences and the level of fines given to those prosecuted for IP violations are often at the center of these criticisms. To remain at the regional forefront of IPR convergence, Chile needs to heed the recommendations of the

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[478] Jorge Correa Sutil, "Judicial Reform in Latin America: Good News for the Underprivileged?" in *The (Un)Rule of Law and the Underprivileged in Latin America*," eds. Juan E. Méndez, Guillermo

WIPO and interest alliances by imposing more stringent sentences in cases of IP convictions, begin issuing *ex parte* searches, and adjudicate cases in a timelier manner. Due to these emerging problems in enforcement, BSA and other interest alliances find themselves settling cases out of court when their first preference would be to obtain a judicial ruling. Legal remedies need to be provided more rapidly for criminal sanctions to be a viable option for those seeking redress for IP violations. The government's efforts throughout the 1990s to modernize and reform its judiciary will go a long way to improving the quality of the Chilean judiciary thereby furthering the process of IPR convergence by enabling Chile to better enforce its IP legal regime.

As the preceding discussion illustrates, during the 1970s and 1980s both the Mexican and Chilean judiciaries were restricted by powerful executives who used unconstitutional means to weaken the power and independence of their respective judiciaries. But in the case of Chile, General Pinochet realized that he had many allies in the federal judiciary. So rather than destroy the institution, he cunningly used it as an instrument to further his agenda. In doing so, Pinochet restored independence to the judiciary and made sure that it continued to receive the necessary resources to act effectively within narrow areas of law, such as commercial law. By contrast, the PRI administrations of Mexico chose to sustain their position of power by continuously weakening and cutting funding to their judiciary to prevent

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O'Donnell, and Paulo Sérgio Pinheiro (Notre Dame: University of Notre Dame Press, 1999): 273.

a challenge to the power of the executive. The result was a judiciary lacking the adequate resources or training to effectively adjudicate.

8.6 Conclusions

In this chapter I argue that in both nations the quality of their respective judiciaries proved critical to the last stage of IPR convergence, policy enforcement. Whereas the variables of presidentialism, interest alliances and liberal trade regimes support IP reform, they are not sufficient to secure successful convergence. Although these variables promote the first and second stage of convergence, policy initiation and implementation, neither has the authority or the capabilities needed to complete the last stage of convergence, enforcement. Rather the institution of an effective judiciary is the one necessary variable in the causal model. Notably though, it is not a sufficient variable in either case because a judiciary cannot enforce what does not exist.

All nations can enact comprehensive IP legislation and create effective administrative agencies to implement the registration of IPRs but without adequate enforcement mechanisms and infringement prosecutions, the existing laws are simply disregarded and become meaningless. Without effective IP policy enforcement, the convergence process remains incomplete and indefinitely stalled. Even if the laws are well publicized and generally understood by the general public, without consistent enforcement of these same laws IP protections run the risk of being disregarded with piracy continuing unabated by risk of prosecution.

The evidence presented above clearly illustrates that differences in the quality of the judiciary and thus their ability to enforce IP reforms largely explains the variance among Mexico and Chile in comparative rankings. Mexico's inability to converge to global standards is fundamentally rooted in its ineffective and poorly trained judiciary. Due to the persistent and pervasive problems of the Mexican judiciary, it cannot effectively or quickly adjudicate IP violations. The result is that although Mexico has successfully completed the first two stages of IPR convergence, policy creation and implementation, it cannot converge to global norms until it fulfills the last stage of policy enforcement. Until then, the reform process remains incomplete in Mexico. By contrast, Chile's better trained and financed judiciary is a more effective enforcer of IPRs. Although the institution became highly politicized during the Pinochet regime, his use of the judiciary to further consolidate his policy preferences paved the way for federal courts that were well prepared to adjudicate over IP cases. Such differences in the capabilities of the two judiciaries largely accounts for the different rankings each has received in property rights and IP rankings.

Sadly, as the 21st Century begins, Mexico finds itself facing ever increasing levels of violent and organized crime. In response to growing public demands to address the high level of criminality, both local and federal government initiated a new series of justice sector reforms that include measures to address problems in the judiciary. None of these proposed reforms target IP violations. With limited resources and mounting public outrage, the Mexican government must prioritize

those forms of criminal activity of critical importance to its own people such as armed robbery, assaults, kidnapping, and drug trafficking. The often unrecognized, nonviolent, and legalistic crime of IPR infringement falls far behind these more pressing issues.

These circumstances also hold true in many other emerging economies that are facing the calls for IPR convergence. The problems Mexico is experiencing in effectively converging need to be recognized by those in the field of IP reform as well as all those concerned with economic development. Bridges can be made among various organizations, including IP interest alliances, to promote and fund judicial reform. Effective IPR convergence will then result as a by-product of stronger, better judiciaries throughout the developing world.

CHAPTER NINE

CONCLUSIONS

9.1 Thesis Summary

The goal of this dissertation is to provide an empirically based explanation of property rights divergence. Accordingly, I contend that divergence is the result of the historical evolution of the judiciary vis-à-vis the executive. Whereas the variables of presidentialism and trade negotiations support convergence, an effective judiciary is necessary to carry out effective convergence. To better understand the problematic process of IP convergence for emerging economies, I employed both quantitative and qualitative methodologies, and drew on the cases of Chile and Mexico to explore the obstacles to successful policy convergence in this arena of commercial law. Throughout this study I emphasized that convergence must be examined as a process variable containing three sequential stages. Policy initiation constitutes the first stage of convergence followed by policy implementation and ending with policy enforcement. For convergence to be successful, a nation must fulfill all three stages of the reform process. It is at this last stage of the process that I argue convergence broke down in Mexico and will remain stalled until the overall of quality of the federal judicial system is improved to better adjudicate cases of IP infringement.

The process of legal structure convergence first began in the early 1990s when many emerging economies faced calls to expand policy convergence beyond the traditional economic arenas of trade and finance to the expanding arena of commercial law. In view of the theoretical benefits of reform as well as the introduction of effective IPR protection into liberal trade forums, many nations began the process of reform by signing on to international treaties and initiating new laws. But as the decade progressed reform remained an elusive goal for many of these nations and differences in convergence patterns began to emerge. Whereas trade and finance policy harmonization was enacted rather rapidly in the developing world, reform occurred much more slowly in various areas of commercial law then scholars initially expected. IPRs were especially targeted in this expanded call for convergence yet the process has been rather problematic. Within Latin America, two nations' that embraced the neoliberal project, Mexico and Chile, also began to reform their respective IP structures but by the end of the decade the results were rather dissimilar. At the turn of the century Chile was viewed as an example of convergence success while Mexico was targeted as one of the worst protectors of IPRs in the hemisphere.

Specifically, this work is a study of policy reform in an age of intense economic global competition. The focus of this work is to examine how Mexico and Chile responded to mounting pressures for policy convergence in the issue-area of intellectual property rights. Explanation is presented concerning why policy reform broke down in the Mexican case but was successfully implemented in Chile. The

evidence illustrates that the historical evolution of public institutions largely determines successful convergence outcomes. Unlike other studies of policy convergence that only examine the actions of the executive branch in the reform process, in this study I call attention to the relationship between the executive and the judiciary and how it affects the convergence process. Whereas trade and finance convergence is the responsibility of the executive branch, convergence of legal structures differs from traditional policy reform because the judiciary carries the burden of policy enforcement. In short, the answer to why Mexico is viewed as a case of IPR non-convergence and Chile as one of successful convergence lies in the ability of their respective judiciaries to enforce the IP reforms of the 1990s. Without a way to compel compliance, IP violations will continue unabated regardless of the existence of numerous laws, trade agreements or interest alliances supporting the protection of IP. Unfortunately, much of the existing scholarship on policy convergence fails to recognize the important role of multiple institutional actors on the process of policy reform. Scholars examining policy convergence must expand their analysis beyond a mere examination of the executive or their assessments will remain incomplete.

Generalizing from these two Latin American cases, I argue that the state continues to plays an important role in neoliberal economic development. The state remains the principal actor responsible for the creation of a judiciary that is sufficiently trained and funded to enforce the law, including the IP legal regime, and thus secure successful convergence in commercial law. Therefore, the specific

institution of the judiciary, often ignored in most studies of economic development, is a critical actor in the development project that must be improved in terms of quality and independence for legal reforms to bear fruit.

Importantly, an effective judiciary is not a sufficient causal variable to IPR convergence. A judiciary of the best quality cannot enforce what does not exist therefore other factors are necessary to begin the process of convergence. As repeated throughout this study nations can enact comprehensive IP legislation and create effective administrative agencies to implement the registration of IPRs but without adequate enforcement mechanisms and infringement prosecutions, the existing laws are simply disregarded. As a result, IP convergence remains incomplete and indefinitely stalled.

9.2 Restatement of the Theoretical Contributions

The analysis presented in this study contributes to debates in both the globalization and economic development literatures. This empirical study provides the field of international political economy with a causal explanation of policy divergence in an increasingly highlighted issue-area in the developing world. It fills a serious void in the existing literature by providing in-depth comparative analysis of two nations who converged in the arenas of trade and finance but only one was capable of effectively converging in the arena of IPRs. I argue that unlike policy convergence in the arenas of trade and finance, IP policy convergence is contingent on the historical evolution of a new institutional actor, the judiciary. Whereas trade and finance reform is traditionally initiated, administered, and enforced within one

branch of government --the executive-- IPR reform is a function of both the executive and judicial branches of government. Therefore, powerful presidents who desire IPR convergence no longer have the necessary control over the reform process to guarantee its completion. Rather this responsibility is the judiciary's which are often characterized by inefficiency and corruption in the developing world. Therefore, in this arena of policy convergence, the reform process is much more complex than scholars originally believed because the final stage of reform is highly dependent on the quality of the judiciary. Successful convergence must address not only the targeted reforms pertaining to this specific field of law but also the general state of the judiciary and its ability to enforce the law. The introduction of a new institutional actor to consider in the policy reform process markedly contrasts to existing scholarship that ignores this branch altogether and assumes that policy convergence, once legislated into law, is automatic and absolute.

