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How We Apply the Coding Scheme

This chapter traverses the gap between indicators and observation. The gap arises from the nature of an indicator. An indicator is a rule that guides observation, but no rule can interpret itself. Using an indicator to guide observation cannot be reduced to an algorithm, but requires disciplined conceptual problem solving as well as detailed knowledge about the cases. In this chapter we come to grips with the conceptual ambiguities and gray cases that arise when we apply abstract concepts such as “executive,” “bindingness,” and “central state” in a wide variety of contexts.¹ Even terms such as “represent” or “budget” are potholes for the unwary to trip over. In the field of social measurement, the gap between an indicator and observation can be wide and treacherous.

There is no fix. Our remedy is to engage ambiguity and gray cases directly. In this chapter, we set out rules that underpin our interpretations while keeping a sharp eye for opaque concepts, awkward cases, and borderline decisions. This, in short, is the commitment to transparency. Only after one has explicitly confronted the gap between indicators and the actual, messy process of social observation, can one say “I have reached the bedrock, and my spade is turned” (Wittgenstein 1953: § 217).

The fundamental problem of social measurement is context specificity—variability in meaning arising from the context in which an indicator is applied (Gerring 2012: 160ff.; Goertz 2006; Munck 2004: 115). On what basis can one bridge the gap between an indicator and an observation? Social

¹ Dahl (1968: 414; quoted in Gerring 2012: 157) stresses that “The gap between the concept and operational definition is generally very great, so great indeed that it is not always possible to see what relation there is between the operations and the abstract definition.” Having operationalized the concept of power (“*A* has power over *B* to the extent that he can get *B* to do something that *B* would not otherwise do”), Dahl (1957: 209ff.) applies his indicator to roll-call voting in the US Senate. However, it is one thing to operationalize power and another to observe it. Dahl (1957: 213) forthrightly concludes that “the conceptual problem is easily solved. But the research problem remains. In order to identify chameleon behavior and separate it from actual attempts at influence, one cannot rely on roll-calls.”

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indicators estimate human behavior through the lens of language, which “like all rule-governed behavior—is grounded in our practices, our habits, our way of life” (Edmonds and Eidinow 2001: 232). Even a simple-sounding word like mountain is vague. Where does the terrain of a mountain end, or when do two peaks joined by a saddle become separate mountains (Quine 1960: 114)? Hence, applying a concept such as “executive,” “bindingness,” or “central state” requires inference. Perception in the absence of inference is inadequate even for the measurement of temperature or pressure, let alone the abstract concepts assessed here (Carnap 1966: ch. 23). Clearly specified indicators can guide inference, but they cannot supplant it.

The challenge is to develop a scientific measure in the knowledge that there is no escape from interpretation. To adapt the saying about turtles supporting the earth, inferring the meaning of an indicator in diverse contexts is “interpretation all the way down.” One needs to construct verbal bridges between an indicator and an observation without the presumption that this eliminates ambiguity as one engages additional cases. Wittgenstein remarks that “Whatever I do is, on some interpretation, in accord with the rule,” so that it is perfectly possible to “. . . give one interpretation after another; as if each one contented us at least for a moment, until we thought of yet another standing behind it” (Wittgenstein 1953: §198 and §201). Our response is that not all interpretations have equal value for our purpose. We need to lay out a logically coherent measure that a) encompasses the core meaning of the overarching concept, international authority; b) is focused on legal rational authority expressed in institutionalized, formally written, rules; c) is intersubjective so that experts can apply the indicators in a consistent way to arrive at convergent observations.

Indicators are rules for disciplined observation in an uncertain observational world. Chapter One has pressed the concept of international authority into the domains of pooling and delegation. We measure pooling and delegation by assessing the composition and competences of international bodies and the rules under which they make decisions. The concepts used in the indicators are less abstract than the overarching concept, but they cannot be directly perceived. There are several possible sources of error. The information at our disposal may be depressingly thin, or it may be contradictory. We may find that the variation we observe is inadequately captured by an indicator. Or, we may be uncertain in the face of disagreement among coders or secondary sources. We notate four sources of uncertainty in the profiles that explain our coding assessments (Part II):

- *Insufficient or ambiguous information.* Outside the laboratory, observation can be plagued by poor light or deficient information. We indicate scores for which we have thin information with the symbol α .

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- *Observations that fall in-between intervals.* No matter how sharp a distinction, some observations sit between intervals. We indicate these with β .
- *Disagreement among coders, experts.* Applying a concept to an empirical phenomenon is an inferential process that is subject to error and hence to disagreement. We note disagreement among coders and/or experts with γ .
- *Inconsistent information.* The relevant information—including IO rules articulated in treaties, etc.—may appear to be contradictory, in which case we use δ .

Nuts and Bolts

Readers may find it helpful to keep the coding scheme at hand when reading this chapter (Part I, Appendix II). This coding scheme guides the data generation, and records the scores for each IO in a given year. It structures our observation across thirty-four discrete items, each of which is scored on a limited number of institutional possibilities. Most items are designed to tap the extent to which an IO pools or delegates authority. The coding scheme generates between 57 and 134 observations annually depending on the number of bodies in an IO and the number of policy streams.

Our observations are available in three formats.

- A dataset and codebook for the *Measure of International Authority* (MIA) for the scores used to estimate pooling and delegation of authority in seventy-six IOs on an annual basis from 1950 (or founding) to 2010. This dataset contains scores for items in the coding scheme along with aggregate variables.
- An excel file which is a complete record of all scores for all IOs. The excel file highlights changes in the scores for all IO bodies.
- Comprehensive profiles in Part II overview forty-six IOs for the general reader while making our observations transparent for the expert.²

NUTS AND BOLTS

What is the unit of analysis? The international governmental organization (henceforth international organization or IO) is a formal organization for collective decision making among at least three member states. An IO is international in that it is constituted among national governments. It is an organization in that it is structured by rules for a continuous purpose.

What do we measure? International authority, that is political authority in the international domain. Political authority is the power to make collective decisions based on

² Profiles of the remaining IOs in the dataset are available upon request.

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a recognized obligation to obey. We conceptualize international authority as delegation, the conditional grant of authority by member states to an independent body, and pooling, the joint exercise of authority by member states.

Which years do we code? The dataset covers the period 1950 (or the founding year of an IO, if later) to 2010 (or the final year of IO existence, if earlier). We code an institutional reform from the year that it comes into effect.

How do we keep track of change? We synthesize all observations used in scoring in an excel file for each IO. We begin with the structure and decision rules in 1950 or the first year of an IO's existence. For each year in which we detect change, we start a new row in the excel file.

How do we justify a coding decision? Our judgments relate to rules laid down in treaties, conventions, protocols, rules of procedures, statutes, or other documents. We reference the documentary basis, and we seek to triangulate our judgments with secondary sources. Profiles for each IO detail documentary bases, secondary sources, and explain our observations.

The coding scheme taps the structure and composition of IO bodies and their role in decision making. We examine 1) the role and composition of institutional actors in an IO; 2) at distinct stages of decision making; 3) across particular decision areas (represented in Figure 1.2 in Chapter One). This produces:

- **Six institutional actors:** member state; general assembly; executive; general secretariat; consultative body; dispute settlement body.
- **Five decision stages:** agenda setting; final decision making; opt-out; ratification; and judicial dispute settlement.
- **Six decision areas:** member state accession; member state suspension; constitutional reform; the budget; financial compliance; and policy making (up to five streams).

Institutional Structure

The institutional structure of international governmental organizations resembles that of the modern state in approximating a *trias politica* with legislative, executive, judicial functions, plus a permanent civil service.³ Typically, an IO has one or more of the following:

- an *assembly* responsible for general legislation and legitimating authoritative decisions with legal force;

³ Alvarez (2005: 9) observes that many IOs have a tripartite structure consisting of a plenary body with broad powers, a more selective body with select powers of implementation, and a secretariat of independent international civil servants.

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- an *executive* responsible for carrying out legislative decisions by appointing officials, imposing guidelines, drafting budgets, and supervising implementation;
- a permanent *general secretariat* which assists the assembly and executive by collecting and disseminating information, organizing meetings, framing the agenda, and directing personnel;
- a *dispute settlement body* which adjudicates disputes concerning the IO's contract and competences.

These bodies constitute the core of an IO's institutional structure. Beyond this, but still integral to its mission, an IO may have one or more *consultative bodies* which provide information, legitimacy, and/or resources.

It is not unusual for an IO to have more than a single body for each of these functions. For our sample of IOs, we find individual IOs with up to three assemblies, five executives, two general secretariats, two independent dispute settlement bodies, and three consultative bodies. Hence, our coding scheme is as follows (Box 2.1):

Box 2.1 COMPOSITION OF AN IO

NAME	BODY
	Assembly 1 (A1)
	Assembly 2 (A2)
	Assembly 3 (A3)
	Executive 1 (E1)
	Executive 2 (E2)
	Executive 3 (E3)
	Executive 4 (E4)
	Executive 5 (E5)
	General Secretariat (GS1)
	General Secretariat (GS2)
	Dispute settlement (DS1)
	Dispute settlement (DS2)
	Consultative body 1 (CB1)
	Consultative body 2 (CB2)
	Consultative body 3 (CB3)

Our first step is to identify the IO bodies that perform these functions. Some IOs exhibit a clean fit between institutional form and function. The Food and Agricultural Organization (FAO) and the Bank for International Settlements (BIS) have one assembly, one executive, one general secretariat, and one dispute settlement body. However, most IOs have more or

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fewer bodies. The result is a fascinating, little studied, diversity of institutional form.⁴

It is not unusual for a single body to perform more than one function. A handful of IOs, including the Permanent Court of Arbitration, the International Whaling Commission, and the Central Commission for the Navigation of the Rhine, make do with just two bodies because they combine legislative and executive tasks in a single body. Overall, the most common omission is a dispute settlement body. In 2010, twenty-seven IOs in the sample lack third-party dispute settlement. Nineteen IOs have one body combining executive and administrative functions, and ten have a single body that is both legislator and executive.

Many IOs disperse legislative, executive, and, more rarely, administrative functions across more than one body. In 2010, twenty IOs had at least two assemblies, twenty-seven at least two executives, and four had two secretariats. The European Union has three assemblies, three executives, and two general secretariats, an independent court, an independent central bank, and three consultative bodies that play a formal decisional role. However, the EU is not uniquely labyrinthine. The Commonwealth of Independent States (CIS) both disperses functions among bodies and bodies among functions. It has two assemblies (the Council of Heads of State and the Council of Heads of Government) and three executives (the Executive Committee of the Commonwealth, the Economic Council, and the Council of Ministers of Foreign Affairs). The Executive Committee serves as both chief executive and general secretariat. The CIS has also one consultative body (the Inter-Parliamentary Assembly) and an independent Economic Court.

We code only bodies that play a decisional role. Hence we exclude purely administrative or auxiliary bodies that act on orders in a chain of command. In the European Union, we code the Council of Ministers, but not COREPER or its working groups, because these are subsidiary emanations of the Council of Ministers.⁵ We also exclude bodies that are designed only for a regional subset of member states. Most global organizations have regional substructures, and while these may have some administrative autonomy, they are marginal for decision making in the IO as a whole.⁶ Moreover, the

⁴ With the exception of some informative textbooks and handbooks (Europa Directory of International Organizations: 2003; Hurd 2011; Reinalda 2009, 2013; Rittberger and Zangl 2006: ch. 4; Yearbook of International Organizations: various years).

⁵ COREPER, and its tiered structure of working groups of civil servants and national representatives, take their orders from the national minister seated in the Council of Ministers.

⁶ Regionalization has allowed global IOs with expanding membership to custom-tailor collective goods to specific sub-groups. The Food and Agriculture Organization (FAO) is a case in point. The organization facilitated regional conferences from its inception and has expanded their role over the decades. In 1955 the FAO's Constitution was amended to allow the Council as well as the Conference to establish regional commissions, committees, and panels and to convene regional conferences (1955 FAO Constitution, Art. VI). A constitutional amendment (2009) makes

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decision to set up regional bodies usually requires explicit approval by the IO's general bodies. However, we do code IO bodies that happen to encompass a subset of member states (e.g. monetary policy in the European Union) and IO bodies with competences from which an individual member state can opt out.

Most IOs operate at a single regional or global level. But this is not always the case. There are three distinct forms of dual or multilevel structure:

- A *confederal* structure consisting of two tiers of decision making. Since 1967, the World Intellectual Property Organization (WIPO) has had a confederal structure superimposed on two constituent Unions established in Paris in 1883 and Berne in 1886. Each Union kept its assembly and executive but merged its secretariat into an overarching International Bureau. For general matters, the assemblies combine in a General Assembly and the two executives combine in a Coordination Executive. WIPO members are not required to join one of the Unions (though most states are members of both), and hence there is a second overarching assembly, the WIPO Conference, representing all member states whether or not they are members of the Paris or Berne Unions. This body has the final word on constitutional matters and the General Assembly has authority over the International Bureau and appoints the director general. In sum, we identify four institutional bodies in WIPO: two assemblies, an executive, and a general secretariat.⁷
- A *technical* structure in which technical decision making bodies function in parallel with political bodies. The technical side may be connected to a bank, court, military, or research institute. The International Criminal Court has such a dual structure where the political side consists of an Assembly of States Parties, a Bureau, and Secretariat alongside a parallel court-specific structure with a Presidency, Judicial Divisions & Prosecutor, and Registry. While the Presidency and Judicial Divisions & Prosecutor

these regional conferences, one each for five world regions, an integral fixture of the FAO structure, and entrusts the FAO Conference with the authority to determine their status, functions, and reporting procedures (2009 FAO Constitution, Art. IV.6). The heads of the regional offices are appointed by the FAO director general and report to the FAO Council and its subcommittees on technical and financial matters and to the FAO Conference on policy matters. See Malinowski (1962) for a discussion of regionalization in the UN.

⁷ When estimating the role of member states in WIPO decision making we trace decision making across the two-tiered structure. In some cases, decisions at the upper level depend on decisions in the Unions. While the WIPO General Conference approves constitutional amendments by simple majority, it can only do so after both the Paris and Berne Unions have passed these amendments in their own assemblies by a three-fourths majority. So while the hurdle for constitutional change is low in the topmost tier, it is, in fact, rather high in the organization as a whole.

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are responsible only for judicial proceedings, the Registry is responsible for the overall administration of the Court, including the political side. So we code the Registry as a decision making body along with the Assembly of States Parties, the Bureau, and the Secretariat.

- A *corporate governance* structure that entwines private and public governance. Since the 1980s, new public management principles have crept into IO governance, and some IOs have given their organization a corporate make-over. The Centre for Agricultural Bioscience International (CABI) is a case in point. Alongside its interstate assembly, executive, and general secretariat, CABI has a Governing Board which oversees CABI's programs and guides management on operational and strategic issues. The Governing Board was established in 1990 by a resolution of the Executive Council, and is insulated from the member states. Six of its nine members sit on the board as private persons with business, government, or scientific backgrounds, and the remaining three members serve *ex officio* on behalf of the Executive Council and the Directorate. Appropriately, the title of the director general is Chief Executive Officer (CEO). Here we code two executives along with an assembly and general secretariat.

Assembly

We pose three questions about the composition of an assembly to gauge its independence from member states. First, what proportion of assembly members are selected by member state governments? Second, are member states directly represented? Third, are member states equally represented? Box 2.2 summarizes the alternatives.

Several conceptual decisions need to be made. What are the criteria for categorizing an IO body as an assembly and when does it make sense to code multiple assemblies? What, precisely, does the membership of an assembly consist of, and what are the criteria for being considered a representative of a member state? How might one distinguish between direct and indirect representation? When does representation in the assembly deviate from the principle of one member, one vote? We discuss these in turn.

An assembly is the legislative body of an IO. When assessing whether a body is an assembly we look for three things: a plenary body consisting of representatives from every member state, a body that is explicitly charged with supreme legislative authority, and a body that shapes the composition of other IO bodies. The first criterion is necessary, the second is nearly so, and the third is a rule of thumb.

Without exception, a body that is designated an assembly in an IO constitution or founding treaty is comprehensive of its members. In most IOs those

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Box 2.2 STRUCTURE OF THE ASSEMBLY

I. How are members of the assembly selected?

- 0 All members of the assembly are selected by member states
- 1 A majority, but not all, members of the assembly are selected by member states
- 2 At least 50 percent of the members of the assembly are selected by parliaments, subnational governments, or other non-member state actors
- 3 At least 50 percent of the members of the assembly are popularly elected

II. Do members of the assembly directly represent member states?

- 0 All members of the assembly receive voting instructions from their government
- 1 A majority, but not all, members of the assembly receive voting instructions from their government
- 2 50 percent or less of the members of the assembly receive voting instructions from their government

III. Is voting weighted?

- 0 No
- 1 Yes

IIIa. If yes, what is the basis of weighted voting?

Is the basis population, GDP, geography, or financial contribution?

who sit in the assembly represent the central government, but in some IOs, the assembly is composed of parliamentary or professional delegates.

An assembly can almost always be expected to have supreme authority on major questions of governance, usually including membership, constitutional reform, and the general competences of the IO. In this respect, an assembly is the closest thing in the international domain to a parliament, and like parliaments of old, it convenes for sessions of limited duration at discrete intervals, generally once or twice a year. Finally, an assembly can be expected to play a role in determining other IO bodies, but not to be determined by them.

The constitution or foundational convention of an IO is usually explicit about which body is supreme. The assembly is typically the first body constituted in an IO's founding document, and it is almost always endowed with extensive functions. In most cases the assembly is explicitly recognized as the IO's supreme, principal, or ultimate authority. The OPEC Constitution is typical in stating simply that "[t]he Conference shall be the supreme authority of the Organization." The only international body mentioned in the terse North Atlantic Treaty (NATO) is its Council: "The Parties hereby establish a Council, on which each of them shall be represented," but there is no reference to its legislative authority. However, the Council is the only NATO body with explicit authority to "set up such subsidiary bodies as may be necessary" (Art. 9). NATO's website confirms that the Council is "the principal political decision-making body within NATO. It brings together high-level representatives of each member

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country to discuss policy or operational questions requiring collective decisions” (Art. 9).⁸

An IO may have more than one assembly. Just as a national state may have two legislative chambers so it is not uncommon for international organizations to have two, or even three, assemblies. The European Coal and Steel Community began with a single assembly (the Council of Ministers), and the European Economic Community added a second in 1975 with the establishment of the European Council, and a third in 1977 when the European Parliament was transformed from a consultative chamber to a legislative assembly with budgetary powers. In the Andean Community, the Commission, “the supreme organ” (1969 Cartagena agreement, Art. 6), was initially the one body that could “formulate the general policy of the Agreement and adopt the measures necessary for the achievement of its objectives” (1969 Cartagena Agreement, Art. 7a). It is composed of one representative of ambassadorial status from each member state. Its legislative role was strengthened in 1987 when it was endowed with a “capacity to legislate exclusively” (1987 Quito Protocol, Art. 6). However, from 1999 it came to share legislative competences with two new assemblies: the Andean Presidential Council, composed of the heads of state, and the Andean Council of Foreign Ministers, composed of the member states’ ministers for foreign affairs (1996 Trujillo Protocol). The Commission is the primary legislator on trade and investment; the Council of Foreign Ministers is the primary legislator on all other policy; and the Presidential Council governs the Andean Community’s general political direction.

