GOVERNANCE ABOVE THE STATE:
EXPLAINING VARIATION IN INTERNATIONAL AUTHORITY
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GOVERNANCE ABOVE THE STATE:
EXPLAINING VARIATION IN INTERNATIONAL AUTHORITY

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1. Introduction

1.1. Explaining international authority

What explains international authority? More specifically, how can we account for the differences in institutional set-up and decision-making procedures in intergovernmental organizations (IOs)? In this dissertation, I argue that a tension between scale and community structures IO design and produces distinct types of international organization: general purpose and task specific. International organizations, just like national and subnational governments, are concerned with solving collective action problems through the provision of public goods. International public goods, such as environmental protection, security, intellectual property law and global health protocols are more easily arranged on a larger scale and some collective action problems can indeed only be effectively addressed if a large number of states cooperate. Hence, there is a clear benefit to increasing scale on the international level. On the other hand, states (and their citizens) care deeply about who governs them. On the national level, we know that communities have a strong preference to govern themselves. This is no different at the international level, although community between states is much more sparse than within. Nevertheless, states are much more willing to cooperate where they conceive themselves to be part of the same political community. A sense of community may arise as a result of a shared history, a common language, or similar religious beliefs and is therefore clustered unequally across the world. Where scale calls for organizations that are focused on re-
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solving collective action problems, community calls for organizations that are rooted in
a sense of belonging to the same group. Community, then, counters the demand that
scale places on international organization.

It is the tension between scale and community that produces distinct types of IOs:
general purpose and task specific. Where community prevails, international organiza-
tions tend to be general purpose. General purpose organizations mimic the role of states
on the national level, and as a result try to confront all policy problems that arise within
the community. Hence, general purpose organizations are characterized by a broad pol-
icy scope. Task specific organizations, on the other hand, are rooted in the specific
problems they seek to address. These IOs seek to bring together all states that are nec-
essary to address the collective action problem they seek to resolve. Hence, task specific
organizations will have a narrow policy scope.

General purpose and task specific organizations differ across a large number of dimen-
sions, and the following chapters will illustrate the tension between scale and community.
Important differences include the decision-making rules, extent of delegation, institu-
tional complexity, accession rules and development over time. The remainder of this
chapter first gives an overview of the study of IOs in the international relations litera-
ture and explains how this research project fits in with the literature. This is followed by
a section on the dataset that was developed to evaluate international authority. Here, I
first outline how others have conceptualized international authority, before moving onto
a discussion of the conceptualization and data collection efforts in this research project.
The last section provides an overview of the remaining chapters.

1.2. IOs in the literature

Political scientists have long been interested in different forms of international coop-
eration. Most international agreements are bilateral: Of 35,269 post World War II
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international agreements registered with the United Nations until 1999, only 2,330 are multilateral—the remainder are all bilateral agreements (Koremenos, 2005). The international relations literature commonly distinguishes between two types of international organization: intergovernmental organizations (IOs) and international non-governmental organizations (INGOs). It is the former type that I will focus my attention on in this research project. IOs can be differentiated from other forms of international cooperation by three important characteristics: they are based on a covenant that outlines the organization’s objectives and design; they have a permanent secretariat; and they have three or more member states (Reinalda, 2009, p. 5).

Interest in IOs has varied over time, with a strong interest in formal institutions followed by a focus on other aspects of international relations. In the early 1950s and 1960s, the study of international organizations was mostly descriptive and concerned with the effectiveness of the institutions that had been established after World War II. The descriptive nature of these studies might lead one to overlook the fact that these authors grappled with important themes, including the relationship between formal and informal rules, the influence of the international system on international organizations and the effects of institutional structure on IO effectiveness (Martin and Simmons, 1998). Most relevant for this research project is the early work that compares regional integration in Europe to integration processes in other parts of the world. Here, a higher level of integration also means that the IO in question is more authoritative. According to Haas, organizations have different modes of decision making, ranging from accommodation on the basis of the lowest common denominator to supranationalism, which he defines as “intergovernmental negotiation with the participation of independent expert and spokesmen for interest groups, parliaments, and political parties” (Haas, 1961, p. 368).1 Haas

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1Haas’ choice of words here is slightly confusing, as intergovernmental is usually taken to mean the opposite of supranational: intergovernmentalism describes a situation in which the IO has little independent power. A more straightforward definition from the same time period is provided by Claude: “A supranational body is thought to be superior to its member states and relatively independent of their consent and support in its operations. Supranationalism, in short, symbolizes the proposition
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then argues that integration in the European context is much more profound because
of three factors: the presence of supranational bodies, the economic function of inter-
national organizations and the environment in which the organizations are found. In a
similar vein, Nye also considers the issue of comparing regional integration and proposes
to break down the concept of integration in three separate processes: economic, social
and political integration. These processes can then be matched with characteristics of
the organizations that can be measured objectively, and thus can provide a means of
comparing the level of integration across different organizations (Nye, 1968). Again, the
depth of integration is understood to reflect the level of authority of an IO.

During the 1980s, the focus shifted from the study of formal institutions to the more
abstract concept of regimes (see e.g. Krasner, 1983; Keohane, 1982, 1984; Axelrod and
Keohane, 1985). Regimes are most commonly defined as "implicit or explicit principles,
norms, rules and decision-making procedures around which actors’ expectations converge
in a given area of international relations" (Krasner, 1982, p. 186). Thus, regime theory
operates under the assumption that the formal rules only partly account for international
relations. In order to fully understand state interactions, regime theory argues, we
cannot just look at international organizations but we should also take into account the
environment in which they operate (Hurd, 2011, p. 28). The regime theory literature
addresses the question of why states create regimes and whether they can influence
state behavior, with less of a focus on explaining institutional variation (Thompson and
Snidal, 2012). More recently, however, scholars have once again become interested in the
characteristics of formal institutions. This new scholarship goes back to the descriptive
research programmes of the 1960s, as outlined above, but is informed by theoretical
insights that can be gained from regime theory, as well as other streams of scholarship.
The aim of these research programmes is to move beyond description to the explanation
of institutional design.

that certain international organizations have achieved substantial emancipation from the control of
national governments and acquired an autonomous role in international affairs" (Claude, 1968).
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The remainder of this section discusses how IOs are understood and studied in the three major streams of international relation literature: realism, liberal institutionalism and social constructivism. I argue that this project is closest to the liberal institutionalist way of thinking but also includes insights from realism and social constructivism.

Realism

Realism is a stream of international relations theory that gained prominence after World War II in response to the idealism that had been prevalent in the antebellum. The history of realism, however, is much longer. Scholars trace the origins of realism to the works of Sun Tzu (544 - 496 BC), Thucydides (460 - 400 BC), Niccolo Machiavelli (1469 - 1527) and Thomas Hobbes (1588 - 1679). Realism is a theoretical framework in which international politics is explained on the basis of power. There are three main assumptions that underpin this school of thought. First, realists conceive of the international system as anarchic. This does not mean that international politics is chaotic, but rather that there is no higher authority than the state—there is no world government. Second, realism is based on the notion that states are the primary actors in the international system. Other actors, such as NGOs, IOs and business interests may exert some influence but always within the parameters set by states. Third, states act as rational individuals to protect their national interest. States aim to maximize their relative power, which can be measured through military capabilities, GDP, population or access to natural resources. Important early realist scholars are Hans Morgenthau (1973), E. H. Carr (1964) and Raymond Aron (1966). More recent realist scholars are Kenneth Waltz (1959; 1979) and Robert Gilpin (1975; 1981). Since it emerged as a research programme in the 1950s, realism has focused on a few key areas of international relations: foreign policy, systemic processes, causes of war, deterrence and bargaining, and international cooperation (Vasquez, 1983).

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1. Introduction

Realists are pessimistic about the possibility for cooperation between states (Maershimeier, 1995; Van Evera, 1993; Grieco, 1988; Walt, 1987; Lipson, 1984). Since each state is primarily interested in securing its own survival and protecting its own interests, each will try to increase its power. An increase of power in one state, however, poses an immediate threat to other states who must respond in kind. This creates an endless cycle of insecurity. Therefore, states are unlikely to cooperate: if a state benefits from cooperation this diminishes the relative power of the other states with which it partners. Hence, concerns for relative gains inhibit the chances of successful cooperation (Walt, 1987). In addition, cooperation is also hampered by concerns about cheating (Grieco, 1988). States fear that treaty partners will fail to meet their promises and thus gain a relative advantage. International cooperation in a realist world, therefore, is limited. Although states sometimes cooperate through institutions, those will be created to reflect the balance of power in the international system and will aim to further the goals of the most powerful states. An example of this is NATO during the Cold War, which represented the contemporary power relations in Europe (Hellman and Wolf, 1993). All this leads to the conclusion that "institutions have minimal influence on state behavior, and thus hold little promise for promoting stability in the post-Cold War world" (Maersheimer, 1995, p. 7).

Although most realist scholars do not put much emphasis on the role of institutions, it should also be noted that there have been scholars who have managed to integrate the role of institutions with realist theory. Grieco (1995), for example, argues that realist assumptions can be made congruent with the emergence of strong institutions in Europe. The Maastricht Treaty (1993) poses a phenomenal challenge for realist scholars: why would states seek to strengthen the institutions of European cooperation following the demise of the Soviet Union? Indeed, Sandholtz (1993b; 1993a) has argued that the process of European integration discounts the value of realists conjectures and that realism is unlikely to explain the development of European institutions. Grieco discusses
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how it is rational and consistent with core realist assumptions that weaker states will use institutional routes to ensure they will not be overruled by more powerful states. This so-called voice-opportunities thesis is a way of understanding European integration from a realist point of view, and provides opportunities for integrating the study of institutions into a realist research programme. Similarly, Krasner (1990) emphasizes how power is the main determinant of institutional arrangements. Power determines which states are included in cooperation, what form the cooperation takes and what the pay-off is. Hence, realism can also help us understand certain features of international cooperation, although most realist scholars remain critical about the effects of international institutions.

Liberal institutionalism

Liberal institutionalism is the second important stream of international relations theory. It has its origins in liberalism, which has a long history that can be traced back to scholars such as Immanuel Kant, David Hume and Adam Smith (Waltz, 1962).\(^3\) Liberalism once again became prominent in the 1970s, largely in reaction to realism. Whereas realism is pessimistic about the likelihood of cooperation between states and the possible effects of international institutions, liberalism aims to show that under certain conditions, cooperation is possible. Liberalism differs from realism on a several key points. First, whereas realists argue that international system is anarchic, liberals believe that norms and international institutions can structure state behavior. Second, liberals challenge the realist notion that states are unitary actors. Instead, they emphasize that other actors, such as domestic interests, NGOs and businesses, also influence international politics. Third, liberals challenge the rationality assumption of realism. Where realists assume that states aim to maximize power and primarily act on their short-term interests to ensure their own security, liberals argue that states are also interested in other goals,

such as trade, and may therefore also consider their long-term interests (Mansfield and Pollins, 2001). Liberals hold the view that it is rational for states to consider their long-term mutual interests, making cooperation more likely.

Liberal institutionalism is rooted in liberalism but introduces some modifications that bring it closer to realism. Most importantly, in agreement with realism liberal institutionalism argues that states are rational actors that try to maximize their own interests. As a result, a fear of other states cheating is the main inhibitor to cooperation. If this constraint can be overcome, liberal institutionalists argue, cooperation is possible (Baldwin, 1993; Milner, 1992; Nye, 1988). Important early works in liberal institutionalism that aim to show just that include Robert Axelrod’s *The Evolution of Cooperation* (1984) and Robert Keohane’s *After Hegemony* (1984). Axelrod’s work is concerned with the Prisoner’s Dilemma. This two-player game demonstrates that players’ rational actions may lead to sub-optimal outcomes. The results of this game paint a grim picture for the possibility of cooperation, but Axelrod shows that where the Prisoner’s Dilemma is repeated an initial cooperative move may induce cooperation in the long term. This strategy of tit-for-tat, as it is called, can prevent defection. Keohane’s work shows that there is far more international cooperation across different issue areas than can be expected from a realist perspective. Keohane argues that international institutions can facilitate cooperation by forming stable mutual expectations, reducing transaction costs and reducing uncertainty. Contrary to realism, then, liberal institutionalism holds the view that international organizations do have causal efficacy and can constrain state behavior.

**Social constructivism**

Social constructivism offers a different approach to international relations that has its roots in sociology. Constructivists argue that state interests are socially constructed and do not merely depend on states’ geopolitical circumstances. Contrary to realism
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and liberal institutionalism, social constructivism does not take national interests and international norms as a given but asks where they come from (Legro, 2005; Rosenau, 2001). Social constructivists argue that state identities and interests are constructed through interaction with others in a process of socialization. This process has concrete effects on the real world. For example, a process of social learning and persuasion led the Ukraine to adopt European norms on citizenship (Checkel, 2005). Social constructivism also differs from the two other theories of IR in its view on state behavior. Realism and liberal institutionalism assume that states follow a logic of consequences, which is to say that they act to achieve certain outcomes. Social constructivism, on the other hand, argues that states often follow a logic of appropriateness, which means they act according to norms for behavior (March and Olsen, 1998; Checkel, 1998).

Social constructivism has contributed to the study of international organizations in several ways. First, social constructivists view international organizations as important vehicles for the diffusion of norms (Keck and Sikkink, 1998; Klotz, 1995; Finnemore, 1993). Second, social constructivists have shown that international organizations do not merely serve to reduce transaction costs, but that they have an identity of their own (Finnemore, 1996; Barnett and Finnemore, 1999; Barnett and Coleman, 2005). Because of this, international organizations may develop in ways that are unintended by their member states at their foundation. Hence, social constructivists allow for even more influence of IOs than liberal institutionalists.

This research project

This research project is most closely aligned with liberal institutionalism. I hold the view that international institutions are consequential and can have an independent effect on state behavior. Nevertheless, this does not mean that there is no value in other approaches and in this project I also include insights from realism and social constructivism. From realism, we can learn that it is very important to keep the balance of power
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between member states into account when studying institutional design. Hence, power asymmetry is included as an explanatory variable in several chapters. The importance of norms in international politics emerges clearly from social constructivist research. In this dissertation, the social construction of identity plays an important role in the discussion on community, which is concerned with the extent to which states conceive of themselves as belonging to the same group. Hence, not only material interests should be taken into account, but also the extent to which states want to cooperate.

1.3. Measuring international authority

The analysis in this dissertation is based on a novel dataset which includes detailed information on the institutional set-up and decision-making procedures of 72 of the world’s most important IOs between 1950 and 2010. The dataset aims to break down the concept of international authority in different dimensions that can be measured consistently across cases. In this section I will first consider the operationalization of IO authority in the literature. I will then show how this research project seeks to contribute to this literature in a distinct way and provide an overview of the dataset and the data collection process.

In the literature

Several authors have proposed conceptualizations of international authority. Stone Sweet and Sandholtz (1998) conceive of international authority as a continuum: cooperation can range from intergovernmental to supranational. International cooperation is intergovernmental if national executives have the largest influence; it is supranational if 'centralized governmental structures' (Stone Sweet and Sandholtz, 1998, p. 8) are the prime drivers of integration. There are three dimensions that determine where on the continuum a specific form of international cooperation falls: 1) the rules (formal and
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informal constraints on behavior), 2) organizations (the international institutions that make and carry out the rules), and 3) transnational society (the extent to which non-governmental actors communicate with each other across national borders). The latter dimension in particular seems to be hard to quantify, but the other two dimensions are also not easily interpreted in a different context. Since Stone Sweet and Sandholtz focus explicitly on the European Union, their framework cannot straightforwardly be applied elsewhere. The main disadvantage to their framework is the danger it poses of confounding independent and dependent variables: is transnational society a cause of supranationalism, or is it a way of measuring it? Nevertheless, there is considerable value in their conception of international authority as a continuous rather than a dichotomous variable.

The Rational Design Project was the first systematic attempt to look at variation within international organizations, but because it only relies on case studies and because the operationalization of the concepts is vague its empirical value has remained limited. Koremenos, Lipson and Snidal (2001b) examine several dimensions that can be considered co-determinants of how autonomous an organization is from its member states: membership rules, policy scope, centralization of tasks, rules for controlling the institution and flexibility of arrangements. The concept of centralization is most important here. The authors define centralization as whether tasks are carried out by “a single focal entity” (p. 771). Unfortunately, this definition is so broad that it can include almost any form of delegation and consequently cannot tell us much about how authoritative an organization is. As Duffield points out, this measure does not distinguish between different forms of centralization: the single focal entity may be purely intergovernmental or more supranational. As has also been stressed above, the distinction between intergovernmental and supranational bodies is a key aspect of evaluating international authority and hence a conceptualization which does not take this into account is of limited use. The broad conceptualization of centralization has also led to a diverse
conceptualization across the case studies that were part of this project, making it hard to evaluate the relevance of this measure (Duffield, 2003).

Bradley & Kelley (2008) specifically focus on international delegation, which they define as "a grant of authority by two or more states to an international body to make decisions or take actions" (p. 2). The authors distinguish between eight forms of authority: legislative delegation (power to make treaties or issue directives), adjudicative delegation (dispute resolution), monitoring and enforcement delegation, regulatory delegation, agenda-setting, research and advice, policy implementation, and finally re-delegation. The level of authority may vary depending on two factors: the legal effect of delegation and the independence of the international body from its member states. Legal effect is a function of enforceability and obligation, meaning that it is high when rules are binding and can be enforced in the domestic sphere and low if rules are non-binding and there is no possibility for sanctions in the case of non-compliance; independence depends on the precision of the mandate, the extent to which member states have oversight, the rules and procedures on decision-making, the financial control mechanisms and the permanence of the organization (Bradley and Kelley, 2008). Bradley and Kelley’s framework is useful in that it is very detailed on the different aspects of international authority. Unfortunately, without empirical evidence, we cannot know to what extent these different dimensions of delegation are independent of each other. Also, as I will argue below, delegation is only one part international authority.

Two datasets code structural features of a large number of IOs. Shanks, Jacobson and Kaplan (1996) list whether or not an IO is an emanation and code two categorical variables: an organization’s membership criteria (universal, geographic or purpose-oriented) and its function (general purpose, political, economic or social). Gartzke, Boehmer, Nordstrom and Hewitt (2006) code whether an IO has a permanent or interventionist administration, whether an IO falls into the category of political, social, economic, or cultural, and the proportion of UN votes in which IOs members vote in concert. Neither
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dataset is sufficiently detailed to capture the important variation in IO’s institutional characteristics. For example, the institutional set-up of IOs is much more complicated than is suggested in the distinction between permanent and interventionist administration, and the function of organizations cannot be fully expressed in only four options. Hence, there is still a lot of work to be done if theories of international authority are to be evaluated empirically.

In recent years, a number of research projects have aimed to fill the gap between theory and data. Tallberg, Sommerer, Squatrito and Jönsson (2013) have studied the extent to which international organizations are open to transnational actors, including NGOs, scientific experts and business interests. They have created a refined dataset that tracks the openness to transnational actors in 300 IO bodies from 1950 - 2010. Their work shows that organizations are increasingly open to transnational actors. Karen Alter (2014) has studied the development of international courts and has compared a large number of courts on a number of characteristics. Her work demonstrates the growing incidence and prominence of 'new-style' international courts, which allow access for non-state actors and therefore can have a real influence on domestic politics. Haftel and Thompson (2006) consider the independence of regional international organizations across three dimensions: decision making procedures, bureaucracy and dispute settlement. They find that trade interdependence and age are important predictors of the independence of international institutions. Haftel (2013) expands this work by looking at the design of regional economic organizations, arguing that an organization’s policy scope and institutional independence constitute a measure of institutionalization. Institutionalization is found to increase with trade interdependence, but only when the implementation of decisions is guaranteed. In the next section, I will outline how this research project can make a distinct contribution to closing the gap between theory and data.
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In this project, we argue that international authority comes in two forms: pooling and delegation (Marks et al., 2015).\textsuperscript{4} Pooling concerns the extent to which member states move away from unanimity voting. Delegation concerns the extent to which decisions are made by bodies that are not dominated by member states. As Hooghe and Marks (2014) have shown, these dimensions are orthogonal. An increase on either pooling or delegation leads an organization to move away from intergovernmentalism towards supranationalism. Figure 1.1 illustrates how international authority is conceptualized in this dissertation. In coding international authority, we consider two essential components of pooling and delegation: the way in which an organization is set up (structure) and the way in which it makes decisions (decision-making). These components consist of several dimensions, as illustrated in figure 1.1. For each organization, the coding scheme asks

\textsuperscript{4}For more information on the conceptualization of international authority and the data collection process, please consult http://www.unc.edu/~hooghe/data_io.php
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of what bodies the IO is composed and how these are involved in the decision making process. For structure, the dataset contains information on the assembly, executive, general secretariat and consultative bodies. For decision making, the dataset includes information on membership (accession and suspension), constitutional reform, finances (budgetary allocation and compliance) and policy making. Together, these dimensions combine to create measures for pooling and delegation.

Higher levels of pooling make international organizations more authoritative. Where decisions are made by unanimity, every member state effectively has veto power and can block the organization’s progress. Where a voting rule of supermajority or majority is employed, on the other hand, individual member states do not have this power and the organization itself has much more leeway in making its decisions. The measure for pooling consists of four basic elements. First, we consider the composition of the IO body: pooling is a grant of authority between states. Hence, pooling only applies when IO bodies are fully or primarily composed of member state representatives. Second, the coding scheme considers what voting rule is used across the six issue domains listed previously. If multiple bodies are involved, we are conservative and take into account the voting rule for the body that is most intergovernmental. Third, we check the extent to which decision-making is binding: extensive pooling carries more weight if decisions are enforcable. Finally, we ask whether IO decisions are subject to ratification. Together, these elements combine to make a measure for pooling.

Delegation contributes to authority in a distinct way from pooling, as it is concerned with decision-making by agents other than member states. Member states have less control over bodies in which not only member states but also other interests are represented, or in which the representatives are under an oath of independence. If decision-making on membership is carried out by these bodies it indicates the organization has more authority. The measure for delegation consists of four dimensions: delegation to general secretariats, assemblies or executives, consultative bodies and dispute settlement. For
the first three, the coding scheme first identifies whether the body is non-state. This can be a result of the composition of the body or because of the formal rules that govern the body. The coding scheme then considers to what extent nonstate bodies are involved in the six decision areas outlined earlier. More weight is given to bodies that make the final decision than those involved in the agenda-setting process. Dispute settlement is approached differently: this component considers the strength of the dispute settlement mechanism across six components. The number of non-state bodies and their involvement in decision-making, as well as the strength of the IO’s dispute settlement mechanism, contribute to the final delegation score.

The dataset contains detailed information 72 international organizations across the above-mentioned dimensions from 1950 until 2010. The extensive data collection was completed by a team of three graduate students (including the author), a post-doc and two professors. Most of the information was gathered from official IO documents, including IO founding documents, protocols, rules of procedure, and annual reports. The vast majority of these are available in the public domain, such as on IO websites, national government websites, through journal publications (for example early issues of International Organization), the Union of International Associations library in Brussels and the Peace Palace Library. Occasionally, we had to write to the relevant IO in order to obtain information. In collecting the information, we focused on the formal rules that govern decision-making. If the actual practice was found to deviate from formal rules, we take this into account, but we do not code informal practices. In addition to the scores, we also created extensive profiles for each organization that make the coding decisions and our reasoning behind them explicity. To illustrate the data-collection process, appendix F includes the profiles for six IOs: the International Atomic Energy Agency (IAEA), International Labor Organization (ILO), Interpol, the Organization for Economic Co-Operation and Development (OECD), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization
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(WHO).

1.4. Structure of this dissertation

The chapters that follow illustrate the effects of the contrasting demands of scale and community. Chapter 2 uses the dataset in order to explore the major trends in international organization. This chapter further elaborates on the distinction between general purpose and task specific organizations and shows how these two types of government differ in terms of institutional configuration, delegation, pooling, and evolution over time. General purpose organizations are characterized by broad policy scope, restricted membership, extensive delegation and little pooling. These organizations also are very dynamic and experience substantive institutional change over time. Task specific organizations, on the other hand, are characterized by narrow policy scope, large memberships, limited delegation and relatively high levels of pooling. In addition, these organizations only rarely undergo reform.

Chapter 3 examines variation on voting rules in a core decision-making area: rules on accession. In this chapter, I note the various ways in which accession is arranged in international organizations: some follow a technocratic procedure, others a political procedure, and a small number of organizations have no rules on accession at all. The chapter shows that technocratic procedures are very common in task specific organizations, with a narrow policy scope and global orientation. Those organizations that follow a political procedure use different voting rules, ranging from unanimity to simple majority. I show that IOs are more likely to use a restrictive voting rule on accession if the policy scope of the organization is large, or if the organization is active in a policy area with high distributional consequences. Where the stakes for cooperation are high, it becomes more important to have a mechanism to keep others out.

Chapter 4 addresses a pivotal aspect of delegation: third party dispute settlement.
1. Introduction

This chapter begins by exploring the composition of third party dispute settlement across international organizations. The analysis shows that dispute settlement falls into distinct types: state controlled and supranational dispute settlement. There also is a group of organizations which lacks a dispute settlement mechanism altogether. The chapter then explains why organizations choose one type of dispute settlement over the other. Supranational dispute settlement, it is found, is most likely in organizations that have egalitarian power relations, trade links and a sense of community. Strong dispute settlement, in other words, is associated with general purpose rather than task specific government.

Chapter 5 is concerned with change in dispute settlement over time. In this chapter, I study a sample of 25 regional economic organizations and find that most of them do not start out with strong dispute settlement, but only develop a strong court after having been in existence for some time. The chapter explores the explanatory power of three causes of change: trade, power and the nature of the contract that underpins the organization. Whereas changes in dispute settlement are often preceded by changes in the level of trade interdependence and the balance of power between member states, the nature of the underlying contract turns out to be the strongest predictor of dispute settlement reform. Where cooperation is based on an incomplete contract, as is often the case in general purpose organizations, dispute settlement is much more likely to be established and upheld. Nevertheless, the analysis also reveals the importance of another variable for change in dispute settlement: the presence of other international institutions in the same issue area. A case study of dispute settlement reform in the Latin American Free Trade Organization (LAFTA, later reformed as ALADI) illustrates this dynamic.

The final chapter serves as a conclusion and points out some avenues for further research.
2. Patterns of International Organization: Task Specific vs. General Purpose

2.1. Introduction

There are many ways to reap scale beyond the national state – empires, leagues, confederations, alliances, and international agreements – but international governmental organizations are distinctive. They are voluntary (unlike empires and all other hierarchical forms of governance), have a differentiated and generally more permanent institutional structure (unlike alliances and international agreements), and have an independent capacity for rule making (unlike leagues or confederations). Beyond these characteristics, there is wide variation. Some international organizations (IOs) have just a few member states; others are global in their coverage. Some focus on a single policy area; others have extremely broad policy portfolios. Some have a diversified institutional architecture; others are fairly simple in their institutional organization. Some appear to be relatively fixed in their organization and membership, while others change considerably over time.

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2. Patterns of International Organization

The premise of this chapter is that the diversity of international organization can be explained as a response to the tension between scale and community in the provision of public goods. On the one hand, interactions among national communities produce externalities and, therefore, demand for transnational public goods (Deutsch, 1953; Marks, 2012). International jurisdictions that have a capacity for continuous information gathering and negotiation are vital for managing problems that transcend national communities. Larger jurisdictions can provide pure public goods, including economic exchange, at lower cost, and they can internalize policy consequences over a larger population. From this standpoint international organizations can be conceived as functional institutions that reap the benefits of scale for the provision of public goods.

But the willingness to sustain an IO depends on more than its functional benefits. Governance is an expression of community and expresses the desire of territorially concentrated groups of people with distinctive histories, institutions and preferences to rule themselves. People care deeply about who exercises authority over them, and we argue that this exerts a powerful constraint on governance beyond the state (Hooghe and Marks, 2009b). Community is much stronger within, than among, states. Hence the dilemma for governance among states is to gain the benefits of scale while adjusting governance to the shallowness of transnational community. To what extent are states willing to commit themselves to incomplete contracts that delegate authority over a broad, but unspecified, range of policy areas? How prepared are they to delegate authority to independent non-state actors? Under what circumstances will they be willing to bind themselves to majority rule?

Our argument is that there are two contrasting approaches to institutional cooperation among states (Hooghe and Marks, 2003, 2010; Enderlein et al., 2010; Hasenclever et al., 1997; Peters et al., 2012, p. 18). The first reproduces general purpose government at the international level by engaging the manifold problems that confront a given set of countries as they interact. General purpose (type I) IOs express a sense of shared
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<table>
<thead>
<tr>
<th>General purpose IO (type I governance)</th>
<th>Task specific IO (type II governance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>broad policy scope</td>
<td>narrow policy scope</td>
</tr>
<tr>
<td>community driven</td>
<td>problem driven</td>
</tr>
<tr>
<td>bundle public goods</td>
<td>decompose public goods</td>
</tr>
</tbody>
</table>

Table 2.1.: Modes of international organization.

purpose among their members. They bundle the provision of public goods for a particular transnational community and, accordingly, they are broad in policy scope. Such IOs may deal with security issues alongside trade issues, or they may engage not just environmental problems for a given community, but a variety of other issues such as culture, transport, human rights, disease, or migration.

The second approach is to decompose problems so that they can be handled independently. Task specific (type II) IOs are rooted not in shared communities, but in shared problems. Each task specific IO is created to solve a particular cooperation problem in a specific policy domain such as trade, air traffic control, food safety, or security. The idea is to parse policy problems into functionally discrete pieces which are connected only in the medium, but not in the short, term so that each may be dealt with in a separate organization (Simon, 1996).

Our purpose in this chapter is to show a) that the tension between community and scale incentivizes the choice between general purpose and task specific governance and b) that this choice has fundamental consequences for institutional design. Task specific IOs have much larger memberships than general purpose IOs. They are much more likely to have majoritarian decision-making rules. Their institutional structure is simpler, and they tend to delegate less to non-state bodies. And they are much less likely to be reformed after they have been set up.

Beyond its validity, a theory can be valuable if it suggests that a phenomenon, which was taken for granted, is puzzling and worthy of explanation. Why are so many institutional features of international organizations – including the scale of their memberships,
2. Patterns of International Organization

the scope of their policy portfolios, the extent to which they delegate authority to independent bodies, the extent to which they pool authority in majoritarian decision-making, the frequency with which they are reformed – not normally distributed around their respective means? Does the apparently bimodal character of international organization have a general explanation?

To tackle this problem we need reasonably good comparative information about the institutional characteristics of IOs. The qualities we are interested in – policy scope, delegation, pooling, institutional reform – are abstract concepts that cannot be directly observed. We need therefore to make a series of conceptual and measurement decisions to produce data that can discipline the generalizations we wish to put on the table.

In the next section we conceptualize how international organizations exercise authority through independent non-state bodies (delegation) and through intergovernmental bodies that make collective decisions (pooling). We then model the composition of IO bodies and how they make decisions to estimate delegation and pooling in 72 IOs from 1950-2010. In subsequent sections we use this information to explain how the institutional structures of IOs vary cross-sectionally and over time.

2.2. Delegation and pooling

We conceive of IO authority as two-sided. Member states can delegate authority to independent bodies – a general secretariat, independent executive, assembly, and court. And/or member states can pool authority among themselves in majoritarian or quasi-majoritarian procedures. Previous research finds that these two forms of IO authority are independent of each other (Hooghe and Marks, 2014), and we need therefore to estimate them separately. The distinction between delegation and pooling is the bedrock of our measurement and our theory, but it is worth emphasizing that while the concepts have not been used to estimate or theorize international organizations, they are not new.
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2.2.1. Conceptualization

The distinction between delegation and pooling first appeared in research on the European Community (EC). Keohane and Hoffmann (1991, p. 7, 16) observe that the EC is an example of “supranationality without supranational institutions” because member states pool, but do not delegate, authority. Moravcsik (1993, p. 506) refers to the concepts “delegation and pooling” in tandem to encompass the authority exercised by the EC. Subsequent uses of the terms also employed them in combination to encompass the ways in which the European Union exercises authority (Hooghe and Marks, 2001; Kohler-Koch and Rittberger, 2007; Schimmelfennig et al., 2006).

The assumption that they are closely related was explicitly questioned by Lake (2007, p. 220). Lake did not seek to assess the conditions under which pooling or delegation take place, but explained that they are conceptually distinct because they involve contrasting strategic imperatives. Whereas the strategic problem in delegating authority to an independent body is shirking in which the agent pursues its own agenda, the strategic problem in pooling authority is that of collective decision-making where a member state may be outvoted under majoritarian decision rules. However, as Lake notes, the distinction is by-passed in analyses which extend the concept of delegation to include pooling or which view international organization through the lens of the principal-agent perspective. The upshot is that our understanding of the contrasting logics of delegation and pooling is embryonic.

The distinction is implied in the legalization (Abbott et al., 2000) and rational design projects (Koremenos et al., 2001b). Abbott and Snidal (1998, p. 8f) use the concept of centralization to refer to “a concrete and stable organizational structure and a supportive administrative apparatus” while independence refers to “the authority to act with a degree of autonomy, and often with neutrality, in defined spheres.” These attributes have an affinity with our concept of delegation. Koremenos et al. (2001b) identify five elements of institutional design: membership rules, scope of issues, flexibility, centralization of tasks, and rules for controlling the institution. The final two overlap with delegation and pooling. Centralization refers to activities “to disseminate information, to reduce bargaining and transaction costs, and to enhance enforcement . . . The least intrusive form of centralization is information collection” (pp. 771-2). Control “focus[es] on voting arrangements as one important and observable aspect of control” (p. 772). Recently, several researchers have begun to operationalize delegation, autonomy, or independence of international organizations (Conceição-Heldt, 2013; Ege and Bauer, 2013; Gehring, 2013).
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2.2.2. Estimation

In order to estimate the delegation and pooling of formal authority in international organizations, we need to pay detailed attention to actors making decisions under rules. With respect to the actors, we wish to know the extent to which the bodies that shape the agenda and make decisions are controlled by states. Pooling is the domain of interstate bodies – bodies entirely or primarily composed of member state representatives. Delegation is the domain of non-state bodies – general secretariats, consultative bodies, assemblies, executives, judicial bodies. With respect to rules, we wish to know how the interaction of voting rules and decision-making bodies empower or constrain states individually and collectively. Unanimity decision-making imposes no constraints on individual states, but hampers collective decision-making. Majoritarianism, in contrast, constrains states individually because they lose their ability to veto undesired decisions, but it facilitates collective decision-making. With respect to decisions, we wish to know the depth of obligation – how binding they are for states and whether they require ratification. We examine actors, rules, and decisions in six substantive fields: membership accession, membership suspension or expulsion, policy making, drafting the budget, budgetary non-compliance, and constitutional reform. Finally, we evaluate third-party dispute settlement in a separate analysis. We apply this schema to 72 IOs with standing in world politics from 1950 and 2010 (listed in Appendix A).

We investigate the formal rules and then determine whether these are translated into institutions in order to narrow the gap in coding between unrealized intention and actual practice (Gray and Slapin, 2012; Haftel, 2013). However, we do not code practices that have only an informal basis. The studies closest to ours are Blake and Lockwood Payton (2014), who estimate pooling by examining the voting rule in the IO body that they judge to be the most consequential in setting policy, Haftel and Thompson (2006), who propose a four-item additive index of IO independence in regional organizations that includes voting in the council of ministers (an element of pooling) and right of initiative by the bureaucracy (an element of delegation), and Goertz and Powers (2011; 2012) who map basic features of the institutional structure of “regional economic institutions” along five dimensions. Each of these studies has produced a dataset on the institutional design of IOs. We extend their efforts by encompassing a wide range of IOs over a 60-year period, and by developing a multi-faceted measurement instrument that estimates both the extent to which IO bodies are independent and their decision-making across a range of fields.

The population consists of international governmental organizations that fulfill a minimum of five of the following six criteria:

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4. The population consists of international governmental organizations that fulfill a minimum of five of the following six criteria:
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We conceive of delegation as a transfer of authority from member states to a non-state IO body. Institutionally, this is most often to a general secretariat. However, member states can also cede control to other bodies that are partially or fully composed of non-governmental actors, such as transnational actors, elected public officials, experts, or judges. Our measure considers each of these possibilities. However, it excludes transfer of authority to bodies outside the IO, such as other international organizations or non-member national states.

Delegation is an additive index encompassing agenda setting, decision-making, and dispute settlement for each year of an IO’s existence. It is the grant of authority by member states to a) organized bodies (general secretariat, consultative bodies, assemblies, executives, judicial bodies) b) that are non-state and c) play a role in agenda setting or final decision-making in d) one or several of the six decision areas listed above. The extent of delegation is a function of the number of non-state bodies and the number of decision areas in which they play a formal role. In dispute settlement, which we examine separately, delegation is a function of the extent to which third-party judicial bodies are independent of member state control, render binding rulings, and non-state actors have access to the body. We estimate each element separately, standardize, and

- three or more member states
- a formal constitution or convention
- a legislative body, executive, and administration
- a permanent staff of 50 or more
- at least one annual meeting of the executive or legislature
- address and website.

We see two reasons for limiting the sample to IOs that have standing in international politics. The first is practical. Our theory requires us to evaluate IOs using much more information than available in any prior dataset, and given time and financial constraints it makes sense to estimate IOs that have a more detectable footprint in the primary and secondary records. Hence our decision to exclude IOs that have no website, address, or are poorly staffed. Second, while we think our theory might apply very broadly, we suspect that states may be more likely to pay attention to IOs that have some minimal level of resources.

5A body is non-state when a) the members are primarily or wholly selected by national parliaments, regional or local governments, trade unions or business associations, or other interest groups, or b) member state representation is indirect, that is, representatives are formally prohibited from receiving voting instructions from their government, or they take an oath of independence.
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Pooling is an additive index tapping the extent to which authority is transferred from individual member states to a collective member state body in agenda setting and decision-making for each year of an IO’s existence. Three elements are included in our assessment of the extent to which member states pool authority: first, whether the decision rule departs from unanimity to some form of majoritarianism; second, whether the decision is binding rather than voluntary; third, whether the decision comes into force without requiring ratification by individual member states. We estimate the extent to which member states pool authority by assessing voting rules, bindingness, and ratification in the same six domains listed above. The weakest link (i.e. the most intergovernmental option) prevails in each decision domain. So if two or more member state bodies are involved in a decision, we consider the rules that govern the most intergovernmental body. The maximum score is majority voting over a binding decision without ratification. The minimum score is unanimous decision-making, followed by nonbinding decision-making under supermajority, followed by ratification by all member states under supermajority. Supermajoritarian decision rules, partial ratification, and partial bindingness produce intermediate scores. Scores for each domain – agenda setting and final decision – are treated as elements of a summated rating scale.6

2.3. Patterns of international organization

We argue that the tension between community and scale shapes incentives over the basic form of cooperation and this is reflected in the size of an IO’s membership, its decision rules, its institutional architecture and evolution, and the authority delegated

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6The two dimensions of authority – pooling and delegation – are weakly correlated (0.06). The coding scheme was honed over iterated rounds of independent coding by two graduate-faculty teams using a subset of organizations. The final coding scheme was applied by six researchers, two of whom had guided the project from day one. Coding decisions are set out and documented in profiles (around 4,500 words for each IO). The full coding scheme is available on the following website: http://www.falw.vu/~mlg/igo.html.
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Figure 2.1.: Policy scope for general purpose and task specific organizations. N = 72 for 2010. Policy scope is estimated on a 1-25 scale (Appendix B). Source: Authors’ own data.

to non-state bodies.