My thesis also deviates from the orthodox liberal economic perspective that advocates a minimal role for the state in the economic arena and the position within international relations that predicts the demise of the state due to economic globalization. The evidence presented throughout this study clearly demonstrates that in the case of IP convergence there remains a critical role for the state in the neoliberal project. Although states do lose varying degrees of sovereignty by signing on to various international IP treaties, not all power over this issue-area is lost. Rather, as the case studies illustrate, international institutions cannot replace the state as the ultimate actor empowered to create the appropriate judicial system to enforce

domestic law. This dissertation demonstrates the important role that states in emerging economies continue to play in the creation of a stable and transparent legal regime essential for efficient market activity. In the developing world, the internal legal environment of a state was largely ignored in development literature and globalization studies. When discussed it was viewed as an exogenous variable to the causal model. This study illustrates that to adequately examine the role of the state under economic globalization, national legal environments must be viewed as endogenous variables to the model. Without this inclusion, the analyses will remain incomplete and the phenomenon misunderstood.

Furthermore, this examination of the causal variables of property rights convergence suggests that the state remains a critical actor in economic development. As noted above, market transactions need secure and transparent legal regimes that can enforce existing laws and contracts. Without the insurance that a transaction or property right will be enforced by the domestic judicial system, market actors will choose to direct activities elsewhere. In this age of intense global competition for limited investment monies, attracting investment is an extremely important task of the federal government. Developing countries in particular recognize that they must address this area of governance to further their development programs. Judicial reform efforts of all kinds not only contribute to economic development but they may also meet other desired goals such as improving societal stability and democratization.

Finally, this dissertation also makes a valuable contribution to the paradigm of new institutional economics within the sub-field of comparative politics. The emphasis I place on balances of power between the executive and legislative branches illustrates the important nature of institutional development to the policy process. The Mexican case in particular demonstrates how governmental institutions can both support and undermine the IPR reform process. Mexico's presidentialist form of government proved a positive factor in the initiation of the reform process but it later served to undermine the enforcement of the same laws it produced. A consequence of the privileged position of the Mexican presidency was that the judiciary historically remained a weak and ineffective institution. In addition, information emerges regarding why some institutions are more sensitive than others to convergence pressures by alliances within different national contexts. During periods of trade negotiations, presidents of developing countries are extremely sensitive to their nation's global image and thus take policy content cues from those external actors who have the power to shape this image and the direction of the trade talks.

Comparative examination of these two cases reveals not only important information regarding the evolution of IPR convergence but also sheds light on the role of the state in the 21st Century. Such analysis is not only valuable to academic discussions of state sovereignty and policy convergence, but also to policy makers grappling with the issue of economic development. The argument does not apply solely to Latin American but can also address similar cases throughout the

developing world. Emerging economies in particular, regardless of regional location, are all facing the calls for global convergence and grappling with the problematic nature of reform in commercial law.

9.3 Concluding Thoughts on Intellectual Property Rights Divergence

What this study also reveals is the increasingly important issue of global enforcement of IPRs. Whereas the developed world called on emerging economies to converge their IP systems to meet the standards employed in the U.S. and Western Europe, and countries in the developing world responded by enacting a series of reforms, IP infringement remains a global problem. Importantly, it is not a problem of only the developing world but developed economies also face rates of infringement that need to be addressed. For example, in a 2004 study of global piracy, it was reported that over a third of all computer software presently in use is pirated. The percentage of illegally copied software was 36 percent for Western Europe and 23 percent for the U.S. and Canada.[479] If piracy rates continue to increase in the U.S. and Western Europe, the global norm that emerging economies are called to meet will drop to a level of only partial protection where 'acceptable' levels of piracy hover at 25 percent. Conditions that give rise to infringement rates worldwide include:

1. The increased ease of making and distributing digital recordings on the internet;

2. Advances in broadband and modem speed capacity;

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[479] ABC Online News, "Global Piracy Impacts on World Economy: Report" (8 July 2004). Report available at www.abc.net.au.

3. The reduced cost of reproduction equipment;

4. Introduction of organized crime involved in the production and distribution of pirated goods;

5. Growing demand for pirated goods (due to high prices of legal goods and rising unemployment);

6. Public perceptions that IP violations do not constitute theft.

The costs of infringement are many for developed and developing countries alike. Governments lose tax revenues as well as domestic jobs to the production and distribution of legal goods while consumers are exposed to inferior and unsafe products. Developing countries suffer from reductions in technology transfers and investment, in addition to limited domestic innovation. For private companies, the rise of 'predatory hiring' is occurring, where technology losses can be attributed to employee transfers who illegally transfer proprietary technical or commercial information from their former employer.[480]

Interest alliances, in particular IIPA and BSA, have been at the forefront of compiling international statistics on IP violations and advocating measures to address weak enforcement. Strategies advocated to improve enforcement, in particular in the developing world, include:

1. Strengthening provisional remedies;

2. Shifting the focus of enforcement activities from vendors to producers;

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[480] Robert M. Sherwood, *Intellectual Property and Economic Development*, (Boulder: Westview Press, 1990).

3. Creating a specialized federal IP court to improve the efficacy of the available legal remedies and contribute to the development of a more efficient enforcement system;

4. Creating IP legal programs and specializations in existing law schools;

5. Providing an effective *ex parte* search remedy;

6. Establishing clear statutory damages for IP violations;

7. Adopting provisions on technological protection measures;

8. Improving the speed of civil copyright infringement litigation;

9. Improving the general administration of justice by reducing court delays and corruption;

10. Promoting continued legal education programs targeting lawyers and judges.

IPR infringement is not solely a dilemma of the developing world but it is rapidly becoming an issue for those that set the global standards for convergence. Whether it is a case of these standards being simply unattainable or that the very principle of IP protection needs to be reassessed should be explored by scholars in future research.

The emerging evidence does suggest that convergence in this field is not a permanent state or a goal that once achieved can be ignored. Rather as a process, successful convergence needs to continuously be maintained through effective enforcement methods and a public campaign to influence public perception of IPRs as integral to promoting innovation, creativity, and national culture. Promotion of IP solely to protect the profit levels of companies many consider to be already rather greedy and immoral will not be a compelling reason for people to adhere to IPRs.

Governments must work with IP interested industries to make commonly pirated goods more accessible if a compelling public interest exists such as in particular pharmaceutical products. Therefore, sustaining convergence in this issue-area entails more than simply government policies and effective enforcement but it also includes affecting cultural understandings of what constitutes theft and private property.

In closing, future analyses of economic globalization and development, must recognize that the historical evolution of public institutions is a critical factor that can undermine the best intentioned reform efforts. Rather than marking the demise of the state, the present era of globalization calls on states to transform themselves to adapt to new global realities. To successfully adapt, governments must recognize that they continue to play an instrumental role in creating economic growth. Development will not result from a reliance on market mechanisms alone. Deliberate governmental policy, such as judicial reform, is needed to construct the market environment conducive to long-term economic growth.

BIBLIOGRAPHY

ABC Online News. "Global Piracy Impacts on World Economy: Report." 8 July 2004. Report available at www.abc.net.au.

Adelman, Jeremy. "Institutions, Property, and Economic Development in Latin America." In *The Other Mirror: Grand Theory Through the Lens of Latin America*, eds. Miguel Angel Centeno and Fernando Lopez-Alves. Princeton: Princeton University Press, 2001.

Agosin, Manuel R. and Diana Tussie. *Globalization, Regionalization and New Dilemmas in Trade Policy for Development*. Buenos Aires: Facultad Latinoamericana de Ciencias Sociales, 1992.

Aguilera, Pedro F. "Piratería de software en Chile bajará al 40% en el 2005." *La Tercera*. 22 April 2000.

American Intellectual Property Law Association (AIPLA). "Committee Reports: IP Practice in Latin America." Available at www.aipla.org/committees/reports/iplatin.htm. Accessed on February 2002.

_____. "Learn about AIPLA." Available at www.aipla.org/html/learn.html. Accessed on September 2002.

Ames, Barry. *The Deadlock of Democracy in Brazil*. Ann Arbor: The University of Michigan Press, 2000.

Andrade, Marcos Morales. "Contentious Competency of the Chilean Industrial Property Department." *ASIPINFORMA* (1998).

Aoki, Masahiko. "Comment on 'Understanding Financial Crises: A Developing Country Perspective,' by Frederic S. Mishkin." In *Annual World Bank Conference on Development Economics 1996*, eds. Michael Bruno and Boris Pleskovic. Washington D. C.: World Bank, 1997.

Araiza, Alma Hernandez, Director General of Adjunct Support Services of the Mexican Institute of Industrial Property. Interview by the author, 16 October 2002. Electronic correspondence.

Asociación Chilena de Distribuidores de Software (ADS). "Presentación Preparada Por la Comisión de Ciencia y Tecnologia, 04-08-01." Available at www.ads.cl. Accessed on July 2003.

_____. "Quines Somos," "Campañas y Seminarios," and "Campaña de Certificación del Licenciamiento del Software Cámara Nacional de Comercio." All reports available at www.ads.cl. Accessed on July 2003.