Just as it is possible to find multiple bodies that fulfill the functions of an assembly, one may find a single body that takes on the functions of assembly and executive. When Kenya, Tanzania, and Uganda reconstituted the East African Community (EAC) in 1993, they set up an intergovernmental Tripartite Commission that was responsible both for promoting “co-operation in various fields including political, economic, social, cultural and security” (Art. 1) and for the “implementation of tripartite programmes” (Art 3.01). A new treaty in 1999 replaced the Tripartite Commission with a more elaborate structure consisting of a stand-alone assembly and two executives.

It is not unusual for an existing body to take on additional functions. At its inception (1957), the European Economic Community established its Council as its intergovernmental assembly. Over the next three decades, the Council machinery evolved into an ever-expanding structure of committees at the interface of national ministries and the European Commission. The Council’s role was slipping into executive terrain as these committees initiated domestic

⁸ <http://www.nato.int/cps/en/natolive/topics_49763.htm>, accessed on July 22, 2016.

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implementation of EU law (Dinan 1994; Wallace and Edwards 1977). Still, in our judgment and that of most EU scholars, the executive role of the Council remained secondary to that of the Commission which was explicitly tasked with executive and management functions. This changed with the Single European Act (1987) which mandated the Council to “reserve the right, in specific cases, to exercise directly implementing powers itself” (Art. 145), at which point we classify the Council as an executive alongside the European Commission (Peters 1992: 102; Sbragia 1993: 29, 20; 1992: 5). This is an instance in which a distinction that is clear in theory but muddy in practice requires a feeling for context.

The first question in Box 2.2 requires that we define selection by member states. Our concern is with the extent to which national executives select members of the assembly. We define national executives broadly to encompass ministers of the central government, diplomats, military or security attachés, central bankers, civil servants, and scientists or experts sent on behalf of their national government. However, this does not include individuals selected by government bodies that are distinct from the national executive, such as subnational governments, national or subnational parliaments, and national or subnational courts. Nor, of course, does it include individuals selected by public interest groups, professional associations, international organizations, or the non-state bodies of international organizations.

A person can be categorized as selected by a member state even if required to meet professional or scientific qualifications laid down by an IO. For example, the World Meteorological Organization (WMO) stipulates that “Each Member shall designate one of its delegates, who should be the director of its Meteorological or Hydrometeorological Service, as its principal delegate between sessions of Congress” (Art. 7.b). The Constitution of the World Health Organization states that delegates to its assembly “should be chosen from among persons most qualified by their technical competence in the field of health, preferably representing the national health administration of the Member” (Art. 11). We code the members of both assemblies as selected by member states.

We consider a person to be a member of an IO assembly for the purpose of assessing non-state representation only if that person has full voting rights. This excludes non-state representatives who can observe and speak but not vote. Six non-state territories in the WMO can participate in all deliberations, but only “Members which are States” can vote on constitutional amendments, accession of new members, relations with other intergovernmental organizations, and appointments (WMO Convention, Art. 11).⁹

⁹ The non-state territories are the British Caribbean Territories, French Polynesia, Hong Kong, Macao, Netherlands Antilles and Aruba, and New Caledonia.

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On this ground we interpret the WMO assembly as entirely member state selected even though a representative of a territory can be elected to the Executive Council, as happened in the case of the British Caribbean Territories. By contrast, the Bank for International Settlements (BIS) extends full participation and voting rights to the European Central Bank, a non-state actor, alongside national central bankers or their nominees whom we consider member state selectees. Similarly, the World Trade Organization (WTO) grants membership to the European Union on the basis of the combined votes of its member states.¹⁰ The WTO also opens the door for membership to any “separate customs territory possessing full autonomy in the conduct of its external commercial relations” (Art. XII). Hong Kong became a member of the WTO in 1995, and retained full membership with voting rights even after China joined in 2001. The International Labour Organization (ILO) assembly receives a score of 2 because trade unions and business associations select 50 percent of the voting members of its assembly. Just one assembly scores 3: the European Parliament, which has been directly elected since 1979.

The second question in Box 2.2 concerns representation. What proportion of the assembly votes as instructed by their respective member state? There are two ways in which the members of an assembly may not directly represent member states. One is by virtue of the presence of non-state representatives. Assembly members who are not selected by member state governments can be expected to be able to put some distance between themselves and their government’s interests. Second, an assembly member selected by a national executive may gain some independence through an explicit norm of independence or impartiality, usually in the form of an oath. This is the classic delegate versus trustee distinction (Burke 1774: ch. 13). A delegate sitting on an IO assembly votes as instructed by her national executive whereas a trustee has autonomy to vote in accord with her own judgment.

Trustee representation, as we observe below, is not uncommon in IO executives, but it remains only a logical possibility in IO assemblies, though there have been some near misses. In 1945, when the United Nations Educational, Scientific and Cultural Organization (UNESCO) was negotiated, France proposed that national delegates on UNESCO’s assembly, the General Conference, should serve in their personal capacities rather than as government representatives, but this was rejected (Phillips 1962: 33–4). No other IO in

¹⁰ For two years (1968–1969) the members of OAPEC voted as a bloc in the Arab League (Tétréault 1981: 52–3). This does not meet the criterion for non-state membership in an assembly because it was not sanctioned in the institutional rules of the Arab League. This contrasts with the Arab League’s explicit rule to grant full membership rights to the Palestine Liberation Organization.

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our sample has come even this far. Evidently, member states are loath to relax control over those who sit in IO assemblies.

The third question in Box 2.2 concerns the basis of representation in the assembly. Does the assembly give states equal weight on the principle of sovereign equality, or is it biased to financial contribution, economic power (e.g. size of the maritime sector or industrial production), population, or equal regional representation (Viola, Snidal, and Zürn 2015)? The possibilities are diverse. The General Meeting of the Bank for International Settlements and the Board of Governors of the World Bank weight votes by financial contribution. The Board of Governors of the International Monetary Fund has a formula based on national GDP. The Nordic Council's Plenary Assembly and the European Union's Council of Ministers use population. The European Coal and Steel Community weighted votes in its Council on coal and steel output. Before introducing one member, one vote in 1975, the South Pacific Commission gave its colonial founding members one additional vote for each of their territories.

Executive

An executive makes and executes policy within the guidelines set by the assembly. We assess the make-up of an IO executive, who gets to sit in it, how they are selected, and whether they are delegates or trustees. These questions require an extended coding frame because, in contrast to an IO assembly, the members of an IO executive may be selected by member states, assemblies, other IO bodies, and even occasionally the executive itself. Whereas the assembly is *primitive* in that it precedes other IO bodies, the executive is *derivative* in that it is determined by other IO bodies.

COMPOSITION

We code who proposes and who appoints the head of the executive and who proposes and who appoints the remaining members of the executive (Box 2.3). We identify which actor or actors are involved in proposing and appointing the executive and its head, and we identify the decision rule that each actor uses at each point (Box 2.4). If an IO has more than one executive, we code these separately.

In this section we set out criteria for classifying a body as an executive and how we distinguish the process of proposing candidates from appointing them. We conclude by explaining the coding matrix (Box 2.4) for the four decisions listed in Box 2.3.

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Box 2.3 COMPOSITION OF THE EXECUTIVE

IV. Who selects the head of the executive?

a. Who proposes the head of the executive?

[see Box 2.4]	Who proposes?
Decision rule?	

b. Who appoints the head of the executive?

[see Box 2.4]	Who decides?
Decision rule?	

V. Who selects the members of the executive?

a. Who proposes the members of the executive?

[see Box 2.4]	Who proposes?
Decision rule?	

b. Who appoints the members of the executive?

[see Box 2.4]	Who decides?
Decision rule?	

Box 2.4 WHO DECIDES USING WHAT DECISION RULE?

What is the decision rule?	Member states	Assembly 1	Assembly 2	Assembly 3	Executive 1	Executive 2	Executive 3	Executive 4	Executive 5	Head of Executive	General Secretariat 1	General Secretariat 2	Other non-state actor*	Rotation	Automatic procedure	No written rule
Unanimity/consensus																
Selective veto																
Supermajority																
Majority																
Voting not applicable																
No written rule																

Shaded cells are inadmissible.

* Usually an IO consultative body or IO court.

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An executive is responsible for executing policy, normally within the guidelines set by an assembly. This brings the executive in close contact with the general secretariat, whose primary function is to run day-to-day operations. An executive plays a key role in agenda setting, in implementation, and is sometimes drawn into decision making on compliance and, occasionally, dispute settlement, whereas a general secretariat collects information, allocates resources, prepares policy, coordinates implementation, and, where applicable, monitors compliance. In short, a general secretariat serves other political bodies, whereas an executive *is* a political body.¹¹

IO constitutions and founding conventions provide useful clues. The executive is usually pinpointed as the second most important body of the organization after the assembly, to which it reports. Sometimes nomenclature makes this explicit. Many IOs have an “Executive Council” (e.g. the African Union and the Centre for Agriculture and Bioscience International), while some have an “Executive Committee” (e.g. Interpol, COMECON). Other IOs have a “Board of Governors” (IAEA, OPEC), “Council” (Benelux, FAO, ISA, SADC), or simply “Board” (Bank for International Settlements). In the latter cases, the term *executive* often crops up as an adjective. The FAO, for example, states that “The Council . . . shall, between sessions of the Conference, act on behalf of the Conference as its executive organ” (1948 FAO Constitution, Rule XXIV). The International Seabed Authority asserts that “The Council is the executive organ of the Authority” (1982 ISA Convention, Art. 162.1, in ISA 2001). A bit more discrimination is sometimes necessary. The International Telecommunication Union’s Council is not explicitly labeled an executive, though it acts as such in assuming responsibility for “all steps to facilitate the implementation by the Member States of the provisions of this Constitution, of the Convention, of the Administrative Regulations, of the decisions of the Plenipotentiary Conference, and, where appropriate, of the decisions of other conferences and meetings of the Union . . . in keeping with the guidelines given by the Plenipotentiary Conference” (1998 ITU Constitution, Art. 11.1 and 2).

In some IOs, the general secretariat takes on an explicitly executive role, often alongside a second executive with parallel competences. The 1999 Treaty of the East African Community (EAC) describes its secretariat as “the executive organ of the Community” with responsibility for managing, monitoring, and coordinating policies (1999 EAC Treaty, Arts. 66.1 and 71). The EAC also has a council which is “the policy organ of the Community” to

¹¹ However, it is worth noting that senior bureaucrats in a general secretariat typically operate in both the political and administrative worlds. They act as administrators in following orders for routine actions in hierarchical settings and they act as political animals in using informal networks and twisting arms to mobilize support for contentious policy (Aberbach, Putnam, and Rockman 1981; Hooghe 2002; Ingraham 1998; Kassim et al. 2013; Page 1985; Suleiman 1984, 2005; Ellinas and Suleiman 2012; Wood and Waterman 1993).

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“promote, monitor and keep under constant review the implementation of programmes” (1999 EAC Treaty, Art. 14). A general secretariat can cover a lot of ground, and in several IOs, the general secretariat not only facilitates the executive council by organizing meetings and providing information, but plays an active role in shaping and implementing policy. The EAC Secretariat plays an executive role in five of the six decision areas that we assess.

In 2010, general secretariats in nineteen IOs combine executive and administrative roles. They range from IO secretariats with narrowly circumscribed executive powers as in SELA, the Andean Community, and the League of Arab States, to wide-ranging executives in the European Union, the Economic Community of West African States (ECOWAS), the African Union, and the European Space Agency. Fifteen of these nineteen IOs have an additional body that is tasked with an executive role, and in five cases, there are two additional executives. By contrast, some secretariats are just what their name implies. In the laconic language of the Commonwealth, “The Secretariat should not arrogate itself to executive functions” (1965 Memorandum on the Commonwealth Secretariat, Art. 6). Three IOs in our dataset had at their foundation no body that met the minimal standards of an executive. The Conference on Security and Cooperation¹² had no executive for the first twenty-two years of its existence. The Arab Maghreb Union was also founded without an executive, and eventually set up two. The Commonwealth of Independent States (CIS) was established in 1992 with only a skeleton structure, though two years later it created three executives.¹³

These examples make a general point: an IO may start life with an insubstantial or non-existent executive if its policy stream is sufficiently thin. The Customs Cooperation Council¹⁴ began with a bare-bones structure that was deemed sufficient to coordinate national customs bureaucracies. It had an assembly-executive, the Customs Cooperation Council, which met twice a year, a small secretariat, and a Permanent Technical Committee which could initiate studies and advise member states. In 1978 the Council established a stand-alone executive, the Policy Commission, which “shall concern itself with broad policy questions relevant to the WCO’s activities. The Commission shall act as a dynamic Steering Group to the Council. It shall initiate studies on the policies, practices, and procedures of the WCO with the objective of assisting the Council to achieve the broad aims of its activities” (Council Decision No. 284).

Box 2.4 sets out the coding matrix that we use for each of four decisions: proposing the head of the executive, appointing the head of the executive,

¹² Renamed the Organization for Security and Cooperation in 1995.

¹³ Coordinating-Consultative Committee (renamed in 1999 as the Executive Committee), the Council of Ministers of Foreign Affairs, and the Interstate Economic Committee (later Economic Council).

¹⁴ Renamed the World Customs Organization in 1994.

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proposing the members of the executive, and appointing the members of the executive. Rules about the final appointment to an executive are usually more explicit than those proposing members, which in some cases is not subject to any written rule. Unless we find evidence for such a rule in an IO's documents or in the secondary literature, we assume that the two stages are rolled into one, so that the actor with authority to appoint also has authority to propose.¹⁵

We code whether decisions by a body to propose or appoint are taken by simple majority, supermajority, or by unanimity/consensus.¹⁶ Most IO bodies use an explicit voting rule. For example, the Assembly of the International Civil Aviation Organization (ICAO) selects members of the Council by simple majority (1947 ICAO Convention, Art. 49). In the Economic and Monetary Community of Central African States (CEMAC), the Conference of Heads of State elects the regional organization's primary executive, the Commission, by consensus (2007 CEMAC Treaty, Art. 27). However, most IO general secretariats are hierarchical and do not take decisions by counting votes. The European Union's secretariat, the European Commission, is an exception— it is a collegial body that decides by simple majority.

In most IOs it is the member states, and only the member states, that select the executive. The head of the executive simply rotates. However, almost half of the IOs in our sample do something entirely different. The possibilities are diverse as Box 2.4 suggests. The African Union's Executive Council draws up a list of candidates for the Commission, and the Assembly of Heads of State or Government collectively makes the final decision by two-thirds majority. In the Andean Community, the secretary general, who heads the executive, is proposed by member states and the Andean Parliament, and is then appointed by the Andean Council of Foreign Ministers and the Andean Commission in joint session. The director generals who sit on the executive are appointed by the secretary general in consultation with member states (CAN 1969, Art. 35). In this case, we code both member states and the secretary general as proposing and the latter as making the final decision.

¹⁵ The conceptual distinction between proposing and appointing is often sharp. Several treaties, conventions, and rules of procedure specify one set of rules for the former and another set for the latter. Some IOs have no written rules for proposing appointment to the executive when they are established, but adopt such rules a few years later.

¹⁶ Most international organizations use the term consensus rather than unanimity. Consensus is more flexible than unanimity because it does not require that all parties actively vote for a decision. As Rodolfo Severino, former ASEAN secretary general, puts it: "Consensus on a proposal is reached when enough members support it—six, seven, eight or nine, no document specifies how many—even when one or more have misgivings about it, but do not feel strongly enough about the issue to block action on it. Not all need to agree explicitly. A consensus is blocked only when one or more members perceive the proposal to be sufficiently injurious to their national interests for them to oppose it outright" (quoted in Haggard 2011: 16).

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Rotation of the head of the executive is often alphabetical by member state or, in some global organizations, by region. There are several alternatives. The Board of Directors of the Bank for International Settlements proposes and selects a chairperson from among its members (1930 BIS Basel Statutes, Art. 38). The Council of the ICAO does the same, though the appointee need not be selected from among the members of the Council (ICAO Convention, Art 51). The organization's second executive, the Air Navigation Commission, cannot choose its president; this person is appointed by the Council. Whereas the Council is an interstate body, the Air Navigation Commission is composed of experts with "qualifications in science and practice of aeronautics" (ICAO Convention, Art. 56) who sit in a professional capacity.

CHARACTER AND BASIS OF MEMBER STATE REPRESENTATION

Box 2.5 sets out the indicators for member state representation in executives. The format follows that for an assembly (see Box 2.2) with some nuances. We ask two questions of executives that we do not ask of assemblies. We ask whether all or only a subset of member states have a seat in the executive (VII). This issue is moot for assemblies because all member states are represented. And we ask whether some seats in the executive are reserved for particular member states (IXa). This is also moot in an IO assembly. Finally, Question VI does not ask whether members of the executive are selected in popular election because no such case exists.¹⁷

Some issues that arise in estimating assemblies also come up for executives. We conceptualize member state representation as representation of the central executive and its constituent units. This does not include sub-national governments, national legislatures, or courts. Hence, we consider judges on the International Criminal Court (ICC) as non-state because a candidate judge for the ICC, though proposed by a member state, "need not necessarily be a national of that State Party" (1998 Rome Statute of the ICC, Art. 37.4.b). To produce a positive score on Question VI, such a non-state actor must either have full voting rights or serve as chair of the executive. So, for example, we code the executive at both the IMF and World Bank as 1 on Question VI because the general secretaries of those organizations chair their executives. The Comité Exécutif at Interpol (1946–56) scores zero because the general secretary, who sits on the executive, neither chairs nor votes.

A member of an executive can also be considered non-state if he or she must take an oath of independence. In 2010, thirteen IO executives were subject to such an oath, including Interpol's Executive Committee which instructs its

¹⁷ At least not until the presidency of the European Commission becomes an elected position (Hix 2008).

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Box 2.5 REPRESENTATION IN THE EXECUTIVE

VI. How are members of the executive selected?

0 All members of the executive are selected by member states

1 A majority, but not all, of the members of the executive are selected by member states

2 At least 50 percent of the members of the executive are selected by parliaments, subnational governments, or other non-member state actors

VII. Do member states have full or partial representation?

0 All member states are represented in the executive

1 A subset of member states is represented in the executive

VIII. Do members of the executive directly represent member states?

0 All representatives in the executive receive voting instructions from their government

1 50 percent or more, but not all, members of the executive receive voting instructions from their government

2 Fewer than 50 percent of the members of the executive receive voting instructions from their government

IX. Does representation in the executive deviate from one member, one vote?

IXa. Is a subset of seats reserved for particular members?

0 No

1 Yes

If yes, what is the basis: financial contribution, economic interest, geopolitical weight, nuclear capability, host country?

IXb. Is voting weighted?

0 No

1 Yes

If the basis population, GDP, geography, or financial contribution?

IXc. Does weighted voting provide some member states with a veto?

0 No

1 Yes

If yes, which countries can exercise a veto?

members to “conduct themselves as representatives of the Organization and not as representatives of their respective countries” (Interpol Constitution, Art 21). Similarly, the members of the Commission of the Organization of Eastern Caribbean States (OECS) are required to “neither seek nor accept instructions from any Government or from any other authority external to the Organization” (2010 OECS Treaty of Basseterre, Art. 12.6). In all, thirty-six IOs in 2010 have at least one executive that is not formally bound by member state instructions. This is a sizeable number, and contrasts starkly with the small number of assemblies not subject to full state control.

