

Living in an Imperfect World?: Incomplete Contracting & the Rational Design of International Organizations¹

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The founding fathers of international organizations (IOs) are responsible for the basic set-up of the respecting institutions, including aims and policy scope, membership rules, institutional actors, and their respective roles in the policy-cycle. Such primary rules can be changed through new treaties, treaty revisions, protocols, or annexes. The paper shows that the extent to which institutional designs of IOs are changed varies and addresses the following question: Why is there institutional instability and why are some IOs more unstable than others? Hypotheses on institutional (in)stability based on incomplete contracting and rational institutional design approaches are analyzed empirically. This illustrates that incomplete contracting based on principal-agent hypotheses are less apt to account for institutional instability than rational design hypotheses. Thus, change-incentives, as well as change-capacities, are crucial for the dynamic evolution of IOs and have to be matched in order to provide institutions that can be effective in the longer run.

Introduction

Around the world, international relations between states are governed by numerous treaties forming a broad variety of international organizations (IOs), including international governmental organizations, regimes, and regional organizations. Over the years, these IOs came to cover a broad variety of policy areas and have contributed to the formation of a growing body of international and regional soft and hard law.

The legal basis constituting and shaping the institutional design of IOs has been studied extensively by lawyers, political scientists, and economists alike.² Work following rational choice, functional, or contractual approaches has pointed out that the legal basis or contract on which IOs rest is by its nature necessarily incomplete (Williamson 1979, 1985; Hart and Moore 1999; Maskin and Tirole 1999; Aghion and Bolton 2003). While states agree on a framework for cooperation, including rules on membership, as well as aims and procedures to achieve these aims, such treaties or contracts cannot cover all eventualities. Regardless of how detailed a legal basis for institutionalized inter-state cooperation is, states cannot predict the future with absolute certainty and cannot create rules and norms for all possible contingencies that might arise. Hence, even if states invest considerable transaction costs into negotiating a very complex founding treaty for an IO, it would be incomplete (Williamson 1979).

Although the adjective “incomplete” does not have positive connotations in the colloquial usage of the term, incomplete contracts have considerable advantages for the states concerned. They allow for flexibility in adaptation and implementation of rules and norms

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2. E.g., North 1986; Keohane 1989; March and Olsen 1989; North 1990; Goodin 1995; Keohane and Martin 1995; Krasner 1995; Scott 1995; Kerremans 1996; Rothstein 1996; Gresov and Drazin 1997; March and Olsen 1998; Pierson 2000; Koremons, et al., 2001; Martin and Simons 2001; Snidal 2002; Abbott, et al., 2000; Goldstein, et al., 2000.

and are, therefore, a good strategy for coping with the shadow of the future and high uncertainty (Kassim and Menon 2003; Hart and Moore 1999; Maskin and Tirole 1999; Aghion and Bolton 2003). Rather than dissolving a treaty in the wake of unexpected environmental changes or considerable shifts of actors' interests, states might be able to adapt their cooperation to newly arising challenges within the framework laid out by an incomplete contract, so long as the rules and norms are formulated abstractly and leave room for interpretation. For example, after 9/11, the mandate of the North Atlantic Treaty Organization (NATO) was interpreted to include terrorist attacks as instances when the members support each other militarily based on Article 5 of the NATO Charter.³ Moreover, incomplete rules on decision-making might allow for sub-groups of IO members to adopt a differentiated approach and cooperate in regard to some specific, possibly highly contested or sensitive policies, while other member states do not have to join in if they disagree. For example, not all European Union (EU) member states have to participate in the Social Policy Protocol and the common currency as the final stage of Economic and Monetary Union (Hooghe and Marks 2014).

If the assumption holds that incomplete contracts increase the flexibility of institutional arrangements (Hart and Moore 1999; Maskin and Tirole 1999; Aghion and Bolton 2003), we would expect high institutional stability for the respective IOs. In fact, the dissolution of an international institution is a rare event, exceptions include the Civil Aeronautics Board Regime (Wison 2000, Williams 1991) or the International Association for Public Bath and Cleanliness (Williams 1991). Yet, this indicator is too crude to tell us something about the operation of IOs founded on incomplete contracts. In fact, not all international arenas for state to state cooperation are equally stable if one applies a more fine-grained indicator for institutional stability. In absolute terms, the number of treaty changes concerning an IO's basic setup (institutions, procedures, competencies, areas of cooperation, etc.) through revisions, amendments, or protocols, varies between zero (United Nations Security Council [UNSC]) and 119 (Association of South East Asian Nations [ASEAN]). Measured by the number of legal changes to an IO's primary law framework relative to the duration for which the respective international institution exists, there is considerable variation in institutional (in)stability. While the World Trade Organization (WTO) and the Pacific Island Forum (PIF) have institutional designs that have been changed on average 0.47 and 0.61 times per year of existence, others, such as the Caribbean Community (CARICOM) or the International Whaling Commission (IWC), are considerably more stable (on average 0.05 and 0.02 changes per year), while others such as Mercosur or Economic Community of West African States (ECOWAS) are significantly less stable, with 2.33 and 1.62 institutional design changes on average per year.

