

### Interorganizational Diffusion in International Relations: Regional Institutions and the Role of the European Union

Lenz, Tobias

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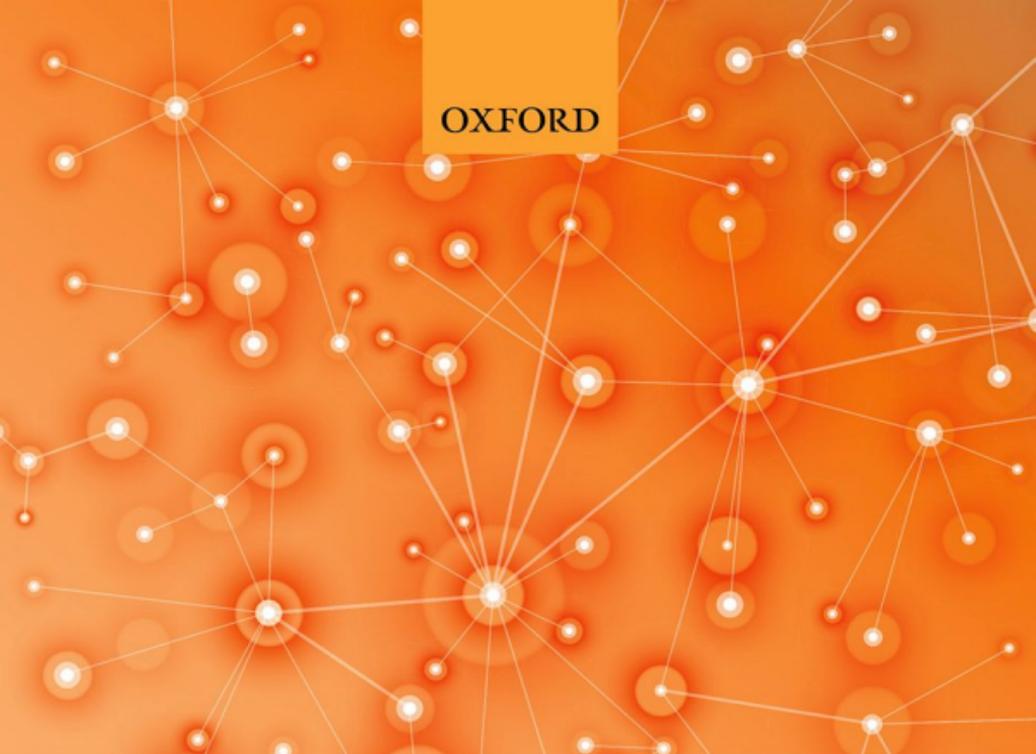
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A network diagram consisting of numerous white nodes connected by thin white lines, set against a vibrant orange background. The nodes are arranged in a complex, interconnected pattern, with some nodes appearing larger and more prominent than others. The overall effect is one of a dynamic, interconnected system.

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TRANSFORMATIONS IN GOVERNANCE

INTERORGANIZATIONAL  
DIFFUSION IN  
INTERNATIONAL RELATIONS

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*Regional Institutions and the Role  
of the European Union*

Tobias Lenz

# Interorganizational Diffusion in International Relations

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# Interorganizational Diffusion in International Relations

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of the European Union*

TOBIAS LENZ

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# Preface and Acknowledgements

I first learned about the process of European integration at the age of 16, while preparing for a year of study abroad in the United States. The topic immediately captured my imagination. I was fascinated by a political process by which former arch-enemies who had fought three devastating wars within less than a century were turning destructive animosity into well-ordered and mutually beneficial cooperation. By the mid-1990s, western Europe was cherished as a true security community in which war had become unthinkable and where citizens across its member states had internalized dependable expectations of peace. I belonged to the first generation that grew up with the privilege of being able to travel freely inside (western) Europe, and I eventually became accustomed to dealing with euros rather than Deutschmarks. In these ways, I could be considered a poster child of the unprecedented opportunities that Europe offered my generation.

At university, where I was enrolled in European Studies, I soon learned that Europe was by no means unique in its quest for regional economic integration, even if it might have taken that endeavour further than other regions in the world. In reading the academic literature, I realized that scholars and policy-makers across the world shared my fascination for the process of European integration, and that other regions were taking similar steps in an attempt to secure peace and provide opportunities for human development. This gave rise to a new research question that has occupied me, on and off, for more than fifteen years now: has the European experience with regional integration influenced similar quests for close economic integration in other parts of the world? How could we know? And would institutionalized forms of regional cooperation have flourished to the same extent around the world had Western Europe taken a different path in the immediate post-Second World War era? This book presents my answer to these long-standing questions.

While it has taken much longer to write this book than I had planned, I consider myself to be a ‘beneficiary’ of the COVID-19 pandemic. With most of my peers and students locked down, and many occupied with homeschooling or otherwise taking care of their kids, I’ve been immensely fortunate to be married to a woman who understands the vagaries of academic writing and who knew I meant it when I said ‘now or never’ at the beginning of the lockdown. Undistracted by colleagues and students, I squatted, if you will, my new Leuphana office and managed to bring a half-finished manuscript to completion within a record time of six weeks. What’s more, the efficacy of that final stretch made up for the many

years of anxiety and guilt on my part for failing to make any significant headway with the book.

I am deeply indebted to a number of persons and institutions who have helped me along the way. I extend thanks, in particular, to my long-term mentors, co-authors, and friends Kalypso Nicolaïdis, Liesbet Hooghe, and Gary Marks. Kalypso supervised my doctoral dissertation at Oxford, and Liesbet and Gary originally hired me as a post-doctoral fellow in an ERC project at the Free University of Amsterdam. I developed the theoretical approach taken in this book and studied the mechanisms of EU influence while working on my dissertation. Later, when doing subsequent work with Liesbet and Gary, I gained access to a treasure trove of data to test my arguments in a larger frame, and was led to think systematically about the scope of my arguments. Kalypso, Liesbet, and Gary are hugely creative thinkers, and while they are all well versed in the technical details of their respective research areas, they share an interest in the bigger picture as well as an impressive ability to integrate diverse strands of research in the pursuit of an original argument—aspects of successful scholarship that I too aspire to. It has been a tremendous pleasure to work closely with these model scholars over many years. I would also like to extend thanks to Walter Mattli and Philippe Schmitter, who examined my doctoral dissertation and who have amicably accompanied my academic development over the years. Moreover, their own important contributions to the study of regional organizations have inspired my work.

I am indebted to Tanja Börzel and Thomas Risse, directors of the Research College ‘The Transformative Power of Europe’ at Freie Universität Berlin, who not only provided a stimulating intellectual environment and financial support, but also invited me to contribute early work on the topic to a special issue of *West European Politics*. Further, Joe Jupille, Director of the Colorado European Union Centre of Excellence at the University of Colorado at Boulder, granted me a European Union fellowship to write up my dissertation in 2011, and has been willing to continue engaging with my work since. Carlos Closa, for his part, invited me to spend a year as a Max Weber Fellow at the European University Institute in 2015/16, which gave me the time and intellectual inspiration to draft various chapters of this book. I am also indebted to Diana Tussie, Director of the Latin American Faculty of Social Sciences (FLACSO) in Buenos Aires; Yeo Lay Hwee, Director of the European Union Centre in Singapore; and Elizabeth Sidiropoulos, Director of the South African Institute of International Affairs (SAIIA) in Johannesburg, all of whom kindly hosted me at their institutions during early field research and helped me in the organization of interviews.

I would also like to thank the numerous diplomats, bureaucrats, and politicians whom I interviewed over the past decade and who have provided me with indispensable first-hand insights into institutional negotiations in various regional organizations, including in ASEAN, Mercosur, and SADC. Many of these conversations are off the record, but they have aided tremendously in the

development of the arguments advanced in this book. I am also grateful to the numerous colleagues who have engaged with my work and commented on papers and chapters over the years, including three reviewers at Oxford University Press. Given the incompleteness of my notes, these colleagues will, unfortunately, remain unnamed here. Over the years, I also have benefited greatly from discussions with Karen Alter, Tanja Börzel, Alexandr Burilkov, Carlos Closa, Francesco Duina, Phillip Genschel, Julia Gray, Yoram Haftel, Kai Hebel, Marina Henke, Andy Hurrell, Anja Jetschke, Joe Jupille, Peter Katzenstein, Walter Mattli, Andrew Moravcsik, Thomas Risse, Frank Schimmelfennig, Philippe Schmitter, Jonas Tallberg, Lora Viola, and Michael Zürn. Finally, a big thank you is due to Dominic Byatt at OUP, whose patience while I delivered the manuscript I have stretched to the limits. I would also like to thank Cathleen Poehler for proofreading the manuscript.

Over the years, I have been fortunate to be able to draw on the support of many diligent research assistants who have helped me in assembling data, transcribing interviews, collecting literature, and checking the manuscript: Nivine El-Aawar, Lennard Alke, Andressa Timm Bauer, Johanna Marie Behr, Jan Dorsten, Nina Glatzer, Janika Kemmerer, Campbell MacGillivray, David Guevara, Lina Hayek, Pia Nöthlich, Stephan Pietzner, Alexandr Portes, Annika Reinke, Stefanie Rueß, Tilman Rüsche, Elena Sandmann and Antonia Schlude. During the time of working on this project, I have received major financial support from a number of institutions, for which I am grateful. I thank the *Stiftung der Deutschen Wirtschaft*, St Antony's College Oxford, Oxford University's Department of Politics and International Relations, the Research College 'The Transformative Power of Europe' at the Free University of Berlin, the European Union Centre at the University of Colorado at Boulder, the British Economic and Social Research Council, the Daimler and Benz Foundation, the European University Institute in Florence, and the Leibniz Association. Moreover, the Leibniz Association's Open Access Monograph Publishing Fund, the German Institute for Global and Area Studies and the Leuphana University Lüneburg helped me in financing the Open Access publication of this book.

The most personal of thanks go to my family. They have been supportive and inspirational in countless ways, and the book would not have come to fruition without them. I dedicate this book to them.

Tobias Lenz

*Lüneburg*  
*February 2021*



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# List of Abbreviations

ACP	African, Caribbean, and Pacific
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AIPA	ASEAN Inter-Parliamentary Assembly
AIPO	ASEAN Inter-Parliamentary Organization
ALADI	Latin American Integration Association
AMU	Arab Maghreb Union
ANC	African National Congress
APEC	Asia-Pacific Economic Cooperation
APRIS	ASEAN–EU Programme for Regional Integration Support
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAN	Andean Community
CARICOM	Caribbean Community
CEMAC	Central African Economic and Monetary Union
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECCAS	Economic Community of Central African States
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
EP	European Parliament
EU	European Union
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GSP	Generalized System of Preferences (EC)
IGAD	Intergovernmental Authority on Development
IO	international organization
IPI	independent parliamentary institution
ISQ	institutional status quo
LOAS	League of Arab States
Mercosur	Southern Common Market
NAFTA	North American Free Trade Agreement
NordC	Nordic Council
OAPEC	Organization of Arab Petrol Exporting Countries
OAS	Organization of American States
OAU	Organisation of African Unity

XX LIST OF ABBREVIATIONS

OECS	Organisation of Eastern Caribbean States
PIF	Pacific Islands Forum
RIP	Regional Indicative Programme
RO	regional organization
SAARC	South Asian Association of Regional Cooperation
SACU	South African Customs Union
SADC	Southern African Development Community
SADCC	South African Development Coordination Conference
SCO	Shanghai Cooperation Organization
SELA	Latin American Economic System
SICA	Central American Integration System
SPC	South Pacific Commission
TPP	Trans-Pacific Partnership
UN	United Nations
USMCA	United States–Mexico–Canada Agreement
WTO	World Trade Organization

# 1

## Introduction

### Regional Institution Building and Diffusion

On 20 November 2007, the ten heads of state of the Association of Southeast Asian Nations (ASEAN) signed a charter in a solemn celebration in Singapore. Signed 40 years after the organization's founding, this document sets out to create a Southeast Asian community by endowing ASEAN with a solid legal foundation and structured institutional framework. Bearing similarities to that of the European Union (EU), the charter established a tiered decision-making structure, with a summit of heads of state and several ministerial councils responsible for specific areas of cooperation. It is also underpinned by sectoral ministerial bodies and committees of senior officials who provide something akin to Europe's comitology system, and is flanked by a committee of permanent representatives in Jakarta, ASEAN's 'capital'. Finally, the charter strengthens the ASEAN secretariat by assigning it a role in the implementation of decisions, and confers legal personality on the association. This institutional evolution is remarkable for an organization that has long prided itself in pursuing a distinct form of regional cooperation dominated by informality and limited institutionalization. Not surprisingly, observers have likened the charter to a slimmed-down version of the (failed) European constitutional treaty (Börzel and Risse 2009: 13).

Similar transformations in the design of regional institutions—the bodies that compose the permanent structure of a regional organization—can be found in other parts of the world. On 11 July 2000, African heads of state and government signed the Constitutive Act of the African Union (AU) in Lomé, Togo. The act significantly strengthens the main framework for institutionalized cooperation in the continent by replacing the Organisation of African Unity, which was more intergovernmental in character. This transition marked a significant evolution towards more independent regional institutions, which are formally much stronger than those in ASEAN and resemble those of the EU. The new organization established a commission with a codified right to initiate legislation and to bring infringement cases to a new African Court of Justice, which was subsequently integrated into the African Court on Human and Peoples' Rights. It also created a Pan-African Parliament as well as an Economic, Social and Cultural Council with consultative powers. Not surprisingly, observers note the 'quasi-identical institutional structures of the AU and the EU' (Staeger 2015: 992).

In this book, I argue that these two episodes reflect a broader pattern. Since the early 1990s, many regional organizations (ROs) have undergone significant transformation towards stronger regional institutions. In so doing, they have moved their degree of institutionalization closer to that of the EU, which remains the most strongly institutionalized regional organization in the world. It is not surprising, therefore, that scholars have noted an increasing similarity of diverse institutional developments in a variety of different ROs with the EU. This raises several important questions. Does the EU play a discernible role in driving processes of institution building in ROs, or can such processes be understood fully on the basis of intraregional and global factors? If so, how does the EU's influence operate, and under what conditions is it likely to make a difference? This book addresses these questions by developing a diffusion account of the influence of the EU that explicates its pathways and specifies the scope condition for their operation. It demonstrates that EU influence systematically shapes processes of regional institution building elsewhere, but that such influence varies across different types of RO.

The theoretical framework upon which these arguments rest breaks new ground in the study of diffusion by embedding diffusion's central notion of interdependent decision-making in a framework of intergovernmental negotiations. I posit that diffusion between international organizations (IOs) in general, and between ROs in particular, differs from diffusion between national polities due to the central role of intergovernmental negotiations. It is the former type of diffusion, however, that has constituted the empirical terrain in political science and international relations in which arguments about diffusion have been developed and tested. Decision-making in IOs is more decentralized than it is within the hierarchically structured context of domestic decision-making. Therefore, in order to understand diffusion between ROs, we need to comprehend the relationship between decentralized negotiations among sovereign governments within ROs and interdependent decision-making between them.

I argue that the impact of diffusion operates through its influence on the institutional preferences and strategies of governments, which in turn determine the outcome of international negotiations. I propose a model of diffusion between ROs that shows how—compared to a situation of *independent* decision-making—institutional innovations may affect institutional outcomes elsewhere. Given that such diffusion effects are likely to be heterogeneous across governments' institutional preferences and strategies, outcomes tend towards various degrees of institutional adaptation of the original innovation rather than its wholesale transfer. In general, I seek to move research on diffusion away from dominant styles of theorizing in terms of broad structural arguments about convergence and similarity and towards a more actor-oriented understanding that (1) emphasizes the purposive choices of governments within the constraints imposed and the strategic opportunities offered

by interdependent decision-making, and (2) acknowledges the resulting diversity in institutional outcomes. This approach shares with recent institutionalist work in international relations the conviction that agency and political conflict are key ingredients in understanding processes of institutional evolution (Jupille, Mattli, and Snidal 2013; Johnson 2014; Rixen and Viola 2016).<sup>1</sup>

The remainder of this introduction outlines the theoretical puzzle in more detail, summarizes the main argument of the book, describes its methodological approach, and sketches its theoretical implications.

### **The puzzle: institution building in regional organizations**

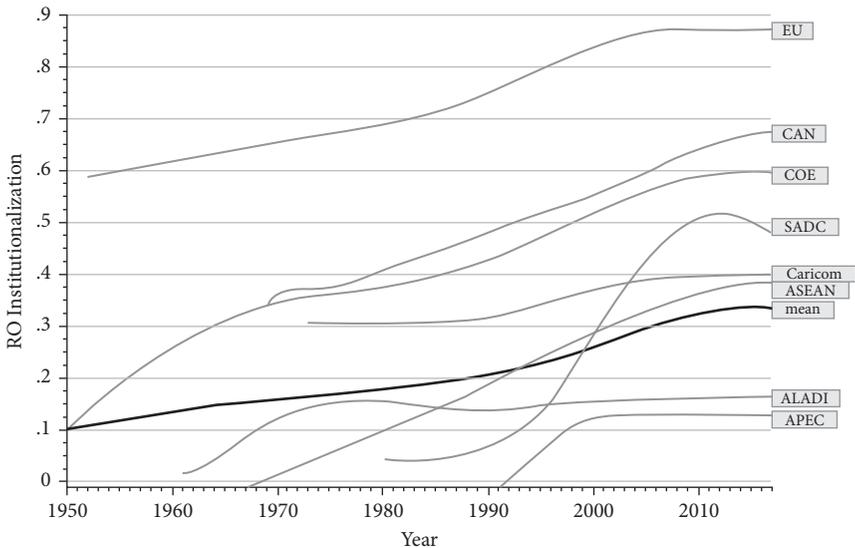
The past 25 years have seen a profound institutional transformation of international cooperation. Research has documented a widespread move towards more institutionalization, including the emergence of stronger dispute settlement institutions and more independent bureaucracies, the appearance of international parliamentary institutions, the growth of pooling decision-making competences, and enhanced access for transnational actors (Allee and Elsig 2016; Alter 2014; Haftel 2013; Hooghe, Lenz, and Marks 2019; Lenz, Burilkov, and Viola 2019; Schimmelfennig et al. 2020; Tallberg et al. 2013). These institutional developments are significant in that they challenge the ‘classical’ model of IOs as consensual and strictly intergovernmental bargaining forums. A growing research programme has conceptualized these institutional changes as the movement of IOs that were once strictly state-dominated towards actors which exert international authority (Barnett and Finnemore 2004; Cooper et al. 2008; Hooghe et al. 2017; Lake 2010; Marks 2012; Zürn 2018).

These institutional developments are particularly marked among ROs. As the example of ASEAN shows, ROs that have historically stayed ‘truthful’ to the state-dominated model of organization have embarked upon a process of greater institutionalization that involves modest forms of delegating authority to independent third-party agents. The AU example attests to the more general observation that organizations which already had some institutionalization have been willing to take it further. Some ROs have created powerful regional institutions, including supranational courts and general secretariats. A few even feature parliamentary bodies with legislative competences. Overall, there is a broad trend for member states around the world to endow ROs with increasing formal authority (Lenz et al. 2015), and the EU has been at the forefront of this development. The EU was the first RO following the Second World War to create supranational, rather than strictly intergovernmental, regional institutions in order to guide an ambitious process of regional economic integration. Over time, the EU has strengthened

<sup>1</sup> This is a more long-standing concern of the historical institutionalism developed in comparative politics (see Mahoney and Thelen 2010; Peters, Pierre, and Kind 2005; Thelen 2004).

existing institutions further, emerging as the most heavily institutionalized RO in the world today. This book explores whether there is a causal relationship between these two institutional developments.

Figure 1.1 displays the evolution of institutionalization in selected ROs between 1950 and 2017, and the mean evolution in the sample as a whole (represented by the thick black line). Institutionalization, the measurement of which is introduced in detail in Chapter 4, gauges the existence and competences in agenda setting, final decision-making, and dispute settlement of four sets of regional institutions: general secretariats, parliamentary bodies, judicial bodies, and other non-state bodies (e.g. labour and business councils or bodies composed of subnational actors). The figure shows that ROs vary widely in their levels of institutionalization, but that most share a similar institutional trajectory insofar as levels of institutionalization have increased over time. Today, the EU remains significantly the most strongly institutionalized RO; however, other ROs have shown similarly dynamic institutional trajectories and thereby have reached, or approach, the level of institutionalization displayed by the EU during its founding period, such as the Andean Community (CAN) or the Council of Europe (CoE). Others have been able to narrow the gap in institutionalization by evolving at a faster rate than the EU, such as the Southern African Development Community (SADC)<sup>2</sup> or ASEAN. As indicated by the thick black line in Figure 1.1, the mean

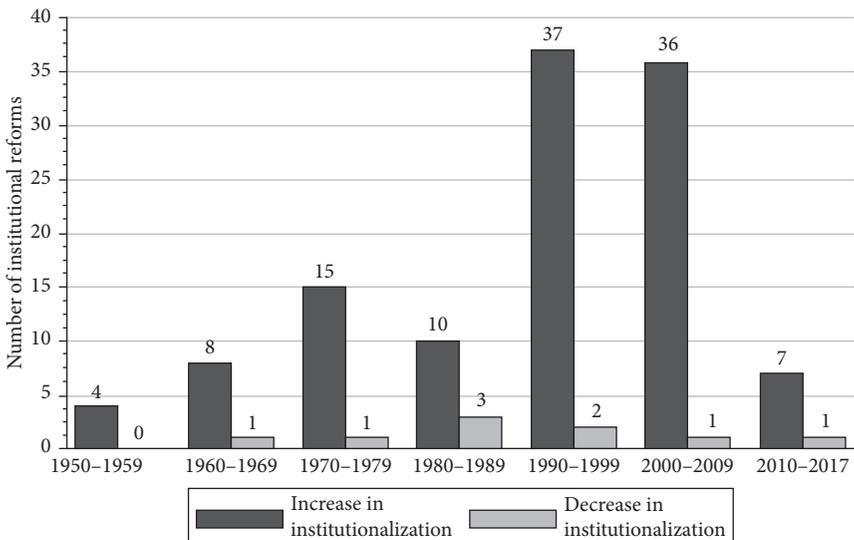


**Figure 1.1** Institutionalization in selected regional organizations, 1950–2017

<sup>2</sup> SADC has seen a decline in institutionalization in recent years due to the disbanding of the SADC Tribunal—an issue I discuss in Ch. 5.

level of institutionalization has grown continuously since the 1950s, with a particularly marked rise since the 1990s. This overall trajectory is noteworthy in view of the fact that newly created ROs tend to display lower levels of institutionalization than existing ones.

This upward trend in institutionalization also becomes visible in patterns of institutional reform. Figure 1.2 displays the number and direction of reforms that have led to changing levels of institutionalization in the entire sample of 36 ROs including the EU, which is introduced in detail in Chapter 4.<sup>3</sup> Figure 1.2 shows that ROs tend to build institutions over time. Unlike in many global organizations, institutional reform is a recurrent feature of ROs. An average RO undertakes a major institutional reform every 18 years, a rate that has increased over time—with the exception of the most recent years. The average RO had 0.55 reforms per decade from the 1950s to the 1980s, and more than twice as many (1.2 reforms) per decade in the post-Cold War era. Even though the ultimate decade is not yet ‘complete’, the data also confirm the intuition that ROs, and IOs more broadly, have struggled to maintain existing levels of institutionalization, with little growth. Relative stagnation notwithstanding, Figure 1.2 demonstrates that institutional change has almost uniformly strengthened institutions throughout the period of observation. Backtracking in institutional authority is



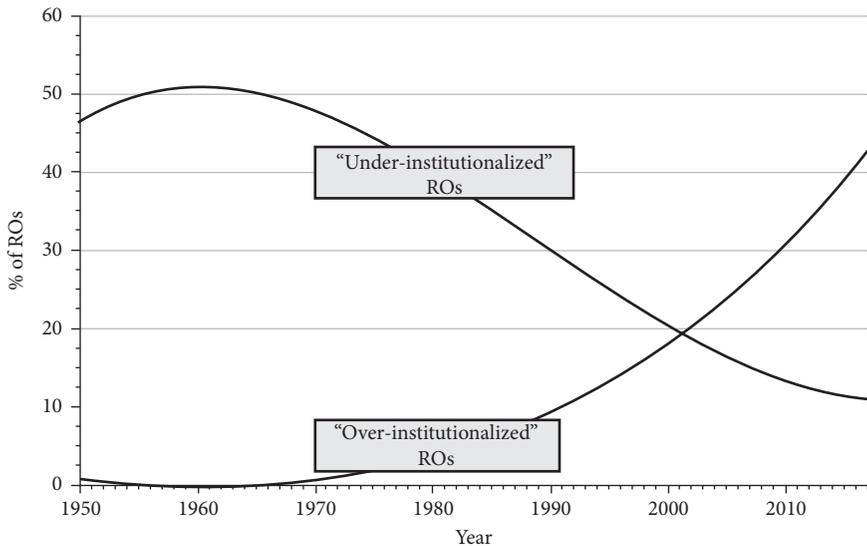
**Figure 1.2** Number of institutional reforms in 36 ROs by decade, 1950–2017

<sup>3</sup> Thirteen institutional reforms are due to the EU, spread out over the entire period.

confined to isolated instances in a few ROs, and not a single RO in the sample has a lower level of institutionalization in 2017 than it did when it was created.

These institutional changes have led to a change in the distribution of ROs with ‘extreme’ levels of institutionalization. Figure 1.3 shows the percentage of ROs that display disproportionately high (‘over-institutionalized’ ROs) and low levels of institutionalization (‘under-institutionalized’ ROs) between 1950 and 2017 as measured by a one standard deviation from the mean, with the year 1990 taken as the baseline. It indicates that ROs with disproportionately low levels of institutionalization have become rare, whereas the number of ROs with high levels of institutionalization has grown continuously. It was around the turn of the millennium that the number of ‘over-institutionalized’ ROs overtook those that are ‘under-institutionalized’. The times have changed in terms of regional institutionalization. In sum, we observe a pattern of institutional diversity embedded in a clear overarching trend that is the result of a process of regional institution building that extends over time.

These institutional developments are remarkable because IOs ‘are notoriously resistant to reform and redirection’ (Barnett and Finnemore 2004: 2). International institutional change involves a high number of veto points because it is subject to unanimity requirements and generally requires domestic ratification. Moreover, institutional reform typically has varying distributional implications for different member states, generating conflicting preferences that make it difficult to reach



**Figure 1.3** Regional organizations with ‘extreme’ levels of institutionalization, 1950–2017

agreement. Furthermore, once institutions are in place, they tend to be self-reinforcing by structuring expectations, generating sunk and adaptation costs, and prompting positive feedback effects, all of which serve to stabilize the status quo (Pierson 2004). As a result, even in international politics there is a ‘striking stability and staying power of the institutional status quo’ (Jupille, Mattli, and Snidal 2013: 5). Finally, delegating power to independent regional institutions cuts to the heart of national sovereignty. It mitigates state control over the process and outcomes of regional cooperation, which runs counter to the widespread assumption that states ‘are jealous guardians of political autonomy and institutional prerogatives’ (Tallberg et al. 2013: 7). The process of building regional institutions with an increasing degree of independence from member states presents a formidable puzzle to researchers in political science and international relations.

There is also, however, a more specific puzzle here, which refers to the trend among *some* ROs to catch up with the EU’s level of institutionalization. A significant number of ROs in the sample have institutionalized more rapidly than the EU has, leading to an element of convergence in the levels of institutionalization among these fast-institutionalizing ROs and the EU.<sup>4</sup> This is puzzling insofar as most accounts of European integration insist on the process’s uniqueness and peculiarity. Historians and political scientists alike have emphasized the unique historical circumstances in which European integration emerged after the Second World War (see e.g. Parsons 2003)—circumstances that render the European experience unlikely to be replicated. As Haas (1961: 389) noted 60 years ago, ‘other regions with strongly varying environmental factors are unlikely to imitate successfully the European example.’ Scholars of regional organization outside Europe reiterate this analytical insight from ‘the other side’, as it were, emphasizing the diversity of regional cooperation processes as a result of distinct historical, cultural, and material circumstances, and lamenting the implicit dominance of the EU as a benchmark. Acharya formulates this line of criticism succinctly: ‘a non-EU-centric perspective on comparative regionalism must take into account the distinctiveness of different regions and their institutional designs, patterns, and “styles” of cooperation’ (Acharya 2016: 110; see also Acharya and Johnston 2007a; Hurrell 1995a; Katzenstein 1997; Murray 2010; Söderbaum and Shaw 2003; Söderbaum and Sbragia 2011). Yet it is not only in view of the conventional understanding of international institutional change and widespread claims about the distinctiveness of European integration that the institutional developments described in regional organization are puzzling.

<sup>4</sup> Convergence should not be understood as genuine similarity in specific institutional designs, but instead as institutional developments in a broadly similar direction but with different magnitudes.

These institutional developments also pose a theoretical anomaly in relation to dominant theories of regionalism, and of international cooperation more broadly. These theories would deny any causal relationship between the EU's institutional evolution and institutional developments in other ROs, because they focus on drivers located within the respective organization. In this view, institutions primarily reflect the processes and structures of a region that operate from the 'inside out'. Dominant functional theories of cooperation—such as neo-functionalism (Haas 1958; 1961), (liberal) intergovernmentalism (Moravcsik 1998), and neoliberal institutionalism (Keohane 1984; Koremenos, Lipson, and Snidal 2001; Zürn 1992)—view ROs primarily as a response to conflicts or problems of collective action resulting from economic or security-related interdependence within an organization. Constructivist or transactionalist approaches, on the other hand, emphasize the role of communication and collective identities (Acharya 2001; Adler and Barnett 1998; Deutsch 1957; Katzenstein 2005). They posit that organizations develop in response to changing social processes and structures. Taken together, these benchmark studies argue that institution building is driven by factors endogenous to the region. They imply that, to the extent that tendencies towards increasing similarity are in fact visible, they reflect *independent* reactions to similar structural conditions inside these regions.

Another set of explanations of regionalism is more attuned to 'outside in' influences, emphasizing global change that impacts ROs from the outside; but these approaches would also deny any specific influence of the EU. Theories of 'new regionalism', in particular, highlight the emergence and evolution of ROs in response to the increasing intensity of globalization (Söderbaum and Shaw 2003; see also Hurrell 1995a; Mansfield 1998). From this perspective, ROs serve as stepping stones that help policy-makers to insert national economies into the global economy, and also as protective shields against the vagaries of globalization. Much of the literature on 'open regionalism' centres on this connection (for an overview, see Bergsten 1997). Similarly, scholars who have stressed the influence of global hegemony, or the effects of the anarchic system itself, have suggested an influence on ROs that operates from the 'outside in' (Crone 1993; Hancock 2009; Grieco 1995; Grieco 1997; Rosato 2011). While the specific mechanisms advanced in this literature differ, the basic idea is that processes of regional institution building respond systematically to shifts in the global (or regional) configuration of power. Even though they are more sensitive to 'outside in' factors, these studies focus on global factors in explanation and therefore also treat ROs as atomistic entities that develop largely independently of each other. As a review of two key texts on the subject perceptively notes: 'Neither volume tells us much about interregional flows [...] or about emulation and learning, including the demonstration effects of one type of regionalism on

another' (Acharya 2007: 637). I argue that such interregional flows matter, and this book sets out to demonstrate when and how they do so, with a specific focus on the EU.

### **The argument: interorganizational influence and institutional diffusion from the European Union**

Building on the diffusion literature, the main argument of this book is that the European Union systematically shapes the process of creating and changing regional institutions in other parts of the world. This influence operates through two distinct pathways—active and passive EU influence—and is conditioned by the nature of the contract upon which ROs are based. Thus, the book maintains that interorganizational dynamics between the EU and other ROs are crucial for understanding regional institution building, thereby challenging existing arguments in comparative regionalism and international institutional design, which suggest that the process of institution building can be adequately explained by focusing on intraregional and global causal factors. I elaborate these arguments in turn.

The first argument I advance is that the existence of the EU makes an identifiable and substantive difference to the institutionalization of ROs in other parts of the world. When the Community (1) directly supports institution building elsewhere and (2) changes its own institutions, policy-makers in other parts of the world also create stronger regional institutions at home. Despite recent crises, the EU remains the most prominent and successful pioneer in the area of regional economic cooperation in the post-Second World War era, and as such it has successfully worked towards the adoption of stronger institutions elsewhere, both passively and actively. Passively, policy-makers in Europe have over time built unprecedented supranational institutions—a commission with far-reaching rights in terms of structuring decision-making among member-state governments; a directly elected parliament that (co-)legislates; a European Court of Justice with features akin to powerful national courts; as well as a series of advisory bodies that institutionalize participation in decision-making by important social groups. These institutions then serve as reference points in institutional negotiations in other parts of the world when policy-makers seek to address novel cooperation problems, nudging institutionalization upward. Actively, the EU negotiates interregional trade deals and cooperation agreements, lends financial and technical assistance, and engages in regular political dialogue with counterparts in other ROs—a support for regional institution building that has also enhanced the institutionalization of ROs elsewhere. Thus, counterfactually, institutions in ROs around the world would be weaker if the EU did not exist: more

ROs would look like the North American Free Trade Agreement (NAFTA) or the European Free Trade Area, and fewer like the Andean Community, SADC, and the African Union.

My second argument is that the EU's active and passive influence on regional institution building elsewhere operates through its effect on the institutional preferences and strategies of national governments who negotiate international agreements. Formal international institutions emerge and change through international treaties which governments of member states negotiate amongst themselves and generally adopt by unanimity. Institutional preferences inform the strategies that they seek to advance in these intergovernmental negotiations, and the final outcome generally reflects a compromise between bargaining positions. The EU actively shapes preferences and/or strategies by providing material incentives and socializing policy-makers into adopting bargaining positions that involve the adoption of EU-type institutions; the EU passively affects preferences and/or strategies by generating new information about the effectiveness of specific institutional choices (learning) and legitimating certain institutional forms (emulation). I propose that the EU may differentially shape the institutional preferences or strategies of member-state governments in international negotiations, which implies that EU influence is likely to lead to stronger regional institutions elsewhere but will rarely result in the wholesale adoption of EU-type institutions in other ROs. This argument about the pathways of EU influence connects the concern of diffusion scholars regarding interdependent decision-making with the problematic of much International Relations scholarship: namely, how sovereign governments with heterogeneous preferences negotiate international order.

Thirdly, I propose that the nature of a particular RO's contract bounds the operation of active and passive EU influence and thereby delimits its causal role. The contracts upon which ROs rest vary in the extent to which they contain open-ended commitments. Some ROs are rooted in open-ended contracts, in which the purpose of cooperation and the actors who contribute to cooperation are deliberately left vague, while other ROs are based on fixed contracts—that is, contracts that clearly specify an organization's purpose and assign the role of achieving it exclusively to national governments. This variation in the contractual nature of ROs, I posit, conditions EU influence for two reasons. First, open-ended contracts entail an endogenous capacity for institutional change because such contracts require regular adaptation to evolving commitments. As a result, opportunities for EU influence multiply. Second, the supply of EU-type institutional proposals is both more frequent and more credible in ROs based on open-ended contracts because these facilitate the construction of analogies between the RO in question and the Community. EU influence, I posit, is detectable primarily in those ROs that, like the EU, aim to build a regional community; outside of this group, it is limited.

These propositions challenge existing arguments on the design of IOs not only empirically but also conceptually and theoretically, because they depart from the often-implicit assumption that IOs can adequately be understood as atomistic entities that are affected primarily by causal factors located at the unit and system levels of analysis. My ontological starting point is that IOs are relational entities, and therefore relevant causal force is transmitted through the direct and indirect interactions between them. In line with diffusion arguments, the key theoretical proposition I advance is that decision-making is regularly interdependent between IOs. Scholars neglect what I term the ‘interorganizational’ level of analysis at their peril.

### **Research approach: mixing methods**

The arguments advanced in this book concern both ‘the exploration of general relationships and explanations and the specific explanation of individual cases and groups of cases’ (Lieberman 2005: 436), and these research goals are best served by a mixed-methods design. Although such designs are widely advocated in the social sciences, they are rarely practised in research on regional organization. This book thus treads new methodological ground in the study of comparative regionalism by bringing to bear a variety of methods and data on the question of EU influence on other ROs. It seeks to exploit the ‘benefits of distinct complementarities’ by nesting quantitative and qualitative analyses of different kinds in an attempt to enhance the validity of the causal inferences drawn in this book (Lieberman 2005: 436; see also Beach and Pedersen 2016; Brady and Collier 2010). Specifically, it uses three complementary research methods:

1. a large-N quantitative analysis of an original dataset on RO design that seeks to establish the general conditions under which EU influence is likely to shape regional institution building;
2. two detailed process-tracing exercises within typical, inferentially powerful, and substantively important cases that aim to demonstrate the pathways by which active and passive EU influence affect regional institution building;
3. a paired comparison of two ROs with different outcomes that aims to demonstrate how contractual open-endedness bounds the effect of EU influence.

These methods aim to provide both external and internal validity to the book’s arguments, as I discuss below.

## Quantitative statistical analysis

A quantitative statistical analysis is essential for demonstrating the argument that EU diffusion systematically shapes processes of regional institution building but that the EU's impact varies across different types of RO. By drawing on a large number of important ROs and controlling for potential confounding factors, such an analysis estimates the average effect of EU influence on institutionalization in the RO population and its interaction with specific RO characteristics. In addition, it requires systematic measurement of EU influence, and I present new measures for the conditions that may drive EU influence such as financial support, interregional agreements, structured interaction, and its own institutional evolution. The analysis identifies patterns of association between these conditions and regional institution building across a large number of cases while controlling for other relevant variables.

The quantitative analysis draws on an original dataset that builds on the Measure of International Authority (MIA) developed by Hooghe et al. (2017), which is detailed in Chapter 4 below. The dataset contains information on the institutional design of 35 ROs and the EU itself in the period from 1950 (or the date of an organization's inception) to 2017. The sample encompasses major and well-known ROs, such as ASEAN, SADC, or Mercosur, alongside lesser-known organizations, such as the Arab Maghreb Union or the Organization of Eastern Caribbean States. It focuses on ROs that 'have standing in international politics' (Hooghe et al. 2017: 16) and thereby encompasses the large majority of regional organizations that scholars interested in the topic have actually studied in small-N settings. These are also the ROs that states care about and invest in. Hence, it provides a tough test of EU influence. At the same time, the sample is broadly comprehensive in its coverage of states and continents, covering ROs from across the world.

## Process-tracing within cases

Within-case analysis—that is, the intensive study of a single case over time—is essential in showing that EU influence operates through its impact on the institutional preferences and strategies of governments, which define their negotiating positions in international negotiations over institutional change. This causal process, shared by the two pathways of EU influence, is unmeasured in the large-N statistical analysis, and so additional evidence is required to demonstrate how, specifically, the various measures of EU influence shape the outcome of interest. Within-case analysis allows me to 'trace the spread of policies and ideas through historical reconstruction of decision making at the actor level' (Starke 2013: 572).

Such analysis strengthens causal inference by illuminating the causal process that underpins statistical correlations and thereby enhances internal validity.

The within-case analysis employed here relies primarily on what Beach and Pedersen (2016) term ‘theory-testing process-tracing’. This type of process-tracing pursues the goal of evaluating ‘whether evidence shows that the hypothesized causal mechanism linking X and Y was present and that it functioned as theorized’ (Beach and Pedersen 2016: 11; Gerring 2007a: 172–85; Bennett and Checkel 2014). I achieve this by (1) theoretically specifying the mechanism in terms of interlocking parts in which actors engage in specific activities that transmit causal force from one part to the next, (2) drawing out a range of observable implications of the mechanism across three key dimensions (sequence, process, and outcome), and (3) determining whether these are detectable empirically by employing a wide range of original data. This data derives from three sets of sources: (1) several dozen interviews with policy-makers, EU representatives, and policy experts that were conducted in nine different countries during eight months of field research in South America (Mercosur), Southern Africa (SADC), and Southeast Asia (ASEAN) in 2009, 2015, and 2016; (2) a variety of primary sources, such as meeting records, diplomatic cables, expert assessments, and expert studies, some of which are not publicly available; and (3) secondary literature in four different languages.

Given that random selection is generally not feasible for case studies, the established principles of representativeness (typical cases) and causal leverage are accompanied by considerations of substantive importance in choosing organizations for within-case analysis (Goertz and Mahoney 2012: ch. 14; Gerring 2008: 645; Seawright and Gerring 2008: 295–6). Typical cases ‘enable cross-case inferences from the studied case to causally similar cases’ (Beach and Pedersen 2018: 839), thereby generating some external validity of within-case analysis, which is mainly directed at internal validity. From cases on or near the regression line, I choose those that provide basic causal leverage because they display high values on the explanatory (X) and outcome (Y) variables of interest, and where the scope condition is present (Beach and Pedersen 2016: 146–52; Falleti and Lynch 2009).<sup>5</sup> Within this group, I furthermore look for cases that approximate what Gerring (2007b) calls a ‘pathway case’. These are cases that are not only likely cases from the perspective of the independent variables of interest but are at the same time unlikely—if not least likely—cases from the perspective of major alternative explanations. As such cases mitigate the problem of overdetermination that often characterizes case study research, they offer particularly penetrating insights into causal mechanisms. Finally, choosing cases that are of major substantive

<sup>5</sup> This selection criterion is compatible with the ‘possibility principle’ formulated by Mahoney and Goertz (2004).

relevance to scholars interested in the topic not only has the pragmatic advantage that a sizeable secondary literature exists on these organizations (Goertz and Mahoney 2012: 184–5) but also shows that EU influence may operate in the most important ROs in the world.

Instead of studying organizations ‘as a whole’, I select individual episodes of institutional change for within-case analysis, for methodological, theoretical, and pragmatic reasons. Theoretically, the stipulated causal process centres on governments’ institutional preferences and strategies, which they typically define across specific institutions or institutional proposals rather than institutionalization *per se*. Methodologically, individual institutional episodes allow for more valid causal inference because the relevant actors, the constraints on their actions, and their interaction can be more precisely specified (King, Keohane, and Verba 1994: 35–8). Moreover, potential alternative explanations can be better specified at the level of individual institutions, affording the opportunity for tighter theoretical control. Given that the quality of within-case analysis depends, in part, on the level of detail that the analyst can muster on the decision-making process, it makes also pragmatic sense to focus on a better-delineated episode. Taken together, following these selection criteria maximizes the likelihood that within-case analysis of the pathways of EU influence provides both internal and external validity.

### Cross-case paired comparison

Finally, the claim that EU influence is conditioned by the contractual nature of other ROs requires not only a quantitative statistical analysis to demonstrate its general validity but also a systematic cross-case comparison to reinforce the causal nature of the association and to demonstrate the validity of the underlying causal mechanism.

The logic of paired comparisons is akin to the most similar systems design, and draws on matching techniques increasingly familiar from statistical analysis (Gerring 2007a: 136–8). The idea is to find cases which differ sharply on the outcome variable, and which assume similar values on as many independent variables of interest as possible, in order to be able to eliminate their causal influence by design. An effective application of the method, according to Tarrow (2010), involves a ‘dual-process tracing’ approach. The first process involves pairing two cases on their dependent and independent variables in an attempt to eliminate as many of them by design. In the second process, the researcher traces the influence of the non-matched independent variable of interest on the dependent variable, to demonstrate its causal effect in accounting for the variation in outcome between the two cases. It thus combines elements of both the correlational and

process-tracing logics, which means that paired comparisons can generate both external and internal validity (Slater and Ziblatt 2013).

The logic of paired comparisons can be usefully combined with the crucial-case method, initially advocated by Harry Eckstein (1975). Crucial cases are those that go against established expectations, thereby providing ‘what is, arguably, the strongest sort of evidence possible in a nonexperimental, single-case setting’ (Gerring 2007b: 232). We obtain particular causal leverage on a theory when we combine a least-likely crucial case to confirm a theory with a most-likely case for prominent alternative explanations that we disconfirm. To the extent that we can match these two cases on critical independent variables, and thereby isolate the influence of our causal factor of interest, in line with the logic of paired comparisons, we have a powerful research design. In this case, not only do we provide evidence in favour of our preferred theory ‘against all odds’, we also demonstrate that its main competitor(s) do not work, even though they should. If the matching is done well, ‘the causal effect of  $X_1$  on  $Y$  can be isolated from other potentially confounding factors’, and this ‘pathway case’ is particularly useful ‘in circumstances in which cross-case covariational patterns are well studied and in which the mechanism linking  $X_1$  and  $Y$  remains dim’ (Gerring 2007b: 238, 239). The paired comparison is based on a variety of primary (documents, interviews) and secondary evidence, and also employs counterfactual reasoning.

### **Theoretical implications of the argument**

The arguments advanced in this book yield important theoretical implications. I highlight three here, and develop these and others more fully in the conclusion.

The first implication is that existing theories of regional organization are incomplete because they emphasize causal factors at the intraregional and global levels of analysis, and neglect interorganizational influences (see Jetschke and Lenz 2013). In so doing, these theories conceive of ROs as atomistic entities that develop independently of each other, whereby this book substantiates the claim that their interaction is an important source of variation in regional organization. This neglect of interdependent decision-making is one reason why integration theories developed in the European context are not likely to be applicable to other parts of the world. Neo-functionalists abandoned their attempt to develop a general theory of regional integration in the 1970s, while liberal intergovernmentalism has barely been applied outside Europe. It is well known in diffusion research that explanations for institutional innovations differ fundamentally from explanations for subsequent institutional adoption (Rogers 2003; Finnemore 1993)—an insight that suggests that regional organization in Europe, as a successful

organizational pioneer, requires a different explanation than do organizations that emerge and develop thereafter. While an exclusive focus on endogenous conditions makes sense in the EU, it would be ill-guided when seeking to explain regional cooperation in other parts of the world.

The second implication concerns the role of context in international institutional design. The dominant rational-design literature interprets international institutions as responding to functional demands emerging from the specific cooperation problems that states encounter. It shares with a large body of literature on regionalism a focus on internal, especially functional, causal factors. My argument bolsters recent work that criticizes this approach for neglecting the contextual nature of institutional design: institutional design does not occur in a 'bargaining vacuum'; it is affected by the institutional or organizational context in which a design decision is being negotiated (Copelovitch and Putnam 2014; Jupille, Mattli, and Snidal 2013; Johnson 2013). It suggests that the institutional activities of other, related organizations are a key aspect of this context. Yet, unlike some of this work, this book conceives of context not mainly in structural but in relational terms as a web of asymmetric interactions between organizations.

A third implication of this book's analysis concerns diffusion in international relations. My argument supports the basic claim of this literature that decision-making is regularly interdependent between organizations, and hence that institutional and policy choices cannot be adequately understood by treating these organizations in isolation (for an overview, see Gilardi 2012). However, the overwhelming focus of this body of research concerns diffusion between national polities, and displays a style of theorizing and analysis that emphasizes broad structural arguments about convergence and increasing similarity in outcomes but largely fails to analyse actors and the dynamics of their interactions. The present study suggests that analysing diffusion between IOs provides fertile ground for developing a more actor-oriented understanding of diffusion because, unlike diffusion between the hierarchically organized units that have dominated the literature, IOs are decentralized settings in which outcomes are the result of bargaining between sovereign governments. This book proposes a heuristic model that shows how institutional innovations in some organizations affect institutional outcomes in other organizations through their influence on governments' institutional preferences and strategies, which in turn shape international inter-governmental negotiations. A core implication of the model is that convergence, emphasized by the existing literature on diffusion, is a rare outcome of diffusion between IOs, because institutional change is the result of an institutional compromise between the heterogeneous interests of sovereign governments. The study seeks to marry key insights of diffusion scholars with the important International Relations concern about the dynamics of decentralized bargaining among heterogeneous actors.

## Structure of the book

Following this introduction, the remainder of this book consists of two main parts that encompass six substantive chapters. Part I, comprising Chapters 2 and 3, develops the theoretical framework, and Part II, Chapters 4–7, evaluates the framework empirically.

The theoretical framework is developed in two steps. Chapter 2 specifies the gap in the theoretical literature by summarizing seven decades of empirical and theoretical debate about regional organization. I identify a paradox: whereas the empirically oriented literature has amassed a significant yet often unsystematic amount of evidence to suggest that the EU has significantly influenced the process of regional institution building in different parts of the world, suggesting that it merits more systematic and theoretically guided analysis, the theoretical literature largely neglects this influence. Pitching its explanations overwhelmingly at the unit (intra-regional) and systemic (global) levels of analysis, the literature offers little insight into interorganizational dynamics. The chapter closes by summarizing the theoretical bias in the existing theoretical literature on regional organization by drawing on the levels-of-analysis metaphor, and introduces the concept of diffusion as a useful analytical tool to theorize the interorganizational influence of the EU on processes of regional institution building elsewhere.

Chapter 3 presents the core of the theoretical framework that guides the subsequent empirical analysis. It develops a heuristic model to analyse processes of diffusion between ROs, and identifies the pathways and scope condition of EU influence. The chapter hypothesizes that the EU's structured interaction with other ROs, as well as its own institutional development, is systematically related to the process of regional institution building elsewhere, and further suggests that the nature of an RO's contract conditions such influence. It closes with the development of testable implications of the argument and a discussion of alternative explanations.

The subsequent four chapters test this theoretical framework empirically. Chapter 4 presents a multivariate statistical analysis of three core hypotheses drawing on the dataset described above. Chapters 5 and 6 examine the causal processes that underlie, respectively, active and passive EU influence. Episodes of institutional change analysed in these chapters include the creation of the SADC Tribunal in 2005 and the formation of Mercosur's Permanent Review Tribunal in 2003. Chapter 7 probes the stipulated scope condition of EU influence—contractual open-endedness—through some correlational analysis and a paired comparison of the parliamentary dimension in ASEAN and NAFTA.

Finally, the conclusion (Part III) summarizes the overall evidence for the book's main arguments and considers its main theoretical implications for the literatures on regional organization, international institutional design, and diffusion, as well as outlining some promising avenues for future research.



PART I  
THEORETICAL FRAMEWORK



## 2

# Revisiting Regional Institution Building

## Levels of Analysis and the European Union Factor

A gap seems to exist between present theory of international regional integration and political reality. The theory explains [...] regional integration almost exclusively on the basis of processes and factors *internal* to the region under consideration. When theory considers phenomena outside the region, they usually appear as residual categories which are left insufficiently examined and about which we know little.

Kaiser (1968: 84–5, emphasis original)

This chapter revisits, and largely (re)confirms, a paradox in the literature on regional organization that Karl Kaiser first identified half a century ago: while the descriptive literature is replete with references to the European Community/European Union (EU) as a causal influence on regional institution building in other parts of the world, the theoretical literature largely neglects this influence because it pitches its causal explanations at alternative levels of analysis. I argue that the ‘EU factor’ operates at the interorganizational level of analysis, whereas dominant theoretical accounts tend to focus either on the regional or subregional level, on the one side, or, more recently, the global level of analysis on the other. In so doing, these dominant accounts, I propose, largely neglect the relational influence that operates between regional organizations (ROs). This state of affairs means that despite its presumed empirical relevance, we still have surprisingly little theoretical knowledge about the EU as a causal factor in understanding regional institution building.

The levels of analysis metaphor is helpful in identifying the explanatory bias in existing theories of regional organization. It provides a conceptual tool to organize theoretical arguments according to common analytic features. Each level of analysis encompasses a diverse set of theories and arguments that is ‘defined according to where one locates the nexus of important causes’ (Waltz 1959: 12; more generally, see Singer 1961; Onuf 1995; Hollis and Smith 1990: ch. 1). The metaphor thus captures a key analytic choice facing any individual scholar: which level of analysis is the most promising in explaining a phenomenon? Because this analytic choice is inescapable, any single theory is necessarily incomplete in that

it neglects other levels of analysis (Yurdusev 1993: 83). Yet, at the level of a research field as a whole, the trade-offs are less severe. A mature field of research will feature theoretical perspectives derived from different levels of analysis. This is the virtue of theoretical pluralism: the theoretical and empirical blind spots of a research field are likely to be smaller when the same phenomenon is analysed from different analytic perspectives. In contrast, such blind spots abound in research fields in which certain levels of analysis are neglected or otherwise overlooked.

In this chapter, I suggest that the study of regional organization is a research field in which the *theoretical* focus has been on both the unit and the systemic levels of analysis while nevertheless largely neglecting the interorganizational level of analysis. This bias, I propose, renders existing explanations of RO design seriously incomplete. The chapter proceeds in three main parts. The next two parts each review seven decades of empirical and theoretical literature on ROs, drawing on the conventional distinction of the field into a first and a second wave. The third part employs the levels of analysis metaphor to summarize the explanatory bias inherent in the research field, and introduces the concept of diffusion as a useful tool to theorize the interorganizational influence of the EU on processes of regional institution building elsewhere. This theorization is undertaken in the next chapter.

### **First wave of regional organization (1950–1980s)**

The European integration process was a novel phenomenon in international politics when it started in the early 1950s. While intergovernmental cooperation has a long history, the fact that independent nation states delegated and pooled significant aspects of their sovereignty in supranational institutions to advance the gradual integration of their economies—without wanting to federalize—was unique. Given the early success of the European strategy to pursue visionary ends by pragmatic means, it soon served as an inspiration for region-builders elsewhere. EC-style common markets began to mushroom around the world, and the European Commission started to support these efforts. European policy-makers themselves and their counterparts elsewhere often saw the EC as the *primus inter pares* of regional (economic) organizations.

### **Regional organization after the Second World War**

As a reaction to the wounds of the Second World War, the architects of the post-war international system were keen to civilize world politics by organizing it globally rather than regionally. Regional organization was thought to be at odds

with ideas about collective security and global government, most clearly manifested in the creation of the United Nations (Mitrany 1965: 126–7). Nevertheless, the states ‘that had already made heavy political investments’ in ROs, especially in Latin America and the Arab world, secured their recognition in the UN Charter (Claude 1968: 5–6). As regional security predicaments remained severe in many parts of the world and global institutions were unable to perform their functions effectively in view of increasing superpower rivalry, ROs blossomed in the 1960s and 1970s.

Even though regional organizations existed long before the European Coal and Steel Community (ECSC), its creation in 1951 and its speedy transformation into the European Economic Community (EEC) in 1957 marked a watershed in international cooperation. Exploiting favourable structural conditions and drawing on a rich intellectual history of sketches for European unification, six West European governments institutionalized supranational control over crucial war resources and created a common market for their distribution in the Paris Treaty of 1951. The institutional architecture—consisting of the ECSC’s ‘High Authority’ with far-reaching competences to direct market interventions, a court, and a parliamentary assembly with executive control functions—‘was, at the time, unmatched in ambition’ (Rittberger 2001: 674). After the failure of more ambitious plans like the European Defence Community, the political ambitions and institutional set-up of the ECSC found their way into the EEC, the forerunner to today’s EU.<sup>1</sup> The Treaty of Rome formulated the objective of creating a common market and a common external tariff, directed by a set of supranational institutions that were unprecedented in international relations. These included the European Commission, with its sole right to propose legislation; the European Court of Justice, which ruled over the interpretation of the treaties and whose judgments were binding on member states; and a Parliamentary Assembly with consultative powers. The EC’s political ambition and institutional architecture was without precedent in international politics.

This pioneering European experiment in supranational cooperation soon ‘triggered regional integration in other parts of the world’ (Etzioni 1963: 515). As policy-makers in the global South struggled to stabilize their often newly independent countries and to promote economic and social development, the EC served as an ambiguous referent. It induced fears of being excluded from the European market, served for some as a ‘countermodel’ to be avoided, and sparked admiration among many others. Diverse attempts at emulating Europe’s success followed. Consider some examples of casual claims regarding the influence of the

<sup>1</sup> The ECSC, the European Economic Community, and the European Atomic Energy Community were merged and subjected to a common set of institutions in the 1967 Merger Treaty. It was only from this point onwards that it was referred to as the European Community, or the EC, although I shall use the acronym when referring to the earlier period as well.

EC on regional organization elsewhere. Nye argued in 1965 that the 'European Economic Community (EEC) has had a strong impact [. . .] on statesmen from other areas of the world' (Nye 1965b: 870). Kaiser's critique of regional organization theory, cited above, was motivated by the observation of 'the impact of EEC [*sic!*] on underdeveloped areas' as an 'example of the demonstration effect' (Kaiser 1968: 96). Asante (1982) noted that 'the developing countries generally saw developments in Western Europe as a model and inspiration' (p. 307), implying that it affected their own institutional choices. And Avery (1973) similarly argued: 'it is patently obvious that the example of European integration served as the major stimulus for similar endeavours in other regions and still remains the model for most integration efforts' (p. 550). Others also posited a causal relevance of the EC 'model', but emphasized the problems associated with the transfer of European models to other parts of the world. Langhammer and Hiemenz, for example, lament what they term a 'fallacy of transposition':

The historically unique example of the integration process in the EEC between 1957 and 1968 when the first two stages of integration were implemented simultaneously served as a model. Governments of developing countries misunderstood this process as a case of limited cooperation without surrendering national sovereignty and tried to copy the example in their countries.

(Langhammer and Hiemenz 1990: 2)

Similar assessments can be found in many parts of the world. In Latin America, the president of the council of the Uruguayan government angrily noted in the late 1950s: 'the formation of a Common Market in Europe [...] constitutes almost a state of war against Latin American exports. We therefore have to respond to one integration with another; [...] to inter-European cooperation with Latin American cooperation' (cited in Balassa 1965: 16). In this example, the EU is seen as a threat that prompts a process of counterorganization. Most scholars agreed that economic integration in Latin America was 'precipitated by the astounding increase in economic cooperation and prosperity in Europe' (Feder 1961: 433; Haas 1961: 382), and frequently noted that Latin American elites were 'influenced by the attempts at regional integration in Europe' (Mace 1988: 408; see also Kaiser 1968: 96; Wionczek 1965: 48; Robertson 1968: 353). Taking stock of regional organization in Central America, Nye remarks drily that the European Economic Community 'was of some importance to Central America, both as an example of mature states pooling sovereignty and as a detailed paradigm for study by SIECA [Secretariat of Economic Integration in Central America]' (Nye 1967: 51; see also Dell 1966). The members of the Latin American Free Trade Association, founded in 1960, similarly '[drew] upon the example of Western Europe' (Wionczek 1970: 52) in their attempt to create a common market.

Disappointed by a lack of progress of the Latin American Free Trade Association, five Andean countries created the Andean Common Market in 1969, with many features similar to those in the EC: gradual and automatic across-the-board tariff reductions; a series of harmonized policies (e.g. agricultural policy, industrial policy) based on common and binding rules called resolutions; majority decision-making in an intergovernmental commission; and a supranational Junta, which 'resembles the Commission of the European Economic Community' (Avery and Cochrane 1973: 203). Many commentators at the time noted that the 'legal institutional model most frequently seized upon by the Cartagena draftsmen was that of the European Communities' (Horton 1982: 43; see also Axline 1979). When policy-makers in the Andean region supplemented this institutional structure in 1979 with an Andean Court of Justice, 'modeled after the successful European Court of Justice' (Keener 1987: 71; see also Padilla 1979: 93), and in the 1980s with an Andean Parliament, the similarities became even more marked.

In Africa, ambitions for pan-African integration through the Organisation of African Unity, founded in 1963, dominated regional organization for the first decade or so. Once high-flying hopes vanished, the 1970s and 1980s saw the emergence of a flurry of sub-regional, economically oriented integration projects such as the Economic Community of West African States (ECOWAS) or the East African Community (EAC), which reflected an 'admiration for the operation of the EEC and its potential power' (Asante 1982: 307). Many of them emulated institutional choices in the EC. The EAC pursued 'plans for a common market on the lines of the EEC' (Freedland 1973: 311), while ECOWAS signed an 'elaborate [founding] treaty, modelled on that of Rome' (Robson 1985: 610). These assessments are not confined to academic observers, with policy-makers themselves holding similar views. One readily admitted: 'ECOWAS is intentionally emulating the European Economic Community, as the most successful regional economic community so far in operation' (cited in Asante 1982: 309); and former Nigerian president Olesegun Obasanjo remarked poetically that ECOWAS tries to 'rekindle our flickering African flame [of regional organization] from the European torch' (cited in Lister 1997: 160). However, few of these regional organizations were successful or even active for longer than the initial years, due in part to the 'poor fit between the imported [European] model of regional integration and the circumstances in which it was applied' (Mayall 1995: 181; Langhammer and Hiemenz 1990).

