

## ARTICLE

### BACK TO BASICS: THE BENEFITS OF PARADIGMATIC INTERNATIONAL ORGANIZATIONS

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#### ABSTRACT

*In the early 2000s, small “coalitions of the willing,” flexible networks, and nimble private-public partnerships were promoted as alternatives to bureaucratic, consensus-seeking, and slow-moving international organizations. The Global Fund to Fight AIDS, Tuberculosis and Malaria was established as an efficient alternative to the lumbering World Health Organization. The Basel Committee, the Financial Stability Forum, and the Financial Action Task Force were lauded as global market regulators. The Pompidou Group, the Dublin Group, and Interpol were touted as effective police networks in the battle against transnational crime.*

*We systematically reviewed the evolution of these celebrated networks in the ensuing decades by using a broad range of primary legal sources and, to better understand the consequences of institutional design, interviewed a dozen key negotiators and staff members. We document that many networks have pursued paradigmatic international organization features: they have broadened their membership to include dissenting countries and established or expanded independent secretariats. In addition, many networks have secured privileges and immunities agreements to shield their staffs and assets. Some have discussed or made plans to transform into international organizations.*

*We argue that existing work on international organizations underestimates the benefits of the paradigmatic international organization form. Because international institutions must engage with multiple audiences, including*

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*different ministries in diverse countries, other international organizations, and current and future staff members, the tried-and-true package of features international organizations offer retains surprising appeal.*

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## INTRODUCTION

In the early years of the twenty-first century, scholars of global governance observed a rejection of international organizations (IOs) in favor of smaller, more flexible alternatives such as transnational networks, public-private partnerships, and informal or “soft” institutions.<sup>1</sup> We refer to the universe that includes all these entities as “international institutions,” and to these alternatives collectively as “nonstandard institutions.” Powerful Western states were tired of being outvoted by developing states in international organizations. They found international bureaucracies unbearably rigid and expensive. Within the United States, there was bipartisan support for the view that alternatives were preferable. George W. Bush formed “coalitions of the willing” to use force in Iraq, to interdict the transport of weapons of mass destruction through the Proliferation Security Initiative, and to support access to treatments for AIDS.<sup>2</sup> Anne-Marie Slaughter joined the Obama State Department in a high-level position shortly after publishing a book that enumerated and praised the advantages of governance through transnational networks over more formal organizations.<sup>3</sup> Observing these trends, José Alvarez discerned “a move away from institutions nearly as serious as the 20th century’s move towards them.”<sup>4</sup>

And yet, states have continued to empower existing international organizations<sup>5</sup> and to establish new ones. At the global level, these new

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<sup>1</sup> See generally EYAL BENVENISTI, *THE LAW OF GLOBAL GOVERNANCE* 74–97 (2014) (describing the flight from IGOs as powerful states manifest an increasing preference for informal institutions); GLOBAL GOVERNANCE IN A WORLD OF CHANGE (Michael N. Barnett, Jon C.W. Pevehouse, & Kal Raustiala eds., 2021); Benedict Kingsbury, Nico Krisch, & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15 (2005); Armin von Bogdandy, Matthias Goldmann, & Ingo Venzke, *From Public International to International Public Law*, 28 EUR. J. INT’L L. 115 (2017); Joost Pauwelyn et al., *When Structures Become Shackles*, 25 EUR. J. INT’L L. 733 (2014); Felicity Vabulas & Duncan Snidal, *Organization Without Delegation: Informal Intergovernmental Organizations (IIGOs) and the Spectrum of Intergovernmental Arrangements*, 8 REV. INT’L ORGS. 198 (2013).

<sup>2</sup> D. Stephen Mathias, *Introduction*, 99 AM. SOC’Y INT’L L. PROC. 243, 243 (2005).

<sup>3</sup> Anne-Marie Slaughter, as the director of policy planning at the State Department during the Obama administration, was a prominent advocate of the advantages of transnational networks over international organizations. See, e.g., ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004); ALEJANDRO RODILES, *COALITIONS OF THE WILLING AND INTERNATIONAL LAW* 1 (2018) (describing the association between a “coalition of the willing” and the Iraq War of 2003).

<sup>4</sup> José Alvarez, *The Move from Institutions*, 100 AM. SOC’Y INT’L L. PROC. 287, 287 (2006).

<sup>5</sup> LIESBET HOOGE ET AL., *MEASURING INTERNATIONAL AUTHORITY* 118–20 (2017) (describing aggregate trends showing increases in delegation and pooling (i.e., the extent to which member states share authority through collective decision-making) between 1975 and 2010 for a sample of 51 international organizations).

international organizations include the International Criminal Court, the International Renewable Energy Agency, and the Global Green Growth Institute. At the regional and sub-regional level, examples include the Nordic Patent Institute,<sup>6</sup> the New Development Bank,<sup>7</sup> and the Bay of Bengal Inter-Governmental Organization.<sup>8</sup>

There are also prominent examples of entities initially established as nonstandard institutions that have, over time, evolved into formal IOs with all the traditional bells and whistles. The Association of Southeast Asian Nations (ASEAN) is an important example, in part because its early incarnation reflected a deliberate rejection of the paradigmatic international organization model.<sup>9</sup> Other entities haven't made a full transition but have moved closer to the traditional model. One example is the Global Fund for AIDS, Tuberculosis and Malaria. The Fund was established in 2002 as a foundation under Swiss Law seeking to embrace a "private sector mentality."<sup>10</sup> Yet, as its General Counsel explained, over the last two decades the organization has taken a number of steps that reflect an "evolution of the Global Fund into an international organization."<sup>11</sup>

We document that these are not isolated examples. Our initial baseline consists of the networks celebrated in Anne-Marie Slaughter's pathbreaking *A New World Order*. We show that since the early 2000s, these small and nimble structures have systematically moved towards the very model they were designed to escape: the paradigmatic international organization. This shift unfolded as networks broadened their membership, obtained greater independence from member states, and solicited the extraordinary privileges and immunities that ordinarily attach to international organizations.

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<sup>6</sup> *About Nordic Patent Institute*, NORDIC PATENT INSTITUTE (last visited Mar. 14, 2023), <https://npi.int/en/about/> [<https://perma.cc/4R9W-Y795>].

<sup>7</sup> *About NDB*, NEW DEVELOPMENT INSTITUTE (last visited Mar. 14, 2023), <https://www.ndb.int/about-ndb/> [<https://perma.cc/JZQ7-B8RV>].

<sup>8</sup> *About BOBP*, BAY OF BENGAL INTER-GOVERNMENTAL ORGANIZATION (last visited Mar. 14, 2023), <https://www.bobpigo.org/pages/view/bobp> [<https://perma.cc/NUX3-9QAT>].

<sup>9</sup> See generally, Miles Kahler, *Legalization as a Strategy: The Asia-Pacific Case*, 54 INT'L ORG. 549 (2000).

<sup>10</sup> NITSAN CHOREV, *THE WORLD HEALTH ORGANIZATION BETWEEN NORTH AND SOUTH* 233 (2012).

<sup>11</sup> Fady Zeidan & Jean Abboud, *The Global Fund to Fight AIDS, Tuberculosis and Malaria: The Journey of a Public Private Partnership*, in *THE ROLE OF INTERNATIONAL ADMINISTRATIVE LAW AT INTERNATIONAL ORGANIZATIONS* 158, 166 (Peter Quayle, ed. 2021) (citing G.A. Res. 64/122 (Dec. 16, 2009)). These steps include securing privileges and immunities under the national laws of multiple states; securing the jurisdiction of the ILO Administrative Tribunal, a body established to resolve employment disputes of international civil servants, to cover Global Fund staff; and obtaining permanent observer status in the UN General Assembly. *Id.*

We then explain this formalization by articulating key unrecognized benefits of the purportedly stodgy international organization model. We draw on information gathered from a dozen interviews with leading negotiators and senior officials, supplemented by a broad range of primary and secondary written sources. We argue that the need for international institutions to interact with diverse audiences, including non-member states, other international institutions, and employees enhances the standard international model's appeal. We show that while quickly setting up a nimble network is initially an efficient way to address a global problem, over time, nonstandard institutions face recurring challenges, leading them to cobble together inefficient workarounds as they try to obtain benefits that are more readily available to paradigmatic international organizations.

The Financial Action Task Force (FATF) illustrates this evolution. FATF was widely hailed in the literature as an “informal trans-governmental network *par excellence*.”<sup>12</sup> Launched by the G7 in 1989 as a temporary five-year initiative,<sup>13</sup> FATF was described as “a paradigmatic case of a selective, Western-driven ‘international club’”<sup>14</sup>—and a wildly successful one at that.<sup>15</sup> This success is in part dependent on the issue area. In the field of financial regulation, the threat of losing access to US-controlled markets looms large and can incentivize widespread compliance with US-inspired rules.

But over time, FATF started to look more and more like a paradigmatic international organization. While pure networks are composed only of national government officials, FATF today has a secretariat with 65 staff members, led by an Executive Secretary, each of whom enjoys the status and protections associated with being an international civil servant.<sup>16</sup> FATF's mandate no longer has an expiration date; it is now open-ended and effectively permanent.<sup>17</sup> A carefully elaborated structure governs the FATF's participation and decision-making, specifying members', associate members' and observers' the roles and powers.<sup>18</sup> The total number of participants in FATF

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<sup>12</sup> RODILES, *supra* note 3, at 158.

<sup>13</sup> WILLIAM GILMORE, *DIRTY MONEY: THE EVOLUTION OF MONEY LAUNDERING COUNTER-MEASURES* 92 (1995).

<sup>14</sup> RODILES, *supra* note 3, at 158.

<sup>15</sup> See, e.g., Stavros Gadinis, *Three Pathways to Global Standards: Private, Regulator, and Ministry Networks*, 109 AM. J. INT'L L. 1, 29 (2015) (FATF is “widely considered one of the most successful standard-setting networks in international financial regulation.”).

<sup>16</sup> FINANCIAL ACTION TASK FORCE, ANNUAL REPORT 2020-2021 72–73 (Nov. 22, 2021), <https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/Annual-Report-2020-2021.pdf> [<https://perma.cc/TV4U-YGW8>].

<sup>17</sup> FINANCIAL ACTION TASK FORCE, MANDATE OF THE FINANCIAL ACTION TASK FORCE 3 (Apr. 12, 2019), <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf> [<https://perma.cc/W5GS-WQKA>].

<sup>18</sup> *Id.* at 5–7.

has grown dramatically to include 205 jurisdictions and twenty international organizations, prompting FATF's former executive secretary to observe that it has become "so inclusive that more jurisdictions are represented in its meetings than in the U.N. General Assembly," although unlike in the General Assembly, not all participants have equal voting rights.<sup>19</sup>

How did this happen? Why did the United States and other Western powers broaden participation beyond the original core? They did so partly because securing support from absent states and endorsements from other international bodies turned out to be critical for advancing FATF's goals. Notably, following the September 11 attacks, Russia went from being on the "black list" of non-cooperative members and territories in 2002 to a full member in 2003.<sup>20</sup> In 2005, with Russia's support, the U.N. Security Council strongly urged all member states to implement FATF's recommendations on money laundering and terrorist financing.<sup>21</sup> FATF's president at the time described the Security Council's formal endorsement as "a major step toward effective global implementation of the Recommendations."<sup>22</sup> The U.N. General Assembly followed up with its own endorsement by consensus in 2006.<sup>23</sup> Over time it became clear that the threat of losing access to US financial markets was not sufficient—international legal authority and broad-based participation proved crucial to effectively combating money laundering.

In some quarters of FATF, there is support for moving even further toward the paradigmatic international organization model. In 2017 and 2018, FATF members "explore[d] options to reinforce [FATF's] legal capacity, international standing, and independence."<sup>24</sup> That is, key European states

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<sup>19</sup> David Lewis, ex-Secretary, Financial Action Task Force, Remarks to the Cambridge International Symposium on Economic Crime (Oct. 5, 2021), <https://www.acfcs.org/with-reported-resignation-of-fatf-head-worlds-most-influential-aml-watchdog-faces-questions-about-independence-integrity-successes-succession/> [<https://perma.cc/Y8N7-RLVJ>].

<sup>20</sup> *Russia, Dominica, Niue, and Marshall Islands Removed from FATF's List of Non-Cooperative Countries and Territories*, OECD (Oct. 11, 2002), <https://www.oecd.org/daf/anti-bribery/russiadominicaniueandmarshallislandsremovedfromfatfslstofnon-cooperativecountriesandterritories.htm> [<https://perma.cc/U3DW-KPGB>].

<sup>21</sup> S.C. Res. 1617, ¶ 7 (July 29, 2005).

<sup>22</sup> FINANCIAL ACTION TASK FORCE, *Forward to ANNUAL REPORT 2005–2006* (June 23, 2006), <https://www.fatf-gafi.org/media/fatf/documents/reports/2005%202006%20ENG.pdf> [<https://perma.cc/8MG6-4VQJ>].

<sup>23</sup> U.N. General Assembly Resolution 60/288 was adopted by consensus on Sept. 8, 2006. G.A. Res. 60/288 at 6 (Sept. 8, 2006).

<sup>24</sup> FINANCIAL ACTION TASK FORCE, *OUTCOMES FATF PLENARY 21–23 FEBRUARY 2018* (Feb. 23, 2018), <https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-february-2018.html> [<https://perma.cc/N72Q-QDZR>]; see also Communiqué issued by the participants in the G7 Finance Ministers and Central Banks Governors Meeting in Bari, Italy, May 12–13, 2017, para. 12,

sought to turn FATF into a paradigmatic international organization, while US negotiators, perhaps anticipating the near impossibility of obtaining the Senate's approval of a treaty, demurred.<sup>25</sup> But pressure to move in that direction persists. In February 2021, the U.N. General Assembly convened a high-level panel that recommended “creat[ing] the legal foundation for an inclusive intergovernmental body on money-laundering”—one with “appropriate rules for universal representation.”<sup>26</sup>

Later that year, the FATF's then-executive secretary, David Lewis, “convulsed” the “world of anti-financial crime” when he unexpectedly resigned from that role.<sup>27</sup> Lewis made a noisy exit; his email to his colleagues, which was picked up by the press, urged them “to protect the secretariat and its professional status . . . so that they can continue to protect and serve you, the FATF, without fear or favor.”<sup>28</sup> In a subsequent post on social media, he argued that a prominent feature of international organizations—specifically, a “strong, independent, impartial secretariat”—supplied FATF with the “best protection” against domination by individual states.<sup>29</sup> Just how far FATF will go in this direction remains to be seen; a return to its initial incarnation, as a small and informal network, however, is clearly off the table. In the pages that follow, we explore strident criticisms and another prominent resignation alleging that without the kind of robust protections that international civil

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[https://www.mef.gov.it/modules/links/g7/G7\\_FMxCBGB\\_Bari\\_Communicux.pdf](https://www.mef.gov.it/modules/links/g7/G7_FMxCBGB_Bari_Communicux.pdf) [https://perma.cc/S7RT-SZ73] (“We welcome and support the ongoing work to strengthen the institutional basis, governance and capacity of the FATF.”).

<sup>25</sup> Interview with former senior IO official (Apr. 10, 2022); *see also* Curtis Bradley, Jack L. Goldsmith, & Oona A. Hathaway, *The Rise of Non-Binding Agreements: An Empirical, Comparative, and Normative Analysis*, 90 U. CHI. L. REV. (forthcoming 2023) (quantifying the move away from international treaties and towards international non-binding agreements because of Congressional gridlock).

<sup>26</sup> FACTI, REPORT OF THE HIGH LEVEL PANEL ON INTERNATIONAL FINANCIAL ACCOUNTABILITY, TRANSPARENCY AND INTEGRITY FOR ACHIEVING THE 2030 AGENDA 43 (Feb. 2021), [https://factipanel.org/docpdfs/FACTI\\_Panel\\_Report.pdf](https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf) [https://perma.cc/86UW-2LKD].

<sup>27</sup> Stephen Rae, *UPDATE: World of FinCrime Convulsed as FATF Chief David Lewis Resigns*, AML INTELLIGENCE (Oct. 2, 2021), <https://www.amlintelligence.com/2021/10/breaking-shock-as-david-lewis-resigns-as-fatf-executive-secretary-expresses-frustration-at-new-terms-for-contract-renewal/> [https://perma.cc/48A4-K4MJ].

<sup>28</sup> *Id.*

<sup>29</sup> *LATEST: FATF Chief Describes His ‘Sad Week’ at Final Plenary Session; Says Meeting Helped Deliver Guidance to Help Nations ‘Navigate the Wild West of Cryptos’*, AML INTELLIGENCE (Oct. 25, 2021), <https://www.amlintelligence.com/2021/10/latest-fatf-chief-describes-his-sad-week-at-final-plenary-session-says-meeting-helped-deliver-guidance-to-help-nations-navigate-the-wild-west-of-cryptos/> [https://perma.cc/42GD-BR2T].

servants enjoy, the job of monitoring global activities cannot be carried out effectively.<sup>30</sup>

In short, the death of formal institutions, and especially of paradigmatic IOs, has been greatly exaggerated. In Part I, we begin by describing the literature on international organizations and its shortcomings. In Part II, we present our theoretical argument and detail our interview methodology. We argue, in short, that it is a mistake to consider any international institution in isolation. International institutions operate in a crowded world; they must engage with actors beyond their immediate participants, including other international institutions and non-member states, as well as their legal systems. Paradigmatic IOs have important and underappreciated advantages when it comes to their capacity to do so. Part III sets out a typology of international institutions and highlights the differences in their legal features and the breadth of their membership, the independence of their secretariats and the privileges and immunities that attach to their staff and assets. Part IV demonstrates that the FATF example described above is not an outlier; most of the networks in *A New World Order* have likewise expanded their memberships and otherwise moved towards the paradigmatic IO model. Part V elaborates the advantages of paradigmatic IOs as compared to nonstandard institutions when it comes to interactions with various audiences and their governing legal systems. Among other advantages, international organizations can enter into treaties instead of being restricted to nonbinding MOUs, take advantage of existing national legislation that provides privileges and immunities to staff, and obtain observer status at other international organizations. And in a world of many international institutions with overlapping mandates, in which other scholars see chaotic and flexible relationships, we observe significant hierarchy, with organizations affiliated with the U.N. enjoying significant status advantages.

## **I. COSTS AND BENEFITS OF INTERNATIONAL ORGANIZATIONS: EXISTING SCHOLARSHIP AND ITS LIMITATIONS**

### ***A. The Goals, Successes, and Limitations of Formal International Organizations***

Why do states establish international organizations like the World Health Organization or NATO? More than twenty years ago, Ken Abbott and Duncan Snidal sought to answer that question. In 1998, they discerned an accelerating trend: “[m]any states, notably the United States, now resist the creation of IOs and hesitate to support those already in operation, citing the shortcomings of international bureaucracy, the costs of formal organization,

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<sup>30</sup> See *infra* notes 258–265 and accompanying text for details on the departures of and criticisms by U.N. Ombudspersons.

and the irritations of IO autonomy.”<sup>31</sup> Abbott and Snidal chose to focus on the “other side of the ledger” and to articulate the advantages of what they labeled “formal international organizations.”<sup>32</sup> Taking a rationalist approach and building on Ronald Coase’s 1937 theory of the firm, Abbott and Snidal argued that states form centralized, vertically organized hierarchies when repeated horizontal relationships involve too much negotiation and duplicative work.<sup>33</sup>

According to Abbott and Snidal, “two characteristics distinguish [formal] IOs from other international institutions: centralization (a concrete and stable organizational structure and an administrative apparatus managing collective activities) and independence (the authority to act with a degree of autonomy, and often with neutrality, in defined spheres).”<sup>34</sup> Centralization facilitates interaction among states; among other things, it lowers the transaction costs of negotiation by providing a stable forum with predetermined rules and formats for making decisions. When it comes to operational activities, centralization makes it possible to take advantage of economies of scale and allocate resources in a way that avoids duplication and gaps in coverage.<sup>35</sup> Independence, especially when coupled with neutrality, can make the international organization, as opposed to national governments, a more credible source of information, avoiding perceptions of bias and partiality.<sup>36</sup>

Just as international organizations have widely publicized benefits, they also have widely recognized costs. There is the financial cost associated with running a permanent organization, including paying staff and maintaining buildings.<sup>37</sup> International organizations can suffer from pathologies associated with national bureaucracies: standardizing too much, costing too much, and moving too slowly—and, at the same time, being insufficiently responsive to key constituencies. Building on Max Weber’s theories of bureaucracy, Michael Barnett and Martha Finnemore argue that international organizations often offer cookie-cutter solutions, defining their missions to “fit the existing, well

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<sup>31</sup> Kenneth W. Abbott & Duncan Snidal, *Why States Act through Formal International Organizations*, 42 J. CONFLICT RES. 3, 5 (1998).

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 13.

<sup>36</sup> *Id.* at 20.

<sup>37</sup> See, e.g., Magdalena Sapala & Sophia Stutzmann, UNDERSTANDING THE FINANCING OF INTERGOVERNMENTAL ORGANIZATIONS, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (Sept. 2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652084/EPRS\\_BRI\(2020\)652084\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652084/EPRS_BRI(2020)652084_EN.pdf) [<https://perma.cc/5LQA-L9N2>]. Obtaining financing for international organizations is a challenge that has persisted since their founding. Kristina Daugirdas, *Funding Global Governance*, 29 NYU ENVTL L. J. 639, 641–42 (2021).

known, and comfortable rulebook.”<sup>38</sup> For example, elections and election monitoring are promoted everywhere, even in authoritarian states where they only work as a façade.<sup>39</sup> Similarly, the International Monetary Fund is criticized for promoting budget cuts as a solution to every financial crisis, including the 1997 Asian financial crisis, which was thought to result from under- rather than over-spending.<sup>40</sup> Like all bureaucracies, international organizations draw power from impersonal rules and procedures, and from specialized technical knowledge, allowing them to make critical choices about winners and make losers appear neutral.<sup>41</sup> Furthermore, international organizations often have weak relationships with the constituencies they serve because of their staffing models, in which top positions are invariably held by “international” (i.e. foreign) staff, while local hiring is used to fill the lowest positions.<sup>42</sup>

Might it be possible to get more of the benefits of international organizations, with fewer costs? Prominent Western leaders and academics certainly thought so at the beginning of the 21<sup>st</sup> century, leading to the rise of various alternatives to formal IOs.

### ***B. The Promise of Nonstandard Institutions***

At the turn of the century, scholars of international law and international institutions observed parallel shifts from formal international law to soft law, and from formal international organizations to alternative forms of cooperation that were looser, less bureaucratic, and more dynamic. These alternative institutions “were formed by a group of states wishing to retain authority rather than relegate it to international bureaucracies with firm structures.”<sup>43</sup> Their participants are often described as “coalitions of the willing”—the implicit contrast being plenary bodies like the United Nations General Assembly where every state is represented, and every state’s vote is weighted equally.<sup>44</sup>

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<sup>38</sup> Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT’L ORG. 699, 720 (1999).

<sup>39</sup> See generally Susan D. Hyde, *Catch Us If You Can: Election Monitoring and International Norm Diffusion*, 55 AM. J. POL. SCI. 365 (2011).

<sup>40</sup> Barnett & Finnemore, *supra* note 38.

<sup>41</sup> *Id.*

<sup>42</sup> Interview with senior IO official (Aug. 17–18, 2020).

<sup>43</sup> BENVENISTI, *supra* note 1, at 37; 74–97. See generally Stephen Mathias, Remarks, 99 AM. SOC’Y INT’L L. PROC. 243 (2005).

<sup>44</sup> RODILES, *supra* note 3, at 3 (“[T]he coalition of the willing approach offers greater flexibility and expediency in comparison to slowly incremental and politically contested traditional multilateral diplomacy, as well as the rigidity of international law-making processes.”).

These nonstandard institutions often have lower start-up costs. International organizations are usually established by treaty. Reaching agreement on treaties can be more difficult because the stakes are high; treaties involve legal obligations, and terminating treaty-based institutions is costly. Moreover, treaties introduce additional costs associated with the ratification process at the national level.<sup>45</sup> (For the United States, the low likelihood of securing Senate approval to ratification usually takes the treaty option off the table.<sup>46</sup>) Separately, coalitions of the willing involve fewer and more homogenous participants, which also reduces negotiation costs.<sup>47</sup> Overall, agreement on the instruments that govern nonstandard institutions is easier to achieve and may not even be necessary. Networks can be established without any kind of written instrument to govern their participation. Soft organizations are often established by nonbinding agreements. Public-private partnerships are often established under national law.<sup>48</sup>

Notably, the appeal of these nonstandard institutions crosses ideological and geographical lines. President George W. Bush's 2006 National Security Strategy promotes "partnerships [that] emphasize international cooperation, not international bureaucracy" and explains that while "existing international institutions have a role to play . . . in many cases coalitions of the willing may be able to respond more quickly and creatively."<sup>49</sup> John Bolton, the principal architect of the Proliferation Security Initiative, praised it as "an activity not an organization"—in contrast to the United Nations, which he derided as "an organization, not an activity."<sup>50</sup> President Barack Obama's 2010 National Security Strategy shifted the rhetoric but echoed the substantive

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<sup>45</sup> David Sullivan, *Remarks by David Sullivan*, 99 ASIL PROC. 244, 245 (2005) (explaining that the "proposal to create a new treaty-based international organization was set aside almost immediately," in part because "[p]articipants in the establishment negotiations were primarily health and development professionals with first-hand recognition that time spent in protracted treaty negotiations and ratification processes would be measured in lives lost"); Zeidan & Abboud, *supra* note 11, at 160 (remarking that, in 2002 when the Global Fund was established as a not-for-profit foundation under Swiss law, "it was considered that this approach would help to speedily implement the public-private partnership nature of the nascent institution consistent with the desire expressed by the UN General Assembly . . . [to] avoid the delays usually associated with the establishment of a traditional international organization.").