There is an interesting empirical puzzle with regard to the stability of primary rules that lay out the fundamental design of IOs, namely that the stability of the fundamental design varies considerably. This paper subsequently sets out to explore how one could account for the empirical variation in using the most prominent theoretical approaches out there. Does instability indicate that incomplete contracting failed and the initial institutional design of an IO was deficient? In order to shed light on these blind spots, this paper takes an explorative approach and proceeds in four steps. Drawing on a representative sample of IOs, I will illustrate that international institutions vary in their stability, as some IOs experience changes or amendments of basic legal rules considerably more often than others. Then I review incomplete contracting and institutional design approaches and formulates expectations on underlying triggers for institutional instability. The final section presents an empirical plausibility probe of the theoretical hypotheses. This reveals that size is important for

3. Another example for flexibility gains through incomplete contracting concerns the European Union. Due to ambivalent and abstract language of the Rome Treaties, the European Communities were able to pursue environmental policies even before this finally became a competence in the Treaties with the Single European Act of 1986 (Johnson and Corcelle 1995; Andersen and Liefferink 1997).

institutional stability of IOs, as higher numbers of member states render basic changes of fundamental primary rules more difficult. Apart from reform capacities of IOs, incentives for primary rule modifications are essential as well. The broader the policy scope an IO covers, the more opportunities and demands for adjustments arise, and the greater the institutional instability. By contrast, the extent to which IOs rest on informal contracts, as well as the extent to which uncertainty arising from contractual omissions or ambiguity is dealt with by delegation of interpretation or arbitration competencies to supranational agents, is not decisive for the stability of an IO's design. The paper concludes with the observation that instability of international institutions does not indicate that incomplete contracting has not worked out, but it is rather a result of rational design choices, most notably in regard to the size and scope of an IO.

Variation in Institutional Stability of International Organizations

While some IOs are “zombies” (Gray 2013)—continuing to exist on paper without being active anymore—their dissolution is a rare event (Keohane 1982).⁴ Nevertheless, the fact that institutional stickiness is prevalent on the international level does not imply that IOs are never subject to reforms of institutional design. In fact, adopting a fine-grained approach reveals that not all international institutions are equally stable. Some undergo changes to their institutional design more often than others with regard to aims and competencies, policy scope, and decision-making procedures, as well as mechanisms of compliance monitoring and enforcement. IOs usually rest on treaties as primary law and are most often modified by treaty amendments or by revisions and less often by new treaties. Treaty amendments usually expand the scope of competencies or deepen the cooperation between the IO member states, whereas revisions could also curtail the depth and scope of cooperation. Both are often accomplished via protocols or annexes to a treaty. Examples of treaty amendments are the 1967 Protocols of Amendment (Buenos Aires), the 1985 Protocols of Amendment (Cartagena de Indias), the 1992 Protocols of Amendment (Washington), and the 1993 Protocols of Amendment (Managua), all of which alter the 1948 Charter of the Organization of American States (OAS).⁵ An example for a treaty revision is the Economic Community of West African States (ECOWAS) Cotonou Treaty (signed on 24 July 1993),⁶ which comprehensively changes the ECOWAS Lagos Treaty (signed on 28 May 1975). New treaties need to be more encompassing and not only focus on specific policies or issues but also simultaneously address a more comprehensive institutional setup. An example of institutional change via new, additional treaties is the ASEAN Framework Agreement on Services (concluded in 1995), which broadened the ASEAN.⁷ Since revisions and amendments are often easier to negotiate, they are more prevalent means of institutional design reform than new treaties.

In addition, states may modify the setup of international or regional organizations through other legal instruments (e.g., conventions,⁸ agreements, standing orders), which are also negotiated by the IO member states. Similar to formal amendments or treaty revisions, they alter the operation of the political system often through increasing the scope of IO competencies,

4. Exceptions include the Civil Aeronautics Board Regime (c.f. Wison 2000) or the International Association for Public Bath and Cleanliness (Williams 1991).

5. Another example is the Supplementary Protocol Amending Article 4 of the Treaty of ECOWAS from 1981 or the Supplementary Protocol Amending Article 53 of the Treaty of ECOWAS from 1988, both of which amended the Treaty establishing the Economic Community of West African States (1975).

6. This Treaty has been amended twice so far through the Supplementary Protocol Amending Articles 1, 3, 6, and 21(2001) and the Supplementary Protocol of 2006 (c.f. www.comm.ecowas.int/sec/index.php?id=treaty&lang=en and www.refworld.org/docid/492182d92.htm, accessed February 2014).

7. To date, there have been seventeen protocols amending the ASEAN Framework Agreement on Services and specifying how to implement the various packages of the agreement (c.f. <http://agreement.asean.org/explanatory/show.html>, accessed January 2014).

8. The term “convention” is in some IIs used for secondary law outcomes (e.g., the International Labour Organisation (ILO) conventions). Vice-versa, the term “agreement” is in some IIs used to describe secondary law (e.g., WTO agreements).

by emphasizing a thematic focus, or by modifying decision-making, implementation, or enforcement rules or institutions. The legal instruments, as well as the alterations they trigger, are legally binding for the member states, either directly through signatures of the authorized state representatives or after signatures have been ratified in accordance with states' respective internal procedures. Such legal instruments to change, amend, or broaden an IO's legal basis include conventions, agreements, or standing orders. For example, the ECOWAS has been modified by nine conventions⁹ and the Organization of African States (OAS) by six agreements.¹⁰ The International Labour Organization's (ILO) institutional design surrounding the implementation of labor standards was altered through standing orders (the latest dates from 2012).¹¹ In some IOs, legal instruments to modify the operation or scope of competencies also include memoranda of understanding (MoU), such as the MoU on the Establishment of the Pacific Forum Line Limited of 1977, which changed the institutional setup and operation of the Pacific Island Forum (PIF).¹²

Unlike agreements or conventions that are often the means to change IO operation, resolutions, recommendations, regulations, directives, or decisions are usually part of the secondary law, developed on the basis of the rules laid out in the primary legal documents that constitute an IO and often passed without a separate process of ratification by the respective IO member states.¹³ Such secondary law is sometimes binding upon its members (e.g., in case of EU regulations or directives, UNSC resolutions, or WTO law) and sometimes not formally binding (in the case of United Nations General Assembly [UNGA] resolutions). Regardless of the extent of formal legalization, unlike primary law changes (treaty changes, amendments, revisions, and agreements conventions), secondary law does not alter the institutional design or operation of IOs. Thus, this paper only looks at the dynamics of IO primary rule development in order to shed light on the extent of the stability of IO institutional design and identify variations in regard to the (in)stability.

