

**SOFT GOVERNANCE: WHY STATES CREATE INFORMAL
INTERGOVERNMENTAL ORGANIZATIONS, AND WHY IT MATTERS**

by

CHARLES BARCLAY ROGER

B.A., Concordia University, 2007

M.Sc., London School of Economics and Political Science, 2008

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

in

THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES

(Political Science)

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

July 2016

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Abstract

Informal intergovernmental organizations have become a prominent feature of the global landscape. Yet it remains unclear why states create informal organizations in some instances and formal organizations in others. Thus far, scholars have argued that states choose to create informal organizations when they offer an “efficient” solution to certain kinds of cross-border cooperation problems. However, such functionalist arguments are underspecified and rest on weak evidence at present. Existing research suggests that functionalist theories can indeed explain certain cases, but numerous anomalies arise when we look at others. This dissertation argues that this is because functionalists do not take into account how domestic politics, distributional conflict and state power can decisively influence the kinds of organizations that are likely to appear. It offers an alternative account of the emergence of informal organizations that incorporates these variables. The theory advanced emphasizes how domestic politics and institutions structure state preferences over organizational form, and how the distribution of preferences and state power then shape the organizations that subsequently emerge. Specifically, it argues that informal organizations arise when either a) policymakers in powerful states face significant domestic constraints, or b) autonomous bureaucrats are given responsibility for “leading” cooperation on the behalf of powerful states. In order to test this theory, a variety of methods are used. First, the theory is evaluated quantitatively through a statistical analysis of an original dataset of formal and informal organizations. Second, the theory is evaluated qualitatively through process tracing of the “emergence” of the International Monetary Fund, the General Agreement on Tariffs and Trade and the International Competition Network. Overall, the analysis provides powerful support for the central thesis of this dissertation: while certain aspects of the cooperation problems states face do play a role, domestic politics and state power are the most important determinants of organizational form. The dissertation’s findings are argued to have implications for theories of rational design in the field of International Relations, for our understanding of the overall rise of informal organizations in the global system, as well as for policy debates about the desirability of this new breed of international institution.

Preface

This dissertation is the original, unpublished, independent work of the author, Charles Roger. The research was approved by the University of British Columbia's (UBC) Behavioral Research Ethics Board (BREB), BREB Number H15-01249.

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Acknowledgements

As with all research, this project has benefited from the insights and support of a great many people. Above all, I would like to recognize the contribution of my doctoral supervisor, Peter Dauvergne, and my committee members, Katia Coleman and Yves Tiberghien. They have each read through numerous drafts of the dissertation and offered valuable comments on each of them that improved the conceptual framework, theory and empirics immeasurably. They have also each been great supporters of my work throughout my doctoral studies, and for all of that I am deeply thankful. Second, I am indebted to Felicity Vabulas and Duncan Snidal for providing much of the inspiration for this work. Their pioneering research has offered a wellspring of useful ideas to engage with, and I have benefited from the comments they have offered on this project. Third, I am thankful that a number of colleagues and friends have also taken time out of their busy schedules to read through and comment on portions of this work, or who provided valuable support in other ways. These individuals include Liliana Andonova, Jessica Green, Philipp Genschel, Thomas Hale, Derek Hall, Virginia Haufler, David Held, Eric Helleiner, Kathy Hochstetler, Matthew Hoffmann, Marieke Kleine, Rahul Mediratta, Joost Paulwyn, Stacy VanDeveer, Robert Wade, Nicole Weygandt, and Kevin Young. Fourth, I have also benefited from the friendship and scholarship of my colleagues at the University of British Columbia, many of whom have gone above and beyond the call of duty in terms of their support for this project. These include Justin Alger, Jen Allan, Michael Byers, Arjun Chowdury, Brian Job, Li Xiaojun, Jane Lister, Miriam Matejova, Richard Price, Paul Quirk, Allen Sens, Lisa Sundstrom, Brent Sutton, Chris Tenove, Carla Winston, and Linting Zhang. Finally, of course, this project could not have been completed or even begun without the unfailing support of my family and close friends. They have been there at each and every stage and know far more about studying informal intergovernmental organizations, as well as the ups-and-downs and ins-and-outs of completing a PhD, than anyone outside of academia ever should.

Beyond these individuals, I also wish to acknowledge the financial support that I have received. My doctoral studies were funded by a Joseph Armand Bombardier Canada Graduate Scholarship, the John S. Montalbano Scholars Fellowship, and the Olav A. Slaymaker Fellowship in Environment. I also received support for this project, in particular, from the Department of Political Science and the Faculty of Graduate Studies at UBC, as well as the Liu Institute for Global Issues.

Chapter 1. Introduction: The Rise of Informal Organizations

1.1 Introduction

The financial crisis of 2007-08 was a great test for global governance. States were faced with the most significant economic turmoil since the Great Depression: economic output plummeted, financial institutions crumbled, and international trade and cross-border capital flows collapsed. With the global economy on the brink of disaster, states called upon international institutions to help avert a catastrophe. The Group of 20 (G20) achieved new prominence as the “international steering committee of the world economy.”¹ Leaders from both industrialized and emerging economies convened in 2008 and 2009 to coordinate their national responses. The International Monetary Fund (IMF) swung into action to provide emergency loans, with a massive infusion of funds bolstering its capacity.² The Financial Stability Forum—established in the wake of the East Asian financial crisis that had occurred ten years earlier—was reconstituted with a new charter, expanded membership and a new name: the Financial Stability Board (FSB). United States (US) Treasury Secretary Timothy Geithner would refer to it as the “fourth pillar” of the global economic governance architecture—alongside the IMF, World Bank and World Trade Organization (WTO).³ The Group of 10 (G10) and the Basel Committee on Banking Supervision (BCBS) recognized the inadequacy of Basel II and within two years concluded a new capital adequacy standard for banks, Basel III.⁴ The activities of other institutions in the field of global finance, such as the International Organization for Securities Commissions (IOSCO) and the

¹ Bergsten 2006; Cooper and Thakur 2013.

² Helleiner 2010; Blustein 2013; Helleiner 2014c.

³ Griffith-Jones, Helleiner, and Woods 2010.

⁴ Young 2011; Vestergaard and Hojland 2011.

International Association of Insurance Supervisors (IAIS), also expanded significantly.⁵ Together, these bodies mounted the global response to the crisis and helped to chart a path to what was hoped would be a more stable world.

Some have argued that one of the most surprising stories of the financial crisis is that these institutions were largely successful—that the system worked.⁶ Initially, economic output, international trade and capital flows had fallen far faster than they had in 1929. Yet they recovered much faster as well. Even if growth remained sluggish thereafter, a second Great Depression was clearly prevented. Daniel Drezner has attributed this, at least in part, to the fact that international institutions performed tolerably well during and after the crisis. “The open global economy survived,” he argues, “because of ‘good enough’ governance.”⁷ Others have disputed this, arguing that global governance was not “good enough”—that the system failed. David Zaring, for instance, has concluded that many of the most important institutions “had little to say in response to the [financial shocks].” “Those responses that were forthcoming,” he claims, “were either ineffective or counterproductive.”⁸ Eric Helleiner has echoed this assessment, to some degree. According to him, “the G20’s contribution to the financial management of the crisis ended up being much less significant than advertised [...] And the FSB’s capacity to act as a kind of fourth pillar of global economic governance turned out to be very limited.”⁹ The achievements of other bodies, like the BCBS, IOSCO and IAIS, have been

⁵ Pagliari 2012.

⁶ Drezner 2014.

⁷ Ibid, p.124.

⁸ Zaring 2010, p.475.

⁹ Helleiner 2014c, p.3. Also see Helleiner 2012b; Helleiner 2012a.

similarly downplayed.¹⁰ Such observers believe that while it is certainly true that there was a flurry of activity at the international level and that the worst was avoided, the actual contribution of international institutions to this outcome was negligible.

The debate between these two views is an important one, and remains unresolved. It highlights the fact that we need to think carefully about the way institutions operate, and how they can be improved in the future—even if their response was “good enough” this time around.¹¹ In many ways, the systemic risks that we face, from the environment to the economy to global health, are too great. Yet there is a third story here—one that many could be forgiven for missing, but which may shed some light on the issues at stake. That story is about the major changes that we are presently witnessing in the nature of global governance. Specifically, the global response to the financial crisis underlined the extent to which *informal*, or “soft,” intergovernmental organizations have come to dominate our approach to important global issues. The G20 was, for instance, central to the global response to the crisis, and its rise has been heralded as one most important developments in international affairs in recent years.¹² Yet it is unlike many of the intergovernmental organizations we have “traditionally” relied on and studied in the field of International Relations (IR).¹³ While it has a centralized organizational structure, it has no permanent secretariat and no formal status under international law. The FSB has a secretariat but it primarily comprises officials that have been seconded by states, and, again, its charter is a “soft” or “non-binding” agreement. The same is true of the G10, BCBS, IOSCO and IAIS. Of

¹⁰ For similar views, see Brummer 2012 and Blustein 2013.

¹¹ See Helleiner and Pagliari 2011 and Kahler 2013 for useful discussions of some of the larger issues raised by the financial crisis for global governance and IR research.

¹² Cooper and Thakur 2013; Kirton 2013.

¹³ Kahler 2000; Kahler and Lake 2003; Abbott 2015.

course, more traditional—or *formal*—intergovernmental organizations, like the IMF and WTO, played an important role in the response to the crisis as well, but the extent to which informal organizations occupied the news headlines was striking. Even in the highly legalized European context the trend was evident. In response to the debt crisis, for instance, three institutions have been especially prominent in Europe: the European Central Bank (ECB), the European Commission and the Euro Group. The first two are formal intergovernmental organizations; the last has, until quite recently, had no formal legal basis.¹⁴

The pattern is hardly confined to the field of global finance. Informal organizations¹⁵ can be found in a variety of issue areas. On climate change, for instance, alongside the United Nations, there is the Clean Energy Ministerial, the Group on Earth Observations, the Global Methane Initiative and the Carbon Sequestration Leadership Forum. Until its demise in 2011, the Asia Pacific Partnership on Clean Development and Climate also played a role. In the field of money laundering, there is the Financial Action Task Force (FATF), the Asia/Pacific Group on Money Laundering (APG), the Eurasian Group (EAG) and the Egmont Group. In the field of consumer health and safety, there is the International Cooperation on Cosmetics Regulation (ICCR), the Intergovernmental Forum on Chemical Safety and the Global Harmonization Task Force, among many others. Lest the impression be given that informal cooperation is confined to “low politics” issue areas, in the field of international security there is the Australia Group, the Nuclear Suppliers Group, the Proliferation Security Initiative (PSI), the Missile Technology Control

¹⁴ This changed with the signing of the Lisbon Treaty in 2009.

¹⁵ Throughout this study, the terms “informal organization” and “formal organization” are used interchangeably with “informal intergovernmental organization” and “formal intergovernmental organization.” When I use the term “intergovernmental organizations,” without qualification, I mean to refer to both formal and informal organizations.

Regime, and the Wassenaar Arrangement (formerly known as CoCom, the Coordination Committee for Multilateral Export Controls). Like the G20 and FSB, each of these institutions has few of the features that we associate with “traditional” intergovernmental organizations. Their institutional or bureaucratic footprint is “light” and their standing under international law is uncertain, at best. Yet, on the whole, these new informal institutions—and many others just like them—are impacting the lives of nearly everyone around the world. Further, their importance seems to be growing.

Few would dispute that informal organizations have been playing a more central role in global affairs. Yet, curiously, few attempts have been made to demonstrate this fact conclusively, explain why it has occurred or sought to understand whether this is a good thing. Has there really been a shift in the nature of global governance? If so, how dramatic has the change really been? If a major shift has indeed occurred, what caused this? Why do states create formal organizations in some instances and informal organizations in others? And what, ultimately, does our answer to this question imply for our ability to govern important global issues? The purpose of this study is to answer these questions. It does so by developing a theory that aims to explain why states choose to create informal organizations, testing it using a range of methods and assessing what this says about the desirability of this new breed of international institution. However, I argue that a great deal needs to be done before this can be accomplished. At present, we still have only a limited understanding of how to conceptualize and think about informal organizations. Thus, there is significant need for clarity about what really “counts” as an informal organization, and how such bodies are different from formal organizations, like the United Nations or World Bank. Finally, but relatedly, we have only a limited understanding of the actual empirical patterns of

governance that we see. Currently, we have fairly good data on the formal intergovernmental organizations that exist, or which have existed, but the data on informal organizations is quite limited. Our empirical understanding of—and ability to explain—their rise is therefore deficient. We have impressions and anecdotes that give us a “sense” of what is going on, not data or statistics.

This study makes a number of important contributions to our understanding of informal organizations. First, it offers a much needed conceptual clarification of their main features, properties, and implications, explaining exactly how they are similar to and different from the kinds of formal organizations that have been the traditional focus of scholarship in the fields of IR and International Law (IL). In recent years, scholars of IR and IL have made some effort to explain what is special about informal organizations, and their work has paved the way for more ambitious research.¹⁶ This study builds on their contributions. Yet, I argue, prevailing efforts still suffer from the fact that they miss or misunderstand some of the key characteristics and consequences of formal and informal organizations. It therefore attempts to specify exactly what informal organizations are, and how we can know them when we see them. It explains in considerable detail how informal organizations are different from formal organizations, and clarifies what this means in practical terms. In line with existing research, for instance, it shows how formal and informal organizations are able to *do* different things after they have been established. I refer to these unique abilities of formal and informal organizations as their “international properties,” since they relate to how an organization functions or performs. Yet the study also shows that *creating* each kind of organization can have different practical implications

¹⁶ Klabbers 2001a; Pauwelyn, Wessel, and Wouters 2012; Vabulas and Snidal 2013.

for states as well. I refer to these as the “domestic implications” of formal and informal organizations, since they concern what it really means to establish them in the first place. To some degree, of course, the domestic implications and international properties of these organizations are related and interlinked, but this distinction—previously overlooked—turns out to be quite important for how we explain why a formal or informal organization emerges in a given context.

The second contribution of the study is to offer an empirical assessment of the phenomenon by collecting new data on the number of informal organizations that have emerged over time. As mentioned, existing efforts to measure the number of intergovernmental organizations in the global system primarily focus on formal bodies. This means that we have no reliable way of knowing how many informal organizations exist and whether we really are seeing something new.¹⁷ It could be that the hype about informal organizations is overblown. Perhaps, for instance, they have been around for some time, and we have a misleading perception about the frequency of informal organizations because they have only attracted more systematic attention in recent years. Perhaps, as well, there are very few informal organizations, and therefore we can safely overlook them without too much loss. Inspired by a similar effort by Felicity Vabulas and Duncan Snidal, the study rectifies this deficit by developing new coding rules that operationalize the concept of an informal organization and creating an original dataset that helps expand our understanding of intergovernmental organizations in important ways.¹⁸ This dataset employs the same source material and methods used to generate the most comprehensive existing dataset on

¹⁷ It also implies that we are, as shown later on, seriously underestimating the total number of intergovernmental organizations.

¹⁸ See *Ibid.*

formal organizations—the Correlates of War Intergovernmental Organizations Database (COW-IGO)—and can therefore be reliably combined with the latter to compare the number of formal and informal organizations over a period of nearly 200 years. The data demonstrate, conclusively, that informal organizations have indeed become a more prominent feature of the global political landscape over the last 50-60 years. In 1945, it shows, they were relatively rare; today, they comprise about a third of all active intergovernmental organizations. Perhaps even more importantly, however, the data also open up new research frontiers by allowing scholars to quantitatively analyze the determinants of organizational form for the first time—a task undertaken in Chapter 4.

The third, and most important, contribution of the study is to move beyond conceptualization and description to offer a more compelling *explanation* of informal organizations than we have at present. To the extent that they exist, prevailing accounts are largely functionalist in nature, couched in the rational design tradition of IR.¹⁹ These hypothesize, generally, that informal organizations emerge when they offer benefits to states that their formal counterparts do not.²⁰ As such, they have some intuitive appeal, and, as will be shown, some explanatory power as well. Yet, in the final analysis, they remain weak and incomplete. First, such theories have yet to be tested in a rigorous manner. Existing case studies show that the arguments that have been advanced are indeed plausible. But their ultimate value remains uncertain, since they focus on “easy tests” and do not demonstrate that the functionalist account can explain a wide range of cases. Worryingly, some contradictory evidence suggests that they may not, or that they miss

¹⁹ Koremenos, Lipson, and Snidal 2001; Koremenos 2013b; Koremenos forthcoming.

²⁰ Whytock 2005; Eilstrup-Sangiovanni 2009; Bradford 2011; Vabulas and Snidal 2013. Important exceptions include Bach 2010; Verdier 2013.

important parts of the story at least. This relates to the second concern, which is that rational design arguments tend to neglect the role of domestic politics, distributional conflict and power in driving an organization's level of formality. This is a problem that plagues theories of rational design more generally, but it seems especially problematic when it comes to explaining organizational form and may help to account for such empirical anomalies. The explanation that I offer attempts to incorporate these variables, and shows how they systematically change the outcomes we would otherwise expect. Further, I test this theory—as well as rational design hypotheses—in a more rigorous fashion and demonstrate that the factors it identifies do indeed play an important role in determining the kinds of organizations that emerge. Indeed, the evidence provides powerful support for this study's central thesis: while characteristics of a cooperation problem do shape the form of an organization to some extent, domestic politics and state power are in fact the primary drivers.

Finally, the study uses these findings to contribute to the normative debate about informal organizations. Many commentators have, thus far, been quite optimistic about these new institutions, arguing that they are better suited to the complex cooperation problems that states face at present.²¹ Informal organizations, they believe, have a number of advantages that make them more appropriate for addressing the new kinds of issues we confront in an increasingly globalized world. These arguments coincide with a more general disillusionment with formal institutions. Prominent intergovernmental organizations, such as the United Nations, IMF, World Bank, and WTO, as well as others like the European Union (EU) and World Health Organization

²¹ Slaughter 1997; Reinicke and Deng 2000; Slaughter 2004; Patrick 2014; Roger and Dauvergne 2016.

(WHO), have been subject to withering criticism in recent years.²² Both scholars and policymakers have lamented *inter alia* their slow bureaucratic pace, their lack of transparency and legitimacy and their inability to adapt to new challenges. This is not to say that informal organizations have gone without criticism. Others are more pessimistic and worry that informal organizations are, at best, a distraction from serious solutions to the world's problems.²³ At worst, they actively undermine effective and accountable global governance. The debate between these rival views overlaps with the debate about the response to the financial crisis, mentioned above, and takes on increasing significance in a world where informal organizations have come to dominate efforts to resolve some of the most pressing issues that we face—financial crises being just one. What it lacks, at present, is a theoretically informed and evidence-based assessment of the value and appropriateness of informal organizations. By undertaking a rigorous investigation of the determinants of organization form and drawing out the policy implications of the findings, this study aims to put the debate about the desirability of these institutions on a new footing.

1.2 A Preview of the Argument

As mentioned above, the central question that this study addresses can be simply stated: why do states create formal organizations in some instances and informal organizations in others? By developing our understanding of what drives states to create informal organizations in the first place, I argue, we can start to explain why informal organizations have become more common

²² Stiglitz 2002; Blustein 2013; Patrick 2015; Garrett 2015. Also see Hale, Held, and Young 2013.

²³ Karlsson-Vinkhuyzen and Vihma 2009; Verdier 2009; Zaring 2010; Blustein 2013; Helleiner 2014c.

over time and gain insights into whether—or when—they are appropriate for resolving global problems. To do so, it undertakes two main theoretical tasks. First, it offers a conceptual argument about what informal organizations really are and how they differ from their formal counterparts. It makes the case that informal organizations have certain features that make them quite unique, but also, as described above, that they have certain international properties and domestic implications, which may make them more or less desirable in different contexts and for different kinds of actors. Second, I advance an explanatory theory that attempts to model the processes of state preference “formation” and interstate preference “aggregation” that are hypothesized to jointly determine the form that an organization is likely to take.²⁴ The theory emphasizes the role of domestic politics and institutions in shaping state preferences over organizational forms and highlights how the distribution of preferences and state power then determine the final outcomes that we see. The argument is laid out in full later on (in Chapter 3), and is elaborated upon in the Conclusion to explain the temporal trend that we see. Here, I offer a brief summary.

First, consider the conceptual argument: that formal and informal organizations differ in important ways and that these differences shape both how they are established and how they function or perform. To see this, it is helpful to contrast the two and to start by identifying the main features of formal organizations, which most readers will be familiar with. Formal organizations are, of course, a central feature of the global political landscape, and a key unit of

²⁴ Note that I differentiate between preference “formation” at the domestic level and preference “aggregation” at the international level. I use these particular words to emphasize the distinctness of each stage. However, there is a sense in which the domestic preference formation process involves a process of preference “aggregation” as well, albeit with respect to the various domestic actors active in an issue area. While true, I maintain the distinction in order to facilitate exposition of the theory.

analysis in the field of IR. They come in many shapes and sizes, and address different issues. This diversity makes it inherently challenging to define them precisely. Nevertheless, most political scientists and international lawyers believe that they share at least three basic characteristics.²⁵ First, formal organizations are created by sovereign states. Though other actors may be involved in various ways, organizations created by non-state actors (multinational corporations, non-governmental organizations), sub-state actors (cross-border associations of municipalities, for example) and other international institutions (so-called “emanations”) are not generally regarded as formal intergovernmental organizations. Second, they have bodies that are functionally separate from member states. Usually this would imply an autonomous body that is delegated responsibility for undertaking certain tasks on the behalf of states: a secretariat with a budget, staff and offices. Often, these can be quite large bureaucracies. Finally, they are established by an agreement under international law. That is, to be considered a *formal* intergovernmental organization a body must be founded by an international agreement that establishes precise legally “binding” obligations, i.e. an international treaty.²⁶ Formal organizations are, therefore, distinguished by the fact that they are a highly *legalized* form of international cooperation.²⁷

With this definition in hand it is easier to see the similarities and differences. Like formal organizations, for instance, informal organizations are created by states. This is what qualifies

²⁵ Singer and Wallace 1970; Schermers and Blokker 2003; Pevehouse, Nordstrom, and Warnke 2004; Klabbers 2009.

²⁶ For the purposes of this dissertation, I refer to all agreements that establish international legal obligations as “international treaties,” even if they go by different names or include some “non-binding” elements in practice. On the distinction between legally “binding” and “non-binding” international agreements, see Schachter 1977; Aust 1986; Aust 2000.

²⁷ Abbott et al. 2000.

them both as *intergovernmental* organizations. However, informal organizations are, generally, less likely to have bodies that are clearly separate from their members. The G20 and the FSB, as noted above, were created by states but have no independent secretariats of their own. Secretarial services are, instead, provided directly by one or more members, or by another intergovernmental organization. If they do have an independent secretariat, it is likely to be quite small; the sprawling bureaucracies characteristic of many formal organizations are almost entirely absent. Nevertheless, in order to count as an intergovernmental *organization*, an informal body must still have a persistent, if limited, organizational identity. At the very least, there must be regular meetings, policy outputs, and a corporate personality of some kind. The third and most important feature of informal organizations is their “twilight” status beyond the traditional boundaries of international law.²⁸ This is, essentially, what makes them *informal* intergovernmental organizations. In contrast with their formal counterparts, which are established by international treaty, informal organizations are typically founded by “non-binding” agreements—a Memorandum of Understanding (MOU), “gentleman’s agreement,” or the like.²⁹ The Terms of Reference of the APG offers a striking example of this. It describes the APG as a “multilateral organization” that is “established by agreement among its members and is autonomous.”³⁰ Yet, at the same time, it explains, the organization is “voluntary and cooperative

²⁸ Schachter 1977; Zaring 1998.

²⁹ Note, again, that the terms used to refer to “non-binding” agreements are actually quite flexible in practice. Deciding whether an agreement is “legally binding” or not cannot simply be determined by the name itself. Ultimately, what matters is the *intentions* of the actors involved, which can only be determined by a holistic assessment of each agreement, including the language and surrounding practices of states. A more detailed discussion of these markers of informality is contained in Chapter 2 where I lay out specific criteria for determining whether an agreement is informal or not. Note, also, that in order to reduce confusion I refer to all non-binding agreements as “MOUs,” or as “non-binding agreements,” even if particular agreements go by different names.

³⁰ APG 2012, p.6.

in nature,” and that its authority “does not derive from an international treaty.”³¹ Informal organizations are, therefore, a less *legalized* form of international cooperation.³²

The distinction between formal and informal organizations would not be particularly relevant or interesting if it did not make a major difference in practice. Yet it does. Formal and informal organizations have different properties and implications that make them more or less useful, or more or less desirable in different contexts and for different actors. First, they have different *international properties*—that is, they can *do* different things. Given the nature of their constitutive agreements and the fact that they have only a limited organizational structure, informal organizations are generally more flexible, more agile, and offer greater confidentiality. That is, they can be changed more easily, they can move more swiftly, and they can be much less transparent. Formal organizations, by contrast, can be larger and more autonomous. That is, their bureaucracies can be more advanced and they can be granted greater operational independence from member states. These properties, it will be shown, may make these different kinds of organizations more or less efficient solutions to different kinds of problems—a fact which rational design theorists emphasize. However, these are not the only aspects of formal and informal organizations that matter for states. In fact, they may actually be of secondary importance in many instances. A second set of implications is *domestic* in nature—that is, creating one or the other kind of organization has very different practical implications for states—and, as will be discussed, for different actors within states. Formal organizations, for

³¹ Ibid.

³² The distinction between formal and informal organizations can, in fact, be restated in the terms developed by Abbott et al. 2000. While formal organization generally exhibit high levels of precision, obligation and delegation, informal organizations generally display lower levels of precision, obligation and delegation.

instance, typically have high ratification requirements, entail significant monitoring arrangements and require larger budgetary allocations. In some circumstances, these implications may actually benefit certain domestic actors. Informal organizations, by contrast, require few of these and we can expect other kinds of actors to prefer them for this reason. These domestic implications or consequences of formality and informality, it is worth noting, are emphasized by my own theory.

Now, consider the explanatory argument. The model that I advance takes the cooperation problem that states face as its starting point. Cooperative efforts begin with an increase in the “demand” for governance in a given issue area, which, it is assumed, creates an incentive for the creation of an intergovernmental organization of some kind.³³ The theory predicts that the demand for governance is related to externalities that increase as interdependence between states deepens. However, these also create an incentive for particular actors within states to initiate or “lead” cooperation as a result of the fact that they have a stake in a particular issue. In this sense, the problem not only creates demand for cooperation, it also “selects” particular actors to become involved. The selection process matters—and, I argue, leads to unique observable implications—because different actors within states can reasonably be anticipated to have different “baseline” preferences over an organization’s level of formality. That is, some will tend to prefer a formal organization, while others will prefer an informal organization. Specifically, I distinguish between two different types of actors within states: political institutions, which are predicted to prefer formality, and independent agencies, which are predicted to prefer informality. While the former have been the “traditional” kinds of actors within states and

³³ Keohane 1982; Moravcsik 1997.

involved in international affairs, the latter have become increasingly common over time and more actively involved in acting on the behalf of states internationally.³⁴ We can therefore expect either of these to be “selected” by externalities created by a cooperation problem in any given situation and this leads us to expect different state preferences.

Why are these actors expected to have different preferences over organizational form? This is the most important logical step in the argument. The key is the fact that these actors occupy different positions within domestic institutional structures. Political institutions are distinguished by the fact that they are directly managed by or directly accountable to elected politicians. This means that actors leading these institutions are heavily influenced by electoral politics and their tenure is relatively uncertain—that is, they can lose their jobs if, for instance, other politicians or citizens are unsatisfied with their performance. This situation, I argue, leads these institutions towards a strong preference for greater formality for two reasons. First, since international treaties are seen to be more prestigious domestically (compared to soft “non-binding” agreements), greater legalization helps politicians to demonstrate leadership, bolster their reputations and improve their probability of being reelected.³⁵ In the words of Anthony Aust, “ministers prefer to be seen signing treaties rather than MOUs,” since they help to signal political strength to domestic audiences.³⁶ Second, since greater legalization makes it more difficult for a state to “exit” an agreement (or intergovernmental organization) by raising the reputational costs of doing so, creating a more formal organization helps to “lock in” the policy preferences of a

³⁴ Kennan 1997; Thatcher 2003; Slaughter 2004; Singer 2007; Bach 2010; Jordana, Levi-Faur, and i Marin 2011; Verdier 2013; Helleiner 2013.

³⁵ See Aust 2000; Brewster 2004; Guzman 2008.

³⁶ Aust 2000, p.38.

politician to a far greater extent.³⁷ They will, therefore, be more certain that their policies will remain in place, even if they are removed from office at some point in the future. The domestic implications of formal intergovernmental organizations are, therefore, a key asset for actors within political institutions.

Independent agencies occupy a different position within a domestic institutional structure and this causes them to have a very different preference. Above all, they are distinguished by the level of autonomy they possess, which insulates them to a greater extent from electoral politics. The tenure of officials in independent agencies is also relatively more certain, by comparison, since they typically serve defined terms in office and can only be removed with great difficulty. Their incentives can, therefore, be expected to be very different. In contrast with political institutions, for instance, independent agencies highly value the autonomy they possess and will likely take actions that will limit the extent to which other domestic actors—legislators, lawyers, diplomats, etc.—intervene in their affairs.³⁸ As David Andrew Singer has noted, “political intervention, in its various guises, is the bane of a regulator’s existence. When politicians attempt to influence regulatory policy directly [...] they threaten the agency’s autonomy and prestige.”³⁹ “Regulators will,” therefore, “use all strategies at their disposal to minimize the possibility of intervention.”⁴⁰ Informality helps them to do so—and, again, this is due to the domestic implications highlighted above. Since creating an informal organization does not require extensive ratification procedures, monitoring arrangements or budgetary allocations, they allow independent agencies to both engage in intergovernmental cooperation to reduce the externalities

³⁷ Brewster 2004; Guzman 2008; Moravcsik 2000a.

³⁸ Damro 2006b; Singer 2007; Bach 2010.

³⁹ Singer 2007, p.22.

⁴⁰ Ibid.

they face—which may, in turn, lead to political intervention if left unchecked⁴¹—and maintain a higher level of control over their affairs than would otherwise be possible. The domestic implications of informal intergovernmental organizations are, therefore, a key asset for actors leading independent agencies.

That said, political institutions and independent agencies cannot achieve their preferred outcomes at all times. The former are unlikely to be able to pursue a formal approach when they face significant *domestic constraints*. Creating a formal organization requires a larger shift from the prevailing domestic “status quo,” since the domestic requirements for signing an international treaty are much more onerous. The prospects for formal cooperation are therefore likely to be heavily influenced by factors that make it more or less difficult for policymakers to secure the domestic support necessary. When opposition to government treaty-making is high, for instance, formality becomes a less achievable objective. When this occurs, a political institution may then switch to an informal approach, which may satisfy some of the constituents in favor of international cooperation while circumventing those that oppose it. An informal organization is a second-best solution, but is likely viewed as better than the alternative: no organization at all.⁴² Independent agencies, by contrast, are unlikely to achieve their first preference when their actions become *politicized*. This may occur under several different conditions, but it most likely happens when an independent agency is seen to be failing or underperforming in some important way by other domestic political actors.⁴³ An issue that arises might also simply be too important

⁴¹ On this point, see Damro 2004; Singer 2007.

⁴² It is, also, theoretically quite easy to “scale-up” an informal organization at a later point in time, see Abbott and Snidal 2004. And, in fact, we do see a fairly significant number of informal organizations being reconstituted as formal organizations at a later point in time.

⁴³ See Damro 2006b; Singer 2007.

or controversial to be left up to bureaucrats alone, particularly if there are significant domestic distributional consequences.⁴⁴ Politicians may then demand a say. Either way, when this happens more political actors and institutions may threaten to intervene or actively intervene in the affairs of an independent agency. If so, then the agency will lose its ability to control foreign policymaking, and the probability that a more formal approach to international cooperation will be pursued can be expected to increase correspondingly.

This is, of course, a “stripped down” model of what goes on within a single domestic political arena. The real world is, no doubt, more complicated. However, the model still admits a great deal of complexity: the domestic preference formation process described above can play out in different ways depending on the state of politics and the institutional structures prevailing within relevant states at the time an intergovernmental organization is to be established. Indeed, the model suggests that it is entirely possible that the preferences of states may conflict, even when they are dealing with the same issue. The second step in the model seeks to explain how such conflicts are resolved. It starts by taking state preferences as given and shows how they “aggregate” to produce either a formal or informal organization using a simple bargaining model. In the model, states bargain over a continuum that ranges from mostly informal to mostly formal. If, after the preference formation process plays out (the first “stage” described above) the preferences of states converge on one side of the continuum, then, of course, we should expect the commonly preferred outcome to arise. If two states both want an organization to be highly formal in nature, then neither needs to hold up cooperation or coerce or cajole others to achieve its first preference. They may disagree about other dimensions of institutional design and engage

⁴⁴ See Bach 2010.

in hard bargaining over those issues. But, when it comes to organizational form, there is little disagreement. Since neither can do better by coercing the other or opting out, the commonly preferred outcome is in equilibrium.

By contrast, when state preferences diverge—that is, when one state prefers informality and the other formality—bargaining power is likely to be a much more important consideration. In this case, states are assumed to agree that an intergovernmental organization of some kind is desirable but they disagree over the form it should take. When this occurs, an organization may be unlikely to materialize, since the preferences of states may be so far apart that there is no scope for agreement. But, more importantly, if they do at least agree that an organization of some kind is necessary, neither can attain its preferred outcome without compelling the other in some way. The final outcome is, therefore, likely to reflect the preference of the state with the greatest bargaining power. Here, in line with classic theories of bargaining, a state is expected to have bargaining power if its preference is closer to the prevailing status quo or “reversion point.”⁴⁵ When this is the case, an actor is more willing to say “no” to any agreement it does not like and can more credibly hold out or “veto” cooperation if it does not get what it wants. Its more-dependent bargaining partner is then more likely to defer to a point closer to the more powerful state’s preference in order to secure an agreement of some kind. The final outcome should, then, reflect the preference of the state with greater veto power. However, bargaining power is not simply a matter of whose preference is closer to the original status quo; other actions are possible that can change the outcome quite dramatically. For instance, if another state can threaten to “go it alone” with others or take actions—applying sanctions or providing “side benefits”—that have

⁴⁵ Nash 1950; Rubinstein 1982; Muthoo 1999; Richards 1999.

the effect of moving the status quo, then an opponent is more likely to defer to a point closer to its preferred outcome—even if its initial preference was closer to the status quo.⁴⁶ In this case, by contrast, the final outcome will reflect the preference of the state with the greater ability to go-it-alone, sanction or buy-off others, all of which may be related to factors “outside” the bargaining scenario itself, such as the size of a state’s market. This means, all else being equal, that states preferring informality may have a bargaining advantage, since their preference is typically much closer to the prevailing status quo; but the theory also allows for other possibilities if a state’s bargaining partners can take actions that remove the initial status quo or “reversion point” as an option. Things, in other words, are not always equal, particularly if states aren’t.

1.3 Alternative Explanations

In this study, I refer to the two-step model outlined above as the “liberal” theory of organizational form, since it suggests that formality is primarily a product of domestic politics, institutions and state power—variables that liberal theories of IR have traditionally emphasized.⁴⁷ As indicated above, it is quite different from the rational design arguments prevailing in the literature at present. These alternatives generally leave domestic politics and power out of the causal equation. They instead hypothesize that, when states create institutions of various kinds, they fashion them to resolve the particular problems they face in the most efficient way. The character of a cooperation problem is itself the most important causal factor. The process they envision can be thought of as akin to the construction of a building, with states

⁴⁶ Gruber 2000; Moe 2005.

⁴⁷ On the liberal tradition of IR, see Zacher and Matthew 1995; Slaughter 1995; Moravcsik 1997.

acting as “architects.”⁴⁸ The structure that an architect will design will be different if the intention is to create a residence rather than a place of work. If there are earthquakes or high winds in the location it is built, then certain reinforcements will be put in place to ensure stability. If the local weather is generally colder, insulation and heating will be added. Similarly, rational design theorists argue that when states attempt to cooperate with one another they face a range of problems that differ in various ways. These problems make certain institutional designs more appropriate than others. They then argue that informal organizations have certain properties that contrast with the properties of their formal counterparts and make one or the other more or less advantageous for addressing particular problems.⁴⁹ The specific aspects of institutional design they emphasize—in contrast, with the theory just presented—are the “international properties” described above. Their general hypothesis is, then, that states choose to create informal organizations when doing so is the “best” way of solving the particular kind of cooperation problem they confront in a given context.

Rational design theories therefore suggest that we can predict what kind of organization will be created if we understand the particular features of the problem that create incentives for states to choose different institutional designs. To do so, they develop a number of specific hypotheses about what these features are. An informal organization is expected to be preferred, for example, when there is high uncertainty about future states of the world, since the greater flexibility that an informal organization offers means it can be adjusted more easily in response to new contingencies. In contrast, a formal organization should be expected when there is significant scope for opportunism—when, for example, a problem has the structure of a Prisoner’s

⁴⁸ This helpful metaphor comes from Kleine 2013.

⁴⁹ Eeilstrup-Sangiovanni 2009; Bradford 2011; Vabulas and Snidal 2013.

Dilemma—since the greater operational independence that formality can afford may offer certain advantages: a more autonomous organization might be better at providing credible information about the behaviour of other states or might even be able to sanction states that engage in opportunistic behaviour to maintain a cooperative equilibrium. By comparison, when the scope for opportunism is low, such mechanisms are not necessary and an informal organization should be preferred. Each of these hypotheses is discussed in more detail in Chapters 3 and 4. For now, it is simply important to note the general thrust of the functionalist argument: that, on average, states are believed to create organizations that are “matched” with the problems they are supposed to solve, and that we should therefore expect to find a strong correlation between particular aspects of the problems states confront and different institutional designs.

This study takes these arguments seriously and even attempts to test their observable implications more thoroughly than has been done thus far. The reason for this is simple. When designing an intergovernmental organization, states no doubt try to create institutions that are well suited to the problems they wish to address. It would be surprising if they did not, and there is certainly evidence that this occurs. Rational design arguments, this study will show, have some validity. At the same time, there are good reasons to believe that they are incomplete and do not adequately explain the emergence of informal organizations on their own. Some of these reasons have been briefly mentioned above, and further evidence is provided throughout the study to support this claim. The liberal theory is advanced as a deliberate response to the theoretical and empirical inadequacies of rational design arguments and leads to quite different conclusions about the emergence, rise, and, ultimately, desirability of informal organizations, as will be discussed next. Further, the evidence offered in the study shows that the factors that the liberal

theory emphasizes appear to be the most important determinants of organizational form. Nevertheless, it is important to keep in mind that while I go to great extents to demonstrate the utility of the liberal theory relative to rational design arguments, it is in fact complementary to such accounts. The theory adds nuance, explains additional variation and has different implications, but it is not, strictly speaking, envisioned as an “alternative.” Although the study may adopt such language at times, the real world is complex and motivations are diverse, and while it is essential for any theory to demonstrate its value relative to other competitors, it is important to also admit a degree of analytical eclecticism as well in recognition of this fact.⁵⁰

1.4 What is at Stake?

Some may be inclined to ask why any of this matters. Why should we care if rational design theorists are right, or if the liberal theory presented in this study offers a more compelling explanation? One answer is that it matters because we value the truth and want to know how the world really works. For many social scientists and, especially, scholars of IR, this may be enough. As individuals who are curious about IR and wish to better understand evolving patterns global governance, we care about the validity of our conjectures and about the puzzle itself. There are, also, important theoretical stakes within the field of IR, since, in some respects, this study can be construed as a broader challenge to “pure” theories of rational design. The rational design project represented an important innovation in IR when it first appeared, and the specific theories it subsequently spawned have achieved some prominence in the discipline over the past 15 years.⁵¹ A number of important methodological innovations have followed as well, which this

⁵⁰ Sil and Katzenstein 2010b; Sil and Katzenstein 2010a; Lake 2013.

⁵¹ Koremenos, Lipson, and Snidal 2001; Koremenos 2013b.

study readily exploits. Researchers in this tradition have, therefore, provided a number of important insights and advanced the field in tangible ways. Further, the approach has been particularly useful for fostering links between the fields of IR and IL—areas of research that have been studied separately for far too long, but which contain important insights that each other can learn from.⁵² Yet they have also been criticized for neglecting domestic politics, distributional conflict and state power as important variables, as noted earlier. Part of the value of this study is, therefore, to show the extent to which this is true. By deliberately evaluating the rational design and liberal explanations side-by-side it demonstrates that we cannot fully understand what drives institutional design without taking these factors into account.

For others who may wonder what the *practical* value of investigating these questions is, there is a second response: it matters because the answer has important policy implications. As mentioned, there is a vigorous debate about the merits of the various institutions we rely on to govern global issues, and many believe that informal organizations hold some promise for providing “good enough” governance, especially since so many formal organizations seem to be failing us. If true, the rational design approach would seem to support those who are more optimistic about these new institutions. If states do in fact design institutions that are “matched” with the problems they face, then this would suggest that the rise of informal organizations has been a rational response to the changing nature of the issues we face and that these new bodies are well positioned to supply effective cross-border governance. If, on the other hand, the factors that the liberal theory identifies have been the primary determinants of organizational form, then more pessimism about these institutions may be warranted. This is because the liberal theory

⁵² Abbott 1989; Abbott and Snidal 2013; Koremenos 2013a.

suggests that informal organizations are often chosen for less salutary reasons: because they help independent bureaucrats in powerful states to maintain autonomy over their international activities, and because they help politicians to outflank domestic opponents of their foreign policies. If such factors are behind their rise, then there would be no necessary relationship between the kind of problem states face and the form of an intergovernmental organization. Many may then be poorly “matched” with the pressing global challenges we face today. While it would, of course, be possible that some informal organizations are well suited to the particular issue they are supposed to address, nothing would guarantee this outcome. Ultimately, therefore, if the liberal theory is correct, we would have to be much more skeptical about the more optimistic claims made on the behalf of many informal organizations.

This is, essentially, what I claim in the Conclusion of this study. The evidence presented in this study indicates that these domestic drivers have played the most important role in determining organizational form and that this has, at least in some cases, led states to create institutions that are poorly “matched” with the problems they are supposed to solve. In fact, in the Conclusion, I also provide some evidence showing that informal organizations are *more likely* to be poorly matched with the underlying issues they aim to address than their formal counterparts. I argue that there is indeed, then, an urgent need to rethink the desirability of these organizations and to develop our understanding of the conditions under which they are able to offer a viable solution to the complex issues that we face today. Further, given that many are likely to be so dysfunctional, it is essential for us to identify the problematic cases that may be most in need of reform. Towards this end, I provide in the Conclusion a new way of systematically evaluating the extent to which organizations may be matched or mismatched with the underlying problems

they are designed to resolve. The approach that I present is preliminary and mainly intended to be illustrative, but could potentially be developed into a new tool that would allow policymakers to look across a broad range of institutions and focus their attention on those that are most likely to be in need of change. In this way, the project not only calls our attention to the fact that at least some institutions may be dysfunctional, it also provides a way of shifting the current policy debate towards a more theoretically-informed variety of normative institutional analysis.

1.5 Methods and Limitations of this Study

In practice, any social scientific study faces a tension between two overarching goals: maximizing external validity and maximizing internal validity. Achieving external validity means that we conduct a study in such a way that it ensures that the causal inferences we draw from a given body of evidence can be *generalized*. Generalization refers, in turn, to the idea that any conclusions that we reach extend beyond the particular cases that we look at, and ideally, across a wide range of cases. A study that maximizes internal validity, by contrast, ensures that a theory explains particular cases well, typically on a micro-level. In an ideal world, a study would be able to achieve both of these goals simultaneously. Often, however, achieving one comes at the expense of the other.⁵³ One way of attaining high external validity is to study a large number of cases. But, in order to do so, we must narrow our analytical focus to a few quantifiable indicators and forgo a detailed analysis of the causal process that leads to an outcome. This obviously does an injustice to the actual complexity of the world and increases the likelihood that our measures of key explanatory variables are inaccurate because they fail to take into account the context of a particular case. Further, with observational (as opposed to experimental)

⁵³ Coppedge 1999.

quantitative methods, we can never completely eliminate the possibility that the relationships we find within a large sample are spurious—caused by some third unobserved factor, which a more detailed analysis might reveal. By contrast, if we chose to maximize internal validity by conducting a study that examines particular cases in considerable detail in order to take complexity into account and increase the accuracy of our measures this frequently comes at the price of limiting the number of cases we can realistically look at. The external validity of our study is thereby reduced.

There is, unfortunately, no sure way of resolving these tensions in any one study. But it is possible to strike a healthy balance by using a variety of analytical strategies. This is the approach taken here. In order to maximize external validity, the study undertakes a quantitative analysis of a sample of formal and informal organizations. At around 90 observations, this is still a fairly small sample by conventional standards. However, by testing the observable implications of the two main theories, the analysis helps to ensure that the explanation does indeed hold across a diverse range of cases. Once this is done, the study then “zooms in” on a few cases in order to ensure that the causal processes do indeed resemble those posited by the theory when observed up close. This more fine-grained qualitative analysis helps to ensure internal validity. In doing so, however, the study also makes an attempt to maximize the generalizability of the case study findings through careful case selection. This is accomplished by examining organizations that are “crucial cases” for the theories in question.⁵⁴ Generally, there are two varieties of crucial cases: “most likely” cases and “least likely” cases. The former are those where a theory must be found to explain a case if we are to have confidence in it because the

⁵⁴ Eckstein 1992. Also see Gerring 2007; Bennett 2008.

conditions are especially propitious, and where failure would significantly lower our confidence in a theory if it fails. The latter, by contrast, are cases where our confidence in a theory rises significantly if a theory can explain it well, since the conditions are not especially propitious, but, for this same reason, should not lead us to significantly lower our confidence in a theory if it does not. External validity is maximized in the qualitative analyses by examining cases that are “most likely” for rational design theories, and, at the same time, “least likely” cases for the liberal theory. Doing so, gives us significant analytical leverage. If we find that rational design predictions are not borne out, then our confidence in that theory should be reduced significantly; and, if we find that the liberal theory performs well, then our confidence in it should increase significantly—indeed, we should expect it to apply in cases beyond those examined.

The study therefore makes a significant effort to adopt analytical strategies that can make the most of a limited number of cases. However, it inevitably has a number of theoretical and empirical limitations, and it is worthwhile noting what these are from the start. First, the study has a somewhat narrow geographical scope. This is because it primarily investigates intergovernmental organizations created by relatively well-governed democratic states. The sample used in the quantitative analysis, for instance, mainly includes intergovernmental organizations created by OECD states. Organizations that were created with the involvement of non-democratic states are, for the most part, excluded from the analysis. Obviously, this limits to some degree the external validity of any conclusions we reach, since the organizations that are subjected to analysis are not representative of the overall population of intergovernmental organizations, many of which were created with the assistance of developing countries or were even created exclusively by them. Yet this is not as problematic as it first appears. For reasons

that will be explained in more detail at the end of Chapter 3, the liberal theory is primarily expected to apply, at present, to intergovernmental organizations created by relatively well-governed democratic states. Further, the case studies include organizations that have involved developing countries to a greater extent. Second, the study has a somewhat narrow temporal scope. This is because it primarily investigates intergovernmental organizations that have been created since the end of the Second World War. Due to data constraints, for instance, the sample used in the quantitative analysis only includes organizations that are created between 1950 and 2005. Further, the case studies mainly focus on organizations that were constituted after 1944. Again, this limitation is somewhat mitigated by the fact that the liberal theory is mainly expected to apply within this time period. However, the narrow temporal scope necessarily limits the extent to which we can generalize to earlier periods. In the future, as discussed further in Chapter 4 and in the Conclusion, efforts will have to be made to extend the theory and empirics beyond these limits in order to fully understand the rise of informal organizations. Yet the analysis undertaken here represents a necessary first step towards that goal. By showing that the theory explains the cases that it looks at well, it suggests that efforts to build upon the account presented here and more thorough testing will be rewarding.

1.6 Outline of the Study

With these limitations in mind, it is now helpful to provide a general outline of how this study will progress. The analysis begins in the next chapter (Chapter 2) with an effort to conceptualize and map the “universe” of formal and informal organizations. In the first half of the chapter, the distinction between formal and informal organizations is explained in considerable detail, and their unique international properties and domestic implications are reviewed. The second half of

the chapter then discusses problems with existing efforts to measure informal organizations, explains how I have operationalized the concept of an informal organization and outlines the data collection methods. It concludes by presenting descriptive statistics from the database that I have developed, showing the unprecedented rise in the number of informal organizations over the past 50-60 years. Chapter 3 focuses on theory. In the first part of the chapter, I provide readers with an overview of the logic behind rational design theories, tease out the specific predictions that rational design theorists have advanced and explain why they fall short, both theoretically and empirically. The chapter then presents the liberal theory advanced in this study in considerable detail. It begins by explaining the logic of the preference “formation” stage and outlining the different conditions in which we would expect states to prefer either a formal or informal organization. The second preference “aggregation” stage is then explained using a simple bargaining model, showing when we should expect a formal or informal organization to emerge. Finally, the chapter concludes by noting the scope conditions of the theory, which are expected to determine when it is likely to operate as expected.

The following chapters focus on testing the empirical predictions of the rational design and liberal theories. Chapter 4 presents the study’s quantitative analysis of the determinants of organizational form. It starts with an overview of the sample selection methodology and the sample itself. It then develops new measures of explanatory variables for testing the observable implications of the liberal and rational design theories. Finally, the chapter presents the results of the quantitative analysis, and conducts a number of additional tests in order to check the robustness of the results and to address potential selection and endogeneity problems. Overall, the analysis provides powerful empirical support for the study’s central thesis. Chapters 5 and 6

then conduct cases studies of individual organizations. Chapter 5 investigates two particularly prominent intergovernmental organizations created during and after the Second World War: the IMF (a formal organization) and the General Agreement on Tariffs and Trade (GATT, an informal organization). Chapter 6 investigates a much more recent informal organization: the International Competition Network (ICN). In each of these chapters, the study begins with a review of the case selection methodology and discusses probative value of each case. I then conduct “congruence” analyses that seek to evaluate the extent to which rational design conjectures are borne out, and find, generally, that the cases are not well explained by the variables rational design theorists believe to be important. This is followed by more detailed “within-case” analyses that attempt to test the extent to which the causal process leading to the emergence of each the organizations resembles that predicted by the liberal theory. Again, these analyses demonstrate that the variables identified by the liberal theory are powerful predictors of organizational form.

Finally, in Chapter 7, the various threads are drawn together. First, the chapter presents a brief summary of the main findings of the study. Second, the chapter reflects upon the broader theoretical, empirical and policy implications of the study. It discusses what the findings mean for the study of IR, and especially for theories of rational design and legalization. It also explains what the results suggest about the underlying causes of the extraordinary rise of informal organizations, and provides some evidence to demonstrate that the theory offers a plausible account of the broader changes that are afoot. And, finally, it explores what the study implies about the desirability of informal organizations, and how we can start to approach the more practical question of organizational reform. The last portion of the chapter is then devoted to

proposing a number of profitable avenues for future research. These include: studying the process of organizational change, which is not addressed to any significant extent in this study; extending the analysis to examine the determinants of organizational form across the developing world, and investigating other potential causal mechanisms, such as policy diffusion and institutional isomorphism, which are potentially important causal factors but are not extensively explored in this study; and, finally, revisiting, refining and extending our more general theories of intergovernmental organization by taking informal organizations into account.

Chapter 2. Conceptualizing and Mapping Organizational Forms

2.1 Introduction

The overall aim of this study is to understand why states create informal organizations and what this means for our ability to solve global problems. In order to do so, however, we must first be clear about what they are, how we can know an informal organization when we see one, and what general organizational patterns we actually see in the world. This is important because informal organizations can take a wide variety of forms, and it is often difficult to understand what unifies them as a group. Indeed, until recently, we have not even had good terms for speaking and thinking about them. Largely for this same reason, we have only limited data that can allow us to gauge broader trends. Most research has focused on case studies of single organizations; few efforts have been made to take a more synoptic view. Conceptualizing and mapping the universe of informal organizations is therefore an essential first step for any careful analysis of their origins and impact. Unless we are able to define them, understand what they have in common, and clearly identify a set of informal organizations in the world that we can subject to comparative analysis, it will be impossible to develop meaningful causal explanations.

Towards this end, the present chapter has two main goals. First, I describe at a general level the defining features, properties and implications of formal and informal organizations. I do so by initially describing formal organizations. This is because readers are likely to be more familiar with formal organizations and because there is already some consensus among IR and IL scholars about their core characteristics. This then allows us to more clearly define and elucidate the main features of informal organizations, since we will be able see precisely how they depart

from the formal model. In doing so, I draw upon the existing literature in IR and IL on informal intergovernmental organizations, especially the pioneering work of Jan Klabbers, Felicity Vabulas and Duncan Snidal, and I illustrate important points with real world examples.⁵⁵ Building on this conceptual groundwork, the second part of the chapter then discusses and presents a new database of informal organizations. I begin by briefly explaining how the database was constructed and how it compares with previous and related efforts. I then present a number of descriptive statistics derived from the dataset that help us visualize the universe of cases that a good theory of organizational form needs to explain.

2.2 The Key Features of Formal and Informal Organizations

When we think about “international relations” as a discipline and as a practical activity, intergovernmental organizations are among the most immediate entities that come to mind. Typically, however, when we think about them we tend to think of *formal* intergovernmental organizations; that is, we think of organizations like the United Nations (UN), WTO, World Bank, or IMF. The reason for this is simple: these organizations command our attention. Hardly a day goes by without an important decision being made by the UN Security Council, a critical dispute settlement ruling by the WTO, or a major loan or surveillance report by the World Bank or IMF. But these kinds of formal organizations are only the most prominent examples of a much broader phenomenon. There are in fact hundreds of formal organizations active across a wide range of issue areas.⁵⁶ Though most operate in relative obscurity and rarely make the news

⁵⁵ Klabbers 2001a; Vabulas and Snidal 2013.

⁵⁶ Shanks, Jacobson, and Kaplan 1996; Pevehouse, Nordstrom, and Warnke 2004; Volgy et al. 2008.

(except perhaps when they close their doors!⁵⁷), today there is hardly an activity that is not in some way regulated by one formal organization or another.⁵⁸

Looking across this landscape, it is clear that formal organizations vary considerably in terms of *inter alia* their structure, size, and purpose.⁵⁹ This variation makes it inherently challenging to define them precisely. In fact, it is probably impossible to do so, since formal organizations are fundamentally social constructs.⁶⁰ Nevertheless, there are at least three defining characteristics that are fairly widely agreed upon in practice.⁶¹ First, it is generally agreed that formal organizations are created by sovereign states; or, more precisely, by individuals authorized to act on the behalf of sovereign states. This differentiates them in an important way from other kinds of organizations that operate across borders, such as multinational corporations (MNCs) and international non-governmental organizations (INGOs), which are mainly created by non-state actors. The criterion also distinguishes formal organizations from bodies created by other kinds of public actors, such as sub-state actors (regional governments, municipalities, etc.), or through the legislative acts of other intergovernmental organizations.⁶² Of course, there are occasionally exceptions to this rule. Some organizations include non-state actors or intergovernmental organizations as members and founders. The governing body of the International Labour

⁵⁷ The Economist 2010.

⁵⁸ For a review of the literature on intergovernmental organizations in the fields of IR and IL, see Abbott 2015.

⁵⁹ See, for example, the exhaustive comparative analysis by Schermers and Blokker 2003.

⁶⁰ See the discussion on this point in Klabbers 2009, p. 6-12. It is worth recalling Kant, “Nothing entirely straight can ever be fashioned from the crooked wood of which humankind is made,” see Kant 2009, p.16.

⁶¹ Compare Schermers and Blokker 2003; Alvarez 2005; Amerasinghe 2005; Brolmann 2007; Klabbers 2009. Also, see Pevehouse, Nordstrom, and Warnke 2004.

⁶² Both varieties are discussed further below. See Shanks, Jacobson, and Kaplan 1996; Pevehouse, Nordstrom, and Warnke 2004.

Organization (ILO) has a tripartite structure that includes representation from states, workers and employers, and the European Community (EC) was a founding member of the WTO. Some organizations have also been founded by non-state actors and subsequently “internationalized” by states.⁶³ Thus, on its own, the criterion does not offer a hard and fast rule, but for an intergovernmental organization to be regarded as such states should generally be the *primary* actors involved in its creation.

Second, formal organizations usually have bodies that are functionally separate from their members, or with a “distinct will.” Usually this would imply a body of some kind that is delegated a degree of operational independence and responsibility for undertaking certain tasks. Often, these can be quite large bureaucracies with offices spread out across the world. The World Bank, for instance, employs around 12,000 staff and has offices in over 100 countries. Many of have been delegated considerable independence and make impactful decisions on a day-to-day basis.⁶⁴ Other organizations, like the European Court of Justice (ECJ), seem to have escaped the control of states altogether.⁶⁵ Again, there are important exceptions. One of the oldest formal organizations still operating today—the Commission for the Navigation of the Rhine, established in 1815—employs only 20 people. Many others, such as the secretariat of the UN Framework Convention on Climate Change (UNFCCC) seem to possess little scope for autonomous decision-making.⁶⁶ As with many treaty secretariats, its “function” is primarily to support interstate negotiations. Yet, even here, such secretariats have a physical headquarters, exist

⁶³ Klabbers 2009. The International Development Law Organization is a good example of a non-profit association that was subsequently reconstituted by states as a formal intergovernmental organization.

⁶⁴ Haftel and Thompson 2006; Hawkins et al. 2006.

⁶⁵ Alter 1998.

⁶⁶ Busch 2009.

independently of any member and they do make some decisions in an autonomous manner—even if they do so within the narrow confines set down by states.⁶⁷ Autonomy may be a matter of degree, but it is autonomy nonetheless.

Finally, but perhaps most importantly, formal organizations are constituted by agreements under international law; that is, they are constituted by international treaty.⁶⁸ Such agreements establish the objectives of an organization, rules of procedure, the rights and obligations of members, and so on. But, as treaties, they are agreements governed by a body of formal and customary international (as well as domestic) law, such as the 1969 Vienna Convention on the Law of Treaties, which specifies how agreements establishing formal legal obligations must be concluded, interpreted, amended, and, if necessary, terminated.⁶⁹ Again, not all intergovernmental organizations are established in quite this way. As will be discussed further below, some intergovernmental organizations are established informally, without recourse to international treaty. But many others, as mentioned above, have also been established by the formal legislative acts of other intergovernmental organizations. The European Agency for Safety and Health at Work was constituted by several EC Council regulations, while the UN Development Programme (UNDP) was created by a resolution of the UN General Assembly. One study has even found that such “organizational progeny” constitute the vast majority of the intergovernmental organizations active today.⁷⁰ However, in IR such organizations—often referred to as “emanations”—are regarded as a fundamentally different kind of body, given their

⁶⁷ Churchill and Ulfstein 2000; Beach 2004.

⁶⁸ For discussion of the concept of treaty in international law, see Klabbbers 1996 and Aust 2000.

⁶⁹ Klabbbers 1996; Aust 2000; Shaw 2008.

⁷⁰ Shanks, Jacobson, and Kaplan 1996. The term “organizational progeny” comes from Johnson 2014.

unique mode of establishment.⁷¹ Here, and in keeping with this usage, I reserve the use of the term “formal organization” or “formal intergovernmental organization” to those bodies established solely through international treaty, and not via a legislative act.

Now, having outlined the central features of formal organizations, we are able to see more clearly the ways in which informal organizations are both similar to and different from their more formal counterparts. In terms of similarities, the most obvious feature that both share is the first: informal organizations are the progeny of states. While there is perhaps more variation in terms of the kinds of actors involved in creating them, they remain fundamentally different from private bodies, such as MNCs and INGOs. It is also worth reemphasizing here that they are different from organizations created by sub-state public actors, such as municipalities or regional governments, which are increasingly common forms of informal cross-border cooperation.⁷² Examples of such organizations include the C40—Cities for Climate Leadership or the World Mayors Council on Climate Change. Because these organizations share some features with informal organizations—they both involve public actors and are constituted outside of international law—they might create some conceptual confusion. Yet they are not immediately analogous to intergovernmental organizations of any kind (formal or informal), since, except in certain exceptional circumstances, the actors that create them rarely have the ability to act on the behalf of a state.⁷³ Although there are certainly valuable comparisons, these organizations should for now be regarded as essentially different creatures.

⁷¹ Singer and Wallace 1970; Pevehouse, Nordstrom, and Warnke 2004.

⁷² Lee 2013; Bulkeley et al. 2014.

⁷³ See the discussion of this point in Aust 2000, chapter 4.

Second—and here we begin to see some differences—informal organizations are less likely to have bodies that are clearly separate from their members. In general, they tend to be very small in size—only a few staff—and the sprawling bureaucracies that are often found in the set of formal organizations are almost entirely absent. Even the UNFCCC Secretariat with only 200 or so staff would have to be considered large by the standards of most informal organizations. IOSCO—arguably one of the larger informal organizations—employs fewer than 30 people, including a number of purely administrative staff. However, some have no dedicated staff or headquarters at all.⁷⁴ A notable feature of many informal organizations is their “virtual” character, whereby secretarial services are supplied by a single state, either on a permanent or rotating basis. Both the G7/8 and G20, for example, lack independent secretariats; secretarial services are instead provided for the group by the states that “host” the rotating annual summits. Similarly, the French Ministry of Finance provides secretarial services for the Paris Club. These kinds of informal organizations, which I refer as “virtual organizations” since they have no independent physical existence or permanent staff, are clearly different from formal organizations in this respect, but nevertheless possess members, a persistent institutional structure and identity, and rules procedure that make them clearly identifiable as organizations.⁷⁵

Third—and this is where formal and informal organizations differ most significantly—informal organizations are constituted by agreements outside of international law. Instead of a treaty, they

⁷⁴ Vabulas and Snidal in fact define informal organizations partly in terms the absence of a secretariat, see Vabulas and Snidal 2013. I differ from them on this point by emphasizing that delegation is a matter of degree, not kind. Informal organizations tend to have smaller secretariats (or none) while formal organizations have larger ones.