General purpose and task specific IOs are distinguished, above all, by the breadth of their policy portfolios. We estimate this by examining IO involvement in 25 policy areas listed in appendix B. As figure 2.1 illustrates, the distribution is bimodal. Twenty-eight IOs in our sample handle eleven or more policies on this list, and 44 handle eight or fewer policies. The median general purpose IO handles 15 policies and the median task specific IO handles three. These numbers can be considered upper bounds because our measure is designed to be sensitive; it detects five distinct forms of IO policy involvement and does so for a refined set of policies.

General purpose and task specific IOs relate to their constituencies differently, and
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this shapes the scale of their membership. General purpose IOs handle the problems that confront a given set of peoples as they interact across national borders. Consequently, they are formed by states whose peoples have some mutuality of expectations underpinning a shared sense of purpose. They require what Elinor Ostrom (2005) describes as “shared mental maps” – a bed of common understandings that facilitate convergent interpretation of behavior. This eases open-ended cooperation based on highly incomplete contracts, which require not only that other members believe one’s promises but also that they understand one’s promises (Gibbons and Henderson, 2011, p. 1351). Almost all general purpose IOs are composed of contiguous member states. The exceptions are illuminating. The Organization of the Islamic Conference unites countries in North Africa, the Arab world, and East Asia, where Islam provides a shared sense of purpose. The Commonwealth encompasses countries that were formerly part of the British imperial orbit, and the United Nations is the only IO that is involved in more than eleven policies but which has a frail community basis.

Task specific organizations are less restrictive over membership but more restrictive over policy. They handle policies that can be isolated from the pack and which are amenable to technical solutions. Task specific IOs are problem driven, and this relieves them from the community conditions required for general purpose governance. Their forte is encompassing all those who are affected by a problem. Hence task specific governance is predominant in dealing with problems that have global externalities and a correspondingly weak community basis. The only large-member organization in Figure 2.2 that is not task specific is the United Nations. However, task specific IOs are not necessarily global. Some task specific IOs handle regional problems that are amenable to independent management. For example, the Central Commission for the Navigation of the Rhine (CCNR) regulates social rights and environmental externalities related to shipping on the Rhine. The Organization of Petroleum-Exporting Countries (OPEC)

\[7\] Or adjacent island states in, for example, the Pacific Islands Forum and the South Pacific Commission.
coordinates production and price setting among oil-exporting economies. The Intergovernmental Organization for International Carriage by Rail (OTIF) sets standards for railways in Europe and contiguous countries in Central Asia and the Middle East. In our theory, these organizations share more with other task specific IOs than with other IOs that can be labelled “regional.”

### 2.3.1. Contrasts in pooling

The pooling of authority is primarily a property of task specific IOs. Figure 2.3 breaks down the incidence of majoritarian decision-making across six policy areas for task specific and general purpose IOs for 2010. 55 percent of the task specific IOs have pooling in five or six policy areas against just eleven percent of general purpose IOs. The contrast persists over time. Figure 2.4 shows the trends in pooling for the 18 general purpose and 33 task specific IOs that have existed since 1975. Pooling edges up slightly for general purpose IOs after 2000, but the gap remains substantial.
Two factors combine to limit the pooling of authority in general purpose IOs and increase it in task specific IOs. The first arises because general purpose IOs are far more likely to engage issues of domestic concern to national governments, and this makes the member states much less willing to sacrifice the national veto (Hooghe and Marks, 2009a; Zürn et al., 2012; Rixen and Zangl, 2012). IOs like to portray themselves as “being impersonal and neutral, that is, that they are not exercising power but instead are using impartial, objective, and value-neutral knowledge to serve others” (Barnett and Coleman, 2005, p. 598). This becomes more difficult as IO decisions reach into member states. The cloak of technocratic detachment fades when an IO allocates scarce resources across competing domestic interests. Most member state governments have legitimacy over issues considered to be matters of diplomacy, but this does not extend to international agreements that have domestic repercussions. It is all too easy for populists to frame the domestic debate over a controversial IO decision as the defense of
Figure 2.4.: Trends in pooling, 1975 – 2010. N = 51. The continuous sample consists of 18 general purpose and 33 task specific IOs.
national sovereignty against foreign interference (Hooghe and Marks, 2009a). No wonder that national governments are intent on maintaining the national veto in IOs that are perceived to affect their domestic support.

Historically, task specific IOs have been at the forefront of pooling authority in majoritarian decisions. Stephen Zamora, a historian of international organization, stresses that supranational decision-making was most palatable in IOs that dealt with specialized issues which did not much impinge on domestic policy. The first departures from unanimity voting were introduced in the international technical unions established during the 19th and early 20th centuries, the first being the International Telegraphic Union (ITU) in 1865, which was then the largest international organization with 15 members. By 1914, several organizations, including the Universal Postal Union with 33 members and the International Institute of Agriculture (forerunner of the Food and Agricultural Organization) with 37 members, had introduced majority voting. After the First World War, majority rule spread slowly to other new technical unions (Zamora, 1980, p. 574-5).

The second factor that affects the willingness of member states to pool authority arises from the size of its membership. All else equal, the larger the number of veto-wielding decision makers, the more difficult it is to craft reform. Task specific IOs face the dilemma that their sheer scale of membership will reduce them to talking shops incapable of action. Streamlining decision-making by relaxing the national veto is an obvious response. Majoritarian procedures are made more palatable for member states when the contract on which the organization is based expressly limits its policy reach or when the organization is biased towards technocratic problem solving.

The two logics of pooling can create huge tensions in a general purpose organization that grows in membership. The European Union is a case in point. National governments have been caught in a stressful choice between facilitating decision-making and holding on to the national veto. When majoritarian procedures have been adopted, this has only been because it appeared to be the least-bad response to membership enlargement. The
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1985 Dooge committee, which was tasked with making proposals for the Single European Act, noted that “more use will need to be made, especially in the context of the enlarged Community, of the majority voting provisions laid down in the Treaties” (1985, p. 14). British Prime Minister Margaret Thatcher and her allies succeeded initially in limiting majority voting to the internal market, but efficiency became an overriding concern in planning for Eastern enlargement. In December 2001, the Laeken Declaration of the European Council launched a Constitutional Convention to overhaul the institutions. It stated bluntly that a

“key question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up?” (European Council, 2001, p. 5)

The outcome was a highly contested redesign of decision-making that involved lowering the threshold for qualified majority voting.\(^8\)

However, it would be misleading to see the EU as indicative of a general trend among general purpose IOs towards majoritarianism. The EU is an outlier among general purpose IOs both in terms of the extent of its enlargement, from six to 28 (and counting), and in terms of the extent to which it has agreed to majoritarian reform. It is no coincidence that the EU is also an outlier in terms of the domestic political resistance that it has generated.

\(^8\)This is not to deny that consensus remains the dominant informal decision rule in the EU. Nevertheless, changes in formal rules towards majoritarian decision-making condition bargaining dynamics, especially over controversial issues, as they shift the burden of justification towards the state that seeks to veto. Whereas formal unanimity grants each state a veto that does not require justification, majoritarian decision-making implies that recalcitrant states must convince the others to apply the informal consensus rule (on informal IOs, see Vabulas and Snidal (2013).
2. Patterns of International Organization

2.3.2. Institutional architecture

General purpose and task specific IOs differ in their institutional architecture. Almost all IOs have a general secretariat with administrative functions, but general purpose organizations tend to have a greater range of decision-making assemblies and executive bodies. As figure 2.5 indicates, the median general purpose organization has four integral bodies compared to three for the median task specific organization. The general purpose organization with the most differentiated institutional architecture – the European Union – has seven different bodies.\(^9\) Among the IOs we observe, the League of Arab States is the only general purpose organization with only two bodies, whereas there are six task specific organizations with just two bodies.\(^10\)

The contrast reflects the differing scope of policy competences in general purpose and task specific IOs. More diverse policy portfolios may require more differentiated institutional structures. Decision-making in a general purpose IO is particularly challenging. The organization must frame short and medium term objectives, and agree on how best to pursue them. It must prevent issue cycling among alternative legislative proposals – a particular danger in the multidimensional issue spaces typical of general purpose organizations. It must determine which actors to consult in crafting policies and must negotiate substantive commitments. And it must find ways to promote compliance with those commitments. Institutions can help in each of these respects by structuring the agenda, supplying and processing information, enhancing the credibility of commitments, and monitoring compliance (Bradley and Kelley, 2008; Hawkins et al., 2006; Koremenos, 

\(^9\)Some IOs are supported by a tiered administrative structure, whereby assemblies, executives, or the general secretariat are aided by subsidiary committees or groups that prepare decisions, follow up on implementation, or study particular aspects. We code only those bodies with some discretion within the IO structure – not auxiliary bodies in a chain of command to a higher body.

\(^10\)The Council of the League of Arab States serves as assembly and executive and is assisted by a general secretariat. Among task specific IOs, the European Organization for Nuclear Research and the European Space Agency have an assembly and a secretariat which also serves as executive. The Central Commission on the Navigation of the Rhine, the Permanent Court of Arbitration, the International Whaling Commission, and the European Free Trade Association have councils which double as assemblies and executives.
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Figure 2.5.: Institutional complexity in 2010. Institutional complexity is estimated as the number of decision making bodies in general purpose and task specific organizations in 2010. N = 72.
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Beyond this, institutions can reduce the uncertainty of incomplete contracting, which is particularly pronounced in general purpose IOs. Whereas task specific IOs take on problems that can be quite well specified in advance, general purpose IOs operate in a more open-textured environment for they are concerned with the problems that arise as peoples interact across national borders. General purpose IOs are correspondingly based on highly incomplete contracts that are flexible in responding to contingencies that are inherently unpredictable, complicated and consequently too costly to write into a contract. Their virtue is flexibility, but this involves ambiguity about the interpretation of rules and it deepens the shadow of the future (Hart and Moore, 2008; Marks et al., 2014). Independent arbitration panels or courts are especially important when there is so much room for disagreement about what counts as cooperation and defection. Greater uncertainty about the rules may produce incentives for greater institutional complexity beyond rule arbitration. If highly incomplete contracting involves not merely rule-based problem solving, but searching and learning, then one may expect institutions to play a critical role in discovering as well as realizing cooperation.

General purpose IOs delegate much more extensively to non-state bodies composed of elected parliamentarians as figure 2.6 reveals (Cutler, 2013). 15 of 28 general purpose IOs have a parliament compared to five of 44 task specific IOs. Parliamentary bodies are the third most prevalent delegated institution among general purpose IOs but the least common among task specific organizations. Moreover, parliaments in general purpose IOs tend to be more authoritative than those in task specific IOs. The strongest of all, the European Parliament, co-decides on accession, budgetary allocation, and policy making, and it has additional agenda-setting powers on suspension and constitutional amendment. The rise of parliaments, like that of independent IO bodies in general, has been marked since the 1980s. The only IO in our dataset with a parliamentary body in 1950 was the North Atlantic Treaty Organization. By 1980, seven IOs had parliaments,
Figure 2.6.: Presence and role of parliaments in 2010. N = 72. Bars indicate the proportion of IOs with a decision-making parliament, a consultative parliament, or no parliament. 15 out of 28 general purpose IOs have a decision making or consultative parliament compared to five of 44 task specific IOs.

The relative paucity of parliamentary bodies in task specific IOs and their abundance in general purpose IOs reflects the contrasting ways in which these types of governance seek legitimacy (Lenz, 2012, 2013). Task specific IOs are in the business of managing particular coordination or collaboration dilemmas (Snidal, 1985; Zürn, 1992). They are oriented chiefly to Pareto optimality and are biased towards output legitimacy in which they are evaluated primarily by results. To the limited extent that parliamentary bodies in task specific IOs are created at all, they have consultative competences only. General purpose organizations, by contrast, engage redistributive as well as technical policies, and they have a correspondingly greater need to legitimate their decisions. Granting elected national parliamentarians access to supranational decision-making is one way to
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2.3.3. Delegation dynamics

The contrast between general purpose and task specific IOs extends to how they change over time. Whereas task specific IOs are designed to fulfill a particular function, general purpose IOs are designed to solve problems that confront a given community. General purpose IOs have a broader and less precise purpose that leads to greater institutional flexibility. The development of general purpose IOs resembles state building in its lack of a master plan – a founding constitution specifying, once and for all, the scope and responsibilities of the organization, its institutional make-up, the level of resource extraction, or its relations with state and non-state actors (Marks, 1997).

Both kinds of organization are based on formal contracts among states. All such contracts are necessarily incomplete because it is simply not possible to write a contract that can specify “the full array of responsibilities and obligations of the contracting parties, as well as anticipate every possible future contingency” (Cooley and Spruyt, 2009, p. 8). But the contracts that underpin general purpose IOs are considerably more incomplete than those that underpin task specific IOs. The treaties for task specific organizations have a clearly defined objective oriented to the management of a specific cooperation problem, such as lowering barriers to trade or coordinating the use of an international common pool resource, and they usually set out in some detail how this objective is to be achieved.

The founding agreements of general purpose organizations do little more than set out the broad parameters for cooperation. They commit their members to open-ended goals – for example, “ever closer Union” in the European Community’s Treaty of Rome; the “formation of an Andean subregional community” in the Andean Community’s 1974 Cartagena Agreement; or the “creation of a homogenous society” in the Economic Community of West African States’ Lagos Treaty. The founding contracts of this type of
organization emphasize the process rather than the destination of cooperation (Marks et al., 2014).

The implications should be understood in both functional and ideational terms. From a functional standpoint, agenda setting in general purpose IOs is unusually complex, and so it is particularly useful to set up independent bodies to fill in the details of incomplete contracts, generate expert policy-relevant information, and monitor compliance (Bradley and Kelley, 2008; Pollack, 2003, p. 378). A general secretariat with the authority to sequence votes can also limit the opportunities for states to defect from a winning coalition by making a more attractive offer centered on a different proposal (Tallberg, 2010). This, in a nutshell, is the notion that incomplete contracting induces states to delegate authority to non-state actors to reduce uncertainty and limit issue-cycling (Hawkins et al., 2006; Marks et al., 2014; Mueller, 2003; Pollack, 2003).

Highly incomplete contracting in a general purpose organization has normative as well as policy effects along the lines highlighted by Chayes and Chayes (Chayes and Chayes, 1993, p. 180):

“[M]odern treaty making, like legislation in a democratic polity, can be seen as a creative enterprise through which the parties not only weigh the benefits and burdens of commitment but explore, redefine, and sometimes discover their interests. It is at its best a learning process in which not only national positions but also conceptions of national interest evolve.”

As cooperation progresses, IO decision makers may come to share frames of reference that reduce perceptual conflicts and ameliorate fear of exploitation (Acharya, 2004; Katzenstein, 2005; Wendt, 1999). Barnett and Finnemore (2004, p. 23) find that the authority of international bureaucrats rests on “a contrary discourse of states protecting their own national and particularistic interests” and on representing “the community against self-seekers.” Other studies find that IO bureaucrats spend most of their time bridging the distance between national norms and common solutions and that they are best conceived
2. Patterns of International Organization

Figure 2.7.: Trends in delegation, 1975 – 2010. N = 51. The continuous sample consists of 18 general purpose and 33 task specific IOs.

As mediators between national values and international norms. On the basis of a panel study of top administrators in the European Commission, Hooghe (2005, p. 862) finds that “top officials sustain international norms when national experiences motivate them to do so – when national political socialization predisposes them to embrace supranationalism, or when supranationalism appears to benefit their country.” These studies find that delegated bodies have a dynamic effect in facilitating repeated interaction and developing a normative basis for cooperation (see also Koch 2009).

In line with this, the information we have gathered indicates that the contrast between delegation in general purpose and task specific IOs gathers steam over time. In 1975, general purpose IOs have an average delegation score of 14.1, rising in 2010 to 27.1 for the
same organizations. This is equivalent to establishing a standing tribunal with automatic right to review and binding decision-making or to creating two additional consultative bodies and empowering a general secretariat to set the agenda in two additional decision areas. By contrast, the average task specific IO has barely budged over time.

The contrast extends to the frequency of reform. Figure 2.8 displays the distribution of reforms in the two types of organizations. We define an organizational reform as a change in any element of our pooling or delegation measure after the founding bargain has been struck. 41 percent of task specific IOs never undergo reform compared to just seven percent of general purpose IOs. Whereas general purpose organizations reform every 15 years on average, task specific ones reform only every 36 years.

2.4. Conclusion

This chapter surveys some basic features of international organization using a new dataset, constructed by the authors, that estimates 72 IOs from 1950 to 2010. We theorize that the differences one can observe among international organizations in their institutional architecture, their decision-making, and their institutional trajectory result from the contrasting ways in which human beings confront the fundamental dilemma of international governance. There are enormous benefits arising from scale in the provision of public goods. Overarching jurisdictions are uniquely able to manage problems that stem from interaction among nations and their peoples. Yet the feeling of ‘we-ness’ that underpins good government is at best weak. But it is not always absent. The existence of even weak communities among nations makes possible general purpose international organization.

General purpose IOs express a sense of shared purpose among their members. They bundle competences for given sets of peoples who, by virtue of their interaction, share a demand for transnational public goods. The membership of general purpose IOs is ter-
2. Patterns of International Organization

Figure 2.8.: Distribution of reforms, 1950 – 2010. The bars show the number of reforms for each IO since its foundation or since 1950 (whichever date is later). For example, just two general purpose IOs have seen no reform compared to 18 task specific IOs. N=72.
2. Patterns of International Organization

...ritorially bounded, and enlargement is a serious matter requiring debate and consensus. Membership of such an IO involves commitments that can affect national sovereignty on a broad front, and their member states are generally unwilling to pool their authority in majoritarian decision-making. But general purpose IOs discover, as well as implement, cooperation. They are designed to negotiate complex issues, and despite the obstacles to reform, they are institutionally flexible.

Task specific governance is distinctly different. It is problem driven, and is intended to provide public goods for a diffusely defined membership that can cover the globe. The legitimacy of task specific IOs lies chiefly in their effectiveness in managing problems. They have a correspondingly limited capacity to facilitate distributional bargains, but are oriented to Pareto optimality in which every participant is at least no worse off than before. There tends to be less variety in their structure, less emphasis on including non-state actors, and less institutional change over time.

Abstract concepts that have been applied to international organizations are challenging to evaluate in empirical analysis. We conceive an IO as a web of rules and we analyze these rules with the help of two precisely formulated concepts which describe both the composition and decision-making of IO bodies. One dimension of variation arises when IO bodies have conditional independence over certain functions, which we conceptualize as delegation. Another arises to the extent that member states make collectively binding decisions under majoritarian rules, which we conceptualize as pooling. The distinction is mooted in the literature, but has remained theoretically inert. Here the distinction motivates both our measurement and theory.

While majoritarian decision-making is a functionally efficient approach to decision-making among states, it is predominant only in task specific organizations. The exception, the European Union, reveals just how difficult it is for states to institute majoritarian rules over decisions that are regarded as intrinsic to their national political life. Task specific IOs, which are functionally oriented to solving particular policy problems,
2. Patterns of International Organization

confront the national veto with greater expediency. Pooling authority in budgetary allocation and ordinary policy making is very common among task specific IOs but much less widespread among general purpose IOs.

Conversely, general purpose IOs develop considerably higher levels of delegated authority than task specific IOs. General purpose IOs are designed to provide public goods on a broad, imprecise, front, and this is reflected in their institutional trajectories. Over time, general purpose IOs accumulate non-state bodies—strong general secretariats, indirectly or directly elected parliamentary assemblies with decision-making power, and consultative bodies of diverse kinds. It is worth noting that such institutional complexity is not given at birth, but develops in iterated reform. This suggests that general purpose IOs shape preferences as well as the means for realizing them.\footnote{The importance of shared expectations for cooperation underpins a literature that builds on Habermas’ (1981) conception of a “common lifeworld” (gemeinsame Lebenswelt), a supply of collective interpretations of the world provided by a common history or culture “to which actors can refer in their communications” (Risse, 2000, p. 14).}
3. You can’t sit with us! Explaining IO accession rules

3.1. Introduction

International organizations (IOs) care deeply about which states join the organization and which states are excluded. Contentious discussions on the enlargement of the European Union, the North Atlantic Treaty Organization and the World Trade Organization emphasize how salient membership decisions are. Nevertheless, organizations display significant variation in the rules they employ for admitting new member states. This chapter examines the causes for variation in IO accession rules. As Magliveras (2011) has argued, accession rules serve three distinct purposes. First, they reveal the extent to which member states are willing to expand the organization. Second, they outline the criteria that prospective member states need to meet before they can be admitted. Third, the accession rules specify the procedure that must be followed for admitting new member states (Magliveras, 2011).

There is an extensive literature that focuses on the second purpose of accession rules—the specific conditions prospective member states need to meet before they can be admitted to the organization. Much of this literature is concerned with the criteria that IOs employ and the effects these conditions have on policies in countries before and after they become members. A number of international organizations, for example, have clauses that require states to be democratic in order to join the organization, and that threaten
existing member states with suspension after a regime change (Pevehouse, 2002a; von Borzyskowski and Vabulas, 2014). Democracy clauses allow new democracies to tie the hands of future governments and increase their credibility (Moravcsik, 2000), and IOs themselves also play an active role in consolidating democracy (Pevehouse, 2002b). Similarly, many IOs that focus on trade demand regulatory reforms before new states can be admitted (Rose, 2005; Davis, 2014).

This chapter focuses on the third purpose of accession rules: the procedure by which member states decide whether new states are admitted. Specifically, I will consider the voting rules states use to make decisions on membership. In making decisions on accession, member states have to decide whether they will use a more or less restrictive voting rule. The voting rules can range from unanimity to simple majority: in the former, every member state can block the accession of newcomers, in the latter only half of the existing member states need to be on board in order for the accession to take effect. In addition to using a political procedure, in which existing member states get to vote on accession, there also is the possibility of using a technocratic procedure, where new states can join by simple acceding to the organization’s founding document. What makes member states choose one decision-making procedure over another? This chapter examines this question by making use of a new dataset that contains detailed information on the decision-making procedures of 72 IOs over time. Examining the voting rules that organizations use to decide on accession shows that most of the variation is cross-sectional. Hence, I will concentrate on variation in voting rules in 2010.

The chapter proceeds as follows. In the next section, I will provide descriptive statistics of the voting procedures employed by international organizations. I will describe technocratic and political decision-making, as cases where organizations have no formal rules on accession. Section 3.3 gives an overview of the possible explanations of variations in IO voting rules on accession. In section 3.4, I will use an ordered logit model to explain variation in voting rules on accession. The final section serves as a conclusion.
3. Explaining IO accession rules

3.2. Voting rules on accession

How do accession rules vary across IOs? In what ways can we distinguish organizations with stricter rules from those who have lighter requirements for membership? When specifying rules on accession, organizations have two options: they can follow a technocratic decision-making procedure, or they can make political decisions on accession. There also is a subset of organizations that does not have written rules on accession. In this section I will explore how these different forms of accession vary across organizations.

Technocratic decision-making

Organizations that have a technocratic decision-making procedure on membership do not require the consent of political bodies in the organization before a new member state is admitted. New member states can simply sign and ratify the organization’s constitution to become members. An example of a technocratic procedure on accession can be found in the United Nations Development Organization (UNIDO), which allows a subset of countries to join by simply ratifying the organization’s constitution: “States members of the United Nations or of a specialized agency or of the International Atomic Energy Agency may become Members of the Organization by becoming parties to this Constitution” (UNIDO Constitution art. 3.a). The International Criminal Court (ICC) similarly allows states to join by ratifying the Rome Statute: “This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations” (Rome Statute Art. 125.3).

Table 3.1 gives an overview of the organizations that use technocratic procedures. IOs differ with regards to where technocratic procedures apply. Out of 72 organizations in the sample, 19 have some type of technocratic procedure in place in 2010. The most inclusive of these allow all member states to join by simply acceding to the constitution. These are the ICC, the International Seabed Association (ISA), the Permanent Court
3. Explaining IO accession rules

<table>
<thead>
<tr>
<th>Name</th>
<th>Applicable to</th>
</tr>
</thead>
<tbody>
<tr>
<td>CERN</td>
<td>Members of CERN’s predecessor or states that had participated in its work</td>
</tr>
<tr>
<td>GEF*</td>
<td>UN member states or members of UN specialized agencies</td>
</tr>
<tr>
<td>ICAO</td>
<td>UN member states</td>
</tr>
<tr>
<td>ICC*</td>
<td>All states</td>
</tr>
<tr>
<td>ILO</td>
<td>UN member states</td>
</tr>
<tr>
<td>IMO</td>
<td>UN member states</td>
</tr>
<tr>
<td>ISA*</td>
<td>All states</td>
</tr>
<tr>
<td>ITU</td>
<td>UN member states</td>
</tr>
<tr>
<td>IWhale*</td>
<td>All states</td>
</tr>
<tr>
<td>PCA*</td>
<td>All states</td>
</tr>
<tr>
<td>SELA*</td>
<td>All sovereign Latin-American states</td>
</tr>
<tr>
<td>UNESCO</td>
<td>UN member states</td>
</tr>
<tr>
<td>UNIDO</td>
<td>UN member states or members of UN specialized agencies</td>
</tr>
<tr>
<td>UNWTO</td>
<td>Members of UNWTO’s predecessor</td>
</tr>
<tr>
<td>UPU</td>
<td>UN member states</td>
</tr>
<tr>
<td>WCO*</td>
<td>All states</td>
</tr>
<tr>
<td>WHO</td>
<td>UN member states; participants in the 1946 World Health Conference</td>
</tr>
<tr>
<td>WIPO</td>
<td>UN member states or members of UN specialized agencies; members of international agreements on intellectual property</td>
</tr>
<tr>
<td>WMO</td>
<td>UN member states; participants in the 1947 IMO Conference</td>
</tr>
</tbody>
</table>

Table 3.1.: Overview of organizations that have technocratic membership procedures in 2010. Organizations with a * rely exclusively on technocratic procedures.
Explaining IO accession rules

of Arbitration (PCA) and the World Customs Organization (WCO). For most other IOs the technocratic procedure applies only to UN member states or to members of UN specialized agencies, such as the World Health Organization (WHO) or the International Labour Organization (ILO). Since most states are members of the UN, this restriction is not very meaningful. The Latin American and Caribbean Economic System (SELA) is one of just two non-global organizations that employ technocratic procedures. Membership in SELA is restricted to "Sovereign Latin American States which sign and ratify the present Convention shall be members of SELA" (Panama Convention Art. 6).

Surveying the organizations in table 3.1, a few features stand out. First, all organizations that have technocratic procedures focus on a limited number of policy areas. The IOs with a technocratic procedure are active in policy fields such as intellectual property (WIPO), mail (UPU), aviation (ICAO) and whaling (IWhale). Hence, there is a strong association between a limited policy focus and the incidence of technocratic accession procedures. Second, with the exception of CERN and SELA, all organizations in table 3.1 have a global focus. Third, a great number of organizations with technocratic procedures are member of the United Nations (UN) family. This seems to suggest that there might be some diffusion of accession rules between these organizations. The only members of the UN family that do not have a technocratic accession procedure are the Food and Agriculture Organization (FAO) and the UN itself. In FAO, the application for membership is first vetted by the General Committee. The final decision on accession is made by the Conference, the organization’s legislative organ, which votes by supermajority. Despite this hurdle for accession, FAO membership is large and currently includes 197 countries; the only UN member state not a member of FAO is Liechtenstein. In the UN, the Security Council first votes on accession: this decision is binding if it results in a negative recommendation. The final decision, upon recommendation by the Security Council, is taken by the General Assembly by two-thirds majority. Given the importance of the organization, it is not surprising that the UN does not have a technocratic
3. Explaining IO accession rules

![Figure 3.1.: Distribution of voting rules on accession in 2010. N = 60.](image)

Even though technocratic decision-making procedures are not uncommon, 60 organizations use a political procedure to decide on accession and suspension. Even IOs that make technocratic decisions often also have a political procedure to deal with those cases where the technocratic procedure does not apply: only seven IOs rely on technocratic procedures exclusively. When organizations follow a political procedure, the voting rules they use can help us distinguish IOs that have stricter criteria for accession. Organizations voting by unanimity are the most conservative, as every member state can block the accession of new states. Supermajority allows for a small minority of dissenters, whereas IOs voting by simple majority only need half of the member states on board.

In decision-making on accession, organizations often involve various organizational
3. Explaining IO accession rules

<table>
<thead>
<tr>
<th>Voting rule</th>
<th>Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority</td>
<td>BIS, OTIF, IAEA, IBRD, IMF, UNESCO, WHO</td>
</tr>
<tr>
<td>Supermajority</td>
<td>SCO, CABI, COE, FAO, IOM, ICAO, Interpol, ILO, IMO, ITU, AU, OAPEC, OPEC, OAS, UN, UNIDO, UPU, WMO, WIPO, UNWTO, WTO</td>
</tr>
<tr>
<td>Unanimity</td>
<td>OIF, CAN, APEC, ASEAN, Caricom, IGAD, ALADI, LOAS, SICA, COMESA, CIS, ComSec, CEMAC, ECCAS, ECOWAS, EFTA, CERN, EAC, ESA, EU, EEA, NAFTA, NATO, OECD, OSCE, OECS, OIC, SPC, PIF, SACU, SADC, Mercosur</td>
</tr>
</tbody>
</table>

Table 3.2.: Voting rules on accession in 2010.

bodies that use different voting rules. In order to determine the main decision-making rule for each IO, I only take into account the final decision-making stage. Where there are multiple bodies involved, I take the voting rule of the most conservative body. In the European Union (EU), for example, the Council, Council of Ministers and European Council are all involved in the final decision on accession. Since one of these, the European Council, votes by unanimity, this is the rule that is applied to the whole organization. Figure 3.1 shows the distribution of organizations across the different voting rules. Most IOs vote by unanimity, followed by supermajority and simple majority. Table 3.2 sorts the organizations by the voting rules they employ.

No formal rules

Finally, there also are some organizations that have no written rules on accession. These are the Benelux, the Central Commission for Navigation on the Rhine (CCNR), the Cooperation Council for the Arab States of the Gulf (GCC), the Nordic Council and the South Asian Association for Regional Cooperation (SAARC). For some of these, the reason for not specifying accession rules seems to be a lack of interest in expanding. The CCNR is concerned with ensuring freedom of navigation on the Rhine. The agreement covers all waterways that lead to and from the Rhine to the sea and to Belgium.
3. Explaining IO accession rules

(Mannheim convention art. 2). Its membership, consisting of Switzerland, France, Germany, Belgium and the Netherlands, therefore includes all countries to which the treaty is directly applicable. The CCNR does have observer states which can participate in the work of the organization without having the right to vote. The collective action problem that the organization addresses does have a clear geographical focus: monitoring shipping and environmental regulation of the Rhine. Hence, expanding membership is not a goal for the organization. The Nordic Council consists of all Scandinavian countries. There is, however, an ongoing discussion on the possible accession of the Baltic states, which historically are very close to Scandinavia. In 1999, Toomas Hendrik Ilves, the Estonian minister for foreign affairs, argued that Estonia should also be considered a Nordic country (Ilves, 1999), and Estonia, Latvia and Lithuania have been observer states in the Nordic Council since 1991.

The Benelux explicitly limits its membership. The current treaty reads: "The application of the present Treaty shall be limited to the territory of Belgium, Luxembourg and the Netherlands" (Revised Benelux Treaty Art. 36.1). Nevertheless, there was some talk of expanding the Benelux not so long ago. In 2007, the prime minister of the German state North Rhine-Westphalia started negotiations with the Benelux about accession (2007). Although these talks did not end in the accession of North Rhine-Westphalia to the Benelux, they did result in the amendment of the Benelux treaty to include several clauses on external relations with EU member states, regions, other forms of government, IOs and other international institutions (Benelux Treaty arts. 24 - 27). The GCC and SAARC seem to be open to expansion but so far have not formalized the accession procedure.

Development over time

There is limited change in accession rules over time. Only 17 IOs have experienced a change in accession rules, but in only five of these there was an actual change from one
set of accession rules to another. In the other IOs, the change was brought about by the implementation of accession rules where there were no formal rules before. The five organizations with an actual change in accession rules are the International Organization for la Francophonie (OIC, 1997), the African Union (AU, 2001), the Organization of the Petroleum Exporting Countries (OPEC, 1965), the Organization of Islamic Cooperation (OIC, 2008) and the Universal Postal Union (UPU, 1966). Out of these five, only OPEC has moved towards less restrictive rules: it makes decisions by supermajority rather than unanimity.

In the other organizations, all changes have led to stricter voting rules. Twelve organizations have moved from not having formalized decision-making procedures to explicit accession rules. An example is the East African Community (EAC). The Kampala Treaty (1967) which founded the organization did not contain provisions on the accession of new member states. The rules for admitting states were clarified with the EAC Treaty (1999) that specified the conditions that had to be met by prospective member states and the procedure by which decisions on accession will be made. Since then, the rules have been implemented to regulate the accession of Burundi and Rwanda. Likewise, the Association of Southeast Asian Nations (ASEAN), which was created in 1967, did not have formal rules on accession until the Charter of the Association of Southeast Asian Nations entered into force in 2008. The bottom line is that most organizations specify accession rules, and once IOs have put a procedure in place, they are unlikely to amend it.

3.3. Theories of IO decision-making

In designing IO decision-making procedures, member states face a trade-off between legitimacy and efficiency. There are two ways in which international institutions can achieve legitimacy. Most commonly, international institutions are perceived to be more
3. Explaining IO accession rules

legitimate if all member states can play an equal role. When it comes to voting rules, this type of legitimacy is achieved by making all decisions by unanimity, to ensure all member states have veto power and cannot be forced into a decision they are opposed to. A different way of thinking about legitimacy is to consider the contribution member states makes to the organization. In this framework, member states that contribute more resources to the IO are expected to have a greater influence in its decision-making procedures. This can be achieved by instituting weighted voting, where the votes of some member states count heavier than those of others (Kahler, 1992; McIntyre, 1954; Zamora, 1980; Blake and Lockwood Payton, 2014).

If unanimity and weighted voting represent the most legitimate options for international decision-making, why do some organizations deviate from these models? The answer can be found in another concern member states face in designing international organizations: efficiency. In organizations that solely rely on unanimity voting, decision-making can become very cumbersome. If a controversial issue comes up, unanimity voting can bring the IO to a complete halt. In organizations that use weighted voting, this can lead to similar problems, with the important distinction that it is only a small group of member states that might be able to block decisions. Hence, concerns for efficiency might persuade member states to implement some form of majoritarian decision-making.

What determines how member states negotiate the trade-off between legitimacy and efficiency? Under what conditions do IO member states move towards majoritarian voting? The literature on IO decision-making has advances several arguments that may explain the variation in IO voting rules and decision-making procedures. Amongst these are the issue area in which the IO operates, the breadth of the organization’s policy scope, the extent to which organization’s require member states to adopt the same policies, the level of democracy in IO member states and the level of power inequality between member states. I will discuss each of these arguments in turn.
3. Explaining IO accession rules

Type of policy area

Several scholars emphasize the importance of the type of policy area in which the organization operates as an explanation for the extent to which membership is restricted. The underlying collective action problem that the IO tries to resolve gives an indication of the likelihood an organization will be inclusive or not, and consequently, the extent to which it will police accession through restrictive decision rules. International cooperation problems can take the form of a number of collective action games, including Prisoner’s Dilemma or Battle of the Sexes. Most scholars broadly distinguish between two classes of games: coordination and collaboration games (Stein, 1982, 1990). The main distinction between these two classes of games is whether states have an incentive to defect. In coordination games, states may have different preferred outcomes but once a decision has been reached, states cannot improve their situation by deviating from the agreement. Therefore, these agreements are self-reinforcing. This is not the case for collaboration games. In these games, states benefit from unilaterally defecting from the agreement, as long as other states keep on cooperating. In the context of a collaboration game such as Prisoner’s Dilemma, agreements are not sustainable and need to be enforced by for example sanctions (Stein, 1982; Snidal, 1985).

The nature of the underlying collective action problem has consequences for how open existing member states are to expanding the organization. Martin (1992) argues that in policy areas that follow the structure of a collaboration problem, cooperation between a smaller group of states is more likely to be successful than for a larger group of member states. In the context of a collaboration game, a larger membership can only be sustained if membership is made conditional or if cooperation is enforced through a dispute settlement mechanism (Martin, 1992). The empirical work of other scholars confirms this notion. NATO is an example of an organization that is based on a collaboration game. Cooperation on security issues is costly and hence makes defecting tempting. In NATO, restrictive membership rules allowed states to only admit those countries with
3. Explaining IO accession rules

a strong interest in cooperation (Kydd, 2001). Stricter rules on accession also have a strategic effect: they can induce acceding states to implement reforms that increase the likelihood of successful cooperation (Schneider and Urpelainen, 2012). Other authors have also stressed the strategic effect of restrictive membership: in the OECD, the process of joining the organization led acceding states to embark on a series of reforms, including trade liberalization (Davis, 2014). In contrast, Koremenos, Lipson and Snidal (2001b) argue that restrictive membership is less likely where the distribution problem is more severe. According to the authors, severe distributional problems can be overcome by a more inclusive membership since this can lessen the zero-sum properties of the cooperation and increases the possibility of trade-offs between member states (Koremenos et al., 2001b). There is, however, little empirical evidence to support this notion.

The type of policy area has also been associated specifically with variation in IO voting rules. Stephen Zamora (1980) traces the origins of majority voting to technical unions such as the International Telegraphic Union (ITU), the Universal Postal Union (UPU) and the International Wine Office. According to Zamora, there are several reasons why majority voting started in these IOs. First, in these organizations member state representatives often were technical experts rather than diplomats, and hence they were more likely to make decisions based on majority. Second, majority voting was more likely since these IOs dealt with "technical matters that did not intrude into questions of high national policy," and therefore, "states felt less need to protect their interests through a veto power" (Zamora, 1980, p. 575). Hence, majority voting is associated with decision-making on technical issues that has little bearing on domestic politics.

H1: Organizations that work in policy areas where there is an incentive to defect are less likely to move away from unanimity voting.
3. Explaining IO accession rules

Policy scope

Another line of argument emphasizes how the breadth of an organization’s policy scope may influence its decision-making procedures. Hooghe and Marks (2014) show that policy scope affects voting rules in IOs: organizations that are active in a larger number of policy areas are less likely to move away from unanimity voting. As they argue, "the broader the reach of an IO, the greater its potential to touch a domestic nerve and produce domestic contestation". Hence, in organizations with a large policy scope, member states are less willing to give up individual control over decision-making and will instead prefer to retain their veto power (Hooghe and Marks, 2014). Although this argument is concerned with decision-making on IO policies, there is no reason to suggest it should not also apply to membership rules. In organizations that have a larger policy scope, there is a greater risk associated with extending the organization’s membership and therefore it is all the more important to impose stricter rules on accession.

The argument about policy scope suggests that there is a trade-off between the depth of cooperation and the inclusiveness of membership: organizations that are active in a larger number of policy areas will be more likely to restrict their membership. Downs, Rocke and Barsoom (1998) show that this trade-off does indeed exist. Organizations that restrict their membership initially are able to achieve higher levels of cooperation, even when their eventual membership is large: "all else being equal, large multilaterals that start out small will be able to achieve considerably more depth than those that start out relatively large" (Downs et al., 1998, p. 414). As was shown earlier, change in accession rules is very unusual, and therefore, IOs that start out with restrictive accession rules are likely to retain them. Hence, in organizations with a larger policy scope accession is likely to be more restrictive.