Asociación Chilena de la Propiedad Industrial (ACHIPI). *Informativo Achipi*. Reports No. 1 - 4 (January 2001 – January 2004). All reports are available at www.achipi.cl. Accessed on September 2003 and January 2004.

_____. "Acerca de Achipi," "Objectivos", and "Informativos y Actividades." Reports available at www.achipi.cl. Accessed on September 2003.

Asociación Nacional de Interpretes (ANDI). ANDI, "Noticias de la ANDI," for the years 1997 – 2003. Available at www.andi.org.mx/noticias.

_____. "Que es la ANDI?". Available at www.andi.org.mx/bienveni/quesandi.html. Accessed on October 2002.

_____. "Ámbito Político." Report prepared for ANDI's General Assembly Meeting III (2002). Available at www.andi.org.mx. Accessed on December 2002.
Avalos, Francisco A. *The Mexican Legal System.* New York: Greenwood Press, 1992.
Avalos, Francisco and Elisa Donnadieu. "Electronic Guide to Mexican Law." *Law Library Resource Xchange, LLC*. 1 March 2002 Report available at www.llrx.com/features/mexican.htm#history.
Banks, Arthur. *World Governments Database*. Cross-national time series, 1815-1999. ICPSR 7412.
Barajas, Abel. "Crece Lucha Contra piratas." *Reforma*. 1 September 2002.
_____. "Apuntan a Piratería sin Armas." *Reforma*. 6 December 2002.
Barra Mexicana. "Directorio de Funcionarios: 2001," "Plan de Trabajo Consejo Directiva Barra Mexicana – Colegio de Abogados: 2001-2002," "Las Nuevas Tecnologias y la Protección del Derecho de Autor," and "BAA: Publicaciones." All reports available at www.bma.org.mx/pdf/plan.pdf. Accessed October 2002.
Bartolini, Leonardo and Allan Drazen. "Capital Account Liberalization as a Signal." NBER Working Paper No. W5725 (1997).
Bates, Robert H. "Social Dilemmas and Rational Individuals: An Assessment of New Institutionalism." In *The New Institutional Economics and Third World Development*, eds. John Harriss, Janet Hunter, and Colin M. Lewis. New York: Routledge, 1997.
Baumol, William. *The Free-Market Innovation Machine.* Princeton: Princeton University Press, 2002.
Becerril, Oscar M. and Patricia Becerril. "Overview of Mexican Industrial Property Law," *International Centre for Commercial Law: Law Development Reports* (May 2001).
Bello, Oliva Quevedo. Sub-secretary of the Mexican National Copyright Institute, Legal Affairs Office. Interview by the author, 17 October 2002.
Berger, Suzanne. *National Diversity and Global Capitalism* with an introduction by Suzanne Berger, eds. Suzanne Berger and Ronald Dore. Ithaca, NY: Cornell University Press,1996.
Bergsman, Joel and Xiaofang Shen. "Foreign Direct Investment in Developing Countries: Progress and Problems." *Finance and Development*. Washington D.C.: International Monetary Fund and the International Bank for Reconstruction and Development, 1995.
Biersteker, Thomas J. "The Triumph of 'Neoclassical' Economics in the Developing World: Policy Convergence and Bases of Governance in the International Economic Order." In *Governance Without Government: Order and Change in World Politics*, eds. James N. Rosenau and Ernst-Otto Czempiel. Cambridge: Cambridge University Press, 1993.
Bowels, Paul and Barnet Wagmans. "Globalisation and the Welfare State." *Eastern Economic Journal* 23 (Summer 1997).
Bradford, Colin I. Jr. "Redefining the Role of the State: Political Processes, State Capacity and the New Agenda in Latin America." In *Redefining the State in Latin America*, ed. Colin Bradford, Jr, 17-30. Paris: Organization for Economic Co-operation and Development, 1994.

Braga, Carlos A. Primo and Carsten Fink. "The Relationship between Intellectual Property Rights and Foreign Direct Investment." *Duke Journal of Comparative and International Law* 9: 163-180.

Brunetti, Aymo, Gregory Kisunko and Beatrice Weder. "Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector." *The World Bank Economic Review* 12 (September 1998): 353-384

Buscaglia, Edgardo and Clarisa Long. "U.S. Foreign Policy and Intellectual Property Rights in Latin America." In *Essays on Public Policy of the Hoover Institution on War, Revolution and Peace: Number 77.* Palo Alto: Stanford University Press, Stanford University Press 1997.

Business Software Alliance (BSA). "About BSA." Report available at www.bsa.org. Accessed on October 2002.

_____. "La Piratería de Programas de Computación y la Ley." Report available at www.global.bsa.org.latinamerica-spanish/antipiracy/chile.phtml. Accessed on February 2004.

Cadwell, Charles. "Implementing Legal Reform in Transition Economies." In *Institutions and Economic Development*, ed. Christopher Clague. Baltimore: John Hopkins University Press, 1997.

Cafagna, Luciano. "Administrative Reform and State Capacity: A Comparative Study of Antitrust Legislation in Italy, Venezuela, and Mexico." In *Redefining the State in Latin America*, ed. Colin I. Bradford, Jr. Paris: Organization for Economic Cooperation and Development, 1994: 213 – 238.

Cámara Nacional de Comercio (CNC). "Piden Mayor Control de la Autoridad: Artistas y Empresarios Advierten por Fuerte Aumento de Piratería en Período de Navidad," *Comunicados* (11 December 2002). Article available at www.cnc.cl. Accessed on October 2003.

_____. "CNC Lanza Concurso Publicidad Callejera," *Noticias CNC* (17 March 2004). Report available at www.cnc.cl. Accessed on October 2003.

Camdessus, Michael. "Toward a Second Generation of Structural Reform in Latin America." Paper presented at the 1997 National Banks Convention, Buenos Aires, Argentina. In *The Challenges of Globalization in an Interdependent World Economy*. Washington, D.C.: International Monetary Fund, 1997: 3.

Camilleri, Joseph. "State, Civil Society, and Economy." In *The State in Transition: Reimagining Political Space*, eds. Joseph A. Camilleri, Anthony P. Jarvis, and Albert J. Paolini. Colorado: Lynne Rienner, 1995.

Camp, Roderic Ai. *Politics in Mexico.* New York: Oxford University Press, 1993.

_____. *Political Recruitment Across Two Centuries, Mexico*. Austin: University of Texas Press, 1995.

Caporaso, James A. and David P. Levine. *Theories of Political Economy*. New York: Cambridge University Press, 1992.

Carothers, Thomas. "The Rule of Law Revival." *Foreign Affairs* 77, 2 (1998).

Carroll, Paul B. "Mexico, in deal with Microsoft, shows a commitment to intellectual property." *Wall Street Journal*. 29 October 1993: A11.

Castañeda, Jorge Amigo. "Modernización del Sistema de Propiedad Intelectual," *Comercio Exterior* 44 (11 November 1994): 1 - 2.
_____. General Director of the Mexican Institute of Industrial Property. Interview by the author, 4 October 2002. Electronic correspondence.
Castro, Claudio de Moura, Laurence Wolff and John Alic. "Science and Technology; an IDB Strategy." In *Inter-American Development Bank's Sustainable Development Department Sector Strategy and Policy Papers Series.* IDB: Publication number EDU-117, April 2001.
Centeno, Miguel Ángel. *Democracy Within Reason: Technocratic Revolution in Mexico.* University Park: Pennsylvania State University Press, 1994.
Central Intelligence Agency. *World Factbook 2001*. Available at www.cia.gov/cia/publications/factbook/index.html. Accessed on June 2002.
Centro de Estudios de Justicia de la Américas. "Mexico: Judicial Reform Projects Underway." Report available at www.cejamericas.org. Accessed May 2004.
Cerny, Phillip. "Globalization and Other Stories: The Search for a New Paradigm for International Relations." *International Journal* (Autumn 1996): 618.
_____. "Reconstructing the Political in a Globalising World." In *Globalisation and the Nation-State*, ed. Frans Buelens. Northampton: Edward Elgar, 1999.
Chile. Cámara de Diputados. "Proyectos de Ley." Report available at http://www.camara.cl/legis/proyley. Accessed on March 2004.
Chile. Departamento de Derechos Intelectuales. Various reports. All available at www.dibam.cl/derechos_intelectuales. Accessed on March 2004.
Chile. Departmento de Propiedad Industrial. "Estadísticas: Solicitudes de Patentes de Invención." Report available at www.dpi.cl. Accessed on March 2004.
Chile. Ministerio de Educación. "Ministra de Educación Recibió Anteproyecto para Combatir Piratería." *Noticias* (July 2002). Report available at www.minedu.cl/noticias. Accessed on June 2004.
Chile. Senado de Chile. "Inform de la Comision de Educacion, Cultura, Ciencia, y Tecnologia recaído en el proyecto de auerdo, en segundo trámite constitucional que aprueba el Tratado de la Organización Mundial de la Propiedad Intelectual sobre Derecho de Autor." *Boletín* No. 2.414-10 (19 July 2000). Report available at www.senado.cl. Accessed on June 2004.
Chiletech. "Conapi: Nace Comisión Nacional Antipiratería." *Chiletech*. 3 May 2001. Article available at www.chiletech.cl. Accessed on September – October 2003.
_____. "CNC Informo Sobre Exitoso Avance en la Campaña de Certificación de Legalidad del Software." *Chiletech*. 5 July 2002. Available at www.chiletech.com.
_____. "Campana de Certificación de Licenciamiento de Software." Available at www.cnc.cl. Accessed January 17, 2004.
Chudnovsky, Daniel. "Beyond Macroeconomic Stability in Latin America." In *The New Globalism and Developing Countries*, eds. John H. Dunning and Khalil A. Hamdani. New York: United Nations University Press, 1997.
CIVICUS. *The Civic Atlas: 2001*. Membership information provided by Patricia Sipher, Membership Coordinator of CIVICUS. World Alliance for Citizenship Participation Data-set. 12 November 2001. Data available at www.civicus.org.