In Asia, several proposals for regional economic organization emerged in the years following the creation of the EC, even though subregional institutions were less popular than in Latin America and Africa and their institutional set-up tended to be leaner. Shortly after the EC's inception, Malaysia proposed a Southeast Asian Friendship and Economic Treaty based on 'the example of Western European regional organisations' (Jorgensen-Dahl 1982: 20) that failed

to take off. A similar fate befell the Association of Southeast Asia, an alliance between the Philippines, Malaysia, and Thailand in 1961, and MAPHILINDO in 1963 (Leifer 1989: 19). ASEAN's founding with the Bangkok Declaration of August 1967 constituted a renewed attempt to foster unity amidst the fear of intraregional conflict propelled by Communist expansion in neighbouring states and domestically. ASEAN pursued an informal style of integration that upheld the principles of consultation and consensus, non-interference, and weak institutionalization, and created some weak regional institutions only after the Bali Summit in 1976: a small secretariat in Jakarta, Indonesia, and a High Council for dispute resolution, followed by a parliamentary assembly in 1977 (see Chapter 7). Even though the institutional and substantive similarities with the EC were limited, 'a lot of people, particularly outsiders, saw in Asean a mirror image of the EEC—an economic community' (Mahathir bin Mohamad 1987: 1–2). Even in Asia, with its distinct style of regional cooperation, references to and claims about EC influence were surprisingly widespread.

In sum, much writing by area studies specialists during the first wave of regional organization regularly makes claims about the influence of the EC, be it as a threat, an inspiration, or an example/model to be emulated. These concepts might have formed promising starting points for scrutinizing EC influence more systematically, but none of them were ever conceptually developed or properly tested. Instead, accounts heavily relied on the impressionistic insights of the individual scholar.

### The European Community's support for regional institution building

The EC's support for regional organization has its roots in relations with Africa. In 1963, the EC negotiated an association agreement with its former colonies in Africa, the Caribbean and the Pacific (ACP) *as a group*. The main objective of this agreement, and eventually of others, was—as a high-level official of the European Commission noted at the time—to 'consciously support a common front by the ACP states' and to act as a 'catalyst for African unification' (Krohn 1975: 70, 81, my translation). The Yaoundé Agreement marked the start of an early form of interregionalism—one in which the EC engaged a group of countries on the basis of a jointly negotiated agreement.

Several instruments were developed in the context of relations with Africa that continue to form the backbone of the EC's support for regional organizations today. First, early interregional agreements provided for an elaborate institutional framework that was 'patterned on that of the European Community' (Grilli 1993: 20) and thereby familiarized region-builders with EC institutional arrangements.<sup>2</sup>

<sup>2</sup> The first Yaoundé Agreement consisted of an Association Council, an Association Committee, a secretariat, a Court of Arbitration, and a Parliamentary Conference, each of which had functions somewhat similar to those of the respective institutions in the EC (Cosgrove-Twitchett 1978: 110).

Second, the EC provided an early form of technical assistance by training civil servants from associate countries in EC institutions (Rempe 2009). Third, the EC lent financial assistance by funding projects that involved several countries in a geographic region. The regional allocation rose from about 11 per cent in the first Yaoundé Agreement to 14.5 per cent in the Third Lomé Convention with ACP states, which lasted until 1990.<sup>3</sup> Besides the ACP group, the EC also engaged with existing ROs in Africa. In 1968, it concluded a cooperation agreement with the EAC and in the late 1970s, officials from the European Commission acted as the ‘midwife’ to the creation of the Southern African Development Cooperation Conference (SADCC) (Anglin 1983: 685; Mandaza and Tostensen 1994: 12: 84). Throughout the 1980s, the EC supported the organization financially, allocating more than ECU 200 million to regional programmes under the Lomé II and III Conventions (European Commission 1990: 12) (see also Chapter 5).

Support for regional organizations started later but was developed in more innovative ways in relations with the non-associated developing countries in Asia and Latin America. With the inception of the EC Generalized System of Preferences (GSP) in 1971, the EC introduced a cumulation of ‘rules of origin’ clause, which allowed ROs such as the Andean Pact and ASEAN to enjoy access to the EC market if a product originated in various countries of that region. At the institutional level, the European Parliament began to hold biannual interparliamentary dialogues with the Parlatino (a continental parliament in Latin America) in 1974; and a year later, the European Commission and the member states established regular meetings with the Council of the Latin American Economic System. In seeking closer contacts with the EC, ASEAN established its first representation abroad in Brussels in 1972 (European Commission 1981: 3), culminating in the first ever ministerial meeting with an RO in 1978 and the signing of an EC–ASEAN Cooperation Agreement in 1980 (European Commission 1981: 3–4, 8; see also Drummond 1982: 311–12). The EC’s early repertoire for the promotion of regional organization was completed by the inception of a broad-based group-to-group dialogue with the Central American countries in 1984 (for an overview, see Roy 1992).

Financial support for regional institutions and projects through the EC’s development policy was extended to Latin America and Asia in 1976. The Andean Pact Junta, the organization’s executive body, was the main beneficiary of financial resources in Latin America, receiving about ECU 1.1 million in institutional support between 1980 and 1982 and ECU 14 million from 1977 to 1982 for regional projects (European Commission 1983: 11). Unlike in Africa, the EC also supported genuine regional policies (rather than just regional projects) such as the Andean Pact’s industrial strategy or the ASEAN Timber Technology Centre (European Commission 1988a: 103; 1988b: 10). Table 2.1 displays the EC’s

<sup>3</sup> Calculations are based on European Commission (1984: 9; 1986: 23; 1992b: 17).

**Table 2.1.** EC development aid allocations to Latin America (LA) and Southeast Asia (SEA) (in million ECU)

Period	Total commitment		Commitment to regional organizations		Share of regional/total commitments (%)	
	LA	SEA	LA	SEA	LA	SEA
1976–80 (average)	76.3	11.5	22.1	0.2	29.0	1.8
1981–5 (average)	263.2	39.6	73.1	2.9	27.8	7.4
1986–9* (average)	220.2	35.2	131.1	6.2	60.0	17.6

\* Because of a lack of data, this period only includes the years 1986 and 1987 for Southeast Asia.

Sources: European Commission (1981: 11; 1988b: 11; 1989).

increasing development aid allocations to regional projects and organizations in Latin America and Southeast Asia.<sup>4</sup> Even though these allocations remained modest in absolute terms, they nevertheless were important contributions in specific areas and, maybe more importantly, served to grant recognition to regional organizations as legitimate partners in international politics. Financial flows also were followed by personal contacts between the two sides, and served to transfer integration know-how.

### Theorizing regional institution building during the first wave

Early theorizing on regional organization was ambitious, and pursued the ultimate aim of developing an encompassing theory of regional integration. After building various such theories in the European context, many theoretically minded scholars moved to the study of other integration processes to apply and refine them. In the process, however, the suggestive evidence on EC influence that their empirically minded peers, and these scholars themselves, had assembled was largely ignored, or at least remained untheorized and failed to be systematically tested.

Owing to the intellectual hegemony of behaviourism in (American) social science at the time, early theorists of integration focused primarily on the unit level of analysis (Rosamond 2000: 54). Transactionalism—developed by Karl Deutsch and his collaborators—examined the integrationist consequences of increasing economic, social, and political transactions within a region in the emergence of

<sup>4</sup> The differences in the allocation of funding in the two regions largely reflect the existence and strength of existing regional groupings.

security communities (Deutsch 1957). Neo-functionalism, the most important of these early theories, saw the process of regional integration as a series of spillovers between functionally connected policy fields, triggering a self-sustaining process towards deeper regional integration and eventual political unification. Functional spillovers, moreover, were directed and continuously nourished by supranational institutions, and were further reinforced by the political mobilization and organization of interest groups at the regional level (Haas 1958; Lindberg 1963; see also Balassa 1961), thereby creating the inherently expansive logic that Ernst Haas himself would soon be agonizing about (Haas 1970).<sup>5</sup>

When the same theorists and their students started applying these theories beyond the European context, the field of 'comparative regionalism' gradually emerged (see Pentland 1973: ch. 5). They soon realized, however, that despite functional spillover and increasing social interactions integration processes did not develop in as linear a fashion as they had in Europe until the mid-1960s. This led theorists to examine the context conditions necessary for successful integration, which they used to account for stagnating or even retrenching integration dynamics (Schmitter 1970b). These conditions revolved almost exclusively around states and dynamics internal to the respective integration processes: structural background factors such as the size and degree of symmetry between the involved countries; process conditions such as decision-making style or the adaptability of involved actors; institutional dynamics associated with the role and influence of regional institutions; and/or the perceptions and ideology of regional policy-makers (Haas 1961; Haas and Schmitter 1964; Nye 1965a: 1; Okolo 1985; Schmitter 1970a).<sup>6</sup> Thus, empirical anomalies that accumulated over time did not prompt these scholars to depart from the unit or even sub-unit level of analysis.

Focused, as they were, on domestic and process-oriented factors, these scholars of neo-functionalism largely neglected external factors in theorizing the dynamics of regional integration. To the extent that they did, such theorization remained conceptually underdeveloped and was never systematically applied empirically. Philippe Schmitter, for example, proposed an 'externalization hypothesis', which sought to capture the feedback effects of outside actors' reactions for the integration process itself (Schmitter 1969: 165; 1970a: 840; see also Pinder 1968: 37; Etzioni 1965: 70–71). It was certainly plausible to argue that integration also had external effects, and to posit that these effects were not confined merely to the

<sup>5</sup> In the meantime, early intergovernmentalists such as Stanley Hoffman also criticised neo-functionalism for underestimating the continued influence of nation states in the integration process (Hoffmann 1966). This critique, however, did not amount to an alternative theory of regional integration and did not depart from neo-functionalism in its exclusive focus on *internal* dynamics.

<sup>6</sup> Early economic theories of regional organization, on the other hand, focused primarily on its effects and conditions for success rather than its emergence and evolution (Viner 1950; Griffin and French-Davis 1965).

material ones of market integration—what Schmitter termed ‘envy’. However, their exact mechanisms and the conditions under which they are likely to be relevant were never clearly elaborated. This critique of neo-functionalism existed at the time. In his *Regional Integration: Reflections on a Decade of Theoretical Efforts*, Hansen (1969: 249–50) notes:

We shall argue below that the Haas–Schmitter model suffers from a serious theoretical inadequacy in its dealing with regional integration schemes in less developed areas: it does not attempt to isolate and measure those exogenous factors in the international environment that affect the integration process.<sup>7</sup>

Joseph Nye was probably the most prominent scholar calling for a sustained examination of ‘external catalysts’ in regional integration processes, although he himself fell short of doing so systematically (Nye 1965b: 882–4). Nye drew some useful conceptual distinctions that continue to resonate to this day—passive vs active external factors (Nye 1968)—and emphasized the role of perceptions of the external environment and the concrete involvement of external actors (see Nye 1970: 811–12, 819–20). While all of these promised to be useful starting points, Nye never moved beyond mere superficial empirical application, and his model eventually became so complex that no single factor was considered in much depth.

A few scholars heeded Nye’s call and did indeed focus mainly on an analysis of external factors in general and the cross-cutting influence between regional groupings in particular, thus moving towards the interorganizational and systemic levels of analysis. Karl Kaiser (1968), for example, developed a series of hypotheses about the interaction of three different types of regional subsystems—transnational society, intergovernmental, and comprehensive—focusing mainly on the effects of external threat and the role of the superpowers in initiating and consolidating or derailing regional integration efforts. William Avery coined the term ‘extra-regional echoing’ to capture processes of imitation of innovative integrative behaviour by other actors, hypothesizing that ‘integration methods, styles, ideas, devices, and such—particularly those of an innovative nature—have some impact and influence beyond the boundaries of the region within which they originate’ (Avery 1973: 550). Both analyses offered promising starting points for a more sustained consideration of EU influence, but progress never went beyond an initial formulation of a limited set of hypotheses which were never empirically tested and/or subsequently refined. Before theoretical progress on this front could be made to ignite a broader research programme, scholars were overtaken by the ‘decline’ of regional organization in the late 1970s, and lost interest.

<sup>7</sup> For a similar critique of the ‘apparent insularity’ (p. 472) of neo-functional theorizing about integration and their neglect of extra-regional powers, in particular, see Cantori and Spiegel (1973).

## Second wave of regional organization (1990–today)

The end of the Cold War marked a watershed in international politics, sparking a ‘new wave of regionalism’ (Mansfield and Milner 1999). The reasons for this wave are manifold, and include the lessening of security constraints associated with the bipolar structure of international politics, increasing interdependence (the term ‘globalization’ rose to prominence during this period), as well as fundamental changes in development thinking and policies (for good overviews, see Fawcett 1995; Mansfield 1998; Hurrell 1995a). During this wave, regional organization diversified in form. More flexible bilateral, plurilateral, and multilateral arrangements that often took the form of ‘new generation’ free trade agreements (see e.g. Roy, Marchetti, and Lim 2007) increasingly supplemented new and revamped ‘old-style’ ROs. This time around, economic cooperation was seen as part and parcel of wider liberalization measures, generally covering a broader range of issues (such as services and investment) and entailing more binding commitments.

### Regional organization after the Cold War

Motivated by concerns about the declining competitiveness of European economies during the final decade of the Cold War, the EC significantly deepened economic integration in the late 1980s and early 1990s. It facilitated decision-making with the move towards majoritarian decision-making in the 1986 Single European Act, and expanded its authority into the realms of economic and monetary policy, foreign and security policy as well as justice and home affairs with the 1992 Maastricht Treaty, transforming itself into the EU (see Green Cowles 1995; Sandholtz and Zysman 1989). The significant deepening of European integration within less than a decade reiterated the Community’s status as a ‘pioneering form of transnational governance’ (Giddens 2000: 98), where ‘the process of unbundling territoriality has gone further than anywhere else’ (Ruggie 1993: 171–2). After many years of ‘Eurosclerosis’ and the more broadly declining attractiveness of ROs, the EC’s transformation signalled a ‘resurgence of regionalism in world politics’ (Hurrell 1995a: 331). Prominent scholars even predicted that the revamped EU would showcase the direction that other regions would steer towards in the future. Andrew Moravcsik (2001), for example, saw the EU as ‘a possible harbinger of future global political structures’ (p. 122), and Anthony Giddens (2000) anticipated that the EU’s efforts forged ‘a way that could, and very likely will, be followed in other regions as well’ (p. 98). Have these expectations been borne out?

Europe’s new-found enthusiasm for integration, and the attendant institutional changes on which it rests, did indeed not go unnoticed in other parts of the world.

As a result, casual references to the EU's influence on regional organization elsewhere quickly re-emerged. The imagery used to capture such influence is similar to that employed during the previous period of scholarly work. There is the idea that the EU serves as an inspiration for other regions, as in Andreas von Staden's (2016) proposition that 'the institutional designs of many regional integration organizations have been inspired by the European model' (p. 28). There is the notion that the EU, as an economically potent and close-knit club, can trigger regional organization elsewhere by generating negative externalities, as in Walter Mattli's (1999) powerful analysis. Finally, there is the notion of the EU as a model that is to be avoided, as in the example of Mercosur's early institutionalization, which rested on 'the will of avoiding the cost of [a] European style institutional arrangement' (Dabène 2009: 94). In any case, casual mentions of EU influence in the literature witnessed a resurgence during this period. Two examples are Warner and Anatol's (2014) assertion that 'many regional integration projects around the world have been strongly influenced by the European model' (p. 193) and Kühnhardt's (2010) claim that 'the EU model is in the process of spreading globally' (p. 394). While, again, many are sceptical of the EU's alleged influence on regional cooperation and integration in other parts of the world, its empirical relevance seems to be widely acknowledged. As Gibb forcefully argues in relation to Africa,

African regionalism has been pursued, both theoretically and empirically, in terms of a neoliberal, free market and Westphalian state model built upon the experiences, values and norms of European integration. [...] However, despite superficial similarities, the relevance and appropriateness of the European integrative model to southern Africa is limited and structurally inappropriate. Indeed, the comparison is misconceived to the point of being fraudulent.

(Gibb 2009: 717)

The literature advances claims about the influence of the EU with regard to all major world regions. For a long time, North America appeared to be immune to regional organization due to the firm commitment of the United States to multilateralism; but this changed with the end of the Cold War. The United States not only abandoned its reluctant stance but began to actively promote regional organization, including through the Canada–United States Free Trade Agreement of 1988, the 1994 NAFTA and, beyond North America, Asia-Pacific Economic Cooperation and the Free Trade Agreement of the Americas (for overviews, see Hurrell 1995c; Haggard 1997). Observers quickly found evidence of EU influence. Cable (1994) comments, for example: 'But the experience of successful—wider and deeper—integration in Europe has undoubtedly been a key influence, whether European integration is seen as a threat to the United States or as a

positive role model' (p. 2). Mattli (1999) similarly argues that 'integration in North America in the late 1980s was largely triggered [...] by the effects of integration in Europe' (p. 185). And Abbott (1992) interprets NAFTA as a 'mutation of the EC model' (p. 917), with similar integrationist ambitions but a different institutional framework.

Further afield, the influence of the EU appears to be more far-reaching. In Latin America in the 1990s, 'the European Union (EU) had become both a model and a partner for a new wave of regional organizations that included, prominently, the Andean Community (CAN according to its Spanish acronym) and the Common Market of the South (Mercosur)' (Malamud 2018: 47). Specifically, the 1986 Economic Cooperation and Integration Program, the precursor to Mercosur, was 'based on the experience of the European Coal and Steel Community' (Botto 2009: 176), and Mercosur's 1991 Treaty of Asunción pursued an ambitious economic integration agenda that sought 'to duplicate the European economic regimes' (Mukhametdinov 2007: 226; see also Lenz 2018). Mercosur's institutional framework has increased in similarity with the EU over time (see also Chapter 6). For example, in 2004 policy-makers created a 'European style structural fund' (Dabène 2009: 187) and in 2007 a Mercosur Parliament for which 'the influence of the European Union [...] was relevant' (Dri 2010: 53).

The revamping of existing ROs in the late 1980s and 1990s, such as the Andean Pact and the Central American Integration System, has also led observers to note the influence of the EU. The Andean Pact, transformed into the Andean Community in 1996, has attracted a lot of commentary regarding the influence of EU institutional models. As Saldías (2007) notes, 'The newly founded Andean Community emulated the polity design of the European Community. Supranationality was reinforced, and community organs were established with a striking resemblance to their European counterparts' (p. 3). The Andean Court, in particular, is widely recognized as having 'explicitly [modelled] its design on the ECJ [European Court of Justice]' (Alter and Helfer 2010: 564; see also Alter, Helfer, and Saldías 2012). Similar claims exist for Central America. For example, O'Keefe (2001) contends that 'the emergence of the European Union and the formation of other regional trading blocs [...] encouraged the presidents of Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador to meet during the early 1990's with a view towards reviving the concept of an integrated Central America' (p. 246).

In Africa, regional economic integration has witnessed renewed efforts at both the continental and subregional levels to overcome the constraints of small economic markets. Even though the revival of regional organization was more than simply building on what already existed, as Bach (2016) notes, it 'went along with a transformative agenda that was strongly inspired by the EU' (p. 8). In Africa, emulation of the EU may have gone furthest, as Bourenane notes: 'IGOs

[international governmental organizations] all over Africa, and ECOWAS in particular, have attempted to imitate the European experience by creating bodies structurally similar to those of the European Union' (Bourenane 1997: 59). The continental framework for integration has evolved considerably since the end of the Cold War. Under the auspices of the Organisation of African Unity, African states adopted the Abuja Treaty in 1991, which aims to create an African Economic Community by 2025 and 'draws much of its inspiration from the highly institutionalized character of the European experience' (Bach 1997: 82). In 2000, African heads of state strengthened the main framework for institutionalized cooperation on the continent by replacing the Organisation of African Unity with the African Union. This transition marked a significant evolution towards more powerful regional institutions, resembling those of the EU. The creation of a Commission with a codified right to initiate legislation and to bring infringement cases to a new African Court of Justice or Pan-African Parliament led many observers to comment on the apparent 'organisational mirroring' occurring between the two bodies (Haastrup 2013: 789; see also Babarinde 2007; Packer and Rukare 2002).

Below the continental level, there are various subregional ROs, many analyses of which contain regular mentions of EU influence. Such claims are maybe most far-reaching for the West African Economic and Monetary Union, which is described as standing 'among African regional organizations—and possibly among regional organizations more in general—as the organization that has most faithfully and explicitly drawn inspiration from the EU' (Piccolino 2020: 179–80). Yet this organization is not the only one for which arguments about EU influence are readily available. A study of Central African ROs, for example, suggests that 'regionalisation trends on a global scale—including the European Union model—continue to play an important role' (Stevens, Hoebeke, and Vlassenroot 2008: 167). Similarly, some propose that with the revised treaty of 1993, ECOWAS's policy-makers 'adopted the institutional arrangement of the EU in many respects' (Akinrinsola 2004: 501). Apart from specific empirical claims about EU influence on regional institution building in Africa, scholars also note—at times in surprise, at times in confirmation, and other times in regret—the influence of the EU model on African policy-makers' imagination. In a comprehensive overview of African regional organization, Hartmann (2016) states: 'Even those who argue from a pan-Africanist line of thinking and stress collective self-reliance essentially propose modes of African regionalism, which take the European Union (EU) as the main inspiration and think integration along these lines is feasible' (p. 272).

Asia is a region with few ROs to this day, not least due to the historic rivalries between China and Japan and specific state–society relations in the region (Calder and Ye 2004; Katzenstein 1997; Hemmer and Katzenstein 2002).

Nevertheless, ASEAN swiftly deepened regional integration after the end of the Cold War, partly in response to the adoption of the Maastricht Treaty that has been described as ‘the straw that broke the camel’s back’ (Ba 2009: 156). In 1992, governments signed a Framework Agreement on Enhancing ASEAN Economic Co-operation—an arrangement that some have described as being ‘directly modelled on the EU’ (Öjendal 2001: 157). In the late 1990s, following a controversial reconsideration of the non-interference principle, member states established an EU-inspired ASEAN troika to address urgent concerns for regional peace and stability (Haacke 1999). The Bali Concord II of 2003 foresaw the creation of an ASEAN Community consisting of three pillars, reminiscent of the pillar model in the Maastricht Treaty, which led some commentators to speak of the organization’s ambition to pursue ‘EU-style regional integration’:<sup>8</sup> a security community, an economic community, and a social-cultural community. The latest chapter, also noted at the outset of this book, is the adoption of the ASEAN Charter in 2007. It gives the organization a formal legal basis and bears some similarity with the EU, for example in establishing an ‘EU-style’ Committee of Permanent Representatives (Jetschke and Murray 2012: abstract). It also establishes a new dispute settlement body that is tasked to adjudicate trade disputes and ‘is modelled from the EU and the World Trade Organization (WTO)’ (Yoshimatsu 2006: 125). Whereas some observers interpret the Charter as ‘the latest reminder of how consistently the EU has been perceived as a model for ASEAN’s institutional development’ (Murray and Moxon-Browne 2013: 522), others qualify the influence and posit that ‘the EU *does* exert some influence over ASEAN, but merely as a point of reference, *not* as a model power’ (Wong 2012: 670, emphasis original).

Besides widespread claims of EU influence in specific world regions, observers increasingly mention the effects of the EU model in relation to generic institutional forms. For example, Karen Alter has done detailed work on institutional ‘copies’ of the European Court of Justice (Alter 2012; Alter and Helfer 2010; Alter, Helfer, and Saldías 2012). Others have noted the influence of the European Parliament on regional parliaments around the world (Dri 2010; Navarro 2010; Luciano 2020; Rüländ and Bechle 2014). According to Grigorescu (2015), the European Parliament has evolved ‘into the most powerful and visible [international parliamentary assembly] and, implicitly, into a model for other parliamentary IGO [international governmental organization] bodies’ (p. 247). And Erthal (2012) suggests in relation to Latin American regional parliamentary institutions that ‘the inspiration provided by the European model cannot be underestimated’ (p. 156). Last but not least, the impact of the EU’s model of economic integration, which is characterized by a staged evolution towards a common market, customs

<sup>8</sup> ‘ASEAN pursues EU-style regional integration’, *International Herald Tribune*, 12 Jan. 2007.

union, and beyond, has attracted scholarly attention. Draper notes, for example: 'At the institutional level, African regional economic communities (RECs) tend to mimic European Union forms, particularly in their predilection for customs unions' (Draper 2012: 68; see also Duina 2006; Lenz 2018).

In sum, the aforementioned scholars and many others would probably agree with Higgott's claim that 'it is clear that policy learning and the politics of emulation (or in many cases the politics of avoidance) [from the EU] are major features of current deliberations about regionalism in other parts of the world' (Higgott 2007: 77). Yet theoretical treatments of regional organization, as I will show below, have largely failed to theorize, and test the implications of, this empirically well-grounded observation. Specifically, various important questions remain unanswered. What exactly is meant by the widespread reference to 'EU-type' institutions? Indeed, how deep do institutional similarities go? And might similar institutions, in fact, only be similar adaptations to comparable functional problems? In other words, does correlation indeed indicate causation? These are some of the questions addressed in this study.

### Interregionalism and the European Union's contemporary support for regional institution building

The end of the Cold War changed the opportunities and constraints for the EU as an international actor, and developing its rather ad hoc support for regional organization into a full-fledged policy had various advantages. It provided an uncontroversial objective within the Community that did not threaten to lead to major turf wars between EU institutions; it promised to facilitate coherence in external relations by incorporating major policy instruments into an 'integrated approach' (European Commission 1992a); and the EU enjoyed a comparative advantage in this area vis-à-vis the United States and other international actors (European Commission 1994: 16; see also Grugel 2004). Since then, the Community's promotion of regional organization has become an integral part of its foreign policy agenda and has reinforced the development of a new pattern of relations in international politics: interregionalism. Today, the EU is 'the region with the deepest engagement in global interregional relations and has the most diverse involvement of regional actors and institutional strategies' (Söderbaum 2016: 179).

The EU's interregional relations generally consist of three elements and take the form of a cooperation or association agreement.<sup>9</sup> First, the EU cooperates

<sup>9</sup> For useful overviews, see Alecu de Flers (2005), Pietrangeli (2009), and Baert, Scaramagli, and Söderbaum (2014); for a more extensive discussion of motivations and strategic interests, see Hardacre (2009). The most recent summary of interregionalism, including beyond the EU, is by Ribeiro Hoffmann (2016).

with other ROs on economic matters that may eventually lead to the conclusion of an interregional free trade agreement (see Young 2015; Young and Peterson 2006). Such trade agreements aim to hasten *intraregional* economic integration—a strategy that the European Commission (2002) terms ‘South–South–North integration’. Second, the EU lends financial and technical assistance to enhance other regions’ capacity for integration. This serves not only to help others meet the EU’s demands in interregional trade deals, but also to transfer integration know-how and experience through seminars, workshops, and consultancies. Third, the EU engages in political dialogue, which serves as a forum to discuss issues of mutual interest. It constitutes a means for transferring knowledge and experience in this field and facilitates region building by prompting the counterpart region to act as a group. A recent assessment counts 13 interregional arrangements between the EU and other regional organizations, plus 18 instances of transregionalism, where the EU deals with individual countries or groups of countries and which also often aim to support regional cooperation through engagement with a region’s key players (Ribeiro Hoffmann 2016: 613). Such interregional relations are a main conduit for ‘exporting’ the EU’s institutions to other organizations. Interview data from EU policy-makers repeatedly confirm that EU actors are ‘eager to export their institutional models to other parts of the world’ (Doctor 2007: 291; see also Buzdugan 2012: 931; Söderbaum 2016: 149–50). With regard to ASEAN, Jetschke and Murray cite a European Commission official:

We have always tried to see if we could somehow influence their process of economic integration on the basis of our own experience [...] I also perceive very much from the other side a lot of interest about how we have been building up our single market, what kind of institutions we have had to develop.

(Jetschke and Murray 2012: 179)

This ambition plays out differently in different regions. EU interregional relations are most developed with Latin America, and it is in this context that claims about active EU influence are most widespread. In an early piece on the topic, Grabendorff (1992) demonstrates that contacts between members of the European Parliament and their counterparts in Central America were pivotal in the institutional development of the Central American Parliament. Dabène argues, more broadly, that the Andean Community and Central America in the 2000s represent instances of coercive isomorphism ‘when the European Union tries to export its model and subordinates the signing of agreements to institutional change’ (Dabène 2009: 88–9). The EU’s active influence on Mercosur, the Community’s main interlocutor on the continent since its inception in 1991, may be the best-documented. There is evidence to suggest, for example, that the EU used the signature of the Interregional Framework Cooperation Agreement in 1995 as a lever to pressure Mercosur into adopting international legal personality

independent of its member states (Peña and Torrent 2005: 25; see also Bouzas 2002: 144). This agreement paved the way for the negotiation of a comprehensive trade agreement between the two regions, which was concluded in August 2019. Again, detailed studies show that Mercosur's adoption of a common customs code and the abolition of double taxation directly results from these interregional negotiations (Doctor 2015: 674; see also Grugel 2007).

In Africa, attempts by the EU to support regional integration through interregional relations have been the most controversial, especially due to negotiations over Economic Partnership Agreements. With these agreements, the EU moved from a 'continental' approach that encompassed its former colonies in Africa, the Caribbean, and the Pacific under a single institutional umbrella and on the basis of a preference-based system to a more 'tailor-made' strategy that engaged individual subregions and entailed reciprocal trade liberalization. Initially intended to strengthen regional integration in the continent by rationalizing overlapping memberships and serving as a credible commitment for economic integration, these negotiations had an adverse effect. As Hartmann (2016) summarizes, 'It is certain that the EPAs strengthened neither the idea nor the practice of regional cooperation on the continent, but might have even weakened some ROs' (p. 279; see also Asche and Engel 2008; Muntschik 2013; Robles 2008; Stevens 2006). Nevertheless, case studies indicate that the EU has actively shaped African regional institutions. Buzgadan (2012) shows, for instance, how negotiations over Economic Partnership Agreements have hampered SADC's ambitions to form a customs union.

In Asia, ASEAN continues to be the Community's main interlocutor, but the Asia–Europe meeting, initiated in 1996, serves as the broader institutional frame for cooperation between Asia and the EU. After disagreement over the status of human rights in an enhanced cooperation agreement in the 1990s, interregional relations between ASEAN and the EU have deepened since the early years of the new millennium. In 2003, the EU launched the ASEAN–EU Programme for Regional Integration Support (APRIS)—a multi-million, multiannual support programme for economic integration—to underpin EU–ASEAN dialogue in the form of the Trans-Regional EU ASEAN Trade Initiative and the Regional EU ASEAN Dialogue Instrument. In 2007, both sides agreed on an ambitious work programme, which aims to pave the way for closer cooperation in the future (for an overview, see Jetschke 2013). Attempts to sign an interregional trade deal have been abandoned in favour of a bilateral approach with individual ASEAN members. Despite this EU activism, few studies seek to assess its impact. Lenz (2012b: 186) argues, for example, that the adoption of the ASEAN Cosmetics Directive in 2009 'originated in the APRIS Programme written by European technical experts and was passed on to officials from the Secretariat who then introduced it into the regular decision-making process'. As before, the plausibility of causal claims regarding the EU's influence through interregional relations

has been established in selected instances, but it is generally not embedded in a broader analysis of the EU's influence upon the basis of a coherent theoretical framework.

### Contemporary theorizing of regional institution building

How does the contemporary theoretical literature reflect the substantial empirical evidence on the influence of the EU on processes of regional institution building?<sup>10</sup> The literature on regional organization has exploded since the early 1990s, and this overview therefore must remain sketchy. Nevertheless, I suggest that while there is an emerging literature on the diffusion of EU institutional models to other regional organizations, on which this study builds, the large bulk of the literature continues to ignore the evidence on EU influence, or fails to conceptualize and theorize it. In fact, with the exception of diffusion studies, there is a predominant sense—well expressed by Söderbaum—that the ‘regional phenomenon is now being transformed from a mainly European project and model during the first wave of regionalism towards a more global and diverse phenomenon’ (Söderbaum 2004: 16–17). As a result, EU diffusion tends to be seen as increasingly irrelevant theoretically.

Most theoretical accounts locate the main drivers of institution building *within* each region, and thereby focus on *endogenous* processes and structures. Let us consider functional, interest-based, institutional, and constructivist approaches. Functional approaches to cooperation—such as neo-functionalism and neo-liberal institutionalism (Keohane 1984; Koremenos, Lipson, and Snidal 2001)—view regional institutions primarily as a response to conflicts and problems of collective action resulting from economic or security-related interdependence within a region. This explains, for example, the delegation of competences to the supranational institutions of the EU (Pollack 2003) and the more intergovernmental nature of institutions in ASEAN (Yoshimatsu 2006) and Mercosur (Bouzas and Soltz 2001). In this vein, Arnold and Rittberger (2013) interpret dispute settlement in Mercosur as a commitment device whose functionality increases with growing dependence on other member states’ domestic economy.

Interest-based accounts—often associated with political economy approaches and liberal theories of international relations—interpret regional institutions as the result of bargaining dynamics driven by the interests of powerful actors within a region. Intergovernmental theories of European integration, for example, highlight the central role of core member-state governments that build regional institutions to protect their geopolitical interests or the economic concerns of their

<sup>10</sup> This section partially draws on Lenz and Marks (2016).

constituencies (Moravcsik 1998). In other regions, scholars similarly emphasize the distribution of interests and power among member states to account for differences in regional institutionalization (Grieco 1997; Gruber 2000; Pedersen 2002; Schirm 2002). Hancock (2009), for example, emphasizes the ‘plutocratic’ interests of the economic hegemon in building regional institutions on top of its own national institutions. More liberally minded scholars specifically emphasize the differential influence of domestic coalitions to explain the emergence and form of regional institutions (Chase 2003; Milner 1995; Nesadurai 2003; Solingen 2005). Etel Solingen’s work, for instance, contrasts the domestic and international strategies of internationalist and statist-nationalist coalitions to argue that the nature of regional orders is a function of the relative strength of these two social groups (Solvingen 1998: 2).

Institution-based theories emphasize the role of national or regional institutions in constraining the pursuit of state interests at the regional level. Prominent work on European integration has highlighted the role of supranational institutions in propelling regional dynamics that member states did not anticipate and subsequently find difficult to rectify (Burley and Mattli 1993; Pierson 1996; Sandholtz and Stone Sweet 1998). In one of the few institutionalist accounts beyond Europe, Duina (2016) attributes variation in the institutions associated with economic integration to national legal systems that are deeply rooted in history (see also Duina and Buxbaum 2008; Malamud 2005). Relatedly, Hawkins (2008) proposes that institutionalization can feed on itself once societal actors are granted access to regional decision-making. As institutional arguments are less popular beyond Europe due to the relative weakness of regional institutions, scholars have examined the role of domestic institutions such as veto players or democracy in affecting the design of regional trade agreements (Mansfield, Milner, and Rosendorff 2002; Mansfield and Milner 2012).

Finally, constructivist work focuses on the role of ideas, cultural traditions, or identities—a literature that is most developed in the European and Asian contexts. Scholars attribute both the EU’s uniquely strong degree of regional institutionalization and the informal, consensual, and weakly institutionalized forms of regional organization in Asia to particular ideas about regionalism (for Europe, see Parsons 2003; Jachtenfuchs 2002; for Asia, see Acharya 1997, 2004; Duina 2006; Ba 2009; Johnston 2003; Jetschke and Katada 2016; beyond Asia and Europe, see Spektor 2010). Beyond these flagship cases for constructivist arguments on regional institutions, Adler and Barnett (1998) show how shared national identities can facilitate movement towards security communities around the world, in which recourse to violence to solve international conflicts has become unthinkable (see also Tussie 2009). In one of the few quantitative studies on the design of regional and global organizations, Hooghe, Lenz, and Marks (2019) argue that a large part of the variation in the delegation and pooling of authority reflects the extent of normative commonality—or community—among member states.

Despite the epistemological, ontological, and theoretical diversity within this group of scholars, these theoretical accounts of regional organization share the focus on *endogenous* factors. This body of literature has developed forceful arguments—based on well-delineated mechanisms and the conditions under which they are likely to operate—about the intraregional conditions that shape processes of regional institution building. On account of their analytic focus, however, these studies are bound to neglect EU influence as a relevant causal factor. Buzdugan, among others, diagnoses an ‘inward focus’ of much of the literature and detects a ‘historical lack of theoretical and empirical attention to the role of international actors in the dynamics of regionalism in IR and IPE’ (Buzdugan 2012: 918, 920). And Söderbaum (2016: 148) flatly declares the role of external actors in region-building to be an ‘overlooked aspect of regionalism.’ This resonates with assessments of the theoretical literature during the first wave of regional organization. Can we claim that not much has changed since then? I think it has, although weaknesses do remain.

Today, there is a sizeable literature from an ‘outside-in’ perspective on regional institution building. One part considers the role of the United States and other hegemonies in regional organization, and thereby draws on systemic thinking about the highly uneven distribution of power in the international system. For example, scholars explore how the United States’ choice of relations with other countries shapes their propensity to form ROs, and the institutional forms these take. In this vein, Crone (1993: 505) argues that the ‘extreme hegemony’ exercised by the United States prevented strong regional institutions from emerging in East Asia during the Cold War (see also Hemmer and Katzenstein 2002; Beeson 2006). Katzenstein (2005) makes a similar argument about the role of the United States in the creation of regional orders in Europe and Asia, leading to different institutional models that underpin them. The EU’s hegemonic influence on regional organization is a dominant theme in the literature on enlargement and the direct neighbourhood, including how the EU employs conditionality to shape other countries’ regional strategies (Bechev 2006; see also Buzdugan 2012). In Asian regional organization, the hegemonic role of China receives increasing scholarly attention (Segal 1996; Beeson 2008).

These ‘outside-in’ accounts capture an important form of external influence, and they tend to involve systematic conceptual and theoretical treatments of the mechanisms by which hegemony operates and produces its effects. They also tend to imply a relevant scope condition, namely the material asymmetry between the hegemon and target actors. When external hegemonies are powerful, the constraints on regional decision-makers are tight; once hegemony weakens, new institutional and policy choices open up, and target actors’ strategies become more important in explaining institutional outcomes (see Mansfield 1998; Ruggirozzi and Tussie 2012; Grugel, Ruggirozzi, and Thirkell-White 2008; Muhr 2011). However, the analytic focus of these studies rests on the United

States, the EU, or China because these are *hegemonic* actors. Put differently, what distinguishes these actors from each other are their strategies and objectives—the EU may pursue multilateral and the United States unilateral strategies (Hettne and Ponjaert 2014), or they may put differential emphasis on notions such as partnership or social and economic inclusion (Grugel 2004)—and not the nature of these actors themselves. It is for this reason that these studies do not offer strong insights on interorganizational influences. The ontological focus, as it were, rests elsewhere.

Another part of this ‘outside-in’ literature focuses less on specific international actors as on systemic economic and security processes that shape regional institution building. A dominant theme, especially in the economic and political economy literature on regional organization, is globalization. Building (economic) regional institutions, these accounts suggest, is the rational response of political actors to structural changes in the world economy and the associated incentives emanating from increasing economic and financial interdependence. More specifically, institution building at the regional level allows policy-makers to exploit the opportunities associated with economies of scale, efficiency improvements, or increased foreign direct investment (Büthe and Milner 2008; Grugel and Hout 1998; Lawrence 1996). Whereas this literature tends to focus on systemic economic influences on states and regions, other scholars attend to external security threats. According to Rosato (2011), for example, variation in regional institution building is a function of the strength of external security threats.

This ‘outside-in’ perspective is also adopted by more heterodox approaches that centre on the influence of globalization on regional organization. They tend to emphasize the *political* processes that underpin structural economic changes, often highlighting the regionally diverse, even contradictory responses to global economic pressures (Hurrell 1995b: 38–45; Marchand, Boas, and Shaw 1999). The New Regionalism literature seeks to build a new theory of the multifaceted reactions induced by these structural changes (Grant and Söderbaum 2003; Hettne 1999: 2; Mittelman 1996; Schulz, Söderbaum, and Öjendal 2001). This approach, as Söderbaum (2016) summarizes, posits that ‘globalization is a strong and, in some of its dimensions, irreversible force, with deep implications for regionalism’ (p. 151). Critical approaches similarly examine the extent to which decision-makers, and their links to powerful societal interests, construct formal ROs to accommodate economic globalization. Gamble and Payne, for example, argue that ‘regionalist projects emerge as a means to help achieve the globalist project in a world where is no longer a single state with the authority and capacity to impose its leadership’ (Gamble and Payne 1996: 252–53; see also Coleman and Underhill 1998).

Again, this literature considers ‘outside-in’ influences on regional institution building and has tremendously improved our understanding of how the broader global environment, in which ROs are embedded, affects their emergence and

form. We now have a good sense both of the mechanisms by which this influence works and of the conditions under which it is likely to result. However, this literature tends to emphasize systemic influences in a generic sense, and thereby neglects the types of influence that operate between ROs. More specifically, while the significant literature on EU interregionalism holds promise in this respect, it largely fails to examine the effects of interregionalism on the design of the respective ROs involved. To date, it has not moved beyond the generic assertion that ‘interregionalism can affect regionalism’ (Doidge 2007: 245; see also Hänggi 2003). Instead, it focuses on conceptualizing different forms of interregionalism (Aggarwal and Fogarty 2004; Hänggi, Roloff, and Rüländ 2005; Söderbaum, Stålgren, and Langenhove 2005), and explores the contribution that interregionalism can make to processes of global governance (Rüländ 2010; Rüländ 2008).

The most sophisticated attempt to capture interorganizational influences is an emerging literature on diffusion between ROs, on which this study builds. This research programme essentially emerged with a special issue published in *West European Politics* in 2012. The lead essay conceptualizes diffusion as interdependent decision-making, and outlines a typology of mechanisms by which institutional models diffuse from one RO, primarily the EU, to other ROs. Since then, the diffusion agenda has developed into a popular research programme (for an overview, see Duina and Lenz 2016). Based primarily on case studies, this literature has accumulated convincing empirical evidence that EU diffusion indeed affects the institutional design of other ROs in some cases. As the aforementioned special issue confidently concludes, the impact of EU diffusion is ‘certainly not spurious’ (Börzel and Risse 2012b: 194). Nevertheless, the external validity of these claims remains uncertain at present. Moreover, while we have an emerging sense of the mechanisms that underlie EU influence, our knowledge about the conditions under which it is likely to matter is limited. Finally, these studies have tended to conceive of outcomes as the adoption of EU institutional models, with little discussion of variation in outcomes (but see Jetschke 2017).

Much of this literature aims to show primarily that EU diffusion matters, at the expense of foregoing the explicit contrasting of the influence of diffusion with that of other factors, such that existing results on the significance of EU diffusion compared to other factors are mixed. Whereas some claim that ‘there is little doubt that the proactive role played by EU institutions to support regionalism has led to a “diffusion” of norms and institutional models’ (Fioramonti and Mattheis 2016: 674), others are more sceptical. A growing literature on localization, for example, suggests—albeit implicitly—that the ‘real’ action is happening when local actors appropriate foreign models for their own purposes rather than in the diffusion process itself (Acharya 2004; Rüländ 2014; Rüländ and Bechle 2014). In these analyses, the analytic focus shifts from the interorganizational level to domestic politics, which implies that the interorganizational level is of decidedly secondary relevance. Studies that explicitly compare the influence of

relevant factors at different levels of analysis tend to confirm this finding. Summarizing a series of studies on the design of ROs in different world regions, Acharya and Johnson find that ‘the role of external powers has not been important in [...] shaping institutional design’ (Acharya and Johnston 2007b: 259). Fawcett and Gandois (2010: 624), on the other hand, in their analysis of regional organization in Africa and the Middle East, conclude that ‘external influence quickly emerges as a prominent factor’, but confine its effect largely to the founding period of an organization. This raises the possibility that existing diffusion studies overemphasize the relative importance of diffusion—and require better controls.

In sum, existing theory on regional organization is seriously incomplete because it overwhelmingly constructs explanations that emphasize as key causes the properties of ROs and their constituent member states or the outside-in pressures flowing from the international system. A literature on the diffusion of regional organization that holds promise in mitigating this deficient theoretical state of affairs is gradually emerging. The next section clarifies the theoretical bias inherent in the literature on RO design by framing it in terms of the level of analysis metaphor, and argues that a better understanding of the influence of EU on regional institution building requires a different ontological starting point: from an atomistic towards a relational conception of ROs.

### **Explanatory bias in the study of regional institution building**

Existing studies of regional institution building can be grouped into three levels of analysis: (1) regional, (2) interorganizational, and (3) global. This threefold categorization expands the classical distinction of Waltz (1979) and others (Singer 1961) between the ‘unit’ level of analysis—the RO in our case—and the ‘systemic’ level of analysis—meaning the international system as a whole—by including the interorganizational level of analysis—i.e. the interaction between ROs.<sup>11</sup> Thus, I conceive the levels of analysis metaphor not in ontological terms, as referring to the units of analysis, but in epistemological terms—i.e. as capturing ‘the types of variables that explain a particular unit’s behavior’ (Moul 1973, cited in Buzan 1995: 203). Work on regional organization, summarized above, overwhelmingly pitches its explanations at the regional and global levels of analysis while neglecting the interorganizational level of analysis. Below, I discuss these three analytic perspectives on the sources of explanations with reference to this literature, summarized in Table 2.2, and advance diffusion as an analytic concept that operates at the interorganizational level of analysis and serves as a useful starting point for developing a theory of the EU’s influence on regional institution building.

<sup>11</sup> The interorganizational level is akin to what Buzan terms a ‘process’ level of analysis, which captures ‘the dynamics of interactions among units’ (Buzan 1995: 203).

**Table 2.2.** Levels of analysis in the study of regional institution building

	Regional	Interorganizational	Global
<i>Denomination</i>	Unit (and sub-unit)	Sub-systemic; inter-unit	Systemic
<i>Type of explanation</i>	Inside-out	Outside-in	Outside-in
<i>Central causes</i>	Attributes of ROs and their constituent member states	Attributes of relationships between ROs	Attributes of the international system
<i>Causal direction</i>	Vertical	Horizontal	Vertical
<i>Ontology</i>	ROs as atomistic units	ROs as relational units	ROs as atomistic units
<i>Associated IR literatures</i>	Liberal intergovernmentalism, neo-functionalism, post-functionalism, transactionalism, domestic politics, international political economy	Diffusion, interregionalism, institutional interplay, regime complexity	New Regionalism, realism, sociological institutionalism (world polity explanations)

*Source:* author's own depiction.

The first level of analysis—the regional level—emphasizes attributes of ROs and its constituent member states as key causes of regional institution building. It analyses phenomena from the perspective of properties of the unit of analysis itself, and thereby provides ‘inside-out’ explanations of regional institution building. Studies at this level of analysis share the premise that the most relevant causes are related to processes that occur intraregionally as well as causal influence flowing vertically within the units themselves: from states to ROs or among different aspects of ROs themselves. Variation in the nature and extent of regional institution building is explained by differing attributes of these organizations and their member states, while institutional similarity reflects similar structural properties of the respective units. Among the influential studies sharing this premise is the rational design project, with its focus on organizational characteristics such as the number of member states and the underlying cooperation problem (Koremenos 2016; Koremenos, Lipson, and Snidal 2001), studies of Asian regional organization on the identity-based roots of institutions (Acharya 1997), and political-economy studies of European integration (Lindberg 1963; Schirm 2002). Most full-fledged theories of regional organization, such as neo-functionalism, liberal intergovernmentalism, post-functionalism, and transactionalism share a focus on the unit (and sub-unit) level of analysis. To this, one may add studies that emphasize domestic politics in regional organization and some variants of international political economy approaches (for a good overview, see Solingen and Malnight 2016).

A key implication of the regional level of analysis is that it treats different ROs as independent observations and, as a result, that processes of regional institution building develop independently of one another. The regional level thereby entails an atomistic ontology in which ROs are treated as self-contained entities whose institutional designs reflect intraregional structures. As Jetschke and Lenz (2013: 628) put it, there is ‘the conventional conceptual assumption that ROs are atomistic entities that take decisions largely in isolation from each other’. For example, if Asian and European ROs are said to differ from one another in terms of their degree of institutionalization, this is due to the fact that they are made up of different types of states, with distinct histories and ideational roots (Katzenstein 1996). This perspective tends to emphasize variation across organizations and its member states, as close study of individual units generally reveals differences between them. As Singer (1961) notes, unit-level analysis highlights ‘significant differentiation among our actors in the international system’ (pp. 82–3). From the perspective of the regional level of analysis, ROs tend to diverge in their institution building processes and outcomes. The analytic picture that emerges, broadly speaking, is one of institutional diversity.

The second level of analysis—the global level—highlights systemic pressures emanating from the international system as key drivers of regional institution building. It analyses political phenomena from the perspective of the properties of the system as a whole, and thus offers an outside-in explanation of regional institution building. Studies at this level of analysis share the premise that the embeddedness of an RO within a broader organizational environment—the system—is causally relevant to explaining its institutional design. Thus, the most relevant causes are located *extraregionally*, and causal influence flows vertically from the international system towards ROs. By implication, the key expectation is that ROs build similar institutions because they are subject to similar global pressures and—less frequently—their institutions differ to the extent that systemic influences vary across regions.<sup>12</sup> Among the influential studies sharing this analytic perspective are works on the impact of globalization on the proliferation of regional trade agreements after the end of the Cold War (Mansfield 1998; Mansfield and Milner 2012) and studies highlighting the influence of global hegemony on regional institution building (Katzenstein 2005). The New Regionalism theory emphasizes the influence of globalization on regional cooperation. Similarly, realist-inspired analyses of regional institution building and world-polity explanations in sociology tend to share these analytic features.

The global level of analysis shares with the regional level of analysis the implication that it treats different ROs as independent observations and, as a result, that

<sup>12</sup> Maybe most truthful to systemic theorizing, this may be because global hegemony pursues different strategies in different regions. More often, however, variance is introduced by combining systemic and unit-level theorizing (see below).

processes of regional institution building develop independently of one another. Even though ROs are affected by similar global structures, they do not interact with each other. Instead, trajectories of regional institutional building reflect direct yet *independent* reactions to systemic pressures. By implication, the global level of analysis also espouses an atomistic ontology in which ROs are treated as self-contained entities whose institutional structures ‘internalize’ pressures emanating from the international system. Studies at this level of analysis tend to emphasize the homogenizing tendencies of the international system across differentially constituted ROs. As Singer (1961) puts it in general terms, systemic theorizing tends to ‘postulate a high degree of uniformity [...]. By definition, we allow little room for divergence in the behavior of our parts when we focus upon the whole’ (p. 81). From this analytic perspective, ROs tend to display similarity, if not homogeneity, in the processes and outcomes of institution building.<sup>13</sup>

The third level of analysis, which this study focuses on, is the interorganizational one. This level emphasizes the interaction between ROs and thus takes seriously their relations. As the introduction to the *Oxford Handbook of Inter-Organizational Relations* flatly states, ‘Inter-organizational relations, as its subject name suggests, is concerned with relationships between and among organizations’ (Cropper et al. 2008: 5). In this book, I am interested in (to use the language of interorganizational analysis) the dyadic and interactive relationship between the EU and other regional organizations (on this terminology, see Cropper et al. 2008: 11–16). While ROs may have a variety of relationships with other organizations which impact their processes of institution building (multiplicitous relations), my theoretical focus rests on their relations with the EU—a choice I justify in the next chapter. In some of the empirical chapters I recognize, however, that relationships with other organizations may also have shaped outcomes. Moreover, the second analytic focus is on interactive relationships—i.e. the direct and indirect interactions between these organizations. Non-interactive relationships, i.e. relationships between ROs that share particular attributes, play a key role in theorizing the scope condition of my argument about the EU interorganizational influence.

The interorganizational level of analysis is located between the other two levels, and therefore shares certain features with both of them. On the one hand, the interorganizational level shares with the global level the explanation of regional institution building as shaped by causal factors external to the RO in question; these factors operate from the outside in. More generally, causal effects flow from a unit’s external environment. Yet rather than conceiving of the external environment as the entire international system, the interorganizational level emphasizes the specific relations between ROs. In this sense, the interorganizational level of

<sup>13</sup> In some of these accounts, variance is introduced by combining systemic and unit-oriented analysis. Much of the literature on globalization and domestic politics shares this analytic focus (for an overview, see Solingen and Malnight 2016).

analysis is sub-systemic in that it operates below the international system as a whole. On the other hand, it shares with the regional level the focus on specific ROs (and their relations to other ROs) as a key causal factor. Expressed in more general terms, causal effects flow from the units of analysis rather than a diffuse system; but it is the relations between them and not their endogenous properties that exert causal effects. In this sense, the interorganizational level of analysis is inter-unit or, in Buzan's (1995) terminology, focused on 'process'.

The most distinctive feature of the interorganizational level of analysis, therefore, is its relational ontology. Rather than conceiving the units of analysis as atomistic entities that develop in isolation, it conceptualizes them as relational. As Jackson and Nexon (1999: 291–2) note in an early treatment of 'relationalism' in IR, citing Charles Tilly: 'Relationalism, on the other hand, treats configurations of ties—recurrent sociocultural interaction—between social aggregates of various sorts and their component parts as the building blocks of social analysis' (see also Jackson and Nexon 2018; Emirbayer 1997).<sup>14</sup> In this analytic perspective, the main causal effects flow from attributes of the *relationships between* ROs rather than ROs proper (regional level of analysis) or the system as a whole (global level of analysis). Similar regional institutions reflect similar attributes in the relations between ROs, whereas differences in regional institutions represent variation in such relationships. The direction of causal influence flows horizontally between units rather than vertically towards units, either from within or from without. Relational types of analysis have recently risen in prominence in political science and IR as scholars have become interested in interactions and networks. For example, contemporary scholarship on international institutions drawing on concepts such as diffusion, interregionalism, Europeanization, institutional interplay, and regime complexity instantiate core assumptions of relational styles of analysis (see e.g. Alter and Meunier 2009; Orsini, Morin, and Young 2013; Raustiala and Victor 2004; Sommerer and Tallberg 2019; Young 1994). All of these concepts seek to capture causal processes that are located at the inter-unit level of analysis and emphasize interactions.

The concept of diffusion holds particular promise both in overcoming some of the core weaknesses in the literature on regional institution building and in capturing the influence of the EU on it. Diffusion is conventionally defined as a process of interdependent decision-making between units of analysis,<sup>15</sup> and this definition highlights three analytic advantages that the concept can bring to the study of ROs. First, it entails interactions between units, and thereby overcomes neglect of the interorganizational level of analysis in the literature on regional

<sup>14</sup> I do not take relationalism 'all the way down' by conceiving relations as processes that are ontologically prior to the units and therefore constitute them. Jackson and Nexon refer to this ontological stance as 'processual relationalism'. Instead, my empirical focus is on the attributes of the relationships between the units, which implies that I still treat units as analytically primitive, or pre-given.

<sup>15</sup> I develop this notion more fully in the next chapter.

organization. Second, the concept is sensitive to the potentially asymmetric nature of transfer processes, in which institutional models often radiate outwards from the most innovative unit(s). This is a particularly adequate premise in the analysis of ROs—a population in which the EU ‘is often (if only implicitly) seen as the “gold standard”’ (Sbragia 2008: 33) due to its prominence, success, and active promotion of regional organization worldwide. Third, the diffusion concept is compatible with a range of transfer channels and mechanisms (for an overview, see Jetschke and Lenz 2011)—an analytic openness that creates space to examine how transfers are shaped by actors on the receiving end.

Thus, diffusion studies need not entail sweeping claims of similarity, if not uniformity, in outcomes. As I discuss in the next chapter, diffusion may be conceptualized as a *process* of interdependent decision-making that is compatible with a range of outcomes. When understood as depending on the relationships between ROs, a key source of variation in diffusion outcomes is the nature and intensity of these relationships. Another source of variation emerges when we account for the specificities of diffusion among IOs. Unlike within states, diffusion among ROs takes place not in a hierarchically structured decision context but in a setting of *decentralized* decision-making in which sovereign governments negotiate strategically over institutional change. In this context, they often disagree about the desired extent of institutional change, including the adoption of external institutional forms. As a result, institutional outcomes in international relations regularly constitute an institutional compromise among different bargaining positions. Depending on the configuration of power among the governments involved as well as the number of governments that advocate the transfer of an institutional form, the outcome reflects the original institutional form to a larger or smaller extent. Thus, when diffusion affects the bargaining position of some but not all governments involved in a negotiation, institutional similarity with the institutional ‘source’ may be severely muted. Moreover, this study seeks to identify more precisely what parts of the outcome can be attributed to diffusion from the EU. Most existing studies seek to show that diffusion matters, but fail to specify those parts of the outcome that are causally attributable to EU diffusion. Employing counterfactual reasoning and precise process-tracing, I attempt to make more specific claims about the effects of EU diffusion as a causal factor. This may contribute to reconciling competing results in the RO literature on the extent to which diffusion matters—a theme I return to in the conclusion.

## Conclusion

This chapter summarizes seven decades of empirical research on regional organization in different parts of the world to demonstrate that references to the EU as a relevant causal influence are pervasive. This stands in marked contrast to the

theoretical literature, I suggest, which has only recently begun to theorize and systematically explore such interorganizational influence between the EU and other ROs using the concept of diffusion. For the most part, the theoretical literature continues to pitch its explanations at the regional (and subregional) as well as global levels of analysis. This chapter thereby confirms a paradox first identified by Karl Kaiser in the late 1960s: namely that present theory of regional organization largely fails to account for an apparently empirically relevant cause. The literature on regional organization, I conclude, displays an explanatory bias towards causes located at the regional and global levels of analysis, and neglects causal factors operating at the interorganizational level, the level that shines an analytic spotlight on the *relations between regional organizations*.

I also propose that a shift in explanatory focus towards the interorganizational level of analysis entails a different ontological starting point: rather than treating ROs as atomistic entities whose institutional designs reflect properties of the ROs and their member states, on the one side (regional and subregional level), or of the international system as a whole, on the other (global level), we need to treat our units of analysis as relational. Only when we do so can we start to recognize that important causal effects flow from the *relationships between ROs*, and especially from the EU towards other ROs. In the next chapter, I use the diffusion literature to develop a theory of the EU's interorganizational influence that is compatible with this ontological premise.

# Theorizing Interorganizational Influence from the European Union

## A Diffusion Framework

The main argument of this book is that the European Union (EU) systematically shapes processes of institution building in other regional organizations (ROs). This influence operates through two distinct pathways—active and passive influence—and is conditioned by the contractual nature of ROs. More broadly, the book proposes that interorganizational influence matters for our understanding of regional institution building; decision-making is regularly interdependent between different ROs.

In this chapter, I lay the analytical foundations for these claims by proposing a novel theoretical framework for understanding processes of interorganizational diffusion, with a particular focus on the EU as the most prominent pioneer in the field of regional organization. In developing this framework, I pay particular attention to how interdependent decision-making affects the decentralized setting of negotiations among sovereign governments, which form the basis of institutional change and evolution in ROs. The framework suggests that EU influence operates through its effect on government's institutional strategies in negotiations over institutional change. An important implication of the framework is that it explains variation in the degree of convergence between the original institutional arrangement and those that are created elsewhere as a function of the extent to which interdependent decision-making shapes national governments' institutional strategies. Only when institutional innovations fully shape collective institutional strategies is convergence likely to result. Otherwise, we observe various degrees of adaptation, such that the final institutional outcome displays limited similarity with the original innovation.

I develop this framework in three steps. First, I outline a heuristic model of diffusion between ROs that captures its basic processes and dynamics. I then zoom in on the role of organizational pioneers and develop the causal process underlying the two pathways and the scope condition of EU influence. Finally, I derive testable propositions from the theoretical framework, and specify its observable implications at the process level. This framework structures the empirical analysis in subsequent chapters, which tests its explanatory power through a combination of quantitative and qualitative methods. Even though

I will formulate the theoretical framework with a view to understanding EU influence on institutional creation and change in ROs, the framework is more broadly applicable. Building on a rich established literature on diffusion in political science, sociology, and economics, I theorize how and when prominent pioneer organizations shape other organizations in a given field through interdependent decision-making. Thus, the general logic of the argument is not confined to questions of *institutional* design but might refer also to policies or other types of rules; similarly, it is not confined to ROs and may, in principle, apply to international organizations (IOs) more broadly.

## **Diffusion between regional organizations**

### Conceptual foundations

For most of the past six decades, scholars of ROs and of international institutions more broadly have treated ROs as atomistic entities that develop largely in isolation from each other. As outlined in the previous chapter, established theories locate the main drivers of regional institution building *within* the respective organization. This is the case whether we take functional theories of cooperation and integration that emphasize ROs as the response to conflicts and problems of collective action resulting from economic or security-related interdependence within a region, or constructivist and transactionalist approaches that emphasize the role of communication and collective identities. Most studies treat different ROs as developing largely independently of each other. The literature overwhelmingly works with the implicit assumption of unit independence.