⁷⁵ For an excellent general discussion of the nature of organizations and of organization theory from the perspective of a sociologist, see Scott 2001.

are typically founded by “non-binding” agreements, such as a MOU.⁷⁶ Though they contain most of the same constitutive provisions as a treaty establishing a formal organization (that is, they lay out goals, a structure, rules of procedure, and so on) they are officially regarded as an “arrangement” or “understanding” between states, not international law.⁷⁷ Occasionally, this is signified by the fact that such constitutive agreements refrain from language implying that signatories *intend* to generate international legal obligations; they use “should” instead of “shall,” for example.⁷⁸ But most often this fact is made explicit in the constituent agreement itself through some statement explaining that any commitments made by parties are of a precatory rather than legally obligatory nature. An especially clear example can be found in Article 4 of the Terms of Reference of the APG. The APG describes itself as a “multilateral organization” that is “established by agreement among its members and is autonomous.” Yet, at the same time, it states that the organization is “voluntary and co-operative in nature,” and its authority “does not derive from an international treaty.”⁷⁹ Some informal organizations are also constituted by “oral agreements” between policymakers. This occurs when there is no written constitutive agreement

⁷⁶ For a useful discussion of MOUs and how they differ from treaties, see Aust 2000, chapters 2-3. Also see Schachter 1977; Aust 1986; and Guzman and Meyer 2010.

⁷⁷ Other names used in the literature include “declaration,” “political commitment,” “de facto agreement,” “non-legal agreement” or “gentlemen’s agreement.” Note that, as mentioned earlier, despite the variety of titles they go by, I generally refer to all such agreements in this study as “non-binding agreements” or “MOUs.”

⁷⁸ Aust 2000, chapter 3. In fact, the *intention* to establish or not establish legally binding commitments is the critical factor determining whether an agreement constitutes international law, or not. Determining intentions is, of course, challenging, since they cannot be directly observed, but they can nevertheless be inferred from both the text of an agreement and the practices and actions of those that negotiate it. Further discussion of how we can infer whether a constitutive agreement is intended to be legally binding or not can be found later in the chapter.

⁷⁹ Article 4, APG Terms of Reference 2012.

but a set of institutions and practices nevertheless develops that gives rise to an intergovernmental organization, as has been the case with the G7/8.⁸⁰

2.2.1 The Properties and Implications of Formal and Informal Organizations

Overall, then, there are a number of important similarities and differences between formal and informal organizations. But these are not simply differences of style; these are differences of substance that have a range of distinct, practical consequences. Some of these consequences, as noted in the Introduction, can be characterized as the “international properties” of formal and informal organizations in that they concern how an intergovernmental organization will tend to operate and evolve over time. These are the properties that the existing literature has generally emphasized, and I outline them below. However, creating and working through formal and informal organizations can also have distinct “domestic implications” as well—that is, creating such organizations will tend to affect states in different ways. These characteristics of formal and informal organizations have, by comparison, been underemphasized by the existing literature, and I elaborate on them in detail. Ultimately, this is important because, as we will see in the next chapter, some of these implications may be beneficial in some contexts and not in others, and they will tend to benefit some actors at the expense of others. Further, I argue that understanding this fact is important for explaining why formal and informal intergovernmental organizations arise. Thus, in this section, I consider both the properties and implications of formal and informal organizations, and begin with a discussion of their “international properties.”

⁸⁰ Dobson 2006; Hajnal 2007.

First, formal and informal organizations differ in terms of their *flexibility*—how easy it is to change or adapt an organization once one has been created. Here, informal organizations have the upper hand, since there are generally fewer impediments to doing so.⁸¹ There are two reasons for this. One, in comparison with formal treaties, non-binding agreements are much easier to change because there are fewer requirements for doing so under international law and the costs of renegotiating a non-binding agreement are lower.⁸² Although treaties may vary in terms of how flexible they are, a treaty will typically specify precise procedures for adjusting or amending a constitutive agreement, and these criteria must be followed or else a state or group of states may violate international law and suffer reputational consequences. Typically, the criteria for adjusting a constitutive agreement—in terms of the number of votes needed, for instance—may also be quite high, and given that any changes may result in significant domestic legal effects states may also be more reluctant to agree to amendments. A non-binding agreement, by contrast, can be adjusted much more easily, since there are fewer requirements. Given the relatively limited legal effects of such treaties, states may be more willing to accept changes. Further, if they do not agree with any changes, certain members may simply decide to follow a different practice, or even “exit” an agreement, without suffering any reputation consequences. They will not be found to be violating international law by doing so.⁸³ Two, because formal organizations generally involve a higher degree of delegation, resistance by entrenched bureaucracies may also make change more difficult, since the larger, more complex bureaucracies associated with formal organizations can be expected to be more capable of thwarting reforms. The recurring failures to reform the World Bank as a result of bureaucratic

⁸¹ Koremenos 2005; Vabulas and Snidal 2013.

⁸² Abbott and Snidal 2000.

⁸³ Aust 2000; Guzman and Meyer 2010.

opposition offer a particularly poignant example of the challenges states often face.⁸⁴ Informal organizations, which involve only limited levels of delegation, face no such obstacles.

Second, informal organizations are generally believed to differ in terms of their *agility*—how quickly they can arrive at decisions and take actions. Working through an informal organization, in comparison with formal organizations, generally allows officials to avoid a range of diplomatic formalities that can sometimes slow down and stifle interactions between officials. There is, for instance, much less need for interactions between officials to be mediated by diplomats and heads of state when commitments are framed as “voluntary” and “non-binding,” posing no threat to a state’s sovereignty.⁸⁵ As a result, many believe that it is easier for officials to form cordial relationships with their counterparts abroad, which can facilitate speedy decision-making.⁸⁶ The confidentiality that an informal organization affords—discussed next—also means that officials can engage in franker and freer dialogue than they otherwise would, which again may mean that officials can arrive at decisions swiftly and without public posturing.⁸⁷ Finally, because the terms of a constitutive agreement are also non-binding, it is also possible for members of an informal organization to take actions even if others disagree.⁸⁸ In a formal organization, if a state or group of states decided to oppose a particular action, acting as a

⁸⁴ Weaver 2008.

⁸⁵ Aust 1986; Zaring 1998. It is for this reason that many informal organizations will therefore simply list components of states as their “members.” The members of IOSCO are, as its name suggests, mainly national securities commissions, and members of the FSB are primarily central banks and ministries of finance. The members of formal organizations are almost always “states,” and the signatories of their constituent agreements are usually diplomats or heads of state.

⁸⁶ Hardt 2014.

⁸⁷ Puetter 2006.

⁸⁸ Eeilstrup-Sangiovanni 2009.

“spoiler,” others may be unable to move forward independently without violating the terms of an agreement. However, within an informal organization, a “coalition of the willing” may be able to take action in this kind of situation, since they will be less worried about violating any legal obligations by taking independent action. An informal organization may, therefore, be able to act more swiftly because of the inherent malleability of its basic rules.

The third way in which formal and informal organizations differ is in terms of their *confidentiality*—how secretive an organization may be. Since they are not constituted by international treaty, informal organizations can generally be much less “public” than their formal counterparts. Any treaty constituting a formal organization must, for example, be registered with the UN under Article 102 of the UN Charter, and published in the *United Nations Treaty Series*, a publicly accessible compendium of international agreements.⁸⁹ Thus, anyone with an Internet connection can easily access a range of information about nearly any formal organization. With informal organizations this is much less true, since there is no obligation under international or domestic law for their constitutive agreements (or any other information, for that matter) to be made public.⁹⁰ It is, essentially, up to the members of each organization to decide what information to disclose. Some, such as the G7/8, do not even have websites or written agreements setting out their goals and how they work. It may also be possible for an informal organization to be more secretive because the body has only a limited institutional presence. In the case of a “virtual organization,” for instance, there is no office or staff that can be contacted

⁸⁹ Domestic requirements also usually mandate the publication of all legally binding agreements that a state enters into. In the US, the Department of State keeps a record of all treaties and executive agreements that the country enters into. In the UK, the Foreign and Commonwealth Office maintains a freely accessible database of all treaties that the government has entered into since the 1830s. Typically, non-binding agreements do not have to be entered into such databases, see Garcia 2015.

⁹⁰ Aust 1986; Aust 2000.

to attain information about an organization. One cannot simply phone the G20 in the way one can call the IMF or a UN office. For the same reason, informal organizations are less likely to be susceptible to the kinds of pressure that can be placed on a formal organization to gain access to its deliberations. It is much more difficult to protest or lobby an organization that has no physical existence, or which has meetings that can be moved around the globe as needed. The terms of access will, therefore, be solely at the discretion of the organization itself.

Fourth, these organizations differ in terms of their *independence* from member states. Here, formal organizations clearly have the upper hand. Formal organizations generally have bodies that are functionally separate from their members and may be granted a high degree of operational independence that is enshrined in the formal rules of an organization. A simple example of this is the longstanding practice of granting officials of formal organizations certain privileges and immunities under international law that are not normally afforded to other kinds of actors, and which may help to preserve their independence and capabilities over time.⁹¹ However, organizations may also be granted special constitutional protections that explicitly limit the extent to which states can intervene in their activities. This is the case, for instance, with judges in various international courts who are seated for defined terms and cannot be removed once in office or pressured by states.⁹² Informal organizations, by contrast, are granted few of these powers. At the extreme—in the case of a virtual organization, for instance—no delegation occurs at all, since an organization has no independent secretariat. In other cases, as with the FSB or the Paris Club, the officials comprising an organization’s secretariat are simply state officials seconded for a brief period of time, or secretarial services are provided by one of the

⁹¹ See Klabbers 2001a.

⁹² Alter 2014.

organization's member states. Finally, in cases where delegation to an independent secretariat does occur, as is the case with IOSCO or APEC, the secretariat's powers and scope for autonomous action are highly constrained.

Fifth, formal and informal organizations differ in terms of their *scale* and *scope*—how large they can be. Many formal organizations, as noted above, have huge numbers of staff that can take on highly complex tasks and provide a much larger range of services to states—from administration and arbitration to peace-keeping and policing. The European Commission, for example, is divided into 28 Directorate-Generals—akin to government departments or ministries—that each comprise hundreds, or even thousands, of highly specialized staff. The largest, the Directorate-General of Translation has over 2000 employees. The United Nations Secretariat employs roughly 8,000 people, spread across 20 specialized Departments. In general, the capabilities of such an organization are therefore very high. Informal organizations, by contrast, are much smaller and typically provide a much narrower range of services to states. Some of the largest informal organizations, such as APEC or IOSCO, employ around 30-40 staff, at most; most others employ only a handful, or, as in the case of a virtual organization like the G20, none at all. Further, the role of their staff seems to be much more basic. The tasks that they are asked to perform are, for the most part, of a purely administrative nature—mainly, facilitating discussion and negotiation and providing basic kinds of information. The capabilities of informal organizations are, therefore, very low.

Now consider the domestic implications of organizational form, which can be equally, if not more significant. First, because they are constituted by international treaty, creating a formal organization typically initiates a quite intrusive, complex and demanding domestic political

process. Drafting an international treaty, for instance, typically requires considerable input from lawyers and diplomats in order to ensure that the agreement is precisely worded, follows the standard process, and is balanced against broader foreign policy goals.⁹³ In the United Kingdom (UK), for instance, any department or agency that has responsibility for an issue may propose to enter in to and lead negotiations on that issue with another country.⁹⁴ However, in doing so, it must consult with and seek advice from the Foreign and Commonwealth Office (which has primary authority over treaty-making), including its Legal Advisors, on the contents and form of the agreement.⁹⁵ Treaties must also, typically, be drafted in consultation with a legislature, which can often have considerable influence. To take an example, again, from the UK, the Kingdom Act requires a list of treaties being negotiated to be submitted to Parliament so that they can be discussed. Further, once an agreement has been concluded, it must be submitted to Parliament for a period of 21 days in accordance with the “Ponsonby Rule” before the agreement can be ratified. Even then, in many cases, treaties require implementing legislation for them to fully come into effect, which means that departments rarely proceed in negotiations without first attaining the requisite legislation. These procedures are relatively similar across many Commonwealth states, where Parliamentary systems generally prevail.⁹⁶ In Presidential systems, of course, legislatures are also very influential—sometimes even more so. In the US, international treaties—if they are regarded as “treaties” under domestic law⁹⁷—must be written in

⁹³ Aust 1986; Martin 2000; Hollis, Blakeslee, and Ederington 2005.

⁹⁴ Sinclair, Dickson, and Maciver 2005, p.732.

⁹⁵ Ibid.

⁹⁶ See Hollis 2005 for a summary review of different national approaches to treaty-making, and Hollis, Blakeslee, and Ederington 2005 for detailed reviews of these different national approaches.

⁹⁷ If an international treaty is considered an executive agreement—which does not require ratification by the Senate—then according to the Case Act, the agreement must at the very least be reported to Congress within sixty days of the agreement coming into force. Such agreements,

consultation with the Senate and ultimately ratified by two-thirds Senate majority before they can come into force. The latter requirement, especially, presents a significant impediment to the creation of formal organizations, as ratification of their constituent agreements requires congruent interests between the Senate and executive, as well as significant expenditure of political capital by the latter.⁹⁸ Overall, the point is that, in most political systems, creating intergovernmental organizations that are constituted by international treaty, i.e. a formal organization, typically requires greater input from a host of domestic actors and opens up avenues for various legal or political challenges by them that may delay, complicate or even stymie cooperation under certain circumstances.

Informal organizations, by contrast, do not confront these problems. If an agreement does not bind a state under international law—if, for instance, all one aims to do is “network” with their homologues abroad, or create a “virtual” forum for creating other “soft law” agreements—then there is less need to consult with a cabinet, lawyers or diplomats.⁹⁹ Such agreements do not need to be stated in precise legal language, can be concluded without diplomatic ceremony and, since they are inherently more flexible, do not need to be so carefully balanced against other goals.¹⁰⁰ In the United Kingdom, Canada and France, for instance, non-binding MOUs and *arrangements administratifs* may be concluded solely by the government agencies involved; the FCO or Ministry of Foreign Affairs need not be consulted.¹⁰¹ Equally, it is typically not necessary for

of which there are several types, are quite common but remain controversial. Further, despite the lack of a ratification requirement, the Senate is often consulted as necessary and able to shape such agreements to a significant extent, see Martin 2000.

⁹⁸ Kelley and Pevehouse 2015a.

⁹⁹ Klabbers 2001a.

¹⁰⁰ Aust 1986.

¹⁰¹ Hollis 2005, p.22.

such agreements to be disclosed to or ratified by a legislature.¹⁰² In the US, for example, according to the Case Act and various State Department regulations, it is generally not necessary to consult or even inform Congress about agreements that are not intended to be “legally binding.”¹⁰³ Of course, domestic requirements related to the conclusion of non-binding agreements vary quite considerably across states, but it can safely be said that the process of concluding them is generally much less demanding and intrusive than the equivalent process for more formal ones.¹⁰⁴ Organizations constituted by informal agreements can, therefore, be created with less input from other domestic actors, and it should be harder for many actors within the state to control, delay or veto a state’s participation in them.¹⁰⁵

Second, since formal organizations typically have bodies that are functionally separate from their members and are, generally, more “public” than their informal counterparts, much greater effort will usually be expended monitoring participation on an ongoing basis. As a large literature in IR has noted, organizations that are capable of operating independently can perform important tasks on the behalf of states, but this independence can also be problematic because an agent with greater freedom of action may not always behave in ways that a principal desires.¹⁰⁶ A higher degree of independence, therefore, potentially leads to agency costs, and this possibility can be expected to be mitigated, all else equal, through more vigilant institutional monitoring and control over the modalities of a state’s participation, as well as of the organization itself. Often this will occur through the creation of oversight committees that scrutinize policy related to a

¹⁰² Klabbers 2001a.

¹⁰³ Aust 1986; Garcia 2015.

¹⁰⁴ Aust 1986; Raustiala 2005; Hollis, Blakeslee, and Ederington 2005; Hollis 2005.

¹⁰⁵ One indicative study finds, for instance, that the “legality” of an agreement has a significant, positive effect on whether a treaty is ratified, although the notion of “legality” used in the study is somewhat different from the notion of “formality” as used here. See Spilker and Koubi 2014.

¹⁰⁶ For an overview of the issues, see Vaubel 2006.

specific organization on an ongoing basis, or requirements that information on treaties and participation in formal intergovernmental organizations be routinely submitted to a legislature.¹⁰⁷ It may also occur when a legislature explicitly retains certain rights of control. The US Congress, for example, has delegated to the executive branch considerable power over IMF and World Bank policy but has reserved authority over certain dimensions of US involvement that it considers particularly important.¹⁰⁸ Since informal organizations are less public and, typically, less autonomous than formal organizations, institutionalized oversight and control of participation by a legislature is typically much lower.¹⁰⁹ In most cases, it is simply the department most directly involved in an informal organization that controls the modalities of participation. Monetary authorities and central banks have, for instance, routinely operated quite independently from legislatures and other political actors with respect to their activities within the G10 and BCBS.¹¹⁰

To the extent that a legislature is capable of controlling involvement in an informal organization, this influence will frequently be confined to power that can be exerted through the budget process, and the enactment of statutes that can place limits on a state's activities. But even this—the third major “domestic implication” of different organizational forms—may be limited. Formal organizations are typically functionally separate from their members and much larger than informal organizations. As a result, they usually require separate financing that a legislature can often manipulate. Indeed, in the United Kingdom and Canada (but in most other states as well), a major financial component to any treaty typically necessitates consultation with a

¹⁰⁷ Pahre 1997.

¹⁰⁸ Broz and Hawes 2006; Lavelle 2011.

¹⁰⁹ Hollis 2005; Hollis, Blakeslee, and Ederington 2005.

¹¹⁰ Goodhart 2011.

legislature, as well as implementing legislation.¹¹¹ This, in turn, increases a legislature's ability to intervene in the negotiating process and shape any agreement to participate in an intergovernmental organization, since the executive departments and agencies involved will ultimately depend on approval by the legislature to secure the funds that are needed.¹¹² This influence can then extend beyond the negotiation process, since funding typically must be renewed on a regular basis. In the US, for instance, Congress' power over contributions to the IMF remains one of the key ways in which it is able to exert influence over the organization and other departments within the government that may have different interests.¹¹³ Congress has also periodically withheld the country's assessed contribution to the budget of the UN and other intergovernmental organizations.¹¹⁴ In many cases, participation in informal organizations may be similarly susceptible to interventions through the appropriations process.¹¹⁵ However, their small size and informal status often means that they can frequently be financed through alternative measures that can be more difficult to control. The many states' contributions to the GATT secretariat were, for years, undertaken through roundabout ways—typically by utilizing funds that individual departments already controlled.¹¹⁶ The US contribution was, for instance, routinely “smuggled” through Congress under the Department of State's budget for “international conferences and contingencies.”¹¹⁷ In many cases, no separate financing may be

¹¹¹ Copithorne 2005; Sinclair, Dickson, and Maciver 2005; Hollis 2005.

¹¹² Ibid.

¹¹³ Broz and Hawes 2006; Lavelle 2011.

¹¹⁴ Nelson 1986. For a case study of such conflicts between different arms of the US government, see Woods 2006.

¹¹⁵ Garcia notes that the ability of Congress to control non-binding agreements more generally is largely limited to that which can be exerted through the appropriations process, see Garcia 2015, p.11.

¹¹⁶ See the discussion of other states' practices, as well as US practice, with respect to financing the GATT secretariat in US House of Representatives 1956.

¹¹⁷ Gardner 1969, p.xxxii.

required at all, as when an organization takes a “virtual” form or when secretarial services are supplied by another state.¹¹⁸ Overall, then, the absence of a clear budget “hook” means that a legislature will typically have much less leverage over a state’s participation in an informal organization and, by extension, over the organization itself.

Table 1 Properties of Formal and Informal Organizations

	<u>Formal Organization</u>	<u>Informal Organization</u>
<i>Defining Features</i>		
Constituent Actors	States	States
Separate Body	More Likely	Less likely
Agreement	Binding	Non-Binding
<i>International Properties</i>		
Flexibility	Low	High
Agility	Low	High
Confidentiality	Low	High
Independence	High	Low
Scale and Scope	High	Low
<i>Domestic Implications</i>		
Ratification	High	Low
Monitoring	High	Low
Resources	High	Low

Summarizing the discussion so far, it is clear that formal and informal organizations have several defining features and corresponding properties and implications. These can be seen in schematic form in Table 1. Formal organizations are created by states, typically have a body that is separate from these members, and are established by binding international agreements. Informal

¹¹⁸ This is the case, for instance, with the Paris Club, where France’s Ministry of Finance plays the role that an international secretariat typically would on the behalf of others. This would then suggest that the costs of other states participation in the Paris Club is extremely low, since there is no need to regularly finance a secretariat. The same is true of the International Competition Network, as discussed in Chapter 6, where Canada’s Competition Bureau serves as the secretariat.

organizations are also created by states, but generally have a less independent, or even “virtual” organizational structure, and are constituted by non-binding agreements. These different characteristics then lead to important practical differences that I refer to as the international properties and domestic implications of each organizational form. Informal organizations tend to be more flexible, more agile, and more confidential. They also place fewer domestic demands on governments in terms of ratification, monitoring and resources. However, these benefits appear to come at the cost of less operational independence, and more limited scale and scope. Formal organizations, by contrast, are typically less flexible, agile, and confidential, and domestic demands are greater. Yet it is possible for states to delegate greater independence to such organizations and to create larger bodies that can provide a greater range of services.

2.3 Mapping the World of Informal Organizations

Thus far, this chapter has focused on conceptualizing formal and informal organizations by outlining their defining features, properties and implications. This has helped to clarify what they are at general level, but it leaves us without a clear sense of the actual organizations and broader organizational patterns that we see in the world. How many informal organizations are there? Have they become more common over time? The next part of the chapter attempts to answer these kinds of basic questions using a new database that maps the world of informal organizations. It is the most complete database of informal organizations available, and it serves a number of important purposes in this study. Most importantly, it defines a population of cases that can facilitate quantitative and qualitative analyses of the determinants of organizational form. But, more generally, the database should also be a valuable resource for other scholars, helping to advance research in the field. Thus far, due to the lack of accurate and reliable

quantitative data, scholarship on informal organizations has largely been confined to qualitative case studies of one or a small number of organizations.¹¹⁹ This means that we have been able to say a great deal about a few important organizations but it has been difficult to make inferences beyond these cases and this ultimately limits the kinds of questions that can be asked. By relieving this constraint, the database should greatly expand the range of analyses that can be undertaken and can help move research towards explaining broader empirical trends.

In what follows, I briefly discuss related databases of formal and informal intergovernmental organizations and how they fall short for our purposes. I also explain how my own database was constructed, and I highlight several important properties of the data that we should keep in mind whenever we use them to make descriptive inferences about the world. Finally, I present a series of descriptive statistics derived from the database that should help us to picture the broad organizational patterns that any theory of organizational form should be able to explain.

2.3.1 Previous Efforts

Scholars have been collecting data on intergovernmental organizations for some time. The first serious effort was that undertaken by Wallace and Singer, which traced patterns in a dataset of intergovernmental organizations active in the global system from 1815 to 1964.¹²⁰ Prior to this time, data was incomplete and imprecise; lists of organizations were mainly illustrative, and the rules determining inclusion in these lists were poorly specified, if at all. The results were, as a result, not particularly useful for making either descriptive or causal inferences about the world.

¹¹⁹ Examples include Ravenhill 2001; Prantl 2006; Cooper and Thakur 2013; Vabulas and Snidal 2013.

¹²⁰ Singer and Wallace 1970.

By developing rigorous coding rules and mining the *Yearbook of International Organizations*, as well as compilations produced by the League of Nations, Wallace and Singer were able to assemble a more reliable and accurate picture of intergovernmental organizations than had previously been possible. Subsequent datasets of intergovernmental organizations have built on their efforts, and, in some cases, produced radically different estimates. Mainly, this has been a result of differences over the treatment of “emanations.”¹²¹ However, a common thread running through all of these datasets has been their focus on *formal* organizations.¹²²

This situation has only changed quite recently as a result of the pioneering work of Vabulas and Snidal.¹²³ Although they are not the first scholars to conceptualize and describe informal organizations, they are arguably the first to offer both a positive, empirically testable theory of organizational form and an estimate of the total number of informal organizations in the global system.¹²⁴ To construct their dataset, they adapt the approach used to construct the COW-IGO Dataset, which is an extension of the earlier work by Wallace and Singer.¹²⁵ They begin by defining informal organizations in a way that is broadly similar to—but nevertheless different from—my own. According to them, an informal organization is a body that is a) created by states, who b) participate in regular meetings but have no independent secretariat or

¹²¹ See the discussion of this in Pevehouse, Nordstrom, and Warnke 2004.

¹²² Or, more accurately, they claim to. As a matter of fact, these databases do include some organizations that are not founded by a binding international agreement and which therefore do not in fact merit inclusion according to their own coding scheme. It is also interesting that the presence of a physical, separate secretariat has not always been deemed essential to the definition of an intergovernmental organization across these various datasets, although it is common to all present-day datasets.

¹²³ Vabulas and Snidal 2013; Vabulas and Snidal 2014; Vabulas and Snidal 2015.

¹²⁴ Their theory of organizational form is discussed in detail in the following chapter.

¹²⁵ This dataset is described in Pevehouse, Nordstrom, and Warnke 2004. It is the most widely used and comprehensive database of formal organizations available, see Gartzke and Schneider 2013.

headquarters/permanent staff, and c) have an explicitly shared expectation about purpose.¹²⁶ Each of these three elements has a close counterpart in the definition of a formal organization used to construct the COW-IGO dataset, which means it is possible to directly compare trends in the two datasets.¹²⁷ Indicators are then developed that can tell us when each of these criteria are met. And, finally, they generate their dataset by applying these indicators to the *Yearbook of International Organizations*, as well as a small number of other data sources.¹²⁸ Through this method, they identify 51 organizations, which they claim is a “fairly comprehensive” list that includes the “most important” informal organizations active in the global system.¹²⁹

This effort to map the world of informal organizations has been an important step forward. But, I argue, their measure suffers from a number of problems that should lead us to conclude that their estimates are likely to be characterized by significant bias.¹³⁰ The problems stem primarily from differences in the way that they and I conceptualize informal organization and the specific coding rules that they employ. This causes them to systematically exclude important sets of informal organizations from their dataset and include bodies that should not be. For instance, as a result of the way they code informal organizations, they restrict their dataset to organizations whose “members” include ministers or heads of state.¹³¹ The rationale for this is never explicitly

¹²⁶ Vabulas and Snidal 2013, p.197-9.

¹²⁷ In the COW-IGO dataset, a formal organization is defined as a body that is a) created by states, that is b) constituted by a formal treaty, and c) has signs of “significant institutionalization,” such as a permanent headquarters or staff. See Pevehouse, Nordstrom, and Warnke 2004.

¹²⁸ Ibid, p.202-9.

¹²⁹ Ibid, p.205.

¹³⁰ They admit to several biases in the dataset, many of which are unavoidable and likely to plague other datasets of formal organizations as well. However, the measurement errors that I describe here are likely to lead to biased descriptive and causal inferences.

¹³¹ Ibid, p.209.

stated, but this excludes all organizations that list members from other levels of government, such as non-ministerial agencies. They specifically note their exclusion of the Egmont Group, which is an intergovernmental organization whose “members” are national financial intelligence units. This is problematic, however, because such non-ministerial bodies frequently have the capacity to act on the behalf of a state.¹³² In the case of the Egmont Group, the financial intelligence units involved do so under the authority granted to them by their respective governments.¹³³ They represent their governments in a way that is in many respects no different from the way that a ministry would, and it is not inconceivable that the organization could have been more formal in nature. Indeed, many formal organizations do in fact list non-ministerial agencies as founders and members. For example, the convention establishing the European Patent Organization was signed by European patent offices that did not typically have ministerial status. The “members” of the Bank of International Settlements are, likewise, primarily central banks and monetary authorities. Neither of these facts leads us to exclude these organizations from the set of formal organizations, and it is therefore unclear why this should lead us to exclude such bodies from the set of informal organizations. So long as they are components of a state, the ministerial or non-ministerial status of the members of an organization is immaterial to the definition of an intergovernmental organization. And, therefore, by excluding such organizations from their dataset, Vabulas and Snidal are likely to underestimate the total number of informal organizations.¹³⁴

¹³² See the discussion of this point in Schachter 1977, p.299; Aust 2000, chapter 5; and Hollis, Blakeslee, and Ederington 2005, p.22. It is worth noting, however, that this is not always the case.

¹³³ See Egmont Group Report, Charter.

¹³⁴ Geddes 1990; King, Keohane, and Verba 1994.

The second problem is that their coding rules exclude groups that have physical “bricks-and-mortar” secretariats and permanent staff. This move appears to be motivated by the fact that Vabulas and Snidal regard their absence as a defining feature of informal organizations that helps to sharply distinguish them from their more formal counterparts. However, while many informal organizations do have a purely “virtual” existence, a large number of informal bodies do in fact have permanent staff and secretariats (although these do tend to be much smaller). The lack of a secretariat and permanent staff is a common feature of informal organizations, but it is not a necessary one, as others have argued—as well as myself above.¹³⁵ Vabulas and Snidal do not explicitly discuss this point, but it is likely that it is the presence of a permanent secretariat and staff that explains the absence of the Asia Pacific Economic Cooperation (APEC), the Black Sea Economic Cooperation (BSEC) and IOSCO from their list of 51 informal organizations, despite the fact that each has frequently been cited as a prominent example of an informal organization by other scholars.¹³⁶ And, if we do believe that these kinds of organizations should properly be classified as such, this means that, again, Vabulas and Snidal’s coding rules are likely to underestimate of the number of informal organizations.

Finally, by counting negotiating groups and various sub-committees as informal organizations, Vabulas and Snidal include in their database a number of bodies that should *not* be there.¹³⁷ These are, of course, important kinds of organizations that states participate in to achieve shared goals in international affairs. Further, many of these are indeed constituted without a binding international agreement. They therefore share several important features with informal

¹³⁵ Klabbers 2001a; Berman et al. 2012; Di Stasi 2015.

¹³⁶ Ibid. Also see Kahler 2000; Bach 2010.

¹³⁷ This can be expected to lead to biased descriptive inference (by overestimating the total number of informal organizations), see King, Keohane, and Verba 1994, chapter 5.

organizations. However, it is difficult to classify such bodies as *independent* organizations, since they are subordinate to or derivative of other formal or informal organizations.¹³⁸ An example is the BCBS, which is included in their dataset. This is an informally constituted body that has a secretariat and state members. Yet the BCBS is properly regarded as a sub-committee of the G10—an informal organization—and not a separate organization. Although it possesses its own secretariat and has its own charter it remains formally subordinate to the latter.¹³⁹ Counting it as a separate organization elides this important fact and causes us to overestimate the actual number of informal organizations. Likewise, Vabulas and Snidal include in their dataset bodies like the Group of 77 (G77) in the UN, the Association of Small Island States (AOSIS) in the UNFCCC, and the Cairns Group in the WTO.¹⁴⁰ These are each informally constituted, created by states and demonstrate some level of institutionalization. Further, they are not formally subordinate to another organization. They sometimes even refer to themselves as intergovernmental organizations. Yet, as officially sanctioned negotiating or caucusing groups, they only operate in the context of another organization and must therefore be regarded as in some sense derivative of that larger organization.¹⁴¹ Counting them as separate obscures this fact and leads us to misidentify the total number of informal organizations as well.

¹³⁸ The lack of “independence” is the primary reason why the COW-IGO database excludes bodies such as UNICEF, UNDP, UNEP and the IPCC from the set of “formal” intergovernmental organizations. Although they function in a manner that is similar to many intergovernmental organizations, they are subordinate to other bodies. UNEP, for instance, was constituted by and is formally a subsidiary body the UN General Assembly. See Singer and Wallace 1970.

¹³⁹ Goodhart 2011.

¹⁴⁰ They explicitly refer to these bodies as “IIGOs-within-FIGOs”—informal intergovernmental organizations within formal intergovernmental organizations. See Vabulas and Snidal 2013.

¹⁴¹ AOSIS, the Group of 77, and the African Group of Negotiators, for instance, each have an official standing within the UNFCCC and UN that makes them very different from the kinds of self-standing informal organization that we find elsewhere, see Williams 1991; Chasek 2001; Roger and Belliethathan 2016. Arguably, regarding these groups as intergovernmental

2.3.2 Constructing the Database

My own database is inspired by and builds upon the work of Vabulas and Snidal. Like them, my goal is create an accurate, reliable and comprehensive mapping of the world of informal organizations. I also adopt their general methodology, described above, and aim to ensure that my data are directly comparable with COW-IGO data, allowing us to integrate the two datasets. However, I attempt to improve upon their effort by operationalizing of the concept of an informal organization in a way that reduces the three sources of measurement error described above. In what follows, I set out four criteria that must be met for a body to be included in my database. These should flow directly and intuitively from the conceptual work undertaken in the first part of this chapter, accurately capturing all of the most relevant dimensions of the concept of an “informal organization” and reliably differentiating them from other kinds of organizations, including formal organizations.¹⁴² After explaining each criterion, I also review the kinds of indicators—and specific types of evidence that we can look for to generate scores—which can help us to determine when each criterion is met. In some cases, several different indicators can be used, and for the specific criterion to be met a body must score positively on all or most of these. I discuss each in turn.

First, to be included in the database an organization *must primarily have members that are states, or components of states*.¹⁴³ As elsewhere, this kind of criterion helps us to distinguish informal organizations from international bodies created by other kinds of actors. In particular, it excludes

organizations is akin to regarding a party as conceptually identical to a legislature. They may share some features, but regarding them as the same kind of entity would be a mistake.

¹⁴² That is, our measure of an informal organization should have high content and discriminant validity. See Adcock and Collier 2001.

¹⁴³ For our purposes, “primarily” is here taken to mean greater than 90 percent of all members.

those that are created by non-state actors, sub-state actors or intergovernmental organizations. However, in contrast with Vabulas and Snidal's operationalization, it specifically does not exclude bodies that list components of states rather than states as such as members, where "components of states" are regarded as governmental bodies that are officially part of a central government. This relaxes things sufficiently to allow us to include organizations such as the Egmont Group, which list agencies and other non-ministerial governmental bodies as members. In order to determine the type of actors that are members of an organization, we will typically look to member lists or lists of "founding members" to see what kinds of organizations are included.¹⁴⁴ In particular, we will look for specific language and words such as "states" or "governments" or we will observe that members are *de facto* components of central governments. The members of IOSCO are, for instance, securities commissions that are typically highly autonomous yet nonetheless components of a central government. The criterion is therefore met in this case. The G20 also meets the criterion because the members of the G20 are all "states." By contrast, the International Electrotechnical Commission (IEC) and the Monitoring Group do not count as intergovernmental organizations because their members are private industry associations and other intergovernmental organizations, respectively.

Second, an organization *must exhibit signs of (limited) institutionalization, or "organization-hood."* This criterion is specifically designed to ensure that an organization is indeed an *organization* and not simply an ad hoc conference or meeting of some kind. To count, we must see *at minimum* some indication of permanence and structure, such as regular meetings and rules

¹⁴⁴ Most often these are available online. Ideally, to determine the nature of an organization I look to lists of "founding members," such as those that signed an organization's constituent agreement.

about decision-making. Meeting this criterion does not require that an organization have a physical headquarters or permanent staff, as does the COW-IGO Dataset. We can, therefore, include in the database all kinds of virtual organizations that do not have these features. But, at the same time, this does not mean that we must correspondingly exclude organizations that do. A headquarters or permanent staff can, in fact, be a strong indicator of institutionalization—although, as noted, we should expect these to be quite small. In order to determine whether an organization meets this criterion we will examine a potential case to see if three conditions are met. First, there should be evidence that the members of the organization meet at regular intervals, where “regular” usually means at least once a year. To infer this we should find evidence of public records of regular meetings between members, public statements about meetings, and so on. Second, we should observe some kind of implicit or explicit rules establishing an organizational structure and decision-making processes.¹⁴⁵ This could be found in a constitution that specifies the various bodies that comprise the organization and the voting rules that determine how decisions are made. It could also be found in the informal practices that practitioners in fact engage in. Finally, we should see some kind of organizational output, such as new rules, resolutions, or documents summarizing the activities of the organization.

Third, an organization *must be independent*. This criterion—which is implicit in the current COW-IGO database coding¹⁴⁶—requires that an organization not be formally subordinate to or

¹⁴⁵ In terms of structure, we will look specifically for evidence of functional differentiation, such as a division of responsibilities between different bodies. Evidence may include a chair, a board, committees a secretariat, and so on. In terms of decision-making processes, we will look for rules about order, committee membership, voting, and so on.

¹⁴⁶ Pevehouse, Nordstrom, and Warnke 2004. However, it is explicitly stated as a criterion for inclusion in the earlier version of the dataset compiled by Singer and Wallace 1970. Also see the discussion of this point in footnote 125 above.

derivative of some other organization. For this to be the case, we must find evidence that suggests the organization is “self-standing” and not just a sub-component or sub-group within another body, whether formal or informal. To infer this, two kinds of evidence are relevant. First, we should look at constitutional documents or public statements for rules or language indicating that the organization is “autonomous” and not formally subordinate or accountable to another organization. Second, we can examine statements about the goals of the organization: is the primary objective of the body to influence the policies of another organization? If an official statement of purpose explicitly mentions another organization, and/or if the goal is to “increase negotiating leverage,” “facilitate bargaining,” “coordinate negotiating positions,” and so on, then we can infer that the organization is largely derivative of another. For instance, the stated purpose of the G77 is to provide “the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues *within* the UN system.”¹⁴⁷ By defining its aims and activities in relation to another organization (here, the UN), this signals that the group is in some sense dependent on another for its *raison d'être*.

Fourth, an organization *must be constituted by a non-binding international agreement*. This final criterion is, in practice, the most crucial one for determining whether an intergovernmental organization is in fact *informal*. It requires that we find evidence indicating that an organization’s constituent agreement was intended to avoid establishing international legal obligations. This can be indicated, first, through either the form of the agreement or the language or statements used to compose it. For example, if the agreement constituting an organization is *unwritten* and implicit

¹⁴⁷ G77 2015. Emphasis added.

in the practices states, the agreement does not—by definition—constitute international law.¹⁴⁸ In practice, very few organizations are likely to be founded in this way. But some are. The Group of 7/8 (G7/8) is an example, as it was not established by a written agreement.¹⁴⁹ By contrast, if an agreement is written we must then search the document constituting an organization for language that deliberately avoids implying that it establishes international legal obligations. As previously noted, this may be stated explicitly through a clause that indicates the precatory nature of the agreement: “this agreement is voluntary,” for example. But it may also be implicit in the use of language. The agreement may be referred to as an “arrangement” or an “understanding” instead of a “charter” or “treaty,” or it may use words such as “hope” “may” or “should” rather than “will” “must” or “shall.” Finding language of this kind would imply that the document is not intended to establish legal obligations. Finally, certain activities may also reveal information about the nature of an agreement. For instance, if states register an international agreement with the UN this sends a strong signal that they in fact regard it as an international treaty. Finding that an agreement was ratified by states would also tend to indicate that an agreement was intended to be binding on members, since this is a practice normally associated with international treaty-making.

These four criteria, the indicators used to determine whether the criteria are met, and examples of the kinds of evidence that we can look for to determine the scores for each indicator are summarized in Table 2. According to this scheme, an organization will count as an informal organization and will be included in the dataset only if each of the four criteria is met. For the

¹⁴⁸ On this point, see Aust 2000, chapter 2.

¹⁴⁹ Dobson 2006.

criteria to be met, we must find evidence that leads to positive scores on all of the indicators.¹⁵⁰ To generate the dataset, I have then applied this coding scheme to the *Yearbook of International Organizations*—as other studies have done—as well as several other smaller lists of organizations from other sources.¹⁵¹ I have also employed the “searching and asking” technique used by Hale and Roger to “snowball” beyond these sources to find other similar organizations that fit the criteria.¹⁵² Ultimately, this method yields a sample that gathers the most prominent examples of a phenomenon. Yet it is important to remember that the dataset is likely to remain biased in several known ways.¹⁵³ First, it is likely to under-represent cases that are highly secretive or which have limited information about them. This may lead to a bias against security and signals intelligence organizations, or organizations from the distant past. Second, it is likely to over-represent relatively “successful” cases, since we will generally have less information about those that were unsuccessful (and, as a result, may have disappeared, or merged with another organization). Third, we will likely over-represent cases in the Global North, since those in the Global South may have fewer resources, are likely to be less well connected, and their affairs may not be conducted in English.

¹⁵⁰ The one exception is that, although evidence of an unwritten constituent agreement may be a positive indicator of informality (by definition, a treaty must be written), many informal agreements are in fact written. This means that a constituent agreement can score negatively on this criterion, but still be “counted” as informal if the other criteria are met.

¹⁵¹ Klabbers 2001a; Slaughter 2004; Berg and Horrall 2008; Berman et al. 2012; Hale and Roger 2014. Evidence to support the coding for each organization—as well as those considered but excluded—is on file and available for scrutiny by anyone interested. Note, also, that the specific copy of the *Yearbook* that I have used is the 2009/10 Volume (Parts 1-3), see Union of International Associations 2009. Each volume is updated simply by adding in new entries, so it is suitable to build a database using the most recent version. Given that the entries are updated with some time lag, I assumed that the 2009/10 Volume provides a complete record of the organizations created in 2005—the most recent year for which there are data in the COW-IGO dataset.

¹⁵² Hale and Roger 2014.

¹⁵³ Vabulas and Snidal 2013; Hale and Roger 2014.

Table 2 Criteria, Indicators and Evidence Determining Inclusion in the Dataset

<u>Criteria</u>	<u>Indicators</u>	<u>Evidence</u>
1. Membership	States/State Components	Member list, agreement, website.
2. Institutionalization	Regular Meetings	Public records, website, agreement.
	Structure/Rules	Agreements, practices, websites, public statements.
	Output	Meeting notes, programs, policies, reports.
3. Independence	Formally autonomous	Agreement/rules, website, public statements.
	Independent objectives	Agreement, public statements.
4. Non-binding Agreement	Written/Unwritten	Practices, public statements, secondary sources.
	Language	Agreement, public statements.
	Associated Behavior	UN Treaty Series, public statements and records.

2.3.3 Preliminary Findings

The database reveals many fascinating trends, many of which are discussed in subsequent chapters. Here, I focus simply on the temporal trend. Figure 1 shows the total number of active formal and informal organization active in the global system from 1945 to 2005, the most recent year for which there is data available. The red line depicts the cumulative total number of formal organizations, as measured by the COW-IGO Dataset.¹⁵⁴ The green line depicts the number of

¹⁵⁴ Pevehouse, Nordstrom, and Warnke 2004. Specifically, I have used the most recent version of the dataset (Version 2.3) that extends the data through 2005. Note, however, that I have adjusted this data somewhat, since a number of informal organizations (37 in total) are miscoded as formal organizations in the COW-IGO data. GATT, for instance, is coded as being informal and therefore is removed from the formal dataset. I have also removed a number of organizations (18 in total) from the COW-IGO dataset that are not properly regarded as independent

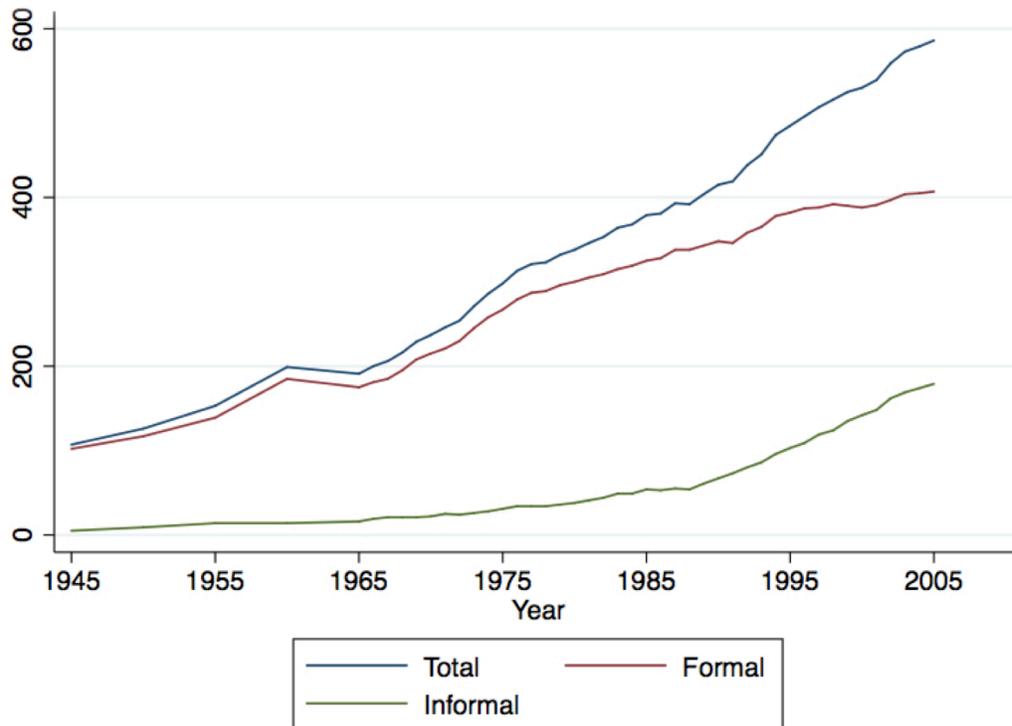
informal organizations, as measured by my own companion dataset.¹⁵⁵ The blue line is simply the sum total of these two. It shows the total number of intergovernmental organizations (both formal and informal) active in the global system throughout this period. This tells us a number of interesting things. First, the data shows that at the end of the Second World War nearly all (more than 95 percent, or 102 out of 107) of the intergovernmental organizations active at that time were formal in nature. The number of informal organizations, by contrast, was vanishingly small (less than 5 percent, or 5 out of 107). Ten years later, little had changed. The number of formal organizations had risen to 139, while the number of informal organizations only rose to 14. Then something changed. In the early 1960s, there was then a significant decline in the total number of intergovernmental organizations, as many pre-war formal organizations disappeared, or were merged with other existing bodies.¹⁵⁶ The number of informal organization stayed relatively similar (rising to only 21 by 1969), but their relative share of the total increased significantly as a result.

intergovernmental organization by any criteria, either because they do not have state members (the Council of Patrons, for instance) or are an emanation of another organization (the European Foundation for the Improvement of Living and Working, for instance, which was constituted by the European Economic Community). I have also added a large number (111 in total) of formal intergovernmental organizations that meet all of their criteria for inclusion, but for some reason or another have been omitted (the International Visegrad Fund and the Islamic Financial Services Board, are examples). Records of all of these changes to the original dataset are on file with the author. Arguably, all of this constitutes significant improvement to the original COW-IGO dataset and the new version is the most complete record of formal intergovernmental organizations in the global system currently available.

¹⁵⁵ My own database follows the same method as the COW-IGO database for determining institutional birth and death. The only major difference is that some informal organizations “die” when they become formal. Thus, for example, GATT is coded as an informal organization and “dies” in 1994, at which point a new organization, the WTO, appears in the formal dataset. The “date of death” is in this case is taken to be the “birth date” of the new formal organization.

¹⁵⁶ See Pevehouse, Nordstrom, and Warnke 2004 for a discussion of this trend.

Figure 1 Intergovernmental Organizations in the Global System



This shift proved to be a portent of things to come. Following the absolute and relative decline in their numbers in the early 1960s, the pace at which formal organizations were created picked up again—but only briefly. In the mid-1970s, the rate of increase decreased significantly. Between 1980 and 2005, for instance, number of formal organizations increased by only a third—from 300 to 407. Other scholars—looking only at formal organizations—have noted this phenomenon with some puzzlement, given the significant deepening of interdependence that occurred throughout this period.¹⁵⁷ However, once we take informal organizations into account, the decline seems less anomalous. Overall, it did not seem to be because existing institutions were satisfactory in some sense, or because there was less need for cooperation. If anything, the need for intergovernmental organization increased, particularly in the 1990s. The overall rate of

¹⁵⁷ Ibid.

institutional creation actually rose somewhat at that point in time. Instead, there was a significant shift in the *kind* of organizations that states were creating—towards a more informal variety. Between 1980 and 2005, for instance, the number of informal organizations rose from 38 to 179—just shy of a 5-fold increase. And, by the end of the period for which we have data, informal organizations were a major force in global politics, comprising around third of all the intergovernmental organizations in existence.

2.4 Conclusion

This chapter has accomplished two core tasks that provide a firm conceptual and empirical base for exploring the rise of informal intergovernmental organizations. First, I have defined informal organizations. Like their more formal counterparts, informal organizations are created by states, but they differ in that they tend to be less autonomous and exhibit much lower levels of legalization. In general, they are less likely to have bodies that are functionally separate from their members and more likely to be constituted by a non-binding agreement, such as an MOU. I have then shown that these are not simply differences in style, but have a number of substantive implications. I accomplished this by comparing and contrasting both the “international properties” and “domestic implications” of formal and informal organizations, which affect how they function and the costs (for states) of creating and working through them, respectively. With respect to their international properties, informal organizations are generally more flexible, more agile, and more confidential than formal organizations, but are less likely to be autonomous or exhibit economies of scale and scope. With respect to their domestic implications, informal organizations generally have fewer ratification requirements, require less input from other domestic actors, require less monitoring and need fewer resources.

The second part of the chapter then discussed the database of informal organizations that I have developed to facilitate our ability to make both descriptive and causal inference about the world of informal organizations. I began by providing an overview of previous efforts to quantify both formal and informal organizations and explained how they fall short in various ways. Building on the conceptual work undertaken in the first part of the chapter, I then developed a number of criteria that can be used to identify formal and informal organizations in the real world. This involved developing indicators that can be used to measure whether a governance arrangement should count as an “organization,” and, if so, whether we should regard it as formal or informal. Finally, I presented a number of descriptive statistics that help to illuminate the world of informal organizations as it has evolved between 1945 and 2005. This showed that at the end of the Second World War, the vast majority of intergovernmental organizations were formal in nature. However, over the ensuing 60 years, informal organizations grew in both absolute and relative terms. Today, they constitute nearly a third of all the currently “active” intergovernmental organizations. Explaining why states have chosen to create such organizations is the main task of this study, and in the next chapter I discuss how we can do so.

Chapter 3. Theorizing Informal Organizations

3.1 Introduction

The previous chapter distinguished between two kinds of intergovernmental organizations, formal and informal, and reviewed their different properties and domestic implications. It then demonstrated that both kinds of organization are important fixtures of the global landscape. Having done so, we are now in a position to address the central question that this study is concerned with: why are some intergovernmental organizations formal and others informal? This is particularly important because present efforts are theoretically unsatisfying and rest on weak empirical evidence. These explanations suggest that states create different kinds of organizations because some are better at solving certain problems than others. Policymakers, on this view, are able to accurately identify the problems they face and choose the organizational form that is best tailored to resolving them. This seems reasonable: why would policymakers not want to design organizations that are well suited to the problems they confront? The proposition also seems reasonable given that scholars have in fact found some evidence that the design of organizations and social institutions seems to be related to specific problems of cooperation.¹⁵⁸ But, as we will see later in this chapter, such “functionalist” theories fall short in ways that suggest something else must be at work.

The argument of this study is that while functionalism may be a useful starting point a truly compelling theory of informal organizations must incorporate what it overlooks: domestic

¹⁵⁸ Koremenos 2013b; Koremenos 2013a. Comparable theories can be found in the fields of law and economics. See, for example, Posner 1972; Schotter 1981; Williamson 1985; Williamson 1991; Milgrom and Roberts 1992; Calvert 1995.

politics, distributional conflict and power. The goal of this chapter is to explain why this is so and to turn this general proposition into an empirically testable theory of organizational form. I begin by describing functionalist theories in detail, since, as the best explanation offered thus far, these serve as the natural yardstick against which any theory should be assessed.¹⁵⁹ I show that functionalists make certain “bets” about the kinds of variables that will best explain organizational form and I tease out the specific empirical predictions that they make. I then offer some preliminary evidence suggesting that they get some important empirical predictions wrong and I show that there are good theoretical reasons for doubting their explanatory power as well. In the second part of the chapter, I outline my own theory, which makes a different bet about the kinds of variables that are likely to explain the form of an organization. Specifically, I hypothesize that the kind of organization that is likely to emerge in a given context depends on processes of state preference formation, how preferences are distributed across states (or groups of states), and the distribution of power, which determines which preference is likely to prevail when conflicts arise. The model I develop yields a number of different empirical predictions about the conditions under which we should expect informal organizations to emerge that are then tested in subsequent chapters.

3.2 Previous Efforts

Functionalist theories have a long history in the field of IR and have much to say about questions of institutional design.¹⁶⁰ The most prominent modern day variants are largely couched in the “rational design” tradition of IR. Theorists in this school argue that institutions matter a great

¹⁵⁹ Popper 1963.

¹⁶⁰ Claude 1964; Mitrany 1966.

deal and that states choose designs that offer them the greatest benefit in a given situation.¹⁶¹ Their argument begins from the premise that states act instrumentally, carefully evaluate their options, and choose those that are expected to yield the greatest utility. They then argue that states can often benefit significantly by cooperating with one another but are confronted with a variety of different strategic problems that inhibit their ability to do so. Unless these underlying problems can be overcome, the benefits of cooperation are difficult to attain. International institutions can be designed to address these problems and help states achieve positive cooperative outcomes that would not otherwise be possible. But, since not all problems are the same, the optimal institutional design will vary.¹⁶² Some institutional designs will “match” better than others with the underlying problems that stymie cooperation in a given area. States, seeking to use their limited resources as efficiently as possible, will therefore choose those institutional designs that best address the strategic problems that they confront. The bet made by rational design theorists is that there will be a strong, consistent relationship between certain types of cooperation problems and specific institutional designs.

This approach has the advantage of being able to draw on a wide variety of results from contract theory and game theory to develop *a priori* conjectures about the kinds of problems that are likely to be correlated with different institutional designs that can then be subject to empirical

¹⁶¹ Martin 1992; Abbott 1993; Koremenos, Lipson, and Snidal 2001; Trachtman 2008; Koremenos 2013b; Koremenos 2013a; Koremenos forthcoming. Current theories generally trace their lineage to Keohane 1982 and Keohane 1984.

¹⁶² As Joel Trachtman 2014, p. 167, has argued with specific reference to intergovernmental organizations: “for each international cooperation area, there is an optimal international organizational structure.” He adds, rightly, that the “optimal” organizational structure may be no organization at all. Also see Martin 1992.

test.¹⁶³ In this way, it has been used to explain a wide variety of different features of intergovernmental organizations, from the degree of independence they possess to the amount of access granted to non-state actors.¹⁶⁴ It has also been applied to decisions about whether to create an intergovernmental organization in the first place. Abbott and Snidal have, for example, hypothesized that states will tend to create intergovernmental organizations when doing so can help them to realize gains from cooperation.¹⁶⁵ They make their case by pointing to two key properties of intergovernmental organizations: centralization and independence. These properties are useful to states because they can help to reduce the barriers that often block cooperative agreements by *inter alia* providing a stable venue for negotiations, neutral information about preferences or behavior, or impartial dispute settlement. The implicit claim made by Abbott and Snidal—made explicit in the work of others¹⁶⁶—is that states will create intergovernmental organizations when there are significant benefits to be derived from a stream of cooperative agreements in an area but also substantial transaction costs. Keohane developed a similar hypothesis in his classic work, arguing that this is particularly likely when “issue density” is high, and this hypothesis has received support from Koremenos, who has found that states are more likely to delegate tasks in international agreements when they confront “complex” cooperation problems.¹⁶⁷

Such arguments about the emergence of intergovernmental organizations are usually framed as being about *formal* organizations, but the benefits of centralization and independence help to

¹⁶³ Koremenos, Lipson, and Snidal 2001; Koremenos forthcoming.

¹⁶⁴ Haftel and Thompson 2006; Tallberg et al. 2014.

¹⁶⁵ Abbott and Snidal 1998. They and others draw on theories of the firm, see Coase 1937; Williamson 1985.

¹⁶⁶ Trachtman 2008; Trachtman 2014.

¹⁶⁷ Keohane 1982; Koremenos 2008.

explain why states wish to create *any* intergovernmental organization, whether formal or informal.¹⁶⁸ However, it does not explain why states choose between these two varieties. Other accounts have tried to do so, and they also couch their theories in this functionalist tradition: the basic answer is that states choose the organizational form that will benefit them most in a given context. This claim is made by arguing that informal organizations have certain properties that contrast with the properties of formal organizations—in much the same way as I did in the previous chapter.¹⁶⁹ They then argue that states choose to create informal organizations when the structure of the problem they face—Koremenos has referred to this as the “situation structure”¹⁷⁰—provides them with an incentive to choose organizations with those properties. This is, for example, the approach taken by Vabulas and Snidal, who arguably offer the most advanced theory of organizational form.¹⁷¹ After comparing and contrasting formal and informal organizations, they argue that states will choose to work through an informal organization when doing so is somehow advantageous. Their core claim is that they do so because “different issue areas—with different underlying cooperation problems—are best addressed by different levels of institutional formality.”¹⁷²

Vabulas and Snidal are not the only ones to make this kind of argument. Zaring, Raustiala, Whytock and Eeilstrup-Sangiovanni have all offered essentially similar functionalist theories

¹⁶⁸ Although they are not clear on this point, it seems Abbott and Snidal believe that preferences for centralization or independence are each regarded as sufficient for states to create an intergovernmental organization. But, as an empirical matter, it is worth noting that while all intergovernmental organizations (both formal and informal) are centralized to some extent, not all are independent. See Haftel and Thompson 2006; Hooghe and Marks 2014.

¹⁶⁹ Note that they focus exclusively on what I have referred to as the “international properties” of formal intergovernmental organizations.

¹⁷⁰ Koremenos 2013a. Also see Abbott 1993.

¹⁷¹ Vabulas and Snidal 2013.

¹⁷² *Ibid*, p. 212.

about transgovernmental networks, which I roughly equate with informal organizations.¹⁷³ Related propositions can also be found in the literature that attempts to explain why states opt for “hard” or “soft” international law.¹⁷⁴ In each case, the prediction is that states choose the institutional form that somehow “fits” or “matches” a given problem. Exactly what problems match with formal and informal organizations is somewhat unclear, as scholars in this area of research have offered a wide variety of different conjectures. Some even appear to contradict each other to some extent.¹⁷⁵ But across these various theories there is some overlap. Table 3 presents a summary of the specific empirical predictions that are most commonly made.¹⁷⁶ In the far left column (“Property”) I have listed the various dimensions along which formal and informal organizations diverge. These dimensions track my discussion of the “international properties” of different organizational forms in Chapter 2. In the second and third columns, I

¹⁷³ Zaring 1998; Raustiala 2002; Whytock 2005; Eilstrup-Sangiovanni 2009. A related argument has also been made by Kahler and Lake 2009. In some cases, as with Zaring’s work, the focus is explicitly on “organizations,” and not “networks” per se. Elsewhere, the focus is at least implicitly on organizations, since in practice these authors seem to equate transgovernmental networks with organizations such as IOSCO, the G20, the PSI, and so on. The models offered by these authors are also particularly striking because of their similarity to the arguments made by Vabulas and Snidal. This suggests that if there are differences between informal organizations and transgovernmental networks, functionalist theories are presently unable to tell us when one or the other would be expected to arise. In a future project, it would be useful to reflect upon the different features of informal organizations and transgovernmental networks, with the intention of revising the definition of the latter.

¹⁷⁴ See, for instance, Lipson 1991, Abbott and Snidal 2000, Guzman and Meyer 2010 and Meyer 2014.

¹⁷⁵ This is the case, for example, with hypotheses about the relationship between the number parties, preference heterogeneity, and institutional form. While Eilstrup-Sangiovanni argues that informality should be more likely when agreements are reached between a small number of actors with congruent interests, Koremenos has argued that informality should increase with the number of actors and the diversity of interests. See Eilstrup-Sangiovanni 2009; Koremenos 2013c. In my discussion, I use the modal hypothesis found in the literature—in this case, that informality should decrease with numbers and preference heterogeneity.

¹⁷⁶ These predictions are mainly drawn from Zaring 1998, p.312-323; Raustiala 2002, p.17-26; Whytock 2005, p.117-130; Eilstrup-Sangiovanni 2009, p.205-210; Vabulas and Snidal 2013, p.209-212. In my exposition I also draw on additional sources to bolster and expand their theoretical arguments.

have then listed the different conditions that have been hypothesized as being important for determining each institutional choice and which are related to the properties in the first column.

Consider each in turn.

Table 3 Functionalist Determinants of Organizational Form

<u>Property</u>	<u>Formal Organization</u>	<u>Informal Organization</u>
1. Flexibility	Low uncertainty	High uncertainty
2. Agility	Low urgency, Routine problems.	High urgency, Systemic crises.
3. Confidentiality	Less sensitive issues, Cooperative external relations.	Highly sensitive issues, Antagonistic external relations.
4. Independence	High opportunism, Heterogeneous interests.	Low opportunism, Homogeneous interests
5. Scale	Large numbers, Wide issue scope.	Small numbers, Narrow issue scope.

First, numerous scholars draw a link between the levels of uncertainty in an issue area and levels of institutional formality. When states can achieve gains in the present by creating an intergovernmental organization but are uncertain about how participation in an organization may affect the distribution of gains in the future they should be more likely to choose an institutional design that can be changed or adapted relatively easily.¹⁷⁷ This is particularly likely to be true when an issue is characterized by what Koremenos refers to as “persistent uncertainty.”¹⁷⁸ Persistent uncertainty prevails when the “shocks” that can be expected to arise in an area are

¹⁷⁷ Ibid.; Guzman and Meyer 2010; Meyer 2014.

¹⁷⁸ The term comes from Koremenos 2005.

essentially random in nature, costly to value in advance and add up as time passes. The dynamics of an issue may, for instance, be known to fundamentally change over time and present states with unforeseen challenges where the optimal response is inherently unknowable at the time an institution is created. When this is the case, an institution that can be changed more easily offers clear advantages. Once states are confronted with an issue they did not anticipate, they can easily adapt the institution they originally established to the new circumstances. An informal organization—which, as discussed in the previous chapter, is much more flexible than formal organizations—may therefore be expected to have an edge in this kind of context, as Koremenos herself notes in her discussion of G7 macroeconomic cooperation.¹⁷⁹

Second, nearly all functionalists have linked levels of institutional informality to situations where speed is important to successful governance.¹⁸⁰ As noted in the previous chapter, one of the crucial advantages of informal organizations is their agility. In contrast with their formal counterparts, informal organization can be set up relatively quickly, since there is no need for ratification and states will have less reason to hold out during bargaining when the shadow of the future is shorter, i.e. when emphasis is placed on the immediate present and the future is highly discounted. This makes informal organizations an ideal choice whenever failure to reach agreement in a timely manner may result in significant losses to all parties, and states therefore urgently need to set up a venue for cooperation. This may occur when, for example, issue areas are prone to unpredictable systemic crises, as in international finance where states have been forced to respond with swift ameliorative actions. By contrast, where emphasis is placed less on the speed with which cooperative agreements are reached and more on ensuring that

¹⁷⁹ See *Ibid*, p.552.