<sup>46</sup> Bradley, Hathaway & Goldsmith, *supra* note 25 (noting other paths for participating in treaties, like sole-executive agreements, are sometimes but not always available).

<sup>47</sup> See RODILES, *supra* note 3 (describing the desire of participants in the Proliferation Security Initiative to keep the PSI outside the UN in order to exclude "potential 'spoilers'—i.e., unwilling or unable states.").

<sup>48</sup> See RODILES, *supra* note 3.

<sup>49</sup> EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY 46, 48 (2006), <https://history.defense.gov/Portals/70/Documents/nss/nss2006.pdf> [<https://perma.cc/SY4P-LCQ8>].

<sup>50</sup> JOHN R. BOLTON, SURRENDER IS NOT AN OPTION 128 (2007).

critiques, agreeing that international organizations have shortcomings<sup>51</sup> and seeking out “a new diversity of instruments, alliances, and institutions.”<sup>52</sup> Core US allies, including Canada, the United Kingdom, and Germany, all emphasized informal cooperation strategies during the first decade of the 21<sup>st</sup> century.<sup>53</sup>

These alternatives to international organizations also have drawbacks. Some critics have argued that while informality and narrow membership may promote efficiency, they are problematic for precisely the reason that powerful states like them: they often exclude weaker states from participation, thereby threatening “international law’s foundational principle of sovereign equality.”<sup>54</sup> Others worry that these nonstandard institutions are less accountable, in part because their significance and working methods are often opaque to outsiders. Jan Klabbers argues that organizations with loose forms “create the impression of not being engaged in regulation at all.”<sup>55</sup> There is less of a need to consult with one’s superiors or one’s colleagues in cabinet—or to inform parliament—if all one sets out to do is “a little ‘networking’ or ‘consulting’ with the partners abroad” or “adopting a few politically binding declarations.”<sup>56</sup> National government officials can avoid the scrutiny typically associated with big policy decisions if networks do not appear to be doing much.

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<sup>51</sup> EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY 3 (2010) [hereinafter 2010 NATIONAL SECURITY STRATEGY], [https://obamawhitehouse.archives.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/national_security_strategy.pdf)

[<https://perma.cc/TZL3-UW8B>]. President Obama’s 2015 National Security Strategy also emphasized the importance of “diverse international coalitions” and noted that the “U.N. and other multilateral institutions are stressed by, among other things, resource demands, competing imperatives . . . and the need for reform[.]” EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY 7, 23 (2015), [https://obamawhitehouse.archives.gov/sites/default/files/docs/2015\\_national\\_security\\_strategy\\_2.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf) [<https://perma.cc/M3Q9-YUEX>].

<sup>52</sup> 2010 NATIONAL SECURITY STRATEGY, *supra* note 51, at 46.

<sup>53</sup> BENVENISTI, *supra* note 1, at 37–41.

<sup>54</sup> RODILES, *supra* note 3, at 4 (noting also that coalitions of the willing “contribute to the further loosening of control of powerful states, which take advantage of the selectivity awarded by coalitions in order to define the priorities in the implementation and evolution of international law—nothing more but nothing less”); *see also* BENVENISTI, *supra* note 1, at 37.

<sup>55</sup> Jan Klabbers, *Institutional Ambivalence by Design: Soft Organizations in International Law*, 70 NORDIC J. INT’L L. 403, 417 (2001).

<sup>56</sup> *Id.*; *see also* Bradley, Goldsmith, & Hathaway, *supra* note 25, at 52–61 (comparing coordination, transparency, and legislative participation in nonbinding international agreements versus treaties).

### *C. What's Missing*

The existing scholarship on international organizations and their alternatives is helpful but hampered by two shortcomings. First, the existing literature is incomplete because it simultaneously understates the costs of various nonstandard institutions and underestimates the advantages of formal international organizations. As described above, the existing approaches contemplate rational and well-informed states making choices in isolation, starting from a blank page, about the kind of institutions that will best serve their needs and preferences in light of the various constraints under which they operate.

We argue that states establishing new institutions must consider the broader context in which these institutions will operate in the longer term. This broader context includes actors beyond the immediate participants in the exercise. Any new institution—whether an international organization, a network, or a public-private partnership—will have to interact with a variety of other actors, including non-member states and other existing institutions. The broader context also includes the legal frameworks that govern these other institutions and states. In this historical moment, when the global governance space is saturated with so many other institutions and actors, we argue that these relational considerations ought to be front and center.

As we will explain, once this broader context is taken into account, important additional benefits of international organizations—and costs associated with nonstandard institutions—come into focus. Among other things, formal international organizations are “plug and play” while nonstandard institutions often require costly custom solutions.

A second shortcoming of this literature is an unacknowledged lack of consensus about what actually counts as an international organization. In this Part, we have tracked political scientists’ use of the term “formal international organization.” It turns out, however, that political scientists and international lawyers don’t quite have the same thing in mind when they talk about international organizations. International lawyers focus on features of international organizations that delineate entities that have certain rights, duties, and capacities in the international legal system—and that national legal systems recognize as having certain privileges and immunities. Our argument focuses on the importance of the legal and institutional context in which international organizations operate. In this broader context, satisfying the *legal* criteria for recognition as an international organization turns out to be quite consequential. In particular, political scientists often ignore the significant privileges and immunities of international organizations, which include

untaxed staff salaries, inviolability of premises and archives, and immunity from litigation.

But there's also a gap between the entities that satisfy the legal criteria for being international organizations and the smaller set of international organizations, like the WHO and the African Union, that capture the public imagination, and are implicitly recognized as "true" or "real" international organizations. Some organizations that satisfy the legal criteria nevertheless seem to have a second-tier status. The International Organization for Migration (IOM) is a prominent example. Since 1989 the IOM has been endowed with all the bells and whistles that are needed to satisfy international lawyers.<sup>57</sup> But until recently, outsiders have viewed the IOM with a mix of skepticism and disdain, and even some insiders are self-conscious of the organization's lesser status.<sup>58</sup> A comprehensive account of the benefits of formal international organizations needs to explain the basis for this distinction within the category of "legal" international organizations. Which are the benefits that follow from legal status, and can they be disentangled from the benefits that follow from being what we call a "paradigmatic" international organization?

## II. OUR CONTRIBUTION

### A. *Our Theory*

We coin the term "paradigmatic international organization" and explain the surprising appeal of an institutional form others consider dated and out of style. Our contribution is threefold: we define what a paradigmatic international organization is; we explain theoretically why all international organizations and especially paradigmatic ones have under-appreciated appeal; and we document a broad-based shift among networks—one particularly important type of nonstandard institution—to incorporate features of international organizations.

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<sup>57</sup> *IOM History*, IOM, <https://www.iom.int/iom-history> [<https://perma.cc/BY5X-FDTQ>] (last visited Mar. 19, 2023).

<sup>58</sup> Interview, *supra* note 42 (noting that, for a long time, IOM was "perceived as a super-big NGO, not quite fit for the big leagues"); MEGAN BRADLEY, *THE INTERNATIONAL ORGANIZATION FOR MIGRATION: CHALLENGES, COMMITMENTS, COMPLEXITIES* 41 (2020) (describing "the perception in some quarters that IOM would take money for anything" and quoting an "influential IOM official" who remarked that "while the organization is now trying to mature, it is in some senses still like a 'teenager:' it wants everything now, it wants to do whatever it chooses, and yet also wants to be taken seriously as an 'adult' organization, even though this means not always being able to do everything or have everything it might want.").

First, we define key terms in the next Part. As noted above, international lawyers and political scientists have long debated networks and international organizations using definitions that only partially overlap. Both groups emphasize that to form international organizations, sovereign states unite to create a written instrument that establishes a type of permanent structure to promote their cooperation. But only the legal literature demands evidence that the organization has a “distinct will” and addresses the extraordinary privileges and immunities that reinforce and indeed help to establish that “distinct will” by insulating international organizations from national legal systems.

We then develop the concept of a “paradigmatic” international organizations as a subset of those organizations that satisfy the legal criteria. While, as a legal matter, an international organization could have as few as two member states, a paradigmatic international organization has broad membership that aligns with its stated purpose and representation. An organization need not have universal membership to qualify as paradigmatic; a general-purpose regional organization whose members include all states in the claimed geographic region would qualify.

To develop and substantiate our argument, we use a mixed-method approach. To better understand the significance and consequences of various choices about institutional design, we completed a dozen semi-structured interviews with current and former senior officials of international institutions (both formal and nonstandard) and the United States government. We focused on the US government officials because many interviewees suggested that it was the United States that was most hesitant to adopt the international organization form for idiosyncratic domestic reasons. Indeed, interviewees with experience in the US government confirmed these concerns, explaining that the high hurdles for treaty ratification in the US Constitution often foreclosed US participation in new international bodies.<sup>59</sup> These interviews inform much of the analysis and arguments we present in the Parts that follow.

To confirm that we did not cherry-pick interview subjects and examples that fit our argument, in Part IV we undertake a comprehensive review of changes over time in the membership and structure of the networks described in Slaughter’s *A New World Order*. These networks represent one especially prominent type of nonstandard institution. Indeed, they form a universe of most-difficult cases for our argument.<sup>60</sup> That is, we center on institutions that

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<sup>59</sup> See generally Bradley, Goldsmith, & Hathaway, *supra* note 25.

<sup>60</sup> See generally Katerina Linos, *How to Select and Develop International Law Case Studies: Lessons from Comparative Law and Comparative Politics*, 109 AM. J. INT’L L. 475 (2015);

were successfully established as small and nimble bodies, without the large and diverse membership and heavy emphasis on process and bureaucracy that characterize formal international organizations. We focus on structures that were celebrated because their limited membership and flexibility gave key constituents important benefits and early successes. If it turns out that even these paradigmatic networks evolved to more closely resemble formal IOs, or if these networks encountered significant problems attributable to their limited membership and informality, this analysis would offer strong support for our theory. If instead, decades later, these flexible coalitions of small groups of like-minded states persisted and multiplied, it would undermine our argument about the benefits of international organizations.

Part V explains why these distinctions matter. In short, international institutions are not isolated creatures. They require buy-in and collaboration from various outside actors that are not immediate participants in that institution. These outside actors include non-member states and, within member states, parts of the government that are not directly engaged with the international institution. For example, unlike foreign affairs ministries, ministries of agriculture, health, or education may be quite unfamiliar with their obligations under international law. These outside actors also include other pre-existing international organizations and their staff. For each of these outside actors or audiences, it matters whether a particular institution readily satisfies the legal criteria for being an international organization.

Information costs are central to our argument. When information is hard to acquire and multiple parties with limited capacity to gather and analyze information must be persuaded to accept a proposal, parties often choose a standard solution. In contrast, when information is easier to acquire and analyze, or when only a few sophisticated parties need to collect and understand the needed information, it is possible to develop more tailored institutional forms. The Asian Infrastructure Investment Bank (AIIB) can help illustrate this point. According to one anonymous interviewee, when Natalie Lichtenstein, chief counsel for AIIB's establishment, was setting up the AIIB's founding charter, she showed states an Excel spreadsheet, where she compared the proposed AIIB charter to other Multilateral Development Bank (MDB) charters, to reassure them.<sup>61</sup> Lichtenstein herself notes that it is "useful to consider the legal lineage of the AIIB Charter" and the "considerable overlap with the Charters of other MDBs is apparent to those who peruse the AIIB

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Katerina Linos & Melissa Carlson, *Qualitative Methods in Law Review Writing*, 84 CHICAGO L. REV. 213 (2016).

<sup>61</sup> Interview with former senior IO official (Oct. 15, 2021).

Charter.”<sup>62</sup> She describes the decision to model the AIIB Charter after familiar forms, saying:

Starting with something workable, known and respected would offer something reliable to governments, financial markets, potential recipients and contractors. For the lead agency in each PFM [prospective founding member of AIIB] government engaging its domestic authorities and public for the necessary approvals to join AIIB, a familiar structure would facilitate discussions and make it easier to draw attention to AIIB’s special features.<sup>63</sup>

Lichtenstein goes on to address the benefits of familiarity for other actors with whom the AIIB interacts, including rating agencies and investors and for potential borrowers.

In addition, we emphasize interoperability and explain how standard institutional forms facilitate cooperation. It is much simpler to move money, equipment, and personnel to and across institutions when the institutions are similarly structured.<sup>64</sup> Along similar lines, certain subsets of international organizations have established regular meetings to facilitate cooperation among themselves. Only entities that meet the relevant criteria can participate, which often means both being recognizable as an international organization and an organization of the relevant type. For example, the Heads of Multilateral Development Banks meet regularly as a group; the participants include the IMF, the World Bank, and numerous regional multilateral development banks.<sup>65</sup> Collaboration among these institutions can, in turn, enhance their individual and collective efficacy.<sup>66</sup>

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<sup>62</sup> NATALIE LICHTENSTEIN, A COMPARATIVE GUIDE TO THE ASIAN INFRASTRUCTURE INVESTMENT BANK 12 (2018).

<sup>63</sup> *Id.* at 13.

<sup>64</sup> See *infra* text accompanying notes 200 and 255.

<sup>65</sup> Press Release, Islamic Development Bank, IsDB Chief Chairs 1st Meeting of Heads of Multilateral Development Banks in 2020 (May 1, 2020), [https://una-oic.org/page/public/news\\_details.aspx?id=295081&NL=True](https://una-oic.org/page/public/news_details.aspx?id=295081&NL=True) [https://perma.cc/K5K9-9ZJQ] (“The Jeddah-based Islamic Development Bank (IsDB) Group hosted a virtual meeting on Thursday with the heads of the International Monetary Fund (IMF) and 10 other Multilateral Development Banks (MDBs), for their first regular gathering in 2020.”); Press Release, Asian Infrastructure Investment Bank, First Meeting of the Heads of the Multilateral Development Banks 2021 (Apr. 21, 2021), <https://www.aiib.org/en/news-events/news/2021/First-Meeting-of-the-Heads-of-the-Multilateral-Development-Banks-2021.html> [https://perma.cc/F9ZD-LW93].

<sup>66</sup> Press Release, European Investment Bank, Statement by President Hoyer after Heads of Multilateral Development Banks’ Meeting (Oct. 15, 2022), <https://www.eib.org/en/press/news/statement-by-president-hoyer-after-heads-of-multilateral-development-banks-meeting> [https://perma.cc/3ZPH-CJE5] (“The value of cooperation

In developing our first argument concerning information costs, we note a parallel to certain features of property law and claims made by property law theorists. Property law theorists argue that, unlike contract law, which is very flexible, property law takes a set number of forms in civil- and common-law countries alike. A powerful explanation for this difference between property and contract law is that property is “an in rem right, which means that it avails against all others,” imposing duties (do not trespass, do not steal) and consequences on a wide range of actors (potential violators, successors, other transactors) who do not participate in any given transaction.<sup>67</sup> In other words, property law keeps things simple because it needs to communicate to a broad audience.<sup>68</sup> By contrast, contract law can be more complicated because (with some exceptions) it imposes obligations only on participating parties.

Along similar lines, when states create an international organization, they establish an entity with objective legal personality, which must be recognized and accorded rights under international law by member states and non-member states alike.<sup>69</sup> States and other international organizations have enacted laws and developed various procedures that facilitate interactions with other international organizations. Organizations that are readily recognizable as conforming to that traditional model will encounter lower transaction costs in their interactions with various actors who are not direct participants in the organization. Such organizations may also benefit in more subtle ways from the attitudes they elicit. A report making the case for transforming the Organization for Security and Cooperation in Europe (OSCE) to a traditional international organization argued that the OSCE’s uncertain legal status was a source of “reputational damage, since other regional or international organizations may not see the OSCE as a credible organization.”<sup>70</sup> Indeed,

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between the multilateral development banks is not an abstract concept but a concrete proposition that translates into impactful projects around the globe . . . Cooperation among MDBs increases the value of their work and the benefits of that work on the ground, ensuring that we complement each other’s strengths, pool expertise and attract private and public finance to where it is most needed.”).

<sup>67</sup> Henry E. Smith, *Standardization in Property Law*, at 159, in *RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW* 159 (Kenneth Ayotte & Henry E. Smith, eds., 2011).

<sup>68</sup> *Id.* at 159.

<sup>69</sup> See generally *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174 (Apr. 11); CHITTHARANJAN FELIX AMERASINGHE, *INTERNATIONAL INSTITUTIONAL LAW* (1996) (commenting on the objective personality of IOs more generally).

<sup>70</sup> REPORT TO THE MINISTERIAL COUNCIL ON STRENGTHENING THE LEGAL FRAMEWORK OF THE OSCE IN 2012 ¶3 (Dec. 7, 2012), <https://www.osce.org/files/f/documents/8/c/97950.pdf> [<https://perma.cc/7EMC-6NZH>] [hereinafter OSCE Report]. Cf. Jan Klabbers, *The Concept of Legal Personality*, 11 *IUS GENTIUM* 35, 61–62 (The “most general purpose of personality” is “to suggest that the human group is worthy of recognition (in the broadest sense of the word) in itself;” this “symbolic value is immense.”).

surveys of elite public officials from across the globe reveal more confidence in traditional international organizations than in nonstandard institutions representing new modes of global governance.<sup>71</sup> This result holds across all sectors and all sampled countries with the exception of Russia.<sup>72</sup>

Relatedly, one of us has compared diffusion through democracy to diffusion through technocracy, and argues that when electorates are involved, a single global model often emerges.<sup>73</sup> In fields in which technocrats decide which laws to adopt, they can canvass diverse options, compare results, learn from others' mistakes, and tailor rules to local circumstances. However, when democratic electorates must be persuaded, politicians often campaign on tried-and-true solutions, even if they know these to be second-best options. This is because voters have limited information and a lot of mistrust. Voters worry that politicians will be partisan and incompetent. Politicians can signal that their proposal is mainstream by selecting the dominant international model, adopted by many other countries, and promoted by an international organization, rather than a more tailored solution that would suit their country best.<sup>74</sup> Survey data shows that the general public continues to have more trust and confidence in the United Nations and the European Union than in their own national governments.<sup>75</sup> And a broad range of experimental studies suggests that when a proposal is presented as endorsed by an international organization or required by international law, support for this proposal goes up, even among segments of the public that were initially sceptical.<sup>76</sup>

As we detail, international organizations that conform to a recognized, standard model and meet the legal criteria have several advantages in engaging with these outside actors. These international organizations can claim rights under international law vis-à-vis non-member states; they can choose from a more expansive menu of forms of cooperation—specifically, one that includes treaties; they can take advantage of laws in many national legal systems that apply to international organizations as a category, which facilitates their access to privileges and immunities, among other things; and they can more easily

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<sup>71</sup> Jonas Tallberg, *Legitimacy and Modes of Global Governance* 324–27, in Barnett et al., eds., *supra* note 1.

<sup>72</sup> *Id.* at 326–27.

<sup>73</sup> KATERINA LINOS, *THE DEMOCRATIC FOUNDATIONS OF POLICY DIFFUSION* (2013); *see generally* Katerina Linos, *Diffusion through Democracy*, 55 AM. J. OF POL. SCI. 678 (2011).

<sup>74</sup> *Id.* *See also* TOBIAS LENZ, *INTERORGANIZATIONAL DIFFUSION IN INTERNATIONAL RELATIONS* (2021); Thomas Sommerer & Jonas Tallberg, *Diffusion Across International Organizations: Connectivity and Convergence*, 73 INT'L ORG. 399 (2019).

<sup>75</sup> Tallberg, *supra* note 71, at 320–24.

<sup>76</sup> *See* Adam Chilton & Katerina Linos, *Preferences and Compliance with International Law*, 22 THEORETICAL INQUIRIES L. 247 (2021) (reviewing the literature on how national public opinion changes in response to international norms and international law).

establish formal relationships with other international organizations by obtaining observer status.

Our argument is one about the benefits of conforming to a standard, familiar type. Formal international organizations have been prominent on the international scene since the end of World War II,<sup>77</sup> and both national legal systems and other international organizations have established infrastructure that accounts for this category of actor. Organizations that can quickly and decisively establish that they belong to that category can take advantage of that infrastructure to advance their missions. As we document, nonstandard institutions may be able to achieve similar kinds of cooperation or similar privileges under national law—but custom solutions and workarounds are often costly.

Indeed, the benefits of standard institutional forms may become more apparent over time. Nonstandard institutional arrangements are often developed when speed is of the essence and negotiating a treaty to set up a traditional international organization is perceived to take up too much time and to yield a structure that is too rigid.<sup>78</sup> We argue that savings in up-front costs may be offset by additional operational costs over time as institutions interact with various external audiences.<sup>79</sup> Costs for nonstandard institutions increase as they are forced to jury-rig or recreate arrangements to replicate the benefits or options that are available to traditional international organizations as a matter of course. This account supplies important support for the hypothesis that some of the observed embrace of nonstandard institutions reflects

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<sup>77</sup> The first organization that was broadly recognized as such is the League of Nations. *See generally* David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT'L L. 275 (1996). After World War II, the population of international organizations increased quite dramatically. *See generally* Michael Wallace & J. David Singer, *Intergovernmental Organization in the Global System, 1815-1964: A Quantitative Description*, 24 INT'L ORG. 239 (1970); Thomas J. Volgy et al., *Identifying Formal Intergovernmental Organizations*, 45 J. PEACE RESEARCH 837 (2008).

<sup>78</sup> Sullivan, *supra* note 45, at 244 (referencing the establishment of the Global Fund: “The speed of organizational growth has taken place by employing innovating programmatic structures, and has been enabled by opting out of the traditional treaty-based international organizations model in favor of a structure that could both provide for a quick start and maintain sufficient flexibility to adapt to a fast-changing environment.”). *See also, e.g.*, Rachel Brewster & Christine Dryden, *Building Multilateral Anticorruption Enforcement: Analogies Between International Trade & Anti-Bribery Law*, 57 VA. J. INT'L L. 221 (2018) (explaining why the short-term costs of building an anti-bribery cost might be prohibitively high).

<sup>79</sup> This point is distinct from the reduced long-term operational costs associated with negotiations and decision-making *within* the international organization. Vabulas & Snidal, *supra* note 1, at 211 (noting that the procedural rules of formal IOs “slow action in the short run but provide a lower cost framework to address recurring issues and implement routine, agreed upon processes over the long haul.”).

constraints and concessions rather than affirmative first-choice preferences.<sup>80</sup> Our account also helps to explain why, on a world stage crowded with heterogeneous institutions, traditional international organizations continue to play the central role.<sup>81</sup>

### 1. Interview Methodology

Because our argument relies heavily on the results of our interviews, we explain some best practices, both to substantiate our methodology and to provide guidance to other legal academics who like us, might have access to elite interviewees. The term ‘elite interview’ is widely used in interview-based research to indicate the position that the interviewee occupies and the work they do.<sup>82</sup> We draw especially on the work of Erik Bleich and Robert Pekkanen here on best practices for recording interview methods.<sup>83</sup>

We start with the issue of sampling bias. Whereas survey research often reports how many people were contacted and how many responded, and a low response rate is viewed as suspect, this is not commonly done with elite interviews. We are very happy to report that all but one of the people we reached out to responded to us and were willing to be interviewed, though many requested this be done anonymously or on background. This high response rate is not the beginning or the end of the inquiry. Best practice for elite interviews also requires (1) a predetermined interview frame, and (2) reaching saturation. A predetermined interview frame requires researchers to think about who they will need to reach out to before entering a field. For example, to find out about current debates in employment, consumer, or securities law, it might be critical to reach out to lawyers from both the plaintiff and the defendant bar. In our case, it was critical to reach out to top decisionmakers who were in the room when the structure of an international

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<sup>80</sup> Lisa L. Martin, *Formality, Typologies, and Institutional Design*, 16 REV. INT’L ORGS. 175, 180 (2021) (“It is important to distinguish between circumstances in which actors choose informal institutions because they have a positive preference for informality; and those in which they would ideally prefer more formal institutions but are constrained by the strategic environment to settle for informality.”).

<sup>81</sup> Suerie Moon, *Global Health: A Centralized Network Searching (in Vain) for Hierarchy*, in Barnett et al., *supra* note 1, at 244 (observing that the system of global health governance remains “centered around WHO”); *Id.* at 258 (predicting that “WHO’s place at the center is likely to endure”).

<sup>82</sup> See generally JENNIFER HOCHSCHILD, CONDUCTING INTENSIVE INTERVIEWS AND ELITE INTERVIEWS, WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH (2009) <https://scholar.harvard.edu/jlhochschild/publications/conducting-intensive-interviews-and-elite-interviews> [<https://perma.cc/G8UL-3895>].