Clague, Christopher, Philip Keefer, Stephen Knack and Mancur Olson. "Institutions and Economic Performance: Property Rights and Contract Enforcement." In *Institutions and Economic Development*. Baltimore: John Hopkins University Press, 1997.

Cohen, Benjamin J. "Phoenix Risen: The Resurrection of Global Finance." *World Politics* 48 (January 1996): 268-296.

Colegio de Abogados de Valparaíso A.G. "Historia." Report available at www.abogados-valparaíso.cl. Accessed on March 2003.

Correa, Carlos M. "Reforming the Intellectual Property Rights System in Latin America." *The World Economy* 23, 6 (June 2000): 851 - 872.

Cronin, Patrick. "Explaining Free Trade: Mexico, 1985 - 1988." *Latin American Politics and Society* 45, 4.

Crook, Clive. "The Future of the State: The Effects of Globalization on Governments." *Economist* 344 (20 September 1997): 5 - 8.

Dabla-Norris, Era and Scott Freeman. "Working Paper of the International Monetary Fund: The Enforcement of Property Rights and Underdevelopment." New York: IMF, 1999.

Dakolias, Maria. *The Judicial Sector in Latin America and the Caribbean: Elements of Reform.* World Bank Technical Paper Number 319. Washington DC: World Bank, 1996.

_____. "Legal and Judicial Reform: The Role of Civil Society in the Reform Process." In *Rule of Law in Latin America: The International Promotion of Judicial Reform*, eds. Pilar Domingo and Rachel Sieder. London: Institute of Latin American Studies, 2001.

de la Torre, Hugo. Fijan Metas Antipiratas." *Reforma*. 5 December 2002.

del Castillo, Gustavo. "NAFTA and the Struggle for Neoliberalism: Mexico's Elusive Quest for First World Status." In *Neoliberal Reform and Politics in Mexico*, eds. Gerado Otero. Boulder: Westview Press, 1996.

Delgado, Jaime. Member of the American Intellectual Property Law Association. Interview by the author. 20 September 2002. Electronic correspondence.

Demsetz, Harold. "Toward a Theory of Property Rights." *The American Economic Review* 57 (1967).

Dittgen, Herbert. "World without Borders? Reflections on the Future of the Nation-State." *Government and Opposition* 34 (Spring 1999): 161 - 179.

Diario, El. "Mientras Chile Logra Acuerdos, Legislación sobre Propiedad Intelectual no Prospera." *Diario, El*. 16 December 2003: B11.

Domingo, Pilar. "Citizenship and Access to Justice to Mexico," *Mexican Studies/EstudiosMexicanos* 15, 1 (Winter 1999): 174 - 175.

Domingo, Pilar and Rachel Sieder, eds. *Rule of Law in Latin America*. London: Institute of Latin American Studies, 2001.

Drucker, Peter F. "The Global Economy and the Nation-State." *Foreign Affairs* 76 (September/October 1997): 159 - 171.

Dunning, John H. and Khalil A. Hamdani, eds. *The New Globalism and Developing Countries.* New York: United Nations University Press, 1997.

Duran, Luis-Alfonso. "Report on the First Ibero-American Forum on Innovation, Industrial and Intellectual Property and Development: Madrid, March 29-31, 2000." Report available at www.aipla.org/reports. Accessed on August 2002.

Economic News and Analysis on Mexico. "Government to Provide Copyright Advice and Prosecute Violators." *Economic News and Analysis on Mexico*. 17 March 1993.

Economist. "Big is Back." *Economist.* 24 June 1995: 7.

_____. "Markets go Global: Will Market Forces Shrink the State?" *Economist.* 20 September 1997: 23 - 27.

Edwards, Sebastion. *Crisis and Reform in Latin America*. New York: Oxford University Press, 1995.

Eichengreen, Barry. "The Tyranny of the Financial Markets." *Current History*(November 1997).

Eggertsson, Thrainn. "A Note on the Economics of Institutions." In *Empirical Studies in Institutional Change*, eds. Lee J. Alston, Thrainn Eggertsson, and Douglass C. North. Cambridge: Cambridge University Press, 1996.

Elliot, Andrea. "Leading Candidate Promises to Restore Chile's Economy." *The Miami Herald.* 10 December 1999.

Escudero, Sergio. "Achieving TRIPS Level Protection." Report presented at the APEC Industrial Property Rights Symposium, Tokyo. August 1996. Report available at www.jpo.go.jp.

Estrategia, "EE.UU. Utilizará a Chile Como Referencia en Propiedad Intelectual." *Estrategia* (29 November 2002).

Evans, Peter. "The Eclipse of the State? Reflections on Stateness in an Era of Globalization." *World Politics* 50 (October 1997): 62 - 87.

Falk, Richard. "State of Siege: Will Globalization Win Out?" *International Affairs* 73 (1997): 123 -136.

Faivovich, Edmundo Fuenzalida. "Law and Legal Culture in Chile, 1974 – 1999." In *Legal Culture in the Age of Globalization*. Stanford: Stanford University Press, 2003: 114 - 115.

Financial Times. "Mexico to Improve Patent Protection." *Financial Times*. 22 January 1990.

Flores-Quiroga, Aldo R. "Economic Crisis and the Mexican State: Toward a New Institutional Interpretation." *Mexican Studies/Estudios Mexicanos* 17 (Winter 2001): 1 - 11.

Flores-Troy, Edwin S. "The Development of Modern Frameworks for Patent Protection: Mexico, a Model for Reform." *University of Texas Law Review* 6 (March 2001): 1 - 32.

ForoEl. Reports 1985 – 2004. Available at www.bma.org.mx/publicaciones/elforo.

Freund, William C. "The Road to Third World Prosperity." In *Developing World – Annual Editions 1997/98*, ed. Robert J. Griffiths. Guilford, CT: Dushkin Publishing Group, 1997.

Frieden, Jeffry A. and David A. Lake, eds. *International Political Economy: Perspectives on Global Power and Wealth.* New York: St. Martin's Press, 1995.

Friedman, Thomas L. *The Lexus and the Olive Tree.* New York: Farrar, Straus, and Giroux, 1999.

Gaceta Parlamentaria. "Iniciativas: Que Reforma y Adiciona Diversas Disposiciones de la Ley de la Propiedad Industrial y de la Ley Federal de Variedad Vegetales." 2 Decimbre 1999. Report available at http://gaceta.diputados.gob.mx/Gaceta.

_____. "Iniciativas: Que Reforma la Ley Federal de Derechos Autors." 20 Abril 2001. Report available at http://gaceta.diputados.gob.mx/Gaceta.

_____. "Iniciativas: De Reformas al Articulo 226 de la Ley de la Propiedad Industrial." 20 Abril 2001. Report available at http://gaceta.diputados.gob.mx/Gaceta.

_____. "Iniciativas." 26 Marzo 2002, 4 Abril 2002 and 26 Abril 2002. All reports available at www.gaceta.diputados.gob.mx.

Garreton, Manuel Antonio. "New State-Society Relations in Latin America." In *Redefining the State in Latin America*, ed. Colin I. Bradford, Jr. Paris: Organization for Economic Cooperation and Development, 1994.

Gilpin, Robert. *The Challenge of Global Capitalism: The World Economy in the 21st Century*. Princeton: Princeton University Press, 2000.

Grindle, Merilee S. *Challenging the State: Crisis and Innovation in Latin America and Africa*. New York: Cambridge University Press, 1996.

Goldblatt, David, David Held, Anthony McGrew and Jonathan Perraton. "Economic Globalization and the Nation-State: Shifting Balances of Power." *Alternatives* 22 (1997): 269 - 285.

Golob, Stephanie R. "Beyond the Policy Frontier: Canada, Mexico and the Ideological Origins of NAFTA." *World Politics* 55 (April 2003).

Gould, David M. and William C. Gruben. "The Role of Intellectual Property Rights in Economic Growth." *Journal of Development Economics* 48 (March 1996).

Grabel, Ilene. "Speculation-Led Development in the Third World." In *Dynamics of Globalization and Development*, ed. Satya Dev Gupta. Boston: Kluwer Academic Publishers, 1997.

Gupta, Satya Dev and Nanda K. Choudhry. "Dynamics of Globalization and Development: An Introduction." In *Dynamics of Globalization and Development*, ed. Satya Dev Gupta. Boston: Kluwer Academic Publishers, 1997.

Hadden, Arter and James C. Scott. "Do You Know your Intellectual Property?" *Find Law*. November 2000. Report available at http://library.lp.findlaw.com.

Handelman, Howard. *Mexican Politics: The Dynamics of Change.* New York: San Martin's Press, 1997.

Hammond, Thomas H. "Veto Points, Policy Preferences, and Bureaucratic Autonomy in Democratic Systems." Unpublished study, draft 2.0 (January 2001).

Harriss, John, Janet Hunter and Colin M. Lewis. "Introduction: Development and Significance of NIE." In *The New Institutional Economics and Third World Development*, eds. John Harriss, Janet Hunter, and Colin M. Lewis. New York: Routledge, 1997.