H2: Organizations with a larger policy scope are less likely to move away from unanimity voting.
3. Explaining IO accession rules

Bindingness

Gilligan (2004) builds on the depth/inclusiveness trade-off to argue that it is conditional on the assumption that member states are expected to set their policies at the same level, that is to say, which is the case when decisions are binding equally for all. Where member states are expected to each adopt the same policy, organizations have an incentive to restrict membership in order to ensure cooperation. In organizations where member states are allowed to opt out, choose depth of cooperation, or choose the time frame at which they will comply the trade-off disappears. Thus, membership can be more open in organizations that allow for various levels of commitment by member states.

H3: Organizations that require member states to set their policies at the same level are less likely to move away from unanimity voting on accession.

Power inequality, regime diversity and democracy

Finally, power inequality and democracy are commonly expected to affect IO decision-making procedures. Blake and Lockwood Payton (2014) find that the presence of a hegemon in the organization does make it significantly more likely an IO will use weighted voting. They do not find an effect for majority voting. Nevertheless, from their work we can infer that power asymmetry might make it more likely that organizations move away from unanimity voting, but only to a certain extent. There are no clear expectations for the effect of power asymmetry on accession rules. On the one hand, powerful states might prefer not to be overruled by weaker states when it comes to the admittance of new members. On the other hand, powerful states can often afford side payments to weaker member states when the votes threatens to go against their interests. Furthermore, Schneider and Urpelainen (2012) have shown that powerful states might have a strategic interest in unanimity voting on accession. Where IOs vote by unanimity, prospective member states will likely need to meet higher criteria for accession, which has a positive effect on cooperation after accession has taken place (Schneider and Urpelainen, 2012).
3. Explaining IO accession rules

The Rational Design Project (Koremenos et al., 2001b,a) advances the idea that uncertainty about the preferences of other member states increases the likelihood of restrictive membership. Uncertainty about preferences can hinder cooperation since member states will not know whether others are likely to defect from the agreement, or cooperate. As Koremenos, Lipson and Snidal argue: 'Effective membership rules create a separating equilibrium where only those who share certain characteristics will bear the costs necessary to be included in an equilibrium' (Koremenos et al., 2001b, p. 784). There are various ways in which uncertainty about preferences can be operationalized. One way of approaching this concept is to consider the regime type of IO member states. Democracies are known to exhibit different behaviors than autocracies in international cooperation (Mansfield et al., 2002; Gartzke and Gleditsch, 2004). Hence, in organizations with different regime types, countries might be less certain about the preferences of other member states, thus necessitating stricter rules on accession. Blake and Lockwood Payton (2014) have shown that regime diversity makes it less likely that IOs will use majority voting: where regime diversity is high, member states want to retain control.

Regime type might also affect IO decision-making on accession in a different way: not only the diversity in regime type, but also the level of democracy of IO member states could have an influence. There is a growing literature that shows how democracies behave differently from autocracies on the international level in a large number of policy areas. Democracies are more likely to use international dispute settlement mechanisms to resolve trade disputes (Davis, 2012; Davis and Bermeo, 2009; Busch, 2000) and territorial disputes (Allee and Huth, 2006), to keep their treaty obligations in wars (Morrow, 2014) and to sign human rights treaties (Simmons, 2009). Democratic governments are more prone to face domestic constraints on decision-making, and may use international organizations to enforce their policies. Since democracies are distinct in such a large number of policy areas, we might also expect democracies to have different preferences about accession rules. The literature does not put forth a clear expectation concern-
3. Explaining IO accession rules

As we saw in section 3.2, IOs display significant substantive variation in the voting rules they use on accession. In this section, I will address analyze what explains variation in accession rules. I discuss the operationalization of the key independent variables, the methodology used for the analysis and the results.

Operationalization

In section 3.3, I outlined several variables that are expected to be of influence on IO voting rules on accession. I operationalize the type of policy area by looking at whether organizations are active in either trade or security. Both these policy areas provide member states with strong incentives to defect and therefore one would expect to see higher levels of unanimity voting in these organizations. Security IO is a dichotomous variable that is coded 1 if the organization is active in the area of security. Data is based on team coding (Marks et al., 2015). Trade IO is a dichotomous variable that is coded 1 if
3. Explaining IO accession rules

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Standard deviation</th>
<th>Minimum</th>
<th>Maximum</th>
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<td>6.77</td>
</tr>
<tr>
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<td>3.64</td>
<td>5.5</td>
<td>21</td>
</tr>
<tr>
<td>Power asymmetry</td>
<td>0.31</td>
<td>0.20</td>
<td>0.08</td>
<td>0.90</td>
</tr>
</tbody>
</table>

Table 3.3.: Descriptive statistics

an organization is listed with the WTO as a regional trade agreement or if it otherwise has a strong trade focus. Policy scope is operationalized by considering the range of policy areas in which an organization is active, out of a list of 25. Data is based on organization’s websites, constitutions, policy output, mission statements, budget and institutional set-up (Marks et al., 2015). I operationalize the extent to which organizations require their member states to put their policies at the same level by taking into account the extent to which decision-making is binding. This is a dichotomous variable that is coded 1 if decisions made by member states on policy-making are automatically binding and zero if not binding or conditionally binding (Marks et al., 2015). Power asymmetry is measured by the power concentration index developed by Mansfield and Pevehouse (2000). This measure takes into account a country’s total population, urban population, military personnel, iron and steel production and energy consumption. The variable uses the material capabilities of the most powerful member state as a ratio to those of all member states. Higher values represent a greater power asymmetry (Mansfield and Pevehouse, 2000; Mansfield, 1994). Regime diversity is operationalized by the standard deviation of the mean polity IV score of IO member states: greater standard deviations indicate higher levels of diversity. The level of democracy is operationalized by the mean polity IV score of IO member states (Marshall et al., 2011). Table 3.3 provides descriptive statistics for all independent variables. The dependent variable, voting rule,
ranges from 1 - 3, ordered from unanimity to supermajority to simple majority. Hence, higher values indicate less restrictive voting rules on accession.

**Methodology**

What explains variation voting rules on accession? In section 3.2, I showed that voting rules on accession can fall into three categories: unanimity, supermajority or simple majority. These categories follow a logical order from more to less strict. Hence, an ordinal logistic regression would be an appropriate way to explain variation on voting rules, provided that the models adhere to the proportional odds assumption (sometimes also referred to as the parallel lines assumption), which indicates that the distance between categories ought to be equivalent (Long and Freese, 2006). If the proportional odds assumption is violated, using an ordinal logistic regression may lead to results that are "incorrect, incomplete or misleading" (Williams, 2007). Fortunately, the models conform to the proportional odds assumption and therefore an ordered logistic regression is appropriate.

I use the link test to make sure there is no specification error. This test is based on the idea that if the model is well-specified, there should be no additional independent variables that can have a significant effect on the dependent variable (Tukey, 1949; Pegribon, 1979). The results of the link test show that there are no specification errors. There are several ways to assess the goodness-of-fit of ordered logistics regressions. I report McFadden’s R$^2$, which gives an indication of the improvement of the model compared to the empty (null) model. Another common problem is multicollinearity. The Variance Inflation Factor (VIF) shows that the models do not suffer from multicollinearity (VIF < 3 for all independent variables).
### 3. Explaining IO accession rules

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
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<td>-0.232</td>
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<tr>
<td></td>
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<td>(0.076)***</td>
<td>(0.098)**</td>
<td>(0.098)*</td>
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</tr>
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<td></td>
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<tr>
<td></td>
<td>(1.416)***</td>
<td>(1.281)***</td>
<td>(1.638)***</td>
<td>(1.475)**</td>
<td></td>
</tr>
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<td>Security IO</td>
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<td>-2.058</td>
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</tr>
<tr>
<td></td>
<td>(1.535)</td>
<td>(1.560)</td>
<td>(1.555)</td>
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<td>Binding decisions</td>
<td>1.520</td>
<td>0.737</td>
<td>1.327</td>
<td>-</td>
<td>1.397</td>
</tr>
<tr>
<td></td>
<td>(0.784)*</td>
<td>(0.675)</td>
<td>(0.784)*</td>
<td></td>
<td>(0.782)*</td>
</tr>
<tr>
<td>Regime diversity</td>
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<td>0.723</td>
<td>0.793</td>
<td>1.120</td>
<td>1.041</td>
</tr>
<tr>
<td></td>
<td>(0.273)***</td>
<td>(0.229)***</td>
<td>(0.291)***</td>
<td>(0.362)***</td>
<td>(0.345)***</td>
</tr>
<tr>
<td>Power asymmetry</td>
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<td>-4.148</td>
<td>-2.893</td>
<td>-0.143</td>
<td>-2.863</td>
</tr>
<tr>
<td></td>
<td>(2.490)</td>
<td>(2.367)</td>
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<td></td>
<td></td>
<td></td>
<td>(1.890)***</td>
<td></td>
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<td>Democracy level</td>
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<td>-</td>
<td>-</td>
<td>0.234</td>
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<td>Pseudo R²</td>
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<td>N</td>
<td>60</td>
<td>60</td>
<td>60</td>
<td>60</td>
<td>60</td>
</tr>
</tbody>
</table>

Table 3.4.: Results of ordered logistic regression for political decision-making on accession. Robust standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.1
3. Explaining IO accession rules

Results

Table 3.4 shows the results of the ordered logistic regression. Positive values indicate a higher likelihood of organizations moving away from unanimity voting. Model 1 includes the main independent variables. The model has a relatively good fit with a Pseudo R² of 0.51. Organizations with a higher policy scope are found to have a lower likelihood of using majority voting, as was expected. Organizations that increase their policy scope by one policy area have a 0.192 lower log odds of having less restrictive voting rule. This result can also be expressed in odd ratios: an organization with a one unit increase in policy scope is 0.85 times as likely to use a less restrictive voting rule as an organization that does not have this increase. This effect of policy scope on accession rules is statistically significant. IOs operating in the policy areas of trade and security are also found to be less likely to move away from unanimity voting, with trade organizations significantly so. Organizations that are active in the policy area of trade have 4.044 lower log odds of being in a less restrictive voting category, compared to organizations that do not have trade as their main focus.

Models 2 and 3 contrast the role of policy scope and specific policy areas. Leaving out the areas of security and trade or leaving out policy scope does not influence the results for the other variables in the model. Hence, we may conclude that policy scope and policy area have separate effects on voting rules. Including both leads to a better explanation of variation in accession rules than including either of those: both the type of policy area and the size of an IO’s policy scope lead organization to adopt more restrictive voting rules on accession.

Model 1 shows that organizations that make binding decisions on policies are significantly more likely to have supermajority and majority voting. This result does not conform to the expectations raised by Gill, since the expectation is that in organizations where member states have to set their policies at the same level, membership would be more exclusive. Nevertheless, we observe that IOs making binding decisions are 4.5
Explaining IO accession rules

times more likely to move away from unanimity. A possible explanation for this result is that in organizations with binding decision-making, there is less of a risk to admitting new member states, since cooperation is mandatory. Binding decision-making may also influence the likelihood of new member states joining: countries mostly are reluctant to sign up for commitments they cannot keep (Chayes and Chayes, 1993; Downs et al., 1996). Another way in which IOs can induce cooperation is by having a strong dispute settlement mechanism that can enforce the organization’s decisions. Model 4 includes a variable for dispute settlement to test this hypothesis. The effect of having a strong dispute settlement mechanism is strong and positive, suggesting that in organizations with effective dispute resolution member states feel less of a need to implement restrictive accession rules.

Contrary to expectation, an increase in regime diversity is associated with a significantly higher likelihood of using a less restrictive voting rule across all models. It might be that regime diversity is not the best way to operationalize uncertainty about preferences. The difficulty of operationalizing uncertainty has been noted by Duffield, who argues that the Rational Design Project "offers no guidance on this vital methodological issue to those who would attempt to evaluate the conjectures" (Duffield, 2003). Hence, these results likely do not give us enough information to evaluate the hypothesis that uncertainty about preferences increases restrictive membership. Instead, it seems that the regime diversity variable is picking up the effect of a variable that has been omitted from all models: size of membership. The likelihood of higher levels of regime diversity increase with the number of member states, and the correlation between regime diversity and size of membership is indeed quite high ($r = 0.68$). As we have seen in section 3.2, organizations with a global scope are more likely to use technocratic voting procedures or majority voting, rather than more restrictive accession rules. Organizations such as

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1The variable measures strength in dispute settlement across six dimensions: 1) right to review 2) nature of the tribunal 3) bindingness 4) remedies in case of non-compliance 5) access for nonstate actors and 6) preliminary ruling. See appendix C for more detail.
the World Health Organization or the International Atomic Energy Agency can only be effective if they have a large membership, and because they have a large membership they are also bound to have high levels of regime diversity. This dynamic seems to be driving the results. Including membership size as an independent variable, however, poses strong endogeneity problems. Power asymmetry negatively affects the likelihood of being in a less restrictive voting category, but the result is not significant. Since there were no strong expectations in the literature about the effect of power asymmetry on membership rules, this result is not surprising.

Finally, model 5 tests for the influence of the mean level of democracy of IO member states. Although the result is positive, democracy does not have a significant effect on accession rules and also does not affect the results for the other variables. From this we might conclude that the distinctiveness of democracies does not express itself in IO accession rules.

3.5. Conclusion

IOs display significant variation in the decision-making procedures they use for admitting new member states. In making decision on accession, organizations can opt for a technocratic procedure or choose a political route. Technocratic procedures are particularly frequent in organizations that have a narrow policy scope, a global orientation and are members of the UN family. Most organizations, however, use a political procedure for admitting new member states. In organizations that utilize a political procedure there is significant variation in the voting rules, which range from unanimity to simple majority.

In this chapter, I have outlined that a number of factors can influence IO decision-making rules. The results of a statistical analysis show that the number of policy areas in which the organization is active is an important predictor of voting rules: organizations
3. Explaining IO accession rules

with a broader policy scope are more likely to use unanimity. Similarly, organizations that focus on trade seem more likely to implement less restrictive voting rules. It seems that in organizations where the distributional consequences are high, concerns for legitimacy trump a desire for efficiency. Organizations with binding decision-making on policy or organizations with strong dispute settlement, on the other hand, were found to be more open to expanding. This would suggest that where cooperation is enforced, countries are more willing to admit new member states since the chances of shirking are much lower. Where the IO can induce compliance, members are less concerned about newcomers.

The analysis also led to an unexpected outcome: Regime diversity was found to make it more likely that organizations have less restrictive rules on membership. A likely explanation of this result is that regime diversity picks up the effects of membership size, a variable that cannot be included in the analysis since it is too closely related to the dependent variable. This result once again illustrates the difficulties of operationalization the uncertainty of preferences in IO member states.

Voting rules are only one part of accession procedures: most organizations also have other requirements that member states need to fulfil before they can join the IO. It seems likely that there is a relationship between restrictive voting rules and other demands on prospective member states. Organizations which are known to have a demanding accession procedure, such as the OECD, EU and NATO, also use unanimity voting to make the final decision on accession. More research is required to explore the link between voting rules and accession procedures in a broader sense.
4. The Rise of Supranational Courts in International Organization

4.1. Introduction

At the turn of the century several scholars noted the rise of international legalization—“the decision in different issue-areas to impose international legal constraints on governments” (Goldstein et al., 2000, p. 387; Abbott and Snidal, 1998, 2000; Abbott et al., 2000). The most institutionalized form of legalization is judicialization: “the emergence of authoritative third-party bodies to help settle international legal disputes among states, and sometimes between states and individuals” (Simmons, 2012, p. 361; Stone Sweet, 1999). Keohane, Moravcsik and Slaughter (2000, p. 457) observe that “international courts and tribunals are flourishing,” and quote Romano (1999, p. 709) who identifies “the expansion of the international judiciary as the single most important development of the post-Cold War age.” Alter (2011, p. 388; 2014) charts the growth of international permanent courts and of binding legal rulings.

The most widely accepted explanation for judicialization focuses on problem structure

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1 Co-authored with Liesbet Hooghe (first author), Svet Derderyan and Emanuel Coman. Earlier versions were presented at the ECPR Joint Sessions in Mainz, March 2013; the International Studies Association meetings in San Francisco, April 1-6 2013; a VUA-UNC sponsored workshop on “Theory meets Data: Design of International Institutions” held at the University of North Carolina in Chapel Hill, April 26-27, 2013; a seminar at VU Amsterdam and the 7th Annual Conference on the Political Economy of International Organizations, Princeton University, January 2014. We thank participants at these events for useful comments, especially Karen Alter, Jörg Ege, Gary Goertz, Bob Keohane, Barbara Koremenos, Gary Marks, Jonas Tallberg, Erik Voeten.
4. The Rise of Supranational Courts

(Hasenclever et al., 1997; Koremenos, 2005, 2007, 2013; Sandler, 1997; Snidal, 1985). It predicts that trade underpins strong dispute settlement to combat moral hazard. In this chapter we conceive this claim in a broader argument. We show that dispute settlement arises in the context of general purpose governance. What matters, we believe, are the demands and opportunities that arise in an incipient political community. While many general purpose IOs are built on preferential trade agreements, it does not follow that regulating trade is their main objective. General purpose IOs are engaged in a number of tasks. Many supranational courts are embedded in general purpose organizations because of their unique role in reducing ambiguity in open-ended contracting.

Our argument seeks to answer three puzzles. First, why is the link between dispute settlement and trade interdependence tenuous, even among trade organizations with similarly high levels of intra-regional trade? Second, why do some of the most authoritative courts deal with non-trade disputes? Third, why is judicialization so dynamic in regional international organizations?

Our understanding of authoritative dispute settlement draws on the distinction between state-controlled dispute settlement and transnational, or supranational, dispute settlement developed in the legalization literature (Helfer and Slaughter, 1997; Keohane et al., 2000; Alter, 2014). State-controlled dispute resolution conceives states as the subjects of international law. They alone control access. Supranational dispute settlement starts from the notion that international law binds non-state actors as well as their governments. Contrary to state-controlled dispute settlement, jurisdiction is compulsory for states and the international court has direct links with domestic actors which can bring cases against governments to the court. In Helfer and Slaughter’s (1997, p. 277) words, supranational dispute settlement involves “stripping the state of its unitary façade.”

\[\text{We prefer “supranational” to transnational because it highlights the supremacy of international over domestic law. For classic definitions of supranationalism, see Ernst Haas (1958), Innis Claude (1968), and Joseph Weiler (1981).}\]
4. The Rise of Supranational Courts

In the next section, we introduce a measure that taps annual variation in six features of dispute settlement in order to chart dispute settlement in 73 international organizations on an annual basis since 1950. We then set out a theory of general purpose governance and compare alternative explanations of dispute settlement in quantitative analysis.

4.2. Conceptualization and operationalization

We argue that governments that seek durable cooperation through international organization face a three-way choice between alternative designs: no judicialized dispute settlement, a state-controlled mechanism where individual governments maintain control, or a supranational system that can take decisions over the objections of a government. Rather than conceiving authoritative dispute settlement as linear from weak to strong we conceive it as configurational and find support for this claim in cluster analysis.

Our conceptualization takes up a central distinction in a mostly qualitative literature on legalization (Alter, 2014; Goldstein et al., 2000; Keohane et al., 2000; Helfer and Slaughter, 1997). State-controlled dispute settlement uses an arbitration panel or a standing tribunal which usually has the authority to reach binding rulings, but the system allows for governments to control the consequences. They permit states to custom-tailor which parts of the contract they are liable for; bar access for non-state actors; and prevent the court from providing remedy in case of non-compliance. That contrasts with supranational dispute settlement, which has compulsory jurisdiction and

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3Appendix A lists the international organizations. We define an IO as an international organization composed of three or more states having an explicit and continuous institutional framework. In selecting the sample we consulted the Correlates of War dataset and identified organizations having a distinct physical location or website, a formal structure (i.e., a legislative body, executive, and administration), at least 50 permanent staff (Yearbook of International Organizations, multiple years, and IO websites), a written constitution or convention, and a decision body that meets at least once a year. Seventy-three IOs that are not emanations from other IOs fit all or all but one of these criteria. In contrast to organizations lacking a formal structure, permanent staff, or that meet irregularly, the IOs in our sample can be more reliably researched using public documents. The sample encompasses a wide range of both regional and global organizations and includes organizations with competences in one or more of 25 policy areas that we code.
4. The Rise of Supranational Courts

courts that “penetrate the surface of the state” (Helfer and Slaughter, 1997, p. 288) through several mechanisms, chief among which are 1) preliminary ruling, which allows or compels domestic courts to seek legal guidance from the international court on potential conflicts between domestic and international law; 2) non-state access, which enables private interests to initiate proceedings against a state; and 3) direct effect, which binds domestic institutions to enforce international rulings.

To compare the strength of third-party dispute settlement across IOs we design a measure that is sensitive to variation in key features of state-controlled and supranational dispute settlement. We refine a framework pioneered by McCall Smith (2000) and adopted in multiple studies (e.g. Haftel, 2013; Jo and Namgung, 2012; Kono, 2007) with four amendments:

- we add to McCall Smith’s five dimensions an important supranational lever—preliminary ruling—emphasized by international legal scholars (Burley-Slaughter and Mattli, 1993; Alter, 2006; Helfer et al., 2009; Weiler, 1991);

- we refine dichotomous into trichotomous measures to better capture intermediate cases;

- we expand the sample beyond trade organizations to non-trade regional and global organizations;

- we assess each IO on an annual basis from 1950 or, if later, the time of its foundation.

The six dimensions we assess are widely recognized as decisive for the authority of a dispute settlement mechanism. Does the mechanism 1) allow for automatic third party access; 2) entail an ad hoc or standing tribunal; 3) issue binding or conditionally binding rulings; 4) enable non-state actors to initiate proceedings, 5) authorize remedial action,
4. The Rise of Supranational Courts

Figure 4.1.: Dimensions of dispute settlement in 2010. Note: The six dimensions are trichotomous. The figure displays the number of IOs that meet a dimension in full (yes) or partly (partial). Automatic third party access: yes, mediated by political body or conditional on the defending state’s consent, no; standing tribunal: yes, ad hoc panel, neither; bindingness of the ruling: yes, conditional or partial, no; nonstate access: private litigants, IO secretariat can initiate, limited to states or interstate bodies; remedy: direct effect, partial such as retaliatory sanctions or compensatory action, none; preliminary ruling: compulsory for some national courts, optional, none. N=72.

and 6) allow domestic courts to seek a preliminary ruling? Figure 4.1 displays, for 2010, the number of international organizations that meet these criteria.

These six criteria constitute a nested hierarchy. Whereas 46 international organizations provide conditional or automatic third party review of disputes, only 12 IOs have preliminary ruling, and the other features fall in-between. This is consistent with McCall Smith’s (2000, p. 143) observation that features “tend to cluster, suggesting a hierarchical ordering.”

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4 Appendix C details the measurement, indicates how we adjudicate cases in the gray zone, and provides descriptive statistics.
### 4. The Rise of Supranational Courts

<table>
<thead>
<tr>
<th>Item</th>
<th>Mean score</th>
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<th>Expected Guttman errors</th>
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<td>Nonstate access</td>
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<td>38.0</td>
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<tr>
<td>Preliminary ruling</td>
<td>0.10</td>
<td>0</td>
<td>10.0</td>
<td>1.00</td>
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</tbody>
</table>

Table 4.1.: Mokken scale analysis for 2010. Note: The table shows the mean score on a scale of zero to 1 for each dimension of dispute settlement, the observed Guttman errors (number of IOs that deviate from the Guttman scale), expected Guttman errors (number of deviations that are expected if items are stochastically independent), and Loevinger’s H (ratio of the total sum of observed vs. expected errors). N=72.

The notion of a nested hierarchy can be tested through a Mokken analysis, which examines the extent to which the data form a Guttman scale (van Schuur, 2003). A scale is Guttman-perfect when a positive response on a difficult item always yields a positive response on a less difficult item. For example, IO dispute settlement that allows for nonstate access will also make binding rulings, have a standing tribunal, and automatic third party review. IOs that allow nonstate access but, for example, do not have a standing tribunal, make a Guttman error. The extent to which a population avoids Guttman errors is expressed in the Loevinger’s H-statistic (Mokken, 1970; Mokken and Lewis, 1982). With an H-index of 0.81 in 2010 (table 4.1), the dispute settlement scale is very strongly hierarchical.\(^5\)

A perfectly symmetrical Guttman scale would reveal the steps to be roughly equally paced. That is not the case: there is a wide distance between the first three, which are core features of state-controlled dispute settlement, and the last three, which are at the

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\(^5\) An H-index above 0.5 (more than half of the population avoids errors) is usually considered strongly Guttman. Dispute settlement meets the criterion for a strong Guttman scale (H>0.6) in every decade, and coherence increases from decade to decade (additional analyses available from the authors).
core of supranational dispute settlement. The third group consists, of course, of IOs that meet no criterion.

K-means cluster analysis confirms that the cases fall into three clusters. The largest cluster (49.0 percent of IO-year observations) consists of IOs with no or very weak legalized dispute settlement. To obtain a metric of judicialization, we can aggregate the six dimensions into a single scale that ranges from zero (on all six criteria) to 1 (on six criteria). The median judicialization score for this cluster is zero (mean=0.008), and scores range between zero and 0.17. The size of this cluster is striking because the population analyzed here consists of the world’s most authoritative international organizations. The second cluster (42.4 percent) contains IOs with state-controlled dispute settlement. Scores range between 0.25 and 0.58, and the median is 0.42 (mean=0.40). Finally, 8.6 percent of IO-year observations fall in the third cluster, which has a median judicialization score of 0.92 (mean=0.85) and scores ranging from 0.67 to 1. For 2010 the respective percentages are 40.3, 36.1, and 23.6 percent.

Table 4.2 contrasts configurations in the latter two clusters for 2010. IOs in the state-controlled type have automatic third-party review, a standing tribunal, and partial or fully binding rulings, but each leaves one or more doors ajar for national governments. The simplest escape route is to have conditionally binding rules. Many global organizations allow opt-outs or derogations. The International Court of Justice, the dispute

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6 The Cronbach’s alpha, which is a measure of the relative coherence of the scale, is 0.88.

7 The odds of an IO having legalized dispute settlement are just about as high as the odds of an international agreement having dispute resolution drawn from a random sample (Koremenos, 2007). The cluster is somewhat smaller than the 57 percent preferential trade agreements that have no or weak judicialized dispute settlement (Allee and Elsig, 2014).

8 Automatic third party access is a precondition for 18 of 26 state-controlled systems. Eight IOs are classified in the state-controlled cluster even while third party access is mediated by a political body, but the political screening tends to be light, and dispute settlement has additional authoritative features. For example, the World Health Organization requires that any question or dispute concerning the interpretation or application of its constitution is first submitted for negotiation to the Health Assembly. If no agreement is reached, the dispute is referred to the International Court of Justice (Constitution Art. 75), a standing tribunal that can make binding judgments for parties that have accepted compulsory jurisdiction. The weak dispute settlement cluster contains two IOs with politically mediated third party access (Gulf Cooperation Council and UNIDO), but access is to an ad hoc mechanism with only consultative competence.
## State-controlled dispute settlement (N=26)

<table>
<thead>
<tr>
<th>Third party</th>
<th>Tribunal binding ruling</th>
<th>Remedy access</th>
<th>Preliminary ruling access</th>
<th>Average</th>
<th>judicialization</th>
<th>IOs</th>
</tr>
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<td>0</td>
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<td></td>
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</tr>
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<td>0</td>
<td>0.33</td>
<td></td>
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<td>0.5</td>
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<td>BIS, ISA</td>
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<td>0</td>
<td>0.58</td>
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<td>WTO</td>
</tr>
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</table>

## Supranational dispute settlement (N=17)

<table>
<thead>
<tr>
<th>Third party</th>
<th>Tribunal binding ruling</th>
<th>Remedy access</th>
<th>Preliminary ruling access</th>
<th>Average</th>
<th>judicialization</th>
<th>IOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>1</td>
<td>1</td>
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<td>OAPEC</td>
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<td>0.67</td>
<td></td>
<td>Benelux, Mercosur</td>
</tr>
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<td>1</td>
<td>0</td>
<td>0.67</td>
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<td>ICC, OECS</td>
</tr>
<tr>
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<td></td>
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<td>1</td>
<td>1</td>
<td>0.5</td>
<td>0.92</td>
<td></td>
<td>Andean, Caricom, EAC, ECOWAS, EEA, SADC, SICA</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1.00</td>
<td></td>
<td>Comesa, CEMAC, European Union</td>
</tr>
</tbody>
</table>

Table 4.2.: State-controlled and supranational dispute settlement in 2010. Note: 0 signifies that the condition is not met; 0.5 signifies the condition is partially met; 1 signifies the condition is met (see text for details). Starred IOs use the ICJ.
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settlement court for the United Nations, represents the ideal-type. Where bindingness is conceded, states keep ultimate control by avoiding effective remedy, non-state access, or preliminary ruling.

IOs in the bottom half of the table approach the supranational ideal-type. Each accepts unconditional bindingness and resorts to one or more mechanisms that enable international courts to “penetrate the surface of the state.” The door to statehood sovereignty, ever ajar in state-controlled dispute settlement, begins to close, and in three IOs it is shut. These IOs combine full remedy, non-state access, and compulsory preliminary ruling. The EU’s European Court of Justice has long been the standard bearer, and in recent years it has been joined by the courts of the Andean Community, COMESA, CEMAC, CARICOM, ECOWAS, SICA, SADC, and the East African Community.9

Scoring remains subjective even when the coding criteria are made explicit, choices documented, and judgments triangulated with experts. Each of our judgments has been discussed multiple times by two or three team members, and our explanations will be publicly accessible. Still, some judgment calls were difficult indeed, and the outcomes may determine whether an IO is categorized as state-controlled or supranational. The World Trade Organization is a fine example of a border case. It meets all core features of a state-controlled system: automatic third party access, standing tribunal, binding rulings. It also meets some supranational features: a capacity to authorize retaliatory sanctions (partial remedy), and more contested, access to nonstate actors, directly and formally by the European Union, or indirectly by industrial lobbying through governments (Busch and Reinhardt, 2006; Davis, 2012; Keohane et al., 2000; Tallberg and McCall Smith, 2012). How much weight does one give to the European Union’s right to

9The supranational status of the Southern African Development Community (SADC) Tribunal was short-lived. It started working in November 2005, but was suspended in August 2010 after a contentious court ruling on land claims in Zimbabwe. In August 2012 the Summit resolved that “a new Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States.” Individuals would no longer be able to access the court (Hulse and van der Vleuten, 2013; Alter, 2014). However, in March 2013 the Court was abolished (Nathan, 2013, http://www.safpi.org/publications/solidarity-triumphs-over-democracy-dissolution-sadc-court, accessed on 7 April 2014).
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initiate disputes?\textsuperscript{10} We opt not to score nonstate access for the WTO, and the k-median cluster analysis used in this chapter sorts it into the state-controlled category.

Figure 4.2 illustrates the general rise and changing face of judicialization among the 73 IOs since 1950. Overall judicialization—the broken line—is 75 percent higher in the 2010s compared to the 1950s. In the early decades, the International Court of Justice and a small group of IOs with similar dispute settlement formed the backbone of judicialized dispute settlement. We define the “ICJ model” as a standing tribunal that provides automatic or conditional third party access for interstate disputes and can take conditionally or unconditionally binding decisions. At its apex in 1960, 22 percent of IOs had an ICJ-type dispute settlement. As the number of international organizations in the dataset grew from 23 in 1950 to 72 in 2010, the ICJ model lost prominence, and in 2010 just 12.5 percent (or nine IOs) conformed. As the figure shows, its share in the state-controlled category has declined. The rise in judicialization is driven by the emergence of the “new-style court” (Alter, 2014), which combines compulsory and binding jurisdiction with one or more supranational levers: enforcement, access for nonstate parties (IO independent bodies or private litigants), preliminary ruling. The number of supranational courts grows from just one in 1952 to 17 by 2010.

Dispute settlement in international organizations has become a three-way choice: no judicialized dispute settlement, state-controlled dispute settlement, or supranational dispute settlement. Why has supranational dispute settlement increased? What determines the selection of this design over others? We turn to this question in the following section.

\textsuperscript{10}The European Union had 93 cases as complainant, 79 as respondent, and 144 as third party against the United States 107, 121 and 116 respectively. The European Union and the United States are by far the most active users of the WTO dispute settlement mechanism. (http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, consulted on 11 October 2014.)
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Figure 4.2.: The evolution of judicialization in IO dispute settlement. Note: The broken line charts average judicialization on a 0-1 scale among 73 IOs. The darker shaded areas show, from the X-axis upwards, the number of IOs using the ICJ model, the number of IOs having a state-controlled dispute settlement other than the ICJ model, and the number of IOs having supranational dispute settlement. The white area represents the IOs without dispute settlement.
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4.3. A theory of third party dispute settlement

We argue that a causally important driver for the rise in judicialization is the rise of a new-style IO: the general purpose organization, which has become the main site for supranational dispute settlement. Supranational courts can help reduce ambiguity in the open-ended commitments that characterize general purpose IOs.

We draw on recent work that applies contract theory to international organization (Marks et al., 2014). General purpose IOs are conceived as highly incomplete contracts in which states make broad and diffuse commitments, for example, to “an ever closer union” (European Union; CEMAC), a “union of their peoples” (Andean), an “economic and political community” (SICA), or a “people-oriented Asean and ... Asean identity” (ASEAN). General purpose IOs do not rely on precise “international rules that define what is required, authorized, or proscribed (precision)” (Abbott and Snidal, 2000, p. 401).

Incomplete contracts are vehicles for dynamic institutional development, but their bane is ambiguity. The consequences of ambiguity can be checked if the parties share norms of appropriate behavior and have mutually convergent expectations (Hart and Moore, 2008; Ostrom, 2005). Marks and his co-authors (2014) find that IOs that have the most dynamic trajectories of organizational change are general purpose IOs that feed on a shared political past. Such IOs will tend to be composed of states in the same world region because shared normative understandings are most pronounced there.

International law and courts can play a central role in reducing ambiguity. They can convey information about community norms and values by explicating, translating, and anchoring values into law; they can produce information by setting standards; and they can enforce community norms by attaching consequences to non-compliance. In short, when an IO contract is incomplete, law and courts can play a vital role in sustaining credible commitments.
This line of argument has affinity with credible commitment theory (Fearon, 1997; Morrow, 2014; Simmons and Danner, 2010), but our argument differs in two respects. First, it emphasizes the role of community norms in sustaining commitment. Hence we draw on constructivism in filling out a rationalist-functionalist hypothesis. And second, our theory posits the causal role of generalized commitment to an incipient transnational political community irrespective of its particular policies.

We unpack our argument below. We first show that international judicialization is multi-faceted: it affects non-trade as well as trade areas. Next we argue that judicialization in various problem areas conceals a singular development: the empowerment of general purpose IOs, which have become the primary host for multi-issue supranational dispute settlement.

**Trade judicialization**

One argument for linking authoritative dispute settlement with trade is rooted in rationalist functionalism. The premise is that the inclusion of dispute settlement in in-
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ternational institutions is a considered choice by governments to address collaboration problems, which generate incentives for members to shirk or cheat (Brousseau et al., 2012; Keohane, 1982; Koremenos, 2005, 2007; Sandler, 1997; Stein, 1983; Zürn, 1992). So how can one ensure that members will abide by the agreement? Judicialized dispute settlement can expose free-riding and, if judgments are binding and enforceable, penalize non-compliance (Hafner-Burton et al., 2012; Hasenclever et al., 1997; Sandler, 2004). This line of argument has placed trade and the time inconsistency it involves at center stage.

A society-centered argument relates economic interdependence to dispute settlement. Traders want the same rules at either end of the exchange. Incipient in Ernst Haas’ work on European integration, this argument was employed by Caporaso(1998), Mattli (1999), Yarborough & Yarborough (1992), and especially Stone Sweet and Brunell (1998, p. 64), who argue that the chief function of third party dispute resolution is to sustain trade over time by “providing a measure of certainty to each contractant and means of reconsecrating the terms of the contract over time.”

The World Trade Organization epitomizes the dual logic. A quasi-supranational system replaced weak GATT dispute settlement in an effort to reduce uncertainty at the time that growing economic interdependence was multiplying the cost of legal uncertainty (Davis, 2012). The depth of judicialization in WTO dispute settlement is striking because it contrasts sharply with the IO’s adherence to consensus and member state control in political decision making.

The connection between trade and judicialization has received mixed empirical support. For example, Haftel (2013: 408) concludes that “strong trade links result in more independent regional bureaucracies and more legalized DSMs.” Jo and Namgung (2012) find a strong positive association between trade volume and strength of dispute settlement in trade agreements, but a more recent study (Allee and Elsig, 2014) finds no significant relationship.
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**Non-trade judicialization**

Recent research has diagnosed judicialized dispute resolution beyond trade. Judicialization has increased in the fields of human rights (Simmons, 2009), mass atrocities (Dutton, 2013; McLaughlin Mitchell and Powell, 2013; Simmons and Danner, 2010), territorial disputes (Allee and Huth, 2006), and the laws of war (Morrow, 2014).

Figure 4.4 maps judicialization by substantive area for the international organizations in our sample with some dispute settlement. To assess over which substantive areas an IO dispute settlement mechanism has authority, we build on Alter (2014) who distinguishes three categories in her book: trade (or economic), human rights, and general. We add a fourth, task-specific, for IOs with dispute settlement on a specialized topic outside trade and human rights. Alter provides detailed descriptions of regional and global courts, of which 19 courts figure in our sample, and we extend her categorization to the remaining 27 IOs with dispute settlement. The coding categories are not mutually exclusive which allows us to be sensitive to the multi-faceted portfolio of some dispute settlement bodies.

Judicialization has increased in three problem areas: human rights, general purpose, and trade (or economic) disputes. Alter finds that, by 2014, half of the new-style courts adjudicate non-economic issues. Our larger dataset tells a similar story: 11 of 17 supranational courts handle human rights, general purpose matters, or both. While thirteen handle trade, four explicitly do not, and in several, including Caricom, EAC, ECOWAS, SADC, SICA, and the OECS, jurisprudence is primarily non-trade. Judicialization in IOs with task-specific dispute settlement—18 in 2010—has been virtually unchanged since the 1970s. All 18 are state-controlled.

Explanations of non-trade judicialization tend to emphasize commitment problems, which arise when an actor’s current preference may not be optimal in the future. States may have incentives to make credible commitments for domestic reasons. For example, Simmons and Danner (2010) find that authoritarian regimes with recent violent pasts were first to sign up to the International Criminal Court because they were keen to tie
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Figure 4.4.: Judicialization by subject matter. Note: N=all IOs with some dispute settlement since 1970 by subject matter: trade & economics, human rights, multi-issue (general purpose), or specialist (task specific). These categories are not mutually exclusive. The thick line tracks average judicialization for IOs that have dispute settlement. Sources: Karen Alter (2014), primary treaties, protocols.
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their opponents’ hands. Allee and Huth (2006) claim that states turn to international adjudication for territorial disputes when it can provide domestic political cover. States may also seek to make credible commitments towards other states: Moravcsik (2000) conjectures that democratizing governments were more intent on a strong European Court of Human Rights to signal their democratic credentials to Western states.