A diffusion framework challenges this assumption by subjecting it to empirical scrutiny. It starts from the distinctive claim that ROs are *interdependent* in their decision-making and that, consequently, decisions in some organizations systematically shape decisions in others (Gray 1973; Strang 1991; Meyer et al. 1997; Simmons and Elkins 2004; Braun and Gilardi 2006). In our context, the claim is that the process of regional institution building in a given RO is affected by the institutional choices taken in the EU. A diffusion framework conceptualizes units of analysis as being embedded in an environment made up of other, similar units, and examines how this embeddedness shapes their institutional evolution and form. As Gilardi (2012) summarizes, diffusion studies analyse how ‘decisions in one country [are] influenced [...] by the ideas, norms, and policies displayed or even promoted by other countries and international organizations’ (p. 453). Such a framework thereby rejects the idea, widespread in the literature on regional organization, that institutional decisions in ROs ‘can adequately be understood by conceiving of national governments [in different ROs] as making decisions independently of each other’ (Simmons, Dobbin, and Garrett 2006: 787).

The defining characteristic of a diffusion framework is that it starts from the assumption of *unit interdependence*.

From this perspective, the key to understanding regional institution building is the direct and indirect linkages between organizations, and the power relations that shape their interaction. The idea that linkages and interactions between units are central to our understanding of institutional change has deep roots in the social sciences, and does not only characterize the literature on diffusion. In political science, the concept of interdependence has a long pedigree, denoting a situation of mutual dependence that is 'characterized by reciprocal effects among countries or among actors in different countries' (Keohane and Nye 1977: 7). Similarly, Rosenau's (1980) linkage politics is defined by 'any recurring sequence of behavior that originates in one system and is reacted to in another' (p. 381). Today, the term 'globalization' has risen to prominence, and any definition of this phenomenon highlights the increasing density of interactions across national borders (Scholte 2005; Jahn 2006). In policy analysis, the concepts of policy learning and policy transfer are said to capture an important source of institutional change, tapping the extent to which 'knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system' (Dolowitz and Marsh 2000: 5; see also Dolowitz 2009).

In sociology, scholars of organizations have developed powerful arguments about how 'organizational environments' or 'organizational fields' are key to understanding institutional change. The former see institutional change as a function of the nature and distribution of resources in organizations' environments, which can be characterized by the 'elaboration of rules and requirements to which individual organizations must conform if they are to receive support and legitimacy' (Scott 2001: 132; see also Pfeffer and Salancik 1975; Aldrich 1979). The latter emphasize the importance of the emergence and distribution of legitimate organizational templates within a system of organizations with similar goals that are constructed and propagated through global cultural and associational processes (Meyer and Rowan 1977; DiMaggio and Powell 1983). The notion of 'organizational fields' directs our attention to '“sets” or “communities” [...] of organizations that directly interact with one another or are influenced by each other in a meaningful way' (Greenwood, Suddaby, and Hinings 2002: 59; for uses of the notion in IR, see Dingwerth and Pattberg 2009; Vetterlein and Moschella 2014). Economic sociologists have developed similar arguments about the embeddedness of social action. Mark Granovetter (1985) stipulates that 'the behavior and institutions to be analyzed are so constrained by ongoing social relations that to construe them as independent is a grievous misunderstanding' (p. 482). He suggests that an atomized conception of human action characterizes both under- and oversocialized conceptions of action, and instead proposes that

actors' 'attempts at purposive action are instead embedded in concrete, ongoing systems of social relations' (Granovetter 1985: 487; see also Marsden 1983; Uzzi 1997). This is similar to the 'relationalism' developed in IR and mentioned in the previous chapter.

Finally, network theorists across a variety of disciplines similarly posit that 'it is not actors' interests, power, or ideology, but the *relations among actors* that are causally significant' (Goddard 2009: 254, emphasis original; see also Granovetter 1973; Maoz 2011; Hafner-Burton 2009; Jackson and Nexon 2018: 585–7; Goddard 2018). Accordingly, scholars of networks zoom in on the relations between actors, and the structures formed by these relations, in an attempt to understand how they constrain and enable the actors involved in these relations. A common feature of these different concepts is that linkages and interactions shape the evolution of units by enabling and constraining decision-making through the manipulation of specific resources such as money, information, and legitimacy. Thus, the idea that linkages and interactions between ROs matter for regional institutional change can draw on a broad conceptual foundation spanning a variety of social science disciplines.

Following convention, diffusion is understood as the process by which the interactions between ROs come to affect institutional change. For example, Rogers (2003: 5) defines diffusion as 'the process in which an innovation is communicated through certain channels over time among the members of a social system' (see also Elkins and Simmons 2005: 36; Gilardi 2005: 454). Accordingly, diffusion studies focus on the process by which organizational decisions in some organizations shape those taken in other organizations. In sociology, this mainly concerns the study of organizations such as business firms, public administrations, museums, or universities (for an overview, see Strang and Soule 1998). Comparativists in political science and students of international relations tend to study diffusion processes among governments. A popular theme among comparativists is the spread of policies among governments at various levels, such as cities, subnational units, and countries (Gray 1973; Levi-Faur 2005; Shipan and Volden 2008; Walker 1969). In international relations, work on diffusion tends to focus on cross-national processes. One prevalent subject is the adoption of liberal economic policies, which tend to be affected by the policies of relevant peers (Simmons and Elkins 2004; Lee and Strang 2006; Brooks and Kurtz 2012); another popular theme is the spread of international agreements, such as investment treaties (Elkins, Guzman, and Simmons 2006; Poulsen and Aisbett 2013) or trade agreements (Mansfield and Milner 2012; Baccini and Dür 2012; Baccini, Dür, and Haftel 2015). By focusing on interdependent decision-making across organizational units, existing diffusion studies provide a welcome corrective to purely endogenously focused models of institutional or policy change. While these studies recognize that 'international influences are integrally connected to national politics' (Lee and Strang 2006: 888), their focus generally is on

hierarchically organized units such as business firms or governments. This implies that the process of adoption within the respective unit itself has received little analytical attention.

I posit that, in order to understand diffusion among ROs, we must problematize the adoption process within units. Unlike other types of organization that have dominated the study of diffusion, institutional choices in IOs in general, and in ROs in particular, are the result of bargaining processes among sovereign governments. These are not hierarchically structured organizations in which a specific actor has the legal competence to impose her preferred institutional choice on others.<sup>1</sup> Consequently, the process of diffusion between ROs cannot simply be understood as the adoption of institutional or policy innovations from elsewhere, for such a view neglects the fact that intergovernmental negotiations among actors with differential interests and power tend to mute the link between an external innovation and the final decision. The dynamics and outcomes of decentralized bargaining among heterogeneous actors is a key theme of international relations scholarship, yet is hardly covered in the literature on diffusion. I argue that studying diffusion between ROs provides an opportunity for, and in fact requires, reconnecting these two concerns. Subsequently, I outline a model of institutional diffusion that develops this argument.

### A heuristic model

For our purpose, it is useful to define diffusion as the process by which institutional innovations in one regional organization shape the outcome of intergovernmental bargaining over institutional choices in other regional organizations. Like other definitions mentioned above, this definition rests on the premise of interdependent decision-making, understood as a process, but also specifies such decision-making as involving intergovernmental bargaining, which lies at the heart of institutional choices in ROs.

The focus on interdependent decision-making implies that claims about diffusion involve an often-implicit counterfactual: the outcome of interest would have been different if ROs were atomistic entities. Expressed differently, an explanation that draws on diffusion implies that the dynamics and outcomes of intergovernmental bargaining over institutional change in ROs would be different if such bargaining were shaped only by factors operating at the (intra)regional and global

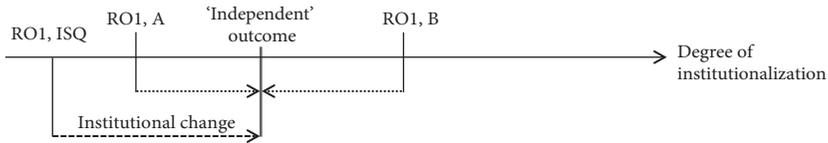
<sup>1</sup> This distinction between hierarchical and decentralized organizations is akin to the traditional distinction in international relations between the hierarchy of nation states and the anarchy that dominates the international system. This distinction thus captures two fundamentally different organizing principles, and served as the major justification for the creation of international relations as an independent field of study. The distinction also resembles the distinction between markets and hierarchies (Williamson 1975).

levels of analysis (Lenz 2013). This counterfactual is known as ‘Galton’s problem’, after the British social scientist and statistician Francis Galton, who, in relation to laws of marriage and descent in anthropology, first raised the possibility that units might not be independent of each other (see Naroll 1965; on counterfactuals generally, see Fearon 1991 and Levy 2008; on counterfactuals in diffusion research, see Starke 2013: 575-76). This problem is sometimes characterized in terms of ‘prerequisites versus diffusion’ (Collier and Messick 1975) or, as Ross and Homer (1976: 1) put it, ‘Are correlations between two traits or behaviours, such as economic development and political stability, to be explained by functional relationships within political systems, or in terms of diffusion and borrowing arising from interactions among countries?’ In the current context, the key question is whether institutional choices in ROs can be adequately understood as being the result of intraregional characteristics and abstract global processes, i.e. arguments located at the (sub)regional or global levels of analysis, or whether they must take interactions between ROs into account, i.e. consider the interorganizational level of analysis.

This discussion suggests that any argument about diffusion entails a (counterfactual) comparison between two situations: one of independent decision-making, in which units are thought of as atomistic entities, and one of interdependent decision-making, in which they interact. Modelling this comparison explicitly is the core idea of the heuristic model developed below. I take the ‘classical’ counterfactual at the unit level one step further by thinking of interactions not at the level of ROs per se but in terms of interactions between an RO and the institutional preferences or strategies of governments, individually or collectively, in another RO. I argue that the effects of diffusion are even discernible in cases in which not *all* governments’ institutional preferences or strategies are shaped by other organizations in similar ways, but in which diffusion affects only a subset of them.

I develop the heuristic model of diffusion between ROs in two steps. I first outline a simple model of intergovernmental bargaining under conditions of independent decision-making as the baseline and then introduce diffusion into the picture.<sup>2</sup> A comparison of the respective institutional outcomes indicates (1) that diffusion effects are discernible even under relatively restrictive assumptions, and (2) that diffusion effects, thus conceived, tend to be smaller in the context of diffusion between ROs, and IOs more generally. The model is heuristic insofar as it directs attention towards the basic processes and dynamics of a situation without positing clear causal relationships. This will be the task of the chapter’s final section.

<sup>2</sup> This model resembles the diffusion model developed by Braun and Gilardi (2006). However, it focuses less on the cost–benefit considerations of individual policy-makers than on the intergovernmental bargaining processes underlying institutional choice.



**Figure 3.1** Negotiated institutional change in regional organizations, independent decision-making

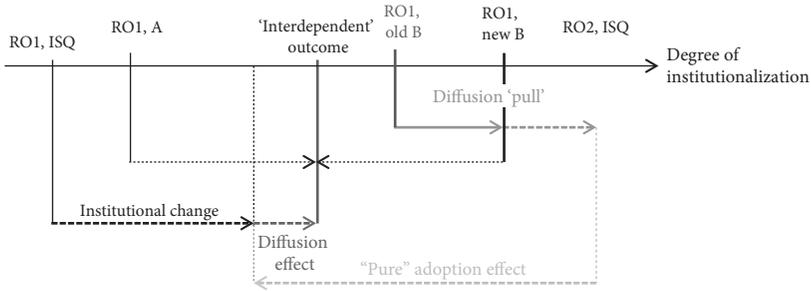
Figure 3.1 depicts a one-dimensional model of intergovernmental bargaining in a regional organization (RO1) in which two governments (A and B) with different institutional preferences seek to reach agreement on the degree of regional institutionalization, measured as departure from the institutional status quo (ISQ). The middle point between their institutional preferences constitutes the outcome under conditions of independent decision-making—i.e. in the absence of diffusion (‘independent’ outcome). The distance between the ISQ and the resulting bargaining outcome denotes the extent of institutional change.

The model makes three simplifying assumptions. First, the two governments have a collective interest in strengthening an existing institution but differ regarding their preferred degree of institutional strengthening. This assumption simply posits that states only come to the negotiating table to discuss institutional change once they have already agreed that such change is actually needed. Second, the two governments are equal in terms of their relative bargaining power—in other words, there is no variation in the ability of a governments to advance its preferred institutional outcome in the negotiations. This assumption enables us to examine actual outcomes as a result of differences in institutional preferences (and strategies—see below) only, and it implies that both states make equal concessions in order to find an agreement.<sup>3</sup>

Third, I assume that the outcome reflects a balanced ‘institutional compromise’ between the two governments. Despite the unanimous decision-making that generally characterizes institutional reform in ROs, this assumption is defensible because the context of regional cooperation is characterized by iterated interaction and a long shadow of the future due to geographic ‘lock-in’; ROs are, in many ways, communities created by fate (Hooghe, Lenz, and Marks 2019).<sup>4</sup> Under these conditions, not even the most powerful government can afford to ignore the institutional preferences of other members over extended periods of time. Such an assumption is widely shared in the literature. The rational design project, for example, posits that institutional outcomes ‘represent their joint efforts—and “compromises” among their preferences—to improve their equilibrium

<sup>3</sup> It will be relaxed in the empirical analyses that follow in subsequent chapters.

<sup>4</sup> This assumption is widespread also in models of international cooperation more broadly, which posit that “states interact repeatedly on a particular issue—which they typically do” (Fearon 1998: 270).



**Figure 3.2** Negotiated institutional change in regional organizations, interdependent decision-making

outcome' (Koremenos, Lipson, and Snidal 2001: 781). The literature on arguing similarly suggests that the outcome of many international negotiations does not simply reflect the preferences of the individual actors, and lowest-common-denominator decisions, but a more balanced institutional compromise (Kleine and Risse 2010; see also Schimmelfennig, Engert, and Knobel 2003). The reason is that international negotiations seldom involve only 'powering' but also include a good deal of joint 'puzzling' and 'persuading' (Blyth 2007). The case studies in the empirical chapters (5-7) demonstrate the empirical plausibility of this assumption.

We now introduce diffusion into this bargaining scenario. Recall that we conceive of diffusion as the process by which institutional innovations affect inter-governmental bargaining over institutional choices elsewhere. Diffusion thereby alters the bargaining context in which governments seek to realize their institutional preferences. Figure 3.2 shows how the bargaining outcome changes when interdependent decision-making is posited. I introduce a second regional organization (RO2), whose institutional status quo (ISQ) constitutes an institutional innovation in the other regional organization (RO1). We assume that one of the two governments involved in the institutional bargain shifts its preferred institutional outcome towards the institutional innovation as a result of interdependent decision-making. Note that A's institutional preference remains unchanged, but its institutional strategy and thereby its bargaining position shifts.<sup>5</sup> The intrinsic motivations for this shift can be manifold, and they are treated as exogenous in the model. A government might consider an institutional innovation to be more 'functional' than existing alternatives in order to solve the cooperation problem at

<sup>5</sup> In the bargaining literature, institutional preferences generally denote a set of ordered values assigned to substantive outcomes in the future, whereas institutional strategies underlie the bargaining positions that governments adopt in order to realize their institutional preferences (sometimes called preferences over actions, as opposed to preferences over outcomes). Thus, strategies, unlike preferences, are responses to the specific strategic context, which implies that preferences are more stable over time and across issues than are strategies (Morrow 1994: 18-20).

hand; it might benefit disproportionately from the anticipated distributional consequences of an institutional innovation; or it might deem an institutional innovation to be more 'appropriate'. In any case, this shift implies a new preferred institutional outcome of government B (RO1, new B), with the distance between its old institutional preference (RO1, old B) and the institutional innovation constituting what one might term the 'diffusion pull'. From the perspective of mainstream accounts, which conceive diffusion as the process by which other units adopt an external institutional or policy innovation, these assumptions are restrictive in that (1) the preferred institutional outcome of only a subset of relevant actors, not all of them, are affected by an external innovation; and (2) this is only partially the case. In other words, according to this model not a single government adopts the institutional innovation in another regional organization wholesale as its preferred institutional outcome, as much of the existing diffusion literature suggests. Even under these comparatively restrictive assumptions, Figure 3.2 indicates that diffusion shapes actual institutional outcomes. The difference between the 'independent' outcome and the 'interdependent' outcome denotes the diffusion effect. This effect is discernible, but it is smaller than the diffusion effect that emerges under the assumption that organizations (fully) adopt external institutional innovations, denoted as the 'pure adoption effect' in Figure 3.2.

The empirical chapters will show that this model of diffusion between ROs serves as a useful heuristic for analysing interorganizational diffusion, and it also has major theoretical benefits. First, it reconnects the key concern of the literature on diffusion, which is to challenge purely endogenous accounts of political outcomes, with a key problematic in international relations: understanding the dynamics of decentralized bargaining among heterogeneous actors. The model thereby offers analytical guidance on how institutional scholars of international politics may introduce the concerns of scholars of diffusion into their models, and indicates where and how their previous models might have been deficient. At the same time, it reminds students of diffusion that diffusion effects are likely to be smaller in the hard-fought world of decentralized international bargaining than in the world of hierarchically structured (domestic) organizations. Second, the model bolsters claims in some of the literature on diffusion that convergence is not the only possible outcome of diffusion processes, and not even the most likely one. As Risse (2016: 88) notes, 'we rarely see full-scale adoption or convergence around specific models of regional cooperation and integration. The most likely outcomes of diffusion with regard to regional cooperation and integration are selective adoption, adaptation, and transformation' (similarly, Braun and Gilardi 2006). To date, this claim mainly stands as an empirical one: scholars *observe* that outcomes of diffusion processes vary. However, the model presented here lends a conceptual basis to these claims. It suggests that the extent of convergence between the institutional innovation and institutional choices elsewhere

depends on the extent to which the innovation affects institutional preferences of other actors. Since ROs are composed of many member states with heterogeneous institutional preferences, the outcomes of diffusion processes are likely to be diverse as well.

But exactly how does the existence of an institutional innovation in one RO shape the institutional preferences of governments in other ROs? The next section answers this question with a focus on the EU.

### **The causal process of European Union influence**

Armed with a better understanding of how interdependent decision-making affects institutional choices in ROs, we now turn to the causal process that underlies interorganizational diffusion from the EU. I argue that organizational pioneers have specific incentives to influence other organizations in their field, generating pressure on regional policy-makers to adopt successful institutional innovations. This argument grounds the focus on the EU, which I argue has been the most important pioneer in the post-Second World War era in the realm of regional organization. This section proceeds in two parts. After developing this argument at length, I detail two pathways through which the EU influences the institutional preferences and strategies of other governments.

#### **The European Union as a pioneer among regional organizations**

Organizational pioneers are ‘actors who have an interest in particular institutional arrangements and who leverage resources to create new institutions or to transform existing ones’ (Hinkle and Schiff 2004: 657). They shape organizations around them by acting both as institutional innovators, who introduce new institutional forms into a system, and as organizational entrepreneurs, who attempt to influence other organizations in the system to adopt these novel institutions, both actively and passively. Thus, the concept of organizational pioneer reintroduces agency, interests, and power into the literature on diffusion.

In the realm of regional organization, the EU has been the main institutional innovator. Innovators have ‘the capacity to imagine alternative possibilities’ (Emirbayer and Mische 1998: 963), thereby deviating from established institutional forms and practices (see Garud and Karnøe 2001). After the Second World War, western European states were not the first to engage in regional economic cooperation, but they did so on the basis of ‘a set of quasi-constitutional institutions unique among international organizations’ (Moravcsik 1998: 86). They pioneered a novel approach to regional organization—regional economic integration guided by supranational institutions—through a range of unprecedented

institutional forms that evolved over time. Institutional innovation consisted in translating institutional types from the domestic context to the world of international cooperation in order to address long-standing cooperation problems, such as how to ensure the effectiveness of cooperation amidst divergent state interests (the European Commission), how to secure reliable implementation of joint decisions (the European Court of Justice), and how to legitimate a state-driven project of economic integration among Europe's democratic membership (the European Parliament, but also the Social and Economic Council and the Committee of the Regions) (see Hix 2005). In Duchêne's famous words, the Community brought 'to international problems the [...] structures of contractual politics which have in the past been associated almost exclusively with "home" and not foreign, that is *alien*, affairs' (Duchêne 1973: 19–20, emphasis original). This approach broke with the previously dominant approach to international cooperation which saw international organizations as strictly intergovernmental bargaining forums. As Perry Anderson has noted, European institutions emerged 'through deliberate design "without historical precedent"' (quoted in Moravcsik 1998: 68).

Having suffered two atrocious wars within a generation, western European states institutionalized supranational control over crucial war resources in the European Coal and Steel Community (ECSC), founded in 1951, and extended the principle of supranationalism towards economic cooperation more broadly in the 1957 Treaties of Rome which created the European Economic Community. In Europe, supranationalism rests on four distinctive institutional types.<sup>6</sup> The first is the High Authority of the ECSC, and later the European Commission, which, akin to national executives, holds far-reaching rights in structuring decision-making among member state governments and can bring non-compliance cases to the European Court of Justice. Second, the European Court of Justice sits at the helm of an international legal system that has adopted many of the same features of domestic legal systems. The 'constitutionalization' of the EU treaties through the Court's jurisprudence is an unprecedented development in international legalization (Weiler 1991; Alter 2001). Third, the empowerment of a directly elected parliamentary body to become a co-decision-maker (along with national governments) is another institutional innovation that is unmatched to this day among IOs (Rittberger 2005; Schimmelfennig et al. 2020). With the Council of Ministers and the European Parliament as equal co-legislators, the EU has developed into a bicameral system akin to many national political systems. Finally, the EU has broken new ground in institutionalizing the consultative rights of a

<sup>6</sup> Besides these delegated institutions, qualified majority voting in the Council of Ministers, which was institutionalized on a broad front with the Single European Act of 1986, is another pioneering institutional feature of the EU. Given that it follows a different logic of institutional design, I do not further consider it here (Lake 2007; Hooghe and Marks 2015).

range of important stakeholders, such as business and labour representatives (Economic and Social Committee) as well as subnational units (Committee of the Regions). In sum, the EU has, over time, pioneered a new 'model' of supranational regional governance.

Institutional innovation is potentially causally relevant in an organizational field because it produces incentives for organizational pioneers to be entrepreneurial in attempting to spread these innovations beyond the confines of the organization itself. Unlike individual entrepreneurs, who are motivated by 'strong notions about appropriate or desirable behavior' (Finnemore and Sikkink 1998: 896), there is an institutional logic to organizational entrepreneurship. Institutional innovations are uncertain in effect and distinct from the established routines in specific organizational fields, which means that 'organizations which innovate in important structural ways bear considerable costs in legitimacy' (Meyer and Rowan 1977: 353). As a result, institutional innovators have a strong incentive to shape other organizations in those fields, both directly and indirectly. Organizational innovators tend to actively promote the adoption of their novel institutional forms by other organizations in order to legitimate the innovation. Mitzen (2006) argues for the importance of ontological security (security of the self) not only for individuals but also for corporate actors such as states and international organizations. In order to overcome the uncertainty and insecurity associated with being 'different', with having 'abnormal' identities, actors have incentives to stabilize their environment 'by routinizing their relations with significant others' (Mitzen 2006: 342) and by trying to make those 'significant others' more like oneself (see also Meyer and Jepperson 2000: 110–11). Thus, the activism of organizational entrepreneurs is central to the spread of institutions. Buzan (2004: 222–7), for example, emphasizes the role of 'vanguards' in the emergence and diffusion of particular social structures that may ultimately acquire global form. Goddard, for her part, in her analysis of entrepreneurs in international politics, contends that 'it is this process of building, integrating, and destroying ties that lies at the heart of entrepreneurship' (2009: 250).

These considerations particularly pertain to the European Union. The Community has been the most active promoter of regional cooperation around the world. Supporting regional integration has been a declared goal of the EU since the early 1970s, but its attempts to engage with newly independent states in Africa as a group rather than as individual countries—an early form of promoting regional cooperation—date back to the early 1960s. Apart from a few global powers and selective 'strategic' partners with which it has started to engage in the last decade or so, the Community regularly deals with non-member countries on a group-to-group basis rather than bilaterally (for a good overview, see Alecu de Flers and Regelsberger 2005). Over time, it has developed a holistic policy to support institution building in existing ROs that consists of various elements (for an

overview, see Smith 2014: ch. 4). The European Commission, in particular, provides technical and financial assistance to policy-makers elsewhere. A range of EU actors maintain institutionalized contacts with their counterparts. For example, the European Parliament has had long-standing ties with parliamentarians in other regions (for an overview, see Herranz 2005). Similarly, ministers and heads of state also engage their counterparts in various regional formats, often referred to as ‘political dialogue’ (for a somewhat dated overview, see Monar 1997). These dialogues are not only geared towards addressing the state of regional cooperation, but generally concern a wide range of topics that are of mutual concern. These dialogue formats often constitute part of formal cooperation agreements between the EU and other ROs—a form of engagement that was particularly popular in the 1990s (for an early assessment, see Edwards and Regelsberger 1990). Today, the EU has regular interaction involving a variety of actors with many ROs, and provides significant amounts of funding to some of them. No other international actor supports ROs to a similar extent worldwide; it is a distinctive feature of the EU’s external relations.

A good deal of instrumental thinking has been involved in specific interregional relations: scholars have emphasized the aim of producing economies of scale by dealing with ROs rather than with individual countries (Monar 1997), and the ambition to open up larger regional markets for EU businesses (see e.g. Robles 2008). Despite such thinking, these efficiency explanations of EU foreign policy have failed to explain why other international actors fail to promote regional organization to a comparable degree. What makes the EU distinct, and endows it with a distinctive set of motivations, is its identity as a regional organization. As Smith (2014) notes, this foreign-policy objective ‘clearly derives from the nature of the EU itself: internal practice, values and experiences have patently produced this particular foreign-policy objective’ (p. 67). The identity explanation resonates widely in the literature, in line with the aforementioned incentives for institutional entrepreneurship of institutional innovators and Mitzen’s (2006) idea of ontological security. Grugel (2004) states flatly that the EU’s promotion of regionalism constitutes an attempt to ‘lay down an identity marker’ (p. 621); Bretherton and Vogler (1999) emphasize that the EU has an inherent ‘tendency to reproduce itself’ (p. 249); and Bicchi (2006) has made the institutionalist argument most clearly: ‘My understanding is that much of the EU’s [external] action can be characterized as an unreflexive attempt to promote its own model because institutions tend to export institutional isomorphism as a default option’ (p. 287). By supporting regional organization around the world, the EU not only legitimizes itself but also seeks to restructure the international environment in which it acts (Söderbaum, Stålgren, and Langenhove 2005). In a more normative vein, Nicolaidis and Howse (2002) contend that the influence of the EU in the world ‘rests on the synergies between the EC’s being, its political essence, and its doing,

its external actions' (p. 771). Through these means, the EU actively promotes the strengthening of regional institutions in other parts of the world as a reflection of its own internal experience with institutionalized regional cooperation.

Organizational innovators also act as entrepreneurs in more indirect ways. As Meyer (2000) notes, 'actors themselves, in their eagerness to demonstrate universality, put their own models—often heavily edited by transmitting scientists, professionals and consultants—forward for general emulation' (p. 242). To the extent that organizational innovators are successful, their institutional innovations gain credibility, which facilitates the transfer of such innovations. DiMaggio and Powell (1983) influentially argue that 'organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful' (p. 152). Professional networks, epistemic communities, and academia often play an important role in such indirect entrepreneurship both by theorizing, or rationalizing, novel practices in ways that make them 'adoptable' in a wide range of contexts (Strang and Meyer 1993) and by distributing and advocating them as 'best practices' to governments in ROs (Haas 1992; see also Keck and Sikkink 1998).

These arguments also pertain particularly to the EU. The Community puts its own models forward for general emulation, and EU representatives regularly encourage others to learn from and emulate the EU experience. Chris Patten, former commissioner for EU external relations, has regularly described the EU as a model of regional integration that is potentially valuable for others. Similarly, Pascal Lamy, the former commissioner for trade, put the EU model forward for general emulation when noting, 'Regionalism may be a European invention, but it is not protected by copyright law!' (Lamy 2001). David Miliband, the former British foreign secretary, even advocated the EU as a 'model power' instead of a 'superpower', with Europe's main strength lying in 'our ability to set global standards [...] and the power of Europe as an idea and a model' (Miliband 2007). Influential analytical concepts advanced by social scientists tend to blur the boundary between description/analysis and prescription. Albeit subtly, they tend to portray the EU as a 'force for good' (for a critique, see Sjursen 2006; Diez 2005). Perhaps most prominently, Manners' notion of normative power seeks to capture the EU's 'ability to shape conceptions of "normal" in international relations' (Manners 2002: 239)—something that is in keeping with the notion of 'naturalization' or 'theorization' captured by Meyer and Strang (1993). This notion operates by affecting discourses, or opinion, about regional cooperation in a largely indirect fashion. As Cutler (2001) notes, in the realm of international parliamentary assemblies, the experience of the European Parliament has 'opened a new chapter in the history of parliamentarianism' (p. 223). Similarly, and as seen in the previous chapter, there is much anecdotal evidence that the EU's experience has affected institution building in other parts of the world.

In sum, among ROs the EU is the most prominent organizational pioneer, understood as an actor which shapes other organizations by acting both as

institutional innovator and as organizational entrepreneur. This discussion suggests that the EU's influence operates in two distinct ways: directly, through active engagement with other ROs, and indirectly, by putting its own institutional arrangements forward for general emulation.<sup>7</sup> Accordingly, the next part of this chapter explicates two causal pathways on the basis of this analytical distinction.

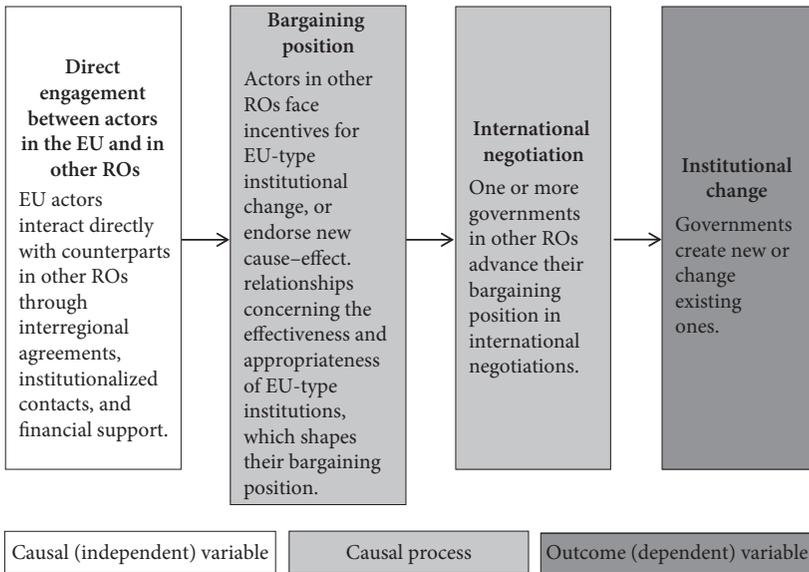
### Two pathways of European Union influence

We are now in a position to join two analytical threads together. The heuristic model of diffusion between ROs, outlined above, suggests that any convincing account of EU influence must detail the ways in which one RO affects processes of intergovernmental bargaining over institutional change in other ROs. The previous part argued that organizational pioneers, of which the EU is the most important among ROs, have incentives to shape the institutional evolution of other organizations in their field, both directly and indirectly. These insights combine into two distinct pathways: active and passive EU influence. Both pathways share a common model of influence. In brief, institutional innovation in the EU exerts pressure on governments elsewhere to change their institutional preferences or strategies, which leads to shifting bargaining positions of one or more governments, which in turn affects international negotiations over institutional design in other ROs. However, the pathways differ with regard to the specific source of EU influence and the underlying causal process. I explicate each pathway in turn.

The first pathway captures the EU's *active influence* on institutional strategies elsewhere. Here, influence is the result of consciously designed activities by a range of EU actors who aim to actively shape institution building processes abroad. Hence, this pathway focuses on the supply side of EU influence and is colloquially associated with the EU as an actor. The underlying causal process is depicted in Figure 3.3.

This pathway posits that EU actors' direct engagement with counterparts in other ROs shapes the institutional strategies that underlie bargaining positions in two ways. For one, the EU may provide material incentives to shift bargaining positions by changing 'the relative size of payoffs associated with alternatives' (Braun and Gilardi 2006: 310; see also Börzel and Risse 2012a; Simmons, Dobbin, and Garrett 2006: 791). In this case, one or more governments in an RO seek to realize their institutional preferences by shifting their bargaining position towards EU-type arrangements in order to benefit from the EU's financial support. Sociological institutionalism refers to this process as 'coercive isomorphism', which DiMaggio and Powell (1983) define as 'both formal and informal pressures

<sup>7</sup> Even though rarely theorized, this distinction is widespread in the literature on the EU (see e.g. Börzel and Risse 2012a; Diez, Stetter, and Albert 2006).



**Figure 3.3** Causal process underlying pathway of active EU influence

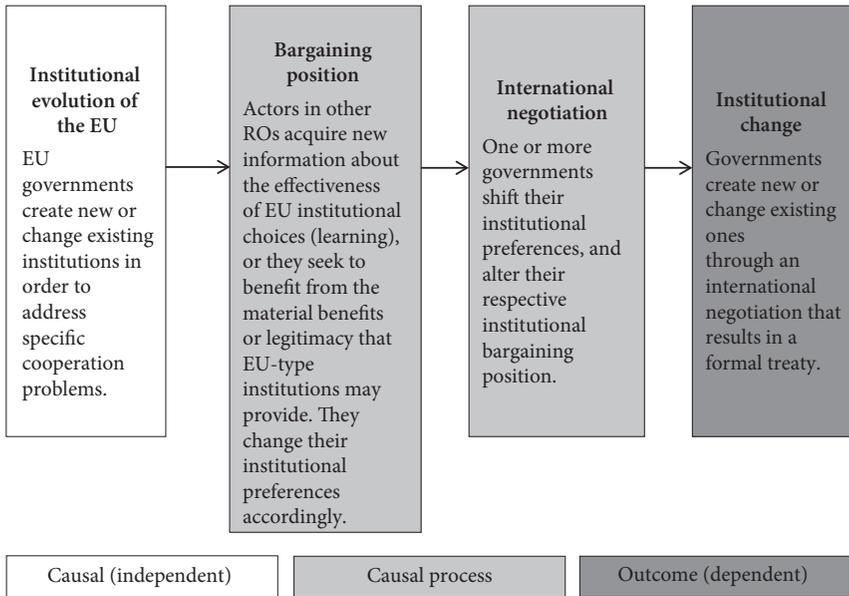
exerted on organizations by other organizations upon which they are dependent' (p. 150). Regarding the EU, these material pressures concern the provision of financial incentives, which can be either positive—strengthening regional institutions can result from a desire to attract funding from the Community—or negative, where institutional change is the result of a desire to prevent existing resources from being withdrawn (Schimmelfennig and Sedelmeier 2005). Even though the EU does not tie the provision of financial support directly to particular types of institutional change, financial dependence on the EU can have a powerful effect on the bargaining positions of relevant actors, and therefore negotiations over institutional change. As I will show in Chapter 5, threats to withdraw funding provided a powerful impetus for institutional reform in the Southern African Development Community by affecting governments' collective institutional strategies.

Moreover, active EU engagement with regional counterparts elsewhere may shape the bargaining positions of governments through socialization, which can be defined as a 'process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion' (Checkel 2001: 562; Johnston 2001). Direct interaction between actors creates channels for communication that provide opportunities for teaching and persuasion. It thereby includes processes that rely both on instrumental and constructivist assumptions, ranging from instrumental role-playing to the internalization of new norms (Checkel 2005).

Given the power asymmetries often involved in socialization processes, some have referred to this as ‘hegemonic socialization’ (Ikenberry and Kupchan 1990). Through interaction with the EU, policy-makers elsewhere receive relevant information not only about what (and how) institutions work there but also about salient institutional developments in the process of European integration. Most immediately, such interaction might help problematize the institutional status quo in an RO—as well as frame the way in which the problem is understood, and what potential solutions to it might look like (Duina and Lenz 2016; Finnemore 1993). Over time, such interaction may further lead to the generation of common knowledge about ‘good’ institutional solutions to particular problems (Haas 1992; Grobe 2010; Risse 2000). Research into bounded rationality and decision-making has shown that policy-makers often learn from information that is readily available (Kahneman 2011; Meseguer 2006), a condition that is positively affected by opportunities for direct communication. The more extensive such communicative channels are, the cheaper it is to acquire information about EU institutions.

Similarly, socialization research shows that the intensity and duration of contact crucially shapes the adoption of new ideas about cause and effect (Checkel 2005; Bearce and Bondanella 2007). Moreover, informational dynamics are deeply influenced by the credibility of the information provider. Actors are more likely to learn from and be persuaded by those who enjoy a high degree of authority and credibility due to their status, previous success, or other markers of social identity (Checkel 2001; 2005: 811, 813; Johnston 2001). These are all characteristics that the EU appears to possess among ROs. This has led sociological institutions to posit that socialization is most likely to lead to isomorphic institutional change in highly professionalized contexts (DiMaggio and Powell 1983). Scholars have documented such social processes of persuasion and teaching in the establishment of the Andean Court of Justice in 1979. The Court’s creation occurred ‘not as a result of direct pressure from or financial linkages to the EU’ (Gray 2014: 10); instead, networks of Andean and EU experts in the legal realms played a key role in the court’s establishment. Saldías offered a detailed account of how personal connections between EU legal experts and influential consultants, as well as officials in the Andean region, led to a change in relevant actors’ beliefs about cause–effect relationships regarding effective legal systems within economic integration schemes (Alter, Helfer, and Saldías 2012; Saldías 2013).

The second pathway captures the EU’s *passive influence* on other ROs. The EU is not only in the vanguard as an international actor, actively supporting regional institution building. It is, above all, the most successful pioneer of institutionalized economic cooperation among neighbouring countries in the post-Second World War era. This pathway captures the idea that EU influence stems from the success and attractiveness of its institutional designs. It focuses on the demand



**Figure 3.4** Causal process underlying pathway of passive EU influence

side of influence and is colloquially associated with the EU as a model. The underlying causal process is depicted in Figure 3.4.

This pathway starts with the EU's own institutional evolution as a source of information on institutional effects, which may shape the institutional strategies of governments elsewhere in two main ways. For one, actors may learn from the EU, a process concerning information about the effects of institutional choices generated and pioneered by others (Simmons, Dobbin, and Garrett 2006; Gilardi 2010; 2012). As institutional innovations start to take effect, they enable other policy-makers to gauge whether they have been successful at generating the desired outcomes. This general insight is intuitive: rather than experimenting with novel institutions, policy-makers can use the information generated by others in the design of their own institutions. Thus, familiarity and success are key conditions for learning. As Ovodenko and Keohane (2012) note, 'institutional designs that are familiar and perceived by a wide variety of participants in negotiations as successful in relevant contexts should have greater chances of being adopted than those that are new' (p. 523). Moreover, diffusion is facilitated by theorization; that is, cause-effect relationships derived from a specific experience become theorized as being generally applicable. By abstracting from the specificity of the context in which desirable effects are initially generated, theorization suggests that 'similar practices can be adopted by all members of a theoretically defined population, with similar effect', and that they work by 'turning diffusion into rational choice' (Strang and Meyer 1993: 496, 500, respectively). However, not all relevant actors are similarly familiar with EU institutions or perceive EU

institutions as being similarly successful, even when theorized. For example, one government may view the design of the European Court of Justice as immensely successful in ensuring a relatively high level of compliance with EU law, and therefore seek to advance a similar design in intergovernmental negotiations over institutional change. Another government, in contrast, may view the same institution as dangerously threatening national sovereignty, and learn from the EU's experience with the 'constitutionalization' of EU treaties through the European Court of Justice that such an institutional form should be avoided. Thus, learning is likely to affect the institutional preferences and strategies of governments in diverse ways (see also Gilardi 2010).

From this perspective, the EU's own institutional evolution can be expected to affect (some) governments' institutional strategies, and ultimately regional institution building elsewhere. Some of the general conditions for learning are present in the EU case. Compared to ROs, information on EU institutions and their effects tends to be more readily available for policy-makers around the world, partly due to the extensive academic literature on the organization. At the same time, recent research on outside perceptions of the EU indicates that political elites in countries involved in regional integration processes view the EU not only as 'the most successful example of regional integration' (Fioramonti and Poletti 2008: 172) but also as highly relevant to their own efforts at institutionalized regional cooperation (Final Report 2008; Chaban, Holland, and Ryan 2009; Yukawa 2018). As EU institutions evolve, the information derived from the EU experience is likely to evolve too. For example, it is widely recognized that the European Court of Justice's decisions that established the principles of direct effect and supremacy of EU law in the 1960s were key to the success of European (legal) integration (Weiler 1991). As a result, several other ROs that have been eager to copy the EU's success, such as the Andean Community, have formally codified these principles in their treaties rather than 'waiting' for a regional court to develop them through case law. Similarly, the EU is the most theorized RO, and such theorization is also likely to evolve over time—tracking the EU's own institutional development. For instance, the insight that the effectiveness of a regional legal system hinges on individuals being allowed to access regional courts could only spread after individuals had started to regularly use the European Court of Justice. Now widely accepted, this insight took decades to emerge and was emphatically established by Karen Alter's work (Alter 2014). In this vein, Alter (2012) has argued that the evolution of the dispute settlement mechanism in the Economic Community of West African States can be explained as the result of a learning process from the EU experience.

Moreover, the EU may affect institutional preferences and strategies elsewhere by shaping notions of appropriate institutional design. This is often referred to as 'emulation', conceived as a process in which 'actors model their behaviour on the examples provided by others' (Lee and Strang 2006: 889). Emulation is motivated by an aspiration to behave in ways widely seen as legitimate and credible. As

organizational fields become structured through associational processes, they develop standards for the legitimate institutional forms that organizations gradually adopt in an attempt to enhance their legitimacy—and ultimately their chances of long-term survival (DiMaggio and Powell 1983). Institutional pioneers are particularly likely to be emulated, given the premium that exists in organizational fields for appearing similar in structural form to the most admired and successful organizations (Haveman 1993). Therefore, drastic change in one such organization can induce similar change in other organizations. As Weyland (2008) notes, ‘drastic change in one country often prompts emulation efforts in other nations by calling attention to problems and offering ideas for solutions’ (p. 290).

From this perspective also, the EU’s own institutional evolution may shape bargaining positions elsewhere. Case studies regularly report that policy-makers view the EU as ‘the most advanced model of regional integration’ (Jetschke and Murray 2012). Hence, it is plausible to posit that the EU is the main exemplar among ROs whose behaviour is likely to be emulated by other governments. EU institutions might not only provide boilerplate solutions to given problems; institutional change in the EU may also alert regional policy-makers to the urgency of addressing certain problems in regional integration in the first place (Duina and Lenz 2016). Again, however, different governments are likely to vary in the extent to which they adopt EU institutions as bargaining positions in intergovernmental negotiations. One government might view the creation of an European Parliament-type parliamentary assembly, for example, as the best or the most appropriate way to enhance the legitimacy of an RO, and advocate a respective institutional change in negotiations. Another government might fear that similar dynamics of self-empowerment, as in the European Parliament case, occur at home, and therefore stick to its initial preference for confining regional cooperation mainly to governmental actors. Chapter 6 describes such a dynamic in the case of the establishment of the Mercosur Review Tribunal.

While I posit a central role for governments in the causal process by which the EU shapes institution building in other ROs, I do *not* argue that non-state actors are irrelevant. The study of regional organization has a rich tradition of emphasizing the role of supranational entrepreneurs, starting with Haas’s (1958) neofunctionalist account in *The Uniting of Europe*. Beyond regionalism, students of international cooperation have also highlighted the role of international bureaucrats, expert networks, and other transnational actors in the dynamics and outcomes of international politics (for an overview, see Risse 2012). In the international negotiations I consider, non-state actors play no formal role, because such negotiations are exclusively in the hands of member-state governments. Nevertheless, such actors may be instrumental in governments’ adoption of EU-type institutional preferences and strategies. Such a role of non-state actors is fully compatible with my theoretical framework, which is indifferent to the

specific actors who transmit causally relevant information from the EU to national governments.

### **Scope condition of European Union influence: the role of contractual open-endedness**

Under what conditions are the two pathways developed in the previous section likely to become salient in affecting processes of institution building beyond the EU? What enables their operation?

Recent advances in the study of causal mechanisms show that causal processes may be triggered by a variety of conditions that provide a context conducive to its operation. As Pawson puts it succinctly, ‘whether [a] mechanism is triggered depends on context’ (Pawson 2002: 342; see also Mackie 1965). I argue that while some of these contextual conditions are closely related to the process of EU influence, such as when the EU actively promotes EU-type institutional change, others are not. For example, EU influence may occur when other organizations seek to solve a particular cooperation problem that the EU has successfully solved previously. In this case, the context that is (potentially) conducive to the operation of EU influence is the emergence of this cooperation problem—a factor exogenous to my model. This illustrates the general insight that often ‘causation resides in the interaction between the mechanism and the context in which it operates’ (Falletti and Lynch 2009: 3; see also Beach and Pedersen 2018: 847). Our knowledge of the contextual conditions that trigger the operation of a particular mechanism tend to be incomplete—that is, a mechanism may be triggered by a variety of contextual conditions, only some of which are generally known.<sup>8</sup> While much diffusion research still treats such potential contextual conditions as mere controls, recent research increasingly seeks to model the interaction between diffusion and domestic factors (see e.g. Aklin and Urpelainen 2014; Grigorescu 2010; Linos 2011). Qualitative research on diffusion especially shows the importance of context. In a study of norm diffusion in European ROs, for example, Jeff Checkel argues that ‘domestic politics—in particular, institutional and historical contexts—delimit the causal role of persuasion/social learning’ (Checkel 2001: 553). What are the relevant contexts that enable EU influence on processes of regional institution building elsewhere?

I posit that contractual open-endedness is a key organizational characteristic that provides a context conducive to EU influence. Contractual open-endedness captures the extent to which the contract, upon which an RO rests, contains open-ended commitments—that is, commitments that do not clearly specify the

<sup>8</sup> Some even argue that mechanisms ‘are triggered under *generally unknown* conditions’ (Elster 1998: 45, my emphasis).

purpose of the process of regional cooperation. ROs rest on a formal contract in which states voluntarily agree to bind themselves to a set of formal rules to facilitate cooperation. While all such contracts are incomplete to some extent, they vary in the extent to which they contain open-ended commitments. At one extreme, contracts are fixed in the sense that cooperation is geared towards achieving some predefined and specific goal, such as establishing a free-trade area. In these organizations, cooperation is a problem-solving exercise that helps governments to solve a well-delineated transnational problem. At the other extreme, contracts are open-ended in that the ultimate result of cooperation is vague and ill-defined. In this case, cooperation entails not only problem-solving but also community-building. ROs that define their purpose in vague terms engage the transnational problems that confront them by building and strengthening a regional community (Hooghe, Lenz, and Marks 2019). Cooperation is intended to evolve over time, such that the *process* of cooperation has intrinsic value because the result is largely indeterminate.

Two examples illustrate the difference. First, NAFTA approximates a fixed contract. The final goal of the cooperation ‘process’ is to create a free-trade area with a pre-defined scope that entails mainly free trade in goods, services, and investment (NAFTA 1992). Once this is achieved, the organization has fulfilled its purpose; NAFTA is not intended as an organization that might develop beyond this state of affairs. The Andean Community, in contrast, rests on an open-ended contract where the ultimate ambition is ‘to strengthen the union of their peoples and to lay the foundations for advancing toward the formation of an Andean sub-regional community’ (CAN 1996, preamble). This is an ill-defined purpose that is impossible, and unfeasible, to specify in terms of the steps to be taken from the outset.

This understanding of contractual incompleteness as open-ended commitments deviates from the more conventional understanding, which captures the extent to which contracts ‘specify the full array of responsibilities and obligations of the contracting parties, as well as anticipate every future contingency that may arise throughout the course of the exchange relationship’ (Cooley and Spruyt 2009: 8). This conventional understanding refers to the specificity of commitments in ‘existing’ policy areas.<sup>9</sup> Crucially, these two contractual characteristics do not necessarily co-vary. Even organizations based on open-ended commitments start cooperation in specific policy areas, for which commitments might be relatively precise. For example, the founding contract of the Organizations of Eastern Caribbean States contains open-ended commitments regarding the ultimate purpose of the organization, but it also contains specific policy commitments regarding the creation of a common market that are quite detailed,

<sup>9</sup> This is similar to the idea of precision as one dimension of the concept of legalization (Abbott et al. 2000).

encompassing nearly 30 pages of text. Importantly, the creation of a common market is seen only as an initial step in a longer process towards creating a 'closer union among the peoples of the East Caribbean' (OECS 1968, preamble).

The character of an RO's contract conditions the causal role of EU influence for both demand- and supply-side reasons. On the demand side, open-endedness gives rise to an *endogenous capacity for institutional change* as institutions adapt to evolving policy commitments over time, and this multiplies opportunities for EU influence. Open-ended commitments imply that governments find it impossible to predict the path that cooperation will take from the outset because it is not directed at achieving a particular goal. Instead, the attempt to address the problems that governments confront as a community over time generally requires adapting cooperative institutions in line with evolving needs (Hooghe, Lenz, and Marks 2019). As a result, institutional change is likely to be more frequent in such organizations (Lenz et al. 2015). From this perspective, open-ended cooperation projects resemble nation-building processes in their lack of a master plan. Fixed contracts, in contrast, are bound to be inherently static. Their purpose is to engage in a well-specified range of activities that are detailed *ex ante*. Institutions, in this context, can be designed at the outset, and opportunities for the EU to shape the design process are diminished because institutional change will be less frequent.

On the supply side, ROs based on open-ended contracts share a fundamental organizational characteristic with the EU, which also rests on an open-ended contract, and this enables EU influence to operate because it renders analogies between these organizations more credible. A substantial literature in psychology, political science, and related fields shows that analogical reasoning is an important source of human problem-solving because analogies are a powerful cognitive tool to comprehend the world (Blechman and Hart 1980; Khong 1992; Vosniadou and Ortony 1989; Zerubavel 1999; see also Sunstein 1993). It rests on the basic insight that 'objects and events in the phenomenal world are almost never approached as if they were *sui generis* configurations but rather are assimilated into pre-existing structures in the mind of the perceiver' (Nisbett and Ross 1980: 36). Analogical reasoning is an inductive form of reasoning and entails a (not necessarily consciously conducted) mapping exercise (Gentner 1983), in which a new situation is matched with a familiar situation on the basis of some commonality, which is then used to make inferences about the new situation on the basis of other characteristics of the familiar situation. More abstractly, analogical reasoning 'involves the transfer of relational information from a domain that already exists in memory [...] to the domain to be explained' (Vosniadou and Ortony 1989: 6). For example, actors may puzzle over how to enhance compliance with the cooperative rules in an RO (new situation), and they may turn to the EU for insights into how to deal with the situation because of some commonality between the organizations. Analogical reasoning suggests that the new

problem may be successfully tackled through the establishment of a standing court to which individuals have access. This example, though hypothetical, approximates the type of reasoning that empirical studies unravel as underpinning the establishment of the Andean Court of Justice (Alter, Helfer, and Saldías 2012).

When are such analogies with the EU likely to occur? What is the relevant commonality among ROs that endows analogies to the EU with some baseline credibility among social actors? I contend that an open-ended contract is the defining organizational characteristic that structures and legitimizes comparisons and thereby facilitates diffusion from the EU. The insight that structural commonalities facilitate diffusion is well established in sociology. Strang and Meyer note that the ‘cultural understanding that social entities belong to a common social category constructs a tie between them. [...] We argue that where actors are seen as falling into the same social category, diffusion should be rapid’ (Strang and Meyer 1993: 490). Specifically, similarity with the EU in a key organizational characteristic has two consequences that delimit the causal role of EU influence. First, such similarity is likely to enhance the supply of EU-type institutional proposals in international negotiations over institutional change because a larger number of relevant actors perceive them as relevant for their own organization. When an RO is engaged in a community-building process, learning from and emulating EU institutions more readily suggests itself to actors who aim to solve regional cooperation problems. In contrast, when organizations pursue a narrow and well-defined purpose, analogies with the EU appear far-fetched and irrelevant to social actors, and can be expected to be rare(r).

Second, basic similarity with the EU as regards the nature of the contract enhances the chance that EU-type proposals are successfully advanced in international negotiations over institutional change in ROs. Parallels in key organizational characteristics signal a baseline plausibility of analogies that aim to justify specific behavioural prescriptions. Credible analogies legitimize demands and thereby make it harder for opponents of the prescription resulting from an analogy to reject that prescription. Such analogies are thus a powerful resource in the discursive struggle over institutional change (e.g. see Baccini and Koenig-Archibugi 2014; Linos 2013), and their strategic use can ‘trap’ opponents into concessions that they would not otherwise make (Schimmelfennig 2001). This applies with particular force in the case of organizations—such as ROs—that constitute communities of fate, where negotiations are rarely pure power games but are based on diffuse reciprocity, involving ‘mutual concessions within the context of shared commitments and values’ (Keohane 1986: 4). In this context, obligation forms an important part of international negotiations, and credible analogies signal appropriate behaviour in parallel situations.

In sum, organizations that provide more opportunities for EU influence on processes of regional institution building due to higher rates of institutional change, and that facilitate the legitimation of EU-type institutional proposals when advanced in international negotiations over institutional change, provide a more conducive context for EU influence to operate. In contrast, ROs that are largely static institutional creatures provide few opportunities for EU influence, and those that differ in key organizational characteristics hamper the credibility of EU-type institutional proposals, thereby providing a more hostile context for EU influence. I argue that contractual open-endedness is a fundamental organizational characteristic that unites these contextual conditions, and thus constitutes an important scope condition for EU influence.

### **Testable implications and alternative explanations**

The diffusion framework developed in the previous sections generates a variety of testable implications, some of which are developed in this section. These are subsequently subjected to systematic tests in the empirical chapters that follow. Implications concern each of the two pathways—active and passive—of EU influence as well as the stipulated scope condition. Each implication is developed in two steps. I first propose an explicit hypothesis that relates variation in underlying structural conditions to variation in outcomes. These hypotheses will be tested quantitatively in Chapter 4. Second, I derive a series of process-level observable implications. These form the basis of an examination of the causal processes underlying the influence of the EU in the case studies presented in Chapters 5, 6, and 7.

#### *Hypothesis 1 (Active EU influence)*

The more extensive active EU engagement is with other ROs, the more likely these ROs are to develop stronger regional institutions, *ceteris paribus*.

This hypothesis captures the basic structural relationship that underlies the pathway of active EU influence. It posits that the pressure exerted by organizational pioneers increases as the pioneer itself becomes more active in promoting its institutional innovations abroad. Specifically, as the EU engages other ROs more intensively, it should also be more successful in shaping national governments' institutional strategies in the negotiation over institutional change in the direction of EU institutions, both by socializing policy-makers elsewhere and by affecting their incentives to form stronger regional institutions. Thus, I expect the scope and intensity of direct interaction with the EU to affect regional institution building elsewhere.

The pathway of active EU influence also generates a range of causal process observations.

- *Sequence.* Changes in governments' institutional strategies track engagement with EU actors, including financial inducements and iterated interaction in common institutions that serve as opportunities for teaching and persuasion. In other words, diachronic variation exists between (change in) EU engagement and strategy change.
- *Process.* Interaction with the EU induces strategy change on the part of relevant actors, which subsequently translates into the bargaining positions of one or several governments. Governments that have been affected by EU-induced strategy change table proposals in institutional bargaining situations that suggest the creation of EU-type institutions.<sup>10</sup> Verbal justifications of their position, either in public or in private, refer to changed institutional incentives induced by changes in EU policy, or by interaction with EU officials.
- *Outcome.* Institutional bargaining leads to stronger regional institutions, which to some extent reflects the bargaining position of those governments with EU-type institutional strategies. Those governments and the EU itself will push for the speedy and effective operationalization of these institutions, whereas governments that initially favoured weaker forms of institutionalization will be more reluctant. Depending on the relative influence of these two camps, the operationalization of the institution may take time, and practices may deviate substantially from the formal rules that were collectively agreed upon. In the most extreme case—that is, if the creation of an institution was induced primarily by EU incentives without genuine local support—the institution in question may be abolished again by member states once an opportunity arises or they become cognizant of particularly negative effects.

*Hypothesis 2 (Passive EU influence)*

As the EU enhances its institutional authority over time, other ROs are more likely to build stronger regional institutions, *ceteris paribus*.

This is a key implication of the EU's passive influence on processes of regional institution building elsewhere. According to this pathway, the availability of information about EU institutions conditions processes of learning from and

<sup>10</sup> The underlying assumption here is that direct engagement with the EU leads to EU-type institutional proposals being tabled by some governments. This assumption is not strictly necessary, but it is reasonable, and one that is confirmed in the empirical chapters.

emulation of EU institutions elsewhere. When EU institutions change, information on those institutions tends to become more readily available for some time, due to increasing attention to the EU by global media outlets and by the academic community. Availability, in turn, is a key condition for EU-type institutional change.

The pathway of passive EU influence also generates a range of causal process-observations.

- *Sequence.* Changes in governments' institutional strategies track changes in the EU's own institutional framework or contact with relevant epistemic actors who transmit information on EU-type institutions. These strategy changes subsequently translate into the bargaining positions of one or several governments.
- *Process.* The creation of an EU-type institution is one proposal over which governments negotiate in institutional bargaining situations. Verbal justifications of their position, in public or in private, refer to inspiration from the EU, or outright admit to having adopted the creation of an EU-type institution as a bargaining position.
- *Outcome.* Institutional bargaining leads to stronger regional institutions, which to some extent reflects the institutional position of those governments with EU-type institutional strategies.

### *Hypothesis 3 (Conditional EU influence)*

The more open-ended the contract upon which a RO rests, the more likely it is that EU influence—both active and passive—will lead to stronger regional institutions.

This hypothesis captures the idea that some ROs are more likely than others to be susceptible to outside influence, including diffusion pressures from the EU, depending on the nature of their contracts. Not all organizations are similarly capable of evolving institutionally, and such variation is a function of the extent to which they contain open-ended commitments that may evolve over time, and therefore require institutional adaptation. Moreover, an open-ended contract constructs a tie between an RO and the EU, thereby facilitating the construction of credible institutional analogies that can be powerful discursive tools in the struggle over institutional change in international negotiations. Thus, I expect both active and passive influence from the EU to be conditional on the degree to which institutional change and credible analogical reasoning is possible.

Again, the hypothesized scope condition generates a range of causal process observations that can be traced empirically.

- In ROs based on open-ended contracts, EU influence is reflected in concrete institutional proposals and seriously debated in policy-relevant circles, whereas in ROs based on fixed contracts, references to the EU are largely abstract, are not reflected in concrete institutional proposals or seriously debated, or may not exist at all.
- In ROs based on open-ended contracts, policy-relevant actors construct similarities with the EU and use them to justify EU-type institutional proposals. Such proposals enjoy an a priori legitimacy given relevant similarities between organizations. Conversely, in ROs based on fixed contracts, policy-relevant actors reject similarities with the EU and therefore reject such proposals, or do not even reach the stage of being seriously discussed among policy-relevant actors.

In the following chapters, I put these hypotheses to a systematic empirical test and explicitly recognize potential alternatives that may drive institutional change in ROs. Depending on the specific institution and the specific RO in question, relevant alternative explanations vary, in ways which I develop more fully in those chapters. However, the diffusion framework developed in this chapter challenges two broad sets of theoretical alternatives that share the assumption of independent policy-making across units. Specifically, emphasizing the role of organizational pioneers in shaping regional institution building elsewhere involves the claim that such processes cannot be adequately understood by focusing on relevant characteristics of ROs themselves (regional level of analysis) or on broader structural change in the system as a whole (global level of analysis). Regarding the former, unit-level explanations view institutional change in ROs as being driven by characteristics of the organizations themselves or the characteristics of the member states that form them. As described in the previous chapter, these explanations encompass such intraregional factors as levels of democracy, the extent of economic interdependence within an organization, or the distribution of material capabilities among the member states. While such regional-level explanations may provide important insights into the process of regional institution building, the theoretical claim associated with a diffusion framework is that such explanations are insufficient to account for the phenomenon under study. Even when combined, they do not provide an adequate explanation.