Hay, Jonathan R., Andrei Shleifer and Robert W. Vishney. "Privatization in Transition

Economies: Toward a Theory of Legal Reform." *European Economic Review* 40 (1996): 559 - 567.
Henisz, Witold J. "The Institutional Environment for Economic Growth." *Economics and Politics* 13 (2000): 1 - 31.
Hernandez, Alma Araiza. Legal Affairs Director of the Mexican Institute of Industrial Property. Interview by the author, 16 October 2002. Electronic correspondence.
Hernández, Jonathon. "Van Contra Piratas Cibernéticos." *Reforma*. 29 September 29 2002.
Hildalgo, Jorge Arturo. "Es Piratería Delincuencia Organizada." *Reforma*. 4 December 2002.
Hirst, Paul and Grahame Thompson. "Globalization and the Future of the Nation State." *Economy and Society* 24 (August 1995): 408-442.
_____ . *Globalization in Question: The International Economy and the Possibilities of Governance.* Cambridge, MA: Polity Press, 1996.
_____. "The Tyranny of Globalization: Myth or Reality." In *Globalization and the Nation-State*, ed. Frans Buelens, 139 - 178. Northhampton, Mass.: Edward Elgar, 1999.
Holm, Hans-Henrik and Georg Sorensen. "Introduction: What has Changed?" In *Whose World Order: Uneven Globalization and the End of the Cold War*, eds. Hans-Henrik Holm and Georg Sorensen, 1-17. San Francisco: Westview Press, 1995.
Holton, Robert J. *Globalization and the Nation-State* New York: St. Martin's Press, 1998.
Huber, Evelyne. "Assessments of State Strength." In *Latin America in Comparative Perspective: New Approaches to Methods and Analysis*, ed. Peter H. Smith. San Francisco: Westview Press, 1999.
International Association for the Protection of Intellectual Property (AIPPI). "AIPPI – Aims and Purposes," available at www.aippi.org/aims/html. Accessed on September 2002.
_____. *Activity Report 2002: Chilean National Group* (February 13, 2003). Report available at www.aippi.org. Accessed on November 2003.
International Centre for Settlement of Investment Disputes. "About ICSID: Introduction and Cases." Report available at http://www.worldbank.org/icsid/pubs/2000ar/4.htm. Accessed March 2003.
International Finance Corporation. "Introduction to FIAS." Report available at http://www.ifc.org/FIAS. Accessed on July 2000.
International Intellectual Property Alliance (IIPA). "Excerpt from the IIPA Special 301 Recommendations." 20 February 1996. Report available at www.iipa.com/rbc/1996/rbc_mexico_301_96.html.
_____. "Priority Practice: Practices Violating the NAFTA – Mexico," excerpts from the IIPA Special 301 Recommendation. March 1998 and March 1999. Both reports available at www.iipa.com.
_____. "Descriptions of the IIPA." Report available at www.iipa.com. Accessed on January 2002.
_____. "Request for High-Level Bilateral Engagement on Copyright Piracy and Enforcement Problems in Mexico." 6 March 2002. Report available at www.iipa.com.

_____. "IIPA Milestones." Report available at www.iipa.com/iipamilestones/html. Accessed on July 2002.
_____. "What's New." www.iipa.com. Accessed on September 2002.
_____. "The IIPA Presidents' Letter to USTR Robert Zoellick about the Reported Inadequacy of Chile's Recent FTA Proposals Affecting Copyright and Enforcement as well as Services and E-Commerce." 5 November 2002. Report available at www.iipa.com/countryreports/html. Accessed on February 2004.
_____. "Special 301 Report: 2002." January 2003. Accessed on February 2004.
_____. " Special 301 Report: Chile" for the years 2001 – 2003. All reports available at www.iipa.org. Accessed on February 2004.
_____. "Public Comments on the Proposed U.S. – Chile Free Trade Agreement" dated 29 January 2001; 12 December 2001; 5 November 2002; and 8 May 2003. All reports available at www.iipa.com/countryreports/html. Accessed on February 2004.
_____. "IIPA 2002-2003 Estimated Trade Losses due to Copyright Piracy (in million of U.S. dollars) and piracy levels in-country." September 2003. Report available at either www.iipa.org.
International Monetary Fund. *International Financial Statistics 2000.* New York: IMF, 2000. Data obtained from CD-Rom format.
Justice Studies Center of the Americas. "Quality of Justice and Economic Freedom: Index of Property Rights." Report available at www.cejamericas.org. Accessed on March 2004.
Justice Studies Center of the Americas, "Judicial Systems and Transparancy: The Opacity Index and its Economic Impact." Report available at www.cejamericas.org. Accessed on March 2004.
Karl, Terry Lynn. *The Paradox of Plenty: Oil Booms and Petro-States.* Berkeley: University of California Press, 1997.
Kaufmann, Daniel, Andrew Kraay, and Michael Mastruzzi, "Governance Matters III: Governance Indicators for 1996 – 2002. Report available at http://info.worldbank.org/governance. Accessed on March 2004.
Keohane, Robert O. and Joseph S. Nye Jr. "Globalization: What's New? What's Not? (And So What?)." In *Power and Interdependence: World Politics in Transition*. New York: Longman, 2000.
King, Neil Jr. "Leading the News: Bush Seals a Trade Deal with Chile – Pact Sets New Standards on Intellectual Property and Monetary Controls." *The Wall Street Journal.* 12 December 2002.
Klein, Philip A. *Beyond Dissent: Essays in Institutional Economics.* Armonk, NY: M.E. Sharp Inc., 1994.
Klesner, Joseph. "Democratic Transition? The 1997 Mexican Elections." *PS: Political Science and Politics* 30 (December 1997).
Knack, Stephen and Philip Keefer. "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures." *Economics and Politics* 7, 3 (1995): 207 - 227.

Knight, Alan. "The Modern Mexican State: Theory and Practice." In *The Other Mirror: Grand Theory Through the Lens of Latin America*, eds. Miguel Angel Centeno and Fernando Lopez-Alves. Princeton: Princeton University Press, 2001.

Krasner, Stephen D. "Approaches to the State: Alternative Conceptions and Historical Dynamics." *Comparative Politics* (January 1984): 223 - 245.

_____. *Sovereignty: Organized Hypocrisy*. New Jersey: Princeton University Press, 1999.

Krugman, Paul. *Strategic Trade Policy and the New International Economics*. Cambridge: MIT Press, 1990.

La Porta, Rafael, Florencio López-de-Silanes, Andrei Shleifer,and Robert W. Vishney. "Legal Determinants of External Finance." *Journal of Finance* 52 (1997).

Laeven, Luc and Giovanni Majnoni. "Does Judicial Efficiency Lower the Cost of Credit?" *World Bank Policy Research Working Papers*, Working Paper 3159 (October 2003). Report available online at www.econ.worldbank.org. Accessed on March 2004.

Lairson, Thomas D. and David Skidmore. *International Political Economy: The Struggles forPower and Wealth.* Forth Worth: Harcourt Brace College Publishers, 1993.

Lamping, Wolfram and Noël P. Vergunst. "Corporatism, Veto Points, and Welfare State Reform in Germany and the Netherlands. Institutions, Interests, and Policies." Paper prepared for presentation at the IPSA World Congress in Quebec, Canada: August 2000.

Latin American Regional Reports. "Chile: Breakthrough on Patent Rights." *Latin American Regional Reports*. 15 February 1990: 7.

_____. "Chile's New Government To Push for Free-Trade Deal with the US." *Latin American Regional Reports*. 15 March 1994: 7.

Latin American Regional Reports – Southern Cone. "NAFTA Invitation to Chile Caps Americas Summit in Miami." *Latin American Regional Reports – Southern Cone.* 29 December 1994: 6.

Lawrence, Robert Z. "The World Trade and Investment System and Developing Countries." In *The New Globalism and Developing Countries*, eds. John H. Dunning and Khalil A. Hamdani. New York: United Nations University Press, 1997.

Leblang, David. "Property Rights, Democracy and Economic Growth." *Political Science Quarterly* 49 (March 1996).

Lee J., Alston and Bernardo Mueller. "Property Rights, Violence, and the State." Unpublished study. Draft prepared for *The Handbook of the New Institutional Economics*. Dated November 14, 2002.

Lee, Jeong-Yeon and Edwin Mansfield. "Intellectual Property Protection and U.S. Foreign Direct Investment." *The Review of Economics and Statistics*. May 1996: 181 - 187.

Lesser, William Lesser. "The Effects of TRIPs-Mandated Intellectual Property Rights on Economic Activities in Developing Countries." Study prepared under WIPO Special Service Agreement. Study available at www.wipo.org. Accessed on September 21, 2002.

Levi, Margaret. "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis." In *Comparative Politics: Rationality, Culture and Structure*,

eds. Mark Irving Lichbach and Alan S. Zuckerman. Cambridge: Cambridge University Press, 1997.

Licensing Executives Society International (LES). "Society Reports: LES Mexico." *Annual Report*, for the years 1996 – 2003. All reports available at www.lesi.org. Accessed on October 2002 and March 2004.

_____. "LES Offers More than Networking." *Les Nouvelles* (December 1998): 1.

_____. "History of LES." Available at www.lesi.org. Accessed on September 2000.

Lijphart, Arend. "The Comparable-Cases Strategy in Comparative Research." *ComparativePolitical Studies* 8 (July 1975).

Lloyd, Marion. "Staggering Losses in Latin America." *The Chronicle of Higher Education.* 2 April 2004.

López-de-Silanes, Florencio. "The Politics of Legal Reform." Unpublished draft dated August 11, 2001.

Lowndes, Vivien. "Varieties of New Institutionalism: A Critical Appraisal." *Public Administration* 74 (Summer 1996): 181.

Lustig, Nora. *Mexico: The Remaking of an Economy.* Washington D.C.: Brookings Institution Press, 1998.

Mann, Michael. "Has Globalization Ended the Rise and Rise of the Nation-State?" *Review of International Political Economy* 4 (Autumn 1997): 472 - 496.

