Legalization as Strategy: The Asia-Pacific Case

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Legalization of international institutions is often cast as a global phenomenon driven, through a functionalist logic, by increasing economic integration or the simple density of international relations in the late twentieth century. An alternative view portrays legalization as spatially circumscribed. Institutions that display rules with high levels of obligation and precision and that delegate rule interpretation and enforcement to third parties are heavily concentrated in West Europe and North America, a zone of long-standing liberal democracies and high levels of economic integration. This concentration, and the regional variation in legalized institutions it implies, offers leverage in explaining legalization in world politics. Closer examination of regional variation also permits a better estimate of the benefits and costs of legalized institutions in sustaining cooperative and predictable outcomes for both governments and private agents.

If Europe and North America provide an implicit benchmark for high legalization, the Asia-Pacific region offers an important example of low legalization and possibly an explicit aversion to legalization. Before the end of the Cold War, the Asia-Pacific region had produced few formal multilateral institutions, given the region’s growing economic and security interdependence. A modest wave of institution building in the 1990s narrowed the institutional difference with other regions, although the density of institutions spanning the region remains lower than that in Europe or the Americas. More important, those regional institutions constructed with significant Asian participation remained highly informal and explicitly rejected legalization in their design. Formal rules and obligations were limited in number; codes of conduct or principles have been favored over precisely defined agreements; and disputes have been managed, if not resolved, without delegation to third-party adjudication.

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Documenting this institutional record in the Pacific is less difficult than in other regions, since institution building has often explicitly excluded legalization. Three institutions, their formation, and their evolution are examined in the first section: the Association of Southeast Asian Nations (ASEAN), Asia-Pacific Economic Cooperation (APEC), and the ASEAN Regional Forum (ARF). These institutions span economic and security issue-areas.

Explaining this pattern of regional variation in legalization is more challenging. In the second section of this article I advance competing explanations for the apparent failure of legalization to take hold in Pacific regional institutions. Each explanation offers different predictions of future institutional evolution. Demand-driven, functionalist arguments associate legalization with economic integration. As levels of integration grow, the binding character of liberalizing agreements becomes more important, and, as levels of obligation and precision increase, delegation of rule interpretation and adjudication of disputes is often observed. A second explanation, widely espoused within the region, portrays regional institutions as reflective of domestic legal culture and institutions. Culturally grounded institutions are predicted to change very slowly, if at all, on the dimensions of legalization. A third cluster of explanations rests on domestic politics. Some features, such as a high assessment of the sovereignty costs of legalization, are shared by the developing countries in the region. Other domestic political variables, such as authoritarianism versus democracy, are likely to divide regimes in the region and influence their attitudes toward institutional forms. Political heterogeneity itself may influence institutional development when institutional change requires consensus on the part of members. Finally, the choice of informal institutions may be an instrumental and strategic choice on the part of governments: instrumental in that institutional choices are not in themselves fundamental but rather are a means to accomplishing other national ends; strategic in that the choice of legalization is highly dependent on other actors and their capabilities in a prospective institutional setting. No generalized preference for or against legalized institutions would be observed, as a cultural explanation might predict; instead, national choices for or against legalization would vary according to the context of bargaining.

Recent developments in the region, the subject of the third section, permit some discrimination among these explanations. One key regional institution, ASEAN, has embraced increased legalization. Asian governments have also made clear their willingness to employ legalized global institutions to resolve both economic and territorial disputes. Two other regional institutions, the ARF and APEC, however, continue to resist clear-cut legal obligations and third-party dispute settlement. This pattern, if sustained, undermines cultural and political explanations that predict a uniform and persistent resistance to legalization and lend support to both demand-driven and strategic accounts of legalized institution building.

The final section is devoted to understanding the implications of these findings for the Asia-Pacific region after the Asian economic crisis of 1997–98. The sharp economic downturn produced a crisis of confidence in regional institutions, which were widely seen as weak and ineffectual. Whether the future of the Pacific will be more
legalized than its past has become part of the region's debate on its institutional course.

ASEAN, ARF, and APEC: Institutions Without Legalization

Three regional institutions and their histories are central in an assessment of legalization in the Asia-Pacific region. The long history (by regional standards) of ASEAN and its self-proclaimed status as an alternative Asian model for international institutions make its evolution particularly important. Its members, all developing countries, and its institutional model of incremental institutionalization and low legalization directly influenced APEC, founded in 1989, and the ARF, a multilateral security group that first met in 1994. Combining both proponents of greater legalization and critics of this "Western" style of international collaboration, the internal debate within APEC also sheds light on the reasons for endorsing or resisting a legalized model of institution building.

The "ASEAN Way": Collaboration Without Legalization

ASEAN was one of many regional institutions constructed in the developing world during the 1960s. In contrast to many of those now-fossilized organizations, ASEAN has played a significant role in Southeast Asia for three decades, while developing in directions unforeseen by its founders. Despite an emphasis on economic cooperation at the time of its formation in 1967, ASEAN remained primarily a mechanism for diplomatic cooperation for much of its history. Its success in the first decades was measured in managing, if not resolving, disputes among the ASEAN states that might have disrupted their economic development and provided an opening for hostile external powers. From this initial security collaboration, ASEAN evolved, after the Vietnamese invasion of Cambodia, into a diplomatic community that worked in collaboration with powers outside the region to thwart the Vietnamese occupation. Economic collaboration was limited until ASEAN governments took steps to liberalize their economies, boosting low levels of economic interdependence among the member economies. Even the security agenda in the first decades was dominated by internal threats from Communist insurgents, a threat largely outside the design of the fledgling regional organization.

As Michael Leifer describes, ASEAN was the "institutional product of regional conflict resolution" (or, more precisely, conflict management). The institutional form chosen by ASEAN's members was strictly intergovernmental and informal. Its founding document was a "multilateral declaration and not a treaty" nor was it a "legal

2. The original members of ASEAN, founded in 1967, were Indonesia, Malaysia, the Philippines, Thailand, and Singapore. Brunei became a member in 1984; Vietnam, Cambodia, Laos, and Myanmar were admitted to membership in the 1990s.
regime embodying a commitment to some form of political integration." Legalization was low, and institutions were rudimentary at the start. An annual meeting of foreign ministers, chaired on a rotating basis by one of their number, provided its governing structure, together with a Standing Committee for consultation between these meetings. Informally, the central arena for consultation and bargaining during ASEAN’s first decade was the Senior Officials Meeting (the top senior officials of the foreign ministries), a group awarded no formal role in ASEAN.