Weighted voting on the executive almost always goes along with direct state representation. The exceptions are the World Bank where the chair of the Executive Board is the president of the permanent staff, and the Global Environmental Fund where the chair of its Council is elected by its members

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at every meeting. We also detect a bias in favor of direct representation when only a subset of states is represented on the executive, for example, because they have reserved seats or because membership on the executive rotates. Reserved seats are valuable state resources, and rotation commits a representative to speak on behalf of the selected state (as in the United Nations Security Council) or group of states in a particular world region (as in the Food and Agriculture Organization).

If members of an executive are elected, two conditions come into play for this to be coded as indirect state representation: a) representatives are explicitly national trustees not national representatives, or b) there is evidence that the election is competitive, for example, there are more candidates than positions; candidates actively campaign for office (for example, by issuing manifestos); or voting is secret.

The Air Navigation Commission of ICAO scores 2 on indirect representation. Article 56 of the Convention reads that the “persons shall have suitable qualifications and experience in the science and practice of aeronautics” and that they are “appointed by the Council from among persons nominated by contracting States.” Both phrases—the reference to persons rather than states and the reference to selection among multiple nominations—suggest indirect representation. ICAO’s website spells out that the Commission is composed of “Members, who act in their personal expert capacity,” and this is confirmed in secondary sources (Milde 2008: 150).

The character of representation can change markedly over time. At its inception, UNESCO’s Executive Board was designed to be independent. There was an election; participants were experts, not diplomats; and there was a guarantee of independence: “members elected by General Conference from among the delegates appointed by the Member states” (Art. V.A.1); “persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas” (Art. V.A.2); instructed to “exercise the powers delegated to them by the General Conference on behalf of the Conference as a whole and not as representatives of their respective Governments” (Art. V.B.11, 1946 UNESCO Constitution). In 1954, the third provision was watered down to create a dual responsibility: “Although the members of the Executive Board are representative of their respective governments they shall exercise the powers delegated to them by the General Conference on behalf of the Conference as a whole.” Over the years the member states chiseled away at executive independence until, in 1991, a comprehensive reform made the members of the board delegates rather than trustees (Art. V.A.1(a) and (b)). The reference to expertise in arts, humanities, etc. was replaced by a bland provision to “endeavor to appoint a person qualified in one or more of the fields of competences of UNESCO” (Art. V.A.2(b)). The reference to independence was dropped in favor of the collective responsibility of the Board to “exercise the powers delegated to it by the General Conference

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on behalf of the conference as a whole” (Art. V.B.14). We code indirect representation from 1950 to 1953, but we need to judge whether the shift to direct representation should be placed as early as 1954 or as late as 1991. We opt for 1954 on account of the revised wording in the Constitution and because secondary sources identify 1954 as a decisive shift from independence to state control (Finnemore 1993: 579).

The final series of questions in Box 2.5 concerns the basis of representation: To what extent, and how, does it deviate from the principle of sovereign equality? There are two ways for an IO to formally accommodate powerful states. Executive votes can be weighted, which is the case in five IOs: the IMF, the World Bank, the Global Environmental Fund, the European Union, and the Commonwealth.¹⁸ We then assess whether this produces a *de facto* veto. Second, seats in the executive can be reserved for particular member states. This takes place in sixteen IOs, including the Permanent Court of Arbitration which, by convention, reserves a seat for the Dutch minister of foreign affairs to serve as its president.

General Secretariat

The general secretariat is the core of an international organization (Barnett and Finnemore 2004; Pollack 2003). It is the most institutionally stable IO body and the most predictably supranational. It is also the most diverse in size. In our sample, the number of staff employed in a secretariat ranges from sixteen in the International Whaling Commission to seven thousand in the World Health Organization. At a minimum, the general secretariat is responsible for running the IO’s headquarters, keeping records, and representing the IO to the outside world. A secretariat can also be charged with preparing and implementing decisions, conducting or commissioning background research, and monitoring member state compliance. Its formal involvement in decision making can vary widely.

In contrast to assemblies and executives, which are vehicles for representation and deliberation, general secretariats are hierarchical bodies. Hence, we focus on its leadership.¹⁹ How is the head of the general secretariat selected;

¹⁸ Weighted voting was used in the Commonwealth of Independent States (1994–99) and in the South Pacific Commission (1965–73).

¹⁹ The default title for the head is general secretary or secretary general with variations that include secretary (IWhale), general manager (Bank for International Settlements), executive director (APEC), managing director (IMF), director general (European Space Agency, FAO, UNESCO, WTO), director (Pacific Islands Forum, Nordic Council), president (World Bank, European Union, ECOWAS), and chief executive officer (CABI).

Coincident with a reform of the institution, the title may change. For example, the head of ECOWAS’ general secretariat was the executive secretary until June 2006 when the secretariat was converted into a Commission with strong executive powers. The post was renamed president of the Commission, in parallel to the European Commission.

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Box 2.6 SELECTION AND REMOVAL OF THE HEAD OF THE GENERAL SECRETARIAT

X. Who selects the head of the General Secretariat?
 Who selects the head?

Box 2.4	Who selects?
Decision rule?	

XI. Who can remove the head of the General Secretariat?
 Who can remove the head?

Box 2.4	Who decides?
Decision rule?	

XII. What is the length of tenure?
 Number of years, or indeterminate:.....

XIII. Is there an oath of independence or formal protection of IO bureaucracy impartiality and independence?
 0 No
 1 Yes

how is she removed; and what is the length of tenure for the position? Box 2.6 specifies only the final decision on selection and removal. These are usually clearly articulated, and there are seldom rules for proposing candidates.²⁰ When more than one body is involved in the selection process, we code appropriately, as in the contemporary European Union where the European Parliament and the European Council are co-responsible for the selection of the Commission president.

A few international organizations do not have an independent administration, but farm out their administration to member states. The North American Free Trade Agreement (NAFTA) has a secretarial outpost in each of its three member states. The secretary who heads each national section is appointed by the respective government (Art. 2002.1). For its first two decades, each member state of the Nordic Council maintained a secretariat which organized meetings in its host country. The Southern African Customs Union (SACU), founded in 1910 and now the oldest customs union still in existence, did not have an independent full-time administrative secretariat until 2004 (2002 Windhoek SACU Agreement, Arts. 8 and 10). Previously, the administration

²⁰ In the Caribbean Community (CARICOM), the secretary general is appointed by the assembly, the Conference, on the recommendation of the Community Council (2001 CARICOM Treaty, Art. 24.1). We code the Conference, which decides by consensus, but readers can find information on the entire decision process in the profile. The profiles provide information on the appointment of deputies, senior staff, etc. where this adds texture to the scoring.

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was run by the South African government. Given their fragmented character and/or lack of independence, none of the bodies noted above can be designated as a self-standing IO body.

The length of tenure of the general secretary varies a lot. Senior appointments are nearly always political appointees on limited-term contracts. Terms usually vary between three and five years, with five years the mode. Some IO contracts avoid fixing the term, as in SACU, CABI, IWhale, COMECON, and the first East African Community.

Information on tenure may not be available in an IO's early years of existence—or it may be left unspecified. We often have to dig into rules of procedure, staff regulations, or by-laws to get detail, and sometimes we must rely on secondary sources. The Central Commission for the Navigation of the Rhine illustrates this. The 1831 convention has a single article dealing with its secretariat, Article 44ter, which states that it is appointed by the Central Commission, and while the convention was revised several times in subsequent decades, the provisions on the secretariat were not. In 1979 the organization published rules of procedure for personnel (Decision of the Commission 1979-II-45bis) in which Article 10 states that the top three positions—the secretary general, the deputy secretary general, and the chief engineer—are appointed by the Commission for terms of four years, extendable twice. The only source for the period before 1979 is a scholarly article written by a secretary general, which implies that the post of general secretary was appointed for life (Woehrling 2008: 6n23).

Consultative Bodies

We inquire whether an IO has one or more standing consultative bodies composed of non-state representatives, and we observe their number, composition, and decisional role. We assess up to three such bodies along the lines set out in Box 2.7. Consultative bodies play a growing role in international governance and we include them in our measure because they are a means by which state control over IO governance may be attenuated. While in 1950 only one in four IOs in our sample had one or more standing consultative bodies, by 2010 this had risen to three in five IOs.

A consultative body fulfills the following criteria:²¹

- It has some formal status, e.g. it is incorporated in a treaty or convention, in a separate protocol, on the IO's organigram, or is described on the IO's website as a recognized consultative body;

²¹ Tallberg et al. (2013) have produced a refined dataset of transnational access in IOs over time.

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Box 2.7 THE STRUCTURE OF CONSULTATION

XIV. Is there a standing consultative body composed of non-state representatives?

- 0 No consultative body
- 1 One consultative body
- 2 More than one consultative body

XV. Who is it composed of?

XVa. CB1 [name]:

- 1 Private representatives (e.g. business, trade unions, social movements, professional experts)
- 2 A combination of private representatives and public non-state representatives
- 3 Public non-state representatives selected by national or subnational assemblies
- 4 Public non-state representatives who are directly elected

XVb. CB2 [name]:

- 1 Private representatives (e.g. business, trade unions, social movements, professional experts)
- 2 A combination of private representatives and public non-state representatives
- 3 Public non-state representatives selected by national or subnational assemblies
- 4 Public non-state representatives who are directly elected

XVc. CB3 [name]:

- 1 Private representatives (e.g. business, trade unions, social movements, professional experts)
- 2 A combination of private representatives and public non-state representatives
- 3 Public non-state representatives selected by national or subnational assemblies
- 4 Public non-state representatives who are directly elected

- It possesses the right to be consulted on an ongoing basis;
- It is composed of non-state representatives.

Applying these criteria requires discernment. We illustrate gray cases with examples. The first criterion is that consultation is institutionalized. We code a formally recognized channel that does not name a particular body but a set of potential bodies if it meets the three criteria listed here. However, it is not sufficient for an IO to informally invite non-state representatives to attend assembly meetings, to deposit briefs, or to have an accreditation system for civil society groups or lobbyists. Non-state representatives must have a recognized right to be invited, and cannot be summarily disinvited. This right is usually entrenched in rules. The Food and Agricultural Organization (FAO) meets the criterion from the early 1950s. Non-governmental consultation is regulated in the FAO's General rules which distinguish NGOs with full consultative status from those with special consultative status or liaison status (Rule XVII.1, 3; Liese 2010). Only the first group meets the criteria set out above on account of being entitled to participate in FAO Council and Conference meetings; those in the remaining groups require an invitation.

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The Commonwealth Secretariat (ComSec) provides a channel for civil society groups to meet with its staff, participate at formal consultations once or twice a year, collaborate on its programs, and take part in flanking events hosted in conjunction with the annual Commonwealth Heads of Government Meeting (CHOGM) (Tallberg et al. 2013: 166–77). However, this channel lacks a standing consultative body with a formal role in decision making and hence does not meet the criteria laid out above.

Regular and predictable consultation is embedded in the foundational contracts of many IOs. In others it develops in the course of an IO's operation and is established in secondary regulation. The former is exemplified in the European Assembly of the European Economic Communities which is empowered in the 1957 Rome Treaty (Title I, Ch. 1, Section 1). Article 137 states that "The Assembly, which shall be composed of representatives of the peoples of the States united within the Community, shall exercise the powers of deliberation and of control which are conferred upon it by this Treaty." Before it gained some legislative powers in 1970, the Assembly had a right to mandatory consultation by the Council and the Commission on a range of economic policies, including the budget (Art. 203).

Many consultative bodies are empowered in a separate protocol or agreement. In 1994 member states of the Caribbean Community ratified the Agreement for the Establishment of an Assembly of Caribbean Community Parliamentarians (ACCP), which became CARICOM's "deliberative and consultative body for the discussion of policies, programs and other matters falling within the scope of the Treaty" (Art. 5.1). The members are appointed or elected by member state parliaments. The United Nations has a plethora of standing expert bodies, most of which have a legal basis in a UN resolution. For example, in 2000, the UN Economic and Social Council created an advisory UN Permanent Forum on Indigenous Issues (ECOSOC resolution 2000/22). Sixteen independent experts sit on the forum in their personal capacity; eight are nominated by governments, and eight by indigenous organizations.

The ASEAN Inter-Parliamentary Assembly (AIPA) illustrates the minimal requirement for consultative status in our coding scheme. The body was established in 1977 as the ASEAN Inter-Parliamentary Organization (AIPO), ten years after ASEAN was founded, with the goal of facilitating exchange visits which would foster "closer contacts and understanding among parliamentarians" in tune with the informal ASEAN way.²² In 2006 the body renamed itself the ASEAN Inter-parliamentary Assembly (AIPA) and formalized its structure. However, the ASEAN Charter (2007) mentions AIPA only in an annex that contains "associated entities" and it does not confer any

²² <<http://www.aipasecretariat.org/about-us/background-history/>>.

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consultative functions. We code AIPA as a formal consultative body from 2010 when an “ASEAN-AIPA interface” was institutionalized to provide a formal setting where heads of state and parliamentary speakers consult on regional issues.

Consultative bodies, such as those discussed above, are primarily composed of non-central-state representatives, e.g. representatives of national or subnational legislatures, subnational governments, producer groups, indigenous communities, or experts of various kinds. Nomination to sit on a consultative body may require support or confirmation by a member government; it may be subject to a national or regional quota; and the nominee’s terms of reference may be controlled by an interstate body. However, from the standpoint of our measure, a distinguishing feature of a consultative body is that its members are not delegates of national governments. A requirement that nominees have a professional or scientific qualification may fail to meet this criterion. The Scientific Committee of IWhale (IWC) is composed of scientists who are appointed by member states as part of national delegations (Rules of Procedure of the SC, A.1). A secondary source points out that only the chair and vice-chair of the committee are expected to “not represent their country” (Donovan and Hammond n.d.).²³

In our scheme, a consultative body that gains decision making power is transformed from a consultative body to an IO body proper. The line between a consultative body and a decisional body is sometimes fine. What is the role of the body: Is it meant to be a non-state check on interstate decision making, or is it integral to the decision process? The European Assembly/Parliament ceases to be a consultative body in 1977 when it gains legislative powers on the budget. Henceforth we code it as an integral IO body. However, we note that the Assembly had one decisional power from the start: it could censure the European Commission by a two-thirds vote and compel it to resign. On that basis one could say that the Assembly was more than a consultative chamber from day one, but we follow common practice in EU studies which characterizes the Parliament as consultative in the early decades.

The Air Navigation Committee of the International Civil Aviation Organization (ICAO) consists of non-state experts in aeronautics who are nominated by contracting states, but act in their personal capacity. Hence it meets the compositional criterion for a consultative body. However, its role is integral to the policy making process so we categorize the Committee as an executive. Its

²³ We include the Scientific Committee of IWhale as an executive body because it makes policy recommendations on the core activities of the IWC: whale stocks, moratoria, and conservation measures, making it the primary agenda setter on policy and an essential pillar of the policy making process. Notwithstanding that it provides scientific “advice” (Rules of Procedure 2014 Art. M), it is “generally considered the second-most important body in IWC” (Tallberg et al. 2013: 211; Andresen 2000).

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job is to propose standards and recommended practices (SARPs) to the Council for a final decision which then goes to the member states for ratification (Dempsey 1987; Richards 2004).

Decision Making

In this section we outline how we code IO decision making, beginning with two concepts—ratification and bindingness—that are fundamental to an estimation of IO authority.

Ratification

Ratification is the procedure whereby an IO decision becomes formally binding only after it gains domestic approval in member states. This may require that the executive signs off on the decision or it may require national legislation or a national referendum. In some cases, an IO decision is put into effect only for those member states that ratify; in other cases, ratification by a subset of member states makes the decision binding on all. Ratification can apply to member accession, constitutional reform, and policy making, and often varies across these decision areas within an IO and over time. Here we engage some general issues related to the evidence and interpretation.

We distinguish four alternatives in Box 2.8 and we scale these to estimate IO authority. The most limiting requirement on the authority of an IO is that every member state must ratify a decision for it to come into force, and the least limiting requirement is that the IO decision comes into force without ratification. We conceive two intermediate situations. The more limiting situation for IO authority is where an IO decision comes into effect only for those member states that ratify. IO authority is less limited when an IO decision comes into effect for all states if ratified by a specified subset of member states.

The incidence of these possibilities varies across decision areas. Decisions on accession either require no ratification or ratification by all. No IO in our sample

Box 2.8 RATIFICATION

- 0 Every member state must ratify the IO decision for it to come into effect
- 1 The IO decision comes into effect only for those member states that ratify
- 2 Ratification by a subset of member states is required for the IO decision to come into effect for all member states
- 3 Ratification is not required for the IO decision to come into effect

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makes use of an intermediate option for accession. Constitutional reform and policy making are more diverse. Constitutional reform requires ratification by every member state in 38.5 percent of the IOs in the sample. Ratification by a subset binds all member states in 24.5 percent; constitutional reform comes into effect only for those that ratify in 20 percent, and no ratification is required in 17 percent. With just a handful of exceptions, policy decisions either require no ratification (79 percent of IOs) or come into effect only for IOs that ratify (17.5 percent).

Ratification is usually specified in an IO's constitution or protocols, often using the term "instrument of acceptance."²⁴ However, in some cases, the text requires further specification. UNESCO's Constitution asserts that "Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted" (Art. IV.B.4). In this case, submission to competent authorities does not imply ratification. UNESCO's Rules of Procedure distinguish between the obligation to submit to domestic authorities and the requirement to ratify. Only conventions need to be ratified. Recommendations are intended to inform domestic law, but as voluntary prescriptions they are not subject to ratification.²⁵

The Benelux Economic Union abolished ratification for decisions in 1958. The Revised Treaty of that year laconically states that "decisions shall commit the High Contracting Parties" (Art. 19.a). That the contracting parties intend decisions to be in no need of ratification becomes clear in the following paragraph which explains that "conventions" do require ratification and are "submitted to the High Contracting Parties in order that they may become operative in accordance with the rules of the Constitution of each High Contracting Party" (1958 Treaty, Art. 19.b). By contrast, the prior treaty of 1944 applies ratification more broadly to "common measures" which must be "submitted for approval by the competent executive or legislative bodies." We code ratification by all member states from 1950 to 1959, and no ratification once the 1958 Benelux Treaty comes into effect.

Our conception of ratification encompasses a variety of domestic executive procedures beyond legislative ratification. This is consistent with the phrase "in accordance with their internal legal requirements" (or variants thereof)

²⁴ For example, the International Atomic Energy Agency uses the following wording "Acceptance by a member shall be effected by the deposit of an instrument of acceptance with the depositary Government referred to in paragraph C of article XXI" (Art. XVIII C). The European Free Trade Association requires that amendments "shall be submitted to the Member States for acceptance in accordance with their internal legal requirements. It shall enter into force, unless otherwise provided, on the first day of the second month following the deposit of the instruments of acceptance by all Member States with the Depositary" (2001 Convention Art. 59, par. 3).

²⁵ See UNESCO's *Rules of Procedure concerning Recommendations to Member States and International Conventions* (last revised in 2004).