¹⁸⁰ Lipson 1991; Raustiala 2002; Eeilstруп-Sangiovanni 2009; Vabulas and Snidal 2013.

commitments made in the present can be sustained far into the future, a more formal organization may have significant advantages. When this is the case, the time and effort involved in ratifying more formal agreements and their explicitly legal nature can actually help states to signal long-term cooperative intentions.¹⁸¹

Third, functionalists have hypothesized a relationship between informality and the need for confidentiality.¹⁸² In comparison with formal organizations, there is generally much less need to disclose details about the inner workings of informal organizations and actors within such organizations can more easily conceal information about their intentions or actions. Informality is therefore likely to be preferred in situations where foreknowledge of the intentions or actions of members risks subverting their effect. More concretely, this means that informal organizations may be preferred in areas where sensitive information is being exchanged, as in global competition policy, where proprietary information about businesses is routinely transferred between agencies. It may also be particularly useful in areas like signals intelligence and counter-terrorism, where it may be important for actors outside of the organization to remain unaware of what goes on within. At the other extreme, in some areas an organization's members may want to make their intentions and actions especially visible. This may be the case when, for instance, an organization's success somehow depends on eliciting cooperation from actors formally outside of it, such as non-state actors or other states. States would then want to make their actions especially transparent, since this would allow them to gain the trust of such actors and be seen as legitimate in their eyes. Greater formality may be one way to achieve this.

¹⁸¹ Guzman 2008; Simmons 2010.

¹⁸² Vabulas and Snidal 2013.

Fourth, scholars have argued that the potential for opportunism in an issue area may be related to choices about organizational form.¹⁸³ In this context, “potential for opportunism” is meant to denote the extent to which there are incentives for states to defect from a cooperative agreement to gain an advantage over others in an issue area, as in a Prisoner’s Dilemma-type problem. When states confront such “enforcement” problems, successful cooperation often turns on the extent to which states can make their commitments credible, establish reputations, and detect and punish violations. This should, in turn, make states more likely to opt for a more formal organizational design, which can facilitate *inter alia* independent monitoring of compliance and credible commitment-making via costly ratification. By contrast, when there is less potential for opportunism in an issue area—when, for instance, states face a coordination problem—there is much less need for such costly and invasive mechanisms. Since states only need to coordinate on one set of rules or another and have few incentives to defect from an agreement once reached, a centralized venue for reaching agreements and basic secretarial services is often all that is needed. An informal organization may then be sufficient to achieve the level of cooperation desired by states.

A related rationale that scholars have noted is related to the heterogeneity or homogeneity of preferences in a given issue area.¹⁸⁴ As preference heterogeneity rises, this should make it more difficult for members of an organization to strike deals with each other, since their “ideal” agreements will grow further apart and the overlapping “win-set” correspondingly smaller.¹⁸⁵ It may also reduce levels of trust, since it is less likely that the interests of one actor will be

¹⁸³ Martin 1992; Whytock 2005; Vabulas and Snidal 2013.

¹⁸⁴ Whytock 2005; Eeilstrup-Sangiovanni 2009.

¹⁸⁵ Whytock 2005; Eeilstrup-Sangiovanni 2009; Vabulas and Snidal 2013.

“encapsulated” by another’s.¹⁸⁶ And, even if states do reach agreement, it can increase the likelihood that there will be serious disputes between members. States may then find it particularly useful to delegate greater independence to a secretariat in order to facilitate bargaining, to monitor and enforce commitments, and to provide for third-party dispute settlement when conflicts arise.¹⁸⁷ A formal organization may then prove more effective than an informal one. By contrast, when preferences are more homogeneous it is relatively easy for states to strike bargains, they are willing to rely on trust to a greater extent, and there will generally be fewer disputes between members of an organization. The incentive to delegate greater independence to an organizations is therefore likely to be much lower, since there will be less need for an independent broker, monitor or dispute arbiter in this context. A minimal, low-cost informal organization may then be the institutional approach favored by states.

Finally, we can hypothesize a relationship between the number of members an organization has, issue scope, and organizational formality.¹⁸⁸ As an organization’s membership increases, it generally becomes more difficult for states to know the preferences of others and the number of potential coalitions increases. This makes it more challenging for states to strike cooperative agreements, and provides a functional rationale for a strong secretariat that has the capacity to

¹⁸⁶ For a discussion of trust in terms of “encapsulated interests” see Cook, Hardin, and Levi 2005.

¹⁸⁷ There is some disagreement about this proposition in the more general literature. Some actually argue that delegation is more likely to occur when preferences are homogeneous, see Hawkins et al. 2006. But others have disputed this, and the bulk of quantitative evidence seems to support the idea that that delegation increases with preference heterogeneity, see Koremenos 2008; Stone 2011; Green and Colgan 2013. To an extent, the disagreement between these two views may simply be a semantic problem, as states may have heterogeneous preferences at one level and homogeneous preferences at another. This is clearly the case in many strategic problems. Consider, for example, the “battle of the sexes” game, where the actors both want to coordinate on a single agreement but prefer different agreements.

¹⁸⁸ Haftel 2013; Hooghe and Marks 2014.

collect, analyze and disseminate information about preferences and to set a feasible agenda. More generally, a larger membership also requires a secretariat with greater logistical capacity and facilities that can accommodate larger groups. The greater scale of such an organization may only be possible to achieve through greater formality. The scope of the issues that an organization aims to deal with may also influence decisions about organizational form. When an organization attempts to deal with many issues at once, this makes bargaining more complicated by significantly increasing the number of potential deals that can be struck, and this provides a strong reason for states to establish a secretariat that has the ability to identify feasible “package” agreements. It also means that an organization may need to retain a larger number of specialized staff and perform a more diverse array of tasks in order to operate effectively. Both considerations are likely to lead states to increase the independence and scale of an organization and to therefore opt for greater formality.

3.2.1 A Critique of Functionalist Theories

While intuitively plausible, there are reasons to doubt the empirical validity and theoretical logic of functionalist theories of organizational form. We can, for example, think of many formal and informal organizations that do not seem to have arisen under the conditions that functionalists expect them to. Consider the example of the International Organization of Supreme Audit Institutions (INTOSAI), an informal organization established in 1953. Its primary purpose is to foster exchange and dialogue between national audit offices, and to facilitate the development of standards in the field of government audit. Yet in many ways it seems that the situation structure would predict greater formality. Uncertainty about the future in the field of government audit is likely to be very low, speed is not likely to be important as tasks are routine, and confidentiality

is not likely to be a great priority either, since the area thrives on publicness. The organization also boasts membership of 192 states that, of course, have highly heterogeneous interests. Next, consider the International Bureau of Weight and Measures (which goes by its French acronym, BIPM). The BIPM is a formal organization, constituted by the Metre Convention of 1875, yet the underlying problem it aims to solve again lacks some of the features that would lead us to expect this. Its purpose has been to help states establish international measurement standards (initially, just mass and length), coordinate comparisons of national reference standards, and to undertake scientific activities related to these two objectives. It therefore focuses on a very narrow range of issues where there is little incentive for opportunism. Further, it was negotiated by a small number of states (11) that were all already users of the metric system and therefore had quite similar interests. We might, therefore, expect the BIPM to be founded informally—as, in fact, some other standard-setting bodies have been—but it was not.

We can, of course, multiply examples where it seems that few of the functionalist conditions are met. Still, one might reasonably argue that I have cherry-picked these cases or that these different institutional designs are driven by relevant variation in other aspects of the issue areas each organization operates in. Another way to probe the validity of the functionalist argument is therefore to look at regional variation within issue areas. Functionalists, of course, predict that institutional design should be highly correlated with the situation structure in an issue area. We should therefore expect that organizations operating within the same issue area but in different regions should be designed similarly. However, this is not always the case. For example, organizations designed to coordinate action on money laundering exhibit considerable institutional variation across regions. In some, the primary institutions are highly formal bodies,

such as MONEYVAL, in Europe, and the Intergovernmental Action Group Against Money Laundering in West Africa (GIAMBA), a specialized agency of the Economic Community of West African States (ECOWAS), in West Africa. Elsewhere, these institutions are highly informal. The premier global body in the area, the FATF, and other organizations like the APG and the EAG are all informal organizations. Similar examinations of organizations active in the areas of nuclear non-proliferation, international banking and metrology, to name just a few, also reveal a host of formal and informal regional bodies designed to govern the same issues.¹⁸⁹ But, if the issue area is indeed held constant across regions in each case, how can we explain this variation? Something else must be going on.

As these brief observations suggest, the empirical validity of functionalist explanations of organizational form is—at the very least—assailable. However, some more general theoretical problems stand out as well, which may help to explain these kinds of puzzles. First, as Koremenos has herself noted, the rational design framework “*does not explicitly include domestic politics.*”¹⁹⁰ Instead, it takes preferences as given, and relies exclusively on the situation structure that states confront to explain institutional design. To some degree, of course, this theoretical move is justifiable, as it allows scholars to explore difficult empirical questions with relatively parsimonious explanatory models. It may be the case that functionalist variables can explain a large amount of the variation that we find in the world. And, to the extent that this is true, the value and policy relevance of rational design theories is evident. Yet it is also

¹⁸⁹ Of course, the specific problems that states face in different regions—even within the same “issue area”—may not actually be identical. However, this probe nevertheless suggests that there may be problems with the functionalist argument and that further investigation is needed, at the very least. This is done in the next chapter.

¹⁹⁰ Koremenos forthcoming , p.7. Italics in original.

problematic because domestic politics have been shown to fundamentally shape international behavior and may matter a great deal for questions of formality in particular.¹⁹¹ Raustiala and Guzman have, for instance, both argued that domestic politics play an essential role in determining the legal form of many international agreements.¹⁹² It is, therefore, reasonable to expect that it matters for organizational form as well. If so, different levels of formality may be determined less by the nature of the problems states confront and more by domestic processes of preference formation and how these “aggregate” across states to produce the final outcomes we see. But testing this hypothesis requires that we first theorize the process of preference formation that is applicable to the form of an intergovernmental organization—a task that is taken up in the second half of this chapter.

The second problem with functionalist theories—which is directly related to the first—is that they underemphasize conflict and thereby offer an overly consensual account of the politics of institutional design. This issue has been noted about functionalist theories more generally, which tend to focus on the *collective* benefits that institutions offer a group of actors at the expense of their *distributive* effects.¹⁹³ The particular issue is that, while taking note of the collective benefits of institutions and organizations is often essential for understanding why they exist in the first place, a wide variety of different forms can often serve the same purpose. There is, in other words, a problem of “multiple equilibria.” The real question is which of these many possibilities actors will choose. Since they may all represent improvements over the status quo,

¹⁹¹ Milner 1997; Milner 1998; Moravcsik 1998.

¹⁹² Guzman 2008; Raustiala 2005.

¹⁹³ See, for instance, the powerful critique by Knight 1992. In IR, this kind of critique has often associated with Krasner 1991. Others have noted that international cooperation regularly involve both collaborative and distributive dimensions, see Fearon 1998.

the different possibilities are not necessarily distinguished by their ability to provide collective benefits. Instead, as Knight has explained, “the major distinguishing feature of different institutional forms is their distributional consequences.”¹⁹⁴ Actors may agree that they can benefit from cooperation, but the various solutions may have different distributional effects and therefore they will disagree over how the “additional” benefits of cooperation should be distributed among them. The critical issue for understanding institutional and organizational forms is then explaining who benefits from these different possibilities and how conflicts over institutional design are resolved.¹⁹⁵

This brings us to the third major problem with functionalist theories: their neglect of *power*. If we accept that domestic politics may determine preferences for different organizational forms and that state preference can sometimes conflict, explaining final organizational outcomes requires an account of whose preference is likely to prevail in a given situation. In theory, a wide range of different factors may be relevant, such socialization or persuasion, but, whenever deep-seated interests are at stake, power—an ability to *impose* one’s will on others—is likely to be the most relevant.¹⁹⁶ The issue for functionalists is that they have not been particularly good at incorporating power into their theories. Duffield has observed, for instance, that considerations of power have only been loosely integrated into theories of rational design.¹⁹⁷ Where it is introduced into theories, this is often done in a relatively ad hoc manner—almost as an

¹⁹⁴ Ibid, p.26.

¹⁹⁵ This omission has been noted by Pollack and Shaffer, who have recently called for a “distributive approach” to understanding the design of international institutions, see Pollack and Shaffer 2013.

¹⁹⁶ Dahl 1957; Krasner 1991; Moe 2005.

¹⁹⁷ Duffield 2003, p.417-18.

afterthought.¹⁹⁸ This contrasts sharply with other approaches to the study of IR, above all Realism, which suggest that the exercise of power is pervasive in world politics and must therefore be placed at the core of any explanation of interstate behaviour. If true, by failing to take power sufficiently seriously, theories of rational design risk restricting their applicability to a limited set of circumstances: “those in which actors either lack, or are unwilling to exploit, capabilities to coerce or to offer inducements for the purpose of obtaining institutions that better serve their individual interest.”¹⁹⁹

In sum, functionalist theories have a long lineage in IR, have been used to explain a range of institutional features, and efforts have been made to develop conjectures to explain the emergence of formal and informal organizations. In doing so, however, they have omitted a number of factors that have been found to be important by a great many others, and which may have important implications for our understanding of organizational form in particular. Ultimately, this observation should not be taken to suggest that their arguments are obviously wrong; they may explain institutional design quite effectively in areas where their scope conditions hold, and they may be an important part of the story behind the rise of informal organizations. The point is that they may be weak and incomplete in their present form, and that making an effort to incorporate what they leave out might help to explain the kinds of empirical puzzles described above.

¹⁹⁸ Consider, for instance, the discussion of power in Vabulas and Snidal 2013.

¹⁹⁹ Duffield 2003.

3.3 A Liberal Theory of Organizational Form

In this section, I attempt to improve upon existing accounts by incorporating domestic politics, distributional conflict and power into a theory of organizational form. In doing so, I couch my argument within the “liberal” tradition of IR. Like functionalism, liberalism also has a long history in the field that generally traces its origins to classic works by Niccolo Machiavelli, Immanuel Kant, and Joseph Schumpeter.²⁰⁰ It has been developed over the past 30 years into a “scientific” theory of international politics that is distinguished by the fact that it grounds explanations of international relations in the actions of individuals—broadly construed—rather than states.²⁰¹ Liberal theories begin by modeling interactions between domestic actors as they compete to advance their policy preferences, show how these internal conflicts are filtered through domestic institutions, and then explain how this process, which can play out very differently across polities, then changes the way that states behave in relation to each other. Such models have helped to generate some of the most profound findings in the field of IR, such as the democratic peace, and underpin the most prevalent theoretical approach in the field of International Political Economy, Open Economy Politics.²⁰² It has therefore been used quite successfully to explain a wide variety of aspects of international cooperation and even institutional design, but it has yet to be applied in any rigorous fashion to questions about the formality of intergovernmental agreements and organizations.²⁰³

²⁰⁰ Doyle 1986; Zacher and Matthew 1995.

²⁰¹ Moravcsik 1997. Also see Putnam 1988; Evans, Jacobson, and Putnam 1993.

²⁰² Ray 1998; Lake 2009.

²⁰³ See, for example, the discussion of this point in Pollack and Shaffer 2013. Some of the most prominent examples of liberal theories include Rogowski 1990; Moravcsik 1998; Milner 1997; DeSombre 2000; Mansfield and Milner 2012. For an example of an effort that applies similar insights to new modes of governance, see Roger, Andonova and Hale 2015.

As elsewhere, the liberal theory that I advance proceeds in two steps.²⁰⁴ In the first, states decide to cooperate through an organization and develop preferences over the form that they would like it to take. The model begins with an exogenous rise in “demand” for governance. This demand provides states with an incentive to cooperate with one another but, in doing so, also “selects” certain domestic public actors to initiate or lead cooperative efforts on the behalf of a state. Different kinds of public actors can be selected that are distinguished by their positions within a domestic institutional structure, and their “identity” matters because each will have different “baseline” preferences over organizational form that then get “translated” into state preferences, given their first-mover advantage. These actors are also each subject to competing political pressures that can sometimes modify their tactics and thereby alter a state’s preference under certain conditions. The second step of the model then explains how these preferences “aggregate” to produce final institutional outcomes. The preference formation process briefly described above can play out in different ways across states, which means that preferences can often conflict to varying degrees, even within the same issue area. One state may prefer a high level of formality while another does not. When this is the case, it is impossible for all states to attain their first preferences. And, for an organization to emerge, these distributional conflicts must be resolved somehow. This preference aggregation process is modeled as a bargaining game, where states negotiate over positions along a formal/informal continuum. The final outcome—the form of the organization that emerges in a given issue area—is a function of the distribution of preferences and power.

²⁰⁴ Legro 1996; Moravcsik 1997.

3.3.1 Step 1: A Model of State Preference Formation

As noted, I begin my theory of preference formation with an account of the “demand” for governance. Without some kind of public “need” for cooperation, there would seem to be little rational reason to supply cross-border governance of any kind. But where does demand for governance come from? In the main, and in line with other liberal theories of IR, I argue that demand for cross-border cooperation arises when there are externalities that result from various social, political or economic transactions between and within polities. These tend to increase as globalization takes place.²⁰⁵ As economies integrate, activities within or between one or more states tend to have more significant effects that others would like to contain or limit, and can only be reduced by mutual agreement amongst those involved.²⁰⁶ In many cases, it may be possible for actors to strike such agreements without much trouble, particularly if the number of actors is small and if it is easy to detect violations of the agreement.²⁰⁷ But with rising transaction costs—“the costs of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements”²⁰⁸—it becomes more difficult to do so. When this is the case, more complex institutional arrangements, including intergovernmental organizations, can be created that can help to (at least partially) reduce transaction costs and thereby make it possible for states to make mutually beneficial policy adjustments.²⁰⁹

²⁰⁵ Ibid.

²⁰⁶ Held 2000; Held and McGrew 2007.

²⁰⁷ Coase 1960; Axelrod 1984.

²⁰⁸ North 1990, p.27.

²⁰⁹ Keohane 1982; Keohane 1984.

Such externalities therefore increase the demand for governance but they may not be sufficient on their own. In some cases, the externality may fall directly on a public actor, negatively affecting its ability to conduct its affairs domestically. In this case, the public actor (say, a ministry) will have a strong interest in pursuing cooperation without any action from societal actors. And, if transaction costs involved in reaching an agreement are sufficient, they may aim to achieve cooperation through an intergovernmental organization. In other cases, however, societal actors must successfully lobby or agitate for a government to take action. This may, of course, require societal actors to resolve collective action problems of their own.²¹⁰ In general, if the benefits from such actions are diffuse, then no one in society will have an interest in shouldering the costs of lobbying or agitating. At the very least, it will then be challenging to make their interests known to public actors. If, by contrast, the benefits are concentrated, then societal actors will have a strong incentive to make their demands felt. Either way, only when societal actors are able to effectively lobby or agitate a public actor will the latter then take up the issue and attempt to craft a cross-border solution. Thus, with respect to demand for governance much depends on the particular features of the issue in question.

But “demand” also has another dimension to it: the kind of demand “process” described above not only encourages states to engage in cross-border cooperation, it also “selects” domestic institutions to lead cooperative efforts on the behalf of a state. States are not unitary entities but are in fact composed of a wide variety of institutions with different kinds of expertise, levels of autonomy and spheres of authority.²¹¹ And, for any given issue, only a few of these institutions are likely to be selected to represent the state in international fora. If, for example, a new

²¹⁰ Olson 1965; Wilson 1982; Tarrow 2011.

²¹¹ Posner 2005.

externality falls primarily on non-state actors, this will lead to societal demands being placed on a specific public actor—usually a public actor that is ostensibly “responsible” for the issue in question. An industry association may, for instance, choose to lobby the US Trade Representative (USTR) to pursue a particular trade agreement, since the USTR’s bailiwick comprises trade issues. If the public actor is responsive to these demands, then it will in turn initiate or “lead” cross-border cooperation and play a critical role in formulating a state’s approach to any subsequent negotiations. Alternatively, an externality may directly affect a particular public actor’s ability to conduct its own domestic affairs, as described above, which will also lead it to call for cross-border cooperation to bolster its capacity. It will do so, in this case, without any need for lobbying by societal actors—but it is “selected” all the same. An exogenous change in technology may, for example, negatively affect a banking regulator’s ability to ensure the stability of its domestic financial system when a banking crisis occurs in another state. It would then attempt to cooperate with homologues abroad to bolster its capacity, and, given its centrality, expertise and first-mover advantage relative to other domestic actors, will typically be granted significant authority over a state’s approach to the negotiations. Of course, responsibility is not always so clearly vested in an institution and others may play a role behind the scenes—after all, delegations will typically involve multiple different actors—but in the final analysis only a small number of institutions will generally take the lead in crafting a state’s position on a particular issue.

Why do we care who leads? The selection process matters because different kinds of actors within the state are likely to have different “baseline” preferences over organizational form. To simplify, I assume that there are two kinds of public actors that can be “selected”: autonomous

agencies run by bureaucrats and more traditional, cabinet-level institutions run by elected officials. I refer to these as “independent agencies” and “political institutions,” respectively.²¹² A political institution is defined here as a governmental entity whose authority is ostensibly derived from “the people,” and either directly elected or directly managed by elected officials. Examples include the UK FCO or the US Departments of State and Commerce, which are cabinet-level bodies that are directly accountable to the Prime Minister and President, respectively, and frequently staffed by elected officials. Independent agencies, by contrast, are defined as governmental entities that “(a) possess and exercise some grant of public authority, separate from that of other institutions, but (b) are neither elected by the people, nor directly managed by elected officials.”²¹³ These include the growing number of “autonomous” regulatory agencies run by unelected bureaucrats who may be appointed by elected officials but serve definite terms in office and are granted significant policymaking independence.²¹⁴ Examples include the US Securities and Exchange Commission, the Bank of England in the UK, or the Canadian Competition Bureau. Both political institutions and independent agencies are public, governmental entities; they differ, primarily, in terms of the degree of autonomy that they

²¹² This distinction parallels that made by Thatcher and Stone Sweet between “majoritarian” and “non-majoritarian” institutions, see Thatcher and Stone Sweet 2003. I have chosen not to adopt this terminology because, while capturing something real and important, it is potentially misleading due to the use of the term “majoritarian,” which has a somewhat different meaning in other contexts. The distinction between independent agencies and political institutions is more intuitive and avoids any confusion.

²¹³ Ibid, p.2.

²¹⁴ It could also include semi-autonomous agencies within PIs. An example of this phenomenon is the National Institute of Standards and Technology (NIST), which is semi-autonomous agency located within the US Department of Commerce. On this phenomenon more generally, see Pollitt et al. 2005. The degree of autonomy that an agency enjoys will often be an empirical matter, and may be de facto or de sure.

possess. While the former are managed by elected politicians and beholden to electoral and special interest politics, the latter are—by design—more insulated from these forces.²¹⁵

The degree of autonomy that an institution possesses is important because there are reasons to believe that this shapes their preferences over the formality of international cooperation, as a number of scholars have noted, and that this is likely to then shape a state's approach to institutional design.²¹⁶ If an independent agency is “selected,” for example, we can reasonably expect it to strongly prefer greater informality. This is because independent regulators highly value the autonomy they already possess and will likely take precautions to limit the extent to which other domestic actors intervene in their affairs.²¹⁷ To the greatest extent possible, they like to maintain strict control over information and their activities and wish to rely upon their own expertise and professional codes for decision-making. Creating and working through a formal organization may therefore be particularly disliked as a means for resolving cross-border issues, when they arise, since this requires a high level of involvement on the part of other actors—legislators, lawyers, diplomats, etc.—who may not share the same professional codes and interests. Above all, they loathe the introduction of “politics” into their affairs, which involvement by a legislature would typically entail. An informal organization, by contrast, does not require extensive ratification procedures, monitoring arrangements and budgetary allocations, as discussed in the previous chapter. Theoretically, this then allows independent

²¹⁵ Of course, these are ideal types; in fact, autonomy is never absolute and there will likely be variation in terms of institutions exposure to the political process across states and within states over time. Much depends on the particular institutional arrangements that prevail at any given point. It is also worth noting that autonomy itself may be formal or informal. A given agency may have a high level of (formal) statutory autonomy, but it is also possible that an agency will have low statutory autonomy but a high level of informal autonomy, see Thatcher 2003.

²¹⁶ Abbott and Snidal 2000; Bach 2010; Singer 2007. Also see Deflam 2002 and Whytock 2005.

²¹⁷ Miller 2000; Singer 2007; Bach 2010.

agencies to both engage in intergovernmental cooperation to reduce externalities they face and maintain a higher level of control over their affairs than would otherwise be possible. An independent agency will, therefore, tend to seek informal cooperation if it can.

Political institutions, by contrast, are more likely to have a baseline preference for formal intergovernmental organizations. There are at least two reasons why this is the case. First, as Anthony Aust has explained, politicians prefer to sign treaties rather than MOU due to their electoral benefits.²¹⁸ When politicians are actively involved in international affairs they may look down upon informal solutions to international problems because they tend to be less visible domestically. Signing a “non-binding” MOU or creating an informal organization is much less prestigious—signaling weakness rather than strength to domestic constituencies—and therefore brings fewer political benefits to politicians, who worry about reelection and their impressions amongst the electorate in ways that unelected bureaucrats do not. Second, politicians (and their constituencies) may worry about policy instability over time and attempt to “lock in” participation in an organization by engaging in more formal cooperation. As in the domestic sphere, politicians may be genuinely worried that those holding their place in the future may not share their policy preferences for intergovernmental cooperation, and they may then prefer greater formality since the more intensive procedures involved and potential for sanctions make it more costly for future politicians to roll-back participation.²¹⁹ Ratification and greater formality, in this instance, is a major benefit. Independent agencies, by contrast, tend to be less

²¹⁸ Aust 2000, p.38. Emphasis added.

²¹⁹ Moravcsik 2000a; Brewster 2004. For the domestic case, see Moe 1995.

worried about locking in participation, since leaders' positions are more secure and those holding their positions in the future are more likely to share the same professional codes.²²⁰

It should be immediately noted, however, that the baseline preferences of political institutions and independent agencies are viewed here as “tendencies,” and not hard “laws.” Often, we in fact see political institutions involved in the creation of informal organizations and independent agencies participating in formal ones. But why is this so? The argument here is that this puzzling behaviour is also deeply influenced by domestic politics. For instance, it may be the case that independent agencies are unable to maintain the level of autonomy they would otherwise prefer because an issue becomes “politicized” or because they have failed to fulfill their domestic mandate somehow. When this occurs other domestic actors may intervene or threaten to intervene in the policymaking process and make it impossible for an independent agency to achieve its initial preference. That is, if issues that are traditionally within the remit of an independent agency come to the attention of legislators or heads of state as a result of domestic distributional conflicts arising from agency policymaking, they may become more deeply involved in leading a state's approach to an issue and take the kinds of ambitious actions that will please their constituencies. Another path to formality may occur if foreign actors interfere in the domestic affairs of an agency, perhaps through the extraterritorial enforcement of their laws, or because another state has chosen to handle an issue at the ministerial level. When this occurs, the policymaking authority of an agency is directly threatened and this may also prompt interventions from other domestic actors that may lead to a different outcome than we would otherwise expect if an independent agency was acting on its own.

²²⁰ Miller 2000.

Similarly, a political institution may pursue informal cooperation under certain circumstances. This may occur, for instance, when a state wishes to cooperate with others to establish an intergovernmental organization, but faces significant domestic constraints that make a formal organization impossible.²²¹ Politicians may prefer formal solutions, but they come at a high price compared to informal ones, largely as a result of their more extensive domestic implications. To make them work, leaders must gain a significant degree of support from other governmental bodies—especially a legislature—and from society in a broad sense. This requirement means that other domestic actors have, *ceteris paribus*, more opportunities to stymie formal cooperation. The form of cooperation will therefore depend to a great extent on a government’s ability to attain the domestic support necessary. One way to think about this is in terms of veto player theory.²²² Establishing a formal organization can be conceptualized as a significant move from the “status quo,” since it generally involves far more domestic changes to attain the associated benefits. It should therefore be easier for a government to pursue formal cooperation when the number of veto players is low. A larger numbers of veto players makes it more difficult for politicians to move away from the status quo. Informal organizations, by contrast, involve fewer changes to the status quo and are less open to various legal and political challenges, and should therefore become more likely under such circumstances. By opting for an informal organization, a politician will be able to satisfy at least some of those demanding cooperation. It is second best,

²²¹ Other possible conjectures may be developed in the future. At present, my theory does not intend to explain all instances where a political institution chooses to create an informal organization. Rather, it develops a hypothesis about one causal pathway. This means that some variation will inevitably go unexplained, but if I am able to improve upon existing theories (i.e. explain more of the variation than they have) then this will nevertheless constitute an important theoretical and empirical advance.

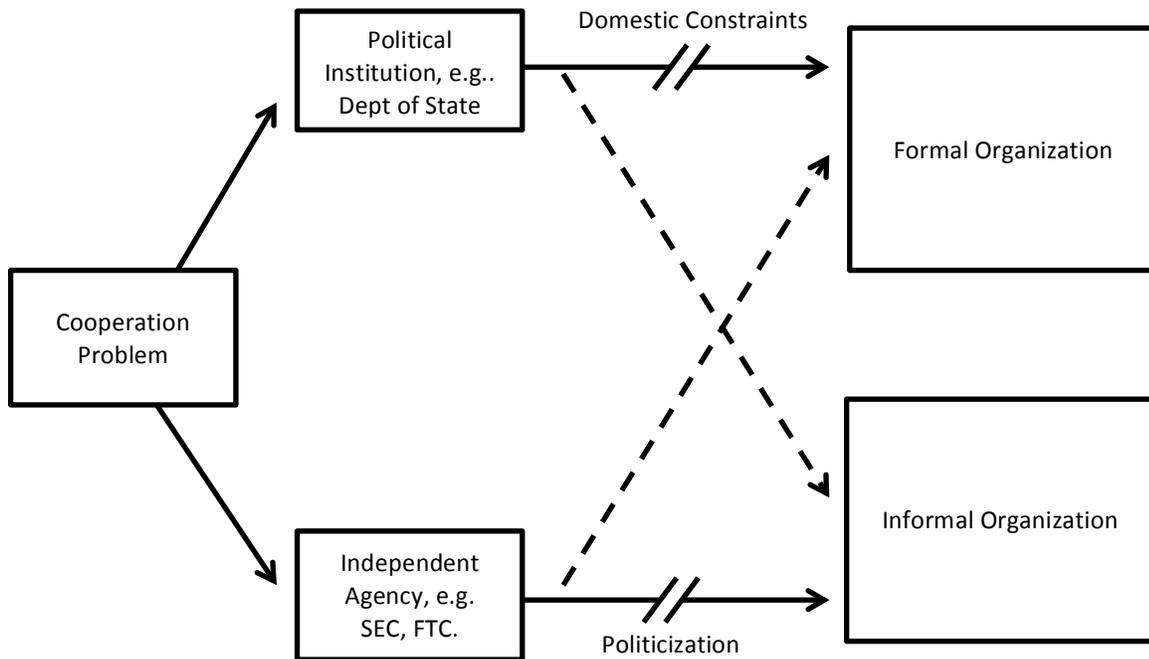
²²² Tsebelis 2002; Jahn 2010.

but better than nothing from their perspective. Further, it is possible that when domestic conditions improve a formal organization may become possible in the future.

In summary, preference formation—the first explanatory step—is a function of demand *and* domestic politics. The process is visualized in Figure 2. Here, demand is essentially the realm of special interest politics: a global problem leads certain societal actors to push for international cooperation. It may also prompt government actors to become directly involved if an externality falls directly upon them, i.e. without lobbying or agitation. Either way, demand creates a need for an organization, but also “selects” domestic actors to lead cooperation. The domestic actors—political institutions and independent agencies—that are selected in this way then have certain baseline preferences over organizational form as a result of their position within a domestic institutional structure. If the actor that is selected has considerable autonomy and is more insulated from electoral politics, then we can expect informal cooperation to be pursued insofar as this is possible, as this allows them to achieve cooperation but maintain autonomy. If an actor has less autonomy and is more beholden to electoral politics, then they are likely to prefer a more formal organizational form, since this is more likely to lock in policy and support their goals of reelection. The solid lines indicate these baseline preferences. However, under certain conditions state preferences are reversed, as shown by the broken lines. If a more autonomous actor is selected, but their work becomes “politicized” by domestic or foreign actors and their autonomy or authority is directly threatened, then others may intervene or play a more prominent role in the negotiations, making formal cooperation a more likely outcome. Likewise, if a political actor is selected, but they simultaneously confront significant domestic constraints that make it difficult

to achieve the kind of domestic “buy in” that is necessary for more formal cooperation, an informal organization becomes more likely.

Figure 2 Model of the Preference Formation Process



3.3.2 Step 2: A Model of State Preference Aggregation

Thus far, the theory I have presented does not explain actual outcomes—whether a formal or informal organization does, in fact, emerge—only state preferences over outcomes. It provides a general model for understanding how domestic politics and institutions can shape state preferences over the legal form of an intergovernmental organization. This preference formation process may play out very differently across states, depending upon the way that domestic institutions have evolved over time, as well as the particular configuration of political actors active within a state at the specific point in time that it seeks to engage in intergovernmental

cooperation. Independent agencies, for example, are an increasingly common feature of states, appearing in a wide range of sectors, but considerable institutional diversity remains within each sector. In some states, responsibility for regulating energy or telecommunications has been delegated to an independent regulatory body, while in others it remains with a political institution, such as a cabinet-level ministry; institutional design at the domestic level—as at the international level—is not simply a function of the problems states seek to solve, but depends upon a range of contextual factors, such as state traditions, institutional structures and political leadership.²²³ Since this is the case, it is reasonable to expect that the same type of political actor will not be leading cooperation within all of the states involved in creating a new organization and therefore states will not necessarily share the same preference over organizational form. Equally, there are a wide variety of political systems and changing constellations of actors within those systems that, taken together, may make it more or less difficult for actors in different states to pursue certain forms of cooperation.²²⁴ Given the different constraints that policymakers face at any one point in time, some may prefer to create a formal organization while others may choose a more informal approach.

As these observations suggest, it is possible that when a group of states seeks to create an intergovernmental organization, their preferences over organizational formality may conflict—often significantly so. It is also possible that states may hold the same preference, but their reasons for doing so may be very different. In order to understand the final outcome that is likely to emerge in a given context we must therefore have some account of how states preferences are likely to “aggregate.” Drawing on bargaining theory and other work in the liberal tradition, I

²²³ Pollit et al. 2001; Thatcher 2003.

²²⁴ Lijphart 1999.

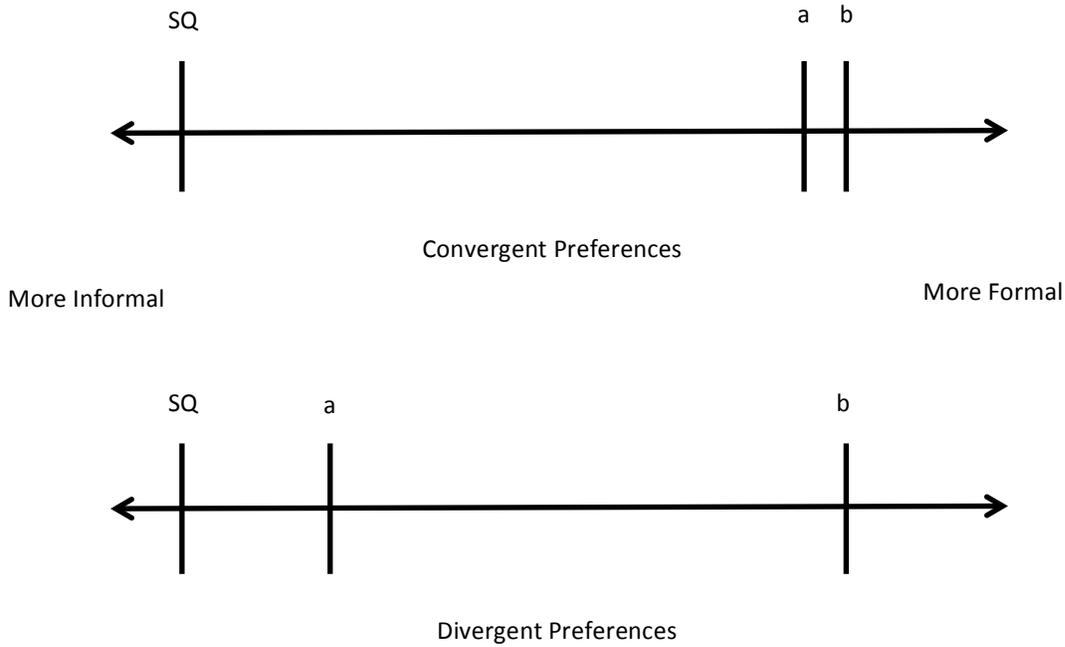
argue that outcomes in the preference aggregation process are likely to depend on two variables: 1) the distribution of preferences, and 2) the distribution of power. The first variable refers to the extent to which preferences are congruent or conflictual. Obviously, if preferences do not conflict then there is little question of which organizational form will be chosen. If states agree that an informal organizational structure is best, then we should expect an informal organization to emerge. However, if state preferences conflict, then in order to understand the actual outcomes that emerge we must explain whose preference is likely to prevail. This is where the second variable—power—comes in. To determine which kind of organization is likely to arise when preferences conflict, we must examine not only who holds what preference but also who has the power to impose their preference on others.

To develop these insights more fully, we can begin to think about the preference aggregation process by first arranging state preferences along a single-dimensional bargaining continuum, as depicted in Figure 3. The particular arrangement tells us about the distribution of preferences in a particular case. In this diagram there are two states, A and B, that have decided to create an organization of some kind and they have each previously formed preferences over the formality of the organization in the prior preference formation stage, as described in the previous section. The continuum represents different institutional designs and ranges from mostly informal to mostly formal. An organizational design on the far left hand side is highly informal and is the option that is closest to the status quo (SQ) in which there is no organization; as we move along the continuum to the right, organizational designs become more and more formal and further

away from the status quo.²²⁵ Both A and B are assumed to behave instrumentally and prefer points along the continuum that are closest to their ideal points, labeled a and b. Once these points are established, the two states then bargain over the design of the organization. Obviously, this model is a simplification. It suggests that states only care about a single issue—an organization’s level of formality or informality—when of course they actually care about many issues, and their bargaining on these issues may affect their bargaining related to the form of an organization. However, in this way, we can visualize the distribution of preferences and develop hypotheses about the kinds of organizations likely to emerge in a relatively straightforward fashion.

²²⁵ One might argue that modeling the bargaining space as a continuum is incongruous with my conceptualization of formality as essentially dichotomous in nature. Further, there are points in the text where I speak of “more formality” or “less formality,” suggesting that organizational form is in fact a continuous variable, which again may seem inconsistent with the exposition thus far. There is some truth in this, since legal obligation is indeed largely dichotomous, see Raustiala 2005. It might, therefore, make sense to model the bargaining scenario as a “battle of the sexes” game where states agree on a set of two Pareto-improving outcomes but disagree over which outcome is preferable. The result would, I argue, be essentially the same. However, thinking about formality as a continuous variable might also not be as problematic as it appears at first. Others have, for instance, argued that legalization is, in fact, a matter of degree, since it involves other dimensions than legal obligation, such as precision and delegation, see Abbott et al. 2000. Moreover, to some extent, my conceptualization of organizational form has a “delegation” dimension, since the extent of institutionalization among both formal and informal organizations may vary, as discussed in the last chapter. Some informal organizations, for instance, involve some delegation (as with APEC) while virtual organizations involve very little (as with the G20). Precision may also be relevant as well, although it is not discussed in detail here. Nevertheless, since this is the case, it may make sense to think about the bargaining scenario as a continuum within the conceptual and theoretical framework of this study, even if legal obligation is itself dichotomous and given analytical priority here.

Figure 3 Visualizing the Distribution of State Preferences



The diagram in the upper half of Figure 3 depicts a scenario in which states A and B have “convergent” preferences. They are convergent in the sense that both ideal points are relatively close together. This means that although there may still be some scope for bargaining over the particular design that will be chosen (since they are not perfectly aligned) the two states generally agree on the level formality that they desire. The particular end of the continuum that the two ideal points converge on indicates the kind of organization that we should expect to arise. In this case, two ideal points are both on the far right hand side of the figure, which tells us that both states prefer a more formal intergovernmental organization and that we should expect the final outcome to reflect their shared preference. The diagram in the lower half of Figure 3 depicts a more complicated scenario in which states A and B have “divergent” preferences. They are divergent in the sense that, while both may agree upon the need for an intergovernmental organization of some kind and therefore want to move away from the status quo, they disagree

over the form of the organization—how far they wish to move away from the status quo. The scope of their disagreement is signaled by fact that the two ideal points are much further apart than in the previous scenario. When this is the case, it is more difficult to say what form it is likely to take.²²⁶ Will the final design be more towards the informal end of the continuum, as preferred by A, or will it be on the formal end, as preferred by B? Unfortunately, in this case, the distribution of preferences alone does not tell us much about the final outcome we can expect. To do so, we must look towards another variable: the distribution of power.

Power is a challenging term to define precisely, particularly because it can take such a wide variety of forms.²²⁷ But, at its most basic level, it can fruitfully be conceptualized as an ability to impose one's will on another. It exists when one actor, say, A, is able to get another, B, to do what it would not otherwise prefer to do.²²⁸ As such, it is an inherently relational concept. It is not simply a property of A that allows it to impose its will on B as it sees fit, but is derived from a particular kind of relationship that exists between the two, as well as the resources at their disposal. Much depends on the specific issue in question (A may have power over B with respect to *j* but not *k*) and the particular point in time that an actor attempts to influence another (A may have power over B with respect to *j* at time *t* but not *t+1*). These observations tell us something about what power is. But in order to develop a theory of power that can be used for our purposes it is necessary to be more specific about the precise sources of power that states are able to

²²⁶ In fact, it is even possible that no organization emerges in this instance because the scope of disagreement is so wide. See Tsebelis 2002.

²²⁷ Barnett and Duvall 2005; Lukes 2005; Baldwin 2016. It is often cited as an example of an “essentially contested concept,” Gallie 1955.

²²⁸ Dahl 1957.

leverage in order to get what they want in a particular scenario.²²⁹ Towards this end, it is possible to gain insights into the relevant kinds of power that states can utilize by drawing on findings from general theories of bargaining.²³⁰ Specifically, in line with these theories, I argue that there are two relevant sources of power that states may exert: first, power may be derived simply from the structure of the bargaining scenario, which can in some cases give an advantage to a particular actor; second power may come from sources “outside” the game and make it possible for actors to reshape the very structure of the bargaining scenario itself. I discuss each source of power in what follows.

First, consider the kind of power that can be exerted “within” a bargaining game. Models developed by John Nash and Ariel Rubinstein, as well as others that have built upon their work, tell us that when actors bargain over the distribution of additional benefits to be derived from some agreement, the final outcome often depends on the quality of actors’ outside options.²³¹ An easy way to think about outside options is in terms of each state’s “best alternative to a negotiated agreement,” or BATNA.²³² States with better BATNAs than others are, by definition, more comfortable with the prevailing situation than their negotiating partners. Their preference is, in other words, closer to the status quo. When this is the case, it is argued, this gives them significant bargaining power. The reason being that, when an actor has a better BATNA, they can more credibly threaten to veto an agreement if they do not get their way. Actors that have comparably worse alternatives to no agreement are, by contrast, less able to credibly threaten to veto a deal, and correspondingly more willing to make compromises to ensure that an

²²⁹ Ibid.; Baldwin 2016.

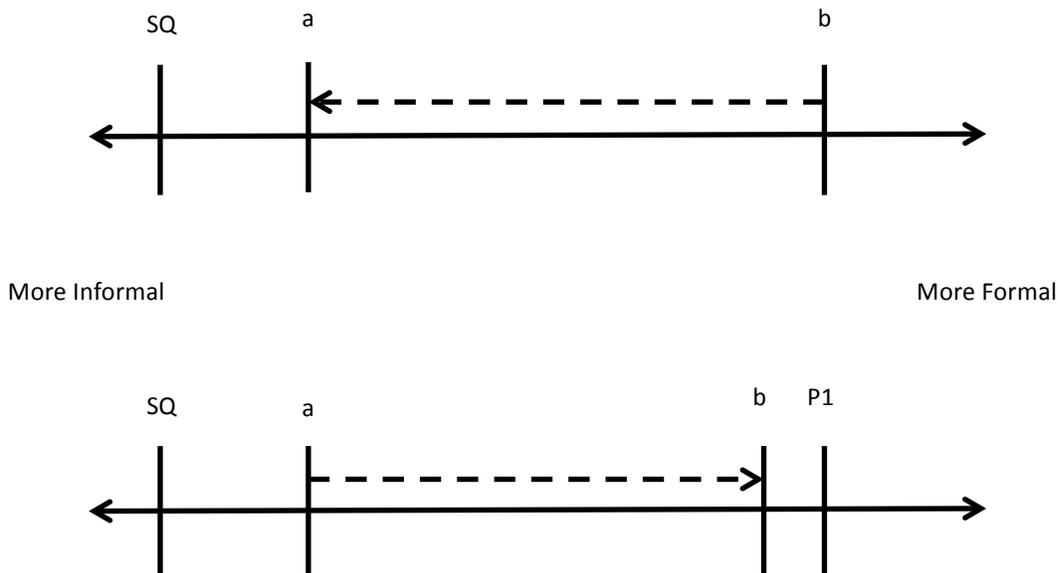
²³⁰ Muthoo 1999. Also see Dixit and Skeath 2004.

²³¹ Nash 1950; Rubinstein 1982; Muthoo 1999.

²³² This is the term coined by the Harvard Negotiation Project.

agreement—any agreement—succeeds. The basic hypothesis is, therefore, that if an actor’s preference is closer to the status quo then they will have greater ability to determine the final bargaining outcome. To illustrate, a scenario of this kind is depicted in the top panel of Figure 4. There, the ideal point of state A is much closer to SQ, which means that in comparison with state B it is relatively more comfortable with things as they are. It wants to move away from the status quo, but only so far—and much less so than B. This should, *if B is unable to take any further actions*, give A a bargaining advantage, since A is more capable of threatening to hold out and potentially even scuttle any agreement that is not close to its ideal point. As a result, B is more likely to defer to a point closer to state A’s ideal point, a, since it prefers a to SQ. In this instance, then, we should expect the outcome of their bargaining to be an organization with a more informal design.

Figure 4 Bargaining Scenarios With Divergent Preferences



Note that the above observations suggest that states preferring an informal design should have an inherent bargaining advantage over those that prefer a more formal one. This is because an informal organizational design is, by its very nature, much closer to the status quo, which means that a state preferring an informal design can more credibly “veto” moves towards greater formality. However, this implication only follows if others are unable to take actions that can affect the structure of the bargaining game. This may not be the case, particularly if the actors have other sources of power at their disposal than the structure of the bargaining game itself—a situation that is likely to occur quite frequently in the real world. This is where the second source of power comes in. A second proposition from bargaining theory related to the one above is that, if a party can take actions that have the effect of changing another’s outside option, or BATNA, then they are generally able to fare better in negotiations. One way to achieve this is to threaten to take unilateral actions that would have the effect of removing the status quo ante as an option—shaping the choice set of their bargaining partner.²³³ Such actions may include threats to use sanctions, threats shut off market access, side payments or a state’s ability to “go it alone” with others, each of which are likely to depend on factors that are extraneous to the bargaining scenario itself.²³⁴ An economically larger or more militarily powerful state, for instance, may be able to leverage another’s dependence on its market or resources to get what it wants, even if the other’s preference is closer to the status quo ante, by threatening to close off access. If so, this enables the larger state to effectively undermine the favorable position that their bargaining partner would otherwise have had, and thereby reduce the credibility of their threats to veto a deal. This kind of scenario is depicted in the bottom panel of Figure 4. There, state B has made a

²³³ Hirschman 1980; Lax and Sebenius 1985; Richards 1999; Gruber 2000; Newman and Posner 2011.

²³⁴ Martin 1994; Gruber 2000; Kim 2010.

threat—say, threatening to shut off access to a market that state B is dependent on²³⁵—that has the potential to shift the status quo ante, SQ, to a new point (P1) that is much closer to its preference. Since P1 is closer to its ideal point, b, the threat is credible. And, by doing this, B leaves A with a choice between b and P1. Since A prefers b to P1, this makes it much more likely that it will defer to B's ideal point. Here, this means that a more formal organization is expected to emerge, in line with B's preference.

In sum, my theory of preference aggregation hypothesizes that the final outcome (i.e. whether a formal or informal organization does in fact emerge) depends on two variables: the distribution of preferences and the distribution of power. When preferences converge, then the outcome is expected to reflect the common preference of all relevant states. By contrast, when preferences diverge, the distribution of preferences on its own tells us little about the type of organization that will emerge. Instead, power becomes an important variable in this context, and is derived from outside options, or BATNAs, and actors' abilities to affect others' outside options through actions that have the effect of shaping the choice set and creating a new bargaining structure altogether. If one state or a group of states has power over others, then the final outcome is predicted to reflect their preference.

3.4 Conclusion

In this chapter, I have focused on providing an answer to the question at the heart of this study: why are some intergovernmental organizations formal and others informal? I began with a detailed overview of functionalist theories, which are the prevailing approach to explaining

²³⁵ Hirschman 1980; Newman and Posner 2011.

organizational form. Such theories argue that states “design” international institutions in a rational manner by attempting to “match” institutional designs with the particular cooperation problems that they face. They wager that we should therefore see a systematic relationship between particular designs and the types of cooperation problems states face. However, I have shown that this is not always a good bet—at least when it comes to organizational form—as we find puzzling variation across organizations operating in similar issue areas and across different regions within the same issue area. Further, I have argued that functionalist theories leave out a number of important variables that have been found to be important by a large number of other scholars, and which may be particularly relevant for explaining choices about organizational form: domestic politics, distributional conflict and power. By incorporating these, I wager, we might be able to explain away some of the empirical puzzles that plague purely functionalist approaches.

The approach to doing so that I have advanced is couched in the liberal tradition of IR. This approach begins by explicitly theorizing the way that states form preferences over outcomes and then modeling how these preferences aggregate to produce the actual outcomes we see in the world. In the first of these steps, a rise in demand compels states to engage in intergovernmental cooperation but also “selects” specific bodies within those states to “lead” efforts to achieve this. Different bodies may be “selected,” which are differentiated by their positions within a domestic institutional structure. Each may care about solving the underlying problem they face and want to design appropriate mechanisms, but they are also conscious of the domestic implications of their design choices. Given that different institutional designs have different effects for these actors, they are each likely to have different baseline preferences over organizational form.

When selected, they would therefore prefer organizations in line with these preferences, all else being equal. But all else is not always equal: under certain conditions, these actors may not be able to achieve their first preferences and will therefore pursue different institutional designs. The second step then takes these state preferences over organizational form as given and explains how they aggregate to produce the final outcomes we see. Drawing on insights from bargaining theory, I have argued that the final institutional designs that we see are determined by two variables: the distribution of preferences and the distribution power. In some cases, the distribution of preferences alone can tell us the kind of organization to expect; in others, we must take into account not only the preferences of actors but also their relative capacities to impose their preferences on others.

The objective of the subsequent chapters is to provide more formal tests of each of these theories. However, before doing so, it is helpful to state some of my theory's scope conditions, since these shape the kinds of the cases we choose to examine to test it. Two are especially important. First, the theory is not expected to apply across all time periods but should hold primarily for the period after the end of the Second World War. This is because it is only during this period that a set of practices—both international and domestic—crystallized that could define precisely what it meant to be a “formal” intergovernmental agreement or organization. Prior to this time, the practices associated with international treaty-making and intergovernmental organizations were inchoate and ill-defined.²³⁶ It was only in 1969 in fact that the Vienna Convention on the Law of Treaties was concluded and finally settled to some degree what would count as an international treaty and what would not. And, while river

²³⁶ Denmark and Hoffmann 2008.

commissions and administrative unions appeared with increased frequency in the nineteenth century, the precise legal nature of these organizations only started to be seriously resolved in the interwar period.²³⁷ Given that the concept of informality can only have meaning once the corresponding practices defining “formality” have been established, it makes sense to limit the use of the two concepts to periods wherein their “borders” are clear. While it is impossible for us to specify a precise date when this occurred, it seems plausible to say that most of the relevant practices were more or less settled by the start of the post-war period and that as we move further back in time from this point, the scope conditions for the theory will quickly be exceeded.²³⁸

Secondly, the theory is not expected to hold for all states but will primarily be applicable to relatively well-governed democracies. The rationale for this scope condition is that the model of domestic politics assumes that political actors are accountable to an electorate and that institutions delegated a degree of formal autonomy are in fact able to hold preferences that are indeed independent from others. If political actors are not accountable to an electorate in some sense, then it is unlikely that the arguments made about the baseline preferences of political institutions will hold—or, at least, may not hold in quite the way depicted above, suggesting that some modification of the theory is likely to be needed. Dictators do not need to be seen to please domestic constituencies in quite the same way and they are not concerned about policy instability, since their positions are secure as long as they hold power. Further, if political actors cannot in any significant sense be constrained by other veto players within a state, then my

²³⁷ Bederman 1996; Slaughter 1993; Klabbers 2001b; Klabbers 2009.

²³⁸ For some empirical justification for this dating, it is also worthwhile to recall that, according to Aust, the practice of concluding informal international agreements “appears to have started in a small way after the Second World War, three being concluded in the 1950s in connection with the Treaty of Peace with Italy,” see Aust 2000, p.20-21.

hypothesis about the effects of constraints on preferences for organizational form will not be relevant. Likewise, in authoritarian states, or poorly governed democracies, it is also unlikely that formally autonomous bodies are actually able to hold independent preferences from other political actors, since the laws establishing their autonomy may be poorly enforced. In many developing states, for instance, where authoritarian regimes are generally more common, formally autonomous central banks are not generally able exercise this autonomy because relevant laws are routinely violated.²³⁹ When this is the case, the arguments made above about the baseline preferences of independent agencies will not hold. As we move beyond the set of relatively well-governed democracies, therefore, the model that I have elaborated will be less and less applicable, and we will likely need to develop new approaches to explaining the behaviour of these states.

²³⁹ Indeed, many of the effects that scholars and policymakers expect to be associated with formal central bank independence, such as low inflation, do not generally hold in developing states, which they generally attribute to poor enforcement of the laws protecting their autonomy. See the review of the literature in Eijffinger and Haan 1996. For a related discussion focusing on differences in the independence of competition agencies across developing and industrialized countries, see Jenny 2012.

Chapter 4. Analyzing the Determinants of Organizational Form

4.1 Introduction

In the previous chapter, I discussed two approaches to explaining the form of an intergovernmental organization. The first, most common type of explanation is functionalist in nature. It hypothesizes that states design organizations in view of the underlying cooperation problems that they collectively confront when trying to solve some issue. States should be expected to create informal organizations when the specific kind of problem that they face makes doing so advantageous. However, I have argued that *prima facie* such theories do not appear to perform well and that functionalists' neglect of domestic politics, distributional conflict and power might be at the root of this problem. The second type—my own—seeks to provide a different account that explicitly incorporates these factors into a theory of organizational form. This theory is rooted in the liberal tradition of IR and points to how the domestic impacts of different design choices shape state preferences over different kinds of cooperation and how these preferences are, in turn, translated into final organizational outcomes through a process of interstate bargaining. But what evidence is there to support this account? Thus far, I have only shown that there are some reasons to doubt the empirical validity of functionalist theories; I have yet to demonstrate that my own explanation fares any better.

In this chapter, my objective is to undertake an initial test of the liberal theory through a quantitative analysis of a sample of intergovernmental organizations drawn from the IGO Database presented in Chapter 2. This approach is particularly useful because it allows us to determine whether the kinds of factors that the liberal theory hypothesizes to be important do

indeed seem to influence the form of an organization across a large number of cases. In this way, it helps us to increase our confidence in the generalizability of any findings. But it does more than this: quantitative analysis can also help us to deal with alternative explanations (such as those offered by functionalists), as well as endogeneity and selection problems that may bias our causal inferences. Towards this end, I begin by discussing how I have chosen the sample of intergovernmental organizations that I intend to use. I then provide an overview of the two main independent variables that I have constructed in order to test the liberal hypotheses articulated in Chapter 3. This is followed by the statistical analysis, which begins by presenting simple differences in means and bivariate relationships and becomes increasingly complex as alternative explanations are tested. Finally, I undertake a number of robustness tests and attempt to address potential selection and endogeneity problems. Overall, the results of this analysis provide strong support for the liberal theory that I advance in this study, suggesting that domestic politics and power play a powerful role in determining the form of an organization.

4.2 Defining a Sample of Intergovernmental Organizations

In order to undertake a statistical analysis of the determinants of organizational form, it is first necessary to select a set of formal and informal intergovernmental organizations that can serve as our dependent variable.²⁴⁰ One approach to doing so would be to randomly sample a set of intergovernmental organizations from the IGO dataset, meaning that every organization in the dataset would have an equal probability of entering the sample. This would appear to be well

²⁴⁰ Selecting a sample rather than using the whole dataset is essential for two reasons: first, because coding the entire dataset is effectively impossible, given data constraints and the lack of information about many organizations, especially those that are now defunct; and, second, because, as discussed at the end of the chapter and further below, the theory is not expected to apply to the entire population of cases. It is therefore essential that we use only a subset of the overall sample.

justified methodologically, helping to ensure that the sample and any causal inferences drawn from it are representative of the overall population of intergovernmental organizations. However, there are good reasons to think that this is not the population of interest for this study. As noted at the end of the last chapter, the liberal theory is not expected to apply to all intergovernmental organizations; there are a number of important scope conditions that are likely to limit its usefulness. Specifically, the theory is not expected to extend far back in time to a period in which international legal practices were not well defined—when the distinction between formal and informal was not especially meaningful. It is also not expected to cover organizations where non-democratic states have played a significant design role. In these places, many of the conditions required for the theory to operate—such as the potential for actors to veto policies and genuinely autonomous bureaucracies—may not hold. Given this, sampling randomly from the entire population of intergovernmental organizations would lead us to include a variety of organizations that the theory is not intended to apply to, and this could cause any causal inferences to be biased since the unit homogeneity assumption would be violated.²⁴¹

In order to avoid this problem, I have opted for a non-random sampling methodology that involves identifying a set of organizations that the theory should be expected to apply to without modification—though in future, as noted in the Conclusion to this chapter, it will be important to extend the theory and empirics beyond this limit. This does not mean choosing observations where the theory should “work” by selecting on specific values of the independent and/or dependent variables; instead, it means identifying a set of organizations that lie within the scope conditions that must theoretically hold for it to operate as predicted. In particular, I choose

²⁴¹King, Keohane, and Verba 1994.

organizations that meet two main criteria. First, I select only those organizations that were created after 1950. This is done in order to ensure that the “temporal” scope condition holds. At this point in time it seems clear that there is a genuine distinction between formal and informal international cooperation, and therefore the condition would be met. Second, I select organizations that have been created almost exclusively by industrialized and broadly democratic states.²⁴² Thus, we can be relatively sure that the “geographic” scope condition is met as well, since actors within these states will generally have the capacity to resist policies they do not like and agencies granted a degree of policymaking independence will indeed be able to act autonomously. Of course, by selecting organizations in this way the sample is clearly not “representative” of the broader population of intergovernmental organizations and this limits our ability to generalize beyond this set of cases. Yet this method should, at least, constitute a set of “crucial” cases where the theory must work, if it is to work anywhere, and should help to explain why *these* states in particular chose formal and informal designs.²⁴³

Using this methodology, 107 intergovernmental organizations were identified as candidates for the sample. I then applied several additional, more practical criteria for inclusion in the final set. Specifically, I limited the dataset to organizations that had: a) an entry in the *Yearbook of International Organizations*, which contains descriptions and information on of a wide variety of international organizations (both governmental and non-governmental), and b) suitable

²⁴² To generate a specific group of states, I began with the set of original OECD states, which have largely been well-off democracies since 1950, and added several others, such as Australia and New Zealand, which also undoubtedly meet the criterion. The 25 state selected in this way are: Austria, Australia Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, New Zealand, Norway, the Netherlands, Portugal, Spain, Sweden, Switzerland, Turkey, the UK, the US. In order to increase the sample size, I also allowed organizations to include Yugoslavia, a non-democratic state, as a founding member.

²⁴³ Seawright and Gerring 2008.

information on the bodies that were involved in creating the organization (as described further below). Each of these was deemed essential to ensuring the comparability of the organizations in the sample, and especially for coding the independent variables in a consistent and replicable manner. After applying this second set of criteria, I settled on a sample of 90 intergovernmental organizations.²⁴⁴ Of these, 53 are formal (coded 0 in the sample dataset), having been constituted by an international treaty, while 37 are informal (coded 1 in the sample dataset), constituted without recourse to a legally binding agreement.²⁴⁵ Some are relatively well known organizations, such as the European Organization for Nuclear Research (CERN), the ECB, and the Organization for Economic Cooperation and Development (OECD), but most are lesser-known bodies, such as the European Company for the Financing of Railway Equipment (EUROFIMA), the Group for Aeronautical Research and Development in Europe (GARTEUR), and the ICCR.²⁴⁶ There is, therefore, no bias towards organizations that are subjectively deemed “important,” or which have already received attention from scholars.