The dataset covers organizations focusing on a broad variety of policy areas and from all parts of the globe. In addition, IOs vary with regard to the number of member states and with regard to the duration of their existence. Apart from these considerations, further rationale for the case selection was availability of the data on primary rule changes (obtained from the respective homepages), as well as the availability of information on key explanatory factors (especially delegation data, incomplete contracting data; see subsequent sections). Based on

9. These are Convention on Privileges and Immunities of the ECOWAS, 1978, Convention A/P.5/5/82 for mutual administrative assistance in customs matters, Convention A/P.4/5/82 relating to inter-states road transit of goods, Supplementary Convention A/SP.1/5/90 establishing a community guarantee mechanism for inter-state road transit of goods, Convention A/P.2/5/82 regulating inter-state road transportation between ECOWAS member states, Convention A/P.1/7/92 on Mutual Assistance in Criminal Matters, Convention A/P.1/8/94 on Extradition, General Convention A/C.1/01/03 on the Recognition and Equivalent of Degrees, Diplomas, Certificates and Other Qualifications in ECOWAS Member States, Convention on Small Arms and Light Weapons, their Ammunitions and other Related Matters, 2006 (c.f. www.ecowas.int/sec/index.php?id=protocole&lang=en and <http://documentation.ecowas.int/legal-documents/protocols/>, accessed February 2014).

10. These are the 1948 Economic Agreement of Bogota, the 1949 Agreement on Privileges and Immunities of the Organization of American States, the 1959 Agreement establishing the Inter-American Development Bank, the 1979 Agreement on the Adoption of the Inter-American Manual on Traffic Control Devices for Streets and Highways, the 1992 Agreement establishing the Inter-American Institute for Global Change Research, and the 1999 Amendment to the Agreement establishing the Inter-American Institute for Global Change Research. (c.f. www.oas.org, accessed March 2014).

11. "They lay down the procedure for the Governing Body to place standard-setting items on the agenda of the Conference, deadlines for the preparation and circulation of reports and questionnaires, and the procedures of the Conference committees that adopt standards." (Source: www.ilo.org/dyn/normlex/en/?p=1000:61:0::NO:61::, accessed June 2014)

12. The PIF considers this MoU to have a legal status (c.f. www.forumsec.org/resources/uploads/attachments/documents/10thEDF_RSP.pdf, p. iii, accessed March 2014). In addition, the PIF Treaty was changed through a series of agreements, including the Pacific Agreement on Closer Economic Relations PACER (2001), the Pacific Island Countries Trade Agreement PICTA (2001), the Pacific Islands Air Services Agreement PIASA (2003), and the South Pacific Regional Trade and Economic Cooperation Agreement SPARTECA (1980).

13. The Human Rights Council (HRC) is an exception as its institutional setup is specified through two HRC resolutions, which needed to be passed by the UNGA before they effectively changed the HRC. These two texts are HRC Resolution 5/1: Human Rights Council "Institution-building package" (2007) and HRC Resolution 16/21: Review of the work and functioning of the Human Rights Council (2011) (c.f. www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx, accessed in June 2014).

these considerations, the dataset reflects a representative sample of thirty-five prominent IOs.¹⁴ While the selected thirty-five IOs are also prominent in the literature, most of them are also part of other research projects with institutional design foci (such as Hooghe, 2014 #7474 and Tallberg, 2013 #7389), but they only constitute a subset of IOs today (e.g., Pevehouse, 2003 #7638). This is not problematic for the purpose of this paper, which is exploratory in nature. The main purpose is to provide novel first insights into an important phenomenon, which has so far not been in the limelight of IO research. Thus, the paper sheds light on major institutional design features (IO primary law, as specified in treaties as equivalent to constitutional law in states) and illustrates there is an interesting empirical puzzle when examining the stability of primary rules that lay out the fundamental design of IOs, namely that IOs vary with respect to the rigidity of their basic institutional design. The paper subsequently sets out to explore how one could account for this variation in using the most prominent theoretical approaches out there.

To assess the level of institutional stability, this paper looks at the number of times an IO's primary law has been subject to changes, amendments, or additions. In order to avoid a bias, as the institutional stability might favor "younger" IOs whose member states had fewer opportunities to make institutional changes, and check for the robustness of findings, the paper additionally constructs an institutional instability index. This index divides the number of legal changes to the primary set-up of IOs by the years of IO existence. The corresponding