Regarding the latter, a diffusion framework also rejects the notion that broader structural changes beyond direct and indirect interactions between ROs offer an adequate explanation of institutional change. In other words, systemic explanations of regional institution building, such as the increasing integration of national economies associated with globalization or the end of the Cold War, are similarly irreducible to interorganizational influence. As Simmons et al. (2006) note in a pioneering volume on the diffusion of liberal economic policies, an explanation that emphasizes diffusion also rejects arguments that 'tend to reduce

“external influences” to simple exogenous factors, notably changes in relative prices around the world’ (p. 788). In sum, explanations operating at the unit and systemic levels of analysis are the basic alternatives to a diffusion framework that focuses on inter-unit influences that result from interdependent decision-making between ROs.

However, the argument advanced here focuses specifically on the influence of the EU, and is therefore also distinct from alternative arguments about diffusion that emphasize other interorganizational interactions. Despite sharing the same conceptual foundations, arguments that highlight, say, the role of neighbouring ROs also constitute alternative explanations (see e.g. Börzel and Hüllen 2015). The chapters that follow will make an effort to distinguish the argument about EU influence not only from arguments focusing on unit- or system-level characteristics but also from alternative arguments about diffusion. The quantitative analysis in Chapter 4, for example, also controls for the respective levels of regional and global institutionalization—arguments that are compatible with the idea of diffusion. Similarly, in the case study chapters, I distinguish whether certain institutional proposals had their origin in the EU or in other ROs with similar institutional features. However, caution is advised. It might well be that a government’s institutional bargaining position is the result of diffusion from a neighbouring RO that was affected by diffusion from the EU. As I have argued before, ‘EU ideational diffusion tends to work in indirect ways, and can therefore be removed from the EU as a definable actor or even specifiable source of influence’ (Lenz 2013: 220). As the effects of diffusion from the EU increase in order, it becomes increasingly difficult to trace them empirically. Solingen refers to this problem of higher-order effects when reminding readers:

as social reality is often even more complex, domestic conditions may themselves be the product of *sedimentation* of prior or historically more remote diffusion (legal norms, for instance, sometimes sediment over centuries). This should sensitize us to the possible presence of second- and third-order effects of antecedent diffusion even where no direct diffusion seems evident.

(Solingen 2012: 633)

Ultimately, practices that diffuse, whether from the EU or other sources, might become theorized in abstract terms. The power of theorization as a mechanism of diffusion lies in the fact that it turns diffusion into a rational choice (see Lenz 2018). It is very difficult to empirically identify the initial sources of such theorized practices. Therefore, the following empirical chapters will make an effort to distinguish the argument about EU influence from alternative arguments about diffusion, but the main theoretical alternatives considered refer to unit- and system-level factors.

## Conclusion

This chapter has laid out the analytical building blocks for the theoretical argument in this book. I argue that the EU systematically shapes the process of institution building in other ROs through both active engagement and the passive influence that stems from its own institutional designs and their evolution. These two pathways do not necessarily lead to the wholesale adoption of EU-type institutions, as much of the research on diffusion suggests; but they affect institutional outcomes by shaping the bargaining positions adopted by individual governments (or other key actors) in the negotiations over institutional change in ROs. However, this influence of the EU is bounded. I suggest that these two pathways are delimited in their causal role by the nature of an RO's contract. Contracts that contain open-ended commitments possess an endogenous capacity for institutional change, thereby providing more numerous opportunities for EU influence, and they signal similarity in key organizational characteristics that facilitate the construction of credible analogies with the EU, thereby making it more difficult for opponents of EU-type institutional change to reject such change outright. We will now consider how these arguments stand up empirically.

PART II  
EMPIRICAL ANALYSIS



# 4

## Explaining the European Union's Interorganizational Influence on Other Regional Organizations

### A Quantitative Analysis

*With Alexandr Burilkov*

In the previous chapter, I developed the main theoretical argument of this book: that the EU systematically shapes institution building in other ROs through interdependent decision-making. This interorganizational influence operates through two distinct pathways—active and passive influence—and is conditioned by the contractual nature of an RO.

In this chapter, I examine this argument quantitatively, using a novel dataset that gauges variation—cross-sectional and over time—in the institutionalization of 36 ROs, including the EU, from 1950 (or the time of their establishment) to 2017. Quantitative statistical analysis allows me to determine whether the EU indeed shapes regional institution building across a large number of cases, how sizeable this influence is, and how it compares to that of other factors that have been argued to shape regional institution building. These include important explanations at the regional and global levels of analysis that have been advanced to account for institutional change in ROs, as well as alternative diffusion influences. In contrast to other quantitative studies of diffusion, my goal is not to adjudicate between different causal mechanisms. Recent research has shown that such attempts have proved difficult in quantitative research due to the challenge of matching indicators and concepts, and the fact that distinct mechanisms 'are often interrelated' empirically (Graham, Shipan, and Volden 2013: 695; Maggetti and Gilardi 2016). My analysis therefore focuses on measuring the conditions under which the two identified pathways of EU influence are likely to matter, and on assessing their explanatory power.

The analysis shows robust support for my argument, with two main findings. First, both the intensity of an RO's engagement with the EU (active influence) and the EU's own institutional trajectory (passive influence) are individually (and jointly) correlated with the level of institutionalization in other ROs. Second,

these effects are strongest in ROs that are based on contracts containing open-ended commitments. Together, these findings suggest that the creation and subsequent institutional evolution of the EU has made a difference to the evolution of institutions in other ROs. Counterfactually, member states would have built less institutionalized ROs in the absence of the EU.

### **Preparing the ground: case selection, operationalization of the main variables, and initial quantitative analyses**

The first step in any quantitative analysis is to construct an appropriate dataset. This task involves important conceptual and operational choices that are justified in this section. It proceeds in three parts. I discuss the dataset and the selection of cases; operationalize the dependent variable *RO Institutionalization* and the main independent variables capturing EU influence; and conduct some initial quantitative analyses.

#### Dataset and cases

My dataset draws on the Measure of International Authority (MIA) dataset developed by Liesbet Hooghe et al. (2017) in order to construct the main dependent variable of the analysis, but rearranges and extends the data to fit the current purpose. The resulting dataset has the form of a panel, which means that data varies across time for a number of entities—i.e. ROs—and the panel is unbalanced because ROs enter the dataset at different points in time—namely, the year of their creation.

In that dataset, ROs are defined in conventional terms as formal international organizations (IOs) that are composed of three or more geographically proximate states having a continuous institutional framework. According to this definition, ROs are conceptually distinct from agreements such as the EU–Mercosur Interregional Framework Cooperation Agreement, alliances such as the Cairns Group, and informal arrangements such as ASEAN+3. They are based on a written contract formally entered into by their member states; that is, they are designed for a continuous purpose and therefore have the capacity for ongoing collective decision-making. The sample was compiled by consulting the Correlates of War dataset and selecting organizations that have a distinct physical location or website, a formal structure (i.e. a legislative body, executive, and administration), at least 30 permanent staff (based on information in the *Yearbook of International Organizations*), a written constitution or convention, and a decision-making body that meets at least once a year.

The dataset identified 36 ROs (including the EU itself) that fit all (or all but one) of these criteria and that do not emanate from other IOs. The dataset

includes most of the ROs that scholars of comparative regionalism are familiar with and that make up the bulk of the secondary literature, such as ASEAN, the Council of Europe, SADC, the African Union, NAFTA, the Andean Community, Mercosur, and the Caribbean Community, but also encompasses lesser-known cases, such as the South Pacific Commission, the Benelux Community, the Latin American Economic System, and the Organization of Eastern Caribbean States. Also forming part of the sample are two ROs that no longer exist—the Council for Mutual Economic Assistance and the first East African Community. The sample is broadly comprehensive of states and continents, and includes all ROs that have exercised significant authority since 1950.

The dataset measures variation in the design of these 36 ROs for the period between 1950 (or the year of their establishment) and 2017. Figure 4.1 shows the entry dates of all the ROs in the sample (and the end dates, where appropriate). ROs enter the dataset throughout the entire period while also reflecting the trends and fashions of regionalism as an organizational form. Five organizations were created prior to or in 1950 and enter the dataset from the start; four ROs were founded in the 1950s (including the predecessor to the EU, the ECSC, in 1952); and ten followed in the 1960s—the decade with the highest activity in terms of newly created ROs during the entire period. Four new ROs emerged in the 1970s, which was a period of declining interest in regionalism as an organizational form. This changed again in the 1980s: seven new ROs emerged during this decade and five new organizations followed in the 1990s. The youngest organization in the sample is the Shanghai Cooperation Council, created in 2002.

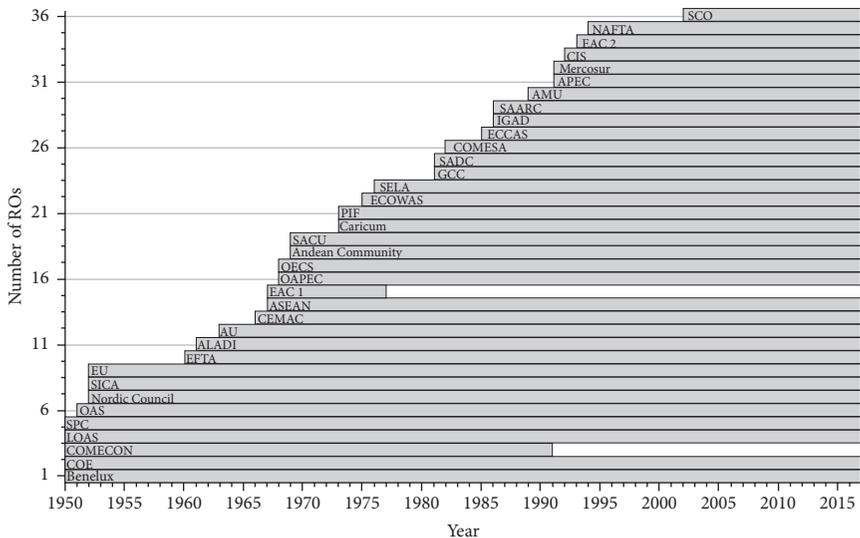


Figure 4.1 Sample of regional organizations, including entry (and end) dates

### Dependent variable: measuring regional institution building

This study analyses the European Union's interorganizational influence on the process by which policy-makers in other ROs create and change regional institutions. The dependent variable thus refers to the different permanent bodies that constitute an RO. The very definition of ROs eliminates substantial variation in basic institutional features. All or almost all of the organizations in the sample have the following: an independent secretariat possessing administrative functions; a standing body, generally composed of national ministers, that regularly convenes in order to adopt secondary legislation; and some form of executive body that supervises implementation. The vast majority of ROs also feature some form of dispute settlement body, and one comprising non-state actors such as parliamentarians, business representatives, and/or non-governmental organizations. Whereas these features distinguish ROs from other international institutional frameworks such as agreements, alliances, or informal arrangements (for the distinction between formal and informal intergovernmental organizations, see Vabulas and Snidal 2013), they are insufficient to capture meaningful variation in institutional strength *within* this group.<sup>1</sup> We therefore need to move beyond such basic measures of institutionalization to gauge variation in regional institution building—and the EU's specific influence on it.

One way to do this is to construct a more fine-grained measure of institutional design that not only codes the existence/nonexistence of important institutional types but also seeks to estimate their competences in decision-making. Once the basic institutional framework of an RO has been set up during its founding years, subsequent institutional change regularly entails fine-tuning the competences of existing institutions rather than creating new ones. The measure used here focuses on those institutions that enjoy some degree of independence from member-state control, and thereby characterize 'supranational' elements in ROs. This is a key characteristic on which most conceptualizations of international institutional design converge (see e.g. Abbott and Snidal 1998; Haftel and Thompson 2006; Koremenos, Lipson, and Snidal 2001; Hooghe and Marks 2015). Specifically, such independence is often conceptualized as delegation, which can be defined as 'a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former' (Hawkins et al. 2006: 7; for an overview of relevant concepts, see Hooghe and Marks 2015). The principals—i.e. the member states—retain ultimate control, but delegated agents enjoy a degree of autonomy that can, and often does, change over time. Thus conceived, regional institutionalization is considered to be of major theoretical significance and is widely used in other empirical studies of ROs, preferential trade agreements, and global organizations. It is also a difficult case by which to assess EU influence, for several

<sup>1</sup> For example, almost all ROs in the sample are 'interventionist organizations' according to Boehmer et al. (2004), their highest category.

reasons: institutionalization entails real costs for states (both material and in terms of national sovereignty); it enhances the danger of unanticipated consequences occurring, due to agency slack; it is formalized, and thus visible rather than obscured; and it entails a certain permanence due to its inclusion in international treaties that are difficult to change.

The dependent variable 'RO institutionalization' is an additive index that captures the extent to which member states create four generic types of regional institutions—general secretariats, parliamentary bodies, judicial bodies, and consultative bodies—that are *not* composed of member-state representatives and that formally endow these institutions with the competences to aid in regional decision-making or dispute adjudication. The measure assesses the formal rules that can be observed in treaties, constitutions, conventions, special statutes, protocols, and rules of procedure—in other words, rules which can be specified independent of actual behaviour. The strength of each of these types of institution is measured on an additive scale and then normalized. The four components are added together and the final score is normalized again, generating a score of regional institutional strength for each year of a given RO's existence. The Cronbach's alpha for the aggregate measure is 0.91, indicating very high internal consistency. Below, I discuss each component in turn and give examples from the sample of ROs while excluding the EU itself (N=35). Further detail on the coding scheme is provided in Appendix A.

The first component is *general secretariats*. They provide the backbone of an RO and form the principal focus of work on IOs and their independence (Barnett and Finnemore 2004; Bradley and Kelley 2008; Hawkins et al. 2006; Johnson 2013). As Abbott and Snidal (1998) noted, 'the very existence of a centralized secretariat implies some operational autonomy' (p. 9). General secretariats tend to be the most institutionally stable RO body and the most predictably supranational. Staffed with independent experts, such a supranational bureaucracy can be characterized as 'a permanent technical or administrative body that manages the operation of the IO on a regular basis' (Haftel and Thompson 2006: 260). Some of these management tasks include running the RO's headquarters, organizing meetings, and maintaining records, but some secretariats also have agenda-setting and executive competences. Secretariats can significantly enhance the efficiency of regional cooperation by supporting state interactions and providing operational activities in the implementation of programmes and policy. Specifically, they may structure agendas, facilitate interstate bargaining, frame strategic plans, and provide background research (Abbott and Snidal 1998; Hawkins et al. 2006; Hooghe and Marks 2015). Their main functions, then, are to facilitate member-state decision-making and to execute policy. With the sole exception of the High Authority of the ECSC (1952–6), general secretariats do not *adopt* policy.<sup>2</sup>

<sup>2</sup> There might be exceptions with regard to certain administrative acts, but these are generally adopted within the narrow confines of secondary legislation adopted by member states.

The institutional strength of general secretariats is measured on the basis of an 11-point scale that assesses: (1) whether an independent secretariat exists (one dimension); (2) whether it has agenda-setting competences in six decision areas: accession, suspension, constitutional reform, budgetary allocation, financial non-compliance, and policy-making (six dimensions); (3) whether it can initiate formal proceedings against a member state that is in non-compliance with the rules of an RO (one dimension); (4) whether it holds a monopoly of policy initiation (one dimension); and (5) whether it (exclusively) holds executive powers such as framing multi-year strategic plans or turning general legislation into directives or executive orders (two dimensions). Almost all of the ROs in the dataset have an independent general secretariat with infrastructural functions, even though it sometimes takes a few years after an organization's founding to set it up. However, the extent to which the secretariat facilitates member-state bargaining, monitors compliance, and carries out executive functions varies considerably. For example, while general secretariats in 29 ROs can set the agenda on budget and/or policy, only three secretariats hold an exclusive right to initiative. Moreover, only seven ROs endow secretariats with agenda-setting competences in three or more decision areas; only six empower them to bring non-compliance suits against member states; while secretariats in 14 ROs hold executive powers, a competence that is exclusive in only two organizations.

The second component is *parliamentary bodies*, which are institutionalized forums for regular deliberation among elected representatives. Parliamentary bodies are distinctive as an institutional form in that they are not designed primarily to enhance the efficiency of regional cooperation, but are 'forum[s] for ensuring democratic accountability' (Cutler 2001: 224). Unlike general secretariats, expert advisory bodies, or courts, they do not lower the transaction costs of international cooperation or provide expert knowledge that facilitates the design of legislation or the monitoring and enforcing of agreements (Lenz, Burilkov, and Viola 2019: 1096-97). Instead, parliamentary bodies tend to be principals themselves in that they represent the electorate of the member states alongside governments and their 'political and policy preferences are prone to being misaligned with the preferences of IOs' intergovernmental bodies because IPAs [international parliamentary institutions] often include opposition parties and change their composition as a result of national elections taking place at different points in time in the member states' (Rocabert et al. 2019: 611). Parliamentary bodies serve an important legitimating function in regional cooperation (Lenz, Burilkov, and Viola 2019; Schimmelfennig et al. 2020).

The institutional strength of regional parliamentary bodies is measured on the basis of a nine-point scale that assesses: (1) whether such bodies exist and have a formal status within the RO (two dimensions); (2) whether they are directly elected (one dimension); and (3) whether they hold agenda-setting and/or legislative competences in the aforementioned decision areas of accession,

suspension, constitutional reform, budgetary allocation, financial non-compliance, and policy-making (six dimensions). Approximately half of the ROs in the sample feature a parliamentary body (N=19), which also tends to be assigned formal status within an RO over time. However, their formal competences tend to be weak. Only three parliamentary bodies have legislative competences in at least one decision area, generally in policy-making. Agenda-setting powers are more widespread, with nine parliaments holding them in at least one decision area. Only two of those nine parliaments hold agenda-setting powers in more than two decision areas. Directly elected parliamentary bodies are also rare: only two organizations have them. According to this measure, parliamentary bodies tend to be significantly weaker than general secretariats in ROs.

The third component is *other non-state bodies*, which are other collective bodies composed of non-state actors that facilitate state decision-making in an RO. Their composition may vary, ranging from representatives of business and labour via technical experts or representatives of indigenous peoples to non-governmental organizations. These bodies may serve both legitimation and efficiency purposes. They can give a voice to powerful or marginalized social groups that have a stake in regional cooperation, and they can serve to tap the information and expertise held by other non-governmental actors to improve decision-making and enhance implementation (Tallberg et al. 2013). As with general secretariats, such bodies generally do not have legislative competences.

The institutional strength of other non-state bodies is measured on the basis of an eight-point scale that assesses: (1) whether such bodies exist and have a formal status within the RO (two dimensions); and (2) whether they have agenda-setting competences in six decision areas: accession, suspension, constitutional reform, budgetary allocation, financial non-compliance, and policy-making (six dimensions). The measure codes up to two different non-state bodies, even though a few organizations have more than that; in such cases, I coded the most institutionalized ones. When there are separate labour and business councils, I coded them as one because they tend to be integrated in most organizations (again choosing the more institutionalized one). About two-thirds of ROs today have some kind of other non-state body (N=22), but only nine organizations have two (or more) such bodies. Almost three-quarters of these have formal consultative status (N=16). Thus, these bodies are somewhat more widespread than parliamentary bodies, but their competences are more limited. Only nine non-state bodies hold agenda-setting competence (40 per cent, compared to 50 per cent in parliamentary bodies, not counting those with legislative competences), and all of them are confined to a single decision area, generally policy-making. Among parliamentary bodies, in contrast, in nine ROs they hold agenda-setting or legislative powers in at least two decision areas.

The fourth component is *judicial bodies*. Judicial bodies are expert bodies that adjudicate disputes among member states, enforce compliance with the rules of

an RO, and ensure the authoritative and impartial application of RO law (Smith 2000; Abbott et al. 2000; Alter and Hooghe 2016). Dispute resolution may be conceived as a distinct reason to delegate to an independent institution in order to secure the social benefits of cooperation (Hawkins et al. 2006: 17). Disputes tend to arise due to the incomplete nature of RO law. In many ROs, dispute settlement is a multi-stage process consisting of political negotiations, mediation, conciliation, arbitration, and adjudication. The measure focuses on *legalized* dispute settlement that involves an independent third party—i.e. arbitration and adjudication. It conceives of legal dispute settlement as a continuum from low to high legalization (see Smith 2000).

The institutional strength of regional judicial bodies is measured on the basis of a seven-point scale that assesses (based on McCall Smith 2000 and Hooghe et al. 2017) whether the dispute settlement system is obligatory; whether it is automatic; how the tribunal is composed; whether adjudication is binding; whether non-state actors have access; whether there is a remedy for non-compliance with a ruling; and whether there is a preliminary ruling system of national court referrals. When there are two separate dispute settlement streams, the more legalized one is coded. Approximately two-thirds of ROs have an automatic third-party dispute settlement system today (N=24) and grant access to private actors (N=23). More than half of ROs feature dispute settlement systems that are obligatory (N=17) (i.e. a member state cannot opt out), and involve a standing tribunal (N=18). Adjudication is fully binding on member states in 18 ROs, and some form of remedy exists in 18 organizations. Preliminary rulings exist in only 10 ROs and rulings only take direct effect in eight organizations. While there is some diversity in these features, they tend to be hierarchically ordered (Smith 2000; Kono 2007; Jo and Namgung 2012; Hooghe et al. 2013).

Figure 4.2 gives a sense of the sample variation of the aggregate measure of *RO institutionalization*. The darkly shaded boxplots cover the inter-quartile range from the 25th to the 75th percentiles, and the lighter extensions indicate the full range of values; the dot designates the mean score over the entire period. The figure shows that ROs vary strongly in their degree of institutionalization, both cross-sectionally and over time. Variation between ROs reaches from the Southern African Customs Union (SACU) with a mean value of 0.02 and the South Asian Association of Regional Cooperation (SAARC) with a mean value of 0.09 to the Andean Community (CAN) with a mean value of 0.51. The other ROs are distributed fairly evenly between these two poles. In the lower third of the distribution are ROs as diverse as the Asia-Pacific Economic Cooperation (APEC), the Shanghai Cooperation Organization (SCO), and the Latin American Economic System (SELA). The upper third of the sample also contains a diverse set of ROs, including the new East African Community (EAC2), the Benelux Community, the Caribbean Community (CARICOM), and the Economic Community of West African States (ECOWAS). The large majority of ROs change their institutional frameworks over time (N=33, 91 per cent), as indicated by

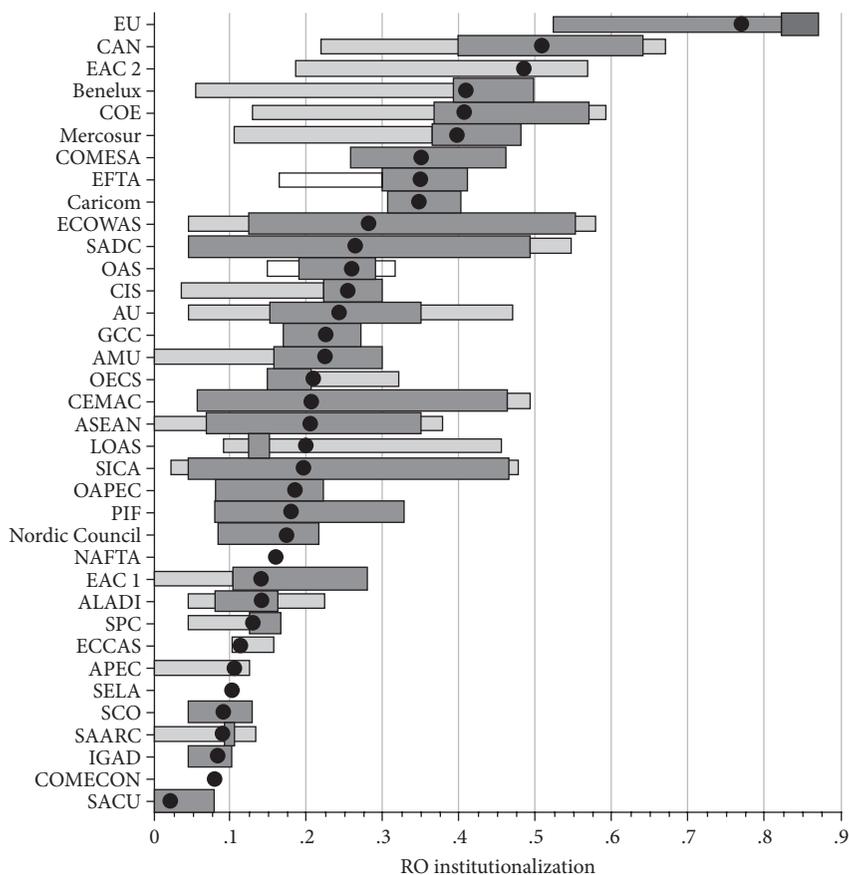


Figure 4.2 Sample variation in *RO Institutionalization*

the extended boxplots; only three are static entities. However, the extent of institutional change varies widely across organizations. Some of the most dynamic entities are the Central American Integration System (SICA), the Central African Economic and Monetary Union (CEMAC), SADC, and ECOWAS. However, others change only very little over time, despite having been founded long ago; such organizations include the Gulf Cooperation Council (GCC), the Nordic Council (NordC), the Economic Community of Central African States (ECCAS), and SCO. Organizations that change little tend to be 'stuck' at low levels of institutionalization. This implies the observation that change in regional institutionalization is almost uniformly upwards. There are several instances of change that diminish institutionalization over time (see also Figure 1.2), the most prominent of which may be the abolition of the SADC Tribunal discussed in Chapter 5. However, not a single RO has a lower level of institutionalization in 2017 than it did in its founding period. Over the entire lifespan of an RO, the net effect of institutional change is uniformly positive.

## Operationalizing European Union influence

According to the diffusion framework outlined in the previous chapter, EU influence operates through two distinct pathways: it can actively support the institutionalization of ROs through direct engagement with other ROs (active influence), and its own institutional evolution might shape regional institutionalization elsewhere in more indirect ways (passive influence). I discuss their operationalization in turn.

*Active EU influence* is operationalized through an aggregate index that measures the EU's institutionalized engagement with other ROs. I construct an index, *EU Engagement*, that consists of three components, each of which is designed to capture the various ways in which the EU may actively shape regional institution building elsewhere. The index is quantitative, and the components are normalized and weighted equally in the aggregate index. The Cronbach's alpha is 0.863, which indicates high scalability.

The first of the three components is the EU's financial support to other ROs, which is the main way in which the Community shapes incentives for institutional change. EU funding is an ordinal variable (with four categories) that captures the amount of funding directed to a specific RO in a given year, encompassing both institutional and project support ( $x$  = EU funding to RO;  $x < 1$  million €;  $1 < x < 4$  million €;  $4 < x < 8$  million €;  $x > 8$  million €). Funding streams were coded on the basis of a variety of official documents, primarily issued by the EU itself, such as regional strategy papers and interregional funding agreements. This data was augmented with information from the ROs themselves—for example, in the form of press statements, website entries, or meeting records that document significant EU funding streams. By 2017, 43 per cent of the organizations had not received any funding from the EU during their lifespan, including the European Free Trade Association (EFTA), the GCC, the Latin American Economic System, the Council for Mutual Economic Assistance, and SCO. Amongst the most heavily funded organizations are the Council of Europe, Mercosur, the Andean Community, and SADC.

The second component is EU interregional cooperation agreements, which are a more indirect way in which EU engagement shapes incentives for institutional change. Institutionalized cooperation measures the policy scope and obligation of all of the EU's agreements with other ROs in the dataset, based on the assumption that interregional agreements with a wider policy scope and a higher degree of obligation are more likely to exert stronger effects of institutional feedback. An interregional agreement's policy scope is assessed based on a list of 29 policy areas, adapted from Lenz et al. (2015), in order to account for the specificities of *interregional* cooperation. Cooperation is recorded in a specific policy area when the agreement explicitly codifies substantive cooperation in the main body of the

agreement. The binding nature of cooperation is assessed on a three-point scale that measures the nature of obligations associated with cooperation (non-binding vs binding) as well as the existence of interregional monitoring institutions, which forms the highest category of obligation. The institutionalized cooperation score is the product of the two standardized components of policy scope and obligation. I assess a total of 15 agreements that between them involve nine different ROs. This assessment excludes recent Interim Economic Partnership Agreements with African subregions because these tend to include only a subset of members. At the low end of the spectrum are agreements with the GCC (1989) and the Andean Pact (1983), both of which are relatively narrow in scope and involve no binding commitments. At the other end of the spectrum are agreements with the Central American Integration System (2003) and the African Union (2007), both of which involve binding commitments.

The third component is the frequency of institutionalized contact between the EU and an RO, which is widely used as a proxy for opportunities for teaching and persuasion in quantitative studies (Bearce and Bondanella 2007: 71–13). EU contact is a count of instances of institutionalized contact between EU representatives and their counterparts in a given year across three levels: (1) ministers and heads of state, (2) parliamentarians, and (3) technical experts, including representatives of the European Commission. The count assumes a value of three when all three sets of actors met in a given year, and zero when none of them met—or when no institutionalization of contact took place. Contacts were coded on the basis of a variety of documents, such as meeting programmes, draft agendas, calendars, ‘history documents’ of delegations with specific ROs, joint or final communiqués of interregional meetings, and annual reports. This data was augmented by website entries and written information elicited by email. The EU has had institutionalized contact with 23 out of the 35 organizations in the dataset, but the frequency and intensity of such contact has varied strongly. Perhaps unsurprisingly, interregional meetings between technical experts are the most frequent overall, followed by meetings between parliamentarians. In terms of organizations, the most frequent contacts are with EFTA and the African Union. At the other end of the spectrum, the EU has some contact with both the Organization of Arab Petroleum Exporting Countries (OAPEC) and the Organization of American States, but these are rather low-level and much less frequent than those in the upper categories.

The second key explanatory variable is *passive EU influence*, which I operationalize as the evolution of the degree of institutionalization in the EU, coded in the same way as for other ROs.<sup>3</sup> As shown in Figure 4.3, EU institutionalization has

<sup>3</sup> This is an imperfect indicator in two important ways. Empirically, it only captures over-time variation and not cross-sectional variation. Philosophically, this indicator is not (strictly speaking) a

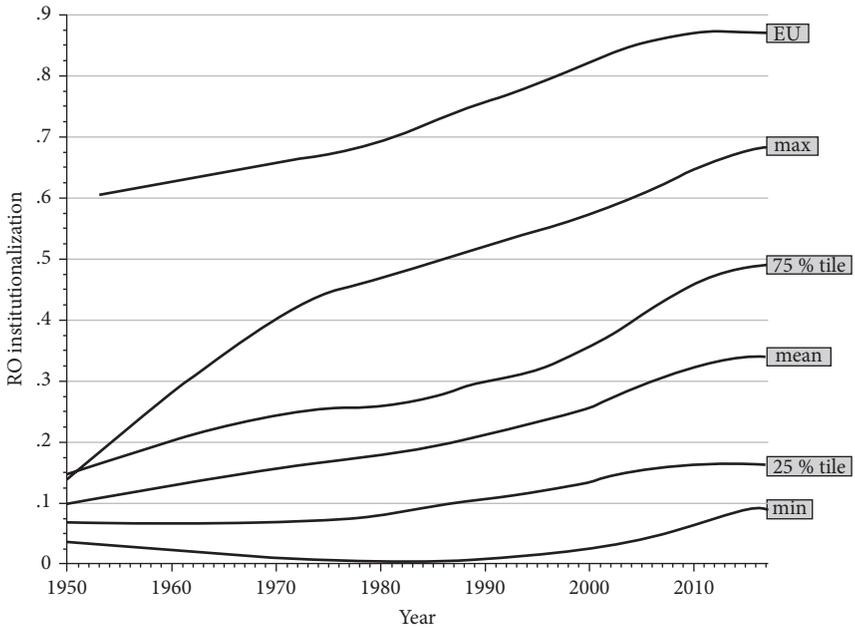


Figure 4.3 EU institutionalization and *RO Institutionalization*

increased steadily over time, with the exception of the transition from the ECSC towards the European Economic Community in the years following 1957.<sup>4</sup> This was most apparent between the Maastricht Treaty of 1991 and the 1999 Treaty of Amsterdam, after which it tapers off. Figure 4.3 also shows that the EU retains, by some margin, the highest level of institutionalization throughout the entire period, which provides the rationale for expecting the EU's level of institutionalization, at any given point in time, to lead other ROs to create *stronger* regional institutions. Nevertheless, the ROs with the maximum values clearly approach the EU's level of institutionalization over time; in fact, the RO with the highest value in 2017, the Andean Community, reached the EU's level of institutionalization in the 1970s. This also holds, albeit to a lesser extent, for the ROs in the highest quartile, and especially for the period since the early 1990s. In this upper range we see some convergence in levels of institutionalization, understood broadly as institutional developments in a broadly similar direction but with

relational measure but one that gauges a substantive characteristic of the unit of interest, the EU. Thus, it conforms more closely to the substantive style of analysis than to a relational style of analysis (even though the empirical analysis regresses this indicator on the institutionalization of other ROs, thereby entailing a measure of inter-unit dynamics). A better indicator would seek to capture the differential reception of EU institution building in other ROs, perhaps through media or discourse analysis. I seek to uncover this reception qualitatively in the case studies.

<sup>4</sup> All of the summary measures display some oscillation, so I have smoothed the lines in order to facilitate reading.

different magnitudes. This is not the case for the mean evolution of regional institutionalization, which runs largely in parallel with the EU's institutional trajectory. In the lower parts of the distribution, we see very modest movement.

### Initial quantitative analyses: bivariate relationships

With these operationalizations of the dependent and main independent variables in place, we can start to explore relationships between them. The basic claim is that the EU systematically shapes institution building in other ROs, both actively and passively. This claim implies both that the EU's own institutional evolution should affect the institutional evolution of ROs elsewhere (passive influence) and that more intensive engagement with the EU will lead to more strongly institutionalized ROs elsewhere (active influence). These are falsifiable claims. If EU influence does not matter, we should not see systematic variation in institutional evolution in line with the EU's own development, and ROs' levels of institutionalization should look identical, on average, across different levels of EU engagement.

I start by exploring the EU's active influence on regional institution building. A key implication of the theoretical argument is that ROs that engage more closely with the EU should display higher levels of institutionalization. Table 4.1 confirms this expectation. It shows that higher categories of EU engagement are, without exception, associated with higher levels of regional institutionalization across different time periods. These differences across categories, which have been confirmed by a t-test, are highly statistically significant, indicating that it is unlikely that they are the result of chance alone. Remarkably, ROs that engage closely with the EU—a phenomenon of the post-Cold War era—display levels of institutionalization that are around 50 per cent higher than those of ROs that have little contact with the EU, and twice as high as organizations that have no contact at all with the EU. In substantive terms, the average difference between no active EU engagement and high active EU engagement amounts to the difference of having a general secretariat with a non-exclusive right to initiate legislation and draft the budget, a body composed of non-state representatives with formal consultative status, and a third-party dispute settlement mechanism with ad hoc arbitrators and rulings that are conditionally binding. This is a large substantive difference in institutionalization. Table 4.1 also indicates that the EU's engagement with other regions has gradually expanded. Whereas engagement was very limited until 1970, it started expanding significantly in the 1970s and 1980s. However, the extensive support for ROs that we see today in organizations such as Mercosur, SADC, and the African Union only started in the 1990s.

I now turn to an initial exploration of the relationship between the EU's own institutional development and levels of institutionalization in other ROs—what I term 'passive EU influence'. Simple time-series models allow us to gauge whether

**Table 4.1.** *RO institutionalization by EU engagement category and by time period*

Time period	Mean without EU engagement	Mean with low EU engagement	$\Delta$	Mean with medium EU engagement	$\Delta$	Mean with high EU influence	$\Delta$
1950–1980	0.137	0.155	0.057***	None		None	
1980–2000	0.176	0.183	0.007*	0.290	0.114***	None	
2000–2017	0.239	0.298	0.058***	0.384	0.145***	0.466	0.226***

Note: \*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table 4.2.** *EU institutionalization and RO institutionalization*

	<i>RO institutionalization</i>
EU institutionalization	0.845*** (0.117)
Constant	-0.419*** (0.090)
Number of observations	66

Note: Robust standard errors in parentheses.

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

there is a relationship between these two variables. Table 4.2 shows that the bivariate relationship is strongly statistically significant. Thus, there is a systematic positive relationship between the EU's level of institutionalization and the mean level of institutionalization among the other ROs.

These bivariate quantitative analyses offer initial evidence for the claim that the EU systematically shapes the process of institution building in other ROs. However, a more rigorous test must ensure that these associations are not spurious. It would have to control for alternative explanations of the outcome and deal with the problem of endogeneity—i.e. the danger that correlation does not indicate causation.

### **Modelling the conditions of European Union influence: a multivariate analysis**

The clear bivariate patterns that the previous quantitative analyses unearthed provide initial support for Hypotheses 1 (active EU influence) and 2 (passive EU influence), but do not take into account the potential limitations on the scope of the theory or consider potential alternative explanations. As discussed in

Chapter 3, the diffusion framework posits that certain types of RO should be particularly susceptible to the influence of the EU—namely, those based upon contracts that contain open-ended commitments. In addition, most studies of regional institutions posit explanatory factors that are located below and above the interorganizational level of analysis: they emphasize specific characteristics of ROs themselves (regional factors), or influences flowing from the international system as a whole (global factors). Therefore, a more rigorous empirical test of the relationship between the EU and the institutionalization of other ROs must consider these alternatives.

Multivariate statistical models are suited to examining the relative explanatory power of a variety of potential explanatory factors, and to ascertaining whether the influence of the EU continues to predict variation in regional institutionalization after alternative explanations have been taken into account. In particular, models that include multiple variables can estimate how an RO's degree of institutionalization differs between organizations that are identical in terms of additional factors but 'exposed' to different levels of both EU engagement and the EU's own institutional evolution. Moreover, such models allow for an analysis of interaction effects. After discussing and operationalizing the hypothesized scope condition and the main alternative explanations, I present the model and the results of the multivariate analysis.

### Operationalizing the scope condition 'contractual open-endedness'

I start by operationalizing the scope condition 'contractual open-endedness.' In the absence of prior measures, I measure this scope condition as a trichotomous variable that taps the extent to which the commitments that member states engage in are open-ended. There are two key dimensions of open-endedness, which I combine into a single indicator (see Table 4.3). The first is the open-endedness of the policy scope, which I assess on the basis of the stipulated objectives of cooperation. This dimension distinguishes organizations with a concrete and narrow organizational objective (fixed)—for example OAPEC, whose principal aim lies in 'the cooperation of the members in various forms of economic activity in the petroleum industry' (OAPEC 1968, Art. 2)—from

**Table 4.3.** Measuring contractual open-endedness

<i>Type of contract</i>	<i>Policy scope</i>	<i>Actor scope</i>
Open-ended	Open-ended	Open-ended
Intermediate	Open-ended	Fixed
Fixed	Fixed	Fixed

those that pursue only a vague and broad-based objective vis-à-vis cooperation (open-ended)—such as the SCO, whose aim is ‘to consolidate multidisciplinary cooperation in the maintenance and strengthening of peace, security and stability in the region’ and to ‘facilitate comprehensive and balanced economic growth, social and cultural development in the region through joint action on the basis of equal partnership’ (SCO 2002, Art. 1).

The second key dimension is that of the open-endedness of actor scope, which I assess based on whether the treaties emphasize national sovereignty and make reference to governments, member states, or countries as the *only* relevant actors. It distinguishes state-centred organizations (fixed) from those that provide for the potential participation of a wider group of actors in the cooperation process (open-ended). State-centred organizations achieve cooperation objectives through *intergovernmental* cooperation, wherein national governments are the only legitimate actors. This is reflected in the fact that treaties regularly emphasize national sovereignty and make continuous reference to governments, member states, or countries as the *only* relevant actors. Organizations with a more open-ended actor scope do not have these characteristics. Actors encompass loosely defined representatives of ‘the people’ as well as national governments. Such organizations typically include transformational commitments vis-à-vis their societies, which are expressed in references made to a ‘union of peoples’, a ‘community of peoples’, or an ‘ever-closer union’.

At the time of their founding, the 36 ROs in my sample were divided in roughly equal parts across the three categories identified in Table 4.3. While an organization can change its degree of contractual open-endedness over time, this is quite rare. I code six single-interval moves towards greater open-endedness. The analysis, presented below, uses the original contracts for the purpose of this investigation.

### Alternative explanations and control variables

The first set of alternative explanations concerns explanatory factors located at the regional level of analysis. The structural characteristics of units are typically the null hypothesis of diffusion studies. The analysis considers several controls internal to each RO, including the most important explanations for international institutional change in general.

*Intraregional trade.* Perhaps the most firmly grounded expectation in the literature is that international institution building should co-vary with economic interdependence (Haftel 2013; Keohane 1984). Economic exchange develops its welfare-improving potential to the fullest with stable, predictable property rights. Hence, trade that traverses international borders creates a demand for coordination among states in order to provide uniform rules. Reducing barriers to cross-border trade is a core rationale of many ROs; therefore, one might expect that the growth

of trade interdependence within an RO leads to greater institutionalization. I measure trade interdependence, 'intra-RO trade', as a region's total trade (imports plus exports) as a proportion of member countries' total trade.

*Power asymmetry.* Scholars in the tradition of Waltzian neorealism hypothesize that powerful states reject strong institutionalization because it inhibits unilateral action, and instead prefer intergovernmental arrangements: '[F]orms of legalization that involve limited delegation [...] provide the crucial basis for cooperation between the weak and the strong' (Abbott and Snidal 2000: 448). Conversely, hegemonic stability theory suggests that an unequal distribution of power may expedite the provision of public goods because the dominant state can internalize its benefits and be willing to pay the costs (Krasner 1976; Mattli 1999). Moreover, a hegemon may find the rule of law useful in eliciting the compliance of weaker members. I control for these possibilities with a measure of power dispersion—*Power asymmetry*—that is the ratio of the material capabilities of the most powerful member state to the average of all other members. The Composite Index of National Material Capabilities (CINC) Version 4.0 provides a summary measure of military expenditure, military personnel, energy consumption, iron and steel production, urban population, and total population for individual countries (Singer 1988; Singer, Bremer, and Stuckey 1972).

*Members.* The degree of institutionalization within an organization might be sensitive to the size of its overall membership base. As the number of members grows, decentralized cooperation in the absence of centralized institutions may become more costly as a result of issue-cycling and increasing informational asymmetry (Hawkins et al. 2006; Hooghe and Marks 2015). This grounds the hypothesis, drawn from the rational design literature, that 'centralization of information is [...] increasingly valuable with larger numbers' (Koremenos, Lipson, and Snidal 2001: 789). I measure 'members' as the natural log of the absolute number of member states in a given year, assuming that the effect of one additional member joining declines as the absolute number increases.

*Democracy.* Norms of appropriate behaviour in democratic states—or, alternatively, the political context in newly democratizing countries—may render elites more willing to delegate to IOs (Risse-Kappen 1995; Grigorescu 2015). An implication of the findings of the democratic peace literature is that autocracies are more likely than democracies to be fearful of exploitation. In particular, newly democratizing states may use international institutions as external commitment devices (Moravcsik 2000). I measure 'democracy' as the annual Combined Polity Score in the Polity IV dataset.

*Per capita GDP.* Finally, I control for the mean per capita GDP of member states in an RO in a given year on the premise that the richer the members, the greater the demand for international cooperation and, correspondingly, the degree of regional institutionalization. Accordingly, I measure the log of the mean per capita GDP of member states to account for the great variance in this control.

The second set of alternative explanations concerns explanatory factors located at the global level of analysis. Especially more recent literature in comparative regionalism has emphasized the influence of systemic processes that impact ROs ‘from above’.

*Globalization.* Perhaps the most firmly grounded expectation on systemic influences on regional institutionalization emphasize the influence of globalization. As economic, social, and political exchanges that cross national borders grow, a variety of actors are likely to engage in cooperative endeavours in order to manage such interdependencies. In particular, the ‘New Regionalism’ literature emphasizes that ROs are often created in order to manage such globalization processes (for an overview, see Söderbaum and Shaw 2003). The institutionalization of regional bodies by state governments might also follow this logic. I divulge the impact of ‘globalization’ through the widely used KOF Index of Globalization, which captures the economic, social, and political connections that countries have with the rest of the world (1970–2017) (Dreher 2006). I include an aggregated measure based on the RO mean of each member state’s globalization score for a given year.

*Cold War.* Various other developments that one might expect to affect regional institutionalization cluster at the end of the Cold War, and I introduce a time dummy (0 = post-1990) to nullify their potential confounding effects. The end of intense ideologically driven bipolar competition created new demands for regional cooperation, ones that might be reflected in deeper institutionalization (Hurrell 1995a). The end of the Cold War also roughly coincides with a stalemate in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade. As the prospects for continued multilateral trade liberalization appeared bleak by the late 1980s, states turned towards regional options instead—a development that may have led to (the creation of) institutionally more ambitious ROs.

*Regional diffusion.* In order to distinguish EU influence from alternative diffusion influences, I include a regional diffusion measure. The diffusion literature suggests that patterns of diffusion cluster among neighbouring countries or adjacent ROs; that is, there is a strong geographic element to diffusion processes (Brinks and Coppedge 2006; Weyland 2008: 283). Neighbouring states, and therefore also neighbouring ROs, tend to be in particularly close contact and regularly exchange relevant information; they also tend to share important cultural characteristics, which are likely to enhance the credibility and potential relevance of the information they receive (Simmons and Elkins 2004). Moreover, ROs within specific geographic regions tend to display significant overlaps in membership, which may lead to similar institutional changes (see e.g. Holzinger, Knill, and Sommerer 2008; Panke and Stapel 2018). In order to capture such ‘neighbourhood’ effects, I measure ‘regional diffusion’ as the average level of institutionalization of all neighbouring ROs in the same geographic region

(the Americas, Europe, Africa, the Middle East, or Asia)—with the exception of the RO in question.

Diffusion may also operate at the global rather than the regional level. Sociological institutionalists in particular expect ROs, as a distinct category of organization, to become more similar in their institutional structure over time due to the emergence of a norm of 'acceptable' forms of institutionalization (Powers and Goertz 2011; DiMaggio and Powell 1983). I tap into such processes by measuring the average level of institutionalization in the sample in a given year, again with the exception of the specific RO in question. Given that the variable 'global diffusion' highly correlates with regional diffusion ( $r=0.83$ ), and furthermore is autocorrelated with 'regional diffusion', I include the former variable in a series of robustness checks.

Summary statistics and bivariate correlations for all variables used in the analysis are contained in Appendix B.

### Model specification

With regard to model specification, I select panel data OLS regression as the most appropriate. Institutionalization theoretically ranges from 0 to 1, but it is a continuous variable, with a maximum in the dataset of 0.67. Therefore, logit and probit models, designed respectively for categorical and ordinal dependent variables, are not appropriate. Furthermore, I include models that incorporate all right-hand-side variables for robustness purposes. ROs do not all appear at the same time, and thus the data is unbalanced, necessitating the adoption of a fixed-effects model, confirmed by a Hausman test (Greene 2008). As panel data often raises the issue of non-stationary unit roots and trending, a Fisher-type test with an advanced Dickey–Fuller component (Becketti 2013) was used to detect their presence, and in order to mitigate their impact, differencing and detrending were used. Furthermore, robust standard errors are used in the estimations.

The main analysis does not lag the independent variables, for several reasons. For one, EU influence may cause regional institutionalization even when it does not temporally precede it. The reason is that EU decisions to engage with other actors or to change its own institutions are discussed and often decided upon long before they are actually implemented. For example, the entry into force of an interregional cooperation agreement can often be anticipated several years in advance, and may already exert causal effects even before it starts operating. The same holds for the entry into force of a new EU treaty (passive influence). Given that change in EU influence is generally anticipated, the moment in time when I record its value generally follows the moment in time when it may start generating causal effects, rendering lags superfluous. This is further compounded, in the case of EU engagement, by the fact that this form of EU influence is deeply rooted in

history, as I showed in Chapter 2. While specific levels of EU engagement can and do change over time, decisions about engagement as such are often taken during the founding phase of an organization—sometimes before its formal constitution—and are strongly conditioned by former colonial ties (Alecú de Flers and Regelsberger 2005). In line with this argument, a reverse causality test, reported in Appendix C, shows that EU engagement is conditioned by region. Finally, a Fischer-type test was used to detect the necessity of using lags and found none. Nevertheless, I report a robustness check in the Appendix that includes a set of models in which the independent variables are lagged by two years. The results are similar.

Finally, contractual open-endedness is a key variable—it takes two forms. It is analysed both on its own and as part of an interaction with EU engagement and EU institutionalization. Contractual open-endedness takes values of 1 (fixed contract), 2 (intermediate contract), and 3 (open-ended contract). As an interaction term, it serves to uncover whether active and passive EU influence vary across ROs that differ as regards their contractual characteristics. The interaction takes the form:

$$Y = c + ax_1 + bx_2 + d(x_1x_2) + SE$$

where  $x_1$  is the continuous variable ‘EU engagement/EU institutionalization’,  $x_2$  is the factor variable ‘contractual open-endedness’, and  $d(x_1x_2)$  is the interaction term.

### Results of the multivariate analysis

Results of the multivariate analysis are presented in Table 4.4. I estimate seven main models that gauge the two conditions of EU influence and their interaction with contractual open-endedness. These models, each of which includes the full battery of controls identified before, are: Model 1: contractual open-endedness; Model 2: EU engagement; Model 3: EU engagement interacted with contractual open-endedness; Model 4: EU institutionalization; Model 5: EU institutionalization interacted with contractual open-endedness; Model 6: EU engagement and EU institutionalization; and Model 7: EU engagement and EU institutionalization as well as contractual open-endedness. I discuss these results, including their statistical and substantive significance, for the two EU influence variables, then turn towards the controls, before examining the robustness checks I conducted.

### European Union influence variables

In line with Hypothesis 1 (active EU influence), I find robust evidence for the claim that EU engagement—an aggregate index of funding, interregional agreements, and institutionalized contacts—is associated with higher levels of institutionalization in other ROs. This comes with positive and strongly statistically significant

**Table 4.4.** EU influence and RO institutionalization

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>	<i>Model 5</i>	<i>Model 6</i>	<i>Model 7</i>
Contractual open-endedness	0.125** (0.055)						0.128** (0.049)
EU engagement (active influence)		0.295*** (0.055)	0.145* (0.072)			0.262*** (0.054)	0.260*** (0.053)
* <i>Open-ended contract</i>			0.207** (0.076)				
EU institutionalization (passive influence)				0.599*** (0.107)	0.272** (0.124)	0.392*** (0.075)	0.411*** (0.074)
* <i>Intermediate contract</i>					0.340** (0.167)		
* <i>Open-ended contract</i>					0.589*** (0.171)		
Regional diffusion	0.116 (0.182)	0.248 (0.193)	0.182 (0.198)	0.008 (0.180)	-0.118 (0.179)	0.122 (0.182)	0.039 (0.172)
Intra-RO trade	0.000 (0.003)	0.001 (0.002)	0.001 (0.001)	-0.001 (0.003)	-0.001 (0.002)	0.000 (0.002)	0.001 (0.002)
Power asymmetry	-0.000 (0.009)	0.002 (0.006)	0.003 (0.006)	-0.003 (0.008)	-0.005 (0.008)	-0.000 (0.006)	-0.001 (0.006)
Democracy	0.010 (0.006)	0.004 (0.004)	0.002 (0.004)	0.008 (0.005)	0.006 (0.004)	0.003 (0.004)	0.002 (0.003)
Members (log)	0.154* (0.089)	0.203*** (0.064)	0.192*** (0.066)	0.158* (0.079)	0.097 (0.072)	0.188*** (0.063)	0.162** (0.066)
GDP per capita (log)	0.040 (0.033)	0.021 (0.028)	0.034 (0.029)	0.006 (0.034)	0.004 (0.028)	-0.002 (0.026)	-0.008 (0.025)
Cold War	-0.024 (0.016)	0.003 (0.014)	-0.001 (0.014)	0.039** (0.015)	0.028** (0.012)	0.038*** (0.013)	0.034*** (0.012)
Globalization	-0.001 (0.003)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	-0.001 (0.002)	0.002 (0.002)	0.001 (0.003)
Constant	-0.861*** (0.311)	-0.536* (0.312)	-0.598* (0.326)	-0.740** (0.335)	-0.560* (0.283)	-0.575* (0.296)	-0.732** (0.278)
R <sup>2</sup> : within	0.392	0.529	0.555	0.439	0.530	0.557	0.580
R <sup>2</sup> : between	0.144	0.017	0.017	0.007	0.227	0.014	0.133
R <sup>2</sup> : overall	0.191	0.076	0.091	0.065	0.237	0.079	0.182

Note: All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

coefficients in Models 2, 6, and 7. These results indicate that the EU's efforts to boost regional institutionalization have been successful and do exert an independent effect. Disaggregating EU engagement into its three constituent components and conducting the regression with each of the components independently does not affect the results (see Table C3 in Appendix C for results).

Passive EU influence, on the other hand, is measured by the EU's own trajectory of institutionalization. Model 4 indicates that higher levels of institutionalization in other ROs are associated with increases in the EU's own degree of institutionalization, lending support to Hypothesis 2. This result holds true when both EU engagement and EU institutionalization are included in the same model (Model 6), as well as when contractual open-endedness is also added (Model 7).

On its own, contractual open-endedness is significantly correlated with regional institutionalization, meaning that organizations based on more open-ended commitments are more likely to achieve high levels of institutionalization (Model 1). This reconfirms the analysis undertaken in Hooghe, Lenz, and Marks (2019), and holds true for organizations with intermediate and open-ended contracts when interacted with EU engagement and EU institutionalization. These results are in line with Hypothesis 3, which states that ROs resting on more open-ended commitments are more likely to be susceptible to EU influence.

Specifically, the effect of EU engagement varies across different types of ROs, as captured by contractual open-endedness. Active EU influence greatly increases in organizations that have an open-ended contract, as demonstrated by the positive and significant interaction in Model 3. These results bolster the conditional hypothesis that EU engagement is most effective in ROs that rest on open-ended commitments because such commitments facilitate the creation of new institutional arrangements and the reform of existing ones. Unsurprisingly, the existing case study evidence that has demonstrated EU influence on other ROs mainly concerns organizations with open-ended contracts, including Mercosur, SADC, and the Andean Community.

As with active EU influence, I find strong support for the idea that institutional evolution in the EU is associated with higher levels of institutionalization in specific types of organizations, primarily those based on open-ended contracts. Model 5 shows a positive and statistically significant effect for the respective interaction term, while both EU institutionalization and contractual open-endedness are highly significant in the mixed Model 7. Furthermore, both intermediate and open-ended contracts show strong interaction with EU institutionalization, as shown in Model 5. These results lend strong support to Hypothesis 3, indicating that primarily organizations with open-ended commitments are responsive to the EU's own trajectory of institutionalization. Where the ultimate purpose of cooperation is clearly defined from the outset, institutional change in an important reference organization—in this case, the EU—does not affect an organization's own level of institutionalization. Conversely, when an organization pursues similar community-building ambitions to those in the EU, drawing analogies to the EU's success is more credible and, in turn, facilitates the strengthening of regional institutions.

How substantive are the effects of the EU on levels of regional institutionalization? I first turn to active EU influence. Figure 4.4 plots the predicted values of

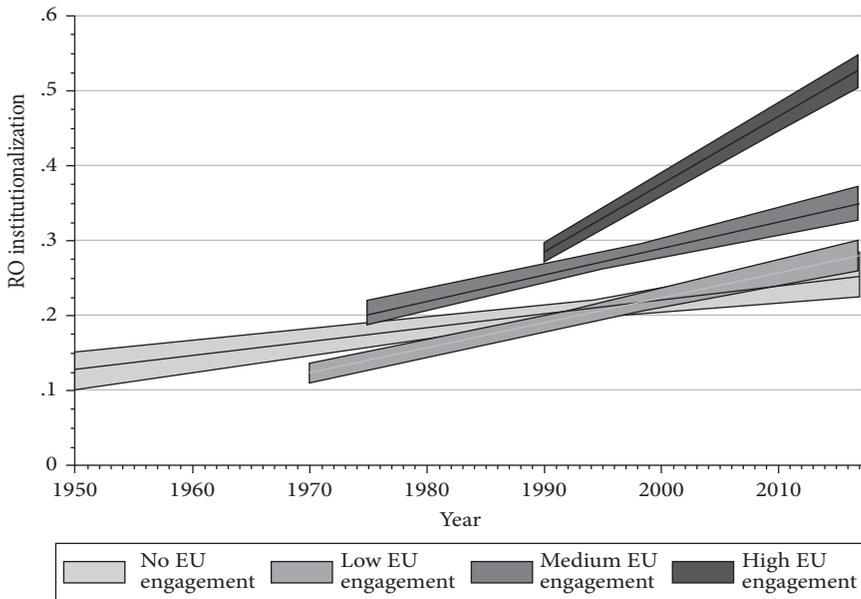
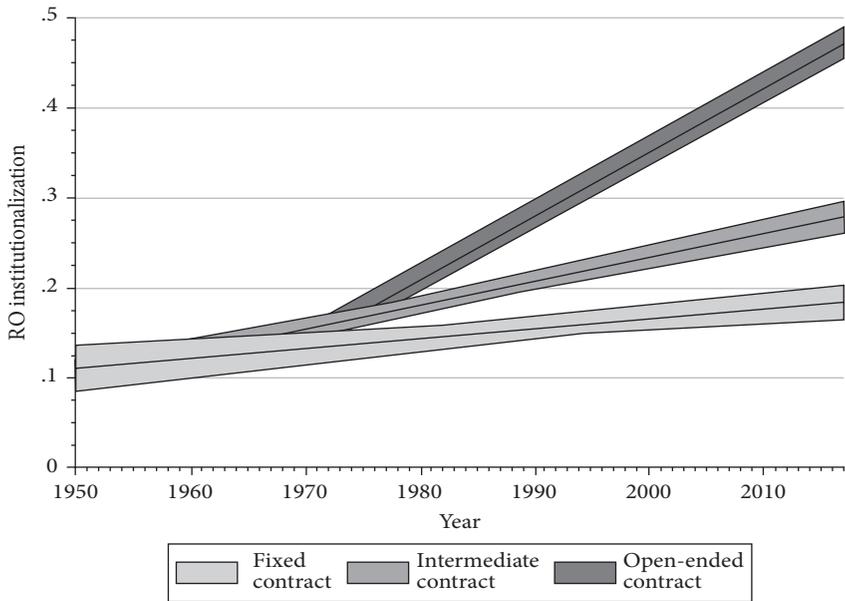


Figure 4.4 EU engagement and *RO Institutionalization* (fitted), 1950–2017

*RO institutionalization* for the different values (low, up to the 33rd percentile; medium, between the 33rd and 66th percentiles; and high, between the 66th and 100th percentiles) of the EU engagement measure between 1950 and 2017 based on Model 7, with other variables being held at their mean. The figure shows that institutionalization grows faster the more closely the EU engages with other ROs, even though *RO institutionalization* has generally increased over time, as indicated by the upward slope of the baseline category ‘no EU engagement’. The most pronounced effect is in ROs deeply engaged with the EU, a phenomenon that began emerging from 1990 on. However, even for ROs that have medium-level engagement with the EU, the effect on institutionalization is noticeable, being statistically distinguishable from low active engagement throughout the entire period. Figure 4.4 also shows that low levels of engagement cannot be reliably distinguished from no EU engagement, as indicated by the overlapping confidence intervals between the two lines.

The EU’s own institutional development also makes a distinguishable difference. Figure 4.5 plots the predicted effects of the interaction between EU institutionalization and contractual open-endedness over time based on Model 5, with other variables being held at their mean. The figure illustrates that institutionalization in the EU exerts its strongest impact on ROs with an open-ended contract, statistically distinguishable from the other two categories of contractual open-endedness from the second half of the 1970s onwards, with a more modest impact on ROs



**Figure 4.5** EU institutionalization and *RO Institutionalization* for different levels of contractual open-endedness (fitted), 1950–2017

with an intermediate contract. I interpret this result as evidence that the EU serves as an important reference point for learning and emulation processes, primarily for those ROs that are similar to the EU with regard to open-ended commitments. Overall, these results lend strong support to the idea that, at least for certain types of organization, decision-making is indeed interdependent across organizations, even in the absence of active EU influence.