As shown in Figure 5, within the sample the total number of intergovernmental organizations has steadily increased since the early 1950s.²⁴⁷ However, as we find in the broader population of

²⁴⁴ This constitutes about 12 percent of all the organizations in the broader IGO dataset (N=753) and 20 percent of all the organizations created since 1950 (N=461). Organizations that appeared to meet the first two criteria but that failed to meet one or more of the second set were: the Independent European Programme Group (informal), the European Cooperation in Space Standardization (informal), the Consultative Committee for Space Data Systems (informal), the Board of Nordic Development Projects (formal), the Guidance Committee for Road Safety in the Nordic Countries (formal), and the Joint Nordic Organization for Lappish Culture and Reindeer Husbandry (formal), among others. A full list is on file.

²⁴⁵ See below for the comparison with the IGO dataset, and Table 10 in Appendix 2 for full descriptive statistics.

²⁴⁶ See Table 9 in Appendix 1 for the list of 90 organizations in the sample.

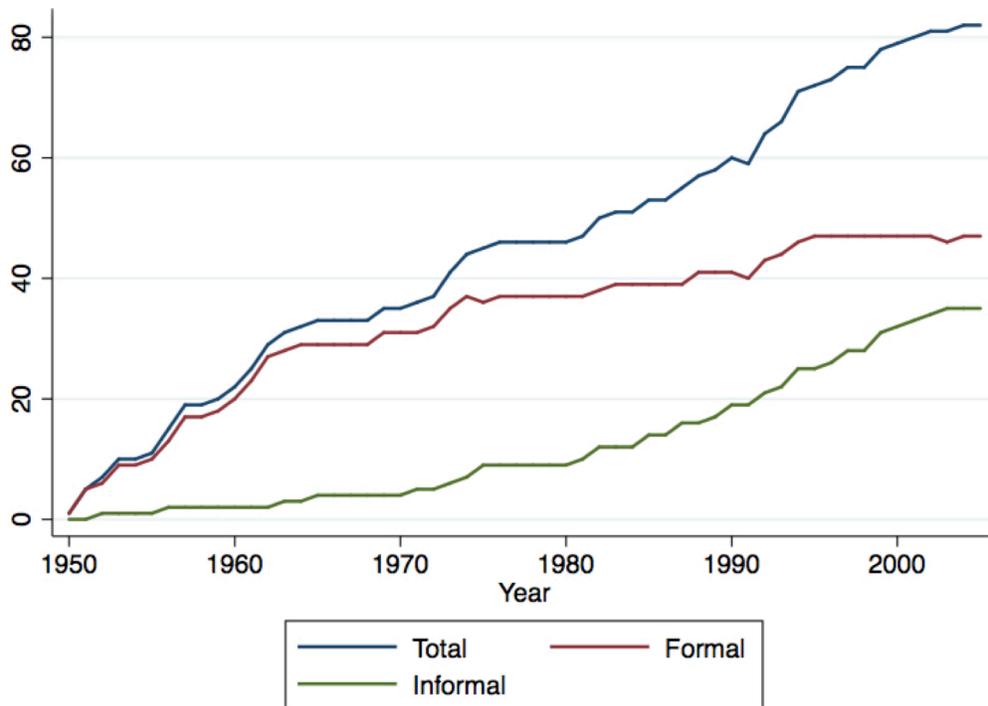
²⁴⁷ It is important to note that one cannot directly compare Figure 5 with Figure 1 in Chapter 2. The reason for this is that in Figure 5, there are no organizations created prior to 1950 by the

intergovernmental organizations, this trend masks significant variation in terms of the *kinds* of organizations that have been created. In the initial period after 1950, formal organizations tended to dominate. By 1960, after a period of rapid growth, over 20 had appeared. By contrast, only 2 informal organizations had emerged by this time. Then, by the mid to late 1960s, something changed. After this point, the total number of formal organizations plateaued as the rate of creation decreased; from 1975 to 2005 the number of formal organizations only rose by 10.²⁴⁸ But, crucially, this did not appear to be because these states needed to cooperate with one another less or because the organizations in existence were regarded as sufficient; they continued to create intergovernmental organizations at roughly the same pace. Instead, the type of organization that they tended to create shifted. Over the same period, the number of informal organizations increased significantly, rising from 10 in 1975 to 35 in 2005—nearly a four-fold increase. By 2005, informal organizations comprised roughly 43 per cent of all the intergovernmental organizations in the sample (and currently still operating), while formal organization comprised a larger—but not much larger—share of 57 per cent.

relevant states. In order to facilitate comparison, we must therefore adjust the broader dataset to remove all of the organizations created prior to this date. When we do so, the overall trend in the IGO dataset is very similar to that shown in Figure 5, see Figures 15 and 16 in Appendix 2. See also the comparative descriptive statistics mentioned below.

²⁴⁸ It should be noted that this number overlooks the fact that 6 formal organizations in the sample ceased to exist during this period. These are the Paris Commission and the Oslo Commission, which were merged into the Ospar Commission in the 1990s; the European Space Launcher Development Organization (ELDO) and the European Space Research Organization (ESRO), which were absorbed by the European Space Agency (ESA) in 1975; the European Coal and Steel Community (ECSC), which was finally absorbed by the EU in 2002; and the European Company for the Processing of Irradiated Fuels (EUROCHEMIC), which ceased operations in 1990.

Figure 5 Temporal Patterns in the Sample of Intergovernmental Organizations



While we may have doubts about the “representativeness” of the sample from a statistical perspective, it is encouraging that the pattern in the sample clearly resembles the one that we find in the broader population of IGOs. In both, we see the same consistent rise in the total number of intergovernmental organizations that states have created, as well as the clear shift in terms of the type of organizations that have been established over time. Further, as noted above, the actual share of each kind of organization within the sample is relatively similar to what we find in broader IGO Dataset. There, among all the organizations created since 1950 (and still active in 2005), for instance, formal organizations constitute roughly 62 percent of all organizations and informal organizations constitute 38 percent of the total—compared, respectively, to 57 percent

and 43 percent in the sample, as mentioned above.²⁴⁹ Informal organizations are somewhat over-represented in the sample, but the difference is quite small. We should therefore be fairly confident that the sample captures, at the very least, an important part of the overall story that we have witnessed over the past 50-60 years, broadly showing the same temporal pattern that we find in the IGO Dataset as a whole despite the sample's narrower geographic scope.

4.3 Explanatory Variables

Having constructed a sample for analysis, the next step involves developing measures of key underlying concepts that can be used to test the observable implications of the liberal theory presented in the last chapter. Developing new measures is essential due to the fact that no existing datasets can easily be employed to test the theoretical propositions of either theory. This is mainly because most available quantitative data is constructed for country-year analyses. I have therefore had to construct new variables for this purpose, either by collecting original data or by employing existing data in new ways. Each of the next two subsections explains how this was done in considerable detail. Doing so is important because we must be confident that the explanatory variables do in fact measure what we want them to—in other words, we want to ensure that the variables have high “construct validity.”²⁵⁰ In the following subsections, I therefore explain the basic concept or concepts that I intend to measure, the primary data that I use, and the variable construction procedures that I have relied upon. A more technical discussion of the variable construction procedures is also included in the footnotes of each subsection to supplement the more intuitive explanation where useful.

²⁴⁹ Full descriptive statistics comparing the sample with the post-1950 trend in the IGO Dataset can be found in Table 10 in Appendix 2.

²⁵⁰ Adcock and Collier 2001.

4.3.1 Measuring Institutional Autonomy

The first explanatory variable (*Autonomy*) that I construct is an aggregate measure of the extent to which autonomous actors are leading efforts to create an intergovernmental organization across most states, or within a few particularly powerful states. As noted in the last chapter, if the domestic actors leading international cooperation are more autonomous—that is, if they are independent agencies—then they are predicted to have a preference for greater informality, while less-autonomous political institutions should have a preference for formality. This means that the probability that an informal organization will emerge in a given context should be higher if autonomous actors are generally more prevalent across most of the states involved in creating an organization, since the preferences of states should be congruent. If, by contrast, political institutions are predominant, then we should expect a more formal organization to emerge. Of course, it is also important to take into account the distribution of state power, as well, when we attempt to gauge whether the kinds of actors leading cooperation has an effect on the actual organizational outcomes we see. This is because preferences may frequently diverge. In many cases, therefore, what may really matter is whether the actors leading cooperative efforts *in the most powerful states* involved in creating an intergovernmental organization are more autonomous, since this can make a major difference to the final outcome we should expect to observe. If they are, then we should expect an informal organization to arise; if not, then a formal organization should be a more likely outcome.

Constructing a variable that can capture these predictions is challenging. Ideally, what we need is an indicator that takes a high value if independent agencies are leading cooperation in most states, or if they prevail in the most powerful states involved in creating an organization, and a

lower value as political institutions take a leadership role in cooperative efforts across most states, or within a few particularly powerful states. This can be achieved, I argue, by examining the composition of the state delegations that created each of the 90 organizations in the sample. Looking at delegations is useful because it seems to be a reasonable measure of the domestic actors “leading” cooperation on the behalf of states in an issue area, and because it is possible to obtain fairly comparable records of the individual participants involved, including their names and official titles.²⁵¹ This allows us to “link” each member of a delegation to a specific governmental body whose degree of institutional autonomy can be estimated. By then assessing the distribution of these different individuals within and across delegations and the likelihood of each delegation being able to influence the final outcome through a measure of state power, we can arrive at a single value that has the properties we desire. This involves four steps that I discuss in more detail.

First, we want to know the leading bodies negotiating on the behalf of a state. This can be done, as noted, by first identifying or developing a list of all the individuals involved in negotiating an agreement to create an organization. Such lists can be obtained either through the websites of organizations, through published historical research, or through direct information requests from secretariats, which often keep records of this information. If this proves impossible, it is also feasible to approximate such a document by examining a participant list from an assembly of

²⁵¹ Of course, it is possible that actors may be “leading,” or in some other way influencing, foreign policy but not actually represented on a delegation, leading to some error in our measure. This is, unfortunately, impossible to correct at this level, and suggests that we should interpret results with a degree of caution. However, it may be possible to attain a more fine-grained measure of the actors leading cooperation in a specific instance in the case studies of individual organizations undertaken in the subsequent two chapters. To the extent that this is the case, the case studies can therefore help to increase our confidence in the measure used in this chapter.

state representatives to an organization that occurs shortly after an organization started. These documents are very similar in nature, and the state representatives often closely resemble those that were involved in creating the organization in the first place. Either way, these lists of participants can then be used to “link” each member of a delegation to a specific governmental body. This is usually easy to do since such participant lists frequently record the official titles of each state representative. For instance, the list of participants that attended the diplomatic conference that established the International Union for the Protection of New Varieties of Plants (UPOV) in 1961 tells us that the French delegation was composed of five members: three from the Ministry of Agriculture and two from the Ministry of Foreign Affairs; the comparable delegation from the Federal Republic of Germany contained six individuals: two from the Foreign Office and four from the Ministry of Food, Agriculture and Forestry. Sometimes information is missing, which makes things more difficult. If official titles are not included, we can then attempt to identify the position held by the person at the time through other sources, or, if this proves impossible, we can make an assumption about the body they are linked to.²⁵² Nevertheless, by repeating this process for each delegation involved in creating every intergovernmental organization in the sample we can develop a complete record of the bodies “leading” cooperation in the relevant states.

After linking delegation members to particular government bodies, the second step involves estimating the autonomy of these bodies and the extent to which they dominate a state delegation (and, by assumption, decision-making more generally). To achieve this, I make use of the

²⁵² When this occurred, I have assumed that the body they are from is the “modal” government body on the particular delegation. Thus, if most individuals are linked with a Ministry of Foreign Affairs, I have assumed that the “unlinked” individual is also from this body.

database and coding procedure developed by Jordana et al., which has been used in a number of studies to measure the “independence” of regulatory agencies and closely corresponds to the notion of a independent agency developed in the previous chapter.²⁵³ In their database, a government body is coded 1 if it meets their criteria of independence and 0 otherwise. Here, if the body that a delegation member is associated with can be found in their database or meets their criteria of independence, I assign that delegation member a score of 1, indicating that they are from an independent agency; if not, then I assign the individual a score of -1, indicating that they are from a “non-autonomous” political institution. By doing this for all members of a delegation and averaging these values it is then possible to obtain an overall estimate of the degree to which a delegation is “dominated” by independent agencies that ranges from 1 to -1.²⁵⁴ A very high score (approaching 1) implies that a delegation is primarily composed of actors from independent agencies and is expected to have a “strong” overall state preference for informality. As a delegation’s score decreases, this indicates greater “politicization,” fewer actors from autonomous bodies, and, presumably, a “weaker” preference for informality. A score below 0 implies that actors from political institutions now dominate the delegation and that a formal organization is expected to be preferred to an informal one. A very low score (approaching -1) implies that the delegation is primarily composed of actors from political institutions and is

²⁵³ Jordana, Levi-Faur, and i Marin 2011. Also, see Levi-Faur 2005. Note that I drop their third criterion that requires a body to be engaged in “regulation;” the critical factor here is the degree of formal independence that a body possesses within a state, not what it does per se.

²⁵⁴ Of course, this way of measuring dominance (by the number of individuals on a delegation) has limitations. In particular, it neglects the fact that some delegations members may be more important than others. For instance, the preference of the head of a delegation may matter more, and a minister may matter more than the junior civil servant. This is not taken into account. In some cases, a delegation “head” is clearly identified in a participant list. But this practice is not consistent and it is unclear who should be deemed more important and what weights we would assign. I have, therefore, opted to weight the preferences of each delegation members equally, assuming that numbers imply power.

expected to have “strong” preference for a more formal organization, if the liberal theory is correct.

To illustrate how this coding procedure works, consider a fairly typical example: the UK’s delegation involved in negotiating the treaty constituting EUROCHEMIC in 1957. This delegation was composed of six individuals: three from the Foreign Office (FO) and three from the UK Atomic Energy Authority (UKAEA). The FO, according to Jordana et al.’s coding rules, cannot be regarded as “independent”—the Foreign Secretary is a cabinet level position and an elected politician typically holds the office. The three individuals from the FO are therefore each assigned values of -1, associating each of them with a political institution. The UKAEA, on the other hand, meets their criteria of independence: it was constituted by the Atomic Energy Authority Act of 1954, which grants the body its own institutional identity, budget, and organizational structure, as well as a range of powers that are separate from those possessed by other departments.²⁵⁵ Thus, the three individuals from the UKAEA are each assigned values of 1, associating them with a independent agency. By averaging across this group of six individuals, we are then able to estimate the degree to which they are dominant: 0.²⁵⁶ This value suggests that that the delegation is expected to have neither a strong preference for an informal organization, nor a strong preference for a formal organization; it is somewhere in between, since neither political institutions nor independent agencies fully dominate. Next, consider the delegation representing the Federal Republic of Germany. It includes four members from the Ministry of Justice, three from the Foreign Office, two from the Ministry of Atomic Affairs, one from the

²⁵⁵ United Kingdom 1954.

²⁵⁶ $(1+1+1-1-1-1)/6 = 0/6 = 0$

Ministry of Finance and one from the Ministry of Interior.²⁵⁷ All hail from “non-independent” political institutions and are therefore assigned values of -1. The overall score for the delegation as a whole is therefore also -1.²⁵⁸ This tells us that political institutions are dominant and should lead us to expect this delegation to have a “strong” preference for a more formal organization.

In this way, it is possible to estimate the degree to which every delegation involved in creating each of the intergovernmental organizations in the sample is dominated by individuals hailing from independent agencies—a proxy for the kind of institutions “leading” cooperation, and an estimate of the preference that a delegation is theoretically expected to have over different organizational forms. If we sum up these numbers, we can then get an estimate of the overall distribution of preferences across this group. A positive value would imply that autonomous actors are generally leading cooperative efforts across the states involved; a middle range value (say, close to 0) would imply either greater politicization across most states or preference divergence; a negative value, by contrast, would imply that political institutions are predominant. However, as noted above and in the last chapter, the distribution of preferences alone cannot always tell us which kind of outcome to expect. After all, as the liberal theory implies, even if a state has a strong preference for a particular organizational form, this preference is unlikely to matter much in the final analysis if others with different preferences can overpower it. The third step is then to integrate an estimate of the power of each state to influence the final outcome of the negotiations. In order to do so, I weight each delegation’s score by its state’s Gross Domestic

²⁵⁷ Interestingly, there are also two members from private corporations on the German delegation: Farbwerke Hoechst and Bayer. Here, and elsewhere, I have opted to disregard such individuals in these calculations.

²⁵⁸ $-11/11 = -1$

Product (GDP) in the year that an organization was created.²⁵⁹ This is a reasonable measure of power for our purposes because states with larger economies are more likely to be able to leverage their markets in order to achieve outcomes that they prefer, either through coercion or side-payments, or by “going it alone” with others.²⁶⁰ Larger economies are, for instance, less likely to be dependent on the markets of smaller ones, while smaller economies will be more dependent on larger markets. This should, then, enable larger states to more credibly threaten to close off access to their market if they do not get what they want. Likewise, larger economies may have more capacity to make concessions to smaller states in order to buy them off by, for instance, providing a much-needed loan or grant, or a policy concession in another area of importance to the smaller state. Finally, states with larger markets may simply be less dependent on cooperation with smaller states in order to supply an adequate level of governance, since the latter may only have a small impact on a problem. Larger states can, therefore, move forward with a “coalition of the willing” and threaten to leave out smaller dissenters. Of course, GDP is not an unassailable measure in all instances, as the sources of power may vary in different issue areas, but it does at least capture an important dimension of the concept of power developed in the last chapter.²⁶¹

²⁵⁹ The GDP data that I use comes from Gleditsch 2002. In fact, I weight preferences by each state’s *relative share* of the “founding” group’s total GDP in the year that an organization is established rather than each state’s raw GDP. This is necessary in order to ensure that the weights are comparable across time.

²⁶⁰ Martin 1994; Gruber 2000; Drezner 2007; Kim 2010.

²⁶¹ Perhaps most importantly, this operationalization does not adequately capture the “within game” notion of power discussed in the last chapter. Doing so was, unfortunately, too difficult to accomplish here. This means that we lose some of the subtlety of the theory of preference aggregation developed in the last chapter. However, predictions about the role that this form of power can play in determining what kind of organization will tend to emerge are tested in the qualitative studies undertaken later on in Chapters 5 and 6.

Finally, once states' preference scores have been weighted by GDP, the summed values for each observation provide us with an estimate of the extent to which autonomous actors are leading cooperation across the states involved in establishing an organization (i.e. the distribution of preferences), while taking into account the fact that the preferences of the most powerful states involved may matter more.²⁶² As with each individual delegation, these estimates range from 1 to -1. A high value (approaching 1) indicates that either the main domestic actors “leading” cooperative efforts are generally more autonomous bodies, or that autonomous actors prevail within the most powerful state or group of states involved in creating an intergovernmental organization. Such a value should lead us to expect this kind of configuration of states to create an informal organization. A mid-range value (around 0) indicates greater preference divergence, or that across most states or within a particularly powerful state the bodies leading cooperation are more “politicized”—there is, in other words, a mix of political institutions and independent agencies. Finally, a very low value (approaching -1) indicates either that political institutions are

²⁶² Mathematically, the formula used to calculate each value of *Autonomy* for each of the intergovernmental organization in the sample is:

$$\sum_{j=1}^n \frac{i_{j1} + i_{j2} + i_{j3} \dots i_{jt}}{t} * \frac{g_{jf}}{\sum_{j=1}^n g_{jf}}$$

Where n is the total number of states involved in creating an organization, i_j is a delegate from country j (and either equals 1 if the delegate hails from a independent agency or -1 otherwise), t is the total number of delegates from country j , and g_{jf} is country j 's GDP in the year that the organization is created. The year that an organization is “created” or “established” is taken to be the year that the agreement constituting the organization is first opened for signature. This may or may not be different from the dates of “establishment” in the COW-IGO and “IGO” Datasets, which record the year that an organization started operations. Using this year rather than the year before or an average of the years before is not problematic since there are rarely significant “jumps” in GDP levels from year to year. At any one point in time, the relative economic size of a state is quite stable.

generally leading cooperative efforts, or that they are playing a leading role within the most powerful state or group of states involved in creating an intergovernmental organization. All else being equal, such as value should lead us to expect the states involved to create a formal organization.

Figure 6 *Autonomy Distribution*

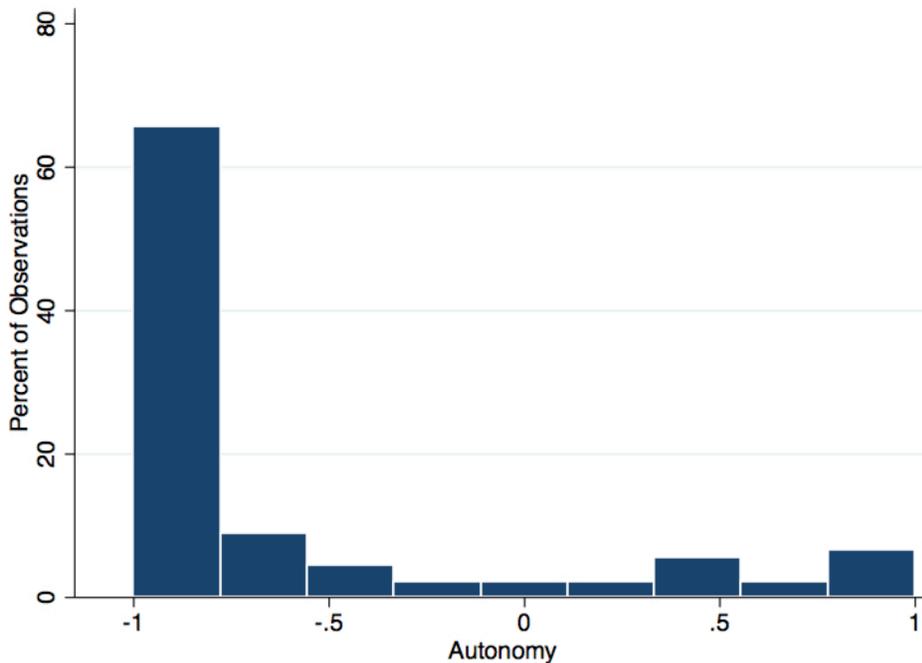


Figure 6 offers an initial peek at the data on the autonomy of the domestic institutions leading cooperation in the states involved in creating each of the intergovernmental organizations in the sample. It shows that in fully 65 percent of the cases political institutions are dominant and there is little to no involvement by more autonomous actors. This corresponds with much of what we know about international politics, which is an arena where political actors have closely guarded their ability to control cross-border interactions due to the high stakes issues that are involved.

Only rarely, it seems, has foreign policy been left up to more independent actors. In roughly 20 percent of the cases in the dataset independent agencies appear to have participated in some way in delegations otherwise dominated by political institutions, i.e. those with a score less than 0, but this most likely reflects a desire on the part of political actors for expertise on highly technical issues. Their role has been ancillary. Interestingly, it appears that independent agencies have “dominated” the delegations (or the most important delegations, in some instances) in only around 15 percent of the cases. However, these kinds of state configurations are the ones that the liberal theory predicts have a much higher probability of producing an informal organization. If this does not prove to be the case, there will be little reason to probe the theory any further.

4.3.2 Measuring Domestic Constraints

The second explanatory variable that I construct (*Constraints*) is intended to measure the impact of the domestic political constraints that policymakers face when they attempt to create intergovernmental organizations. As discussed in the last chapter, an informal organization may come about when policymakers face significant domestic constraints that make it difficult to pursue the kind of formal cooperation they would otherwise prefer. Formal agreements, such as treaties, are always difficult to conclude, since they offer more opportunities for other actors to thwart cooperation, if they wish to do so, by resisting ratification, financing or threatening to closely monitor and control the body. This means that an actor’s ability to pursue a more formal arrangement is likely to be significantly affected by the level of opposition they face. More opposition means it is more difficult; less means it is easier. But, if an actor does face a high level of opposition, rather than accepting that cooperation is impossible, or “taking on” these opposing interests directly, policymakers may instead opt for a more informal variety of

cooperation that is more difficult to constrain. As opposition rises, we should therefore see growing reliance on informality. Again, this is subject to the qualification that the distribution of preferences and state power should matter a great deal. Indeed, we should expect an informal organization to be especially likely if policymakers in most of the relevant states involved in creating an organization face significant constraints, or if policymakers in a few particularly powerful states face significant constraints.

Constructing a variable that can convincingly test this prediction is also challenging. What we need is an indicator that takes a high value if there are significant domestic constraints within most states involved in creating an organization, or within a few particularly powerful states, and a low value if domestic constraints are minimal across most states, or within a few very powerful ones. One way to accomplish this is by making use of pre-existing data on veto players. The concept of a veto player has been developed most prominently in the work of Tsebelis and refers to an actor “whose agreement is required for a change in the status quo.”²⁶³ The basic theory behind veto player analysis is that different political institutions offer more or less opportunities—or “veto points”—for political actors to stymie a shift in policy. The more veto points there are, generally, the more difficult it is for an “agenda setter” to move policy away from some initial “status quo” point. But the theory also points out that the preferences of the actors occupying each veto point matter as well. If the preferences of the actors occupying two veto points are closer together, then it should generally be easier to shift policy away from the initial status quo than it would otherwise have been, and vice versa. This theory obviously closely corresponds to the notion of domestic constraints that the liberal theory is concerned

²⁶³ Tsebelis 2002, p.17.

with. Indeed, in the last chapter I framed the argument about domestic constraints in just this way. The efforts that have been made to measure the number of veto players across countries and time therefore offer a convincing estimate of the level of opposition a policymaker will face.

In order to construct *Constraints* I have used the comprehensive and widely used POLCON index developed by Henisz.²⁶⁴ This dataset estimates the number of veto players across three branches of government (executive, lower house and upper house), most closely corresponds to the concept of domestic constraints as developed in the previous chapter, and is the most comprehensive in terms of countries and years covered. However, turning this into a variable that we can use requires several additional steps. First, I begin by finding the average level of political constraints within each of the 25 countries used to generate the sample. In some cases, I have used all the years for which there are data in order to calculate this average. This was done if there was no evidence of a major regime change after which the “equilibrium” level of political constraints changes quite dramatically. In others, I have used only part of the data. This was done if there was evidence of a major regime change after which the “typical” level of political constraints “jumps” to what appears to be a new equilibrium. Thus, for instance, I use the entire 200+ year period for which there is data for the US, since there is no evidence of a major change in the equilibrium level of political constraints during this time.²⁶⁵ In Germany, by

²⁶⁴ Henisz 2002. Specifically, I use his POLCONIII measure. I chose not to use the alternative POLCONV measure because it is less comprehensive and includes units that seemed inappropriate in the field of foreign affairs, since the measure expands up the first by including sub-federal governmental units and the judiciary. For further information on this dataset and how it differs from other attempts to measure veto points and veto players, see Jahn 2010.

²⁶⁵ In the 1800s, the average value is .37 with a standard deviation of .07; the average value from 1900-2012 is .39 with a standard deviation of .02. Throughout the entire period for which there is data, the average is .38 (with standard deviation .05). This is the value that I use as the US average.

contrast, the equilibrium level changes quite dramatically throughout the period from 1871 (when data begins) to 1945, but is relatively stable thereafter.²⁶⁶ For Germany, therefore, I take the average for the period from 1945 to 2012 (the most recent year for which there is data).

Next, using the date on which the agreement constituting an organization was first opened for signature, I then record the level of domestic constraints that policymakers could have expected to face at the time that they would have had to “ratify” an agreement, if it was a treaty.²⁶⁷ This is done for all the states that were involved in negotiating a constitutive agreement. By finding the difference between this value and the average level of political constraints in each of these countries, we are then able to estimate the domestic constraints that actors faced at the time that the agreement was concluded. A positive value implies that the opposition that could have been expected at the time was higher than usual for that particular state, thereby making it more difficult to pursue a formal constitutive agreement; a lower value, by contrast, implies that the level of opposition that could have been expected was lower than usual for a particular state.²⁶⁸

²⁶⁶ From 1871 to 1945 the average is .17 with a standard deviation of .18; from 1945 to 2012 the average is .42 with a standard deviation of .03. I use the latter value (.42) as the average for Germany.

²⁶⁷ Using this date assumes that as soon as an agreement is open for signature (if it is a treaty), the effort to attain ratification begins. Given that the average time to actual ratification of treaties is relatively short (typically 1-2 years), this appears to be a reasonable assumption. See, for instance, Haftel and Thompson 2013; Kelley and Pevehouse 2015b. In some cases, however, I have chosen to use the level of domestic constraints in the year after an agreement was concluded. This was done whenever the agreement was signed in November or December, since it is highly unlikely that a treaty would ever be ratified in these months.

²⁶⁸ It is worth emphasizing that the estimates do not tell us a great deal about the typical *level* of constraints that states face—they simply tell us whether constraints are above or below average for a state in question. Indeed, a drawback of this measure arises from the fact that if two states have average constraints of, say, 3 and 4 and values of 4 and 5, respectively, in the year that an organization is created, both are recorded as having above average constraints. But this, of course, overlooks the fact that the second state already has a *higher* average level of constraints than the first. However, there is little reason to be too concerned about this. First, in practice, the

If the value is higher, the prediction is that the actors leading cooperation are more likely to prefer informality; if the value is lower, then the actors leading cooperation are more likely to pursue a more formal organization. By making this move, of course, I rely on the assumption that the actors aiming to establish an organization are able to anticipate the level of opposition that they are likely to face when an agreement is ostensibly opened for signature (and ratification) and are able design the organization and, in particular, its constitutive agreement, accordingly.²⁶⁹

As with *Autonomy* I then weight each of these values by each country's GDP at the time of signature in order take into account the fact that the final outcome is expected to be a product of both the distribution of preference *and* state power. By finding the sum of these values across all the delegations involved in creating each organization we are then able to arrive at an overall estimate of the domestic constraints that policymakers within each group of states could expect

variation in the average level of constraints is relatively low: the mean average level of constraints across all the states in the sample is .42 with mean deviation of .05. Second, the biggest outliers are relatively small countries, such as Switzerland and Finland, which are unlikely to influence outcomes a great deal. Third, any effect here should ultimately lead us to *underestimate* the domestic constraints states face. This should, if anything, make it more difficult to find an effect. Note, as well, that the within-country variation can be quite significant over time and is, on average, higher than the cross-country variation. For full descriptive statistics on the domestic constraints within each of the 25 countries, see Table 11 in Appendix 2.

²⁶⁹ This aligns with the “rational anticipation” hypothesis proposed of Haftel and Thompson (2013), who in turn follow the work of Putnam (1988), Downs, Rocke, and Barsoom (1996) and Fearon (1998). The argument—which has received considerable empirical support—is that actors make adjustments in the treaty negotiation phase in anticipation of the constraints they are likely to face in the subsequent implementation or “ratification” phase.

to face at the time that each of the intergovernmental organizations in the sample was created.²⁷⁰ In order to facilitate comprehension and comparability with *Autonomy*, I have rescaled these values to range between -1 and 1. A high value (approaching 1) implies that there is a higher than average level of domestic constraints across most of the countries involved in creating an organization, or within a few particularly powerful states. According to the liberal theory, any of these configurations of states should have higher probability of producing an informal organization. A value of 0 implies that there is an average level of domestic political constraints across most of the states involved, or within a particularly powerful state, or that there are significantly different levels of constraints. Finally, a value of -1 indicates that within most states or within a few powerful states, there is an especially low level of domestic constraints. Such configurations should have the lowest probability of producing an informal organization, since it should be easy to achieve the kind of domestic consensus needed for a more formal organization, or a powerful state may simply exert pressure on others to conform.

²⁷⁰ Mathematically, the formula used to generate each value of *Constraints* is:

$$\sum_{j=1}^n (v_{jf} - v_{ja}) * \frac{g_{jf}}{\sum_{j=1}^n g_{jf}}$$

Where n is the total number of states involved in creating an organization, v_{jf} is the level of domestic constraints prevailing in country j at the time of founding, v_{ja} is the average level of domestic constraints in country j , and g_{jf} is j 's GDP at the time of founding.

Figure 7 Constraints Distribution

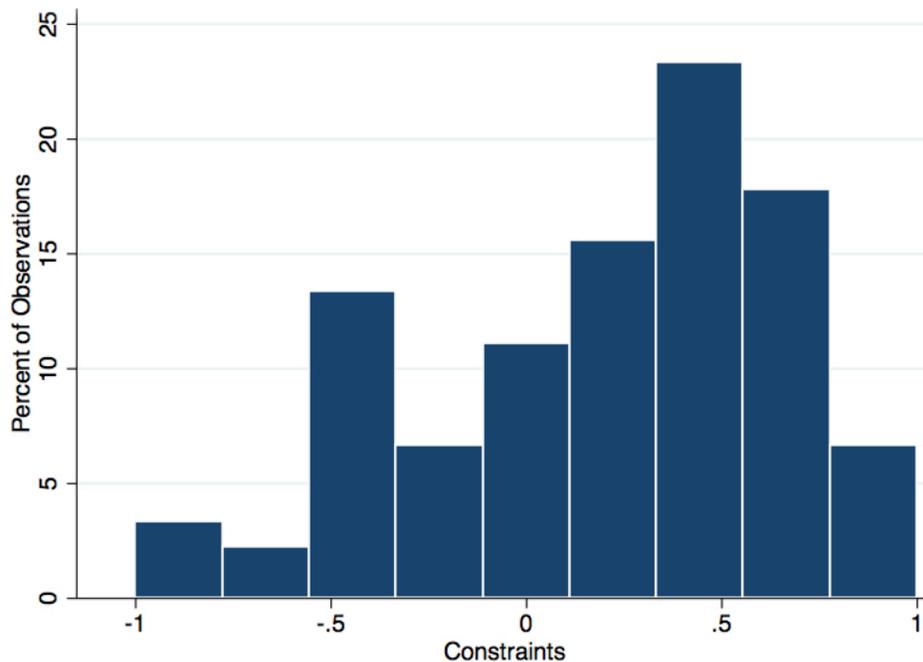


Figure 7 offers an initial peek at the data on domestic constraints. It shows, interestingly, that in the vast majority of cases the domestic constraints that important policymakers have faced are above average. Indeed, in nearly half (47 percent) the levels of domestic constraints range from .5 to 1, or “medium high” to “high.” In all of these, it should generally be more difficult to conclude a formal agreement constituting an intergovernmental organization, and therefore there should be a higher likelihood of informality. In a further 25 percent of the cases, the domestic constraints range from 0 to .5, or average to medium-high. In these, the opposition that can be expected is still quite high, but somewhat less so. Thus, the probability of an informal intergovernmental organization arising from such a configuration of states should be lower in these cases. Finally, in the remaining cases, the levels of domestic constraints are below average. Although these are relatively fewer by comparison, the probability of an organization being more

formal in nature should be higher. If these predictions turn out to be wrong, then, again, we should have little reason to believe the liberal theory is right.

4.4 Quantitative Analysis

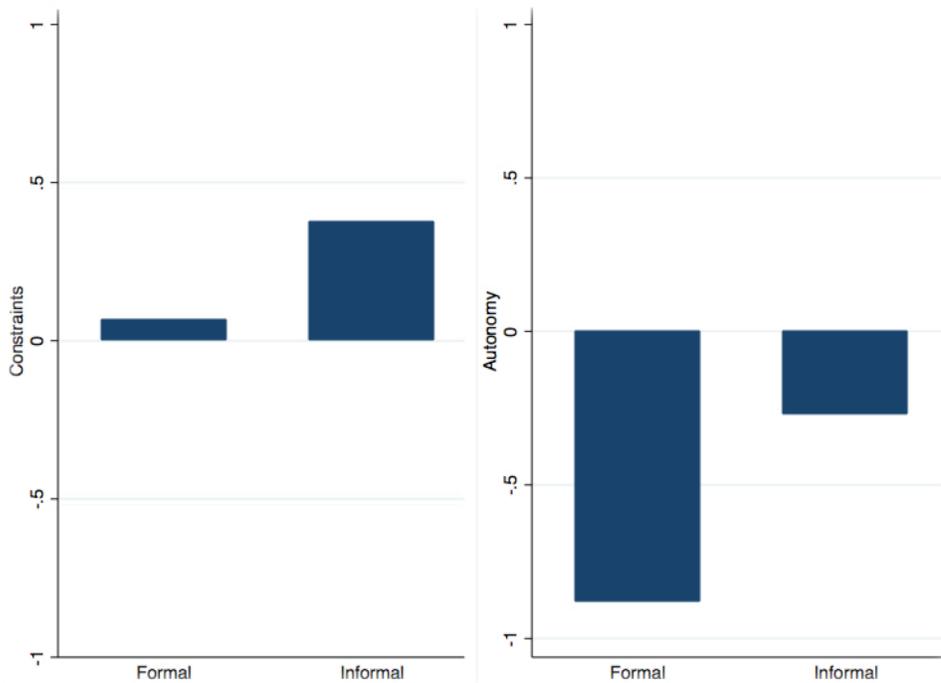
Thus far, I have presented how I have operationalized the drivers of decision-making related to the form of an intergovernmental organization that stem from the liberal theory developed in the last chapter. In this section, the goal is to use the two variables that I have constructed to test the validity of the theoretical arguments by determining whether they do indeed appear to be causally related to informality. To do so, I begin by presenting statistical averages and correlations and progressively complicate the analysis by taking into account alternative explanations. In the final section, I then attempt to address the possibility of selection and endogeneity problems that may bias any estimate of their impact.

4.4.1 Simple Analyses of the Data

One way to probe the face validity of the liberal theory is to examine differences in means, or averages. Figure 8, for instance, shows the average values of *Constraints* and *Autonomy* across the sample of formal and informal organizations. The chart on the left hand side shows that, on average, formal organizations are associated with lower levels of domestic constraints. Specifically, the average level of domestic constraints across all formal organizations is around .07. By contrast, the average level of domestic constraints across informal organizations is around .35. Informal organizations are, therefore, associated with much higher levels of domestic constraints, which is consistent with the liberal theory. The difference (.28) is large and statistically significant at conventional levels. The chart on the right hand side then shows the

difference in means for *Autonomy*. It demonstrates that when the actors leading cooperation are less autonomous, this is strongly associated with greater formality. Specifically, when we look at the set of formal organizations the average level of autonomy is around -.85—a very low level. However, when we look at informal organizations, the average level of autonomy possessed by the actors leading negotiations is higher—around -.29. Again, the difference (.56) is both large and statistically significant. Overall, then, the figure shows that we see the kind of variation that we would expect if the liberal theory were correct.

Figure 8 Differences in Means



To probe the data further, we can then employ simple statistical models to examine basic bivariate and multivariate relationships. Since the dependent variable is dichotomous (taking either a value of 0 if an organization is formal or 1 if an organization is informal), I employ a

probit model to measure the effects of *Autonomy* and *Constraints* on the level of formality.²⁷¹ The results, estimated by maximum likelihood, are shown in Table 4. Models 1 and 2 estimate the bivariate relationships between *Autonomy* and *Constraints* and the dependent variable, respectively, and show that there is a positive and statistically significant effect in both cases. Together, these two models indicate that as the level of autonomy or constraints rises among relevant states involved in the creation of an intergovernmental organization, the probability that the organization will be informal increases. Model 3 then shows that both variables continue to be significant predictors of informality when included in the same statistical model. Both, again, appear to have positive and statistically significant effects on an organization's level of informality. As a basic robustness check, model 4 then replicates this analysis but estimates the results via linear Ordinary Least Squares (OLS) regression. Again, the two variables maintain their (positive) signs and levels of statistical significance.

Table 4 Simple Bivariate and Multivariate Regressions

VARIABLES	(1)	(2)	(3)	(4)
Autonomy	1.214*** (0.302)		1.141*** (0.319)	0.351*** (0.0628)
Constraints		1.010*** (0.328)	0.863** (0.346)	0.253*** (0.0899)
Constant	0.573** (0.264)	-0.454*** (0.159)	0.334 (0.285)	0.584*** (0.0548)
Observations	90	90	90	90

Robust standard errors in parentheses, *** p<0.01, ** p<0.05

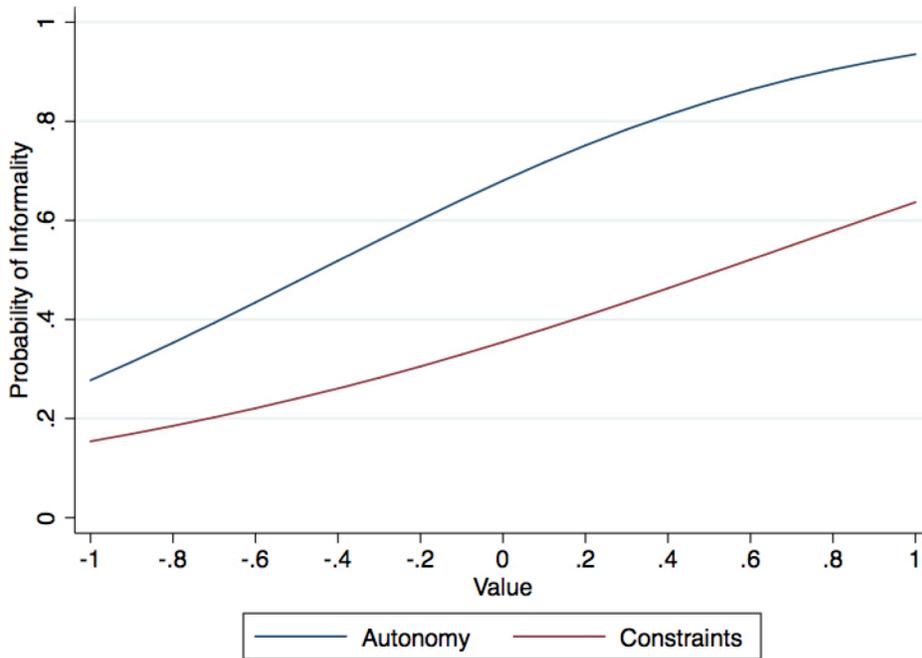
²⁷¹ Estimating the results using a logit model makes no different to the findings presented here.

So far, this analysis bears out the basic predictions of the liberal theory. But, we might also ask: do these variables appear to have a *large* effect on the outcome? If not, then the results would be interesting, but not especially important or meaningful. However, their effects do appear to be large. This can be seen in Figure 9, which uses the results from Model 3 in Table 4 to estimate the marginal effects of both *Autonomy* and *Constraints* on an organization's level of formality.²⁷² Along the x-axis are the different values that the two variables can take, which both range from -1 to 1. The y-axis measures the probability that an organization is informal and ranges from 0 to 1. The blue and red lines then show how the probability of an organization being informal changes at different levels of *Autonomy* and *Constraints*.²⁷³ Both show that their impact is quite large. The blue line tells us, for instance, that at the lowest level of *Autonomy* (-1), the probability that an organization will be informal is quite small—around 30 percent. However, as *Autonomy* increases, the probability that an organization will be informal quickly grows. When *Autonomy* takes a value of 0, the probability that an organization will be informal is greater than 60 percent; and, as it increases to 1, there is nearly a 90 percent chance that an organization will be informal. Similarly, the red line shows that when relevant domestic constraints are at their lowest point (-1), the chance that an organization will be informal is very low—around 15 percent. At 0, the probability rises to over 35 percent. And, finally, when domestic constraints are at their highest, the probability that an organization will be informal is around 65 percent.

²⁷² Specifically, I estimate the marginal effects at the means. This measures the effect of a discrete change in a variable of interest, while holding all others at their means. This means, for instance, that when we estimate the effect of an instantaneous change in the level of domestic constraints on the formality of an organization, the other variable in the model—in this case, *Autonomy*—is held at its mean. Here, the average value for *Autonomy* is -.63, implying (in keeping with the liberal theory, which assumes that domestic constraints are most relevant for political actors) that those leading cooperation are presumed to be mostly non-autonomous (political) institutions.

²⁷³ Each marginal effect estimate is statistically significant at the 95 percent confidence level.

Figure 9 Marginal Effects on the Probability of Informality



4.4.2 Accounting for Alternative Explanations

The quantitative evidence presented thus far suggests that there is, at the very least, a significant correlation between levels of autonomy and constraints and the informality of an intergovernmental organization. However, as the last chapter demonstrated, these are not the only factors that may theoretically drive choices about the formality of an organization. Most prominently, as discussed in the previous chapter, rational design theories suggest that states create organizations that “match” the particular “situation structure” they confront. They bet that we should see different institutional designs correlate with specific dimensions of the cooperation problems they confront. The argument of this study is that these are, at best, not the only drivers of informality. But there is no *a priori* reason to think that such explanations are

unable to explain at least part of the variation that we see. It is therefore important to test the extent to which these factors play a role. Further, if they turn out to be the main drivers of informality—meaning that *Autonomy* and *Constraints* lose their substantive and statistical significance once these variables are taken into account—then we would have strong reasons to doubt that the liberal theory is correct. If the liberal theory is right, however, *Autonomy* and *Constraints* should continue to be significant predictors of informality even after we control for these other variables in a multivariate analysis.

In order to take the impact of the “situation structure” into account, we must first operationalize a number of additional variables that measure the theoretically relevant dimensions of the cooperation problems states confront. To do so, I develop measures for each of the different “rational design” hypotheses set out in the first section of the last chapter. In each case, I do my best to faithfully replicate the coding procedures used in relevant rational design studies. Thus, for instance, in order to develop a measure of *Uncertainty* in an issue area I employ a coding procedure used by Koremenos.²⁷⁴ In her study “Contracting Around International Uncertainty” she codes uncertainty as a dichotomous variable (taking a value of 1 if there is a high level of uncertainty, and 0 otherwise). Uncertainty is conceptualized as being present in an issue area whenever there is high potential for adverse changes in the distribution of costs and benefits in the future. This is, in turn, a function of the kind of issues states are dealing with. Thus, for instance, monetary issues, trade, mutual security, environmental pollution, and some finance issues are coded as “high uncertainty,” while agreements dealing with human rights, prohibition, and those concerning species protection are coded as being “low uncertainty” issue areas. Here, I

²⁷⁴ Koremenos 2005.

replicate this coding for each of the organizations in the dataset, relying upon constitutive agreements, descriptions in the *Yearbook of International Organizations*, as well as organization's websites. Of course, some intergovernmental organizations deal with multiple issues. I therefore code an organization according to the highest uncertainty issue it deals with. The EU, for instance, deals with a variety of low uncertainty problems, but also high uncertainty ones, such as monetary, trade, environmental and security issues. I therefore code it as "high uncertainty."

Occasionally, however, a suitable coding procedure did not exist and had to be created from scratch. This was the case with *Agility*. Functionalists, as described in the last chapter, argue that an intergovernmental organization is more likely to be informal if the issue it deals with requires a "speedy" response. Hardt, for example, has argued that greater informality is useful to intergovernmental organizations when they need to respond swiftly to humanitarian emergencies, and Eeilstrup-Sangiovanni has argued that it is important when states need to respond quickly to imminent threats.²⁷⁵ Here, I conceptualize such issues as those that are "time-sensitive"—meaning that failure to act quickly would lead to significant losses of property or life. In part, this comes down to whether an organization focuses on "reacting" to major problems or events. An organization designed to detect and respond to epidemics, terrorist attacks or financial crises should, for instance, place an emphasis on speedy decision-making and implementation. By contrast, other issues may call for slower decision-making: setting product standards or engaging in research, for instance. For these kinds of tasks, there is low chance of significant loss of life or property and haste might actually lead to more problems than a failure

²⁷⁵ Eeilstrup-Sangiovanni 2009; Hardt 2014.

to act. Based on this thinking, I have created a variable that takes three values: -1, 0, +1. An organization is coded +1 if it focuses on “reacting” or “responding” to problems that may entail large losses of life or property. Any organization designed to respond to “emergencies,” “disasters,” “epidemics,” “crises,” or “conflicts” are categorized as dealing with issues that require speed. If the organization is primarily engaged in regulatory standard setting or research, by contrast, it is coded -1—indicating that the organization may emphasize slower, more meticulous decision-making. All others are coded 0, indicating that they are engaged in activities that are not particularly time-sensitive in either sense.

The third variable that I code for, *Confidentiality*, measures the level of secrecy that an issue calls for. Functionalists have argued that when states wish to keep their activities hidden from view an informal design offers important advantages. We would, then, expect to see greater informality when this is the case. Alternatively, where states wish to make their activities especially transparent, they may opt for a more formal design. To create this variable, I build upon insights from the work of Tallberg et al.²⁷⁶ Their study of the “opening up” of intergovernmental organizations, argues that states adopt a variety of designs that may grant different degrees of “access” to transnational actors. Some tasks require considerable discretion, and therefore access is not desired; others benefit considerably from the input or actions of transnational actors. Following their work, I argue that organizations requiring a high level of discretion or secrecy are those dealing with security or monetary issues; those that are more open generally deal with complex issues or those which require considerable local implementation. I therefore construct a variable that takes three values: -1, 0, +1. If an organization deals with

²⁷⁶ Tallberg et al. 2014.

security or monetary issues, it is coded 1, indicating that it will benefit from a high level of confidentiality. This is done if the organization's description in the *Yearbook of International Organizations* contains the words: "military," "police," "defense," "crime," "terrorism," "justice," "weapon," "threat," or "currency," "monetary," "capital," or "exchange rate," "inflation," or variants of those terms. By contrast, if an organization has regional offices, or if the description contains the words "complexity," "science," "scientist," "laboratory," "invention," "observatory," "studies," "technology," "methodological," or "academic," it is coded -1, indicating that the organization will likely benefit from greater openness.²⁷⁷ All others are coded 0, indicating that they do not benefit from being especially open or closed.

The next two variables that I construct are designed to measure an organization's need for independence from states, which is expected to lead them to prefer a more formal design. One factor that is likely to drive an organization's need for independence is the potential for *Opportunism*. If an organization deals with issues where non-compliance is likely to be a problem, then greater independence may be necessary, since there will likely be a need for the organization to engage in sanctioning, monitoring or dispute settlement. This may only be possible in a more independent body, and therefore greater formality will be necessary. In order to code for the potential for opportunism I develop a measure that takes three values: 0, 1, and 2. The different values are assigned to organizations depending on the kind of activity they are engaged in, which is determined through constitutive documents, descriptions in the *Yearbook of International Organizations*, websites, or secondary sources. Specifically, if an organization is

²⁷⁷ In the case of conflicts, I have assumed that a need for secrecy dominates. The ECB, for instance, deals with monetary issues and conducts studies of various kinds, and its description in the *Yearbook* reflects this. It is nevertheless coded as requiring a high level of confidentiality, since this is likely to be an overriding priority.

primarily engaged in research, training, or information exchange, or acts simply as a discussion forum, it is coded with a 0. This indicates that there is “low” potential for opportunism. Organizations engaged in finance or joint operations, such as running a major facility that requires substantial investment and ongoing funding, are coded 1, indicating “medium” potential for opportunism. Finally, organizations engaged in rule-setting, collective security, or dispute-settlement, are coded 2, indicating “high” potential for opportunism. The exception is organizations designed purely for facilitating regulatory coordination. These are coded as having low potential for opportunism, since such organizations are engaged in rule-setting yet there is generally little need for enforcement once the rules are established.

I also construct a variable that measures the level of *Heterogeneity* among the actors involved in creating an organization. In addition to the potential for opportunism, rational design scholars have argued that actors are more likely to require greater independence if their preferences are more heterogeneous. I operationalize heterogeneity in two different ways. The first approach is to follow Koremenos by using the Affinity of Nations index developed by Gartzke, which is based upon voting patterns in the UN General Assembly.²⁷⁸ The data are dyadic and range from -1 to +1, taking a high value if two states vote similarly and a low value if they vote differently. To gauge the degree of preference heterogeneity using this variable we can take the minimum value from among the various dyadic values for all the countries involved in creating an organization, relying upon a “weakest link” assumption.²⁷⁹ A second approach measures the

²⁷⁸ Koremenos 2008; Gartzke 1998; Gartzke 2006.

²⁷⁹ Hirshleifer 1983. The Affinity of Nations Index covers the years 1946 to 2008 and ranges from 0 to 1 for each dyad, with a value of 1 meaning that state preferences are highly congruent. The raw measure of preference heterogeneity that I construct (using the minimum value among the states involved) therefore take a low value if there is a high level of

level of economic inequality among the actors involved in creating an organization. Actors with very different levels of income may have quite different preferences or low levels of trust, and therefore there may be a need for greater formality when this is the case.²⁸⁰ This can be measured either in terms of the normalized difference between the highest and lowest incomes, or in terms of the overall level of economic inequality among those involved, which can be measured through an index such as the Gini coefficient.²⁸¹ I have constructed measures of both variables, since neither seems inherently preferable to the other.

Finally, rational design scholars have also argued that the size of an organization's *Membership* and the scope of the issues (*Issue Scope*) that an organization is intended to resolve may impact the formality of an organization. If a large group of countries wish to cooperate with one another or if an organization is designed to address a larger number of issues, this may require greater formality. The size of the group can be measured in two different ways. First, we can create a variable that simply measures the number of countries involved in creating an organization. Second, we can measure the current size of an organization's membership. Even if an organization is created by only a small number of actors, they may rationally anticipate that its membership will grow in the future and therefore may require a more formal design. If so, then current membership may be a better estimate of their intentions. Still, both measures have some face validity, and I therefore make use of both in the multivariate analysis to test this prediction. With regard to the scope of the issues that an organization is designed to address, I make use of

heterogeneity. To ease interpretation I have, however, inverted the measure. As used here, a higher value implies greater heterogeneity.

²⁸⁰ Shadlen 2004; Green and Colgan 2013.

²⁸¹ In both cases, a higher value implies greater preference heterogeneity.

the measure developed by Lenz et al.²⁸² They have developed a coding procedure that utilizes a list of 26 different issue areas that an organization may be active in to gauge the number of distinct issues that it is intended to address. I employ this same technique using descriptions in the *Yearbook of International Organizations*.²⁸³

Table 5 shows the results of several bivariate and multivariate probit analyses that include these new variables.²⁸⁴ Model 1 shows the basic results for *Autonomy* and *Constraints* and is identical to Model 3 in Table 4. Models 2 through 8 then show the simple bivariate relationships between each of the rational design variables and the form of an organization. Model 9 includes all of the functionalist variables together in a single model. Model 10 then replicates this model but adds in both *Autonomy* and *Constraints*. As before, *Autonomy* and *Constraints* are both positively signed and statistically significant in Model 1. Among the bivariate relationships, Models 4 and 5 stand out. The first shows the relationship between *Confidentiality* and formality, while the second shows the effect of *Opportunism*. Both are statistically significant and the signs on the coefficients are in the directions predicted by rational design theories. The positive sign on *Confidentiality* in Model 4 tells us that as the need for confidentiality increases, an organization is more likely to be informal. The negative sign for *Opportunism* in Model 5, in turn, indicates

²⁸² Lenz et al. 2015.

²⁸³ Note that, according to the data collected by Ibid., “task specific” intergovernmental organizations change much less frequently, where as those founded as “general purpose” institutions generally expand their remit quite considerably, taking on more and more issues over time. There is, therefore, very little reason to think that there is significant change over time across these categories. Those that focus today on a narrow range of issues were likely to in the past, and those that address a larger range of issues were likely to be that way as well.

²⁸⁴ Table 11 in Appendix 2 shows descriptive statistics for all of the variables used in the analysis. Table 12 shows all of the basic correlations between each of variables, and Table 13 reports Variance Inflation Factor (VIF) scores that measure potential for multicollinearity between all of the variables included in the main analysis. The VIF scores are all well below conventional bounds of acceptability.

that as the potential for opportunism grows an organization is less likely to be informal. The rest of the rational design variables (*Uncertainty*, *Agility*, *Heterogeneity*, *Membership* and *Issue Scope*) never achieve statistical significance in the bivariate models, and in some cases are incorrectly signed. Model 2 and Model 3, for instance, suggest that *Uncertainty* and *Agility* have, if anything, negative relationships with informality when considered on their own—the opposite effect predicted by rational design theories.

Model 9, as mentioned, includes all of the rational design variables in a single model. Here, again, the variables *Confidentiality* and *Opportunism* stand out. Both are found to be statistically significant and correctly signed. The rest of the variables still do not achieve statistical significance. Model 10 then adds *Autonomy* and *Constraints*. In this model, *Confidentiality* and *Opportunism* continue to be statistically significant and have the correct signs. However, the most important finding to be derived from this model is that despite the addition of these variables, *Autonomy* and *Constraints* continue to be important predictors of informality. Both are statistically significant at the 5 percent confidence level or better and the signs on the coefficients indicate that they have a positive relationship with informality, as expected by the liberal theory.

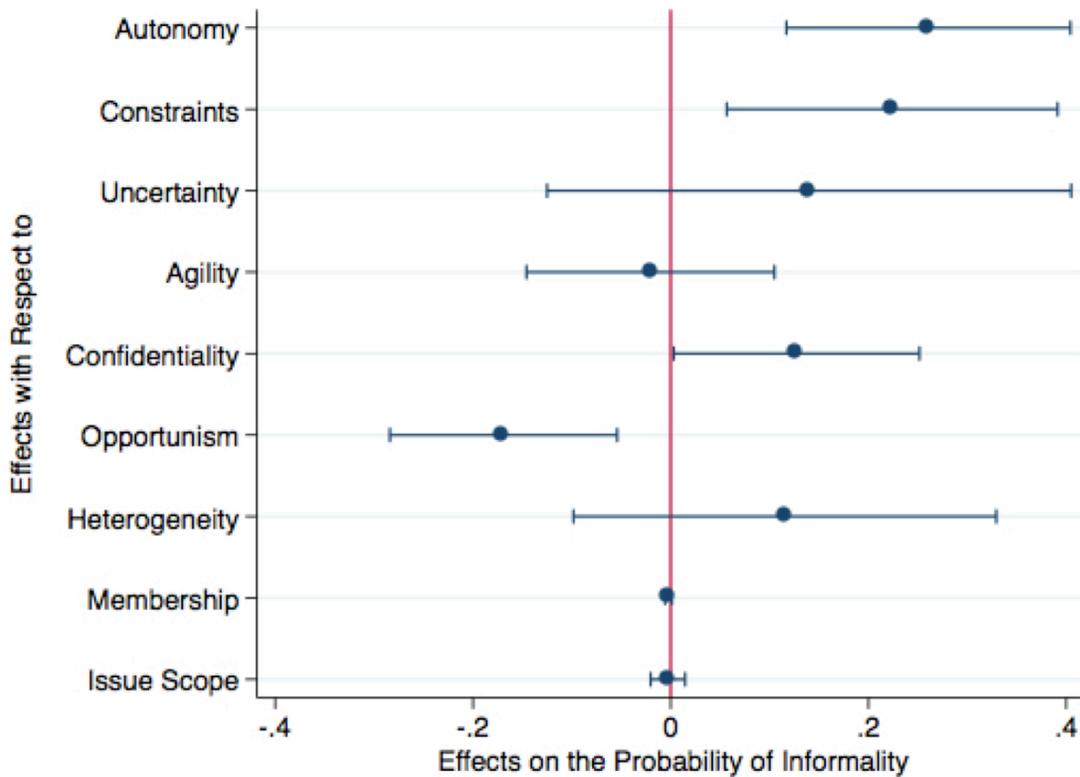
Table 5 Bivariate and Multivariate Regressions

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Autonomy	1.141*** (0.319)									1.144*** (0.374)
Constraints	0.863** (0.346)									0.956** (0.374)
Uncertainty		-0.378 (0.271)							0.0165 (0.443)	0.584 (0.568)
Agility			-0.183 (0.191)						-0.107 (0.238)	-0.106 (0.273)
Confidentiality				0.342* (0.184)					-0.628** (0.271)	-0.541* (0.296)
Opportunism					-0.643*** (0.179)				-0.755*** (0.247)	-0.737*** (0.279)
Heterogeneity						0.434 (0.388)			-0.715 (0.454)	-0.463 (0.468)
Membership							-0.00540 (0.00482)		-0.0130 (0.00822)	-0.00903 (0.00752)
Issue Scope								-0.0234 (0.0335)	0.00781 (0.0385)	-0.0116 (0.0371)
Constant	0.334 (0.285)	-0.0522 (0.182)	-0.273* (0.146)	-0.125 (0.146)	0.214 (0.178)	-0.0517 (0.208)	-0.123 (0.179)	-0.144 (0.180)	1.007*** (0.386)	1.139** (0.455)
Observations	90	90	90	90	90	90	90	90	90	90

Robust standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.1

The results from this analysis indicate that some rational design variables do appear to play a role. But it also tells that even after we take this into account, *Autonomy* and *Constraints* still have a positive effect on the probability of an organization being informal. That said, we might still wonder about the size of these effects. As mentioned before, even if *Autonomy* and *Constraints* have an impact on the outcome, this would be much less interesting if their effect was relatively small compared to other variables. Yet it appears this is not the case. To determine what their relative impact is on the outcome, we can again estimate the marginal effects of all of the variables. These results, which are derived from Model 10, are presented in Figure 10. On the y-axis are each of the variables included in the model. On the x-axis we see each variable's *average* marginal effect on the probability that an organization is informal. Each of the blue points is the model's best estimate of the average size of each variable's effect on the outcome, while the whiskers indicate the 95 percent confidence levels on either side of this estimate. Overall, the figure shows that among all of the variables in the model *Autonomy* and *Constraints* have the largest effects on the outcome. On average, an increase in these variables will raise the probability that an organization will be informal by over 20 percent (26 and 22 percent, respectively). The other two variables that achieve statistical significance, *Confidentiality* and *Opportunism*, also have an impact on the outcome, but their effect is smaller. Among them, *Opportunism* has the larger effect: on average, an increase in the potential for opportunism by 1 unit lowers the probability that an organization will be informal by about 17 percent. Increasing the need for confidentiality by 1 unit, in turn, raises the likelihood that an organization will be informal by roughly 12 percent.

Figure 10 Average Marginal Effects



Overall, the results presented thus far strongly support the liberal theory presented in the previous chapter. Both *Autonomy* and *Constraints* are positively correlated with an organization's level of informality. Further, compared to relevant functionalist "rational design" variables, they also appear to have the largest impact on the probability that an organization will be informal. Still, we might wonder whether these results are robust across different specifications of the model or different ways of measuring the key explanatory variables. They are. Table 6 presents a number of different models that provide additional estimates of the results, include alternative measures of relevant variables described above, and test several additional arguments that scholars might be expected to put forward. Model 1 is identical to Model 10 above and included for reference. Models 2 and 3 then include the same variables but

estimate the results using logit and OLS models, respectively. The results show that there is no major difference in the results. All of the key variables maintain their signs and significance levels. The only new finding is that *Membership* achieves significance in Model 3. The negative sign indicates that organizations with a larger number of actors involved are less likely to be informal. Models 4 and 5 then replicate the results in Model 1 but use alternative measures of preference heterogeneity. The first uses the difference between the maximum and minimum levels of GDP for all the countries involved in creating an organization; the second uses a Gini measure of inequality. In both cases, the key variables again maintain their signs and significance levels, with the exception of *Confidentiality*, which does not reach standard levels of statistical significance in Model 4. Finally, Model 6 uses the alternative measure of the size of an organization's membership—specifically, membership at the time that an organization is created. But, again, this does not change the main results.