Table 1: Institutional Instability of Thirty-Five IOs

	# primary law modifications	years since foundation	institutional instability		# primary law modifications	years since foundation	institutional instability
UNGA	0	66	0.000	SAARC	3	27	0.111
UNSC	0	66	0.000	IMO	8	64	0.125
IOM	0	61	0.000	WCU	8	59	0.136
UNIDO	0	46	0.000	ILO	9	66	0.136
CD	0	33	0.000	COE	14	63	0.222
HRC	0	6	0.000	SICA	5	21	0.238
IWC	1	66	0.015	SCO	3	11	0.273
WIPO	1	45	0.022	UNESCO	22	67	0.328
FAO	3	67	0.045	OPEC	18	47	0.383
IBRD	3	67	0.045	WTO	8	17	0.471
CARICOM	2	39	0.051	PIF	25	41	0.610
COMESA	1	18	0.056	EU	48	61	0.787
OECD	3	52	0.058	AU	42	49	0.857
UPU	8	138	0.058	OAS	68	64	1.063
WHO	4	66	0.061	ECOWAS	60	37	1.622
ITTO	2	29	0.069	Mercosur	49	21	2.333
IAEA	5	55	0.091	ASEAN	119	45	2.644
EAC	5	45	0.111				

14. The selected IOs are the International Labour Organization (ILO), the World Trade Organization (WTO), the United Nations Security Council (UNSC), the Conference on Disarmament (CD), the International Whaling Commission (IWC), the International Tropical Timber Organization (ITTO), the International Organization for Migration (IOM), the Human Rights Council (HRC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the United Nations Industrial Development Organization (UNIDO), the Organization for Economic Co-operation and Development (OECD), the Food and Agricultural Organization (FAO), the International Bank for Development and Reconstruction (IBRD), the World Customs Organisation (WCO), the Organization of the Petroleum Exporting Countries (OPEC), the International Maritime Organization (IMO), the World Intellectual Property Organization (WIPO), the International Atomic Energy Agency (IAEA), the Universal Postal Union (UPU), and the United Nations General Assembly (UNGA). In addition, the database also includes IOs with regional membership: the European Union (EU), the Council of Europe (CoR), the Organization of American States (OAS), Central American Integration System (SICA), Mercado Commun del Sur (Mercosur), the Economic Community of West African States (ECOWAS), Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the African Union (AU), the Shanghai Cooperation Organization (SCO), South Asian Association for Regional Cooperation (SAARC), the Association of South East Asian Nations (ASEAN), the Pacific Island Forum (PIF) and the Caribbean Community (CARICOM). There is also variation in the size of IOs and the duration of their existence. Some of the IOs are small in terms of membership (SCO, HRC, and UNSC), others are large (WTO, UNGA, IOM, and WHO), while some are recently founded (Mercosur, SCO, HRC, and WTO) and others date back to the 1940-50s (OAS, EU, ILO, UNGA, SC, and IWC).

index captures the average number of changes per year and ranges from zero to ∞ , with zero resembling the highest level of institutional stability (i.e., no changes at all). Table 1 presents the absolute number of changes from the IO's foundation to 2012, as well as the instability index, focusing on institutional changes related to the IO's primary set-up (founding treaties and subsequent legal changes, treaty modifications, e.g., amendments, protocols, and declarations, and additions or extensions that require the ratification by IO member states).

Table 1 illustrates that IOs differ in their institutional stability. The lowest level of stability can be observed for ASEAN (a total of 119 signed legal agreements since its foundation in 1967), followed by Mercosur, ECOWAS, OAS, AU, EU, and PIF, all of which have on average more than one modification concerning primary rules every two years. For example, OAS, which was created in 1948 (OAS Charter), has had sixty-eight inter-American conventions, treaties, agreements, and protocols created and signed, all of which together constitute the OAS' legal basis. While PIF has only experienced twenty-five modifications to its founding treaty since its founding in 1971. By contrast, other IOs have not changed their primary rules at all, such as UNSC, HRC, UNGA, IOM, and CD. In the midfield are IOs such as ILO or WHO, which have changed on average 0.14 and 0.06 primary rules per year of existence. Why is it that some institutional designs evolve in a more dynamic fashion than others?

Accounting for Varying Institutional Stability: Incomplete Contracting and Beyond

Why do IOs differ in their institutional stability? This section examines incomplete contracting and rational institutional design approaches (Morgan and Campbell 2011), which deal with questions of how institutions should be designed. This paper formulates four expectations on the role of informal contracting and of rational design features for propensity of institutional design changes in IOs in order to subsequently explore their ability to shed light on the phenomenon of varying institutional stability of IOs.

An incomplete contracting perspective starts from the premise that actors follow a strategic, bounded rationality and lack full information over future developments. Accordingly, all contracts are by nature incomplete, not the least due to the high transaction costs that the contracting parties would need to invest if they would seek to explicate all potential future eventualities in the treaty at hand (Williamson 1979, 1985; reiterated in Hart and Moore 1999; Maskin and Tirole 1999; Aghion and Bolton 2003). Incomplete contracts in which the parties use general and abstract language and norms rather than specific ones allow for flexibility when it comes to adaptation and implementation of rules (Hart and Moore 1999; Maskin and Tirole 1999; Aghion and Bolton 2003). This not only applies to economic contracts between market subjects but also to IO founding treaties between states. Thus, in international relations, using abstract language and inserting ambiguity into treaty language is a good strategy for states to cope with the shadow of the future and the high level of accompanying uncertainty (Kassim and Menon 2003). Instead of dissolving an IO and creating a new one, states operating in IOs based on incomplete contracts may adapt it to new circumstances or external shocks by using the margins of interpretation of the IO's primary rules. Accordingly, incomplete contracting approaches would generally expect a high level of IO institutional stability.¹⁵ This baseline expectation can be qualified in two respects. First, incomplete contracts face the risk that an individual party exploits the vagueness of rules for their own benefit, thereby reducing the payoffs of interstate cooperation for the other parties (often discussed as the free-rider problem, Axelrod and Keohane 1986; Keohane 1989). To prevent such negative externalities, principal-agent approaches contend that states as principals deal with uncertainties resulting