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used in many IO documents. But when does the domestic procedure become so light that it is rendered meaningless?

Constitutional amendments to the statute of the International Monetary Fund (IMF) are in the gray zone between ratification and non-ratification. They demand an up-or-down by circular: “If the proposed amendment is approved by the Board of Governors, the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members” (Art. XVIII-b). We interpret this as an additional step after approval by the IMF assembly that is consistent with member state control, and we therefore code it as 2: “ratification by a subset of member states is required for the IO decision to come into effect for all member states.”

The Universal Postal Union (UPU) requires ratification for amendments to the Constitution: “The Constitution shall be ratified as soon as possible by the signatory countries” (Art. 25.3). This suggests a code of 1 indicating that the constitution comes into effect only for those member states that ratify. However, the ratification requirements are so light and the institutionalized practice of implementation—even in countries that do not ratify—so strong that it makes sense to interpret the ratification procedure as tacit ratification. This is the conclusion of a detailed legal commentary published by the UPU (2014: A23): “In the past, most of the member countries had not ratified the Acts of the Union by the time they came into force, although they applied them. To settle disputes arising in such circumstances the principle of ‘tacit ratification’ was admitted.” The legal commentary is unequivocal, as is the track record, and we judge that ratification is moot.

Bindingness

We distinguish three degrees of bindingness: non-binding, conditionally binding, and unconditionally binding (Box 2.9).

Box 2.9 BINDINGNESS

- 0 Non-binding
- 1 Conditionally binding (i.e. a member state can opt out or can impose restrictions on application)
- 2 Binding

How We Apply the Coding Scheme

Non-bindingness is often explicit. Decisions of the Commonwealth of Independent States (CIS) are not binding because, as Art. 23 of the Charter indicates, “Any State may declare its lack of interest in any matter, which should not be regarded as an impediment to making a decision.” Interpol’s Constitution says that “Members shall do all within their power, insofar as is compatible with their own obligations, to carry out the decisions of the General Assembly” (Art. 9). Interpol resolutions have moral, rather than legal, force (Martha 2010: 59; Deflem 2006). Decisions on budgetary allocations or appointments, by contrast, are binding.

An IO scores 1 if the decision is partially or conditionally binding. The situation is clear when member states can opt out. For example, the European Space Agency distinguishes between mandatory activities, to which all member states contribute financially, and optional activities, which member states can fund at their discretion (ESA Convention, Art. 5.1a). Similarly, the Convention of the International Civil Aviation Organization determines that regulations and standards (SARPs) are binding unless a state explicitly opts out within sixty days (Art. 38).

We code policy making in the European Economic Area (EEA) as conditionally binding. The legal basis for conditional bindingness stems from Article 103 of the EEA Agreement which states that measures become binding once members have notified that their respective constitutional requirements for approval have been fulfilled (for example, through a parliamentary vote). If a member fails to notify the EEA within six months that this requirement has been fulfilled, the measure is suspended (Art. 102.2). Incidentally, only EFTA members can escape an EEA decision while EU members must comply.

Occasionally we need to adjudicate ambiguities. Decisions in the Central American Integration System (SICA) are normally binding but there is a not-so-subtle opt-out. Bindingness derives from Article 10 in the 1991 Tegucigalpa Protocol which states that “The organs and institutions of the Central American Integration System shall contribute to effective compliance with and implementation of the objectives and principles of this Protocol. This obligation shall take overriding precedence in all supplementary or subordinate legislation.” This is reinforced by Article 22: “Without prejudice to the provisions of Article 10, the decisions of the Council of Ministers shall be binding on all Member States and only provisions of legal nature may serve to prevent their application.” However, the next sentence qualifies this: “The Council shall give further consideration to the matters by means of appropriate technical studies and, if necessary, shall adapt its decision to the needs of the legal system in question. However, such decisions may be applied by those Member States which have not objected to them.” Hence individual states can opt out but cannot prevent others from going ahead. This is corroborated by the fact that SICA has indeed engaged in differentiated integration in which

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sub-groups of member states cooperate in certain policy fields. At the time of writing, four of its seven members have agreed to introduce common internal borders and a common passport and have adopted the protocol on SICA's supranational court.²⁶

The International Organization of La Francophonie (OIF) is an example of intransparent rule-making. However, the absence of an explicit commitment to bindingness is itself meaningful. One of the OIF's policy streams is technical programming and project implementation. The Hanoi Charter goes into considerable detail on the selection, programming, and management of projects, but is not specific on their legal status. Financial contributions of the member states are clearly binding, but because individual states can opt out of particular projects we code this policy stream as conditionally binding. A second stream concerns political cooperation, the chief output of which is resolutions at the biannual summit. For example, the Dakar 2014 summit passed resolutions on terrorism, UNESCO, and Ebola. Prior summits have passed resolutions on the broad policy direction for the organization alongside motions on youth education, women's health, and tourism. These rarely entail specific commitments other than a generic instruction to the Ministerial Conference to study the topic. We code these resolutions as non-binding.²⁷

An IO scores 2 if the decision is unconditionally binding. This is usually straightforward for budgetary decision making that commits the organization as a whole to allocate funds for particular purposes. Statutory member contributions to an annual operational budget is also evidence for binding budgetary decision making. In this case, explicit rules would be extraneous.²⁸ In its foundational documents, running to several hundred pages, the European Union does not explicitly say that its budget is binding. Nor does the organization have a formal procedure to deal with non-paying members. The financial regulation that lays down operational principles and basic rules of financial implementation is concerned with controlling EU institutions, not member states. However, there can be no reasonable doubt that budgetary contributions and budgetary allocation in the EU are indeed binding. Correspondingly, annual budgetary allocations take the form of legally binding annual legislative acts published in the *Official Journal of the European Union* (Schermers and Blokker 2005: 702).

²⁶ Guatemala, El Salvador, Honduras, and Nicaragua.

²⁷ This is not the case for declarations that relate to membership accession and suspension (e.g. the Bucharest declaration) and constitutional amendments (e.g. the Hanoi Charter), which are binding. These are taken up when we deal with membership and constitutional reform respectively.

²⁸ Sanctions for financial non-compliance are also conclusive evidence that budgetary decisions are binding.

How We Apply the Coding Scheme

Bindingness in policy making is also usually explicitly formulated or it can be inferred from the legal form of the decision. For example, the contemporary African Union has two binding policy streams. The first is concerned with economic and functional cooperation which has its legal basis in the 2000 Constitutional Act. Similar to EU legislation, regulations are directly applicable in member states, while directives give leeway for member states to adapt the means to achieve binding goals. The language in the Assembly’s Rules of Procedure is unambiguous (Rule 34): “Regulations and Directives shall be binding on Member States, Organs of the Union and RECs [Regional Economic Communities].” The second policy stream concerns the Peace and Security Council which can authorize interventions and sanctions in the event of unconstitutional regime change. Its legal basis is the 2003 Protocol which states that “The Member States agree to accept and implement the decisions of the Peace and Security Council, in accordance with the Constitutive Act” (Art. 7.3).

Box 2.10 specifies which decision areas are subject to ratification and which to discretionary bindingness. Except for policy making, ratification and non-bindingness are mutually exclusive instruments for protecting member state sovereignty. In the remainder of this section we discuss coding rules and ambiguities by decision area.

Box 2.10 DECISION AREAS THAT MAY BE SUBJECT TO RATIFICATION OR BINDINGNESS

	Ratification	Binding
Accession	√	
Suspension		
Constitutional reform	√	
Budgetary allocation		√
Financial compliance		
Policy making	√	√

Membership: Accession and Suspension

Organizations typically have rules about how others can join and when members can be sanctioned or thrown out. These are vital matters in an IO, and are dealt with under the rubric of accession, suspension, and expulsion. Suspension or expulsion of a member state may occur after serious violation of IO rules or basic principles, such as human rights, democracy, or peaceful

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Box 2.11 DECISION MAKING ON MEMBERSHIP

XVI. Who decides accession of new members?

a. Who can initiate accession?

Box 2.4	Who initiates?
Decision rule?	

b. Who makes the final decision?

Box 2.4	Who decides?
Decision rule?	

XVII. Is ratification by existing member states required?

- 0 Every member state must ratify accession for it to come into effect.
- 1 Ratification by a subset of member states is required for accession to come into effect.
- 2 Ratification is not required for accession to come into effect.

XVIII. Who decides suspension of a member state?

a. Who can initiate membership suspension?

Box 2.4	Who initiates?
Decision rule?	

b. Who makes the final decision?

Box 2.4	Who decides?
Decision rule?	

resolution of conflict. Sanctions for financial arrears and misuse of funds are often sharply different from those for non-budgetary suspension, and we discuss these separately.

Box 2.11 summarizes five questions that tap decision making on membership: agenda setting and decision rules relating to accession, whether accession requires ratification, and agenda setting and decision rules relating to suspension and expulsion. Since we discussed ratification above, we focus here on decision making.

Questions XVI.a, XVIII.a, XVI.b, and XVIII.b ask us to identify the actors engaged in agenda setting and final decision making and the rules under which they decide. This follows the frame in Box 2.4, but two particularities deserve comment: the prominence of automatic decision making under technocratic rules, and gaps in the rules.

Twenty-five IOs in our sample have automatic accession and six have automatic suspension in which the relevant procedures are specified in the

How We Apply the Coding Scheme

constitution or other key documents and do not require the consent of political bodies to reach a final decision.

Most IOs in the United Nations family stipulate that membership of the United Nations automatically creates the right to accede to the IO. For example, Article II.1 of the UNESCO Constitution states that “Membership of the United Nations Organization shall carry with it the right to membership of the United Nations Educational, Scientific and Cultural Organization.” The World Health Organization follows the same principle, albeit more precisely: “Members of the United Nations may become Members of the Organization by signing or otherwise accepting this Constitution in accordance with the provisions of Chapter XIX and in accordance with their constitutional processes” (Art. 4).

Automaticity can also apply to suspension. For example, suspension or expulsion from the United Nations leads to automatic expulsion from several other global organizations, including UNESCO (Constitution, Art. II.4), the International Maritime Organization (IMO Convention, Art. 10), the United Nations Industrial Development Organization (Constitution, Art. 5.1), and the International Labour Organization.²⁹

Accession may also be automatic once a state ratifies an IO’s constitution. For example, the International Criminal Court (ICC) allows states to join by ratifying the Rome Statute: “This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations” (Art. 125.3).

Technocratic decision making may be combined with discretionary decision making, in which case we code both tracks. UNESCO extends membership to all UN members. However, the organization also allows a non-UN member to join if proposed by a majority of the Executive Board and confirmed by supermajority in the General Conference (Art. II.2).³⁰ The WHO requires that the application of a non-UN member gains a simple majority in the Health Assembly (Art. 6); UN members gain automatic access.

IOs that have technocratic decision making on suspension can initiate, and sometimes complete, expulsion proceedings by applying ex-ante criteria. The Francophonie has had explicit suspension rules since 2000. Suspension is automatic in case of a coup d’état in a regime that had democratic elections (OIF 2000 Declaration of Bamako: 8–9). There is also a political procedure for countries suspected of violating human rights. This involves fact-finding by the secretary general in collaboration with the Ministerial Conference and the Permanent Council. We code the secretary general and the member states

²⁹ There is no explicit rule for the ILO. We obtained confirmation of the rule in an email exchange with the Secretariat (2011).

³⁰ This is how Palestine gained membership of UNESCO in 2011.

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(by virtue of being consulted by the CPF) as proposers, and the Permanent Council as final decision maker.

If there are no rules for accession or suspension, we code this as “missing.” But before doing so, we need to exclude the possibility that such rules are dispersed across multiple sources. The Commonwealth’s suspension procedure is a case in point. It has developed, in British fashion, as a web of rules that has thickened over time. The legal basis is the 1971 Singapore and 1991 Harare Declarations which specify the commitment of Commonwealth members to peace, liberty, human rights, equality, and trade. In 1995, the Millbrook Program formalized a procedure for suspension following the ad hoc suspension of the Nigerian government after it executed political activist Ken Saro-Wiwa. Since then the procedure has been invoked several times to suspend Pakistan (twice), Zimbabwe, and Fiji (twice).³¹ The key body in both agenda setting and final decision is the Commonwealth Ministerial Action Group (CMAG), a nine-member intergovernmental body which answers to the Commonwealth Heads of Government Meeting (CHOGM). The CMAG has sole authority to suspend and impose sanctions, but has only advisory authority concerning expulsion and reinstatement after suspension. On these matters the CHOGM takes the final decision. We code the CMAG in its roles as agenda setter and decision maker, the CHOGM as final decision maker, and the secretary general, who plays an important supporting role in initiating, monitoring, and guiding suspension proceedings, as a second agenda setter.

The absence of written rules can be as revealing as their existence. The absence of a written agreement on something as important as membership can be hugely significant. For example, the Nordic Council, regulated by the Helsinki Treaty, last revised in 1995, contains no provisions on membership. It simply observes that Denmark, Finland, Norway, Iceland, and Sweden are members and that the Åland Islands, Farøer, and Greenland have limited representation. Since 1991 the Baltic countries have had observer status, but their overtures for full membership have been politely rebuffed.³² The absence of written rules may be an intentional strategy signaling unwillingness to enlarge.

Observing accession or suspension is no proof of the existence of institutionalized norms. In the absence of formal rules, the Organization of Islamic Cooperation (OIC) suspended Afghanistan and Egypt in 1979 after they made peace with Israel. If the process for suspension is ad hoc, we code this as “no written rule.” By contrast, the OIC sets out explicit rules for accession in Article VIII of its Charter.

³¹ Gambia preempted suspension by leaving the organization in October 2013.

³² The three Baltic Republics are members of the Baltic Sea Parliamentary Conference which was set up in 1991 without a permanent secretariat or executive structure.

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The six-member Gulf Cooperation Council (GCC) has neither rules for accession nor for suspension in its Charter, handbook, website, or in its Arab language documentation. Yemen has been pursuing membership for years without success. In 2010, Yemen asked the US to mediate, and Yemeni accession was discussed and rejected by the GCC Supreme Council. Yemen has been admitted to several low-politics GCC councils. In 2011 Jordan and Morocco’s requests to start accession negotiations were accepted by the GCC, but progress has been slow. This loose, informal practice does not meet the threshold of a routinized norm, and so we continue to score “no written rules” through 2010. The GCC expelled associate member Iraq after its invasion of Kuwait, but has so far refrained from formulating explicit suspension rules.

Constitutional Reform

A constitution is a set of fundamental principles or established precedents for the governance of an organization. The treaty that establishes an international organization typically sets out the principles upon which it is based, the procedures for making decisions, and the organs that make them. However, some treaties assume that they are set in stone and are silent on constitutional reform. Box 2.12 summarizes the questions we ask about decision making in constitutional reform.

Box 2.12 DECISION MAKING ON CONSTITUTIONAL REFORM

XIX. Who decides on constitutional reform?

a. Who can initiate constitutional reform?

Box 2.4	Who initiates?
Decision rule?	

b. Who makes the final decision?

Box 2.4	Who decides?
Decision rule?	

XX. Is ratification required?

- 0** Every member state must ratify the constitutional reform for it to come into effect
- 1** The constitutional reform comes into effect only for those member states that ratify
- 2** Ratification by a subset of member states is required for the constitutional reform to come into effect for all member states
- 3** Ratification is not required for the constitutional reform to come into effect

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Our primary focus is on written rules, i.e. procedures that member states have negotiated in public form. However, we pay particular attention to areas vulnerable to under-specification, such as agenda setting, and we collect evidence well beyond the treaties. Most IOs detail their constitutional procedures in foundational documents, but there are exceptions. The 270-page Treaty of Chaguaramas establishing the Caribbean Community briefly states that the Conference of Heads of Government decides on constitutional amendments (Art. 236.1) and that ratification by all is required (Art. 237.2). Further research adds that constitutional amendments are routinely prepared by an Intergovernmental Task Force which works under the authority of the Community Council of Ministers chaired by the secretary general. We code the Community Council of Ministers and the Secretariat General in agenda setting, and the Conference as the final decision maker.³³

We code “no written rules” for the initial years of ASEAN. Its foundational document, the Bangkok Declaration of 1967, carefully avoids the question of how it might be amended. As observers have stressed, the Declaration is a non-binding pronouncement setting out “aims, principles and purposes” for collaboration (Art. 4). We begin coding ASEAN from 1976, when the Declaration was complemented by the Treaty of Amity and Cooperation which gave the pronouncement organizational form. Whereas the Bangkok Declaration was never amended, the Treaty has been amended several times by protocols attached to the Treaty. While the Treaty itself does not describe how this is done, the process is institutionalized and described by primary and secondary sources. A protocol is initiated by one or more member states. It then requires consensus in a ministerial council or at the summit of heads of state. Finally, it must be ratified by all member states to come into effect. The 2007 ASEAN Charter, which supersedes earlier declarations and treaties, puts this in black and white (Art. 48.1–3).

Financial Decision Making

Control over financial resources is an essential feature of IO decision making. We investigate to what extent an IO has an independent and routinized source of financing, how decisions are made on budgetary allocation, and how decisions are made on financial non-compliance.

³³ “Welcome remarks by His Excellency Edwin W. Carrington Secretary General Caribbean Community (CARICOM) on the Occasion of the First Meeting of the Reconstituted Intergovernmental Task Force (IGTF), 29 September 2010, Georgetown, Guyana,” *Press Release 380/2010*. Available at <http://archive.caricom.org/jsp/pressreleases/press_releases_2010/pres380_10.jsp>, accessed on July 23, 2016).

How We Apply the Coding Scheme

FINANCIAL AUTONOMY

Financial autonomy taps the extent to which the IO secretariat rather than member states control the IO's financial envelope. We distinguish three categories (Box 2.13).

Box 2.13 FINANCIAL AUTONOMY

XXI. Does the IO have independent revenue?

- 0** IO revenue consists of ad hoc or discretionary member state financing
- 1** IO revenue consists of routinized, non-discretionary member state contributions (e.g. tied to GDP per capita)
- 2** IO revenue consists of routinized, non-discretionary member state contributions and the IO has an independent source of revenue (e.g. donations, grants, taxes, fees, bonds) amounting to at least one quarter of its budget

Two ground rules underpin the coding. First, when examining an IO's financial resources we encompass an IO's operations and policy making as well as its administration. Sometimes the source of funding differs across the operational and the administrative budget, in which case we give priority to the larger of the two.

The International Organization for Migration (IOM) makes a sharp distinction between these in its Constitution (IOM 2014; IOM Constitution, Art. 20.1). The bulk of funding goes to the operational budget (93 percent in 2010).³⁴ Whereas the administrative budget consists of statutory member state contributions complemented by a small overhead charged to project funding, the operational budget consists primarily of voluntary government contributions, so we code IOM zero on financial autonomy.

If an IO's operational budget has multiple sources of funding with different degrees of member state control, we seek to determine which is predominant. Interpol is financed through gifts, bequests, and grants in addition to statutory member contributions. However, national contributions make up 80 to 85 percent of the budget, and this determines our coding.