<sup>83</sup> Erik Bleich & Robert Pekkanen, *How to Report Interview Data*, in INTERVIEW RESEARCH IN POLITICAL SCIENCE, 84–105 (Layna Mosley, ed., 2013).

body was debated or modified, as well as to their successors, who could discuss what worked well and what key problems emerged in later years. The second goal of interview research is reaching saturation. Interview research should end when interviewees recommend contacting people already contacted, successive interviewees repeat previously articulated opinions, and disagreements among interviewees become predictable.<sup>84</sup> We reached this point on several issues and were very pleased when multiple interviewees pointed us to experts we had already spoken to. For example, a broad range of interviewees confirmed that excitement about informal institutions often came from United States' representatives. Similarly diverse interviewees confirmed that actual and potential staff members had a strong preference for the generous compensation packages associated with international organizations; the U.N. pension fund came up quite often.

It is also important to report on interview procedure, as otherwise a brief meeting with a busy leader, or an interview that the researcher poorly recalled could receive too much weight. As we worked on this project during the pandemic, we conducted each interview by phone or videoconference. Our interviews were lengthy. Many lasted longer than an hour, and one interviewee continued our conversation over multiple hours over multiple days. Both of us were present at all interviews, with one researcher taking notes. We also recorded many interviews for accuracy. They were semi-structured in that we prepared written questions in advance while also leaving space for interviewees to take the conversation in directions they considered important.

Interviews are most effective when designed to extract systematic information about actual behaviors in specific cases in the recent past. Put another way, it is important to focus on areas about which interviewees may best contribute and recall—by asking, for instance, about what elite interviewees do routinely, and what procedures they follow. In contrast, asking elite interviewees to make empirical generalizations about what they tend to do or to theorize about their motives may yield less reliable answers.<sup>85</sup> It is also important to ask interviewees about specific events. Asking interviewees to volunteer examples is helpful but will likely lead them to recall cases where their office was a key player, rather than those where they were not critically involved.<sup>86</sup> We followed those practices and illustrate with diverse examples.

All people, and perhaps politicians and lawyers especially, tend to describe the world in a self-interested way. Some statements—such as

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<sup>84</sup> *Id.* at 90–91.

<sup>85</sup> Matthew N. Beckmann & Richard L. Hall, *Elite Interviewing in Washington, DC*, in *INTERVIEW RESEARCH IN POLITICAL SCIENCE* 198 (Layna Mosley ed., 2013).

<sup>86</sup> *Id.*

statements that accept blame or give credit to others—tend to be more credible than the reverse.<sup>87</sup> Authors can also check on statements for credibility. We sought, when possible, to use written corroboration instead of or in addition to interview language. Indeed, several interviewees who wanted to remain anonymous pointed us to documents that we could cite instead of their own words. Finally, by offering all interviewees anonymity, we can help reduce the biases associated with eponymous statements and allow interviewees to flag problems with their organizations or address other sensitive issues.

Finally, authors often select colorful quotations. In presenting quotations, it is important to explain whether the sentiment was representative of other interviewees, that just happened to be expressed particularly well by one individual, or whether instead it represented an unusual viewpoint. We generally selected quotations we found to reflect typical sentiment and made sure to flag any quotations we included that reflected idiosyncratic beliefs.

### III. A TYPOLOGY OF INTERNATIONAL INSTITUTIONS

We begin by clarifying the differences among different categories of international institutions. Elaborating on these categories will lay the groundwork for the systematic analysis of the evolution of networks in Part IV and for our account of the appeal of the paradigmatic IO form in Part V. We highlight the distinctions between the two types of institutions that are most different from one another, which we label “paradigmatic international organizations” and “paradigmatic networks.”

We use the term “international organization” to refer to organizations that satisfy the widely accepted definition among scholars of international law. In their treatise, Henry Schermers and Niels Blokker provide a three-element definition of international organizations endorsed by many other prominent legal theorists. Schermers and Blokker argue that international organizations require three elements: (1) an agreement between two or more states, (2) setting up at least one organ with a will of its own, and (3) operating under international law.<sup>88</sup> The organization’s “distinct will” from that of its member states might emerge from an organ composed of representatives of member states that is empowered to take some decisions by majority (or supermajority

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<sup>87</sup> See, e.g., Katerina Linos, *How Can International Organizations Shape National Welfare States? Evidence from Compliance with European Union Directives*, 40 COMP. POL. STUD. 547, 560–62 (2007) (explaining that when bureaucrats blame themselves for delays in the implementation of international employment regulations, and labor unions absolve employer associations from blame for such delays, these statements are credible as they are contrary to self-interest).

<sup>88</sup> HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW* § 33 (6th rev. ed. 2018).

or qualified majority) vote, or, alternatively, it might emerge from a secretariat that has some independence or autonomy from the member states.<sup>89</sup> International organizations today typically have both. The third element—operating under international law—excludes organizations that are established under, and therefore governed by, national law. As we explain below, one key source of international organizations’ independence and autonomy is their insulation from national law. International organizations that satisfy these three criteria have legal personality under international law, which means that they have at least some recognized rights and obligations under international law, including the capacity to enter into treaties, to incur responsibility for violating their obligations, and to make claims against other states and IOs if they are the victims of violations.

Although the legal definition of an international organization requires only two member states,<sup>90</sup> we argue that international organizations with broader membership constitute a distinct subset of the international organizations that meet the legal definition. In particular, we define “paradigmatic international organizations” as those that have a broader membership that aligns with the organization’s purported goals.

The three types of nonstandard institutions lack, at least to a degree, one or more of the three elements that define international organizations. “Soft organizations” are entities that, unlike pure networks, have some existence separate and apart from participating states, but by design lack one or more of the features that define international organizations.<sup>91</sup> A classic example is the Organization for Security and Cooperation in Europe (OSCE).<sup>92</sup> This organization emerged out of the Conference on Security and Co-operation in Europe (CSCE).<sup>93</sup> The CSCE was a diplomatic conference convened in various capitals on an ad hoc basis in the early 1970s; it stood out as one of the few venues in which the United States, the Soviet Union, and Western Europe

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<sup>89</sup> *Id.* at § 44A (suggesting both interpretations); JAN KLABBERS, *ADVANCED INTRODUCTION TO INTERNATIONAL ORGANIZATIONS LAW* 9 (2015) (noting the requirement of a “distinct will” displays a tension between “sociological accuracy and legal formalism.” On the one hand, international organizations typically have secretariats, and “bureaucracies tend to lead a life of their own:” on the other hand, “precious few organizations . . . can take binding decisions against the will of one or more member states.”).

<sup>90</sup> *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14, §§ 84–88 (Apr. 20, 2010) (concluding that the Commission of the River Uruguay, established by a bilateral treaty between Argentina and Uruguay, is an international organization with legal personality).

<sup>91</sup> Klabbers, *supra* note 55, at 405–08.

<sup>92</sup> *Id.*

<sup>93</sup> Carolyn Moser & Anne Peters, *Legal Uncertainty and Indeterminacy: Immutable Characteristics of the OSCE?*, in *THE LEGAL FRAMEWORK OF THE OSCE* 4–5 (Mateja Steinbrück Platise, Carolyn Moser, & Anne Peters, eds. 2019).

engaged one another during the Cold War. The CSCE's best-known output is the Helsinki Final Act, a prominent example of an influential but legally non-binding document that articulated consensus positions on human rights. In the early 1990s, the CSCE's participating states established various "structures," including institutions and field operations, but they consistently avoided adopting any kind of document that defined the CSCE as a unitary institution.<sup>94</sup> In 1994, the CSCE was renamed the OSCE, but the document announcing that change stated that the name change "alters neither the character of our CSCE commitments nor the status of the CSCE and its institutions."<sup>95</sup> This statement generated ambiguity about the OSCE's international legal status and, indeed, in the years that followed, participating states openly disputed it.<sup>96</sup> Some have treated the OSCE like any other international organization, while others have continued to reject that characterization of the organization's status.

Public-private partnerships diverge from the international organization form along two dimensions. They often involve prominent roles for private actors as well as states, and they are typically established under (and therefore governed by) national rather than international law. We have already mentioned the Global Fund as an example.<sup>97</sup> While states were among the actors who established the Global Fund in 2002, the founders also included private foundations, most prominently the Bill and Melinda Gates Foundation; nongovernmental organizations; the pharmaceutical industry; and individuals living with HIV/AIDS, tuberculosis, and malaria.<sup>98</sup> The composition of the Global Fund's board assured these various private actors ongoing influence over the Fund's activities.<sup>99</sup> By contrast, international organizations almost never allow private actors a vote in decisions.<sup>100</sup> Instead, they wait outside meeting rooms, ready to pass on cheat sheets with detailed notes to receptive national delegates because private actors typically cannot participate in most negotiations, let alone vote.<sup>101</sup>

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<sup>94</sup> Lisa Tabassi, *The Role of the Organization in Asserting Legal Personality*, in *THE LEGAL FRAMEWORK OF THE OSCE* 50–52 (Mateja Steinbrück Platise, Carolin Moser, & Anne Peters, eds., 2019).

<sup>95</sup> Budapest Decisions, I. Strengthening the OSCE, DOC.RC/1/95 ¶ 29 (Dec. 21, 1994), <http://hrlibrary.umn.edu/osce/new/Budapest-Decisions.html> [<https://perma.cc/Z5ZS-YE6F>].

<sup>96</sup> Tabassi, *supra* note 94, at 48–49.

<sup>97</sup> See *supra* notes 10–11 and accompanying text.

<sup>98</sup> Sullivan, *supra* note 45, at 244.

<sup>99</sup> David Gartner & Kenneth W. Abbott, *Reimagining Participation in International Institutions*, 8 J. INT'L L. & INT'L REL. 1, 13–14 (2012).

<sup>100</sup> Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VANDERBILT L. REV. 649, 651–52 (2006) (describing the ILO's tripartite governance structure, in which not only representatives of governments but also representatives of organized labor and employers can vote, as a unique exception to the general rule).

<sup>101</sup> Interview with senior IO official (Jan. 25, 2021).

Public-private partnerships have been established across a range of issue areas. Other public-private partnerships related to health include GAVI, the Vaccine Alliance; the Stop TB Partnership, and the Medicines for Malaria Venture.<sup>102</sup> The Internet Corporation for Assigned Names and Numbers (ICANN), established as a non-profit public benefit corporation in California to regulate internet addresses, is another example.<sup>103</sup> Public-private partnerships have become an increasingly common means of tackling global environmental issues, including climate change.<sup>104</sup>

Among nonstandard institutions, networks stand out as the least formalized. Slaughter, who made these networks the centerpiece of *A New World Order*, defines them as “a pattern of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the ‘domestic’ from the ‘international’ sphere.”<sup>105</sup> In contrast to international organizations, Slaughter emphasizes that networks “operate in the political equivalent of the informal economy.”<sup>106</sup> Networks are not established by treaty—and may not be governed by any formal document at all. As a result, she explains, networks have “no independent or formally recognized status in international law and politics.”<sup>107</sup> And by extension, unlike international organizations, networks lack their own rights and obligations under international law.<sup>108</sup>

Slaughter described the Group of Seven (G-7) as “[p]erhaps the premier network of heads of states.”<sup>109</sup> It is an example of a paradigmatic network because of its informality and composition of a small group of participating states. The G-7 was not established by any kind of international agreement, and it has no secretariat.<sup>110</sup> Michael Hodges argued that the G-7 couldn’t even be properly labeled an institution: “Institutions have clear organizational centres, the most important characteristics of which in practice, are often their cafeterias and pension plans. More importantly, the public’s expectation

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<sup>102</sup> Gian Luca Burci, *Public/Private Partnerships in the Public Health Sector*, 6 INT’L ORGS. L. REV. 359, 362–66 (2009).

<sup>103</sup> *What Does ICANN Do?*, ICANN, <https://www.icann.org/resources/pages/what-2012-02-25-en> [<https://perma.cc/5RNT-JUCE>] (last visited Mar. 19, 2023); Kingsbury, Krisch, & Stewart, *supra* note 1, at 22.

<sup>104</sup> See generally Liliana B. Andonova, *Public-Private Partnerships for the Earth*, 10 GLOBAL ENV’T POL. 25 (2010).

<sup>105</sup> SLAUGHTER, *supra* note 3, at 14.

<sup>106</sup> *Id.* at 33.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 34. The states participating in a network have their own international obligations, of course, and those do attach to their acts and omissions in relation to the network.

<sup>109</sup> *Id.* at 37.

<sup>110</sup> *Id.*

demands that institutions have clear rules, clear criteria for membership, and clearly defined functions.”<sup>111</sup>

In Table 1 below, we give more substance to the definitions of networks and international organizations by spelling out their features. In this table and the text that follows, we emphasize something familiar to international lawyers, but less familiar to lawyers working in other areas or to international relations experts: international organizations’ privileges and immunities.<sup>112</sup> These legal mechanisms help insulate international organizations from control by individual member states (and their national legal systems) and thereby help establish international organizations’ capacity to act with a distinct will.

**Table 1: Key Features of Networks and International Organizations**

	Networks	International Organizations	Paradigmatic International Organizations
Membership	Like minded states only	At least two states	Broad state membership (e.g., universal; entire region; all states engaged in the activity regulated by the organization)
Secretariat	No	Yes	Yes
Privileges and Immunities	No	Yes	Yes

### ***A. Membership***

Participation in networks is usually limited. Limiting participation to states that already share the same objectives makes it possible to avoid the dynamics that frequently characterize negotiations in forums where all states can participate, including lengthy debates on goals, money, and process. This approach also avoids the risk of being outvoted by states with diverging preferences—an outcome that the United States encounters rather frequently in international organizations operating on a one-state, one-vote basis. Moreover, narrow membership is intimately connected with flexibility along

<sup>111</sup> Michael R. Hodges, *The G8 and the New Political Economy*, in *THE G8’S ROLE IN THE NEW MILLENNIUM* 69 (Michael R. Hodges, John J. Kirton, & Joseph P. Daniels eds., 1999).

<sup>112</sup> See Julia Gray & Rachel Hulvey, *Extending Autonomy: The Immunity of International Organizations 2* (unpublished paper presented at the PEIO Conference, Mar. 22, 2021) (on file with authors) (remarking that “legal immunities are largely understudied in political science” and that this “oversight persists despite a broad literature focused on other aspects of IO legalization”).

other dimensions and with a move away from a public sector mentality to a private sector mentality; there is a reason why “Coca Cola doesn’t have a board with 190 members.”<sup>113</sup>

Fluidity also characterizes participation in networks given that the number of participants might grow or shrink as circumstances change or interstate relationships deteriorate. There are no written criteria for selecting new members or for withdrawal or expulsion. What is today the G-7 started in 1975 as the G-6, an “ad hoc forum that would foster the informal discussion of macroeconomic problems among the leaders of the world’s most industrialized countries.”<sup>114</sup> In 2005, the group expanded to include Russia and became the G-8. When Russia annexed Crimea in 2014, the G-7 resumed meetings without Russia. German Chancellor Angela Merkel remarked: “As long as the political environment for the G-8 is not at hand, as is the case at the moment, there is no G-8—neither as a concrete summit meeting or even as a format for meetings.”<sup>115</sup> Not to be outdone, Russian Foreign Minister Lavrov argued that “[t]he G8 is an informal club, with no formal membership, so no one can be expelled from it.”<sup>116</sup> He clarified that “[i]ts *raison d’être* was for deliberations between western industrialised countries and Russia, but there are other fora for that now . . . so if our western partners say there is no future for that format, then so be it. We are not clinging to that format.”<sup>117</sup>

Participation in international organizations likewise can be limited, and sometimes is. As noted above, two states suffice to establish an international organization.<sup>118</sup> The process for adding or subtracting members is regulated by the organization’s founding treaty and may be quite cumbersome.

While as a legal matter only two states are necessary to create an international organization, international organizations usually strive for broader membership. We identify those that succeed as “paradigmatic international organizations.” Broad membership may mean universal membership for international organizations with global ambitions, or inclusion of key players in a region for regional organizations, or inclusion of key players in an issue area. Certain limits on membership are consistent with our understanding of broad membership. Many international organizations adopt membership criteria that limit participation to states in a certain geographical

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<sup>113</sup> Interview, *supra* note 101.

<sup>114</sup> HUGO DOBSON, *THE GROUP OF 7/8* xii (2007).

<sup>115</sup> Julian Borger, *Russia Shrugs off Threat of Permanent Expulsion from G8*, *THE GUARDIAN* (Mar. 24, 2014), <https://www.theguardian.com/world/2014/mar/24/russia-shrugs-threat-expulsion-g8> [<https://perma.cc/YNL3-CG4J>].

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See *supra* notes 88 and 90.

region or to states that share a certain feature or set of features (say, language for the Community of Portuguese-Speaking Countries), yet still aim to capture a wide array of members that fit these geographic, linguistic, or other criteria. In some cases, the number of members can signal endorsement for a given project. For example, the AIIB's success in convincing western states to become members notwithstanding the United States' opposition was a meaningful accomplishment.<sup>119</sup>

Broad membership that aligns with how an organization represents itself allows the organization to speak and act with greater credibility. By analogy, the U.N. Charter provides that affirmative votes of nine of the 15 members of the Security Council suffice to make substantive decisions (provided that the permanent five members are among the nine).<sup>120</sup> As a legal matter, up to six negative votes of non-permanent members do not matter. But a unanimous vote is a "powerful rhetorical tool to present the Council as embodying the voice of the 'international community.'"<sup>121</sup>

The inverse is also true: international institutions may lose efficacy or legitimacy when certain individual states, or certain groups of states, decline to join or choose to exit. For international organizations that hold themselves out as global, lack of participation by states from a given region, or by states that are particularly central to the issue the organization is seeking to regulate, can be a problem. Some commentators have suggested that Brexit portends the unraveling of the European Union.<sup>122</sup> Think too of the threat that African states would exit the International Criminal Court *en masse* when Burundi, South Africa, and The Gambia withdrew in quick succession, and the African Union followed up with a decision endorsing collective withdrawal by its member

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<sup>119</sup> Matthias Sobolewski & Jason Lange, *U.S. Urges Allies to Think Twice Before Joining China-Led Bank*, REUTERS (Mar. 16, 2015), <https://www.reuters.com/article/us-europe-asia-bank/u-s-urges-allies-to-think-twice-before-joining-china-led-bank-idUSKBN0MD0B320150317> [<https://perma.cc/63HH-R5A7>]; *Who We Are*, ASIAN INFRASTRUCTURE INVESTMENT BANK, <https://www.aiib.org/en/about-aiib/index.html>, [<https://perma.cc/6S2K-PSN4>] (last visited Mar. 19, 2023).

<sup>120</sup> U.N. Charter art. 27.

<sup>121</sup> Ian Hurd, *The Strategic Use of Liberal Internationalism: Libya and the UN Sanctions, 1992-2003*, 59 INT'L ORG. 495, 506 (2005).

<sup>122</sup> PAUL STEPHAN, *THE WORLD CRISIS AND INTERNATIONAL LAW* 1, 267 (including the EU in a list of "obsolete organizations"). See also Hurd *supra* note 121. Others, however, have suggested that Brexit may have been a blessing that facilitated deeper cooperation within the European Union. A 2021 trillion-dollar anti-poverty policy has been called Europe's Hamiltonian moment, and new unanimous decisions in the area of refugees and common defense policy far exceed what was thought possible just a few years ago. Elena Chachko & Katerina Linos, *Ukraine and the Emergency Powers of International Institutions*, 116 AM. J. INT'L L. 775, 775–76 (2022).

states.<sup>123</sup> These developments were particularly significant because Africa remains the continent on which the Court has been most active.<sup>124</sup> Another example is the decision by some of the few states that remain actively engaged in whaling to withdraw (or threaten to withdraw) from the International Whaling Commission (IWC).<sup>125</sup> These departures have not affected the legal status of the IWC as an international organization, but they have threatened the Commission's capacity to effectively regulate whaling.<sup>126</sup> These actual and threatened exits have also undermined the IWC's status as *the* go-to forum for governments to resolve, or at least to manage, deep-rooted disputes about the circumstances (if any) under which whaling is acceptable.<sup>127</sup> For regional or sub-regional organizations, missing a state that belongs as a geographical matter can raise questions; consider here the concerns that the actual exit of Venezuela or the potential exit of Turkey could undermine the American Convention on Human Rights or European Convention on Human Rights, respectively. A lack of alignment between an organization's mission and its membership can undermine an organization's credibility. The solution is to persuade the missing states to join—and that requires an organization to appeal to that external audience, a topic we take up in more detail in Part V.

<sup>123</sup> See Manisuli Ssenyonjo, *State Withdrawals from the Rome Statute of the International Criminal Court: South Africa, Burundi, and the Gambia*, in THE INTERNATIONAL CRIMINAL COURT AND AFRICA 214–16 (Charles Chernor Jalloh & Ilias Banteaks, eds., 2017); Patryk I. Labuda, *The African Union's Collective Withdrawal from the ICC: Does Bad Law Make for Good Politics?*, EJIL:TALK! (Feb. 15, 2017), <https://www.ejiltalk.org/the-african-unions-collective-withdrawal-from-the-icc-does-bad-law-make-for-good-politics/> [https://perma.cc/7QKU-WDRQ]; Christa-Gaye Kerr, *Sovereign Immunity, the AU, and the ICC: Legitimacy Undermined*, 41 MICH. J. INT'L L. 195, 219–21 (2020); Laurence Helfer, *Exiting Treaties*, 91 VA. L. REV. 1579, 1645–47 (2005).

The Gambia and South Africa later revoked their decisions to withdraw from the ICC. Press Release, International Criminal Court, ASP President Welcomes Gambia's Decision Not to Withdraw from the Rome Statute (Feb. 17, 2017) <https://www.icc-cpi.int/news/asp-president-welcomes-gambias-decision-not-withdraw-rome-statute>, [https://perma.cc/22JY-XB8P]; Norimitsu Onishi, *South Africa Reverses Withdrawal from International Criminal Court*, N.Y. TIMES (Mar. 8, 2017), <https://www.nytimes.com/2017/03/08/world/africa/south-africa-icc-withdrawal.html> [https://perma.cc/NQ2N-PETU].

<sup>124</sup> Ssenyonjo, *supra* note 123, at 227–29; Kerr, *supra* note 123, at 199–205.

<sup>125</sup> See generally David D. Caron, *The International Whaling Commission and the North Atlantic Marine Mammal Commission: The Institutional Risks of Coercion in Consensual Structure*, 89 AM. J. INT'L L. 154 (1995) (discussing Iceland's withdrawal from the IWC and Norway's role in establishing a competing organization); Shelby Devanney, *When There's a Whale There's a Way: An Analysis of Japan's Decision to Withdraw from the International Whaling Commission and the Potential Implications for Whale Populations and the International Community*, 44 SUFFOLK TRANSNAT'L L. REV. 295 (2021).

<sup>126</sup> See generally Alyson Decker, *Save the Whales—Save the Whalers—Wait, Just Save the International Whaling Commission: A Close Look at the Controversy Surrounding Cultural Claims to Whale*, 16 S. CAL. INTERSDISC. L. J. 253, 281–82 (2006); Ian Hurd, *Almost Saving the Whales: The Ambiguity of Success at the International Whaling Commission*, 26 ETHICS & INT'L AFFS. 103, 109 (2012).

<sup>127</sup> Decker, *supra* note 126; Hurd, *supra* note 121.

### ***B. Secretariats***

The presence or absence of a secretariat is one feature that distinguishes networks from IOs. IO secretariats often take on two particularly significant roles: preparatory work for future international agreements and monitoring existing international agreements. The importance of preparatory work is made clear by a large literature on agenda setting. This literature emphasizes that the party that determines the agenda, meaning the party that controls which items will be discussed and the order in which they will be discussed, has a critical impact on the outcome of collective decision-making.<sup>128</sup>

International organization secretariats also conduct technical research, and issue reports and rankings on various topics related to their missions, including implementation (or lack thereof) of various commitments and legal obligations that member states have undertaken. A large literature demonstrates that these kinds of outputs can be quite powerful means of influencing state behavior.<sup>129</sup> To take one notorious example, while serving as the World Bank's Chief Executive, Kristalina Georgieva was found to have succumbed to Chinese pressures to inflate China's ranking in an influential report on business climates.<sup>130</sup> To take another example, the practice of assigning letter grades for human rights performance, initially used to influence states through national human rights institutions and through the UN Human Rights Committee, is also being considered by a broad range of treaty bodies.<sup>131</sup>

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<sup>128</sup> See generally KENNETH ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (3rd ed., 2012).

<sup>129</sup> See generally SALLY ENGLE MERRY, *THE SEDUCTIONS OF QUANTIFICATION* (2016); Judith G. Kelley & Beth A. Simmons, *Introduction: The Power of Global Performance Indicators*, 73 INT'L ORG. 491 (2019); Kevin E. Davis, Benedict Kingsbury, & Sally Engle Merry, *Indicators as a Technology of Global Governance*, 46 L. & SOC'Y REV. 71 (2012); Katerina Linos & Tom Pegram, *What Works in Human Rights Institutions?*, 111 AM. J. OF INT'L L. 628 (2017); Catherine Powell, *Gender Indicators as Global Governance: Not Your Father's World Bank*, 17 GEO. J. GENDER & L. 777 (2016).

<sup>130</sup> Andrea Shalal & David Lawder, *IMF Chief Called Out Over Pressure to Favor China While at World Bank*, REUTERS (Sept. 17, 2021), [reuters.com/business/sustainable-business/world-bank-kills-business-climate-report-after-ethics-probe-cites-undue-pressure-2021-09-16/](https://reuters.com/business/sustainable-business/world-bank-kills-business-climate-report-after-ethics-probe-cites-undue-pressure-2021-09-16/) [https://perma.cc/X38J-76GA].