### Controls

Let us now examine the effects of the control variables. I start by considering intraregional variables that gauge specific internal characteristics of ROs. Somewhat surprisingly, little support for most of these variables is discernible. The only exception is membership. There is fairly consistent support for the rational design claim that a greater number of members leads to higher levels of institutionalization, confirming a finding by Hooghe and Marks (2015). The coefficients are consistently positive and reach conventional levels of significance in six out of seven models, suggesting that the functional pressures for institutionalization in large membership organizations often overcome the threat of decisional blockage that increases as the number of members goes up. As this measure is a

log of the total membership of the RO, it furthermore supports the notion that the impact of growing membership lessens as an RO grows substantially.

However, I find no support for the influential neoliberal-institutionalist claim that intraregional trade interdependence affects regional institutionalization, which confirms a recent finding by Haftel (2013). Coefficients are inconsistently signed and negligibly small. Some of the strongest regional institutions can be found in organizations in regions such as Africa and Latin America, where trade interdependence is comparatively low. Similarly, power asymmetry is not consistently signed, with very small coefficients that oscillate around 0, and never reach statistical significance. Various configurations of power asymmetry between members in terms of material capabilities appear to be compatible with both high and low levels of regional institutionalization. This challenges the neorealist claim that powerful states are generally reluctant to cede sovereignty. Important exceptions include South Africa in SADC (but not the Southern African Customs Union) and Nigeria in ECOWAS; both ROs are highly unequal in terms of power but display comparatively high levels of institutionalization. The influence of democracy also finds little statistical support. While consistently positive, coefficients oscillate around 0 and do not reach statistical significance in any of the models. ROs with more democratic member states do not appear to build stronger regional institutions in general. Finally, per capita GDP does not have an impact on institutionalization, as it is inconsistently signed, does not achieve any degree of significance, and, despite being a log of the original variable, shows negligible coefficients. This suggests that the economic situation of an RO does not play a significant role in institutionalization, meaning that such outcomes would be the same whether members were developing, middle-income, or high-income countries, or any mix thereof.

As noted in Chapter 3, the analytical assumptions underlying alternative channels of diffusion are compatible with the argument about EU influence. Moreover, to the extent that the EU systematically shapes processes of regional institution building, it will lead to a gradual increase in the levels of regional institutionalization both in the population as a whole and within macro-regions. This, in turn, should further push institutionalization in those ROs whose levels are below average in the respective reference group. However, regional diffusion (measured as the average level of institutionalization of all neighbouring ROs in five geographic macro-regions, excluding the RO in question) is neither significant in any of the models, nor is it consistently signed, indicating that this is not a substantive contributor to RO institutionalization. Results are similar for global diffusion, discussed below.

Finally, I turn to alternative external influences at the global level of analysis, specifically the impact of the Cold War (signed 1 until 1989 and 0 afterwards). While otherwise negatively signed and not significant in models including only contractual open-endedness or EU engagement, it is positively signed and statistically significant in models that include EU institutionalization (Models 4–7),

indicating that the presence of bipolar superpower competition had a mitigating impact on passive EU influence, and in turn on RO institutionalization, and that the absence of this intense superpower competition following the collapse of the Soviet Union in 1991 provided novel opportunities for institutionalization. Interestingly, this control loses some of its significance and coefficient size in the table that excludes European ROs (Table C3, Appendix C), indicating that the impact of the Cold War disproportionately affected institutionalization in Europe, as Europe was the central theatre of superpower competition in the period. Yet, I do not find any support for the idea that an RO's connectedness with the rest of the world drives its level of institutionalization. The variable 'globalization' is inconsistently signed, never reaches conventional levels of statistical significance, and has negligibly small coefficients. Just as in the case of GDP, this control measures a certain type of economic development, and the lack of significance indicates that it is not relevant to institutionalization.

### Robustness checks

A counterargument may posit that active EU influence is endogenous to regional institutionalization because the EU might be interested in dealing with more established organizations and those that have similar levels of institutionalization. In other words, high levels of RO institutionalization may *attract* more extensive engagement with the EU—rather than active EU influence causing an increase in RO institutionalization. I control for this possibility by testing for reverse causality, i.e. I re-ran Models 1–3 with 'RO institutionalization' as the independent variable and 'EU engagement' as the dependent variable—also including the interaction with contractual open-endedness. As shown by Table C1 (Appendix C), RO institutionalization is not a significant factor in determining whether or not the EU actively engages with a specific RO. One should note, however, that the EU is more engaged in macro-regions, such as Africa or the Americas, in which levels of institutionalization tend to be higher, as indicated by the positive and statistically significant coefficient for regional diffusion.

Based on the assumption that channels of EU influence might be more informal in situations in which EU membership overlaps with that of other ROs, I also conducted the analysis while excluding European ROs. One may reason that overlapping membership enables regular interaction and more informal forms of cooperation that are not captured in the indicators composing the active EU influence measure. Specifically, the manifold interactions with EFTA have not induced an institutional strengthening of EFTA itself, but have engendered a new institutional arrangement—the European Economic Area—in which three out of four EFTA member states are subjected to the EU's institutions and rules

(Haukeland Fredriksen 2012). Such idiosyncrasies, which may abound among European ROs, are impossible to capture in the wide-ranging statistical analysis. As indicated in Table C2 in Appendix C, however, this does not change the substantive results presented in Table 4.4.

I also re-ran Models 2 (EU engagement plus controls) and 7 (full model) while disaggregating the measure of active EU influence into its three components—funding, cooperation agreements (policy scope, obligation), and contacts—in order to ensure that the effects of this variable are not dependent on any single component. The results, shown in Table C3, show that each of the components reaches high levels of statistical significance and comparable effect sizes to the aggregated index on its own. This indicates that the results on active EU influence presented in Table 4.4 do not depend on any single component of the measure.

In a similar vein, I undertook to disaggregate institutionalization into its four components—general secretariat, parliamentary body, non-state bodies, and judicial bodies—and examine them in turn using models 2 (active EU influence), 4 (passive EU influence), and 7 (full model) in order to ensure that causality in the models is not due to any single element of the dependent variable. Overall, the results show substantial continuity between the components and confirm the high degree of internal consistency of the aggregate index (Table C4, Appendix C). EU engagement and EU institutionalization are without exception strongly positively correlated. So the influence of the EU on regional institutionalization does not hinge on a single type of institution. On the other hand, while contractual open-endedness plays an important role in parliamentary and judicial bodies, that is not the case for general secretariats or non-state bodies, where democracy and prosperity tend to play a more substantive role.

An alternative measure of contractual open-endedness was used as well. This measure—used in Hooghe, Lenz, and Marks (2019)—is dichotomous instead of trichotomous because it eliminates the actor scope dimension, thereby collapsing the intermediate and open-ended categories of the trichotomous measure (for an extensive description, see Hooghe, Lenz, and Marks 2019: 151–3). The results, displayed in Table C5, show strong support for the alternate measure of contractual open-endedness, and do not substantively alter the results of the main analysis.

As mentioned in model design, an analysis of the main models, but including two-year lags, is also included in Table C6, Appendix C. The results show strong continuity with the main analysis, with identical substantive results, demonstrating that the results are insensitive to lag structures. In a similar vein, the analysis was repeated, but with global diffusion replacing regional diffusion, as the two are highly correlated. This analysis does not show strong support for global diffusion as a causal factor, as it is inconsistently signed and not significant in any model (Table C7).

## Conclusion

This chapter quantitatively tests the book's central claim that the EU systematically shapes processes of regional institution building, by drawing on a new dataset on the institutional design of 36 ROs (including the EU itself) in the period from 1950 to 2017. I show that both the EU's engagement with other ROs (active influence) as well as the EU's own institutional development (passive influence) are associated with higher levels of institutionalization in other ROs, but that these effects vary across different types of organizations. ROs based on contracts that contain open-ended commitments are more susceptible to outside influence and display greater levels of institutional diffusion from the EU than ROs that are based on fixed contracts. An endogenous capacity for institutional change, coupled with the ability of local actors to draw credible analogies with the EU due to similarities in their organizational purpose, appears to facilitate operation of the two pathways of EU influence.

More generally, this chapter has demonstrated that interorganizational influence matters for the process of regional institution building. Our understanding of institution building processes appears to be seriously incomplete when emphasizing only the intraregional or global levels of analysis. Only one of the associated variables, the size of an RO's membership, has a consistently positive impact on regional institution building, while other variables at these levels of analysis, including prominent ones such as intraregional economic interdependence, intraregional power asymmetry, or globalization, do not. Thus, the quantitative analysis confirms that international institutional design is regularly interdependent across ROs, in particular between the EU and its counterparts elsewhere.

# 5

## Active European Union Influence

### Institutional Change in the Southern African Development Community

The previous chapter demonstrates that active EU influence—which operates through financial support, institutionalized contacts between actors from both sides, and interregional cooperation agreements—is associated with higher levels of institutionalization in the population of ROs, and that this influence can be a substantively important source of variation in those organizations with which the EU engages closely. Yet a multivariate statistical analysis estimates the effect of independent variables on outcomes without shedding light on the process by which this effect occurs. In Chapter 3, I theorized that active EU influence operates by shaping the institutional preferences and strategies that governments seek to realize in international negotiations. In this chapter, I trace this causal process in an inferentially powerful, typical, and substantively important case in order to assess its operation. I thus connect the dots of the fourfold causal pathway outlined in Chapter 3.

In so doing, I analyse an episode of institutional change in SADC, the establishment of a supranational tribunal. SADC is one of the most important sub-regional organizations in Africa, and home to the continent's most powerful state, South Africa. The EU has engaged closely with SADC from its inception, and the organization is rooted in an open-ended contract, thereby fulfilling the scope condition for EU influence. I argue that especially the EU's financial contributions to SADC, on which the organization is heavily dependent, allowed it to shape member states' collective preference ordering. SADC member states share two collective preferences: attracting donor funding for the organization and creating regional institutions that protect national sovereignty. Throughout the 1980s, member states could pursue these preferences simultaneously as international donors saw the organization as an important 'stronghold' in the fight against apartheid in South Africa. With the end of apartheid and other global transformations in the early 1990s, however, these preferences increasingly came into conflict. When the EU threatened to withdraw funding, as was the case in the early 1990s and again in the late 1990s, SADC member states prioritized the continued attraction of donor funding over their preference for sovereignty-preserving regional institutions. This induced, first, the inclusion of the Tribunal

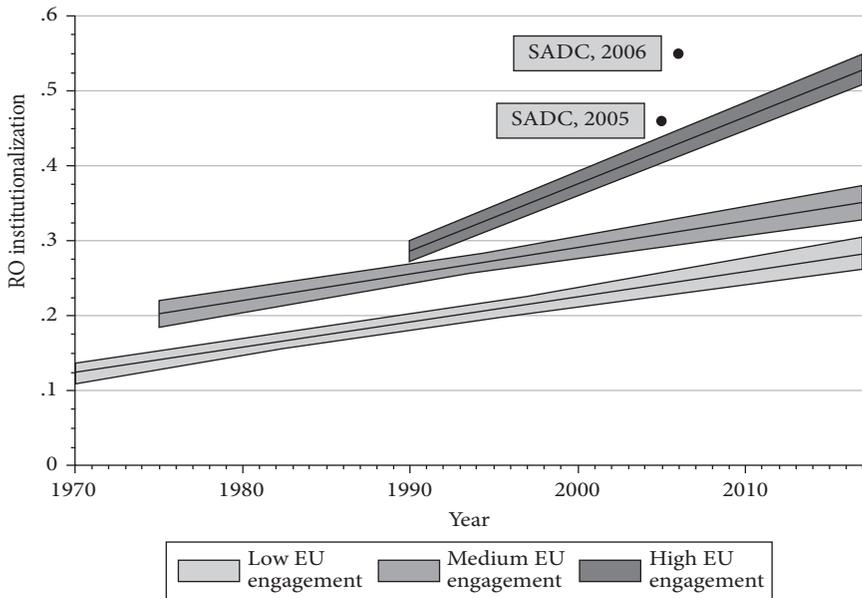
in the SADC Treaty in 1992 and, eventually, its operationalization in 2005. Thus, the establishment of the SADC Tribunal reflects, I suggest, an institutional strategy to satisfy their collective preference for continued support by international donors, largely at the expense of their preference for sovereignty-protecting institutions, when member states realized that they could no longer pursue these preferences simultaneously. I conclude that, counterfactually, the Tribunal would not have been established in the absence of active influence by the EU.

The chapter proceeds in three parts. The first part specifies the rationale for selecting the respective institutional episode in SADC. The second part gives some background on the chosen case, and identifies the puzzle by engaging with alternative explanations that have been advanced to account for the establishment of international dispute settlement mechanisms. The third part traces the EU's active influence on the institutional preferences and strategies of governments, and their subsequent interaction in international negotiations over institutional change.

### **Case selection rationales: representativeness, causal leverage, and substantive importance**

In general, single case studies that aim to test theory are most useful when they are representative and provide causal leverage (Elman, Gerring, and Mahoney 2016: 378; Gerring 2008: 645; Seawright and Gerring 2008: 295–6)—two criteria that I evaluate for the chosen case below. Such case studies are particularly important in diffusion studies because diffusion, conceived as a *process* of interdependent decision-making, leaves its most distinctive empirical traces at the level of the decision-making process, not its outcome. Let us consider representativeness and causal leverage alongside substantive importance in turn.

Representativeness is the 'traditional' criterion employed by the literature on case selection in multi-method research (Lieberman 2005: 444; Gerring 2007a: 91–2). Typical cases display low residuals in the statistical analysis—so-called 'on-liars'—thereby facilitating generalizability and enhancing the external validity of within-case analysis. This is the case for SADC. Figure 5.1 locates the organization in relation to the regression line of the model that examines the effect of EU engagement (Model 7 in Table 4.4). As the figure indicates, the establishment of the SADC Tribunal moves the organization from a level of institutionalization near the regression line in 2005 ('SADC, 2005' in the figure) to a level of institutionalization which other ROs, with which the EU engages closely, roughly reach about a decade later, on average ('SADC, 2006' in the figure). Thus, I interpret the SADC case as an early instance of the general type of institutional change that the EU can effect when it engages other organizations



**Figure 5.1** Location of the SADC case in the multivariate analysis of active EU influence

closely—a trajectory that other organizations in this EU engagement category have followed subsequently.

The SADC case also provides causal leverage because it assumes high values on the active EU influence variable (X) as well as the outcome variable ‘RO institutionalization’ (Y), while resting on an open-ended contract (see Falletti and Lynch 2009; Seawright 2016; Weller and Barnes 2016). SADC has regularly received more than 50 and up to 70 per cent of its budget from EU sources, and the EU has had constant contact with the organization over the course of many years, even decades, suggesting that this might serve as a perfect case for observing how the active influence pathway works. If EU engagement does not make a difference in SADC, it is unlikely to do so anywhere (Gerring 2007). From the perspective of active EU influence, therefore, SADC is a likely case.

At the same time, SADC is an organization in which policy-makers were *not* bent on emulating the European integration experience, including its institutions, from the start, which allows me to ‘isolate’ to some extent the EU’s active influence from a desire, on the part of member state governments, to emulate the EU independently of its active support. Policy-makers initially rejected EU-type integration arrangements, and opted for a unique design that was rooted in a strongly decentralized structure. As Brett and Gissel note, the organization’s early institutions ‘were idiosyncratic arrangements: the first systematic rejection of orthodox

integration theory by any group of Third World nations' (Brett and Gissel 2018: 209). Similarly, Lee contends that 'the member states rejected the EU model, thus becoming the first regional economic organisation in Africa to do so' (Lee 2003: 47). The fact that SADC was, at least during its founding period, an 'anti-EU' organization affords us the opportunity to control for passive EU influence largely by design.

For reasons developed in the introduction, I examine active EU influence on the establishment of the SADC Tribunal, a more narrowly delineated institutional episode which forms part of the 'RO institutionalization' measure used in Chapter 4. This specific episode affords additional causal leverage because it approximates an ideal-typical 'crucial case' in that 'the causal effect of  $X_i$  on  $Y$  can be isolated from other potentially confounding factors' (Gerring 2007b: 238). As we have seen, SADC presents a (most) likely case from the perspective of active EU influence. On the other hand, the organization is a difficult case, if not a least likely case, for the establishment of a strong dispute settlement mechanism due to the structural conditions that characterize the organization and its membership. As I discuss in the next section, the overwhelming majority of explanations advanced to explain the design of dispute settlement mechanisms in IOs would expect SADC to feature a weak mechanism, or none at all (or to encounter other major empirical anomalies).

Finally, the establishment of the SADC Tribunal is a substantively important case. SADC is one of the most important ROs in Africa, based in two of Africa's economically most powerful states, South Africa and Angola. Academic interest in the field of regional organization is distributed highly unevenly across ROs, and SADC is a much-studied case. This has the added pragmatic advantage that there is a sizeable secondary literature on which the case study can draw. In particular, the establishment of the Tribunal was an important event in the institutional evolution of the organization. As Ruppel notes, 'The establishment of the Tribunal was a major event in SADC's history as an organisation as well as in the development of its law and jurisprudence' (Ruppel 2012: 93). It is, hence, substantively relevant for understanding the organization and its institutional evolution.

In sum, tracing the active influence of the EU on the establishment of the SADC Tribunal provides a near-ideal setting for complementary within-case analysis of the statistical regularities detected in Chapter 4 because it is a representative case in relation to the group of organizations with which the EU engages closely; it is inferentially powerful because it approximates Gerring's 'pathway case' logic; and it is substantively important.

### **Dispute settlement in SADC**

SADC is an RO in Southern Africa that currently encompasses 15 member states. It established a permanent Tribunal in 2005 that marked a big step in the

legalization of the organization. I begin the analysis of active EU influence by giving some background on the organization and outlining its institutional evolution, with a focus on dispute settlement. Next, I consider standard explanations for the establishment of dispute settlement mechanisms. I then analyse the three steps of the causal process by engaging the distinct observable implications of the pathway.

### Background: SADC and the evolution of institutionalized dispute settlement

Widely seen at the time as the 'most important and exciting co-operation in southern Africa' (Hill 1983: 222), SADC originated in the early 1980s as the Southern African Development Coordination Conference (SADCC), and its institutions have developed enormously over time. While cooperation started as a strictly member state-driven and decentralized form of sectoral coordination at the regional level, with minimal levels of institutionalization, over a period of 40 years it has evolved into an ambitious project of regional economic integration, including a common currency, with strong central institutions.

Formalizing the common desire of the frontline states to lessen economic dependence on South Africa under the apartheid regime, the organization was born on 1 April 1980 with the adoption of the declaration 'Southern Africa: Towards Economic Liberation', and institutionalized with a memorandum of understanding, signed on 20 July 1981. The core idea was to enlist financial and ideological support from international donors in coordinating national economic development plans based on a commonly agreed programme of action. From the beginning, member states pursued a vision of regional cooperation that deliberately broke with the approach of many previous such efforts on the African continent, and put member states' national interests and autonomy centre stage. Anglin (1983) observes an unequivocal 'emphasis on actions not institutions. [...] SADCC is innovative in [...] the respect paid to the sensitivities of members to infringements of their national sovereignty' (pp. 691–2). This becomes most apparent in the degree to which member states assumed responsibility for managing SADCC's operational programmes. Individual member state governments were endowed with the right to advance cooperation in specific policy sectors, steered by member state-dominated sectoral commissions. The establishment of a small secretariat in Gaborone, Botswana, was thus (as the first chairman of SADCC notes) the expression of a 'deliberately business-like approach, in which institutions follow achievement' (cited in Anglin 1983: 696). Strong regional institutions that could constrain member states' freedom of manoeuvre were deliberately rejected.

Namibia's independence and, more importantly, the imminent end of apartheid in South Africa in the early 1990s changed the structural context for regional

cooperation and triggered a fundamental transformation of the organization. With the adoption of the SADC Treaty on 17 August 1992, the organization's purpose shifted from 'economic autarky toward the more traditional goal of regional integration' (Herbst 2007: 139). This transition went hand in hand with increasing legalization. The organization largely maintained its decentralized nature based on sectoral cooperation units directed by individual member states, but nevertheless modestly strengthened the existing secretariat and provided for a supranational Tribunal in the treaty. Furthermore, the member states established the Organ for Politics, Defence and Security in an attempt to buttress SADC's security dimension in 1996 and, in the same year, adopted a trade protocol envisaging the creation of a free trade area, which entered into force in 2000. The trade protocol contains a tiered dispute settlement mechanism for trade matters that involves the establishment of expert panels, with the Tribunal as dispute settlement of 'last resort' (art. 32, SADC Trade Protocol 1996).

By the late 1990s, however, widespread implementation failure and political tensions had sobered the initial enthusiasm and led to a questioning of SADC's original set-up (Gibb 1998; Lee 1999). In 2001, the Summit adopted a reform package entailing far-reaching changes to the institutional framework in order to more effectively execute SADC's original mandate. It abolished the sectoral coordinating units, centralized tasks in the secretariat around four directorates with executive functions, and revamped the intergovernmental structure (for an overview of the restructuring exercise, see Tjønneland 2005). Besides institutional restructuring, member states agreed on a ten-year agenda for integration in 2003, the Regional Indicative Strategic Development Plan (RISDP), which inter alia outlines the process of creating an EU-style common market and a common currency. Intensified efforts at regional economic integration, as well as negotiations with the EU over so-called Economic Partnership Agreements, have once again brought to the fore the problem of overlapping membership in regional integration (Engel and Asche 2008; Krapohl and Van Huut 2020; Stevens 2006). Attempts are under way to rationalize existing economic agreements, partly under the umbrella of the African Union. The most important of these rationalization projects is the so-called Tripartite Agreement, adopted in 2008, which seeks to merge integration efforts in SADC, COMESA (the Common Market for Eastern and Southern Africa), and the EAC.

The institutions of dispute settlement, and in particular the SADC Tribunal, have followed a particularly noteworthy trajectory.<sup>1</sup> After a decade of minimal institutionalization, mention of a Tribunal found its way into the 1992 SADC Treaty, which stipulates: 'The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary

<sup>1</sup> The 1996 SADC Trade Protocol contains its own dispute settlement mechanism for trade disputes that entails recommendations by ad hoc panels.

instruments and to adjudicate upon such disputes as may be referred to it' (SADC Treaty 1992, art. 16.1). While the other institutions in the agreement were quickly established, the Tribunal took more than a decade to become operational. After several years of negotiation, it was only in August 2000 that the Summit adopted a protocol that specified the Tribunal's composition, power, and procedures. It entered into force in the following year, when member states incorporated it into the amended SADC treaty (SADC Treaty Amended 2001, art. 16). The Tribunal became operational with the establishment of headquarters in Windhoek, Namibia, and the appointment of judges in 2005. Until its dissolution, 15 of 16 SADC member states fell under its jurisdiction (Alter 2014: appendix).

The operationalization of the SADC Tribunal marked a fundamental change in the ability of member states and non-state actors to enforce SADC legislation. It is independent and can make impartial judgements.<sup>2</sup> According to the Protocol on the SADC Tribunal, the Tribunal is a standing court with its own infrastructure and budget, consisting of at least ten 'jurists of recognised competence' serving a five-year term, renewable once (arts. 3 and 6, SADC Tribunal Protocol 2000). For those member states that have ratified the Protocol, the Tribunal holds compulsory jurisdiction for issues related to the interpretation and application of community law (arts. 14 and 15). There is an automatic right to review regarding disputes between states and the Community, between natural or legal persons and the Community, and between the Community and its staff (arts. 17, 18, and 19). And its rulings are final and binding on member states (art. 24). Not only the member states but also individuals have access to the Tribunal, once they have exhausted all domestic remedies (arts. 15 and 18). The supranational jurisdiction of the Tribunal is embedded in the domestic legal system of member states. In principle, the decisions of the Tribunal have direct effect: 'States and institutions of the Community shall take forthwith all measures necessary to ensure execution of decisions of the Tribunal' (art. 32.2). However, the Summit retains a gate-keeping role when member states fail to comply with a ruling (art. 32.5). The Protocol also contains a preliminary rulings procedure (art. 16), according to which domestic courts can ask the Tribunal to rule on a case before it that engages community law. Art. 16 is an almost literal copy of article 177 of the Treaty of Rome.

Taken together, the Tribunal's institutional design meets the characteristics of what Keohane, Moravcsik and Slaughter (2000) term 'transnational dispute resolution' and what Alter (2006) refers to as 'new-style international courts.' More importantly, its key institutional elements match those of the European Court of Justice (ECJ), such that Alter (2012) refers to the SADC Tribunal as an 'ECJ copy.' It even goes beyond the ECJ's competences by explicitly providing for the development of 'Community jurisprudence' that draws not only on

<sup>2</sup> In describing the design of the SADC Tribunal, I draw loosely on the literature on legalization, especially on Smith (2000), Keohane, Moravcsik, and Slaughter (2000), and Hooghe et al. (2017).

community law but also on national and international law and the principles underlying it (Art. 21b).<sup>3</sup>

The fate of the SADC Tribunal has been fairly short-lived. In the wake of a high-profile case—the 2008 *Campbell* case, in which a white farmer sued the Zimbabwean government for expropriating his farm, and the Tribunal found that the land seizures conducted as part of a land reform violated the rule of law, enshrined in SADC treaties—the Zimbabwean government initiated a process by which the SADC governments gradually weakened and ultimately disbanded the Tribunal (Nathan 2013). Nevertheless, since Zimbabwean President Mugabe’s death in September 2019, there has been talk of re-establishing the Tribunal. Especially in South Africa, influential voices consider such a move.

### What explains the Tribunal’s establishment and design? Existing explanations

The establishment and design of the SADC Tribunal, described in the previous section, poses a puzzle from the perspective of several theoretical arguments that deal with dispute settlement design in international relations. Most of these explanations share the conceptual focus on the regional level of analysis, that is, they assume that the main causes of member states’ choices of regional institutions concern the attributes of ROs and their constituent member states. Consider five arguments that explain the level of legalization of international dispute settlement mechanisms, four of which are located at the regional level of analysis and one at the global level. The results are summarized in Table 5.1 below.

First and most fundamentally, the SADC Tribunal’s establishment and operationalization are unexpected in view of the fact that member states have been, and continue to be, concerned about a loss of national sovereignty. As I will detail below, member states largely share a collective preference in favour of sovereignty-preserving regional institutions. We would expect the sovereignty costs of a highly legalized dispute settlement mechanism to be prohibitively high for states with a distinct concern about safeguarding national sovereignty (Moravcsik 2000: 227; Smith 2000: 144–45). And indeed, the story of the Tribunal’s demise is an exemplary case of how concerns about national sovereignty shape the (re-)design of international institutions. In the justifications given by Zimbabwe’s representatives for why they initiated the abolishment of the Tribunal after the *Campbell* case, sovereignty concerns dominate. Yet, sovereignty concerns do not explain why the Tribunal was established in the first place. After all, the Tribunal emerged ‘after the ECJ’s [European Court of Justice’s] legal revolution, with

<sup>3</sup> For a good overview, see Ruppel and Bangamwabo (2008).

**Table 5.1.** Existing explanations of international dispute settlement design and SADC

Explanation	SADC situation	Expected outcome
<b>Regional level of analysis</b>		
Sovereignty concerns	Most member states share strong concern about national sovereignty.	Detrimental to strong dispute settlement mechanism.
Functionalism	Limited intraregional interdependence. Ambitious integration objective (common market, customs union) and more complex cooperation problems.	Detrimental to strong dispute settlement mechanism. Conducive to strong dispute settlement mechanism, but time gap between design and operationalization.
Power asymmetry	High; relatively low dependence on regional market of regional hegemon, South Africa.	Detrimental to strong dispute settlement mechanism.
Regime type	Most member states are non-democracies; average level of democracy is fairly low.	Detrimental to strong dispute settlement mechanism.
<b>Global level of analysis</b>		
WTO membership	Holds for all member states, except the Seychelles.	Adoption of WTO model (or weaker).

Source: author's depiction.

perfect hindsight' (Alter 2012: 140). Policy-makers should have been aware that the Tribunal's design features facilitate the enforcement of legal rules because it creates routes to circumvent the gatekeeping role of states; in short, it is common knowledge that the Tribunal's design encroaches on national sovereignty, and hence should have been anticipated.

Functional arguments explain why sovereignty concerns are generally not the only consideration of policy-makers in the design of international institutions. After all, in order to reap the benefits of international cooperation, some pooling and delegation of sovereignty is commonly required, and tends to make cooperation more efficient (Keohane 1984). Specifically, more legalized dispute settlement is expected to enhance treaty compliance, which is particularly valuable when the anticipated benefits of cooperation are high (Allee and Elsig 2016: 96; Arnold and Rittberger 2013: 105–6; Smith 2000: 149–50; generally, Hawkins et al. 2006; Stone Sweet and Brunell 1998). Functional institutionalism may explain, therefore, why the issue of dispute settlement started entering the SADC agenda once member states had agreed to develop the organization from a body to

coordinate national development policies towards a body that facilitates economic integration.<sup>4</sup> With the new objectives that were specifically geared towards liberalizing trade between member states, the functional need for legalized dispute settlement rose. The fact that both debates started in parallel in the early 1990s, prior to the adoption of the SADC Treaty, is compatible with this view. Nevertheless, the fact that member states took ten years to make the Tribunal operational provides functional arguments with a puzzle. If there are good functional reasons to establish a strong dispute settlement mechanism, this should lead to timely operationalization.

After all, given the limited economic complementarity among the member states, few political actors anticipated the realization of large trade gains. The structure of economic interdependence in the region is oriented towards trade with international partners, such as the EU and the United States, rather than with each other (Krapohl and Fink 2013; generally, see Garzón 2017). According to data from the Unu-cris trade database, only around five per cent of the region's external trade was conducted intra-regionally during the 1990s—a figure that is even lower than in many other developing regions, such as East Asia and Latin America (for the comparison, see Lenz 2018: 37). It is not surprising, therefore, that expert studies have regularly warned of inflated expectations regarding intra-regional trade liberalization. In preparation of the SADC Treaty, an expert study noted that 'promoting trade integration as a simple linear process [...] [from a preferential trade agreement to an economic union] is inappropriate for the SADCC region at this stage or [*sic*] its development' (SADCC 1992: 27; similarly, Green 1990: 107). Moreover, there are at least two institutional models that are functionally equivalent in ensuring the credibility of commitments: the dispute settlement system of the World Trade Organization (WTO) and the ECJ (see also below). Functional arguments have trouble to account for institutional choice in situations of functional equivalence.

Third, the authority of the SADC Tribunal is surprising in view of the power asymmetry that exists within the organization. Most scholars expect strong power asymmetries to inhibit stronger legalization because strong states 'view the creation of supranational commitment institutions with scepticism' (Arnold and Rittberger 2013: 105; Smith 2000: 149; Abbott and Snidal 2000: 448; Grieco 1990). The power asymmetries among SADC member states are large, larger than in most other African ROs (and beyond). During the 1990s, South Africa combined more than two-thirds of the region's gross domestic product, and had more than one-fourth of the total population and among the highest per capita incomes. At the same time, it was relatively less dependent on the regional market than were

<sup>4</sup> The nature of the cooperation problem also becomes more complex as a result of this change in purpose, which means that the likelihood of a (strong) dispute settlement mechanism increases (for the general argument, see Koremenos 2007).

other member states, enhancing its relative bargaining power over institutional outcomes vis-à-vis their peers (Krapohl and Fink 2013: 484). When the regional hegemon is also the least dependent on the regional market, a strong dispute settlement mechanism is very unlikely to emerge.

Fourth, the creation of the Tribunal is similarly surprising in view of the regime types that constitute SADC's membership. Scholars generally contend that supranational dispute settlement is more likely to emerge among democratic states, for two reasons. First, democracies find it easier than autocracies to disburse authority across different levels of government, rather than to centralize it, including to IOs, because they are less fearful of supranational authority (Risse-Kappen 1995; Simmons 2009). Second, democracies are more responsive than autocracies to the political interests of different economic interest groups. Whereas autocracies tend to have their support base primarily among import-competing firms, and thereby tend to reject strong supranational commitments, democratic states try to balance the interests of import- and export-competing firms more fairly, while they generally have stronger export-promoting constituencies that are in favour of stronger legalization (Jo and Namgung 2012: 1046–48; Mansfield, Milner, and Rosendorff 2002; see also Solingen 2008). SADC's membership is not overly democratic. The average polity IV score, which measures a country's level of democracy, rose in the second half of the 1990s, among other reasons due to South Africa's accession to the organization; however, it remains limited, hovering somewhere between autocratic and democratic during the 1990s.

Finally, an explanation at the global level of analysis may posit that ROs focusing on economic issues are likely to align their dispute settlement systems with the arrangement in the WTO, which marked a significant move towards more legalization when compared to the prior system (see Keohane, Moravcsik, and Slaughter 2000). The transaction costs of a more institutionalized system in the RO are certainly lower when the member states are also members of the WTO and therefore subject to its compulsory jurisdiction because, unless explicitly prohibited, they can take an economic dispute within the RO to the WTO system.<sup>5</sup> As Alter notes, the WTO dispute settlement system serves as 'a default system for resolving trade disputes' (Alter 2012: 138). However, this explanation encounters two severe anomalies. First, negotiations on the SADC Tribunal were concluded before the WTO negotiations on dispute settlement had really taken shape, and process evidence indicates that reference to the WTO system—as opposed to the EU system—was essentially non-existent. Moreover, the member states decided not only to upgrade their dispute settlement system to the WTO level, but to go beyond it with the adoption of an EU-type system; the institutional extension

<sup>5</sup> With the exception of the Seychelles, all SADC member states were also members of the WTO in 2000, when the Protocol on the Tribunal was adopted.

beyond the WTO level is unaccounted for by this argument.<sup>6</sup> Second, member states took ten years to operationalize the Tribunal which they had agreed upon in the Windhoek treaty.

Taken together, the establishment of the SADC Tribunal constitutes a theoretical puzzle from the perspective of existing explanations of international dispute settlement design. While functional theories of institutional design in particular generate implications that are compatible with some parts of the story, actual process evidence on functional considerations dominating the decision-making process is scarce. I suggest that the causes emphasized by existing explanations point to an institutional equilibrium that is largely reflected in the previous and current dispute settlement arrangement, which relies on a fairly weak system centred around ad hoc panels to adjudicate trade disputes. We may even say that the system that existed prior to the entry into force of the Trade Protocol—a Tribunal existed, but was not operational—is compatible with member-state interests. Why did the organization deviate from this institutional equilibrium for some time? My answer is that this ‘deviation’ was due to the EU’s active influence, specifically the threat to withdraw funding from the organization.

### **Establishing the SADC Tribunal: the role of EU incentives**

This section traces the establishment of the SADC Tribunal in two steps. The first part analyses governments’ preferences and institutional strategies with a view to identifying whether, and how, the EU might have shaped them. The second part examines how these institutional preferences and strategies are reflected in the final outcome by tracing the process of negotiation. I argue that the threat by the EU to withdraw financial support, on which the organization had become even more dependent after the end of the Cold War, forced member states to prioritize their collective preference for attracting donor funding in support of regional cooperation over their preference for sovereignty-protecting regional institutions. As a result, they decided that the establishment of the SADC Tribunal was the most promising strategy to continue attracting donor funding, above all from the EU itself.

### **Institutional preferences and strategies**

SADC member states share two collective preferences that underpin regional cooperation and shape the institutional strategies they pursue. The first one is to

<sup>6</sup> Some scholars even suggest that dispute settlement mechanisms in regional trade agreements adopted after the strengthening of the multilateral system in the Uruguay round should be weaker than before to allow states to ‘forum shop’ between mechanisms at different levels of legalization (Jo and Namgung 2012: 1049–51). For them, even a WTO-type dispute settlement mechanism in a regional agreement constitutes a theoretical puzzle.

attract donor funding for the organization's activities. During the first decade of the organization's existence, this preference underpinned the purpose of lessening economic dependence on apartheid South Africa: international donors largely financed a common programme of action to that end. Yet even after South Africa joined the organization in 1994 and the organization's purpose shifted towards regional economic integration, this collective preference remained strong. The Consultative Conferences, annual meetings of SADC officials with representatives from international donors, continued to be 'the most important event in the SADC's calendar of activities' (Sidaway 1998: 54). The extensive sections in the organization's record that deal with relations with its international donors similarly attest to this collective preference. Christopher Clapham and others have convincingly shown that the attraction of international donor funding for regional organizations serves the purpose of stabilizing fragile states (Clapham 1996; see also Bayart 2000; Brown 2013).

In line with the structural incentives outlined in the previous section, the second collective preference is one in favour of sovereignty-preserving regional institutions, which underpins member states long-held opposition to a permanent Tribunal with supranational competences. This preference is reflected in the organization's initial institutional set-up, which is minimal and fully controlled by member states, as described before. During the 1980s, organizational reform was minor and primarily sought to improve the working procedures of sectoral cooperation. In 1987, for example, member states defined clear criteria for the selection of projects for inclusion into the programme of action, and revised the approval process in order to ensure that selected projects were of clear regional relevance while constituting national developmental priorities (Mandaza and Tostensen 1994: 37–9). As late as August 1991—a year before the Windhoek Treaty codified the Tribunal—an expert group that had been tasked with a formalization of the organization concluded confidently in its final report that 'the institutions governing SADCC are adequate and effective generally' (Malima et al. 1991: 375). Given that the report 'takes into account the views expressed by member states' (SADCC Council of Ministers 1991b: 371), this statement expresses member states' collective institutional preference at the time.

During the 1980s, member states pursued these collective preferences simultaneously. International donors were willing to provide ample resources to the organization in their effort to support the international struggle against apartheid in South Africa, while being largely indifferent to the institutional set-up of SADCC. This allowed member states to attract donor funding while realizing their preference for sovereignty-preserving regional institutions through SADCC's strongly member state-driven and decentralized structure.

However, several external developments from the late 1980s onwards made it increasingly difficult for member states to pursue their collective preferences harmoniously. For one, the inception of structural adjustment programmes during the second half of the 1980s in response to the foreign debt crisis threatened

SADCC's sectoral cooperation programme and further increased the organization's dependence on external funding, reaching 90 per cent of the organization's programme in the late 1980s. The adjustment programmes forced member states to increasingly shift their limited financial resources towards servicing countries' debt obligations (for a general overview, see Eichengreen and Lindert 1992). As a Secretariat note to the Council in 1987 warned, 'the mounting difficulties for SADCC member states to meet their debt-service obligations' would make it very difficult to 'contract new debt for implementation of the Organisation's Programme of Action' (SADCC Secretariat 1987: 70). These growing financial constraints on regional cooperation meant that 'most of the financing for the Programme [would] have to come from [...] SADCC's cooperation partners' (SADCC Secretariat 1987: 67). This development rendered member states even more sensitive than before to donors' priorities.

Yet the end of the Cold War generated considerable uncertainty as to the continued willingness of donors to satisfy a growing need for external financial resources because Southern Africa lost its geostrategic importance. Many countries of the quickly dissolving Soviet bloc withdrew their contributions entirely, which enhanced the importance of remaining western European donors, above all the European Community. Yet policy-makers in the European Community seemed to increasingly shift their attention towards the countries in transformation in central and eastern Europe. These concerns regarding the Community's commitment to the region were heightened by the fact that Community representatives had voiced dissatisfaction with SADCC's poor disbursement rates of European funds before. In 1988, an internal Secretariat document noted flatly that 'the rate of disbursing allocated resources has been very slow' and worried that if no remedial measures were taken, 'a time will come when the cooperating partners will begin to reschedule the undisbursed resources out of the incomplete projects and out of the SADCC region' (SADCC Secretariat 1988: 94, 95). In addition, South Africa's transition to black majority rule seemed imminent in the early 1990s, and this fuelled expectations that external funding for the organization would recede even further. As SADCC's executive secretary at the time, Simba Makoni, noted:

Support from the international community has not really come to us on our own account. It has come to us as sympathy support against apartheid [...] So while one appreciates the amount that we have been receiving, the spirit behind the figures is not a very comforting one, because if it remains the basis for that support, when apartheid goes, then so will the funds go with it.

(cited in Brett and Gissel 2018: 209–10)

And indeed, the general concern that important donors would turn their back on SADCC appeared to materialize in the early 1990s, when the European Community

considered redistributing financial support away from the organization. Repeated complaints about the low disbursement rates in SADCC projects ushered in a credible threat that the new Lomé Convention—Lomé IV—would significantly reduce financial aid to the organization. A Secretariat document noted worryingly: ‘On all accounts, if the EEC [European Economic Community] position is sustained, the SADCC Programme will suffer enormously from a reduced regional allocation’ (SADCC Secretariat 1991a: 51; see also Adelman 2008: 7; Holland 1995: 269). By that time, a general sensitivity to the priorities of their cooperation partners had come to focus primarily on the European Community, the most important remaining donor.

These developments occurred against a general fear of marginalization that encompassed the continent in view of increasing tendencies towards regionalization elsewhere in the world—developments that eventually convinced policy-makers of the need to refocus their efforts from sectoral coordination to economic integration. The European Community was not just an important donor, but also an attractive example of successful economic integration—and a forerunner of potential times to come. In the late 1980s Botswana’s President Quett Masire warned of the growing international competitive pressures that were embodied in Europe’s attempt to complete the internal market. At the 1988 Summit, he argued, ‘We understand that the Single European Act of 1987 will come into effect soon, paving the way for the creation of an Internal EEC market in 1992. If the Europeans need this kind of economic cooperation, we must need it even more’ (Masire 1988: 33). A few years later, Zimbabwean President Robert Mugabe noted that ‘the 1990s are likely to be a decade of trading blocs and growing multi-lateralism’ and stated the need to ‘develop SADCC from being a sectoral coordination machinery to that of a full economic integration programme’ (SADCC Summit 1991: 53). Thus, in view of the difficulties to sustain donor-financed sectoral development programmes and of the larger changes in the world economy brought about by the end of the Cold War, member states became convinced that trade liberalization—which had not played a role during the first decade of cooperation—should be the organization’s primary purpose. But how ought this new ambition be realized?

The debate quickly came to revolve around two competing models—both of which were seen to be compatible with wider African ambitions to form Regional Economic Communities (SADCC Council of Ministers 1991a: 33–5). A Secretariat note in 1991 captured the choice succinctly:

In the face of the region’s realities, and the current international tendencies toward the establishment of economic blocks, the region must accept to transform itself into an economic block similar to the proposed North American free trade zone or the European Economic Community.

(SADCC Secretariat 1991b: 361)

Shortly thereafter, there seems to have been agreement among member states to establish an EU-type common market. The SADCC Council of Ministers resolved that the new framework for regional integration must provide ‘for crossborder investment, trade and labour and capital flow across national boundaries’ (SADCC Council of Ministers 1991a: 16) and a few days later, at the SADCC Summit, Zimbabwean President Robert Mugabe spoke of the need for ‘greater cooperation in fiscal and monetary affairs; [and] facilitation of movement of peoples, goods and services’ (SADCC Summit 1991: 53). I have shown elsewhere how the choice for an EU-type common market instead of a NAFTA-like free trade agreement constitutes an expression of frame diffusion, according to which particular types of problems are linked through analogous reasoning with specific solutions in the absence of a thorough cost-benefit analysis (Lenz 2018). Settling on a new organizational purpose was only the beginning. Once member states have agreed on the purpose of cooperation, they need to decide upon the institutions that are suitable to guide cooperation towards the new aim. In view of the goal to achieve economic integration through trade liberalization, a dispute settlement system quickly became subject of debate.

Early proposals for such a system reflected member states’ collective preference for sovereignty-preserving regional institutions. In 1989, the Council had tasked an expert team with making recommendations on the formalization of SADCC (SADCC Summit 1989: 3–4). The experts presented their report to the Council meeting in August 1991. The report reconfirms the emerging consensus that ‘stronger emphasis should be given on [*sic*] the objective of achieving economic integration’, and recommends that ‘the settlement of disputes shall be by arbitration, and an arbitration tribunal or committee will be provided for’ (Malima et al. 1991: 375, 379). These two institutional options were closely tied to the dispute resolution system underpinning the GATT: a committee was the existing GATT mechanism while an arbitration tribunal was a reform proposal being discussed at the time (see Elsig and Eckhardt 2015: S25). In their close affiliation with the GATT system, both of these options were non-binding. Moreover, the report does not list the dispute settlement mechanism among the institutions which are to receive a legally codified standing in the new treaty (see Malima et al. 1991: 380). Thus, this important proposal for the institutional reform of SADCC, which expressly took ‘into account the views expressed by member states’ (SADCC Council of Ministers 1991b, 3: 371), clearly reflected member states’ collective preference for the protection of national sovereignty. However, this proposal was soon ‘over-turned’ by international donors, among which the EU was an important one.

The 1992 Consultative Conference marked a turning point because it was at this even that member states realized that their collective preferences stood in open conflict. In particular, the intention to establish a weak dispute settlement system ‘changed dramatically at SADCC’s 1992 Consultative Conference’ (Brett

and Gissel 2018: 210). The theme document, which is used by donors to make financial pledges for the following period, was elaborated in cooperation with the most important donor agencies, including representatives from the EU. It argued that international donor support had been ‘predicated on the anti-apartheid struggle’ and would now depend on ‘policy reforms’ related to the integration of national economies (SADCC 1992: 19). European donor agencies, in particular, indicated that continued financial support could become conditional on ‘renouncing part of [...] sovereignty’, and emphasized that a regional development community ‘requires mechanisms of mediation and arbitration, to which all agents of integration—governments, business, civil associations and individuals—can seek justice’ (SADCC 1992: 145, 41–2).

Given the importance that regional blocs appeared to have in the post-Cold War era, member states resolved to prioritize continued donor support over their preference for the protection of national sovereignty. At their first meeting after the consultative conference in August 1992, the Council of Ministers followed the theme document’s recommendation and denoted the regional Tribunal as among ‘the central intergovernmental organs of the community’ (SADCC Council of Ministers 1992: 36).<sup>7</sup> The Windhoek Treaty, adopted at the Summit in August 1992, thus provides for the establishment of a permanent Tribunal with compulsory jurisdiction and the power to ‘give advisory opinions’ over all matters of the treaty and subsidiary instruments (art. 16, SADC Treaty).

The decision to establish a permanent Tribunal ‘against’ a collective preference for sovereignty-preserving regional institutions thus reflects a collective strategy to retain donor support in view of a credible threat that the two preferences stood in direct conflict with each other. This threat was directly related to the EU’s active involvement in the organization, even though other (primarily European) donors appeared to share it too. Other commentators have similarly interpreted the Tribunal ‘as part of a new post-1989 aid strategy’ and an attempt ‘to signal adherence to the regional integration orthodoxies of its new lead donor: the European Economic Community’ (Brett 2018: 57, 58). The specific institutional details of the new Tribunal were to be laid down in a separate protocol.

### International bargaining

Actual work on the Protocol began in early 1997. By the time that work on the protocol started, designing the Tribunal based on the template of the new dispute settlement system of the WTO, with which the Windhoek stipulations were fully compatible, appeared the more appropriate choice when compared to an EU-type

<sup>7</sup> The decision to refer to it as an intergovernmental body of the community may suggest that member states were unaware of the actual competences that such a court would have.

court for a group of countries that were largely unwilling to cede significant amounts of sovereignty. This collective preference had not fundamentally changed by then. For one, negotiations for the Tribunal Protocol started only several years after the Windhoek Treaty had entered into force. As Asmelash notes, 'At the heart of the delay in adopting the Protocol was the reluctance of the SADC Member States to set up a supranational court that would compromise their national sovereignty. Several Member States were rather keen on less formal means such as arbitration and mediation' (Asmelash 2017: 2). Hulse and van de Vleuten similarly note that 'the Council and the Summit's intrinsic motivations to establish even a simple inter-state dispute settling Tribunal were quite low' (Hulse and van der Vleuten 2015: 90). Moreover, in 1996, member states concluded the SADC Trade Protocol, which established a separate dispute settlement system based on ad hoc panels, and to which only member states had access—a clear indication that sovereignty remained a primary consideration of member states. Why did member states nevertheless decide to establish an ECJ-type court?

Member states decided to 'outsource' the elaboration of the Protocol to external experts. In the second half of 1996, they instructed a small expert panel—composed of Namibian law professor Walter Kamba and then-Advocate-General from the European Court of Justice Francis Jacobs (Ruppel 2012: 92; Viljoen 1999: 200)—to elaborate a draft proposal for the Tribunal (SADC Sector Coordinators 1996: 799). The expert study was financed by the German Agency for International Cooperation (GIZ) (SADC Council of Ministers 1997: 78). The consultants presented a draft proposal to the member states in February 1997, which suggests the establishment of an EU-type court—largely in line with the theme paper of the 1992 Consultative Conference, and not surprising in view of the funders and writers of the proposal. The text recommends an individual right to access the Tribunal, and considers a 'more general jurisdiction in relation to human rights' (Viljoen 1999: 200).

A stronger commitment to human rights had been debated in the region since the transition from the old Conference to the Community. The SADC Treaty committed member states to human rights, democracy, and the rule of law as general principles (art. 4), but it lacks an enforcement mechanism to give credence to these treaty stipulations. In February 1994, the SADC Secretariat organized a workshop for non-governmental organizations on human rights, which was followed by a ministerial workshop on Democracy, Peace and Security in July. Attended by representatives from non-governmental organizations as well as government ministers and parliamentarians, the workshop adopted the 'Windhoek Resolutions' which called for the establishment of an SADC Human Rights Commission and an SADC Bill of Rights (SADC Council of Ministers 1994: 6, 42; see also Viljoen 1999: 201). These advances culminated, in 1996, in the drafting of a SADC Human Rights Charter by non-governmental organizations from several member states (Ruppel 2012: 92)—shortly before work on the Tribunal Protocol

began. The draft proposal for the Tribunal Protocol considered these demands and advances that had taken place in the meantime.

However, legal experts from the member states who considered the proposal for the first time at a meeting in April 1997 rejected the idea of endowing the Tribunal with a general human rights jurisdiction. According to the record of the first legal experts' meeting, they decided 'to delink this matter from the jurisdiction of the proposed Protocol for the reason that SADC would be required to develop a separate protocol or legal instrument to govern activities on human rights' (quoted in Viljoen 1999: 201).<sup>8</sup> South Africa, in particular, that was initially in favour of a regional human rights court (see African National Congress 1993) had changed course on the matter 'in order to protect its new Constitutional Court' (Brett 2018: 58).

Once these decisions had been taken, work on the Protocol at the regional level and primarily among legal experts seems to have proceeded fairly smoothly. National legal experts met again in August 1997 and senior officials convened in early 1998, before a meeting of the SADC Ministers of Justice/Attorneys General in April 1998 adopted the draft protocol and sent it to member states 'for consideration and to satisfy their constitutional requirements' (SADC Council of Ministers 1998: 123). The ministers explicitly noted that the creation of the tribunal was 'long over due and that the Tribunal should be created without further delay' (SADC Secretariat 1998: 331), suggesting adoption by the Council and the Summit at their meetings in September 1998.

At this point in time, the protocol seems to have been largely finalized in terms of content, but this is when member states started dragging their feet reflecting continued concerns about national sovereignty. At its meeting in September 1998, the Council of Ministers decided that the draft protocol 'not be recommended to the Summit for signature due to the ongoing consultations in Member States' (SADC Council of Ministers 1998: 123). At the Council meeting in February 1999, the ministers acknowledged that the majority of member states had not responded to the request sent by the Secretariat 'to indicate their positions' in order to finalize the adoption process (SADC Council of Ministers 1999b: 8). Another six months later, this situation had not changed. As a result, the Council repeated the same statement, word for word, at its meeting in August in Maputo (SADC Council of Ministers 1999a: 7) and the Summit, at its meeting in Maputo in the same month, was silent on the issue. The Council meeting in February 2000 did not even mention the issue. It was not until the Council and Summit meetings in Windhoek in August 2000 that both bodies adopted the Protocol on

<sup>8</sup> Apparently, the legal experts who considered the proposal had simply 'not been mandated by their respective governments to negotiate about the inclusion of human rights in the proposed tribunal's jurisdiction' (Viljoen 1999: 201).

the SADC Tribunal—two years after the Council of Ministers of Justice had recommended the draft protocol for adoption by the Council and the Summit.

What might explain why member states consented to signing the protocol in 2000, while they seem to have been reluctant before? Again, it was a threat from the EU to stop funding the organization that seems to have induced member states to prioritize their preference for continued donor support over their concerns about national sovereignty. Evidence on the three types of observable implications—timing, process, and outcome—support the argument that financial incentives from the EU made member states realize that their collective preferences could no longer be pursued simultaneously. Regarding the timing of the decision, it is striking how the decision to adopt the Tribunal Protocol in August 2000 followed on the heels of a second wave of major dissatisfaction by international donors, and above all the EU, regarding the organization's performance. It was during this period that some bilateral donors started withdrawing their financial support while others, once again, considered such steps (Tjønneland 2006: 20–21). At that time, rumours spread that the EU—by far the largest remaining donor—might rationalize its Regional Indicative Programmes (RIP). The Council of Ministers noted at its meeting in Windhoek in August 2000:

the EC may be considering to have only one or a few RIPs for Africa, as opposed to the current arrangements where there is a separate RIP for subregional groups of countries. Therefore, it is desirable that SADC negotiate and convince the EC to retain the RIP for the SADC region. (SADC Council of Ministers 2000: 81–82)

In a general context of uncertainty, European donors expressed particular doubts about the possibility of improving the record of the organization without an enhanced dispute settlement mechanism that could push member states to abide by their commitments (see SADC Council of Ministers, February 1999: 112). Once again, there is no evidence that EU actors (or others) ever explicitly connected continued funding on the adoption of the Tribunal Protocol (see also Brett and Gissel 2018: 211). However, on various occasions EU-oriented actors conveyed their views about 'what an effective and credible dispute settlement mechanism ought to entail', as one of my interview partners recounted of Francis Jacobs, the Advocate-General from the European Court of Justice who formed part of the expert group drafting the Protocol (Interview with Stephen Kokerai).

The argument that the EU, and especially the financial support it provides to SADC, are causally relevant for understanding the adoption of the Tribunal Protocol is also bolstered by process observations. Above all, actors intimately familiar with the adoption process have made similar arguments—even in public. Mauritian judge Ariranga Pillay, who served as chief justice in his home country from 1996 until 2007 and later became a judge on and the president of the SADC Tribunal, stated that member states created the Tribunal in order 'to get funds

from the European Union and others' by giving 'off all the right buzz words, you know, "democracy, rule of law, human rights"' (Christie 2011). This is not surprising given that a judge from the European Court of Justice participated in the drafting process of the Protocol—a fact that many interview partners recall vividly. Charles Mkandawire, who was the registrar at the Tribunal during its operation, recounts that member states, when looking at article 21 on the applicable law and its broad formulation, 'asked: who drafted this?' (Interview with the author: 19 November 2015). Not surprisingly, therefore, member states later had regrets about the design of the Tribunal. During the debate surrounding the disbanding of the Tribunal ten years later, the Zimbabwean Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, complained that the SADC Tribunal did not 'bear the DNA imprint of SADC countries' (Zvayi 2011), suggesting that their collective preference for the protection of national sovereignty had been 'violated' with the decision.

The institutional outcome, finally, displays clear similarity to its EU counterpart. Member states adopted central design features from the ECJ, while mitigating its potential intrusiveness. On the one side, the Tribunal Protocol features an exclusive competence to constitutional review (SADC Tribunal Protocol 2000, art. 17), private access (arts. 15, 18), and a preliminary rulings procedure (art. 16), which is a literal copy of article 177 of the Treaty of Rome. It even goes beyond the ECJ's competences by stipulating that non-compliance suits can be brought directly by individuals when all other domestic remedies have been exhausted (art. 15b) and by explicitly providing for the development of 'Community jurisprudence' (art. 21b) (for a good overview, see Ruppel and Bangamwabo 2008). On the other hand, policy-makers carefully circumscribed the Tribunal's competences to protect national sovereignty. The Protocol thus stipulates that sanctions in case of non-compliance with a ruling could only be imposed by the Summit, acting as always by unanimity. Moreover, in the absence of a direct effect doctrine and a preliminary rulings procedure that does not *require* national courts of last instance to refer cases to the Tribunal, as in the EU, private access and even preliminary rulings are much less likely to encroach on sovereignty. As long as member states do not incorporate rules into their domestic legal corpus, those rules do not constitute claimable rights among citizens. The establishment of the Tribunal, therefore, reflects a collective strategy to 'balance' two competing preferences: attracting continued donor support and protecting national sovereignty.

This is further reflected in the fact that questions of how to finance the new institution was not much of a concern to policy-makers during the negotiations and afterwards. In a Secretariat note to the Council in August 2000, before the adoption of the Protocol by the Council and the Summit, the Secretariat remarks that the 'Council is invited to note that there will be financial implications in setting up the Tribunal' (SADC Secretariat 2000: 444)—a formulation that the Summit endorsed at its meeting in August 2000 when it adopted the Tribunal

Protocol (SADC Summit 2000: 16). In 2003, the Council of Ministers started operationalizing the Tribunal while noting, 'In view of the resource constraints facing Member States, and the fact that there are currently no cases pending, Council decided that the tribunal be operationalized at minimum cost' (SADC Council of Ministers 2003: 71). This was possible because the EU was willing to step in with financial support—as it had done before. It provided an initial financial contribution of €215,000 under the Regional Integration Capacity Building Project (SADC Council of Ministers 2003: 71), which constitutes almost a third of the total financing of the Tribunal. Note that these commitments were made before the Tribunal had actually incurred any cost, since the judges were only sworn in in 2005. At the same time, SADC officials knew that the EU was willing to support the Tribunal financially on a more continuous basis. A Secretariat note in 2005 remarks, for example, 'Council is invited to further note that European Union is prepared to consider further funding for the Tribunal should SADC present a request for funding of Tribunal projects' (SADC Secretariat 2005: 529). In return, however, the EU resolved 'to monitor the implementation of SADC protocols and policies [...] and the establishment of an SADC Tribunal' (Tjønneland 2006: 18). The tight dependence on the EU, including with regard to the Tribunal, continued after the decision to establish the body had been taken.

Moreover, the disbanding of the Tribunal after its contentious ruling in the *Campbell* case further bolsters the argument that the institution's establishment reflects an institutional strategy to realize a preference for continued donor support over collective concerns about national sovereignty. After these rulings and other contentious decisions by the Tribunal, Tanzanian President Jakaya Kikwete allegedly remarked to fellow heads of state, 'We have created a monster that will devour us all' (Christie 2011). At a meeting of the Council in April 2011, Zimbabwe raised the concern that the Tribunal should not have jurisdiction over matters regarding individuals and member states; Botswana shared these reservations, while South Africa apparently raised no objections (Christie 2011). Some member states, including the SADC Secretariat, were concerned about Zimbabwe's non-compliance with the ruling, arguing that 'this would antagonise the international community; they argued that it would tarnish the reputation of Sadc' (Zvayi 2011). Nevertheless, at that point in time member states prioritized their preference for retaining national sovereignty (and by implication a weaker dispute settlement system) – how this related to their preference for attracting donor support goes beyond the scope of this chapter.

## Conclusion

Chapter 5 traces the EU's active influence on the establishment of the Tribunal in the Southern African Development Community. It shows how the EU's financial

support, and threats to reconsider it, shaped member states' preference ordering and, as a result, induced an institutional strategy in favour of establishing and operationalizing the SADC Tribunal. Specifically, the financial dependence of SADC on EU financial support meant that the EU could force governments to prioritize their collective preference for securing donor support over their preference to protect national sovereignty through limited institutionalization. In this context, the establishment of the Tribunal reflects member states' collective strategy when they realized that they could no longer satisfy both preferences simultaneously.

The evidence presented in this chapter strongly suggests that active EU influence played an important causal role in the establishment of the SADC Tribunal. Counterfactually, it is unlikely that the Tribunal would have been established in the mid-2000s in the absence of the EU's active influence, given member states' institutional preferences were stacked against it. They certainly weighted their concern for retaining national sovereignty more highly than the effective enforcement of collective decisions as long as the external constraints on their preference ordering were modest. This only changed when the EU threatened to withdraw funding. Moreover, the organization's activity, which, from a functional point of view, most strongly demanded a dispute settlement and enforcement mechanism, namely economic integration, already had an institutionalized dispute settlement mechanism contained in the 1996 Trade Protocol. Given the organization's collective preference for attracting donor support and the rather *uniform* constraint imposed by the EU's threat to withdraw funding from the organization on individual member states' preferences, the outcome is a high degree of institutional similarity between the EU and SADC—until the Tribunal was disbanded in 2013. Specifically, the SADC Tribunal was a full-fledged EU-type court.