A commitment argument gets some way in explaining judicialization outside trade, but why should states want to make commitments to human rights or good governance in the first place? Barbara Koremenos (2007, p. 197n) explains that human rights agreements can usually not be construed as credible commitment or enforcement problems: “A state that complies is not hurt by another state’s noncompliance to the same degree as in certain trade agreements, which are best characterized as having enforcement problems, and hence widespread compliance in human rights is not as urgent.” Beth Simmons (2012, p. 360) notes that “it is certainly hard to understand why rational self-interested states would find it in their interest to create binding international agreements to treat their own citizens with respect.” Some scholars have turned to constructivism to understand commitments that do not have an apparent self-interested rational basis. One line emphasizes emulation, but while it is plausible that states may look for models once they have decided on strong judicialized dispute settlement, it does not explain why they develop that preference in the first place.\[11\]

We propose that the core reason lies in the special needs (and possibilities) of general purpose IOs. Research on judicialization has been partitioned into studies of a particular problem—trade, investment, environment, human rights, territorial disputes. This generates detailed knowledge, but it also breaks up into discrete accounts what appears a singular development. By focusing on problems rather than institutions it has become difficult to see the forest for the trees.

\[11\] This argument restricts the role of emulation to the design decisions that governments face once they have chosen a dispute settlement regime. If states chose a supranational design, why not look at the ECJ as template?
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**General purpose IOs**

The concurrent rise of judicialization across a range of problem areas has been spurred by the growth and empowerment of general purpose IOs.

IOs can be conceptualized as general purpose (or Type 1) jurisdictions if they are designed to bundle an indefinite range of problems for a relatively given transnational community of states (Hooghe and Marks, 2003, 2009b; Lenz et al., 2014). They are broad in policy scope. Such IOs may deal with security alongside trade, or they may engage not just economic development, but a variety of other problems such as culture, environment, transport, human rights, disease, or migration. The benefits of scale are multifarious and changeable.

General purpose IOs tend to have incomplete contracts, which provides greater institutional flexibility. But incomplete contracts involve ambiguities which are moderated when states have common understandings. Shared community—common political-historical ties—facilitates their creation and stimulates adaptation.

There is kinship between our argument and the concept of political community developed by Karl Deutsch (1953, p. 75, 192-3). Deutsch conceives community as sustained communication across economic, social, cultural, and political fields. The coherence of a political community is reinforced where these fields overlap, and reduced where they cross-cut. Government is facilitated where patterns of communication are clustered, and is more problematic where they do not. In contrast to Deutsch, we place greater emphasis on the political and legal institutions that could nurture ties that bind. Do the states have a common political regime? Do they use the same legal system? Do they share a political history in which the founding member states were constituent parts of an overarching federation or colonial empire prior to the establishment of the regional organization?

This line of argument has affinity with Kathy Powers and Gary Goertz’ “multifunctional, multipurpose regional economic institutions”—a “distinctive type of institution
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(Powers and Goertz, 2011, p. 2410 and 2388). They use the term regional economic institution (REI) because these IOs often started as preferential trade agreements or customs unions. However, several REIs have outgrown their initial ambition and “create institutions within a limited geographical area, typically contiguous states, to deal with a variety of economic, social, and political problems” (Powers and Goertz, 2011; Goertz and Powers, 2014; Haftel, 2013).

General purpose IOs increase demand for supranational dispute settlement in two ways. First, courts can remind actors of the values and norms that undergird the common enterprise; and they can anchor these principles in mind, precedence, and law, thereby raising the cost for states of reneging on promises. General purpose IOs differ from task specific IOs in that states sign up to signal their commitment to a shared normative future—not merely to a particular instrumental benefit. The preamble of the Andean Community’s Cartagena agreement (1974) subordinates the instrumental to the normative: “RESOLVED to strengthen the union of their peoples and to lay the foundations for advancing toward the formation of an Andean subregional community”; ‘AWARE that integration constitutes a historical, political, economic, social, and cultural mandate for their countries”; ‘DETERMINED to attain such goals by creating an integration and cooperation system that will lead to the balanced, harmonious, and shared economic development of their countries” (1974 Cartagena Agreement).

General purpose IOs often embody tall orders and lofty principles. It is tempting for states to treat them as “cheap talk” – especially when the promised goal lies far into the future. Authoritative courts can, and do, use their judgments to remind parties of the goals they signed up to. The critical role of the European Court of Justice in clarifying and defending the European Community’s supranational objectives against creeping intergovernmentalism is well documented (Weiler, 1981; Burley-Slaughter and Mattli, 1993; Alter, 2003). The ECOWAS court has repeatedly used its rulings to clarify states’ commitments (Alter, Helfer, McAllister 2013). In its first human rights case,
which puts Nigeria—its biggest member state—on the block, the Court wrote “. . . by the provision of Article 4 par (g) of the Treaty of the Community, the Member states . . . are enjoined to adhere to the principles including ‘the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights. The combined effect of the provisions indicates that any violation of human rights in any Member State may be brought by the individual or corporate bodies before this Court . . . wherein the Court is empowered to apply the general principles of the law recognized by civilized nations.”12 Explicating the principles underlying IO cooperation may take precedence over the policy at stake. Similar to the ECJ which established the principle of direct effect and preliminary ruling in the Costa vs. ENEL case but dismissed Mr. Costa’s challenge against the government-owned electricity producer, so the ECOWAS Court dismissed the complaint of a Nigerian citizen, Mr. Ugokwe, against his government but took the opportunity to reiterate in no uncertain terms ECOWAS’s commitment to nonstate access and direct effect. For lawyers and judges, legal doctrine and precedence are often what makes a decision significant; politicians are more concerned about the material outcome of the case (2003, p. 186).

Of course, member states could try to rein in these courts or choose to ignore their judgments, but few have done so. The demise of the SADC Tribunal after its ruling against Zimbabwe is, thus far, the exception that proves the rule.

Second, courts in general purpose IOs play the familiar role of resolving enforcement and commitment problems (Koremenos and Betz, 2013). In IOs that implement incomplete contracts, these problems tend to be multiple and varied, which may induce states to consider broadening and firming up a dispute settlement’s jurisdiction.

Solving enforcement and commitment problems is standard in the IPE literature for why trade requires strong third party dispute settlement, and in the developed West

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Trade disputes are likely to be among the toughest nuts to crack. But outside the West, uncertainty stems more often from government failure in delivering domestic peace or the rule of law, observing human rights, managing migration flows, securing access to water, food, or safe transit. Achieving scale in solving these issues is often more urgent than enforcing scale in trading. In a comparative study of African trade agreements, Gathii (2011, p. 69) emphasizes that “African RTAs are trade-plus regimes that reflect a broad set of goals . . . African RTAs serve as institutions of basin management demonstrating the entwined relationships among trade, environment, and security aspects of international river basins. In short, natural resource management and water cooperation, on the one hand, are interwoven with trade and security, on the other.”

International courts can more effectively signal assurance to two strategic audiences: domestic constituencies seeking governance reform and international investors or donors seeking returns to investment. International courts provide a stamp of legitimacy on domestic adjustments that are a prerequisite for trade cooperation. ECOWAS is illustrative. Created in 1975 to achieve a common market, ECOWAS’ economic program was quickly frustrated by internal conflict leading the group to focus on peace, security, and human rights in the region. In 1996, the treaty was revised accordingly (Ngowu, 2007, p. 348). ECOWAS has the world’s most active transnational intervention force (ECOMOC), and in 2001, a supranational court with competence over social rights and human rights became operational. All of its 51 binding rulings have involved human rights or good governance issues (Alter 2014, p. 75, 107). Trade has been moved onto the backburner.

Judicial delegation can increase predictability by a) explicating commitments; b) exposing gaps between political commitments and compliance, and c) tying the hands of political successors and domestic opponents. As Downs et al. (1996) argue, “the deeper the agreement, the greater the punishments required to support it.”

\[\text{For an extension of the argument, see Allee and Elsig (2014).}\]
important when IO cooperation produces domestic contestation. Channeling domestic complaints through courts can help buttress political commitments.

This line of argument is particularly relevant for IOs with a highly incomplete contract where the chance of an issue touching a domestic nerve is both greater and less calculable. General purpose IOs adapt their authority structure and the range of policies more than do task-specific IOs, and this compounds uncertainty. Between 1975 and 2010, average political delegation has nearly doubled from 0.11 to 0.19 among general purpose IOs, while it has nudged up only slightly among other IOs (from 0.11 to 0.14). The range of policies, measured on a 1-12 scale, has increased from an average of 9.4 to 15.1 against an increase from 2.8 to 3.2 for task specific IOs. As IOs acquire a broader mandate or deeper political delegation, we expect them to seek more muscular dispute settlement. Of the 17 courts that we identify in 2010 only two were created when the IO was founded. All others necessitated a new commitment by the member states: a separate legal protocol or treaty to set up the supranational court or deepen an existing one, a separate political agreement to implement a prior treaty promise, or both. The two outliers are the European Court of Justice (1952) and the International Criminal Court (2002).

4.4. Hypotheses

Our theory predicts that general purpose IOs are the main sites for supranational dispute settlement. We begin by setting out our main hypotheses and alternative explanations before outlining controls.

In operationalizing general purpose governance we focus on two key characteristics: 1) the incompleteness of the contract framing the IO, and 2) the extent to which founding

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14N=51 for IOs in existence since 1975. We use data collected by Marks et al. (forthcoming; also Lenz et al. 2014) on the extent of delegation— the conditional grant of authority by member states to an independent nonstate political body.
members of the IO share political community. Our operationalization is deliberately conservative. While we expect general purpose IOs to have these two features, we do not expect every IO with one or both features to be general purpose.\textsuperscript{15}

Our main analytical focus is on the implications not just of an IO contract, but of how the potential benefits of cooperation increase over time in relation to that contract. We need, therefore, to add a time dimension to our contract measure. \textit{Contractual dynamic} is therefore a raw measure of the incompleteness of the IO contract, ranging from 1 to 3, multiplied by the age of the regional organization (1 for the year of founding, 2 for the second year, 3 for the third, and so on).\textsuperscript{16} A contract is coded unity if it is relatively complete, that is if it commits member states to a fixed objective under clearly specified conditions; two if it is intermediate, that is, it envisages cooperation among a given set of actors on policy issues that are only partly specified; and three if it is highly incomplete, if it commits states to a vague purpose—e.g. a “community of peoples” or “ever closer union”—to be achieved by unspecified actors through an open-ended process.\textsuperscript{17}

Political community is a factor that captures the cultural, geographical, political, and institutional similarity of the member states that sign the IO’s contract or which are member states in 1950 if the IO was established earlier.\textsuperscript{18} We use indicators that sum-

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{15} An alternative approach is to categorize IOs in types: general purpose vs. task-specific IOs contingent on policy scope and objectives (Lenz et al., 2014), or the classification developed by Goertz and Powers who have identified 34 regional economic institutions (2011, p. 2401). General purpose vs. task specific can be proxied by the range of policies that an IO is involved in over time, which is a variable ranging between unity and 25.
\item\textsuperscript{16} We start the time clock at year 1 in 1945. Our results are not affected by this decision.
\item\textsuperscript{17} The categorization implements a lexicon of key words to code the preamble and paragraphs stating intent of the foundational treaties, and was conceptualized by Marks, Lenz, Ceka, Burgoon (2014) for 33 regional organizations. We extend their coding scheme to all 73 international organizations.
\item\textsuperscript{18} \textit{Diversity in continental location} is Rae’s index of fractionalization \(1 - \sum_{i=1}^{m} s_i^2\) where \(s_i\) is the share of a region in an IO’s membership at creation, and \(m\) refers to the number of regions relevant for this IO. The classification of regions follows Shanks et al. (1996). \textit{Diversity of religion} is the Rae index, where \(s_i\) is the share of a religion in an IO’s membership and \(m\) is the number of religions relevant for this IO. Source: CIA Factbook (n.d). \textit{Diversity of civilization} is the Rae index, where \(s_i\) is the share of a civilization in an IO’s membership, and \(m\) is the number of civilizations relevant for this IO. Sources are Huntington (1996) and Russett, Oneal, and Cox (2000). \textit{Diversity in political regime}
\end{itemize}
\end{footnotesize}
marize basic features of a country’s geographical location, its culture, religion, political and legal institutions. The five indicators hang closely together with a Cronbach’s alpha of 0.90. We reverse the factor scores so that higher values indicate greater commonality. Our argument implies the following:

**H1:** The more incomplete the contract on which an IO is based, the more likely it will develop supranational dispute settlement.

**H2:** The more cohesive the political community among the original founding states, the more likely that this IO will develop supranational dispute settlement.

Problem structure has been hypothesized to motivate dispute settlement. According to this argument, IOs that specialize in solving commitment and enforcement problems should have the most pressing functional need for strong dispute settlement. Hence, IOs concerned with a collaboration problem such as trade, where shirking is likely, require stronger legal dispute settlement than IOs coordinating standards. To the extent that function determines form, trade regimes should be most likely to have a supranational court.

Like trade organizations, collective security systems involve collaboration problems with strong prisoner dilemma features (Hasenclever et al., 1997; Snidal, 1985; Stein, 1983), but that is countervailed by the fact that security is existential to state survival. So while the first characteristic could induce states to find merit in a strong dispute settlement mechanism, the second leads governments to resist ceding control. Security may expose the limits of legal dispute settlement as a means for resolving collaboration problems. Most theorists anticipate that national sovereignty trumps the need to solve moral hazard (Kono, 2007; Snidal, 1985; Stein, 1983).
4. The Rise of Supranational Courts

It has proven difficult to operationalize the notion of the intensity of the need for coordination, collaboration or enforcement in the face of uncertainty. With the exception of Barbara Koremenos’ efforts for international agreements (2005; 2007), we are aware of no large- or medium-N data. We propose two operationalizations. Our first operationalization uses an IO classification by policy mandate developed by Charles Boehmer, Erik Gartzke, and Timothy Nordstrom (Boehmer et al., 2004; Boehmer and Nordstrom, 2008). They assess whether international organizations have a mandate, which they define to “reflect[s] the type of role framers of the IGO anticipated when the organization was founded, as formalized in the founding documents of the organization” (Boehmer et al., 2004, p. 19). The classification distinguishes between IOs with a Security Mandate, an Economic Mandate, or a Multi-issue Mandate.\(^{19}\) These categories are non-exclusive, and the definitions are broad. A more restrictive operationalization identifies for each IO the predominant policy field from a list of 25 policies. We focus on three where expectations are most strongly grounded: trade and customs (Trade IO); security, military and diplomatic cooperation (Security IO); human rights (Human Rights IO).\(^{20}\)

- **H3:** Trade IOs are most likely to have supranational dispute settlement.
- **H4:** Security IOs have weak judicialized dispute settlement.

\(^{19}\)We are grateful to Charles Boehmer for sharing a list of IGOs by mandate with us. The economic category is broader than trade, and includes e.g. financial institutions like the World bank, the Bank of International Settlements, and the IMF, Iwhale which monitors whaling, and the United Nations. Every multi-issue IO is also categorized as an economic IO. The security category includes both IOs that specialize in security, such as NATO and the OSCE, and multi-issue IOs with a security function, including the Organization of American States or the Commonwealth of Independent States.

\(^{20}\)IOs that support a free trade agreement, a customs union, economic union, or an economic and monetary union are categorized as trade organizations. IOs whose core is a military alliance, a security community, a mutual non-aggression pact, or political-diplomatic collaboration are categorized as security organizations. IOs whose primary goal is to promote human rights, including defense against mass atrocities, labor rights, and minority rights, are categorized as human rights IOs. The policy portfolio of each IO was assessed by two independent coders with a list of 25 policies adapted from a classification scheme initially developed Lindberg and Scheingold (1970), and updated by Philippe Schmitter (1996). Coders were asked to code the policy responsibility of each IO in two ways: a) in what policies does the IO have substantial involvement, and b) of these policies, which policy constitutes the core activity of the IO? The Krippendorf’s alpha among coders was 0.70, which indicates reasonably high intercoder reliability.
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We also test the neofunctionalist hypothesis that cross-border economic exchange demands regulation by a centralized authority. We employ a measure that estimates the importance of intra-IO trade relative to non-IO trade. **Trade interdependence** $s_i$ is the proportion of an IO $i$’s intra-IO trade $t_{ii}$ (exports plus imports) of the IO members’ total trade $t_i$, so that $s_i = \frac{t_{ii}}{t_i}$. Intra-IO trade has the virtue of being responsive to dynamics of scale (intra-IO trade shares tend to increase as an IO’s scale grows) and intensity (for a given scale, intra-IO trade share increases as trade among members intensifies). The link is hypothesized for international organizations designed to regulate trade transactions, i.e. regional trade organizations and one global trade organization (World Trade Organization). We also run the models with two other commonly used measures: the intra-trade intensity measure and the symmetric trade introversion index (Iapadre and Plummer, 2011).

**H5: The more extensive trade interdependence among IO members, the greater the pressure for supranational dispute settlement.**

The models exert three controls. First, liberals argue that democracy facilitates supranationalism on the grounds that, since Kant and the Enlightenment, international norms have been central to the liberal political project. Democracies make more credible commitments because checks on executive power and more transparent decision making make cheating more costly (Kono, 2007; Jo and Namgung, 2012; Mansfield and Milner, 2012; McCall Smith, 2000; Moravesik, 2000; Simmons and Danner, 2010). Davis (2012) argues that democratic checks and balances bias the international policy process towards litigation and away from informal settlement. However, one study of trade agreements finds that democracies may prefer state-controlled over supranational dispute settlement because it enables them to better protect their import-competing industries (Jo and Namgung, 2012). Democracy is calculated as the mean of the polity IV scores of all

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21The index ranges between 0 and 1. Bilateral trade data and data for some regional trade organizations are regularly published by international organizations; the most comprehensive series (since 1970) is downloadable at http://www.cris.unu.edu/riks/web/data (see Iapadre and Plummer 2011, p. 102-105 for a discussion).
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members of each international organization with high values indicating high levels of democracy.

**H6a:** The higher the level of democracy among IO members, the stronger the pressure for judicialized dispute settlement.

**H6b:** There is a ceiling effect: democracies prefer state-controlled over supranational dispute settlement.

Second, realists claim that **power asymmetry** depresses strong dispute settlement. Great powers oppose binding formal rules because third-party dispute settlement levels the playing field (Stone, 2010) and strong dispute settlement bodies can set precedents that constrain state authority over time (Kono, 2007; Hawkins and Jacoby, 2008). But some scholars contend that hegemonic powers may value binding rules if they reflect their interests. Martin (1992) observes that the rule of law is sometimes the cheapest way for hegemons to get others to comply. Tallberg and McCall Smith (2012) argue that the type of legal dispute settlement matters: when an independent secretariat can take member states to court, a level playing field is likely, but dispute settlement that limits access to states is vulnerable to power politics. The upshot is that, if big powers accept judicialized dispute settlement, they are likely to push for a state-controlled design.

**Power asymmetry** is measured as a concentration ratio, which estimates the market share of the material capabilities of the largest members. We adopt a formula that adjusts for the size of the market (Mansfield, 1994; Mansfield and Pevehouse, 2013; Haftel, 2014). Power asymmetry, which ranges between zero and unity, is the proportion of the material capabilities of the largest member state to the sum of material capabilities of all member states adjusted for the number of member states in an IO. Material capabilities is the Composite Index of National Material Capabilities (CINC) version 4.0 which summarizes military expenditure, military personnel, energy consumption, iron and steel production, urban population, and total population (Singer et al., 1972; Singer, 1987).
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H7a: The greater the predominance of one member state, the lower the likelihood of strong dispute settlement.

H7b: Power asymmetry is compatible with state-controlled dispute settlement.

Finally, constructivists emphasize the potential for institutional diffusion (Börzel and Risse, 2012; Elkins and Simmons, 2005; Lenz, 2012; Simmons et al., 2006). We explore the impact of the UN International Court of Justice script on international dispute settlement. The ICJ was created in 1945 in the expectation that it would become the premier international dispute body. International organizations that are formal members of the UN family tend to emulate the United Nations in a host of rules, including on accession, financial contribution formula, sanctions for financial non-compliance, majority voting, hiring practices, and institutional structure. It is only a short step to expect that they should also emulate the UN’s dispute settlement.\textsuperscript{22} UN family adopts a value of unity for an IO for the years that it is a recognized Specialized Agency of the United Nations.\textsuperscript{23}

H8: Formal members of the UN family are more likely to emulate the ICJ state-controlled model.

Method

As we have explained, there are sound theoretical reasons to expect the three types of dispute settlement to be driven by different causal logics. We use multinomial logit to set our theory against the data. This method is especially good at assessing the effect of individual variables on categorical outcomes.\textsuperscript{24}

\textsuperscript{22}A second script with plausible influence is the EU’s European Court of Justice. From the early 1990s the European Union has invested heavily in regional organizations through the EU’s regional indicative programs which channel development aid to regional organizations. Transfer of EU institutions is rarely an explicit goal, but a means to promote trade, development, security, or good governance (Van Hüllen and Börzel, 2013; De Lombaerde and Schulz, 2009; Pietrangeli, 2009; Télo, 2007). There is some anecdotal evidence of direct coaching through transnational legal associations or, occasionally, from the ECJ itself, but there is to our knowledge no data source with reliable comparative assessments of diffusion of the ECJ script.


\textsuperscript{24}Theory is the primary motivation for using multinomial logit, but statistical properties reinforce our choice for multinomial over ordinal logit. Omodel and Brant tests show that the proportional odds
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We use decennial observations, which is appropriate given that reforms of dispute settlement are rare events that are the product of multi-annual negotiations. This strategy is recommended when the covariates are sluggish and the number of observations small (Clark and Linzer, 2014). Our results are robust across several methods, including the inclusion of year dummies and the use of decennial observations (results obtainable from the authors) (Beck and Katz, 1997; Beck et al., 1998; Carter and Signorino, 2010).

4.5. Explaining types of dispute settlement

We theorize that general purpose IOs have become the most auspicious sites for supranational dispute settlement. General purpose IOs tend to have highly incomplete contracts which provide for institutional adaptation. Furthermore, general purpose IOs that consist of states with relatively similar political, cultural, and legal values and norms are most suited to furnish the shared mental frames for incomplete contracting. The main alternative explanation in the literature is that trade is the strongest incentive for strong dispute settlement.

The first three models in table 4.3 compare these claims under controls. Model 1 considers how the choice of supranational over state-controlled dispute settlement is affected by baseline measures of general purpose IOs. Contractual dynamic incorporates the effects of incompleteness of an IO contract. Political community captures shared political norms among the founding members. We find strong support for both variables, and these results are robust to alternative operationalizations.26

\footnote{Due to data limitations for trade our time series runs 1970-2010.}

\footnote{We run the following alternatives: (a) substitute Contractual dynamic with Policy dynamic, which measures policy scope over time; (b) substitute Contractual dynamic with Political delegation, which measures IO authority over time; (c) substitute Political community with Historical Ties; (d) replace Contractual dynamic and Political community with dichotomous variables for general purpose IOs:}

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Model 2 reveals partial support for the trade argument. IOs with an economic mandate are more likely to have supranational than state-controlled dispute settlement, but Trade interdependence is not a significant predictor. \(^{27}\) Interestingly, IOs with a security mandate are neither more nor less likely to have one or the other form of dispute settlement. When we re-run the analysis with an operationalization that categorizes IOs as trade, security, or human rights IO (or none of the above), we find little support for either trade IO or trade interdependence (appendix D table D.1). We conclude that problem structure is not robust in explaining the choice between supranational and state-controlled dispute settlement.

Model 3 evaluates the general purpose and problem structure/trade argument under controls. This is a rigorous test for the conjecture that the rise of general purpose IOs lies behind a rise in trade-related and non-trade related judicialization. Still, we find impressive empirical support. Contract and political community, which are clearly exogenous to dispute settlement, are robustly significant controlling for problem structure. \(^{28}\)

Models 3, 4, and 5 compare three sets of institutional choices: supranational vs. state-controlled, supranational vs. weak, and state-controlled vs. weak dispute settlement. Model 6 compares the supranational option against the alternatives. Figure 4.5 visualizes the substantive effects of change in a key variable on the probability of each type of dispute settlement, while holding all other variables at their mean. For Contract, Political Community, Trade interdependence, Power asymmetry, and Democracy, the left bar shows the effect at one standard deviation below the mean, and the right the effect at one standard deviation above the mean. For the dichotomous variables, Economic Mandate and UN family, the left bar shows the effect when the condition is absent and

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\(^{27}\)The result for trade interdependence is consistent under alternative specifications, and is also not due to multi-collinearity with the IO mandate variables.

\(^{28}\)To assess whether our results are driven by the fact that many general purpose IOs are regional we include a regional dummy. Regional is positive and modestly significant, but Contract and Political Community are robust in Model 3 and Contract is robust in the rigorous test conducted in Model 6.
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Figure 4.5.: Predictors and the probabilities of supranational, state-controlled, or weak dispute settlement. Note: Each column indicates the probability of weak, state-controlled and supranational dispute settlement at the given value of the independent variable of interest while holding all other variables at their means. The calculations are based on table 4.3, model 3.

There is strong and robust support for the general purpose argument in this chapter. A common political-institutional foundation (political community) and an incomplete contract are key causal ingredients for supranational dispute settlement. They allow one to distinguish the causal underpinnings of supranational from state-controlled dispute settlement (Model 3), from weak dispute settlement (Model 4), or both of these combined (Model 6). An IO with Political community that is one standard deviation below the mean has a probability of 3 percent of having a supranational court, while one that is one standard deviation above the mean has a 14 percent probability. Similarly, an IO Contract that is one standard deviation below the mean has a probability of 3 percent of having a supranational court, but one that is one standard deviation above the mean increases that probability to 17 percent. These features do not produce supranational
Table 4.3.: Explaining dispute settlement types. Note: *** p<0.01, ** p<0.05, * p<0.1; unstandardized coefficients with cluster-corrected standard errors (by IO). Time for 1970-2010. The reference category for the first three models is the state-controlled type, for the next two models it is the weak type; it is state-controlled plus weak for the last model.
dispute settlement overnight, but tend to provide auspicious conditions under which, over time, states may discover the benefits of supranational dispute settlement. Unlike state-controlled dispute settlement, supranational courts are rarely part of the initial IO setup.

The effect of problem structure is less pronounced. IOs with an economic mandate are more likely to set up supranational courts (Models 3 and 6), but the effect is not linear. As figure 4.5 indicates, IOs with an economic mandate are more likely to have a supranational court (13 percent probability against 5 percent for IOs without economic mandate) and more likely to have no dispute settlement at all (51 against 41 percent); they are less likely to have state-controlled dispute settlement (35 against 55 percent). Trade interdependence, on the other hand, differentiates IOs with weak dispute settlement from others (Models 4 and 5), but does not tell one whether an IO will choose supranational or state-controlled DS. Trade interdependence seems to encourage judicialized dispute settlement but the effect tapers off for supranational courts.

Our robustness analysis (appendix D table D.1) makes plain that interpretations about problem structure are sensitive to decisions about operationalization. While we find some effect on dispute settlement for the broad category of IOs with an economic mandate, we find no effect for the more restrictive category of trade IOs (appendix D, table D.1). Conversely, while we can detect no effect of the broad category of IOs with a security mandate, a definition that singles out IOs specializing in security produces consistently strong results: they appear the bedrock of weak judicialized dispute settlement. We also find suggestive evidence (appendix D, table D.1) that IOs specializing in human rights are considerably more likely to have strong judicialized dispute settlement but not necessarily a supranational court.29 Clearly, these findings call for improved operationalization.

Among the control variables, only UN family is consistent and powerful. The UN

29 The number of human rights IOs is small: the Organization of American States, the International Labour Organization, the International Criminal Court, the Council of Europe, and the African Union. The International Criminal Court reports annually to the United Nations assembly, but it is not part of the United Nations system.
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family constitutes the core of state-controlled dispute settlement: the probability of an IO having state-controlled dispute settlement shoots up from 31 to 84 percent if the IO is an official special agency of the United Nations. No IO in the UN family has a supranational court.\textsuperscript{30} Power asymmetry, measured here as a concentration index, is non-linear: it exerts a brake on supranational dispute settlement (Model 6), but not on state-controlled dispute settlement. The chance that an IO with a concentration index one standard deviation above the mean has a supranational court halves compared to an IO with a concentration index one standard deviation below the mean (from 16 to 8 percent); the probability of having a state-controlled dispute settlement only declines marginally (from 42 to 41 percent). Democracy separates IO with weak dispute settlement from those with state-controlled dispute settlement. Democracy neither increases nor decreases the likelihood of having a supranational court. This appears consistent with Jo and Namgung’s ceiling effect.\textsuperscript{31}

Supranational dispute settlement is concentrated in a small number of general purpose IOs that combine a highly incomplete contract with shared community. Only four of 17 IOs with supranational dispute settlement in 2010 are arguably not general purpose: two specialize in human rights (Council of Europe and International Criminal Court), and two are broad economic organizations (European Economic Area and the Organization of Arab petrol-exporting countries).\textsuperscript{32} State-controlled dispute settlement dominates in the UN and its specialized agencies, but it can also take root beyond, for example in IOs where the members are mostly democratic or share extensive trade links. The group of IOs with weak dispute settlement falls in two subgroups: one of non-economic task-specific organizations which may have no functional need for dispute settlement, and one

\textsuperscript{30}The International Criminal Court reports annually to the United Nations assembly, but it is not part of the United Nations system.

\textsuperscript{31}Using subsets of available data (jackknifing) or drawing randomly with replacement from a set of data points (bootstrapping) produces estimates of the precision of coefficients. Excluding the European Union, the Council of Europe, the World Trade Organization, or NAFTA does not alter the results.

\textsuperscript{32}Alter (2014, p. 97-98) wonders whether the OAPEC tribunal is still functional. We include it because we found evidence of a sitting court but not of recent cases.
of have-nots: they lack community, democracy, balanced power, UN family membership, and trade links. For those anticipating the emergence of a transnational legal order there is a long journey ahead.

4.6. Conclusion

This paper examines the remarkable diversity of authoritative international dispute settlement in international organizations over the past six decades. Its contribution is four-fold.

First, this chapter innovates by using a dataset that includes non-regional as well as regional international organizations and by tracking IOs over time. This allows us to investigate temporal as well as cross-sectional variation across a larger and more diverse sample of IOs. Second, we explore the incidence of three distinct institutional forms of dispute settlement. Supranational dispute settlement starts from the principle that international law binds governments and non-state actors. Direct links between courts and domestic societies attenuate government control when non-state actors initiate litigation, when national courts ask for a preliminary ruling, or when court judgments have direct effect. State-controlled dispute settlement is based on the principle that states are subject to international law. While it allows states automatic third-party access and rulings may be binding, state-controlled dispute settlement always leaves a door ajar for governments to escape the consequences of their commitments. Finally, a number of IOs steer clear from legalized forms of dispute settlement. We show that over the past two decades the balance among these three has shifted: the number and proportion of IOs with judicialized dispute settlement has increased appreciably, and within that population, we diagnose a marked shift from state-controlled to supranational dispute settlement.

Third, this chapter evaluates whether the principal hypotheses put forward in the
literature hold up against these data. We confirm the negative effect of power asymmetry and the positive effects of trade links and UN family. There are surprises. Democracy is positively associated with judicialized dispute settlement, but it does not encourage the strongest form: supranational courts. And perhaps most surprising of all, problem structure—the extent to which a policy area poses collaboration issues characterized by moral hazard or time inconsistency—is not robust. Trade IOs or IOs with an economic mandate are not consistently likely to have stronger judicialized dispute settlement. And IOs with a security mandate are not consistently distinctive in judicialization once we control for confounding factors.

Finally, we propose a novel argument for the growth of supranational dispute settlement, which can be explained by the rise of the general purpose IO. General purpose IOs with highly incomplete contracts and shared political community are the most auspicious sites for supranational courts. Supranational courts, in turn, can play a vital role in sustaining credible commitments. They can explicate commitments, expose shirking, punish non-compliance, and hence reduce ambiguity in a process of continuous institutional adaptation. This virtuous circle is, we argue, more likely if the IO can draw on shared political community, and can experiment over time. Supranational courts are usually not part of the initial bargain; they are institutional adaptations which states may (or may not) acquire over time.
5. Exploring the Causes for Change in Regional Third Party Dispute Settlement

5.1. Introduction

The past few decades have seen a drastic increase in the strength of regional courts. Various scholars have noted the increased prominence of international dispute settlement and the proliferation of the number of courts with direct effect and access for non-state actors (Allee and Huth, 2006; Alter, 2011, 2012; Keohane et al., 2000). This development can be captured by the concept of judicialization: "the increase in enforceability through adjudication and the possible authorization of sanctions by an independent third party" (De Bièvre and Poletti, 2015). Two dynamics could be involved in the rise of judicialization. On the one hand, the rise in judicialization could be the result of the creation of new regional international organizations (RIOs) with strong dispute settlement mechanisms. On the other hand, it may also be that existing RIOs undergo reforms in their dispute settlement mechanism that render them stronger. For regional international organizations, it is the latter dynamic that prevails. In other words, most regional organizations do not start out with a strong dispute settlement mechanism but member states only agree to set up a court or make an existing dispute settlement mechanism more powerful.

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1This version has been accepted for publication in a special issue on judicialization in World Trade Review. Earlier versions of this chapter were presented at the 55th Annual Convention of the International Studies Association in Toronto and at a stimulating workshop for the special issue in Antwerp. I thank participants at these meetings, the editors of the special issue, and Liesbet Hooghe, Gary Marks, Trineke Palm, Benjamin Neudorfer and an anonymous reviewer for comments.
after the organization has been operational for some time. Understanding the causes for change, therefore, is essential for explaining the rise of judicialization.

I define institutional change in dispute settlement as a reform that renders the dispute settlement mechanism weaker or stronger. Two plausible drivers of institutional change in RIO dispute settlement are changes in the balance of power or the level of trade interdependence between member states. An increase in trade interdependence may induce change by creating a demand for regulation of these trade flows. Societal actors will cooperate with the international organization in order to expand the organization’s mandate, leading to more delegation, including an increase in dispute settlement to enforce decision-making on trade policy. Others have emphasized the role of power. RIOs are often assumed to be created in order to reflect the balance of power between their member states at creation. When there is a change in the balance of power between member states, institutions may no longer reflect member state preferences, necessitating reform in order to bring them back in line.

In this chapter I will propose a third variable that may help understand dispute settlement reform: the nature of organization’s founding contract. The treaties on which regional trade organizations are based vary considerably in their degree of completeness: some have detailed specifications of the objectives the organization hopes to achieve, whereas others are unclear about the precise goals the member states want to accomplish. RIOs based on more incomplete contracts are more flexible. Hence, they allow member states to adapt to changing circumstances and to discover their shared interests. This flexibility, while oft beneficial to member states, also creates uncertainty about the nature of the cooperation. Therefore, states are more likely to find they need strong institutions to share information and enforce decisions. Since the specific goals of the organization in the context of an incomplete contract only become clear over time, these institutions will only be created after the organization has been set up. Thus, incomplete contracts are expected to be associated with higher levels of judicialization and more change over
5. Exploring Change in Regional Dispute Settlement

time.

The chapter proceeds as follows. In the next section I will explore the explanations for institutional change that have been put forward in the literature in more detail. The following section provides the case selection and introduces the measure for dispute settlement that I use in this chapter. In this section, I also outline some trends in judicialization. In the next section, I explore the causes for change in dispute settlement across 25 regional international organizations with a strong trade focus. The descriptives reveal that the nature of the underlying contract is a strong predictor for dispute settlement change, whereas the other predictors have less purchase on institutional reform. Nevertheless, these variables fail to explain all cases. In order to find an alternative explanation for dispute settlement reform, this chapter includes a case study of change in the Latin American Free Trade Association (LAFTA, the predecessor of the Latin American Integration Association). The case study reveals that in the case of ALADI, the influence of other organizations was the main driver behind dispute settlement reform. The final section serves as a conclusion.

5.2. Theories of reform

The literature has put forward several possible causes of institutional change. In this section I will highlight the three most important determinants of institutional change. These include the balance of power and the level of trade interdependence between member states. In addition, I will draw attention to a third variable: the nature of an organization’s founding contract. Whereas the effects of power and trade have received considerable attention amongst scholars of institutional design and institutional change, the part an organization’s founding contract plays in inducing institutional change has featured less prominently in the literature.
Balance of power

Power is often considered an important determinant of institutional design, and a shift in power relations may lead to a change in international institutions. Institutions are often assumed to reflect the power relations between member states at their creation (Keohane, 1984). This line of thinking is particularly strong in the rational choice framework. There, the central assumption is that actors have a set of rank-ordered preferences and try to maximize their utility accordingly. Hence, actors will only agree to the creation of an institution if the institution allows them to further their interests. In the international realm, this means that states will only create an international organization if they anticipate benefiting from this organization (Keohane, 1982). As Koremenos, Lipson and Snidal explain: “states use diplomacy and conferences to select institutional features to further their individual and collective goals, both by creating new institutions and modifying existing ones” (Koremenos et al., 2001b). Institutions, then, will only arise when the perceived benefits of the institution exceed the transaction costs involved in setting it up (Hall and Taylor, 1996). A shift in power relations may induce change when it causes the institution to no longer match the preferences of member states. States will seek to address this imbalance between power relations and institutional design by changing the institution, or even by abandoning the organization altogether and starting over in a new venue (Helfer, 2006). Hence, a shift in state preferences can induce institutional change.

Not only an incongruity between the balance of power between member states and institutional design plays a role for change in third party dispute settlement, but the specific power balance between member states also is significant. More precisely, in organizations where there is a hegemon, third party dispute settlement is less likely to increase in strength than in those RIOs that enjoy egalitarian power relations. Hegemons prefer not to be bound by strong courts, since they can also get their way without a body enforcing the organization’s decision-making. A strong dispute settlement mech-
5. Exploring Change in Regional Dispute Settlement

anism levels the playing field, something which is mainly appealing for those countries which otherwise are at a disadvantage (Stone, 2010). Empirical evidence supports this argument (Kono, 2007; Koremenos, 2007).

**Trade interdependence**

Increased trade interdependence is regularly mentioned as an explanation for institutional change. Trade interdependence features prominently in neofunctionalist theories of international organizations. These theories date back to the 1960s when scholars became interested in comparing the level of integration of different regional organizations (Nye, 1968). Neofunctionalism not only considers the role of states in international cooperation, but also the role of other societal actors, including interest groups, political parties and business (Haas, 1961). In neofunctionalism, integration is driven by societal actors who cooperate with the RIO in order to advance their interests. Hence, the causal mechanism that links trade interdependence to institutional change in neofunctionalism pays attention to both the demand and supply side of integration.

On the demand side, societal actors lobby for more delegation to supranational institutions in order to further their own interests. On the supply side, supranational institutions are looking to expand their responsibilities by taking away more decision-making power from the domestic level (Caporaso, 1998; Mattli, 1999). Trade interdependence often is the driving force behind the demands of societal actors. This becomes evident within the context of the EU, where increased trade interdependence led to a demand by societal actors (particularly business interests) to regulate these trade flows through European rules and regulations. The European Commission made use of this functional pressure to gradually increase its influence over the decision-making process (Stone Sweet and Sandholtz, 1998; Stone Sweet and Brunell, 1998). Thus, trade interdependence can lead to functional pressure to render the regional organization more authoritative by a process of incremental change. Dispute settlement plays an important role in this
process as it allows for the enforcement of decisions made by international institutions.