15. However, the sample of thirty-five IOs clearly illustrates that the number of times in which IOs' primary institutional rules have been changed varies (c.f. table 1). On the one end of the spectrum are IOs that have not experienced primary institutional change at all, such as UNSC, HRC, UNGA, IOM, and CD. In the midfield are IOs with relatively stable institutional design, such as IWC, CARICOM, WHO, ILO, SCO, and WTO, which changed their institutional design on average between 0.02 and 0.47 times per IO-year. Finally, the other end of the spectrum is populated by IOs with unstable institutional designs (more than 0.5 changes in primary rules per year on average). These are ASEAN, Mercosur, ECOWAS, OAS, AU, EU, and PIF.

from the incomplete nature of the primary rule set of an IO (as well as from vague formulations in secondary law/rules) by delegating competencies to supranational or non-state based institutions as agents. These agents are responsible for compliance oversight, adjudication, or enforcement, and in some instances also for decision-making (Garrett 1992; Abbott and Snidal 2000: 433; Pollack 1997; Fearon 1998; Downs, et al., 1996). In the EU, for example, states have agreed on a general, incomplete, contract-based institutional framework and have increasingly delegated competencies to supranational agents, such as the European Commission, for agenda-setting and compliance monitoring, the European Central Bank (ECB) for monetary policy, or the European Court of Justice (ECJ) for compliance enforcement (Pollack 1997; Kassim and Menon 2003: 123; Wallace, et al., 2010). Accordingly, P-A approaches would expect that IO design is stable if negative externalities arising from incomplete contracts can be addressed by non-state (supranational) actors to which interpretative and dispute settlement competencies are delegated (*Hypothesis 1*). At the other extreme, IOs with power not delegated to agents (e.g., a very low level of legalization, Abbott, et al., 2000; Goldstein, et al., 2000), incomplete contracting leads either to high instability (many changes in legal foundations in order to prevent or respond to free-riding efforts of individual states) or to institutional inertia (if free-riding becomes dominant, so that further investment in cooperation concerning the respective IO turns into an irrational strategy for the member states).

Second, although all contracts and treaties are characterized by ambiguous rules, the level of incompleteness can nevertheless vary. Accordingly, *Hypothesis 2* states: The more an IO's institutional design is based on incomplete rules, the easier it is for states to adjust to environmental changes within the given institutional framework of an IO or a regional organization (RO). Accordingly, the more IO founding treaties are based on incomplete contracting, the more institutional design stability should increase. By contrast, the greater the share of precise primary rules, the greater the likelihood of IO institutional design adjustments.

Third, rational design theories also allow for the development of propositions on IO institutional instability variation. At its core, rational institutional design theories assume that states are strategic rational actors and design institutions in a manner to serve their needs (Snidal 1991, 2002; Goodin 1995). States know that the primary rules of an international organization, such as the aims of cooperation, policy scope of the institution, rules on membership, basic rules on institutions, and competencies in the policy-cycle, will have tremendous effects on dynamics and outcomes of multilateral cooperation (March and Olsen 1984; Young 1986; Koremons, et al., 2001; Mitchell 2003). Accordingly, IO members have an incentive to set the thresholds high for future primary rule changes (i.e., qualified majority or even consensus of all member states). Thus, if consensus, or at least an oversized majority of members, is required for primary rule changes, the number of member states should influence IO institutional stability as the number of veto players that can prevent changes increases (Tsebelis 2002). *Hypothesis 3* expects that the more member states an IO has, the fewer changes to the institutional design will take place, and the higher the institutional stability of the respective IO will be.

Institutional design not only specifies the IO's organizational setup and the distribution of competencies across its policy-cycle but also the aims of cooperation (Axelrod 1984). The policy scope can influence the demand for adaptations in reaction to changes in the external environment and, in turn, the likelihood of institutional instability of international organizations. *Hypothesis 4* states: The broader the policy scope, the higher the institutional instability of an IO as the demand for potential modifications increases.

Empirics: Incomplete Contracts and (In)Stability of International Institutions

This section presents a plausibility probe for the four hypotheses. To this end, it conducts a correlation-based analysis. The dependent variable (DV), IO institutional instability, is measured as the number of primary rules changes relative to the duration of an IO's existence.

Thus, the DV is continuous in nature. Therefore, linear regression is appropriate. The Ordinary Least Squares (OLS) regressions allow establishing the directionality and significance of the co-variation between the independent variables of the four institutional design hypotheses (H1–4) and the DV. In addition, the empirical analysis of this paper draws on narrative evidence in order to further substantiate the quantitative findings.

The four independent variables are operationalized in the following manner. *Hypothesis 1* expects that IO member states as principals can delegate competencies to agents as a means to counteract negative externalities resulting from the incomplete nature of IO rules (or rather the exploitation of rule-ambiguity by “egoistic” states). It expects that the institutional design of IOs is stable if negative externalities arising from incomplete contracts are balanced by the delegation of competencies to non-state actors (principals). Comparative data for delegation to principals is difficult to obtain. The legalization approach to IOs has produced a high number of excellent case studies (e.g., Abbott 2000; Simmons 2000; Deitelhoff 2009; Keohane, et al., 2000), but it does not provide comparative information on the thirty-five IOs used in this paper. Thus, instead of focusing on the role of compliance monitoring, adjudication, and enforcement by principals, we use data on delegation of legislative and executive competencies to non-state principals (usually secretariats) in IO operation (Hooghe and Marks 2014).¹⁶ The delegation project of Hooghe and Marks covers thirty of the thirty-five IOs used in this paper (not UNSC, HRC, CD, ITTO, and IWC).