ASEAN’s institutions developed slowly; a modest increase in obligation and precision was not accompanied by any increase in delegation from member states to the organization, however. The Declaration of ASEAN Concord and the Treaty of Amity and Cooperation in Southeast Asia signed in 1976 established core principles of behavior and a code of conduct for regulating relations among the states of the region. Although the Treaty of Amity and Cooperation (TAC) legally bound its signatories to this code of conduct, which included respect for sovereignty, non-interference in domestic affairs, peaceful settlement of disputes, and renunciation of the use of force, no sanctions were included to enforce the norms of conduct. These ground rules formed the basis for ASEAN’s method of dispute management, the much-studied (and touted) ASEAN way. ASEAN’s treaty structure did not produce an elaboration of military cooperation, however; nor did it sustain any delegation from member states to the small secretariat established in 1976.

The institutional design and procedures of ASEAN—the ASEAN way—are normally described as starkly different from the formal legalism of most Western international institutions. Relations among ASEAN’s members emphasize “informality rather than a legalistic framework, adopting the principles of accommodation and consensus in decision making and non-interference in the domestic affairs of its members, and accommodating the needs of members at different levels of economic development.” Two principles lie at the core of ASEAN’s official ideology and standard operating procedures: musyawarah (consultation) and mufakat (consensus). These two terms are taken to characterize decision making in village society in Southeast Asian societies (or at least Malay societies). The first defines a process of decision making that involves painstaking and lengthy discussion and consultation in which decisions emerge from the bottom up. That process aims to achieve eventual consensus—unanimity or near-unanimity—as a much-valued result. This alleged transfer of a domestic decision-making style (clearly informal and antilegal) to international negotiation implies a strong cultural component in the choice of international institutions, at least in the rhetoric of ASEAN’s members.

ASEAN did not remain a skeletal institution, despite its resistance to legalization. As its mandate grew to include cooperation in a larger number of domains, the density and frequency of intergovernmental meetings (eventually over two hundred each year) served to cement its consultative and consensual institutional model. A deepen-
ing of intergovernmental cooperation followed the Manila Summit in 1987: ASEAN formally incorporated the Senior Officials Meeting (already at the core of its permanent operation) and created a Senior Economic Officials Meeting to handle all aspects of ASEAN economic cooperation. Consultation widened to include Senior Officials Meetings on the environment, drug trafficking, social development, science and technology, and other policy domains. The creation of national secretariats in each foreign ministry that were responsible for ASEAN-related activities at the national level strengthened this move from intergovernmental to transgovernmental collaboration.

The product of this increasingly elaborate ASEAN cooperation umbrella was difficult to measure. Ironically, for all of the *gemeinschaft* aura of the ASEAN way, few if any major disputes were settled by means of consultation and consensus building: dispute management (preventing the outbreak of militarized disputes or military conflict) best characterizes the achievements of ASEAN in security collaboration. Even the means of dispute settlement specified in the 1976 treaty—a High Council that would recommend ways of settling disputes—has never been activated. Nevertheless, ASEAN's success as a mechanism of diplomatic collaboration was unique in the developing world. It has also been labeled a security community in formation in which the use or threat of force among members has become increasingly rare.8

Economic cooperation among ASEAN members produced mediocre results until the formation of the ASEAN Free Trade Area (AFTA) in 1992. ASEAN’s pattern of economic cooperation and the reasons for its limited achievements are familiar: inward-looking economic policies and economies at different levels of income and industrialization. The absence of formal regional institutions and the failure to negotiate precise and binding obligations reflected those shortcomings rather than creating them. Although the ASEAN economies were among the most successful in the developing world by the 1990s, very little of that success could be attributed to intraregional trade liberalization.9

A long list of economic initiatives—Preferential Trading Arrangements, Industrial Projects, Industrial Complementation Projects, and Industrial Joint Ventures—was succeeded by AFTA, agreed to at the Singapore Summit in 1992. AFTA was designed in part to deflect competitive pressures within the region, particularly China and India. Widespread economic liberalization in Asia had removed both the distinctive policy and cost advantages of ASEAN. Substantial unilateral liberalization in ASEAN member economies and the prospects of greater intraregional trade argued for accepting more binding obligations to liberalize trade.10 AFTA also reflected the emerging economic agenda for developing economies in the 1990s: to attract foreign investment by creating wider markets, a dynamic that would influence NAFTA as well as other regional arrangements.

9. Excluding Singapore, a crucial entrepot, intra-ASEAN trade was less than 5 percent of total trade. Chia 1996, 63.
10. See Chia 1996; and Ravenhill 1995.
Despite the fanfare that accompanied AFTA’s introduction and a new strategy of creating a common effective preferential tariff that made national exceptions more difficult, ASEAN faced a serious credibility problem. Its half-hearted attempts at regional trade liberalization in the past and the informal institutional preferences of ASEAN members produced skepticism on the part of many observers. Institutional innovations did not seem to match the new commitments.\(^\text{11}\) Apparently, AFTA would continue to rely on unilateral measures with a minimum of peer pressure. Even as the agenda of AFTA widened beyond merchandise trade to include services and other contentious issue-areas, a mechanism for mobilizing member governments to speed the process of liberalization and to bring pressure on those who defected from liberalization commitments remained unclear.\(^\text{12}\)

ASEAN’s institutional design was modified by two innovations that were designed to add political weight to the AFTA liberalization project and to increase the organization’s ability to monitor compliance with commitments. At the same time, these changes did not represent an increase in legalization. The 1992 Singapore Summit that approved AFTA added political oversight to the new liberalization program by establishing a calendar for regular summits of ASEAN heads of government. In addition, the ASEAN secretariat was delegated increased responsibilities for initiation, advice, coordination, and implementation of ASEAN activities. Expanded delegation was related to the requirements of AFTA as was acceptance that the Senior Economic Officials would recommend decisions to the economic ministers by “flexible consensus,” a break with ASEAN traditional insistence on effective unanimity.\(^\text{13}\) The secretariat’s staff doubled—but only to thirty-one, an indication of the limits of delegation and the persistence of ASEAN’s intergovernmental model.

In evaluating the original design of AFTA, John Ravenhill notes two prominent shortcomings that were linked to the ASEAN way of institution building and its aversion to legalization: inadequate precision and limited delegation. In contrast to other regional free-trade agreements, AFTA was a sparse document of about fifteen pages (compared to NAFTA’s more than one thousand). The lack of concrete and specific provisions in the original version of AFTA produced the derisory nickname “Agree First, Talk After.” In the absence of more precise obligations, nontariff barriers (more important in many sectors than tariffs) and rules of origin threatened to undermine the new strategy for trade liberalization.\(^\text{14}\) Given the ambiguities and contested interpretations that were likely to arise with such a sketchy blueprint, ASEAN also seemed to require new institutional capabilities for interpreting rules or adjudicating disputes. Despite modest increases in delegation to the permanent apparatus of ASEAN and a widening of intergovernmental collaboration, those capabilities did not exist.