Mansfield, Edwin. *Intellectual Property Protection, Foreign Direct Investment, and Technology Transfer.* Washington D.C.: International Finance Corporation, 1994.

Maskus, Keith E. *Intellectual Property Rights in the Global Economy*. Washington D.C.: Institute for International Economics, 2000.

Mauro, Paolo. "Corruption and Growth." *Quarterly Journal of Economics* 110 (1995).

Maxfield, Sylvia. "Bankers' Alliances and Economic Policy Patterns: Evidence from Mexico and Brazil." *Comparative Political Studies* 23, 4 (January 1991): 419 - 458.

Maxfield, Sylvia and Adam Shapiro. "Assessing the NAFTA Negotiations." In *The Post-NAFTA Political Economy*, ed. Carol Wise. University Park: The Pennsylvania State University Press, 1998.

Mercurio, El. "Aceleran proyecto de propiedad industrial." *Mercurio, El.* 19 August 2002.

_____. "Farmacéuticos Sortean Pugna con Código Ético." *Mercurio, El.* 22 January 2004.

_____. "Propuesta de Nueva Ley de Propiedad Inteletual." *Mercurio, El. 6* March 2004.

Messick, Richard E. "Judicial Reform and Economic Development." *The World Bank Research Observer* 14 (February 1999).

Mexican Association of Information Technologies. "Historia" and "Piratería." Both reports available at www.amiti.org.mx/historia.asp. Accessed September and October 2002.

Mexican Institute of Industrial Property (IMPI). "Base de Datos de Patentes, 2000." Report available at www.impi.gob.mx. Accessed on October 2002.

_____. "Que es el IMPI?" "Guia de Contencioso Administrativo," and other various reports all available at www.impi.gob.mx. Accessed on September 2002.

_____. "Marco Juridico Nacional en Propiedad Industrial." Report available at www.impi.gob.mx. Accessed on October 2002

Mexico. Camara de Diputados del Congreso. "Sumario Oficial de la Camara de Diputados del Congreso de los Estados Unidos Mexicanos: Jueves 27 de Noviembre de 1997." *Diario de los Debates.* Primer de Sesiones Ordinarias del Primer Año de Ejercicio.

Mexico. Camara de Diputados del Congreso. Comisión de Cultura. "Actividades Legislativos: Ley Federal Del Derecho de Autor," for the years 1994 - 1996. Available at www.uam.mx/difusion/comcul/leyes/leyes6.html. Accessed on December 2002.

_____. "Ley Federal del Derecho de Autor." Report available at www.uam.mx/difusion/comcul/leyes. Accessed on September 2002.

Mexico. Instituto Nacional del Derecho de Autor. "Misíon," "Antecedentes del Derecho de Autor", and other reports. All available at www.sep.gob.mx. Accessed October 2002.

Mexico. Procurador General de la República. "Boletín." Numero 868 (18 December 2001). Available at www.pgr.gob.mx/cmsocial/bol01. Accessed on October 2002.

_____. "Boletín." Numero 1011 (November 2002). Available at www.pgr.gob.mx/cmsocial/bol02. Accessed on November 2002.

Mexico. Secretaría de Hacienda y Crédito Público Unidad de Comunicación Social. "Información de Prensa 102/95." 22 May 1995). Available at www.shcp.gob.mx/estruct/unicoms. Accessed December 2002.

Miami Herald. "Pharmaceutical Flap." 14 March 1988, B7.

Mishkin, Frederic S. "Understanding Financial Crises: A Developing Country Perspective." In *Annual World Bank Conference on Development Economics 1996*, eds. Michael Bruno and Boris Pleskovic. Washington D. C.: World Bank, 1997.

Mittelman, James H. "How Does Globalization Really Work." In *Globalization: Critical Reflections*, ed. Mittelman. Boulder: Lynne Rienner Publishers, 1996.

Moeckel, Christina. "Intellectual Property Protection and Enforcement in Mexico." Dated 1995. Report available at www.natlaw.com/pubs/moeckel.htm. Accessed on September 2002.

Morales, Marco. "How the U.S. – Chile Free Trade Agreement Impacts on IP." *Managing Intellectual Property Guide to the Americas* (June 2003).

Morales-Martir, Abel. "Patent Litigation in Mexico." *International Centre for Commercial Law: Law Development Reports* (June 2001).

Morris, Christopher W. *An Essay on the Modern State*. New York: Cambridge University Press, 1998.

Naím, Moisés. "Latin America: The Second Stage of Reform." In *Economic Reform and Democracy*, eds. Larry Diamond and Marc F. Plattner. Baltimore: John Hopkins University Press, 1995.

National Law Center for Inter-American Free Trade (NLCIFT). *Novedades* 3-8 (April 1995 – December 2001). All reports available at www.natlaw.com/nlcift.htm. Accessed on October 2002.

_____. "What is NLCIFT?" *NatLaw: Publications* (1998). Report available at www.natlaw.com/nlcift.htm. Accessed on October 2002.

Neff, Richard E. Neff. "Status of Administrative (& Civil) Remedies in Mexico." Report presented to the Trinational Intellectual Property Committee – Session II (June 1997).

Niblo, Stephen R. "The World Economy and an Economically Active State: From Economic Radicalism to Neoliberalism in Mexico." In *The State in Transition: Reimagining Political Space*, eds. Joseph A. Camilleri, Anthony P. Jarvis, and Albert J. Paolini. Colorado: Lynne Rienner, 1995.

North, Douglass. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 1994.

_____. "The New Institutional Economics and Third World Development." In *The New Institutional Economics and Third World Development*, eds. John Harriss, Janet Hunter, and Colin M. Lewis. New York: Routledge, 1997.

North, Douglass and R.P. Thomas. *The Rise of the Western World: A New Economic History* Cambridge: Cambridge University Press, 1973.

O'Donnell, Guillermo. *"Some Reflections on Redefining the Role of the State." In* Redefining the State in Latin America*, ed. Colin I. Bradford, Jr, 251-260. Paris: Organization forEconomic Co-operation and Development, 1994.*

Observatorio. "Comisión Nacional Anti Piratería Destruyó Milliones de Dólares en Productos Piratas." *Observatorio*, June 19, 2002. Article available at www.observatorio.cl/noticias_ecomic

Oppenheim, Lois Hecht. *Politics in Chile: Democracy, Authoritarianism, and the Search for Development.* Oxford: Westview Press, 1999.

Ostry, Sylvia. "Policy Approaches to System Friction: Convergence Plus." In *National Diversity and Global Capitalism*, eds. Suzanne Berger and Ronald Dore. Ithaca, NY: Cornell University Press, 1996.

Panish, Neal P. "Chile Under Allende: The Decline of the Judiciary and the Rise of a State of Necessity." *Loyola of Los Angeles, International and Comparative Law Journal* 9 (Summer 1987): 702-721.

Panitch, Leo. "Rethinking the Role of the State." In G*lobalization: Critical Reflections,* ed. James H. Mittleman. International Political Economy Yearbook: Lynne Rienner, 1996.

Petit, Pascal and Luc Soete. "Globalization in Search of a Future." *International Social Science Journal* 160 (June 1999): 165 - 182.

Pierson, Christopher. *The Modern State*. New York: Routledge, 1996.

Pitts, Joe W. "Pressing Mexico to Protect Intellectual Property." *The Wall Street Journal*, 25 January 1991: A13.

Political Science Reference Almanac: 2000. Almanac available at www.polisci.com/almanac.nations.

Potter, David. "The Autonomy of Third World States Within the Global Economy." In *Global Politics*, eds. Anthony G. McGrew and Paul G. Lewis. Oxford: Polity Press, 1992.

Prakash, Aseem and Jeffrey A. Hart, eds. *Globalization and Governance.* London: Routledge, 1999.

Prillman, William C. *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*. Westport: Praeger, 2000.

Ragin, Charles C. *The Comparative Method*. Los Angeles: University of California Press, 1987.

Rangel, Ivett. "Presentan Propusestas para la ANDI." *Reforma*. 26 February 2002.

Ratliff, William and Edgardo Buscaglia. "Judicial Reform: the Neglected Priority in Latin America." *The Annals of the American Academy of Political and Social Science* 550 (March 1997): 59 - 73.

Reforma. "Es México 'rey' de la piratería." *Reforma*. 11 August 2002.

Report on the proceedings of the 3rd Annual Pact Global Workshop on Financial Accountability and Transparency. July 2 – 3, 1998. Organized by the Programme for Accountability and Transparency, Management Development and Governance Division of the United Nations Development Programme in co-operation with the UN Office for Project Services and UNDP Thailand. New York: United Nations Publications, 1998. Report available at http://magnet.undp.org/docs/efa/REPORTF.html.

Reyes, Corinna A. "Unlikely Alliances: The Politics of Judicial Reform in Contemporary Mexico." Paper prepared for the XXII Annual Latin American Studies Conference, Washington D.C., September 6-8, 2001.

Riker, William H. and Itai Sened. "A Political Theory of the Origin of Property Rights: Airport Slots." In *Empirical Studies in Institutional Change*, eds. Lee J. Alston, Thrainn Eggertsson, and Douglass C. North. Cambridge: Cambridge University Press, 1996.

Robberson, Tod. "Mexico Puts Software Pirates on Notice." *Washington Post.* 6 March 1993: A25.

Rodrik, Dani. "Has Globalization Gone Too Far." Washington, D.C.: Institute for International Economics, 1997.

_____. "Sense and Nonsense in the Globalization Debate." In *International Political Economy*, eds. Jeffry A. Frieden and David A. Lake. New York: Bedford/St. Martin's Press, 2000.