Hypothesis 2 assumes the more an IO’s institutional design is based on incomplete rules, the greater the institutional stability, since it is easier for states to make adjustments to environmental changes within a given institutional framework. To compare all thirty-five IOs with regard to their use of incomplete contracts, we collected data on the number of words in the founding treaties/charters/constitutions. This is a proxy for incomplete contracting as the primary law of all IOs needs to regulate similar issues, such as, membership, institutional set-up, competencies, day-to-day operation of the political system (e.g., agenda-setting, negotiations and decision-making, implementation, compliance monitoring, adjudication and enforcement), and rules for fundamental treaty revisions, while IO basic treaties, conventions, or charters differ considerably in their length. For example, the founding treaty of the International Convention for the Regulation of Whaling has only 2,589 words, and the IOM’s treaty only has 2,490 words, while the EU’s founding treaty (establishing the Coal and Steel Community) is considerably lengthier with 37,472 words, followed by CARICOM’s founding treaty with 13,742 words.¹⁷ Detailed texts allow for fewer margins of interpretation, and the respective institutional design of the IO should, therefore, be subject to a higher number of formal adjustments or revisions (e.g., through protocols and other forms of amendments). Vice-versa, the shorter an IO’s primary law document is, the more incomplete the nature of the contract will be, along with higher institutional stability. CARICOM, CD, UNSC, and UNGA are based on lengthy founding treaties and their institutional setup has remained highly stable over the years.

Hypothesis 3 expects that the more member states an IO has, the fewer changes to the institutional design will take place, and the higher the institutional stability of the respective IO will be, since this increases the number of actors who can turn into veto players concerning

16. The independent variable (IV) data to put hypothesis 1 to a plausibility probe stems from the delegation project of Liesbet Hooghe and Gary Marks (Hooghe and Marks 2014). These authors operationalize the extent of delegation to a principal by a compound variable entailing nine equally weighted elements, namely the competencies of an IO secretariat in regard to membership accession, constitutional revision, suspension of membership, financial non-compliance, drafting of the budget, policy initiation, monopoly of policy initiation, executive functions, and executive monopoly, ranging from 0 to 9 (maximum) (Hooghe and Marks 2014).

17. Nevertheless, even lengthy primary law texts entail incomplete elements and incorporate vague wording that leaves room for interpretation. The UNSC has an institutionalized way to cope with the incomplete contract nature of the UN charter (8,907 words) as it provides diplomats with interpretation guidelines “The *Repertoire of the Practice of the Security Council* provides comprehensive coverage of the Security Council’s interpretation and application of the United Nations Charter and its own Provisional Rules of Procedure. The material presented in the *Repertoire* is exclusively based on official documents of the Security Council, in particular the Council’s resolutions and decisions, the verbatim records of the Council’s meetings, the Secretary-General’s reports and the official correspondence from Member States.” (Source: www.un.org/en/sc/repertoire/structure.shtml; emphasis in the original, accessed on 20-06-2014).

primary rule changes. Accordingly, IO size is measured by the number of member states of each IO, and the data stems from their respective homepages.

Hypothesis 4 expects that the more policy areas an IO deals with, the higher its institutional instability is as demands for potential future changes increase. The yearbook of international organizations covers all thirty-five IOs and provides information on the policy areas covered. We distinguish between ten policy areas (agriculture, social affairs, development, environment, finance, human rights, security, technology, trade, and health).¹⁸ The descriptive statistics are provided in the Appendix.

In order to test the four hypotheses and shed light on the drivers of IO instability, the models in Table 1 are put together in a manner avoiding problems arising from multicollinearity. Thus, the multivariate model 1 examines H1 and H2, model 2 examines H2 and H3, and model 3 focuses on H2 and H4, as these models are free of multicollinearity (the correlation matrix is provided in the Appendix). Moreover, the number of observations is limited, so it is best to keep the models parsimonious. An outlier analysis revealed that ASEAN has by far the highest percentage of institutional instability in the data sample. For robustness checks, all models are also run without ASEAN as well (models 4–6).

Table 2: Exploring Institutional Instability¹⁹

	model 1	model 2	model 3	model 4	model 5	model 6
delegation (H1)	0.660 (0.738)			0.605 (0.5904)		
legal basis (H2)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
number members (H3)		-0.003* (0.001)			-0.002* (0.001)	
policy scope (H4)			0.109* (0.041)			0.109** (0.031)
Constant	0.331 (0.243)	0.681*** (0.169)	0.101 (0.173)	0.231 (0.196)	0.532** (0.141)	0.001 (0.131)
Number of observations	30	35	35	29	34	34
R-squared	0.05	0.16	0.19	0.044	0.082	0.289

OLS regressions with ***= $p < 0.001$, **= $p < 0.01$, *= $p < 0.05$; standard errors in parentheses

IOs often use incomplete contracting when difficulties arise during negotiations at the founding stage. This is due to differences in state interests. Rather than not cooperating at all, contracting parties use vague wording to keep the possibility of future changes and improvements alive while avoiding a veto by a member state. Next to the usage of ambiguous concepts rather than specific definitions, incomplete contracts often entail vague and ambivalent constructions in basic treaties, conventions, or charters. Often, incomplete contracting takes shape in an attempt to formulate an IO aim or policy competence, but it does not clarify how exactly decisions are made (e.g., Article 12 of the Treaty of ECOWAS establishes a common customs tariff without further specifying responsibilities or decision making procedures).²⁰ In addi-

18. Source: www.uia.org/yearbook, accessed November 2014.

19. The findings for all models remain robust if the models are run with the DV number of changes to primary institutional design instead of instability index (controlling for the age of IOs) as a dependent variable (since this is a categorical variable, negative binomial regressions are used). All regressions are available upon request.