To receive a maximum score of 2, at least 25 percent of an IO's revenue must come from extra-member state sources. This would be the case if the IO raises its own revenues or taxes, if it has a fixed share of a tax that is raised on behalf of the IO by member states, or if it has predictable funding from non-state donors. One in five IOs fall into this category in 2010. The main source of income for ECOWAS is a community import levy of 0.5 percent. More than 25 percent of the European Union's income comes from customs and excise

³⁴ IOM (2009: 83–5).

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taxes, agricultural levies, and a uniform rate of 0.3 percent on top of the value added tax collected by EU member states. The Common Market for Eastern and Southern Africa (COMESA) can raise independent funds through a common market levy, though around 70 percent of its funding comes from EU grants.

To score 2, funding must be beyond the direct control of an IO's member states. International donors—international organizations, third countries, or non-governmental organizations—can be an important source of financial independence for an IO even if the contributions are tied to conditions. The cases of UNESCO and Interpol are instructive.

UNESCO is a gray case because its funding has shifted from mandatory member state contributions to voluntary contributions from member states, private donors, the European Union, and other multilateral organizations (Graham 2015). However, these voluntary contributions are micro-managed by the member states and do little to increase UNESCO's financial autonomy.³⁵ While UNESCO's Constitution explicitly authorizes the director general to seek third-party funding, she requires approval by the member state-controlled Executive Board (Const., Art. IX.3). Furthermore, a revision of the financial regulations in 1989 tightened the conditions under which she can accept gifts and spend those funds on UNESCO programs.³⁶ We continue to give UNESCO a score of 1 to reflect its mandatory member state contributions. Were member state-controlled voluntary contributions to become predominant, the score for financial autonomy would slip to zero.

Interpol's third-party contributions are less than 20 percent of its total revenues, but even if they had reached the 25 percent threshold, they would not qualify as independent revenue. Indeed, outside donations are systematically vetted by the Executive Committee, a member state-dominated body. Article 38 of the Constitution reads: "The Organization's resources shall be provided by (a) the financial contributions from Members, and (b) gifts, bequests, subsidies, grants and other resources after these have been accepted or approved by the Executive Committee." Again, the score reflects the hands-on control of member states.

COMESA is a contrasting case because its member states have less control over the financial tap. According to the 1993 COMESA Treaty, "other resources of the Secretariat shall include such extra budgetary resources as: (a) grants, donations, funds for projects and programmes and technical assistance; and (b) income earned from activities undertaken by the Common

³⁵ Graham (2015: 164) observes that "restricted voluntary funding rules allow donors to dictate how the contributions they provide are used, which may not conform with the priorities set by intergovernmental bodies . . . This devolution of authority violates multilateralism."

³⁶ UNESCO, *35-C5 Complementary Additional Program 2010–2011*, Paris, 1–44, accessed on July 23, 2016, from <<http://unesdoc.unesco.org/images/0018/001881/188146E.pdf>>.

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Market” (Art. 163), and the secretary general is authorized to “initiate and maintain dialogue” with multilateral and bilateral donor agencies (Art. 181.2–3). Member states have the right to attend meetings with international donors, and the meeting reports are conveyed to a member state-controlled body (Art. 181.4), but the use of donor money appears not to be conditional on member state consent. We have no firm read on the extent to which donors impose conditions, but grants from IOs, including the European Union, do tend to be multi-annual and hence relatively predictable. These put the COMESA secretariat in a relatively secure financial position vis-à-vis the member states and warrant a score of 2.

The Pacific Islands Forum (PIF), which also extracts the bulk of its funding from donors, scores zero. The difference with COMESA is that the PIF’s donor money—85.4 percent of its 2013 budget—comes primarily from two of its member states, Australia and New Zealand. To secure this money, which “may be subject to some restrictions on the activities it may be allocated to,” PIF’s Secretariat needs to conclude fixed-term bilateral agreements (PIF 2014: 1–3).

The World Bank and the IMF are clear-cut cases for a score of 2. They achieve financial autonomy through independent loans, bonds, and long-term member state investments. The World Bank raises almost all its money by issuing bonds on the world’s financial markets, and is consequently not dependent on member state contributions. The IMF’s financial resources are provided by the member countries in the form of quotas which determine countries’ voting weights, access to IMF financing, and allocation of special drawing rights. Twenty-five percent of the quota is deposited in an IMF account upon accession or after renegotiation. Annual running costs are covered by the difference between interest receipts on outstanding loans and interest payments on quotas. The IMF is the third-largest holder of gold reserves in the world, and it can borrow money through both multilateral and bilateral contracts.

A score of 1 applies to an IO which is financed by routinized member state contributions that are provided as a lump sum. This characterizes nearly three-quarters of IO-years in the dataset. Typically, financing is planned on a multi-annual schedule according to a formula.

Article VII of the Convention of the European Organization for Nuclear Research’s Convention (CERN) specifies that each member state contributes “both to the capital expenditure and to the current operating expenses of the organization in accordance with scales, which shall be decided every three years by the Council by a two-thirds majority of all the Member States, and shall be based on the average net national income at factor cost of each Member State for the three latest preceding years for which statistics are available.” Article 55 of the Charter of the Organization for American States (OAS) specifies that “The General Assembly shall establish the bases for fixing

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the quota that each Government is to contribute to the maintenance of the Organization, taking into account the ability to pay of the respective countries and their determination to contribute in an equitable manner.” The quotas have been reviewed several times, most recently in 2007 when they were adjusted to GDP and per capita GDP with discounts for exceptionally low-income countries. The formula requires nine calculation steps and is reviewed every three years.³⁷

It is rare for an organization to provide such detail. We look for a reference to an objective system for resource extraction. For example, the ASEAN Charter (Art. 30, par. 2) states that “The operational budget of the ASEAN Secretariat shall be met by ASEAN Member States through equal annual contributions which shall be remitted in a timely manner.” The Latin American Integration Association (LAIA) indicates that its Committee of Representatives is responsible for the “establishment of the percentages of member countries’ contributions to the budget of the Association” (Art. 43g). Both IOs score 1.

The Shanghai Cooperation Organization (SCO) illustrates the minimal requirements for “regular member state contributions.” Each year a budget is “drawn up and executed in accordance with a special agreement between member States. This agreement shall also determine the amount of contributions paid annually by member States to the budget of the Organization on the basis of a cost-sharing principle” (Charter, Art. 12). Russia and China each contribute 24 percent, Kazakhstan 21 percent, Uzbekistan 15 percent, Kyrgyzstan 10 percent and Tajikistan 6 percent (Grieger 2015: 6). So while the size of the budget is open to annual renegotiation, the distribution of contributions appears fixed.

A score of zero refers to situations where funding is not regulated, where individual member states retain sovereignty over their financial contributions, or where the IO depends on voluntary largesse by one or more of its members. Some 10 percent of IO-years fit this criterion.

The Charter of the South Asian Association for Regional Cooperation (SAARC) says that “The contribution of each Member State towards financing of the activities of the association shall be voluntary” (Art. IX.1). In the Universal Postal Union (UPU), member states can choose how much they contribute (though there is a mandatory minimum contribution), and for every budget cycle they can change the height of their contribution within certain limits (Convention, p. xxiv).

The International Organization for Migration (IOM) depends almost entirely on discretionary member state contributions. According to Art. 20.3 of the Constitution, “contributions to the operational expenditure of the organization shall be voluntary,” and such contributions accounted for 97 percent of IOM funding in 2009. Its small administrative budget is financed by regular,

³⁷ <<http://scm.oas.org/pdfs/2011/CP25590E.ppt>>.

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predictable member state contributions. We also include the North Atlantic Free Trade Agreement (NAFTA) in the zero category because it does not have a central budget. Its offices in Mexico City, Ottawa, and Washington DC are each nationally funded.

Here and elsewhere, we code a rule change only when it takes effect. The Treaty of the Economic Community of Central African States (ECCAS) raised the possibility of routinized self-funding from “other sources determined by the [annual] Conference” beyond ad hoc, discretionary annual funding. When its member states replaced annual member state contributions with an IO-wide import tax of 0.4 percent in 2010 we change the score from zero to 2.

DECISION MAKING ON THE BUDGET

In this section we explain what we include under budgetary decision making, how we code agenda setting, and how we assess bindingness and financial non-compliance (Box 2.14).

Box 2.14 DECISION MAKING ON THE BUDGET

XXII. Who decides on budgetary allocation?

a. Who drafts the budget?

Box 2.4	Who drafts?										
Decision rule?	<table border="1" style="border-collapse: collapse; width: 100%; height: 100%;"> <tr><td style="width: 10px; height: 10px;"></td><td style="width: 10px; height: 10px;"></td></tr> </table>										

b. Who makes the final decision?

Box 2.4	Who decides?										
Decision rule?	<table border="1" style="border-collapse: collapse; width: 100%; height: 100%;"> <tr><td style="width: 10px; height: 10px;"></td><td style="width: 10px; height: 10px;"></td></tr> </table>										

XXIII. Is budgetary decision making binding?

- 0 Budgetary decision making is not binding
- 1 Budgetary decision making is binding unless a member state opts out of a program or financial commitment
- 2 Budgetary decision making is binding

XXIV. Who decides on financial compliance?

a. Who can initiate?

Box 2.4	Who initiates?										
Decision rule?	<table border="1" style="border-collapse: collapse; width: 100%; height: 100%;"> <tr><td style="width: 10px; height: 10px;"></td><td style="width: 10px; height: 10px;"></td></tr> </table>										

b. Who makes the final decision?

Box 2.4	Who decides?										
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By budgetary allocation we refer to decision making on funding for an IO's core activities which include, but are not limited to, its operational core. We conceptualize agenda setting on the budget broadly to refer to any body or actor having the right to draft the budget or whose consultation or recommendation is mandatory. We define decision making narrowly to encompass only those bodies that take the final decision.

In most cases, these distinctions are fairly straightforward. In the World Tourism Organization (UNWTO), for example, the secretary general drafts the budget (Art. 22.2 of the Constitution); the Council recommends by supermajority (Art. 19 (e)); the Assembly takes the final decision by supermajority (Art. 12 (i)). We score the secretary general and the Council as agenda setters, and the Assembly as final decision maker.

Our coding recognizes only self-standing bodies or actors, not emanations that are integral to some other body. In the South Asian Association for Regional Cooperation (SAARC), technical committees draft separate budgets for each program which are then submitted to the Standing Committee for approval by unanimity (Art IX.2 and Art. V.1.b). Since the technical committees are emanations of the Standing Committee, we score the Standing Committee for both agenda setting and final decision.

The Charter of ASEAN states that "the Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives" (Art. 30, par. 2). We score the secretary general for agenda setting, and the ASEAN Coordinating Council, which is ASEAN's executive, for the final decision. We do not score the Committee of Permanent Representatives because it is an emanation of the ASEAN Coordinating Council.

The ASEAN example illustrates that treaties may omit to specify the final decision rule. Our prior in these cases is that the standard voting rules apply as specified elsewhere by the IO. In ASEAN there is ample evidence that the standard voting rule, consensus, does indeed extend to the budget. In the Commonwealth of Nations, the secretary general's annual report indicates that the secretariat drafts the budget which is approved by the Board of Governors by consensus. The Treaty of the Commission for the Navigation of the Rhine (CCNR) simply states that "The Central Commission shall fix in advance its budget for the following year" (Art. 47). The general rule applies: "All resolutions concerning the Central Commission's internal affairs shall be validly adopted by a majority of votes" (Art. 46) and we code the Central Commission as both agenda setter and decision maker.

Some IOs have different rules for different circumstances. The South Pacific Commission (SPC) has two sets of rules for the final decision. In years in which the Congress meets, it takes the final decision by supermajority (Canberra

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agreement, Art. XIV.46). In off-years, the Committee of Representatives of Governments and Administrations, which acts as a second assembly, decides by supermajority (Canberra agreement, Art. II(f)). As it happens, this makes no difference to the final score used to estimate pooling because the composition of these bodies is equally intergovernmental.

We distinguish three degrees of bindingness: binding, binding unless a member state opts out, and non-binding, and we code budgets independently from policy making. While non-binding budgets usually entail that policy decisions are also non-binding, the reverse is not always true. A budget can be binding even if policy is not. For example, Art. 46 of the CCNR Treaty details that “resolutions adopted unanimously shall be binding unless within one month one of the Contracting States informs the Central Commission that it refuses its approval” and that “resolutions adopted by a majority shall constitute recommendations.” So policy decisions are clearly non-binding. However, the Treaty also states that resolutions on internal affairs—and this includes the budget—shall be taken by majority. The budget is determined by the member states collectively and there is no possibility of opt-out for a recalcitrant member.

For an IO budget to be coded as non-binding, we need corroborating evidence that member states are not legally bound to comply with the budget. Few IOs envisage such a possibility. The absence of a provision on budgetary non-compliance is necessary but not sufficient. Just three IOs in 2010 fit the bill of non-bindingness across the board: APEC, SAARC, and NAFTA.³⁸

SAARC has voluntary program participation and has no formal rules concerning its budget which we judge to be non-binding. NAFTA is the only IO in the sample that has no central budget. Member states defray expenses for their respective NAFTA offices and for meetings. Hence there is no collective financial commitment. We score 98—“not applicable”—which has the same value as “not binding” indicating that on budgetary decision making NAFTA does not pool or delegate authority.

We evaluate APEC budgetary decision making as non-binding because it strongly endorses voluntarism: “APEC is the only intergovernmental grouping in the world operating on the basis of non-binding commitments, open dialogue and equal respect for the views of all participants. Unlike the WTO or other multilateral trade bodies, APEC has no treaty obligations required of its participants. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis” (Kahler 2000: 558; Haggard 2011).³⁹ However, the budgetary process in APEC is actually a gray

³⁸ The Arab Maghreb Union (AMU) could be a fourth case, but since there is no written track record, it seems appropriate to code “no written rules.”

³⁹ <<http://www.apec.org/en/About-Us/About-APEC.aspx>>. This is corroborated by strong language in official APEC documents (APEC 2010: 3; 2013: 2): “There are no binding commitments;

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case. Its operations budget is binding, but this amounts to around three million dollars and covers only a tiny portion of the organization's core activities. Most programs, including APEC's pathfinder initiatives, are funded through voluntary contributions and the budgets for these are non-binding.

Several IOs shift from non-binding to the intermediate category, including the South Pacific Commission (SPC, renamed the Secretariat of the Pacific Community in 1997). In the original 1947 Canberra agreement, the Commission was described as an advisory instance to the six founding member states, and the agreement noted that governments "undertake to contribute" their respective shares (Art. 53). The expenses of the Commission were paid by a central fund, while core activities were covered by non-binding supplementary budgets.

The revised Memorandum of Agreement of 1984 establishes a binding commitment. The memorandum requires that members assess the needs of the SPC annually and apportion financial costs "in such manner as the participating governments may unanimously determine" (1984 Memorandum, 49). Since 1999, the core budget is tied to a "formula [which] shall reflect the principle of burden sharing." Programs and projects are reviewed by a Planning and Evaluation Committee composed of member state representatives, which reports to the Conference or to the Committee of Representatives of Governments and Administrations.

The intermediate category applies to IOs where the budget as a whole is binding but a member state can opt out from a component. For example, the European Organization for Nuclear Research (CERN) states in Art. VII, par. 3 of its Convention that "contributions to be paid by a Member State under paragraph 1 shall be calculated in respect of, and applied only to, the programmes in which it participates." The European Space Agency (ESA) has a similar rule. The Organisation for Economic Co-operation and Development (OECD) makes a distinction between the annual budget and subsidiary budgets (Art. 20 of the Paris Convention). The annual budget covers around half of Part I programs which are mandatory. There are separate budgets for Part II programs which are voluntary.

NATO illustrates the gray zone between bindingness and partial bindingness. NATO's core civil and military budget is binding. This covers expenses for operations that are NATO-wide: NATO command structure, command and control systems, alliance-wide communications systems, and NATO air defense. There is no explicit provision on budgetary non-compliance, but the contribution formula is detailed. However, NATO's field operations and military procurement are not part of the central budget; nor can member states be bound to invest. These "indirect contributions" are much larger

compliance is achieved through discussion and mutual support in the form of economic and technical cooperation."

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than direct contributions. Contrary to ESA or CERN, where the foundational document details the dual compulsory/voluntary nature of budget and program structure, the NATO Treaty is not explicit on financial commitments. One has to delve into the NATO handbook, its website, and meeting minutes to document rules. Since the activities financed by voluntary contributions are substantial and central to NATO objectives we code the budget as partially binding.

FINANCIAL COMPLIANCE

We interpret financial compliance procedures strictly to refer to rules penalizing member states that fail to pay their contributions or misuse IO funds. Can an IO impose interest charges, freeze a member's funds, suspend its voting rights, constrain its right to attend or organize meetings, or, in extremis, expel a non-compliant member state?

We are concerned here with sticks rather than carrots. Hence we score the Organization of American States (OAS) as having no procedure for non-compliance, despite its elaborate system of positive incentives, which include discounts on future contributions for members who pay their dues by a certain date.⁴⁰ Other IOs without financial compliance fall into one of the following categories: intergovernmental organizations with a non-binding or partially binding budget (e.g. APEC, NAFTA, NATO, SAARC, and the Shanghai Cooperation Organization); IOs with few cohesive member states (e.g. BENELUX, EFTA, the Nordic Council, the Commission for the Navigation of the Rhine); IOs bankrolled by a few rich members or donors (for example, the Pacific Islands Forum [Australia and New Zealand], the South Pacific Commission [Australia and the European Union], La Francophonie [France and Canada], and the Commonwealth of Independent States [Russia]). In the remaining organizations, rules on budgetary non-compliance often emerge once financial arrears occur in practice and constitute a threat to the viability of the organization.

Many non-compliance procedures kick in automatically if a member state's arrears meet certain conditions, but in most cases, such action is accompanied by a clause that gives the final word to a political body. We then code agenda setting as automatic, and we code the final decision as taken by the political

⁴⁰ In 1990, in the face of mounting arrears, the OAS Permanent Council agreed to discount 2 percent of the following year's contribution for member states paying up by April 30. This was increased to 3 percent in 2000 if a member state forked up by the end of January of the fiscal year. By 2009 arrears had all but disappeared when the discount far exceeded market rates, and in 2011 the Permanent Council tightened the conditions under which member states can get a discount (Permanent Council of Organization of American States: Committee on Administrative and Budgetary Affairs. "Report on quota payments (various years)," downloadable from <<http://www.oas.org/consejo/caap/Quotas%20documentos.asp>>, accessed on July 23, 2016).

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body. A typical set up is as follows: “A Member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member” (ILO Constitution, Art. 12.4).

The balance of automaticity and political decision making varies. The Economic and Monetary Community of Central African States (CEMAC) gives the Council of Ministers little discretion to override automatic sanctions. A two-stage process commences if a member is a year in arrears. It begins with suspension of voting rights, followed six months later by suspension from all CEMAC activities and funding. The member state can escape these sanctions “only in case of a ‘*force majeure*’ duly concluded by the Council of Ministers” (Art. 52). The East African Community (EAC) makes automatic sanctions conditional on political consent: “The Summit may suspend a Partner State from taking part in the activities of the Community if that State fails to observe and fulfill the fundamental principles and objectives of the Treaty including failure to meet financial commitments to the Community within a period of eighteen (18) months” (Treaty, Art. 146.1). The International Labour Organization is more lenient. Article 13.4 of its Constitution states that the member loses voting rights, unless the Conference “is satisfied that the failure to pay is due to conditions beyond the control of the Member.”