Model 7 presents estimates from a regression that is in all respects the same as Model 1, but includes a new variable, *Past Participation*. This variable measures the total number of informal organizations that a founding group has been involved in creating in the years prior to the creation of each new organization in the dataset. The purpose of including it is to test arguments about the role of past participation in informal organizations, which may reasonably be expected to influence the likelihood that a state will participate in a new one. This may be due to an isomorphic effect that leads states that have engaged in informal organizations in the past to develop a new governance repertoire that is then applied to new problems and issue areas. Interestingly, this variable turns out to have statistically significant in the expected direction, which suggests that this kind of mechanism may play a role. However, the effect is substantively

quite small compared to the others considered thus far. On average, an increase in previous participation in other informal organizations only increases the probability that states will create a new one by 2 percent. Further, when we include *Past Participation*, the other variables in the models maintain their effects and significance levels. Finally, Model 7 is again identical to the baseline model, but interacts *Autonomy* and *Constraints*. This is done because one may argue that the model presented in the previous chapter implies that levels of institutional autonomy should condition the effect of domestic constraints, i.e. domestic constraints should have more of an impact upon political institutions. The interaction term turns out to be statistically insignificant. However, this negative outcome should not affect our interpretation of the main statistical results a great deal, since it is doubtful that such an interaction term is actually appropriate here. The reason being that, even if the effect of domestic constraints is theoretically conditioned by an institution's level of autonomy at the domestic level, given that *Autonomy* and *Constraints* are already quite complex composite measures that aggregate data across multiple states it is unlikely that interacting these variables is a suitable test of this hypothesis.

Table 6 Robustness Checks

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Autonomy	1.144*** (0.374)	2.003*** (0.740)	0.281*** (0.0693)	1.150*** (0.371)	1.181*** (0.368)	1.272*** (0.381)	0.798** (0.395)	1.160*** (0.383)
Constraints	0.956** (0.374)	1.655** (0.682)	0.209** (0.0916)	1.030*** (0.371)	0.864** (0.405)	0.886** (0.383)	0.983*** (0.358)	1.012** (0.466)
Uncertainty	0.584 (0.568)	0.894 (0.986)	0.0840 (0.130)	0.829 (0.632)	0.553 (0.565)	0.558 (0.555)	0.651 (0.546)	0.587 (0.568)
Agility	-0.106 (0.273)	-0.234 (0.489)	0.0191 (0.0679)	-0.0651 (0.298)	-0.104 (0.269)	-0.0919 (0.261)	-0.248 (0.268)	-0.112 (0.275)
Confidentiality	-0.541* (0.296)	-1.085* (0.614)	-0.138* (0.0780)	-0.418 (0.293)	-0.520* (0.290)	-0.568* (0.316)	-0.500* (0.297)	-0.549* (0.303)
Opportunism	-0.737*** (0.279)	-1.310** (0.539)	-0.191** (0.0730)	-0.868*** (0.306)	-0.788*** (0.281)	-0.755*** (0.281)	-0.752*** (0.284)	-0.745*** (0.283)
Heterogeneity	-0.463 (0.468)	-0.879 (0.793)	-0.104 (0.136)			-0.560 (0.551)	-0.961* (0.536)	-0.481 (0.481)
Membership	-0.00903 (0.00752)	-0.0142 (0.0144)	-0.00228* (0.00127)	-0.00682 (0.00812)	-0.00505 (0.00653)		-0.0124 (0.00826)	-0.00888 (0.00756)
Issue Scope	-0.0116 (0.0371)	-0.00676 (0.0612)	-0.00416 (0.0102)	-0.0237 (0.0362)	-0.0158 (0.0383)	-0.00692 (0.0373)	-0.0134 (0.0364)	-0.0121 (0.0371)
Heterogeneity1				0.219 (1.425)				
Heterogeneity2					0.645 (0.855)			
Membership2						-0.0518 (0.0404)		

Continued on next page...

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Past Participation							0.119** (0.0509)	
Autonomy*Constraints								21.43 (65.90)
Constant	1.139** (0.455)	2.013** (0.860)	0.813*** (0.0976)	0.804 (0.745)	0.720 (0.525)	1.560** (0.674)	1.113** (0.464)	0.617 (0.461)
Observations	90	90	90	89	90	90	90	90
R-squared			0.416					

Robust standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.1

4.4.3 Addressing Selection and Endogeneity Concerns

One complexity that has not been discussed in detail thus far is the possibility of selection and endogeneity problems, especially regarding the impact of actor autonomy. The key issue is that some of the rational design (and liberal) variables may be important not simply as controls. Instead, they may actually determine when certain actors are likely to lead cooperation as well. That is, perhaps certain “situation structures” not only make an organization more likely to be informal but also determine when a state is likely to leave responsibility for leading cooperation up to more autonomous actors. Or, more specifically, maybe states are more willing to let more autonomous domestic actors lead cooperation when there is little chance of opportunism and greater need for confidentiality, and vice versa. Obviously, this possibility complicates hypothesis testing. If true, the quantitative analysis undertaken above could plausibly show that there is a significant relationship between levels of actor autonomy and an organization’s level of informality but the relationship would not be a causal one. Instead, the situation structure would simply make it more likely that we would see higher levels of autonomy *and* make it more likely that an organization will be informal.

With observational data, one of the most powerful ways of addressing this issue is through “matching” methods, which can help to mitigate such concerns by partially endogenizing the likelihood that autonomous actors will be present in any given situation. The logic of matching strategies is to approximate as much as possible a genuine controlled experiment, where a “treatment” is assigned at random. In a real experimental situation, we are then able to control for all of the other factors that may influence the outcome, since the treatment and control groups will be statistically identical. They will only differ with respect to whether they received the

treatment or not. Obviously, this is not possible with observational data. However, using matching methods, we can compare cases that are similar, or “matched,” in every possible respect except for the fact that in some (the “treatment” group) the explanatory variable is present and in others it is not (the “control” group). Once this is done, we can then re-estimate the causal effect of the explanatory variable by examining the difference in outcomes across these two groups. The estimate will be better—and can help to mitigate selection and endogeneity concerns—because the matching procedure explicitly accounts for the different theoretically relevant factors that could also be driving the likelihood that a particular case received the “treatment” in the first place.

One of the most widely used matching methods relies upon propensity scores.²⁸⁵ This method begins by using the variables believed to determine the likelihood that a case receives a treatment as regressors in a logit model with a dichotomous “treatment” variable as the outcome. In the case at hand, the “treatment” would be *Autonomy*, and the regressors are the relevant rational design variables that we believe might influence the probability that autonomous actors will lead cooperative efforts. This procedure then generates a propensity score for each case in the sample, which tells us the probability that a particular case will receive the treatment, given the values of the other variables. We then use each case’s propensity score to match observations in the treatment group with others in the control group. Each set of matched observations then has an equal probability of having received the treatment, but the individual cases actually differ with respect to whether or not they have in fact received the treatment. Following this, we can then perform a number of “balance” diagnostics to verify the degree of similarity between the

²⁸⁵ Guo and Fraser 2010; Stuart 2010.

treatment and control groups. Finally, we can then use the matched sample to re-estimate the causal effect of the treatment variable using a difference in means test.

In order to employ a matching method, I have dichotomized the “treatment” variable, *Autonomy*, since it is not a binary variable. I have done so by recoding *Autonomy* to equal 1 if a value is above the mean and 0 if a value is below the mean. Using a logit model, we then estimate the propensity scores for each case in the sample, which tell us the probability that the new “treatment” variable, *Autonomy2*, will take a value of 1. To do so, I have used the rational design variables *Confidentiality* and *Opportunism*. I have dropped the others from this model because they are both substantively and statistically insignificant in nearly all of the models presented thus far. The scores generated in this way are, as mentioned, probabilities and therefore range from 0 to 1. The average probability that a case receives the *Autonomy* treatment is .29, or 29 percent, and the propensity scores range from close to 0 to .52, or 52 percent. This indicates that, given the values of the other variables in the model, there is *hypothetically* a very low probability of the actors leading cooperation being autonomous in some cases, and a greater than 50 percent chance of them being autonomous in others.

In order to undertake matching, I have adopted a three “nearest neighbor,” with replacement, matching rule. This means that each of the observations in the treatment group can be matched with three (weighted) observations in the control group, and that once a case has been used as a match it continues to be available for further matches afterwards. I also apply a “caliper” of .05, which restricts the “radius” or range of the “potential” matches in the control group to those that lie within at least 5 percentage points of the observation in the treatment group. Finally, the range

of possible matches is also restricted to those that fall within the “common support.”²⁸⁶ Once this has been done, I have then performed a number of diagnostics to ensure that “balance” has occurred.²⁸⁷ First, I have examined the standardized difference in means²⁸⁸ of each covariate, as well as their variance ratios, in both the “raw” and “matched” samples.²⁸⁹ This revealed that the standardized difference of each covariate across the treatment and control groups are significantly reduced in the matched sample, and well within conventional bounds. Likewise, the variance ratios are much closer to unity in the matched sample, and, again, well within conventional bounds. Second, t-tests for each variable then also confirm that the matching procedure has removed any statistically significant differences across the treated and control groups. Finally, we can see the overall improvement in balance by examining a density plot of the propensity scores across the raw and matched samples. This is shown in Figure 11, which allows us to compare, visually, how similar the propensity scores are across these two groups. Again, this reveals that the cases in the “matched” sample are much more alike in terms of their probability to have received the treatment.

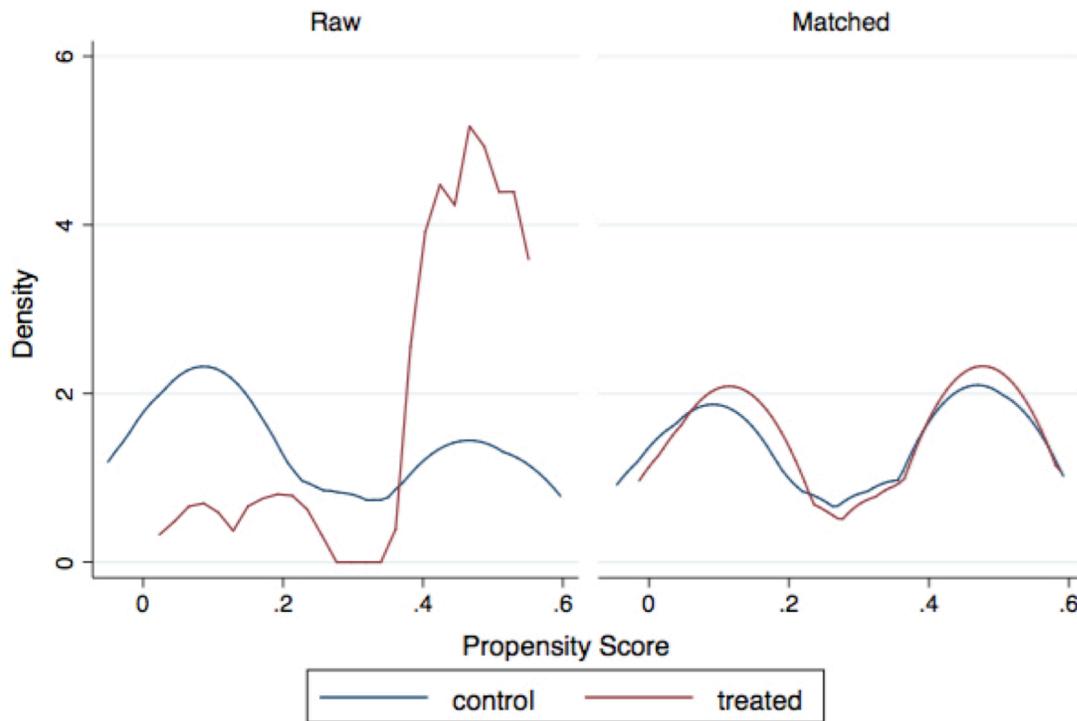
²⁸⁶ That is, any observations with propensity scores that fall outside of the range of overlap between each of the treatment and control groups are dropped.

²⁸⁷ “Balance” is said to occur when the cases in both the treatment and control groups not only have the same propensities to have received the treatment, but when the standardized difference in means and variances of each of the variables believed to determine this propensity are identical across each group as well.

²⁸⁸ The standardized difference in means, or “standardized bias,” is defined as the difference in means in the “treatment” and “control” groups, divided by the standard deviation for the entire “treated” group.

²⁸⁹ The detailed results are reported in Figure 14 in Appendix 2.

Figure 11 Balance Density Plot



Together, these balance diagnostics (as well as others that I have undertaken but not reported here) suggest that while balance across the treatment and control groups is not perfect, it is significantly better than in the raw sample. We can, therefore, be reasonably confident that relevant aspects of the “situation structure” that we believe may drive autonomous actors to engage in cooperation are held constant across the two groups. Having achieved this we are now in a position to re-estimate the effect of *Autonomy2* by examining the difference in means across the treatment and control groups. Doing so confirms that the autonomy of the actors leading cooperation has a substantively and statistically significant ($p < .01$) effect on the likelihood that an organization will be informal. Specifically, the results indicate that, on average, an increase in *Autonomy2* from 0 to 1 (hypothetically equivalent to a switch from non-autonomous to autonomous actors) raises the probability that an organization will be informal by roughly 36

percent. To reinforce this analysis, I have also utilized a range of other approaches to addressing selection and endogeneity concerns, including inverse-probability weighting and coarsened exact matching.²⁹⁰ These other methods provide alternative ways for ensuring balance across the treatment and control groups and they confirm the results presented here.²⁹¹

4.5 Conclusion

This chapter provides the first formal test of the liberal theory. It began by identifying a sample of 90 formal and informal intergovernmental organizations that lie within the scope conditions outlined at the end of the last chapter. It then developed two variables that measure a) the extent to which the actors leading cooperation are autonomous, and b) the level of domestic constraints. Both factors are hypothesized by the liberal theory to impact an organization's level of formality and several preliminary statistical tests provided empirical support for this prediction. I then developed a number of variables aimed at testing the main predictions made by rational design theorists and included these in a larger multivariate model with the "liberal" variables. This analysis suggested that these alternative explanations do have some validity. In particular, it suggests that the level of confidentiality that an issue requires and the scope for opportunism affect the probability that an organization will be informal. However, the results also indicated that, while this was true, domestic constraints and the autonomy of the actors leading cooperation

²⁹⁰ Iacus, King, and Porro 2012; Imai and Ratkovic 2014.

²⁹¹ See Table 16 in Appendix 2 for the average treatment effect using propensity score (PSM) matching and the inverse probability weighting (IPW) estimation results. The detailed results of the coarsened exact matching analysis are not presented here but the code for running this test can be found in the supplementary material for this chapter. I have also undertaken a similar propensity analysis with a larger number of covariates, including additional rational design variables and the domestic constraints variable. This alternative analysis again broadly confirms the results presented here.

still have powerful effects on informality—indeed, they appear to have the largest effects among all the variables considered.

The various analyses conducted in this chapter therefore provide considerable support for the liberal theory. Having said this, however, two important caveats are in order. First, it is important to remember that while these results appear to confirm that the liberal theory offers an important explanation of informality across a relatively large number of cases, our ability to generalize beyond these cases is rather limited. The sample is, as noted earlier in the chapter, not representative of the broader population of intergovernmental organizations—both geographically and over time. Thus, while we can be relatively confident that the findings hold within at least a subset of the cases within this broader population, it is difficult to know how far they will travel. Only a much more ambitious analysis on a truly random sample of organizations can answer this question. Second, it is also important to recognize the inferential limits of quantitative methods. In general, quantitative methods are very useful for determining the kinds of patterns that hold across many cases. But they are less useful when we want to understand exactly *why* those patterns occur.²⁹² A statistical analysis can demonstrate that certain variables appear to have a powerful effect on—or are correlated with—an outcome, but it cannot effectively test hypotheses about the causal mechanisms that link them. Instead, this goal is best accomplished by examining the micro-level processes that occur as individual organizations are formed. This important task is undertaken in the next two chapters.

²⁹² Hall 2003; Collier, Brady, and Seawright 2004.

Chapter 5. The Emergence of the IMF and GATT

5.1 Introduction

In order to explore the causal mechanisms that lead states to create institutions with different organizational forms, this chapter analyzes two intergovernmental organizations: the IMF and the GATT. Together, they are among the most important international economic institutions that states have established since the end of the Second World War. The IMF was created, along with the International Bank for Reconstruction and Development (IBRD), or World Bank, at the Bretton Woods conference, which took place over a three-week period in July 1944.²⁹³ It is *formal* intergovernmental organization governed by the IMF/IBRD Articles of Agreement, an international treaty that came into force on December 27, 1945. The original treaty delegated the IMF responsibility for regulating a stable system of exchange rates and operating as a lender of last resort when states faced balance of payments crises.²⁹⁴ To fulfill these objectives, it endowed the organization with a precise organizational structure to facilitate decision-making, as well as a large bureaucracy to support its operations. Today, it has an administrative budget of over \$1 billion and employs about 2,400 staff, including a significant contingent of lawyers who play an influential role in the deliberations of relevant IMF bodies.²⁹⁵ While powerful states do occasionally circumvent the formal rules, particularly when vital interests are at stake in lending decisions, the IMF typically operates according to a precise legal framework.²⁹⁶

²⁹³ For an excellent short account of the main issues at stake in the Bretton Woods negotiations, see Kahler 2002.

²⁹⁴ Vreeland 2007.

²⁹⁵ Gold 1984.

²⁹⁶ Stone 2011.

The GATT was an intergovernmental organization responsible for facilitating interstate negotiations, regulating barriers to international trade and, to some degree, resolving trade disputes. It was established in October 1947 and existed in roughly the same form until 1994 when the WTO replaced it.²⁹⁷ In contrast with the IMF, the GATT was an *informal* organization—albeit of a somewhat peculiar sort. The GATT agreement—the trade agreement—is a treaty and establishes legal obligations.²⁹⁸ But the *organization* itself has little basis in the treaty and was formed in the years after the agreement was concluded. Apart from some procedural rules that mainly apply to meetings of the “contracting parties,” the GATT agreement did not include provisions for its most important organizational components. Indeed, at first, the contracting parties were reluctant to delegate any responsibilities at all—even to a committee.²⁹⁹ Yet an organization nevertheless crystalized to supplement and support implementation of the treaty. An intersessional committee met regularly between meetings of the contracting parties, and, later, a permanent GATT Council was created. Both operated “without the existence of authorizing provisions [...] in the basic treaty.”³⁰⁰ A variety of other critical institutional components also had no basis in the treaty, including the organization’s dispute settlement panels

²⁹⁷ Jackson 1997; Croome 1999; Jackson 2009.

²⁹⁸ Note that in this chapter I refer to the “GATT agreement,” as well as the “GATT organization,” or just “GATT.” I do this in order to clearly distinguish between the international trade agreement and the organization that was later established informally around it. For further details on the establishment of the organization, see below. It is nevertheless worth noting that the GATT agreement never fully came into force. The GATT was, instead, only “provisionally applied” via the 1947 Protocol of Provisional Application, which suspended obligations to implement rules if they conflicted with existing national legislation. See Jackson 1980.

²⁹⁹ Jackson 1969, p.152-54; Dam 1970, p.335; Jackson 2009, p.35.

³⁰⁰ Jackson 1969, p.153.

and its small secretariat.³⁰¹ In 1966, the secretariat employed only 179 staff—and, as a rule, no lawyers³⁰²—operating on a budget of \$2,233,000, roughly equivalent to \$16,800,000 in 2015.³⁰³ The unconventional nature of the GATT fostered a long-running debate among international lawyers over its legal status, with “purists” arguing that it was not an intergovernmental organization at all.³⁰⁴ However, the general consensus is that while the GATT was not formally constituted it must, in the words of John Jackson, be regarded as a “*de facto*” intergovernmental organization.³⁰⁵

Why was the IMF formal? Why was the GATT informal? Did the autonomy of the actors leading cooperation or the domestic constraints that policymakers faced shape the outcome? Or, alternatively, was this the product of a deliberate attempt on the part of policymakers to address different underlying cooperation problems? These are the key questions that this chapter attempts to answer. To do so, it begins with a discussion of the case selection method, which focuses primarily on the inferential properties of the two cases. Looking at these two organizations, in particular, provides us with considerable analytical leverage relative to the two contending approaches. Second, the chapter then conducts a brief cross-case “congruence” analysis that

³⁰¹ Jackson 2009, p.35-37. On the evolution of the GATT’s dispute settlement procedures, see Hudec 1998 and Jackson 2009, p.45-50.

³⁰² Interestingly, an informal rule emerged early on, promoted by GATT contracting parties and the first Executive Director Eric Wyndham-White, that the GATT would employ no legal staff. Diplomats rather than lawyers would therefore administer the dispute settlement process. The organization did not acquire a legal division until 1981, a move that was encouraged by the deeply legalized USTR and, interestingly, resisted by the European Community. Even then, however, it was first established as a two year “experiment” before becoming a more permanent component of the GATT. For details see Hudec 1998.

³⁰³ Dam 1970, p.340. At the same time, the IMF had around 773 employees and an administrative budget of roughly \$15,160,000, equivalent to around \$114,100,000 today.

³⁰⁴ Jackson 1967; Dam 1970.

³⁰⁵ Jackson 2009, p.36.

seeks to measure the extent to which the underlying cooperation problems that each organization seeks to address can explain the variation we see.³⁰⁶ This is offered as an initial probe of the plausibility of the rational design approach, and shows that such an account does not effectively explain the cross-case variation that we find. Third, the chapter then derives testable propositions about the unique causal processes that we would expect to see if the liberal or rational design theories were right, and conducts within-case analyses of the emergence of each organization to test their validity. In contrast with the congruence analysis, this provides a more rigorous test of the two approaches and shows that a liberal approach offers a more compelling explanation of the cases.

5.2 Case Selection

The IGO Database developed in Chapter 2 offers a large number of “potential” cases that could be subject to qualitative analysis. Many would be good candidates. The existing methodological literature also provides a range of different rationales for choosing qualitative cases.³⁰⁷ In this chapter, the choice of cases has been driven by two overarching considerations. First, they have been chosen because the organizations are intrinsically important, or “prominent.” In the previous chapter, the sample of organizations included a wide variety of bodies, many of which are relatively obscure. Doing so was useful because it helps to establish that the general pattern holds across a wide range of cases and is not driven by particular observations. Yet we may nevertheless still want to know whether the theory can explain several substantively important cases. The two organizations were therefore chosen, in part, in order to address this concern.

³⁰⁶ On “congruence” tests see George and Bennett 2005.

³⁰⁷ Lieberman 2005; Seawright and Gerring 2008; Weller and Barnes 2014.

They can be considered “prominent” in at least three senses. First, in both cases, great powers, such as the US, UK and Union of Soviet Socialist Republics (USSR), played important roles in their creation, and they are generally regarded as key pillars of the postwar order.³⁰⁸ Second, the two organizations are genuinely global institutions with remits that span regions and effects that extend to nearly every corner of the globe.³⁰⁹ Finally, the two organizations have attracted a great deal of attention from the media, politicians, and general public—unlike most intergovernmental organizations both are virtually household names.³¹⁰ Thus, if the liberal theory offers a powerful explanation of these cases, we will know that its scope is not in any sense limited to “unimportant” or “obscure” organizations.

The second major consideration driving this choice is specifically related to the probative value of the cases. In particular, it can be argued that both organizations are “most likely” cases from the perspective of rational design theories.³¹¹ Many have thought of the IMF and GATT as highly successful organizations, believed that there was a good “match” between the design of each organization and the problem it was intended to solve—at least initially—and that this success could be attributed to the foresight and leadership of their creators. Margaret Garritsen de Vries, official historian of the IMF, has noted, for instance, “by trial and error, and with eventual success, the Fund formed and implemented policies that enabled it, by 1965, to attain most of the objectives for which it was created.”³¹² De Vries and others have also frequently

³⁰⁸ Zeiler 1999; Barton et al. 2006; Hale, Held, and Young 2013.

³⁰⁹ Abbott 1992; Irwin 1995; Kahler 2002; Steil 2013.

³¹⁰ Vreeland 2007; Hoekman and Mavroidis 2007.

³¹¹ On the methodology of so-called “crucial cases,” including “most likely” and “least likely” variants, see Eckstein 1992; Gerring 2007; Bennett 2008.

³¹² de Vries 1986, p.v. Similar claims have been made by a variety of other scholars regarding the IMF’s early years, i.e. before the Bretton Woods system broke down as a result of major

attributed the success of the IMF to the perspicacity of those at the Bretton Woods conference—no doubt a distinguished group.³¹³ Many have made similar claims for the GATT. Barton et al., have argued that the “organization should be credited with the unprecedented reduction in national trade barriers that occurred in period after the World War II.”³¹⁴ Further, they have claimed that the regime’s “remarkable success is attributable to a lack of a strong and defined structure,” i.e. its informality.³¹⁵ And, like the IMF, the quality of the “match” has been credited to the wisdom of the GATT’s founders. One recent history of the negotiations concludes: “leadership rose to the challenge that the world was facing. The institution [delegates] created helped solve the particular problem they confronted.”³¹⁶

Given these observations, it can be argued that if the rational design argument is to work anywhere, it should work here. But, for this same reason, if the theory fails to adequately explain these cases, then there are strong reasons to doubt its validity. Usefully, it can also be argued that the IMF and GATT are, to some degree, “least likely” cases from the perspective of the liberal theory, since they both lie beyond the scope conditions set out at the end of Chapter 3, if only

changes in the global economy that were largely unforeseen in 1944. See, for example, James 1996; Kirshner 1996, p.xi. Also see Hale, Held, and Young 2013. Of course, since its initial *raison d'être* faded away in the 1970s, the IMF has been criticized in a number of ways, particular regarding its lending to developing countries, see Blustein 2001; Stiglitz 2002. However, we must also keep in mind that the Articles of Agreement were revised several times from 1968 onwards—before the breakdown—and that much of its work since then represents a departure from its original objectives. It is worth mentioning, as well, that despite several high profile failures, one comprehensive effort to evaluate the IMF’s later work describes the organization as “broadly effective” and concluded that “the balance of successes and failures [...] adds up to a broadly positive record,” Brau and McDonald 2009, p.14.

³¹³ De Vries 1986; Steil 2013; Conway 2014.

³¹⁴ Barton et al. 2006, p.27; Goldstein, Rivers, and Tomz 2007. Also see Gardner 1969; Irwin, Mavroidis, and Sykes 2009.

³¹⁵ Barton et al. 2006, p.27.

³¹⁶ Irwin, Mavroidis, and Sykes 2009, p.202.

just. For instance, the two organizations were created in 1944 and 1947, respectively—a time where the distinction between formal and informal had only recently solidified and when informal organizations were relatively uncommon. The negotiations and initial motivations that led to their establishment extend even further back. They both, therefore, lie on the cusp of the “temporal” scope condition and therefore we would expect the theory to be less likely to perform well. The cases are also located just beyond the “geographical” cut-off point, since many less-developed and non-democratic states were involved in their creation. Most works have, of course, downplayed the importance of such states.³¹⁷ But some recent revisionist histories have challenged this view, utilizing new archival data to show that they actually played an outsized role in the final outcomes and that their needs were often taken into account.³¹⁸ Again, this implies that the theory is somewhat less likely to operate as predicted. And, taken together, these properties of the cases offer some additional analytical leverage: if a theory can effectively explain a “least likely” case—one that lies beyond the theoretical scope conditions—this should significantly improve our confidence in it.

5.3 Probing the Validity of Rational Design Hypotheses: A Congruence Analysis

In order to start our investigation it is useful to begin by probing the utility of rational design explanations. Such theories, as discussed in Chapter 3, imply that the nature of the cooperation problems states face should predict the kind of organization that will arise. In Chapter 4, we also found that features of an issue area do in fact seem to be correlated with the formality of an organization. Specifically, the quantitative analysis showed that when we look across a large number of cases higher potential for opportunism appeared to lower the probability that an

³¹⁷ Gardner 1969 is a typical example.

³¹⁸ Toye 2003a; Helleiner 2014a; Helleiner 2014b.

organization would be informal, and greater issue sensitivity—or need for confidentiality—raised the probability that an organization would be informal. There is, then, some reason to think that rational design variables can generally explain at least some of the variation we see. Here, we want to see how far such explanations can take us. Do they appear to convincingly “explain” the variation across these two cases? If so, this would lend the rational design approach some initial plausibility and there would be less need for further investigation; if not, this would weaken the plausibility of this particular explanation and we would be forced to consider alternative explanations. To check, we can undertake a “congruence” analysis, which investigates whether we indeed see key rational design variables take values we would expect them to when we observe a particular value of the dependent variable—essentially, a “small-n” version of a statistical analysis. In what follows, I consider each variable in turn, starting with the two that received some support in the quantitative analysis.

Opportunism. As noted, rational design theories suggest that high potential for opportunism should reduce the probability that an organization will be informal. If the theory were correct, we would then expect the IMF to deal with an issue that has characteristics of a collaboration problem and the GATT to deal with an issue that does not. However, this does not seem to be the case. The IMF was initially designed in response to perceived monetary problems that arose during interwar period, especially those associated with adherence to the gold exchange standard in the 1920s and the unstable exchange rates that prevailed in the 1930s. The architects at Bretton Woods wanted to create a system that avoided the adjustment, liquidity and commitment problems associated with the former, by allowing for currency revaluations when necessary, and, by providing resources for countries with short-term incentives to devalue, would not be

susceptible to the kinds of competitive devaluations, or “beggar-thy-neighbor” policies, they associated with the latter.³¹⁹ The IMF was, therefore, deliberately designed in order to address a perceived collaboration problem, which suggests that it should be formal—and it is. However, the rationale of the GATT was remarkably similar. Indeed, Secretary of State Cordell Hull—the most important individual behind what would eventually become the GATT—identified trade retaliation as the key problem facing the world in the field of international commerce: when one country raised tariffs to protect an industry, others responded by increasing their own, thereby negating any gains the first was able to achieve.³²⁰ Again, therefore, the underlying issue was perceived to be a collaboration problem. Further, to some extent the problem may have been greater in the case of the GATT, since it may have been more difficult to detect whether actors were violating the agreement than in the case of the IMF, where a deviation from a currency’s par value would have been obvious to all. Potential for opportunism therefore fails to predict the informality of the GATT.

Confidentiality. If opportunism does not provide a convincing explanation of the variation across these cases, perhaps the sensitivity of a problem—which generates a need for confidentiality and

³¹⁹ Nurkse 1944; Bordo 1993; Dominguez 1993. Interestingly, scholars have suggested that those at Bretton Woods were mistaken about the potential for competitive devaluations inherent in the monetary system and their associated welfare implications. The founders perceived that the effect of such devaluations was negative and lead others to respond with retaliatory devaluations and exchange controls—ultimately ending in a sub-optimal equilibrium. They designed the Bretton Woods institutions in order to address this problem. But there are doubts about whether they were correct in their interpretation, see Eichengreen and Sachs 1985; Eichengreen 1992. As a result, as Bordo has speculated, the organization may well have been designed differently had those at Bretton Woods “been freed from misperceptions,” see Bordo 1993, p.31. If correct, the implication for rational design theories is tremendous: an institution may be designed to respond to a particular *perceived* problem, but since this perception may be wrong there may nevertheless be a poor “match.”

³²⁰ Hull 1948, p.354-55. In this case, the available evidence suggests that he was correct in his perception, see Allen 1953; Conybeare 1984; Conybeare 1987; Irwin 2011a.

corresponding demand for informality—does. However, a close look at the cases suggests this possibility actually fares little better. The IMF has generally been regarded as a highly secretive institution. The original reason for this was related to the highly sensitive nature of the information that IMF staff would be privy to.³²¹ Under the system of pegged but adjustable exchange rates that the IMF would oversee, information about future exchange rate adjustments would have a high market value. Further, if it became widely available, such information would likely undermine the organization's ability to fulfill its goal of maintaining stable exchange rates. The need for a high level of confidentiality was, therefore, driven by the cooperation problem that the IMF was supposed to resolve. But this should, if rational design theories are correct, lead us to expect the IMF to be informal—which it is not. The GATT, at first glance, appears to more closely correspond with rational design predictions. Like the IMF, it was also regularly accused of being a secretive institution.³²² Further, its secrecy could, at least in part, be attributed to the nature of problem it dealt with: a level of confidentiality was thought to be necessary in order to facilitate bargaining and to protect valuable diplomatic information. However, available evidence also indicates—contra rational design arguments—that the need for secrecy was just as much a product of the GATT's informality as it was a cause of it. The uncertain legal basis of the organization led to a culture of discretion amongst staff members, who wished to shelter the fragile institution from the public gaze and even deny its standing as an intergovernmental

³²¹ Stone 2011, p.62-63.

³²² Albeit less so, see Jackson 1969, p.13. One former staff member has nevertheless recalled a striking—indeed Kafkaesque—example of GATT secrecy. Upon joining the Agricultural Division of the GATT Secretariat, the staff member requested to see an organizational chart but was informed that such a document did not exist. After asking a second individual, she was told that such a document existed but was confidential. A third individual then confirmed the existence and confidentiality of the organizational chart but opted to provide access to it anyways. See Plank-Brumbach 2015.

organization.³²³ The validity of the rational design argument regarding confidentiality is therefore, at best, somewhat uncertain in this case.

Flexibility. Rational design theories have also argued that a high level of uncertainty can help to explain different organizational forms. Higher levels of uncertainty about the future distribution of costs associated with an organization may lead states to prefer greater flexibility, which an informal organization can theoretically provide. The logic seems reasonable; but, again, rational design predictions are uneven. Many have repeatedly emphasized the need for institutional flexibility when it comes to international monetary relations in order to “respond to changing circumstances and unforeseen developments.”³²⁴ A more flexible, informal approach may therefore have been warranted in the case of the IMF. Yet the founders at Bretton Woods actually opted for greater formality and less flexibility.³²⁵ The IMF, therefore, does not correspond well with rational design predictions. The GATT fares better, by contrast. Trade agreements have commonly been regarded as governing issues requiring high levels of flexibility.³²⁶ Further, there is evidence that many countries involved in the GATT negotiations wished to preserve their capacity to adjust trade policies in the future to meet domestic objectives, such as ensuring high levels of domestic employment.³²⁷ Negotiators responded to these concerns, most directly, by inserting of a number of clauses in the formal GATT agreement that allowed for general “exceptions” to the basic GATT rules. The Protocol of Provisional Application also allowed for flexible implementation of the GATT itself, and the organizational

³²³ Lacarte 2004. Also see Dam 1970.

³²⁴ Gold 1984, p.25. Also see Koremenos 2005.

³²⁵ See Gardner 1969; Gold 1984.

³²⁶ Koremenos 2005.

³²⁷ Gardner 1969; Irwin, Mavroidis, and Sykes 2009.

component of the GATT was, of course, highly informal. Thus, the case of the GATT does seem to at least partially confirm a key rational design prediction.

Agility. A fourth prediction made by rational design theorists is that informal organizations are likely to be chosen when there is a need for speedy decision-making. They may be particularly useful when an organization is supposed to respond to crises or emergencies of various kinds, which may result in high costs if action is delayed. However, this prediction also receives little support from the available evidence. One of the main roles of the IMF, for instance, was to help manage balance of payments crises. During the interwar period, such imbalances often lowered confidence in a deficit state's ability to convert liabilities into gold and this put pressure on states to suspend convertibility. The IMF would help to solve this problem by providing short-term, emergency relief to avoid such costly measures and allow space for longer-term policy changes to correct the disequilibrium. Its ability to move swiftly would be critical to its success. If rational design theories are correct, then informality should have helped, yet those at Bretton Woods opted for a highly formal organization. The GATT, by contrast, was not designed to manage crises or respond to emergencies at all. Its primary purpose was to facilitate trade negotiations, which were not especially time-sensitive. The need for timely decision-making was perhaps most relevant to the settlement of disputes. Given the costs of litigation, it was desirable for trade disputes to be resolved relatively quickly. If so, informality may have helped. But, if speed was indeed a goal, it does not seem that an informal approach was indeed superior. The GATT dispute settlement process was often criticized for its delays, and, interestingly, many of

the problems stemmed directly from the GATT's informality.³²⁸ In both cases, therefore, rational design predictions are not borne out.

Heterogeneity. A fifth rational design prediction is that informal organizations are less likely to appear when state preferences are more heterogeneous, leading to greater expectations of future conflict amongst the states involved. Arguably, in both cases there were significant disagreements regarding a range of issues. Further, both were expected to involve a fairly diverse group of democratic and non-democratic, industrialized and developing states, and communist and capitalist states.³²⁹ In general, however, there was fairly broad consensus on at least the fundamental principles underlying the IMF as well as a common commitment to postwar multilateralism at the time it was created.³³⁰ Ikenberry, for instance, has argued that the successful conclusion of the Bretton Woods negotiations was facilitated by the presence of a strong quasi-epistemic community at the time, which meant that most of those involved agreed upon all the most basic elements of a deal.³³¹ By contrast, the divisions over commercial policy were more fundamental and the context in which they took place proved problematic.³³² In comparison with Bretton Woods, Milner has noted, “it is difficult to find [an epistemic

³²⁸ Jackson 1990, p.59; Toye 2003a. Cases in the WTO have generally been resolved 2-5 months faster than under the GATT, despite the fact that far more disputes have been brought forward, see Hoekman and Kostecki 2009, p.93.

³²⁹ The Soviet Union participated directly in the Bretton Woods talks, but later chose not to ratify the Articles of Agreement. The Soviet Union also participated in the early negotiations that led to the GATT, but later refused to send delegates, claiming that it did not have sufficient resources or experienced personnel. Nevertheless, those at the GATT talks—the US, especially—deliberately sought to leave the door open to Soviet participation. See Irwin, Mavroidis, and Sykes 2009, p.72-73.

³³⁰ Conway 2014; Rauchway 2015.

³³¹ Ikenberry 1992; Ikenberry 1993.

³³² See Gardner 1969, chapters 13-17. Also see Mckenzie 2008.

community] among all the disagreements between and within each government.”³³³ Throughout the GATT negotiations, the UK and many other Commonwealth countries maintained a strong attachment to the system of Imperial Preferences established at the 1932 Ottawa Conference. Developing countries wished to maintain their capacity to enforce high barriers to trade to promote economic development, and sought exceptions to basic rules. The US, by contrast, was strictly in favor of non-discrimination and a precise agreement. Overall, the end of the wartime alliance, postwar economic crises in Europe, and deepening Cold War tensions also made the general environment in which the trade negotiations took place much less propitious. The GATT was therefore created in a time of peace, but there were deep divisions among those involved, a profound sense of disillusionment and growing expectations of conflict. Thus, it would seem that heterogeneity fails to explain the two cases.

Membership and Issue Scope. Finally, rational design theorists have argued that organizations involving a smaller number of states and a narrower range of issues are more likely to be informal. However, neither possibility seems to explain the variation we see. In both cases, the initial agreements were negotiated by the US and UK, and then widened to include a larger range of countries. The IMF/IBRD Articles of Agreement were concluded by a group of 44 countries, while the GATT was concluded by a smaller group of 23. Yet in both cases the organizations were conceived as being universal—open, in principle, to membership by any sovereign state. They were both therefore designed with a large membership in mind. While this may result in a correct prediction in the case of the IMF, the GATT is clearly anomalous. The result is similar, but the reverse, when it comes to the scope of the issues that the organizations governed. Both

³³³ Milner 1997, p.142.

were no doubt highly ambitious organizations but the number of issues that they sought to address was relatively small, at least as originally conceived. The IMF was primarily concerned with maintaining stable exchange rates, while the GATT was primarily focused on facilitating international trade by reducing tariff barriers. Few connections were made to other issues. Indeed, from a purely functional perspective, the two organizations were actually quite similar.³³⁴ While they may have dealt with distinct issues, their scope and ultimate objectives were broadly the same. Rational design conjectures may therefore correctly predict the form of the GATT but they fail to predict the form of the IMF.

Table 7 Summary of Rational Design Predictions

<u>Variables</u>	<u>IMF</u>	<u>GATT</u>
Opportunism	Correct	Incorrect
Confidentiality	Incorrect	Uncertain
Flexibility	Incorrect	Correct
Agility	Incorrect	Incorrect
Heterogeneity	Incorrect	Incorrect
Membership	Correct	Incorrect
Issue Scope	Incorrect	Correct

In sum, the results of this initial probe are somewhat mixed, as shown in Table 7. In some cases rational design variables take values that we would expect them to, yet in most they do not. In each of the columns, only two predictions out of a possible seven are “correct.” Further, no single variable offers correct predictions for both organizations. At best, if we chose to regard the confidentiality variable as giving a “correct” prediction in the GATT column, this only increases the number of correct predictions to three out of seven, and the variable still fails to explain the cross-case variation. Thus, we may conclude that a rational design explanation does not offer an

³³⁴ See, for instance, the comparison of these two organizations in Jackson 1969 and Dam 1970.

especially convincing explanation of these two cases. Further, the analysis suggests that, contra the claims made by others, both the IMF and GATT actually appear to be poorly “matched” with the issues they were supposed to govern—an observation buttressed by the fact that numerous attempts were made to reform the organizations over the years that had the effect of correcting some of their “birth defects.”³³⁵ While both may be regarded as examples of “successful” intergovernmental organizations, it may be entirely possible that they would have performed better had they been designed differently. Ultimately, however, while interesting and informative, the results of this congruence analysis must be regarded as inconclusive. While they may reduce the plausibility of a purely rational design explanation somewhat, they cannot definitively rule it out.

5.4. Examining Causal Mechanisms: Within-Case Analyses

In the final analysis, assessing whether a particular theory explains a case—or not—requires not simply looking at correlations between particular independent and dependent variables, as above and in the previous chapter, but actually observing the causal process that links them.³³⁶ This is where a within-case analysis, or “process tracing,” can be especially helpful. Process tracing can help to unravel the decisions and sequences of events that lead from an initial set of conditions to a final outcome by searching for particular clues indicating that the causal process indeed

³³⁵ Indeed, it is noteworthy that in several respects the IMF became less formal as a result of the creation of several “political” bodies, such as the G10 and the Committee of Twenty (C20), see Dam 1983; Gold 1984; James 1996. Numerous attempts were also made to reconstitute the GATT on a more formal basis, culminating at last in the successful creation of the WTO, see Barton et al. 2006; Jupille, Mattli, and Snidal 2013. To some degree, these reforms can therefore be interpreted as efforts to correct the “match” between an organization’s structure and the underlying problem it is intended to address.

³³⁶ More specifically, since causal processes can rarely be directly observed, testing whether a theory is correct requires searching for observable implications that indicate that the causal process is the one that a theory envisions, see King, Keohane, and Verba 1994..

resembles the one hypothesized by a theory.³³⁷ In what follows, I do so by breaking the causal process down into three steps that broadly reflect the theoretical framework presented in Chapter 3:

- 1) Demand for governance and “selection” of domestic institutions.
- 2) The formation of state preferences over organizational form.
- 3) The negotiation and establishment of a new intergovernmental organization.

In the first step, I investigate why states came to believe that an organization of some kind was needed and how particular domestic institutions assumed leadership over the cooperative process. The second step focuses on understanding the preferences of these actors and how they shaped each state’s approach to institutional design. The third step then examines the preference “aggregation” process whereby state preferences are translated into final organizational outcomes. In other words, the second and third steps investigate how different domestic institutions are able to influence the form of an organization, as in the quantitative analysis—although with much more detailed information about the preference formation and aggregation processes. The first also investigates the process that precedes this stage, i.e. the treatment assignment process itself, which the quantitative analysis did not address. In what follows, I discuss the IMF first and then turn to consider the case of the GATT.

If the liberal theory is correct, then we should find consistent evidence in each case indicating that domestic political factors—specifically, levels of domestic autonomy, politicization and/or domestic constraints—as well as the relative power that states possess have driven decisions

³³⁷ George and Bennett 2005; Bennett and Checkel 2015.

about the formality of an organization. The different actors that get “selected” to lead cooperative efforts should have preferences in line with those predicted by the liberal theory. We should also see evidence that their reasons for holding those preferences accord with our expectations. And, finally, the distribution of preferences and power should be seen as essential for determining the form of the organization that emerges. By contrast, if rational design considerations are the primary drivers of informality, then we should see a very different causal process unfold: states should be engaged in conscious efforts to identify the cooperation problems they face and should be seen to make an effort to tailor institutional designs to the specific cooperation problems that are confronted. The final organizational form should primarily be chosen because it offers a good “match” with the problem that states identify; it should be thought to advance cooperation more effectively than a similar organization with a different level of formality. The narrow institutional preferences of the actors leading cooperation and state power should be much less important to the outcome.

5.5 The Emergence of the IMF as a Formal Organization

5.5.1 Demand and Institutional Selection

The IMF was primarily created in response to problems of cooperation experienced during the Great Depression. Countries had been struck by a massive economic downturn, and they attempted to respond to it in a number of ways. First, many countries initially resorted to protectionist policies that sought to restrict trade and boost domestic demand for manufactured and agricultural goods.³³⁸ The Smoot-Hawley tariff in the US —the most infamous of these

³³⁸ Eichengreen and Irwin 2010; Irwin 2011a.

measures, discussed further in the next section—attempted to raise agricultural prices, which had been particularly hard hit. The second response was fiscal, and, again, efforts by the US were exemplary.³³⁹ Shortly after his election in 1932, Franklin Delano Roosevelt initiated considerable government spending to spur economic activity. The third approach was monetary: states sought to boost domestic prices by lowering interest rates and revaluing their currencies.³⁴⁰ Since the mid 1920s, most states had been on the gold standard. Under this system, countries pledged to fix their currencies to a specific quantity of gold, and, by taking actions to maintain this parity, would thereby stabilize the value of their currency relative to all others that did so as well.³⁴¹ The gold standard had the great advantage of facilitating trade and investment between countries, and was regarded as a hallmark of prudent economic policymaking.³⁴² But, at the same time, the commitment to gold parity restricted a state's capacity to use monetary levers.³⁴³ Faced with declining exports and outflows of gold, maintaining parity during the Great Depression typically meant contracting the money supply, which reduced prices, employment and output. Using monetary policies to stimulate domestic investment therefore meant severing the link with gold. Once this was accomplished, a country could devalue in order to improve competitiveness and expand credit. But doing so led to unanticipated consequences, which appeared to undermine the value of this particular tool.

The UK was among the first to take this path and, in some respects, provided a model for doing so. Faced with significant outflows of gold and internal domestic resistance to contractionary

³³⁹ Rauchway 2008.

³⁴⁰ Eichengreen and Sachs 1985; Eichengreen 1992.

³⁴¹ Bordo and Schwartz 1984; Eichengreen 2008.

³⁴² Bordo and Rockoff 1999.

³⁴³ Eichengreen 1992; Rauchway 2015.

measures designed to maintain parity, the country was forced to halt convertibility and devalue its currency in September 1931.³⁴⁴ Its early departure from the gold standard seemed to have put the country on the road to recovery.³⁴⁵ However, as countries such as the UK departed from gold and adjusted their currencies, a troubling dynamic of competitive devaluations was unleashed. If one state lowered the value of its currency, this instantly made other economies less competitive. They would then have an incentive to retaliate to improve their competitiveness again, effectively undermining some or even all of the advantage that the first country had gained by doing so. This move would then, in turn, cause others to do so as well. Following the British devaluation, for instance, Roosevelt believed that the pound was now undervalued, giving the UK an unfair advantage.³⁴⁶ Shortly after his election, he therefore pledged to establish a “sound and adequate” dollar, and soon took actions to halt gold convertibility, devalue, and lower interest rates so as to raise domestic prices.³⁴⁷ This had the effect of nullifying all of the advantage that the UK had previously gained. This, at any rate, was the perception.³⁴⁸ By 1935, key leaders in Europe and North America thought that the dynamic of competitive devaluations was undermining recovery and the effective use of monetary instruments, which had been critical to some of the early successes in battling the Great Depression.³⁴⁹

This problem of the interwar period therefore created an initial incentive for cooperation. After their experience with fluctuating exchange rates and competitive devaluations—and lack of cooperation following the London Conference of 1933—states wished to return to monetary

³⁴⁴ Clarke 1977; Eichengreen and Sachs 1985.

³⁴⁵ Ibid.

³⁴⁶ Rauchway 2015.

³⁴⁷ Ibid.

³⁴⁸ Bordo 1993.

³⁴⁹ Clarke 1977; Eichengreen and Sachs 1985; Eichengreen 1992.

stability, if not the gold standard.³⁵⁰ But, in line with the liberal theory, it also “selected” particular domestic institutions to lead efforts to do so. In the US, the negative effects of competitive devaluations were most keenly felt by the Treasury Department—a political institution, as conceptualized in Chapter 2—that had responsibility for administering Roosevelt’s activist monetary policies throughout his administration. Henry Morgenthau, Jr., who served as Secretary of the Treasury from 1934 to 1945, was Roosevelt’s close confidant and supporter, and proposed to pursue currency stabilization to bolster the effectiveness of the Treasury’s policies.³⁵¹ The President was hesitant at first, but also wished to avoid another round of competitive devaluations and was willing to let Morgenthau try.³⁵² With the President’s consent, he started to pursue a degree of stabilization in early 1935, spearheading a dialogue with counterparts at the ministerial level in the UK and France.³⁵³ In the former, he established contact with Neville Chamberlain and the British Treasury; in the latter, with officials in the Ministry of Finance.³⁵⁴ His initial policy focus was on France, which was on the verge of a disruptive devaluation. President Leon Blum had come to office in 1936 firmly committed to maintaining the country’s gold parity—the country had long been a gold standard holdout—but the state was under intense pressure as a result of the growing German threat, which led to massive capital and gold outflows.³⁵⁵ Morgenthau regarded devaluation of the franc as inevitable and sought to stimulate three-way cooperation in order to allow for an orderly French departure

³⁵⁰ Ibid.; Eichengreen 2008.

³⁵¹ Blum 1970, p.64.

³⁵² Ibid. Cordell Hull and the State Department objected to the Treasury’s efforts, which provoked resistance from Morgenthau, as well as Roosevelt, who authorized Morgenthau to remind Hull that the Treasury had sole responsibility for stabilization. See Ibid, p.64-65.

³⁵³ Ibid.

³⁵⁴ Clarke 1977.

³⁵⁵ Oye 1986; Oye 1992.

from gold and subsequent currency stabilization.³⁵⁶ The result was the Tripartite Pact of 1936, which laid down a number of general principles governing monetary relations.

The Tripartite Pact was a highly limited effort. It did not call for the establishment of an intergovernmental organization, and it was not even a formal intergovernmental agreement. Blum had wanted a formal agreement, partly in order to cast the devaluation of the franc—which contradicted a key electoral promise to the French public—“as a great act of international cooperation and statesmanship.”³⁵⁷ However, anticipated resistance from powerful isolationists in the US and similar worries about the optics of a proposed stabilization with American voters made such an approach impractical.³⁵⁸ Morgenthau therefore proposed an alternative: an informal “gentleman’s agreement,” which would not require ratification by the Senate.³⁵⁹ The agreement was subsequently announced through independent declarations by the three governments, and it proved successful at maintaining a degree of stability at a crucial point in time.³⁶⁰ With economic recovery largely in place, countries now had greater assurance that progress would not be eroded by further devaluations. But perhaps the most important impact of the agreement was that it established an understanding among those involved to pursue cooperation in the monetary sphere. Previously, there had been little contact between Treasuries and Central Banks in the critical years of 1934 and 1935—i.e. after the failed London Conference—and the lack of consultation had contributed to the breakdown in monetary

³⁵⁶ Blum 1970.

³⁵⁷ *Ibid.*; Clarke 1977, p.33.

³⁵⁸ Blum 1970.

³⁵⁹ *Ibid.*

³⁶⁰ For the Treasury’s statement, see Morgenthau 1936.

relations.³⁶¹ Yet, after the agreement, contact between officials became much more frequent as the goal of pursuing international monetary stability was established. In this way, the Pact effectively brought to an end the period of unilateral action that had prevailed since September 1931. Further, the actors and lines of communication established between British, French and Americans were largely the same ones that would facilitate the creation of the IMF almost a decade later.³⁶² It therefore represented “the first step taken toward the rebuilding of an international monetary system.”³⁶³

By the start of the Second World War, the idea of forming an intergovernmental organization of some kind to ensure monetary stability had been floating around for some time. John Maynard Keynes had proposed such an approach as early as 1930 in his *Treatise on Money*, which called for a supranational bank and international currency to resolve the kinds of problems that the Tripartite Pact was supposed to address.³⁶⁴ The proposal evolved in a number of Keynes’ later publications, and the idea began to resonate in policymaking communities on both sides of the Atlantic.³⁶⁵ Morgenthau, in particular, recognized the importance of international monetary stability for ensuring peace and prosperity, and was especially proud of his achievements in the area, especially the Tripartite Pact. But as his attention—and Roosevelt’s—began to turn towards arrangements for the postwar order, he appreciated the need to “generalize and improve upon the

³⁶¹ Oye 1986; Oye 1992.

³⁶² Clarke 1977, p.56.

³⁶³ Clarke 1977, p.55.

³⁶⁴ Keynes 1930.

³⁶⁵ Ikenberry 1993; Rauchway 2015, p.150-156. The idea even resonated among Nazi officials. Hjalmar Schacht and Walter Funk, German Minister of Economic Affairs from 1938 to 1945, had proposed a “New Order” along similar lines, see Van Dormael 1978; Conway 2014.

experience” and “bring the treasuries in the United Nations into continuing collaboration.”³⁶⁶ He specifically imagined “a multilateral accord, broader than the Tripartite Pact, and more powerful, that would provide a central agency for preventing competitive devaluations, for avoiding exchange controls even of a benign type, and to those ends, for assisting nations in solving their international monetary problems.”³⁶⁷ To give flesh to his idea, Morgenthau directed Harry Dexter White to prepare plans for the establishment of “inter-Allied stabilization fund” in December 1941, and sought approval from Roosevelt and others in the administration to begin an informal dialogue on the matter, particularly with the British.

5.5.2 The Formation of Preferences Over Organizational Form

The proposal put forward by White paid close attention to the underlying issue that most concerned his client, Morgenthau: competitive currency devaluations. The basic idea was to “provide an instrument with the means and the procedure to stabilize foreign exchange rates and strengthen the monetary systems of the United Nations.”³⁶⁸ Under the scheme, members would fix the rates at which they would exchange their currencies for others, and buy and sell gold, and would only adjust these rates in consultation with others.³⁶⁹ They would, in turn, also contribute currency and gold to a multilateral “pool” that would total no more than \$5 billion.³⁷⁰ When faced with adverse balance of payments, the treasuries of member states would then have the right to purchase the currencies of other members in order to meet their temporary needs, up to an amount equivalent to their original subscription. They would thereby be able to avoid taking

³⁶⁶ Blum 1967, p.229.

³⁶⁷ Ibid.

³⁶⁸ White 1969, p.39.

³⁶⁹ Gardner 1969; White 1969; Bordo 1993.

³⁷⁰ White 1969; Horsefield 1969.

domestically costly, short-term measures to maintain parity and have space to implement longer-term corrective measures.³⁷¹ Under special conditions, members would also be able to purchase more than their original subscription, provided that the balance of payments problems were considered sufficiently threatening and that they received approval from other members. Such decisions would be made by a board of directors composed of the governments of member states, and each member would receive voting rights according to the size of a member's contribution to the currency and gold pool. Given that the US would be the largest contributor, this assured it a dominant voice—indeed, it would have an effective veto with respect to many policy decisions.³⁷²

The White Plan was, in general, designed to meet the perceived problems that had troubled the Treasury—and the world—during the interwar years. It aimed to establish global monetary stability while preserving members' abilities to intervene domestically to maintain high levels of employment—what John Ruggie later referred to as the compromise of “embedded liberalism.”³⁷³ It was highly ambitious. While White did not himself devote attention to legal issues, the plan clearly required significant changes on the part of member governments, particularly by obligating them to ensure currency convertibility, control exchange rates to maintain parity and place a large amount of currency and gold in the multilateral pool. In the US, meeting such obligations virtually required Congressional approval of some kind. Indeed, both Morgenthau and Roosevelt expected early on that implementation of the agreement would be contingent upon approval by the Senate or a joint resolution by both houses of Congress as a

³⁷¹ Gardner 1969; Bordo 1993.

³⁷² Woods 2003; Woods 2006.

³⁷³ Ruggie 1982.

congressional-executive agreement.³⁷⁴ This impression was reinforced by Roosevelt's experience creating the UN Relief and Rehabilitation Administration (UNRRA) in 1943—comparatively, a much less ambitious organization. Anticipating resistance from isolationists, Roosevelt had attempted to use an executive agreement to bypass the Senate completely, but encountered significant opposition to the proposal from Republicans, such as Arthur Vandenberg, as well as Democrats, such as Tom Connally, chairman of the Senate Foreign Relations Committee, who believed that doing so would set a “dangerous precedent.”³⁷⁵ After amendments, the charter of the UNRRA had eventually been passed, but the experience had been sobering one and taught the administration about the perils of ignoring Congress.

The above considerations would appear to confirm rational design hypotheses, since the formality of the organization seemed to have been a function of the commitments that were believed necessary to resolve the problem that policymakers confronted. White proposed an organization that, if created, would require enormous domestic legal changes and these effectively meant that the agreement could not but require approval by Congress. However, in many respects, that was precisely the point, since the larger postwar agenda of Roosevelt and Morgenthau was to embed the US in a web of international legal agreements. Although pragmatic and reserved in his foreign policy pronouncements, Roosevelt had long been an internationalist in the Wilsonian tradition.³⁷⁶ As Assistant Secretary of the Navy, he had supported Woodrow Wilson's efforts to create the League of Nations, and regarded the failure to

³⁷⁴ In the end, participation was indeed secured through a congressional-executive agreement, which requires only a simple majority in both the House and Senate. Given that the Democrats had majorities in both, this would be an easier path to ratification than approval by the Senate, which would have required a 2/3 majority.

³⁷⁵ Divine 1967, p.117-119; Borgwardt 2005.

³⁷⁶ Dallek 1995.

secure approval for the Covenant as a major setback for the US. He believed that opposition by isolationists and unilateralists to greater international engagement more generally was myopic and out of step with the increasingly integrated world that was emerging. Their uncompromising resistance to “foreign entanglements” had, in his view, severely limited the US executive’s ability to secure American interests abroad throughout the country’s history—the experience of his cousin, Theodore Roosevelt, being a notable example in the President’s mind.³⁷⁷ Throughout his own administration such groups had also repeatedly curtailed his own international agenda and scope for maneuver, most prominently through the Neutrality Acts of the 1930s, which had constrained his capacity to provide material support for an embattled Britain and placed the country’s security at risk.³⁷⁸ He was therefore determined to secure a more active role for the US in global affairs. His lieutenant, Morgenthau, who also envisioned a greater role—both international and domestic—for the Treasury, in particular, shared this mindset.

For most of his Presidency, Roosevelt had limited his internationalist goals due to the power of isolationists in Congress and in order to focus on implementing the New Deal.³⁷⁹ In 1932, he had even publicly renounced his earlier advocacy in favor of the membership in the League of Nations in response to attacks by isolationists, such as the publisher William Randolph Hearst. However, with the onset of the Second World War, Roosevelt at last saw an opportunity to pursue his internationalist agenda.³⁸⁰ In 1940, he had been elected to an unprecedented third term and the Democrats had again secured majorities in both houses of Congress.³⁸¹ Crucially, as

³⁷⁷ Smith 2007; Patrick 2009.

³⁷⁸ Cole 1983.

³⁷⁹ Dallek 1995, p.18-19.

³⁸⁰ Ibid.; Hearden 2002; Schlesinger 2003.

³⁸¹ Dunn 2013.

well, with the country's entry into the war in December 1941, there was also growing public support for greater international engagement, which isolationist Republicans and Democrats in Congress could only ignore at their peril.³⁸² Roosevelt therefore had a freer hand to pursue the kind of foreign policy that he had long favored.³⁸³ By 1941, for instance, he had largely repealed the Neutrality Acts that had encumbered his ability to support the fight against Hitler. But, at the same time, Roosevelt also recognized that such support would be fleeting and that resistance to internationalism was likely to return after the war.³⁸⁴ "Anybody who thinks that isolationism is dead in this country is crazy," he claimed, "as soon as this war is over, it may well be stronger than ever."³⁸⁵ If so, this risked returning the US to its prewar isolationist slumber—an outcome that he dreaded. He therefore sought to use the unique opportunity that the war had presented to ensure continued engagement in international affairs well into the future, and, in this regard, formal organizations would be a powerful tool.³⁸⁶ Membership in formal organizations would embed the US in international legal and organizational structures that would effectively "lock in" some kind of global engagement well into the future. They would be, Roosevelt thought, "the only device that would keep the United States from slipping back."³⁸⁷ Morgenthau, perpetually mindful of his political master, was receptive to this agenda. By successfully negotiating the stabilization fund, he hoped to not only create a new global monetary system, with the Treasury at its apex, but also furnish a weapon that Roosevelt could use to permanently defeat economic nationalists and isolationists.³⁸⁸ To ensure this, Morgenthau expedited negotiations so that a

³⁸² Divine 1967; Borgwardt 2005.

³⁸³ Dallek 1995; Smith 2007.

³⁸⁴ Quoted in Butler 2005, p.xiii.

³⁸⁵ Quoted in Patrick 2009, p.62.

³⁸⁶ Hoopes and Brinkley 1997; Hearden 2002; Patrick 2009.

³⁸⁷ Quoted in Butler 2005, p.xii.