<sup>131</sup> See Katerina Linos & Tom Pegram, *Architects of Their Own Making: National Human Rights Institutions and the United Nations*, 38 HUM. RTS. Q. 1109, 1122–26 (2016) (discussing how countries seeking membership to the Human Rights Council sought 'A' letter grades); Katerina Linos & Tom Pegram, *The Language of Compromise in International Agreements*, 70 INT'L ORG. 587, 616 (2016) (explaining that states built their National Human Rights Institutions in compliance with UN recommendations in order to obtain an 'A' letter grade); Vincent Plinton, *The Development of Grading Systems on the Implementation of UN Treaty Body Recommendations and the Potential for Replication to Other UN Human Rights Bodies* (March 2017).

The work of international secretariats can be understood as the technical implementation of member states' decisions, and as the means for realizing the benefits of centralization. But such implementation is rarely ministerial; secretariats almost invariably retain discretion about how to carry out any given assignment. This discretion can empower officials to steer the organization in the directions they prefer—which may be to advance their perception of the organization's core mission, to advance their own well-being, or some combination.<sup>132</sup> This relationship resembles a standard principal-agent problem, in which the state principals have less technical knowledge than the international organization staff. Depending on how states select, monitor, and compensate international organization staff, the state principals can benefit from, or be fooled by, their agents. The principal-agent critique specific to international organizations goes as follows: international organization secretariats, composed of multinational staff, headquartered in remote cities away from national capitals, end up promoting global goals and are indifferent to calls from nation states.<sup>133</sup> Without information and control with respect to secretariats, powerful states worry that they lose control over organizations.<sup>134</sup> The traditional tool states used to minimize this principal-agent problem was to fight over top-level appointees, and sometimes also lower-level staff, to ensure they had adequate representation.<sup>135</sup>

Because networks lack secretariats, they avoid the risks associated with runaway international organizations.<sup>136</sup> National government officials from

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[https://ishr.ch/sites/default/files/documents/tb\\_grading\\_systems\\_their\\_replicability\\_to\\_other\\_un\\_hr\\_bodies.pdf](https://ishr.ch/sites/default/files/documents/tb_grading_systems_their_replicability_to_other_un_hr_bodies.pdf) [<https://perma.cc/RB5V-WTZP>].

<sup>132</sup> See, e.g., CHOREV, *supra* note 10, at 227, 232–33 (arguing that the World Health Organization secretariat engaged in strategic adaptation to reconcile member states' demands and institutional goals).

<sup>133</sup> Anu Bradford, Stravros Gadinis, & Katerina Linos, *Unintended Agency Problems: How International Bureaucracies Are Built and Empowered*, 57 VA. J. INT'L L. 159, 166 (2018).

<sup>134</sup> Not all authors see this as a major problem. For instance, some have argued that when seen not from the perspective of powerful states, but from the perspective of weaker states, or from the collective perspective prioritizing the production of global public goods, it is often best to give more control to secretariats and less control to states. See, e.g., Kenneth W. Abbott, Philipp Genschel, Duncan Snidal, & Bernhard Zangl, *The Governor's Dilemma: Competence versus Control in Indirect Governance* (Berlin Soc. Sci. Ctr. Discussion Paper, SPIV 2018-01), <https://bibliothek.wzb.eu/pdf/2018/iv18-101.pdf> [<https://perma.cc/BTP3-BX85>].

<sup>135</sup> Interview, *supra* note 42.

<sup>136</sup> See generally Anne-Marie Slaughter, *The Accountability of Government Networks*, 8 IND. J. GLOB. LEGAL STUD. 347 (2001); Robert O. Keohane, *The Concept of Accountability in World Politics and the Use of Force*, 24 MICH. J. INT'L L. 1121 (2003); Alexandru Grigorescu, *Transparency of Intergovernmental Organizations: The Role of Member States, International Bureaucracies and Nongovernmental Organizations*, 51 INT'L STUD. Q. 625 (2007).

participating states are directly accountable to their home states—although the typical mechanisms of review for administrative action may not always reach participation and decision-making in networks.<sup>137</sup>

### *C. Privileges, Immunities, and Legal Capacities of International Organizations*

The role international organization secretariats play is extensively studied in both political science and law; we turn here to the role of IO privileges and immunities, which is much better understood in the legal literature.<sup>138</sup> The treaties establishing international organizations typically link the scope of immunity to the organization's purposes and goals. For example, Article 105(3) of the U.N. Charter provides that the United Nations shall enjoy "such privileges and immunities as are necessary for the fulfilment of its purposes."<sup>139</sup> A standard package of privileges and immunities includes comprehensive immunity from legal process for the organization itself, immunity from legal process for the organization's staff for words spoken and conduct undertaken in the staff member's official capacity, inviolability of the organization's premises and archives, and exemptions from taxation for the organization and its staff.<sup>140</sup>

Immunity's main purpose is to reinforce the organization's international character. Immunity prevents individual member states from undermining the organization's independence or formal governance mechanisms by subjecting the organization to its national legislation or courts. As the Canadian Supreme Court observed in a case against the World Bank, "It is part of the original agreement that in exchange for admission to the international organization, every member state agrees to accept the concept of collective governance."<sup>141</sup> Immunity has major financial consequences. For instance, when the United Nations peacekeepers were accused of bringing a cholera epidemic to Haiti or engaging in sexual exploitation in the Central African Republic, victims could not obtain damages by filing suits in national courts.<sup>142</sup>

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<sup>137</sup> See, e.g., Richard B. Stewart, *U.S. Administrative Law: A Model for Global Administrative Law?*, 68 L. & CONTEMP. PROBS. 63, 67–71 (2005).

<sup>138</sup> See Gray & Hulvey, *supra* note 112.

<sup>139</sup> U.N. Charter art. 105, ¶ 3.

<sup>140</sup> August Reinisch, *Privileges and Immunities*, 132, 133–34, in RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS (Jan Klabbbers and Åsa Wallendahl, eds., 2011)

<sup>141</sup> EDWARD CHUKWUEMEKE OKEKE, JURISDICTIONAL IMMUNITIES OF STATES AND INTERNATIONAL ORGANIZATIONS 238 (2018) (quoting *World Bank Grp. v. Wallace*, [2016] S.C.R. 206 (Can.) ¶ 93).

<sup>142</sup> Kristina Daugirdas, *Reputation as a Disciplinarian of International Organizations*, 113 AM. J. INT'L L. 221, 221–22 (2019); Kristina Daugirdas & Julian Davis Mortenson, *United*

Immunity from national legal process makes it possible for international organizations to recruit and employ a genuinely international staff pursuant to a uniform set of rules that are not determined by any individual member state. By contrast, nonstandard institutions are sometimes forced to recruit from a much narrower pool of candidates—those that have the right to work in a particular state. For example, a job posting for the Global Counterterrorism Forum invites candidates “eligible to live and work in the Netherlands” to submit their curriculum vitae.<sup>143</sup> As the D.C. Circuit explained in a case against the Organization of American States:

The unique nature of the international civil service is relevant. International officials should be as free as possible, within the mandate granted by member states, to perform their duties free from the peculiarities of national politics. The OAS charter, for example, imposes constraints on the organization’s employment practices. Such constraints may not coincide with the employment policies pursued by its various member states. It would seem singularly inappropriate for the international organization to bind itself to the employment law of any particular member . . . .<sup>144</sup>

As an alternative to suits in national courts, international organizations typically establish dedicated tribunals to resolve employment disputes.<sup>145</sup>

The immunity of individual international organization staff members from suits relating to their official acts is essential to preventing nations from circumventing the organization’s immunity. After all, international

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*States Defends the United Nations’ Immunity in Haitian Cholera Case*, 108 AM. J. INT’L L. 819 (2014).

<sup>143</sup> See, e.g., Vacancy Announcement, Global Counterterrorism Forum Head of Unit, HEAD OF UNIT, ADMINISTRATIVE UNIT, GLOBAL COUNTERTERRORISM FORUM (2022), <https://www.thegctf.org/Who-we-are/GCTF-Administrative-Unit/Vacancies>.

<sup>144</sup> *Broadbent v. Org. of Am. States*, 628 F.2d 27, 34–35 (D.C. Cir. 1980); see also *Mendaro v. World Bank*, 717 F.2d 610, 615–16 (D.C. Cir. 1983) (“The sheer difficulty of administering multiple employment practices in each area in which an organization operates suggests that the purposes of an organization could be greatly hampered if it could be subjected to suit by its employees worldwide. But beyond economies of administration, the very structure of an international organization, which ordinarily consists of an administrative body created by the joint action of several participating nations, requires that the organization remain independent from the intranational policies of its individual members.”).

<sup>145</sup> See, e.g., *Waite & Kennedy v. Germany*, App. No. 26083/94, Judgment, Eur. Ct. H.R. ¶ 65 (Feb. 18, 1999), <https://hudoc.echr.coe.int/eng?i=001-58912> [<https://perma.cc/Z3WY-D69G>] (describing the ESA Appeals Board, which resolves employment disputes involving the European Space Agency).

organizations act through their officials. Immunity serves another purpose: it allows individual officials to discharge their responsibilities without fear of angering national governments, including, quite possibly, their own.

Immunity from legal process for international organizations and their officials is typically supplemented with a package of additional privileges and immunities that reinforces the goals outlined above. For example, IO staff typically do not pay national taxes on their salaries; the rationale is to ensure that staff of different nationalities who are paid the same salary have uniform take-home pay.<sup>146</sup> Provisions that exempt the organization from taxation both eliminate a potential tool of harassment and lower the organization's overall cost of doing business. Finally, states that host international organizations typically enter into headquarters agreements that address visa procedures for individuals who are traveling to the host state in connection with the organization's work. The purpose of such provisions is to insulate the organization's work from any bilateral disputes that the host state may have with another member state.<sup>147</sup>

#### IV. SHIFTS IN PARADIGMATIC NETWORKS: BROAD TRENDS

In this Part, we show that since the early 2000s, networks once hailed for their small and nimble structure have systematically moved towards the very model they were designed to escape: the paradigmatic international organization. More specifically, most of the networks celebrated by Slaughter in the early 2000s have, over the past two decades, broadened their membership and established new secretariats or expanded existing ones. Many have also found ways to obtain privileges and immunities for themselves and for their staff.

The universe of regulatory networks Slaughter covers in her book supplies us with a useful baseline. It allows us a tractable and rigorous illustration of a pattern: we can ensure that we are talking about the subsequent development of the very same institutions once lauded for their nimbleness and flexibility. In this way, we also focus on institutions deemed practically important, since Slaughter selected networks that were particularly relevant to policymakers across a broad range of issue areas. Descriptions of important

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<sup>146</sup> Rutzel Silvestre J. Martha, *Immunities and Privileges, E Tax Exemptions, Exemptions from Taxes, Customs Duties, and Prohibitions on Imports and Exports (Article II Sections 7–8 General Convention)*, in AUGUST REINISCH, *THE CONVENTIONS ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES: A COMMENTARY* 219 (2016).

<sup>147</sup> Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States Relating to International Law: United States Refuses to Grant Visa to Iranian UN Envoy*, 108 AM. J. INT'L L. 516, 523–29 (2014).

areas of international cooperation—including finance,<sup>148</sup> the environment,<sup>149</sup> and police cooperation,<sup>150</sup>—largely emphasize the networks in Slaughter’s book, reinforcing our confidence that these are significant networks across a broad range of fields.<sup>151</sup>

In this Part we focus on networks as one type of nonstandard institution. In the next, Part V, we show that it was not only networks that moved in the direction of greater formalization. Even international organizations that satisfied the legal criteria for being international organizations but fell short with respect to others associated with paradigmatic international organizations actively sought to remedy those shortcomings.

The appendix comprehensively surveys trends across the networks identified in Slaughter’s pioneering work, while Table 2 below summarizes some key patterns. The first column, geographic expansion, tracks whether the network has expanded to include more participating states. The second column shows whether the institution has either established its own secretariat—i.e., staff who answer to the institution itself (and not directly to participating states) or, if one already existed in 2004, whether the size of the secretariat staff has expanded. In pure networks, there is no such secretariat, and either a single participating government provides logistical support to the network, or participating governments rotate the tasks among themselves (e.g., the host of the next meeting of participating states carries out all tasks associated with that event). The third column tracks whether the network has immunity from national legal process in at least one state where it has an office, and the fourth column tracks the immunities that secretariat staff enjoy. (Where no secretariat exists, the third and fourth column indicate that these questions are not applicable.) The appendix provides the same information in more detail, as

<sup>148</sup> See generally, e.g., Stavros Gadinis, *Three Pathways to Global Standards: Private, Regulator, and Ministry Networks*, 109 AM. J. INT’L L. 1 (2015); Fleur Johns, *Starting and Stopping Points: A Response to Stavros Gadinis*, 109 AJIL UNBOUND 39 (2015); Fleur Johns, *Financing as Governance*, 31 OXFORD J. LEGAL STUD. 391 (2011).

<sup>149</sup> See generally Timothy Meyer, *Epistemic Institutions and Epistemic Cooperation in International Environmental Governance*, 2 TRANSNAT’L ENV’T L. 15 (2013); Timothy Meyer, *Shifting Sands: Power, Uncertainty and the Form of International Legal Cooperation*, 27 EUR. J. INT’L L. 161 (2016); Timothy Meyer, *Free Trade, Fair Trade, and Selective Enforcement*, 118 COLUM. L. REV. 491 (2018).

<sup>150</sup> See generally Nadia Gerspacher & Benoît Dupont, *The Nodal Structure of International Police Cooperation: An Exploration of Transnational Security Networks*, 13 GLOB. GOVERNANCE 347 (2007).

<sup>151</sup> We focus on executive networks in *A New World Order* and set aside legislative and judicial networks for now, as the literature on networks focuses on these. Slaughter’s book omits two networks prominent in the early 2000s: the Proliferation Security Initiative and the Global Fund for AIDS, Tuberculosis and Malaria. We believe this is because they were announced shortly before the publication of her book. We don’t include them in the table below, for consistency, but discuss them in the subsequent qualitative section.

well as additional information, and tracks our sources for this information for each organization.

**Table 2: “New World Order” Executive Networks in 2022**

Network by Subject Matter	Geographic Expansion	Secretariat Expanded or Established	Organizational Immunity	Staff Immunity
<b>Financial and Insurance Regulation</b>				
International Association of Insurance Supervisors	✓	✓	✓	✓
Basel Committee	✓	✓	✓	✓
Financial Action Task Force (FATF)	✓	✓	✓	✓
Financial Stability Board	✓	✓	✓	✓
International Organization of Securities Commissions	✓	✓	✗	✗
<b>Economic Cooperation</b>				
G-15	✓	✗	N/A	N/A
International Competition Network	✓	Information publicly unavailable.	✗	✗
Asian-Pacific Economic Cooperation (APEC)	✓	✓	✓	✓
<b>Law Enforcement</b>				
International Drug Enforcement Conference	✓	✗	N/A	N/A
Dublin Group	✗	Information publicly unavailable.	✓	✓
Pompidou Group	✓	✓	✓	✓
Egmont Group	✓	✓	✓	✓
Interpol	✓	✓	✓	✓
<b>Security</b>				
Organization for Security and Cooperation in Europe (OSCE)	✓	✓	✓	✓

Network by Subject Matter	Geographic Expansion	Secretariat Expanded or Established	Organizational Immunity	Staff Immunity
Conference on Interaction and Confidence Building Measures in Central Asia (CICA)	✓	✓	✓	✓
<b>Environmental</b>				
International Network for Environmental Compliance and Enforcement	✓	Information publicly unavailable.	✗	✗
North American Commission for Environmental Cooperation (CEC)	✗	✓	✓	✓
<b>Key Global Issues, General</b>				
G-7	✗	✗	N/A	N/A
G-20	✗	✗	N/A	N/A

Some of the “networks” included in Slaughter’s book already had many of the features of paradigmatic international organizations at the time that the book was published. Interpol has had a governing document that was captioned its “Constitution” since 1956;<sup>152</sup> a headquarters located in Lyon, France, which benefited from “extensive legal immunities”<sup>153</sup>; and Interpol counted 181 members<sup>154</sup>—only ten fewer than the United Nations had at that time.<sup>155</sup> Among lawyers, Interpol’s status as an international organization wasn’t entirely free from doubt, based mainly on the fact that its founding Constitution didn’t fit the mold of a typical treaty.<sup>156</sup> Still, as is the case with the OSCE,

<sup>152</sup> RUTSEL SILVESTERE J. MARTHA, COURTNEY GRAFTON, & STEPHEN BAILEY, *THE LEGAL FOUNDATIONS OF INTERPOL* 1 (2d ed. 2020).

<sup>153</sup> James Sheptycki, *The Accountability of Transnational Policing Institutions: The Strange Case of Interpol*, 19 CAN. J. L. & SOC. 107, 120–21 (2004).

<sup>154</sup> *Id.* at 127.

<sup>155</sup> Growth in United Nations Membership, <https://www.un.org/en/about-us/growth-in-un-membership> [<https://perma.cc/96YD-7GNJ>] (last visited April 19, 2023).

<sup>156</sup> Sheptycki, *supra* note 153, at 114–15, 117–121. Interpol’s Constitution lacks final clauses that address how states can become parties. In addition, instead of speaking of member States, the Constitution provides that “[a]ny country may delegate as a Member to the Organization any official police body whose functions come within the framework of activities of the Organization.” Constitution of the International Criminal Police Organization-Interpol, <https://www.interpol.int/en/Who-we-are/Legal-framework/Legal-documents> [<https://perma.cc/T56E-3PX6>].

some states and international organizations interacted with Interpol as though it were a (legal) international organization.<sup>157</sup> Given the features enumerated above, Interpol is much closer to a paradigmatic international organization than a paradigmatic network. Indeed, a recently published book co-authored by Interpol's former General Counsel specifically contests Slaughter's characterization of Interpol as a network.<sup>158</sup>

A number of other networks likewise already had features of international organizations in 2004—including having a secretariat that benefitted from immunity. These include nearly all of the networks engaged in financial and insurance regulation; their secretariats have long enjoyed immunity because they were formally hosted by (and in that sense were part of) international organizations that enjoyed such immunities. These include FATF (hosted by the OECD) and several others hosted by the Bank for International Settlements.<sup>159</sup>

Overall, since 2004 we see a significant (but not universal) movement toward the paradigmatic international organization model as manifested by geographical expansion and the establishment or expansion of a dedicated secretariat. Fifteen of the nineteen networks in Table 2 saw their membership expand. Of the sixteen networks for which secretariat information was publicly available, twelve were either new established or expanded. Nearly all of those secretariats enjoy at least some immunity for the organization and for their staff.

Among those that were closer to paradigmatic networks in 2004, some have acquired features of international organizations without quite transforming into paradigmatic international organizations. One example here is the Egmont Group. Its 2008 Annual Report describes its transition during the preceding “from an informal body to a formal, self-sustaining, internationally recognized entity.”<sup>160</sup> That transition included the establishment of a “fully functioning and permanent Egmont Group Secretariat in Toronto.”<sup>161</sup> In addition, the Canadian government agreed that the Egmont Group would enjoy a range of privileges and immunities, including immunity from every form of legal process for the Organization; that its premises and archives would be inviolable; and its staff would enjoy immunity from legal

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<sup>157</sup> See, e.g., Sheptycki, *supra* note 153, at 121; MARTHA ET AL., *supra* note 152, at 168–74.

<sup>158</sup> MARTHA ET AL., *supra* note 152 at 2 (citing Slaughter as an example of how Interpol's legal character is “regularly questioned or misunderstood”).

<sup>159</sup> See *infra* Appx.

<sup>160</sup> The Egmont Group, *Annual Report May 2009–June 2008*, <https://egmontgroup.org/wp-content/uploads/2021/07/Egmont-Group-Annual-Report-2007-2008.pdf> [<https://perma.cc/W5EL-WX6S>].

<sup>161</sup> *Id.* at 5.

process for all acts performed by them in their official capacity.<sup>162</sup> Along the way, participation in the Egmont Group has increased dramatically. At its founding, the Egmont Group was a network of the financial intelligence units in 24 countries. Today it has 167 member states.

Meanwhile, on the other side of the globe, consider the Conference on Interaction and Confidence Building Measures in Asia (CICA). CICA was initially modeled on the OSCE's predecessor, the CSCE.<sup>163</sup> In the last two decades, the states participating in CICA have established a secretariat and provided for privileges and immunities.<sup>164</sup> More recently, the states participating in CICA are showing an appetite for further movement towards the paradigmatic IO model.<sup>165</sup> Last October, the member states adopted the Astana Statement on CICA Transformation, in which they announced: "We hereby launch the structured, inclusive and transparent negotiations process of gradual, incremental and consensus-based transformation of CICA into a full-fledged regional international organization."<sup>166</sup>

To be sure, some networks have not changed much at all for decades. The G-7 and the G-20 represent the key exception to a trend we observe in Table 2: these G networks have retained their small original memberships and informality (though, as noted above, the G-7 did for a time expand to include Russia).<sup>167</sup> The very breadth of the topics addressed by these G groups over the years may help explain the absence of a dedicated secretariat, one of the key indicators of formalization we consider above. Moreover, the wide range of topics that the G groups have addressed over the years means that there is no readily identifiable type of expertise that could reliably facilitate carrying out the full range of commitments and goals announced in the G groups' communiqués. Because the G groups do not themselves engage in operational activities, concerns about effective coordination and interoperability don't arise for them. That said, further research is needed to explain the factors that cause some institutions to evolve in this way while others do not.<sup>168</sup>

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<sup>162</sup> Egmont Group of Financial Intelligence Units Privileges and Immunities Order, SOR/2007-67.

<sup>163</sup> See *supra* notes 93–94 and accompanying text; Nicola P. Contessi, *Going Continental: China's New Agenda for Asian Regionalism and the Conference on Interaction and Confidence Building Measures in Asia* 92, in *CHINESE REGIONALISM IN ASIA* (Tiang Boon Hoo & Jared Morgan McKinney, eds., 2022).

<sup>164</sup> See *infra* Appx.

<sup>165</sup> Contessi, *supra* note 163, at 103.

<sup>166</sup> Astana Statement on CICA Transformation, para. 1 (Oct. 13, 2022), <https://www.cica.org/docs/581086209634f8ef116c3b.pdf> [<https://perma.cc/X5Z8-EQ7B>].

<sup>167</sup> See *supra* notes 115–117 and accompanying text.

<sup>168</sup> See generally Felicity Vabulas & Duncan Snidal, *Cooperation Under Autonomy: Building and Analyzing the Informal Intergovernmental Organizations 2.0 Dataset*, 58 J. PEACE RES. 859 (2021).

## V. THE PULL OF THE PARADIGMATIC INTERNATIONAL ORGANIZATION FORM—APPEALING TO MULTIPLE AUDIENCES

While Part IV establishes the prevalence of incremental shifts towards the legal structures and membership patterns associated with paradigmatic IOs, this Part relies on interviews with and publications by current and former IO officials. These firsthand accounts are intended to identify the benefits of conforming to that paradigmatic model, not only for networks, but for other types of nonstandard institutions as well, including private-public partnerships and “soft” international organizations. Our core claim is that paradigmatic international organization forms retain significant appeal over more innovative and tailored structures.

Whether they conform to the paradigmatic IO model or not, international institutions are not isolated creatures. They interact with and require buy-in from many diverse audiences who are outsiders to the institution. Unable or unwilling to do in-depth research, these diverse audiences may be suspicious or simply confused when a new institutional form is proposed, and reassured when a familiar, tried-and-true institutional form is presented instead. In this part, we explore how three audiences specific to international organizations—states, other international organizations, and international civil servants—benefit from, and expect, the traditional form.

### A. *The Audiences: States, International Organizations, and Staff*

Member and non-member states are a crucial audience for international institutions. Participating states are, of course, key actors within these institutions. In addition, states can be external audiences in a variety of ways. They may be potential member states of the organization. They may be non-member states with no intention of joining (and, depending on the organization’s charter, perhaps ineligible to do so in any event).<sup>169</sup> Even participating member states can be an external audience. Although they are sometimes theorized as unitary actors, the reality is that states are quite fragmented,<sup>170</sup> and the departments of participating states that do not directly interact with an international institution are a type of external audience.

<sup>169</sup> See, e.g., Charter of the Organization of American States art. 8, Apr. 30, 1948, 2 U.S.T. 2394 (“Membership in the Organization shall be confined to independent States of the Hemisphere that were Members of the United Nations as of December 10, 1985, and the nonautonomous territories mentioned in document OEA/Ser. P, AG/doc.1939/85, of November 5, 1985, when they become independent.”).

<sup>170</sup> See generally Neal Kumar Katyal, *Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within*, 115 YALE L. J. 2314 (2006); Rebecca Ingber, *Bureaucratic Resistance and the National Security State*, 104 IOWA L. REV. 139 (2018); Kristina Daugirdas & Gian Luca Burci, *Financing the World Health Organization*, 16 INT’L ORGS. L.

Other international organizations are a second core partner and constituency.<sup>171</sup> Indeed, as organizations and institutions with overlapping and related mandates have proliferated, coordination and cooperation among such institutions have become increasingly important.<sup>172</sup> In this section, we explain why institutions that are readily identifiable as international organizations have an easier time cooperating with other international organizations than other nonstandard institutions do. Nonstandard institutions will face additional costs, challenges, and limitations in the ways that they might interact with international organizations. As is the case for their interactions with states, such nonstandard institutions will remain vulnerable to objections based on their status. Nonstandard institutions may be able to overcome those objections or to develop workarounds—but those workarounds inevitably involve additional costs and delays.