In each of these situations 1) the rules specify objective criteria for establishing non-compliance; 2) there is an automatic trigger for sanctions; and 3) a political body may overrule or amend these sanctions. We score agenda setting as technocratic and the final decision as political.

A small number of IOs do not provide the option of political intervention, in which case we score both agenda setting and final decision as automatic. The International Telecommunication Union (ITU) states in Art. 28(9) of its Constitution that “A Member State which is in arrears in its payments to the Union shall lose its right to vote as defined in Nos. 27 and 28 of this Constitution for so long as the amount of its arrears equals or exceeds the amount of the contribution due for the two preceding years.” The Andean Community stipulates that “The Member Country that is behind more than four quarters in regard to the payment of its contributions to the General Secretariat or to the Court of Justice of the Andean Community shall not be able to exercise the right to vote in the Commission until it solves its situation” (Trujillo Protocol, Art. 28). IWhale lays down a firm deadline for member states to pay (with interest) along with the sanction: “The right to vote of representatives of any

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Contracting Government shall be suspended automatically.” New member states may obtain special dispensation.⁴¹

The Global Environmental Fund (GEF) ties voting power to contributions which are calculated on the basis of an International Bank for Reconstruction and Development regulation: “[F]or the purpose of determining voting power in the event of a formal vote by the Council, a Contributing Participant’s total contributions shall consist of the actual cumulative contributions made by a Contributing Participant to the GEF Trust Fund, including actual contributions made to the Fourth Replenishment, contributions made to the Global Environment Trust Fund (the ‘GET’), and the grant equivalent of co-financing and parallel financing made under the GEF pilot program, or agreed with the Trustee before the effective date of the GEF Trust Fund” (GEF 2008: Annex C referring to IBRD’s Executive Directors’ Resolution No. 2006-0008 Art. 4(b)). We score this as technocratic for both decision stages.

When a political body is involved, it is usually in the final decision stage. The Universal Postal Union (UPU) is an interesting exception. While the procedure is nearly fully automatic, there is a window for the nonconforming member state to negotiate an amortization schedule with the UPU general secretariat. If the member state does not comply with the negotiated outcome, it automatically loses its voting rights. In this case, we code the general secretariat’s role as tweaking an otherwise automatic procedure in agenda setting, but not in the final decision.

Some non-compliance rules are entirely political, and then we code the relevant body or bodies in agenda setting and final decision. The International Civil Aviation Organization (ICAO) provides an example. Article 62 of the ICAO Convention states that “The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.” The Convention does not specify what constitutes “a reasonable period.” The Council is the key body in monitoring member state compliance and the assembly makes the final decision by simple majority. The World Bank also has a political process, which stipulates that “If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing” (Articles of Agreement Art. VI.2). The Board of Governors sets the agenda and makes the final decision by majority.

⁴¹ Section E.2(a), in *Rules of Procedure and Financial Regulations as Amended by the Commission on its 62nd Annual Meeting of IWhale, June 2010*, and Section F.6., in *Financial Regulations of IWhale*.

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Policy Making

IO policy can be defined as a system of laws, regulatory measures, courses of action, and funding priorities that are promulgated by an IO or one of its representative bodies on a given topic. Policy tends to be reflected in law and implementing legislation, in regulations authorized by legislation, or in programs or projects framed within a legal or regulatory framework. Some scholars include judicial decisions, but it seems sensible to treat judicial decisions separately.

We conceive of IO legislative and policy making as consisting of one or more of the following streams:

- passing protocols or conventions;
- passing recommendations or declarations;
- passing laws, regulations, decisions, directives;
- designing, selecting, funding, and implementing programs/projects;
- monitoring standards or practices.

This excludes IO membership, the budget, the foundational treaties, and dispute settlement. Each of these are dealt with elsewhere in our scheme.

Comparing policy making across international organizations requires classification. Several IOs have multiple policy streams with different decision rules. Our scoring needs to be sensitive to this variation while facilitating comparison across IOs.

Each IO profile begins by identifying the IO's principal policy streams. We code up to five such streams in any given year using the questions set out in Box 2.15. Who sets the agenda, and who takes the final decision? What is the role of the general secretariat in policy initiation? Are policy decisions binding? And do policy decisions require ratification?

A number of issues present themselves as we code policy making. First, we need to determine which policy streams are core to the competences of the IO. Second, we consider some particular issues that arise for international organizations concerned with banking or dispute resolution. Third, we explain how we assess the role of the secretary general in agenda setting.

In determining which policy or policies are core competences of an IO, we triangulate treaties, constitutions, and conventions with annual reports, website information on policy output, and the secondary literature. We identify policy streams that are related to the core purpose of the IO and have a public record of output. If more than one stream is in play and each has a distinct set of actors or rules at any stage in the decision making process (i.e. they produce different scores in our coding) then we code them separately.

UNESCO's policy making consists of projects through its multi-annual program, and the adoption of conventions, recommendations, and declarations

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Box 2.15 DECISION MAKING ON POLICY MAKING

XXV. Who decides policy?

a. Who can initiate policy?

Box 2.4	Who initiates?
Decision rule?	

b. Who makes the final decision?

Box 2.4	Who decides?
Decision rule?	

c. What is the role of the general secretariat in initiating policy?

- 0 The general secretariat has no formal role in initiating policy
- 1 The general secretariat has a formal role in initiating policy, but does not monopolize agenda setting
- 2 The general secretariat has a formal monopoly of initiative or is the only body with a formal role in agenda setting

XXVI. Are policy decisions binding?

- 0 Policy decisions are not binding
- 1 Policy decisions are binding unless a member state explicitly opts out
- 2 Policy decisions are binding

XXVII. Is ratification required?

- 0 Every member state must ratify the policy for it to come into effect
- 1 The policy comes into effect only for those member states that ratify
- 2 Ratification by a subset of member states is required for the policy to come into effect for all member states
- 3 Ratification is not required for the policy to come into effect

(about sixty in total since 1948). Programming is often perceived to be the most important form of UNESCO policy making (Blanchfield and Browne 2013; Dutt 2009: 85; Niebuhr 1950). The 2010–11 program budget of just under 400 million dollars is earmarked for education, natural sciences, social sciences, culture, communication and information, and the UNESCO Institute for Statistics. The second policy stream consists of conventions, which unlike recommendations and declarations, are intended to have the status of international legal commitments. Programming and conventions provide wiggle room for member states, but in different ways. In programming individual member states can opt in or out of particular programs, although the overall allocation of resources is binding once the budget has been adopted by the General Conference. A convention can be passed by a two-thirds majority of the General Conference, and becomes binding for a member state only after it has ratified it.

The history of the Southern African Development Community (SADC) reveals how policy streams may change over time. Its longest-standing policy instrument

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is programming. This was the focus of the Lusaka 1980 Memorandum, which set up the Southern African Development Coordination Conference (SADCC), an alliance of the frontline states—Angola, Botswana, Lesotho, Mozambique, Swaziland, Tanzania, and Zambia—against white minority rule in Southern Africa. The intention was to attract international donor investment by promising to coordinate development around specific functional areas (Anglin 1983). Initially, programming was highly decentralized, but over several reforms, agenda setting power migrated to the Secretariat. Since 2004, SADC projects are embedded in strategic development plans which guide SADC programming and induce member states to incorporate programming into national law. The SADC secretariat is now the main initiator, and it is aided in framing and implementation by fifteen SADC national committees. The Council of Ministers approves projects by consensus, including those financed by external donors. However, policy programs remain voluntary and do not require ratification (Afadameh-Adeyemi and Kalula 2011).

A second policy instrument, the protocol, was introduced in 1993 when SADCC became the Southern African Development Community (SADC). A protocol is a legal instrument that sets broad goals and principles for cooperation in a policy field, e.g. health, energy, combating illicit drugs, tourism, or trade. In contrast to policy programs, protocols require ratification and are binding. Between 1993 and 2010, SADC passed twenty-one protocols.⁴²

Forty-two of seventy-four IOs in our sample in 2010 have a single set of rules for decision making across their core policies. There are some gray cases in which we need to decide whether a second policy stream is prominent enough to warrant separate scoring. The OECD's principal output is non-binding recommendations on policy from corruption to multilevel governance. Between January 2005 and June 2011, fifty-three Acts were passed of which forty-four were recommendations, three were decisions, and six declarations.⁴³ We code recommendations as the OECD's policy stream because they alone are central to the organization's output.

For a policy stream to feature in our coding there needs to be a track record of activity. The International Seabed Authority (ISA) illustrates that bold intentions are not enough. According to its foundational convention, the ISA monitors member state compliance with the Law of the Sea, set out in a contract of 531 pages regulating the use of the international seabed. The Law of the Sea includes, among other things, the establishment of a body, "the Enterprise," to exploit seabed resources "on behalf of mankind as whole" (Art. 153; see also Annex IV. Statute of the Enterprise). The compendium contains provisions about the regulation of prospection, exploration, and

⁴² <<http://www.sadc.int/documents-publications/protocols/>>, accessed on July 23, 2016.

⁴³ Calculations from the OECD website (<<http://webnet.oecd.org/OECDACTS/Instruments/>>).

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exploitation of marine minerals (the Mining Code), oversight of the exploitation of international seabed resources, promotion of marine scientific research, and dispute settlement. The ISA has yet to set up the Enterprise, and since dispute settlement is coded separately, our focus is on the regulation and supervision of the implementation of the Law of the Sea.

Policy takes a distinctive form in international courts, and we assess them in relation to their role and decision making in dispute settlement. With respect to policy, our focus is on the rules that govern their operations. How do they make decisions about how they handle dispute resolution?

The output most often associated with the International Criminal Court (ICC) is the judges' work: prosecutions, court cases, rulings. This activity is constitutionally insulated from political interference, is binding (though not easily enforceable), and does not require ratification. We score this under dispute settlement, not policy making. However, under policy making we score the ICC's development of multi-annual strategic plans, which lay down the ICC's overall and body-specific judicial and managerial goals and its cooperation with member states.⁴⁴ These are prepared by the Registry, the Court's general secretariat; then discussed by the Bureau, the Court's executive; and finally submitted for consent to the Assembly of States Parties. Parallel, and partly in competition, the Bureau can draft its own policy, usually after soliciting input from working groups.⁴⁵ In their respective fields of competence, the Registry and the Bureau exercise substantial executive autonomy. The key point here is that both are engaged in rule setting, which ultimately takes the form of resolutions submitted for consent to the Assembly of States Parties. Resolutions are generally binding and do not require ratification. We code both the Registry and Bureau for agenda setting, and the Assembly as the final decision maker.

The Permanent Court of Arbitration (PCA) provides arbitration, conciliation, and fact-finding in disputes involving states, private parties, state entities, and intergovernmental organizations. We treat this under dispute settlement. However, the PCA is also in the business of developing new modes of arbitration or conciliation, and this falls under policy making. The process for rule-making can be gleaned from its convention alongside routinized practice. Drafting takes place under guidance of the PCA International Bureau with the help of expert committees, and rules and procedures are adopted by

⁴⁴ For example, ICC. 2006. *Strategic Plan of the International Criminal Court*, ICC-ASP/5/6; ICC. 2010. *Report of the Court on the Public Communication Strategy 2010–2013*, ICC-ASP/9/29; ICC. 2015. *International Criminal Court Strategic Plan 2013–2017 (interim update—July 2015)*. Incidentally, the ICC also reports annually to the General Assembly of the United Nations, a reporting cycle we do not code here.

⁴⁵ The Bureau meets twice a month. The topics it addresses are diverse: financial arrears, member state cooperation with the Court, an independent oversight mechanism for the Court, a fund for victims, visitation rights for the accused in custody, and constitutional amendments.

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the member state appointed Administrative Council. However, it is also possible for the Administrative Council to initiate policy without the Bureau's help, and so we code it as initiator as well as final decider. Rules and procedures are optional for member states. Both the ICC and PCA illustrate the duality often found in a court-oriented organization. Dispute settlement follows a judicial logic with elements of hierarchy and supranationalism, whereas decision making about dispute settlement is primarily intergovernmental.

The WTO and NAFTA combine dispute settlement and substantive policy making. The WTO administers and interprets trade rules, offers a negotiation forum for trade agreements, and settles trade disputes. When we assess WTO policy we engage the first two aspects, with member states and the General Council (through working groups and committees) initiating proposals and the General Council and the Ministerial Conference making the final decision.

NAFTA chiefly settles trade disputes. NAFTA secretariats administer panel proceedings, but do not set policy. The policy making body is the Free Trade Commission: "the Commission shall (a) supervise the implementation of this Agreement; (b) oversee its further elaboration" (Art. 2001.2). The Commission decides after having heard the relevant specialist committees or working groups. NAFTA skirts the conceptual boundary of what constitutes substantive policy making. The detailed provisions of its 393-page agreement were designed to render subsequent policy making superfluous, but even this exhaustive IO contract could not hope to foresee all eventualities and it has a policy mechanism.

Policy making in banking IOs is concerned chiefly with rules that regulate lending. The Bank for International Settlements (BIS) helps central banks manage their foreign reserves. The rules that govern these operations are developed and decided by the Board of Directors with input from the general manager, and this is what we code. The International Monetary Fund (IMF)'s main policy activity is to lend money to members in economic difficulty and provide technical assistance. Quota increases and special drawing right allocations are proposed by the managing director and decided by the Board of Governors, and the Executive Board takes decisions on the rules governing lending (Art. XVIII.4). The IMF is one of a handful of IOs where the secretariat holds exclusive right of policy initiative.

Agenda setting in policy making is assessed in two ways. We identify which actors are mandated to propose or recommend policy, and we then assess the voting rule. We estimate separately the role of the IO general secretariat in agenda setting. In most IOs, formal access to agenda setting is much broader—and more supranational—than final decision making. By contrast to final decision making, agenda setting can be crowded. At the extreme, the Andean Community provides the opportunity for six bodies to influence the drafting of policy. Alongside the general secretariat (Trujillo Protocol, Art. 30a) and

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individual member states, the Andean Parliament is encouraged to “participate in norm generation of the process by means of suggestions ... on subjects of common interest, for incorporation in Andean Community Law” (Trujillo Protocol, Arts. 20e and 43e). The Business Advisory Council, the Labor Advisory Council, and since 2008, the Advisory Council of Indigenous People also have the right to recommend policy at deliberative meetings (Decision 464, Art. 3b; Decision 674, Art. 3c). The Andean Presidential Council is not an agenda setter because it attends to strategic planning, not legislative policy making. The Council and the Commission are the final decision makers.

THE GENERAL SECRETARIAT’S POWER OF INITIATIVE

We pay particular attention to the role of the general secretariat because it is the body most commonly identified with supranationalism (Haas 1958; Claude 1968). Early writers were fascinated by the High Authority, the secretariat of the European Coal and Steel Community, which had sole power of policy initiative. We locate the High Authority in the topmost category of a trichotomous scale for the role of the secretariat in agenda setting. At the low end are general secretariats that are not mandated to initiate policy; the intermediate category consists of general secretariats with a non-exclusive power to initiate.

Beyond the EU, five IOs have general secretariats that clear the hurdle for a monopoly of initiative: SADC (from 2002), CEMAC (from 1999), ECOWAS (from 2007), the Andean Community (until 1987), and the IMF (from 1969), which has a general secretariat that monopolizes agenda setting on loans.

The criterion for a maximum score of 2 is that there is an explicit recognition that policy proposals submitted to the final decision body emanate solely from the secretariat. That is to say, the secretariat is the gatekeeper between any proposal and the final decision, and there are no alternative routes for a proposal to reach the decision stage. This does not require that the general secretariat is explicitly prescribed to be the sole initiator. Nor is it necessary that the secretariat is the only actor involved in the agenda setting stage. Contrary to common belief, neither the Treaty of Rome nor subsequent EU treaties specify that the European Commission has a “monopoly of initiative,” “sole initiative,” or “exclusive initiative.” However, its monopoly of initiative is implied by statements dispersed in the treaties signaling that it is the gatekeeper along a decisional path that cannot be short-circuited, for example: “the Council, acting by means of a qualified majority vote on a proposal of the Commission, shall decide” (Art. 20, Art. 21.2, Art. 33.8, Art. 38); “the provisions ... may be amended by the Council acting by means of unanimous vote on a proposal of the Commission” (Art. 14.7); “the Commission shall make recommendations for this purpose” (Art. 35). The most recent consolidated

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version of the EU treaties following the Lisbon Treaty (2009) has simplified this. There is now a label—the ordinary legislative procedure—for situations where the Commission holds the monopoly of initiative, and the decision process is described in detail in Article 294. However, it is interesting that the Commission’s “monopoly of initiative” is made clear without using the term. The first step in the ordinary legislative procedure reads as follows: “The Commission shall submit a proposal to the European Parliament and the Council” (Art. 294.2).

Similar language appears in CEMAC’s N’Djamena Convention, which came into force in 1999: “the Council of Ministers shall adopt, unanimously on a proposal of the Executive Secretariat, the common rules referred to in Article 4 paragraph a) of this Convention” (Art. 46). The following article reinforces the role of the secretariat: “As necessary, the Council of Ministers on the proposal of the Executive Secretariat, adopts by qualified majority, by regulation or directive, the implementing provisions necessary” (Art. 47). CEMAC’s secretariat is also authorized to “transmit . . . the proposals, recommendations and advice necessary or useful for the application of the present Convention and for the functioning of the economic union” (Art. 71). Decisive is that the Convention does not endow any other body with the authority to propose regulations or directives to the Council of Ministers.

The Andean Community scores 2 until 1987. The Cartagena Treaty does not say that the Junta has *exclusive* right of initiative, but treaty articles leave little doubt. The Junta is the only body with the authority to “submit to the Commission proposals to facilitate or accelerate the implementation of the Agreement” (Art. 15c).⁴⁶ Furthermore, “the Commission shall, upon the proposal of the Board [the Junta], decide on the necessary rules . . .” Incidentally, as in the EU from 1986 to 1993, amendments to Junta proposals require consensus while adoption usually requires only qualified majority (Annex I.3). The Junta lost its monopoly of initiative in 1987 when the Quito Protocol allowed member states, in addition to the Junta, to submit proposals directly to the Commission (Art. 10). From that year the Junta scores 1.

The secretariat of the IMF, the Staff, has traversed the entire range from no right of initiative to a monopoly of initiative, and is currently the sole body that drafts the conditions under which a member state can borrow, or in IMF parlance, the conditionality procedure for activating Special Drawing Rights.

⁴⁶ Structural similarities with the European Union are sometimes concealed by terminology. The Andean Community’s Junta or, since 1999, the General Secretariat, is the functional equivalent of the European Commission. The Commission of the Andean Community is the functional equivalent of the Council of Ministers. On institutional diffusion from the EU, see Börzel and Risse (2012); Jetschke (2009); Jetschke and Lenz (2013); Lenz (2012, 2013); Hoffmann (2016); and Risse (2016).