\(^{11}\) Ravenhill 1995.


\(^{13}\) ASEAN Secretariat 1997, 15–36.

\(^{14}\) See Ravenhill 1995; and Chia 1996.
ASEAN in the early 1990s was a model of institutional development without legalization. ASEAN institutions were far more elaborate than they had been at the founding of the group twenty-five years earlier, moving from an intergovernmental model to a transgovernmental one. The scope of cooperation had widened to encompass a broad swathe of government policies. Binding and precise legal obligations among the member states remained relatively few, however, and delegation of interpretation or enforcement to judicial or quasi-judicial institutions did not exist.

The ARF: Security Initiatives the ASEAN Way

Although security arrangements have generally been less legalized than institutions and agreements in other issue-areas, arms control regimes during the Cold War often included precise and binding obligations. (The third dimension of legalization—delegation—has been less characteristic of security regimes.) As in other spheres, legalization in security arrangements was particularly characteristic of Europe. In the Pacific the European model of confidence building and arms control was rejected in favor of a weakly institutionalized multilateral arrangement that reflected the influence of ASEAN and the high sovereignty costs attached to constraints on security policies.

The ARF, which met for the first time in 1994, was the first intergovernmental multilateral security initiative that covered the entire Asia-Pacific region. Its heterogeneous membership includes the ten members of ASEAN and twelve other governments.15 Wide membership has been matched by a thin institutional framework, deeply influenced by the ASEAN model. As one observer remarked, the ARF was “so under-institutionalized the members don’t even call themselves members.”16 The ARF began (and continues) without a secretariat (ASEAN provided the services of a secretariat) and with no clear obligation to convene between the forum’s annual meetings.17 Its operational conventions resemble those of ASEAN: consensus (and nonvoting); progress at a pace comfortable to all participants.

In self-conscious contrast to “Western-style legalism,” the modest agenda of the ARF was not based on binding commitments of any kind.18 Although ASEAN’s TAC was adopted early on as a code of conduct for the ARF, its import was “more symbolic than practical.”19 The more legalized alternative of having participants accede to the TAC would have been opposed by China and treated warily by Indonesia and other members of ASEAN. Instead, the ARF based its initial program on a set of modest seminars on noncontroversial topics.

15. In addition to ASEAN members, the membership of the ARF includes Australia, Canada, China, the European Union (presidency), India, Japan, Mongolia, New Zealand, Papua New Guinea, Republic of Korea, Russia, and the United States.
17. Ibid.
The model of a weakly institutionalized and continuing dialogue on security in the Pacific is regarded by some as the principal achievement of the ARF. Although China's deep suspicion of precise and binding multilateral commitments threatened the ARF, its supporters claim that China's "comfort level" has shifted over time with participation in the forum and that China's incorporation in such a framework, however loose and imprecise, is valuable for regional cooperation and conflict management. Rather than movement forward by a pattern of negotiation and commitment, the ARF relies heavily on its nonofficial track two for forward momentum and new ideas. Whatever the shortcomings or strengths of the ARF, however, few of its members seem eager to have the organization move in a more legalized direction: sovereignty costs in the sphere of security relations may simply be too high. However, in the case of the third regional institution, APEC, conflict between an Asian (or ASEAN) model of nonlegalized institution building and a more legalized approach backed by the United States and others has been more apparent and persistent.

APEC and the Rejection of Legalization

ASEAN and its institutional design were awarded a central role in the development of the ARF; ASEAN preferences were also crucial in the initiation of APEC. As Yoichi Funabashi describes, Japan and ASEAN were the central Asian players in the formation of APEC. Since ASEAN's opposition had blocked the development of a Pacific economic organization in the past, the institutional preferences of the Southeast Asian governments had to be accommodated. ASEAN was promised a prominent role from the beginning by Australia, which had proposed the formation of APEC. One way of insuring that APEC would not be dominated by Japan and the United States was to shape the organization in the ASEAN image. ASEAN preferences were close to those of Japanese policymakers, who viewed even the Organization for Economic Cooperation and Development (OECD) as too formal a model for the planned Pacific economic organization.

As the name of APEC itself indicates, its precise character as an institution has been a matter of debate since its foundation. Lawrence Krause defends APEC as a process that constrains and informs governments through ongoing dialogue, a process that also explicitly engages the private sector, which has been the source of Pacific economic integration. Ippei Yamazawa labeled APEC an "open economic association" that represents economic integration without formal institutions. Unlike ASEAN, whose members were all Asian developing countries, or the ARF, in which sovereignty costs produced a broader consensus against legalization, APEC contained what Ravenhill calls two "competing logics" that coalesced around the

24. Ibid., 64.
dimensions of legalization: Asian preferences for “lack of specificity in agreements” and “an informal, incremental bottom-up approach to regional cooperation” were juxtaposed with Western models based on “formal institutions established by contractual agreements.”

In its first years APEC emphasized consultation and dialogue, rather than binding commitments, a trajectory that clearly placed it in a nonlegalized mold that resembled other regional institutions. This pattern matched the preferences of ASEAN and of China (the two key constraints on the ARF’s construction as well). ASEAN’s wariness of “dilution” within the larger APEC framework found voice in its Kuching Consensus, which laid out the ground rules for ASEAN participation in APEC. The consensus specified opposition to legalization within the new regional organization, stipulating that APEC “should not lead to the adoption of mandatory directives for any participant to undertake or implement” and that it should proceed “gradually and pragmatically.”

The ASEAN position did not foreclose further institutionalization of APEC through one of two avenues: either agreeing on nonbinding principles that would evolve into a more binding code or permitting some members to opt out if they were unwilling to participate in more binding agreements. China, an early participant in APEC, expressed even less willingness to enter into binding commitments, opposing “a strong organization with mandatory powers that can force it to change beyond its ability and desire.”

By 1993, as a new U.S. administration took greater interest in APEC, APEC’s future as a purely consultative institution was challenged by a more ambitious alternative. The gradualist view of APEC’s future was soon pitted against an “American” approach that was viewed by Asians as “too legalistic and too institutional.”