A third core audience is staff, including potential staff an organization may seek to recruit and the staff of other organizations with whom officials may need to interact. Our interviews revealed various ways in which the status of an institution—and therefore the benefits that it was (or was not) able to offer—shaped the outcomes of those interactions. The lawyer for a prominent nonstandard institution outlined how she was always able to get her colleagues' attention when she emphasized that formalizing this body and turning it into an international organization had the potential to make their salaries tax exempt.<sup>173</sup>

In the sections that follow, we use several examples to illustrate how different features of international organizations help them appeal to multiple audiences. Sometimes, the argument is straightforward—it is not difficult to see why a better compensation package will appeal to staff, or why the head of an international organization might want the organization's size or prestige to grow. For this reason, we focus on benefits that are less readily apparent. Several of these benefits follow from recognized legal status, under international and national law, as an international organization.

We also highlight the central role of one particular international organization—the United Nations, noting that its significance extends beyond

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REV. 299 (2019) (describing WHO officials' observations that member states do not speak with one voice and that diverging perspectives among national health and development agencies are common).

<sup>171</sup> SCHERMERS & BLOKKER, *supra* note 88, § 1686A.

<sup>172</sup> See generally Laurence Boisson de Chazournes, *Relations with Other International Organizations*, in THE OXFORD HANDBOOK OF INTERNATIONAL ORGANIZATIONS (2016).

<sup>173</sup> Interview with senior official at a nonstandard international institution (Apr. 28, 2021).

the legal status of the U.N. Charter.<sup>174</sup> An organization's (or IO official's) ability to demonstrate a formal relationship with, or formal endorsement by, the United Nations turns out to be quite consequential.<sup>175</sup> For example, we explain below the benefits of permanent observer status at the U.N. General Assembly, some of which are symbolic (akin to diplomatic recognition) and some of which are material (access to high-level officials associated with foreign ministries). As another example, the General Assembly and Security Council's reinforcement of FATF's recommendations contributed to their global implementation, in part by communicating that support for these recommendations extended far beyond the limited number of states actively participating in FATF at the time.<sup>176</sup>

***B. The Benefits of International Organization Status: International Agreements***

International institutions use a variety of formal and informal agreements to cooperate with states and with other international institutions. International institutions enter into agreements with host states concerning their headquarters, and with member and non-member states regarding their operations. After all, as one of our interviewees put it, the purpose of international institutions headquartered in Switzerland is “probably not to improve the lives of the Swiss.”<sup>177</sup> Examples of operational agreements include the World Bank's Loan and Guarantee Agreements, the FAO's forestry agreements, Euratom's agreements on cooperation and exchange of information, and the IAEA's agreements on the inspection and the supply of fissionable materials.<sup>178</sup> IOM's predecessor ICEM “had the task of promoting the settlement of European refugees in other continents,” and “[i]t could do so only by making agreements with non-member states willing to receive refugees.”<sup>179</sup> International organizations have a long and well-established practice of entering into agreements with one another. For example, the European Community, the EU's predecessor, entered into treaties with the International Civil Aviation Organization and the West African Economic and

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<sup>174</sup> Article 103 of the U.N. Charter provides that “[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” U.N. Charter art. 103.

<sup>175</sup> CHOREV, *supra* note 10, at 26–27 (“As sociologists of organizations remind us, international organizations need symbolic resources in addition to material ones. To generate support, an organization's presentation of itself, its mission, and its programs have to be accepted [as both internally and externally] legitimate.”).

<sup>176</sup> See *supra* notes 21–24 and accompanying text.

<sup>177</sup> Interview, *supra* note 61.

<sup>178</sup> SCHERMERS & BLOKKER *supra* note 88, § 1772.

<sup>179</sup> *Id.*

Monetary Union.<sup>180</sup> The growing salience of treaties among international organizations is reflected in the 2007 charter of the Association of Southeast Asian Nations (ASEAN), which explicitly contemplates ASEAN's concluding agreements with other international organizations.<sup>181</sup> In 2012, "ASEAN adopted specific Rules of Procedure for the Conclusion of International Agreements."<sup>182</sup> These rules specifically contemplate ASEAN entering into treaties.<sup>183</sup> The goal of these rules was to "strengthen ASEAN as a negotiator not *in* but *with* international organizations."<sup>184</sup> As we elaborate below, international organizations enjoy benefits at multiple stages of the process of making and implementing international agreements—and resolving disputes if they arise.

For international organizations, the menu of possible forms for agreements with states and with other international organizations includes treaties.<sup>185</sup> Treaties have several advantages over informal agreements like Memoranda of Understanding (MOUs). Treaties are governed by the law of treaties, which means that individual treaties are embedded in and supported by a set of secondary rules about how they are made, interpreted, modified, and so on.<sup>186</sup> Inscribing commitments in a treaty can shift the dynamics between the parties when disputes arise, as they often do when the interests of the parties are not perfectly aligned over the duration of the treaty.<sup>187</sup> It is a familiar rule of treaty law that states cannot invoke inconsistent internal rules

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<sup>180</sup> Joris Larik, *Regional Organizations' Relations with International Institutions: The EU and ASEAN Compared*, in THE OXFORD HANDBOOK OF COMPARATIVE FOREIGN RELATIONS LAW 447, 453 nn. 33–34 (Curtis A. Bradley ed., 2019).

<sup>181</sup> Charter of the Association of Southeast Asian Nations, art. 41, ¶ 7, Nov. 20, 2007 [hereinafter ASEAN Charter] ("ASEAN may conclude agreements with countries or sub-regional, regional and international organisations and institutions.").

<sup>182</sup> Larik, *supra* note 180, at 454.

<sup>183</sup> *Id.* (noting the rules apply to "any written agreement, regardless of its particular designation, governed by international law which creates rights and obligations for ASEAN as a distinct entity from its Member States").

<sup>184</sup> PARUEDEE NGUITRAGOOL & JÜRGEN RÜLAND, ASEAN AS AN ACTOR IN INTERNATIONAL FORA 61 (2015).

<sup>185</sup> See generally Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations, *completed* Mar. 21, 1986, UN Doc. A/CONF.129/15, 25 I.L.M. 543 (not yet in force) [hereinafter VCLT-IO]; SCHERMERS & BLOKKER, *supra* note 88, § 1748. "Hundreds of agreements between international organizations and states have been registered and published in the UN Treaty Series." *Id.* § 1796.

<sup>186</sup> See generally Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter VCLT]; VCLT-IO, *supra* note 185.

<sup>187</sup> See, e.g., SCHERMERS & BLOKKER, *supra* note 88, § 1690 (observing that, with respect to headquarters agreements, the interests of international organizations do not always run parallel to those of their host states).

or regulations as a defense to a violation.<sup>188</sup> As one former IO official explained to us, invoking that rule makes for a “potent” argument, and shifts the conversation from *whether* the state will come into compliance with its obligations under the treaty to *how* the state will come into compliance.<sup>189</sup> More broadly, the law of treaties sets states and international organizations on a level playing field when disputes arise, which makes it easier for an international organization to insist on its rights when the other party to the agreement is in violation.<sup>190</sup>

We return to an earlier example of an organization with contested status, the OSCE, to illustrate the benefits of treaties. While Austria and Poland have both entered into treaties with the OSCE,<sup>191</sup> other participating states have declined to do so. As a result, the OSCE’s agreements with those states typically take the form of Memoranda of Understanding, where the legal status is contested and uncertain.<sup>192</sup> Lisa Tabassi, the OSCE’s former general counsel, has insisted that these MOUs are binding and enforceable, just like treaties.<sup>193</sup> But Tabassi herself later gives a concrete example that showcases the diminished efficacy of MOUs:

[In 2015,] a host state unilaterally and formally notified the OSCE through a *Note Verbale* that the MOU for a field operation (a MOU which had been ratified by parliament) was terminated with immediate effect and the OSCE was given one month to wind up its operation and repatriate its international members. Although the Permanent Council decision establishing that field operation and its approved mandate continued until the end of 2015, and although it was questionable whether provisions of the agreement ratified by parliament could be terminated by a Ministry’s *Note Verbale*, the message was clear that the field operation was no longer

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<sup>188</sup> VCLT, *supra* note 186, art. 27 (“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”); *see also id.* (repeating this language with respect to states and extending it to international organizations).

<sup>189</sup> Interview, *supra* note 61.

<sup>190</sup> Kristina Daugirdas, *International Organizations and the Creation of Customary International Law*, 31 EUR. J. INT’L L. 201, 218 (2020).

<sup>191</sup> Tabassi, *supra* note 94, at 53–54, 57, 76.

<sup>192</sup> Laurence Boisson de Chazournes & Andrzej Gądkowski, *The External Relations of the OSCE*, in THE LEGAL FRAMEWORK OF THE OSCE 199–214 (Mateja Steinbrück Platise, Carolyn Moser, & Anne Peters eds., 2019) (“The OSCE resorts to [MOUs] to ensure that it is not faced with the elementary question of its legal personality, as they enable the Organization to conclude arrangements and agreements without having to demonstrate their legal nature.”).

<sup>193</sup> Tabassi, *supra* note 94, at 56 (describing that “for the OSCE Secretariat all instruments are considered to be binding and enforceable,” “[r]egardless of the format or signatures.”).

welcome and the privileges and immunities granted would no longer be supported by the Ministry. The OSCE had no recourse but to acquiesce, discontinue operations, liquidate a sixteen-year presence under pressure and extract all international officials, assets and archives within the one-month deadline.<sup>194</sup>

In contrast to an MOU, Tabassi argued, a multilateral treaty codifying these requirements would have “provid[ed] more security to the OSCE and its officials regarding the continuity of legal protection, including for an orderly withdrawal.”<sup>195</sup>

Should a treaty dispute arise between an international organization and a member state, international organizations have yet another arrow in their quivers: the possibility of invoking the member state’s duty to cooperate with the organization. This duty was articulated in a 1980 advisory opinion regarding a dispute between Egypt and the World Health Organization over the legality of transferring a regional office away from Alexandria. The International Court of Justice affirmed that states have a duty to cooperate with international organizations of which they are members.<sup>196</sup> The Court observed that Egypt had offered to host the regional office, the WHO had accepted that offer, and Egypt had agreed to provide that office with privileges and immunities. The “very essence” of the resulting legal relationship, according to the Court, was a “body of mutual obligations of co-operation and good faith.”<sup>197</sup>

Invoking this duty to cooperate often has, in the words of a former international organization official, a “slightly magical effect.”<sup>198</sup> In a discussion between a national government official and an international organization official, invoking the duty to cooperate and reminding the government official of the purpose of the organization means that the organization is no longer in the position of a supplicant seeking a favor. This framing can shift the dynamics between the participants by “pushing out the

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<sup>194</sup> *Id.* at 56–57.

<sup>195</sup> *Id.* at 57.

<sup>196</sup> Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. Rep. 73, 93 (Dec. 20) (“The very fact of Egypt’s membership of the Organization entails certain mutual obligations of co-operation and good faith incumbent upon Egypt and upon the Organization.”).

<sup>197</sup> *Id.* In particular, those duties required consultations regarding the conditions and modalities of any transfer of the regional office to ensure that any transfer to a new site took place “in an orderly manner and with a minimum of prejudice to the work of the Organization,” and a “reasonable period of notice to the other party” regarding the termination of the office. *Id.* at 95–96.

<sup>198</sup> Interview, *supra* note 61.

frame” and making it possible to “get around the sticking point” by suggesting to the government official that, unless he or she addressed the organization’s concern, the official might get “criticized for jeopardizing the effectiveness of the organization instead of praised for holding the line.”<sup>199</sup> In the OSCE example above, this argument may have proven useful if it had been available.

Even in the absence of disputes or disagreements, nonstandard institutions like the OSCE can encounter obstacles to reaching agreements because national legislation and policies are designed for traditional international organizations. For example, in 2004 a group of OSCE participating states failed to conclude the legal arrangements necessary to loan to the OSCE military unmanned aerial vehicles (UAVs) and the military personnel to operate them, despite strong political will:

Offers from participating States to provide the equipment and technological capacity were received; however, legal obstacles prevented the offers from being accepted because such equipment and experts from the potentially contributing states belonged to the military, which could not make loans to an entity not enjoying international legal personality, as there could be no assurances of the proper immunity at the international level. Consequently, the [OSCE’s Special Monitoring Mission] has had to obtain such services through a commercial contractor, at significant expense, through open tender in accordance with the OSCE Financial Regulations.<sup>200</sup>

In summary, the examples above highlight some of the ways in which an organization’s legal status impacts its day-to-day operations. And as we explain in more detail below, the fact that national legislation and national bureaucracies have pre-existing structures to accommodate recognized international organizations facilitates engagement with and by such organizations—and impedes engagement with and by nonstandard institutions.

### ***C. The Benefits of International Organization Status: Securing Privileges and Immunities***

As we explain above, the package of privileges and immunities that international organizations enjoy typically extends beyond immunity from legal process for the organization itself and immunity for officials in connection with their work for the organization. That package may also include inviolability of premises and archives, immunity from financial controls and

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<sup>199</sup> *Id.*

<sup>200</sup> Tabassi, *supra* note 94, at 67.

regulations, exemption from taxation and customs duties, exemption from restrictions on imports and exports, and certain guarantees with respect to communications.<sup>201</sup> Often (but not always), states take on obligations to accord these privileges and immunities when they become member states by acceding to the treaty that establishes the organization. Because the package of privileges and immunities is fairly standard across international organizations, numerous states have enacted legislation that allows for “one-stop shopping” and an abbreviated process for traditional international organizations to secure this package of immunities. Nonstandard institutions, by contrast, find that recreating a similar package of immunities is, at a minimum, quite burdensome.

For example, in the United States, the International Organizations Immunities Act (IOIA), authorizes the president, by executive order, to designate the international organizations that will enjoy privileges and immunities.<sup>202</sup> The IOIA sets out a default package of immunities that largely tracks those listed above.<sup>203</sup> Moreover, the statute defines “international organization” as “a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.”<sup>204</sup> Pursuant to executive orders, about 60 international institutions have been so designated.<sup>205</sup> Nonstandard institutions like the Global Fund face a more arduous route to securing the privileges and immunities in the IOIA. Whereas international organizations can obtain privileges and immunities by the stroke of the presidential pen, nonstandard institutions are not covered by the statutory text quoted above, and therefore require the enactment of separate legislation to benefit from the IOIA’s immunities. The Global Fund and some other nonstandard entities have managed to obtain such legislation—so it is not impossible, but certainly more difficult than acquiring immunities by executive order.<sup>206</sup> The legal structure

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<sup>201</sup> *See, e.g.*, U.N. Convention on the Privileges and Immunities of the Specialized Agencies, Dec. 2, 1948, 33 U.N.T.S. 261.

<sup>202</sup> *See* 22 U.S.C. §288 et seq.

<sup>203</sup> *See* 22 U.S.C. §288(a).

<sup>204</sup> 22 U.S.C. §288.

<sup>205</sup> *See* 22 U.S.C.A. §288(a).

<sup>206</sup> For examples of statutes recognizing such entities, *see, e.g.*, 22 U.S.C. §288f-3 (International Committee of the Red Cross); 22 U.S.C. §288f-4 (International Union for Conservation of Nature and Natural Resources); 22 U.S.C. §288f-6 (Global Fund).

for providing privileges and immunities to international organizations is similar in the United Kingdom<sup>207</sup> and Canada.<sup>208</sup>

If they don't succeed in securing legislation, nonstandard institutions may be able to develop workarounds to secure comparable benefits. The transaction costs of this approach are quite high, however. As one former official put it: "When you look at the standard roster of privileges and immunities, they cut across seven or eight ministries or agencies. To get this done, you have to go to eight, nine, ten different ministries to get them all to sign off."<sup>209</sup> Nonstandard institutions also face the challenge of initiating these interactions without diplomatic status or officials of recognized diplomatic rank; that status can influence whether calls are answered at all and if so, how quickly.<sup>210</sup>

Finally, international organizations have a legal argument in their back pockets that remains unavailable to nonstandard institutions. In the absence of other legal sources to establish their entitlement to privileges and immunities, traditional international organizations have sometimes succeeded in establishing customary international law as the basis for their claim.<sup>211</sup> This legal argument is hardly guaranteed to succeed—but it is only available to entities that are recognizable as international organizations.

#### ***D. The Benefits of International Organization Status: Obtaining Recognition and Observer Status***

One way that international organizations cooperate is by obtaining observer status at other organizations. Roughly twenty percent of international organization charters include provisions that explicitly establish this

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<sup>207</sup> See generally Chanaka Wickremasinghe, *The Immunity of International Organizations in the United Kingdom*, 10 INT'L ORGS. L. REV. 434, 437 (2013) ("Given the growth in the numbers of international organizations since 1945, it would be very cumbersome, and probably unrealistic, to require that primary legislation should be introduced every time it was proposed that the UK should join an international organization in respect of which it was necessary to grant privileges and immunities. Therefore since 1944, there has been a statutory power to give effect to privileges and immunities of international organizations by means of secondary legislation which—though it still requires Parliamentary approval—involves a more limited process.").

<sup>208</sup> See generally Foreign Missions and International Organizations Act, S.C. 1991, c. 41 (Can.).

<sup>209</sup> Interview, *supra* note 61.

<sup>210</sup> *Id.*

<sup>211</sup> See Michael Wood, *Do International Organizations Enjoy Immunity under Customary International Law?*, 10 INT'L ORG. L. REV. 287, 307 (2013).

possibility; many more organizations have procedural rules that allow it.<sup>212</sup> Observer status can bring organizations both symbolic and practical benefits. On a symbolic level, observer status is a form of diplomatic recognition.”<sup>213</sup> Observer status “constitutes an acknowledgement by other entities of the international profile of the organization;” it communicates that an organization ought to be taken seriously, which may in turn bolster the organization’s efficacy and autonomy.<sup>214</sup> As a practical matter, observer status is a key that can unlock access to the rooms where things happen. The details vary across organizations, but observer status may mean automatic access to both formal and informal arenas.<sup>215</sup> Observer status also involves access to documents that may not be available (at all, or immediately) to the general public.<sup>216</sup> Finally, although the word “observer” suggests passivity, it is in fact a term of art that can involve certain rights of participation—to make statements, to make proposals, and to have documents distributed.<sup>217</sup>

Observer status at the U.N. General Assembly can be particularly important along both symbolic and practical dimensions. As the one international organization with universal membership and wide-ranging purposes, the endorsement of its plenary body can carry significant weight. On a practical level, observer status at the General Assembly is valuable to international institutions because it provides access to officials in foreign affairs ministries.<sup>218</sup> Institutions with technical, specialized mandates otherwise often lack such access.<sup>219</sup> Action at the General Assembly can also usefully focus higher-level attention and trigger interagency action *within* national bureaucracies. Such prodding at the international level may be particularly important for technocratic issues that are managed by lower-status agencies within national governments.<sup>220</sup>

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<sup>212</sup> Kristina Daugirdas & Tom Ginsburg, *International Organizations: Describing the Elephant* (forthcoming) (on file with authors).

<sup>213</sup> Boisson de Chazournes, *supra* note 172, at 691, 701.

<sup>214</sup> BOISSON DE CHAZOURNES & GADKOWSKI, *supra* note 192, at 204.

<sup>215</sup> See Erik Suy, *The Status of Observers in International Organizations*, in COLLECTED COURSES OF THE HAUGE ACADEMY OF INTERNATIONAL LAW 146 (1978) (noting that “[t]he grant of observer status entails at least the right to attend open meetings and such a right may not be denied them.”).

<sup>216</sup> See *id.* at 120–22.

<sup>217</sup> See *id.* at 103, 131–47.

<sup>218</sup> Interview with senior official at a nonstandard international institution (Feb. 25, 2021).

<sup>219</sup> *Id.*

<sup>220</sup> See, e.g., Adam Kamradt-Scott, *The International Health Regulations* (2005), 16 INT’L ORGS L. REV. 242, 259 (2019) (observing that “health ministers are often considered a lesser government portfolio compared to, for example, finance or defence”). Development agencies too have “lesser clout both within and without the executive.” David Moore, *The Missing “D” in U.S. Foreign Relations Law*, 109 GEO. L.J. 1139, 1186 (2021).

In addition, as an organ with the authority to discuss and adopt recommendations regarding every topic of international cooperation,<sup>221</sup> the General Assembly is a forum that can influence the work of every other international institution.<sup>222</sup> As explained below, the Global Fund successfully obtained observer status at the U.N. General Assembly. The General Assembly has served as an important forum for articulating the international community's goals with respect to HIV and AIDS—and for coordinating the work of the numerous organizations and programs with respect to HIV and AIDS, including the Global Fund as well as the World Health Organization, the U.N. Development Program, and UNICEF, among others.<sup>223</sup>

Currently, almost 90 organizations have observer status at the U.N. General Assembly.<sup>224</sup> Most, but not all of these, are paradigmatic international organizations. The U.N. Charter does not speak to this status, and for several decades, no formally adopted standards governed the process of granting such status. Instead, the General Assembly periodically adopted resolutions granting it.<sup>225</sup> In 1994, the General Assembly adopted a decision indicating that, “the granting of observer status in the General Assembly should in the future be confined to States and to those intergovernmental organizations whose activities cover matters of interest to the Assembly.”<sup>226</sup> The process that emerged out of these resolutions is as follows. A U.N. member state (or a group of member states) initiates the process by requesting the inclusion of an appropriate item in the agenda of the General Assembly. That request must be accompanied by a memorandum explaining why such status is appropriate.<sup>227</sup> The General Assembly's Sixth Committee—its Legal Committee—considers all applications for observer status before they are considered in the plenary session.<sup>228</sup> Ultimately, the General Assembly makes the decision.<sup>229</sup>

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<sup>221</sup> See generally U.N. Charter art. 11.

<sup>222</sup> See generally G.A. Res. 2009/6 (July 27, 2007); G.A. Res. 70/266 (Jun. 8, 2016).

<sup>223</sup> See, e.g., G.A. Res. 75/284 (June 8, 2021).

<sup>224</sup> See *Intergovernmental and Other Organizations*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/LX4M-TR44>].

<sup>225</sup> See, e.g., G.A. Res. 70/524 (Dec. 14, 2015) (establishing observer status for the Eurasian Economic Union); G.A. Res. 70/524 (Dec. 14, 2015) (establishing observer status for the Eurasian Economic Union); G.A. Res. 76/123 (Dec. 9, 2021) (establishing observer status for the International Solar Alliance).

<sup>226</sup> G.A. Dec. 49/426 (Dec. 9, 1994).

<sup>227</sup> See 2008 U.N. JURID. Y.B., U.N. Doc. ST/LEG/SER. C/46, at 439–40.

<sup>228</sup> *Id.* at 440. For that reason, as the UN legal office has explained, it is “highly likely . . . that the legal status of the applicant organization—as an international organization—would be determined on that occasion.”

<sup>229</sup> *Id.*

Given the General Assembly's criteria, organizations that conform to the traditional model face fewer obstacles to obtaining observer status (and the concomitant symbolic and practical benefits) than those that do not. Since 1994, a handful of institutions that are not traditional international organizations have managed to obtain observer status at the General Assembly. The Global Fund and the International Olympic Committee did so in 2009 and the private International Chamber of Commerce did so in 2016. In each case, though, objections were raised at the Sixth Committee that slowed down and threatened to derail the process.<sup>230</sup> With respect to the International Chamber of Commerce, the French delegate highlighted the unattractive nature of alternatives to observer status: if the Committee failed to grant the status, "[a]n artificial structure would have to be created to enable [the organization] to circumvent General Assembly [decision] 49/426."<sup>231</sup> Some of the objecting states relented only after revisions were made that reaffirmed the General Assembly's 1994 decision. These revisions emphasized that the General Assembly's criteria for granting observer status had not changed, endeavoring to retain a high bar for other nonstandard institutions that might try to run the gauntlet.<sup>232</sup>

One final point bears mentioning. The COVID-19 pandemic forced international organizations to make dramatic changes to their standard operating procedures.<sup>233</sup> These restrictions often excluded or limited participation by entities that lack formal observer status within an organization, especially civil society organizations.<sup>234</sup> For example, when the WHO's World

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<sup>230</sup> See, e.g., *Summary Record of the 14th Meeting*, [2009] Y.B. 6TH COMM. ¶ 62, U.N. Doc. A/C.6/64/SR.14 (representative of Malaysia paraphrased as saying: "As a matter of principle, the Committee should not grant the [Global] Fund's request for observer status in the General Assembly. Nevertheless, her delegation had agreed to make an exception in the case of the Fund, given its noble ideals and its work in reaching out to those in need of its services."); *Summary Record of the 10th Meeting*, [2009] Y.B. 6th COMM. ¶ 62, U.N. Doc. A/C.6/64/SR.10 (representative of Iran "said that his delegation had joined the consensus on the draft resolution [granting observer status to the International Olympic Committee] because of the role of sport in promoting friendship and understanding. However, the criteria established in the relevant General Assembly resolutions should be observed in the future and a precedent should not be set."); Sixth Committee, *Summary Record of the 13th Meeting*, [2016] ¶¶ 7, 10, 12, 13, UN Doc. A/C.6/71/SR.13 (Venezuela, Russia, Syria, and Algeria objecting that the International Chamber of Commerce does not meet the criteria set out in the General Assembly's 1994 decision).

<sup>231</sup> *Id.* at ¶ 3.