**Contract**

Although scholars have frequently paid attention to the role of shifts in power and trade interdependence as explanations for institutional change, in this chapter I argue that a third variable also contributes to our understanding of change in dispute settlement: the nature of the organization’s founding contract. Different scholars have argued that international agreements can be conceived of as contracts (Cooley and Spruyt, 2009; Abbott et al., 2000; Lake, 1996). Contracts vary in their degree of completeness: whereas some RIOs are based on a treaty that specifically outlines the objectives of the organization, others are vague about the goals and subjects of the contract. As Marks et al. outline, incomplete contracts offer a considerable advantage over complete ones: they are flexible, which enables them to survive exogenous shocks and adapt to changing circumstances. This flexibility, however, comes at a cost. In the context of an incomplete contract, states deal with constant ambiguities. Uncertainties are caused by a shortage of information, a lack of clarity about the decision-making process and the possibility of rule violations. In order to achieve cooperation in the face of such uncertainty, delegated agents, including third party dispute settlement mechanisms, are of great importance. They can collect and distribute information, avert issue cycling and prevent escalation of conflicts by adjudicating in the between conflicting interpretations of the rules (Marks et al., 2014).

For most organizations, however, the creation of strong delegated agents is a gradual process that comes about as a result of continued interaction. When working together in the context of an incomplete contract, states find out about their needs and learn to trust each other. Cooperation is "a creative enterprise through which the parties not only weigh the benefits and burdens of commitment but explore, redefine, and sometimes discover their interests" (Chayes and Chayes, 1993). As member states come to see them-
5. Exploring Change in Regional Dispute Settlement

...selves as belonging to the same community, they are much more likely to create strong institutions. Several authors have emphasized how member states need shared norms in order to delegate authority, including dispute settlement, to the international level (Acharya, 2004; Duina, 2011; Keohane and Martin, 1995; Deutsch, 1953). Hence, even though organizations based on incomplete contracts have a need for delegated agents, including dispute settlement mechanisms, these often are only created after member states have some experience of cooperation. Incomplete contracts do not necessitate organizations to start out with powerful institutions but rather induce an “endogenous dynamic” (Marks et al., 2014) that leads organizations to undergo institutional change over time.

5.3. Trends in judicialization

Case selection

In this chapter I consider change in dispute settlement in regional international organizations that are concerned with trade. I define regional international organizations as institutions with at least three geographically proximate member states (Haftel and Thompson, 2006; Powers and Goertz, 2011). In the sample of the strongest international organizations, 33 organizations are classified as regional. To sift out the organizations with a strong focus on trade I only include these organizations that also are regional trade agreements. Of those agreements I include the ones that have been notified to the World Trade Organization and those included in Haftel (2013). In addition, I also

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2The population consists of international governmental organizations that fulfill a minimum of five of the following six criteria:
- three or more member states
- a formal constitution or convention
- a legislative body, executive, and administration
- a permanent staff of 50 or more
- at least one annual meeting of the executive or legislature
- address and website.

include APEC and the Benelux, which also have a strong focus on trade. In total, this brings the sample size to 25. The complete list of organizations can be found in appendix E.

**Measuring judicialization**

Various authors have made an attempt to quantify the difference between dispute settlement mechanisms. Most of these hinge on the question of the degree of independence dispute settlement mechanisms have with regard to the organization’s member states: the more independent, the stronger the dispute settlement mechanism.

Delegation on the international level can take different forms. One of these forms is adjudicative delegation, the “authority to make a decision about a controversy or dispute.” The extent of this type of delegation is determined by the legal effect of the decisions made by the dispute settlement mechanism and by the independence of the judicial body. The legal effect is high when decision-making is binding and when decisions are enforceable, e.g. they have direct effect or sanctions are permitted (Bradley and Kelley, 2008). These variables help us to conceptualize delegation but are too imprecise to help us rank various dispute settlement mechanisms.

Keohane, Moravscik and Slaughter also consider dispute settlement a form of delegation. There are three dimensions of delegation on which dispute settlement mechanisms can vary: independence, access and embeddedness. Independence is concerned with the way in which judges or arbitrators are selected; access takes into account who has legal standing before the tribunal, or “who can set the agenda”; embeddedness has to do with the control over formal implementation. The position on these dimensions allows us to distinguish between interstate and transnational dispute resolution (Keohane et al., 2000).

Karen Alter distinguishes between old- and new-style international courts. New-style international courts have several characteristics that set them apart from old-style courts.
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First, these bodies have compulsory jurisdiction: there is an automatic right to litigation. Second, new-style courts have enforcement jurisdiction, which means they also get to adjudicate in case of state non-compliance. Finally, they allow private actors access to the judicial proceedings; this often increases the number of cases and brings international law to the domestic level (Alter, 2006).

In this chapter I use a refined measure of dispute settlement that takes into account all elements that have been identified as relevant for measuring the strength of judicialization in the literature. The measure consists of six elements of judicialization: a) automatic third party access; b) nature of the tribunal; c) bindingness of the ruling; d) nonstate access, and e) enforcement and f) whether the judicial body can issue preliminary rulings (Hooghe and Marks, 2014; Marks et al., 2015). These relate to the studies discussed previously: automatic third party access corresponds to Alter’s compulsory jurisdiction; the nature of the tribunal is found in Keohane et al.’s framework.

Figure 5.1.: Distribution of the different elements of dispute settlement for all 25 regional trade organizations in 2010.

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as independence; bindingness relates the notion of legal effect in the work of Bradley and Kelley. Keohane, Moravscik and Slaughter and Alter emphasize the importance of nonstate access; the concept of enforcement is found in Bradley and Kelley and Alter; the latter also identifies the importance of preliminary rulings. All six elements are measured trichotomously.\textsuperscript{4} The elements are added up to create a dispute settlement score that ranges from zero to six. This measure is based upon the work of McCall Smith (2000), which has also been used by others, including Kono and Haftel and Thompson (Kono, 2007; Haftel and Thompson, 2006): it differs from McCall Smith’s contribution in that it included preliminary rulings and measures all elements trichotomously. Figure 5.1 shows the distribution across the different elements of dispute settlement for all 25 trade RIOs in 2010.

Change over time

From the measure for the strength of third party dispute settlement in RIOs that was outlined in the previous section we can construct a measure for change. I define a moment of change as a year in which one or more of the elements of dispute settlement are different from the previous year. Figure 5.2 shows the number of organizations that have a change on one or several of the six elements of dispute settlement in each decade.

\textsuperscript{4}The questions and possible outcomes for the six elements are as follows:

- Is there automatic right for third-party review of dispute (0, 0.5, 1)? (0 = no right to review; 0.5 = access mediated by a political body; 1 = automatic right to review)
- Is the composition of the tribunal ad hoc or standing (0, 0.5, 1)? (0 = no tribunal; 0.5 = ad hoc tribunal; 1 = standing tribunal)
- Are rulings binding, conditionally binding or nonbinding (0, 0.5, 1)? (0 = not binding; 0.5 = conditionally binding; 1 = binding)
- Do non-state actors have access to dispute settlement (0, 0.5, 1)? (0 = no access; 0.5 = other IO body has access; 1 = domestic and international actors have access)
- Can a remedy be imposed in case of non-compliance (0, 0.5, 1)? (0 = no remedy, 0.5 = retaliatory sanctions; 1 = ruling takes direct effect)
- Is there a preliminary ruling system (0, 0.5, 1)? (0 = no preliminary ruling; 0.5 = optional preliminary rulings; 1 = compulsory preliminary rulings)
The number of organizations that reform in each decade is quite small but increases over time. The majority of changes occur in the 1990s and 2000s. This can partly be attributed to the larger number of organizations that are active in this time period, but not entirely: the number of organizations increases by six, but the number of reforms more than doubles.

Reforms in dispute settlement in most organizations are independent of the founding contract. The Caribbean Community (CARICOM), for example, had a reform in dispute settlement with the establishment of the Caribbean Court of Justice in 2005. By then, the organization had already been operational for several decades: the Caribbean Free Trade Agreement (CARIFTA) was created in 1968 and transformed into the Caribbean Common Market with the signature of the CARICOM Treaty in 1973. Before the establishment of the Caribbean Court of Justice, the organization had an arbitration procedure to resolve disputes, but that had never been used. Hence, the creation of the Court was not part of the negotiation on the organization’s founding contract. Even
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when discussions on dispute settlement are part of the negotiations on the RIO’s founding contract, this does not mean that the creation of a dispute settlement mechanism is a given. A good example is the Community Court of Justice of the Economic Community of Western African States (ECOWAS), established in 2001. The Lagos Treaty that founded the organization in 1975 already contained provisions on dispute settlement: there was to be a Tribunal that guaranteed: “the observance of law and justice in the interpretation of the provisions of this Treaty” (Lagos Treaty Arts. 11.1 and 56). Despite these intentions, member states only adopted the Protocol on the Community Court of Justice (Protocol A/P1/7/91) in 1991. The protocol did not enter into force until 1996 and the Court only became operational in 2001. Hence, there was not only a long time period between the original treaty negotiations and the establishment of the Court, but the member states also had separate negotiations on the specific design features of the new dispute settlement mechanism, necessitated by the lack of detail in the organization’s founding treaty.

If we only consider whether or not there has been a change, however, we lose a lot of interesting variation. It is sensible to differentiate between reforms that increase an organization’s score on dispute settlement, and those that decrease it. As figure 5.2 indicates, the vast majority of changes serve to make an IO’s dispute settlement mechanism more authoritative. In fact, in only three cases has a change led to a weakened dispute settlement mechanism. In 1958, the European Union made a change so that rulings no longer had direct effect. Direct effect was re-instated in 1963. In 1980, the Latin American Free Trade Association (LAFTA) was reformed into the Latin American Integration Association (ALADI), and the new IO lost its dispute settlement. Finally, the East African Community (EAC) became inactive after 1984, as did its dispute settlement mechanism. In 1993, a new treaty was signed to bring the organization back to life, but this treaty contained no provisions on dispute settlement. In 1999 the member states signed the Arusha treaty, which provided for the establishment of the East African Court
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of Justice. The court became operational in 2001. Apart from these three instances, all changes in dispute settlement have rendered organization’s dispute settlement bodies more authoritative.

5.4. Exploring change in dispute settlement

Methodology

What explains dispute settlement reform? In this section I will systematically consider the effect on dispute settlement reform of the three main variables outlined previously: balance of power, trade interdependence and the nature of the contract on which the RIO is based. In order to see how these variables can combine with each other to produce dispute settlement reform, I use a configurational approach rooted in Qualitative Comparative Analysis (QCA). Pioneered by Charles Ragin (1987), QCA combines features of qualitative, case-oriented research methodology with quantitative, variable-oriented approaches (Marx et al., 2014). QCA is qualitative and case-oriented since it emphasizes that the effect of variables cannot be understood in isolation, but that configurations of different variables contribute to various outcomes. In this approach, therefore, different combinations of variables can lead to the same outcome. QCA is quantitative since it allows for the comparison of a larger number of cases than would be possible using case study research, and therefore allows us to find patterns in explanatory variables and outcomes (Marx et al., 2014).

In this section, I use the most basic application of the configurational approach: to construct a truth table that allows for summarizing data and exploring the relevancy of different theories (Rihoux and Marx, 2013). In the truth tables I present below, I am interested in the different combinations in which the three variables outlined above contribute to change in third party dispute settlement. I analyze the RIOs that do not have a change in their third party dispute settlement mechanisms in a separate table.
For the organizations that change, each moment of change is taken as a case; for those that do not change I analyze the organizations in 2010, the final year of observation in the dataset. To create the truth tables, I dichotomize the variables for balance of power and trade interdependence. The variable that measures the degree of completeness of the RIO’s founding contract can take on three distinct values. The truth table reveals that the nature of the founding contract can explain most cases of change, whereas the explanatory value of the other variables is less obvious. A closer examination of the cases indicates that there might be an omitted variable: the influence of other international institutions.

Operationalization

As outlined previously, the literature expects changes in trade interdependence and power inequality, as well as the nature of the organization’s founding contract to affect the likelihood of observing institutional change. In this section I will outline how I operationalize these variables.

Balance of power

A shift in power relations can cause a change in dispute settlement if this means that the institution no longer matches the power relations between member states. A common way to operationalize the balance of power in a regional trade agreement is to consider the material capabilities of member states. The Composite Index of National Material Capabilities (CINC) version 4.0 draws upon military expenditure, military personnel, energy consumption, iron and steel production, urban population, and total population. By taking the material capabilities of the most powerful member state as a ratio of the other member states, we gain a measure for detecting hegemons (1972; 1987). I compare the power asymmetry at the moment of change to the levels of inequality three years prior. I assign this variable a one if there has been an decrease of in the level of power
asymmetry of more than three percent. In all other cases, the variable is assigned a zero.\textsuperscript{5}

**Trade interdependence**

An increase in trade interdependence is expected to lead to a gradual increase in dispute settlement. I measure trade interdependence as an organization’s trade share as a proportion of member states’ total trade.\textsuperscript{6} In order to evaluate whether trade interdependence has increased, I compare the trade interdependence at the moment of change to the levels of trade interdependence three years prior. In case of an increase of more than three percent, the variable is assigned a score of one; if it has remained the same or decreased, a zero.\textsuperscript{7}

**Contract**

The nature of the contract underlying the regional organization is expected to have a strong influence on the likelihood of institutional reform: where contracts are fairly incomplete, RIOs are more likely to find that over time they need strong institutions to ensure decisions are made and enforced. I use the coding of Marks et. al (2014), in which the contract variable can take on three different values: complete (1), intermediate (2) and incomplete (3).\textsuperscript{8} A contract is defined as complete when the founding treaty outlines a fixed objective for member states to achieve through clearly specified means.

\textsuperscript{5}Different percentage thresholds yield similar results: a one percent threshold sees two more organizations assigned a positive score for a decrease in power inequality; a five percent threshold three fewer organizations included. To ascertain the robustness of the measure I also used the concentration of capabilities as found in Mansfield & Pevehouse (2000). Depending on the threshold used, the correlation between these measures is between 0.55 and 0.71.

\textsuperscript{6}Data is taken from http://www.cris.ume.edu/riks/web/data, see Iapadre and Plummer (2011) for a discussion.

\textsuperscript{7}Different percentage thresholds yield similar results: ASEAN and the OECS also have an increase when using a one percent threshold. Results are identical when using a five percent threshold.

\textsuperscript{8}The coding was carried out by the authors of the paper (Marks et al., 2014) and then submitted to an external expert for review. The reliability of the data was tested by two research assistants familiar with the concepts in the study, who independently coded a random sample of thirteen regional organizations. They agreed on all but one score (Krippendorff’s alpha = 0.78).
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<table>
<thead>
<tr>
<th>change</th>
<th>contract</th>
<th>power</th>
<th>trade</th>
<th>RIOs</th>
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<td>1</td>
<td>1</td>
<td>SICA (1994), ECOWAS (2005)</td>
</tr>
<tr>
<td>positive</td>
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<td>0</td>
<td>1</td>
<td>Andean (1996), OECS (2010)</td>
</tr>
<tr>
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<td>2</td>
<td>1</td>
<td>1</td>
<td>CARICOM (2005)</td>
</tr>
<tr>
<td>positive</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>ASEAN (1997), COMESA (1998)</td>
</tr>
<tr>
<td>positive</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>ALADI (1971)</td>
</tr>
<tr>
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<td>1</td>
<td>0</td>
<td>EFTA (2002)</td>
</tr>
<tr>
<td>negative</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>EU (1958)</td>
</tr>
<tr>
<td>negative</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>EAC (1994)</td>
</tr>
<tr>
<td>negative</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>LAIA (1981)</td>
</tr>
</tbody>
</table>

Table 5.1.: Overview of independent variables in trade RIOs that reform.

An intermediate contract commits member states to cooperation on goals that are not fully specified, for example encouraging economic progress. An incomplete contract leaves the nature of the cooperation fully unspecified. The contract covers not just member states but the population as a whole ("the people") and the goal of cooperation is undetermined (e.g. "an ever closer union").

Organizations that reform

Table 5.1 shows the truth table with different combinations of independent variables for all cases of reform in regional international organizations. In total, 18 RIOs undergo a reform in dispute settlement; some reform multiple times and in total there are 28 instances of reform. The vast majority of reforms occur in organizations that are characterized by an incomplete (15) or intermediate (10) contract. In fact, there are only three instances of reform where the organization is based on a complete contract. Hence, there seems to be a strong association between the degree of completeness organization’s founding contract and dispute settlement reform. The other variables, power asymmetry
and trade interdependence, seem to have less purchase on dispute settlement reform. In 12 cases of dispute settlement reforms there is an increase in trade interdependence; in 15 percent there is a decrease in power asymmetry. From these results we can infer that the nature of the organization’s founding contract is the strongest predictor of dispute settlement reform.

EFTA and ALADI are interesting cases: they undergo a reform in dispute settlement even though they are based on a complete contract. EFTA reformed its dispute settlement mechanism in 2002 within the context of the ratification of the Convention Establishing the European Free Trade Association. The dispute settlement procedure consists of arbitration, as was also the case under previous agreements; the main difference is that decision-making became binding. EFTA’s legal situation, however, is complicated by the fact that three out of four EFTA member states are also members of the European Economic Area. The EEA set up the EFTA Court of Justice in order to allow for the enforcement of EEA regulations in EFTA member states. The EFTA Court mimics the European Court of Justice, which is responsible for compliance with EEA regulations in EU countries (Sevon, 1992; Haukeland Fredriksen, 2010). It is a strong court with an automatic right to review, a standing tribunal, binding decision-making that takes direct effect, non-state access and the possibility to issue preliminary rulings. Although there also is a decrease in the level of power inequality, the move towards binding decision-making in the EFTA tribunal is more likely to have been affected by the presence of the EFTA Court. I will discuss the case of ALADI in more detail below.

The organizations that have a negative reform, i.e. a reform that renders the dispute settlement mechanism less authoritative, are a mixed bag. The EU is the only RIO in this group with a highly incomplete contract. It is interesting to note that for the EU this negative reform only endured briefly: by 1963 the court was restored to its full strength. The East African Community has an intermediate contract. The negative reform, how-

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9Iceland, Liechtenstein and Norway are members of the EEA. Switzerland opted to conclude separate agreements with the EC.
5. Exploring Change in Regional Dispute Settlement

<table>
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<th>contract</th>
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<th>average judicialization score</th>
<th>RIOs</th>
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<td>0</td>
<td>LOAS</td>
</tr>
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<td>0</td>
<td>0</td>
<td>1.8</td>
<td>APEC, EEA, NAFTA, SACU</td>
</tr>
</tbody>
</table>

Table 5.2.: Overview of independent variables in trade RIOs that do not reform.

ever, comes within the context of a renewed period of activity for the organization, and
dispute settlement comes back at a later stage. This is also accompanied by a change in
contract: the organization moves towards an incomplete contract. Finally, ALADI has
a negative reform and a complete contract. This is the only organization in the sample
that has a negative reform where dispute settlement is not restored afterwards. In all
cases of negative reform, there also is a change in the balance of power and the level
of trade interdependence. These results are surprising: we would expect an increase
in trade interdependence to be accompanied by higher levels of dispute settlement, not
lower. Lower levels of power inequality are also expected to facilitate higher levels of
judicialization. Hence, these variables do not perform well for explaining negative reform.

Organizations that do not reform

Table 5.2 shows the different combinations of independent variables amongst RIOs that
do not reform in 2010, the last year in the dataset. In total, seven regional organizations
do not have a change in dispute settlement. The table also includes the average legal-
ization score for each combination (maximum score is six). When organizations do not
reform their dispute settlement mechanism, this might be due to a ceiling effect: once
an organization arrives at high levels of dispute settlement, reform is less likely to occur,
or even impossible when the maximum score has been reached. Looking at the average
legalization score for the RIOs that do not reform, however, tells us that this is not the
case. Most organizations in this group do not have provisions on dispute settlement at
all, and those that do are at very low levels of judicialization.
Five of the organizations that do not reform are based on a complete contract: APEC, EEA, NAFTA and SACU. These organizations also do not have changes in their levels of power inequality and trade interdependence. Hence, these results are as expected. Two organizations are based on an intermediate contract, yet do not have any change in dispute settlement. ECCAS does have provisions on dispute settlement in its founding treaty, but the court was never set up. The League of Arab States (LOAS) created the Arab Investment Court in 2003 (Alter, 2014, p. 373) but since this body only applies to one agreement and a very limited issue area, it is not included in the dataset. Only one organization that does not reform that has an incomplete contract: the Gulf Cooperation Council (GCC). The organization envisaged reforming its dispute settlement mechanism, but has not managed to do so just yet. The GCC Charter, which established the RIO in 1981, provided the creation of the so-called "Commission for the Settlement of Disputes" (GCC Charter, art. 10). By 2005, however, the Commission had not been used even once (Sturm and Siegfried, 2005). The GCC member states signed a new Economic Agreement in 2001, which also plans for the establishment of a new dispute settlement mechanism to govern the terms of the agreement. So far, this institution has not been brought to life, but the agreement indicates that the member states have at least considered reform.

5.5. Case study: dispute settlement reform in ALADI

As shown in section 5.4, the nature of the organization’s founding contract has a strong influence on the likelihood of dispute settlement reform. Nevertheless, the nature of the founding contract cannot explain all cases: EFTA and ALADI reform despite having a complete contract. As we have seen, in the case of EFTA this reform is likely to have been induced by the presence of the EFTA Court of Justice, which was set up to ensure compliance with EEA legislation in the EFTA countries. This seems to indicate there is a missing variable that can explain institutional change: the influence of other
international institutions that are active in the same issue area. In this section I will explore dispute settlement reform in ALADI in more detail. As we will see, the influence of other international institutions once again plays an important role. ALADI is an critical case because it undergoes change despite having a complete contract, and a unusual case since it is the only organization which completely abandons its dispute settlement mechanism after a few years (Yin, 2014, p. 51-52). The case study is split into two parts: the first section covers the period from 1960 to 1971, when the dispute settlement mechanism was created. The second section addresses the period from 1971 to 1980, when the organization was reformed without a dispute settlement mechanism. I will first give an overview of the development of the organization in these time periods before systematically analyzing the influence of different variables on dispute settlement reform.

1960 – 1971

Background

ALADI has its origins in the Latin American Free Trade Organization (LAFTA). The organization was founded in 1960 by seven countries in Latin America: Argentine, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay. Later on, Colombia (1961), Ecuador (1961), Venezuela (1966) and Bolivia (1967) also joined. The Montevideo Treaty that established the organization stated that the goal of LAFTA was to establish a fully functioning free trade area within twelve years (1960). The organization came about in response to rules put forward in the General Agreement of Tariffs and Trade (GATT). Whereas before the founding states of LAFTA, particularly Argentina, Brazil, Chile and Uruguay, had been able to grant each other preferential treatment through exchange controls, under GATT, which sought to eliminate these, they were no longer able to do so. In order to continue giving each other preferential treatment they established a free trade area under Art. XXIV.4 of GATT (Ferrere, 1985).
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LAFTA was the first organization that sought to improve coordination and integration between Latin American countries. LAFTA aimed at establishing a common market by gradually reducing and eliminating tariffs. It was based on the principle of reciprocity, and the member states regularly negotiated on which products trade restrictions should be eliminated (Marotta Rangel, 2008). The organization was initially successful, with 'thousands of tariffs' being eliminated or reduced, and trade between member states increasing (Padilla, 1979).

The 1960 Montevideo Treaty did not contain any provisions on third party dispute settlement. In December 1964, however, the Conference adopted a protocol which ordered the Executive Committee to propose a protocol for the settlement of legal disputes (Padilla, 1979). Before this protocol was adopted, a provisional method of dispute settlement was put in place. This procedure is not coded because it was entirely political: the Executive Committee only referred disputes to the so-called Special Commission of Jurists after a unanimous decision. This led to a situation where everyone could veto the proceedings and the legal effect of the rulings remained unclear (Padilla, 1979). The protocol on third party dispute settlement, which was adopted on 2 September 1967 and entered into force in 1971, introduced a stronger dispute settlement mechanism.

The protocol provides for the establishment of an Arbitral Tribunal where member states have an automatic right to third party review: 'either of the parties may resort to the arbitration procedure established in the present Protocol' (art. 16). The Tribunal consists of ad-hoc arbitrators, one selected by each member state (art. 12). Decision-making is binding. The Protocol specifies that "the award is compulsory for the Parties to the dispute from the time notice is given, and it shall have the force of res judicata with respect to the Parties" (art. 30). In case of non-compliance with the decisions of the Tribunal, the member states involved in the dispute may request the Conference, the organization’s legislative body, to issue a resolution to enforce compliance. Members may also request Conference for permission to impose retaliatory sanctions (art. 34).
There is no mention of access for non-state actors and the Tribunal also does not have the power to issue preliminary rulings. In case of a dispute, three arbiters would decide on the case and make a decision by majority vote (art. 18).

Analysis

What led member states to adopt a dispute settlement procedure in 1967? In this section I will argue that the establishment of the Tribunal was mainly spurred by an increase in trade interdependence. In what follows, I will examine each of the causes for change in turn. First, let us consider LAFTA’s founding contract. When we consider the 1960 Montevideo treaty, we find that it is much closer to a complete than to an incomplete contract. The Treaty states a very specific goal for the organization: "By this Treaty the Contracting Parties establish a Free-Trade Area" (art. 1). The Treaty then proceeds to indicate precisely the steps by which this is to be achieved. As Wionczek observes: 'The scope of the Treaty was closely circumscribed by special provisions for agriculture, escape clauses, and the possibility of renegotiating the composition of national schedules in the light of experience' (Wionczek, 1965). Nowhere in the Treaty is there an indication that any cooperation beyond the establishment of the free trade area is intended, or, indeed, desired. As outlined in section 5.2, incomplete contracts can lead to institutional change because states discover their interests over time and learn to trust each other enough to delegate to a dispute settlement mechanism. This, however, does not seem to be the reason behind dispute settlement reform in LAFTA.

Power may also play a role in institutional change. As outlined above, egalitarian power relations are necessary to facilitate delegation to the international level. A shift in power relations can cause a change in dispute settlement if this means that the institution no longer matches the power relations between member states. Using the measure for power asymmetry discussed in section 5.4, we see a slight change in the balance of power between member states. We do, however, not observe a strong fluctuation in
these numbers, indicating that the balance of power between LAFTA member states remained fairly constant over time. Although new members joined the organization in the 1960s, this did not cause a significant shift in the balance of power since the states that joined were weak compared to the powerful founding members (particularly Brazil, Chile and Argentina), and therefore were unlikely to bring about a change in institutional arrangements. A change in power, therefore, seems unlikely to be the cause of a change in dispute settlement.

Finally, trade interdependence can also induce change because increased levels of trade create a demand for regulation. In order for this to be true, we would expect an increase in trade interdependence in the years leading up to the signature of the Protocol on dispute settlement. The total value of trade between LAFTA member states before and after the Montevideo Treaty was signed indicates that trade interdependence increased with the creation of LAFTA. Trade increases for all member states, although there is a substantial difference in the percentage increase per member state (Wionczek, 1965). Nevertheless, the increase in intra-regional trade was significant and lead to a positive evaluation of the contribution of the organization (Padilla, 1979). It therefore seems most likely that increased trade interdependence led to a demand for third party dispute settlement.

1971 - 1980

Background

Although member states initially had some success in implementing the goals of the 1960 Montevideo treaty, after a couple of years disagreements arose. The organization was based on the principle of reciprocity, which turned out to be problematic given the difference in the levels of development between the member states (Marotta Rangel, 2008). The member countries soon found themselves in two blocs. On the one hand there were the more developed 'Six' (Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay), on
5. Exploring Change in Regional Dispute Settlement

the other hand the lesser-developed Andean bloc (Bolivia, Colombia, Ecuador, Peru and Venezuela). The two blocs had different preferences concerning the goals of the organization. The 'Six', and especially Argentina, Brazil, Chile and Uruguay, were mainly interested in using the organization as a vehicle for granting each other preferential treatment. The Andean countries, on the other hand, were interested in developing a true free trade zone and adopted this goal in their national policies (Ferrere, 1985). This difference in preferences led to delays in the negotiation over which products and services should be subjected to trade liberalization in each round of implementation. The 'Six' started using escape clauses in order to escape their obligations. This, in turn, led the Andean countries to put a hold on their efforts as well, and they tried to revert earlier policies.

The growing divisions between member states rendered the organization ineffective (Aitken and Lowry, 1972). Already in 1965, Wionczek wrote: 'It seems doubtful that any substantial progress can be achieved without redrafting the Montevideo Treaty to include a detailed program to which participating countries subscribe without reservations' (Wionczek, 1965). In November 1979, GATT adopted a decision that allowed developing countries to grant each other limited trade preferences: 'contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties' (1979, art. 1). This solved the problem of the LAFTA member states: they could now give each other preferential treatment without the need for the obligations established within the context of the organization. The disagreements between the member states and the decision by GATT led to the decision to dismantle the organization in 1980 (Ferrere, 1985).

The Arbitral Tribunal, which became operational in 1971, was never very successful. In fact, it never heard a single case. This was not for lack of disputes: as the division between member states grew, a number of issues came up, but these were resolved bilaterally (Padilla, 1979). This led to "a substantial weakening of the rule of law in the
5. Exploring Change in Regional Dispute Settlement

process of (LAFTA) integration” (Orrego-Vicuña, 1976).

In 1980, a new Montevideo treaty was signed and LAFTA was replaced by ALADI (sometimes referred to as LAIA, Latin American Integration Association). All member states of LAFTA joined the new organization, and 'for all practical purposes, the LAIA is a continuation of LAFTA' (Ferrere 1985). The ambitions of ALADI were more modest and flexible than those of its predecessor: the long-term goal was to establish common market by means of partial agreements and bilateral negotiations. This would eventually lead to a 'multilateralization' of concessions, resulting in a common market (Marotta Rangel, 2008). Under ALADI, all institutions that were established under the 1960 treaty ceased to exist (art. 66). This also meant that the Arbitral Tribunal was abolished. The new treaty does not set up a new tribunal in its place. Instead, the Treaty lists "To propose formulae for the solution of questions brought by member countries concerning non-observance of any of the rules or principles of this Treaty' (art. 35m) as one of the tasks of the Committee of Representatives, ALADI’s executive body. This is a political procedure, which does not register on our measure for third party dispute settlement. In 1990, the Committee of Representatives adopted a procedure that member states were to follow in case of non-compliance. It is based on consultation between the disputing parties. If they fail to reach an agreement, the Committee of Representatives takes the final decision (art. 5). Although this makes the procedure more formal, it does not make a difference for our measure on dispute settlement since states still have to follow a political trajectory.

Analysis

What led the member states to abandon LAFTA, and why were there no provisions on dispute settlement included in the 1980 Montevideo Treaty? I will once again discuss each of the variables of interest in turn. As we have seen above, LAFTA was based on a complete contract; hence, a change in dispute settlement is unexpected. The
balance of power in the period preceding the abolishment of the dispute settlement mechanism remains at the same level, and therefore also does not seem a likely cause of dispute settlement reform in this time period. Increased trade interdependence can lead to institutional change, and in the time period between 1971 and 1990 we do indeed see trade interdependence increase. We would, however, expect an increase in trade interdependence to be associated with stronger dispute settlement rather than a decrease in the organization’s level of judicialization. Therefore, a change in the level of trade interdependence is also not a good candidate for explaining the abolishment of the LAFTA tribunal.

Instead, what led to the abolishment of LAFTA and the establishment of ALADI is the influence of other international institutions. In this case, it was the influence of the GATT that caused the downscaling of the organization. The above-mentioned new GATT regulations allowed developing countries preferential treatment. As a consequence of this, LAFTA, with its ambitious goals, was no longer necessary. The member states were now able to continue their cooperation in an organization that was much less stringent and did not force member states to oblige by commitments they did not fully support. The Arbitral Tribunal had not been called upon before, and in this context of less powerful demands on member states it was also less likely to be needed. Dispute settlement mechanisms are particularly likely to arise in situations where the incentive to defect is high (Koremenos, 2007). Since the incentive to defect in ALADI was lower, and because the Arbitral Tribunal in LAFTA had been overlooked in favor of bilateral negotiations, it did not come back in ALADI.

The abolishment of the LAFTA Tribunal shows the influence of what Jo and Namgung refer to as the multilateral trade regime (2012). In their article, the authors show that dispute settlement mechanisms that were created after the Uruguay round are significantly less likely to include strong provisions on dispute settlement. This is because member states now had an outside option available: dispute settlement through
5. Exploring Change in Regional Dispute Settlement

the WTO. Similarly, the creation of LAFTA and the eventual abolition of its dispute settlement mechanism was spurred by outside options, in this case the GATT looming in the background. Similarly, the development of stronger dispute settlement in EFTA was a result of the close presence of the EFTA court and EU regulations. Hence, these cases demonstrate that we should not only consider variables that only concern the institution itself, but also variables that affect the environment in which the RIO does its work.

There had been many disagreements between member states during the twenty years when LAFTA was in operation. The member states soon organized themselves into two blocs that did not trust each other. There only were narrowly defined goals for the organization, and when the rationale for the organization fell away, the member states were happy to tone down the objectives. The two blocs that characterized the conflict between member states later organized themselves in distinct organizations with a broad contracts: Argentine, Brazil, Paraguay, Uruguay and Venezuela joined together in Mercosur; Bolivia, Columbia, Ecuador and Peru established the Andean Community.

5.6. Conclusion

Dispute settlement reform is essential for understanding how high levels of judicialization come about, since most organizations only develop strong dispute settlement mechanisms after they have been set up. Change in dispute settlement might also be able to tell us more about institutional change in a broader sense. In this chapter I have explored the causes for dispute settlement reform in regional international organizations. The paper first discusses the consequences of power inequality, trade interdependence and the nature of the organization’s founding contract for institutional development. Truth tables reveal that the nature of the organization’s founding contract is a powerful predictor of the likelihood of finding institutional reform. The balance of power and level of trade interdependence between RIO member states have a smaller influence on the possibility
of a change in dispute settlement.

Nevertheless, these variables cannot explain all cases of reform. The results point towards an omitted variable: the influence of other institutions in the same issue area. In the case of EFTA, the EU has likely had a strong effect on its dispute settlement design. A case study of ALADI reveals that in this organization, the influence of the GATT played an important role in the creation of the organization and the eventual abolishment of its dispute settlement mechanism. Hence, this study identifies the influence of the environment in which the organization operates as an impetus for institutional reform. To gain a better understanding of the importance of this variable, it would be useful to systematically explore its influence across all cases, preferable through a full QCA analysis.

As the chapter revealed, it is easier to explain positive changes rather than negative reform, i.e. reforms that make the dispute settlement mechanism less authoritative. Neither of the proposed variables performs particularly well for negative reforms. Therefore, more research is needed to understand this phenomenon. As we have seen, negative reform is a rare event. When organizations no longer perform according to the desires of the member states or are no longer perceived to be necessary they are much more likely to be abandoned than scaled back. Hence, negative institutional change poses a bit of a puzzle and is another possible avenue for future research.
6. Conclusion

The different chapters of this dissertation have shown the effects of the tension between scale and community on international organization. As I have argued in the introduction, this tension produces two distinct types of IOs: general purpose and task specific. Where organizations are rooted in community, they are likely to be general purpose; where organizations focus on effectively addressing a problem, they are likely to be task specific. The primary distinction between task specific and general purpose organizations is their policy scope, which is extensive in the latter and limited in the former. The various chapters have shown that these type of organizations behave differently across a range of dimensions.

Perhaps most importantly, general purpose and task specific organizations differ in how they make decisions and in how they are set up, i.e. in pooling and delegation. Task specific organizations aim to include all states that are involved in the collective action problem they seek to address. As a result, they tend to have large memberships, which may impede decision making in the context of unanimity voting. Hence, a concern for efficiency makes task specific organizations much more likely to move away from unanimity voting. General purpose organizations, on the other hand, prefer to stick with conservative decision-making. These organizations have large policy scopes and frequently deal with issues that are distributional or carry legitimacy concerns. Their memberships also tend to be smaller, which diminishes the threat of deadlock. Hence, general purpose organizations are much more likely to make decisions by unanimity.
6. Conclusion

Task specific and general purpose organizations also differ in the extent to which member states are willing to delegate authority to them: general purpose organizations have are endowed with high levels of delegation over time, whereas task specific organizations remain static at lower levels.

The two types of IOs also display variation in terms of institutional complexity. General purpose organizations tend to not only have higher levels of delegation but also a larger variety of bodies to deal with the complex policy problems they encounter. This type of organization is more likely to have a parliament in which national politicians can influence IO policies. This reflects the greater need of general purpose organizations to legitimize their decisions. Task specific organizations, on the other hand, have a simpler institutional set-up with fewer IO bodies. Parliaments are very rare in this type of organization.

The difference between task specific and general purpose organizations also affects their conditions for admitting new member states. Chapter 3 demonstrates that stricter accession rules are found in organizations where there is more at stake. One of the main predictors of stricter accession rules is the size of an organization’s policy scope: the larger the policy scope, the higher the incidence of restrictive accession rules. Since policy scope is the defining characteristic of general purpose organizations, we can conclude that these organizations tend to be more exclusive. This makes sense: where organizations are rooted in community, it becomes important to ensure only states with whom you want to cooperate are admitted. In task specific organizations, characterized by a small policy scope, it is important to enlarge membership to effectively address the organization’s policy problems.

Task specific and general purpose organizations also differ on dispute settlement. Chapter 4 shows that dispute settlement falls into distinct types: state-controlled and supranational. State-controlled dispute settlement is characterized by automatic access to judicial proceedings, a standing tribunal and sometimes binding decision-making.
Nevertheless, state-controlled dispute settlement always leaves states the final say and cannot directly influence domestic politics. This is different in supranational dispute settlement, where courts can either impose sanctions or make directly binding rules, allow access to non-state actors or issue preliminary rulings. Hence, these courts carry substantial sovereignty costs and can directly affect domestic politics. Although strong dispute settlement is often predicted to occur in the context of strong trade relations, these courts frequently work in very different issue areas, including human rights. The chapter shows that supranational dispute settlement is most common in organizations that are based on an incomplete contract or organizations that are rooted in community: general purpose organizations. Hence, the rise of supranational courts can be attributed to the empowerment of general purpose government.

Finally, this dissertation has also shown that task specific and general purpose organizations differ in the extent to which they change over time. Chapter 2 described how general purpose organizations are much more dynamic than task specific organizations. Since the former are rooted in community, they confront all problems that occur within their geographical area. The problems that these organizations are required to solve are not known beforehand. Hence, general purpose organizations require a degree of flexibility which can be realized through cooperation based on an incomplete contract. In order to ensure successful cooperation in the context of so much flexibility, general purpose organizations are often increasingly bestowed with strong institutions, including general secretariats and dispute settlement mechanisms. Hence, general purpose organizations display much more change over time. Task specific organizations, on the other hand, are set up to deal with a specific collective action problem. Hence, the institutional requires fewer amendments. The dynamic nature of general purpose organizations was also revealed in chapter 5, which discussed dispute settlement reform in regional organizations. It was found that the nature of the organization’s founding contract was a strong predictor of the likelihood of dispute settlement reform. In organizations with an
6. Conclusion

incomplete founding contract, reform was much more likely to occur.

This dissertation contributes to the literature on institutional design by showing how the tension between scale and community produces distinct types of organizations, and by showing how these types vary across different dimensions of institutional set-up and decision-making. The dissertation is part of a larger research project that puts forward a new dataset on the institutional design of 72 organizations over time. This rich data source will be made publicly available and hence will also benefit other researchers.