The first APEC summit in November 1993 was preceded by an ambitious report from the Eminent Persons Group that had been formed to advise the APEC member governments on the organization’s future course. The report urged a timetable and a target date for achieving free trade in the Pacific as well as a “GATT-plus” agenda of trade and investment facilitation measures. For the U.S. member of the Eminent Persons Group, the 1993 summit demonstrated that APEC had “become a negotiating forum rather than a purely consultative body.”

This turn in APEC’s agenda and instrumentalties appeared to be confirmed at the Bogor Summit in 1994, which endorsed a region-wide program for liberalizing trade and investment. The timetable was multispeed, offering more time to developing countries. Nevertheless, a high-level political commitment was made to an agenda that appeared to move beyond the global GATT/WTO agenda, including investment as well as behind-the-border policies. Skeptics noted that the Bogor Declaration was “very much in the Asian tradition of lack of specificity about institutional design and agreement implementation.”

obsiders saw the United States transforming the APEC mandate “at its root,” by replacing its model of “consultation and consensus” with “more formal and binding commitments to scheduled liberalization programs.”

The record of APEC following the Bogor Summit, however, demonstrated the familiar regional pattern of limited institutionalization with little or no legalization. APEC’s institutional design has included a prominent role for informal advisory groups, such as the Pacific Economic Cooperation Council, the Eminent Persons Group, and the APEC Business Advisory Council, but it remains an intergovernmental group. Its small secretariat relies heavily on working groups to arrive at consensus. After Bogor, debate centered on two issues: on the one hand, the priority to be awarded to the liberalization agenda, as compared to APEC’s other goals of trade and investment facilitation and technical cooperation and, on the other, the means by which the Bogor commitments would be reached. Developing-country members of APEC emphasized building on the success already achieved in the region through unilateral means: the addition of peer pressure within APEC councils would produce Concerted Unilateral Action (CUA) without moving toward binding commitments or deadlines, extensive monitoring, or the application of sanctions. The United States and others from the industrialized world were skeptical of the CUA model and stressed the need for clearly measured reciprocity to overcome the temptation of free-riding within APEC and between APEC and the rest of the world.

In subsequent development of individual action plans and the Manila Action Plan for APEC (MAPA) to implement the Bogor commitments, it became clear that any movement toward more binding and precise APEC commitments had been a false start. APEC remained resolutely nonlegal; its members “have shown little willingness to formalize APEC by means of binding agreements on a defined set of substantive economic or trade issues, nor have its members sought to create a regional institution with rule-making, interpretative, enforcement, or adjudicative powers.” On the legalization dimensions of precision and obligation, the MAPA clearly fell short: even a sympathetic observer labeled it “complex” but “vague on overall goals and short on specifics.” Even more revealing was APEC’s foray into liberalizing investment regimes, a set of principles that were explicitly labeled “nonbinding.” As Merit Janow points out, these principles were, on several key points, imprecise and weaker than commitments already made under the WTO’s Trade-Related Investment Measures negotiations. Although the principles included a dispute-settlement provision, they did not incorporate a mechanism or procedure beyond suggesting settlement through acceptable arbitration procedures.

Delegation, the third dimension of legalization, was necessarily linked to obligation and precision. If there were no binding rules to be interpreted or adjudicated, then little need existed for a formal dispute-settlement mechanism. Perhaps the clear-

33. Yamakage 1997, 293.
est indication of the skepticism that APEC’s Asian members—particularly Japan, China, and ASEAN—have toward legalized models was found in proposals for an APEC dispute-mediation service rather than a dispute-settlement mechanism. The Eminent Persons Group, which moved the APEC agenda forward in the 1990s, had recommended the creation of a dispute-settlement mechanism, “based on either the ‘Dunkel text’ [of the proposed WTO dispute-settlement mechanism] or the Canada-United States/NAFTA model, as soon as possible.” The second and third Eminent Persons Group reports, however, transformed this recommendation into a dispute-mediation service that would not compete with the WTO’s new Dispute Settlement Understanding and would only “provide assistance in resolving (and thus, over time, perhaps avoiding) economic disputes among its members.” The Eminent Persons Group justified this endorsement of a less-legalized formula with a reference to APEC’s own evolving institutions: a binding dispute-settlement mechanism required “the existence of agreed rules against which to judge compliance” or (on the NAFTA model of judging compliance by implementation of domestic laws) “a significant degree of comparability of those laws among the participating economies.” As soon became clear, even this less-legalized version of a dispute-settlement mechanism would prove unacceptable or unnecessary for Asian members of APEC.

Why Legalization Is Low in the Asia-Pacific Region

By the mid-1990s three key regional institutions in the Pacific had taken an institutional form that appeared to reject legalization. The obligations undertaken were seldom binding and were often imprecise. In part because of the character of members’ commitments, little delegation to interpret or adjudicate those commitments was evident. The emergence of legalized models outside the region—particularly the WTO, the European Union, and NAFTA—seemed to have inspired little imitation.

The characteristics of these three Asia-Pacific institutions seem to undermine simple demand-driven, functionalist models of legalization: economic integration and security interdependence have grown in East and Southeast Asia as well as across the Pacific, yet the demand for legalized institutions seems to remain low. Growing regional economic integration might produce legalized institutions through the domestic political demands of increasingly internationalized economic interests. Their interests in a stable, rule-governed environment for international economic transactions should be reflected in more legalized institutions to govern market access and constrain government policies. A somewhat different model relies on the growth of specific assets related to intraregional trade and investment. Specific assets—investments tightly linked to intraregional economic exchange and having few alter-

38. APEC Eminent Persons Group 1993, 40.
40. Ibid., 23.
41. Models of this kind are elaborated by Kenneth W. Abbott and Duncan Snidal in this issue.
native uses—will increase concerns over government opportunism in regional economic partners. Legalized institutions may deal more effectively with the threat of opportunism and backsliding from commitments through easier identification of violations and mechanisms for sanctioning those violations. Although the rejection of legalized institutions in the Pacific appears to undermine these arguments, a final demand-driven approach may help to explain the pattern of institutional design in the region. If alternative institutions are available outside the region to supply the legalized characteristics required by the new economic circumstances, then demand for such institutions within the region may be lower.

A second explanation for the region's rejection of legalization is widely accepted in regional rhetoric: ASEAN and APEC are set apart from "Western-style" institutions on the basis of radically different Asian legal culture and institutions. International expression of those domestic institutions and cultures produces the ASEAN (or APEC) way and a distrust of Western-style legalization. This argument is often connected to wider assertions of "Asian values"—less adversarial and litigious, less intent on demonstrating right and wrong, more concerned with avoiding conflict. One commentator on APEC dispute management argues that an "Asian way" of approaching disputes—"an emphasis on group harmony, consensus, and informality and avoidance of legalism"—is at the core of disagreements between Asian and Western members: "These differences of 'legal culture' reflect deeply held values and are unlikely to change in the near future."43 According to this model, institutional preferences are expressive of deep-seated cultural norms that are reflected in domestic legal practices and international institutional choices.

