

## Chapter 1

### Governance structures and processes in integration organizations

#### *Formalization of institutional credible commitments for governance*

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#### **1.1 Introduction: credible commitments and formalization**

This chapter proposes the following thesis: States entering regional (and other) organizations accept *formal commitments* to achieve their goals with the expectation that other participant States will reciprocate.<sup>1</sup> The legal and institutional

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<sup>1</sup> In the opposite sense, Kahler and Lake argue that personal, cultural or institutional ties between actors facilitate through reciprocity the making of credible commitments over time and space. Reciprocity acts as the enforcement mechanism. M. Kahler and D. A. Lake, “Explaining Regulatory Change in the Global Economy,” in W. Mattli and N. Woods (eds.), *Explaining Regulatory Change in the Global Economy* (Princeton University Press, 2009). They follow A. Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge University Press, 2006) (available at <http://books.google.com/books?id=2cwCxLAogNQC&pgis=1>) and J. E. Rauch and A. Casella, *Networks and Markets* (New York: Russell Sage Foundation, 2001) (available at <https://www.russellsage.org/publications/networks-and-markets>).

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features of the organization create credibility by locking participants into a system which regulates their behavior and restricts their ability to release themselves from the commitments accepted. By locking themselves into specific policy choices, States reduce the margin of action for future governments, and thus the risk that they will change them. My thesis is that the intensity and extent of the formal commitments depend directly on the kind of objectives/regional public goods that the organizations pursue. The larger the number of objectives, and the more ambitious in relation to the current *status quo*, the more robust the institutional commitments need to be if the organization is to succeed in attaining them. There is a trade-off between yielding sovereignty (that is, accepting credible commitments) and entering into complex integration schemes. Less ambitious objectives may be attained with a lower level of institutional commitment.

This study will focus on the formal mechanisms that secure “credible commitments.” Credible commitments result from institutional design which comprises a number of instruments: the regulation of membership; the institutional structure of integration organizations; the decision-making procedure; the nature of derived norms and the mechanisms for their incorporation into national orders; and the mechanisms of jurisdictional control, supervision and scrutiny. Each of these serves to “lock” participants into integration schemes, and restricts their freedom to withdraw from accepted commitments.

By focusing on institutional design, this study adopts a clear position on regional integration: it considers that integration is a formal process. Current scholarship has

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consolidated a conceptual difference between “regionalization” and “regionalism.”<sup>2</sup> These two concepts correspond to what in the 1990s W. Wallace insightfully named “informal” and “formal” integration respectively. Regionalization, or informal integration, refers to a spontaneous process of interaction between public or private actors, creating networks and directing flows towards each other in economic, security and cultural domains, among others.<sup>3</sup> On these lines, Álvarez proposes studying the alternative to traditional international organizations which comprises transgovernmental networks of regulators, non-binding inter-State institutions; public/private consortia and standard setting by private actors.<sup>4</sup> Similarly, Mansfield and Solingen refer to societal, bottom-up and often economically driven processes in constant flux, and Breslin and Higgott speak of processes of integration which, albeit seldom unaffected by State policies, derive their driving force from markets, from private trade and investment flows, and

<sup>2</sup> T. Behr and J. Jokela, *Regionalism and Global Governance: The Emerging Agenda*, Notre Europe Studies and Research No. 85 (2011) (available at [www.notre-europe.eu/en/axes/europe-and-world-governance/works/publication/regionalism-global-governance](http://www.notre-europe.eu/en/axes/europe-and-world-governance/works/publication/regionalism-global-governance)); S. Breslin and R. Higgott, “Studying Regions, Learning from the Old, Constructing the New,” 5:3 *New Political Economy* 344 (2000); L. Fawcett and H. Gandois, “Regionalism in Africa and the Middle East: Implications for EU Studies,” 32:6 *Journal of European Integration* 617–636 (2010).

<sup>3</sup> W. Wallace, *The Dynamics of European Integration* (London: Pinter Publishers for the Royal Institute of International Affairs, 1992).

<sup>4</sup> J. E. Álvarez, “Institutionalised Legalization and the Asia-Pacific ‘Region,’” 5:1 *New Zealand Journal of Public and International Law* 9–28 (2007), p. 19.

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from the policies and decisions of companies, rather than from predetermined government plans.<sup>5</sup>

In contrast, regionalism or formal integration is normally associated with a political project,<sup>6</sup> a top-down process which is highly institutionalized and State-led and which is channeled through formal instruments (that is, treaties).<sup>7</sup> The relationship between both forms, regionalization/informal integration and regionalism/formal integration, is a complex one. Sandholtz and Stone Sweet argue the existence of “the rule centre logic of institutionalisation,” which leads transactors to demand clearer and more predictable rules as interdependence increases.<sup>8</sup> Logically also, the aim of formal integration is precisely to trigger informal integration or regionalization. Hence, the relationship between both can be construed as a circular one in which informal integration may trigger formal integration, and this in turn aims to provoke further informal integration or regionalization.