This research project also opens up several avenues for further research. A promising venue for future research is the interaction between IOs. As chapter 5 has shown, the influence of other organizations active in the same issue area can have an important influence on institutional development. We also know that some organizations can be crowded out by others. Precisely how this happens is poorly understood and therefore studying the interaction between organizations could make a valuable addition to our understanding of institutional design. This research project has primarily focused on the formal rules that govern IO behavior. This focus is justified given that formal rules usually structure informal rules. Nevertheless, we know that informal rules often are influential in international politics as well. Hence, a logical extension of this project would be to consider informal rules and how these relate to formal rules.
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Appendices
## A. International Organizations (1950 - 2010)

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The population consists of those international organizations that fulfill a minimum of five out of six criteria:

- three or more member states
- a formal constitution or convention
- a legislative body, executive, and administration
- a permanent staff of 50 or more
- at least one annual meeting of the executive or legislature
- an address and website

We exclude emanations. Seventy-one of the 73 IOs in the dataset are in the Correlates of War (COW) dataset. The Shanghai Cooperation Organization and the European
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Economic Area are not in the COW dataset, but meet six of the seven criteria. IOs that do not meet the threshold but are in the COW dataset include the Association of African Trade Promotion Organizations (AATPO), which lacks a permanent secretariat, an annual meeting, and website (and is a subsidiary of the African Union); the Australia-New Zealand-US Treaty Organization (ANZUS), which has two members and does not have a permanent secretariat, webpage or address; the Arctic Council, which had until 2011 a rotating secretariat of very small size. Several COW-listed IOs are subsidiaries of other organizations, such as the Andean Parliament, a consultative body to the Andean Community; the Nordic Council of Ministers, an executive body of the Nordic Council; or the European Central Bank, a European Union institution. One organization, Comecon, was formally disbanded (in 1991), and is not included in the analysis in chapters 2 and 3.
B. Policy scope

The policy portfolio of each IO was assessed by two independent coders with a list of 25 policies in hand. This list was adapted from a classification scheme initially developed for the European Union by Lindberg and Scheingold (1970), and updated by Philippe Schmitter (1996) and Liesbet Hooghe and Gary Marks (2001). Coders were asked to code the policy responsibility of each IO in two ways: a) in what policies does the IO have substantial involvement, and b) of these policies, which policy constitutes the core activity of the IO in 2010? The Krippendorff’s alpha among coders is 0.70, which indicates reasonably high intercoder reliability.

1. Agriculture

2. Competition policy, mergers, state aid, antitrust

3. Culture and media

4. Education (primary, secondary, tertiary), vocational training, youth

5. Development, aid to poor countries

6. Financial regulation, banking regulation, monetary policy, currency

7. Welfare state services, employment policy, social affairs, pension system

8. Energy (coal, oil, nuclear, wind, solar)

9. Environment: pollution, natural habitat, endangered species
B. Policy scope

10. Financial stabilization, lending to countries in difficulty

11. Foreign policy, diplomacy, political cooperation

12. Fisheries and maritime affairs

13. Health: public health, food safety, nutrition

14. Humanitarian aid (natural or man-made disasters)

15. Human rights: social & labor rights, democracy, rule of law, non-discrimination, election monitoring

16. Industrial policy (including manufacturing, SMEs, tourism)

17. Justice, home affairs, interior security, police, anti-terrorism

18. Migration, immigration, asylum, refugees

19. Military cooperation, defense, military security

20. Regional policy, regional development, poverty reduction

21. Research policy, research programming, science

22. Taxation, fiscal policy coordination

23. Telecommunications, internet, postal services

24. Trade, customs, tariffs, intellectual property rights/patents

25. Transport: railways, air traffic, shipping, roads

26. (Data collection, statistics, reports – coded separately)
C. Measuring third party dispute settlement

Third party dispute settlement refers to the existence of legally binding third party adjudication to resolve disputes and enforce compliance to the terms of an IO contract. By disputes about the IO contract we mean disputes about the interpretation of the IO’s treaty, protocol, legal instruments or policy output. These can involve disagreements among member states, member states and an IO body, or member states and private parties. Hence, for IOs designed as a court, such as the International Criminal Court or the Permanent Court of Arbitration, the issue is not the legalism of these courts’ judgments, but the extent to which member states party to the international agreement resort to binding dispute settlement to resolve disputes about the IO contract.

Legalism is measured along six dimensions. The first five are adopted from James McCall Smith (2000). The sixth dimension was added after consulting experts. Each component is scaled from zero to one.

- Is there automatic right for third-party review of dispute (0, 0.5, 1)? A score of 1 means that a state party can initiate litigation over the objections of the party litigated against (automatic right). An intermediate score signifies that third-party access depends on the consent of a political body. In the World Health Organization, only disputes “which are not settled by negotiation or by the Health Assembly” (2005 Constitution art. 26) can be referred to the International Court of Justice.
C. Measuring third party dispute settlement

- *Is the composition of the tribunal ad hoc or standing (0, 0.5, 1)?* IOs with a standing tribunal are scored highest on account of the intuition that decisions by standing tribunals are more consistent, and thus legalistic, over time. An intermediate score is reserved for IOs with dispute settlement that relies on ad hoc arbitrators. The International Telecommunications Union states in its Optional Protocol on the Compulsory Settlement of Disputes that “each of the two parties to the dispute shall appoint an arbitrator. If one of the parties has not appointed an arbitrator within this time-limit, this appointment shall be made, at the request of the other party, by the Secretary-General” (art. 1). IOs without tribunal, such as the Organization for Islamic Countries or the League of Arab States, receive the lowest score.

- *Are rulings binding, conditionally binding or nonbinding (0, 0.5, 1)?* Our assessment is based on explicit language in the treaty, convention or protocol that sets up the dispute settlement mechanism. Conditional bindingness can be achieved in the following ways: a) a state consents ex ante to bindingness (e.g. ICJ statute: “states may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes (Art 36)“); b) a state registers a derogation or exception (e.g. the International Tribunal for the Law of the Sea (ITLOS) allows member states to limit exposure to binding jurisdiction); c) a decision requires post hoc approval by a political body (e.g. in ASEAN, recommendations of the Appellate Body require reverse consensus in the intergovernmental Senior Economic Officials’ Meeting, that is, only member state consensus can reject the Appellate Body’s recommendations (Art. 9.1 and 12.13)).

- *Do non-state actors have access to dispute settlement (0, 0.5, 1)?* Under nonstate actors are understood third-party international organizations, IO bodies, parliaments, trade or public interest groups, or individuals. Access means that they can take a member state or IO body to court for violation of rights that evolve from state membership in that international organization. Our coding is trichotomous: zero if none of the above
C. Measuring third party dispute settlement

can initiate litigation; 0.5 if the general secretariat or another IO body can initiate litigation\(^1\), and 1 if domestic or other international actors can initiate litigation. When IOs impose limits on nonstate access, we evaluate the weight of constraints against the opportunity of access. In Mercosur, private actor access is mediated by national committees that wield a veto (Art. 39 of the Olivos Protocol); we code zero. In the Andean Community, nonstate standing by individuals and companies is restricted to actions of nullification, but unmediated (Arts. 17-19 of the Treaty creating the Court of Justice of the Cartagena Agreement); we code 1. The European Court of Justice of the European Union, like courts in several other organizations, requires nonstate parties to exhaust domestic channels before bringing their case higher up, but access is otherwise unmediated; we code 1.

- **Can a remedy be imposed (0, 0.5, 1)?** In a handful of IOs rulings of dispute settlement bodies take direct effect, that is, they bind domestic courts to act. Examples are the European Union, the Andean Community, ECOWAS, or the Intergovernmental Organization for International Carriage by Rail (OTIF). In OTIF, a ruling “shall become enforceable in each of the Member States on completion of the formalities required in the State where enforcement is to take place” (Art. 32 of 1999 Convention). An intermediate score is allocated to IO where states are authorized to take retaliatory sanctions, as is the case e.g. in Mercosur, the European Free Trade Association, the WTO or the Pacific Islands Forum. In the Pacific Islands Forum, the affected party is authorized to stop exercising their treaty duties to the defaulting party (PICTA treaty art. 22.6). Sometimes it is not the individual member state but a collective political body that can authorize sanctions. In the International Labour Organization the executive decides on sanctions in case of non-compliance (Art. 33 of the Constitution).

- **Is there a preliminary ruling system (0, 0.5, 1)?** This dimension is an addition to McCall’s schema. A preliminary ruling system establishes an explicit link between

\(^1\)See Tallberg and McCall Smith (2012) for a convincing argument why the intermediate category is important.
C. Measuring third party dispute settlement

national courts and the supranational legal system, and its presence has been said to be critical in the development of EU. A score of 1 is allocated when preliminary rulings are compulsory, that is, domestic courts are required to refer cases of potential conflict between national and supranational law to the supranational court or are required to heed rulings. IOs with a court that is the recipient of optional preliminary rulings receive a score of 0.5.

If an IO has more than one dispute settlement mechanism, we code the most prominent one. In the Caribbean Community (Caricom), the Caribbean Court of Justice is coded as it constitutes the final step in a hierarchy of options for dispute resolution, which include good offices, mediation, consultations, conciliation, arbitration and adjudication (Art 188, Revised Caricom Treaty). The International Telecommunications Union has two dispute settlement mechanisms. The first of these, which has its legal basis in the 1947 Convention, was joined by a second mechanism when the Optional Protocol on the Compulsory Settlement of Disputes was adopted in 1992. The second is somewhat more authoritative, and we code this as the predominant dispute settlement from 1992.

Information for the coding comes from founding documents, protocols, rules of procedure, and annual reports by dispute settlement bodies or the international organizations, all of which are in the public realm and can be accessed on the web, at the Union of International Associations library in Brussels, or by writing to the relevant international organization. We also rely on the secondary literature on international courts, adjudication and dispute settlement, and various websites. Case studies detail and explain coding decisions. Their purpose is to make our judgments explicit, and therefore open to amendment or refutation.
D. Robustness analysis with alternative operationalization of problem structure

Table D.1 replicates the analysis conducted in table 4.3. It replaces the IO mandate variables, which are non-exclusive categorizations of an IO’s mandate according to the foundational treaty or protocol, with a categorization of IOs according to their predominant activity over time. Note: *** p<0.01, ** p<0.05, * p<0.1; unstandardized coefficients with cluster-corrected standard errors (by IO). Time for 1970-2010. The reference category for the first three models is the state-controlled type, for the next two models it is the weak type; it is state-controlled plus weak for the last model.
## D. Robustness analysis with alternative operationalization of problem structure

<table>
<thead>
<tr>
<th></th>
<th>Supranational vs. state-controlled DS</th>
<th>Supranational vs. weak DS</th>
<th>State-controlled vs. weak DS</th>
<th>Supranational vs. alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
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<tr>
<td>Contract dynamic</td>
<td>0.023**</td>
<td>0.029**</td>
<td>0.024**</td>
<td>-0.005</td>
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<td></td>
<td>(0.008)</td>
<td>(0.014)</td>
<td>(0.011)</td>
<td>(0.009)</td>
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<td>Political community</td>
<td>0.798***</td>
<td>1.005***</td>
<td>0.800**</td>
<td>-0.206</td>
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<td></td>
<td>(0.277)</td>
<td>(0.379)</td>
<td>(0.390)</td>
<td>(0.260)</td>
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<tr>
<td>Trade</td>
<td>1.746</td>
<td>0.067</td>
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<td>1.237</td>
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<tr>
<td></td>
<td>(1.258)</td>
<td>(1.129)</td>
<td>(1.151)</td>
<td>(0.775)</td>
</tr>
<tr>
<td>Security</td>
<td>-14.367***</td>
<td>-16.531***</td>
<td>-16.503***</td>
<td>0.028</td>
</tr>
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<td></td>
<td>(1.328)</td>
<td>(1.708)</td>
<td>(1.667)</td>
<td>(0.776)</td>
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<tr>
<td>Human rights</td>
<td>0.726</td>
<td>-1.471</td>
<td>16.650***</td>
<td>18.121***</td>
</tr>
<tr>
<td></td>
<td>(1.516)</td>
<td>(2.372)</td>
<td>(2.029)</td>
<td>(1.061)</td>
</tr>
<tr>
<td>Trade interdependence</td>
<td>0.007</td>
<td>0.017</td>
<td>0.023</td>
<td>0.006</td>
</tr>
<tr>
<td></td>
<td>(0.020)</td>
<td>(0.026)</td>
<td>(0.030)</td>
<td>(0.021)</td>
</tr>
</tbody>
</table>

|                      | Supranational vs. state-controlled DS | Supranational vs. weak DS | State-controlled vs. weak DS | Supranational vs. alternatives |
|                      | (5)                                   | (6)                       |                             |                               |
| Democracy            | -0.088                                | -0.014                    | -0.137                      | 0.018                         |
|                      | (0.078)                               | (0.109)                   | (0.085)                     | (0.075)                       |
| Power asymmetry      | -2.943*                               | -3.857**                  | -3.142                      | -4.550**                      |
|                      | (1.756)                               | (1.611)                   | (1.972)                     | (1.983)                       |
| UN family            | -13.150***                            | -16.782***                | -14.131***                  | -11.201***                    |
|                      | (1.009)                               | (0.962)                   | (1.147)                     | (1.335)                       |
| Constant             | -1.093                                | -0.593                    | -0.878                      | -3.636**                      |
|                      | (1.412)                               | (2.698)                   | (1.629)                     | (1.675)                       |

|                      | Supranational vs. state-controlled DS | Supranational vs. weak DS | State-controlled vs. weak DS | Supranational vs. alternatives |
|                      | (7)                                   | (8)                       | (9)                         | (10)                          |
| Decennial data       | Yes                                   | Yes                       | Yes                         | Yes                           |
|                      | 302                                   | 296                       | 296                         | 296                           |
| Wald $\chi^2$        | 1428.85                               | 4782.52                   | 3986.36                     | 3954.07                       |
|                       | 3954.07                               | 3954.07                   | 3954.07                     | 1945.28                       |
| McFadden $R^2$       | 0.29                                  | 0.31                      | 0.39                        | 0.39                          |
|                       | 0.39                                  | 0.39                      | 0.39                        | 0.39                          |
| Nagelkerke $R^2$     | 0.51                                  | 0.53                      | 0.62                        | 0.62                          |
|                       | 0.62                                  | 0.62                      | 0.62                        | 0.62                          |
| Lacy’s $R^6$         | 0.29                                  | 0.33                      | 0.40                        | 0.40                          |
|                       | 0.40                                  | 0.40                      | 0.40                        | 0.49                          |

Table D.1.: Explaining dispute settlement types (alternative problem variables).
## E. Regional Economic Organizations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Name</th>
<th>first year in dataset</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andean</td>
<td>Andean Community</td>
<td>1969</td>
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<tr>
<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
<td>1991</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
<td>1967</td>
</tr>
<tr>
<td>BENELUX</td>
<td>Benelux</td>
<td>1950</td>
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<tr>
<td>CARICOM</td>
<td>Caribbean Community</td>
<td>1968</td>
</tr>
<tr>
<td>SICA</td>
<td>Central American Integration System</td>
<td>1952</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
<td>1982</td>
</tr>
<tr>
<td>CIS/SNG</td>
<td>Commonwealth of Independent States</td>
<td>1992</td>
</tr>
<tr>
<td>CEMAC</td>
<td>Monetary and Economic Community of Central Africa</td>
<td>1966</td>
</tr>
<tr>
<td>ECCAS</td>
<td>Economic Community of Central African States</td>
<td>1985</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
<td>1975</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
<td>1960</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
<td>1967</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
<td>1952</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
<td>1994</td>
</tr>
<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
<td>1981</td>
</tr>
<tr>
<td>LAIA/ALADI</td>
<td>Latin American Integration Association</td>
<td>1961</td>
</tr>
<tr>
<td>LOAS</td>
<td>League of Arab States</td>
<td>1950</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
<td>1994</td>
</tr>
<tr>
<td>OECOS</td>
<td>Organization of Eastern Caribbean States</td>
<td>1968</td>
</tr>
<tr>
<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
<td>1982</td>
</tr>
<tr>
<td>PIF</td>
<td>Pacific Islands Forum</td>
<td>1975</td>
</tr>
<tr>
<td>SACU</td>
<td>South African Customs Union</td>
<td>1969</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
<td>1982</td>
</tr>
<tr>
<td>MERCOSUR</td>
<td>Mercado Comun del Sur</td>
<td>1991</td>
</tr>
</tbody>
</table>

Table E.1.: List of 25 regional economic organizations.
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F.1. International Atomic Energy Agency

Introduction

The International Atomic Energy Agency (IAEA) seeks to ensure the safe use of nuclear technology. Its membership is global and entails 162 countries. The IAEA is active in various areas that are related to nuclear science and technology: nuclear applications, nuclear energy, safety and security, safeguards and technical cooperation. The IAEA’s objective is to “accelerate and enlarge the contribution of atomic energy” while making sure that it is “not used in such a way as to further any military purpose” (Statute, Art. 2). The headquarters of the organization are in Vienna, Austria. It also has operational liaison and regional offices in Geneva, Switzerland; New York, USA; Toronto, Canada; and Tokyo, Japan. Additionally, IAEA runs or supports research centers and scientific laboratories in Vienna and Seibersdorf, Austria; Monaco; and Trieste, Italy.

The IAEA was created in 1957 against the background of increasing concerns over the proliferation of nuclear energy. The United States and other countries in possession of nuclear technology promised to share their knowledge in exchange for the assurance that nuclear technology would not be used for military purposes. The IAEA served to provide the assurance that nuclear technology would not be mis-used (Barkenbus, 1987; Smith, 1987). Because it promotes the peaceful use of nuclear energy, the IAEA is also called the “Atoms for Peace” organization. Initially, 81 states including the Soviet
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Union unanimously approved its Statute (Fisher, 1997, p. 30). The fact that it was created against the backdrop of the Cold War makes it all the more remarkable that the negotiations establishing the IO succeeded (Bechhoefer, 1959). The IAEA is not a specialized agency of the United Nations but is embedded in the UN family by means of a special agreement that requires the organization to report to the UN General Assembly annually. It also reports to the UN Security Council when appropriate (Rautenbach, 2006).

The key legal document of the IAEA is the Statute (signing: 1956; entry into force: 1957). The Statute has been amended three times, with amendments coming into force in 1963, 1973 and 1989. These amendments, which have sought to increase equal representation in the Board of Governors, have no effect on our coding. The IAEA has three main decision-making bodies: the General Conference, which serves as the assembly; the Board of Governors, which serves as the executive; and the Secretariat.

Structure

Assembly

Assembly A1: General Conference (1957 – present)

The highest decision-making organ in the IAEA is the General Conference, exclusively composed of member state representatives (Art. 5 (a)). Representation is direct (Art. 5 (b)). The General Conference serves to makes decisions on all matters that have been referred to it by the Board of Governors and can also propose the consideration of various issues to the Board of Governors (Art. 5 (f)). Decisions in the General Conference are taken by simple majority (Art. 5 (c)). These decisions are binding. Each member has one vote and there is no mention of weighted voting (Art. 5 (c)). There have been no changes in the structure of the assembly.
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Executive

Executive E1: Board of Governors

The Board of Governors is the executive body of the organization. The IAEA website describes the work of this body as follows: “At its meetings, the Board examines and makes recommendations to the General Conference on the IAEA’s accounts, programme, and budget and considers applications for membership. It also approves safeguards agreements and the publication of the IAEA’s safety standards and has the responsibility for appointing the Director General of the IAEA with the approval of the General Conference.”

Head of executive. The Board of Governors is responsible for electing its own chair. The executive is chosen “from among its members” (Art. 6 (h)). Because the Board of Governors usually decides by majority (Art. 6 (e)) it is also assumed that this is the case for the election of the chairperson.

Members of executive. The General Conference and the Board of Governors both play a role in the selection of the members of the Board of Governors. The Board has reserved seats for particular powers. Under current rules (Statute of 1957, Amendment of Article VI.A.1 of the Statute, in force in 1989), seats on the Board are allocated as following: a) “ten members most advanced in the technology of atomic energy including the production of source materials” selected by the outgoing board, complemented, if required, by the member most advanced in atomic energy in those geographical regions that do not have a top-ten nuclear power (Art. 6 (a).1); b). twenty members, elected by the General Conference, taking into account equitable geographical representation (Art. 6 (a).2 (a); and c) two more members, elected by the General Conference, representing non-Western geographical areas combinations of regions (Art. 6 (a).2 (b), (c)).

Selection rules have been amended three times, increasing over time the share of seats elected by the General Conference and tightening regional representation. According to
the 1957 Statute, nearly half of the seats were filled by the outgoing Board on the basis of nuclear power, and ten elected by the General Conference. In 1963, the number elected by the General Conference was increased from ten to twelve. A second amendment, which came into force in 1973, increased the number elected by the General Conference to 22, and the number elected by the Board to minimum nine. In 1989 the number of members selected by the Board of Governors was increased to minimum ten. Currently, the Board of Governors has 35 members.

Following Article 6 (a), only member states are eligible for membership and a subset of member states is represented in the executive. Since there is no suggestion of it being otherwise, we assume there is direct member state representation in the Board of Governors. Each member state has one vote (Art. 6 (e)), and there is no mention of weighted voting.

**General secretariat**

**GS1: The Secretariat**

The IAEA was created by the 1956 founding treaty and has not changed since. The IAEA Secretariat is headed by the Director General. Both the assembly and the executive play a role in the selection process: the Director General is appointed by the Board of Governors and the appointment has to be approved by the General Conference (Art. 7 (a)). Both these bodies make decisions by simple majority rule (Art. 5 (c), 6 (e)). The Director General is appointed for a term of four years (Art. 7 (a)). The Statute stipulates: “The Director General shall be responsible for the appointment, organization, and functioning of the staff and shall be under the authority of and subject to the control of the Board of Governors” (Art. 7 (b)). This has been interpreted to mean that the executive can remove the head of the secretariat, by simple majority.

The current Director General of the IAEA is Yukiya Amano from Japan. He has been in office since 1 December 2009. There are six Deputy Directors-General, who each hold
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responsibility for one of the IAEA programs. The IAEA currently employs about 2500 staff.

Consultative bodies

There is no mention of any consultative bodies or any informal and formal consultative arrangements in any of the documents of IAEA.

Authority

Membership

Accession

The procedure for the accession of new member states has remained stable over time. All states are eligible for membership of the IAEA. States that apply for membership need to be recommended by the Board of Governors and need to gain approval by the General Conference (Art. 4 (b)): “In recommending and approving a State for membership, the Board of Governors and the General Conference shall determine that the State is able and willing to carry out the obligations of membership in the Agency, giving due consideration to its ability and willingness to act in accordance with the purposes and principles of the Charter of the United Nations.” Both these bodies make their decision by simple majority (Art. 6 (e), 5 (c)). Ratification by the other member states is not required.

Suspension

The IAEA has the possibility to suspend members who have “persistently violated the provisions of this Statute or of any agreement entered into it pursuant to this Statute” (Art. 19 (b)). The measure is proposed by the Board of Governors and needs to be approved by the General Conference. In both cases the decision is made by a two-
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thirds majority (Art. 19 (b)). Decisions on suspension are made on the basis of a fact-finding report that is drafted by the staff of inspectors under the direction of the Director General (Art. 12 (c)). This means the Secretariat is also involved in the decision-making procedure on suspension.

Constitutional reform

The rules for constitutional reform have not changed over time. Following the IAEA Statute Article 18 (a), member states can initiate amendments. The same article also gives an agenda-setting role to the secretariat: “Certified copies of the text of any amendment proposed shall be prepared by the Director General and communicated by him to all members at least ninety days in advance of its consideration by the General Conference” (Art. 18 (a)). Amendments need to be approved by the General Conference: “Amendments shall come into force when approved by the General Conference by a two-thirds majority” (Art. 18 (c)). Amendments only come into force after having been “accepted” by a two-thirds majority “in accordance with their respective constitutional processes” (Art. 18 (c).ii). This means that the decision comes into force for all members when it has been ratified by a subset of member states.

Finances

Revenues

According to the Statute, the organization’s expenses are covered by member states. Their contributions are determined by a scale designed by the Board of Governors and approved by the General Conference (Art. 14 (d)). This has been interpreted as regular member state contributions. The regular budget of the IAEA for 2014 is 344 million euros.
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Budgetary allocation

The budget is drafted by the Board of Governors, based on estimates provided by the Director General (Art. 14 (a)). The Board of Governors makes decisions by a two-thirds majority (Art. 6 (e), Art. 14 (h)). The final approval on the budget is done by the General Conference (Art. 14 (a)), which also decides by a two-thirds majority (Art. 14 (h)). Given that there are rules on budgetary non-compliance it is assumed that decision-making on the budget is binding.

Non-compliance

When a member state is in arrears it can have its voting rights withdrawn. The proposal for sanctions is primarily administrative; the decision on this is made by Congress by a simple majority (Art. 5 (c), Art. 19 (a)).

Policy making

The IAEA is active in various areas that are concerned with nuclear technology. It promotes research and negotiates safeguard agreements for the use of nuclear facilities. The Agency is also involved in monitoring the compliance with safety measures and in guiding nuclear projects run by various member states. Both these types of policy making have been coded. There seems to be little change in the IO’s focus: it seems to have been active in the same policy fields since the beginning (Anon, 1957, 1960; Barkenbus and Forsberg, 1995).

Programming. IAEA general policy making happens at the annual General Conference, where the annual program for the IO is approved by the member states, which includes guidelines and budgets for technical cooperation, research, fact-checking missions etc. The IAEA website describes the General Conference as the “highest policymaking body” in the organization. The description on the website makes it clear that the executive, secretariat and individual member states are involved in the agenda setting
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process. “The General Conference meets annually, typically in September, to consider and approve the Agency’s programme and budget and to decide on other matters brought before it by the Board of Governors, the Director General, or Member States.” Hence we code the General Secretariat, member states and the Board as agenda-setters, and the General Conference as decision maker. An analysis of the IAEA in 1959 shows that these bodies have been involved in decision making from the very start (Stoessinger, 1959). As is evident from the website, the General Conference can make the final decision on policies. The constitution also states that “the General Conference shall have the authority to take decisions on any matter specifically referred to the General Conference for this purpose by the Board” (Art. 5 (f.1)).

Monitoring: safeguards. The key activity of the IAEA concerns monitoring states’ activities related to nuclear energy. To do this the IAEA enters into agreements with the state, whereby a state agrees to submit nuclear materials, facilities and activities to the scrutiny of IAEA’s safeguards inspectors—called safeguards. The safeguards system is based on assessment of the correctness and completeness of the State’s declarations to the IAEA concerning nuclear material and nuclear-related activities. This is primarily the province of the Staff (Art. 12.1 and 12.2), which is held accountable by the Board. Decisions are binding and no ratification is required. The Secretariat plays the key role in the agenda setting process, a role that is nearly equivalent to monopoly of initiative. The IAEA closely monitors member state compliance (see e.g. Art. 12 (c)), and approves safeguard agreements. It can be assumed that policy-making is binding, and Article 19 (b) provides possibility for a “member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute” to be suspended. There is no mention of ratification being required.
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Dispute settlement

There have been no changes in the dispute settlement procedure of the IAEA since its creation. The IAEA statute provides for an automatic right to review of member state disputes. Dispute settlement is carried out by the ICJ: “Any question or dispute concerning the interpretation or application of this Statute, which is not settled by negotiation shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement” (Art. 17 (a)). Since dispute settlement is through the ICJ, the ICJ statute should be followed with regards to the procedure. This means that decision-making is binding if there is an ex ante agreement amongst disputing parties or when it is approved post hoc by a political body, there is a standing body of justices which rules collectively on disputes and only member states have legal standing before the court. There is no remedy for non-compliance and the ICJ does not provide for a system of preliminary ruling. The ICJ can also be called upon by the General Conference or the Board of Governors to provide an opinion in case a legal question arises.

F.2. International Labor Organization

Introduction

The International Labor Organization (ILO) seeks to promote labor rights and human rights in general. Its membership is global and currently includes 185 countries. In the words of the former ILO Director-General, Juan Somavia: “The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”1 The organization’s headquarters is located in Geneva, Switzerland, but there also are regional offices in

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Addis Ababa (Ethiopia), Lima (Peru), Beirut (Lebanon), Bangkok (Thailand), Geneva (Switzerland) and many field offices around the world.

The ILO has its origins in the international labor movement that started at the beginning of the nineteenth century. In the aftermath of the industrial revolution, conditions for the working class had steadily worsened. Child labor and unsafe working environments had become increasingly common. These developments gave rise to the creation of the international labor movement in the beginning of the nineteenth century, which campaigned for workers’ rights. Within the international labor movement, it soon became evident that improving working conditions required international cooperation. It was understood that countries that did not legislate on labor rights would gain a competitive advantage over those who did, and therefore international agreements on labor rights were necessary for improving the lives of the working class (Murphy, 2001; Langille, 2003). This sentiment is explicitly reflected in the preamble to the ILO Constitution, which reads: "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries" (ILO Constitution). The ILO was created in 1919 as part of the Treaty of Versailles which formally ended WWI. The organization was part of the League of Nations and became a specialized agency of the United Nations in 1946. In 1969, the year of its 50th anniversary, the ILO received the Nobel Peace Prize.

The key legal document of the ILO is the Constitution (signed: 1919; entry into force: 1919). The founding treaty was amended several times. The most important amendment, the Declaration of Philadelphia (signed: 1944), entered into force in 1948. Since then, the Constitution has only undergone minor revisions. The most recent amendment to the Constitution came into force in 1974. Another amendment from 1997 needs to be ratified or accepted by two more countries to enter into force and a campaign has been launched to bring the amendment into force. The amendments that have entered into force so far have served to increase the number of seats on the executive
but these changes do not affect our coding.

The ILO is distinguished from other IOs through its unique structure in which workers, employers and governments are represented separately. This so-called tripartite system was created in order to reflect the entire social structure (Beguin, 1957; Haworth and Hughes, 2003). The ILO has three main decision-making bodies: The International Labor Conference (assembly), the Governing Body (executive) and the International Labor Office (secretariat).

**Structure**

**Assembly**

**Assembly A1: General Conference (1948 – present)**

The International Labor Conference is the highest decision-making organ in ILO. Its composition and decision-making procedures have not changed over time. It is characterized by a tripartite structure in which member states, employees and employers are represented. The Conference comprises of four representatives from each member state: two governmental delegates represent the member states directly while each state has also one representative of workers and employers respectively (Constitution, Art. 3). Thus, non-state actors select 50 percent of the delegates.

According to Article 4 of the Constitution the representatives vote individually (not collectively on behalf of their respective state). More importantly, since half of the members are non-state representatives, we code member state representation as indirect. Weighting of votes is not explicitly discussed but as each country has four delegates and no weighting is mentioned in the Constitution this implies that each country has the same weight (four votes).
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Executive

Executive E1: Governing Body (1948 – present)

The Governing Body is the executive organ of the ILO. According to the ILO website, the Governing Body “takes decisions on ILO policy, decides the agenda of the International Labor Conference, adopts the draft Programme and Budget of the Organization for submission to the Conference, and elects the Director-General.”

Head of executive. According to the Constitution, the Governing Body elects its own Chairman. The voting rule is consensus (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). Since 1968, the practice is that the Governing Body elects its own chair, which usually is one of the government delegates following geographical rotation (Introduction to the Governing Body, p. 3). The formal rule for his election is simple majority though in practice she is appointed by consensus (Compendium of rules applicable to the Governing Body of the International Labor Office p. 6), which is also the general decision rule in the executive (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). Since only government representatives can chair and since rotation is the dominant selection rule, we code this as rotation for both agenda setting and decision making.

Members of executive. In the Governing Body, half of the seats are reserved for government representatives. Representatives of workers and employers take up the other half and therefore 50 percent of the executive is composed of non-member states. Over time, the number of seats on the executive has increased from 32 to 56. This number indicates that only a subset of member states is represented in the Governing Body. Currently, the executive is composed of 28 government representatives and fourteen employer and fourteen worker delegates respectively (Constitution, Art. 7.1). Ten of the government delegates are determined by the ten member countries with the highest
industrial importance (Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States) while the remaining eighteen governmental seats are given to member countries selected by the remaining government representatives in the assembly (Constitution, Art. 7.2). We therefore code both member states and the assembly in the proposal and final decision stage. The assembly makes its decisions by simple majority (Standing Orders of the International Labor Conference art. 52.4). The earliest version of the Standing Orders we have been able to consult stems from 1955, before that the voting rule is unknown. The worker and employer delegates in the assembly elect their representatives for the Governing Body respectively (Constitution, Art. 7.4).

Whether member states are directly or indirectly represented is not entirely explicit. Each representative has a substitute which could be interpreted either way. But due to the fact that half of the members are non-state representatives, we code member state representation as indirect. As in the assembly, each member of the executive has one vote (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 25, p. 10). The general decision rule in the executive is consensus (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). Since the Compendium is “a consolidation in a single document of the existing rules by which it is governed” we assume consensus is the decision-rule for the entire time period in which we consider ILO. There is no mention of weighted voting.

**General secretariat**

**GS1: The International Labor Office (1948 – present)**

The International Labor Office functions as the ILO’s secretariat. There have been no changes to this body since 1948. The secretariat is headed by the Director General. The Director General is elected by the Governing Body (Art. 8.1), and the rule used
to be consensus (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). Currently, the Director-General is selected for five years (renewable) through simple majority vote (Compendium of rules applicable to the Governing Body of the International Labor Office Annex III.4 p. 54). The decision rule became simple majority in 1988. The length of tenure has always been five years. There are no written rules for the removal of the Director-General. The current Director-General is Mr. Guy Ryder, who was first elected in 2012. The ILO currently employs about 2700 people.

Consultative bodies

There are no consultative bodies of non-state representatives.

Authority

Membership

Accession

The ILO has always aimed for the broadest possible membership (Helfer, 2006). There have been no changes to the accession procedure over time. Any member of the UN may through “formal acceptance of the obligations of the constitution” become a member of the ILO (Constitution, Art. 1.3). Also, the Conference may admit new members by a two-thirds majority of their members as well as of the government delegates (Constitution, Art. 1.4). This normally happens after reviewing a report of a specifically appointed Selection Committee (Anon, 1962a). Hence, we code both technocratic admission and the Conference (by supermajority) as involved in the decision and as final decision-maker. There is no evidence for a requirement of ratification by existing member states.
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Suspension

There are no written rules for suspension or expulsion of members. Members that are expelled by the United Nations, however, also automatically lose membership of the ILO (personal communication). Moreover, there has been one instance in which a country has been encouraged to withdraw from the organization. In 1964, South Africa withdrew after repeated calls by the ILO to do so (personal communication). We code ‘automatic loss of membership of loss of UN membership’ as technocratic.

Constitutional reform

On the initiation of constitutional amendments there are no written rules in the Constitution. However, the Rules for the Conference of the International Labor Conference (Art. 47) clearly indicate that the International Labor Office drafts amendments and submits them to the Conference. The earliest version of the Standing Orders that we have been able to access stems from 1955. The Conference itself does not make a final decision immediately but discusses the drafts first and may refer them to a committee. Once the Conference adopts a draft amendment, it refers the amendment to the Conference Drafting Committee, which drafts a final instrument of amendment. This text is then again discussed by the Conference and may be amended before the final vote takes place. Hence, we code the International Labor Office as well as the International Labor Conference as involved in the initiation of amendments. The decision-rule for the Conference at this stage is not obvious but we assume that it is the same decision-rule as for the final decision, i.e. supermajority. The decision over amendments is made by the Conference with two-thirds of the votes needed (Constitution, Art. 36). In order to take effect amendments need to be “ratified or accepted by two-thirds of the Members of the Organization including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance” (Constitution, Art. 36), i.e. a subset of member states needs to ratify the amendment in order to come into effect.
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Finances

Revenues

According to the Constitution, the organization is funded by regular member state contributions (Art. 13). The revenues for expenditures of the ILO, however, come from both mandatory member state contributions and voluntary contributions and donations. Members have to make financial contributions (Constitution, Art. 13.4) and the organization has a biennial financial period (Rules for the Conference, 11bis) for which budget estimates are made (Rules for the Conference, 7bis). The Programme and Budget for the Biennium 2010-11 (p. ix) lists member state contributions as the only source of income for the regular budget of nearly US$ 727 million. Furthermore, ILO received US$ 53 million in voluntary member state contributions (the Regular Budget Supplementary Account). Together with further donations for extra-budgetary resources in technical cooperation of US$ 530 million in the 2012-13 biennium this amounts to a comparably large budget. However, we do not have enough information on the composition of the budget over time and therefore we cannot substantiate a decision for own sources of funding for the entire time period under consideration. Because of this, we take the conservative decision of coding member state contributions as the main source of revenue.

Budgetary allocation

The Programme and Budget for the Biennium 2010-11 (p. xi) indicates that the Director-General drafts the budget for consideration of the Governing Body (by consensus, see Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). Early reports indicate the Governing Body has always been involved in the proposal stage (Anon, 1951) and that the Director-General has been responsible for drafting the budget for a long time (Anon, 1959). We therefore assume
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their involvement in the decision-making process on the budget from the beginning of our time period. The Conference is the final decision-making body (by two-thirds majority, see Constitution, Art. 13.2 (c)). The Conference also has a Finance Committee “consisting of one Government delegate from each Member of the Organisation” (Rules for the Conference, Art. 7bis) that reports to the Conference and prepares its decisions. Decision-making is coded as binding since there are provisions on what happens in case of non-compliance (Art. 13.4).

Non-compliance

Consequences of budgetary non-compliance are initiated by the Director-General informing the Governing Body about members being in arrears with their financial contributions (Compendium of rules applicable to the Governing Body of the International Labor Office 6.1.4 p. 27). Generally, there is no decision to be taken because the consequences are already determined by the Constitution (Art. 13.4): The respective member loses its right to vote in the bodies of ILO. However, “the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.” (Constitution, Art. 13.4) We code the agenda-setting stage as technocratic and the final decision as taken by the Conference by supermajority. Article 1.5 of the Constitution also states that a member state may not leave the organization unless it has fulfilled its financial obligations.

Policy making

The ILO has several policy instruments: “Conventions and Recommendations are the instruments used by the International Labor Conference to set international Labor standards. The Conference also adopts other types of texts, including declarations. Declarations are resolutions of the International Labor Conference used to make a formal and
authoritative statement and reaffirm the importance which the constituents attach to certain principles and values. Although declarations are not subject to ratification, they are intended to have a wide application and contain symbolic and political undertakings by the member States.\(^2\)

“International Labor standards are legal instruments drawn up by the ILO’s constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.\(^3\) So far, the ILO has adopted 189 binding Conventions and 202 non-binding Recommendations. The biennial program is also one of the policy instruments of the organization. In recent years, ILO has increasingly resorted to nonbinding instruments (Abbott and Snidal, 2000; Alston, 2004). In our coding we include both recommendations and conventions as significant policy instruments for ILO. The only difference between the two is their bindingness.