While the fate of the SADC Tribunal is unique among ROs, the way in which the EU contributed to its establishment is not. The EU provides substantial funding for many ROs in the global South, and such funding is often accompanied by regular contacts with EU officials and the provision of technical expertise in the creation of regional institutions and policies. Several ROs in the global South are highly dependent on EU funding, and bargaining power between the EU and many of its counterparts in the Global South is generally distributed in highly asymmetrical ways. Chapter 4 demonstrated that such engagement regularly induces higher levels of institutionalization in other ROs—the EU makes a counterfactual difference. In the SADC case, however, this difference made possible the organization's most severe crisis in recent history. In this sense also, active EU influence has been truly consequential—yet in ways not originally intended.

# 6

## Passive European Union Influence

### Institutional Change in Mercosur

Chapter 4 showed that the EU's own institutional evolution is associated with increases in the degree of institutionalization in the sample of ROs, and that this effect is particularly pronounced in ROs that rest on an open-ended contract. But what is the causal mechanism that underpins this correlation between passive EU influence and institutional change? In this chapter, I trace the respective pathway in a typical, inferentially powerful, and substantively important episode of regional institution building: the establishment of a Permanent Review Tribunal in Mercosur with the Protocol of Olivos adopted in 2002. Mercosur decision-makers and policy experts have closely observed the European integration process from the organization's inception and references to the EU are frequent in the secondary literature. Moreover, Mercosur is based on an open-ended contract, thereby fulfilling the scope condition for EU influence to operate.

The aim of this chapter is two-fold. First, it seeks to demonstrate that the hypothesized causal process of passive EU influence is indeed present in this institutional episode, and that it operates as theorized. Second, I also aim to show that passive EU influence forms a substantively important factor in understanding this specific institutional episode. I argue that a focus on passive EU influence generates counterfactually added value to explaining this process of institutional change in Mercosur. Specifically, I propose that Uruguay advanced the establishment of an EU-type dispute settlement mechanism in negotiations over a reform of Mercosur's system in the early years of the new millennium, whereas Argentina and Brazil advanced proposals for a WTO-type system. The institutional outcome, adopted with the Olivos Protocol in 2002, constitutes a compromise between these two positions, with identifiable traces left by Uruguay's insistence on an EU-type system, in particular the inclusion of consultative opinions and the possibility of the disputing parties to access the Permanent Review Tribunal directly.

The chapter is divided into three parts. The first part specifies the rationale for selecting the respective institutional episode in Mercosur. The second part gives some background on the chosen case and identifies the puzzle by engaging with alternative explanations that have been advanced to account for the establishment of international dispute settlement mechanisms. The third part traces the EU's passive influence on the institutional strategies of governments and their

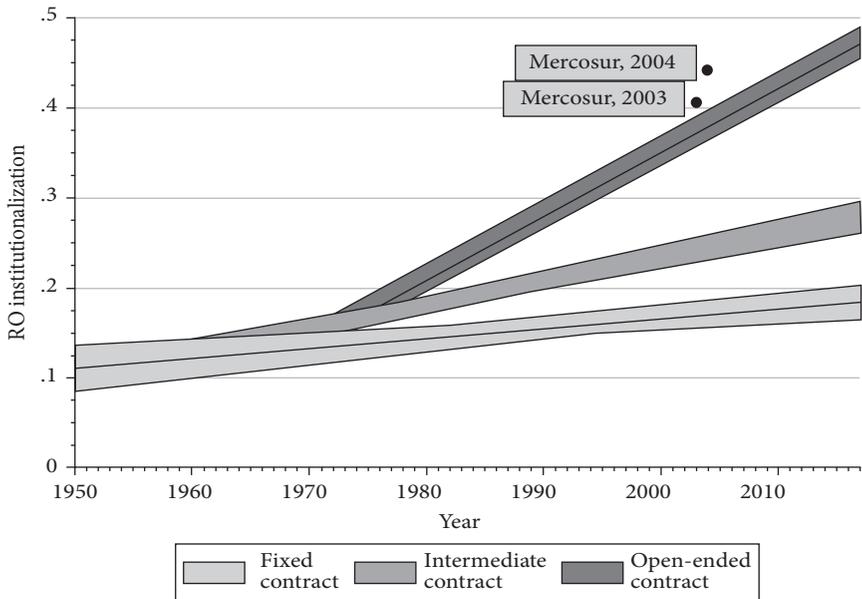
subsequent interaction in international negotiations over institutional change. The conclusion summarizes the main argument and specifies the extent of passive EU influence in this episode.

### **Case selection rationales: representativeness, causal leverage, and substantive importance**

As with the analysis of active EU influence, this chapter also selects a case for within-case analysis on the basis of three criteria: representativeness, causal leverage, and substantive importance (Elman, Gerring, and Mahoney 2016: 378; Gerring 2008: 645; Seawright and Gerring 2008: 295–6). Within-case analysis is particularly important for examining the pathway of passive EU influence because this type of influence is not confined to a change in the EU's institutional framework as a key condition that triggers the causal process—an implication of the theory analysed in Chapter 4. Passive influence from the EU may even make a difference to processes of regional institution building when the initial impetus for institutional change is unrelated to the EU, such as the emergence of an exogenous cooperation problem or crisis.

First, Mercosur is a near-representative case according to the multivariate statistical analysis conducted in Chapter 4 because it displays low residuals (Lieberman 2005: 444; Gerring 2007a: 91–2). Figure 6.1 locates the organization prior to (2003) and after the establishment of the Permanent Review Tribunal (2004) in relation to the regression line of the model that examines passive EU influence (Model 5 in Table 4.4). As the figure indicates, Mercosur lies near the regression line for ROs with an open-ended contract prior to the establishment of the Permanent Review Tribunal, and then reaches a level of institutionalization afterwards, which other ROs with open-ended contracts roughly achieve towards the end of the observation period, on average. Thus, Mercosur is a 'forerunner' compared to other ROs in this category of contractual open-endedness to reach typical levels of institutionalization.

The Mercosur case also provides causal leverage because the operation of the passive EU influence pathway is possible due to the values on key independent variables of interest (see Mahoney and Goertz 2004). For one, Mercosur rests on an open-ended contract, which means that the nature of the organization is conducive to the operation of the pathway. Moreover, due to the relative recency of the case, the EU's close contact with the organization and the presence of active EU-oriented epistemic communities, information on EU institutions is readily available in the region, even for small states with limited bureaucratic resources. The EU's direct engagement with Mercosur implies, however, that we cannot distinguish between active and passive EU influence by design; instead, we have to



**Figure 6.1** Location of the Mercosur case in the multivariate analysis of passive EU influence

do that through careful process tracing of the various parts of a social mechanism (see Beach and Pedersen 2018).

While rendering passive EU influence possible, Mercosur is *not* a most likely case for such influence due to the scepticism of the two largest member states, Argentina and Brazil, towards strong regional institutions and their overwhelming bargaining power. From the inception of the organization, the two largest member states were eager to have institutions *follow* actual achievements in integration rather than the other way around. This less institutionalized approach is generally considered the result of lessons learned from the experience of earlier integration efforts in Latin America, and reflects the preferences of Argentina and Brazil for full control over the process (Campbell, Rozemberg, and Svarzman 1999: 145). It is therefore fair to say that Mercosur was, with regard to regional institutions, designed as an ‘anti-EU’ project and Argentinean and Brazilian policy-makers continue to eschew supranational institutions to this day. Vigevani and Cepaluni, for example, emphasize ‘Brazil’s plan to create a non-institutionalized Mercosur to preserve its autonomy and allow itself greater international insertion’ (Vigevani and Cepaluni 2009: xiii). Therefore, as mentioned above, it is difficult to demonstrate passive EU influence for Mercosur. As a result, if EU influence can be shown to make a difference under the unfavourable conditions that exist in Mercosur, it is safe to assume that such influence is wielded elsewhere too.

For reasons outlined in the introduction, I examine passive EU influence not on Mercosur as a whole but on a more narrowly delineated institutional episode, the establishment of the Permanent Review Tribunal. This episode affords additional causal leverage because, as I detail in the next section below, many of the structural conditions that characterize the region in the early 2000s would not predict a further strengthening of the existing dispute settlement system. Therefore, Mercosur constitutes an unlikely case for change on this institutional dimension.

Finally, the establishment of the Permanent Review Tribunal is a substantively important case. Mercosur is arguably the most important RO in South America, home to the region's two most economically powerful states, Argentina and Brazil. It is also quite successful. As Kaltenthaler notes, Mercosur is 'an example of international integration that is only surpassed by the European Union in terms of the depth of the integration process' (Kaltenthaler and Mora 2002: 73). Therefore, it forms an extensively studied case in research on regional organization, attesting to its relevance. What is more, dispute settlement is a key institutional dimension in any ambitious economic organization and one where much is at stake for member states. As the SADC case in the last chapter amply demonstrates, the national sovereignty costs of institutionalized dispute settlement can be considerable. Scholars readily recognize that the establishment of the Mercosur tribunal was an important event in the organization's institutional evolution. As Arnold and Rittberger (2013) note, the Olivos Protocol introduces 'far-reaching institutional reforms to the existing dispute settlement system' (p. 98). So it is substantively relevant for understanding the organization and its institutional development.

In sum, tracing the passive influence of the EU on the establishment of the Permanent Review Tribunal in Mercosur provides a strong setting for complementary within-case analysis of the statistical regularities detected in Chapter 4 because it is a near-representative case in relation to the group of organizations that rest on an open-ended contract. Moreover, it is inferentially powerful because it approaches Gerring's 'pathway case' logic, especially as regards alternative explanations; and it is substantively important.

### **Dispute settlement in Mercosur**

Mercosur is an RO in the Southern Cone of Latin America that was founded in 1991 and currently encompasses five member states: Argentina, Brazil, Paraguay, Uruguay and Venezuela.<sup>1</sup> Member states established a panel-based dispute

<sup>1</sup> The latter entered the organization in 2012 and was suspended in 2016 on the basis of the 1998 Ushuaia Protocol on democratic commitment.

settlement system in the 1991 Protocol of Brasília and upgraded it with the 2002 Protocol of Olivos, which creates the Permanent Review Tribunal. I begin the analysis of passive EU influence by giving some background on the organization and outlining its institutional evolution, with a focus on dispute settlement. Next, I consider standard explanations for the establishment of dispute settlement mechanisms in relation to the organization. I then analyse the three steps of the causal process by engaging the distinct observable implications of the pathway.

### Background: Mercosur and the evolution of institutionalized dispute settlement

Mercosur was founded by Argentina, Brazil, Paraguay, and Uruguay in March 1991 with the signing of the Treaty of Asunción. Widening earlier forms of bilateral cooperation between Argentina and Brazil to incorporate the two smaller members Paraguay and Uruguay, Mercosur started with a minimum level of institutionalization. While the main goal of integration, the formation of a common market, has not changed over time, economic cooperation has been complemented by functional cooperation in other areas, including social and cultural policies and the environment. Alongside this expansion in policy scope, the institutional framework of Mercosur has also evolved considerably. Today, Mercosur features three key central institutions—the Mercosur Secretariat, the Mercosur Parliament and the Review Tribunal—alongside two advisory bodies composed of non-state representatives: the Economic and Social Consultative Forum and the Consultative Forum of Municipalities, Federal States, Provinces and Departments.

Mercosur's inception is rooted in the momentous changes that took place in the Southern Cone in the late 1970s and 1980s. In particular, the organization is a product of two transformational developments. The first one is Argentina and Brazil's transition from decades of military dictatorship towards democracy, which enabled a gradual rapprochement. An early agreement on nuclear energy was soon followed by further functional cooperation in the realms of security, economics, and infrastructure, which 'initiated a confidence-building process' (Gardini 2005: 407) that ultimately resulted in the creation of Mercosur (for an overview, see Manzetti 1990). The second transformational development at the root of Mercosur is a convergence in Argentina and Brazil's developmental policies away from a strategy of import substitution towards more outward-oriented economic policies. As a result of the debt crisis of the 1980s and the initial failure of domestic macroeconomic policies, efforts at integration in the Southern Cone developed from the late 1980s onwards in the 'context of programmes for unilateral trade liberalization and structural adjustment' (Kaltenthaler and Mora 2002: 75). As policy-makers in Argentina and Brazil sought to stabilize their economies in

view of economic crises and amidst broader structural changes in the world economy, market integration with neighbouring states became a viable option.

After ten years of bilateral cooperation, Paraguay and Uruguay joined the Argentina–Brazil axis and Mercosur sought an ambitious programme of trade liberalization that envisaged the creation of a customs union and a common market within four years. Mercosur's first decade successfully focused on cooperation in economic affairs, with a manifold increase in the volume of intra-regional trade: intra-Mercosur exports rose five-fold between 1990 and 1998 and intra-Mercosur trade as a percentage of the group's total trade tripled between 1989 and 1997 (Kaltenthaler and Mora 2002: 91). The financial crises that enveloped Argentina as a result of the devaluation of the Brazilian Real in 1999 triggered a rethinking in the organization's policy orientation. Mercosur expanded into non-economic policy areas such as social, cultural, and educational policies, while economic integration stagnated and was even reversed (Carranza 2003; Gómez-Mera 2005; Riggiozzi 2015). Since then, economic integration has stabilized while the organization has engaged in expansion. Venezuela joined in 2012 and is currently suspended under the 1998 Ushuaia Protocol on democratic commitment. Mercosur is currently in the process of admitting additional members and intends a convergence with the Andean Community.

Despite affinities in purpose, the institutional framework differs markedly from that of the EU, even though Mercosur institutions have evolved from very low initial levels of institutionalization. The Treaty of Asunción contains a provisional institutional framework, providing for three intergovernmental organs to guide the transition towards the common market: (1) a Common Market Council, comprised of foreign affairs and economic ministers, is entrusted with the political guidance to achieve the objectives of Mercosur; (2) a Common Market Group, composed of representatives from the foreign affairs and finance ministries as well as the central banks, proposes decisions based on the Council's guidelines and receives technical and administrative support from a series of working groups (*subgrupos de trabajo*); and (3) a secretariat in Montevideo, Uruguay (arts. 9–16), complemented by a negotiation-based dispute settlement mechanism. The Ouro Preto Protocol, adopted in 1994, established the permanent institutional structure of Mercosur, which confirmed the essential characteristics outlined in the founding treaty. It added a Trade Commission, which assists the Council in matters concerning the functioning of the customs union, and two consultative institutions: a Joint Parliamentary Commission and a Socio-Economic Consultative Forum (Sections 3–5).

After early success, serious domestic problems threatened the remarkable achievements in the late 1990s. The devaluation of Brazil's currency in early 1999 plunged Argentina into a severe economic and financial crisis, from which it is still recovering. Amidst increasingly frequent disputes over unilateral protective measures that contravened existing Mercosur agreements, integration began to

be seriously questioned (Carranza 2003; Mecham 2003). That the integration process did not collapse entirely during this period is due to skilled presidential diplomacy and continuing convergent strategic interests between the partners (Malamud 2003; Gómez-Mera 2005). The crisis nevertheless revealed certain structural weaknesses in Mercosur, such as divergent macroeconomic policies or the relatively weak institutional framework, triggering a (partial) rethinking of the neoliberal integration paradigm of the 1990s (Phillips 2001). When new left-wing governments entered office in Brazil, Argentina, and Uruguay in the early 2000s, Brazilian President Lula announced a 'relaunch' of Mercosur. It was at that time that 'suggestions about reforming Mercosur in the image of the EU' were proposed (Mukhametdinov 2007: 224). After a failure to find agreement on a complete overhaul of Mercosur's institutional framework, reform proceeded in a more piecemeal fashion and without any attempts to pool sovereignty. Policy-makers created a Permanent Review Tribunal (see below) and extended the competences of the Mercosur Secretariat to technical issues in 2002. A Committee of Permanent Representatives and a 'European style structural fund' (Dabène 2009: 187) were established in 2003 and 2004 respectively. In 2007, the member states set up a directly elected Mercosur Parliament, and the creation of a Mercosur Court of Justice is currently under discussion. These institutional innovations have contributed to a revival of Mercosur integration, admittedly without being able to rekindle the initial enthusiasm.

Mercosur's dispute settlement mechanism is today the most strongly institutionalized supranational body of the organization, and it has taken a remarkable development path since the organization's founding. The Treaty of Asunción contained a provisional dispute settlement mechanism according to which disputes were to be settled through direct negotiations between the parties and ultimately, if unsuccessful, by a non-binding recommendation of the Common Market Council (annex III). The 1991 Protocol of Brasília introduced judicialized third party review, which became an integral part of the Treaty of Asunción (Protocol of Brasília 1991, art. 33) and its successor, the Ouro Preto Protocol (art. 43). After direct negotiations and, if requested, a recommendation by the Common Market Group (Chapters 2 and 3), either party can refer the dispute to an ad hoc panel, which issues binding awards (arts. 9 and 21). Despite the mechanism's independence, access was strongly controlled by member states: private actors need to file a brief with the national sections of the Common Market Group, which act as gatekeepers (Chapter 5). The ad hoc panel can also mandate, upon request by one of the disputing parties, the imposition of 'temporary compensatory measures', which may entail the temporary suspension of concessions (art. 23).

Member states reformed the dispute settlement mechanism with the 2002 Olivos Protocol, which aims to 'guarantee the correct implementation, application and enforcement of the fundamental tools of the integration process and the set of rules of Mercosur, in a consistent and systematic manner' (Protocol of

Olivos 2002, preamble). The Protocol maintains the automatic right to review by an ad hoc arbitration panel (art. 10), and adds a Permanent Review Tribunal as a second layer, which acts as a court of last instance (*Tribunal Permanente de Revisión*, art. 18). The Tribunal is a standing court ‘with its own infrastructure and budget’ (Arnold and Rittberger 2013: 102) that was set up in 2004 with its seat in Asunción, Paraguay, after the entrance into force of the Olivos Protocol. It is composed of five arbitrators, one of whom is selected for a two-year term, renewable, by each member state, while the fifth is nominated jointly for a period of three years (art. 18). The decisions of the Arbitration Court are directly binding and cannot be appealed (art. 26).<sup>2</sup> Non-compliance with the Court’s decisions allows the other party ‘to start the application of temporary compensatory measures’ (art. 31)—a process that is elaborated in much more detail in the Olivos Protocol. Private access remains very indirect because national committees have to approve claims filed by private individuals or corporations (Chapter 11). In addition to being a means of last resort for ad hoc arbitration, the Permanent Review Tribunal can also issue consultative opinions (*opiniones consultativas*) (art. 3). These are non-binding and can be requested by member states acting jointly, by Mercosur decision-making bodies, by the Mercosur Parliament, and by national supreme courts (Decision CMC/37/03, arts. 2 and 11). While consultative opinions are not directly related to the access of private actors to the dispute settlement system, they nevertheless imply that ‘private actor cases may reach the MERCOSUR Permanent Review Court’ circumventing national government’s gate-keeping role (Alter 2014: 86). Nevertheless, national supreme courts act as gatekeepers in embedding Mercosur’s rules in domestic legal systems by declaring national courts’ referrals to the Permanent Review Tribunal admissible (Kühn Baca 2017: 413). As of February 2021, three consultative opinions have been rendered.<sup>3</sup>

The Olivos Protocol marks a significant increase in the institutionalization of dispute settlement in Mercosur. Applying Keohane, Moravcsik, and Slaughter’s (2000) ideal typical distinction between interstate and transnational dispute settlement, Arnold and Rittberger (2013) find that the Olivos reform marks a ‘qualitative shift’ from interstate conflict litigation ‘towards a more transnational DSS [dispute settlement system]’ (pp. 101, 102). Contrasting the WTO and the European Court of Justice (ECJ) models, both of which are strongly institutionalized, Alter and Lenz find that Mercosur’s post-Olivos dispute settlement procedure largely builds on the WTO model, but includes elements of the ECJ model, primarily in the form of the preliminary ruling mechanism, which is copied from

<sup>2</sup> As of Feb. 2021, the Permanent Review Tribunal has rendered six rulings (<https://www.mercosur.int/quienes-somos/solucion-controversias/laudos/>, accessed 22 Feb. 2021).

<sup>3</sup> <https://www.mercosur.int/quienes-somos/solucion-controversias/opiniones-consultivas/> (accessed 17 Feb. 2021).

the European Court of Justice (Alter 2014: 92, 206; Lenz 2012a: 168).<sup>4</sup> According to the quantitative measure discussed in Chapter 4, the Olivos reforms move the dispute settlement system from four to five points on a seven-point scale, marking an increase of 25 per cent.

### What explains the Permanent Review Tribunal's establishment and design? Existing explanations

Chapter 5 reviews a range of explanations for the establishment of dispute settlement mechanisms in IOs. This section reconsiders these explanations, and adds an additional one related to learning, in light of the Mercosur case. I argue that the establishment of the Permanent Review Tribunal also poses a theoretical puzzle, even though the structural conditions in Mercosur are quite different from those in SADC. As before, these explanations overwhelmingly share a conceptual focus on the regional level of analysis—that is, they assume that the causally relevant incentives and constraints on member states' institutional design choices concern the attributes of ROs and their constituent member states. A plausible explanation at the global level of analysis suggests that ROs align their dispute settlement systems with that of the WTO of which they are a member. These explanations are summarized in Table 6.1.

First, the establishment of the Permanent Review Tribunal—a more independent institution than the mechanism that existed prior—is unexpected in view of the fact that especially the two biggest Mercosur member states, Argentina and Brazil, have been and continue to be concerned about a loss of national sovereignty (Moravcsik 2000: 227; Smith 2000: 144–5). It is well documented that Argentina and Brazil try to minimize the independence of regional institutions and to retain their own national sovereignty as much as possible, as is reflected in the strongly intergovernmental institutional framework agreed upon by member states at Ouro Preto (Vaz 2002; Vigevani and Cepaluni 2009: ch. 6). Argentina and Brazil put in place a number of institutional safeguards to ensure that they retain control over the process of dispute settlement. Among these safeguards are: private access remains highly restricted; awards handed down by the ad hoc panels and the Permanent Review Tribunal cannot be enforced directly through national legal systems; and the Tribunal's consultative opinions are advisory only. Nevertheless, these explanations are less able to account for institutional evolution over time. If we assume that Argentina and Brazil have a fairly stable

<sup>4</sup> There has been debate, especially among legal scholars, about setting up a Mercosur Court of Justice (see e.g. Logar 1997; Scotti and Klein Vieira 2013). In 2010 the Mercosur Parliament lent its support to the idea by presenting member states with a draft protocol, but member states have so far failed to consider it (for a detailed analysis, see Kühn Baca 2017).

**Table 6.1.** Existing explanations of international dispute settlement design and Mercosur

Explanation	Mercosur situation	Expected outcome
<b>Regional level of analysis</b>		
Sovereignty concerns	Large member states, Argentina and Brazil, share strong concern about national sovereignty.	Detrimental to strong(er) dispute settlement.
Power asymmetry	High; low dependence on regional market of regional hegemon, Brazil.	Detrimental to strong(er) dispute settlement.
Functionalism	<ul style="list-style-type: none"> <li>• Limited and decreasing intraregional interdependence.</li> <li>• Ambitious integration objective (common market, customs union).</li> <li>• Lowering transaction costs; reassuring investors.</li> </ul>	Detrimental to strong(er) dispute settlement. Conducive to strong dispute settlement, but no change. Indeterminate.
Learning; information updating	Low usage rates of earlier dispute settlement mechanism; minor issues referred to arbitration.	Detrimental to strong(er) dispute settlement.
Regime type	Member states are executive-dominated democracies.	Potentially conducive to strong(er) dispute settlement.
<b>Global level of analysis</b>		
WTO membership	Holds for all member states.	Adoption of WTO model.

Source: author's depiction.

institutional preference for preserving national sovereignty, why do they consent to the design of a novel dispute settlement system that is significantly more legalized, and therefore sovereignty-constraining, than its predecessor?

Compounding this puzzle is the fact that these two largest members dominate the organization due to the enormous power asymmetries in Mercosur. Large power asymmetries are generally expected to inhibit legalization, because strong states are able to realize their preferences through unilateral action and weak cooperative institutions (Arnold and Rittberger 2013; Smith 2000: 149; Abbott and Snidal 2000: 448; Grieco 1990). The power asymmetries in Mercosur are exceptionally large due to the membership of Brazil in a few-member organization. In 2002, when the Olivos Protocol on dispute settlement was adopted, Brazil accounted for 81 per cent of total GDP and almost 80 per cent of the total population in the organization, according to data from the World Bank.<sup>5</sup> At the same time, Brazil is relatively less dependent on the regional market than are other

<sup>5</sup> The two biggest states taken together represent more than 96% of total GDP and of the total population.

member states, enhancing its relative bargaining power over institutional outcomes (for the general argument, see Krapohl and Fink 2013: 484). This situation was amplified by the financial crisis in the region that preceded the reform of the dispute settlement mechanism. According to data presented in Arnold and Rittberger (2013: 110) for Brazil, only about 10 per cent of its external trade (imports and exports) depends on the regional market. As in the SADC case, when the regional hegemon is also the least dependent on the regional market, an institutionalized dispute settlement mechanism is unlikely to emerge. Combining the sovereignty-preserving preferences of Argentina and Brazil with the highly uneven distribution of power in the organization, the increasing institutionalization of dispute settlement constitutes a veritable theoretical puzzle.

Functional arguments explain why sovereignty concerns are generally not the only consideration of policy-makers in the design of international institutions. After all, in order to reap the benefits of international cooperation, some pooling and delegation of sovereignty is commonly required and tends to make cooperation more efficient (Keohane 1984). Specifically, more legalized dispute settlement is expected to enhance treaty compliance, which is particularly valuable when the anticipated benefits of cooperation are high (Allee and Elsig 2016: 96; Arnold and Rittberger 2013: 105–6; Smith 2000: 149–50; generally, Hawkins et al. 2006; Stone Sweet and Brunell 1998). It is an anomaly for functional institutionalism that member states started debating a further institutionalization of dispute settlement at a time when the anticipated benefits of cooperation were plummeting due to the financial crisis in the region. In general, while intraregional interdependence rose significantly during Mercosur's first decade, it remains limited in a broader comparative perspective, especially for the organization's larger member states (Garzón 2017; Lenz 2018: 37). Moreover, the objectives of the integration process did not change during this period but have remained ambitious: the creation of a common market and customs union. And while the cooperation problems that underly ambitious economic integration are generally complex, involving commitment problems, enforcement problems, and uncertainty about future states of the world problems (see Koremenos 2007), these problems are fairly constant over time, and do not easily account for changes in Mercosur's dispute settlement procedure with the Olivos Protocol.

In a rational institutionalist argument that aligns with this functionalist line of reasoning, Arnold and Rittberger (2013) propose that the decision for reform was an attempt to reassure investors of the continued viability of Mercosur in view of the crisis, as well as an attempt to lower the transaction costs of litigation in view of experience with prior rulings. How credible, however, is such a signal, given member states' low usage rates of the earlier dispute settlement mechanism? If member states prefer to settle disputes diplomatically in a system with limited legalization, are they likely to use a more legalized system more in the future (see

also below)? Moreover, conceiving of the dispute settlement system as an assurance mechanism for international investors largely fails to detail the specific institutional design features chosen. And how, specifically, does the establishment of a Permanent Review Tribunal, an appeal body, lower transaction costs? While member states may be eager to seek an institutional guarantee ‘allowing a losing country another chance to argue against the ad hoc tribunal’s decision’ (Arnold and Rittberger 2013: 117), thereby lowering transaction costs, a standing tribunal also generates significant costs to finance its establishment and operation. As one of the high-level participants in the negotiation, former Uruguayan Foreign Minister Didier Operti, remarks, ‘This Tribunal implies a budget, this Tribunal implies a cost’ (Operti 2004: 154, my translation)<sup>6</sup>—a distributional effect that may weigh even more heavily during times of economic crisis. Moreover, some institutional features of the new arrangement, such as the ability to issue consultative opinions or to use the Tribunal not as an appellate body but as a permanent arbitrator, are difficult to explain by transaction cost considerations.

Deepening the puzzle is the fact that member states barely used the previous dispute settlement mechanism under the Protocol of Brasília, as they settled their disputes mainly through diplomatic channels.<sup>7</sup> According to the official website, the first award was handed down in 1999—eight years after the mechanism’s adoption and six years after its entry into force—and only three awards had been given under the protocol until the negotiations for a reform of dispute settlement started in May 2000 and five until the negotiations were concluded in 2001.<sup>8</sup> Tallberg and Smith (2014: 139) report that between 1993 and 2005, roughly 20 interstate disputes were referred to ad hoc panels, of which 10 developed into formal proceedings. This is a remarkably low number in view of the fact that the financial crisis in the region that started in 1999 meant that trade conflicts multiplied. According to data presented in Gómez-Mera (2013: 17–19), between 1992 and 2004 there were 31 unilateral and negotiated measures that restricted trade only between Argentina and Brazil, thus indicating potential or actually settled cases that did not reach the arbitration procedure.<sup>9</sup> Moreover, states tended to refer the less important issues to arbitration. As Vinuesa notes, ‘only *minor differences* have been taken to arbitration in comparison with the impressive agenda of potential controversies that were permanently an important part of Mercosur’s

<sup>6</sup> All translations of Spanish or Portuguese texts in this chapter are my own, unless noted otherwise.

<sup>7</sup> An Argentinean member of the Common Market Group, which handled many of these complaints, reports that ‘there were other controversies that did not reach the protocol of Brasília ad hoc procedure but were handled through these systems that we have that are not jurisdictional [...] and there was always a lot of good will to resolve conflicts’ (interview with García del Río, Buenos Aires: 11 Aug. 2015).

<sup>8</sup> <https://www.mercosur.int/quienes-somos/solucion-controversias/laudos/> (accessed 17 Feb. 2021).

<sup>9</sup> Out of the 10 formal awards under the Brasília Protocol, 5 involved Argentina and Brazil. The other 5 involved other combinations of member states, indicating that trade conflicts occurred not only between Argentina and Brazil.

recent negotiating history' (cited in Tallberg and Smith 2014: 139, my emphasis). The low usage rates of arbitration and the minor nature of the conflicts that reached arbitration compound the theoretical puzzle. Why do states formally strengthen an institution that they barely use and, when they do, only for minor conflicts? As we will see, some institutional changes at Olivos constitute an attempt to improve the system in view of deficiencies that had started to surface with the existing system, but explanatory gaps remain.

The main theoretical anomalies of the Olivos Protocol remain when one considers that all four Mercosur member states are democracies that are generally considered to be more likely to commit to supranational dispute settlement (Risse-Kappen 1995; Simmons 2009). Despite their formally democratic character, most countries in Latin America, including the largest countries in Mercosur, Argentina and Brazil, have strongly centralized political systems in which the devolution of power is limited (Mainwaring and Shugart 1997; O'Donnell 1994). Nevertheless, the democratic record of Latin American states since their return to democracy is broadly in line with the expectation of an institutionalized dispute settlement mechanism. Whether the consolidation of democracy since the Protocol of Brasília was enacted in 1991 is fully aligned with a significant legalization in Olivos, however, is a different question.

Finally, an explanation at the global level of analysis may posit that ROs focusing on economic issues are likely to align their dispute settlement systems with the arrangement in the WTO, which marked a significant move towards more legalization when compared to the prior system (see Keohane, Moravcsik, and Slaughter 2000). The transaction costs of a more institutionalized system in the RO are certainly lower when the member states are also members of the WTO and therefore subject to its compulsory jurisdiction because, unless explicitly prohibited, they can take an economic dispute within the RO to the WTO system. All Mercosur members at the Olivos negotiations are also members of the WTO, and should therefore be open to the idea of 'upgrading' the previous system in the Brasília Protocol to the WTO level of institutionalization. As Alter (2012) suggests, in regional economic organizations, the WTO dispute settlement system serves as 'a default system for resolving trade disputes' (p. 138). And indeed, the Olivos Protocol shares key institutional features with the WTO system. However, the empirical record reveals that reference to the WTO played little role during the negotiations. In fact, Brazil especially has pursued distinct institutional agendas in Mercosur and internationally. Vigevani and Cepaluni (2009) contend that the Cardoso government's quest for autonomy through participation led it to 'pursue a non-institutionalist approach to Mercosur, whilst taking an institutionalist approach to its multilateral agenda, particularly regarding global organizations such as the United Nations and the WTO' (p. 56). Moreover, some design elements go beyond the WTO, including the preliminary rulings system and the fact

that the Permanent Review Tribunal can be used as a court of first instance rather than merely an appellate body, as in the WTO.

Taken together, the establishment of Mercosur's Review Tribunal constitutes a theoretical puzzle from the perspective of most existing explanations of international dispute settlement design, whether they are located at the regional or global levels of analysis. Even if plausible explanations have been advanced to account for its establishment, there remain explanatory gaps with regard to specific institutional design features adopted at Olivos.

### **Establishing the Permanent Review Tribunal: the role of Uruguay's EU-type institutional strategy**

This section traces the establishment of the Permanent Review Tribunal in two steps. The first part analyses the (main) governments' institutional preferences and strategies to identify whether, and how, the EU might have passively shaped the resulting negotiating positions. The second part examines how these positions are reflected in the final negotiating outcome. To the extent that we can trace the causal influence of governments' preferences and strategies, which were shaped by the EU's passive influence, on the institutional outcome, we may claim that EU influence made an identifiable difference.

I argue that Uruguay's institutional strategy, since about 1994, has been the establishment of a Mercosur Court of Justice that is modelled on the ECJ, and that this is the strategy that Uruguay sought to advance in the Olivos negotiations. This strategy is not the result of active EU influence, and therefore constitutes an example of learning and emulation—in other words, passive influence from the EU. The larger member states' preferences have evolved over time, but influence from the EU is more difficult to discern. The Olivos Protocol is the result of a compromise between different negotiating positions. While the institutional preferences of Argentina and Brazil are more strongly reflected in the final outcome, it is due to Uruguay's strategy to establish an EU-type court of justice that the Olivos Protocol entails two institutional features: the provision that the Permanent Review Tribunal can issue consultative opinions; and the provision that the two parties to a dispute can file a claim directly with the Permanent Review Tribunal, without going through an ad hoc arbitration panel first. This stipulation makes the Review Tribunal more than a mere appellate body, as it exists for example in the WTO, but a proper court that rules on both the facts of a case as well as the applicable law. I propose that, counterfactually, had Uruguay not adopted an 'EU-type' institutional strategy, these two design features would not have been included in the Olivos Protocol. Passive EU influence, I submit, nudged the dispute settlement system in Mercosur towards higher levels of institutionalization.

## Institutional preferences and strategies

Institutional preferences over the form of regional integration in Mercosur have long been divided between two ‘camps’. On the one side are the larger members, Argentina and Brazil, which generally have been reluctant to create strong regional institutions and have favoured intergovernmental arrangements over which they have full control. On the other side are Paraguay and Uruguay, the two smaller members, which have been in favour of strong(er) regional institutions in order to bind the larger member states and thereby to counterbalance the large economic asymmetries in the organization. This preference divergence between larger and smaller member states has characterized most institutional negotiations in Mercosur since its inception.

The institutional preference divergence between Argentina and Brazil on the one side and Paraguay and Uruguay on the other has also been visible in negotiations over Mercosur’s dispute settlement system since the beginning. During negotiations on the Protocol of Brasília in 1991, Brazil was the most reluctant member and sought a purely negotiation-based arrangement (Vaz 2002: 183; see also Rey Caro 2004: 194). Paraguay and Uruguay were in favour of a strong regional dispute settlement system,<sup>10</sup> while Argentina had an interest in committing Brazil to *some* institutionalized arrangement that would involve third-party adjudication. As Felix Peña, an Argentinian official who participated in the negotiations, recounts:

Our concern was to get Brazil to sign on to an institutionalized form of dispute settlement that would go beyond mere negotiation. [...] A stable process could not depend on the goodwill and consent of a single country. We were still in the period before the creation of the WTO and the dispute settlement system, which exceeded what came from the GATT, in which a country could block the dispute settlement system. My obsession was to avoid that Brazil could block the process.<sup>11</sup>

However, negotiations were conducted fairly quickly, and the smaller member states especially found it difficult to develop detailed negotiating positions. This was to change subsequently.

Key figures in the Uruguayan government had been interested in the EU model since the early days of Mercosur, and held a vague institutional preference to follow the EU model in key areas of Mercosur’s institutional framework. Yet it was only in the wake of negotiations over the Brasília Protocol that the government

<sup>10</sup> Interview with José Büttner, Paraguayan government official, 24 July 2015.

<sup>11</sup> Interview with Felix Peña, Buenos Aires, 30 July 2015.

started to develop a detailed institutional strategy regarding the organization's dispute settlement mechanism. In 1991 or 1992, the Ministry of Foreign Affairs organized a seminar on the creation of a court of justice in Mercosur. Among the participants of the event were two theorists and practitioners of legal integration closely associated with the ECJ: one was Pierre Pescatore, who served as a judge at the ECJ between 1967 and 1985, and Fernando Uribe Restrepo, who at the time served as a judge at the Andean Tribunal of Justice, the 'ECJ's jurisdictional cousin' (Alter and Helfer 2010: 563). In the wake of the seminar, the National Commission of Layers in Uruguay produced a detailed draft on the creation of a Mercosur court of justice (Kühn Baca 2017: 440; Dreyzin de Klor 2003: 8), which has since informed Uruguay's position in negotiations over the revision of Mercosur's dispute settlement system.<sup>12</sup>

Uruguay's institutional strategy involves, at its core, the establishment of a Mercosur court of justice along the lines of the ECJ. On various occasions, Minister Didier Operti has confirmed this position, both publicly and in private (see Dreyzin de Klor 2003: 7–8).<sup>13</sup> In the context of a celebration of the twentieth anniversary of the Latin American Integration Association at the Uruguayan Parliament on 9 November 2000, for example, he lamented the lack of both 'community law' and 'a court' needed to ensure the 'control of legality' as the EU had shown, and insisted on the transfer of the European model to Mercosur (Denot Medeiros 2000a: 2). This strategy for the establishment of a court involves the following features that are characteristic of the ECJ (Alter 2012): the creation of a permanent court with compulsory jurisdiction; one that is able to hear cases between states as well as between states and private actors (private access); whose decisions are directly binding on member states; and a preliminary rulings system that allows actors to request binding advisory opinions from the court on matters involving Mercosur law.<sup>14</sup> Moreover, Uruguay sought to upgrade Mercosur's administrative secretariat to a technical secretariat that would *inter alia* have the competence to monitor compliance with a ruling (Dreyzin de Klor 2003: 8; Martínez Puñal 2003: 178; Perotti 2001/2002: 4).

Argentina and Brazil changed their institutional preferences during the late 1990s, primarily in light of their experience with the actual functioning of the dispute settlement mechanism and the financial crisis that enveloped the region around the turn of the millennium (see Arnold and Rittberger 2013). During the negotiations on the Ouro Preto Protocol, both countries agreed that there was no need to revise the mechanism, and decided to integrate the Brasília Protocol into Ouro Preto. For most of the 1990s Mercosur made good progress: intraregional

<sup>12</sup> According to Vaz (2002: 221) Uruguay tabled the proposal during the negotiations on the Ouro Preto Protocol, where it failed to be considered.

<sup>13</sup> Interview with Didier Operti, Montevideo, 3 Aug. 2015.

<sup>14</sup> Interview with García del Río, Buenos Aires, 11 Aug. 2015; interview with Didier Operti, Montevideo, 3 Aug. 2015.

trade grew at impressive rates, and emerging disputes were generally settled through diplomatic negotiations. This changed with the financial crisis that started in 1999, and led both states to reconsider their preferences regarding Mercosur, including dispute settlement. Strong tensions between the two countries raised serious concerns regarding the sustainability of regional integration—and both countries eventually agreed to relaunch integration rather than to scale it back or to abandon it all together.

Among member states, *Brazil* has long been the most sceptical of a strongly institutionalized Mercosur. After the Protocol of Brasília was adopted in 1991, Brazil rejected any revision of the dispute settlement system for a long time, even though the Protocol explicitly provides for such a revision. Alluding to Uruguay's quest for supranational institutions, including a supranational dispute settlement mechanism, Brazil's Vice-President Marcos Marciel de Oliveira, in a speech to the Paraguayan Congress in February 1997, defended the institutional status quo:

Governments as well as private initiatives, businessmen, companies, and citizens can call upon the dispute settlement system whenever and however often they consider it necessary. [...] Our institutions have produced excellent results so far and will render the adoption of models that do not correspond to our necessities and common experiences obsolete in the end.

(cited in Arnold and Rittberger 2013: 113)

Nevertheless, during the financial crisis, Brazil decided to deepen its commitment to Mercosur due to several external developments in the international economy, including the reinvigoration of the negotiations for a Free Trade Agreement of the Americas, the failed ministerial negotiations at the WTO in Seattle, and renewed interest from the EU in a bi-regional trade deal. As Gómez-Mera argues, 'In light of the various external challenges faced by Brazil in the late 1990s, the foreign policy elite viewed a reinvigoration and strengthening of MERCOSUR as the best strategic option' (Gómez-Mera 2013: 116; see also Vigevani and Cepaluni 2009: 69–73). This ushered in the so-called relaunch agenda that Brazil promoted during Argentina's presidency of Mercosur in the first half of 2000. The core of this agenda was to complete the customs union, and update the institutional framework in light of this goal. Negotiations over a revision of the dispute settlement system were, according to Brazil's then Foreign Minister, Celso Lafer, 'an investment in the credibility of the project', because Olivos 'was in line with institution building, and therefore it went beyond the idea of being intergovernmental'.<sup>15</sup>

<sup>15</sup> Phone interview with Celso Lafer, 7 Aug. 2015. Given the crisis situation, institution building 'was also an area where it was possible to think and act without such a direct influence of the difficult economic situation' (interview with Carlos Márcio Cozenday, Brasília, 6 Aug. 2015).

Initially, Brazil envisaged only minor procedural adjustments to the existing dispute settlement mechanism, in light of the experience that policy-makers had collected with its functioning to date. In a public debate, the country's ambassador to Mercosur, José Artur Denot Medeiros, reiterated that 'for Brazil, the relaunch means continuing Mercosur's negotiation process—and not an "overhaul"—based on a renewed political "push" of the Governments of the Member States' (Denot Medeiros 2000b: 2). This is in line with Brazil's principled position that an institutional deepening of Mercosur 'must result from the effective needs of the integration process itself' (Denot Medeiros 2001: 3). An Argentinean policy-maker involved in the negotiations remarks,

Brazil, I don't think, had anything too specific. It was the way it was accompanying it [Protocol of Olivos]. Yes, they considered the general review necessary; they had also had experience with awards; we've all participated in one case. They said: 'well, let's settle things.' The reform of the Olivos Protocol was never considered, at least at the negotiating table, as a substantial reform and as a, let's say, 'everything we had so far isn't working and we have to start again [...]', no, it was an improvement.<sup>16</sup>

Initial proposals included that the intervention of the Common Market Group in the resolution of disputes would be optional rather than mandatory; and that the Common Market Council should be the body clarifying the content and scope of arbitration awards (Dreyzin de Klor 2003: 6–7). Brazil was also in favour of studying simplified procedures for the settlement of disputes in particular issue areas, such as rules of origin and anti-dumping (Dreyzin de Klor 2003: 6–7).<sup>17</sup>

*Argentina* was hit hard by the financial crisis in the late 1990s. The Argentinean economy slid into recession, and disappointment regarding Brazil's unilateral devaluation was widespread. Nevertheless, Argentina's foreign policy elite never questioned its commitment to Mercosur, because other strategic options were scarce. As Felix Peña, a high-level ministerial official in Argentina at the time, puts it, 'a "serious" Mercosur [...], with few high-quality rules and institutions, [is] still the best option that the four member states have for the demanding world of globalization and of big regional blocs' (Peña 2001). After the new government of Fernando de la Rúa entered office in December 1999, Argentina and Brazil quickly started work on the relaunch agenda.

Argentina had two key institutional demands in the Olivos negotiations: a stipulation that would allow member states to choose whether to file a dispute in Mercosur or at the WTO; and the establishment of an appellate mechanism that would allow parties to a dispute to have the awards of the ad hoc panels reviewed

<sup>16</sup> Interview with Garcia del Rio, Buenos Aires, 11 Aug. 2015.

<sup>17</sup> Ibid.

(Dreyzin de Klor 2003: 6; Perotti 2001/2: 5; see also Gómez-Mera 2013: 127).<sup>18</sup> This position was the result of the country's bad experience with the second and third awards issued by the ad hoc arbitration system, which made Argentina question the stipulation in the Brasília Protocol that ad hoc awards are final and binding (art. 21) (Arnold and Rittberger 2013: 115–16). In September 1999, Argentina lost a case against Brazil regarding subsidies for the production and export of pork meat; and in March 2000, it lost to Brazil on the issue of safeguard measures on textile products. Argentina was also open to studying the creation of a judicial body that would authoritatively interpret Mercosur law in order to enhance the consistency of the application of Mercosur law (Dreyzin de Klor 2003: 6).

### International bargaining

The dispute settlement system established with the Protocol of Brasília was envisaged to be transitory. The Protocol declares that it 'will remain in force until the Permanent System for Dispute Settlement [...] comes into force' (art. 34, Protocol of Brasília).

A first opportunity to revise the system emerged during the negotiations of the Ouro Preto Protocol, which at the end of 1994 consolidated Mercosur's institutional framework. Due to the insistence of Argentina and Brazil, however, member states agreed to maintain the existing dispute settlement system, 'making adjustments as necessary to adapt it to the new organic structure of Mercosur' (Vaz 2002: 220–21). As a result, the Ouro Preto Protocol notes that 'before completing the process of convergence of the Common External Tariff, the States Parties will carry out a review of the current Mercosur dispute settlement system with a view to adopting the permanent system' (art. 44). Even if the smaller member states had not succeeded in convincing the larger members that a more institutionalized arrangement for dispute settlement should be established from the outset, it was clear that they would get another chance to push for a stronger system. The by-law to the protocol, adopted in 1998, states unequivocally that such specifications serve the purpose 'to ensure the growing effectiveness of Mercosur's dispute settlement mechanisms and to guarantee the legal certainty of the integration process' (Decision CMC 17/98).

The worsening financial crisis around the turn of the millennium provided a window of opportunity to embark upon a reform of Mercosur's dispute settlement system. Amidst quickly deteriorating relations between the core member states Argentina and Brazil, and expectations among key stakeholders regarding

<sup>18</sup> Ibid. As another Argentinean negotiator put it, 'We wanted to take a step forward with the dispute resolution system, but not go as far as the EU system' (interview, Buenos Aires, 11 Aug. 2015).

the future of the organization, member states decided to relaunch the integration process. Argentina and Brazil started bilateral negotiations on the content of the relaunch agenda in early 2000, after the new Argentinean government of Fernando de la Rúa had entered office; and at a regional summit held in April 2000 in Buenos Aires, the two smaller members announced their support for the initiative. The Common Market Council formally decided in June 2000 that this relaunch would include a reform of the dispute settlement system (Decision CMC 25/00). An Ad Hoc Group on Institutional Matters was set up to present a reform proposal by December 2000.

The Ad Hoc Group on Institutional Matters provided a negotiating forum for delegations from each of the four member states during this early phase of negotiations, which lasted from May to December 2000. Given some overlap in negotiating positions, some issues sparked little controversy and were settled early on in the negotiations. The most important of these issues was the establishment of an appellate body along the lines of the WTO system (art. 18, Protocol of Olivos)—a demand by Argentina.<sup>19</sup> The Brazilian delegation in the Ad Hoc Group included this proposal in a first draft protocol that it presented at its meeting in Brasília in August 2000 (Dreyzin de Klor 2003: 7).<sup>20</sup> For Brazil, this was a first concession to its neighbour, because it did not really see a need to fundamentally change the system.<sup>21</sup> In a note to the Foreign Ministry following the third arbitration award, which Brazil won against Argentina, Ambassador José Artur Denot Medeiros lauded the ‘successful completion of the first three arbitration procedures under the Protocol of Brasília’ (Denot Medeiros 2000c: 4). At the same time, however, Brazil ‘accepted to go that route because we felt that it was reasonable what they were asking for if you are in a integration process.’<sup>22</sup> The smaller member states agreed to the proposal because it aligned with their institutional preference for a more institutionalized system of dispute settlement in general. Moreover, states agreed on the need to elaborate on the enforcement mechanisms of rulings and started developing concrete provisions (arts 31, 32, Protocol of Olivos) (Perotti 2001/2: 5). While Argentina, Brazil, and Paraguay had found agreement on most of the critical issues by the end of the year, Uruguay resisted the agreed-upon text

<sup>19</sup> Interview with Carlos Márcio Cozenday, Brasília, 6 Aug. 2015. For a complete list of issues that were settled early on in the negotiations, see Perotti (2001/2: 5).

<sup>20</sup> Such a body would also allow governments ‘to resolve issues independent from domestic interest groups. It would then offer opportunities to blame others’ (interview with Welber Barral, Florence, 18 Nov. 2015).

<sup>21</sup> Arnold and Rittberger argue that Brazil’s initial reluctance to introduce an appellate body changed only in the wake of the fourth arbitral award issued in May 2001 (‘poultry case’) (Arnold and Rittberger 2013: 120)—a claim that is difficult to reconcile with the secondary sources cited above. The ad hoc panel, applying WTO anti-dumping rules, established that Argentina’s anti-dumping measures imposed on imports of Brazilian chicken meat would not have to be revoked (Mercosur Ad Hoc Arbitration Tribunal 2001). Highly dissatisfied with this decision, Brazil sought a revision of the award at the WTO, which it won (WT/DS241-6).

<sup>22</sup> Interview with Carlos Márcio Cozenday, Brasília, 6 Aug. 2015.

because it viewed the proposed changes as being too limited (Dreyzin de Klor 2003: 7–8; Martínez Puñal 2003: 178). On 6 December it tabled its own proposal, which, according to Díaz Barrado (2003), ‘presented positions that were very different from those of the other member states’ (p. 1098). As a result, the Ad Hoc Group could not find agreement until the 19th presidential summit in Florianópolis in December, when it had been envisaged that the new protocol would be signed (Perotti 2001/2: 4). The Common Market Council therefore extended the deadline to June 2001, and created a High-Level Group to build on the proposal of the Ad Hoc Group as well as proposals by the national delegations in order to come up with a coherent draft protocol (Decision CMC 65/00).

After intense negotiations, the High-Level Group found agreement on two additional issues, endorsing some of Uruguay’s demands (Dreyzin de Klor 2003: 10; Díaz Barrado 2003: 1098): abolishing the mandatory intervention of the Common Market Group during the initial negotiation stage of dispute settlement (art. 6, Protocol of Olivos); and introducing a preliminary rulings mechanism (art. 3, Protocol of Olivos).<sup>23</sup> The latter marked an institutional innovation rather than a modification of existing rules. Even though Brazil ‘staunchly opposed this provision initially’, as an Argentinian government official remarked (cited in Arnold and Rittberger 2013: 118), Uruguay’s Foreign Minister Didier Opertti explained to his colleagues how this could help the consistent application of Mercosur law<sup>24</sup>—a problem that had surfaced in the three arbitration awards issued by ad hoc panels after the system started being used. Even though Uruguay initially proposed that consultative opinions be binding, Argentina and Brazil only consented to the inclusion of advisory opinions, with details to be worked out later.<sup>25</sup> These concessions to Mercosur’s smaller member states, and especially to Uruguay, can be seen as part of the Cardoso administration’s more general interest ‘in maintaining a minimal consensus among Mercosur members’ in view of external challenges (Vigevani and Cepaluni 2009: 67).

The stickiest issues were only resolved late in the negotiations, with strong political guidance. Member states eventually found agreement on Uruguay’s (and maybe Paraguay’s) proposal that the parties to a dispute may decide, by consensus, to circumvent the ad hoc arbitration stage and transfer their case directly to the Permanent Review Tribunal for adjudication once they have failed to find a negotiated settlement (art. 23, Protocol of Olivos). In its quest for a supranational court, Uruguay sought that any party could request direct access to the Tribunal for a final decision; but Argentina and Brazil insisted that such access had to be based on the consent of the two parties to a dispute (see also Arnold and

<sup>23</sup> As an Argentinean policy-maker remarks, the consultative opinions are the ‘child of the mother Uruguay’ (interview with García del Río, Buenos Aires, 11 Aug. 2015).

<sup>24</sup> Interview with Didier Opertti, Montevideo, 3 Aug. 2015.

<sup>25</sup> *Ibid.* Elaborated in Decision CMC/37/03 consultative opinions have advisory status only.

Rittberger 2013: 118–19).<sup>26</sup> In this case, the Tribunal judges both the matters of fact and the applicable law (Opertti 2004: 153; see also Rey Caro 2004: 199–201). Thus, it serves as a ‘proper’ court rather than an appellate body because it rules independently on a case, issuing binding rulings that are not subject to further appeal.<sup>27</sup> In this sense, the Permanent Review Tribunal is more than an appellate body; it has characteristics of a single court (see Martínez Puñal 2003: 190–91). As Didier Opertti remarks, ‘This arbitration Tribunal is a bit of a compromise between those who wanted to stay with pure arbitration and not go any further, and those who wanted to advance on this journey towards the establishment of a Jurisdictional Tribunal’ (Opertti 2004: 153).

The latest issue to be resolved in the negotiations was the choice of arbitration forum.<sup>28</sup> Member states eventually agreed on a stipulation that explicitly provides them with a choice between settling a dispute through the WTO or other preferential trade agreements in which they are a member or through the Mercosur procedure. However, once states choose one of these forums, they are prohibited from using other forums to rule on the same issue (art. 1, Protocol of Olivos).<sup>29</sup> This stipulation is the result of the fourth award issued by an ad hoc panel in May 2001, where Brazil filed the same case both with Mercosur and then with the WTO.

Uruguay’s ‘fierce insistence’ (Dreyzin de Klor 2003: 10) on allowing private actors to access Mercosur’s dispute settlement system directly did not encounter agreement among the other member states. The National Sections of the Common Market Group continue to serve as the gatekeepers that channelled private complaints into the system (art. 41, Protocol of Olivos). However, due to the novel, non-mandatory role of the Common Market Group at the negotiation stage of dispute settlement, governments that endorse private complaints may directly seek arbitration of these claims, either through the ad hoc system or with the Permanent Review Tribunal. In this way, it is easier for private actors to channel their claims to arbitration and adjudication, even though the gatekeeping role of governments persists.

The negotiations were concluded successfully in February 2002, and the Protocol of Olivos was signed by the heads of state and government on 18 February 2002. In December 2003, the Common Market Council adopted the rules of procedure according to article 47 of the Olivos Protocol (Decision CMC/37/03),

<sup>26</sup> Interview with Garcia del Rio, Buenos Aires, 11 Aug. 2015.

<sup>27</sup> According to some legal experts, this leads to inconsistencies with other stipulations in the protocol due to the dual nature of the Permanent Review Tribunal (see Bergamaschine Mata Diz 2007: 173).

<sup>28</sup> Interview with Garcia del Rio, Buenos Aires, 11 Aug. 2015.

<sup>29</sup> In principle, Uruguay rejected the provision until the end, but consented to it as part of a negotiated compromise. As Didier Opertti put it, ‘the best is the enemy of the good’ (interview, Montevideo, 3 Aug. 2015).

and the latter entered into force on 1 January 2004. The Permanent Review Tribunal took up its work in Asunción on 13 August 2004.

As is the case with most institutional compromises, there is disagreement among the parties as to whether key tenets of the institutional outcome reflect any specific model. Whereas especially Argentinean and Brazilian negotiators perceive the Olivos system as being similar to the WTO system, representatives of the smaller member states insist that it has more similarity to the EU system. Welber Barral, a Brazilian policy-maker notes, for example, that the Olivos Protocol is 'highly influenced by the WTO system. Some parts of the protocol are verbatim taken from the WTO treaty. People involved in the negotiations on the Brazilian side had been at the WTO just before.'<sup>30</sup> An Argentinian government official similarly notes that 'Brazil and Argentina's attitude was to look for improvements in the system and take the WTO as an example,' while an Uruguayan official comments, 'I think it [the Protocol of Olivos] is more inspired by the EU than by WTO' (cited in Arnold and Rittberger 2013: 122). And in his characteristically strong-headed way, Didier Opertti says that 'there is no doubt that the European Union with its system [of dispute settlement] has influenced and will continue to have a big influence in the construction of the community model' (Opertti 2004: 153). This quote suggests once again that Uruguay's institutional strategy regarding dispute settlement was shaped by EU institutions and is indeed reflected in the final outcome.

## Conclusion

This chapter traced the EU's passive influence on the establishment of the Permanent Review Tribunal in Mercosur. It showed that member states' institutional preferences and strategies were shaped, in discernible ways, by the institutional experience of the EU. In particular, Uruguay advanced an EU-type dispute settlement mechanism in negotiations over a reform of Mercosur's system in the early years of the new millennium, whereas Argentina and Brazil advanced proposals for a WTO-type system. The institutional outcome, adopted with the Olivos Protocol in 2002, constitutes a compromise between these two positions, with identifiable traces left by Uruguay's insistence on an EU-type system.

The evidence presented in this chapter strongly suggests that the EU's passive influence, via its effect on Uruguay's institutional strategy regarding dispute settlement in the organization, played a relevant causal role in understanding the establishment of Mercosur's Permanent Review Tribunal. Counterfactually, the negotiation record suggests that both the provision on consultative opinions and the opportunity of the two disputing parties to access the Permanent Review

<sup>30</sup> Interview with Welber Barral, Florence, 18 Nov. 2015.

Tribunal directly—rendering it a de facto single court in this case—would not have formed part of the final outcome had Uruguay not pushed for it. This does not deny the widespread assessment that the Olivos system is, in its broad outline, closer to the WTO system than to the ECJ system. Nevertheless, we can identify two specific institutional features that go beyond the WTO system. These are the result of Uruguay's fierce insistence that Mercosur's dispute settlement system be more institutionalized than the WTO system. Given that Uruguay's institutional strategy is directly derived from the model provided by the ECJ, the EU's passive influence made a distinguishable difference in the Olivos reforms.

The fact that member state concerns over national sovereignty pose a difficult obstacle to the creation of more independent regional institutions not only concerns Mercosur but is a pervasive phenomenon in the global South and also beyond. In Mercosur, this obstacle is further compounded by the fact that power asymmetries are enormous, with the member states that hold the most sovereignty-preserving preferences also being the largest ones, and that the dominant member states have long seen the EU with scepticism. However, this chapter shows that even in such inhospitable environments, some local actors find EU institutional models attractive—often for idiosyncratic reasons—and advance them as demands in intergovernmental negotiations over institutional change. When this happens, the EU often leaves detectable traces in institutional outcomes, as such negotiations tend to constitute an institutional compromise among the diverse bargaining positions of governments. In organizational contexts in which bargaining power is distributed less in favour of institution averse-governments and where governments are less sceptical of EU-type institutional change or even desire it, passive EU influence is likely to be more substantial and widespread. Therefore, Mercosur's experience with regard to dispute settlement is unlikely to be unique in the world of regional organization, and may in fact be rather common.

# The Scope of European Union Influence

## The Role of Contractual Open-Endedness

Chapters 5 and 6 demonstrate the validity of the two pathways of EU influence. Direct contacts with EU actors (SADC) and the availability of information on EU institutions (Mercosur) shape governments' institutional strategies in intergovernmental negotiations over institutional change, and thereby leave their imprint on institutional outcomes. In these cases, the conditions for EU influence are favourable because SADC and Mercosur both rest on an open-ended contract.

However, when the nature of an organization's contract is fixed, I argue in this chapter, the scope for EU influence is limited. This is the case because the EU can often not generate, by itself, the conditions on which it depends for it to make a distinguishable difference. It relies on local actors to advance demands for EU-type institutional change, and on governments to adopt EU institutions as their strategies in institutional negotiations. The establishment of the Permanent Review Tribunal in Mercosur, analysed in Chapter 6, is a case in point. While it is possible to identify, counterfactually, how EU influence shaped the design of Mercosur's judicial body, member states decided to revise the dispute settlement system for various idiosyncratic reasons that were unrelated to the EU, and an encompassing explanation of the outcome must engage causal factors other than EU influence. In this case, as in many others, the influence of the EU on institutional outcomes depends on favourable structural conditions that may enable its operation. In other words, the scope of EU influence on institutional change is confined, to a large extent, by structural conditions that generate opportunities for EU influence. These prerequisites for EU influence are more likely to be met, I argue, when ROs are based on open-ended contracts—as in this case. Conversely, when ROs rest on a fixed contract, EU influence is less likely to make a difference.

In this chapter, I uncover the operation of the stipulated scope condition of EU influence—contractual open-endedness—whose general causal relevance I examined in Chapter 4. Chapter 4 demonstrates that the effect of active and passive EU influence on levels of institutionalization in a sample of ROs is particularly pronounced in those that are based on an open-ended contract. In this chapter I show—through a paired comparison of ASEAN and NAFTA with regard to the parliamentary dimension—that EU-type institutional change is voiced more often in ROs based on an open-ended contract because actors find it easier to construct analogies with the EU that give legitimacy to such demands.