How We Apply the Coding Scheme

Our premise is that conditionality lies at the core of policy making in the IMF. This is consistent with the succinct definition of conditionality coined by the influential IMF legal expert, Sir Joseph Gold: “Conditionality in the IMF refers to the policies the Fund expects a member to follow in order to be able to use the Fund’s general resources” (cited in Diz 1984: 214). Conditionality refers to the formulation and imposition of (often painful) policy choices on a member state in financial difficulty. So conditionality is closer to the bone than the more mundane set of obligations that are required for a member state to remain in good standing, such as providing economic information or to making prompt repurchases of special drawing rights.

Conditionality was nowhere to be found in the original Articles of Agreement or accompanying rules of procedure (1945 Agreement, Arts. V.1, VI.1, XII), and there was no explicit role for the Staff in initiating policy on drawing rights (Pauly 1996). Barnett and Finnemore (2004: 57) argue that this omission was deliberate. Many delegates at the inaugural Bretton Woods conference opposed conditionality and favored automatic disbursement of funds. The Staff’s power to set the agenda was acquired over time. From the 1950s, IMF officials, with American support, began to explicate conditionality criteria and develop negotiating procedures (1952 E.B. Decision No 102-52/11, revised in 1953; Barnett and Finnemore 2004: 58; Mookerjee 1966). However, the practice was opaque until it was put in writing in the First Amendment to the Treaty Articles in 1969 (Diz 1984: 214–15, quoting Sir Joseph Gold).⁴⁷

This constitutional amendment unequivocally recognized the authority of the Fund to develop policies (Art. I.2, Art. V, Section 3.c, 3.d) and it acknowledged the central role of the managing director in proposing allocations and responding to crises (Art. XXIV, Section 4.a). The reform was accompanied by an Executive Board Decision which formalized the requirement that members consult the Fund (Diz 1984: 224). Even though the terms “exclusive” or “sole” are not used, the language denotes an exclusive right of initiative and this is confirmed by experts. Jacques Polak, former IMF senior official, notes that “A member cannot bypass both staff and management and put its program to the executive board, directly or through its executive director. Argentina tried in 1984 and was promptly rebuffed” (Polak 1991: 32). Stone (2011: 56) stresses that “no lending item can come before the board without the managing director’s approval,” and Barnett and Finnemore (2004: 50) highlight the Fund’s “capacity to set agendas” as a key institutional feature that undergirds IMF autonomy. Polak (1991: 30, 32) observes that the proposals considered by the board are always constructed by the staff, and “in the great majority of cases, approval of a credit arrangement depends on a judgment by staff and

⁴⁷ Sir Joseph Gold wrote the First Amendment (IMF 2000).

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management that a member's adjustment program measures up to the requirements dictated by its current difficulties and its prospects in the world economy." "In effect, the Executive Board ratifies whatever the IMF management proposes" (Stone 2011: 56). Since 1969 we code the Management as having a formal right of initiative and we conceive this right to be exclusive.

The ECOWAS Commission is a gray case that we ultimately evaluate to meet the bar. A special institutional reform in 2006 transformed the secretariat into a collegial Commission. Its new powers are laid down in a special Memorandum on the Restructuring of the Community Institutions, which has as its chief objective "to enhance the prerogatives of the Commission" (2006b Memorandum, Art. 6). The text does not say explicitly that the Commission has sole initiative, but it is emphatic in strengthening the Commission's authority to "initiate and implement major programmes and projects" (Art. 1). It details further that: "The Commission proposes to the Council and the Authority all recommendations that it deems useful for promoting and developing the Community. It also makes proposals on the basis of which they can decide on the major policy orientations of member states" (Art. 12). This is expansive language, and the Commission's legislative initiative is documented in a recent comprehensive sector-by-sector evaluation (United Nations 2016).

BINDINGNESS AND RATIFICATION

An IO may soften sovereignty loss for member states by restricting the bindingness of a decision, by allowing a member state to expressly opt out or by making a decision entirely voluntary and non-binding, or by making a decision binding only after a member state or a subset of member states have ratified it. We discuss these in turn.

To identify the intermediate category of bindingness it is often necessary to examine the contextual conditions set out in legal documents. By intermediate bindingness we mean that policy making as a whole is binding but a member state can opt out. This option is frequently restricted in time or bound to certain conditions. For example, the Convention of IWhale goes into considerable detail to the effect that member states objecting to IO decisions within a 90-day period are not bound, while the remaining states are bound (Art. V.3). The Central Commission of the Navigation of the Rhine (CCNR) declares that "Resolutions adopted unanimously shall be binding, unless within one month one of the Contracting States informs the Central Commission that it refuses its approval" (Convention, Art. 46).

Some IOs have binding as well as non-binding policy. We code these as distinct policy streams if they cover substantively important policy areas and follow distinctive decision rules. For example, the European Space Agency

How We Apply the Coding Scheme

(ESA) has mandatory and optional activities. Mandatory activities are those to which all member states are financially bound; optional activities are those in which all member states participate unless they expressly opt out. Mandatory activities are tightly circumscribed: they cover education and documentation alongside select space research programs. Most scientific programs fall under the optional category, including the International Space Station, the Galileo program (Europe's global navigation satellite system), and the space probe Rosetta, the first to land on a comet. Consistent with their contrasting degrees of bindingness, the voting rule for mandatory programs is supermajority and for optional programs it is simple majority.

Some founding statutes do not use the language of bindingness, but employ a related term, such as obligation. The IMF Articles of Agreement refer to "general obligations of participants" (e.g. Arts. IV, VIII, XXII, XXIII, and XXIV) and to specific obligations related to IMF conditionality (Art. XIX). A lending program always takes the form of a legal contract: the candidate recipient submits a letter of intent accompanied by a Memorandum of Agreement that spells out the policy actions that the member has taken and intends to take during the lending period (Guitian 1995; Polak 1991). These documents are, once agreed by the Executive Board, legally binding on the member recipient, the IMF, and its members. A member state that fails to act on IMF representations, IMF lingo for conditionality, may see the disbursement of loan installments suspended (Art. XXIII). We regard this as binding decision making. Stone (2011: 182) observes that ninety-two of ninety-nine countries that obtained IMF funding between 1992 and 2002 experienced at least one program suspension. In extremis, a member can be forced to withdraw from the organization (Art. XXVI.2).

Member states can also impose ratification conditions (Box 2.15, Question XXVII). IO authority is bluntly curtailed when every single member state must ratify an IO decision to bring it into effect. We code two intermediate scenarios between this and "no ratification." The more intergovernmental of these is that the policy comes into effect only for those states that ratify.⁴⁸ The less intergovernmental scenario is that ratification by a subset of member states triggers implementation for all.

Most IO policy decisions do not require any form of ratification. Still, one or more streams of policy in nineteen IOs have required ratification at some point over the period of this study, and fourteen do so today. Ratification is normal for IOs that are in the business of brokering conventions, as in the ILO, WIPO, the Council of Europe, and the South Asian Association for Regional Cooperation.

⁴⁸ There is frequently the additional requirement that a minimum number of member states must ratify for the decision to come into effect in ratifying states.

Measurement

For obvious reasons, rules concerning ratification are usually spelled out in writing. However, there is occasionally some ambiguity. In global IOs the default is that the decision comes into effect only for member states that ratify; in regional IOs the default is that the decision comes into effect after ratification by all member states. If documentary evidence is lacking, websites or news sources can fill in.

UNESCO, which has passed some sixty conventions or declarations, has rules of procedure which regulate the production of conventions, but the document is vague on the type of ratification. A few years into UNESCO's life, experts were called in to clarify the rules, and they did so in a detailed legal background document which was adopted by the General Conference in 1962.⁴⁹ UNESCO's conventions are binding only on member states that ratify. The World Customs Organization's foundational contract explains that its conventions require ratification, but it does not specify the type of ratification. However, an examination of the nineteen conventions and two agreements that are searchable on the WCO website reveals that conventions bind only states that ratify and that a minimum number of member states must ratify for a convention to come into effect (i.e. a score of 1).

Dispute Settlement

An international dispute may be defined as a "specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counter-claim, or denial by another" (Merrills 2011: 1; Romano, Alter, and Shany 2014; Alter and Hooghe 2016). We seek to capture the authority of an IO to take on legal disputes that directly relate to the constitution, principles, or policies of the international organization and that involve at least one public authority, most often member state governments but sometimes also a standing body or office holder of the international organization. The disputes we are concerned with relate to the terms of the IO contract and the extent to which contracting parties or IO bodies comply. We exclude labor disputes or disputes that involve only private actors.

Our measure deals with arbitration and adjudication, forms of *legal* dispute settlement. We exclude diplomatic or political forms, such as negotiation, mediation, or conciliation by a third party. Systems of arbitration and adjudication are important in our scheme because they directly affect the depth of transnational legalization (McCall Smith 2000; see also Abbott et al. 2000).

Our measure conceives legal dispute settlement as a continuum from low to high legalization which we assess using the seven dimensions of Box 2.16.

⁴⁹ 12 C/12, "Interpretation and Implementation of Article IV, Paragraph 4, of the constitution (submission of conventions and recommendations to 'competent national authorities')," General Conference, Twelfth Session, Paris 1962.

How We Apply the Coding Scheme

Variation on each dimension is compressed into two or three categories that can be reliably scored. All but the first and last of these dimensions are based on McCall Smith's (2000) measure of dispute settlement in regional economic agreements. We begin by establishing whether a dispute settlement is obligatory or optional for the members of an IO. The final dimension is preliminary ruling which has been theorized to be a powerful lever for domesticating international law (Alter 2014; Helfer and Slaughter 1997). All but one of these dimensions—type of tribunal—can, at least in theory, apply to arbitration as well as adjudication. The crucial difference between arbitration and adjudication is that the former requires the parties to set up a panel of judges to handle disputes, while the latter involves a court or standing tribunal.

Box 2.16 DISPUTE SETTLEMENT

XXVIII. Is the dispute settlement system obligatory?

- 0 There is no dispute settlement
- 1 The dispute settlement system is not obligatory; member states can opt out
- 2 The dispute settlement system is obligatory; member states cannot opt out

XXIX. Is there an explicit right to third-party review of disputes concerning member state compliance?

- 0 There is no right to third-party review
- 1 Access to third-party review is controlled by a political body
- 2 There is an automatic right to third-party review

XXX. How is the tribunal composed?

- 0 There is no tribunal
- 1 The tribunal is composed of ad hoc arbitrators
- 2 The tribunal has a standing body of justices who rule collectively on all disputes during extended terms of service

XXXI. Is adjudication binding?

- 0 Adjudication is not binding
- 1 Adjudication is binding if there is ex ante agreement among disputing parties or if approved post hoc by a political body
- 2 Adjudication is directly binding

XXXII. Do non-state actors have legal standing?

- 0 Only member states can initiate dispute resolution
- 1 The international secretariat (or other IO body) can initiate dispute resolution
- 2 Non-state actors as well as state actors can initiate dispute resolution

XXXIII. Is there a remedy for non-compliance to the ruling?

- 0 There is no remedy for non-compliance
- 1 The remedy for non-compliance is retaliatory sanctions
- 2 Court rulings have direct effect

XXXIV. Is there a preliminary ruling system of national court referrals?

- 0 There is no preliminary ruling system
- 1 There is a preliminary ruling system, but no national court is required to ask for a ruling
- 2 There is a preliminary ruling system and some national courts are required to ask for a ruling

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OBLIGATORY COVERAGE

Dispute settlement provisions often receive special treatment in an IO contract. Sometimes they are laid down in a separate protocol or convention which states need to ratify on top of ratifying the political IO contract. Even when dispute settlement is integral to the foundational contract, it may not automatically apply to all members. Members may be able to file derogations or opt out. The upshot is that the dispute settlement system may cover only some members even while the rest of the IO contract applies to all. So prior to investigating the institutional features of a dispute settlement system, we need to ask who it applies to. Is it obligatory for all member states and an integral part of the IO commitment (score of 2), or is it optional and therefore potentially applicable to just a subset of members (score of 1)?⁵⁰

SICA and the African Union score 1 on this criterion. The Central American Court of Justice is operational for just four of seven SICA member states. The 1992 Statute of the Court charges a Judicial Council composed of the presidents of each member state's highest court to declare the Court operational, and the Council launched the court in 1994 after three member states had ratified. We begin coding in 1994. The African Court on Human and People's Rights (ACHR), which serves the African Union, was agreed in 1998. The fifteen signatures that were required for it to become operational were collected by 2003, and the Court was open for business in 2006, which is when we code. The United Nations and most IOs in the UN family score 2 because all member states are required to accept the jurisdiction of the International Court of Justice.

The criteria for scoring a dispute settlement system are that it must be functional and must be legal rather than political. We code up to two systems, including the system with the most encompassing membership and the system that has the highest score in our coding scheme. If there are ties on these criteria, we code the more commonly used system.

A functional dispute settlement system has an address, a budget, and appointed judges or, in the case of arbitration, a budget and procedure for selecting arbitrators. A declaration of intent in a constitutional document is not sufficient. While we pay attention to the incidence of rulings, we do not exclude the possibility that the sheer existence of a court may serve as a shadow of hierarchy which deters parties from violating rules. In such cases, we need to be sure that the court is properly constituted with judges and a staff.

The International Islamic Court of Justice of the Organization of Islamic Cooperation (OIC) is a clear case for exclusion. The OIC Summit adopted a

⁵⁰ So this criterion measures whether a dispute settlement is *in principle* or *de jure* obligatory for all member states or optional; it does not estimate its actual coverage of an IO's member states.

How We Apply the Coding Scheme

draft statute and a site was chosen (Kuwait), but governments never ratified the statute and none of the seven judges was appointed (Lombardini 2001; Tadjini 2011). The Judicial Board of the Organization of Arab Petroleum-Exporting Countries (OAPEC) is a border case. The Board was foreseen in the 1968 treaty, but its statute was not approved until 1978, and it commenced work in May 1981 (Blokker and Schermers 2011: 459). It has only heard two cases and several positions on the bench have been vacant for some time (Romano 2014: 118; see also OAPEC website), leading Karen Alter to note that “it is not clear whether this court is really operational” (Alter 2014: online appendix). However, the Board has a president and vice-president, and it continues to have a budget, adopted by the Council of Ministers on an annual basis (OAPEC annual report, several years), so we code it from 1981.

The International Telecommunication Union (ITU) has two dispute settlement systems. One system provides an elaborate menu of options ranging from negotiation and mediation to various types of arbitration. Third-party access is not automatic, rulings are binding if member states consent a priori, and non-state actors cannot litigate. It is the default system for constitutional disputes and it applies to all member states. A second, optional, system, adopted in the constitutional reform of 1992, provides for automatic third-party access and binding adjudication. By 2016, just fifty member states had ratified the protocol. The score for the first system is 2, and the second, 1.

We evaluate *legal* dispute settlement in which judges, arbitrators, or legal experts decide cases on the basis of legal standards and apply rules of procedure (Romano, Alter, and Shany 2014: 7–8). Dispute settlement by politicians or their delegates belongs in the political sphere. The Commonwealth of Nations has a powerful Ministerial Action Group intended to handle serious or persistent violations of Commonwealth values. The group is composed of the foreign ministers of nine countries, and it has the authority to suspend or expel a member. We assess its role as one of the Commonwealth’s policy streams.

ECOWAS has authoritative institutions for both types of dispute settlement. Its Mediation and Security Council, consisting of heads of state, foreign ministers, or senior ambassadors from its nine member states is authorized to prevent or mediate conflicts and to decide military interventions. The Council can avail itself of a Council of Elders, an unusual body of eminent persons elected on a rotating annual basis who provide their good offices in mediating conflicts. Since 2005, ECOWAS also has a full-fledged supranational court with strong competence in human rights and good governance. We code the Mediation and Security Council as a branch of political-executive authority, and the Court as a legal dispute settlement body.

We code dispute settlement mechanisms that address disputes involving member states, member states and an IO body, and member states and private

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parties, but we do not code disputes involving private parties only. The World Intellectual Property Organization (WIPO) highlights the difference. WIPO offers extensive arbitration and mediation services for private commercial parties, and these fall outside our coding scheme. The IO does not have in-house dispute settlement for interstate conflicts on intellectual property rights. However, disputes arising from agreements concluded under the Berne and Paris conventions often proscribe that parties take their dispute to the International Court of Justice (Kwakwa 2002), and this is what we code. Incidentally, since the creation of the World Trade Organization member states can also take disputes to the WTO; a 1996 agreement between WIPO and the WTO streamlines the process.

THIRD-PARTY REVIEW

Can a party—member state, private actor, or IO body—initiate litigation with a third party? The key difference between a score of 2 and a score of 1 is whether a party can initiate litigation unilaterally, that is, without the consent of the targeted party or of a political body. A score of 1 indicates that access is contingent on a political decision. We distinguish three situations: a political body can block access to a judicial body; a political body intervenes to postpone or raise the hurdle for a judicial process; or both sides' consent is required for the judicial process to proceed.

In the Gulf Cooperation Council (GCC), a political body controls access to judicial dispute settlement. A resolution from the Ministerial Council or the Supreme Council is required for a dispute to be referred to the Commission for the Settlement of Disputes (Charter, Art. 10). This is then an instance of politically controlled access to a third party. The same is true in UNESCO where the Legal Committee of the General Conference, or its Executive Board when the Legal Committee is not in session, may by simple majority refer a matter to either the ICJ or an arbitral tribunal (Constitution Art. XIV.2; Rules of Procedure 1962: Rule 38).

The World Health Organization is a gray case which just falls short of automatic review. According to its Constitution, disputes on the IO contract shall be referred to the ICJ once negotiation or mediation by the Health Assembly fails. In theory, an aggrieved party could force a dispute to go to the ICJ court. However, the hurdle is extremely high, and we judge it to be too high for a score of 2 in light of ICJ jurisprudence which has established that all means of negotiation—either directly between the parties or mediated by the World Health Assembly—should first be exhausted.⁵¹

⁵¹ In a 2006 judgment, the ICJ summarily rejected a request by the Democratic Republic of Congo to challenge Rwanda in the ICJ on the basis of the World Health Organization's Article 75

How We Apply the Coding Scheme

The Organization for Security and Cooperation in Europe (OSCE) shows how access may be made conditional on all parties' consent. The first step in the OSCE's multi-stage dispute settlement system is conciliation, which can be activated unilaterally. If conciliation fails, the parties may submit their dispute to binding arbitration but both sides need to agree, as the language in the Convention spells out: "A request for arbitration may be made at any time by agreement between two or more States parties to this Convention" (1992 Convention on Conciliation and Arbitration with the OSCE, Art. 26.1).

TRIBUNAL

The rules are generally unambiguous on whether a dispute settlement system has an ad hoc or standing tribunal. An IO without third-party access scores zero on the composition of a tribunal and on all subsequent dimensions of the measure. For IOs with third-party access, we distinguish two categories. IOs with a standing tribunal receive a score of 2 on the intuition that decisions by standing tribunals have greater weight, are more consistent, and potentially more authoritative (McCall Smith 2000). Dispute settlement that relies on panels or arbitrators selected on a case by case basis receives a score of 1.

BINDINGNESS

This dimension taps whether a tribunal's judgment creates a binding commitment in international legal terms or a commitment that is conditionally binding or does neither.