Arguments from dominant legal culture to international institutional design fail for several reasons, however. Most Asian societies, particularly in Southeast Asia, display legal pluralism rather than monolithic legal cultures and homogenous legal institutions.44 Domestic legal institutions were produced by successive layers of legal influence—some imposed by colonial powers, some borrowed by successor regimes. This process of melding legal traditions preceded Western influence in some cases. In Indonesia, for example, "Islamic law was never taken over fully anywhere... Indonesian societies picked and chose among rules that were then adapted to suit their own organizational values and needs."45 Complexity increased in many societies when modernizing nationalists, whether those of Meiji Japan or postcolonial Indonesia, embraced the centralizing and unifying tendencies of Western law against local and religious traditions. Local legal and political traditions, such as the musyawarah and mufakat of ASEAN, were typically rejected by nationalists or reserved for a poorly educated rural population: "How could a unified and independent country survive without a unified regime of law? How could 'primitive' adat law be a suitable vehicle of modernization?"46 Not only is Asia characterized by legal pluralism within individual societies; its heterogeneity across societies, given different religious and

44. Hooker 1978.
46. Fasseur 1992, 256.
colonial histories, is also manifest. Legal cooperation within ASEAN has made little progress because of the diversity of legal systems within Southeast Asia.

What appear to be cultural differences may in fact represent strategies pursued by political actors. Legal "traditions" are sometimes rooted in a cost-benefit calculus that is skewed by governments. Frank Upham describes the sources of persistent national ideologies—such as the belief that Japan is a deeply harmonious society averse to litigation—in a political or bureaucratic elite's desire to deflect social pressure in particular directions (that is, away from the judicial system). The ASEAN or Asian way of managing disputes or favoring informal institutions may result from not only the construction of social myths about harmony and a national past untouched by Western influence but also conscious political programs to dampen adversarial conflict internally and internationally.

Domestic political explanations for regional institutional design represent a third category of explanation independent of culture and reflective of national histories. Domestic politics includes variables that are shared by most of the Asian societies that are members of these institutions as well as other variables that discriminate among them. Both political homogeneity (a shared history of responding to colonialism) and heterogeneity (divisions over political regime and the status of domestic legal institutions) may undermine a move to legalized institutions. A common assessment of the sovereignty costs associated with legalization (and their political consequences) may lead states to reject legalized institutions; resistance by authoritarian regimes skeptical of the rule of law will also hold back institutional evolution in a legalized direction, so long as decision making occurs by consensus.

All of the states in Southeast Asia, with the exception of Thailand, share a history as colonial territories. Other regional powers, such as China, have also been marked by the experience of unequal treaties imposed by Western imperial powers and by invasion and occupation by Japan. These histories are embedded in the domestic politics of Asian societies, creating a strong attachment to norms of state sovereignty and a bias against legalized institutions. Consensus decision making protects national prerogatives, and external, binding constraints that might challenge internal legitimacy and political order are viewed with deep suspicion. This post-colonial syndrome, which increases what Kenneth W. Abbott and Duncan Snidal call sovereignty costs, should erode over time as new political cohorts take power, although certain domestic interests, such as the military and state security bureaucracies, may have an organizational interest in sustaining nationalist programs.

The Asia-Pacific region, apart from its relatively uniform response to colonialism, is marked by political heterogeneity. To the degree that legalization is based on the interaction of liberal democratic states, the region may not meet a crucial threshold condition. Authoritarian regimes are likely to reject constraints on their behavior (the rule of law) internally and internationally. Authoritarian regimes and states that im-

48. Abbott and Snidal, this issue.
pute high sovereignty costs to legalized institutions are unlikely to entertain transna-
tional dispute resolution, which offers direct access to nonstate actors. As Robert
Keohane, Andrew Moravcsik, and Anne-Marie Slaughter argue, transnational dis-
puate resolution may deepen and reinforce legalization over time. 49

Domestic legal institutions and practices in the region are also diverse. Peter Kat-
zenstein has argued that Asian states inherited "rule by law" institutions rather than
the West European tradition of "rule of law." 50 However, Asian societies display
considerable variation in the strength of their legal institutions and the power of their
legal professions and judiciary. Whatever the current level of political intervention in
the administration of justice, some states (Singapore, Malaysia, the Philippines) have
histories of judicial autonomy and legal redress, whereas others (Vietnam, China)
possess only the rudiments of independent legal institutions.

Each of the preceding explanations predicts a uniform response on the part of
regional states toward legalized institutions. Functionalist and demand-driven expla-
nations predict an increase in legalization with growing economic integration; expla-
nations based on legal culture or domestic politics predict persistent resistance to
legalization. (Democratic and rule-of-law states might be predicted to deviate from
authoritarian states in their acceptance of legalized institutions, but those preferences
may not find expression within institutions that are embedded in politically heteroge-
neous settings.)

The most significant flaw in explanations for the persistent rejection of legaliza-
tion in the Asia-Pacific region, however, is that a uniform rejection of legalization has
not persisted. Outside regional institutions, Asia-Pacific governments have embraced
legalization in particular issue-areas when it serves national purposes. Within the
region, ASEAN's members have accepted legalization as a concomitant of their free
trade area. APEC and the ARF, on the other hand, remain institutions that are not
legalized on any of the three dimensions of obligation, precision, or delegation.

These recent developments lend support to a fourth explanation for legalization:
the choice of legalization is both instrumental and strategic. The choice of legalized
institutions is instrumental in that it does not express deeper cultural preferences (or
aversions). Instead, legalized institutions are primarily a means to other ends. The
governments of the region share common goals of economic integration and opening
(without such a minimal consensus, AFTA and APEC would not exist). The national
choice of legalization in a particular context, then, results from a calculus that legal-
ized institutions serve those goals, even when costs (particularly sovereignty costs)
are taken into account. The choice for or against legalized institutions is also strate-
gic, since it will be influenced by the competing strategies and capabilities of other
actors in particular institutional settings. Governments may reject binding and pre-
cise obligations in a setting that requires bargaining with a government (the United
States) that not only has greater economic and legal capabilities but also has demon-
strated an attachment to unilateral enforcement. As described in the next section, this

49. Keohane, Moravcsik, and Slaughter, this issue.
type of discriminating calculus goes some distance in explaining both institutional innovations and stasis in the Pacific region.