This study assesses the empirical models of formalization based upon a large sample of existing organizations across all continents. It does not explore the causality link

<sup>5</sup> E. D. Mansfield and E. Solingen, “Regionalism,” 13:1 *Annual Review of Political Science*, 145–163 (2010) and S. Breslin and R. Higgott, “Studying Regions, Learning from the Old, Constructing the New,” 5:3 *New Political Economy* 344 (2000).

<sup>6</sup> L. Fawcett and H. Gandois, “Regionalism in Africa and the Middle East: Implications for EU Studies,” 32:6 *Journal of European Integration* 617–636 (2010), p. 619

<sup>7</sup> S. Breslin and R. Higgott, “Studying Regions, Learning from the Old, Constructing the New,” 5:3 *New Political Economy* 344 (2000).

<sup>8</sup> W. Sandholtz and A. Stone Sweet, *European Integration and Supranational Governance* (New York: Oxford University Press, 1998).

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between informal/formal integration, nor is this study interested in “measuring” informal integration or the achievements under informal integration. It rather explores the relationship between the type of objectives and public goods that an organization seeks to provide and the kind of institutional commitments designed for achieving them.

Despite criticism of this “soulless” process that lacks support from public opinion and/or citizens,<sup>9</sup> the focus of this study is formalization. Formalization means providing a treaty form for framing interactions and flows with the objective of fostering them and/or organizing already existing ones. Formalization provides a legal form for political

<sup>9</sup> In relation to Africa, Matthews argues that public sector organizations have driven regionalism from above and that it has lacked the support and involvement of the private sector and the general public (A. Matthews, *Regional Integration and Food Security in Developing Countries* (Rome: Food and Agriculture Organization of the United Nations, 2003)). In the case of MERCOSUR, Pena and Rozemberg point out that, unlike other integration experiences, the private sector and legislative representatives have not managed to become relevant forums of consultation for MERCOSUR institutions, nor have they substantively contributed to promoting the integration initiative within their respective societies (C. Pena and R. Rozemberg, *MERCOSUR: A Different Approach to Institutional Development* (The Canadian Foundation for the Americas (FOCAL), 2005) (available at [www.focal.ca](http://www.focal.ca))). Lamy writes that regional integration processes have suffered from a lack of political and democratic involvement of public opinion. Integration processes habitually remain a top-down and in some respects technocratic exercise, with fairly little in the way of legitimacy (P. Lamy, “Regional Integrations in Africa: Ambitions and Vicissitudes/Intégrations Régionales en Afrique: Ambitions et Vicissitudes,” *Notre Europe Policy Paper No. 43* (2005), p. 33 (available at [www.eng.notre-europe.eu/media/policypaper\\_43\\_lamy\\_o2.pdf?pdf=ok](http://www.eng.notre-europe.eu/media/policypaper_43_lamy_o2.pdf?pdf=ok))).

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commitments and, through this form, increases their credibility. This is true whether these produce a transfer of powers or, conversely, represent a commitment to prevent power transfer. The tendency towards formalization is growing, with a significant number of treaties signed every year among different groups of actors. Behind this mushrooming lies the belief that treaties are a good instrument for promoting stated goals in regional (and indeed other kinds of) cooperation schemes.

Formalization reflects the strongest point along the scale composed of the three components of the legalization paradigm<sup>10</sup> (that is, obligation).<sup>11</sup> Obligation means that States (or other actors) are legally bound by rules or other forms of commitment. In formal integration schemes, treaties fulfill the function of creating a legal obligation which is subject to scrutiny under the general rules, procedures and discourses of international law.<sup>12</sup> Whilst informal integration (that is, regionalization) goes beyond the scope of this study, it may be

<sup>10</sup> K. W. Abbott *et al.*, “The Concept of Legalization,” 54:3 *International Organization* 401–419 (2000).

<sup>11</sup> Another component of the legalization paradigm, delegation (i.e. existence of third parties with authority to implement, interpret and apply the rules, to resolve disputes and – possibly – to make further rules) is examined under a slightly different construction in section 1.2 below. The third component, precision (i.e. unambiguous definition of the conduct that rules require, authorize or prescribe) is not directly examined in this study. For a strong criticism of the legalization paradigm, see J. E. Álvarez, “Institutionalised Legalization and the Asia-Pacific ‘Region’,” 5:1 *New Zealand Journal of Public and International Law* 9–28 (2007).

<sup>12</sup> K. W. Abbott *et al.*, “The Concept of Legalization,” 54:3 *International Organization* 401–419 (2000).

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hypothesized that it is also subject to legalization, but of a very different kind: whenever flows of goods, people, money, services and so on exist, they rely on the existing domestic law (and politics) of the origin, transit and destination. Whilst operating on a legal enabling structure of domestic law, a formalized overarching structure may not have emerged for these flows.