According to Article 14 of the ILO Constitution, the Governing Body prepares the agenda of the International Labor Conference, also considering any suggestions made by member states and making sure the consultation of members prior to the adoption of Conventions of Recommendations by the Conference.\(^4\) According to Article 10.1, “The functions of the International Labor Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions

\(^2\)http://www.ilo.org/public/english/bureau/leg/declarations.htm (accessed on March 5, 2014)


\(^4\)A Convention “shall only be binding upon the Members which ratify it” (Constitution, Art. 20). Thus, ratification of Conventions is required in order to come into effect. However, conventions are not binding for members informing the Director-General of their non-ratification (Constitution, Art. 19.5, 20). Conventions require ratification of two members to enter into force.
of industrial life and Labor, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.” Hence, we code member states, the Governing Body and the General Secretariat as having the power to initiate policies, the Governing Body by its general decision rule, consensus (Compendium of rules applicable to the Governing Body of the International Labor Office, Rule 24, p. 10). The Conference makes the final decision by supermajority (Constitution, Art. 19).

Dispute settlement

Every member state needs to communicate to the International Labor Office a report on its application of conventions (Constitution, Art. 22). The Director-General then summarizes the reports before the conference (Art. 23). “In the event of any representation being made to the International Labor Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit” (Constitution, Art. 24). If the Governing Body is not satisfied with the response, it may publish this (Constitution, Art. 25). Any member of the ILO, any delegate of the Conference, or the Governing Body may then file a complaint with the ILO (Constitution, Art. 26).

The Governing Body controls access to third-party review of disputes and may first try to resolve disputes itself (Constitution, Art. 26). If the Governing Body deems it appropriate it appoints a so-called “Commission of Inquiry” to solve the dispute (Constitution, Art. 26). As the Commission of Inquiry is appointed for each single dispute, it is ad hoc by nature. According to Constitution Article 29.2, the recommendations of the
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Commission of Inquiry are binding only if the governments involved in the dispute accept them. If not, the government may propose referring the dispute to the International Court of Justice (Constitution, Art. 26.2).

Also, the governing Body may initiate such a procedure itself (Art. 26.4). Thus, not only members but also a treaty organ does have legal standing. However, private parties do not have independent and unmediated standing. In case of non-compliance with recommendations from the Commission of Inquiry, the Governing Body “may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.” (Constitution, Art. 33). This means there is a slim possibility of retaliatory sanctions but it requires consensus in the Governing body and a positive vote in the Conference, which amounts to a very high hurdle indeed. There is no preliminary ruling system.

F.3. International Criminal Police Organization

Introduction

The International Criminal Police Organization (INTERPOL) facilitates international collaboration in policing and security. According to the Constitution, INTERPOL’s aims are: “To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the 'Universal Declaration of Human Rights'” and “To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes” (Art. 2). Its membership is global and currently entails 190 countries. The organization’s headquarters are in Lyon, France.

INTERPOL was created in 1946 as a successor to the International Criminal Police Commission (ICPC). The pre-war ICPC was founded in Vienna in 1923 to forge international cooperation of criminal police, and had permanent headquarters in the Vienna
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Police Directorate since 1934. The ICPC was set up (and Interpol operates until this day) as an international cooperative network of national police institutions, with systems for international telegraphic and radio communications, its own periodical, and mixed non-state and state membership. Over the years, ICPC membership gradually expanded. By 1940, the Commission represented more than 40 states, including most European powers as well as some non-European countries. The US became an official member in 1938 (Deflem, 2002, 2006). The organization was largely self-governed by a transnational police network which wielded knowledge and expertise to keep governments at bay. But when Nazi Germany conquered Austria in 1938 it kidnapped the organization and its archives, moving it to Berlin (Barnett and Coleman, 2005; Deflem, 2002; Fooner, 1989, p. 48-50).

In 1946, the organization was rebuilt largely along the lines of the original ICPC but its headquarters were now situated in Paris, France. In that year, INTERPOL was first chosen as the organization’s telegraphic address, and since then the organization is known by this name. In 1956, a new constitution was adopted that changed the organization’s name to International Criminal Policy Organization, as it is currently known. The organization’s headquarters were relocated from Paris to Lyon in 1989. It has also seven regional offices across the globe.

The key legal documents of INTERPOL are the Constitution of the International Criminal Police Commission (signing: 1946; entry into force: 1946) and the Constitution of the International Criminal Police Organization – INTERPOL (signing: 1956; entry into force: 1956). INTERPOL’s General Regulations were also adopted in 1956. The Constitution and General Regulations have been amended multiple times, with the most recent amendments coming into force in 2008.

Neither the 1946 Constitution nor the 1956 Constitution constituted at the time an explicit international agreement among states, but grew out of an unofficial meeting of representatives of police forces. The Constitution “was written by a random group
of police officers who did not submit the draft to their governments for approval or authorization” (Fooner, 1989, p. 45). “Interpol’s position as an international intergovernmental organization has been established over time” (Anderson, 1989, p. 57). Its legal status remained uncertain until the 1980s. In 1947, it applied to the United Nations for recognition as a non-intergovernmental organization, and was rejected at first and accepted in 1948. In 1958, the Council of Europe rejected its non-governmental status. In 1971, Interpol was recognized by the United Nations as having the status of an intergovernmental organization. Some member states dragged their feet, but the issue was finally settled when in 1982 the United States government designated Interpol as a public international organization entitled to full international immunities and privileges (Fooner, 1989, p. 50-53, 184).

INTERPOL has always had three main decision-making bodies. From 1946 until 1956 these were the Assemblée (assembly), Comité Exécutif (executive) and Bureau Central International (secretariat). Since 1956 these are the General Assembly, the Executive Committee and the General Secretariat. Anchored in the constitution as an integral part of INTERPOL are the specialized bureaus, the so-called National Central Bureaus (NCB), whose task it is to provide the access point between the police forces in participating countries.

Structure

Assembly

Assembly A1: Assemblée (1946 – 1955)

The Assembly (Assemblée) was INTERPOL’s assembly from 1946 until 1955. In this body all members of the organization are represented: “Seuls les membres ont le droit de participer aux assemblées de la Commission” (Art. 3.5). The Constitution reads: “La Commission Internationale de Police Criminelle est composée: a) des membres effectifs
soit les membres délégués par leur Gouvernement auprès de la Commission. Ces membres ne sont pas soumis à l'élection; b) des membres extraordinaires, soit les membres élus à la majorité des deux tiers des voix au cours d'une assemblée plénière. Ces membres devront toujours avoir l'approbation de leur Gouvernement” (Art. 3.1). The first part of this article indicates that all member states are represented in the assembly, and that there is direct representation. The second part indicates that there also is a second category of members of the Assembly. This category is reserved for individuals who have rendered special services to the organization or scientific experts: “Seules les personnes suivantes peuvent être candidates au titre de membre extraordinaire: i) celles qui ont rendu à la Commission des services effectifs ou ii) celles qui, en considération de leurs connaissances techniques ou scientifiques ou des fonctions qu’elles assument, sont censées devoir promouvoir de façon estimable les activités de la Commission” (Art. 3.1). The government of the extraordinary member needs to consent in his participation. Hence there is less than 100 percent member state representation in the Assembly. After 1956, the organization still mentioned the scientific experts in the Constitution, but they no longer are members of the assembly so we code the assembly as 100 percent selected by member states.

The Assembly mostly takes its decisions by simple majority (Art. 8). There is no mention of weighted voting. Each member state has one vote (Art. 3.3), but since this does not include the votes of extraordinary members, de facto a member state could have more than one vote (Barnett and Coleman, 2005, p. 604).

The Assembly is chaired by the President who is elected for five years by two-thirds majority. There are also seven elected vice-presidents (Art. 4), and together with the President they form a largely honorary Governing Board (Bresler, 1992, p. 84-85).
Assembly A1: General Assembly (1956 – present)

The 1956 Constitution describes in somewhat greater detail the composition and functions of the General Assembly. The highest decision-making organ in INTERPOL is now called the General Assembly, which is described as the organization’s “supreme governing body.” All members are state representatives (1956 Constitution, Art. 6), and thus the distinction between effective and extraordinary members disappears. However, the Constitution asserts a preference for “(a) High officials of departments dealing with police affairs, (b) Officials whose normal duties are connected with the activities of the Organization, (c) Specialists in the subjects on the agenda” (Constitution, Art. 7). Some observers have interpreted this to mean that, “strictly speaking,” police bodies—not countries—were members of Interpol (Fooner, 1989, p. 68). Others contend that for all practical purposes sovereign countries are the members, basing their view on the stance of governments in the few instances at which this was an issue (Anderson, 1989, p. 59). The ambiguity of the Constitution is not an accident; it is consistent with a longstanding desire by Interpol to minimize direct governmental and political control (Anderson, 1989, p. 58-59).

Member states may appoint several delegates to the organization, but each member state has only one vote (Art. 13) and there are neither weighted voting provisions nor preferential seats.

The main functions of the General Assembly are “to examine and approve the general programme of activities prepared by the Secretary General for the coming year” and “to adopt resolutions and make recommendations to Members on matters with which the Organization is competent to deal” (Constitution, Art. 8).

The General Assembly takes decisions by simple majority, unless otherwise specified in the Constitution (Art. 14). It is chaired by the President of the Organization. He or
she is elected by the General Assembly from the delegates by a two-thirds majority for four instead of five years (Art. 16). There are also two vice-presidents. The President or vice-presidents are not immediately re-electable. Though the Assembly’s decisions are not binding on the member states, Article 9 stipulates that they should do all in their power to carry out decisions.

INTERPOL’s Constitution also provides for the possibility of the creation of committees by the General Assembly (2008 General Regulations, Art. 35).

Executive

Executive E1: Comité Exécutif (1946 – 1956)

The Executive Committee (Comité Exécutif) functions as INTERPOL’s executive from 1946 until 1956. It consists of the President, three general rapporteurs (rapporteurs generaux) and the Secretary General (Art. 5.1). Since the Secretary General is included as a member of the executive we code the composition of the executive as less than 100 percent member states. Only a subset of member states is represented. The Executive Committee’s tasks are to execute the Assembly’s decisions, to exercise control over the International Central Bureau and over the organization’s other institutions and to prepare the meetings of the Assembly (Art. 5.1).

The president of the Executive committee is the President of the Assembly. He is elected for five years by the Assembly by two-thirds of the vote (Art. 4), and can be reelected (Art. 5.4).

The members of the executive are proposed by the President and elected by the Assembly (Art. 5.4) by simple majority (Art. 8). The length of tenure for rapporteurs is two years (Art. 5.6) and for the president five years (Art. 5.4). Only a subset of member states is represented. We code member state representation as “no written rules.” The Executive Committee does not have reserved seats for particular member states. However, “Les membres de Comité Exécutif devront, autant que possible, appartenir à
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des Etats différents, mais le Secrétaire général appartiendra de préférence au pays où est établi le siege de la Commission” (Art. 5.5, see also Art. 5.7).

The Executive Committee, like all other bodies in the organization, makes its decisions by simple majority (Art. 8). There is no weighted voting.

Executive E1: Executive Committee (1956 – present)

Under the 1956 constitution, the Executive Committee is enlarged and the Secretary-General loses formal membership. It consists of the President, three Vice-Presidents and nine delegates (Constitution, Art. 19). The number of members on the Executive Committee was further increased from nine to thirteen delegates in 1964. Thus, only a subset of member states is represented in the executive. The Secretary General is no longer explicitly mentioned as a member though he has the right to participate in the discussions of the Executive Committee (as well as of the Assembly) (Art. 29). Hence, we now code the composition of the executive as 100 percent member state.

The Executive Committee is responsible for the execution of the decisions taken by the General Assembly and for proposing the organization’s work programme to the General Assembly (Constitution, Art. 22). The Executive Committee meets at least once a year (Art. 20) and currently holds meetings three times a year.

Contrary to the 1946 Constitution, the 1956 Constitution and General Regulations of INTERPOL do not explicitly state the voting rule in the Executive Committee. The Rules of Procedure of the Executive Committee, first adopted in 1994, indicate that the general decision rule is simple majority (Art. 7.2). We have reason to extrapolate this back to 1956: it is consistent with voting in the General Assembly (General Regulations, Art. 19), and simple majority was the rule prior to 1956. There is no weighted voting, and there are no preferential seats.

The Executive Committee is chaired by the President of the Organization (Art. 18). The President is elected by the General Assembly, deciding by two-thirds majority (Art.
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16). The term of office for the President is four years and renewal is not possible.

The other members of the executive are the Vice-Presidents and the delegates. Both are elected by the General Assembly by simple majority (Art. 16, Art. 19). According to the Constitution, the delegates “shall belong to different countries, due weight having been given to geographical distribution” (Art. 15). Since 1964, a gentlemen’s agreement allocates three positions to Africa, three to Asia, three to the Americas, and four to Europe (Fooner, 1989, p. 83). The President and Vice-Presidents also have to be from different countries (Art. 16), and after an amendment in 1964, from different continents. Different from the 1946 Constitution, member state representation is now explicitly indirect: “In the exercise of their duties, all members of the Executive Committee shall conduct themselves as representatives of the Organization and not as representatives of their respective countries” (Art. 21).

General secretariat

GS1: Bureau Central International (1946 – 1955)

The International Central Bureau (Bureau Central International) is described as the “executive body” of the ICPC (Art. 1.2). It is responsible for the centralization and distribution of information concerning the falsification of money and international criminals (Art. 1.2). The International Central Bureau is headed by the Secretary General (Art. 2.1), who is appointed by the Assembly upon the proposal of the President (Art. 5.4). The Assembly makes its decisions by simple majority (Art. 8). The length of tenure for the Secretary General is five years (Art. 5.4), and renewable. A Frenchman should have preference as secretary general (Art. 5.5). There are no written rules on the possible removal of the Secretary General.
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GS1: General Secretariat (1956 – present)

The 1956 Constitution renamed the Bureau into the General Secretariat, which is responsible for the day-to-day work of the organization. In the Constitution, several tasks are listed, including: “(a) Put into application the decisions of the General Assembly and the Executive Committee; (b) Serve as an international centre in the fight against ordinary crime; (c) Serve as a technical and information centre; (d) Ensure the efficient administration of the Organization; (e) Maintain contact with national and international authorities, whereas questions relative to the search for criminals shall be dealt with through the National Central Bureaus” (Art. 26).

The Secretary General is appointed by the General Assembly on the proposal of the Executive Committee (Art. 28). We therefore code both bodies as being involved in the selection of the Secretary General. The selection of the Secretary General is decided by majority vote. Candidates should be “persons highly competent in police matters” (Art. 28), i.e. former police officers. The same bodies can also decide on the removal of the Secretary General, which can only take place in “exceptional circumstances” (Art. 28). The length of tenure of the Secretary General is five years (Art. 28) with the possibility of renewal. The current Secretary General is Ronald K. Noble, a U.S. citizen, who was reelected for a third term in 2010.

The 1956 Constitution retained the provision that preference should be accorded to a national of the host country (i.e. France) (Art. 43), and indeed, until 1985 this was the case, providing the French ministry of the Interior with an informal agenda-setting right (Anderson, 1989, p. 95-96). Since then, non-French nationals have occupied the post. We code formal rules.

At the end of 2011, a total of 673 people worked at the General Secretariat and Regional Bureaus, representing 98 different nationalities (2011 Annual Report, p. 7). INTERPOL relies heavily on seconded officials.\(^6\)

\(^6\)http://www.interpol.int/About-INTERPOL/Structure-and-governance/General-Secretariat (accessed...
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Consultative bodies

CB1: Advisors (1956 – 2010)

There is an advisory college composed of scientific experts “with a world-wide reputation in some field of interest to the Organization” (see Const. Art. 34 to 37; General Regulations Art. 46 to 50). The advisors are constituted in a college, which selects one of them to be the Senior Advisor (General Rules, Art. 46). They are appointed for three years by the Executive Committee. The provision that the executive committee must consult the College of Advisors was removed in 1962. An advisor may be removed by the General Assembly. They may be called on by the Assembly, the Executive Committee, the president or the secretary-general, and may be consulted individually or collectively. They can also meet on their own volition (General Regulations, Art. 50), and can make suggestions to the General Secretariat or the Executive Committee (1962 General Regulations, Art. 46) though it is not clear whether either Secretariat or Executive Committee is bound to consider their advice. This suggests a very limited policy advisory role.


In 1986, an independent body was set up to verify that Interpol’s sensitive criminal records and policy files be compiled and maintained free of misuse and abuse. Under current rules, the body performs a triple role. First, it processes individual requests for access to individual files with the aim to verify whether information is accurate and appropriate. Second, it advises the organization on policy with respect to processing personal information. And third, it monitors the application by Interpol of its data protection rules. It acts mainly as a check on the General Secretariat. The General

cess ed on 30 May 2014).
Secretariat is required to solicit the opinion of the Commission on particular issues that are specified in Interpol’s Rules on the Procession of Information. The General Secretariat may consult the Commission on any other issue related to personal information. The Commission may also carry out spot checks (Rules, Ch. 1, Art. 4). Furthermore, the Commission may summon the General Secretariat to present or defend its position on an issue (Rules, Art. 5, (f).5), and if the General Secretariat is unable to follow a Commission’s recommendation, it is required to submit a report explaining its decision (Rules, Art. 6 (b)). If it judges this necessary, the Commission may bring a disagreement with the General Secretariat before the Executive Committee (Rules, Art. 6 (d)).

The five members of the board (since 2008: Commission) are on three-year terms; their term is renewable once or exceptionally twice. The members were initially chosen by a complex arrangement that involved the Executive Committee and the government of France, but watched closely over the expertise and independence of the candidates. Of the first three members, one is selected by the Executive Committee (from a list submitted by member states), and one by the government of France, who then together select a third person with senior judicial credentials to chair. All three persons must be impartial and have strong judicial credentials. An electronic data processing expert is appointed by the Chairman of the Board from a list of five candidates proposed by the Executive Committee, and the fifth member is a member of the Executive Committee (Fooner 1989: 171-2; Art. 16-18, 1982 Rules on International Police Cooperation, in Fooner 1989: 223-4). In 2008, the INTERPOL General Assembly voted to amend INTERPOL’s Constitution to integrate the Commission into its internal legal structure (2008 Constitution, Art. 36-37). All members are now selected by the Executive Committee from candidates put forward by member states, and they are appointed by the General Assembly. The Chairperson is appointed by the other four members.

The board/commission members are independent (Vademecum, Art. 2; 2008 Constitution, Art. 36); they shall neither solicit nor accept instructions from any persons
or bodies (Art. 19, Rules on International Police Cooperation). They must have the nationality of one of the member states, but there are otherwise no restrictions on nationality.

**Authority**

**Membership**

**Accession**

There were no written rules on accession under the 1946 Constitution. In practice, membership was demand-driven. New members filed notice of their intention to join to the Secretary-General, paid dues, and were automatically enrolled (Fooner, 1989, p. 48). Prior to 1956 an application to join had to come from the appropriate ministerial authority—usually home affairs or justice; from 1956 applications are normally conveyed through diplomatic channels (Anderson, 1989, p. 93). We code “no written rules.”

Rules on accession were first formalized in the 1956 Constitution, stating that “Any country may delegate as a Member to the Organization any official police body whose functions come within the framework of activities of the Organization” (Art. 4). Requests for accession are addressed to the Secretary-General. So member states initiate accession, and there are otherwise no written rules on the initiation process. The final decision is taken by the General Assembly, which decides by a two-thirds majority (Art. 4). Ratification is not required. There have been no changes in these rules over time.

**Suspension**

There are no written rules on suspension outside voting suspension due to financial arrears. Article 2 of the constitution states that the international police cooperation is to be conducted within the "spirit of the Universal Declaration of Human Rights,” but there is no monitoring or enforcement mechanism in the organization.
Constitutional reform

The 1946 constitution did not contain formal rules on constitutional reform. Rule changes were agreed at the annual assembly meetings (Fooner, 1989; Anderson, 1989). This had been the route taken for the 1956 constitution. The revision was submitted and adopted to all members at the General Assembly in Vienna. It used the lightest form of ratification: the Constitution listed all countries which at that time were members, and according to Article 45, assumed them to adopt the new Constitution “unless they declare through the appropriate governmental authority that they cannot accept this constitution” within six months.

The 1956 Constitution does contain a procedure. The Constitution can be amended by the General Assembly on the proposal of the Executive Committee or of member states. The final decision is taken by a two-thirds majority (Art. 42). Ratification is not required.

Finances

Revenues

Since 1928, member states had been paying annual dues in Swiss Francs (based on a population key), which was unable to raise enough money (Bresler, 1992, p. 122). Considerable support from the host country—Austria before the war and France thereafter—was essential to run the organization (Fooner, 1989; Barnett and Coleman, 2005). According to a US House of Representatives Judiciary Committee Report of April 1959, some 75 percent of Interpol’s funding had been from the French government (Anderson, 1989, p. 43). Hence we code the lowest level of financial independence: ad-hoc member state financing.

The 1956 constitution established the principle of financial independence by creating a tiered system of annual contributions and making the acceptance of gifts and grants
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conditional on the accord of the General Assembly (Art. 38 and 39). A new dues system came into effect with the Financial Regulations of 1958, which implemented these principles. Dues are assessed on a sliding scale with eleven categories based on four criteria: ability to pay, use made of membership, financial position of the state, and population size. Member states choose their level of subscription, in consultation with the Secretary-General, and every three years the actual amount to be paid is determined on the basis of actual budget figures (Anderson, 1989, p. 101). Some 95 percent of its current income has been derived from member state contributions (Fooner, 1989, p. 165). Hence from 1958, we code member state contributions as the form of financial resources.

Budgetary allocation

Before 1956 there are no written rules on budgetary allocation. According to the 1956 Constitution: “The draft budget of the Organization shall be prepared by the Secretary General and submitted for approval to the Executive Committee” (Art. 40). This means that the executive and secretariat are involved in the proposal stage. The final decision is made by the General Assembly (Art. 40), deciding by simple majority (Art. 14). Decision-making on the budget is coded as binding since there are sanctions in case of non-compliance.

Non-compliance

“Failure of members to pay their subscriptions in time is a long-standing problem” (Anderson, 1989, p. 101). The rules on budgetary non-compliance have been expanded over time. Until 1956, there were none. The General Regulations of 1956 read: “If a Member constantly fails to fulfill its financial obligations toward the Organization, the Executive Committee may suspend its right to vote at General Assembly meetings and refuse it any other benefits it may claim, until all obligations have been settled. The
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Member may appeal against such a decision to the General Assembly” (Art. 53). We therefore code the executive in the proposal stage and both the executive and assembly in the final decision stage. In 1983, the rules became more specific: members that failed to pay for three years are excluded from participation in the Organization, but the decision can be appealed with the General Assembly (Art. 53). This means that our coding does not change. A change came in 1996, when it was decided that members who have not fulfilled their financial duties towards the organization for the current and previous financial year lose their right to vote and their right to participate at meetings apart from the General Assembly. The member can also no longer host meetings or propose candidates for employment at the Secretariat. The Secretary General proposes the decision and goes ahead with applying the sanctions unless the Executive Committee decides otherwise. We therefore code the Secretary General in the proposal stage and the Executive Committee for the final decision (Art. 52). Members can also appeal to the General Assembly, which has the power to overturn the earlier decision. For this reason, the General Assembly is included in the decision stage as well (Art. 52).

Policy making

INTERPOL’s work has always focused on furthering international police cooperation. Over the years, the organization’s work has become more extensive. Initially, most of INTERPOL’s attention dealt with the identification of crime and criminals. This still is an important part of the organization’s work. Nowadays, however, counterterrorism has become a key priority (Deflem, 2006). In each member country there is a designated National Central Bureau that serves as a contact point for INTERPOL, and National Central Bureaus are explicitly recognized in the Constitution as an integral part of INTERPOL (Art. 5). Through these National Central Bureaus, INTERPOL facilitates the communication and cooperation between different police forces. The organization runs a secure communication system that allows safe exchange of confidential data. The
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organization also supports police forces in emergencies, such as with the identification of disaster victims. Finally, another goal is capacity building of national police forces through training and the provision of tools. “Interpol is not a supranational police agency with investigative powers or an organization sanctioned by an international governing body such as the United Nations. Rather, it is a cooperative network formed independently among police agencies to foster collaboration and provide assistance in police work across nations.” (Deflem, 2006, p. 245). Thus, the main policy instrument for INTERPOL is the general assembly resolution, and since the 1970s, the main policy activity consists of programmes coordinated by the General Secretariat and involving the National Central Bureaus (Anderson, 1989; Fooner, 1989; Deflem, 2006).

From 1946 until 1956, the Constitution indicates that individual member states and the Executive Committee are involved in the proposal stage. Members propose issues to be discussed and these are studied by the rapporteurs before being put to a vote in the Assembly: “Les propositions des membres relatives à des affaires relevant des activités de la Commission doivent être présentées par écrit au Président qui les fait parvenir, s’il y a lieu, aux rapporteurs chargés de les étudier” (Art. 6.1). The final decision, in the form of a resolution, is taken by the Assembly (Art. 6.2). Resolutions are non-binding. There is no mention of ratification.

After 1956, the Constitution lists as one of the tasks of the General Secretariat to: “Draw up a draft programme of work for the coming year for the consideration and approval of the General Assembly and the Executive Committee” (Art. 26 (h)). We code the Secretariat (Art. 26) and the Executive Committee in the proposal stage (Art. 22) and the General Assembly for the final decision (Art. 8). Since data collection and processing is a major aspect of INTERPOL policy activity, we also code the CCF (Commission for the Control of INTERPOL’s Files) in the initiation stage because its proposals have to be addressed by the General Secretary, and it can also formulate proposals to the other bodies. Hence its status ensures it an integral role in policy.
making. We code its input from 1986. The Advisors, on the other hand, only have access when invited by one of the bodies, and hence we do not code them as involved in policy making.

Interpol resolutions have solely moral, not legal force. Article 9 of the Constitution merely states that, “Members shall do all within their power, in so far as is compatible with their own obligations, to carry out the decisions of the General Assembly”. Decision-making is therefore coded as non-binding. Ratification is not required.

**Dispute settlement**

There are no written rules on third-party dispute settlement.

**F.4. Organization for Economic Co-Operation and Development**

**Introduction**

The Organization for Economic Co-Operation and Development (OECD) seeks “to promote policies that will improve the economic and social well-being of people around the world.” Its is global and currently (2014) encompasses 34 countries: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States. The OECD also collaborates closely with Brazil, China, India, Indonesia, Russia, and South Africa. The organization’s aims initially evolved primarily around the co-ordination of aid for under-developed countries, but it would also involve a measure of economic policy consultation, and co-operation on trade matters (Griffiths, 1997, p. 248). Over time, the emphasis
would shift more squarely to macro-economic policy. The language in the OECD Convention, unchanged over time, is more balanced: “(a) to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy; (b) to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and (c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations” (Art. 1). The OECD’s headquarters are in Paris, France. The organization also has centers based in Berlin, Mexico, Tokyo and Washington DC.

The OECD was established in 1961 on the foundations of the Organization for European Economic Cooperation (OEEC). The OEEC, which we therefore include in the coding, was created in 1947 to administer the Marshall plan, a US-financed aid program that sought to rebuild Europe after World War II; to promote the liberalization of trade in Europe; and to govern a European Payments Union. From 1958, calls were made to reorient the organization and broaden its membership. After negotiations, it was agreed to preserve the legal personality of the organization and maintain some core OEEC decisions, while all other acts of the OEEC would be subject to a unanimous vote before carrying over into the OECD. This in effect meant the lapsing of all OEEC decisions (Griffiths, 1997, p. 247-250). Canada and the United States joined 16 OEEC countries to sign the OECD Convention in 1960. Over the years, other countries have joined or started cooperating with the OECD. Nowadays, the OECD connects “40 countries that account for 80 percent of world trade and investment, giving it a pivotal role in addressing the challenges facing the world economy.” OECD membership is considered prestigious and has been shown to increase international trade (Rose, 2005).


\[ \text{http://www.oecd.org/about/history/} \text{ (accessed on May 12, 2014)} \]
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legal document for the OEEC is the Convention for European Economic Co-Operation (signing: 1948; entry into force: 1948). Before 1961, the key bodies of the organization were the Council (assembly), Executive Committee (executive) and the Secretariat. Since 1961, the Council is the central body of the organization. It meets either as the Council of Ministers, which we code as an assembly, or as the Council of Permanent Representatives, which we code as an executive organ. The Secretariat is the administrative body of the organization. The Business and Industry Advisory Committee and the Trade Union Advisory Committee of the OECD function as two non-state consultative bodies.

Structure

Assembly


In the OEEC, the Council is the central organ of the organization, described in the convention as “the body from which all decisions shall derive” (Art. 15 (a)). It is composed of member state representatives (Art. 15 (a)) and we assume direct member state representation. All decisions of the Council are taken by unanimity. As the Convention outlines: “Unless the Organisation agrees for special cases, decisions shall be taken by mutual agreement of all the Members” (Art. 14). Hence, there is no weighted voting.

Assembly A1: Council of Ministers (1961 – present)

The OECD Convention defines the Council as the “body from which all acts of the Organisation derive” (Art. 7). There have been no changes in the composition or decision-making procedures of this body over time. At the ministerial level, the Council meets once a year. The Council is made up of one representative per member country, plus a representative of the European Commission. However, as the OECD website explains, “In a Supplementary Protocol to the Convention on the OECD of 14 December 217
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1960, the signatory countries agreed that the European Commission should take part in the work of the OECD. (…) While the European Commission’s participation goes well beyond that of an observer, it does not have the right to vote on decisions or recommendations presented before Council for adoption.”

Because the representative of the European Commission does not participate in Council voting we code 100 percent full and direct member state representation. The Secretary General of the European Free Trade Association enjoys the same privileges (Rules of Procedure, Rule 7 (b), according to the Ministerial Resolution of 23 July 1960). Each member has one vote (Convention, Art. 6.2). Thus, there is no weighted voting.

Executive

Executive E1: Executive Committee (1948 - 1961)

The Executive Committee serves as the organization’s executive body. It is composed of a subset of member states (Art. 16 (a)). Members that do not have a seat on the executive “may take part in all the discussions and decisions of that Committee on any item specifically affecting the interests of that Member” (art. 15 (c)). We assume direct member state representation. The Executive Committee also makes it decisions by unanimity (Art. 14) and there is no weighted voting.

The head of the executive is proposed and selected by the assembly: “The Council shall designate annually from among the Members of the Executive Committee a Chairman and a Vice-Chairman” (Art. 16 (c)). The assembly decides by unanimity (Art. 14). Likewise, the members of the executive are also proposed and selected by the assembly: “The Executive Committee shall consist of seven Members to be designated annually by the Council” (Art. 16 (a)). Again, this decision is taken by unanimity (Art. 14). Contrary to its OEEC successor, the Council of Permanent Representations, no role is foreseen for the Secretary General.

8http://www.oecd.org/about/membersandpartners/ (accessed on May 12, 2014)
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Executive E1: Council of Permanent Representatives (1961 – present)

The Council of Permanent Representatives is the executive body of the organization, headed by the Secretary General: “The Secretary-General shall serve as Chairman of the Council meeting at sessions of Permanent Representatives. He shall assist the Council in all appropriate ways and may submit proposals to the Council or to any other body of the Organisation” (Convention, Art. 10.2). There is no formalized procedure for the selection of the Secretary-General. Since the creation of the OECD, there have only been four Secretary-Generals who have all served for long periods. Since there are no formal rules, we follow the procedure that has been used to appoint the current Secretary-General.9

The procedure for the selection of the current Secretary-General (SG) is detailed on the OECD website.10 First, OECD member countries are asked to suggest candidates. Representatives of all member states considered the applications in the first round. The three candidates that were most likely to win consensus proceeded to the next round, where this process was repeated. In the third and final round the Council chose the new Secretary-General by consensus. From this information we conclude that member states and members of the Council of Permanent Representatives are involved in proposing the SG and members of the Council of Permanent Representatives also make the final decision. The Council selects the SG by consensus (Convention Art. 10, Art. 6).

Member states and a representative of the European Commission (see Supplementary Protocol No. 1 to the Convention of 1960) select the members of the Council. Because of the important role played by the Secretary-General in the work of the Council, we code representation as less than 100 percent member states. There is direct member state representation of all member states (Art. 7) and there is no weighted voting (Art. 98).

9The first Secretary General, the former Danish Finance Minister Thorkil Kristensen, was appointed by the Ministerial Conference on the proposed Organisation for Economic Co-operation and Development, 4 August 1960.
The Council of Permanent Representatives is assisted by three types of subsidiary bodies: standing committees (Executive Committee, External Relations Committee and Budget Committee), the substantive committees, and other subsidiary bodies established by the Council (Rules of Procedure, Rule 1 (b)). Committees play an important role in the work of OECD: “Representatives of member countries and of countries with Observer status work with the OECD Secretariat on specific issues. […] Representatives of the 34 OECD member countries meet in specialised committees to advance ideas and review progress in specific policy areas, such as economics, trade, science, employment, education or financial markets. There are about 250 committees, working groups and expert groups. Some 40,000 senior officials from national administrations go to OECD committee meetings each year to request, review and contribute to work undertaken by the OECD Secretariat.”

While these expert groups, working groups and committees have an executive character; they are accountable to the Council (Rules of Procedure, Section VII). Therefore, we code them as subordinate to the executive body.

**General secretariat**

**GS1: The Secretariat (1948 – present)**

Before 1961, the Secretary-General was appointed by the assembly (Art. 17 (c)), voting by unanimity (Art. 14). The length of tenure was indeterminate and there are no written rules on the removal of the Secretary-General.

The OECD Convention strengthened the role of the Secretary-General and his services, and endowed him with clear executive as well as secretarial functions. According to the Convention, the Secretary-General serves as chairman of meetings of the Council of Permanent Representatives and may submit proposals to any body (Convention, Art. 10.2). The rules of procedure of the Council characterize the Secretary-General as

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having “policy, executive and management responsibilities. The SG also represents the Organisation vis-à-vis the rest of the world and acts as its legal representative. “He/she may submit proposals, including the Programme of Work and Budget, to the Council and to any other body of the Organisation. He/she is in charge of executing the Council decisions and implementing the PWB. He/she ensures that the Organisation’s activities are managed within the Budget in a cost effective manner” (Rules of Procedure, 2009, p. 23, 14). Moreover, the SG may meet informally with committees and working groups subsidiary to the Council, and “it belongs to the sphere of authority of the Secretary-General, as the Chair of the Council, to decide how he/she intends to exercise his mandate and how he/she wants to organize consultations” (Rules of Procedure, 2009, p. 23, Art. 15). The OECD website states: “The work mandated by the Council is carried out by the OECD Secretariat.”

As outlined above, member states can propose candidates for this position. Different rounds of meetings seek to arrive at a unanimous Council decision on the appointment (Art. 6.1). The Secretary-General is appointed for a period of five years (Convention, Art. 10.1). In the past, Secretary-Generals have stayed on for as long as fifteen years. There are no written rules on the possible removal of the Secretary-General.

The OECD’s current Secretary-General is Mr. Angel Gurría, who has held this position since 2006. His appointment was renewed in 2010. The OECD employs some 2500 staff who are mainly based in the organization’s headquarters in Paris. The staff consists of economists, lawyers, scientists and other professionals.

\[12\text{http://www.oecd.org/about/whodoeswhat/ (accessed on May 12, 2014).}\]
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Consultative bodies

Consultative body CB1: Business and Industry Advisory Committee (BIAC) (1962 – present)

Consultative body CB2: Trade Union Advisory Committee (TUAC) (1962 – present)

The OECD cooperates with various stakeholders, but only the BIAC and TUAC qualify as consultative bodies: “The OECD’s core relationship with civil society is through the Business and Industry (BIAC) and the Trade Union (TUAC) Advisory Committees to the OECD. These advisory bodies contribute to most areas of OECD work through policy dialogue and consultations.”13 BIAC and TUAC represent the interests of trade and labor in the OECD. The BIAC describes itself as follows: “BIAC is an independent international business association devoted to advising government policymakers at OECD and related fora on the many diversified issues of globalisation and the world economy. Officially recognised since its founding in 1962 as being representative of the OECD business community, BIAC promotes the interests of business by engaging, understanding and advising policy makers on a broad range of issues.”14 The TUAC has this description on its website: “The Trade Union Advisory Committee (TUAC) to the OECD is an interface for trade unions with the OECD. (…) TUAC’s day to day work involves meeting with the OECD Secretariat, Committees and Member governments to appraise them of the views of the trade union movement on the issues on the OECD’s agenda.”15 These two organizations consist of private actor representatives.

13http://www.oecd.org/about/membersandpartners/ (accessed on May 12, 2014)
14http://www.biac.org/aboutus.htm (accessed on May 12, 2014)
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Authority

Membership

Accession

During the OEEC period, accession was open to “any non-signatory European country” (Art. 25) which signed the treaty and required “assent of the Council” (Art. 25). We therefore code the Council in the final decision-making stage, deciding by unanimity (Art. 14). After 1961, the procedure for the accession of new member states is described in the Convention: “The Council may decide to invite any Government prepared to assume the obligations of membership to accede to this Convention. Such decisions shall be unanimous (…). Accession shall take effect upon the deposit of an instrument of accession with the depositary Government” (Convention, Art. 16). The more detailed procedure for accession of new member states is listed on the OECD website. There are four steps that must be taken before a country can join the OECD:

1. The Council, at the Ministerial level, adopts a resolution for membership discussions with potential member states. The Secretary-General carries out these discussions.

2. An “Accession Roadmap” details the requirements that need to be met by prospective member states. It also identifies the Committees and Working Groups (under the direction of the Council of Representatives) that will be involved in reviewing the progress of states in terms of the requirements.

3. The review by the Committees takes place and the results are reported to the Council.

4. On the basis of this review, the Council makes the final decision by unanimity.
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We therefore code the Council on the Ministerial and Representative level, as well as the Secretary-General in the proposal stage. The Council on the Ministerial level makes the final decision. Acceding states often make substantive reforms prior to joining the OECD. Prospective members are often required to liberalize trade, finance and investment policies. Membership of the OECD is perceived to be prestigious and valuable, and hence states are willing to enact significant policy changes before acceding (Davis, 2014). The OECD is sometimes called a "rich countries club", but in recent years the organization has become increasingly inclusive, with membership being opened to countries such as Slovenia, Chile and Estonia (Woodward, 2011).

The OECD has never developed a systematic procedure for enlargement. As Carroll and Kellow write, decisions on this issue were made after “the proposals of one or more of the existing member states, following informal discussions with the country concerned and the Secretary-General” (Carroll and Kellow, 2011). Therefore, even though the specifics of the procedure might have varied from country to country, we conclude the same bodies were involved in the accession process over time. Ratification by existing member states is not required.

Suspension

Under the OEEC, the Convention lists what happens in case of “non-fulfillment of obligations” (Art. 26): “If any Member of the Organisation ceases to fulfil its obligations under the present Convention, it shall be invited to conform to the provisions of the Convention. If the said Member should not so conform within the period indicated in the invitation the other Members may decide, by mutual agreement, to continue their co-operation within the Organisation without that Member.” It is not clear who proposes the measure. We code the assembly for the final decision, deciding by unanimity (Art. 26). After 1961, under the OECD, there are no written rules on suspension.
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Constitutional reform

There are no written rules on constitutional reform.

Finances

Revenues

The OEEC was funded by member state contributions. Following the Convention: “The expenses of the Organisation shall be borne by Members and shall be apportioned in accordance with the provisions of the above mentioned Supplementary Protocol.” This protocol indicates that the Council determines the scale of the contributions (Art. 4).