A Legalized Future? Recent Institutional Evidence in the Asia-Pacific Region

Discriminating among alternative explanations for the pattern of legalization in the Pacific would be difficult were it not for two recent developments: acceptance by Asian governments of legalized arenas outside the region and divergence between the institutional evolution of ASEAN on the one hand and APEC and the ARF on the other. These developments lend support to the strategic explanation for legalized institutions and undermine those explanations, particularly cultural and political explanations, that rely on homogeneous or unchanging preferences toward legalization within the region.

Asian Governments and the WTO

The WTO's Dispute Settlement Understanding is widely regarded as a victory for those who wished to move the global trade organization in a more legalized direction. Although Japan, the largest Asian economy, had endorsed a diplomatic rather than a legal view of GATT dispute resolution at the start of the Uruguay Round, there is little evidence that Japan actively opposed the legalized direction that the negotiations eventually took. On the contrary, Funabashi claims that Japan, and particularly the Ministry of International Trade and Industry, had long been interested in strengthening dispute-settlement mechanisms in world trade as a way of constraining American unilateralism.

The record of Asian governments under the new WTO dispute-settlement procedures undermines arguments that they are reluctant to engage in legalized institutional settings. Certainly Asian countries, and particularly developing countries, underutilized the GATT dispute-settlement mechanism, relative to their importance in world trade. The short history of the WTO Dispute Settlement Understanding suggests that this pattern may be changing, even though few concessions were made to developing countries in the negotiations that produced the procedure. Although Asian governments continue to underutilize the new procedure when compared with their importance in world trade, the proportion of complaints brought by Asian governments has doubled as a share of total complaints when compared to the historical average under GATT. The first complaint lodged under the new procedure was

51. Croome 1995, 149.
54. Under GATT only nine complaints were brought by Asian governments (4.35 percent of the total). Three of these were brought by Hong Kong. In the short time that the WTO procedure has been operational, 10.63 percent of the complaints have been brought by Asian states. The proportion of complaints made against Asian countries has remained roughly the same.
brought by Singapore against Malaysia. (It was withdrawn before a panel was established.) Japan has used the WTO procedures vigorously to challenge U.S. sanctions directed to opening the Japanese automobile market and European Union restrictions on "screwdriver" assembly plants. An even more sensitive case was the complaint lodged by Japan against Indonesia, challenging Indonesia's National Car Program. Thailand and Malaysia were party, with other developing countries, to a successful and high-profile complaint against U.S. restrictions on imported shrimp for which the United States claimed environmental justification. Apart from the European Court of Justice, the WTO Dispute Settlement Understanding is the most legalized dispute-settlement mechanism in world trade. Nevertheless, Asian governments appear comfortable using it to challenge the major trading powers and each other.

**Territorial and Other Interstate Disputes**

Acceptance of third-party adjudication by Asian states has been even more striking in other issue-areas. The execution of Flor Contemplacion, a citizen of the Philippines convicted of murder in Singapore, produced a crisis between Singapore and the Philippines. The conflict was resolved in part by referral to a panel of three U.S. forensic experts who conducted a joint autopsy on the remains of the murder victim and reached the same conclusion as the Singaporean coroners.55

The Asia-Pacific region is dotted with long-standing territorial disputes. Few disputes have been resolved through judicial or quasi-judicial means. Recently, however, economic development has driven ASEAN states toward resolving territorial disputes that have lingered since decolonization. Singapore and Malaysia agreed in 1994 to submit their dispute over the island of Pulau Batu Putih/Pedra Branca to the International Court of Justice. The choice of venue was determined strategically by Malaysia: rather than using ASEAN's dispute-settlement mechanism, which could have been activated, it viewed the World Court as more appealing. As one senior ASEAN official pointed out, "Malaysia has territorial disputes with practically every country in ASEAN. They felt that if they go the [sic] High Council it may be difficult to get an objective decision from the other members."56 By June 1998 the two governments had negotiated a special agreement to refer Malaysia's claim to the International Court of Justice; formal signing and ratification remain.

Malaysia and Indonesia followed suit in their dispute over Sipadan and Ligitan Islands. The need to settle the territorial claims was heightened once again by economic development: Malaysian development of Sipadan—touted as one of the ten most beautiful islands in the world—as a tourist destination brought protests from Indonesia over this breach of a 1969 status quo agreement. Malaysia once again preferred the disinterested International Court of Justice to its ASEAN partners who held territorial claims against it; Indonesia held out for bilateral avenues of settlement or the ASEAN High Council. The two disputants agreed to take their claims to

the International Court of Justice in October 1996; a memorandum of understanding on the procedures for submitting their respective claims was agreed in May 1997, and in May 1998 the two countries formally agreed to accept any ruling made by the court. The two countries jointly seised the court of their dispute in November 1998, and it now appears on the court's docket.

These territorial disputes are not the most important in the region. Recent and limited judicial proceedings hardly confirm a larger movement to legalization in this issue-area. So far, legalized resolution of more important territorial conflicts, such as those in the South China Sea, has not occurred. Nevertheless, these longstanding disputes were taken to a global judicial body for settlement rather than to an available, nonlegalized forum in the region (the ASEAN High Council). These cases demonstrate that resistance to legalization is not uniform and, in the case of Malaysia, that governments make careful strategic calculations of when and where legalized dispute resolution will serve national purposes.

**Legalization and ASEAN**

In addition to their willingness to resolve disputes in legalized forums outside the region, the ASEAN governments have also endorsed legalization in ASEAN itself. The adoption of a dispute-settlement mechanism by ASEAN in 1996 was clearly related to AFTA and the growth of economic exchange among ASEAN economies. First proposed by Thailand in April 1995, the idea of a dispute-settlement mechanism for ASEAN grew from the dispute between Singapore and Malaysia over the Malaysian government's decision to increase tariffs on petrochemical products (a major Singaporean export). Singapore believed that this action was a breach of the agreement within AFTA to lower tariffs by 2003. A means for determining which member's interpretation was correct did not exist within ASEAN, however. As a result, Singapore took Malaysia's action to the new WTO dispute-settlement mechanism. Bringing an intra-ASEAN trade dispute to the WTO was an embarrassment to the organization and its members; it also sparked a realization that disputes of this kind were likely to increase as economic integration deepened among the ASEAN economies.