The chapter proceeds in three parts. In the first part, I spin out some additional observable implications of the argument about contractual open-endedness as a scope condition for EU influence at the structural level, and examine them empirically. Next, I contrast the establishment of a parliamentary institution in ASEAN with its non-establishment in NAFTA to argue that contractual open-endedness eventually facilitated the parliamentarization of ASEAN while its absence hampered EU influence in NAFTA. The second part justifies a paired comparison and the specific cases chosen, while the third presents the empirical evidence.

### **Demand and supply conditions of EU influence: some quantitative evidence**

Unless the EU uses its active influence as a lever for institutional change—a situation analysed in the establishment of the SADC Tribunal in Chapter 5—EU influence is dependent on facilitating conditions that enable its operation. I theorized in Chapter 3 that contractual open-endedness is an important scope condition for EU influence because it provides ROs with an endogenous capacity for institutional change due to the open-ended nature of commitments. This, in turn, generates conditions conducive to the operation of EU influence on both the demand and supply side.

On the demand side, open-endedness facilitates institutional change as institutions require more frequent adaptation when the cooperation problems that they address evolve over time, thereby providing more numerous opportunities for EU influence. Conversely, when an RO pursues a specific purpose from the start, its institutions are more easily designed at the outset and will require less adaptation. Does this expectation play out empirically? Is it indeed the case that ROs based on open-ended contracts display higher rates of institutional change than those with an intermediate and fixed contract, thereby generating more numerous opportunities for EU influence?

We saw in Chapter 1 that the number of institutional reforms has steadily increased throughout the decades, and examine here whether these institutional reforms are distributed unevenly across RO types. I use the measures introduced in Chapter 4 to test this implication. Institutional change is the number of times that the level of institutionalization in the sample of 35 ROs (excluding the EU) changes, both upward and downwards. Institutionalization is an additive index that captures the existence and competences of four types of regional institutions that are not composed of member states' representatives: general secretariats, parliamentary bodies, other non-state consultative bodies, and judicial bodies. Contractual incompleteness, on the other hand, is a trichotomous variable that taps the extent to which the commitments that member states engage in are open-ended, with regard both to the stipulated organizational objective and to the

scope of actors allowed to participate in cooperation. As noted in Chapter 4, contractual open-endedness is highly stable over time, with only six organizations changing the category by one towards greater open-endedness. This analysis uses the dynamic contract scores.

Figure 7.1 displays the number of institutional reforms by category of contractual open-endedness. In line with the expectation, ROs based on open-ended contracts are indeed more likely than those based on intermediate or fixed contracts to adapt their institutions. In short, the distribution is highly skewed. In terms of the absolute number of institutional reforms depicted in the left-hand panel, ROs based on open-ended contracts represent 53 per cent of the total number of institutional reforms; ROs with an intermediate contract represent 35 per cent of institutional reforms; and ROs based on a fixed contract represent 12 per cent. If we control for the number of organizations in each contract category, the picture is similarly skewed. As shown in the right-hand panel, organizations with an open-ended contract change their institutional framework, on average, once every decade, whereas ROs with an intermediate contract engage in institutional change every 20 years and ROs with a fixed contract only once in 29 years. The latter number means that some ROs, such as NAFTA, have not changed their level of institutionalization even once since their founding nearly 30 years ago. The two panels thus show clearly that opportunities for EU influence are much more frequent in ROs based on open-ended contracts and to some extent also in ROs with an intermediate contract—which, it should be recalled, also rest on an open-ended purpose but restrict the actor scope to governments—than in those based on fixed contracts.

On the supply side, the ability of social actors to draw credible analogies between the EU and other ROs enhances the supply of proposals for EU-type

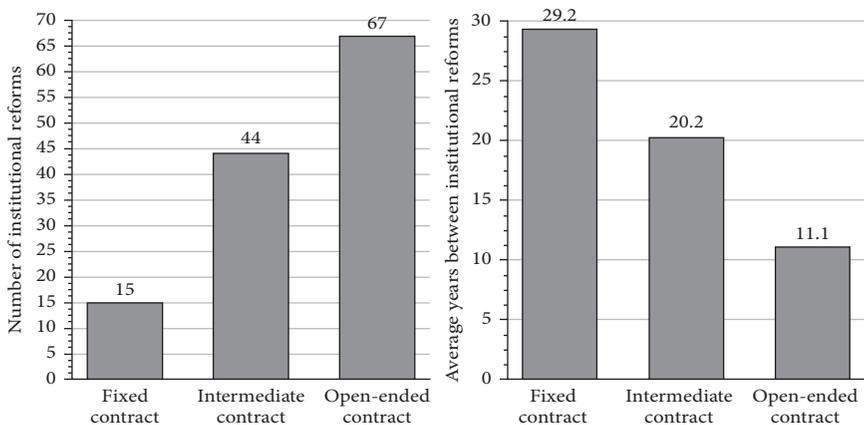


Figure 7.1 Institutional reforms in 35 ROs by contractual open-endedness, 1950–2017

institutional change and makes it more difficult for opponents of such change to reject it. This reasoning should affect actors within the EU itself as well as those in other ROs. Thus, we would expect EU engagement to vary with the contractual open-endedness of other ROs. Chapter 4 shows that the EU's engagement with other ROs is associated with higher levels of institutionalization in those ROs. Therefore, open-ended contracts enhance the likelihood that the EU supplies financial and technical expertise that shape regional institution building. The reason is that contractual open-endedness signals cultural similarity. ROs with an open-ended contract are akin to the EU in their aim to engage in regional community-building on a broad policy front. When such cultural similarity exists, other ROs are more likely to seek engagement with the EU and vice versa. This reasoning implies that active EU engagement should cluster in ROs with an open-ended contract. Does this expectation bear out empirically?

We saw in Chapter 4 that active EU engagement with other ROs has grown over time, and here we examine whether it is distributed unevenly across different RO types. EU engagement, operationalized in Chapter 4, is an aggregate index that incorporates three components: financial support; interregional cooperation agreements; and institutionalized contacts at the level of heads of state and government, parliamentarians, and technical experts. Such engagement exists with 23 out of the 35 ROs in the sample, and varies strongly in intensity among the 23 ROs with which the EU is formally engaged. What contracts are these organizations based on?

Figure 7.2 shows the extent of EU engagement with other ROs by contractual open-endedness for two time periods: 1970–90 and 1990–2017.<sup>1</sup> We see that the EU engages primarily with like organizations whose contracts contain open-ended commitments.<sup>2</sup> Several developments are notable. First, engagement with other ROs has significantly increased over time. While medium levels of EU engagement were rare during the Cold War (four instances) and high levels of engagement were entirely absent, they have become more frequent after the end of the Cold War (15 instances of medium EU engagement and eight instances of high engagement). Second, medium and high levels of EU engagement are almost exclusively located in the intermediate and open-ended contract categories. This pattern holds perfectly for the Cold War era, and is near-perfect for the period since.<sup>3</sup> Conversely, no engagement is the relatively most frequent category in ROs with a fixed contract. While no engagement is the modal category across all engagement

<sup>1</sup> The numbers in this figure do not represent numbers of ROs but instances of a particular level of EU engagement. The EU regularly changes its level of engagement with ROs over time, such that there may be two or even three instances of different levels of engagement with individual ROs in a specific period.

<sup>2</sup> The overall bivariate correlation between the two variables is 0.302.

<sup>3</sup> The single exception to this pattern is the EU's engagement with the European Free Trade Association, primarily in the form of the European Economic Area.

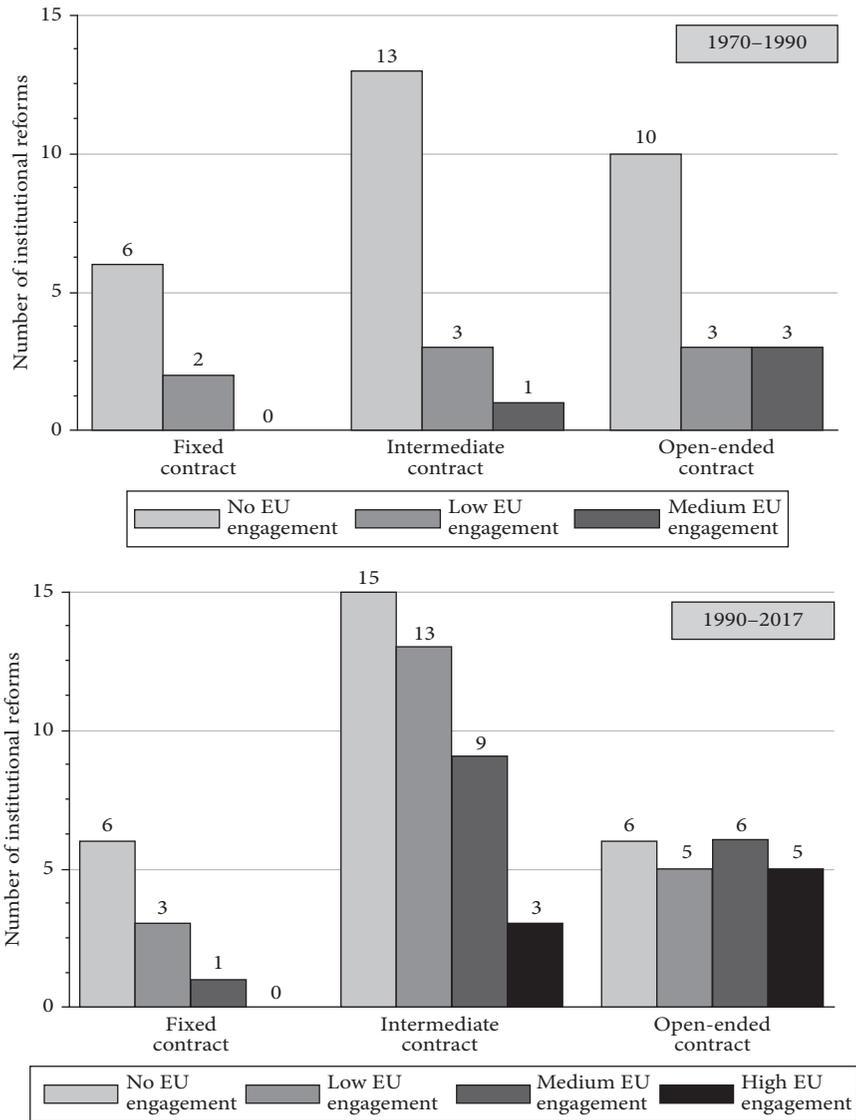


Figure 7.2 EU engagement with 35 ROs by contractual open-endedness, 1970–2017

categories and contract types, when we combine the various levels of EU engagement (low, medium, and high) for each contract category, it remains the modal category only in ROs with a fixed contract for the period after the end of the Cold War. Third, the EU has massively enhanced its engagement with ROs that rest on an intermediate contract since the end of the Cold War. ROs in this category now unite the largest number of instances of EU engagement. This holds for both low

and intermediate levels of engagement, while the highest number of instances of high levels of engagement can be found among ROs with an open-ended contract.

Taken together, the evidence presented suggests that contractual open-endedness, which serves as a proxy for the ambition of ROs to engage in community-building, delimits the scope of EU influence in two distinct ways. On the one hand, ROs based on an open-ended contract provide more frequent opportunities for EU influence to operate because these ROs change their institutions more frequently. On the other hand, contracts that contain open-ended commitments are also a structural feature of ROs that signals affinities with the EU, which tends to enhance the EU's engagement. Yet how, specifically, does contractual open-endedness delimit the scope for EU influence? This is the subject of the next section.

### **Institutional change and the scope of EU influence: a paired comparison**

The quantitative evidence presented in the previous section presents some preliminary correlational evidence for the idea that contractual open-endedness delimits the scope of EU influence. We can probe the workings of the relationship more deeply by developing specific process observations of the argument, and testing those in a detailed qualitative analysis of two ROs that sit at opposite ends of the spectrum of contractual open-endedness—a paired comparison. I first justify the selection of cases before specifying some additional process implications that guide the comparison.

#### Case selection

What should an effective test of the scope condition look like? Ideally, we would contrast two cases that differ with regard to the hypothesized scope condition and the outcome of interest, while trying to keep as many confounders as possible constant in order to control for their potential impact by design. This is the logic of a paired comparison, which ‘implies minimizing the difference between the systems being compared’ (Tarrow 2010: 234). Such a set-up would allow us to examine how contractual open-endedness enables EU influence to operate in one case, resulting in EU-influenced institutional change, while in the other case the different nature of the contract of another RO inhibits EU influence, thereby leading to no institutional change, or change that is not shaped by EU influence.

I suggest that a comparison of ASEAN and NAFTA on the parliamentary dimension provides causal leverage in this sense because this comparison approximates the conditions that have been formulated for the effective use of paired comparisons and for useful crucial cases.

At the most general level, the study of regional parliamentarization is a useful analytical focus because we can critique a few prominent existing explanations on a priori theoretical grounds. This alleviates the limited-degrees-of-freedom problem that besets case studies in general (Tarrow 2010: 246–7). Crucially, there is no plausible functional reason for the establishment of regional parliamentary institutions. They provide none of the efficiency-enhancing benefits that rational delegation theory attributes to international institutions, such as providing technical expertise, solving commitment problems, setting the agenda, or monitoring and enforcing agreements. At the same time, such institutions generate potentially significant sovereignty costs (see Lenz, Burilkov, and Viola 2019; Schimmelfennig et al. 2020). Thus, from the perspective of standard delegation theory, international parliamentary institutions offer a negative balance of costs and benefits. This characteristic of the institutional form affords me the opportunity to eliminate a range of potential explanations for international institutional change by design.

A comparison of NAFTA and ASEAN is useful, moreover, because NAFTA represents a likely case for the establishment of a regional parliament whereas ASEAN represents a least likely case. The key explanation for the establishment of international parliaments is democracy. The argument is that international parliamentary institutions are an expression of the prevalence of democratic norms at the national level, which actors transfer to the international level (Grigorescu 2015; Rittberger 2005; Schimmelfennig 2010; Tallberg, Sommerer, and Squatrito 2016). A second well-established argument suggests that actors seek to hold their governments accountable, and this is only possible through domestic channels as long as IOs operate on the basis of strict intergovernmentalism. Once IOs start to gain authority—either by moving from consensus towards majoritarian decision-making (pooling) or by empowering independent actors to act on their behalf (delegation) (for the conceptual distinction and measurement, see Hooghe, Lenz, and Marks 2019: ch. 3)—securing the accountability of executives in international cooperation requires additional channels at the international level. The creation of international parliamentary institutions is one institutional option for achieving this goal (Rittberger 2005; Rittberger and Schimmelfennig 2006: 1160; Slaughter 2004: 125–9; Verdoes 2020; Zürn, Binder, and Ecker-Ehrhardt 2012).

From the perspective of established theoretical explanations, NAFTA should be more likely than ASEAN to establish an international parliamentary institution, primarily because it is composed of democracies, at least two of which are well consolidated (Canada and the United States). Regarding authority, the two ROs do not differ substantially: their authority is limited in both cases. In NAFTA, decisions in the Free Trade Commission are taken by consensus, and with the exception of an (albeit powerful, especially with regard to investments) dispute settlement mechanism (Abbott 2000), delegation is absent. Due to the prevalence of democratic member states, NAFTA is a likely case for the establishment of a parliamentary institution. ASEAN, in contrast, consists mainly of non-democratic

states. Its average Freedom House score puts the organization into the autocracy category. Moreover, ASEAN's level of authority is limited. Key decision-making bodies, such as the Summit and the various ministerial councils, take decisions by consensus, and both the dispute settlement system and the secretariat have limited competences. Thus, ASEAN starts approaching a least likely case regarding parliamentarization from the perspective of prominent theories (see Lenz, Burilkov, and Viola 2019 1: 1103).

Despite these expectations, the outcome is exactly the reverse: whereas ASEAN has established a parliamentary institution with consultative functions, NAFTA has not.<sup>4</sup> What distinguishes these two organizations and accounts in large parts for the divergence in parliamentarization, I suggest, is not the nature of their membership or authority but their contract, because these differences in contracts condition EU influence. ASEAN is based on an intermediate founding contract, pursuing an open-ended purpose to 'promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific, and administrative fields' with a focus on governments as the central actors (Bangkok Declaration, Preamble). As Rodolfo Certeza Severino, former Secretary General of ASEAN, aptly remarks, the Declaration expressed national leaders' 'resolve to work together for common purposes, purposes that at the time were only vaguely discerned and projected' (Severino 2006: 3). The 2008 ASEAN Charter also emphasizes the goal to 'maintain and enhance peace, security and stability' (art. 1.1) and widens the contract beyond governments to include people and societies. NAFTA, in contrast, rests on a fixed contract, pursuing the well-defined objective to 'establish a free trade area' (art. 101, NAFTA Agreement). The new United States–Mexico–Canada Agreement (USMCA), which is scheduled to enter into force on 1 June 2020, has adapted some of the substantive provisions of the old agreement but has not altered the well-specified and narrow purpose of establishing a free trade area (art. 1.1).

The ASEAN case provides additional causal leverage on the question of how contractual open-endedness may enable EU influence, being one of the few organizations in the sample that changes its level of contractual open-endedness over time. While ASEAN has an intermediate contract for much of its history, this changes with the ASEAN Charter towards an open-ended contract. This change goes hand in hand with governments' objective to create an ASEAN Community consisting of a political-security, an economic, and a sociocultural pillar. It was this change in contractual open-endedness that enabled parliamentarians to push for EU-type institutional change. The configuration of the respective variables is summarized in Table 7.1.

<sup>4</sup> Thus, NAFTA fulfils what Mahoney and Goertz (2004) call the 'possibility principle', i.e. a 'negative' case in which the outcome of interest is possible because at least one independent variable is conducive to the outcome of interest.

**Table 7.1.** Configurations of variables in NAFTA and ASEAN cases

	NAFTA	ASEAN
	Likely case	Least likely case
Democratic organization	Yes	No
International authority	Limited	Limited
Pooling	No	No
Delegation	Weak	Weak
Contract	Fixed	Intermediate → open-ended
Outcome	No parliamentary institution	Parliamentary institution

The counterintuitive distribution of outcomes means that detailed case studies of the establishment of a parliamentary institution within ASEAN, on the one side, and into its absence in NAFTA, on the other side, provide unique insights into the scope of EU influence and the causal processes by which it operates. Specifically, it allows me to trace the processes that underlie the positive interaction between contractual open-endedness and EU influence detected in Chapter 4.

### Specification of observable implications

In view of the focus on the parliamentary dimension of regional organization, we can specify the generic causal process implications outlined in Chapter 3.

- Advocates of the EU ‘model’ advance proposals for EU-type institutional change even though structural conditions are unfavourable. Specifically, actors who have not internalized democracy as a norm advocate the establishment of parliamentary institutions even within organizations with little authority, perceiving the EU to be both successful and similar to their own organization. As a result, references to the EU should be frequent.
- Conversely, even actors who have internalized democracy as a norm do not advocate the establishment of parliamentary institutions, deeming the EU to be irrelevant to their own organization due to differences in the contractual nature of the organizations. As a result, references to the EU should be rare and demands should focus on other institutional solutions to the legitimization problem in ROs.
- Governments involved in organizations pursuing open-ended commitments find it difficult to reject demands for the establishment of a parliamentary body even though they have not internalized democracy as a norm, given the compelling similarity with the EU. As a result, we see justifications of why organizations are not similar to the EU or why governments endorse the demands.

## **The parliamentary dimension in ASEAN and NAFTA: the empirical record**

What does the empirical record of regional parliamentarization in ASEAN and NAFTA look like? I argue that, contrary to existing structural conditions in the two organizations, contractual open-endedness was a key condition that enabled EU influence to operate in the case of ASEAN and hampered EU influence in NAFTA. In the latter case, even though some actors raised the idea of a regional parliament, it was never seriously considered.

### Establishing a parliamentary institution in ASEAN

ASEAN is a general-purpose organization in Southeast Asia that includes ten member states. At its establishment in 1967 with the Bangkok Declaration, the five founding members sought to stabilize their mutual relations in the face of the double threat of communist subversion from the inside and great power domination from the outside. Much of the early period in cooperation was dedicated to building trust among national leaders who were regularly engaged in militarized disputes (Leifer 1989; Glas 2017).

The resulting institutional framework was minimal and purely intergovernmental. An annual foreign ministers' meeting set the agenda and took decisions, the ASEAN Secretaries General presided over an ASEAN National Secretariat which supervised the Association's activities, and a Standing Committee of national officials was responsible for managing day-to-day business. Since then, piecemeal reforms have gradually strengthened the organization's institutional framework, but ASEAN remains an organization that is characterized by 'perennial under-institutionalization' (Beeson 2010: 330) when compared to other ROs around the world. In 2007, governments adopted the ASEAN Charter, which for the first time gave the Association a coherent legal foundation and modestly strengthened its institutional framework.

With the ASEAN Charter, the Association's parliamentary institution—the ASEAN Interparliamentary Assembly (AIPA) (previously: ASEAN Interparliamentary Organization, AIPO)—received formal recognition as an Associated Entity according to Article 16. Shortly thereafter, ASEAN leaders established regular informal meetings with AIPA representatives, which were formalized in 2010 in the form of a joint discussion forum. Termed the 'ASEAN–AIPA Leaders' Interface', it provides an institutionalized setting for intra-ASEAN coordination on AIPA resolutions prior to ASEAN Summits, the organization's highest decision-making body (ASEAN Summit 2010; Deinla 2013: 15). With that decision, AIPA has acquired formal consultative status in the Association, even though its competences remain circumscribed: the parliamentary institution

does not have any legislative competence, and it has no formal leverage to ensure that its resolutions are taken into consideration by ASEAN's leaders. Nevertheless, it marks an instance of institutional change that has strengthened ASEAN's institutional framework.

AIPO emerged in the 1970s as a forum of deliberation and discussion on matters of common concern. Following initial contacts in 1973, the Indonesian legislature formally proposed the establishment of a regional parliamentary institution to advance cooperation among ASEAN's national parliaments in 1974. A first ASEAN Parliamentary Meeting was held in January 1975 and, after several years of debate, parliamentarians adopted the statutes of the ASEAN Interparliamentary Organization (AIPO) in September 1977 (AIPA 2013b). Among its purposes was to make parliamentary contributions to the attainment of ASEAN's goals and to provide a more direct link between the organization and member state societies (AIPO 1977). Despite its name and objectives, AIPO remained formally unassociated with ASEAN's decision-making structure.

Even though archival and intensive interview work on its formalization is very rare, there is evidence that EU influence played a role in the emergence of AIPO. Various area studies experts who analysed interregional relations during this early period concur that the EU constitutes a model for ASEAN. Mols (1990) remarks that 'Western European efforts at unification were (and still are) seen as an important model' in the region (p. 67), and Drummond (1982) similarly notes: 'From the beginning ASEAN had a kind of ideological link with the EC which it saw as a model to emulate' (p. 311). Moreover, the EC was actively involved with ASEAN. German Foreign Minister Hans-Dietrich Genscher announced in the 1980s that the 'European Community and its member states from the outset have considered it an important task to promote this association' (quoted in Mols 1990: 67). Direct relations between ASEAN and the European Community started in 1972, and it was ASEAN member states that actively sought closer links. Indonesia not only proposed the creation of AIPO in 1974, but also took the initiative to establish direct relations with the European Community (Mols 1990: 67; Drummond 1982: 311–12). In 1972, the organization established a Special Coordinating Committee to manage relations with the European Commission as well as the ASEAN Brussels Committee—the first one outside of ASEAN (Drummond 1982: 311–12). In 1974, the same year that Indonesia proposed AIPO, the two organizations set up Joint Study Groups to prepare the negotiation of an interregional cooperation agreement, which was signed in 1980 in Kuala Lumpur. This was complemented by the first ministerial meeting between both sides in November 1978 (European Commission 1981: 3–4; for an overview, see Harris and Bridges 1983).

More specifically, the debate about AIPO's formalization coincided temporally with intensive debates in the European Community about the role of the European Parliament in European integration. Jetschke and Rüländ (2009) argue,

therefore, that the ‘parliamentarization of the European Community, discussed and enacted over the course of 1974–76, resonated in ASEAN’, which they interpret as evidence of ‘ritualistic emulation’ (p. 185). At the same time, informal contacts between parliamentarians from both sides started in 1976 (Rüland and Carrapatoso 2015: 210), at the time when the formalization of AIPO was being discussed. Parliamentary ties between both sides were formalized in 1979, the year AIPO held its first official General Assembly, and regular meetings have taken place since then.<sup>5</sup> Partly fostered by these direct contacts, the idea of creating an ASEAN Parliament along the lines of the European Parliament has regularly come up in AIPO debates. At a preparatory meeting for the creation of AIPO, for example, the head of the Malaysian delegation lamented: ‘we still have a long way to go before we can become an ASEAN Parliament like that of the Parliament of the European Economic Community’ (quoted in Rüland and Bechle 2014: 70). And there are many references to the European Community and the European Parliament in AIPO’s resolutions at the time. The General Assembly meeting in 1991 resolved, for example, that the Thai delegation conduct a study on the merits of establishing an ASEAN Parliament, ‘along the lines of the European Parliament or other regional parliaments’ (Resolution no. 12GA/1991/Res/0-18).

This evidence plausibly suggests that AIPO’s establishment was due, in part, to the inspiration provided by the European Parliament, transmitted both actively and passively. In the next two decades, the Organization held about one General Assembly meeting a year, but it had little influence on the process of regional cooperation itself. AIPO also provided the organizational platform to discuss and advance proposals for institutionalized participation in regional decision-making. In 1980, the Philippine delegation proposed the creation of an ASEAN Parliament with modest legislative functions—an idea that parliamentarians declared a ‘long-term objective’ (AIPA 2013).

Yet, despite recurrent calls and initiatives, little progress was made regarding the formalization of AIPO as an integral part of ASEAN over the next 20 years. As Rüland and Bechle bluntly note, such proposals ‘never received serious consideration’ by governments (Rüland and Bechle 2014: 73). Why? The reluctance to attend to EU-inspired calls for the establishment of a parliamentary institution is, at least partially, due to the fact that the intergovernmental mode of cooperation in ASEAN, which rests on the nature of ASEAN’s founding contract, left no room for participation by actors other than governmental ones. The Bangkok Declaration is open-ended in its purpose, as mentioned above, but does not make mention of actors other than governments as the key actors in cooperation. The

<sup>5</sup> For an overview of interparliamentary relations until 2003, see: [https://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/fd/dase20040927\\_003/dase20040927\\_003en.pdf](https://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dase20040927_003/dase20040927_003en.pdf) (accessed 22 Feb. 2021).

entire document only refers to ‘nations’, ‘states’, and ‘countries’; no mention is made of ‘people’ or ‘societies’. This focus is also reflected in the name ASEAN. On this basis, the Association developed a particular style of cooperation—what became known as the ‘ASEAN way’—which is characterized by radical informality and consensus and relies heavily on small-scale contacts among state leaders (for an overview, see Jetschke and Katada 2016; Severino 2006: ch. 1). The idea was to build confidence and trust among authoritarian leaders in a difficult geopolitical context. At summit meetings, heads of state regularly spent as much time on the golf course as they did hammering out deals to advance regional cooperation (Severino 2006: 2). Acharya aptly refers to the style of cooperation as ‘elite-centric regional socialization’ (Acharya 2003: 376).

As a result, active voices for the establishment of an EU-type parliamentary body were unable to construct a credible case for their demands because the nature of ASEAN’s contract, and thus its fundamental social purpose, was distinct from that of the EU. Cooperation revolved around confidence-building among elites; it was not seen as a form of community-building that involved citizens. Despite exceptions<sup>6</sup>, most governments therefore insisted that ASEAN was categorically distinct and generally rejected comparisons to other experiences of regional integration, and especially to the EU. For example, Singaporean Foreign Minister Suppiah Dhanabalan stated in 1981:

ASEAN is now one of the world’s fastest growing regions. However, there are critics, both within and without ASEAN, who lament the lack of progress in economic cooperation in ASEAN. They point, for example, to the lack of progress in the establishment of a preferential trade area and similar arrangement which have characterized other cooperative endeavours like the European Community. *Such critics fail to recognize that ASEAN’s most significant achievement has been the establishment of good neighborliness among members—a desire to cooperate and not confront.* (quoted in Yukawa 2018: 330, my emphasis)

In a systematic study of ASEAN’s perceptions of the EU, Yukawa shows that such quotes stand for a broader pattern. He argues that ‘at least until the 1980s, the relevant actors in ASEAN had not viewed the EU as a model to any significant extent’ (Yukawa 2018: 330).<sup>7</sup> Perceptions of relevant political actors that ASEAN and the EU were two fundamentally different regional organizations with distinct purposes meant that demands for EU-type institutional change stood little chance of being taken up by governments.

<sup>6</sup> For example, former Thai foreign minister and Deputy Prime Minister Thanat Khoman notes, albeit retrospectively: ‘It should be put on record that, for many of us and for me in particular, our model has been and is still, the European Community’ (Khoman 1992, xix).

<sup>7</sup> In an elaborate section in his book, former Secretary General Severino justifies why ‘Southeast Asia is not Western Europe’ (Severino 2006: 4).

This situation changed with two major exogenous shocks: the end of the Cold War and, more immediately, the Asian financial crisis that plunged the region into economic recession. Criticism of ASEAN started growing in the immediate post-Cold War era on several fronts. For one, the region's human rights record became subject to serious external criticism. The EU eventually abandoned the scheduled renegotiation of the 1980 EC–ASEAN cooperation agreement due to ASEAN's rejection to accept human rights conditionality. As Manea (2008) notes, 'ASEAN realized that the European Community would become more intrusive about human rights violations and the lack of democracy within its territory' (p. 375). More broadly, criticism surged regarding the state- and elite-centric nature of regional cooperation in ASEAN, thereby challenging a key practice of the organization (Ba 2013: 139–40). Even though the ASEAN way was an important ingredient in the success of the organization during the first few decades, the 'time change' brought about by the end of the Cold War rendered ASEAN's modus operandi increasingly less acceptable to a variety of actors inside and outside the organization, including academics, civil society groups, and popular commentators. Advocates of more societal involvement grew during the 1990s (see e.g. Caballero-Anthony 2004).

The 1997/8 Asian financial crisis seemed to confirm these criticisms. ASEAN's failure to orchestrate a coordinated reaction 'shattered ASEAN's credibility as a regional leader and an economic regime' (Narine 2002: 139). As a result, earlier criticism deepened and new criticism appeared. In this vein, Rüländ argues that 'increasingly vociferous demands [emerged] to transcend ASEAN's elitist and state-centric nature [...] and to democratize regional governance by creating more participatory channels' (Rüländ 2014: 251). In the late 1990s, ASEAN governments faced unprecedented criticism from a variety of important actors inside and outside the organization. Rejection and non-response increasingly appeared like inadequate strategies to deal with the situation; institutional change became more pressing.

In the early 2000s, governments started addressing these criticisms in two ways, and I argue that one facilitated the other. On the one side, governments extended the purpose of ASEAN to be less government-centric. Ali Alatas, Indonesia's Foreign Minister at the time, puts it as follows: 'ASEAN must strive for relevance. To succeed at this, ASEAN must be able to get the people of ASEAN to be more directly and deeply involved in its activities' (Alatas 2001: 7). The 'Vision 2020', which heads of state and government adopted at the beginning of the financial crisis in 1997, reiterates the ambition to 'foster a strong sense of community', and speaks of the vision of creating a 'community of caring societies', 'conscious of its ties of history, aware of its cultural heritage and bound by a common regional identity' (ASEAN Heads of State and Government 1997). In an important ASEAN document, references to people and societies start to appear. Subsequent documents echo the community-building idea and relate it explicitly to the notion

of ‘people-centredness’, which becomes a new buzzword for the organization. The Bali Concord II, which ASEAN leaders adopted in October 2003, mentions the term ‘people/s’ seven times, and formulates the goal that ASEAN remains ‘a dynamic, resilient, and cohesive regional association for the well being of its member states and people’ (ASEAN Heads of State and Government 2003). Finally, the Charter codifies this community-building discourse by committing the organization ‘to intensifying community building through enhanced regional cooperation and integration, in particular by establishing an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community’ (Preamble), and promoting ‘a people-oriented ASEAN in which all sector of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building’ (art. 1.12). These shifts mark a change in the contractual nature of ASEAN, from an intermediate towards an open-ended contract.

At the same time, these contractual changes enabled long-standing demands on the establishment of an EU-type parliamentary institution to become more compelling. When ASEAN started to embark upon the Charter-making process, EU-inspired calls received a new impetus. Several parliamentarians from the region visited the European Parliament and the Parliamentary Assembly of the Council of Europe in Strasburg in 2005, and this ‘stiffened their resolve to “work toward the Asian Parliamentary Assembly,”’ including carving out a stronger role for AIPO (Decker 2008: 327).<sup>8</sup> AIPO transformed itself into the ASEAN Inter-Parliamentary Assembly (AIPA) in preparation for the Charter-making process. Various interview partners voiced their impression that these renewed demands were strongly influenced by inspiration from the European Parliament. A Singaporean AIPO/AIPA delegate stated that advocates of an ASEAN parliamentary institution ‘saw the European Parliament, which is a supranational body powerful enough to legislate for the whole region, and that’s what they saw themselves doing.’<sup>9</sup> A government official similarly mentioned that ‘they saw that the EU has a parliament, and thought: “Why not us?”’<sup>10</sup>

One of the most active and long-standing advocates of a parliamentary institution in ASEAN is Jose de Venecia, former Speaker of the Philippine House of Representatives and former president of AIPO. In 2003, de Venecia co-drafted a Philippine report that reinvigorated interest in the idea of establishing an ASEAN parliamentary institution (AIPA 2013a). In January 2007, he gave a speech to the ASEAN Leaders’ Summit in order to make the case for the establishment of a regional parliamentary institution. The speech is worth quoting at length

<sup>8</sup> Interview with Jose de Venecia, Manila, Oct. 2015.

<sup>9</sup> Interview, Singapore, Sept. 2009.

<sup>10</sup> Interview with Singaporean government official, Singapore, Aug. 2009.

because it contains reference both to EU influence and to the role of contractual open-endedness:

To keep pace with ASEAN's progress toward community, AIPO (now called AIPA) itself is moving toward an ASEAN Interparliamentary Assembly (AIPA)—on the model of continental legislatures: the European Parliament, born in 1962; the Latin-American Parliament, born in 1964; and the African Parliament, born in 2004, that are already well established.

Indeed, Asia—cradle of the great civilizations, cradle of the great religions, and cradle of the great cultures—lags far behind the other continents in this global movement toward the establishment of regional parliaments [...]

Given these precedents, we expect that our ASEAN regional parliament would have a key role [...] in the historic process of Southeast Asian integration... (De Venecia 2007: 5–6)

De Venecia's speech is interesting because it uses the fact that other ROs have established parliamentary institutions as an argument in favour of parliamentarization in ASEAN, also mentioning the European Parliament. At the same time, the speech alludes to the fact that ASEAN's move towards community-building justifies changes in ASEAN's institutions.

These demands made their way into the ASEAN Charter and eventually resulted in the formalized recognition of AIPA as the parliamentary arm of ASEAN. The Eminent Persons Group, nominated by governments to make recommendations on the Charter, undertook a study visit to the EU during their consultations, where their counterparts emphasized that granting parliamentarians formalized access to regional decision-making was a crucial ingredient in rendering an organization more people-oriented.<sup>11</sup> Subsequently, the group recommended 'cultivat[ing] ASEAN as a people-centered organization and [strengthening] the sense of ownership and belonging among its people, including enhancing the participation of [...] AIPA' (Eminent Persons Group 2006: 6). This proposal was taken up by the High Level Task Force, which was created by governments to draft the final Charter. Negotiation documents and interviews suggest that the idea of more structured participation by parliamentarians was largely consensual among governments during the final Charter negotiations (see the accounts in Koh, Manalo, and Woon 2009). Yet legal complications resulting from the fact that not all ASEAN member states were also members of AIPA prevented AIPA's full integration into the organization's decision-making structure.<sup>12</sup>

<sup>11</sup> Interview with Fidel Ramos, Sept. 2009.

<sup>12</sup> Interview with Termsak Chalermphanupap, Jakarta, Aug. 2009. See also 'Weaknesses in Legislative Systems Stall ASEAN Parliament', *Malaysia General News*, 5 July 2007.

Alternative mechanisms had to be found. The formal establishment of regular meetings prior to ASEAN summits reflects this particular need.

Why were governments more willing to accept parliamentary demands for the creation of an ASEAN parliamentary institution this time around? Any explanation for its establishment is certainly multi-causal, and government's willingness to re-establish the credibility and legitimacy of ASEAN in the eyes of important stakeholders of the organization plays a key role, as I have argued elsewhere (Lenz, Burilkov, and Viola 2019). Yet changes in the contractual nature of ASEAN made it easier for parliamentarians to make their voice heard because analogies to the EU appeared more relevant than ever. Even those policy-makers who had previously strictly rejected any comparisons with the EU now endorsed them in public. For example, Singaporean Prime Minister Goh Chok Tong (2002) argued for the creation of an ASEAN economic community in a speech at the World Economic Forum East Asia Economic Summit in 2002, which he described as 'not unlike the European Economic Community of the 1950s'. In a 2007 speech, Secretary-General Ong Keng Yong (2007) remarked: 'It is no accident that ASEAN has been looking at the European Union's rich experience as we map out our own plans for becoming a Community by 2015.' To actors focused on the building of their own ASEAN community, analogies with the EU as a prime example of successful community-building 'made sense'.

More systematic evidence lies in the fact that in the accounts given by the members of the High-Level Task Force that drafted the ASEAN Charter, almost half indicated that the EU served as a useful reference in their endeavours (Koh, Manalo, and Woon 2009). This sense is widely shared among academic observers. Wong, for example, interprets the EU's 'disproportionate influence on the institutional design and evolution' of ASEAN as that of forming a 'passive reference point' (Wong 2012: 671). In the most systematic analysis of the perception of ASEAN's policy-makers of the EU, Yukawa finds a connection between the incidence of references to the EU in ASEAN policy-makers' public statements and the emergence of (economic) community-building. He concludes:

In summary, starting in the 2000s, ASEAN has frequently framed the EU as a model and has actually come to receive support from the EU. Yet this basically applies only to the area of functional cooperation, centering on economic integration, with remarks about 'the EU as a model' appearing after ASEAN itself had come to promote the idea of community. (Yukawa 2018: 334)

This analysis confirms the stipulated link between positive references to the EU and the community-building idea. I interpret this empirical finding as evidence that changes in the nature of ASEAN's contract have made analogies with the EU more plausible and have thereby facilitated the materialization of EU influence.

In fact, such considerations have been voiced publicly. Hadi Soesastro, a member of the influential ASEAN–ISIS network and a participant in discussions regarding the realization of the ASEAN Economic Community (AEC), laid out relevant considerations in a 2008 research report:

The Blueprint is not a detailed agreement with clearly defined targets based on lengthy up-front negotiations unlike that of the North American Free Trade Area (NAFTA). NAFTA is a narrow, yet, a deep integration project and is also not about ‘community-building’ [...] In a sense, the ASEAN process towards realizing the AEC is more like that of the European Union’s (EU) rather than that of NAFTA. (Soesastro 2008: 49)

This statement captures well the idea that broad similarities in purpose make influence from certain types of organizations more palatable than that from others. NAFTA, he suggests, has a narrow focus and is not about community-building, which means that it is less useful as a referent than is the EU, which, by implication, is an open-ended integration project that aims to build a community.

Additional evidence for this claim comes from the fact that following the financial crisis, while a variety of non-state actors, not only parliamentarians, have sought to establish closer links with ASEAN, parliamentarians have been most successful in establishing institutionalized links to participate in ASEAN’s decision-making process. Various civil society groups similarly have pressed to be recognized by ASEAN and to make their voice heard in ASEAN decision-making. In fact, some of these civil society groups may have been more vocal than parliamentarians in the region in advancing their demands. Yet their efforts have fallen short. Gerard argues that civil society organizations have been unable to shape policy despite ASEAN’s commitment to creating a ‘people-centred’ organization because ‘ASEAN’s “people-oriented” shift serves to legitimate its reform agenda’ (Gerard 2014: 267). Legitimation is most successful when it signals to important stakeholders that an organization is ‘desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’ (Suchman 1995: 574). Rendering AIPA rather than other non-state actors ‘*the* key partner in government’, as stated by a media release on the Summit following the adoption of the Charter (ASEAN Summit 2007, my emphasis), promises greater legitimacy benefits because this institutional form is more recognizable among ROs that are engaged in open-ended cooperation.

The contractual nature of an RO thereby conditions the diffusion pressure that other organizations may exert. The functional and normative arguments for why a parliamentary institution may or may not be a ‘good’ institution to have in an RO are generally well known. Yet they are not equally compelling in all ROs. In particular, these arguments are more compelling when the basic purpose of an organization, as expressed in the nature of its contract, are similar across the EU

and other ROs. The establishment of AIPA as an institution of ASEAN is a pertinent illustration of this logic—a logic that operates similarly in the absence of such similarities between the EU and other ROs, as we see in the next section.

### The non-establishment of a parliamentary institution in NAFTA

The North American Free Trade Agreement (NAFTA) is a regional economic agreement between Canada, Mexico, and the United States that aims to create a free trade area in goods, services, and investment. The agreement was adopted in 1991 and entered into force in January 1994. It has gradually eliminated tariffs, reduced non-tariff barriers, liberalized capital movement, and opened up trade in selected services; however, its institutional frameworks remain thin (Duina 2015). Implementation of the agreement has proceeded smoothly and largely according to schedule, with the last of its provisions implemented in January 2008.

NAFTA is rooted in prior economic agreements between the two northern neighbours, the United States and Canada, who had signed a bilateral economic agreement in 1988. Mexico, for its part, reversing decades of inward-oriented economic policies, then sought a free trade agreement with the United States in 1990, through then-President Carlos Salinas. Mexico suffered harshly from the economic crisis that rippled through Latin America in the 1980s, which Salinas sought to remedy through more liberal economic policies and, in order to lock these in, external agreements. Recognizing that ‘the moment was ripe for a historic political reconciliation’, the Bush (senior) administration consented, while Canada could ‘not afford to be absent from the negotiation table’ even though it already had a functioning agreement with the United States (Baer 1991: 132, 141). NAFTA essentially extends the Canada–US Free Trade Agreement to Mexico, with two supplementary agreements—the North American Agreement on Labour Cooperation and the North American Agreement on Environmental Cooperation—which largely reflect the concerns of labour unions and environmentalists in the United States (Duina 2015).

NAFTA is a thinly institutionalized RO without a parliamentary institution. Besides various intergovernmental bodies that are responsible for monitoring the implementation of and further developing liberalization commitments,<sup>13</sup> the organization’s daily business is managed by the three national sections of the secretariat (art. 2002.1, NAFTA 1991). The most elaborate institutional structure in NAFTA is the dispute settlement mechanism. A general procedure according to article 20 of the agreement is supplemented by independent mechanisms on investment disputes (art. 11) and on countervailing duty and antidumping

<sup>13</sup> <http://archive.vn/elIjRj> (last accessed on 22 Feb. 2021).

measures (art. 19). While all three are based on independent rulings by ad hoc panels, the latter two provide for a higher degree of bindingness regarding rulings and retaliatory sanctions in cases of non-compliance. The investment dispute mechanism also provides for the access of private investors to the procedure (Abbott 2000). Besides the dispute settlement mechanism, NAFTA does not dispose of any other delegated institutions. Unlike in many other ROs around the world, not even a single EU-type institutional proposal has ever been proposed and seriously considered in NAFTA. As Bow and Anderson bluntly state, ‘No one argued that North America would be, could be, or should be like Europe’ (Bow and Anderson 2015: 2). Or, in Abbott’s unpretentious words, ‘An approach to delegation modeled on the EU was not politically feasible’ (Abbott 2000: 535). The organization is a prominent case of an RO without a parliament. In a world in which the incidence of parliamentary bodies has grown rapidly even in ROs composed of non-democratic member states, NAFTA increasingly looks like an outlier. This organization, I argue, is instructive in order to study the broader structural conditions that facilitate, or hamper, EU influence.

Alas, why does NAFTA not have a parliamentary institution? It is more difficult to explain the absence of an institution than its presence. Many factors may reasonably account for NAFTA’s ‘parliament-lessness’, but I seek to show that one major reason why such an institution has never been seriously considered is related to the nature of NAFTA’s founding contract. The contract, I argue, heavily constrains the potential for EU influence because it sets member states on a fundamentally different track regarding regional cooperation, compared with their counterparts in Europe. As a result, an EU-type parliamentary institution has rarely been proposed by relevant social groups, even less considered seriously by governments. This stands in marked contrast to the ASEAN experience, where the creation of an EU-type parliamentary institution has been a core part of an ongoing debate about institutional reform in the organization. Below, I review several critical junctures in the evolution of NAFTA where such proposals have been, or reasonably could have been, tabled.

The first critical juncture is the negotiation of NAFTA itself. Formal negotiations began in June 1991 and were conducted in relative secrecy. While coordination with economic interest groups was smooth in all three countries, negotiators tried to avoid wider public debate, since the Canada–US Free Trade Agreement almost faltered over it becoming a major rallying point in the 1988 Canadian elections. Given the detail of NAFTA and the far reach of its provisions—on many fronts, NAFTA trod entirely new ground—negotiations were concluded in record time. Even detailed negotiation histories are entirely silent on a proposal to include a parliamentary institution—such a proposal simply did not exist (Cameron and Tomlin 2001; Boskin 2014). The only institution envisaged from the beginning is a dispute settlement mechanism. This is not surprising, given that negotiators saw their task as negotiating a free trade agreement and ensuring

its implementation. As Jaime Serra Puche, the Mexican lead negotiator of NAFTA, recalls:

The negotiation under Bush was a complicated negotiation but, in a way, it was simple because we had an agreement on where we wanted to get to. We knew that we wanted a free trade agreement with no tariffs, with no obstacles to trade, with investment chapters, with intellectual property, with dispute settlement.

(quoted in Boskin 2014: 22)

The more specific the purpose of an organization and the more detailed the substantive stipulations of an agreement, the less need there is for the design of an elaborate institutional framework that can assist policy-makers in ‘discovering cooperation’ (Marks et al. 2014). As the above quotation indicates, negotiators shared a clear understanding of this narrow purpose from the start. As a result, NAFTA eventually emerged as a fairly complete contract. As Abbott notes:

NAFTA is among the most highly detailed international agreements ever negotiated between governments. [...] NAFTA was drafted at a level of detail substantially higher than the EC treaty, bearing in mind that NAFTA does not envision the adoption of secondary legislation in the sense of the EC treaty.

(Abbott 2000: 524)

As a result of the narrow goal- and government-oriented character of NAFTA, displayed in its founding contract, the institutional structure is light. A Free Trade Commission, a secretariat, around 30 working groups and committees, and the dispute settlement mechanism are ‘exclusively designed for the implementation of the agreement’ (Duina 2015: 179). A parliamentary institution is simply irrelevant in such a context, as are even standing intergovernmental bodies that adopt secondary legislation (Bélanger 2007).

A second critical juncture is the ‘renegotiation’ of NAFTA under the Clinton administration. Once the agreement was adopted in August 1992, politicization skyrocketed. During the 1992 presidential election campaign, Bill Clinton promised a renegotiation of the agreement to accommodate the demands of environmental and labour groups that heavily criticized the agreement. These groups mobilized against what they perceived to be a deal focusing exclusively on economic efficiency gains while neglecting social, welfare, and environmental concerns. Afraid of major job losses and environmental degradation,<sup>14</sup> they demanded more stringent regulations on labour rights and environmental protection. Renegotiations then began soon after Bill Clinton ousted George W. Bush as

<sup>14</sup> An independent in the 1992 presidential race, Ross Perrot famously warned of a ‘giant sucking sound going South’.

President of the United States in January 1993. Clinton was keen to secure supplemental agreements on labour and the environment, but also made clear that the negotiated text itself would not be touched (Boskin 2014: 22). Concluded in September 1993, the North American Agreement on Labour Cooperation (NAFTA 1993a) and the North American Agreement on Environmental Protection (NAFTA 1993b) primarily commit member states to enforcing their own domestic laws on these matters. These agreements were mainly directed at Mexico, where the enforcement of domestic labour and environmental laws had been historically poor (Wold 2008: 210–11). Both agreements also set up a thin institutional infrastructure to monitor implementation, with the latter containing a more robust institutional framework than the former.

Yet, again, there was no debate about any form of parliamentary institution. Both demands by interest groups as well as the negotiation itself were concerned with regulatory issues regarding labour rights and the environment, and institutional debate centred on how to enforce these regulations (see Nolan García 2011). The main purpose was to mitigate the anticipated negative fallout from the trade agreement, the specific details of which had been agreed upon. And even the few NAFTA critics who did make reference to the EU used the Community as a prominent example of a regulatory regime that provides for progressive social policies. Sheldon Friedman, influential economist at the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) at the time, notes, for example, ‘In contrast to the care which has been taken in the EC to undertake economic integration in a manner which avoids “social dumping”, the Bush-Salinas NAFTA will be an open invitation to continue and intensify this already-rampant practice’ (Friedman 1992: 27). It is striking to note the difference in the ways in which the EU is used to legitimize political demands in the two organizations. Whereas the proponents of parliamentarization in ASEAN used the EU as an example of community-building, to which a parliamentary body contributes in important ways, in NAFTA, critics use the EU as an example of a progressive regulatory regime that ‘requires’ certain regulatory policies in order to be considered fair. As Schimmelfennig et al. note:

The strategies pursued by the supporters were tailored to the objections raised by the opponents. As opposition focused on substantive policy concerns, proponents sought to address these concerns not by institutional reform but rather by offering additional guarantees to attenuate fears of negative effects on the environment and working standards. (Schimmelfennig et al. 2020: 183)

A parliamentary body, with its purpose to enable participation by parliamentarians and its concomitant potential to enhance the legitimacy of an organization, was simply not needed, given the particular pattern of contestation that emerged around NAFTA during this early period.

Since the entry into force of NAFTA and its side agreements in 1994, institutional evolution has been minimal, and few additional critical junctures emerged until the recent renegotiation of NAFTA under the Trump administration. With the exception of minor technical matters, such as adjustments in the rules of origin, the substantive stipulations as well as the institutional framework have remained unaltered until the negotiation of the new United States–Mexico–Canada Agreement (USMCA). What is more, even debate about a reform of NAFTA has been relatively limited. For much of the following 20 years, the agreement operated fairly smoothly, and criticism of the agreement has been overwhelmingly directed at its regulatory detail and not at its institutional framework (Bélanger 2007).<sup>15</sup> During his election campaign in 2008 Barack Obama promised to renegotiate NAFTA to enhance the essentially unenforceable labour and environmental regulations from the side agreements, but no progress was made on this front (Jacobs 2010). Instead, Obama shifted his focus to the negotiations of the Trans-Pacific Partnership (TPP) in the context of his strategic ‘pivot to Asia’. According to well-informed accounts, he succeeded in updating many of the NAFTA provisions, including on labour protection and the environment, in this context (Grunwald 2017), but institutional change in NAFTA itself was therefore off the table.

NAFTA became subject to public debate, once again, when President Donald Trump announced during his election campaign that he would renegotiate the agreement, which he saw as ‘the worst trade deal ever made’<sup>16</sup> and ‘unfair to Americans’.<sup>17</sup> Fulfilling a pledge of his election campaign, President Trump sought to make the agreement more reciprocal between the parties. Renegotiations started in June 2017 and were concluded, after more than a year of intense negotiations, on 1 October 2018. The new agreement was signed by the presidents of the three countries in November 2018, and has been approved by all three parliaments. It entered into force on 1 July 2020. While the new agreement contains some changes in substantive provisions, especially when it comes to car manufacturing, trade in agricultural products (especially dairy), and intellectual property protection, the already thin institutional framework from NAFTA was further thinned out (for an overview, see Hufbauer and Gliberman 2018). In fact, negotiations over the maintenance of the existing dispute settlement procedures were

<sup>15</sup> When Vicente Fox became president of Mexico in 2000, he proposed to transform NAFTA into an economic union (‘North American Union proposal’) along the lines of the EU, a proposal which US President George W. Bush harshly rejected (Fox 2007: 101). However, it is unclear whether the proposal was ever a serious suggestion. In 2002, the Canadian Parliament completed a consultation process on the future of North America after 9/11, and proposed a more institutionalized NAFTA that would involve interparliamentary cooperation and, eventually, even a standing court of justice (Bélanger 2007: 210).

<sup>16</sup> <https://www.bbc.com/news/business-45711595> (accessed 22 Feb. 2021).

<sup>17</sup> <https://qz.com/1185878/nafta-negotiations-the-consequences-of-trumps-positions/> (accessed 22 Feb. 2021).

intense because the United States intended to significantly weaken or scrap altogether the three NAFTA procedures. Upon fierce Canadian and Mexican insistence, however, only the investment dispute settlement mechanism (old art. 11) was ‘severely curtailed’ (Hufbauer and Gliberman 2018: 4). After a three-year transition period, the mechanism is scrapped concerning investment disputes between Canada and the United States and limited to certain sectors for investment disputes between the United States and Mexico (see also Gantz 2018). Overall, institutional change in the new agreement is limited.

In sum, there has been surprisingly little debate about the establishment of a parliamentary institution in NAFTA, even though its membership is fully democratic. What are the reasons for this state of affairs? The evidence presented above indicates that most of the contestation around NAFTA focused on substantive issues related to trade liberalization—labour rights, environmental protection, job loss/gain, industrial development, etc.—rather than the agreement’s institutions. While there was some contestation, including among negotiators themselves, regarding the specifics of the dispute settlement procedures, there is little indication that serious proposals were put forward that included an extensive EU-type institutionalization of the agreement. Instead, early proposals in particular which reference the EU construe it as a progressive regulatory regime that avoids ‘social dumping’ through ‘upward social harmonization’, in an attempt to make the analogy resonate with the concerns of a fundamentally different organizational type (see Friedman 1992). The rare proposals that do depict the EU more encompassingly as an open-ended community-building process that would fundamentally change the character of NAFTA never stood a serious chance of being adopted.<sup>18</sup> As Bow and Anderson argue, ‘those that hoped North America could be more than just a preferential trade agreement—and even some that hoped otherwise—could not help but be influenced in their thinking by the European “model” and European-inspired ideas about regions and regionalism’ (Bow and Anderson 2015: 2). In other words, EU-type institutions only ‘make sense’ to political actors when international cooperation is directed at achieving an open-ended purpose. When cooperation serves more narrow purposes, analogies with the EU tend to be far-fetched and serious political discussion tends to revolve around more substantive issues.

## Conclusion

This chapter seeks to determine the limits of EU influence, and argues that contractual open-endedness is a key factor in conditioning its scope. Whereas EU

<sup>18</sup> See e.g. a press conference by the three heads of state in 2007 where President George W. Bush dismissively likens proposals for a North American Union along the lines of the EU as ‘the difference between reality and what some people are talking on TV about’ (White House 2007).

influence is able to operate in ROs that rest on an open-ended contract, it is highly constrained in those ROs whose contract is fixed. This is due to both demand- and supply-side reasons.

On the demand side, ROs that rest on an open-ended contract encounter a higher demand for institutional change because the transnational cooperation problems they engage are likely to evolve over time, which in turn multiplies opportunities for EU influence to make a difference to the institutions chosen. The chapter shows that the frequency of institutional change is distributed highly unevenly across the three categories of contractual open-endedness, with ROs based on an open-ended contract changing their institutions almost three times more frequently than do those ROs that rest on a fixed contract. The paired comparison in the parliamentary dimension of ASEAN and NAFTA also shows that the absence of institutional reform in the latter organization (up to the recent renegotiation of the agreement) has posed a serious constraint on the few advocates of EU-type institutional change who seek to affect its institutional set-up.

On the supply side, proposals for EU-type institutional change are more likely to emerge and to be seriously considered in some organizational contexts than in others. Specifically, actors are more likely to seriously advance such proposals when the organization in question is similar to the EU in terms of the open-ended nature of the contract. The chapter presents quantitative evidence indicating that the EU is more likely to engage actively with those ROs that rest on contracts containing open-ended commitments and thus pursue organizational goals similar to itself. Moreover, the paired comparison between ASEAN and NAFTA shows that local proponents of EU-type institutional change seek to construct analogies between their organization and the EU in order to bolster their claims for EU-type institutional change. Such analogies, however, are more likely to resonate where the basic social purposes of cooperation are plausibly similar, and the nature of an RO's contract is a key organizational characteristic that actors consider when assessing similarity.

PART III  
CONCLUSION



# European Union Diffusion and Other Regional Organizations

## Conclusions

Regionalism may be a European invention, but it is not protected by copyright law!

Pascal Lamy (2001), former Commissioner of Trade

This book seeks to explain the European Union's influence on the process of institution building in other ROs. To what extent, in what ways, and under what conditions have policy-makers elsewhere heeded Lamy's not-so-subtle piece of advice to emulate or learn from the European experience? The literature on regional organization is replete with references to influence from Europe's foremost RO, but few theoretical works have considered it worthy of careful study. If the detailed knowledge of area study specialists and students of comparative regional organization is an indication of the potential worth of a research topic, it is surprising that the topic has received so little attention from International Relations theorists. Despite recent crises, both scholars and policy-makers widely see the EU as the most successful exemplar of regional economic cooperation in the modern era. Debates about regional cooperation in other parts of the world are regularly accompanied by reference to, and comparisons with, the European integration experience. What is more, the EU is the most active supporter of regional organization around the world, dedicating millions of euros and providing sought-after technical expertise for the task. Do these well-known observations have systematic consequences for institutional design outcomes?

This book answers this question in the affirmative. The main argument is that the existence of the EU has made an identifiable and substantive difference to the institutional design of ROs in other parts of the world—counterfactually, ROs would be significantly less institutionalized in the absence of the EU. This is due both to its active influence, through direct engagement with many ROs around the world, and to its passive influence, stemming from the information it provides on institutional effects and from the legitimacy it gives to those institutional forms which it has successfully championed. However, the nature of an RO's contract delimits the causal role of the EU. Its influence is mainly detectable in ROs

that, like the EU itself, rest on an open-ended contract in which the purpose of cooperation is not only to collectively solve transnational problems but also to build and strengthen a regional community. A variety of methods and data, which are unique in their breadth and depth to the study of regional organization, strongly support these arguments.

This final chapter begins by summarizing the main empirical findings on active and passive EU influence as well as on the scope of these pathways. It then considers the theoretical implications of the book's arguments for the literatures on regional organization, international institutional design, and diffusion, and mentions some avenues for future research.

### **Conditions and pathways of EU influence on regional institution building**

Here the main results regarding the conditions and pathways of EU influence and the scope of their operation are briefly sketched.

#### Active EU influence

As a pioneer in the realm of regional organization, the EU has an incentive to promote adoption of its institutional forms beyond its own borders. Institutional pioneers suffer legitimacy costs because the institutional forms they display do not align with recognized organizational patterns. Therefore, such pioneers face incentives to enhance their legitimacy by inducing others to adopt their institutional forms, rendering them less unique (Meyer and Rowan 1977; Meyer 2000). EU external action closely conforms to this idea of organizational entrepreneurship. The EU has actively supported regional institution building since the 1960s, starting with its former colonies in Africa and the Caribbean. Initially, the European Commission provided development aid to regional projects and organizations. Later, this support was integrated into formal cooperation agreements with ROs that also involved interregional meetings between representatives of Community bodies and their counterparts, and political cooperation across a wide range of issues. Following the Cold War, the EU started allocating financial and technical resources directly to the strengthening of regional institutions, and increasingly sought free trade agreements with other ROs as a means to export its regulatory standards. Today the EU continues to engage closely with many ROs around the world, even though the enthusiasm for interregionalism may be vanishing. Especially in trade, the EU has turned towards trade bilateralism in various of the EU's long-standing interregional relationships (Meißner 2019a; 2019b), and its ambitious agenda of regulatory convergence through interregional

trade agreements also appears to be in decline (Young 2015). Nevertheless, the interregional trade agreement with Mercosur that was signed on 29 June 2019 shows that EU interregionalism is all but dead.