Ruggie, John Gerard. "Trade, Protectionism and the Future of Welfare Capitalism." *Journal of International Affairs* 48, 1 (Summer 1984).

Russell, Philip L. *Mexico Under Salinas*. Austin: Mexico Resource Center, 1994.

Sachs, Jeffrey. "Interlocking Economics: Unlocking the Mysteries of Globalization." *Foreign Policy* (Spring 1998).

Sachs, Jeffrey D. and Joaquín Vial. "Can Latin America Compete." In *The Latin American Competitiveness Report 2001-2002.* Oxford: Oxford University Press, 1992.

Sassen, Saskia. *Losing Control? Sovereignty in an Age of Globalization.* New York: Columbia University Press, 1996.

_____. "The Spatial Organization of Information Industries: Implications for the Role of the State." In *Globalization: Critical Reflections*, ed. James H. Mittelman. Boulder: Lynne Rienner Publishers, 1996.

Scott, Bruce R. "The Great Divide in the Global Village." *Foreign Affairs* 80, 1

(January/February 2001): 160 - 177.
Sell, Susan K. "Intellectual Property Protection and Antitrust in the Developing World: Crisis, Coercion, and Choice." *International Organization* 49 (Spring 1995): 315 - 350.
Seyoum, Belay. "The Impact of Intellectual Property Rights on Foreign Direct Investment." *Columbia Journal of World Business* 31 (Spring 1996).
Shaw, Martin. "The State of Globalization: Towards a Theory of State Transformation." *Review of International Political Economy* 4 (Autumn 1997): 497 - 513.
Sherwood, Robert M. *Intellectual Property and Economic Development*. Boulder: Westview Press, 1990.
Sherwood, Robert M. and Carlos A. Primo Braga. "Intellectual Property, Trade and Economic Development: A Road Map for the FTAA Negotiations." *The North-South Agenda Papers*, no. 21 (September 1996).
Siavelis, Peter. "Executive-Legislative Relations in Post-Pinochet Chile: A Prelimary Assessment." In *Presidentialism and Democracy in Latin America*, eds. Scott Mainwaring and Matthew Soberg Shugart. Cambridge: Cambridge University Press, 1997.
_____. "Disconnected Fire Alarms and Ineffective Police Patrols: Legislative Oversight in Postauthoritarian Chile." *Journal of Interamerican Studies and World Affairs* (Spring 2000).
Signet, William D. "Introduction: Selected Aspects of the Mexican Legal System." Dated 2002. Report available at available at www.signetramos.com
Silva, Eduardo. "From Dictatorship to Democracy: The Business –State Nexus in Chile's Economic Transformation, 1975-1994." *Comparative Politics* 28, No. 3 (April 1996).
_____. "Organized Business, Neoliberal Economic Restructuring, and Re-democratization in Chile." In *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand. Miami: North-South Center Press, 1998.
Silva, Eduardo and Francisco Durand. "Organized Business and Politics in Latin America." In *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand. Miami: North-South Center Press, 1998.
Simmons, Beth and Zachary Elkins. "Globalization and Policy Diffusion: Explaining Three Decades of Liberalization." In *Governance in a Global Economy: Political Authority in Transition*, eds. Miles Kahler and David Lake. Princeton: Princeton University Press, 2003.
Skidmore, Thomas E. and Peter H. Smith. *Modern Latin America*. New York: Oxford University Press, 2001.
Smith, Michael. "Modernization, Globalization, and the Nation-State." In *Global Politics: Globalization and the Nation-State*, eds. Anthony G. McGrew and Paul G. Lewis. Cambridge, MA: Polity Press, 1992.
Snyder, Richard. "After Neoliberalism: The Politics of Reregulation in Mexico." *World Politics* 51, 2 (1999): 173 - 204.

Sociedad de Autores y Compositores de Música. "History." Report available at www.sacm.org.mx. Accessed October 2002.
Sociedad General de Escritores de México. "Qué es Sogem?" and "Reformas." Both reports available at www.sogem.org.mx. Accessed October 2002.
Sociedad Chilena del Derecho de Autor (SCD). "Historia" and "SCD llama a los autores a estar en alerta." Both reports available at www.scd.cl/historia.htm and www.musica.cl/galeriascd. Accessed November 2002.
_____. "Fue aprobada Ley de la Música." 6 August 2003. News bulletin available at www.musica.cl/galeriascd only.
_____. "Departmento Internacional" and "Expertos del Mundo Visitan SCD." Both reports available at www.scd.cl. Accessed on November 2003.
Software Publishers Association (BSA). "Worldwide Software Piracy Losses Estimated at $11.4 Billion in 1997." *Software and Information Industry Association eNewsletter*. 16 June 1998). Available at www.siia.net. Accessed on March 2004.
_____. "1999 BSA/SIIA Piracy Study." Available at www.siia.net. Accessed on March 2004.
Sosa, Jonathon Hernández. "Sigue la BSA con 'cero tolerancia.'" *Reforma* , 1 July 2002.
Standard & Poor's. "Sovereign Ratings History Since 1975." Sovereign Rating Actions: Report available at www.standardandpoors.com/RatingsActions/Sovereigns. Accessed on August 2002.
_____. "Sovereign Ratings List." Sovereign Rating Actions: August 22, 2002. Report available at www.standardandpoors.com/RatingsActions/Sovereigns.
Steinmo, Sven and Kathleen Thelen. "Historical Institutionalism in Comparative Politics." In *Structuring Politics: Historical Institutionalism in Comparative Analysis*, eds. Sven Steinmo, Kathleen Thelen and Frank Longstreth. Cambridge: Cambridge University Press, 1992.
Stephenson, Matthew. "Economic Development and the Quality of Legal Institutions," *The World Bank's Legal Institutions Reports*. Report available at www.legal.worldbank.org. Accessed on March 2004.
Stiglitz, Joseph and Lyn Squire. "International Development: Is It Possible." *Foreign Policy* 110 (1998).
Stone, Andrew, Brian Levy and Ricardo Paredes. "Public Institutions and Private Transactions." In *Empirical Studies in Institutional Change*, eds. Lee J. Alston, Thrainn Eggertsson, and Douglass C. North. Cambridge: Cambridge University Press, 1996.
Stoppford, John M., Susan Strange, and John S. Henley. *Rival States, Rival Firms: Competition for World Market Shares.* New York: Cambridge University Press, 1991.
Strange, Susan. "States, Firms and Diplomacy." In *International Political Economy: Perspectives on Global Power and Wealth*, eds. Jeffry A. Frieden and David A. Lake. New York: St. Martin's Press, 1995.
_____. "The Defective State," *Daedalus* 24, 2 (Spring 1995): 2.
_____. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press, 1996.

Summers, Lawrence H. and Vinod Thomas. "Recent Lessons in Development." In *International Political Economy: Perspectives on Global Power and Wealth*, eds. Jeffry A. Frieden and David A. Lake. New York: St. Martin's Press, 1995.

Sunkel, Osvaldo. "Uneven Globalization, Economic Reform, and Democracy: A View from Latin America." In *Whose World Order: Uneven Globalization and the End of the Cold War*, eds. Hans-Henrik Holm and Georg Sorensen. San Francisco: Westview Press, 1995.

Sureda, Andrés Rigo and Waleed Haider Malik's, eds. "Judicial Challenges in the New Millennium." In *World Bank Technical Paper: No. 450.* Washington D.C.: The International Bank for Reconstruction and Development/World Bank Publications, 1999.

Sutil, Jorge Correa. "Judicial Reform in Latin America: Good News for the Underprivileged?" In *The (Un)Rule of Law and the Underprivileged in Latin America,*" eds. Juan E. Méndez, Guillermo O'Donnell, and Paulo Sérgio Pinheiro. Notre Dame: University of Notre Dame Press, 1999.

Svensson, Jakob. "Investment, Property Rights and Political Instability: Theory and Evidence." *European Economic Review* 42 (1998): 1317 - 1341.

Tellez-Flores, Claudia. "Proposal for the Creation of a Specialized Intellectual Property Court in Mexico." L.L.M. thesis, University of Arizona's College of Law. 1999.

Tercera, La. "Diputados denuncian pirateria encubierta." *Tercera, La.* 27 January 2004.

Thompson, Grahame. "Economic Autonomy and the Advanced Industrial State." In *Global Politics*, eds. Anthony G. McGrew and Paul G. Lewis. Oxford: Polity Press, 1992.

_____. "Introduction: Situating Globalization." *International Social Science Journal* 160 (June 1999): 139 - 152.

Thompson, Helen. "The Modern State, Political Choice and an Open International Economy." *Government and Opposition* 34 (Spring 1999): 203 - 225.

Thurow, Lestor. *The Future of Capitalism.* New York: William Morrow and Company, 1996.

Tirado, Ricardo. "Mexico: From the Political Call for Collective Action to a Proposal for Free Market Economic Reform." In *Organized Business, Economic Change, Democracy in Latin America*, eds. Eduardo Silva and Francisco Durand. Miami: North-South Center Press, 1998.

Todaro, Michael P. *Economic Development*. Menlo Park, CA: Addison-Wesley, 2000.

Tomassini, Luciano. "The IDB and the Modernization of the State." In *Redefining the State in Latin America*, ed. Colin I. Bradford, Jr. Paris: Organization for Economic Cooperation and Development, 1994.

Transparency International. "Corruption Perceptions Index 2002 - Latinoamérica and the (Spanish speaking) Caribbean." Report available at www.transparency.org. Accessed on October 2003.

Turner, Federick. "Changing Roles of the State: Measurement, Opportunities, and Problems." *International Social Science Journal* 163 (March 2000): 5 - 14.