³⁸⁸ Woods 1990, p.142.

treaty could be concluded, signed and, ideally, ratified before the 1944 election, which he personally worried Roosevelt would lose.³⁸⁹

Given the characteristics of White's ambitious plan and its congruence with the broader postwar agenda of Roosevelt and Morgenthau, the US placed significant emphasis on legal formality. By contrast, within the UK—America's main negotiating partner—the preference for formality was never as strong. By 1941, the British had set up a number of interdepartmental committees to discuss postwar financial problems.³⁹⁰ With work mainly being undertaken by the Treasury, the committees had developed a document on “Post-War Monetary, Financial and Trade Policy” that had started to make its way through the offices of Whitehall in August 1941.³⁹¹ By September, the document had come to the desk of John Maynard Keynes—then working in the Treasury, and soon (in 1942) to be a member of the House of Lords. It spurred him to advance his own proposal. After several days of writing (largely at Tilton, his home) Keynes produced, in early September, two papers, one on postwar currency policy and a second entitled “Proposals for an International Currency Union.”³⁹² Like White's Plan, his ideas were informed by his own country's experience during the Great Depression, as well as the problems that he anticipated to arise once the war was over. The proposal first called for an International Clearing Union, the object of which was to maintain stability and balance of payments equilibrium between member countries by denominating national surpluses and deficits in a supranational currency (“bancor”) and requiring both creditor and debtor countries to make adjustments to clear their accounts. It also included proposals for a number of additional organizations, such as a supranational police

³⁸⁹ See Blum 1967; Rauchway 2015.

³⁹⁰ Pressnell 1987.

³⁹¹ *Ibid.*; Skidelsky 2000.

³⁹² Keynes 1969. Also see Conway 2014.

force and a reconstruction and relief organization. It was, therefore, highly ambitious as well. And, although these other organizations were eventually dropped, the proposal went through several revisions and was eventually incorporated into the committee's core document, later known as the "Treasury Bible."³⁹³

Unlike White, Keynes explicitly considered the legal nature of the proposed Clearing Union, since colleagues had raised questions about the feasibility of such a project and its affect on national sovereignty.³⁹⁴ He assured, in a later draft, that "in the present version of the plan, no greater surrender [of sovereignty] is required than in any commercial treaty—certainly not greater than in the binding undertakings [...] the United States is inviting us to make."³⁹⁵ However, doing this would not be easy, since Keynes' proposal was not the only one on offer. There was, in fact, a degree of internal contestation over the matter within Churchill's wartime coalition government. Many in the War Cabinet, such as Lords Amery and Beaverbrook, Churchill's close confidant, preferred no organization at all, since it would potentially jeopardize relations with the Commonwealth.³⁹⁶ The (at this point in time) more autonomous Bank of England, which largely allied with such individuals in the War Cabinet to strengthen its position, believed that a less ambitious and less formal arrangement would have been preferable. Bank officials "wanted to simplify, voluntarise and liberalise it," urging the government, "to place less emphasis on rules and leave more to the discretion of member countries."³⁹⁷ While claiming to accept Keynes' basic idea, Bank officials thought the proposed Clearing Union should be "more

³⁹³ Skidelsky 2000.

³⁹⁴ Ibid.

³⁹⁵ Keynes 1969, see Article 50.

³⁹⁶ Pressnell 1987; Skidelsky 2000.

³⁹⁷ Skidelsky 2000, p.219.

like an informational and moral forum, establishing and spreading norms of good-neighborliness.”³⁹⁸ Thus, if the Bank of England—where officials largely resisted the idea of an international bank because it would interfere with their domestic and international control over sterling³⁹⁹—were able to lead cooperation, the UK would likely have a very different preference over the formality of any proposed organization.⁴⁰⁰

5.5.3 The Negotiation and Establishment of a New Intergovernmental Organization

When the US Treasury initiated a dialogue with the UK and let it know of its proposals, it relied, as noted, on the networks that had been established under the Tripartite Pact.⁴⁰¹ They therefore began with British Treasury. This gave Keynes’ a first-mover advantage over opponents, such as the Bank of England, since it would be the Treasury that would be leading the negotiations with the US.⁴⁰² However, it quickly became clear that, whatever the merits of Keynes’ proposed Clearing Union, it was a non-starter with the Americans. In their view, it would never get past Congress.⁴⁰³ The discussions would largely focus, therefore, on the White Plan, with Keynes and his team attempting to reconcile it with their own to the maximum extent possible.⁴⁰⁴ After this

³⁹⁸ Ibid, p.220.

³⁹⁹ Ibid. According to Hugh Dalton, President of the Board of Trade, Bank officials believed “the proposed fund could not possibly be ‘passive’ because no active-minded banker could disinterest himself in the fate of his assets. Therefore, it was inevitable that people would ring up on the telephone and advise sales or purchase of sterling. It would all, they thought, be under the influence of foreigners. They assumed that it would be located in Washington. This would mean the break-up of the sterling block and that everyone would soon ‘look askance’ at sterling. When someone asked whether they would like it in London and not in Washington, Catterns exclaimed, Oh good gracious no! We don’t want the thing here.” see Dalton 1986, p.707-708.

⁴⁰⁰ Ibid, p.330.

⁴⁰¹ Clarke 1977.

⁴⁰² Pressnell 1987; Skidelsky 2000.

⁴⁰³ Ikenberry 1992; Steil 2013; Conway 2014.

⁴⁰⁴ Steil 2013; Conway 2014.

initial period of informal bilateral discussion, the plans were eventually released to the public and the circle of negotiation was widened. The evolving White Plan was sent to dozens of countries along with invitations to attend an informal conference to discuss it.⁴⁰⁵ In the summer of 1943, a total of 46 countries attended a conference in Washington, and the Americans initiated bilateral talks with countries like Canada, France, Australia, China and Brazil.⁴⁰⁶ Efforts would also be made to narrow the gap between Great Britain and the US. They would hold two meetings in Washington and exchange views across the Atlantic.⁴⁰⁷ Finally, in April 1944, the British and American negotiators arrived at an agreement on a *Joint Statement of Experts on the Establishment of an International Monetary Fund*, which largely reflected, in modified form, the original White Plan.⁴⁰⁸ On this basis, and after various heated domestic deliberations, the conference would move forward—for the British, somewhat reluctantly.⁴⁰⁹ Invited parties would meet in Atlantic City, in June, to let technical negotiators resolve a number of remaining issues, coordinate their approaches to the final round of bargaining, and allow the American lawyers to prepare the basic agreement.⁴¹⁰ The whole group would then travel by train to Bretton Woods at the start of July.

Throughout these negotiations, and at the actual conference in Bretton Woods, negotiators engaged in spirited discussions of the design of the organization that was at last emerging. They key issues would be liquidity, adjustment, transitional issues, the role of gold, and quotas.⁴¹¹ The

⁴⁰⁵ Ibid.

⁴⁰⁶ Horsefield 1969; De Vries 1986.

⁴⁰⁷ Ikenberry 1992; Conway 2014; Rauchway 2015.

⁴⁰⁸ Joint Statement 1969.

⁴⁰⁹ Steil 2013; Conway 2014.

⁴¹⁰ Ibid.

⁴¹¹ Gardner 1969; Horsefield 1969; Conway 2014.

legal form of the organization appears to have been discussed as well—at Bretton Woods, mainly within Committee 4 of Commission 1—but there seems to have been a presumption of legal formality by this stage. What record exists of these discussions indicates that the legal form of the organization was not a major source of contention.⁴¹² Certainty, it did not attract the same level of attention as other matters, which often led to vehement disagreements.⁴¹³ We might therefore infer that the preferences of the countries were congruent. However, it is also the case that much greater emphasis was placed on legal issues by the US, and that the British likely had to negotiate on their terms. Keynes would himself famously remark on the litigiousness of the Americans throughout the whole process: “to judge from the results in this lawyer-ridden land, the *Mayflower*, when she sailed from Plymouth, must have been entirely filled with lawyers.”⁴¹⁴ Further, within the UK there was also considerable antipathy about the agreement that was emerging within the War Cabinet, Parliament and among the general public. At several points, the Bank of England and individuals in the Cabinet called for greater flexibility and appeared to want to sabotage the agreement with the US.⁴¹⁵ They seemed to prefer no agreement (Amery and Beaverbrook), or a more informal arrangement (the Bank’s preferred solution) than the one that was taking shape. Churchill was under considerable pressure from such critics and proved reluctant to accept a multilateral solution. Repeatedly, therefore, Keynes received instructions from the Cabinet that “placed less emphasis on agreement with the United States, [and] more on escaping from commitments.”⁴¹⁶ He resisted these entreaties, and persuaded the Cabinet to go along with his approach for the time being. But, as a result, when the agreement was finally

⁴¹² See the meeting minutes for Committee 4 in Schuler and Rosenberg 2012, see p.494-504.

⁴¹³ Gardner 1969; Steil 2013; Conway 2014.

⁴¹⁴ See the relevant portion of Keynes’ speech in Ibid, p.280-281.

⁴¹⁵ Skidelsky 2000, p.315; Dalton 1986, p. 646-650.

⁴¹⁶ Ibid, 326.

reached, Richard Gardner claims, “virtually the only whole-hearted endorsement of the financial compromise came from Keynes himself.”⁴¹⁷

As noted, Morgenthau had tried to “fast track” the agreement so that it could be concluded and possibly ratified before the 1944 election. Delaying by the British and Soviets had, however, made this impossible, and the agreement was only finalized at the end of July. With an election underway, ratification would therefore have to wait. In order to ensure the outcome, Morgenthau mounted an enormous campaign to educate the public, confront critics (especially isolationists in Congress, such as Robert Taft, and the eastern banking establishment) and build constituencies in support of the agreement. But, in the end, Roosevelt won a fourth term and the Democrats attained large majorities in both the House and Senate. Despite the passing of Roosevelt only a few months later, the Bretton Woods Agreements Act officially became law in July 1945.⁴¹⁸ Once this occurred, the British choice was stark: it could accept the outcome in Bretton Woods or attempt to go it on its own with the Commonwealth—the approach now advocated by Amery, Beaverbrook and the Bank.⁴¹⁹ If anything, opposition only increased with the fall of Churchill and the rise of Clement Attlee. In general, the Labour Party, which controlled a majority in the House of Commons, and the Conservatives, which controlled the House of Lords, were opposed.⁴²⁰ The problem, for both, was that the country’s resources had been sapped by the war and, with Lend-Lease about to expire, it badly needed American assistance. Within Attlee’s Cabinet, a decision was therefore made to tie ratification of the Bretton Woods agreement to the

⁴¹⁷ Gardner 1969, p.124.

⁴¹⁸ Conway 2014; Rauchway 2015.

⁴¹⁹ Pressnell 1987; Toye 2000.

⁴²⁰ Gardner 1969; Pressnell 1987; Toye 2000.

successful conclusion of a generous financial arrangement with the US—ideally, a grant.⁴²¹ Again, Keynes led the negotiations. However, the gamble did not work. The Americans proved unwilling to offer resources on anything like the terms that were envisioned, and were unconvinced by the British threat.⁴²² Ultimately, the UK relented, accepting a loan with especially onerous conditions, and, faced with a potentially disastrous outside option—what Keynes’ referred to as “Starvation Corner”—chose to ratify the treaty negotiated at Bretton Woods.⁴²³

5.5.4 Summary

Overall, the IMF case provides fairly strong evidence in favor of a liberal approach. We see states motivated to cooperate in order to address the issue of competitive devaluations. But we also see particular institutions being “selected” to lead cooperative efforts. Further, they appear to have preferences broadly in line with what we would expect. Roosevelt and Morgenthau, in the US, had good reasons to prefer a formal organization, since this would help to “lock in” an internationalist foreign policy more than an informal approach like the Tripartite Pact would. However, when faced with serious domestic constraints, as occurred during the negotiation of the Pact, the US chose to create an informal institution (if not an informal *organization*). France, by contrast, preferred a formal approach, which would help to portray the government’s actions in a more positive light. In the UK, we see somewhat greater diversity. Keynes, in the Treasury, took a more formal approach, but there were others that attempted to resist this, especially the Bank of England, which preferred greater informality, which would limit interventions from

⁴²¹ Gardner 1969; Toye 2000. Note that the British ratification was necessary for the agreement to come into force.

⁴²² Gardner 1969; Conway 2014; Rauchway 2015.

⁴²³ Skidelsky 2000; Conway 2014.

international bureaucrats.⁴²⁴ Given that it was a more autonomous actor within the government, this is exactly what the liberal theory would expect. We nevertheless see the British going along with the US and working within a formal paradigm, possibly because it simply had no other choice and this strengthened Keynes' position vis-à-vis the Bank of England in the Cabinet. The Treasury also had a first-mover advantage, since it, not the Bank, was the chief contact of the American Treasury. However, had the Bank "led" cooperative efforts on behalf of the UK, the state's expressed preference for informality may have been much stronger. Whether it would have succeeded in making this preference felt internationally is another matter, since power appeared to play an important role as well. Once the negotiations were completed, there was little appetite for the agreement in the UK. Labour sought to use ratification as leverage to attain better terms for the postwar loan, but the threat was not credible. The US resisted, and ultimately the UK was compelled to ratify the agreement because of Britain's dependent on American largesse and its outside option was bleak; even a bad agreement with the US was better than none. The IMF, therefore, ended up as a formal organization.

Of course, the case also suggests that actors engaged in efforts to design an institution that addressed the problems states faced, which suggests that rational design considerations might have some validity. Keynes and White, no doubt, thought carefully about the kind of institution that was being created. Further, it does appear that efforts to resolve the problem of opportunism were part of the motivation behind their choice of a more formal approach, since this led them to design a much more ambitious institution. However, interestingly, many believe that this emphasis was overdone. Many commentators—including Keynes himself—have subsequently

⁴²⁴ See n.364 above for the reflections by Hugh Dalton on the Bank of England's rationale for resisting the IMF. Also see the discussion in Skidelsky 2000.

remarked on the “excessive” level of legalism, especially on the part of the US, which may have contributed to the organization’s later problems. Richard Gardner, for instance, in his classic history of the negotiations, famously remarked upon the strong misguided “tendency [among those involved] to think that outstanding international problems could be resolved by drafting detailed codes of formal principles.”⁴²⁵ Those at Bretton Woods, he thought, “failed to recognize that the promulgation of formal codes may be a less effective method of international cooperation than the establishment of informal working relationships.”⁴²⁶ Joseph Gold, General Counsel of the IMF during its early years, has also remarked on the high level of legalism at Bretton Woods. In his classic study of the IMF’s legal architecture, he argued that this feature of the agreement was not a product of “rational considerations” and that the level of precision negotiators adopted made the organization slower and less flexible than was desirable.⁴²⁷ Eventually, this would be a major concern. Starting in the 1960s, policymakers made numerous efforts to change the Articles of Agreement to add in a degree of flexibility. States also supplemented the IMF with a variety of “political bodies,” such as the G10 and the Committee of 20 (C20), which augmented the organization’s capacity quite dramatically and reduced its level of formality.⁴²⁸ There are, therefore, reasons to think that, even if there was a strong element of rational design at work, the level of formality that was ultimately chosen was *not* particularly well suited to the problems the organization was intended to address.

⁴²⁵ Gardner 1969, p.383.

⁴²⁶ Ibid, p.384.

⁴²⁷ Gold 1984, p.00.

⁴²⁸ Dam 1983; Gold 1984; James 1996.

5.6 The Emergence of the GATT as an Informal Organization

5.6.1 Demand and Institutional Selection

Like the IMF, the GATT was a product of the Great Depression. As mentioned above, when countries were struck by the economic downturn they responded in a number of different ways, one of which was to hike tariff rates to raise prices of foreign goods and thereby protect domestic industries. Indeed, tariffs were one of the first instruments that governments reached for. In the US, the Smoot-Hawley Tariff Act of 1930 was a direct response to the major economic losses that domestic producers faced, particularly farmers, who had been deeply affected by a major decline in commodity prices.⁴²⁹ Although both proponents and opponents have long exaggerated its direct economic impact, the effect of Smoot-Hawley was extensive in another important respect: it touched off a round of retaliatory protectionist measures that led to economic losses which far outweighed any benefits the tariff itself provided.⁴³⁰ In Canada, Smoot-Hawley was seen as hostile act, and contributed to the election of a Conservative government that introduced a higher tariff and reoriented itself towards the UK and Commonwealth.⁴³¹ The tariff rates on American goods also rose throughout Europe, choking off the country's share of world trade. In addition to these unilateral responses to Smoot-Hawley, states also formed preferential blocs that discriminated against American goods. Most prominently, in 1932, the British Empire Economic Conference concluded the Ottawa Agreements, which limited tariffs on goods traded within the British Commonwealth and made goods originating from outside of it less competitive—what

⁴²⁹ Schattschneider 1935.

⁴³⁰ Irwin 2011a; Irwin 2011b.

⁴³¹ Jacks 2014.

became known as the system of “Imperial Preference.”⁴³² Of course, protectionism was hardly new phenomenon—in the US, Smoot-Hawley only raised tariffs on dutiable goods by about 15-18 percent⁴³³—but the troubling dynamic that ensued led governments to search for solutions.

The problem of tariff retaliation created an incentive for cooperation of some kind—countries wanted to ensure access to foreign markets, even in times of crisis—but the effects of retaliation also fell upon particular actors within governments and motivated them to “lead” cooperative efforts. In the US, Cordell Hull, a Southern Democrat whom Roosevelt named Secretary of State in 1933, was among those who were most concerned. When he assumed leadership of the State Department—a political institution, as conceptualized in Chapter 3—he made trade liberalization a priority. His reasons for doing so were several. Hull was, first of all, an ardent free trader and had pushed for the lowering of tariffs throughout his political career in the House and Senate.⁴³⁴ An open trading system was, in his view, good economic policy and might help to alleviate some of the worst effects of the Great Depression.⁴³⁵ But Hull, as Secretary of State, saw the importance of free trade not simply in economic terms. Free trade could certainly lead to economic gains, and it would be desirable for that reason alone, but the political implications of free trade were just as important.⁴³⁶ Indeed, he was convinced that trade restrictions stifled diplomacy, bred political conflict, and increased the likelihood of war.⁴³⁷ The dynamic that Smoot-Hawley unleashed, in his view, negatively affected national security and hindered the State Department’s ability to conduct its work effectively in other areas. Its diplomatic efforts in

⁴³² Lattimer 1934.

⁴³³ Chang 2003.

⁴³⁴ Hull 1948, p.352-3.

⁴³⁵ Allen 1953.

⁴³⁶ Hull, p.355.

⁴³⁷ Ibid, chapter 7.

a range of areas were being repeatedly stymied by “diplomatic protests” over trade.⁴³⁸ Thus, while Hull was certainly committed to free trade and likely to subjectively perceive the rise of trade barriers as a problem, it was also the case that making progress on trade was objectively essential to the attainment of the State Department’s broader goals.⁴³⁹ It therefore had a strong incentive to take charge. To do so, the first item on Hull’s agenda was actually domestic: to break Congress’s hold over tariffs by sponsoring the Reciprocal Trade Agreements Act (RTAA), which became law in 1934 (as an amendment to the Smoot-Hawley Tariff Act).⁴⁴⁰ Prior to this time, Congress had sole authority to set tariffs for the US, which meant that the tariff rate was largely a function of domestic politics.⁴⁴¹ While the executive branch had, of course, negotiated a number of trade agreements with various states before this time, its ability to do so had been seriously impaired.⁴⁴² With the conclusion of the RTAA, however, authority for setting tariffs would be delegated to the Executive, which would then have the capacity to negotiate reciprocal reductions with other states and enact them by executive order.⁴⁴³

The RTAA, which would be renewed several times over the ensuing years, completely changed the political dynamics of trade policy in the US. The number of trade agreements rose

⁴³⁸ In his memoirs, Hull (p.355) wrote, “To me it seemed virtually impossible to develop friendly relations with other nations in the political sphere so long as we provoked their animosity in the economic sphere. How could we promote peace with them while waging war on them commercially? When I came to the State Department I found in the files no fewer than thirty-four formal and emphatic diplomatic protests presented by as many nations following the passage of the Smoot-Hawley high-tariff Act. Nor had their protests been confined to words. Goaded by what they regarded as almost an embargo keeping out their exports to the United States, they retaliated in kind.”

⁴³⁹ Butler 1998, p.7-9; Zeiler 1999.

⁴⁴⁰ Butler 1998; Hull 1948, p.354.

⁴⁴¹ Schattschneider 1935.

⁴⁴² Lake 1988.

⁴⁴³ Haggard 1988.

considerably. Initially, despite his belief that multilateralism was the best course of action, Hull focused on reaching bilateral treaties.⁴⁴⁴ Between 1934 and 1939, therefore, the US concluded reciprocal trade agreements with 19 other states. Among the most important were those with the UK and others in the Commonwealth, such as Canada. Their strategic importance largely derived from Hull's belief that the Ottawa Agreements had done significant damage to the US; in Congress, in 1940, he described them as "the greatest injury, in a commercial way, that has been inflicted on this country since I have been in public life."⁴⁴⁵ However, these agreements, while significant, largely left the system of Imperial Preference intact.⁴⁴⁶ As postwar planning began in the midst of the Second World War, Hull sought a more robust agreement with the British, which was the key to "unlocking" the Empire.⁴⁴⁷ The first effort to do so took place in August 1941 during the summit at Placentia Bay, Newfoundland, where Roosevelt and Churchill agreed upon the Atlantic Charter—a statement of their joint aims for a postwar global order.⁴⁴⁸ There, Undersecretary of State Sumner Welles attained a preliminary British commitment to an open global trading system, although he and Hull were disappointed by the reservations that Churchill introduced and which Roosevelt had accepted.⁴⁴⁹ A much more significant commitment was elicited during the subsequent "Lend-Lease" negotiations. Despite vigorous resistance, again, by Churchill to anything that obligated the UK to automatically dismantle the system of Imperial Preference, Hull and Roosevelt were able to exploit the UK's dependence on aid to extract a

⁴⁴⁴ Ibid, p.356. The RTAA, in fact, only allowed for the negotiation of bilateral agreements—a point returned to later on. This was, it was found, political necessary in order to secure Congressional approval.

⁴⁴⁵ Quoted in Gardner 1969, p.19.

⁴⁴⁶ Hearden 2002; Irwin, Mavroidis, and Sykes 2009.

⁴⁴⁷ Gardner 1969; Zeiler 1999; Toye 2003b.

⁴⁴⁸ Ibid., Chapter 3; Wilson 1991. Also see Borgwardt 2005.

⁴⁴⁹ Gardner 1969; Zeiler 1999; Irwin, Mavroidis, and Sykes 2009.

formal British promise (consecrated in Article VII of the Mutual Aid Master Agreement) to pursue reductions in tariffs and the elimination of discrimination in trade with the US.⁴⁵⁰

Article VII provided the international legal framework for the British and American officials to negotiate a multilateral trade and monetary regime. It effectively obligated the UK to cooperate with the US on postwar planning in order to receive aid for the war effort. Many in the UK government took the commitment seriously and work began quickly.⁴⁵¹ Keynes and the Treasury, as described above, would propose a “Clearing Union,” which would govern international monetary relations. But progress was made on the commercial side as well. In July 1942, James Meade of the Economic Section of the War Cabinet would write a memorandum entitled “Proposal for an International Commercial Union” outlining a British approach that was sent to and swiftly embraced by Labour MP Hugh Dalton, then President of the Board of Trade—the political institution responsible for *inter alia* undertaking trade negotiations on behalf of the UK.⁴⁵² Dalton would, in turn, convene an interdepartmental committee, chaired by Arnold Overton, Secretary of the Board of Trade, which would revise and endorse Meade’s proposal.⁴⁵³ A memorandum presenting several paths forward was then prepared by the Board of Trade and the Dominion Secretary and submitted to the War Cabinet in April 1943, which broadly endorsed the most ambitious course of action.⁴⁵⁴ In the US, of course, planning had already been underway for some time. Both Cordell Hull and Roosevelt, as described in the previous section, emphasized the importance of engaging in postwar planning early on—even before the US

⁴⁵⁰ For accounts of this episode from the British and American sides, see Gardner 1969; Pressnell 1987; Zeiler 1999.

⁴⁵¹ Pressnell 1987.

⁴⁵² Zeiler 1999, Chapter 2; Irwin, Mavroidis, and Sykes 2008, p.27-37.

⁴⁵³ Dalton 1986; Pimlott 1985, p.399.

⁴⁵⁴ Ibid.

formally entered the war.⁴⁵⁵ In order to do so, Hull established a number of planning committees within the State Department to develop proposals for a new global order, including a rejuvenated trade regime.⁴⁵⁶ Under the leadership of Leo Pasvolovsky and Harry Hawkins, chief of the Division of Trade Agreements, the committees eventually developed a detailed outline for an International Trade Organization (ITO), which would underpin the kind of liberal trade regime—built upon the Most Favored Nation and non-discrimination principles—that Hull had long envisioned.

5.6.2 The Formation of Preferences Over Organizational Form

Both the British and American plans for international trade were carefully thought out, and, to a great extent, reflected efforts to design an arrangement that could address the problems that troubled them. However, they initially focused on creating a *formal* organization that was very different from what later emerged. Meade’s proposal suggested that the UK had an important stake in an open trading system, and offered a sketch of the kind of arrangements that might help to attain this goal. He placed emphasis on three main principles. First, he suggested, “Membership in the Union would be open to all states which applied for membership and were willing to carry the obligations of membership.”⁴⁵⁷ Second, he thought that “Members of the Commercial Union would undertake not to grant preferences or other price advantages to any other member of the Union without extending it to all members, except that certain moderate and defined degrees of preference might be given as between members of a recognized political or

⁴⁵⁵ Hearden 2002; Schlesinger 2003; Patrick 2009.

⁴⁵⁶ The plans for a United Nations Organization would also emerge from the committee chaired by Pasvolovsky, see Hearden 2002; Schlesinger 2003.

⁴⁵⁷ Meade 2008, p.216.

geographical group of nations.”⁴⁵⁸ Thus, while generally recognizing need to limit discrimination, the plan also “hollowed out” a place for the system of Imperial Preference. Third, “Members of the Union would undertake to remove altogether certain protective devices against the commerce of other members and to reduce to a defined maximum the degree of protection which they would afford to their own home producers.”⁴⁵⁹ It was, needless to say, an ambitious plan. To achieve it, Meade stated, “the existence of some international body which had the competence to interpret the Charter of the Commercial Union, and to arbitrate or to give decisions in case of disputes among its members would be [...] essential.”⁴⁶⁰ Yet, even though concerns about flexibility and the potential for conflict were mentioned in his proposal—and might have led him to prefer an informal approach, according to the theory of rational design—he nevertheless seems to have assumed a more legalistic approach. Flexibility was to be handled, instead, through exemptions and escape clauses in what appeared to be formal design, a point discussed further below.

Most likely, at this point, Meade may have simply assumed that these matters were beyond his remit and was simply a function of broader considerations—what was politically and legally necessary, domestically and internationally, to get the job done.⁴⁶¹ Certainly, in the past, the British had traditionally concluded trade agreements as formal international treaties. However, a number of intergovernmental agreements and organizations that the British spearheaded or

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid, p.220-221.

⁴⁶¹ See Meade’s diary entries for the 21 and 22 of September 1943 in Howson and Moggridge 1990.

participated in at the time had in fact been informal in nature.⁴⁶² If there was a choice between these two options, however, there are reasons to think that Meade's political backer in the Board of Trade and War Cabinet—Hugh Dalton—strongly preferred a more formal approach. Dalton had been a rising star in the Labour Party.⁴⁶³ He aspired to be Foreign Secretary, but his position within the Conservative-dominated Cabinet was tenuous and he searched for areas where he could demonstrate Labour leadership.⁴⁶⁴ When he came across Meade's paper, he immediately embraced it as his “pet project.”⁴⁶⁵ Doing so served two purposes. First, in his view, the project was indeed “of first-class importance.”⁴⁶⁶ In his earlier publications in the 1930s, Dalton had argued in favor of multilateral agreements to reduce tariffs on a reciprocal basis.⁴⁶⁷ The project therefore accorded with Dalton's own long-held ideas. But, perhaps even more importantly, it also provided an opportunity for him to take charge of an initiative with “first-class controversial value” and demonstrate his value to Labour voters and his counterparts in the War Cabinet.⁴⁶⁸ Leading an ambitious scheme would, in Dalton's view, allow him to engage with an important issue and bolster his position in the government—as well as any future government.⁴⁶⁹ He

⁴⁶² Aust 1986; Aust 2000. Examples informal organizations that the British created or participated in include the Commonwealth Telecommunications Board (1928) and the Commonwealth Agricultural Bureau (1929). The Commonwealth Secretariat, established in 1949, was also established informally.

⁴⁶³ Dalton was Parliamentary Undersecretary for Foreign Affairs in 1929 to 1931, and, from 1935, had been the Party's spokesman for foreign affairs.

⁴⁶⁴ See Pimlott 1985, Introduction.

⁴⁶⁵ Toye 2000, p.214.

⁴⁶⁶ Pimlott 1985, p.399.

⁴⁶⁷ He had proposed a “supreme International Economic Planning Body,” see Toye 2000, p.195.

⁴⁶⁸ Pimlott 1985, p.399.

⁴⁶⁹ Dalton expected another coalition government after the war—he did not predict the Labour victory that eventually occurred. He therefore saw the shift towards postwar planning after the Article VII talks as a chance to take real action within the government, which would allow him to start implementing part of Labour's program, while also engaging with and demonstrating his usefulness to other members of the coalition government, especially Churchill, which he

therefore gave Meade full political support, and initiated the process that turned his paper into a fully-fledged draft treaty. As noted, it was Dalton who convened the interdepartmental Committee on Commercial Policy that “kick started” the British negotiation process, but he was also the one who subsequently directed Sir Frederick Leith-Ross to draft the proposal as a legal agreement.⁴⁷⁰ Dalton therefore decisively moved the proposal in a more formal direction, which is what the liberal theory suggests should occur.

The US proved receptive to this approach. Thus far, the State Department had mainly considered a more ambitious, yet nevertheless “cautious,” version of the bilateral approach that it had relied upon before the war.⁴⁷¹ But when the Americans met with British officials at an informal Article VII seminar held in Washington in September and October 1943, their view changed. The unreleased report from these meetings notes numerous areas of agreement—although there were significant disagreements over Imperial Preference, quantitative restrictions and cartels—including the desirability of a multilateral convention and an “International Commercial Policy Organization” to enforce it.⁴⁷² The report outlines a range of tasks that such an organization would be expected to perform, including providing information, carrying out investigations and fact-finding functions, interpreting the convention, and arbitrating disputes. It also offers a rough sketch of the organization’s structure, which included a supervisory Council of member governments and a Commission, comprising a staff of experts that would carry out the tasks

regarded as critical to solidifying a position within any future government, see Dalton 1986, Introduction by Ben Pimlott.

⁴⁷⁰ Leith-Ross 1968, p.293.

⁴⁷¹ Irwin, Mavroidis, and Sykes 2008, p.39-39. This was, in any case, all the RTAA allowed for; a multilateral approach required either an entirely new treaty or a significant expansion of the authority delegated under the RTAA.

⁴⁷² State Department 2008.

described above. While these discussions were merely “exploratory” and did not imply any commitment to the plan described in the report—indeed, a memorandum “stressed that the US Government had not formulated any position on the questions discussed” and noted that “American officials participating in the conversations did so in their individual capacities”⁴⁷³—they led to a significant shift in the State Department’s view on multilateralism and the desirability of an intergovernmental organization. It was, henceforth, regarded as the superior approach. And after further discussions with Canadian trade officials—who wholly embraced the idea—the State Department spent most of 1944 developing specific proposals along the lines suggested by the British.⁴⁷⁴

Part of the reason for this was that the British proposal accorded with the long-held views of the Secretary of State. As far back as 1916, Hull had proposed the establishment of a “permanent international trade congress,” which would have established and maintained a liberal trade regime after the First World War.⁴⁷⁵ In 1925, he had even used the term “International Trade Organization”—the moniker that was eventually adopted for the proposed organization.⁴⁷⁶ Hull also regarded multilateralism as the ideal means of reducing tariff barriers, if it was domestically feasible, since it made the task of negotiation easier.⁴⁷⁷ Meade’s ideas, therefore, aligned with his own. But, it was important in another respect as well: he sensed the opportunity for assuming leadership on the issue and realizing his “free trade dreams.”⁴⁷⁸ Creating the ITO would be the ultimate capstone to an illustrious political career. The objective also, obviously, aligned with

⁴⁷³ Quoted in Irwin, Mavroidis, and Sykes 2008, p.41.

⁴⁷⁴ Zeiler 1999; Irwin, Mavroidis, and Sykes 2009.

⁴⁷⁵ Hull 1948; Toye 2003a, p.285.

⁴⁷⁶ Toye 2003a, p.285.

⁴⁷⁷ See Hull 1948, p.356.

⁴⁷⁸ Zeiler 1999, p.37. Also see Butler 1998.

Roosevelt's broader goal, described in the previous section, of embedding the US within a web of intergovernmental agreements and organizations in order to guard against isolationist resurgence and ensure ongoing American participation in global affairs after the war. Roosevelt was no freer trader like Hull, but he supported Hull's efforts nonetheless, since they fit in with his internationalist agenda.⁴⁷⁹ Each of these factors might have led these policymakers to prefer a more *formal* organization, since a formal approach would "lock in" the outcomes they sought to a far greater extent: an informal "gentleman's agreement" might have been expedient but could easily be renounced after the war if the administration changed. Yet it was also the case that any trade agreements signed by the US under the RTAA virtually had to be highly formal in nature due to the high level of politicization in the area. Congress had heavily resisted the administration's efforts to establish the UNRRA without its consent, and when it came to international trade—an issue that traditionally fell within its remit—Congress would no doubt demand a say.

The State Department was, then, inclined—if not compelled—to adopt a highly "legalistic" approach to the trade agreement.⁴⁸⁰ This could be seen in the State Department's *Proposed Multilateral Convention on Commercial Policy* of 1944, which was written in a language of legal rights and obligations, as well as the more fully developed draft charter advanced in its *Proposals for Expansion of World Trade and Employment* of 1945, which served as the basis for subsequent negotiations.⁴⁸¹ However, in order to conclude a formal agreement, timing was critical. Hull had regarded the period immediately following the First World War as especially

⁴⁷⁹ See *Ibid*, Chapter 2. Also see discussion in Hull 1948; Hearden 2002; Patrick 2009.

⁴⁸⁰ Gardner 1969; Dam 1970, p.4.

⁴⁸¹ Irwin, Mavroidis, and Sykes 2009.

propitious time to establish a permanent trade organization and he repeatedly lamented Congress's failure to consider a resolution he had put forward supporting such an agenda.⁴⁸² The opportunity had eventually passed. But if such an organization had existed, he thought, Smoot-Hawley and the breakdown of the 1930s might never have happened; Congress would never have been able to retreat from the global economy as it did and other governments would not have reacted the way they had.⁴⁸³ He did not want to lose his chance to lock in a more liberal trade policy again, especially given the Democrats' majorities in Congress.⁴⁸⁴ The State Department's Special Committee on the Relaxation of Trade Barriers, chaired by Harry Hawkins, issued a report in 1943 that echoed this concern: "the opposition is in a weaker position now than it has been in the past or will be [...] after the war" and therefore the time to establish a permanent organization "is already upon us."⁴⁸⁵ Thus, shortly after the State Department released its proposed Charter in 1945—regrettably, after the departure of Cordell Hull, who resigned from his position due to poor health—Assistant Secretary of State William Clayton called for a United Nations Conference on Trade and Employment, which convened a larger group of states to begin negotiations.

5.6.3 The Negotiation and Establishment of a New Intergovernmental Organization

The Charter for the ITO was negotiated, starting in 1946, in a series of "Preparatory Committee" meetings that took place in London, Lake Success (New York), Geneva, and Havana. In many respects, they proved to be far more challenging than those that established the IMF and IBRD.

⁴⁸² Hull 1948; Allen 1953, p.107.

⁴⁸³ Ibid.

⁴⁸⁴ Zeiler 1999, p.37.

⁴⁸⁵ Quoted in Aaronson 1997, p.35.

States disagreed on a number of quite fundamental issues. The most significant by far was the problem of Imperial Preference.⁴⁸⁶ The UK sought to preserve its ability to discriminate and use tariffs as a means of protection through a number of carve-outs that allowed the system of Imperial Preference to remain in place and which enabled the the country to raise tariffs if domestic employment was threatened. The US was diametrically opposed to this. Officials in the State Department believed that the UK had committed to the removal of discriminatory practices in the Lend-Lease negotiations, and saw British resistance as a violation of the spirit of Article VII. It pushed for more precise commitments. But developing countries raised similar issues.⁴⁸⁷ They also sought to attain a degree of flexibility that would allow them to use tariffs to promote their own industries. Eventually, to preserve the agreement, the US capitulated and included a section on development that offered these states a number of exemptions. It also relented, to some extent, in its battle against the UK over discriminatory practices. But, as the number of exemptions accumulated, the US itself sought escape clauses so that it could opt out of its tariff commitments under certain conditions as well. Nevertheless, throughout all of this, there seems to have been no suggestion that an informal agreement or organization was inherently preferable. Despite their desire for flexibility, states remained wedded to the formal approach.

The GATT agreement first appeared in the London meetings (Committee II), which took place in 1946.⁴⁸⁸ It was, originally, simply a part of the larger ITO initiative. Committee II was charged with the task of negotiating the portion of the larger agreement that dealt directly with commercial policy. But, in contrast with other committees, the negotiators in London made

⁴⁸⁶ Zeiler 1999; Toye 2003b.

⁴⁸⁷ Toye 2003a.

⁴⁸⁸ Zeiler 1999; Irwin, Mavroidis, and Sykes 2009.

considerable progress, and they decided that it would be useful to produce a separate tariff agreement in order to “safeguard” the concessions they were going to be making at subsequent meetings while the rest of the Charter was sorted out.⁴⁸⁹ The negotiators in Committee II assumed that they were not creating a separate organization; the GATT agreement was simply a temporary trade agreement that would eventually be incorporated into the ITO. Indeed, at subsequent meetings in Lake Success and Geneva the negotiators went to great lengths to ensure that the agreement did not imply that an intergovernmental organization was being created. Organizational arrangements were explicitly left out. Negotiators even replaced the term “Interim Trade Committee” with the somewhat cumbersome “CONTRACTING PARTIES,” specifically “to remove any connotation of formal organization.”⁴⁹⁰ The agreement that emerged from these negotiations, as well as the actual tariff reduction schedules that were agreed upon, constituted the 1947 Geneva Final Act. Governments signed the agreement in accordance with the Protocol of Provisional Application, which suspended certain obligations if they conflicted with existing legislation. For the US, this meant that the GATT agreement could be implemented under the existing RTAA authority and need not be submitted for ratification.⁴⁹¹

The GATT agreement came into force on January 1st 1948 as the Charter negotiations were still underway. While it was widely regarded as a temporary measure at the time, it proved to be an important—and lasting—accomplishment. Over the course of the negotiations, it had become increasingly evident that the Truman administration would encounter significant domestic

⁴⁸⁹ Zeiler 1999; Irwin, Mavroidis, and Sykes 2009.

⁴⁹⁰ Jackson 1969, p.120. Note that elsewhere in this chapter, to reduce awkwardness, I have put “contracting parties” in lower-case. I have nevertheless left it in quotes whenever it is used in order to retain some of the sense of the term as used in the original GATT agreement.

⁴⁹¹ See Jackson 1980.

resistance that might threaten the larger ITO initiative. A glimpse of this could be seen during the renewal of the RTAA in 1945, when the government sought additional powers to negotiate tariffs. Despite the fact that the Democrats controlled majorities in both the House and Senate, the effort encountered unexpected resistance.⁴⁹² Renewal was eventually granted, but with the additional powers the government requested came additional constraints.⁴⁹³ The level of opposition then increased significantly after the Republicans gained control of the House and Senate in the 1946 congressional elections after being shut out of both since 1933. Given that there were far more isolationists and protectionists in the Republican Party, the administration knew it was going to have a hard time ratifying the agreement under such circumstances.⁴⁹⁴ But the loss of public support made matters even worse. Much of the business community started to feel the agreement that was emerging did not serve their interests, and the broader public was either wary or unaware.⁴⁹⁵ Thus, the conclusion of the ITO Charter in Havana in early 1948, after more than three months of negotiations, could not have happened at a worse time. Faced with a hostile Congress and plummeting public support for the ITO, Truman chose to delay ratification rather than waste political capital and risk embarrassment in an election year. The move sealed the fate of the ITO.

Truman, of course, managed to win the 1948 Presidential election and the Democrats returned majorities in the House and Senate. This new atmosphere gave his administration the confidence to submit the agreement, at last, to Congress in April 1949, over a year after it had been reached. However, its support for the initiative had declined precipitously by this time. Other issues

⁴⁹² Gardner 1969; Aaronson 1997; Zeiler 1999.

⁴⁹³ Gardner 1969, p.158-160.

⁴⁹⁴ Aaronson 1997, p.35.

⁴⁹⁵ Aaronson 1997, Chapter 7; Milner 1997, p.147.

gained the attention of the administration, such as the growing Cold War threat, the Marshall Plan and yet another extension of the RTAA.⁴⁹⁶ Congress, too, had a number of other pressing legislative priorities. As a result, the congressional hearings were delayed for another year. When the House hearings finally occurred in April 1950, the ITO attracted significant criticism.⁴⁹⁷ Many of the most important businesses and business associations in the US testified against it. Its opponents argued, vigorously and (to many there) convincingly, that the various exemptions in the Charter made it ineffective, that the ITO was not in the economic interest of the US, and that ratifying the Charter effectively ceded sovereignty to an unaccountable international bureaucracy.⁴⁹⁸ The outcome was disappointing; there would be no hearing in the Senate. When asked by Clayton when one might be expected, the Chairman of the Senate Foreign Relations Committee, Tom Connally, advised against the idea altogether and refused to schedule a date.⁴⁹⁹ The ITO was dead. Meanwhile, the UK and other countries that had taken part in the negotiations had held off on ratifying the Charter.⁵⁰⁰ Knowing that there were doubts about the US' ability to follow through and that value of the ITO depended upon American participation, they waited for Congress to move before seeking parliamentary approval. Once the Truman administration quietly announced that it was no longer seeking ratification, the British opted out as well.⁵⁰¹

However, behind the scenes, as the expected resistance to the ITO had grown, officials in the US had quietly considered alternatives. While the GATT agreement was initially regarded as a

⁴⁹⁶ Zeiler 1999.

⁴⁹⁷ Gardner 1969; Aaronson 1997; Milner 1997.

⁴⁹⁸ Aaronson 1997, p.127-128.

⁴⁹⁹ Ibid.; Zeiler 1999.

⁵⁰⁰ Gardner 1969.

⁵⁰¹ Zeiler 1999; Toye 2003b.

temporary measure, it was increasingly thought to present an attractive way forward. Of course, on its own, it was not a reliable substitute, since it lacked the organizational components that the ITO was to provide. It was never intended to stand on its own. But in some augmented form it could advance the administration's aims nonetheless. John Leddy, the American official who drafted the GATT, wrote a memorandum to Truman in 1950: "The ITO is no longer a practical possibility [...] The need for a trade organization, however, is a matter of urgency. The international administration of the trade-agreements program will bog down unless we can set up a permanent international body."⁵⁰² "We should drop the ITO," he suggested, and instead "participate in the establishment of an appropriate organization under the General Agreement." By taking these actions, "we will have managed to make effective [...] substantially all of the major parts of the ITO charter." Later that year, Winthrop Brown wrote to the British: "the U.S. Government proposed [...] to build on the G.A.T.T. and give it a rather more permanent organization which could function between the sessions."⁵⁰³ The British, in turn, were receptive to the approach, recognizing that a formal organization was unlikely to materialize given that the prospect of Congress approving a treaty had dimmed even further after the 1950 congressional elections. "There will be less resistance to the idea of American adherence to an already functioning body," they claimed, "than to the idea of the U.S. joining yet another abstruse international economic organization."⁵⁰⁴

⁵⁰² Quoted in Aaronson 1997, p.130.

⁵⁰³ Quoted in Ibid.

⁵⁰⁴ Quoted in Ibid, p.131.

The British and others—although they preferred a formal approach—could not “go it alone” without the US, given its important position in the world trade system.⁵⁰⁵ Pursuing a formal approach on their own would have meant excluding the US from the trade regime—something they could not tolerate given their heavy dependence on the American market, especially in the immediate postwar years.⁵⁰⁶ They therefore deferred to the US by helping it build around the GATT an informal institutional infrastructure that could service the agreement. An intersessional committee was created as a purely “experimental arrangement,” comprising trade officials that met regularly between gatherings of the “contracting parties.”⁵⁰⁷ It would last until the 1960s, when a more permanent body (the GATT Council) was set up. A network of other committees and working groups was also set up with “no explicit textual authority.”⁵⁰⁸ Arrangements were made, as well, for a secretariat to be weaved into the evolving organization. In order to make preparations for the ITO, states at the Havana Conference had called upon the UN to establish an Interim Commission for the International Trade Organization (ICITO). Its purpose was to make the necessary arrangements for the ITO, so that it could begin operations soon after the Charter was ratified. Yet, when it became clear that the ITO was not going to materialize, ICITO was left without a purpose. Members of the GATT then commandeered it. They would, essentially, reimburse ICITO for providing secretarial services on an annually renewed basis. And, since ICITO was technically a sub-body of the UN, they could “piggyback” on the rights and immunities afforded UN officials to give the GATT some semblance of formality.⁵⁰⁹ Paying for all of this was awkward, but not insurmountable. In the US, funding for the GATT was

⁵⁰⁵ Kim 2010.

⁵⁰⁶ Ibid.

⁵⁰⁷ Cite GATT doc here, p.00.

⁵⁰⁸ Jackson 2009.

⁵⁰⁹ Jackson 1969.

“smuggled” through Congress each year through the State Department’s budget for “International Conferences and Contingencies;” other countries did likewise.⁵¹⁰ Ultimately, however, officials were not content with the informal arrangements that emerged. The lack of a formal structure was seen as a major impediment that limited the functionality of the regime.⁵¹¹ In 1954, Eisenhower recommended that the US negotiate organizational provisions for the GATT. Shortly after, in 1955, a new agreement for an Organization for Trade Cooperation (OTC) was reached, with strong support from other GATT members.⁵¹² In comparison with the ITO, it was much less ambitious. It would, for the most part, simply “formalize” what had already been happening informally. Yet it fared no better. The agreement was submitted to Congress that year, but after again facing vociferous resistance and a divided government it failed to be ratified as well. GATT remained an informal organization.

5.6.4 Summary

The GATT, like the IMF, appears to be better explained by a liberal theory, since the causal process clearly resembles the one that it predicts should occur. During the interwar period, states were confronted by a problem that created a demand for cooperation but also “selected” institutions to lead cooperative efforts. In the US, a political institution—the State Department—became involved and had a strong preference for a more formal organization, which would “lock in” a liberal trade policy and provide an opportunity for domestic and international leadership. In the UK, a political institution—the Board of Trade—became involved as well and had a similar preference for analogous reasons. Certainly, we see actors on both sides giving careful thought to

⁵¹⁰ Gardner 1969, p.xxxii; US House of Representatives 1956, p.8.

⁵¹¹ See, for instance, Ibid.

⁵¹² Kim 2010. Also see Bronz 1956 for a thorough discussion of the OTC agreement.

the design of an organization, which is what a rational design theory would predict. But, if anything, a more formal design seems to have been the preferred approach for each of the trade organization that policymakers considered. Why, then, did an informal organization appear? The answer is clearly rooted in domestic politics and state power, although poor timing as a result of difficult international bargaining also played its part. Faced with significant domestic constraints that made it difficult to pursue the more formal approach that was desired, the Truman administration opted for an informal design. The experience was even repeated by the Eisenhower administration. It attempted to put the informal GATT on a new footing, but was again constrained by a divided Congress. This was the case even though there was strong evidence that the informal design was less than ideal. The House Ways and Means Committee's report on the OTC Agreement noted that the GATT had been "handicapped by the absence of formal administrative machinery" and that the "makeshift arrangement [was] necessarily costly to the US."⁵¹³ They knew, in short, that the informal design was poorly matched with the underlying problem, but proved unable to move away from the status quo due to the domestic constraints that policymakers faced. Finally, although subtle, we find that power played a role too. Other countries might have been willing to establish a formal organization—and, likely, even preferred it (the OTC initiative, certainly, was strongly supported by many GATT members)⁵¹⁴—but were unable to do so because they were ultimately unwilling to "go it alone." Given its crucial position in the world trade system, they had to follow the lead of the US, however reluctantly.

⁵¹³ US House of Representatives 1956, p.7-8.

⁵¹⁴ See the discussion of the OTC initiative in Kim 2010.

5.7 Conclusion

This chapter has presented two case studies that provide additional evidence in favor of a liberal approach to explaining the emergence of informal intergovernmental organizations. The cases selected—the IMF (a formal organization) and the GATT (an informal organization)—are two of the most prominent institutions created since the end of the Second World War, and are “crucial cases” for each of the theories, although in different ways. The chapter first conducted a basic “congruence” analysis, which probed the plausibility of rational design hypotheses. By examining the particular values that key independent variables take across the two cases, it showed that a rational design approach does not seem to explain the cases very well. Few of the variables took their expected values and none effectively explain the cross-case variation that we find. If correct, the analysis also suggests that the form of each organization was in fact poorly “matched” with the issue it aimed to address. The chapter then sought to explore the causal mechanisms in more detail by conducting a process tracing analysis of the emergence of each organization. This showed that, in most respects, a liberal explanation offers a more compelling account.

In both instances, an initial problem created demand for cooperation of some kind and “selected” particular domestic institutions to lead cooperative efforts. Broadly speaking, these actors’ preferences over the formality of each organization were those expected: political institutions appeared to favor a more formal approach, while more autonomous bodies (to the extent that they played a role) preferred an informal one. The reasons for those preferences also appear to align with our expectations: in general, politicians strongly preferred formality since this enabled them to demonstrate leadership and helped to “lock in” a particular policy design; more

autonomous actors preferred an informal approach that would have preserved their domestic and international authority. While we do find some evidence that policymakers attempted to design institutions that “matched” the problems they saw, the institutions that were created rarely were. The emphasis on legalism in the case of the IMF led negotiators to create a formal organization that—despite claims to the contrary—seemed poorly suited to the problems it confronted. An informal approach, some have suggested, may have produced better outcomes. Despite its later success, many at the time also regarded the GATT’s informality as problematic. Indeed, states initially sought to create a formal organization, which may have been more appropriate, but opted to create an informal one when faced with significant domestic constraints. Finally, power appeared to be important as well. Even though many other states preferred to create a formal organization in the GATT case, for instance, they deferred to the US when it chose an informal path because they were highly dependent on it. An “optimal” formal organization without the US appeared to be a worse outcome than a “suboptimal” one that included it.

Chapter 6: The Emergence of the ICN

6.1 Introduction

This chapter complements the qualitative analysis undertaken in the previous one by exploring the emergence of a different—and much more recent—organization: the International Competition Network (ICN). The ICN is an intergovernmental organization established in 2001 that is the primary body responsible for governing global competition or “antitrust” issues, including the regulation of mergers, cartels and “unilateral” anti-competitive business practices, such as exploitation of a dominant market position.⁵¹⁵ Given that the ICN was established by a MOU, it is, in the terminology of this study, an informal organization.⁵¹⁶ This agreement, now known as the ICN’s “Operational Framework,” sets out *inter alia* the organization’s objectives and the broad structure through which they are to be accomplished. It states that the purpose of the ICN is to offer a venue for regular meetings between competition officials and to facilitate cooperation between national competition bodies. Its primary activity in this regard involves the formulation of “soft law” standards that are designed to facilitate convergence of national competition procedures and substantive competition laws and policies. This is achieved through a hierarchically organized set of bodies, including a steering group that oversees a number of committees or “Working Groups” that focus on specific areas of common concern. However, in contrast with the cases examined thus far, the ICN is what I call a “virtual organization,” since it

⁵¹⁵ The term “competition” is used throughout the world. However, as a result of its early experience with competition issues and initial focus on “trusts,” the term “antitrust” generally prevails in the US. I regard the two terms as synonymous and use both interchangeably throughout the text.

⁵¹⁶ ICN 2001.

has no independent existence apart from the states that comprise it; there is no secretariat that one can visit and there are no staff that one can speak to.⁵¹⁷ Instead, the tasks that a secretariat could normally be expected to perform are undertaken by the Canadian Competition Bureau, which has dedicated several officials to serve on the behalf of the ICN membership—an arrangement that was established by the first chair of the ICN, Konrad von Finckenstein.

How did the ICN emerge as an informal organization? Was its informality a rational response to the particular cooperation problems faced by states? Or, alternatively, was its informality influenced by the autonomy of the actors involved or the domestic constraints that policymakers faced in powerful states? In short, can its level of formality be explained by rational design theories or does the liberal approach advanced in this study offer a more compelling explanation? The aim of this chapter is to investigate these questions. To do so, it follows the approach taken in the last one. It begins with a discussion of the case selection procedure, which largely hinges on the inferential properties of the case. The argument is that the ICN is useful for us to investigate because it is a case that rational design theorists already believe they can explain well and is, to some degree, a “tough test” for the alternative liberal approach. The chapter then presents the results of a “congruence” analysis that seeks to determine the extent to which the variables that rational design theorists believe drive decisions about the informality of an organization can in fact account for the ICN’s organizational form. This is offered, again, as a preliminary probe of the plausibility of the rational design theory, and the results indicate that the ICN is not particularly well explained by the features of the cooperation problem that rational design theorists believe to be important. The chapter then conducts a more rigorous test of the

⁵¹⁷ See discussion of virtual organizations in Chapter 2.

rational design and liberal theories through a within-case analysis that aims to determine whether the causal process that led to its emergence more closely resembles that predicted by one or the other theory. As in the last chapter, this analysis demonstrates that the liberal approach offers a more compelling account of the case and that the theory advanced by rational design scholars falls short.

6.2 Case Selection

As indicated in the previous chapter, the IGO Database offers a range of cases that could plausibly be subjected to qualitative analysis. There are also a variety of reasonable methodological approaches to the selection of a particular qualitative case. Why the ICN? There are two reasons. First, the ICN is of interest because it was created relatively recently. Both the IMF and GATT, which I examined in the previous chapter, were established either during or immediately after the Second World War. The decision to examine them was, in part, because they were especially “prominent” bodies that subsequently went on to play an important role in global economic affairs in the postwar era. However, it is possible that the factors that drove the variation that we saw in those cases were somehow peculiar to a particular historical period when informal organizations were relatively uncommon. Indeed, it may be the case that as the number of informal organizations rose in the ensuing years policymakers became more familiar with their properties and were therefore able to make more informed decisions about when they are likely to offer an appropriate means of solving a particular problem. If true, then rational design explanations might offer a better explanation at later points in time. The liberal approach might then, in turn, effectively explain the GATT and IMF cases but its scope of application would be relatively limited. To guard against this possibility, it is therefore helpful to explore a

more recent case. If the liberal theory can explain an organization that emerged at a much later period in time, then we can be more confident that it does indeed apply throughout the entire period that the theory suggests it should.

The second reason for looking at the ICN is because it can again be regarded as a “most likely” case for rational design theories. As with the GATT and IMF, political scientists have made many statements suggesting that the ICN is a particularly effective institution that is well matched with the problem it is supposed to address. Scholars such as Pierre-Hugues Verdier and Anne-Marie Slaughter clearly see the ICN as an especially successful organization.⁵¹⁸ In an article otherwise quite skeptical of bodies like the ICN, Verdier has stated, “the ICN is the best [...] option for international anti-trust cooperation.”⁵¹⁹ Compared to other more formal approaches, he argues, “the ICN can plausibly catalyze deeper convergence.”⁵²⁰ Slaughter has also repeatedly held up the ICN as a particularly innovative and effective approach to a complex issue that can help to avoid a “regulatory race” to the bottom.⁵²¹ Many, therefore, regard the ICN as particularly well suited to the problem it is supposed to solve, which suggests that we should see the mechanism rational design theorists posit operating as expected. But, perhaps even more relevant is the fact that rational design theorists already believe that they have offered a compelling explanation for why this is so. Anu Bradford, for instance, has argued that nonbinding cooperation has been chosen by states because it “offers a better path for international antitrust convergence” than more “binding” approaches.⁵²² “Given the nature of the

⁵¹⁸ For a similar views, see Sokol 2007 and Bradford 2011.

⁵¹⁹ Verdier 2009, p.161.

⁵²⁰ Ibid.

⁵²¹ Slaughter 2004; Slaughter and Zaring 2006, p.217.

⁵²² Bradford 2011, p.322. For similar views, see First 2003, Whytock 2005 and Sokol 2007.

collective action problem in international antitrust cooperation,” she claims, “[states believe that] binding agreements and formal institutions remain largely unnecessary and undesirable.”⁵²³ An informal organization was chosen, in her view, because states thought it was “optimal.”

These observations suggest that if rational design theories are to work anywhere, then they should work in this case. For this same reason, we would have good reasons to doubt their validity and embrace an alternative explanation if—after a second look—it appears that something else is going on. The ICN is, therefore, a particularly valuable case for us to examine. But, usefully, it can again be argued that the ICN is also a “least likely” case for the liberal approach, at least to some degree. Since the ICN was established in 2001, it clearly does fall within the range of the temporal scope condition discussed at the end of Chapter 3, which means that we should not be surprised if it operates as expected. Indeed, as described above, it would actually be problematic if it did not. However, since a number of developing and less democratic states were in fact involved in its creation and as members later on, the ICN does fall beyond the geographic scope condition. While the ICN was first and foremost an American idea, as will be discussed in greater detail later on in this chapter, it was actually established by a fairly diverse group of states, including both industrialized/democratic nations, as well as less developed and less democratic ones. Interestingly, as will be discussed in detail later on as well, the European Commission was also one of the key actors involved in the creation of the ICN—a fact which introduces some additional uncertainty, since it is not clear to what extent the liberal theory can be extended to explain the preferences and behaviour of an intergovernmental organization, particularly if it plays an especially prominent role in the establishment of an institution. Given

⁵²³ Bradford 2011.

these considerations, the liberal theory should be less likely to operate as expected, at least to some degree.⁵²⁴ To the extent that this is the case, these characteristics of the ICN provide us with some additional analytical leverage: if it can effectively explain a “least likely” case, then we would have good reasons to think that it will offer a powerful explanation elsewhere.

6.3 Probing the Validity of Rational Design Hypotheses: A Congruence Analysis

Given that rational design theorists already believe that they can explain the ICN’s informality quite well, it is helpful to begin the analysis in this chapter by evaluating whether this is so. As the quantitative analysis in Chapter 4 demonstrated, there is indeed some reason to think that specific features of a cooperation problem might provide an incentive for states to opt for a more or less formal design. The analysis showed, for instance, that greater scope for opportunism lowered the probability that an organization would be informal, and that the sensitive nature of an issue—which raises the need for confidentiality—increased it. In this section, therefore, the goal is see how far such hypotheses can actually take us. If features of the cooperation problem consistently point in the direction that rational design theories predict then the theory should be regarded as having some preliminary plausibility. If, by contrast, relevant variables point in the opposite direction—that is, if they seem to predict greater formality—then this must necessarily weaken our assessment of the rational design approach and we would be compelled to take alternative explanations more seriously. The following “congruence” analysis investigates whether rational design variables do indeed take values that we would expect them to, given that we already know the ICN is informal in nature. Each variable discussed in Chapter 3 is

⁵²⁴ It is worth noting that, while the claim that the ICN is a “most likely” case for rational design theories is strong, the corresponding claim that it is also a genuine “least likely” case for the liberal theories is weaker. This speaks to the difficulty of finding cases that exhibit both of these properties at once.

considered in turn, starting with the two that proved to be statistically and substantively significant in the quantitative analysis.

Opportunism. Rational design theories predict that the informality of an intergovernmental organization is negatively related to the scope for opportunism. Thus, if the structure of a cooperation problem resembles a Prisoners' Dilemma, then an organization should be more likely to be formal; if it is more akin to a coordination problem, with little scope for opportunism, then an organization should be expected to be informal. Rational design scholars, such as Anu Bradford and Christopher Whytock, have argued that the problem the ICN aims to tackle is the latter, and that states have little need to closely monitor behaviour or make for formal "binding" commitments.⁵²⁵ If so, then this prediction would be confirmed. However, in contrast with their claims, the vast majority of the work in the area suggests the opposite: that there is indeed significant scope for opportunistic behaviour in the field of antitrust.⁵²⁶ States generally have a strong incentive to police anticompetitive behaviour that negatively affects consumers and firms within their own borders. However, most scholars agree that states have: a) a strong incentive to regulate the behaviour of foreign firms more stringently than domestic ones (so-called "over-regulation"); and, b) little incentive to regulate domestic business practices that only affect foreign consumers (so-called "under-regulation").⁵²⁷ Indeed, they have a particularly

⁵²⁵ Whytock 2005; Bradford 2007; Bradford 2011.

⁵²⁶ Guzman 1998; Guzman 2004; Taylor 2006; Stephan 2011; Büthe 2015. Note, also, that Bradford qualifies her argument somewhat in Bradford 2011, n.68 where she concludes (based on observations of Chinese antitrust enforcement actions) that antitrust policies can indeed serve protectionist ends "calling into question the characterization of international anti-trust cooperation as a coordination game (as opposed to a Prisoners' Dilemma)."

⁵²⁷ There is considerable evidence demonstrating that states do in fact engage in both under- and over-regulation, see Shugart, Silverman, and Tollison 1995; Guzman 1998; Taylor 2006; Stephan 2011.

compelling reason to engage in such practices when interstate trade is high and the use of tariffs is heavily regulated, since over-regulation of foreign firms and under-regulation of domestic ones can operate as an opaque form of non-tariff protectionism for domestic industries.⁵²⁸ States may, therefore, benefit from cross-border cooperation on antitrust, but they also have a strong incentive (and capacity) to opportunistically deviate from the globally optimal policy to give their own industries an advantage over foreign competitors. Given this, rational design theorists predict that states should create a more formal organization with significant monitoring and enforcement powers. Yet states opted for an informal organization that has neither. Rational design theories would, therefore, seem to get an important prediction wrong in this case.

Confidentiality. Rational design theories also predict that the sensitive nature of an issue—which creates an incentive for greater confidentiality—should also lead policymakers to opt for a less transparent, informal institutional design. Here, rational design theorists appear to be on firmer ground. Antitrust officials are regularly privy to confidential business information, and robust cooperation typically requires domestic agencies to exchange such sensitive information with their foreign counterparts. Given its high market value, however, there is significant concern amongst antitrust officials and businesses about the conditions under which such exchange will occur and the level of confidentiality that a foreign agency will ensure.⁵²⁹ To provide some level of security numerous states have signed bilateral agreements of various kinds to regulate the exchange of information between antitrust agencies. Most such agreements have been voluntary “soft law” arrangements, which is in line with what rational design arguments expect.⁵³⁰

⁵²⁸ Kono 2006.