Formalization means a formal (i.e. treaty) legal framework created either for existing informal interactions or else to promote them. Formalization does not necessarily imply rigidity or inflexibility though, nor indeed uniformity or homogeneity. In practice, formalization covers a wide array of practices spanning integration schemes and international organizations. Importantly, formalization does not imply “freezing” organizations at the foundational moment. Rather, formalization serves to adapt organizations to changing circumstances and objectives. Nor does formalization require uniformity and/or single institutional structure; it does not remit to a Cartesian structure of single organizations per geographical area and sector of activity. Rather, formalization has served to create a thick web of overlapping institutions and organisms. Formalization does not result in an inflexible design either; instead it accommodates flexible membership (accommodating acceding States, but also allowing for withdrawal) and differentiated geometry through a variety of mechanisms. In short, formalization does not lead to a world of uniformity, but rather to one of plurality. This variety, evolution overlapping, flexibility and differentiation is examined in the following sections.

Sections 1.3 to 1.7 examine the structure of formalized institutional commitments by looking at the organs for decision-making, the procedures for taking decisions and the

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model of derived norms. Section 1.8 then provides a classification of the different integration schemes by examining the relationship between an integration organization's objectives and the formal instruments available to it for generating credible commitments. As the thesis of this chapter is that the objectives of regional integration organizations inspire a given institutional structure, Section 1.3 examines the kind of objectives existing within integration organizations.

### 1.2 Methodological considerations

The analysis of the formal characteristics of integration organizations derives from a data set specifically built for this project. The data set comprises institutional features of eighty-five integration and/or international organizations. Comparative integration being the object of this project, the sample includes all organizations that define integration either as one among several or their main objective. The sample also includes organizations which do not have integration as one of their objectives and have alternative ones. This makes the sample richer and, moreover, increases variation, which, in turn, permits identifying models. This book does not focus on agreements or treaties, but rather on organizations, since its objective is to assess the institutional modalities existing within formal organizations. An agreement may or may not generate organs (i.e. formal institutions). Naturally, integration may also result from the combination of a set of overlapping treaties without a strong structure of formal institutions behind them. Capturing this reality will require a different research design, but the research question emerging would be slightly different (that is, how integration happens).



## METHODOLOGICAL CONSIDERATIONS

The sample selected permits dealing with the main research question (that is, what is the relation between the objectives of a given organization and the institutional design chosen?). The introduction of variation in terms of objective allows observing divergence in terms of institutional design. And this relates to the main purpose, which is to substantiate analytical models of “integration organizations.” The organizations in the sample are listed in the abbreviations at the start of this book. These organizations may have either regional or global reach; they may aim at extensive or punctual objectives, and these can be highly specific or grossly undefined. Two specific cases are given special treatment. On the one hand, we do not discuss ASEAN extensively since the *specifics of its governance, legal order and community building* are the topic of most of the studies in the series. Furthermore, a specific volume will discuss in detail the ASEAN model in relation to the comparative template that this book proposes. This treatment does not imply conceding credit to the arguments on the *sui generis* nature of ASEAN: all organizations possess formal institutions and ASEAN is no exception. The EU is the other special case. A significant number of comparative studies take the EU as the explicit or implicit model followed in other cases (for instance, the so-called diffusion paradigm<sup>13</sup>). Unavoidably, some normative conclusions are drawn out of the comparison, making the EU the standard of integration to achieve. This has prompted strong

<sup>13</sup> T. A. Börzel and T. Risse, “From Europeanisation to Diffusion: Introduction,” 35:1 *West European Politics* 1–19 (2012).

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reactions against “eurocentrism.”<sup>14</sup> In order to control this methodological bias, the EU is taken as a case among others in every section and, for the purposes of illustrating the argument, other cases will usually be presented as examples. This methodological caution is particularly relevant for matters of design of organizations’ bodies, and the introduction to Section 1.5 will reassert the case. Epistemologically, this research questions the plea for recognizing the uniqueness of different integration organizations. This advocates underlining idiosyncratic explanations which exist in any other case (from SADC to MERCOSUR). Idiosyncrasy precludes comparison, which is the very reason for a project on comparative regional integration. Hence, we believe that the plea to take into account idiosyncratic features does not make much sense in epistemological terms. Rather, research on comparative regionalism/regional integration needs to be mainstreamed.<sup>15</sup>

### 1.3 Objectives: creating commitments to achieving public goods

The commitment to certain objectives, principles and values acts as meta-orienter of the organization. These serve to

<sup>14</sup> F. Söderbaum and A. Sbragia, “EU Studies and the ‘New Regionalism’: What Can Be Gained from Dialogue?,” 32:6 *Journal of European Integration* 563–582 (2010); P. Murray, “Comparative Regional Integration in the EU and East Asia: Moving Beyond Integration Snobbery,” 47 *International Politics* 308–323 (2010); A. Acharya, “Comparative Regionalism: A Field Whose Time Has Come?,” 47:1 *International Spectator: Italian Journal of International Affairs* 3–15 (2012).

<sup>15</sup> C. Closa, *Mainstreaming Regionalism*, EUI RSCAS Working Paper 2015/12, Global Governance Programme-158.