<sup>232</sup> *Id.* at ¶ 25.

<sup>233</sup> See Gian Luca Burci, *Covid-19 and the Governance of International Organizations*, 17 INT'L ORGS. L. REV. 485, 486–89 (2020).

<sup>234</sup> See *id.* at 490; Colum Lynch & Robbie Gramer, *NGOs Frozen Out of U.N. Building*, FOREIGN POLICY (Sept. 23, 2021), <https://foreignpolicy.com/2021/09/23/unga-civil-society-ngo-blocked-headquarters-covid/> [<https://perma.cc/C7GL-8A63>] (pointing out that civil

Health Assembly held an abridged virtual session in May 2020 to carry out essential business, speaking rights were limited to member states and other international organizations, while NGOs and other participants “could only post written statements on the WHO’s website.”<sup>235</sup> Participation decisions efficiently addressing an emergency in the short term may end up exacerbating power inequities in the longer term.

***E. The Benefits of a Formal Relationship with the United Nations: Expanding Membership to Become a Paradigmatic International Organization***

The discussion of the Asian Infrastructure Investment Bank in Part II.A illustrated some of the benefits of conforming to a familiar organizational model.<sup>236</sup> The example of the International Organization for Migration (IOM) demonstrates the significance of entering into a formal relationship with the United Nations for persuading two non-member states, China and Russia, to join. Without these states, IOM lacked the breadth of membership that would qualify it as a paradigmatic IO based on our definition above. It is telling that William Lacey Swing, as Director-General of the IOM (an American, as was typical for most of the organization’s history), spent not only many working hours but also every vacation trying to persuade these two countries to join.<sup>237</sup> To understand why, it is useful to understand IOM’s history.

The institutional structure and status of the organization now known as IOM evolved considerably over the decades. The IOM was initially established in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), helping to settle the sizeable displaced population in Europe in the wake of World War II.<sup>238</sup> The United States played a key role in shaping PICMME as an entity that was not a paradigmatic IO or a part of the U.N. system, and that involvement deliberately and successfully excluded Communist states from participating.<sup>239</sup> The following year, PICMME adopted a new constitution and changed its name to the

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society representatives continued to be denied entry to the U.N. headquarters building 18 months after the Covid pandemic began).

<sup>235</sup> *Id.* at 488.

<sup>236</sup> Recall, by contrast, the concerns articulated by the OSCE that its uncertain status was a source of reputational damage in its interactions with other IOs. *See* OSCE Report, *supra* note 70 and accompanying text.

<sup>237</sup> Interview with William Lacey Swing, former Director-General of the International Organization for Migration (Nov. 28, 2020).

<sup>238</sup> Megan Bradley, *Joining the UN Family? Explaining the Evolution of IOM-UN Relations*, 27 GLOB. GOVERNANCE 251, 253 (2021).

<sup>239</sup> *See* Jérôme Elie, *The Historical Roots of Cooperation Between the UN High Commissioner for Refugees and the International Organization for Migration*, 16 GLOB. GOVERNANCE 345, 349–50 (2010).

Intergovernmental Committee for European Migration (ICEM).<sup>240</sup> Several decades later, in 1989, ICEM became IOM, styled as a formal intergovernmental organization but still outside the U.N. system—and still encumbered by a widespread sentiment that IOM was “not quite fit for the big leagues.”<sup>241</sup> In 2016, IOM formally joined the U.N. system by entering into an agreement with the United Nations to become a related agency of the U.N.<sup>242</sup> William Swing was very proud of this accomplishment, saying: “Finally, after nearly 75 years, the U.N. has its own migration agency” and that more and more, “the IOM in the news is referred to as the U.N. migration agency.”<sup>243</sup>

At various points in its history, ICEM, later known as IOM, explored the possibility of joining the U.N. system. For several decades, ICEM/IOM’s limited membership was both a cause and a consequence of its outsider status. For instance, ICEM’s early inquiries in 1953 received a frosty reception from their U.N. counterparts. From the perspective of the U.N. official evaluating the possibilities, key obstacles included the exclusion of Communist states and the dominant influence of the United States.<sup>244</sup> Half a century later, in 2003, IOM’s limited membership continued to pose an obstacle to joining the U.N. system, saying: “IOM counted ninety-eight members in 2003; five large powers—China, Russia, India, Indonesia, and Brazil—were only observers, and IOM had almost no Middle Eastern members.”<sup>245</sup> In the years that followed, IOM “gradually and strategically persuaded new states to join.”<sup>246</sup>

When Swing became the Director-General of IOM in 2008, he was determined to persuade Russia and China to join. In an interview, Swing explained: “it says a lot about an organization to not have Russia and China as members.”<sup>247</sup> In particular, it reinforced the perception that the IOM was an “American-run organization.”<sup>248</sup> Becoming a part of the U.N. system would help IOM shed this image, and, as Swing suggested, doing so would make IOM more attractive to prospective new members, as it would be “probably less political to join a U.N. agency.”<sup>249</sup>

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<sup>240</sup> See *id.* at 350.

<sup>241</sup> *IOM History*, INT’L ORG. FOR MIGRATION, <https://www.iom.int/iom-history> [<https://perma.cc/5NQW-LJ8P>] (last visited Mar. 20, 2023); *supra* note 58

<sup>242</sup> *IOM Becomes a Related Organization to the UN*, INT’L ORG. FOR MIGRATION, <https://www.iom.int/news/iom-becomes-related-organization-un> [<https://perma.cc/6UDG-AQ8P>] (last visited Mar. 20, 2023).

<sup>243</sup> Interview with William Swing, *supra* note 237.

<sup>244</sup> See Bradley, *supra* note 238, at 255–56.

<sup>245</sup> *Id.* at 263.

<sup>246</sup> *Id.*

<sup>247</sup> Interview with William Swing, *supra* note 237.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

As described above, Swing actively courted both China and Russia. He eventually convinced China to join in 2016. The timing of China's decision supports the contention that the IOM's status within the U.N. system was a factor, as China became a member of IOM exactly one day before IOM's member states formally decided to join the U.N. system as a related organization.<sup>250</sup> Russia became a member several years later in 2020, shortly after Swing completed his second term. The commentary from Gennady Gatilov, the Russian Permanent Representative to the United Nations and Other International Organizations in Geneva, supports Swing's intuition that U.N.-system status matters. In explaining the Russian government's decision, Gatilov said: "We proceed from the fact that the *IOM is a competent structure associated with the U.N.* and includes over 170 countries."<sup>251</sup>

Here are our key take-aways about the shift to the paradigmatic international organization form: IOM fought hard to become a part of the U.N. system. This step helped recruit two states whose non-member status had been a persistent sore spot for the organization. This step also had concrete benefits for staff, including in terms of status and financial compensation.<sup>252</sup> Participation in the U.N. system also allowed for much more coordination and interoperability with other international organizations. After a prior failed attempt,<sup>253</sup> IOM gained access to the Chief Executive Board for Coordination, which is "the longest-standing and highest-level coordination forum of the United Nations System."<sup>254</sup> For instance, in 2017, one year after joining the U.N. System, IOM developed the U.N. Global Compact on Migration, which set global strategy on a highly charged issue. It is highly unlikely that the Global Compact would have been developed, or involved so many states and international organizations, or been led by the IOM, had the IOM retained its earlier peripheral status.

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<sup>250</sup> *UN Chief Welcomes China Joining International Organization for Migration*, U.N. NEWS (July 1, 2016), <https://news.un.org/en/story/2016/07/533642-un-chief-welcomes-china-joining-international-organization-migration> [<https://perma.cc/S4YU-Y6TX>] (noting that the IOM member states had "approved the motion by which IOM will join the UN system" on June 30, 2016).

<sup>251</sup> *Council Approves Russian Request to Join International Organization for Migration*, TASS RUSS. NEWS AGENCY, (Nov. 24, 2020) (emphasis added), <https://tass.com/politics/1227471> [<https://perma.cc/RP2D-GSSJ>].

<sup>252</sup> IOM joined the U.N. pension fund in 2007. *Members and Observers*, IOM, <https://www.iom.int/members-and-observers> [<https://perma.cc/D89C-W4ZX>] (last visited Mar. 20, 2023).

<sup>253</sup> In 2007, IOM Director-General Brunson McKinley sought access to this body, arguing that his participation would "fill an operation and policy gap, deepen mutual understanding and encourage cooperation." Ban Ki-moon, then UN-Secretary General, rebuffed this request. Bradley, *supra* note 238, at 257–58.

<sup>254</sup> *About*, U.N. SYS. CHIEF EXECS. BOARD FOR COORDINATION, <https://unsceb.org/about> [<https://perma.cc/V2SU-AS9G>] (last visited Mar. 20, 2023).

***F. The Benefits of Paradigmatic International Organization Status that Includes a UN Affiliation: Engaging with Staff of Other IOs***

The importance of international organization status in interactions with other *entities* comes through in the above sections. These benefits also extend to the level of *individual* employees, as we explain in this section. Why exactly, are the staffing arrangements associated with paradigmatic international organizations so fundamental to effectively carrying out international organization work? What if international organizations instead recruited good people, but hired them as contractors?

Here again, IOM supplies a revealing example. We interviewed several current and former IOM and U.N. Office of the High Commissioner for Refugees officials. The latter was established by the U.N. General Assembly and is part of the United Nations. The organizations have overlapping missions. And yet, notwithstanding the fact that our interviewees had amassed several decades of experience at IOM and UNHCR between them, they suggested that, before IOM became a part of the UN system, staff rarely moved from one organization to the other.<sup>255</sup> When moves between the two organizations did occur, they were almost always in one direction: from IOM to UNHCR. A combination of material benefits associated with being employed by the United Nations and pride in UNHCR's work inhibited moves in the opposite direction.<sup>256</sup> IOM struggled to be taken seriously in a way that UNHCR did not.<sup>257</sup>

Even within the United Nations, employment arrangements that deviate from the paradigm can lead to problems. Public complaints by theoretically powerful ombudspersons for UN sanctions illustrate this point. The Security Council established the Ombudsperson in 2009 after a series of successful judicial challenges to states' implementation of Security Council sanctions.<sup>258</sup> The Ombudsperson is tasked with reviewing requests submitted by individuals and entities subject to Security Council sanctions and with making recommendations about whether the individuals ought to be removed from the Security Council's Al-Qaida Sanctions List.<sup>259</sup> The Ombudsperson has significant formal powers—notably, if the Ombudsperson recommends that a person or entity should be removed from the terrorist blacklist, that recommendation will almost certainly determine the outcome. The Ombudsperson can be overruled only if the Committee decides by consensus

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<sup>255</sup> Interview with former IO senior official (Dec. 17, 2020); Interview, *supra* note 42.

<sup>256</sup> Interview with a former IO senior official (Dec. 17, 2020).

<sup>257</sup> See *supra* note 58.

<sup>258</sup> S.C. Res. 1904, ¶¶ 20–21, Annex II (Dec. 17, 2009); see also Devika Hovell, *Due Process in the United Nations*, 110 AM. J. INT'L L. 1, 8–29 (2016).

<sup>259</sup> S.C. Res. 1989, ¶ 21 (June 17, 2011).

that the person or entity should remain on the blacklist<sup>260</sup>—or if the Security Council steps in to retain the listing.<sup>261</sup> However, institutional gaps have hampered these theoretically powerful individuals.

For instance, Daniel Kipfer Fasciati, who recently resigned as the Ombudsperson, complained that various markers of low bureaucratic status hampered his ability to effectively carry out his mission. Because he served under a series of short-term consultancy contracts, Fasciati was prohibited from personally escorting guests from outside the U.N. headquarters into his office for official business.<sup>262</sup> For the same reason, he was not eligible to obtain a diplomatic passport, or *laissez-passer*, for travel on behalf of the United Nations, “a distinction that diminished his diplomatic standing when he visited foreign countries.”<sup>263</sup> And having one’s contract frequently renewed, as is the case with contractors, can give the impression that one lacks independence.

Slights that may seem trivial can have serious consequences for the efficacy of an individual or institution; they can even have legal consequences. Fasciati’s predecessor in the Ombudsperson role, Kimberly Prost, wrote that “there is a strong argument to be made that the Ombudsperson process has sufficient attributes so as to be categorized as an effective independent review mechanism providing an equivalent protection to classic judicial review.”<sup>264</sup> The key factor undermining this conclusion, according to Prost, comes in the bureaucratic details that Fasciati also complained about—including the consultancy contract arrangement.<sup>265</sup>

### CONCLUSIONS AND IMPLICATIONS

The Basel Committee, the Financial Stability Forum, and the Financial Action Task Force have been lauded as informal networks that regulate global markets flexibly through non-binding actions, by relying on US dominance in financial markets. And yet, over the years, they have needed to welcome Russia and China as members to get political and institutional backing from the Security Council. To hire staff and run their day-to-day operations, they have worked through established international organizations, notably the Organization for Economic Cooperation and Development and the Bank for

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<sup>260</sup> *Id.* at ¶ 23.

<sup>261</sup> *Id.*

<sup>262</sup> Colum Lynch, *How a Dream Job Become a Bureaucratic Nightmare for a Top U.N. Lawyer*, FOREIGN POL’Y (July 27, 2021), <https://foreignpolicy.com/2021/07/27/un-terrorism-lawyer-resigning-ombudsperson-bureaucracy/> [<https://perma.cc/W94C-H4PX>].

<sup>263</sup> *Id.*

<sup>264</sup> Kimberly Prost, *Security Council Sanctions and Fair Process*, in RESEARCH HANDBOOK ON U.N. SANCTIONS AND INT’L L. 232 (L. Van den Herik ed., 2017).

<sup>265</sup> *Id.* at 232.

International Settlements. These are not isolated examples. Through a systematic review of networks once hailed for their small membership and nimble structure, we document a general trend towards broader membership and formalization, typically including both a secretariat and privileges and immunities for staff.

But it is not only small and nimble networks that dramatically expanded their membership. So did important international organizations that already had a constitutive treaty, an independent secretariat, and expansive privileges and immunities. Broader membership was central to international organizations once perceived as unduly influenced by powerful states. The IOM stands out as an example here. It was once seen as a US puppet. Yet, its American leaders worked hard to dispel this perception by expanding the organization's membership and seeking (and eventually obtaining) U.N. affiliation. Even more telling is the effort of another superpower, China. China worked hard to ensure that the AIIB, which could have been perceived as the Chinese regional bank, instead have broad membership and strong ties to the West. We coin the term paradigmatic international organizations to demarcate those international organizations that have broad membership, as we believe these have particularly strong appeal.

Our claim is not that such organizations are always preferable or better, but that they offer certain distinctive advantages. Whether they conform to the paradigmatic model or not, international institutions are not isolated creatures. They interact with and require buy-in from many diverse audiences. A familiar institutional structure is reassuring to key constituencies, notably member and non-member states, other international organizations, and international organization staff, and also facilitates interoperability.

While there is nothing inevitable about formalization and membership expansion, our findings nevertheless allow us to contribute to important debates on the costs and benefits of international organizations, as well as debates on global governance. We concur with many scholars who observe that the global governance space has become crowded. Theorists have noted the proliferation of overlapping congeries of agreements and institutions, sometimes for the express purpose of undermining one institution in favor of another.<sup>266</sup> The result is a crowded, layered set of international regimes, many

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<sup>266</sup> See generally Karen J. Alter, *Comprehending Global Governance: International Regime Complexity v. Global Constitutionalism*, 9 GLOB. CONSTITUTIONALISM 413 (2020); Karen J. Alter & Kal Raustiala, *The Rise of International Regime Complexity*, 14 ANN. REV. OF L. & SOC. SCI. 329 (2018); Gráinne de Búrca, Robert O. Keohane, & Charles Sabel, *Global Experimentalist Governance*, 44 BRIT. J. POL. SCI. 477 (2014); Karen J. Alter & Sophie Meunier, *The Politics of International Regime Complexity*, 7 PERSPECTIVES ON POL. 13

of which do not conform to traditional models of treaties or of international organizations.

And yet, scholars analyzing the choice between paradigmatic international organizations and nonstandard alternatives have ignored this context. They have conceptualized the choice as one that is self-contained and concerns only the immediate participants. Thus, rational states might opt for the international organization model if the value served by centralization and independence outweighs the costs.<sup>267</sup> Conversely, states may opt for informal institutions if they would gain greater flexibility and state autonomy, closer control of information, low short-term transaction costs (i.e., speed in establishing the institution in the first place) or avoid the need for approval from other national political bodies.<sup>268</sup>

We argue that theorists err when they disregard international institutions' relational dimensions because how those international institutions will interact with various external audiences, including other states and pre-existing international institutions, turns out to be crucial to their efficacy. As the global governance space becomes increasingly saturated, we argue that those relational considerations ought to be front and center.<sup>269</sup> This is the moment for "modular multilateralism"—how an institution relates to other institutions and to non-participating states will often be at least as important as what that institution can do on its own. Indeed, some informal institutions may *only* be viable as complements to (rather than substitutes for) existing traditional organizations.

This Article also suggests that regime theorists may have underestimated the sources of order and structure in the global governance space. So far, regime theorists have focused on formal legal rules as sources of hierarchy and order, and found only a few of them in the form of *jus cogens* rules of international law and Article 103 of the U.N. Charter, which provides that, "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any

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(2009); Larry Helfer, *Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking*, 29 YALE J. INT'L L. 1 (2004).

<sup>267</sup> See Abbott & Snidal, *supra* note 31, at 5.

<sup>268</sup> Vabulas & Snidal, *supra* note 1, at 209–12; Klabbers, *supra* note 55 (institutional ambiguity by design).

<sup>269</sup> Put another way, this issue has become central given where we are in the life cycle of multilateralism and multilateral institutions. See generally Harlan Grant Cohen, *Multilateralism's Life Cycle*, 112 AM. J. INT'L L. 47 (2018); see also Harlan Grant Cohen, *Fragmentation*, in FUNDAMENTAL CONCEPTS FOR INTERNATIONAL LAW: THE CONSTRUCTION OF A DISCIPLINE (Jean d'Aspremont & Sahib Singh, eds., 2019).

other international agreement, their obligations under the present Charter shall prevail.”<sup>270</sup>

Our findings suggest a broader range of formal and informal sources of hierarchy and order among international institutions that help to explain why paradigmatic international organizations retain a central role in the crowded global governance space.<sup>271</sup> The formal sources include status as a specialized or related agency of the United Nations and legal capacity to enter into treaties and to insist on the fulfilment of the obligations they codify. In turn, these formal sources shape informal interactions among the individuals who undertake the day-to-day work of global governance. On this front more research—and especially research that draws on sociological methods and insights—would prove illuminating.

The defining features of what we today consider a paradigmatic international organization are the result of deliberate and incremental innovations during the nineteenth and twentieth centuries, including the development of multilateral treaties as a type of agreement and the invention of the international civil service under Sir Eric Drummond’s leadership of the League of Nations.<sup>272</sup> By the dawn of the twenty-first century, policymakers and scholars alike were especially eager to pursue alternatives. And yet, the traditional, formal model has stubbornly persisted. The number of international organizations has leveled off in the last twenty years, but it is not decreasing.<sup>273</sup> In this Article, we have set out the case for why this distinctive model is likely to persist in the decades to come.

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<sup>270</sup> Alter & Raustiala, *supra* note 266, at 333.

<sup>271</sup> *See supra* note 81.

<sup>272</sup> SUSAN PEDERSON, *THE GUARDIANS: THE LEAGUE OF NATIONS AND THE CRISIS OF EMPIRE* 7 (2015) (“Drummond had created something entirely new: a truly international bureaucracy, structured by function and not by nationality, loyal to an international charter, and capable of efficiently managing a complex programme.”); *see also id.* at 46–48; *see generally* Abdullah El Erian, *Third Report on Relations Between States and Inter-Governmental Organizations*, [1968] 2 Y.B. Int’l L. Comm’n 163, U.N. Doc. A/CN.4/203/Add.3.

<sup>273</sup> Daugirdas & Ginsburg, *supra* note 212.

## APPENDIX: NETWORK EXPANSION AND FORMALIZATION SINCE THE PUBLICATION OF “A NEW WORLD ORDER”

General Information					Independence			Privileges, Immunities, Capacities			
Network	Subject Matter	Governing Document	Plenary Organ	Geographic Expansion	Secretariat	Secretariat Established or Expanded Post-2004	Decision-making	Organizational Immunity	Observer Status	Can Enter Treaties	Staff Immunity
<u>G-7</u> <sup>i</sup>	Key matters on the global agenda.	None. <sup>ii</sup>	Annual.	No.	No. <sup>iii</sup>	N/A.	Consensus. <sup>iv</sup>	N/A. <sup>v</sup>	No. <sup>vi</sup>	No. <sup>vii</sup>	N/A. <sup>viii</sup>
G-15	Economic issues.	None.	Annual. <sup>ix</sup>	Yes. <sup>x</sup>	No. <sup>xi</sup>	N/A	Consensus. <sup>xii</sup>	N/A	No.	No.	N/A <sup>xiii</sup>
<u>G-20</u>	Mainly Economic issues but also other key international matters.	None. <sup>xiv</sup>	Annual.	No. <sup>xv</sup>	No. <sup>xvi</sup>	N/A	Consensus. <sup>xvii</sup>	N/A <sup>xviii</sup>	No.	No.	N/A <sup>xix</sup>
<u>International Organization of Securities Commissions</u>	Financial regulation.	National Instrument Under Domestic Law. <sup>xx</sup>	Annual. <sup>xxi</sup>	Yes. <sup>xxii</sup>	Yes. <sup>xxiii</sup>	Yes. <sup>xxiv</sup>	By-law amendments require support of 2/3 of Presidents Committee members in attendance. All other Resolutions are approved by majority. <sup>xxv</sup>	No, but some additional privileges, such as inviolability. <sup>xxvi</sup>	No. <sup>xxvii</sup>	No. <sup>xxviii</sup>	No, but some additional privileges, such as tax benefits. <sup>xxix</sup>
<u>Basel Committee</u>	Financial regulation.	Non-binding international. <sup>xxx</sup>	Tri-annual. <sup>xxxi</sup>	Yes. <sup>xxxii</sup>	Yes. Hosted by the Bank for International	Yes. <sup>xxxiv</sup>	Consensus. <sup>xxxv</sup>	Yes. <sup>xxxvi</sup>	No. <sup>xxxvii</sup>	No.	Yes. <sup>xxxviii</sup>

General Information					Independence			Privileges, Immunities, Capacities			
Network	Subject Matter	Governing Document	Plenary Organ	Geographic Expansion	Secretariat	Secretariat Established or Expanded Post-2004	Decision-making	Organizational Immunity	Observer Status	Can Enter Treaties	Staff Immunity
					Settlements (BIS). <sup>xxxiii</sup>						
<u>International Association of Insurance Supervisors</u>	Insurance regulation.	National Instrument under Domestic Law. <sup>xxxix</sup>	Annual. <sup>xl</sup>	Yes. <sup>xli</sup>	Yes. <sup>xlii</sup>	Yes. <sup>xliii</sup>	Formal procedures, majority. <sup>xliv</sup>	Yes. <sup>xlv</sup>	No. <sup>xlvi</sup>	No.	Yes. <sup>xlvii</sup>
<u>Financial Stability Board</u>	Financial regulation.	Non-binding international. <sup>xlvi</sup>	Bi-annual. <sup>xlix</sup>	Yes. <sup>l</sup>	Yes. <sup>li</sup>	Yes. <sup>lii</sup>	Consensus. <sup>liii</sup>	Yes. <sup>liv</sup>	No. <sup>lv</sup>	No.	Yes. <sup>lvi</sup>
<u>International Network for Environmental Compliance and Enforcement</u>	Environment .	National Instrument under Domestic Law. <sup>lvii</sup>	Executive Planning Committee: frequency of meetings varies. <sup>lviii</sup>	Yes. <sup>lix</sup>	Yes, based in the Environmental Law Institute. <sup>lx</sup>	Information publicly unavailable.	Information publicly unavailable.	No. <sup>lxi</sup>	No. <sup>lxii</sup>	No.	No. <sup>lxiii</sup>
<u>Egmont Group</u>	Law enforcement and financial crimes.	National Instrument Under Domestic	Annual. <sup>lxv</sup>	Yes. <sup>lxvi</sup>	Yes. <sup>lxvii</sup>	Yes. <sup>lxviii</sup>	Consensus. <sup>lxix</sup>	Yes. <sup>lxx</sup>	No. <sup>lxxi</sup>	No.	Yes. <sup>lxxii</sup>

General Information					Independence			Privileges, Immunities, Capacities			
Network	Subject Matter	Governing Document	Plenary Organ	Geographic Expansion	Secretariat	Secretariat Established or Expanded Post-2004	Decision-making	Organizational Immunity	Observer Status	Can Enter Treaties	Staff Immunity
		c Law. <sup>lxiv</sup>									
<u>Asian-Pacific Economic Cooperation (APEC)</u>	Economy.	Non-binding international. <sup>lxxiii</sup>	Annual. <sup>lxxiv</sup>	Yes. <sup>lxxv</sup>	Yes. <sup>lxxvi</sup>	Yes. <sup>lxxvii</sup>	Consensus. <sup>lxxviii</sup>	Yes. <sup>lxxix</sup>	No. <sup>lxxx</sup>	No.	Yes. <sup>lxxxi</sup>
<u>Conference and Interaction on Confidence Building Measures in Central Asia (CICA)</u>	Security and rule of law.	Non-binding international. <sup>lxxxii</sup>	Quadrennial. <sup>lxxxiii</sup>	Yes. <sup>lxxxiv</sup>	Yes. <sup>lxxxv</sup>	Yes. <sup>lxxxvi</sup>	Consensus. <sup>lxxxvii</sup>	Yes. <sup>lxxxviii</sup>	Yes. <sup>lxxxix</sup>	No.	Yes. <sup>xc</sup>
<u>Organization for Security and Cooperation in Europe (OSCE)</u>	Security and democracy.	Non-binding international. <sup>xc</sup>	Weekly. <sup>xcii</sup>	Yes. <sup>xciii</sup>	Yes. <sup>xciv</sup>	Yes. <sup>xcv</sup>	Consensus. <sup>xcvi</sup>	Yes. <sup>xcvii</sup>	Yes. <sup>xcviii</sup>	No.	Yes. <sup>xcix</sup>
<u>North American Commission for Environmental Cooperation (CEC)</u>	Environment.	Binding international. <sup>c</sup>	Annual. <sup>ci</sup>	No. <sup>cii</sup>	Yes. <sup>ciii</sup>	No. <sup>civ</sup>	Consensus. <sup>cv</sup>	Yes. <sup>cvi</sup>	No.	No.	Yes. <sup>cvii</sup>
<u>Financial Action Task Force (FATF)</u>	Law enforcement and financial crimes.	Non-binding international. <sup>cviii</sup>	Several plenary meetings per year. <sup>cix</sup>	Yes. <sup>cx</sup>	Yes. <sup>cx</sup>	Yes. <sup>cxii</sup>	Consensus. <sup>cxiii</sup>	Yes. <sup>cxiv</sup>	No. <sup>cxv</sup>	No.	Yes. <sup>cxvi</sup>

General Information					Independence			Privileges, Immunities, Capacities			
Network	Subject Matter	Governing Document	Plenary Organ	Geographic Expansion	Secretariat	Secretariat Established or Expanded Post-2004	Decision-making	Organizational Immunity	Observer Status	Can Enter Treaties	Staff Immunity
<u>Interpol</u>	Law enforcement.	Binding international. cxvii	Annual. cxviii	Yes. cxix	Yes. cxx	Yes. cxxi	Simple or supermajority, depending on the subject matter. cxxii	Yes. cxxiii	Yes. cxxiv	Likely yes. cxxv	Yes. cxxvi
<u>Dublin Group</u>	Law enforcement.	None. cxxvii	Biannual. cxxviii	No. cxxix	Yes. cxxx	Information publicly unavailable.	Consensus. cxxxi	Potentially through its association with the European Union. cxxxii	No. cxxxiii	No.	Likely through its association with the European Union. cxxxiv
<u>Pompidou Group</u>	Law enforcement.	Non-binding international. cxxxv	Quadrennial. cxxxvi	Yes. cxxxvii	Yes. cxxxviii	Yes. cxxxix	Consensus. cxl	Likely through its association with the Council of Europe. cxli	No.	No.	Likely through its association with the Council of Europe. cxlii
International Drug Enforcement Conference	Law enforcement.	None.	Annual.	Yes. cxliii	No. cxliv	Information publicly unavailable.	Information publicly unavailable.	N/A	No.	No.	N/A
<u>International Competition Network</u>	Antitrust and competition policy.	Non-binding international. cxlv	Annual. cxlvi	Yes. cxlvii	Yes. cxlviii	Information publicly unavailable.	Consensus. cxlix	No.	No.	No.	No.