⁵²⁹ Janow 2000.

⁵³⁰ Ibid.; Damro 2006b; Slaughter and Zaring 2006; Papadopoulos 2010.

However, it does not seem that confidentiality is a major feature of the ICN. Despite its informality, the ICN is a relatively transparent institution that grants significant opportunities for participation by nonstate actors and a variety of other public actors, including other intergovernmental organizations. The organization's Operational Framework explicitly encourages the involvement of so-called "Non-Governmental Advisors," or NGAs, which are usually individuals from the business community, consumer advocacy groups, private law firms and academia. Their role has hardly been symbolic, either: while they do not play a role at the decision-making level, these NGAs have been active participants in most of the ICN's core activities, helping to formulate the soft law standards it produces.⁵³¹ Thus, while the sensitive nature of the issue is certainly a concern for many antitrust agencies, it is unclear whether the need for confidentiality was a main driver of the ICN's informality.

Flexibility. A third proposition advanced by rational design theorists is that the probability that an organization will be informal should rise when there is significant need for institutional flexibility, given that informal organizations can be changed relatively easily. Specifically, states may be inclined to choose them when there is a high level of uncertainty about how best to address a problem in the future. Here, rational design theories are at their strongest. Anticompetitive practices and competition policies, numerous scholars and practitioners have observed, are continually evolving.⁵³² Business conduct is, for instance, in a state of constant and rapid change as firms attempt to circumvent prevailing competition laws and policies and reflexively adapt to changing business conditions. As a result, Bode and Budzinski have explained, "future types of anticompetitive practices and arrangements cannot be completely

⁵³¹ Anderson 2011; Goldman, Kwinter, and Joneja 2011.

⁵³² See Budzinski 2008, p.25.

anticipated by competition authorities and lawmakers,” and therefore adequate governance arrangements must have significant capacity to adapt to new challenges.⁵³³ Similarly, they note, the economic theories underlying evaluations of competitive conditions by antitrust authorities are in a state of continual change, which means that “today’s best practices can only and always be temporary assessments (currently most appropriate practices) that are permanently challenged by new insights.”⁵³⁴ Thus, again, there is significant need for any adequate system of governance to “remain open to theory innovation” and “derived policy innovations.”⁵³⁵ Given these considerations, a more flexible informal organization may have significant advantages over more formal alternatives, allowing competition authorities to develop new regulatory approaches relatively easily in response to shifts in business practices and theories of market competition.⁵³⁶ The prediction made by rational design theorists would appear to be borne out.⁵³⁷

Agility. Rational design theorists expect, as well, that informal organizations should be more likely to emerge when speed is particularly important. Informal organizations, they believe, can

⁵³³ Bode and Budzinski 2006, p.100.

⁵³⁴ Ibid.

⁵³⁵ Ibid.

⁵³⁶ Importantly, there is some evidence suggesting that this kind of consideration did play a role in the design of the ICN. In an address at the 27th Annual Conference on International Antitrust Law and Policy explaining his support of the ICN, Douglas Melamed (at the time, Acting Assistant Attorney General of the Antitrust Division of the Department of Justice) argued that “sound antitrust principles must be able to adapt to new economic learning and new marketplace challenges and thus do not lend themselves either to detailed or precise codification [...] Sound antitrust enforcement requires a deep and shared “culture of competition” that will enable prudent application of economically-based competition principles to the facts of individual cases; such enforcement cannot be achieved by agreement on formal rules,” see Melemed 2000.

⁵³⁷ Interestingly, however, while Bode and Budzinski argue that a more formal approach to global competition issues would have low adaptive capacity, they remain relatively pessimistic about the adaptive capacity of the ICN as well. Both approaches aim to foster strong policy convergence that would limit diversity and innovation, albeit through different means. As a result, they believe the ICN “does not fulfill the criterion of adaptability,” see Bode and Budzinski 2006, p.101.

make decisions more swiftly than their formal counterparts and need not be held back by “hold outs” that wish to obstruct action. They may, therefore, be more appropriate for addressing problems where any kind of delay may result in high costs, such as crises or emergencies. Does the evidence confirm this prediction? Certainly, antitrust is an area that has resulted in some high profile disputes that required quick diplomatic solutions, particularly following conflicting merger review decisions. Disagreements between the EU and US over the Boeing/McDonnell Douglas and General Electric/Honeywell mergers in the late 1990s and early 2000s attracted a great deal of media attention and even led to threats of trade retaliation.⁵³⁸ However, as Evenett et al. have demonstrated, antitrust crises on this scale are notable mainly because they are so exceptional.⁵³⁹ The vast majority of international competition disputes are comparatively routine “low politics” affairs, and do not give rise to significant political conflagrations.⁵⁴⁰

In contrast with international trade, for instance, disagreements over antitrust issues rarely provoke political brinkmanship or escalate into major diplomatic crises, at least in part because the firms involved have little desire to see major jurisdictional conflicts arise and generally work to accommodate the demands of different antitrust authorities.⁵⁴¹ Thus, there seems to be no special need for speedy decision-making in the field of antitrust, which suggests that this particular rational design argument does not work well in this case. Nevertheless, even if there was a pressing need of this kind, the ICN was not in fact designed as a forum for responding to

⁵³⁸ See Karpel 1998; Boeder 2000.

⁵³⁹ Evenett, Lehmann, and Steil 2000, p.19. Also see Whytock 2005 and Damro 2006a, p.2 and Chapter 2.

⁵⁴⁰ Also see Whytock 2005.

⁵⁴¹ Janow 2000.

crises or disputes after they occur.⁵⁴² At best, if it could be said to aim at reducing conflict and crisis at all, it was envisioned as a way of *preventing* disputes from arising in the first place by promoting antitrust policy convergence and familiarity between officials.⁵⁴³ However, this process is likely to be relatively slow and piecemeal, which suggests that speed was not an overriding concern for policymakers and is unlikely to have driven their decision to pursue an informal approach.

Heterogeneity. The fifth proposition that rational design scholars have advanced is that the probability that an intergovernmental organization will be informal should increase if the preferences of states are closely aligned. The rationale for this hypothesis is that, if preferences are aligned, then there should be little expectation of conflict—and corresponding need for dispute settlement—and no great need for robust commitment mechanisms of the kind that a formal organization can provide.⁵⁴⁴ Here again, however, rational design predictions do not seem to be supported by the available evidence. States certainly agree on at least the general principles underlying the regulation of market competition. Specifically, they agree that the overarching aim of antitrust agencies should be to increase market efficiency, and, to some degree, fairness. Looking at the EU and US, for example, Stephan has noted: “the substantive goals of EC competition law seem in form virtually identical to those of the United States.”⁵⁴⁵ Some rational

⁵⁴² Fox 2003; Fox 2009.

⁵⁴³ See Damro 2006a for this argument. Interestingly, the original proposal for the ICN mentioned that a “dispute mediation mechanism” might be desirable. This would have convened panels of neutral experts to help states reach a settlement when disagreements occurred. However, it noted that this service would primarily be valuable to “less powerful countries” and was not ultimately incorporated in the Operating Framework that actually emerged. See ICPAC 2000, p.286.

⁵⁴⁴ Those who make this argument include, Whytock 2005; Eeilstrup-Sangiovanni 2009.

⁵⁴⁵ Stephan 2011.

design scholars have suggested that, therefore, the preferences of states are generally aligned, since their overarching policy goals are so similar.⁵⁴⁶ Yet most accounts emphasize the very different ways in which these principles are interpreted and applied across different states—not to mention the different ways in which authorities evaluate market efficiency and fairness.⁵⁴⁷ In practice, for instance, some jurisdictions (such as the US) tend to accept that the accumulation of market power and cooperation between firms can be efficiency enhancing, at least in some cases; others (such as the EU) tend to resist any concentration of market power or cooperation between firms.⁵⁴⁸ States also differ significantly over the extent to which they restrict export cartels. The US has generally exempted this variety of cooperation from antitrust rules, whereas other states have not permitted it. The position of developing countries appears to be at odds with the preferences of more industrialized states as well. They have called for heavy restrictions on firms in industrialized states but repeatedly seek exemptions from any agreements that subject their own firms to global antitrust rules.⁵⁴⁹ Finally, as will be discussed later on, there have been significant differences over the formality of the rules that states wish to create. Overall, then, while they may indeed agree on general principles, the preferences of states seem to be far more heterogeneous than some rational design scholars appear to admit.⁵⁵⁰

⁵⁴⁶ See, for example, Whytock 2005.

⁵⁴⁷ Guzman 1998; Stephan 2011; Bradford 2011.

⁵⁴⁸ See Stephan 2011.

⁵⁴⁹ Drexl 2004.

⁵⁵⁰ Interestingly, Anu Bradford is one of the few rational design theorists who argues that greater preference heterogeneity makes a formal approach less likely. Indeed, she claims in Bradford 2011 (in line with the argument made here) that preference heterogeneity is high in the field of antitrust and that this fact influenced the decision to pursue a “non-binding” arrangement. While she therefore gets this prediction correct, she is in the minority; most others—including those examining the same issue area, such as Christopher Whytock—have made the opposite argument, see Whytock 2005.

Membership and Issue Scope. The last predictions that rational design scholars have advanced are related to the size of an organization's membership and the range of issues it is intended to address. In particular, they argue that intergovernmental organizations should be more likely to be informal when they are designed to facilitate cooperation amongst a smaller number of states and when they deal with a narrower range of issues. In this case, the evidence is somewhat uneven. First, the ICN was in fact created to facilitate cooperation amongst a large number of states. Although only 14 jurisdictions were actually involved in the creation of the ICN in 2001, their explicit intention was for the organization to have nearly universal membership.⁵⁵¹ And, to a great extent, this ambition has been realized: within 7 years of its creation, the ICN's membership expanded to include 92 different national jurisdictions. Thus, this particular prediction does not receive much empirical support. The second prediction, by contrast, is much more congruent with the evidence, given that the remit of the ICN is confined to a single issue: competition. This includes a number of sub-issues, such as cartels, mergers and unilateral conduct, but each clearly falls within this larger field of concern. Further, it is clear that this was quite intentional. The ICN's creators deliberately eschewed any links with other issue areas.⁵⁵² The prediction, therefore, seems to be borne out. That said, there are many who believe that global competition issues and international trade are in fact inextricably linked due to the fact that both anticompetitive business practices and antitrust policies can serve protectionist purposes, and that it is necessary to address them both simultaneously.⁵⁵³ There is, certainly, some historical precedent for making this link given that antitrust provisions were included in the ITO Charter, discussed in the last chapter, and there have been repeated calls for states to address

⁵⁵¹ Janow 2003; Janow and Rill 2011.

⁵⁵² Budzinski 2004; Janow and Rill 2011.

⁵⁵³ For a thorough discussion, see Damro 1999. Also see Guzman 1998; Fox 2003; Taylor 2006.

competition issues in the GATT and WTO ever since.⁵⁵⁴ The WTO’s dispute settlement panel has also ruled on cases with a prominent antitrust dimension, notably in *Mexican Telecom*.⁵⁵⁵ If correct, this suggests that genuine progress in the area requires policymakers to forge a link between these issues, and that by failing to do so the ICN is in fact poorly matched with the problem it is intended to address, which might seem to contradict rational design theories. Ultimately, therefore, while I count this as a correct prediction, there is at least some uncertainty about the evidence in support of this particular conjecture.

Table 8 Summary of Rational Design Predictions

<u>Variables</u>	<u>ICN</u>
Opportunism	Incorrect
Confidentiality	Uncertain
Flexibility	Correct
Agility	Incorrect
Heterogeneity	Incorrect
Membership	Incorrect
Issue Scope	Correct

Overall, the results of this probe are, as in the last chapter, somewhat mixed, as shown in Table 8. Some of the variables that rational design theorists believe to be important take values we expect them to, meaning that there is at least some support for rational design conjectures. But, in general, it seems reasonable to conclude that the theory fails to explain the ICN convincingly, performing no better than in the last chapter. If we choose to regard the *Confidentiality* variable as a “correct” prediction, then only three out of seven rational design variables point in the expected direction, at best. Thus, the congruence analysis again suggests that there may in fact be

⁵⁵⁴ See Wells 2002 for a thorough discussion of this episode; Taylor 2006 also offers a helpful review and discussion of subsequent efforts to address competition issues in the GATT and WTO.

⁵⁵⁵ Fox 2006.

a “mismatch” between the organization’s design and the cooperation problem that states face in the arena of antitrust—and that a formal organization, if realized, might have performed better. This observation would seem to be buttressed by the fact that—in contrast with what prominent rational design theorists of antitrust issues have argued—a number of other scholars and practitioners in the field of international law believe that the optimal approach to cooperation in the area is in fact via a formal organization: the WTO. Indeed, Eleanor Fox has gone so far as to claim, “nearly all proponents of global antitrust conclude that the appropriate forum would logically and practically be the WTO.”⁵⁵⁶ Presumably, those who take the opposite view Christopher Whytock and Anu Bradford believe that this consensus is wrong. But, if not (as the congruence analysis suggests), then the informality of the ICN is a real puzzle for rational design theorists—why, if there is such a consensus amongst experts and practitioners on the desirability of a formal approach, did states create an informal organization? At the very least, this anomaly means that we have good reason to consider whether an alternative theory can explain this outcome better. It is to that task that I now turn.

6.4 Examining Causal Mechanisms: A Within-Case Analysis

Ultimately, the inferential value of the congruence analysis undertaken above is rather limited. While the findings may reduce the plausibility of a rational design explanation and provide an incentive for exploring alternatives, they cannot definitively rule it, nor do they demonstrate the superiority of the liberal theory advanced in this study. In order to provide a more rigorous evaluation of the two theories, this section offers a “within-case” analysis of the events that led

⁵⁵⁶ Fox 2003, p.925. There is some exaggeration here. A large number of experts (not simply those mentioned above, such as Bradford and Whytock) have argued that the ICN and not the WTO is the ideal approach. See, for instance, Janow and Lewis 2001; Wood 2004; Sokol 2007.

to the emergence of the ICN. As in the last chapter, I utilize a process tracing methodology that examines the causal chain that links an initial set of conditions with the final outcome that we observe. In doing so, I evaluate specific hypotheses about the processes that we should expect to see if one or the other theory is correct and, on this basis, make inferences about the causal mechanisms that are likely at work. For instance, if we see officials agreeing that an informal approach was desirable because it could more “efficiently” address the underlying cooperation problem they faced than formal alternatives, then we can reasonably infer that a rational design explanation offers a convincing explanation of the ICN. By contrast, if we find that the institution’s design was driven by a desire to maintain autonomy on the part of leading independent agencies or by the domestic constraints that policymakers faced in powerful states, then we would have good reasons to believe that the causal mechanism envisioned by the liberal theory provides a compelling account. In order to break the case up into manageable parts and to carefully evaluate these contrasting theories, I divide the analysis into three stages, as in the last chapter: institutional demand and the “selection” of domestic institutions; the formation of preferences over organizational form; and the negotiation and establishment of a new intergovernmental organization. I discuss each in turn.

6.4.1 Demand and Institutional Selection

Anticompetitive business practices are as old as markets themselves.⁵⁵⁷ “People of the same trade seldom meet together,” Adam Smith wrote in *The Wealth of Nations*, “even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some

⁵⁵⁷ Finley 1973; Polanyi 2001.

contrivance to raise prices.”⁵⁵⁸ Smith was, of course, a great exponent of capitalism, but, it seems, he had little faith in capitalists. He believed that states needed to counter their tendency to restrict trade and actively promote market competition.⁵⁵⁹ However, as often as not, as Smith well knew, they were entirely complicit in such arrangements.⁵⁶⁰ The right to grant royal monopolies was long a lucrative source of revenue for states.⁵⁶¹ Indeed, it was only in late 1800s that they began to assume the role that Smith envisioned for them. The first modern statute regulating competition was enacted in Canada, in 1889, and was followed shortly after, in 1890, by the Sherman Antitrust Act in US.⁵⁶² The impetus for these new laws, particularly in the US, was the rise of massive “trusts” that came to dominate national industry. These enormous companies—which Matthew Josephson famously described in *The Robber Barons*⁵⁶³—were able to achieve historically unprecedented economies of scale and scope, but their immense size also meant that they could easily ruin smaller businesses, exploit consumers and even, many believed, threaten democracy itself.⁵⁶⁴ Politicians sought to tame their ability to abuse the economic power they had accumulated and hoped to foster a more efficient and fairer market economy.⁵⁶⁵ In many respects, they were successful. The breakup of John D. Rockefeller’s Standard Oil Trust in

⁵⁵⁸ Smith 1977, p.184.

⁵⁵⁹ As he notes, “Where there is an exclusive corporation, it may perhaps be proper to regulate the price of the first necessary of life. But where there is none, the competition will regulate [private restrictions] much better than any assize,” see Ibid, p.201.

⁵⁶⁰ See Ibid, p.169.

⁵⁶¹ North and Thomas 1973, p.98-99; North 1990.

⁵⁶² Freyer 2006; Büthe 2015.

⁵⁶³ Josephson 1962.

⁵⁶⁴ Wells 2002; Freyer 2006.

⁵⁶⁵ Peritz 1996; Wells 2002; Freyer 2006.

1911—at the time, the world’s largest corporation—was only the most prominent example of the state’s newfound willingness and ability to ensure that competition prevailed.⁵⁶⁶

From these beginnings in the late 19th century, antitrust laws slowly but steadily spread throughout the world, fundamentally altering the relationship between states and markets.⁵⁶⁷ However, the ability to regulate competition was always—and, by and large, remains—limited by the territoriality of law. States could effectively regulate anti-competitive business practices when the behaviour fell within their jurisdiction, but they were largely unable to do so when it occurred beyond their borders. This was not particularly problematic when the relevant markets were more limited in scope, but it became so as they integrated over time, particularly in the years after the Second World War—partly as a result of institutions such as the GATT, investigated in the last chapter.⁵⁶⁸ When this occurred, cooperation between foreign businesses to restrict trade and divide up markets affected domestic consumers, but antitrust officials and the courts were unable to directly sanction or otherwise limit their actions. The problem was only partially resolved through the “extraterritorial” application of domestic antitrust laws. In the US, the legality of extraterritoriality was established in the *ALCOA* case of 1945, in which Judge Learned Hand established the “effects doctrine” that permitted domestic antitrust laws to be enforced against foreign firms when their restrictive practices affected American consumers—a decision that was subsequently affirmed by Congress in the Foreign Trade Antitrust

⁵⁶⁶ For fascinating discussion of this episode see Yergin 1991 and Chernow 1998. For more on early antitrust enforcement efforts, see Wells 2002.

⁵⁶⁷ *Ibid.*; Freyer 2006. Also see Büthe 2015.

⁵⁶⁸ Dabbah 2003; Utton 2006. Also see Goldstein, Rivers, and Tomz 2007.

Improvements Act (FTAIA) of 1982.⁵⁶⁹ The effects doctrine allowed the US —by far the most frequent user of extraterritorial enforcement—to take aggressive legal actions to limit the effects of anti-competitive business practices in other states, but also led to conflict since these actions were widely seen as an infringement of the sovereignty of other states.⁵⁷⁰

In the 1980s and 1990s, the scope for cross-border conflict over antitrust issues increased significantly, and, with it, the demand for cooperation. Three issues were especially concerning. First, the period saw a rapid proliferation of antitrust laws.⁵⁷¹ By 1980, nearly 100 years after the enactment of the Sherman Act, only around 30 (largely industrialized) states had implemented competition laws. However, the number exploded thereafter, rising to nearly 120 by 2010. This significantly increased the number of actors active in the field of antitrust and the need to constraint their activities, especially insofar as they affected consumers and firms in other states.⁵⁷² Second, the particularly rapid integration of global markets during this period, as a result of declining tariffs and transportation costs, meant that domestic consumers were far more exposed to restrictive business practices occurring beyond the borders of states.⁵⁷³ To some degree, then, as the number of national antitrust authorities was rising, their capacity to regulate competitive conditions within their jurisdictions was falling. And, given the controversial nature (and, for many states, limited effectiveness) of extraterritorial enforcement, a cooperative

⁵⁶⁹ The FTAIA gave legislative authority to the effects doctrine but also restricted its use in several ways, specifically to cases where foreign conduct had a “direct, substantial and reasonably foreseeable effect,” see discussion in Griffin 1999; Swaine 2011. Controversially, however, it also established that extraterritorial enforcement could be used when American *exports* were affected by anticompetitive business practices, and that foreign firms could not invoke antitrust laws in the US to limit injurious practices engaged in by domestic firms.

⁵⁷⁰ Griffin 1999; Raustiala 2009.

⁵⁷¹ Bütte 2015.

⁵⁷² Graham and Richardson 1997; Damro 2004.

⁵⁷³ Dabbah 2003; Sokol 2007.

solution to this problem was desirable.⁵⁷⁴ Finally, due to the growing fragmentation of production processes across national borders in response to the liberalization of trade and investment regimes many corporations were becoming subject to a variety of different—and often inconsistent—antitrust rules.⁵⁷⁵ This, of course, contributed to the transaction costs of doing business across borders and created an incentive for harmonization, but also increased the scope for jurisdictional conflicts as antitrust authorities enforced varying rules, had different information and interests, and, ultimately, came to different decisions about the effects of firm behaviour. There was, as a result, a growing incentive for states to establish some kind of multilateral framework to regulate the behaviour of antitrust authorities, increase their governance capacity and help to limit the potential for disagreements over antitrust issues.

Given the level of integration that came to prevail in the transatlantic marketplace, in particular, two actors were particularly affected by these changes: the EC (later EU) and the US.⁵⁷⁶ Within the EU, the actor most directly affected was the European Commission, which, under the Treaty of Rome that established the European Economic Community in 1957, had significant authority to regulate market competition in the single market.⁵⁷⁷ Specifically, responsibility for regulating competition issues in Europe was vested in the Directorate General of Competition (DG-COMP, formerly DG-IV). DG-COMP was one of a number of Directorate-Generals within the European Commission, but was particularly notable for the degree of authority and independence it enjoyed. The Treaty of Rome granted DG-COMP “unambiguous legal authority” to regulate

⁵⁷⁴ Damro 2006a; Sokol 2007; Bradford 2011.

⁵⁷⁵ Graham and Richardson 1997; Damro 2004; Epstein and Greve 2004; Utton 2006.

⁵⁷⁶ Pollack and Shaffer 2001; Damro 2004; Damro 2006a.

⁵⁷⁷ Competition provisions had also been included in the Treaty of Paris that established the ECSC in 1951, and were enforced by the High Authority.

competition within the European market, and, in 1962, it was delegated a high degree of autonomy from the Council of Ministers and European Parliament, allowing it to operate virtually independently of member states.⁵⁷⁸ In this regard, it is a unique actor within the European Commission: it is the only Directorate-General to have been granted such extensive powers.⁵⁷⁹ And, as a result, as Wilks has written, it has become far more than a “mere operating agency”; it has, over time, developed into a “trustee of the competition rules” in Europe that “can be compared to the great independent regulatory agencies of the US.”⁵⁸⁰ Thus, while the DG-COMP is in fact a component of an intergovernmental organization, it is reasonable to regard it as analogous to an independent agency, as defined in this study—an analytical choice that has been made by a number of others studying global competition issues as well.⁵⁸¹ If so, then it is very different from the kinds of political institutions that led cooperative efforts in the previous chapter, and, if the liberal theory is correct, this should lead us expect it to have an initial preference for a more informal approach to the resolution of the problems described above.

In the US, two institutions were particularly affected by the global changes taking place: the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice. Both institutions have responsibility for regulating competition within the US, and can be expected to share, with DG-COMP, a preference for informality.⁵⁸² The FTC was created by Congress in 1914 and was the very first law enforcement agency to be established with the explicit goal of regulating market competition. In comparison with other government departments in the US, it

⁵⁷⁸ Wilks 2005, p.127.

⁵⁷⁹ Gerber 1998; McGowan and Cini 1999; Damro 2006a.

⁵⁸⁰ Wilks 2005, p.127-128. See also McGowans and Wilks 1995.

⁵⁸¹ See especially Damro 2006a.

⁵⁸² For a thorough analysis of this unusual institutional arrangement, see Crane 2011.

was granted a high level of insulation from elected officials in order to ensure that its decisions were based exclusively on its expert authority. The five commissioners that head the FTC each serve fixed seven-year terms and can only be removed from office with great difficulty. Significant legal protections were also established that constrain interventions from the President, other government departments, and Congress.⁵⁸³ In many respects, therefore, the FTC is the quintessential independent agency.⁵⁸⁴ The Antitrust Division, by contrast, was officially established in 1933 and might seem to be a far more politicized institution, since it is (formally) simply a component of the law enforcement arm of the executive branch, the Department of Justice. The Assistant Attorney General for Antitrust can, in contrast with FTC commissioners, be removed at the will of the President. We might therefore expect it to behave in the manner of a political institution, as defined in Chapter 3. However, as Kovacic and Winerman have observed, “as a matter of custom developed over a period of decades, the Antitrust Division has developed a substantial degree of political insulation from the president.”⁵⁸⁵ Instances of political interference in its affairs have been historically quite rare.⁵⁸⁶ Further, there are a number of cases where the Antitrust Division has taken actions that were vigorously opposed by other departments within the executive branch.⁵⁸⁷ And, finally, in comparison with the FTC, which is directly overseen by Congress and is obliged to provide it with confidential information about its activities when called upon, the Antitrust Division has no such responsibility. Given the degree

⁵⁸³ Kovacic and Winerman 2015.

⁵⁸⁴ Wilks and Bartle 2003; Crane 2011; Breger and Edles 2015. This, of course, should not be taken to suggest that its independence is absolute. It is indeed influenced by politicians, and especially by Congress, see Weingast and Moran 1983. However, it can still be said to have a preference for less political intervention than more, and will likely take actions that limit the scope for intervention.

⁵⁸⁵ Kovacic and Winerman 2015, p.2100.

⁵⁸⁶ Rill and Turner 2014; Voorhees Jr. 2014.

⁵⁸⁷ Kovacic and Winerman 2015, p.2100.

of “de facto” operational autonomy that it possesses, then, there are strong reasons for treating the Antitrust Division *as if* it was an independent agency as well.⁵⁸⁸

From the start, both the European Commission and the authorities in the US placed significant emphasis on informal cooperation in order to address the growing problems they confronted, suggesting that this was indeed their “initial preference,” as the liberal theory would predict. Both, for instance, had reached a range of bilateral agreements with other countries—and with each other—that were primarily “soft” or “non-binding” in nature, and which could therefore be concluded on the basis of what Damro has referred to as their “discretionary authority.”⁵⁸⁹ Indeed, he notes that in negotiating these agreements the “EU and US competition agents carefully avoided cooperating in ways that would require changes to domestic legislation,” specifically in order to reduce potential for “domestic and foreign political interventions” that would violate their autonomy.⁵⁹⁰ This underlying rationale for informality also aligns with what the liberal theory predicts: both DG-COMP and the American antitrust agencies preferred a less formal mode of cooperation because it would explicitly limit the extent to which domestic and foreign actors could compromise their autonomy and authority. However, as the 1990s progressed, two major shifts occurred. First, there was a growing consensus amongst these actors that bilateral cooperation was insufficient and that a more comprehensive, multilateral approach was needed to address the issues that states faced—in particular, some kind of intergovernmental

⁵⁸⁸ For further discussion of the de facto operational independence of the Antitrust Division, see Jenny 2012.

⁵⁸⁹ Damro 2006a. For a detailed examination of the EU’s agreements, see Papadopoulos 2010. For the US, see Ullerton and Azard 2009.

⁵⁹⁰ Damro 2006a, p.130-131. From the perspective of the US, specifically, competition authorities wished the agreements to be concluded as executive agreements or non-binding “soft law” rather than international treaties.

organization. Second, there was subsequently considerable disagreement between Europe and the US over the *kind* of organization that was desired. The former, despite its initial preference for informality, insisted that competition issues be governed by a formal organization—the WTO—while the latter preferred a less formal approach, what was at first referred to as a “Global Competition Initiative.”

6.4.2 The Formation of Preferences Over Organizational Form

The European Commission’s effort to pursue binding cooperation through the WTO represented a dramatic reversal of its previous course of action. In the place of soft law and reliance on its “discretionary authority,” it embraced a much more ambitious international agenda. The proposal that outlined this new approach built on the work of a group of experts convened by Commissioner Karel van Miert and was published as a communication to the Council of Ministers in June 1996 entitled *Towards an International Framework of Competition Rules*.⁵⁹¹ This document outlined a set of modalities based on the premise that a new “International Competition Authority” was not a viable option and that therefore the WTO represented the “prime candidate for a framework of competition rules” in view of its strong institutional infrastructure, existing monitoring and notification systems, and legalized dispute settlement mechanism.⁵⁹² Specifically, the proposal called for the negotiation of a new agreement in the WTO that was to be built up over time and would involve four main components. First, it called upon WTO members to adopt basic domestic competition structures, including rules and suitable authorities empowered to enforce them. Second, WTO members were to identify a “core of common principles” that would promote global market competition, encourage cooperation

⁵⁹¹ European Commission 1996.

⁵⁹² European Commission 1996, p.9.

between competition agencies, and facilitate convergence of substantive competition laws. It argued, as well, that these principles could be developed in stages, focusing first on “horizontal restraints,” such as cartels, and gradually encompassing other practices. Third, it aimed to establish a framework to ensure transparency in the implementation of competition rules, including provisions for notification, monitoring of commitments, and information exchange. Finally, these rules were to be subject to legalized dispute settlement in the event of their breach.

At first glance, this reversal appears to be anomalous for the liberal theory, since a formal organization is not expected to be the first choice of an independent agency. However, a close examination of the European decision-making process suggests that the liberal theory performs as expected in this case. This is because DG-COMP’s choice to push for a larger role for the WTO occurred after the *politicization* of competition issues in Europe. In part, this was due to actions being taken by the US. Under the Clinton administration, the American authorities dramatically stepped up their international enforcement activities and assertions of extraterritoriality.⁵⁹³ The Antitrust Division and FTC set out new International Antitrust Enforcement Guidelines in 1995, which outlined an aggressive approach to anti-competitive practices occurring outside the US, and was followed by a “veritable explosion in the exercise of extraterritorial enforcement.”⁵⁹⁴ This shift towards a more aggressive American stance reflected both the new attitude of the administration and the fact that the capacity of the American authorities had increased significantly following the 1993 *Hartford Fire* decision by the Supreme

⁵⁹³ Litan and Shapiro 2002. Antitrust enforcement, especially international enforcement, had been relatively limited under Presidents Reagan and Bush, partly as a result of their own political views and partly because the effects doctrine was itself subject to a number of legal constraints that raised uncertainty about their ability to rely on extraterritoriality, as described further below.

⁵⁹⁴ Ellis 2002, p.478-479. Griffin 1999; Litan and Shapiro 2002; Connor 2008. For the guidelines, see DOJ and FTC 1995.

Court. The case involved reinsurance companies in the UK that had conspired to restrict certain practices by insurers in the US that benefited consumers. Their actions were legal in the UK, and the defendants challenged the assertion of extraterritorial jurisdiction on the basis of the principle of comity that had been percolating within the American legal system since the signing of the FTAIA.⁵⁹⁵ However, the Supreme Court rejected the argument, finding that considerations of comity could not constrain the extraterritorial enforcement of the Sherman Act.⁵⁹⁶ The decision reaffirmed the effects doctrine and thereby strengthened the hand of the American agencies. DG-COMP was, as result, concerned about its inability to restrict extraterritorial enforcement of foreign antitrust laws within Europe, particularly by the US, which risked undermining its authority and prestige.⁵⁹⁷ Its embrace of the WTO therefore made some sense: according to European officials, this could bolster DG-COMP's position by more effectively restraining extraterritorial enforcement by the US.⁵⁹⁸

The incentive to utilize the WTO was, at the same time, influenced by DG-COMP's comparatively limited ability to unilaterally address foreign anti-competitive practices affecting European markets—at least, relative to the US. For over twenty years, DG-COMP had attempted to engage in extraterritorial enforcement by espousing a version of the effects doctrine that prevailed in the US. However, in its *Wood Pulp* decision of 1988 the ECJ limited the European

⁵⁹⁵ The principle of comity (which has both positive and negative variants) states that countries should give due respect to the legitimate legal differences that exist between them. For a review of the principle's evolution within the American legal system see Swaine 2011; Dodge 2015.

⁵⁹⁶ Specifically, it would apply in any situation in which an activity was not expressly mandated by a foreign state, creating a genuine conflict of laws. For a discussion of the principle of comity in the American legal system, as well as the effect of *Hartford Fire*, see Ibid.

⁵⁹⁷ This concern was expressed in European Commission 1996, p.6, n.9. Also see Damro 2001; Damro 2006a.

⁵⁹⁸ See Papadopoulos 2010, p.218. Also, see the discussion in Waller 1997.

Commission's authority in this area. DG-COMP had argued for application of the effects doctrine in a case against suppliers of wood pulp that were found to be violating European competition law, but the ECJ refused to accept this argument. Ultimately, it held up the judgment against the suppliers, but it argued that jurisdiction would be asserted because the particular anti-competitive arrangement had been "implemented" in Europe—not because its effects were felt there. This alternative "implementation doctrine" was, essentially, an affirmation of the "territoriality"—not extraterritoriality—of European law, and was therefore a disappointment for DG-COMP, since its ability to address anti-competitive behaviour affecting European markets was curtailed to some degree.⁵⁹⁹ Specifically, it would be less capable of resolving the growing international problems that Europe faced in the field of competition through the kinds of unilateral measures adopted by the US. And, given this, the strong embrace of the WTO had an additional purpose: as the Commission's communication to the Council emphasized, by adopting an ambitious cooperative approach it would significantly strengthen the DG-COMP's ability to address the growing problems faced by European firms and consumers.

All of this was particularly important because, in the early 1990s, numerous member states and industry groups had started to call for reform of DG-COMP as a result of their dissatisfaction with its performance. The European Commission was, at the time, subject to a number of withering criticisms from governments, consumer groups, and the business community who lamented its seeming unwillingness or inability to take action on important issues facing European industry, as well as its perceived lack of accountability. In 1993, for instance, the British House of Lords published a report that outlined a range of concerns, and called for major

⁵⁹⁹ See, for instance, the reflections on the Court's decision by Commissioner Leon Brittan, as well as related commentary, in Griffin 1999, p.186-187.

procedural reforms as well as greater role for national authorities in competition policymaking, as did a widely read report by the Confederation of British Industry. Their calls were echoed by the Secretary General of the Union of Industrial and Employers' Confederations of Europe (UNICE) who argued in the *Financial Times* that European competition policies were “being applied without the necessary vigour and discrimination.”⁶⁰⁰ The most significant threat, by far, came from Germany. Both the Federal Cartel Office and the Federal Economic Ministry began to push for the creation of a new European Cartel Office—independent of the European Commission—that would, in their view, be more objective, powerful and transparent.⁶⁰¹ These calls were especially threatening given Germany’s importance within the EU, and provided a strong incentive for DG-COMP to make changes to ameliorate at least some of the concerns being voiced. During his nomination examination in the European Parliament, for instance, Karel van Miert acknowledged the need for improvements to European competition policymaking, particularly in order to improve transparency and legal security. He rejected the idea of a new competition authority outright, but greater engagement with member states and efforts to effectively address the concerns of industry was henceforth regarded as a crucial component of DG-COMP’s approach to policymaking in the second half of the 1990s.

This consideration may have made it much more likely that DG-COMP would adopt a more ambitious, formal approach. Fearing more dramatic interventions of the kind advocated by German officials, attempting to resolve global competition issues through the WTO may have helped to demonstrate its effectiveness to member states and might have seemed like a more attractive outcome, particularly in view of its pre-existing authority to act on the behalf of

⁶⁰⁰ Quoted in Wilks and McGowan 1995, p.263.

⁶⁰¹ Ibid.

member states in that forum. However, DG-COMP's perceived lack of accountability also led member states to directly intervene in and challenge its informal policymaking—essentially, forcing its hand. In 1991, it had reached a bilateral agreement with the Antitrust Division and the FTC that aimed to establish a basic framework for preventing disputes between them.⁶⁰² It attempted to do so, initially, on its own discretionary authority by claiming that the pact was merely an “administrative agreement” that could be concluded without approval from member states in the Council of Ministers. However, shortly after the agreement was concluded, member states began to complain, arguing that European Commission had acted *ultra vires*—beyond its legal authority—and sought to challenge its actions. Frustration with the Commission's lack of consultation, for instance, led the French government (with support from the Netherlands and Spain) to file a complaint with the ECJ to have it annulled.⁶⁰³ The Commission argued that it had acted within the bounds of its legal authority, but in 1994 the ECJ ruled in favor of the French government and voided the agreement. It was, eventually, reinstated with retroactive effect, after it was re-approved by a joint decision of the Council of Ministers and the Commission in 1995. But the judgment nevertheless had an important and lasting effect: it placed significant limits on DG-COMP's ability to pursue an informal approach to global competition issues. And, with its preferred avenue effectively blocked—or, at least, made highly tenuous—due to close scrutiny and sanctions by member states and the ECJ, there was a strong incentive for DG-COMP to take a more formal route.

⁶⁰² Damro 2004; Damro 2006a.

⁶⁰³ The French did not object to the substance of the agreement per se, but expressed concern about the way that it had been reached.

The Commission's decision to adopt a formal approach in the WTO was, therefore, at odds with its initial preference. But it can be explained once we take into account the degree to which competition issues became politicized in Europe at the time. DG-COMP's authority and autonomy had been threatened in several ways: first, by the "explosion" of extraterritorial enforcement by the US; second, by the fact that its ability to unilaterally address the problems that confronted European industry had been constrained by the ECJ's *Wood Pulp* decision; third, and relatedly, by the growing dissatisfaction of member states with its performance, which led to significant threats of intervention and reform; and, finally, by the active intervention of member states and the ECJ that directly challenged DG-COMP's ability to opt for informality. Combined, these factors made it almost certain that DG-COMP would pursue an ambitious formal approach. And, given that European Commission had already been authorized by the ECJ to act on the behalf of member states with respect to specific issues in the WTO, there was a significant incentive for DG-COMP to claim that it was the best venue for resolving global competition issues, as the Commission's communication to the Council of Ministers indicated.⁶⁰⁴ Actually realizing the ambitious proposal put forward in the communication would, of course, rest on the Commission's ability to persuade—or coerce—other states to go along with its approach. In this regard, the position of the US was particularly important, especially in view of the fact that the WTO strategy was in large part adopted in order to more effectively constrain its ability to enforce American antitrust laws extraterritorially. However, as the liberal theory would predict, the US did not view this new European agenda favorably.

⁶⁰⁴ On the legal relationship between the ECJ, the Commission and the WTO, see Waller 1997, p.382-383, and especially n.222.

The US was, in the mid-1990s, confronting many of the same challenges as the European Commission and there was growing recognition that existing efforts were insufficient to address them. As noted above, officials under the Clinton administration had devoted increasing attention to international antitrust enforcement issues. They were particularly concerned about their ability to successfully prosecute international cartels, which had become a priority for the Antitrust Division; the growing number of multijurisdictional mergers, which increased the scope for conflict with foreign authorities; and the potential barriers to market access that American firms were facing as a result of foreign anti-competitive business practices and the proliferation of antitrust enforcement authorities.⁶⁰⁵ The scale of these problems—as well as, it should be noted, the EU’s proposal to resolve them through the WTO—compelled antitrust officials to rethink their approach. Towards this end, Attorney General Janet Reno and Assistant Attorney General for Antitrust Joel Klein established the International Competition Policy Advisory Committee (ICPAC) in November 1997. ICPAC, which comprised a number of prominent antitrust experts and former officials, was the first committee of its kind and was assigned the task of assessing the problems that American antitrust authorities were facing and proposing actionable solutions. It considered three issues: first, how to more effectively address problems arising from multijurisdictional merger review; second, how to cooperate more effectively with foreign competition authorities; and, third, how to think about the interaction between trade and competition issues. ICPAC would work for two years, collecting the views of a range of groups, including competition officials, lawyers, economists and members of the business community. The Final Report was published in February 2000, and the recommendations it contained greatly informed subsequent policymaking.

⁶⁰⁵ Janow and Lewis 2001; Litan and Shapiro 2002.

ICPAC's assessment of the issues that competition authorities confronted was similar to that advanced by the European Commission in several ways. Above all, while it was much more confident in the US's ability to rely on extraterritorial enforcement, ICPAC agreed that national laws were inadequate when markets were increasingly global. The Committee affirmed that there was need for "deeper cooperation between U.S. and overseas competition enforcement authorities" in order to "ensure that domestic and international structure are in place for deepening international approaches to shared problems and managing tensions that might arise."⁶⁰⁶ Further, it argued, "bilateral cooperation [...] is unlikely to be a sufficient response to all of the competition problems and the opportunities presented by the global economy." Thus, it was necessary for the US to "develop its broader multilateral engagement on competition policy matters."⁶⁰⁷ In this limited way, the US agreed with the EU that some expanded form of cooperation was necessary. However, the Final Report was highly critical of the European proposal in most other respects. "[This] Advisory Committee," it stated, "sees efforts at developing a harmonized and comprehensive multilateral antitrust code administered by a new supranational competition authority or the WTO as both unrealistic and unwise."⁶⁰⁸ ICPAC therefore recommended that the "WTO and its area of core competence remain as an intergovernmental trade forum."⁶⁰⁹ In this regard, the Committee's view was no different from that held by leading antitrust officials in the US. Joel Klein, for example, in a keynote speech at a conference of competition officials held by the Organization for Economic Cooperation and

⁶⁰⁶ ICPAC 2000, p.35.

⁶⁰⁷ Ibid, p.255.

⁶⁰⁸ Ibid, p.271.

⁶⁰⁹ Ibid, p.272.

Development⁶¹⁰—with the Vice-President of the European Commission, Leon Brittan, in attendance—was simply blunter: “This is a bad idea.”⁶¹¹

ICPAC’s main criticisms of the European proposal fell into two general categories, and are particularly revealing. First, it feared that empowering an intergovernmental organization such as the WTO might lead to unwanted interventions in domestic regulatory practices by international bureaucrats. “WTO oversight of antitrust actions by governments would,” ICPAC noted (quoting Klein), “involve the WTO in second-guessing prosecutorial decision making in complex evidentiary contexts – a task in which the WTO has no experience and for which it is not suited.”⁶¹² The second rationale cited by ICPAC focused on a different problem: it worried that delegating responsibility to the WTO “would inevitably politicize [...] antitrust enforcement.”⁶¹³ Klein had voiced a similar concern in his keynote speech. Involving the WTO in antitrust policymaking would, in his view, sacrifice “the economic rationality and legal neutrality of antitrust decision making.”⁶¹⁴ How this was going to happen was left unstated. However, the concerns expressed by ICPAC were more detailed. It feared, first of all, that the “quid pro quo nature of WTO negotiations would distort competition standards.”⁶¹⁵ As states bargained, the worry was that concessions on antitrust rules would be traded in order to gain advantages in others areas. International competition policies would, therefore, be driven by political considerations rather than legal expertise. Second, it feared the domestic *interagency* negotiating

⁶¹⁰ The OECD had been regularly involved in international dialogue about international competition policy through its Competition Policy and Law Committee.

⁶¹¹ Klein 1999, p.42.

⁶¹² ICPAC, p.264. The quote comes from a keynote speech that Klein made at the OECD in June 1999. It was subsequently published as Klein 1999.

⁶¹³ ICPAC 2000, p.264.

⁶¹⁴ Klein 1999, p.42.

⁶¹⁵ ICPAC 2000.

process, which inevitably gave other departments (most notably, the USTR) a greater say on antitrust rules and would therefore infringe upon the policymaking autonomy of the antitrust agencies. As the Final Report noted, “antitrust policy has worked hard to achieve a degree of independence from the interagency process; more participation in that process increases the risks of politicization without a guarantee of commensurate benefits.”⁶¹⁶ Each of these concerns, it should be noted, closely corresponds with what the liberal theory predicts: the undesirability of linking trade and competition issues and delegating authority to a formal organization stemmed from the fact that this risked creating an opportunity for international bureaucrats and other arms of the US government to intervene in, and thereby “politicize,” decision-making. Keeping antitrust issues out of the hands of such actors was necessary to ensure that the policymaking independence of antitrust authorities remained intact. As ICPAC itself stated in the conclusion of the Final Report, “antitrust must properly remain outside the deliberative interagency process. It is important to the integrity of U.S. antitrust enforcement that this remain the case.”⁶¹⁷

While the WTO was not believed to be the “natural home” for international competition policy, ICPAC nevertheless thought that something needed to be done. “The proposition that purely national approaches are sufficient and that broader international engagement is not necessary,” it argued, is “untenable.”⁶¹⁸ Thus, it seemed, something more substantial than the status quo but less threatening than a formal organization was needed. Towards this end, the Advisory Committee proposed:

the United States explore the scope for collaboration among interested governments and international organizations to create a new venue

⁶¹⁶ ICPAC 2000, p.294.

⁶¹⁷ Ibid, p.295.

⁶¹⁸ Ibid, p.272

where government officials, as well as private firms, nongovernmental organizations (NGOs), and others can consult on matters of competition law and policy. The advisory Committee calls this the “Global Competition Initiative.”

The purpose of this alternative organization was to facilitate dialogue between competition officials, foster “soft” convergence of antitrust laws, policies and analyses—as opposed to the “hard” convergence, or harmonization, that the WTO promoted—and “possibly undertake some dispute mediation and even technical services.”⁶¹⁹ In terms of membership, it aimed to be “inclusive,” involving both developed and developing states, and, as indicated, would provide space for non-state actors, such as business associations, consumer groups and legal professionals, to play a role. However, the proposed initiative also took a novel form. In the place of a new international authority constituted by international treaty, it proposed “a ‘virtual organization’ with minimal dedicated staff, support by participating institutions and governments, and regular meetings [...] akin to the meetings of the senior economics ministers of the Group of Seven nations [...] but with less formality and perhaps more frequent meetings.”⁶²⁰ In short, it was to be an informal organization.

The reference to the G7/8 is noteworthy because it shows that the Committee members were aware of other informal organizations and to some degree modeled the ICN on them. But the attraction does not seem to have been driven by a rigorous assessment of what was “optimal,” given the collective action problems states faced—indeed, the Report noted that “in some instances [addressing antitrust issues outside of a formal intergovernmental organizations] may

⁶¹⁹ Ibid, p.285.

⁶²⁰ Ibid.

not be a satisfactory result,” since certain advantages would be forgone.⁶²¹ Rather, the G7/8 demonstrated that countries could establish a governance arrangement that “does not require a new international bureaucracy or substantial funding.”⁶²² It would therefore avoid empowering a new global authority and, presumably, would not require legislative approval.⁶²³ “The logic behind this Advisory Committee’s idea for a competition initiative,” the Final Report explained, “stems in part from a recognition that countries may be prepared to cooperate in meaningful ways but are not necessarily prepared to be legally bound under international law.”⁶²⁴ Beyond this, the Global Competition Initiative could also confine itself to issues where the antitrust agencies had exclusive authority, thereby limiting interagency politics. As Merit Janow and James Rill wrote, the “operative motto” would be “all competition policy, all the time.”⁶²⁵ Later observations by a Commissioner of the FTC, William Kovacic, have confirmed this as an integral advantage of the ICN—at least from the perspective of officials within the main antitrust agencies. Comparing it with formal organizations such as the WTO and OECD, he (with Hugh Holmann, an Attorney Advisor to Kovacic) wrote:

Within the ICN, the member competition authorities have relatively greater freedom to express their views as antitrust bodies. There is less looking over the shoulder out of concern that the competition agency’s

⁶²¹ Ibid, p.42. The exact reasons for this statement are not clearly explained in ICPAC’s report.

⁶²² Ibid.

⁶²³ Douglas Melamed emphasized this point: “ICPAC itself viewed the GCI, not as a bricks-and-mortar organization with a large Secretariat and a precise jurisdiction, but as something more akin to the G-8, ‘but with less formality.’ That strikes me as pointing in the right direction, though of course the G-8 model would be hard to transplant directly to an enterprise with vastly broader participation. We need to recognize that the chances of getting government funding, in the U.S. or elsewhere, for an expensive new multilateral organization are very slim indeed and that creating a bricks-and-mortar organization (even deciding where to locate it) would create complex legal and jurisdictional issues, coupled with *intra*- and intergovernmental disputes,” see Melamed 2000 (emphasis added).

⁶²⁴ Ibid, p.284.

⁶²⁵ Janow and Rill 2011, p.37. It is important to observe as well that trade officials would not participate in any of the discussions within the ICN.

views might contradict the preferences of other public institutions with their governments.⁶²⁶

The initiative might, therefore, be sub-optimal in a number of ways, as ICPAC noted in its report (see above), but could facilitate cooperation beyond the status quo while preserving the independence and authority of the antitrust authorities.

6.4.3 The Negotiation and Establishment of a New Intergovernmental Organization

Soon after it advanced its proposal to the Council, the European Commission pushed hard for competition issues to get on to the WTO agenda. Their first chance to do so was at the Singapore Ministerial Conference in 1996. The US and other countries strongly resisted this effort, and, as a result, there was no agreement on what kind of action to take. The WTO members nevertheless agreed to establish a Working Group on the Interactions between Trade and Competition Policy in order to study the issues that had been raised and “identify any areas that may merit further consideration in the WTO framework.”⁶²⁷ On the basis of the discussions within this group, member states would then decide whether to include the issues on the WTO agenda at a later point in time. The initial mandate of the working group was for two years (although it was later renewed), and it was the primary forum where state’s positions were voiced over the ensuing years. Countries prepared numerous submissions on various aspects of competition policy, and the debate was lively.⁶²⁸ Yet the consultations ultimately “prove[d] to be a reality check regarding the status of competition law and policy.”⁶²⁹ Antitrust officials in the US were

⁶²⁶ Hollman and Kovacic 2011, p.75.

⁶²⁷ WTO 1996. The Working Group was be chaired by Frederic Jenny and would release a report on its discussions in 1998.

⁶²⁸ Drexl 2004.

⁶²⁹ Papadopoulos 2010, p.209.

hesitant. Klein, who had attended the Singapore Ministerial, noted in 1996 speech that while he welcomed dialogue in the Working Group, he believed “a hasty effort at the WTO is fraught with risk.”⁶³⁰ He later explained, “For the WTO to study what is going on elsewhere and to analyze the significance of those developments might well make sense. But only if such work is not seen as a precursor to negotiations in the WTO on competition policy.”⁶³¹ Reflecting this view, the first American submission to the Working Group said:

the United States has stated on other occasions, and continues to believe, that there is not the degree of consensus today that would support negotiation in the WTO of constructive competition policy discipline.⁶³²

As the submission indicates, the US was not alone. Other industrialized states and many developing countries also voiced their opposition to the inclusion of competition policy on the WTO agenda.⁶³³ Thus, the European Commission faced an uphill battle. Charlene Barshefsky, the USTR from 1996-2001, observed that the “EU was virtually alone in its interest in global negotiations on competition.”⁶³⁴

As a result of the initial opposition that the Commission encountered, it gradually adjusted the ambition of its proposal downwards. In response to the concerns expressed by the US, for instance, the proposal that the Commission advanced in 1999 accepted that use of the WTO’s dispute settlement mechanism to enforce competition policies in member states was not realistic, at least in the near term: “Dispute settlement modalities will need to be further considered once there is greater clarity about the scope of the commitments to be assumed under a WTO

⁶³⁰ Klein 1996, p.14.

⁶³¹ Klein 1997, p.17.

⁶³² Quoted in Papadopoulos 2010, p.225.

⁶³³ Drexl 2004.

⁶³⁴ See ICPAC 2000, p.271.

agreement so that they are well adapted to the specifics of competition law. In any event, there should be no dispute settlement review of individual decisions.”⁶³⁵ The proposal also gave priority to a single competition issue, which the Commission believed there was sufficient consensus on and had clear implications for international trade: so-called “hard-core” cartels.⁶³⁶ In other areas, it recognized, there was not sufficient consensus for a binding agreement. Finally, in an effort to placate developing countries, the European Commission included flexibility provisions that permitted them to gradually assume their WTO commitments, and proposed that the WTO assume a prominent role in providing technical assistance to help them to do so.⁶³⁷ Increasingly, it is worth noting, the WTO framework that the European’s were proposing looked more and more like a “binding” version of ICPAC’s “Global Competition Initiative.” At the Seattle Ministerial Conference in 1999, it would nevertheless lobby WTO member states to move beyond the Working Group and put competition issues on the agenda for the next official “Millennium Round” of negotiations. However, as a result of significant opposition from developing states—particularly over the issue of agriculture—and amid widespread street protest, the conference ended in failure. The European proposal had not yet received a hearing.

Meanwhile, following the publication of the ICPAC report, Klein would publicly endorse the Global Competition Initiative. “In the end,” he remarked, “I think such a development is almost inevitable.”⁶³⁸ The initiative also received support from Klein’s successor, Douglas Melamed, who criticized the Commission’s efforts to put competition policy on the WTO agenda as well.

⁶³⁵ Quoted in Papadopoulos 2010, n.71.

⁶³⁶ Ibid.

⁶³⁷ Ibid.

⁶³⁸ Klein 2000, p.6.

The European Commission, for its part, gave the American proposal a “cool reception.”⁶³⁹ Mario Monti, the successor to Karel van Miert as Commissioner for Competition Policy, expressed that he was “a little disappointed” that the US had failed to endorse the creation of a competition agreement in the WTO and did “not think [the Global Competition Initiative] would provide a genuine substitute for the multilateral initiative we are advocating.”⁶⁴⁰ Despite this, with support for its WTO proposal diminished after Seattle, the European Commission played a hand in helping to bring it about.⁶⁴¹ The first concrete step took the form of a meeting at Ditchley Park in February 2001. This was intended to be a purely exploratory affair: a “brainstorming” session organized by the International Bar Association (IBA). The meeting involved 43 senior competition officials, who generally agreed on three main points by the end.⁶⁴² First, they emphasized that it would be important for the initiative to provide avenues for participation by the business community and other competition professionals. Second, they believed that it was important for the initiative to bring participants together on a regular basis and to include representatives both developed and developing countries. Third, they thought the initiative should “encourage the possibility of more open, nonbinding, frank discussions than those that occur when negotiations are under way” and should focus solely on competition issues.⁶⁴³ In general, while the US officials emphasized the importance of keeping the institutional footprint of the initiative “light,” the Europeans, as would be expected, proposed more robust structures.⁶⁴⁴

⁶³⁹ First 2003.

⁶⁴⁰ Monti 2000.

⁶⁴¹ Monti 2001. Despite his reservations, Monti explained that he “[saw] no inherent harm in the creation of the ‘Global Competition Initiative,’” Monti 2000.

⁶⁴² Janow 2003; Janow and Rill 2011.

⁶⁴³ Janow 2003, p.5.

⁶⁴⁴ Ibid.

After achieving some consensus at the meeting on the broad outlines of the initiative, officials began to flesh out the organization, scope, membership and activities of what was by that point being referred to as a “Global Competition Forum.” They would, according to Janow, devote a considerable amount of attention to these issues, since the “organization and management of the initiative [was to] have important implications for the future.”⁶⁴⁵ Through various rounds of consultations, officials first settled on the broad structure, which would involve an informal steering committee that directed a number of functional working groups. The basic funding arrangements were also agreed upon, which would involve commitments by agencies, as well as relevant intergovernmental organizations and private sector bodies, such as the IBA. Disagreements arose over the precise role of non-governmental organizations, but, in the end, officials concluded that the forum would be primarily aim at facilitating dialogue between governments, with non-governmental organizations primarily playing an advisory role. Throughout all this, the informal nature of the organization that was being established and the absence of a “top heavy” secretariat would remain central.⁶⁴⁶ Despite concerns about how the Bush administration would regard the initiative, the new Chairman of the Federal Trade Commission, Timothy Muris, eventually made it “one of his leading priorities,” as did the new Assistant Attorney General for Antitrust, Charles James.⁶⁴⁷ Their commitment put any residual uncertainty to rest, and less than a year after the meeting in Ditchley Park, the initiative was then launched as the “International Competition Network” by 14 competition authorities at the

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid, 6

⁶⁴⁷ Janow and Rill, p.36.

Fordham Corporate Law Institute in October 2001.⁶⁴⁸ Konrad von Finckenstein, the head of the Canadian Competition Bureau, was nominated as the first chair of the steering group.

The ICN was therefore established as “new venue.” But reflecting its ambivalence about the ICN, the European Commission again pushed for competition issues to be taken up by the WTO at the Doha Ministerial Conference that November. And, to the surprise of competition experts, the US and developing countries actually permitted it to become a part of the official negotiating agenda. The Ministerial Declaration stated that members “agree that negotiations will take place after the Fifth Session of the Ministerial Conference [the Cancun Ministerial Conference] on the basis of a decision to be taken, by explicit consensus, at that session on the modalities of negotiations.”⁶⁴⁹ Ultimately, the reason for this acquiescence remains unclear, given their longtime opposition to the European initiative. However, with respect to the US, some have speculated that the decision was a strategic ploy by the USTR, Robert Zoellick. He had indicated as early as July 2001 that the US was ready to support the negotiation of a minimal binding agreement, and later claimed that the aim of doing so was simply “to ensure that work in the WTO on trade and competition plays a constructive role in furthering the development of a culture of competition among WTO members.”⁶⁵⁰ But, as Papadopoulos has argued on the basis of interviews with American officials, it is also likely that “the [USTR] supported the prospect of a minimal agreement on competition in order to be able to withdraw such support later on in the context of negotiations of more importance to the United States.”⁶⁵¹ As a result, the episode

⁶⁴⁸ The final change in name appears to have been made in order to reduce confusion with existing OECD and International Bar Association initiatives, see *Ibid.*

⁶⁴⁹ WTO 2001.

⁶⁵⁰ USTR 2002.

⁶⁵¹ Papadopoulos 2010, p.231.

“would demonstrate the correctness of the concerns of competition experts in the US that the WTO is not the right forum for competition policy, as competition is only one of the many ‘bargaining chips’ on the table of discussions.”⁶⁵²

The life of competition issues on the WTO agenda was nevertheless a short one. At last, at the Cancun Ministerial Conference, in 2003, the European Commission had a chance to persuade others to take its proposal seriously and take up the issue of competition. Yet, reverting back to the long-term trend, it faced significant resistance from the US and developing countries. The USTR’s willingness to allow competition to be negotiated as part of the Doha agenda had provoked significant opposition from antitrust officials. As described above, many American antitrust officials had been vocal opponents of the WTO negotiations, and they viewed the USTR’s move with some skepticism.⁶⁵³ However, in addition to them, there were outcries from the legal community. In testimony to the USTR, for instance, the American Bar Association strongly advocated against the WTO competition agreement and broadly supported the stance of the Antitrust Division and the FTC.⁶⁵⁴ There was, then, increased domestic resistance within the US when competition policy finally reached the negotiating table at the Cancun Ministerial Conference in 2003. As a result, the USTR would again play an obstructive role. Canada and other OECD states would, in turn, counter the European proposal by advocating for a voluntary “Competition Policy Committee” in the WTO that would serve as forum for notification, sharing of best practices and non-binding “peer review” of competition policy implementation. And, finally, developing countries would move to block any negotiation on competition policy as well.

⁶⁵² Ibid.

⁶⁵³ Devuyt 2000.

⁶⁵⁴ See American Bar Association 2003.

Facing a wall of opposition, the prospects for agreement on anything close to what the European Commission had proposed was severely diminished. At last, in August 2004, the WTO General Council officially stated that competition policy would “not form part of the work programme set out in the [Doha] Declaration.”⁶⁵⁵ No further negotiations would be conducted. The ICN was the only multilateral organization left in the field.

6.5 Conclusion

In this chapter, I have investigated the emergence of a relatively recent informal organization: the ICN. In many respects, the ICN has been a fairly successful intergovernmental organization, a fact that makes it particularly useful to examine because this suggests that there may be a good “match” between its design—or, at least, its level of formality—and the issue that states face in the area. We might think, then, that it is a case where we would expect rational design theories to perform well. And, in fact, rational design theorists have analyzed the case already and concluded that their theory can indeed explain it. However, I have shown in this chapter that there are strong reasons to believe that this is not the case. The “congruence” analysis undertaken in the third section shows that many of the variables that rational design theorists believe to be important are “wrongly signed.” There is, therefore, some reason to doubt the plausibility of a rational design approach. Of course, as I have noted, a congruence analysis has only limited inferential value, but the negative result does provide us with a strong incentive to investigate alternative theories. To do so, the chapter then undertook a “within case” analysis that examined the chain of events that led to the emergence of the ICN. This allows us to evaluate rational design hypotheses and the liberal theory advanced in this study in a more rigorous fashion, and

⁶⁵⁵ WTO 2004.

the evidence presented provides strong support for the liberal theory—and casts serious doubt on the validity of a rational design account. Here, I briefly summarize and draw conclusions from this evidence.

Consider, first, what we would expect to see if the rational design theory were correct. If it were right, then we should see some consensus amongst experts and competition officials on at least the broad outlines of an approach—at least with respect to the level of formality. To some degree, we do see this. As Eleanor Fox has explained, most independent experts believe that a formal organization—the WTO—is the best venue for addressing global competition issues.⁶⁵⁶ Further, the case shows that at least one major actor, the European Commission, was a forceful advocate of this position and that, at least in part, this position was based on the recommendations of a group of experts. Despite this, however, a formal organization did not emerge because most other states took a very different stance—despite the larger degree of consensus amongst independent experts. In this regard, the US was the most important actor. Interestingly, the position of the US was also partially based on an assessment of the problem that states faced by a group of experts. Yet this group came to very different conclusions about the desirability of a formal organization. There was, therefore, no obvious way in which the nature of the problem led easily to conclusions about the optimal design of an institution. But, even more important for our present purposes, was the fact that the dispute was not simply due to different perceptions of the underlying problem or legitimate disagreements about the best course of action—in general, they both diagnosed the problem in similar ways, and, at first, had similar preferences over how to address it (informally, on the basis of their discretionary authority)—but

⁶⁵⁶ Fox 2003.

stemmed mainly from different domestic political dynamics that closely resemble those predicted by the liberal theory.