20. Other examples include the OAS, which often uses phrases such as "states should make individual and united efforts" without further clarification (e.g., concerning the regulation of international financial or technical cooperation Art. 37, b, ii 1967, Protocol to the Charter of the Organization of American States; similar also concerning the realization of economic, social, educational, scientific and cultural rights and standards in Art. 26, 1969 American Convention on Human Rights, or concerning Art. 1 or 12 on international cooperation for progressively achieving the realization of economic, social, educational, scientific and cultural rights and standards in the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights).

tion, incomplete contracting is widespread in the form of treaties that regulate which policy competencies IO member states exercise jointly, but at the same time, it allows for detours of individual states (e.g., the 1973 Treaty of Chaguaramas (CARICOM) outlines exceptions in Article 24 (I.): “Nothing in this Annex shall prevent any member state from taking action which it considers necessary for the protection of its essential security interests”).²¹ Hypothesis 1 expects that the primary rule-based design of an IO is especially stable if negative externalities arising from incomplete contracts can be addressed by non-state (supranational) actors to which interpretative and dispute settlement competencies are delegated. The regression analysis does not support the expectation of the P-A approach, as the signs point to the opposite direction, while the findings also lack significance (models 1, 4, and Table 2). It is not the case that IOs with high levels of delegation tend to feature high levels of institutional stability. However, Hypothesis 1 assumes that all IOs feature a similar level of incomplete contracting, which might not hold empirically (see below discussion on hypotheses 3 and 4).

Hypothesis 2 expects that institutional design instability should decrease the more IO founding treaties are based on incomplete contracting. At first glance, this is supported empirically, for example by ASEAN, which has a short founding treaty (the Bangkok Declaration of 1967 is only 744 words long) but is institutionally unstable (2.64 changes per IO-year).²² However, most other IOs do not fit into this pattern, as the PIF, HRC, IOM, IWC, SCO, WTO, and WHO all have relatively short founding treaties but nevertheless sport high levels of institutional stability.²³ In line with this second observation, Table 2 also illustrates that longer texts tend to correlate with fewer basic rule changes (models 1–6). While these findings are robust, they are not significant. Thus, the length of primary treaties does not systematically influence an IO’s prospects for institutional stability.

Hypothesis 3 draws on rational institutional design approaches. It expects that the more member states an IO has, the fewer changes to the institutional design will take place, and the higher the institutional stability of the respective IO will be. Interviews with diplomats from smaller and larger IOs also reveal that reaching consensus agreements is more difficult in multilateral negotiations where there are more actors that need to agree (interview #5, 05-10-10; interview #12, 23-11-10; interview #27, 06-12-10; interview #151, 08-12-11; interview #39, 07-03-11; interview #158, 06-03-12; interview #163, 16-03-12).²⁴ For example, concerning the UN, an interviewee reported that negotiations with 192 veto players were “slow and cumbersome” (interview #18, 26-11-10) and that sixty-five states in disagreement lead to a deadlock situation in the CD (interview #51, 09-03-11). The debate on the institutional reform of the UN system (especially the SC and UNGA), for example, illustrates that a high number of actors not only renders change difficult in day-to-day negotiations concerning contested norms but also concerning changes in primary rules (e.g., interview #7, 22-10-10; interview #17, 26-11-10; interview #99, 12-05-11). In line with this, an increase in size of IOs robustly and significantly decreases the instability of an IO’s basic institutional design (Table 2, models

21. FAO’s preamble of the principles and procedures which should govern conventions and agreements concluded under Articles XIV and XV of the Constitution, and Commissions and Committees established under Article VI of the Constitution: “The ninth session of the Conference, after considering the report of the Council (C 57/38) came to the conclusion that it was necessary to lay down principles to be adhered to in future whenever the provisions of Articles VI, XIV or XV of the Constitution were being applied. *The intention was not to lay down too rigid rules since obviously the text of the various conventions and rules of procedure must be drafted in the light of the desired objectives.* The Conference, however, wished to establish a framework, i.e., juridical and administrative norms to govern in future the drafting of new texts or of amendments to existing agreements and of the constituent rules of commissions and committees.” (emphasis added by the author) (Source: www.fao.org/docrep/meeting/022/K8024E.pdf, accessed November 2014).

22. Similarly, the AU’s Constitutive Act encompasses 3,081 words and is well below the 7,402 average, whereas its institutional design was subject to above average changes 0.86. Mercosur also sports the expected correlation (below average words 5,603, combined with a high level of institutional instability 2.33).

23. Concerning IOs with detailed primary law texts, the EU (37,472 words) and ECOWAS (8,236 words) are clear outliers as well, also featuring high levels of institutional instability (0.79 and 1.62 changes per IO-year respectively).

24. The interviews stem from a project on multilateral negotiations and have been conducted with national diplomats as well as members of international organizations between 2010 and 2012 (c.f. author 2013).

3 and 6).²⁵ Fewer member states allows for a more flexible development of cooperation in which members may adapt the IO's basic design more often. The effect size of this variable is considerable. A bivariate regression shows that a one unit increase in the IV (one more IO member state) reduces IO instability by 0.003 units. Moreover, this variable alone accounts for 15.17 percent of the observed DV variation.