Turner, Federick and Alejandro L. Corbacho. "New Roles for the State." *International Social Science Journal* 163 (March 2000): 109 - 120.

Tussie, Diana. *Globalization, Regionalization and New Dilemmas in Trade Policy for*

Development. Buenos Aires: Facultad Latinoamericana de Ciencias Sociales, 1992.
Ungar, Mark. *Elusive Reform: Democracy and the Rule of Law in Latin America*. Boulder: Llynne Rienner Publishers, 2002.
United Nations Development Programme. "UNDP Governance Policy Paper: Good governance and sustainable human development." New York: UNDP, 1997.
United States Agency for International Development (USAID). "Congressional Presentation FY1997: Mexico." www.usaid.gov/pubs/cp97/countries/mx.htm. Accessed on August 2002.
_____. "LAC Regional: Program Data Sheet 598-019." Text taken from the FY 2003 Congressional Budget Justification. www.usaid.gov/country/lac.
_____. "Achievements in Building and Maintaining the Rule of Law." *Occasional Papers Series*. November 2002: 78.
United States. Congress. Senate. Committee on the Judiciary. "Statement of Ambassador Carla A. Hills, U.S. Trade Representative, before the Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks." *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*. 100th Congress, First Session, 14 May 1991.
_____. "Statement of Gerald J. Mossinghoff, President, Pharmaceutical Manufactures Association, before the Subcommittee on Patents, Copyrights and Trademarks, May 14, 1991." *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*. 100th Congress, First Session, 14 May 1991.
_____. "Letter to His Excellency Carlos Salinas de Gortari, President of the United Mexican States, from Senator DeConcini, May 24, 1991." Presented as an additional submission for the record. *Hearings on Fast Track: Intellectual Property – Hearings before the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*. 100th Congress, First Session, 14 May 1991.
_____. "Statement of Eric H. Smith, Executive Director and General Counsel, International Intellectual Property Alliance, September 29, 1992." *Hearings on International Piracy on Intellectual Property*. 102th Congress, Second Session, 29 September 1992.
_____. *Proposed United States – Chile and United States – Singapore Free Trade Agreements.* 108th Congress, First Session, 14 July 2003.
United States. Copyright Office. "Annual Report." For the years 2000-2003 available at www.copyright.gov/reports/annual. Accessed on August 2002 and February 2004.
United States. Department of State. "U.S. Releases Special 302 Report on Intellectual Property." *International Information Programs*. May 2003.
United States. Office of the Trade Representative. *National Trade Estimate Reports*. For the years 1995-2004. All reports are available at www.ustr.gov/reports. Accessed October 2002 and March 2004.
_____. "USTR Announces Results of Special 301 Annual Review." Releases for the period 1996-2003. Available at www.ustr.gov. Accessed on September 2002 and March 2004.

_____. *2001 International Trade Agenda*. May 2001. Available at www.ustr.gov. Accessed on September 2002.
_____. "USTR's Role." www.ustr.gov/about-ustr/istrrole.html. Accessed on October 2002.
_____. "Strategic Plan 2002 – 2006." All reports available at www.ustr.gov/about-ustr/istrrole.html. Accessed on October 2002.
Valenzuela, Arturo. "Origins, Consolidation, and Break down of a Democratic Regime." In *Democracy in Developing Countries: Latin America*, eds. Larry Diamond, Juan Linz and Seymour Martin Lipset. Boulder: Lynne Rienner, 1989: 171.
Vargas, Jorge A. "The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995." *American University Journal of International Law and Policy* 11, 2 (1996): 295 - 340
von Bertrab, Hermann. *Negotiating NAFTA: A Mexican Envoy's Account*. Washington D.C.: Center for Strategic and International Studies, 1997.
Wall Street Journal. "Pressure Building Inside, Outside Mexico to Liberalize its Investment Regulations." 23 December 1988. On-line edition accessed.
_____. "Salinas Asks U.S. to Open Further to Mexican Goods." 3 October 1989. On-line edition accessed.
_____. "U.S. Exempts Mexico from Any Retaliation on Proprietary Rights." 25 January 1990. On-line edition accessed.
Waltz, Kenneth N. "Globalization and Governance." First published in *PS: Political Science and Politics* (December 1999). The American Political Science Association Online. Available at www.apsanet.org/PS/dec99/waltz.cfm
Washington Post. "For the Record." 14 October 1993: A.30.
Watal, Jayashree. *Intellectual Property Rights in the WTO and Developing* Countries. Boston: Kluwer Law International, 2001.
Weder, Beatrice. "Legal Systems and Economic Performance: The Empirical Evidence." In *Judicial Reform in Latin America and the Caribbean*, eds. Rowat, Malik and Dakolias. Washington D.C.: World Bank, 1995.
Weldon, Jeffrey. "Presidencialismo in Mexico." In *Presidentialism and Democracy in Latin America*, eds. Scott Mainwaring and Matthew Soberg Shugart. New York: Cambridge University Press, 1997.
Welsch, Friedrich J. and Jose V. Carrasquero. "Perceptions of State Reform in Latin America." *International Social Science Journal* 163 (March 2000): 31 - 38.
White, William and David Walden. "Briefing Note for Regional Integration in the Americas." NAFTAweb: February 2, 1999. Available at http://wehner.tamu.edu/mgmt.www/nafta/spring99/Groups99/5/group5_1.htm
Whiting, Van R. Jr. *The Political Economy of Foreign Investment in Mexico.* Baltimore: John Hopkins University Press, 1991.
Wolf, Martin. "Will the Nation-State Survive Globalization." *Foreign Affairs* 80, 1 (January/February 2001): 178 - 190.
World Bank Group. "Development Data: 1999." Report available at http://devdata.worldbank.org/data-query/SMResult.asp.
_____. "Helping to Improve Governance in IDA Countries: September 2000."

Available at www.worldbank.org/ida/idagover.htm.
_____. "Justice Sector at a Glance: Country Reports." All data discussed were reported for the year 2000. Reports available at www4.worldbank.org/legal/database. Accessed on March 2004.
_____. "Classification of Economies: 2001." Report available at www.worldbank.org/data/databytopics/class.htm.
_____. "World Bank Project Data: 2001." Report available at http://www4.worldbank.org/projects/Projects.asp?pid
_____. "Governance Research Indicator Country Snapshot: Chile and Mexico." Both reports available at www.worldbank.org. Accessed on April 2001.
_____. *World Development Report 2002: Building Institutions for Markets*. New York: Oxford University Press, 2002.
World Economic Forum. *World Competitiveness Report*. Geneva: World Bank Press, 1994.
World Intellectual Property Organization (WIPO). "Conferencia Diplomatica sobre Ciertas Cuestiones de Derecho de Autor y Derechos Conexos." Report available at www.wipo.int/spa/diplconf/disrib/msword/42dc.doc. 11 December 1996.
_____. "Director General Pledges WIPO Support to Mexico." News article dated 25 February 2000. Report available at www.wipo.int/pressroom/en/updates/2000.
_____. "El Director General Recibe a Una Delegacióon de Artistas Intérpretes y Ejecutantes de México." *WIPO Updates*,. 3 December 2001. Article available at www.wipo.int/pressroom/es/updates. Accessed on December 2002
_____. "General Information." Report available at www.wipo.org. Accessed on October 2002.
_____. "Country Legislative Profiles: Chile." Available at www.wipo.org. Accessed March 2003.
_____. "Enforcement-Related Activities by Different Sectors of WIPO from May to December 2003". Report available at www.wipo.int/enforcement/en/activities. Accessed on January 2004.
_____. "WIPO Guide to Intellectual Property Worldwide: Country Profiles. Reports available at www.wipo.org/aboutrip/en. Accessed on October 2002, March 2003 and March 2004.
Yin, Robert K. *Case Study Research*. Beverly Hills: Sage Publications, 1984.
Zagaris, Bruce. "Mexico Initiates Intellectual Property Law Enforcement." *Latin American Law and Business Report* (January 31, 1999): 18.

Appendix 1: Middle Income Economies

Lower Middle Income Economies (N=55)	Upper Middle Income Economies (N=38)
Albania	American Samoa
Algeria	Antigua and Barbuda
Belarus	Argentina
Belize	Bahrain
Bolivia	Barbados
Bosnia	Botswana
Bulgaria	Brazil
Cape Verde	Chile
China	Croatia
Colombia	Czech Republic
Costa Rica	Dominica
Cuba	Estonia
Djibouti	Gabon
Dominican Republic	Grenada
Ecuador	Hungary
Egypt	Isle of Man
El Salvador	Korea, Republic
Equatorial Guinea	Lebanon
Fiji	Libya
Guatemala	Malaysia
Guyana	Malta
Honduras	Mauritius
Iran	Mayotte
Iraq	Mexico
Jamaica	Oman
Jordan	Palau
Kazakhstan	Panama
Kiribati	Poland
Lativia	Puerto Rico
Lithuania	Saudi Arabia
Macedonia	Seychelles
Maldives	Slovak Republic
Marshall Islands	South Africa
Micronesia	St. Kitts and Nevis
Morocco	St. Lucia
Namibia	Trinidad and Tobago
Papua New Guinea	Uruguay
Paraguay	Venezuela
Peru	
Philippines	
Romania	

Russian Federation	
Samoa	
Sri Lanka	
St. Vincent and the Grenadines	
Suriname	
Swaziland	
Syrian Arab Republic	
Thailand	
Tonga	
Tunisia	
Turkey	
Vanuatu	
West Bank and Gaza	
Yugoslavia, FR (Serbia/Montenegro)	

Source: World Bank. "Classification of Economies," accessed at www.worldbank.org.data/databytopics/class.htm.