What difference have these activities made? The evidence presented in this book shows that the EU's active support for regional organization has contributed—as intended—towards building stronger institutions elsewhere. A quantitative analysis of a sample of 35 of the most important ROs around the world in the period from 1950 to 2017 shows that the level of regional institutionalization varies systematically with the EU's active engagement with other ROs, measured for each RO as a well-integrated index that includes the amount of financial aid given, the extent of interregional contacts between representatives from both sides, and the nature of interregional cooperation agreements. Organizations that engage more closely with the EU are more likely than those that engage sparsely or not at all to have high levels of regional institutionalization, controlling for a host of other explanations that have been advanced to explain the design of international institutions. In sum, active EU influence further strengthens the general trend towards stronger regional institutions since the mid-1980s; counterfactually, this trend would have been less pronounced in the absence of the EU's active engagement with ROs around the world.

How does the EU actively shape regional institution building? I argue that the EU shapes outcomes by affecting governments' institutional preferences and strategies through the provision of financial incentives and new information, which in turn affect the outcome in intergovernmental negotiations. A detailed case study of the establishment of the Tribunal in SADC in 2005—a substantively important case—provides causal leverage in tracing active EU influence because it approximates a least likely case from the perspective of existing theoretical explanations of dispute settlement design. At the same time, the EU has actively engaged with SADC from its inception and the hypothesized scope condition—an open-ended contract—is present during the relevant period.

The case study shows how the EU, through its control over financial resources on which the organization is heavily dependent, shaped governments' strategy over how to balance their two primary collective preferences: attracting international support for regional cooperation and protecting national sovereignty when building regional institutions. During the first decade of the organization's existence, member states were able to pursue these preferences simultaneously as international donors viewed the Southern African Development Coordination Conference, SADC's predecessor, as an important 'stronghold' in the fight against apartheid in South Africa. Thus, they were willing to provide financial and technical support independent of the organization's institutional framework, which reflected member states' collective preference for sovereignty-preserving forms of cooperation. Global and regional transformations in the early 1990s as well as the EU's growing dissatisfaction with the organization's performance changed this

'harmonious' state of affairs. When the EU, which had become the region's most important donor in the meantime, threatened to withdraw funding from the organization in the early 1990s member states were forced to prioritize their preference to attract donor funding over their preference for sovereignty-preserving regional institutions. The codification of the Tribunal in the Windhoek Treaty thereby reflects their strategy to retain donor support in a situation in which the two had come into conflict. Nevertheless, member states' institutional preferences were stacked against the actual implementation of this provision because they weighted their concern for retaining national sovereignty more highly than the effective enforcement of collective decisions, and the SADC Trade Protocol, the most important instrument for advancing regional economic integration that was adopted in 1996, already contained a dispute settlement mechanism. In the late 1990s, however, the external constraints on their preference ordering rose once more. The EU again threatened to withdraw its financial support, changing SADC member state's collective institutional strategy towards the establishment of the Tribunal in order to retain EU support. Given the organization's collective preference for attracting donor support and the fact that the EU's threat to withdraw funding posed a danger to the organization as a whole, the outcome of EU diffusion is a high degree of institutional similarity between the EU and SADC: the SADC Tribunal is a fully-fledged EU-type court.

The case study also shows the dangers associated with the EU being overly assertive when advancing its institution building agenda. After only five years of operation, the SADC Tribunal was disbanded and has been replaced by a less intrusive mechanism. While the fate of the SADC Tribunal is unique among ROs, the way in which the EU contributed to its establishment is not. What is more, even though the EU is generally less assertive in the distribution of its financial support to other ROs, there are other cases in which such behaviour has been reported, such as in Central America.

### Passive EU influence

The EU has acted as the most important institutional innovator in regional cooperation in the post-Second World War era. When the organization was founded in 1951, policy-makers in Western Europe deliberately broke with the traditional model of strictly intergovernmental cooperation to develop a hitherto unprecedented, quasi-constitutional institutional framework that involved extensive delegation to supranational bodies. Supranationalism grew further in the following decades, and today the EU is the most supranational among regional and global organizations. The signature institutions of Europe's supranationalism are the European Commission, with its exclusive right to propose legislation and its ability to bring non-compliance cases to the regional court; the European Court

of Justice, whose rulings have direct effect in member states and which is embedded within national legal systems through a system of preliminary rulings; and the directly elected European Parliament, the second legislator alongside the Council of Ministers. Again, institutional innovators bear considerable costs in terms of legitimacy because they break with established institutional forms and routines, and therefore have an incentive to put their institutional innovations forward for general emulation (Meyer 2000)—an idea that is well captured in Pascal Lamy’s catchy plea, cited at the beginning of this chapter. Numerous policy-makers the world over have expressed their admiration for the process of European integration, and many academic observers advance anecdotal claims about learning and emulation processes from the EU. Do these stand up to systematic scrutiny?

This book demonstrates that the EU has indeed passively shaped processes of regional institution building. A quantitative analysis of 35 important ROs spanning all world regions in the period from 1950 to 2017 shows that the institutionalization of other ROs evolves in line with the EU’s own institutional development. The Community’s level of institutionalization has a statistically significant and substantively sizeable impact on the levels of institutionalization in other ROs, controlling for a host of other potential causes. This finding indicates that the EU systematically serves as a reference point in negotiations over institutional change in other ROs, thereby nudging institutions towards higher levels of institutionalization than would otherwise be the case.

This substantial effect notwithstanding, I suspect that my measure seriously underestimates the EU’s passive influence, for two reasons. First, a more fine-grained measure would capture the EU’s differential reception in other ROs and would thereby seek to tap other sources of such influence that are currently not captured in the measure. The case studies in Chapters 6 and 7 show, for example, that governments and other actors may use EU institutions to legitimize their demands independently of high-profile institutional change in the EU itself. In other words, governments may also enhance regional institutions during periods of relative stagnation in the European integration process, and this likely effect is not captured in the quantitative measure. Second, it may well be that the nature of an RO’s founding contract, which I take as an exogenous influence on regional institution building, is, at least in some cases, endogenous to passive EU influence. One may believe that the success of community-building in Europe inspired policy-makers elsewhere to embark on similar undertakings, and that this is reflected in their founding contracts. Taken together, these reasons suggest that the effects of passive EU influence, which I identify in the book, are overly conservative.

What is the causal process underlying passive EU influence? As with active influence, I argue that passive influence operates through its impact on the definition of governments’ institutional preferences and strategies by providing new information on cause–effect relationships, by enabling learning, and by legitimizing certain institutional forms, facilitating emulation. To the extent that such

preferences and strategies, shaped by learning from and emulating the EU's institutions, exert an identifiable effect on the final outcome, we may say that the EU had an independent impact. This impact certainly varies with the power of the government, or group of governments, that adopt EU-type institutions as their bargaining positions in institutional negotiations; but under the long shadow of the future that characterizes regional cooperation, the influence of even nominally weak governments is often detectable.

The establishment of the Permanent Review Tribunal in Mercosur is a pertinent example. Not only is it a typical case in view of the results obtained in the regression analysis, it is also an unlikely case from the perspective of existing explanations of dispute settlement design. The nominally weak government of Uruguay, and to some extent also of Paraguay, adopted the creation of an EU-type tribunal as their bargaining positions in negotiations over a reform of Mercosur's dispute settlement system. The design of the Permanent Review Tribunal, codified with the Olivos Protocol in 2002 and operationalized in 2004, is closer to Argentina and Brazil's position in establishing a WTO-type dispute settlement system, although Uruguay's insistence on an EU-type system left identifiable traces. In particular, I suggest that the provisions both on consultative opinions and on the possibility of the two disputing parties accessing the Permanent Review Tribunal directly—rendering it a *de facto* single court in this case—would not have formed part of the final outcome had Uruguay not pushed for it. Inclusion of these two institutional features is, therefore, the substantive difference that passive EU influence made to the final outcome, because Uruguay's institutional strategy in these negotiations is directly derived from the model provided by the European Court of Justice. Due to the strong power asymmetries in favour of governments that are highly sceptical concerning independent regional institutions in Mercosur, passive EU influence is detectable but limited. In organizational contexts in which bargaining power is distributed less in favour of institution-averse governments and where governments are less sceptical about EU-type institutional change or even desire it, passive EU influence is likely to be more substantial and widespread.

### Scope of EU influence

My claim that the EU systematically shapes the process of building institutions in other ROs does not imply that EU influence matters always and everywhere. I submit that the operation of the active and passive EU influence pathways is conditional on the nature of the constitutional contracts upon which an RO rests. Such founding or amendment contracts are not all carved of the same wood, establishing institutions and rules in order to advance regional cooperation, but they vary enormously in the extent to which they contain open-ended commitments. Some organizations specify the purpose of cooperation at the outset,

clearly naming the specific cooperation problems they aim to address; these organizations are based on fixed contracts. Other organizations leave the purpose of cooperation vague and unspecified. They seek to build regional communities and ever closer unions not only among governments but also among the member states' citizens. They also address transnational cooperation problems as they emerge over time, and problem-solving goes hand in hand with community building (Hooghe, Lenz, and Marks 2019; Lenz et al. 2015). I call the contracts upon which such organizations rest 'open-ended contracts'.

On this basis, I argue that in organizations that are based on open-ended contracts similar to the EU's contractual basis, EU influence is likely to be extensive. Conversely, organizations that rest on fixed or intermediate contracts severely constrain the potential for both pathways of EU influence. The reason is that, with the exception of outright coercion or conditionality—a situation that is exceedingly rare in the EU's support for regional organization—the EU cannot, by itself, generate the conditions upon which it depends for its institutions to make a difference in negotiations over institutional change. Such negotiations may become necessary, for example, when existing institutions do not operate in the manner initially intended by their creators, or when the emergence of new cooperation problems requires adjustments to the existing institutional framework. In this sense, the EU's influence on regional institution building elsewhere is often what Dill (2015) calls 'causally dependent'.

Even though the specific causes of particular negotiations over institutional change may be diverse, I contend that opportunities for EU influence are more numerous in certain types of ROs, namely those with an open-ended contract. This claim rests on two theoretical considerations. First, organizations with open-ended contracts are more likely to undergo regular institutional change, thereby multiplying the opportunities for EU influence. When an organization is institutionally static, EU institutions may only shape regional institution building once—at the moment of founding. When an organization changes more frequently, opportunities for EU influence multiply. Second, actors who aim to promote EU-type institutional change within an RO find it easier to do so when their organization displays similarity with the EU in a fundamental organizational characteristic, such as the nature of its contract. Such similarities make it easier for proponents of EU-type institutional change to draw credible analogies with the process of European integration, bolstering their institutional demands, while at the same time making it harder for opponents of EU-type institutional change to reject them. The legitimacy of EU-type institutional change, in short, hinges on the relevance of the EU experience to other organizations. Similarity in contractual open-endedness, I argue, proxies such relevance.

What empirical evidence is there for these theoretical claims? A statistical analysis of 35 ROs from around the world in the period from 1950 to 2017 shows that the direct effects of active and passive EU influence are indeed

statistically stronger and substantively larger in organizations that are based on open-ended contracts. Specifically, I find that active and passive EU influence are consistently strongest in organizations with open-ended contracts, mixed in the case of intermediate contracts, and indistinguishable from the null hypothesis of no influence in organizations with fixed contracts. The data also show clearly that the incidence of institutional change is distributed highly unevenly across the three types of RO, with open-ended organizations reforming their institutions much more frequently than those based on intermediate and fixed contracts. Specifically, whereas the former type engages in institutional reform roughly once in a decade, on average, ROs with an intermediate contract reform their institutions once every two decades and those with a fixed contract only every three decades. Thus, opportunities for EU influence are significantly reduced in organizations that rest on a fixed contract compared to the other two categories. I also show quantitatively that affinities between the EU and other ROs shape active EU engagement. The EU supports those ROs that are based on open-ended and intermediate contracts much more frequently than those based on fixed contracts—a trend that has strengthened with the end of the Cold War. Today, it actively engages the majority of ROs based on open-ended contracts, while this is not the case for the other two RO types.

A detailed comparison of the parliamentary dimension in ASEAN and NAFTA shows how, specifically, contractual affinities between organizations delimit the causal role of EU influence. This paired comparison has the virtue that, given explanations for parliamentarization in the existing literature, NAFTA is expected to be more likely than ASEAN to create a regional parliamentary institution because its membership is composed of established democracies; but the opposite actually happened. Whereas ASEAN, an organization composed mainly of autocracies and with limited authority, granted consultative rights to the ASEAN Interparliamentary Assembly in 2010, NAFTA does not even have an unaffiliated parliamentary body, nor has the creation of a parliamentary institution as an official institution of NAFTA ever been seriously entertained by governments. Process-tracing the debates over institutional change at critical junctures of the organization's lifetime, I find that references to the EU are much more frequent in ASEAN than they are in NAFTA. When the EU is nevertheless invoked in debates over institutional change in NAFTA, similarities are constructed not around community-building and contractual open-endedness but around regulatory politics, seeking to make the EU relevant to NAFTA's specific and narrow purpose—a move that ultimately fails. When proposals do emerge for a reconstruction of NAFTA along EU lines, these are outright rejected by key decision-makers as utterly irrelevant.

In ASEAN, references to the EU have occurred frequently throughout ASEAN's existence and form a key element of the politics surrounding regional parliamentarization. From the mid-1970s onwards, parliamentary actors in ASEAN

promoted the establishment of a parliamentary institution with a formal affiliation to the organization, primarily by reference to the European Parliament. At the same time, they established regular contact with their counterparts in the EU in order to legitimize their efforts. During most of this period, governments did not seriously consider these demands—and indeed rejected analogies to the EU with reference to ASEAN's distinct purpose. Strikingly, however, this changed when governments started debating a major reform of the association that aimed to construct an ASEAN community. Ultimately culminating in the adoption of the ASEAN Charter, parliamentary demands for institutionalized participation were taken more seriously by policy-makers and ultimately accepted. When the Charter was adopted, even policy-makers from countries that had long rejected any comparison with the EU started referring to it as inspirational—and relevant. A tightly controlled comparison of two cases with contrasting and—in light of the existing literature—anomalous outcomes suggests that the ability of actors to draw credible analogies with the EU to legitimize their own demands for EU-type institutional change is indeed a relevant factor delimiting the causal role of EU influence.

### **Theoretical implications**

In this section I develop the implications of the book's main findings for the literatures on regional organization, international institutional design, and diffusion, and sketch some promising avenues for future research.

#### **Regional organization, in Europe and beyond**

The first and perhaps most important implication of the argument advanced in this book is that existing theories of regional organization are seriously incomplete because they emphasize causal factors at the intraregional and global levels of analysis and neglect interorganizational influences.<sup>1</sup> As detailed in Chapter 2, such accounts explain the emergence and evolution of ROs as the result of intraregional constellations of preferences, institutions, or identities or of global influences that stem from globalization or external security threats (an overview is provided in Börzel 2016). In so doing, they conceive of ROs as atomistic entities that develop independently of each other. Indeed, the existing literature in large part fails to recognize that institutional choices are, rather than independent, regularly interdependent between organizations, and specifically between the EU and other ROs. This book demonstrates that the EU systematically shapes

<sup>1</sup> I discuss my contribution in relation to the growing literature on diffusion, including between ROs, below.

processes of regional institution building both actively, by providing financial support, engaging their counterparts in other organizations, and concluding interregional agreements, and passively, by serving as a reference point that others learn from and emulate. This is not to deny that other factors crucially shape the process of regional institution building; they do. However, the analysis in this book suggests that any account of the phenomenon is seriously incomplete unless it takes into account the influence of the EU, both as an active promoter of regional institution building and as a successful pioneer. The EU makes an identifiable difference.

The neglect of interdependent decision-making is one reason why integration theories developed in the European context are difficult to transfer to other parts of the world. In the 1970s, neofunctionalists abandoned their endeavour to develop a general theory of regional integration, while liberal intergovernmentalism has barely been applied outside of Europe. It is well known in diffusion research that explanations for institutional innovations differ fundamentally from explanations for subsequent institutional adoption (Finnemore 1993). Institutional innovations deviate from established institutional forms and practices, and their explanation therefore requires a theoretical focus on endogenous conditions that can account for such deviation. As a result, it may be apt for theories of European integration to set aside diffusion explanations *a priori*.<sup>2</sup> For example, Moravcsik (1998) notes in passing, citing Perry Anderson, that European institutions ‘emerged for the most part not through inattention, emulation, or revolution’ (p. 68), and then moves on to develop his liberal intergovernmentalist theory of integration. However, if we aim to explain regional cooperation and integration beyond Europe, the neglect of diffusion explanations constitutes a serious omission; beyond the explanation of an institutional innovation or innovator, diffusion has to be taken seriously as an explanation, for the reasons developed in this book. In line with this observation, one of the most successful theories of regional integration—Walter Mattli’s (1999) *The Logic of Regional Integration*—is deliberately not derived from the European experience, and takes diffusion in the form of competition between ROs seriously.

Recent research shows that contractual incompleteness is a key determinant of the institutional evolution of international organization because it provides an endogenous capacity for institutional change (Hooghe, Lenz, and Marks 2019). I build on this literature to suggest that what I term ‘contractual open-endedness’<sup>3</sup> delimits the causal role of EU influence. Out of the contract literature has emerged a productive research programme in many fields of social sciences, including

<sup>2</sup> There is some debate, however, especially among historians, as to whether the EU has not also extensively emulated institutional models from elsewhere (see Patel 2013; Patel and Calligaro 2017).

<sup>3</sup> I find this term more apt than ‘contractual incompleteness’ because incompleteness generally focuses on the specificity of individual provisions, whereas open-endedness gauges the nature of the purpose of an RO.

political science and International Relations (see e.g. Lake 1996; Cooley and Spruyt 2009; Keohane 1984; Diez 2014), but it has been completely ignored in the study of regional organization. I seek to reconnect the study of contracts and of regional organization. Open-ended contracts provide more numerous opportunities for EU influence to make a difference because they require more frequent institutional adaptation, and they also make it easier for actors to draw credible analogies with the EU, which is also based on an open-ended contract, thereby legitimizing demands for EU-type institutional change. Thusly interpreted, contractual open-endedness is a fundamental organizational characteristic that creates ‘cultural’ similarities and differences between organizations and thereby shapes the nature of their relationship. It is compatible with the relational ontology that underlies the analysis in this book.

How do the book’s findings speak to recent research that highlights the fact that regional organizations in the global South operate in different ways and are less successful than in Europe (Gray 2018; Gray and Slapin 2012; Vinokurov and Libman 2017)? I have not examined specifically the consequences of EU diffusion, even though the case of the disbanding of the SADC Tribunal, discussed in Chapter 5, indicates that it may sometimes lead to institutional ‘backlash’. In any case, this book’s findings are not to be interpreted as suggesting that EU-type institutions will lead to EU-type outcomes in other ROs (see also below). Institutional functioning and other outcomes of regional organization are not a function of institutions alone but of complex interactions between institutions and the wider social, cultural, and material context in which they operate. If these contexts differ, so will the functioning of institutions that are similar in terms of their design (Lenz 2013; see also Alter and Helfer 2010). It is inherent in diffusion processes that the ideas, institutions, or policies that travel to places other than the ones where they originated will display a worse ‘fit’ with local conditions—they are ‘decoupled’ to some extent, at least initially. This implies that they will generally not display the same type or degree of functionality as they do in their ‘home’ setting. Whether diffusion, from the EU or other sources, is a relevant cause of the comparatively worse performance of ROs in the global South merits further research.

Nevertheless, diffusion research also suggests that actors regularly adopt external institutions not primarily to enhance the functionality of organizations but for purposes of recognition and legitimacy (Meyer and Rowan 1977). This suggests that we may be applying the wrong measuring rod to assess their success; rather than measuring them purely by their functionality, we should also assess whether anticipated legitimacy benefits materialize. The difficulty is that these two important goals of policy-making tend to exist in tension. Whereas legitimacy gains often stem from the familiarity of institutional forms, efficiency tends to necessitate institutions that are tailor-made to fit specific local conditions, pushing them towards ‘uniqueness’. How actors in other ROs generally weigh the balance between the legitimacy gains that they anticipate by emulating institutions

from the EU or elsewhere, and the loss of efficiency that this may entail, provides a promising area for future research.

The findings of this book also contribute to the large literature on the external relations of ROs and, above all, that of the EU. This literature has analysed in detail how ROs conduct their foreign policy, the determinants of their activism in international forums, and the nature of their ‘actorness’ (Smith 2014; Hulse 2014; Panke, Lang, and Wiedemann 2018). However, much less research attention has been given to the actual *effects* of EU foreign policy outside of the enlargement context and its direct neighbourhood (Ademmer and Börzel 2013; Schimmelfennig and Sedelmeier 2005). This holds also for the literature on the EU’s interregional relations (Söderbaum and Van Langenhove 2005; Hardacre 2009). Relatedly, while the notion of EU normative power centres squarely on the EU’s ability to spread its ideas by constituting a model of regional cooperation, whether such indirect influence has actually materialized is largely unknown (Manners 2002; Lenz 2013). This book adduces extensive evidence to lend empirical support to many of these claims. It shows that several decades of actively promoting regional cooperation around the world and developing relations with other ROs has affected processes of regional institution building elsewhere. The findings thus suggest that the EU can exert significant influence even in contexts beyond its immediate neighbourhood, where interdependence is lower and the EU’s material power diminishes. However, it also shows that its influence is dependent on facilitating conditions over which the EU has little direct control, such as the nature of another RO’s founding contract. To what extent other ROs shape their peers along the lines of the EU through ideational attraction and direct engagement is a prominent route for future research (for a pioneering study in this respect, see Reiss 2022).

### International institutional design

The book examines the conditions and causal processes that shape the design of international institutions—a vibrant field of research in International Relations. The dominant rational design literature interprets international institutions as responding to functional demands emerging from the specific cooperation problems that states encounter (Keohane 1984; Koremenos, Lipson, and Snidal 2001; Tallberg et al. 2013). It shares with a large body of literature on regional organization the analytical focus on internal, especially functional, causal factors. Recent work has rightly criticized this approach for neglecting the contextual nature of institutional design. The latter does not occur in a ‘bargaining vacuum’; it is affected by the institutional or organizational context in which a design decision is being negotiated. Yet, whereas these critiques have focused on the presence or absence of existing and prior agreements between prospective partners in ‘new’

cooperation (Copelovitch and Putnam 2014), institutional alternatives in the wider policy regime (Jupille, Mattli, and Snidal 2013), and the role of international bureaucrats in design negotiations (Johnson 2013), this book focuses on the diffusion of institutions between ROs. The book demonstrates that interorganizational dynamics matter, especially those that emanate from prominent organizational pioneers. From this perspective, the context that is relevant to our understanding of international institutional design encompasses not only the institutional status quo, prior institutional experience, and the interests of non-state actors in the design process but also the institutional activities of other, related organizations.

This book suggests that a major shortcoming of the existing literature on rational design is its failure to consider how the emergence of successful institutional designs in other organizations alters the context in which institutional design choices are made subsequently. With its broad focus on efficiency considerations, the bulk of this scholarship downplays the bargaining dynamics that shape negotiations over institutional design between governments. In other words, these broadly functional explanations are surprisingly ‘politics-free’ (see Duffield 2003: 417–18). In line with recent calls for an examination of the *process* of institutional design, and not merely its outcomes (Thompson 2010), the present book offers extensive evidence on the underlying bargaining dynamics that shape design decisions. In so doing, it helps reconnect the rational design literature with its focus on overall efficiency with a key concern of political science and International Relations, which is to understand how actors come to adopt certain positions in political negotiations and how strategic interactions among them produce negotiated outcomes.

How does the argument presented in this book generalize beyond the realm of regional organization? For one, my argument implies that EU influence is likely to be limited among global organizations because the overwhelming majority of these organizations rest on a fixed contract (Lenz et al. 2015). Global organizations should take inspiration from organizations that are more similar to themselves in terms of the social purpose they serve because diffusion, I argue, is bounded by the plausible construction of ‘cultural’ similarity. The great majority of these organizations pursues a well-specified purpose, and they tend to be limited to governments as the relevant actors—community-building is generally not part of their mandate. This means that EU institutions are less likely to shape the design of institutions in task-specific global organizations. This may suggest that the ‘regimes of diffusion’, when it comes to global rather than regional organizations, are task-specific and revolve around prominent organizations in specific issue areas. While the UN may be a relevant focal organization in the realm of international security, the WTO may be the reference point in international trade governance and the World Health Organization in the international governance of health. In line with this argument, Heldt and Schmidtke (2019) have recently proposed that the

World Bank serves as a focal organization in the field of multilateral development finance (on focal organizations in international relations, see Jupille, Mattli, and Snidal 2013). Tackling questions about the ways in which task-specific organizations serve as focal organizations for their peers and which organizations have such a status offers a fruitful avenue for future research.

More broadly, this study emphasizes a neglected reason for why political institutions regularly change. A large literature in political science, sociology, and cognate disciplines has identified the dynamics that stabilize institutional arrangements and make departure from the status quo difficult. One reason for the stickiness of institutions is their taken-for-granted nature. North (1990), for example, stresses how institutional adaptation is constrained by ‘routines, customs, traditions, and conventions’ which have ‘tenacious survival ability because they have become part of habitual behavior’ (p. 83). Such taken-for-grantedness rests, at its core, on an inability of political actors to imagine alternative institutional arrangements. This inability is undermined by available models that display successful alternatives. Akin to a role model in sports that drives admirers to continuously seek to develop and learn, institutional ‘role models’ both free organizational actor’s imagination of institutional alternatives and legitimize these alternatives, thereby facilitating institutional change. The EU has regularly assumed such a role in the development of regional institutions, capturing local actors’ imagination concerning potentially viable institutional alternatives to the status quo. The existence of such successful institutions elsewhere is one reason why ‘there is nothing automatic, self-perpetuating, or self-reinforcing about institutional arrangements’ (Mahoney and Thelen 2010: 8). Successful organizational pioneers and the institutional models they advance contribute to undermining the reproduction of institutions because such pioneers regularly induce new institutional preferences and strategies that pose a threat to existing institutional compromises. The vociferous debate about the ‘China model’ as a potential alternative to liberal democracy prominently attests to this dynamic.

## Diffusion

The literature on diffusion has accumulated large amounts of evidence to suggest that institutional or policy choices are regularly interdependent across units of analysis; they cannot be understood in isolation (for overviews, see Gilardi 2012; Graham, Shipan, and Volden 2013). However, the overwhelming focus of these studies concerns diffusion between national polities and other hierarchically organized units of political organization (federal states, cities, etc.). Diffusion between IOs has almost been completely neglected.<sup>4</sup> Moreover, the literature

<sup>4</sup> To the extent that international organizations figure at all, they serve as promoters or channels of cross-national diffusion (see e.g., Fink 2013; Finnemore 1993; but see Sommerer and Tallberg 2019).

displays a style of theorizing and analysis that emphasizes broad structural arguments about convergence and increasing similarity in outcomes, but largely fails to analyse actors and the dynamics of their interactions. As a result, it is often unclear how diffusion arguments connect to a key concern in international relations, namely to understand the dynamics of decentralized bargaining among sovereign governments.

The present study suggests that analysing diffusion between IOs constitutes fertile ground for developing a more actor-oriented understanding of diffusion that takes seriously the basic insight that explanations in political science should also delineate how environmental incentives and constraints shape the purposive choices of actors (Lake and Powell 1999). The reason is that, unlike diffusion between the hierarchically organized units that have dominated the literature, IOs are decentralized settings in which outcomes are the result of bargaining between sovereign governments with heterogeneous preferences. It is difficult to understand diffusion between IOs without taking this difference in context seriously. This book proposes a heuristic model that reconnects these two concerns. It shows how institutional innovations in some organizations affect institutional outcomes in other organizations through their influence on governments' institutional preferences and strategies, which, in turn, shape international intergovernmental negotiations. The model implies that institutional innovations in one organization may affect the institutional preferences of governments in other organizations in different ways, thereby leading to various degrees of institutional adaptation rather than the simple adoption of foreign institutional models. In short, the diffusion effects are likely to be smaller in the hard-fought world of international politics, and are only rarely expected to lead to convergence with individual institutional models.

The analysis also shows that organizational pioneers, such as the EU, are important providers of institutional designs for other ROs, thereby answering the seemingly simple question of where the diffused institutional designs actually come from. Quantitative studies of diffusion in particular have had a hard time answering this question because they generally conceptualize diffusion in terms of horizontal connections between units of analysis that are modelled through spatial lags, sometimes in a strictly dyadic set-up. The analytical concern is with identifying relevant connections through which diffusion occurs. This approach has been powerful in terms not only of establishing that policy-making is regularly interdependent between organizations but also of identifying relevant 'reference groups' that facilitate diffusion. However, this book suggests that such studies tend to misconceive international diffusion processes as overly decentralized and uncoordinated, with no identifiable 'centre'. Instead, the book indicates that institutional diffusion can be an asymmetrical process in which influence primarily flows outwards from important institutional pioneers. In this sense, the present study reminds scholars that diffusion processes may well be structured in a centralized way, in which one node is much more central than others in the

network of certain organizations. Recent research on network topography confirms that ‘complex systems [tend] to produce asymmetric network structures, in which some nodes are “hubs”, and are far more connected than others’ (Farrell and Newman 2019: 45). Given the EU’s economic power and its manifold connections with other regional organizations, interorganizational diffusion in this field may well remain characterized by a ‘hub-and-spokes’ pattern centring on the EU. This supposition bears further scrutiny in future research.

A natural starting point is to focus on the most central node in a network—the most prominent organizational pioneer—in analysing the diffusion of institutional forms across IOs. However, there are various potential sources of diffusion, and further research may investigate the conditions under which one source of diffusion is chosen over another (see Baccini, Dür, and Haftel 2015; Reiss 2022). An implication of my argument about the role of contractual open-endedness in delimiting the causal role of EU influence is that, whereas the EU is the central reference point for organizations that pursue a community-building purpose, other reference points are more relevant in other types of organization. Task-specific IOs, such as NAFTA, may draw more systematically on organizations that pursue similar purposes of trade liberalization, such as the WTO. However, the case study on the establishment of the Permanent Review Tribunal shows that even in IOs based on an open-ended contract, several institutional models may compete for influence: Uruguay and to some extent also Paraguay favoured an EU-type court, whereas Argentina and also Brazil promoted a WTO-type tribunal. So, there is discernible variation in reference points even within ROs based on open-ended contracts. Future research may theorize such variation below the structural organizational level at which I theorize the scope condition of EU influence. Why do states turn to a specific reference point, and not others, in defining their institutional preferences and strategies? Future research may also examine the conditions under which the members of an organization do not simply draw on diverse institutional models—maybe those that are most suitable to advancing their individual preferences—but develop a common understanding about the most appropriate model that best enhances their collective interest.

Understanding the complex politics of diffusion in International Relations is of growing importance because the relevance of diffusion as a factor shaping international institutional design is bound to increase. Due to the growing complexity of the global governance architecture and growth in the overlap of international institutions (Alter and Raustalia 2018; Haftel and Lenz 2021), interactions between organizations will multiply, and this provides fertile ground for the diffusion of institutional and policy models. Recent research shows that connectivity between IOs facilitates diffusion, and may even lead to institutional convergence (Sommerer and Tallberg 2019). The relevance of diffusion is here to stay.

# Appendixes

## APPENDIX A

### The Dependent Variable 'RO institutionalization'

The dependent variable 'RO institutionalization' consists of four components that are detailed below. It draws on, and re-arranges, the 'delegation' measure in the Measure of International Authority (MIA) dataset (Hooghe et al. 2017).

#### I. Institutionalization of a general secretariat

Every RO in the dataset has a secretariat with infrastructural functions such as running the headquarters, organizing meetings, and maintaining records. However, the extent to which the secretariat carries out executive functions, monitors compliance, and facilitates member-state bargaining varies considerably. A general secretariat cannot reasonably be expected to be a final decision-maker, and so the coding assesses the extent to which the secretariat can go beyond the infrastructural functions to be an agenda setter.

- **GS1: *Existence*.** Does the organization have an independent secretariat with administrative functions (0, 1)?
- **GS2: *Membership accession*.** Is the secretariat authorized to vet, solicit, or negotiate membership of the RO (0, 1)?
- **GS3: *Membership suspension*.** Is the secretariat authorized to initiate the suspension of membership (0, 1)?
- **GS4: *Constitutional amendments*.** Is the secretariat authorized to initiate or negotiate constitutional amendments (0, 1)?
- **GS5: *Substantive non-compliance*.** Is the secretariat authorized to initiate a formal proceeding against a member state in non-compliance with RO rules (0, 1)?
- **GS6: *Financial non-compliance*.** Is the secretariat authorized to initiate a formal proceeding against a member state in financial arrears (0, 1)?
- **GS7: *Drafting the budget*.** Is the secretariat authorized to (co-)draft the annual budget of the RO (0, 1)?
- **GS8: *Policy initiation*.** Is the secretariat authorized to propose one or more of the following: recommendations, resolutions, or declarations; programmes or projects; laws, regulations, decisions, or directives; protocols or conventions (0, 1)?
- **GS9: *Monopoly of policy initiation*.** Is the role of the secretariat in initiating policy (a) not mandated; (b) mandated by the RO's founding document and shared with other bodies; (c) anchored in the RO's founding document and exclusive (0, 0.5, 1)?

- **GS10: *Executive powers.*** Is the secretariat of the RO authorized to carry out executive functions, such as framing multi-year strategic plans, drafting policy, or turning general legislation into directives or executive orders (0, 1)?
- **GS11: *Monopoly of executive powers.*** Does the secretariat monopolize these powers or does it share them with another body (0, 1)?

**GS\_Institutionalization** is calculated as a summated rating scale ranging from 0 (no institutionalization) to 11 (maximum institutionalization) and rescaled from 0 to 1.

## II. Institutionalization of a parliamentary body

Parliamentary bodies are bodies composed of elected parliamentarians that are either directly elected or nominated by national parliaments.

- **PB1: *Existence.*** Is there a parliamentary body in the organization (0, 1)?
- **PB2: *Formal status.*** Does the parliamentary body have some formal status, e.g. (a) is it incorporated in the treaty or convention, in a separate protocol, or in the RO's organogram or website as a formal consultative body; (b) does it possess formal rights of consultation on a regular, predictable basis (0, 1)?
- **PB3: *Direct election.*** Is the parliamentary body directly elected (in more than half of the member states) (0, 1)?
- **PB4: *Membership accession.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?
- **PB5: *Membership suspension.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?
- **PB6: *Constitutional amendment.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?
- **PB7: *Budgetary allocation.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?
- **PB8: *Budgetary non-compliance.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?
- **PB9: *Policy making.*** Does the parliamentary body have a right to initiative (0.5) or legislative competence (1)?

**PB\_Institutionalization** is calculated as a summated rating scale ranging from 0 (no institutionalization) to 9 (maximum institutionalization) and rescaled from 0 to 1.

## III. Institutionalization of other non-state bodies

ROs may also engage other bodies composed of non-state actors, such as those composed of labour and business representatives, of representatives from subnational units, of indigenous people, or of representatives from non-governmental organizations. These bodies are, at the most, consultative in nature; they do not have legislative competences. But they vary in the extent to which they exist, are formalized, and have a right to initiate policy across six decision areas. A non-state body is coded as existing when there is a formal regional body that has among its objectives to contribute to regional cooperation under the respective RO. I code up to two consultative bodies. A few organizations feature

separate labour and business councils, but those are coded as one because they tend to be integrated in most organizations.

- **NS1: *Existence*.** Does the organization have a body composed of non-state actors (0, 1)?
- **NS2: *Consultative status*.** Does this body have some formal status, e.g. (a) is it incorporated in the treaty or convention, in a separate protocol, or in the RO's organogram or website as a formal consultative body; (b) does it possess formal rights of consultation on a regular, predictable basis (0, 1)?
- **NS3: *Right to initiative*.** Does this body have a right to initiate policy in membership accession, membership suspension, constitutional amendments, budgetary allocation, budgetary non-compliance and policy (0–3)? Agenda-setting competences in each decision area score 0.5.

**NS *Institutionalization*** is calculated as a summated rating scale ranging from 0 (no institutionalization) to 10 (5 points for each of up to two bodies) (maximum institutionalization) and rescaled from 0 to 1.

#### IV. Institutionalization of judicial bodies

This component conceives legal dispute settlement as a continuum from low to high legalization that is assessed using seven dimensions. 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 James McCall Smith's (2000) measure of dispute settlement in regional economic agreements. When there are two separate dispute settlement streams, I code the more authoritative one.

- **JB1: *Is the dispute settlement system obligatory (0/1)?*** An RO scores 1 if the dispute settlement system is obligatory, that is, member states cannot opt out of the system. This criterion applies, as is often the case, if dispute settlement procedures are part of a legal document that is separate from the political RO contract.
- **JB2: *Is there an automatic right for third-party review of disputes concerning member state compliance (0/0.5/1)?*** An RO scores 1 if a member state can initiate litigation over the objections of the party litigated against (automatic right); and 0.5 if access to third-party dispute settlement depends on the consent of a political body.
- **JB3: *Is the composition of the tribunal ad hoc or standing (0/0.5/1)?*** An RO scores 1 if there is a standing tribunal; and 0.5 if there are ad hoc tribunals; no tribunal gets a score of 0.
- **JB4: *Is adjudication binding, conditionally binding, or non-binding (0/0.5/1)?*** The assessment is based on explicit language in the treaty, convention, or protocol that sets up the dispute settlement mechanism. Conditional bindingness is applicable when: (a) a state consents *ex ante* to bindingness; (b) a state can register a derogation or exception; or (c) a decision requires post hoc approval by a political body.
- **JB5: *Do non-state actors have access to dispute settlement (0/0.5/1)?*** Non-state actors are understood to be third-party IOs, parliaments, trade, business or public interest groups, or individuals. Access means they can take a member state or a body of the RO to court for violation of rights that evolve from the contract. If no non-state actors have legal standing, an RO receives a score of 0; if only the international secretariat (or other RO body) has standing, an organization scores 0.5; 1 is the score when the range of non-state actors with legal standing is diverse.

- **JB6:** *Is there a remedy for non-compliance to the ruling (0/0.5/1)?* ROs score 1 if rulings take direct effect, i.e. they bind domestic courts to act. They score 0.5 if the remedy for non-compliance is retaliatory sanctions; and 0 when no remedies exist.
- **JB7:** *Is there a preliminary ruling system of national court referrals (0/0.5/1)?* ROs score 1 if preliminary rulings are compulsory, i.e. domestic courts must refer cases of potential conflict between national and supranational law to the supranational court or must abide by supranational rulings; and 0.5 if preliminary rulings are optional.

*JB\_Institutionalization* is calculated as a summated rating scale ranging from 0 (no institutionalization) to 7 (maximum institutionalization) and rescaled from 0 to 1.

*RO\_Institutionalization*, the aggregate measure, sums up the four rescaled components and normalizes the final score again, generating a score between 0 and 1 for each year of a given RO's existence.

APPENDIX B

## Summary Statistics

	Mean	SD	Min	Max
RO institutionalization	0.229	0.159	0	0.67
Contractual open-endedness	2.128	0.738	1	3
EU engagement (active influence)	0.133	0.229	0	0.907
EU institutionalization (passive influence)	0.769	0.098	0.524	0.871
Regional diffusion	0.229	0.103	0.023	0.404
Global diffusion	0.229	0.073	0.098	0.334
Intra-RO trade	17.19	17.039	0	75.506
Power asymmetry	4.991	4.157	1	22.831
Democracy	13.09	6.109	1.333	21
Members	12.267	10.6	3	53
GDP per capita	12830.09	12955.76	410.285	73829.34
Cold War	0.420	0.494	0	1
Globalization	52.182	13.724	28.709	89.766
Observations	1565			

## Correlation matrix

	Institution- alization	Contractual open- endedness	EU engagement	EU institution- alization	Regional diffusion	Global diffusion	Intra-RO trade	Power asymmetry	Democracy	Members (log)	GDP per capita (log)	Cold War	Globalization
Institutionalization	1.000												
Contractual open-endedness	0.347 (0.000)	1.000											
EU engagement	0.508 (0.000)	0.302 (0.000)	1.000										
EU institutionalization	0.421 (0.000)	0.046 (0.071)	0.417 (0.000)	1.000									
Regional diffusion	0.033 (0.199)	0.041 (0.106)	-0.010 (0.686)	0.087 (0.001)	1.000								
Global diffusion	0.048 (0.062)	0.012 (0.627)	0.022 (0.401)	0.241 (0.000)	0.492 (0.000)	1.000							
Intra-RO trade	0.204 (0.000)	-0.079 (0.002)	-0.106 (0.000)	-0.050 (0.057)	-0.026 (0.318)	0.007 (0.799)	1.000						
Power asymmetry	-0.005 (0.844)	-0.065 (0.016)	-0.157 (0.000)	0.057 (0.036)	-0.015 (0.585)	0.010 (0.704)	0.363 (0.000)	1.000					
Democracy	0.364 (0.000)	-0.127 (0.000)	0.135 (0.000)	0.183 (0.000)	0.011 (0.675)	0.052 (0.042)	0.460 (0.000)	0.012 (0.661)	1.000				
Members (log)	0.077 (0.002)	0.038 (0.129)	-0.092 (0.000)	0.110 (0.000)	0.009 (0.730)	-0.003 (0.912)	0.310 (0.000)	0.698 (0.000)	-0.116 (0.000)	1.000			
GDP per capita (log)	0.288 (0.000)	-0.273 (0.000)	0.102 (0.000)	0.275 (0.000)	-0.080 (0.002)	0.007 (0.779)	0.347 (0.000)	-0.052 (0.054)	0.418 (0.000)	-0.070 (0.006)	1.000		
Cold War	-0.351 (0.000)	-0.043 (0.089)	-0.373 (0.000)	-0.870 (0.000)	-0.104 (0.000)	-0.280 (0.000)	0.040 (0.121)	-0.050 (0.066)	-0.196 (0.000)	-0.099 (0.000)	-0.234 (0.000)	1.000	
Globalization	0.006 (0.817)	0.026 (0.344)	0.041 (0.143)	0.125 (0.000)	0.110 (0.000)	0.203 (0.000)	-0.013 (0.645)	0.018 (0.557)	-0.029 (0.293)	0.002 (0.945)	-0.046 (0.096)	-0.189 (0.000)	1.000

APPENDIX C

# Robustness Checks

**Table C.1.** Testing for reverse causality

	Outcome variable: <i>EU engagement</i>		
Contractual open-endedness	-0.004 (0.097)		
RO institutionalization		0.138 (0.117)	-0.021 (0.216)
* <i>Intermediate contract</i>			-0.208 (0.305)
* <i>Open-ended contract</i>			0.312 (0.327)
Regional diffusion	0.728** (0.322)	0.724** (0.319)	0.728** (0.320)
Intra-RO trade	-0.003 (0.008)	-0.003 (0.008)	-0.003 (0.008)
Power asymmetry	-0.006 (0.012)	-0.007 (0.011)	-0.006 (0.012)
Democracy	0.016 (0.011)	0.015 (0.011)	0.015 (0.011)
Members (log)	-0.130 (0.160)	-0.131 (0.160)	-0.133 (0.160)
GDP per capita (log)	0.030 (0.067)	0.031 (0.067)	0.030 (0.068)
Cold War	-0.051 (0.037)	-0.051 (0.037)	-0.051 (0.037)
Globalization	-0.003 (0.005)	-0.003 (0.004)	-0.003 (0.004)
Constant	-0.100 (0.751)	-0.120 (0.704)	-0.110 (0.710)
R <sup>2</sup> : within	0.368	0.369	0.370
R <sup>2</sup> : between	0.047	0.051	0.051
R <sup>2</sup> : overall	0.090	0.094	0.094

Note: All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table C2.** EU influence and *RO institutionalization*, with European ROs excluded

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Contractual open-endedness	0.124** (0.058)						0.136** (0.051)
EU engagement (active influence)		0.303*** (0.061)	0.141* (0.075)			0.273*** (0.059)	0.271*** (0.057)
* <i>Open-ended contract</i>			0.210** (0.078)				
EU institutionalization (passive influence)				0.634*** (0.121)	0.670*** (0.143)	0.421*** (0.090)	0.453*** (0.090)
* <i>Fixed contract</i>						-0.453** (0.192)	
* <i>Open-ended contract</i>						0.231*** (0.076)	
Regional diffusion	0.187 (0.205)	0.390* (0.220)	0.311 (0.224)	0.068 (0.208)	-0.070 (0.208)	0.245 (0.204)	0.146 (0.196)
Intra-RO trade	-0.001 (0.004)	-0.001 (0.002)	0.000 (0.002)	-0.003 (0.004)	-0.002 (0.003)	-0.002 (0.002)	-0.002 (0.002)
Power asymmetry	-0.003 (0.010)	0.001 (0.007)	0.002 (0.007)	-0.007 (0.009)	-0.009 (0.009)	-0.003 (0.006)	-0.004 (0.007)
Democracy	0.010 (0.007)	0.004 (0.005)	0.002 (0.004)	0.007 (0.006)	0.005 (0.005)	0.002 (0.004)	0.001 (0.004)
Members (log)	0.164 (0.100)	0.200** (0.081)	0.193** (0.077)	0.156* (0.091)	0.102 (0.080)	0.171** (0.078)	0.131 (0.080)
GDP per capita (log)	0.038 (0.039)	0.019 (0.031)	0.038 (0.034)	0.014 (0.039)	0.015 (0.031)	0.004 (0.029)	-0.002 (0.027)
Cold War	-0.026 (0.021)	-0.002 (0.018)	-0.002 (0.016)	0.032* (0.019)	0.021 (0.016)	0.030* (0.016)	0.025* (0.014)
Globalization	-0.001 (0.003)	0.001 (0.002)	0.000 (0.002)	0.001 (0.003)	-0.002 (0.002)	0.001 (0.003)	-0.000 (0.003)
Constant	-0.855** (0.341)	-0.514 (0.344)	-0.653* (0.357)	-0.795** (0.366)	-0.645** (0.306)	-0.582* (0.333)	-0.730** (0.309)
R <sup>2</sup> : within	0.390	0.527	0.557	0.432	0.536	0.554	0.582
R <sup>2</sup> : between	0.130	0.021	0.013	0.001	0.298	0.044	0.314
R <sup>2</sup> : overall	0.213	0.131	0.135	0.078	0.301	0.198	0.377

Note: All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table C3.** EU influence and *RO institutionalization*, with EU engagement disaggregated into its three components

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Contractual open-endedness		0.125*** (0.041)		0.138** (0.055)		0.145*** (0.047)		0.117* (0.058)
EU contacts (active influence)	0.174*** (0.034)	0.145*** (0.032)						
EU funding (active influence)			0.124*** (0.034)	0.109*** (0.029)				
EU agreement scope (active influence)					0.227*** (0.050)	0.207*** (0.047)		
EU agreement bindingness (active influence)							0.183*** (0.052)	0.149*** (0.053)
EU institutionalization (passive influence)		0.476*** (0.090)		0.544*** (0.089)		0.479*** (0.075)		0.485*** (0.083)
Regional diffusion	0.198 (0.172)	-0.024 (0.168)	0.322 (0.191)	0.059 (0.170)	0.158 (0.198)	-0.068 (0.179)	0.157 (0.208)	-0.058 (0.181)
Membership	0.199*** (0.070)	0.156** (0.071)	0.160* (0.079)	0.118 (0.076)	0.211*** (0.064)	0.165** (0.066)	0.218*** (0.073)	0.173** (0.076)
GDP	0.032 (0.030)	-0.002 (0.029)	0.028 (0.031)	-0.011 (0.027)	0.038 (0.031)	0.002 (0.028)	0.030 (0.032)	-0.004 (0.030)
Globalization	0.001 (0.002)	0.000 (0.003)	0.000 (0.002)	0.000 (0.003)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.003)
Intra-RO trade	0.001 (0.002)	0.001 (0.002)	-0.000 (0.002)	-0.000 (0.002)	0.000 (0.002)	0.000 (0.001)	0.001 (0.002)	0.001 (0.002)
Democracy	0.007 (0.005)	0.005 (0.004)	0.007 (0.005)	0.004 (0.005)	0.006 (0.004)	0.003 (0.003)	0.008* (0.004)	0.006 (0.004)
Cold War	0.003 (0.013)	0.040*** (0.013)	-0.020 (0.018)	0.027* (0.014)	-0.001 (0.015)	0.037*** (0.011)	-0.001 (0.016)	0.037*** (0.012)
Power	0.002 (0.007)	-0.002 (0.007)	0.001 (0.007)	-0.003 (0.007)	0.002 (0.007)	-0.002 (0.007)	0.001 (0.008)	-0.002 (0.008)
Constant	-0.662** (0.324)	-0.843*** (0.269)	-0.484 (0.351)	-0.705** (0.281)	-0.696** (0.330)	-0.895*** (0.277)	-0.675** (0.332)	-0.845*** (0.282)
R <sup>2</sup> : within	0.470	0.530	0.431	0.510	0.499	0.569	0.467	0.526
R <sup>2</sup> : between	0.016	0.148	0.016	0.161	0.010	0.135	0.014	0.127
R <sup>2</sup> : overall	0.068	0.196	0.076	0.192	0.068	0.189	0.063	0.181

Note: Note that the analysis shows the two elements of cooperation agreements, policy scope and obligation, separately. All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table C4.** EU influence and *RO institutionalization*, with *RO institutionalization* disaggregated into its four components

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	General secretariat	General secretariat	General secretariat	Parliamentary body	Parliamentary body	Parliamentary body	Non-state bodies	Non-state bodies	Non-state bodies	Judicial bodies	Judicial bodies	Judicial bodies
Contractual open-endedness			0.090 (0.056)			0.094** (0.043)			0.000 (0.051)			0.330*** (0.101)
EU engagement (active influence)	0.132*** (0.042)		0.112** (0.044)	0.277*** (0.047)		0.262*** (0.046)	0.168** (0.069)		0.142* (0.070)	0.601*** (0.158)		0.523*** (0.151)
EU institutionalization (passive influence)		0.295** (0.122)	0.221* (0.125)		0.381*** (0.113)	0.185** (0.079)		0.433*** (0.143)	0.321** (0.135)		1.287*** (0.308)	0.915*** (0.249)
Regional diffusion	0.357 (0.229)	0.241 (0.226)	0.177 (0.216)	-0.063 (0.199)	-0.233 (0.194)	-0.150 (0.188)	-0.144 (0.214)	-0.308 (0.221)	-0.245 (0.219)	0.841* (0.426)	0.333 (0.407)	0.377 (0.400)
Intra-RO trade	-0.001 (0.002)	-0.002 (0.002)	-0.001 (0.002)	0.002 (0.002)	0.001 (0.003)	0.002 (0.002)	0.005* (0.003)	0.004 (0.003)	0.005 (0.003)	-0.003 (0.004)	-0.006 (0.005)	-0.003 (0.004)
Power asymmetry	-0.007 (0.006)	-0.009 (0.006)	-0.009 (0.006)	-0.003 (0.005)	-0.007 (0.006)	-0.004 (0.005)	0.019** (0.009)	0.015 (0.009)	0.017* (0.009)	-0.001 (0.017)	-0.013 (0.020)	-0.008 (0.017)
Democracy	0.009*** (0.003)	0.011*** (0.003)	0.008*** (0.003)	0.007** (0.003)	0.012** (0.004)	0.006* (0.003)	0.001 (0.005)	0.003 (0.005)	0.001 (0.006)	-0.001 (0.011)	0.007 (0.013)	-0.006 (0.009)
Members (log)	0.161*** (0.050)	0.140*** (0.048)	0.136** (0.052)	0.055 (0.058)	0.019 (0.079)	0.029 (0.063)	0.099 (0.076)	0.071 (0.079)	0.086 (0.073)	0.497*** (0.172)	0.404* (0.201)	0.397** (0.176)
GDP per capita (log)	0.056*** (0.017)	0.048** (0.022)	0.039** (0.017)	-0.004 (0.015)	-0.006 (0.020)	-0.018 (0.016)	0.091*** (0.026)	0.077*** (0.020)	0.073*** (0.022)	-0.059 (0.092)	-0.094 (0.109)	-0.125 (0.091)
Cold War	0.022*** (0.007)	0.041*** (0.010)	0.038*** (0.010)	0.001 (0.013)	0.018 (0.014)	0.014 (0.013)	-0.018 (0.017)	0.011 (0.017)	0.011 (0.016)	0.005 (0.042)	0.085** (0.037)	0.073** (0.033)
Globalization	-0.001 (0.002)	-0.001 (0.002)	-0.002 (0.002)	0.001 (0.002)	0.000 (0.002)	0.000 (0.002)	-0.003 (0.003)	-0.002 (0.004)	-0.002 (0.003)	0.008 (0.006)	0.008 (0.007)	0.007 (0.007)
Constant	-0.678*** (0.179)	-0.771*** (0.208)	-0.803*** (0.156)	-0.117 (0.215)	-0.300 (0.214)	-0.251 (0.225)	-1.078*** (0.286)	-1.199*** (0.247)	-1.110*** (0.303)	-0.274 (0.969)	-0.693 (1.024)	-0.763 (0.814)
R <sup>2</sup> : within	0.433	0.411	0.468	0.484	0.318	0.509	0.381	0.371	0.394	0.315	0.246	0.373
R <sup>2</sup> : between	0.005	0.013	0.036	0.097	0.179	0.216	0.198	0.192	0.192	0.009	0.025	0.013
R <sup>2</sup> : overall	0.022	0.015	0.121	0.200	0.270	0.260	0.230	0.239	0.232	0.002	0.000	0.033

**Table C5.** EU influence and *RO institutionalization*, alternative measure of contractual open-endedness (Hooghe, Lenz, and Marks 2019)

	(1)	(2)	(3)	(4)
Contractual open-endedness (alternative)	0.132** (0.059)			0.138** (0.052)
EU engagement (active influence)		0.167*** (0.054)		0.260*** (0.053)
* <i>Open-ended contract</i>		0.189*** (0.065)		
EU institutionalization (passive influence)			0.533*** (0.094)	0.414*** (0.074)
* <i>Open-ended contract</i>			0.271*** (0.085)	
Regional diffusion	0.100 (0.181)	0.192 (0.195)	-0.137 (0.183)	0.022 (0.171)
Intra-RO trade	0.000 (0.003)	0.000 (0.001)	-0.001 (0.002)	0.001 (0.002)
Power asymmetry	0.000 (0.009)	0.003 (0.006)	-0.003 (0.008)	-0.001 (0.006)
Democracy	0.010 (0.006)	0.002 (0.004)	0.005 (0.005)	0.002 (0.003)
Members (log)	0.154* (0.089)	0.185*** (0.061)	0.111 (0.074)	0.162** (0.066)
GDP per capita (log)	0.039 (0.033)	0.034 (0.029)	-0.000 (0.030)	-0.009 (0.025)
Cold War	-0.024 (0.016)	-0.004 (0.013)	0.030** (0.012)	0.034*** (0.012)
Globalization	-0.000 (0.002)	0.000 (0.002)	0.001 (0.002)	0.002 (0.002)
Constant	-0.766** (0.326)	-0.572* (0.309)	-0.555* (0.305)	-0.635** (0.274)
R <sup>2</sup> : within	0.393	0.554	0.513	0.582
R <sup>2</sup> : between	0.088	0.015	0.173	0.093
R <sup>2</sup> : overall	0.150	0.091	0.207	0.154

Note: This analysis uses the measure of contractual incompleteness by Hooghe, Lenz, and Marks (2019), which is dichotomous (fixed, open-ended) rather than trichotomous. The fixed contract is the baseline measure. All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table C6.** EU influence and *RO institutionalization*, including two-year lags for all independent variables

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Contractual open-endedness	0.098** (0.048)						0.107** (0.042)
EU engagement (active influence)		0.277*** (0.053)	0.138** (0.064)			0.249*** (0.052)	0.248*** (0.052)
<i>* Open-ended contract</i>			0.197*** (0.069)				
EU institutionalization (passive influence)				0.556*** (0.105)	0.253* (0.131)	0.363*** (0.079)	0.376*** (0.078)
<i>* Intermediate contract</i>					0.322* (0.168)		
<i>* Open-ended contract</i>					0.545*** (0.174)		
Regional diffusion	0.193 (0.184)	0.290 (0.195)	0.281 (0.202)	-0.085 (0.184)	-0.175 (0.188)	0.082 (0.191)	0.043 (0.189)
Intra-RO trade	-0.000 (0.003)	0.000 (0.002)	0.001 (0.001)	-0.001 (0.002)	-0.001 (0.002)	-0.000 (0.002)	0.000 (0.002)
Power asymmetry	-0.000 (0.008)	0.002 (0.006)	0.002 (0.006)	-0.003 (0.007)	-0.005 (0.007)	-0.001 (0.006)	-0.001 (0.006)
Democracy	0.009 (0.006)	0.003 (0.004)	0.001 (0.004)	0.008 (0.005)	0.005 (0.004)	0.003 (0.004)	0.002 (0.003)
Members (log)	0.157* (0.084)	0.200*** (0.058)	0.186*** (0.059)	0.158** (0.075)	0.101 (0.068)	0.185*** (0.058)	0.164*** (0.060)
GDP per capita (log)	0.052 (0.031)	0.033 (0.026)	0.045 (0.028)	0.019 (0.033)	0.018 (0.028)	0.011 (0.025)	0.007 (0.024)
Cold War	-0.020 (0.018)	0.004 (0.015)	-0.000 (0.015)	0.037** (0.015)	0.028** (0.013)	0.036** (0.014)	0.033** (0.013)
Globalization	-0.001 (0.003)	0.001 (0.003)	0.000 (0.003)	0.001 (0.003)	-0.001 (0.003)	0.001 (0.003)	0.001 (0.003)
Constant	-0.905*** (0.296)	-0.619** (0.300)	-0.679** (0.313)	-0.809** (0.320)	-0.653** (0.280)	-0.654** (0.285)	-0.790*** (0.265)
R <sup>2</sup> : within	0.376	0.505	0.529	0.421	0.493	0.528	0.543
R <sup>2</sup> : between	0.114	0.012	0.018	0.003	0.219	0.009	0.115
R <sup>2</sup> : overall	0.168	0.071	0.089	0.060	0.229	0.072	0.166

Note: All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

**Table C7.** EU influence and RO institutionalization, including global diffusion

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Contractual open-endedness	0.125** (0.056)						0.130** (0.051)
EU engagement (active influence)		0.295*** (0.055)	0.145* (0.072)			0.259*** (0.054)	0.256*** (0.054)
* <i>Open-ended contract</i>			0.208*** (0.076)				
EU institutionalization (passive influence)				0.553*** (0.104)	0.256* (0.131)	0.411*** (0.073)	0.431*** (0.073)
* <i>Intermediate contract</i>					0.326* (0.170)		
* <i>Open-ended contract</i>					0.560*** (0.177)		
Global diffusion	-0.207 (0.377)	0.213 (0.353)	0.167 (0.364)	-0.309 (0.332)	-0.532 (0.322)	-0.365 (0.320)	-0.485 (0.342)
Intra-RO trade	0.000 (0.003)	0.001 (0.002)	0.001 (0.001)	-0.001 (0.003)	-0.001 (0.002)	0.000 (0.002)	0.001 (0.002)
Power asymmetry	0.000 (0.009)	0.002 (0.006)	0.003 (0.006)	-0.003 (0.008)	-0.004 (0.008)	-0.000 (0.006)	-0.001 (0.006)
Democracy	0.010 (0.006)	0.004 (0.004)	0.002 (0.004)	0.009 (0.005)	0.007 (0.005)	0.003 (0.004)	0.002 (0.003)
Members (log)	0.153* (0.090)	0.204*** (0.065)	0.192*** (0.066)	0.165* (0.082)	0.105 (0.076)	0.186*** (0.064)	0.159** (0.067)
GDP per capita (log)	0.039 (0.033)	0.020 (0.028)	0.033 (0.030)	0.006 (0.034)	0.005 (0.029)	-0.005 (0.027)	-0.011 (0.025)
Cold War	-0.026 (0.017)	0.003 (0.014)	-0.001 (0.014)	0.032** (0.014)	0.023* (0.012)	0.037*** (0.013)	0.032** (0.012)
Globalization	-0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	-0.001 (0.002)	0.002 (0.002)	0.001 (0.002)
Constant	-0.846** (0.316)	-0.535* (0.316)	-0.598* (0.329)	-0.709** (0.334)	-0.550* (0.289)	-0.555* (0.299)	-0.712** (0.278)
R <sup>2</sup> : within	0.392	0.528	0.555	0.435	0.513	0.557	0.581
R <sup>2</sup> : between	0.149	0.016	0.017	0.002	0.222	0.013	0.134
R <sup>2</sup> : overall	0.192	0.077	0.092	0.048	0.222	0.079	0.182

Note: All models use fixed effects and robust standard errors (in parentheses).

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .



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