Our first cut is to examine the language in treaties, conventions, protocols, and rulings. Often there is explicit wording: e.g. "final and binding," "compulsory," or conversely, "advisory" or "recommendations." Where possible we seek confirmation in legal commentary or secondary literature. The Charter of the Gulf Cooperation Council states that its Commission for the Settlement of Disputes produces "recommendations" and "opinions." The International Maritime Organization may put a dispute about its contract to the International Court of Justice. In contrast to most IOs in which ICJ rulings are conditionally binding, Art. 56 of the IMO's Constitution says that an ICJ opinion is advisory. Hence in both the GCC and the IMO we score dispute settlement as non-binding. Since 1974, Benelux Court rulings are binding. The bulk of its Court rulings are preliminary rulings requested by domestic courts, and this may

because the DRC had not proven that those conditions had been met (ICJ, Judgment, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*). The ICJ has traditionally interpreted its jurisdiction conservatively where treaties or conventions contain such compromissory clauses.

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explain the somewhat unorthodox wording: “The decision that contains the requested explanation describes the facts upon which the Benelux explanation must be applied.”⁵² “Must be applied” suggests bindingness, and this is consistent with the opinion of legal experts (Alter 2014; Wouters and Vidal 2008). Incidentally, the Benelux Court may also provide advisory opinions to any IO body or member government, but as of 2016 the Court has issued only one advisory opinion against more than 200 binding rulings.

The intermediate category of conditional bindingness is produced under three circumstances: a) the default is that a ruling is non-binding but a member state can consent *ex ante* to bindingness; b) the default is that a ruling is binding but a member state may register a derogation or exception; and c) a ruling acquires legal force only after it has been endorsed by a political IO body.

Non-binding unless parties agree to be bound is the largest category. It is common when an IO uses the ICJ for adjudication. The Statute of the ICJ declares that “states may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes” (Art. 36). Hence we score all dispute settlement systems that employ the ICJ as conditionally binding, unless an IO explicitly deviates from this (as in the IMO example above). This applies to several UN family organizations, including the Food and Agricultural Organization, the World Health Organization, and the United Nations, but also to some non-UN organizations that use the ICJ, such as the European Organization for Nuclear Research (CERN). The OSCE illustrates how the template can be adopted without using the ICJ. Legal dispute settlement in the OSCE is non-binding except if the parties agree in advance to submit to ad hoc arbitration, and arbitration rulings will then be legally binding on the parties.

The Council of Europe’s Court of Human Rights (ECtHR) also falls in the partially binding category prior to 1998. Article 46 leaves it to the member states to recognize the Court’s jurisdiction as “compulsory *ipso facto*,” “on condition of reciprocity,” or “for a specified period.” Initially, only Sweden, Ireland, Denmark, Iceland, Germany, and Belgium accepted the ECtHR’s compulsory jurisdiction (Alter 2011). Since 1998, when Protocol 11 came into force, the Court’s jurisdiction is compulsory and unconditional. Article 46 now reads “binding force and execution of judgments: The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.” All member states commit to sign up to the Convention. Hence, from 1998, the Council of Europe’s score on bindingness increases from 1 to 2.

⁵² Author’s translation of “De beslissing waarbij uitleg wordt gevraagd omschrijft de feiten, waarop de door het Beneluxhof te geven uitleg moet worden toegepast” (1965 Protocol, Art. 6.5).

How We Apply the Coding Scheme

Binding with member state opt-out is less common. The International Tribunal for the Law of the Sea (ITLOS), which is attached to the International Seabed Authority (ISA), has binding jurisdiction with escape clauses. Member states can file exemptions, and many have done so. For example, “Australia further declares . . . that it does not accept any of the procedures provided for in section 2 of Part XV (including the procedures referred to in paragraphs (a) and (b) of this declaration) with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic bays or titles, which regulate the definition of territorial waters, seabed and continental shelves.” And Russia “does not accept the procedures, provided for in section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles”; nor does it accept binding ruling over “disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.” The upshot is that bindingness is severely constrained except where it concerns the seizing of vessels, where ITLOS has quasi-supranational authority (Alter 2014: 80).

Finally, a tribunal’s rulings may be conditionally binding because they can be overturned by a political decision. The recommendations of an arbitration panel on disputes among members of ASEAN become binding unless they are rejected by consensus in the Senior Economic Officials’ Meeting. Reverse consensus is a high hurdle, and while it is true that ASEAN’s recommendations are not unconditionally binding, they are arguably more authoritative than a purely advisory opinion. In our judgment this produces a score of 1. Note the contrast with the GCC’s Commission for the Settlement of Disputes, where political intervention overwhelms judicial decision making. There the Commission provides non-binding recommendations or opinions, which may, or may not, be taken up by the Supreme Council.

The binding character of a tribunal’s rulings should not be confused with whether a dispute settlement *system* is obligatory or not. ICJ rulings are conditionally binding: member states have a choice between treating ICJ rulings as advisory or compulsory. However, the ICJ dispute settlement *system* is obligatory: every member of the United Nations must accept the ICJ as the UN’s primary judicial dispute settlement system. Conversely, the rulings of SICA’s Court are unconditionally binding, but the Court *system* has optional coverage: only member states that have ratified the Protocol are bound by the Court system. Moreover, we need to distinguish the bindingness of a

Measurement

tribunal's rulings from the effect of these rulings in the domestic legal context, as we explain below.

NON-STATE ACCESS

The final three dimensions tap institutional characteristics that affect the transnational character of international law (Alter and Hooghe 2016; Hooghe et al. 2014). These features concern the extent to which international courts relate directly to domestic actors by a) allowing non-state actors to initiate proceedings, b) making implementation of international court rulings independent from government consent, and c) enabling domestic courts to refer cases to the international court.

Non-state access estimates whether actors other than state governments have access to the international tribunal. Non-state actors are international organizations, non-state IO bodies, parliaments, public interest groups, corporations, and private individuals. Access refers to the capacity to take a member state or IO body to court for violation of rights relating to state membership in that international organization. Our coding is trichotomous: zero if no non-state actor can initiate litigation; 1 if the general secretariat or other IO body can initiate litigation; and 2 if domestic or other international actors can initiate litigation. We introduce an intermediate category for IO secretariats because some leading scholars argue that IOs that enable an IO body to sue states are more effective in fighting non-compliance than IOs that restrict dispute mechanisms to member state complaints (Tallberg and McCall Smith 2014).

IO contracts are usually clear about which of these options applies, but ambiguity may arise where IOs impose conditions on non-state access. The archetype of supranational legalization, the European Court of Justice, requires that non-state parties must exhaust domestic channels before bringing their case to the ECJ. Access is otherwise unmediated, and so the ECJ scores 2. The same is true for the European Court of Human Rights, arguably the second-most authoritative transnational court.

There are gray cases in which we need to evaluate whether opportunities for access outweigh conditionality. In Mercosur we judge the constraints too severe. Private actor access is in principle possible, but veto-wielding national committees can block, and so we score zero. In the Andean Community, private actors cannot challenge member state violations of Andean law either directly or indirectly through the Junta, but individuals and companies can demand that acts be nullified (Alter, Helfer, and Saldias 2012). Non-state access is otherwise unmediated by national courts, member states, or by the Junta, and we score 2.

How We Apply the Coding Scheme

REMEDY

Is there a means to enforce implementation of a ruling in case of contract violation? We distinguish three categories: no remedy; the right to impose retaliatory measures; and direct effect. Direct effect entails that international law can be enforced by individuals in domestic courts. It presumes that the international contract creates individual rights which national courts are obliged to protect.⁵³

Legal scholarship is awash with strict and liberal definitions of direct effect (Nollkaemper 2014; Engle 2009). Here we center on the notion that an IO has provisions that ensure that the individual rights created by IO treaty or IO decision can be invoked in domestic courts. This may mean—but does not require—that international law is directly applicable in domestic legal orders. Directly applicable international law becomes automatically part of national law without needing transposition, or in US parlance, it is self-executing. In the European Union, regulations have direct effect *and* are directly applicable, while the treaty and directives have direct effect but are not directly applicable.⁵⁴ In other IOs, direct effect is less straightforward. Some IOs have adopted rules that echo EU jurisprudence. The terms “direct effect” or “direct applicability” are almost never used, so we must look for functional equivalence in treaties, law, or jurisprudence that indicates that IO rules create automatic obligations for domestic institutions.

We need to be clear about what is evaluated: we investigate whether there are IO rules that specify direct effect or applicability—not whether there are *domestic* rules giving rise to direct effect. Our coding does not encompass the difference between monism or dualism, which is a matter of domestic rules. Monist legal systems accept that the domestic and international legal systems form a unity. How exactly domestic and international law relate varies from case to case, but in pure monist systems international law is supreme and so, in principle, it can generate direct effect. Dualist legal systems emphasize that international law needs to be transposed into domestic law before it is

⁵³ On the distinction between direct effect and self-help enforcement mechanisms, including retaliation, see Phelan (2016).

⁵⁴ The distinction between direct applicability and direct effect is specific to EU law. A provision of the Treaty of Rome says that regulations are “directly applicable” in all member states. Early on, however, the ECJ was faced with the question whether other sources of EU law (e.g. treaties, or decisions) could also have an effect similar to that of regulations in the domestic legal order. The issue is important because under classical international law, the domestic effect of an international treaty is a matter for the states to decide. Some states (e.g. the Netherlands) are monist, because their constitution gives automatically direct effect (or “self-executing force” in US parlance) to international treaties. In Case 26/62 *Van Gend en Loos*, the ECJ declared that the EU treaties have direct effect because they establish rights and obligations not only to states, but also to their residents. The decision paved the way for the constitutionalization of the EU legal order by ensuring that EU law is embedded in the national legal system of each member state (Weiler 1991). We thank Federico Fabbrini for clarifying the principle of direct effect in personal communication.

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accessible to citizens or judges in the domestic realm. Most domestic systems are dual, and many monist systems (e.g. the United States) tie serious conditions to the automaticity of international rights in the domestic system.

Direct effect is detectable in a handful of general purpose regional IOs such as the European Union, the Andean Community, CEMAC, ECOWAS, SICA, the East African Community, and LOAS. The European Court of Justice was the first international court to assert direct effect in the 1962 *Van Gend en Loos* case when the ECJ declared that “the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights.” Following scholarship we date direct effect to this landmark ruling (Alter 2005; Burley and Mattli 1993; Weiler 1991). Until today the EU treaty does not explicitly refer to the direct effect doctrine, yet direct effect is acknowledged to be most expansive in the European Union (Nollkaemper 2014).

The Treaty of Cartagena which created the Andean Community also lacks explicit language. Some observers note that the drafters, who modeled the Treaty on the Rome Treaty, implied Andean law to have direct effect (Alter and Helfer 2010: 571, note 35; Alter, Helfer, and Saldias 2012). In its second preliminary ruling, the Andean Tribunal of Justice reminded parties of this by referring to a 1980 declaration in which member states had agreed that “the legal system of the Cartagena Agreement prevails within the framework of its competences over national norms.” The Tribunal used this to buttress its claims of supremacy of Andean law and implied direct effect. Hence we code direct effect from the start of the Andean Community in 1983.

Other IOs use more explicit language. For example, the East African Community’s Treaty describes that its Court rulings are “final, binding, and conclusive and not open to appeal” (Art. 35) and that “[T]he order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar, whereupon the party in whose favor execution is to take place may proceed to execute the judgment” (1999 Treaty, Art. 44). The intermediate step between judgment and execution is too small to be meaningful, and scholars have interpreted this as creating direct effect (Alter 2012). The CEMAC Convention declares its Court rulings to be directly applicable, using the term “force exécutoire” (Convention of the Court of Justice of CEMAC, Art. 5; see also Godwin Bongyu 2009).

The CARICOM Court of Justice (CCJ) is an ambiguous case, and we follow legal scholarship to assess that it has no direct effect. The 2001 Agreement Establishing the Caribbean Court of Justice contains clear wording on the obligation of domestic actors to ensure compliance with CCJ rulings: “all authorities of a Contracting Party act in aid of the Court and . . . any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall

How We Apply the Coding Scheme

be enforced by all courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party” (Art. 26). This confirms that CCJ rulings are binding, but does not indicate whether, or how, these rules are embedded in domestic legal orders (McDonald 2003: 970–1). One argument for denying the CCJ direct effect is that the Court’s exclusive jurisdiction over treaty interpretation explicitly prevents individuals from invoking treaty obligations in domestic courts (O’Brien 2011). It seems as if the member states have built a wall between international and national dispute settlement. As one observer summarizes, “there is no analogous concept of direct effect in Caribbean Community Law. The enforcement of CCJ rulings requires that national legislatures transplant the ruling into national law. Thus, the Member States have control over their own compliance” (Alvarez Perez 2008: 7).

The Organization for International Carriage by Rail (OTIF)’s arbitration system does not meet the bar. The convention states that an arbitration award “is enforceable in each of the Member States on completion of the formalities required in the State where enforcement is to take place” (1999 Convention, Art. 32). This leaves the door wide open for member states to control compliance, and there is also no indication that non-state parties can invoke treaty obligations in domestic courts.

An intermediate score is allocated to IOs in which states are authorized to take retaliatory sanctions or can claim compensation. This is the case in ten IOs in 2010, namely ASEAN, Benelux, COMESA, the European Free Trade Association (EFTA), NAFTA, Mercosur, the Organization of Eastern Caribbean States (OECS), the Organization for American States, the Pacific Islands Forum (PIF), and the WTO. In most cases, the ruling authorizes the aggrieved party to impose sanctions or claim concessions. In the PIF, the affected party can suspend concessions after it has failed to persuade the other party to comply. In the OECS, the Supreme Court may award monetary dispensation or authorize the complainant “to exercise any right of redress available under international law.” In some IOs, a collective body authorizes sanctions. ASEAN’s dispute settlement combines individual and collective sanctions. When the arbitration tribunal’s recommendations are not implemented within a set time, the aggrieved party may suspend concessions towards the other party, but a political body, the Senior Economic Officials’ Meeting, may block this by consensus minus one.

PRELIMINARY RULING

A preliminary ruling establishes an explicit link between domestic and international governance by permitting or requiring domestic courts to refer cases involving the application of international law to the international tribunal.

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The final decision remains with the referring court. Once again, the European Court of Justice was the first international court to acquire this authority, and it has become a powerful instrument for embedding European law into domestic law. The preliminary ruling was created to give national courts the opportunity to gain clarification, but national courts, and soon the ECJ itself, began to use it to assess whether national law was compatible with European law and, indirectly, to establish supremacy of EU law. Legal scholars and practitioners have identified the mechanism as influential in “constitutionalizing” the European Union (Alter 2005; Burley and Mattli 1993; Weiler 1991).

The preliminary ruling is used in several regional organizations. Most deviate somewhat from the ECJ template, usually with the intent to hem in creeping legalization. The most basic design choice concerns whether referral by national courts should be optional or required. In a compulsory system the international court becomes the court of last resort for issues where international and domestic law intersect, and this places the court in a position to shape how international law is domestically embedded. If one conceives preliminary ruling systems along a dimension from low to high potential legalization, the ECJ stands at its apex: a) referral is compulsory for the member states’ highest courts; b) preliminary rulings are binding on courts that ask for them; and c) rulings can pertain to a broad range of questions. No other court can match the ECJ on all three. A court meeting the first condition scores 2. An optional system, whereby national courts are permitted but do not have to ask for a preliminary ruling, receives a score of 1. IOs without a preliminary ruling system score zero.

CEMAC’s Court of Justice, which began work in 2000, resembles the ECJ most closely (Alter 2011). The highest national courts must refer a question to the CEMAC Court, and its rulings are binding on national courts. Moreover, the Court’s remit is at least as expansive as that of the ECJ. It can give preliminary rulings on “the interpretation of the Treaty of CEMAC and subsequent texts, on the legality and interpretation of the constitution and the acts of the CEMAC members, when a national court or judicial body is called to find out in the course of litigation” (Convention of the Court of Justice, Art. 17). The Benelux also scores 2 though its system is less expansive. As in the EU, lower level national courts can refer questions for a preliminary ruling, the highest national courts are obliged to do so, and preliminary rulings are binding. However, unlike the EU, there are several escape clauses. Highest courts can elide referral if there is “no reasonable doubt” about the ruling on a given question, if the issue “constitutes a case of particular urgency,” or if the court refers to “a solution previously given by the Court.” In practice, national courts have used preliminary ruling regularly. More than half of the Court’s caseload consists of preliminary rulings (Wouters and Vidal 2008).

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The Andean Tribunal falls in the intermediate category and scores 1 because “pre-judicial interpretation”—the Andean parlance for preliminary ruling—is optional for national courts. Interestingly, if a court requests a preliminary ruling, it is binding. The Andean Court’s room for interpretation is limited to specifying the contents and scope of Andean law (Alter 2011). The East African Community’s Court is a clear case of optional preliminary ruling with broad substantive scope: “Where in any action before a court of a member state, an issue arises as to the interpretation of a provision of the Treaty, or the other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the Court for interpretation” (2005 ECCJ Protocol, Art. 10f).

Sometimes treaty language can be deceptive. CARICOM’s Constitution seems to suggest preliminary rulings are compulsory. Article XIV states that a national court “shall” refer cases that raise questions about interpretation or application of the CARICOM treaty. However, this is undercut by the condition “if it considers that a decision on the question is necessary to enable it to deliver judgment.” Referral is optional—not compulsory—and this interpretation is consistent with legal scholarship (Alter 2012; O’Brien and Foadi 2008). Caserta and Madsen (2016: 116) observe that in the first ten years of the Court’s operation not a single case has been referred to the Court.

Conclusion

This chapter reveals that when one opens the black box of a cell in a dataset, one can find a lot inside. The decisions outlined in this chapter are but a sample of those that are required to estimate how IOs are governed. Yet they illustrate the challenges that confront the social scientist in using an indicator to make an observation. The Measure of International Authority is informationally demanding, and insufficient information is an endemic source of uncertainty. More fundamentally, there is the challenge of validly applying abstract concepts across a range of human behavior. The indicators used in the MIA employ standard social science concepts—for example, assembly, executive, majority, member state, proposes, appoints—to assess which bodies play a formal role at what stage in an IO’s decision making. Yet applying these concepts in a meaningful way across diverse IOs illustrates the role of disciplined problem solving in dealing with ambiguities and gray cases.

Our focus is on the written record of rules underpinning the governance of an international organization—its institutional structure of assemblies, executives, secretariats, consultative bodies, and dispute settlement mechanisms; the composition of these bodies; the rules by which each makes decisions; and

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the roles they play in IO decision making. Our approach is to break down the complexity of IO governance by actor, by decision stage, and by decision area in order to provide precise and reliable estimates of “who makes what decisions how.” Disaggregation allows us to engage the evidence concretely rather than abstractly. It makes our decisions transparent, which is another way of saying that it allows us to be wrong in a way that the reader may observe.

This involves laying out ground rules that guide coding and pointing to gray cases that illustrate or challenge our coding scheme. In so doing, we hope to facilitate the accumulation of knowledge. We are aware, of course, that even the most valid estimate of an IO’s institutional rules is not sufficient to explain what that IO does, but we do believe that it is a necessary part of an explanation. What is written cannot explain what people do, but it would be unwise to claim that one can explain what people do without paying close attention to the rules that they have agreed to guide their behavior. The institutional structure and decision making of international organizations varies in ways that may tell one a lot about the possibilities and constraints of governance in the international domain.