Finally, *Hypothesis 4* expects that the number of policy areas covered by an IO matters as well. The broader the IO policy scope, the higher its institutional instability is as demands for potential future changes increase. In line with this, the regressions feature a positive, robust, and significant correlation between policy scopes on the one hand and institutional instability on the other hand (Table 2, models 3, 6). While most IOs (UNGA being the exception) are highly specialized and cover only one or two policy areas, regional organizations tend to be much broader in scope (COMESA, CARICOM, Mercosur, OAS, SAARC, EAC, SICA, ECOWAS, AU, and EU all cover five or more policy areas). This together with the fact that general-purpose IOs tend to be considerably larger in membership than regional, broad-purpose organizations²⁶ can account for why the former are having a higher level of institutional stability than the latter. The policy scope variable has a considerable effect on the DV, institutional instability. A bivariate analysis revealed that if an IO covers one more policy area, its institutional instability increases by 0.092 units. The policy scope variable is a powerful predictor for IO institutional stability. It accounts for 13.96 percent of the empirical variation in the instability of the IOs primary institutional design rules.

Conclusions

A glance at the empirics of treaty modifications and the forms of amendments or additions reveals that international institutions develop dynamically over time. Some IOs, such as UNGA or HRC, do not feature changes in the basic institutional set-up (aims, competencies, institutional arenas and actors, and decision-making or arbitration procedures). Others are slightly less stable, such as WHO, SICA, IAEA, or EAC, featuring a handful of modifications concerning primary rules. Yet others have undergone institutional changes in the double digits, such as the EU with forty-eight, UNESCO with twenty-two, or ECOWAS with sixty basic alterations. Despite considerable variation, international relations research has not yet systematically addressed this phenomenon. To explore institutional instability and add value to our knowledge on institutional dynamics beyond the nation-state, this paper took an explorative step, examining the following research question: Why are the basic institutional designs of some IOs more unstable than others?

It showed that hypotheses on the role of delegation to mitigate uncertainties arising from incomplete contracting and on the ambivalence of the primary rules themselves are less apt to account for institutional instability. While incomplete contracting allows for built-in ambiguity into institutional design and flexible interpretations, it does neither systematically trigger, nor prevent institutional alterations. The extent that IOs rest on informal contracts and the extent that uncertainty arising from contractual ambiguity is dealt with by delegation of interpretation competencies to supranational agents did not turn out as decisive for the stability of an IO's design. Instead, observed instability of international institutions does not indicate that incomplete contracting has failed. Rather it is a consequence of rational design choices of IO founding fathers. The paper illustrated that change-capacity and change-incentives are key to understanding the dynamics of the institutional development of IOs. Most importantly, size

25. With just four member states, Mercosur is the smallest IO in the sample and underwent many changes in its institutional design (an average of 2.33 changes per year of existence). ASEAN has ten member states and also a high level of institutional instability (a score of 2.33 changes per IO-year). On the other end of the spectrum are large IOs, such as the WHO with 194, UNGA with 193, or ILO with 185 member states, which are all rather stable (average changes of 0.06, 0.00 and 0.14 per IO-year). Yet, there are also some outliers. Notably, the institutional designs of PIF, CARICOM, and UNSC are considerably more stable than the number of member states alone predicts.

26. The IOM, WTO, IAEA, IMO, UNIDO, WHO, ILO, WIPO, IBRD, UPU, UNGA, WCU, FAO, and UNESCO all have more than one hundred and fifty members, while the average size of the ROs in the dataset is 18.9.

is important for the IO's prospects to remain institutionally stable. Higher numbers of member states in IOs render basic changes concerning an IO's aims, competencies, institutional configurations, decision making, and dispute settlement procedures more difficult, as such changes usually require unanimity. Small IOs have more change-capacity than larger IOs with more veto-players. In addition, incentives for basic adjustments are crucial for an IO's prospects of remaining institutionally stable. The broader the policy scope an IO covers, the greater the number of opportunities and demands for modifications, the greater the likelihood for institutional instability. Hence, IO instability does not indicate that incomplete contracting has failed in these instances, but it illustrates that change-incentives as well as change-capacities are crucial for an IO's dynamic evolution. Comparing broad-purpose with specialized IOs, it is notable that the change capacities are more limited in the latter, due to the often large membership size. Regional organizations are not only better able to accommodate possible demands for basic rule modifications, but they are also more often exposed to demands for changes, as they are usually characterized by a larger policy scope. Thus, the institutional design is sound in regional organizations combining limited geographically designed membership with wide-policy scopes, as well as in IOs with large membership (open to all states regardless of their geographical location) and limited policy scopes. If an IO is large in size, as well as in regard to the policies covered, demands for change are likely to be high but cannot be accommodated easily. UNGA is a prime example of such an international institution, and the debates on UNGA reforms (as well as the fact that no basic change has been enacted) exemplify the resulting difficulties (e.g., Carlsson 1995). With a move to and changes in hard law, states can "resolve problems of incomplete contracting" (Abbott and Snidal 2000: 422), but, as this paper illustrates, only if the IO matches change-demands with change-capacities.

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APPENDIX

Table A1: Descriptive Statistics

Variable	Observations	Mean	Standard Devia	Min	Max
delegation (H1)	30	0.3074074	0.185542	0	0.7777778
legal basis (H2)	35	11427.74	15775.98	486	69113
number members (H3)	35	87.22857	79.58388	3	195
policy scope (H4)	35	3.485714	2.582423	1	10

Table A2: Correlation Matrix

	delegation	number members	legal basis	policy scope
delegation	1			
number members	-0.1467	1		
legal basis	0.3889	-0.0112	1	
policy scope	0.5076	-0.6342	0.284	1