The liberal theory states that an initial demand for cooperation selects domestic institutions to lead cooperative efforts and that these institutions have different “baseline” preferences over organizational form. Of relevance here is the fact that the most important actors with respect to competition policy are independent agencies, which are predicted to have an initial preferences for informality *unless an issue gets politicized*, making their first preference undesirable or unachievable. This is, in fact, what we do see. Both the American and European authorities, at first, had a clear preference for informal cooperation that would preserve their policymaking autonomy. The European Commission only reversed course to pursue formal cooperation via the WTO after its capacity was diminished in several ways, after it faced threats of intervention by member states, and after member states did in fact intervene to challenge its informal policymaking. Politicization, therefore, offers a powerful explanation of the timing and rationale for its revised preference for the WTO.

The American authorities were, by contrast, under no such pressure (in fact, political support for their activities and their capacity to exert extraterritorial jurisdiction increased in the mid-1990s). As a result, they continued to have a clear preference for a variety of cooperation that limited the scope for interventions by international bureaucrats and other domestic actors. An informal organization could achieve this goal—even if, as practitioners in the US admitted, “in some instances it may not be a satisfactory result.”⁶⁵⁷ Thus, the liberal theory offers a powerful

⁶⁵⁷ ICPAC 2000, p.42.

explanation of the preferences of the main actors involved. The bargaining power of these actors then helps to explain the final outcome, as the last section of the paper demonstrates. The EU wanted a formal approach to the problem, which would have involved a much more significant shift from the status quo, and it depended on the consent of others to a far greater extent, particularly since one of the main goals was to restrict American extraterritoriality. The US, by contrast, preferred an outcome that was much closer to the status quo, which theory suggests should give it a bargaining advantage since it can “hold out” and ultimately stymie cooperation. This is, in fact, what we see in the case. The US generally refused to budge from its hardline stance, and the Europeans eventually deferred to its position and embraced an informal approach when it proved impossible to achieve cooperation in the WTO. Thus, while the nature of the cooperation problem does not clearly explain the design of the institution that emerged, domestic politics and power do.

Chapter 7. Conclusion: Findings, Implications, and Future Research

7.1 Introduction

Eight years on from the 2008 global financial crisis, reliance on informal organizations has showed no sign of abating. In early 2016, a meeting of G20 ministers was convened and took place in China for the first time. The discussions focused on ways of stimulating global growth, improving the effectiveness of global economic governance, facilitating international trade and investment, and ensuring sustainable development. All are pressing concerns. Alongside this, a steady stream of meetings was scheduled to convene under the aegis of the APEC covering a variety of topics, including public-private partnerships, fisheries management, capital flows and barriers to trade. The FSB set out its work programme for the year, and the IAIS released, in October 2015, a robust standard for systemically important insurance firms—the organization’s most significant accomplishment to date. Across a range of issue areas, new informal bodies have joined their ranks: the Global Governance Group, the Major Economies Forum on Energy and Climate Change, the International Offshore Petroleum Environmental Regulators Group, the International Confederation of Energy Regulators, and the Chang Mai Initiative Multilateralization, which led to the establishment of a surveillance unit to monitor the agreement, the ASEAN+3 Macroeconomic Research Office. Despite the major test that they were subjected to during the financial crisis—which many believe they failed—informal organizations continue their ascent.

This study has sought to improve our understanding of these “unconventional,” but increasingly important institutions. It has done this, first, by refining how we think about or conceptualize

them. Informal organizations, it has shown, have a number of features and properties that differentiate them from their more “traditional” formal counterparts in important ways. Specifically, I have argued that informal organizations are bodies created by states that exhibit a limited level of institutionalization (at minimum) and are constituted by a “non-binding” international agreement. Further, that while this unique form means that they have a number of special “international properties,” which may make them particularly useful for solving certain kinds of issues, they also have important “domestic implications” that affect states—and, especially, particular actors within states—in different ways. Second, I have made a major effort to map the “universe” of informal organizations by collecting new data on the number of informal organizations that exist or which have existed in the past. This has significantly improved our empirical understanding of informal organizations, and of intergovernmental organizations more broadly. The data show that informal organizations are not in fact as “unconventional” as they may seem at first. Indeed, after a period of rapid growth they now constitute as much as a third of all the currently “active” intergovernmental organizations. They can, therefore, be regarded as a mainstay of the global political landscape. They are institutions that pervade nearly every issue area and deserve far greater attention than they have thus far received by both scholars and policymakers.

Third, I have advanced a new theory that attempts to explain why states create formal organizations in some instances and informal organizations in others. This theory builds upon others that have been developed by beginning with the cooperation problem that states confront, which may, in certain instances, provide an incentive for either a formal or informal design based upon efficiency considerations. Unlike these theories, however, the account that I offer suggests

that domestic politics and state power may also play a role and may even override such considerations in many cases. This leads to very different expectations about the circumstances in which informal organizations can be expected to emerge. In particular, it asserts that informal organizations are likely to appear: a) when the domestic actors leading cooperation in powerful states are more autonomous, since these actors are expected to prefer approaches that limit the extent to which other domestic and international actors can intervene in their affairs; and b) when policymakers in powerful states face significant domestic opposition, since this makes their initial preference for greater legalization more difficult to achieve. This theory was then tested both quantitatively and qualitatively. First, I tested its observable implications by undertaking a statistical analysis of a sample of 90 formal and informal intergovernmental organizations derived from the IGO Dataset described above. This showed that domestic constraints and the kinds of actors leading cooperation in powerful states indeed shaped the design of these organizations in the way predicted by the theory, and that while aspects of the cooperation problem do play a role their effect appears to be more limited. Second, I then tested the theory's observable implications through case studies of three organizations: the IMF, the GATT, and the ICN. These showed, again, that the factors that the "liberal" theory identifies have indeed powerfully shaped the form of these organizations, and that rational design considerations, while again playing a role, were relatively less important by comparison. Overall, then, the study offers powerful support for the model that it advances.

Rather than offering a more detailed summary of the evidence presented in the study, this concluding chapter now steps back and offers a number of broader reflections upon its findings. First, I discuss the theoretical, empirical and policy implications that stem from the study.

Theoretically, I argue, this research has important consequences for a number of existing explanatory approaches to the study of international institutions, especially those within the rational design tradition. Empirically, the study suggests a very different explanation of the unprecedented rise of informal organizations in the global political landscape than we have at present, and I offer some preliminary evidence to support this story. From a policy perspective, its findings tell us something new—and potentially worrying—about the desirability of these organizations, and I show hope we can start to think about the process of reforming those institutions that are in need of change. Second, I discuss future avenues of research. In general, these follow directly from the limitations of the study, which are two-fold: first, that it primarily limits its analytical scope to organizations that are created by relatively well-governed democratic states; and, second, that the study only investigates the “constitutional moment” in which an organization is initially established. I therefore argue that in order to fully understand the politics of informal organizations it is essential for us to analyze the determinants of organizational form when the actors involved exhibit greater diversity, and how informal organizations subsequently evolve after they have been created. Finally, I also argue that there are good reasons for scholars analyzing intergovernmental organizations to take informal organizations into account in a more systematic fashion when studying questions of institutional design and, more generally, how intergovernmental organizations operate.

7.2 Theoretical Implications

Throughout the 1980s and 1990s, IR scholars devoted a significant amount of effort to understanding the role of international institutions in world politics. The initial focus of most

scholars was on showing that institutions mattered.⁶⁵⁸ The key work in the area was, of course, Robert Keohane's *After Hegemony*, which adopted the key assumptions of prevailing neorealist theories, but, by injecting insights from the "New Institutionalism" in economics, was able to show how institutions could facilitate cooperation in ways in that neorealists such as Waltz and Gilpin did not predict.⁶⁵⁹ His approach was largely functionalist—states created institutions because of what they could help them to accomplish—and a range of studies then built on this core idea. These did so, primarily, by developing our understanding of the different kinds of problems that states faced. Keohane's work conceptualized the problem of international cooperation in terms of a Prisoner's Dilemma problem, where states could benefit from cooperation but had strong incentives to behave opportunistically. Others noted, however, that states often faced different kinds of problems—coordination problems, suasion problems, for instance—and explained the specific ways in which institutions helped states to overcome these.⁶⁶⁰ In the case of coordination problems, for instance, they did so by providing states with a focal point around which expectations could converge. In other kinds of problems, the roles that institutions performed were different, as were the politics surrounding them. Krasner, for instance, argued that when states confronted coordination problems with "multiple equilibria" and different distributional consequences states tend to have a strong incentive to bargaining along the "Pareto frontier" to attain their desired outcome⁶⁶¹

Having established that they mattered, research on international institutions then progressed in new directions in the early 2000s. In particular, it focused to a significant extent on questions of

⁶⁵⁸ Martin and Simmons 1998.

⁶⁵⁹ Waltz 1979; Gilpin 1981; Keohane 1984.

⁶⁶⁰ Snidal 1985; Abbott 1993; Stein 1990; Martin 1992; Kahler 1992.

⁶⁶¹ Krasner 1991.

institutional design—why different institutions took the shape they did and how this mattered. Two special issues of the journal *International Organization*, which appeared in 2000 and 2001, respectively, were particularly important, and bear significantly upon the research undertaken in this study. The first, *Legalization and World Politics*, observed that international institutions varied tremendously in terms of the extent to which they were “legalized.”⁶⁶² Legalization was conceptualized in terms of three core attributes—precision, obligation and delegation—and the papers in the special issue sought to explain why institutions varied in terms of their degree of legalization, and what the practical consequences of legalization were.⁶⁶³ Much of the research in the special issue itself was conceptual, descriptive and advanced only preliminary hypotheses about the patterns observed. However, it managed to ignite a significant amount of research in the fields of IR and IL, especially on the causes, dynamics and impacts of so-called “hard” and “soft” law.⁶⁶⁴ A variety of scholars sought to explain why states sometimes created international agreements that established “hard” legal obligations and in others did not.⁶⁶⁵ They also sought to unpack the ways in which hard and soft law interacted—conflicting with or complementing each other, or, alternatively, substituting for one another—and what the ultimate consequences of hard and soft law, in terms of compliance and effects, were for states and the underlying problems they aimed to solve.

The second special issue, *The Rational Design of International Institutions*, was broader in its goals since it sought to explain a much wider range of institutional features. It began from the

⁶⁶² Goldstein et al. 2001.

⁶⁶³ Abbott et al. 2000.

⁶⁶⁴ Abbott and Snidal 2000; Zaring 2005; Pollack and Shaffer 2013.

⁶⁶⁵ Abbott and Snidal 2000; Kirton and Trebilcock 2004; Guzman and Meyer 2010; Shaffer and Pollack 2010.

observation that international institutions vary considerably in terms of their design—not just in terms of their level of legalization. Some institutions included a larger number of actors than others, some were more “centralized” than others, some were more flexible, and some, finally, aimed to deal with a larger number of issues. What accounted for these different designs? The essential contribution of the project was to link the different kinds of problems that states confronted to the outcomes observed. By regarding states as rational unitary actors and assuming that they wanted to overcome the different cooperation problems they confronted, the editors hypothesized that states would attempt to “match” different institutional designs with the particular problems that stymied cooperation—uncertainty, opportunism, and so on. If so, we could explain a significant amount of the observed variation in institutional outcomes by evaluating conjectures about the different kinds of problems that created incentives for states to choose them. As with *Legalization and World Politics*, the rational design project ignited a wide range of research—a large amount of which has already been described in previous chapters of this study.⁶⁶⁶ Scholars developed a range of more specific hypotheses about the connections between “situation structures” and various aspects of institutional design, including flexibility provisions, the “openness” of international institutions, the extent of delegation, the independence of intergovernmental organizations, as well as—and here the work on legalization and the rational design project link—on the “hardness” or “softness” of international law.⁶⁶⁷

These two special issues and the various lines of research they facilitated have undoubtedly enriched our conceptual, empirical and theoretical understanding of international institutions in important ways. Further, they have been particularly useful for stimulating dialogue between

⁶⁶⁶ Koremenos 2013a.

⁶⁶⁷ Pollack and Shaffer 2013.

scholars of IR and IL, who had failed to do so for far too long.⁶⁶⁸ But many have also argued that they each confront problems as well—problems which, interestingly, are quite similar. The major issue that scholars have identified with respect to theories of rational design is, as noted in the Introduction as well as subsequent chapters (Chapter 3, in particular), that they fail to adequately theorize the impact of domestic politics, distributional conflict and power. Key scholars within the rational design tradition, such as Barbara Koremenos, have been quite explicit about the fact that they take state preferences as given, and do not attempt to model preference formation processes in the way that other approaches to the study of IR have done.⁶⁶⁹ While they explicitly attempt to take into account whether an underlying problem has a distributional dimension, they do not theorize how preferences over institutional solutions may conflict as well—when, for instance, multiple equilibria exist as Krasner discussed.⁶⁷⁰ And, although their advocates are more reticent to admit it, rational design theories have also been accused of failing to theorize the role of power.⁶⁷¹ These criticisms have been directed at the rational design project *as a whole*, but they apply equally to existing research on hard and soft law. Pollack and Shaffer, in a recent review, have noted that functionalist explanations akin to those espoused by rational design scholars have been “nearly ubiquitous” in this field and that while this has been a productive approach such theories, unsurprisingly, face similar kinds of problems.⁶⁷² “This functionalist literature,” they argue, “has generated considerable insight into the reasons that states might choose hard and soft law, but it runs into difficulties in explaining why states might have different preferences over hard and soft law, and why states might

⁶⁶⁸ Abbott 1989; Abbott and Snidal 2013.

⁶⁶⁹ See, for instance, Koremenos 2013 and Koremenos forthcoming.

⁶⁷⁰ Pollack and Shaffer 2013.

⁶⁷¹ Duffield 2003.

⁶⁷² Pollack and Shaffer 2013, p.197.

establish multiple, overlapping, and inconsistent hard- and soft-law norms to govern a single issue in international politics.”⁶⁷³

In view of these issues the present study makes several important contributions. First, it shows that many of the allegations directed against such functionalist theories are indeed correct. Part of the motivation for advancing an alternative explanation of organizational form was the large number of empirical anomalies that seemed to arise when attempting to apply rational design theories in this area. But we see this, as well, in a more systematic way, in the various “congruence” analyses presented in the two case study chapters. After a careful examination of the scores for each variable, these suggested that the factors that rational design theorists have thus far identified are in fact relatively poor predictors of organizational form. When we looked up close at the causal processes operating in each case through “within-case” analyses it seems that such approaches do not perform particularly well either. While states certainly had ideas about what the “best” design might be and would try to move towards that goal, other factors routinely intervened—domestic constraints, autonomy considerations, for instance. Equally, when we widened our lens by looking at a larger number of cases we found, again, that “pure” rational design hypotheses are not particularly effective at explaining the variation we find. The quantitative analysis showed, for instance, that while aspects of the cooperation problems that states face do seem to play a role, they offer only a partial explanation, at best, and their effect on institutional design compared to other factors is relatively weak. The study, therefore, provides good reasons for us to believe that rational design theories, while powerful in many ways, also

⁶⁷³ Ibid, p.202.

face important limitations and that we need to revise our theories or propose new ones in order to fully understand variation in institutional design.

The contribution of this study is not simply “destructive,” however; it is constructive as well. In response to the apparent inadequacies of functionalist theories, for instance, Pollack and Shaffer have proposed that we need to adopt what they refer to as a “distributive approach” to understanding choices between “hard” and “soft” law. This kind of approach would admit that states can hold contrasting preferences over different institutional forms and seeks to understand how state power determines who is able to secure outcomes closer to their preference.⁶⁷⁴ Showing how such a model might be developed by building upon a liberal theoretical framework is the second major theoretical contribution of this study. The “liberal” theory that it advances explicitly seeks to explain why states develop different preferences over the legal form of an institution as a result of the domestic distributional implications of alternative institutional designs, and it proposes a parsimonious model for understanding how choices over organizational form are made when preferences conflict by focusing on the role of state power. Further, it systematically demonstrates that such an approach does indeed help to explain a significant amount of the variation that we find—more, in fact, than prevailing rational design theories are able to. Thus, it shows that rational design theories can be supplemented by additional insights and it affirms the value of the particular “distributive approach” that Pollack and Shaffer have proposed. The effort is, of course, preliminary and will have to be developed in a number of ways. But it suggests that further theory building and empirical testing along these lines—as well as additional efforts to more fully integrate rational design and liberal theories—

⁶⁷⁴ Ibid.

would be rewarding in the future. It would be particularly valuable, I believe, when applied to the phenomenon of hard and soft law, which is directly analogous to the formal and informal organizations explored in this study, but it would also likely have significant benefits for understanding other aspects of institutional design as well.

7.3 Empirical Implications

In addition to these theoretical implications, the research presented in this study has important empirical implications, particularly for our understanding of the rise of informal intergovernmental organizations and broader shifts in the structures of global governance. The study began, in the Introduction and Chapter 1, by observing the tremendous growth of informal organizations, and, to a great extent, it is this phenomenon that motivated the investigation in the first place. However, the research that has been undertaken thus far primarily sought to improve our understanding of informal organizations by investigating what drives states to create them in particular instances. By doing so, we clearly understand the determinants of organizational form better. Yet neither of the theories that have been investigated offers an explanation of the *rise* of informal organizations per se. Both the rational design and liberal theories explain, generally, the causes of informality; they do not tell us why they have become more common over time. Both, nevertheless, hint at different kinds of explanations. Here, I elaborate each of these broader stories, and, to some extent, present and discuss some of the evidence in support of these. This is not a conclusive analysis by any means. Further investigation is clearly required in order to determine exactly how the different dynamics that they identify have actually played out, and what their contributions to the overall trend have been. However, the preliminary evidence that is offered indicates that an extended version of the liberal theory can tell us a great deal about the

overall rise of informal organizations, and that further investigation of the dynamic may be a fruitful avenue of research in the future.

To begin, consider what rational design theories have to say about the rise of informal organizations. Such theories argue that when states wish to cooperate with one another they face a range of different cooperation problems that are “best” addressed by specific kinds of institutions. States, acting instrumentally, are therefore expected to “match” institutions with the cooperation problems that they most efficiently resolve. It is in this sense that they are *rationally* designed. As presented, the theory simply explains variation across institutions; that is, why we should see some institutional features in some instances and different ones in others. It does not, at least in this form, offer an explanation of changing patterns of institutional design *over time*. Nevertheless, we may reasonably argue that if we do see systematic change in institutional designs—as institutions with certain features become more common over time—then theories of rational design would seem to imply that the problems themselves must have been changing. If informality is more likely to be chosen, for instance, when cooperation problems require greater agility, flexibility, confidentiality, and so on, then states must be confronting problems with these characteristics more often. The rise of informal organizations would, according to this extended theory, be a rational response to a shift in the nature of the underlying cross-border issues.

Although theories of rational design have not been extended in this way, it is not difficult to find scholars that have made similar kinds of claims.⁶⁷⁵ Tony Porter, for instance, has argued that

⁶⁷⁵ See Cerny 1995; Strange 1996; Evans 1997; Held 2000.

there has been a significant shift in the structure of global governance.⁶⁷⁶ His characterization of this shift is complex and multidimensional. It includes, first and foremost, the growth of informal institutions and “soft” rules. However, in his view, the current world order is also differentiated from previous ones by the extent of overlap and interconnections between institutions, the prominence of private governance, and its heavy reliance upon decentralized implementation of global rules. He refers to this world order as an amalgam of “transnational institutions.” Crucially, he then locates the causes of the shift towards “transnational institutions” in a number of broader systemic changes, primarily related to the process of globalization. The current world economy, he notes, is distinguished by an accelerated pace of events, more frequent crises, and growing uncertainty about the future, which are jointly responsible for the larger changes in the nature of international institutions. “With acceleration,” he argues, “formal law and traditional bureaucratic international organizations can be too slow.”⁶⁷⁷ “Crisis involves a sudden compression of the time available for deliberation and decision-making relative to the severity and speed of the problem that needs to be addressed” and provides states with an incentive for more agile forms of “experimentalist” governance.⁶⁷⁸ The growth of uncertainty and systemic risks is, in turn, associated with more flexible and less centralized institutions. Of course, Porter’s explanation of the rise of “transnational institutions” is not explicitly grounded in a rational design approach—far from it, in fact. But the affinities between his theory and what a rational design theorist might conjecture are nevertheless quite striking.

⁶⁷⁶ Porter 2012, p.26.

⁶⁷⁷ Ibid, p.26.

⁶⁷⁸ Ibid, p.26.

No doubt, this is an important part of the overall story. Many have argued that globalization has indeed resulted in major changes in the world economy and thrown up new kinds of challenges.⁶⁷⁹ If so, this would seem to support the idea that the new issues that states confront may be at the root of the institutional shift we are seeing. But, just as frequently, others have argued the contrary: that globalization has not changed the world as much as we might think.⁶⁸⁰ In certain ways, in fact, the global economy is no more “globalized” than in the late 19th century. Others have also argued that even if globalization has resulted in major changes in the global landscape, this may not have impacted the practice of international politics all that much.⁶⁸¹ While it may increase the payoffs of cooperation, the preferences of powerful states still determine the kinds of cross-border governance structures that get established. There are therefore significant disagreements about some of the claims made by scholars such as Porter, and reason to think that, while the structure of the issues that states face have indeed changed and may be linked to shifts in institutional design, this may not be enough to explain all of the change we see. In view of this, consider what the liberal theory would suggest. Like rational design arguments, it too can be extended to offer a plausible alternative explanation of variation over time. However, instead of associating the sources of institutional shifts with the changing problems that states confront, this alternative would locate the drivers of informality squarely within the domestic political arenas of powerful states—where internal changes have then been projected outwards to shape the global political landscape in the image of the great powers.⁶⁸²

⁶⁷⁹ Scholte 2005; Held and McGrew 2007; Dicken 2011; Goldin and Mariathan 2014. See also my own work Held and Roger 2013.

⁶⁸⁰ Wade 1996; Waltz 1999; Hirst, Thompson, and Bromley 2009.

⁶⁸¹ Waltz 1999; Drezner 2007.

⁶⁸² In this regard, the theory has a strong affinity with type of theory expressed in Slaughter 1993.

Two shifts would seem to be particularly important in this regard. The first is the growing reliance upon independent agencies as a tool of national governance. Numerous studies have observed that these institutions have grown in number over time, particularly but not exclusively within OECD states, and more active in global affairs, as domestic and international forces become increasingly intertwined.⁶⁸³ Given that they are expected to have a preference for informality, it would then seem reasonable to hypothesize that the number of informal organizations would have grown as well. The second shift is the growth of polarization and divided government within the domestic political arenas of powerful states, which together have made policymaking more difficult. Today, for instance, many lament the extent to which American legislative politics has been hindered by political partisanship—caused by growing economic inequality, conflicting ideologies, interest group politics and years of gerrymandering.⁶⁸⁴ The problem seems particularly acute at present, but it is in fact a long-term trend. Since the end of the Second World War, polarization and the frequency of legislative gridlock have steadily increased.⁶⁸⁵ This has extended to and limited the US’ ability to ratify formal agreements and created an additional incentive for informality. In recent years, as David Kaye has put it, “the U.S. Senate [has rejected] multilateral treaties as if it were a sport” and this has increasingly forced policymakers to search for alternative forms of international cooperation—what he calls “stealth multilateralism.”⁶⁸⁶ While the trend is most apparent within the US, it has affected other powerful states as well. France, Germany, and even the UK have

⁶⁸³ Pollit et al. 2001; Pollitt et al. 2005; Jordana, Levi-Faur, and i Marin 2011. See also Kennan 1997; Slaughter 2004; Bach 2010; Helleiner 2013.

⁶⁸⁴ See McCarty, Poole, and Rosenthal 2006; Mann and Ornstein 2012.

⁶⁸⁵ Binder 1999; Binder 2003; Binder 2014.

⁶⁸⁶ Kaye 2013, p.113.

seen more divided and minority/coalition governments since the 1970s and 1980s.⁶⁸⁷ The dynamics behind this trend are likely to be different in each case, but the effect is very much the same: policymaking has become more difficult, and, given that this is expected to lead policymakers to rely upon informal governance as a way of bypassing domestic opposition, it is reasonable to expect that the number of informal organizations would have grown over time as well.

The liberal theory therefore suggests that a very different, but equally plausible dynamic has been behind the rise of informal organizations—although one that need not be seen as a strict alternative to the rational design argument outlined above. While I do not explore these two stories systematically here, it is nevertheless useful to offer some preliminary evidence. We can do this in a relatively simple way by using the data and models from Chapter 4 to generate predictions about the kinds of institutions we would expect to emerge over time. Specifically, we can generate predictions using a model that contains all of the rational design variables and a separate model with just the liberal variables, *Autonomy* and *Constraints*. These predictions tell us the probability that an organization will be informal given the actual values that the independent variables take at each point in time. By comparing these two sets of predictions we can get a rough idea of the role that each dynamic played historically. These are shown in Figures 12 and 13. The first shows that, since 1950, informal organizations should have become somewhat more frequent over time, simply as a result of changes in the kinds of issues that states faced. Yet the overall trend in the figure is relatively flat, indicating that while this may be the

⁶⁸⁷ See, for instance, the relevant chapters in Elgie 2001, which contain information on the frequency of divided government in these states. For a similar view, see Hale, Held, and Young 2013 (Conclusion).

case, a shift in the nature of cooperation problems is unlikely to be the whole story—or even the most important part. The second figure, by contrast, shows that informal organizations should have been expected to arise much more frequently over time as a result of the combined effect of greater involvement on the part of independent agencies and growing domestic constraints. The trend line, by comparison with that in Figure 12, is much steeper. Of course, this evidence is hardly conclusive; a more thorough investigation of these two dynamics will be necessary in the future. But it does indicate that the variables the liberal theory identifies as important may have been the dominant drivers of the temporal trend we see.

Figure 12 The Impact of Changing Cooperation Problems, 1950-2005

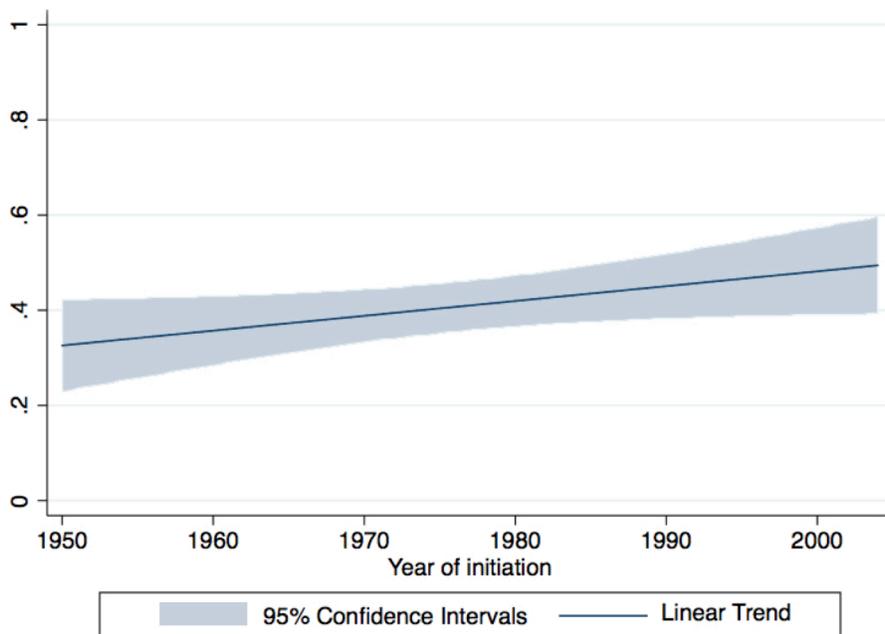
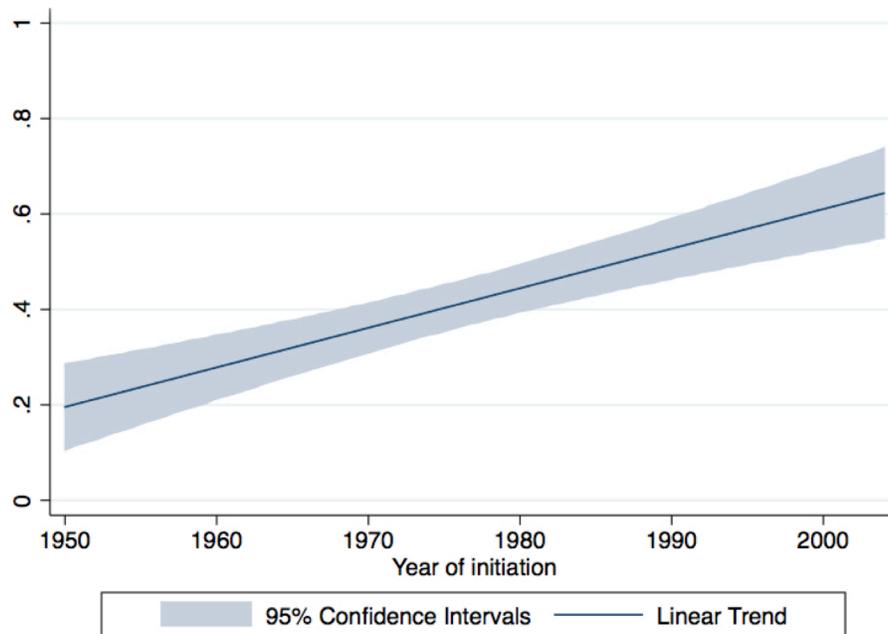


Figure 13 The Impact of Institutional Autonomy and Domestic Constraints, 1950-2005



7.4 Policy Implications

The story this study tells about the rise of informal organizations has important policy implications as well. At the start of the 2000s, informal organizations and other new forms of cross-border governance were heralded for their supposed ability to address the complex problems that were appearing. Formal organizations were, at the time, being severely criticized—and, in many ways, they still are. Much of this ire centered on a few very prominent bodies. The IMF, for instance, was widely derided for its handling of the East Asian financial crisis in 1997 and 1998.⁶⁸⁸ Shortly after, in 1999, massive protests in Seattle and elsewhere were directed at the WTO for its promotion of a “neoliberal” agenda that involved prying open markets in the developing world, exploiting vulnerable workers in those states, and destroying

⁶⁸⁸ Blustein 2001; Stiglitz 2002.

the livelihoods of workers in industrialized states.⁶⁸⁹ The EU was criticized for lacking adequate accountability structures and infringing the sovereignty of European states.⁶⁹⁰ In 2005, French and Dutch voters rejected ratification of the Treaty Establishing a Constitution for Europe, which would have consolidated the Maastricht Treaty and the Treaty of Rome and granted the EU a range of new powers. The UN, too, became engulfed in scandals related to *inter alia* its failure to intervene in the Rwandan genocide, corruption in the Oil-for-Food Programme in Iraq, and sex trafficking facilitated by peacekeepers in Bosnia.⁶⁹¹ Failure to undertake important reforms, especially of the Security Council, would also be widely viewed as problematic.⁶⁹² Today, a recent critique in the *New York Times* by a prominent former UN official argued that the organization is now fundamentally incapable of resolving pressing global issues effectively—it is, in his words, a “Remington typewriter in a smartphone world.”⁶⁹³

In this context, significant hope was placed in the fast and flexible varieties of cooperation that were appearing. In 1997, Anne-Marie Slaughter argued in *Foreign Affairs* that new transgovernmental networks—many of which are, in fact, correctly characterized as informal rather than transgovernmental in nature—constituted a protean world order “that is more effective and potentially more accountable than [...] current alternatives.”⁶⁹⁴ In her view, the informal institutions that were emerging—including the G8, FSF, IOSCO, the BCBS and the ICN, among others—offered leaders “a blueprint for the international architecture of the 21st

⁶⁸⁹ Aaronson 2001; Blustein 2009.

⁶⁹⁰ Schmitter 2000; Siedentop 2001.

⁶⁹¹ Dallaire 2003; Meyer and Califano 2006; Bolkova and Lynn 2011.

⁶⁹² Bosco 2009.

⁶⁹³ Banbury 2016.

⁶⁹⁴ Slaughter 1997.

century.”⁶⁹⁵ In a more recent work, Ian Goldin has emphasized their contribution as well. Such bodies, he claims, “provide a more effective response to global twenty-first century challenges” and “could be expanded to even greater effect.”⁶⁹⁶ These views are shared by a host of others.⁶⁹⁷ The common element among them all is that they believe the world faces new systemic risks that informal organizations are particularly well equipped to handle. Their rise should therefore be regarded as a promising development that augurs well for our collective ability to manage the challenges of globalization. Formal organizations may be failing in important ways, on this view, but this new breed of institution is stepping in to plug the regulatory gaps. Indeed, the proponents of informal varieties of cooperation believe that this new form of cross-border governance is so promising that it should be actively embraced and promoted as part of a wider approach to global governance and world order.

As grand as the claims were—and are—they lacked a firm empirical grounding. As Slaughter conceded in her book, *A New World Order*, “It is impossible to support these various claims of impact systematically.”⁶⁹⁸ Rational design theories, if correct, would go some way towards providing such support. If the nature of the cooperation problems states faced could be shown to drive decisions about organizational form, then there would be strong reasons to believe that informal organizations were, on average, efficient and likely to be particularly effective. However, the overarching conclusion of this study is that, while this may be true in some instances, this need not be the case always, or even most of the time. In fact, for the most part, the choice of design seems to have been driven by domestic considerations that are only loosely

⁶⁹⁵ Ibid. See also Slaughter 2004.

⁶⁹⁶ Goldin 2013, p.114, 116.

⁶⁹⁷ Reinicke and Deng 2000; Brummer 2014; Patrick 2014.

⁶⁹⁸ Slaughter 2004, p.170.

related to the problems states actually want to solve. And, ultimately, this may mean that many organizations are unlikely to be especially effective—with potentially disastrous effects in the future. Evidence of this can be gleaned from the qualitative analyses presented in this study. Despite being relatively successful, the informality of the GATT was seen by most states as problematic, and several failed attempts were made to put the organization's secretariat on a firmer footing. The ICN, as well, was less formal than most believed was desirable given the “situation structure” in the field of competition—a view held, to some degree, even by the ICN's American proponents. Interestingly, the theory suggests that the problem may extend, equally, to formal organizations. Some, it would imply, may be more formal than the situation structure would call for, and preliminary evidence of this has been provided in the IMF case study. At the very least, then, the study leads us to the conclusion that we should be cautious about some of the claims made by advocates such as Slaughter and Goldin.

Of course, the theory does not imply that all informal organizations will be dysfunctional. At least in some cases, an organization's design may be chosen because it “matches” the problems states face—a situation that may be more likely to prevail when domestic constraints are limited, giving a political actors a free hand, and an issue is so important that policymakers seek to ensure that they get it right. An organization may then be particularly effective. It is also possible that a specific organizational form may be determined by domestic factors but is also, incidentally, optimal from a rational design perspective. Most likely, domestic and rational design considerations will work hand-in-hand. The importance of the theory from a policy perspective is, therefore, not to totally discredit the claims made on the behalf of formal or informal organizations, but to prompt us to take the idea that they may be dysfunctional more seriously

and to call upon scholars and policymakers to investigate on a case-by-case basis whether this is so and, if so, what can be done. Some have moved in this direction already. Work by Verdier and Zaring, for example, is exemplary for the fact that it critically interrogates the claims about the appropriateness of these new institutions, and seeks to understand the precise conditions in which informal institutions are likely to work.⁶⁹⁹ But we need more of this. Although a deeper investigation along these lines is beyond the scope of this study, it does suggest one particularly valuable way of proceeding in the future. Naturally, we are most likely to get sub-optimal institutions when the form of an organization does not match the issue it is supposed to address: when an informal organization is likely to be optimal, given the characteristics of a cooperation problem, but the organization that emerges is, for whatever reason, actually formal; or, when a cooperation problem indicates that a formal organization is likely to be optimal, but the organization is, in fact, informal. Identifying cases that fall into these categories—or are likely to—is a prerequisite for deeper analysis and, potentially, reform. And, thus far, there has been no obvious way of accomplishing this, at least on a large scale. However, arguably, the quantitative results from Chapter 4 can again help us.

Specifically, the results of this study can help us to identify mismatched organizations by generating predictions about the “optimal” form of an organization using a statistical model that includes only the rational design variables and comparing these predictions with the “realized” form of an organization. We can then visualize this as a plot with four quadrants, as shown in Figure 14.⁷⁰⁰ The top row contains the organizations that have a greater than 50 percent

⁶⁹⁹ Verdier 2009; Zaring 2009.

⁷⁰⁰ Note that the acronyms for the intergovernmental organizations in the figure can be found in the list contained in Appendix 1.

probability of being informal, given the values that the rational design variables take. These are, essentially, those that rational design theories suggest are more likely than not to be “optimally” informal. The bottom row contains the organizations that have less than 50 percent probability of being informal, given the values that the rational design variables take. These are, by contrast, those that rational design theories suggest are more likely than not to be “optimally” formal. The column on the left hand side of the figure then contains all the organizations that are actually informal, while those on the right contain all of the organizations are actually formal. By comparing the organizations that fall in each of the four quadrants, we can then get an idea as to whether their forms “match” what theory would suggest is ideal. Organizations in the top-left and bottom-right quadrants are those that are expected to be correctly “matched.” Organizations in the top-right and bottom-left quadrants are those that are “mismatched”—where an organization’s level of formality does not reflect what rational design considerations would predict. These, I argue, are the cases that would warrant more careful inspection by scholars and policymakers and may be potential candidates for reform.

Figure 14 Matched and Mismatched Intergovernmental Organizations

	Actually Informal	Actually Formal
Optimally Informal	EG, EURODRUGS, TREVI, EC, NTSC, MOPAN, CEER, FSF/FSB, ICCR, WENRA, VICH, ICRARD, ICPEN, ICH, WELMEC, NSOAF, EIPA, G7/8, G10, PC.	CEPT, EPPO, EUROPOL, HAGUE, IMC, NDF.
Optimally Formal	AG, COST, CWSC, MTCR, EUREKA, PSI, GHSI, EA, ENPG, EAL, IRF, GFTF, EURAMET, VAMAS, GARTEUR, ICHRB, NC.	NIB, ICPMD, OSPAR, EFTSA, NAMMCO, ECB, EU, EUMETSAT, NASCO, RAMOGE, ESA, IEA, PARIS, EPO, EMBL, NCTR, OSLO, BONN, EMBC, INTELSAT, ICPRP, ESO, ESRO, ELDO, NCM, ICPM, UPOV, EFTA, EUROCONTROL, OECD, EUROCHEMIC, EEC, EIB, EURATOM, ICPS, IMC, EUROFIMA, CERN, ECMT, NPFC, ANZUS, ECSC, CCC, ESRF, ICSR, CIPM, EUFMD.

Note: For the acronyms of the organizations in this table, see Appendix 1.

Of course, this diagnostic exercise is primarily illustrative. Its ultimate value will depend upon a more accurate specification the conditions under which a particular organizational form is in fact desirable. However, it does suggest a way of focusing our attention on the cases where further scrutiny—and, potentially, reform—is likely to be especially fruitful. Further, in principle, the technique can be developed in the future in order to move IR researchers in the direction of more rigorous normative institutional analysis. Here, however, it is also of interest because it allows us

to make a number of interesting empirical observations that are worth dwelling on briefly, since they reinforce a number of the points made above. First, the figure suggests that while many intergovernmental organizations are in fact “well matched”—at least in terms of their organizational form—more than a quarter of the total were “mismatched” at the time they were constituted.⁷⁰¹ This is a significant share, and implies that many organizations may be dysfunctional and in need of some kind of reform. Second, it indicates that, of these, the vast majority of the “mismatched” organizations—roughly 80 percent of the total—have been informal organizations. Another way to look at this is by comparing the number of mismatches within each of the columns. Whereas around 46 percent of all informal organizations are mismatched with the problem they are supposed to solve, only 11 percent of all formal organizations are. The reasons for this inequality are not entirely clear, and will require further research. Most likely, some of the factors that typically drive states to create informal organizations—such as the domestic ones explored in this study—are more likely result in a “mismatch” as well. Yet this finding clearly suggests that, in comparison with their formal counterparts, informal organizations may be much more likely to be dysfunctional, and that, as a result, much of the enthusiasm for these institutions may indeed be misplaced.

7.5 Future Research

This study has shed new light on the “world” of informal organizations, provided a new understanding of the factors that have led to their emergence and rise, and offered reasons to doubt some of the more optimistic claims made on their behalf. In doing so, I have utilized a

⁷⁰¹ It is important to note that in this data, some of the organizations have ceased to exist. Further, a number have in fact been “formalized” and therefore shift to a different quadrant at a later point in time.

range of methods to evaluate the theory that it advances in order to maximize both external and internal validity. However, as noted in the Introduction, the study has a number of limitations. As in any scientific endeavor, there is only so much that a scholar can accomplish in a single study and this necessarily limits what can be said about a phenomenon at any point in time. But, equally, by being aware of these limitations, it is possible to set out a number of promising and concrete avenues for future research. Some of these have already been described above, or in the body of the study. However, in what follows, I discuss three further possibilities. The first two follow directly from the theoretical and empirical limits of the study. The third then moves beyond these and argues that, in view of the study's findings, there are reasons to believe that the broader literature on intergovernmental organizations also suffers from important constraints due to its general neglect of informal organizations. There are, therefore, good reasons to believe that scholars of intergovernmental organizations and of international institutions, broadly conceived, would benefit from greater attention to the phenomenon that this study investigates.

The first area for future research is related to one of the limitations of this study that was discussed in the Introduction: that it focuses, primarily, on the drivers of informality among organizations created by relatively well governed, democratic states. This followed from the geographical scope condition set down in Chapter 3 that restricted the theory's applicability, and was also a product of data constraints that reduced the range of cases that it was feasible to look at. It meant, unfortunately, that, while the theory could be shown to explain a good number of organizations quite well, the extent to which it can explain the drivers of informality more generally is somewhat uncertain. Thus, in order to gain a more comprehensive understanding of informal organizations, it will be necessary in the future to broaden our analysis to include

institutions created by other kinds of states. Doing so will require two important innovations. First, it will require revising the theory in order to take account of the unique factors that may change the politics of institutional design when such states are involved. This may include theorizing how different kinds of domestic institutional arrangements may influence the preference formation process, and also how external pressures, such as normative pressures within an organizational field, may create incentives for states to adopt a particular organizational form when attempting to resolve a particular issue. Second, it will require developing new, more geographically comprehensive data that can be used to test any revised hypotheses. At present, we have fairly good data on independent agencies and veto players in well governed, democratic states, but much less on the institutional arrangements elsewhere, especially data that are sensitive to the unique circumstances that prevail in other kinds of states. Undertaking a major effort to collect such data should, therefore, allow us to extend the theory beyond the existing scope conditions and to improve our understanding of informal organizations as a whole.

The second area for future research is related to a second limitation of the study that is implicit in its theoretical and empirical focus: that it focuses primarily on decision-making during the “constitutional moment” when an intergovernmental organization is first established. At present, the study seeks to understand why, when states create an intergovernmental organization, they choose either a formal or informal design. However, some of the data collected for this study reveals that, in fact, the form of an organization can change over time. For instance, the quantitative data reveal that about 10 percent of all informal organizations are “formalized” at a later point in time, as when the informal GATT was transformed into the more formal WTO.

However, the qualitative analysis also revealed, interestingly, that formal organizations are occasionally “informalized” as well. This was the case, for instance, with the IMF. In the 1960s and 1970s, it was supplemented by a number of informal “appendages,” such as the G10 and Committee of 20, that had no basis in the organization’s constitutive agreement but altered the way that the organization functions in important ways.⁷⁰² Obviously, this study does not investigate this phenomenon in any great detail. However, in order to develop our understanding of informal organizations in the future it will be essential for us to theorize this process further and to evaluate conjectures using the best evidence available. This will likely involve reformulating the theories I have investigated in this study to take into account the process of institutional change, and to develop new ways of testing these, potentially by modifying the existing dataset so that it can be used to undertake event history analysis—the ideal quantitative approach.

The final avenue for future research is related to a limitation inherent in the broader body of literature investigating the politics of intergovernmental organizations: that it focuses, primarily on formal intergovernmental organizations. This is particularly true of quantitative work, which primarily relies upon the existing COW-IGO dataset.⁷⁰³ The COW-IGO dataset, as noted in the Introduction and Chapter 2, only includes formal organizations. However, this study has shown that informal organizations are a major component of the global political landscape; they are not

⁷⁰² See Dam 1983; Gold 1984; James 1996. To some degree, this phenomenon parallels practices of “informal governance,” which occurs within formal intergovernmental organizations. These practices have been investigated by others in a burgeoning body of important research that includes Puetter 2006; Stone 2011; Kleine 2013; Hardt 2014. But it is also different in important ways, since the informal appendage is a more permanent modification to the existing institution.

⁷⁰³ See, for example, Hafner-Burton, von Stein, and Gartzke 2008; Mansfield and Pevehouse 2008.

simply an interesting but ultimately inconsequential aberration—mere statistical error. Further, it has shown that this dimension of institutional design matters and is hotly contested, both domestically and internationally. As a result, scholars of IR seeking to investigate questions about intergovernmental organizations neglect them at their peril. By only looking at formal organizations, we are failing to investigate a theoretically and empirically important set of institutions. But, perhaps even more importantly, we are potentially truncating a key dependent variable at an important and potentially theoretically relevant cut-off point. The implication of this is significant: it means that many of the inferences that we draw—or have drawn—about the politics of intergovernmental organizations risk being biased.⁷⁰⁴ Including informal organizations in our analyses is, therefore, also necessary for methodologically sound research in IR on formal organizations as well. Thus, it will be important for scholars to think about how this lacuna may affect our conclusions, and potentially requires us to revisit some established claims to ensure that they hold up once we take informal organization into account. Fortunately, by developing a new companion dataset of informal organizations that can be reliably combined with the COW-IGO dataset, this study provides scholars with one of the key tools needed to do so.

7.6 Conclusion

This study has argued that the rise of informal organizations is an increasingly consequential phenomenon, but that our understanding of it is deficient. In response, it has advanced a new framework for thinking about these institutions, a new explanation of the determinants of organizational form and it has evaluated this explanation with new data and carefully selected

⁷⁰⁴ Geddes 1990.

cases. The different methods confirm the validity of the theory, and the implications of the findings are vast—theoretically, empirically and from a policy perspective. It shows that we need to be critical of “pure” rational design approaches, at least in some instances, but also affirms some of the particular theoretical solutions that others have put forward. It shows that this new theory also provides an alternative account of the overall rise of informal organizations that is plausible and, most of all, potentially worrying. Indeed, it suggests that informal organizations may not be the panacea that some have argued they are. By demonstrating that this key dimension of institutional design has been driven, to a large extent, by domestic considerations and not careful attention to the structure of an issue, many informal organizations may be poorly “matched” with the problems they are supposed to resolve. Informal organizations, to be sure, have their place among the various tools that policymakers have at their disposal, and there is significant need for further research to deepen our understanding of these important institutions. Given the size of the risks that we face today, we need all the help that we can get. But, ultimately, even if they are expedient and have a number of desirable properties from the perspective of many policymakers, there are reasons to be skeptical about many of the broad, unqualified claims made by the boosters of informal approaches to global governance.

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Appendix 1

Table 9 List of Intergovernmental Organizations in the Sample

<u>Number</u>	<u>Organization Name</u>	<u>Acronym</u>	<u>Informal</u>	<u>Year</u>
1	ANZUS Treaty Organization	ANZUS	0	1951
2	Australia Group	AG	1	1985
3	Bonn Agreement	BONN	0	1969
4	Common Wadden Sea Cooperation	CWSC	1	1982
5	Council of European Energy Regulators	CEER	1	2000
6	Customs Cooperation Council/World Customs Organization	CCC	0	1950
7	EFTA Surveillance Authority	EFTASA	0	1992
8	EUREKA Organization	EUREKA	1	1985
9	Eurogroup	EG	1	1997
10	European and Mediterranean Plant Protection Organization	EPPO	0	1951
11	European Association of National Metrology Institutes	EURAMET	1	1987
12	European Atomic Energy Agency	EURATOM	0	1957
13	European Central Bank	ECB	0	1992
14	European Coal and Steel Community	ECSC	0	1951
15	European Commission for the Control of Foot-and-Mouth Disease	EUFMD	0	1953
16	European Company for the Chemical Processing of Irradiated Fuels	EUROCHEMIC	0	1957
17	European Company for the Financing of Railway Equipement	EUROFIMA	0	1955
18	European Conference of Ministers of Transport	ECMT	0	1953

<u>Number</u>	<u>Organization Name</u>	<u>Acronym</u>	<u>Informal</u>	<u>Year</u>
19	European Conference of Postal and Telecommunications Administrations	CEPT	0	1959
20	European Cooperation in Accreditation	EA	1	1997
21	European Cooperation in Accreditation of Laboratories	EAL	1	1994
22	European Cooperation in Legal Metrology	WELMEC	1	1990
23	European Cooperation in Science and Technology	COST	1	1971
24	European Council	EC	1	1974
25	European Economic Community	EEC	0	1957
26	European Free Trade Association	EFTA	0	1961
27	European Institute of Public Administration	EIPA	1	1981
28	European Investment Bank	EIB	0	1957
29	European Launcher Development Organization	ELDO	0	1962
30	European Molecular Biology Conference	EMBC	0	1969
31	European Molecular Biology Laboratory	EMBL	0	1973
32	European Networking Policy Group	ENPG	1	1997
33	European Organisation for the Exploitation of Meteorological Satellites	EUMETSAT	0	1983
34	European Organization for Nuclear Research	CERN	0	1953
35	European Organization for Safety of Air Navigation	EUROCONTROL	0	1960
36	European Patent Organization	EPO	0	1973
37	European Police Office	EUROPOL	0	1995
38	European Southern Observatory	ESO	0	1962
39	European Space Agency	ESA	0	1975

<u>Number</u>	<u>Organization Name</u>	<u>Acronym</u>	<u>Informal</u>	<u>Year</u>
40	European Space Research Organization	ESRO	0	1962
41	European Synchrotron Radiation Facility	ESRF	0	1988
42	European Union	EU	0	1992
43	Europol Drugs Unit	EURODRUGS	1	1993
44	Financial Stability Forum/Board	FSF/FSB	1	1999
45	Global Harmonization Task Force	GHTF	1	1992
46	Global Health Security Initiative	GHSI	1	2001
47	Group for Aeronautical Research and Technology in Europe	GARTEUR	1	1973
48	Group of Seven	G7	1	1975
49	Group of Ten	G10	1	1963
50	Hague Conference on International Private Law	HAGUE	0	1951
51	International Centre for Migration Policy Development	ICMPD	0	1993
52	International Commission for Protection of the Rhine	ICPRP	0	1963
53	International Commission for the Hydrology of the Rhine Basin	ICHRB	1	1970
54	International Commission for the Protection of the Moselle	ICPM	0	1961
55	International Commission for the Protection of the Saar	ICPS	0	1956
56	International Commission of the Meuse	CIPM	0	1994
57	International Commission of the Scheldt River	ICSR	0	1994
58	International Committee on Regulatory Authority Research and Development	ICRARD	1	1994
59	International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use	ICH	1	1990

<u>Number</u>	<u>Organization Name</u>	<u>Acronym</u>	<u>Informal</u>	<u>Year</u>
60	International Consumer Protection and Enforcement Network	ICPEN	1	1992
61	International Cooperation on Cosmetics Regulation	ICCR	1	1999
62	International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products	VICH	1	1996
63	International Energy Agency	IEA	0	1974
64	International Moselle Commission	IMC	0	1956
65	International Moselle Company	IMC1	0	1956
66	International Regulators Forum	IRF	1	1994
67	International Telecommunications Satellite Organization	INTELSAT	0	1964
68	Missile Technology Control Regime	MTCR	1	1987
69	Multilateral Organizations Performance Assessment Network	MOPAN	1	2002
70	Nordic Council	NC	1	1952
71	Nordic Council for Tax Research	NCTR	0	1973
72	Nordic Council of Ministers	NCM	0	1962
73	Nordic Development Fund	NDF	0	1988
74	Nordic Investment Bank	NIB	0	2004
75	Nordic Telecommunications Satellite Council	NTSC	1	1965
76	North Atlantic Marine Mammal Commission	NAMMCO	0	1992
77	North Atlantic Salmon Conservation Organization	NASCO	0	1982
78	North Pacific Fisheries Commission	NPFC	0	1952
79	North Sea Offshore Regulators Forum	NSOAF	1	1989

<u>Number</u>	<u>Organization Name</u>	<u>Acronym</u>	<u>Informal</u>	<u>Year</u>
80	Organization for Economic Cooperation and Development	OECD	0	1960
81	Oslo Commission	OSLO	0	1972
82	OSPAR Commission	OSPAR	0	1992
83	Paris Club	PC	1	1956
84	Paris Commission	PARIS	0	1974
85	Proliferation Security Initiative	PSI	1	2003
86	RAMOGE Commission	RAMOGE	0	1976
87	Trevi Group	TREVI	1	1975
88	Union for Protection of New Varieties of Plants	UPOV	0	1961
89	Versailles Project on Advanced Materials and Standards	VAMAS	1	1982
90	Western European Nuclear Regulators' Association	WENRA	1	1999

Appendix 2

Figure 15 Post-1950 Temporal Trends in IGO Dataset

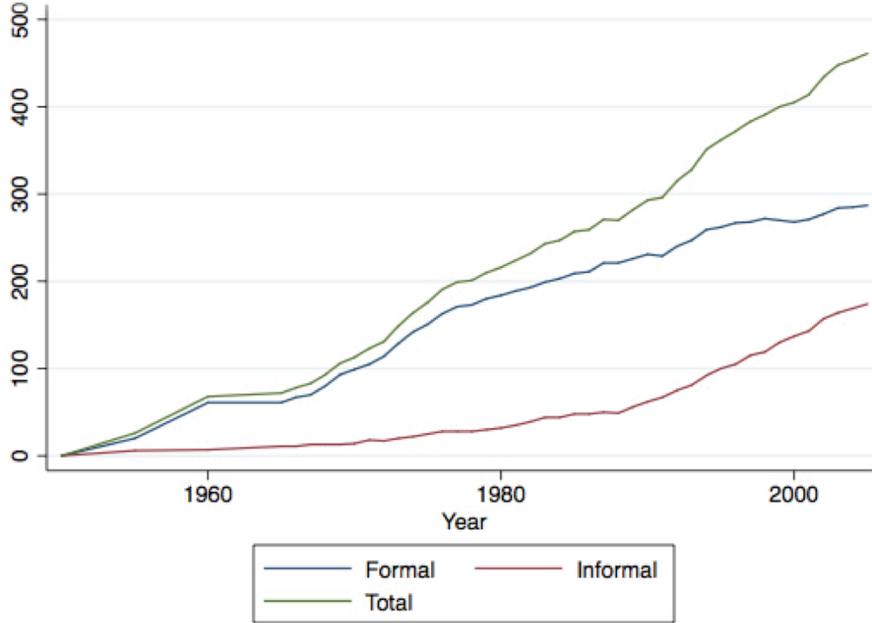


Figure 16 Post-1950 Temporal Trends in the Sample

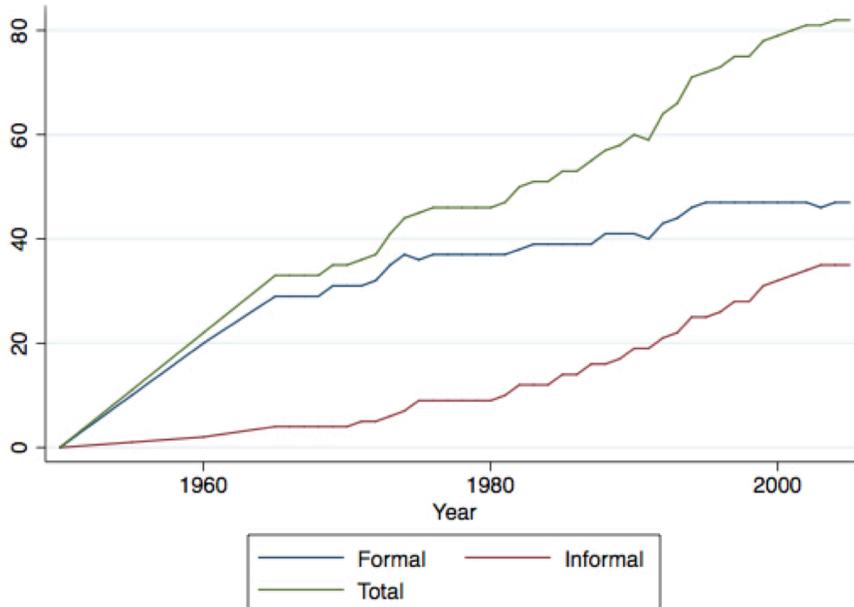


Table 10 Descriptive Statistics: IGO Dataset Versus Sample

Variable	Mean	Std. Dev.	Min	Max
<i>IGO Dataset (Post-1950)</i>				
Formal	185.2727	79.8948	0	287
Informal	63.15909	49.52563	0	174
Total	248.4318	125.016	0	461
<i>Sample Dataset</i>				
Formal	33	12.69789	1	47
Informal	12.42857	11.19067	0	35
Total	45.42857	22.80339	1	82

Table 11 Descriptive Statistics: Domestic Constraints

State	Obs	Mean	Mean Deviation	Min	Max	Start	End
USA	213	0.3831671	0.03562	0.152	0.536	1800	2012
CAN	146	0.3667474	0.0576675	0.05152	0.512	1867	2012
BEL	183	0.5139362	0.113185	0.09557	0.72	1830	2012
LUX	93	0.3824564	0.1376151	0.1305	0.526693	1890	2012
FRN	68	0.3792913	0.1652649	0.14433	0.676	1945	2012
SWZ	140	0.5529093	0.0729072	0.06522	0.632	1873	2012
SPN	35	0.4404045	0.0792933	0.06531	0.512	1979	2012
POR	37	0.4081285	0.0589261	0.03375	0.506692	1976	2012
GFR	64	0.4205419	0.0386986	0.0328	0.500025	1949	2012
AUS	67	0.4391142	0.0414649	0.02817	0.552	1946	2012
ITA	65	0.484963	0.0709118	0.05148	0.588	1948	2012
GRC	67	0.3369323	0.1375923	0.09263	0.553361	1946	2012
FIN	96	0.5257207	0.0211931	0.01496	0.553361	1917	2012
SWD	126	0.4691486	0.0738262	0.04891	0.584	1887	2012
NOR	131	0.4534578	0.0647076	0.04537	0.546694	1882	2012
DEN	123	0.3801661	0.1663139	0.08148	0.596	1885	2012
ICE	95	0.4828097	0.0615946	0.04715	0.592	1918	2012
AUL	112	0.442134	0.0611404	0.04927	0.54	1901	2012
NEW	122	0.3442347	0.0673208	0.04644	0.500025	1891	2012
UKG	180	0.3703889	0.0424196	0.03227	0.46669	1833	2012
JPN	61	0.5215862	0.053875	0.04299	0.636	1952	2012
NTH	162	0.5226355	0.1095663	0.09438	0.667964	1851	2012
IRE	91	0.4379241	0.0439946	0.03267	0.576	1922	2012
TUR	82	0.2819653	0.1718652	0.14968	0.53336	1931	2012
YUG	71	0.0141791	0.0410042	0.0217	0.153341	1921	1991
Total	25	0.42523	0.05914	0.37929	0.51394	NA	NA

Table 12 Descriptive Statistics

Variable	Obs.	Mean	Std. Dev.	Min.	Max.
Form	90	0.4111111	0.4947919	0	1
Autonomy	90	-0.630252	0.6179787	-1	1
Constraints	90	0.1928496	0.4650326	-1	1
Uncertainty	90	0.4666667	0.5016826	0	1
Agility	90	-0.2555556	0.7429233	-1	1
Confidentiality	90	0.3111111	0.7441826	-1	1
Opportunism	90	0.7555556	0.8651961	0	2
Heterogeneity (Affinity)	90	-0.4060749	0.3463297	-0.9864865	0.3846154
Heterogeneity (Gini)	89	0.4572515	0.1459998	0.02021	0.753868
Heterogeneity (Diff)	90	0.3798947	0.2127226	0.0200277	0.9666412
Membership (Current)	90	24.29885	28.27445	3	180
Membership (Original)	90	8.888889	5.286073	2	19
Issue Scope	90	3.488889	3.551371	1	26

Table 13 Correlation Matrix

	Autonomy	Constraints	Uncertainty	Agility	Confidentiality	Opportunism	Heterogeneity	Membership	Issue Scope
Autonomy	1								
Constraints	0.21	1							
Uncertainty	-0.38	-0.01	1						
Agility	-0.26	-0.12	0.56	1					
Confidentiality	0.1	-0.19	-0.48	-0.38	1				
Opportunism	-0.47	-0.08	0.7	0.5	-0.28	1			
Heterogeneity	0.17	-0.23	-0.25	-0.01	0.16	-0.22	1		
Membership	0.06	0.03	-0.16	-0.04	0.06	-0.08	0.19	1	
Issue Scope	-0.08	-0.01	0.08	-0.16	0	0.04	0.07	0.15	1

Table 14 Collinearity Diagnostic

Variable	VIF	VIF (Square root)	Tolerance	R-Squared
Autonomy	1.35	1.16	0.7409	0.2591
Constraints	1.18	1.09	0.8454	0.1546
Uncertainty	2.47	1.57	0.4041	0.5959
Agility	1.63	1.28	0.6141	0.3859
Confidentiality	1.49	1.22	0.6715	0.3285
Opportunism	1.8	1.34	0.5558	0.4442
Heterogeneity	1.38	1.17	0.725	0.275
Membership	1.27	1.13	0.788	0.212
Issue Scope	1.18	1.09	0.8484	0.1516
Mean VIF	1.53			

Table 15 Balance Diagnostic⁷⁰⁵

	Standardized Differences		Variance Ratio	
	Raw	Matched	Raw	Matched
Confidentiality	0.3820586	0.091978	0.5424931	1.113891
Opportunism	-1.109623	-0.14428	0.3106485	0.7469563

⁷⁰⁵ In a “balanced” sample the standardized difference or “bias” should be as close to 0 as possible and less than .25. The variance ratio should be as close to 1 as possible and between .5 and 2. See Rubin 2001; Stuart 2010.

Table 16 Estimation Results

VARIABLE	PSM	IPW
Autonomy2	0.3564117*** (-0.1020428)	0.2746376*** (-0.0572133)

Robust standard errors in parantheses, ***p<.001