<sup>i</sup> The G-7 was previously the G-8, prior to Russia's exclusion because of its annexation of Crimea.

<sup>ii</sup> What is now known as the G-7 was founded in the Declaration of Rambouillet. Declaration of Rambouillet, Nov. 17, 1975; *About the G8*, U.S. DEP'T OF STATE, <https://2009-2017.state.gov/e/eb/ecosum/2012g8/about/index.htm> [<https://perma.cc/2JN6-G823>]. The group operates without a formal governing document.

<sup>iii</sup> *The G7: Frequently Asked Questions*, FRANCE DIPLOMACY, <https://www.diplomatie.gouv.fr/en/french-foreign-policy/french-g7-presidency-2019/the-g7-frequently-asked-questions/> [<https://perma.cc/24SZ-G4DL>] ("The Group of 7 (G7) is an informal group of seven countries, the Heads of State and Government of which meet at an annual summit. It has no legal existence, permanent secretariat or official members. It is the Presidency, which is held by one of the seven countries in turn every year, that provides the resources required for the group's work.").

<sup>iv</sup> See, e.g., Press Release, White House, Carbis Bay G7 Summit Communiqué (June 13, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/carbis-bay-g7-summit-communique/> [<https://perma.cc/4WCH-R2BX>].

<sup>v</sup> See, e.g., Foreign Missions and International Organizations Act, SOR/2018-47, G7 Summit Privileges and Immunities Order (Can.) (only granting immunities to representatives of foreign states, international organization officials and experts—not to the G7 as such. Compare SOR/2010-62, G20 Summit Privileges and Immunities (*infra* note xvii), which grants immunity not just to officials but also to the "Organization," defined as "the intergovernmental conference of the 20 leading industrialized countries, also known as the G20."). See also *supra* note iii (the G-7 has "...no legal existence").

<sup>vi</sup> *Id.*

<sup>vii</sup> *Id.*

<sup>viii</sup> Although countries may grant representatives immunity on an ad hoc basis for the duration of the Summit. See e.g., The G7 Presidency (Immunities and Privileges) Order 2021, SI 2021/521 (Eng., Wales) (granting the representatives of G-7 nations diplomatic immunity within England and Wales while in the U.K. for the Summit).

<sup>ix</sup> Sridharan, Kripa, *G-15 and South-South Cooperation: Promise and Performance*, 19(3) THIRD WORLD QUARTERLY 357, 360 (1998).

<sup>x</sup> *Id.*, at 366 (1998); see also *A Guide To Committees, Groups, and Clubs*, INTERNATIONAL MONETARY FUND, <https://www.imf.org/en/About/Factsheets/A-Guide-to-Committees-Groups-and-Clubs#G15> [<https://perma.cc/D7WY-PYD3>] (enumerating G-15 members and illustrating that as of Feb. 2021, the group in fact comprised 17, not 15 nations).

<sup>xi</sup> The group serves as an intergovernmental cooperation mechanism and lacks a permanent secretariat.

<sup>xii</sup> The G-15 typically issues joint statements on behalf of all members. See, e.g., G-15 Joint Statement at the 61<sup>st</sup> Session of the Trade and Development Board Geneva (Sept. 15, 2014), [https://unctad.org/system/files/non-official-document/tdb61\\_g15\\_stat\\_en.pdf](https://unctad.org/system/files/non-official-document/tdb61_g15_stat_en.pdf) [<https://perma.cc/2ZBB-ZGDV>]; G-15 Joint Statement to the Ecosoc High-level Segment (July 2017, 2017), <https://sustainabledevelopment.un.org/content/documents/25350srilanka2.pdf> [<https://perma.cc/MH7M-U6AR>].

<sup>xiii</sup> Participants of G-15 ministerial meetings and representatives in international organizations are typically diplomats from member states who enjoy diplomatic immunities. See *id.*

<sup>xiv</sup> James McBride, Anshu Siripurapu, & Noah Berman, *What Does the G20 Do?*, COUNCIL ON FOREIGN REL. (Dec. 15, 2022, 3:45PM), <https://www.cfr.org/backgrounder/group-twenty> [<https://perma.cc/37D8-BRMT>].

<sup>xv</sup> The G-20 founding members, 19 states and the European Union, remained constant. However, the G-20 does invite other organizations and states to participate in summits. See, e.g., *History of the G20*, SHERPA G20 INDON., <https://sherpag20indonesia.ekon.go.id/public/en/history-of-the-g20> [<https://perma.cc/3XJZ-PBUU>] (last visited Feb. 15, 2023).

<sup>xvi</sup> See *id.*; see also *Canada and the G20*, GOV'T OF CAN., [https://www.international.gc.ca/world-monde/international\\_relations\\_relations\\_internationales/g20/index.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations_relations_internationales/g20/index.aspx?lang=eng) [<https://perma.cc/MU2X-5EMT>] (last visited Feb. 15, 2023).

<sup>xvii</sup> Bertelsmann Stiftung, *The G-20: 9 Facts and Figures*, (2018), <http://aei.pitt.edu/102452/1/6.pdf> [<https://perma.cc/E5CM-M7YF>].

<sup>xviii</sup> Although some countries may grant the Summit privileges and immunities on an ad hoc basis. *See e.g.*, G20 Summit Privileges and Immunities Order (Foreign Missions and International Organizations Act), SOR/2010-62 (SOR/2010-62), GOV'T OF CAN., <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2010-62/page-1.html> [<https://perma.cc/P29C-THJG>].

<sup>xix</sup> As with organizational immunity, some countries may grant representatives privileges and immunities on an ad hoc basis. *Id.*

<sup>xx</sup> BY-LAWS OF IOSCO, INT'L ORG. OF SECURITIES COMM'NS §83, [https://www.iosco.org/library/by\\_laws/pdf/IOSCO-By-Laws-Section-1-English.pdf](https://www.iosco.org/library/by_laws/pdf/IOSCO-By-Laws-Section-1-English.pdf); [<https://perma.cc/NE53-JTCD>]; Cally Jordan, *The New Internationalism? IOSCO, International Standards and Capital Markets Regulation*, CIGI ONLINE (May 9, 2018), <https://www.cigionline.org/publications/new-internationalism-iosco-international-standards-and-capital-markets-regulation/> [<https://perma.cc/H2PV-DBZJ>]. IOSCO was incorporated as a not-for-profit legal entity under Québec law in 1987. *See About IOSCO*, INT'L ORG. OF SECURITIES COMM'NS, [https://www.iosco.org/about/?subsection=about\\_iosco](https://www.iosco.org/about/?subsection=about_iosco) [<https://perma.cc/W4DC-JF7F>] (last visited Feb. 15, 2023).

<sup>xxi</sup> *See International Organization of Securities Commissions (IOSCO)*, YEARBOOK OF INTERNATIONAL ORGANIZATIONS ONLINE (2022), <https://uia.org/s/or/en/1100046681> [<https://perma.cc/7CEA-UP3P>] (last visited Feb. 26, 2023).

<sup>xxii</sup> Has expanded from 104 ordinary members in 2004 (national securities commissions in a respective jurisdiction is an ordinary member) to 131 as of 2023. *About IOSCO*, INT'L ORG. OF SECURITIES COMM'NS, [https://www.iosco.org/about/?subsection=about\\_iosco](https://www.iosco.org/about/?subsection=about_iosco) [<https://perma.cc/CDG3-67AG>] (last visited Feb. 26, 2023).

<sup>xxiii</sup> *General Secretariat*, INT'L ORG. OF SECURITIES COMM'NS, <https://www.iosco.org/about/?subsection=gs> [<https://perma.cc/4X4P-T29B>] (last visited Feb. 18, 2023).

<sup>xxiv</sup> ANNUAL REPORT 2010, INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS 2010 (2010), [https://www.iosco.org/annual\\_reports/2010/pdf/annualReport.pdf](https://www.iosco.org/annual_reports/2010/pdf/annualReport.pdf); (last visited April 19, 2023); ANNUAL REPORT 2021 (2021), INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS, [https://www.iosco.org/annual\\_reports/2021/](https://www.iosco.org/annual_reports/2021/) [<https://perma.cc/43TM-7CVB>] (last visited Apr. 19, 2023); YEARBOOK OF INT'L ORG.'S, *supra* note XXI.

<sup>xxv</sup> INT'L ORG. OF SECURITIES COMM'NS, *By-laws of IOSCO*, §3, [https://www.iosco.org/library/by\\_laws/pdf/IOSCO-By-Laws-Section-1-English.pdf](https://www.iosco.org/library/by_laws/pdf/IOSCO-By-Laws-Section-1-English.pdf) [<https://perma.cc/7VML-ZRCN>] (last visited Feb. 15, 2023).

<sup>xxvi</sup> IOSCO has a headquarters agreement with Spain, which does not provide for immunity from suit but provides that “[t]he headquarters of OICV/IOSCO and its other premises, as well as the furniture found in them, will be inviolable, whoever owns them; and they may not be accessed or recorded in any way except with the authorization of the General Secretary of IOSCO/IOSCO or the person representing him, without prejudice to the provisions of the Constitution and the laws.” *See Acuerdo de Sede Entre el Reino de España y la Organización Internacional de Comisiones de Valores (OICV/IOSCO)*, § 3.1 (Dec. 17, 2011), <https://www.boe.es/diarioboetext.php?id=BOE-A-2011-r19646> [<https://perma.cc/D9HW-KEUQ>].

<sup>xxvii</sup> IOSCO does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See Intergovernmental and Other Organizations*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/3362-Z6CT>] (last visited Feb. 18, 2023); *see also International Intergovernmental Organizations Granted Observer Status to WTO Bodies*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm](https://www.wto.org/english/thewto_e/igo_obs_e.htm) [<https://perma.cc/2EKZ-DLJJ>] (last visited Feb. 18, 2023).

<sup>xxviii</sup> We did not locate treaties to which IOSCO is a party.

<sup>xxix</sup> IOSCO's headquarters agreement provides for tax benefits for staff members, among other privileges. *See Acuerdo de Sede Entre el Reino de España y la Organización Internacional de Comisiones de Valores*, *supra* note xxvi.

<sup>xxx</sup> *Basel Committee Charter*, BANK FOR INT'L SETTLEMENTS §§ 8.2–8.3 (June 5, 2018), <https://www.bis.org/bcbs/charter.htm> [<https://perma.cc/XK4Z-VTWH>] (last visited Feb. 15, 2023).

<sup>xxxi</sup> *Id.* at § 8.2.

<sup>xxxii</sup> In 2003, only 14 institutions participated. The Basel Committee is now composed of 45 institutions from 28 jurisdictions. *Fact Sheet: Basel Committee on Banking Supervision*, BANK FOR INT'L SETTLEMENTS (Aug. 2, 2003), <https://web.archive.org/web/20040212233438/http://www.bis.org:80/about/factbcbs.htm>

[<https://perma.cc/5345-YNVX>]; *Basel Committee Membership*, BANK FOR INT'L SETTLEMENTS (Jul. 21, 2022), <https://www.bis.org/bcbs/membership.htm> [<https://perma.cc/T7AA-43UX>].

<sup>xxxiii</sup> *Basel Committee on Banking Supervision: About the BCBS*, BANK FOR INT'L SETTLEMENTS, [https://www.bis.org/bcbs/organ\\_and\\_gov.htm](https://www.bis.org/bcbs/organ_and_gov.htm) [<https://perma.cc/2QHK-AQZJ>] (last visited Feb. 18, 2023).

<sup>xxxiv</sup> In 2003, the Secretary General was supported by a staff of 14. The 2013 version of their website says the Secretary General is supported by a staff of 17. We did not find any more current information on their staffing. *Fact Sheet: Basel Committee on Banking Supervision*, BANK FOR INT'L SETTLEMENTS (Aug. 2, 2003), <https://web.archive.org/web/20040212233438/http://www.bis.org:80/about/factbcbs.htm> [<https://perma.cc/5345-YNVX>]; *Fact Sheet: Basel Committee on Banking Supervision*, BANK FOR INT'L SETTLEMENTS (Aug. 4, 2013), <https://web.archive.org/web/20130804161635/http://www.bis.org:80/about/factbcbs.htm> [<https://perma.cc/T7AA-43UX>].

<sup>xxxv</sup> BANK FOR INT'L SETTLEMENTS, *supra* note xxx, at §8.4.

<sup>xxxvi</sup> The Basel Committee is hosted by the BIS, which has privileges and immunities. *See* BANK FOR INT'L SETTLEMENTS, *supra* note xxx; *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, BANK FOR INT'L SETTLEMENTS (Jan. 1, 2003), <https://www.bis.org/about/headquart-en.pdf> [<https://perma.cc/AAZ7-LS67>]; *Host Country Agreement Between the Bank for International Settlements and the Government of the People's Republic of China Relating to the Establishment and Status of a Representative Office of the Bank for International Settlements in the Hong Kong Special Administrative Region of the People's Republic of China*, BANK FOR INT'L SETTLEMENTS (May 11, 1998), <https://www.bis.org/about/hostctryhk.pdf> [<https://perma.cc/7XTW-TAZL>].

<sup>xxxvii</sup> The Basel Committee does not have observer status at the UN General Assembly or at other major international organizations such as the WTO, nor does the BIS. *See Intergovernmental and Other Organizations*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/LDH8-47JJ>] (last visited Feb. 18, 2023); *see also International Intergovernmental Organizations Granted Observer Status to WTO Bodies*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm](https://www.wto.org/english/thewto_e/igo_obs_e.htm) [<https://perma.cc/5WZP-2NXJ>] (last visited Feb. 18, 2023).

<sup>xxxviii</sup> For the secretariat within the BIS. *Basel Committee Organization and Governance: About the BCBS*, BANK FOR INT'L SETTLEMENTS, [https://www.bis.org/bcbs/organ\\_and\\_gov.htm](https://www.bis.org/bcbs/organ_and_gov.htm) [<https://perma.cc/RL42-EPDE>] (last visited Feb. 18, 2023); *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, BANK FOR INT'L SETTLEMENTS, *supra* note XXXVI.

<sup>xxxix</sup> Originally established in 1994 as a non-profit. In 1996, became an insurance standard-setter and relocated to Switzerland hosted by the BIS. *See* BY-LAWS, INT'L ASS'N OF INSURANCE SUPERVISORS art. 1. (Nov. 8, 2018), <https://www.iaisweb.org/uploads/2022/01/181207-2018-By-Law-Amendments-8-November-2018.pdf> [<https://perma.cc/B5N3-25FQ>].

<sup>xl</sup> *See id.* at art. 12, § 1.

<sup>xli</sup> Now includes members from over 200 jurisdictions. *IAIS Members*, INT'L ASS'N OF INSURANCE SUPERVISORS, <https://www.iaisweb.org/page/about-the-iais/iais-members> [<https://perma.cc/CVY6-6SY6>] (last visited Feb. 18, 2023).

<sup>xlii</sup> *What We Do*, INT'L ASS'N OF INSURANCE SUPERVISORS, <https://www.iaisweb.org/page/about-the-iais> [<https://perma.cc/AR5L-RM33>] (last visited Feb. 18, 2023).

<sup>xliii</sup> *IAIS Year in Review*, INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (2021), <https://www.iaisweb.org/uploads/2022/05/IAIS-Year-in-Review-2021-1.pdf> [<https://perma.cc/4C8K-THED>].

<sup>xliv</sup> *See* INT'L ASS'N OF INSURANCE SUPERVISORS, *supra* note xxxix, at art. 13, § 8.

<sup>xl</sup> The IAIS is hosted by the BIS, which enjoys privileges and immunities under Swiss Law. *IAIS ANNUAL REPORT*, INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS 8 (2017), <https://www.iaisweb.org/uploads/2022/01/181113-IAIS-AR-2017-Digital-PDF-Def-SP.pdf> [<https://perma.cc/EF83-VQSK>]; *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, BANK FOR INT'L SETTLEMENTS, *supra* note xxxvi.

<sup>xlvi</sup> The IAIS does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See Intergovernmental and Other Organizations*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/25PF-GQEM>] (last

visited Feb. 18, 2023); *see also* *International Intergovernmental Organizations Granted Observer Status to WTO Bodies*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm](https://www.wto.org/english/thewto_e/igo_obs_e.htm) [<https://perma.cc/6ZDL-G3K6>] (last visited Feb. 18, 2023).

<sup>xlvi</sup> The IAIS Secretariat is hosted by the BIS, which enjoys privileges and immunities under Swiss law. INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS, *supra* note 305; *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, BANK FOR INT'L SETTLEMENTS, *supra* note xxxvi.

<sup>xlvi</sup> CHARTER, FIN. STABILITY BD., art. 23, [https://www.fsb.org/wp-content/uploads/r\\_090925d.pdf?page\\_moved=1](https://www.fsb.org/wp-content/uploads/r_090925d.pdf?page_moved=1) [<https://perma.cc/2NGB-ZKWP>]. Originally founded in 1999 as the Financial Stability Forum. Formally established in 2009. Note, however, that in 2013, the Financial Stability Board was incorporated under Swiss law. *See* ARTICLES OF ASSOCIATION OF THE FINANCIAL STABILITY BOARD, FIN. STABILITY BD. (Jan. 28, 2013), <https://www.fsb.org/wp-content/uploads/FSB-Articles-of-Association.pdf> [<https://perma.cc/D7DC-VU5T>].

<sup>xlvi</sup> *See* CHARTER, FIN. STABILITY BD., *supra* note xlviii, at art. 9, § 1.

<sup>li</sup> *Financial Stability Board: History of the FSB*, FIN. STABILITY BD., <https://www.fsb.org/about/history-of-the-fsb/> [<https://perma.cc/RL2H-3M5Q>] (last visited Feb. 18, 2023).

<sup>li</sup> *Financial Stability Board: About the FSB: Organisational Structure and Governance*, FIN. STABILITY BD., <https://www.fsb.org/about/organisation-and-governance/> [<https://perma.cc/HJQ3-Y2GG>] (last visited Feb. 19, 2023).

<sup>lii</sup> *Financial Stability Board: History of the FSB*, FINANCIAL STABILITY BOARD, <https://www.fsb.org/about/history-of-the-fsb/> [<https://perma.cc/2CWH-N8NE>].

<sup>liii</sup> CHARTER, FIN. STABILITY BD., *supra* note xlviii, at art. 7, § 2.

<sup>liv</sup> Paragraph 13, Report to the G20 Los Cabos Summit on Strengthening FSB Capacity, Resources and Governance ([https://www.fsb.org/wp-content/uploads/r\\_120619c.pdf](https://www.fsb.org/wp-content/uploads/r_120619c.pdf)); *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, Jan. 1, 2003, <https://www.bis.org/about/headquart-en.pdf> [<https://perma.cc/FMZ3-DTZZ>].

<sup>lv</sup> The FSB does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See Intergovernmental and Other Organizations*, THE UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/VUT6-226L>] (last visited Feb. 15, 2023) [hereinafter *Intergovernmental Organizations at the UN*]; *International Intergovernmental Organizations Granted Observer Status to WTO bodies*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm](https://www.wto.org/english/thewto_e/igo_obs_e.htm) [<https://perma.cc/L4B3-B3H7>] (last visited Feb. 15, 2023) [hereinafter *Intergovernmental Organizations at the WTO*].

<sup>lvi</sup> The FSB secretariat is hosted by the BIS, which enjoys privileges and immunities under Swiss law. *See Other BIS-Hosted Associations*, BANK FOR INT'L SETTLEMENTS, <https://www.bis.org/about/comsecr.htm> [<https://perma.cc/YV86-63EA>]; *Agreement between the Swiss Federal Council and the Bank of International Settlement to Determine the Bank's Legal Status in Switzerland*, BANK FOR INT'L SETTLEMENTS, *supra* note xxxvi. Moreover, members do not waive existing immunities by participating in the organization. *See* ARTICLES OF ASSOCIATION OF THE FINANCIAL STABILITY BOARD, FIN. STABILITY BD. art. 9 (Jan. 28, 2013), <https://www.fsb.org/wp-content/uploads/FSB-Articles-of-Association.pdf> [<https://perma.cc/D7DC-VU5T>] (Art. 9 provides: Membership in the Association shall not constitute a waiver of the sovereign immunity of any Member or the privileges and immunities of international financial institutions participating as Members as provided for by their respective constitutive texts and as provided for under international law and national law.”)

<sup>lvii</sup> *International Network for Environmental Compliance and Enforcement*, BASEL CONVENTION (Sept. 30, 2012), <http://www.basel.int/Default.aspx?tabid=2920> [<https://perma.cc/7VME-9HS5>] (establishing the organization as a “non-profit s.501(c)(3) under U.S. law in the District of Columbia...”).

<sup>lviii</sup> *Id.*

<sup>lix</sup> *Id.* Founded by the U.S. Environmental Protection Agency and its Dutch equivalent; it has since expanded around the globe.

<sup>lx</sup> *International Network for Environmental Compliance and Enforcement*, ENV'T L. INST., <https://www.eli.org/international-network-environmental-compliance-and-enforcement/international-network-environmental> [<https://perma.cc/U9HR-WER6>] (last visited Feb. 18, 2023).

<sup>lxi</sup> INECE does not appear in the list of organizations afforded immunity under United States law. *See* 22 U.S.C. § 288.

<sup>lxii</sup> INECE does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See Intergovernmental Organizations at the UN*; *Intergovernmental Organizations at the WTO*, *supra* note lv.

<sup>lxiii</sup> *Id.*

<sup>lxiv</sup> Egmont Group of Financial Intelligence Units Charter, EGMONT GROUP (revised Sept. 2018), <https://egmontgroup.org/wp-content/uploads/2021/09/Egmont-Group-Charter-Revised-September-2018-Sydney-Australia.pdf> [<https://perma.cc/PKJ9-CEFM>]; Egmont Group of Financial Intelligence Units Privileges and Immunities Order (Foreign Missions and International Organizations Act), § 2(1) SOR/2007-67 (Can.).