It was fitting that the ASEAN decision to adopt a dispute-settlement mechanism was taken at the same meeting that crafted a compromise on the knotty issue of liberalizing trade in rice and sugar. AFTA's liberalization demands were beginning to bite; consensus and consultation might not sustain the momentum of liberalization without additional institutional supports. The dispute-settlement mechanism was designed to apply to all ASEAN economic agreements, past, present, and future. A senior ASEAN official also noted that requests for a formal mechanism had come mainly from the private sector, even though the private sector would not have direct access to the mechanism.

Much of the commentary on the ASEAN dispute-settlement mechanism referred to a change from ASEAN's consensus decision making to a more legalized approach. The model of dispute resolution chosen bore little resemblance to an ASEAN
APEC Resists Legalization

ASEAN governments have accepted third-party dispute settlement—the dimension of legalization least favored in the past—in both ASEAN and other venues. ASEAN’s acceptance of legalization has not been paralleled in APEC’s recent evolution, however. The final report of the APEC Eminent Persons’ Group in 1995 once again advocated an APEC dispute-mediation service, but it concluded that such a service “should avoid duplicating or competing with the arrangements already in place at the WTO.” This conclusion reflected the belief of APEC members that the new WTO Dispute Settlement Understanding, despite its legalized character, should become the principal venue for resolving trade disputes.58 As described earlier, Asian governments have used the new WTO instrument in resolving trade conflicts.

APEC’s Dispute Mediation Experts Group began its work in 1995 on the assumption that “no new institutions should be created within APEC for this purpose.”59 Before the November 1996 Manila Summit, APEC rejected once again the establish-

ment of a formal dispute-settlement body similar to the WTO. Edsel Custodio, joint head of the Philippines negotiating team, stipulated that disputes among members should be resolved using “voluntary mediation”; if such efforts failed, the parties to the dispute should go to the WTO. The Manila Summit’s Ministerial Joint Statement made virtually no mention of dispute mediation. The Dispute Mediation Experts Group has directed its attention toward educating APEC’s members and publics on WTO dispute-settlement procedures and rendering more transparent the arbitration and dispute-resolution practices available in APEC member economies.

APEC and the ARF, Pacific institutions that incorporate Western legalizers, remain resolutely resistant to legalization in all of its dimensions. The sixth ASEAN Regional Forum in July 1999 confirmed that the ARF would “continue to move at a pace comfortable to all ARF participants on the basis of consensus.” ASEAN, on the other hand, whose members were supposed to be culturally predisposed against legalization, had moved some distance toward legalizing its institutions and making use of other legalized venues at the global level. This apparent paradox points toward an explanation of legalization in the region that emphasizes both its strategic utility for national governments and its demand-driven character.

Legalization and Its Regional Limits

The Asia-Pacific region has recently shed its image as the home of informal and nonlegalized institutions in favor of a more differentiated pattern. ASEAN’s recent acceptance of more legalized institutional innovations and its members’ willingness to make use of third-party adjudication outside the organization lend support to both demand-driven and strategic accounts of legalization. Shifts in the international economic environment and liberalization of the ASEAN economies laid the groundwork for the negotiations that produced AFTA. Regional business leaders, increasingly involved in each other’s economies, lobbied for a more stable and rule-governed environment. Governments, facing a higher level of specific assets linked to intra-regional trade and hoping to attract foreign investment through a wider market, accepted the need for more binding liberalization commitments. AFTA, which produced commitments with greater precision and obligation, in turn stimulated demands for mechanisms to clarify and interpret its commitments. Reports on the WTO dispute-settlement mechanism negotiations suggest that business had pressed for a more formal mechanism, a pattern that has been seen in other regional economic organizations. Territorial dispute settlement has also been driven in part by desires to exploit the resources in and around contested territory. At the same time, postcolonial sensitivities regarding external legal constraints have diminished.

These regional trends and the demand for institutional innovation that they created affected only one regional institution, however; both APEC and the ARF continued

62. ASEAN Regional Forum 1999.
to avoid precise and binding commitments or any third-party mechanisms for rule interpretation or adjudication. If demand driven by economic integration moved ASEAN’s members toward legalization, one would expect a similar development in APEC. To explain their divergent trajectories, a different aspect of demand-driven models must be deployed: the successful operation of the WTO altered the supply of legalized institutions for the settlement of certain economic disputes. As APEC members (who were members of WTO or aspired to be) became familiar with the WTO Dispute Settlement Understanding, they saw less need for a dispute-settlement or mediation mechanism within APEC. Despite the rhetoric against legalization within APEC, its members appeared willing to utilize the new and highly legalized procedures of the WTO.

An explanation based on alternative institutional supply does not fully account for APEC’s failure to follow the logic of adopting more binding and precise liberalization obligations, as ASEAN had through the AFTA. Economic integration in the Pacific was as deep or deeper than integration within Southeast Asia. In order to explain the paradox that has recently emerged—less legalization in regional forums that have more members who strongly endorse legalization—legalization or its absence can best be viewed as a strategic response by governments in particular institutional settings. Governments choose or accept legalized institutions when they represent the best strategy for accomplishing their larger goals, given the strategies and capabilities of other governments.

The ASEAN governments (and China) are able to prevent legalization in APEC. They continue to do so because they do not want the organization’s prospective agenda, which goes well beyond that of the WTO, to become binding, and because of the configuration of power within the organization, which could be dominated by the two largest industrialized economies, the United States and Japan. Given the United States’ willingness in the past to deploy unilateral enforcement measures in order to force the opening of Asian markets and change “protectionist” Asian policies, Asian members of APEC faced the possibility that the United States (and possibly Japan) would employ legalized institutions in just this fashion. Most of the states in East and Southeast Asia have been targets of U.S. demands in international economic negotiations. They are, therefore, likely to be more wary of legalization in institutions where the United States plays a dominant role (that is, APEC) and less averse to legalization in a setting where the United States is absent or less dominant. For APEC to pursue a more legalized future, the United States would need to credibly commit to ending “aggressive unilateralism.”

Since ASEAN is entirely Asian in its membership (and, with the exception of Singapore, restricted to developing countries), these recent changes call into question sweeping claims of opposition to legalization based on legal culture or uniformly high sovereignty costs. Other domestic political variables better supplement demand-driven and strategic explanations for the emerging pattern of legalization. Although sovereignty costs may have declined in economic issue-areas, other domains, such as national security and human rights, have begun to display a divide between democratic and authoritarian regimes over the issue of greater international oversight. One
of the region’s democracies, Thailand, recently proposed “flexible engagement”—a break with ASEAN’s rigid ban against scrutinizing domestic political practices or human rights violations. Not surprisingly, that suggestion was subjected to withering criticism by other, nondemocratic members. The type of political regime is also likely to influence the willingness of governments to accept international legalization that guarantees their citizens’ rights against national governments and the influence that legalizing constituencies have on national policy. Both will be reduced in authoritarian regimes. Few members of the ARF, including the United States, seem eager to move that forum in the direction of more binding and precise multilateral security commitments: the sovereignty costs for national militaries and electorates appear too high. So long as decision making is based on consensus, these politically driven cleavages will place these issue-areas off-limits to legalization, in contrast to other regions, such as Europe or Latin America.