The OECD is also funded by regular member state contributions: “General expenses of the Organisation, as agreed by the Council, shall be apportioned in accordance with a scale to be decided upon by the Council. Other expenditure shall be financed on such basis as the Council may decide” (Convention, Art. 20.2). More specific information can be found on the OECD website, which states that “The Organisation’s member countries fund the budget for Part I programmes, accounting for about 50 percent of the consolidated budget. Their contributions are based on both a proportion that is shared equally and a scale proportional to the relative size of their economies. Part II budgets include programmes of interest to a limited number of members or relating to special sectors of activity not covered by Part I. Part II programmes are funded according to a scale of contributions or other agreements among the participating countries.”\(^\text{16}\) We interpret this to mean that mandatory contributions prevail in the funding of OECD’s core activities.

\(^\text{16}\)http://www.oecd.org/about/budget/membercountriesbudgetcontributionsfor2012.htm (accessed on May 12, 2014)
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Budgetary allocation

Before 1961, the budget was drafted by the Secretary-General and approved by the Council: “The Secretary-General shall present to the Council for approval an annual budget” (Art. 23 (a)). The Council decides by unanimity (Art. 14). In the OECD, the Secretary-General drafts the budget for the approval of the Council (Convention, Art. 20) – since this is annual, we gather this means the Council of Ministers. Following the information listed above, the general part of the budget (part I) is binding, but the optional part (part II) is not. Therefore we code that countries can opt out of certain programmes.

Non-compliance

There are no rules for budgetary non-compliance.

Policy making

For the OEEC, the main form of policy-making is the management of the Marshall aid. As outlined in the Convention: “The aim of the Organisation shall be the achievement of a sound European economy through the economic co-operation of its Members. An immediate task of the Organisation will be to ensure the success of the European recovery programme” (Art. 11). In the Convention, the Council is described as “the body from which all decisions derive” (Art. 15 (a)). We therefore code the assembly as making the final decision on policy-making, deciding by unanimity (Art. 14). Since the Executive Committee is reported to “assist” (Art. 15 (c)) and “report to” the Council, we code it in the proposal stage. Likewise, the Secretary-General has the “right to participate in discussion” of Council meetings, and is therefore included in the proposal stage as well. Decision-making is coded as binding (Art. 14). Ratification is not required.

The OECD offers members a framework to compare experiences and examine “best practices” in a large number of areas from economic policy or environmental protection
to education or health to corruption or decentralization. The OECD’s rich committee and research work is geared towards preparing Acts, which come in two main forms: Decisions, which are legally binding, and Recommendations, which are not. The OECD has also other instruments, but these lack legal standing (declarations), apply only to some member states (arrangements and understandings), or are outside normal policy making (international agreements). Between January 2005 and June 2011, 53 Acts were agreed of which 44 recommendations, three decisions and six declarations. The most recent binding decision dates back to 2007.17 Hence we focus on recommendations as the most relevant policy instrument.

This legal framework forms the backdrop for the OECD’s signature policy activity, which is the peer review process. Peer reviews are conducted on the basis of data collection and analysis by the 2,500 staff of the OECD Secretariat. The OECD’s work is well-regarded and often influences national policies (Mahon and McBride, 2009; Martens and Jakobi, 2010; Jakobi and Martens, 2007).

The organization’s governing body, the Council, has the power to adopt OECD Acts (Art. 7) by unanimity (Art. 6.1). We therefore code the Council as the final decision-maker; we code both the Council of Ministers and the Council of Permanent Representatives since decision making takes place throughout the whole year while the Council of Ministers meets only once a year. These Acts are the result of the substantive work carried out in the organization’s Committees, and based on in-depth analysis and reporting undertaken within the Secretariat, and so we code both the Secretary-General (Art. 10.2) and the executive Committee structure as involved in agenda-setting.

As mentioned above, we focus on recommendations because of their greater substantive importance. They “are not legally binding, but practice accords them great moral force as representing the political will of Member countries and there is an expectation that Member countries will do their utmost to fully implement a Recommendation. Thus, 17http://webnet.oecd.org/oecdacts/ (accessed on May 12, 2014)
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Member countries which do not intend to implement a Recommendation usually abstain when it is adopted.\footnote{http://www.oecd.org/legal/oecdlegalinstruments-theacts.htm (accessed on May 4, 2014)} We code this as nonbinding, notwithstanding the strong emphasis on peer pressure. Recommendations do not require ratification.

Dispute settlement

The OECD does not have any provisions on dispute settlement. There are plans for dispute settlement procedures but they have not yet been ratified. Under the OEEC there also were no rules on dispute settlement.

F.5. United Nations Educational, Scientific and Cultural Organization

Introduction

The United Nations Educational, Scientific and Cultural Organization (UNESCO) seeks to “create the conditions for dialogue among civilizations, cultures and peoples, based upon respect for commonly shared values.” Its membership is global and currently entails 195 members and nine associate members. The UNESCO Mission is “to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations” (Constitution, Art. I.1). The organization’s headquarters are in Paris and there are also 65 field offices around the world.

UNESCO was created in 1946 with a view to creating a culture of peace that would lead to the prevention of another world war. UNESCO’s first Director General, Julian
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Huxley, expressed the hope that the organization would contribute to "the emergence of a single world culture" (UNESCO, 1946). UNESCO is the successor of the International Institute of Intellectual Co-operation (IIIC), a non-governmental organization founded in 1925 (Martens, 2001; Sewell, 1975, p. 6). Nowadays, UNESCO focuses on "the building of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information." The organization currently has two global priorities: Africa and Gender Equality. It also has overarching objectives: education for all, sustainable development, addressing social and ethnic challenges, fostering cultural diversity and building inclusive societies.

The key legal document of UNESCO is the Constitution of the United Nations Educational, Scientific and Cultural Organization (signing: 1945; entry into force: 1946). This document has been amended 22 times, with the latest amendment coming into force in 2001. UNESCO has three main decision-making bodies: The General Conference, which functions as an assembly, the Executive Board, which has an executive role, and the Secretariat.

Structure

Assembly

Assembly A1: General Conference (1946 – present)

The highest decision-making organ in UNESCO is the General Conference, composed of member state representatives (Art. IV.A.1). It serves to "determine the policies and the main lines of work of the Organization" (Art. IV.B.2). The General Conference meets every two years. Decisions in the General Conference are mostly taken by simply majority (Art. IV.C.8.a). There is no weighted voting (Art. IV.C.8.a). The composition and decision-making procedures of the General Conference have not changed over time.

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Executive

Executive E1: Executive Board (1946 – present)

The Council of Ministers is the executive body of the organization. It consists exclusively of member states and only a subset of the member states is represented (Art. V.A.1). At the start of the organization, there were eighteen seats on the Executive Board. Over the years this number has steadily increased. As a result of the last amendment, which was adopted in 1991, the Executive Board now has 58 seats. The Constitution mentions the main function of the executive: “The Executive Board, acting under the authority of the General Conference, shall be responsible for the execution of the programme adopted by the Conference. In accordance with the decisions of the General Conference and having regard to circumstances arising between two ordinary sessions, the Executive Board shall take all necessary measures to ensure the effective and rational execution of the programme by the Director-General” (Art. V.6b).

Initially, the organization had no rules on the election of the chair of the executive. The Rules of Procedure for the Executive Board, first adopted in 1952, explains that the chairperson is chosen from amongst the members of the executive (Rule 12; now: Rule 10). The general decision-rule of simple majority applies here (Rule 47; now: Rule 50).

Before 1948 there were no rules on the proposal for members of the executive. The 1948 Rules of Procedure of the General Conference explain that either two member state delegations or the Nominations Committee can propose members states for election to the Executive Board (Rule 95.2). Since the Nominations committee consists of “the heads of all delegations entitled to vote in the Conference” (Rule 27), we code member states as having the right to propose. The General Conference makes the final decision (Art VI (a)), deciding by simple majority (IV.8 (a)).

Member states elected to the Executive Board select their representatives. Up until 1953, the members of the Executive Board served in individual capacity and did not
represent the interests of their member states (Dexter, 1947; Finnemore, 1993; Graham, 2006). Section 11 of the Constitution confirms this: "The members of the Executive Board shall exercise the powers delegated to them by the General Conference on behalf of the Conference as a whole and not as representatives of their respective Governments." As the Constitution sets out, the Executive Board consists of "persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas and qualified by their experience and capacity to fulfill the administrative and executive duties of the Board" (Article V. par. 2). Hence, scientists, writers and professors served more commonly on the Executive Board than ministers or diplomats. This situation, however, led to conflicts when Executive Board members deviated from the official policy stance of their member states (Sewell, 1975, p. 169). Hence, in 1954 the Constitution was amended to give the members of the Executive Board a dual role: they were to represent their member state (Constitution Art. V. par. 1) as well act as experts on behalf of the organization (Constitution Art. V. par. 12). Since then, representatives increasingly consisted of government ministers and diplomats. Another amendment in 1993 did away with the expert role entirely. Since the composition of the Executive Board started changing since 1954, we code exclusive member state representation from that time onwards. There is no weighted voting in this body (Executive Board RoP, Rule 48).

**General secretariat**

**GS1: The Secretariat (1946 – present)**

The UNESCO Secretariat consists of the Director General and staff (Art. VI.1). It has existed from the beginning of the organization. The Director General is described as the "chief administrative officer of the Organization" (Art. VI.2).

Following the Constitution, the Executive Board nominates the Director General and the General Conference makes the final decision (Art. VI.2). The decision-making rule is simple majority (Art. IV.C.8). Initially, the length of tenure for the Director General
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was fixed at six years, with the possibility of renewal (Art. VI.2). In 2001, an amendment to the constitution was adopted that shortened this period to four years (Art. VI.2). There are no written rules on the possible removal of the Director-General from office.

The current Director General is Irina Bokova, who was first elected in 2009 and then reelected in 2013. The Secretariat is divided into different sectors: programme sectors, support sectors and central services. UNESCO employs about 2000 civil servants, 700 of which are located in 65 field offices worldwide.

Consultative bodies

The UNESCO brochure for 2009 states that, “Some 350 non-governmental organizations (NGOs) maintain official relations with UNESCO and hundreds more work with the Organization on specific projects” (UNESCO brochure 2009, p. 25). UNESCO has closely interacted with NGO from the very beginning (Huxley, 1973). Since the organization was tasked to work on a range of subject areas, ‘it was laid down by the founding conference in London that UNESCO could co-operate with non-governmental organisations concerned with subject matters coming within UNESCO’s scope of activity, particularly in technical questions, and that UNESCO might also create new organisations if necessary’ (Martens, 2001, p. 397). UNESCO has frequently created NGOs in order to carry out specific policy goals for the organization. In 1946, for example, UNESCO founded the International Council of Museums (ICOM), an NGO that is tasked with maintaining the Documentation Centre on museums. UNESCO also takes into account the work of NGOs and avoids setting up projects that already are carried out by existing NGOs. The organization sometimes even delegates the execution of specific projects to NGOs that have more expertise (Philips, 1962; Martens, 2001). Nevertheless, none of these NGOs play a role in the UNESCO policy-making process and therefore they are not coded as a consultative body.
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Authority

Membership

Accession

Article II of the Constitution describes the procedures pertaining to accession to the organization. All member states of the UN have the right to become members of the UNESCO meaning that the procedure is technocratic. For states that are not members of the UN, the Executive Board can make a recommendation (by simple majority, Rules of Procedure of the Executive Board Rule 50) to the General Conference for admission (final decision by two-thirds majority, Constitution Art. II.2). Ratification is not required. There have been no changes in the accession procedure over time.

The UNESCO constitution also allows for the possibility of associate membership (Art. II.3). Associate members have the right to participate in the meetings at all levels, receive all documents, submit proposals, but cannot vote or stand for election; they are required to pay a contribution (Resolution 41.2). To date UNESCO has nine associate members.

Suspension

The only available written rule on suspension in the Constitution is that the suspension or expulsion of countries from the UN leads to expulsion from UNESCO, coded as a technocratic mechanism (Constitution, Art. II.4, 5). There is no information on suspension/expulsion through actions of the organs of the UNESCO.

Constitutional reform

Initially, it was not clear who could propose constitutional amendments. Looking at the texts of individual amendments, however, it becomes evident that member states, the Executive Board and the General Conference have the right to propose amend-
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ments. We code the decision-rule as simple majority in both bodies, starting in 1952 for the Executive Board. The General Conference, deciding by two-thirds majority, makes the final decision on constitutional amendments (Art XIII.1). Amendments “which involve fundamental alterations in the aims of the Organization or new obligations for the Member States” (Constitution, Art. XIII.1) require the acceptance (i.e. ratification) by two-thirds of the member states (Constitution, Art. XIII.1).

Finances

Revenues

Financing of the UNESCO’s operations is multilayered. The organization has a regular budget funded by member state contributions according to a scale set by the General Conference (Constitution, Art. IX.2). The UNESCO also funds large parts of its program (the ‘Complementary Additional Programme’ (CAP) of extrabudgetary activities) through voluntary contributions from member states, the private sector, and other partners (Constitution, Art. IX.3). The biennial regular budget (financed by member states) for 2010 and 2011 is US$ 653 million (35 C/5 Approved, p. viii). The extra-budgetary activities of the CAP, funded by voluntary contributions and donations, amount to more than US$ 800 million during that period (35 C/5 CAP p. 3). This part is substantially large and, therefore, own sources of funding is a suitable coding. Because UNESCO has had provisions about receiving voluntary contributions in the Constitution since the beginning, we code own sources of funding for the whole time period.

Budgetary allocation

Before 1952, there is no information available on who proposes the budget. Since 1952, the Secretariat drafts the budget (Art. VI.3 (a)). The budget is examined by the Executive Board (Art. V.6 (a)), deciding by supermajority (RoP, Rule 50), before it is sent to the General Conference. The General Conference makes the final decision
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over the budget (Constitution, Art. IX.2) by two-thirds majority (Rules of Procedure of the General Conference, Rule 85.2 (i)). Before 1958, the decision was taken by simple majority. Decision-making on the budget is coded as binding because there are sanctions in case of non-compliance.

Non-compliance

Rules on budgetary non-compliance were first introduced in 1949. There have been amendments since but these do not affect our coding. In case of non-compliance member states automatically lose their voting rights (Constitution, Art. IV.8.b). This is an administrative decision. It can be overturned by the General Conference “if it is satisfied that failure to pay is due to conditions beyond the control of the Member State” (Constitution, Art. IV.8.c). We therefore code the General Conference as final decision-maker. In this case, the Conference decides by the general decision-rule, simple majority (Constitution, Art. IV.8.a).

Policy making

UNESCO’s policy-making consists of two parts: the funding of projects through the biennial programme and budget, and the adoption of conventions, recommendations and declarations (about 60 in total since 1948). The last convention was passed in 2011. Programming, however, has always been the most salient form of policy making in UNESCO (Niebuhr, 1950), and this is why we use this as basis for the coding. The Director-General and the Executive Board are involved in policy initiation: The Director-General formulates proposals and drafts the programme of work (Constitution, Art. VI.3 (a)). The Executive Board prepares the agenda for the General Conference, examines the programme of work and submits it to the General Conference with its recommendations (Constitution, Art. V.6 (a)) applying the general decision rule of simple majority (Rules of Procedure of the Executive Board, Rule 50). The Constitution states: “The General
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Conference shall determine the policies and the main lines of work of the Organization. It shall take decisions on programmes submitted to it by the Executive Board.” (Art. IV.2). This means the General Conference makes the final decision, deciding by simple majority (Constitution, Art. IV.8.a). There have been no changes in the decision-making procedure over time.

Because a significant part of the budget for funding programs comes from voluntary contributions (see section on finance), we code policy-making as binding unless a member state notifies the IO within a specific time period it will not take part. For programs, ratification is not required.

Dispute settlement

The constitution stipulates that, “Any question or dispute concerning the interpretation of this Constitution shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its Rules of Procedure” (Constitution, Art. XIV.2). Therefore, a political body controls access to third-party review.

The procedure has been specified further in the Rules of Procedure of the General Conference, where it states that the Legal Committee, consisting of 24 members selected by the General Conference (Rules of Procedure of the General Conference, Rule 36), “may decide by a simple majority to recommend to the General Conference that any question concerning the interpretation of the Constitution be referred to the International Court of Justice for an advisory opinion... In cases where the Organization is party to a dispute, the Legal Committee may decide, by a simple majority, to recommend to the General Conference that the case be submitted for final decision to an Arbitral Tribunal, arrangements for which shall be made by the Executive Board” (Rule 38).

The UNESCO Constitution provides parties the choice between a judicial (ICJ) and a political (arbitration) dispute settlement, but in cases where the IGO itself is involved,
arbitration seems to be the instrument of choice for a final, i.e. binding, decision while the ICJ is the instrument of choice for advice (see Rules of Procedure of the General Conference, Rule 38). We therefore code the arbitration path. This means that judgments are binding pending \textit{ex ante} agreement among disputing parties; a panel of \textit{ad hoc} arbitrators makes decisions. While the UNESCO constitution or other rules do not specify further conditions for the arbitral tribunal, it appears reasonable to assume that non-state actors have no legal standing, and that there is no remedy for non-compliance specified \textit{ex ante}.

Our coding would only differ in one respect if the ICJ path had been coded: the ICJ is a standing body (ICJ Statue, Art. 13). ICJ judgments are only binding if there is \textit{ex ante} agreement among the parties involved; Art. 36 of the ICJ Statute sets out the conditions under which bindingness can be secured. Only states can initiate disputes (ICJ Statute Art. 34.1). There is no remedy for non-compliance in either the ICJ Statute or the UNESCO constitution. It should be noted that most UNESCO conventions contain their own dispute settlement mechanisms, and the presence of the ICJ and arbitration are about evenly balanced. For a more detailed discussion, see von Schorlemer (2007).

\section*{F.6. World Health Organization}

\subsection*{Introduction}

The World Health Organization (WHO) was created after World War II within the framework of the United Nations. The WHO’s main objective is “the attainment by all peoples of the highest possible level of health” (WHO Constitution, art.1). The need for international collaboration on health became evident during the course of the 19th century. There were three main reasons for the establishment of an international health organization. First, increased international trade led to the import of foreign diseases, and unilateral quarantine measures proved ineffective to stop the spread of
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cholera and plague epidemics. Second, the establishment of national health services in
the 19th century, which came as a result of the awareness that public health was an
important policy goal for governments, created a greater understanding of the benefits
of international cooperation on health issues. Third, advances made in bacteriology
gave a better knowledge of the causes and cures of many diseases, and therefore enabled
governments to address various illnesses. These development led to the establishment of
several international health agencies which were superseded by the WHO in 1946 (Allen,
1950).

The WHO’s headquarters are in Geneva, Switzerland. Its membership has increased
over the years and currently entails 194 countries. The organization currently has a
special focus on two populations: women and the people of Africa. These groups are
used as indicators of the WHO’s overall effectiveness. The key legal document of the
WHO is the Constitution (signing: 1946; entry into force: 1948). The day on which the
Constitution came into force is now celebrated as World Health Day. The Constitution
has been amended four times with the last amendment entering into force in 2005.
Other documents consulted are the Rules of Procedure of the World Health Assembly,
first adopted in 1955, and the Rules of Procedure of the Executive Board, first adopted
in 1956.

The WHO has three main decision-making bodies: the World Health Assembly, the
Executive Board, and the Secretariat. The WHO provides for the possibility of NGO
consultation through a formal procedure. We code this NGO participation as a consultative body. The WHO has six regional offices that play an important role in implement-
ing the organization’s policies (Hanrieder, 2014b). Over time, the organization has
successfully adapted itself to changes in the external environment that were caused by
new developments in health and the changing political landscape, where decolonization
had an important effect on the demands placed on the organization (Chorev, 2012; Lee,
2009; Hanrieder, 2014a). Nevertheless, the WHO has accommodated those changes mainly
through focusing on new policy areas, and the institutional set-up of the organization has remained largely static.

**Structure**

**Assembly**

**Assembly A1: World Health Assembly (1948 – present)**

The highest decision-making organ in the WHO is the World Health Assembly, composed of member state representatives (Art. 10). The WHO constitution outlines a large number of functions for which the Health Assembly is responsible, most importantly “to determine the policies of the Organization” (Art. 18 (a)). There is direct member state representation in this body (Art. 11). There is no weighted voting in this body (Rules of Procedure of the World Health Assembly, Rule 69).

**Executive**

**Executive E1: Executive Board (1948 – present)**

The Executive Board is the executive body of the WHO. It is composed exclusively of member states and a subset of member states is represented. Since there is no indication of it being otherwise, we assume member state representation in the executive is direct. There is no mention of weighted voting in the Constitution. In 1956, when the first Rules of Procedure of the Board were adopted, this was made explicit: “Each member of the Board shall have one vote” (Rule 42). According to the WHO website, the Board serves “to give effect to the decisions and policies of the Health Assembly, to advise it and generally to facilitate its work.” Two committees assist the Board: the Programme, Budget and Administration Committee (PBAC) and the Independent Expert Oversight Advisory Committee (IEOAC). The Board also directly participates in the work of the
assembly by sending representatives to take part in its deliberations (World Health Assembly Rules of Procedure, Rule 44, Burci and Vignes, 2004, p. 36).

The Constitution states: “The Board shall elect its Chairman from among its members” (Art. 27). We understand this to mean that the executive proposes and makes the final decision on selecting the head of the executive. Since the selection of the chairman is not listed as an important issue which requires a two-thirds majority, decision-making is by simple majority (Constitution, Art. 60 (c)).

As outlined in the Constitution, “The Health Assembly, taking into account an equitable geographical distribution, shall elect the Members entitled to designate a person to serve on the Board” (Art. 24). This means that the Assembly proposes and selects the members of the executive. The Rules of Procedure of the Health Assembly, first adopted in 1955, indicate that for this issue a decision-rule of simple majority is used (Rule 71). The number of seats on the Executive Board has increased over the years. In 1948, the Board had eighteen seats. A 1960 amendment first allowed the number to increase to 24 (Anon 1962: 239). In 1975, the number of seats on the Executive Board was increased to 30. An amendment entering into force in 1984 increased this number to 31. In 1994 this became 32 and in 2005 the current number of 34 members was reached (Constitution, Art. 24). These changes do not affect our coding.

General secretariat

GS1: The Secretariat (1948 – present)

The Secretariat is headed by the Director-General and is responsible for, amongst other things, preparing the organization’s budget (Constitution, Art. 34). The Director-General is “appointed by the Health Assembly on the nomination of the Board on such terms as the Health Assembly may determine” (Constitution, Art. 31). Consistent with other organizations, we code both the executive and the assembly as being involved in the appointment of the Director-General. The Board does not have this decision listed
as an “important question” and therefore we code the general decision-rule of simple majority (Rules of Procedure for the Board, Rule 43, Constitution, Art. 60). For the Assembly, the appointment of the Director-General was added to the list of important issues in 2007 (Rules of Procedure of the Assembly, Rule 72). Before this, the rule was simple majority; afterwards a two-thirds majority was required to make the decision.

Since 1996 the length of tenure of the Director-General has been fixed at five years (Rules of Procedure of the Assembly, Rule 108). Before that time, the length of appointment was indeterminate. There are no written rules on the possible removal of the Director-General.

The current Director-General is Dr. Margaret Chan, who was first appointed by the World Health Assembly in 2006. She has been re-appointed to serve a second term, starting in 2012. The WHO employs around 6000 people who work at the organization’s headquarters, in six of the regional offices, or in other places around the world. Most hold one year appointments for one year or more (Burci and Vignes, 2004, p. 51). The regional offices are powerful and play an important role in the implementation of the decisions taken by the World Health Assembly. Nevertheless, the decentralized nature of the organization has been criticized. The regional offices are perceived to create inefficiencies in implementation, cause conflicts in the organization and reduce the WHO’s accountability (Hanrieder, 2014b; Graham, 2014; Levine, 2006).

Consultative bodies

Consultative body CB1: Formal NGO participation (1948 – present)

The Constitution provides for the possibility of giving non-state actors consultative status with the WHO: “The Organization may, on matters within its competence, make suitable arrangements for consultation and co-operation with non-governmental international organizations and, with the consent of the Government concerned, with national organizations, governmental or non-governmental” (Art. 71). The first World Health
Assembly also adopted a document, titled “Working Principles Governing the Admission of Non-Governmental Organizations into Relations with WHO.” This document details the criteria that should be met by an NGO before it can have a relationship with the WHO.

While there is no single consultative body composed of non-member state representatives, we believe that the formal channel that NGOs have to consult and participate in different WHO meetings justifies coding one consultative body composed of private actor representatives.

**Authority**

**Membership**

**Accession**

The WHO currently has 194 members and two associate members, Puerto Rico and Tokelau. There have been no changes over time in the procedure for accession. Membership is open to states that are members of the United Nations (Constitution, Art. 4) or that have sent representatives to the International Health Conference in 1946 (Constitution, Art. 5). These states can join by signing and ratifying the Constitution. We code this as technocratic decision-making. States that do not meet either of those criteria “may apply to become Members and shall be admitted as Members when their application has been approved by a simple majority vote of the Health Assembly” (Constitution, Art. 6; see also Anon, 1962b, p. 239). We code the Assembly in both the proposal as the final stage, deciding by simple majority. Ratification is not required.

**Suspension**

The Constitution deals with budget and non-budget related suspensions of voting rights and privileges: “If a Member fails to meet its financial obligations to the Organization
or in other exceptional circumstances, the Health Assembly may, on such conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled” (Art. 7). While it is clear that the suspension is mainly there for budget-related questions, the phrase “or in other exceptional circumstances” implies that suspension can occur due to other issues as well. Indeed, for many years this article was used exclusively for cases of budgetary non-compliance. In 1964, however, a proposal was received to invoke it against South Africa on the basis of “exceptional circumstances”, in that case the country’s policy of apartheid. The assembly determined that this policy “fails to adhere to the humanitarian principles of the World Health Organization” and South Africa’s voting privileges have to be revoked. South Africa immediately withdrew from the WHO. It was only after the coming into force of its new constitution in 1994 that South Africa’s rights and privileges at the WHO were restored (Burci and Vignes, 2004, p. 30).

Thus, we code the assembly in the proposal stage and for the final decision and we refer to Rule 72 (Rules and Procedures of the Health Assembly) which states that a decision regarding the suspension of voting and other rights is reached by a two-thirds majority. Suspension of voting rights has been listed as an “important question” since 1980: before that time, we code the general decision-making rule of simple majority. A member can also withdraw from the organization if they have formally reserved this right upon depositing their instruments of acceptance. Currently this is only applicable to the United States (Burci and Vignes, 2004, p. 29).

**Constitutional reform**

The final decision on amendments is made by the Health Assembly, deciding by two-thirds majority (Art. 73). From the constitution it does not become clear who can propose amendments. It is, however, implied that the Board can be involved in the decision-making procedure on constitutional amendments (Art. 60 (c)). Therefore we
code the board in the proposal stage. Both bodies make their decision by two-thirds majority (Art. 60). According to the Constitution, amendments need to be “accepted by two-thirds of the Members in accordance with their respective constitutional processes” (Art. 73). We interpret this to mean that ratification by a subset of member states is required for an amendment to enter into force.

**Finances**

**Revenues**

According to the Constitution, the Assembly “shall apportion the expenses among the Members in accordance with a scale to be fixed by the Health Assembly” (Art. 56). The WHO’s 2010 Unaudited Interim financial report, however, suggests, 53 percent of the contributions come from member states, while the rest come from different NGOs, foundations, the UN, and the private sector. Even though a substantial amount of the organization’s income comes from other sources, we still code member state contributions as the main source of income.

**Budgetary allocation**

The budget is drafted by the Secretary-General (Constitution, Art. 34) and approved by the Assembly (Constitution, Art. 18 (f)). The Assembly takes decisions on the budget by simple majority (Constitution, Art. 60 (b)). There is no explicit reference to whether decision-making is binding but because the decisions on the budget are taken by unanimity and because there are sanctions for budgetary non-compliance decision-making has been coded as binding.

**Non-compliance**

The Constitution states: “If a Member fails to meet its financial obligations to the Organization or in other exceptional circumstances, the Health Assembly may, on such
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conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled” (Art. 7). We code the Assembly in the proposal stage and for the final decision. As outlined above, suspension of voting rights has been listed as an “important question” since 1980: before that time, we could the general decision-making rule of simple majority.

Policy making

The WHO website gives an overview of the organization’s policy output: “providing leadership on matters critical to health and engaging in partnerships where joint action is needed; shaping the research agenda and stimulating the generation, translation and dissemination of valuable knowledge; setting norms and standards and promoting and monitoring their implementation; articulating ethical and evidence-based policy options; providing technical support, catalyzing change, and building sustainable institutional capacity; and monitoring the health situation and assessing health trends.” The work of the WHO, therefore, can take different forms but the most important part of policy-making is running programs. Another type of policy-making is the conclusion of conventions or agreements. To date, only one convention has been created under the direction of the WHO, the WHO Framework Convention on Tobacco Control. It was adopted in 2003 and entered into force in 2003. The International Health Regulations (entry into force: 2007) is another legally binding instrument of the WHO. Because of the relative importance of the conventions and agreements we also include those in our coding. Thus, we code two types of policy-making: binding and non-binding.

The main task of the Assembly is “to determine the policies of the Organization” (Constitution, Art. 18 (a)). We therefore code the Assembly as making the final decision. The decision-rule used by the Assembly in most cases is simple majority, except for issues which have been listed as “important questions” (Rules of Procedure of the World Health Assembly, Rule 70). The conclusion of international agreements and conventions would
be an example of an issue that would be decided by a two-thirds majority (Constitution, Art. 60 (a)). We therefore have a different coding for both the different types of policymaking.

Different bodies can propose policies to the Assembly. One of the tasks of the Executive Board is to “to submit to the Health Assembly for consideration and approval a general programme of work covering a specific period” (Constitution, Art. 28 (g)). Its role in the initiation phase is also corroborated by secondary (Burci and Vignes 2004: 40). In case of decision-making on conventions or agreements, the voting rule is supermajority, in other cases, simple majority (Constitution, Art. 60). Member states also can put items on the agenda, as is demonstrated from the Rules of Procedure of the World Health Assembly, which states that at sessions of the Assembly the Board shall include in the agenda “any item proposed by a Member or by an Associate Member” (1955, Rule 5 (d)). Indirectly, the Director-General is also mentioned to play a role in the agenda-setting stage. In the Constitution, one of the tasks of the Assembly is defined as: “to instruct the Board and the Director-General to bring to the attention of Members and of international organizations, governmental or nongovernmental, any matter with regard to health which the Health Assembly may consider appropriate” (Art. 18 (g)). For this reason we also include the Secretariat in the proposal stage.

Decision-making on programming is coded as non-binding since these decisions do not carry any legal force. Decision-making on international agreements or conventions is coded as binding, unless member states opt out as provided for in the Constitution (Art. 20 and 22). Ratification is only required for international agreements and conventions. The Constitution states that these instruments shall enter into force “for each Member when accepted by it in accordance with its constitutional processes” (Art. 19).
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Dispute settlement

Dispute settlement in the WHO is governed by a political body: “Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement” (Constitution, Art. 75). Since dispute settlement is through the International Court of Justice, the rules of the ICJ statute apply. This means that decision-making is binding if there is an ex ante agreement amongst disputing parties or when it is approved post hoc by a political body, there is a standing body of justices which rules collectively on disputes and only member states have legal standing before the court. There is no remedy for non-compliance and the ICJ does not provide for a system of preliminary ruling.
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Hoe kunnen we verklaren hoe international organisaties zijn opgezet en beslissingen maken? In dit proefschrift betoog ik dat een spanning tussen schaal en gemeenschap resulteert in het ontstaan van twee verschillende soorten internationale organisaties: algemeen (general purpose) en taak-specifiek (task specific). International organisaties hebben, net als nationale overheden, als doel om collectieve actie problemen op te lossen door het verstrekken van publieke goederen. Internationale publieke goederen, zoals milieubescherming, veiligheid, intellectueel eigendomsrecht en wereldwijd gezondheidsbeleid zijn eenvoudiger te realiseren op een grotere schaal, en sommige collectieve actie problemen kunnen zelfs alleen effectief worden aangepakt als een groot aantal landen samenwerkt. Om deze reden is er een duidelijk voordeel van schaalvergroting. Gemeenschappen hebben echter een sterke behoefte om zichzelf te besturen. Dit is op internationaal niveau niet minder het geval dan op nationaal niveau, hoewel gemeenschapsgevoel op internationaal niveau aanmerkelijk dunner is gezaaid. Desalniettemin zijn landen eerder bereid om samen te werken in een internationale organisatie als ze het gevoel hebben bij dezelfde politieke gemeenschap te horen. Gemeenschapsgevoel kan onstaan als gevolg van een gemeenschappelijke taal, geschiedenis of godsdienstige overtuiging en is daarom in ongelijkmatige clusters verspreid over de wereld. Waar schaal vraagt om organisaties die zich richten op het oplossen van collectieve actie problemen, vraagt gemeenschap om organisaties die geworteld zijn in het idee dat landen bij dezelfde groep horen. Schaal en gemeenschap stellen daarom tegenstrijdige eisen aan de opzet en
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besluitvormingsprocedures van internationale organisaties.

Deze spanning tussen schaal en gemeenschap produceert twee verschillende types internationale organisaties. Waar gemeenschap de boventoon voert, zijn organisaties algemeen. Algemene organisaties imiteren de rol van national overheden en proberen daarom alle problemen op te lossen die in hun gemeenschap onstaan. Algemene organisaties worden daarom getypeerd door een brede beleidsomvang. Taak-specifieke organisaties zijn daarentegen geworteld in de specifieke problemen die ze proberen op te lossen en hebben daarom een nauwe beleidsomvang. Dit type organisatie streeft ernaar om alle landen samen te brengen die nodig zijn om het probleem aan te pakken.

De verschillende hoofdstukken van dit proefschrift illustreren het effect van de spanning tussen schaal en gemeenschap op internationaal niveau en laat zien hoe algemene en taak-specifieke organisaties op een groot aantal vlakken van elkaar verschillen.

De belangrijkste verschillen tussen algemene en taak-specifieke organisaties zijn wellicht te vinden in hoe ze zijn opgezet en hoe ze beslissingen maken. Taak-specifieke organisaties streven ernaar om alle landen die zijn betrokken bij een collectief actie probleem te omvatten. Daarom hebben deze organisaties vaak een groot aantal lidstaten. Dit bemoeilijkt het maken van unanieme beslissingen: waar unanimiteit is vereist heeft ieder land effectief vetorecht en kan daarmee besluitvorming blokkeren. Om toch beslissingen te kunnen maken wijken taak-specifieke organisaties daarom vaak af van unanimiteit en is een meerderheid voldoende om tot een besluit te komen. Algemene organisaties, daarentegen, zijn conservatiever in hun manier van besluitvorming. Deze organisaties hebben een brede beleidsomvang en behandelen vaak problemen waarvan de oplossingen om herverdeling vragen of inbreuk doen op de soevereiniteit van lidstaten. Het lidmaatschap van deze organisaties is veelal kleiner en daarom is de kans op een impasse minder groot. Algemene organisaties zijn daarom eerder geneigd om aan unanimiteit vast te houden. Taak-specifieke en algemene organisaties verschillen ook in hoeverre lidstaten bereid zijn autoriteit aan de organisatie over te dragen. Algemene organisaties krijgen
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na verloop van tijd steeds meer en sterkere instituties, zoals onafhankelijke rechtbanken en parlementen. Taak-specifieke organisaties hebben weinig onafhankelijkheid van hun lidstaten, en daarin verandert weinig naarmate de organisatie zich ontwikkelt.


Het verschil tussen taak-specifieke en algemene organisaties heeft ook invloed op de voorwaarden die deze organisaties stellen aan de toelating van nieuwe lidstaten. Strengere toegangsvoorwaarden komen vooral voor in organisaties waar er veel op het spel staat. De omvang van een de beleidsruimte is één van de belangrijkste oorzaken van strengere toegangsvoorwaarden: hoe breder de beleidsomvang, hoe groter de kans dat de organisatie restrictieve beslisregels heeft wat betreft toelating. Aangezien een brede beleidsruimte het onderscheidende kenmerk is van algemene organisaties, kunnen we hieruit concluderen dat deze organisaties minder snel nieuwe lidstaten toelaten. Dit is niet verwonderlijk: als organisaties zijn geworteld in gemeenschap is het belangrijk dat bestaande lidstaten alleen nieuwe lidstaten kunnen accepteren die deel uitmaken van de gemeenschap. In taak-specifieke organisaties, die gericht zijn op het oplossen van een bepaald probleem, is het juist belangrijk om lidmaatschap te vergroten zodat het probleem op de juiste schaal effectief kan worden aangepakt.

Taak-specifieke algemene organisaties verschillen ook wat betreft hun rechtsorganen. Rechtspraak in internationale organisaties kan twee verschillende vormen aannemen: intergouvernementaal (state-controlled) en supranationaal. Intergouvermentale rechtspraak
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wordt gekenmerkt door een automatische toegang tot de rechtsgang, een staand tribunaal en in sommige gevallen bindende beslissingen. Desalniettemin laat intergouvernementale rechtspraak de lidstaten het laatste woord en kan daarom geen directe invloed hebben op binnenlandse politiek. Dit is anders in supranationale rechtspraak, waar rechtbanken sancties op kunnen leggen of beslissingen kunnen maken die direct bindend zijn, toegang verlenen aan andere actoren dan lidstaten en prejudiciële vragen kunnen beantwoorden. Deze rechtbanken tasten de nationale soevereiniteit aan en kunnen een directe invloed hebben op binnenlandse politiek. Er wordt vaak gedacht dat sterke handelsrelaties de oorzaak zijn van het onstaan van supranationale rechtbanken, maar de praktijk laat zien dat de meeste van deze rechtbanken zich ook bezig houden met heel andere beleidsonderwerpen, zoals mensenrechten. Dit hoofdstuk laat zien dat supranationale rechtspraak het vaakst voorkomt in organisaties die geworteld zijn in gemeenschap, met andere woorden, in algemene organisaties. De opkomst van supranationale rechtbanken kan daarom worden verklaard door de bekrachtiging van algemene organisaties.

Als laatste laat dit proefschrift ook zien dat taak-specifieke en algemene organisaties verschillen in hoeverre ze over de loop tijd veranderen. Algemene organisaties zijn veel dynamischer dan taak-specifieke organisaties. Omdat algemene organisaties zich bezig houden met alle problemen die binnen hun gemeenschap onstaan, is het van te voren niet bekend wat voor taken de organisatie uit zal moeten oefenen. Daarom is het belangrijk dat deze organisaties flexibel zijn. Dit kan worden gerealiseerd door samen te werken op basis van een incompleet contract. Om op deze manier succesvol te kunnen samenwerken zijn sterke instituties nodig en daarom worden deze organisaties na verloop van tijd vaak bekrachtigd met bijvoorbeeld sterke secretariaten en rechtbanken. Algemene organisaties ondergaan daarom veel meer veranderingen naarmate ze zich ontwikkelen. Taak-specifieke organisaties worden daarentegen opgericht op een specifiek probleem aan te pakken. Omdat van te voren bekend is wat het probleem is behoeven de instituties veel minder aanpassingen. De dynamische aard van algemene organisaties wordt
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ook geïllustreerd in het laatste hoofdstuk, waar hervormingen in regionale rechtbanken worden besproken. Dit hoofdstuk laat zien dat de aard van het onderliggende contract een belangrijke aanwijzing biedt voor de ontwikkeling van de rechtbank. Als organisaties zijn gebaseerd op een incompleet contract zijn hervormingen veel waarschijnlijker.