<sup>lxv</sup> *Id.*

<sup>lxvi</sup> The Egmont Group was composed of Financial Intelligence Units (FIUs) from 94 countries in 2004. In 2021, the Group was composed of 167 FIUs. FINANCIAL INTELLIGENCE UNITS: AN OVERVIEW, WORLD BANK & THE INTERNATIONAL MONETARY FUND (2004), <https://www.imf.org/external/pubs/ft/fiu/fiu.pdf> [<https://perma.cc/4MLZ-XCFL>]; EGMONT GROUP OF FINANCIAL INTELLIGENCE UNITS: ANNUAL REPORT, EGMONT GROUP (2022), [https://egmontgroup.org/wp-content/uploads/2022/10/EGMONT\\_21-267\\_2020%E2%80%932021\\_AR-E\\_WEB.pdf](https://egmontgroup.org/wp-content/uploads/2022/10/EGMONT_21-267_2020%E2%80%932021_AR-E_WEB.pdf) [<https://perma.cc/L97V-4HGC>].

<sup>lxvii</sup> *Organization and Structure*, EGMONT GROUP, <https://egmontgroup.org/about/organization-and-structure/#:~:text=The%20Egmont%20Group%20comprises%20various,financing%2C%20and%20associated%20predicate%20crimes> [<https://perma.cc/TBB3-G5RC>] (last visited Feb. 18, 2023).

<sup>lxviii</sup> *Id.*

<sup>lxix</sup> *Id.*

<sup>lxx</sup> Egmont Group of Financial Intelligence Units Privileges and Immunities Order, *supra* note lxiv (“The Organization shall have in Canada the legal capacities of a body corporate and the privileges and immunities set out in Articles II and III of [the Convention on the Privileges and Immunities of the United Nations].”).

<sup>lxxi</sup> The Egmont Group does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See supra* note lv.

<sup>lxxii</sup> *See supra* note lxiv, § 2(2) (“Officials of the Organization shall have in Canada, to the extent that may be required for the exercise of their functions in relation to the Organization, the privileges and immunities set out in section 18 of Article V of the United Nations Convention.”).

<sup>lxxiii</sup> *See Policies and Procedures*, APEC, <https://www.apec.org/about-us/about-apec/policies-and-procedures> [<https://perma.cc/FHT3-PC8F>] (last visited Feb. 18, 2023).

<sup>lxxiv</sup> *Annual Ministerial Meetings*, APEC, <https://www.apec.org/meeting-papers/listings/annual-ministerial-meetings> [<https://perma.cc/AWL5-W2E9>] (last visited Feb. 19, 2023).

<sup>lxxv</sup> Has expanded from its original 12 members in 1989 to 21 members. *Asia Pacific Economic Cooperation*, OFF. OF THE HISTORIAN: U.S. DEP’T OF STATE, <https://history.state.gov/milestones/1989-1992/apec> [<https://perma.cc/XVQ4-BHFJ>].

<sup>lxxvi</sup> *APEC Secretariat*, APEC, <https://www.apec.org/about-us/apec-secretariat> [<https://perma.cc/LA8T-PJTY>] (last visited Feb. 18, 2023).

<sup>lxxvii</sup> The 2004 APEC website lists 22 Program Directors and 27 permanent staff. Current websites list between 17 and 20 Program Directors, and 33 to 40 staff positions. *APEC Secretariat*, [http://www.apec.org/apec/about\\_apec/apec\\_secretariat.html](http://www.apec.org/apec/about_apec/apec_secretariat.html), accessed via the waybackmachine.com, (Jan. 3, 2004); *APEC Secretariat*, APEC, <https://www.apec.org/about-us/apec-secretariat> [<https://perma.cc/LA8T-PJTY>] (last visited Feb. 18, 2023); *Frequently Asked Questions*, APEC, <https://www.apec.org/faq> [<https://perma.cc/SB45-6XRK>] (last visited Apr. 12, 2023).

<sup>lxxviii</sup> *How APEC Operates*, APEC, <https://www.apec.org/meeting-papers/listings/annual-ministerial-meetings> [<https://perma.cc/9WSB-V9NB>] (last visited Feb. 18, 2023).

<sup>lxxix</sup> International Organisations (Immunities and Privileges) (APEC Secretariat) Order, G.N. No. S 25/1993, (Sing.).

<sup>lxxx</sup> APEC does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. *See supra* note lv.

<sup>lxxxi</sup> *See supra* note lxxiii.

<sup>lxxxii</sup> *See* CICA Declaration on the Principles Guiding Relations between the CICA Member States, Sept. 14, 1999, [https://docs.google.com/gview?url=http://www.s-cica.org/pdf/DECLARATION\\_ON\\_THE\\_PRINCIPLES\\_GUIDING\\_RELATIONS\\_\(1999\)\\_-\\_eng.doc](https://docs.google.com/gview?url=http://www.s-cica.org/pdf/DECLARATION_ON_THE_PRINCIPLES_GUIDING_RELATIONS_(1999)_-_eng.doc)

[<https://perma.cc/NJ59-XUCN>]; ALMATY ACT (charter of CICA) (June 2002), [https://docs.google.com/gview?url=http://www.s-cica.org/pdf/Almaty\\_Akt\\_\(2002\)\\_-\\_eng.doc](https://docs.google.com/gview?url=http://www.s-cica.org/pdf/Almaty_Akt_(2002)_-_eng.doc) [<https://perma.cc/PP6M-CA33>].

<sup>lxxxiii</sup> *Id.*

<sup>lxxxiv</sup> The organization began with 15 states in 1999 and has grown to 27 member states and 9 observer states as of 2022. Aibarshyn Akhmetkali, *Sixth CICA Summit: Expectations and Retrospective*, THE ASTANA TIMES, (Oct. 12, 2022), <https://astanatimes.com/2022/10/sixth-cica-summit-expectations-and-retrospective/> [<https://perma.cc/S8ZH-933N>].

<sup>lxxxv</sup> *About CICA: Secretariat*, CICA, <https://www.s-cica.org/index.php?view=page&t=secretariat> [<https://perma.cc/Z2US-QTKV>] (last visited Feb. 18, 2023).

<sup>lxxxvi</sup> *About CICA: History*, CICA, <https://www.s-cica.org/index.php?view=page&t=history> [<https://perma.cc/7B4H-HRX>] (last visited March 24, 2023).

<sup>lxxxvii</sup> See ALMATY ACT § I.1, *supra* note lxxxii.

<sup>lxxxviii</sup> Convention on the Privileges and Immunities of the Secretariat, its Personnel and Representatives of Members of the Conference on Interaction and Confidence Building Measures in Asia (June 8, 2010), <https://www.s-cica.org/docs/1910543168625d01919d42e.pdf> [<https://perma.cc/G7BM-D7TL>] [hereinafter Convention on the Privileges and Immunities of the Secretariat].

<sup>lxxxix</sup> Was conferred observer status at the UNGA in 2007. See *Intergovernmental Organizations Having Received a Standing Invitation to Participate as Observers in the Sessions and the Work of the General Assembly and Not Maintaining Permanent Offices at Headquarters*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/AMB2-ZANR>] (last visited Feb. 24, 2023).

<sup>xc</sup> Convention on the Privileges and Immunities of the Secretariat, *supra* note lxxxviii.

<sup>xci</sup> The Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, 14 I.L.M. 1292. See also Jaap de Hoop Scheffer, *The OSCE: A Unique Organisation with Distinctive Added Value*, OSCE (Jun. 5, 2003), <https://www.osce.org/files/f/documents/5/1/42489.pdf> [<https://perma.cc/TT5M-CG58>]. “[T]he OSCE remains the odd one out in relation to most other international organizations. The reasons . . . are that its decisions are not legally binding and it has no legal personality” *Id.*, at 2.

<sup>xcii</sup> *Permanent Council*, OSCE, <https://www.osce.org/permanent-council> [<https://perma.cc/2KVQ-5LXQ>] (last visited Feb. 18, 2023).

<sup>xciii</sup> See *Participating States*, OSCE, <https://www.osce.org/participating-states> [<https://perma.cc/P27S-8EGM>] (last visited Feb. 18, 2023). The OSCE grew from 35 signatories of the Helsinki Final Act of 1975 to 57 members.

<sup>xciv</sup> *OSCE Secretariat*, OSCE, <https://www.osce.org/secretariat> [<https://perma.cc/2NKE-685C>] (last visited Feb. 18, 2023).

<sup>xcv</sup> *Activities of the Secretariat*, OSCE, <https://www.osce.org/files/f/documents/b/1/18918.pdf> [<https://perma.cc/S29J-NSQN>] (last visited March 15, 2023).

<sup>xcvi</sup> *CSCE/OSCE Key Documents*, OSCE, <https://www.osce.org/resources/csce-osce-key-documents> [<https://perma.cc/XNQ7-MHXU>] (last visited Feb. 18, 2023).

<sup>xcvii</sup> The OSCE has privileges and immunities in some but not all OSCE participating states. See generally Isabelle Pingel, *Privileges and Immunities of the Organization for Security and Co-Operation in Europe* (Max Planck Inst. for Comparative Pub. L. & Int. L., Paper No. 2018-37, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3300813](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3300813) [<https://perma.cc/SL2P-67VB>].

<sup>xcviii</sup> The OSCE was conferred observer status at the UNGA in 1993. See *Intergovernmental Organizations Having Received a Standing Invitation to Participate as Observers in the Sessions and the Work of the General Assembly and Not Maintaining Permanent Offices at Headquarters*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/R4XY-QA8L>] (last visited Feb. 18, 2023).

<sup>xcix</sup> OSCE staff have privileges and immunities in some but not all OSCE participating states. See Pingel, *supra* note xcvii, at 4.

<sup>c</sup> North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M. 1480, <https://ustr.gov/sites/default/files/naaec.pdf> [<https://perma.cc/U6RA-99F3>].

<sup>ci</sup> *International Cooperation: CEC Council Sessions*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/international-cooperation/cec-council-sessions> [<https://perma.cc/wx6q-wwn7>] (last visited Feb. 15, 2023).

<sup>cii</sup> Agreement among three countries. See North American Agreement on Environmental Cooperation, *supra* note c.

<sup>ciii</sup> See *id.*, at art. 8, ¶ 2.

*Operational Plan of the Commission for Environmental Cooperation 2004-2006*, COMMISSION FOR ENVIRONMENTAL COOPERATION OF NORTH AMERICA, [http://www.cec.org/files/documents/operational\\_plans/1791\\_2004-operationalplan\\_en.pdf](http://www.cec.org/files/documents/operational_plans/1791_2004-operationalplan_en.pdf) [https://perma.cc/TH4T-MF3Q] (last visited Apr. 12, 2023); *Secretariat*, COMMISSION FOR ENVIRONMENTAL COOPERATION, <http://www5.cec.org/about-us/secretariat> [https://perma.cc/86LW-8PFV] (last visited Apr. 12, 2023).

<sup>cv</sup> See North American Agreement on Environmental Cooperation, Art. 3, *supra* note c.

<sup>cvi</sup> Foreign Missions and International Organizations Act, SOR/97-450 (Can.); 22 U.S.C. § 288 (Defining “international organization” and the president’s authority); Commission for Environmental Cooperation Privileges and Immunities in Canada Order (Foreign Missions and International Organisations Act), SOR/97-450 (Can.) (Sept. 23, 1997), <https://laws-lois.justice.gc.ca/eng/regulations/SOR-97-450/page-1.html> [https://perma.cc/HDX6-URT8].

<sup>cvi</sup> *Id.*

<sup>cvi</sup> Economic Declaration ¶ 53 (July 16, 1989), <http://www.g8.utoronto.ca/summit/1989paris/communiqu/index.html> [https://perma.cc/V9AU-4X2Q].

Established in 1989 by the G-7. Received new open-ended mandate in April 2019; FATF, HIGH-LEVEL PRINCIPLES AND OBJECTIVES FOR FATF AND FATF-STYLE REGIONAL BODIES (2009), <https://www.fatf-gafi.org/en/publications/Fatfgeneral/High-levelprinciplesfortherelationshipbetweenthefatfandthefatf-styleregionalbodies.html> [https://perma.cc/SY6N-U7GU].

<sup>cix</sup> *FATF Plenary Meetings – Chairman’s Summaries*, FATF, <https://www.fatf-gafi.org/en/the-fatf/outcomes-of-meetings.html> [https://perma.cc/N5L5-RDCR] (last visited Feb. 24, 2023).

<sup>cx</sup> FATF has grown from 33 members to 39. *History of the FATF*, FATF, <https://www.fatf-gafi.org/en/the-fatf/history-of-the-fatf.html#:~:text=The%20Financial%20Action%20Task%20Force,G7%20Summit%20in%20July%201989> [https://perma.cc/JFZ9-C468] (last visited Feb. 24, 2023).

<sup>cx</sup> *FATF Secretariat*, FATF, <https://www.fatf-gafi.org/en/the-fatf/fatf-secretariat.html> [https://perma.cc/Q3LY-HHL2] (last visited Mar. 20, 2023).

<sup>cxii</sup> FINANCIAL ACTION TASK FORCE ANNUAL REPORT 2004 – 2005, FINANCIAL ACTION TASK FORCE (June 10, 2005); *Frequently Asked Questions*, FATF, <https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html> [https://perma.cc/6E6S-NPUR] (last visited Apr. 12, 2023).

<sup>cxiii</sup> *Financial Action Task Force*, FATF MANDATE (Apr. 12, 2019), <https://www.fatf-gafi.org/en/the-fatf/mandate-of-the-fatf.html#:~:text=FATF's%20mandate%20recognises%20the%20need,threats%20that%20all%20countries%20face>.

<sup>cxiv</sup> The FATF secretariat is housed at the OECD. Its officials may therefore benefit from OECD privileges and immunities. See *Privileges and Immunities Agreements*, OECD, <https://www.oecd.org/legal/privileges-immunities-agreements.html> [https://perma.cc/N238-2NKG] (last visited Feb. 24, 2023).

<sup>cxv</sup> FATF does not have observer status at the UN General Assembly or at other major international organizations such as the WTO. See *Intergovernmental and Other Organizations*, THE UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [https://perma.cc/VUT6-226L] (last visited Feb. 15, 2023).

<sup>cxvi</sup> The FATF secretariat is housed at the OECD. Its officials may therefore benefit from OECD privileges and immunities. See *Privileges and Immunities Agreements*, OECD, <https://www.oecd.org/legal/privileges-immunities-agreements.html> [https://perma.cc/N238-2NKG] (last visited Feb. 24, 2023).

<sup>cxvii</sup> CONSTITUTION OF THE ICPO-INTERPOL, art. 30, <https://www.interpol.int/en/content/download/590/file/01%20E%20CONSTITUTION%2011%202021.pdf> [https://perma.cc/YMA4-KPWH].

<sup>cxviii</sup> *General Assembly*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Governance/General-Assembly> [https://perma.cc/GK33-868F] (last visited Feb. 16, 2023).

<sup>cxix</sup> Interpol membership has grown from a few dozen countries to 195 member states. See *Membership of Interpol*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Legal-framework/Membership-of-INTERPOL> [https://perma.cc/FA92-FCQZ] (last visited Feb. 16, 2023).

<sup>cx</sup> *General Secretariat*, INTERPOL, <https://www.interpol.int/en/Who-we-are/General-Secretariat> [https://perma.cc/FE82-2FZH] (last visited Feb. 16, 2023).

<sup>357</sup> *Id.*

<sup>cxxi</sup> *Id.*; INTERPOL AT WORK: ANNUAL ACTIVITY REPORT, INTERPOL (2004).

<sup>cxii</sup> INTERPOL, *supra* note CXVII.

<sup>cxixiii</sup> Agreement between ICPO-Interpol and the Government of the French Republic Regarding INTERPOL's Headquarters in France, Nov. 3, 1992, <https://www.interpol.int/content/download/6815/file/Agreement%20between%20ICPO-INTERPOL%20and%20France.pdf> [<https://perma.cc/3UVB-MS6N>].

<sup>cxixiv</sup> Interpol was conferred observer status at the UNGA in 1996. *See Interpol and the United Nations*, INTERPOL, <https://www.interpol.int/en/Our-partners/International-organization-partners/INTERPOL-and-the-United-Nations> [<https://perma.cc/NGY9-XRDT>] (last visited Feb. 16, 2023); *Intergovernmental Organizations having received a standing invitation to participate as Observers in the sessions and the work of the General Assembly and not maintaining Permanent Offices at Headquarters*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/VUT6-226L>] (last visited Feb. 15, 2023).

<sup>cxixv</sup> Interpol has entered many cooperation agreements. It is debatable, however, whether those are treaties under international law or are mere contracts. *See Cooperation Agreements*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Legal-framework/Cooperation-agreements> [<https://perma.cc/T32H-CXGU>] (last visited Feb. 16, 2023).

<sup>cxixvi</sup> STAFF MANUAL FOR THE GENERAL SECRETARIAT, INTERPOL 16 (Oct. 13, 2019), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiY\\_P-vp5T1AhWIHDQIHmCDVEQFnoECA8QAQ&url=https%3A%2F%2Fwww.interpol.int%2Fcontent%2Fdownload%2F7167%2Ffile%2F13%2520E%2520STAFF%2520MANUAL.pdf&usg=AOvVaw2fXoWfQy-f-vA2rL18bGuh](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiY_P-vp5T1AhWIHDQIHmCDVEQFnoECA8QAQ&url=https%3A%2F%2Fwww.interpol.int%2Fcontent%2Fdownload%2F7167%2Ffile%2F13%2520E%2520STAFF%2520MANUAL.pdf&usg=AOvVaw2fXoWfQy-f-vA2rL18bGuh) [<https://perma.cc/V4B3-JLK2>].

<sup>cxixvii</sup> Remains an informal cooperation group. *Draft Guidelines for Cooperation in the Dublin Group*, E.U. MONITOR, <https://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vkeg9ge2kztl> [<https://perma.cc/PE5X-A5GB>] (last visited Feb. 16, 2023).

<sup>cxixviii</sup> *Id.*

<sup>cxixix</sup> Review of Guidelines for Cooperation in the Dublin Group, 7765/1/05 Rev 1, COUNCIL OF THE EUROPEAN UNION (July 6, 2005), <https://data.consilium.europa.eu/doc/document/ST-7765-2005-REV-1/en/pdf> [<https://perma.cc/6H8V-NS7W>]; Guidelines for Cooperation in the Dublin Group, 9161/3/17 Rev 3, COUNCIL OF THE EUROPEAN UNION (March 1, 2018), <https://data.consilium.europa.eu/doc/document/ST-9161-2017-REV-3/en/pdf> [<https://perma.cc/7FG6-QAGJ>].

<sup>cxixxx</sup> *Dublin Group*, YEARBOOK OF INTERNATIONAL ORGANIZATIONS ONLINE (2022), <https://uia.org/s/or/en/1122284786> [<https://perma.cc/8LKK-MMYG>]. The Dublin Group secretariat is based in the Council of the European Union secretariat.

<sup>cxixxi</sup> *Id.*

<sup>cxixxii</sup> The European Union provides the Secretariat for the Dublin Group. The Group may benefit from immunity through its association with the European Union. Cindy Fazey, *International Policy on Illicit Drug Trafficking: The Formal and Informal Mechanisms*, J. OF DRUG ISSUES 769 (2007); Protocol (No 7) On the Privileges and Immunities of the European Union, Art. 1-4 (Oct. 26, 2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/PRO/07&from=EN#d1e286-266-1> [<https://perma.cc/AK6B-3FPH>].

<sup>cxixxiii</sup> *Intergovernmental Organizations having received a standing invitation to participate as Observers in the sessions and the work of the General Assembly and not maintaining Permanent Offices at Headquarters*, UNITED NATIONS, <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> [<https://perma.cc/VUT6-226L>] (last visited Feb. 15, 2023).

<sup>cxixxiv</sup> The European Union provides the Secretariat for the Dublin Group. Secretariat officials may benefit from the privileges and immunities afforded to the European Union secretariat. *See* Protocol (No 7) On the Privileges and Immunities of the European Union, Art. 10 (Oct. 26, 2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/PRO/07&from=EN#d1e286-266-1> [<https://perma.cc/AK6B-3FPH>].

<sup>cxixxv</sup> *Setting Up a Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)*, Res. (80) 2 (Mar. 27, 1980), <https://rm.coe.int/resolution-80-2-english-mod/16808e5106> [<https://perma.cc/6VPN-JFH6>]. Incorporated into the institutional framework of the Council of Europe as an inter-governmental body.

<sup>cxixxvi</sup> *Pompidou Group: The Ministerial Conference*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/pompidou/about/tasks-and-structure/the-ministerial-conference> [<https://perma.cc/VBZ4-Y9DH>] (last visited Feb. 16, 2023).

<sup>cxlvii</sup> *Our Members*, COUNCIL OF EUROPE—POMPIDOU GROUP, <https://www.coe.int/en/web/pompidou/about/member-states> [<https://perma.cc/K9SB-VKLB>] (last visited Feb. 16, 2023) The group started as an informal arrangement among seven countries and has grown to 41 member states. *See Our History*, COUNCIL OF EUROPE—POMPIDOU GROUP, <https://www.coe.int/en/web/pompidou/about/history> [<https://perma.cc/7T33-2W6X>] (last visited Feb. 16, 2023).

<sup>cxlviii</sup> The secretariat is housed within the institutional framework of the Council of Europe. *Secretariat*, COUNCIL OF EUROPE—POMPIDOU GROUP, <https://www.coe.int/en/web/pompidou/about/secretariat> [<https://perma.cc/6USX-ENAN>] (last visited Mar. 20, 2023).

<sup>cxlix</sup> *Secretariat*, COUNCIL OF EUROPE – POMPIDOU GROUP (March 9, 2005),

[http://web.archive.org/web/20050309073315/http://www.coe.int/T/E/Social\\_Cohesion/pompidou\\_group/1.The\\_Pompidou\\_Group/Secretariat/default.asp#TopOfPage](http://web.archive.org/web/20050309073315/http://www.coe.int/T/E/Social_Cohesion/pompidou_group/1.The_Pompidou_Group/Secretariat/default.asp#TopOfPage) [<https://perma.cc/2ANQ-6FYC>]; *Secretariat*, COUNCIL OF EUROPE – POMPIDOU GROUP, <https://www.coe.int/en/web/pompidou/about/secretariat> [<https://perma.cc/X5AX-FHDY>].

<sup>cxli</sup> *Pompidou Group: The Ministerial Conference*, COUNCIL OF EUROPE, *supra* note cxxxvi.

<sup>cxlii</sup> The Council of Europe provides the Pompidou Group with secretarial services and secretariat officials may benefit from the privileges and immunities afforded to the European Union secretariat. *See* CM/Res(2021)4 of the Committee of Ministers of the Council of Europe on the Council of Europe International Co-operation Group on Drugs and Addictions (Pompidou Group), COUNCIL OF EUROPE (June 16, 2021); Res.(80)2, COUNCIL OF EUROPE (March 27, 1980), <https://rm.coe.int/resolution-80-2-english-mod/16808e5106> [<https://perma.cc/C3VX-V8X2>]; General Agreement on Privileges and Immunities of the Council of Europe, Paris, 2.IX.1949, (Eur. T.S. No. 2), <https://rm.coe.int/1680063729> [<https://perma.cc/XH68-C3LX>].

<sup>cxliii</sup> *Id.*

<sup>cxliii</sup> *Baku to Host 36<sup>th</sup> International Drug Enforcement Conference*, AZERTAC (Apr. 12, 2019),

[https://azertag.az/en/xeber/Baku\\_to\\_host\\_36th\\_International\\_Drug\\_Enforcement\\_Conference-1269299](https://azertag.az/en/xeber/Baku_to_host_36th_International_Drug_Enforcement_Conference-1269299) [<https://perma.cc/G6KD-LRNF>].

<sup>cxliv</sup> *See, e.g., The 30th Annual International Drug Enforcement Conference*, WORLD TRADE CTRS. ASS'N (May 6, 2013), <https://www.wtca.org/news/the-30th-annual-international-drug-enforcement-conference> [<https://perma.cc/9SUF-NENK>] (“the annual sessions rotate between member countries and are organized for the heads of national special forces that are responsible for drug control.”).

<sup>cxlv</sup> Hugh Hollman & William E. Kovaic, *The International Competition Network: Its Past, Current and Future Role*, FED. TRADE COMM. 274 (citing International Competition Policy Advisory Comm., U.S. Dep't of Justice, Final Report 281–302 (2000)); This is still described as an informal network. *See About*, INT'L COMP. NETWORK, <https://www.internationalcompetitionnetwork.org/about/> [<https://perma.cc/PH3M-GLGR>] (last visited Mar. 20, 2023).

<sup>cxlvi</sup> *Id.*

<sup>cxlvii</sup> The ICN has grown from 14 members in 2001 to 140 members. *See id.; Members*, INT'L COMP. NETWORK, <https://www.internationalcompetitionnetwork.org/members/> [<https://perma.cc/2M8D-ZZVX>] (last visited Mar. 20, 2023).

<sup>cxlviii</sup> *ICN Contacts*, INT'L COMP. NETWORK, <https://www.internationalcompetitionnetwork.org/contact/> [<https://perma.cc/BD5Q-EWAL>] (last visited Mar. 20, 2023).

<sup>cxlix</sup> *See supra* note cxlv (“[T]he ICN does not exercise any rule-making function. Where the ICN reaches consensus on recommendations, or ‘best practices,’ arising from the projects, individual competition authorities decide whether and how to implement the recommendations, through unilateral, bilateral or multilateral arrangements, as appropriate.”).