The recent pattern of legalization in the Pacific has wider implications for the dilemmas faced by developing countries contemplating the reform of regional and global institutions. On the one hand, weaker states will typically benefit from legalization, since legalization will often impose some constraints on the strong, discouraging unilateral interpretation and enforcement of international obligations. On the other hand, as the Asia-Pacific case suggests, that calculus may hold only in cases of complete legalization (relatively high levels of obligation, precision, and delegation). A setting in which levels of obligation and precision increase, and stronger members are able to unilaterally interpret and enforce those obligations, is far less favorable for weaker countries. National legal capabilities will also be critical in determining a government’s relative costs and benefits when confronted with a choice for or against legalization. Successful engagement in legalized institutions requires resources and expertise, which are often in short supply in poor countries. The newest (and poorest) members of ASEAN—Vietnam, Laos, Myanmar, and Cambodia—have economies that are not fully market-oriented and demonstrate the greatest concern over sovereignty costs. They are likely to serve as a drag on future legalization within ASEAN. The organization may reach a legalization plateau that remains well below the levels of institutional legalization found in the Western Hemisphere and the European Union.

An explanation for the pattern of legalization in the Pacific that emphasizes demand-driven and strategic elements leaves one puzzle, however. Why do the Asian states decline to trust a legalized APEC and at the same time pursue their economic interests in a legalized WTO? A complete answer to this question awaits a more discriminating and detailed analysis of the policies of individual governments toward particular global and regional institutions. However, several elements of an explanation can be advanced. First, the agenda of APEC was potentially more expansive than the WTO on such sensitive issues as foreign investment and regulatory policies. It was also less subject to control by developing-country members. The addition of influen-

tial and active developing-country governments, such as India and Brazil, in WTO negotiations offered insurance that any new U.S. agenda would be subject to developing-country approval. The question of agenda control, in turn, reflects on the configuration of influence within the two organizations. The relative weight of Japan and the United States within APEC was potentially much greater than it was within the WTO, where their views would be balanced by the European Union and a large number of developing economies.

The strategic explanation for acceptance of or resistance to legalized institutions is supported by historical evidence. Despite the rupture that Western imperialism meant for the traditional Chinese worldview in the nineteenth century, the Chinese imperial government quickly absorbed and deployed Western international law to defend its interests in a dangerous environment. China attended both Hague Peace Conferences (1899 and 1907), joined the Universal Postal Union, and adhered to “many multilateral conventions dealing with the laws of war, the pacific settlement of disputes, and other matters.”

China’s behavior was imitated by other Asian states that were spared absorption into colonial empires: “The strategy generally adopted by China, Japan, and Siam was to learn the ‘rules of the game’ as quickly as possible. This involved translations of British, French, and American books on international law and the employment of foreign advisers.” Whatever their cultural distaste for “Western” legal instruments, Asian states have long demonstrated a willingness to use those instruments when required for their national well-being.

Legalization, Regional Institutions, and the Asian Economic Crisis

The question of legalization and its limits in the Asia-Pacific region has now become entwined with institutional reforms in the wake of the most severe regional economic crisis in decades. Following the Thai devaluation in July 1997, a national currency crisis became, through a process of unexpected contagion, a regional and global economic crisis. Proponents of the existing institutional models emphasize that existing regional institutions did not collapse and that these institutions were not designed for high-profile roles in crisis management. Despite an increase in economic conflict during the crisis, existing commitments to liberalize in AFTA were underscored and accelerated at the ASEAN summit in November 1999. Domestic economic distress has not been externalized into militarized conflicts. Nevertheless, even sympathetic observers do not award key regional institutions a central or constructive role in managing either the economic crisis or the later crisis that surrounded Indonesia’s role in East Timor. Others have been harsher in their judgments: “None of the much-touted institutions and forums designed to promote regional stability and economic

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64. Gong 1984, 181.
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health has had much to contribute, especially not the region’s own club: the Association of South-East Asian Nations. . . . The ‘ASEAN Way’ no longer works.”

Defenders of the region’s informal model of institution-building had argued before the crisis that these institutions satisfied key goals of national governments without the need for formal and legalized institutions. Debate has now begun on whether that model, already eroding before the crisis, remains adequate to the newly defined international situation and the risks that it presents to governments in the region.

Although the region’s governments have demonstrated an instrumental and pragmatic attitude toward the shape of regional institutions, legalized institutions may not immediately address the region’s collective needs (for at least two reasons). Legalization is only one dimension on which international institutions can vary, and it is not clear that legalization will provide the institutional improvements required by a new and riskier regional environment. Following Abbott and Snidal, legalization seems particularly suitable for situations in which opportunism on the part of governments is a central concern and legalization can render commitments more credible. Although government opportunism occurred during the Asian crisis (Malaysia’s imposition of capital controls, for example), it is far from clear that failure by governments to maintain their existing commitments is a central problem for the region. The region did not demonstrate substantial backsliding from existing liberalization or agreed commitments for the future. Regional financial contagion has produced a consensus on the need for closer surveillance of government policies, but here as well, legalization appears to add relatively little. As Beth Simmons suggests, monetary and financial affairs at the global level have been marked by a decline rather than an increase in legalization since 1976. Although enhanced surveillance may require institutional changes, and particularly a greater commitment to transparency on the part of governments, those institutional changes may not require legalization.

Finally, regional economic institutions in the Pacific have avoided competition with global institutions. The demand for further institutional development in the region may be partially offset if global institutions satisfy the requirements perceived by governments. Global institutional supply has been important in the past and will continue to be important to these globally engaged economies in the future. Although the Asian economic crisis is likely to produce institutional change in the region, more legalized regional institutions may not offer solutions to the new economic and security challenges that the region faces. Choices will not be based on hypothetical cultural affinities to institutions of a particular sort, but rather on hard calculations of institutional performance and regional outcomes.

67. The Limits of Politeness, The Economist, 28 February 1998, 43–44. For other critical reviews of APEC, the ARF, and ASEAN, see Cheng 1998; Acharya 1999; and Wesley 1999.
68. See Doner 1997, 201; and Petri 1997, 43.
69. Simmons, this issue.